

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

JOSEPH KASTNER,

Plaintiff,

- against -

JOHN SA DOE; CAMP MOGEN AVRAHAM;
CAMPS MOGEN AVRAHAM, HELLER,
STERNBERG, INC.; STERNBERG, HELLER,
MOGEN AVRAHAM THE SHMA CAMPS, LLC; and
UNITED JEWISH APPEAL (UJA) FEDERATION OF
NEW YORK,

Defendants.

MEMORANDUM
OF LAW

Index No. 900111/2021

Hon. Steven M. Jaeger
JUSTICE ASSIGNED

Date Returnable:
December 8, 2021

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

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

While the issue before this Court is limited to determining the constitutionality of the Child Victims Act, this case concerns questions of important public interest, including access to justice for child sexual abuse survivors previously denied by unreasonably short statutes of limitation (“**SOLs**”), identifying otherwise hidden child predators, appropriately shifting the cost of sexual abuse from survivors and the state to those who caused and allowed the abuse, and educating the public to prevent further child sexual abuse.

To assist this Court in understanding the particular injustice that the Child Victims Act addresses, and establishing, not just as a legal matter but as a matter of social science and public interest, that the Child Victims Act is a reasonable remedy to that injustice, CHILD USA seeks to participate as *amicus curiae* in this case.

CHILD USA—a nonprofit think tank dedicated to protecting children and preventing abuse—is the leading organization in the United States devoted to reforming SOLs to reflect the science of delayed disclosure of childhood sexual abuse. CHILD USA’s Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on revival laws, and has advised Congress, 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. In 2018, CHILD USA founded the Sean P. McIlmail Statutes of Limitations Research Institute, which is dedicated to studying and analyzing SOLs to fight for access to justice for all child sex abuse survivors.

In S.T. v. Diocese of Rockville Centre et al., Index No. 900007/2019, Docket No. 76 (N.Y. Sup. Ct., Nassau County, Mar. 2, 2020), this Court denied CHILD USA’s motion for leave to file an *amicus curiae* brief, finding that granting the requested relief would delay the determination of the submitted motions, the parties were more than capable of a full and adequate presentation of

the relevant law and facts necessary for the Court's determination of the motions, and CHILD USA had not identified any relevant law or arguments that might otherwise escape the Court's consideration. *Id.* at 6 (citing *Kruger v. Bloomberg*, 1 Misc.3d. 192, 198 (Sup. Ct. NY Co. 2003)). As described in the *Affirmation of Jeffrey D. Prol, Esq. in Support of Motion by CHILD USA to file Amicus Curiae Brief* filed herewith and as set forth in detail below, CHILD USA's motion and *amicus curiae* brief here is distinguishable from the submission the Court reviewed in that case.

Distinct from the parties' legal briefs on *Defendant John SA Doe's Motion to Dismiss*, Sept. 15, 2021, Docket No. 25 (the "**MTD**"), this *amicus curiae* brief provides the Court with critical social science and public policy information and data and national context—all of which CHILD USA is uniquely situated to provide—that bear directly on the analysis of whether the Child Victims Act is constitutional under the New York Constitution's Due Process Clause. This includes:

- (i) research on and analysis of the science of delayed disclosure by survivors of their abuse establishing why it was effectively impossible for countless survivors of child sex abuse in New York to file civil claims before the prior SOLs expired;
- (ii) the national landscape on constitutional challenges to state child sex abuse claims revival laws, including in New York;
- (iii) the important public interest in revival of expired civil SOLs; and
- (iv) the effects of the revival laws on public safety.

The parties in the case do not have the breadth and depth of CHILD USA's social science experience and expertise in these issues implicated by the MTD—and in particular, the important and otherwise unrepresented perspective of advocates for child sexual abuse survivors nationwide and in New York State specifically—all of which are integral to (a) providing a complete record and context for understanding the particular injustice that the Child Victims Act addresses, and (b) establishing, not just as a legal matter but as a matter of social science and public interest, that the Child Victims Act is a reasonable remedy to that injustice. Thus, CHILD USA respectfully

submits that this brief will remedy this knowledge gap and provide a full and adequate record on the issues, focus the Court's attention on arguments that might otherwise escape its consideration, and otherwise be of special assistance to the Court.¹

For these reasons, CHILD USA respectfully submits that it is an appropriate party to be made an *amicus curiae* in this case.

PRELIMINARY STATEMENT

Defendant John SA Doe ("**Defendant**") has moved this Court to dismiss plaintiff Joseph Kastner's ("**Plaintiff**") complaint against him, which alleges three causes of action arising from sexual abuse in the summer of 1990. Defendant argues that New York's Child Victims Act ("**CVA**"), which revived expired civil claims for child sex abuse under CPLR § 214-g for a temporary period, violates the Due Process Clause of the New York Constitution.

As New York Court of Appeals precedent establishes, and this Court and several other recent trial court opinions have found, CPLR § 214-g is constitutional as a reasonable remedy to cure the injustice of past child sexual abuse, which uniquely delays survivors from processing, coping with and disclosing their experiences so that unreasonably short SOLs obstruct their access to the courts and keep the public in the dark about predators that continue to sexually abuse children. Many adult survivors of child sex abuse used the revival window—the last avenue for justice for these individuals—to bring otherwise expired civil claims against abusers and other responsible parties. This Court's decision will thus affect survivors of sexual abuse as well as the

¹ CHILD USA respectfully submits that this motion will not substantially prejudice the rights of the parties in this case because it can be considered simultaneously with the Defendant's MTD without delaying the case. By Stipulation filed on September 28, 2021, Plaintiff (defined herein) and Defendant (defined herein) agreed to adjourn the date for filing and service of (a) Plaintiff's opposition papers to the MTD to December 1, 2021, and (b) Defendant's reply papers on the MTD (if any) to December 6, 2021. [See Dkt. 27.] Although CHILD USA recognizes that moving by order to show cause may be the preferable procedure for a motion seeking *amicus curiae* status, given the existing consensual briefing schedule between the parties on the MTD, CHILD USA is filing this motion in accordance therewith.

public at large, who the New York State Legislature (the “**Legislature**”) temporarily empowered to uncover instances of child sex abuse that would have otherwise remained hidden. CHILD USA therefore respectfully requests that this Court hold that the CVA, and specifically the revival provision, CPLR § 214-g, is constitutional, and deny the MTD.

ARGUMENT

I. THE CHILD VICTIMS ACT’S REVIVAL PROVISION IS CONSTITUTIONAL UNDER THE NEW YORK CONSTITUTION’S DUE PROCESS CLAUSE

The Child Victims Act’s revival provision, CPLR § 214-g, comports with the New York Constitution’s Due Process Clause because it is a reasonable remedy to the injustice of New York’s unreasonable and short SOLs that blocked child sex abuse survivors’ access to the courts and kept the public in the dark about predators that continued to sexually abuse children.

A. Child Sexual Abuse Uniquely Prevents Survivors From Bringing Timely Claims Under Unreasonably Short Statutes of Limitation

Child sexual abuse is a public policy and public health crisis, with about 3.7 million children sexually abused in the United States every year.² It affects one in five girls and one in thirteen boys in this nation.³

An extensive body of scientific evidence establishes that childhood sexual abuse survivors are traumatized in a way that is distinguishable from victims of other crimes. As explained by the

² See Preventing Child Sexual Abuse, CDC.gov (last visited Jan. 24, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat’l Survey of Children’s Exposure to Violence, 169(8) JAMA Pediatrics 746 (2015).

³ G. Moody, et. al., Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., The prevalence of child sexual abuse in community and student samples: A meta-analysis, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

Center for Disease Control, “Adverse Childhood Experiences” (“ACEs”) “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.”⁴ Indeed, in 1998, one of the largest investigations to date of the effects of childhood abuse established a strong relationship between ACEs and negative effects across the lifespan, including: disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability.⁵

Survivors of childhood sexual abuse therefore often need decades to process and cope with the abuse they suffered, much less to report it.⁶ One study found that 44.9% of male victims and 25.4% of female victims of child sex abuse delayed disclosure by more than 20 years.⁷

⁴ Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1> (hereinafter “CDC ACEs Study”); see also Vincent J. 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 (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 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

⁵ See Felitti, at 245–58; see also R. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH. PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders.”); M. Merricka., et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 2017); see also Sachs-Ericsson, et al., A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., Concomitance between childhood sexual and physical abuse and substance use problems: A review, 22 CLINICAL PSYCHOL. REV. 27 (2002) (adult survivors of child sexual abuse are nearly three times as likely to report substance abuse problems than their non-survivor peers).

⁶ 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/TonicImmobility Webinar.pdf](https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility%20Webinar.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).

⁷ Patrick J. O’Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. Child Sex. Abuse 133 (2008).

Child sex abuse survivors may struggle to disclose their experiences due to effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or stigma regarding victimization.⁸ Estimates across different research studies reveal that between 70% and 95% of child sexual assault victims never report the abuse to authorities.⁹

Moreover, cultures of secrecy shield organizations from public scrutiny and discourage survivors from bringing abuse to light. Historically, a wall of willful ignorance and secrecy had been constructed around child sex abuse, which was reinforced by unreasonable SOLs that unjustly prevented survivors from accessing justice through the legal system and thus favored the perpetrators of such abuse and the institutions that covered up for them. Since the release of the Boston Globe's 2002 *Spotlight* investigative report that uncovered rampant sexual abuse in the Catholic Church, an alarming number of institutional scandals have emerged, with more institutions and perpetrators revealed to the public each year.¹⁰

Until 2019, child sex abuse survivors in New York only had until age 23 to file a civil suit against their abusers and age 21 to bring personal injury claims against other defendants. See NY CPLR §§ 213-c and 214(5). This was problematic because, as the above-discussed research establishes, nearly all survivors were unable to bring their claims within such an unreasonably

⁸ Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

⁹ See David Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US Dept. of Justice, Office of Justice Programs (2008), available at <https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf> (Based on an analysis of an estimated 285,400 child sexual assault victims, researchers found that only 30% of cases involved police contact.); Kamala London et al., *Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications for Forensic Interviewers*, 16 MEMORY 29, 31 (2008) (“Researchers have found a range of 5% to 13% of child sexual abuse victims reporting abuse to authorities across different studies.”).

¹⁰ Marci A. Hamilton, We Failed Our Children for Too Long: The Case for SOL Reform, *The Advocate*, J. of the Okla. Ass'n for Just., 23 (Nov. 4, 2016).

short timeframe. At the time, New York ranked as one of the worst jurisdictions in the United States for its SOLs for child sex abuse claims.¹¹ To remedy the problem, in 2019, the Legislature passed the CVA, which, among other things, opened a window permitting survivors of child sexual abuse in New York to assert otherwise time-barred civil claims—from August 14, 2019 through August 14, 2021. *See* CPLR § 214-g.

Revival laws like CPLR § 214-g recognize that in establishing unreasonably short SOLs for child sexual abuse claims, lawmakers, and society at large, did not understand the plight of those sexually abused as children and unfairly 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 survivors of sexual abuse which may hinder such survivors from making the causal connection between their abuse and problems suffered later in life”); Sliney v. Previte, 41 N.E.3d 732, 741–42 (Mass. 2015) (child sex abuse survivors are often “not able to appreciate the extent or the cause of harm they experience as a result of sexual abuse perpetrated on them for many years after the abuse has ended”); Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 517 (Conn. 2015) (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”).

Because a law enacted after expiration of a previously applicable limitations period violates the *Ex Post Facto* Clause of the United States Constitution when applied to revive a previously

¹¹ 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>.

time-barred *criminal* prosecution, see Stogner v. California, 539 U.S. 607, 610, 632–33 (2003), the ability to file a civil claim using a revival provision is the sole redress for many survivors whose claims unjustly expired. Revival windows also serve the important public interest of identifying hidden predators and appropriately shifting the cost of abuse from the survivor and the state to those who caused and allowed the abuse. By passing the CVA, the Legislature recognized this injustice and took a reasonable step to address it, providing long-denied access to justice to many survivors of child sex abuse and greatly reducing the present danger to New York’s children.

B. The Child Victims Act’s Claims Revival Provision Is a Reasonable Remedy to the Injustice of Barring Child Sexual Abuse Claims with Unreasonably Short Statutes of Limitations

This Court has already addressed whether the CVA violates a defendant’s right to due process under the New York Constitution and found that it does not. See Opinion, Ark3 DOE v. Diocese of Rockville Ctr. et al., Index No. 900010/2019 (N.Y. Sup. Ct., Nassau County, May 13, 2020), at 12, Docket No. 145 (the “**Diocese of Rockville Centre Opinion**”). In fact, this Court has already rejected the very same argument that Defendant raises here. In Ark3 DOE v. Diocese of Rockville Centre, the Diocese of Rockville Centre (the “**Diocese**”) argued that the Legislature’s attempt through CPLR § 214-g to temporarily revive formerly time-barred claims based on certain alleged abuse is unconstitutional under the New York Constitution’s Due Process Clause. See Diocese of Rockville Centre Opinion, at 4. The Diocese argued that a claim revival provision meets the New York due process standard only when a plaintiff could not have brought an action timely in response to exceptional circumstances or a serious injustice. See id. at 5. This Court rejected the Diocese’s articulation of the standard, finding instead that “[s]imply put, in order to find that the Due Process clause is satisfied, a court need only determine that the revival statute was a reasonable measure to address an injustice.” Id. Upon review of the case law and legislative history, this Court held that “the Child Victims Act is a reasonable response to remedy the injustice

of past child sexual abuse. Accordingly, it does not violate Defendant DIOCESE's right to due process under the New York State Constitution," and this Court denied that portion of the Diocese's motion to dismiss. See id. at 12.

Like the Diocese's unsuccessful argument in the Diocese of Rockville Centre, Defendant here contends that the "injustice" prong of the due process analysis requires a showing of the claimants' complete inability to sue within the original statutory period. See MTD at 27 (asserting that the applicable test is "whether the class of plaintiffs whose claims were revived, as a whole, were prevented from bringing timely claims by circumstances beyond their control"); see also MTD at 12 (describing the exceptional circumstances required as "the practical impossibility for plaintiffs to bring a timely claim under the formerly applicable limitations period").¹² For all the reasons stated in the Diocese of Rockville Centre Opinion, this Court already rejected Defendant's proffered articulation of the applicable standard, which distorts the standard of review set forth in In re World Trade Ctr. Lower Manhattan Disaster Site Lit., 89 N.E.3d 1227, 1243 (N.Y. 2017). CHILD USA asks the Court to do the same here.

The injustice that the Legislature sought to remedy through the claims-revival provision of the CVA is clear and well-documented: retroactive revival of a civil claim for child sexual abuse is a reasonable solution to correct the injustice countless survivors experience because of the incompatibility of delayed disclosure associated with child sex abuse with unreasonably short SOLs that favor child predators over child safety.

¹² Defendant goes so far as to assert that "[i]n every instance in which a New York revival statute was upheld, revival was justified by facts showing that *no diligent plaintiff could have timely pursued claims, such that plaintiffs would never have had an available remedy absent revival.*" MTD at 9 (emphasis added). Defendant is incorrect. See Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989) (Court of Appeals found the legislature's revival of DES claims did not violate New York Constitution's Due Process Clause, even though some plaintiffs may have known of their DES-related injuries before the original limitations period ran, concluding that "[u]nder these circumstances, the Legislature properly determined that it would be more fair for all plaintiffs to uniformly now have one year to bring their actions, rather than for the courts to begin drawing arbitrary lines transecting this area's shades of gray").

Before the CVA, the New York SOL for bringing child sex abuse claims was an oppressive barrier to justice, making it virtually impossible for most survivors to bring claims. And New York did not have a discovery rule that appropriately expanded the time available to child sex abuse survivors for bringing claims. Against this reality, the Legislature determined that keeping the majority of child sex abuse survivors from coming to court because of inappropriately short SOLs was an identifiable injustice that required the enactment of the CVA. Abundant scientific research reveals that: (1) child sexual abuse is disturbingly common in the United States; and (2) child sexual abuse has profound neurological effects on most survivors, with their trauma impacting them for a lifetime.¹³ This research has proven that most survivors cannot bring their claims within the short timeframe allotted, and that mere knowledge of an abusive act does not give a survivor the means to bring their claim.¹⁴

Defendant fails to acknowledge, much less address, this wealth of scientific and clinical information, which the Legislature considered in identifying the injustice that required a legislative remedy. Defendant shows his lack of understanding of this injustice by characterizing CVA claimants as having “simply decided not to” bring timely claims “before later changing their minds.” See MTD at 2. Although some survivors of child sex abuse may have timely brought claims under the prior SOL, the prevalence of abuse and science of delayed disclosure prove that most New York child sex abuse survivors have historically been barred from court. Fortunately, the Legislature *did* understand this injustice. Indeed, the Diocese of Rockville Centre Opinion quoted the Senate Committee Report and the Assembly Committee Report (Sponsor Memorandum), which describe the Legislature’s reasoning in developing and ultimately passing

¹³ Supra notes 3–5.

¹⁴ Id.

the bill that became the CVA. See Diocese of Rockville Centre Opinion, at 10–11. Likewise, in characterizing the Legislature’s actions as merely “chang[ing] its mind about the statute of limitations it previously established,” see MTD at 2, Defendant fails to appreciate that the Legislature acted reasonably and within its authority to make better law because of advanced understandings of neuroscience and trauma.

As Defendant acknowledges in the MTD, trial courts in New York have found and continue to find under binding Court of Appeals precedent that the CVA’s claims revival provision is a reasonable remedy to the injustice of child sex abuse survivors being unable to assert claims under the prior truncated SOLs. See id. at 21 (citing several recent New York Superior Court opinions, including this Court’s Diocese of Rockville Centre Opinion and one Southern District of New York opinion). In one case cited, Giuffre v. Dershowitz, the District Court for the Southern District of New York also rejected the very argument Defendant proffers here and that this Court rejected in the Diocese of Rockville Centre—that New York courts have only upheld claim-revival provisions where plaintiffs could not have brought an action timely. See Giuffre v. Dershowitz, No. 19-cv-3377, 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020). The Dershowitz court aptly observed that “the CVA’s claim-revival provision obviously reflects the Legislature’s desire to correct a perceived injustice, i.e., 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.” Id. at *2. Accordingly, the court was “unable to see how the CVA’s claim-revival provision fails to meet the manageable bar set forth in the [Court of Appeals World Trade Center opinion].” Id. (referring to In re World Trade Ctr., 89 N.E.3d at 1243). In stark contrast, Defendant fails to cite to a single instance in which a New York court found that CPLR § 214-g violated the Due Process Clause under the New York Constitution.

Finally, by enacting procedural rules specific to actions revived under CPLR § 214-g, New York courts prepared to address the very issues Defendant raises about the passage of time between the events at issue and the aging of individuals with potentially relevant information. See N.Y.C.C.R.R. § 202.72.2 (providing for, among other things, training for justices, judicial hearing officers, referees, and alternative dispute resolution neutrals in subjects related to sexual assault and the sexual abuse of minors; and directing judges and other court personnel in setting schedules to be mindful of the difficulties in document, deposition, and other discovery in matters of this type and age).

Based on the above, and for all the reasons this Court recognized in the Diocese of Rockville Centre Opinion, the CVA is a reasonable response to remedy the injustice that New York's prior, and inappropriately short, SOL wrought on the majority of child sex abuse survivors.

C. The Child Victims Act Addresses New York's Important Public Interest in Child Protection

A complete record and a full and adequate presentation of the issue raised by Defendant requires an examination of how the CVA also serves New York's interest in child protection. See, e.g., New York v. Ferber, 458 U.S. 747, 756–57 (1982); Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (“There is also no doubt that[] “[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.”) (quoting Ashcroft v. Free Speech Coalition, 535 U.S. 234, 244 (2002)).

There are three important public purposes served by the CVA, and particularly § 214-g. It: (1) identifies previously unknown child predators; (2) shifts the cost of abuse from survivors to those who caused the abuse; and (3) educates the public to prevent future abuse. As the relevant social science shows, by enacting this claims revival provision, the Legislature achieved these purposes.

First, the revival window facilitates the identification of previously unknown child predators who would otherwise not be identified because claims against them could not be timely asserted. Some predators abuse a high number of victims and keep abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the longest time between offense and conviction was 36 years.¹⁵ By allowing older claims to proceed through the justice system, the State empowered victims to identify New York's hidden child predators and institutions that endanger children to the public so they can be held accountable, and so the public and legal system can develop policies to prevent further abuse. Broader prevention of abuse has outstanding long-term impact for the children and families of New York.¹⁶

Second, the CVA furthers New York's important public interest in educating the public about matters of public safety, especially the dangers of child sexual abuse and how to prevent it. When predators and institutions are exposed through SOL reform, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press and media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse.¹⁷ Coverage of SOL reforms such as the CVA and its implications fosters public discussion about child sexual abuse and can connect parents and others with tools and resources to better identify abusers and responsible institutions. Empowering adults with a better

¹⁵ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 *Child Abuse Negl.* 579 (1995).

¹⁶ 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>.

¹⁷ Recent examples include Netflix's *Jeffrey Epstein: Filthy Rich* and HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*.

understanding of abuse enables them, in turn, to educate their children about signs of grooming and abusive behavior, for example. In other words, SOL reform not only provides access to justice previously withheld from survivors of child sexual abuse; it prevents further abuse by fostering critical social awareness that can help keep kids safe while also encouraging institutions to implement accountability and safe practices.

Third, the lifetime cost of child sexual abuse to survivors is enormous,¹⁸ and they, along with New York, often unjustly carry the burden of this expense.¹⁹ The estimated lifetime cost to society of child sexual abuse cases occurring in the U.S. in 2015 is \$9.3 billion, and the average cost per non-fatal female victim was estimated at \$282,734.²⁰ The negative effects over a survivor's lifetime generate extensive costs that impact the nation's health care, education, criminal justice, and welfare systems.²¹ Window cases that result in awards and settlements will not only equitably shift some of the cost of abuse away from survivors; they will also save the state money by reducing expenditures on these public services. The revival provisions strongly further New York's interest in holding child abusers accountable to those they harmed.

¹⁸ The toxic stress and trauma experienced by survivors of childhood sexual abuse are even higher than 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).

¹⁹ While one in three New Yorkers receive Medicaid, sex abuse survivors likely 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/>.

²⁰ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 Child Abuse Negl. 413 (2018).

²¹ Id. (Average cost estimates per victim include, in part, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs. Costs associated with suicide deaths are estimated at \$20,387 for female victims.).

Thus, the Legislature's enactment of CPLR § 214-g not only remedies the long-standing injustice to child sex abuse survivors barred from bringing their claims under unreasonably short SOLs; it also serves New York's important public interest in keeping its children safe and preventing future child sex abuse. Indeed, New York's opening of the revival window has allowed an extraordinary number of survivors to seek justice and pursue their claims of child sex abuse with over 10,857 cases having been filed to date.

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

Defendant presents this Court with an incomplete picture of the national constitutionality landscape of revival laws for child sex abuse by highlighting six states—Illinois, South Carolina, Rhode Island, Florida, Missouri, and Virginia—that he contends blocked their state legislatures from reviving time-barred sexual abuse claims under a due process standard much like that required by the New York Constitution. See MTD at 25–28. On the other hand, he contends that states that upheld revival statutes follow the federal due process standard. See id. at 25. But New York's Due Process Clause, which does not prohibit the Legislature from reviving claims, is distinguishable from the laws in the states Defendant cherry-picked. Additional states—including Connecticut, New Jersey, and Massachusetts—have rigorous state constitution due process standards like that of New York and have found revival laws constitutional despite the heightened standard.²²

²² See, e.g., Hartford Roman Catholic Diocesan Corp., 119 A.3d at 496; Slincy, 41 N.E.3d at 739–40; S.Y., Plaintiff, v. Roman Catholic Diocese of Paterson, No. CV202605ESCLW, 2021 WL 4473153, at *4 (D.N.J. Sept. 30, 2021).

Defendant fails to point to a single state that permits revival of time-barred claims like New York, but has refused to uphold such a law for child sex abuse survivors.²³ In fact, the other decisions Defendant relies on turn 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.²⁴ Due process at the state level has been a time-evolving doctrine, with states moving away from an antiquated vested rights approach to SOLs 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.²⁵

When New York opened its revival window, it joined a growing list of at least 33 jurisdictions that enacted laws to revive child sex abuse claims either through a window, an extended maximum victim age limit, or a delayed discovery rule.²⁶ Nearly all of the courts that considered the constitutionality of these windows upheld the revival laws, even where the respective state has adopted a stricter standard of review to determine constitutionality than the federal standard. The following table shows this trend:

²³ 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 v. Marcantonio, 678 A.2d 873, 873 (R.I. 1996).

²⁴ 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, 678 A.2d at 883; 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 v. Cayouette, 419 S.E.2d 669, 674–75 (Va. 1992).

²⁵ In re World Trade Ctr., 89 N.E.3d at 1243.

²⁶ CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Nov. 1, 2021), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>; CHILD USA, Discovery Rule Report: Discovery Tolling of Statutes of Limitation for Child Sexual Abuse Claims (Feb. 26, 2021), available at <https://childusa.org/2020-discovery-rule-report/>.

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
Arizona	1.5-Year Window & Age 30 Limit (2019)	AZ ST § 12-514; “Arizona Child Protection Act”, H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019)	Not challenged
Arkansas	2-Year Window (2021)	Justice for Vulnerable Victims of Sexual Abuse Act”, Arkansas Act 1036; S.B. 676, 93 rd General Assembly, Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118	Not challenged
California	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); “CHILD VICTIMS ACT”, 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Upheld as constitutional ²⁷
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Upheld as constitutional ²⁸
Colorado*	3-Year Window (2021)	“Child Sexual Abuse Accountability Act”, SB21-088, 73 rd General Assembly, 1 st Reg. Sess. (Colo. 2021) (Effective, January 1, 2022) *The law is not a revival law—it is a new cause of action—but it is included because it opens a window to justice for many survivors whose common law claims have expired.	Not challenged
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged ²⁹
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; “Child Victim’s Act”, 2007 Delaware Laws Ch. 102 (S.B. 29)	Upheld as constitutional ³⁰
Florida	4-Year Window (1992)	F.S.A. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Found unconstitutional ³¹
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; “Hidden Predator Act”, 2015 Georgia Laws Act 97 (H.B. 17)	Upheld as constitutional ³²

²⁷ See, e.g., Coats v. New Haven Unified Sch. Dist., 46 Cal. App. 5th 415, 427, 259 Cal. Rptr. 3d 784, 792 (2020).

²⁸ See, e.g., Roman Catholic Bishop of Oakland v. Superior Court, 128 Cal.App.4th 1155, 1161, 28 Cal.Rptr.3d 355 (2005).

²⁹ See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258–60 (Del. 2011).

³⁰ See, e.g., Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008).

³¹ See, e.g., Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).

³² See, e.g., Harvey et al. v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
Guam	Permanent Window (2016)	Tit. 7 G.C.A §§ 11306; 11301.1(b); Added by P.L. 33-187:2 (Sept. 23, 2016)	Not challenged
	2-Year Window (2011)	7 G.C.A. § 11306(2) (2011); Public Laws No.31-06 (2011), available at https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf	Not challenged
Hawaii	2-Year Window (2018)	HAW. REV. STAT. § 657-1.8; 2018 Hawaii Laws Act 98 (S.B. 2719)	Not challenged
	2-Year Window (2014)	HAW. REV. STAT. § 657-1.8; 2014 Hawaii Laws Act 112 (S.B. 2687)	Not challenged
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)	Upheld as constitutional ³³
Kentucky	Limited Window (2021)	“AN ACT relating to child abuse and declaring an emergency”, 2021 Kentucky Laws Ch. 89 (HB 472); KRS 413.249 “Action relating to childhood sexual abuse or childhood sexual assault”	Not challenged
Louisiana	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); La. Stat. Ann. § 9:2800.9 “Action against a person for abuse of a minor”	Challenge pending ³⁴
Maine	Permanent Window (2021)	ME ST T. 14 § 752-C; “An Act To Provide Access to Justice for Victims of Child Sexual Abuse” 2021 Me. Legis. Serv. Ch. 301 (H.P. 432) (L.D. 589)	Not challenged
Michigan	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872)	Not challenged
Minnesota	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)	Not challenged
Montana	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216 “TORT ACTIONS--CHILDHOOD SEXUAL ABUSE”; 2019 MONTANA LAWS CH. 367 (H.B. 640)	Not challenged
Nevada	Permanent Window & Age 38 Limit (2021)	2021 Nevada Laws Ch. 288 (S.B. 203); NV ST §§ 11.215, 41.1396	Not challenged

³³ See, e.g., Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014).

³⁴ See, e.g., Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct.).

U.S. Jurisdiction	Revival Law Type	Window Statute	Constitutional Challenge
New Jersey	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B; 2019 NJ Sess. Law Serv. Ch. 120 (SENATE 477)	Upheld as constitutional ³⁵
New York	1-Year Window (2020)	N.Y. C.P.L.R. 214-g; “Child Victims Act” 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440); Executive Order No. 202.29 (2020); S.B. 7082, 2020 Leg., Reg. Sess. (N.Y. 2020)	Challenge pending ³⁶
	1-Year Window (2019)	N.Y. C.P.L.R. 214-g; “Child Victims Act” 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440); Executive Order No. 202.29 (2020); S.B. 7082, 2020 Leg., Reg. Sess. (N.Y. 2020)	Upheld as constitutional ³⁷
North Carolina	2-Year Window (2019)	NC ST § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Challenge pending ³⁸
Northern Mariana Islands	Permanent Window (2021)	“To amend the Commonwealth Code to authorize civil claims for child sexual abuse to be commenced at any time; and for other purposes”; 2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)	Not challenged
Utah	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308 ; 2016 Utah Laws Ch. 379 (H.B. 279)	Held unconstitutional ³⁹
Vermont	Permanent Window (2019)	VT. STAT. ANN TIT. 12, § 522, “Actions based on childhood sexual or physical abuse”; 2019 Vermont Laws No. 37 (H. 330)	Not challenged
Washington D.C.	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Upheld as constitutional ⁴⁰

³⁵ See, e.g., Diocese of Paterson, 2021 WL 4473153, at *4; T.M. v. Order of St. Benedict of New Jersey, Inc., MRS-L-399-17 (Law Division, Morris County).

³⁶ See, e.g., Giuffre v. Prince Andrew, Case No. 1:21-cv-06702-LAK (SDNY).

³⁷ See, e.g., S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County (May 18, 2020) (Jaeger, J.); Dershowitz, 2020 WL 2123214 at *2.

³⁸ See, e.g., In North Carolina, a constitutional challenge was accepted by a three-judge panel in Cryan v. YMCA, No. COA 20-696, 2021 WL 197287 (N.C. App. Jan. 4, 2021). A decision has not yet been rendered.

³⁹ See, e.g., Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

⁴⁰ See, e.g., Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Superior Court).

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 SOLs.⁴¹ As discussed above, 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. See, e.g., Hartford Roman Catholic Diocesan Corp., 119 A.3d at 496; Sliney, 41 N.E.3d at 739–40; Cosgriffe v. Cosgriffe, 864 P.2d 776, 779–80 (Mont. 1993); Hoffman, 452 N.W.2d at 514. Every appellate court that has considered the reasonableness of a claim revival statute for child sex abuse survivors under its state due process clause has determined the remedial statute was reasonable, according to *amicus curiae*’s research. For this reason, and all those already discussed, this Court should likewise find that CPLR § 214-g is reasonable.

WHEREFORE, *amicus curiae* asks this Court to deny the MTD, finding that the claims revival provision of the CVA, CPLR § 214-g, is a proper exercise of the Legislature’s authority under the New York Constitution’s Due Process Clause.

⁴¹ See supra note 25.

Dated: November 30, 2021
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Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, or any authorized addendum containing statutes, rules, regulations, etc., is 6,985.



Jeffrey D. Prol