

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

Civil Division

LINDSEY BELL-KERR	:	
Plaintiff,	:	
v.	:	Case No. 2021 CA 001351 B
BALTIMORE-WASHINGTON	:	Judge Todd E. Edelman
CONFERENCE OF THE UNITED	:	Next Event: Initial Conference
METHODIST CHURCH, <u>et al.</u>	:	Date: July 30, 2021
Defendants.	:	

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANT MARK SCHAEFER’S MOTION TO DISMISS**

I. INTRODUCTION

In his Motion to Dismiss, Defendant Mark Schaefer asks this Court to decide that his reliance on the expiration of the prior three-year statute of limitations to escape liability is more deserving of protection than access to justice for survivors of sexual abuse.

Defendant Mark Schaefer asks the Court to rule that D.C. Code § 12-301(a)(11) is an unconstitutional violation of due process. He asks the Court to swim against the tide sweeping state houses and courthouses alike across the country in favor of protecting sexual assault victims and ensuring the courthouse doors are open to them. His Motion is not consistent with District of Columbia law and the purposes behind the “Sexual Abuse Statute of Limitations Amendment Act of 2018,” D.C. Law 22-311. The Motion to Dismiss is crafted to challenge the legislation in whole and as applied to him individually.

II. RELEVANT FACTUAL BACKGROUND¹

Plaintiff filed her cause of action against Defendants on April 28, 2021. This action was timely filed under the currently existing statutory framework. D.C. Law 22-311, the “Sexual Abuse Statute of Limitations Amendment Act of 2018,” became effective May 3, 2019. Section 5(a)(2) of D.C. Law 22-311 created a two-year revival period for claims that would be time-barred under the prior section 12-201:

Notwithstanding any other provision of law, a claim for the recovery of damages that would be time-barred under D.C. Official Code § 12-301 before the effective date of this act, but that would not be time-barred under section 3, is revived and, in that case, a cause of action may be commenced within 2 years after the effective date of this act.

D.C. Law 22-311. Sec. 5(a)(2)(2019). Plaintiff timely filed her action within the revival window, a fact which is uncontested in Defendant Schaefer’s Motion to Dismiss.

Plaintiff’s Complaint alleges counts for assault and battery, intentional infliction of emotional distress, breach of fiduciary duty, and negligent employment. The events at issue occurred between 2002-2003. (Compl. ¶¶ 26-56). The sexual abuse forming the foundation of the litigation occurred when Plaintiff was a college freshman, a teenager aged 18 to 19 years old, barely of the age of majority. The sexual abuse alleged was not consensual. (Compl. ¶¶ 42, 54). When fellow students reported the sexual misconduct by Defendant Schaefer to his supervisors, at the Defendant Baltimore-Washington Conference and Defendant American University, their claims were effectively ignored, the abuse was ratified, and Defendant Schaefer was allowed to continue abusing the Plaintiff. (Compl. ¶¶ 43-49). The misconduct was so severe in nature, that Plaintiff turned to alcohol to cope and attempted suicide in July 2003. (Compl. ¶¶ 55-56).

¹ Mindful of the Court’s presumptive page limit, while the Complaint spanned 96 paragraphs, Plaintiff has endeavored to present only a concise summary of the facts here. Other individual facts will be discussed as necessary in relation to specific counts.

It was also impossible for Plaintiff to avoid Defendant Schaefer for years following the abuse; he had infiltrated her community and social network and would monitor, shadow, and circle Plaintiff for years to come. (Compl. ¶ 58). Despite actual notice from multiple sources that Defendant Schaefer had sexually abused one of its students, Defendant AU not only continued to employ Defendant Schaefer; it promoted him to the position of University Chaplain and expanded his teaching opportunities, effectively ratifying his improper behavior. (Compl. ¶ 59).

III. LEGAL STANDARD

A. Legal Standard for Rule 12(b)(6) Motion to Dismiss

To survive a motion to dismiss, a complaint “must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist.” *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007). For purposes of a Rule 12(b)(6) motion to dismiss, “the complaint must be construed in the light most favorable to the plaintiff and its allegations taken as true.” *McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C. 1979). To that end, “liberal rules of pleading normally protect a plaintiff from dismissal at the pleading stage when the complaint can be said to state a claim if all inferences are drawn in the plaintiff’s favor.” *Duncan v. Children’s Nat. Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997).

IV. ARGUMENT

Plaintiff requests that the Court deny Defendant Schaefer’s motion because DC Code § 12-301 is constitutional as a reasonable effort by the DC Council to provide justice to survivors of sexual assault. Defendant Schaefer has no vested right in a particular statute of limitations and it imposes no “special hardship and oppressive effect” on him as claimed.

Defendant argues that statutes of limitations are an important element of due process. Plaintiff agrees. They are important. They are also able to be updated, revised, and amended. They

are not set in stone for all time. Changing the framework and amending statutes of limitations is a power held by the Council of the District of Columbia.

The Court of Appeals acknowledged the constitutional power of legislation to amend statutes of limitations. *See Owens-Corning Fiberglas Corp. v. Henkel*, 689 A.2d 1224 (D.C. 1997). In *Owens-Corning*, appellant argued a claim was untimely filed since a new asbestos-specific statute of limitation was enacted after appellee's claim accrued. *Id.* at 1231. It was argued that the new asbestos statute shortened the statute of limitations set forth in a separate three-year statute, a scenario in which the claim should have been filed within six weeks of the effective date of the new statute. *Id.* at 1233. The Court refused to apply the contorted interpretation of the new statute in that case given that there was a separate statute providing for a longer filing deadline. *Id.* at 1235.

Within *Owens-Corning*, the Court provides a framework discussion for how statute of limitations legislation are to be interpreted. Guidance includes that, "there is a strong public policy that litigation be disposed of on the merits wherever possible." *Id.* at 1233 (internal citation omitted). Also, "where two constructions as to the limitations period are possible, the courts prefer the one which gives the longer period in which to prosecute the action... If there is any reasonable doubt in a statute of a limitations problem, the [c]ourt will resolve the question in favor of the complaint standing and against the challenge." *Id.* (citing *Simpson v. D.C. Office of Human Rights*, 597 A.2d 392, 402 (D.C. 1991)). The Court cites the U.S. Supreme Court case law articulating the constitutional power of the legislature to control statutes of limitations. *Id.* at 1234 (citing *Koshkonong v. Burton*, 104 U.S. 668 (1881)). Further, "statutes should be construed, if reasonably possible, to avoid any doubt as to their constitutionality." *Id.*

A. Revival of claims is consistent with due process.

The retroactive revival of time-barred claims is constitutional if the legislative intent is clear and the change is procedural. *See Landgraf v. USI Film Products*, 511 U.S. 244, 267-72 (1994) (holding that retroactive civil legislation is constitutional when legislative intent is clear and the change is procedural). The Supreme Court expressed assurances that if the statute revealed clear intent of retroactive application, then the court was assured that the legislature considered any potential unfairness and found that the benefits of the statute outweighed any potentiality. *Id.* at 272-73.

Retroactive intent is clear this case. D.C. Law 22-311, “Sexual Abuse Statute of Limitations Amendment Act of 2018,” specifically stated clear legislative intent to apply retroactively with a revival window of previously time-barred claims: Sec. 5(a)(2) states: “Notwithstanding any other provision of law, a claim for the recovery of damages that would be time-barred under D.C. Official Code § 12-301 before the effective date of this act, but that would not be time-barred under section 3, **is revived** and, in that case, a cause of action may be commenced within 2 years after the effective date of this act.” (emphasis added).

The change is a procedural change. Statutes of limitations are considered procedural in the District of Columbia. *See, e.g., A.I. Trade Finance, Inc. v. Petra Intern’l Banking Corp.*, 62 F.3d 1454 (D.C. Cir. 1995).

Thus, the elements for *Landgraf* are met and Defendant Schaefer’s constitutional challenge fails. The revival of Plaintiff’s claims—and the claims of other survivors of sexual assault—comports with due process principles.

1. The Court of Appeals has upheld the constitutionality of claim-revival statutes in other contexts.

The use of claim-revival statutes has previously been held constitutional by the District of Columbia Court of Appeals. In *Riggs National Bank of Washington, D.C., v. D.C.*, 581 A.2d 1229 (1990), the Court considered the Uniform Disposition of Unclaimed Property Act of 1980 and retroactive application of Section 42-242 involving escheat. Riggs argued the law was a violation of due process of the Fifth Amendment. The Court analyzed, “[t]his court recently reiterated its disposition to refrain from striking down allegedly unwise legislation in the absence of a clear conflict with the language of the Constitution. We recognized in *Hornstein* that a court ‘usurps legislative functions when it presumes to adjudge a law void where the repugnancy between the law and the Constitution is not established beyond a reasonable doubt.’” *Id.* at 1240 (citing *Hornstein v. Barry*, 560 A.2d 530 (D.C. 1989)). The Court of Appeals cited *Chase v. Secs. Corp. v. Donaldson*, 325 U.S. 304 (1945) for support of the principles that:

Where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment...

Id. at 1241. Thus, in the absence of a vested interest in real or personal property, due process is intact. *Riggs* also involved claims of detrimental reliance on the statute of limitations because “its conduct would have been different if the present rule had been known and the change foreseen.” *Id.* at 1242. No actual hardship or oppression was shown in *Riggs* (despite loss of earnings on money held, for example). The Court acknowledged that “statutes are to be construed ‘so as to avoid serious doubts as to their constitutionality...’” *Id.* (citations omitted). Challenges to the retroactive statute failed.

Edwards v. Lateef, 558 A.2d 1144 (1989), is also instructive. In *Edwards*, the Court of Appeals held that the Uniform Reciprocal Enforcement of Support Act could apply retroactively for collection of child support. The Court found that “statutes that create additional remedies, relate to the modes of procedure or confirm or clarify existing rights do not contravene the general proscription against the retrospective operation of legislation.” *Id.* at 1147. The Court held that the statutory amendment at issue did not affect or amend a substantive right. The language provided an additional remedy and mechanism to enforce an existing obligation. *Id.*

Defendant Schaefer did not cite *Riggs*, *Edwards*, or *Owens-Corning* in his motion. The three cases combined show that where legislation clearly states that a statute of limitations is amended—in furtherance of public policy toward allowing access to courts—those statutes will be shown constitutional deference. Rather than citing to *Riggs*, *Edwards*, or *Owens-Corning*, which are clearly relevant to this Court’s inquiry, Defendant cites to cases from 1903 and 1906 when D.C. law first displaced Maryland law. More recent cases cited herein, however, are informative of what has transpired in the century since the enactment of the D.C. Code. Once again, the Supreme Court guidance in *Chase* shows that legislatures may constitutionally repeal or extend a statute of limitations where a party is not invested with a “title to real or personal property.” *Chase*, 325 U.S. at 311.

2. Defendant Schaefer has no right to a statute of limitations defense.

This is a case timely filed under the D.C. Code’s purposefully enacted statute of limitations for sexual abuse. This is a case about access to justice for a victim seeking redress from her perpetrator. This is a case about making the public aware of the misconduct of a sexual predator. This is not a case involving title to real or personal property. Defendant Schaefer has not been “invested” with any claim to rely on the statute of limitations. His request for freedom to live his

life and “order his affairs” believing he has escaped liability for his misconduct is offensive to Plaintiff, and offensive to the spirit of the “Sexual Abuse Statute of Limitations Amendment Act of 2018,” D.C. Law 22-311.

In *Chase*, the Supreme Court expounded on the role of statutes of limitations:

They have come into the law not through the judicial processes but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what is now called a “fundamental” right or what used to be called a “natural” right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

Chase, 325 U.S. at 314. Further, as the *Chase* Court explained, “certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment.” *Id.* at 316.

There is no controlling case law for the District of Columbia holding that there is a right to a statute of limitations defense. Other jurisdictions have also rejected the concept of a right to a statute of limitations defense. *See, e.g., Roe v. Ram*, Civil No. 14-00027 LEK-RLP, 2014 WL 4276647, *9 (D.H.I. August 29, 2014) (“We are unable to accept defendants' proposition that the expiration of a statute of limitations confers upon a defendant any vested right or property interest which remains undisturbed by subsequent legislative enactments.”); *K.E. v. Hoffman*, 452 N.W.2d 509, 513 (Minn. App. 1990) (“Plainly, the limitations statute in the present case is not analogous to one involving adverse possession where the passage of time extinguishes the plaintiff's right and remedy, and gives the defendant a vested property right.”); *W.F. v. Roman Catholic Diocese of Paterson*, Civil Action No. 20-7020, 2021 WL 2500616, *3 (D.N.J. June 7, 2021) (“Generally, protectable fixed interests include property rights and preexisting contractual relationships....Here, retroactive application of the Child Victim's Act would neither deprive

Defendant of its property rights nor disadvantage a preexisting contractual relationship. Rather, the passage of the Child Victim's Act only bars a procedural remedy once available to Defendant.”).

B. DC Code § 12-301 satisfies the rational basis standard.

Defendant’s Motion concedes that the rational basis standard applies to this Court’s inquiry. The inquiry focuses on legislative intent, inspection of a legitimate government purpose, and whether it is reasonably related to its objective.

1. *There is a legitimate government purpose in opening the courthouse doors to sexual abuse victims.*

Underlying the impetus for the revival statute and the amended statute of limitations for sexual abuse is the important analysis of the Committee on the Judiciary & Public Safety, which wrote in the Committee Report:

The Committee was deeply moved by the testimony of many public witnesses regarding their experiences and the psychology behind victimization and trauma. Survivors face tremendous barriers to reporting their crimes: barriers to identifying as a victim, shame or humiliation related to the abuse itself, and a fear—and, clearly, a reality—of being disbelieved or retraumatized. If survivors do come forward, the opportunity to seek justice should not be arbitrarily foreclosed. The Committee has thoughtfully weighed the interests at stake in both bills’ proposals and concludes that the District’s statutes of limitations must be expanded.

D.C. COMM. ON THE JUDICIARY & PUB. SAFETY, REPORT ON B22-0021, THE “SEXUAL ABUSE STATUTE OF LIMITATIONS AMENDMENT ACT OF 2018,” Cong. L22-0311, at 9 (2019).

2. *DC Code § 12-301 is reasonably related to its stated purpose.*

The District of Columbia took a moderate approach to revising the civil statute of limitations for sexual abuse. As evidenced by the Council preserving a civil statute of limitations for sexual abuse litigation, it took more limited action than was available. As the Committee on the Judiciary & Public Safety wrote: “The Committee believes that statutes of limitations serve

an incredibly important purpose, but in practice, they can function as arbitrary time limits that should be revisited as societal understandings of crime, victimization, and traumatization evolve.”

D.C. COMM. ON THE JUDICIARY & PUB. SAFETY, REPORT ON B22-0021, THE “SEXUAL ABUSE STATUTE OF LIMITATIONS AMENDMENT ACT OF 2018,” Cong. L22-0311, at 5 (2019).

Careful consideration was given to the statute regarding its application to adult victims. The Council determined that the expanded statute of limitations and the revival window should apply to claims for both children and adults:

In light of recent high-profile cases related to sexual abuse and a more nuanced understanding of the needs of survivors, the Committee believes there are compelling reasons to expand the civil statute of limitations along with the criminal statute of limitations. The Committee Print removes the phrase “that occurred while the victim was a minor” from the D.C. Code § 12-301(11). Claims arising from abuse while the victim was either a minor or an adult, under the Committee Print, would be subject to the statute of limitations provided for in that Code section.

Id. at 11. This was not an accidental or unreasoned amendment, as suggested by Defendant Schaefer.

Further, the revival window was a deliberate, reasonable amendment to further the purpose of creating greater access to the courts and justice for victims:

Finally, the Committee Print creates a 2-year revival window for civil claims related to sexual abuse. Claims that were previously barred under the current statute of limitations but would otherwise be eligible under the new statute of limitations, may be brought forward during this 2-year period. This revival window is created out of a recognition that the previous statute of limitations was overly restrictive.

Id. at 12.

C. The legislation is consistent with growing national trends toward revival statutes and expanding the statute of limitations for sexual abuse cases.

The national trend toward expanding statute of limitations for sexual abuse cases is clear from the wave of legislation and changes in the last few years. The Council clearly considered the national trends as the Committee report and legislative history cited legislation passed in other jurisdictions extending the statutes of limitations and creating revival windows. D.C. COMM. ON THE JUDICIARY & PUB. SAFETY, REPORT ON B22-0021, THE “SEXUAL ABUSE STATUTE OF LIMITATIONS AMENDMENT ACT OF 2018,” Cong. L22-0311, at 4-5 (2019).

1. Other State Legislation

With the passage of DC Code § 12-301, the District of Columbia joined dozens of states across the country that have amended their statutes of limitations in recent years to restore justice to countless abuse survivors, protect survivors by expanding the time to bring civil claims, and to acknowledge that survivors often do not report and/or bring claims until decades after the abuse. Many have enacted revival windows as part of the legislation. *See, e.g., Arizona*, Ariz Rev Stat Ann § 12-514 (increased statute of limitations to age 30, 19-month window for time-barred claims); **Arkansas**: Ark. Code Ann. § 16-56-130 (2 year revival window); **California**: Cal Civ Proc Code § 340.1 (increased statute of limitations to age 40, 3 year revival window); **Colorado**: COLO. REV. STAT. § 13-80-103.7 (3 year window for claims for abuse from 1960-21); **Connecticut**: Conn Gen Stat Ann § 52-577d (retroactively increased statute of limitations to age 51, including for time-barred claims); **Delaware**: Del. Code Ann. Tit. 10, § 8145 (2 year window first for perpetrators, private organizations, and government, then against health care providers); **Georgia**: O.C.G.A. § 9-3-33.1(d) (2 year window); **Hawaii**: Haw Rev Stat Ann § 657-1.8 (increased statute of limitations to age 26, 8 year revival window); **Kentucky**: Ky. Rev. Stat. § 413.249 (revives statute up to five years after previously expired beginning March 23, 2021);

Maine: Me. Rev. Stat. Ann. tit. 14, § 752-C (permanent revival window); **Massachusetts:** Mass. Gen. Laws An. Ch. 260 § 4C (permanently revived statute up to age 53); **Minnesota:** Minn Stat Ann § 541.073 (increased statute of limitations to age 24, 3 year revival window); **Montana:** Mont Code Ann 27-2-216 (increased statute of limitations to age 27, 1 year revival window); **New Jersey:** NJ Stat Ann 2A:14-2b (increased to age 55, and a 2 year revival window); **New York:** N.Y. C.P.L.R. § 214-g (one year window with one year extension); **North Carolina:** NC Gen Stat Ann § 1-52 (increased statute of limitations to age 28, 2 year revival window); **Rhode Island:** 9 RI Gen Laws Ann § 9-1-51 (increased statute of limitations to age 53, plus discovery rule); **Vermont:** Vt Stat Ann T. 12 § 522 (retroactively abolished the statute of limitations and created permanent revival window).

2. Other State Jurisprudence

Other state courts have upheld the constitutionality of revival statutes. Many of these are grounded on the precedent set in *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945). *See, e.g., Connecticut: Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357 (2015) (upholding constitutionality of retroactive application of statutory amendment increasing SOL to thirty years); **Delaware:** *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247 (Del. 2011) (holding constitutional statute abolishing SOLs for claims of childhood sexual abuse and creating two-year revival window); **California:** *Deutch v. Masonic Homes of Cal., Inc.*, 164 Cal. App. 4th 748 (Cal. Ct. Ap. 2008) (statute extending SOLs from one to eight years and creating revival window held constitutional); **Massachusetts:** *Sliney v. Previte, et al*, 41 N.E.3d 732 (Mass. 2015) (statute extending the statute of limitations on sexual abuse, with a retroactivity provision, and revival window held constitutional); **Georgia:** *Harvey v. Merchan*, No. S21A0143, 2021 WL 2518868 (Ga. June 21, 2021) (upheld revival statute for sexual assault claims; no violation of due process rights); **Hawaii:** *Roe v. Ram*, Civil No. 14-00027 LEK-RLP, 2014 WL 4276647, *4-9

(D.H.I. August 29, 2014); **Minnesota:** *K.E. v. Hoffman*, 452 N.W.2d 509, 512-13 (Minn.App. 1990); **Montana:** *Cosgriffe v. Cosgriffe*, 262 Mont. 175, 178-82 (1993); **New Jersey:** *W.F. v. Roman Catholic Diocese of Paterson*, Civil Action No. 20-7020, 2021 WL 2500616, *2-4 (D.N.J. June 7, 2021) (rejects due process violation under NJ Constitution citing *Chase*); **South Dakota:** *DeLonga v. Diocese of Sioux Falls*, 329 F.Supp.2d 1092, 1101 (D.S.D. 2004); **Vermont:** *Colomb v. Roman Catholic Diocese of Burlington, Vermont, Inc.*, No. 2:10-cv-254, 2012 WL 4479758, *3 (D.VT. Sept. 28, 2012).

3. The constitutionality of sexual assault revival windows has been upheld in twelve states to date.

Defendant's Motion highlights the three jurisdictions where challenges to the sexual assault revival statutes were successful under the respective state frameworks: Utah, Illinois, and Missouri. It is important to note the flipside—conspicuously absent from Defendant's Motion—which is that the revival statutes have been upheld as Constitutional in twelve states based on the most recent available research: California, Connecticut, Delaware, Georgia, Hawaii, Kansas, Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Virginia. *See Deutsch v. Masonic Homes of Cal., Inc.*, 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal. Ct. App. 2008); *Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 317 Conn. 357, 406 (Conn. 2015); *Sheehan v. Oblates*, 15 A.3d 1247, 1258-60 (Del. 2011); *Harvey v. Merchan*, No. S21A0143, 2021 WL 2518868 (Ga. June 21, 2021); *Roe v. Ram*, Civ. No. 14-00027 LEK-RLP, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *Shirley v. Reif*, 260 Kan. 514, 526, 920 P.2d 405, 413 (Kan. 1996); *Sliney v. Previte*, 473 Mass. 283, 41 N.E.3d 732, 737, 739 (Mass. 2015); *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990); *Cosgriffe v. Cosgriffe*, 262 Mont. 175, 864 P.2d 776, 779 (Mont. 1993); *Doe v. Silverman*, 287 Or. App. 247, 253, 401 P.3d 793, 797 (Or. Ct. App. 2017), review denied, 362 Or. 389, 411 P.3d 382 (Or. 2018); *DeLonga v.*

Diocese of Sioux Falls, 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004); *Kopalchick v. Cath. Diocese of Richmond*, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007). See also, CHILD USA, *History of U.S. Child Sex Abuse Statutes of Limitation Reform: 2002 to 2020*, available at <https://childusa.org/2020-sol-report/>.

D. Defendant Schaefer's arguments about the difficulty of his defense are irrelevant, speculative, and unfounded.

Without any evidentiary support, Defendant protests that Plaintiff's revived claim may be difficult to defend because the events occurred in 2002-2003. What this argument ignores is that the Plaintiff has the burden of proof, just like the plaintiff in every other case, regardless of the statute of limitations.

There are many causes of action that a plaintiff may bring in which the material events stretch back in time. For example, D.C. Code § 12-301(1) establishes a 15-year statute for the recovery of lands, tenements, or hereditaments; D.C. Code § 12-301(6) provides a 12-year statute for actions on a bond, bill, covenant, or instrument under seal; and D.C. Code § 12-301(10) allows actions for injury to real property from toxic substances including asbestos initiated five years from the date the injury is discovered or should have been discovered.

Extended timeframes for filing claims in civil litigation do not violate a defendant's due process rights simply because of the passage of time. As cited earlier in this brief, the courts and legislature value access to justice and keeping the courthouse doors open to plaintiffs.

No discovery has occurred in this case. There is no evidence that Plaintiff or Defendant Schaefer will have any difficulty investigating the material facts at issue. One potential fact witness is known to be deceased, but frankly, that could happen in any litigation and is not a justification to support a due process violation. Because Defendant Schaefer chose to groom and victimize young women in a college setting, many of the witnesses are relatively young.

Plaintiff falls into the category of individuals that the revival window legislation was designed to aid in seeking justice, both by the strict letter of the legislation and the legislative history. She is afforded access to the courts under D.C. Code § 12-301(a)(11).

V. CONCLUSION

For the reasons set forth above, Plaintiff asks this Court to deny Defendant Mark Schaefer's Motion to Dismiss in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 2021, a copy of Plaintiff's Memorandum in Opposition to Defendant Mark Schaefer's Opposed Motion to Dismiss the Complaint was via CaseFileXpress filed and served on:

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