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C.A.R. 50 Certiorari to the Court of Appeals, 2022CA1583 Appeal from: District Court, Arapahoe County 22CV30065 Hon. Elizabeth Beebe Volz	▲ COURT USE ONLY ▲
Petitioners: **Aurora Public Schools and David James O'Neill** v. Respondents: **Angelica and Brian Saupe**	Case No. 22 SC 824

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BRIEF OF *AMICI CURIAE* THE COLORADO TRIAL LAWYERS ASSOCIATION AND THE AMERICAN ASSOCIATION FOR JUSTICE

CERTIFICATION OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 28, 29, 32, and 53(f)(1), including all formatting requirements set forth in these rules.

- This brief contains **4,534** words, which is less than the word limit in C.A.R. 29 (4,750 words), including headings, quotations, and footnotes, but excluding the caption, certificate of compliance, table of contents, table of authorities, signature block, and certificate of service.

I acknowledge that my brief may be stricken if it does not comply with any of the requirements of C.A.R. 28(a)(2) and (3), 29, and 32.

/s/ Nelson Boyle
Nelson Boyle, Reg. No. 39525

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1. Child Sexual Abuse Accountability Act (CSAAA), 2021 COLO. SESS. LAWS Ch. 442 (SB21-088).

I. IDENTITY AND INTEREST OF AMICI CTLA AND AAJ

The Colorado Trial Lawyers Association ("CTLA") exists to promote and protect individual rights through the judicial process, advance advocacy skills, promote high ethical standards and professionalism, and improve and protect the state's judicial system. CTLA has over 1,000 member-attorneys advocating its goals.

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. For more than 75 years, AAJ has served as a leading advocate of the right of all Americans to seek legal recourse for wrongful injury.

CTLA and AAJ member-attorneys frequently represent children and adults in lawsuits against entities, institutions, and individuals who

have allowed, perpetrated, and refused to take responsibility for the grooming and sexual assault of children. CTLA and AAJ seek amicus participation to address Colorado's long-standing public policy of holding accountable all those who participate in and allow the sexual assault of minors and other considerations supporting the constitutionality of § 13-20-1203, C.R.S.

CTLA and AAJ member-attorneys received no monetary or other honoraria and, instead, volunteered the time and expenses incurred in researching, writing, and submitting this brief.

II. ARGUMENT SUMMARY

Colorado has long recognized the state's compelling interest in protecting children from sexual abuse. The Child Sexual Abuse Accountability Act (CSAAA), §§ 13-20-1201, et. seq., C.R.S., reaffirms Colorado's longstanding public policy of protecting children by holding accountable all those responsible for or enabling the sexual abuse of a child by one in a position of trust.

The CSAAA is not unconstitutionally retrospective. The legislation impairs no vested rights, nor does it create any new obligation, duty, or disability. Even if it did, the compelling public health and safety policy considerations it promotes outweigh any conceivable rights sexual predators, and institutions culpable for child sexual abuse, may assert.

By enacting the CSAAA, Colorado joined more than twenty states that have passed legislation giving survivors of child sexual abuse the opportunity to seek justice. The balance of courts that have considered constitutional challenges to similar statutes have upheld the laws.

Amici CTLA and AAJ urge this Court to reverse the district court ruling below and uphold the CSAAA as constitutional.

III. ARGUMENT

A. The CSAAA reflects Colorado's longstanding public policy under which the State has held accountable all individuals and entities responsible for the sexual assault of children.

Colorado public policy has long sought to protect minors from sexual assault. Through statutory and decisional law, Colorado has recognized the need to protect children from sexual abuse from one in a position of trust in civil and criminal contexts. To those ends, the State has developed criminal laws and allowed civil claims against employers of predatory adults who have exploited their positions of trust to sexually assault Colorado children. *See, e.g.*, *Moses v. Diocese of Colo.*, 863 P.2d 310, 327-29 (Colo. 1993) (holding that an employer-church owed duty to protect parishioner from predatory priest); § 16-22-102(9), C.R.S. (defining "unlawful sexual behavior" to include the offense of criminal conspiracy to commit numerous depraved acts including sexual assault of a minor and sexual assault of a minor by one in a position of trust); § 18-3-401(3.5), C.R.S.; § 18-3-405.3, C.R.S. (criminalizing the commission of a sexual assault on a child by one in a position of trust); *Manjarrez v. People*, 2020 CO 53, ¶¶21-32 (applying § 18-3-405.3); § 19-3-302, C.R.S.

(Legislative declaration for Colorado's reporting statute, declaring the General Assembly's intention to protect Colorado's children from abuse); § 19-3-304, C.R.S. (Colorado's reporting statute).[1] These authorities are just a few examples of Colorado's longstanding public policy goal of protecting children.[2]

By enacting and signing the CSAAA, SB21-088, codified (in part)[3] in §§ 13-20-1201, *et. seq*., C.R.S., the General Assembly and Governor re-affirmed Colorado's longstanding public policy of protecting children by holding accountable all those involved in their sexual abuse.

As explained in the CSAAA, Colorado policymakers recognized that

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[1] Through the reporting statute, Colorado intends to protect children by holding criminally accountable those who have knowledge of the grooming and sexual assault of a minor but who do not report the crime. *See* §§ 19-3-302, -304.

[2] For instance, *see People v. Madril*, 746 P.2d 1329, 1330-37 (Colo. 1987) (discussing a previous statutory scheme and law criminalizing the sexual assault of a child by one in a position of trust); *Gonzales v. Cty. Court of Arapahoe*, 2020 COA 104, ¶¶ 61-66 (discussing the history of Colorado's reporting statute before and after a 1975 "comprehensive reform" of that act).

[3] The Act includes a non-statutory legislative statement of purpose that, although uncodified, became law when signed by the Governor as part of SB21-088. See **App. 1** (SB21-088) at 2922-23 § 1.

sexual predators often find their child victims while employed at organizations and institutions like Petitioner Aurora Public Schools. Predators take advantage of their status as "caregivers with unsupervised access to children" in relationships involving "repeated episodes that become more invasive over time" in a "gradual process of sexualizing the relationship, known as 'grooming,'" before they sexually assault their child victims. *Id.* at § 1(1)(a).

Employers, like the Petitioner, "are often in the best position to identify perpetrators of child sexual abuse," and those "organizations may cover up instances of child sexual abuse perpetrated by [their] members, employees, agents, and volunteers." *Id.* at § 1(2)(a). "When institutions choose to protect their power and profit by concealing the truth, the cover-up is a distinctly different harm than the child sexual abuse being concealed." *Id.* at § 1(2)(b). So "victims must have access to recourse against [those institutions]."

Accordingly, the CSAAA simply reaffirms and underscores Colorado's longstanding public policy of protecting children from predators who are in positions of trust.

B. The CSAAA is not unconstitutionally retrospective.

Section 13-20-1203 of the CSAAA does not violate the prohibition against retrospective legislation found in Article 2, Section 11 of the Colorado Constitution.[4]

1. Standards on retroactivity and retrospectivity.

Legislation can be prospective, retroactive, or retrospective. *Ficarra v. Dep't. of Regul. Agencies*, 849 P.2d 6, 11 (Colo. 1993); *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397-99 (Colo. 2010). This Court employs the term *retrospective* to describe retroactive legislation that impairs vested rights, and courts have held that some retrospective laws are *unconstitutionally retrospective*.

For instance, this Court routinely applies retroactive legislation passed after an incident happened when the new law displays a clear legislative intent to achieve retroactive application and is not unconstitutionally retrospective. *See Ficarra*, 849 P.2d at 13; *Cisneros v.*

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[4] Petitioner does not contend that § 13-20-1203 is unconstitutional under the United States Constitution nor under other parts of Colorado's Constitution.

Elder, 2022 CO 13M, ¶9 (noting that intervening legislation had mooted an appeal in a parallel case); *People v. Fagerholm*, 768 P.2d 689 (Colo. 1989); *City of Greenwood Vill. v. Petr's for Proposed City of Centennial*, 3 P.3d 427, 444 (Colo. 2000).

A statute may be unconstitutionally retrospective under Article 2, Section 11, of the State Constitution if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Ficarra*, 849 P.2d at 15. But rights are only vested when they exist independently and do not depend upon a statute or the common law. *Greenwood Vill.*, 3 P.3d at 445. And a statute that merely alters a party's litigation posture does not impair vested rights and so is *not* unconstitutionally retrospective. *Id.*

Also, "[v]ested rights do accrue to thwart the reasonable exercise of the police power for public good." *Lakewood Pawnbrokers, Inc. v. Lakewood*, 517 P.2d 834, 838 (Colo. 1973). To the contrary, this Court has "long made clear . . . [that] even the abrogation of a vested right, while an important consideration, must nevertheless be balanced against

public policy considerations . . . before the abrogating legislation could be struck as retrospective." *Justus v. State*, 2014 CO 75, ¶ 48 (Coats, J., concurring). Thus, *even* when a statute impairs a vested right, "the court must then determine whether the impairment is nonetheless justified as 'reasonable and necessary to serve an important public purpose.'" *Id.* at ¶19 (majority opinion) (quoting *U.S. Trust Co. of N.Y.*, 431 U.S. 1, 25 (1977)).

Important public purposes include "public health and safety concerns, the state's police powers to regulate certain practices, [and] other public policy considerations." *See generally*, *Ficarra*, 849 P.2d at 21; *Van Sickle v. Boyes*, 797 P.2d 1267, 1271 (Colo. 1990); *Lakewood Pawnbrokers, Inc.*, 517 P.2d at 838. The "character of the governmental action" is relevant to this Court's analysis. *Van Sickle*, 797 P.2d at 1271. And a statute that "protects the health and safety of the community" is not unconstitutionally retrospective. *Id.*; *Ficarra*, 849 P.2d at 22 (a statute imposing stricter standards for issuing bail bondsman licenses was not retrospective legislation since such standards served "an important and rational governmental interest in the safe and honest

exercise of bail bondsmen's duties").

2. The CSAAA is not unconstitutionally retrospective as it impairs no vested rights.

Section 13-20-1203, which took effect in January 2022, impaired NO vested rights of the Petitioner nor other employers of sexual predators.

Often, "where a statute of limitations has run and the bar attached, 'the right to plead it as a defense is a vested right which cannot be taken away or impaired by subsequent legislation'"; but that right is not absolute. *Jefferson Cty. Dep't of Soc. Serv. v. D.A.G.*, 607 P.2d 1004, 1006 (Colo. 1980) (quoting *Willoughby v. George*, 5 Colo. 80, 82 (1879)).

No Colorado statute has expressly permitted an employer of a sexual predator to avoid liability for their part in the sexual assault of a child. Any purported expectation of protection that employers of sexual predators might assert relies on the continued validity of general statutory law in an area that traditionally falls within the legislative power. This has resulted in employers of sexual predators benefiting from fixed statutes of limitations periods, which have often defeated claims by child sexual abuse victims. But the "mere expectation [of protection]

based upon an anticipated continuance of the existing law [or continued legal status]" is insufficient to establish a vested right. *Ficarra*, 849 P.2d at 16; *see also Nye v. ICAO*, 883 P.2d 607, 609 (Colo. App. 1994) ("[N]o person [or entity] has a vested right in any rule of law entitling that person to insist it shall remain unchanged for his or her [or its'] future benefit.").

The General Assembly created the CSAAA to provide an alternative avenue for victims of sexual abuse to seek recourse and, doing so, it expressly determined:

> The CSAAA *does not revive any common law cause of action* that is barred and instead *creates a new right for relief* for any person sexually abused in Colorado while the person was participating in a youth-related activity or program as a child[.]

See **App. 1** (SB21-088) at 2923. (emphasis added). The CSAAA does not permit the revival of time-barred actions related to sexual abuse, and instead provides a new and separate relief for victims. *Id.*; *Justus*, ¶ 29 ("[W]e must . . . construe the statutory language as the legislature enacted . . . the statute. We must assume that the legislature does not use words idly."). Contra, *Jefferson Cty. Dep't of Soc. Servs.*, 607 P.2d at

1004 (finding when the previously applicable statute of limitations runs and is subsequently repealed, the newly adopted statute of limitations cannot revive the *same* barred actions under the previous statute). Since the CSAAA creates a new cause of action and expressly does not revive claims previously barred by statutes of limitations, institutions like Petitioner have no impaired vested rights that could be implicated under § 13-20-1203.

3. The CSAAA does not create a new obligation, duty, or disability since it does not change Petitioner's applicable standard of conduct.

Since a vested right is not implicated, the Court must consider the second prong of the analysis: Whether the statute creates "a new obligation, imposition of a new duty, or attachment of a new disability with respect to" past transactions or considerations. *Golden v. Parker*, 138 P.3d 285, 290 (Colo. 2006). A law's application "is not rendered retrospective," however, "'merely because the facts upon which it operates occurred before the adoption of the statute.'" *Est. of DeWitt*, 54 P.3d 849, 855 (Colo. 2002) (quoting *Greenwood Vill.*, 3 P.3d at 445).

A statute does not create a new duty or obligation if it does not

change the standard applicable to the conduct at issue. For instance, in *Hickman v. Cath. Health Initiatives*, 328 P.3d 266, 268 (Colo. App. 2013), a division of the court of appeals held that retroactive application of § 12-36.5-203(2), C.R.S., abrogating hospital immunity for credentialing decisions, was not unconstitutional. The hospital did not have a vested right and abrogating the hospital's immunity from damages did not create a new duty or obligation. *Id.* at 273. The hospital previously had a duty of care in credentialing medical professionals so the statute did not change the standard applicable to the hospital's previous credentialing conduct. *Id.*; *see also Colo. Dep't of Soc. Servs. v. Smith*, *Harst & Assocs., Inc.*, 803 P.2d 964, 966-67 (Colo. 1991) (a remedy to the state for overpayment did not create a new duty for nursing homes since they always had a fiduciary duty to maintain patient's accounts in trust).

Under the CSAAA, victims may bring civil claims against the actors who committed the sexual misconduct and against organizations that knew or should have known of a risk of sexual misconduct against minors in the youth related programs they managed. § 13-20-1202(1)(a)-(b), C.R.S. But the CSAAA does **not** create a new duty or obligation because

the sexual abuse of children has always been illegal; Colorado has long recognized the duty of care in protecting children from sexual abuse.

In *Destefano v. Grabrian*, this Court recognized the doctrine of negligent supervision. 763 P.2d 275, 287 (Colo. 1988). It held that an employer "who knows or should have known that an employee's conduct would subject third parties to an unreasonable risk of harm may be directly liable to third parties for harm proximately caused by his conduct." *Id.* at 288; *see also Moses*, 863 P.2d at 327-29. And for decades, Colorado has also imposed a duty on individuals caring for children to report sexual abuse. The mandatory reporting statute, enacted through the Child Protection Act of 1987, §§ 19-3-301, *et seq.*, C.R.S., identifies persons who are required to report known or suspected child abuse or neglect if such person "has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect . . . ." § 19-3-304(1)-(3), C.R.S. Those persons include, but are not limited to: Public or private school officials or employees, mental health professionals, clergy members, and directors,

coaches, assistant coaches, and athletic program personnel employed by a private sports organizations or program. § 19-3-304(2)(l), (n), (aa), and (ii), C.R.S.

Similarly, the CSAAA does not attach a new disability—and certainly not one of constitutional magnitude—since this State has long regulated the protection of children and the oversight of youth-related activities. See *DeWitt*, 54 P.3d at 857 (upholding a statutory amendment since a statute is only unconstitutionally retrospective if it "impose[s] a 'disability' of constitutional magnitude," and the amendment at issue there only imposed procedural changes in the highly regulated areas of probate and insurance); *see also*, *Hickman*, 328 P.3d at 274 (concluding that a statute that abrogated hospital immunity from damages arising from credentialing decisions did not impose a new disability of constitutional magnitude since the state had long regulated the health care industry).

The Supreme Court has observed that protecting children from sexual abuse is one of a state's most established and profound responsibilities. "There is no more worthy object of the public's concern"

than the welfare of its children. *Wyman v. James*, 400 U.S. 309, 311 (1971). "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." *New York v. Ferber*, 458 U.S. 747, 757 (1982); *accord People v. Grady*, 126 P.3d 218, 221 (Colo. App. 2005), *cert. denied* (Colo. Jan. 9, 2006) (citing *Ferber*); *People v. Maloy*, 465 P.3d 146, 158 (Colo. App. 2020) (same)).

This Court, too, has acknowledged that "the state has a substantial interest in ensuring that children are not subject to abuse or neglect." *Watso v. Colo. Dep't of Soc. Servs.*, 841 P.2d 299, 308-09 (Colo. 1992) (holding that the suspected child abuser registry under the Child Protection Act did not deny constitutional due process). It has further emphasized "the state's legitimate interest in protecting children against sexual abuse by persons who, by reason of a special relationship to a child, assume varying duties of care and responsibility toward the child." *Madril*, 746 P.2d at 1334. And it has recognized the General Assembly's "on-going commitment to afford minors significant safeguards from harm by passing numerous statutes designed to protect minor children." *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229, 1233 (Colo. 2002).

The CSAAA merely fosters the important policy goal of protecting children from sexual abuse and exploitation; it does not impose a new duty nor attach a new disability of constitutional magnitude. So the CSAAA is not unconstitutionally retrospective.

4. When a newly enacted statute is firmly rooted in well-established and longstanding public policy, Colorado will not find the statute to be unconstitutionally retrospective.

No statute or decisional law gives an institution, like the Petitioner, a vested right to avoid accountability for its role, if any, in the sexual assault of children by its agent or employee. To the contrary, as discussed above, Colorado statutory and decisional law has long established an unequivocal public policy of holding accountable all those responsible for or enabling the sexual assault of a child by one in a position of trust. *See Moses*, 863 P.2d at 327-29; § 16-22-102(9); § 18-3-401(3.5); § 18-3-405.3; *Manjarrez*, ¶¶21-32; § 19-3-304.

Even if the Court concludes that § 13-20-1203 impairs or abrogates "a vested right", that conclusion "must nevertheless be balanced against public policy considerations . . . before the abrogating legislation could be struck as retrospective." *Justus*, ¶ 4. The "character of the governmental

action" is therefore a relevant consideration. *Van Sickle*, 797 P.2d at 1271. And the Court must not find it unconstitutional if it "promote[s] the public good," *id.*, and is "justified as reasonable and necessary to serve an important public purpose," *Justus* (cleaned up), ¶19.

This Court should find that § 13-20-1203 is not unconstitutionally retrospective because the public interest at stake arguably outweighs the established interest in *Ficarra* and is perfectly consistent with Colorado's considerable statutory and decisional law implementing the State's longstanding public policy of protecting children in the very situations that the General Assembly targeted with the CSAAA. *See Moses*, 863 P.2d at 327-29; § 16-22-102(9); § 18-3-405.3; *Manjarrez*, ¶¶21-32; § 19-3-304.

The reason, in part, for this new cause of action is simple: "When institutions choose to protect their power and profit by concealing the truth, the cover-up is a distinctly different harm than the child sexual abuse being concealed," so "victims must have access to recourse against [those institutions]." **App. 1** (SB21-088) at 2922-23 § 1 at (2)(b). The importance of the General Assembly taking a clear stance against

employers of sexual predators who are culpable in the sexual abuse of minors can hardly be overemphasized. The lack of accountability that employers have enjoyed for decades is without question a matter of substantial public concern subject to the General Assembly's regulatory power.

The CSAAA highlights Colorado's strong public interest in protecting the safety and welfare of minor victims by both holding sexual predators accountable for their crimes and the organizations for which they work accountable for failing to address such crimes. The Act extends Colorado's demonstrated efforts to protect children. It is also "needed to address the long history of child sexual abuse that occurred within organizations that are culpable and complicit in the abuse." § 1 at (4)(b). Finding § 13-20-1203 retrospective would fundamentally undermine the General Assembly's well-established authority to pass legislation that plainly advances Colorado's public interest.

C. Decisions in states with similar statutes on childhood sexual abuse claims support the constitutionality of the CSAAA.

Colorado is hardly alone in passing legislation like the CSAAA to modernize its laws on child sexual abuse and revive such claims. Over

recent years, a nationwide effort has opened courthouse doors to victims of child sexual abuse who were unable to report the abuse until after a limitation period expired. Many states have recognized that child sexual abuse is a significant health problem, and that the vast majority of child sexual abuse survivors delay reporting well into adulthood. At least 28 states and territories have enacted statutes permitting survivors of childhood sexual abuse to bring civil claims that were previously blocked by statutes of limitation.[5] The nationwide trend toward allowing victims

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[5] **Arizona**. AZ ST § 12-514 (2019) (revival window, May 2019 to December 2020). **Arkansas**. Ark. Code Ann. § 16-118-118(b)(2) (2021) (revival window, January 2022 to January 2024). **California**. Cal. Civ. Proc. Code § 340.1(q) (2020) (revival window, January 2020 to January 2023). **Connecticut**. Conn. Gen. Stat. § 52-577d (2002) (revival window, May 2002 for claims not otherwise barred by amended SOL). **Delaware**. Del. Code Ann. tit. 10, § 8145(b) (2007) (revival window, July 2007 to July 2009). **Florida.** F.S.A. § 95.11 (1992) (4-year revival window for plaintiffs whose abuse/ incest claims were previously barred under SOL). **Georgia**. Ga. Code Ann. § 9-3-33.1(d)(1) (2015) (revival window, July 2015 to July 2017). **Guam.** Tit. 7 G.C.A §§ 11301.1(b) & 11306 (2016) (permanent revival window). **Hawaii**. Haw. Rev. Stat. § 657-1.8 (revival window, April 2012 to April 2020). **Kentucky**. Ky. Rev. Stat. Ann. § 413.249(7)(b) (2021) (revival window for any claim "commenced" within five years of expiration of applicable SOL). **Louisiana**. La. Rev. Stat. Ann. § 9:2800.9 (2021) (revival window, June 2021 to June 2024). **Maine**. Me. Rev. Stat. tit. 14, § 752-C (permanent revival window starting October 2021).

of child sexual abuse to hold their abusers and enabling organizations accountable underscores the importance of the public policy considerations behind the CSAAA.

On balance, more courts that have considered the constitutionality of similar statutes extending limitations periods for childhood sexual abuse claims have upheld the laws. Generally, those courts balance public policy and the legislature's intent, enabling these statutes

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Massachusetts. Mass. Ann. Laws ch. 260, § 4C (2014) (effective June 2014, revives claims not otherwise barred by amended SOL), **Michigan**. Mich. Comp. Laws § 600.5851b (2018) (90-day revival window). **Minnesota**. H MINN. STAT. § 541.073 (2013) (revival window, May 2013 to May 2016). **Montana**. Mont. Code Ann. § 27-2-216 (2019) (revival window from May 2019 to May 2020). **Nevada**. NV ST §§ 11.215, 41.1396 (2021) (permanent revival window starting June 2021). **New Jersey**. N.J. STAT. ANN. §§ 2A:14-2A and 2A:14-2B (2019) (revival window, December 2019 to December 2021). **New York**. N.Y. C.P.L.R. 214-g; (2019) (revival window, August 2019 to August 2021). **North Carolina.** N.C. Gen. Stat. § 7A-31(b) (two-year revival window). **Northern Mariana Islands.** 2021 N.M.I. Pub. L. No. 22-12 (permanent revival window). **Oregon**. Or. Rev. Stat. Ann. § 12.117 (2009) (revival window effective January 2010) **Rhode Island**. R.I. Gen. Laws § 9-1-51(a)(3) (2019) (effective July 2019, revives claims up to 35 years). **Utah.** Utah Code Ann. § 78B-2-308 (three-year revival window). **Vermont**. Vt. Stat. Ann. tit. 12, § 522(d) (2019) (permanent revival window starting July 2019). **Washington D.C.** D.C. CODE § 12-301 (2018). **West Virginia**. W. Va. Code § 55-2-15(c) (2020) (revival window effective June 2020 for claims until survivor reaches age 36).

allowing older claims of abuse to defeat statute of limitations defenses.

Recently, in *Harvey v. Merchan*, Georgia's supreme court upheld Ga. Code Ann. § 9-3-33.1(d)(1), which revived child sex abuse claims that had expired before its enactment, was not unconstitutionally retroactive under Georgia's constitution. 860 S.E.2d 561, 574 (Ga. 2021). Georgia's constitutional prohibition against ex post facto and retroactive laws is nearly identical to Colorado's. *See* Ga. Const. of 1983, Art. I, Sec. I, Par. X ("No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed."). The Georgia court adopted the United States Supreme Court's reasoning in cases providing that there is no absolute vested right in a statute of limitations, which are subject to "a relatively large degree of legislative control." *Id. See also*, *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (citing *Campbell v. Holt*, 115 U.S. 620 (1885)).

Delaware's supreme court reached a similar result because statutes of limitations "affect matters of procedure and remedies, not substantive or vested rights." *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d

1247, 1259 (Del. 2011). Accord, *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462 (Conn. 2015) (not unconstitutionally retroactive); *Sliney v. Previte*, 41 N.E.3d 732 (Mass. 2015) (retroactive application of statute of limitations held constitutional); *cf.*, *Wiley v. Roof*, 641 So.2d 66, 69 (Fla. 1994) (violated state constitutional due process clause); *Mitchell v. Roberts*, 469 P.3d 901, 913 (Utah 2020) (same); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338 (Mo. 1993) (violated Missouri's constitutional prohibition against retrospective laws).

Similarly, nearly all intermediate appellate courts, federal district courts, and state district courts that have considered the constitutional challenges have upheld similar statutes. *See, e.g.*, *Deutsch v. Masonic Homes of Cal., Inc.*, 164 Cal. App. 4th 748, 752, 759 (2008) (upholding statute extending limitation period from one to eight years and creating revival window for otherwise time-barred claims); *accord*, *Coats v. New Haven Unified Sch. Dist.*, 46 Cal. App. 5th 415, 427 (2020); *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 U.S. Dist. LEXIS 120830, at *10-26 (D.Haw. Aug. 29, 2014); *S.Y. v. Roman Catholic Diocese of Paterson*, Civil Action No. 20-2605 (ES) (CLW), 2021 U.S. Dist. LEXIS 18833, at *22-23

(D.N.J. Sep. 30, 2021); *Farrell v. United States Olympic & Paralympic Comm.*, 567 F. Supp.3d 378, 393 (N.D.N.Y. 2021); *PC-41 Doe v. Poly Prep Cty. Day Sch.*, 590 F. Supp.3d 551, 562 (E.D.N.Y. 2021); *Doe v. Big*, No. CV 2020-017354, 2021 Ariz. Super. LEXIS 737, *2-5 (Ariz. Super. Ct. Sept. 28, 2021).

Amici CTLA and AAJ ask this Court to follow the sound reasoning of courts in other jurisdictions and uphold the CSAAA as constitutional.

IV. CONCLUSION

For the reasons stated above, *Amici* CTLA and AAJ urge this Court to follow its own prior decisions and the sound reasoning of courts in other jurisdictions, to uphold the CSAAA as constitutional and as a natural extension of Colorado's long-standing public policy against providing any safe harbor for those who sexually abuse and exploit children or who enable such heinous acts.

Dated: February 21, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 21, 2023, a copy of the above **Brief of *Amici Curiae*** was filed with the court and served via the Court E-Filing System upon all counsel of record.

Respectfully Submitted,

s/ *S. Paige Singleton*