

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT**

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BERNARD MUSUMECI, : **Claim No.136689**
 : **Docket No. 2022-05735**
 Claimant- Appellant, :
 : **NOTICE OF MOTION TO**
 -against- : **FILE *AMICUS CURIAE***
 : **BRIEF IN SUPPORT OF**
 : **CLAIMANT-APPELLANT**
STATE OF NEW YORK, :
 :
 Defendant-Respondent. :
 :
-----X

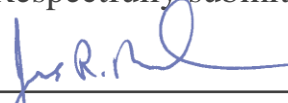
PLEASE TAKE NOTICE, that upon the annexed affirmation of James Marsh Esq., the annexed proposed brief, and all the pleadings, proceedings and exhibits included herein, CHILD USA will move this Court at the Courthouse located at 45 Monroe Place, Brooklyn, New York on the 18th day of February, at 10AM or as soon thereafter as counsel can be heard, for the following relief:

- [a] An order permitting CHILD USA to file the accompanying proposed brief of amicus curiae; and**
- [b] Granting any other, further, or different relief that this Court may deem just, proper, and equitable.**

PLEASE TAKE FURETHER NOTICE, that answering affidavits, if any, are required to be served in accordance with the rules of this Court.

Dated: February 18, 2023
New York, New York

Respectfully submitted,



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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT**

-----X
BERNARD MUSUMECI, : **Claim No.136689**
: :
Claimant- Appellant, : :
: : **AFFIRMATION**
-against- : **IN SUPPORT**
: :
: :
STATE OF NEW YORK, : :
: :
Defendant-Respondent. : :
: :
-----X

James Marsh, Esq., hereby affirms, under the penalties of perjury, the truth of the following statements:

1) I am an attorney admitted to practice law in the State of New York. I make this certification in support of the motion of CHILD USA to submit the annexed amicus curiae brief in the above-captioned appeal, which is annexed hereto as **Exhibit A.**

2) CHILD USA is the leading non-profit national think tank fighting for the civil rights of children. CHILD USA’s mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and

information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on revival laws, and has advised state governors, legislatures, and judiciaries on the constitutionality of revival window laws for child sex abuse throughout the country, including in New York.

3) CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case will have immediate and broad implications on the ability of victims of sex abuse to bring civil claims in New York. The Child Victims Act enables victims of sexual abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sexual abuse in New York will expose hidden perpetrators to the public, shift the cost of abuse from victims to those who perpetrated and enabled the abuse, and it will ultimately educate the public and help prevent future abuse.


4) CHILD USA has legal and social science expertise that can help the court determine the questions at issue in this case. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on public

safety, the science of trauma and delayed disclosure by victims of their abuse, and the how the decision below conflicts with the same.

5) No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the within application should be granted in all respects.

Dated: February 18, 2023
New York, New York



James Marsh, Esq.
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Counsel of Record for Amicus Curiae

EXHIBIT A



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New York Supreme Court

Appellate Division – Second Department

Claim No.136689

BERNARD MUSUMECI,

Claimant- Appellant,

-against-

STATE OF NEW YORK,

Defendant-Respondent.

**BRIEF OF AMICUS CURIAE CHILD USA
IN SUPPORT OF CLAIMANT-APPELLANT**

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ARGUMENT

I. INTRODUCTION

Child sexual abuse is a public policy crisis, with approximately 3.7 million children sexually abused in the United States every year.¹ It affects 1 in 5 girls, and 1 in 13 boys in this nation.² This crisis has created an emergency for lawmakers and policymakers to redress, halt, and prevent. Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short statutes of limitation (“SOLs”) that kept victims out of court. Short SOLs for child sex abuse have played into the hands of the perpetrators and the institutions that coverup for them. The research recognizes that the overwhelming majority of victims cannot bring their claims within the short timeframe allotted by most SOLs like that in New York before the Child Victim’s Act, and that mere knowledge of an abusive act is insufficient for a victim to bring their claim.³ Revival laws such as

¹ See Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also, D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat’l Survey of Children’s Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

² G. Moody, et. al., Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., The prevalence of child sexual abuse in community and student samples: A meta-analysis, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

³ N. Spröber et al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (2014).

those passed by the New York General Assembly recognize that society for too long did not understand the plight of those sexually abused as children and unfairly extinguished their rights long before they had the ability to report or seek justice for their abuse. By passing the Child Victims Act (“CVA”), the New York General Assembly took a proactive stance to address access to justice for victims and, in so doing, greatly reduced the present danger to New York’s children.

The decision below undermines the Act’s noble purpose and perpetuates archaic stereotypes regarding how victims disclose and report their abuse. By misconstruing the pleading requirements, the Court of Claims has made access to justice effectively impossible for claims related to child sexual abuse. As a result, institutions that fail to prevent or respond to reports of sexual abuse may continue to do so undeterred. Shutting the courthouse doors will have broader implications—it will chill reports of sexual abuse as many victims will choose not to come forward if they see no avenue to justice.

II. THE COURT OF CLAIMS DECISION CONFLICTS WITH CONTEMPORARY RESEARCH REGARDING THE NATURE OF MEMORY FOR TRAUMATIC EVENTS AND THE DISCLOSURE OF ABUSE

Many of the rules of evidence and civil procedures that have created obstacles in cases of child sexual abuse are, at least in part, a product of the rule-makers’

beliefs about the nature of human memory and the disclosure of abuse.⁴ To remove these obstacles, courts must recognize the incompatibilities between modern scientific understanding these topics and existing legal standards and procedures to reconcile what particulars a complaint of child sexual abuse should reasonably be expected to provide about the alleged abuse based on the research regarding traumatic memories, and when.

A. Contemporary Research Confirms that Traumatic Events Impair a Victim’s Ability to Form Linear, Specific Memories

The trauma of sexual abuse has a significant neurological impact on key regions of the brain that impact memory including the prefrontal cortex, the amygdala, and the hippocampus.⁵ First, the prefrontal cortex, the part of the brain responsible for higher order executive functions such as processing, planning, and regulating attention, is impaired, sometimes even effectively shut down in states of high stress or fear.⁶ During a traumatic event, the brain’s fear circuitry—in particular the amygdala—takes over the prefrontal cortex and redirects attention to information it deems necessary for survival.⁷ In so doing, the amygdala interrupts functioning of the hippocampus, the brain region responsible for encoding experiences into

⁴ Michael Saks & Barbara A Spellman, The Psychological Foundations of Evidence Law (New York University Press, 2016) 2.

⁵ Arnsten, A., Stress signaling pathways that impair prefrontal cortex structure and function. 10(6) NAT. REV. NEUROSCI. 410 (2009).

⁶ Id.

⁷ Id.

memory thereby inhibiting the process of and memory for peripheral details.⁸ As a result, memories of the traumatic experience may consist of “the sensory data from the traumatic event—the sights, sounds, smells, and bodily sensations—but without the linguistic narrative structure that gives a person’s ordinary memories a sense of logical and chronological coherence.”⁹ These problems are especially pronounced for victims of repeated abuse. Recalling specific details and temporal information about discrete events in a series of recurring events is especially difficult due to the development in memory of a script or schema for recurring events.¹⁰ Often victims can recall the gist of what happened across a series of recurring events but have difficulty delineating and differentiating the specific features of each individual event.¹¹ Recalling dates is particularly difficult for victims of sexual abuse. The brain is good at recalling when events occurred relative to one another, but bad at recalling discrete dates in a vacuum.¹² As a result, victims often present a disorganized and fragmented narrative memory of the traumatic event.¹³

⁸ Id..

⁹ Stephen Paskey, Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum, 56 SANTA CLARA L. REV. 457, 487 (2016).

¹⁰ Natali Dilevski, et. al., Adult memory for specific instances of a repeated event: a preliminary review, 28(5) PSYCHIATR. PSYCHOL. LAW. 711, 731 (2020).

¹¹ Christine Wells, Catriona M Morrison & Martin Conway, Adult Recollections of Childhood Memories: What Details Can Be Recalled?, 67(7) J. OF EXPERIMENTAL PSYCH. 1249 (2014).

¹² Id..

¹³ Id..

Similarly, avoidant forms of coping after exposure to child sexual abuse have also been associated with persistent impairments in retrieving event-level, specific autobiographical memories, an outcome clinically referred to as “Overgeneral Memory” or “OGM.”¹⁴ Phenomena such as dissociation and repression are relevant to memories of child sexual abuse, especially in cases where the abuse involves the betrayal of trust and the misuse of a position of authority.¹⁵

Overall, the science makes clear that it is not reasonable to expect victims of child sexual abuse to recall traumatic events in a consistent and linear manner. They will remember some aspects of the experience in exquisitely painful detail, while they may remember other aspects not at all, or only in confused fragments. These are normal limitations of memory caused by a neurobiological response to a traumatic event. Courts must appreciate the impact of trauma in relation to victims of sexual abuse so that they may assess related claims more effectively and receive evidence in a more just and unbiased manner.

B. Child Sexual Abuse Uniquely Prevents Victims from Bringing Timely Claims Under Short Statutes of Limitations

An extensive body of research establishes that victims of childhood sexual abuse are traumatized in a way that is distinguishable from victims of other crimes.¹⁶

¹⁴ Supra n. 10.

¹⁵ Schultz T., Passmore J.L., & Yoder C.Y., Emotional closeness with perpetrators and amnesia for child sexual abuse, 12(1) J. CHILD SEX ABUS. 67 (2003).

¹⁶ See infra n. 17 and accompanying text.

Child sexual abuse is strongly correlated with negative effects across an individual's lifespan, including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability.¹⁷ The wide-ranging effects of sexual abuse make it difficult for victims not only to appreciate that they have been sexually abused, but also to connect their problems to the abusive experience and to develop a cohesive narrative related to the same. Indeed, many victims of child sex abuse suffer in silence for decades before they speak to anyone about their traumatic experiences. Studies attribute this delay to a number of factors. For example, as children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.¹⁸

¹⁷ See, e.g., Felitti V.J., et al., Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. The Adverse Childhood Experiences (ACE) Study, 14(4) AM. J. PREV. MED. 245-58 (1998); R. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressor, including abuse, can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders”); M. Merricka., et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 2017) (hereinafter M. Merricka); see also Sachs-Ericsson, et al., A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (explaining that adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., Concomitance between childhood sexual and physical abuse and substance use problems: A review, 22 CLINICAL PSYCHOL. REV., 27 (2002) (finding that adult survivors of child sexual abuse are nearly three times as likely to report substance abuse problems than their non-survivor peers).

¹⁸ Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 CHILD ABUSE NEGL. 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

Child sexual abuse victims may also struggle to disclose their abuse because of psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.¹⁹ This is a crime that typically occurs in secret, and many child victims of sexual violence assume no one will believe them.²⁰ Children in state custodial care are especially likely to fear that their claims will not be taken seriously, to worry about retaliation, and to doubt confidentiality of their report.²¹

Additionally, many victims develop coping strategies such as denial, repression, and dissociation to avoid recognizing and/or addressing the harm they suffered.²² These mechanisms may persist well into adulthood, long past the date of the abuse. In fact, one study found that 44.9% of male victims and 25.4% of female

¹⁹ Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 *TRAUMA VIOLENCE ABUSE* 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

²⁰ See Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Aug. 17, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, Caring for Kids: What Parents Need to Know about Sexual Abuse, NAT'L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

²¹ See Smith, C.P., & Freyd, J.J., Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma, 26 *J. OF TRAUMATIC STRESS* 1 (2013); see also, Freyd, J.J., Institutional Betrayal and Institutional Courage, available at <https://dynamic.uoregon.edu/jjf/institutionalbetrayal/index.html> (last visited Jan. 8, 2022).

²² G.S. Goodman et. al., A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy, 14 *PSYCHOL. SCI.* 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

child sexual abuse victims delayed disclosure by *more than twenty years*.²³ This translates to a harsh reality: more victims first disclose their abuse between ages *fifty and seventy* than during any other age.²⁴

Traditional SOLs were not created with sexual abuse victims in mind and the rigid boundaries they establish require victims to do that which behavioral psychology and cognitive-neuroscience research dictates is virtually impossible to access legal protections. As a result, victims who do not disclose abuse until well into adulthood often find that SOLs prevent them from pursuing viable claims against their abusers and the institutions that enabled the abuse.

The New York General Assembly considered the scientific realities of sexual abuse and its impact on disclosure and passed the CVA to remedy the injustice of the State's prior too-short SOL. By opening a window for victims to bring their claims, the New York General Assembly sought to give victims long-overdue access to the courts, ensure that abusers and their enablers paid for *some* of the moral and financial costs of their abuse, and identify abusers and enabling institutions to prevent further harm to children. When courts interpret procedural rules to effectively require that which the science tells us that victims of abuse cannot do,

²³ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

²⁴ CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3 (June 21, 2022), <https://childusa.org/6-17-2022-2021-sol-report-final/>.

victims suffer re-traumatization at the hands of the very system that is designed to make them “whole” and these important public interests go unserved.

C. The Pleading Requirement Imposed by the Court of Claims is Inconsistent with the Science of Memory and Perpetuates Problematic Myths Related to Disclosure

A widely held though mistaken belief is that individuals can recall significant life events with detail and accuracy and that these recollections reflect the “truth” of what happened.²⁵ “[O]ne of the most critical contributors to achieving just outcomes in [sexual abuse] cases is eliciting the most complete and accurate information from the primary source of evidence—the complainant.”²⁶ Some of the same behaviors and responses previously understood as demonstrating a lack of veracity—and that may result in a complaint that, on its face, appears contrived—are in fact hallmarks of trauma.²⁷ Indeed, in the courtroom, self-contradiction or inconsistent statements are generally thought to reflect a serious defect in either complainant memory or honesty. However, decades of research testing beliefs about memory demonstrate that our intuitions about basic memory processes are usually incorrect.²⁸ Simply put,

²⁵See Martin A Conway, Lucy V Justice & Catriona M Morrison, Beliefs about Autobiographical Memory ... and why they Matter, 27(7) THE PSYCHOLOGIST 502 (2014); Svein Magnussen & Annika Melinder, What Psychologists Know and Believe about Memory: A Survey of Practitioners, 26(1) APPLIED COGNITIVE PSYCH. 54 (2012).

²⁶ Westera, N., Zydervelt, S., Kaladelfos, A., & Zajac, R., Sexual assault complainants on the stand: A historical comparison of courtroom questioning, 23 PSYCH., CRIME & LAW 15 (2017).

²⁷ See Deborah Davis & William C. Follette, Foibles of Witness Memory for Traumatic/High Profile Events, 66 J. AIR L. & COM. 1421, 1432-34 (2001) (noting that a witness's confidence does not correlate with the correctness of testimony).

²⁸ Id.

triers-of-fact are unaware of how error-prone memory can be, especially for victims of trauma.²⁹ Errors of omission such as time gaps and errors of commission such as self-contradictions are typical and predictable ways of responding to and coping with traumatic experiences, however triers-of-fact often disregard allegations of sexual abuse by victims who are unable to remember or misremember details of the abusive event(s).³⁰

The value placed on the consistency of information provided by victims of sexual abuse is especially problematic when it comes to prosecuting cases of repeated sexual abuse, but it also has enormous implications for victims' ability to access justice. Particularization is important in framing a criminal charge and in allowing the perpetrator or other culpable party to prepare a defense in both the criminal and civil contexts. Given that victims who provide more temporal details are generally deemed to be more credible, it is unsurprising that research has shown that victims who report multiple abusive events generally fare worse as compared to those who report a single abusive incident.³¹ More precisely, victims who express

²⁹ Johanna Lindholm & Ann-Christin Cederborg, Legal Assessment of Victims of Human Trafficking for Sexual Purposes, 34(1) BEHAVIORAL SCIENCE & THE LAW 218 (2016).

³⁰ SEXUAL ASSAULT INCIDENT REPORTS: INVESTIGATIVE STRATEGIES, INT'L ASS'N OF CHIEFS OF POLICE 3 (Aug. 8, 2018), <https://www.theiacp.org/resources/document/sexual-assault-incident-reports-investigative-strategies>; see also Bremner, J., Traumatic Stress: Effects on the Brain, 8 DIALOGUES CLINICAL NEUROSCI. 445, 448-49 (2006) (explaining traumas impact on memory).

³¹ Id.; see also, Paola Castelli & Gail S Goodman, Children's Perceived Emotional Behaviour at Disclosure and Prosecutors' Evaluations, 38(9) CHILD ABUSE & NEGLECT 1521 (2014).

confidence about temporal details are consistently thus leading to more convictions, than victims who are unsure of the same.³²

Similar misconceptions are reflected in the Court of Claims' interpretation of the pleading requirements below. Sexual abuse in particular can trigger intense feelings of shame, and with it a reluctance to disclose details, especially early in the litigation process when victims have had less time to process the traumas or when they are reprocessing the information for the first time.³³ As noted, victims grappling with the experience of abuse or reliving it may provide a shifting or inconsistent narrative. Thus, it is not unusual to find that a victim may reveal certain details or events only later in the process. The "inconsistencies" in peripheral details as between Plaintiff's initial and amended complaints are manifestations of this reality which, if anything, lend credence to the allegations of abuse contained therein.

Treating a victim's story as less plausible when it fails to meet judicial expectations about their capacity to remember details of a traumatic event, as the Court of Claims did below, results in imperfect justice for victims of abuse. Such undue rejection is a form of revictimization at the hands of the very system designed to help victims obtain redress from their harms. It reinforces the shame and stigma

³² Id.

³³ Supra n. 17.

associated with child sexual abuse and decreases the likelihood that victims will come forward in the future, for fear that they will not be believed.

The New York General Assembly passed the Child Victim's Act in recognition of the trauma that can make it difficult for victims to understand or process their abuse or appreciate the importance of filing a civil claim. Indeed, shining light on the evidence-based patterns of disclosure has been a crucial component in the fight for SOL reform not only in New York but also nationwide. To give these laws their proper and intended effect, traditional methods of assessing and evaluating complaint narratives must be based on a neurological understanding of how the brain processes trauma as this will lead to more just outcomes for victims of sexual abuse.

III. THE COURT OF CLAIMS' DECISION SUBVERTS THE PUBLIC POLICY INTERESTS SERVED BY THE CVA

The New York Child Victims Act serves a compelling interest in child protection. See, e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling."); New York v. Ferber, 458 U.S. 747, 756-57 (1982) ("First. It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling.") (quoting Globe Newspaper Co., 457 U.S. at 607); Ashcroft v. Free Speech Coal, 535 U.S. 234, 263 (2002) (O'Connor, J., concurring) ("The

Court has long recognized that the Government has a compelling interest in protecting our Nation’s children.”). “There is also no doubt that[] ‘[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.’” Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244).

There are three compelling public purposes served by The Child Victims Act: it (1) identifies previously unknown child predators and the institutions that shield them; (2) shifts the cost of abuse from victims to those who caused the abuse; and (3) educates the public to prevent future abuse.

A. If Adopted, the Court’s Interpretation of the Civil Pleading Requirements Will Discourage Victims from Filing Claims Which Would Otherwise Help Identify Previously Unknown Predators and Their Enabling Institutions

Historically, a wall of ignorance and secrecy has been constructed around child sexual abuse, which has been reinforced by state tort limitations that have deterred or completely disabled victims from filing claims. That is a major reason why the public knew so little about the epidemic of child sexual abuse. The CVA revival window facilitates the identification of previously unknown child predators³⁴ and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready or able to disclose give perpetrators and institutions

³⁴ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

wide latitude to suppress the truth to the detriment of children, parents, and the public. Unfortunately, unidentified predators continue abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.³⁵

Through the CVA, the Legislature empowered victims with a window of time to identify New York's hidden child predators and the institutions that endanger children, which has helped prevent those predators from further abusing children and is allowing the public to develop policies to inhibit new abuse from occurring in the long-term.³⁶ When courts interpret procedural rules to effectively eliminate any possibility of success for claims arising from child sexual abuse, institutions in Defendant's position are free to put their own financial and reputational interests above the public good causing a chilling effect on disclosure and identification of predators to the detriment of parents and the general public.

B. The Lower Court Opinion Stifles the Use of Civil Damages as a Tool of Accountability that Shifts Some of the Costs of Abuse from the Victim and Taxpayers to The Culpable Parties

³⁵ Id.

³⁶ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDABUSE.ORG, <https://preventchildabuse.org/resource/why-prevention-matters/> (last visited Aug. 17, 2022); Preventing Adverse Childhood Experiences, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

The cost of child sexual abuse to victims is enormous,³⁷ and they, along with the State of New York, unjustly carry the burden of this expense. The negative effects over a victims' lifetime generate many costs that impact the nation's health care, education, criminal justice, and welfare systems.³⁸ For example, the estimated lifetime cost to society from child sexual abuse cases that occurred in the U.S. in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.³⁹ Average costs per victim include, but are not limited to, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs.⁴⁰ Costs associated with suicide deaths are estimated at \$20,387 for female victims.⁴¹ Access to justice not only serves to equitably shift some of these costs from victims to the abusers and their enablers, but they also save the State money by reducing expenditures on public services. The lower court

³⁷ See M. Merricka; I. Angelakis et al., Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornot, Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know, J. PEDIATRIC HEALTHCARE (2015); Perryman Group, Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment (2014), <https://www.perrymangroup.com/media/uploads/report/perryman-suffer-the-little-children-11-2014.pdf>.

³⁸ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

opinion will stifle otherwise legitimate claims, leaving victims to bear the costs of their abuse on their own

C. The Opportunity for Public Education and Scrutiny to Prevent Future Abuse Are Lost When Strict Pleading Requirements Block Victims from Bringing Their Claims

The CVA revival provision has helped educate the public about the dangers of child sexual abuse and how to prevent such abuse. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.⁴² Because the CVA permitted an increased number of child victims to come forward, it has shed light on the prevalence of child sexual abuse, which has allowed parents and other guardians to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. By fostering greater social awareness of systemic problems putting pressure on stakeholders, and using the court to promote change, these cases have served as a catalyst for significant child protection reforms.

⁴² E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

These revival laws also address the systemic issue of institutional child sexual abuse, which occurs with alarming frequency in athletic institutions, youth-serving organizations, and state-operated facilities. When victims cannot meaningfully access justice through the civil courts, the opportunity to bring chronic abuses and misconduct to the public and lawmakers' attention is lost. This is especially true of claims involving institutional cover-ups of child sexual abuse. These entities are in a unique position to regulate employees or others known to pose a sexual safety risk to children and to adopt child protective policies and procedures that deter institutional sex abuse but will be unmotivated to do absent the threat of discovery let alone liability. Without institutional accountability for enabling child sexual abuse to happen and for looking the other way or covering up abuse when it's reported, the children these institutions serve remain at risk today.

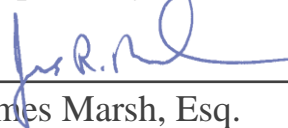
The Court of Claims' harsh and arbitrary interpretation of the procedural rules to protect culpable institutions is an affront to sensible public policy and a slap in the face to victims. To best protect children from abuse, there must be some reasonable expectation and degree of assurance that youth-serving organizations and institutions charged with the care of children will recognize when they fall short of public expectations and be held meaningfully accountable.

CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully requests that this Court overturn the decision of the Court of Claims.

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