

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMMETT W. CALDWELL,

Plaintiff,

vs.

CITY OF NEW YORK; NYC BOARD  
OF EDUCATION, et. al.

Defendants.

CASE NO.: 21-CV-6560 (LTS)

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

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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, including in New York, where she was a law professor at Benjamin N. Cardozo School of Law for 26 years.

CHILD USA is uniquely positioned to provide this Court with current research and analysis helpful to the statutory interpretation of New York’s Child Victims Act (the “CVA”), including the legislative history and intent of the CVA, the science of delayed disclosure by victims of their abuse, and the compelling public interests in justice and public safety that the Legislature considered when enacting the CVA revival window. 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.

CHILD USA's amicus brief is helpful to the Court's understanding of the plain meaning and legislative intent of the Child Victims Act, particularly the policy rationale for opening the doors to justice for all child sex abuse survivors who were blocked by unfairly short SOLs and exposing hidden predators to make New York safer for children today. This brief will explain how C.P.L.R. § 208(b)'s civil statute of limitations ("SOL") extension to age 55 for claims that were not already expired and C.P.L.R. § 214-g's revival window for expired civil claims work together in harmony to achieve the important public policy interests of the CVA.

### PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae*. The Court concluded that, although Plaintiff filed his complaint alleging child sexual abuse within the deadline pursuant to N.Y.C.P.L.R. § 214-g's revival window, his claims were nonetheless time-barred. The Court reasoned that "because Plaintiff was a child at the time of the events in 1965, he must be over 55 years old, and his claims are therefore barred under N.Y. C.P.L.R. § 208(b)." Caldwell v. City of New York, 2021 WL 3887678 (S.D.N.Y. 2021) at \*6. The Court provided Plaintiff with 60 days to file a declaration demonstrating why his complaint should not be dismissed as time barred. Id. at \*10. Amicus CHILD USA here joins Plaintiff, who is unrepresented, in his request that the complaint not be dismissed as time-barred under C.P.L.R. § 208(b).

There is a nationwide epidemic of child sex abuse, with the vast majority of claims expiring before they ever get to court. Before New York's Child Victims Act was passed, child sex abuse victims in New York had until they reached age 23 to file a suit against their abusers and age 21 for personal injury claims against other defendants. See N.Y.C.P.L.R. §§ 208, 213-c and 214(5). New York was one of the worst states in the United States for child sex abuse claims before the Child Victims Act was passed (and extended). *Sponsor's Memorandum*, Senate Bill No. S2440,

2019-20 Leg. Sess. (N.Y. 2019), available at <https://www.nysenate.gov/legislation/bills/2019/S2440>.

Senator Brad Hoylman and Assemblymember Linda B. Rosenthal sponsored the Child Victims Act, which was signed into law in 2019. The Child Victims Act, New York Senate Bill No. 2440/Assembly Bill No. A2683, N.Y. 242nd Leg. Sess. (2019). Senator Hoylman and Assemblymember Rosenthal also sponsored Senate Bill S7082/Assembly Bill A9036 in 2020, which extended the Act for another year due to COVID-19 related court closures. Over 10,000 child sex abuse victims have filed claims pursuant to the window. CHILD USA, *Statute of Limitations Reform Serves the Public Interest: A Preliminary Report on the New York Child Victims Act*, CHILDDUSA.ORG (Aug. 23, 2020), available at <https://childusa.org/wp-content/uploads/2021/08/A-Preliminary-Report-on-the-New-York-Child-Victims-Act.pdf>. As the sections read and legislative history demonstrates, the two provisions N.Y.C.P.L.R § 214-g and N.Y.C.P.L.R § 208(b) work in tandem to open the doors to justice for all survivors. The SOL extension to age 55 is applicable to claims that were not already expired before the CVA went into effect, and the revival window is applicable to claims for past abuse that were already time-barred before the CVA was enacted. As Senator Hoylman said during the Senate hearing on January 28, 2019, “The Child Victims Act... would create an avenue for justice. We are in this chamber opening the courthouse doors for the thousands of survivors across the state.” *The Child Victims Act: Hearing on S.B. S4220 Before The New York State Senate*, 2019-20 Leg. Sess. (Jan. 28, 2019), available at [www.youtube.com/watch?v=tgG2L2uo7IM](http://www.youtube.com/watch?v=tgG2L2uo7IM).

The Court’s decision will have a significant effect on victims of child sexual abuse throughout New York who are 55 and older and are now embracing the revival window to bring previously expired claims that were blocked by unfairly short SOLs. If Plaintiff’s complaint is



dismissed, it will create a conflict of statutory interpretation within the New York courts that was never intended when the legislature passed the CVA. Accordingly, CHILD USA respectfully submits that Plaintiff's complaint should not be dismissed because the revival window is open to all victims, regardless of their age.

## ARGUMENT

### **I. THE PLAIN MEANING OF THE CHILD VICTIMS ACT SHOWS THAT THE N.Y.C.P.L.R § 214-g REVIVAL WINDOW IS OPEN FOR ALL CHILD SEX ABUSE VICTIMS REGARDLESS OF THEIR AGE AND IS NOT LIMITED BY SECTION 208(b)**

The crux of the issue in this case is whether the age limitation outlined in one section of the CVA, C.P.L.R § 208(b), can be interpreted to limit revived claims brought under another section, § 214-g. The plain meaning of both provisions does not support such a reading. The CVA accomplished three distinct amendments and additions to state law related to child sexual abuse: (1) the statute of limitations was extended on criminal cases involving certain sex offenses against children under 18 (see N.Y.C.P.L.R. § 30.10(f)); (2) the time was extended within which child sex abuse civil actions may be brought to the victim's 55th birthday (see N.Y.C.P.L.R § 208(b)); and (3) a one-year (later extended to two-year) window was opened reviving civil actions on which the statute of limitations had already run, even in cases that were litigated and dismissed on limitations grounds, effective August 14, 2019 (see N.Y.C.P.L.R § 214-g). See also Barker v. Victorious Life Christian Church, 151 N.Y.S.3d 590, n.1 (Sup. Ct. 2021).

This Court has preliminarily concluded that Plaintiff may not bring a child sexual abuse claim under the revival window of C.P.L.R § 214-g due to the age 55 SOL in C.P.L.R § 208(b). However, the plain language of the statute as well as the legislative history prove that the SOL in Section 208(b) does not apply to claims brought under the revival window. C.P.L.R § 208(b) extends the SOL to when a victim is 55 years old for any claims for abuse that were not already

expired; C.P.L.R. § 214-g permits any claims that were previously time-barred to be brought for a limited period of time.

**A. The Plain Language of N.Y.C.P.L.R. § 214-g Allows a Revival Window for Any Child Sexual Abuse Claims That Were Previously Barred**

“It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature.” People ex rel. Negron v. Superintendent, Woodbourne Correctional Facility, 36 N.Y.3d 32, 160 N.E.3d 1266, 136 N.Y.S.3d 819 (N.Y. 2020) (quoting Patrolmen’s Benevolent Assn. of City of N.Y. v. City of New York, 41 N.Y.2d 205, 208 (N.Y. 1976)). Generally, courts “look first to the statutory text, which is the clearest indicator of legislative intent.” Id. at 36 (quoting Matter of New York County Lawyers’ Assn. v. Bloomberg, 19 N.Y.3d 712, 721 (N.Y. 2012)). “[W]here the language of a statute is clear and unambiguous, courts must give effect to its plain meaning.” Id. (quoting State of New York v. Patricia II., 6 N.Y.3d 160, 162 (N.Y. 2006)).

Accordingly, N.Y.C.P.L.R. § 208(b) states the following:

“Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, with respect to all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sexual offense committed against such person who was less than eighteen years of age such action *may be commenced*, against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of said conduct, on or before the plaintiff or infant plaintiff reaches the age of fifty-five years.” (emphasis added).

This section extends the statute of limitations for child sexual abuse claims and allows a plaintiff to sue for their injuries until they reach age 55. The prior law set the SOL for child sex abuse

victims at age 23 for suits against their abusers and age 21 for personal injury claims against other defendants. See N.Y.C.P.L.R. §§ 208, 213-c, and 214(5).

There is a clear absence of any explicit language in Section 208(b) referencing the newly added Section 214-g revival window provision or Section 208(b)'s applicability to newly revived actions brought pursuant to Section 214-g. For Section 208(b) to apply retroactively to the previously time-barred window claims, clear legislative intent would be required. See 75 N.Y. Jur. 2d Limitations and Laches § 13 (Statutes of limitation “do not operate retroactively unless the contrary legislative intent is clearly indicated.”) (citing Hastings v. H. M. Byllesby & Co., 293 N.Y. 413, 57 N.E.2d 737 (1944) (“The courts will not give retrospective operation to a statute which interferes with antecedent rights in the absence of an unequivocal expression in the statute that the Legislature intended that the statute should have such effect”)). Notably, such applicability would contradict the express legislative intent that the window would be open for all survivors, regardless of their age, as discussed in Section II infra.

In contrast, the language of N.Y.C.P.L.R. § 214-g is as follows:

“Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding... *every civil claim or cause of action brought* against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age... or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, *which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim*, is hereby revived...” (emphasis added).

This section allows any child sexual abuse claim that was previously barred due to the statute of limitations or a plaintiff's failure to file a notice of claim to be revived. The revival was originally

only for a period of one year, but it was later extended to two years. Senate Bill S7082, 2019-20 Leg. Sess. (N.Y. 2020) (enacted). Unlike Section 208(b), Section 214-g explicitly applies to claims that were previously time-barred.

“Ultimately, [the] Court should give the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions.” People v. Iverson, 37 N.Y.3d, 170 N.E.3d 728, 148 N.Y.S.3d 173 (N.Y. 2021) (quoting Matter of Long v. Adirondack Park Agency, 76 N.Y.2d 416, 420, 559 N.Y.S.2d 941, 559 N.E.2d 635 (N.Y. 1990)). Indeed, a statute “must be construed as a whole,” and “its various sections must be considered together and with reference to each other.” Town of Aurora v. Village of E. Aurora, 32 N.Y.3d 366, 372, 91 N.Y.S.3d 773, 116 N.E.3d 64 (N.Y. 2018).

Both sections fall within Article 2, Chapter 8 of New York’s Consolidated Rules for Civil Practice Law and Rules, entitled “Limitations of Time”. Section 208 titled “Infancy, Insanity,” was amended under the CVA to add an additional subsection (b) extending the statute of limitations for child sexual abuse claims until the victim is 55 years old. Conversely, the CVA added an entirely new section under Article 2, § 214-g, titled “Certain sex abuse cases” that revives “every civil claim or cause of action” related to child sexual abuse that was previously expired temporarily. “Where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.” Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs., 5 N.Y.3d 36, 43, 799 N.Y.S.2d 753, 832 N.E.2d 1169 (N.Y. 2005) (quoting McKinney’s Cons Laws of NY, Book 1, Statutes § 240, Comment, at 411–412); see also Pajak v. Pajak, 56 N.Y.2d 394, 397, 452 N.Y.S.2d 381, 437 N.E.2d 1138 (N.Y.1982). Because Section 214-g does not include an age limitation for previously expired claims, and there is no indication in either

section that Section 208 applies to window claims, a contrary interpretation is unsupported by a plain reading of the text.

Each section of the CVA is separate and distinct from the other in its design and purpose, and there is no conflict between the provisions of Section 214-g and Section 208(b). The statutory language as set forth in C.P.L.R. § 208(b) extended the time within which civil actions may be brought up to the victim's 55th birthday. C.P.L.R. § 214-g separately opened with an additional section a one-year (later extended to two-year) window reviving any civil actions for which the statute of limitations had already run, even in cases that were litigated and dismissed on statute of limitations grounds. Section 214-g applies to previously time-barred claims, while Section 208 applies to claims that were not already expired. "If apparently conflicting provisions of a statute can be reconciled, they ought to be." Blalock v. Olney, 17 A.D.3d 842, 793 N.Y.S.2d 583 (N.Y. Sup. Ct. Apr. 14, 2005) (citing Matter of Sun Beach Real Estate Dev. Corp. v. Anderson, 98 A.D.2d 367, 369, 469 N.Y.S.2d 964 (1983)). Further, even if Section 208 was applicable to window claims, it merely states "action *may* be commenced . . . on or before the plaintiff or infant plaintiff reaches the age of fifty-five years" and does not prohibit another statute, like Section 214-g, from permitting claims after a plaintiff reaches that age. C.P.L.R. § 208(b) (emphasis added). Therefore, there can be no conflict between these two provisions.

In appropriate circumstances, the Court may "inquire into the... purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history." Town of Aurora v. Village of E. Aurora, 32 N.Y.3d 366, 372, 91 N.Y.S.3d 773, 116 N.E.3d 64 (2018). Although a complete summary of the CVA's legislative history will be provided in the next section, the bill summary and Sponsor's Memorandum authored by Senator Holyman confirm the above interpretation of these provisions. The memorandum states that C.P.L.R. §



208(b) “amends *prospectively* the statute of limitations in civil actions alleging conduct which would constitute a sexual offense against a child under the age of 18” (emphasis added). *Sponsor’s Memorandum*, Senate Bill S2440, 2019-20 Leg. Sess. (N.Y. 2019), available at <https://www.nysenate.gov/legislation/bills/2019/S2440>. In contrast, the memo indicated that C.P.L.R. § 214-g accomplishes the following:

“[The section] allows for time-barred actions in which such conduct is alleged to be revived, and not be barred by any statute of limitation or notice of claim requirement otherwise existing in law... This section makes clear that *any* revived civil actions brought during the one-year window that were previously dismissed due to being time-barred or for failure to file a notice of claim or a notice of intention to file a claim shall not be dismissed on those grounds.”

*Id.* (emphasis added). Therefore, the legislative history confirms that the two sections are distinct provisions, with Section 208(b) functioning prospectively and Section 214-g reviving previously barred claims, that provide separate avenues and requirements for relief in the overarching goal of providing justice for all child sexual abuse victims.

#### **B. New York Courts and the Unified Court System Agree that N.Y.C.P.L.R. § 214-g Opened a Revival Window for Survivors of Any Age**

The Court’s preliminary interpretation is an outlier amongst the 10,857 child sex abuse cases survivors filed under C.P.L.R. § 214-g’s revival window.<sup>1</sup> While New York has not yet published aggregate data on the current age of plaintiffs in those cases, many claims by survivors above age 55 for abuse perpetrated against them in the 1960s and 1970s are now pending. See e.g., Estate of Gallagher by and through Gallagher v. Catholic Foreign Mission Society of America,

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<sup>1</sup> See CHILD USA, *Statute of Limitations Reform Serves the Public Interest: A Preliminary Report on the New York Child Victims Act* (Aug. 23, 2021), available at <https://childusa.org/a-preliminary-report-on-the-new-york-child-victims-act/>; See also Tokasz, J., *Nearly 11,000 Child Victims Act lawsuits filed in New York State*, THE BUFFALO NEWS (Aug. 17, 2021), available at [https://buffalonews.com/news/local/crime-and-courts/nearly-11-000-child-victims-act-lawsuits-filed-in-new-york-state/article\\_e9a9dfd8-ff66-11eb-b2c7-d304eeb7206a.html](https://buffalonews.com/news/local/crime-and-courts/nearly-11-000-child-victims-act-lawsuits-filed-in-new-york-state/article_e9a9dfd8-ff66-11eb-b2c7-d304eeb7206a.html). (“The state Office of Court Administration tallied a total of 10,857 lawsuits”).

Inc., 105 N.Y.S.3d 863 (N.Y. July 23, 2019) (Petitioner alleged that the decedent was sexually abused when he was 11 years old by a brother within the church in the 1960s); Wagner v. The Rockefeller University Hospital, *Petition for Pre-Action Discovery Independent Master and Conjunction*, Index No. 54315/2019 (N.Y. Sup. Ct. Apr. 26, 2019) (Petitioners alleged they were sexually abused as patients of Dr. Reginald Archibald at the Rockefeller University Hospital in the 1960s and 1970s); Bellafante, G., *She Was 4 and Deaf. That's When the Sexual Abuse Began, She Said*, THE NEW YORK TIMES (Oct. 16, 2019), <https://www.nytimes.com/2019/10/16/nyregion/new-york-school-deaf-sexual-abuse.html> (12 former students of the New York School for the Deaf during the 1960s and 70s filed suit against the school in the New York State Supreme Court in Westchester County claiming they were sexually abused by the dormitory headmaster). Notably, *amicus* research has not yielded another window case challenged as time barred on account of a plaintiff's current age.

Further, judicial opinions, including those from the Southern District of New York, explicitly acknowledge that the window applies to survivors of any age and is not limited to younger plaintiffs. In one recent case, the Court stated, "The CVA, passed on February 14, 2019, opened a window to revive cases involving sexual abuse of minors, *regardless of the current age of the victim*, where the statute of limitations had run." Holloway v. Holy See, No. 19 CIV. 2195 (NRB), 2021 WL 1791456, at \*1 (S.D.N.Y. May 5, 2021) (emphasis added); See also Poppel v. Rockefeller Univ. Hosp., No. 19-CV-1403 (ALC), 2019 WL 3334476, at \*1 (S.D.N.Y. July 25, 2019) ("The CVA 'provides for a one-year revival window during which a *survivor of any age* may bring claims that were previously time-barred under the statute of limitations.'" (emphasis added)).

The New York State Unified Court System has also indicated that the revival window applies to victims of any age. The Uniform Civil Rules for the Supreme Court and County Court contain a specific provision regarding actions revived pursuant to § 214-g. N.Y. Comp. Codes R. & Regs. tit. 22, § 202.72. Under subsection (h), “any person who intends to appear without a lawyer in a case revived under C.P.L.R. § 214-g is advised to review the information set forth at <http://www.nycourts.gov/courthelp/>.” The link to the New York Courts official website provides guidance for child sex abuse victims in filing claims. It explains that victims who were sexually abused as children “can start a civil case against their abuser or a liable third party, like a church or school, until they are 55 years old”; however, the subsequent section reads “**Important!** For one year, between August 14, 2019 – August 13, 2020, a child sex abuse victim can start a civil case: No matter how old you are” and “No matter how long ago the abuse took place.” New York State Unified Court System, *Child Sex Abuse Cases*, NYCOURTS.GOV, <https://www.nycourts.gov/courthelp/Safety/childSexAbuseCases.shtml/> (last updated Aug. 14, 2019). Therefore, current judicial opinions and cases filed since the passage of the CVA, as well as the New York court system, are in agreement that the revival window does not have an age limitation.

## II. THE LEGISLATIVE HISTORY OF THE CVA CONFIRMS THAT THE N.Y.C.P.L.R. § 214-G REVIVAL APPLIES TO ALL VICTIMS

As previously stated, the primary consideration of courts in interpreting a statute is to “ascertain and give effect to the intention of the Legislature.” Riley v. County of Broome, 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 (2000) (quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 92[a], at 177). Generally, “unambiguous language of a statute is alone determinative.” Id. (citing Matter of Washington Post Co. v. New York State Ins. Dept., 61 N.Y.2d

557, 565, 475 N.Y.S.2d 263, 463 N.E.2d 604 (N.Y. 1985)). However, the legislative history of an enactment may also be relevant and “is not to be ignored, even if words be clear.” Riley, at \*463 (quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 124, at 252). “When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no “rule of law” which forbids its use, however clear the words may appear on “superficial examination.” Id. (quoting New York State Bankers Assn. v. Albright, 38 N.Y.2d 430, 437, 381 N.Y.S.2d 17, 343 N.E.2d 735 (N.Y. 1985)). Pertinent also are “the history of the times, the circumstances surrounding the statute’s passage, and attempted amendments.” Id. (quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 124, at \*253).

**A. The Legislature Understood and Intended that the CVA Window Would Be Open for All Survivors No Matter Their Age**

The New York Legislature intended for the CVA window to revive all time-barred claims of child sex abuse for adult survivors, regardless of how long ago a survivor was abused and regardless of how old that person is today. As previously indicated, the Sponsor’s Memorandum in support of the CVA explained the “[p]assage of the Child Victims Act will finally allow justice for *past* and future survivors of child sexual abuse.” *Sponsor’s Memorandum*, Senate Bill No. S2440, 2019-20 Leg. Sess. (N.Y. 2019), available at <https://www.nysenate.gov/legislation/bills/2019/S2440>. (emphasis added). In a letter to then Governor Andrew Cuomo, the CVA sponsors in the Senate and Assembly were explicit that the window was for adult survivors of any age whose claims were expired:

“This legislation would also open a one-year period for individuals currently barred by the statute of limitations to bring a civil case against their abuser or the institution which harbored them, *no matter how long ago the abuse occurred.*”

See *Sponsors' Letter in Support of Senate Bill No. S.2440/Assembly Bill No. A2683*, Bill Jacket, (N.Y. 2019) at 5 (emphasis added).

It is also clear from a review of the hearings in the Senate and Assembly, and the votes that followed, that the Legislature passed the CVA with the understanding and intention that the window would be open for child sex abuse survivors of any age. See *The Child Victims Act: Hearing on S.B. S4220 Before The New York State Senate*, 2019-20 Leg. Sess. (Jan. 28, 2019), available at [www.youtube.com/watch?v=tgG2L2uo7IM](http://www.youtube.com/watch?v=tgG2L2uo7IM). (“Senate Hearing Video”); *Transcript of the Hearing on Assembly Bill No. A02683*, New York State Assembly (Jan. 28, 2019), available at [https://nystateassembly.granicus.com/DocumentViewer.php?file=nystateassembly\\_84e1669f47e4dc307e3e5e07ecc65e4e.pdf&view=1](https://nystateassembly.granicus.com/DocumentViewer.php?file=nystateassembly_84e1669f47e4dc307e3e5e07ecc65e4e.pdf&view=1) (“Assembly Hearing Transcript”). There was no mention at any point on the floors in either chamber of the window being limited to age 55. *Id.* Yet, numerous legislators provided explicit and implicit recognition that the revival window would be open for all survivors no matter how long ago they were abused.<sup>2</sup> Notably, Assemblyman Andy Goodell pointed to the openness of the window as justification for his vote against it. He lamented,

[F]or a year, you can bring a civil lawsuit against anybody with **no restrictions whatsoever as to the timing**. They don't even have to be alive anymore, you can sue their estate if they have one, or their employer. And **your claim could be 50, 60, 70 years old**, long past the time that any, any individual or employer would have any records to defend themselves... All it does is allow somebody, **regardless of how many decades have passed**, to sue your local school district and your local

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<sup>2</sup> *Id.* Senator Brad Hoylman stated during his remarks, “We are in this chamber opening the courthouse doors for the thousands of survivors across the state. Both survivors moving forward, and the thousands of adult survivors who didn't get their chance to have their case heard and allow them to have their case in a court of law with a jury of their peers.” Senator Peter B. Harkham stated, “This bill will go a long way giving the past generation justice, generations moving forward justice.” Senator Diane J. Savino said, “We're providing justice to people who have been victimized and lived with it for many many years.” Senator Rich Funke said, “Personally I remained troubled by the implications of the one year look back window and what it means for schools and churches across the state. . . . In Rochester New York, those cases most of which happened too long ago to be prosecuted, and many of which included perpetrators and accomplices who had passed away changed my view. At that moment I understood perhaps the only solace and justice that many victims would be ever able to achieve lie in their ability to file suit in a court of law. The church has withdrawn its opposition . . . and so today I rise to strongly support his legislation.”



municipality claiming they were a victim when there are no longer any records or anyone alive to defend your locality. For that reason, I will be voting against it.

Assembly Hearing Transcript, at 24-26 (emphasis added).

**B. The CVA Was Designed to Provide Justice to All Victims of Child Sex Abuse in New York, No Matter How Long Ago They Were Abused**

It is clear from the prior legislative history of the CVA legislation that the New York legislature designed the revival window signed into law to be open for victims any age. The 2019 window was the successful culmination of over 13 years of advocacy for justice on behalf of child sex abuse survivors in New York. New York's CVA was first introduced not long after California opened the first successful window for survivors in the United States. Cal. Civ. Proc. Code § 340.1.<sup>3</sup> Assemblymember Margaret Markey introduced the first CVA legislation in the 2005-2006 session. New York Assembly Bill No. A11723, 2005-6 Leg. Sess. (N.Y. 2006).<sup>4</sup> The CVA window was originally designed to “provide a remedy for those whose lives have been unalterably changed by the horror of child-hood sexual abuse. Victims of these horrific crimes will get their day in court and be able to seek the justice they have been denied.” *New York State Assembly Memorandum in Support of Legislation*, Assembly Bill No. A4560B, 2007-08 Leg. Sess. (N.Y. 2007), available at [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A04560&term=2007&Summary=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A04560&term=2007&Summary=Y&Memo=Y).

Of all the versions of revival window that the New York legislature considered since 2005, there was only one version in 2009 that explicitly limited the window with an upper age cap,

<sup>3</sup> Notably, California's one-year window did not have an upper age limit. See Cal. Civ. Proc. Code § 340.1.

<sup>4</sup> See Rojas, R., *She Fought for Stronger Sexual Abuse Laws. Her Son Was the Reason*, THE NEW YORK TIMES (Feb. 20, 2019) <https://www.nytimes.com/2019/02/20/nyregion/margaret-markey-child-victims-act.html>; Vitello, P., *For 5<sup>th</sup> Year, Child Sex Abuse Bill Dies in Legislature*, THE NEW YORK TIMES (Jun. 2, 2010) <https://www.nytimes.com/2010/06/03/nyregion/03abuse.html>.

according to amicus curiae's research. Senate Bill No. S05893/Assembly Bill No. A.2596, 2009-10 Leg. Sess. (N.Y. 2009), available at [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A02596&term=2009&Summary=Y&Memo=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02596&term=2009&Summary=Y&Memo=Y&Text=Y). Like the version that ultimately passed, the 2009 bill had three separate provisions: (1) a criminal SOL extension, (2) a civil SOL extension to age 23 amending C.P.L.R. § 208, and (3) a revival window in a new section, C.P.L.R. 3012-b. Id. C.P.L.R. § 3012-b provided for a one-year window to revive claims for child sex abuse "committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired." Id. Unlike the current window, however, Subsection (a-1) of the new provision contained an age cap limitation for the window, which stated as follows:

"Any civil claim or cause of action brought pursuant to subdivision (a) of this section may only be commenced for conduct committed against such child forty years or less before the effective date of this section or commenced within forty years of such child reaching the age of eighteen years."

Id. This 2009 legislation was also introduced by Assemblymember Markey, who explained the age limitation:

"Persons for whom the right to bring a civil action has been foreclosed because of the current civil statute of limitations bar would be given a one-year 'window period' from the date of enactment of the bill, to recover damages for any past instance of child sexual abuse the civil claim must be commenced within forty years of the effective date of this section or commenced within forty years of such child reaching the age of eighteen years."

*Sponsors Memorandum*, Assembly Bill No. A.2596, 2009-10 Leg. Sess. (N.Y. 2009), available at [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A02596&term=2009&Summary=Y&Memo=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02596&term=2009&Summary=Y&Memo=Y&Text=Y). In this case, the legislature clearly and explicitly proposed an age limitation that would apply to the revival window. The age cap was put in the same section and directly following the provision creating the window.

Significantly, Assemblymember Markey introduced another version of the CVA the following year that did not contain the age cap provision limiting the window. Assembly Bill No. A.10814, 2011-12 Leg. Sess. (N.Y. 2012), available at [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A10814&term=2011&Summary=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10814&term=2011&Summary=Y&Memo=Y). In fact, all versions of the CVA that was introduced thereafter, including the 2019 version that was signed into law, do not contain an age cap provision, both in the statute and the Sponsor's Memoranda.<sup>5</sup> It is clear from the legislative history that an upper age limit for the window had been previously proposed, and the legislature intentionally excluded it from subsequent versions before the current CVA was signed into law. Therefore, the revival window of the CVA was designed to be open for all survivors with no age limitation.

### **C. The CVA Revival Window Serves New York's Compelling Interest in Justice and Child Protection**

Child sexual abuse is a public health epidemic affecting 1 in 5 girls, and 1 in 13 boys in this nation.<sup>6</sup> 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.<sup>7</sup> Historically, 90% of child victims never go to the

<sup>5</sup> See Assembly Bill No. A01771A, 2013-14 Leg. Sess. (N.Y. 2013); Assembly Bill No. A.2872, 2015-16 Leg. Sess. (N.Y. 2015); Assembly Bill No. A.10600, 2015-16 Leg. Sess. (N.Y. 2016); Senate Bill No. S0657/Assembly Bill No. A08421, 2017-18 Leg. Sess. (N.Y. 2017).

<sup>6</sup> G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender* (2018) 18(1164) BMC PUBLIC HEALTH (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* (2011) 16(2) CHILD MALTREATMENT 79 (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al. (2009) *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

<sup>7</sup> 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).

authorities.<sup>8</sup> Victims often need decades to come forward. Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse.<sup>9</sup> When victims do come forward, it was too late to access justice due to short statutes of limitations. This means that most child sexual predators are never arrested, let alone convicted. They continue to move through society with unfettered access to children for years.

Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years.” Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 Child Abuse Negl. 579 (1995). The decades before disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. A window that is open to survivors of any age, as the New York legislature crafted, supports the public interest by exposing older hidden predators that are still sexually abusing children today and institutions that continue to protect predators.

Revival laws honor and empower the victims of child sex abuse who faced locked courthouse doors due to unfairly short SOLs. Because it is unconstitutional to revive a criminal SOL, Stogner v. California, 539 U.S. 607, 610 (2003), filing civil claims under the revival window is the sole avenue of justice available to many survivors. Revival laws are not solely about justice

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<sup>8</sup> Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. 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>.

<sup>9</sup> 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)).

for victims; there are also important public safety reasons for allowing older claims of abuse to proceed.

The window is a necessary legislative response to the public's need to learn who are the hidden child predators in New York and the needs of victims to be validated by the State. Reviving expired claims serves these three compelling purposes: (1) identifying hidden child predators and the institutions that endanger children to the public, therefore shielding other children from future abuse; (2) shifting the cost of abuse from victims and taxpayers to those who caused the abuse; and (3) educating the public about the prevalence of child sex abuse and patterns institutions follow that put children at risk.

When predators and institutions are exposed, as they have been already in CVA cases, the public learns about the insidious ways child molesters operate and which institutions endanger children. These revelations educate parents and prevent future abuse. Preventing sex abuse helps society by reducing the number of victims, which results in healthcare savings, healthier workplaces, and happier homes. Revival windows also educate the public about the danger of child sexual abuse and how to prevent it. By shedding light on the problem, the authorities, parents, and others are better able to identify abusers and responsible institutions and prevent further abuse. This knowledge educates everyone on how to identify the signs of grooming and abusive behavior and create more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

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. The public was left uninformed about the identities of individuals and institutions that continued to abuse and endanger children.



Moreover, this public education about the prevalence and harm from child sex abuse helps families and the legal system develop policies to prevent the continuation of more abuse. Broader prevention of abuse has outstanding long-term impact for the children and families of New York.<sup>10</sup>

The lifetime cost of child sex abuse to victims is also enormous, and New York often unjustly carries the burden of this expense with them.<sup>11</sup> Window cases that result in awards and settlements not only equitably shift the cost of abuse away from victims, they also save the state approximately \$750,000,000 in Medicaid reimbursements.<sup>12</sup>

New York's revival window is consistent with the national trend to give child sex abuse survivors long overdue access to justice. Already, 24 States, Washington D.C., & Guam have revived previously expired claims with a window and/or age limit revival law. CHILD USA, *Overview of All Window and Age Limit Revival Laws* (July 12, 2021), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>. Limiting the window to survivors under age 55 would hinder the important public policies of justice, child safety, and preventing

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<sup>10</sup> See generally, Making the Case: Why Prevention Matters, PREVENTCHILDBABUSE.ORG (last visited Mar. 30, 2020), available at <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV (last visited Mar. 30, 2020), available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>.

<sup>11</sup> The average lifetime cost of child maltreatment is \$830, 928.00 per victim. Child maltreatment includes: physical abuse, sexual abuse, emotional abuse (psychological abuse), and neglect. The toxic stress and trauma associated with childhood sexual abuse are even higher for those victims than those who experience other forms of child maltreatment. See M. Merricka, et. al., Unpacking the impact of adverse childhood experiences on adult mental health, CHILD ABUSE NEGLECT (2017); Angelakis, I., Gillespie, E.L., 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 3 New Yorkers receive Medicaid, it is likely that sex abuse survivors disproportionately receive support due to the crippling effect of trauma. Dan Clark, One in three people in New York is on Medicaid, POLITIFACT.COM (Jul. 21, 2017 at 4:04 PM), available at <https://www.politifact.com/new-york/statements/2017/jul/21/john-faso/one-three-people-new-york-are-medicaid/>.

<sup>12</sup> In settlements that are reached in these cases, a "Medicaid lien" is placed on the settlement funds for the coverage directed to the problems arising from the sex abuse. Without statute of limitations reform, the Medicaid funds needed for treatment cannot be reimbursed. With the Child Victims Act, Medicaid is reimbursed for a conservative estimate of \$750,000,000, assuming approximately 3,000 victims successfully 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.

future abuse that the New York Legislature sought to achieve when it passed the Child Victims Act.

### CONCLUSION

For the foregoing reasons, amicus curiae requests this Court find Plaintiff's Complaint should not be dismissed as time barred as it was timely filed pursuant to the revival window provision of the Child Victims Act, N.Y.C.P.L.R. § 214-G.

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Respectfully submitted,

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