

**Caselaw on Constitutionality of Reviving Child Sex Abuse Statutes of Limitations in Pennsylvania**

May 25, 2021

**A. A Pennsylvania Window Would Not Violate Due Process**

- Under Pennsylvania law, “any legislative enactment, enjoys a presumption of constitutionality,” and those who challenge it “bear a heavy burden to prove it unconstitutional” and “[a] statute will only be declared unconstitutional if it clearly, palpably and plainly violates the constitution.” *Ieropoli v. AC&S Corp.*, 577 Pa. 138, 153-54, 842 A.2d 919, 929 (Pa. 2004) (quoting *Erfer v. Commonwealth*, 568 Pa. 128, 794 A.2d 325, 331 (Pa. 2002)) (citation omitted).
- The United States Supreme Court in *Landgraf v. USI Film Products*, 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. *Id.* at 272.<sup>i</sup>
- A revival window for child sex abuse would be constitutional under the Pennsylvania Due Process Clause because the legislative intent to revive is explicit and statutes of limitations are procedural in Pennsylvania, just as they are under Federal law.<sup>ii</sup> *McDonald v. Redevelopment Authority*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009). In *McDonald*, the Pennsylvania Supreme Court held that the shortening of an SOL for a plaintiff under eminent domain did not violate Due Process rights because it was just a procedural change, not a substantive change.
- The Pennsylvania Supreme Court acknowledged in *Bible v. Dep’t of Labor & Indus.*, 548 Pa. 247, 260, 696 A.2d 1149, 1156 (Pa. 1997), that it has “used the same reasonableness/balancing of interests analysis” as the U.S. Supreme Court applying the Due Process Clause of the U.S. Constitution “in applying the due process protections of the Pennsylvania Constitution.”
- In Pennsylvania, “retrospective laws which have been deemed reasonable are those which impair no contract and disturb no vested right, but only vary remedies, cure defects in proceedings otherwise fair, and do not vary existing obligations contrary to their situation when entered into and when prosecuted.” *Bible v. Dep’t of Labor & Indus.*, 548 Pa. 247, 260, 696 A.2d 1149, 1156 (Pa. 1997) (quoting *Krenzelak v. Krenzelak*, 503 Pa. 373, 382-83, 469 A.2d 987, 991 (Pa.1983)) (internal citation omitted)<sup>iii</sup>
- Defendants in Pennsylvania have no absolute right to a statute of limitations defense.<sup>iv</sup> Due process concerns are muted where the defendant would be claiming a vested right arising out of the very same procedural problem which motivated the legislature to act, and fundamental fairness cuts in favor of retroactive reach intended to cure the wrong. *Gilman v. United States*, 290 F. 614, 616 (D. Pa. 1923) (“[T]here can be no vested right to do wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong is to be presumed.”).
- Pennsylvania has a compelling interest in identifying hidden child predators and the institutions that endanger children, shifting the cost of abuse from victims and taxpayers to those who caused it, and educating the public to prevent child sex abuse. Pennsylvania’s interest far outweighs any alleged unfairness to defendants. The revival will do no more than impose on them the liability



they created through their own wrongful actions at the time they acted wrongfully. *Commonw. v. Johnson*, 732 A.2d 639, 643 (Pa. Super. Ct. 1999) (internal citations omitted).

- Revival windows for child sex abuse claims are universally recognized as a reasonable remedy to the injustice of unreasonably short SOLs which barred survivors' claims long before they were able to come to terms with their abuse.<sup>v</sup> Further, no revival window has been invalidated under the Federal Due Process Clause.

## **B. A Pennsylvania Window Would Not Violate the Remedies Clause**

- By its plain language, the Pennsylvania Remedies Clause protects those “injured” (the victims), and not those who caused the injury.<sup>vi</sup>
- Pennsylvania only invalidates statutes under the Remedies Clause when they alter the substance of a person's underlying claim, not the procedure that dictates when they can bring the claim.<sup>vii</sup> *Ieropoli v. AC&S Corp.*, 577 Pa. 138, 149, 842 A.2d 919, 926 (Pa. 2004).<sup>viii</sup> SOLs do not dictate a right to recover, but are a procedural deadline for seeking that recovery, so they are permissible under the Remedies Clause. *Seneca v. Yale & Towne Mfg. Co.*, 474 (Pa. 1941) (shortening the time limit to file a workers compensation claim is procedural, it does not disturb vested rights).<sup>ix</sup>
- No state with a statutory child sexual abuse revival window and a Remedies Clause has invalidated the revival window under the Remedies Clause. 14 states with a Remedies Clause have a child sex abuse revival law. Only 4 states have invalidated that law, based on case precedent, Due Process, or a finding that the law is retrospective.<sup>x</sup> 4 states have found their revival law constitutional based on Due Process, and in Connecticut in part based on the Remedies Clause.<sup>xi</sup> 6 states have revived child sexual abuse claims, without challenge.<sup>xii</sup>

<sup>i</sup> *Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004).

<sup>ii</sup> *Bible v. Dep't of Labor & Indus.*, 548 Pa. 247, 696 A.2d 1149 (Pa. 1997); *Commonw. v. Johnson*, 732 A.2d 639, 643 (Pa. Super. Ct. 1999).

<sup>iii</sup> In *Bible*, the amendment to the Worker's Compensation Act which retroactively changed compensation for loss of hearing claims did not impair claimants' right to receive compensation for hearing loss, which would have been substantive, but merely changed the remedy, and retroactive application of the amendment to pending cases was constitutional.

<sup>iv</sup> “[T]here is no such thing as a vested right to do wrong.” *Landgraf*, 511 U.S. at 297 (quoting *Freeborn v. Smith*, 69 U.S. 160 (1865)). See also *Kiskaddon v. Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902) (“No one has a vested right to do wrong”); *Satterlee v. Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827) (“there can be no right to do wrong”).

<sup>v</sup> Every appellate court that has analyzed a claim revival statute for child sex abuse under that state's due process clause has determined the remedial statute was not only rational, but reasonable. *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”); *Slincy*, 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 to the state's legitimate purpose of affording sexual abuse victims a remedy”).

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<sup>vi</sup> “[A]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law . . .” Pa. Const. Art. 1 § 11.

<sup>vii</sup> See also *Johnson v. Am. Std.*, 607 Pa. 492, 500, 8 A.3d 318, 323 (Pa. 2010) (emphasis added) (The Pennsylvania Supreme Court “held that the statute was unconstitutional as applied to complaints filed before its effective date because the statute extinguished already existing *causes of action*.”).

<sup>viii</sup> The Pennsylvania Supreme Court analyzed the history of the Remedies Clause in Pennsylvania and found that the statute limiting successor asbestos-related liabilities for corporations violated the Remedies Clause, because it *extinguished the plaintiff’s accrued cause of action* to recover for his asbestos-related illness, instead of altering the procedure of the action.

<sup>ix</sup> See also, *In re Condemnation of Real Estate by Carmichaels*, 88 Pa. Commw. 541, 490 A.2d 30 (Pa. Cmwlth. 1985); *Upper Montgomery Joint Authority v. Yerk*, 1 Pa. Commw. 269, 274 A.2d 212 (Pa. Cmwlth. 1971).

<sup>x</sup> *Wiley v. Roof*, 641 So. 2d 66, 69 (Fla. 1994) (Florida); *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 340 (Mo. 1993) (Missouri); *Doe v. Crooks*, 364 S.C. 349, 351–52, 613 S.E.2d 536, 538 (2005) (South Carolina); *Mitchell v. Roberts*, ---P.3d---, 2020 WL 3118607, \*2 (Utah 2020) (Utah).

<sup>xi</sup> *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 406 (Conn. 2015) (Connecticut); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011) (Delaware); *Sliney v. Previte*, 41 N.E.3d 732, 737, 739 (Mass. 2015) (Massachusetts); *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990) (Minnesota);

<sup>xii</sup> AZ ST § 12–514 (2019 Arizona window); HB 472, Gen. Assemb., 2021 Reg. Sess. (Ky. 2021) (Kentucky window); MCA § 27–2–216 (2019 Montana window); ORS 12.117 (Oregon revival through new age cap); VT. STAT. ANN. tit 12, § 522 (2019 Vermont window); W. VA. CODE ANN. § 55-2-15 (West Virginia revival through new age cap).