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Position Paper on the Constitutionality of Reviving Child Sex Abuse Statutes of Limitations in Pennsylvania

Professor Marci A. Hamilton, CEO
Alice Bohn, Esq., Legal Director
Alice Hanan, Esq., Staff Attorney for SOLs
Jessica Schidlow, Esq., Staff Attorney
Lauren Majewski, Esq., Staff Attorney

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BACKGROUND: Pennsylvania lawmakers have debated whether to provide justice to child sex abuse victims since 2005 when Philadelphia District Attorney Lynne Abraham released the groundbreaking Grand Jury Report on child sex abuse in the Philadelphia Archdiocese.[1] There have been numerous hearings on bills introduced to enact a statutory window, support from one editorial board after another, and dozens of op-eds in support.

The nation's leading constitutional expert on this issue, Penn professor, and former United States Supreme Court clerk, Marci A. Hamilton, has testified in every state to enact a window and defended window constitutionality across the United States including in Pennsylvania.[2]

The Legal Department of CHILD USA tracks SOL reform in every state and at the federal level.[3] The **2021 SOL Tracker** www.childusa.org/2021sol is updated weekly. Today it is providing this updated position paper on window constitutionality in Pennsylvania.

[1] *In re: County Investigating Grand Jury*, Misc. No. 03-00-239 (Penn. Ct. Comm. Pleas. Sept. 17, 2003), available at https://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf.
[2] *Testimony re: HB 1947, Statute of Limitations Reform in Pennsylvania.* Marci A. Hamilton. June 13, 2016, available at https://childusa.org/wp-content/uploads/2020/03/PA_HB1947_testimony_6_13_16_final.pdf.
[3] CHILD USA, *SOL Tracker*, CHILDUSA.ORG (last visited May 19, 2021) available at https://childusa.org/2021sol/.

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A Quick Overview of Constitutionality of a Pennsylvania Window

- Child sex abuse impacts **1 in 5 girls and 1 in 13 boys** and the trauma results in **age 52 as the average age of disclosure**—when they're ready to come forward and tell someone they were abused—for victims of child sex abuse.[4] Yet, until recently, many states, including Pennsylvania, blocked criminal charges and civil lawsuits well before that age.

- **Statute of limitations reform serves the *state's compelling interests* in:**

    1) **identifying hidden child predators and the institutions that endanger children**;
    2) **shifting the cost of abuse from the victims and taxpayers to those who caused it**;
    3) **educating the public about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.**

- **34 States are currently considering SOL reform**. **20 states, Washington D.C., and Guam have revived time-barred child sex abuse claims** and in 2021, 22 states other than Pennsylvania have introduced window bills to revive time-barred child sex abuse claims.

- Of the states to consider the issue, **24 states and D.C. have held revival of civil claims constitutional**.

- Civil revival is constitutional in Pennsylvania. All that is required is the **legislature's clear intent to revive**[5] because altering the statute of limitations is a **procedural** change, not a substantive one.[6] Therefore, defendants in Pennsylvania have **no absolute right to a statute of limitations defense**. **"[T]here is no such thing as a vested right to do wrong."**[7]

- **False claims of child sex abuse are very rare**. Guam had 0 false claims out of 200 claims in their window and in California there were anecdotal reports of 5 false claims out of 1,150 claims in their window, but none officially in court.

- By its plain language, the Pennsylvania **Remedies Clause protects those "injured," not those who caused the injury,** and it is similar to the Remedies Clause of 39 other states, a majority of which have not found any defect with civil revival.

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[4] CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

[5] *Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004); *Landgraf*, 511 U.S. at 267-68 (1994).

[6] *Bible v. Dep't of Labor & Indus.*, 548 Pa. 247, 696 A.2d 1149 (Pa. 1997); *McDonald v. Redevelopment Authority*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); *Commonw. v. Johnson*, 732 A.2d 639, 643 (Pa. Super. Ct. 1999).

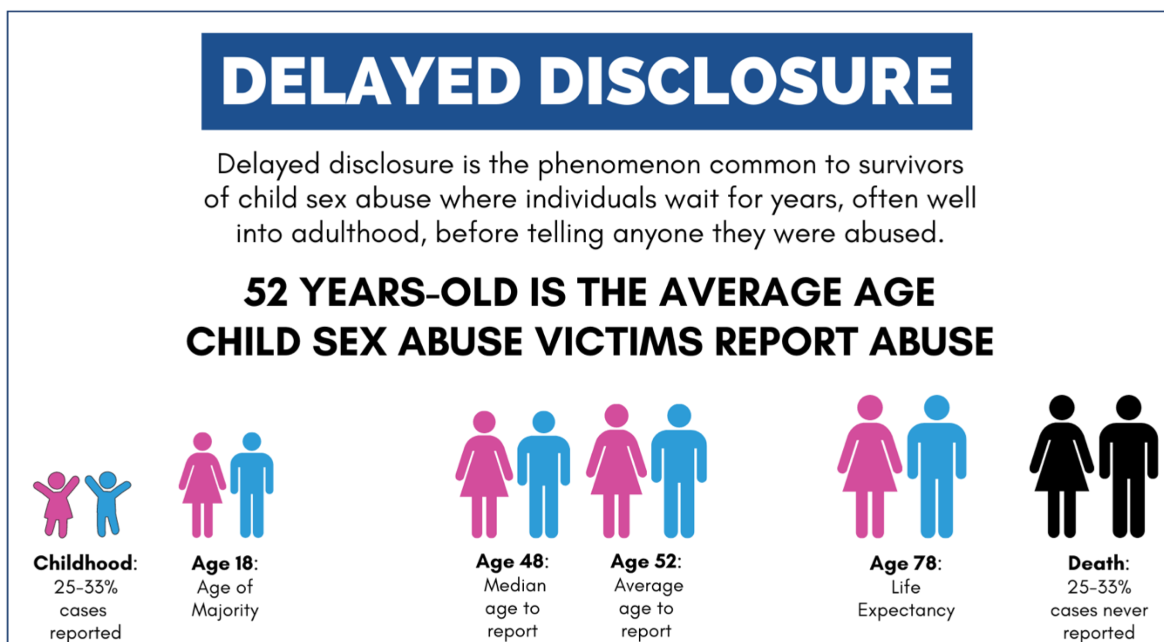
[7] *Landgraf*, 511 U.S. at 297 (quoting *Freeborn v. Smith*, 69 U.S. 160 (1865)).

A Window in Pennsylvania Is Constitutional

I. History and Background on SOL Reform for Child Sex Abuse Victims

There is a worldwide epidemic of child sex abuse, with at least one in five girls and one in thirteen boys sexually assaulted before they turn 18, which has created an emergency for lawmakers and policymakers to redress, halt, and prevent. There are compelling public interests in lawmakers taking a proactive stance now to address those victims whose claims have expired, as well as protecting future children from sex abuse. **It is an either/or public policy choice with the highest stakes: shift the law to be victim-centered and child-protective *or* continue to protect child predators and their enabling institutions.**

The vast majority of claims of those abused in the past in Pennsylvania expired before the victims were capable of getting to court. Passing a revival window will protect the children of Pennsylvania by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also shift the cost of abuse from the victims to the ones who caused it and bring delayed, but still welcome, justice to these victims. SOL reform validates victims and puts perpetrators and institutions on notice that the state stands with the victims.



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Statutes of limitations or SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical procedural rule.

Reviving expired SOLs **serves the *Commonwealth's compelling interests* in**

1) **identifying hidden child predators and the institutions that endanger children**;
2) **shifting the cost of abuse from the victims and taxpayers to those who caused it**;
3) **educating the public about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.**

The net result is that the society as a whole is enlightened and can come together to support the traumatized victims and to heal itself. This is a vital step in the process toward righting the wrongs perpetrated against the vulnerable and exacerbated by unfairly short SOLs.

There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement since 2002, see CHILD USA's Report: History of US SOL Reform: 2002- 2020.[8] 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform with Washington D.C. and twenty-three states, including Pennsylvania, changing their SOLs for the better in 2019.[9] The powerful SOL reform wave rode its way into 2020, with thirty states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse. [10] This year, 34 states have introduced SOL reform bills, and 5 have already been signed into law.[11]

In 2019, Pennsylvania joined the rest of the country in protecting child victims in the future by extending the civil SOL from age 30 to age 55. Pennsylvania has generated the most Grand Jury reports on child sex abuse in the country and is the only state to have definitive evidence of sex abuse cover ups in every diocese, yet they remained behind the tidal wave of action to empower victims to hold perpetrators accountable until 2019.

Recently, windows and other revival laws for child sex abuse claims have been more popular than ever. Since 2019 alone, 11 states and Washington D.C. revived expired civil claims. Those states are **Arizona, Arkansas, California, Kentucky, Montana, New Jersey, New York, North Carolina, Rhode Island, Vermont, West Virginia and Washington, D.C.** There are now 20 states, Washington D.C. and Guam that have successfully revived expired civil claims for child sex abuse since 2002. This year, 23 states have already introduced bills to revive child sex abuse claims in 2021. For more information about the movement for SOL reform in 2021, see http://www.childusa.org/2021sol.

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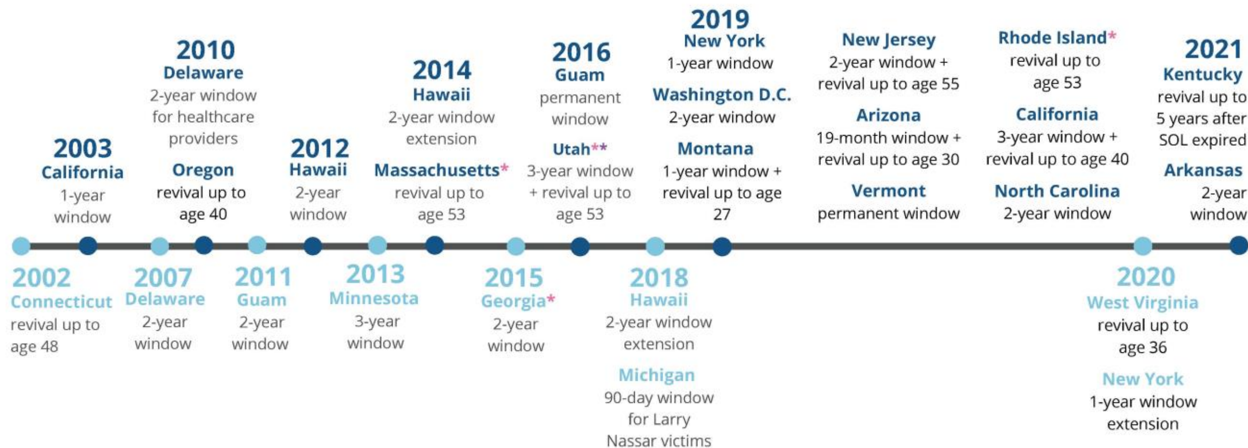
[8] CHILD USA, History of US SOL Reform: 2002-2020, CHILDUSA.ORG (last visited May 19, 2021), available at www.childusa.org/sol-report-2020.

[9] *See 2019 SOL Tracker*, CHILDUSA.ORG (last visited May 19, 2021), available at www.childusa.org/2019sol.

[10] *See 2020 SOL Tracker*, CHILDUSA.ORG (last visited May 19, 2021), available at www.childusa.org/2020sol.

[11] *See 2021 SOL Tracker*, CHILDUSA.ORG (last visited May 19, 2021), available at www.childusa.org/2021sol.



II. Constitutional Analysis of Window Legislation

Pennsylvania opponents of a revival window claim that it is unconstitutional to enact retroactive civil statute of limitations. Along with a majority of the states, **it is constitutional in Pennsylvania to revive an expired civil SOL.**[12]

[12] **ARIZ:** *Chevron Chemical Co. v. Superior Court*, 641 P.2d 1275, 1284 (Ariz. 1982); *City of Tucson v. Clear Channel Outdoor, Inc.,* 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, ARIZ. REV. STAT. ANN. § 12-505 (Ariz. 2010)); **CAL:** *Mudd v. McColgan*, 183 P.2d 10, 13 (Cal. 1947); *20th Century Ins. Co. v. Superior Court*, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), *cert. denied*, 535 U.S. 1033, 122 S. Ct. 1788 (2002); **CONN:** *Doe v. Hartford Roman Catholic Diocesan Corp.,* 317 Conn. 357, 439-40 (Conn. 2015); **DEL:** *Sheehan v. Oblates of St. Francis de Sales,* 15 A.3d 1247,1258-60 (Del. 2011); **DC:** *Riggs Nat'l Bank v. Dist. ofColumbia,* 581 A.2d 1229, 1241 (D.C. 1990); **GA:** *Canton TextileMills, Inc. v. Lathem*, 317 S.E.2d 189, 193 (Ga. 1984);*Vaughn v. Vulcan Materials Co.,* 465 S.E.2d 661, 662 (Ga. 1996); **HAW:** *Roe v. Doe,* 581 P.2d 310, 316 (Haw. 1978); *Gov't Emps. Ins. Co. v. Hyman*, 975 P.2d 211 (Haw. 1999); **IDAHO:** *Hecla Mining Co. v. Idaho St Tax Comm'n,*697 P.2d 1161, 1164 (Idaho 1985); *Peterson v. Peterson*, 320 P.3d 1244, 1250 (Idaho 2014); **IOWA:** *Schulte v. Wageman*, 465 N.W.2d 285, 287 (Iowa 1991); **KAN:** *Harding v. K.C. Wall Prod., Inc.,* 831 P.2d 958, 967-68 (Kan. 1992); *Ripley v. Tolbert*, 921 P.2d 1210, 1219 (Kan. 1996); **MASS:** *Sliney v. Previte*, 41 N.E.3d 732, 739-40 (Mass. 2015); *City of Boston v. Keene Corp.,* 406 Mass. 301, 312-13 (Mass. 1989); *Kienzler v. Dalkon Shield Claimants Tr.,* 426 Mass. 87, 88-89 (Mass. 1997); **MICH:** *Rookledge v. Garwood,* 65 N.W.2d 785, 790-92 (Mich. 1954); *Pryber v. Marriott Corp.,* 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), *aff'd*, 307 N.W.2d 333 (Mich. 1981) (per curiam); **MINN:** *Gomon v. Northland Family Physicians, Ltd.,* 645 N.W.2d 413, 416 (Minn. 2002);*In re Individual 35W Bridge Litig.,* 806 N.W.2d 820, 830-31 (Minn. 2011); **MONT:** *Cosgriffe v. Cosgriffe,* 864 P.2d 776, 778 (Mont. 1993); **NJ:** *Panzino v. Continental Can Co.,* 364 A.2d 1043, 1046 (N.J. 1976); **NEW MEX:** *Bunton v. Abernathy*, 73 P.2d 810, 811-12 (N.M. 1937); *Orman v. Van Arsdell*,78 P. 48, 48 (N.M. 1904); **NY:** *In re World Trade Ctr. Lower Manhattan Disaster Site Lit.,* 89 N.E.3d 1227, 1243 (N.Y. 2017); *Hymowitz v. Eli Lilly & Co.,* 539 N.E.2d 1069, 1079-80 (N.Y. 1989); *McCann v. Walsh Const. Co.,* 123 N.Y.S.2d 509, 514 (N.Y. 1953) *aff'd without op.* 306 N.Y. 904 (1954); *Gallewski v. Hentz & Co.,* 93

A. A Pennsylvania Window Would Not Violate Due Process

It is unconstitutional to revive a criminal SOL, because it violates the Ex Post Facto Clause of the Constitution.[13] At the same time, it is constitutional to revive a civil SOL.[14] Under the federal Constitution, revival of a civil SOL is constitutional if two due process requirements are met: (1) **clear legislative intent** and (2) the **change is to a procedural element**, like a statute of limitations.[15]

While the precise question of the constitutionality of revival of child sex abuse SOLs has not been addressed by the Pennsylvania Supreme Court, the Court's prior decisions regarding retroactive amendments support the constitutionality of a statutory window. In *Bible v. Dep't of Labor & Indus.*, 548 Pa. 247, 696 A.2d 1149 (Pa. 1997), the Court found that an amendment to the Workers' Compensation Act which retroactively changed the compensation for loss of hearing claims did not violate due process. The Court has applied the applicable due process principles in *Bible*, when it held a retroactive amendment to be constitutional because "[w]e have used the same reasonableness/balancing of interests analysis in applying the due process protections of the Pennsylvania Constitution . . . '[T]raditionally, retrospective laws which have been deemed reasonable are those which impair no contract and disturb no vested right, but only vary remedies, cure defects in proceedings otherwise fair, and do not vary existing obligations contrary to their situation when entered into and when prosecuted.'"[16] In *Bible* the amendment did not impair claimants' right to receive compensation for hearing loss, which would have been substantive, but merely changed the remedy, and retroactive application of the amendment to pending cases was constitutional. The Pennsylvania Supreme Court's reasoning controls.

Since the Supreme Court articulated the modern constitutional standard in *Landgraf* in 1997, the retroactive application of lengthened statutes of limitations has not been found to disturb vested rights under Pennsylvania law.[17] In *McDonald v. Redevelopment Authority*, 952 A.2d 713, 718

N.E.2d 620, 624-25 (N.Y. 1950); **N DAK:** *In Interest of W.M.V.,* 268 N.W.2d 781, 786 (N.D. 1978); **OR:** *McFadden v. Dryvit Systems, Inc.,* 112 P.3d 1191, 1195 (Or. 2005); *Owens v. Maass*, 918 P.2d 808, 813 (Or. 1996); **PA:** *Bible v. Dep't of Labor &Indus.,* 696 A.2d 1149, 1156 (Pa. 1997); *McDonald v. Redevelopment Auth. of Allegheny Cnty.,* 952 A.2d713, 718 (Pa. Commw. Ct. 2008), *appeal denied*, 968 A.2d 234 (Pa. 2009); **S DAK:** *Stratmeyer v. Stratmeyer,* 567 N.W.2d 220, 223 (S.D. 1997); **VA:** *Kopalchick v. Cath. Diocese of Richmond*, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007); **WASH:** *Lane v. Dep't of Labor & Indus.,* 151 P.2d 440, 443 (Wash. 1944); *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.,* 146 P.3d 914, 922 (Wash. 2006), *superseded in part by statute* WASH. REV. CODE 25.15.303, *as recognized* in *Chadwick Farms Owners Ass'n v. FHC, LLC,* 160 P.3d 1061, 1064 (Wash. 2007), *overruled in part by* 207 P.3d 1251 (Wash. 2009); **W VA:** *Pankovich v. SWCC,* 163 W. Va. 583, 259 S.E.2d 127, 131-32 (W. Va. 1979); *Shelby J.S. v. George L.H.,* 381 S.E.2d 269, 273 (W. Va. 1989); **WYO:** *Vigil v. Tafoya,* 600 P.2d 721, 725 (Wyo. 1979); *RM v.State*, 891 P.2d 791, 792 (Wyo. 1995).

[13] *Stogner v. California*, 539 U.S. 607, 610 (2003).

[14] *Landgraf v. USI Film Prods*., 511 U.S. 244, 267 (1994).

[15] *See Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004); *see also Landgraf*, 511 U.S. at 267-68; *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 311-15 (1945*); Campbell v. Holt*, 115 U.S. 620, 6 S. Ct. 209 (1885).

[16] *Id*. at 260, 1156 (quoting *Krenzelak v. Krenzelak*, 503 Pa. 373, 382-83, 469 A.2d 987, 991 (Pa.1983) (internal citation omitted).

[17] *McDonald v. Redevelopment Auth.*, 952 A.2d 713,
718 (Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009) ("[N]o one has a vested right in a statute of limitations or other procedural matters, and the legislature may at any time alter, amend or repeal such provision without offending constitutional restraints.").

(Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009), which involved statutes of limitations under eminent domain, the Court held that a retroactive restriction in the limitations period from five years to one year did not violate the plaintiffs' due process rights. The shortening of an SOL for a plaintiff was permissible, because it was just a procedural change, not a substantive change. The same reasoning applies to defendants, and thus to a revival window for child sexual abuse claims—mere alteration of an SOL does not violate due process in Pennsylvania. Pennsylvania is thus in line with the majority of states, which have **not** found that defendants have a vested right in expired SOLs post-*Landgraf*.[18]

Pennsylvania courts have observed a distinction—even in the sovereign immunity context—between retroactive application of a legislative procedural enactment, such as revival of an SOL, and actual retrospective or retroactive laws which might violate either the Ex Post Facto clause, or Due Process. Expressly following *Landgraf*, one Pennsylvania Court has reasoned:

> A statute does not operate retrospectively merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Instead, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. A statute is retroactive only if it changes the legal consequences of acts completed before its effective date. The…amendments do not impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. As such they do not operate retroactively. …Furthermore, as our Supreme Court has explained the modified timing requirements…are procedural and therefore do not fall within the categories of retrospective laws prohibited by the Ex Post Facto Clause.

Commonw. v. Johnson, 732 A.2d 639, 643 (Pa. Super. Ct. 1999) (internal citations omitted). **Consistent with this reasoning, a revival window does not retroactively alter the burdens on the parties, or the penalties for defendants who commit or create the conditions for the sexual abuse of children at the time of the commission of the offense. It merely changes one procedural element of the civil law governing child sex abuse: the timing of bringing a civil lawsuit.**

Any claim to a vested right in the running of a statute of limitations is grounded in a right to due process, and the Pennsylvania Supreme Court has already foreclosed any proper reliance on such an argument. Most recently, in 2015, two of Pennsylvania's sister State Supreme Courts, Massachusetts and Connecticut, considered the constitutionality of similar revival legislation, and after careful analysis both Courts upheld the revivals to be a proper exercise of legislative judgment under their state Constitutions.[19]

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[18] *Supra* note 2.

[19] *See Sliney v. Previte*, 473 Mass. 283, 41 N.E.3d 732 (Mass. 2015); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 119 A.3d 462 (Conn. 2015).

One of the reasons given for due process arguments against revival of SOLs is a concern about the potential for false claims. This argument is a red herring. Victims of child sex abuse almost never make false claims, as we learned in Guam, California and Delaware, where windows already opened and closed. In Guam, approximately 300 survivors have filed claims since 2016, when it enacted legislation to eliminate and revive expired claims. No false claims have been reported. In California, there were anecdotal, unconfirmed reports of approximately 5 false claims out of the 1,150 filed, which means false claims in the area of child sex abuse are statistically insignificant. In addition, numerous scientific studies have established that children rarely make up child sex abuse. While there were few false claims in California, the window resulted in the identification of 300 child predators previously unidentified to the public, as mentioned above. These numbers, when applied to the due process "reasonableness/balancing of interests analysis" articulated by the Pennsylvania Supreme Court in *Bible*, also weighs in favor of deference to legislative judgment for the protection of children under the *Landgraf* framework. *Bible*, 548 Pa. at 260.

Opponents of reform try to claim that without a statute of limitations, institutions and pedophiles won't be able to defend themselves in court against decades-old claims, also raising due process fairness concerns. This is another red herring. SOL reform merely removes the arbitrary deadline for filing a claim. The plaintiff still bears the initial burden of proof, and if the plaintiff does not have corroborating evidence, the case is over. The defendant need not defend cases where the plaintiff lacks evidence, and simply need file a motion to dismiss. Right now, for the majority of Pennsylvania cases, defendants simply file motions to dismiss solely on SOL grounds. They fear that the cases will now move to the merits rather than remain unheard due to this arbitrary deadline.

As the *Landgraf* Court noted in discussing the reasonableness of retroactive legislation, "there is no such thing as a vested right to do wrong."[20] This principle has long existed under Pennsylvania law as well. There is no such thing as a vested right to commit a wrong, nor to cover up a crime.[21] Due process concerns are muted where the defendant would be claiming a vested right arising out of the very same procedural problem which motivated the legislature to act, and fundamental fairness cuts in favor of retroactive reach intended to cure the wrong.[22] The key distinction is that the pedophile and aiding and abetting institutional defendants knew full well when they endangered and harmed children that they were violating the law. There is no unfair surprise in subjecting them to liability, because when they acted, they were on full notice that they should not have done what they did. The revival will do no more than impose on them the liability they created through their own wrongful actions at the time they acted wrongfully.[23]

[20] *Landgraf*, 511 U.S. at 297, 114 S. Ct. at 1510, 128 L. Ed. 2d at 272 (quoting *Freeborn v. Smith*, 69 U.S. 160, 2 Wall. 160, 175, 17 L. Ed. 922 (1865)).
[21] *Kiskaddon v.Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902) ("No one has a vested right to do wrong"); *Satterlee v. Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827) ("there can be no right to do wrong").
[22] *Gilman v.United States*, 290 F. 614, 616 (D. Pa. 1923) ("[T]here can be no vested right to do wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong is to be presumed.").
[23] *Johnson*, 732 A.2d at 643.

B. A Pennsylvania Window Would Not Violate the Remedies Clause of the Pennsylvania Constitution

For those arguing that the Pennsylvania Remedies Clause invalidates a window, they are ignoring the plain language and purpose of the clause. Unlike a general due process concern which must be applied to either party, the Remedies clause text limits its own application, stating, "*all courts shall be open*; and *every man for an injury done* him in his lands, goods, *person* or reputation *shall have remedy by due course of law,* and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct." Pa. Const. Art. 1 § 11. The obvious purpose of the Remedies Clause is to protect plaintiffs from legislative action that will undermine the existence of an individual's remedy for an injury done. It is a constitutional guarantee of open courts **for plaintiffs**, and not a shield to block court access in favor of powerful defendants.

With a statutory window, the legislature is simply trying to protect a plaintiff's ability to proceed in court in pursuit of a remedy for the injury already done. A statutory window does not create a new substantive theory but rather makes it possible for the one who was injured to receive "due course of law." All Pennsylvania courts agree that the "legislative branch cannot dissolve a right to recover once a case accrues. …' If, at that moment in a particular case, the law would provide the plaintiff access to a remedy, no subsequent law can take it away.'"[24]

In *Ieropoli v. AC&S Corp*., 577 Pa. 138, 842 A.2d 919 (Pa. 2004), the Pennsylvania Supreme Court held that the statute limiting successor asbestos-related liabilities for corporations was unconstitutional. The court analyzed the history of the Remedies Clause in Pennsylvania, and found that the legislation violated the Remedies Clause, because it *extinguished the plaintiff's accrued cause of action* to recover for his asbestos-related illness. The *Ieropoli* Court "held that under the Remedies Clause, *a cause of action* that has accrued is a vested right which cannot be eliminated by subsequent legislation."[25] Any attempt to broaden the *Ieropoli* holding or reasoning to include tortious defendants is belied by the words of the Pennsylvania Supreme Court itself, re-stated its own *Ieropoli* holding as follows: "we held that the statute was unconstitutional as applied to complaints filed before its effective date because the statute extinguished already existing *causes of action*."[26] According to the Pennsylvania Supreme Court, "the guarantee of a 'remedy by due course of law' in Article 1, Section 11, means that a case cannot be altered, in its 'substance' by a

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[24] *Konidaris v. Portnoff Law Associates, Ltd.,* 598 Pa. 55, 74, 953 A.2d 1231, 1242 (Pa. 2008) (citing and quoting *David Schuman*, *The Right to a Remedy,* 65 Temp. L. Rev. 1197, 1206, 1208 (1992)); *see also Stroback v. Camaioni*, 449 Pa. Super. 395, 674 A.2d 257 (Pa. Super. Ct. 1996).

[25] *Konidaris,* 598 Pa. at 64, 953 A.2d at 1236 (quoting *Konidaris v. Portnoff Law Assoc., Ltd*, 884 A.2d 348, 353 (Pa. Cmwlth. 2005) (emphasis added).

[26] *Johnson v. Am. Std.,* 607 Pa. 492, 500, 8 A.3d 318, 323 (Pa. 2010) (emphasis added).

subsequent law."[27] Procedural changes are not problematic under the Remedies Clause, and statutes of limitation are procedural in Pennsylvania, not substantive.[28]

Given the due process holdings of cases such as *Bible* and *McDonald*, neither *Ieropoli* nor *Konidaris* alter the text of the Remedies Clause to make it apply to not only those injured but also those responsible for the injury. *There is no vested right to do wrong in Pennsylvania*.[29] Thus, the plain language of the Remedies Clause should control.[30] There is no legitimate, much less plain, reading of a window bill whereby child sex abuse victims can be said to be the cause of "injury done" to the institutions and individuals who endangered them.[31]

Finally, once again, there is no vested right to do wrong in Pennsylvania. This rule has long existed under Pennsylvania law.[32] There is also no vested right to do wrong under federal law.[33]

Given longstanding precedent and modern jurisprudence, it is clear civil SOL revival legislation, if enacted, would be a proper exercise of legislative judgment in the state of Pennsylvania. The only way to have this question answered once and for all is to enact a statutory revival window and allow the Justices of the Supreme Court of Pennsylvania to answer the question themselves. Under Pennsylvania law, as under federal, "any legislative enactment, enjoys a presumption of constitutionality," and those who wish to challenge it "bear a heavy burden to prove it unconstitutional" and "'[a] statute will only be declared unconstitutional if it clearly, palpably and plainly violates the constitution.'"[34]

According to the Pennsylvania Supreme Court, there are 39 others states with similar Remedies Clauses. Yet, no state with a Remedies Clause has invoked it to invalidate a window. Even if the language of the Pennsylvania Constitution were ambiguous, Pennsylvania's Remedies Clause is not unique, and therefore does not require a unique constitutional interpretation. As the *Ieropoli* Court noted "[t]he constitutions of thirty-nine states contain a provision that is substantially similar to that part of Article 1, Section 11 that is highlighted. This provision, commonly referred to as the 'open courts' or 'remedies' clause, is derived from Magna Carta and Sir Edward Coke's Seventeenth Century commentary on the Great Charter, which was relied upon by the drafters of

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[27] *Ieropoli* 577 Pa. at 149, 842 A.2d at 926 (quoting *Menges v. Dentler*, 33 Pa. 495, 498-99 (Pa. 1859)).

[28] *Seneca v. Yale & Towne Mfg. Co.*, 142 Pa. Super. 470, 474 (Pa. 1941); *see also, In re Condemnation of Real Estate by Carmichaels*, 88 Pa. Commw. 541, 490 A.2d 30 (Pa. Cmwlth. 1985); *Upper Montgomery Joint Authority v. Yerk*, 1 Pa. Commw. 269, 274 A.2d 212 (Pa. Cmwlth. 1971).

[29] *Kiskaddon v. Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902) (emphasis added); *Satterlee v.Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827).

[30] *Ieropoli*, 577 Pa. at 148, 842 A.2d at 925 (noting that "the fundamental rule of construction which guides us is that the Constitution's language controls").

[31] *Commonw. v. Davidson*, 595 Pa. 1, 32, 938 A.2d 198, 216-217, (Pa. 2007) (noting "words and phrases…shall be construed according to rules of grammar and according to their common and approved usage…When the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning[.]") (internal citations omitted); *see also*, *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 557 Pa. 595, 609-610, 735 A.2d 100, 108-109 (Pa. 1999).

[32] *Kiskaddon v. Dodds*, 21 Pa. Super. 351, 355 (Pa. Super. Ct. 1902); *Satterlee v. Matthewson*, 16 Serg. & Rawle 169, 191 (Pa. 1827).

[33] *Landgraf*, 511 U.S. at 297.

[34] *Ieropoli*, 577 Pa. at 153-154, 842 A.2d at 928 (quoting *Erfer v. Commonwealth*, 568 Pa. 128, 794 A.2d 325, 331 (Pa. 2002)) (citation omitted).

early American state constitutions."[35] As a majority of State Constitutions contain Plaintiff's Remedy Clauses similar to Pennsylvania's, **and** a majority of states have not found revival of civil SOLs to disturb any vested right, it is disingenuous to argue that Pennsylvania's Constitution is distinctive, and would thus somehow require a contrary result from that seemingly dictated by the ordinary, commonly understood meaning of the term "open courts."[36]

Pennsylvania does not need to amend its state constitution in order to revive expired sex abuse claims, nor should it make revival of expired civil claims contingent on an amendment. A constitutional amendment in Pennsylvania is unnecessary and would be detrimental. Even if there were a valid constitutional argument against revival in Pennsylvania, the state's interest in passing a revival law is so strong that it would overcome the constitutional objections. Amending the constitution will only serve to temporarily placate the public, while stalling important claims and keeping victims from shifting the cost of their abuse to the ones who caused the abuse. Instead of asking victims, advocates, legislators, and the public to enter into another time-consuming process of constitutional amendment, do what is right for victims of sex abuse and assault and pass a statutory window during this session. It is constitutional in Pennsylvania to revive an expired civil SOL. Reviving expired civil SOLs will empower Pennsylvania's child sex abuse victims to bring their attackers to justice.

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[35] *Id.* at 148, 925 (internal citations omitted).
[36] *Id*.