

T.M., : SUPERIOR COURT OF NEW JERSEY,  
 : LAW DIVISION: MORRIS COUNTY  
 :  
 Plaintiffs, :  
 v. : DOCKET NUMBER. MRS-L-399-17  
 :  
 :  
 ORDER OF ST. BENEDICT OF :  
 NEW JERSEY INC., ET. AL. : Hon. Peter Bogaard, J.S.C.  
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 Defendants,| :  
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**NOTICE OF MOTION OF CHILD USA FOR LEAVE TO APPEAR AS  
AMICI CURIAE**

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Morris County Courthouse  
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Please take notice that, pursuant to Rule 1:13-9, CHILD USA, through its attorneys, David Inscho and Kline and Specter, P.C., hereby move the Superior Court of New Jersey, Civil Division, for an order granting them leave to appear as Amicus Curiae and to file the amicus brief with this motion.

Please take further notice that, in support of this motion, Amici rely on the attached Certification of David Inscho, submitted herewith.

Respectfully submitted,

*David K. Inscho*

BY:

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DAVID K. INSCHO, ESQUIRE  
Counsel for Amici Curiae  
CHILD USA

Dated: April 2, 2020

Do not use without permission of CHILD USA.

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**CERTIFICATION OF DAVID INSCHO IN SUPPORT OF MOTION OF  
CHILD USA FOR LEAVE TO APPEAR AS AMICI CURIAE**

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I, David Inscho, Esq., being of full age, hereby certify as follows:

- 1) I am pro bono counsel to Amicus Curiae, CHILD USA. The Amicus is a nonprofit, national think tank devoted to ending child abuse and neglect. CHILD USA’s interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. The Amicus therefore has a “special interest, involvement, or expertise” in this matter, which turns on the constitutionality of N.J. Stat. Ann. §§ 2A:14-2a and 2b. In my capacity as counsel, I am familiar with the facts set for herein and am authorized to give this Certification in support of the application to appear as Amicus Curiae in this case.

- 2) This case will have immediate and broad implications on the ability of victims of sex abuse to bring civil claims in New Jersey. N.J. Stat. Ann. §§ 2A:14-2a and 2b enable victims of child sex abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sex abuse in New Jersey will expose hidden perpetrators to the public, shift the cost of abuse from victims to those who allowed the abuse, and it will ultimately educate the public and help prevent future abuse. For these reasons, the Court's decision is a matter of public interest.
- 3) If permitted to appear as Amicus Curiae, CHILD USA will present a perspective on the issues distinct from those of the parties. CHILD USA is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA has unique legal and social science expertise that can help the court determine the constitutional questions at issue in this case. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on

revival laws, and has advised state governors, legislatures and judiciaries on the constitutionality of revival window laws for child sex abuse throughout the country, including in New Jersey. The Amicus Curiae respectfully submit that this Court should find that N.J. Stat. Ann. §§ 2A:14-2a and 2b are constitutional under the United States and New Jersey constitutions, and that their provisions are not “manifestly unjust” to defendants.

- 4) For these reasons, the Amicus Curiae moves for leave to appear as Amicus Curiae and to file the brief submitted with this motion. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

*David K. Inscho*

BY:

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DAVID K. INSCHO, ESQUIRE  
Counsel for Amici Curiae  
CHILD USA

Dated April 2, 2020

T.M., : SUPERIOR COURT OF NEW JERSEY,  
: LAW DIVISION: MORRIS COUNTY  
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: ORDER OF ST. BENEDICT OF :  
NEW JERSEY INC., ET. AL. : Hon. Peter Bogaard, J.S.C.  
: Defendants : CERTIFICATION OF SERVICE  
: :  
: :

I, David K. Inscho, Esquire certify as follows:

1. I am pro bono counsel to Amicus Curiae, CHILD USA.
2. Attached to this Certification are true and accurate copies of a Notice of Motion of Child USA for Leave to Appear as Amici Curiae, Certification of David Inscho in Support of Motion of Child USA for Leave to Appear as Amici Curiae, Brief of Amicus Curiae CHILD USA in Support of Plaintiff, and this Certification of Service to be filed with:

Civil Division Case Management Office  
Morris County Courthouse  
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And also caused to be served, via electronic mail, one copy of same upon:

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I certify that the foregoing statements made by me are true, I am aware that if any foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

*David K. Inscho*

BY: \_\_\_\_\_

DAVID K. INSCHO, ESQUIRE  
Counsel for Amici Curiae  
CHILD USA

Dated April 2, 2020



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**BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFF**

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Dated March 1, 2020

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> .....	1
PRELIMINARY STATEMENT .....	2
PROCEDURAL HISTORY.....	4
ARGUMENT .....	5
I. THE REVIVAL PROVISIONS ARE CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION .....	5
II. THE REVIVAL PROVISIONS ARE CONSTITUTIONAL UNDER THE NEW JERSEY CONSTITUTION .....	7
A. New Jersey Law Is in Accord with the Many States to Allow Revival of Expired Claims .....	9
B. New Jersey No Longer Uses a Vested Rights Inquiry to Determine the Constitutionality of Revival Laws and Applies Rational Basis Scrutiny Instead .....	11
C. The Legislature Expressly Intended for N.J. Stat. Ann. §§ 2A:14-2a and 2b To Apply Retroactively to Sexual Abuse Related Claims That Were Previously Time-Barred.....	12
D. Retroactive Revival of Child Sex Abuse Claims Pursuant to N.J. Stat. Ann. §§ 2A:14-2a and 2b Does Not Violate New Jersey Constitutional Due Process Protections .....	15
E. N.J. Stat. Ann. § 2A:14-2b Revival of Child Sex Abuse Claims Does Not Result in Manifest Injustice.....	18
F. Legislative Judgment In Enacting N.J. Stat. Ann. §§ 2A:14-2a and 2b Should Be Accorded Deference .....	23
CONCLUSION .....	24

## TABLE OF AUTHORITIES

### Cases

<u>20th Century Ins. Co. v. Superior Court</u> , 109 Cal. Rptr. 2d 611 (Cal. Ct. App. 2001), <u>cert. denied</u> , 535 U.S. 1033 (2002).....	10
<u>Ashcroft v. Free Speech Coal</u> , 535 U.S. 234 (2002).....	20, 21
<u>Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.</u> , 146 P.3d 914 (Wash. 2006) .....	10
<u>Bible v. Dep't of Labor &amp; Indus.</u> , 696 A.2d 1149 (Pa. 1997).....	10
<u>Bunton v. Abernathy</u> , 73 P.2d 810 (N.M. 1937).....	10
<u>Canton Textile Mills, Inc. v. Lathem</u> , 317 S.E.2d 189 (Ga. 1984).....	10
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<u>Chevron Chemical Co. v. Superior Court</u> , 641 P.2d 1275 (Ariz. 1982).....	10
<u>City of Boston v. Keene Corp.</u> , 406 Mass. 301 (Mass. 1989) .....	10
<u>City of Tucson v. Clear Channel Outdoor, Inc.</u> , 105 P.3d 1163 (Ariz. 2005) (barred by statute, ARIZ. REV. STAT. ANN. § 12-505 (Ariz. 2010)).....	10
<u>Cosgriffe v. Cosgriffe</u> , 864 P.2d 776 (Mont. 1993).....	7, 10, 16, 24
<u>D.J.L. v. Armour Pharm. Co.</u> , 704 A.2d 104 (N.J. Super. Ct. Law Div. 1997).....	11, 15, 17, 18
<u>Doe v. Hartford Roman Catholic Diocesan Corp.</u> , 317 Conn. 357 (Conn. 2015) .....	10, 24
<u>Edgewater Investment Ass'n v. Borough of Edgewater</u> , 510 A.2d 1178 (1986) .....	24
<u>Flemming v. Nestor</u> , 363 U.S. 603 (1960).....	9
<u>Gallewski v. Hentz &amp; Co.</u> , 93 N.E.2d 620 (N.Y. 1950) .....	10
<u>Gibbons v. Gibbons</u> , 432 A.2d 80 (N.J. 1981) .....	13, 20
<u>Ginsberg v. New York</u> , 390 U.S. 629 (1968) .....	20

<u>Globe Newspaper Co. v. Superior Court</u> , 457 U.S. 596 (1982) .....	20
<u>Gomon v. Northland Family Physicians, Ltd.</u> , 645 N.W.2d 413 (Minn. 2002) .....	10
<u>Gov't Emps. Ins. Co. v. Hyman</u> , 975 P.2d 211 (Haw. 1999) .....	10
<u>Harding v. K.C. Wall Prod., Inc.</u> , 831 P.2d 958 (Kan. 1992).....	10
<u>Hecla Mining Co. v. Idaho St Tax Comm'n</u> , 697 P.2d 1161 (Idaho 1985) .....	10
<u>In Interest of W.M.V.</u> , 268 N.W.2d 781 (N.D. 1978).....	10
<u>In re Individual 35W Bridge Litig.</u> , 806 N.W.2d 820 (Minn. 2011) .....	10
<u>J.S. v. R.T.H.</u> , 714 A.2d 924 (N.J. 1998).....	20
<u>K.E. v. Hoffman</u> , 452 N.W.2d 509 (Minn. Ct. App. 1990) .....	7
<u>Kienzler v. Dalkon Shield Claimants Tr.</u> , 426 Mass. 87 (Mass. 1997) .....	10
<u>Kopalchick v. Cath. Diocese of Richmond</u> , 274 Va. 332 (Va. 2007).....	10
<u>Landgraf v. USI Film Prods.</u> , 511 U.S. 244, 267, 114 S.Ct. 1483 (1994) .....	5, 6
<u>Lane v. Dep't of Labor &amp; Indus.</u> , 151 P.2d 440 (Wash. 1944) .....	10
<u>Maryland v. Craig</u> , 497 U.S. 836 (1990) .....	20
<u>Matter of Commitment of N.N.</u> , 679 A.2d 1174 (N.J. 1996) .....	21
<u>McCann v. Walsh Const. Co.</u> , 123 N.Y.S.2d 509 (N.Y. 1953) <u>aff'd without op.</u> 306 N.Y. 904, 119 N.E.2d 596 (1954).....	10
<u>McDonald v. Redevelopment Auth. of Allegheny Cnty.</u> , 952 A.2d 713 (Pa. Commw. Ct. 2008), <u>appeal denied</u> , 968 A.2d 234 (Pa. 2009) .....	10
<u>McFadden v. Dryvit Systems, Inc.</u> , 112 P.3d 1191 (Or. 2005) .....	10
<u>Melanie H. v. Defendant Doe</u> , No. 04-1596-WQH-(WMc), slip op. (S.D.Cal. Dec. 20, 2005) ..	16
<u>Mudd v. McColgan</u> , 183 P.2d 10 (Cal. 1947) .....	10
<u>Nelson v. Bd. of Educ. of Tp. of Old Bridge</u> , 689 A.2d 1342 (1997) .....	19

<u>New York v. Ferber</u> , 458 U.S. 747 (1982).....	20
<u>Nobrega v. Edison Glen Associates</u> , 772 A.2d 368 (N.J. 2001).....	passim
<u>Oberhand v. Dir., Div. of Taxation</u> , 940 A.2d 1202 (2008) .....	13
<u>Orman v. Van Arsdell</u> , 78 P. 48 (N.M. 1904) .....	10
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<u>Pankovich v. SWCC</u> , 163 W. Va. 583, 259 S.E.2d 127 (W. Va. 1979).....	10
<u>Panzino v. Cont'l Can Co.</u> , 364 A.2d 1043 (N.J. 1976).....	10, 11, 12
<u>Pension Ben. Guar. Corp. v. R.A. Gray &amp; Co.</u> , 467 U.S. 717 (1984) .....	12, 15, 24
<u>Peterson v. Peterson</u> , 320 P.3d 1244 (Idaho 2014) .....	10
<u>Price v. N.J. Mfrs. Ins. Co.</u> , 867 A.2d 1181 (N.J. 2005).....	8
<u>Pryber v. Marriott Corp.</u> , 296 N.W.2d 597 (Mich. Ct. App. 1980), <u>aff'd</u> , 307 N.W.2d 333(Mich. 1981).....	10
<u>R.L. v. Voytac</u> , 971 A.2d 1074 (N.J. 2009).....	3
<u>Reingold v. Harper</u> , 6 N.J. 182 (N.J. 1951) .....	24
<u>Republic of Austria v. Altmann</u> , 541 U.S. 677(2004) <u>declined to extend</u> <u>Hamdan v. Rumsfeld</u> , 548 U.S. 557, 126 S.Ct. 2749 (2006)).....	6
<u>Riggs Nat'l Bank v. Dist. of Columbia</u> , 581 A.2d 1229 (D.C. 1990).....	10
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<u>Rookledge v. Garwood</u> , 65 N.W.2d 785 (Mich. 1954).....	10
<u>Rothman v. Rothman</u> , 320 A.2d 496 (N.J. 1974) .....	20
<u>Safechuck v. MJJ Prod., Inc.</u> , 257 Cal.Rptr.3d 229 (Cal. Ct. App., Jan. 3, 2020).....	24
<u>Shelby J.S. v. George L.H.</u> , 381 S.E.2d 269 (W. Va. 1989).....	10
<u>Short v. Short</u> , 858 A.2d 571 (N.J. Super. Ct. App. Div. 2004) .....	passim
<u>Sliney v. Previte</u> , 41 N.E.3d 732, 737 (Mass. 2015).....	7, 10, 16, 24
<u>South. Burl. Cty. N.A.A.C.P. v. Twntp. of Mount Laurel</u> , 336 A.2d 713 (N.J. 1975) .....	15
<u>Stogner v. California</u> , 539 U.S. 607 (2003) .....	5
<u>Stratmeyer v. Stratmeyer</u> , 567 N.W.2d 220 (S.D. 1997) .....	10
<u>Tedesco v. Trantino</u> , A-1062-05T1, 2006 WL 3344024 (N.J. Super. Ct. App. Div. Nov. 20, 2006).....	11, 17
<u>Twiss v. State, Dep’t of Treasury, Office of Fin. Mgmt.</u> , 591 A.2d 913 (N.J. 1991). 11, 12, 13, 14	
<u>United States Trust Co. v. New Jersey</u> , 431 U.S. 1 (1977).....	24
<u>Usery v. Turner Elkhorn Mining Co.</u> , 428 U.S. 1 (1976).....	9
<u>Vaughn v. Vulcan Materials Co.</u> , 465 S.E.2d 661 (Ga. 1996).....	10
<u>Vigil v. Tafoya</u> , 600 P.2d 721 (Wyo. 1979) .....	10
<u>Williamson v. Lee Optical of Okla.</u> , 348 U.S. 483 (1955) .....	8
 <b>Statutes</b>	
N.J. Stat. Ann. §§ 2A:61B-1(b) .....	16
N.J. Stat. Ann. §§ 2A:14-2a.....	passim
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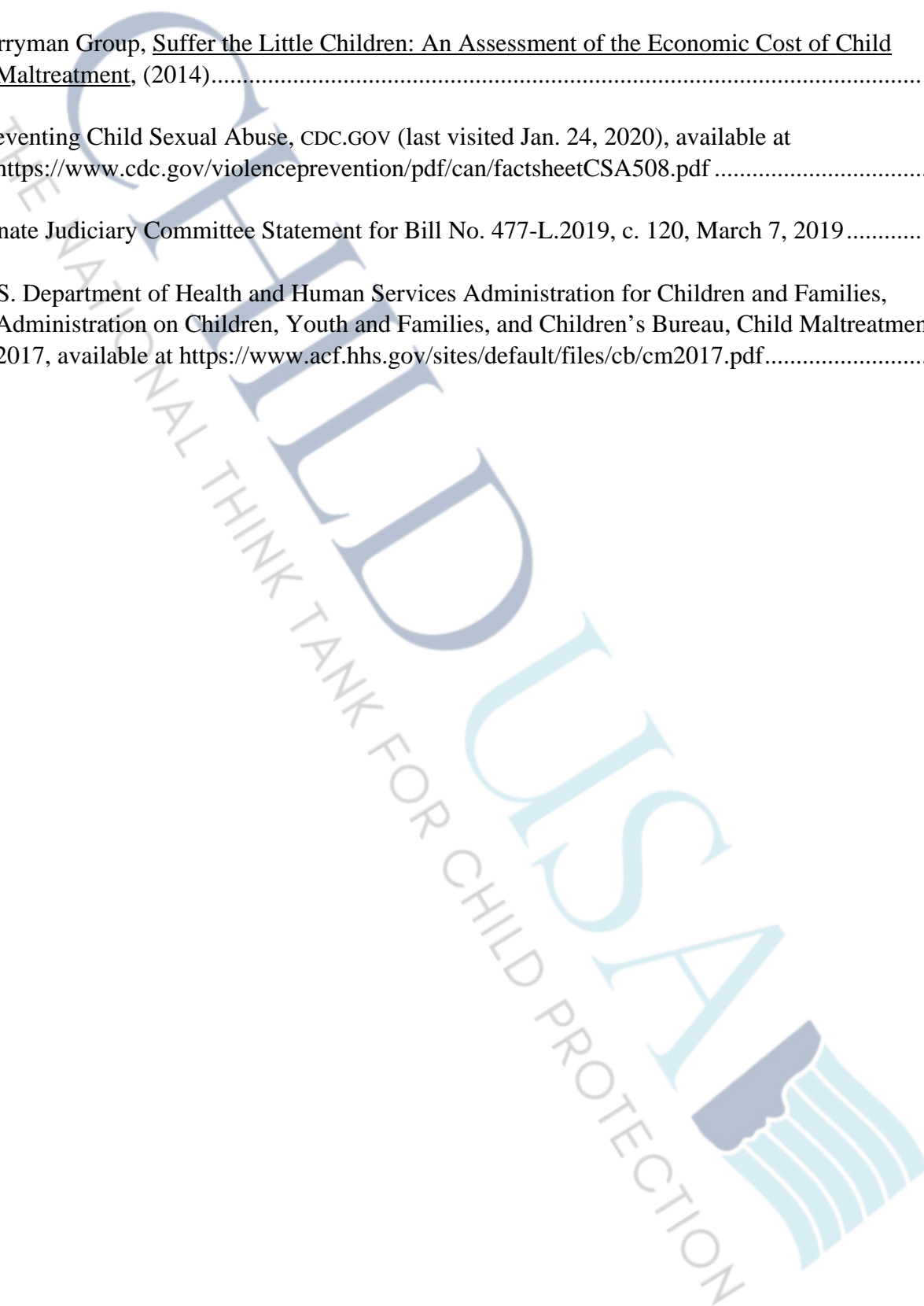


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## **STATEMENT OF INTEREST OF *AMICUS CURIAE***

*Amicus curiae*, CHILD USA, is the leading national non-profit 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 determine the most effective public policies to end child abuse and neglect. CHILD USA produces evidence-based solutions and information needed by 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”) including its national child sex abuse SOL reform initiative. 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, including in New Jersey.

CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of New Jersey’s revival law for child sex abuse claims, the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on child safety, and the science of delayed disclosure by victims of their abuse.

CHILD USA’s interests in this case are directly correlated with its mission to

increase child protection from sex abuse and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. Therefore, CHILD USA is an appropriate party to be made an Amicus Curiae in this matter pursuant to New Jersey Court Rule 1:13-9.

CHILD USA's amicus brief is helpful to the court's understanding of, amongst other things, (1) why it was effectively impossible for countless victims of child sex abuse in New Jersey to file civil claims before the prior SOLs expired based on the science of delayed disclosure of abuse and trauma, and (2) how reviving lapsed claims is a reasonable response to remedy the longstanding injustice New Jersey victims experienced due to short SOLs.

### **PRELIMINARY STATEMENT**

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to *New Jersey Court Rule* 1:13-9. The Defendants challenge the constitutionality of N.J. Stat. Ann. §§ 2A:14-2a and 2b, the provisions of SB477, 2018-2019 Leg., Reg. Sess. (N.J. 2019) ("SB477"), which revive expired civil claims for child sex abuse in New Jersey. *Amicus* CHILD USA here joins in Plaintiff's request that this Court uphold N.J. Stat. Ann. §§ 2A:14-2a and 2b, finding that they are constitutional and that they present no manifest injustice. Sex abuse is rampant in the United States, with the vast majority of claims expiring before they ever get to court. Now, victims in New Jersey can come forward when they are ready, which serves the compelling public

interest in identifying hidden predators and permits the shifting of the cost of abuse from the victim and the state to the ones who caused and allowed it.

Child sexual abuse affects 1 in 4 girls, and 1 in 20 boys in this nation.<sup>1</sup> Historically, 90% of child victims never go to the authorities and the vast majority of claims have expired before the victims were capable of getting to court.<sup>2</sup> There is an extensive body of scientific evidence establishing that childhood sexual abuse victims are traumatized and harmed in a way that makes it difficult or impossible to process and cope with the abuse, or to self-report it. Victims often need decades to do so.<sup>3</sup> Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse, if they ever come forward.<sup>4</sup> Still, approximately 3.7 million children are sexually abused in the United States every year.<sup>5</sup> Yet, because it is

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<sup>1</sup> NSOPW, Questions and Answers about Sexual Assault and Sexual Offending, U.S. DEPT. OF JUSTICE, <https://www.nsopw.gov/en/SafetyAndEducation/QuestionsAndAnswers>.

<sup>2</sup> Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Dep't of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families, and Children's Bureau, Child Maltreatment 2017, available at <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

<sup>3</sup> Rebecca Campbell, Ph.D., "The Neurobiology of Sexual Assault: Explaining Effects on the Brain," NAT'L INST. OF JUSTICE (2012), available at <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; R.L. v. Voytac, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).

<sup>4</sup> N. Spröber et al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (Mar. 27, 2014).

<sup>5</sup> Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also, Finkelhor, D., Turner H. A., Shattuck, A., & Hamby, S.L., Prevalence of child exposure to violence, crime, and

unconstitutional to revive a criminal SOL, Stogner v. California, 539 U.S. 607, 610 (2003), filing civil claims using the revival provision is the sole avenue of justice available to many survivors.

This Court's decision regarding the constitutionality of SB477 will have a significant effect on victims of child sexual abuse throughout New Jersey, as many of those individuals are embracing the revival provisions to bring previously expired claims that had expired due to unfairly short SOLs. This case presents an opportunity for this Court to hold that the revival provisions of SB477 are constitutional, and that its provisions are not manifestly unjust to the defendants in this case, thereby easing the further psychological distress caused by this challenge. Accordingly, CHILD USA respectfully submits that N.J. Stat. Ann. §§ 2A:14-2a and 2b should be upheld as constitutional and not manifestly unjust.

### **PROCEDURAL HISTORY**

On February 16, 2017, Plaintiff filed a Complaint charging Defendants with various counts related to sexual abuse he endured as a minor. See Plaintiff's Complaint (Feb. 16, 2017). On March 18, 2020, Plaintiff's counsel contacted CHILD USA, telling them that Defendants challenged the constitutionality of N.J. Stat. Ann. §§ 2A:14-2a and 2b in a Motion seeking an order scheduling a plenary

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abuse: Results from the Nat'l Survey of Children's Exposure to Violence, JAMA PEDIATRICS 169(8), 746-54 (2015).

hearing pursuant to Lopez v. Swyer, 62 N.J. 267 (1973), and that there is a protective order on the case. CHILD USA incorporates by reference all facts set forth in the Plaintiff's Complaint. See Plaintiff's Complaint (Feb. 16, 2017). Therefore, CHILD USA files a Motion to File an Amicus Brief with this Brief.

## **ARGUMENT**

N.J. Stat. Ann. §§ 2A:14-2a and 2b are constitutional under the United States and New Jersey constitutions.

### **I. THE REVIVAL PROVISIONS ARE CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION.**

The retroactive elimination of a civil SOLs is constitutional under the United States Constitution.<sup>6</sup> The United States Supreme 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

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<sup>6</sup> C.f., Stogner v. California, 539 U.S. 607, 610 (2003) (retroactive application of a criminal SOL to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).



[of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” *Id.* at 272-73 (emphasis in original).

In Chase Securities Corp. v. Donaldson, 325 U.S. 304 (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 SOLs did not deprive the defendant of property without due process of law in violation of the Fourteenth Amendment. 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. SOLs represent “a public policy [enacted by a legislature] about the privilege to litigate[;]” their protection is not a “fundamental” right. *Id.*

While there is a presumption against retroactivity, it can be readily overcome by express legislative language. “[T]he antiretroactivity presumption is just that – a presumption, rather than a constitutional command.” Republic of Austria v. Altmann, 541 U.S. 677, 692-93 (2004) declined to extend Hamdan v. Rumsfeld, 548 U.S. 557 (2006)). See also Landgraf, 511 U.S. at 267-68. When retroactive intent is clear, as it is in the revival provisions of N.J. Stat. Ann. § 2A:14-2b, and as discussed further below, the anti-retroactivity presumption is overcome.



The revival of expired SOLs is something no legislature should take lightly, and the Legislature did not do so in 2019 when it enacted SB477. Under the federal Constitution, this Court is required to defer to the legislature’s judgment, as the Massachusetts Supreme Court did in upholding the retroactive application of its SOL for child sexual abuse tort claims:

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

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

## **II. THE REVIVAL PROVISIONS ARE CONSTITUTIONAL UNDER THE NEW JERSEY CONSTITUTION.**

New Jersey is among many states that allow retroactive revival of expired civil claims.<sup>7</sup> With the enactment of SB477, defendants in New Jersey may no longer deploy an expired claim against the expiration of claims. See infra discussion Part II.A. The revival provisions of SB477 are constitutional because the legislative intent to revive is explicit, SOLs are procedural, Price v. N.J. Mfrs. Ins. Co., 867 A.2d 1181, 1185 (N.J. 2005), and the provisions meet the rational basis standard for satisfying due process under the Fourteenth Amendment of the United States Constitution. Williamson v. Lee Optical of Okla., 348 U.S. 483, 491 (1955). The revival provisions are a rational legislative response to the public's need to learn who are the hidden child predators in the state and the needs of victims to obtain justice and to shift the cost of the abuse. Further, there is no manifest injustice to 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 unknown perpetrators, holding responsible institutions accountable, and shifting the cost of abuse from the victims to those who caused or enabled the abuse. Therefore, N.J. Stat. Ann. §§ 2A:14-2a and 2b are a constitutional exercise of New Jersey's legislative power and should be upheld by this Court pursuant to the United States Constitution.

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<sup>7</sup> See 2019 SOL Report, CHILDUSA.ORG (Dec. 4, 2019), available at <https://www.childusa.org/sol-report-2019>.

**A. New Jersey Law Is in Accord with the Many States Allowing Revival of Expired Civil Claims.**

Under the New Jersey Constitution, N.J. Stat. Ann. §§ 2A:14-2a and 2b enjoy a presumption of constitutionality and the burden of overcoming this presumption is on Defendants. Nobrega v. Edison Glen Associates, 772 A.2d 368, 382 (N.J. 2001) (citing Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) (“It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.”)). “[T]he presumption of constitutionality . . . forbids [this Court] lightly to choose that reading of the statute’s setting which will invalidate it over that which will save it.” Flemming v. Nestor, 363 U.S. 603, 617 (1960). Defendants have failed to carry the burden of overcoming the presumption in favor of the constitutionality of N.J. Stat. Ann. §§ 2A:14-2a and 2b.

Every state permits retroactive application of laws to some degree. Many states have addressed the more particular facial constitutional question presented in this case: whether revival of SOLs is constitutional. Of the jurisdictions that have considered constitutional challenges to the application of revival legislation to a

cause of action, twenty-three states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival.<sup>8</sup>

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<sup>8</sup> Twenty-three states and the District of Columbia have expressly held retroactive application of revival legislation is constitutional. **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); **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); **PA:** 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); **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, 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).

New Jersey is in this category. The revival of an expired civil SOL has been upheld in other contexts in New Jersey. Panzino v. Cont'l Can Co., 364 A.2d 1043 (N.J. 1976) (revival of occupational hearing loss claims constitutional); Short v. Short, 858 A.2d 571, 576 (N.J. Super. Ct. App. Div. 2004) (revival of wrongful death actions constitutional) cert. denied, 182 N.J. 429, 866 A.2d 985 (2005); 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); D.J.L. v. Armour Pharm. Co., 704 A.2d 104, 108 (N.J. Super. Ct. Law Div. 1997) (revival of claims for HIV or AIDS against blood products constitutional).

**B. New Jersey No Longer Uses a Vested Rights Analysis to Determine the Constitutionality of Revival Laws and Applies Rational Basis Scrutiny Instead.**

There is no vested right in the running of an SOL in New Jersey. 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 Twiss v. State, Dep't of Treasury, Office of Fin. Mgmt., 591 A.2d 913, 916 (N.J. 1991); Panzino, 364 A.2d at 1046; Short, 858 A.2d at 574 (“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, 364 A.2d at 1046; Nobrega, 167 N.J. at 545.<sup>9</sup>

In fact, after a thorough review of its case law, the New Jersey Supreme Court explicitly rejected its outdated “vested rights” inquiry to determine constitutionality, explaining that “in place of the 'vested rights' inquiry we will apply rational basis scrutiny, as that standard has been articulated by the United States Supreme Court in its contemporary legislative retroactivity decisions.” Nobrega, 772 A.2d at 382 (citing Pension Ben. Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984)).

The more recent New Jersey cases are in harmony with states expressly adopting the United States Supreme Court’s modern, more flexible approach to “vested rights” analysis, and this Court need only follow settled New Jersey precedent to reject the Defendants’ challenge to the retroactive provisions of N.J. Stat. Ann. §§ 2A:14-2a and 2b as an unconstitutional violation of “vested rights.” See Twiss, 591 A.2d at 916; Panzino, 364 A.2d at 1046; Short, 858 A.2d at 574.

**C. The Legislature Expressly Intended for SB477 to Apply Retroactively to Sexual Abuse Related Claims That Were Previously Time-Barred.**

In New Jersey, courts give effect to retroactive statutes “when the Legislature has expressed its intent, either explicitly or implicitly, that the statute should be so

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<sup>9</sup> Prior NJ cases “which held retroactive resurrection of otherwise time-barred causes of action to be unconstitutional, are limited to ‘a claim sounding in contract.’” Short, 858 A.2d at 574 (citing Panzino, 364 A.2d at 1046-67 and Twiss, 591 A.2d. at 915-16).

applied; when the statute is curative; or when the reasonable expectations of those affected by the statute warrant such application.” Twiss, 591 A.2d at 916 (citing Gibbons v. Gibbons, 432 A.2d 80, 84 (N.J. 1981)). The plain language of SB477 evidences the Legislature’s clear intent for the statute to apply to acts that occurred prior to enactment and revive claims that would otherwise have been time-barred. Where “the Legislature expresses an intent that the statute is to be applied retroactively, the statute should be so applied.” Oberhand v. Dir., Div. of Taxation, 940 A.2d 1202, 1209 (2008) (citing Gibbons, 432 A.2d at 84).

Section 2A:14-2b opens a 2-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. Section 2A:14-2b applies retroactively to revive expired claims pursuant to following clear 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. Accord Twiss, 591 A.2d at 915-916.



Section 2A:14-2a revives expired child sex abuse claims for individuals until they are age 55 or for those abused as adults up to 7 years after they discover that their current problems were caused by the assault. This section applies retroactively due to the following clear language:

“Every action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual . . . , or sexual abuse . . . against a minor under the age of 18 that occurred prior to, on or after the effective date of P.L.2019, c. 120 (C.2A:14-2a et al.) shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.”

N.J. Stat. Ann. § 2A:14-2a.

The Legislature’s intent to apply these statutes retroactively is explicit in the statutory language, and therefore, these statutes should be given retroactive effect.<sup>10</sup>

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<sup>10</sup> Even if the statute’s retroactivity was not explicit, there is ample evidence of the Legislature’s and the Governor’s intent that SB477 be applied retroactively to revive expired claims. See 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”); Senate Judiciary Committee Statement for Bill No. 477-L.2019, c. 120, March 7, 2019 (§ 2A:14-2b “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 § 2A:14-2a applies to “abuse that occurred prior to, on or after the bill’s effective date and [s]ince the extended statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 years when the bill takes effect . . . and who is aware of the injury and its cause could file a suit.”).

**D. Retroactive Revival of Child Sex Abuse Claims Pursuant to N.J. Stat. Ann. §§ 2A:14-2a and 2b Does Not Violate New Jersey Constitutional Due Process Protections.**

When retroactive legislation is challenged as a violation of New Jersey’s Due Process protections,<sup>11</sup> the legislation is subject to “rational basis scrutiny” and the “constitutional inquiry [] ‘is whether the retroactive legislation is supported by a legitimate legislative purpose furthered by rational means.’” Short, 858 A.2d at 575 (quoting Nobrega, 772 A.2d at 382 (quoting Pension Ben. Guar. Corp., 467 U.S. at 729 (1984))).

Laws retroactively reviving time barred claims relating to child sex abuse are necessary and increasingly common as state legislatures grapple with remedying the longstanding injustice innumerable survivors have experienced because of short SOLs that have in effect protected child predators over child safety and justice.<sup>12</sup> There are three compelling public purposes served by retroactive revival laws for child sex abuse: they (1) identify previously unknown child predators; (2) shift the cost of abuse from victims to those who caused the abuse; and (3) educate the public about the prevalence and harm from child sex abuse. The civil revival provisions of

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<sup>11</sup> Due process and equal protection guarantees are “inherent” in New Jersey Constitution, Article 1, Paragraph 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 S.Ct. 18, 46 L.Ed.2d 28 (1975)).

<sup>12</sup> See 2020 SOL Summary, Nat’l Overview of SOLs for Child Sex Abuse, CHILDUSA.ORG (last visited Apr. 1, 2020), available at <https://www.childusa.org/2020sol>.

N.J. Stat. Ann. §§ 2A:14-2a and 2b achieve these purposes, and indeed, are the only way to remedy the injustice inflicted by the previously unfair, short SOLs. Revival laws are recognized as a rational solution to remedying the injustice child sex abuse survivors endured and reasonable public policy for child protection. Slaney, 41 N.E.3d at 741-42; Roman Catholic Bishop of Oakland v. Super. Ct., 28 Cal. Rptr. 3d 335, 359-60 (Cal. Ct. App. 2005); Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D.Cal. Dec. 20, 2005) at 16-18. See also, Cosgriffe, 864 P.2d at 778 (holding retroactive application of SOLs for torts based on sexual abuse constitutional against due process challenge because statute was rationally related to legitimate purpose of the state).

The New Jersey Legislature recognized the difficulty survivors face and the many years it takes for them to come to terms with their abuse and seek justice.<sup>13</sup> Until this year, child sex abuse victims in New Jersey had 2 years to file a civil lawsuit relating to their abuse after reaching age 18 or discovering their injury was caused by the abuse. N.J. Stat. Ann. §§ 2A:14-2 and 2A:61B-1(b). The prior SOL in New Jersey was an oppressive barrier to justice, making it impossible for the vast majority of victims to bring claims. That meant, first and foremost, that the public was uninformed about the identities of individuals and institutions that could

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<sup>13</sup> See Delayed Disclosure of Child Sex Abuse, childusa.org (last visited Apr. 1, 2020), available at <https://www.childusa.org/delayed-disclosure>.

endanger children. The Legislature's amendment to N.J. Stat. Ann. §§ 2A:14-2a and 2b enables sexual abuse victims to bring claims when they are able, to benefit the public and to bring justice to victims. By enacting the revival provisions, the Legislature took reasonable steps to revive expired claims of sex abuse where it recognized an opportunity to right a long-standing injustice keeping the truth hidden and victims out of court.

In Short, the Superior Court found 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 death. Short, 858 A.2d at 575; see also Tedesco, 2006 WL 3344024, at \*2. 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 of the fact of the ways they were wronged.

In D.J.L. v. Armour Pharm. Co., the Superior Court found 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. 704 A.2d at 108. The Court recognized the principle that a State can protect its people by holding perpetrators accountable. Id., at 114-15. The revival of expired claims did not impair any

constitutionally protected rights where the Legislature, “through legislative debate and deliberation,” *id.*, at 113, determined the appropriate date of accrual for a claim.

The legitimate legislative purposes of N.J. Stat. Ann. §§ 2A:14-2a and 2b are to increase public safety and remedy the injustice inflicted on so many survivors of sex abuse by unfairly short SOLs. The Legislature recognized that courthouse doors were unfairly blocked for victims of sex abuse, and the rational remedy the Legislature chose was to unlock them and push open the doors to truth and justice. The Legislature recognized that the State has an interest in discovering hidden child predators in New Jersey to keep children safe from future abuse. Retroactive revival of civil sex abuse claims is not only a rational means of identifying hidden child predators in New Jersey and remedying the longstanding injustice of short SOLs; it is the only means. Even if these enactments 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 N.J. Stat. Ann. §§ 2A:14-2a and 2b.

**E. N.J. Stat. Ann. § 2A:14-2b Revival of Child Sex Abuse Claims Does Not Result in Manifest Injustice.**

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, 772 A.2d at 383 (quoting Edgewater Investment Ass’n v. Borough of

Edgewater, 510 A.2d 1178, 1184-85 (1986)). 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, 772 A.2d at 384 (quoting Nelson v. Bd. of Educ. of Tp. of Old Bridge, 689 A.2d 1342, 1349 (1997)); see also Edgewater, 510 A.2d at 1184-85.

The overwhelming and compelling public interests in the retroactive application of N.J. Stat. Ann. §§ 2A:14-2a and 2b to revive previously expired claims of child sex abuse is well established in Part II.D. The “manifest injustice” inquiry weighs these interests in revival of child sex 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, 858 A.2d at 576 (quoting Nobrega, 772 A.2d at 383-84 (quoting Gibbons, 432 A.2d 80 (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:14-2a and 2b are not “manifestly unjust” merely because a party relied on avoiding liability or hoped they would not be sued for tortious conduct.



The Legislature exercises its police power to enact laws that “promote the public health, safety, morals or general welfare”. Rothman v. Rothman, 320 A.2d 496, 499 (N.J. 1974). The state’s compelling interest in protecting New Jersey’s youth from sex abuse is well-established in legislative enactments and judicial rulings.<sup>14</sup> See, e.g., P.V. ex rel. T.V. v. Camp Jaycee, 962 A.2d 453, 464 (N.J. 2008) (“[T]his State has a paramount interest in preventing and protecting against . . . sexual abuse and exploitation of children.”); J.S. v. R.T.H., 714 A.2d 924, 930 (N.J. 1998) (“There can be no doubt about the strong policy of this State to protect children from sexual abuse”); Matter of Commitment of N.N., 679 A.2d 1174, 1183 (N.J. 1996) (“The State assuredly has a deep and abiding interest in insuring the mental health and well-being of its children.”). “There is also no doubt that[] ‘[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.’” Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244).

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<sup>14</sup> Ashcroft v. Free Speech Coal, 535 U.S. 234, 263 (2002) (O’Connor, J., concurring) (“The Court has long recognized that the Government has a compelling interest in protecting our Nation’s children.”); Maryland v. Craig, 497 U.S. 836, 837 (1990) (“States have a compelling interest in protecting minor victims of sex crimes from further trauma”); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state’s interest in “safeguarding the physical and psychological well-being of a minor” is “compelling.”); New York v. Ferber, 458 U.S. 747, 756-57 (1982) (“*First*. It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is compelling.”) (quoting Globe Newspaper Co., 457 U.S. at 607); Ginsberg v. New York, 390 U.S. 629, 640 (1968) (“The well-being of children is of course a subject within the State’s constitutional power to regulate”).



The civil revival provisions in N.J. Stat. Ann. §§ 2A:14-2a and 2b also serve the compelling state interest in increasing child protection. By allowing previously expired claims to proceed through the justice system, the State encourages victims to identify hidden child predators and their enabling institutions in New Jersey to the public so they can be apprehended. Holding perpetrators accountable now protects future children from abuse by exposing liable actors and halting their intentional or negligent actions.<sup>15</sup> The Legislature understood the public value of identifying hidden predators when it enacted N.J. Stat. Ann. §§ 2A:14-2a and 2b.

By enacting N.J. Stat. Ann. §§ 2A:14-2a and 2b, the Legislature acted to shift *some* of the cost of abuse from the victims to those responsible for their abuse. The cost of sex abuse is necessarily high and victims will always be forced bear life-long, high costs of the abuse.<sup>16</sup> It is not deleterious to require would-be defendants to

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<sup>15</sup> See generally, Katie Sobko, Facing Trial, North Jersey teacher accused of sexually assaulting students pleads guilty, NORTHJERSEY.COM (Jan. 23, 2020, 4:17 PM), available at <https://www.northjersey.com/story/news/essex/2020/01/23/essex-county-nj-teacher-nicole-dufault-guilty-aggravated-sexual-contact/4556289002/>; Lawsuit Alleges Sex Abuse, Cover Up at Bergen Catholic High School, CBSLOCAL.COM (Apr. 10, 2018, 8:04 AM), available at <https://newyork.cbslocal.com/2018/04/10/lawsuit-alleges-sex-abuse-bergen-catholic-high-school/>.

<sup>16</sup> The average lifetime cost of child maltreatment (physical, sexual, emotions, psychological abuse, and neglect) is \$830,928.00 per victim. The toxic stress and trauma associated with childhood sexual abuse are even higher for those victims than for those who experience other forms of child maltreatment. See M. Merricka, et. al., Unpacking the impact of adverse childhood experiences on adult mental health, CHILD ABUSE NEGLECT (2017); Angelakis, I., Gillespie, E.L., Panagioti, M., Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornot, Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know, J. PEDIATRIC HEALTHCARE (2015); Perryman Group, Suffer the Little Children: An Assessment of the Economic Cost of Child

defend against claims of sex abuse, especially where a plaintiff still has the initial burden of proof to establish a claim. A manifest injustice argument fails if it relies on the potential unfairness to a defendant, who committed or enabled horrific crimes of child sex abuse, that could result from having to compensate a victim for the injury caused. See Short, 858 A.2d at 576 (“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.

New Jersey has a compelling interest in educating the public about matters of public safety, especially child sex abuse. With the opening of the revival window, the public uncovers instances of child sex abuse that would have otherwise remained hidden. Children are at heightened risk when the public and parents are unaware that certain adults endanger children. Moreover, this public education about the

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Maltreatment, (2014). While 1 in 5 New Jersey residents receive Medicaid, it is likely sex abuse survivors disproportionately receive support due to the crippling effect of trauma. Louise Norris, New Jersey and the ACA's Medicaid expansion, HEALTHINSURANCE.ORG (Feb. 22, 2018), available at <https://www.healthinsurance.org/new-jersey-medicaid/>. In these cases, a “Medicaid lien” is placed on settlement funds for the coverage directed to problems arising from the sex abuse. Without SOL reform, Medicaid funds needed for treatment cannot be reimbursed. With the Child Victims Act, Medicaid is reimbursed for a conservative estimate of \$250,000,000, assuming approximately 2,000 victims take advantage of the window and that on average they will receive \$250,000 in settlement, which is below the national average of approximately \$350,000.

prevalence and harm from child sex abuse helps families and the legal system develop policies to protect victims more effectively. Broader prevention of abuse has outstanding long-term impact for the children and families of New Jersey.<sup>17</sup>

Any detrimental reliance that defendants face under N.J. Stat. Ann. §§ 2A:14-2a and 2b is not deleterious and is far outweighed by the public interest and the victims' need for delayed, but necessary justice.

**F. Legislative Judgment In Enacting N.J. Stat. Ann. §§ 2A:14-2a and 2b Should Be Accorded Deference.**

Retroactive measures are accorded “a high degree of judicial deference,” especially “in the area of economic and social legislation.” Edgewater, 510 A.2d at 1182-83 (citing United States Trust Co. v. New Jersey, 431 U.S. 1, 22-23 (1977)); Reingold v. Harper, 6 N.J. 182, 193-94 (N.J. 1951). As the New Jersey Supreme Court stated in Edgewater:

The strong deference accorded legislation in the field of . . . economic policy is not less applicable when that legislation is applied retroactively. 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.

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<sup>17</sup> See generally, Making the Case: Why Prevention Matters, PREVENTCHILDABUSE.ORG (last visited Mar. 30, 2020), available at <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV (last visited Mar. 30, 2020), available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>.

Edgewater, 510 A.2d at 1182-83 (citing Pension Ben. Guar. Corp., 467 U.S. 717 at 729 (1984)).

As states face important public policy issues such as ongoing child sexual abuse epidemic, judicial deference to legislative judgment as to civil, procedural retroactivity is now the norm. See Sliney, 41 N.E.3d at 737, 739 ; Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 439-40 (Conn. 2015); Cosgriffe, 864 P.2d at 779; Safechuck v. MJJ Prod., Inc., 257 Cal.Rptr.3d 229, 234 (Cal. Ct. App., Jan. 3, 2020). Before enacting SB477, the Legislature gave due consideration to the benefits to child sex abuse victims and society as a whole and the potential financial exposure of defendants. “[W]e presume the Legislature ‘acted with existing constitutional law in mind and intended the act to function in a constitutional matter.’” Short, 858 A.2d at 574. The Legislature's judgment to enact the claim revival provisions, giving New Jersey's child sex abuse victims access to justice and helping eradicate child sex abuse in New Jersey, should be given deference, and upheld by this Court.

### **CONCLUSION**

For the foregoing reasons, *Amicus Curiae* CHILD USA respectfully requests this Court hold that the retroactive revival provisions of N.J. Stat. Ann. §§ 2A:14-2a and 2b are a constitutional exercise of the Legislature's authority.

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Respectfully submitted,



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