



June 22, 2023

RE: Recent Colorado decision holding the state's unusual window is unconstitutional is irrelevant to the child sex abuse window bills now pending

Dear Senators and Representatives:

Overall, this has been a winning year for child sex abuse statutes of limitations reform. For example, Maryland, which started considering SOL reform 20 years ago, passed a permanent window.

There was, however, a recent setback in Colorado where the state Supreme Court held its window unconstitutional. **There are no other windows remotely like the Colorado window, including Pennsylvania's window bills.** They are simply apples and oranges.

The Colorado law was an innovative approach, which created a new cause of action for revival of expired claims. Innovation is to be expected in this vibrant movement, but the tried-and-true method of revival in all other windows are not affected by the window. Pennsylvania's window is the tried-and-true version.

With an ordinary window, the state eliminates the deadline for filing claims for existing causes of action. The only alteration for the claim is the deadline to file. That's a mere procedural change that is constitutional. The defendants knew or should have known about the potential liability when they engaged in bad acts. Adding a new cause of action, though, creates surprise, makes the change substantive, and, therefore, unconstitutional.

Pennsylvania's window bills are identical to the ones that were enacted and overcome constitutional attack in Arizona, California, Delaware, Georgia, Guam, Hawaii, Maine, New Jersey, New York, Vermont, and D.C. **No state with a statutory child sexual abuse revival window and a Remedies Clause has invalidated the revival window under the Remedies Clause.** In fact, five states with a Remedies Clause have found their child sexual abuse revival law constitutional based on Due Process, and in Connecticut in part based on the Remedies Clause. Another 6 states with Remedies Clauses in their constitution have revived child sexual abuse claims, without challenge. They are Arizona, Kentucky, Montana, Oregon, Vermont, and West Virginia.

In sum, the Colorado ruling is irrelevant to Pennsylvania's window efforts. In fact, both HB1 and HB2 are constitutional, as Gov. Shapiro explained when Attorney General and as I explained in [testimony](#) in January and March of this year.





Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton".

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