

No. 2022-30407

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

JOHN LOUSTEAU  
*Plaintiff-Appellant*

v.

CONGREGATION OF HOLY CROSS SOUTHERN PROVINCE, INC. and  
HOLY CROSS COLLEGE, INC.  
*Defendants-Appellees*

---

APPEAL FROM A JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA  
CASE NO. 2:21-CV-01457

---

**BRIEF OF *AMICUS CURIAE* CHILD USA  
IN SUPPORT OF APPELLANT AND REVERSAL**

---

Gerald E. Meunier (La. 9471)  
Brittany R. Wolf-Freedman  
(La. 36733)  
Gainsburgh, Benjamin, David,  
Meunier, & Warshauer, LLC  
1100 Poydras Street  
2800 Energy Centre  
New Orleans, Louisiana 70163  
bwolf@gainsben.com  
Counsel for *Amicus Curiae*  
CHILD USA

Prof. Marci A. Hamilton, Esq.  
Pennsylvania University  
Founder & CEO, CHILD USA  
3508 Market Street, Suite 202  
Philadelphia, PA 19104

Alice Bohn, Esq.  
Legal Director, CHILD USA

Carina Nixon, Esq.  
Staff Attorney, CHILD USA

## CERTIFICATE OF INTERESTED PERSONS

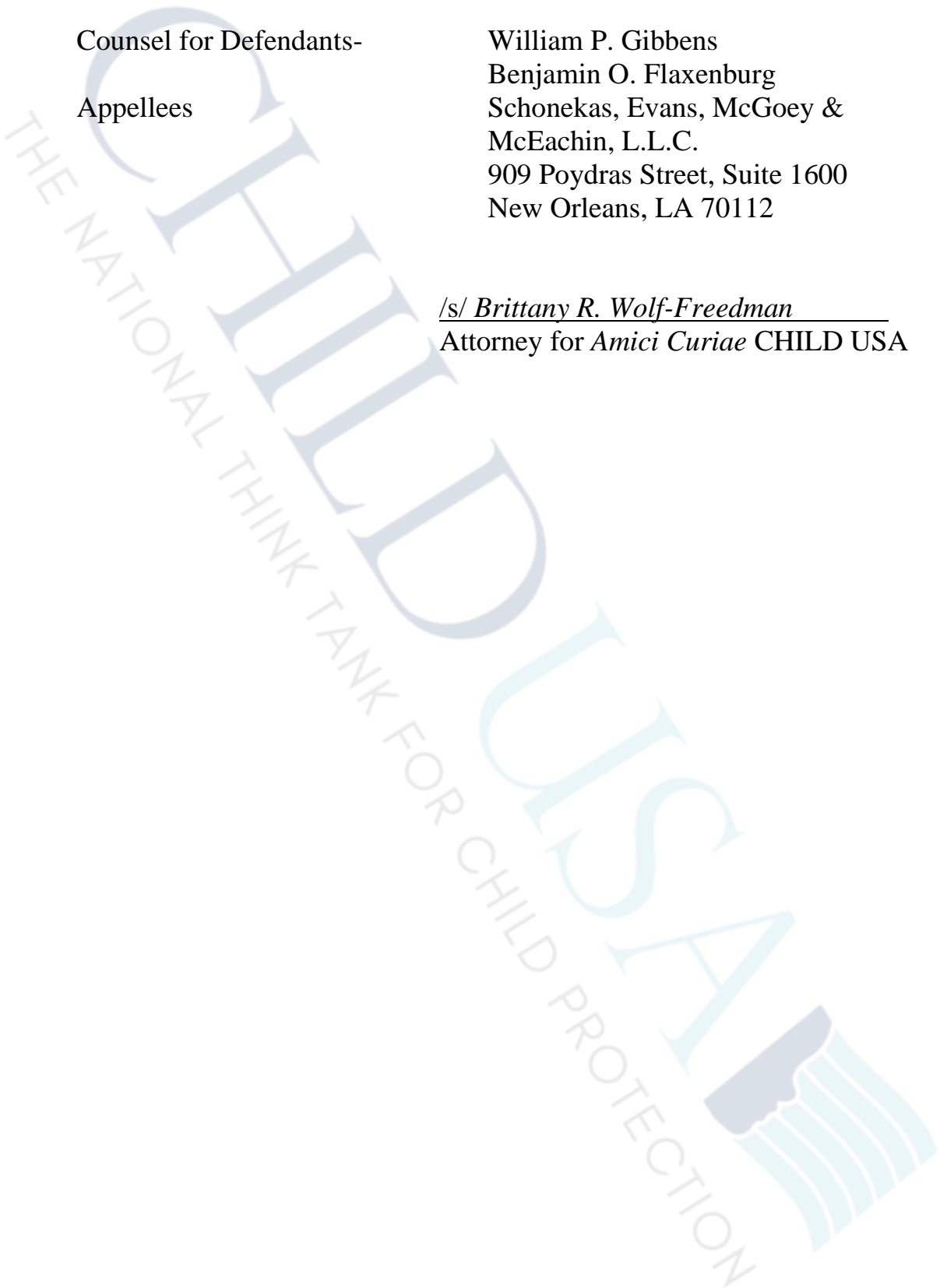
Undersigned counsel certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this may evaluate possible disqualification or recusal:

District Court Judge	Honorable Jay Zainey Judge United States District Court for the Eastern District of Louisiana
Magistrate Judge	Honorable Karen Roby Wells Magistrate Judge United States District Court for the Eastern District of Louisiana
Plaintiff-Appellant	John Lousteau
Counsel for Plaintiff-Appellant	Frank E. Lamothe, III Julien Guy Lamothe Kristi S. Schubert Lamothe Law Firm, LLC 400 Poydras Street, Suite 1760 New Orleans, LA 70130  Kevin Hastings, Pro Hac Vice Michael Thomas Pfau, Pro Hac Vice Pfau Cochran Vertetis Amala PLLC 701 Fifth Avenue, Suite 4300 Seattle, WA 98104
Defendants-Appellees	Congregation of Holy Cross Moreau Province, Inc. and Holy Cross College, Inc.

Counsel for Defendants-  
Appellees

William P. Gibbens  
Benjamin O. Flaxenburg  
Schonekas, Evans, McGoey &  
McEachin, L.L.C.  
909 Poydras Street, Suite 1600  
New Orleans, LA 70112

/s/ Brittany R. Wolf-Freedman  
Attorney for *Amici Curiae* CHILD USA



## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF AUTHORITIES .....	iv
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	2
<b>ARGUMENT</b> .....	3
<b>I. ACT 322 DOES NOT VIOLATE LOUISIANA’S DUE PROCESS CLAUSE</b> .....	3
<b>A. Child Sex Abuse Uniquely Prevents Victims from Bringing Timely     Claims, Warranting Constitutional Revival</b> .....	4
<b>B. The Science of Trauma and the Reality of Long Disclosure Rates     Support the Legislature’s Enactment of Act 322 as a Rational     Response to Louisiana’s Compelling Interest in Child Protection</b> .....	9
<b>II. DECISIONS IN OTHER STATES REVIVING CHILD SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF ACT 322’s REVIVAL PROVISION</b> .....	16
<b>III. ACT 322’S REVIVAL PROVISION SHOULD BE CERTIFIED TO THE LOUISIANA SUPREME COURT</b> .....	23
CONCLUSION .....	25
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT.....	27
CERTIFICATE OF SERVICE .....	28

## TABLE OF AUTHORITIES

### FEDERAL CASES

<i>Ashcroft v. Free Speech Coalition</i> 535 U.S. 234 (2002) .....	9
<i>Campbell v. Holt</i> 115 U.S. 620 (1885) .....	22
<i>Chase Securities Corp. v. Donaldson</i> 325 U.S. 304 (1945) .....	18, 22
<i>Erie R. Co. v. Tompkins</i> 304 U.S. 64 (1938) .....	24
<i>Fox v. Nu Line Transport, L.L.C.</i> 37 F.4th 289 (5th Cir. 2022) .....	24
<i>Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.</i> 457 U.S. 596 (1982) .....	11
<i>Maryland v. Craig</i> 497 U.S. 836 (1990) .....	10
<i>New York v. Ferber</i> 458 U.S. 747 (1982) .....	9, 11
<i>Packingham v. North Carolina</i> 137 S. Ct. 1730 (2017) .....	9
<i>Page v. Cameron Iron Works, Inc.</i> 259 F.2d 420, 422 (5th Cir. 1958) .....	18
<i>Stogner v. California</i> 539 U.S. 607 (2003) .....	15
<i>Temple v. McCall</i> 720 F.3d 301 (5th Cir. 2013) .....	24

**STATE CASES**

*ARK10 v. Archdiocese of New York*  
 No. 950038/2019, 2022 WL 1452438 (N.Y. Sup. Ct. May 9, 2022).....21

*ARK269 v. Archdiocese of New York*  
 No. 950301/2020, 2022 WL 2954144 (N.Y. Sup. Ct. July 19, 2022) .....20

*B.A. v. Golabek*  
 No. 18-cv-7523, 2021 WL 5195665 (D.N.J. Nov. 8, 2021).....20

*Babineaux v. Judiciary Comm'n*  
 341 So. 2d 396 (La. 1976) .....22

*Baum v. Agudath Israel of America*  
 No. 950207/2019, 2022 WL 2704237 (N.Y. Sup. Ct. July 8, 2022).....20

*Bell-Kerr v. Baltimore-Washington Conf. of the United Methodist Church*  
 No. 2021 CA 0013531B (D.C. Superior Court).....22

*Board of Barber Examiners of Louisiana v. Parker*  
 182 So. 485 (1938) .....22

*Borel v. Young*  
 2007-0419 (La. 11/27/07); 98 So. 2d 42 .....18

*Buchanan v. Langston*  
 36-520 (La. App. 2 Cir. 9/18/02); 827 So. 2d 1186 .....10

*Cameron Parish School Board v. Acands*  
 96-0895 (La. 1/14/97); 687 So. 2d 84 .....3, 22

*Chance v. American Honda Motor Co.*  
 94-2582 (La. 4/11/94); 635 So. 2d 177 .....3, 22

*Coats v. New Haven Unified Sch. Dist.*  
 259 Cal.Rptr.3d 784 (Cal. Ct. App. 2020) .....17

*Cole v. Celotex Corp.*  
 599 So. 2d 1058 (La. 1992).....22

<i>Cosgriffe v. Cosgriffe</i> 864 P.2d 776 (Mont. 1993).....	23
<i>Coyle v. Salesians of Don Bosco</i> No. L-2606-21, 2021 WL 3484547 (N.J.Super.L. July 27, 2021).....	20
<i>Doe v. Hartford Roman Catholic Diocesan Corp.</i> 119 A.3d 462, 496 (Conn. 2015).....	23
<i>Farrell v. United States Olympic &amp; Paralympic Comm.</i> No. 120CV1178FJSCFH, 2021 WL 4820251 (N.D.N.Y. Oct. 15, 2021) .....	21
<i>Folse v. Folse</i> 98-1976 (La. 6/29/99); 738 So. 2d 1040 .....	8, 9, 10
<i>Giuffre v. Dershowitz</i> No. 19 CIV. 3377 (LAP), 2020 WL 2123214 (S.D.N.Y. Apr. 8, 2020).....	21
<i>Giuffre v. Prince Andrew</i> No. 1:21-cv-06702-LAK (S.D.N.Y. 2021) .....	21
<i>Harvey v. Merchan</i> 860 S.E.2d 561 (Ga. 2021) .....	18, 23
<i>Ireland v. Mackintosh</i> 61 P. 901 (Utah 1900).....	22
<i>John C D Doe v. Big Brothers Big Sisters of Am.</i> No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021) .....	16
<i>John I M Doe v. Big Brothers Big Sisters of America et al.</i> No. CV2020-017354 (Ariz. Super. Ct. Sept. 28, 2021) .....	16
<i>Kastner v. Doe</i> No. 900111 (Sup. Ct. Nassau Cty. Jan. 14, 2022).....	21
<i>K.E. v. Hoffman</i> 452 N.W.2d 509, 514 (Minn. Ct. App. 1990).....	23
<i>Lousteau v. Congregation of Holy Cross Southern Province, Inc.</i> No. 21-1457, 2022 WL 2065539 (E.D. La. June 6, 2022).....	3, 7, 23

*McGourty v. Archdiocese of New York*  
 No. 950410/2020, 2022 WL 2715904 (N.Y. Sup. Ct. July 12, 2022).....20

*Mckinney v. Goins*  
 No. 21 CVS 7438 (N.C. Wake Cnty. Super. Ct. Dec. 20, 2021). ....21

*Mitchell v. Roberts*  
 469 P.3d 901 (Utah 2020).....21, 22

*Municipality No. One. V. Wheeler*  
 10 La. Ann. 745 (1855) .....22

*Murphy v. Murphy*  
 2004-1053 (La. App. 3 Cir. 12/8/04); 889 So. 2d 417 .....10

*PB-36 Doe v. Niagara Falls City Sch. Dist.*  
 152 N.Y.S.3d 242 (N.Y. Sup. Ct. 2021).....21

*PB-65 Doe v. Niagara Falls City Sch. Dist.*  
 No. E174572/2021, 2021 WL 5750878 (N.Y. Sup. Ct. Oct. 26, 2021).....21

*PC-41 Doe v. Poly Prep Cty. Day Sch.*  
 No. 20 Civ. 3628, 2021 WL 4310891 (E.D.N.Y. Sept. 22, 2021) .....21

*Pearson v. Hartford Acc. & Indem. Co.*  
 281 So. 2d 724 (La. 1973) .....18

*Picone v. Lyons*  
 601 So. 2d 1375 (La. 1992) .....22

*Pinkins v. Cabes*  
 98-1803 (La. App. 4 Cir. 1/27/99); 728 So. 2d 523 .....7

*Progressive Sec. Ins. Co. v. Foster*  
 97-2985 (La. 4/23/98); 711 So. 2d 675 ..... 22

*R.L. v. Voytac*  
 971 A.2d 1074 (N.J. 2009) .....6

*Roe v. Ram*  
 No. CIV. 14-00027 LEK-RL, 2014 WL 4276647 (D. Haw. Aug. 29, 2014) .....19



*Roman Catholic Bishop of Oakland v. Superior Court*  
 28 Cal.Rptr.3d 355 (Cal. Ct. App. 2005) .....17

*Saupe v. Aurora Public Sch. & David James O’Neill*  
 No. 2022CV30065 (Co. Dist. Ct. Aug. 3, 2022).....17

*S.K. v. Svrcek*  
 No. 400005/2021, 2021 WL 7286456 (N.Y. Sup. Ct. Dec. 1, 2021).....21

*Shearer v. Fitzgerald*  
 No. 0514920/2020 (N.Y. Sup. Ct. Oct. 1, 2021).....21

*Sheehan v. Oblates of St. Francis de Sales*  
 15 A.3d 1247 (Del. 2011)..... 18, 23

*Sliney v. Previte*  
 41 N.E.3d 732 (Mass. 2015).....23

*S.T. v. Diocese of Rockville Ctr.*  
 Index No. 099997/2019, Supreme Court, Nassau County (May 18, 2020).....21

*State ex rel. Poterie v. Walmsley*  
 162 So. 826 (1935) .....22

*State v. Apotex Corp.*  
 282 P.3d 66 (Utah 2012) .....22

*State v. Foster*  
 46-897 (La. App. 2 Cir. 4/13/12); 92 So. 3d 468 .....10

*State v. Interiano*  
 2003-1760 (La. 2/13/04); 868 So. 2d 9 .....9

*State v. Miller*  
 98-0301 (La. 9/9/98); 718 So. 2d 960 .....8

*State v. Standard Oil Co. of Louisiana*  
 178 So. 601 (1937).....22

*State v. Whitmore*  
 46-120 (La. App. 2 Cir. 3/2/11); 58 So. 3d 583 .....10

*S.Y. v. Roman Catholic Diocese*  
 No. 20-2605, 2021 WL 4473153 (D.N.J. Sep. 30, 2021).....20

*Taylor v. Piney Grove Volunteer Fire & Rescue Dep't*  
 20 CVS 13487, (N.C. Wake Cnty. Super. Ct. Dec. 20, 2021) .....21

*Theriot v. Terrebonne Par. Police Jury*  
 436 So. 2d 515 (La. 1983) .....22

*Third Municipality of New Orleans v. Ursuline Nuns*  
 2 La. Ann. 611 (1847) .....22

*T.M. v. Order of St. Benedict of New Jersey, Inc.*  
 No. MRS-L-399-17 (Law Division, Morris County).....20

*Torrey v. Portville Cent. Sch.*  
 125 N.Y.S.3d 531 (N.Y. Sup. Ct. 2020) (Table).....21

*W.F. v. Roman Catholic Diocese of Paterson*  
 No. 20-7020, 2021 WL 2500616 (D.N.J. June 7, 2021).....20

*Whitwell v. Archmere Acad., Inc.*  
 No. CIV.A.07C08006RBY, 2008 WL 1735370 (Del. Super. Ct. Apr. 16, 2008)  
 .....18

*Wiley v. Roof*  
 641 So. 2d 66 (Fla. 1994).....18

*Zimmerman v. Progressive Security Insurance Co.*  
 49-982 (La. App. 2 Cir. 8/12/15); 174 So. 3d 1230.....7

**STATUTES, REGULATIONS, AND RULES**

2021 La. Acts 322 (H.B. 492), § 2.....2

2021 N. Mar. I. Pub. L. No. 22-12.....21

7 GUAM CODE ANN. § 11301.1(b) .....19

7 GUAM CODE ANN. § 11306 .....19

ARIZ. REV. STAT. ANN. § 12-514 .....16

ARK. CODE ANN. § 16-118-118 .....17

CAL. CIV. PROC. CODE § 340.1 .....	17
CAL. CIV. PROC. CODE § 340.16 .....	17
D.C. CODE § 12-301 .....	22
DEL. CODE tit. 10, § 8145.....	18
DEL. CODE tit. 18, § 6856.....	18
FED. R. APP. P. Rule 29.....	1
FLA. STAT. ANN. § 95.11 .....	18
GA. CODE § 9-3-33.1 .....	18
HAW. REV. STAT. § 657-1.8 .....	19
KY. REV. STAT. ANN. § 413.249 .....	19
LA. CIV. CODE art. 3492 .....	15
LA. STAT. ANN. § 9:2800.9.....	7, 19
LA. STAT. ANN. § 9:2800.9 (1993).....	15
La. Sup. Ct. R. 12(1).....	24
ME. REV. STAT. ANN. tit. 14, § 752-C.....	19
MINN. STAT. § 541.073 .....	20
MONT. CODE § 27-2-216 .....	20
N.C. GEN. STAT. § 1-17.....	21
N.J. STAT. ANN. § 2A:14-2A.....	20
N.Y. C.P.L.R. § 214-g.....	20
NEV. REV. STAT. ANN. § 11.215 .....	20
NEV. REV. STAT. ANN. § 41.1396 .....	20
SB21-088, 73rd General Assembly, 1st Reg. Sess. (Colo. 2021) .....	17

UTAH CODE ANN. § 78B-2-308.....21  
 VT. STAT. ANN. tit. 12, § 522 .....22

**OTHER AUTHORITIES**

*At the Heart of Gold: Inside the USA Gymnastics Scandal* (HBO 2019) .....12  
 Bessel A. van der Kolk M.D. et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006) .....6  
 Brian Bushard, *FBI Reportedly Investigating Sexual Abuse By New Orleans Catholic Priests*, FORBES (June 29, 2022) .....13  
 CHILD USA, *Revival Laws for Child Sex Abuse Since 2002* (Jan. 1, 2022) .....16  
 D. Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US Dept. of Justice, Office of Justice Programs (2008) .....6  
 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).....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) .....5  
 Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018) .....14  
 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) .....4  
 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).....5  
 Gail Hornot, *Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know*, J. PEDIATRIC HEALTHCARE (2015) .....14

I. Angelakis, E.L. Gillespie, M. Panagioti, *Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis*, PSYCHOLOGICAL MEDICINE 1-22 (2019).....14

*Jeffrey Epstein: Filthy Rich* (Netflix 2020) .....12

Jim Mustian, *FBI opens sweeping probe of clergy sex abuse in New Orleans*, ASSOCIATED PRESS (July 1, 2022).....13

Kid Count Data Center, *Children who were victims of abuse or neglect by type of abuse in Louisiana*, ANNIE E. CASEY FOUNDATION (Feb. 8, 2022).....12

M. Merricka et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017).....14

M. Stoltenborgh et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011).....4

*Making the Case: Why Prevention Matters*, PREVENTCHILDABUSE.ORG .....12

Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).....11

*Myths and Facts About Sexual Assault*, CAL. DEP’T OF JUST. ....5

N. Pereda et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328 (2009) .....4

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).....5

Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008) .....6

Perryman Group, *Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment* (2014).....14

*Preventing Adverse Childhood Experiences*, CDC.GOV .....12

*Preventing Child Sexual Abuse*, CDC.GOV.....4

Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260 (2019).....5

Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, NAT’L INST. OF JUSTICE (2012) .....6

Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19 (2007).....6

## STATEMENT OF INTEREST OF *AMICUS CURIAE*

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to Federal Rule of Appellate Procedure 29.<sup>1</sup> 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.

This case will have immediate and broad implications on sex abuse victims' ability to bring civil claims in Louisiana. Act 322's revival window enables victims of sexual abuse whose claims were previously time-barred to bring their claims. 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.

---

<sup>1</sup> Undersigned counsel hereby certifies that: (1) no counsel for a party authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and (3) no person or entity—other than *amicus curiae*, their members, or their counsel—contributed money intended to fund the preparation or submission of this brief. Undersigned counsel further certifies that they conferred with counsel of record for plaintiff/appellant and defendants/appellees and all parties to this appeal consent to the filing of the instant *amicus* brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The United States District Court for the Eastern District of Louisiana rejected the constitutionality of Act 322's revival provision or "window," which revives for a period of three years all expired child sex abuse civil claims in Louisiana. 2021 La. Acts 322 (H.B. 492), § 2. CHILD USA supports the Appellant's request that this Court certify the questions at issue to the Louisiana Supreme Court. Alternatively, CHILD USA respectfully submits that Act 322's revival window comports with due process and is constitutional under Louisiana law. Importantly, Act 322's revival window is supported by the compelling public interest to remedy the injustice of Louisiana's prior unreasonably short statutes of limitation, which obstructed sex abuse victims' access to the courts and kept the public in the dark about child predators.

Moreover, a ruling against Act 322's revival window would negatively impact the hundreds of child sex abuse victims throughout Louisiana who are embracing the window in pursuit of long overdue justice. Such a ruling would jeopardize the compelling public policies of justice, public safety, and preventing future child sex abuse that the Louisiana Legislature sought to uphold and improve when it passed Act 322. Accordingly, CHILD USA respectfully submits that this Court uphold Act 322 as constitutional.



## ARGUMENT

### I. ACT 322 DOES NOT VIOLATE LOUISIANA'S DUE PROCESS CLAUSE

In the event this court does not certify the question regarding Act 322's constitutionality to the Louisiana Supreme Court, this Court should find Act 322's revival provision constitutional. As recognized in this case by the district court, recent Louisiana jurisprudence has abandoned the position that reviving prescribed causes of action is *ipso facto* unconstitutional, opening the door to constitutional revivals under certain circumstances.<sup>2</sup> *Lousteau v. Congregation of Holy Cross Southern Province, Inc.*, No. 21-1457, 2022 WL 2065539, at \*14–15 (E.D. La. June 6, 2022) (discussing *Chance v. American Honda Motor Co.*, 94-2582 (La. 4/11/94); 635 So. 2d 177 and *Cameron Parish School Board v. Acands*, 96-0895 (La. 1/14/97); 687 So. 2d 84).

In the context of child sex abuse cases, the court must weigh creating a property right for child predators against protecting the state's children from sex abuse. On its face, and for the reasons discussed below, this is a circumstance warranting special consideration in a constitutionality analysis, allowing the court to uphold Act 322 as constitutional.

---

<sup>2</sup> For further discussion on the *Chance* and *Cameron* decisions and how they impact the constitutionality of reviving prescribed causes of action in Louisiana, see Plaintiff-Appellant's Brief, Section II.D.

Even if a court were to determine that a defendant has a vested property right in a statute of limitations defense, *that right can be overcome* in the proper exercise of legislative authority. Here, the defendant's asserted property right is readily overcome by the state's compelling interest in exposing hidden child predators, protecting the children of Louisiana, and affording victims of child sex abuse access to justice based on current scientific understandings of trauma and rates of disclosure. Thus, Act 322 passes constitutional muster under a substantive due process inquiry.

**A. Child Sex Abuse Uniquely Prevents Victims from Bringing Timely Claims, Warranting Constitutional Revival**

Child sex abuse is a national public health crisis, with 3.7 million children sexually abused every year.<sup>3</sup> It affects one in five girls and one in thirteen boys in the United States.<sup>4</sup> An extensive body of evidence establishes that childhood sex 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

---

<sup>3</sup> See *Preventing Child Sexual Abuse*, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf> (last visited Feb. 22, 2022). 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).

<sup>4</sup> 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).

they speak to anyone about their traumatic experiences. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.<sup>5</sup> This is a crime that typically occurs in secret, and many victims of sexual violence assume no one will believe them.<sup>6</sup>

Additionally, child sex abuse victims may struggle to disclose their experiences due to the effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or the stigma of sexual victimization.<sup>7</sup> Victims also often develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.<sup>8</sup> Moreover, they disproportionately develop depression, substance abuse, Post-traumatic Stress Disorder (“PTSD”), and challenges in personal relationships.

---

<sup>5</sup> 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/>.

<sup>6</sup> See *Myths and Facts About Sexual Assault*, CAL. DEP’T OF JUST., [https://www.meganslaw.ca.gov/mobile/Education\\_MythsAndFacts.aspx](https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx) (last visited June 2, 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/factsheet/caring\\_for\\_kids\\_what\\_parents\\_need\\_know\\_about\\_sexual\\_abuse.pdf](https://www.nctsn.org/sites/default/files/resources/factsheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf).

<sup>7</sup> 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).

<sup>8</sup> 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/>.

These mechanisms may persist well into adulthood, long past the date of abuse. In fact, a study found that 44.9% of male child sex abuse victims and 25.4% of female child sex abuse victims delayed disclosure by *more than twenty years*.<sup>9</sup> Remarkably, it is estimated that 70–95% of child sexual assault victims never report their abuse to the police.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> This translates to a harsh reality: more victims first disclose their childhood sex abuse between ages *fifty and seventy* than during any other age.<sup>13</sup> By allowing these victims to come forward, Act 322's revival window rationally responds to this reality by prioritizing child protection over the purported property

---

<sup>9</sup> Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

<sup>10</sup> 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>.

<sup>11</sup> 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/>.

<sup>12</sup> 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).

<sup>13</sup> CHILD USA's data on those abused in Boy Scouts of America. For more information, contact [info@childusa.org](mailto:info@childusa.org).

rights of child abusers. The Court should recognize this as the type of circumstance contemplated by the *Chance* and *Cameron* courts when they appropriately reserved the possibility of constitutionally reviving certain prescriptive periods. See *Lousteau*, 2022 WL 2065539 at \*14–\*15.

A common argument against reviving child sex abuse causes of action is the threat of litigating “stale” claims. This is a red herring, as the plaintiffs—the child victims—bear the initial burden of proof. *Zimmerman v. Progressive Security Insurance Co.*, 49-982 (La. App. 2 Cir. 8/12/15); 174 So. 3d 1230, *reh’g denied, writ denied*, 2015-1955 (La. 11/30/15); 184 So. 3d 36, *reconsideration denied*, 2015-1955 (La. 1/15/16); 184 So. 3d 701; *Pinkins v. Cabes*, 98-1803 (La. App. 4 Cir. 1/27/99); 728 So. 2d 523, *reh’g denied, writ denied* 99-1242 (La. 7/19/99); 745 So. 2d 32. In fact, if a plaintiff is over the age of twenty-one, there is an additional step to complete before they even have the opportunity to establish a prima facie case—they must submit “certificates of merit” executed by their attorney and a licensed mental health practitioner declaring “that there is reasonable and meritorious cause for the filing of the petition” and that “there is a reasonable basis to believe that the plaintiff has been subject to criminal sexual abuse or physical abuse during his childhood.” La. Stat. Ann. § 9:2800.9(B).

Victims then face the daunting challenge of proving their case. The Louisiana Supreme Court itself has noted that “[i]t is well known and documented that sexual

abuse of children is extremely difficult to detect because ‘the offense often takes place in secret, the victim is young, vulnerable and reluctant to testify, and *there is often no physical or other evidence the abuse took place*’ . . . . The *evidence is rarely direct, but is circumstantial*” and “there are *rarely witnesses* to sexual abuse.” *Folse v. Folse*, 98-1976 (La. 6/29/99); 738 So. 2d 1040, 1047–48 (emphasis added) (quoting *State v. Miller*, 8-0301 (La. 9/9/98); 718 So. 2d 960, 962). The “stale claim” impact of time’s passage in the cases at issue is therefore more prejudicial to victims, not the wrongdoer. Creating a property right in a prescription period for child abuse would establish an additional layer of protection for child abusers and another nearly insurmountable hurdle for child victims, effectively ensuring that abusers would not be held accountable in a vast number of cases.

As the foregoing makes abundantly clear, this case is not simply about protecting “vested” property rights; it is about giving child abuse victims a voice and a chance to prevent their abusers from harming more children. In essence, the defense is asking this Court to sanction child sex abuse by placing a higher value on an abuser’s right to prescription than on Louisiana’s compelling interest in protecting children. In light of *Chance* and *Cameron*, this Court is not obligated to make such an unjust holding.

**B. The Science of Trauma and the Reality of Long Disclosure Rates Support the Legislature’s Enactment of Act 322 as a Rational Response to Louisiana’s Compelling Interest in Child Protection**

Act 322’s revival window serves Louisiana’s “compelling” 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) (noting 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.”) (citing *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002)). In *State v. Interiano*, the Supreme Court of Louisiana upheld a statute against a challenge that it was “unconstitutionally vague and ambiguous” in part because the legislative history demonstrated the legislature’s intent that the statute serve the “compelling state interest in protecting children from the physical and psychological harm that can result from sexual acts committed ‘upon the person’ of the child and the psychological impact that having such acts committed in their presence may cause.” 2003-1760 (La. 2/13/04); 868 So. 2d 9, 15–16.

This decision does not stand alone; indeed, Louisiana jurisprudence demonstrates a commitment to affirming legislative intent in furtherance of the state’s compelling interest in child protection. In *Folse*, the Louisiana Supreme Court upheld the application of a relaxed evidentiary standard to child custody cases governed by the Post-Separation Family Violence Relief Act (“PSFVRA”) because it was “clear that the Legislature has expressed an overriding interest in protecting

child victims of sexual abuse by encouraging the admission of reliable hearsay evidence . . . . That interest is not subject to being ‘second-guessed.’” 738 So. 2d at 1050 (quoting *Maryland v. Craig*, 497 U.S. 836, 855 (1990)). See also *State v. Whitmore*, 46-120 (La. App. 2 Cir. 3/2/11); 58 So. 3d 583, 595 (finding a Louisiana statute regulating the computer-aided solicitation of a minor did not unconstitutionally infringe upon the defendant’s right of free speech, but even if it had, “the state has a legitimate reason to do so” because “[it] is without question that the government has a compelling interest in protecting its children from sexual exploitation and abuse”); *State v. Foster*, 46-897 (La. App. 2 Cir. 4/13/12); 92 So. 3d 468, 475 (upholding the *Whitmore* court’s constitutionality analysis and affirming judicial deference to the statutory advancement of “the state’s compelling interest in protecting children from sexual exploitation and abuse”), *writ denied*, 2012-1094 (La. 11/16/12); 102 So. 3d 29; *Murphy v. Murphy*, 2004-1053 (La. App. 3 Cir. 12/8/04); 889 So. 2d 417, 422 (upholding the trial court’s decision that paternal grandfather was not allowed unsupervised visits with the child due to the grandfather’s alleged history of child sex abuse, noting that “[i]t is common knowledge that sexual abuse is profoundly harmful to a child. In fact, ‘[t]he State has a **compelling interest in protecting children** from sexual abuse’”) (emphasis original) (quoting *Folse*, 738 So.2d at 1045)); *Buchanan v. Langston*, 36-520 (La. App. 2 Cir. 9/18/02); 827 So. 2d 1186, 1189 (affirming that “[t]he State has a



compelling interest in protecting children from sexual abuse”) (citing *Globe Newspaper Co. v. Superior Ct. for Norfolk County*, 457 U.S. 596 (1982)).

Louisiana’s compelling interest in protecting its children from sex abuse weighs in favor of a civil revival window that would expose hidden predators and prevent them from inflicting future harm on Louisiana’s children. Just as *Ferber* found in its unanimous decision, Louisiana’s responsibility to prevent the sexual abuse of minors is a compelling “government objective of surpassing importance.” 458 U.S. at 757. Indeed, Act 322’s revival window serves three important public purposes: it (1) identifies previously unknown child predators; (2) educates the public to prevent future abuse; and (3) shifts the cost of abuse from victims to those who caused the abuse.

First, Act 322’s revival window facilitates the identification of previously unknown child predators<sup>14</sup> 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. In Louisiana alone, there were 1,926 children sexually abused between 2017 and 2020—and this only accounts for those cases

---

<sup>14</sup> Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).

actually reported to the authorities.<sup>15</sup> 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.<sup>16</sup> Through Act 322, the Legislature empowered victims to identify Louisiana's hidden child predators and the institutions that endanger children, helping prevent those predators from abusing more children.<sup>17</sup>

Second, Act 322's revival window helps educate the public about the dangers of child sex abuse and how to prevent such abuse. When predators and institutions are exposed, particularly high-profile ones like Jeffrey Epstein 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.<sup>18</sup> In Louisiana, for example, it was only in 2018—after a civil suit opened the floodgates to reports

---

<sup>15</sup> Kid Count Data Center, *Children who were victims of abuse or neglect by type of abuse in Louisiana*, ANNIE E. CASEY FOUNDATION (Feb. 8, 2022), <https://datacenter.kidscount.org/data/tables/6617-children-who-were-victims-of-abuse-or-neglect-by-type-of-abuse#detailed/2/any/false/574,1729,37,871,870,573,869/1268,1390,1267/13636,19471>.

<sup>16</sup> Elliot et al., *supra* note 14.

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

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

of child sex abuse—that the Archdiocese of New Orleans released a list of fifty-seven clergy members credibly accused of child sex abuse, despite incidences reported to the church dating back to 1935.<sup>19</sup> A subsequent analysis of the list conducted by the Associated Press found the Archdiocese failed to include at least twenty names.<sup>20</sup> Soon afterwards, the FBI opened its own investigation to determine whether the predator priests can be charged with federal crimes for sex trafficking.<sup>21</sup>

As Act 322 permits an increased number of child victims to come forward, it similarly sheds light on the prevalence of child sex abuse, which allows parents, guardians, and organizations 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, statute of limitation reform not only provides access to justice previously withheld from victims of child sex abuse, but it also prevents further abuse by fostering social awareness while encouraging public and private institutions to implement accountability and safe practices.

---

<sup>19</sup> Brian Bushard, *FBI Reportedly Investigating Sexual Abuse By New Orleans Catholic Priests*, FORBES (June 29, 2022), <https://www.forbes.com/sites/brianbushard/2022/06/29/fbi-reportedly-investigating-sexual-abuse-by-new-orleans-catholic-priests/?sh=274ad707751b>.

<sup>20</sup> Jim Mustian, *FBI opens sweeping probe of clergy sex abuse in New Orleans*, ASSOCIATED PRESS (July 1, 2022), [https://apnews.com/article/new-orleans-clergy-sex-abuse-fbi-investigation-0d0ee865d27508b7848909d8e82e87fb?taid=62bc675cf8ab3500015e51ab&utm\\_campaign=TrueAnthem&utm\\_medium=AP&utm\\_source=Twitter](https://apnews.com/article/new-orleans-clergy-sex-abuse-fbi-investigation-0d0ee865d27508b7848909d8e82e87fb?taid=62bc675cf8ab3500015e51ab&utm_campaign=TrueAnthem&utm_medium=AP&utm_source=Twitter).

<sup>21</sup> *Id.*

Third, the cost of child sex abuse to victims is enormous,<sup>22</sup> and they, along with the State of Louisiana, unjustly carry the burden of this expense. The estimated lifetime cost to society from United States child sex abuse cases that occurred in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.<sup>23</sup> 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.<sup>24</sup> Costs associated with suicide deaths are estimated at \$20,387 for female victims.<sup>25</sup> These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.<sup>26</sup> Revived child sex 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.

---

<sup>22</sup> 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>.

<sup>23</sup> Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Prior to 1993, claims of child sex abuse were subject to the one-year prescriptive period set forth in the Louisiana Civil Code.<sup>27</sup> After the 1993 enactment of legislation, which did not have retroactive application, the statute of limitations for these cases was extended to the victim reaching age twenty-eight. La. Stat. Ann. § 9:2800.9 (1993). These limitation periods rendered it practically impossible for the vast majority of victims to seek legal redress for their abuse; and since it is unconstitutional to revive a criminal statute of limitations, filing civil claims pursuant to the revival window is the *only avenue of justice available* to many Louisiana survivors.<sup>28</sup>

Accordingly, the Legislature's enactment of Act 322's claim revival provision not only rationally remedies the long-standing injustice to child sex abuse victims barred from bringing their claims under illogically short time restraints, but also serves Louisiana's compelling public policy interests in keeping its children safe and preventing future child sexual abuse. A judicial holding that bars Louisiana's revival legislation for child sex abuse statutes of limitation—in disregard of explicit statutory language, clear legislative intent, and compelling societal interests—would wrongly eviscerate vital legislative authority in Louisiana, as well as contradict the

---

<sup>27</sup> La. Civ. Code art. 3492.

<sup>28</sup> *California v. Stogner*, 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).

national trend of reviving civil claims to provide justice to victims of child sex abuse.<sup>29</sup>

## II. DECISIONS IN OTHER STATES REVIVING CHILD SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF ACT 322'S REVIVAL PROVISION

When Louisiana enacted Act 322's revival window, it joined a growing list of at least thirty states and territories that have enacted civil revival laws for child sex abuse claims. Over the past twenty years, revival legislation has grown in popularity as legislatures have recognized that child sex abuse victims need more time to come forward and that statutes of limitation have historically blocked their claims.<sup>30</sup> Nearly all courts that have considered the constitutionality of these revival laws 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 <sup>31</sup>

<sup>29</sup> See Section II.

<sup>30</sup> CHILD USA, *Revival Laws for Child Sex Abuse Since 2002* (Jan. 1, 2022), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

<sup>31</sup> *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).

<b>Jurisdiction</b>	<b>Revival Law</b>	<b>Statute</b>	<b>Constitutional Challenge</b>
<b>Arkansas</b>	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
<b>California</b>	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 <sup>32</sup>
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional <sup>33</sup>
<b>Colorado*</b>	3-Year Window (2021)	SB21-088, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (eff. January 1, 2022)  *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.	Challenge pending <sup>34</sup>

<sup>32</sup> *Coats v. New Haven Unified Sch. Dist.*, 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020).

<sup>33</sup> *Roman Catholic Bishop of Oakland v. Superior Court*, 28 Cal.Rptr.3d 355, 359 (Cal. Ct. App. 2005).

<sup>34</sup> *Saupe v. Aurora Public Sch. & David James O'Neill*, No. 2022CV30065 (Co. Dist. Ct. Aug. 3, 2022).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
<b>Delaware</b>	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged <sup>35</sup>
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional <sup>36</sup>
<b>Florida</b>	4-Year Window (1992)	FLA. STAT. ANN. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional <sup>37</sup>
<b>Georgia</b>	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional <sup>38</sup>

<sup>35</sup> See generally, *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011).

<sup>36</sup> *Whitwell v. Archmere Acad., Inc.*, No. CIV.A.07C08006RBY, 2008 WL 1735370, at \*2 (Del. Super. Ct. Apr. 16, 2008).

<sup>37</sup> *Wiley v. Roof*, 641 So. 2d 66, 69 (Fla. 1994). Notably, in its discussion of the United States Supreme Court's determination in *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945) that reviving statute of limitation periods did not violate the Fourteenth Amendment, the *Wiley* court focused on the *Chase* Court's caveat that "states may interpret their constitutions differently." *Wiley*, 641 So. 2d at 68. Ultimately, the *Wiley* court relied on the *Chase* dissent to conclude that Florida law "does not prioritize rights over remedies" and to hold that "[o]nce an action is barred, a property right to be free from a claim has accrued." Thus, in Florida, a defendant has a vested right in a statute of limitations period beginning on the date that period has run. This is distinguishable from Louisiana's approach to limitations periods and vested rights, which is divided into liberative prescription periods and peremptive prescription periods. *Borel v. Young*, 2007-0419 (La. 11/27/07); 98 So. 2d 42, 49, *on reh'g* (July 1, 2008). In Louisiana, only peremptive periods—analogueous to statutes of repose—automatically extinguish an underlying right. *Page v. Cameron Iron Works, Inc.*, 259 F.2d 420, 422 (5th Cir. 1958). Liberative prescription, on the other hand, is subject to several *contra non valentem* exceptions frequently present in child sex abuse claims. La. Civ. Code arts. 3447-3452; see Plaintiff-Appellant's Brief, Section IV.A.1.c. As a result, a liberative prescriptive period does not automatically confer a right to the defendant on the date the period has run. *Pearson v. Hartford Acc. & Indem. Co.*, 281 So. 2d 724, 726 (La. 1973). Accordingly, Louisiana's discussion of liberative prescriptive periods, such as those involved in the case at hand, agrees with the principal holding in *Chase* that the right to assert prescription is not a fundamental right. *Chase*, 325 U.S. at 314. Therefore, Louisiana's due process analysis is distinguishable from Florida's.

<sup>38</sup> *Harvey v. Merchan*, 860 S.E.2d 561, 566 (Ga. 2021).



<b>Jurisdiction</b>	<b>Revival Law</b>	<b>Statute</b>	<b>Constitutional Challenge</b>
<b>Guam</b>	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 <a href="https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf">https://www.guamlegislature.com/Public_Laws_31st/P.L.%2031-07%20Bill%20No.%2034-31.pdf</a>	Not challenged
<b>Hawaii</b>	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)	Constitutional <sup>39</sup>
<b>Kentucky</b>	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472); KY. REV. STAT. ANN. § 413.249	Not challenged
<b>Louisiana</b>	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); LA. STAT. ANN. § 9:2800.9	Challenge pending
<b>Maine</b>	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

<sup>39</sup> *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at \*9 (D. Haw. Aug. 29, 2014).

<b>Jurisdiction</b>	<b>Revival Law</b>	<b>Statute</b>	<b>Constitutional Challenge</b>
<b>Michigan</b>	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872)	Not challenged
<b>Minnesota</b>	3-Year Window (2013)	MINN. STAT. § 541.073, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681)	Not challenged
<b>Montana</b>	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216; 2019 Montana Laws Ch. 367 (H.B. 640)	Not challenged
<b>Nevada</b>	Permanent Window & Age 38 Limit (2021)	2021 Nevada Laws Ch. 288 (S.B. 203); NEV. REV. STAT. ANN. §§ 11.215 & 41.1396	Not challenged
<b>New Jersey</b>	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 (S.B. 477)	Constitutional <sup>40</sup>
<b>New York</b>	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 <sup>41</sup>

<sup>40</sup> See *S.Y. v. Roman Catholic Diocese*, 2021 WL 4473153, at \*4 (D.N.J. Sep. 30, 2021)); *B.A. v. Golabek*, 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*, 2021 WL 3484547 (N.J.Super.L. July 27, 2021); *T.M. v. Order of St. Benedict of New Jersey, Inc.*, MRS-L-399-17 (Law Division, Morris County).

<sup>41</sup> *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

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	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 <sup>42</sup>
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 <sup>43</sup>
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 <sup>44</sup>

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); *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. 2021).

<sup>42</sup> *S.T. v. Diocese of Rockville Centre*, Index No. 099997/2019, Supreme Court, Nassau County (May 18, 2020); *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); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, 152 N.Y.S.3d 242 (N.Y. Sup. Ct. 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); *Kastner v. Doe*, No. 900111 (Sup. Ct. Nassau Cty. Jan. 14, 2022); *Giuffre v. Dershowitz*, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at \*2 (S.D.N.Y. Apr. 8, 2020).

<sup>43</sup> 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).

<sup>44</sup> *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020). The *Roberts* decision focused heavily on Utah state court precedent and the “original understanding” of the Utah Constitution’s Due Process Clause in coming to its conclusion. *Id.* at 904–07, 909. Despite conceding that Utah Supreme Court precedent has “sent mixed signals” regarding whether the legislature has the power to abrogate a defendant’s “vested” right in a statute of limitations, the *Roberts* court emphasized that its “vested rights limitation on legislative power can be traced through our decisions for more than

Jurisdiction	Revival Law	Statute	Constitutional Challenge
<b>Vermont</b>	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
<b>Washington D.C.</b>	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Constitutional <sup>45</sup>

a century,” culminating in its recent decision on the matter in *State v. Apotex Corp.*, 282 P.3d 66 (Utah 2012). *Roberts*, 469 P.3d at 907–08. The court then pointed to its decision in *Ireland v. Mackintosh*, 61 P. 901 (Utah 1900) to support its position against the federal jurisprudence set forth in *Campbell v. Holt*, 115 U.S. 620 (1885), noting that *Ireland* agreed with the *Campbell* dissent, and that *Campbell* was simply “an aberration.” *Roberts*, 469 P.3d at 913.

The *Roberts* discussion is inapposite to Louisiana’s historical jurisprudence. Since 1847—even before the United States Supreme Court decided *Campbell*—the Louisiana Supreme Court began steadily shifting away from restricting the legislature’s power to enact retroactive laws. *Third Municipality of New Orleans v. Ursuline Nuns*, 2 La. Ann. 611, 613 (1847). From that point forward, Louisiana Supreme Court jurisprudence followed the development of federal law on legislative power and the due process clause. *See Municipality No. One v. Wheeler*, 10 La. Ann. 745 (1855); *State ex rel. Poterie v. Walmsley*, 162 So. 826, 838 (1935); *State v. Standard Oil Co. of Louisiana*, 178 So. 601, 611 (1937); *Bd. of Barber Examiners of Louisiana v. Parker*, 182 So. 485 (1938); *Theriot v. Terrebonne Par. Police Jury*, 436 So. 2d 515, 520 (La. 1983). Importantly, this trend did not change after Louisiana’s 1974 Constitutional Convention. *See Progressive Sec. Ins. Co. v. Foster*, 97-2985 (La. 4/23/98); 711 So. 2d 675, 688; *Babineaux v. Judiciary Comm’n*, 341 So. 2d 396, 400 (La. 1976). Moreover, the Louisiana Supreme Court has displayed clear support for the *Campbell* decision and for *Chase Securities*, the later United States Supreme Court decision that affirmed *Campbell*. *See Picone v. Lyons*, 601 So. 2d 1375, 1367–77; *Cole v. Celotex Corp.*, 599 So. 2d 1058, 1084 (La. 1992). Finally, unlike Utah’s recent jurisprudence on the issue, Louisiana’s recent due process analyses represent a further shift towards approving the legislature’s power to retroactively revive prescriptive periods, so long as there is clear legislative intent to do so. *See Chance*, 635 So. 2d 177; *Cameron*, 687 So. 2d at 91. As a result of the above, there is a clear distinction between Utah and Louisiana due process jurisprudence, especially related to legislative power to enact retroactive legislation, rendering *Roberts* unpersuasive in the case at hand.

<sup>45</sup> *Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church*, No. 2021 CA 0013531B (D.C. Super. Ct.).

As mentioned above, Louisiana’s jurisprudential approach to due process is flexible, warranting a judicial review of the revival statute at issue which accounts for the same or substantially similar public policy considerations weighed by those appellate courts having upheld revival laws in other states. *See, e.g., Harvey v. Merchan*, 860 S.E.2d 561, 566 (Ga. 2021); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 496 (Conn. 2015); *Sliney v. Previte*, 41 N.E.3d 732, 739–40 (Mass. 2015); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258–60 (Del. 2011); *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). Indeed, 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 rational, according to *amicus curiae*’s research. For this reason, and all those already discussed, this Court should likewise find that Act 322’s revival window is constitutional.

### **III. ACT 322’S REVIVAL PROVISION SHOULD BE CERTIFIED TO THE LOUISIANA SUPREME COURT**

In determining the constitutionality of Act 322’s revival provision, the district court noted that there was an “absence of authority from the Louisiana Supreme Court” on this specific constitutional issue and was thus forced to “make an *Erie* guess and determine, in its best judgment, how the state Supreme Court would resolve the issue if presented with the same case.” *Lousteau*, No. 21-1457, 2022 WL

2065539, at \*5 (citing *Temple v. McCall*, 720 F.3d 301, 307 (5th Cir. 2013); *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)). In situations such as these, the Louisiana Supreme Court “will consider certified questions from federal circuit courts of appeals.” See *Fox v. Nu Line Transport, L.L.C.*, 37 F.4th 289, 292 (5th Cir. 2022) (quoting La. Sup. Ct. R. 12(1)).

Resolving whether Act 322’s revival provision is constitutional pursuant to Louisiana law is necessary and urgent; not only for the plaintiff in this case, but for all victims of child sex abuse in Louisiana who stand to benefit from the access to justice that Act 322 provides. For many victims, deciding to bring a claim against their abuser is a traumatic and emotionally complex process, often involving painful conversations with family and loved ones and coming to terms with the enormous consequences of disclosing their abuse for the very first time.<sup>46</sup> Because of this, once a potential plaintiff has received an official notice of the deadline to assert their claims, they often need a period of reflection to determine whether to submit to the legal process. This reflection period is different for each victim and may include working with a therapist to prepare for each decision involved in making a legal claim. As a result, actionable disclosure is not a discrete event; it is typically an ongoing, incremental, years-long process.

---

<sup>46</sup> See Section I.A. above for a detailed discussion of the trauma attendant to child sex abuse.

Understandably, many victims are hesitant to begin such an emotionally and personally taxing legal process until they are certain their claims will be accepted by a court. A sense of control over their own stories is central for victims coping with child sex abuse, while a loss of control threatens to re-traumatize them. The three-year revival window provided by Act 322 closes less than two years from now, on June 13, 2024. Providing these victims with certainty that their claims are indeed constitutionally valid in the state of Louisiana is therefore an urgent matter; the longer the resolution takes, the smaller their window to justice becomes. As such, this Court should certify the issue of Article 322's state constitutionality to the Louisiana Supreme Court without delay.

### **CONCLUSION**

For the foregoing reasons, *Amicus Curiae* CHILD USA respectfully requests this Court certify the questions at issue to the Louisiana Supreme Court, or, in the alternative, hold that the revival provision of Act 322 is a constitutional exercise of the Legislature's authority.

Dated: September 29, 2022

Respectfully submitted,

/s/ Brittany R. Wolf-Freedman

Gerald E. Meunier (La. 9471)

Brittany R. Wolf-Freedman (La. 36733)

Gainsburgh, Benjamin, David Meunier &  
Warshauer, LLC

2800 Energy Centre

1100 Poydras Street

New Orleans, Louisiana 70163

(504) 522-2304

[bwolf@gainsben.com](mailto:bwolf@gainsben.com)

*Counsel for Amicus Curiae*

CHILD USA





## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I hereby certify that pursuant to Federal Rules of Appellate Procedure 29 and 32 the attached brief is proportionally spaced, has a typeface (Times New Roman) of 14 points, and contains 6,484 words (excluding, as permitted by Fed. R. App. P. 32(f), the cover page, table of contents, table of authorities, certificate of compliance, certificate of interested persons, and certificate of service), as counted by the Microsoft Word processing system used to produce this brief.

Dated: September 29, 2022

/s/ Brittany R. Wolf-Freedman

Brittany R. Wolf-Freedman  
Counsel for *Amicus Curiae*  
CHILD USA

### **CERTIFICATE OF SERVICE**

I hereby certify that, on September 29, 2022, I filed the foregoing Brief of *Amicus Curiae* using the Court's ECF system. Service on all counsel of record for all parties was accomplished electronically using the Court's CM/ECF system. I further certify that, on that date, the CM/ECF system's service-list report showed that all participants in the case were registered for CM/ECF use.

Dated: September 29, 2022

/s/ Brittany R. Wolf-Freedman  
Brittany R. Wolf-Freedman  
Counsel for *Amicus Curiae*  
CHILD USA