

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

	X
KAJA SOKOLA,	:
	:
Plaintiff,	: MEMORANDUM
	: OF LAW
	:
v.	: Index No. 950250/2019
	:
HARVEY WEINSTEIN, ROBERT WEINSTEIN,	: Hon. George J. Silver
THE WALT DISNEY COMPANY, DISNEY	: JUSTICE ASSIGNED
ENTERPRISES, INC., MIRAMAX HOLDING	:
CORP., MIRAMAX FILM NY LLC f/k/a	:
MIRAMAX FILM CORP., and DOE CORP. 1-10,	: Date Returnable:
	: November 3, 2020
Defendant.	:
	:
	:
	X

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO FILE AMICUS
CURIAE BRIEF IN SUPPORT OF PLAINTIFF**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, CHILD USA, is a 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 The Sean P. McIlmail SOL Reform Institute. CHILD USA’s Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on revival laws, and has advised Congress and state governors, legislatures, and courts on the constitutionality of revival window laws for child sex abuse throughout the United States, including in New York, where she was a law professor, at Benjamin N. Cardozo School of Law for 26 years.

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

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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.

CHILD USA's amicus brief is helpful to the court's understanding of, (1) why it was effectively impossible for countless victims of child sex abuse in New York to file civil claims before the prior SOLs expired based on the science of delayed disclosure of abuse and trauma, (2) how temporarily reviving lapsed claims is a reasonable remedy the longstanding injustice New York victims experienced due to short SOLs, (3) provides the court with a national overview of the constitutionality of child sex abuse revival laws in the states, and (4) how maintaining strong institutional liability jurisprudence will encourage institutions to prevent sex abuse and will deter future abuse.

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae*. The Defendants challenge the constitutionality of CPLR § 214-G, which revives expired civil claims for child sex abuse in New York. *Amicus* CHILD USA joins in Plaintiff's request that this Court uphold CPLR § 214-G, finding that it is constitutional. There is a nationwide epidemic of sex abuse, with the vast majority of claims expiring before they ever get to court. Until this year, child sex abuse

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victims in New York had until they reached age 23 to file suit against their abusers and age 21 for personal injury claims against other defendants. See NY CPLR §§ 213-c and 214(5). According to CHILD USA, the leading authority, New York ranked as one of the worst states in the United States for its statutes of limitations for child sex abuse claims before the Child Victims Act was passed (and extended).¹ Now, with CPLR § 214-G, all victims in New York can come forward for a period of two years, 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 is a public health epidemic affecting 1 in 4 girls, and 1 in 6 boys in this nation.² Historically, 90% of child victims never go to the authorities and the vast majority of claims have expired before the victims were able to get into court.³ There is an extensive body of scientific evidence establishing that childhood

¹ CHILD USA, 2019 Annual Report, Child Sex Abuse Statutes of Limitation Reform from 2002-2019 (May 5, 2020), available at <http://www.childusa.org/sol-report-2019>.

² American Psychological Association, Understanding Child Sex Abuse, available at <https://www.apa.org/pi/about/newsletter/2011/12/sexual-abuse> (last visited Jan. 22, 2020); see also, The National Child Traumatic Stress Network, Child Sexual Abuse Fact Sheet, available at https://www.nctsn.org/sites/default/files/resources//child_sexual_abuse_fact_sheet_parents_teachers_caregivers.pdf (last visited Jan. 22, 2020); National Sexual Violence Resource Center, Understanding Child Sex Abuse Definitions and Rates (Aug. 2012), available at https://www.nsvrc.org/sites/default/files/NSVRC_Publications_TalkingPoints_Understanding-Child-Sexual-Abuse-definitions-rates.pdf (last visited Jan. 22, 2020).

³ Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1> (hereinafter “ACE Study”); 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>.

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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.⁴ Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse, if they ever come forward.⁵ Still, approximately 3.7 million children are sexually abused in the United States every year.⁶ Yet, because it is 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.

Further, the courts must continue to hold institutions liable for preventable abuse their employees commit. Employers are in a unique position to deter institutional sex abuse but will be unmotivated to do so if liability is lessened. Accountability is the best way to deter institutions from failing to properly respond to sexual abuse allegations and prevent future harm. Research supports the position that civil liability serves as a profound deterrent for undesirable behavior and

⁴ 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> (hereinafter "Campbell"); 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) (hereinafter van der Kolk).

⁵ N. Spröber et al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (Mar. 27, 2014).

⁶ 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 abuse: Results from the Nat'l Survey of Children's Exposure to Violence, JAMA PEDIATRICS 169(8), 746-54 (2015).

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motivator for systemic change. By creating greater awareness of systemic problems, putting pressure on stakeholders, and using the court to promote change, civil litigation has served as a catalyst for significant reform. Farber, et. al., Strengthening the Child Welfare Workforce: Lessons from Litigation, 4 J. PUBLIC CHILD WELFARE 132-57 (2010).

This Court's decision will have a significant effect on victims of child sexual abuse throughout New York, as many of those individuals are embracing the revival window 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 provision of CPLR § 214-G is constitutional, thereby easing the further psychological distress caused by this challenge. Accordingly, CHILD USA respectfully submits that this Court should maintain robust institutional liability jurisprudence, and uphold CPLR § 214-G as constitutional.

ARGUMENT

I. THE CHILD VICTIMS ACT, CPLR § 214-G, IS CONSTITUTIONAL UNDER THE NEW YORK CONSTITUTION'S DUE PROCESS CLAUSE

New York is among many states that allow revival of expired claims. The Child Victims Act, CPLR § 214-G comports with the Due Process Clause because it is a reasonable remedy to the injustice of New York's extremely unreasonable and short statutes of limitations that blocked child sex abuse victims' access to the courts

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and kept the public in the dark about predators that continued to sexually abuse children.

A. New York Law Is in Accord with the Many States to Allow Revival of Expired Civil Claims

Every state permits retroactive application of laws to some degree. Many states have addressed the facial constitutional question presented in this case: whether revival of civil statutes of limitation is constitutional. Of the 42 jurisdictions that have considered constitutional challenges to the application of revival legislation to a cause of action, 23 states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival of civil cases.⁷ New York state is unquestionably in this category.

⁷ 23 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

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When New York opened its revival window, it joined a growing list of at least 30 jurisdictions which enacted laws to revive child sex abuse claims via either a window, an extended maximum victim age limit, or a delayed discovery rule.⁸

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).

⁸ See **ARIZ:** ARIZONA STAT. ANN. § 12-514 (2019); **ARK:** ARK. CODE ANN. § 16-56-130 (1993); **CAL:** CAL. CIV. PROC. CODE § 340.1 (2003, 2019); **CONN:** CONN. GEN. STAT. § 52-577d (2002); **DEL:** DEL. CODE ANN. TIT. 10, § 8145 (2007); DEL. CODE ANN. TIT. 10, § 8145 (2007); **DC:** D.C. CODE § 12-301 (2019); **FLA:** FLA. STAT. § 95.11 (1992), **GA:** GA. CODE ANN. § 9-3-33.1 (2015); **HAW:** HAW. REV. STAT. § 657-1.8 (2012, 2014, 2018); **IDAHO:** IDAHO CODE § 6-1704 (ID); **ILL:** 735 ILL. COMP. STAT. 5/13-202.2 (2006); **IOWA:** IOWA CODE § 614.8A (1991); **KAN:** KAN. STAT. ANN. § 60-523 (1992); **MASS:** MASS. GEN. LAWS ANN. CH. 260 § 4C (2014); **MICH:** MICH. COMP. LAWS ANN. § 600.5851b (2018); **MINN:** MINN. STAT. ANN. § 541.073 (1989); **MONT:** MO. REV. STAT. § 537.046 (1989); MONT. CODE ANN. § 27-2-216 (1989, 2019), **NJ:** N.J. STAT. ANN. § 2A:14-2B (2019); **NY:** N.Y. C.P.L.R. § 214-g (2019); **NC:** N.C. GEN. STAT. ANN. § 1-52 (2019); **OR:** OR. REV. STAT. ANN. 12.117 (2010); **RI:** tit. 9 R.I. GEN. LAWS ANN. § 9-1-51 (1996, 2019); **SC:** S.C. CODE ANN. § 15-3-555 (2001), **SD:** S.D. CODIFIED LAWS § 26-10-25 (1991); **UTAH:** UTAH CODE ANN. § 78B-2-308 (2016); **VT:** V.T. STAT. ANN. tit. 12, § 522 (2019); **VA:** V.A. CODE ANN. § 8.01-249 (1991); V.A. CONST. ART. 4, § 14 (1995); **WV:** W. VA. CODE ANN. § 55-2-15 (2020); **WYO:** WYO. STAT. ANN. § 1-3-105(b)(ii) (1993); **GUAM:** 7 G. COMP. ANN. § 11301.1 (2016).

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Revival windows like New York's give all child sex abuse victims an opportunity to access justice, regardless of age or when they discovered their injuries related to their abuse. New York stands alongside Guam, the District of Columbia, and 14 other states that have revived previously expired child sex abuse claims with a time-limited revival window.⁹

The overwhelming majority of these jurisdictions have been successful in opening revival windows and defending them against state constitutionality challenges. Of these jurisdictions, Arizona, Michigan, Montana, Vermont, Guam, and Washington D.C. have opened revival windows without a constitutional challenge in the courts.¹⁰ In California, Delaware, Hawaii, Minnesota, New Jersey and New York the revival windows have withstood constitutional attack, and thus far have been upheld by courts within those jurisdictions as comporting with state due process protections.¹¹ In Georgia, the window was challenged, but the court did

⁹ **ARIZ:** H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019); **CAL:** CAL. CIV. PROC. CODE § 340.1.; **DEL:** DEL. CODE tit. 10, § 8145 and tit. 18, § 6856; **DC:** D.C. CODE § 12-301; **FLA:** FLA. STAT. §95.11; **GA:** GA. CODE § 9-3-33.1; **HAW:** HAW. REV. STAT. § 657-1.8; **MICH:** MICH. COMP. LAWS § 600.5851b; **MINN:** MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681); **MONT:** MONT. CODE § 27-2-216; **NJ:** S. 477 2019 Gen. Assemb., Reg. Sess. (N.J. 2019); **NC:** S 199, 2019 Leg., Reg. Sess. (N.C. 2019); **UTAH:** UTAH CODE ANN. § 78B-2-308; **VT:** B. 330, 2019 Leg., Reg. Sess. (Vt. 2019); **VA:** VA. CODE ANN. § 8.01-249 (1991); **GUAM:** 7 G. COMP. ANN. § 11301.1.

¹⁰ See *id.*

¹¹ See *Deutsch v. Masonic Homes of Cal., Inc.*, 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal.Ct.App.2008); *Coats v. New Haven Unified Sch. Dist.*, 46 Cal. App. 5th 415, 427, 259 Cal. Rptr. 3d 784, 792 (2020); *Sheehan*, 15 A.3d at 1258-60; *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990); *T.M. v. Order of St. Benedict of New Jersey, Inc.*, MRS-L-399-17

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not rule on constitutionality.¹² Like New York, a challenge to North Carolina's window is currently pending in the judiciary.¹³ Florida, Utah, and Virginia are the only states to invalidate their windows as unconstitutional based on a vested rights approach to due process.¹⁴ However, Virginia subsequently amended its constitution allowing revival of child sex abuse claims.¹⁵

B. New York Laws are Presumptively Constitutional and Courts Should Defer to Legislative Judgments

Under the New York Constitution, the Child Victims Act enjoys a presumption of constitutionality, and a reviewing court must “proceed on the presumption that the law is constitutional.” Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1080 (N.Y. 1989); Montgomery v. Daniels, 340 N.E.2d 444, 451-52 (N.Y. 1975). Moreover, “[t]he burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.” Trump v. Chu, 478 N.E.2d 971, 975 (N.Y. 1985).

(Law Division, Morris County); Torrey v. Portville Cent. Sch., 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020); S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County, Hon. Steven M. Jaeger (May 18, 2020); Giuffre v. Dershowitz, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020).

¹² See Crea v. Krzyzanski, No. 1:18-CV-0861-SCJ, 2019 WL 1499471, at *3 (N.D. Ga. Feb. 6, 2019) (defendant's motion to dismiss challenged the constitutionality of the window, but court dismissed without prejudice).

¹³ Joseph Cryan, et al., v. Nat'l Council of Young Men's Christian Ass'n of the U.S.A., et al., File No.: 20-CVS-951 (N.C. Super. Ct., Cty. of Forsyth).

¹⁴ See Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994); Mitchell v. Roberts, 2020 WL 3118607, *2 (Utah 2020); Starnes v. Cayouette, 244 Va. 202, 212, 419 S.E.2d 669, 675 (1992). But see Landgraf v. USI Film Prods., 511 U.S. 244 (1994) (revival of civil statutes of limitations is constitutional under the United States Constitution).

¹⁵ See VA Const. art. 4, § 14 (1995); Kopalchick, 645 S.E.2d at 439.

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This Court should defer to the Legislature's judgment, S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County, Hon. Steven M. Jaeger (May 18, 2020), as several state Supreme Courts have already done in upholding claim revival statutes for child sex abuse.¹⁶ Defendant has failed to carry the burden of overcoming the presumption in favor of the constitutionality of CPLR § 214-G.

C. The New York Legislature Has Authority to Revive Child Sex Abuse Claims

It is well within the New York legislature's authority to enact revival laws, and New York courts have routinely upheld civil claim revival statutes.¹⁷ The New York Court of Appeals has rejected the argument that the retroactive application of revived civil statutes of limitations inherently disturbs rights vested under the New York Constitution. In re World Trade Ctr., 89 N.E.3d at 1239. Instead, New York cases "have taken a more functionalist approach, weighing the defendant's interests

¹⁶ See, 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."); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 406 (Conn. 2015) (judiciary is prohibited from "substitut[ing] our personal notions of good public policy for those of [the legislature]"); Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011) ("[W]e do not sit as an überlegislature legislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law."); Sliney v. Previte, 41 N.E.3d 732, 737, 739 (Mass. 2015).

¹⁷ In re World Trade Ctr., 89 N.E.3d at 1243 (World Trade Center cleanup); Hymowitz, 539 N.E.2d at 1079-80 (DES injuries); McCann, 123 N.Y.S.2d at 514 (latent disease); Gallewski, 93 N.E.2d at 624 (World War II detention); Robinson v. Robins Dry Dock & Repair Co., 144 N.E. 579, 582 (N.Y. 1924) (workers compensation).

in the availability of a statute of limitations defense with the need to correct an injustice.” Id.

New York courts’ deference to legislative authority for revival of child sex abuse claims is highlighted in Zumpano v. Quinn, 849 N.E.2d 926 (N.Y. 2006). Although the Court in Zumpano did not grant equitable estoppel for the plaintiffs, the Court itself acknowledged the possibility for future revival of child sex abuse claims, stating “[a]ny exception to be made to allow these types of [reprehensible] claims to proceed outside of the applicable statute of limitations would be for the Legislature, as other states have done.” Id., at 931-32. The Court then cited revival laws in Connecticut, CONN. GEN. STAT. § 52-577d, and California, CAL. CODE CIV. PROC. § 340.1, as persuasive. If the Court of Appeals did not believe that the New York Legislature had the authority to revive civil sex abuse claims, it would not have invited the Legislature to do so in Zumpano.

D. The Child Victims Act, CPLR § 214-G Is a Reasonable Remedy to the Injustice of Barring Child Sexual Abuse Claims with Unreasonably Short Statutes of Limitations

After a thorough review of prior case law on revival laws, the New York Court of Appeals found that “a claims-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice.” In re World Trade Ctr., 89 N.E.3d at 1243. Accordingly, if the legislature asserts an adequate interest to remedy injustice, its legislation is upheld

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against a constitutional attack. See id. at 1246 (“[E]very time this Court has considered the issue in the past it has upheld the legislature’s claim-revival statute as a proper response”). The test is easily satisfied when the issue is child sex abuse and revealing child predators to the public.

Retroactive revival of a civil claim for child sexual abuse is a reasonable solution to the injustice countless survivors experience because of extremely short statutes of limitations that have favored child predators over child safety. The Court of Appeals noted “both instinct and reason revolt at the proposition that redress for a wrong must be denied . . . [where barring an individual’s claim based on the statute of limitations would be] contrary to all prevailing ideas of justice.” Robinson, 144 N.E. at 582.¹⁸ In the case of DES-related claims, the Court of Appeals concluded the revival statute “has a rational basis, and the Legislature acted within its broad range of discretion in enacting the law.” Hymowitz, 539 N.E.2d at 1080.

If DES exposure is a grave public health threat, then child sexual abuse is a public health epidemic: it affects one in four girls, and one in six boys in this nation.¹⁹ Still, approximately 3.7 million children are sexually abused in the United States every year.²⁰ Historically, 90% of child victims never report abuse and most claims

¹⁸ See also, Uery v. Turner Elkhorn Mining Co., 428 U.S. 1, 14-20, 96 S. Ct. 2882, 2891-2894 (1976).

¹⁹ Supra, note 2.

²⁰ Supra, note 6.

have expired before the victims were capable of getting to court.²¹ This is because, as noted above, there is an extensive and persuasive body of scientific evidence establishing that childhood sexual abuse victims are 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.²² Yet until this year, child sex abuse victims in New York had until age 23 to file a suit against their abusers and age 21 for personal injury claims against other defendants. NY CPLR §§ 213-c and 214(5). To date, New York has never had a discovery rule for child sex abuse statute of limitations that expands the time available to victims for bringing claims despite the evidence of delayed disclosure. The prior New York SOL was an oppressive barrier to justice, making it impossible for the vast majority of victims to bring claims.

Yet, because it is unconstitutional to revive a criminal statute of limitations, Stogner, 539 U.S. at 610,²³ filing civil claims pursuant to the revival provision is the only avenue of justice available to many survivors. The civil revival provision of CPLR § 214-G is not only a reasonable response to remedying the injustice inflicted on so many survivors of child sex abuse by New York's unfairly short statutes of limitation; it is also the only remedy.

²¹ Supra, note 3.

²² Supra, note 4.

²³ Stogner, 539 U.S. 607, 610, 123 S. Ct. 2446, 2449 (2003) (retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).

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Defendant argues that there is no “injustice” justifying the revival of child sexual abuse claims because victims could have timely filed them. Defendant points to dicta in Zumpano where the Court of Appeals opined that plaintiffs in that action were “aware of the sexual abuse” and that “they had sufficient knowledge to bring an intentional tort cause of action.” Zumpano, 849 N.E.2d at 929. While this statement is telling of the Court’s understanding of the trauma of child sex abuse at that time, it was in no way central to the holding in Zumpano, nor does it undermine the body of evidence the New York Legislature considered in passing the Child Victims Act.²⁴

Since Zumpano was decided in 2006, an avalanche of scientific research has exposed the reality that 1) child sexual abuse is disturbingly common in the United States and 2) child sexual abuse has profound neurological impacts on most victims, with their trauma impacting them for a lifetime.²⁵ This research has proven that the overwhelming majority of victims cannot bring their claims within the short timeframe allotted, and that mere knowledge of an abusive act does not give a victim the means to bring their claim.²⁶ The New York Legislature considered the science

²⁴ See generally New York State Assembly transcript of vote on A02683/S02440 (Jan. 28, 2019) 36-38, 41, 44-45, 50, available at <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-28-19.pdf#search=%222683%22>.

²⁵ *Supra* notes 2-3.

²⁶ *Id.*

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of trauma and the reality of delayed disclosure by extending its civil SOL to age 55, while also creating the revival window at issue.

The injustice the Legislature meant to rectify in creating a revival window was not merely child sexual abuse, but also the trauma that kept most victims of abuse from bringing their claims to court under the prior SOL. Victims bore the cost of the abuse, not the ones who caused it.²⁷ The Legislature also extended the SOL prospectively to age 55 for this same reason. The Senate found that:

“New York currently requires most survivors to file civil actions, or criminal charges against their abusers by the age of 23 at most, long before most survivors report or come to terms with their abuse, which has been estimated to be as high as 52 years old on average. Because of these restrictive statutes of limitations, thousands of survivors are unable to sue or press charges against their abusers”

Justification for Senate Bill S2440 (last visited Sept.15, 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s2440>. Defendant encourages this court to deny the Legislature’s ability to make better law in light of advanced understandings of neuroscience and trauma. Although some victims of child sex

²⁷ The average lifetime cost of child maltreatment is \$830, 928.00 per victim. Child maltreatment includes: physical abuse, sexual abuse, emotional abuse (psychological abuse), and neglect. The toxic stress and trauma associated with childhood sexual abuse are even higher for those victims than 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 Maltreatment, (2014) (hereinafter Perryman Group).

abuse may have brought a claim by the age of 23, the prevalence of abuse and science of delayed disclosure prove that most New York victims have historically been barred from court.

Prior attempts to invalidate the CPLR § 214-G have failed because courts continue to find that the Child Victims Act is a reasonable remedy to the prior injustice of preventing child abuse claims through extremely short statutes of limitations. In Torrey v. Portville Cent. Sch., No. 88476, 2020 WL 856432 (N.Y. Sup. Ct. Feb. 21, 2020), the Supreme Court of Cattaraugus County upheld the Child Victims Act, finding that this legislation “open[s] the doors of justice to the thousands of survivors of child sexual abuse [who have previously been] . . . unable to sue or press charges.” Id., at *1.

In April, the Southern District of New York reiterated the permissive standard of review for a civil revival statute set forth in Matter of World Trade Ctr. Lower Manhattan Disaster Site Lit., and found that the Child Victims Act successfully remedies the injustice that “the statute of limitations for certain claims expired before child victims of sexual abuse recovered from past traumas to a degree sufficient to assert their rights.” Giuffre v. Dershowitz, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020). In May, the Supreme Court again found that CPLR § 214-G “is a reasonable response to remedy the injustice of past child

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sexual abuse.” S.T. v. Diocese of Rockville Centre, Index No. 099997/2019 (Sup. Ct. Nassau Cty. May 18, 2020).

The Defendant incorrectly alleges that the “injustice” prong of the Due Process analysis requires a showing of claimants’ complete inability to file suit within the original statutory period. Defendant does not cite any binding or even non-binding New York precedent for this unsupported claim. Defendant does rely heavily on the Federal District Court’s ruling in In re World Trade Ctr. Lower Manhattan Disaster Site Litig., 66 F. Supp. 3d 466, 476 (S.D.N.Y. 2014), vacated on other grounds, 892 F.3d 108 (2d Cir. 2018) for support. Yet in that case the District Court merely acknowledged that inability to file a claim and discovery of latent injuries has “supported the constitutionality” of previous revival laws. Id.

Significantly, the District Court’s decision on constitutionality was appealed to the Second Circuit, which specifically certified the question of what standard to apply for a due process analysis of revival laws to the New York Court of Appeals. In re World Trade Ctr. Lower Manhattan Disaster Site Litig., 846 F.3d 58, 70 (2d Cir. 2017). After reviewing all prior precedent in New York, the Court of Appeals articulated the standard as an inquiry of whether the revival statute “was enacted as a reasonable response in order to remedy an injustice.” In re World Trade Ctr. Lower Manhattan Disaster Site Litig., 89 N.E.3d at 1243. The Court only requires that there be an “identifiable injustice that moved the legislature to act.” Id., at 1242. The

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Court specifically acknowledged “there is no principled way for a court to test whether a particular injustice is ‘serious’” and that “such moral determinations are left to the elected branches of government.” *Id.*, at 1243.

This is *exactly* what happened here: the New York Legislature determined that keeping the majority of child sex abuse victims from coming to court because of inappropriately short statute of limitations is an identifiable injustice that required the enactment of the Child Victims Act. This Court need not attempt to identify “whether [this] class of plaintiffs is blameless;” the Legislature has already used its appropriate authority to do so. *Id.*, at 1243. After vacating its original decision on other grounds, the District Court did not need to make a new finding based on the Court of Appeal’s articulated due process standard.

Defendant’s proffered “inability” requisite is illusory and unsupported by New York law. As discussed above, many child sex abuse claims revived by CPLR § 214-G were not able to be asserted within New York’s prior limitations period, but nonetheless, this specific finding is not required by the Court to find the clear “injustice” the Legislature sought to remedy with CPLR § 214-G’s revival window.

E. The Child Victims Act, CPLR § 214-G Addresses New York’s Compelling Interest in Child Protection

The Child Victims Act serves New York’s “compelling” interest in child protection. *See, e.g., New York v. Ferber*, 458 U.S. 747, 756-57 (1982). “There is

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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).

There are three important public purposes served by The Child Victims Act: it (1) identifies previously unknown child predators; (2) shifts the cost of abuse from victims to those who caused the abuse; and (3) educates the public to prevent future abuse. By enacting § 214-G, the Legislature 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.

New York has a compelling interest in educating the public about matters of public safety, especially to prevent 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. The public was left uninformed about the identities of individuals and institutions that continued to abuse and endanger children. Moreover, this public education about the prevalence and harm from child sex abuse helps families and the legal system develop policies to prevent the

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continuation of more abuse. Broader prevention of abuse has outstanding long-term impact for the children and families of New York.²⁸

The lifetime cost of child sex abuse to victims is also enormous, and New York often unjustly carries the burden of this expense with them.²⁹ Window cases that result in awards and settlements will not only equitably shift the cost of abuse away from victims, they will also save the state approximately \$750,000,000 in Medicaid reimbursements.³⁰

The Legislature's enactment of CPLR § 214-G not only remedies the long-standing injustice to child sex abuse victims, it also serves New York's compelling interest in keeping its children safe and preventing future child sex abuse.

²⁸ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDBUSE.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>.

²⁹ See supra note 25. While 1 in 3 New Yorkers receive Medicaid, it is likely that sex abuse survivors disproportionately receive support due to the crippling effect of trauma. Dan Clark, One in three people in New York is on Medicaid, POLITIFACT.COM (Jul. 21, 2017 at 4:04 PM), available at <https://www.politifact.com/new-york/statements/2017/jul/21/john-faso/one-three-people-new-york-are-medicaid/>.

³⁰ In settlements that are reached in these cases, a "Medicaid lien" is placed on the settlement funds for the coverage directed to the problems arising from the sex abuse. Without statute of limitations reform, the Medicaid funds needed for treatment cannot be reimbursed. With the Child Victims Act, Medicaid is reimbursed for a conservative estimate of \$750,000,000, assuming approximately 3,000 victims successfully 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.

II. DECISIONS IN OTHER STATES REVIVING CHILD SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF CPLR § 214-G

Defendant has presented this Court with an incomplete picture of the national constitutionality landscape of revival laws for child sex abuse. (Defendant's Brief, p. 20, n.2). Defendant cherry-picks six states - Illinois, South Carolina, Rhode Island, Florida, Missouri, Virginia - in support of their position and neglect to mention at all the ten states that have explicitly upheld revival laws for child sex abuse claims as constitutional - California, Connecticut, Delaware, Hawaii, Kansas, Massachusetts, Minnesota, Montana, New Jersey, South Dakota.³¹

The decisions Defendant relies on are predicated on a vested rights approach to due process that New York has explicitly rejected. In these states, the courts invalidated the revival laws as per se violations of defendants' due process protections in a statutes of limitations defense.³² There is no state Defendant points to that permits revival of time-barred claims like New York, but has refused to uphold such a law for child sex abuse survivors.³³ Due process at the state level has

³¹ See supra note 12; see also Hartford Roman Catholic Diocesan Corp., 317 Conn. at 406; Shirley v. Reif, 260 Kan. 514, 526, 920 P.2d 405, 413 (1996); Sliney, 41 N.E.3d at 737, 739; Cosgriffe, 864 P.2d at 779; DeLonga v. Diocese of Sioux Falls, 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004).

³² Doe A. v. Diocese of Dallas, 234 Ill. 2d 393, 411-12, 917 N.E.2d 475, 486 (2009); Doe v. Crooks, 364 S.C. 349, 351-52, 613 S.E.2d 536, 538 (2005); Kelly v. Marcantonio, 678 A.2d 873, 883 (R.I. 1996); Wiley v. Roof, 641 So. 2d 66, 68-69 (Fla. 1994); Doe v. Roman Catholic Diocese of Jefferson City, 862 S.W.2d 338, 341 (Mo. 1993); Starnes, 419 S.E.2d at 674-75 (1992); Mitchell, 2020 UT at ¶¶ 50-52

³³ 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, 678 A.2d at 873.

been a time evolving doctrine, with states moving away from an antiquated vested rights approach to statutes of limitations and deferring to legislative judgment instead for revival of previously expired claims. The rationale of states still clinging to a vested rights approach to statutes of limitations is not compelling because it directly conflicts with New York law which does not grant defendants an absolute right to such a defense.³⁴

Like New York, legislatures across the country have adopted civil revival laws for survivors of child sex abuse to remedy the injustice of blocking their claims with unreasonably short statutes of limitations.³⁵ These revival laws are a recognition that society for too long did not understand the plight of those sexually abused as children and extinguished their rights long before they had the ability to report or seek justice for their abuse. DeLonga v. Diocese of Sioux Falls, 329 F. Supp. 2d 1092, 1101–02 (D.S.D. 2004) (acknowledging “the Legislature most certainly was unaware” when it adopted its personal injury statute of limitations “of the involuntary coping mechanisms associated with victims of sexual abuse which may hinder such victims from making the causal connection between their abuse and problems suffered later in life”). Sliney, 41 N.E.3d at 741–42 (recognizing child sex abuse victims are often “not able to appreciate the extent or the cause of harm they

³⁴ In re World Trade Ctr., 89 N.E.3d at 1243.

³⁵ See supra note 10.

experience as a result of sexual abuse perpetrated on them for many years after the abuse has ended”); Hartford Roman Catholic Diocesan Corp., 119 A.3d at 517 (recognizing “the unique psychological and social factors that often result in delayed reporting of childhood sexual abuse, which frustrated the ability of victims to bring an action under earlier revisions of the statute of limitations”).

New York’s modern approach to due process is flexible, and judicial review of its revival window involves substantially similar considerations of “reasonableness” as the appellate courts that have explicitly upheld revival laws for child sex abuse in other states. Hartford Roman Catholic Diocesan Corp., 119 A.3d at 496 (rejecting due process challenge because revival law “is a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child” and the “revival of child sexual abuse victims’ previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way”); Sliney, 41 N.E.3d at 741 (rejecting due process challenge because the revival statute was reasonable and “tied directly to the compelling legislative purpose” of giving access to justice for child sex abuse survivors who do not process their injuries well into adulthood); Cosgriffe, 864 P.2d at 779–80 (rejecting due process challenge because the discovery statute “has a reasonable relation to the legitimate purpose of the State”); Hoffman, 452 N.W.2d at 514 (rejecting due process challenge because “the statute has a reasonable relation

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to the state's legitimate purpose of affording sexual abuse victims a remedy”). Every appellate court that has considered the reasonableness of a claim revival statute for child sex abuse victims pursuant to its state due process clause has determined the remedial statute was reasonable, according to *amicus curiae*'s research. New York courts accordingly should defer to the policy decisions made by the state legislature regarding reviving civil statutes of limitation in child sexual abuse cases.

III. THE NEGLIGENCE PRINCIPLE IN THE RESTATEMENT (THIRD) OF TORTS SHOULD GUIDE THIS COURT IN HOLDING DEFENDANTS LIABLE FOR CONCEALING AND FACILITATING SEXUAL ASSAULT

This court should rely on the modern iteration of the negligence principles set forth in the Restatement (Third) of Torts that considers whether “the employment relationship facilitates the employee’s causing harm to third parties.” Application of the outdated principles in § 317 Restatement (Second) of Torts undermines important public policies and permits employers to put profits above the safety of others, causing a chilling effect on disclosure and identification of hidden predators. Since the release of the Boston Globe’s *Spotlight* investigative report in 2002 that uncovered rampant abuse in the Catholic Church, an alarming number of institutional scandals have emerged, with more institutions and perpetrators revealed to the public each succeeding year. Marci A. Hamilton, We Failed Our Children for Too Long: The Case for SOL Reform, *The Advocate*, J. OF THE OKLAHOMA ASS’N FOR JUST., 23 (Nov. 4, 2016). These scandals are convincing evidence that sexual

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abuse remains pervasive in our culture and that we are in need of more effective deterrence. Appropriately, institutional responsibility for sexual abuse has since been at forefront of child sexual abuse reform. *Id.*, at 23-24. Widespread sexual misconduct like that of Harvey Weinstein does not, and did not, occur without the facilitation of others, emboldening and subsequently concealing the predatory behaviors of those over whom they have control.

Tort law has evolved throughout history in response to institutional abuses of power.³⁶ A danger of heedlessly applying antiquated rules is it may thwart emergent public policies.³⁷ This is precisely the issue that has emerged as some Courts continue to follow the antiquated negligence principles of § 317 of the Restatement Second of Torts.³⁸ Without viable tort remedies, employers in Defendants' position are free to put profits above the public good, causing a chilling effect on disclosure and identification of predators all to the detriment of society as a whole.

Alternatively, modern social values inform the negligence principle set forth § 41 of the Restatement Third of Torts that considers whether "the employment relationship facilitates the employee's causing harm to third parties."³⁹ The current iteration captures the elements set forth in the Second Restatement while providing

³⁶ See generally, M. Rustad, et al., Taming the Tort Monster: The American Civil Justice System as a Battleground of Social Theory, 68 BROOK. L. REV. 1 (2002).

³⁷ *Id.*, at 29.

³⁸ RESTATEMENT (SECOND) OF TORTS § 317 (Am. Law Inst. 1975); see also Ehrens v. Lutheran Church, 385 F.3d 232, 235 (2d Cir. 2004).

³⁹ See RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 41(b)(3) (2012).

courts the necessary flexibility to balance fairness to employers with a public need to hold them accountable for harm they have caused or failed to prevent.⁴⁰ Notably, the Restatement Third condemns the failure to “exercise reasonable care under all the circumstances.”⁴¹ Modern convention calls for the imposition of an affirmative duty on employers to exercise reasonable care. The so-called “reasonable employer” may no longer be indifferent to the sexual misconduct of its employees but rather they must make greater efforts to identify risks of sexual assault and take reasonable steps to prevent harm and encourage reporting.

What is at stake is whether our legal system will provide adequate redress to the victims of not just Harvey Weinstein, but of churches, schools, youth-serving organizations and predators everywhere. The consequences of affording the company immunity cannot be understated and the courts must bear in mind the full range of potential victims when deciding this case.

IV. INSTITUTIONAL LIABILITY SERVES A NUMBER OF SIGNIFICANT PUBLIC INTERESTS

In order to keep their businesses and reputations intact, institutions’ systematic denial of pervasive misconduct allows sexual abuse to flourish, shifting the burden of abuse to the public. Courts must recognize the causal role the

⁴⁰ See RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 41 (2012) Comment (e), *Duty of Employers*.

⁴¹ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM), § 41 (2012), Comment C, *Duty of Reasonable Care*.

employer plays in creating or facilitating the harm and hold them accountable accordingly. Access to civil justice provides victims with an opportunity for meaningful emotional and economic redress. Civil liability also increases transparency and scrutiny of employees' protective policies (or lack thereof). This spurs cultural changes within the organization and bring about important legislative reforms that increase the safety of children. Vance, S., How Reforming the Tort of Negligent Hiring Can Enhance the Economic Activity of a State, Be Good for Business & Protect the Victims of Certain Crimes, 6(1) Leg. & Pol'y Brief 4 (2014).

A. Access To Justice Is Critically Important For Victims

For sexual assault survivors, acknowledgement of the wrongdoing is an essential part of recovery. See generally van der Kolk. When abuse involves an organization, that organization must be held accountable for failing to protect survivors and facilitating the abuse. Civil liability is an effective, meaningful method of acknowledging systemic failures and serves to endorse institutions' ongoing duty to protect others, to implement new procedures to prevent similar abuse from reoccurring, and sends a clear message that our society will not tolerate individuals or institutions who turn a blind eye to sexual assault of children.⁴²

⁴² Kropp, S., Solving the Penn State Problem: Holding the Institution Accountable for its Conspiracy of Silence, 42 Cap. U. L. Rev. 167, 199-200 (2014). (hereinafter, Kropp).

In addition to providing important validation and acknowledgment, financial compensation also serves a tangible, restorative function. Sexual abuse has a serious cost for victims—physically, psychologically, emotionally, and interpersonally.⁴³ Moreover, the costs to the individual victims are devastating, and the economic cost to society is staggering.⁴⁴ Civil accountability shifts some of the economic burden to the responsible parties most capable of bearing it. See generally, Perryman Group.

B. Accountability Discourages Future Bad Acts and Fosters Prevention

Holding institutions liable not only provides justice for victims of the past but is also an opportunity to prevent current and future harms. While an individual perpetrator's bad acts should be condemned, courts have historically limited fault to the perpetrator while underplaying the contribution of employers' actions (or omissions) that facilitated the abuse.⁴⁵ As a result, employers have been able to

⁴³ See generally, ACE Study; see also Felitti, et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, 14(4) Am. J. Prev. Med. 245-58 (1998); S.R. Dube et al., Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes); Nelson, E. et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) ARCHIVES OF GEN. PSYCHIATRY 139, 139-45 (2002) (reaffirming earlier studies that established childhood sexual abuse has a profound negative impact throughout the victims lifetime).

⁴⁴ Supra, note 28. See also Fang, et. al., The Economic Burden of Child Maltreatment in the United States & Implications for Prevention, 36 CHILD ABUSE & NEGLECT 156-165 (2012); see also CHILD USA, Fiscal Impact of SOL Reform, (2018) available at <https://www.childusa.org/fiscalimpact> (noting that estimates based on investigated cases place the economic burden of abuse at \$2 trillion annually.).

⁴⁵ Chamallas, M., Vicarious Liability In Torts: The Sex Exception, 48 VALPARAISO UNIV. L. REV. 133, 168 (2013) (Explaining that courts' reluctance to impose liability for sexual misconduct on

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perpetuate their false narratives of powerlessness over individual perpetrators to avoid civil liability. Not only does this strategic denial result in failures to intervene to stop known abuse, it also affirmatively creates conditions that tend to embolden predatory employees.⁴⁶ Cultures of secrecy shield organizations from public scrutiny and discourage victims from bringing abuse to light.

History shows institutions must be coerced to protect the interests of children and other vulnerable persons. Kropp, at 200. Without civil liability, employers have considered enacting protective policies costly, where there is little to no cost felt by employers when a child is victimized by their employee. *Id.* Civil accountability changes the cost-benefit analysis for the benefit of victims by making institutional indifference economically burdensome.

Furthermore, civil lawsuits provide an important public avenue for transparency regarding the nature and scope of the abuse occurring within organizations, as well as the organizational responses to known abuse and the risks of abuse. The public scrutiny and criticism attendant to such civil cases forces employers to answer for their conduct before members of the larger community and

employers may be traced to what cognitive psychologists call the “fundamental attribution error” which is the tendency to attribute an event to the character or disposition of the individual actor).

⁴⁶ O’Leary, P., et al., Grooming and child sexual abuse in institutional contexts, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney 16-18 (2017), available at <https://www.icmec.org/wp-content/uploads/2018/04/Research-Report-Grooming-and-child-sexual-abuse-in-institutional-contexts-Prevention.pdf>.

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often creates the pressure needed to bring about important reforms. All these factors help to reshape the culture within institutions, improves overall social welfare and advances broad economic goals.

CONCLUSION

For the foregoing reasons, *amicus curiae* requests this Court to find that the revival provisions of the Child Victims Act, CPLR § 214-G are a constitutional exercise of the Legislature's authority.

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Respectfully submitted,



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