No. 109PA22 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

DUSTIN MICHAEL MCKINNEY, GEORGE JERMEY MCKINNEY, and JAMES ROBERT TATE,

Plaintiffs-Appellants,

STATE OF NORTH CAROLINA,

Intervenor-Appellant,

v.

GARY SCOTT GOINS and THE GASTON COUNTY BOARD OF EDUCATION,

Defendants-Appellees.

From Wake County

BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFFS-APPELLANTS URGING REVERSAL OF THE DECISION BELOW

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INTRODUCTION[1]

Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.[2] It affects one in five girls and one in thirteen boys in the United States.[3] The trauma that stems from child sexual abuse is complex and individualized, and it impacts victims both in the short-term and throughout their lifetimes.[4] It has devastating impacts on the brain that disrupt neurodevelopment and impair social, emotional, and cognitive functioning.[5] Child sexual abuse takes a significant, long-term toll on victims' overall health as well, increasing the risk not only for depression, anxiety, substance abuse, PTSD, and suicidal ideation, but also physical ailments such as high blood pressure and chronic illness.[6] The unique harms attendant to child sexual abuse make it difficult or impossible for victims to

[1] No person or entity other than amicus curiae contributed to this brief or contributed money for its preparation

[2] *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).

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

[4] BESSEL VAN DER KOLK, THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA (Viking 2014).

[5] De Bellis, M. D., Spratt, E. G., & Hooper, S. R, Neurodevelopmental biology associated with childhood sexual abuse, 20(5) J. OF CHILD SEXUAL ABUSE 548 (2011).

[6] *Supra* n.2.

process and cope with the abuse, or to self-report it.[7] Many victims suffer in silence for decades before they talk to anyone about their traumatic experiences. In fact, research indicates that 44.9% of male victims and 25.4% of female victims delay disclosure *by more than 20 years.*[8] In another study of victims of abuse in Boy Scouts of America, 51% of victims disclosed their abuse for the first time at age fifty or older.[9] The decades before disclosure give perpetrators and their enablers the freedom to move about society with unfettered access to children and the latitude to inflict additional harm.

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short statutes of limitation ("SOLs") that kept victims out of court. Short SOLs for child sex abuse have played into the hands of the perpetrators and their enabling institutions. This has created an emergency for lawmakers and policymakers to redress, halt, and prevent. By passing the SAFE Child Act's revival window, the North Carolina General Assembly has taken a proactive stance to address access to justice for victims who—through no fault of their own—were unable to come forward with their claims until long after the

[7] 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).
[8] Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).
[9] Delayed Disclosure of Child Sexual Abuse, CHILD USA, https://childusa.org/wp-content/uploads/2020/03/delayeddisclosure-childUSA-1.jpg (last visited Mar. 8, 2022).

limitations period had expired. Revival laws are not solely about justice for victims, there are also compelling public policy reasons for permitting older claims to proceed: (1) they identify hidden predators and the institutions that endanger children to the public, thereby shielding other children from abuse; (2) they shift the cost of abuse from victims and taxpayers to those parties responsible for it; and (3) they educate the public about the prevalence of child sex abuse and patterns institutions follow that put children at risk, so that families and the legal system can develop more effective prevention practices.

Because it is unconstitutional to revive a criminal SOL, Stogner v. California, 539 U.S. 607, 610 (2003), filing civil claims under the revival provision is the sole avenue of justice available to many victims and the only means of fulfilling these policy interests. It is also consistent with the national trend to give child sex abuse victims long overdue access to justice through a window and/or age limit revival law.

A ruling against the SAFE Child Act's revival window will have negative ramifications for the hundreds of child sexual abuse survivors throughout North Carolina that are now embracing the window in pursuit of long overdue justice. This case presents an opportunity for the Court to correct this injustice and uphold the Act's revival window as constitutional thereby easing further psychological distress caused by this challenge and putting perpetrators and their aiding and abetting

institutions on notice that the state of North Carolina stands with the victims of these heinous crimes.

Accordingly, CHILD USA respectfully submits that this Court should reverse the decision below and uphold the SAFE Child Act's revival window as constitutional under Article I, §19 of the North Carolina Constitution.

ARGUMENT

I. THE NORTH CAROLINA STATE CONSTITUTOIN DOES NOT LIMIT THE GENERAL ASSEMBLY'S AUTHROTIY TO TEMPORARILY REVIVE THE LIMITATIONS PERIOD FOR CHILD SEXUAL ABUSE CLAIMS

Defendants-Appellees argue that the SAFE Child Act's revival provision violates the North Carolina State Constitution's Law of the Land Clause in Article I, Section 19. This argument is without merit. As this Court established over a century ago, statutes of limitation are procedural devices and thus not immune from legislative change in any way that would give Defendants a "vested right" to be free from liability for common law torts simply because the limitations period has lapsed. To the extent that the decision below creates such a right, it does so based on the majority's nearly exclusive analysis of a single, antiquated case that misapplied federal law and without tying its reasoning to any constitutional provision. Moreover, North Carolina courts have moved away from the "vested rights" inquiry

and now follow the same federal substantive due process approach to challenges brought under Article I, §19 of the State's Constitution. Since there is no "vested" or "fundamental" right to a limitations defense, the SAFE Child Act's revival provision is subject to rational-basis review under which it unquestionably survives scrutiny. The window is a rational response to the General Assembly's interest in remedying the injustice of North Carolina's prior, unreasonably short SOLS, which obstructed victims' access to the courts and kept the public in the dark about predators and enabling institutions. Even if this Court were to find that Defendants have a substantive right in an expired limitations period, the revival provision would still pass constitutional muster under a higher level of scrutiny.

A. Perpetrators of Child Sexual Abuse and Their Enabling Institutions Do Not Have A "Vested Right" In A Limitations Defense Under Article I, §19 of the North Carolina Constitution

That there is no vested right in a limitations defense under the Federal Constitution is undisputed. See Campbell v. Holt, 115 U.S. 620, 629 (1885). This is so because "[s]tatutes of limitation find their justification in necessity and convenience rather than logic." Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945). Statutes of limitation represent "a public policy [enacted by a legislature] about the privilege to litigate" and their protection is not a "fundamental" right. Id. Federal law is settled, "where lapse of time has not invested a party with title to real

or personal property," a legislature may "lift[ ] the bar of a statute of limitation so as to restore a remedy lost" without running afoul of due process under the Fourteenth Amendment. Id at 316.

North Carolina courts have traditionally followed the reasoning of the United States Supreme Court on substantive due process issues because Article I, §19, the Law of the Land Clause, has consistently been interpreted as being synonymous with 'due process of law' as used in the Fourteenth Amendment to the Federal Constitution. Rhyne v. K-Mart Corp., 358 N.C. 160, 170 (2004). Thus, the fact that the SAFE Child Act's revival provision easily survives scrutiny under the federal constitution *should,* consistent with Rhyne and its progeny, defeat Defendants' facial challenge under a "vested rights" analysis.

Despite settled federal law establishing that there is no "vested right" in a limitations defense to common law torts, the panel majority creates such a right under Article I, §19 of the North Carolina State Constitution. The opinion relies on the majority's near exclusive analysis of this Court's decision in Wilkes County v. Forester, 204 N.C. 163 (1933); however, a closer reading of the *Wilkes* case reveals an error in the Court's interpretation and application of the federal rule articulated by the U.S. Supreme Court in *Campbell*, which theorized that the lifting of a limitations bar so as to recover property whose title had vest in another citizen may violate due process. 204 N.C. at 168-70. Importantly, the *Campbell* decision draws

a clear distinction between an unconstitutional law that acts to strip a person of their tangible property, and a constitutional change which merely extends the time within which a plaintiff can file a claim. Id. Unfortunately, the *Wilkes* decision fails to recognize this critical distinction. That single error has been compounded over the years and has led to a problematic situation in which North Carolina courts have found a violation of the federal constitution where the federal courts themselves have not. Notably, neither *Wilkes* itself nor its progeny cite to the Law of the Land Clause or any other state constitutional provision to support the conclusion that a defendant has a vested right in a statutory limitations bar. Absent a North Carolina case finding that such a right is created by a state constitutional provision, no such right exists. See State v. ----, 2 N.C. 28, 39 (1794) ("Does any part of our Constitution prohibit the passing of a retrospective law? It certainly does not."); see also State v. Bell, 61 N.C. 76, 83 (1867) (per curiam) (noting that although the ex post facto clause limits the retroactive application of certain criminal laws, the "omission" of a general bar on retroactive legislation "is a strong argument to show that retrospective laws, merely as such, were not intended to be forbidden.").

By contrast, a proper interpretation of *Campbell* and other Supreme Court precedent is consistent with North Carolina caselaw holding that retroactive procedural laws that impact remedies do not implicate Article I, §19. See, e.g., Alpha Mills v. Watertown Steam-Engine Co., 116 N.C. 797, 804 (1895) (explaining that a

statute of limitation "does not act on the rights of the parties, but only affects the remedy. It is created by the Legislature and can be removed by the Legislature."); Quality Built Homes Inc. v. Town of Carthage, 371 N.C. 60, 69 (2018) (citing *Christie v. Hartley Constr., Inc.*, 367 N.C. 534, 538 (2014) ([S]tatutes of limitation are procedural, not substantive, and determine not whether an injury has occurred, but whether a party can obtain a remedy for that injury.); Speck v. Speck, 5 N.C. App. 296, 301 (1969) ("The General Assembly has the power to enact retroactive laws provided that they do not impair the obligation of contracts or disturb vested rights. There is no vested right in procedure, and therefore statutes affecting procedural matters solely may be given retroactive effect when the statutes express the legislative intent to make them retroactive."). As this Court has held for over a century, the General Assembly has the "unquestionable" power to revive expired limitations provisions, as it affects only a remedy and not a property right. Hinton v. Hinton, 61 N.C. 410, 414-15 (1868).

The SAFE Child Act's revival provision does not divest Defendants of any real or personal property rights and Defendants are not entitled to immunity from liability merely because the legislature's policy change is disadvantageous. See, Chase, 325 U.S. at 316 ("Whatever grievance appellant may have at the change of policy to its disadvantage, it had acquired no immunity from this suit that has become a federal constitutional right."). While Defendants may have had the protection of

the prior limitations "policy" while it existed, the revival provision is not rendered unconstitutional merely because it operates on facts which were in existence prior to its enactment. See Wood v. J. P. Stevens & Co., 297 N.C. 636 (1979); see also, Perry v. Perry, 80 N.C. App. 169, 175-76 (1986) (citations omitted) ("[T]he Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object [. . .] the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances."). Defendants' mere expectancy that it would have a limitations defense to claims arising from their acts of child sexual abuse falls short of what the United States Supreme Court has traditionally held to be a fundamental or "vested right" in need of constitutional protection.

B. North Carolina Courts Have Moved Away from A Vested Rights Approach and Instead Undertake a Substantive Due Process Analysis to Determine the Constitutionality of Revival Laws

Courts throughout the nineteenth century, including those in North Carolina, relied heavily on a "vested rights" analysis in determining the validity of legislation, including legislation reviving the limitations period on otherwise time-barred claims. Many of these "vested rights" cases were decided before or shortly after the Fourteenth Amendment was ratified at a time when substantive due process was in

its infancy and courts did not defer to state legislatures on matters of public policy. See James Kainen, "The Historical Framework for Reviving Constitutional Protection for Property and Contract Rights," 79 Cornell L. Rev. 87 (1993). However, over time the vested rights inquiry proved difficult in the absence of a clear and consistent definition of "vested rights" in relation to legislative retroactivity; the result has been considerable inaccuracy and inconsistency in the analysis of retroactive application of the law, a reality exemplified by *Wilkes*. It is no surprise then that modern jurists have rejected the categorical vested rights inquiry of the nineteenth century and instead employ a substantive due process approach. Under federal substantive due process analysis, a law is unconstitutional only if it serves no rational government purpose. If the law impacts a fundamental right, then it is subject to strict scrutiny and will be deemed constitutional if it is narrowly tailored to serve a compelling government interest. North Carolina has fully adopted the same two-tiered analytical approach for substantive due process challenges under Article I, § 19. See Toomer v. Garrett, 155 N.C. App. 462 (2002).

Now, when retroactive legislation is challenged as a violation of North Carolina's Due Process protections, as Defendants attempt in this case, the pertinent question is thus not the effect of the retroactivity on a "vested right," but rather whether the legislative change is reasonable "in relation to the public good likely to result from it." In re Hospital, 282 N.C. 542, 550 (1973). Utilizing this test, 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 demonstrate a violation beyond a reasonable doubt. North Carolina State Board of Education v. State, 814 S.E.2d 67 (N.C. 2018). Even retroactive laws imposing new burdens based on past acts "come to the Court with a presumption of constitutionality, and [] the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984); Miracle v. N.C. Local Gov't Emps. Ret. Sys., 124 N.C. App. 285, 293 (1996) (citation omitted). A facial challenge is therefore the most difficult constitutional challenge to mount successfully under the presumption of constitutionality, and a court may not strike a statute down if it can be upheld on **any reasonable ground**. See State v. Bryant, 359 N.C. 554 (2005) (emphasis added). As the U.S. Supreme Court sets forth in Landgraf v. USI Film Prods., 511 U.S. 244 (1994), "legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments." 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 itis an acceptable price to pay for the countervailing benefits." Id at 272–73 (emphasis in original).

C. The SAFE Child Act's Revival Provision Easily Survives Scrutiny Under Rational-Basis Review

As previously discussed, North Carolina law holds that statutes of limitation are procedural devices that impact a remedy rather than a substantive "fundamental" right. Accordingly, the SAFE Child Act's revival provision is subject to rational-basis review, under which the provision unequivocally passes constitutional muster. Reviving expired claims serves the public policy interests in: (1) identifying hidden child predators and the institutions that endanger children; (2) shifting the cost of abuse from victims and taxpayers to those who caused the abuse; and (3) educating the public about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future. By enacting the SAFE Child Act's revival provision, the General Assembly achieves these purposes, taking reasonable steps to revive expired claims of child sex abuse where it recognized an opportunity to right a long-standing injustice that kept the truth hidden and victims out of court.

First, the revival window facilitates the identification of previously unknown child predators[10] and the institutions who shield them who would otherwise not be

[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).

identified, because it is unconstitutional to revive a criminal SOL, Stogner, 539 U.S. at 610. By permitting previously time-barred claims to proceed, the State empowers victims to identify North Carolina's hidden child predators and institutions that endanger children to the public so they can be held accountable, and so the public can develop policies to prevent further abuse in the long-term.[11]

Second, the cost of child sexual abuse to victims is enormous, and staggering to the community as the negative effects over a victim's lifetime generate many costs that impact the nation's health care, education, criminal justice, and welfare systems.[12] In fact, the estimated average lifetime cost per victim of abuse includes: $32,648 in childhood health care costs, $10,530 in adult medical costs, $144,360 in productivity losses, $7,728 in child welfare costs, $6,747 in criminal justice costs, and $7,999 in special education costs.[13] That places the economic burden of abuse at an estimated $2 trillion annually.[14] Window cases that result in awards and settlements will not only equitably shift some of the cost of abuse away from victims,

[11] See generally, Making the Case: Why Prevention Matters, PREVENTCHILDABUSE.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.

[12] Fang, et. al., The Economic Burden of Child Maltreatment in the United States & Implications for Prevention, 36 CHILD ABUSE & NEGLECT 156-165 (2012).

[13] Id.

[14] See CHILD USA, Fiscal Impact of SOL Reform, (2018) available at https://www.childusa.org/fiscalimpact.

they will also save the state money by reducing expenditures on important public services.

Finally, revival laws help educate the public about matters of public safety, especially child sexual abuse. 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 public learns about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse. By shedding light on the prevalence and harm from child sex abuse, parents and others are better able to identify abusers and responsible institutions and to prevent further abuse. This knowledge helps generate more social awareness around the signs of grooming and abusive behavior, while also encouraging institutions to implement accountability and safety practices and the legal system to develop policies to protect victims more effectively.

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. These revival laws do not yield a high number of cases,[15] but provide long-overdue justice to adult victims of child sex abuse. Even if this Court were to find

[15] See The Relative Success of Civil SOL Window and Revival Statutes State-by-State, CHILDUSA.ORG (last visited Apr. 5, 2021), available at www.childusa.org/law.

that Defendants have a fundamental right in a limitations defense, the revival provision also satisfies strict scrutiny. It is hard to imagine a more compelling interest than providing access to justice to victims of child sexual abuse and protecting North Carolina's children now and into the future. See State v. Bishop, 368 N.C. 869, 877 (2016) (noting that the General Assembly has a compelling interest in protecting children from physical and psychological harm) ; Cinema I Video, Inc. v. Thornburg, 83 N.C.App. 544, 551-52 (1986) (explaining the state's interest of "surpassing importance" in protecting minors from the "physiological and psychological" harms of sexual exploitation and abuse).

As this Court has continually acknowledged, the legislature is the branch of government that is best equipped to weigh "all the factors surrounding a particular problem," Tetterton v. Long Mfg. Co., 314 N.C. 44, 58 (1985) (quoting Kennedy v. Cumberland Eng'g Co., 471 A.2d 195, 206 (R.I.1984) (Murray, J., dissenting)), and "balance competing interests", Id, and is, therefore, a more appropriate forum than the courts for implementing policy-based changes to the state's laws. See State v. Warren, 252 N.C. 690, 696 (1960). Reviving previously time-barred civil claims is something no legislature should take lightly and the General Assembly did not do so when it unanimously passed the SAFE Child Act. When the legislature enacts a statute after examining its legal and public policy implications it is not the province of the court to substitute its judgement for that of the legislature. See Wynn v. United

Health Services/Two Rivers HealthTrent Campus, 716 S.E. 2d 373 (N.C. Ct. App. 2011), writ denied, review denied, 720 S.E. 2d 685 (N.C. 2012).

II. NORTH CAROLINA'S LAW IS IN ACCORD WITH THE MANY STATES THAT ALLOW REVIVAL OF TIME-BARRED CIVIL CLAIMS

When the North Carolina General Assembly passed the SAFE CHILD Act in 2019, it joined a growing list of at least 30 states and territories that enacted civil revival laws for sexual abuse claims that were previously blocked by unreasonably short SOLs. Over the past two decades, revival legislation has grown in popularity as legislatures have come to understand the science of trauma and increasingly recognize how victims' rights were extinguished long before they had the ability to report or seek justice to bring an action under previously too short limitations periods.

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, 54th Leg., 1st Reg. Sess. (Ariz. 2019)	Constitutional[16]
Arkansas	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93rd 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
	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Constitutional[17]
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional[18]

[16] 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).

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

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

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Colorado*	3-Year Window (2021)	SB21-088, 73rd General Assembly, 1st 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[19]
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional[20]
Florida	4-Year Window (1992)	F.S.A. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional[21]
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional[22]
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

[19] See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).
[20] 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).
[21] Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).
[22] Harvey et al. v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	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
	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[23]
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[24]
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

[23] 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).
[24] Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct.).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Minnesota	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)	Not challenged
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[25]
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[26]

[25] 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).

[26] 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[27]
North Carolina	2-Year Window (2019)	NC ST § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Challenge pending[28]
Northern Mariana Islands	Permanent Window (2021)	2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)	Not challenged
Utah	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308 ; 2016 Utah Laws Ch. 379 (H.B. 279)	Unconstitutional [29]
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

[27] 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).

[28] 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).

[29] Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Washington D.C.	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Constitutional[30]

Indeed, not a single state that permits revival of time-barred claims—like North Carolina—has refused to uphold such a law for sexual abuse survivors.[31] North Carolina's modern approach to due process is flexible, and judicial review of the SAFE Child Act's revival provision involves substantially similar considerations of rationality as courts in other states.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests that this Court reverse the decision below to find that the SAFE Child Act's revival provision to be a constitutional exercise of the North Carolina General Assembly's authority.

Dated: July 11th, 2022

[30] 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).
[31] 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).

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