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SAVAN DESAI,

Plaintiff-Appellant,
v.

WEST-WINDSOR PLAINSBORO
REGIONAL SCHOOL DISTRICT,

Defendant-Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001571-21

CIVIL ACTION

ON APPEAL FROM
THE FINAL ORDER
OF THE SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION,
MERCER COUNTY
DOCKET NO. MER-L-500-21

Sat Below:

HON. DOUGLAS H. HURD, J.S.C.

NOTICE OF MOTION OF CHILD USA FOR LEAVE
TO APPEAR AS AMICUS CURIAE

J. Silvio Mascolo, Esq.
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Please take notice that, pursuant to Rule 1:13-9, CHILD USA, through its attorney, J.Silvio Mascolo, hereby moves the Superior Court of New Jersey, Appellate Division, for an order granting them leave to appear as Amicus Curiae and to file the enclosed amicus brief with this motion.

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

Respectfully submitted,

/s/ J. Silvio Mascolo

J. Silvio Mascolo, Esq.

Counsel of Record for Amicus Curiae
CHILD USA

Dated: May 27, 2022

CERTIFICATE OF SERVICE

I, J. Silvio Mascolo, Esquire do hereby certify that a copy of the foregoing Motion on behalf of CHILD USA to appear as *amicus curiae* in Response to Defendant-Respondent's Motion for Summary Judgment was served via electronic mail/ filing upon the following:

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Respectfully submitted,

/s/ J. Silvio Mascolo

J. Silvio Mascolo, Esq.

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CHILD USA

Dated: May 27, 2022

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HON. DOUGLAS H. HURD, J.S.C.

ORDER

THIS MATTER having been brought before the Court by proposed amicus CHILD USA for an Order permitting CHILD USA to appear as *amicus curiae* and file an opposition to the Defendant-Respondent's Motion for Summary Judgment, and the Court having considered the motion and parties' responses thereto, and for good cause appearing,

IT IS on this day of _____, 2022, **ORDERED** and **DECREED**

that amicus CHILD USA's Motion is hereby GRANTED.

IT IS FURTHER ORDERED that CHILD USA be and hereby is granted leave to appear and participate as *amicus curiae* in this case.

IT IS FURTHER ORDERED that CHILD USA's proposed *amicus* brief attached to CHILD USA's Notice of Motion shall hereby be deemed filed.

It is **FURTHER ORDERED** that a copy of this Order shall be served upon all counsel within ten (10) days from the date of entry hereof.

J.A.D.

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CERTIFICATION OF J. SILVIO MASCOLO, ESQ.
IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

CERTIFICATION

I, J. Silvio Mascolo, Esq., being of full age, hereby certify as follows:

1) I am an attorney admitted to practice law in the State of New Jersey, A PARTNER IN THE LAW FIRM OF Rebenack, Aronow & Mascolo, LLP, attorneys for CHILD USA, and am fully familiar with this matter. I make this certification in support of the motion of CHILD USA to appear in the above-captioned matter as amicus curiae.

2) CHILD USA is the leading non-profit national think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on revival laws, and has advised state governors, legislatures, and judiciaries on the

constitutionality of revival window laws for child sex abuse throughout the country, including in New Jersey.

3) CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case has immediate and broad implications on the ability of victims of sex abuse to bring civil claims in New Jersey. The 2019 amendments to New Jersey's Child Sexual Abuse Act and Tort Claims Act enable victims of sexual abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sexual abuse in New Jersey exposes hidden perpetrators to the public, shift the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educates the public and help prevent future abuse. CHILD USA plans to address the following issue: whether a child sex abuse claim that accrued prior to the enactment of the New Jersey Legislature's amendments to the Child Sexual Abuse Act and Tort Claims Act, but timely filed in accordance with the enacted amendments' extended statute of limitations and revival window, was nevertheless barred by the Tort Claims Act's notice of claim requirement.

4) CHILD USA has legal and social science expertise that

can help the Court determine the questions at issue in this case. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding New Jersey's revival law for sexual abuse claims, the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on public safety, the science of trauma and delayed disclosure by victims of their abuse, and the national landscape on revival windows for sexual abuse.

5) For these reasons, CHILD USA respectfully requests that the Court grant this Motion for Leave to File Brief of Amicus Curiae and accept the accompanying proposed amicus brief for filing. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

6) No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

7) I hereby certify, pursuant to Rule 1:4-4(b), that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ J. Silvio Mascolo

J. Silvio Mascolo, Esq.

Dated: May 27, 2022

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**BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFF-
APPELLANT, DENYING DISMISSAL**

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae, CHILD USA, is the leading national nonprofit think tank fighting for the civil rights of children. Our mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors.

CHILD USA is the leading organization in the United States to track and study child sex abuse statutes of limitations (“SOLs”) as part of its 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.

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

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae*. Plaintiff-Appellant challenges the lower court's ruling that Plaintiff-Appellant was required to file a notice of claim pursuant to New Jersey's Tort Claims Act ("TCA") prior to filing his child sex abuse cause of action against Defendant-Respondent under New Jersey's Child Sexual Abuse Act ("CSAA"). CHILD USA submits that the New Jersey Legislature's amendments to the TCA and CSAA enacted on December 1, 2019 eliminated the notice of claim requirement for all child sex abuse cases timely filed in accordance with the CSAA's newly extended statute of limitations ("SOL") and two-year revival window. See N.J.S.A. § 59:2-1.3(a); N.J.S.A. § 59:8-3(b); N.J.S.A. § 2A:14-2a; § N.J.S.A. 2A:30B-6; § N.J.S.A. 2A:61B-1; Pub. Law 2019, c. 120; Pub. Law 2019, c. 239.

This interpretation of the statutory amendments is directly supported by this Court's precedent. See W.S. v. Hildreth, 268 A.3d 1038, 1040-41 (N.J. Super. Ct. App. Div. 2021). It is additionally supported by the clear legislative intent and significant public interest in remedying the injustice of New Jersey's prior unreasonably short SOLs and procedural requirements, which obstruct child sex abuse victims' access to

the courts and has kept the public in the dark about child predators.

A ruling upholding notice of claim requirements for cases timely filed pursuant to the CSAA's extended SOL and two-year revival window could have negative ramifications for the hundreds of child sex abuse survivors throughout New Jersey who are now embracing the extended time limits in pursuit of long overdue justice. Also at stake are the important public policies of justice, public safety, and preventing future sex abuse, which the New Jersey Legislature sought to achieve for the public when it passed these amendments.

Accordingly, CHILD USA respectfully submits that this Court should reverse the trial court's finding that a notice of claim is required in cases like Plaintiff-Appellant's, which were timely filed in accordance with the CSAA's extended SOL and two-year revival window.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

CHILD USA relies on the procedural history and statement of facts as presented by the parties.



ARGUMENT

Pursuant to Rule 1:13-9, CHILD USA respectfully submits this amicus brief. As a national think tank dedicated to furthering the civil rights of children, CHILD USA has gathered and produced cutting-edge legal and social science research related to the need for statute of limitations reform. In this brief, CHILD USA will address the following issue: whether a child sex abuse claim that accrued prior to the enactment of the New Jersey Legislature's amendments to the CSAA and TCA, but timely filed in accordance with the enacted amendments' extended SOL and revival window, was nevertheless barred by the TCA's notice of claim requirement.

I. NEW JERSEY CASE LAW AND LEGISLATIVE HISTORY CONFIRM THAT CSAA REVIVAL WINDOW CLAIMS ARE NOT SUBJECT TO A NOTICE OF CLAIM DEADLINE UNDER NEW JERSEY'S TCA

In May 2019, the New Jersey Legislature passed Chapter 120, which became effective December 1, 2019. Pub. Law 2019, c. 120, § 10. By passing Chapter 120, the Legislature amended several pieces of legislation, including New Jersey's TCA and CSAA. N.J.S.A. § 59:2-1.3(a); N.J.S.A. § 59:8-3(b); N.J.S.A. § 2A:14-2a; N.J.S.A. § 2A:30B-6; N.J.S.A. § 2A:61B-1. In August of the same year, the Legislature passed Chapter 239, which further clarified the standard of liability for public entities under

the TCA by amending Section 7 of Chapter 120, and which also took effect on December 1, 2019. Pub. Law 2019, c. 239, §§ 1-2.

Notably, Chapter 120 enacted a new SOL for sex abuse and exploitation tort claims. N.J.S.A. § 2A:14-2a. Relevant here is the new SOL for child sex abuse claims, which was extended to “thirty-seven years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever is later.” Id. Importantly, Chapter 120 also revived expired child sex abuse claims until the victim reaches age fifty-five, as well as opened a two-year revival window for expired child sex abuse claims from December 1, 2019 until November 30, 2021. Id.; N.J.S.A. § 2A:14-2b.

As to the TCA, Chapter 120 eliminated public entity immunity for sex abuse claims and added a provision stating that the TCA’s procedural requirements, such as the notice of claim prerequisite, “shall not apply” to CSAA causes of action.

N.J.S.A. § 59:8-3(b). Chapter 239 then clarified that the TCA immunity was eliminated only for sexual abuse causes of action arising from a public entity’s or a public employee’s “willful, wanton or grossly negligent act,” and in child sexual abuse actions arising from the “negligent hiring, supervision, or

retention of any public employee.” N.J.S.A. § 59:2-1.3(a).

Thus, when read as a whole, the Chapter 120 and Chapter 239 amendments (“the Amendments”) allow a child sex abuse victim to bring a claim against a public entity or public employee until they reach age fifty-five, or during the two-year revival window, without concern for the TCA’s notice of claim requirement. As discussed below, this conclusion is supported by published New Jersey case law,¹ as well as the Legislature’s intent in passing the Amendments.

A. This Court Has Concluded That a Minor’s Sex Abuse Claims Brought Pursuant to the Extended SOL Under the CSAA Are Not Subject to the TCA’s Notice of Claim Requirement, Regardless of When the Claim Accrued

In W.S. v. Hildreth, this Court considered a procedural issue central to the Amendments’ effect on the TCA: whether a claim that accrued prior to the Amendments’ enactment, but timely filed in accordance with the newly extended SOL for child sex abuse claims, was nevertheless barred by the TCA’s notice of claim requirement. 268 A.3d 1038, 1040-41 (N.J. Super. Ct. App. Div. 2021).

Hildreth involved a plaintiff who was sexually abused as a

¹ Because unpublished opinions cannot be considered precedent by this court, *Amicus Curiae* solely discusses published opinions. See N.J. Ct. R. § 1:36-3.

child from 1996 to 1997 by his elementary school teacher. Id. at 1040. In 2017, Plaintiff moved to file a late notice of claim against the school district under the TCA. Id. At that time, the TCA required minors to file a notice of claim ninety days after reaching the age of majority. N.J.S.A. § 59:8-8 (2013). Consequently, plaintiff's motion was denied because the "motion record did not establish a basis for tolling the accrual of the cause of action beyond plaintiff's eighteenth birthday," which occurred in 2004. Hildreth, 268 A.3d at 1040. Then, in January 2020—after the Amendments' December 1, 2019 effective date—Plaintiff filed a complaint under the CSAA against the school district, which the school district moved to dismiss because (1) Plaintiff failed to timely file a notice of claim under the TCA, and (2) Chapter 120's amendment eliminating the TCA's notice of claim requirement did not apply to causes of action that accrued prior to its effective date. Id. The New Jersey Supreme Court denied the school district's motion, which the school district appealed. Id. at 1041.

On appeal, this Court analyzed the Amendments as a whole, first noting that the extended SOL under the CSAA rendered the cause of action's accrual date irrelevant because it necessarily meant "a complaint is timely filed" before the plaintiff reaches

fifty-five years of age or during the two-year revival window. See id. at 1043. This Court concluded that this was in line with the Legislature's intent, explaining that the Amendments "intentionally resuscitated claims, like plaintiff's that had accrued prior to December 1, 2019, and otherwise would have been time-barred under the statute of limitations." Id. at 1046. Thus, when Plaintiff's claim was revived on December 1, 2019, all the Amendments applied to his claim. Id. Accordingly, the Chapter 120 amendment to the TCA, N.J.S.A. section 59:8-3(b), which removed all "procedural requirements" for sex abuse causes of action, also applied to Plaintiff's claim. Id. This Court stated that,

"as of December 1, 2019, **there was no longer any precondition for a plaintiff alleging sexual abuse as a minor by a public employee or public employer to file a notice of claim under the TCA before filing suit, regardless of when the cause of action accrued.** Those claims are subject to the new statute of limitations contained in N.J.S.A. 2A:14-2a(a)(1) Accordingly, plaintiff's complaint was timely filed under the new statute of limitations governing his claims, and he was under no obligation to file a notice of tort claim as a prerequisite to suit."

Id. at 1046-47 (emphasis added).

As such, this Court affirmed the lower court's denial of the school district's motion for summary judgment and construed the Amendments eliminating the TCA procedural notice

requirements as applying to all child sex abuse claims timely filed under Chapter 120's amended and extended SOL. Id.

The Hildreth holding was a natural extension of this Court's ruling just days earlier² in E.C. by D.C. v. Inqlima-Donaldson. 268 A.3d 1029 (Sup. Ct. App. Div. 2021). In Inqlima-Donaldson, the plaintiff was sexually abused from 2015 to 2016 by defendant Inqlima-Donaldson, a teacher hired by the board of education. Id. at 1031. Plaintiff filed an action against the board of education based on vicarious liability, which survived the board's motion for summary judgment, and was addressed by this Court on appeal. Id. at 1032. On appeal, this Court considered whether the Amendments deprived the board of education of its immunities under the TCA. Id.

In its analysis, the court described the Amendments as "a group of laws enacted to expand the rights of victims of sexual assaults and other sexual misconduct," and that the Legislature "address[ed] the fact that victims might also encounter sexual misconduct involving public entities and public employees" by "disabl[ing] Tort Claim[s] Act immunities . . . and eliminat[ing] the procedural notice-of-claim requirements." Id.

² Inqlima-Donaldson was decided on December 16, 2021 and the Hildreth decision was handed down on December 21, 2021.

(citing N.J.S.A. § 2A:14-2(a); N.J.S.A. § 2A:30B-6; N.J.S.A. § 2A:61B-1 and N.J.S.A. § 59:8-3(b)). The court therefore analyzed “the meaning and scope of N.J.S.A. § 59:2-1.3(a) as illuminated by the Legislature’s stated desire to expand the rights of victims of sexual assaults and other sexual misconduct.” Id.

The Superior Court concluded that the amendments to the TCA were “intended to deprive public entities of their Tort Claims Act immunities when the sexual misconduct suffered by the plaintiff” was encompassed by the causes of action expressly stated in the statute. Inglima-Donaldson, 268 A.3d at 1038. Importantly, the court noted that “[b]y disabling Tort Claims Act immunities in sexual misconduct cases, the Legislature undoubtedly intended to make the plaintiff’s pursuit of a remedy realistic rather than illusory.” Id. at 1035 (highlighting in Footnote 6 the OLS’s analysis of the Amendments’ heightened liability and additional fiscal impact to public entities). To that end, the Superior Court decided against the board of education’s interpretation of the statute,³ finding that it would

³ The board argued the court should interpret N.J.S.A. section 59:2-1.3(a)(1) as saying a public entity would lose its TCA immunities only if the public entity’s *and* the public employee’s conduct was willful, wanton, or grossly negligent, “despite the statute’s declaration that such conduct need be attributed only

"make more difficult if not insurmountable a plaintiff's pursuit of a remedy provided in N.J.S.A. 59:2-1.3(a)(1)."⁴ Id.

As such, the Superior Court affirmed the Legislature's intent in enacting the Amendments to the TCA was to allow a greater number of plaintiffs to bring claims against public entities for child sex abuse. Thus, the court determined that any interpretation of the statute that would undermine this clear legislative intent should be rejected.

Taking the above legislative history and case law into account, this Court should interpret the Amendments -including

to 'the public entity or public employee.'" Inglima-Donaldson, 268 A.3d at 1033 (emphasis original).

⁴ New Jersey courts have a history of considering the public policy implications of time limitations in child sex abuse cases and have often construed such limitations favorably for the child victim. See Hardwicke v. Am. Boychoir Sch., 845 A.2d 619, 631 (N.J. Sup. Ct. App. Div. 2004), aff'd as modified, 902 A.2d 900 (2006) (criticizing the trial court's interpretation of the CSAA because it would allow the public entity school to avoid liability in a child sex abuse action); J.L. v. J.F., 722 A.2d 558, 567 (N.J. Sup. Ct. App. Div. 1999) (reversing the trial court's dismissal of plaintiff's child sex abuse claims on SOL grounds, reasoning that should the child plaintiff's "horrific allegations be true, it might not be equitable to permit defendant to benefit from a strict adherence to the statute of limitations"); Jones v. Jones, 576 A.2d 316, 322 (N.J. Sup. Ct. App. Div. 1990), certif. denied, 585 A.2d 412 (N.J. 1990) (reversing the trial court's dismissal of plaintiff's child sex abuse claims on SOL grounds, noting that New Jersey has a "long history of instances" of declining to uphold a time limitation "when some conduct on the part of the defendant . . . has rendered it inequitable").

the elimination of the TCA's notice of claim requirement—as applying to *all* child sex abuse cases brought before the victim's fifty-fifth birthday or during the two-year revival window, as the Legislature intended.

B. The Legislative History of the Amendments Evidences Intent to Revive All Child Sex Abuse Claims Unencumbered by a Notice of Claim Requirement

When the Legislature passes a bill that amends several statutes, courts “must attempt to harmonize the provisions of all statutes that the Legislature has enacted affecting the subjects involved.” Nw. Bergen Cnty. Utils. Auth. v. Donovan, 143 A.3d 290 (N.J. 2016). Simply put, to properly ascertain the Legislature's intent in passing one statutory amendment, the court should look to the Legislature's intent in passing the legislation as a whole. Accordingly, an analysis of the Legislature's intent in passing Senate Bill No. 477 (“S. 477”)—which became Chapter 120—and Assembly Bill No. 5392 (“A.B. 5392”)—which became Chapter 239—is necessary to determine the Legislature's intent in amending the TCA.

First and foremost, the Legislature expressly stated that S. 477 was meant to “extend the statute of limitations in civil actions for sex abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based

on sex abuse. **The bill would also expand the categories of potential defendants in civil actions.**" Statement to S. Comm. Substitute for S. 477 (Mar. 7, 2019) ("Senate Committee Statement") (emphasis added). As to applicability, **S. 477's provisions would apply "to lawsuits which could be filed beginning on December 1, 2019, the bill's effective date."** Id. (emphasis added). These lawsuits were specifically intended to include "any child victim of past abuse who is under the age of 55 years when the bill takes effect, or who will reach 55 years of age sometime after the bill takes effect, and who is aware of the injury and its cause," or who filed during the two-year revival window. Id. at §§ 2, 9. Thus, the Legislature clearly communicated its intent that *all* of S. 477's provisions apply to lawsuits filed by child victims under age fifty-five on December 1, 2019 or who filed during the two-year revival window.

To clarify S. 477's effect on the TCA, the Legislature wrote Section 8 of the Senate Committee Statement, which explains that the bill,

"eliminates the [TCA's] two-year statute of limitations period . . . for bringing a sexual abuse lawsuit against a public entity, as well as **any of the act's procedural requirements, such as the 90-day period for filing notice of a claim** of liability against a public entity for such lawsuits; **the process of filing a lawsuit with service upon the public entities would thus be the same as when suing a private organization.** Public entities

would also be subject, just like a private organization, to the new, extended statute of limitations periods for child and adult victims of abuse.”

Id. (emphasis added). The logic follows that, as a provision of S. 477, the Legislature intended its elimination of the notice of claim requirement to apply to *all* lawsuits timely filed after December 1, 2019, pursuant to the newly extended statute of limitations.

This intent is reaffirmed by the Assembly Judiciary Committee Statement for Assembly No. 5392, which explicitly states that the bill’s “new liability standards in sexual abuse lawsuits filed against public entities and public employees” would “take effect on December 1, 2019, the same effective date as [Chapter 120].” (May 20, 2019) (“Assembly Statement”).

Importantly, the Assembly Statement concludes that “[t]he bill expressly indicates that once lawsuits can commence against public entities and public employers beginning on December 1, 2019, **these suits, and any suits previously filed that have not been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations.**” Id. (emphasis added).

Finally, the Legislature once again asserted its intent on this matter in its March 29, 2019 Legislative Fiscal Estimate to the Senate Committee Substitute for S. 477 and its June 24, 2019

Legislative Fiscal Estimate for Assembly No. 5392 (the "Fiscal Estimates"). The Fiscal Estimates include identical language from the Office of Legislative Services ("OLS"), explicitly noting that,

"because the two-year window for parties to bring previously time-barred actions; the State, school districts, and local units of government are likely to face an elevated number of claims that will have to be defended in the first few years after the bill's enactment. Once these retroactive, previously impermissible claims will have been adjudicated or settled, the count of additional cases filed as a result of this bill will normalize."

(emphasis added). The OLS's analysis clearly evidences that the Legislature intended S. 477 and A.B. 5392 to allow child sex abuse victims to bring lawsuits against public entities during the two-year revival window unencumbered by the TCA's notice of claim requirement. Had this not been the Legislature's intent, the OLS would not have expected case numbers against public entities to rise so substantially, as all cases where the minor did not bring a notice of claim decades ago would still be barred. See N.J.S.A. § 59:8-8(a). Such an interpretation would render the two-year revival window essentially meaningless for child sex abuse victims with cases against public entities, as it would revive the SOL on their claims but continue to enforce an even more restrictive notice of claim requirement.

Thus, it is inconsistent with the Legislature's intent and its own estimation of S. 477's and A.B. 5329's effect to conclude that the TCA's ninety-day notice requirement applied to cases filed pursuant to the new SOL. Instead, the Legislature made abundantly clear its desire to revive and expand the number of child sex abuse cases that could be brought against public entities.

II. THE AMENDMENTS REFLECT DELAYED DISCLOSURE SCIENCE AND ADDRESS NEW JERSEY'S COMPELLING INTEREST IN PROTECTING CHILDREN

New Jersey's Amendments acknowledge that victims of child sex abuse often take decades to disclose their abuse. The revival window in the CSAA and the elimination of the notice of claim requirement from the TCA correct the injustice of New Jersey's historically unreasonably short SOLs and other procedural requirements that blocked child sex abuse victims' access to courts and kept the public uninformed.

A. Child Sex Abuse Uniquely Prevents Victims from Bringing Timely Claims

Child sex abuse is a national public health crisis, with 3.7 million children sexually abused every year.⁵ In the United

⁵ See Preventing Child Sexual Abuse, CDC.gov (last visited Feb. 22, 2022), <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also D. Finkelhor, et. al., Prevalence of child exposure

States, at least one in five girls and one in thirteen boys is sexually abused before they turn eighteen.⁶ An extensive body of evidence establishes that childhood sex abuse victims are traumatized in a way that is distinguishable from victims of other crimes. Many victims of child sex abuse suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, child sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.⁷ These victims may also 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

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

⁶ 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); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011); 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).

⁷ Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 CHILD ABUSE NEGL. 123 (2015).

⁸ Ramona Alaggia et al., Facilitators and Barriers to Child

Additionally, disclosing sexual abuse to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the victim knowing that he or she was abused; being willing to identify publicly as a sexual abuse victim; and deciding to act against their abuser. This last variable may be particularly difficult for victims, as nearly 90% of perpetrators are someone the child knows; in fact, roughly one-third of child sex abuse offenses are committed by family members.⁹ It is hardly surprising, then, that one study found 44.9% of male victims and 25.4% of female victims of child sex abuse delayed disclosure by more than twenty years.¹⁰ In another study of victims of abuse in Boy Scouts of America, 51% of victims disclosed their abuse for the first time at age fifty or older.¹¹ An estimated 70% of child sexual assault victims never

Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016),
20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

⁹ Sarah E. Ullman, Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors, 16 J. CHILD SEX. ABUSE 19 (2007); David Finkelhor & Anne Shattuck, Characteristics of Crimes Against Juveniles, University of New Hampshire, Crimes Against Children Research Center (2012), available at http://www.unh.edu/ccrc/pdf/CV26_Revised%20Characteristics%20of%20Crimes%20against%20Juveniles_5-2-12.pdf.

¹⁰ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

¹¹ Delayed Disclosure of Child Sexual Abuse, CHILD USA, <https://childusa.org/wp-content/uploads/2020/03/delayed-disclosure-childUSA-1.jpg> (last visited Mar. 8, 2022).

report abuse to the police.¹² Victims, therefore, often need decades to process the abuse they suffered, much less to report it.¹³

Moreover, cultures of secrecy paired with unreasonably short SOLs and other time restraints shield organizations from public scrutiny and discourage victims from disclosing abuse. The Boston Globe's 2002 Spotlight investigative report uncovered rampant sexual abuse in the Catholic Church, and an alarming number of institutional scandals have since emerged, with more institutions and perpetrators publicly named each year.¹⁴

Until 2019, child sex abuse victims in New Jersey only had until age twenty or two years from discovering their claim to file a civil suit against their abusers and other defendants. N.J.S.A. §§ 2A:14-2; 2A:61B-1(b) (West 1992). As detailed

¹² D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US Dept. of Justice, Office of Justice Programs (2008), <https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf>.

¹³ R.L. v. Voytac, 971 A.2d 1074 (N.J. 2009); Rebecca Campbell, Ph.D., The Neurobiology of Sexual Assault: Explaining Effects on the Brain, NAT'L INST. OF JUSTICE (2012), <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; Bessel A. van der Kolk M.D., et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).

¹⁴ Hamilton, M., 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).

above, nearly all victims fail to bring claims within such an unreasonably short timeframe. To remedy the problem, the Legislature passed the Amendments, which retroactively and prospectively extended the civil SOL to age fifty-five or seven years from discovery, whichever is later. N.J.S.A. § 2A:14-2a (2019). It additionally opened a two-year window permitting victims of child sex abuse in New Jersey to assert otherwise time-barred civil claims—from December 1, 2019 through November 30, 2021. N.J.S.A. § 2A:14-2b (2019). Importantly, procedural requirements under the TCA were also eliminated for lawsuits filed during this window or pursuant to the extended statute of limitations, allowing public entities to be sued in the same manner as private organizations. Senate Committee Statement at Section 8.

Because a law to revive a previously time-barred *criminal* prosecution violates the Ex Post Facto Clause of the United States Constitution, filing a civil claim using a revival provision is the sole redress for many child sex abuse victims whose claims unjustly expired. See Stogner v. California, 539 U.S. 607, 610, 632–33 (2003). By passing the Amendments, the New Jersey Legislature recognized the injustice of short time restraints and took a reasonable step to address this issue,

providing long-denied access to justice to victims of child sex abuse and greatly reducing the present danger to New Jersey's children.

B. The Amendments Address New Jersey's Compelling Interest in Child Protection

The Amendments to the CSAA and TCA also serve New Jersey's compelling interest in child protection. E.g., *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017); *Hoefers v. Jones*, 672 A.2d 1299, 1308 (N.J. Super. Ct. Ch. Div. 1994) (noting the "duty to protect infants and those of legal disability unable to protect themselves" is "the fundamental principle guiding our courts in promoting a child's welfare and best interests It is the state's quintessential compact with its citizens, an organic precept of decency of inherent constitutional dimension," and "is a preeminent promise of human kind, binding one generation to another that those who cannot protect themselves will be protected; that those who need care will receive it; and that the powers of the state, administratively, legislatively, and through its courts, will be utilized to oversee that promise."), aff'd, 672 A.2d 1177 (N.J. Super. Ct. App. Div. 1996). Three important public purposes are served by the Legislature's enactment of the Amendments. They: (1) identify previously unknown child predators and the institutions

that shield them; (2) shift the cost of abuse from victims to those who caused the abuse; and (3) educate the public to prevent future abuse.

First, the CSAA revival window and the elimination of procedural requirements from the TCA facilitate the identification of previously unknown child predators¹⁵ and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready to disclose give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Unfortunately, unidentified predators continue abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.¹⁶ Through the Amendments, the Legislature empowered victims to identify New Jersey's hidden child predators and the institutions that endanger children, which helps prevent those predators from further abusing children and allows the public to develop policies to inhibit new abuse from occurring in the

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

¹⁶ Id.

long-term.¹⁷

Second, the CSAA revival window and the elimination of procedural requirements from the TCA help to educate the public about the dangers of child sexual abuse and how to prevent such abuse. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.¹⁸ Because the Amendments permit an increased number of child victims to come forward, they shed light on the prevalence of child sex abuse, which allows parents and other guardians to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. Indeed, SOL and notice-of-claim reform not only

¹⁷ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDBUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.gov (last visited Feb. 23, 2022), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁸ E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

provide access to justice previously withheld from victims of child sexual abuse; it prevents further abuse by fostering social awareness while encouraging public and private institutions to implement accountability and safe practices.

Third, the cost of child sexual abuse to victims is enormous,¹⁹ and they, along with the State of New Jersey, unjustly carry the burden of this expense.²⁰ The estimated lifetime cost to society from child sexual abuse cases that occurred in the U.S. in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.²¹ Average costs per victim include but are not limited to \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581

¹⁹ See M. Merricka., et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 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).

²⁰ While one in four Arizonans receive Medicaid, sex abuse victims likely disproportionately receive support due to the crippling effect of trauma. Stephanie Innes, Enrollment in Arizona's Medicaid program hits record 2M adults and children, AZCENTRAL.COM (Jul. 14, 2020 at 1:10 PM), <https://www.azcentral.com/story/news/local/arizona-health/2020/07/14/enrollment-arizonas-medicaid-program-hits-record-2-million/5429518002/>.

²¹ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs.²² Costs associated with suicide deaths are estimated at \$20,387 for female victims.²³ These staggering costs gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.²⁴ Revived child sexual abuse cases that result in awards and settlements not only equitably shift some of the costs away from victims and onto the abusers, but they also save the State money by reducing expenditures on public services.

As a result, the Legislature's enactment of the CSAA revival window and its elimination of procedural requirements from the TCA not only remedy the long-standing injustice to child sexual abuse victims barred from bringing their claims under unreasonably short time restraints, but also serve New Jersey's compelling interest in keeping its children safe and preventing future child sexual abuse.

III. REVIVAL LAWS FOR CHILD SEX ABUSE CLAIMS ACROSS THE UNITED STATES SUPPORT THAT A NOTICE OF CLAIM IS NOT REQUIRED FOR REVIVAL WINDOW CLAIMS

In 2019, New Jersey joined the growing national movement to

²² Id.

²³ Id.

²⁴ Id.

protect children from sexual predators and to honor justice for victims of child sexual abuse. Since 2002, revival legislation has grown in popularity, and even more rapidly with the #metoo movement, as legislatures recognize that child sexual abuse victims need more time to come forward and SOLs and notice of claim deadlines have historically blocked their claims.²⁵ New Jersey stands alongside at least **thirty states and territories** that enacted civil revival laws for childhood sexual abuse claims that were blocked by unreasonably short SOLs and notice of claim deadlines. The following table shows this prevailing trend:

Jurisdiction	Revival Law	Statute
Arizona	1.5-Year Window & Age 30 Limit (2019)	A.R.S. § 12-514; H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019)
Arkansas	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93 rd General Assembly, Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118
California	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)

²⁵ CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Jan. 1, 2022), <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

Jurisdiction	Revival Law	Statute
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)
Colorado*	3-Year Window (2021)	SB21-088, 73 rd General Assembly, 1 st Reg. Sess. (Colo. 2021) (Effective, January 1, 2022) *This is not a revival law—it is a new cause of action—but it opens a window to justice for victims whose claims have expired.
Connecticut	Age 48 Limit (2002)	CONN. GEN. STAT. § 52-577d (2002); 2002 Conn. Legis. Serv. P.A. 02-138 (S.H.B. 5680).
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)
Florida	4-Year Window (1992)	FLA. STAT. ANN. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)
Guam	Permanent Window (2016)	Tit. 7 G.C.A §§ 11306; 11301.1(b); Added by P.L. 33-187:2 (Sept. 23, 2016)
	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
Hawaii	2-Year Window (2018)	HAW. REV. STAT. § 657-1.8; 2018 Hawaii Laws Act 98 (S.B. 2719)
	2-Year Window (2014)	HAW. REV. STAT. § 657-1.8; 2014 Hawaii Laws Act 112 (S.B. 2687)
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)

Jurisdiction	Revival Law	Statute
Kentucky	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472); KY. REV. STAT. ANN. § 413.249
Louisiana	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); LA. STAT. ANN. § 9:2800.9
Maine	Permanent Window (2021)	ME. REV. STAT. ANN. tit. 14 § 752-C; 2021 Me. Legis. Serv. Ch. 301 (H.P. 432) (L.D. 589)
Massachusetts	Age 53 Limit (2014)	MASS. GEN. LAWS ch. 260, § 4C (2014); 2014 Mass. Legis. Serv. Ch. 145 (H.B. 4126).
Michigan	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872)
Minnesota	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)
	1-Year Window (1989)	MINN. STAT. § 541.073
Missouri	Age 23 Limit (1990)	MO. REV. STAT. § 537.046
Montana	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216; 2019 MONTANA LAWS CH. 367 (H.B. 640)
Nevada	Permanent Window & Age 38 Limit (2021)	2021 Nevada Laws Ch. 288 (S.B. 203); NEV. REV. STAT. ANN. § 11.215, 41.1396
New Jersey	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A & 2A:14-2B; 2019 NJ Sess. Law Serv. Ch. 120 (SENATE 477)
New York	2-Year Window (2022)	NEW YORK CITY, N.Y., CODE § 10-1105 (2022); L.L. 21/2022 § 2, EFF. JAN. 9, 2022

Jurisdiction	Revival Law	Statute
	1-Year Window (2020)	N.Y. C.P.L.R. 214-g; 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)
	1-Year Window (2019)	N.Y. C.P.L.R. 214-g; 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)
North Carolina	2-Year Window (2019)	N.C. GEN. STAT. § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)
Northern Mariana Islands	Permanent Window (2021)	2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)
Oregon	Age 40 Limit (2010)	OR. REV. STAT. § 12.117; 2009 OREGON LAWS CH. 879 (H.B. 2827).
Rhode Island	Age 53 Limit (2019)	R.I. GEN LAWS § 9-1-51; 2019 RHODE ISLAND LAWS CH. 19-83 (19-H 5171B).
Utah	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308 ; 2016 Utah Laws Ch. 379 (H.B. 279)
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)
Virginia	1-Year Window (1991)	VA. CODE ANN. § 8.01-249.
Washington D.C.	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)
West Virginia	Age 36 Limit (2020)	W. VA. CODE § 55-2-15; 2020 WEST VIRGINIA LAWS CH. 2 (H.B. 4559).

Modern revival laws do not distinguish between private and public defendants when reviving claims against institutions involved in child sexual abuse. This is because legislatures recognize the public interest in stopping predators from sexually abusing children is equally as compelling within public institutions as it is in the private sphere. Indeed, other states have permitted the revival of child sex abuse causes of action against public entities based on statutes with far less exacting language than that used by the New Jersey Legislature.

Here, the New Jersey Legislature was careful to include explicit language reviving claims against public entities that were blocked not only by statutes of limitations but also by “procedural requirements,” such as the ninety-day period for filing notice of a claim against a public entity for “an injury resulting from the commission of sexual assault.” N.J.S.A. § 59:8-3; Senate Committee Statement, § 8. New Jersey’s statutory language is unique, as it is one of the only window statutes with explicit language removing a claim presentation deadline. See also CAL. CIV. PROC. CODE § 340.1(q) (2020) (any claim for damages . . . that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is

revived . . .”). The Legislature’s deliberate use of language including survivors of abuse within state institutions in its window for justice sets it apart from other states’ revival provisions and should be recognized by this Court.

An interpretation of the Amendments that reinstates a claim presentation deadline for window claims against public entities would violate the explicit language of the amendments to the TCA, the CSAA window provision, and the clear directive of the New Jersey Legislature. The Legislature’s purposeful judgment to enact a broad revival window that gave victims with claims against public institutions two years or until age fifty-five to bring their abuser’s enablers to justice and help eradicate child sex abuse in New Jersey should be given deference and interpreted as such by this Court.

CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully requests this Court reverse the trial court's grant of the Motion for Summary Judgment and rule a notice of claim was not required.

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