W.F., Plaintiff, v. ROMAN CATHOLIC DIOCESE OF PATERSON and SALESIANS OF DON BOSCO a/k/a SALESIAN SOCIETY a/k/a SALESIANS DON BOSCO CANADA AND EASTERN USA, Defendant.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY 2:20-cv-07020-MCA-MAH

NOTICE OF MOTION OF CHILD USA FOR LEAVE TO APPEAR AS AMICUS CURIAE

PLEASE TAKE NOTICE that upon the Certification of Charles L. Becker, Esq. and Kline and Specter, P.C., in support of the motion for leave to file an amicus curiae brief, CHILD USA requests the United States District Court, District of New Jersey, issue an order granting them leave to appear as Amicus Curiae and to file the amicus curiae brief that accompanies this motion.

Respectfully submitted,

BY: */s/ Charles L. Becker*
____
CHARLES L. BECKER, ESQUIRE
Counsel for Amici Curiae
CHILD USA

Dated: December 14, 2020

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W.F., Plaintiff, v. ROMAN CATHOLIC DIOCESE OF PATERSON and SALESIANS OF DON BOSCO a/k/a SALESIAN SOCIETY a/k/a SALESIANS DON BOSCO CANADA AND EASTERN USA, Defendant.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY 2:20-cv-07020-MCA-MAH

CERTIFICATION OF CHARLES L. BECKER IN SUPPORT OF MOTION OF CHILD USA FOR LEAVE TO APPEAR AS AMICUS CURIAE

I, Charles L. Becker, Esq., being of full age, hereby certify as follows:

1) I am an attorney admitted to practice law in the State of New Jersey and the United States District Court for the District of New Jersey. I am a partner at Kline & Specter, P.C. in their New Jersey office. I make this certification in support of the motion of CHILD USA to appear in the above-captioned matter as amicus curiae.

2) CHILD USA is the leading non-profit national 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 produces evidence-based solutions

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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 Jersey

3) District courts have broad discretion to permit the filing of amicus curiae briefs. See United States v. Alkaabi, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) ("The extent, if any, to which an amicus curiae should be permitted to participate in a pending action is solely within the broad discretion of the district court."). Although no rule explicitly governs the filing of amicus briefs in this District, District Courts may consider by analogy the requirements of Federal Rule of Appellate Procedure 29 and the Third Circuits interpretation of the same in exercising their discretion whether to grant leave to file amicus briefs. See id.; see also Acra Turf Club, LLC v. Zanzuccki, Civ. No. 12-2775, 2014 WL 5465870, at *5 (D.N.J. Oct. 28, 2014); Martinez v. Capital Cities/ABC-WPVI, 909 F. Supp. 283, 286 (E.D. Pa. 1995).

4) Under Federal Rule of Appellate Procedure 29(b), a party seeking leave to appear as amicus curiae must state "(A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the

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disposition of the case." Fed. R. App. P. 29(3). The Third Circuit has explained that "it is preferable to err on the side of granting leave" so that a court will not "be deprived of a resource that might have been of assistance." Neonatology Assocs., P.A. v. Comm'r of Internal Revenue, 293 F.3d 128, 133 (3d Cir. 2002); see also id ("[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted."); Newark Branch, NAACP v. Town of Harrison, 940 F.2d 792, 808 (3d Cir. 1991) (amicus briefs help "insur[e] a complete and plenary presentation of difficult issues so that the court may reach a proper decision").

5) 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 Jersey. N.J. Stat. Ann. §§ 2A:14-2b enables victims of child sex abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sex abuse in New Jersey 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.

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6) CHILD USA has legal and social science expertise that can help the court determine the constitutional questions at issue in this case. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of New Jersey's revival law for child sex abuse claims, the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on public safety, and the science of trauma and delayed disclosure by victims of their abuse.

7) For these reasons, CHILD USA respectfully requests that the Court grant this Motion for Leave to File Brief of Amicus Curiae and accept the accompanying proposed amicus brief for filing. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

8) 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.

Respectfully submitted,

BY: */s/ Charles L. Becker*

CHARLES L. BECKER, ESQUIRE
Counsel for Amici Curiae CHILD USA

Dated December 14, 2020

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W.F.,
Plaintiff,

v.

ROMAN CATHOLIC DIOCESE OF PATERSON and SALESIANS OF DON BOSCO a/k/a SALESIAN SOCIETY a/k/a SALESIANS DON BOSCO CANADA AND EASTERN USA,
Defendant.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

2:20-cv-07020-MCA-MAH

BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFF, DENYING DISMISSAL

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Do not use without permission of CHILD USA.

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McDonald v. Redevelopment Auth. of Allegheny Cnty., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009)..............................37

McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005).......................37

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W. VA. CODE ANN. § 55-2-15 41

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OTHER AUTHORITIES

2020 SOL Summary, Nat'l Overview of SOLs for Child Sex Abuse, CHILDUSA.ORG 26

Angelakis, I., Gillespie, E.L., Panagioti, M., Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019) 33

BESSEL A. VAN DER KOLK M.D., ET AL., TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY (2006) 17

Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at http://www.cdc.gov/violenceprevention/acestudy/#1 16

Do not use without permission of CHILD USA.

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) 17

Delayed Disclosure of Child Sex Abuse, CHILDUSA.ORG 27

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) 16

Gail Hornot, Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know, J. PEDIATRIC HEALTHCARE (2015) 33

H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019) 40

Louise Norris, New Jersey and the ACA's Medicaid expansion, HEALTHINSURANCE.ORG (....33

M. Merricka, et. al., Unpacking the impact of adverse childhood experiences on adult mental health, CHILD ABUSE NEGLECT (2017) 33

M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011) 16

MAKING THE CASE: WHY PREVENTION MATTERS, PREVENTCHILDABUSE.ORG 34

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) 16

Perryman Group, Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment, (2014) 33

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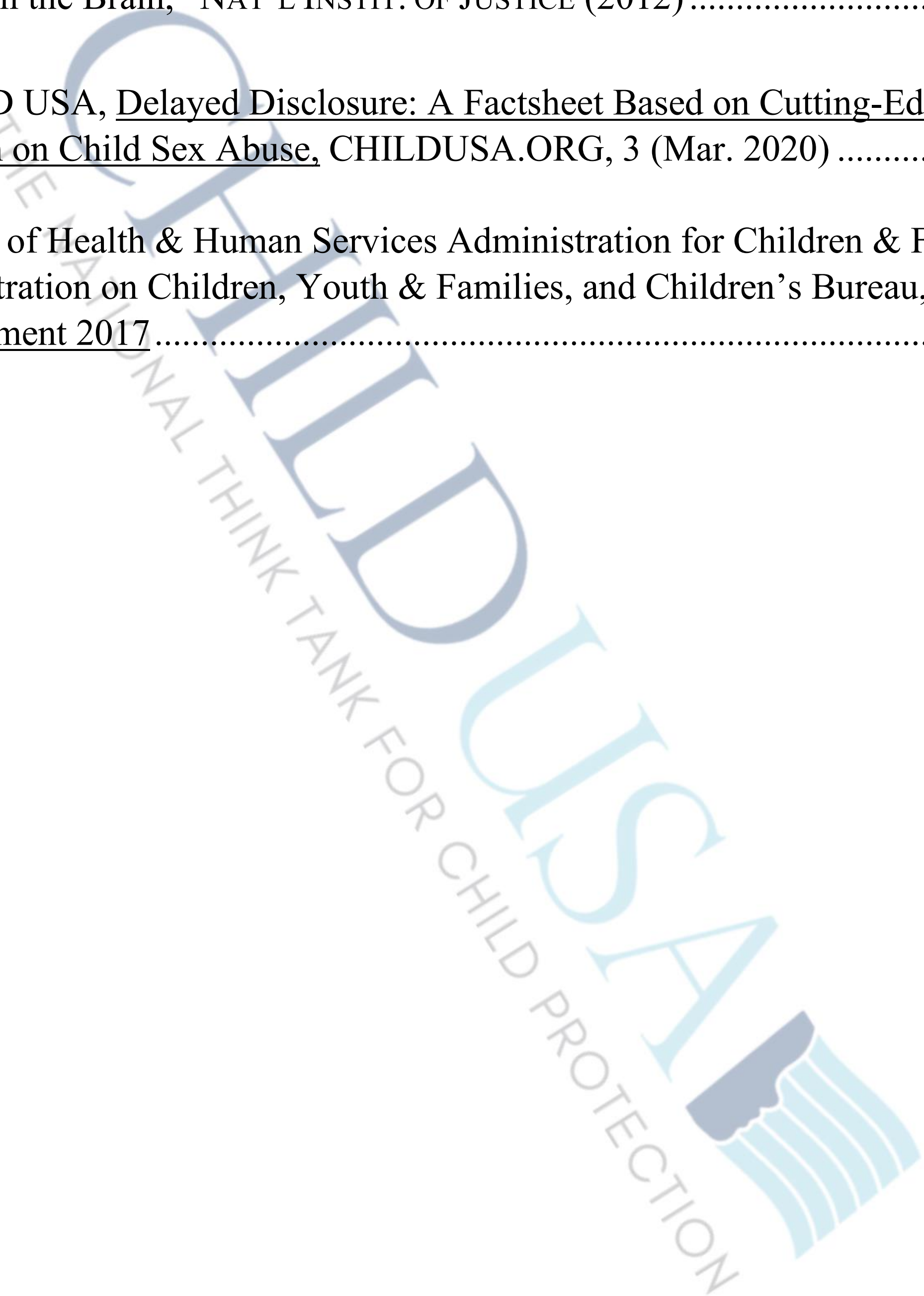
Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020), available at https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf 17

Rebecca Campbell, Ph.D., "The Neurobiology of Sexual Assault: Explaining Effects on the Brain," NAT'L INSTIT. OF JUSTICE (2012) 17

See CHILD USA, Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse, CHILDUSA.ORG, 3 (Mar. 2020) 17

U.S. Dep't of Health & Human Services Administration for Children & Families, Administration on Children, Youth & Families, and Children's Bureau, Child Maltreatment 2017 16



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STATEMENT OF INTEREST OF AMICUS CURIAE

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 New Jersey's revival law for child sex abuse claims, the compelling public interest in revival of expired civil 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

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increase child protection from sex abuse and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

CHILD USA's amicus brief is helpful to the court's understanding of, (1) why it was effectively impossible for countless victims of child sex abuse in New Jersey to file civil claims before the prior SOLs expired based on the science of trauma and delayed disclosure of abuse, (2) how temporarily reviving lapsed claims is a rational solution remedying the injustice child sex abuse survivors endured and reasonable public policy for child protection, and (3) provides the court with a national overview of the constitutionality of child sex abuse claim revival laws in the states.

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae*. Defendants challenge the constitutionality of N.J. Stat. Ann. §§ 2A:14-2b, which revived expired civil claims for child sex abuse in New Jersey. *Amicus* CHILD USA joins in Plaintiff's request that this Court uphold N.J. Stat. Ann. §§ 2A:14-2b, finding that it is constitutional. Child sexual abuse is a public policy crisis affecting 1 in 5 girls, and 1 in 13 boys in this nation.[1] Historically, 90% of child victims never go to the

[1] 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

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authorities and the vast majority of claims expire before the victims can access the courts.[2] 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.[3] Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse, if they ever come forward.[4] Still, approximately 3.7 million children are sexually abused in the United States every year.[5] 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,

(2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively)

[2] 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

[3] 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).

[4] 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)).

[5] 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).

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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 New Jersey, 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 N.J. Stat. Ann. §§ 2A:14-2b is constitutional, thereby easing the further psychological distress caused by this challenge. Accordingly, CHILD USA respectfully submits that this Court should uphold N.J. Stat. Ann. §§ 2A:14-2b as constitutional.

ARGUMENT

N.J. Stat. Ann. §§ 2A:14-2b is constitutional under the New Jersey constitution.

I. RETROACTIVE REVIVAL OF CHILD SEX ABUSE CLAIMS PURSUANT TO N.J. STAT. ANN. §§ 2A:14-2B COMPORTS WITH DUE PROCESS UNDER THE NEW JERSEY CONSTITUTION

N.J. Stat. Ann. §§ 2A:14-2b is constitutional under the New Jersey constitution because, (1) the text of the statute explicitly calls for the revival of claims, (2) the expiration of a procedural SOL does not create a protected substantive or vested right, Price v. N.J. Mfrs. Ins. Co., 867 A.2d 1181, 1185 (N.J. 2005), and (3) the revival window for child sex abuse survivors to file claims is a rational solution to remedying the injustice child sex abuse survivors endured and reasonable public policy for child protection. Further, there is no manifest injustice to

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Defendants because their conduct was illegal at the time they took action and any reliance on the expiration of Plaintiff's child sex abuse claims is far outweighed by New Jersey's public interest in identifying unknown perpetrators, holding responsible institutions accountable, and shifting the cost of abuse from the victims to those who caused or enabled the abuse.

A. The Legislature Expressly Intended for N.J. Stat. Ann. §§ 2A:14-2b to Apply Retroactively to Sexual Abuse Related Claims That Were Previously Time-Barred.

In any matter requiring consideration of a statute, the courts primary inquiry is that of legislative intent. See, e.g., Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251, 263–64 (2008) (explaining that the Supreme Court's essential task in construing a statute is to understand and give effect to the legislature's intent). To determine legislative intent, courts look first to a statute's language and gives those terms their plain and ordinary meaning, DiProspero v. Penn, 183 N.J. 477, 492 (2005), because "the best indicator of that intent is the plain language chosen by the Legislature," Cashin v. Bello, 223 N.J. 328, 335 (2015). Where the statutory language is clear and unambiguous, courts may not impose an interpretation contrary to the statutes plain meaning. See State v. Smith, 197 N.J. 325, 332 (2009) (stating that it is not the Supreme Court's function to rewrite the Legislature's plainly written enactment or presume that the Legislature intended something other than that expressed by way of the plain language); see also, Murray v. Plainfield Rescue

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Squad, 210 N.J. 581 (2012) (reiterating that if the legislature's intent is clear on statute's face, then the court must apply law as written); Parsons ex rel. Parsons v. Mullica Tp. Bd. of Educ., 226 N.J. 297 (2016) (reaffirming that when the statutory language is clear, the court's interpretive process ceases, and its sole function is to enforce the statute in accordance with its terms).

The "high degree of judicial deference" accorded to the legislature is "not less applicable when legislation is applied retroactively." Twiss v. State Dep't of Treasury, 124 N.J. 461, 467 (1991). "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." Edgewater Inv. Associates v. Borough of Edgewater, 103 N.J. 227, 237-38 (1986) (citing Pension Ben. Guar. Corp., v. R.A. Gray & Co., 467 U.S. 717, 729 (1984)). Accordingly, New Jersey courts will give effect to retroactive statutes when the legislature evidences a clear intent that the statute should be so applied. Twiss, 124 N.J. at 467.

The plain language of N.J. Stat. Ann. §§ 2A:14-2b evidences the Legislature's clear intent for the statute to apply to acts that occurred prior to enactment and revive claims that would otherwise have been time-barred.

Section 2A:14-2b opens a 2-year revival window for victims of any age for claims relating to the sexual abuse of children and sexual assault of adults that

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previously expired. Section 2A:14-2b applies retroactively to revive expired claims pursuant to following language:

> "an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act . . . , or sexual abuse . . . , that occurred prior to the effective date of P.L.2019, c. 120 (C.2A:14-2a et al.), and **which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date**."

N.J. Stat. Ann. § 2A:14-2b (emphasis added). This statute explicitly requires application to acts that occurred prior to enactment and requires revival of expired claims based on those acts, and therefore, the Legislature expressly intended it to do so.

As states face important public policy issues such as the ongoing child sexual abuse crisis, judicial deference to legislative judgment as to civil, procedural retroactivity is now the norm. See Sliney v. Previte, 473 Mass. 283, 285 (2015); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 439-40 (2015); Cosgriffe v. Cosgriffe, 262 Mont. 175, 177 (1993); Safechuck v. MJJ Prod., Inc., 43 Cal. App. 5th 1094, 1099-1100 (2020). Before enacting SB477, the Legislature gave due consideration to the benefits to child sex abuse victims and society as a whole and the potential financial exposure of defendants:

> "[O]pponents argue that by exposing religious and nonprofit organizations to potentially massive financial liabilities, the bill may have the unintended effect of inhibiting these organizations from

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> providing the services that many vulnerable New Jersians rely on. I take these concerns seriously, but I cannot deny victims the ability to seek redress in court for sexual abuse that often leaves trauma lasting a lifetime. I am confident that our judicial system is the right venue for and to access these claims fairly and impartially."

T.M. v. Order of St. Benedict of New Jersey Inc., et. al., Tr. of Mot. at 51, May 22, 2020 (quoting statements by Governor Murphy). "[W]e presume the Legislature 'acted with existing constitutional law in mind and intended the act to function in a constitutional matter.'" Short v. Short, 372 N.J. Super. 333, 338 (2004). The Legislature's judgment to enact the claim revival provisions, giving New Jersey's child sex abuse victims access to justice and helping eradicate child sex abuse in New Jersey, should be given deference, and upheld by this Court where the legislature's intent to apply the statute retroactively is explicit in the statutory language.[6]

[6] Even if the statute's retroactivity was not explicit, there is ample evidence of the Legislature's and the Governor's intent that SB477 be applied retroactively to revive expired claims. See Governor's Statement Upon Signing, Senate Committee Substitute for Senate Bill No. 477-L.2019, c. 120, May 13, 2019 (N.J. Stat. Ann. § 2A:14-2b "creates a two-year filing window for sexual abuse claims that would otherwise be time-barred by the statute of limitations that goes into effect upon the bill's enactment."); Senate Judiciary Committee Statement for Bill No. 477-L.2019, c. 120, March 7, 2019 (§ 2A:14-2b "creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill's effective date which would otherwise be time-barred" and § 2A:14-2a applies to "abuse that occurred prior to, on or after the bill's effective date and [s]ince the extended statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 years when the bill takes effect . . . and who is aware of the injury and its cause could file a suit.").

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B. Retroactive Application of N.J. Stat. Ann. §§ 2A:14-2b Is Constitutional as It Does Not Interfere with A Vested Right of The Defendant

Once the court has found legislative intent to retroactively apply the statute, the court must then determine whether retroactive application of the particular statute at issue interferes with a "vested right" in violation of the Due Process Clause of the New Jersey Constitution, Art. I ,¶ 1. Twiss at 467. The New Jersey Supreme Court has rejected the argument that the retroactive application of revived SOLs inherently disturbs rights vested under the New Jersey Constitution. See id.; Panzino v. Continental Can Co., 71 N.J. 298, 305 (1976); Short, 372 N.J. Super. at 338 ("retroactive amendments to the statutes of limitations resulting in a revival of an otherwise barred claim are not *per se* unconstitutional"). In practice, the New Jersey Supreme Court has routinely permitted the retroactive application of statutes, even where the result permits a claim to proceed that was previously time barred. Panzino, 71 N.J. at 298; Nobrega v. Edison Glen Associates, 167 N.J. 520, 545 (2001); Twiss, 124 N.J. at 469–70 (defining a "vested right" as that which, "encompasses a fixed interest entitled to protection from state action" and utilizing this definition to decline to strike down as unconstitutional the retroactive application of the statute in which the party challenging the law had no fixed property interest that could be affected). To the extent that the Court *has* held retroactive revival of otherwise time-barred claims to

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be unconstitutional, it has specifically confined its reasoning to claims sounding in contract or implicating property rights. Panzino,71 N.J. at 305.

Applying the revival provision, N.J. Stat. Ann. §§ 2A:14-2b, neither divests property owners of a vested right nor disadvantages preexisting contractual relationships. Further, the "mere expectation . . . based upon anticipated continuance of the present laws" cannot alone be regarded as a vested right. Id. (citing Phillips v. Curiale, 128 N.J. 608, 621 (1992)). Therefore, Defendants' expectation that it would have a defense to claims arising from their acts of child sexual abuse under the prior statute of limitations does not amount to a "vested right" in need of constitutional protection.

C. New Jersey Has Moved Away from A Vested Rights Analysis To Determine the Constitutionality Of Revival Laws and Applies Rational Basis Scrutiny Instead.

All statutes with retroactive elements, are subject to scrutiny under the Due Process Clause of the New Jersey Constitution, Art. I ,¶ 1. As noted, the New Jersey Supreme Court historically performed its due process analysis by asking whether retroactive application would interfere with a "vested right." See, e.g., Phillips, 128 N.J. at 617. This inquiry has proven challenging absent a clear and consistent definition of a "vested right" in the context of legislative retroactivity. See, e.g., Pennsylvania Greyhound Lines v. Rosenthal, 14 N.J. 372, 384 (1954) (defining a vested right as "a present fixed interest which . . . should be protected against

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arbitrary state action."); Twiss, 124 N.J. at 469–70 (explaining that retroactive application generally does not violate due process unless the consequences are "particularly harsh or oppressive."); see also, Phillips, 128 N.J. at 620 ("There can be no vested right in the continued existence of a statute or rule of the common law which precludes its change or repeal.'"); Levin v. Township of Livingston, 62 N.J.Super. 395, 404 (Law Div.1960), aff'd in part, rev'd in part, 35 N.J. 500 (1961) (declaring that the "mere expectation as may be based upon an anticipated continuance of the present general laws" does not constitute a "vested right"). Accordingly, the New Jersey Supreme Court in Phillips noted that "[d]iscerning commentators and judges have questioned the value of the vested rights analysis." 128 N.J. at 621 (quotations omitted).

The Court in Nobrega, a case involving retroactive application of a newly enacted real estate disclosure statute, further expressed disfavor in the "vested rights" analysis when determining the constitutionality of retroactive application of a statute. 167 N.J 520, 540-45 (2001). Recognizing the United States Supreme Court's interpretation of the Due Process Clause of the Fourteenth Amendment as holding that retroactive legislation, "does not deprive party of due process if the legislation 'is supported by a legitimate legislative purpose furthered by rational means,'" the Court went on to state its intent to similarly embrace a "rational relationship" test. Id. at 543 (quoting Pension Ben. Guar. Corp. v. R.A. Gray &

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Co., 467 U.S. 717, 729 (1984)). Now, when retroactive legislation is challenged as a violation of New Jersey's Due Process protections[7], the focus of the constitutional inquiry is much broader, and the deferential "rational basis" standard is applied to the legislation. Nobrega, 167 N.J. at 543 (quoting Pension, 467 U.S. at 729). Utilizing this test, as with the "vested rights" analysis, courts defer to the wisdom of the legislature and place the burden upon the party challenging the constitutionality of the retroactive application of a statute to establish that the legislature has acted in an "arbitrary and irrational manner." Nobrega, 167 N.J. at 544 (citing Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976)).

Laws retroactively reviving time barred claims relating to child sex abuse are necessary and increasingly common as state legislatures grapple with remedying the longstanding injustice innumerable survivors have experienced because of short SOLs that have in effect protected child predators over child safety and justice.[8] There are three compelling public purposes served by retroactive revival laws for child sex abuse: they (1) identify previously unknown child predators; (2) shift the cost of abuse from victims to those who caused and enabled the abuse; and (3) educate the public about the prevalence and harm from child sex abuse. The civil

[7] Due process and equal protection guarantees are "inherent" in New Jersey Constitution, Art. I ,¶ 1, though expressed in language different than the U.S. Constitution. D.J.L. v. Armour Pharm. Co., 704 A.2d 104, n11 (N.J. Super. Ct. Law Div. 1997) (citing South. Burl. Cty. N.A.A.C.P. v. Twnp. of Mount Laurel, 336 A.2d 713 (N.J. 1975) app. dismissed, cert. denied, 423 U.S. 808, 96 (1975)).
[8] See 2020 SOL Summary, Nat'l Overview of SOLs for Child Sex Abuse, CHILDUSA.ORG (last visited Nov., 14, 2020), available at https://www.childusa.org/2020sol)

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revival provision of N.J. Stat. Ann. §§ 2A:14-2b achieves these purposes, and indeed, is the only way to remedy the injustice inflicted by the previously unfair, short SOLs. Revival laws are widely recognized as a rational solution to remedying the injustice child sex abuse survivors endured and reasonable public policy for child protection. See, e.g., Sliney, 473 Mass. at 285-86 (2015); Roman Catholic Bishop of Oakland v. Super. Ct., 128 Cal.App.4th 1155, 1171-72 (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 v. Cosgriffe, 262 Mont. 175, 178 (1993) (holding retroactive application of SOLs for torts based on sexual abuse constitutional against due process challenge because statute was rationally related to legitimate purpose of the state).

The New Jersey Legislature recognized the difficulty survivors face and the many years it takes for them to come to terms with their abuse and seek justice.[9] Until 2019, child sex abuse victims in New Jersey had 2 years to file a civil lawsuit relating to their abuse after reaching age 18 or discovering their injury was caused by the abuse. N.J. Stat. Ann. §§ 2A:14-2 and §§2A:61B-1(b). The prior SOL in New Jersey was an oppressive barrier to justice, making it impossible for the vast majority of victims to bring claims. That meant, first and foremost, that

[9] See Delayed Disclosure of Child Sex Abuse, CHILDUSA.ORG (last visited Apr. 1, 2020), available at https://www.childusa.org/delayed-disclosure.

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the public was uninformed about the identities of individuals and institutions that could endanger children. The Legislature's amendment to N.J. Stat. Ann. §§ 2A:14-2 enables sexual abuse victims to bring claims when they are able, to benefit the public and to bring justice to victims. By enacting the revival provision, the Legislature took reasonable steps to revive expired claims of sex abuse where it recognized an opportunity to right a long-standing injustice keeping the truth hidden and victims out of court.

In Short, the Superior Court found that an amendment to an SOL reviving expired claims for wrongful death causes of action was "supported by a legitimate legislative purpose furthered by rational means" because it is difficult for individuals who have lost a loved one to contemplate bringing a claim against a defendant within only two years of a loved one's death. 372 N.J. Super. at 337-40. Similar to Short, the Legislature recognized that it is difficult for victims of sex abuse to bring claims within two years, even if they are cognizant that they were wronged.

In D.J.L. v. Armour Pharm. Co., the Superior Court found that it was "not debatable" that the Legislature's revival of HIV-related claims was rationally related to the purpose of protecting New Jersey's people. 704 A.2d at 108. The Court recognized the principle that a State can protect its people by holding perpetrators accountable. Id., at 114-15. The revival of expired claims did not impair any constitutionally protected rights where the Legislature, "through legislative

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debate and deliberation," id., at 113, determined the appropriate date of accrual for a claim.

Most recently, in T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (N.J. Sup. Ct., Law Division, Morris Cty), the court upheld N.J. Stat. Ann. §§ 2A:14-2b as constitutional, and in so doing explained that "there is a recognized body of signs and literature regarding how difficult it is for victims of sexual abuse to bring their claims within the two year limitation period. By enacting this statute, the State is utilizing its powers and efforts to protect those most vulnerable in society by holding sexual predators accountable." Tr. of Mot. at 53, May 22, 2020.

The legitimate legislative purpose of N.J. Stat. Ann. §§ 2A:14-2b is to increase public safety and remedy the injustice inflicted on so many survivors of sex abuse by unfairly short SOLs. The Legislature recognized that courthouse doors were unfairly blocked for victims of sex abuse, and the rational remedy the Legislature chose was to unlock them and push open the doors to truth and justice. The Legislature recognized that the State has an interest in discovering hidden child predators in New Jersey to keep children safe from future abuse. Retroactive revival of civil sex abuse claims is not only a rational means of identifying hidden child predators in New Jersey and remedying the longstanding injustice of short SOLs, it is the only means. Even if the revival provision were subject to a higher standard of scrutiny than the rational basis standard, it would

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be impossible to identify more compelling interests that are more narrowly tailored than the interests protected by N.J. Stat. Ann. §§ 2A:14-2b.

D. N.J. Stat. Ann. § 2A:14-2b Revival Of Child Sex Abuse Claims Does Not Result In A Manifest Injustice To Defendant.

Even after satisfying the constitutional requirement of rational basis scrutiny, courts may apply their "equitable powers and decline to apply" retroactive laws in New Jersey if retroactive application would result in a "manifest injustice." Nobrega, 167 N.J. at 537. The manifest injustice test is an equitable inquiry that "requires a weighing of the public interest in the retroactive application of the statute against the affected party's reliance on previous law, and the consequences of that reliance." Nobrega, 167 N.J. at 547 (quoting Nelson v. Bd. of Educ. of Tp. of Old Bridge, 148 N.J. 358, 371 (1997)). It is a doctrine that the courts have sparingly applied and has been applied to defeat the application of a retroactive law on only two occasions. See Nobrega 167 N.J. at 546 (citing State Trooper v. State, 149 N.J. 38, 56 (1997)).

The overwhelming and compelling public interests in the retroactive application of N.J. Stat. Ann. §§ 2A:14- 2b to revive previously expired claims of child sex abuse is well established in Part I(C) of this brief. The "manifest injustice" inquiry weighs these interests in revival of child sex abuse claims against Defendants' reliance on prior SOLs.

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The "critical element of the manifest injustice inquiry is actual reliance by the party challenging the retroactive statute", and "whether the consequences of this reliance are so deleterious and irrevocable that it would be unfair to apply the statute retroactively." Short, 372 N.J. Super. at 340 (quoting Nobrega, 167 N.J. at 546-47 (quoting Gibbons v. Gibbons, 86 N.J. 515, 523-24 (1981)). The "belief that [one] could no longer be sued" is not "the type of reliance that would support equitable relief from an otherwise constitutional retroactive lifting of the time-bar." Id. N.J. Stat. Ann. §§ 2A:14-2b is not "manifestly unjust" merely because a party relied on avoiding liability or hoped they would not be sued for tortious conduct.

The Legislature exercises its police power to enact laws that "promote the public health, safety, morals or general welfare". Rothman v. Rothman, 65 N.J. 219, 227-28 (1974). The state's compelling interest in protecting New Jersey's youth from sex abuse is well-established in legislative enactments and judicial rulings.[10] See, e.g., P.V. ex rel. T.V. v. Camp Jaycee, 197 N.J. 132, 149 (2008) ("[T]his State has a paramount interest in preventing and protecting against . . . sexual abuse and

[10] 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."); Maryland v. Craig, 497 U.S. 836, 837 (1990) ("States have a compelling interest in protecting minor victims of sex crimes from further trauma"); 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); Ginsberg v. New York, 390 U.S. 629, 640 (1968) ("The well-being of children is of course a subject within the State's constitutional power to regulate").

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exploitation of children."); J.S. v. R.T.H., 155 N.J. 330, 343 (1998) ("There can be no doubt about the strong policy of this State to protect children from sexual abuse"); Matter of Commitment of N.N., 146 N.J. 112, 131 (1996) ("The State assuredly has a deep and abiding interest in insuring the mental health and well-being of its 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).

The civil revival provision in N.J. Stat. Ann. §§ 2A:14-2b also 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 and their enabling institutions in New Jersey to the public so they can be apprehended. Holding perpetrators accountable now protects future children from abuse by exposing liable actors and halting their intentional or negligent actions. The Legislature understood the public value of identifying hidden predators when it enacted N.J. Stat. Ann. §§ 2A:14-2b.

By enacting N.J. Stat. Ann. §§ 2A:14-2b, the Legislature acted to shift *some* of the cost of abuse from the victims to those responsible for their abuse. The cost of sex abuse is high and victims will always be forced bear

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life-long, high costs of the abuse.[11] It is not deleterious to require would-be defendants to defend against claims of sex abuse, especially where a plaintiff still has the initial burden of proof to establish a claim. A manifest injustice argument fails if it relies on the potential unfairness to a defendant, who committed or enabled horrific crimes of child sex abuse, that could result from having to compensate a victim for the injury caused. See Short, 372 N.J. Super. at 341 ("In any event, it can hardly be considered manifestly unjust that the family's assets will now be available to recompense the wronged family member at the expense of the family member who caused that wrong."). The balance weighs heavily in favor of the public purpose of compensating survivors for the life-long losses suffered as a result of the intentional or tortious conduct of others.

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[11] The average lifetime cost of child maltreatment (physical, sexual, emotions, psychological abuse, and neglect) is $830,928.00 per victim. The toxic stress and trauma associated with childhood sexual abuse are 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, CHILD ABUSE NEGLECT (2017); Angelakis, I., Gillespie, E.L., Panagioti, 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 5 New Jersey residents receive Medicaid, it is likely sex abuse survivors disproportionately receive support due to the crippling effect of trauma. Louise Norris, New Jersey and the ACA's Medicaid expansion, HEALTHINSURANCE.ORG (Feb. 22, 2018), available at https://www.healthinsurance.org/new-jersey-medicaid/. In these cases, a "Medicaid lien" is placed on settlement funds for the coverage directed to problems arising from the sex abuse. Without SOL reform, 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.

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New Jersey 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. 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 impact for the children and families of New Jersey.[12]

Any reliance that defendants face under N.J. Stat. Ann. §§ 2A:14-2b is not deleterious and is far outweighed by the public interest and the victims' need for delayed, but necessary justice. See, T.M., Tr. of Mot. at 46 ("[T]he public interest in allowing victims of sexual abuse to seek redress through the courts, and to obtain compensation for what they went through and what they suffered, speaks for itself."); see also id. at 52 ("There is no manifest injustice to the defendants because their actions were illegal at the time they took action and any reliance on the expiration of plaintiff's child sex abuse claims is far outweighed by New Jersey's

[12] See generally, MAKING THE CASE: WHY PREVENTION MATTERS, PREVENTCHILDABUSE.ORG (last visited Dec. 8, 2020), available at https://preventchildabuse.org/resources/why-prevention-matters/; Preventing Adverse Childhood Experiences, CDC.GOV (last visited Dec. 8, 2020), available at https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html.

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public interest in identifying known perpetrators holding responsible institutions accountable and shifting the cost of abuse from the victims to those who enabled the abuse."); see also id. at 54 ("[T]he State of New Jersey has a paramount and enduring interest in preventing and protecting and against the sexual abuse and exploitation of children. Any detrimental reliance on the part of the individual and the entity defendants in this case is outweighed by the public policy interest served by the legislature. . . any harm to the defendants is outweighed by the public interest and the need of victims of assault for justice. . .").

II. NEW JERSEY LAW IS IN ACCORD WITH THE MANY STATES ALLOWING REVIVAL OF EXPIRED CIVIL CLAIMS.

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 SOLs is constitutional. 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.[13] New Jersey is in this category. The revival of an expired

[13] **ARIZ:** Chevron Chemical Co. v. Super. 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

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civil SOL has been upheld in other contexts in New Jersey. Panzino , 71 N.J. at 304 (revival of occupational hearing loss claims constitutional); Short, 372 N.J. Super. at 304-05 (revival of wrongful death actions constitutional); Tedesco v. Trantino, A-1062-05T1, 2006 WL 3344024, at *2 (N.J. Super. Ct. App. Div. Nov. 20, 2006) (revival of wrongful death actions constitutional); Armour Pharm. Co.,

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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 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 Arsdel*l*, 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).

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307 N.J. Super. at 65 (revival of claims for HIV or AIDS against blood products constitutional); T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Div., Morris Cty.) (revival of claims arising from child sexual abuse constitutional).

Further, due process at the state level has been a time evolving doctrine, with states moving away from an antiquated vested rights approach to statutes of limitations defenses and deferring to legislative judgment instead for revival of previously expired claims.[14] Many states have explicitly rejected the vested rights approach to a statutes of limitations defense. 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

[14] See Landgraf , 511 U.S. at 272.

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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).

Under the New Jersey Constitution, N.J. Stat. Ann. §§ 2A:14-2b likewise enjoys a presumption of constitutionality and the burden of overcoming this presumption is on Defendants. Nobrega, 167 N.J. at 544 (citing Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) ("It is by now well established that

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legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.”)). “[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). Defendants have failed to carry the burden of overcoming the presumption in favor of the constitutionality of N.J. Stat. Ann. §§ 2A:14-2b.

III. DECISIONS IN OTHER STATES REVIVING CHILD SEX ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF THE REVIVAL WINDOW IN N.J. STAT. ANN. §§ 2A:14-2B.

Like New Jersey, 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 and to safely inform the public of hidden child predators. 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.

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

New Jersey 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, Georgia, Hawaii, Michigan, Minnesota, Montana, New York, North Carolina, Utah, Vermont, Virginia, District of Columbia, and Guam which have done so explicitly with a time-limited revival window.[15]

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,

[15] 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).

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Kansas, Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Virginia.[16] In the District of Columbia, Guam and another 4 states - Arizona, Michigan, Vermont, West Virginia - child sex abuse claims were revived without a constitutional challenge in the courts.[17] Like New Jersey, Georgia and New York 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.[18] 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.[19]

[16] 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, 274 Va. 332, 337 (2007).

[17] *Supra* n.15.

[18] T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Div., Morris Cty); 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); Harvey v. Harvey, No. 2017-CV-712, Superior Court of Carroll County, Hon. Bill Hamrick (Oct. 31, 2019)

[19] 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).

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Revival laws were held to be unconstitutional in 8 states - Arkansas, Florida, Illinois, Missouri, Rhode Island, South Carolina, Utah, and Virginia.[20] However, Virginia subsequently amended its constitution for the purpose of allowing revival of child sex abuse claims.[21] 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 statutes of limitations defense. 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.[22] Unlike in these minority states, this Court is neither constrained by the New Jersey Constitution nor binding caselaw to invalidate New Jersey's revival window.

20 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).

[21] See VA CONST. ART. 4, § 14 (1995); Kopalchick, 274 Va. at 337.

[22] 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.").

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

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").

New Jersey's 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

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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 considered the reasonableness of a claim revival statute for child sex abuse victims pursuant to its state 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 relating to the child sexual abuse epidemic, judicial deference to legislative judgment as to civil, procedural retroactivity is now the norm. See Cosgriffe, 864 P.2d at 779 (quoting Hoffman, 452 N.W.2d at 513-14) ("[W]e are not in a position to judge the wisdom of the

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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 legislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law.").

New Jersey law clearly permits revival of previously time-barred claims, and so N.J. Stat. Ann. §§ 2A:14-2b for survivors of child sex abuse is constitutional. The majority of states that have ruled on the constitutionality of reviving previously expired claims, like New Jersey, recognize that defendants do not have a constitutionally protected right in a statutes of limitations defense. This Court accordingly should uphold the revival window as constitutional and defer to the New Jersey 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* CHILD USA respectfully requests this Court hold that the retroactive revival provision of N.J. Stat. Ann. §§ 2A:14-2b is a constitutional exercise of the Legislature's authority.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G) and Fed. R. App. P. 32(g)(l), the undersigned hereby certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and Fed. R. App. P. 29(a)(5):

1. This brief contains words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type, which complies with Fed. R. App. P. 32(a)(5) and (6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, I caused a copy of (1) the Notice of Motion for Leave to File an Amici Curiae Brief; (2) the Certification of Charles L. Becker, Esq. and Kline & Specter, P.C.; and (3) the proposed Amicus Curiae Brief, to be served electronically via e-file, whereupon all counsel of record were served.

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