

---

---

# New York Supreme Court

Appellate Division – First Department

---

In the Matter of

S.T.,

*Plaintiff,*

-against-

DIOCESE OF ROCKVILLE CENTRE ET AL.,

*Defendant*

---

## **BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFF**

---

Marci A. Hamilton, Esq.  
CEO & Academic Director  
CHILD USA  
Robert A. Fox Professor of Practice  
UNIVERSITY OF PENNSYLVANIA  
3814 Walnut Street  
Philadelphia, PA 19104  
Tel: (215) 539-1906  
marcih@sas.upenn.edu

Alice R. Nasar  
Alice A. Bohn  
Attorneys, CHILD USA  
3508 Market Street, Suite 202  
Philadelphia, PA 19104  
Tel: (215) 539-1906  
ahanan@childusa.org  
abohn@childusa.org

Dated January 24, 2020

---

## TABLE OF CONTENTS

STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> .....	1
ARGUMENT.....	2
I. THE CHILD VICTIMS ACT, CPLR § 214-G, IS CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION.....	2
II. THE CHILD VICTIMS ACT, CPLR 214-G IS CONSITUTIONAL UNDER THE NEW YORK CONSITUTION .....	5
A. New York Law Is in Accord with the Many States to Allow Revival of Expired Claims .....	5
B. There Is No Vested Right in the Running of a Statute of Limitations in New York.....	8
C. CPLR 214-G Is a Reasonable Remedy to the Injustice of Barring Child Sexual Abuse Claims with Unreasonably Short Statutes of Limitations .....	10
CONCLUSION.....	15

## TABLE OF AUTHORITIES

### Cases

<u>20th Century Ins. Co. v. Superior Court</u> , 109 Cal. Rptr. 2d 611 (Cal. Ct. App. 2001), <u>cert. denied</u> , 535 U.S. 1033 (2002).....	7
<u>Ashcroft v. Free Speech Coal</u> , 535 U.S. 234 (2002) .....	18
<u>Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.</u> , 146 P.3d 914 (Wash. 2006) .....	10
<u>Bible v. Dep't of Labor &amp; Indus.</u> , 696 A.2d 1149 (Pa. 1997) .....	9
<u>Bookcase, Inc. v. Broderick</u> , 218 N.E.2d 668 (N.Y. 1966), <u>app. dsmd.</u> , 385 U.S. 12 (1966).....	19
<u>Bookcase, Inc. v. Broderick</u> , 267 N.Y.S.2d 415 (N.Y. Sup. Ct. 1966), <u>aff'd</u> , 218 N.E.2d 668 (1966) .....	19
<u>Bunton v. Abernathy</u> , 73 P.2d 810 (N.M. 1937) .....	9
<u>Canton Textile Mills, Inc. v. Lathem</u> , 317 S.E.2d 189 (Ga. 1984) .....	8
<u>Chase Securities Corp. v. Donaldson</u> , 325 U.S. 304 (1945).....	3
<u>Chevron Chemical Co. v. Superior Court</u> , 641 P.2d 1275 (Ariz. 1982).....	7
<u>City of Boston v. Keene Corp.</u> , 406 Mass. 301 (Mass. 1989).....	8
<u>City of Tucson v. Clear Channel Outdoor, Inc.</u> , 105 P.3d 1163 (Ariz. 2005) (barred by statute, ARIZ. REV. STAT. ANN. § 12-505 (Ariz. 2010)).....	7
<u>Cosgriffe v. Cosgriffe</u> , 864 P.2d 776 (Mont. 1993).....	5, 9, 14
<u>Doe v. Hartford Roman Catholic Diocesan Corp.</u> , 317 Conn. 357 (Conn. 2015)....	7, 13
<u>Flemming v. Nestor</u> , 363 U.S. 603 (1960).....	6
<u>Gallewski v. Hentz &amp; Co.</u> , 93 N.E.2d 620 (N.Y. 1950) .....	9, 11
<u>Globe Newspaper Co. v. Superior Court</u> , 457 U.S. 596 (1982) .....	17, 18
<u>Gomon v. Northland Family Physicians, Ltd.</u> , 645 N.W.2d 413 (Minn. 2002).....	9
<u>Gordon v. Walkley</u> , 344 N.Y.S.2d 233 (N.Y. App. Div. 1973), <u>rev'd</u> , 316 N.E.2d 870 (N.Y. 1974) .....	19
<u>Gov't Emps. Ins. Co. v. Hyman</u> , 975 P.2d 211 (Haw. 1999) .....	8
<u>Harding v. K.C. Wall Prod., Inc.</u> , 831 P.2d 958 (Kan. 1992).....	8
<u>Hecla Mining Co. v. Idaho St Tax Comm'n</u> , 697 P.2d 1161 (Idaho 1985).....	8
<u>Hodes v. Axelrod</u> , 515 N.E.2d 612 (N.Y. 1987) .....	4
<u>Hymowitz v. Eli Lilly &amp; Co.</u> , 539 N.E.2d 1069 (N.Y. 1989) .....	6, 9, 10, 15
<u>In Interest of W.M.V.</u> , 268 N.W.2d 781 (N.D. 1978) .....	9

<u>In re Individual 35W Bridge Litig.</u> , 806 N.W.2d 820 (Minn. 2011).....	9
<u>In re World Trade Ctr. Manhattan Disaster Site Litig.</u> , 89 N.E.3d 1227 (N.Y. 2017)	
.....	passim
<u>K.E. v. Hoffman</u> , 452 N.W.2d 509 (Minn. Ct. App. 1990).....	5
<u>Kienzler v. Dalkon Shield Claimants Tr.</u> , 426 Mass. 87 (Mass. 1997).....	8
<u>Kopalchick v. Cath. Diocese of Richmond</u> , 274 Va. 332 (Va. 2007) .....	10
<u>Landgraf v. USI Film Prods.</u> , 511 U.S. 244 (1994).....	2, 3, 4
<u>Lane v. Dep't of Labor &amp; Indus.</u> , 151 P.2d 440 (Wash. 1944).....	10
<u>Majewski v. Broadalbin-Perth Cent. Sch. Dist.</u> , 969 N.E.2d 978 (N.Y. 1998).....	12
<u>McCann v. Walsh Const. Co.</u> , 123 N.Y.S.2d 509 (N.Y. 1953) <u>aff'd without op.</u> 306	
N.Y. 904, 119 N.E.2d 596 (1954).....	9, 11
<u>McDonald v. Redevelopment Auth. of Allegheny Cnty.</u> , 952 A.2d 713 (Pa.	
Commw. Ct. 2008), <u>appeal denied</u> , 968 A.2d 234 (Pa. 2009).....	9
<u>McFadden v. Dryvit Systems, Inc.</u> , 112 P.3d 1191 (Or. 2005).....	9
<u>Melanie H. v. Defendant Doe</u> , No. 04-1596-WQH-(WMc), slip op. (S.D.Cal. Dec.	
20, 2005) .....	14
<u>Montgomery v. Daniels</u> , 340 N.E.2d 444 (N.Y. 1975) .....	6
<u>Mudd v. McColgan</u> , 183 P.2d 10 (Cal. 1947) .....	7
<u>New York v. Ferber</u> , 458 U.S. 747 (1982) .....	17
<u>Orman v. Van Arsdell</u> , 78 P. 48 (N.M. 1904) .....	9
<u>Owens v. Maass</u> , 918 P.2d 808 (Or. 1996).....	9
<u>Packingham v. North Carolina</u> , 137 S. Ct. 1730 (2017).....	18
<u>Pankovich v. SWCC</u> , 163 W. Va. 583 (W. Va. 1979).....	10
<u>Panzino v. Continental Can Co.</u> , 364 A.2d 1043 (N.J. 1976).....	9
<u>People v. Pierson</u> , 68 N.E. 243 (NY 1903).....	18
<u>Peterson v. Peterson</u> , 320 P.3d 1244 (Idaho 2014) .....	8
<u>Prince v. Massachusetts</u> , 321 U.S. 158 (1944) .....	18
<u>Pryber v. Marriott Corp.</u> , 296 N.W.2d 597 (Mich. Ct. App. 1980), <u>aff'd</u> , 307	
N.W.2d 333 (Mich. 1981) .....	8
<u>R.L. v. Voytac</u> , 199 N.J. 285 (N.J. 2009) .....	16
<u>Republic of Austria v. Altmann</u> , 541 U.S. 677 (2004) <u>declined to extend Hamdan</u>	
<u>v. Rumsfeld</u> , 548 U.S. 557 (2006) .....	4
<u>Riggs Nat'l Bank v. Dist. of Columbia</u> , 581 A.2d 1229 (D.C. 1990).....	8
<u>Ripley v. Tolbert</u> , 921 P.2d 1210 (Kan. 1996) .....	8
<u>RM v. State</u> , 891 P.2d 791 (Wyo. 1995) .....	10
<u>Robinson v. Robins Dry Dock &amp; Repair Co.</u> , 144 N.E. 579 (N.Y. 1924) .....	11, 15
<u>Roe v. Doe</u> , 581 P.2d 310 (Haw. 1978).....	8

<u>Roman Catholic Bishop of Oakland v. Superior Court</u> , 28 Cal. Rptr. 3d 335 (Cal. Ct. App. 2005).....	14
<u>Rookledge v. Garwood</u> , 65 N.W.2d 785 (Mich. 1954) .....	8
<u>Shelby J.S. v. George L.H.</u> , 381 S.E.2d 269 (W. Va. 1989).....	10
<u>Sliney v. Previte</u> , 41 N.E.3d 732 (Mass. 2015) .....	5, 8, 14
<u>Stogner v. California</u> , 539 U.S. 607 (2003).....	2, 17
<u>Stratmeyer v. Stratmeyer</u> , 567 N.W.2d 220 (S.D. 1997).....	9
<u>Trump v. Chu</u> , 478 N.E.2d 971 (N.Y. 1985) .....	7
<u>Usery v. Turner Elkhorn Mining Co.</u> , 428 U.S. 1 (1976).....	15
<u>Vaughn v. Vulcan Materials Co.</u> , 465 S.E.2d 661 (Ga. 1996) .....	8
<u>Vigil v. Tafoya</u> , 600 P.2d 721 (Wyo. 1979) .....	10
<u>Statutes</u>	
CPLR 214-G .....	4
<u>Other Authorities</u>	
American Psychological Association, <u>Understanding Child Sex Abuse</u> .....	15
Angelakis, I., Gillespie, E.L., Panagioti, M., <u>Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis</u> , PSYCHOLOGICAL MEDICINE 1-22 (2019).....	20
Bessel A. van der Kolk M.D., et al., <u>Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society</u> (2006) .....	16
Centers for Disease Control and Prevention, <u>The Adverse Childhood Experiences (ACE) Study</u> .....	16
Dan Clark, <u>One in three people in New York is on Medicaid</u> , POLITIFACT.COM (Jul. 21, 2017 at 4:04 PM) .....	20
Finkelhor, D., Turner H. A., Shattuck, A., & Hamby, S.L., <u>Prevalence of child exposure to violence, crime, and abuse: Results from the Nat’l Survey of Children’s Exposure to Violence</u> , JAMA PEDIATRICS 169(8), 746-54 (2015) ....	17
Gail Hornot, <u>Childhood Trauma Exposure &amp; Toxic Stress: What the PNP Needs to Know</u> , J. PEDIATRIC HEALTHCARE (2015) .....	20
M. Merricka, et. al., <u>Unpacking the impact of adverse childhood experiences on adult mental health</u> , CHILD ABUSE NEGLECT (2017) .....	20
National Sexual Violence Resource Center, <u>Understanding Child Sex Abuse Definitions and Rates</u> (Aug. 2012) .....	15
Perryman Group, <u>Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment</u> , (2014).....	20

Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020) .....17  
Rebecca Campbell, Ph.D., "The Neurobiology of Sexual Assault: Explaining  
Effects on the Brain," National Institute of Justice (2012) .....16  
The National Child Traumatic Stress Network, Child Sexual Abuse Fact Sheet ...15  
U.S. Department of Health and Human Services Administration for Children and  
Families, Administration on Children, Youth and Families, and Children's  
Bureau, Child Maltreatment 2017 .....16

## STATEMENT OF INTEREST OF *AMICUS CURIAE*

*Amicus curiae*, CHILD USA, is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA develops evidence-based solutions and information needed by policymakers, youth-serving organizations, courts, media, and the public to increase child protection and the common good.

CHILD USA works to protect children from abuse in various contexts including its national child sex abuse statute of limitations reform initiative. CHILD USA's interests in this case are directly correlated with its mission to increase public safety and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

## ARGUMENT

The Child Victims Act, CPLR § 214-G, is constitutional under the federal and state constitutions.

### I. THE CHILD VICTIMS ACT, CPLR § 214-G, IS CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION

The retroactive elimination of a civil statute of limitations is constitutional under the United States Constitution.<sup>1</sup> The Court in Landgraf v. USI Film Prods., 511 U.S. 244, 267 (1994), held that retroactive civil legislation is constitutional if two conditions are met: (1) the legislative intent is clear and (2) the change is procedural. The Landgraf Court set out the duty of judicial deference as follows: “legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf, 511 U.S. at 272. The Court went on to observe that “the *constitutional* impediments to retroactive civil legislation are now modest . . . Requiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” Id. at 272-73 (emphasis in original).

---

<sup>1</sup> C.f., Stogner v. California, 539 U.S. 607, 610, 123 S. Ct. 2446, 2449 (2003) (retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).



In Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S.Ct. 1137 (1945), an action to recover the purchase price of securities fraudulently sold, the Court held that a state statute which abolished any defense the defendant might previously have had under the state statutes of limitation did not deprive the defendant of property without due process of law in violation of the Fourteenth Amendment. In so holding, the Court stated that “[s]tatutes of limitation find their justification in necessity and convenience rather than logic. They represent expedients, rather than principles. They are practical and pragmatic devices.” Id. at 314. Statutes of limitations represent “a public policy [enacted by a legislature] about the privilege to litigate[;]” their protection is not a “fundamental” right. Id. See also, In re World Trade Ctr. Manhattan Disaster Site Litig., 89 N.E.3d 1227, 1243 (N.Y. 2017) (“[M]odern cases reflect a less rigid view of the Legislature’s right to pass such legislation.”) (citing Hodes v. Axelrod, 515 N.E.2d 612, 615 (N.Y. 1987)).

While there is a presumption against retroactivity, it can be readily overcome by express legislative language. “[T]he antiretroactivity presumption is just that – a presumption, rather than a constitutional command.” Republic of Austria v. Altmann, 541 U.S. 677, 692-93, 124 S.Ct. 2240, 2249-50 (2004) declined to extend Hamdan v. Rumsfeld, 548 U.S. 557, 126 S.Ct. 2749 (2006)). See also Landgraf, 511 U.S. at 267-68. When retroactive intent is clear, as it is in the Child Victims Act, and as discussed further below, the anti-retroactivity presumption is overcome.

The revival of expired statutes of limitations is something no legislature should take lightly, and the Legislature did not do so in 2019 when it enacted CPLR 214-G as part of the Child Victims Act. Under the federal Constitution, this Court is required to defer to the legislature's judgment, as the Massachusetts Supreme Court did in upholding the retroactive application of its statute of limitations for child sexual abuse tort claims:

Our task is to interpret the Legislature's intention [about retroactivity]. Where the Legislature has "expressly stated" that the statute should be applied retroactively, we follow the legislative directive. That is the case here . . . The purpose of the act, as reflected in its preamble, and reinforced by legislative history, is to preserve public safety and protect children who have been abused by enabling them to seek a remedy for severe injuries that they did not appreciate for long periods of time due to the abuse . . . This is unquestionably an important public purpose.

Sliney v. Previte, 41 N.E.3d 732, 737, 739 (Mass. 2015) (citations omitted). See also Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (quoting K.E. v. Hoffman, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990)) ("[W]e are not in a position to judge the wisdom of the legislature, where . . . the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy.").

## **II. THE CHILD VICTIMS ACT, CPLR 214-G IS CONSTITUTIONAL UNDER THE NEW YORK CONSTITUTION**

New York is among the many states that allows revival of expired claims. Defendants in New York may not use an expired claim as a shield against the unjust expiration of claims, as evidenced by prior caselaw. See infra discussion Part II. B. Moreover, the Child Victims Act, CPLR § 214-G is a reasonable response to the injustice of unreasonably short statutes of limitations for child sexual abuse.

### **A. New York Law Is in Accord with the Many States to Allow Revival of Expired Claims**

Under the New York Constitution, the Child Victims Act enjoys a presumption of constitutionality, and a reviewing court must “proceed on the presumption that the law is constitutional.” Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1080 (N.Y. 1989); Montgomery v. Daniels, 340 N.E.2d 444, 451-52 (N.Y. 1975). “[T]he presumption of constitutionality . . . forbids [this Court] lightly to choose that reading of the statute’s setting which will invalidate it over that which will save it.” Flemming v. Nestor, 363 U.S. 603, 617 (1960). Moreover, “[t]he burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.” Trump v. Chu, 478 N.E.2d 971, 975 (N.Y. 1985). Defendant has failed to carry the burden of overcoming the presumption in favor of the constitutionality of CPLR 214-G.

Every state permits retroactive application of laws to some degree. Many states have addressed the more particular facial constitutional question presented in this case: whether revival of statutes of limitations is constitutional. Of the jurisdictions that have considered constitutional challenges to the application of revival legislation to a cause of action, twenty-three states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival.<sup>2</sup>

---

<sup>2</sup> Twenty-three states and the District of Columbia have expressly held retroactive application of revival legislation is constitutional. **ARIZ:** Chevron Chemical Co. v. Superior Court, 641 P.2d 1275, 1284 (Ariz. 1982); City of Tucson v. Clear Channel Outdoor, Inc., 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, ARIZ. REV. STAT. ANN. § 12-505 (Ariz. 2010)); **CAL:** Mudd v. McColgan, 183 P.2d 10, 13 (Cal. 1947); 20th Century Ins. Co. v. Superior Court, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), cert. denied, 535 U.S. 1033, 122 S. Ct. 1788 (2002); **CONN:** Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 439-40 (Conn. 2015); **DEL:** Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011); **DC:** Riggs Nat'l Bank v. Dist. of Columbia, 581 A.2d 1229, 1241 (D.C. 1990); **GA:** Canton Textile Mills, Inc. v. Latham, 317 S.E.2d 189, 193 (Ga. 1984); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661, 662 (Ga. 1996); **HAW:** Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978); Gov't Emps. Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); **IDAHO:** Hecla Mining Co. v. Idaho St Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014); **KAN:** Harding v. K.C. Wall Prod., Inc., 831 P.2d 958, 967-968 (Kan. 1992); Ripley v. Tolbert, 921 P.2d 1210, 1219 (Kan. 1996); **MASS:** Sliney v. Previte, 41 N.E.3d 732, 739-40 (Mass. 2015); City of Boston v. Keene Corp., 406 Mass. 301, 312-13 (Mass. 1989); Kienzler v. Dalkon Shield Claimants Tr., 426 Mass. 87, 88-89 (Mass. 1997); **MICH:** Rookledge v. Garwood, 65 N.W.2d 785, 790-92 (Mich. 1954); Pryber v. Marriott Corp., 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), aff'd, 307 N.W.2d 333 (Mich. 1981) (per curiam); **MINN:** Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); In re Individual 35W Bridge Litig., 806 N.W.2d 820, 830-31 (Minn. 2011); **MONT:** Cosgriffe v. Cosgriffe, 864 P.2d 776, 778 (Mont. 1993); **NJ:** Panzino v. Continental Can Co., 364 A.2d 1043, 1046 (N.J. 1976); **NEW MEX:** Bunton v. Abernathy, 73 P.2d 810, 811-12 (N.M. 1937); Orman v. Van Arsdell, 78 P. 48, 48 (N.M. 1904); **NY:** In re World Trade Ctr. Lower Manhattan Disaster Site Lit., 89 N.E.3d 1227, 1243 (N.Y. 2017); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989); McCann v. Walsh Const. Co., 123 N.Y.S.2d 509, 514 (N.Y. 1953) aff'd without op. 306 N.Y. 904, 119 N.E.2d 596 (1954); Gallewski v. Hentz & Co., 93 N.E.2d 620, 624-25 (N.Y. 1950); **N DAK:** In Interest of W.M.V., 268 N.W.2d 781, 786 (N.D. 1978); **OR:** McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); Owens v. Maass, 918 P.2d 808, 813 (Or. 1996); **PA:** Bible v. Dep't of Labor & Indus., 696 A.2d 1149, 1156 (Pa. 1997); McDonald v. Redevelopment Auth. of Allegheny Cnty., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009); **S DAK:** Stratmeyer v.

New York state is in this category. The revival of an expired civil statute of limitations has been upheld in other contexts in New York. In re World Trade Ctr., 89 N.E.3d at 1243 (holding that “a claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice” where the legislature enacted Jimmy Nolan’s law to allow injured workers who participated in September 11, 2001, cleanup to bring claims); Hymowitz, 539 N.E.2d at 1079-80 (finding no need to articulate a specific standard where the “latent nature of DES injuries is well known” and the prior statute of limitations for claims against drug manufacturers “prevented the bringing of timely actions for recovery”); McCann, 123 N.Y.S.2d at 514 (upholding an amendment reviving claims for caisson disease where the previous statute expired “even before the claimant was aware of the fact that he had the disease”); Gallewski, 93 N.E.2d at 624 (finding a revival statute tolling a securities transaction claim for citizens of Axis-occupied countries valid where a “serious injustice would [otherwise] result to plaintiffs not guilty of any fault.”); Robinson v. Robins Dry Dock & Repair Co., 144

---

Stratmeyer, 567 N.W.2d 220, 223 (S.D. 1997); **VA**: Kopalchick v. Cath. Diocese of Richmond, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007); **WASH**: Lane v. Dep’t of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co., 146 P.3d 914, 922 (Wash. 2006), superseded in part by statute WASH. REV. CODE 25.15.303, as recognized in Chadwick Farms Owners Ass’n v. FHC, LLC, 160 P.3d 1061, 1064 (Wash. 2007), overruled in part by 207 P.3d 1251 (Wash. 2009); **W VA**: Pankovich v. SWCC, 163 W. Va. 583, 259 S.E.2d 127, 131-32 (W. Va. 1979); Shelby J.S. v. George L.H., 381 S.E.2d 269, 273 (W. Va. 1989); **WYO**: Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979); RM v. State, 891 P.2d 791, 792 (Wyo. 1995).

N.E. 579, 582 (N.Y. 1924) (upholding an amendment reviving claims for workers compensation that had previously been nullified where “[t]he bar of the statute imposed for the protection of the defendants against belated claims [wa]s being used to deprive a plaintiff without fault of a cause of action based on defendant’s wrong.”).

**B. There Is No Vested Right in the Running of a Statute of Limitations in New York**

New York has routinely permitted the retroactive application of statutes. It also has observed the distinction drawn by federal courts between remedial and substantive retroactive changes in the law, and has prescribed deference with respect to remedial, or procedural, changes. See Majewski v. Broadalbin-Perth Cent. Sch. Dist., 969 N.E.2d 978, 980 (N.Y. 1998) (“An equally settled maxim is that ‘remedial’ legislation or statutes governing procedural matters should be applied retroactively.”).

The New York Court of Appeals has repeatedly rejected the argument that the retroactive application of revived statutes of limitations inherently disturbs rights vested under the New York Constitution, where there is a reasonable justification for remedying the injustice. In re World Trade Ctr., Judge Riviera observed that the Court of Appeals “has upheld the legislature’s claim-revival statute as a proper response to the problem the legislature sought to address” in every instance where

the issue has come before the Court. In re World Trade Ctr., 89 N.E.3d at 1243 (concurring opinion).

As states are faced with important public policy issues such as the child sexual abuse epidemic, judicial deference to legislative judgment as to civil retroactivity is now the norm. As the Supreme Court of Connecticut recently stated in upholding retroactive revival of child sex abuse claims:

[W]e are mindful that state [c]onstitutional provisions must be interpreted within the context of the times. . . We must interpret the constitution in accordance with the demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning. . . [A] constitution is, in [former United States Supreme Court] Chief Justice John Marhsall’s words, intended to endure for ages to come . . . and, consequently, to be adapted to the various crises of human affairs . . . In short, the [state] constitution was not intended to be a static document incapable of coping with changing times. It was meant to be, and is, a living document with current effectiveness.

Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 406 (Conn. 2015) (internal citations omitted).

The New York cases are in harmony with states expressly adopting the United States Supreme Court’s modern, flexible approach to “vested rights” analysis, and this Court need only follow settled New York precedent to reject the Defendant’s due process challenge to the retroactive provisions of the Child Victims Act, CPLR § 214-G.

**C. The Child Victims Act, CPLR 214-G Is a Reasonable Remedy to the Injustice of Barring Child Sexual Abuse Claims with Unreasonably Short Statutes of Limitations**

After a thorough review of its prior case law on revival laws, the New York Court of Appeals found that “a claims-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice.” In re World Trade Ctr., 89 N.E.3d at 1243. Accordingly, if the legislature can assert an adequate interest, its legislation is upheld against a constitutional attack. See id. at 1246 (“[E]very time this Court has considered the issue in the past it has upheld the legislature’s claim-revival statute as a proper response.”).

Retroactive revival of a claim for child sexual abuse is a reasonable solution to the injustice countless survivors experience because of short statutes of limitations that have favored child predators over child safety. Sliney v. Previte, 41 N.E. 732, 741-42 (Mass. 2015); Roman Catholic Bishop of Oakland v. Superior Court, 28 Cal. Rptr. 3d 335, 359-60 (Cal. Ct. App. 2005); Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D.Cal. Dec. 20, 2005) at 16-18. See also, Cosgriffe, 864 P.2d at 778 (holding retroactive application of statute of limitations for torts based on sexual abuse constitutional against due process challenge because statute was rationally related to legitimate purpose of the state). The Court of Appeals noted:



[B]oth instinct and reason revolt at the proposition that redress for a wrong must be denied . . . [where barring an individual's claim based on the statute of limitations would be] contrary to all prevailing ideas of justice.

Robinson, 144 N.E. at 582.<sup>3</sup> In the case of DES-related claims, the Court of Appeals concluded that “the revival statute [addressing DES, tungsten-carbide, asbestos, chlordane, and polyvinylchloride] has a rational basis, and the Legislature acted within its broad range of discretion in enacting the law.” Hymowitz, 539 N.E.2d at 1080.

If DES exposure is a grave public health threat, then child sexual abuse is a public health epidemic: it affects one in four girls, and one in six boys in this nation.<sup>4</sup> Historically, 90% of child victims never go to the authorities and the vast majority of claims have expired before the victims were capable of getting to court.<sup>5</sup> This is because, as noted above, there is an extensive and persuasive body of scientific

---

<sup>3</sup> See also, Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 14-20, 96 S. Ct. 2882, 2891-2894 (1976).

<sup>4</sup> American Psychological Association, Understanding Child Sex Abuse, available at <https://www.apa.org/pi/about/newsletter/2011/12/sexual-abuse> (last visited Jan. 22, 2020); see also, The National Child Traumatic Stress Network, Child Sexual Abuse Fact Sheet, available at [https://www.nctsn.org/sites/default/files/resources//child\\_sexual\\_abuse\\_fact\\_sheet\\_parents\\_teachers\\_caregivers.pdf](https://www.nctsn.org/sites/default/files/resources//child_sexual_abuse_fact_sheet_parents_teachers_caregivers.pdf) (last visited Jan. 22, 2020); National Sexual Violence Resource Center, Understanding Child Sex Abuse Definitions and Rates (Aug. 2012), available at [https://www.nsvrc.org/sites/default/files/NSVRC\\_Publications\\_TalkingPoints\\_Understanding-Child-Sexual-Abuse-definitions-rates.pdf](https://www.nsvrc.org/sites/default/files/NSVRC_Publications_TalkingPoints_Understanding-Child-Sexual-Abuse-definitions-rates.pdf) (last visited Jan. 22, 2020).

<sup>5</sup> Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Department of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families, and Children's Bureau, Child Maltreatment 2017, available at <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

evidence establishing that childhood sexual abuse victims are harmed in a way that makes it difficult or impossible to process and cope with the abuse, or to self-report it. Victims often need decades to do so.<sup>6</sup> Still, approximately 3.7 million children are sexually abused in the United States every year.<sup>7</sup> Yet, because it is unconstitutional to revive a criminal statute of limitations, Stogner, 539 U.S. at 610, filing civil claims pursuant to the revival provision is the only avenue of justice available to many survivors. The civil revival provision of CPLR § 214-G is not only a reasonable response to remedying the injustice inflicted on so many survivors of child sex abuse by unfairly short statutes of limitation; it is also the only remedy.

The New York Child Victims Act also serves the compelling state 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

---

<sup>6</sup> Rebecca Campbell, Ph.D., "The Neurobiology of Sexual Assault: Explaining Effects on the Brain," National Institute of Justice (2012), available at <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; R.L. v. Voytac, 199 N.J. 285, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).

<sup>7</sup> Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also, Finkelhor, D., Turner H. A., Shattuck, A., & Hamby, S.L., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat’l Survey of Children’s Exposure to Violence, JAMA PEDIATRICS 169(8), 746-54 (2015).

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). Acting to guard the general interest in youth’s well-being, the State may regulate or prohibit conduct, thereby restricting parental control, by requiring school attendance, regulating or prohibiting the child’s labor, and in many other ways. Thus, the right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. People v. Pierson, 68 N.E. 243 (NY 1903); Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944). The state may bar distribution to children of books containing objectionable material, Bookcase, Inc. v. Broderick, 218 N.E.2d 668 (N.Y. 1966), app. dsmd., 385 U.S. 12 (1966), material may be determined to be objectionable for children, without regard to the traditional legal concept of “”obscenity,” Bookcase, Inc. v. Broderick, 267 N.Y.S.2d 415, 417 (N.Y. Sup. Ct. 1966), aff’d, 218 N.E.2d 668 (1966); and children may be denied the right to vote, marry, or hold office, Gordon v. Walkley, 344 N.Y.S.2d 233, 237-38 (N.Y. App. Div. 1973), rev’d, 316 N.E.2d 870 (N.Y. 1974).

There are three compelling public purposes served by The Child Victims Act: it (1) identifies previously unknown child predators; (2) shifts the cost of abuse from victims to those who caused the abuse;<sup>8</sup> and (3) educates the public. The civil revival provision of CPLR 214-G achieves these purposes, and indeed, is the only way to remedy the injustice inflicted by unfairly short statutes of limitation. Even if these legislative enactments were subject to a higher standard of scrutiny than the rational basis standard, it would be impossible to identify more compelling interests that are more narrowly tailored than the interests protected by the Child Victims Act.

As required under the federal and New York constitutions, the New York Legislature expressly stated its intent to revive civil statutes of limitation in CPLR

---

<sup>8</sup> The average lifetime cost of child maltreatment is \$830, 928.00 per victim. Child maltreatment includes: physical abuse, sexual abuse, emotional abuse (psychological abuse), and neglect. The toxic stress and trauma associated with childhood sexual abuse are even higher for those victims than those who experience other forms of child maltreatment. See M. Merricka, et. al., *Unpacking the impact of adverse childhood experiences on adult mental health*, CHILD ABUSE NEGLECT (2017); Angelakis, I., Gillespie, E.L., Panagiotti, M., *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). While 1 in 3 New Yorkers receive Medicaid, it is likely that sex abuse survivors disproportionately receive support due to the crippling effect of trauma. Dan Clark, *One in three people in New York is on Medicaid*, POLITIFACT.COM (Jul. 21, 2017 at 4:04 PM), available at <https://www.politifact.com/new-york/statements/2017/jul/21/john-faso/one-three-people-new-york-are-medicaid/>. In settlements that are reached in these cases, a “Medicaid lien” is placed on the settlement funds for the coverage directed to the problems arising from the sex abuse. Without statute of limitations reform, the Medicaid funds needed for treatment cannot be reimbursed. With the Child Victims Act, Medicaid is reimbursed for a conservative estimate of \$250,000,000, assuming approximately 2,000 victims take advantage of the window and that on average they will receive \$250,000 in settlement, which is below the national average of approximately \$350,000.

214-G. Its sound judgment, which is entitled to a presumption of constitutionality, is a reasonable remedy to the injustice child sex abuse survivors have experienced because of New York's unreasonably short statutes of limitations. Moreover, this civil revival serves the compelling interest in identifying hidden child predators to increase public safety.

### CONCLUSION

For the foregoing reasons, *Amicus Curiae* requests this Court to find that the revival provisions of the Child Victims Act, CPLR § 214-G are a constitutional exercise of the Legislature's authority.

Dated: January 24, 2020

Respectfully submitted,



Marci A. Hamilton, Esq.  
*Counsel of Record*  
CEO & Academic Director, CHILD USA  
Robert A. Fox Professor of Practice  
UNIVERSITY OF PENNSYLVANIA  
3814 Walnut Street, Philadelphia, PA 19104  
Tel: (215) 539-1906  
marcih@sas.upenn.edu

Alice R. Nasar  
Alice A. Bohn  
Attorneys, CHILD USA  
3508 Market Street, Suite 202, Philadelphia, PA 19104  
Tel: (215) 539-1906  
ahanan@childusa.org  
abohn@childusa.org