No. 23-12365

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

TIEQIAO "TIM" ZHANG, *et al.*,
Plaintiffs-Appellants,

v.

EMORY UNIVERSITY,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia
Case No. 1:21-cv-00868-AT

BRIEF OF THE AMERICAN COUNCIL ON EDUCATION AND 16 ADDITIONAL HIGHER EDUCATION ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE

Peter G. McDonough
AMERICAN COUNCIL ON EDUCATION
One Dupont Circle
Washington, DC 20036
(202) 939-9300
pmcdonough@acenet.edu

Jessica L. Ellsworth
Amanda NeCole Allen
Claire Adkins Rhodes
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Attorneys for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Rules 26.1-1 and 28-1(b) of the Rules of the United States Court of Appeals for the Eleventh Circuit, undersigned counsel for *amici curiae* certifies that, in addition to the interested persons listed in Defendant-Appellee's Certificate of February 15, 2024, the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action—including subsidiaries, conglomerates, affiliates, parent corporations, publicly traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to any party in this case—is limited to the following:

***Amici Curiae*:**

1. American Council on Education
2. American Association of Community Colleges
3. American Association of State Colleges and Universities
4. Association of American Universities
5. Association of Catholic Colleges and Universities
6. Association of Community College Trustees
7. Association of Governing Boards of Universities and Colleges
8. Association of Public and Land Grant Universities
9. Career Education Colleges and Universities

10. Council for Christian Colleges and Universities
11. Council of Graduate Schools
12. Georgia Independent College Association
13. NASPA-Student Affairs Administrators in Higher Education
14. National Association of College and University Business Officers
15. National Association of Independent Colleges and Universities
16. Southern Association of Colleges and Schools Commission on Colleges
17. University Risk Management & Insurance Association

Counsel for *Amici Curiae*:

1. Hogan Lovells US LLP
2. Jessica L. Ellsworth
3. Amanda NeCole Allen
4. Claire Adkins Rhodes
5. Peter G. McDonough

Pursuant to Rule 26.1-1(b) of the Rule of the United States Court of Appeals for the Eleventh Circuit, the undersigned certifies that the above information will be entered into the web-based stock ticker symbol CIP, indicating that there is nothing to declare.

Undersigned counsel for *amici curiae* further certifies that neither *amici* nor counsel for *amici* have a parent corporation, and no company owns a ten percent or greater interest in *amici* or counsel for *amici*.

/s/ Jessica L. Ellsworth
Jessica L. Ellsworth

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STATEMENT OF INTEREST[1]

Amicus curiae the American Council on Education (ACE) represents all higher education sectors. ACE's higher education members educate two out of every three students in all accredited, degree-granting American institutions. Its more than 1,700 members reflect the extraordinary breadth and contributions of degree-granting colleges and universities in the United States. Founded in 1918, ACE seeks to foster high standards in higher education, believing a strong higher education system to be the cornerstone of a democratic society. ACE regularly contributes *amicus* briefs on issues important to the education sector such as the mental health of college students.

ACE is joined in this brief by the following organizations, whose descriptions are found in the Addendum to this brief:

- American Association of Community Colleges;
- American Association of State Colleges and Universities;
- Association of American Universities;
- Association of Catholic Colleges and Universities;
- Association of Community College Trustees;

[1] No party's counsel authored any part of this brief. Nor did any party, party's counsel or any person other than *amici*, their members, and their counsel contribute any money intended to fund this brief. Appellee consented to the filing of this brief. Appellants did not. *Amici* accordingly filed a motion for leave to file this brief.

- Association of Governing Boards of Universities and Colleges;
- Association of Public and Land Grant Universities;
- Career Education Colleges and Universities;
- Council for Christian Colleges and Universities;
- Council of Graduate Schools;
- Georgia Independent College Association;
- NASPA-Student Affairs Administrators in Higher Education;
- National Association of College and University Business Officers;
- National Association of Independent Colleges and Universities;
- Southern Association of Colleges and Schools Commission on Colleges; and
- University Risk Management & Insurance Association.

ACE's and the other *amici*'s interests in this case are significant. *Amici* have a longstanding commitment to assisting higher education institutions in their efforts to protect and promote college students' well-being and mental health, and they have worked closely with member institutions as they seek to balance efforts to protect students from self-harm (or harm to others) with legal obligations to protect the privacy of and not discriminate against students seeking mental health services.

Over the past several years, *amici* and the higher education community have seen a rise in both the number of students with mental health conditions and the severity of those conditions. To meet students' needs for mental health services, *amici*'s members employ, provide referrals to, or otherwise offer access to, psychiatrists and other medical professionals who are trained and licensed to diagnose and treat mental health conditions.

Student mental health services include both on-campus mental health services, such as in-person counseling and telemedicine services, and referrals for students who need long-term support. Many higher education institutions today have behavior intervention teams that work to proactively address mental health issues on their campuses, and also provide vigorous "see something, say something" programs designed to help students who may be facing mental health issues. In short, *amici*'s members undertake great effort to address the need for mental health services for college students, and in recent years, have expanded the availability of mental health services, including counseling and psychiatric care, and invested resources to continue improving mental health care for their students.[2]

Amici and the higher education community are deeply concerned about Appellants' request to impose a new duty on universities to prevent a student's self-

[2] *See, e.g.*, Sara Abelson, *et al.*, *What Works For Improving Mental Health in Higher Education*, at 1, ACE (2023), https://www.acenet.edu/Documents/What-Works-Mental-Health.pdf.

harm when there are no well-pled facts showing the university had any knowledge that student was considering suicide or self-harm. Such a duty would have unintended consequences, as schools would be forced to monitor the lives of students seeking mental health services and, while adhering to their other legal obligations, take the most conservative action possible with respect to such students. Imposing such a nebulous duty on universities could—counterproductively—consume university mental health staff and resources, making it harder for students in need to access those services. And it ignores that student suicide can unfortunately occur impulsively without warning or identifiable predictors.[3]

Appellants' position also risks discouraging students in need of mental health counselling from seeking it, whether for anxiety, depression, trauma, relationship

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[3] *See* Joseph C. Franklin, *et al.*, *Risk Factors for Suicidal Thoughts and Behaviors: A Meta-Analysis of 50 Years of Research*, 143 Psych. Bulletin 187, 213 (2016) (concluding, based on review of more than 300 studies, that existing risk factors "are weak and inaccurate predictors of" suicidal thoughts and behaviors); Matthew Large, *et al.*, *Known Unknowns and Unknown Unknowns in Suicide Risk Assessment: Evidence From Meta-Analyses of Aleatory and Epistemic Uncertainty*, 41 BJPsych Bulletin 160, 162 (2017) ("Many suicides are by low-risk patients and we should not pretend we are able to peer into their future any more than we can discern the future of a higher-risk patient."); *see also, e.g.*, *Teen Suicide*, Johns Hopkins Medicine, https://www.hopkinsmedicine.org/health/conditions-and-diseases/teen-suicide (noting impulsive behaviors as a factor in teen suicide risk); Randy P. Auerbach, *et al.*, *Impulsivity and Suicidality in Adolescent Inpatients*, 45 J. Abnormal Child Psych. 91, at *13 (2017) (similar), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5045310/pdf/nihms773744.pdf; *Suicidal Behaviors*, Nationwide Children's Hospital, https://www.nationwidechildrens.org/conditions/suicidal-behaviors (noting higher suicide rate of young males because, in part, they tend to act "more impulsively").

violence, medication management, substance abuse, or any of the other many concerns that lead students to seek treatment. Students who need support risk being driven underground, and universities could feel compelled from a risk perspective to take the most immediate, conservative measures available to monitor students, to suggest or request students voluntarily withdraw, or to restrict or remove students from programs or activities,[4] all triggered by a student seeking needed mental health support. This would further discourage students with mental health conditions from coming forward and could result in negative health and safety outcomes for those students.

Holding universities liable when, as the District Court found here, there are no well-pled facts showing the university had any knowledge the student was considering suicide would be unreasonable and unprecedented. The District Court thus correctly interpreted Georgia tort law and applied a similar standard to the one used by courts around the country in cases involving likewise tragic underlying facts. This Court should affirm.

[4] Among the many shortcomings of Appellants' ill-defined position, and the inherent challenges in lawfully implementing it, federal and many states' disability and accommodations laws inform what is and is not permissible in terms of restricting or removing students from programs or activities, *see*, *e.g.*, 42 U.S.C. § 12132.

STATEMENT OF THE ISSUES

1. Whether the District Court correctly held that under Georgia tort law a university cannot be liable for a student's suicide when the complaint fails to plausibly allege that the university had knowledge the student was contemplating suicide and therefore fails to plausibly allege the student's suicide was foreseeable to the university.

2. Whether this Court should recognize a new duty for universities under Georgia tort law that would make them responsible for a student's suicide even when there are no allegations that the university had been directly alerted that a student was contemplating suicide.

SUMMARY OF THE ARGUMENT

This case arises from the tragic death of Appellants' son, Albert. As the District Court correctly held below, Georgia tort law does not impose liability on a university for a student's suicide where there are no plausibly pled allegations that the suicide was foreseeable to the university. The District Court interpreted Georgia tort law to be in line with tort law in other states, as reflected in numerous decisions from courts across the country: A university cannot be found negligent for failing to prevent a student's suicide when it had no notice that the student was having suicidal thoughts or considering committing suicide.

Appellants seek to impose a standard that no other court has adopted. They ask for a heightened tort duty for universities in Georgia to prevent a student's suicide even when there are no plausibly pled allegations making it foreseeable to the university that the student would commit suicide. The Court should reject their position for three distinct reasons.

First, Appellants' position seeking to impose a new duty on universities to supervise and monitor their students' lives is incompatible with how various jurisdictions recognize the modern university-student relationship. Universities are not responsible for monitoring and controlling all aspects of their students' lives, and it would be a radical shift for universities to take on the role of policing students' lives in this fashion.

Second, Appellants fail to legally support their position. They rely on cases involving tort suits against K-12 schools or other entities who have different and significantly elevated legal duties to monitor and supervise their students. Universities are not held to such a standard of care; unlike K-12 schools, they do not stand in for their students' parents. College and university students are treated as autonomous adults with protected privacy interests. And even though a small number of college students matriculate before they are eighteen years old, *amici*'s

members treat all college students as adults, and all college students, regardless of their actual age, expect to be treated as adults by their institutions.[5]

Third, Appellants' proposed vague and unadministrable standard would harm universities' efforts to protect and promote students' well-being and mental health. The higher education community is aware of the rising prevalence of mental health conditions amongst student populations and strives to increase accessibility and helpfulness of mental health care for its students. But adopting Appellants' position seeking to impose a new duty on universities to prevent a student's self-harm would hinder the progress taken by the higher education community to remove the stigma from seeking mental health treatment by effectively pressuring institutions to take the most stringent action permissible in every case, based on potential liability risk, even when students have sought treatment for issues other than self-harm and have not indicated any consideration of suicide.

Amici therefore ask this Court to affirm the District Court's decision that as a matter of law, a university cannot be liable on a negligence-based theory for a

[5] The law often requires such treatment. For example, the Family Educational Rights and Privacy Act gives privacy protections to an "eligible student," which is defined "as a student who has reached 18 years of age or is attending a postsecondary institution at any age. This means that, at the secondary level, once a student turns 18, all the rights that once belonged to his or her parents transfer to the student." U.S. Dep't of Education, *Protecting Student Privacy*, *Glossary*, "*Eligible Student*," available at https://studentprivacy.ed.gov/glossary.

student's suicide where there are no well-pled facts showing that the university had any knowledge the student was considering suicide or self-harm.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY APPLIED THE FORESEEABILITY ELEMENT OF GEORGIA TORT LAW TO THE WELL-PLED FACTS IN APPELLANTS' COMPLAINT.

The District Court properly determined that Albert's suicide was not foreseeable to Emory because Appellants failed to plausibly allege that any Emory staff member "was directly alerted or had concrete information to indicate that Albert might attempt suicide." Doc. 86 at 1, 12 (Order Granting Mot. to Dismiss). Indeed, courts across the country have indicated that universities must be aware of a student's intent to commit suicide or recent prior suicide attempts before being held liable under state tort law for a student's suicide. *See, e.g.*, *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 609 (W.D. Va. 2002); *Webb v. Muller*, 135 N.Y.S.3d 224, 238 (N.Y. Sup. Ct. 2020); *Tang v. President & Fellows of Harvard Coll.*, 36 Mass. L. Rptr. 49, 2019 WL 5069077, at *4 (Mass. Super. Ct. Sept. 9, 2019); *Dzung Duy Nguyen v. Massachusetts Inst. of Tech.*, 96 N.E.3d 128, 146 (Mass. 2018). And here, the District Court followed the approach taken by countless courts when determining that the amended complaint lacked factual allegations indicating that

Emory had "direct" knowledge that Albert might attempt suicide or that he had ever indicated that he may take his own life. Order Granting Mot. to Dismiss 13.

As the District Court explained, a higher education institution is not negligent where a student's self-harm was unforeseeable. Intertwined with negligence and proximate cause is the idea of foreseeability. *Brandvain v. Ridgeview Inst., Inc.*, 372 S.E.2d 265, 272–273 (Ga. Ct. App. 1988), *aff'd*, 382 S.E.2d 597 (Ga. 1989). Proximate cause, a required element to prove a negligence claim, is a "legal limit on liability" that makes a negligent actor only liable for those consequences that are "probable." *Johnson v. Avis Rent A Car Sys., LLC*, 858 S.E.2d 23, 29 (Ga. 2021), *reconsideration denied* (June 1, 2021). But under the doctrine of "intervening causes," proximate cause does not exist where an unforeseeable independent act of someone other than the defendant was sufficient to cause the plaintiff's injury and was not triggered by the defendant's act. *City of Richmond Hill v. Maia*, 800 S.E.2d 573, 576–577 (Ga. 2017). And in Georgia, but for limited circumstances that do not apply here, "suicide is deemed an unforeseeable intervening cause of death which absolves the tortfeasor of liability." *Id.* at 577; *see also* Order Granting Mot. to Dismiss 17 ("[A] plaintiff alleging that a student's suicide was foreseeable to a university must clear a *high bar*.") (emphasis added).

Georgia is not the only jurisdiction to adopt such a rule. "Courts have long been rather reluctant to recognize suicide as a proximate consequence of a

defendant's wrongful act." *Watters v. TSR, Inc.*, 904 F.2d 378, 383 (6th Cir. 1990). Many courts, like Georgia courts, have adopted the rule that suicide is an independent intervening event that breaks the causal chain. *Chalhoub v. Dixon*, 788 N.E.2d 164, 168 (Ill. App. Ct. 2003) ("[A] plaintiff may not recover for a decedent's suicide following a tortious act."); *Hooks SuperX, Inc. v. McLaughlin*, 642 N.E.2d 514, 521 (Ind. 1994) (same); *McLaughlin v. Sullivan*, 461 A.2d 123, 124 (N.H. 1983) (same); *Lenoci v. Leonard*, 21 A.3d 694, 699 (Vt. 2011) (same); *see also Carney v. Tranfaglia*, 785 N.E.2d 421, 425 (Mass. App. Ct. 2003) (same); *Vinson v. Clarke Cnty.*, 10 F. Supp. 2d 1282, 1303 (S.D. Ala. 1998) (same); *McMahon v. St. Croix Falls Sch. Dist.*, 596 N.W.2d 875, 879 (Wis. Ct. App. 1999) (same). This rule has been applied in cases involving student suicide at universities. *See, e.g.*, *Jain v. Iowa*, 617 N.W.2d 293, 300 (Iowa 2000) (noting, in a wrongful death action against a university, that "it is the general rule that . . . the act of suicide is considered a deliberate, intentional and intervening act that precludes another's responsibility for the harm").

As a result, courts consistently hold, like the District Court did below, that a university cannot be liable for a student's suicide unless, at a minimum, it has knowledge of an intent to commit suicide. For example, in *Nguyen*, the Supreme Judicial Court of Massachusetts upheld summary judgment for a university in a wrongful death action following a student suicide because the evidence showed the

student "never communicated by words or action" to any university employee that he planned or intended to commit suicide. 96 N.E. 3d at 146, 149.

Consistent with these legal principles, the District Court here correctly found that the amended complaint failed to plausibly allege the foreseeability element of Appellants' tort claim. Order Granting Mot. to Dismiss 17. It did not allege that Albert expressed an intent to commit suicide or that anyone close to him like a peer or parent ever reported to Emory any concerns. *See generally* Doc. 72 (Amended Compl.); Order Granting Mot. to Dismiss 17. There was no indication to Emory that Albert "threatened to kill himself," *Schieszler*, 236 F. Supp. 2d at 605, had recently attempted suicide, *Tang*, 2019 WL 5069077, at *1, or planned to commit suicide, *Nguyen*, 96 N.E.3d at 149.

Foreseeability, and the extent of the legal obligations a university owes a student, is a different analysis when there are facts demonstrating the university has knowledge a student has previously attempted suicide. The Supreme Judicial Court of Massachusetts, for example, has held that such knowledge can create a "special relationship" between a university and student that includes a student suicide prevention duty under state law. *See Nguyen*, 96 N.E.3d at 131. As a result, in *Tang v. President & Fellows of Harvard College.*, No. 1881CV02603 (Mass. Super. Ct. Dec. 20, 2022),[6] the court addressed whether a university had met the suicide

[6] Available at https://perma.cc/LYM2-XSSL.

prevention duty triggered under Massachusetts law by its knowledge of the student's prior suicide attempt on campus. The court held that the university did so as a matter of law by taking "reasonable measures" including confirming that the student had no "active plan to commit suicide," arranging for a Harvard psychologist see the student, arranging for the student's admission to a mental health facility, and notifying the student's father of the suicide attempt and that he had been admitted to the hospital. *Id.* at 15 (quoting *Nguyen*, 96 N.E.3d at 145).

Here, the District Court rightly acknowledged the tragedy of this case, Order Granting Mot. to Dismiss 23, but given Georgia law—which is consistent with the well-established law from states around the country—the District Court reached the correct legal conclusion as applied to the well-pled facts. This Court therefore should affirm the District Court's decision. The premise underlying the decision below is correct as a matter of law: a particular student's suicide is not foreseeable to a university where the university has no knowledge that the student has contemplated self-harm in the past or present, even if the student has sought to access some mental health services from the university. To *amici*'s knowledge, no court has recognized or imposed such a far-reaching duty.

II. THE COURT SHOULD NOT CREATE A NEW DUTY UNDER GEORGIA TORT LAW FOR UNIVERSITIES TO PREVENT A STUDENT'S SUICIDE WHERE THERE ARE NO PLAUSIBLY PLED ALLEGATIONS THAT THE STUDENT'S SUICIDE WAS FORESEEABLE TO THE UNIVERSITY.

The Court also should reject Appellants' request to expand Georgia tort law to impose a new duty on universities to prevent a student's suicide where the university had no knowledge that the student had contemplated self-harm in the past or present. Appellants ask the Court to find an exception to the general rule that suicide is an unforeseeable intervening event because they claim a special relationship existed between Albert, his parents, and Emory. Appellants Br. 18–19. According to Appellants, Georgia tort law imposes a special duty on universities to supervise and monitor students, even if the university has no knowledge that the student has contemplated suicide or self-harm in the past or present. Appellants argue that Emory breached its duty by failing to notify them (Albert's parents) or the State of Georgia that he exhibited "indicators of having been subjected to physical and mental abuse"; they further contend that Albert's death by suicide was foreseeable because he exhibited such "indicators of abuse." Appellants Br. 9–11.

Adopting Appellants' position would impose a new duty under Georgia tort law for universities to monitor a student and notify a student's parents or the State when a student exhibits indicators of abuse—even where there are no well-pled facts showing the university had any knowledge the student was considering suicide.

The Court should reject their position for three reasons. First, their position is incompatible with the modern relationship between universities and their students. Second, Appellants rely on factually distinguishable and inapplicable cases describing the obligations of entities who have different legal duties than universities. And third, their proposed "indicators of abuse" standard is vague, unadministrable, and would ultimately be harmful to students' well-being and mental health by discouraging students from accessing care on campus even when they are in need.

A. Appellants' Position is Incompatible with the Modern University-Student Relationship.

Appellants' position, asking the Court to impose a new duty on universities, would be contrary to how courts in various jurisdictions recognize the modern university-student relationship. There is no general duty to prevent the suicide of another. *See Rasnick v. Krishna Hosp., Inc.*, 690 S.E.2d 670, 673 (Ga. Ct. App. 2010), *aff'd*, 713 S.E.2d 835 (Ga. 2011) ("A person is under no duty to rescue another from a situation of peril which the former has not caused.") (citation omitted); *Brandvain*, 372 S.E.2d at 270 ("[T]here is no duty to guarantee that a patient will not commit suicide."); *Mikell v. Sch. Admin. Unit No. 33*, 972 A.2d 1050, 1054 (N.H. 2009) ("[N]egligence actions seeking damages for the suicide of another will not lie."); *Nguyen*, 96 N.E.3d at 139 ("Generally, there is no duty to prevent another from committing suicide.").

Georgia courts, however, may deviate from this general rule in limited cases involving a special relationship between the tortfeasor and the decedent, which can give rise to "the unusual duty" to prevent another's self-harm.[7] *Maia*, 800 S.E.2d at 577–578. This is because "when some special relation exists between the parties, social policy may justify the imposition of a duty to assist or rescue one in peril." *Thomas v. Williams*, 124 S.E.2d 409, 413 (Ga. Ct. App. 1962). Examples of special relationships include situations where one person is placed under custody or care of the other like doctor-patient, hospital-patient, police officer-detainee, or jailor-prisoner. *Maia*, 800 S.E.2d at 578; *see, e.g.*, *Kendrick v. Adamson*, 180 S.E. 647, 648 (Ga. Ct. App. 1935) (a jail employee owes a person who is imprisoned a duty to keep the person safe); *Brandvain*, 372 S.E.2d at 271 (a private hospital is under a duty to exercise "reasonable care in looking after and protecting a patient").

But unlike these relationships, a college student is not placed under the care or custody of a university. Appellants wrongly assert that a special relationship existed such that Emory had a duty to aid or protect Albert while he was "away from the care and supervision of his parents and entrusted to the oversight and protection of" a university. Appellants Br. 37–38. That position is incompatible with how

[7] The Supreme Court of Georgia has explained that there are two exceptions to "the general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death: the so called rage-or-frenzy exception and the special-relationship exception." *Maia*, 800 S.E.2d at 577. Appellants only advance the special relationship exception.

courts in various jurisdictions recognize the modern university-student relationship. *See Bradshaw v. Rawlings*, 612 F.2d 135, 138 (3d Cir. 1979) ("[T]he modern American college is not an insurer of the safety of its students."); *Nguyen*, 96 N.E.3d at 141 ("[U]niversities are not responsible for monitoring and controlling all aspects of their students' lives.").

Appellants cite no case that has recognized a special relationship between universities and students such that universities have a generally applicable duty to prevent students from engaging in self-harming or risky behavior. Nor could they. Courts do *not* recognize such a special relationship. *See, e.g.*, *Bradshaw*, 612 F.2d at 141 (No "special relationship existed as a matter of law, which would impose upon the college either a duty to control the conduct of a student operating a motor vehicle off campus or a duty to extend to a student a right of protection in transportation to and from off campus activities."); *Doe v. Emerson Coll.*, 153 F. Supp. 3d 506, 514 (D. Mass. 2015) (finding no special relationship such that the college owed "a duty to prevent the consumption of alcohol or use of drugs by herself or other students").

Indeed, universities are not obligated to provide parental protection or supervision (often referred to as *in loco parentis*) to their students. "There is universal recognition that the age of *in loco parentis*" passed decades ago, and "that the duty, if any is not one of a general duty of care to all students in all aspects of

their collegiate life." *Nguyen*, 96 N.E.3d at 141 (citation omitted). Georgia courts and courts in other jurisdictions agree. *See, e.g.*, *Niles v. Bd. of Regents of Univ. Sys. of Georgia*, 473 S.E.2d 173, 175 (Ga. Ct. App. 1996) ("[C]ollege administrators do not stand in loco parentis to adult college students."); *Bradshaw*, 612 F.2d at 139–140 (college administrators and faculties do not assume a role in loco parentis).[8]

Appellants' proposed special relationship also would invade students' protected privacy interests by requiring universities to monitor and supervise their students in far reaching ways. Today, courts frequently treat college students as autonomous adults with privacy interests and generally afford them protections against intrusions by university officials and employees. *See Bradshaw*, 612 F.2d at 139 (College students are not minors and "are now regarded as adults in almost every phase of community life."). And the same legal principles apply even for students who begin college at an earlier age than the average college student. *See Hartman*,

[8] *See also Doe v. Cmty. Coll. of Baltimore Cnty.*, 595 F. Supp. 3d 392, 421 (D. Md. 2022) ("[C]ourts throughout the country have rejected the in loco parentis doctrine in the collegiate setting."); *Austin-Hall v. Woodard*, No. 3:18-cv-270, 2020 WL 5943018, at *6 (S.D. Ohio Oct. 7, 2020) ("The law is clearly established that colleges and universities do not stand *in loco parentis*."); *Ginsburg v. City of Ithaca*, 839 F. Supp. 2d 537, 543 (N.D.N.Y. 2012) ("New York has affirmatively rejected the doctrine in loco parentis at the college level.") (citation omitted); *Millard v. Osborne*, 611 A.2d 715, 721 (Pa. Super. Ct. 1992) ("Clearly, in modern times, it would be inappropriate to impose an *in loco parentis* duty upon a university.") (citation omitted); *Hartman v. Bethany Coll.*, 778 F. Supp. 286, 293 (N.D.W. Va. 1991) ("The recent trend in the caselaw is against finding an *in loco parentis* relationship between colleges or universities and their students.").

778 F. Supp. at 294 ("It is not reasonable to conclude today that seventeen year old college students necessarily require parental protection and supervision."). "A college freshman is just that; whatever his or her age." *Id.* Thus, a university like Emory does "not stand *in loco parentis*" because a student enters college a year or two shy of the age of majority. *See id.*; *contra* Appellants Br. 9–11.

At its core, the new duty that Appellants ask this Court to impose on universities runs contrary to the well-established modern university-student relationship. The court below found that the death of plaintiffs' son Albert was not, in fact, foreseeable because the university lacked actual knowledge that he was considering suicide. This Court should refrain from creating a new duty for universities to supervise and monitor college students by affirming the District Court's decision as the correct interpretation of Georgia law.

B. Appellants Rely on Cases that Do Not Apply to Universities.

Students attending college are in a distinct phase of their education—and their lives—compared to their younger elementary and high school selves. Appellants rely on several cases involving tort suits against a K-12 school or an entity standing in for the child's parents, but those suits are inapplicable here. *See* Appellants Br. 10–11, 33–36; *see, e.g.*, *Wyke v. Polk Cnty. Sch. Bd.*, 129 F.3d 560, 574 (11th Cir. 1997) (suit against elementary school arising from circumstances surrounding the suicide of a 13-year-old); *Meyers v. Cincinnati Bd. of Educ.*, 983 F.3d 873, 875 (6th

Cir. 2020) (suit against elementary school arising from a third grader committing suicide after a series of severe bullying from classmates); *Beul v. ASSE Int'l, Inc.*, 233 F.3d 441, 444 (7th Cir. 2000) (suit by a 16-year-old foreign exchange student against a nonprofit corporation "standing in for her parents" after being raped and sexually abused by her host family's father).

Context is critical here. K-12 schools "operate in loco parentis to students and are 'permitted a degree of supervision and control that could not be exercised over free adults.' " *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 802 (11th Cir. 2022) (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995)); *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 646 (1999) (observing "that the nature of [the State's] power [over public schoolchildren] is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults") (citation omitted) (alterations in original). Universities, in contrast, do not stand in for their students' parents and therefore generally have no duty to supervise and monitor their students.

Even if these cited cases somehow supported that universities have a duty to monitor and supervise their students, the facts of those cases are distinguishable from this case. They involved circumstances where a school either knew about prior suicidal attempts or severe bullying by other classmates that made a student's death

by suicide reasonably foreseeable. Neither of those circumstances have been alleged here.

For example, in *Wyke*, a mother brought a wrongful death action after her middle-school son tragically committed suicide at home following two suicide attempts at school that the school never told the mother about. 129 F.3d at 574. There, the Eleventh Circuit limited its holding to the facts of that case, holding "only that, when a child attempts suicide at school and the school knows of the attempt, the school can be found negligent in failing to notify the child's parents or guardian." *Id.* at 571. But here, unlike *Wyke*, Appellants have not alleged that any prior suicide attempts occurred, or that Emory knew about them. *See* Amended Compl.

Appellants' reliance on *Meyers* is similarly misplaced. There, a third grader tragically died by suicide after allegedly being repeatedly and severely bullied by classmates at school. *Meyers*, 983 F.3d 873. Two days before his suicide, a student allegedly grabbed the third grader and yanked him toward a wall, causing him to be unconscious for more than seven minutes while other students continued to taunt and kick him. *Id.* at 877. Later that evening, the third grader's parents took him to the hospital because he was experiencing stomach pain and nausea, although the parents were not told at the time that an attack had occurred at school earlier that day. *Id.* Two of the school administrators also allegedly "knew the full extent to which" the third grader "was subjected to aggression and violence by his classmates"

and "even had video footage of several of the violent incidents" the third grader had experienced at school. *Id.* at 885.

Based on those allegations as well as other instances of bullying, the Sixth Circuit found that the plaintiffs sufficiently alleged facts showing that school officials acted recklessly when they lied to the third grader's "parents and chose not to inform [his] parents about six instances in which [the third grader's] physical safety was threatened," which ultimately, prevented his parents from fully understanding his "horrifying experience" at school. *Id.* at 885. Yet, here, the allegations are far from the allegations of extremely severe and consistent bullying that the school knew about, and lied to the parents about, in *Meyers*. Whether that student's suicide was reasonably foreseeable has no relevance to the disposition of this case. *See supra* 11.

And lastly, *Beul*, another case cited by Appellants, could not be more different than this case. There, a 16-year-old foreign exchange student worked with a nonprofit corporation to spend a year with a host family in the United States. *Beul*, 233 F.3d at 444. After arriving in the U.S., the host family's father raped the exchange student and continued a protracted sexual relationship with her. *Id.* at 446. The Seventh Circuit found that the nonprofit had a duty "to protect foreign girls and boys from sexual hanky-panky initiated by members of host families," noting "this young foreign girl [was] virtually abandoned by the agency that was standing in for

her parents." *Id.* at 448, 451. Unlike the nonprofit, universities do not stand in the place of their students' parents; courts have routinely rejected such a premise. Thus, a university like Emory has no special duty to monitor the safety and wellbeing of a student when university faculty or staff were not directly alerted to the danger of a potential suicide, either by the student himself, by a peer, or in some other specific manner.

In short, Appellants rely heavily on cases involving suits against K-12 schools and a foreign exchange program standing in for a child's parents. But no court has recognized that universities have parental duties like those entities—duties that would prove unworkable and result in unwanted and unacceptable intrusions into university students' lives.

C. Appellants' Position, If Embraced, Would Be At Odds With Higher Education Institutions' Efforts To Protect And Promote Students' Mental Health.

Amici have grave concerns that Appellants' position, if adopted, would ultimately harm universities' ongoing efforts to protect and promote students' mental health.

The last decade has seen great strides in encouraging openness about mental health struggles within higher education communities.[9] For good reason; it is

[9] *See, e.g.*, Marcus Hotaling, *Let's Talk: Senior Leadership, Student Mental Health, and Counseling Centers*, ACE (2023),

imperative that students experiencing anxiety, depression, relationship struggles, homesickness, or loneliness raise their hands and feel comfortable seeking help. The last thing anyone should want is for these students to feel afraid of seeking assistance or discouraged from doing so. If Appellants' position were adopted, however, there is little doubt that it would lead to perceptions among the most vulnerable students that seeking mental health treatment may lead to their university initiating an intervention, sharing sensitive information with their parents, proposing a voluntary separation, or otherwise taking the most restrictive option legally available in order to limit the student's ability to participate in an educational program or residential environment.[10] For similar reasons, Appellants' position may discourage students in an abusive relationship from seeking counseling support or other resources. And

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https://www.acenet.edu/Documents/Lets-Talk-Counseling-Centers.pdf; Alina Tugend, *Colleges Get Proactive in Addressing Depression on Campus*, N.Y. Times (June 7, 2017), https://www.nytimes.com/2017/06/07/education/colleges-get-proactive-in-addressing-depression-on-campus.html.

[10] Privacy concerns can deter students from seeking mental health services. *See generally* Elnaz Moghimi, *et al.*, *Mental Health Challenges, Treatment Experiences, and Care Needs of Post-Secondary Students: A Cross-Sectional Mixed-Methods Study*, BMC Public Health 2, 10, 13 (2023) (noting that privacy and confidentiality concerns may impact the accessibility and helpfulness of students seeking mental health care); *Breaking Down the Barriers to Care: How to Improve Access to Student Mental Health Services*, Mantra Health (Aug. 3, 2022), https://mantrahealth.com/post/breaking-down-the-barriers-to-care/ (explaining that some students "refrain from accessing mental health services because of concerns about privacy," including fear of "their mental health information will be used at the college level").

students who do choose to seek services or treatment may feel their privacy has been invaded if their university shares details of their mental or physical abuse with their parents or others.

This chilling effect could have a drastic negative impact on college campuses, especially considering that increasing numbers of students are arriving to universities with preexisting, highly challenging mental health conditions.[11] As students' mental health needs have increased in recent years,[12] universities have

[11] According to the UCLA Higher Education Research Institute annual freshman survey, 81.8% of over two thousands full-time freshmen college students "felt that their mental health was *at least somewhat* a source of their stress over the past year." Ngoc Tran, *et al.*, *2021 Your First College Year Survey* 2, UCLA Higher Education Research Institute (April 2022), https://heri.ucla.edu/briefs/YFCY/YFCY-2021-Brief.pdf; *see* Substance Abuse and Mental Health Services Administration (SAMHSA), *Prevention and Treatment of Anxiety, Depression, and Suicidal Thoughts and Behaviors Among College Student*s 3 (2021), https://store.samhsa.gov/sites/default/files/pep21-06-05-002.pdf; *see also* Pierpaolo Limone & Giusi Antonia Toto, *Factors That Predispose Undergraduates to Mental Issues: A Cumulative Literature Review for Future Research Perspectives*, 10 Front. Public Health 1, 6 (2022) ("Mental health disorders are common among students, with a higher incidence than in the general population.").

[12] According to the Healthy Minds Student survey of over 350,000 students at 373 campuses, more than 60% of college students met the criteria for at least one mental health problem. This was nearly a 50% increase from the survey in 2013. Sarah Ketchen Lipson, *et al.*, *Trends in college student mental health and help-seeking by race/ethnicity: Findings from the national healthy minds study, 2013–2021*, 306 J. Affective Disorders 138 (2022). In addition, about 35% of college students reported being diagnosed with anxiety and 27% of college students reported being diagnosed with depression, according to a 2022 survey of undergraduate students. American College Health Association, *Undergraduate Student Reference Group Executive Summary Spring 2022*, at 15 (2022).

correspondingly increased the accessibility and availability of mental health services and training.[13] Universities strive to make services available without attaching consequences to obtaining those services that would impose a chilling effect and could lead students to avoid accessing needed mental health care.

Moreover, Appellants' proposed new duty on universities would embrace the vague and ill-defined term "indicators of abuse." Appellants Br. 10. This is not an administrable standard, and no court has adopted such an approach. Under Appellants' position, university officials would struggle to determine exactly what constitutes an indicator of abuse and when an abusive situation would require action. There would be no readily identifiable way to discern when seeking mental health treatment from a university official for conflicts with a boyfriend, girlfriend, or roommate could amount to a student exhibiting indicators of emotional abuse. Because such "indicators of abuse" are vague and ill-defined, universities would be uncertain as to when they have a legal duty to monitor a student, inform a student's parents, or remove a student from a program. Such a duty would be "impractical and unrealistic" for universities to carry out, especially in circumstances where a student's suicide unfortunately occurs without warning or identifiable predictors.[14]

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[13] "[I]n a 2019 study of over 400 college presidents, 8 out of 10 presidents reported the mental health of their students as a rising priority when compared to the three previous years." SAMHSA, *supra* note 11, at 3; *see also* Hotaling, *supra* note 9; Tugend, *supra* note 9.

[14] *See supra* note 3.

See, e.g., *Emerson Coll.*, 153 F. Supp. 3d at 514 (explaining that imposing "a legal duty on colleges or administrators to supervise the social activities of adult students" on colleges "would be impractical and unrealistic").

Appellants' vague and unadministrable position thus would harm universities' efforts to protect and promote students' well-being and mental health. In *amici*'s experience, universities function best and provide the best educational experiences when they can take a holistic approach to student development and provide support services to students who need them. Driving students away from mental health services out of fear of overreaction would hamper students' academic, social, and emotional development. No public policy would be served by imposing this duty on universities. This Court should not endorse Appellants' efforts to expand tort law against universities.

CONCLUSION

For the above reasons and those in Defendant-Appellee's brief, this Court should affirm the judgment below.

Dated: February 22, 2024

Respectfully submitted,

/s/ Jessica L. Ellsworth

Jessica L. Ellsworth
Amanda NeCole Allen
Claire Adkins Rhodes
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Peter G. McDonough
AMERICAN COUNCIL ON EDUCATION
One Dupont Circle
Washington, DC 20036
(202) 939-9300
pmcdonough@acenet.edu

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 32(g), I hereby certify that the brief of American Council on Education as *amicus curiae* in support of Defendant-Appellee complies with (1) the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) because it was written in Times New Roman, 14-point font and (2) the type-volume limitations contained in Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i), because it contains 6,455 words, excluding those parts of the brief excluded from the word count under Federal Rule of Appellate Procedure 32(f).

/s/ Jessica L. Ellsworth
Jessica L. Ellsworth

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above brief of American Council on Education as *amicus curiae* in support of Defendant-Appellee was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit on February 22, 2024 using this Court's ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that four paper copies of the brief with green covers and backing will be dispatched for delivery via Federal Express to:

David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

/s/ Jessica L. Ellsworth
Jessica L. Ellsworth

ADDENDUM – LIST OF *AMICI CURIAE*

1. American Council on Education (ACE): More information about ACE can be found at: https://www.acenet.edu

2. American Association of Community Colleges (AACC): More information about AACC can be found at:

3. American Association of State Colleges and Universities (AASCU): More information about AASCU can be found at: https://aascu.org/

4. Association of American Universities (AAU): More information about AAU can be found at: https://www.aau.edu/

5. Association of Catholic Colleges and Universities (ACCN): More information about ACCN can be found at: https://www.accunet.org/

6. Association of Community College Trustees (ACCT): More information about ACCT can be found at: https://www.acct.org/

7. Association of Governing Boards of Universities and Colleges (AGB): More information about AGB can be found at: https://agb.org/

8. Association of Public and Land Grant Universities (APLU): More information about APLU can be found at: https://www.aplu.org/

9. Career Education Colleges and Universities (CECU): More information about CECU can be found at: https://career.org/

10. Council for Christian Colleges and Universities (CCCU): More information about CCCU can be found at: https://www.cccu.org/

11. Council of Graduate Schools (CGS): More information about CGS can be found at: https://cgsnet.org/

12. Georgia Independent College Association (GICA): More information about GICA can be found at: https://georgiacolleges.org/

13. NASPA-Student Affairs Administrators in Higher Education: More information about NASPA can be found at: https://www.naspa.org/

14. National Association of College and University Business Officers (NACUBO): More information about NACUBO can be found at: https://www.nacubo.org/

15. National Association of Independent Colleges and Universities (NAICU): More information about NAICU can be found at: https://www.naicu.edu/

16. Southern Association of Colleges and Schools Commission on Colleges (SACSCOC): More information about SACSCOC can be found at: https://sacscoc.org/

17. University Risk Management & Insurance Association (URMIA): More information about URMIA can be found at: https://www.urmia.org/home