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C.A.R. 50 Certiorari to the Court of Appeals, No. 22CA1583 Appeal from Arapahoe County District Court, No. 2022CV30065	▲ **COURT USE ONLY** ▲
Petitioners: AURORA PUBLIC SCHOOLS and DAVID JAMES O'NEILL v. Respondents: ANGELICA SAUPE and BRIAN SAUPE	**Case No. 22 SC 824**

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(Application for Admission Pending)

BRIEF OF *AMICI CURIAE* AMERICAN TORT REFORM ASSOCIATION, COLORADO CIVIL JUSTICE LEAGUE, COLORADO CHAMBER OF COMMERCE, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES IN SUPPORT OF AURORA PUBLIC SCHOOLS

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limit set forth in C.A.R. 29(d):

_X_ It contains 4,747 words.

The *amici curiae* brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/Daniel E. Rohner
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INTEREST OF *AMICI CURIAE*

Amici are organizations that advocate for a healthy business environment, support a balanced civil justice system, and insure Colorado homeowners, drivers, businesses, and other entities. Accordingly, *amici* have a substantial interest in ensuring that Colorado law continues to adhere to traditional constitutional law principles recognizing that legislative revival of time-barred claims constitutes impermissible retrospective legislation. While this case arises in the context of childhood sexual abuse, legislation of this type, left unchecked by courts, will undoubtedly spread to other cases involving sympathetic plaintiffs or causes, jeopardizing the predictability and reliability of the civil justice system.

The American Tort Reform Association ("ATRA") is a broad coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation. ATRA and its members have become alarmed as state legislatures consider eliminating or vastly extending statutes of limitations and reviving time-barred claims. ATRA has raised constitutional and public policy concerns with such legislation in several states.

The Colorado Civil Justice League ("CCJL") is a voluntary non-profit organization dedicated to improving Colorado's civil justice system through a

combination of public education and outreach, legal advocacy and legislative initiative. It is a diverse coalition of large and small businesses, trade associations, individual citizens and private attorneys. Founded in 2000, CCJL has submitted *amicus curiae* briefs to this Court in key cases in which liability may be improperly expanded, statutory language misapplied, or the rule of law undermined.

The Colorado Chamber of Commerce is a Colorado nonprofit membership corporation formed in 1965 through a merger of the Colorado State Chamber of Commerce and the Manufacturers' Association of Colorado. The Colorado Chamber's mission is to champion a healthy business climate in Colorado. Its members consist of large and small businesses based in Colorado or doing business in Colorado, as well as several local chambers of commerce and a number of trade associations representing specific industries.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent approximately 65% of the U.S. property-casualty insurance market and write more than $9.3 billion in premiums in the State of Colorado. On

issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts, including this Court.

The National Association of Mutual Insurance Companies ("NAMIC") consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write $357 billion in annual premiums and represent 69% of homeowners, 56% of automobile, and 31% of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

ISSUE ADDRESSED BY *AMICI CURIAE*

Whether applying a newly created cause of action to conduct that occurred prior to the creation of the cause of action violates Colorado's constitutional prohibition against laws that are retrospective in operation. *Amici curiae* agree with the District Court and Petitioner Aurora Public Schools that a statute authorizing such an action violates Article II, Section 11, because it either revives time-barred claims or imposes new liability for past conduct.

INTRODUCTION AND SUMMARY OF ARGUMENT

Colorado, like most jurisdictions, has long held that "[w]hen the bar of the statute of limitations has once attached, the Legislature cannot, by an amendatory act, revive the action." *Denver, S. Park & Pac. Ry. Co.. v. Woodward*, 4 Colo. 162, 167 (1878). Reviving a time-barred claim abrogates vested rights and is unconstitutionally retrospective. *Jefferson County Dep't of Soc. Servs. v. D.A.G.*, 607 P.2d 1004, 1005-06 (Colo. 1980). This constitutional safeguard facilitates a civil justice system in which courts determine liability based on the best evidence available. It avoids surprising organizations with old claims in which witnesses and records are gone and the actions they took, or allegedly failed to take, are evaluated in hindsight based on what society knows and expects today rather than at the time the cause of action arose.

In enacting the Child Sexual Abuse Accountability Act ("CSAAA"), the legislature transparently attempted to circumvent this established constitutional constraint by codifying a cause of action against a "managing organization" of youth programs. S.B. 21-088 (Colo. 2021) (codified at C.R.S. § 13-20-1202). These negligence-based claims may allege that, decades ago, these organizations should have had hiring, supervising, or reporting mechanisms in place that, in retrospect, may have prevented, detected, or stopped sexual abuse committed by an employee or volunteer. *See* C.R.S. § 13-20-1202(1)(b) (providing liability if an organization "knew or should of known" of a risk). The statute authorizes plaintiffs to file these claims, which may date back to the 1960s, during a three-year window. *Id*. § 13-20-1203(2). This provision is little more than a reviver of time-barred negligence claims masquerading as a "new" statutory action. To the extent the statutory action imposes new liability for past conduct, that too is prohibited retrospective legislation.

Because of this law, nonprofit organizations, schools, and businesses that provide services to children are likely to face situations in which they are sued, but the perpetrator of the abuse is dead, the staff from that period is long gone, and employment and other records from that time have been discarded. These evidentiary challenges, exacerbated by a sudden surge of old claims, may pressure

organizations to settle even if they believe they acted responsibly at the time or to file for bankruptcy.

That the CSAAA implicates claims of sympathetic plaintiffs who have experienced serious injuries due to reprehensible behavior, as here, should not affect the Court's established constitutional analysis. Tort law, by its very nature, deals with tragic situations—accidents resulting in serious injuries that have a dramatic impact on a person's life, products that allegedly cause a person's death, and diseases that may have been contracted through exposure to toxic substances, for example. Statutes of limitations exist in these situations, and for all civil actions, because these limits are "fundamental to a well-ordered judicial system." *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980).

Affirming the trial court's ruling would keep Colorado in the legal mainstream. As this brief will show, most state high courts, like this Court, have long rejected legislation purporting to revive time-barred claims. While other states have revived similar claims in recent years, many of these laws face constitutional challenges and are likely to be invalidated.

The alternative, altering Colorado's constitutional law to permit the CSAAA to revive long-expired claims, or somehow distinguishing a retroactive statutory action from a traditional reviver though it has the same effect, would significantly

undermine due process and the finality statutes of limitations provide. Such a departure from *stare decisis* would provide the General Assembly with the ability to reopen other types of stale claims. This would make determinations of liability less accurate and more prone to deep-pocket jurisprudence, frustrate the ability of individuals and organizations to properly evaluate liability risks, and subject organizations to a risk of indefinite liability.

For these reasons, the Court should affirm the district court ruling below.

ARGUMENT

I. REVIVING TIME-BARRED CLAIMS UNDERMINES COLORADO'S CIVIL JUSTICE SYSTEM

A. Statutes of Limitations Allow Judges and Juries to Decide Cases Based on the Best Evidence Available

The CSAAA's codification of a negligence-based cause of action, when retroactively applied to past conduct, undermines the fundamental purpose of statutes of limitations.

Statutes of limitations are an essential aspect of a fair and well-ordered civil justice system. They "promote justice, discourage unnecessary delay, and forestall prosecution of stale claims." *Brown v. Walker Com., Inc.*, 2022 CO 57, ¶ 34 (quoting *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096 (Colo. 1996)). Statutes of limitations allow judges and juries to evaluate liability when the

best evidence is available—before records are lost, witnesses are gone, and memories fade. *See Yarbro v. Hilton Hotels Corp.*, 655 P.2d 822, 825 (Colo. 1982). The possibility of an unfair trial is heightened when heart-wrenching allegations are involved, as they are here.

Statutes of limitations also allow businesses and other organizations to accurately gauge their liability exposure and make financial, insurance coverage, and document retention decisions accordingly. They provide "security and stability to human affairs" that is "vital to the welfare of society." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879). After a lengthy delay in filing suit, "not only is it predictable . . . [that] evidence deteriorates or disappears, memories fade, and witnesses die or move away, but a defendant is also prejudiced simply by the defeat of his right of repose, being exposed as he would then be to surprise litigation long after the statutory limitations period had run." *Malm v. Villegas*, 342 P.3d 422, 426 (Colo. 2015) (internal citations and quotations omitted).

When a law significantly lengthens or even eliminates a statute of limitations *prospectively,* organizations can respond by making rational decisions. They can, for example, keep meticulous records of their policies, practices, and decision making. They can document the best practices that they followed. They can retain these records forever, if needed. Knowing they are subject to extraordinary liability

exposure, organizations may even decide not to offer a particular service or product or decline to acquire a business that, at any point, operated in such an area. When the legislature revives time-barred claims, however, it take away those choices. A nonprofit organization or business cannot go back in time to document its practices, keep records beyond ordinary retention periods, or avoid operating in an area in which it can be hit with a lawsuit fifty years after an incident occurs.

The loss of this security and stability is particularly problematic with respect to insurance. By assuming and managing risk, insurers play an indispensable role in modern life. But a necessary precondition to "managing" risk is the ability to identify and quantify it to establish reserves sufficient to cover all potential exposure for all covered types of losses. Although access to historical data and sophisticated statistical models allows insurers to perform this complex task with ever-increasing accuracy and efficiency, the process still depends on a measure of predictability and stability. Insurers must be able to locate a point at which historically distant events no longer pose a current and future risk—where "the past" is definitively and conclusively past. Without a clear line of demarcation, risk assessments and other basic ordering by organizations, insurers, and other entities become uncertain, unreliable, and even speculative.

The fundamental due process issues that arise as a result of reviving time-barred claims are evident in the wake of the CSAAA, which, during a three-year period, allows claims that date back to the 1960s. This window opened just one year ago and will not close until January 1, 2025. In the meantime, organizations that offer youth programs in Colorado, such as schools, sports leagues, and recreational centers, are likely to face a surge of old claims. While statistics do not appear to be available on how many CSAAA cases attorneys filed during the first year of its window, experience in other states enacting similar laws suggests that, as the deadline approaches, they will file thousands of lawsuits, primarily against organizations, not the perpetrators of the abuse.[1]

These entities can expect increased insurance costs and difficulties obtaining insurance in the future, in addition to their significant new liability exposure for otherwise time-barred claims. *See* Kay Dervishi, *Child Victims Act Leads to*

[1] *See, e.g.*, Derek Lacey, *Eckerd Camps, Henderson County Named in Sexual Assault Case*, Asheville Citizen-Times, Jan. 7, 2022, 2022 WLNR 588624 (quoting an attorney indicating that her firm filed 249 revived cases under North Carolina's SAFE Child Act in just one month against Boy Scout troops, camps, and churches). In New York, proponents of reviver legislation predicted that the Child Victims Act's claims-revival would result in between 2,000 and 3,000 new lawsuits. *See* Gloria Gonzales, *Insurers Try to Measure Exposure to Childhood Sex Abuse Claims*, Bus. Ins., Aug. 20, 2019. When the two-year window closed, attorneys had filed nearly 11,000 revived claims against a wide range of individuals and organizations. *See* Jay Tokasz, *Nearly 11000 Child Victims Act Lawsuits Filed in New York State*, Buffalo News, Sept. 26, 2021.

Insurance Woes, City & State, Feb. 10, 2020 (stating that schools and nonprofits, in the wake of New York's claims-revival law, "faced increased insurance costs" and "have lost coverage for sexual abuse claims altogether").

B. Opening the Constitutional Door to Reviving Time-Barred Claims Will Begin a Slippery Slope That Will Undermine Colorado's Civil Justice System

Over time, there will be many sympathetic plaintiffs, important causes, and unpopular industries and defendants. It is never easy to tell an injured person that his or her time to sue has ended. Allowing revival of time-barred claims here would inevitably lead to future calls to permit claims asserting injuries based on conduct that occurred decades ago to proceed in Colorado courts.

Amici have already observed several such attempts. Efforts are underway in states that have revived time-barred childhood sexual abuse claims to expand these provisions. Legislation recently took effect in New York that revives claims brought by those who allege injuries from sexual abuse as *adults*. *See* S. 66 (N.Y. 2022). California enacted similar legislation reviving claims against entities alleging damages from sexual assault experienced as adults, adding related employment claims. *See* A.B. 2777 (Cal. 2022).[2] Vermont almost immediately

[2] As introduced, the California legislation would have broadly revived claims seeking to recover damages for "inappropriate conduct, communication, or activity of a sexual nature." A.B. 2777 (Cal., introduced Feb. 18, 2022).

expanded its 2019 childhood sexual abuse claims-revival law to apply to *physical* abuse claims. *See* S. 99 (Vt. 2021). Now, Vermont is considering legislation that would further extend this reviver to "emotional abuse" claims. H. 8 (Vt., introduced Jan. 5, 2023).

Plaintiffs' lawyers and advocacy groups will also seek to revive other types of tort claims. For example, legislation proposed in Maine would have retroactively expanded the statute of limitations for product liability claims from six to fifteen years. *See* LD 250 (Maine 2019) (reported "ought not to pass"). Oregon considered a bill that would have revived time-barred asbestos claims during a two-year window. *See* S.B. 623 (Or. 2011) (died in committee). Last October, New York revived claims by water suppliers alleging injuries related to an "emerging contaminant." S. 8763A (N.Y. 2022).

States have also considered proposals to retroactively recognize novel theories of liability. Bills have attempted to allow claims addressing social and political causes by applying today's moral values to conduct that occurred long ago. For instance, a California bill would have revived actions under the state's unfair competition law alleging that businesses deceived, confused, or misled the public on the risks of climate change or financially supported activities that did so. *See* S.B. 1161 (Cal. 2016) (reported favorably from committee, but died without

floor vote). Another California bill proposed a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims for events that occurred up to 115 years earlier. *See* A.B. 15 (Cal., as amended Mar. 26, 2015) (claims-revival provision removed and legislation made prospective before enactment).

While most of these proposals failed to gain sufficient support for enactment, should this Court alter Colorado's constitutional law or allow the legislature to circumvent the prohibition on reviving time-barred claims through codifying a new cause of action with retroactive application, more of these types of proposals are expected. The drumbeat for discarding statutes of limitations will grow louder. As a result, individuals and businesses in Colorado will face a risk of indefinite liability. In addition, when adopted, these proposals will undermine the ability of judges and juries to accurately evaluate liability given the loss of witnesses and records, faded memories, and changes in societal expectations. Cases will become more susceptible to being decided based on sympathy and bias, rather than law and evidence.

II. CODIFYING A NEGLIGENCE-BASED CAUSE OF ACTION, AND APPLYING THE NEW STATUTORY ACT TO CONDUCT AS FAR BACK AS 1960, CONSTITUTES IMPERMISSIBLE RETROSPECTIVE LEGISLATION

A. This Court Should Reaffirm the Established Constitutional Principle That the Legislature May Not Revive Time-Barred Claims or Retroactively Impose New Liability

The Colorado Constitution prohibits the General Assembly from reviving time-barred claims or imposing new liability for past conduct. It provides that "[n]o ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation . . . shall be passed by the general assembly." Colo. Const. art. II, § 11. A law is unconstitutionally retrospective if it "abrogates an existing right of action or defense, or creates a new obligation on transactions or considerations already past." *California Co. v. State*, 348 P.2d 382, 399 (Colo. 1959) (quoting *Evans v. City of Denver*, 57 P. 696, 697 (Colo. 1899)). For well over a century, this Court has consistently recognized that once a statute of limitations had run, the legislature cannot revive it without abrogating a vested right. *See Edelstein v. Carlile*, 78 P. 680 (1904); *Willoughby v. George*, 5 Colo. 80, 82 (1978); *Denver, S. Park & Pac. Ry. Co. v. Woodward*, 4 Colo. 162, 167 (1878). This steadfast rule remains unaltered in modern times. *See Jefferson v. City Dep't of Soc. Servs. v. D.A.G.*, 607 P.2d 1004, 1005-06 (Colo. 1980).

Whether a claim is revived through lengthening or eliminating a statute of limitations that has run or codifying a "new" cause of action that may be filed at any time does not change the fact that the underlying claim accrued and that the time to bring it expired, creating a vested right. As this Court has recognized, a vested right "has an independent existence" and is "not dependent upon the common law or the statute under which it was acquired." *Abromeit v. Denver Career Serv. Bd.*, 140 P.3d 44, 51 (Colo. 2005). For example, after the General Assembly enacted a new statute governing paternity suits, this Court ruled that a child's mother could not use the new statutory action to bring a claim that the applicable statute of limitations had already barred. *See Jefferson*, 607 P.2d at 1005-06. "When the bar of the statute of limitations" has attached, the Court found, "the legislature cannot revive the action." *Id*.

To the extent that the CSAAA's statutory cause of action does more than codify and revive common law negligence claims against organizations (and it is not clear that it does), the law impermissibly imposes new liability for past conduct. *Jefferson,* 607 P.2d at 1006.

B. Colorado's Constitutional Law is Consistent with the Majority of States in Prohibiting Revival of Time-Barred Claims

Colorado's longstanding rejection of legislative attempts to revive time-barred claims reflects the traditional rule in the states and remains consistent with the current approach applied in most jurisdictions.[3]

State high courts have repeatedly recognized that the majority rule among jurisdictions is that a legislature cannot adopt retroactive laws that revive time-barred claims.[4] These states generally apply an analysis that is consistent with

[3] *See* Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L. J. 1672, 1739 (2012) (observing it was "orthodox constitutional theory" that "due process" prohibited retroactive legislation that interfered with vested rights); Bryant Smith, *Retroactive Laws and Vested Rights*, 5 Tex. L. Rev. 231, 237 (1927) (same).

[4] *See Johnson v. Garlock, Inc*., 682 So. 2d 25, 28 (Ala. 1996) ("The weight of American authority holds that the bar does create a vested right in the defense."); *Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred."); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) ("[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action."); *Dobson v. Quinn Freight Lines, Inc*., 415 A.2d 814, 816-17 (Me. 1980) ("The authorities from other jurisdictions are generally in accord with our conclusion" that there is a substantive right in a statute of limitations after the prescribed time has completely run and barred the action); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993) (recognizing constitutional prohibition of legislative revival of a time-barred claim "appears to be the majority view among jurisdictions with constitutional provisions"); *Kelly v. Marcantonio*,

Colorado law, whether they do so through applying a specific state constitutional provision prohibiting retroactive legislation, due process safeguards, a remedies clause, or another state constitutional provision.[5] Courts have also applied these constitutional principles to reject the legislative revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers' compensation claims, among others.

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678 A.2d 873, 883 (R.I. 1996) (recognizing the "great preponderance of state appellate courts" reject claims-revival laws) (cleaned up); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) ("Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.").

[5] *See, e.g.*, *Garlock*, 682 So. 2d at 27-28; *Lilly*, 823 S.W.2d at 885; *Wiley v. Roof*, 641 So. 2d 66, 68-69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484-85 (Ill. 2009); *Skolak v. Skolak*, 895 N.E.2d 1241, 1243 (Ind. Ct. App. 2008); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc*., 114 S.W.3d 850, 854-55 (Ky. 2003); *Hall v. Hall*, 516 So. 2d 119, 120 (La. 1987); *Dobson*, 415 A.2d at 816-17; *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc*., 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp*., 493 A.2d 1193, 1195-96 (N.H. 1985); *Wilkes County v. Forester*, 167 S.E. 691, 695 (N.C. 1933); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Lewis v. Pennsylvania R. Co*., 69 A. 821, 822-23 (Pa. 1908); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc*., 12 S.W.3d 1, 4 (Tex. 1999); *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020); *Murray v. Luzenac Corp*., 830 A.2d 1, 2-3 (Vt. 2003); *Starnes v. Cayouette*, 419 S.E.2d 669, 674-75 (Va. 1992); *Society Ins. v. Labor & Indus. Review Comm'n*, 786 N.W.2d 385, 399-402 (Wis. 2010).

In 2020, the Utah Supreme Court became the latest state high court to find a law reviving time-barred claims unconstitutional after the legislature permitted such claims against perpetrators of childhood sexual abuse. *See Mitchell v. Roberts*, 469 P.3d 901 (Utah 2020). While the court "appreciated the moral impulse" underlying the claims-revival provision and expressed "enormous sympathy for victims of child sex abuse," it maintained that the issue was "not a matter of policy" but one of basic protection for defendants. *Id.* at 914. The court unanimously held that the principle that the legislature "vitiates a 'vested' right" in violation of due process by retroactively reviving a time-barred claim is "well-rooted," "confirmed by the extensive historical material," and has been repeatedly reaffirmed for "over a century." *Id*. at 903, 904, 913. Thus, the court continued to follow the "majority approach." *Id*. at 906.

In comparison, a minority of states find that legislation reviving time-barred claims is generally permissible or appear likely to reach that result. These states generally follow the approach taken under the U.S. Constitution, which contains an "Ex Post Facto" clause that prohibits retroactive criminal laws, including revival of time-barred criminal prosecutions, *Stogner v. California*, 539 U.S. 607, 663 (2003), but does not similarly bar retroactive laws affecting civil claims. For that

reason, while retroactive legislation is "disfavored" under federal law,[6] under the U.S. Constitution, there is no vested right in a statute of limitations defense that prohibits reviving an otherwise time-barred claim. *See Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution. *See Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980); *Chase*, 325 U.S. at 312-13. Many states, including Colorado, do so. In fact, when the Connecticut Supreme Court ruled that its law favored the minority approach, it contrasted Colorado as among the states that ground their holding that legislation reviving time-barred claims is "per se invalid" in a state constitutional provision prohibiting retroactive legislation. *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 510-11 (Conn. 2015) (citing *Jefferson*, 607 P.2d at 1006).

In addition, the differentiation in federal law between criminal and civil revivers does not exist in Colorado, as this Court has found that "[t]he constitutional prohibition of retrospective legislation parallels the provision forbidding *ex post facto* laws." *See Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 590 P.2d 960, 962 (Colo. 1979). "The purpose of the constitutional ban

[6] *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994).

on retrospective legislation, like the ban on ex post facto laws, is to prevent the unfairness that results from changing the legal consequences of an act after the act has occurred." *Trailer Haven MHP, LLC v. City of Aurora*, 81 P.3d 1132, 1139 (Colo. Ct. App. 2003).

Advocates supporting the CSAAA may emphasize that other states have enacted legislation reviving time-barred childhood sexual abuse claims in recent years. States enacted many of these laws between 2019 and 2021. As in Colorado, legislatures in several of these states revived time-barred claims despite clear constitutional prohibitions. As noted, already, the Utah Supreme Court invalidated that state's 2016 law. *Mitchell*, 469 P.3d at 903. Constitutional challenges are now before appellate courts in Louisiana, North Carolina, New York, and Rhode Island. *Amici* anticipate that courts will ultimately invalidate some, if not all, of the reviver provisions in these laws.[7]

[7] *Lousteau v. Congregation of Holy Cross Southern Province, Inc.*, No. 22-30407 (5th Cir.) (considering appeal of ruling finding Louisiana's reviver unconstitutional); *Doe v. Society of the Roman Catholic Church of the Diocese of Lafayette*, No. 2022-CC-00829, 347 So.3d 148 (Mem) (La. Oct. 4, 2022) (remanding to Court of Appeals with instruction to consider whether reviving a time-barred claim would "unconstitutionally impair relator's vested right in the defense of liberative prescription"); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, CA 21-01223 (N.Y. App. Div., 4th Dept.) (briefing complete)*; McKinney v. Goins*, No. 109PA22 (N.C.) (considering appeal of ruling finding reviver unconstitutional); *Houllahan v. Gelineau*, SU-2021-0032-A, SU-2021-0033-A,

Invalidating the CSAAA's cause of action as applied retroactively to time-barred claims will ensure that Colorado law remains consistent with the majority approach.[8] This Court has consistently emphasized the important interests statutes of limitations serve in promoting justice, discouraging unnecessary delay, and protecting the judicial system from stale claims. *See, e.g., Lake Canal Reservoir Co. v. Beethe*, 227 P.3d 882, 886 (Colo. 2010). For such interests to have meaning, there must be robust constitutional protections. That is not the case if this Court permits a new cause of action to impose liability based on events that occurred, and claims that expired, decades ago.

CONCLUSION

For these reasons, *amici* respectfully request that the Court affirm the district court's ruling that applying the CSAAA's newly created cause of action to conduct that allegedly occurred prior to the creation of the cause of action, or otherwise applying the statute to revive time-barred claims, violates Colorado's prohibition against retrospective laws.

SU-2021-0041-A (R.I.) (oral argument scheduled for Feb. 1, 2023, in case in which trial court did not reach constitutional issue).

[8] *Amici* are not aware of any state high court abandoning *stare decisis* to allow revival of time-barred claims over the past thirty years.

Respectfully submitted this 17th date of January 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2023, a true and correct copy of the foregoing Brief of *Amici Curiae* was served via Colorado Courts E-Filing, the court's online filing system, upon the following:

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