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IN THE SUPREME COURT OF THE STATE OF WISCONSIN

Appeal No. 2021-AP-1054

FEMALA FLEMING;

Plaintiff-Appellant,

v.

AMATEUR ATHLETIC UNION OF THE UNITED STATES, INC.;

Defendant/Respondent-Petitioner.

**NON-PARTY BRIEF OF CHILD USA AS *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFF-APPELLANT FEMALA FLEMING**

On Appeal from the Decision of the Wisconsin Court of Appeals, District IV,
Reversing Order of the Circuit Court and Remanding for Further Proceedings,
The Honorable JoAnne F. Kloppenburg, Presiding

On Appeal from the Circuit Court for Dane County,
The Honorable Rhonda L. Lanford, Presiding

Case No. 2020-CV-1789

Timothy W. Burns

State Bar No. 1068086

Jesse J. Bair

State Bar No. 1083779

Nathan M. Kuenzi

State Bar No. 1112795

Burns | Bair LLP

10 E. Doty Street, Suite 600

Madison, Wisconsin 53703

Counsel for Amicus Curiae

Prof. Marci A. Hamilton, Esq.

University of Pennsylvania

Founder & CEO, CHILD USA

3508 Market Street, Suite 202

Philadelphia, PA 19104

Alice Bohn, Esq.

Alice Nasar Hanan, Esq.

CHILD USA

3508 Market Street, Suite 202,

Philadelphia, PA 19104

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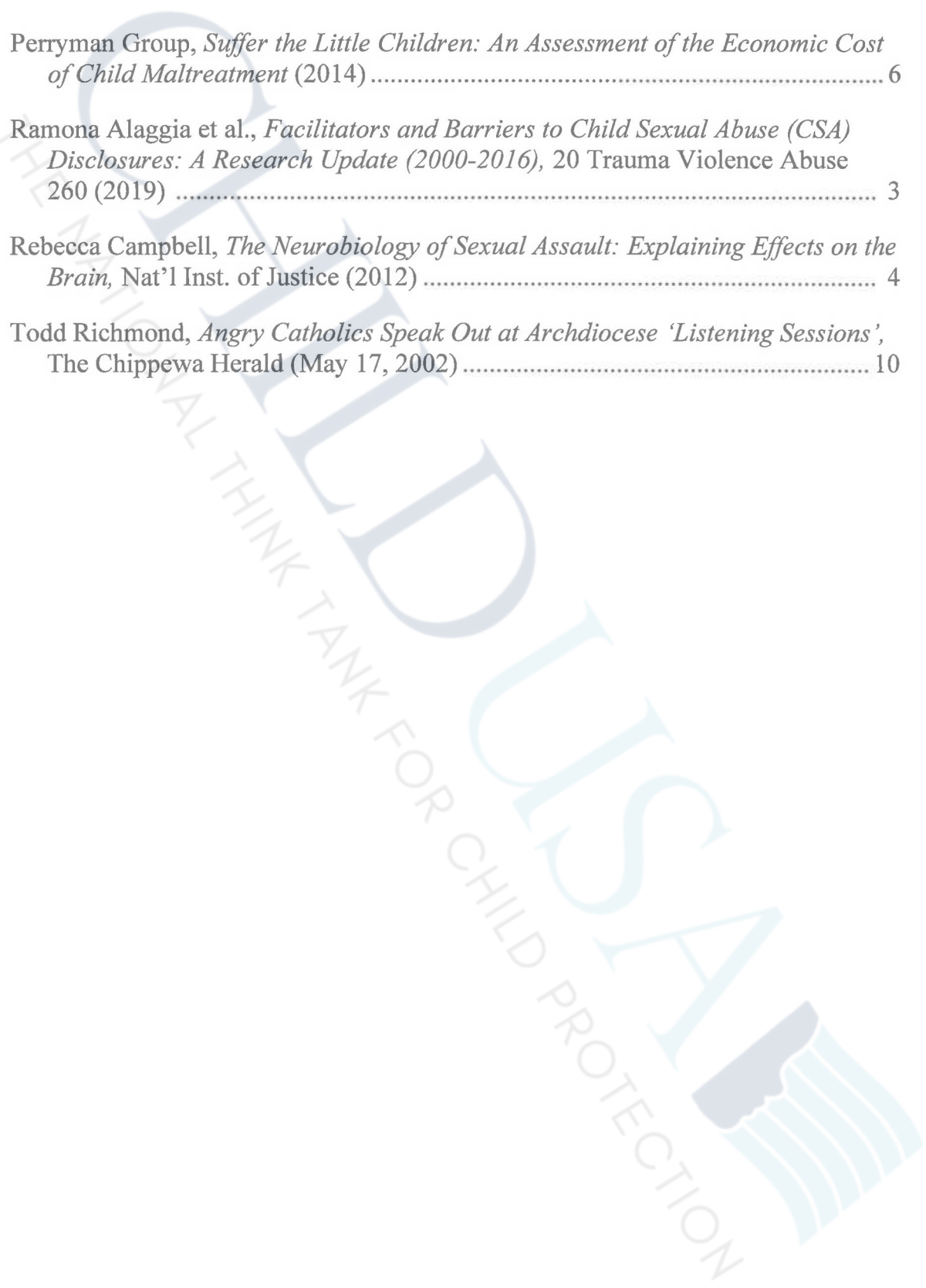
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INTRODUCTION

CHILD USA respectfully submits this brief as *amicus curiae* in support of Plaintiff-Appellant Femala Fleming. Defendant/Respondent-Petitioner Amateur Athletic Union of the United States, Inc. (“AAU”) appeals the Court of Appeals’ ruling that Wis. Stat. § 893.587, as amended by 2003 Wis. Act 279 (hereinafter referred to as the “2003 SOL Extension”), which extended the statute of limitations (“SOL”) for civil claims involving the sexual abuse of a minor to age 35, is the applicable limitations statute. The 2003 SOL Extension reflects the Legislature’s understanding that child sexual abuse (“CSA”) inflicts a unique trauma on victims, rendering many of them unable to disclose their abuse until decades later. A ruling that limits the applicability of Section 893.587’s extended SOL to actions only against perpetrators of CSA and religious organizations that employ them would have disastrous ramifications for CSA victims throughout Wisconsin. It would also jeopardize the important public policies of justice, public safety, and preventing future CSA that the Wisconsin Legislature sought to uphold. Accordingly, CHILD USA respectfully submits that this Court should uphold the Court of Appeals’ ruling.

ARGUMENT

I. WISCONSIN'S 2003 SOL EXTENSION REFLECTS THE SCIENCE OF CSA TRAUMA AND ADDRESSES WISCONSIN'S COMPELLING INTEREST IN PROTECTING CHILDREN

Wisconsin's 2003 SOL Extension acknowledges that victims of CSA often take decades to disclose their abuse. The extension corrects the injustice of Wisconsin's unreasonably short SOLs that blocked CSA victims' access to courts and kept the public uninformed about predators and youth serving institutions that endanger children.

A. CSA Uniquely Prevents Victims from Filing Timely Claims for their Injuries.

CSA is a national public health crisis, with 3.7 million children sexually abused every year.¹ It affects one in five girls and one in thirteen boys in the United States.² An extensive body of evidence establishes that CSA survivors are traumatized in a way that is distinguishable from victims of other crimes. Indeed, many victims of CSA suffer in silence for decades before they speak to anyone about their traumatic experiences. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruption in family stability, loss of

¹ See *Preventing Child Sexual Abuse*, CDC (last visited Feb. 22, 2022), <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also David 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), available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2344705>.

² Gwenllian 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), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6180456/>; Marije Stoltenborgh et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) *Child Maltreatment* 79 (2011); Noemí Pereda et al., *The Prevalence of Child Sexual Abuse in Community and Student Samples: A Meta-analysis*, 29 *Clinical Psych. Rev.* 328, 334 (2009).

close relationships, or involvement with the authorities.³ This crime typically occurs in secret, and many victims assume no one will believe them.⁴

Additionally, CSA victims may struggle to disclose their experiences due to the effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or the stigma of sexual victimization.⁵ Victims also often develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffer.⁶ Moreover, they disproportionately develop depression, substance abuse, PTSD, and challenges in personal relationships.

These mechanisms may persist well into adulthood. A study found that 44.9% of male CSA victims and 25.4% of female CSA victims delayed disclosure by *more than twenty years*.⁷ In fact, more victims first disclose their abuse between ages *fifty and seventy* than during any other age.⁸ It is estimated that 70–95% of CSA victims never report their abuse to the police.⁹

³ Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 *Child Abuse Negl.* 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁴ See *Myths and Facts About Sexual Assault*, Cal. Dep't of Just., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Jan. 13, 2023); National Child Traumatic Stress Network Child Sexual Abuse Committee, *Caring for Kids: What Parents Need to Know about Sexual Abuse*, at 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

⁵ Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 *Trauma Violence Abuse* 260, 279 (2019).

⁶ Gail S Goodman et al., *A Prospective Study of Memory for Child Sexual Abuse: New Findings Relevant to the Repressed-memory Controversy*, 14 *Psychol. Sci.* 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

⁷ Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 *J. Child Sex Abuse* 133 (2008).

⁸ CHILD USA, *Data on Abuse in Boy Scouts of America* (on file with author at info@childusa.org)

⁹ David Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, U.S. Dep't of Just., Office of Just. Programs (2008), <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf>.

Before 2003, Wisconsin CSA victims only had until age twenty or five years from discovery to file a civil suit for their injuries.¹⁰ Since trauma affects CSA victims in serious and wide-ranging ways, and because “disclosure is a process that can take decades,”¹¹ Wisconsin’s short SOL rendered it practically impossible for the vast majority of victims to seek legal redress for their abuse.

B. Wisconsin’s 2003 SOL Extension Addresses Its Compelling Interest in Child Protection.

The 2003 SOL Extension not only remedies the long-standing injustice to CSA victims of unreasonably short SOLs, it also serves Wisconsin’s compelling interest in protecting the physical and psychological well-being of its children,¹² by: (1) identifying previously unknown child predators and the institutions that shield them; (2) shifting the cost of abuse from victims to those who caused the abuse; and (3) educating the public to prevent future abuse.

First, a longer SOL facilitates the identification of hidden predators and institutions that shield them. The decades before a victim is ready to disclose give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Through the 2003 SOL Extension, the Legislature empowered victims to tell their stories and help prevent the individuals and institutions responsible for their abuse from endangering more children.¹³

Second, the 2003 SOL Extension helps educate the public about the dangers of CSA and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of

¹⁰ See Wis. Stat. §§ 893.16, 893.54, 893.587.

¹¹ *State v. Hineman*, 2023 WI 1, ¶ 64 (Karofsky, J., concurring); see also *R.L. v. Voytac*, 971 A.2d 1074 (N.J. 2009); Rebecca Campbell, *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, Nat’l Inst. of Justice (2012), <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>.

¹² *State v. Thiel*, 183 Wis. 2d 505, 524, 515 N.W.2d 847, 854 (Wis. 1994).

¹³ See generally *Preventing Adverse Childhood Experiences*, CDC.gov (last visited Feb. 23, 2022), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

America, and the Catholic Church, the press publishes pieces that enlighten communities about methods child molesters use to groom and sexually assault children and the institutional failures that enabled abuse. This fosters a social awareness that inspires the public to implement safe practices and accountability to prevent CSA in their family and community institutions.

Third, the cost of CSA to survivors is enormous,¹⁴ and they, along with Wisconsin, unjustly carry the burden of this expense. The estimated lifetime cost to society from CSA cases that occurred in the U.S. in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.¹⁵ These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.¹⁶ CSA cases that result in awards and settlements equitably shift some of the cost of abuse away from survivors and save the State money by reducing expenditures on these public services.

II. THE HISTORICAL CONTEXT AND LEGISLATIVE HISTORY OF THE 2003 SOL EXTENSION SUPPORT ITS EXTENDED SOLS' APPLICABILITY TO SECULAR ORGANIZATIONS

It is clear that Section 893.587's extended age 35 SOL is applicable to Plaintiff-Appellant's claims against AAU, when considering both the legislative history and historical context for the 2003 SOL Extension.

A. No States Have Reformed Their Laws with Longer CSA SOLs to Single Out Religious Organizations.

The SOL reform movement for CSA in the United States was spurred by the *Boston Globe's* January 2002 Pulitzer Prize-winning *Spotlight* series on the cover-

¹⁴ See Melissa T. Merrick et al., *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, 69 *Child Abuse & Neglect* 10 (July 2017); Ioannis Angelakis et al., *Childhood Maltreatment and Adult Suicidality: A Comprehensive Systematic Review With Meta-analysis*, *Psychological Medicine* 1-22 (2019); Gail Hornor, *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).

¹⁵ Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 *Child Abuse Negl.* 413 (2018).

¹⁶ *Id.*

up of clergy CSA committed by Cardinal Bernard Law of the Boston Archdiocese.¹⁷ This publication was a turning point in the history of child protection as the public was introduced to the outlines of a paradigm of sex abuse in trusted institutions. The *Spotlight* series brought to the fore the broad themes of institution-based CSA: powerful individuals motivated by image and self-preservation; calculated ignorance of the clear risks to children; and protection of abusers within an institution, rather than the children. While stories began to pile up about Catholic priests sexually abusing children, it became increasingly clear that victims were not going to be able to get any justice because they were blocked by short SOLs in many states, including Wisconsin. Thus, the shock about the disclosures was compounded by the inefficacy of the legal system to right the wrongs.

Legislatures across the country began to appreciate the danger and long-standing injustice of shutting the courthouse doors on survivors before they were ready to come forward. As a result, nearly every state amended their SOLs to give CSA survivors more time to press criminal charges and/or file civil claims for their abuse related injuries.¹⁸ On the civil SOL side, forty-six States, two U.S. Territories and the Federal Government amended their laws with SOL extensions, SOL eliminations, and/or revival of expired claims.¹⁹ The following table shows this prevailing trend for civil SOL reform since 2002:

¹⁷ Michael Rezendes, *Church Allowed Abuse by Priest for Years*, The Boston Globe: Spotlight Series (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>.

¹⁸ See *History of Child Sex Abuse Statutes of Limitations Reform in the United States: 2002 to 2021*, CHILD USA, at 150–51, available at <https://childusa.org/wp-content/uploads/2022/07/12.16.2022-2021-SOL-Report-FINAL.pdf>.

¹⁹ *Id.*

| Civil CSA SOL Reform Laws 2002–2022 | |
|--|---|
| Year | Statute |
| 2002 | Cal. Civ. Proc. Code § 340.1; Conn. Gen. Stat. §§ 52-577d; 42 Pa. Cons. Stat. § 5533. |
| 2003 | Alaska Stat. Ann. §§ 09.10.065, 09.10.140, 25.20.010; 735 Ill. Comp. Stat. 5/13-202.2; Iowa Code §§ 614.8, 614.1; Md. Code Ann., Cts. & Jud. Proc. §§ 5-105, 5-201. |
| 2004 | Mo. Rev. Stat. § 537.046; Okla. Stat. Ann. § 95; Wis. Stat. §§ 893.16, 893.54, 893.57, 893.93, 893.587. |
| 2005 | N.H. Rev. Stat. Ann. § 508:4-g. |
| 2006 | Cal. Civ. Code § 52.5(c); N.Y. C.P.L.R. §§ 213-c, 214(5); Ohio Rev. Code Ann. § 2305.111(C); 18 U.S.C. § 2255. |
| 2007 | Del. Code Ann. tit 10, § 8145(a); Idaho Code § 6-1704; Ky. Rev. Stat. Ann. § 413.249; Mo. Rev. Stat. § 537.047; Tex. Civ. Prac. & Rem. Code Ann. § 16.0045. |
| 2008 | Cal. Civ. Proc. Code § 340.1; N.H. Rev. Stat. Ann. § 508:4-g. |
| 2009 | D.C. Code Ann. §§ 12-301, 12-302. |
| 2010 | Ala. Code § 13A-6-158(b)(1); Del. Code Ann. tit 18, § 6856; Fla. Stat. Ann. § 95.11 (9); 735 Ill. Comp. Stat. 5/13-202.2; Mass. Gen. Laws Ann. ch. 260, §§ 2A, 4C; Or. Rev. Stat. Ann. § 12.117. |

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| 2011 | 7 Guam Code Ann. § 11306; Mass. Gen. Laws Ann. ch. 260, § 4D; N.D. Cent. Code Ann. § 28-01-25.1; Tex. Civ. Prac. & Rem. Code Ann. § 16.0045; Va. Code Ann. §§ 8.01-243, 8.01-229, 1-204, 8.01-249. |
| 2012 | Haw. Rev. Stat. § 657-1.8; Neb. Rev. Stat. § 25-228; S.C. Code Ann. §§ 15-3-530(5), 16-3-2060(C). |
| 2013 | Alaska Stat. Ann. § 09.10.065; Haw. Rev. Stat. § 663J-7; Ind. Code Ann. § 34-11-2-4; Minn. Stat. Ann. § 541.073 ; Va. Code Ann. §§ 8.01-249(6), 8.01-243(D). 18 U.S.C. § 2255. |
| 2014 | Del. Code Ann. tit. 11, § 787(i)(3)(b); Haw. Rev. Stat. § 657-1.8; 735 Ill. Comp. Stat. 5/13-202.2; Mass. Gen. Laws Ann. ch. 260, §§ 4C & 4C1/2. |
| 2015 | Cal. Civ. Code § 52.5(c); Ga. Code Ann. §§ 9-3-33.1(a)(2), (b)(2); N.Y. C.P.L.R. § 212; N.D. Cent. Code Ann. § 12.1-41-15; Tex. Civ. Prac. & Rem. Code Ann. § 16.0045; Utah Code Ann. § 78B-2-308. |
| 2016 | 7 Guam Code Ann § 11301.1(a); Tenn. Code Ann. § 28-3-116(b)(2)(B); Utah Code Ann. § 78B-2-308; W. Va. Code Ann. § 55-2-15 (a). |
| 2017 | Ky. Rev. Stat. Ann. § 413.249; Md. Code Ann., Cts. & Jud. Proc. § 5-117(b); Neb. Rev. Stat. § 25-228; Nev. Rev. Stat. Ann. § 11.215; N.M. Stat. Ann. § 37-1-30; Okla. Stat. Ann. § 95. |

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| 2018 | Haw. Rev. Stat. § 657-1.8; Mich. Comp. Laws Ann. §§ 600.5805, 600.5851, 600.5851b; 18 U.S.C. § 2255. |
| 2019 | Ala. Code § 13A-6-158(b)(1); Ariz. Rev. Stat. Ann. § 12-514; Cal. Civ. Proc. Code § 340.1; Conn. Gen. Stat. §§ 52-577d; Mont. Code Ann. §§ 27-2-216; N.J. Stat. Ann. §§ 2A:14-2A, 2A:14-2B; N.Y. C.P.L.R. § 214-g, 208; N.C. Gen. Stat. §§ 1-17, 14-43.18(e); 42 Pa. Cons. Stat. §§ 5533, 5522, 8522(b)(1); 9 R.I. Gen. Laws § 9-1-51; Tenn. Code Ann. § 28-3-116; Tex. Civ. Prac. & Rem. Code Ann. § 16.0045; Utah Code Ann. §§ 63G-7-201, 63G-7-403(2)(b), 63G-7-401(1)(b); Vt. Stat. Ann. tit. 12, § 522; D.C. Code § 12-301. |
| 2020 | N.H. Rev. Stat. Ann. § 508:4-g; N.Y. C.P.L.R. §§ 214-g; W. Va. Code Ann. § 55-2-15(a). |
| 2021 | Ariz. Rev. Stat. Ann. § 12-722; Ark. Code Ann. § 16-118-118; Colo. Rev. Stat. Ann. §§ 13-80-103.7, 13-20-1202; Iowa Code §§ 614.8, 614.1; Ky. Rev. Stat. Ann. § 413.249; La. Stat. Ann. § 9:2800.9; Me. Rev. Stat. Ann. tit. 14, § 752-C; Nev. Rev. Stat. Ann. § 11.215; N.Y. C.P.L.R. § 212; 2021 N.M.I. Pub. L. No. 22-12 (H.B. 22-2, SDI); |
| 2022 | Cal. Civ. Proc. Code § 340.1; La. Stat. Ann. § 9:2800.9; N.Y.C. Admin. Code, § 10-1105; 18 U.S.C. § 2255. |

Notably, there is not a single CSA SOL law that singles out religious organizations for longer or more onerous civil SOLs than private secular organizations, according to *amicus curiae's* research. Likewise, the Wisconsin Legislature had no intention of targeting only religious organizations with its 2003 SOL Extension.

B. Legislative History Supports The 2003 SOL Extension's Applicability to Secular Organizations.

AAU urges this Court to adopt an extremely narrow interpretation of Section 893.587 that relies on its mischaracterization of the 2003 SOL Extension's legislative history. In 2002, the Wisconsin SOL for CSA claims against institutions was age 20, or 5 years from discovery, but religious organizations were effectively immunized from liability for CSA by the First Amendment.²⁰ At that time, the Wisconsin public, which included many CSA survivors, were incensed that the law as it stood was a barrier to holding abusers and their trusted institutions accountable, thus endangering children.²¹ In 2003, Legislators introduced Senate Bill 207 and Assembly Bill 428, which would make clergy mandated reporters of CSA, extend the criminal SOL for prosecution of CSA, extend the civil SOL for CSA claims, and provide a cause of action against religious organizations subject to the extended SOL.²² With this comprehensive SOL reform package, the Legislature took pains to expressly place religious institutional CSA claims on equal footing as CSA claims

²⁰ See *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis. 2d 302, 312, 533 N.W.2d 780, 784 (Wis. 1995).

²¹ See Dennis Chaptman, *Tears Flow with Tales of Exploitation by Clergy*, Milwaukee J. Sentinel (Sept. 18, 2003) https://www.bishop-accountability.org/news2003_07_12/2003_09_18_Chaptman_TearsFlow.htm; Todd Richmond, *Angry Catholics Speak Out at Archdiocese 'Listening Sessions'*, The Chippewa Herald (May 17, 2002) https://chippewa.com/angry-catholics-speak-out-at-archdiocese-listening-sessions/article_f36c5674-5d8a-5448-82f0-5258f7ecc0b8.html.

²² See S.B. 207, 2003–04 Leg. (Wis. 2003); A.B. 428, 2003–04 Leg. (Wis. 2003).

against private secular organizations, in the aftermath of *Pritzlaff*, which recognized an exception favoring religious organizations.²³

The Legislature fully understood that the 2003 SOL Extension would be applicable to CSA claims against both secular and religious institutions. The SOL bills were not the product of a cursory review or a hasty passing in the Wisconsin State Legislature; in fact, they were the source of great debate, politicking, and publicity, all of which centered on giving victims more time to bring their abusers to justice. Numerous religious organizations negotiated with legislators over the bill's final provisions and some even sent representatives to the Capitol to **testify in support** of SB 207, including the Archdiocese of Milwaukee St. Francis, Wisconsin Catholic Conference, Wisconsin Jewish Conference, and Wisconsin Council of Churches.²⁴ It is irrational that these religious organizations would have supported a bill that singles them out for more accountability for CSA than their neighboring secular youth serving organizations. AAU's erroneous interpretation of the 2003 SOL Extension runs afoul of the Legislature's clear intent and its tireless efforts to negotiate and pass this SOL extension for all Wisconsin CSA survivors, not only those abused by clergy employed by religious organizations.

CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully submits that this Court affirm the Court of Appeals' ruling.

²³ See *Pritzlaff*, 194 Wis. 2d at 312.

²⁴ See *Hearing Before the Wisconsin Senate Committee on Judiciary, Corrections and Privacy on Senate Bill 207, 2003–04 Leg. (2003)* (Statement of Joel Pittleman of the Wisconsin Jewish Conference), available at https://docs.legis.wisconsin.gov/2003/related/public_hearing_records/sc_judiciary_corrections_and_privacy/bills_resolutions/03hr_sc_jcp_sb207_pt02.pdf.

Respectfully submitted,



Timothy W. Burns
State Bar No. 1068086
Jesse J. Bair
State Bar No. 1083779
Nathan M. Kuenzi
State Bar No. 1112795
Burns | Bair LLP
10 E. Doty Street, Suite 600
Madison, Wisconsin 53703
Telephone: (608) 286-2808
Email: tburns@burnsbair.com

*Counsel for Amicus Curiae
CHILD USA*

Dated: February 3, 2023

Prof. Marci A. Hamilton, Esq.
University of Pennsylvania
Founder & CEO, CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
Tel: (215) 539-1906
marcih@sas.upenn.edu

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

FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 2,912 words.

Dated: February 3, 2023



Timothy W. Burns
State Bar No. 1068086

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I hereby certify that:

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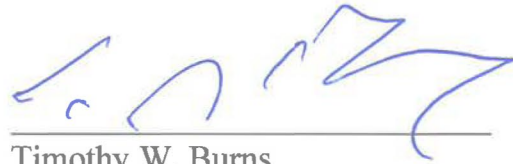


Timothy W. Burns
State Bar No. 1068086

CERTIFICATE OF SERVICE

I certify that on this date I served this brief on counsel by electronic filing and by regular mail.

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Timothy W. Burns
State Bar No. 1068086