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JA/GG DOE 146, representing one (1),
plaintiff,

Plaintiff,

v.

THE ROMAN CATHOLIC
ARCHDIOCESE OF NEWARK a/k/a
ARCHDIOCESE OF NEWARK;
SOCIETY OF THE CATHOLIC
APOSTOLATE PROVINCE OF THE
IMMACULATE CONCEPTION
(EASTERN); ST. JOSEPH'S OF THE
PALISADES a/k/a ST. JOSEPH'S OF
THE PALISADES; ABC ENTITY, its
priests, reverends, teachers, deacons,
directors, officers, employees, agents,
servants, representatives, and/or
volunteers, is a fictitious name of an
entity believed to have employed Father
John G. Biermann, S.A.C.; and JOHN
DOES 1-5, individually, and in their
capacity as a former and/or current
priest, reverend, teacher, deacon,
director, officer, employee, agent,
servant, representative and/or volunteer
of the defendants, are persons whose
identities are unknown to Plaintiff,
Defendants.

SUPERIOR COURT OF
NEW JERSEY
ESSEX COUNTY, LAW DIVISION

DOCKET NO. ESX-L-007889-21

Civil Action

**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 the leading national nonprofit think tank fighting for the civil rights of children. Our mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors.

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 sexual abuse claims, the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on public safety, the science of delayed disclosure by victims of their abuse, and the national landscape on revival windows for sexual abuse.

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae*. Defendant challenges the constitutionality of N.J. Stat. Ann. § 2A:14-2b as applied to this case, which revived expired civil claims for sexual abuse in New Jersey. CHILD USA submits that § 2A:14-2b easily meets the legal standards for determining whether a statute of limitations revival period comports with due process under the United States Constitution and New Jersey law, as applied to this case.

Every court to consider the constitutionality of the revival window under § 2A:14-2b has upheld it. This includes multiple New Jersey trial courts and two recent federal district courts from the District of New Jersey. See B.A. v. Golabek, 2021 WL 5195665 (D.N.J. Nov. 8, 2021) (Katharine S. Hayden, U.S.D.J.) (attached as Appendix A); S.Y. v. Roman Catholic Diocese of Paterson, 2021 WL 4473153 (D.N.J. Sept. 30, 2021) (Esther Salas, U.S.D.J.) (attached as Appendix B). These courts unanimously held that the revival window comports with due process and does not result in a manifest injustice to defendants. The window is supported by clear legislative intent and the significant public interest to remedy the injustice of New Jersey's prior, unreasonably short SOLs, which obstructed sex abuse victims' access to the courts and kept the public in the dark about predators.

A ruling against § 2A:14-2b's revival window could have negative ramifications for the hundreds of child sexual abuse survivors throughout New

Jersey that are now embracing the window in pursuit of long overdue justice. Also at stake are the important public policies of justice, public safety, and preventing future sexual abuse that the New Jersey Legislature sought to achieve for the public when it passed § 2A:14-2b. Accordingly, CHILD USA respectfully submits that this Court should uphold § 2A:14-2b as constitutional as applied here.

ARGUMENT

Pursuant to Rule 1:13-9, CHILD USA respectfully submits this amicus brief. As a national think tank dedicated to furthering the civil rights of children, CHILD USA has gathered and produced cutting-edge legal and social science research related to the need for statute of limitations reform. In this brief, CHILD USA will address the following issues: whether N.J.S.A. § 2A:14-2b's revival provisions are constitutional as applied under the United States Constitution, whether the revival provisions are constitutional as applied under the New Jersey Due Process Clause, and the national landscape of the constitutionality of revival windows.

I. N.J.S.A. § 2A:14-2B'S REVIVAL WINDOW IS CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION

The retroactive elimination of a civil statute of limitations is constitutional under the United States Constitution.¹ The Court in Landgraf v. USI Film Prods., 511 U.S. 244, 267 (1994), held that retroactive civil legislation is constitutional if two conditions are met: (1) the legislative intent is clear and (2) the change is procedural. The Landgraf Court set out the duty of judicial deference as follows:

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

“legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf, 511 U.S. at 272. The Court went on to observe that “the *constitutional* impediments to retroactive civil legislation are now modest . . . Requiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” Id. At 272–73 (emphasis in original).

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

view of the Legislature’s right to pass such legislation.”) (citing Hodes v. Axelrod, 515 N.E.2d 612, 615 (N.Y. 1987)).

The revival of expired statutes of limitations is something no legislature should take lightly, and the Legislature did not do so in 2019 when it enacted N.J.S.A. § 2A:14–2b. Under the Federal Constitution, this Court is required to defer to the legislature’s judgment to determine whether there is a rational basis for § 2A:14–2b, as the Massachusetts Supreme Court did in upholding the retroactive application of its statute of limitations for child sexual abuse tort claims:

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

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

victims a remedy.”).

II. N.J.S.A. § 2A:14-2B’S REVIVAL WINDOW IS CONSTITUTIONAL AS APPLIED UNDER THE NEW JERSEY CONSTITUTION’S DUE PROCESS CLAUSE

Every court in New Jersey to consider facial and as applied challenges to the constitutionality of N.J.S.A. § 2A: 14-2b has found it to be constitutional. N.J.S.A. § 2A:14-2b is also constitutional under the New Jersey constitution because the expiration of a procedural statute of limitation related to sexual abuse claims does not create a protected substantive or vested right, B.A. v. Golabek, 2021 WL 5195665 (D.N.J. Nov. 8, 2021) (Katharine S. Hayden, U.S.D.J.) (attached as Appendix A); S.Y. v. Roman Catholic Diocese of Paterson, 2021 WL 4473153 (D.N.J. Sept. 30, 2021) (Esther Salas, U.S.D.J.) (attached as Appendix B); and the revival window for victims to file claims is a rational solution to remedying the injustice victims endured. See Coyle v. Salesians of Don Bosco, No. L-2606-21, 2021 WL 3484547 (N.J.Super.L. July 27, 2021) (Thomas R. Vena, J.S.C.) (attached as Appendix C). Further, there is no manifest injustice to Defendant because any reliance on the expiration of Plaintiff’s sex abuse claims or evidentiary burden caused by the passage of time is far outweighed by New Jersey’s public interest in identifying unknown perpetrators, holding perpetrators and institutions accountable, and shifting the cost of abuse from the victims to those who caused or enabled the abuse. W.F. v. Roman Catholic Diocese of Paterson, 2021 WL

2500616 (D.N.J. June 7, 2021) (Madeline Cox Arleo, U.S.D.J.) (attached as Appendix D).

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

As Defendant has admitted, the New Jersey legislature evinced clear intent to revive the types of claims like the one in this case under N.J. Stat. Ann. § 2A:14-2b. Def.'s Br. at 6. 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 v. State Dep't of Treasury, 124 N.J. 461, 467 (1991), which the district court has held does not. S.Y. v. Roman Catholic Diocese of Paterson, 2021 WL 4473153, *8 (D. N.J. Sept. 30, 2021) (Esther Salas, U.S.D.J.) (attached as Appendix B) ("the Court does not find that N.J.S.A. § 2A:14-2b's revival of time-barred tort claims violated the Salesians's due process rights protected under the New Jersey constitution."); W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616, *3 (D.N.J. June 7, 2021) (Madeline Cox Arleo, U.S.D.J.) (Attached as Appendix D) ("Retroactive application of the Child Victim's Act would not deprive Defendant of a vested right"); T.M. v. Order of St. Benedict of New Jersey, Inc., No. MRS-L-399-17 (N.Y. Super. Ct. Law Div. Morris Cty. May 22, 2020) (Peter A. Bogaard, J.S.C.) ("even under a vested

rights analysis, the statute will survive constitutional muster.”) (attached as Appendix E).

The New Jersey Supreme Court has rejected the argument that the retroactive application of revived statutes of limitation inherently disturbs rights vested under the New Jersey Constitution. See *id.*; Panzino v. Continental Can Co., 71 N.J. 298, 305 (1976); Short v. Short, 372 N.J. Super. 333, 338 (N.J. Sup. Ct. Oct. 13, 2004) (“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 be unconstitutional, it has specifically confined its reasoning to claims sounding in contract or implicating property rights. Panzino, 71 N.J. at 305.

In S.Y. and W.F., the district court explicitly upheld the constitutionality of N.J.S.A. § 2A:14-2b, indicating that an “expectation” or “mere hope” that the claims related to sexual abuse were previously barred, even when that expectation is based upon present law, is “insufficient to invalidate otherwise legitimate legislation” and is not a vested right. S.Y., 2021 WL 4473153, at *8; W.F., 2021 WL 2500616, at *3 (citing Phillips v. Curiale, 608 A.2d 895, 903–904 (N.J. July 13, 1992)) (Madeline Cox Arleo, U.S.D.J.) (attached as Appendix D); D.J.L. v. Armour Pharmaceutical Co., 704 A.2d 104, 115 (N.J. Super. Ct. Sept. 29, 1997).

The revival provision pursuant to N.J.S.A. § 2A:14-2b neither divests property owners of a vested right nor disadvantages preexisting contractual relationships. Therefore, as the district court already decided, Defendant’s expectation that it would have a defense to claims arising from their acts of sexual abuse under the prior statute of limitations does not amount to a “vested right” in need of constitutional protection.

B. New Jersey Has Moved Away from A Vested Rights Analysis and Toward Rational Basis Review to Determine the Constitutionality of Revival Laws

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 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). The United States Supreme Court’s interpretation of the Due Process Clause of the Fourteenth Amendment holds that

retroactive legislation, “does not deprive party of due process if the legislation ‘is supported by a legitimate legislative purpose furthered by rational means.’” Pension Ben. Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984). The Court similarly embraced a “rational relationship” test. Id. At 543 (quoting Pension, 467 U.S. at 729). Now, when retroactive legislation is challenged as a violation of New Jersey’s Due Process protections,² as Defendant attempts in this case, 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).³

² 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)).

³ See Short, 372 N.J. Super. at 337-40 (finding that an amendment to a statute of limitation 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. 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); D.J.L. v. Armour Pharm. Co., 704 A.2d at 108, 114–15 (finding 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. The Court recognized the principle that a State can protect its people by holding perpetrators accountable. The revival of expired claims did not impair any constitutionally protected rights where the Legislature, “through legislative debate and deliberation,” determined the appropriate date of accrual for a claim.).

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)). This Court has used the rational basis test to determine the constitutionality of the revival provisions in N.J.S.A. § 2A: 14-2b and determined it was constitutional. See T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (N.J. Sup. Ct., Law Division, Morris Cty) (Peter A. Bogaard, J.S.C.) (attached as Appendix E) .

i. Child Sexual Abuse Uniquely Prevents Victims From Bringing Timely Claims and the Revival Provisions of N.J.S.A. § 2A:12-2b are a Rational Solution to the Legislature’s Interest in Addressing that Problem

Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.⁴ It affects one in five girls and one in thirteen boys in the United States.⁵

⁴ See Preventing Child Sexual Abuse, CDC.gov (last visited Feb. 22, 2022), <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).

⁵ 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); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011); N. Pereda, et. al., The prevalence of child sexual

An extensive body of evidence establishes that childhood sexual abuse survivors are traumatized in a way that is distinguishable from victims of other crimes. These survivors may struggle to disclose their experiences due to effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or stigma regarding victimization.⁶ One study found 44.9% of male victims and 25.4% of female victims of child sex abuse delayed disclosure by more than 20 years.⁷ An estimated 70% of child sexual assault victims never report abuse to the police.⁸ Survivors therefore often need decades to process the abuse they suffered, much less to report it.⁹

N.J.S.A. § 2A:14-2b also serves New Jersey's "compelling" interest in child protection. See, e.g., New York v. Ferber, 458 U.S. 747, 756-57 (1982); State v.

abuse in community and student samples: A meta-analysis, 29 CLINICAL PSYCH. REV. 328, 334 (2009).

⁶ 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).

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

⁸ D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US Dept. of Justice, Office of Justice Programs (2008), <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf>.

⁹ Rebecca Campbell, Ph.D., "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>; 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).

Cohen, 68 A.3d 892, 896 (N.J. Super. Ct. July 2, 2009) (“protection of the children’s physical and psychological welfare constitutes a compelling state interest”) (quoting Application of VV Pub. Corp., 577 A.2d 412 (1990)). Three important public purposes are served by the Legislature’s enactment of N.J.S.A. § 2A: 14-2b. It: (1) identifies previously unknown child predators and the institutions that shield them; (2) shifts the cost of abuse from survivors to those who caused the abuse; and (3) educates the public to prevent future abuse.

First, the revival window facilitates the identification of previously unknown child predators¹⁰ and institutions who shield them who would otherwise not be identified, because it is unconstitutional to revive a criminal SOL, Stogner v. California, 539 U.S. 607, 610 (2003). Through N.J.S.A. § 2A:14-2b, the State empowered victims to identify New Jersey’s hidden child predators and institutions that endanger children to the public so they can be held accountable, so the public can develop policies to prevent further abuse in the long-term.¹¹

¹⁰ Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995) (7% of offenders sampled committed offenses against 41 to 450 children; the highest time between offense to conviction was 36 years).

¹¹ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDAUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV (last visited Feb. 23, 2022), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

Second, N.J.S.A. § 2A:14-2b educates the public about dangers of child sexual abuse and prevention. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press publishes pieces that enlighten communities about methods child molesters use to sexually assault children and the institutional failures that enabled their abuse. This connects the public with tools to identify abusers and responsible institutions. SOL reform not only provides access to justice previously withheld from survivors of child sexual abuse; it prevents further abuse by fostering social awareness while encouraging institutions to implement accountability and safe practices.

Third, the cost of child sexual abuse to survivors is enormous,¹² and they, along with New Jersey, unjustly carry the burden of this expense.¹³ The estimated

¹² See M. Merricka., et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 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).

¹³ While about one in four New Jerseyans receive Medicaid, sex abuse survivors likely disproportionately receive support due to the crippling effect of trauma. Louise Norris, New Jersey and the ACA's Medicaid expansion, HEALTHINSURANCE.ORG (Nov. 17, 2021), <https://www.healthinsurance.org/medicaid/new->

lifetime cost to society of child sexual abuse cases occurring in the U.S. in 2015 is \$9.3 billion, and the average cost of non-fatal per female victim was estimated at \$282,734.¹⁴ The negative effects over a survivor's lifetime generate costs that impact the nation's health care, education, criminal justice, and welfare systems.¹⁵ Window cases that result in awards and settlements will not only equitably shift some of the cost of abuse away from survivors; they will also save the state money by reducing expenditures on these public services.

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) (Peter A. Bogaard, J.S.C.) (attached as Appendix E), the court upheld § 2A:14-2b as constitutional “either under a rational basis analysis or even under a vested rights analysis.” The court 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.” T.M. v. Order of St.

jersey/#:~:text=New%20Jersey%20Medicaid%20enrollment%20in,in%20Medicaid%20in%20New%20Jersey.

¹⁴ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

¹⁵ *Id.*

Benedict of New Jersey, Inc., Tr. Of Mot. At 53, May 22, 2020 (attached as Appendix E).

The legitimate legislative purpose of the revival window under N.J.S.A. § 2A:14-2b is to increase public safety and remedy the injustice inflicted on so many survivors of sex abuse by unfairly short SOLs. Retroactive revival of civil sex abuse claims is not only a rational means of remedying the longstanding injustice of short statutes of limitation, but also the only means. Even if the revival provision were subject to a higher standard of scrutiny than the rational basis standard, it would be impossible to identify more compelling interests that are more narrowly tailored than the interests protected by § 2A:14-2b.

C. N.J.S.A. § 2A:14-2b Revival of 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.S.A. § 2A:14-2b to revive previously expired claims of sexual abuse is well established in Part II(B)(i) of this brief. The “manifest injustice” inquiry weighs these interests in revival of sexual abuse claims against Defendant’s reliance on prior SOLs.

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.S.A. § 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. Although Defendant emphasizes the passage of time in their challenge to N.J.S.A. § 2A:14-2b, it fails to acknowledge that Plaintiff must overcome the burden of proof before any burden shifts to the Defendant.

The Legislature regularly 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). It is clear that the Legislature intended § 2A:14-2b would benefit the broader public and provide relief to sexual abuse victims whose claims would still be untimely by instituting a two-year “open window” period. See S. Rep. No. 477 at 1 (Mar. 7, 2019) (recognizing that the 2019 amendments “would extend the statute of limitations in civil actions for sexual abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based on sexual abuse.”). !!

A manifest injustice argument fails if it relies on the potential unfairness to a defendant, who is alleged to have committed, allowed, or enabled 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.

Any reliance that defendants face under N.J.S.A. § 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^{re}

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.”) (Peter A. Bogaard, J.S.C.) (attached as Appendix E); 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 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. . .”).

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

When New Jersey opened its revival window, it joined a growing list of at least 30 states and territories that enacted civil revival laws for sexual abuse claims that were blocked by unreasonably short statutes of limitation. Over the past twenty years, revival legislation has grown in popularity as legislatures have recognized that

child sexual abuse survivors need more time to come forward and SOLs have historically blocked their claims.¹⁶ Nearly all the courts that considered the constitutionality of these revival windows upheld the laws, even where they adopted a stricter standard of constitutionality than the federal standard. The following table shows this trend:

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Arizona	1.5-Year Window & Age 30 Limit (2019)	A.R.S. § 12-514; H.B. 2466, 54 th Leg., 1 st Reg. Sess. (Ariz. 2019)	Constitutional ¹⁷
Arkansas	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93 rd General Assembly, Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118	Not challenged
California	1-Year Window (2020)	CAL. CIV. PROC. CODE § 340.16 (2021); 2020 CAL. LEGIS. SERV. CH. 246 (A.B. 3092)	Not challenged
	1-Year Window (2019)	CAL. CIV. PROC. CODE § 340.16 (2020); 2019 CAL. LEGIS. SERV. CH. 462 (A.B. 1510)	Not challenged

¹⁶ CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Jan. 1, 2022), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

¹⁷ John I M Doe v. Big Brothers Big Sisters of America, et al., No. CV2020-017354 (Ariz. Super. Ct. Sept. 28, 2021) (Robert Brutinel, C.J.) (attached as Appendix J); John C D Doe v. Big Brothers Big Sisters of America, et al., No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021), review denied, No. CV-22-0003-PR (Ariz. April 8, 2022) (Robert Brutinel, C.J.) (attached as Appendix J).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Constitutional ¹⁸
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional ¹⁹
Colorado*	3-Year Window (2021)	SB21-088, 73 rd General Assembly, 1 st Reg. Sess. (Colo. 2021) (Effective, January 1, 2022) *This is not a revival law—it is a new cause of action—but it opens a window to justice for survivors whose claims have expired.	Not challenged
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged ²⁰

¹⁸ Coats v. New Haven Unified Sch. Dist., 46 Cal. App. 5th 415, 427, 259 Cal. Rptr. 3d 784, 792 (2020).

¹⁹ Roman Catholic Bishop of Oakland v. Superior Court, 128 Cal.App.4th 1155, 1161, 28 Cal.Rptr.3d 355 (2005).

²⁰ See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional ²¹
Florida	4-Year Window (1992)	F.S.A. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional ²²
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional ²³
Guam	Permanent Window (2016)	Tit. 7 G.C.A §§ 11306; 11301.1(b); Added by P.L. 33–187:2 (Sept. 23, 2016)	Not challenged
	2-Year Window (2011)	7 G.C.A. § 11306(2) (2011); Public Laws No.31-06 (2011), available at https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf	Not challenged
Hawaii	2-Year Window (2018)	HAW. REV. STAT. § 657-1.8; 2018 Hawaii Laws Act 98 (S.B. 2719)	Not challenged

²¹ Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008) (Robert B. Young, J.) (attached as Appendix O).

²² Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).

²³ Harvey et al. v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	2-Year Window (2014)	HAW. REV. STAT. § 657-1.8; 2014 Hawaii Laws Act 112 (S.B. 2687)	Not challenged
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)	Constitutional ²⁴
Kentucky	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472); KRS 413.249	Not challenged
Louisiana	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); La. Stat. Ann. § 9:2800.9	Challenge pending ²⁵
Maine	Permanent Window (2021)	ME ST T. 14 § 752-C; 2021 Me. Legis. Serv. Ch. 301 (H.P. 432) (L.D. 589)	Not challenged
Michigan	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872)	Not challenged
Minnesota	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)	Not challenged

²⁴ Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014) (Leslie E. Kobayashi, D.J.) (attached as Appendix M).

²⁵ Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct.).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Montana	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216; 2019 MONTANA LAWS CH. 367 (H.B. 640)	Not challenged
Nevada	Permanent Window & Age 38 Limit (2021)	2021 Nevada Laws Ch. 288 (S.B. 203); NV ST §§ 11.215, 41.1396	Not challenged
New Jersey	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B; 2019 NJ Sess. Law Serv. Ch. 120 (SENATE 477)	Constitutional ²⁶
New York	2-Year Window (2022)	NEW YORK CITY, N.Y., CODE § 10-1105 (2022); L.L. 21/2022 § 2, EFF. JAN. 9, 2022	Not challenged
	1-Year Window (2020)	N.Y. C.P.L.R. § 214-g; 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440); Executive Order No. 202.29 (2020); S.B. 7082, 2020 Leg., Reg. Sess. (N.Y. 2020)	Constitutional ²⁷

²⁶ See SY v. Roman Catholic Diocese, 2021 WL 4473153, at *4 (D.N.J. Sep. 30, 2021) (Esther Salas, U.S.D.J.) (attached as Appendix B); B.A. v. Golabek, 18-cv-7523, 2021 WL 5195665, at *6 (D.N.J. Nov. 8, 2021) (Katharine S. Hayden, U.S.D.J.) (attached as Appendix A); W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616 (D.N.J. June 7, 2021) (Madeline Cox Arleo, U.S.D.J.) (attached as Appendix D); Coyle v. Salesians of Don Bosco, 2021 WL 3484547 (N.J.Super.L. July 27, 2021) (Thomas R. Vena, J.S.C.) (attached as Appendix C); T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Division, Morris County) (Peter A. Bogaard, J.S.C.) (attached as Appendix E).

²⁷ Giuffre v. Prince Andrew, Case No. 1:21-cv-06702-LAK (Jan. 12, 2021, SDNY) (Lewis A. Kaplan, U.S.D.J.) (attached as Appendix I).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	1-Year Window (2019)	N.Y. C.P.L.R. 214-g; 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440); Executive Order No. 202.29 (2020); S.B. 7082, 2020 Leg., Reg. Sess. (N.Y. 2020)	Constitutional ²⁸
North Carolina	2-Year Window (2019)	NC ST § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Challenge pending ²⁹
Northern Mariana Islands	Permanent Window (2021)	2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)	Not challenged

²⁸ S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County (May 13, 2020) (Jaeger, J.) (attached as Appendix N); PB-65 Doe v. Niagara Falls City School Dist., No. E174572/2021, 2021 WL 5750878, at *4 (N.Y. Sup. Ct. Oct. 26, 2021) (Deborah A. Chimes, J.S.C.) (attached as Appendix K); Farrell v. United States Olympic & Paralympic Committee, No. 120CV1178FJSCFH, 2021 WL 4820251 (N.D.N.Y. Oct. 15, 2021) (Frederick J. Scullin, Jr., U.S.D.J.) (attached as Appendix F); PB-36 Doe v. Niagara Falls City Sch. Dist., 72 Misc. 3d 1052 (N.Y. Sup. Ct. 2021); PC-41 Doe v. Poly Prep Cty. Day Sch., No.20 Civ. 3628, 2021 WL 4310891, at *3-9 (E.D.N.Y. Sept. 22, 2021) (Diane Gujarati, U.S.D.J.) (attached as Appendix L), appeal filed, (2d Cir.Oct.22, 2021); Torrey v. Portville Cent. Sch., 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020); Kastner v. Doe, No. 900111 (Sup. Ct. Nassau Cty. Jan. 14, 2022); Giuffre v. Dershowitz, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020) (Loretta A. Preska, Sen. U.S.D.J.) (attached as Appendix H).

²⁹ Rulings against the constitutionality of NC's window are currently on appeal. See Taylor v. Piney Grove Volunteer Fire & Rescue Department, 20 CVS 13487, North Carolina, Wake County Superior Court (Dec. 20, 2021) and Mckinney v. Goins, 21CVS 7438, North Carolina, Wake County Superior Court (Dec. 20, 2021).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Utah	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308 ; 2016 Utah Laws Ch. 379 (H.B. 279)	Unconstitutional ³⁰
Vermont	Permanent Window (2019)	VT. STAT. ANN TIT. 12, § 522, “Actions based on childhood sexual or physical abuse”; 2019 Vermont Laws No. 37 (H. 330)	Not challenged
Washington D.C.	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Constitutional ³¹

There isn’t a single state that permits revival of time-barred claims like New Jersey that has refused to uphold the constitutionality of such a law for sexual abuse survivors.³² As discussed above, New Jersey’s modern approach to due process is flexible, and judicial review of its revival window involves substantially similar considerations of rationality as the appellate courts that have explicitly upheld revival laws for sexual abuse in other states. See, e.g., Hartford Roman Catholic

³⁰ Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

³¹ Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 001351B (D.C. Super. Ct., Oct. 10, 2021) (Todd E. Edelman, J.) (attached as Appendix G).

³² In Rhode Island, cases that predate the 1986 adoption of a civil due process clause have upheld revival, but subsequent to that constitutional amendment the Court did not permit revival in Kelly v. Marcantonio, 678 A.2d 873, 873 (R.I. 1996).

Diocesan Corp., 119 A.3d at 496; Sliney, 41 N.E.3d at 739–40; Cosgriffe v. Cosgriffe, 864 P.2d 776, 779–80 (Mont. 1993); Hoffman, 452 N.W.2d at 514. Every appellate court that has considered the reasonableness of a claim revival statute for sexual abuse survivors under its state due process clause has determined the remedial statute was reasonable, according to *amicus curiae*'s research. For this reason, and all those already discussed, this Court should likewise find that § 2A:14-2b is rational.

New Jersey law clearly permits revival of previously time-barred claims, and so N.J.S.A. § 2A:14-2b for survivors of child sexual 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 sexual 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.S.A. § 2A:14-2b is a constitutional exercise of the Legislature's authority as applied to this case.

Respectfully submitted,

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