

THE  
**SUPREME COURT OF THE STATE OF NEW YORK**  
**APPELLATE DIVISION - FIRST DEPARTMENT**

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**Q.G.,** : **Appellate Case No.: 2022-04752**

**Plaintiff-Appellant,** : **NOTICE OF MOTION TO**

**-against-** : **FILE AN *AMICUS CURIAE***

**CITY OF NEW YORK** : **BRIEF IN SUPPORT OF**

**Defendants-Respondent,** : **PLAINTIFF-APPELLANT**

**-and-** :

**SPENCE-CHAPIN SERVICES TO CHILDEN** :  
**AND FAMILIES f/k/a Spence-Chapin**  
**Adoption Services,**

**Defendant.** :

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**PLEASE TAKE NOTICE**, that upon the annexed affirmation of James Marsh Esq., the annexed proposed brief, and all the pleadings, proceedings and exhibits included herein, CHILD USA will move this Court at the Courthouse located at 27 Madison Ave, New York, New York 10010 on the day of July 21, 2023, at 2PM or as soon thereafter as counsel can be heard, for the following relief:

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

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

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

Dated: July 21, 2023

New York, New York

Respectfully submitted,



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**TO:**

**CLERK OF THE COURT**

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THE  
**SUPREME COURT OF THE STATE OF NEW YORK**  
**APPELLATE DIVISION - FIRST DEPARTMENT**

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**Q.G.,** : **Appellate Case No.: 2022-04752**

**Plaintiff-Appellant,** : **AFFIRMATION**

**-against-** : **IN SUPPORT OF MOTION**

**CITY OF NEW YORK** : **OF CHILD USA**

**Defendants-Respondent,** :

**-and-** :

**SPENCE-CHAPIN SERVICES TO CHILDEN** :  
**AND FAMILIES f/k/a Spence-Chapin** :  
**Adoption Services,** :

**Defendant.** :

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

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

2) CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect,

and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on revival laws, and has advised state governors, legislatures, and judiciaries on the constitutionality of revival window laws for child sex abuse throughout the country, including in New York.

3) CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case will have immediate and broad implications on the ability of victims of child sex abuse to seek justice and to hold entities accountable for the harms caused by their actions or inactions. The Child Victims Act enables victims of sexual abuse whose claims were previously time-barred to bring their claims and in turn will expose hidden perpetrators to the public, shift the cost of abuse from victims to those who perpetrated and enabled the abuse, and it will ultimately educate the public and help prevent future abuse.

4) CHILD USA has legal and social science expertise to help this Court determine the issues in this case by providing the appropriate context in which child sexual abuse claims arise. CHILD USA is uniquely positioned to provide this Court

with current research and analysis regarding child sexual abuse, institutional abuse, and the science of trauma as well as the compelling public interests served by The Child Victim's Act which enables victims to bring decades-old claims against public entities.

5) No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

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

Dated: July 21, 2023  
New York, New York



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

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# **EXHIBIT A**



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# New York Supreme Court

Appellate Division – First Department

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**Appellate Case No.: 2022-04752**

Q.G.,

*Plaintiff-Appellant,*

-against-

CITY OF NEW YORK

*Defendants-Respondents,*

-and-

SPENCE-CHAPIN SERVICES TO CHILDEN AND FAMILIES  
f/k/a Spence-Chapin Adoption Services,

*Defendant.*

---

**BRIEF OF AMICUS CURIAE CHILD USA  
IN SUPPORT OF PLAINTIFF-APPELLANT**

---

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## **AMICUS CURIAE STATEMENT OF INTEREST**

CHILD USA is the leading non-profit 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's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse ("CSA") victims who have been harmed by individuals, public entities, and institutions.

CHILD USA is uniquely positioned to provide this Court with current research on the unique challenges involved in CSA cases, including the realities of trauma that can impact the timing of disclosure. The Child Victims Act's ("CVA") revival window enabled victims of child sexual abuse whose claims had been barred by New York's previously too-short statute of limitations (SOL) or foreclosed by the claims presentation deadline to seek justice in court. N.Y.C.P.L.R. § 214-g. In turn, claim revival for child sexual abuse in New York has exposed hidden predators and enabling institutions to the public, shifted the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educated the public and helped prevent future abuse. CHILD USA's contribution will aid the Court's analysis beyond that which the parties' lawyers provide.

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## PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to 22 NYCRR 1250.4(f). Plaintiff-Appellant asks this Court to reverse the lower court's ruling that Defendant-Respondent, the City of New York, and Defendant, Spence-Chapin Services to Children and Families f/k/a Spence-Chapin Adoption Services are entitled to immunity as a matter of law on their claim for negligent supervision arising from the Defendant-Respondent's failure to provide appropriate oversight of Plaintiff-Appellant and their foster parents, causing the child to suffer horrific and repeated sexual abuse.

CHILD USA asks that this Court grant Plaintiff-Appellant's request and find that the Defendant-Respondent breached their common law and statutory duties by failing to exercise reasonable care to safeguard Plaintiff-Appellant from a foreseeable risk of sexual abuse while the child was under their custody and control.

There is an epidemic of child sexual abuse in this nation that has created an emergency for lawmakers to redress, halt, and prevent. Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short statutes of limitation ("SOLs") and claims presentation deadlines that kept victims out of court. Short SOLs for child sex abuse have played into the hands of the perpetrators and the institutions that coverup for them. Revival laws such as those passed by the New York General Assembly recognize that society for

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too long did not understand the plight of those sexually abused as children and unfairly extinguished their rights long before they had the ability to report or seek justice for their abuse. By passing the Child Victims Act (“CVA”), the New York General Assembly took a proactive stance to address access to justice for victims and, in so doing, greatly reduced the present danger to New York’s children. As the plain language of the statute and legislative history indicates, N.Y.C.P.L.R § 214-g revives all civil claims and causes of action for injuries suffered as a result of CSA that would have otherwise been time-barred by New York’s prior SOL or precluded by a claim presentation deadline. This Court’s decision will affect victims of child sexual abuse throughout New York who are now embracing the revival window to bring previously expired claims that were blocked by unfairly short SOLs and burdensome presentation deadlines. If the lower court’s ruling is permitted to stand, public entities and institutions will escape accountability for the most egregious breaches of their duties. Such a holding would jeopardize the important public policies of justice, public safety, and preventing future child sexual abuse that the New York Legislature sought to uphold and improve when it passed the CVA.

## **ARGUMENT**

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## **I. THE PREVALENCE AND TRAUMATIC IMPACT OF CHILD SEXUAL ABUSE UNSCORES THE IMPORTANCE OF CIVIL ACCOUNTABILITY FOR GOVERNMENT AGENCIES WHEN THEY BREACH THEIR DUTIES TO FOSTER CHILDREN IN THEIR CUSTODY**

Child sexual abuse is a national public health crisis, with **3.7 million children sexually abused every year**.<sup>1</sup> It affects **1 in 5 girls and 1 in 13 boys** in the United States.<sup>2</sup> Children and youth living in foster care are especially vulnerable to experiencing sexual abuse. The best evidence reveals that children in foster care are four times more likely to be sexually abused than their peers not in care.<sup>3</sup> Children placed in group home setting are a staggering twenty-eight times more likely to

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<sup>1</sup>See Preventing Child Sexual Abuse, CDC.gov, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

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

<sup>3</sup> Euser, S., et. al., The Prevalence of Child Sexual Abuse in Out-of-Home Care: A Comparison Between Abuse in Residential and in Foster Care, 18(4) CHILD MALTREATMENT 221 (2013).

experience sexual abuse.<sup>4</sup> Nearly 1/3 of children in foster care report being abused by foster parent or another adult in the home.<sup>5</sup>

An extensive body of research indicates that child sexual abuse victims are traumatized in a way that is distinguishable from victims of other crimes. The traumatic effects of child sexual abuse are complex and individualized, and they impact victims throughout their lifetime.<sup>6</sup> Sexual abuse can disrupt a child's social, emotional, and cognitive development and place them at a significantly higher risk for psychological problems including, but not limited to, substance abuse, suicidality, and Post Traumatic Stress Disorder.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Peter Pecora, et. al., Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study, CASEY FAMILY PROGRAMS (April 2005), available at [https://www.casey.org/media/AlumniStudies\\_NW\\_Report\\_FR.pdf](https://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf).

<sup>6</sup> 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/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/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)

<sup>7</sup> See, e.g., U.S. DEP'T HEALTH & HUMAN SERVICES, The Adverse Childhood Experiences (ACEs) Study, Centers for Disease Control & Prevention, available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/>; see also, Felitti, et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, 14(4) AM. J. PREV. MED. 245-58 (1998); S.R. Dube et al., Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

Child sexual abuse produces enormous costs to victims but it also generates staggering costs to society that impact the nation's health care, education, criminal justice, and welfare systems.<sup>8</sup> For example, **the estimated lifetime cost to society of child sexual abuse cases occurring in the U.S. in 2015 is \$9.3 billion, and the average cost of non-fatal per female victim was estimated at \$282,734.**<sup>9</sup> Society pays a hefty price for government indifference toward victimized and at-risk children in their custody.

Despite its prevalence and damaging impact, child sexual abuse remains one of the most underreported crimes in the United States, among any age group. Remarkably, it is estimated that 70–95% of child sex abuse victims never report their abuse.<sup>10</sup> It is believed that victims in the foster care system are even less likely to report than victims not in care.<sup>11</sup> As a result, many victims of child sex abuse suffer in silence for decades before they speak to *anyone* about their traumatic experiences.

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<sup>8</sup> Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018) (Average cost estimates per victim include, in part, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs. Costs associated with suicide deaths are estimated at \$20,387 for female victims.)

<sup>9</sup> Id.

<sup>10</sup> D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US DEP'T. OF JUSTICE, (2008), <https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf>.

<sup>11</sup> Supra n.3.

For those who *do* disclose, one study found that 44.9% of male victims and 25.4% of female child sex abuse victims delayed disclosure by *more than twenty years*.<sup>12</sup>

As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.<sup>13</sup> This is a crime that typically occurs in secret, and many child victims of sexual violence assume no one will believe them.<sup>14</sup> Additionally, child sex abuse survivors may struggle to disclose their abuse because of psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.<sup>15</sup> Victims may also

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<sup>12</sup> Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

<sup>13</sup> Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 CHILD ABUSE NEGL. 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

<sup>14</sup> See Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., [https://www.meganslaw.ca.gov/mobile/Education\\_MythsAndFacts.aspx](https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx) (last visited Aug. 17, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, Caring for Kids: What Parents Need to Know about Sexual Abuse, NAT'L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), [https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring\\_for\\_kids\\_what\\_parents\\_need\\_know\\_about\\_sexual\\_abuse.pdf](https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf).

<sup>15</sup> Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.<sup>16</sup>

Children in foster care may face additional barriers to disclosure. For example, it is not unusual for children in the system to move from one foster home or group facility to another, often within weeks or months of placement. This lack of stability makes it difficult for children to develop trusting relationships with caregivers or peers with whom they feel safe enough to disclose. Others may be reluctant to disclose because they rely on their adult caregivers for their basic needs such as food, shelter, and clothing and may fear a loss of access to these items if they report abuse.

For those in care who do report as children, reporting sexual abuse to agency officials can become a distinctively damaging part of the abuse experience for—a phenomenon known as “betrayal trauma” or “institutional trauma” —when the institutions they depend upon fail to prevent or respond supportively to their reports

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<sup>16</sup> G.S. Goodman et. al., A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy, 14 PSYCHOL. SCI. 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

of sexual abuse.<sup>17</sup> The effects of institutional betrayal exacerbate and often exceed those associated with victims' primary abusive experience.<sup>18</sup>

Accordingly, victims must be able to hold the relevant governmental agencies accountable and seek redress for the myriad of harms that can flow from their actions and inactions. When the judicial system denies victims the opportunity to seek such accountability, institutions may feel entitled to continue their abuse with impunity. The broader implications of shutting the courthouse doors will have dire consequences—they chill reports of sexual abuse because many victims choose not to come forward if they see no avenue to justice and this, in turn, suppresses the truth to the detriment of children, parents, and the public. This is the precise harm that the New York Legislature sought to redress in passing the CVA.

## **II. CONSIDERATIONS OF PUBLIC POLICY DEMAND CIVIL ACCOUNTABILITY FOR ENTITIES THAT FAIL TO EXERCISE REASONABLE CARE TO PROTECT THE CHILDREN IN THEIR CUSTODY**

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<sup>17</sup> Carly Parnitzke Smith & Jennifer J. Freyd, Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma, 26 J. TRAUMATIC STRESS 1 (2013); see also, JENNIFER J. FREYD, INSTITUTIONAL BETRAYAL AND INSTITUTIONAL COURAGE, <https://dynamic.uoregon.edu/jjf/institutionalbetrayal/index.html> (last visited Jan. 8, 2021).

<sup>18</sup> Linsey L. Monteith et al., Perceptions of Institutional Betrayal Predict Suicidal Self-Directed Violence Among Veterans Exposed to Military Sexual Trauma, 72 J. CLINICAL PSYCHOL. 743, 750 (2016); see also Rebecca Campbell et al., An Ecological Model of the Impact of Sexual Assault on Women's Mental Health, 10 TRAUMA, VIOLENCE & ABUSE 225, 234 (2009); see also, Carly Parnitzke Smith & Jennifer J. Freyd, Institutional Betrayal, 69 AM. PSYCHOLOGIST 575, 577-78 (2014).

For children who are abused in foster care, intervention by a child protective agency is often their only hope of escaping their perpetrators. These children rely on agencies to respond quickly and effectively to reports of abuse, to identify signs of harm, and to intervene with appropriate services. As the entities charged with the custody of these children, they must be held to a high standard and recognize that their actions will be scrutinized *before* a court will find that they are entitled to immunity. The tragic reality is that child sexual abuse runs rampant in our foster care systems, in no small part because the agencies responsible for the custody and care of these children have failed to properly screen foster parents, monitor the safety of the children in placement, and follow up on reports of abuse. History has proven that child welfare agencies cannot be trusted to self-police, particularly when there are financial, reputational, and other incentives to avoid addressing systemic abuse. Hence, civil liability is needed “to hold public officials accountable when they exercise power irresponsibly.” Pearson v. Callahan, 555 U.S. 223, 231 (2009). Access to civil justice not only provides victims with an opportunity for meaningful emotional and economic redress, but it also acts as a potent deterrent for future bad acts and impetus for systemic change.

#### **A. Access To Justice Is Critically Important for Victims**

For sexual assault survivors, acknowledgement of the wrongdoing is an essential part of recovery. When abuse involves an institution or public entity, that

institution or entity must be held accountable for failing to protect victims and perpetuating the abuse. Civil liability is an effective, meaningful method of acknowledging systemic failures and serves to endorse institutions' ongoing duty to protect others, to implement new procedures to prevent similar abuse from reoccurring and sends a clear message that our society will not tolerate it when the government turns a blind eye to sexual abuse of the children in their care.<sup>19</sup>

In addition to providing important validation and acknowledgment, financial compensation also serves a tangible, restorative function. As previously stated, sexual abuse has a serious cost for victims—physically, psychologically, emotionally, and interpersonally—and the economic cost to society is staggering.<sup>20</sup> Moreover, the costs to the individual victims are devastating, and the economic cost Civil accountability shifts some of the economic burden to the responsible parties most capable of bearing it.

## **B. Accountability Discourages Future Bad Acts and Fosters Prevention**

Holding culpable entities liable not only provides justice for victims of the past but is also an opportunity to prevent current and future harm. While an individual perpetrator's bad acts should be condemned, courts have historically

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<sup>19</sup> Kropp, S., Solving the Penn State Problem: Holding the Institution Accountable for its Conspiracy of Silence, 42 CAP. U. L. REV. 167, 199-200 (2014).

<sup>20</sup> See *infra* section II.



limited fault to the perpetrator while underplaying the contribution of the institutions and public entities actions (or omissions) that facilitated the abuse.<sup>21</sup> As a result, these institutions were able to perpetuate their false narratives of powerlessness over individual perpetrators to avoid civil liability. Not only does this strategic denial result in failures to intervene to stop known abuse, it also affirmatively creates conditions that tend to embolden predatory behavior.<sup>22</sup> Cultures of secrecy shield institutions from public scrutiny and discourage victims from bringing abuse to light. Without civil liability, child protection agencies have considered enacting new policies and procedures costly, where there is little to no cost felt by the agency when a child over whom they exercise custody is victimized by a foster parent.<sup>23</sup> Civil accountability changes the cost-benefit analysis for the benefit of victims by making such indifference economically burdensome.

Furthermore, civil lawsuits provide an important public avenue for transparency regarding the nature and scope of the abuse occurring within these important institutions, as well as the institutional responses to known abuse and the

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<sup>21</sup> Chamallas, M., Vicarious Liability In Torts: The Sex Exception, 48 VALPARAISO UNIV. L. REV. 133, 168 (2013).

<sup>22</sup> O’Leary, P., et al., Grooming and child sexual abuse in institutional contexts, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney 16-18 (2017), available at <https://www.icmec.org/wp-content/uploads/2018/04/Research-Report-Grooming-and-child-sexual-abuse-in-institutional-contexts-Prevention.pdf>.

<sup>23</sup> Id.

risks of abuse. The public scrutiny of agencies' protective policies (or lack thereof) and transparency forces these agencies to answer for conduct before members of the larger community which often creates the pressure needed to bring about organizational change and to restore public trust in our government institutions.<sup>24</sup> By creating greater awareness of systemic problems, putting pressure on stakeholders, and using the court to promote change, civil litigation has even served as a catalyst for significant child welfare reform.<sup>25</sup> Some notable reforms include increased funding, improved staff training and supervisory ratios, lower caseloads, new quality assurance measures, and enhanced data collection.<sup>26</sup>

Regrettably, the lower court has decided to expand immunity for government entities charged with the custody and care of these exceptionally vulnerable children, regardless of if they ignore foreseeable risks of child sexual abuse. The decision undermines important public interests and is yet another a slap in the face to victims who are forced to bear physical, emotional, and financial burdens of this dereliction of duty.

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<sup>24</sup> Rice, et. al., Engaging Families and Building Relationships: Strategies for Working Across Systems from a Social Exchange Perspective, 15(2) ADVANCES IN SOCIAL WORK 306-317 (2014).

<sup>25</sup> Farber, et. al., Strengthening the Child Welfare Workforce: Lessons from Litigation, 4 J. PUBLIC CHILD WELFARE 132-157 (2010).

<sup>26</sup> Id. (citing a study from CWLA & the ABA Center on Children & the Law, Child welfare consent decrees: Analysis of thirty-five court actions from 1995 to 2005 (2005).

### **III. BLANKET GOVERNMENTAL IMMUNITY IS INCONSISTENT WITH THE LEGISLATIVE INTENT IN PASSING NEW YORK'S CHILD VICTIMS ACT**

New York's foster care system gained significant public attention in January of 2017 following the release of the Suffolk County Supreme Court Grand Jury Report which brought to light how multiple agencies failed in their responsibilities by disregarding rules and procedures enacted to protect the children in their care.<sup>27</sup> The 83-page Report set forth recommendations to ensure such failures would not occur in the future---one of them being the removal of the SOL for child sexual abuse claims given a large number of victims were barred from filing lawsuits due to the too short-SOL in effect at that time.<sup>28</sup>

Before New York's Child Victims Act was passed, child sex abuse victims in New York had until they reached age 23 to file a suit against their abusers and age 21 for personal injury claims against other defendants. See N.Y.C.P.L.R. §§208, 213-

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<sup>27</sup> SUFFOLK COUNTY SUPREME COURT SPECIAL GRAND JURY, AUGUST 17, 2016 TERM 9E GRAND JURY REPORT CPL § 190.85(1)(C), available at <https://suffolkcountyny.gov/Portals/6/DA/PDFs/Grand%20Jury%20Reports/SCDA%20Special%20Grand%20Jury%20Report%20-%20Foster%20Care.pdf?ver=2019-03-15-115344-310>

<sup>28</sup> ID.

c and 214(5). New York was one of the worst states in the United States for child sex abuse claims before the Child Victims Act was passed (and extended).<sup>29</sup>

Senator Brad Hoylman and Assembly member Linda B. Rosenthal sponsored the Child Victims Act, which was signed into law in 2019 and created a window during which victims could file previously time-barred claims. See CPLR §§ 208(b) and 214-g. As Senator Hoylman said during the Senate hearing on January 28, 2019, “The Child Victims Act... would create an avenue for justice. We are in this chamber opening the courthouse doors for the thousands of survivors across the state.”<sup>30</sup>

The injustice the Legislature sought to rectify in creating a revival window was not merely child sexual abuse, but also the trauma that kept most victims of abuse from bringing their claims to court under the prior SOL. Victims bore the cost of the abuse, not the ones who caused it. The Legislature also extended the SOL prospectively to age 55 for this same reason. The Senate found that:

“New York currently requires most survivors to file civil actions, or criminal charges against their abusers by the age of 23 at most, long before most survivors report or come to terms with their abuse, which has been estimated to be as high as 52 years old on average. Because

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<sup>29</sup> Sponsor’s Memorandum, Senate Bill No. S24403 2019-20 Leg. Sess. (N.Y. 2019), available at <https://www.nysenate.gov/legislation/bills/2019/S2440>.

<sup>30</sup> The Child Victims Act: Hearing on S.B. S4220 Before The New York State Senate, 2019-20 Leg. Sess. (Jan. 28, 2019), available at [www.youtube.com/watch?v=tgG2L2uo7IM](http://www.youtube.com/watch?v=tgG2L2uo7IM).

of these restrictive statutes of limitations, thousands of survivors are unable to sue or press charges against their abusers”<sup>31</sup>

The Child Victims Act is a reasonable remedy to the prior injustice of preventing child abuse claims through extremely short SOLs. Consistent with this underlying policy, the New York Legislature was careful to include explicit language reviving claims against public entities that were blocked not only by SOLs, but also by a claim presentation or notification deadline, thus placing claims against public entities on equal footing as all other claims. See CPLR §§ 208(b) and 214-g; Court of Claims Act § 10(10) (providing that “this section [concerning notice of claim and notice of intention to file claim] shall not apply” to cases within scope of CVA); Gen. Municipal Law § 50-e(b) (providing that “[t]his section [requiring notice of claim within 90 days after the claim arises] shall not apply” to claims within scope of CVA). The Legislature created an exception to the presentation deadline for claims arising from child sexual abuse because they understood that 90 days is far too little time for victims to find out about the new window, come to terms with their abuse, weigh the enormous personal consequences of identifying themselves

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<sup>31</sup> Justification for Senate Bill S2440 (last visited Sept.15, 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s2440>.

as a victim, name the people who sexually abused them and the entities that permitted the abuse, and ultimately, find a lawyer to file their claims.

The Child Victim's Act is consistent with other modern CSA revival laws which do not distinguish between private and public defendants; this is because legislatures recognize the public interest in stopping predators from sexually abusing children is equally as compelling within public institutions as it is in the private sphere. Notably, in California and Hawaii, after judicial determinations that the revival language was not explicit enough to overcome sovereign immunity, their legislatures reconvened and passed subsequent legislation explicitly reviving claims against state entities. *See* Coats v. New Haven Unified Sch. Dist., 259 Cal.Rptr.3d 784, 749 (Cal. Ct. App. 2020); Roe v. Ram, No. 14-00027, 2014 WL 4276647, at \*3 (D. Haw. Aug. 29, 2014).

This Court must bear in mind the full scope of potential victims in deciding this case and should defer the Legislature's purposeful judgment to enact a broad revival window that gave victims with claims against public institutions access to justice in New York.

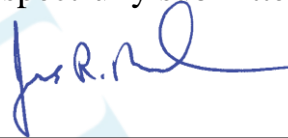
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## CONCLUSION

For the foregoing reasons, *amicus curiae* request this Court grant Plaintiff-Appellant's request and reverse the lower court's decision creating blanket immunity government entities as inconsistent with New York's sound public policy.

Dated: July 21, 2023

Respectfully submitted,



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## PRINTING SPECIFICATIONS STATEMENT

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