

Nos. 21-3981, 21-3991

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

STEVE SNYDER-HILL, et al.,

Plaintiffs-Appellants,

v.

OHIO STATE UNIVERSITY,

Defendant-Appellee.

TIMOTHY MOXLEY, et al.,

Plaintiffs-Appellants,

v.

OHIO STATE UNIVERSITY,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District Of Ohio
Nos. 2:18-cv-736, 2:21-cv-03838 (Hon. Michael H. Watson)

**BRIEF OF NATIONAL WOMEN'S LAW CENTER,
WOMEN'S SPORTS FOUNDATION, AND 49 ADDITIONAL
ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

(Counsel Listed on Inside Cover)

NATIONAL WOMEN'S LAW CENTER

Emily Martin
Sunu P. Chandy
Shiwali Patel
Neena Chaudhry
Elizabeth Tang
11 Dupont Circle NW, Suite 800
Washington, DC 20036
Telephone: (202) 588-5180
spatel@nwlc.org

WEIL, GOTSHAL & MANGES LLP

Caroline Hickey Zalka
Alexandra Rose
Seth Massey
767 5th Avenue
New York, NY 10153
Telephone: (212) 310-8000
caroline.zalka@weil.com

Arianna Scavetti
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7000
arianna.scavetti@weil.com

Counsel for Amici Curiae

Additional Amici Listed on Next Page

ADDITIONAL AMICI CURIAE

9to5, National Association of Working Women

American Association of University Women

American Medical Women's Association

Athlete Ally

Autistic Self Advocacy Network

Birnbaum Women's Leadership Network at NYU School of Law*

Center for Women's Health & Human Rights, Suffolk University

Chicago Alliance Against Sexual Exploitation (CAASE)

Clearinghouse on Women's Issues

Collective Power for Reproductive Justice

Desiree Alliance

EducateUS: SIECUS In Action

Family Equality

Feminist Majority Foundation

FORGE, Inc.

GLBTQ Legal Advocates & Defenders

If/When/How: Lawyering for Reproductive Justice

* This brief has been joined by a Center affiliated with New York University School of Law, but does not purport to present the school's institutional views, if any.

Kentucky Association of Sexual Assault Programs

Lawyers Club, San Diego

Legal Aid At Work

Legal Momentum, the Women's Legal Defense and Education Fund

NARAL Pro-Choice America

National Alliance to End Sexual Violence

National Association of Social Workers

National Association of Women Lawyers

National Center for Transgender Equality

National Crittenton

National Employment Lawyers Association

National Network to End Domestic Violence

National Organization for Women Foundation

National Women's Political Caucus

Nurses for Sexual Reproductive Health

Ohio Alliance to End Sexual Violence

Ohio Council of Churches

Oklahoma Call for Reproductive Justice

Reproaction

SIECUS: Sex Ed for Social Change

SisterLove Inc.

SisterReach

The Army of Survivors

The Women's Law Center of Maryland

Victim Rights Law Center

Women Lawyers Association of Los Angeles

Women Lawyers On Guard Inc.

Women's All Points Bulletin (WAPB)

Women's Bar Association of the District of Columbia

Women's Institute for Freedom of the Press

Women's Law Project

Women's Media Center

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sixth Circuit Rule 26.1 and Federal Rule of Appellate Procedure 29(a)(4)(A), undersigned counsel certifies that no *Amici Curiae* is a subsidiary or affiliate of any publicly owned corporation not named in this appeal; none has a parent corporation; and there is no publicly held corporation that owns 10% or more of the stock of any of them. No *Amici Curiae* has a substantial financial interest in the outcome of the litigation.

Dated: February 9, 2022

/s/ Caroline Hickey Zalka

Caroline Hickey Zalka

Counsel for Amici Curiae

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i
AMICI CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE 1
INTRODUCTION 3
ARGUMENT 6
 I. Failure to recognize sexual abuse is a pervasive and insidious
 problem..... 6
 II. The challenges in recognizing sexual abuse are exacerbated in
 college athletics. 9
 A. College athletes have a special relationship of trust and
 dependence with their institutions and athletic teams. 10
 B. College athletics culture may inhibit athletes from
 realizing they have been sexually abused. 16
 III. The district court erred in failing to account for the context here
 that made it less likely that Plaintiffs would realize that they
 had faced sexual abuse. 23
CONCLUSION 26
CERTIFICATE OF COMPLIANCE 29
CERTIFICATE OF SERVICE 30
ADDENDUM 31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Nat’l Collegiate Athletic Ass’n v. Alston</i> , 141 S. Ct. 2141 (2021).....	14
Statutes	
Title IX of the Education Amendments of 1972.....	1, 2, 4
Other Authorities	
Association of Alberta Sexual Assault Services, <i>Men and Sexual Assault</i> , https://bit.ly/3IR1EOb (last visited Feb. 9, 2022)	22, 23
AAU, <i>Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct</i> , ix (Oct. 15, 2019), https://bit.ly/3Lloik3	6, 7
Abigail Pesta, <i>An Early Survivor of Larry Nassar’s Abuse Speaks Out For the First Time</i> , Time (July 18, 2019), https://bit.ly/3IVHJyv	7, 8, 20
Adam Epstein & Paul M. Anderson, <i>The Relationship between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective</i> , 26 Marq. Sports L. Rev. 287, 290 (2016).....	15
Adela S. Roxas & Lynn L. Ridinger, <i>Relationships of Coaching Behaviors to Student-Athlete Well-Being</i> , 2 Higher Educ. Pol. & Econ., no. 1, art. 10, at 2 (2016), https://bit.ly/3ma3nFF	13
Aimee C. Kimball, ‘ <i>You signed the line</i> ’: <i>Collegiate student athletes’ perceptions of Autonomy</i> , 8 Psychology of Sport and Exercise, no. 5, at 818 (2007).....	11
Alexandra Laird, <i>The NCAA’s Lack of Clarity Regarding Coaches Liability for Abuse of Players</i> , THE L•E•JER, (Sept. 6, 2021) https://bit.ly/3ywthIx	12
Aubri Keese, <i>Young athletes’ perceptions of playing though pain</i> , Dissertations and Theses @ UNI, at 10-15, 19 (May 2020), https://bit.ly/3q09U6O	21

Blair McDonald, *What it Means to be a Student-Athlete*, Vand. Hustler (Sept. 9, 2019) <https://bit.ly/3pZGjdp>15

Caryn Trombino & Markus Funk, Perkins Coie LLP, *Report of the Independent Investigation: Sexual Abuse Committed by Dr. Richard Strauss at The Ohio State University*, 2-4, 71, 132-34 (May 15, 2019), <https://bit.ly/3EsRBMYY>22, 26

Centers for Disease Control and Prevention, *Preventing Sexual Violence, Violence Prevention* (2021), <https://bit.ly/3p0Sckp>6

Chris Carr & Jamie Davidson, *Mind, Body and Sport: The psychologist perspective*, NCAA, <https://bit.ly/3ISEVIL> (last visited Feb. 9, 2022).....22

David Jesse, *Campus doctors who abuse athletes use their access and power*, Detroit Free Press (Mar. 5, 2020), <https://bit.ly/3sfZVNo>16, 17

Ellen Staurowsky, *College Athletes’ Rights in the Age of the Super Conference: The Case of the All Players United Campaign*. J. of Intercollegiate Sport, 11, 24 (2014), <https://bit.ly/3F47J8G>12

Erin Hatton, *Colleges expect athletes to work but not to air any grievances – here’s why that’s wrong*, The Conversation, (July 21, 2020), <https://bit.ly/3yECvCz>13, 14, 21

Frank LoMonte, *Universities continue to block athletes from talking to the media. That’s got to stop.*, Poynter (Sept. 23, 2020) <https://bit.ly/3F7eM0g>11, 21

Gary Smith, *Why Don’t More Athletes Take A Stand*, S.I. Vault (July 9, 2012), <https://bit.ly/3yxRpdO>.....11

James M. DuBois, et al., *Sexual Violation of Patients by Physicians: A Mixed-Methods, Exploratory Analysis of 101 Cases*, 31 Sexual Abuse 503, 504, 514 (2019).....8

Jennifer Medina, *‘Just the grossest thing’: Women Recall Interactions With U.S.C. Doctor*, N.Y. Times (May 17, 2018).....8, 9

Joseph Nardone, *College Coaches Have Too Much Influence And Unchecked Power Opposite Medical Staffs, Survey Suggests*, Forbes (June 25, 2019) <https://bit.ly/3yLkTVT>.....13

Kathleen C. Basile et al., *Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements* (2014), <https://bit.ly/3GJqizg>3

Kathy Fang & Elizabeth Karpen, *175 women alleged sexual abuse against a Columbia gynecologist. Five years after his conviction, they’re still fighting to be heard*, *Colum. Spectator* (Mar. 26, 2021), <https://bit.ly/3scRTFe>8, 9

Keaton Clauss Muzika, *College Athletes and Romantic Relationship Conflict: The Moderating Effects of Sport-Relationship Conflict and Enrichment*, *Electronic Theses and Dissertations*, at 3 (Aug. 2018), <https://bit.ly/3mefUYs>11

Kirsten Moran, *Don’t fool yourself: Athletes commit to a coach, not a program*, *Nevada Sportsnet* (Dec. 9, 2021), <https://bit.ly/324hwgv>12

Kristy McCray & Elizabeth Taylor, *“I learned that sports teaches rape culture”*: *Assessing Sexual Violence Prevention Education for Intercollegiate Athletes*, 14 *J. of Intercollegiate Sport*, no. 1, at 50 (2021)22

Lauren Book, *College athletes report high incidence of sexual abuse by campus authority figures, survey finds*, *Lauren’s Kids* (Aug. 31, 2021), <https://bit.ly/32kUC4M>.....16

Lenny Bernstein, *In Larry Nassar’s shadow, a larger sex abuse case at the University of Michigan*, *Wash. Post* (Sept. 23, 2021)9

Letter from Robert C. Scott, Chair, Comm. On Educ. and Lab., and Suzanne Bonamic, Chair Subcomm. On Civil Rights and Human Servs., to Gene L. Dodaro, Comptroller General, U.S. Gov. Accountability Office (Dec. 16, 2021)23

Lorin Mordecai, *Sexual Violence in Intercollegiate Athletics: A Historical Perspective of Male Athletic Entitlement*, *J. of Issues in Intercollegiate Athletics* 36, special issue (2017)).....22

Lydia Bell & Mary Wilfert, *Mind, Body and Sport: Interpersonal violence and the student-athlete population*, *NCAA*, <https://bit.ly/3292lCo> (last visited Feb. 9, 2022)13, 19, 20, 22

Manisha Aggarwal-Schifellite, *Student-athletes pleased with time on teams, but balancing commitments difficult*, Harv. Gazette (June 5, 2020), <https://bit.ly/328PD6X>.....15

Marc Lallanilla, *Team Psychology Can Contribute to Assaults*, ABC News (April 20, 2006), <https://abcn.ws/3F6DnCz>19, 20

Michele Felder, *What Are College Football Players Eating at BCS Training Tables?*, Bleacher Report (Mar. 19, 2013), <https://bit.ly/3p0A61S>14

RAINN, *Campus Sexual Violence: Statistics*, <https://bit.ly/3scrOpK> (last visited Feb. 9, 2022)7

RAINN, *Scope of the Problem: Statistics*, <https://bit.ly/3e0qq0W> (last visited Feb. 9, 2022)6

Rape, Abuse, and Incest National Network, *Perpetrators of Sexual Violence: Statistics*, <https://bit.ly/323ziR1> (last Feb. 9, 2022)3

Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 Wash. L. Rev. 71, 99 & n. 127 (2006).....10, 14

Shaila Dewan, *Why Women Can Take Years to Come Forward With Sexual Assault Allegations*, N.Y. Times (Sept. 18, 2018).....7

Talia Richman & Doug Donovan, *Death of Jordan McNair: Why did so few Maryland football players talk to investigator?*, The Balt. Sun (Oct. 8, 2018)11, 12

The 1 in 6 Statistic, 1in6, <https://bit.ly/3J39DIi> (last visited Feb. 9, 2022)6

The Trust Gap Among College Students, National Survey of Student Engagement, <https://bit.ly/3dVRA9p> (last visited Feb. 9, 2022)15

U.S. Dep’t of Justice, Bureau of Justice Statistics, *National Crime Victimization Survey, 2010-2014*, (2015), <https://bit.ly/3pZrgAU>.....6

Well-Being, NCAA, <https://bit.ly/3F9MO4c> (last visited Feb. 9, 2022)17

**AMICI CURIAE’S IDENTITY, INTEREST,
AND AUTHORITY TO FILE¹**

Sexual abuse prevents survivors from accessing the full and enriching benefits of athletics and education. *Amici* aim to help this Court to understand the insidious effects of sexual abuse on college athletes and the imperative of considering the experiences of survivors in addressing sexual harassment through the enforcement of Title IX.

The **National Women’s Law Center** (“NWLC”) is a non-profit legal advocacy organization dedicated to the advancement and protection of the rights of all people to be free from sex discrimination. Since its founding in 1972, NLWC has worked to advance educational opportunities, income security, workplace justice, and health and reproductive rights for women and girls and has participated as counsel or *Amicus Curiae* in a range of cases before the Supreme Court, federal courts of appeals, federal district courts, and state courts to secure protections against sex discrimination. NWLC’s work of advocating for equity in education, including in school athletics, includes advocating for the full and fair enforcement of Title IX of the Education Amendments of 1972 (“Title IX”). Accordingly, NWLC has an

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *Amici Curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

interest in eradicating sexual harassment, including assault, on college campuses and in college athletics.

The **Women's Sports Foundation** (“WSF”) exists to enable girls and women to reach their potential in sport and life. The organization is an ally, an advocate, and a catalyst. Founded by Billie Jean King in 1974, WSF strengthens and expands athletic participation and leadership opportunities through research, advocacy, community programming, and a wide variety of collaborative partnerships. WSF has positively shaped the lives of millions of youth, high school and college athletes, elite athletes, and coaches. As part of its work, WSF advocates for policies to safeguard against abuse and harassment in sport, which deter athletes from participating in sports and developing as individuals and athletes.

Additional *Amici* are civil rights advocacy organizations, committed to ensuring that survivors can bring claims (including through Title IX) for the harms they have faced and that they are not prevented from pursuing justice by erroneous application of procedural barriers. All *Amici* share an interest in eradicating sexual abuse, including in college athletics, and facilitating this Court's understanding of the effects of sexual abuse on college athletes and the importance of considering survivors' experiences in evaluating their claims.

INTRODUCTION

Each year, hundreds of thousands of individuals are subjected to sexual abuse—the vast majority of them at the hands of someone they know or trust.² Abuse of this type can be particularly insidious in the way it twists bonds of trust to protect perpetrators. Unable to process that a person they know could betray their trust in this way, survivors may fail to recognize the harm perpetrated against them as sexual abuse. The consequences are profound and deeply troubling: Survivors may struggle to cope with trauma they do not fully understand and may be unable to seek treatment and support they need. The ruling of the court below, if upheld, would add yet another profound and unwarranted consequence: the impossibility of securing justice for survivors who did not at first recognize their experiences as sexual abuse.

² Rape, Abuse, and Incest National Network (“RAINN”), *Perpetrators of Sexual Violence: Statistics*, <https://bit.ly/323ziR1> (last visited Feb. 9, 2022). Sexual abuse can take many forms, including assault, harassment, and molestation. The Centers for Disease Control and Prevention (“CDC”) defines sexual violence as “a sexual act that is committed or attempted by another person without freely given consent of the victim or against someone who is unable to consent or refuse.” Kathleen C. Basile et al., *Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements*, at 11 (2014), <https://bit.ly/3GJqizg>. It includes “nonphysically pressured unwanted penetration; intentional sexual touching; [and] non-contact acts of a sexual nature.” *Id.* And it includes when a victim is unable to refuse due to “intimidation or pressure, or misuse of authority.” *Id.* Unless otherwise specified, the term “sexual abuse” as used in this brief is intended to encompass sexual violence and harassment in all its forms.

Plaintiffs are former students, many of whom were college athletes, at The Ohio State University (“OSU”) who suffered sexual abuse at the hands of Dr. Richard Strauss over the course of two decades while OSU ignored and enabled it. The district court granted OSU’s motion to dismiss their complaint on the ground that Plaintiffs’ Title IX claims were barred by the statute of limitations. The court presumed that all Plaintiffs knew or should have known, either during Dr. Strauss’s abusive medical examinations or shortly thereafter, that they suffered sexual abuse. The court deemed it implausible that Plaintiffs did not recognize until years later that Dr. Strauss’s “treatment” was sexual abuse because some Plaintiffs stated in the complaint that they had been uncomfortable with the examinations and had discussed their discomfort with teammates and coaches.³

The district court’s analysis wrongly conflated some Plaintiffs’ descriptions of discomfort at the time of the examinations with a recognition that they had been sexually abused. The court also incorrectly assumed that because the uncomfortable nature of Dr. Strauss’s examinations was openly discussed or joked about by some athletes at OSU, every Plaintiff should have known or should have investigated to discover that the abuse resulted from OSU’s deliberate indifference.⁴ But these

³ See *Garrett* Op. and Order, [hereinafter, “*Garrett* Op.”], R. 197 at 18 n.7 (adopted by *Snyder-Hill* Op. and Order, R. 158; and *Moxley* Op. and Order, R. 26).

⁴ *Id.* at 19 n.8.

allegations, which the district court erroneously used to discredit Plaintiffs' claims, actually illustrate the insidious ways in which Plaintiffs' trust in their institution prolonged their suffering and made it less likely that they would realize that they experienced sexual abuse.

The district court's analysis failed to account for well-established social and psychological dynamics that can prevent survivors of sexual abuse—especially abuse at the hands of a trusted authority figure—from recognizing it. These dynamics are exacerbated in the context of college athletics. College athletes are susceptible to the influence of authority figures, particularly ones they trust and admire, such as a coach or team doctor. They are vulnerable to accepting experiences shared with and condoned by their teams as normal and appropriate and may be less likely to suspect that these experiences are abusive. As high-level athletes, they are often encouraged to endure physical discomfort and suppress pain. These factors ingrained in college athletics place college athletes at heightened risk not only of experiencing sexual abuse but also of failing to realize they have been abused. By failing to account for these dynamics, the district court incorrectly discredited the experiences of survivors of sexual abuse, and particularly survivors who are also college athletes.

Survivors of sexual abuse at the hands of trusted authority figures already face enormous challenges in redressing the trauma they have suffered. Courts should not

add to these challenges by constraining survivors from seeking and achieving justice based on unsupported and harmful assumptions about whether and how they should recognize abuse. Plaintiffs plausibly alleged that they did not understand until years later that Dr. Strauss had sexually abused them *and* that OSU's deliberate indifference allowed further abuse. The district court was wrong to deem their claims untimely, and its order of dismissal should be reversed.

ARGUMENT

I. Failure to recognize sexual abuse is a pervasive and insidious problem.

Sexual abuse is an all-too-common problem that affects every community. More than 400,000 individuals are sexually abused each year.⁵ Sexual abuse is particularly pervasive on college campuses, where one in four women, one in fifteen men, and one in four transgender, non-binary, and gender-nonconforming students are sexually assaulted during their time as undergraduates.⁶ Male college students

⁵ RAINN, *Scope of the Problem: Statistics*, <https://bit.ly/3e0qq0W> (last visited Feb. 9, 2022) (citing the U.S. Dep't of Justice, Bureau of Justice Statistics, *National Crime Victimization Survey, 2010-2014*, (2015), <https://bit.ly/3pZrgAU>); *see also* CDC, *Preventing Sexual Violence, Violence Prevention* (2021), <https://bit.ly/3p0Sckp>.

⁶ AAU, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, ix (Oct. 15, 2019) [hereinafter "AAU Survey"], <https://bit.ly/3Lloik3>. In addition, according to a 2005 student conducted by the U.S. Centers for Disease Control, 16% of boys—or about one in six boys—have been sexually abused by the age of 18. The 1 in 6 Statistic, 1in6, <https://bit.ly/3J39DIi> (last visited Feb. 9, 2022).

are 78% *more* likely than male non-students of the same age to be a victim of rape or sexual assault.⁷

But the fact that sexual abuse is so prevalent does not mean that it is easily *recognized* as abuse—including by the survivors themselves. An abuser's actions—pretending as if nothing abusive happened, or dismissing or minimizing the incident—can inhibit a survivor's ability to recognize abuse for what it is.⁸ Male survivors may be particularly likely to doubt their experience: In a survey of 181,752 students at 33 universities, more than half of college men who experienced nonconsensual sexual touching said they did not believe it was serious enough to report to the school.⁹

Barriers to recognizing sexual abuse take on added significance in the context of abuse perpetrated by medical professionals. Patients trust doctors with their bodies, and appropriate medical procedures may be uncomfortable or feel invasive.

⁷ RAINN, *Campus Sexual Violence: Statistics*, <https://bit.ly/3scrOpK> (last visited Feb. 9, 2022).

⁸ Shaila Dewan, *Why Women Can Take Years to Come Forward With Sexual Assault Allegations*, N.Y. Times (Sept. 18, 2018), <https://nyti.ms/3oYVNiT>; *see also* Abigail Pesta, *An Early Survivor of Larry Nassar's Abuse Speaks Out For the First Time*, Time (July 18, 2019), <https://bit.ly/3IVHJyv> (a survivor of U.S. Gymnastics' team doctor Larry Nassar's abuse recounting how Nassar normalized inappropriate touching).

⁹ *AAU Survey* at A7-27. This is just one of the many hurdles male survivors face in responding to and overcoming sexual abuse.

For this reason, patients relying upon doctors' expertise and discretion generally will not assume that an unpleasant experience is abusive. To the contrary, survivors of abuse by doctors often believe that the uncomfortable touching they experienced was medically necessary—a belief that can be reinforced by the doctor's own assurances that their conduct is normal and appropriate. For example, a former USC student who was abused by a university doctor explained that she was unclear if the doctor abused her because “she was young and unsure of proper protocol for a physician.”¹⁰ A survivor of sexual abuse by a Columbia gynecologist described a similar experience: “I believed that everything he was doing was medically necessary . . . It wasn't until after the fact that I realized this was not what it was supposed to be.”¹¹ This trust often contributes to the reoccurrence of abuse by physicians on patient-victims: In a study of 101 cases of sexual abuse by a physician, abuse reoccurred in 96% of cases.¹² The disturbing accounts of sexual abuse by doctors, including Larry Nassar, who abused hundreds of gymnasts;¹³ Robert

¹⁰ Jennifer Medina, *'Just the grossest thing': Women Recall Interactions With U.S.C. Doctor*, N.Y. Times (May 17, 2018), <https://nyti.ms/3F4BeHt>.

¹¹ Kathy Fang & Elizabeth Karpen, *175 women alleged sexual abuse against a Columbia gynecologist. Five years after his conviction, they're still fighting to be heard*, Colum. Spectator (Mar. 26, 2021), <https://bit.ly/3scRTFe>.

¹² James M. DuBois, et al., *Sexual Violation of Patients by Physicians: A Mixed-Methods, Exploratory Analysis of 101 Cases*, 31 Sexual Abuse 503, 504, 514 (2019).

¹³ Pesta, *supra*.

Anderson, who abused more than one thousand University of Michigan male students and athletes;¹⁴ George Tyndall, who abused female students at the University of Southern California;¹⁵ and Robert Hadden, who abused women for decades as a gynecologist at the Columbia University Irving Medical Center,¹⁶ illustrate the breadth and severity of this dynamic.

As these examples show, the assumption that every survivor who feels discomfort necessarily knows or should know that they have been sexually abused rests on a flawed understanding of survivors' experiences—in particular the experience of survivors abused by an authority figure or medical professional.

II. The challenges in recognizing sexual abuse are exacerbated in college athletics.

Factors that often prevent survivors from realizing that the conduct they have experienced is sexual abuse—such as trust in and respect for the perpetrator, normalization through societal expectations and cues from authority figures, and unwillingness to see oneself as a victim—are exacerbated in many respects by the culture of college athletics. College athletes, like the majority of Plaintiffs here, have a special love for their school, and they trust and depend on coaches, team doctors,

¹⁴ Lenny Bernstein, *In Larry Nassar's shadow, a larger sex abuse case at the University of Michigan*, Wash. Post (Sept. 23, 2021), <https://wapo.st/3e49tmd>.

¹⁵ Medina, *supra*.

¹⁶ Fang & Karpen, *supra*.

and their teammates. They are particularly likely to follow the lead of these figures. These dynamics may prevent college athletes from realizing that they have been the victims of sexual abuse.

A. College athletes have a special relationship of trust and dependence with their institutions and athletic teams.

Being a college athlete is, in many ways, a labor of love. Love of the sport, team, and school motivate college athletes to dedicate enormous amounts of time and energy to representing their schools on and off the field. They wake up hours earlier than their classmates to attend practice, miss office hours to watch game film, and sit in frigid ice baths to rehab aching muscles instead of socializing with friends. The relationship between college athletes and their institution quickly becomes one of particular trust and dependence.

A number of factors contribute to the heightened level of trust that college athletes place in their teams, institutions, and the individuals affiliated with them. One factor is the highly regulated nature of college athletes' lives. College athletes can spend as many as 40 to 50 hours per week on athletic activities alone. *See* Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 Wash. L. Rev. 71, 99 & n. 127 (2006) (conservatively estimating a football player dedicates 53 hours to football during the week of a home game). The sheer amount of time college athletes spend with their coaches and teammates contributes to the construction of deep personal bonds and

strong relationships of trust and community. It also means that college athletes have fewer opportunities to develop relationships outside of their teams—they rarely have time for other jobs, for study sessions with non-athlete classmates, or even for casual socializing. See Keaton Clauss Muzika, *College Athletes and Romantic Relationship Conflict: The Moderating Effects of Sport-Relationship Conflict and Enrichment*, Electronic Theses and Dissertations, at 3 (Aug. 2018), <https://bit.ly/3mefUYs> (citing Aimee C. Kimball, ‘‘You signed the line’’: Collegiate student athletes’ perceptions of Autonomy, 8 *Psychology of Sport and Exercise*, no. 5, at 818 (2007)). This massive time commitment and relationship building contributes to the development of an ‘‘us-against-them’’ mentality. See Gary Smith, *Why Don’t More Athletes Take A Stand*, S.I. Vault (July 9, 2012), <https://bit.ly/3yxRpdO>. College athletes are more likely to protect and defend their school or someone who is a part of the institution because ‘‘there is an unwritten rule that athletes shouldn’t talk to outsiders about issues that could ‘hurt your own.’’’¹⁷ Talia Richman & Doug Donovan, *Death of*

¹⁷ This rule, however, isn’t always unwritten. East Carolina University directs football players, ‘‘[i]f you do not have anything good to say, do not say anything at all. DO NOT COMPLAIN ABOUT THE COACHES, TEAMMATES OR THE UNIVERSITY.’’ Frank LoMonte, *Universities continue to block athletes from talking to the media. That’s got to stop.*, Poynter (Sept. 23, 2020), <https://bit.ly/3F7eM0g>. Kent State University instructs all of its athletes that complaints should be reported to coaches only. See *id.* And 50 out of 58 handbooks from NCAA Division I state universities explicitly forbid college athletes from speaking to journalists without permission. *Id.*

Jordan McNair: Why did so few Maryland football players talk to investigator?, Balt. Sun (Oct. 8, 2018), <https://bit.ly/3m7kbx2>.

College athletes are also conditioned to trust and defer to the judgment of others. Even in their time off the field, everything from what they eat, to when they sleep, to what they wear is decided by someone else. See Ellen Staurowsky, *College Athletes' Rights in the Age of the Super Conference: The Case of the All Players United Campaign*, J. of Intercollegiate Sport, 11, 24 (2014), <https://bit.ly/3F47J8G> (“The lives of college athletes are routinely regulated . . . coaches and athletic department personnel . . . have developed over the years a detailed set of guidelines by which athletes must live to earn and to keep their scholarships.”). This dependence creates an almost unquestioning level of trust between a college athlete and their coach and teammates—not always to the athlete’s benefit. See Alexandra Laird, *The NCAA’s Lack of Clarity Regarding Coaches Liability for Abuse of Players*, THE L•E•JER, (Sept. 6, 2021), <https://bit.ly/3ywthIx> (describing how a college softball player ran blindfolded into a brick wall at the encouragement of her coach and teammates because she assumed they wouldn’t put her in danger).

Coaches and trainers play an essential role in developing an athlete’s sense of trust and dependence on the institution. An athlete’s relationship with a coach is often a major factor in determining which school the athlete attends, see Kirsten Moran, *Don’t fool yourself: Athletes commit to a coach, not a program*, Nevada

Sportsnet (Dec. 9, 2021), <https://bit.ly/324hwgv>, and coaches frequently serve as trusted mentors. Athletes take cues from coaching staff in determining what type of conduct is normal or acceptable on and off the field. One study found that “having a coach who talks to student-athletes about treating members of the opposite sex appropriately, relationship violence, and speaking up when things are not right, is both directly and indirectly significantly related to [a college athlete’s] willingness to intervene in both situations.” Lydia Bell & Mary Wilfert, *Mind, Body and Sport: Interpersonal violence and the student-athlete population*, NCAA, <https://bit.ly/32921Co> (last visited Feb. 9, 2022).

Coaches are more than mentors; they directly influence an athlete’s college experience as both a student and athlete. *See, e.g.*, Adela S. Roxas & Lynn L. Ridinger, *Relationships of Coaching Behaviors to Student-Athlete Well-Being*, 2 Higher Educ. Pol. & Econ., no. 1, art. 10, at 2 (2016), <https://bit.ly/3ma3nFF> (“College coaches have power over student-athletes’ playing time, scholarship money, and transfer opportunities, as well as the quality of much of the time of their day-to-day lives.”); *see also* Erin Hatton, *Colleges expect athletes to work but not to air any grievances – here’s why that’s wrong*, The Conversation, (July 21, 2020), <https://bit.ly/3yECvCz> (discussing the control coaches have over college athletes); Joseph Nardone, *College Coaches Have Too Much Influence And Unchecked Power Opposite Medical Staffs, Survey Suggests*, Forbes (June 25, 2019),

<https://bit.ly/3yLkTVT> (discussing the power college coaches have over an athlete's medical care). Coaches control playing time, scholarship status, injury status and medical treatment, and whether an athlete has a viable professional career. *See* Hatton, *supra*. They can dictate what classes a college athlete takes and when, McCormick, *supra* at 100 & n.129, what a college athlete majors in, *id.* at 100 & n. 130, and how much, and what, a college athlete eats, *see* Michele Felder, *What Are College Football Players Eating at BCS Training Tables?*, Bleacher Report (Mar. 19, 2013), <https://bit.ly/3p0A61S>. Athletes must trust that their coaches are looking out for their best interest and putting them in a position to grow and develop as athletes and individuals.

Further contributing to the development of a deep trust and institutional dependence, college athletes often view sports as not just a hobby, but a necessity. Many college athletes depend on their institutions for the ability to attend college at all. They rely on athletic scholarships for their education, housing, and meals. *See* McCormick, *supra* at 117-118 & nn.195-198 (2006). They may be restricted in their ability to earn money that they could otherwise use to support themselves and their families.¹⁸ *Id.* Indeed, since the 1990s, courts have recognized that there is a special

¹⁸ Even as opportunities for college athletes to earn education-related benefits from their schools and money from third parties' use of their name, image, and likeness expand, *see, e.g., Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021), access to these opportunities and benefits requires the athletes to remain in good

relationship between recruited college athletes and the institutions they play for because schools encourage athletes to enroll with the promise of a scholarship. *See* Adam Epstein & Paul M. Anderson, *The Relationship between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective*, 26 Marq. Sports L. Rev. 287, 290 (2016).

Because of these factors, college athletes have a higher level of institutional trust than their peers. *The Trust Gap Among College Students*, National Survey of Student Engagement, <https://bit.ly/3dVRA9p> (last visited Feb. 9, 2022). College athletes—even more than average college students—feel a sense of community and a desire to believe the best of their schools and the individuals around them. *See, e.g.*, Manisha Aggarwal-Schifellite, *Student-athletes pleased with time on teams, but balancing commitments difficult*, Harv. Gazette (June 5, 2020), <https://bit.ly/328PD6X> (65% of college athletes at Harvard said they valued the sense of community their team provided); Blair McDonald, *What it Means to be a Student-Athlete*, Vand. Hustler (Sept. 9, 2019), <https://bit.ly/3pZGjdP> (describing the sense of community felt by a college athlete).

standing with their team, and many college athletes continue to depend on their scholarships to finance their education.

B. College athletics culture may inhibit athletes from realizing they have been sexually abused.

Unfortunately, the extraordinary trust that college athletes have in their teams and institutions is too often breached. More than 1 in 4 current and former male and female college athletes in a recent survey said they endured inappropriate sexual contact from a campus authority figure—most often a male professor or coach. Lauren Book, *College athletes report high incidence of sexual abuse by campus authority figures, survey finds*, Lauren's Kids (Aug. 31, 2021), <https://bit.ly/32kUC4M>. College athletes are more than twice as likely to suffer abuse by a campus authority figure as college non-athletes. *Id.* Moreover, college athletes' trust and dependence on their teams and institutions places them at a higher risk not only of experiencing sexual abuse, but also of failing to recognize that conduct they have experienced *is* sexual abuse. For college athletes, there are a number of significant barriers to recognizing sexual abuse—as Plaintiffs' allegations illustrate.

First, college athletes may struggle to recognize abuse based on the trust they have developed in their team's authority figures. Team doctors, like Dr. Strauss, are critically important figures in the infrastructure of college athletics. Often, a clean bill of health from a team doctor is a prerequisite to eligibility to play. *See, e.g.*, David Jesse, *Campus doctors who abuse athletes use their access and power*, Detroit Free Press (Mar. 5, 2020), <https://bit.ly/3sfZVNo>. Athletes also depend on team

doctors to help them overcome injuries and return to the sports they love. A team doctor's determination of whether a student is injured or eligible to play, *see Well-Being*, NCAA, <https://bit.ly/3F9MO4c> (last visited Feb. 9, 2022), can have a significant effect on an athlete's future prospects, *see, e.g., Jesse, supra*. Athletes trust that the doctors they are directed to see by their institutions, coaches, and trainers have their best interest at heart. *See id.*; *see also, e.g., Snyder-Hill* Second Amend. Compl., R. 123 *passim* [hereinafter "*Snyder-Hill SAC*"]; *Moxley* Amend. Compl., R. 16 *passim* [hereinafter "*Moxley AC*"]. College athletes also lack the medical expertise to second-guess treatment that a team doctor tells them is necessary.

Many Plaintiffs described these dynamics with Dr. Strauss. They understood Dr. Strauss's examinations as business-as-usual because authority figures at "OSU told student-athletes that if they wanted to keep their scholarships or continue playing for OSU, they had to go to Dr. Strauss for their annual physical exams and medical treatment." *Snyder-Hill SAC* at ¶ 200, R. 123 at 38; *Moxley AC* at ¶ 141, R. 16 at 29. For instance, "[a]s a requirement of [Plaintiff] receiving team benefits, OSU staff told him that he had to see Dr. Strauss for annual team physicals, any injuries, and any other immediate medical concerns," and "[e]ach year, Coach Daly told [the Plaintiff] that he had to get his physical with Dr. Strauss or he would not be able to continue playing at OSU." *Snyder-Hill SAC* at ¶¶ 551, 812, R. 123 at 87,

120; *see also Moxley* AC at ¶¶ 629, 867, R. 16 at 104, 144. Many Plaintiffs believed that a required medical examination from a team doctor simply could not be abuse—no matter how uncomfortable it made them.

The reactions of the coaches and trainers with whom college athletes have strong bonds of trust can further contribute to their inability to recognize inappropriate conduct as sexual abuse. When coaches and trainers treat as normal conduct that a college athlete feels uncomfortable with, it confirms the athlete's belief that it must not be wrong.

In Plaintiffs' case, coaches and trainers downplayed and misrepresented Dr. Strauss's sexual abuse, effectively dismissing concerns rather than indicating to Plaintiffs that they experienced something serious and abusive that could form the basis of a legal claim. For example,

After [Plaintiff's] first physical and on several occasions after that, [Plaintiff] told Coach Sloan that he was uncomfortable with Dr. Strauss's examination. Coach Sloan made light of [Plaintiff's] complaint, laughed about the athlete's descriptions of the examinations, and said, "That's just what Dr. Strauss does." . . . Coach Sloan told [Plaintiff] that Dr. Strauss's examinations were appropriate and there was no reason to complain.

Snyder-Hill SAC at ¶¶ 501, 511, R. 123 at 81-82; *see also* ¶¶ 1229, 1468, R. 123 at 170, 201 (describing other OSU coaches laughing when an athlete mentioned Dr. Strauss' examinations); *Moxley* AC at ¶ 715, R. 16 at 119-20 (Coach Bruce directed a Plaintiff not to pursue his concerns regarding Dr. Strauss' exams). "Because Coach

Sloan and the athletic trainers treated the examinations as normal, [Plaintiff] continued to see Dr. Strauss for physicals each year he attended OSU,” which included seeing Dr. Strauss at least ten times for tendinitis treatment. *Snyder-Hill SAC* at ¶ 503, R. 123 at 81. Dr. Strauss “performed the same genital examination at each medical appointment.” *Id.* at ¶ 504, R. 123 at 81-82. Another Plaintiff who was required to see Dr. Strauss “told athletic trainer Vince O’Brien about how inappropriate” his first physical with Dr. Strauss seemed, and he explained that the fact “that OSU did not take action after [he] told O’Brien about his concerns further led [him] to believe Dr. Strauss’s examinations were legitimate.” *Id.* at ¶¶ 988, 1012, R. 123 at 141-42, 144. “OSU’s coaching staff, trainers, and student-athletes” nicknamed Dr. Strauss “‘Dr. Jelly Paws,’ ‘Dr. Nuts,’ ‘Dr. Soft Hands,’ and ‘Dr. Cough.’” *Id.* at ¶ 196, R. 123 at 38; *Moxley AC* at ¶ 137, R. 16 at 28. Given that trusted authority figures made jokes regarding Dr. Strauss’s misconduct, Plaintiffs understood Dr. Strauss’s exams as “akin to being ‘hazed’ or as a ‘rite of passage’”—not as sexual abuse. *See, e.g., Snyder-Hill SAC* at ¶ 170, R. 123 at 32; *Moxley AC* at ¶ 111, R. 16 at 22.

Second, college athletes are vulnerable to pressure from peers and authority figures because they exist in a homogenous group, isolated from outside opinions, and are expected to follow instructions from superiors. *See Bell & Wilfert, supra; see also Marc Lallanilla, Team Psychology Can Contribute to Assaults, ABC News*

(April 20, 2006), <https://abcn.ws/3F6DnCz> (“college-level sports teams often have their own identities, beliefs and codes” which leads to “‘groupthink,’ where individual initiative is quashed by the collective values of the group.”). As a result, abusive behaviors can go unchallenged, and “group values can easily override a young person’s sense of right and wrong.” Lallanilla, *supra*; *see also* Bell & Wilfert, *supra*. College athletes are conditioned to accept what is happening to them as something that happens to all the other athletes.

As a result, the medical examination becomes, in the survivors’ view, simply a shared experience, albeit an uncomfortable one, among teammates, and an individual athlete is less likely to override the communal mindset by viewing it as something truly wrongful or abusive. Teammates joking and laughing about the experience also serves to further cause them to minimize or disregard their discomfort. *See Snyder-Hill SAC* at ¶¶ 524, 589, 694, 1173, 2239-40, R. 123 at 84, 90, 103, 163, 314-15; *Moxley AC* at ¶¶ 299, 386, 640, 719, 855, R. 16 at 55, 67-68, 106, 120, 142. This dynamic is heightened when it seems clear that coaches and others in a position of authority know what is happening yet do not intervene. *See, e.g., Pesta, supra* (describing the normalizing effect of a gymnastics coach joking with Nassar about an athlete’s body while the athlete was topless and receiving “treatment”); *Snyder-Hill SAC* at ¶ 814, R. 123 at 120 (a coach jokingly threatened athletes with having to see Dr. Strauss); *Moxley AC* at ¶¶ 137-38, R. 16 at 28 (same).

Finally, college athletes already operate in a demanding culture in which physical discomfort is something to be disregarded for the good of the team. Sports culture prioritizes the ideal of mental and physical “toughness” and the ability to endure difficult or uncomfortable situations. *See* Aubri Keese, *Young athletes’ perceptions of playing through pain*, Dissertations and Theses @ UNI, at 10-15, 19 (May 2020), <https://bit.ly/3q09U6O>. It glamorizes moments of athletes persevering in the face of impossible circumstances—Kerri Strug vaulted on an injured ankle, Greg Louganis continued diving after hitting his head on the diving board, and Michael Jordan played an NBA finals game with the “flu.” College athletes seek to emulate these heralded examples, and in doing so, they become used to enduring discomfort—physical and mental exhaustion, injuries, or even just a soul-crushing loss. The more an individual identifies as an athlete, the more willing the individual is to ignore pain. Keese, *supra* at 48. They may also lose the ability to distinguish between minor aches and serious pain or injury. *Id.* at 14. Athletics culture normalizes an attitude that college athletes should simply “endure” pain and should not question discomfort.

College athletes experiencing pain or discomfort are often told they are in a position of privilege and should not complain. *See* Hatton, *supra*; LoMonte, *supra*; *supra* note 18. In particular, mental disorders and psychological distress are minimized in college athletes because athletes are told to be strong, stable, and

demonstrate the “mental toughness” ingrained in sports culture. Chris Carr & Jamie Davidson, *Mind, Body and Sport: The psychologist perspective*, NCAA, <https://bit.ly/3ISEVIL> (last visited Feb. 9, 2022). Because of internal and external pressure, college athletes are less likely to realize that something that makes them uncomfortable is actually abuse—much less the basis for a legal claim.¹⁹

This psychological pressure weighs heavily on male college athletes in particular. Society teaches that invulnerability and denial of pain are “essential qualities of ‘manliness.’” Association of Alberta Sexual Assault Services, *Men and Sexual Assault*, <https://bit.ly/3IR1EOb> (last visited Feb. 9, 2022) [hereinafter “AASAS Article”]; see also Bell & Wilfert, *supra*. Male college athletes are encouraged to take on a hyper-masculine identity with a heightened sense of aggression and sexuality. Kristy McCray & Elizabeth Taylor, “*I learned that sports teaches rape culture*”: *Assessing Sexual Violence Prevention Education for Intercollegiate Athletes*, 14 *J. of Intercollegiate Sport*, no. 1, at 50 (2021) (citing Lorin Mordecai, *Sexual Violence in Intercollegiate Athletics: A Historical*

¹⁹ Some of the individuals Dr. Strauss sexually abused were minors—high school athletes given a rare opportunity to train with a college team—and thus had even less of a framework to recognize Dr. Strauss’s conduct as abuse rather than simply part of the college athletics experience. See, e.g., Caryn Trombino & Markus Funk, Perkins Coie LLP, *Report of the Independent Investigation: Sexual Abuse Committed by Dr. Richard Strauss at The Ohio State University*, 71 (May 15, 2019), <https://bit.ly/3EsRBMV>.

Perspective of Male Athletic Entitlement, J. of Issues in Intercollegiate Athletics 36, special issue (2017)). Accordingly, male college athletes, who believe they are to embody “manliness” and male sexuality, are particularly unlikely to recognize themselves as the victim of sexual abuse in a culture in which men “simply are not allowed to admit that they have been sexually assaulted and abused.” *AASAS Article*.

While many survivors face significant barriers to recognizing inappropriate conduct as sexual abuse, the particular context of college athletics heightens the risks and challenges.²⁰ Any assessment of when a college athlete knew or should have known they experienced abuse must account for these well-documented dynamics.

III. The district court erred in failing to account for the context here that made it less likely that Plaintiffs would realize that they had faced sexual abuse.

The district court held Plaintiffs’ claims untimely because it believed they knew or should have known that they were sexually abused at the time of the abuse or soon thereafter. *See Garrett Op.* at 18 n.7. It found implausible Plaintiffs’

²⁰ The federal government recognizes the critical importance of assessing and accounting for the risk and challenges posed by sexual abuse of college athletes. The U.S. House of Representatives Committee on Education and Labor recently requested that the U.S. Government Accountability Office analyze these issues, including barriers for college athletes in reporting abuse and how educational institutions prevent and respond to abuse of college athletes. Letter from Robert C. Scott, Chair, Comm. On Educ. and Lab., and Suzanne Bonamic, Chair Subcomm. On Civil Rights and Human Servs., to Gene L. Dodaro, Comptroller General, U.S. Gov. Accountability Office (Dec. 16, 2021).

allegations that they did not know they were abused until years later because it interpreted their allegations that some Plaintiffs were concerned or distressed by Dr. Strauss's examinations, and some discussed or even joked about the examinations with teammates and others, as evidence that all Plaintiffs knew or should have known that the examinations were actionable sexual abuse. *Id.* But the court's analysis—confined to one footnote—improperly conflated some survivors' feelings of discomfort with knowledge or notice of sexual abuse and the school's related obligations, and it failed entirely to account for the significant influence of college athletics culture and power imbalances when abuse is by a team doctor.

None of the allegations the district court referenced are inconsistent with Plaintiffs' assertions that they did not realize they had been abused by Dr. Strauss until years later. To the contrary, Plaintiffs describe how coaches' minimization of Dr. Strauss's conduct, OSU's dismissal of complaints about Dr. Strauss, and Dr. Strauss's significant role in athletes maintaining eligibility caused them to dismiss their discomfort. These dynamics prevented Plaintiffs from realizing that they had been sexually abused and from considering whether OSU's inaction caused the abuse. The district court improperly disregarded these circumstances because it misinterpreted Plaintiffs' discomfort with Dr. Strauss's exams as awareness of sexual abuse, notwithstanding that many Plaintiffs believed OSU would not have required Dr. Strauss's uncomfortable examinations unless they served a legitimate

purpose. *E.g.*, *Snyder-Hill SAC*, R. 123 *passim*; *Moxley AC*, R. 16 *passim*. The court's analysis is inconsistent not only with Plaintiffs' experiences, but with those of many survivors more broadly.

The district court's approach also creates perverse incentives for institutions who enable abusers: The longer an institution can leave survivors unsure of whether they have experienced abuse, the more likely the institution is to escape consequences (while leaving others exposed to the same abuser). *See Snyder-Hill SAC* at ¶ 199, R. 123 at 38 ("Rather than take the flood of complaints about Dr. Strauss seriously, OSU continued to require students to be treated by him, thereby supplying him an endless trough of victims."); *see also Moxley AC* at ¶ 140, R. 16 at 28-29. For example, when the head fencing coach reported to OSU Medical Director/Head Team Physician Dr. John Lombardo "that male fencers were uncomfortable with Dr. Strauss and . . . complained that Dr. Strauss was 'performing improper or unnecessary genital exams on her male student-athletes,'" OSU quietly assigned another physician to serve as the fencers' primary physician. *Snyder-Hill SAC* at ¶ 189-90, R. 123 at 36-37; *Moxley AC* at ¶¶ 130-31, R. 16 at 27. It dismissed substantive concerns raised by the coach as "rumors" with "no foundation" and permitted Dr. Strauss to remain in his role as team doctor for other sports. OSU did not undertake a formal investigation, discipline Dr. Strauss in any way, or report the coach's complaint to the State Medical Board of Ohio. *Snyder-Hill SAC* at ¶ 193,

R. 123 at 37; *Moxley AC* at ¶ 134, R. 16 at 27-28. It was another two years before OSU took steps to cut off Dr. Strauss's access to *other* students, during which he continued to sexually abuse Plaintiffs and after which he remained a tenured faculty member and retired with emeritus status. Trombino & Funk, *supra* at 2-4, 132-34. It is no wonder that many Plaintiffs did not recognize Dr. Strauss as the serial sexual abuser that he was.

The district court was wrong to assume that Plaintiffs should have both recognized Dr. Strauss's sexual abuse *and* understood that OSU perpetuated it. Its analysis fails to account for OSU's role in the abuse by disregarding complaints and facilitating Dr. Strauss's access to OSU's college athletes. Plaintiffs' access to justice should not be denied because of the trust they placed in an institution they loved, and institutions like OSU—that enabled the abuse—must be held accountable.

CONCLUSION

The complaints in these cases lay bare over hundreds of pages Dr. Strauss's pattern of contemptible, abusive conduct and OSU's decades of deliberate indifference. But courts cannot and should not assume that each individual Plaintiff—including college athletes leaving a required visit with a team doctor—understood the discomfort as sexual abuse, or saw the pattern, and thus became aware of the institutional indifference. The court below erred in failing to account

for the confluence of factors that caused Plaintiffs not to realize that they were sexually abused or that OSU was deliberately indifferent to their abuse, as Plaintiffs described in the complaints.

Survivors of sexual abuse already face numerous hurdles in seeking justice, starting with simply understanding that they were abused. The district court's approach exacerbates this challenge by starting the clock on survivors' ability to pursue justice before they even realize they have been abused, based on an erroneous understanding of survivors' experiences and reactions to abuse. Because the district court's approach would fundamentally deny access to justice for many survivors of sexual abuse, its judgment should be reversed.

Respectfully Submitted,

Dated: February 9, 2022

/s/ Caroline Hickey Zalka

Caroline Hickey Zalka

NATIONAL WOMEN'S LAW CENTER

Emily Martin
Sunu Chandy
Shiwali Patel
Neena Chaudhry
Elizabeth Tang
11 Dupont Circle NW, Suite 800
Washington, DC 20036
Telephone: (202) 588-5180
spatel@nwlc.org

WEIL, GOTSHAL & MANGES LLP

Caroline Hickey Zalka
Alexandra Rose
Seth Massey
767 5th Avenue
New York, NY 10153
Telephone: (212) 310-8000
caroline.zalka@weil.com

Arianna Scavetti
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7000
arianna.scavetti@weil.com

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because it contains 6,453 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type.

Dated: February 9, 2022

/s/ Caroline Hickey Zalka

Caroline Hickey Zalka

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: February 9, 2022

/s/ Caroline Hickey Zalka

Caroline Hickey Zalka

Counsel for Amici Curiae

ADDENDUM**DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS**

Amici hereby set forth their designation of relevant District Court documents as required by Sixth Circuit Rule 30(g).

In the matter of *Snyder-Hill v. OSU*, 2:18-cv-736 (S.D. Ohio):

Record Entry Number	Description of Documents	Page ID#
123	Second Amended Complaint	1995-2357
158	Opinion and Order	2774-76

In the matter of *Moxley v. OSU*, 2:21-cv-03838 (S.D. Ohio):

Record Entry Number	Description of Documents	Page ID#
16	Amended Complaint	211-362
26	Opinion and Order	511-12

Amici further set forth their designation of relevant District Court documents in the action related below to the underlying action in this appeal, *Garrett v. OSU*, No. 2:18-cv-692 (S.D. Ohio):

Record Entry Number	Description of Documents	Page ID#
197	Opinion and Order	1494-1518