STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-23-122

Robert E. Dupuis, et al.,

Plaintiff-Appellees,

v.

Roman Catholic Bishop of Portland, Maine,

Defendant-Appellant.

On Appeal from Decision of the Superior Court
(Business and Consumer Docket)

BRIEF OF *AMICI CURIAE* AMERICAN TORT REFORM ASSOCIATION AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

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INTEREST OF *AMICI CURIAE*

Pursuant to Rule 7A(e) of the Maine Rules of Appellate Procedure and this Court's Notice of Invitation to File Amicus Briefs issued on June 23, 2023, the American Tort Reform Association and American Property Casualty Insurance Association file this brief as *amici curiae*.

Amici are organizations that represent companies doing business in Maine and their insurers. Over the past two decades, *amici* have become alarmed as state legislatures consider reviving time-barred claims. While this case arises in the context of childhood sexual abuse, legislation of this type, left unchecked by courts, will undoubtedly spread to other cases involving sympathetic plaintiffs or causes, jeopardizing the predictability and reliability of the civil justice system. *Amici* have a substantial interest in ensuring that Maine law continues to adhere to traditional constitutional law principles prohibiting the legislature from reviving time-barred claims, as it did in enacting P.L. 2021, ch. 301 (codified at 14 M.R.S. § 752-C(3)) ("the 2021 Act").

The American Tort Reform Association (ATRA) is a broad coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and

predictability in civil litigation. For more than three decades, ATRA has filed *amicus* briefs in cases involving important liability issues. ATRA testified before the Maine Judiciary Committee in opposition to the 2021 Act, raising both constitutional and public policy concerns.

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 63% of the U.S. property-casualty insurance market, including 77% of Maine's general liability insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts, including this Court.

SUMMARY OF AUGUMENT

This Court, like those in many other jurisdictions, has repeatedly recognized that the legislature cannot constitutionally revive a claim once the statute of limitations has expired. In 1999, the Maine legislature followed this principle when it eliminated the statute of limitations for any civil action alleging injuries stemming from childhood sexual abuse prospectively and for claims not yet barred. P.L. 1999, ch. 639, § 2. The legislature went too far, however, in 2021, when it amended this law to apply the unlimited statute of limitations "regardless of the date of the sexual act" and "regardless of whether the statute of limitations on such actions expired prior to" the amended statute's effective date. P.L. 2021, ch. 301, § 1 (the "2021 Act"). This approach is unconstitutional when applied to revive time-barred claims.

As the cases in this consolidated appeal demonstrate, plaintiffs have relied on the 2021 Act to assert claims alleging organizations, long ago, were negligent when hiring or supervising employees and volunteers. The named plaintiff's claim, for example, stems from allegations of abuse that occurred in 1961—the year voters elected John F. Kennedy president, East Germany built the Berlin Wall, and drivers

spent 31 cents on a gallon of gasoline. It was three decades before this Court recognized the tort of negligent supervision and prior to Maine's enactment of a law requiring a broad range of professionals to report suspected child abuse. Document retention policies, often set in reliance on statutes of limitations, would have led an organization to long ago discard paper records from that era. A 35 year-old staff member from that period who could serve as a witness, if still alive, would be 97 years old today.

The practical and fairness issues stemming from a lengthy or unlimited statute of limitations are exacerbated when the legislature retroactively makes the change. When a statute of limitations is extended or eliminated prospectively, organizations can prepare, as best they can, for the risk of a lawsuit years in the future by carefully documenting their actions, retaining records indefinitely, and purchasing additional insurance coverage if available. They may even choose not to operate in an area subject to such an extraordinary liability risk. A retroactive law that revives time-barred claims, however, takes away those options. It unexpectedly subjects organizations to liability without records, witnesses, or other evidence and requires them to defend themselves in

claims that are based on society's understanding of the troubling prevalence of abuse and expectations of due care today, not sixty years ago.

Permitting revival of time-barred claims would significantly undermine due process and the finality statutes of limitations provide, not just in the context of this case, but in any type of civil action. It would make determinations of liability less accurate. It would also invite legislation to revive claims of other sympathetic individuals—as no lawyer wishes to tell a person seeking help that the time to sue has passed—or in response to calls to address other past injustices as societal and political shifts occur.

As this brief will show, this Court has made clear on at least seven occasions since 1980 that, while the legislature can expand the time to file a viable claim, it "cannot revive an extinguished right or deprive anyone of vested rights" when "the prescribed time has completely run and barred the action." *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816-17 (Me. 1980). This approach is firmly in the legal mainstream, as the "great preponderance" of state appellate courts have rejected attempts to revive time-barred claims. *Kelly v. Marcantonio*, 678 A.2d

873, 883 (R.I. 1996); *see also Aurora Pub. Sch. v. A.S.,* 531 P.3d 1036, 1050 (Colo. 2023); *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020). Maine law should remain consistent with this approach.

For these reasons, the Law Court should follow established precedent, reverse the Business Court's rulings below, and direct that the Business Court dismiss time-barred claims.

ARGUMENT

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

The 2021 Act's claims-revival provision defies the fundamental purpose of statutes of limitations, whose "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." *Brochu v. McLeod*, 2016 ME 146, ¶ 17, 148 A.3d 1220, 1224 (quoting *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)). While "[s]tatutes of limitations are primarily designed to assure fairness to defendants," *Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 428 (1965), they are essential to a fair and well-ordered civil justice system overall. This is because some period is needed to balance an individual's

ability to pursue a lawsuit with a defendant's right to mount a fair defense. *See Dowling v. Salewski*, 2007 ME 78, ¶ 11, 926 A.2d 193, 196.

Statutes of limitations also serve the critical purpose of allowing judges and juries to evaluate the liability of an individual or a business when the best evidence is available. *See Shay v. Walters*, 702 F.3d 76, 81 (1st Cir. 2012) ("Statutes of limitations are critically important in the due administration of justice. They should not lightly be discarded."). The possibility of an unfair trial is heightened when heart-wrenching allegations are involved, as they are here. In addition, statutes of limitations allow businesses and other organizations to accurately gauge their liability exposure and make financial, insurance coverage, and document retention decisions accordingly. They provide "security and stability to human affairs" that is "vital to the welfare of society." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

The loss of security and stability is particularly problematic with respect to insurance. By assuming and managing risk, insurers play an indispensable role in modern life. But a necessary precondition to "managing" risk is the ability to identify and quantify it to establish reserves sufficient to cover all potential exposure for all covered types of

losses. Although access to historical data and sophisticated statistical models allows insurers to perform this complex task with ever-increasing accuracy and efficiency, the process still depends on a measure of predictability and stability. Insurers must be able to locate a point at which historically-distant events no longer pose a current and future risk—where "the past" is definitively and conclusively past. Without a clear line of demarcation, risk assessments and other basic ordering by organizations, insurers, and other entities become uncertain, unreliable, and even speculative.

The fundamental due process issues that arise as a result of reviving time-barred claims are evident in the wake of the 2021 Act, which contains no time constraint at all on revived claims. As the cases before this Court demonstrate, personal injury lawyers have filed cases involving allegations of sexual abuse that occurred sixty years ago. The challenges of defending old claims given the loss of records, witnesses, and institutional memory, and the nature of the allegations involved, is borne mainly by schools, nonprofit organizations, and other entities that provided services to children.

For example, in a constitutional challenge to a similar law in Colorado, organizations representing school districts, local governments, and their insurers observed that it is "extremely difficult for an organization to even investigate claims based on allegations that are decades old" and the "farther back in time allegations go, the more likely there will be no individuals with knowledge or relevant documents available." Brief of *Amici Curiae* Colorado School Districts Self Insurance Pool, et al., at 5-6, *Aurora Pub. Sch. v. Saupe*, No. 2022SC824 (Colo. filed Jan. 17, 2023). Those *amici* recounted a revived claim arising in the early 1980s, in which a member school district could not "confirm whether the alleged perpetrator had been an employee, let alone whether and to what degree the individual may have interacted with the claimant." *Id.* Since record retention was informed by applicable statutes of limitations and dictated by needs and physical space, schools would not have saved records from that period. *See id.*

As a result of reviver laws, organizations can expect increased insurance costs and difficulties obtaining insurance in the future, in addition to their significant new liability exposure for otherwise time-barred claims. *See* Kay Dervishi, *Child Victims Act Leads to Insurance*

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

The implications of permitting the legislature to revive time-barred claims will extend beyond the context of childhood sexual abuse. Over time, there will be many other sympathetic plaintiffs, important causes, and unpopular industries and defendants. It is never easy to tell an injured person that their time to sue has ended. This is why constitutional safeguards require legislatures to act prospectively, not retrospectively, so that our society can appropriately order itself and know the law. Allowing revival of time-barred claims here would inevitably lead to future calls to permit claims alleging physical or economic injuries based on alleged conduct that occurred decades ago to proceed in Maine courts.

Amici have already observed several such attempts. Efforts are underway in states that have revived time-barred childhood sexual abuse claims to expand these provisions. Legislation recently enacted in New York has revived claims brought by those who allege injuries from sexual

abuse as *adults*. *See* S. 66 (N.Y. 2022). California legislation has gone even further by proposing to revive claims involving anything that might be considered "inappropriate conduct, communication, or activity of a sexual nature" decades ago, which would spark stale employment litigation and other claims. *See* A.B. 2777 (Cal. 2022) (as amended in Senate June 16, 2022).[1] Vermont almost immediately expanded its 2019 childhood sexual abuse claims-revival law to apply to claims alleging *physical* abuse. *See* S. 99 (Vt. 2021).

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

[1] California ultimately enacted an amended bill that revives claims alleging that an entity is legally responsible for damages stemming from a sexual assault by an alleged perpetrator that occurred when the plaintiff was an adult. A.B. 2777 (Cal. 2022).

States have also considered proposals to retroactively permit novel theories of liability. Bills have attempted to allow claims addressing social and political causes by applying today's values to conduct that occurred long ago. For instance, a California bill would have revived time-barred actions alleging that businesses confused or misled the public on the risks of climate change or financially supported activities that did so. *See* S.B. 1161 (Cal. 2016) (reported favorably from committee, but died without floor vote). Another California bill proposed a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims for events that occurred up to 115 years earlier. *See* A.B. 15 (Cal., as amended Mar. 26, 2015) (claims-revival provision removed and legislation made prospective before enactment).

While most of these proposals have failed to gain sufficient support for enactment, should this Court not adhere to Maine's vested-rights analysis and allow the 2021 Act's claims-revival, more of these types of proposals should be expected in the state. Calls for discarding statutes of limitations and reviving time-barred claims will become more frequent and louder. As a result, individuals and businesses in Maine will face a

risk of indefinite liability. In addition, when adopted, these proposals will undermine the ability of judges and juries to accurately evaluate liability given the loss of witnesses and records, faded memories, and changes in the law and societal expectations. Cases will become more susceptible to being decided based on sympathy and bias, rather than law and evidence.

II. THIS COURT HAS REPEATEDLY INDICATED THAT THE LEGISLATURE CANNOT REVIVE TIME-BARRED CLAIMS

This Court has specifically indicated in at least seven decisions between 1980 and 2014 that what the legislature *can* do is extend a statute of limitations to increase the time to file suits *where the statute of limitations has not already expired*. What the legislation *cannot do* is revive time-barred claims.

In *Dobson v. Quinn Freight Lines, Inc.*, the Court considered the application of an amendment to the workers' compensation statute that allowed employees to file a claim, in some circumstances, beyond the ten-year period following an injury that was in effect when the worker's injury occurred. 415 A.2d 814, 815 (Me. 1980). In that instance, the Court ruled that the legislation could retroactively extend the statute of limitations "as long as the claims have not yet been barred by the previous statute of limitations in force at the time the amended version

became effective." *Id.* at 816. The Court explained that:

> Legislation which lengthens the limitation period *on existing viable claims* does not have the effect of changing the legal significance of prior acts or events. It does not revive an extinguished right or deprive anyone of vested rights. No one has a vested right in the running of a statute of limitations *until the prescribed time has completely run and barred the action*.

Id. (emphasis added). The clear implication of this reasoning is that there is a vested right in the running of a statute of limitations once the prescribed time has run and barred the action. *Dobson* also suggests that reviving a claim, long after the time to file it has ended, may impermissibly "have the effect of changing the legal significance of prior acts or events," which is precisely what also occurs as a result of the 2021 Act. *Id.*

This Court has repeatedly reaffirmed *Dobson*'s holding in the workers' compensation context. For example, in *Harvie v. Bath Iron Works Corp.*, the Court rejected a plaintiff's request to apply an amendment to the workers' compensation act that would have revived a stale claim after the statute of limitations had expired. *See* 561 A.2d 1023, 1025 (Me. 1989). Once the claim had expired, an amendment "could not revive the claim." *Id.* Consistent with this principle, in *Danforth v.*

L.L. Bean, Inc., the Court ruled that a 1983 amendment altering the accrual date of a workers' compensation claim could retroactively apply to extend the period to file a "then viable claim" that "had not been extinguished under the prior statutory period." 624 A.2d 1231, 1232 (Me. 1993). In *Rutter v. Allstate Automobile Insurance Co.*, this Court observed that "amendments to [the workers' compensation law] are procedural and may be applied retroactively to extend the statute of limitations *as long as the employee's claim was not extinguished on the effective date of the amendment*." 655 A.2d 1258, 1259 (Me. 1995) (emphasis added).

The Court was most direct in its language in *Morrissette v. Kimberly-Clark Corp.*, in which it distinguished retroactive changes to the *level* of workers' compensation benefits going forward for injuries pre-dating the amendment, which do not impede on a vested right, from reviving time-barred claims, which does: "[A]mendments to the statute of limitations may be applied retroactively to extend the statute of limitations, but *not* to revive cases in which the statute of limitations has expired." 837 A.2d 123, 128 (Me. 2003) (emphasis in original).

While these cases arose in the context of workers' compensation claims, the Court has indicated that these principles apply equally to

other claims, including those arising from childhood sexual abuse. In *Angell v. Hallee*, this Court ruled that while the time to file a lawsuit may be tolled in some circumstances and legislation can extend the time to file claims before the applicable period has ended, the 2000 amendment that eliminated the statute of limitations for civil actions alleging injuries stemming from childhood sexual abuse "cannot 'revive cases in which the statute of limitations has expired.'" 2014 ME 72, ¶ 6, 92 A.3d 1154, 1157 (quoting *Morrissette*, 837 A.2d at 128 and citing *Dobson*, 415 A.2d at 816-17); *see also Angell v. Hallee*, 2012 ME 10, ¶ 7, 36 A.3d 922, 924-25 (examining amendments to the statute of limitations for civil actions alleging childhood sexual abuse between 1985 and 2000 and recognizing that these extensions could apply only prospectively in absence of a recognized basis for tolling the applicable period).

In fact, the legislature itself was careful to adhere to these constitutional principles when it amended 14 M.R.S. § 752-C to extend the period for bringing a claim in 1991 and eliminated the statute of limitations in 1999. *See* P.L. 1991, ch. 551, § 2 (applying extension from six to twelve years of accrual and extension from three to six years of discovery to "[a]ll actions for which the claim has not yet been barred by

the previous statute of limitations in force on the effective date of this Act."); P.L. 1999, ch. 639, § 2 (eliminating statute of limitations for "[a]ll actions for which the claim has not yet been barred by the previous statute of limitations in force on the effective date of this Act."). This Court and others have recognized that previous amendments to the statute of limitations did not revive time-barred claims. *See Angell,* 2012 ME 10, ¶ 7, 36 A.3d at 924; *see also McAfee v. Cole*, 637 A.2d 463, 466 (Me. 1994) (recognizing that the discovery rule adopted by the 1991 amendment only applies to claims that were not already barred by the previous statute of limitations); *Guptill v. Martin*, 228 F.R.D. 62, 64 (D. Me. 2005) (observing that the legislature expressly did not revive time-barred claims in its 1991 and 1999 amendments). The legislature's U-turn in 2021 is inconsistent with Maine's constitutional law.

While plaintiffs and their supporting *amici* may suggest that these statements are *dicta*, these decisions are consistent with longstanding Maine law recognizing that legislatures "have no constitutional power to enact retrospective laws which impair vested rights, or create personal liabilities." *Coffin v. Rich*, 45 ME 507, 514-15 (1858). Indeed, as far back as 1823, three years after Maine's admission to the Union, this Court

recognized that a law is impermissibly retrospective if it "takes away, or impairs, vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." *Proprietors of Kennebec Purchase v. Laboree*, 2 Me. 275, 289 (1823) (quoting *Society, &c. v. Wheeler*, 2 Gal. 105) (Story J.)). In that ruling, this Court recognized that there is "little doubt of [the] unconstitutionality" of legislation that retroactively alters a statute of limitations to suddenly eliminate a viable, accrued claim. *Id.* at 294. "[S]o far as [that law] is *prospective*, [it] is liable to no objection; but so far as it is *retrospective*, and has *altered the common law*, it is *unconstitutional*, and cannot be carried into effect; because *such* operation would impair and destroy *vested rights*. . . ." *Id.* at 294-95 (emphasis in original). The flip-side of this principle, as it applies to defendants, is that once a statute of limitations runs, they too have a vested right that cannot be eliminated by subsequent legislation.

These principles have not changed. As the Court recognized just last year, the Maine Constitution's Due Process Clause protects from retroactive legislation vested rights, which arise from "everything to which a man may attach a value and have a right." *See NECEC*

Transmission LLC v. Bureau of Parks & Lands, 2022 ME 48, ¶ 44, 281 A.3d 618, 634. A right to be free from suit, after an established period has passed, certainly has value.

In addition, as the Appellant's brief discusses, the retroactivity of 2021 Act is constitutionally problematic for a second reason: It would impose liability based on the law as it exists today, rather than the law that existed at the time the alleged the organizations' alleged actions or omissions occurred. *See* App. Br. at 32-35. Maine first placed an obligation on a broad range of professionals to report suspected abuse, including sexual abuse, in 1975. P.L. 1975, ch. 167.[2] Even then, Maine law did not recognize tort liability for negligent supervision. That did not occur until 2005. *See Fortin v. Roman Catholic Bishop of Portland*, 2005 ME 57, ¶ 39, 871 A.2d 1208, 1222; *see also Swanson v. Roman Catholic Bishop*, 1997 ME 63, ¶ 9, 692 A.2d 441, 443-44 ("We have never decided that the negligent supervision of an employee constitutes an independent basis for liability on the part of an employer."). Yet, lawsuits revived by

[2] The first version of that law, enacted in 1965, focused on physical abuse and applied only to physicians and hospitals. P.L. 1965, ch. 68. The current statute is codified at 22 M.R.S. § 4011-A. *See generally* Maine State Legislature, Mandatory Child Abuse Reporting Legislative History, https://www.maine.gov/legis/lawlib/lldl/mandatoryreporting/ (last updated Sept. 2022).

the 2021 Act allege claims that were not viable decades ago. Putting aside the vested right in the running of a statute of limitations and applying pure logic, a claim that was not viable at the time it expired cannot be "revived." No legislative action, including the 2021 Act, can constitutionally create "a new liability where none had previously existed." *NECEC*, 2022 ME 48, ¶ 39, 281 A.3d at 632.

III. INVALIDATING THE 2021 ACT'S CLAIMS-REVIVAL PROVISION IS CONSISTENT WITH THE MAJORITY APPROACH AMONG STATES

In *Dobson*, this Court recognized that "[t]he authorities from other jurisdictions are generally in accord with our conclusion" that there is a substantive right in a statute of limitations after the prescribed time has completely run and barred the action. 415 A.2d at 816-17. That was an accurate statement of the state of the law prior to *Dobson*,[3] it was accurate when *Dobson* was decided in 1980, and it remains so today. Maine's longstanding rejection of legislative attempts to revive time-barred claims remains consistent with the approach applied in most jurisdictions.

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

As several state high courts have recognized, the majority rule among jurisdictions is that a legislature cannot adopt retroactive laws that revive a time-barred claim without violating defendants' due process rights.[4] These states generally apply a vested-rights analysis that is consistent with Maine law, whether they do so through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state constitutional provision.[5] Courts have applied these constitutional

[4] *See Johnson v. Garlock, Inc*., 682 So. 2d 25, 28 (Ala. 1996) ("The weight of American authority holds that the bar does create a vested right in the defense."); *Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred."); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) ("[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action."); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993) (recognizing prohibition of legislative revival of a time-barred claim "appears to be the majority view among jurisdictions with constitutional provisions"); *Kelly v. Marcantonio,* 678 A.2d 873, 883 (R.I. 1996) (recognizing the "great preponderance of state appellate courts" reject claims-revival laws under due process analysis) (cleaned up); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) ("Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.").

[5] *See, e.g*., *Garlock*, 682 So. 2d at 27-28; *Lilly*, 823 S.W.2d at 885; *Wiley v. Roof*, 641 So. 2d 66, 68-69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484-85 (Ill. 2009); *Skolak v. Skolak*, 895 N.E.2d 1241, 1243 (Ind. Ct. App. 2008); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc*., 114 S.W.3d 850, 854-55 (Ky. 2003); *Hall v. Hall*, 516 So. 2d 119, 120 (La. 1987); *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc*., 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp*., 493 A.2d 1193, 1195-96 (N.H. 1985); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Lewis v. Pennsylvania R. Co*., 69 A. 821, 822-23 (Pa. 1908); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc*., 12 S.W.3d 1, 4 (Tex. 1999); *Starnes v. Cayouette*, 419 S.E.2d 669,

principles to reject the legislative revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers' compensation claims, among others.

The supreme courts of Colorado and Utah are the most recent high courts to reaffirm this principle. This June, the Colorado Supreme Court found that the Child Sexual Abuse Accountability Act could not create a new claim for conduct predating the legislation and for which any previously available claims would be time-barred. *Aurora Pub. Sch. v. A.S.*, 531 P.3d 1036, 1050 (Colo. 2023). There, the court recognized that "where the statute of limitations has run and a claim is barred, the right to plead it as a defense is a vested right which cannot be taken away or impaired by any subsequent legislation." *Id.* at 1048-49 (cleaned up). The constitutional bar on retroactively altering vested rights, the court observed, "ensures that people have notice of the consequences of their actions before they act—a foundational component of due process." *Id.* at 1050. While the court was sympathetic to the legislature's desire to "right the wrongs of past decades," it properly understood that there is no

674-75 (Va. 1992); *Society Ins. v. Labor & Indus. Review Comm'n*, 786 N.W.2d 385, 399-402 (Wis. 2010).

"public policy exception" to the constitutional prohibition on reviving time-barred claims. *Id.* at 1049.

Three years earlier, the Utah Supreme Court applied similar reasoning to invalidate a law reviving time-barred claims under a vested-rights analysis after the state legislature permitted such claims against perpetrators of childhood sexual abuse. *See Mitchell*, 469 P.3d at 901. There too, the court "appreciated the moral impulse" underlying the claims-revival provision and expressed "enormous sympathy for victims of child sex abuse," but it maintained that the issue was "not a matter of policy" but one of basic protection for defendants. *Id.* at 914. The court unanimously held that the principle that the legislature "vitiates a 'vested' right" in violation of due process by retroactively reviving a time-barred claim is "well-rooted," "confirmed by the extensive historical material," and has been repeatedly reaffirmed for "over a century." *Id.* at 903, 904, 913.

In comparison, about one-third of states have found that legislation reviving time-barred claims is generally permissible or appear likely to reach that result. These states, unlike Maine, generally follow the approach taken under the U.S. Constitution. The U.S. Supreme Court

has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution. *See Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980); *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 312-13 (1945). Many states do so. In fact, when the Connecticut Supreme Court ruled that its constitutional law favored the minority federal approach, it recognized Maine is among those states in which reviving time-barred claims is "per se invalid." *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 511 n.55 (Conn. 2015) (citing *Dobson*, 415 A.2d at 816).

As Plaintiffs and their supporting *amici* may emphasize, some courts have recently upheld laws reviving time-barred childhood sexual abuse claims. These include the Vermont Supreme Court, which adopted the federal approach,[6] a plurality decision from a Louisiana intermediate appellate court that took an outlier approach to vested rights,[7] and an

[6] *See A.B. v. S.U*, 298 A.3d 573 (Vt. 2023).

[7] *See Sam Doe v. The Society of the Roman Catholic Church of the Diocese of Lafayette,* No. 22-120 (La. Ct. App., 3d Cir. Aug. 17, 2023) (plurality decision). In *Sam Doe*, two judges found that a statute of limitations gives rises to a vested right only after a claim has been brought and dismissed as time barred. *See* Slip Op. at 13 (Picket, C.J., and Perret, J.). *Amici* are aware of no state high court taking this approach, which seems to apply *res judicata*. A third judge recognized a vested right in the running of a statute of limitations, but found the legislature could eliminate that right so long as it had a rational basis for doing so. *See* Concurring Op. at 2-3 (Fitzgerald, J., concurring). Two judges dissented, recognizing that "[o]nce liberative prescription accrues, the right to plead the defense is "absolute, complete, unconditional, and independent of a contingency," and that the Louisiana Supreme Court

intermediate appellate court in New York,[8] a state that applies a unique "functionalist approach" to evaluating the permissibility of reviving time-barred claims.[9] These decisions are inconsistent with Maine law.[10]

Invalidating the 2021 Act's claims-revival provision will ensure that Maine law remains consistent with the majority approach among states. While some states have afforded their citizens and litigants a weaker version of due process, Maine should choose to maintain robust constitutional protection for vested rights.

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has "unequivocally rejected" laws reviving time-barred claims "on several occasions." Dissenting Op. at 1-3 (Bradberry, J., joined by Gramillion, J., dissenting). The Louisiana Supreme Court is expected to review the *Sam Doe* decision, which it had accepted for review before remanding to the intermediate appellate court for further consideration.

[8] *See PB-36 Doe v. Niagara Falls City Sch. Dist.*, 182 N.Y.S.3d 850 (NY App. Div. 4th Dep't 2023), reargument or leave to appeal denied, 2023 NY Slip Op 66309(U) (Apr. 28, 2023).

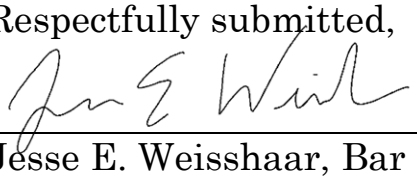
[9] New York's "functionalist approach" weighs the "defendant's interests in the availability of a statute of limitations defense with the need to correct an injustice." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 400 (2017). This test permits a reviver where "exceptional circumstances" or "extraordinary events," create an "inability" for a plaintiff to assert a timely claim. *Id.* at 399, 410.

[10] Constitutional challenges to laws reviving time-barred childhood sexual abuse claims are pending in North Carolina and the U.S. Court of Appeals for the Fifth Circuit. See *Lousteau v. Congregation of Holy Cross Southern Province, Inc.*, No. 2:21-CV-01457 (E.D. La. June 8, 2022), No. 22-30407 (5th Cir.) (Louisiana law) (oral argument held July 12, 2023); *McKinney v. Goins*, No. 22-261 (N.C. Ct. App.) (oral argument held June 3, 2023).

CONCLUSION

For these reasons, *amici curiae* respectfully request that the Law Court reverse the Business Court's orders and direct judgment on the pleadings or dismissal on the basis that P.L. 2021, ch. 301, § 1, which amended 14 M.R.S. § 752-C to retroactively eliminate any statute of limitations for civil actions identified in the statutory text, is unconstitutional to the extent it revives time-barred claims.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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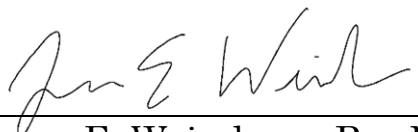

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