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A Not so Retro Problem: Extending Statutes of Limitations to Hold Institutions Responsible for Child Sexual Abuse Accountable under State Constitutions

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A NOT SO RETRO PROBLEM: EXTENDING STATUTES OF LIMITATIONS TO HOLD INSTITUTIONS RESPOSNBILE FOR CHILD SEXUAL ABUSE ACCOUNTABLE UNDER STATE CONSTITUTIONS

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"I felt a little funny about it . . . . I was 12 years old and he was an old man."[1]

I. ONE DAY AT A TIME: AN INTRODUCTION TO CHILD SEXUAL ABUSE IN THE UNITED STATES

In 1986, twelve-year-old Patrick McSorley grieved with his schizophrenic, and now widowed, mother after his father's recent suicide.[2] During this difficult time, Father John J. Geoghan, a priest from the family's local Roman Catholic parish, stopped by the family's Boston, Massachusetts home to offer his condolences and take Patrick out for ice cream.[3] On the way back, Geoghan allegedly placed his hand on the boy's upper leg and slid his hand toward the child's genitals.[4] The elderly priest, whose history of sexual abuse was well known by his supervising personnel within the Archdiocese of Boston, soon began to masturbate the boy and eventually himself.[5] Before being dropped off back at his mother's house, Geoghan simply told Patrick, "We're very good at keeping secrets."[6]

Unfortunately, stories like Patrick's are not uncommon; one report estimates that 15.2% of women and 6.4% of men have endured sexual abuse as children.[7]

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* J.D. Candidate, 2019, Villanova University Charles Widger School of Law; B.S. 2016, University of New Haven. This Comment is dedicated to my mother, Mary Ellen. Although I lost you as my law school journey was beginning, thank you for teaching me that it is not about waiting for the storm to pass, but learning to dance in the rain. I would also like to thank everyone on *Villanova Law Review* who guided and supported me throughout the writing process.

1. Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOS. GLOBE (Jan. 6, 2002), https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html [https://perma.cc/5VWY-K4G9] (quoting Patrick McSorely, a man who at only age twelve was allegedly sexually abused by family priest John J. Geoghan).

2. *See id.* (discussing the context of Patrick McSorely's victimization).

3. *See id.* (discussing Geoghan's visit to McSorely's home after learning of father's passing and offering to take the boy for ice cream).

4. *See id.* (detailing the encounter between McSorely and Geoghan).

5. *See id.* (discussing Geoghan's history of abuse and Archdiocese of Boston's knowledge of Geoghan's sexual abuse tendencies); *see also* Evan Richman, *Geoghan Preferred Preying on Poorer Children*, BOS. GLOBE (Jan. 7, 2002) https://www.bostonglobe.com/news/special-reports/2002/01/07/geoghan-preferred-preying-poorer-children/69DE1kOuETjphwmIBcgzCM/story.html [https://perma.cc/45ES-6MF6] (reporting on Geoghan's victim preference, his psychological treatment history, frequency of allegations against him, and the Archdiocese of Boston's responses to these specific allegations).

6. Rezendes, *supra* note 1.

7. *See, e.g.*, National Center for Injury Prevention and Control, *About Behavioral Risk Factor Surveillance System ACE Data*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 1,

Despite this documented prevalence, child sexual abuse (CSA) often goes unreported.[8]

Individual perpetrators of the CSA bear the brunt of the responsibility for the unspeakable acts they commit against children.[9] However, it is not uncommon for institutions that supervise, or are otherwise responsible for the alleged perpetrators to have contributed in some way to these heinous acts suffered by so many children.[10] One of the most notable examples of such an institution is the Roman Catholic Church.[11] The issue gained national attention in the United States after *The Boston Globe* Spotlight Team published a now famous article detailing the abuse of Patrick McSorley and countless other children, while also exposing the Archdiocese of Boston's attempt to cover up CSA committed by priests it directly supervised.[12]

Unfortunately, incidents like this are not isolated to this Roman Catholic diocese.[13] Similar patterns of institutional mishandling of CSA have been

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2016), https://www.cdc.gov/violenceprevention/acestudy/ace_brfss.html [https://perma.cc/N7JF-W8UP] (summarizing the statistics of a study examining adverse childhood experiences).

8. *See* Emily M. Douglas & David Finkelhor, *Childhood Sexual Abuse Fact Sheet*, CRIMES AGAINST CHILD. RES. CTR. (May 2005), http://www.unh.edu/ccrc/factsheet/pdf/childhoodSexualAbuseFactSheet.pdf [https://perma.cc/L9W5-SCY8] (identifying the failure of child sexual abuse to be reported as a problem for estimating victimization of child sexual abuse); *see also* NAT'L CTR. FOR VICTIMS OF CRIME, *Child Sexual Abuse Statistics*, http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics [https://perma.cc/M7NX-8RQ7] (last visited Mar. 7, 2018) (discussing child sexual abuse statistics based on a study about child maltreatment conducted by the United States Department of Health and Human Services).

9. *See* Richard Fossey & Todd A. Demitchell, *"Let the Master Answer": Holding Schools Vicariously Liable When Employees Sexually Abuse Children*, 25 J.L. & EDUC. 575, 576 (1996) (discussing sexual assault as an illegal act "committed for private gratification and fall[s] outside the scope of the perpetrator's employment responsibilities"); *see also* Jennifer K. Weinhold, Note, *Beyond the Traditional Scope-of-Employment Analysis in the Clergy Sexual Abuse Context*, 47 U. LOUISVILLE L. REV. 531, 534 (2009) (explaining the concept of direct liability in the clergy sexual abuse context).

10. *See* Marci A. Hamilton, *Child Sex Abuse in Institutional Settings: What Is Next*, 89 U. DET. MERCY L. REV. 421, 424 (2012) (noting how institutions cover up knowledge of pedophilia to maintain their image). In the past, institutional-based abuse cases were kept secret for years and even decades, whereas the significant media attention surrounding situations involving the Catholic Church, Pennsylvania State University, and the Boy Scouts of America is a more recent phenomenon. *See id.* at 423–24 (discussing the recent shift of public attention on institutional-based child sexual abuse over more common abuse cases that involve family or friends).

11. *See id.* at 425–26 (discussing several instances of child sexual abuse committed by Roman Catholic priests within various dioceses in the United States). *See generally* Constance Frisby Fain & Herbert Fain, *Sexual Abuse and the Church*, 31 T. MARSHALL L. REV. 209 (2006).

12. For a summary and discussion of *The Boston Globe* article and the role played in the sexual victimization of children by the Archdiocese of Boston, see *supra* notes 1–6 and accompanying text.

13. *See, e.g.*, Snyder v. Boy Scouts of Am., Inc., 205 Cal. App. 3d 1318, 1326 (1988) (dismissing an action against Boy Scouts of America for alleged sexual misconduct committed by a scout leader because of the statute of limitations); *see also* DAN B. DOBBS ET AL., THE LAW OF TORTS § 247 n.9 (2d ed. 2017) (citing case law involving civil child sexual abuse actions brought against institutions); Hamilton, *supra* note 10, at 424 (identifying institutions other than the Catholic Church that have had organizational issues with child sexual abuse).

exposed in "the Philadelphia Roman Catholic Archdiocese, the Church of Jesus Christ of Latter-Day Saints, and among rabbis in the Orthodox Jewish and Hasidim communities."[14] Moreover, the transgressions of administrators at Pennsylvania State University (Penn State) and Jerry Sandusky, a former football coach at Penn State, show that CSA problems are not limited to religious institutions.[15]

The power to hold these offending institutions accountable in civil court is critical to addressing institutional CSA.[16] However, many victims cannot understand or process the physical abuse they were subject to as children or appreciate the importance of filing a civil cause of action in a court of law; in fact, many fail to recognize this as an option.[17] For this reason, many CSA victims do not come forward until years after the actual abuse had taken place.[18] From a civil liability perspective, delayed reporting increases the risk that the victim may no longer be able to bring a civil suit if the statute of limitations period—or the time in which a party is legally permitted to file a suit—has expired within a given state.[19] In these instances, state constitutions may prevent the legislature from passing laws that extend the limitations period and revive a

14. *See, e.g.*, Callahan v. State, 464 N.W.2d 268, 269 (Iowa 1990) (ruling on child abuse claim in state school over span of several years); Roe v. Gelineau, 794 A.2d 476, 479 (R.I. 2002) (hearing civil claim of alleged abuse in Catholic orphanage); *see also* DOBBS, *supra* note 13, § 247 (discussing usual instances of child sexual abuse in non-institutional and institutional settings); Hamilton, *supra* note 10, at 425–24 (specifying institutions with a record of internal issues of child sexual abuse).

15. *See* Hamilton, *supra* note 10, at 424–25 (summarizing the child sexual abuse case involving Penn State and Jerry Sandusky); *see also* Susan Candiotti, *Disturbing Emails Could Spell More Trouble for Penn State Officials*, CNN (July 2, 2012, 10:05 PM), http://www.cnn.com/2012/06/30/justice/penn-state-emails/index.html [https://perma.cc/VEW4-GVWJ] (detailing actions taken by Penn State administration after gaining knowledge of alleged child sexual abuse committed by former football coach, Jerry Sandusky).

16. *See, e.g.*, Ellen M. Bublick, *Who is Responsible for Child Sexual Abuse? A View from the Penn State Scandal*, 17 J. GENDER RACE & JUST. 297, 310 (2014) ("[W]hen asking the civil responsibility question in a way that seeks to prevent child sexual abuse, courts should retain the accountability of third parties."); *cf.* Rosemarie Ferrante, Note, *The Discovery Rule: Allowing Adult Survivors of Childhood Sexual Abuse the Opportunity for Redress*, 61 BROOK. L. REV. 199, 229–30 (1995) (arguing opportunity to prove sexual abuse occurred when harm caused by abuse caused repression and failure to bring suit within limitations period is issue of "fundamental fairness").

17. *See* Jenna Miller, Note, *The Constitutionality of and Need for Retroactive Civil Legislation Relating to Child Sexual Abuse*, 17 CARDOZO J.L. & GENDER 599, 603 (2011) (discussing the tendency of child abuse victims to keep stories of their abuse to themselves).

18. *See* DOBBS, *supra* note 13, § 247 (noting child sexual abuse claims are "typically brought by mature adults, thirty or forty years of age or even older"); *see also* Miller, *supra* note 17, at 603 (discussing the story of a California police officer who was extremely hesitant to come forward with his personal experience of being sexually abused by a priest as child due to shame and embarrassment).

19. *See* DOBBS, *supra* note 13, § 247 (discussing the effects of repressed memory and other psychological impediments to bringing suit against perpetrators of child sexual abuse). In many child sexual abuse cases, "the claim is that the plaintiff's suffering leads to repression . . . that causes her to lose all conscious memory of the abuse before she has become an adult." *See id.*; *see also* Miller, *supra* note 17, at 605 (discussing the effect of statute of limitations on child sexual abuse victims who were not psychologically ready to file lawsuit against their abuser as children).

CSA suit.[20]

This Comment analyzes how state constitutions and statutes of limitations prevent institutions from being held accountable for CSA.[21] Specifically, this Comment draws attention to institutional CSA in America—a pressing issue that lawmakers and average citizens may not consider when contemplating the issue of retroactive statutes of limitations.[22] This Comment contends that *all states* should adopt a constitutional approach that *permits* retroactive extensions of statutes of limitations.[23] This approach would grant state lawmakers the authority to retroactively apply extensions to the statute of limitations for civil CSA cases.[24] Reviving time-barred sexual abuse claims not only allows state legislatures to empower victims, but it would also hold institutions liable for abuses that they contributed to.[25]

Part II of this Comment discusses statutes of limitation generally, the legal issues that arise from retroactive extensions of these laws, and the implications of limitation periods in civil institutional CSA cases.[26] Part III provides a detailed summary of federal and state cases, statutes, and judicial reasoning supporting the three approaches to evaluating state constitutionality of retroactive statutes.[27] Part IV offers a critical analysis of the impact state constitutions and statutes of limitation have on CSA victims and potentially responsible institutions.[28] Part V concludes the Comment and encourages constituents and lawmakers in states prohibiting retroactive extensions to consider how this type of public policy may contribute to or perpetuate the problem of CSA within organizations.[29]

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20. *See* Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 510 (Conn. 2015) (discussing the impact of state constitutional restrictions on the ability of state legislatures to revive a time-barred claim through the retroactive extension of statutes of limitations).

21. *See id.* at 508–14 (discussing the approaches employed by all forty-four U.S. "sister" states, which have decided the issue of retroactive revival of time-barred claims as of 2015).

22. For a discussion of civil claims for child sexual abuse against supervising institutions, see *infra* note 51–57 and accompanying text.

23. For a discussion of why all states should adopt retroactive statutes of limitations, see *infra* notes 145–61 and accompanying text. *See* Campbell v. Holt, 115 U.S. 620, 629 (1885) (establishing federal approach to evaluating constitutionality of revival of previously time-barred claims through retroactive extension of statutes of limitation); *see also* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (confirming approach established in *Campbell* in modern day securities litigation context).

24. *See Hartford Roman Catholic*, 119 A.3d at 509 (discussing impact of *Campbell* and *Chase Securities* on legislative authority).

25. *See* Bublick, *supra* note 16, at 302–07 (discussing importance of preserving institutional accountability in child sexual abuse cases).

26. For a further discussion of retroactively extended statutes of limitation as applied to civil institutional child sexual abuse claims, see *infra* notes 40–50 and accompanying text.

27. For a further discussion of the cases, statutes, and constitutional provisions that make up each approach to retroactivity and the statute of limitations, see *infra* notes 75–144 and accompanying text.

28. For a critical analysis of the various approaches used by states in determining state constitutionality of retroactive extensions of statutes of limitations, see *infra* notes 145–61 and accompanying text.

29. For a discussion of the impact of the various approaches used by states, see *infra* notes 162–72 and accompanying text.

II. BACKGROUND: CAN TIME REALLY HEAL ALL WOUNDS?

Simply put, a CSA victim may be prevented from holding responsible parties accountable because their actions may not have been filed within the state's statute of limitations period.[30] However, in an attempt to allow alleged victims to have their day in court, some state legislatures have amended their laws so that the statute of limitations may be *retroactively* extended in several contexts, including CSA.[31] This type of retroactive legislation *revives* expired civil CSA claims that were not timely filed within the statute of limitations, giving victims another opportunity to file a legal action.[32]

A. *Beat the Clock: The Statute of Limitations*

Generally, the term *statute of limitations* refers to a "time frame set by legislation where affected parties need to take action to enforce rights or seek

30. *See* Miller, *supra* note 17, at 600 (explaining the application of statutes of limitation to child sexual abuse claims).

31. *See, e.g.*, Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 509 (Conn. 2015) (discussing legislative approaches to reviving time-barred claims by retroactively extending the statute of limitations period in some causes of action). In *Hartford Roman Catholic*, the Supreme Court of Connecticut evaluated the validity of an extension of the sexual abuse statute of limitations, which retroactively revived a plaintiff's otherwise time-barred claim under the Connecticut constitution. *See id.* at 494–95 (identifying a defendant's state constitutional challenge to the extension of statute of limitations in Connecticut). The plaintiff, who brought the civil action, had been sexually abused as a child by a Roman Catholic priest supervised by the defendant, the Archdiocese of Hartford, a Roman Catholic Diocese. *See id.* at 470. At the trial level, a jury found the Archdiocese had proximately caused the plaintiff's injuries through negligent and reckless conduct, specifically in its (1) supervision of the abusive priest, (2) failure to eject the priest once it became aware of the abuse, and (3) failure to warn others of the threat that the priest presented to others. *See id.* at 476 (summarizing the trial court's findings and judgment against the defendant). However, on appeal, the diocese argued that the statute of limitations for sexual abuse in Connecticut had time-barred the plaintiff's cause of action and that the retroactive application of the statute violated the diocese's substantive due process rights under the Connecticut constitution. *See id.* The Archdiocese argued that, as a matter of substantive due process, the Connecticut state constitution, unlike the United States Constitution, prohibits the type of retroactive extension of the statute of limitations. *See id.* at 495. Connecticut courts use six factors when evaluating the validity of this type of legislation under the Connecticut constitution. *See id.* at 497 (explaining that *Geisler* established the framework to determine if the Connecticut constitution affords greater protection than the United States Constitution). Because one of these factors requires weighing the persuasive precedents of *other* state courts, the Supreme Court of Connecticut in *Hartford Roman Catholic* engaged in a comprehensive survey of the approaches used by *all* those states that have made state constitutional rulings on retroactive extensions of statutes of limitations as a general matter. *See Hartford Roman Catholic*, 119 A.3d at 508–09 (discussing the method of determining various state approaches). In its rigorous analysis, the Supreme Court of Connecticut grouped together states that have ruled on this issue into three large categories and specifically referenced the leading case that supports the approach currently used by each state. *See id.* at 509–13. The Supreme Court of Connecticut specifically categorized the state approaches into three groups: (1) those that follow the federal approach in *Campbell* and *Chase Securities*, (2) those that hold that amending a statute of limitations to revive a time-lapsed claim is per se invalid, and (3) those that fall between the other two broad approaches. *See id.*

32. *See* Miller, *supra* note 18, at 600 (discussing the concept of revival of otherwise time-barred claims through retroactive extensions of statutes of limitations as applied specifically to civil child sexual abuse claims).

redress after injury or damage."[33] After this time period has expired, rights, such as the ability to recover civil damages, can no longer be enforced by a legal action or lawsuit.[34] These types of statutes exist primarily to provide fairness to defendants.[35] At some point, a cause of action becomes so "ancient" that a party cannot reasonably expect to be obligated to legally answer for its past actions.[36]

There are a variety of valid reasons why these ancient causes of action are not fit to be brought before a court and are time-barred by legislators.[37] Over time, evidence may not be properly preserved and witnesses, if they can even be found, may have forgotten essential facts.[38] The statute of limitations reflects a public policy that it is unfair to assign blame to a party based on evidence that has been significantly devalued over time.[39]

B. *Tick Tock: Child Sexual Abuse, Statute of Limitations, and Retroactivity*

In the civil context, a law is "retroactive" if it applies to conduct even if it was enacted after that conduct occurred.[40] A retroactive law can take precedent

33. *See Statute of Limitations*, BLACK'S LAW DICTIONARY (2d online ed. 2018) (defining the term "statute of limitations").

34. *See* Miller, *supra* note 17, at 600 (identifying the consequences associated with expiration of statutes of limitations). The lapse of the statute of limitations period essentially ends the game for a potential plaintiff as would the game clock in an athletic event after it hits zero and signals that the contest is over. *See id.*

35. *See Developments in the Law Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950) (explaining the primary goal of statutes of limitations). Federal courts have also recognized the importance of statutes of limitations in providing fairness to defendants. *See id.* at 1185. For a discussion of the statute of limitations as applied by the Supreme Court, see *infra* notes 79–112.

36. *See Developments in the Law Statutes of Limitations*, *supra* note 35, at 1185 (discussing a defendant's reasonable expectation not to answer to legal obligations after a prolonged time period); *see also The Path of the Law*, 10 HARV. L. REV. 457, 476 (1897) ("The foundation of the acquisition of rights by lapse of time is to be looked for in the position of the person who gains them, not in that of the loser.").

37. *See, e.g.*, Order of R.R. Tels. v. Ry. Express Agency, Inc., 321 U.S. 342, 349 (1994) (identifying reasons supporting statute of limitations legislation); *see also* James R. MacAyeal, *The Discovery Rule and The Continuing Violation Doctrine as Exceptions to the Statute of Limitations for Civil Environmental Penalty Claims*, 15 VA. ENVTL. L.J. 589, 590–92 (1996) (identifying four purposes of statutes of limitations as (1) encouraging prompt filing of claims, (2) protecting defendants from fraudulent claims, (3) providing defendant with assurance that liability will not be attached for conduct from long ago, and (4) promoting efficient judicial administration).

38. *See Order of R.R. Tels.*, 321 U.S. at 349 (explaining the purposes served by statutes of limitations). In discussing the theory in favor of the statute of limitations even when a genuine and justified claim may exist, the *Order of Railroad Telegraphers* court noted "it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *See id.* at 349; *see also* MacAyeal, *supra* note 37, at 590–92 (discussing fundamental purposes of statutes of limitation in promoting public policy and judicial administration).

39. *See Developments in the Law Statutes of Limitations*, *supra* note 35, at 1185–86 (discussing public policy considerations supporting statutes of limitations, including outdated evidence and effectiveness of courts).

40. *See* Miller, *supra* note 17, at 600; *see also Retroactive Statute*, BLACK'S LAW DICTIONARY (2d online ed. 2018) ("[A retroactive statute is] a law that imposes a new

over another law that may have previously applied to the conduct.[41] For instance, consider Defendant A wronged Plaintiff A in 2010, and the 2010 statute of limitations for Plaintiff A's cause of action was four years.[42] Plaintiff A did not file suit by the time the statutory period ran out in 2014.[43] However, in 2015, the legislature amended the law to a six-year statute of limitations, to be applied retroactively.[44] This would mean that, although Plaintiff A missed the statute of limitations under the 2010 law, a suit could be filed under the new 2015 law.[45]

While reviving a valid time-barred claim may seem appealing, the process of enacting retroactive extensions can raise many legal questions.[46] Even in the noble context of addressing CSA, retroactive legislation in some states might infringe on a defendant's *vested constitutional right*.[47] In theory defendants acquire a vested right to be free from answering certain legal obligations when the defined time period for bringing a suit has lapsed under the statute of limitations.[48] Retroactive extensions of the statute of limitations effectively strip defendants of such protections under the same statutory authority providing shelter from time-barred suits in the first place.[49] For defendants who rely on the

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obligation on past things or a law that starts from a date in the past.").

41. *See* Jan G. Laitos, *Legislative Retroactivity*, 52 WASH. U. J. URB. & CONTEMP. L. 81, 82 (1997) (discussing creation of new legal obligations by way of retroactive legislation that did not exist under a previous legislative scheme).

42. *Cf. id.* at 87 (identifying impact of retroactive legislation and stating "[a]ction that was legally permissible at the time it occurred, is either made impermissible, or is burdened, in the past (i.e., prior to the applicable date of the new law)").

43. *Cf. id.*

44. *Cf. id.*

45. *Cf. id.*

46. *See id.* at 82 (discussing the legal ramifications of retroactive legislation in general and proposing a temporal classification scheme for this type of legislation). Retroactive legislation inherently involves legal relationships or decisions that relied on prior law that has since changed or been amended. *See id.* (discussing a party's reliance on a previously enacted law). Because of the reliance on the previous state of a given law, retroactive legislation may affect pre-existing legal arrangements, impact rights of parties that have been previously established, and impose unanticipated consequences. *See id.* (identifying specific areas that may be affected by retroactive legislation).

47. *See* Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 510–11 (Conn. 2015) (noting states where retroactive statutes of limitations are a violation of a defendant's vested rights); 2 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 15.9(a)(v) (2017) (discussing the importance of classification as a remedy or right for Fourteenth Amendment due process analysis); Campbell v. Holt—*A Rule or an Exception?*, 35 YALE L.J. 478, 480 (1926) (discussing the impact of the *Campbell* decision on modern jurisprudence). *But see* Miller, *supra* note 17, at 600 (discussing argument claiming that statute of limitations time lapse is vested right that a party is entitled to). For a detailed discussion and analysis of the various state approaches to evaluating retroactive statutes of limitations, see *infra* notes 113–44 and accompanying text.

48. *See Hartford Roman Catholic*, 119 A.3d at 511 (noting states where defendant has a vested right in time-barred causes of action); *see also* Miller, *supra* note 17, at 600 (noting that, in some instances, retroactive legislation may infringe on a vested right that arose under previously enacted law). When legislatures prohibit retroactive statutes of limitations because this action would infringe on vested rights, the retroactive legislation is considered invalid per se. *See Per Se*, BLACK'S LAW DICTIONARY (2d online ed. 2018) (defining term "per se" as "in itself; taken alone; inherently; in isolation; unconnected with other matters").

49. *See* Miller, *supra* note 17, at 601 ("[A]busers would be deprived of reliance on the statute of limitations to protect them from liability."); *see also* Laitos, *supra* note 41, at 91

protections of statutes of limitations, retroactive legislation can create a new burdensome obligation, impose a new duty, or attach new liability to events or considerations that have already taken place.[50]

C. *Institutional Accountability: You Do the Crime, You Do the Time*

CSA victims can sue both the perpetrator who physically committed the abuse and, under certain circumstances, the institution that supervised the abuser.[51] Depending on the forum state or jurisdiction, potential tort claims that may be brought against churches and other negligent institutions include, but are not limited to, breach of fiduciary duty, negligent supervision, negligent retention, fraud, and intentional infliction of emotional distress.[52] Such suits not only empower the victim, but can also have a deterrent effect on the institution's enabling behavior.[53]

The possibility of being held liable in a court of law encourages institutions to take measures to ensure that they protect the youth they are responsible for.[54]

(identifying valid and invalid types of retroactive legislation). The classic example of retroactivity is when a legislature adopts a rule that changes the legal implications on a party and implications that were already established under prior *valid* legislation. *See id.* The typical timeline for such an event can be summarized into four stages:

> (1) The legislative body adopts a substantive rule (the "old law").
> (2) After its adoption, private conduct occurs consistent with, or perhaps because of, this old law.
> (3) The legislative body adopts a new substantive rule (the "new law").
> (4) After its adoption, the new law in some way affects the legal consequences of the private conduct that occurred under the old law.

Id. at 92.

50. *See, e.g.*, Landgraf v. USI Film Prods., 511 U.S. 244, 269 n.24 (1994) (providing examples of burdens of retroactive legislation, such as a new zoning law changing the expectations of a developer or an anti-gambling law passed after plans for a casino were approved); *see also* Miller, *supra* note 17, at 600 (discussing the *Landgraf* approach to retroactivity).

51. *See, e.g.*, Doe v. Diocese of Dallas, 917 N.E.2d 475, 479 (Ill. 2009) (identifying civil claims brought against a diocese who supervised sexually abusive priest); *see also* RESTATEMENT (THIRD) OF AGENCY § 2.04 cmt. b (AM. LAW INST. 2006) (defining and discussing theory of respondeat superior); Weinhold, *supra* note 9, at 534–37 (comparing direct liability against individual perpetrators of sexual abuse and vicarious liability against agencies responsible for abusers through respondeat superior). "Respondeat superior is the specific theory of vicarious liability under which an employer is held responsible for the legal consequences of an employee's intentional tort against a third party." *Id.* at 536.

52. *See, e.g.*, *Diocese of Dallas*, 917 N.E. 2d at 475 (identifying tort claims brought against the Diocese of Dallas, including negligent supervision and negligent retention).

53. *See* Bublick, *supra* note 16, at 307 (arguing that imposing gatekeeper type liability on institutions serves a deterrent function). This deterrent effect, specifically with respect to putting the public on notice of wrongdoing, has been used to deter individual sex offenders. *See, e.g.*, Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 518 (2013) (discussing the legislative intent of sexual abuse laws as deterrence to potential offenders and discouragement of previous offenders from repeating illegal actions).

54. *See* Bublick, *supra* note 16, at 297–98, 307 (discussing the role courts and legislatures play in deterring child abuse); *see also* Frank A. Sloan et. al, *Liability, Risk Perceptions, and Precautions at Bars*, 43 J.L. & ECON. 473, 497–98 (2000) (noting tort liability

This argument is supported by the fact that institutions like the Catholic Church place significant value on maintaining a positive institutional image and reputation.[55] Before the *Boston Globe* story was published in 2002, the media commonly cooperated in keeping CSA stories involving the church off the front page for the very reason of preserving its reputation, while institutional leaders went to great lengths to maintain a "pristine" image.[56] Retroactively expanding CSA statutes of limitations may not generate new media coverage of the issue, but it may deter and prevent further institutional CSA.[57]

III. CONSTITUTIONALITY OF RETROACTIVE EXTENSIONS OF STATUTES OF LIMITATIONS

The federal constitutional concerns associated with retroactive extensions of statutes of limitations are rooted in the Fourteenth Amendment.[58] The Due Process Clause of the Fourteenth Amendment prohibits the states from taking life, liberty, or property of its citizens without due process of law.[59] The Fourteenth Amendment is relevant in the context of statutes of limitations because the Due Process Clause protects the vested property rights of a defendant, which, some have argued, includes the right to rely on the expired limitations

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as a deterrent has not been researched thoroughly but arguing "theoretical analyses of tort as a deterrent are quite optimistic about its effects").

55. *See* Hamilton, *supra* note 10, at 424 (discussing taboos associated with talking about the Catholic Church and child sexual abuse).

56. *See id.* (discussing the role of the media in preserving institutional reputation through the lack of adequate coverage of institutional child sexual abuse).

57. *See id.* at 439 ("Now, with the public becoming more well-informed and the horrible facts [of child sex abuse] on the front pages, there is a real possibility that the legal system can be reformed to *protect children and deter institutions* that protect abusers." (emphasis added)); *see also* Patrick M. Garry, *The Rising Role of State Constitutional Law: An Introduction to a Series of Articles on the South Dakota Constitution*, 59 S.D. L. REV. 4, 7 (2014) (discussing how state constitutions "set up the basic organization of government, outline various government duties, and specify and protect individual rights").

58. *See* Campbell v. Holt, 115 U.S. 620, 628–29 (1885) (holding the revival of debt claim previously time-barred by statute of limitations is constitutionally permissible under the Fourteenth Amendment). Although the holding in *Campbell* may seem dated, the Court again visited the issue of reviving time-barred claims in *Chase Securities*. *See* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 315 (1945) ("The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation."). Despite the time that had lapsed between these two decisions, the Court still grounded its holding in its interpretation of the Fourteenth Amendment. *See id.* at 315–16 ("[I]t cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment.").

59. *See* U.S. CONST. amend. XIV, § 1 (establishing constitutional due process rights for American citizens). Section one of the Fourteenth Amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

Id. (emphasis added).

period to dismiss a civil suit.[60]

However, the scope of Fourteenth Amendment's due process protection, as defined by the courts, has long excluded lapsed statute of limitations periods.[61] This lapse of time is merely considered a *remedy* for a defendant, as opposed to a property *right*.[62] As a result, enacting legislation that revives a claim otherwise time-barred by the statute of limitations does not offend a defendant's Fourteenth Amendment due process rights and is therefore permissible under the federal constitution.[63]

Despite the constitutionality of retroactive extensions of statutes of limitations at the federal level, states are currently divided on whether these extensions violate their state constitutions.[64] Although some states embrace the federal approach, others substantially deviate from that type of constitutional interpretation.[65]

There are currently three approaches states use to evaluate the constitutionality of this issue: (1) the federal approach, (2) the per se invalid approach, and (3) the mixed approach, which falls between the other two dichotomized positions.[66] The common effect each approach has on retroactive extensions of the statute of limitations is significant.[67] States following the federal approach allow retroactive extensions under their state constitution.[68]

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60. *See, e.g.*, Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 511 (Conn. 2015) (noting states where defendant has a vested right in time-barred causes of action); Ryan C. Williams, *The One and Only Substantive Due Process Clause*, 120 YALE L.J. 408, 423 (2010) (explaining that vested rights is a natural law concept that endows persons with certain inalienable rights that a legislature cannot rescind).

61. For a discussion of the *Campbell* and *Chase Securities* decisions and impact of the Fourteenth Amendment, see *infra* notes 79–112 and accompanying text.

62. *See Campbell*, 115 U.S. at 628–29 (distinguishing between vested property rights protected by Fourteenth Amendment and remedies that fall outside the scope of protections).

63. *See id.* (holding that defendants hold no property right in statutes of limitations and, as a result, retroactive legislation does not infringe on any Fourteenth Amendment rights).

64. *See Hartford Roman Catholic*, 119 A.3d at 508–13 (discussing varying state views in assessing the constitutionality of reviving claims previously time-barred by the statute of limitations).

65. *See id.* (discussing the state approaches that deviate from federal approach outlined in *Campbell* and *Chase Securities*).

66. *See id.* (noting the three state approaches to the constitutionality of retroactive statutes of limitations). For a further discussion about the three categories of approaches to state constitutionality of retroactive extensions to statutes of limitations generally, see *supra* note 31 and accompanying text.

67. For a discussion of the effect that these differing state approaches have, see *infra* note 75–144 and accompanying text.

68. *See Hartford Roman Catholic*, 119 A.3d at 509 (identifying "sister states" that adopt the federal constitutional approach of applying retroactive extensions of statutes of limitations generally). Eighteen states follow the federal approach as established in *Campbell* and *Chase Securities*. *See id.* Those states include Arizona, California, Delaware, Georgia, Hawai'i, Idaho, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, North Dakota, Washington, West Virginia, and Wyoming. *See id.* Generally, the federal approach used by these states allows "the retroactive expansion of the statute of limitations to revive otherwise time-lapsed claims—seemingly without limitation." *See id.* Although the Supreme Court of Connecticut identified eighteen states that use the federal approach, after the ruling in *Hartford Roman Catholic*, it is clear that Connecticut also evaluates a defendant's substantive due process rights, which is consistent with *Campbell* and *Chase*

Conversely, states that use the per se invalid method prohibit this type of statute.[69] Avoiding a sweeping "yes" or "no" answer to this question, the remaining states that use the mixed approach evaluate the state constitutionality within the specific context that the legislation was passed.[70] The approach that states adopt depends on whether the state constitution considers the lapse of a limitations period a vested substantive right or a mere remedy.[71]

Whether a retroactive state statute of limitations is constitutional under a state's constitution depends on how much weight a defendant's interest carries in seeing the statute of limitations lapse.[72] States that apply the per se invalid approach and preclude retroactive extensions absolve alleged institutional defendants, such as the Catholic Church, Penn State, or the Boy Scouts of America, from civil liability after the statute of limitations has run.[73] In these situations, state constitutions shield institutions that had a hand in devastating many young lives.[74]

IV. APPROACHES TO STATE CONSTITUTIONALITY: CAN WE RESET THE CLOCK?

Prior to 2015, courts in forty-four states ruled on whether retroactive extensions of a statute of limitations that revive a time-barred action violated substantive due process rights under a state constitution.[75] However, Connecticut's 2015 decision in *Doe v. Hartford Roman Catholic Diocesan Corp*.[76] raised this total to forty-five states.[77] There is much variation among

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Securities. *See id.* at 517–18 (holding "retroactive application . . . which revived the plaintiff's otherwise time barred claims, did not violate the defendant's substantive due process rights under the Connecticut constitution").

69. *See id.* at 510–11 (identifying states that absolutely bar revival of time-barred claims). Twenty-four states use the per se invalid approach for a variety of reasons. *See id.* Those states include Alabama, Arkansas, Colorado, Florida, Illinois, Indiana, Louisiana, Kentucky, Maine, Missouri, Nebraska, New Hampshire, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Virginia. *See id.* at 510–11 (identifying states that hold the revival of time-barred claims through retroactive statutes of limitations as per se invalid).

70. *See id.* at 512–13 (discussing approaches used by New York and Wisconsin when assessing constitutionality of retroactive extensions to statutes of limitation generally).

71. *See id.* at 509–12 (illustrating state constitutional due process approaches to statutes of limitations can be divided into three groups: federal approach, per se invalid approach, and the mixed approach).

72. *See, e.g.*, Kelly v. Marcantonio, 678 A.2d 873, 883 (R.I. 1996) (stating "state appellate courts, however, are free to interpret and to construe their own state constitutional due process and equal protection provisions").

73. *See Hartford Roman Catholic*, 119 A.3d at 511–13 (discussing the legal impact of barring revival of time-lapsed claims under state constitutions).

74. *See* Miller, *supra* note 17, at 617 (arguing constitutional authority to enact retroactive child sexual abuse laws would allow "more child sexual abuse victims . . . to obtain the benefits these laws provide").

75. *See Hartford Roman Catholic*, 119 A.3d at 508 (noting that forty-four states have previously ruled on the issue of whether the revival of already time-barred claims violates substantive due process). For a detailed discussion of state precedent discussing these holdings and reasoning, see *infra* notes 113–44 and accompanying text.

76. 119 A.3d 462 (Conn. 2015).

77. *See Hartford Roman Catholic*, 119 A.3d at 517–18 (holding that the legislature's enactment of retroactive legislation reviving sexual abuse claims passed rational basis review

these holdings, and even the states that reach the same general conclusion about statutes of limitation cite a diverse array of authority to support the holding in each state's leading case.[78]

A. *The Federal Approach Under* Campbell *and* Chase Securities*: All We Got Is Time*

The decisions in *Campbell v. Holt*[79] and *Chase Securities Corp. v. Donaldson*[80] signify that retroactive extensions of the statute of limitations are permissible under the United States Constitution "*seemingly without limitation*."[81] Notably, *Campbell* establishes the threshold determination of whether the statute in question affects a *remedy* or a *right*.[82] Although these two seminal cases were not decided in the context of CSA, the rule established by *Campbell* and later confirmed by *Chase Securities*, has significant implications on statutes of limitations as a general proposition.[83] When considering retroactive extensions of statutes of limitations under the United States Constitution in any context, *Campbell* establishes that these types of statutes "go to matters of *remedy*, [and] not to destruction of fundamental rights."[84]

1. Campbell v. Holt*: Please Reset the Game Clock*

In 1885, the Supreme Court established the long-standing rule that statutes reviving causes of action previously barred by a statute of limitations only extinguish the *remedy* associated with the claim, *not a vested right*.[85] In *Campbell*, the plaintiff, Malvina Stamps, sued to recover a cash debt owed to her.[86] Although her original cause of action would have expired in 1859, the Texas legislature, in response to the Civil War, suspended all statutes of limitations.[87] In 1866, the legislature passed a law that commenced all statutes of limitation.[88] Thus, Stamps had until 1868 to file suit against the defendants.[89]

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and did not violate diocese's substantive due process rights).

78. *See id.* at 509–13 (discussing the constitutional or statutory authority, or lack thereof, relied on by forty-four states that have ruled on the revival of claims previously time-barred by the statute of limitations).

79. 115 U.S. 620 (1885).

80. 325 U.S. 304 (1945).

81. *See Hartford Roman Catholic*, 119 A.3d at 509 (emphasis added).

82. *See* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v) (discussing the importance of classifying whether the statute affects a remedy or right for Fourteenth Amendment due process analysis).

83. *See id.* (discussing the holding of *Chase Securities* and remedies under statutes of limitations).

84. *See Chase Sec. Corp.*, 325 U.S. at 314 (emphasis added).

85. *See* Campbell v. Holt, 115 U.S. 620, 628–29 (1885) (holding lapse of statute of limitations period provides party with remedy and not substantive right under the United States Constitution).

86. *See id.* at 620 (describing the facts of the case).

87. *See id.* at 621.

88. *See id.*

89. *See id.* (noting that in 1866, "the statute . . . began to run against her in this case, and would become a bar in two years").

However, she failed to file suit within that time frame, and her claim was barred.[90]

In 1869, however, the Texas legislature revised the state's constitution, which contained a new provision stating that *all* prior suspensions were still in effect until the new constitution was ratified.[91] This announcement essentially nullified the 1866 legislation commencing the two-year statute of limitations, and the statutes of limitations for Stamps's cause of action remained suspended.[92] Stamps then timely filed suit in 1874, within the two years since the Texas legislature officially adopted the new constitution.[93]

The defendants, in an attempt to get out of their debt payment, argued that this state constitutional provision was void because it deprived them of a vested property right protected by the United States Constitution in the form of the time-bar created by the statute of limitations.[94] Holding that the plaintiff was entitled to recover the debt, the Court reasoned that providing a new *remedy* after the time-bar had taken effect under the statute did not create a new right for a plaintiff or impose a new duty to defend on the defendant.[95] Moreover, because the Fourteenth Amendment only protects substantive rights and not remedies, the statute of limitations period falls outside the scope of due process protections.[96] As a result, the revival of a time-barred claim is *constitutionally permissible* at the federal level.[97]

By distinguishing between *substantive* and *remedial* statutes, the *Campbell* Court clarified that substantive rights are protected by the Fourteenth Amendment, while remedies are not.[98] As a mere remedy, a defendant has no vested property right to a statute of limitations defense.[99] Remedies are not "immune from legislative controls" under the Constitution, and "no one reasonably can expect" them to be.[100] Therefore, legislative revival of a claim

90. *See id.*

91. *See id.* (the provision stated, "[t]he statutes of limitations of civil suits were suspended by the so-called act of secession . . . and shall be considered as suspended within this state until the acceptance of this constitution by the United States congress" (internal quotations omitted)).

92. *See id.*

93. *See id.* at 620.

94. *See id.* at 622 (discussing the lapse of limitations period as a defense to recovery of the debt lawsuit).

95. *See id.* at 628 ("The authorities we have cited, especially in this court, show that no right is destroyed when the law restores a remedy which had been lost.").

96. *See id.* at 628–29 (distinguishing between remedies and substantive rights and clarifying that only substantive rights enjoy due process protections promised by the Fourteenth Amendment); *see also* Campbell v. Holt—*A Rule or an Exception?*, *supra* note 47, at 480 (discussing the impact of *Campbell* on modern jurisprudence).

97. *See Campbell*, 115 U.S. at 628 ("It violates no right of [the defendant's] . . . when the legislature says time shall be no bar, though such was the law when the contract was made.").

98. *See* Campbell v. Holt—*A Rule or an Exception?*, *supra* note 47, at 480 (discussing the difference between substantive and remedial rights and clarifying the *Campbell* decision provided as to this issue). However, the distinction between classifications of right and remedy is not easily defined. *See* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v) ("The distinction between a right and a remedy, at times, can become hazy.").

99. *See* Campbell v. Holt—*A Rule or an Exception?*, *supra* note 47, at 480–81 (noting if the statute of limitations only destroys the defendant's remedy, the plaintiff's right to sue remains intact).

100. *See* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v).

that was time-barred by a previous statute is not a violation of the substantive due process rights provided by the Fourteenth Amendment.[101]

2. Chase Securities Corp. v. Donaldson*: Back to the Future*

Expanding past the context of debt, the Supreme Court in *Chase Securities* once again found that a retroactive amendment to a statute of limitations did not violate a defendant's due process rights under the Fourteenth Amendment.[102] In *Chase Securities*, a plaintiff brought a civil securities action against a defendant under the Minnesota Blue Sky Law.[103] Agreeing with the defendant's argument, the Minnesota Supreme Court found that the statute of limitations under the Blue Sky Law had run.[104] However, during the time the plaintiff was appealing this decision, the Minnesota legislature lifted the statute of limitations bar for several categories of Blue Sky Law cases, including the type of claim brought against the defendant.[105] After learning of this legislative change, the plaintiff re-asserted his original claim.[106]

In response, the defendant raised a constitutional challenge to Minnesota's retroactive amendment to the Blue Sky Law's statute of limitations.[107] Before the Supreme Court of the United States, the defendant claimed that the retroactive

101. *See* DOBBS, *supra* note 13, § 247 (discussing the federal constitutional implications of the *Campbell* Court's holding that statutes of limitations create remedies that fall outside the scope of Fourteenth Amendment protections). With respect to amended statutes of limitations that revive otherwise time lapsed claims, "federal case law supports the constitutionality of such an application as a general matter of federal due process." *See id.*

102. *See* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314–16 (1945) (noting Court's agreement with *Campbell*).

103. *See id.* at 305–06 (identifying the plaintiff's cause of action). This suit was brought under Minnesota's Blue Sky Law—the state's securities law—in the context of a securities litigation that alleged failure to register business units, illegal sales, as well as common-law fraud and deceit. *See id.* at 306.

104. *See id.* at 308–09 (discussing the procedural history of the case); *see also* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v) (summarizing the *Chase Securities* case).

105. *See Chase Sec.*, 325 U.S. at 307–08 (identifying the timeline of the plaintiff's allegations and Minnesota's amendment to the statute of limitations for specific securities litigation claims). The previous statute of limitations in Minnesota for fraud did not begin running until the fraud was discovered. *See id.* at 307 (identifying the state of the previous law in Minnesota). However, the new statute of limitations had the following implications on the parties in *Chase Securities*:

> Under the new law, actions for failure to disclose non-registration or for misrepresentations concerning registration . . . must be brought within six years of *delivery* of the securities. Aggrieved purchasers were therefore denied future benefit of suspension of the period of limitation during the time such frauds or grounds of action remained undiscovered . . . . The effect of this was to *abolish any defense that appellant might otherwise have made under the Minnesota statutes of limitation*.

Id. at 307–08. (emphasis added).

106. *See id.* at 308 (discussing the procedural history of the plaintiff's securities claim); *see also* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v) (discussing the facts of *Chase Securities*).

107. *See Chase Sec. Corp.*, 325 U.S. at 308 (describing defendant's constitutional challenge to the retroactive statute of limitations).

legislation was a violation of his Fourteenth Amendment due process right to invoke the statute of limitations as a defense.[108] Disagreeing with the defendant's position, the Court held that retroactively extending the statute of limitations for the Minnesota Blue Sky Law was permissible under the United States Constitution and consistent with the Court's holding in *Campbell*.[109] Echoing its decision in *Campbell*, the Court reasoned that the statute of limitations merely created a remedy for a defendant, not a right, and therefore the statutory bar to suit fell outside the scope of the Fourteenth Amendment due process protections.[110] By holding that there is no fundamental right to raising the defense of the statute of limitations, the Court noted that the federal constitution does not immunize the defendant from suit just because the legislature's policy change is disadvantageous.[111] The Court noted that, because "[t]he statute of limitations was a legislative creation . . . the legislature could remove the statute to allow plaintiffs to pursue their remedy."[112]

3. *Keep an Eye on the Clock: The Federal Approach Among the States*

Currently, eighteen states stand with the federal government's approach to the constitutional interpretation of retroactive extensions of the statute of limitations.[113] Fourteen of these states view the defense of the statute of limitations through the lens of their state constitutions.[114] These states have interpreted their respective state constitutions to grant no vested right to a statute of limitations defense.[115] In this situation, a party's substantive due process rights

108. *See id.* at 305 (discussing the defendant's constitutional challenge to the Minnesota legislature retroactively reviving the securities claim after the limitations period had expired).

109. *See id.* at 315 ("The essential holding in Campbell v. Holt, so far as it applies to this case, is sound and should not be overruled. The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation.").

110. *See id.* (discussing the *Campbell* holding). Relying on *Campbell*, the Court noted:

> The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation. What it does forbid is taking of life, liberty or property without due process of law . . . . Assuming that statutes of limitation like other types of legislation could be so manipulated that their retroactive effects would offend the Constitution, certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment.

Id. at 315–16.

111. *See id.* at 316 ("Whatever grievance appellant may have at the change of policy to its disadvantage, it had acquired no immunity from this suit that has become a federal constitutional right.").

112. *See* ROTUNDA & NOWAK, *supra* note 47, § 15.9(a)(v).

113. *See* Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 509 (Conn. 2015) (surveying state approaches to evaluating the state constitutionality of the retroactive expansion of statutes of limitations).

114. *See id.* at 509 (identifying fourteen states that grounded their approaches on the issue of statutes of limitations time lapses in the interpretation of state constitutions).

115. *See id.* ("[F]ourteen states, namely Arizona, California, Delaware, Hawaii, Idaho, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Jersey, North Dakota, Washington, and Wyoming, hold that the retroactive expansion of the statute of limitations to revive time barred claims is not a violations of a defendant's substantive due process

cannot be violated and therefore retroactive extensions of the statute of limitations are constitutionally permissible.[116]

However, nuances are still evident—even in states that employ a *Campbell* approach rooted in state constitutional interpretation.[117] For example, Georgia's is the only state constitution that contains a provision that *explicitly prohibits retroactive legislation*.[118] Despite this constitutional conflict, the Supreme Court

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rights . . . .").

116. *See id.* (discussing the constitutional rationale for permitting legislation that revives otherwise time-barred claims in fourteen states). States that have permitted retroactive statutes of limitations include, but are not limited to, Arizona, California, Delaware, Hawai'i, Idaho, Kansas, Massachusetts, Michigan, Montana, New Jersey, North Dakota, Washington, and Wyoming. *See, e.g.*, Chevron Chem. Co. v. Super. Ct., 641 P.2d 1275, 1284 (Ariz. 1982) (holding that "subsequent extensions" of the statute of limitations does not violate the constitution); 20th Century Ins. Co. v. Super. Ct., 90 Cal. App. 4th 1247, 1263 (2001) (noting the rule established in *Campbell* and *Chase Securities* is also the rule followed in California); Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1259 (Del. 2011) ("As a matter of constitutional law, statutes of limitation go to matters of remedy not destruction of fundamental rights . . . . Accordingly, the General Assembly has the power to determine a statute of limitations and such a determination does not violate [the Delaware constitution due process clause] if it is reasonable." (citation and internal quotation marks omitted)); Roe v. Doe, 581 P.2d 310, 315 (Haw. 1978) ("We are unable . . . to accept the proposition that statutory causes of action which become barred through the expiration of a statute of limitations can never be revived by a subsequent legislative extension of that period of limitations."); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014) ("[S]tatutes of limitation involve matters of remedy, not destruction of rights." (internal quotation marks omitted) (quoting Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985))); Harding v. K.C. Wall Prods., Inc., 831 P.2d 958, 968 (Kan. 1992) ("The legislature has the power to revive actions barred by a statute of limitations if it specifically expresses its intent to do so through retroactive application of a new law."); City of Boston v. Keene Corp., 547 N.E.2d 328, 335 (Mass. 1989) ("[T]he running of the limitations period on such claims does not create a vested right which cannot constitutionally be taken away by subsequent statutory revival of the barred remedy." (citation omitted)); Pryber v. Marriott Corp., 296 N.W.2d 597, 600 (Mich. Ct. App. 1980) ("The right to defeat a claim by the interposition of a statute of limitations is a right which may be removed by the Legislature." (citations omitted)); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) ("Montana follows . . . [the *Campbell* approach] in regard to due process and the retroactive application of statutes of limitation."); Panzino v. Cont'l Can Co., 364 A.2d 1043, 1046 (N.J. 1976) (discussing the implications of the *Campbell* reasoning within New Jersey); *In re* W.M.V., 268 N.W.2d 781, 786 (N.D. 1978) (holding the revival of time-barred causes did not violate the Due Process Clause of the U.S. Constitution or the North Dakota constitution); Lane v. Dep't of Labor & Indus., 151 P.2d 440, 445 (Wash. 1944) (holding no vested right is affected in reviving a previously time-barred claim); Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979) (applying the test established in *Chase Securities* to evaluate retroactive extensions of statutes of limitations under the Wyoming Constitution).

117. *See, e.g.*, *Hartford Roman Catholic*, 119 A.3d at 509 (summarizing the Georgia supreme court's reasoning in a leading decision regarding extensions of statutes of limitations).

118. *See id.* at 509 (citing Canton Textile Mills, Inc. v. Lathem, 317 S.E.2d 189 (Ga. 1984)) (discussing the Georgia supreme court's holding regarding revival of time-barred claims). The Georgia constitution expressly prohibits the enacting of retroactive laws. *See* GA. CONST. art. I, § 1, ¶ X ("No bill of attainder, ex post facto law, *retroactive law*, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed." (emphasis added)). However, like the United States Supreme Court, the Georgia supreme court has held that the "statute of limitation[s] is remedial in nature." *See* Jaro, Inc. v. Shields, 181 S.E.2d 110, 111 (Ga. 1971). This remedial classification, despite the prohibition against retroactive laws, has led the Georgia supreme court to hold "although retroactive, [statutes of limitations] will be enforced, provided they do not impair the obligation of contracts or disturb absolutely vested rights, and only go to confirm rights already existing, and in

of Georgia held that the statute of limitations defense falls outside the scope of the retroactive legislation ban because of its classification as a *remedy* in Georgia.[119] Conversely, three federal approach states—Iowa, West Virginia, and New Mexico—permit retroactive extensions but do not cite constitutional authority.[120] Instead, these states rely on judicial canons of construction.[121]

B. *Tick Tock: The Impermissible Per Se Approach*

Departing from the federal approach, twenty-four states have held that a retroactive extension to a statute of limitations that revives an otherwise time-barred claim is per se impermissible, meaning that it is absolutely invalid in any context.[122] Although a large mass of states reject the revival of a claim already barred by the statute of limitations under their state constitutions, the reasoning used to support such a blanket rejection varies by state.[123] One sub-category of these per se states is those that ground their opinion in constitutional provisions.[124]

Seven of the per se states depart from the federal approach because of specific prohibitions against retroactive legislation in their own state

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furtherance of the remedy, by curing defects and adding to the means of enforcing existing obligations." *Canton Textile Mills, Inc.*, 317 S.E.2d at 191–92 (citing Seabord Air Line Ry. v. Benton, 165 S.E. 593, 596 (Ga. 1932)).

119. For a discussion of the statute of limitations and constitutional prohibition against retroactive law in Georgia, see *supra* note 118 and accompanying text.

120. *See Hartford Roman Catholic*, 119 A.3d at 509 ("Iowa, West Virginia, and New Mexico, do not squarely ground their decisions in any particular state or federal constitutional provision.").

121. *See id.* (discussing the rationale used by courts of Iowa, West Virginia, and New Mexico to support the approach to evaluating revival of time-barred claims). The Iowa Supreme Court stated that statutes of limitation only affect the remedy, finding "[i]t is a statute of repose, one of presumption of nonexistence, or payment or discharge of the cause of action, and does not destroy the cause of action." *See* Schulte v. Wageman, 465 N.W.2d 285, 287 (Iowa 1991) (internal quotation marks omitted). In agreeing with the Supreme Court of the United States, New Mexico relied heavily on the *Campbell* decision "that a right to defeat an action for debt by a plea of the statute of limitations is not a property right nor a vested right, and may be taken away at will by the Legislature." *See* Orman v. Van Arsdell, 78 P. 48, 48 (N.M. 1904).

Similarly, West Virginia has found that state tort law and the corresponding statutes of limitations do not require absolute stability. *See* Pnakovich v. SWCC, 259 S.E.2d 127, 131 (W. Va. 1979) (noting stability is not necessary because the law "is re-written by the Legislature every session, [and] is an unsettled area of the law which does not reflect stability nor promote great reliance [on previous status of statute of limitations]."). The *Pnakovich* court noted that, unlike property law, people do not conduct their behavior based on their knowledge of tort law. *See id.* The court's rationale was that a change in the statute of limitations for a tort will not affect a person's behavior, and thus no right is infringed upon with retroactive statutes of limitations for torts. *See id.*

122. *See Hartford Roman Catholic*, 119 A.3d at 510 (identifying twenty-four states that held that retroactive amendments of the statute of limits are per se invalid); *see also supra* note 48 for definition of "per se."

123. *See Hartford Roman Catholic*, 119 A.3d at 510 (discussing the statutory and constitutional support relied on by state courts to absolutely prohibit state legislatures from enacting retroactive extensions to statutes of limitations).

124. *See id.* at 510–11 (noting that the decisions of eighteen states to per se invalidate the retroactive revival of time-barred claims were grounded in interpretation of state constitutional provisions).

constitutions.[125] Moreover, eleven per se states depart from the federal approach even further by holding that retroactive extensions of the statute of limitations are a direct infringement on a vested property right that is created under their state constitutions.[126] In these states, once a claim has time-lapsed, the potential

125. *See id.* at 510 (discussing the reasoning used by seven states to support the per se invalid approach to retroactive extensions of statutes of limitations). Alabama, Colorado, Missouri, New Hampshire, Oklahoma, Tennessee, and Texas each have state constitutional provisions that expressly prohibit retroactive legislations. *See id.* (discussing the constitutional prohibition against retroactive legislation as justification for per se impermissibility of revival of time-barred actions); *see also* Johnson v. Garlock, Inc., 682 So.2d 25, 28 (Ala. 1996) (discussing Alabama's constitutional provision against retroactivity and holding "[o]nce an action is barred by a statute of limitations . . . rights vest in the limitations defense which cannot be destroyed by subsequent legislative act because [of the relevant Alabama constitutional provision]" (quoting Tyson v. Johns-Manville Sales Corp., 399 So.2d 263, 268–70 (Ala. 1981))); Jefferson Cty. Dept. of Soc. Servs. v. D.A.G., 607 P.2d 1004, 1006 (Colo. 1980) ("Where a statute of limitations has run and the bar attached, 'the right to plead it as a defense is a vested right which cannot be taken away or impaired by subsequent legislation.'" (quoting Willoughby v. George, 5 Colo. 80, 82 (1879))); Doe v. Roman Catholic Diocese, 862 S.W.2d 338, 341–42 (Mo. 1993) (relying on the Missouri Constitution's prohibition against retroactive legislation and stating "once the original statute of limitation expires and bars the plaintiff's action, the defendant has acquired a vested right . . . that is substantive in nature" (citing Uber v. Mo. Pac. R.R. Co., 441 S.W.2d 682, 683 (Mo. 1969))); Gould v. Concord Hosp., 493 A.2d 1193, 1196 (N.H. 1985) (holding the amendment to limitations period *after* the period already expired impaired the "defendants' vested right to assert the limitations defense and would thus operate as an unconstitutional retrospective law"); Wright v. Keiser, 568 P.2d 1262, 1267 (Okla. 1977) (finding legislative revival of an otherwise time-barred claim is an express violation of the Oklahoma constitution); Ford Motor Co. v. Moulton, 511 S.W.2d. 690, 696–97 (Tenn. 1974) (holding that the Tennessee constitutional prohibition against retroactivity bars extension of lapse limitations period when parties have the "right to 'expect' under the prior law they would not be sued"); Baker Hughes, Inc. v. Keco R. & D., Inc., 12 S.W.3d 1, 4 (Tex. 1999) ("A statute extending the limitations period of a claim already barred by limitations violates the Texas Constitution's prohibition against retroactive laws . . . .").

126. *See Hartford Roman Catholic*, 119 A.3d at 511 (discussing the reasoning used by courts in Arkansas, Florida, Illinois, Louisiana, Nebraska, North Carolina, Rhode Island, South Carolina, South Dakota, Utah, and Virginia). Eleven states bar retroactive extensions to statutes of limitations because this statutory time-bar is considered a vested property right under each state constitution. *See id.* (discussing the revival of time-lapsed claim in eleven states as "incursion on a vested property right that amounts to a per se violation of substantive due process" (citations omitted)); *see also* Johnson v. Lilly, 823 S.W.2d 883, 885 (Ark. 1992) (stating disagreement with federal approach and holding "legislature cannot expand a statute of limitation so as to revive a cause of action already barred" (citations omitted)); Wiley v. Roof, 641 So.2d 66, 68 (Fla. 1994) ("Once an action is barred, a property right to be free from a claim has accrued."); Doe A. v. Diocese of Dallas, 917 N.E.2d 475, 484 (Ill. 2009) (holding "[i]f the claims were time-barred under the old law, they remained time-barred even after the repose period was abolished by the legislature" (internal quotation marks omitted) (quoting M.E.H. v. L.H., 685 N.E.2d 335, 339 (Ill. 1997))); Henry v. SBA Shipyard, Inc., 24 So.3d 956, 960–61 (La. Ct. App. 2009) (discussing retroactivity, substantive legislative change, and vested rights under Louisiana constitution); Givens v. Anchor Packing, Inc., 466 N.W.2d 771, 775 (Neb. 1991) (stating the departure from vested right approach "tramples upon the vested rights of others"); Colony Hill Condo. Ass'n v. Colony Co., 320 S.E.2d 273, 276 (N.C. 1984) (discussing the prejudice to defendant's due process rights through the revival of a time-barred claim); Kelly v. Marcantonio, 678 A.2d 873, 883 (R.I. 1996) (finding legislative revival of an already time-barred action infringes on defendant's vested and substantive due process rights); Doe v. Crooks, 613 S.E.2d 536, 538 (S.C. 2005) (holding retroactive application of statutes of limitations that revive already barred actions infringes on a defendant's due process rights under the South Carolina Constitution (citing Goff v. Mills, 308 S.E.2d 778, 780 (1983))); State of

defendant enjoys a vested property right and no longer needs to defend against a particular claim.[127] Under this type of constitutional interpretation, unlike the federal approach, any infringement on that right to be free from suit is considered a violation of *substantive* due process and invalid legislation.[128]

There are several states that hold retroactive extensions of the statute of limitations to be invalid per se without relying on their state constitutions to support this position.[129] Five states embrace the per se invalid approach but do not cite any source in their constitution or general statutes that create a protected vested right.[130] In these five states—Indiana, Kentucky, Maine, Oregon, and Pennsylvania—the complete prohibition against revival of time barred claims is

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Minnesota *ex rel.* Hove v. Doese, 501 N.W.2d 366, 370 (S.D. 1993) ("When a right to sue has expired under the applicable statute of limitations prior to the effective date of a new and longer statute, the new limitations period cannot revive the expired cause of action."); Roark v. Crabtree, 893 P.2d 1058, 1063 (Utah 1995) (finding a vested right in defense of the statute of limitation under the Utah constitution); Starnes v. Cayouette, 419 S.E.2d 669, 674 (Va. 1992) (finding "substantive as well as vested rights are entitled to due process protection").

127. *See Hartford Roman Catholic*, 119 A.3d at 511 (identifying states that grant defendants a vested property right in a time-barred claim).

128. *Compare id.* (finding no substantive right to statute of limitations defense under the state constitution), *with* Campbell v. Holt, 115 U.S. 620, 628–29 (1885), *and* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (establishing that lapsed statute of limitations do not create a substantive right under the federal constitution).

129. *See Hartford Roman Catholic*, 119 A.3d at 511 (noting Indiana, Kentucky, Maine, Oregon, Pennsylvania, and Vermont *do not* cite state constitutional provisions in leading cases on the revival of time-barred claims).

130. *See id.* (identifying states that absolutely prohibit the retroactive revival of claim time-barred by the statute of limitations without citing source of vested right within a state constitution or statute). Indiana grounds its approach in a rule of construction rather than a specific statutory or constitutional provision that addresses the issue of retroactivity. *See* Green v. Karol, 344 N.E.2d 106, 112 (Ind. App. 1976) ("The general rule is that the statute of limitations in force at the time of suit governs . . . . However, it is well-established that if, while the old statute was in force and before plaintiff's suit was commenced, plaintiff's right of action was barred by that statute, no statute subsequently passed can renew defendant's liability." (citations omitted)).

Several other states use similar rules of construction to reach the same conclusion as Indiana. *See, e.g.*, *Hartford Roman Catholic*, 119 A.3d at 511 (discussing the similarity in approaches used by Indiana, Kentucky, Maine, Pennsylvania, and Oregon); *see also, e.g.*, Johnson v. Gans Furniture Indus., Inc., 114 S.W.3d 850, 854–55 (Ky. 2003) ("[A]n amendment that extends the period of limitation may be applied to a claim in which the period has not already run, it may not be applied to revive a claim that has expired without impairing vested rights." (citations omitted)); Kiser v. Bartley Min. Co., 397 S.W.2d 56, 58 (Ky. 1965) (discussing the jurisdictional preference for the applicability of legislative amendment "to claims that arose before the amendment, where the previously existing limitation had not run on those claims at the time the amendment became effective" (citation omitted)); Dobson v. Quinn Freight Lines, Inc., 415 A.2d 814, 816 (Me. 1980) (discussing that, although there is a "constructional preference for prospective application," "retroactive" statutes of limitations are not unconstitutional as long as they do not "change the legal consequences of acts or events that occurred prior to the effective date"); Nichols v. Wilbur, 473 P.2d 1022, 1022–23 (Or. 1970) ("'It is clear from the decisions of the courts of this state as well as those of other jurisdictions that a person has no vested right in the running of a statute of limitations *unless it has completely run and barred the action*.'" (emphasis added) (quoting Davis & McMillan v. Indus. Acc. Comm'n, 246 P. 1046, 1047–48 (Cal. 1926))); Maycock v. Gravely Corp., 508 A.2d 330, 334 (Pa. 1986) ("[A]fter an action has become barred by an existing statute of limitations, no subsequent legislation will remove the bar or revive the action." (internal quotation marks omitted)).

a rule of construction as opposed to a statutory or constitutional restriction.[131] Finally, Vermont's prohibition on retroactive legislation is rooted in a state statutory provision, rather than any limitation imposed by the Vermont constitution.[132]

C. *The Mixed Approach: Is Timing Really Everything?*

The constitutional approaches used by New York and Wisconsin fall between the two extremes of the broad, permissible federal approach and the strict, absolute bar of the per se invalid rule.[133] The New York and Wisconsin courts operate on a case-by-case basis, ultimately delivering a ruling that may be consistent with either the federal or per se invalid approach.[134] New York's "exceptional circumstance" standard and Wisconsin's rational basis review do not automatically allow or prohibit retroactive extensions of statutes of limitation under their respective state constitutions.[135]

New York's exceptional circumstance standard allows the state legislature to revive an otherwise time-barred claim if it reasonably determines the circumstances surrounding the claim are *exceptional*.[136] Additionally, to qualify as an exceptional circumstance, the potential plaintiff must demonstrate that a serious injustice would be suffered if the intent of the state legislature was not honored.[137] Similar to the federal view, the New York statute of limitations does

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131. For a discussion of the approaches and case law from Indiana, Kentucky, Maine, Oregon, and Pennsylvania, see *supra* note 130.

132. *See Hartford Roman Catholic*, 119 A.3d at 511 (summarizing the reasoning in a leading Vermont case on revival of time-barred claims); *see also* Murray v. Luzenac Corp., 830 A.2d 1, 2 (Vt. 2003) (discussing the statutory scheme related to the retroactive amendment to limitation periods); Capron v. Romeyn, 409 A.2d 565, 566–67 (Vt. 1979) (applying a Vermont statute, rather than the state's constitution, to the question of retroactive amendment to statutes of limitation).

133. *See Hartford Roman Catholic*, 119 A.3d at 512 (discussing the dichotomy between the federal approach and the per se invalid approach compared to the more flexible approaches used by New York and Wisconsin).

134. *See id.* (summarizing the approaches used by New York and Wisconsin). For a detailed discussion of the New York and Wisconsin approaches, see *infra* notes 136–44 and accompanying text.

135. *See Hartford Roman Catholic*, 119 A.3d at 511 (discussing the legislative impact of the New York and Wisconsin approaches on retroactive amendments to statutes of limitations within each state).

136. *See* Gallewski v. H. Hentz & Co., 93 N.E.2d 620, 624 (N.Y. 1950) (discussing the "exceptional circumstances" standard). The Court of Appeals of New York has reasoned:

> [T]he Legislature may constitutionally revive a personal cause of action where the circumstances are exceptional and are such as to satisfy the court that serious injustice would result to plaintiffs not guilty of any fault if the intention of the Legislature were not effectuated. This is no inclusive and categorical rule such as that expressed in Campbell v. Holt . . . , which many State courts have been unwilling to accept. The tests . . . leave the court free to approach each revival statute on its individual merits, is the light of its own peculiar circumstances and setting.

Id. (footnotes omitted) (citing Robinson v. Robins Dry Dock & Repair Co., 144 N.E. 579, 580–81 (N.Y. 1924)).

137. *See id.* at 624 (evaluating constitutionality of retroactive statutes of limitation by

not create a vested property right for a defendant but instead merely bars a remedy for a given claim so long as the statute is effective.[138] However, the statute of limitations does not destroy the legislature's right to change its view on the policy that was responsible for imposing the questioned time-bar in the first place.[139] As a result, retroactive extensions are not barred under the New York Constitution per se but may be held unconstitutional when evaluating notions of serious injustice under the exceptional circumstance standard.[140]

Unlike defendants in New York courts, Wisconsin defendants do possess a vested constitutional right when a statute of limitations has lapsed.[141] Despite the classification as a vested right, a revival of a time-barred claim may still be permissible under the Wisconsin constitution if the revival passes a rational basis review.[142] As a result, the vested right created by the statute of limitations is not absolute in Wisconsin and must be balanced against the state's legitimate interest in addressing a given issue.[143] When applying rational basis review to retroactive statutes of limitation, Wisconsin courts weigh the private interests that will be damaged by the retroactive aspects of the law and the public interest to be served by the retroactive extension.[144]

IV. CRITICAL ANALYSIS: TIME TO SYNCHRONIZE OUR WATCHES

The federal constitutional approach to evaluating due process challenges to retroactive extensions of statutes of limitation provides a workable framework that should be adopted by all states, *especially in the context of institutional CSA*.[145] Although individual state constitutions control state civil tort claims, rather than the U.S. Constitution, the due process analysis established in *Campbell* and *Chase Securities* offers state citizens, legislatures, and courts a flexible approach without offending the primary purpose of statutes of

determining whether a circumstance is exceptional and would cause a plaintiff serious injustice if their claim continued to be time-barred).

138. *See* Campbell v. Holt, 115 U.S. 620, 628–29 (1885) (finding no vested property right to statutes of limitation defense under the Fourteenth Amendment); Thomas v. Bethlehem Steel Corp., 470 N.E.2d 831, 837 (N.Y. 1984) ("Unlike a judgement, however, the running of a Statute of Limitations creates no such vested or property right.").

139. *See Thomas*, 470 N.E.2d at 837–38 ("[A]though it bars a remedy on the claim so long as it remains effective, [the statute of limitations] does not destroy the right or foreclose a change in the legislative policy which resulted in imposition of the bar." (citations omitted)).

140. *See Gallewski*, 93 N.E.2d at 623–24 (holding the "exceptional circumstances" test is the appropriate standard for weighing validity of the revival of time-barred claims under the New York constitution).

141. *See* Soc'y Ins. v. Labor & Indus. Review Comm'n, 786 N.W.2d 385, 399–402 (Wis. 2010) (holding the time-bar imposed by the statute of limitations is a substantive right protected by the Wisconsin constitution).

142. *See id.* at 401–02 (discussing the balancing test and public interest considerations served by the retroactive extension of the statute of limitations).

143. *See id.* at 397 (indicating that a "substantive, or vested, property right is not dispositive for due process purposes" (internal quotation marks omitted)).

144. *See id.* (identifying the relevant factors for rational basis review).

145. For a discussion of the federal approach rooted in the decisions in *Campbell* and *Chase Securities*, see *supra* notes 79–112 and accompanying text.

limitation.[146] The federal approach allows young children who have been sexually victimized to have their day in court, despite the pressing psychological and emotional barriers that may have prevented them from speaking about their abuse within the limitations period.[147] By allowing legislative changes in policy in regards to the statute of limitations, the federal approach gives victims an opportunity to overcome these very real obstacles.[148] At the same time, it would recognize that institutions like the Catholic Church or Penn State cannot find a vested right to a limitations defense merely because a victim has yet to come forward.[149]

In the context of CSA, time should not be interpreted as a vested state constitutional right that allows an institution to escape liability for its role in the sexual victimization of children.[150] Those states that elevate a time-bar from a remedy to a constitutionally protected substantive right should be aware of the very real implications such an interpretation has on sexually abused children.[151] Children, and in many cases, adults, who were sexually abused at a young age but are not ready to retain counsel and file a civil complaint until after adolescence should not have to face a "buzzer-beater" situation when it comes to seeking justice.[152]

Those per se states, which do not permit retroactive extensions of the statute of limitations because of statutory provisions or judicial rules of construction, should repeal and replace those binding standards to accommodate victims of child sexual abuse.[153] Such legislative and judicial action would provide victims

146. *See* Order of R.R. Tels. v. Ry. Express Agency, Inc., 321 U.S. 342, 348–49 (1994) ("Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.").

147. *See* Hamilton, *supra* note 10, at 429 (noting many victims of child sexual abuse may "need decades to come forward" or to recognize the "connection between their typically serious problems in adulthood and the sexual abuse that occurred as a child").

148. *See* Campbell v. Holt, 115 US. 620, 628–29 (1885) (finding no vested right to the statute of limitations time-bar defense under the Fourteenth Amendment); *see also* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (finding no unconstitutional infringement on the vested property right of the defendant through legislative revival of a previously time-barred claim).

149. *See* Campbell v. Holt, 115 US. 620, 628–29 (1885); *see also* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945); *see also* Scott Malone & Philip Pullella, *The Catholic Church is Fighting to Block Bills that would Extend the Statute of Limitations for Reporting Sex Abuse*, REUTERS (Sept. 2015), http://www.businessinsider.com/r-as-pope-visit-nears-us-sex-victims-say-church-remains-obstacle-to-justice-2015-9 [https://perma.cc/28A9-DN6T] (discussing the Roman Catholic Church's efforts to use "its legal and political clout to oppose bills that would extend the statute of limitations for victims of child sex abuse").

150. For a discussion of state constitutional interpretations which categorize a statute of limitations time lapse as a vested right, see *supra* notes 113–21 and accompanying text.

151. *See* Hamilton, *supra* note 10, at 431 ("Legions of victims of child sex abuse have learned that when they were finally ready to talk to a prosecutor or a lawyer, the . . . statutes of limitations . . . had already expired. Across the United States, one victim after another has been surprised by these technical, legal deadlines.").

152. *See id.* at 432 ("[M]any states have been working to extend their child sex abuse SOLs, because there is always a new victim with a compelling story that shows lawmakers the *folly* of having any SOL for the crime of child sex abuse." (emphasis added)).

153. *See, e.g.*, Bublick, *supra* note 16, at 308 (arguing child victims of sexual abuse

and society with a judicial platform to increase accountability within institutions responsible for those heinous acts.[154] While remaining as fair as possible to the defendant, legislatures and courts can limit the application of new legislation to civil CSA claims without allowing plaintiffs to revive other time-barred claims.[155]

Finally, the federal approach authorizes state legislatures to retroactively expand the statute of limitations for a claim but still accounts for legislative discretion in any context of a proposed limitations period change.[156] Although there is a risk that all time-barred claims may potentially be revived, every proposed extension, as with any piece of legislation, will be subject to the political and legislative process.[157] If states are concerned that a reclassification of the statute of limitations from a right to a remedy presents a slippery slope that will destroy the statute of limitations defense for claims that are truly antiquated and not fit for adjudication, the mixed approaches of New York and Wisconsin offer a reasonable alternative.[158]

The New York and Wisconsin approaches allow potential defendants to be treated fairly, given the particular context of the claim and statute, while still authorizing the legislature to enact laws that will hold institutions with a record of CSA accountable for their past transgressions.[159] Factors such as justice, accountability, deterrence, and the safety of our nation's youth are all relevant and reasonable considerations a state court should be able to weigh against a

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should not bear any responsibility for any portion of abuse); Miller, *supra* note 17, at 600–01 (noting that reviving time-barred claims would allow victims to get retribution against their attackers). Pennsylvania state representative Mark Rozzi alleges being raped by a priest in a shower when he was thirteen years old. *See* Malone & Pullella, *supra* note 149. Rozzi is now leading the way in the Penssylvania legislature in an effort to extend the statutory of limitations period in Pennyslvania. *See id.* Rozzi himself was unable to pursue any legal action against his alleged abuser because by the time he was ready to talk publicly about the incident twenty-five years and the statute of limitations period had passed. *See id.*

154. *See* Bublick, *supra* note 16, at 302–07 (proposing that civil accountability of negligent actors and abusers involved in civil sexual assault cases should be preserved by courts and legislatures to promote the deterrence of behavior that subjects children to safety risks).

155. *See* Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (discussing the role of legislative policy and changes to that policy when enacting retroactive extensions to the statute of limitations).

156. *See id.* at 315–16 (acknowledging that legislatures enact policies that are disadvantageous to some parties yet finding that this disadvantage is not an infringement on the federal constitutional right to be immune from suit).

157. *Cf.* Marci A. Hamilton, *Summary of Statutes of Limitations Reform Across the United States (May 3, 2016)*, CARDOZO LAW, http://solreform.com/snapshot.pdf [https://perma.cc/4V5F-8PMM] (last visited Mar. 20, 2018) (noting legislatures that amended statutes of limitations for CSA cases).

158. *See* Gallewski v. H. Hentz & Co., 93 N.E.2d 620, 624 (N.Y. 1950) (emphasizing the importance of exceptional circumstances in evaluating the constitutionality of revival actions); *see also* Soc'y Ins. v. Labor & Indus. Review Comm'n, 786 N.W.2d 385, 401–02 (Wis. 2010) (considering the public interest served by the infringement on a defendant's vested property right using rational basis review).

159. *See Gallewski*, 93 N.E.2d at 624 (analyzing the constitutionality of revival actions using the exceptional circumstance standard rather than the per se determination); *see also Soc'y Ins.*, 786 N.W.2d at 396 & 396 n.12 (analyzing the constitutionality of revival actions using the rational basis test rather than the per se determination).

defendant's right to plead a statute of limitations defense.[160] However, the current law in far too many states fail to incorporate these important factors and allow their state constitutions to serve as a shield from holding institutions accountable for CSA.[161]

V. CONCLUSION: TIME FLIES (WHEN STATE CONSTITUTIONS ALLOW TIME TO FLY)

Because of the nature of CSA claims against third-party institutions and the prolonged period it typically takes until the abuse is reported, CSA should not be considered a typical antiquated claim that may have lost its relevancy and ability to be properly addressed by a court over time.[162] The trauma, devastation, and ongoing predatory nature of these actions make this a *timeless* issue for victims, advocates, and those institutions that are hoping to right their wrongs.[163] State constitutions should be interpreted to establish a structure that protects the children of our country, not act as the strongest shield from accountability and liability for those who contributed to their sexual victimization.[164]

Permitting retroactive legislation under the constitution of a given state is crucial to provide CSA victims a platform to hold wrongdoers accountable.[165]

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160. *See Gallewski*, 93 N.E.2d at 624–25 (discussing factors such as the legislative interest in tort causes of action generally, a defendant's interest in statute of limitations defense, circumstances surrounding causes of actions, and "elementary notions of justice and fairness"); *see also Soc'y Ins.*, 786 N.W.2d at 397–98 (considering factors such as public interest, private interest, reliance on previously settled laws, and the right to recover damages in the context of pressing economic or social issues).

161. *See* Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 510–11 (Conn. 2015) ("[T]wenty-four states support the position that legislation that retroactively amends a statute of limitations in a way that revives time barred claims is per se invalid.").

162. *See* Order of R.R. Tels. v. Ry. Express Agency, Inc., 321 U.S. 342, 348–49 (1994) (discussing the primary purpose of the statute of limitations in providing a defendant the "right to be free of stale claims"). In *Order of Railroad Telegraphers*, the Court noted that, although the delayed time period between the event triggering the cause of action and the actual claim filing was notably long and "regrettable," the *exigent circumstances* causing the delay are relevant to statute of limitation time-bars. *See id.* at 349 (finding the long delay in bringing the suit was "caused by the exigencies of the contest, not by the neglect to proceed"). Such an exigent circumstance is embodied in the unique nature of the lasting impacts on CSA victims. *See* Alexandra Hunstein Roffman, *The Evolution and Unintended Consequences of Legal Responses to Childhood Sexual Abuse: Seeking Justice and Prevention*, 34 CHILD. LEGAL RTS. J. 301, 305 (2014) ("The secretive nature of child sex abuse and the propensity of children to hold onto that secret for years at a time create unique circumstances.").

163. *See* Ferrante, *supra* note 16, at 200–01 ("[C]hildren subjected to repeated acts of sexual abuse suffer physically, psychologically and emotionally, often repressing the episodes of sexual abuse in order to avoid dealing with the pain and trauma caused by the abuse."); *see also* JEROME KROLL, PTSD/BORDERLINES IN THERAPY: FINDING THE BALANCE 54 (1993) ("[V]iolent, prolonged, or intrusive abuse . . . represents stressors that are beyond the adaptive capacities of all but the most exceptional children and that will regularly produces a long-lasting traumatic syndrome."); Roffman, *supra* note 162, at 305 (identifying a victim's own shame and embarrassment about their abuse as a primary reason a child does not come forward at or near the time they are abused).

164. *See* Bublick, *supra* note 16, at 310 ("[W]hen asking the civil responsibility question in a way that seeks to prevent child sexual abuse, courts should retain the accountability of third parties.").

165. *See* Hamilton, *supra* note 10, at 433 ("[Statute of limitations] reform does far more

Institutions that supervise sexual predators will be deterred from continuing practices that may have contributed to a child's abuse if legislatures are constitutionally authorized to revive time-barred claims.[166] Similarly, the possibility of civil liability will encourage these institutions to genuinely reform their organizations to prevent future instances of abuse, creating a safer environment for our nation's youth.[167]

State constitutions should not shield wrongdoers when it comes to actions as heinous as CSA.[168] Retroactive revival of time-barred claims provides an incentive for offending institutions to clean up their organization at the risk of facing liability for actions that may have occurred long ago but still have lasting impacts.[169] In these instances, deterrence not only comes in the form of being publicly held accountable, but also in the form of monetary damages that a court may award to a plaintiff who was sexually victimized as a young child.[170]

The Supreme Court of the United States has established a constitutional approach to retroactive extensions of statutes of limitation that would allow state legislatures to deter and prevent child sexual abuse through state constitutions.[171]

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than create justice for victims in the past. It also forestalls future abuse of today's children. It gives victims their day in court and levels the playing field between individual and institutional entities that cause abuse and the victims.").

166. *See* Miller, *supra* note 17, at 600–01 (noting how retroactive statutes of limitations would allow victims "to obtain some form of retribution against the abusers" (citation omitted)); *see also* Bublick, *supra* note 16, at 310 ("Courts and legislatures can do something to protect children from abuse by retaining institutional accountability and not permitting that responsibility to be shifted back to criminals . . . or to vulnerable children who suffered abuse."); Wilson, *supra* note 53, at 518 (identifying legislative intent supporting some sexual abuse laws as deterrent to potential offenders and discouragement of previous offenders from repeating illegal actions).

167. *See* Bublick, *supra* note 16, at 310 ("[W]hen asking the civil responsibility question in a way that seeks to prevent child sexual abuse, courts should retain the accountability of third parties.").

168. *See* Garry, *supra* note 57, at 7 (discussing how state constitutions "set up the basic organization of government, outline various government duties, and specify and protect individual rights"). "With their unique histories and varied cultural backgrounds, state constitutions often provide broader protections for individual rights than does the more process-oriented U.S. Constitution." *See id.* As both a survivor of CSA and a state legislator, Pennsylvania Representative Mark Rozzi commented on his personal experience with the Pennsylvania statute of limitations saying, "When I was [thirteen] years old and I was standing in the shower getting raped with my best friend outside the door, do you think I knew what a statute of limitations was?" *See* Malone, *supra* note 149.

169. *See* Bublick, *supra* note 16, at 310–11 (arguing that state law should apportion liability to institutions to hold them accountable); *cf.* Sloan et al., *supra* note 564, at 473–74 (explaining that a law must be sufficiently threatening to preclude an actor from undertaking the prohibited behavior).

170. *See, e.g.*, Robert D. Cooter, *Punitive Damages for Deterrence: When and How Much*, 40 ALA. L. REV. 1143, 1146–47 (1989) (noting the deterrent effect of punitive damages); Richard S. Gruner, *Beyond Fines: Innovative Corporate Sentences Under Federal Sentencing Guidelines*, 71 WASH. U. L.Q. 261, 322 (1993) (noting the deterrent effect of negative publicity). *But see* Sloan et al., *supra* note 54, at 498 (noting deterrent effects stemming from tort liability has not been researched extensively but arguing "the theoretical analyses of tort as a deterrent are quite optimistic about its effects").

171. *See* Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 509 (Conn. 2015) (finding the federal approach to revival of time-barred actions "allow[s] the retroactive expansion of the statute of limitations to revive otherwise time-lapsed claims—*seemingly*

It is important to understand that legislative policy and constitutional interpretation are not the cure-alls for the issues of pedophilia or organizational corruption underlying institutional sex abuse.[172] However, the public relation and economic implications attached to these legal measures present an opportunity to create an environment where children do not have to fear the very same people that were meant to protect them.

without limitation" (emphasis added)).

172. *See, e.g.*, Andrea Friedman, *Pedophilia: Laws Fighting Nature Instead of Coping with it*, 43 SW. L. REV. 253, 268 (2013) (arguing the reform of laws related to pedophilia should consider the complex scientific background of pedophilia that "is a biological condition developed before birth").