COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2023-P-0706

DR. KRISTIN A. KNOUSE & others,
Appellants,
v.
DR. DAVID M. SABATINI,
Appellee.

ON APPEAL FROM ORDER OF THE SUPERIOR COURT

BRIEF OF *AMICUS CURIAE* MASSACHUSETTS EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT KRISTIN KNOUSE SUPPORTING REVERSAL OF THE DECISION OF THE SUPERIOR COURT

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DECLARATION OF AUTHORSHIP

Pursuant to Mass. R.A.P. 17(c)(5), no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed monetarily toward the preparation of this brief; no person or entity other than amicus and its counsel contributed monetarily toward the preparation of this brief; and amicus and its counsel do not represent and have not represented any party to the present appeal, and were not parties and did not represent any parties in any proceeding or legal transaction at issue in the present appeal.

INTEREST OF AMICUS CURIAE

Massachusetts Employment Lawyers Association (MELA) is a voluntary membership organization of more than 175 lawyers who regularly represent employees in labor, employment, and civil rights cases in Massachusetts. MELA is an affiliate of the National Employment Lawyers Association (NELA), the country's largest organization of lawyers who represent employees and applicants with workplace-related claims (approximately 3,000 attorneys).

MELA's members actively advocate for the rights of employees before the executive, legislative and judicial branches. MELA has filed

numerous *amicus curiae* briefs in cases before the Commonwealth's appellate courts, including: *Sutton v. Jordan Furniture, Inc.*, 493 Mass. 728 (2024); *Columbia Plaza Associates v. Northeastern University,* 493 Mass. 570 (2024); *Int'l Longshoremen Ass'n, Loc. 1413-1465 v. Massachusetts Comm'n Against Discrimination*, 104 Mass. App. Ct. 28 (2024); *Adams v. Schneider Electric USA,* 492 Mass. 271 (2023); *Koussa v. Att'y Gen.*, 489 Mass. 823 (2022)*; Patel v. 7-Eleven, Inc.*, 489 Mass. 356 (2022); *Meehan v. Medical Information Technology, Inc.*, 488 Mass. 730 (2021); *Osborne-Trussell v. Children's Hospital Corp.*, 488 Mass. 248 (2021); *Parker v. Enernoc, Inc.,* 484 Mass. 128 (2000); *Yee v. Massachusetts State Police*, 481 Mass. 290 (2019).

MELA's members represent employees who experience discrimination in myriad ways in the modern workplace, including but not limited to discriminatory compensation, hiring and promotion practices, working conditions, education and training, and flexibility and remote work options. MELA is deeply committed to ensuring that Massachusetts laws providing protection to employees broadly protect all employees, including those who simultaneously hold other statuses within their institutions (e.g., as students), and those experiencing

sexual harassment, from discriminatory barriers to career and educational advancement. The interest of MELA in this case is also to protect the rights of its members' clients by ensuring that Massachusetts courts properly apply the anti-SLAPP law in the context of internal investigations in the workplace.

STATEMENT OF THE CASE

MELA adopts the Statement of the Case as set forth in the Appellant's opening brief.

STATEMENT OF FACTS

MELA adopts the Statement of the Facts as set forth in the Appellant's opening brief.

SUMMARY OF ARGUMENT

Chapter 214, § 1C is a remedial civil rights statute that prohibits sexual harassment in employment and education, and which must be interpreted broadly to effectuate its purpose of eliminating sexual harassment in those environments. The deterrent and remedial functions of the statute can only work if individual harassers, not only institutions, can be held liable for their actions under the law.

In this case, the trial judge erred in holding that Appellant Kristin Knouse could not bring a claim for sexual harassment under G.L. c. 214,

§ 1C against Appellee David Sabatini, who she alleges sexually harassed her when she was both a student at the Massachusetts Institute of Technology (MIT) and an employee at the Whitehead Institute. The judge incorrectly viewed G.L. c. 214, § 1C as a purely procedural statute, whose only function was to provide a cause of action for rights guaranteed under chapters 151B and 151C, when in fact G.L. c. 214, § 1C creates a substantive and independent right to be free from sexual harassment at schools and workplaces in the Commonwealth. *See infra* pp. 20-24. Contrary to the trial judge's reasoning, while G.L. c. 214, § 1C borrows the definition of sexual harassment from G.L. c. 151C for education cases; it does not incorporate a different, non-definitional provision of G.L. c. 151C that limits claims under that law to those against education institutions. *See infra* pp. 12-20.

The trial judge also erred in holding that Dr. Knouse's reports of harassment made to employees of MIT and the Whitehead Institute, as well as investigators hired by the Whitehead Institute were not "petitioning activity" under the Commonwealth's anti-SLAPP statute (G.L. c. 231, § 59H). Schools and employers are required by federal and state law to have specific internal procedures for the reporting and

investigation of allegations of sexual harassment, and state and federal agencies have oversight authority to ensure that employers and educational institutions comply with the requirements of laws prohibiting sexual harassment. Complaints made through those statutorily-mandated processes are therefore likely to encourage review by a government entity, and indeed are often required before an employee or student can bring their legal claims of harassment to administrative agencies or the courts. For that reason, and given the broad definition of "petitioning activity" under G.L. c. 231, § 59H, Dr. Knouse's internal complaints constitute such petitioning activity. *See infra* pp. 31-34.

ARGUMENT

I. CHAPTER 214, § 1C PROVIDES BROAD PROTECTION AGAINST SEXUAL HARASSMENT AND ALLOWS FOR CLAIMS AGAINST INDIVIDUALS

Bedrock principles of statutory interpretation establish that G.L. c. 214, § 1C permits recovery against individual defendants based on their sexual harassment of students in an educational setting. General Laws c. 214, § 1C reads in full:

> A person shall have the right to be free from sexual harassment, *as defined in chapter one hundred and fifty-one B and one hundred and fifty-one C*. The superior court shall

> have the jurisdiction to enforce this right and to award the damages and other relief provided in the third paragraph of section 9 of chapter 151B. Any such action shall be commenced in the superior court within the time allowed by said section 9 of said chapter 151B. No claim under this section that is also actionable under chapter 151B or chapter 151C shall be brought in superior court unless a complaint was timely filed with the Massachusetts commission against discrimination under said chapter 151B.

G.L. c. 214, § 1C (emphasis added). The statute was enacted in 1986 as part of a comprehensive legislative scheme to address sexual harassment in education and employment. St.1986, c. 588. The statute was part of a package of protections, which included amendments to G.L. c. 151B, addressing sexual harassment in employment, and G.L. c. 151C, addressing sexual harassment in education.

In enacting G.L. c. 214, § 1C, the Legislature created a substantive and independent statutory right that "supplements" Chapters 151B and 151C. *Lowery v. Klemm*, 446 Mass. 572, 575 (2006). For example, G.L. c. 214, § 1C "provides the exclusive remedy for [sexual harassment] claims against employers of fewer than six employees." *Guzman v. Lowinger,* 422 Mass. 570, 572 (1996).

By its plain and broad language, G.L. c. 214, § 1C does not place any limits on who may be sued, indicating the Legislature's intent for it

to be widely available to employees and students whose claims do not otherwise fall under Chapter 151B or 151C. In this case, the Superior Court incorrectly truncated the reach of G.L. c. 214, § 1C by asserting that it does not support a cause of action against an individual defendant who sexually harasses a student. Amicus urges this Court to correct this error of law.

A. The language of G.L. c. 214, § 1C does not limit liability to educational institutions

Because the question of individual liability is one of statutory interpretation, "[t]he general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Lowery*, 446 Mass. at 576–77 (quotation omitted). Accordingly, the plain language of the statute is the "primary source of insight into the intent of the Legislature." *Id.* (quotation omitted). As a civil rights statute, G.L. c. 214, § 1C must be construed "liberally, giving effect to every provision to produce a consistent body of law." *Thurdin v.*

SEI Bos., LLC, 452 Mass. 436, 444 (2008); *Green v. Wyman-Gordon Co.*, 422 Mass. 551, 554 (1996).

The statute defines a substantive right to be free from sexual harassment; provides the Superior Court with jurisdiction to enforce that right and award damages as set forth in Chapter 151B, § 9 ¶ 3; and requires the filing of claims within one of the two filing deadlines contained in Chapter 151B, depending on whether such claim is actionable under either Chapter 151B or 151C. As discussed below, the last sentence explicitly recognizes that the statute provides protections beyond what are provided in Chapters 151B and 151C, noting that for the subset of claims that are also actionable under those statutes, the administrative exhaustion requirements set forth in Chapters 151B and 151C must be followed. *See* discussion *infra* pp. 23-24. The statute contains no language limiting against whom sexual harassment plaintiffs may bring claims.[1] The language that creates the substantive right—"[a] person shall have the right to be free from sexual

[1] The term "a person" in Section 1C has been held to mean a person who experienced sexual harassment in an employment or educational context because of the definitions of sexual harassment incorporated into the statute. *Lowery*, 446 Mass. at 578.

harassment"—is unrestricted by any reference to a particular type of wrongdoer. *See* G.L. c. 214, § 1C.

Chapter 214, § 1C incorporates the *definitions* of sexual harassment in Chapters 151B and 151C. The law declares the "right to be free from sexual harassment, as defined in chapter one hundred and fifty-one B and one hundred and fifty-one C." *Id*.

Section 1 of Chapter 151B contains a dedicated "Definitions" section. That section includes the following definition of sexual harassment:

> [S]exual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.

G.L. c. 151B, § 1(18).

Likewise, Chapter 151C's Section 1 represents a dedicated "Definitions" section for that statute, and defines sexual harassment in nearly identical terms to Chapter 151B:

> [S]exual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:-- (i) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.

G.L. c. 151C, § 1(e). The Supreme Judicial Court (SJC) has held that G.L. c. 214, § 1C incorporates the entirety of each of these definitions. *Lowery*, 446 Mass. at 578. The definition of sexual harassment in education used by G.L. c. 214, § 1C make clear that the conduct prohibited is perpetrated by individual people. *See* G.L. c. 151C, § 1(e). Nothing in the definition addresses who can be held legally liable for this prohibited sexual harassment.

The Superior Court in this case held that G.L. c. 214, § 1C does not permit individual liability, reasoning that Chapter 151C is the source of substantive law for G.L. c. 214, § 1C, and Chapter 151C, 2(g) only permits suits against institutions. Appellant Addendum at 85. Chapter 151C, § 2(g) makes it "unfair educational practice for an educational institution . . . To sexually harass students in any program

or course of study in any educational institution."[2] G.L. c. 151C, § 2(g). However, section 2(g) is not contained in the Definitions section of Chapter 151C (which is found in Section 1), and cannot possibly be interpreted as a definition of sexual harassment. Consequently, the Chapter 151C, § 2(g) limitation should not be read into G.L. c. 214, § 1C.

"Courts may not read into a statute a provision that the Legislature did not enact," *Commonwealth v. Newberry*, 483 Mass. 186, 195 (2019), and may "not read into [a] statute a provision which the Legislature did not see fit to put there . . . ." *Massachusetts Insurers Insolvency Fund v. Smith*, 458 Mass. 561, 567 (2010) (quoting *General Elec. Co. v. Department of Envtl. Protection,* 429 Mass. 798, 803 (1999)). Had the legislature intended to incorporate other parts of Chapter 151C into G.L. c. 214, § 1C besides its definition of sexual harassment, "it would have done so explicitly." *Lowery*, 446 Mass. at 577. Chapter 214, § 1C expressly incorporates provisions of Chapter 151B other than the definition (the damages provision and statute of limitations), but it does

[2] The statute defines an "educational institution," as relevant here, as "any institution for instruction or training." *See* G.L. c. 151C, § 1(b).

not incorporate any provision of Chapter 151C other than its definition of sexual harassment. The Legislature instead made the deliberate choice not to incorporate Chapter 151C, § 2(g). As the SJC has made clear, "where there is an express exception in a statute, it comprises the only limit on the operation of the statute and no others will be implied." *Thurdin*, 452 Mass. at 444. Chapter 214, § 1C, expressly limits "sexual harassment" to the definitions in 151B and 151C and contains no other limitations; the courts cannot imply any further limitations on the clear statutory language.

In *Green v. Wyman-Gordon Co.* and *Lowery v. Klemm*, the SJC made clear that G.L. c. 214, § 1C does not incorporate any more or less of Chapters 151B or 151C than what is expressly stated in the statutory language. *See Green*, 422 Mass. at 555; *Lowery*, 446 Mass. at 577. In *Green,* the SJC emphasized that G.L. c. 214, § 1C does not incorporate the Chapter 151B definition of "employer": "G.L. c. 214, § 1C, ensures that *all* employees are protected against sexual harassment in the workplace, whether or not their employers fit within the definition in c. 151B." *Green*, 422 Mass. at 557. In *Lowery*, the Court held that had the Legislature intended to incorporate only part of the Chapter 151B and

151C definitions, it would have done so explicitly. *See Lowery*, 446 Mass. at 577. The same statutory language that cannot be read to incorporate the Chapter 151B restrictions on who is an "employer" cannot *sub silentio* incorporate limitations on liability found in Chapter 151C. Chapter 214, § 1C by its language places no limitations on who can be sued; language in 151C that was not imported into G.L. c. 214, § 1C is simply irrelevant to the statutory interpretation of that statute.

In an analogous context, the SJC made clear that it will not read limitations on who can be sued into civil rights statutes with broad language. In *Thurdin v. SEI Boston, LLC*, the plaintiff employee sued her small employer for pregnancy discrimination under the Massachusetts Equal Rights Act (MERA) (G.L. c. 93, § 102). *See Thurdin,* 452 Mass. at 437. That statute guarantees that "all persons" shall have the right to make and enforce contracts regardless of sex. *Id.* at 444. The statutory language is silent as to any limitations on who can be sued. While the defendants argued that Chapter 151B's exception for employers with fewer than six employees should be grafted on to MERA, the SJC disagreed, holding "there is nothing in the plain language of § 102 of MERA that excludes small employers from its

application." *Id.* As with MERA, in the absence of statutory language explicitly limiting who can be sued under G.L. c. 214, § 1C a court cannot impose such a limitation.

It is well established that G.L. c. 214, § 1C allows for suits against individual defendants in the employment context. *See, e.g.*, *Guzman,* 422 Mass. at 572 (plaintiff's sexual harassment claim against individual employer fell squarely under G.L. c. 214, § 1C); *Chapin v. Univ. of Massachusetts at Lowell,* 977 F. Supp. 72, 82 (D. Mass. 1997) (noting that claim of direct harassment against individual can be brought under G.L. c. 214, § 1C). There is no difference in the statutory language when it comes to suits brought by employees and suits brought by students; only the definitions of sexual harassment differ, and those differences relate only to the whether the harassment occurs in an employment or educational setting. See G.L. c. 151B, § 1(18); G.L. c. 151C, § 1(e). The statute embraces suits against individuals as a general matter and this Court should not imply an unarticulated exception, particularly where that exception runs afoul of the rule requiring liberal construction. *Thurdin*, 452 Mass. at 444. This Court

should give full effect to the provisions of G.L. c. 214, § 1C and apply them to suits against sexual harassers in an educational setting.

B. Chapter 214, § 1C creates a broad substantive right to be free from sexual harassment that goes beyond what Chapters 151B and 151C address

The Superior Court's reasoning in this case was also incorrect because it construed G.L. c. 214, § 1C as a purely procedural statute that effectuates the substantive law set forth in Chapters 151B and 151C. *See* Appellant Addendum at 85. The language of Chapter 214, § 1C demonstrates that it is itself a source of substantive law on sexual harassment in educational contexts, distinct from Chapters 151B and 151C. Substantive law is the "part of the law that creates, defines, and regulates the rights, duties, and powers of parties." *Substantive Law*, *Black's Law Dictionary* (12th ed. 2024). Chapter 214, § 1C creates an independent statutory right for students to be free from sexual harassment. *See Guzman*, 422 Mass. at 572 (citing *O'Connell v. Chasdi*, 400 Mass. 686 (1987)) ("By adding G.L. c. 214, § 1C, the Legislature provided that which was missing in *O'Connell:* a statutory right to be free from sexual harassment."); *see also Lowery*, 446 Mass. at 578 (Chapter 214, § 1C "extends to employees and students protection that is not otherwise available under G.L. c. 151B and c. 151C . . . ."). As one

federal judge has explained in assessing a G.L. c. 214, § 1C claim: "[T]he practice at issue here—sexual harassment of a student who is neither an applicant nor enrolled in a vocational school—is made unlawful under chapter 214, not chapter 151C. Although the relevant definition of sexual harassment comes from chapter 151C, the actual prohibition comes from chapter 214." *Harbi v. Massachusetts Inst. of Tech.*, No. CV 16-12394-FDS, 2017 WL 3841483, at *7 (D. Mass. Sept. 1, 2017).

Courts have suggested that *one* function the statute serves in the education context is to provide a procedural mechanism to enforce the rights guaranteed by Chapter 151C, due to drafting irregularities in Chapter 151C. As the Massachusetts Commission Against Discrimination (MCAD) and courts have noted, for unknown reasons Chapter 151C itself does not provide a private cause of action for most of the conduct it prohibits. *See, e.g.*, *Doe v. Fournier*, 851 F. Supp. 2d 207, 215 (D. Mass. 2012), *on reconsideration in part* (Mar. 20, 2012) ("Despite this broad language, however, for whatever reason, Chapter 151C permits only a narrow class of students to seek a legal remedy for sexual harassment."); *Gammons o/b/o Toure and MCAD v. City of Revere, et al.*, 06-BED-02366, 2014 WL 5499573, at *5 n.3 (2014)

(Chapter 151C "on its face, provides no redress for discrimination against students once they are admitted to an educational institution") (citation and quotation omitted). The procedural mechanism to enforce 151C is set out in Chapter 151C, § 3, but that section applies only to a person seeking admission to an educational institution or enrolled in a vocational training institution. G.L. c. 151C, § 3(a). In *Lowery,* the SJC noted that G.L. c. 214, § 1C "gives students who are sexually harassed in violation of G.L. c. 151C, § 2(g), access to the remedial provisions of G.L. c. 151B, § 9." 446 Mass. at 578 (*citing Morrison v. Northern Essex Community College*, 56 Mass. App. Ct. 784, 786 n.6 (2002) (interpreting the 1986 version of Section 1C)). As discussed *supra*, G. L. c 214, § 1C is itself a source of substantive law—specifically, the right to be free from sexual harassment. Nothing in *Lowery*, *Morrison*, or any case law from Massachusetts appellate courts suggests that G. L. c. 214, § 1C's sole function with respect to sexual harassment of students is to provide a procedural avenue to enforce Chapter 151C violations under § 2(g).

Indeed, the statute assumes there will be cases of sexual harassment in an educational setting that will fall under G.L. c. 214, § 1C but not Chapter 151C. The last sentence of G.L. c. 214, § 1C states

that for the subset of claims that are also actionable under Chapters 151B and 151C, the administrative exhaustion requirements set forth in those statutes must be followed.[3] Chapter 214, § 1C states that any action, including one that falls within the sexual harassment definition of G.L. c. 151C, "shall be commenced in the superior court within the time allowed by said section 9 of chapter 151B [i.e. three years]." However, for the subset of education-related claims that are actionable under chapter 151C, "[n]o claim under this section . . . shall be brought in superior court unless a complaint was timely filed with the Massachusetts commission against discrimination under said chapter 151B [i.e. 300 days]." The statute thereby recognizes that some education-related claims are governed by the three-year filing deadline, because they are not actionable under Chapter 151C. Because the substantive scope of liability under G.L. c. 214, § 1C is broader than that of Chapter 151C, the Superior Court's efforts to sync the two

[3] Chapter 151B has two filing deadlines: employment discrimination cases falling within the provisions of Chapter 151B must be filed with the MCAD within 300 days, G.L. c. 151B, § 5; and later, the complainant has the right to remove the case from the MCAD and file a civil action in Superior Court within three years, G.L. c. 151B, § 9.

statutes' scope is both atextual and contrary to the express intent to provide broader protections under Chapter 214, § 1C.

C. The Superior Court relied on federal court cases that were erroneously decided or did not address the question of individual liability

In the absence of any controlling authority on point, the Superior Court relied on several federal district court cases interpreting G.L. c. 214, § 1C. *See* Appellant Addendum at 85. Only one of those cases, *Doe v. Fournier*, is directly relevant, and that case misinterpreted the plain language of the statute.

In *Doe v. Fournier*, a high school guidance counselor sexually harassed the plaintiff, and the plaintiff sued the town, school officials, and the guidance counselor individually under G.L. c. 214, § 1C. 851 F. Supp. 2d at 212. The court dismissed the claim against the individual harasser, reasoning that "[t]he chapter 214 private right of action is limited to claims of sexual harassment as defined by chapters 151B and 151C. Plaintiff's claim falls within the chapter 151C definition. Chapter 151C, however, refers only to 'educational institutions,' whose definition does not include individuals." *Id.* at 218 (citing G.L. c. 151C, §§ 1(b), 2). As discussed *supra*, G.L. c. 214, § 1C does not incorporate Chapter

151C, § 2 and the *Fournier* court was incorrect to graft that section on to Section 1C.

The other two federal cases the Superior Court relied on did not directly address the question of whether individuals can be liable for sexual harassment under G.L. c. 214, § 1C. *Doe v. Town of Stoughton* was a 2013 peer-to-peer harassment case, in which another student raped the plaintiff and disseminated nude photographs of her to their classmates. No. CIV.A. 12-10467-PBS, 2013 WL 6498959, at *1 (D. Mass. Dec. 10, 2013). The plaintiff brought a sexual harassment claim against the town under G.L. c. 214, § 1C and Chapter 151C, §2(g). The judge granted summary judgment for the town on the basis that Chapter 151C did not make the school or town liable for peer-on-peer harassment. *Id.* at *5. The judge reasoned that "[t]he plain language of [G.L. c. 151C, § 2(g)] contemplates a scenario in which the institution itself, through its administrators or employees, acts as the harasser." *Id. Stoughton* does not support the proposition that *only* institutions can be liable under G.L. c. 214, § 1C, only that the institution is not liable for peer harassment unless its employees in some way act as the harasser. *Id.*; *see also Harrington v. City of Attleboro*, 172 F. Supp. 3d

337, 352 (D. Mass. 2016) (dismissing plaintiffs' § 2(g) claims based on peer sexual harassment). *Stoughton* did not address the question of individual liability for a harasser under G.L. c. 214, § 1C, so its analysis is irrelevant to Knouse's claim against Sabatini for his harassment against her as his student and supervisee.

Finally, the Superior Court cited to dicta from *Doe v. Bradshaw*, that stated: "suit may only be brought under chapter 214 against educational institutions, rather than individuals, based on limitations rooted in chapter 151C." 203 F. Supp. 3d 168, 188 (D. Mass. 2016) (relying on *Stoughton* and *Fournier*). In *Bradshaw*, a high school student brought claims against the soccer coach who sexually assaulted her, as well as other school officials, the school committee, and her town. *Id.* at 173. She did *not* bring any claim under either Chapter 151C or G.L. c. 214, § 1C against the individual defendants; she brought a G.L. c. 214, § 1C claim against the town and school committee. *See id.* at 189 (citing *Stoughton*, 2013 WL 6498959 at *5; *Fournier*, 851 F.Supp.2d at 218). The focus of the court's analysis was therefore whether the town and school committee were strictly liable for the coach's actions under G.L. c. 214, § 1C, which it determined they were.

See id. The statement relied on by the *Knouse* court was pure dicta. *Doe v. Fournier* was the only federal case directly on point and this Court is not bound to follow its incorrect interpretation of the language of G.L. c. 214, § 1C.

D. An interpretation of G.L. c. 214, § 1C that does not allow for individual liability would lead to unreasonable consequences

This Court should not "adopt a construction of a statute that creates 'absurd or unreasonable' consequences." *Lowery*, 446 Mass. at 578-79. Chapter 214, § 1C was enacted with the specific purpose of extending broad protection against sexual harassment to employees and to students. Without individual liability under Chapter 214, § 1C, many students will have no legal recourse for sexual harassment by a school employee. The Commonwealth's appellate courts have yet to clarify whether an educational institution is strictly liable for sexual harassment by employees in positions of authority. *See Bradshaw*, 203 F. Supp. 3d at 188–89. But if institutional liability were to depend on the institution itself taking or failing to take some action in response to harassment, the only person a student could sue may be the individual harasser. Other existing causes of action simply do not provide adequate recourse for students sexually harassed at school.

The SJC noted in *Lowery* that persons other than employees and students, to whom G.L. c. 214, § 1C does not apply, "are not without recourse: although not protected by G.L. c. 214, § 1C, they may bring actions under other statutes, including the civil rights act, G.L. c. 12, § 11I, as well as common-law claims for sexual harassment or related injuries . . . ." *Lowery*, 446 Mass. at 581. *Lowery* contrasted the more limited protection afforded to non-employees and non-students with the more "extensive" protection G.L. c. 214, § 1C grants to those two identified classes. The SJC held that the singling out of employees in the statute reflected the "legislative policy judgment" that "employees, who generally depend on their jobs for their livelihood, need greater protection from sexual harassment than volunteers, who are uncompensated and therefore more free to leave an uncomfortable workplace environment." *Id.* This reasoning is equally applicable to students, who cannot easily change the course of their education if they are sexually harassed. The broad protection provided by G.L. c. 214, § 1C would be severely diminished by any interpretation of the law that did not allow for suits against individual harassers.

Common law tort claims also do not necessarily fit the reality of sexual harassment in an educational context, which relies on the abuse of power by a supervisor, professor, or other person to whom an institution has delegated power over employees or students. *See* Note, *Sexual Harassment Claims of Abusive Work Environment Under Title VII*, 97 Harv. L. Rev. 1449, 1463 (1984) ("tort damages alone do not acknowledge that sexual harassment injures a discrete and identifiable group by subjecting its victims to demeaning treatment and relegating them to inferior status in the workplace."). *Lowery* suggested that non-employees and non-students have other statutory and common law remedies for sexual harassment. However, sexual harassment as defined in Section 1C is significantly broader than what tort claims can address. For sexual harassment that does not involve physical contact, which might give rise to assault and battery claims, only the most extreme conduct would give rise to a tort claim under a theory of intentional infliction of emotional distress. *See e.g.*, *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144–45 (1976) (intentional infliction of emotional distress claims requires proof that defendant intended to inflict distress or should have known that distress was likely, that

conduct went "beyond all possible bounds of decency," and that plaintiff's distress was severe and no reasonable person could endure it). Sexual harassment that is not "beyond all possible bounds of decency" or does not cause the plaintiff unendurable distress would not be redressable through tort claims, leaving a significant gap in the law if G.L. c. 214, § 1C were held not to allow for suits against harassers.

Moreover, because plaintiffs cannot recover attorneys' fees and costs through a tort case, and because the damages from sexual harassment are most often emotional distress damages—whose monetary value can be hard to pin down—depriving students of a statutory civil rights action to address sexual harassment will mean that many students will not have the opportunity to vindicate their rights. *See Kadlick v. Dep't of Mental Health*, 431 Mass. 850, 852 (2000) (noting that "[t]he purpose of the statutory provisions permitting an award of attorney's fees to prevailing plaintiffs is both to promote civil rights enforcement and to deter civil rights violators, by encouraging private lawsuits aimed against civil rights abuses."); *see also City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986) (noting that civil rights statutes have attorneys' fees provisions because "the private market for

legal services failed to provide many victims of civil rights violations with effective access to the judicial process.").

Finally, an interpretation of Chapter 214, § 1C that allows for individual liability in the employment context but not in the education context would provide greater protection from harassment to adults in education settings than to the students charged to their care. The school principal who sexually harasses one of the teachers could be individually liable for their behavior, but if the same principal engages in the same behavior toward a student—arguably an even more vulnerable victim than the adult teacher—they would not be. The Legislature, focused as it has been on creating a comprehensive scheme aimed at eradicating sexual harassment in employment and education, could not have intended such a result.

The Legislature made clear that the purpose of G.L. c. 214, § 1C is to provide broad protection against sexual harassment in the employment and education contexts. That professed protection is meaningless if employees and students cannot bring claims against the individuals engaging in the sexual harassment.

II. STATEMENTS MADE IN INTERNAL DISCRIMINATION AND HARASSMENT INVESTIGATIONS CONSTITUTE PETITIONING ACTIVITY UNDER G.L. c. 231, § 59H

The Massachusetts Employment Lawyers Association joins the arguments made by Defendant Knouse and amici Legal Momentum and National Women's Law Center that Dr. Knouse's reports of harassment to her employer and her school are petitioning activity under G.L. c. 231, § 59H. *See* Knouse Opening Br. 27-49; Legal Momentum et al. Br. 19-30. The purpose of G.L. c. 231, § 59H, the anti-SLAPP statute, is to protect individuals from retaliatory litigation based on the exercise of their petitioning rights. *Duracraft Corp. v. Holmes Prod. Corp.*, 427 Mass. 156, 166 (1998), *holding modified by Blanchard v. Steward Carney Hosp., Inc.*, 477 Mass. 141 (2017). The statute defines petitioning "expansively," *Bristol Asphalt, Co. v. Rochester Bituminous Prod., Inc.*, 493 Mass. 539, 550 (2024), in order to effectuate the Legislature's intent "to enact very broad protection for petitioning activities," *Duracraft Corp.*, 427 Mass. at 162. The anti-SLAPP statute defines petitioning activity broadly to include statements made in connection with issues "under consideration or review" by a governmental body and "any statement reasonably likely to encourage

consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding." G.L. c. 231, § 59H.

Employers and educational institutions are required by law to prevent, address, and redress sex discrimination and harassment. Legal Momentum et al. Br. 19-30. Employers and educational institutions are subject to detailed federal and state requirements for addressing reports of sexual misconduct by and against employees and students. *See* 34 C.F.R. §§ 106.44-106.45 (setting forth requirements for educational institutions under Title IX); G.L. c. 6, § 168E (setting forth requirements for educational institutions under Massachusetts law); G.L. c. 151B, § 3A (setting forth employer requirements regarding sexual harassment). By law employers and educational institutions are required to provide a procedure for investigation of complaints of sexual misconduct. 34 C.F.R. § 106.44(b)(1); G.L. c. 6, § 168E; G.L. c. 151B, § 3A(b)(1). Educational institutions are required annually to report data about all complaints by and against students and employees, including the outcomes of those complaints and whether discipline was imposed, to the Massachusetts Department of Higher Education, which is then required to aggregate data from across the Commonwealth to report to

the Attorney General and Legislature. G.L. c. 6, §168E(q). Education institutions risk losing their federal funding if the U.S. Department of Education determines that they are not complying with the legal requirements of Title IX. 20 U.S.C. § 1682.

Federal and state anti-discrimination laws that apply to both employment and education are premised on the idea that employees and students should, and often must, attempt to address their discrimination concerns within their institutions before either the courts or administrative agencies can exercise their oversight authority. *See* Legal Momentum et al. Br. 19-30. Given the detailed legislative and regulatory scheme, particularly for educational institutions, and the requirement that employees and students first make complaints like the one Dr. Knouse made to MIT before their complaints can be brought to an agency or to Court, such complaints are "reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding," and indeed are the first step for many victims of sexual harassment in being able to exercise their right to directly petition to government agencies and

courts. Such complaints therefore constitute "petitioning activity" as that term is broadly defined in G.L. c. 231, § 59H.

CONCLUSION

For the foregoing reasons, MELA request that this Court vacate the decision of the Superior Court, hold that suits against individuals for harassment in an educational setting may be brought pursuant to G.L. c. 214, § 1C, and hold that the internal complaint of sexual harassment in this case constitutes petitioning activity pursuant to G.L. c. 231, § 59H.

Respectfully Submitted for
MASSACHUSETTS EMPLOYMENT
LAWYERS ASSOCIATION
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September 12, 2024

CERTIFICATE OF COMPLIANCE

I, Naomi R. Shatz, hereby certify that I have complied with all relevant provisions of Massachusetts Rules of Appellate Procedure 16, 17, 19, and 20 with respect to the contents, format, filing, and service of this brief. In compliance with Massachusetts Rules of Appellate Procedure 20, this brief was prepared in Century Schoolbook 14-point font on Microsoft Word for Microsoft 365 MSO (Version 2408), and contains 5,655 non-excluded words.

/s/ Naomi R. Shatz
Naomi R. Shatz

CERTIFICATE OF SERVICE

I, Naomi R. Shatz, hereby certify that, on September 12, 2024, I served the foregoing Amicus Curiae Brief of Massachusetts Employment Lawyers Association in Support of Defendant-Appellant Kristin Knouse in Massachusetts Appeals Court case No. 2023-P-0706, David M. Sabatini vs. Kristin A. Knouse & others, on the following counsel of record via e-mail and by submitting it through the eFileMA system:

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