

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

LILI BERNARD,  
Plaintiff,

v.

WILLIAM COSBY,  
Defendant.

Case No. 21-CV-18566 (NLH) (MJS)

*Document Filed Electronically*

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

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**Other Authorities**

CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Jan. 1, 2022) .....25

*Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILD USA (Mar. 2020) .....7

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*Senate Committee Substitute for Senate Bill No. 477- L.2019, c. 120, May 13, 2019 .....8*

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## STATEMENT OF INTEREST OF AMICUS CURIAE

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

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

CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of New Jersey’s revival law for 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, 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.

Every court to consider the constitutionality of the revival window under § 2A:14-2b has upheld it; Defendant does not dispute this fact. Def.'s Br. at 9, 20. 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); S.Y. v. Roman Catholic Diocese of Paterson, 2021 WL 4473153 (D.N.J. Sept. 30, 2021). 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. Likewise, it is clear from the legislative history of § 2A:14-2b that the legislature considered the public interest in justice for survivors and preventing sexual abuse when it included claims by survivors of adult sexual abuse

in the revival window. Therefore, the constitutional analysis of § 2A:14-2b remains the same for both child and adult victims despite Defendant's assertion.

This Court's decision will not only impact survivors of adult sexual abuse; 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.

## ARGUMENT

### I. SECTION 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.<sup>1</sup> 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: “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).

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<sup>1</sup> 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).

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. Stat. Ann. § 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.

Slincy 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. SECTION 2A:14-2B’S REVIVAL WINDOW IS CONSTITUTIONAL UNDER THE NEW JERSEY CONSTITUTION’S DUE PROCESS CLAUSE**

Section 2A:14-2b is also constitutional under the New Jersey constitution because, (1) the text of the statute explicitly calls for the revival of claims, including for adult victims, (2) the expiration of a procedural SOL 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); S.Y. v. Roman Catholic

Diocese of Paterson, 2021 WL 4473153 (D.N.J. Sept. 30, 2021); and (3) the revival window for sex abuse survivors to file claims is a rational solution to remedying the injustice survivors endured and constitutes reasonable public policy. See Coyle v. Salesians of Don Bosco, No. L-2606-21, 2021 WL 3484547 (N.J.Super.L. July 27, 2021). Further, there is no manifest injustice to Defendant because his alleged conduct was illegal at the time he took action and any reliance on the expiration of Plaintiff's sex abuse claims is far outweighed by New Jersey's public interest in identifying unknown perpetrators, holding responsible 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).

**A. The Legislature Expressly Intended for Section 2A:14-2b to Apply Retroactively to All Sexual Abuse Related Claims That Were Previously Time-Barred**

In any matter requiring consideration of a statute, the courts' primary inquiry is that of legislative intent. See, e.g., Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251, 263–64 (2008) (explaining that the Supreme Court's essential task in construing a statute is to understand and give effect to the legislature's intent). To determine legislative intent, courts look first to a statute's language and gives those terms their plain and ordinary meaning, DiProspero v. Penn., 183 N.J. 477, 492 (2005), because "the best indicator of that intent is the plain language chosen by

the Legislature,” Cashin v. Bello, 223 N.J. 328, 335 (2015). Where the statutory language is clear and unambiguous, courts may not impose an interpretation contrary to the statutes plain meaning. See State v. Smith, 197 N.J. 325, 332 (2009) (stating that it is not the Supreme Court's function to rewrite the Legislature's plainly written enactment or presume that the Legislature intended something other than that expressed by way of the plain language); see also, Murray v. Plainfield Rescue Squad, 210 N.J. 581 (2012) (reiterating that if the legislature's intent is clear on statute's face, then the court must apply law as written); Parsons ex rel. Parsons v. Mullica Tp. Bd. of Educ., 226 N.J. 297 (2016) (reaffirming that when the statutory language is clear, the court's interpretive process ceases, and its sole function is to enforce the statute in accordance with its terms).

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

New Jersey courts will give effect to retroactive statutes when the legislature evidences a clear intent that the statute should be so applied. Twiss, 124 N.J. at 467.

i. *The Plain Language of Section 2A:14-2b Demonstrates the Legislature’s Intent to Enact a Revival Window For Both Adult and Child Sexual Abuse Claims*

The plain language of N.J. Section 2A:14-2b shows the Legislature’s intent to open a two-year revival window for victims of any age for claims relating to the sexual abuse of children and sexual assault of adults that previously expired. W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616, at 2. Section 2A:14-2b applies retroactively to revive expired claims pursuant to following language:

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

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

ii. *The Legislative History Demonstrates Clear Intent by the Legislature to Revive Expired Sexual Abuse Claims*

Even if the statute's retroactivity was not explicit, "the legislative history of the law evinces a clear legislative intent for retroactive application." W.F. v. Roman Catholic Diocese of Paterson, at 2. For example, a Senate Judiciary Committee Statement explains that the provision "creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill's effective date which would otherwise be time-barred" and the "extended statute of limitations is retroactive to cover past acts of abuse." Senate Judiciary Committee Statement for Bill No. 477-L.2019, c. 120, March 7, 2019. See also Governor's Statement Upon Signing, Senate Committee Substitute for Senate Bill No. 477-L.2019, c. 120, May 13, 2019 (N.J. Stat. Ann. § 2A:14-2b "creates a two-year filing window for sexual abuse claims that would otherwise be time-barred by the statute of limitations that goes into effect upon the bill's enactment."). Therefore, the New Jersey legislature specifically intended that § 2A:14-2b be given retroactive effect.

*iii. The Legislative History Also Demonstrates the Clear Intent for the Revival Window to Apply to Both Children and Adults Based on Similar Public Policy Concerns*

The New Jersey legislature enacted a revival window under § 2A:14-2b that applies to both adult and child victims based on similar public policy concerns

associated with the trauma and delayed disclosure of sexual abuse.<sup>2</sup> Defendant contends that the New Jersey legislature enacted the revival window “because victims of *child abuse* are not able to appreciate the extent or cause of harm they experience for many years after the abuse has ended,” and the same concerns “are not present where the alleged victim is an adult...” Def.’s Br. at 20-21. Additionally, Defendant states that “the New Jersey legislature did not make any findings about why the window is curative with respect to adult victims.” Def.’s Br. at 21. These assertions are unequivocally false.

The Legislature’s intent was clear that the revival window applies to both child and adult victims of sexual abuse. In fact, the stages of the Senate bill, SB 477, demonstrate this intent as the revival window pertaining to adults was specifically added to the amended bill after it was initially introduced without it. See Senate Bill No. 477-L.2018, Dec. 4, 2018 (PREFILED); Senate Committee Substitute for Senate Bill No. 477- L.2019, c. 120, May 13, 2019. Additionally, the Senate Judiciary Committee’s Statement to the Senate Subcommittee, which Defendant cites in his brief, explained the revival provision and its applicability to both child and adult victims:

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<sup>2</sup> The trauma associated with child sexual abuse uniquely prevents survivors from bringing timely claims under short statutes of limitations. *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILD USA (Mar. 2020), <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

Section 9 - Child and Adult Victims: This section creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill's effective date which would otherwise be time-barred, even after applying (retroactively) the new, extended statute of limitations period for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).

Senate Judiciary Committee Statement for Bill No. 477-L.2019, c. 120, March 7, 2019.

Although much of the legislative history and reporting regarding the revival window focuses on child victims, testimony and statements from the legislators and other witnesses show that it also applies to adult victims for many of the same public concerns. The sponsor of the legislation, Senator Joseph Vitale, stated the following:

To change our state's archaic two year statutes of limitations for *victims of child and adult sex abuse* and to provide an opportunity for others who have never been able to seek that justice. For me this has been a nearly two decade effort to have all of us understand the depth of sex abuse, the ways and places in which it takes place and the awful life altering consequences for all of its victims... For a *child or adult*, [sexual abuse] is the single most violent life changing event that will ever happen to them. They carry that with them for the entirety of their lives. And they never forget and for many of them, never heal... *This bill equally applies to all victims, both children and adults*, so they are given a fair and reasonable amount of time to bring their case regardless of when the abuse occurred. This includes allowing those previously time barred by our worst in the nation

statute of limitations time to pursue a civil case for a period of 2 years, referred to as a window in the bill. (Emphasis added).

*Hearing on SB 477 Before the Senate Judiciary Committee*, 2018-19 Leg., 218th Sess. (NJ 2019) (statement of Sen. Joseph Vitale); *Hearing on AB 3648 Before the Assembly Judiciary Committee*, 2018-19 Leg., 218th Sess. (NJ 2019) (statement of Sen. Joseph Vitale).

Asher Lovy, an advocate for sexual abuse victims and a survivor himself, testified before the Assembly Judiciary Committee considering the companion bill, AB 3648, and highlighted the importance of a revival window for adult victims. He stated:

This bill in some ways is the best bill right now existing in this country, especially in regards to... the way it opens a window to adult victims acknowledging that adult survivors of sexual assault also have difficulty in coming forward... This bill as it pertains to adult victims of sexual assault does not actually change, as I understand it, the civil statute of limitations. It simply extends the window after you discover more facets of the abuse, the effects of the abuse, it extends the window where you have the ability to go into a courtroom and go through a Lopez hearing and prove your case.

*Hearing on AB 3648 Before the Assembly Judiciary Committee*, 2018-19 Leg., 218th Sess. (NJ 2019) (statement of Asher Lovy).

Significantly, an adult survivor of sexual assault also testified before the Senate Judiciary Committee regarding the importance of the legislation. Katie Brennan, who was 31 at the time she testified, went public in a Wall Street Journal article with allegations of being raped by a senior official in Governor Phil

Murphy’s administration after a campaign event in April 2017.<sup>3</sup> She told legislators that she filed a civil lawsuit against the state and the campaign official with just three months and one day left on the statute of limitations under New Jersey’s current law. *Hearing on SB 477 Before the Senate Judiciary Committee*, 2018-19 Leg., 218th Sess. (NJ 2019) (statement of Katie Brennan). She detailed the trauma she went through days after the alleged incident, as well as the “traumatizing decision” to pursue a civil case. *Id.* She also highlighted the frequency of delayed reporting for sexual abuse victims, stating “Out of 1,000 sexual assaults, approximately 230 people report, and less than five see a [criminal] conviction.” *Id.* Brennan’s participation shows that the Legislature considered the impact of a highly publicized case in New Jersey involving an adult victim of sexual assault, and the bill reflected that consideration.

Although much of the legislative history of the revival window under § 2A:14-2b focuses on child victims, it is unquestionable that the Legislature intended the provision to also apply to victims of adult sexual abuse.

**B. Retroactive Application of Section 2A:14-2b Is Constitutional as It Does Not Interfere with A Vested Right of The Defendant**

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<sup>3</sup> See Katie King, *A Sexual Assault Accusation in New Jersey Spotlights a National Dilemma*, THE WALL STREET JOURNAL (Oct. 14, 2018), <https://www.wsj.com/articles/a-sexual-assault-accusation-in-new-jersey-exposes-a-national-dilemma-1539542172>.

Once the court has found legislative intent to retroactively apply the statute, the court must then determine whether retroactive application of the particular statute at issue interferes with a “vested right” in violation of the Due Process Clause of the New Jersey Constitution, Art. I, ¶ 1. Twiss at 467, which this Court has held does not. S.Y. v. Roman Catholic Diocese of Paterson, 2021 WL 4473153 (D. N.J. Sept. 30, 2021); W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616 (D.N.J. June 7, 2021).

The New Jersey Supreme Court has rejected the argument that the retroactive application of revived SOLs inherently disturbs rights vested under the New Jersey Constitution. See id.; Panzino v. Continental Can Co., 71 N.J. 298, 305 (1976) ; Short 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., this Court explicitly upheld the constitutionality of § 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); D.J.L. v. Armour Pharmaceutical Co., 704 A.2d 104, 115 (N.J. Super. Ct. Sept. 29, 1997)).

The revival provision pursuant to § 2A:14-2b neither divests property owners of a vested right nor disadvantages preexisting contractual relationships. Therefore, as this 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.

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

All statutes with retroactive elements are subject to scrutiny under the Due Process Clause of the New Jersey Constitution, Art. I, ¶ 1. As noted, the New Jersey Supreme Court historically performed its due process analysis by asking whether retroactive application would interfere with a “vested right.” See, e.g., Phillips, 128 N.J. at 617. This inquiry has proven challenging absent a clear and consistent definition of a “vested right” in the context of legislative retroactivity. See, e.g., Pennsylvania Greyhound Lines v. Rosenthal, 14 N.J. 372, 384 (1954) (defining a vested right as “a present fixed interest which . . . should be protected against arbitrary state action.”); Twiss, 124 N.J. at 469–70 (explaining that retroactive application generally does not violate due process unless the consequences are “particularly harsh or oppressive.”); see also, Phillips, 128 N.J. at 620 (“There can be no vested right in the continued existence of a statute or rule of the common law which precludes its change or repeal.”); Levin v. Township of Livingston, 62 N.J.Super. 395, 404 (Law Div.1960), aff’d in part, rev’d in part, 35 N.J. 500 (1961) (declaring that the “mere expectation as may be based upon an anticipated continuance of the present general laws” does not constitute a “vested right”). Accordingly, the New Jersey Supreme Court in Phillips noted that “[d]iscerning commentators and judges have questioned the value of the vested rights analysis.” 128 N.J. at 621 (quotations omitted).

The Court in Nobrega, a case involving retroactive application of a newly enacted real estate disclosure statute, further expressed disfavor in the “vested rights” analysis when determining the constitutionality of retroactive application of a statute. 167 N.J. 520, 540-45 (2001). Recognizing the United States Supreme Court’s interpretation of the Due Process Clause of the Fourteenth Amendment as holding that retroactive legislation, “does not deprive party of due process if the legislation ‘is supported by a legitimate legislative purpose furthered by rational means,’” the Court went on to state its intent to similarly embrace a “rational relationship” test. Id. at 543 (quoting Pension Ben. Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984)). Now, when retroactive legislation is challenged as a violation of New Jersey’s Due Process protections,<sup>4</sup> 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).<sup>5</sup>

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<sup>4</sup> 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)).

<sup>5</sup> See Short, 372 N.J. Super. at 337-40 (finding that an amendment to an SOL reviving expired claims for wrongful death causes of action was “supported by a legitimate legislative purpose furthered by rational means” because it is difficult for individuals who have lost a loved one to contemplate bringing a claim against a defendant within only two years of a loved one’s

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)).

Recently, in T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (N.J. Sup. Ct., Law Division, Morris Cty), the court upheld § 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.” Tr. of Mot. at 53, May 22, 2020.

The legitimate legislative purpose of the revival window under N.J. Stat. Ann. § 2A:14-2b is to increase public safety and remedy the injustice inflicted on

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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.).

so many survivors of sex abuse by unfairly short SOLs. As The Legislature recognized, the State has an interest in discovering hidden predators in New Jersey to keep people safe from future abuse. Retroactive revival of civil sex abuse claims is not only a rational means of remedying the longstanding injustice of short SOLs, 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.

**D. N.J. Stat. Ann. § 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. Stat. Ann. § 2A:14-2b to revive previously expired claims of sexual abuse is well established in Part II(C) of this brief. The “manifest injustice” inquiry weighs these interests in revival of sexual abuse claims against Defendants’ 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. Stat. Ann. § 2A:14-2b is not “manifestly unjust” merely because a party relied on avoiding liability or hoped they would not be sued for tortious conduct.

The Legislature 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.”).

Though child sexual abuse was a major focus in passing the legislation, lawmakers recognized the need for all victims of sexual abuse to access justice. A sponsor of the legislation, Senator Joseph Vitale, stated, “Child and adult victims of sexual assault and abuse live every day with their trauma... And every single day that passes without changing this law is a reminder to them that they don’t matter.” He further stated, “Sexual assault and rape are crimes entirely unique and they should be treated as such, particularly when it involves children.”<sup>6</sup> By

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<sup>6</sup> *See also Governor Murphy Signs Legislation Extending the Civil Statute of Limitations for Sexual Abuse Claims in New Jersey* (May 13, 2019), available at <https://www.nj.gov/governor/news/news/562019/20190513c.shtml> (Statement by Governor Phil Murphy: “Survivors of sexual abuse deserve opportunities to seek redress against their abusers... This legislation allows survivors who have faced tremendous trauma the ability to pursue justice through the court system.”; Statement by Assemblywoman Quijano: “This bill is about allowing victims the time to get the justice they deserve... Because those who have been sexually abused often suppress their memories for years or don’t connect their injuries to their abuse, they need much more time to file a civil action. This new law gives them that time.”; Statement by Assemblywoman Vainieri Huttel “Sexual abuse survivors often struggle for years to come to terms with their abuse, especially

enacting N.J. Stat. Ann. § 2A:14-2b, the Legislature acted to shift *some* of the cost of abuse from the victims to those responsible for their abuse. A manifest injustice argument fails if it relies on the potential unfairness to a defendant, who is alleged to have committed or enabled horrific crimes of 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. Stat. Ann. § 2A:14-2b is not deleterious and is far outweighed by the public interest and the victims’ need for delayed, but necessary justice. See, T.M., Tr. of Mot. at 46 (“[T]he public interest in allowing victims of sexual abuse to seek redress through the courts, and to obtain compensation for what they went through and what they suffered, speaks for

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child victims... We must allow victims the time to realize the damage that has been done to them both physically and mentally. Survivors of sexual abuse deserve a fair opportunity to seek justice.” Statement by Assemblywoman Jasey: “We must also stand up for victims of sexual assault, particularly those who suffered the assault as a child. Often times, survivors continue to suffer for years as they block memories of the horror of rape. With this new law, New Jersey is making it clear that we put victims first.”).

itself.”); see also *id.* at 52 (“There is no manifest injustice to the defendants because their actions were illegal at the time they took action and any reliance on the expiration of plaintiff’s child sex abuse claims is far outweighed by New Jersey’s 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. NEW JERSEY LAW IS IN ACCORD WITH THE MANY STATES THAT ALLOW REVIVAL OF EXPIRED CIVIL CLAIMS**

The national landscape on the constitutionality of reviving time-barred claims supports upholding New Jersey’s revival provisions. Due process at the state level has evolved since the 19<sup>th</sup> century, with states moving away from the antiquated vested rights approach Defendant urges this court to adopt, and replacing it with deference to legislative judgment instead for revival of previously

expired claims.<sup>7</sup> See Cosgriffe, 864 P.2d at 779 (quoting Hoffman, 452 N.W.2d at 513-14) (“[W]e are not in a position to judge the wisdom of the legislature. . .”); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. at 406 (judiciary is prohibited “ from “substitut[ing] our personal notions of good public policy for those of [the legislature]”); Sheehan, 15 A.3d at 1258-60 (“[W]e do not sit as an überlegislature legislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law.”). Modern legislative retroactivity jurisprudence underscores this shift, even among states that had not previously permitted revival.<sup>8</sup>

Many states have addressed the facial constitutional question presented in this case: whether revival of a civil claim previously barred by a statute of limitation is constitutional. Currently, of the 33 jurisdictions that have directly ruled on constitutional challenges to the application of revival legislation to a cause of action, 23 states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival of civil claims that were previously time-barred.<sup>9</sup> New Jersey is unquestionably in line with the majority’s modern

<sup>7</sup> See Landgraf , 511 U.S. at 272.

<sup>8</sup> See *infra* n.17.

<sup>9</sup> **ARIZ:** Chevron Chemical Co. v. Superior Court, 641 P.2d 1275, 1284 (Ariz. 1982); City of Tucson v. Clear Channel Outdoor, Inc., 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, ARIZ. REV. STAT. ANN. § 12-505 (Ariz. 2010)); **CAL:** Mudd v. McColgan, 183 P.2d 10, 13 (Cal. 1947); 20th Century Ins. Co. v.

Superior Court, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), cert. denied, 535 U.S. 1033, 122 S. Ct. 1788 (2002); **CONN:** Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 439-40 (Conn. 2015); **DEL:** Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011); **DC:** Riggs Nat'l Bank v. Dist. of Columbia, 581 A.2d 1229, 1241 (D.C. 1990); **GA:** Canton Textile Mills, Inc. v. Lathem, 317 S.E.2d 189, 193 (Ga. 1984); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661, 662 (Ga. 1996); **HAW:** Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978); Gov't Emps. Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); **IDAHO:** Hecla Mining Co. v. Idaho St Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014); **IOWA:** Schulte v. Wageman, 465 N.W.2d 285, 287 (Iowa 1991); **KAN:** Harding v. K.C. Wall Prod., Inc., 831 P.2d 958, 967-968 (Kan. 1992); Ripley v. Tolbert, 921 P.2d 1210, 1219 (Kan. 1996); **MASS:** Sliney v. Previte, 41 N.E.3d 732, 739-40 (Mass. 2015); City of Boston v. Keene Corp., 406 Mass. 301, 312-13 (Mass. 1989); Kienzler v. Dalkon Shield Claimants Tr., 426 Mass. 87, 88-89 (Mass. 1997); **MICH:** Rookledge v. Garwood, 65 N.W.2d 785, 790-92 (Mich. 1954); Pryber v. Marriott Corp., 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), aff'd, 307 N.W.2d 333 (Mich. 1981) (per curiam); **MINN:** Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); In re Individual 35W Bridge Litig., 806 N.W.2d 820, 830-31 (Minn. 2011); **MONT:** Cosgriffe v. Cosgriffe, 864 P.2d 776, 778 (Mont. 1993); **NJ:** Panzino v. Continental Can Co., 364 A.2d 1043, 1046 (N.J. 1976); **NEW MEX:** Bunton v. Abernathy, 73 P.2d 810, 811-12 (N.M. 1937); Orman v. Van Arsdell, 78 P. 48, 48 (N.M. 1904); **NY:** In re World Trade Ctr. Lower Manhattan Disaster Site Lit., 89 N.E.3d 1227, 1243 (N.Y. 2017); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989); McCann v. Walsh Const. Co., 123 N.Y.S.2d 509, 514 (N.Y. 1953) aff'd without op. 306 N.Y. 904, 119 N.E.2d 596 (1954); Gallewski v. Hentz & Co., 93 N.E.2d 620, 624-25 (N.Y. 1950); **N DAK:** In Interest of W.M.V., 268 N.W.2d 781, 786 (N.D. 1978); **OR:** McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); Owens v. Maass, 918 P.2d 808, 813 (Or. 1996); **S DAK:** Stratmeyer v. Stratmeyer, 567 N.W.2d 220, 223 (S.D. 1997); **VA:** Kopalchick v. Cath. Diocese of Richmond, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007); **WASH:** Lane v. Dep't of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914, 922 (Wash. 2006), superseded in part by statute WASH. REV. CODE 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061, 1064 (Wash. 2007), overruled in part by 207 P.3d 1251 (Wash. 2009); **W VA:** Pankovich v. SWCC, 163 W. Va. 583, 259 S.E.2d 127, 131-32 (W. Va. 1979); Shelby J.S. v. George L.H., 381 S.E.2d 269,

perspective. There are 9 minority states expressly ruling the law at issue could not constitutionally revive claims.<sup>10</sup> It is worth noting that in several cases where a law was not permitted to revive claims, the statutes at issue were missing the explicit revival language and legislative intent to revive that § 2A:14-2b includes.<sup>11</sup>

Defendant's sweeping claim that most states recognize an absolute constitutional vested right in a statute of limitations defense is patently false. (D. Br. 19).<sup>12</sup> Regardless, the rationale of the minority states still clinging to a vested

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273 (W. Va. 1989); **WYO:** Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979); **RM v.State**, 891 P.2d 791, 792 (Wyo. 1995).

<sup>10</sup> 9 states have expressly held the retroactive application of a particular revival law was unconstitutional. **ALA:** Tyson v. Johns-Manville Sales Corp., 399 So. 2d 263, 268 (Ala. 1981) superseded by statute as recognized in Johnson v. Garlock, Inc., 682 So.2d 25 (Ala.1996); **ARK:** Johnson v. Lilly, 308 Ark. 201, 203, 823 S.W.2d 883, 885 (1992); **FL:** Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994); **ILL:** D.P. v. M.J.O., 266 Ill. App. 3d 1029, 1036, 640 N.E.2d 1323, 1328 (1994); **MISSOURI:** Doe v. Roman Catholic Diocese of Jefferson City, 862 S.W.2d 338, 340 (Mo. 1993); **NH:** Gould v. Concord Hospital, 126 N.H. 405, 408, 493 A.2d 1193 (N.H. 1985); **RI:** Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996); **SC:** Doe v. Crooks, 364 S.C. 349, 351–52, 613 S.E.2d 536, 538 (S.C. 2005); **UTAH:** Mitchell v. Roberts, ---P.3d---, 2020 WL 3118607, \*2 (Utah 2020).

<sup>11</sup> See e.g., D.P. v. M.J.O., 266 Ill. App. 3d 1029, 1036, 640 N.E.2d 1323, 1328 (1994) (“Nor would the language of § 13–202.2(e) indicate a legislative intent to give retroactive application to the provisions of the amendatory act . . .”); Gould v. Concord Hospital, 126 N.H. 405, 408, 493 A.2d 1193 (N.H. 1985); Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996); Doe v. Crooks, 364 S.C. 349, 351–52, 613 S.E.2d 536, 538 (S.C. 2005).

<sup>12</sup> See n. 16; See e.g., Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 440 (1982) (explaining the right to raise a one-year SOL defense instead of a two-year defense is not a “vested property right” even though it may increase liability for defendant); Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011) (“Under Delaware law, the CVA can be applied retroactively because

rights approach to statutes of limitations is not compelling because it directly conflicts with New Jersey law which does not grant defendants an absolute right to such a defense. The revival of an expired civil SOL has been regularly upheld in other contexts in New Jersey. Panzino, 71 N.J. at 304 (revival of occupational hearing loss claims constitutional); Short, 372 N.J. Super. at 304-05 (revival of wrongful death actions constitutional); Tedesco v. Trantino, A-1062-05T1, 2006 WL 3344024, at \*2 (N.J. Super. Ct. App. Div. Nov. 20, 2006) (revival of wrongful death actions constitutional); Armour Pharm. Co., 307 N.J. Super. at 65 (revival of

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it affects matters of procedure and remedies, not substantive or vested rights.”); Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) (“The right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. ...[W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations.”); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985) (“The shelter of a statute of limitations has never been regarded as a fundamental right, and the lapse of a statute of limitations does not endow a citizen with a vested property right in immunity from suit.”); Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 668-69 (Kan. 1992) (“a defendant has no vested right in a statute of limitations. It is an expression of legislative public policy, is procedural, and may be applied retroactively when the legislature expressly makes it so.”); City of Boston v. Keene Corp., 406 Mass. 301, 328 (1989) (“Consequently, the running of the limitations period on [asbestos] claims does not create a vested right which cannot constitutionally be taken away by subsequent statutory revival of the barred remedy.”); Pryber v. Marriott Corp., 98 Mich. App. 50, 56-57 (1980), *aff'd*, 411 Mich. 887 (Mich. 1981) (per curiam) (“the right to defeat a claim by interposing a statute of limitations is not a vested right.”); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (explaining that due process is not violated by the retroactive application of a revival window for a perpetrator of child sexual abuse who has no vested interest in an SOL defense).

claims for HIV or AIDS against blood products constitutional); T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Div., Morris Cty.) (revival of claims arising from child sexual abuse constitutional). Therefore, the relevant majority view amongst the states to rule on revival laws, like New Jersey, is in favor of the constitutionality of revival.

#### **IV. DECISIONS IN OTHER STATES REVIVING SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF THE REVIVAL WINDOW IN SECTION 2A:14-2B**

When New Jersey opened its revival window, it joined a growing list of at least 30 U.S. States and Territories that enacted civil revival laws for sexual abuse claims that were blocked by unreasonably short SOLs. 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.<sup>13</sup> Following the MeToo movement, legislatures began to realize that individuals sexually assaulted as adults also suffer trauma that prevents them from reporting their abuse or pursuing claims immediately. As a result, Michigan, New Jersey, California, and New York enacted revival laws for

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<sup>13</sup> CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Jan. 1, 2022), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

adult sexual assault survivors too.<sup>14</sup> 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:

<b>U.S. Jurisdiction</b>	<b>Revival Law Type</b>	<b>Window Statute</b>	<b>Constitutional Challenge</b>
<b>Arizona</b>	1.5-Year Window & Age 30 Limit (2019)	AZ ST § 12-514; “Arizona Child Protection Act”, H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019)	Not challenged
<b>Arkansas</b>	2-Year Window (2021)	Justice for Vulnerable Victims of Sexual Abuse Act”, Arkansas Act 1036; S.B. 676, 93 <sup>rd</sup> General Assembly, Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118	Not challenged
<b>California</b>	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

<sup>14</sup> See Cal. Civ. Proc. Code § 340.16 (2021); Mich. Comp. Laws § 600.5851b; N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B; New York City, N.Y., Code § 10-1105 (2022).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); “CHILD VICTIMS ACT”, 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Upheld as constitutional <sup>15</sup>
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Upheld as constitutional <sup>16</sup>
<b>Colorado*</b>	3-Year Window (2021)	“Child Sexual Abuse Accountability Act”, SB21-088, 73 <sup>rd</sup> General Assembly, 1 <sup>st</sup> Reg. Sess. (Colo. 2021) (Effective, January 1, 2022)  *The law is not a revival law—it is a new cause of action—but it is included because it opens a window to justice for many survivors whose common law claims have expired.	Not challenged
<b>Delaware</b>	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged <sup>17</sup>

<sup>15</sup> Coats v. New Haven Unified Sch. Dist., 46 Cal. App. 5th 415, 427, 259 Cal. Rptr. 3d 784, 792 (2020).

<sup>16</sup> Roman Catholic Bishop of Oakland v. Superior Court, 128 Cal.App.4th 1155, 1161, 28 Cal.Rptr.3d 355 (2005).

<sup>17</sup> See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).

<b>U.S. Jurisdiction</b>	<b>Revival Law Type</b>	<b>Window Statute</b>	<b>Constitutional Challenge</b>
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; “Child Victim’s Act”, 2007 Delaware Laws Ch. 102 (S.B. 29)	Upheld as constitutional <sup>18</sup>
<b>Florida</b>	4-Year Window (1992)	F.S.A. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Found unconstitutional <sup>19</sup>
<b>Georgia</b>	2-Year Window (2015)	GA. CODE § 9-3-33.1; “Hidden Predator Act”, 2015 Georgia Laws Act 97 (H.B. 17)	Upheld as constitutional <sup>20</sup>
<b>Guam</b>	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 <a href="https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf">https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf</a>	Not challenged
<b>Hawaii</b>	2-Year Window (2018)	HAW. REV. STAT. § 657-1.8; 2018 Hawaii Laws Act 98 (S.B. 2719)	Not challenged
	2-Year Window (2014)	HAW. REV. STAT. § 657-1.8; 2014 Hawaii Laws Act 112 (S.B. 2687)	Not challenged

<sup>18</sup> Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at \*2 (Del. Super. Ct. Apr. 16, 2008).

<sup>19</sup> Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).

<sup>20</sup> Harvey et al. v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

<b>U.S. Jurisdiction</b>	<b>Revival Law Type</b>	<b>Window Statute</b>	<b>Constitutional Challenge</b>
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)	Upheld as constitutional <sup>21</sup>
<b>Kentucky</b>	Limited Window (2021)	“AN ACT relating to child abuse and declaring an emergency”, 2021 Kentucky Laws Ch. 89 (HB 472); KRS 413.249 “Action relating to childhood sexual abuse or childhood sexual assault”	Not challenged
<b>Louisiana</b>	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); La. Stat. Ann. § 9:2800.9 “Action against a person for abuse of a minor”	Challenge pending <sup>22</sup>
<b>Maine</b>	Permanent Window (2021)	ME ST T. 14 § 752-C; “An Act To Provide Access to Justice for Victims of Child Sexual Abuse” 2021 Me. Legis. Serv. Ch. 301 (H.P. 432) (L.D. 589)	Not challenged
<b>Michigan</b>	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872)	Not challenged
<b>Minnesota</b>	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)	Not challenged

<sup>21</sup> Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at \*9 (D. Haw. Aug. 29, 2014).

<sup>22</sup> Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct.).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
Montana	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216 “TORT ACTIONS--CHILDHOOD SEXUAL ABUSE”; 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)	Upheld as constitutional <sup>23</sup>
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; “Child Victims Act” 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)	Upheld as constitutional <sup>24</sup>

<sup>23</sup> See SY v. Roman Catholic Diocese, 2021 WL 4473153, at \*4 (D.N.J. Sep. 30, 2021)); B.A. v. Golabek, 18-cv-7523, 2021 WL 5195665, at \*6 (D.N.J. Nov. 8, 2021); W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616 (D.N.J. June 7, 2021); Coyle v. Salesians of Don Bosco, 2021 WL 3484547 (N.J.Super.L. July 27, 2021); T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Division, Morris County).

<sup>24</sup> Giuffre v. Prince Andrew, Case No. 1:21-cv-06702-LAK (SDNY).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
	1-Year Window (2019)	N.Y. C.P.L.R. 214-g; “Child Victims Act” 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)	Upheld as constitutional <sup>25</sup>
<b>North Carolina</b>	2-Year Window (2019)	NC ST § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Challenge pending <sup>26</sup>
<b>Northern Mariana Islands</b>	Permanent Window (2021)	“To amend the Commonwealth Code to authorize civil claims for child sexual abuse to be commenced at any time; and for other purposes”; 2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)	Not challenged

<sup>25</sup> S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County (May 18, 2020) (Jaeger, J.); PB-65 Doe v. Niagara Falls City School Dist., No. E174572/2021, 2021 WL 5750878, at \*4 (N.Y. Sup. Ct. Oct. 26, 2021); Farrell v. United States Olympic & Paralympic Committee, No. 120CV1178FJSCFH, 2021 WL 4820251 (N.D.N.Y. Oct. 15, 2021); 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), 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).

<sup>26</sup> 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, 21 CVS 7438, North Carolina, Wake County Superior Court (Dec. 20, 2021).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
<b>Utah</b>	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308 ; 2016 Utah Laws Ch. 379 (H.B. 279)	Held unconstitutional <sup>27</sup>
<b>Vermont</b>	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
<b>Washington D.C.</b>	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Upheld as constitutional <sup>28</sup>

Defendant fails to point to a single state that permits revival of time-barred claims like New Jersey but has refused to uphold such a law for sexual abuse survivors.<sup>29</sup> 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 Diocesan Corp., 119 A.3d at 496; Sliney, 41 N.E.3d at 739–40; Cosgriffe v.

<sup>27</sup> Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

<sup>28</sup> Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Superior Court).

<sup>29</sup> 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).

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. Stat. Ann. § 2A:14-2b for survivors of 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 and adult 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. Stat. Ann. § 2A:14-2b is a constitutional exercise of the Legislature's authority.

Respectfully submitted,

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Dated: February 21, 2022

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

LILI BERNARD,  
Plaintiff,

v.

WILLIAM COSBY,  
Defendant.

Case No. 21-CV-18566 (NLH) (MJS)

*Document Filed Electronically*

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**CERTIFICATE OF COMPLIANCE**

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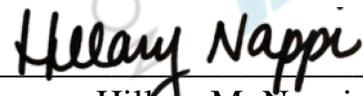
Pursuant to L. Civ. R. 7.1, L. Civ. R. 7.2, the undersigned hereby certifies that this brief complies with the type-volume limitations of Fed. R. App. P.

32(a)(7)(B)(i) and Fed. R. App. P. 29(a)(5):

1. This brief is under 40 pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type, which complies with Fed. R. App. P. 32(a)(5) and (6) and L. Civ. R. 7.2(d).

Dated: February 21, 2022

Respectfully submitted,



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