IN THE SUPREME COURT OF GEORGIA

WALTER JACKSON "JAKE" HARVEY, JR. and CAROLE ALLYN HILL HARVEY, Appellants, v. JOY CAROLINE HARVEY MERCHAN, Appellee.	Case No. S21A0143

BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF APPELLEE

Richard A. Horder, Esq.
Georgia Bar No. 366750
Jacqueline O. Eisermann, Esq.
Georgia Bar No. 256669
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street, N.E.
Suite 900
Atlanta, GA 30309
Tel: (404) 812-0843
rhorder@kmcllaw.com
jeisermann@kmcllaw.com

Counsel for Amicus Curiae, CHILD USA

Marci A. Hamilton, Esq.
CEO & Legal Director, CHILD USA
Fels Institute of Government
Professor of Practice
University of Pennsylvania
3508 Market Street, Suite 202
Philadelphia, PA 19104
Tel: (215) 539-1906
Marcih@sas.upenn.edu

Alice Nasar Hanan, Esq.
Jessica Schidlow, Esq.
Staff Attorneys, CHILD USA
Ahanan@childusa.org
jschidlow@childusa.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, CHILD USA, is a national nonprofit think tank working to end child abuse and neglect in the United States. CHILD USA pairs the best social science research with the most sophisticated legal analysis to identify and implement effective public policies to end child abuse and neglect. CHILD USA produces evidence-based solutions and information needed by courts, lawmakers, policymakers, organizations, media, and society as a whole to increase child protection and the common good.

CHILD USA is the leading organization in the United States to track and study child sex abuse statutes of limitations ("SOLs") as part of its Sean P. McIlmail SOL Reform Institute. CHILD USA's Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on revival laws, and has advised Congress and state governors, legislatures, and courts on the constitutionality of revival window laws for child sex abuse throughout the United States.

CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of Georgia's revival law for child sex abuse claims, the compelling public interest in revival of expired civil

[1] On December 21, 2020, the Court granted leave to file under Rule 23(3). Amicus curiae's brief is timely under that order, a copy of which is attached as Exhibit 1.

SOLs, impacts of the revival laws on public safety, and the science of delayed disclosure by victims of their abuse.

CHILD USA's interests in this case are directly correlated with its mission to increase child protection from sex abuse and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. Therefore, CHILD USA is an appropriate party to be made an *amicus curiae* in this matter.

CHILD USA's amicus brief will be helpful to the Court's understanding (1) of why it was effectively impossible for countless victims of child sex abuse in Georgia to file civil claims before the prior SOLs expired based on the science of trauma and delayed disclosure of abuse, (2) of how temporarily reviving lapsed claims serves the legitimate governmental objectives of shifting the costs of abuse from the victim and the state to the perpetrator who sexually abuses children and uncovering hidden predators, and (3) will provide the Court with a national overview of the constitutionality of child sex abuse claim revival laws in the states.

SUMMARY OF ARGUMENT

Appellants challenge the constitutionality of the Hidden Predator Act's revival window, O.C.G.A. § 9-3-33.1(d) (2015), which revived expired civil claims for child sex abuse in Georgia. *Amicus* CHILD USA joins in Appellee's request that this Court uphold O.C.G.A. § 9-3-33.1(d), finding that it is constitutional. There is a nationwide epidemic of sex abuse, with the vast majority of claims expiring long

before they ever get to court. Prior to 2015, the Georgia civil SOL was age 23 for claims against perpetrators of abuse and age 20 against other defendants, making it one of the most stringent statutes of limitations in the United States for child sex abuse claims. *See* O.C.G.A. § 9-3-33.1(a)(2), O.C.G.A. § 9-3-33, O.C.G.A. 9-3-90. In 2015, Georgia passed the Hidden Predator Act, which opened a two-year "revival window," allowing victims to bring civil claims against perpetrators from July 1, 2015 to July 1, 2017, beyond the expiration of the prior SOL of June 30, 2015. *See* O.C.G.A. § 9-3-33.1(d)(1). The state also extended the SOL to age 23 for plaintiffs to bring claims and added a discovery rule for claims against all defendants that gives a victim up to two years after they discover that the abuse caused a current injury to file a lawsuit. *See* O.C.G.A. § 9-3-33.1(a)(2), O.C.G.A. § 9-3-33.1(b)(2). More victims were able to come forward during the 2-year window and many more will be able to do so pursuant to O.C.G.A. § 9-3-33.1(b)(2), which serves the compelling public interest of identifying hidden predators and shifting the cost of abuse from the victim and the state to the perpetrators of child sex crimes.

Child sexual abuse is a public policy crisis affecting approximately 1 in 5 girls, and 1 in 13 boys in this nation.[2] Historically, 90% of child victims never go to

[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*

the authorities and the vast majority of claims expire before the victims can access the courts.[3] There is an extensive body of scientific evidence establishing that childhood sexual abuse victims are traumatized and 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.[4] Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse, if they ever come forward.[5] Still, approximately 3.7 million children are sexually abused in the United States every year.[6] Yet, because it is unconstitutional to revive a criminal SOL, *Stogner v. California*, 539 U.S. 607, 610 (2003), filing civil claims using the revival window is the sole avenue of justice available to many survivors. It is also the only effective

---

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] 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. Dep't of Health & Human Services Administration for Children & Families, Administration on Children, Youth & Families, and Children's Bureau, *Child Maltreatment 2017*, available at https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf.

[4] Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, NAT'L INST. OF JUSTICE (2012), available at https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf; *R.L. v. Voytac*, 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).

[5] *See* CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014)).

[6] Preventing Child Sexual Abuse, CDC.GOV (last visited Nov. 14, 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).

and tried and true means to identify hidden child predators to the public.

This Court's decision will have a significant effect on victims of child sexual abuse throughout Georgia, as many of those individuals embraced the revival window to bring claims that had expired due to unfairly short SOLs. This case presents an opportunity for this Court to hold that the revival window in O.C.G.A. § 9-3-33.1(d) is constitutional, thereby easing the further psychological distress caused by this challenge. Accordingly, CHILD USA respectfully submits that this Court should uphold O.C.G.A. § 9-3-33.1(d) as constitutional.

ARGUMENT

The Hidden Predator Act's revival window in O.C.G.A. § 9-3-33.1(d) (2015) is constitutional under the United States and Georgia Constitutions.

I. THE HIDDEN PREDATOR ACT'S REVIVAL WINDOW COMPORTS WITH THE DUE PROCESS AND RETROACTIVITY PROVISIONS OF THE UNITED STATES AND GEORGIA CONSTITUTIONS

The revival window in O.C.G.A. § 9-3-33.1(d) is constitutional under the United States and Georgia Constitutions because, (1) the text of the statute explicitly calls for revival of claims, (2) SOLs are procedural and Georgia law provides that the running of an SOL does not create a constitutionally protected substantive or vested right, and (3) the revival window for child sex abuse survivors to file claims is rationally related to legitimate governmental objectives.

A. The Retroactive Revival of Time-Barred Civil Claims Is Permissible Because the Legislative Intent is Clear and the Change Is Procedural

The United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244, 267 (1994) held that retroactive civil legislation is constitutional if two conditions are met: (1) the legislative intent is clear[7] and (2) the change is procedural. *Id.* at 272 ("[T]he *constitutional* impediments to retroactive civil legislation are now modest").

In this instance, the legislature's intent to revive claims is clear, as the Act expressly provides for the creation of a revival window:

> For a period of two years following July 1, 2015, plaintiffs of any age who were time barred from filing a civil action for injuries resulting from childhood sexual abuse due to the expiration of the statute of limitations in effect on June 30, 2015, shall be permitted to file such actions against the individual alleged to have committed such abuse before July 1, 2017, thereby reviving those civil actions which had lapsed or technically expired under the law in effect on June 30, 2015." O.C.G.A. § 9-3-33.1(d)(1)(2015).

As the Supreme Court explained in *Landgraf*, "[r]equiring 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." 511 U.S. at 272-73.

[7] While there is a presumption against retroactivity, "the anti-retroactivity presumption is just that – a presumption, rather than a constitutional command" and can be readily overcome by express legislative intent. *Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004) (declined to extend *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)).

The second prong of the *Landgraf* test is also easily satisfied, as it is well-settled in Georgia that SOLs are procedural in nature. *Hunter v. Johnson*, 259 Ga. 21 (1989) ("Statutes of limitation look only to the remedy and so are procedural.").

As under federal law, where the retroactive intent is express, and the statute involves the retroactivity of a civil procedural matter, a retroactive statute is constitutional under Georgia law. *See, e.g., Deal v. Coleman*, 294 Ga. 170, 172 (2013) (citing *Arby's Restaurant Group, Inc. v. McRae*, 292 Ga. 243, 245 (2012)) ("[W]e must presume that the General Assembly meant what it said and said what it meant."); *City of Atlanta v. City of College Park*, 292 Ga. 741, 744 (2013) ("[W]e must afford the statutory text its 'plain and ordinary meaning'"); *see also Henderson v. Dep't of Transp.*, 267 Ga. 90, 91 (1996) ("The constitutional prohibition against retroactivity, however, does not apply to procedural laws.").

Therefore, the revival window also does not violate the Georgia Constitution's prohibition against retroactive laws. Appellants concede this point. *See* Appellants' Brief, pg. 18. The Georgia Constitution, art. I, § I, para. X, only forbids retroactive laws which infringe on vested rights, *Deal*, 294 Ga. at 178-79, and "[t]here is no vested right in a statute of limitation" defense. *Vaughn v. Vulcan Materials Co.*, 266 Ga. 163, 164-65 (1996).[8] As this Court has already ruled, the "legislature may revive

[8] *See also Huggins v. Powell*, 315 Ga. App. 599, 602 (2012) (same); *Smith v. SunTrust Bank*, 325 Ga. App. 531, 538 (2014) (same); *Conner v. Greene*, 219 Ga. App. 860, 861 (1996) (same);

a claim which would have been barred by a previous limitations period by enacting a new statute of limitations, without violating our constitutional prohibition against retroactive laws." *Id*. (citing *Canton Textile Mills v. Lathem*, 253 Ga. 102, 105(1) (1984). While defendants may "have the protection of the policy while it exists," statutes of limitation are "good only by legislative grace" and they are "subject to a relatively large degree of legislative control." *Canton Textile Mills, Inc. v. Lathem*, 253 Ga. 102, 104-05 (1984) (quoting *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)). As such, the legislature's revival of previously time-barred claims is permitted pursuant to both the Georgia and United States Constitutions.

B. The Revival Window Comports with Due Process Because It Is Rationally Related to a Legitimate Governmental Objective of Protecting Children and Preventing Abuse

Under a substantive due process analysis of both the Federal and Georgia Constitutions, laws that do not implicate a fundamental right or suspect class are subject to the most lenient level of judicial scrutiny, "rational basis" review. U.S. Const. Amend. 14; Ga. Const. art. 1, § 1 para. 1; *see also Zarate-Martinez v. Echemendia*, 299 Ga. 301, 305-07 (2016); *Bunn v. State*, 291 Ga. 183, 186 (2012). Under this test, a statute will be upheld in the face of a due process challenge so long as it bears a rational relationship to a legitimate governmental objective. *Id*.; *see also*,

Dowdy v. Earthwise Rest. Mgmt., 221 Ga. App. 220, 222 (1996) (same); *Wilson v. Christian*, 220 Ga. App. 221, 222 (1996) (same).

Georgia Dept. of Human Resources v. Sweat, 276 Ga. 627, 629 (2003) (A statute has a rational basis if it is "reasonably related to the public health, safety or general welfare."). The rational basis standard does not require that the statute "adopt the best, or even the least intrusive, means available to achieve its objective," rather, the statute need only be "reasonable in relation to the goal [the government] seek[s] to achieve." *City of Lilburn v. Sanchez*, 268 Ga. 520, 522 (1997). Only if the statute is "irrelevant" to the legislative objective, or "altogether arbitrary," does a statute violate due process. *Id*. Since the Georgia Supreme Court in *Canton* held that a statute of limitations defense is not a "fundamental right," 253 Ga. at 105 (quoting *Chase*, 325 U.S. at 314), and because Appellants do not belong to a suspect class, O.C.G.A. § 9-3-33.1(d) withstands due process scrutiny if it bears a rational relationship to a legitimate governmental objective.

The Georgia Legislature's legitimate governmental objectives in passing O.C.G.A. § 9-3-33.1(d) can best be explained by statistics and public policy. The child sexual abuse crisis continues to affect approximately one in four girls, and one in thirteen boys in this nation.[9] Accordingly, approximately 3.7 million children are sexually abused in the United States every year.[10] Arrests are only made in 29% of child sexual abuse cases, and for children under six, only 19% of sexual abuse

[9] *Supra*, note 2.
[10] *Supra*, note 5.

incidents result in arrest.[11] This means that over two-thirds of child sexual predators are never arrested, let alone convicted. They continue to move through society as hidden predators with unfettered access to children.

Historically, 90% of child victims never report their abuse and most claims expire before the victims were capable of getting to court.[12] This is because, as noted above, there is an extensive and persuasive body of scientific 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. Evidence shows that child sexual abuse victims do not openly identify their perpetrator until they have reached adulthood, usually in their 40s and 50s.[13] This research has proven that the overwhelming majority of victims could not bring their claims within the short timeframe allotted by Georgia's prior SOL, and that mere knowledge of an abusive act does not give a victim the means to bring their claim.[14]

Georgia lawmakers faced a simple choice when drafting the Hidden Predator Act—protect predators or protect children. By including a revival window, the Georgia Legislature recognized the science of trauma and the reality of delayed

[11] *See* H. N. Snyder, Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics, U.S. DOJ, Bureau of Justice Statistics, available at https://www.bjs.gov/content/pub/pdf/saycrle.pdf; Darkness to Light, Child Sexual Abuse Statistics, 1, available at https://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf.
[12] *Supra*, note 2.
[13] *Supra*, note 3.
[14] *Id*.

disclosure and established that public policy favors providing a remedy for childhood sexual abuse and ensuring perpetrators do not "get off scot free."[15] In so doing, the lawmakers sent a clear message: they intended to uphold justice for survivors and protect Georgia's children.

There are three important public purposes served by The Hidden Predator Act. It (1) identifies previously unknown child predators; (2) shifts the cost of abuse from victims and the state to those who caused the abuse; and (3) educates the public to prevent future abuse. By enacting § 9-3-33.1(d), the Legislature achieved these purposes, taking reasonable steps to revive expired claims of child sex abuse where it recognized an opportunity to right a long-standing injustice that kept the truth hidden and victims out of court.

The revival window serves the compelling state interest in increasing child protection. By allowing previously expired claims to proceed through the justice system, the State encourages victims to identify hidden child predators in Georgia to the public so they can be apprehended. Holding perpetrators accountable now protects future children from abuse by exposing hidden predators and halting their

[15] *See* Statement of Rep. Greg Morris before Georgia Legislature, "House Day 30 PM1," available at http://www.gpb.org/lawmakers/2015/day-30-crossover-day (relevant statements begin at 2:08:15) (last visited November 10, 2020).

actions. The Legislature understood the public value of identifying hidden predators when it enacted § 9-3-33.1(d).

By enacting § 9-3-33.1(d)., the Legislature also acted to shift *some* of the cost of abuse from the victims to those who abused them. The cost of sex abuse is high and, without access to justice, victims and their families are forced to bear those costs themselves.[16] Often, the state must also carry the burden of this lifetime expense with the victims.[17] It is not deleterious to require perpetrators to defend against claims of sex abuse, especially where a plaintiff still has the initial burden of proof to establish a claim. The revival of the civil SOL weighs heavily in favor of Georgia's purpose to hold child abusers accountable to those they harmed.

[16] The average lifetime cost of child maltreatment (physical, sexual, emotional, psychological abuse, and neglect) is $830,928.00 per victim. The toxic stress and trauma associated with childhood sexual abuse is even higher for those victims than for those who experience other forms of child maltreatment. *See* M. Merricka, et. al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (2017); I. Angelakis, et. al., *Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis*, 49 PSYCHOLOGICAL MEDICINE 1057 (2019); Gail Hornot, *Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know*, 29(2) J. PEDIATRIC HEALTHCARE 191 (2015); Perryman Group, *Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment*, (2014).

[17] Fang, et al., *The Economic Burden of Child Maltreatment in the United States & Implications for Prevention*, 36 CHILD ABUSE & NEGLECT 156 (2012) (explaining that the estimated average lifetime cost per victim of nonfatal child sexual abuse includes, in part: $32,648 in childhood health care costs, $10,530 in adult medical costs, $144,360 in productivity losses, $7,728 in child welfare costs, $6,747 in criminal justice costs, $7,999 in special education costs; the estimated average lifetime cost per death includes: $14,100 in medical costs, and $1,258,800 in productivity losses).

Georgia also has a compelling interest in educating the public about matters of public safety, especially child sex abuse. With the opening of the revival window, the public uncovers instances of child sex abuse that would have otherwise remained hidden.[18] Children are at heightened risk when the public and parents are unaware that certain adults endanger children. Moreover, this public education about the prevalence and harm from child sex abuse helps families and the legal system develop policies to protect victims more effectively. Broader prevention of abuse has outstanding long-term impacts for the children and families of Georgia.[19]

The Legislature's two-year window reviving civil claims for child sexual abuse against perpetrators easily meets the rational basis standard. It is a reasonable solution to the injustice countless survivors and the public experience due to extremely short statutes of limitations that have in effect favored child predators over child safety, prevented victims from seeking justice in court, and kept parents and the public in the dark about dangerous individuals in their midst. Even if the revival window were subject to a higher standard of scrutiny than the rational basis standard,

[18] *See generally*, CHILD USA, *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, available at https://childusa.org/wp-content/uploads/2020/03/RelativeSuccessofCivilSOLWindowandRevivalStatutes_Jan2019.pdf (last visited November 14, 2020).

[19] *See generally, Making the Case: Why Prevention Matters*, PREVENTCHILDABUSE.ORG (last visited November 14, 2020) available at https://preventchildabuse.org/resource/why-prevention-matters/; *Preventing Adverse Childhood Experiences*, CDC.GOV (last visited November 14, 2020), available at https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html.

it would be impossible to identify more compelling interests that are more narrowly tailored than the interests protected by the Hidden Predator Act's § 9-3-33.1(d).

II. THE HIDDEN PREDATOR ACT'S REVIVAL WINDOW DOES NOT VIOLATE EQUAL PROTECTION UNDER THE UNITED STATES OR GEORGIA CONSTITUTIONS BECAUSE IT IS RATIONALLY RELATED TO A LEGITIMATE LEGISLATIVE PURPOSE

Equal protection challenges brought under both the United States and Georgia Constitutions are considered jointly "because the protection provided in the Equal Protection Clause of the United States Constitution is coextensive with that provided in Art. 1, Sec. 1, Par. 2 of the Georgia Constitution of 1893." *Fair v. State*, 288 Ga. 244, 246 (2010) (internal citations omitted). Under the equal protection clauses of the federal and state Constitutions, the government is required to treat similarly situated individuals in a similar manner. *Gary v. City of Warner Robins*, 311 F.3d 1334, 1337 (11th Cir. 2002). A statute that may result in differential treatment does not, however, necessarily violate the Equal Protection Clause; a statute that does not implicate a suspect class or fundamental right passes constitutional muster so long as the legislative means are "rationally related to a legitimate governmental purpose." *Estate of McCall ex rel. McCall v. United States*, 642 F.3d 944, 950 (11th Cir. 2011) (citation omitted); *Harper v. State*, 292 Ga. 557, 560 (2013); *see also, Morgan County Bd. Of Com'rs v. Mealor*, 280 Ga. 241 (2006) (reconsideration denied) ("Where the classification has some reasonable basis, it does not

violate equal protection merely because the classification is not made with mathematical nicety or because in practice it results in some inequality."); *Sweat*, 276 Ga. at 630 ("The rational basis standard reflects the Court's awareness that drawing distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary."). Since legislation is presumed to be valid by the judiciary, the burden is on the litigant challenging the statute to establish that he or she is similarly situated to members of the class who are treated differently from him or her, *and* that there is no rational basis for the differential treatment. U.S.C.A. Const. Amend. 14; *Harper*, 292 Ga. at 560; *see also McCall*, 642 F.3d at 950 (citation omitted) (noting that those "attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it"). A court will uphold a statute if, "under any conceivable set of facts, the classifications drawn in the statute bear a rational relationship to a legitimate end of government not prohibited by the constitution." *See Sweat*, 276 Ga. at 630. "[A]ny plausible or arguable reason" will do. *Sanchez*, 268 Ga. at 522; *see also*, *Gary*, 311 F.3d at 1339 ("Courts must not overturn the legislation unless the varying treatment of different . . . persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the legislature's actions were irrational.").

Appellants argue that the "delayed discovery" provision of the Hidden Predator Act, O.C.G.A. § 9-3-33.1(b)(2), impermissibly differentiates between individuals who committed child sexual abuse before July 1, 2015, and those who committed abuse after that date, by permitting plaintiffs whose abuse occurred after July 1, 2015 to bring a claim for child sexual abuse only up until age 23 or "[w]ithin 2 years from the date that the plaintiff knew or had reason to know of the abuse and that the abuse resulted in injury to the plaintiff as established by competent medical or psychological evidence." *See* O.C.G.A. § 9-3-33.1(b)(2)(A)(ii). To the extent that the provision creates two categories of defendants, any differential treatment is constitutional. Appellants concede that under the Equal Protection Clause, the Court only departs from its usual rational basis scrutiny when the group burdened by the classification is suspect or when the classification burdens a fundamental right. Yet, Appellants contend that strict scrutiny applies to the equal protection analysis here by claiming that somehow, the creation of two "classes" of defendant in a statute implicates a fundamental right to a SOL that does not exist in Georgia. Appellants conflate their SOL and "disparate treatment" arguments to justify the application of strict scrutiny, when it is clear that rational basis applies.

As an initial matter, defendants who are subject to claims under the separate discovery and revival provisions are not "similarly situated" because at no point will these two provisions ever be jointly applicable. Further, application of the statute to

perpetrators of child sexual abuse does not implicate a suspect class worthy of extraordinary protection; nor does it implicate a fundamental right as established in Section II of this brief. *See, e.g., Chase*, 325 U.S. at 314 ("Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles … [t]heir shelter has never been regarded as … a 'fundamental' right."). Thus, any purported differential treatment among perpetrators as between the statute's discovery and revival provisions poses no constitutional difficulty so long as some "legitimate governmental purpose" is "rationally" served by such provisions. *McCall*, 642 F.3d at 950.

It is rational that the procedural requirement for "competent medical or psychological evidence" contained in the discovery provision should be required going forward so that victims can be on notice to preserve relevant evidence necessary to acquire the same. Victims whose abuse occurred decades ago would be less likely to have such evidence available and so the General Assembly made the policy decision to not impose this evidentiary burden on such victims.

The provisions contained in O.C.G.A. § 9-3-33.1 provide avenues for victims of childhood sexual abuse to seek relief and to safely inform the public of child abusers, a clearly legitimate governmental objective. The discovery and the revival provision each rationally further that objective in different ways—the discovery provision addresses the delayed manifestation issue that may arise in cases of

childhood sexual abuse, while the revival provision provides victims whose claims were otherwise time-barred under previous too-short statutes of limitation a renewed opportunity for seeking relief. The General Assembly, in amending § 9–3–33.1, set forth specific objectives that it hoped to accomplish with these changes and there is a rational basis between the statute as amended and the distinctions made between abuse occurring before and after July 1, 2015 as a means of accomplishing those objectives. The statute is valid and does not violate equal protection.

III. GEORGIA'S LAW IS IN ACCORD WITH THE MANY STATES THAT ALLOW REVIVAL OF TIME-BARRED CIVIL CLAIMS

Many states have addressed the facial constitutional question presented in this case: whether revival of a civil claim previously barred by a statute of limitation is constitutional. Appellants agree that Georgia does in fact permit revival of civil claims. *See* Appellants' Brief, pg. 18. Nonetheless, Appellants seek to persuade this Court to overturn clear Georgia precedent and vest in perpetrators of child sex abuse a substantive right to a statute of limitations defense in civil lawsuits brought by the children they victimized. Appellants try to bolster their outrageous position with outdated caselaw from other states and completely misrepresent the national landscape on the constitutionality of reviving time-barred claims.

Appellants' contention that "most courts outside this state have rather consistently held that retroactive revival laws are constitutionally invalid" is

incorrect and based on outdated caselaw. Appellants' Brief, pg. 19-21. Due process at the state level has been a time-evolving doctrine, with states moving away from an antiquated vested rights approach to statute of limitations defenses and deferring to legislative judgment instead for revival of previously expired claims.[20] Appellants' reliance on *Waller's* old overview of the constitutionality of revival laws across the states from 1990 is reckless and misleading. *See* Appellants' Brief pg. 19-20, quoting *Waller v. Pittsburgh Corning Corp.*, 742 F. Supp. 581, 583 (D. Kan. 1990), *aff'd*, 946 F.2d 1514 (10th Cir. 1991). Since 1990, more than ten additional states have upheld the constitutionality of revival laws and several states which did not permit revival, according to *Waller*, now do, including Delaware, Montana, and Virginia.[21] Currently, of the jurisdictions that have considered constitutional challenges to the application of revival legislation to a cause of action, 24 states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival of civil cases that were previously time-barred.[22] Of the states to

[20] *See Landgraf* , 511 U.S. at 272.
[21] Compare *infra* n.26 and *Waller*, 742 F. Supp. at 583-84 (D. Kan. 1990).
[22] **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. Lathem*, 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

rule on the issue, only nine have expressly held a revival law to be unconstitutional.[23] Georgia's modern approach permitting revival of time-barred claims is

P.3d 1244, 1250 (Idaho 2014); **IOWA:** *Schulte v. Wageman*, 465 N.W.2d 285, 287 (Iowa 1991); **KAN:** *Harding v. K.C. Wall Prod., Inc.*, 831 P.2d 958, 967-68 (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 (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. 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).

[23] **ALAB:** *Tyson v. Johns-Manville Sales Corp.*, 399 So. 2d 263, 268 (Ala. 1981) *superseded by statute as recognized* in *Johnson v. Garlock, Inc.*, 682 So.2d 25 (Ala.1996); **ARK:** *Miller v. Subiaco Acad.*, 386 F. Supp. 2d 1025, 1028 (W.D. Ark. 2005); **FL:** *Wiley v. Roof*, 641 So. 2d 66, 68–69 (Fla. 1994); **IL:** *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 411–12 (2009); **MO:** *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. 1993); **NH:** *Gould v. Concord Hospital*, 126 N.H. 405, 408 (1985); **RI:** *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); **SC:** *Doe v. Crooks*, 364 S.C. 349, 351–52 (S.C. 2005); **UT:** *Mitchell*, 2020 UT at ¶¶ 50-52; **VA:** *Starnes*, 419 S.E.2d at 674–75 (1992).

unquestionably in line with the weight of American authority, and is not even close to the "extreme measure" Appellants claim it is.

Further, many states have explicitly rejected the vested rights approach to a statute of limitations defense that Appellants urge this Court to adopt, despite clear Georgia precedent holding otherwise. *See, e.g., Chevron Chemical Co. v. Superior Court*, 131 Ariz. 431, 440 (1982) (explaining the right to raise a one-year SOL defense instead of a two-year defense is not a "vested property right" even though it may increase liability for defendant); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011) ("Under Delaware law, the CVA can be applied retroactively because it affects matters of procedure and remedies, not substantive or vested rights."); *Roe v. Doe*, 581 P.2d 310, 316 (Haw. 1978) ("The right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. . . . [W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations."); *Hecla Mining Co. v. Idaho State Tax Comm'n*, 697 P.2d 1161, 1164 (Idaho 1985) ("The shelter of a statute of limitations has never been regarded as a fundamental right, and the lapse of a statute of limitations does not endow a citizen with a vested property right in immunity from suit."); *Harding v. K.C. Wall Products, Inc.*, 250 Kan. 655, 668-69 (Kan. 1992) ("a defendant has no vested right

in a statute of limitations. It is an expression of legislative public policy, is procedural, and may be applied retroactively when the legislature expressly makes it so."); *City of Boston v. Keene Corp.*, 406 Mass. 301, 328 (1989) ("Consequently, the running of the limitations period on [asbestos] claims does not create a vested right which cannot constitutionally be taken away by subsequent statutory revival of the barred remedy."); *Pryber v. Marriott Corp.*, 98 Mich. App. 50, 56-57 (1980), *aff'd*, 411 Mich. 887 (1981) (per curiam) ("the right to defeat a claim by interposing a statute of limitations is not a vested right."); *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 779 (Mont. 1993) (explaining that due process is not violated by the retroactive application of a revival window for a perpetrator of child sexual abuse who has no vested interest in an SOL defense).

IV. DECISIONS IN OTHER STATES REVIVING CHILD SEX ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF THE HIDDEN PREDATOR ACT'S REVIVAL WINDOW

As in Georgia, legislatures across the country have adopted civil revival laws for survivors of child sex abuse to remedy the long-standing injustice of blocking their claims with unreasonably short statutes of limitations. In the majority of jurisdictions where these laws were challenged, they have been expressly upheld as constitutional. Further, every appellate court to consider the reasonableness of a legislature's decision to revive victims' claims for child sex abuse has determined that the remedial statute was rational.

A. The Majority of Revival Laws for Child Sex Abuse Claims Have Been Upheld as Constitutional

Georgia is on a growing list of at least 29 jurisdictions which have enacted various laws to revive previously expired child sex abuse claims, and stands alongside Arizona, California, Delaware, Florida, Hawaii, Michigan, Minnesota, Montana, New Jersey, New York, North Carolina, Utah, Vermont, Virginia, District of Columbia, and Guam, which have done so explicitly with a time-limited revival window.[24]

The overwhelming majority of these jurisdictions have successfully revived previously time-barred child sex abuse claims with a window, discovery rule, or extended age limit. Revival laws for child sex abuse claims have been explicitly upheld as constitutional in 11 states - California, Connecticut, Delaware, Hawaii,

[24] *See* **ARIZ:** ARIZONA STAT. ANN. § 12–514 (2019), H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019); **ARK:** ARK. CODE ANN. § 16-56-130 (1993); **CAL:** CAL. CIV. PROC. CODE § 340.1 (2003, 2019); **CONN:** CONN. GEN. STAT. § 52-577d (2002); **DEL:** DEL. CODE ANN. TIT. 10, § 8145 (2007); DEL. CODE ANN. TIT. 10, § 8145 (2007); **DC:** D.C. CODE § 12-301 (2019); **FLA:** FLA. STAT. § 95.11 (1992), **GA:** GA. CODE ANN. § 9-3-33.1 (2015); **HAW:** HAW. REV. STAT. § 657–1.8 (2012, 2014, 2018); **ILL:** 735 ILL. COMP. STAT. 5/13–202.2 (2006); **IOWA:** IOWA CODE § 614.8A (1991); **KAN:** KAN. STAT. ANN. § 60–523 (1992); **MASS:** MASS. GEN. LAWS ANN. CH. 260 § 4C (2014); **MICH:** MICH. COMP. LAWS ANN. § 600.5851b (2018); **MISS:** MO. REV. STAT. § 537.046 (1989); **MINN:** MINN. STAT. ANN. § 541.073 (1989), 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681); **MONT:** MONT. CODE ANN. § 27–2–216 (1989, 2019), **NJ:** N.J. STAT. ANN. § 2A:14-2B (2019), S. 477 2019 Gen. Assemb., Reg. Sess. (N.J. 2019); **NY:** N.Y. C.P.L.R. § 214-g (2019); **NC:** N.C. GEN. STAT. ANN. § 1-52 (2019), S 199, 2019 Leg., Reg. Sess. (N.C. 2019); **OR:** OR. REV. STAT. ANN. 12.117 (2010); **RI:** tit. 9 R.I. GEN. LAWS ANN. § 9-1-51 (1996, 2019); **SC:** S.C. CODE ANN. § 15-3-555 (2001), **SD:** S.D. CODIFIED LAWS § 26–10–25 (1991); **UTAH:** UTAH CODE ANN. § 78B-2-308 (2016); **VT:** V.T. STAT. ANN. tit. 12, § 522 (2019); **VA:** V.A. CODE ANN. § 8.01-249 (1991); V.A. CONST. ART. 4, § 14 (1995); **WV:** W. VA. CODE ANN. § 55-2-15 (2020); **WYO:** WYO. STAT. ANN. § 1–3–105(b)(ii)) (1993); **GUAM:** 7 G. COMP. ANN. § 11301.1 (2016).

Kansas, Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Virginia.[25] In the District of Columbia, Guam and another four states - Arizona, Michigan, Vermont, and West Virginia - child sex abuse claims were revived without a constitutional challenge in the courts.[26] Like Georgia, New Jersey and New York's revival windows have thus far withstood constitutional attack, but defendants have appealed the courts' decisions which determined that the windows did not violate defendants' constitutional rights.[27] A challenge to North Carolina's window is currently pending in the judiciary, and Rhode Island's new revival law and Iowa's discovery rule was challenged, but the court did not rule on constitutionality.[28]

[25] *See* Deutsch v. Masonic Homes of Cal., Inc., 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal.Ct.App.2008); *Coats v. New Haven Unified Sch. Dist.*, 46 Cal. App. 5th 415, 427 (2020); *See Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 406 (age limit); *Sheehan*, 15 A.3d at 1258-60; *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *Shirley v. Reif*, 260 Kan. 514, 526 (1996); *Sliney*, 41 N.E.3d at 737, 739; *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990); *Cosgriffe*, 864 P.2d at 779; *Doe v. Silverman*, 287 Or. App. 247, 253 (2017), *review denied*, 362 Or. 389 (2018); *DeLonga v. Diocese of Sioux Falls*, 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004); *Kopalchick v. Cath. Diocese of Richmond*, 274 Va. 332, 337 (2007).

[26] *Infra* n.29.

[27] *T.M. v. Order of St. Benedict of New Jersey, Inc.*, MRS-L-399-17 (Law Division, Morris County); *Torrey v. Portville Cent. Sch.*, 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020); *S.T. v. Diocese of Rockville Centre*, Index No. 099997/2019, Supreme Court, Nassau County, Hon. Steven M. Jaeger (May 18, 2020); *Giuffre v. Dershowitz*, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020); *See also Crea v. Krzyzanski*, No. 1:18-CV-0861-SCJ, 2019 WL 1499471, at *3 (N.D. Ga. Feb. 6, 2019) (defendant's motion to dismiss challenged the constitutionality of the window, but court dismissed without prejudice).

[28] *Joseph Cryan, et al., v. Nat'l Council of Young Men's Christian Ass'n of the U.S.A., et al.*, File No.: 20-CVS-951 (N.C. Super. Ct., Cty. of Forsyth); *Edwardo v. Gelineau* 2020 WL 6260865, *1, R.I. Super (October 16, 2020); *Frideres v. Schiltz*, 540 N.W.2d 261, 268 (Iowa 1995).

Revival laws were held to be unconstitutional in eight states - Arkansas, Florida, Illinois, Missouri, Rhode Island, South Carolina, Utah, and Virginia.[29] However, Virginia subsequently amended its constitution for the purpose of allowing revival of child sex abuse claims.[30] In these states, the courts were constrained by state law precedent to invalidate the revival laws as per se violations of defendants' constitutional rights in a statute of limitations defense.[31] Recently, the Utah Supreme Court noted that it appreciated the "moral impulse" and the legislature's "substantial policy justifications" for helping alleviate the lifetime suffering of child sex abuse victims, but expressed frustration that the Utah Constitution did not permit it to carry out the intent of the legislature.[32] Unlike in these minority states, this Court is neither constrained by the Georgia Constitution nor binding caselaw to invalidate Georgia's revival window.

B. Revival Laws for Child Sex Abuse Are Universally Recognized by States as Rational

[29] *Miller v. Subiaco Acad.*, 386 F. Supp. 2d 1025, 1028 (W.D. Ark. 2005); *Wiley v. Roof*, 641 So. 2d 66, 68–69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 411–12 (2009); *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. 1993); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 364 S.C. 349, 351–52 (S.C. 2005); *Mitchell*, 2020 UT at ¶¶ 50-52; *Starnes*, 419 S.E.2d at 674–75 (1992). *See also Doe v. Boy Scouts of America*, 148 Idaho 427 (2009) (invalidating application of law which created new cause of action for survivors of child sex abuse to conduct that was not previously actionable).

[30] *See* VA Const. art. 4, § 14 (1995); *Kopalchick*, 645 S.E.2d at 439.

[31] See *supra*, n.22.

[32] *Mitchell*, 2020 UT at ¶¶ 50-52 ("The problems presented in a case like this one are heart-wrenching. We have enormous sympathy for victims of child sex abuse. But our oath is to support, obey, and defend the constitution. And we find the constitution to dictate a clear answer to the question presented. The legislature lacks the power to retroactively vitiate a ripened statute of limitations defense under the Utah Constitution.").

Revival laws recognize that society for too long did not understand the plight of those sexually abused as children and extinguished their rights long before they had the ability to report or seek justice for their abuse. *DeLonga v. Diocese of Sioux Falls*, 329 F. Supp. 2d 1092, 1101–02 (D.S.D. 2004) (acknowledging "the Legislature most certainly was unaware" when it adopted its personal injury statute of limitations "of the involuntary coping mechanisms associated with victims of sexual abuse which may hinder such victims from making the causal connection between their abuse and problems suffered later in life"). *Sliney*, 41 N.E.3d at 741–42 (recognizing child sex abuse victims are often "not able to appreciate the extent or the cause of harm they experience as a result of sexual abuse perpetrated on them for many years after the abuse has ended"); *Hartford Roman Catholic Diocesan Corp.*, 119 A.3d at 517 (recognizing "the unique psychological and social factors that often result in delayed reporting of childhood sexual abuse, which frustrated the ability of victims to bring an action under earlier revisions of the statute of limitations").

Georgia's modern approach to due process is flexible, and judicial review of its revival window involves substantially similar considerations of rationality as the appellate courts that have explicitly upheld revival laws for child sex abuse in other states. *Hartford Roman Catholic Diocesan Corp.*, 119 A.3d at 496 (rejecting due process challenge because revival law "is a rational response by the legislature to

the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child" and the "revival of child sexual abuse victims' previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way"); *Sliney*, 41 N.E.3d at 741 (rejecting due process challenge because the revival statute was reasonable and "tied directly to the compelling legislative purpose" of giving access to justice for child sex abuse survivors who do not process their injuries well into adulthood); *Cosgriffe*, 864 P.2d at 779–80 (rejecting due process challenge because the discovery statute "has a reasonable relation to the legitimate purpose of the State"); *Hoffman*, 452 N.W.2d at 514 (rejecting due process challenge because "the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy"). Every appellate court that has analyzed a claim revival statute for child sex abuse under that state's due process clause has determined the remedial statute was not only rational, but reasonable, according to *amicus curiae's* research.

As states face the important public policy issues related to the child sexual abuse epidemic, judicial deference to legislative intent as to civil, procedural retroactivity is now the norm. *See Cosgriffe*, 864 P.2d at 779 (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. . ."); *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 406 (judiciary is prohibited " from "substitut[ing] our

personal notions of good public policy for those of [the legislature]"); *Sheehan*, 15 A.3d at 1258-60 ("[W]e do not sit as an überlegislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law.").

The United States and Georgia Constitutions clearly permit revival of previously time-barred claims, and so the Hidden Predator Act's revival window for survivors of child sex abuse is constitutional. Despite Appellants' erroneous contention, the majority of states that have ruled on the constitutionality of reviving previously expired claims recognize that defendants do not have a constitutionally protected right in a statute of limitations defense. Well-settled Georgia precedent should not be overruled simply because Appellants dislike the Act. This Court accordingly should uphold the revival window as constitutional and defer to the Georgia Legislature's rational policy decision to open a window to justice for survivors of child sex abuse and hold perpetrators accountable.

CONCLUSION

For the foregoing reasons, *amicus curiae* urges this Court to find that the revival window in the Hidden Predator Act, O.C.G.A. § 9-3-33.1(d) (2015) is a constitutional exercise of the Legislature's authority.

Dated: December 21, 2020

Respectfully submitted,

Richard A. Horder, Esq.
Georgia Bar No. 366750
Jacqueline O. Eisermann, Esq.
Georgia Bar No. 256669
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street, N.E.
Suite 900
Atlanta, GA 30309
Tel: (404) 812-0843
rhorder@kmcllaw.com
jeisermann@kmcllaw.com

Counsel for Amicus Curiae, CHILD USA

Marci A. Hamilton, Esq.
CEO & Legal Director, CHILD USA
Fels Institute of Government
Professor of Practice
University of Pennsylvania
3508 Market Street, Suite 202
Philadelphia, PA 19104
Tel: (215) 539-1906
Marcih@sas.upenn.edu

Alice Nasar Hanan, Esq.
Jessica Schidlow, Esq.
Staff Attorneys, CHILD USA
Ahanan@childusa.org
jschidlow@childusa.org

CERTIFICATE OF SERVICE

I hereby certify that, on December 21, 2020, I served a copy of the foregoing by e-mail on the following counsel of record:

Candace E. Rader
Attorney for Appellants
301 Tanner Street
Carrollton, GA 30117
(770) 830-0858
candace@candaceraderlaw.com

Charles Merritt Lane
Attorney for Appellants
414 College Street
Carrollton, GA 30117
(770) 830-0809
mlane@shadrixlane.com

Esther Panitch
Attorney for Appellee
The Panitch Law Group PC
4243 Dunwoody Club Drive Suite 205
Atlanta, GA 30350
esther@panitchlawgroup.com

Emma Hetherington
Attorney for Appellee
Wilbanks CEASE Clinic
P.O. Box 1792
Athens, Georgia 30603
ehether@ugacease.org

Brian J. Atkinson
Attorney for Appellee
Wilbanks CEASE Clinic
P.O. Box 1792
Athens, Georgia 30603
batkinson@ugacease.org

Devin LeDrut Mashman
Attorney for Appellee
Wilbanks CEASE Clinic
P.O. Box 1792
Athens, Georgia 30603
dmashman@ugacease.org

This 21st day of December, 2020.

s:\ Jacqueline O. Eisermann
Counsel for Amicus Curiae, CHILD USA

Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street, N.E.
Suite 900
Atlanta, GA 30309
Tel: (404) 812-0843

EXHIBIT 1

SUPREME COURT OF GEORGIA
Case No. S21A0143

December 21, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

WALTER JACKSON HARVEY JR. et al. v. JOY CAROLINE HARVEY MERCHAN.

Upon consideration of the Motion to File Brief of Amicus Curiae, it is ordered that the motion is granted and that the movant file the brief attached to the motion.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk