

SUPREME COURT OF LOUISIANA

No. 2023-CC-01194

DOUGLAS BIENVENU, ET AL.,
Plaintiffs-Respondents

v.

DEFENDANT 1 AND DEFENDANT 2,
Defendants-Applicants

JOHN DOE 1, ET AL.,
Plaintiffs-Respondents

v.

DEFENDANT 1 AND DEFENDANT 2,
Defendants-Applicants

ON APPLICATION FOR SUPERVISORY WRITS FROM THE SIXTEENTH JUDICIAL DISTRICT COURT, PARISH OF ST. MARTIN DIV. F, No. 87184 C/W 87515, THE HONORABLE ANTHONY J. SALEME, JR. PRESIDING

**MOTION FOR LEAVE OF CHILD USA AND CHILD USADVOCACY TO FILE A BRIEF OF
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-RESPONDENTS**

Pursuant to Rule VII of the Supreme Court of Louisiana, CHILD USA and CHILD USAAdvocacy, by and through their undersigned counsel, requests leave to file the accompanying brief as *amicus curiae* in the above-captioned matter.

CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child

protection and the common good. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on revival laws, and has advised state governors, legislatures, and judiciaries on the constitutionality of revival laws for child sex abuse throughout the country.

CHILD USA Advocacy is a 501(c)(4) advocacy organization dedicated to ending child abuse and neglect by advocating for better laws for child protection. Drawing on the combined expertise of the nation's leading child advocates, specifically our sister organization, CHILD USA, CHILD USA Advocacy is committed to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy's Executive Director, Kathryn Robb, Esq., is a lawyer, legislative advocate, and outspoken survivor of child sexual abuse who has been fighting to pass meaningful child sex abuse legislation across the country for over 16 years. Kathryn is an expert on revival laws and has advised state governors, legislatures, and judiciaries on the constitutionality of revival laws for child sex abuse throughout the country, including in Louisiana.

Under the Rules of the Louisiana Supreme Court, a brief of an amicus curiae "must include consideration of and satisfaction of at least one of the following criteria: (1) Amicus has an interest in some other case involving a similar question; (2) There are matters of fact or law that might otherwise escape the court's attention; or (3) The amicus has substantial, legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already party to the case." Supreme Court Rule VII, § 12. In this case, amici satisfy two of the three stated criteria.

First, amici have the legal and social science expertise to help the Court determine the question at issue concerning the constitutionality of Act 322's revival provision or "window," as interpreted by Act 386, 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; 2022 La. Acts 386 (H.B. 402), § 2. Amici are uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of Louisiana's revival law for

sexual abuse claims, the compelling public interest in revival of expired civil statutes of limitation, impacts of the revival laws on public safety, the science of trauma and delayed disclosure by victims of their abuse, and the current national trends on revival windows for sexual abuse. Amici hope that its contribution will aid the Court's analysis beyond that which the parties' counsel will provide.

Additionally, amici have substantial, legitimate interests in this case that are directly correlated with their mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case has immediate and broad implications on the ability of sex abuse victims to bring civil claims in Louisiana. Act 322's revival window enables victims of child sexual abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sexual abuse in Louisiana exposes hidden predators to the public, shifts the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educates the public and helps prevent future abuse.

For these reasons, amici respectfully requests that the Court grant this Motion for Leave to File Brief of *Amicus Curiae* and accept the accompanying proposed *amicus* brief for filing.

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CHILD USA
FIGHTING FOR CHILDREN'S CIVIL RIGHTS

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ARK269 v. Archdiocese of New York, No. 950301/2020, 2022 WL 2954144, at *1 (N.Y. Sup. Ct. July 19, 2022)17

Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Superior Court)19

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Dupuis v. Roman Cath. Bishop of Portland, No. BCD-CIV-2022-00044, 2023 WL 2117841, at *1 (Me. Bus. & Consumer Ct. Feb. 13, 2023).....16

Edwardo v. Gelineau, No. PC-2019-10530, 2020 WL 6260865, at *1 (R.I. Super. Ct. Oct. 16, 2020), consol. appeal filed, Nos. 2021-0032-A, 2021-0033-A, & 2021-0041-A (R.I. 2021).18

Farrell v. United States Olympic & Paralympic Committee, No. 120CV1178FJSCFH, 2021 WL 4820251 (N.D.N.Y. Oct. 15, 2021).....18

Folse v. Folse, 98-1976 (La. 6/29/99); 738 So. 2d 1040, 1047–486

Gilbert v. Catahoula Parish Police Jury, 407 So.2d 1228 (La.1981)7

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SC ST § 15-3-555	18
UTAH CODE ANN. § 78B-2-308.....	18
VT. STAT. ANN. tit. 12, § 522.....	19
W.V. CODE §55-2-15	19

Other Authorities

Brian Bushard, <u>FBI Reportedly Investigating Sexual Abuse By New Orleans Catholic Priests</u> , FORBES (June 29, 2022).....	12
CHILD USA, <u>Fiscal Impact of SOL Reform</u> , (2018) available at https://www.childusa.org/fiscalimpact	12
CHILD USA, <u>Revival Laws for Child Sex Abuse Since 2002</u> (Jan. 1, 2022).....	13
D. Finkelhor et al., <u>Sexually Assaulted Children: National Estimates and Characteristics</u> , US Dept. of Justice, Office of Justice Programs (2008)	9
Delphine Collin-Vézina et al., <u>A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse</u> , 43 CHILD ABUSE NEGL. 123 (2015), https://pubmed.ncbi.nlm.nih.gov/25846196/	9
Fang, et. al., <u>The Economic Burden of Child Maltreatment in the United States & Implications for Prevention</u> , 36 CHILD ABUSE & NEGLECT 156-165 (2012).....	11, 12
G.S. Goodman et. al., <u>A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy</u> , 14 PSYCHOL. SCI. 113-8 (2003)	9
Hoskell, L. & Randall, M., <u>The Impact of Trauma on Adult Sexual Assault Victims</u> , JUSTICE CANADA 30 (2019).....	8
Hunter, S., <u>Disclosure of child sexual abuse as a life-long process: Implications for health professionals</u> , 32(2) AUSTRALIAN & NEW ZEALAND J. OF FAM. THERAPY 159,	8
Jim Mustian, <u>FBI opens sweeping probe of clergy sex abuse in New Orleans</u> , ASSOCIATED PRESS (July 1, 2022)	12
Kid Count Data Center, <u>Children who were victims of abuse or neglect by type of abuse in Louisiana</u> , ANNIE E. CASEY FOUNDATION (Feb. 8, 2022).....	8
Kimberly Curth, <u>Louisiana lawmakers pass legislation that will give victims of child sex abuse more time to come forward with civil claim</u> , FOX 8 LIVE (June 11, 2021), available at https://www.fox8live.com/2021/06/11/louisiana-lawmakers-pass-legislation-that-will-give-victims-child-sex-abuse-more-time-come-forward-with-civil-claim	2, 6

<u>Making the Case: Why Prevention Matters</u> , PREVENTCHILDABUSE.ORG	11
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R. Anda, et al., <u>The Enduring Effects of Abuse and Related Adverse Experiences in Childhood</u> , 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005)	8
Ramona Alaggia et al., <u>Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)</u> , 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019)	9
Sarah E. Ullman, <u>Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors</u> , 16 J. CHILD SEX. ABUSE 19, 30	12

STATEMENT OF INTEREST & IDENTITY OF *AMICI*¹

CHILD USA: CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA’s mission is to employ in-depth legal analysis and cutting-edge social science research to develop the best policies to protect children, prevent future abuse and neglect, and bring justice to survivors. CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good.

CHILD USA Advocacy: CHILD USA Advocacy is a 501(c)(4) advocacy organization dedicated to ending child abuse and neglect by advocating for better laws for child protection. Drawing on the combined expertise of the nation’s leading child advocates, specifically our sister organization, CHILD USA, CHILD USA Advocacy is committed to protecting children’s civil liberties and keeping children safe from abuse and neglect.

Amici have a significant interest in the outcome of this case which will impact victims’ ability to access justice and hold institutions accountable for the abuses that *they* made possible. Acts 322 and 386 (together “the Acts”), were designed not only to remedy the long-standing injustice of Louisiana’s prior unreasonably restrictive prescriptive period to child sex abuse (“CSA”) victims, but also to mitigate the effects the public suffered because victims were forced to remain silent about the individuals and institutions that put children at risk. Thus, this case presents an opportunity for this Court to further the noble goals that the legislature sought attain when it passed Acts 322 and 386 by upholding the constitutionality of Louisiana’s revival window.

¹ No party’s counsel authored the brief in whole or in part. No person other than these amici curiae, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

In 2021, the Louisiana legislature enacted a law to provide CSA victims an opportunity to finally seek redress for the trauma they endured by reviving, for a period of three years, all civil claims arising from CSA against any party, regardless of when the abuse occurred. 2021 La. Acts 322 (H.B. 492), § 2; 2022 La. Acts 386 (H.B. 402) § 2. After the revival law was passed, the Church assured the public that it was committed to “doing all that we can for the healing of survivors of abuse,”² and yet it has continued to suppress the truth by blocking the discovery of information that would be harmful to their reputations. In furtherance of these acts, Defendants argue that the revival window unjustly divests them of their right to plead a limitations defense. To be sure, there is nothing unjust about reviving claims against both the individuals who perpetrate abuse and the institutions that enable that abuse.

As amici will argue below, Act 322’s revival provision or “window”, as interpreted by Act 386, comports with due process and is constitutional under Louisiana law. The revival window is a rational remedy to the long-standing injustice of Louisiana’s prior unreasonably short statute of limitation (“SOL”) which obstructed victims’ access to the courts and kept the public in the dark about child predators and enabling institutions. Further, it is supported by the compelling public policy interests of justice, safety, and child protection that the Louisiana legislature sought to uphold and improve when it passed the revival window. Accordingly, a judicial holding that bars Louisiana’s revival legislation for CSA claims—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 national trend of

² Kimberly Curth, Louisiana lawmakers pass legislation that will give victims of child sex abuse more time to come forward with civil claim, FOX 8 LIVE (June 11, 2021), available at <https://www.fox8live.com/2021/06/11/louisiana-lawmakers-pass-legislation-that-will-give-victims-child-sex-abuse-more-time-come-forward-with-civil-claim/>

reviving civil claims to provide justice to victims of child sex abuse.³

As the foregoing makes abundantly clear, this case is not simply about protecting “vested” property rights; it is about giving child sex abuse victims a voice and a chance to prevent their abusers from harming more children. Accordingly, this Court should uphold the constitutionality of the revival window, thereby putting perpetrators and enabling institutions on notice that the state of Louisiana stands with the victims of these heinous crimes.

I. PREDATORS AND ENABLING INSTITUTIONS CANNOT RELY ON THE VESTED RIGHTS DOCTRINE TO EVADE AND UNDERMINE LEGISLATIVE ENACTMENTS DESIGNED TO ADDRESS IMPORTANT PUBLIC POLICY CONCERNS

The Catholic Church has, for decades, systematically ignored laws that require allegations of abuse to be reported to law enforcement and avoided disclosing to the public facts about its own crimes and endangerment of children. For years, Church officials were aware of predatory clergy and spent obscene amounts of time and money to cover it up by moving predatory priests from parish to parish.⁴ Untold numbers of children needlessly suffered because of their actions. Now, Defendants seek to use the doctrine of vested rights as a sword to evade the predictable consequences of their criminal and tortious conduct. Defendants’ position, if accepted, would further incentivize institutions to suppress the truth as they could avoid accountability simply by running out the clock on potential claims. For this reason, and the reasons articulated below, this Court should not permit such a holding.

A. Perpetrators and Enabling Institutions Do Not Have a Vested Right to a Prescription Defense

³ See Section III.

⁴ See generally Reports of Attorneys General, Grand Juries, Individuals, Commissions, and Organizations, BISHOPACCOUNTABILITY.ORG (last visited June 1, 2023), <https://www.bishop-accountability.org/AtAGlance/reports.htm>.

Under Louisiana Civil Code art. 6, the legislature can impose any temporal effects it desires on a new piece of legislation provided no constitutional provision limits their authority to do so. Polk, et al v. Edwards, et al., 626 So.2d 1128, 1132 (La. 1193) (citing In re American Waste & Pollution Control Co., 588 So.2d 367 (La. 1991)). Thus, to mount a successful constitutional attack on the Acts, Defendants must point to a state constitutional provision that expressly prohibits the legislature from passing retroactive laws and must establish that Act 322's revival window is barred by that provision. Id. Defendants have failed to identify a constitutional source that supports their position that the right to plead prescription is a vested right entitled to constitutional protection from legislative revival; instead, Defendants rely entirely on outdated and inapt jurisprudence to create such a right where none exists. See Id. at 1132; see also Doerr v. Mobil Oil Corp., 00-947, pp. 13-14 (La. 12/19/00), 774 So.2d 119, 128-29, opinion corrected on reh'g., 00-947 (La. 3/16/01), 782 So.2d 573 (relaying that Louisiana's civil code establishes two sources of law—legislation and custom—and further that “legislation will supersede custom in every instance”).

Indeed, Louisiana courts have always held that prescription is procedural in nature, not substantive. Succession of Lewis, 22-79 (La. 10/21/22), 351 So.3d 336; State v. All Prop. & Cas. Ins. Carriers Authorized & Licensed To Do Bus. In State, 06-2030 (La. 8/25/06), 937 So.2d 313; Cameron Par. Sch. Bd. v. Acands, Inc., 96-895 (La. 1/14/97), 687 So.2d 84; Chance v. Am. Honda Motor Co., Inc., 93-2582 (La. 4/11/94), 635 So.2d 177. Because the revival provisions go to matters of procedure, Act 322 applies retroactively as a matter of law. See La. Civ. Code art. 6 (“Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary”); see also Doe v. The Society of Roman Catholic Church of the Diocese of Lafayette, No. 22-120, p.13 (La. App. Cir. 8/18/23) (“As a procedural statute, Section 2800.9 could not create causes of action; it simply provided timeframes for when existing causes of action could be brought.”). As

articulated by the Third Circuit Court of Appeals in Doe, “the exception of liberative prescription is not a vested right until it is the subject of a judgement sustaining such exception. **Until then it is just a mere expectation of a future benefit.**” No. 22-120 at p.13 (emphasis added). While Defendants may have had the protection of the prior prescriptive period while it existed, the Acts are not rendered unconstitutional merely because the policy change is disadvantageous to Defendants. See Chase Securities Corp. v. Donaldson, 325 U.S. 304, 316, 65 S. Ct. 1137, 1149 (1945). Defendants’ mere expectancy in a prescription defense to claims arising from child sexual abuse falls short of what this Court has held to be a fundamental or “vested right” in need of constitutional protection. See Sawicki v. KIS Stavanger Prince, 01-528, p. 10 (La. 12/7/01), 802 So.2d 598, 604 (emphasis added) (“The right must be absolute, complete and unconditional, independent of a contingency, and *a mere expectancy of future benefit ... does not constitute a vested right.*”).

B. This Court Must Defer to the Legislature on Matters of Important Public Policy

Even if this Court were to find that Defendants have a substantive right to a prescription defense, that right *may* be overcome where there is a “clear and unequivocal expression of intent by the legislature” to revive a prescribed cause of action. Chance, 635 So. 2d at 178. To that end, Act 386 states, in no uncertain terms, “It is the express intent of the legislature to revive until June 14, 2024, any cause of action related to sexual abuse of a minor that previously prescribed under any Louisiana prescriptive period.” 2022 La. Acts 386 §2. In the words of the Archdiocese of New Orleans, “[t]his legislation allows those abused not only in churches and schools but in their families, playgrounds, workplaces, youth organizations, and other public businesses where children and teenagers should be safe to pursue their claims in court *regardless of when it occurred.*”⁵

⁵ Supra n. 2 (emphasis added)

Despite the legislature’s clear intent, Defendants argue that that the revival provision is unfairly prejudicial because, if upheld, they will be forced litigate “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. Notably, this Court has found 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.

Where, as here, 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”, Landgraf v. USI Film Products, 511 U.S. 244, 272-73 (1994), it is not within the province of the judiciary to second-guess the wisdom or soundness of the policy. See Greater New Orleans Expressway Commission v. Olivier, 04-2147 (La. 1/19/05), 892 So.2d 570,573; see also Lewis, 351 So.3d at 347 (recognizing that the legislature's revision of La. Civ. Code art.197 was based on equity and policy considerations" and relying on the same to find that it applied retroactively).

II. ACT 322’S REVIVAL WINDOW COMPORTS WITH DUE PROCESS UNDER THE LOUISIANA STATE CONSTITUTION

Under Louisiana law, even retroactive laws imposing new burdens based on past acts come to court with a strong presumption of constitutionality. Moore v. RLCC Technologies, Inc., 95-2627 (La. 2/28/96), So.2d. 1135. Even if we assume, *arguendo*, that Defendants have a substantive right to a prescription defense, that right is still subject to the reasonable exercise of legislative power. Accordingly, under a substantive due process analysis, Defendants’ constitutional challenge will fail if there exists a reasonable relationship between the legislative enactment and the promotion or protection of a public good, such as health, safety, or welfare. See Theriot v. Terrebonne Parish Police Jury, 436 So.2d 515 (La.1983); Gilbert v. Catahoula Parish Police Jury, 407 So.2d 1228 (La.1981); City of New Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976); Harry's Hardware, Inc. v. Parsons, 410 So.2d 735 (La.1982), cert. denied,459 U.S. 881, 103 S.Ct. 178, 74 L.Ed.2d 145 (1982). The revival window is a rational legislative response to the realities of trauma that can delay disclosure and it also serves Louisiana’s compelling interest in child protection. For these reasons, and as articulated below, Act 322’s revival window comports with due process under the Louisiana state constitution.

A. Revival of Prescribed CSA Claims is a Rational Response to the Realities of Trauma That Can Impact Disclosure Timing

Child sexual abuse is a national public health crisis, with **3.7 million children sexually abused every year**.⁶ It affects **1 in 5 girls and 1 in 13 boys** in the United States.⁷ In Louisiana alone, there were 1,926 children sexually abused between 2017 and 2020—and this represents only those cases that were reported to authorities.⁸ An extensive body of research shows that CSA victims are traumatized in a way that is distinguishable from victims of other crimes. The traumatic effects of CSA are complex and individualized, and they impact victims throughout their lifetime.⁹ Many victims suffer in silence for decades before they speak to anyone about their traumatic experiences.¹⁰ Remarkably, it is estimated that

⁶See Preventing Child Sexual Abuse, CDC.gov, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

⁷ 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).

⁸ 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>.

⁹ See Hoskell, L. & Randall, M., The Impact of Trauma on Adult Sexual Assault Victims, JUSTICE CANADA 30 (2019), available at https://www.justice.gc.ca/eng/rppr/jr/trauma/trauma_eng.pdf; see also R. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005)

¹⁰ Hunter, S., Disclosure of child sexual abuse as a life-long process: Implications for health professionals, 32(2) AUSTRALIAN & NEW ZEALAND J. OF FAM. THERAPY 159, 164 (2011); Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>. 3

70–95% of child sexual assault victims never report their abuse to the police.¹¹

As children, victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.¹² Additionally, CSA victims may struggle to disclose their experiences due to 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.¹³ Victims may also develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.¹⁴ These mechanisms may persist well into adulthood, long past the date of abuse. It is no surprise then that **44.9% of male victims and 25.4% of female victims delay disclosure by more than twenty years.**¹⁵ This translates to a harsh reality: **more victims first disclose their abuse between ages fifty and seventy than at any other age.**¹⁶ By the time victims come forward—assuming they come forward at all—they often find the courthouse doors are closed because the SOL on their claims expired long before they were psychologically able to disclose.

Prior to 1993, CSA claims in Louisiana were subject to a one-year prescriptive period. La. Civ. Code art. 3492. After the 1993 enactment of legislation, which did not have retroactive application, the prescriptive period for these cases was extended to the victim reaching age twenty-eight—still well below

¹¹ 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>.

¹² 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/>.

¹³ 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).

¹⁴ 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/>.

¹⁵ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

¹⁶ CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3 (June 21, 2022), <https://childusa.org/6-17-2022-2021sol-report-final/>.

the average age of disclosure. La. Stat. Ann. § 9:2800.9 (1993). Accordingly, the revival window is a rational response by the Louisiana legislature designed to provide access to justice previously withheld from CSA victims and to bring Louisiana's law in line with science. Even if the revival window were subject to a higher standard of scrutiny, there is hardly a more compelling interest necessitating revival than the protection of Louisiana's children now and into the future.

B. Act 322's Revival Window Serves Louisiana's Compelling Interest in Child Protection

Louisiana's responsibility to prevent the sexual abuse of children is a compelling government objective of surpassing importance. See e.g., State v. Interiano, 2003-1760 (La. 2/13/04); 868 So. 2d 9, 15–16 (upholding the constitutionality of a statute where the legislative history indicated an intent to 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.”); see also State v. Whitmore, 46-120 (La. App. 2 Cir. 3/2/11), 58 So. 3d 583, 595 (finding a statute regulating the computer-aided solicitation of a minor did not unconstitutionally infringe upon the defendant's right of free speech, but stating that even if it had, “the state ha[d] 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, writ denied, 2012-1094 (La. 11/16/12); 102 So. 3d 29 (affirming judicial deference to the statutory advancement of “the state's compelling interest in protecting children from sexual exploitation and abuse”).

Louisiana's compelling interest in child protection weighs in favor of a civil revival window. Indeed, the revival window serves three compelling public purposes: it (1) identifies previously unknown child predators and their enabling institutions; (2) shifts the cost of abuse from victims and the state onto those responsible; and (3) educates the public about the prevalence, signs, and impact of child sexual abuse

so that it can be prevented in the future. By enacting the revival window, the Louisiana legislature achieves these purposes, taking reasonable steps to revive expired CSA claims where it recognized an opportunity to right a long-standing injustice that kept the truth hidden and victims out of court.

First, Act 322's revival window facilitates the identification of previously unknown child predators and the institutions that shield them, who would otherwise remain hidden. Child predators are compulsive sex offenders for whom there is still no cure. Many abuse children well into their elderly years; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, with the longest period between offense and conviction being thirty-six years.¹⁷ That is why public identification and incarceration are crucial to keeping children safe. In passing the revival window, the Legislature empowered victims to identify Louisiana's hidden child predators and the institutions that endanger children which will in turn help prevent future harm.¹⁸

Second, the cost of CSA to victims is enormous, and staggering to the community as the negative effects over a victim's lifetime generate many costs that impact the nation's health care, education, criminal justice, and welfare systems.¹⁹ In fact, the estimated average lifetime cost per victim of abuse includes: \$32,648 in childhood health care costs, \$10,530 in adult medical costs, \$144,360 in productivity losses, \$7,728 in child welfare costs, \$6,747 in criminal justice costs, and \$7,999 in special education costs.²⁰ That places the economic burden of abuse at an estimated \$2 trillion annually.²¹ Window cases

¹⁷ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

¹⁸ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDBUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁹ Fang, et. al., The Economic Burden of Child Maltreatment in the United States & Implications for Prevention, 36 CHILD ABUSE & NEGLECT 156-165 (2012).

²⁰ Id.

²¹ See CHILD USA, Fiscal Impact of SOL Reform, (2018) available at <https://www.childusa.org/fiscalimpact>.

that result in awards and settlements will not only equitably shift some of the cost of abuse away from victims and onto those responsible for the abuse, they will also save the state money by reducing expenditures on important public services.

Finally, the revival window helps educate the public about the prevalence and nature of CSA crimes so that they can be prevented in the future. When predators and institutions are exposed, particularly high-profile ones like the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways predators use their positions of trust to groom victims and the institutional failures that enable their abuse.²² For example, in Louisiana, it was only in 2018—after a civil suit opened the floodgates to reports of child sexual abuse—that the Archdiocese of New Orleans released a list of fifty-seven clergy members credibly accused of child sexual abuse, despite incidences reported to the church dating back to 1935.²³ A subsequent analysis of the list conducted by the Associated Press found the Archdiocese failed to include at least twenty names.²⁴ Soon afterwards, the FBI opened its own investigation to determine whether the predator priests could be charged with federal sex trafficking crimes.²⁵ The public scrutiny attendant to these revelations then encourages public and private institutions to implement accountability and safety practices thereby helping to prevent further abuse.

²² 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/>

²³ 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>.

²⁴ 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.

²⁵ Id. at 3.

For the reasons articulated above, Act 322’s revival window is not only a rational remedy to the injustice of Louisiana’s prior unreasonably short prescriptive period for CSA claims, but also the best way to serve Louisiana’s compelling public policy interests.

III. LOUISIANA’S LAW IS IN ACCORD WITH THE NATIONAL TREND PERMITTING REVIVAL OF TIME-BARRED CIVIL CLAIMS

Over the past twenty years, revival legislation has grown in popularity as legislatures have recognized that CSA victims need more time to come forward and that SOLs have historically blocked their claims.²⁶ Today, Louisiana stands alongside at least *thirty states and territories* that have enacted civil revival laws for CSA claims. 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 (2023)	Arkansas Act 616; S.B. 204, 94th Gen. Assemb., Reg. Sess. (Arkansas 2023); ARK. CODE ANN. § 16-118-118	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), rev. denied, No. CV-22-0003-PR (Ariz. April 8, 2022).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
	2-Year Window (2021)	Arkansas Act 1036; S.B. 676, 93rd Gen. Assemb., Reg. Sess. (Arkansas 2021); ARK. CODE ANN. § 16-118-118	Challenge Pending ²⁸
California	1-Year ASA 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 ²⁹
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002); 2002 CAL. LEGIS. SERV. CH. 149 (S.B. 1779)	Constitutional ³⁰
Colorado*	3-Year Window (2021) *This is not a revival law—it is a new cause of action that includes a revival window.	SB21-088, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (eff. January 1, 2022)	Unconstitutional ³¹

²⁸ H.C. et al. v. Nesmith, No. CV-23-328 (Ark. Ct. App. 2023), available at https://caseinfo.arcourts.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_frames?backto=D&case_id=CV-23-328&begin_date=&end_date=.

²⁹ Coats v. New Haven Unified Sch. Dist., 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020); Huth v. Cosby, No. BC565560, 2022 WL 17583304, at *3 (Cal. Super. Ct. May 17, 2022); Huth v. Cosby, No. BC565560, 2022 WL 17583301, at *4 (Cal. Super. Ct. Sep. 27, 2022); Doe v. Los Angeles Unified School Dist., No. 20STCV44886, 2023 WL 8188636 (Cal. Super. Oct. 12, 2023).

³⁰ Roman Catholic Bishop of Oakland v. Superior Court, 28 Cal.Rptr.3d 355, 359 (Cal. Ct. App. 2005).

³¹ Aurora Public Schools and David James O’Neill v. A.S. and B.S., 531 P.3d 1036 (Col. June 20, 2023) affirming Angelica Saupe & Brian Saupe v. Aurora Public Sch. & David James O’Neill, No. 2022CV30065 (Colo. Dist. Ct. Aug. 3, 2022).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Connecticut	Age 48 Limit (2002)	CONN. GEN. STAT. § 52-577D; 2002 CONN. LEGIS. SERV. P.A. 02-138 (S.H.B. 5680).	Constitutional ³²
Delaware	2-Year Window (2010)	DEL. CODE tit. 18, § 6856; 2010 Delaware Laws Ch. 384 (H.B. 326)	Not challenged ³³
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145; 2007 Delaware Laws Ch. 102 (S.B. 29)	Constitutional ³⁴
Florida	4-Year Window (1992)	FLA. STAT. ANN. § 95.11; 1992 Fla. Sess. L. Serv. Ch. 92-102 (CSSB 1018)	Unconstitutional ³⁵
Georgia	2-Year Window (2015)	GA. CODE § 9-3-33.1; 2015 Georgia Laws Act 97 (H.B. 17)	Constitutional ³⁶
Guam	Permanent Window (2016)	7 GUAM CODE ANN. §§ 11306 & 11301.1(b); Added by P.L. 33-187:2 (Sept. 23, 2016)	Constitutional ³⁷
	2-Year Window (2011)	7 GUAM CODE ANN. § 11306(2) (2011); Public Laws No.31-06 (2011)	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 ³⁸
Kansas	Age 31 Limit (2023)	2023 Kan. Sess. Laws Ch. 28 (H.B. 2127); KAN. STAT. ANN. § 60-523	Not challenged

³² Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 406 (Conn. 2015).

³³ See generally, Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011).

³⁴ Whitwell v. Archmere Acad., Inc., No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008).

³⁵ Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994).

³⁶ Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021).

³⁷ Rupley v. Balajadia, No. 20-00030 (D. Guam June 3, 2021).

³⁸ Roe v. Ram, No. CIV. 14-00027, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Kentucky	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472); KY. REV. STAT. ANN. § 413.249	Challenge pending ³⁹
Louisiana	3-Year Window (2021)	2021 La. Sess. Law Serv. Act 322 (H.B. 492); LA. STAT. ANN. § 9:2800.9	Challenge pending ⁴⁰
Maine	Permanent Window (2021)	ME. REV. STAT. ANN. tit. 14, § 752-C; 2021 Me. Legis. Serv. Ch. 301 (H.P. 432) (L.D. 589)	Constitutional ⁴¹
Maryland	Permanent Window (2023)	2023 MARYLAND LAWS CH. 6 (H.B. 1); 2023 MARYLAND LAWS CH. 5 (S.B. 686).	Challenge pending ⁴²
Massachusetts	Age 53 Limit (2014)	MASS. GEN. LAWS CH. 260, § 4C; 2014 MASS. LEGIS. SERV. CH. 145 (H.B. 4126).	Constitutional ⁴³
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
Missouri	Age 23 Limit (1990)	MO ST § 537.046.	Unconstitutional ⁴⁴

³⁹ Killary v. Thompson, No. 2020-CA-0194, 2022 WL 2279865 (Ky. Ct. App. June 24, 2022), rev. granted (Ky. Dec. 7, 2022).

⁴⁰ Lousteau v. Congregation of Holy Cross S. Province, Inc., No. CV 21-1457, 2022 WL 2065539 (E.D. La. June 8, 2022), vacated and remanded, No. 2022-30407, 2023 WL 5524753 (5th Cir. Aug. 28, 2023); T.S. v. Congregation of Holy Cross S. Province, Inc, et al., No. 2022-CA-1826 (La. Jan. 2023); Doe v. Soc’y of the Roman Cath. Church of the Diocese of Lafayette, 347 So.3d 148 (Mem) (La. 2022); Doe v. Doe, No. 2020-10745 (La. Civ. Dist. Ct. 2020).

⁴¹ Dupuis v. Roman Cath. Bishop of Portland, No. BCD-CIV-2022-00044, 2023 WL 2117841, at *1 (Me. Bus. & Consumer Ct. Feb. 13, 2023).

⁴² John Doe, Richard Roe, and Mark Smith v. Roman Catholic Archdiocese of Washington, filed in the Circuit Court for Prince George’s County, Maryland (Oct. 1, 2023).

⁴³ Sliney v. Previte, 41 N.E.3d 732, 737 (Mass. 2015).

⁴⁴ Doe v. Roman Catholic Diocese of Jefferson City, 862 S.W.2d 338, 340 (Mo. 1993).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
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
New Jersey	2-Year Window & Age 55 Limit ASA & CSA (2019)	N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B; 2019 NJ Sess. Law Serv. Ch. 120 (S.B. 477)	Constitutional ⁴⁵
New York	1-Year ASA Window (2022)	NY CPLR § 214-J; 2022 Sess. Law News of N.Y. Ch. 203 (S. 66-A)	Not challenged
	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 ⁴⁶
	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 ⁴⁷

⁴⁵ See e.g., 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).

⁴⁶ See e.g., ARK269 v. Archdiocese of New York, No. 950301/2020, 2022 WL 2954144, at *1 (N.Y. Sup. Ct. July 19, 2022); ARK10 v. Archdiocese of New York, No. 950038/2019, 2022 WL 1452438, at *1 (N.Y. Sup. Ct. May 9, 2022); Giuffre v. Prince Andrew, Case No. 1:21-cv-06702-LAK (S.D.N.Y. 2021).

⁴⁷ See e.g., PB-36 Doe v. Niagara Falls City Sch. Dist., 182 N.Y.S.3d 850, 852 (N.Y. App. Div. 2023), aff'g 152 N.Y.S.3d 242 (N.Y. Sup. Ct. 2021); Farrell v. United States Olympic & Paralympic Comm., 567 F.Supp.3d 378 (N.D.N.Y. 2021); PC-41 Doe v. Poly Prep Cty. Day Sch., No.20 Civ. 3628, 2021 WL 4310891, at *3-9 (E.D.N.Y. Sept. 22, 2021), appeal filed, (2d Cir. Oct.22, 2021); Giuffre v. Dershowitz, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020);

Jurisdiction	Revival Law	Statute	Constitutional Challenge
North Carolina	2-Year Window (2019)	N.C. GEN. STAT. § 1-17; 2019 North Carolina Laws S.L. 2019-245 (S.B. 199)	Constitutional ⁴⁸
Northern Mariana Islands	Permanent Window (2021)	2021 N. Mar. I. Pub. L. No. 22-12 (HB 22-2, SDI)	Not challenged
Ohio	5-year Window (2023)	OH ST § 2305.111; 2023 Ohio Laws File 12 (Am. Sub. H.B. 35) "Scout's Honor Law"	Not Challenged
Oregon	Age 40 Limit (2010)	O.R.S. § 12.117; 2009 Oregon Laws Ch. 879 (H.B. 2827).	Not challenged
Rhode Island	Age 53 Limit (2019)	RI ST § 9-1-51; 2019 Rhode Island Laws Ch. 19-83 (19-H 5171B).	Challenge pending ⁴⁹
South Carolina	3-Year Limited Window (2001)	SC ST § 15-3-555	Unconstitutional ⁵⁰
Utah	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308; 2016 Utah Laws Ch. 379 (H.B. 279)	Unconstitutional ⁵¹
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)	Constitutional ⁵²
West Virginia	Age 36 Limit (2020)	W.V. CODE §55-2-15; 2020 WEST VIRGINIA LAWS CH. 2 (H.B. 4559).	Not challenged

⁴⁸ See Mckinney v. Goins, No. COA22-261, (Court of Appeals of NC Sept. 12, 2023), ruling constitutional and reversing Wake County Superior Court Dec. 20, 2021; Taylor v. Piney Grove, No. COA 22-259 (Court of Appeals of NC Sept. 12, 2023), reversing Wake County Superior Court Dec. 20, 2021.

⁴⁹ Eduardo v. Gelineau, No. PC-2019-10530, 2020 WL 6260865, at *1 (R.I. Super. Ct. Oct. 16, 2020), consol. appeal filed, Nos. 2021-0032-A, 2021-0033-A, & 2021-0041-A (R.I. 2021).

⁵⁰ Doe v. Crooks, 364 S.C. 349, 351–52, 613 S.E.2d 536, 538 (2005).

⁵¹ Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

⁵² A.B. v. S.U., No. 22-AP-200, 2023 WL 3910756, at *5 (Vt. June 9, 2023).

Jurisdiction	Revival Law	Statute	Constitutional Challenge
Washington D.C.	2-Year Window ASA & CSA (2019)	D.C. CODE § 12-301; 2018 District of Columbia Laws 22-311 (Act 22-593)	Constitutional ⁵³

The collective jurisprudence recognizes only three bases upon which this Court may find the revival window unconstitutional: (1) there is a state constitutional provision expressly prohibiting retroactive legislation; (2) the claims are barred by a statute of repose; or (3) the legislature did not express its intent for the statute to apply retroactively. Here, none of the three bases exist; the Louisiana State Constitution does not contain an anti-retroactivity provision, there is no peremption on CSA claims, and the Legislature has expressed its clear and unequivocal intent to revive all CSA related claims against all parties, regardless of when the abuse occurred. Thus, if this Court wishes to find the Acts’ unconstitutional, it must create a new basis upon which to do so. 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 other state supreme courts having upheld revival laws after rejecting the outdated vested rights approach, even where a court determined defendants had a substantive right to a limitations defense. *See, e.g., McKinney v. Goins*, No. COA22-261, (Court of Appeals of NC Sept. 12, 2023), reversing Wake County Superior Court Dec. 20, 2021; *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). For this reason, and all those set forth above, the Court should likewise find that Act 322’s revival window is constitutional.

⁵³ *Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church*, No. 2021 CA 0013531B (D.C. Super. Ct.).

CONCLUSION

For the foregoing reasons, *Amici* respectfully requests that this Court affirm the rulings of the Third Circuit and District Court and uphold Act 322's revival provision, as interpreted by Act 386, as a constitutional exercise of the Legislature's authority.

Dated: January 19, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above Motion for Leave and accompanying Amicus Curiae brief on the following counsel of record for all parties by electronic mail on January 19, 2024:

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