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Idaho Supreme Court
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IN THE SUPREME COURT FOR THE STATE OF IDAHO

GREG GOMERSALL and CYNDI GOMERSALL, as Guardians of the Minor Child, W.G.G.,

Plaintiffs/Appellants,

vs.

ST. LUKE'S REGIONAL MEDICAL CENTER, LTD, an Idaho general nonprofit corporation, dba St. Luke's Boise Medical Center,

Defendant/Respondent,

Docket No. 47664-2019
Ada County Case No. CV01-19-01716

RESPONDENT'S BRIEF

**Appeal of District Court of the Fourth Judicial District of the State of Idaho,
In and For the County of Ada
Honorable Steven Hippler, District Judge Presiding**

Eric S. Rossman
Erica S. Phillips
Matthew G. Gunn
ROSSMAN LAW GROUP, PLLC
350 N. 9TH Street, Ste. 500
Boise, Idaho 83702
Tele: 208/331-2030

Attorneys for Appellants

Trudy Hanson Fouser
Stephen L. Adams
GJORDING FOUSER, PLLC
121 North 9th Street, Suite 600
Boise, Idaho 83702
Tele: 208/336-9777

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. STATEMENT OF THE CASE

A. Nature of Case

This case arose out of allegedly wrongful conduct by a hospital and/or its personnel that caused injuries to minor W.G.G. Respondent St. Luke's Regional Medical Center, LTD. ("St. Luke's")[1], filed for summary judgment on the grounds that the statute of limitations had run for all of W.G.G.'s claims. In response, the Gomersalls[2] contended that Idaho Code § 5-230 was unconstitutional and/or that St. Luke's was equitably estopped from raising a statute of limitations defense. The trial court entered summary judgment in favor of St. Luke's on the grounds that the statute of limitations had passed and that there was no question of fact as to when the cause of action accrued or whether equitable estoppel applied. The Gomersalls now appeal from that ruling.

B. Course of Proceedings and Statement of Facts

For the purposes of St. Luke's summary judgment motion only, St. Luke's took all of the allegations as set forth in Gomersalls' Complaint as true.[3] St. Luke's has no significant objection to or dispute with the statement of facts as set forth by the Gomersalls. App. Br. pp. 2 – 3.

Procedurally, on January 25, 2019 W.G.G. and his parents filed a Complaint. R. Vol. I, pp. 6 – 11. The Complaint stated only one cause of action for negligence arising out of medical treatment. R. Vol. I, pp 9 – 10. The Complaint did not discuss the statute of limitations, nor did it argue that the statute of limitations was stayed or tolled for any reason. St. Luke's Answered the Complaint on July 16, 2019, R. Vol. I, pp. 12 – 20, specifically stating that the Complaint was filed more than eight years after W.G.G.'s injuries physically manifested. R. Vol. I, p. 13. St.

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[1] Pursuant to I.A.R. 35(d), Respondent/Defendant will be simply referred to as St. Luke's.
[2] Pursuant to I.A.R. 35(d), Plaintiffs/Appellants will be referred to as the Gomersalls or individually identified.
[3] St. Luke's asked in its briefing that the allegations set forth in the Complaint be assumed to be true for purposes of the summary judgment motion only. R. Vol. I, p. 24 (fn. 1). Plaintiffs acknowledged this request in their responsive briefing. R. Vol. I, p. 44 (fn. 1).

Luke's shortly thereafter filed a motion seeking summary judgment because the statute of limitations as set forth in Idaho Code § 5-219(4) and as extended by Idaho Code § 5-230 had run, and, therefore, barred the Gomersalls from seeking recovery. R. Vol. I, pp. 21 – 22.

The Gomersalls responded on September 24, 2019, contending that Idaho Code § 5-230 is unconstitutional. R. Vol. I, pp. 43 – 68. Included with this briefing were the declarations of the Gomersalls' counsel and memory expert Daniel Reisberg, apparently designed to respond to St. Luke's statement as to the purposes of statutes of limitations.[4] R. Vol. I, pp. 75 – 105. St. Luke's responded to the constitutionality argument for the first time in its reply briefing, as such issue had not been raised by the Gomersalls prior to their response briefing. R. Vol. I, pp. 106 – 119.[5] St. Luke's also challenged the admissibility of Rossman's and Reisberg's declarations, as well as portions of Mrs. Gomersall's declaration. R. Vol. I, pp. 107 – 110. After oral argument, the trial court determined that the statute of limitation accrued no later than January 3, 2011 (the date St. Luke's gave notice that it had untimely administered the sodium bicarbonate), that portions of the Gomersalls' supporting declarations were inadmissible, and that Idaho Code § 5-230 was constitutional. R. Vol. I, pp. 120 – 137. The Gomersalls appeal, asking this Court to determine whether the district court erred by determining that equitable estoppel did not apply, that Idaho Code § 5-230 was constitutional, and did the district court err in excluding evidence at the summary judgment stage. St. Luke's will address these issues below, in addition to the issues it raises below.

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[4] St. Luke's only provided this argument as legal background. R. Vol. I, pp. 26 – 27. This argument was not a basis upon which the motion for summary judgment could be granted, nor did it have anything to do with St. Luke's arguments as to accrual of the injuries or the time frames of the applicable statute of limitations.

[5] It should be noted that while briefing on this issue was prepared, the Idaho Supreme Court released the opinion in GREGORY v. STALLINGS, No. 46818, 2020 WL 3989134, at *7 (Idaho July 15, 2020), which was non-binding at the time the briefing was filed, but which may resolve the issue of whether equitable estoppel needs to be plead or may be raised for the first time in a responsive brief.

II. ADDITIONAL ISSUES PRESENTED ON APPEAL

A. Did Plaintiffs adequately raise the issues to be decided on appeal below?

B. Should *stare decisis* be applied in this case to determine that Idaho Code § 5-219(4) continues to be constitutional?

C. Does this Court need to take judicial notice of the legislative history of Idaho Code § 5-230 where the parties present argument related to such history, but the history was not presented as part of the record before the district court?

D. Did Judge Hippler correctly determine that a due process analysis would apply to the open court provisions of Idaho Const. Art. I, § 18?

E. Are Respondents Entitled to Costs on Appeal?

III. STANDARD OF REVIEW

A. The summary judgment standard on review is a different for constitutional questions and for equitable estoppel.

This is the review of a grant of summary judgment on the constitutionality of Idaho Code § 5-230 and for the applicability of equitable estoppel This involves two separate standards. On summary judgment where the constitutionality of a statute is challenged, the Court reviews the district court's decision de novo. *In re Bermudes*, 141 Idaho 157, 159, 106 P.3d 1123, 1125 (2005).

To the extent the Court addresses the applicability of equitable estoppel, a specific summary judgment standard applies. Equitable claims and defenses are not tried before a jury.[6] Judge Hippler recognized that the equitable estoppel argument was an issue for the court. Tr. Vol. I, pp. 56:19 – 56:20. The Idaho Supreme Court has recognized that the court is the trier of fact in equitable estoppel cases. *See J.R. Simplot Co. v. Chemetics Int'l, Inc.*, 126 Idaho 532, 533–34, 887

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[6] This has been the rule in Idaho for well over 100 years and continues to be the rule today. *See, e.g., Ada Cty. Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 369, 179 P.3d 323, 332 (2008) ("[T]here is no right to a jury trial for equitable actions."); *Rees v. Gorham*, 30 Idaho 207, 164 P. 88, 89 (1917) ("It appears therefore, that this cause is clearly one cognizable in equity. This court has adhered to the rule that parties are not entitled to a jury trial in equitable actions."); *Christensen v. Hollingsworth*, 6 Idaho 87, 53 P. 211, 212 (1898) ("The guaranty that 'the right to trial by jury shall remain inviolate' has no reference to equitable cases.").

P.2d 1039, 1040–41 (1994). For equitable issues on summary judgment, "[W]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982). Stated another way, when

> [T]he action will be tried before the court without a jury, however, the court may, in ruling on the motions for summary judgment, draw probable inferences arising from the undisputed evidentiary facts. Drawing probable inferences under such circumstances is permissible since the court, as the trier of fact, would be responsible for resolving conflicting inferences at trial.

Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Tr., 147 Idaho 117, 124, 206 P.3d 481, 488 (2009) (citations omitted).

As to inferences actually made on summary judgment by a judge sitting as a trier of fact, this Court, "freely reviews the entire record that was before the district court to determine whether either side was entitled to judgment as a matter of law and whether inferences drawn by the district court are reasonably supported by the record." *Seward v. Musick Auction, LLC*, 164 Idaho 149, 156, 426 P.3d 1249, 1256 (2018). If such inferences are reasonable, they should be upheld. *See Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 236, 31 P.3d 921, 924 (2001).

B. The determination of whether evidence is admissible is discretionary with the district court.

As to the evidentiary issues related to St. Luke's motion for summary judgment, "When reviewing the trial court's evidentiary rulings, this Court applies an abuse of discretion standard. The Court reviews a trial court's decision admitting or excluding evidence, including the testimony of expert witnesses, under the abuse of discretion standard." *Herrett v. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd.*, 164 Idaho 129, 132, 426 P.3d 480, 483 (2018) (citations omitted). A relevant

exception to this general rule exists: "The question of whether evidence is relevant is reviewed de novo, while the decision to admit relevant evidence is reviewed for an abuse of discretion." *Perception Const. Mgmt., Inc. v. Bell*, 151 Idaho 250, 253, 254 P.3d 1246, 1249 (2011). The trial court acted within its discretion to not consider inadmissible evidence if it, "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

IV. ARGUMENT

The primary issue before this Court is whether a minor has a constitutional right to have all statutes of limitations be tolled until they reach the age of majority. Though the Gomersalls specifically ask the Court to address the constitutionality of Idaho Code § 5-230, this broader request is effectively the relief they seek. In order for the Gomersalls to prevail on appeal, they must effectively convince this Court that not only is Idaho Code § 5-230 unconstitutional, but they also have to show that W.G.G. has a constitutional right to not have any statute of limitations begin to run until he reaches the age of majority. This means that the Gomersalls must also show that Idaho Code § 5-219(4) is unconstitutional. In response, St. Luke's argues that the Gomersalls did not challenge the constitutionality of Idaho Code § 5-219(4) before the district court, and such issue may not be raised for the first time on appeal. Even if the issue has been properly preserved for appeal, the Gomersalls have not met their burden to show that minors have a constitutional right to not have statutes of limitations run against them until they reach the age of 18, or that Idaho Code §§ 5-230 and 5-219(4) are unconstitutional. St. Luke's also contends that Judge Hippler was within his discretion to exclude evidence at the summary judgment stage, and that he

properly determined there was no question of fact as to whether equitable estoppel applies.

A. Because the Constitutionality of Idaho Code § 5-219(4) was not raised below nor argued in their opening brief, the Gomersalls' appeal should fail as a matter of law.

The Gomersalls have only appealed the constitutionality of Idaho Code § 5-230. Idaho Code § 5-219(4) is only mentioned five times in their briefing[7], and at no point do the Gomersalls actually attack the constitutionality of Idaho Code § 5-219(4). Therefore, the only briefing before the district court and before this Court is a constitutional attack on § 5-230. With very limited exception (none of which apply here), the Gomersalls are not permitted to raise issues on appeal that they did not raise before the district court, nor can they change the type of constitutional challenge they raise. Further, I.A.R. 35(a)(6) requires the appellant to set forth the basis of their argument, and they did not do so in their opening brief with regard to § 5-219(4).

1. The Gomersalls failed to raise the constitutionality of Idaho Code § 5-219(4) before the district court.

With regard to failing to raise the issue before the district court, as a simple matter of logic, there are two applicable statutes of limitations: Idaho Code § 5-219(4) sets a two-year statute of limitations applicable to all personal injuries (including malpractice actions), and Idaho Code § 5-230 tolls all statutes of limitations that would run against persons under disabilities, including minors. If the Gomersalls effectively convince this Court that Idaho Code § 5-230 is unconstitutional, the automatic fallback is Idaho Code § 5-219(4), which means that all minors would have the same two years to bring a personal injury action as everyone else. The Gomersalls cannot obtain any relief unless they convince the Court that Idaho Code § 5-219(4) is unconstitutional as applied to minors. However, the Gomersalls never raised this issue to the

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[7] *See* App. Br. p. vi (identifying that Idaho Code § 5-219(4) is only addressed on pp. 1, 8, 11, 22, and 23 of the Gomersalls' opening brief).

district court. *See* R. Vol. I, pp. 44, 46 – 47, 56 – 58 (only discussing Idaho Code § 5-230). The district court recognized this, stating, "Plaintiff is not arguing that I.C. § 5-219(4) is unconstitutional. His argument is focused strictly on I.C. § 5-230." R. Vol. I, p. 7.

The Idaho Supreme Court has long mandated that an issue may only be appealed if it has been reviewed and ruled on by the district court. *See Sanchez v. Arave*, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991). The reason for this rule was set forth in 1867:

> It is for the protection of inferior courts. It is manifestly unfair for a party to go into court and slumber, as it were, on his defense, take no exception to the ruling, present no point for the attention of the court, and seek to present his defense, that was never mooted before, to the judgment of the appellate court. Such a practice would destroy the purpose of an appeal and make the supreme court one for deciding questions of law in the first instance.

Smith v. Sterling, 1 Idaho 128, 131 (1867). This rule applies to constitutional issues as well. "This Court generally will not consider constitutional issues that have been raised for the first time on appeal." *Gordon v. Hedrick*, 159 Idaho 604, 611–12, 364 P.3d 951, 959 (2015).[8]

There are very few exceptions to this general rule, none of which appear to apply here. For example, subject matter jurisdiction may be raised for the first time on appeal. *See Ackerschott v. Mountain View Hosp., LLC*, 166 Idaho 223, 457 P.3d 875, 889 (2020). Similarly, "Constitutional issues may be considered for the first time on appeal if such consideration is necessary for subsequent proceedings in the case." *Sanchez*, 120 Idaho at 322, 815 P.2d at 1062 (quoting *Messmer v. Ker*, 96 Idaho 75, 78, 524 P.2d 536, 539 (1974), and citing Idaho Code § 1-205). This exception applies where the issues returned to the district court will continue to involve the issue

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[8] *See also Cox v. Hollow Leg Pub & Brewery*, 144 Idaho 154, 159, 158 P.3d 930, 935 (2007) ("This Court generally will not consider constitutional issues that have been raised for the first time on appeal.*"); Buffington v. Potlatch Corp.*, 125 Idaho 837, 840, 875 P.2d 934, 937 (1994) ("This Court generally will not consider constitutional issues that have been raised for the first time on appeal."); *Sullivan v. Sullivan*, 102 Idaho 737, 739 (fn. 5), 639 P.2d 435, 437 (1981) ("It is a basic rule of this Court, however, that constitutional issues generally will not be considered when raised for the first time on appeal.").

as to which constitutionality is disputed. *Messmer* at 78, 524 P.2d at 539. This exception does not appear to apply in this case because this matter is dispositive: if St. Luke's prevails on appeal, then there will be no subsequent proceedings before the district court. If the Gomersalls prevail on appeal, then the statute of limitations issue is resolved, and the parties will need no further guidance as to the constitutionality of the statute of limitations. Thus, this Court has no reason to provide guidance as to an issue not previously raised before the district court, because the district court will not grapple with on remand. The constitutionality of an issue must be briefed and argued before the district court; tangential references or implicit arguments as to constitutionality simply are not sufficient to bypass the requirement that the issue must be first addressed by the district court. *See Nycum v. Triangle Dairy Co.*, 109 Idaho 858, 862, 712 P.2d 559, 563 (1985); *Int'l Bus. Machines Corp. v. Lawhorn*, 106 Idaho 194, 197, 677 P.2d 507, 510 (Ct. App. 1984) ("Although these issues arguably were raised below—if the pleadings are generously interpreted—they were not supported by any factual showing or by the submission of legal authority. In short, they were not presented for decision."). There is no basis to raise the constitutionality of Idaho Code § 5-219(4) for the first time before this Court as, for whatever reason, it was not raised before the trial court.[9] Therefore, there is no decision as to the constitutionality of § 5-219(4) to appeal, and the Gomersall's appeal as to § 5-230 should fail as a matter of law.

2. The Gomersalls may not bring an as-applied challenge to the constitutionality of Idaho Code § 5-230 because they raised a facial challenge to the statute before the district court.

Along these same lines, the Gomersalls changed their constitutional challenge from a facial

[9] St. Luke's attempted to point out this issue to the trial court in the form of arguing that the Supreme Court has found Idaho Code § 5-219(4) to be constitutional, and therefore indicating that *stare decisis* would apply. R. Vol. I, pp. 111 – 112. Judge Hippler rejected the application of *stare decisis* because no argument was made by the Gomersalls as to the constitutionality of Idaho Code § 5-219(4). R. Vol. I, p. 126.

challenged to an "as-applied" challenge. In their opening brief, the Gomersalls state, "W.G.G.'s challenge to § 5-230 is best characterized as an 'as-applied' challenge in the context of all minors under the age of twelve when their cause of action accrues." App. Br. p. 9. This is directly contradictory of what was presented to the district court, which only received arguments as to facial unconstitutionality. R. Vol. I, pp. 46 – 47, 55. However, facial and as-applied challenges do not work the same way. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 870–71, 154 P.3d 433, 441–42 (2007). Facial and "as applied" challenges utilize two completely separate standards: facial challenges may be made through motion practice as they are purely a question of law, while "as applied" challenges require a complete record, meaning discovery must be completed and the record must fully be presented to the district court. *Id.* An "as applied" challenge would have been premature in this case, because there was no developed record, nor any discovery completed.

The Gomersalls would have the Court sweep this distinction under the rug, contending that because there was a stipulated set of facts for purposes of the summary judgment motion, no additional record was necessary. App. Br. p. 9. However, this is not correct. The Gomersalls rely on *Lindstrom v. Dist. Bd. of Health Panhandle Dist. I*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985) to support this argument. App. Br. p. 9. In *Lindstrom* the Court of Appeals engaged in an "as applied" challenge to a permitting decision, but only after it noted, "The parties essentially agreed upon the facts. Evidence was adduced in the district court for determination of one disputed factual issue, and neither party has challenged any of the court's findings." *Lindstrom* at 959, 712 P.2d at 660. Thus, in *Lindstrom* an as-applied challenge occurred only after an evidentiary presentation to the district court. *Id.* at 960–61, 712 P.2d 661–62. *Lindstrom* does not stand for the position that a stipulated set of facts for an early motion for summary judgment is the same as a

complete, developed record.

When the constitutional challenge was made for the first time in the Gomersalls' responsive briefing, the challenge was clearly a facial challenge, and St. Luke's had no need to ask for time to make a fuller record. It is only for the first time on appeal that the Gomersalls ask this Court to convert their constitutional challenge to an "as applied" challenge, without providing any legal support that they may do so. Because St. Luke's never briefed, argued, or even addressed an "as applied" challenge to the district court, because the district court never made a ruling on an "as applied" basis, and as the Gomersalls are only requesting this Court do an "as applied" analysis on appeal, there is literally no issue before the Court that was addressed by the district court.

3. The Gomersalls do not present any argument or reasoning to this court as to the constitutionality of Idaho Code § 5-219(4).

In addressing the briefing on appeal, the Idaho Supreme Court has repeatedly indicated that an issue must be briefed on appeal to be properly before the Court. *See* I.A.R. 35(a)(6); *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010); *Jorgensen v. Coppedge*, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008). If not briefed and supported as required by the I.A.R., an argument is waived. *Dawson v. Cheyovich Family Tr.*, 149 Idaho 375, 383, 234 P.3d 699, 707 (2010). In reviewing the Gomersalls' briefing, their entire argument is that Idaho Code § 5-230 is unconstitutional. A finding that § 5-230 is unconstitutional does not automatically apply to § 5-219(4). Unless both statutes are undone by this Court, the Gomersalls cannot establish that W.G.G. has timely brought a claim. Even if § 5-230 is unconstitutional, W.G.G.'s claim is untimely under § 5-219(4), and absent any briefing, this issue is not properly on appeal.

B. The Gomersalls have not put forth a scintilla of evidence which supports an equitable estoppel defense.

As to the equitable estoppel issue, there is no evidence to show that St. Luke's induced the

Gomersalls to not bring a claim. Also, equitable estoppel defense only applies for a reasonable time after the hidden information was discovered; it does not apply to extend the overall statute of limitations.

1. The evidence put forward by the Gomersalls related to equitable estoppel does not actually support an equitable estoppel defense nor does it establish any element of equitable estoppel.

St. Luke's contends that there is simply no evidence which supports an equitable estoppel defense.

> [T]he elements of equitable estoppel are a false representation or concealment of a material fact with actual or constructive knowledge of the truth; the party asserting estoppel did not know or could not discover the truth; the false representation or concealment was made with the intent that it be relied upon; and the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

Williams v. Blakley, 114 Idaho 323, 325, 757 P.2d 186, 188 (1987). "All factors of equitable estoppel are of equal importance, and there can be no estoppel absent any of the elements." *Regjovich v. First W. Investments, Inc.*, 134 Idaho 154, 158, 997 P.2d 615, 619 (2000). Thus, the Gomersalls need to establish a false representation or a concealment of a fact.

In total, there were four declarations submitted related to St. Luke's summary judgment motion. R. Vol. I, pp. 36 – 42, 69 – 105. However, only Cyndi Gomersall could be in a position to properly testify as to an allegedly false representation, and indeed, Cyndi Gomersall's declaration is the only one which actually refers to the alleged statements made by St. Luke's.[10] Judge Hippler determined the Gomersall's other declarations were, unnecessary, irrelevant and conclusory. Conclusory testimony or opinions are not admissible for purposes of summary judgment.

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[10] St. Luke's acknowledges that both Cyndi Gomersall's and Jeffrey Streets' declarations contain the same letter sent by St. Luke's to the Gomersalls. R. Vol. I, pp. 42 and 74. However, only Cyndi Gomersall explains why this letter was allegedly false or concealed facts.

Suhadolnik v. Pressman, 151 Idaho 110, 116, 254 P.3d 11, 17 (2011) ("The affiant must have personal knowledge of the facts contained within the affidavit and statements within it cannot be conclusory or speculative."). "A statement is conclusory if it does not contain supporting evidence for its assertion." *Eldridge v. West*, 166 Idaho 303, 458 P.3d 172, 180 (2020). Judge Hippler correctly declined to review such documents. R. Vol. I, pp. 123 – 24.

According to Mrs. Gomersall, the only communication she received from St. Luke's was the Jan. 3 letter. R. Vol. I, p. 70 (¶ 5). This letter must be the basis of equitable estoppel claim. In reviewing her testimony, Judge Hippler concluded that a number of statements were conclusory, including that she, "learned St. Luke's never made adjustments to Plaintiff's bill," but Judge Hippler still considered such statements. R. Vol. I, pp. 122 – 23. Judge Hippler's consideration of Mrs. Gomersall's statements was an abuse of discretion, as inadmissible evidence may not be considered for summary judgment purposes, and therefore the judge did not act consistently with the legal standards applicable to the specific choices available.

Even should the Court consider Mrs. Gomersall's testimony, the testimony does not establish the elements required for a claim of equitable estoppel. According to Mrs. Gomersall, the reason that the Gomersalls did not file a claim earlier was as follows:

> As we initially believed that our son had not suffered significant damage and because St. Luke's represented in its January 3, 2010 letter that our bill would be adjusted, in reliance on St. Luke's representation we significantly delayed seeking legal counsel or pursuing legal remedies on behalf of our son as we believed the matter would be resolved.

R. Vol. I, p. 70 (¶ 5). This letter does not show that St. Luke's made, "a false representation or concealment of a material fact with actual or constructive knowledge of the truth." *Williams*, 114 Idaho at 325. First, the letter makes it clear that, "We will also be making adjustments to a portion of [W.G.G.]'s hospital bill." R. Vol. I, pp. 42 and 74. This is not a concealment and could only be

a false representation. However, the statement also refers to a future event, i.e. what St. Luke's will do in the future. "A misrepresentation must be as to a past or existing fact." *Ferro v. Soc'y of Saint Pius X*, 143 Idaho 538, 544, 149 P.3d 813, 819 (2006). "Generally, a statement about a future event does not constitute a misrepresentation." *City of McCall v. Buxton*, 146 Idaho 656, 664, 201 P.3d 629, 637 (2009). Thus, there can be no misrepresentation, and no estoppel.[11]

Second, even if St. Luke's never made the adjustment to billing, such statement was not material. In order for the false representation to create a situation for equitable estoppel to arise, it must be material to the reason why a claim was not filed, or else, a plaintiff could simply pick any statement and say that they relied on it as a reason for not filing a claim.[12] Nothing about St. Luke's statement would induce someone to refrain from filing suit. St. Luke's concealed nothing and misrepresented nothing; instead, St. Luke's clearly indicated that the sodium bicarbonate treatment was delayed, essentially informing the Gomersalls that St. Luke's actions could have caused damages. Thus, there is no reasonable fact or inference that can be construed in the Gomersalls' favor which could lead a fact finder that St. Luke's induced the Gomersalls to refrain from filing suit. Further, as discussed above, because this is an equitable issue, the district court did not have to make inferences in the Gomersalls' favor and could make any reasonable inferences under the circumstances. To the extent Judge Hippler made any inferences against the Gomersalls, such inferences are reasonably supported by the record and should be upheld.

2. Equitable estoppel does not toll the statute of limitations, and eight years is not a reasonable amount of time for equitable estoppel to prevent St. Luke's

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[11] To the extent the Gomersalls raise the issue that St. Luke's never intended to adjust the billing, *see First Sec. Bank of Idaho, N.A. v. Webster*, 119 Idaho 262, 268, 805 P.2d 468, 474 (1991), there is nothing in the record to support such argument, nor would such inference be reasonable under the facts presented.

[12] Prior to the close of briefing, the Supreme Court released the opinion in GREGORY v. STALLINGS, No. 46818, 2020 WL 3989134, at *7 (Idaho July 15, 2020), a currently unpublished case which discusses this exact issue, stating, "The focus remains on whether the Stallings induced Gregory to sit on his rights." Should this opinion be published in the future, St. Luke's will rely on it as it is clearly relevant to this analysis.

from arguing that the statute of limitations bars W.G.G.'s claims.

Even if the Court finds that St. Luke's concealed or misstated facts, the timelines in this case do not support the Gomersalls' equitable estoppel argument. "Equitable estoppel is based on the concept that it would be inequitable to allow a person to induce reliance by taking a certain position and, thereafter, take an inconsistent position when it becomes advantageous to do so." *Regjovich v. First W. Investments, Inc.*, 134 Idaho 154, 158, 997 P.2d 615, 619 (2000). Equitable estoppel may be used to prevent a defendant from arguing that a claim is barred by the applicable statute of limitations. *Knudsen v. Agee*, 128 Idaho 776, 779, 918 P.2d 1221, 1224 (1996). That being said,

> Equitable estoppel does not eliminate, toll, or extend the statute of limitations. It merely bars a party from asserting the statute of limitations as a defense. That bar does not last forever, however. It lasts only for a reasonable time after the party asserting estoppel discovers or reasonably could have discovered the truth.

Ferro v. Soc'y of Saint Pius X, 143 Idaho 538, 540–41, 149 P.3d 813, 815–16 (2006).

If the Court were to reach the applicability of equitable estoppel, the wrongful act as alleged by the Gomersalls is the January 3, 2011 letter. R. Vol. I, p. 65. The letter was sent more than eight years before the Complaint was filed on January 25, 2019. R. Vol. I, p. 6. Eight years is not a reasonable amount of time for equitable estoppel to apply. For example, in *Knudsen*, this Court found that a little over two years was an unreasonable amount of time to wait to bring a claim, and therefore equitable estoppel did not apply. *Knudsen v. Agee*, 128 Idaho 776, 779, 918 P.2d 1221, 1224 (1996). In contrast, the Supreme Court indicated in *Anderson v. Anderson, Kaufman, Ringert & Clark, Chartered*, 116 Idaho 359, 364–65, 775 P.2d 1201, 1206–07 (1989) that equitable estoppel did bar a statute of limitations defense where the parties were diligent in bringing a counterclaim nine months after it was discovered.

Assuming the equitable estoppel runs from the discovery of the misrepresentation,

according to Cyndi Gomersall, the truth was discovered "[m]any months later . . ." R. Vol. I, p. 71 (¶ 6). This implies that it was months, not years, before Mrs. Gomersall discovered the alleged misrepresentation. This would still mean that there were several years that the Gomersalls waited to bring their claim after they found out the truth. Further, Mrs. Gomersall indicated that she does not receive Medicaid bills, R. Vol. I, p. 70 (¶ 4), yet she somehow was able to find out that the bills were not adjusted (without explaining how). R. Vol. I, p. 71 (¶ 6).

This was not a situation where the information was hidden from the Gomersalls for long, nor can they claim they could not find the truth. Instead, they knew the "truth" for approximately seven or more years, but simply did not act with due diligence to bring the claim. Therefore, they should not be permitted to argue that St. Luke's is equitably estopped from arguing the statute of limitations.

C. Based on general constitutional analysis principles, the Court should find that Idaho Code §§ 5-230 and 5-219(4) are constitutional under the open courts, due process, and equal protection clauses.

Should the Court reach the constitutional question and analyze the constitutionality of both Idaho Code §§ 5-230 and 5-219(4)[13], this Court would need to take two extraordinary steps in order to grant the Gomersalls the relief they request: first, it would have to determine that two statutes are unconstitutional; and second, the Court would need to invalidate those cases that have upheld these statutes as constitutional in the past. It is worth noting that Judge Hippler never ruled on the issue of *stare decisis* because, of the two statutes implicated by the Gomersall's challenge, there is only caselaw discussing the constitutionality of Idaho Code § 5-219(4), which the Gomersalls did not challenge below. R. Vol. I, p. 126. However, St. Luke's believes that if the

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[13] St. Luke's contends that the Court must analyze the constitutionality of both of these statutes in order for the Gomersalls to have the relief they are requesting, which is that there is a constitutional right to have all statutes of limitations tolled until a minor reaches the age of majority.

Court has determined that it is appropriate to reach the constitutional issues raised by the Gomersalls, it will need to address the constitutionality of Idaho Code §§ 5-230 and 5-219(4) together. Therefore, this Court will likely need to address the *stare decisis* issue that was raised before the district court but which the district court appears to have determined was not applicable.[14]

In order to properly address the constitutional issues, St. Luke's will briefly outline general constitutional principles, including the concept of stare decisis. St. Luke's will also outline the history of Idaho Code § 5-230 to show why there are no constitutionality concerns with that statute. St. Luke's will address the Gomersall's specific constitutional challenges in the next sections.

1. Idaho law seeks to avoid constitutional challenges to legislative enactments.

As a general matter, Idaho courts do not seek opportunities to overturn legislation. It is a, "well-established rule that a legislative act should be held to be constitutional until it is shown beyond a reasonable doubt that it is not so, and that a law should not be held to be void for repugnancy to the Constitution in a doubtful case." *Sanderson v. Salmon River Canal Co.*, 45 Idaho 244, 263 P. 32, 35 (1927). "The party challenging a statute on constitutional grounds must overcome a strong presumption of validity." *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho

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[14] This principle has been phrased several ways. For example, "When the trial court reaches the correct result by an erroneous theory, we will affirm the result on the correct theory." *Stapleton v. Jack Cushman Drilling & Pump Co. Inc.*, 153 Idaho 735, 740, 291 P.3d 418, 423 (2012). Alternately, "A respondent on appeal is not necessarily limited to the issues decided by the trial court or the issues raised by the appellant. The respondent can seek to sustain a judgment for reasons that were presented to the trial court even though they were not addressed or relied upon by the trial court in its decision." *Id.* at 742, 291 P.3d at 425. *See also Noak v. Idaho Dep't of Correction*, 152 Idaho 305, 310, 271 P.3d 703, 708 (2012) (holding that where the district court reached a ruling on an issue that was incorrect, a cross-appeal was not necessary to raise the issue on appeal); *Walker v. Shoshone Cty.*, 112 Idaho 991, 993, 739 P.2d 290, 292 (1987) (same). Another way of stating this issue is that the district court may be affirmed on other grounds. *See Rincover v. State, Dep't of Fin., Sec. Bureau*, 128 Idaho 653, 657, 917 P.2d 1293, 1297 (1996); *McColm-Traska v. Baker*, 139 Idaho 948, 951–52, 88 P.3d 767, 770–71 (2004) (affirming a decision on other grounds); *Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 643, 647, 827 P.2d 656, 660 (1992) (affirming on other grounds); *Summers v. Cambridge Joint Sch. Dist. No. 432*, 139 Idaho 953, 957, 88 P.3d 772, 776 (2004) (same); *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 132 Idaho 754, 775, 979 P.2d 627, 648 (1999) (same).

82, 90, 982 P.2d 917, 925 (1999). "Every reasonable presumption must be indulged in favor of the constitutionality of an enactment." *Sch. Dist. No. 25, Bannock Cty. v. State Tax Comm'n*, 101 Idaho 283, 290, 612 P.2d 126, 133 (1980). Indeed, Idaho courts are, "obligated to seek an interpretation of a statute that upholds its constitutionality." *State v. Olivas*, 158 Idaho 375, 380, 347 P.3d 1189, 1194 (2015) (quoting *In re Bermudes*, 141 Idaho 157, 159, 106 P.3d 1123, 1125 (2005)). "The judicial power to declare legislative action unconstitutional should be exercised only in clear cases." *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 869, 154 P.3d 433, 440 (2007). Even if this Court reaches the constitutionality of Idaho Code §§ 5-230 and 5-219(4), there is no sufficient basis for the Court to determine that minors have been deprived of their constitutional rights.

2. Idaho Code § 5-219(4) has been found to be constitutional and there is no basis to step away from *stare decisis* in this case.

Idaho courts have already determined Idaho Code § 5-219(4) to be constitutional. Indeed, the Gomersalls are not able to show any Idaho case where a statute of limitations has been deemed unconstitutional. Instead, it appears every attack on the constitutionality of an Idaho statute of limitations has been rejected.

The rule of *stare decisis* states,

> When there is controlling precedent on questions of Idaho law the rule of *stare decisis* dictates that we follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.

State v. Grant, 154 Idaho 281, 287, 297 P.3d 244, 250 (2013). Where Idaho has been, "squarely in line with several other states," on a given issue this Court has not found, "our controlling precedent to be manifestly wrong or unjust, and [we] decline to overturn our existing case law." *Farm Bureau Mut. Ins. Co. of Idaho v. Cook*, 163 Idaho 455, 414 P.3d 1194, 1199 (2018). The instruction to

Idaho courts is that: "We shall not stray from the principle of stare decisis without an exceptionally compelling reason to do so, particularly where doing so would be a move to embrace ambiguity over order." *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 579, 237 P.3d 1200, 1205 (2010).

The constitutionality of Idaho Code § 5-219(4) has been attacked multiple times, each time without success. For example, in *Hawley v. Green*, 117 Idaho 498, 500–01, 788 P.2d 1321, 1323–24 (1990), the Idaho Supreme Court found that Idaho Code § 5-219(4) did not violate the open court provisions found in Idaho Const. Art. I, § 18. The *Hawley* court also determined that Idaho Code § 5-219(4) did not violate due process or equal protection, relying on the Supreme Court's prior decision in *Holmes v. Iwasa*, 104 Idaho 179, 657 P.2d 476 (1983), which also found Idaho Code § 5-219(4) to be constitutional. *Hawley* at 501–02, 788 P.2d at 1324–25. Idaho Code § 5-219(4) was constitutionally upheld as recently as April, 2020. *See Walsh v. Swapp Law, PLLC*, 166 Idaho 629, 462 P.3d 607, 619–20 (2020).[15]

In short, St. Luke's has not found any Idaho decision where a statute of limitations has been found unconstitutional. The closest situation the Gomersalls identify is *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986). *Durtschi* was a case analyzing the time frames for minors to file a notice of tort claims under the Idaho Tort Claims Act in that short period of time when the 6-year tolling period for minors to file a claim with the court (as outlined in Idaho Code § 5-230) and the 120-day time frame for minors to file a notice of tort claim with the applicable governmental entity (under former Idaho Code § 6-906) were not identical. Prior to issuing the

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[15] Idaho has no history of overturning statutes of limitations. *See Davis v. Moran*, 112 Idaho 703, 705 – 08, 735 P.2d 1014, 1016 – 19 (1987) (Idaho Code § 5-242 upheld); *Miller v. Stauffer Chem. Co.*, 99 Idaho 299, 302–04, 581 P.2d 345, 348–50 (1978) (Idaho Code § 5-239 upheld); *Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill*, 103 Idaho 19, 24, 644 P.2d 341, 346 (1982) (Idaho Code § 5-241 upheld); *Brackney v. Combustion Eng'g, Inc.*, 674 F.2d 812, 815 (9th Cir. 1982) (the 9th Circuit upholding Idaho Code § 5-230). *But see United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939) (determining that any statute of limitations which violated the requirements of the Idaho Constitution, Article 9, § 3 (dealing with the public school endowment fund), was unconstitutional).

opinion, the Idaho Legislature had modified the timeline for minors to file a notice of tort claim so that it was tolled for six years. *Doe v. Durtschi*, 110 Idaho at 475, 716 P.2d at 1247 (fn. 5) (discussing the adoption of Idaho Code § 6-906A). In *Durtschi*, the Idaho Supreme Court determined that the then applicable notice period (120 days) was tolled by the provisions of Idaho Code § 5-230. *Id.* at 477–79, 716 P.2d at 1249–51. The Gomersalls suggest that *Durtschi* somehow suggests that a general tolling statute such as Idaho Code § 5-230 may be improper, and that the Idaho Supreme Court left open for later resolution whether public policy should deem these statutes unconstitutional. App. Br. pp. 16 – 17. However, nothing of the sort happened in *Durtschi*.

Instead, the *Durtschi* court wholeheartedly approved of the public policy behind Idaho Code § 5-230, stating, "The long-standing policy of Idaho has been to shelter minor plaintiffs from the insensitive ticking of statutory clocks. At the time of the instant cases, this policy was embodied in I.C. § 5–230(1) . . ." *Id.* at 475, 716 P.2d at 1247 (citations omitted). In this discussion, the Court pointed to *Chapin v. Stewart*, 71 Idaho 306, 310, 230 P.2d 998, 1001 (1951), a case analyzing the statute of limitations set forth in Idaho Code § 5-213[16], a statute which continues to allow for minors to bring certain claims after they reach the age of majority. Regardless, the *Durtschi* court so approved of Idaho Code § 5-230 that it utilized the statute to override the plain language application of Idaho Code § 6-906. As Idaho Code § 6-906 no longer applies to minors, the applicability of *Durtschi* to the present case is questionable at best, and more likely simply inappropriate. The issue in *Durtschi* was the inconsistency between Idaho Code § 6-906, as it existed at the time, and Idaho Code § 5-230. The *Durtschi* Court did not in any way disapprove of Idaho Code § 5-230 – it instead lauded Idaho Code § 5-230's policy objectives and sought to bring

[16] Idaho Code § 5-213 anachronistically still lists a married woman as being under a disability. It is confounding that our legislature has failed to undertake an effort to remove such painfully inappropriate designations from Idaho's statutory code.

Idaho Code § 6-906 in line with the tolling provisions of Idaho Code § 5-230. Thus, based on *stare decisis* principles, there is no basis to find that Idaho Code § 5-219(4) is unconstitutional.

3. The purpose of statutes of limitations and the history of Idaho Code §§ 5-230 and 5-219(4) establish that they are not constitutionally infirm.

It is admittedly challenging to attack the constitutionality of statutes of limitations. "Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Bd. of Regents of Univ. of State of N. Y. v. Tomanio*, 446 U.S. 478, 487, 100 S. Ct. 1790, 1796, 64 L. Ed. 2d 440 (1980). The United States Supreme Court has validated the authority of state legislatures to enact statutes of limitations, stating,

> It is the settled doctrine of this court that the legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided, in each case, a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect.

Wheeler v. Jackson, 137 U.S. 245, 255, 11 S. Ct. 76, 78, 34 L. Ed. 659 (1890). Simply stated, unless there is a significant and specific reason why a statute of limitations is constitutionally infirm, the general rule is that they are valid legislative enactments.

In looking at why it is so challenging to overturn a statute of limitations, it is helpful to understand their purpose generally, and specifically to understand the history of these two statutes. At the outset of this section, St. Luke's notes that the Gomersalls laid out some of the legislative history of Idaho Code § 5-230. App. Br. pp. 27 – 29. This legislative history was never presented to the district court. R. Vol. I, p. 128. As outlined repeatedly above, an issue not raised before the district court is not properly before the court on appeal. However, I.R.E. 201(d) provides that, "The court may take judicial notice at any stage of the proceeding." *See State v. Lemmons*, 158 Idaho

971, 978, 354 P.3d 1186, 1193 (2015) (W. Jones, concurring). I.R.E. 201(a) and Idaho Code § 9-101 are broad enough to allow a court to take judicial notice of legislative history. Further, the Idaho Supreme Court, "take[s] judicial notice of the public and private acts of the legislature . . . and the Journals of the legislative bodies to determine whether an act of the legislature was constitutionally passed and for the purpose of ascertaining what was done by the legislature." *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 406, 342 P.2d 706, 707 (1959). Thus, to the extent the Gomersalls have put the legislative history of Idaho Code § 5-230 before this Court, it is presumed that the Court will take judicial notice of such legislative facts, even though no motion for judicial notice was made.

The purpose of a statute of limitations is to, "limit the temporal extent or duration of liability for tortious acts." *CTS Corp. v. Waldburger*, 573 U.S. 1, 7, 134 S. Ct. 2175, 2182, 189 L. Ed. 2d 62 (2014). "Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles." *Perryman v. Motorist Mut. Ins. Co.*, 846 N.E.2d 683, 689 (Ind. Ct. App. 2006) (citations omitted). They are, "a time limit for suing in a civil case . . . The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh." STATUTE OF LIMITATIONS, Black's Law Dictionary (11th ed. 2019).

Statutes of limitations serve multiple purposes, including providing finality to potential cases. *See* 51 Am. Jur. 2d Limitation of Actions § 8. "The dual purposes of a limitations period are to force parties to litigate claims while the evidence is still fresh, and to grant the prospective defendant relative security and stability by allowing it better to estimate its outstanding legal obligations." *Cook v. City of Chicago*, 192 F.3d 693, 696 (7th Cir. 1999). "[T]here is [also]a third

purpose, and that is to enable the defendant to cap his liability. Normally the size of a plaintiff's claim is, apart from any entitlement to prejudgment interest, independent of when suit is filed. But sometimes . . . it increases with the passage of time." *Id.* Such statutes are, "instruments of public policy and of court management, which do not confer upon defendants any right to be free from liability, although this may be their effect." *Big League Entm't, Inc. v. Brox Indus., Inc.*, 149 N.H. 480, 483, 821 A.2d 1054, 1057 (2003). "The primary purpose of the statute of limitations is to provide defendants a fair opportunity to defend and to prevent plaintiffs from litigating stale claims." *Price v. New Jersey Mfrs. Ins. Co.*, 182 N.J. 519, 524, 867 A.2d 1181, 1184 (2005). Thus, they provide judicial efficiency. *See English v. Bousamra*, 9 F. Supp. 2d 803, 807 (W.D. Mich. 1998), aff'd, 188 F.3d 507 (6th Cir. 1999). "Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 463–64, 95 S. Ct. 1716, 1722, 44 L. Ed. 2d 295 (1975). Simply stated, "[A] statute of limitations is a legislative declaration of public policy not only to encourage our citizens to seasonably file and to vigilantly prosecute their claims for relief, but also to require them to do so or, otherwise, find their claims proscribed by law." *Dorris v. State*, 360 S.W.3d 260, 269 (Mo. 2012).

In creating a statute of limitations, it is the legislature who makes the "value judgment" to determine when claims may no longer be brought, thereby setting the public policy of the state. With regard to personal injury actions, Idaho has long held that there is a two-year statute of limitations. *See, e.g.*, *Renner v. Edwards*, 93 Idaho 836, 837, 475 P.2d 530, 531 (1969). When *Renner* imposed a discovery rule on Idaho Code § 5-219(4), the Idaho Legislature modified the

statute in 1971 to limit the discovery rule application, putting the statute in its current form. *See Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill*, 103 Idaho 19, 22, 644 P.2d 341, 344 (1982); S.L. 1971, Ch. 180, § 1. The only exceptions to the two-year statute of limitations of which St. Luke's is aware are based on disability (under Idaho Code § 5-230), equitable estoppel, waiver[17], and to the extent applicable, fraudulent concealment as set forth in § 5-219(4).

Like § 5-219(4), Idaho Code § 5-230 has a long history in Idaho. The first version of this law appears to have been enacted in 1881. C.C.P. 1881, § 170. By 1919, the tolling statute essentially halted all applicable statutes of limitations during the term of a disability. These disabilities included minority, insanity, incarceration, or being a married woman. C.L. 1919, §§ 4070 and 6623. This law stayed in place until 1976, meaning that from 1919 until 1976, no statute of limitations ran against a minor until they reached the age of majority. Under the 1976 revisions, Idaho Code § 5-230 provided for the first time that, "an action shall not be tolled for a period of more than six (6) years on account of minority, incompetency, [etc.] . . .". 1976 Idaho S.L., Chp. 276, § 1. This law was specifically made retroactive, meaning that the legislature thought the law was of enough value to have it apply to all existing cases. The Gomersalls correctly point out that the purpose of this bill, as discussed in the legislative hearings, was to, in part, alleviate insurance concerns over the potential for claims to be brought for many years after a claim accrues due to incompetency or minority. App. Br., pp. 28 – 29. The Gomersalls also point out that an opposing viewpoint was offered to the legislative committees (i.e. that all minors should have until they are after the age of 18 to bring claims), but it is clear that this viewpoint was rejected by the passage of Idaho S.L. 1976, Chp. 276, § 1. Only two further changes were made to Idaho Code § 5-230

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[17] *Day as Tr. of Tr. B of Donald M. Day & Marjorie D. Day Family Tr. v. Transportation Dep't*, 166 Idaho 293, 458 P.3d 162, 170 (2020).

between 1976 and the present, the first in 1985 was a grammatical change from, "Within the age of majority" to, "Under the age of majority." Idaho 1985 Idaho S.L., Chp. 74, § 1. The second occurred in 1993, when imprisonment was removed from the list of disabilities to which the statute applies. 1993 Idaho S.L., Chp. 120, § 1. As the Gomersalls point out, neither of these changes affect the analysis of whether the 1976 modifications are constitutional. App. Br. p. 29 (n. 2).

In 1976 the Idaho legislature was clearly concerned about the length of time claims could be brought after an injury occurred. They determined that the then existing statute (which allowed minors to reach the age of majority in every case before the statute of limitations began running) was simply too long. They considered arguments on both sides and determined that the simplest solution was to simply apply a tolling period of six years for every type of disability. This tolling period has the effect of giving claimants under a disability an extended opportunity to bring claims, but also preventing the claims from lasting for what could be essentially an entire lifetime (depending on the type of disability). Nothing about this process smacks of unconstitutionality, and it instead appears that a reasonable, rational legislative enactment occurred. With this background in mind, St. Luke's will address the Gomersall's specific arguments.

D. Neither Idaho Code § 5-230 nor § 5-219(4) violate the open courts provision of the Idaho Constitution.

1. The Court can avoid an open court analysis by applying general constitutional principles.

The Gomersalls' first contention is that the open court provision of the Idaho Constitution requires all statutes of limitations to be tolled until a minor reaches the age of majority. There are preliminary reasons why the Court need not actually reach the constitutional analysis. First, Idaho's open courts clause states, "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be

administered without sale, denial, delay, or prejudice." Idaho Const. Art. I, § 18. There is a significant amount of Idaho case law discussing that this clause does not create a substantive right and does not enlarge the rights or remedies of Idaho citizens.[18] As other courts have noted about Idaho's Constitution, arguments about, "a fundamental state constitutional right of access to the courts," have generally been rejected, "as neither [Idaho Const. Art. I, § 18] nor anything in Idaho case law supports [this] position." *Cayne v. Washington Tr. Bank*, No. 2:12-CV-000584-REB, 2017 WL 3749366, at *3 (D. Idaho Aug. 30, 2017). Other states have held similarly with regard to their open court provisions. *See, e.g., Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund,* 2000 WI 98, ¶ 43, 237 Wis. 2d 99, 122, 613 N.W.2d 849, 862–63 (holding that Wisconsin's "right to remedy" provision creates no legal rights.). Though, "[E]very individual in our society has a right of access to the courts," *State Dep't of Health & Welfare v. Slane*, 155 Idaho 274, 279, 311 P.3d 286, 291 (2013), that right of access clearly is subject to limits. *See Eismann v. Miller*, 101 Idaho 692, 697, 619 P.2d 1145, 1150 (1980). Stated another way, "[S]tatutes of limitation are not unconstitutional because they bar access to the courts: Statutes of limitation, by their very nature, bar access to the courts after the prescribed period of time has elapsed." *Smith v. Cobb Cty.-Kennestone Hosp. Auth.*, 262 Ga. 566, 572, 423 S.E.2d 235, 240 (1992). Thus, in order to reach the conclusion sought by the Gomersalls, this Court would have to overturn every case previously holding that Idaho Constitution, Art. I, § 18 does not provide a substantive right or remedy.

Second, for every child's injury, there are multiple people who have causes of action to

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[18] *See Venters v. Sorrento Delaware, Inc.*, 141 Idaho 245, 252, 108 P.3d 392, 399 (2005); *Luttrell v. Clearwater Cty. Sheriff's Office*, 140 Idaho 581, 585, 97 P.3d 448, 452 (2004); *Hawley v. Green*, 117 Idaho 498, 500–01, 788 P.2d 1321, 1323–24 (1990); *Jones v. State Bd. of Med.*, 97 Idaho 859, 864–65, 555 P.2d 399, 404–05 (1976); *Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill*, 103 Idaho 19, 24, 644 P.2d 341, 346 (1982); *Cummings v. J. R. Simplot Co.*, 95 Idaho 465, 468, 511 P.2d 282, 285 (1973); *Moon v. Bullock*, 65 Idaho 594, 151 P.2d 765, 769 (1944) (overruled on other grounds by *Doggett v. Boiler Eng'g & Supply Co.*, 93 Idaho 888, 477 P.2d 511 (1970)).

recover related damages. The general rule is that parents have the primary right of action as related to any damages incurred by the child in connection with the injury. *Jacobsen v. Schroder*, 117 Idaho 442, 444, 788 P.2d 843, 845 (1990); *Lasselle v. Special Products Co.*, 106 Idaho 170, 173–74, 677 P.2d 483, 486–87 (1983). Alleging that the mere existence of a statute of limitations that may divest a child's ability to bring his own medical malpractice action once he reaches the age of majority is illogical and contrary to Idaho precedent. Under *Jacobsen* and *Lasselle*, W.G.G.'s right to bring a claim is not even the primary right arising out of his injury. The entire open courts issue may be avoided simply by recognizing that Idaho gives the primary cause of action for an injury to a child to the parents who actually incur the expenses for the child's medical treatment and care. As the Idaho Supreme Court has pointed out,

> A man cannot be said to be denied, in a constitutional or in any rational sense, the privilege of resorting to courts to enforce his rights when he is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection.

Miller v. Stauffer Chem. Co., 99 Idaho 299, 304, 581 P.2d 345, 350 (1978).

Where multiple persons have the right to bring a cause of action, there simply is not a basis to conclude that the courts were ever closed. In a case discussing the Idaho statute of repose, the Idaho Supreme Court stated,

> At the outset, we again observe that the legislature clearly has the power to abolish or modify common law rights and remedies. A statute placing limitations on remedies does not contradict the provision of the Idaho Constitution that courts of justice shall be open to every person and a speedy remedy afforded for every injury of person.

Olsen v. J.A. Freeman Co., 117 Idaho 706, 717, 791 P.2d 1285, 1296 (1990). "It is well established that the 'open courts' provision governing access to courts of justice does not prohibit the legislature from abolishing or modifying a common-law right of action." *Id.*

For purposes of a constitutional analysis, it does not matter that W.G.G. could not

personally bring a claim while he was a minor, because the claim was always available to people who could bring it on their own behalf or on his behalf. As, "The general rule of constitutional avoidance encourages courts to interpret statutes so as to avoid unnecessary constitutional questions," *Miller v. Idaho State Patrol*, 150 Idaho 856, 864, 252 P.3d 1274, 1282 (2011), the fact that the claim belongs to both W.G.G. and his parents allows this Court to avoid a constitutional question and simply apply the statute of limitations.

2. There is no constitutional right for a minor to have until they reach the age of majority to bring a claim.

To the extent the Court reaches a substantive argument of the open courts clause analysis, the Gomersalls ask this Court to do what no court in the United States has done: to find that minors have a substantive right to have the statute of limitations be tolled until the minor reaches the age of majority. While there are courts that have determined that their state's open court provisions are violated by certain statutes of limitations, they have generally done so because of the specific statutory schemes present in those states. As discussed below, Idaho's statutory scheme is unlike those states which have found that their statutory scheme violates the states' open courts provision. No court has found that there is a constitutional right to have a statute of limitations be tolled until a minor reaches the age of majority.

A large number of states have a three-part structure: one statute for personal injury actions, one statute for tolling, and a third claim-specific statute that applies. For example, Alaska, Arizona, Missouri (under former law), Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming each have a general statute of limitations for personal injury, a tolling statute for minors (or for disability), and a separate statute of limitations applicable to medical malpractice cases (and which

trumps the other two statutes).[19] Other states and territories, including Puerto Rico, New York, Nebraska, and Washington D.C., have opted for a simpler statute of limitations process, where there is only one statute of limitations, which is tolled for the entire period of minority. Only Kansas appears to have a format similar to that adopted by the Idaho legislature. *See* Kan. Stat. §§ 60-513(a)(7) and 60-515(a).

These various types of statutory schemes have been challenged in their applicable state courts, and numerous different results have occurred. The Gomersalls ask the Court to look at Texas, Alaska, Missouri, Arizona, and Ohio[20] to encourage a similar result from those cases. However, these cases are not helpful in the analysis of Idaho's open courts clause. At the time of the case law relied on by the Gomersalls, each of these states had the three part structure outlined above.[21] Once the appellate courts in those states reviewed the specific medical malpractice specific statute of limitations and found them to be unconstitutional as to minors, each state had a general tolling statute which allowed minors until at least the age of majority to file. Idaho's statutory scheme cannot be analyzed in this same regard, because if Idaho Code § 5-230 is undone, all that is left is the shorter general statute under Idaho Code § 5-219(4). Thus, unlike those cases (where only the specific medical malpractice statute of limitations was undone), here both the tolling and general statute of limitations would need to be undone to reach the desired result.

Further, the cases relied on by the Gomersalls tend to be older cases. For example, the Missouri case, *Strahler v. St. Luke's Hosp.*, 706 S.W.2d 7 (Mo. 1986), is almost thirty-five years old, and Missouri law has been updated. The current version of Mo. Stat. § 516.105 (the statute of limitations at issue in that case) has been changed so that a claim may be brought until age twenty,

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[19] The citations for these references are in the Addendum.
[20] App. Br. pp. 12 – 15.
[21] *See* Addendum.

or ten years after the injury. The Missouri Supreme Court has upheld this new statute as constitutional and not violative of Missouri's open courts or equal protection provisions, stating that, "[T]he legislature provided a reasonable, ten–year period in which to sue." *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 910 (Mo. 2015).[22] Other cases, including *Barrio v. San Manuel Div. Hosp. for Magma Copper Co.*, 143 Ariz. 101, 692 P.2d 280 (1984) and *Sax v. Votteler*, 648 S.W.2d 661 (Tex. 1983), are 36 and 37 years old respectively.

Regardless, while cases cited by the Gomersalls appear to express one point of view with regard to open court provisions, such cases are not the only view, nor necessarily the majority view. For example, Virginia has a three-part structure similar to those set forth in the cases relied on by the Gomersalls. Specifically, Va. Code § 8.01-229(A)(1) tolls the statute of limitations for minors until they reach the age of majority, Va. Code § 8.01-243(A) sets a two-year statute of limitations for all personal injury cases (including malpractice), and Va. Code § 8.01-243.1 contains a specific statute of limitations for medical malpractice cases which trumps the other two statutes. Despite the similarity to other states, the Virginia Supreme Court denied a constitutional attack on this statute of limitations. In *Willis v. Mullett*, the alleged malpractice occurred on a 15-year-old, who filed suit over four years later. *Willis v. Mullett*, 263 Va. 653, 656–57, 561 S.E.2d 705, 708 (2002). In that case, the plaintiff argued that because he was barred from bringing a claim while he was a minor, "the minor would lose his right to a jury trial." *Id.* at 658, 561 S.E.2d at 709. In discussing the applicable statutes, the Virginia Court stated,

> The parties agree that if an action is brought by a next friend within the reduced tolling period of the medical malpractice statute of limitations for minors, the minor would have a right to a jury trial on disputed factual claims. Accordingly, the issue is simply one of the validity of the legislative time limitation on Willis's right of

[22] This case does not involve a minor, and so has limited applicability. However, the point is that a 10-year statute of repose is reasonable.

> action. Such a limitation does not deny a fundamental constitutional right.
>
> Indeed, because a legislature may abolish a cause of action, it may also extinguish a cause of action by the imposition of a statute of limitations without affecting a fundamental constitutional right.

Id. at 658–59, 561 S.E.2d at 709 (citations omitted). The Virginia court also found that the statute did not violate due process, equal protection, or special legislation provisions of the constitution. *Id.*

Similarly, Massachusetts' statute of limitations structure resembles Virginia, Alaska, Arizona, etc. *See* Mass. Gen. Laws Ann. ch. 260, §§ 2A, 4, 7 and ch. 231 § 60D. Analyzing this framework in *Harlfinger v. Martin*, the Massachusetts Supreme Judicial Court rejected a constitutional attack. *Harlfinger* is a case where a minor had surgery to repair a fractured elbow, but it was discovered years later that the surgery failed to repair the fracture. *Harlfinger v. Martin*, 435 Mass. 38, 39–40, 754 N.E.2d 63, 66 (2001). Though the Massachusetts court did not engage specifically in an open-court analysis, the court analyzed the cases cited by the Gomersalls, as well as numerous other cases in other courts, including *Holmes v. Iwasa*. *Id.* at 45–46, 754 N.E.2d at 70–71. In finding Massachusetts' statute constitutional, the court acknowledged factors that would cause children to be more likely to be time barred by claims, through no fault of their own. *Id.* at 46–47, 754 N.E.2d at 71. Even recognizing these possibilities, the court determined that the statute was constitutional. *Id.* at 48. The court held that "[l]egislative line drawing requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line. Such line drawing does not violate equal protection principles simply because it is not made with mathematical nicety or because in practice it results in some inequality." *Id.* (citations omitted). While this analysis was based on due process and equal protection as opposed to open courts, the point is that the court recognized that statutes of limitations may inherently have the

effect of limiting a minor's right to bring a claim before reaching the age of majority. Despite this, the constitutionality of the statute is not affected.

Perhaps the most relevant case on this issue is *Estate of McCarthy v. Montana Second Judicial Dist. Court, Silverbow Cty.* This case involved a premature delivery and allegedly negligent treatment in 1974, with the suit being filed in 1995. *Id.*, 1999 MT 309, ¶¶ 3 – 4, 297 Mont. 212, 213–14, 994 P.2d 1090, 1091. Like other states, Montana has a general tolling statute and a specific medical malpractice exception for such statute. *See* Mont. Code Ann. §§ 27-2-401 and 27-2-205. The plaintiffs in *Estate of McCarthy* made an argument based on Mont. Const. Art. II, § 16, which has language almost identical to Idaho's open courts clause. *Estate of McCarthy*, 1999 MT 309, ¶ 14, 297 Mont. at 216–17, 994 P.2d at 1093. The Montana Supreme Court applied a rational basis test, discussing that the statute was passed in order to avoid claims that could last up to 20 years. *Id.* at, ¶ 17, 297 Mont. at 218, 994 P.2d at 1094. In applying this test, it found, "Ensuring the availability and affordability of health care services, as well as reducing the costs of medical malpractice insurance, are legitimate legislative objectives," and thus there was a rational basis for the statutes. *Id.* at ¶¶ 18-19, 297 Mont. at 218, 994 P.2d at 1094. The Montana Court went on to distinguish *Strahler*, *Barrio*, and *Sax*, holding that these cases did not utilize a rational basis test. *Id.* at ¶ 21, 297 Mont. at 219, 994 P.2d at 1095.

While there are clearly two diverging paths that have been followed with regard to open courts analysis, St. Luke's argues that this Court should not follow the path set forth in *Sax, Barrio*, and the other cases relied on by the Gomersalls. Those cases all appear to be resolved, at least in part, on the fact that those states have determined that their open court clause provides a substantive right. Idaho has clearly indicated that Art. I, § 18 of the Idaho Constitution provides no such right. As the Wisconsin Supreme Court has noted, where a constitutional provision does not provide a

legal right, "a statute of limitations may preclude a plaintiff's action, and a defendant may rely on the statutory bar, even if the plaintiff did not discover the injury." *Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund*, 2000 WI 98, ¶ 47, 237 Wis. 2d 99, 124, 613 N.W.2d 849, 863 (after holding that Wisconsin's "right to remedy" clause does not provide a legal right or remedy). In this case, because Idaho Const. Art. I, § 18 provides no legal right or remedy, it is not a basis to undo a properly enacted statute of limitations. Idaho should follow Montana's and Wisconsin's lead, as their statutory and constitutional situation more closely aligns with Idaho's.

3. Idaho Code §§ 5-230 and 5-219(4) are rationally related to a reasonable governmental purpose, and do not deny minors access to the courts.

At this point, it is worth noting that the Gomersalls attack Judge Hippler's specific use of the rational basis test in analyzing Idaho's open courts clause. App. Br. pp. 25 – 27; R. Vol. I, pp. 128. However, it is not clear that Judge Hippler actually applied a rational basis test to the open courts clause. As he stated, "Even if Idaho's open court provision did confer a substantive due process right, Plaintiff has failed to establish that I.C. § 5-230 fails the rational basis test." R. Vol. I, p. 128. Based on this language, it appears that Judge Hippler was conflating a due process analysis (where rational basis may apply) with open courts (which the rational basis test may not apply to). In other words, if the open courts clause did provide a substantive right, such right would be analyzed under due process. As the Gomersalls point out, there does not appear to be any Idaho case law applying a rational basis test to an open courts clause analysis, likely because Idaho's open courts provision does not confer a substantive right. St. Luke's agrees that some states, including Alaska, Arizona, Missouri, Ohio, and Texas, appear to apply a binary analysis to open court analysis (i.e. was the court open to a given claimant? If yes, there is no constitutional violation, and if not, there was a constitutional violation). Other courts, such as Montana, appear to apply due process gradations to an open court analysis. St. Luke's contends that if this Court

determines that the open court clause provides a substantive right, violation of such right falls under the due process provisions of the Idaho Constitution, and therefore Judge Hippler's analysis was correct. However, since this area is unresolved, St. Luke's will include both a due process analysis and a binary analysis.

With regard to a due process analysis, courts will generally uphold a statute of limitations against a due process challenge as long as the plaintiff is accorded a reasonable time, under all the circumstances, to bring suit before the bar takes effect. *Fields v. Legacy Health Sys.*, 413 F.3d 943, 956-57 (9th Cir. 2005) (citing cases). "'Due process' emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated." *Ross v. Moffitt*, 417 U.S. 600, 609, 94 S. Ct. 2437, 2443, 41 L. Ed. 2d 341 (1974).

> In order for a defendant to prevail on a substantive due process claim, the State action that deprived the defendant of life, liberty, or property must be arbitrary, capricious, or without a rational basis. A substantive due process violation will not be found if the State action bears a reasonable relationship to a permissible legislative objective.

State v. Sherman, 156 Idaho 435, 438, 327 P.3d 993, 996 (Ct. App. 2014). "A deprivation of property encompasses claims where there is a legitimate claim or entitlement to the asserted benefit under either state or federal law." *Guzman v. Piercy*, 155 Idaho 928, 939, 318 P.3d 918, 929 (2014). "To receive due process, the property interest must be an identifiable and legitimate claim or entitlement to a specific benefit provided by state or federal law." *Guzman* at 939, 318 P.3d at 929. "Questions of due process arising in challenges to legislation ordinarily result in a minimal scrutiny test, and this Court and others have at times engaged in speculative inquiry in order to identify any conceivable rational relationship which would legitimatize the legislative action." *Jones v. State Bd. of Med.*, 97 Idaho 859, 870, 555 P.2d 399, 410 (1976).

The stated legislative purposes of Idaho Code §§ 5-230 and 5-219(4) are to reduce medical

expenses and costs of insurance. The Montana Supreme Court observed the inherent rationality connecting statutes of limitations and lowered medical costs and insurance rates. *Estate of McCarthy*, 1999 MT at ¶ 19, 297 Mont. at 218, 994 P.2d at 1094. These are the same sorts of purposes that were analyzed by the Idaho Supreme Court when addressing challenges to Idaho's damages cap statutes. *See Kirkland v. Blaine Cty. Med. Ctr.*, 134 Idaho 464, 470, 4 P.3d 1115, 1121 (2000). *Kirkland* specifically held that, "By striking this balance between a tort victim's right to recover noneconomic damages and society's interest in preserving the availability of affordable liability insurance, the legislature is engaging in its fundamental and legitimate role of structuring and accomodating [sic] the burdens and benefits of economic life." *Id.* (citations omitted). In other words, there was a reasonable connection between capping damages and lowering insurance costs. This same analysis applies this case.

It does not matter whether the legislation actually achieved the stated legislative goal. "On rational basis review, courts do not judge the wisdom or fairness of the legislation being challenged." *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 396, 987 P.2d 300, 308 (1999). "[I]n a substantive due process challenge, we do not require that the government's legislative acts actually advance its stated purposes, but instead look to whether the governmental body could have had no legitimate reason for its decision." *State v. Bennett*, 142 Idaho 166, 169, 125 P.3d 522, 525 (2005). If the legislation is not effective, then it is the legislature's responsibility to come up with a new statute, and not the Court's responsibility to nullify the statute. "It is for the legislature, not the judiciary, to evaluate the wisdom or efficacy of the statutory scheme." *Rule Sales & Serv., Inc. v. U.S. Bank Nat. Ass'n*, 133 Idaho 669, 673, 991 P.2d 857, 861 (Ct. App. 1999). "Such an amendment would be the prerogative and responsibility of the legislature and not the function of

this court."[23] *State Farm Mut. Auto. Ins. Co. v. Hinkel*, 87 Nev. 478, 483, 488 P.2d 1151, 1154 (1971). In this case, a statute of limitations is reasonable and rational method of completing the stated legislative purpose. This is not a case where, "under no circumstances is the statute valid." *Hernandez v. Hernandez*, 151 Idaho 882, 884, 265 P.3d 495, 497 (2011). Therefore, constitutional due process considerations should not invalidate Idaho Code §§ 5-219(4) and 5-230.

Should the Court utilize a "binary" open courts analysis, St. Luke's argues that the courts have never closed their door to W.G.G. First, as discussed above, the claims are not even primarily his claims, but initially belong to his parents. There was no bar whatsoever to Mrs. and Mr. Gomersall bringing these claims on their own behalf; they simply just did not do so. Once the two-year time limit of Idaho Code § 5-219(4) passed, the door to the courthouse was still open to W.G.G. St. Luke's acknowledges that he could not act on his own. However, this does not mean that he was barred from bringing the claim. As the Wisconsin Court of Appeals rather dispassionately put it, a minor who misses a statute of limitations, "is identically situated with the adult who fails within five years to discover an injury caused by medical malpractice." *Halverson v. Tydrich*, 156 Wis. 2d 202, 215–16, 456 N.W.2d 852, 857–58 (Ct. App. 1990). In other words, it is unfortunate that the claim was not timely brought, but there is no constitutional infirmity in the statute of limitations. The door to the courthouse was open, and the Gomersalls did not timely walk through it.

E. Idaho Code §§ 5-230 and 5-219(4) do not violate Idaho's equal protection clause.

The Gomersalls contend that Idaho's equal protection clause is violated because minors

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[23] Indeed, the Gomersalls seem to implicitly acknowledge that their argument is with the Idaho legislature, rather than this Court: "W.G.G. recognizes, however, that these four states, **as Idaho should**, had a general tolling statute which tolled minors' claims until reaching the age of majority." App. Br. p. 33; R. Vol. I, pp. 128.

are treated differently depending on their age when the claim accrues. App. Br. p. 32. St. Luke's contends that this is incorrect. "Equal protection, . . . emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600, 609, 94 S. Ct. 2437, 2443, 41 L. Ed. 2d 341 (1974). "The principle underlying equal protection is that all persons in like circumstances should receive the same benefits and burdens of the law." *State v. Jones*, 140 Idaho 41, 51, 89 P.3d 881, 891 (Ct. App. 2003).

Idaho Code §§ 5-230 and 5-219(4) do not violate equal protection under Art. I, § 2 of the Idaho Constitution and the Fourteenth Amendment. "When this Court performs an equal protection analysis, it identifies the classification under attack, articulates the standard under which the classification will be tested, and then determines whether the standard has been satisfied." *State v. Doe*, 155 Idaho 99, 103–04, 305 P.3d 543, 547–48 (Ct. App. 2013). The level of scrutiny applied depends on the type of classification made. *See Meisner v. Potlatch Corp.*, 131 Idaho 258, 261, 954 P.2d 676, 679 (1998); *State v. Doe*, 155 Idaho 99, 104, 305 P.3d 543, 548 (Ct. App. 2013). Under the Fourteenth Amendment, Idaho Code §§ 5-230 and 5-219(4) do not involve any fundamental right or suspect class, nor do they involve gender or illegitimacy. For purposes of the Idaho Constitution, these statutes do not have a discriminatory character on their face, as they apply equally to everyone.[24]

The Gomersalls argue that Idaho Code §§ 5-230 and 5-219(4) do not pass a rational basis test, *see* App. Br. p. 34, but also argue that a higher level of scrutiny should be applied, as, "the right to access the courts is fundamental," App. Br., p. 34, and because Idaho Code § 5-230,

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[24] Even though there are some difference between federal and state equal protection, the Idaho Supreme Court has stated that, "As with due process, the differences between the standard applied under Idaho's equal protection clause and the federal clause are negligible." *Tarbox v. Tax Comm'n*, 107 Idaho 957, 960, 695 P.2d 342, 345 (1984). See also *Jones v. State Bd. of Med.*, 97 Idaho 859, 865, 555 P.2d 399, 405 (1976).

"singles out legal incompetents, minors and the insane, who cannot assert claims on their own behalf . . ." App. Br. p. 35. However, these arguments do not support a basis for a higher level of scrutiny. Regarding access to the courts, St. Luke's agrees that the Idaho Supreme Court has repeatedly determined that, "Access to courts is a fundamental right." *Evensiosky v. State*, 136 Idaho 189, 191, 30 P.3d 967, 969 (2001). *See also State v. Brandt*, 135 Idaho 205, 207, 16 P.3d 302, 304 (Ct. App. 2000). However, there is no Idaho case law suggesting that a statute of limitations creates an effective barrier to this fundamental right. Indeed, in the context where this issue has mostly been raised (i.e. prisoner access to the courts), Idaho appellate courts have stated, "The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *State v. Brandt*, 135 Idaho 205, 207, 16 P.3d 302, 304 (Ct. App. 2000) (quoting *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72 (1977)). In this case, such right would mean that if a minor has a claim requiring judicial determination, such minor would need to be provided with a method of bringing such claim, not that they may never be time barred. Idaho has provided such methods multiple ways, including allowing parents or guardians to bring such claims on behalf of the minor, or allowing parents to bring the claims on their own behalf. With such provisions in place, there is no basis for arguing that this fundamental right is blocked by a statute of limitations, or that such fundamental right has indeed been affected in any way. This returns the Court's analysis to a rational basis standard.

Next, the fact that statutes of limitations may have different effects on different groups of people does not mean that the statute is inherently discriminatory on its face. Idaho's "means focus" test, "is employed where the discriminatory character of a challenged statutory

classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute." *Rudeen v. Cenarrusa*, 136 Idaho 560, 569, 38 P.3d 598, 607 (2001). "[T]he classification must be obviously invidiously discriminatory before the means-focus test will be used." *State v. Hart*, 135 Idaho 827, 830, 25 P.3d 850, 853 (2001). Alternately, the discrimination, "must distinguish between individuals or groups either odiously or on some other basis calculated to excite animosity or ill will." *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 396, 987 P.2d 300, 308 (1999). Even so, "[N]ot every legislative classification which treats different classes of people differently can be said to be discriminatory, much less obviously invidiously discriminatory." *Id.* In this case, under the plain language of Idaho Code §§ 5-219(4) and 5-230, every person is treated the same: there is a two-year statute of limitations for personal injury actions, unless a person is under a disability, in which case the statute of limitations is tolled for up to a maximum of six years or when the disability is removed, whichever is sooner. There is nothing discriminatory, much less invidiously discriminatory, about this structure even though the ultimate result may have different effects on a two-year old, a thirteen-year old, and a twenty-five-year old. The truth is that Idaho Code § 5-230 does not create a greater burden on minors than adults, but actually provides a greater benefit. Indeed, it is not minors who end up with a greater burden, but instead adults, who have a significantly shortened time frame to bring a personal injury claim. For example, if the necessary course of treatment for an injury takes four or five years, adults will have to incur expert expenses to establish the need for future care and its cost, while minors will simply be able to continue treating, and can wait until treatments are concluded to file suit.

The Gomersalls ask the Court to rely on case law from several states, including West Virginia, New Hampshire, Utah, and South Dakota, contending that each of these cases held that,

"medical negligence claims could not be barred prior to a minor reaching the age of majority." App. Br., p. 33. Reliance on these cases should be rejected for several reasons. First, the West Virginia case, *Whitlow v. Bd. of Educ. of Kanawha Cty.*, 190 W. Va. 223, 438 S.E.2d 15 (1993), is not a medical malpractice case, and provides relatively little guidance as to specialized statutes of limitations. Second, the equal protection test applied in *Carson v. Maurer*, 120 N.H. 925, 932–33, 424 A.2d 825, 831 (1980), has been rejected by the New Hampshire Supreme Court in *Cmty. Res. for Justice, Inc. v. City of Manchester*, 154 N.H. 748, 917 A.2d 707 (2007), and thus its analysis is suspect. Third, as the Gomersalls acknowledge, each of these states has generalized tolling statute which allows the minor until the age of majority to bring a cause of action. *See* W. Va. Code § 55-2-15; N.H. Rev. Stat. § 508:8; Utah Code § 78B-2-108 (formerly Utah Code § 78–12–36); S.D. Codified Laws § 15-2-22.

The simple fact is that none of these cases held that equal protection created an inherent right for minors to wait until the age of majority to bring a claim, but instead, they each invalidated the specialized statute of limitations, which left the general tolling statute of limitations as a fallback. Specifically, the New Hampshire Supreme Court found that the specialized medical malpractice statute of limitations was unconstitutional, "[i]nsofar as it extinguishes rights conferred by RSA 508:8 . . ." *Carson*, 120 N.H. at 936, 424 A.2d at 833. In so finding, they held that the generalized tolling statute, "is a saving statute, the purpose of which is to protect minors and mental incompetents from the destruction of their rights by the running of the statute of limitations." *Id.* This analysis strangely gave constitutional importance to a general statute over a specific statute, finding the two statutes read together inherently violated equal protection. As Idaho does not have a specialized medical malpractice tolling statute, this analysis is not helpful.

In relying on these cases, the Gomersalls ignore a vast body of law where state courts have

determined that statutes of limitations, in whatever structure may have been adopted, do not violate equal protection. Many courts (arguably a majority) have addressed the constitutionality of statutes of limitations for minors under equal protection and have found no violation.[25] Should this Court find similarly, it would be, "squarely in line with several other states," *Farm Bureau Mut. Ins. Co. of Idaho v. Cook*, 163 Idaho 455, 460, 414 P.3d 1194, 1199 (2018), and it is unlikely that such law will be found to be manifestly wrong or unjust.

While the parties can ask this Court to apply rulings from other states, ultimately, the Court will need to engage in an equal protection analysis under Idaho law. To do so, "The first step in an equal protection analysis is to identify the classification under attack. The second step is to articulate the standard under which the classification will be tested, and the third step is to determine whether the standard has been satisfied." *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 395, 987 P.2d 300, 307 (1999). St. Luke's contends that the Gomersalls cannot get past the first step, because of Idaho's statutory structure. As outlined above, Idaho Code §§ 5-230 and 5-219(4) do not create an extra burden or hurdle for minors to overcome. Instead, minors are given a legal benefit not provided to other people. Thus, while there is a classification (i.e. those under a disability), that class of people is given longer to bring a claim than others. This means that there is no "classification under attack." While minors are treated differently, in actuality they are benefitted by Idaho Code § 5-230. The fact that they are not able to independently bring claims should not be deemed an "attack" because such rule is not contained in Idaho Code § 5-230. In reality, the statute or rule whose constitutionality should be questioned is the statutory limitation that prevents him from bringing a claim himself, such as I.R.C.P. 17(c), where the class attack

[25] See the Addendum for citations.

actually occurs. There is actually no classification "under attack" in § 5-230, but instead, only a benefit.

If the Court determines that there is a classification under attack, St. Luke's contends, as outlined above, that such classification merits only a rational basis test. Under the rational basis test, Idaho Code §§ 5-230 and 5-219(4) should, "withstand an equal protection challenge if there is any conceivable state of facts which will support it." *McLean v. Maverik Country Stores, Inc.*, 142 Idaho 810, 814, 135 P.3d 756, 760 (2006). Stated another way, "a classification will survive rational basis analysis if the classification is rationally related to a legitimate governmental purpose." *Meisner v. Potlatch Corp.*, 131 Idaho 258, 262, 954 P.2d 676, 680 (1998). As outlined above, it is clear that the purposes of statutes of limitations, including § 5-230, are rationally related to keeping costs down. The Legislature could have chosen any number of ways of trying to keep costs down; regardless, the version adopted by Idaho's legislature is reasonable and rational.

The Supreme Court of Kansas, the only state found with a statutory scheme substantially similar to Idaho's, held that Kansas's statutory scheme was constitutional. In *Bonin v. Vannaman*, the plaintiff was diagnosed with scoliosis when she was three, but such diagnosis was never communicated to her or her parents. *Bonin*, 261 Kan. 199, 202, 929 P.2d 754, 759–60 (1996). When the plaintiff turned 18, she sued her doctor and her parents for failing to timely address the injuries she suffered, which she believed could have been corrected if addressed early. *Id.* at 203, 929 P.2d at 760. Both the plaintiff's parents and doctor were able to obtain dismissal, as the case was filed beyond the 8-year total statute of limitations period. *Id.* at 204, 929 P.2d at 760–61. The plaintiff challenged dismissal under equal protection, due process, and open courts grounds. *Id.* at 211, 929 P.2d at 765. The Kansas Supreme Court noted that "a person who is under 18, a minor, may not bring a lawsuit in his or her own name. Instead, if a minor has a cause of action, it must

be pursued by a guardian, a conservator, a guardian ad litem, or a 'next friend' who is an adult."[26] *Id.* at 212, 929 P.2d at 765. The court also noted that Kansas's tolling period allows a minor one year after they reach the age of majority to bring a claim, but that Kansas also has an overall eight-year cap from the date of the wrongdoing.[27] *Id.* at 212, 929 P.2d at 765–66. In analyzing equal protection, the Kansas Supreme Court stated:

> An adult in a medical malpractice case only has a 4–year statute of repose, which is 4 years shorter than the repose period allowed for a minor to bring a medical malpractice action. [The plaintiff], as a minor plaintiff, is better off in this medical malpractice action than if she were an adult plaintiff because she had a longer statute of repose (8 years) than an adult would have had (4 years). **Since [the plaintiff] is not actually worse off than an adult plaintiff would be in this case, this equal protection challenge could be found moot.** However, the appellees do not raise this argument, so we will consider the equal protection issue.

Id. at 214, 929 P.2d at 766 (emphasis added). Under this analysis, the Kansas Supreme Court would have determined that an equal protection analysis must fail under the first step of Idaho's three-step analysis because there was no actual attack on a classification, as outlined above.

Regardless, the Kansas Supreme Court proceeded with the analysis, discussing the economic factors that the Kansas Legislature considered when enacting the eight-year statute of limitations for minors (which are identical to what the Idaho Legislature considered). *Id.* at 214 – 15, 929 P.2d at 767. In discussing these factors, the Kansas Supreme Court applied a rational basis test, finding,

> There is no doubt that reducing medical malpractice insurance rates so as to insure the availability of health care in Kansas has been found to be a legitimate and valid state interest in the past. This court has no reason to suspect that the state interests of keeping medical malpractice insurance rates low so that health care will be available in Kansas are not just as valid state interests today as they were in 1976.

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[26] This is essentially identical to Idaho's rule. Compare I.R.C.P. 17(c).
[27] This is actually more restrictive than Idaho Code § 5-230, which states that the normal statute of limitations begins running at the end of the 6-year tolling period.

Id. at 216, 929 P.2d at 767–68. This analysis resulted in a conclusion that no violation of equal protection occurred under Kansas's statutory framework.[28]

While St. Luke's could outline the ruling of every state that has found equal protection to not be violated, St. Luke's will leave the discussion with the *Bonin* case because it is so similar to this case, and also to Idaho's statutory and historical framework.[29] While it is unfortunate that the Gomersalls failed to bring a claim against St. Luke's prior to the end of the statutory period, the negative consequences of such action should not result in a determination that Idaho's statutory framework violates equal protection. Idaho Code §§ 5-230 and 5-219(4) are rationally related to the espoused governmental purpose, and therefore are constitutional.

F. The Gomersalls did not request fees, and therefore are not entitled to such.

There is no mention of costs or fees in the Gomersalls' opening brief. Pursuant to I.A.R. 35(a)(5), if the Gomersalls believed they were entitled to fees, they must have included a request in their opening brief. Failure to do so prevents an award of fees. *Sprenger, Grubb & Assocs., Inc. v. City of Hailey*, 133 Idaho 320, 322, 986 P.2d 343, 345 (1999).

G. St. Luke's is entitled to costs if prevails on appeal.

St. Luke's does not seek fees on appeal because there is no applicable mandatory attorney fee statute, and because the complexity of the issues presented make discretionary fee statutes, such as Idaho Code § 12-121, inapplicable. Should St. Luke's prevail on appeal, St. Luke's will seek costs pursuant to I.A.R. 40.

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[28] It is worth noting that the due process and open courts analysis are also relevant, and St. Luke's asks the Court to review such in determining those issues. *Bonin v. Vannaman*, 261 Kan. 199, 217 – 21, 929 P.2d 754, 768 - 70 (1996)

[29] St. Luke's notes that the year Kansas adopted the version of Kan. Stat. § 60-515 analyzed in the case was 1976, the same year Idaho adopted the current version of Idaho Code § 5-230.

V. CONCLUSION

St. Luke's acknowledges this case has an awful result. Assuming the facts as set forth in the Complaint are true, a young man was injured and St. Luke's admitted that the injury was caused by the actions of St. Luke's employees/agents. If the statute of limitations set forth in Idaho Code §§ 5-230 and 5-219(4) are deemed constitutional, then the young man is barred from recovery in a case that would likely have only been about damages. However, it was not St. Luke's inaction that caused this result; instead, the undisputed facts are that the Gomersalls waited over 8 years to bring a claim, even with St, Luke's admitting a mistake. Idaho's Legislature has reasonably and rationally determined that 8 years is the length of time a minor has to bring such a claim. There is nothing about Idaho's statutory scheme that even hints at unconstitutionality, under whatever theory, and therefore it was the Gomersalls own actions that dictate this unfortunate result.

Finally, the Gomersalls present not even a scintilla of evidence which supports a conclusion that St. Luke's should be estopped from raising a statute of limitations defense. St. Luke's never induced or enticed the Gomersalls to refrain from bringing a claim, but merely made a statement as to what would happen in the future with regard to W.G.G.'s bills. The Gomersalls cannot rely on such statements to sit on their rights for 8 years, and thus, equitable estoppel does not prevent St. Luke's from asking for dismissal under the applicable statute of limitations.

For these reasons, St. Luke's asks that Judge Hippler's ruling be affirmed.

RESPECTFULLY SUBMITTED this 4th day of August, 2020.

GJORDING FOUSER, PLLC

By /s/ Stephen L. Adams
Trudy Hanson Fouser – Of the Firm
Stephen L. Adams – Of the Firm
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2020, I served a true and correct copy of the foregoing document by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Eric S. Rossman
Erica S. Phillips
Matthew G. Gunn
ROSSMAN LAW GROUP, PLLC
350 N. 9TH Street, Ste. 500
Boise, Idaho 83702
Tele: 208/331-2030

☐ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile
☐ Email
☒ iCourt E-File/Serve
erossman@rossmanlaw.com
ephillips@rossmanlaw.com
mgunn@rossmanlaw.com

/s/ Stephen L. Adams
Stephen L. Adams

ADDENDUM

This addendum constitutes a fifty-state survey of every statute and case that St. Luke's was able to find relevant to the constitutional issues presented in this case, and is provided for the use of the Court and the parties, should it be found to be helpful. It is not intended to supplement St. Luke's briefing; the research contained herein is as non-biased as possible, finding all relevant case law regardless whether it benefitted or detracted from St. Luke's position. While St. Luke's tried to make it as comprehensive as possible, it is not intended to be utilized as a replacement for individual research. Additional research resources are included at the bottom.

State	Applicable Statutes	Length of time	Cases discussing/Why unconstitutional
Alabama	Ala. Code § 6-2-8 – SOL for minors tolled for three years until after reaching age of majority, but no more than 20 years after accrual. Ala. Code § 6-2-38 – Two year SOL for personal injury or wrongful death Ala. Code § 6-5-482 – Two year general med mal SOL; four years for minors, minors under 4 have until 8th birthday.	Four years after the act, but at least until the minor's eighth birthday	*Reese v. Rankin Fite Mem'l Hosp.*, 403 So. 2d 158, 160 (Ala. 1981): "Reese next argues that s 6-5-482 violates the due process and equal protection provisions of both the state and federal constitutions. We cannot agree. The basis of this argument is that the statute treats minors injured through medical malpractice differently from minor victims of other torts. He points out that over one hundred years ago by act now carried in the Code at s 6-2-8, the legislature provided that the statute of limitations was suspended during minority and that the removal of that suspension for medical malpractice claims rendered the Medical Malpractice Act unconstitutional on equal protection grounds. Again, we cannot agree. The policy considerations leading up to the passage of the Alabama Medical Liability Act are stated in the legislation itself."
Alaska	AS § 09.10.055 – 10 year statute of repose.	9.10.140: 2 years after disability ceases	*Sands ex rel. Sands v. Green*, 156 P.3d 1130, 1132 (Alaska 2007): AS § 09.10.140(c) was

	AS § 09.10.070 – 2 year SOL for personal injury. AS § 09.10.140 – SOL tolled during disability, including minority; contains an exception for personal injury cases for minors, based on the eighth birthday.	9.10.055: 10 year statute of repose (with exceptions) 09.10.070 – 2 year SOL for personal injury, etc.	interpreted to mean that children under eight had to bring a claim within 2 years after they turned 8, as opposed to the general 10-year statute of repose. Thus, there are different statutes of limitations for a child injured under 8 and a child injured 8 or older. Statute violated due process of minors to access the courts. *Evans ex rel. Kutch v. State*, 56 P.3d 1046, 1064 (Alaska 2002) – This case, before *Sands* found the entire tort reform legislation facially constitutional (including damage caps, statutes of limitations, offers of judgment, etc.). This case was discussed in *Sands*. However, *Sands* only held the 2 year-stay for children under 8 as unconstitutional. *Evans* held the entire 10 year statute of repose constitutional, and *Sands* did not overrule that.
Arizona	ARS § 12-502 – SOLs tolled until a minor reaches the age of 18. ARS § 12-542 – 2 year SOL for personal injury and malpractice. Former ARS § 12-564(D) – no longer exists, but used to have a special SOL for medical malpractice actions for minors.	12-502: SOL tolled until disability removed 12-542: SOL for personal injury, etc. (2 years after accrual) 12-564(D): For children under 7, SOL begins to run when child reaches age 7 (only applied in Med Mal cases).	*Barrio v. San Manuel Div. Hosp. for Magma Copper Co.*, 143 Ariz. 101, 105, 692 P.2d 280, 284 (1984): 12-564(D) held unconstitutional in violation of AZ open courts' clause. The Court notes, "Article 18, § 6 is stronger and more explicit than the open court provisions contained in other state constitutions."
Arkansas	Ark. Code § 16-56-105 – 3 year SOL for personal injury.	If individual is nine (9) years of age or younger	*Raley v. Wagner*, 346 Ark. 234, 57 S.W.3d 683 (2001) (analyzing 1991 version of

	Ark. Code § 16-56-116 – general tolling provision, minors have until 3 years after reaching majority to bring claim Ark. Code § 16-114-203 – Med mal SOL, for minors, under age 9 have until 11th birthday or two years from act.	at the time of the act… the minor or his or her representative shall have the later of the minor's eleventh birthday or two (2) years from the act… in which to commence an action.	statute): Applying two-year statute of limitations set forth in the Medical Malpractice Act to minors with medical malpractice claims, while applying general savings statute to minors with other tort actions, had a rational basis of controlling health care cost paid by the people of state and, thus, applying shorter statute of limitations to minors with the medical malpractice actions did not violate the equal protection and due process clauses of the federal or state Constitution. "After reviewing the emergency clause, we hold that there is a rational basis for applying the two-year statute of limitations to minor plaintiffs in medical malpractice actions while allowing minor plaintiffs in other tort actions until their twenty-first birthday to bring forward a claim. We conclude that the rational basis for applying the shorter statute of limitations to the minors with the medical malpractice actions is to control health care cost paid by the people of Arkansas. The trial court found that the Arkansas Medical Malpractice Act is constitutional, and we cannot say that this finding was erroneous."
California	Cal. Civ. Proc. Code § 335.1 – 2 year SOL for personal injury.	Actions shall be commenced within three (3) years from the	*Kite v. Campbell*, 142 Cal. App. 3d 793, 800, 191 Cal. Rptr. 363, 367 (Ct. App. 1983) (rejected on other grounds by

	Cal. Civ. Proc. Code § 340.5 – Med mal SOL, minors have 3 years, except minors under age 6 have 3 years or until 8th birthday, whichever is longer Cal. Civ. Proc. Code § 352 – SOL tolled for minority and disability.	date of the alleged wrongful act except that actions by a minor under the full age of six (6) shall be commenced within three years or prior to his eighth birthday, whichever provides a longer period. The period can be further tolled in the event of fraud or collusion by the parent or guardian, defendant's insurer, or the health care provider	*Young v. Haines*, 41 Cal. 3d 883, 896, 718 P.2d 909, 915 (1986)): § 340.5 does not violate equal protection or due process of minors. *Torres v. Cty. of Los Angeles*, 209 Cal. App. 3d 325, 334, 257 Cal. Rptr. 211, 217 (Ct. App. 1989): holding that § 340.5 violates equal protection to the extent that it has different rules of accrual for minors and adults, and require minors and adults to be treated the same. *Photias v. Doerfler*, 45 Cal. App. 4th 1014, 1021, 53 Cal. Rptr. 2d 202, 206 (1996): agreeing with *Torres* that § 340.5 violates equal protection to the extent that it has different rules of accrual for minors and adults. *Arredondo v. Regents of Univ. of California*, 131 Cal. App. 4th 614, 619, 31 Cal. Rptr. 3d 800, 803 (2005): agreeing with *Torres* and *Photias*, but refusing to extend them, and dismissing a claim that was filed 5 days past the medical malpractice statute of limitations.
Colorado	Colo. Rev. Stat. § 13-80-102 – 2 year SOL for negligence. Colo. Rev. Stat. § 13-80-102.5 – Med mal SOL is 2 years after accrual or 3 years after negligent act. For minors under age 6,	Actions shall be brought within three (3) years (or two (2) years after the wrongful act was discovered in the event of foreign	*Licano v. Krausnick*, 663 P.2d 1066, 1068 (Colo. App. 1983): Statutes of limitations for minors do not violate due process or equal protection.

	they have until their 8th birthday. Colo. Rev. Stat. § 13-81-101 – minors considered to be under a disability. Colo. Rev. Stat. § 13-81-103 – general tolling statute, minors have until 2 years after disability is removed to file.	body/knowing concealment), but a minor under the age of eight (8) who was under the age of six (6) at the time of the occurrence may bring an action at any time prior to turning eight (8). Colorado has one caveat, however: if a minor does not have a "legal guardian," they are considered as being under disability and have two years after the disability is removed to bring the action (if a legal representative is appointed during the period of minority, there is a two year period after the appointment of the legal representative for the claim to be brought).	
Connecticut	Conn. Gen. Stat. § 52-584 – 2 year med mal SOL from discovery, 3 year total SOL from act or omission complained of.	Three (3) years (no exception for minors)	*Neuhaus v. Decholnoky*, 83 Conn. App. 576, 850 A.2d 1106 (2004), aff'd in part, rev'd in part on other grounds, 280 Conn. 190, 905 A.2d 1135 (2006): SOL held not to violate the open courts

	Connecticut does not appear to have any tolling statute for minors.		provisions or equal protection as relates to minors.
Delaware	Del. Code tit. 10, § 8107 – 2 year personal injury SOL. Del. Code tit. 18, § 6856 – 2 year med mal SOL, with discovery exception, total 3 years. Minors under age 6 have until 2 or 3 years after incident or discovery, or 6th birthday, whichever is later. Delaware does not appear to have a general tolling statute for minors, other than the med mal statute.	A minor shall have the latter of time for bringing an action between ordinary two (2) year statute of limitations or minor's sixth birthday.	*Cole v. Delaware League for Planned Parenthood, Inc.*, 530 A.2d 1119, 1122 (Del. 1987): Rejected a constitutional attack on § 6856 by a claimant who was 17 when she had an abortion that caused injury. Found there was no violation of equal protection. This case followed two other cases which did not involve minors, *Reyes v. Kent General Hospital, Inc.*, Del.Supr., 487 A.2d 1142 (1984) (addressing equal protection), and *Dunn v. St. Francis Hosp., Inc.*, 401 A.2d 77 (Del. 1979) (discussing open courts and due process).
D.C.	D.C. Code § 12-301 – 3 year SOL for personal injury, 3 or 1 year for med mal (depending on whether negligence or battery is alleged). D.C. Code § 12-302 – SOL tolled for minors until they reach the age of majority.	Statute of limitations (three (3) years) does not begin to run until minor reaches the age of majority	There does not appear to be any caselaw specifically on constitutionality of statutes of limitations for minors. However, the following cases apply the rules to minors. *Canterbury v. Spence*, 464 F.2d 772, 793 (D.C. Cir. 1972) *Rudder v. Williams*, 666 F.3d 790, 795 (D.C. Cir. 2012)
Florida	Fla. Stat. § 95.11 – 4 year SOL for negligence, 2 year SOL for med mal with discovery rule. 4 year overall med mal SOL, children under 8 have until 8th birthday or SOL, whichever is	Two (2) years for all medical malpractice claims; except if the claim was (or should have been) discovered later, minors	*Cates By & Through Cates v. Graham*, 427 So. 2d 290, 291 (Fla. Dist. Ct. App. 1983): generally finding the statute of limitations, as applied to minors, is constitutional. Upheld by *Cates v. Graham*, 451 So. 2d 475, 476–77 (Fla. 1984), finding that the

	longer. Extra time for fraud.	shall have the later of two years from the date the incident was or should have been discovered or the minor's eighth birthday.	statute of limitations did not bar access to the courts. *Carr v. Broward Cty.*, 541 So. 2d 92, 95 (Fla. 1989): holding that Florida's statutory scheme does not violate the open courts provisions of the Florida Constitution, and that statutes of limitations are valid legislative means to restrict or limit causes of action in order to achieve certain public interests.
Georgia	Ga. Code § 9-3-33 – 2 year SOL for personal injury Ga. Code § 9-3-71 – 2 year SOL for med mal actions, with 5 year statute of repose. Ga. Code § 9-3-73 – Minors under 5 have until 7th birthday to bring med mal claims. Minors over 5 subject to normal SOL. Ga. Code § 9-3-90 – SOL tolled for minors until they reach the age of 18.	Minors under five shall have two years from the date of the minor's fifth birthday to bring a medical malpractice claim if the cause of action arose before such minor attained the age of five years.	*Mansfield v. Pannell*, 261 Ga. 243, 404 S.E.2d 104 (1991): this is a birth injury case brought 8 years after the birth of the child. Interpreted the new version of § 9-3-73 as constitutional, and applied it so that it did not deprive the rights of children who would have been excluded for a period of two years under one possible interpretation of the statute. *Smith v. Cobb Cty.-Kennestone Hosp. Auth.*, 262 Ga. 566, 423 S.E.2d 235 (1992): this is a birth injury case. Had the old statutory scheme applied, the plaintiff's claim would have been tolled under § 9-3-90 until her 18th birthday. Under the new scheme, she had a shorter time under § 9-3-73 to bring a claim. Statutory scheme held constitutional as to equal protection, access to the courts, and privileges and immunities clauses. Also held not to violate a vested right.

			Crowe v. Humana Hosp., 263 Ga. 833, 834, 439 S.E.2d 654, 655 (1994): upheld equal protection finding in *Smith*. *Deen v. Egleston*, 597 F.3d 1223 (11th Cir. 2010): a medical malpractice claim where the claimant was mentally incapacitated. After a discussion of relevant case law from other states and other circuits, the 11th Circuit found that Georgia's statutory scheme has a rational basis, stating, "Defending law suits is hard; defending malpractice suits is harder; and defending old malpractice suits is harder still. These courts have reasonably concluded that being forced to defend stale malpractice suits increases the cost of liability insurance and renders the practice of medicine that much more expensive. Moreover, the rationales offered by these courts dovetail with the rationales offered by the state of Georgia: providing quality care, ensuring that there are enough doctors and medical services, stabilizing the market for medical insurance, barring old claims, and generally promoting public safety, health, and welfare." *Id.* at 1233.
Hawaii	Haw. Rev. Stat. § 657-7 – 2 year SOL for personal injury.	Actions by a minor shall be commenced within six (6) years from the date of the	There does not appear to be case law on the constitutionality of the statute of limitation/repose as it applies to minors.

	Haw. Rev. Stat. § 657-13 – SOL tolled during minority. Haw. Rev. Stat. § 657-7.3 – Med mal SOL is 2 years after discovery, not more than six years from act causing injury. Minors have six years from wrongful act, except minors under 10 shall bring claim within 6 years or by age 10, whichever is longer.	alleged wrongful act, but actions by a minor under the age of ten (10) years shall be commenced within six (6) years or by the minor's tenth birthday, whichever is longer.	
Idaho	Idaho Code § 5-219(4) – 2 year SOL for personal injury Idaho Code § 5-230 – all claims tolled for 6 years due to disability		There does not appear to be case law on the constitutionality of the statute of limitation/repose as it applies to minors.
Illinois	735 Ill. Comp. Stat. 5/13-202 – 2 year SOL for personal injury 735 Ill. Comp. Stat. 5/13-211 – SOL tolled for minority. 735 Ill. Comp. Stat. 5/13-212 – Med mal SOL is 2 years after discovery of injury, but not more than 4 years after act causing injury. For minors, they have 8 years after the act or omission causing injury, or until 22nd birthday.	Two (2) years after the date on which the claimant knew or should have known, but in no event more than four (4) years (no exception for minors).	*Partin v. St. Francis Hosp.*, 296 Ill. App. 3d 220, 694 N.E.2d 574 (1998): a birth injury case where the claimant filed at age 19, and challenged the med mal SOL structure as unconstitutional under due process, equal protection, equal access, and special legislation provisions. The Illinois Appellate Court found § 13-212 to be constitutional on all grounds, finding a rational basis for the statute, that the statute only limited the time to file and did not prevent access to the courts, and did not constitute special legislation. *Thompson v. Franciscan Sisters Health Care Corp.*, 218 Ill. App. 3d 406, 578 N.E.2d 289 (1991): a birth injury case brought by a mother on behalf of her

			daughter 14 years after the birth. Held § 13-212 as constitutional, not violating due process or equal protection. The case discusses how the old statute allowed claims to be brought until minors were age 20, or sometimes longer, and that cutting down such length of time was reasonable.
Indiana	Ind. Code § 34-11-2-4 – 2 year SOL for personal injury Ind. Code § 34-11-6-1 – SOL for disabilities tolled until disability is removed. Ind. Code § 34-18-7-1 – 2 year med mal SOL. Minors under 6 have until 8th birthday to file.	Two (2) years after the date of the alleged age, except that a minor less than six (6) years of age has until the minors eighth (8th) birthday to file	*Cundiff by Cundiff v. Daviess Cty. Hosp.*, 656 N.E.2d 298 (Ind. Ct. App. 1995): a minor claimant sued three months after his 8th birthday related to treatment occurring shortly after his birth. The claimant contended the former med mal SOL (which was similar to § 34-18-7-1) was a violation of due process, equal protection, open courts, and privilegs and immunities clauses because other non-med mal claims were stayed until the disability was removed. The Court determined no federal constitutional due process or equal violation occurred, though the case was remanded to apply the proper state equal protection test. *Ledbetter v. Hunter*, 842 N.E.2d 810 (Ind. 2006): a minor suffered birth injuries, and her mother did not bring a med mal claim for religious reasons. The minor filed a claim 2 years after she turned 18, arguing that the med mal SOL violated the privileges and immunities clause. The Court noted that

			the duty to learn of a minor's injuries falls to a parent, as they have, "natural and legal obligations . . . to protect and care for their children." *Id.* at 815. No constitutional infirmity was found. *Douglas by Douglas v. Hugh A. Stallings, M.D., Inc.*, 870 F.2d 1242 (7th Cir. 1989): a birth injury case where the minor was born in 1968 but did not sue until 1984. During that time period, the med mal SOL structure changed. An attack was made on equal protection and due process grounds. The 7th Circuit specifically analyzed why minors are not a suspect classification, and found no equal protection violation. The 7th Circuit also analyzed the claimant's argument that a strict scrutiny analysis applied for due process, finding that only a rational basis test applied, and that the statute was rationally related to a goal of relieving malpractice insurance rates. Thus, there was no constitutional infirmity.
Iowa	Iowa Code § 614.1 – 2-year personal injury SOL. 2-year med mal SOL from date of discovery or six years from date of wrongful act. Med mal SOL for minors under age eight must be brought by age 10 or two years after discovery, whichever is later.	Two (2) years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of, the injury or death, but in no	No specific medical malpractice cases involving minors were found in a search of Iowa law. However, these cases addressed the constitutionality of statutes of limitations in other related contexts: *Conner v. Fettkether*, 294 N.W.2d 61 (Iowa 1980): personal injury case not identified as a medical

	Iowa Code § 614.8 – SOL tolled for minors until one year after they reach age of majority.	event shall any action be brought more than six (6) years after the date of the act. However, an action brough on behalf of a minor under the age of eight (8) years shall be commenced no later than the minor's tenth (10th) birthday (whichever is later).	malpractice case, but holding that § 614.8 does not violate equal protection of a minor because it actually extends the time to bring a claim. *Koppes v. Pearson*, 384 N.W.2d 381 (Iowa 1986): medical malpractice case, finding that the medical malpractice statute does not violate equal protection or due process.
Kansas	K.S. 60-513(a)(7) – two year SOL for malpractice actions and personal injury. K.S. 60-515(a) – all SOLs are tolled for disability, but for not longer than 8 years.	Medical malpractice claims must be brought within two years. The statute of limitations is extended for minors: minors may bring an action within one (1) year of achieving the age of majority. However, in no case may an action be brought more than eight (8) years after the act giving rise to the cause of action.	**HELD VALID UNDER EQUAL PROTECTION:** *Bonin v. Vannaman*, 261 Kan. 199, 216–17, 929 P.2d 754, 768 (1996): "Thus, we hold that the 8–year statute of repose for minors in 60–515(a) is rationally related to state interests which are still valid today as they were in 1976. As such, the 8–year statute of repose applicable to minors in 60–515(a) in a medical malpractice action does not violate equal protection." **HELD VALID UNDER DUE PROCESS:** *Bonin v. Vannaman*, 261 Kan. 199, 219, 929 P.2d 754, 769 (1996): "Here, K.S.A. 60–515(a) restricts a minor's common-law right to bring a cause of action for personal injuries to 8 years from the time of the act giving rise to the cause of action. In some instances, as here, 60–515(a) abolishes a minor's right to

			bring a claim altogether, because the minor may not discover that he or she has a claim until the 8–year statute of repose has already expired. The quid pro quo for the restriction or abrogation a minor's common-law right in 60–515(a) is the continued availability of health care in Kansas. Health care is readily available in Kansas because medical malpractice insurance is available to physicians at a reasonable rate, in part due to the passage of 60–515(a) and its 8–year statute of repose. If the availability of no-fault car insurance is considered an adequate quid pro quo for a restriction on nonpecuniary remedies, then the availability of health care also qualifies as an adequate quid pro quo for an 8–year time restriction on a minor's common-law right to pursue a cause of action. See *Manzanares,* 214 Kan. at 599, 522 P.2d 1291. An adequate quid pro quo has been provided, and 60–515(a) does not violate the Due Process Clauses of the Kansas Constitution Bill of Rights or the United States Constitution."
Kentucky	Ky. Rev. Stat. § 413.140 – 1 year SOL for personal injury and med mal. Med mal is based on discovery with 5 year cap. Ky. Rev. Stat. § 413.170 – SOL tolled for minority.	Minors have one (1) year (the statute of limitations for medical malpractice claims) after achieving the age of majority	**HELD INVALID UNDER OPEN COURTS PROVISION:** The five (5) year statute of repose was declared to be unconstitutional under Kentucky's constitutional open-courts guarantee. *McCollum v. Sisters of Charity of Nazareth Health*

		to bring an action.	*Corp.*, 799 S.W.2d 15, 19 (Ky. 1990).
Louisiana	La. Stat. § 9:5628 – One year med mal SOL with discovery rule; no more than 3 years after wrongful act. Specifically applies to minors.	One (1) year after alleged wrongful act, however in no case more than three (3) years from the date of the alleged wrongful act, whether or not those persons are minors.	**HELD VALID UNDER DUE PROCESS AND EQUAL PROTECTION:** Louisiana courts have found that, in the context of claims brought on behalf of a minor, that Louisiana's statute of limitations in the medical malpractice context do not violate due process, equal protection, or access to the courts. *Landry v. Lafayette Gen. Hosp.*, 520 So. 2d 947, 948 (La. Ct. App. 1987).
Maine	Me. Rev. Stat. tit. 14, § 752 – Six year SOL for personal injury. Me. Rev. Stat. tit. 14, § 853 – SOL tolled for minority. Me. Rev. Stat. tit. 24, § 2902 – 3 year med mal SOL, accrues on date of wrongful act. For minors, must be filed within 6 years of wrongful act or 3 years after reaching age of majority. Applies over other two statutes.	Actions brought on behalf of minors must be commenced within six (6) years after the act or omission, or within three (3) years after the minor reaches the age of majority, whichever first occurs.	**HELD VALID UNDER EQUAL PROTECTION:** *Maine Med. Ctr. v. Cote*, 577 A.2d 1173, 1176–77 (Me. 1990): "A statute of limitation, by definition arbitrary, is enacted to provide potential defendants with the assurance of eventual repose from claims made stale by the passage of time. It is of necessity a potent element in any reform of tort law. We have heretofore recognized that "[t]he production of evidence and records necessary to meet [medical] malpractice claims becomes progressively more difficult with time." *Tantish v. Szendey,* 158 Me. 228, 230, 182 A.2d 660, 661 (1962). As a court, we must assume that section 2902 represents the Legislature's considered judgment concerning the most effective manner of decreasing the premium costs of medical professional liability

			insurance. 'It is not necessary that the methods adopted by the legislature be the best or wisest choice. No matter how much the court might have preferred some other procedure, if the measure is reasonably appropriate to accomplish the intended purpose we must give it effect.' *National Hearing Aid Centers,* 376 A.2d at 461. Applying this analysis, we are unable to say that section 2902 is irrational as it relates to the stated legislative purpose."
Maryland	Md. Code Ann., Cts. & Jud. Proc. § 5-101 – 3 year SOL for personal injury. Md. Code Ann., Cts. & Jud. Proc. § 5-201 – SOL tolled during minority. Md. Code Ann., Cts. & Jud. Proc. § 5-109 – Med mal SOL, earlier of 3 years after discovery, or 5 years after wrongful act. For children under 11 when injury was committed, time limits run when they reach age 11.	The statute of limitations does not run until the minor reaches the age of majority. Unconstitutional statute held that time period began running when the minor reached eleven (11), or in the case of reproductive system/foreign object injuries, when the minor reached sixteen (16).	Maryland declared the statute of limitations with respect to minors unconstitutional based upon Article 19 of Maryland's Declaration of Rights, which provides that: "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land." *Piselli v. 75th St. Med.*, 371 Md. 188, 219, 808 A.2d 508, 526 (2002).
Massachusetts	Mass. Gen. Laws ch. 260, § 2A – 3-year SOL for personal injury. Mass. Gen. Laws ch. 260, § 7 – SOL tolled for minority. Mass. Gen. Laws ch. 231, § 60D – Med mal SOL for minors is 3	Three (3) years, except that a minor under the full age of six (6) shall have until his ninth (9th) birthday to bring the action. In no event shall any such action be	**HELD VALID UNDER DUE PROCESS:** *Harlfinger v. Martin*, 435 Mass. 38, 47, 754 N.E.2d 63, 71–72 (2001): "The fact that some minors, due to parental neglect or ignorance (not present here) or to minors' unawareness of the extent and gravity of their injuries, will lose their ability to bring medical

	years after accrual; children under 6 have until 9th birthday to commence action. No action may be commenced more than 7 years after wrongful act.	commenced more than seven (7) years after the occurrence or omission.	malpractice claims does not require us to conduct our due process analysis of this statute of repose with some heightened level of scrutiny." **HELD VALID UNDER EQUAL PROTECTION:** *Harlfinger v. Martin*, 435 Mass. 38, 50, 754 N.E.2d 63, 74 (2001): "The classification being challenged is not one based on age; children have not been singled out for any different treatment on this particular subject; and the distinction being challenged is not one that uniquely affects children. That children are governed by the same statute of repose as adults, and, like adults, exempted from that statute if their claim is based on a foreign object left in the body, does not provide any basis on which we would depart from the traditional rational basis analysis."
Michigan	Mich. Comp. Laws § 600.5805 – General SOL for personal injury is 3 years, with many exceptions. Mich. Comp. Laws § 600.5838a – general med mal SOL is 3 years after accrual or 6 months after discovery. Mich. Comp. Laws § 600.5851 – minors have one year after they reach age of majority to bring claims. For med mal claims, minors under	If the minor is under eight (8), the claim must be brought before the minor turns ten (10), or within the normal statute of limitations period, (which is two (2) years), whichever is later. *A slightly different rule applies in the context of injuries to a	**HELD VALID UNDER DUE PROCESS:** *Bissell v. Kommareddi*, 202 Mich. App. 578, 581, 509 N.W.2d 542, 543–44 (1993): "The state unquestionably has a legitimate interest in securing adequate and affordable health care for its residents. And it is reasonable to assume that a lessening of exposure to malpractice claims would encourage health-care providers to remain in this state. Plaintiff has failed to show that the classification is arbitrary and does not bear a

	age 8 have until 10th birthday to file.	minor's reproductive system.	rational relation to the object of the legislation." **HELD VALID UNDER EQUAL PROTECTION:** *Bissell v. Kommareddi*, 202 Mich. App. 578, 581, 509 N.W.2d 542, 543–44 (1993): "With respect to plaintiff's due process challenge, statutes of limitation are to be upheld unless it can be demonstrated that their consequences are so harsh and unreasonable that they effectively divest plaintiffs of the access to the courts intended by the grant of the substantive right. *Forest v. Parmalee,* 402 Mich. 348, 359, 262 N.W.2d 653 (1978). In this case, even though the statute of limitations does shorten the time within which minors must bring suit, we believe that it provides more than a reasonable amount of time for their claims to be pursued."
Minnesota	Minn. Stat. § 541.07 – 2-year SOL for personal injury. Minn. Stat. § 541.15 – SOL tolled for minority. This applies to minors, except that the suspension is not for more than 7 year, or one year after disability is removed. Minn. Stat. § 541.076 – 4-year SOL for med mal claims.	The statute of limitations for a medical malpractice claim brought by a minor is tolled for seven (7) years, or until the minor reaches the age of majority, whichever comes first. After the tolling period expires, the regular statute of limitations for a	There does not appear to be Minnesota case law on the specific issue of whether the statute of repose as applied to minors is constitutional. However, the Eighth Circuit has found that Minnesota's medical malpractice statute of repose does not violate due process or equal protection generally. *Jewson v. Mayo Clinic*, 691 F.2d 405, 411 (8th Cir. 1982).

		medical malpractice claim (four [4] years) begins to run.	
Mississippi	Miss. Code. § 15-1-49 – 3-year SOL for personal injury. Miss. Code. § 15-1-36 – 2-year med mal SOL with discovery exception, but not more than 7 years after wrongful act. For minors under age 6, they have until age 8 to file. Miss. Code. § 15-1-59 – SOL tolled for minority, but no claim may be brought after 21 years.	If the minor is under the age of six (6), the minor may commence action on the claim at any time within two (2) years of reaching his sixth (6th) birthday, or when the minor dies, whichever comes first. If the minor does not have a parent or legal guardian, then the minor has two (2) years after the time at which the minor shall have a parent or legal guardian, or when the minor dies, whichever comes first. If the claim is asserted against a government hospital, a strict one (1) year statute of limitations applies.	There does not appear to be Mississippi case law on the constitutionality of the medical malpractice statute of limitations as applied to minors
Missouri	Current version of Mo. St. § 516.105.1 – Medical malpractice SOL is 2 years. Minors	A minor shall have until his or her twentieth (20th) birthday	**FORMER VERSION HELD INVALID UNDER OPEN COURTS PROVISON:** A prior version

	may bring a claim until age 20, or 10 years after the injury, whichever is longer. Former version of Mo. St. § 516.105 – Medical malpractice SOL is 2 years, except minors under 10 had until 12th birthday.	to bring a medical malpractice claims, however, in no event shall any claim be commenced after the expiration of ten (10) years from the date of the act, or two (2) years after the minor's eighteenth (18th) birthday, whichever is later.	of Missouri's statute of limitations regarding medical malpractice was deemed unconstitutional under Missouri's constitutional guarantee of open access to the courts, Mo. Const. art. I, § 14. *Strahler v. St. Luke's Hosp.*, 706 S.W.2d 7, 12 (Mo. 1986). Because the court in *Stahler* premised its holding on the constitutional guarantee of open courts, it did not reach the plaintiff's due process or equal protection arguments. *Id.*, at 8. *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 910–11 (Mo. 2015): the current SOL does not violate the open courts clause or equal protection.
Montana	Mont. Code Ann. § 27-2-205 – 2 year SOL for malpractice with discovery rule, no more than 5 years after date of injury. For minors under age 4, SOL begins to run on minor's 8th birthday. Mont. Code Ann. § 27-2-401(1) – general tolling statute for minors, in that SOL does not run during disability. However, the tolling period cannot be extended more than 5 years due to minority or disability.	Three (3) years after the date of injury or within three (3) years after the plaintiff discovers or should have discovered the injury, however, in no case man an action be commenced after five (5) years after the date of the injury. For minors under the age of four (4) at the date of injury, the	**HELD VALID UNDER EQUAL PROTECTION:** *Estate of McCarthy v. Montana Second Judicial Dist. Court, Silverbow Cty.*, 1999 MT 309, ¶ 29, 297 Mont. 212, 221–22, 994 P.2d 1090, 1096: "Best has presented no persuasive argument or authority supporting his contention that § 27–2–205(2), MCA, is not rationally related to a legitimate governmental objective and, therefore, he has not met his burden of establishing that the statute is unconstitutional beyond a reasonable doubt. *See Davis,* 282 Mont. at 239, 937 P.2d at 30. We

		period begins to run when the minor reaches eight (8) years old or dies, whichever comes first, and the action is tolled during any period during which the minor does not reside with a parent or guardian.	conclude that § 27–2–205(2), MCA, does not violate Best's right to equal protection of the laws." The case also held that the statute did not violate Montana's constitutional guarantee of open courts.
Nebraska	Neb. Rev. Stat. § 25-207 – 4-year personal injury SOL. Neb. Rev. Stat. § 25-213 – SOL tolled under age 20. Neb. Rev. Stat. § 25-222 – Med mal SOL is 2 years after wrongful act or 1 year after discovery.	Normal two (2) year limitations period is tolled until the minor reaches twenty-one (21) years of age.	**STATUTE OF LIMITATIONS TOLLED UNTIL MINOR REACHES AGE OF MAJORITY**
Nevada	Nev. Rev. Stat. § 11.190 – 2-year personal injury SOL. Nev. Rev. Stat. § 11.250 – SOL tolled for minority. Nev. Rev. Stat. § 41A.097 – Med mal SOL, 3 years after date of injury or 1 year after discovery. No specific tolling for minors, with exceptions: for brain damage or birth defect, 10 years of age; sterility is 2 years after child discovers the injury.	Three (3) years after the date of injury or one (1) year after the plaintiff discovers or should have discovered the injury. The period is not tolled for minors, with two exceptions: • In the case of brain damage or a birth defect,	**HELD VALID UNDER EQUAL PROTECTION:** *Rodrigues v. Washinsky*, 127 Nev. 1171, 373 P.3d 956 (2011) (unpublished): "Attracting qualified doctors to Nevada is a legitimate government interest, and the Legislature's decision to not include a minority tolling provision in NRS 41A.097 was rationally related to this legitimate interest. Consequently, appellants' equal-protection challenge fails."

		the period of limitations is extended until the child reaches ten (10) years of age. • In the case of sterility, the period of limitation is extended until two (2) years after the child discovers the injury.	
New Hampshire	N.H. Rev. Stat. § 507-C:4 – Med mal SOL is 2-years from wrongful act. Minors under age 8 have until 10th birthday to bring claim. N.H. Rev. Stat. § 508:4 – 3 year personal injury SOL. N.H. Rev. Stat. § 508:8 – SOL tolled until 2 years after reaching age of majority.	Statute Deemed Unconstitutional: Claims must be brought within two (2) years, however, for minors under the age of eight (8) shall have until their tenth (10th) birthday to commence an action. Current Effective Law: A minor may bring a claim within two (2) years after their	**HELD INVALID UNDER EQUAL PROTECTION:** Applying intermediate scrutiny, the New Hampshire Supreme Court struck down the minority provision of New Hampshire's medical malpractice statute of limitations as violative of the Fourteenth Amendment and the state constitution. *Carson v. Maurer*, 120 N.H. 925, 932, 424 A.2d 825, 831 (1980), *overruled by Cmty. Res. for Justice, Inc. v. City of Manchester*, 154 N.H. 748, 917 A.2d 707 (2007). The court reasoned that because a savings statute, N.H. Rev. Stat. § 508:8, provided a savings statute to all minors with claims, N.H. Rev. Stat. §

		minority is removed.	507-C:4 could not permissibly deny medical malpractice claimants that protection. *Id.* *Carson* was overruled in part because it applied an incorrect standard for intermediate scrutiny, however, the decision in *Carson* as to the constitutionality of the statute of limitations appears to stand. *Cmty. Res. for Justice, Inc. v. City of Manchester*, 154 N.H. 748, 917 A.2d 707 (2007).
New Jersey	N.J. Stat. § 2A:14-2 – 2-year personal injury SOL; birth injuries must be brought by 13th birthday. N.J. Stat. § 2A:14-21 – SOL tolled for minority. Birth injuries must be commenced prior to minor's 13th birthday.	Claims must be brought within two (2) years of achieving the age of majority, except an action by or on behalf of a minor for injuries sustained at birth shall be commenced by the minors thirteenth (13th) birthday.	There does not appear to be New Jersey caselaw on the constitutionality of the statute of limitations for medical malpractice actions as applied to minors.
New Mexico	N. M. S. 1978, § 41-5-13 N. M. S. 1978, § 37-1-10	Statute (Likely) Deemed Unconstitutional: Claims must be brough within three (3) years of the date of malpractice, except a minor under the full age of six (6) years shall have until his ninth (9th) birthday in which to file.	**HELD INVALID UNDER DUE PROCESS**: Applying a "reasonableness" standard, New Mexico's statute was held unconstitutional (in the circumstances of that case) as violative of due process in *Jaramillo v. Heaton*, 2004-NMCA-123, ¶ 19, 136 N.M. 498, 136, 100 P.3d 204, 209: "In summary, we hold that under the circumstances of this case, the provision in Section 41–5–13 that requires a minor who experienced malpractice

		Likely Current Rule: One (1) year following the minor reaching the age of majority.	before the age of six to bring a claim under the Act by his or her ninth birthday violates due process."
New York	CPLR § 214-a CPLR § 208(a)	The statute of limitations for minors with medical malpractice claims is tolled until the minor reaches the age of majority, at which point the claimant has two and a half (2.5) years to bring an action.	**STATUTE OF LIMITATIONS TOLLED UNTIL MINOR REACHES AGE OF MAJORITY**
North Carolina	N.C.G.S. § 1-15(c) N.C.G.S. § 1-17(b)	A medical malpractice action brought on behalf of a minor shall be brought within the ordinary statute of limitation, three (3) years (in a non-discovery case), with a four (4) year statute of repose. However, if those time limitations expire before the minor attains the full age of nineteen (19), the action may be brought before the minor attains the full age of nineteen (19).	**HELD VALID UNDER EQUAL PROTECTION:** *Hohn v. Slate*, 48 N.C. App. 624, 627, 269 S.E.2d 307, 308 (1980): "Based on this distinction, we presume the General Assembly at the time it enacted understood and correctly appreciated the needs of the people of this state when the legislation was enacted. To strike this statute down, we would have to substitute our judgment for that of the General Assembly. The plaintiff contends that by shortening the period in which persons with malpractice claims may bring actions, the state has penalized those persons for the benefit of the insurance companies. If this is true, we feel it is a matter for the General Assembly. We hold G.S. 1-17(b) does not violate the equal protection clause of

			the constitution of this state or the United States."
North Dakota	NDCC, 28-01-18 NDCC, 28-01-25	Statute of limitations, ordinarily two (2) years with a six (6) year statute of repose, is tolled for minors until one (1) year after the minor reaches the age of majority, but for a maximum of twelve (12) years.	There does not appear to be any case law on the constitutionality of North Dakota's statute of limitations for minors with medical malpractice claims. While not directly on point, *Schauble v. Schulz*, 137 F. 389, 396 (8th Cir. 1905) provided that infants can be put in the same position as adults. Additionally, the court in *Hoffner v. Johnson*, 2003 ND 79, ¶ 23, 660 N.W.2d 909, 917, held that North Dakota's six year statute of repose for medical malpractice claims did not violate equal protection generally.
Ohio	Current Ohio Rev. Code § 2305.11 – Medical malpractice SOL was 2 years. Former Ohio Rev. Code § 2305.11 - Medical malpractice SOL was 1 year from accrual, or 4 years after malpractice occurred, with this statute not being applicable to any disability tolling provision. Ohio Rev. Code § 2305.16 – SOL tolled during minority.	Former statute: One year since the cause of action accrues, but no more than four years from the date that the alleged malpractice took place. The former R.C. § 2305.11 specifically exempted medical malpractice claims from R.C. § 2305.16, which tolls the statute of limitations for minors until	**HELD INVALID UNDER DUE COURSE OF LAW PROVISIONS:** Applying a "real and substantial relationship" (i.e., intermediate) standard of review, the Supreme Court of Ohio held that a prior version of Ohio's medical malpractice statute, which provided that minors had a maximum of four years in which to bring a medical malpractice claim, was unconstitutional because it violated Ohio's "due course of law" constitutional provisions. *Mominee v. Scherbarth*, 28 Ohio St. 3d 270, 276, 503 N.E.2d 717, 722 (1986). Ohio's due course of law provisions are found at Section 1 Article I and

		they reach they reach the age of majority. <u>Current:</u> The statute of limitations for medical malpractice claims brought by minors is tolled until the minor reaches the age of majority.	Section 16 Article I of the Ohio Constitution, which are "due course of law" and "open court" provisions, respectively. A concurrence in *Mominee* opined that the two provisions are interrelated, and that a violation of the open court provision was a per se violation of the due process provisoin. *Mominee*, 18 Ohio at 282. Before *Mominee* was decided, the Supreme Court of Ohio held that a distinction made in the prior statute between minors under the age of ten (10) and minors above the age of ten (10) was unconstitutional as violative of equal protection. *Schwan v. Riverside Methodist Hosp.*, 6 Ohio St. 3d 300, 303, 452 N.E.2d 1337, 1339 (1983). It was not until *Mominee*, however, that the four year limitation itself was held unconstitutional.
Oklahoma	12 Okl.St. § 96	<u>Statute held unconstitutiona l:</u> If the minor was under the age of twelve (12), the statute was tolled for seven (7) years. If the minor was over the age of twelve (12), the statute was tolled until the minor reached the age of majority.	**HELD INVALID UNDER "SPECIAL LAWS" PROVISION:** Oklahoma's statute of limitations for medical malpractice claims, which exempted medical malpractice claims from Oklahoma law tolling other negligence claims brought by minors, was held unconstitutional as violative of Oklahoma's constitutional provision against special laws. *Mowles By & Through Mowles v. Hillcrest Health Ctr.*, 1991 OK CIV APP 118, 832 P.2d 24, 27

		Current: The statute of limitations for medical malpractice claims brought by minors is tolled until the minor reaches the age of majority.	
Oregon	O.R.S. § 12.110 O.R.S. § 12.160	Claims for medical malpractice shall be brought within two (2) years from when the injury was discovered or should have been discovered, but no later than five (5) years from the date of the alleged malpractice. O.R.S. § 12.110 explicitly exempts medical malpractice claims from O.R.S. § 12.160, which tolls other statutes of limitation in cases of disability, including minority.	**HELD VALID UNDER EQUAL PROTECTION:** "If the legislature has created classifications among minors by making the ORS 12.160 classification between them and non-incapacitated adults inapplicable to medical malpractice cases, there is adequate rational support for its having done so. Oregon Laws 1975, chapter 796, which made ORS 12.160 inapplicable to the repose provisions of ORS 12.110(4), *see* section 10a, was enacted in response to the so-called "medical malpractice crisis." We are not prepared to say that the classification lacks a rational basis or a rational relationship to the purpose of the statute which creates it." *Jones By & Through Jones v. Salem Hosp.*, 93 Or. App. 252, 258–59, 762 P.2d 303, 309 (1988).
Pennsylvania	40 P.S. § 1303.513(c)	For minors, no cause of action for medical malpractice may be brought more than seven (7) years after	**STATUTE OF LIMITATIONS TOLLED UNTIL MINOR REACHES AGE OF MAJORITY** **Note:** Applying intermediate scrutiny, the Supreme Court

		the date of the alleged malpractice or after the minor attains the age of twenty (20) years, whichever is later.	of Pennsylvania held that the stature of repose violated Pennsylvania's constitutional due course of law provision generally: "the seven-year statute of repose, with exceptions for foreign objects cases and minors, is not substantially related to controlling the cost of malpractice insurance rates by providing actuarial predictability to insurers. Accordingly, we conclude the MCARE Act's statute of repose is unconstitutional, reverse the order of the Superior Court, and remand for further proceedings." *Yanakos v. UPMC*, 218 A.3d 1214, 1226–27 (Pa. 2019), *reargument denied,* 224 A.3d 1255 (Pa. 2020).
Puerto Rico	31 L.P.R. § 5298 32 L.P.R. § 254 31 L.P.R. § 971	Puerto Rico's one (1) year statute of limitations for medical malpractice claims is tolled until the minor reaches the age of majority, which in Puerto Rico is twenty-one (21).	**STATUTE OF LIMITATIONS TOLLED UNTIL MINOR REACHES AGE OF MAJORITY**
Rhode Island	Gen.Laws 1956, § 9-1-14.1(1)	Claims must be brought within three (3) years from the occurrence of the incident giving rise to the action; however, a minor on whose	**STATUTE OF LIMITATIONS TOLLED UNTIL MINOR REACHES AGE OF MAJORITY (GENERALLY, SEE NOTE BELOW)** Note: The Supreme Court of Rhode Island held that the statute of limitations for

		behalf no action is brought within three (3) years from the occurrence of the incident shall bring the action at any time up to twenty-one (21) years of age.	medical malpractice claims, which arguably distinguished between minors and adults (despite allowing minors to bring an action up to age 21 if one had not been brought on their behalf) did not violate equal protection. *Dowd v. Rayner*, 655 A.2d 679, 682 (R.I. 1995).
South Carolina	Code 1976 § 15-3-545 Code 1976 § 15-3-40	South Carolina's three (3) year statute of limitations is tolled for minors for not more than seven (7) years, and not more than one (1) year after the minor reaches the age of majority.	There does not appear to be South Carolina caselaw on the statute of limitations for medical malpractice claims as applied to minors.
South Dakota	SDCL § 15-2-22 SDCL § 15-2-22.1 SDCL § 15-2-14.1	Statute held unconstitutional: Minors under the age of six (6) with medical malpractice claims had until two (2) years after the minor's sixth (6th) birthday. Current: The statute of limitations for minors with medical malpractice claims is tolled to up to one (1) year after reaching the age of majority.	**HELD INVALID UNDER EQUAL PROTECTION:** The Supreme Court of South Dakota struck down SDCL 15–2–22.1 (since repealed) because the statute "[was] arbitrary and [was] not rationally related to the legitimate purpose to alleviate the medical malpractice crisis. Therefore, the statute violates equal protection provisions of both the United States and South Dakota Constitutions and must fail." *Lyons v. Lederle Labs., A Div. of Am. Cyanamid Co.*, 440 N.W.2d 769, 772 (S.D. 1989).

Tennessee	T. C. § 29-26-116 T. C. § 28-1-106	One (1) year from the date of discovery, but in no event more than three (3) years from the date of the act or omission. Tennessee's statute tolling general tort claims by minors does not apply to medical malpractice claims. *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 514 (Tenn. 2005), *as amended on reh'g in part* (Feb. 21, 2006).	**HELD VALID UNDER EQUAL PROTECTION AND DUE PROCESS:** In 2005, the Supreme Court of Tennessee overruled previous decisions by holding that Tennessee's statute which tolled the statute of limitations for general tort claims brought by minors, T. C. § 28-1-106, did not apply to medical malpractice claims brought by minors. *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 517 (Tenn. 2005), *as amended on reh'g in part* (Feb. 21, 2006). The rule announced in *Calaway* was prospective only, however. *Id.* In 2014, the Tennessee Court of Appeals held that the application of the medical malpractice limitations period, which allowed a minor three (3) years from the date of the act or omission to bring a claim under the interpretation advanced in *Calaway*, did not violate Plaintiff's right to due process or equal protection under the law. *Bentley v. Wellmont Health Sys.*, No. E2013-01956-COA-R3CV, 2014 WL 1408171, at *5 (Tenn. Ct. App. Apr. 10, 2014).
Texas	TEX.REV.CIV.STAT.ANN. art. 4590i, § 10.01 Tex. Civ. Prac. & Rem. Code Ann. § 16.003 Tex. Civ. Prac. & Rem. Code Ann. § 16.001 (West)	10.01: med mal claims must be filed within 2 years, minors under 12 had until 14th birthday to file (repealed)	*Sax v. Votteler*, 648 S.W.2d 661 (Tex. 1983) – Holding precursor of § 10.01 unconstitutional under open courts provision. Set forth history of SOL for minors. Held that open courts

	Tex. Civ. Prac. & Rem. Code Ann. § 74.251 (West)	74.251: 2 year SOL on med mal claims, minors under 12 have until 14th birthday to file 16.003: Personal injury SOL (2 years) 16.001: SOL tolled generally for minors until they reach age 18	provision was a due process right. *Weiner v. Wasson*, 900 S.W.2d 316 (Tex. 1995) – Upholding *Sax*, finding that the modified law as set forth in § 10.01 is unconstitutional for the same reasons as *Sax*. Applied 16.003 and 16.001 as the new SOL. *Adams v. Gottwald*, 179 S.W.3d 101 (Tex. App. 2005) and *Montalvo v. Lopez*, 466 S.W.3d 290, 292–93 (Tex. App. 2015) – Holding that 74.251 is unconstitutional for the same reasons set forth in *Sax* and *Weiner*.
Utah	Utah Code § 78–14–2 Utah Code § 78B-2-108	Former statute subjected all persons, including minors, to a two-year statute of limitations and a four year statute of repose. All other claims brought by minors were tolled until the age of majority by § 78–12–36 (now § 78B-2-108).	**HELD INVALID UNDER UNIFORM OPERATION OF LAWS CONSTITUTIONAL PROVISION**: Applying a form of heightened scrutiny, the Supreme Court of Utah held that a statute which excepted medical malpractice claims from Utah's general tolling statute violated Article I, section 24 of the Utah Constitution. *Lee v. Gaufin*, 867 P.2d 572, 589 (Utah 1993). Article I, section 24 provides for uniform operation of the laws, and is different in material respects from the Fourteenth Amendment to the United States Constitution. *Id.*, at 577,
Vermont	12 V.S. § 551 12 V.S. § 521	The statute of limitations for minors is tolled	**STATUTE OF LIMITATIONS TOLLED**

		until the age of majority.	**UNTIL MINOR REACHES AGE OF MAJORITY**
Virginia	Va. Code Ann. § 8.01-229 – SOL for minors tolled until they reach the age of majority Va. Code Ann. § 8.01-243(A) – 2 year personal injury SOL Va. Code Ann. § 8.01-243.1 – Med Mal SOL for minors; any minor under 8 must bring by age 10; any minors over 10 must bring claim within 2 years.		*Willis v. Mullett*, 263 Va. 653, 561 S.E.2d 705 (2002) – Med Mal SOL for minors is challenged on equal protection, due process, and special legislation grounds. Upheld on all grounds. Rational basis test is applied.
Washington	RCW 4.16.190 RCW 4.16.350	Following *Schroeder*, the statute of limitations is tolled until the minor reaches the age of majority.	**HELD INVALID UNDER STATE CONSTITUTION'S PRIVILEGES AND IMMUNITIES CLAUSE:** Applying a heightened form of scrutiny called "reasonable ground," the Supreme Court of Washington held that RCW 4.16.190(2), which excepts medical malpractice from Washington's general tolling statute, violated the privileges and immunities clause of the Washington Constitution. *Schroeder v. Weighall*, 179 Wash. 2d 566, 586, 316 P.3d 482 (2014). The privileges and immunities clause of the Washington Constitution is more protective than the equal protection clause of the United States Constitution. *Id.*, at 572.
West Virginia	W. Va. Code Ann. § 55-2-12 – General SOL for personal injury is 2 years.		No case holding § 55-7B-4(c) unconstitutional.

	W. Va. Code Ann. § 55-2-15 – General SOL begins running at age of majority, but not longer than 20 years after accruing. W. Va. Code Ann. § 55-7B-4(c) – Med mal cases for children injured under 10 years must be brought within 2 years or by 12th birthday, whichever period is longer. W. Va. Code Ann. § 29-12A-6(b) – claims by minor against a political subdivision injured under 10 years must be brought within 2 years or by 12th birthday, whichever period is longer.		*Whitlow v. Bd. of Educ. of Kanawha Cty.*, 190 W. Va. 223, 231, 438 S.E.2d 15, 23 (1993) – holds that § 29-12A-6(b) is irrational in that it treats minors and the insane differently, and limiting the length of tolling for minors does not actually substantially diminish the number of suits filed. Therefore, it is a violation of equal protection. *Donley v. Bracken*, 192 W. Va. 383, 389, 452 S.E.2d 699, 705 (1994) - § 55-2-15 found to be constitutional and does not violate due process or equal protection. *Albright v. White*, 202 W. Va. 292, 307, 503 S.E.2d 860, 875 (1998) - § 55-2-15 does not violate equal protection.
Wisconsin	Wis. Stat. Ann. § 893.54 – SOL for personal injury is 2 or 3 years. Wis. Stat. Ann. § 893.16 – SOL tolled until 2 years after disability ceases, except med mal cases Wis. Stat. Ann. § 893.55(1m) – Med mal cases have a 3 year SOL, with exceptions Wis. Stat. Ann. § 893.56 – Med Mal SOL for minors is 10 years old or as set forth in 893.55, whichever is later.		*Claypool v. Levin*, 209 Wis. 2d 284, 562 N.W.2d 584 (1997) – Noted that the statute of limitations was too short, but that the change must come from the legislature, and asked the legislature to make a change. Relied on *Peterson v. Roloff*, 57 Wis.2d 1, 7, 203 N.W.2d 699 (1973). *Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund*, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 – Noting that the legislature took the advice of the court in *Claypool* and adopted § 893.55. Held §§ 893.55 and 893.56 constitutional on Wis. open court/right-to-remedy

			provisions, and does not violate equal protection or due process. *Czapinski v. St. Francis Hosp., Inc.*, 2000 WI 80, ¶ 28, 236 Wis. 2d 316, 334, 613 N.W.2d 120, 130 – holding 893.55 to be constitutional under the equal protection clause. *Miller By & Through Sommer v. Kretz*, 191 Wis. 2d 573, 578, 531 N.W.2d 93, 95 (Ct. App. 1995) - § 893.55 is constitutional under the equal protection clause. *Halverson v. Tydrich*, 156 Wis. 2d 202, 216, 456 N.W.2d 852, 858 (Ct. App. 1990) - §§ 893.55 and 893.56 do not violate the open courts/right-to-remedy provisions of the Wisconsin Constitution.
Wyoming	Wyo. Stat. Ann. § 1-3-105(a)(iv) - 4 year SOL for personal injury Wyo. Stat. Ann. § 1-3-114 - disability (including minority) tolls SOL until 3 years after disability is removed, except for med mal cases Wyo. Stat. Ann. § 1-3-107 - Med Mal SOL is 2 years generally, for minors it is by 8th birthday or 2 years from act, whichever is greater	§ 1-3-105(a)(iv) – 4 year SOL for personal injury § 1-3-114 – disability (including minority) tolls SOL until 3 years after disability is removed, except for med mal cases § 1-3-107 – Med Mal SOL is 2 years generally, for minors it is by 8th birthday	*Kordus v. Montes*, 2014 WY 146, 337 P.3d 1138 (Wyo. 2014) – holding med mal SOL and related SOL for personal injury are unconstitutional to minor's claims under open court's provision, relying on *Sax* (Texas). Also discuss a case regarding minor's tort notice claims.

		or 2 years from act, whichever is greater	

Additional resources:

71 A.L.R.5th 307 (Originally published in 1999) "Medical malpractice statutes of limitation minority provisions"