CHILD USA
THE THINK TANK FOR CHILD PROTECTION

TO: Sen. Lisa Baker, Chair
and members of the Senate Judiciary Committee

FROM: Marci Hamilton, CEO & Academic Director, CHILD USA; Robert A. Fox Professor of Practice, University of Pennsylvania

RE: Constitutionality of revival of civil statute of limitations, SB No. 540

DATE: October 2, 2019

Madame Chair and members of the committee, my name is Marci Hamilton. Thank you for allowing me to testify today regarding the constitutionality of revival of civil statute of limitations, the developments in SOL reform this year, and the public interest in SOL reform. No state has forced victims to get a constitutional amendment before they could get unfairly delayed justice.

By way of introduction, I am the Founder, CEO, and Academic Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am the Robert A. Fox Professor of Practice. I am the author of Justice Denied: What America Must Do to Protect Its Children (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena. I am the leading legal expert on the history and constitutionality of SOL reform and have submitted testimony and successfully briefed the issue in numerous states. Before joining the University of Pennsylvania faculty, I held the Paul R. Verkuil Chair in Public Law at Benjamin N. Cardozo School of Law, where I was a constitutional law scholar, after clerking for Justice Sandra Day O'Connor at the United States Supreme Court.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations, or "SOL" reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

There is a worldwide epidemic of child sex abuse, with at least one in four girls and one in six boys sexually assaulted before they turn 18. The vast majority of claims expire before the victims are capable of getting to court. Passing SB 540 will protect the children and adults of Pennsylvania by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also shift the cost of abuse from the victims to the ones who caused it and bring delayed, but still welcome, justice to these victims. SOL reform validates victims and puts perpetrators and institutions on notice that the state stands with the victims.

Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse.[1] Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked.

[1] N. Spröber et al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC Public Health, at p. 282 (March 27, 2014) at https://www.clinicalkey.com/#!/content/medline/2-s2.0-24669770).

Statutes of limitations or SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that historically has prevented the vast majority of sex abuse and assault victims from obtaining justice. Civil SOL reform in this context serves the public good in three ways:

1) **It *empowers and validates the victims* by giving them a legal weapon to force the previously hidden facts into the public square;**
2) **It *shifts the cost* of abuse from the victims to the ones who caused the abuse;**
3) **It *educates the public* about sexual predators and the entities that enable them to improve prevention in the future.**

The net result is that the society as a whole comes together to support the traumatized victims and to heal itself. This is a vital step in the process toward righting the wrongs perpetrated against the vulnerable and exacerbated by unfairly short SOLs.

This year has been a banner year for SOL reform as 44 states and D.C. have considered legislation to extend or revive the SOLs for child sex abuse. Between 2003 and this year, ten states had revived expired civil SOLs. In 2019 alone, seven more states have done so. Those states are **Arizona, Montana, New Jersey, New York, Rhode Island, Vermont, and Washington, D.C.** For more information about the movement for SOL reform in 2019, see www.childusa.org/2019sol.

There is a growing trend toward revival of expired civil SOLs for adult victims of sex abuse and assault as well. New Jersey enacted a window this year, which revives expired civil SOLs for child and adult sex assault victims for a period of two years. SB 540 would do the same for Pennsylvania's victims. California also opened a window this year, which will provide access to justice through SOL reform to adult victims of physicians at California universities. Michigan opened a 90-day window in 2018 to create justice for the victims of Dr. Larry Nassar.

Pennsylvania's civil SOL is increasingly short at age 30 when compared to developments in the rest of the country. Despite many efforts in the state to extend or eliminate civil SOLs or pass a window, the statute of limitation still remains at age 30. This means that victims of abuse in Pennsylvania bear the burden of acknowledging and exposing their abuse at much earlier points than in many of her sister states. Pennsylvania has generated the most grand jury reports on child sex abuse in the country and is the only state to have definitive evidence of sex abuse cover ups in every diocese, yet they remain behind the tidal wave of action to empower victims to hold perpetrators accountable.

Opponents of SB 540 claim that it is unconstitutional to enact retroactive civil statute of limitations in Pennsylvania, arguing for the arduous process of constitutional amendment. However, federal and state precedent speak differently. Along with a majority of the states, **it is constitutional in Pennsylvania to revive an expired civil SOL.**[2]

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[2] *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)); *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;(2002); *Shell W. E&P, Inc. v. Dolores Cnty. Bd. of*

Reviving expired civil SOLs does not violate due process under the Pennsylvania or Federal Constitution.

It is unconstitutional to revive a criminal SOL, because it violates the Ex Post Facto Clause.[3] At the same time, it is constitutional to revive a civil SOL.[4] Under the federal Constitution, revival of a civil SOL is constitutional if two due process requirements are met: (1) **clear legislative intent** and (2) the **change is to a procedural element**, like a statute of limitations.[5]

While the precise question of the constitutionality of revival of child sex abuse SOLs has not been addressed by the Pennsylvania Supreme Court, the Court has applied these due process principles in *Bible v. Dep't of Labor & Indus.*, 548 Pa. 247, 696 A.2d 1149 (Pa. 1997), when it held a retroactive amendment to the Workers' Compensation Act constitutional because "[w]e have used the same reasonableness/balancing of interests analysis in applying the due process protections of the Pennsylvania Constitution . . . '[T]raditionally, retrospective laws which have been deemed reasonable are those which impair no contract and disturb no vested right, but only vary remedies, cure defects in proceedings otherwise fair, and do not vary existing obligations contrary to their

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Comm'rs, 948 P.2d 1002, 1011-13 (Colo. 1997); *Rossi v. Osage Highland Dev.*, LLC, 219 P.3d 319, 322 (Col. App. 2009) (citing *In re Estate of Randall*, 441 P.2d 153, 155 (Col. 1968)); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 439-40; *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011); *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1241 (D.C. 1990); *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); *Roe v. Doe*, 581 P.2d 310, 316 (Haw. 1978); *Gov't Employees Ins. Co. v. Hyman*, 975 P.2d 211 (Haw. 1999); *Hecla Mining Co. v. Idaho State Tax Comm'n*, 697 P.2d 1161, 1164 (Idaho 1985); *Peterson v. Peterson*, 320 P.3d 1244, 1250 (Idaho 2014); *Metro Holding Co. v. Mitchell*, 589 N.E.2d 217, 219 (Ind. 1992); *Harding v. K.C. Wall Products, Inc.*, 831 P.2d 958, 967-968 (Kan. 1992); *Ripley v. Tolbert*, 921 P.2d 1210, 1219 (Kan. 1996); *Sliney v. Previte*, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); *Allstate Ins. Co. v. Kim*, 829 A.2d 611, 622-23 (Md. 2003); *City of Boston v. Keene Corp.*, 406 Mass. 301, 312-13, 547 N.E.2d 328 (Mass. 1989); *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); *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002); *In re Individual 35W Bridge Litigation*, 806 N.W.2d 820, 830-31 (Minn. 2011); *Cosgriffe v. Cosgriffe*, 864 P.2d at 778; *Panzino v. Continental Can Co.*, 364 A.2d 1043, 1046 (N.J. 1976); *Bunton v. Abernathy*, 73 P.2d 810, 811-12 (N.M. 1937); *Orman v. Van Arsdell*, 78 P. 48, 48(N.M. 1904); *Gallewski v. Hentz & Co.*, 93 N.E.2d 620, 624-25 (N.Y. 1950); *Hymowitz v. Eli Lilly & Co.*, 539 N.E.2d 1069, 1079-80 (N.Y. 1989); *McFadden v. Dryvit Systems, Inc.*, 112 P.3d 1191, 1195 (Or. 2005); *Owens v. Maass*, 918 P.2d 808, 813 (Or. 1996); *Bible v. Dep't of Labor & Indus.*, 696 A.2d 1149, 1156 (Pa. 1997); *McDonald v. Redevelopment Auth. of Allegheny Cnty.*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009); *Twomey v. Carlton House of Providence, Inc.*, 11 R.I. 264, 271 (R.I. 1974); *Dandeneau v. Board of Governors for Higher Educ.*, 491 A.2d 1011, 1012 (R.I. 1985); *DeLonga v. Diocese of Sioux Falls*, 329 F. Supp. 2d 1092, 1101-1102 (S.D. 1994); *Stratmeyer v. Stratmeyer*, 567 N.W.2d at 223; *Lane v. Dep't of Labor & Indus.*, 151 P.2d 440, 443 (S.D. 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); *Pankovich v. SWCC*, 163 W. Va., 259 S.E.2d 127, 131-32 (W. Va. 1979); *Shelby J.S. v. George L.H.*, 381 S.E.2d 269, 273 (W. Va. 1989); *Neiman v. Am. Nat'l Prop. & Cas. Co.*, 613 N.W.2d 160, 164 (Wis. 2000); *Vigil v. Tafoya*, 600 P.2d 721, 725 (Wyo. 1979); *RM v. State*, 891 P.2d 791, 792 (Wyo. 1995).

[3] *Stogner v. California*, 539 U.S. 607, 610 (2003).

[4] *Landgraf v. USI Film Prods*., 511 U.S. 244, 267 (1994).

[5] *See Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004); *see also Landgraf*, 511 U.S. at 267-68; *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 311-15 (1945*); Campbell v. Holt*, 115 U.S. 620, 6 S. Ct. 209 (1885).

situation when entered into and when prosecuted.'"[6] The Pennsylvania Supreme Court's reasoning controls, and in *Bible*, the court found that an amendment which retroactively changed the compensation for loss of hearing for workers' compensation claims did not violate due process. The amendment did not impair claimants' right to receive compensation for hearing loss, which would have been substantive, but merely changed the remedy, and retroactive application of the amendment to pending cases was constitutional.

Since the Supreme Court articulated the modern constitutional standard in *Landgraf* in 1997, the retroactive application of lengthened statutes of limitations has not been found to disturb vested rights under Pennsylvania law.[7] In *McDonald v. Redevelopment Authority*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009), which involved statutes of limitations under eminent domain, the Court held that a retroactive restriction in the limitations period from five years to one did not violate the plaintiffs' due process rights. The shortening of an SOL for a plaintiff was permissible, because it was just a procedural change, not a substantive change. The same reasoning applies to defendants, and thus to SB 540—mere alteration of an SOL does not violate due process in Pennsylvania. Pennsylvania is thus in line with the majority of states, which have **not** found that defendants have a vested right in expired SOLs post-*Landgraf*.[8]

Pennsylvania courts have observed a distinction—even in the sovereign immunity context—between retroactive application of a legislative procedural enactment, such as revival of an SOL, and actual retrospective or retroactive laws which might violate either the Ex Post Facto clause, or Due Process. Expressly following *Landgraf*, one Pennsylvania Court has reasoned:

> A statute does not operate retrospectively merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Instead, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. A statute is retroactive only if it changes the legal consequences of acts completed before its effective date. The…amendments do not impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. As such they do not operate retroactively. …Furthermore, as our Supreme Court has explained the modified timing requirements…are procedural and therefore do not fall within the categories of retrospective laws prohibited by the Ex Post Facto Clause.

Commonw. v. Johnson, 732 A.2d 639, 643 (Pa. Super. Ct. 1999) (internal citations omitted). **Consistent with this reasoning, SB 540 does not retroactively alter the burdens on the parties,**

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[6] *Id*. at 260, 1156 (quoting *Krenzelak v. Krenzelak*, 503 Pa. 373, 382-83, 469 A.2d 987, 991 (Pa.1983) (internal citation omitted).

[7] *McDonald v. Redevelopment Auth.*, 952 A.2d 713,
718 (Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009) ("[N]o one has a vested right in a statute of limitations or other procedural matters, and the legislature may at any time alter, amend or repeal such provision without offending constitutional restraints.").

[8] *Supra* note 2.

or the penalties for defendants who commit or create the conditions for the sexual abuse of children at the time of the commission of the offense. It merely changes one procedural element of the civil law governing child sex abuse: the timing of bringing a civil lawsuit.

Any claim to a vested right in the running of a statute of limitations is grounded in a right to due process, and the Pennsylvania Supreme Court has already foreclosed any proper reliance on such an argument. Most recently, in 2015, two of Pennsylvania's sister State Supreme Courts, Massachusetts and Connecticut, considered the constitutionality of similar revival legislation, and after careful analysis both Courts upheld the revivals to be a proper exercise of legislative judgment under their state Constitutions.[9]

Debunking the arguments against revival of SOLs

One of the reasons given for due process arguments against revival of SOLs is a concern about the potential for false claims. This argument is a red herring. Victims of child sex abuse almost never make false claims, as we learned in Guam, California and Delaware, where windows already opened and closed. In Guam, approximately 200 survivors have filed claims since 2016, when it enacted legislation to eliminate and revive expired claims. No false claims have been reported. In California, there were anecdotal, unconfirmed reports of approximately 5 false claims out of the 1,150 filed, which means false claims in the area of child sex abuse are statistically insignificant. In addition, numerous scientific studies have established that children rarely make up child sex abuse. While there were few false claims in California, the window resulted in the identification of 300 child predators previously unidentified to the public, as mentioned above. These numbers, when applied to the due process "reasonableness/balancing of interests analysis" articulated by the Pennsylvania Supreme Court in *Bible*, also weighs in favor of deference to legislative judgment for the protection of children under the *Landgraf* framework. *Bible*, 548 Pa. at 260.

Opponents of reform try to claim that without a statute of limitations, institutions and pedophiles won't be able to defend themselves in court against decades-old claims, also raising due process fairness concerns. This is another red herring. SOL reform merely removes the arbitrary deadline for filing a claim. The plaintiff still bears the initial burden of proof, and if the plaintiff does not have corroborating evidence, the case is over. The defendant need not defend cases where the plaintiff lacks evidence, and simply need file a motion to dismiss. Right now, for the majority of Pennsylvania cases, defendants simply file motions to dismiss solely on SOL grounds. They fear that the cases will now move to the merits rather than remain unheard due to this arbitrary deadline.

As the *Landgraf* Court noted in discussing the reasonableness of retroactive legislation, "there is no such thing as a vested right to do wrong.'"[10] This principle has long existed under Pennsylvania law as well. There is no such thing as a vested right to commit a wrong, nor to cover up a crime.[11] Due process concerns are muted where the defendant would be claiming a vested right arising out

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[9] *See Sliney v. Previte*, 473 Mass. 283, 41 N.E.3d 732 (Mass. 2015); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 119 A.3d 462 (Conn. 2015).

[10] *Landgraf*, 511 U.S. at 297, 114 S. Ct. at 1510, 128 L. Ed. 2d at 272 (quoting *Freeborn v. Smith*, 69 U.S. 160, 2 Wall. 160, 175, 17 L. Ed. 922 (1865)).

[11] *Kiskaddon v.Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902) ("No one has a vested right to do wrong"); *Satterlee v. Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827) ("there can be no right to do wrong").

of the very same procedural problem which motivated the legislature to act, and fundamental fairness cuts in favor of retroactive reach intended to cure the wrong.[12] The key distinction is that the pedophile and aiding and abetting institutional defendants knew full well when they endangered and harmed children that they were violating the law. There is no unfair surprise in subjecting them to liability, because when they acted, they were on full notice that they should not have done what they did. The revival will do no more than impose on them the liability they created through their own wrongful actions at the time they acted wrongfully.[13]

The plain language of the Pennsylvania Remedies Clause protects those "injured" not those who caused the injury.

Aware of the foregoing law, the Catholic Bishops and their big business supporters have now fallen back on an alternative theory—that the Remedies Clause of the State Constitution supposedly bars revival of a cause of action. The purpose of the Remedies Clause is to protect plaintiffs from legislative action that will undermine the existence of an individual's remedy for an injury done. It is a constitutional guarantee of open courts **for plaintiffs**, and a not shield to block court access in favor of powerful defendants. Unlike a general Due Process concern which must be applied to either party, the Remedies clause text limits its own application, stating, "*all courts shall be open*; and *every man for an injury done* him in his lands, goods, *person* or reputation *shall have remedy by due course of law,* and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct." Pa. Const. Art. 1 § 11.

With SB 540, the legislature is simply trying to protect a plaintiff's ability to proceed in court in pursuit of a remedy for the injury already done. This bill does not create a new substantive theory but rather makes it possible for the one who was injured to receive "due course of law." All Pennsylvania courts agree that the "legislative branch cannot dissolve a right to recover once a case accrues. …' If, at that moment in a particular case, the law would provide the plaintiff access to a remedy, no subsequent law can take it away.'"[14]

In *Ieropoli v. AC&S Corp*., 577 Pa. 138, 842 A.2d 919 (Pa. 2004), the Pennsylvania Supreme Court held that the statute limiting successor asbestos-related liabilities for corporations was unconstitutional. The court analyzed the history of the Remedies Clause in Pennsylvania, and found that the legislation violated the Remedies Clause, because it *extinguished the plaintiff's accrued cause of action* to recover for his asbestos-related illness. The *Ieropoli* Court "held that under the Remedies Clause, *a cause of action* that has accrued is a vested right which cannot be eliminated by subsequent legislation."[15] Any attempt to broaden the *Ieropoli* holding or reasoning to include tortious defendants is belied by the words of the Pennsylvania Supreme Court itself, re-

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[12] *Gilman v.United States*, 290 F. 614, 616 (D. Pa. 1923) ("[T]here can be no vested right to do wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong is to be presumed.").

[13] *Johnson*, 732 A.2d at 643.

[14] *Konidaris v. Portnoff Law Associates, Ltd.,* 598 Pa. 55, 74, 953 A.2d 1231, 1242 (Pa. 2008) (citing and quoting *David Schuman*, *The Right to a Remedy,* 65 Temp. L. Rev. 1197, 1206, 1208 (1992)); *see also Stroback v. Camaioni*, 449 Pa. Super. 395, 674 A.2d 257 (Pa. Super. Ct. 1996).

[15] *Konidaris,* 598 Pa. at 64, 953 A.2d at 1236 (quoting *Konidaris v. Portnoff Law Assoc., Ltd*, 884 A.2d 348, 353 (Pa. Cmwlth. 2005) (emphasis added).

stated its own *Ieropoli* holding as follows: "we held that the statute was unconstitutional as applied to complaints filed before its effective date because the statute extinguished already existing *causes of action*."[16] According to the Pennsylvania Supreme Court, "the guarantee of a 'remedy by due course of law' in Article 1, Section 11, means that a case cannot be altered, in its 'substance' by a subsequent law."[17] Procedural changes are not problematic under the Remedies Clause, and statutes of limitation are procedural in Pennsylvania, not substantive.[18]

Given the due process holdings of cases such as *Bible* and *McDonald*, neither *Ieropoli* or *Konidaris* do alter the text of the Remedies Clause to make it apply to not only those injured but also those responsible for the injury. *There is no vested right to do wrong in Pennsylvania*.[19] Thus, the plain language of the Remedies Clause should control.[20] There is no legitimate, much less plain, reading of SB 540 whereby child sex abuse victims can be said to be the cause of "injury done" to the institutions and individuals who endangered them.[21]

Finally, once again, there is no vested right to do wrong in Pennsylvania. This rule has long existed under Pennsylvania law.[22] There is also no vested right to do wrong under federal law."[23]

Given longstanding precedent and modern jurisprudence, it is clear civil SOL revival legislation, if enacted, would be a proper exercise of legislative judgment in the state of Pennsylvania. The only way to have this question answered once and for all is to enact SB 540 with its retroactive, revival provision, and allow the Justices of the Supreme Court of Pennsylvania to answer the question themselves. Under Pennsylvania law, as under federal, "any legislative enactment, enjoys a presumption of constitutionality," those who wish to challenge it "bear a heavy burden to prove it unconstitutional" and "'[a] statute will only be declared unconstitutional if it clearly, palpably and plainly violates the constitution.'"[24]

Pennsylvania's children and adult survivors deserve at least this much respect by this body for their civil rights.

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[16] *Johnson v. Am. Std.,* 607 Pa. 492, 500, 8 A.3d 318, 323 (Pa. 2010) (emphasis added).
[17] *Ieropoli* 577 Pa. at 149, 842 A.2d at 926 (quoting *Menges v. Dentler*, 33 Pa. 495, 498-99 (Pa. 1859)).
[18] *Seneca v. Yale & Towne Mfg. Co.*, 142 Pa. Super. 470, 474 (Pa. 1941); *see also, In re Condemnation of Real Estate by Carmichaels*, 88 Pa. Commw. 541, 490 A.2d 30 (Pa. Cmwlth. 1985); *Upper Montgomery Joint Authority v. Yerk*, 1 Pa. Commw. 269, 274 A.2d 212 (Pa. Cmwlth. 1971).
[19] *Kiskaddon v. Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902) (emphasis added); *Satterlee v.Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827).
[20] *Ieropoli*, 577 Pa. at 148, 842 A.2d at 925 (noting that "the fundamental rule of construction which guides us is that the Constitution's language controls").
[21] *Commonw. v. Davidson*, 595 Pa. 1, 32, 938 A.2d 198, 216-217, (Pa. 2007) (noting "words and phrases…shall be construed according to rules of grammar and according to their common and approved usage…When the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning[.]") (internal citations omitted); *see also*, *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 557 Pa. 595, 609-610, 735 A.2d 100, 108-109 (Pa. 1999).
[22] *Kiskaddon v. Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902); *Satterlee v. Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827).
[23] *Landgraf*, 511 U.S. at 297.
[24] *Ieropoli*,
577 Pa. at 153-154, 842 A.2d at 928 (quoting *Erfer v. Commonwealth*, 568 Pa. 128, 794 A.2d 325, 331 (Pa. 2002)) (citation omitted).

The Pennsylvania Remedies Clause, according to the Pennsylvania Supreme Court, is similar to 39 other states.

Even if the language of the Pennsylvania Constitution were ambiguous, Pennsylvania's Remedies Clause is not unique, and therefore does not require a unique constitutional interpretation. As the *Ieropoli* Court noted "[t]he constitutions of thirty-nine states contain a provision that is substantially similar to that part of Article 1, Section 11 that is highlighted. This provision, commonly referred to as the 'open courts' or 'remedies' clause, is derived from Magna Carta and Sir Edward Coke's Seventeenth Century commentary on the Great Charter, which was relied upon by the drafters of early American state constitutions."[25] As a majority of State Constitutions contain Plaintiff's Remedy Clauses similar to Pennsylvania's, **and** a majority of states have not found revival of civil SOLs to disturb any vested right, it is disingenuous to argue that Pennsylvania's Constitution is distinctive, and would thus somehow require a contrary result from that seemingly dictated by the ordinary, commonly understood meaning of the term "open courts."[26]

Pennsylvania does not need to amend its state constitution in order to revive expired sex abuse claims, nor should it make revival of expired civil claims contingent on an amendment. A constitutional amendment in Pennsylvania is unnecessary and would be detrimental. It will only serve to temporarily placate the public, while stalling important claims and keeping victims from shifting the cost of their abuse to the ones who caused the abuse. Instead of asking victims, advocates, legislators, and the public to enter into the time-consuming process of constitutional amendment, do what is right for victims of sex abuse and assault and pass SB 540 during this session. It is constitutional in Pennsylvania to revive an expired civil SOL. Reviving expired civil SOLs will empower Pennsylvania's sex abuse victims to bring their attackers to justice.

If I may take my legal hat off for a moment and speak to you as an advocate for children, let me be direct: do not hide behind the Constitution to deny victims their day in court. Not only is that approach misguided but it will delay real justice as new roadblocks are placed in their way. That is simply cruel to people who have suffered long enough.

Pass legislation without a contrived constitutional delay. Our children deserve no less.

Please do not hesitate to contact me if you have questions regarding SOL reform or if I can be of assistance in any way on other child protection issues.

Sincerely,

[25] *Id.* at 148, 925 (internal citations omitted).
[26] *Id.*

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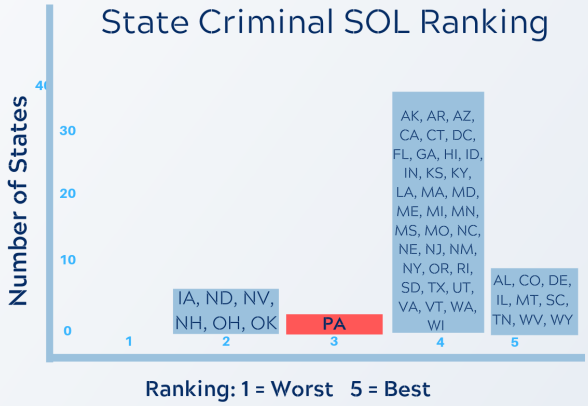
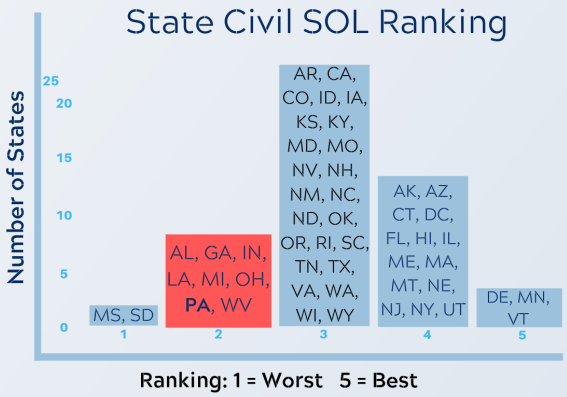
PA

One of the worst states for SOL Reform

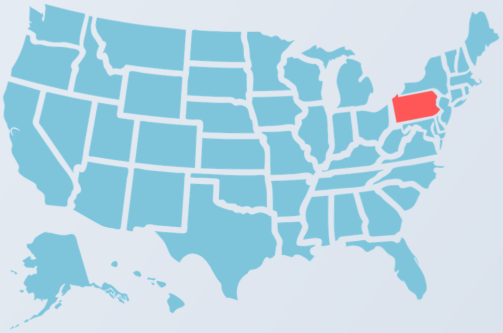


44 other states, the federal government and Washington D.C. have already eliminated criminal SOLs - PA has not.



40 states have better civil SOLs for CSA victims.

PA's Civil SOL expires 22 years before the average age of disclosure for child sex abuse victims.



PA is the **only state** to have definitive evidence of sex abuse cover ups in every diocese.

The Sean P. McIlmail Statute of Limitations Research Institute

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