

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

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PB-36 DOE,	:	Docket No.: CA 21-01223
	:	
	:	
Plaintiff- Respondent,	:	
	:	NOTICE OF MOTION TO
-against-	:	FILE <i>AMICUS CURIAE</i>
	:	BRIEF IN SUPPORT OF
NIAGARA FALLS CITY SCHOOL	:	PLAINTIFF-RESPONDENT
DISTRICT and LASALLE JUNIOR	:	
HIGH SCHOOL,	:	
	:	
Defendants-Appellants,	:	
	:	
-and-	:	
	:	
ROBERT LEWIS,	:	
	:	
Defendant.	:	
-----X	:	

PLEASE TAKE NOTICE, that upon the annexed affirmation of James Marsh Esq., the annexed proposed brief, and all the pleadings, proceedings and exhibits included herein, CHILD USA and NYSTLA will move this Court at the Courthouse located at 50 East Avenue, Suite 200, Rochester, New York on the 12th day of September 2022, at 10 AM or as soon thereafter as counsel can be heard, for the following relief:

[a] An order permitting CHILD USA to file the accompanying proposed brief of amicus curiae; and

[b] Granting any other, further, or different relief that this Court may deem just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, are required to be served in accordance with the rules of this Court.

Dated: August 30, 2022
New York, New York

Respectfully submitted,



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: :
-and- : :
: :
ROBERT LEWIS, : :
: :
Defendant. : :
-----X

James Marsh, Esq., hereby affirms, under the penalties of perjury, the truth of the following statements:

1) I am an attorney admitted to practice law in the State of New York. I make this certification in support of the motion of CHILD USA and NYSTLA to submit the annexed amicus curiae brief in the above-captioned appeal, which is annexed hereto as **Exhibit A**.

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 York.

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 will have immediate and broad implications on the ability of victims of sex abuse to bring civil claims in New York. The Child Victims Act enables 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 York will expose hidden perpetrators to the public, shift the cost of abuse from victims to those who perpetrated and enabled the abuse, and it will ultimately educate the public and help prevent future abuse.

4) CHILD USA has legal and social science expertise that can help the court determine the constitutional questions at issue in this case. CHILD USA is uniquely

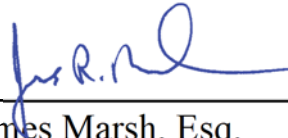
positioned to provide this Court with current research and analysis regarding the constitutionality of New York's revival law for sexual abuse claims, the compelling public interest in revival of expired civil SOLs, impacts of the revival laws on public safety, the science of trauma and delayed disclosure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

5) NYSTLA is a statewide organization of attorneys, most of whom practice in the personal injury field. Its certificate of incorporation expresses the purpose of the organization as follows: To "promote reforms in the law, facilitate the administration of justice, elevate the standard of integrity, honor and courtesy in the legal profession, and cherish the spirit of brotherhood among members thereof." There are many interest groups that actively seek to limit the rights of persons who are tortiously injured; NYSTLA exists to advance and protect those rights. It educates the general public and the bench and bar about important issues in the personal injury/malpractice field, sponsoring a variety of CLE courses and public forums, and publishing numerous periodicals.

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.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the within application should be granted in all respects.

Dated: August 30, 2022
New York, New York



James Marsh, Esq.
Marsh Law Firm PLLC
Counsel of Record for Amicus Curiae



EXHIBIT A



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New York Supreme Court

Appellate Division – Fourth Department

Docket No: CA 21-01223

PB-36 DOE,

Plaintiff- Respondent,

-against-

NIAGARA FALLS CITY SCHOOL DISTRICT
AND LASALLE JUNIOR HIGH SCHOOL,

Defendants-Appellants,

-and-

ROBERT LEWIS,

Defendant.

**BRIEF OF AMICI CURIAE CHILD USA AND NYSTLA
IN SUPPORT OF PLAINTIFF-RESPONDENT**

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Niagara County Clerk's Index No. E172556/20

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QUESTIONS PRESENTED

CHILD USA and NYSTLA rely on the questions presented as submitted by the parties.



STATEMENT OF FACTS

CHILD USA and NYSTLA rely on the statement of facts as presented by the parties.



AMICI CURIAE STATEMENT OF INTEREST

CHILD USA is the leading non-profit national think tank fighting for the civil rights of children, and its 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'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 will have immediate and broad implications on the ability of victims of sex abuse to bring civil claims in New York. The Child Victims Act's revival window enabled victims of sexual abuse whose claims were previously time-barred to bring their claims. In turn, claim revival for sexual abuse in New York exposes hidden perpetrators to the public, shifts the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educates the public and helps prevent future abuse.

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tortiously injured; NYSTLA exists to advance and protect those rights. It educates the general public and the bench and bar about important issues in the personal injury/malpractice field, sponsoring a variety of CLE courses and public forums, and publishing numerous periodicals.

PRELIMINARY STATEMENT

CHILD USA and NYSTLA respectfully submit this brief as *amici curiae* pursuant to 22 NYCRR 1250.4(f). The Defendants-Appellants challenge the constitutionality of The Child Victims Act (“CVA”), which revived expired civil claims for child sex abuse in New York. CPLR § 214-G. CHILD USA and NYSTLA submit that the CVA’s revival window easily comports with due process under the United States Constitution and New York law. Importantly, the CVA’s revival window is supported by clear legislative intent and the significant public interest to remedy the injustice of New York’s prior unreasonably short statutes of limitation (“SOLs”), which obstructed sex abuse victims’ access to the courts and kept the public in the dark about child predators. By serving such a critical public purpose, the CVA revival window must be considered a reasonable response to the seriousness of the harm caused by the inability to hold child sex abusers accountable.

Moreover, a ruling against the CVA’s revival window would negatively impact the thousands of child sexual abuse victims throughout New York who embraced the window in pursuit of long overdue justice. Such a ruling would severely jeopardize the important public policies of justice, public safety, and preventing future sexual abuse that the New York Legislature sought to uphold and improve when it passed the CVA. Accordingly, CHILD USA and NYSTLA

respectfully submit that this Court should uphold the CVA as constitutional as applied.



ARGUMENT

The CVA's claim revival provision, CPLR § 214-G, is constitutional under the Fourteenth Amendment of the United States Constitution and the New York State Constitution's Due Process Clause. Importantly, the CVA's revival window is supported by clear legislative intent and the significant public interest to remedy the injustice of New York's prior unreasonably short child sex abuse SOLs. Moreover, it is in accordance with a growing list of at least thirty states and territories that have also enacted civil revival laws for sexual abuse claims.

I. THE CVA'S REVIVAL WINDOW IS CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION

The retroactive elimination of a civil statute of limitations is constitutional under the United States Constitution.¹ In Landgraf v. USI Film Products, the United States Supreme Court held that retroactive civil legislation is constitutional if two conditions are met: (1) the legislative intent is clear and (2) the change is procedural. 511 U.S. 244, 267 (1994). Regarding the first prong, the revival of expired SOLs is something no legislature should take lightly. The New York Legislature certainly did not do so when it enacted the CVA, as discussed below in Part II. Indeed, the New York Legislature definitively determined that enacting the CVA revival

¹ C.f., Stogner v. California, 539 U.S. 607, 610 (2003) (holding that retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).

window was a reasonable remedy to correct an injustice. Because the New York Legislature’s intent to pass the CVA revival window was unambiguous, the first prong is satisfied.

As to the second prong, the Supreme Court determined in Chase Securities Corp. v. Donaldson that “[s]tatutes of limitation find their justification in necessity and convenience rather than logic. They represent expedients, rather than principles. They are practical and pragmatic devices.” 325 U.S. 304, 314 (1945). As such, SOLs represent “a public policy [enacted by a legislature] about the privilege to litigate”—their protection is not a fundamental right. *Id.* See also, In re World Trade Ctr. Manhattan Disaster Site Litig., 89 N.E.3d 1227, 1243 (N.Y. 2017) (stating, “modern cases reflect a less rigid view of the Legislature’s right to pass such legislation”) (citing Hodes v. Axelrod, 515 N.E.2d 612, 615 (N.Y. 1987)). Because SOLs are “pragmatic devices” that are procedural in nature instead of substantive “principles,” the CVA SOL revival window satisfies the second prong of the Landgraf test. Accordingly, the CVA revival window is constitutional under the United States Constitution.

II. THE CVA REVIVAL WINDOW IS CONSTITUTIONAL UNDER THE NEW YORK CONSTITUTION

The CVA revival window is presumptively constitutional and is supported by clear legislative intent. The New York Legislature purposefully enacted the CVA with a significant public policy purpose in mind: to reasonably remedy the

injustice of New York’s untenably short child sex abuse SOLs, which did not reflect the effects of trauma on child sex abuse victims’ ability to disclose their abuse, inequitably blocking their access to the courts and concealing from the public the predators who continued to sexually abuse children.

A. This Court Should Defer to the Legislature’s Judgment Because New York Laws are Presumptively Constitutional and the CVA is Reasonable

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

This Court should defer to the Legislature’s judgment, as New York courts have routinely upheld civil claim revival statutes. In re World Trade Ctr., 89 N.E.3d at 1243; Hymowitz, 539 N.E.2d at 1079–80; McCann v. Walsh Const. Co., 123 N.Y.S.2d 509, 514 (N.Y. App. Div. 1953), aff’d 119 N.E.2d 596 (N.Y. 1954); Gallewski v. H. Hentz & Co., 93 N.E.2d 620, 624 (N.Y. 1950); Robinson v. Robins Dry Dock & Repair Co., 144 N.E. 579, 582 (N.Y. 1924). In fact, the New York Court of Appeals has specifically rejected the argument that the retroactive

application of revived civil statutes of limitations inherently disturbs rights vested under the New York Constitution. In re World Trade Ctr., 89 N.E.3d at 1239.

Indeed, after a thorough review of its prior holdings on revival laws, the New York Court of Appeals found that “a claims-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice.” Id. at 1243. This test is easily satisfied when the Legislature enacts a law to serve a critical public purpose; in this case, legislation to remedy an injustice to child sex abuse victims, whose trauma stymied disclosure of their abuse and prevented them from bringing claims, which in turn allowed hidden child predators to continue abusing children.

When creating the CVA revival window, the New York Legislature carefully considered the reality faced by child sex abuse victims. It analyzed the science of trauma and how delayed disclosure prevents victims from bringing timely claims under short SOLs, and enacted the revival window to rectify its prior misunderstandings of the obstacles child sex abuse victims face in bringing their claims to court. See Sponsor Memo for Bill S2440, available at <https://www.nysenate.gov/legislation/bills/2019/s2440> (last visited August 16, 2022). To ensure it met the reasonableness standard, the Legislature carefully crafted the revival window with a one-year time limit—indeed, the window is already closed. Id.; 2020 N.Y. Sess. Laws, Exec. Order 202.29.

As discussed below, the Legislature’s reasoning for enacting the CVA revival window is affirmed by the undeniable science of trauma and delayed disclosure. This support soundly demonstrates that the Legislature correctly judged the time-limited CVA revival window as a reasonable response to the injustice inflicted upon child sex abuse victims by SOLs that inequitably barred their claims. Thus, this Court should defer to the Legislature’s judgement and uphold the CVA as constitutional.

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

Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.² It affects one in five girls and one in thirteen boys in the United States.³ An extensive body of evidence establishes that childhood sexual abuse survivors are traumatized in a way that is distinguishable from victims of other crimes. Indeed, many victims of child sex abuse suffer in silence for decades before they speak to anyone about their traumatic experiences. As children, sex abuse

² See Preventing Child Sexual Abuse, CDC.gov, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; 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); 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).

victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.⁴ This is a crime that typically occurs in secret, and many child victims of sexual violence assume no one will believe them.⁵

Additionally, child sex abuse survivors may struggle to disclose their abuse because of psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.⁶ Victims may also develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.⁷ Moreover, they disproportionately develop depression, substance abuse, Post-traumatic Stress Disorder (“PTSD”), and challenges in personal relationships.

These mechanisms may persist well into adulthood, long past the date of the abuse. In fact, one study found that 44.9% of male victims and 25.4% of female

⁴ 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), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁵ See Myths and Facts About Sexual Assault, CAL. DEP’T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Aug. 17, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, Caring for Kids: What Parents Need to Know about Sexual Abuse, NAT’L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

⁶ 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), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

⁷ G.S. Goodman et. al., A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy, 14 PSYCHOL. SCI. 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

child sex abuse victims delayed disclosure by *more than twenty years*.⁸ Remarkably, it is estimated that 70–95% of child sex abuse victims never report their abuse to the police.⁹ Additionally, research has found a higher rate of PTSD symptoms in child sex abuse victims who delay disclosure when compared with those who did not delay disclosure.¹⁰

In sum, trauma affects child sex abuse victims in serious and wide-ranging ways, logically necessitating decades for them to process their abuse, much less report it.¹¹ This translates to a harsh reality: more victims first disclose their child sex abuse between ages *fifty and seventy* than during any other age.¹² By allowing previously barred child victims an additional window of time to come forward, the CVA revival provision reasonably responds to this reality.

⁸ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

⁹ 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/ojdp/214383.pdf>.

¹⁰ Sarah E. Ullman, Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors, 16 J. CHILD SEX. ABUSE 19, 30 (2007), <https://pubmed.ncbi.nlm.nih.gov/17255075/>.

¹¹ 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/TonicImmobility Webinar.pdf](https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility%20Webinar.pdf); 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).

¹² CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3 (June 21, 2022), <https://childusa.org/6-17-2022-2021-sol-report-final/>.

C. The Science of Trauma and Delayed Disclosure Support the Legislature’s Enactment of the CVA as a Reasonable Response to New York’s Compelling Public Policy Interest in Child Protection

The CVA serves New York’s “compelling” interest in child protection. See, e.g., New York v. Ferber, 458 U.S. 747, 756–57 (1982). “There is also no doubt that[] ‘[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.’” Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002)). Moreover, the CVA revival window serves three important public purposes: it (1) identifies previously unknown child predators; (2) shifts the cost of abuse from victims to those who caused the abuse; and (3) educates the public to prevent future abuse.

First, the CVA revival window facilitates the identification of previously unknown child predators¹³ 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

¹³ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

offense and conviction was thirty-six years.¹⁴ Through the CVA, the Legislature empowered victims with a window of time to identify New York's hidden child predators and the institutions that endanger children, which has helped prevent those predators from further abusing children and is allowing the public to develop policies to inhibit new abuse from occurring in the long-term.¹⁵

Second, the CVA revival provision has helped 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.¹⁶ Because the CVA permitted an increased number of child victims to come forward, it has shed light on the prevalence of child sex abuse, which has allowed 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

¹⁴ Id.

¹⁵ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDBABUSE.ORG, <https://preventchildabuse.org/resource/why-prevention-matters/> (last visited Aug. 17, 2022); Preventing Adverse Childhood Experiences, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁶ E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

abusive behavior. Indeed, SOL reform not only provides 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,¹⁷ and they, along with the State of New York, unjustly carry the burden of this expense. 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 \$282,734.¹⁸ Average costs per victim include, but are not limited to, \$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.¹⁹ Costs associated with suicide deaths are estimated at \$20,387 for female victims.²⁰ These staggering costs gravely affect victims and also impact the nation's health care, education, criminal justice, and

¹⁷ See M. Merricka. et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 2017); I. Angelakis et al., 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), <https://www.perrymangroup.com/media/uploads/report/perryman-suffer-the-little-children-11-2014.pdf>.

¹⁸ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

¹⁹ Id.

²⁰ Id.

welfare systems.²¹ Revived child sexual abuse cases that result in awards and settlements not only equitably shift some of these costs away from victims and onto the abusers, but they also save the State money by reducing expenditures on public services.

Nevertheless, the prior SOL in New York for child sex abuse victims was age twenty-three to file a suit against abusers and age twenty-one for personal injury claims against other defendants. CPLR §§ 213-c & 214(5). These SOLs constituted an oppressive barrier to justice, rendering it impossible for the vast majority of victims to bring their claims to court. Yet, because it is unconstitutional to revive a criminal statute of limitations, filing civil claims pursuant to a revival provision is the only avenue of justice available to many survivors. See Stogner, 539 U.S. at 610.²²

The Legislature's enactment of the CVA claim revival window not only reasonably remedies the long-standing injustice to child sexual abuse victims barred from bringing their claims under illogically short time restraints, but also serves New York's public policy interests in keeping its children safe, preventing

²¹ Id.

²² Stogner, 539 U.S. 607, 610 (2003) (retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).

future child sexual abuse, and shifting the economic impacts of abuse from the State onto the perpetrator.

III. DECISIONS IN OTHER STATES REVIVING SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF THE CVA'S REVIVAL WINDOW

When New York opened its revival window, it joined a growing list of at least thirty states and territories that enacted civil revival laws for sexual abuse claims that were blocked by unreasonably short SOLs. Over the past twenty years, revival legislation has grown in popularity as legislatures have recognized that child sexual abuse victims need more time to come forward and that SOLs have historically blocked their claims.²³ Nearly all courts that considered the constitutionality of these revival windows upheld them, even where they adopted a stricter standard of constitutionality than the federal standard. The following table shows this trend:

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Arizona	1.5-Year Window & Age 30 Limit (2019)	ARIZ. REV. STAT. ANN. § 12-514; H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019)	Constitutional ²⁴

²³ CHILD USA, Revival Laws for Child Sex Abuse Since 2002 (Jan. 1, 2022), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

²⁴ John I M Doe v. Big Brothers Big Sisters of Am., No. CV2020-017354 (Ariz. Super. Ct. Sept. 28, 2021); John C D Doe v. Big Brothers Big Sisters of Am., No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021), review denied, No. CV-22-0003-PR (Ariz. April 8, 2022).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Arkansas	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93rd Gen. Assemb., Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118	Not challenged
California	1-Year Window (2020)	CAL. CIV. PROC. CODE § 340.16 (2021); 2020 CAL. LEGIS. SERV. CH. 246 (A.B. 3092)	Not challenged
	1-Year Window (2019)	CAL. CIV. PROC. CODE § 340.16 (2020); 2019 CAL. LEGIS. SERV. CH. 462 (A.B. 1510)	Not challenged
	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Constitutional ²⁵
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional ²⁶
Colorado*	3-Year Window (2021)	SB21-088, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (Effective, January 1, 2022)	Not challenged
		*This is not a revival law—it is a new cause of action—but it opens a window to justice for survivors whose claims have expired.	
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged ²⁷

²⁵ Coats v. New Haven Unified Sch. Dist., 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020).

²⁶ Roman Catholic Bishop of Oakland v. Superior Court, 28 Cal.Rptr.3d 355, 359 (Cal. Ct. App. 2005).

²⁷ See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional ²⁸
Florida	4-Year Window (1992)	FLA. STAT. ANN. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional ²⁹
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional ³⁰
Guam	Permanent Window (2016)	7 GUAM CODE ANN. §§ 11306 & 11301.1(b); Added by P.L. 33-187:2 (Sept. 23, 2016)	Not challenged
	2-Year Window (2011)	7 GUAM CODE ANN. § 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

²⁸ Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008).

²⁹ Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).

³⁰ Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)	Constitutional ³¹
Kentucky	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472); KY. REV. STAT. ANN. § 413.249	Not challenged
Louisiana	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); LA. STAT. ANN. § 9:2800.9	Challenge pending ³²
Maine	Permanent Window (2021)	ME. REV. STAT. ANN. tit. 14, § 752-C; 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; 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); NEV. REV. STAT. ANN. §§ 11.215 & 41.1396	Not challenged

³¹ Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014).

³² Lousteau v. Congregation of the Holy Cross South. Province, Inc., No. 22-30407 (5th Cir.), on appeal No. 2:21-CV-1457 (E.D.La. June 8, 2022); Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct.).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
New Jersey	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A & 2A:14-2B; 2019 N.J. Sess. Law Serv. Ch. 120 (S.B. 477)	Constitutional ³³
New York	2-Year Window (2022)	NEW YORK CITY, N.Y., CODE § 10-1105 (2022); L.L. 21/2022 § 2, eff. JAN. 9, 2022	Not challenged
	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)	Constitutional ³⁴
	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)	Constitutional ³⁵

³³ See S.Y. v. Roman Catholic Diocese, No. 20-2605, 2021 WL 4473153, at *4 (D.N.J. Sep. 30, 2021); B.A. v. Golabek, No. 18-cv-7523, 2021 WL 5195665, at *6 (D.N.J. Nov. 8, 2021); W.F. v. Roman Catholic Diocese of Paterson, 2021 WL 2500616 (D.N.J. June 7, 2021); Coyle v. Salesians of Don Bosco, No. L-2606-21, 2021 WL 3484547 (N.J.Super.L. July 27, 2021); T.M. v. Order of St. Benedict of New Jersey, Inc., No. MRS-L-399-17 (Law Division, Morris County).

³⁴ ARK269 v. Archdiocese of New York, No. 950301/2020, 2022 WL 2954144, at *1 (N.Y. Sup. Ct. July 19, 2022); McGourty v. Archdiocese of New York, No. 950410/2020, 2022 WL 2715904, at *1 (N.Y. Sup. Ct. July 12, 2022); Baum v. Agudath Israel of America, No. 950207/2019, 2022 WL 2704237, at *1 (N.Y. Sup. Ct. July 8, 2022); ARK10 v. Archdiocese of New York, No. 950038/2019, 2022 WL 1452438, at *1 (N.Y. Sup. Ct. May 9, 2022); Kastner v. Doe., No. 900111 (Sup. Ct. Nassau Cty. Jan. 14, 2022); S.K. v. Svrcek, No. 400005/2021, 2021 WL 7286456, at *5 (N.Y. Sup. Ct. Dec. 1, 2021); Shearer v. Fitzgerald, No. 0514920/2020 (N.Y. Sup. Ct. Oct. 1, 2021), on appeal No. 2021- 07975 (App. Div.2d Dept.); Giuffre v. Prince Andrew, Case No. 1:21-cv-06702-LAK (S.D.N.Y.).

³⁵ PB-65 Doe v. Niagara Falls City Sch. Dist., No. E174572/2021, 2021 WL 5750878, at *4 (N.Y. Sup. Ct. Oct. 26, 2021); Farrell v. United States Olympic & Paralympic Comm., 567 F.Supp.3d 378 (N.D.N.Y. 2021); PC-41 Doe v. Poly Prep Cty. Day Sch., No.20 Civ. 3628, 2021 WL 4310891, at *3-9 (E.D.N.Y. Sept. 22, 2021), appeal filed, (2d Cir. Oct. 22, 2021); Torrey v. Portville Cent. Sch., 125 N.Y.S.3d 531 (N.Y. Sup. Ct. 2020) (Table); S.T. v. Diocese of Rockville Centre, Index No. 099997/2019, Supreme Court, Nassau County (May 18, 2020); Giuffre v. Dershowitz, No. 19 CIV. 3377, 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
North Carolina	2-Year Window (2019)	N.C. GEN. STAT. § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Challenge pending ³⁶
Northern Mariana Islands	Permanent Window (2021)	2021 N. Mar. 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)	Unconstitutional ³⁷
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)	Constitutional ³⁸

Not a single state that permits revival of time-barred claims—like New York—has refused to uphold such a law for sexual abuse survivors.³⁹ As mentioned above, New York’s modern approach to due process is flexible, and judicial review of its revival window involves substantially similar considerations of rationality as

³⁶ Rulings against the constitutionality of NC’s window are currently on appeal. See Taylor v. Piney Grove Volunteer Fire & Rescue Dep’t, 20 CVS 13487, (N.C. Wake Cnty. Super. Ct. Dec. 20, 2021); Mckinney v. Goins, No. 21 CVS 7438, (N.C. Wake Cnty. Super. Ct. Dec. 20, 2021).

³⁷ Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

³⁸ Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Super. Ct.).

³⁹ 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).

the appellate courts that have explicitly upheld revival laws for sexual 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); K.E. v. Hoffman, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990). Moreover, every appellate court that has considered the reasonableness of a claim revival statute for sexual 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 the CVA is reasonable, and therefore, constitutional.

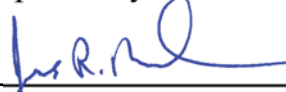
The majority of states that have ruled on the constitutionality of reviving previously expired claims, like New York, recognize that defendants do not have a constitutionally protected right in an SOL defense. Accordingly, this Court should uphold the CVA revival window as constitutional and defer to the New York Legislature's reasonable policy decision to open a window to justice for survivors of child sexual abuse and hold perpetrators accountable.

CONCLUSION

For the foregoing reasons, *amicus curiae* requests this Court to find that the CVA's claim revival provision, CPLR § 214-G, a constitutional exercise of the Legislature's authority.

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Respectfully submitted,



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