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STATE OF RHODE ISLAND
SUPREME COURT

ROBERT HOULLAHAN, PETER CUMMINGS, PHILIP EDWARDO *Appellants,* v. LOUIS A. GELINEAU, et al. *Appellees.*	SU-2021-0031-A SU-2021-0033-A SU-2021-0041-A On appeal from Superior Court: PC 2020-02010, 2019-10530, and 2019-09894

BRIEF OF *AMICUS CURIAE* CHILD USA

IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

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

CHILD USA is the leading organization in the United States to track and study child sex abuse statutes of limitations as part of its Sean P. McIlmail SOL Reform Institute. CHILD USA's Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on revival laws, and has advised Congress and state governors, legislatures, and courts on the constitutionality of revival laws for child sex abuse throughout the United States.

CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of Rhode Island's revival law for sexual abuse claims, the compelling public interest in revival of expired civil statute of limitations, the impacts of the revival laws on child protection, the science of disclosure timing by victims of their abuse, and the national landscape on revival windows for sexual abuse.

INTRODUCTION & SUMMARY OF ARGUMENT

The United States Supreme Court's and Rhode Island's case law precedent, as well as sound public policy, support revival of civil child sex abuse claims where

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the legislative intent is clear and where public interest weighs in favor of revival—both of which are true in the case at hand. The Rhode Island Legislature explicitly drafted revival language in section 9-1-51, evidencing its irrefutable intent to enact a revival provision. Additionally, the science of trauma that is specific to child sex abuse, that trauma's effect on victims' disclosure of claims, as well as Rhode Island's compelling public interest in child protection strongly outweigh any unfairness section 9-1-51's revival provision may pose to defendants. Finally, the national trend upholding the constitutionality of revival laws supports affirming the constitutionality of section 9-1-51.

Thus, CHILD USA respectfully submits that section 9-1-51 is constitutional and should be applied in this case.

ARGUMENT

I. SECTION 9-1-51's REVIVAL PROVISION IS CONSTITUTIONAL AS APPLIED UNDER THE UNITED STATES CONSTITUTION

The retroactive elimination of a civil statute of limitations is constitutional under the United States Constitution.[1] The Court in Landgraf v. USI Film Products held that retroactive civil legislation is constitutional if two conditions are met: (1)

[1] C.f., Stogner v. California, 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).

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the legislative intent is clear and (2) the change is procedural. 511 U.S. 244, 267 (1994). The Landgraf Court set out the duty of judicial deference as follows: "legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments." Id. at 272. The Court went on to observe that "the constitutional impediments to retroactive civil legislation are now modest . . . . Requiring *clear intent[of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits*." Id. at 272–73 (emphasis added).

The Landgraf ruling affirmed the Court's well-established precedent set forth in Chase Securities Corp. v. Donaldson, where the Court held that a state statute which abolished any defense the defendant might previously have had under the state statutes of limitation did not deprive the defendant of property without due process of law in violation of the Fourteenth Amendment. 325 U.S. 304 (1945). In so holding, the Court stated 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." Id. at 314. The Court even went further, stating that statutes of limitations represent "a *public policy* [enacted by a legislature] about the privilege to litigate [;]" *their protection is not a*

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"fundamental" right. Id. (emphasis added).

Therefore, the United States Supreme Court has made abundantly clear that, under the United States Constitution, this Court is required to defer to the Legislature's judgment to determine whether the enactment of section 9-1-51 is sound public policy. Other states follow this precedent, such as the Massachusetts Supreme Court, which upheld the retroactive application of its statute of limitations for child sexual abuse tort claims, reasoning:

> Our task is to interpret the Legislature's intention [about retroactivity]. Where the Legislature has "expressly stated" that the statute should be applied retroactively, we follow the legislative directive. That is the case here . . . The purpose of the act . . . is to preserve public safety and protect children who have been abused by enabling them to seek a remedy for severe injuries that they did not appreciate for long periods of time dueto the abuse . . . This is unquestionably an important public purpose.

Sliney v. Previte, 41 N.E.3d 732, 737, 739 (Mass. 2015) (citations omitted). See also Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (quoting K.E. v. Hoffman, 452 N.W.2d 509, 513–14 (Minn. Ct. App. 1990)) ("[W]e are not in a position to judge the wisdom of the legislature, where . . . the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy.").

The revival of expired statutes of limitations is something no legislature should take lightly, and the Rhode Island Legislature did not do so in 2019 when it enacted section 9-1-51, as discussed in detail in the following section. Accordingly,

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under the United States Constitution and applicable federal case law, this Court should find section 9-1-51's revival provision constitutional.

II. SECTION 9-1-51's REVIVAL PROVISION IS CONSTITUTIONAL AS APPLIED UNDER RHODE ISLAND'S DUE PROCESS CLAUSE

Under Rhode Island law, it is a well-established principle of constitutional analysis that "legislative enactments are presumed to be constitutional." Brennan v. Kirby, 529 A.2d 633, 639 (R.I. 1987). A party seeking to challenge the validity of a statute must "prove *beyond a reasonable doubt*" that the statute violates the State or Federal Constitution. Gorham v. Robinson, 186 A. 832, 837 (R.I. 1936) (emphasis added). See also Brennan, 529 A.2d at 639–41.

In 1986, Rhode Island amended its Constitution to add a civil due process clause. R.I. Const. art. I, § 2. This due process ensures that a person has "notice and an opportunity to be heard" before "any deprivation of . . . life, liberty, or property." Moreau v. Flanders, 15 A.3d 565, 588 (R.I. 2011). Rhode Island's Due Process clause tracks the language of the United States Constitution's Fourteenth Amendment almost word for word,[2] and the due process analysis under both Constitutions has been, for the most part, "identical." Wyrostek v. Nash, 984

[2] Article 1, Section 2 of the Rhode Island Constitution provides, "[n]o person shall be deprived of life, liberty or property without due process of law", while the Fourteenth Amendment of the U.S. Constitution provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

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F.Supp.2d 22, 27 (D.R.I. 2013) (citing Rhode Island Depositors Economic Protection Corp. v. Brown, 659 A.2d 95, 101 (R.I. 1995)).

Thus, just as the United States Supreme Court rejected the proposition that retroactive elimination of a viable civil statute of limitations defense constitutes a denial of due process, so should Rhode Island. As such, this Court should follow the United States Supreme Court and its own state court precedent and find that any presumptions against retroactivity can be readily overcome by the Legislature's express intent and the compelling public policy reasons to enact section 9-1-51's revival provision.

A. Rhode Island's Constitution Permits Explicit Legislative Revival of Time-barred Claims

Extending statutes of limitations to retroactively revive otherwise time-barred claims has been deemed "wholly within legislative authority" and constitutional under Rhode Island law. See Dandeneau v. Bd. of Governors for Higher Educ., 491 A.2d 1011, 1012 (R.I. 1985); Twomey v. Carlton House of Providence, Inc., 320 A.2d 98, 101–02 (R.I. 1974) (finding "there were no federal or state constitutional restraints on the Legislature's right to restore a remedy barred by the passage of time."); Spagnoulo v. Bisceglio, 473 A.2d 285 (R.I. 1984) (determining the retroactive application of Uniform Law on Paternity did not deprive putative father of due process of law). In Twomey, the Rhode Island Supreme Court upheld as constitutional an explicitly retroactive amendment to a statute of limitation that

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revived the remedy for a time-barred personal injury claim. Id. at 101–02. Similarly, the Rhode Island Supreme Court held in Dandeneau that it was constitutional for the Legislature to retroactively amend the statute of limitation from two to three years and revive plaintiff's claim. 491 A.2d at 1012.

Since then, this Court, in a matter it deemed of "first impression," answered whether a new law, which lengthened the statute of limitation for child sex abuse claims from three to seven years and contained a discovery rule that would toll the statute of limitation, could apply retroactively to revive previously time-barred claims.[3] Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996). This Court reasoned that "the amendment to art. 1, sec. 2, precludes legislation with retroactive features permitting revival of an already time-barred action that would impinge upon a

[3] "Section 9-1-51 reads in pertinent part as follows:
'(a) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever period expires later.
'(b) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents cause the injury complained of, but may compute the date of discovery from the date of the last act *by the same perpetrator* which is part of a common scheme or plan of sexual abuse or exploitation.
'* * *
'(e) As used in this section, "childhood sexual abuse" means any act committed by *the defendant* against a complainant who was less than eighteen (18) years of age at the time of the act and which act would have been a criminal violation of chapter 37 of title 11.' (Emphasis added.)" Kelly, 678 A.2d at 875–76.

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defendant's vested and substantive rights and would offend a defendant's art. 1, sec. 2, due process protections." Id. at 883. Without undertaking any further constitutional analysis, the Court held that "art. 1, sec. 2, in our State Constitution bars the retroactive application of section 9-1-51 to claims already time-barred." Id. at 884.

Importantly, the provisions at issue in Kelly are distinguishable from the provision at issue in the case at hand, most notably because the Kelly provisions *contained no explicit intent by the Legislature to revive expired claims*. In fact, the statutory text makes absolutely no mention of what claims—expired, pending or future—would be affected by the new statute of limitation. This is a critical distinction, given the Legislature's role in determining policy and weighing public interest. In the case at hand, the Legislature clearly evidenced its intent to revive expired claims in section 9-1-51(a)(3) by providing: "any claim or cause of action based on conduct of sexual abuse may be commenced within the time period enumerated in subsections (a)(1)(i) and (a)(1)(iii) *regardless if the claim was time-barred under previous version of general laws*" (emphasis added). Due to this major distinction, the Kelly opinion fails to be instructive as to section 9-1-51's constitutionality.

Kelly can also easily be distinguished from the retroactive laws this Court upheld as constitutional in pre-Kelly cases. In both Twomey and Dandeneau, the

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statutory language included an explicit directive for retroactivity. See Dandeneau, 491 A.2d at 1012 (noting the Act was amended during pendency of the appeal to extend the limitations period to three years, and stated "[t]his act shall take effect upon passage and shall apply to all pending cases brought hereunder * * *."); Twomey, 320 A.2d at 100 (stating the 1971 act "shall apply retroactively to those actions which had accrued less than two years prior to August 1, 1971."). Accordingly, the Kelly holding is applicable only narrowly to the specific type of law at issue in that case—a statute of limitation *that does not include explicit retroactive or revival language.* Kelly's progeny, Theta Prop. v. Ronci Realty co., Inc.,[4] affirms this interpretation by noting that "[g]enerally, statutes and their amendments are 'to operate prospectively *unless it appears by clear, strong language or by necessary implication that the Legislature intended to give the statute retroactive effect.*" 814 A.2d 907, 915 (R.I. 2003) (quoting Pion v. Bess Eaton Donuts Flour Co., 637 A.2d 367, 371 (R.I. 1994)) (emphasis added).

Therefore, the holding in Kelly does not render the revival provision in section 9-1-51 unconstitutional, as the provision contains *explicit instructions that the law should revive civil claims* for Rhode Island's child sex abuse victims whose claims had expired under prior versions of the law. Indeed, the Legislature's language

[4] Theta is additionally distinguishable from the case at hand because it discussed the revival of a statute of repose, which is different than a statute of limitation. 814 A.2d at 913–17.

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evidences its purposeful crafting of a law that could not be overturned by Kelly, but which must be upheld by the historically assured Rhode Island precedent that affirms the Legislature's explicit intent to enact a statutory revival provision.

B. Section 9-1-51's Compelling Public Policy Interest in Providing Child Sex Abuse Victims Access to Justice Outweighs Any Unfairness

Traditionally, the Rhode Island Supreme Court has been critical of the "vested right" concept, saying it is "merely conclusory and disfavored when considering due process challenges." Brown, 659 A.2d at 103 (citing Raymond v. Jenard, 390 A.2d 358, 359–60 (R.I. 1978) (quoting Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 HARV. L. REV. 692, 696 (1960) (stating, "from an analysis of the cases it becomes apparent that it is impossible to reduce the potentially infinite variety of situations in which the problem of retroactivity can arise to a single common denominator")). While the Kelly court subscribed to the vested rights theory, it did not address whether there are limitations to that vested right or if it was absolute. 678 A.2d at 884. Additionally, as previously discussed, the Kelly holding is not applicable to section 9-1-51's revival provision. Thus, this Court should rely on its prior and better-established precedent.

One such precedential case is Brown, in which this Court explained that it "has traditionally employed a balancing test in cases involving retroactive statutes in which the court weighs the public interest in retroactivity against the unfairness

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created." 659 A.2d at 101–04 (quoting Brennan, 529 A.2d at 640). Thus, even if a court were to determine that a defendant has a due process right to a statute of limitation, *that right can be overcome*. In this case, it is readily overcome by the state's compelling interest in exposing hidden child sexual predators, protecting the children of Rhode Island, and affording survivors of child sexual abuse access to justice based on current scientific understandings of trauma and resulting disclosure timing. As such, the Legislature correctly recognized that the strength of public interest in enacting section 9-1-51 soundly outweighs any arguments of unfairness.

i. *Child Sex Abuse Uniquely Prevents Victims from Bringing Timely Claims*

Child sex abuse is a national public health crisis, with 3.7 million children sexually abused every year.[5] It affects one in five girls and one in thirteen boys in the United States.[6] An extensive body of evidence establishes that childhood sex

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[5] 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).

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

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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 victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.[7] This is a crime that typically occurs in secret, and many victims of sexual violence assume no one will believe them.[8]

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.[9] Victims also often develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or

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[7] Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 CHILD ABUSE NEGL. 123 (2015), https://pubmed.ncbi.nlm.nih.gov/25846196/.

[8] See Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., 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/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

[9] 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).

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addressing the harm they suffered.[10] Moreover, they disproportionally 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, a study found that 44.9% of male victims and 25.4% of female child sex abuse victims delayed disclosure by *more than twenty years*.[11] Remarkably, it is estimated that 70–95% of child sexual assault victims never report their abuse to the police.[12] 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.[13]

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

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[10] 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/.

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

[12] D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (2008), https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf.

[13] 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/.

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report it.[14] By allowing these victims to come forward, section 9-1-51's revival provision reasonably responds to this harsh reality.

ii. *The Science of Trauma and Delayed Disclosure Support the Legislature's Enactment of section 9-1-51 as a Reasonable Response to Rhode Island's Compelling Public Policy Interest in Child Protection*

Section 9-1-51's revival provision serves Rhode Island'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]here 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.'") (citing Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002)); State v. Taylor, 562 A.2d 445, 454–55 (R.I. 1989) (stating, "[t]he protection of the psychological and physical well-being of minor children is a compelling and therefore also a legitimate state interest."); In re Ephraim L., 862 A.2d 196, 200 (R.I. 2004) (asserting that a "'state's role in protecting children may properly be preventive of harm as well as remedial.'") (quoting In re Lester, 417 A.2d 877, 881 (R.I.1980)); Heroux v.

[14] 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; 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).

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Carpentier, 1998 WL 388298, at *10 (R.I. Super. 1998) (recognizing the court "must exercise its common law jurisdiction to protect the interests of children within its jurisdiction" from a "knowing and deliberate course of conduct" by sexual predators).

Rhode Island's compelling interest in protecting its children from sexual abuse weighs in favor of a civil revival window that would expose hidden predators and prevent them from inflicting future harm on Rhode Island's children. Just as Ferber found in its unanimous decision, Rhode Island's responsibility to prevent the sexual abuse of minors is a "government objective of surpassing importance." 458 U.S. at 757. Indeed, section 9-1-51's revival provision serves three compelling 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, section 9-1-51's revival provision facilitates the identification of previously unknown child predators[15] 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

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

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abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.[16] Through section 9-1-51, the Legislature empowered victims to identify Rhode Island's hidden child predators and the institutions that endanger children, which helps prevent those predators from further abusing children and allows the public to develop policies to inhibit new abuse from occurring in the long-term.[17]

Second, section 9-1-51's revival provision 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 Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.[18] Because section 9-1-51 permits an increased number of child victims to come forward, it sheds light on the prevalence of child

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[16] Id.

[17] See generally, Making the Case: Why Prevention Matters, PREVENTCHILDABUSE.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.

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

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sex abuse, which allows parents and other guardians to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. Indeed, 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.

Third, the cost of child sex abuse to victims is enormous,[19] and they, along with the State of Rhode Island, 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.[20] 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

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[19] 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.

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

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productivity, $8,333 in child welfare costs, $2,434 in costs associated with crime, and $3,760 in special education costs.[21] Costs associated with suicide deaths are estimated at $20,387 for female victims.[22] These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.[23] 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.

Nevertheless, the prior statutes of limitation in Rhode Island for child sex abuse victims were age twenty-five to file a suit against abusers and age twenty-one for claims against other defendants. R.I. Gen. Laws § 9-1-51 (1993); § 9-1-14(b) (1993). These statutes of limitation 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 the revival provision is the *only avenue of justice available* to many survivors.[24]

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[21] Id.
[22] Id.
[23] Id.
[24] Stogner, 539 U.S. at 610 (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).

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Accordingly, the Legislature's enactment of section 9-1-51's claim revival provision 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 Rhode Island's compelling public policy interests in keeping its children safe and preventing future child sexual abuse. Therefore, a finding that the Kelly holding bars all revival legislation—regardless of explicit statutory language, clear legislative intent, and compelling societal interests—would eviscerate legislative authority and buck the national trend of reviving civil claims to provide justice to victims of child sex abuse.[25]

III. DECISIONS IN OTHER STATES REVIVING SEXUAL ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY OF SECTION 9-1-51's REVIVAL PROVISION

When Rhode Island enacted section 9-1-51's revival provision, it joined a growing list of at least thirty states and territories that have enacted civil revival laws for sexual abuse claims. Over the past twenty years, revival legislation has grown in popularity as legislatures have recognized that child sex abuse victims need more

[25] See, e.g., Chevron Chemical Co. v. Superior Court, 641 P.2d 1275, 1284 (Ariz. 1982); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014); Harding v. K.C. Wall Products, Inc., 831 P.2d 958, 967–69 (Kan. 1992); Pryber v. Marriott Corp., 296 N.W.2d 597 (Mich. Ct. App. 1980), aff'd, 307 N.W.2d 333 (Mich. 1981) (per curiam); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993); Panzino v. Continental Can Co., 364 A.2d 1043, 1046–47, (N.J. 1976); Lane v. Dept. of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Vigil v. Tafoya, 600 P.2d 721, 724–25 (Wyo. 1979). See also Allstate Ins. Co. v. Kim, 829 A.2d 611 (Md. 2003).

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time to come forward and that statutes of limitation have historically blocked their claims.[26] 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[27]
Arkansas	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93rd General Assembly, 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

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

[27] 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).

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Jurisdiction	Revival Law	Statute	Constitutional Challenge
	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020); 2019 CAL. LEGIS. SERV. CH. 861 (A.B. 218)	Constitutional[28]
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional[29]
Colorado*	3-Year Window (2021)	SB21-088, 73rd General Assembly, 1st Reg. Sess. (Colo. 2021) (Effective, January 1, 2022) *This is not a revival law—it is a new cause of action—but it opens a window to justice for survivors whose claims have expired.	Not challenged
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged[30]
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional[31]

[28] Coats v. New Haven Unified Sch. Dist., 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020).
[29] Roman Catholic Bishop of Oakland v. Superior Court, 28 Cal.Rptr.3d 355, 359 (Cal. Ct. App. 2005).
[30] See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).
[31] Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008).

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Jurisdiction	Revival Law	Statute	Constitutional Challenge
Florida	4-Year Window (1992)	FLA. STAT. ANN. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional [32]
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional[33]
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
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8; 2012 Hawaii Laws Act 68 (S.B. 2588)	Constitutional[34]

[32] Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).
[33] Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).
[34] Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014).

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Jurisdiction	Revival Law	Statute	Constitutional Challenge
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[35]
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

[35] Lousteau v. Congregation of the Holy Cross South. Province, Inc., et al., 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.).

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Jurisdiction	Revival Law	Statute	Constitutional Challenge
New Jersey	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B; 2019 NJ Sess. Law Serv. Ch. 120 (S.B. 477)	Constitutional[36]
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[37]

[36] 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).

[37] 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 (SDNY).

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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[38]
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[39]
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 [40]
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

[38] 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); 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 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020).

[39] 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).

[40] Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

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Jurisdiction	Revival Law	Statute	Constitutional Challenge
Washington D.C.	2-Year Window (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Constitutional[41]

Not a single state that permits revival of time-barred claims—like Rhode Island—has refused to uphold such a law for sexual abuse survivors.[42] As mentioned above, Rhode Island's modern approach to due process is flexible, and judicial review of its revival provision involves substantially similar public policy considerations as 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, 864 P.2d at 779–80; Hoffman, 452 N.W.2d at 514. 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 section 9-1-51 is constitutional.

[41] Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Super. Ct.).
[42] In Rhode Island, cases that predate the 1986 adoption of a civil due process clause have upheld revival See infra Part II.

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CONCLUSION

For the foregoing reasons, *Amicus Curiae* CHILD USA respectfully requests this Court hold that the revival provision of section 9-1-51 is a constitutional exercise of the Legislature's authority as applied to this case.

Dated: November 2, 2022

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B)

1. This brief contains 6,195 words, excluding the parts exempted from the word count by Rule 18(b).

2. This brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 2nd day of November, 2022, I filed and served this Brief of *Amicus Curiae* through the electronic filing system on the following, and the document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System:

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