DATE FILED: February 21, 2023 4:33 PM

COLORADO SUPREME COURT Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	
C.A.R. 50 Certiorari to the Court of Appeals, 2022CA1583 District Court, Arapahoe County, 2022CV30065	▲ COURT USE ONLY ▲
DEFENDANT-PETITIONERS: AURORA PUBLIC SCHOOLS and DAVID JAMES O'NEILL v. **PLAINTIFFS-RESPONDENTS:** ANGELA SAUPE and BRIAN SAUPE	Supreme Court Case No.: 2022SC824
Counsel for Amicus Curiae CHILD USA Michael Nimmo, Esq., #36947 **WAHLBERG, WOODRUFF, NIMMO & SLOANE LLP** 4601 DTC Boulevard, Suite 950 Denver, CO 80237 Phone: 303-571-5302 Fax: 303-571-1806 Email: michael@denvertriallawyers.com Prof. Marci A. Hamilton, Esq. University of Pennsylvania **CHILD USA** Founder & CEO 3508 Market Street, Suite 202	

Philadelphia, PA 19104
Phone: (215) 539-1906
Email: marcih@sas.upenn.edu

Alice Nasar Hanan, Esq.
CHILD USA
Staff Attorney
3508 Market Street, Suite 202
Philadelphia, PA 19104
Phone: (215) 539-1906
Email: ahanan@childusa.org

BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFFS-RESPONDENTS ANGELA AND BRIAN SAUPE

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:

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

It contains 4,643 words (does not exceed 4,750 words).

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

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

Dated this 21st day of February 2023:

s/ Michael Nimmo
Michael Nimmo, #36947

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST

Amicus curiae, CHILD USA, is an interdisciplinary, non-profit think tank fighting for the civil rights of children. CHILD USA engages in legal analysis and social science research to determine the most effective public polices to protect children from sexual abuse and to provide access to justice to survivors. Likewise, CHILD USA is the only organization to track and study SOLs for CSA in the U.S. and across the globe, as part of its Sean P. McIlmail SOL Reform Institute.

CHILD USA's Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on SOLs, and has advised Congress and state governors, legislatures, and courts on the importance of SOL reform for CSA throughout the United States, including in Colorado.

CHILDUSA's interests in this case are directly correlated with its mission to enhance child protection and to eliminate barriers to justice for victims who have been harmed by individuals and institutions. If the CSAAA is deemed unconstitutional, even as it applies only to the Petitioners, the impact on CSA victims in Colorado would be devastating.

SUMMARY OF THE ARGUMENT

Petitioner challenges the constitutionality of C.R.S. § 13-20-1201, et seq. (the "CSAAA") which, among other things, creates a new civil cause of action for victims of childhood sexual misconduct, occurring as early as 1960, to hold abusers and negligent youth-related organizations accountable for their injuries. C.R.S. § 13-20-1203 (2). CHILD USA submits that the CSAAA is constitutional under CO CONST. ART. II, § 11 as it reflects the Colorado Legislature's understanding that CSA inflicts a unique trauma on victims, rendering many of them unable to disclose their abuse until decades later. Most courts, like those in Colorado, use a modern interest balancing analysis instead of the outdated absolute "vested rights" approach when evaluating the constitutionality of retroactive civil laws. This is especially true when the law in question is curative and the legislature's intentions are clear. A ruling against the CSAAA would have negative ramifications for all the CSA victims throughout Colorado who are embracing the new cause of action in pursuit of long overdue justice. Also at stake are important public policies of justice, public safety, and preventing future sexual abuse that

the Colorado Legislature sought to achieve when it passed the CSAAA. Accordingly, CHILD USA respectfully submits that this Court upholds the constitutionality of the CSAAA.

ARGUMENT

I. THE CSAAA REFLECTS THE SCIENCE OF CSA TRAUMA AND ADDRESSES COLORADO'S COMPELLING INTEREST IN PROMOTING JUSTICE AND SAFEGUARDING CHILDREN

A. CSA Uniquely Prevents Victims from Filing Timely Claims for their Injuries

CSA is a national public health crisis, with 3.7 million children sexually abused every year.[1] It affects one in five girls and one in thirteen boys in the United States.[2] The Colorado Legislature declared

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[1] *See* Preventing Child Sexual Abuse, CDC.GOV (last visited Feb. 10, 2023), https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf; *see also* 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), available at https://jamanetwork.com/journals/jamapediatrics/fullarticle/2344705.

[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 PUB. HEALTH (2018), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6180456/; M. Stoltenborgh et. al., A Global Perspective on Child Sexual Abuse: Meta-

CSA as a "significant public health problem in Colorado with long-term effects on the physical and mental health of children, including trauma, increased risk for unintended pregnancy, sexually transmitted infections, low academic performance, truancy, dropping out of school, eating disorders, substance abuse, self-harm, and other harmful behaviors."[3]

An extensive body of evidence establishes that CSA survivors are traumatized in a way that is distinguishable from victims of other crimes. Many victims of CSA 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 disclosure, such as disruptions in family stability, loss of close relationships, or

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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] *See* S.B. 88, 2021 Leg. (Col. 2021).

involvement with the authorities.[4] This crime typically occurs in secret, and many victims assume no one will believe them.[5]

Additionally, CSA victims may struggle to disclose their experiences due to the effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or the stigma of sexual victimization.[6] Victims also often develop a variety of coping strategies—such as denial, repression, and dissociation—which make it difficult to recognize or address the harm they suffered.[7] These mechanisms may persist well into

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[4] D. 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/.

[5] *See* NATIONAL CHILD TRAUMATIC STRESS NETWORK CHILD SEXUAL ABUSE COMMITTEE, Caring for Kids: What Parents Need to Know about Sexual Abuse, at 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

[6] R. Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

[7] G. 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).

adulthood. A study found that 44.9% of male CSA victims and 25.4% of female CSA victims delayed disclosure by *more than twenty years*.[8] In fact, more victims first disclose their abuse between ages *fifty and seventy* than during any other age.[9] It is estimated that 70–95% of CSA victims never report their abuse to the police.[10]

The CSAAA's new retroactive cause of action judiciously reflects this reality.

B. Colorado's Unreasonably Short SOLs Blocked Colorado Survivors from Accessing Justice

The SOL reform movement for CSA in the United States was spurred by the *Boston Globe*'s January 2002 Pulitzer Prize-winning *Spotlight* series on the cover-up of clergy abuse by the Boston Archdiocese.[11] The *Spotlight* series brought to the fore the broad

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[8] Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. Child Sex Abuse 133 (2008).
[9] CHILD USA, Data on Abuse in Boy Scouts of America (on file with author at info@childusa.org)
[10] D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, U.S. Dep't of Just., Office of Just. Programs (2008), https://www.ojp.gov/pdffiles1/ojjdp /214383.pdf.
[11] Michael Rezendes, Church Allowed Abuse by Priest for Years, The Boston Globe: Spotlight Series (Jan. 6, 2002),

themes of institution-based CSA: powerful individuals motivated by image and self-preservation; calculated ignorance of the clear risks to children; and protection of abusers within an institution, rather than the children. While stories began to pile up about Catholic priests sexually abusing children, it became apparent that victims were unlikely to receive any justice due to the restrictive criminal and civil SOLs in many states, including Colorado.[12] Thus, the shock about the disclosures was compounded by the inefficacy of the legal system to right the wrongs.

In the summer of 2005, the Denver Post published a series of investigative articles exposing local cases of clergy abuse. This prompted Colorado legislators to act by extending the SOL and temporarily reviving expired claims, to provide victims with the opportunity to seek justice.[13] While a bill eliminating criminal SOLs

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https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html.

[12]Eric Gorski, Breaking His Long Silence , Denver Post, (July 26, 2005),http://www.denverpost.com/frontpage/ci_2890452.

[13] See H.B. 1088, 2006 Leg. (Col. 2006); H.B. 1090, 2006 Leg. (Col. 2006); S.B. 143, 2006 Leg. (Col. 2006).

passed,[14] the civil justice provisions were defeated, in part due to the Colorado Catholic Conference's aggressive lobbying against it.[15] Efforts to eliminate the civil SOL and revive claims faltered again in 2008 and again in 2020.[16]

In 2021, the Legislature's reform of the SOL was finally achieved after a long and difficult 15-year fight led by lawmakers, advocates, and survivors seeking justice and protection. The reform included the CSAAA and changes to CO REV. STAT. ANN. § 13–80–103.7 that eliminated the general civil SOL for CSA. Prior to this reform, victims had a deadline of age twenty to file suit for most claims against institutions responsible for their abuse. *See* COLO. REV. STAT. ANN. §§ 13-80-101, 102, 103.7. This means, historically, the civil SOL expired nearly three decades before the average Colorado victim told anyone

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[14] See H.B. 1088, 2006 Leg. (Col. 2006).
[15] Michael Karlik, Colorado Politics, As the sex abuse statute of limitations bill falters again, echoes of 2006 defeat, June 13, 2020, updated march 11, 2021, available at https://www.coloradopolitics.com/legislature/as-the-sex-abuse-statute-of-limitations-bill-falters-again-echoes-of-2006-defeat/article_549aefe0-ad24-11ea-bfb6-6fa84b38e8e5.html.
[16] See H.B. 1011, 2008 Leg. (Col. 2008); H.B. 1296, 2020 Leg. (Col. 2020).

they were abused. Indeed, Colorado's SOLs were amongst the shortest in the country in 2021; at that time, thirty-seven states gave survivors more time to file suit, having longer SOLs than Colorado or no SOL at all.[17] Colorado's SOLs were absolutely "draconian" before the 2021 SOL reform, contrary to Petitioner's contention. See Petitioners Opening Brief pg. 12.

C. The CSAAA's Retroactive Cause of Action Is the Only Avenue to Justice for Many Colorado Survivors

Historically, Colorado victims of CSA have been blocked by unreasonably short SOLs from criminally prosecuting their abusers and pursuing civil claims for their injuries. The 2019 Clergy Sexual Abuse report from the Colorado Attorney General's Office highlights the issue, revealing that at least 166 children were sexually abused by 43 Roman Catholic priests since 1950, yet only one claim was "arguably still viable for prosecution within the relevant statute of limitations."[18] Because

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[17] CHILD USA, History of Child Sex Abuse Statutes of Limitations Reform in the United States: 2002 to 2021, p.162-63, https://childusa.org/wp-content/uploads/2021/02/2021-02-26-2020-SOL-Report-2.16.21-v2.pdf.

[18] Special Master's Report, Roman Catholic Clergy Sexual Abuse of Children in Colorado from 1950 to 2019, pg. 1 (Oct. 22, 2019), available

criminal retroactive legislation is unconstitutional, Stogner v. California, 539 U.S. 607, 610 (2003), the civil courts are the sole avenue to justice. The Legislature understood and appreciated that the only way to restore justice to Colorado victims is to give them a renewed opportunity to file civil lawsuits for their injuries if they so choose.

D. The CSAAA's Retroactive Cause of Action Addresses Colorado's Compelling Interest in Child Protection

The CSAAA not only remedies the long-standing injustice to CSA victims of unreasonably short SOLs, it also serves Colorado's compelling interest in protecting the physical and psychological well-being of its children, by: (1) identifying previously unknown child predators and the institutions that shield them; (2) shifting the cost of abuse from victims and taxpayers to those who caused the abuse; and (3) educating the public to prevent future abuse.

First, a longer SOL facilitates the identification of hidden child predators and institutions that shield them. Before a victim is ready to come forward, decades can pass, giving perpetrators and institutions

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at https://coag.gov/app/uploads/2019/10/Special-Masters-Report_10.22.19_FINAL.pdf.

ample time to conceal the truth, causing harm to children, families, and society as a whole. Some predators abuse a high number of children and continue to harm children even in their advanced age. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the longest time between offense to conviction was 36 years.[19] In Colorado, the Attorney General's Office reported that 5 Roman Catholic priests were responsible for sexually abusing 102 of the 166 children.[20] Notably, "on average it took 19.5 years before a Colorado Diocese concretely restricted an abusive priest's authority" after an allegation of sexual abuse, and "[n]early a hundred children were sexually abused in the interim."[21] Clearly, the identification of even aged perpetrators is a public safety interest of the first order.

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[19] Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).
[20] Supra n. 19, Supplemental Report, pg. 7 (Dec. 1, 2020), available at https://coag.gov/app/uploads/2020/12/12.1.20-Final-Catholic-clergy-child-sexual-abuse-supplemental-report.pdf
[21] Id. at 2.

Second, the CSAAA helps educate the public about the dangers of CSA and how to prevent it. When perpetrators and organizations are exposed, especially high-profile cases like those of Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press sheds light on the tactics used by perpetrators to groom and sexually exploit children, as well as the institutional failures that allowed the abuse to occur. This creates a heightened sense of awareness in society, motivating the public to take action and establish safe practices and accountability measures to prevent CSA in families and community organizations.

Third, the cost of CSA to survivors is enormous,[22] and they, along with Colorado taxpayers, unjustly carry the burden of this expense. The Colorado Legislature acknowledged the financial toll that CSA can

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[22] *See* Melissa T. Merrick et al., Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health, 69 CHILD ABUSE & NEGLECT 10 (July 2017); I. Angelakis et al., Childhood Maltreatment and Adult Suicidality: A Comprehensive Systematic Review With Meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornor, 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).

take on its victims, including costs related to: "health care, child welfare, special education, short- and long-term physical and mental health treatment, violence and crime, suicide, productivity, and loss of future wages."[23] The estimated lifetime cost to society from CSA 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.[24] These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.[25] CSA cases that result in awards and settlements equitably shift *some* of the cost of abuse away from survivors and save the State money by reducing expenditures on these public services.

The Colorado legislature rationally responded to the State's compelling interests in protecting children from sexual abuse and correctly prioritized the physical and psychological well-being of its

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[23] See S.B. 88, 2021 Leg. (Col. 2021)

[24] E. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

[25] Id.

children over the alleged property rights of child abusers and harmful institutions.

E. The Colorado Legislature's Judgment Should be Accorded Deference

The Court should defer to the Legislature's judgment to grant child sexual abuse victims access to justice and to help eliminate child sexual abuse in Colorado. The CSAAA was not the product of a cursory review or a hasty passing in the Colorado Legislature; in fact, it was the source of great debate, politicking, and publicity, all of which centered on giving victims more time to bring their abusers to justice. Numerous critics of the CSAA sent representatives to the Capitol to testify against the bill, including the same organizations that have sought involvement in this case as *amici curiae* in support of Petitioner.[26] Petitioner and supporting *amici curiae* are urging the Court to reconsider the same

[26] See e.g., Senate Judiciary Committee Hearing on SB21-1088 (Mar. 11, 2021), available at https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20230210/41/11058#info_

public policy factors the Legislature thoroughly evaluated before passing the CSAAA.[27]

The notion that allowing CSA causes of action to proceed under the CSAAA would result in litigating stale claims is a fallacy. (Petitioners Opening Brief pg. 42). The plaintiffs, who are the child victims, bear the initial burden of proof on their claims. If they fail to present sufficient evidence, the case will be dismissed without the defendants being required to mount a defense. Consequently, the passage of time is more prejudicial to the victims, not the wrongdoers. Allowing access to the justice system through civil lawsuits based on past abuse would not hinder its functioning, but rather would serve to ensure that it operates fairly.

It is not unjust to hold institutions liable for their involvement in incidents of CSA that occurred in the past. (Petitioners Opening Brief pg. 12). Many institutions have engaged in illegal conduct by knowingly

[27] See Michael Karlik Lawmakers pause sex abuse bill as critics cast doubt on constitutionality, Colorado Politics (May 26, 2021) available at https://www.coloradopolitics.com/legislature/lawmakers-pause-sex-abuse-bill-as-critics-cast-doubt-on-constitutionality/article_565d8538-bdb6-11eb-9491-e3a647ff5498.html

covering up the abuse, and being held responsible for their actions does not constitute an unfair outcome. Many institutions have insurance coverage, which will likely mitigate a significant portion of their liability. The initiation of legal action by CSA victims has not led to an excessive number of lawsuits that would undermine the goals of tort reform.[28] CSA claims are unique in nature due to the severe harm inflicted on minors who were powerless at the time, and the power dynamics between the victims, perpetrators, and involved institutions.

As states face important public policy issues relating to the ongoing child sexual abuse epidemic, judicial deference to legislative judgments on civil procedural retroactivity is now the norm. See, e.g., Sliney v. Previte, 41 N.E.3d 732, 737-39 (Mass. 2015); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 439-40 (Conn. 2015); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779–80 (Mont. 1993). In upholding the constitutionality of a CSA claim-revival law the Supreme Court of Delaware wisely mused, "we do not sit as an überlegislature to eviscerate proper legislative enactments. It is beyond the province of

[28] Supra n. 23.

courts to question the policy or wisdom of an otherwise valid law.". Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258–60 (Del. 2011). Likewise, the Colorado Legislature meticulously weighed the arguments regarding potential unfairness, the difficulties in litigating these CSA claims, and the financial impact on institutions and their insurers. Their judgment should be respected and given deference.[29]

II. THE CSAAA'S NEW CAUSE OF ACTION WITH RETROACTIVE EFFECT IS CONSTITUTIONAL UNDER BOTH THE UNITED STATES AND COLORADO CONSTITUTIONS

A. The CSAAA Is Constitutional Under the United States Constitution

The District Court ruled in error that the retroactive application of Colorado CSAAA's new civil cause of action in this case violates the United States Constitution. (Order pg. 8). A well-established principle in constitutional law is that immunity from a lawsuit due to the expiration of an SOL is not considered a "federal constitutional right".

[29] Legislative Council Staff, Final Fiscal Note, SB 21-088 (Aug. 23, 2021), available at https://leg.colorado.gov/sites/default/files/documents/2021A/bills/fn/2021a_sb088_f1.pdf

Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S. Ct. 1137 (1945) ("it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment."). The United States Supreme Court set out the standard of review for retroactive civil legislation in Landgraf v. USI Film Prods., 511 U.S. 244, 267, 114 S. Ct. 1483, 1498 (1994), where the Court explained that such legislation is constitutional if it has clear legislative intent and the change is procedural. The CSAAA satisfies this standard with ease and would hold up even under a higher level of scrutiny, considering the significant government objectives involved.

The District Court blurs the critical constitutional lines between laws with retroactive effect in criminal cases, where it has been barred, versus in civil cases, where it is permissible. It mistakenly relies on a criminal case, Stogner v. California, 539 U.S. 607, 610,123 S. Ct. 2446, 2449 (2003), which held that retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the Ex Post Facto Clause of the United States Constitution.

Stogner does not similarly bar laws with retroactive effect on civil claims. Id. The Petitioner and the American Tort Reform Association and other *Amici Curiae* supporting the Petitioner concur on this federal law issue. See (Petitioner's Brief, pg. 11, Fn. 1) (acknowledging "the federal ex post facto clauses apply only to criminal laws") and Amicus Brief, pgs. 18-19.

B. The CSAAA Is Constitutional Under the Colorado Constitution

Colorado's constitutional constraint on retroactive civil lawmaking is not absolute. Despite Colorado's constitutional provision that "No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, . . . shall be passed by the general assembly," not all retroactive laws are deemed unconstitutional. COLO. CONST. art II, § 11. The Colorado Constitution permits a law to operate retroactively so long as it neither "(1) impairs a vested right, [n]or (2) creates a new obligation, imposes a new duty, or attaches a new disability". This Court established this modern standard of review in In re Estate of DeWitt, 54 P.3d 849, 855 (Colo. 2002). The application of these factors is subject to variation in each case, as they

enable the court to weigh the rights that may be impacted by the new law against the policy objectives behind the legislation.

Even if the CSAAA did infringe on a vested right or create a new obligation, duty, or liability, it would still be constitutional because it serves the compelling government interests detailed in Section I. Vested rights are not absolute in Colorado and are balanced against public interests such as health, safety, regulation, and policy, as stated in DeWitt,, 54 P.3d at 855, and City of Golden v. Parker, 138 P.3d 285, 289–90 (Colo. 2006). The public policy for the CSAAA clearly outweighs the purported right of institutions to financial immunity for being complicit in or covering up the sexual abuse of children in their care.

The defense that the SOL has expired for a specific common law or statutory cause of action is not a vested right nor is it impaired by the new cause of action established by the Act. In Colorado, the determination of what constitutes a "vested right" is not based on an objective test. Courts consider the following factors when making this determination: "(1) whether the public interest is advanced or retarded; (2) whether the statute gives effect to or defeats the bona fide intentions

or reasonable expectations of the affected individuals; and (3) whether the statute surprises individuals who have relied on a contrary law." DeWitt, 54 P.3d at 855 (citing Ficarra v. Dep't of Regulatory Agencies, 849 P.2d 6, 16 (Colo. 1993)). The CSAAA advances the critical public interest of protecting children from sexual abuse and holding institutions responsible for harm accountable. It is unreasonable for an institution that endangered children to argue that they failed to prevent abuse by relying on the existence of a short SOL. Ultimately, those responsible for the abuse cannot claim a vested right in an SOL defense against claims brought under the CSAAA.

The CSAAA would not impose a new obligation, duty, or disability related to CSA, which has long been considered a crime and a tort. Likewise, the Act does not change the standard applicable to CSA, as it has always been illegal. Establishing the SOL for torts is a traditional legislative power and any policy shift increasing liability for those responsible for child sex abuse would not be considered a disability of "constitutional magnitude" pursuant to DeWitt, 54 P.3d at 857.

III. DECISIONS IN OTHER STATES PERMITTING CLAIMS FOR DECADES OLD CHILDHOOD SEXUAL ABUSE SUPPORT THE CONSTITUTIONALITY OF THE CSAAA

Legislation allowing adult victims of CSA to seek justice has gained popularity in recent years, as lawmakers have come to understand the realities of disclosure and that SOLs have prevented victims from bringing claims in the past. The traditional approach has been to revive pre-existing common law or statutory civil claims for CSA as more than twenty-seven U.S. States and Territories have already done.[30] The vast majority of appellate courts that have assessed the constitutionality of CSA revival laws have upheld them, even in instances where the state has adopted a stricter standard of constitutionality compared to the federal standard.[31] Notably, the

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[30] Supra n.18.

[31] *See* **Arizona**: John I M Doe v. Big Brothers Big Sisters of Am., No. CV2020-017354 (Ariz. Super. Ct. Sept. 28, 2021); John C D Doe v. Big Brothers Big Sisters of Am., No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021), review denied, No. CV-22-0003-PR (Ariz. April 8, 2022); **California**: Coats v. New Haven Unified Sch. Dist., 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020); **Connecticut**: Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 406 (Conn. 2015); **Delaware**: Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011); **Georgia**: Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021);

Georgia and Massachusetts Supreme Courts ruled in favor of CSA claim revival laws despite their state constitutions having express limitations on retroactive civil legislation, like Colorado's constitution.[32]

The constitutionality of civil retroactivity at the state level has evolved over time, with states shifting from a vested rights approach to instead granting deference to legislative policy judgments. In the few jurisdictions, like Utah, that remain resistant to change, the CSA revival law was declared invalid due to the fact that vested rights are considered substantive, and any violation of those rights is per se

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Hawaii: Roe v. Ram, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); **Massachusetts**: Sliney v. Previte, 41 N.E.3d 732, 737 (Mass. 2015); **New Jersey**: Coyle v. Salesians of Don Bosco, 2021 WL 3484547 (N.J.Super.L. July 27, 2021), and Bernard, v. Cosby, No. 121CV18566NLHMJS, 2023 WL 22486, at *8 (D.N.J. Jan. 3, 2023); **New York**: PB-36 Doe v. Niagara Falls City Sch. Dist., No. 1015, 2023 WL 1500374, at *2 (N.Y. App. Div. Feb. 3, 2023) *affirming* 72 Misc. 3d 1052 (N.Y. Sup. Ct. 2021); **District of Columbia**: Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church, No. 2021 CA 0013531B (D.C. Super. Ct.). Cf, **Florida:** Wiley v. Roof, 641 So. 2d 66, 69 (Fla. 1994); **Utah**: Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

[32] See Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021) (upholding GA. CODE § 9-3-33.1's 2-year window as constitutional); GA. CONST. art. I, § 1, para. X; Sliney v. Previte, 41 N.E.3d 732, 737 (Mass. 2015) (upholding MASS. GEN. LAWS CH. 260, § 4C's revival to age 52 as constitutional); MASS. CONST. pt. 1, art X.

unconstitutional.[33] In Colorado, even vested property rights are not immune from legislative interference. Colorado's more adaptive constitutional approach, as demonstrated in this Court's ruling in Dewitt, is distinguishable from the rigid stance taken in other jurisdictions granting defendants an absolute constitutional right.

The Colorado Legislature has taken an innovative approach to justice for adult victims of CSA by enacting a new cause of action that applies retroactively to past abuse. Yet the constitutionality of the CSAAA is dependent on weighing the same public policies that appellate courts in other states have considered when determining that revival of expired CSA claims is constitutional. Generally, courts have balanced public policy and the legislatures' intent to allow older claims of abuse to proceed against any constitutional rights a defendant may claim in an SOL defense. No state that permits revival of a time-barred claim has refused to uphold such a law for CSA survivors.

Indeed, every appellate court that has considered the reasonableness of a claim revival statute for sexual abuse survivors

[33] **Utah**: Mitchell v. Roberts, 469 P.3d 901, 903 (Utah 2020).

under its state constitution has determined the remedial statute was reasonable and upheld it, according to *amicus curiae's* research. *See, e.g.*, Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 496 (Conn. 2015); Sliney v. Previte, 41 N.E.3d 732, 739–40 (Mass. 2015); Cosgriffe,864 P.2d 776 at 779; K.E. v. Hoffman, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990); PB-36 Doe v. Niagara Falls City Sch. Dist., No. 1015, 2023 WL 1500374, at *2 (N.Y. App. Div. Feb. 3, 2023) *affirming* 72 Misc. 3d 1052 (N.Y. Sup. Ct. 2021).

This Court should respect the legislative policy decision made by the Colorado Legislature to create a new civil cause of action for victims of sexual abuse to hold both the perpetrators and responsible organizations accountable and declare the constitutionality of the Child Sexual Abuse Accountability Act.

CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully submits that this Court reverses the District Court's ruling and finds the CSAAA constitutional.

Respectfully submitted this 21st day of 2023

Respectfully submitted,

WAHLBERG, WOODRUFF, NIMMO & SLOANE, LLP

s/ Michael Nimmo
Michael Nimmo, Esq., #36947

For *Amicus Curiae* CHILD USA

CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of February 2023 a true and correct copy of **BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFFS-RESPONDENTS ANGELA AND BRIAN SAUPE** was served electronically via ICCES or e-mail to the following persons:

Gwyneth Whalen, Esq.
W. Stuart Stuller, Esq.
Anne L. Stuller, Esq.
CAPLAN AND EARNEST, LLC
whalen@celaw.com
sstuller@celaw.com
astuller@celaw.com
Attorneys for Petitioner Aurora Public Schools

Leonard R. Higdon, Esq.
Law Office of Leonard R. Higdon
lhigdon@lrhlaw.com
Attorney for Petitioner David O'Neill

James W. Avery, Esq.
Denver Injury Law, LLC
averylawfirm@gmail.com
Attorney for Respondents Angelica and Brian Saupe

s/ Marina Lovato
Marina Lovato, Paralegal