

CTQ-2024-00001
United States District Court for the Western District of New York
Civil Action #1: 19-cv-00707-WMS-LGF
United States Court of Appeals for the Second Circuit Docket No. 22-1442

Court of Appeals
of the
State of New York

BRITTANY N. JONES, a/k/a Brittany N. Finch,

Plaintiff-Appellant

— against —

CATTARAGUS COUNTY SCHOOL DISTRICT,

Defendant-Respondent.

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

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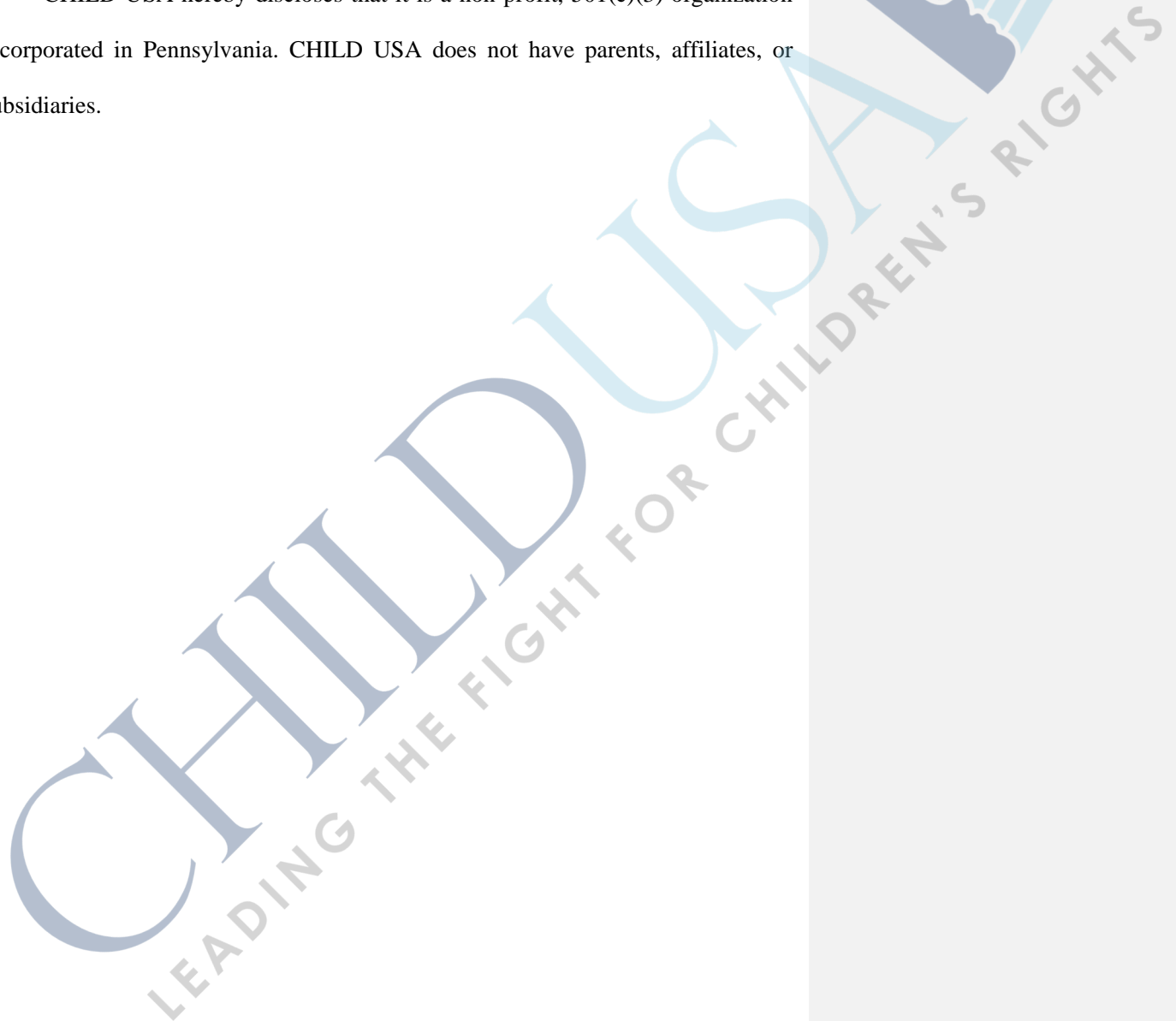


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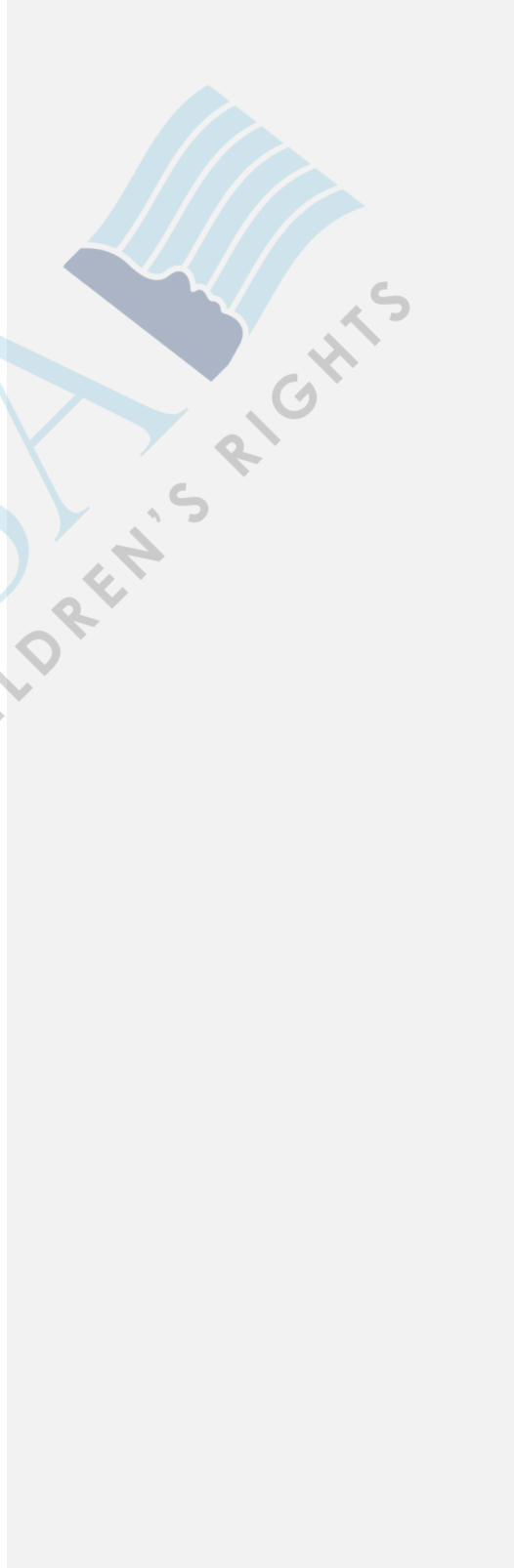


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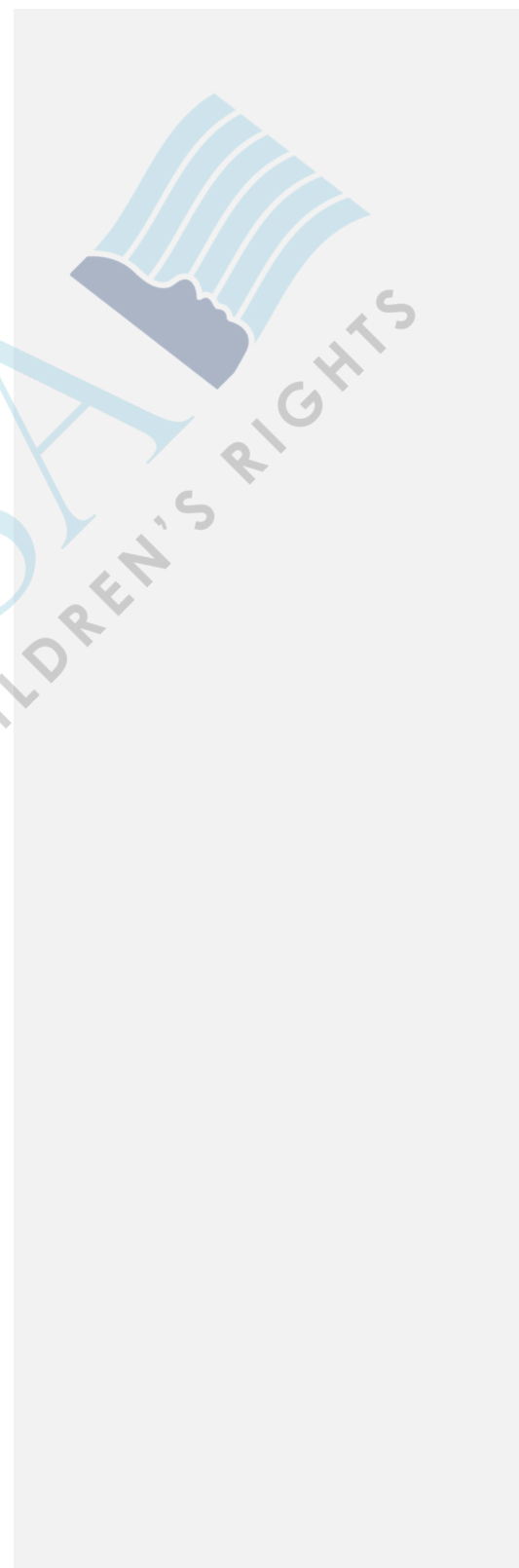
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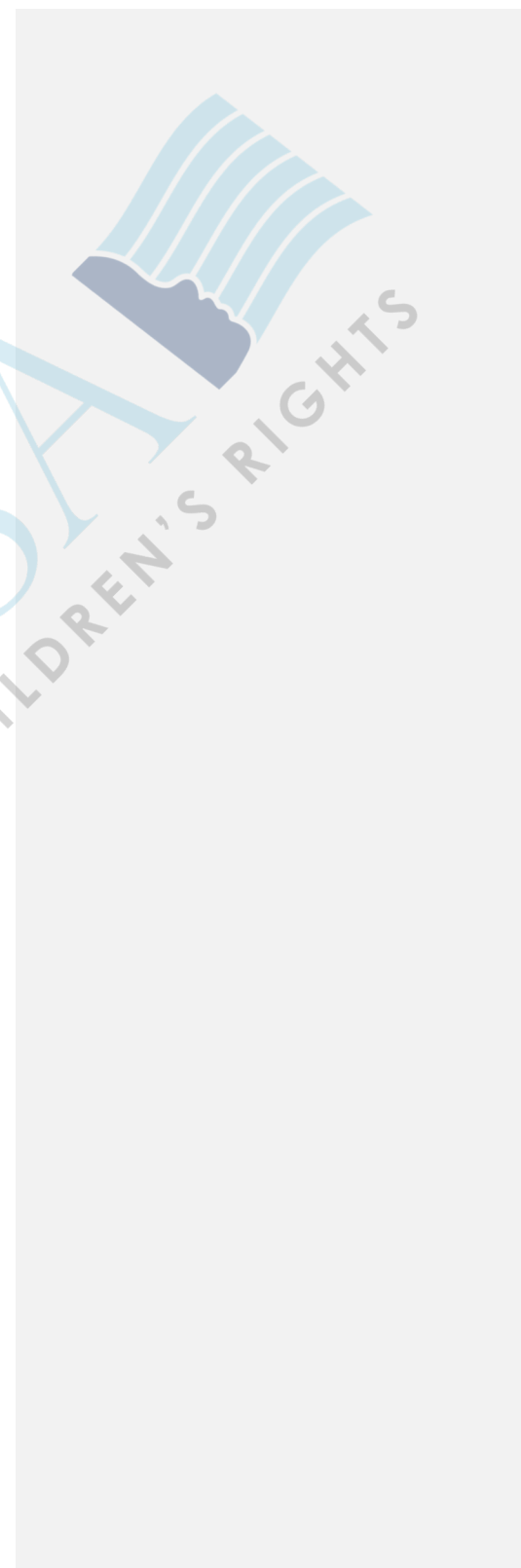
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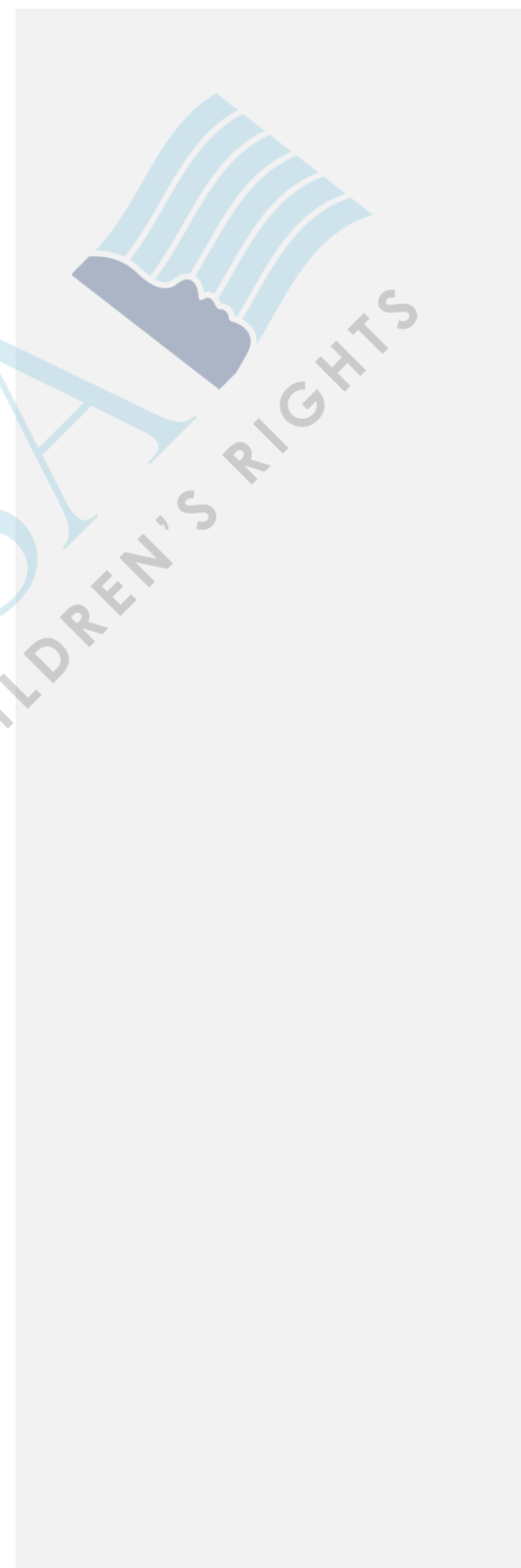
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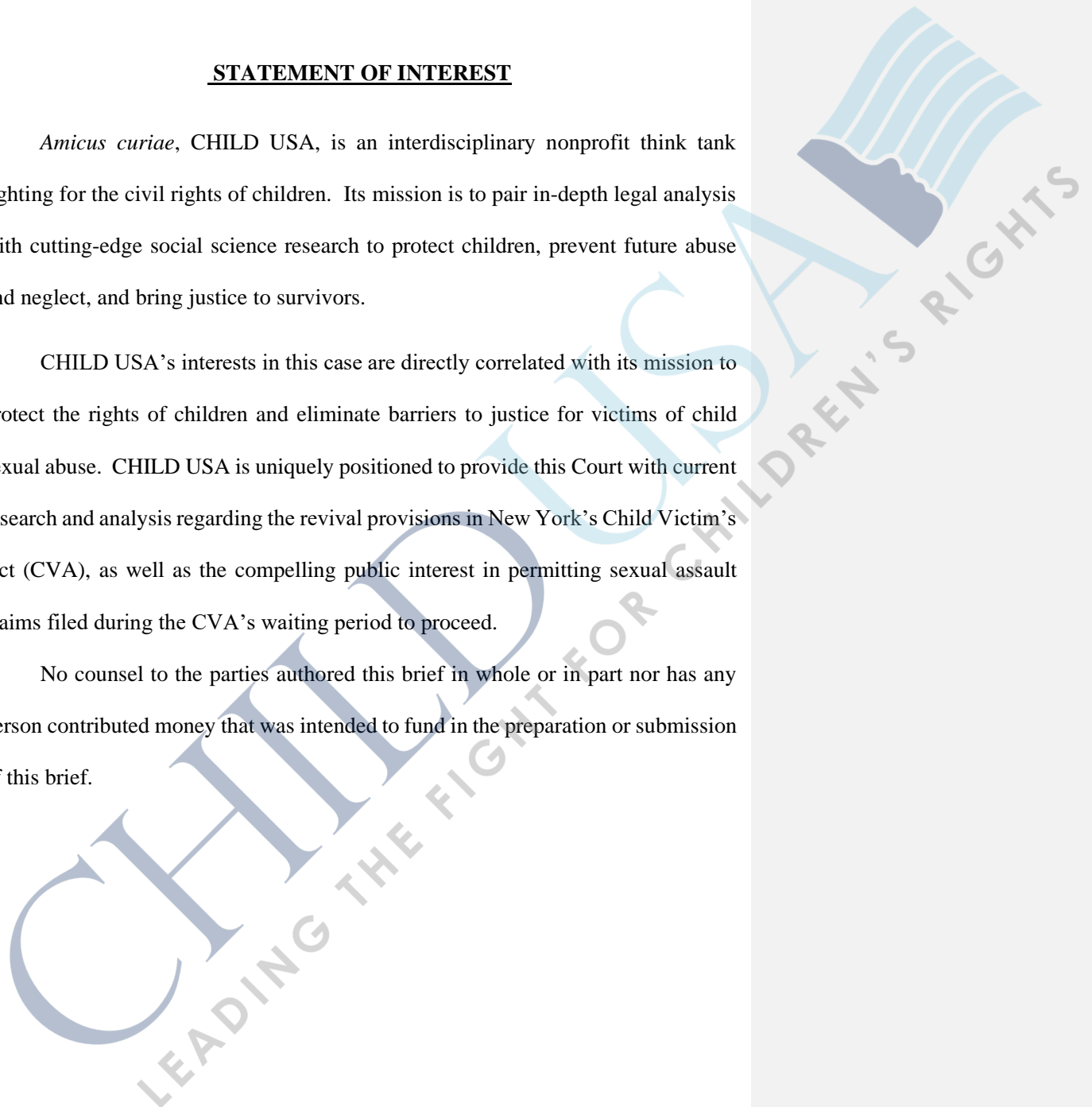


STATEMENT OF INTEREST

Amicus curiae, CHILD USA, is an interdisciplinary nonprofit think tank fighting for the civil rights of children. Its mission is to pair in-depth legal analysis with 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 protect the rights of children and eliminate barriers to justice for victims of child sexual abuse. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the revival provisions in New York's Child Victim's Act (CVA), as well as the compelling public interest in permitting sexual assault claims filed during the CVA's waiting period to proceed.

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.



ARGUMENT

I. THE COURT SHOULD UPHOLD THE CVA'S PURPOSE TO PROVIDE JUSTICE TO CHILD SEX ABUSE VICTIMS AND RULE THE REVIVAL PROVISION DID NOT ESTABLISH AN AFFIRMATIVE DEFENSE

In the United States alone, 3.7 million children are sexually abused every year.¹ This national public health crisis is indiscriminate and pervasive, affecting one in five girls and one in thirteen boys.² Historically, a wall of ignorance and secrecy was constructed around child sex abuse, which is reinforced by short statutes of limitation (“SOLs”) that keep victims out of court. Short SOLs for child sex abuse have played into the hands of the perpetrators and the institutions that cover up for them. The research recognizes that the overwhelming majority of victims cannot bring their claims within the short timeframe allotted by most SOLs—like that in New York before the Child Victim’s Act (CVA).³ Revival laws such as those passed

¹ See Preventing Child Sexual Abuse, CDC.gov, available at <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).

² 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).

³ N. Spröber et al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (2014).



by the New York General Assembly acknowledge that, for too long, society 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 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.

An interpretation of the Child Victim's Act's (CVA's) revival provision as establishing a statute of limitation or condition precedent is thus oppositional to its purpose and perpetuates decades of strict procedural hurdles that shut courthouse doors to victims of sexual abuse. By misconstruing the CVA's revival provision, the District Court deprived Plaintiff, and other similarly situated child sexual abuse victims, from accessing long-awaited justice. Creating an affirmative defense out of the revival provision's six-month waiting period affords yet another layer of protection to institutions such as Defendant, who fail to prevent or respond to reports of sexual abuse. Indeed, allowing institutions to harm children without repercussion due to a procedural technicality negates the entire premise upon which the CVA was built. See Sponsor Memo for Bill S2440, available at <https://www.nysenate.gov/legislation/bills/2019/s2440> (last visited August 16, 2022). Thus, barring suits like Plaintiff's based on a court-established procedural affirmative defense has broad implications; it will perpetuate the belief that



institutions can foster sexual abuse with impunity, and it will chill reports of sexual abuse, as fewer victims will come forward during future revival periods for fear their claims will simply be thrown out.

Moreover, adopting the District Court's interpretation of the CVA's revival provision would needlessly exacerbate the psychological difficulties child sexual abuse victims already experience in bringing their claims to court. An extensive body of evidence establishes that childhood sex abuse victims are traumatized in a way that is distinguishable from victims of other crimes. Indeed, many child victims of 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 speaking out, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.⁴ This is a crime that typically occurs in secret, and many victims of sexual violence assume no one will believe them.⁵

⁴ Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 Child Abuse Negl. 123 (2015), available at <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁵ See Myths and Facts About Sexual Assault, Cal. Dep't of Just., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Nov. 9, 2023); 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), available at https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.



Additionally, CSA victims may struggle with psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.⁶ Victims may also develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.⁷ They disproportionately 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.⁸

Within the institutional context, this trauma is compounded by cultures of secrecy and statutory immunity, which shield organizations from public scrutiny and further discourage victims from reporting abuse. For instance, the Boston Globe’s 2002 Spotlight investigative report uncovered rampant sexual abuse in the Catholic Church that went undisclosed and unanswered for decades. An alarming number of

⁶ 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), available at <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

⁷ 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), available at <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

⁸ 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/6-17-2022-2021-sol-report-final/>.



institutional scandals have since emerged, with more institutions—public and private—named each year.⁹

In sum, sexual abuse reaches children in all corners of society and inflicts its trauma in serious and wide-ranging ways.¹⁰ The New York General Assembly carefully considered the scientific realities of sexual abuse and its impact on disclosure, and passed the CVA’s revival provision to remedy the injustice of the State’s prior too-short SOL. By providing an additional period of time for victims to bring their claims, the New York General Assembly sought to give victims long-overdue access to the courts, ensure that abusers and their enablers paid for *some* of the moral and financial costs of their abuse, and identify abusers and enabling institutions to prevent further harm to children. When courts interpret procedural rules to weaken this intent, victims suffer re-traumatization at the hands of the very system that is designed to make them “whole.”

⁹ M. Hamilton, We Failed Our Children for Too Long: The Case for SOL Reform, The Advocate, J. of the Okla. Ass’n for Just., 23 (Nov. 4, 2016).

¹⁰ Rebecca Campbell, Ph.D., The Neurobiology of Sexual Assault: Explaining Effects on the Brain, Nat’l Inst. of Justice (2012), available at [https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility Webinar.pdf](https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility%20Webinar.pdf); R.L. v. Voytac, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk, M.D. et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).



II. A RULING THAT THE REVIVAL PROVISION ESTABLISHES AN AFFIRMATIVE DEFENSE WOULD SUBVERT THE COMPELLING PUBLIC POLICY INTERESTS SERVED BY THE CVA

There are three compelling public purposes served by The Child Victims Act:

it (1) identifies previously unknown child predators and the institutions that shield them; (2) shifts the cost of abuse from victims to those who caused the abuse; and (3) educates the public to prevent future abuse.

A. Holding that the CVA Filing Period Establishes an Affirmative Defense Would Hamper the Identification of Previously Unknown Predators and Their Enabling Institutions

In the past, legislation and policy constructed a wall of ignorance and secrecy around child sexual abuse, which was reinforced by state tort limitations that deterred or completely disabled victims from filing claims. To remedy this, the CVA revival period facilitates the identification of previously unknown child predators¹¹ and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready or able 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 abusing children; for example, one study found that 7% of offenders sampled committed offenses against

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

forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.¹²

Through the CVA, the New York Assembly empowered victims with a period of time to identify New York's hidden child predators and the institutions that endanger children. This has helped prevent those predators from further abusing children and is allowing the public to develop policies to inhibit new abuse from occurring in the long-term.¹³ When courts interpret procedural rules to eliminate the possibility of success for a claim arising from child sexual abuse, institutions in Defendant's position are free to put their own financial and reputational interests above the public good. This inevitably causes a chilling effect on disclosure and identification of predators to the detriment of parents and the general public.

B. The District Court's Interpretation Stifles the Use of Civil Damages as a Tool to Shift the Costs of Abuse onto The Culpable Parties

The cost of child sexual abuse to victims is enormous,¹⁴ and they, along with the State of New York, unjustly carry the burden of this expense. The negative

¹² Id.

¹³ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDAUSE.ORG, <https://preventchildabuse.org/resource/why-prevention-matters/> (last visited Aug. 17, 2022); Preventing Adverse Childhood Experiences, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁴ See M. Merricka; 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),

effects over a victims' lifetime generate many costs that impact the nation's health care, education, criminal justice, and welfare systems.¹⁵ For example, the estimated lifetime cost to society from child sexual abuse cases that occurred in the U.S. in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.¹⁶ Average costs per victim include, but are not limited to, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs.¹⁷ Costs associated with suicide deaths are estimated at \$20,387 for female victims.¹⁸ Access to justice not only serves to equitably shift some of these costs from victims to the abusers and their enablers, but they also save the State money by reducing expenditures on public services. The District Court opinion will stifle otherwise legitimate claims, leaving victims to bear the costs of their abuse on their own.

<https://www.perrymangroup.com/media/uploads/report/perryman-suffer-the-little-children-11-2014.pdf>.

¹⁵ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.



C. The Opportunity for Public Education to Prevent Future Abuse is Lost When Strict Procedural Requirements Block Victims from Bringing Their Claims

The CVA revival provision has helped educate the public about the dangers of child sexual 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.¹⁹ Because the CVA permits an increased number of child victims to come forward, it is shedding light on the prevalence of child sexual abuse. This exposure 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. By fostering greater social awareness of systemic problems, putting pressure on stakeholders, and using the court to promote change, the CVA has served as an important catalyst in the child protection reform movement.

These revival laws also address the systemic issue of institutional (child sexual abuse), which occurs with alarming frequency in athletic institutions, state-operated

¹⁹ E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

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facilities, and youth-serving organizations, such as Defendant's. When victims cannot meaningfully access justice through the civil courts, the opportunity to bring chronic abuses and misconduct to lawmakers' and the public's attention is lost. This is especially true of claims involving institutional cover-ups of child sexual abuse. Youth-serving entities are in a unique position to regulate employees or others known to pose a sexual safety risk to children and to adopt child protective policies and procedures that deter institutional sex abuse. However, they will be unmotivated to do so absent the threat of liability. Without institutional accountability for enabling child sexual abuse, looking the other way, or covering it up when it's reported, the children these institutions serve remain at risk today.

The District Court's interpretation of the CVA's revival provision undermines compelling public policy concerns and leaves victims like Plaintiff without access to justice. To best protect children from abuse, there must be some reasonable expectation and degree of assurance that youth-serving organizations and institutions charged with the care of children will recognize when they fall short of public expectations and be held meaningfully accountable.

CONCLUSION

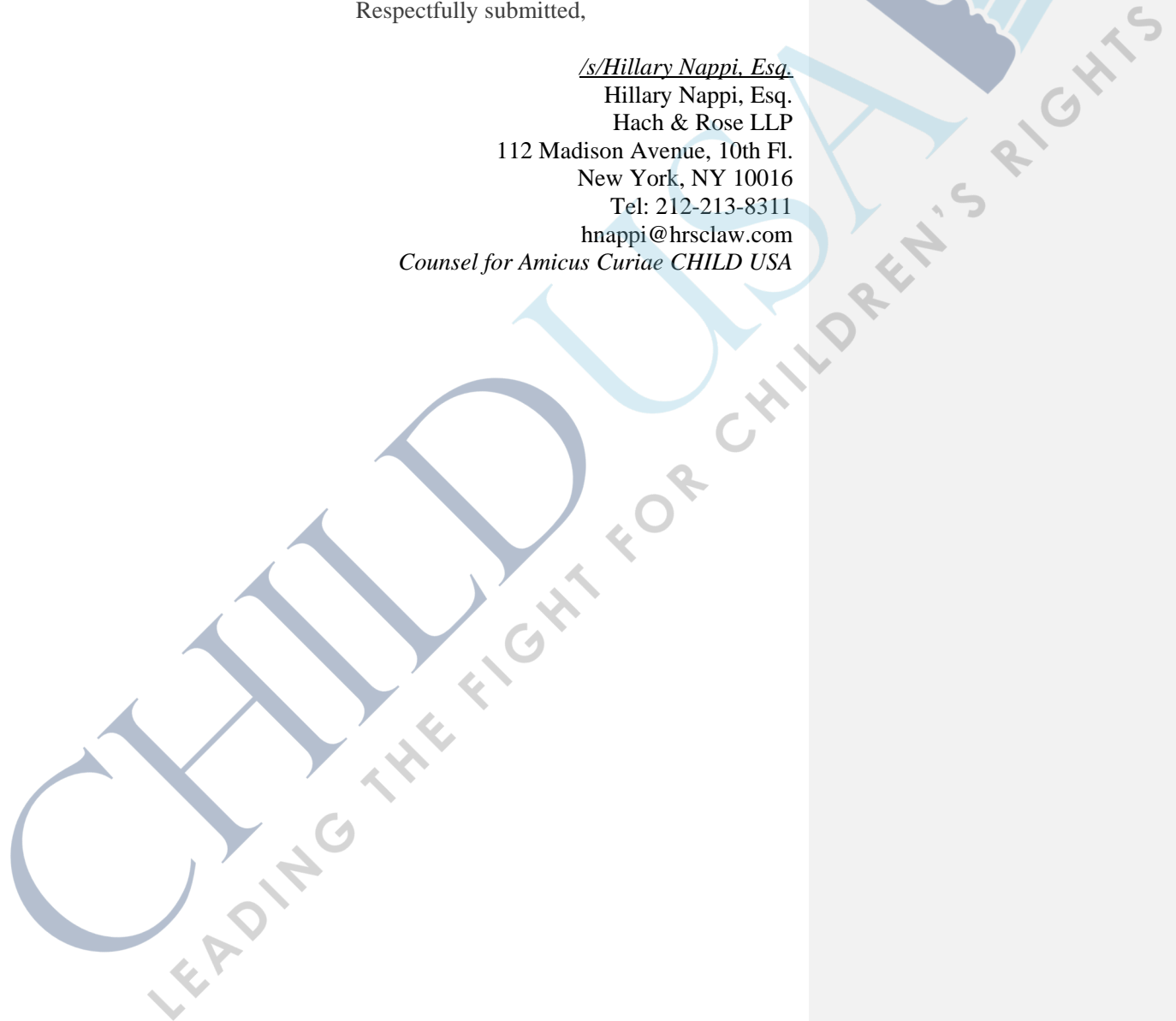
For these reasons, *Amicus Curiae* CHILD USA respectfully requests that this Court expressly hold the waiting period in Section 214-g of the Child Victim's



Act is not a statute of limitations or a condition precedent to filing suit, and therefore, filing within the waiting period cannot bar plaintiff's claims.

Respectfully submitted,

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**NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to 22 NYCRR Part 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: July 31, 2024

/s/ Hillary Nappi, Esq.
Hillary Nappi, Esq.

