SUPREME COURT OF FLORIDA

CASE NO. 82,412

CALVIN WILEY,

Petitioner,

vs.

CARRIE LINN YOUNG ROOF,

Respondent.

_____/

BRIEF OF AMICI CURIAE, ACADEMY OF FLORIDA TRIAL LAWYERS, FLORIDA ASSOCIATION FOR WOMEN LAWYERS AND NOW LEGAL DEFENSE AND EDUCATION FUND

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STATEMENT OF INTEREST OF AMICI CURIAE

The Academy of Florida Trial Lawyers is a large voluntary statewide association of trial lawyers specializing in litigation in all areas of the law, including personal injury litigation. The lawyer members of the Academy are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the evolution of the common law, and the right of access to courts.

The Academy has been involved as amicus curiae in cases in the Florida appellate courts and Supreme Court involving access to court and statutes of limitations, as well as all other aspects of the tort system.

The Florida Association for Women Lawyers is a large voluntary statewide association of attorneys of both genders involved in all areas of the law. Its purposes include improvement of the administration of justice and the promotion of women's legal rights. FAWL, its members and its clients are vitally concerned with the elimination of abuses that diminish the integrity of the individual and the family unit.

FAWL and its chapters have been involved as amicus curiae in cases in the Florida appellate courts and Supreme Court involving family violence and child abuse.

The NOW Legal Defense and Education Fund is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to

eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. The role of women and girls in the family, including domestic violence, is a major focus of NOW LDEF's work. NOW LDEF has participated as amicus curiae in numerous cases involving statutes of limitations for incest and child sexual abuse in state and federal appellate courts, including in the state of Florida.

ARGUMENT

THE EXTENDED STATUTE OF LIMITATIONS CAN AND SHOULD BE APPLIED IN THIS CASE.

A. BACKGROUND - THE UNIQUE PROBLEM OF CHILD SEXUAL ABUSE

Florida courts have recognized that cases involving sexual battery within the family present special problems requiring special solutions. Heuring v. State, 513 So.2d 122, 124 (Fla. 1987). For example, some courts in criminal cases have relaxed the normally strict standards applied to similar fact evidence under §90.404, Florida Statutes. Heuring, 513 So.2d at 124-125; State v. Paille, 601 So.2d 1321 (Fla. 2d DCA 1992); Thomas v. State, 599 So.2d 158 (Fla. 1st DCA 1992).

The Florida legislature, too, has recognized the unique character of the offenses of child abuse and incest by passing Chapter 92-102, §§ 1 and 2, Laws of Florida, amending §95.11, Florida Statutes. Those sections provide:

(Section 1.) . . .

(7). FOR INTENTIONAL TORTS BASED ON ABUSE. -- An action founded on alleged abuse, as defined in §39.01 or §415.102, or incest, as defined in §826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

(Section 2.) Notwithstanding any other provision of law, a plaintiff whose abuse or incest claim is barred under section 1 of this act has 4 years from the effective date of this act to commence an action for damages.

In designing a statute of limitations that does not begin to run until the child has reached majority, left the control of the abuser, and realized the connection between her injury and the tort; and in giving the statute retroactive effect, the legislature has acknowledged that the torts of incest and child abuse are unlike any other. These torts involve the abuse of power by a trusted adult over a young, helpless victim. Even if she wanted to, the victim could not bring suit on her own behalf.[1] As we

[1] Victims of child abuse can be of either gender. We use the feminine pronoun here because it is consistent with the parties in this case, and because the majority of victims are female. See In the Children's Best Interests: A Manual for Pro Bono Attorneys Who Assist Guardians Ad Litem, §5.01 at 5-1 (Office of the State Court's Administrator, 1991). The typical victim of child sexual abuse is a girl, nine years of age or less. Id.

discuss below, the child victim almost always has nobody to seek a remedy on her behalf.

The uniqueness of the problem of child sexual abuse requires a unique solution. Over the past decade or more, child sexual abuse, once buried in secrecy, has come out of the dark. It has been the subject of myriad studies and voluminous writings in the fields of psychology, sociology and the law. See, e.g., Lamm, Easing Access to the Courts for Incest Victims: Toward an Equitable Application of the Delayed Discovery Rule, 100 Yale L. J. 2189 (1991); Note, Retroactive Application of Legislatively Enlarged Statutes of Limitations for Child Abuse: Time's No Bar to Revival, 22 Indiana L. Rev. 989 (1989); Reed, A Dozen Myths about Child Sexual Abuse, Reprinted in In the Children's Best Interests, A Manual for Pro bono Attorneys who Assist Guardians Ad Litem (Office of the State Court's Administrator, 1991).

The studies disclose a problem of surprising magnitude. Estimates range from tens of thousands to hundreds of thousands of victims each year. See Note, supra., 22 Indiana L. Rev. at 989; Lamm, supra., 100 Yale L.J. at 2192. According to the Office of the State Court's Administrator, 19,000 cases of verified child sexual abuse were reported in Florida during fiscal year 1989-90. More than half of these cases involved children under the age of ten. In the Children's Best Interest, supra., §5.01 at 5-1, quoting Report of the Study Commission on Child Welfare: Part II (1991).

An estimated 75 to 90 percent of incest victims reach adulthood without ever revealing the abuse. Note, supra., at 993; Reed, supra, at 2-14 (94 to 98%). According to a multitude of studies, there are consistent psychological and social reasons for the lack of reporting. These reasons appear in case after case:

First, sexual abuse victims are very likely to feel ashamed, embarrassed and frightened. As one Florida judge suggested, "Imagine having to tell the world about the most humiliating sexual experience you have ever had". Hon. Leonard Fleet, quoted in In the Children's Best Interests, supra., §2.02 at 2-5. Now, imagine in addition that the humiliating sexual experience was also an appalling betrayal of trust by an intimate authority figure. And imagine that the authority figure has convinced you of dire consequences if you reveal your secret.

Incest victims may fear that reporting the abuser will break up the family, or even cost the entire family its sole source of economic support. They may also fear anger, rejection, or physical harm from the abuser or from other family members. And, the child may also fear that the abuser -- who is most often a beloved relative -- will be imprisoned or otherwise harmed. See In the Best Interests of the Children, §2.02 at 2-11.

Second, psychological defense mechanisms may result in denial or repression of the experience. Many victims of incest suffer from a form of Post-Traumatic Stress Disorder, which may cause them to avoid situations, such as litigation, which might force them to recall the trauma. Lamm, supra. 100 Yale L.J. at 2194; Note,

supra., 22 Indiana L. Rev. at 993; Lindabury v. Lindabury, 552 So.2d 1117, 1119 (Jorgenson, Jr., dissenting).

Third, the gross disparity in the relative power, knowledge and resources of the victim and the perpetrator may enable the abuser not only to commit the tort in the first place, but to keep it concealed, as well. The abuser may first persuade a very young child to engage in the sexual acts. Such a young child may not know that the act is wrong. Indeed, in the case of incest, the abuser is often one of the very people to whom the child looks to establish what is right and what is wrong.[2] Later, the abuser may use that same power and knowledge to persuade the victim that the victim is at fault, or that the secret must be kept. In incest cases, the child's very survival - physical or psychological - may depend on pleasing the abuser.

Moreover, even if the child does tell someone, he or she may not be believed. Other adult family members may refuse to pursue the matter, either because they do not or cannot believe the child; because they think the abuse will stop; or because they, too, are dependent on the abuser and fear the breakup of the family and the loss of support. In the Children's Best Interests, §2.02 at 2-10, 2-12.

Finally, while Fla. R. Civ. P. 1.210(b) allows for the appointment of a next friend or guardian at litem to represent a

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[2] "It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural". Moore v. City of East Cleveland, 431 U.S. 494, 52 L.Ed.2d 531, 97 S.Ct. 1932, 1938 (1977).

child in court, most children lack the resources to seek and retain legal assistance independent of their parents or other family members.

Thus, because of a variety or combination of psychological, social and legal factors, a child victim of sexual abuse may be unable to pursue any legal action until the age of majority, or even long after.

It was in the light of these now well recognized factors that the legislature enacted the new statute of limitations and expressly gave it retroactive effect.

The intent of the legislature in doing so could not be plainer. The statute expressly states:

> Notwithstanding any other provision of law, a plaintiff whose abuse or incest claim is barred under section 1 of this act has four years from the effective date of this act to commence an action for damages.

Ch. 92-102, §2, Laws of Florida, eff. April 8, 1992.

The legislature reached this decision after careful study of the constitutionality of the statute. It was discussed in the Judiciary Committee. See Affidavit of Sen. Fred R. Dudley and attached transcript (App.1-9) An entire section of the Senate Staff Analysis is devoted to the point. (App. 19)

Noting that no Florida case had ever expressly decided this issue, the Senate Staff Analysis pointed out that the United States Supreme Court and several lower federal courts have held that retroactive application of extended statutes of limitations to

claims that otherwise would be barred does not violate 14th Amendment Due Process. (App. 19). The Staff Analysis stated that the Minnesota Court of Appeals had recently upheld the retroactivity of a specific statute of limitations for a civil action based on sexual abuse. K.E. v. Hoffman, 452 N.W. 2d 509 (Minn. App. 1990).

In addition, Rep. Elaine Gordon requested and received an opinion from Prof. William VanDercreek of the Florida State University College of Law, which reviewed the proposed revival provision and concluded that it "should not be invalidated on constitutional grounds". Letter from Prof. William VanDercreek to The Honorable Elaine Gordon (February 17, 1992) (App. 15-16). A legislative intern researched the issue and reached the same conclusion. See Memorandum from Kara Tollett, Legislative Intern, to Tom Tedcastle (February 20, 1992) (Re: HB 703 -- Statute of Limitations) (App.12-14).

Having thus informed itself, the Legislature apparently concluded that it constitutionally could enact a statute reviving causes of action that had been extinguished, because that is exactly what it did. This conclusion is not inconsistent with Florida law, and is supported by a substantial body of federal law and law from other states.

B. FLORIDA LAW DOES NOT REQUIRE INVALIDATION

1. NO RIGHT VESTS IN A CHILD ABUSER WHEN THE STATUTE OF LIMITATIONS EXPIRES.

The trial court ruled that plaintiffs' claims were barred by §§95.11(3)(a) and 95.11(3)(o), Florida Statutes, which were in force at the time of the last alleged act of abuse. They provide a four year limitation period for actions founded on negligence and for intentional torts, respectively. Significantly, these statutes are statutes of limitations, not statutes of repose.[3]

Section 95.11(3)(o) provides that "[a]n action for assault, battery . . . or any other intentional tort" must be brought within four years of the time the cause of action accrues; that is, "when the last element constituting the cause of action occurs." §95.031, Florida Statutes, (1990). Before the enactment of Chapter 92-102, at least one court held "accrual" to mean that the

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[3] A statute of repose is to be distinguished from a statute of limitations. The court in Lamb v. Volkswagen Werk Aktiengesellschaft, 631 F.Supp. 1141, 1147 (S.D. Fla. 1986), wrote:

> A statute of repose terminates the right to bring an action after the lapse of a specific period. The right to bring the action is foreclosed when the event giving rise to the cause of action does not transpire within this interval. A statute of limitations delineates the time a party has to initiate an action once the injury has occurred; it does not begin to run until the wrong has been or should have been discovered.

A statute of limitations can bar a cause of action. A statute of repose can prevent it from even accruing. Id. Statutes of repose and limitations do not confer positive rights; they relate to remedies by imposing limitations on plaintiff's positive right to sue. See e.g., Bauld v. J.A. Jones Construction Co., 352 So.2d 401 (Fla. 1978); Walter Denson & Sons v. Nelson, 88 So.2d 1 (Fla. 1956).

plaintiffs' cause of action is contemporaneous with the intentional act - that is, the injury itself completes the cause of action. See Lindabury v. Lindabury, 552 So.2d 1117 (Fla. 3d DCA 1989).

That interpretation of "accrual" applied to the tort of sexual abuse in Lindabury has been recognized as inappropriate when applied in other tortious situations. For example, knowledge of a physical problem alone, without the knowledge that the injury was related to medical treatment, will not trigger a limitations period in medical malpractice actions if the connection is not readily apparent. Tanner v. Hartog, 618 So.2d 177 (Fla. 1993) Moore v. Morris, 475 So.2d 666 (Fla. 1986). Similarly, a physician's failure to disclose an adverse condition amounts to a fraudulent withholding of facts and is sufficient to toll a running of the statute of limitations. Nardone v. Reynolds, 333 So.2d 25 (Fla. 1976).

Indeed, this Court has recognized that a statute of repose is impermissibly applied to the case of one injured by a product where the ill effects of that injury do not manifest themselves within the statutory repose period. Diamond v. E.R. Squibb & Sons, Inc., 397 So.2d 671 (Fla. 1981) (where no symptoms appear after ingestion of a dangerous drug for the period of repose the "injury" does not occur and the statute's application to that tort is unconstitutional.) Accord, Pullum v. Cincinnati, Inc., 476 So.2d 657, 659 (Fla. 1985). But Cf. Kush v. Lloyd, 616 So.2d 415 (Fla. 1992) (because legislature balanced rights of injured patients and health care providers, and found overwhelming need, medical

malpractice statute of repose could bar cause of action before it accrued).

As the dissent in Lindabury notes, to equate the intentional act with the injury, as did the majority in that case, is uniquely problematic in cases of child sexual abuse. Lindabury, 552 So.2d at 1120 (Jorgenson, J. dissenting). The victims are by definition children. They are usually small children. In fact, as we have noted, most are under the age of ten. These young children are usually incapable of making such a connection, and always incapable of taking any legal action on their own to do anything about it.

The legislature's enactment of Chapter 92-102 recognized the inadequacy of the "accrual" test as applied to torts of intentional abuse and incest in Lindabury. The statute specifically allows for commencement of the cause of action "within seven years after the age of majority, or within four years after the injured person leaves the dependency of the abuser, or within four years from the time of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later."

The new rule adopted by the legislature has come to be known as the "discovery rule" or the "delayed discovery rule". It has been adopted in several jurisdictions, and has been advocated by many commentators. See, e.g., Lamm, Easing Access to the Courts for Incest Victims: Toward an Equitable Application of the Delayed Discovery Rule, 100 Yale L.J. 2189 (1991); see also see also Judge

Jorgenson's dissent in Lindabury, 552 So.2d at 1118 (advocating adoption of a form of the discovery rule).

The order of dismissal cannot be justified by Firestone Tire & Rubber Co. v. Acosta, 612 So.2d 1361 (Fla. 1992). In Firestone, the court delineated the issue as follows:

> The real issue for our determination is whether repeal of the statute of repose can have the effect of reestablishing a cause of action that had been previously extinguished by operation of law. We find there is no authority or intent by the legislature to do so. (emphasis supplied)

612 So.2d at 1363. In Firestone, this Court, relying on Melendez v. Dreis & Krump Manufacturing Co., 515 So.2d 735 (Fla. 1987), held that "absent the legislature's `clear manifestation of retroactive effect, the subsequent elimination of the statute of repose [could not] save the plaintiff's suit.'" 612 So.2d at 1363-1364 But Ch. 92-102 is such a clear manifestation of the legislature's intent to give retroactive effect to lengthening the statute of limitations.

The order of dismissal relied upon Walter Denson & Son v. Nelson, 88 So.2d 120 (Fla. 1956), Corbett v. General Engineering & Machinery Co., 37 So.2d 161 (Fla. 1948), and Patterson v. Sodders, 167 So.2d 789 (Fla. 2d DCA 1964), for the proposition that once a statute of limitations has run, the potential defendant has acquired a vested right not to be sued and, therefore, the legislature cannot amend the statute of limitations to apply

retroactively. The principle, as enunciated in Denson, Corbett, and Patterson is dicta only, as in each of those cases, the plaintiff's claim was not barred because the extended statute of limitations was enacted before the earlier limitation had run.

Furthermore, each of those cases, as well as Firestone, arose in a commercial context. People enter into contractual relationships and put products on the market with the expectation that liability can be limited with reasonable certainty. The state has an interest in enforcing such limits to foster a good business climate and the Constitution protects the obligations of contracts from impairment. Article I, §10, Florida Constitution.

But there can be no reasonable expectations of limited liability for child abuse. The state has no interest in fostering a good climate for child abuse. The Constitution does not protect child abuse as it does commerce.

In Walker v. Miller Electric Manufacturing Co., 591 So.2d 242 (Fla. 4th DCA 1991), approved in Firestone, the court reasoned that where a products liability plaintiff was injured in a discrete accident which took place instantaneously at a point in time when the statute of repose had run, the defendant had acquired a vested right not to be sued. However, the court believed that cases of slowly-evolving injury (such as asbestos-caused lung cancer) should be treated differently and that a defendant in such an action would

neither acquire nor develop a vested right from a statute of repose.[4] Walker, id., at 245.

Significantly, this Court has held that a statute permitting revival of a cause of action is not unconstitutional. Department of Transportation v. Feltner, 266 So.2d 670 (Fla. 1972). Feltner involved the revival of causes of action under the sovereign immunity statute. Those causes of action had been abolished during a brief time when the sovereign immunity statute was repealed.

In 1969, the legislature enacted Chapter 69-116 which waived sovereign immunity as to torts as of July 1, 1969. Later in 1969, the legislature enacted Chapter 69-57, which repealed the immunity waiver as of July 1, 1970. The repealing statute did not contain a savings clause safeguarding causes of action arising during the one year when the waiver statute was in effect. In 1971, the legislature enacted Chapter 71-165, which permitted the revival of all causes of action arising during the one year period when Chapter 69-116 was in effect.

In Feltner, the Supreme Court pointed out that the legislature expressly stated that it had sought to revive the prior causes of action because no provision has been made for a savings clause in Chapter 69-57. The court held that the revival statute was both valid and constitutional. See also U.S. v. Hunter, 700 F.Supp. 26 (M.D. Fla. 1988) (even if Florida statute of limitations expires

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[4] Walker distinguished an asbestos cancer case in which the cause of action accrued with the plaintiff's discovery of his disease, after the effective date of the amendment which abrogated the statute of repose in asbestos cases.

before student loan was assigned to the Department of Education, the United States' suit was timely filed when federal law revived claim.)

The legislature here has stated its specific intent to revive causes of action for intentional child abuse and incest that may have been otherwise extinguished. That decision was a reasoned decision and a constitutional one.

2. THE DECISION BELOW VIOLATES THE PLAINTIFFS' RIGHT OF ACCESS TO COURT, GUARANTEED BY ARTICLE I, SECTION 21, FLORIDA CONSTITUTION.

The Florida Constitution includes a mandatory right of access to courts. Article I, Section 21. That right is protected against infringement by any official authority, including the court and the legislature. Shay v. First Federal of Miami, 429 So.2d 64, 66-67 (3d DCA 1983).

The right may be limited, for example, by the enactment of a statute bearing a reasonable relation to a legitimate state interest. Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985). In Pullum, this Court held that a statute of repose which might bar some products liability plaintiffs from court, was nevertheless constitutional because the legislature reasonably decided that perpetual liability places an "undue burden on manufacturers." Id., at 659. Similarly, in Carr v. Broward County, 541 So.2d 92 (Fla. 1989), the Supreme Court found that the legislature had discerned an overriding public necessity because of the medical malpractice insurance crisis. Thus, a statutory period of repose barring a cause of action that did not accrue until after the

period had expired did not violate the constitutional mandate of access to courts. See also Kluger v. White, 281 So.2d 1, 4 (Fla. 1973), which states:

> The legislature may abolish civil remedy only if it can show an "overpowering public necessity" and "no alternative method of meeting such public necessity."

The legislature, in enacting §95.11(7), provided broader access to courts, remedial in nature and consistent with the constitutional right of access to courts. Without the extended statute of limitations, most victims of child sexual abuse have no access to courts. The court below, in finding the statute unconstitutional, has taken the very action that the legislature may not. It abolished the right of access to court without demonstrating an overpowering public necessity - nor any necessity at all - for doing so.

Here, there is no legitimate state interest in protecting the perpetrators of such an odious crime. Lindabury v. Lindabury, 552 So.2d 1117, 1118 (Fla 3d DCA 1989)(Jorgenson, J., dissenting). Indeed, research abounds showing that the victims of incest and abuse all too frequently grow up to perpetrate such abuse again on the next generation of children. It is very much within the legitimate state interest to allow, and public policy should encourage, civil lawsuits wherein a plaintiff injured as a child would be able to recover judgment against the perpetrator. Money would then be available for the plaintiff to use for therapy to heal the injury, and hopefully, to prevent recurrence in the next

generation. See generally, Heuring, 513 So.2d at 124 (noting that incest is "generational").

The legislature can abrogate a plaintiff's right of access to courts by enacting a statute bearing a reasonable relation to a legitimate state interest. If there is an overpowering public necessity, the courts will enforce such a statute. Carr, supra; Pullum, supra. Conversely, if the enactment of a statute allows access to courts by reviving an extinguished cause of action, the court below held that it abrogates a "vested" right, and could not be enforced. Such reasoning allows the legislature, using a balancing test, to deny the right (of access to courts) of plaintiffs who are often, blameless, but refuses to allow the legislature, using a balancing test, to deny the claimed rights (vested and due process) of defendants, even though those defendants are often, as alleged in this case, grievously liable.

The legislature can, within the confines of the Constitution, balance societal interests in the fields of products liability and medical malpractice, to allow a limit to the period of liability to bar the possibility of relief from some plaintiffs. Why can the legislature not, in balancing societal needs as it has done here, prefer the rights of plaintiffs, injured as children by adults' perversions, over the competing interests of these perpetrators in escaping civil liability entirely? What sort of societal interest is promoted by vesting a perpetrator of child abuse or incest with the "right" not to be hailed into court to answer for this "odious" behavior?

The legislature has conducted a careful balancing here. Its conclusion should be respected.

Since access to courts is not an absolute right under the Florida Constitution, the courts have allowed the legislature to enact statutes denying access, but only where the denial was part of a statutory scheme, after the legislature has balanced the rights and interests at stake. Kluger v. White, 281 So.2d 1 (Fla. 1973); Kush v. Lloyd, 616 So.2d 415 (Fla. 1992).

This is the legislature's function - to enact statutes after balancing the competing needs of segments of the population and society as a whole. In Kush, a statute of repose barring some medical malpractice claims was upheld because it was found to be the result of the legislature's balancing of the rights of injured plaintiffs against the exposure of health care providers to liability for endless periods of time. Since the legislature had engaged in the balancing process, the Supreme Court acknowledged that the courts were not authorized to second-guess the legislature's judgment. 616 So.2d at 421-422.

In the instant case, the legislature, in crafting §95.11(7), has favored the rights of plaintiffs injured by abuse and incest, to meet a societal need. The legislature recognized that, if it did not extend the statute of limitations and give it retroactive effect, there would be no remedy for most victims. If medical malpractice plaintiffs' constitutional right of access to courts can sometimes be barred, there is no logical reason that the "injuring" defendants' so-called vested rights cannot

constitutionally be abrogated, after the legislature has so carefully weighed the competing interests. This Court should not, as the Kush court did not, second-guess the legislature.

C. LAW FROM OTHER COURTS SUPPORTS CONSTITUTIONALITY

Federal and state courts consistently hold that no due process concerns prohibit the legislature from extending the statute of limitations and effecting a revival of damages actions previously time-barred.

In Campbell v. Holt, 115 U.S. 620, 29 L.Ed. 483, 6 S.Ct. 209 (1895), the Supreme Court of the United States held constitutional an 1869 provision reviving Plaintiff's action which had otherwise become time-barred in 1868 by the then effective statute of limitations. Defendants insisted that because the bar of the statute had been complete and perfect, it could not be taken away as a defense. They argued that to do so would violate the Fourteenth Amendment to the Constitution of the United States. The Court acknowledged that the revival of an action to recover real or personal property, previously time-barred, would violate the due process clause of the Fourteenth Amendment because both legal title and real ownership become vested by virtue of the statue of limitations. But the Court held that the revival of an action on a debt "stands on very different ground." 6 S.Ct. at 211.

The Court noted numerous cases where "a contract incapable of enforcement for want of a remedy, or because there is some obstruction to the remedy, can be so aided by legislation as to become the proper ground of a valid action," id., at 213, and held

the cases before them, for repayment of a debt owed, was just such a case.

> No man promises to pay money with any view to being released from that obligation by lapse of time. It violates no right of his, therefore, when the legislature says, time shall be no bar, though such was the law when the contract was made. 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.

Id., at 213.

Similarly, in Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945), the Supreme Court of the United States upheld the constitutionality of a statute of limitation which extended the time within which to bring an action for violation of securities laws. Similar to the statute at issue here, the statute in Chase provided a one year period within which to bring any actions previously time-barred, no matter when they accrued. The Court relied on its prior holding in Campbell, supra, and further recognized:

> Some rules of law probably could not be changed retroactively without hardship and oppression, and this whether wise or unwise in their origin. 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 .... This is not a case where appellant's conduct would have been different if the present rule had been known and the change foreseen. It does not say, and could hardly say, that it sold unregistered stock depending on a statute of limitation for shelter from liability.

Id., 65 S.Ct. at 1143. Accord, International Union of Electrical, Radio & Machine Workers, AFL-CIO, Local 790 v. Robbins & Meyers, Inc., 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976).

This unassailable rationale is quintessentially applicable to cases of intentional child sexual abuse. The law cannot allow someone to intentionally abuse a helpless child with the reasonable expectation that, if he could conceal it for long enough, he could get away with it.

The Court of Appeals of Minnesota held exactly that in K.E. v. Hoffman, 452 N.W.2d 509 (Minn. App. 1990). The court relied upon Chase to uphold a statute providing that sexual abuse claims do not arise until the victim knew or had reason to know his injury was caused by abuse, when applied to a claim which was time-barred prior to the enactment of the statute. The court noted that the "hardship" or "oppressive effects" raised by the Chase court as a possible basis for invalidating statutes reviving time-barred actions would only arise where a defendant justly and reasonably relied upon the previous limitations statute.

> The alleged sexual abuse of appellant in 1975, in other words, would have to have been undertaken under the assumption the limitations period would continue in effect.

Id., at 513. The law cannot sanction such an assumption.

The courts of many states have applied similar reasoning to uphold the retroactive application of extended statutes of limitation to revive a variety of causes of action that otherwise would have been barred.

In Canton Textile Mills, Inc. v. Lathem, 253 Ga. 102, 317 S.E.2d 189 (1984), the Georgia Supreme Court held constitutional a 1982 statute extending the statute of limitations for certain worker compensation claims, including some claims that had expired. The previous limitation period had been one year. In doing so, the court expressly overruled the holding of an earlier case. The Georgia Supreme Court approved the view expressed by Justice Jackson in Chase:

> Statutes of limitation . . . represent expedients, rather than principles. They are by definition arbitrary and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. . . . Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of

limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control. Id., 325 U.S. at 314.

Id., at 192. The Supreme Court of Arizona reached the same conclusion in Chevron Chemical Company v. Superior Court of the State of Arizona, 641 P.2d 1275 (1982) upholding the constitutionality of a statute reviving a workers' compensation claim previously time-barred.

New York and Massachusetts have reached similar results in reviving cases involving toxic substances, where the poisonous effect of the substance did not manifest itself until years after the exposure and after the statutes of limitations had run. McCann v. Walsh Constr. Co., 123 N.Y.S.2d 509 (App. Div. 1953), aff'd, 119 N.E.2d 596 (1954) (caisson disease); In Re Agent Orange Product Liability Litigation, 597 F. Supp. 740 (E.D. NY 1984); Hymowitz v. Eli Lilly & Co., 518 N.Y.S.2d 996 (Sup. Ct. 1987), aff'd, 541 N.Y.S.2d 941 (1989) (prenatal exposure to diethylstilbestrol [DES]); McGowan v. New York Tel. Co., 544 N.Y.S.2d 423 (Sup. Ct. 1989) (polyvinyl chloride); City of Boston v. Keene Corp., 547 N.E.2d 328 (Mass. 1989) (asbestos). And the Florida Supreme Court, under conflict of law principles, applied the New York asbestos revival statute to revive a cause of action that otherwise would have expired. Meehan v. Celotex, 523 So.2d 141, 146 (Fla. 1988).

The effect of child sexual abuse can be just like the effect of toxic poisons. The child may have no ability to make any connection between his or her problems and the abuse until long

after the abuse has ended and the child has left the control of the abuser.

Other states have also followed the lead of these courts, particularly in cases involving paternity and child abuse.

In Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. App. 1989), the court upheld the constitutionality of a statute extending the limitations period for sexual molestation torts and expressly reviving causes of action which were previously time barred. The court distinguished earlier cases which, like the Florida cases relied on below, contained dicta indicating that an enlargement of limitations can only be permitted to affect cases in which the previous limitation period had not expired. In allowing the legislature to revive an action previously time-barred, the court relied not only on Campbell and Chase, but also upon the important state interest at stake:

> In this case the important state interest espoused by section 340.1 is the increased availability of tort relief to plaintiffs who had been the victims of sexual abuse while a minor. ... The language of the retroactivity provision of section 340.1 indicates a clear legislative intent to maximize claims of sexual-abuse minor plaintiffs for as expansive a period of time as possible.

257 Cal. Rptr. at 578.

See also, Cosgriffe v. Cosgriffe, 865 P.2d 776 (Mont. 1993) (upholding statute reviving expired causes of action for child

sexual abuse) Schulte v. Wageman, 465 N.W.2d 285 (Iowa 1991) (upholding revival of certain paternity actions); Heck v. McConnell, 418 N.W.2d 678 (Mich. App. 1987) (upholding a statute extending limitation period for filing paternity suits) and Roe v. Doe, 581 P.2d 310 (Haw. 1978) (upholding general constitutionality of statute extending the statute of limitations in paternity cases to three years from the birth of the child or from the effective date of the statute, whichever is later.) But, see Starnes v. Cayouette, 244 Va. 202, 419 S.E.2d 669 (Va. 1992) (due process right vests because of Virginia Statute §8.01-234 prohibiting revival.)

These cases make sense. They should be applied to this statute. No child abuser can commit such a horrible crime with any kind of reasonable expectation that his liability will at some point be limited. The right not to answer for this kind of act should never vest.

CONCLUSION

Times change and the law, notwithstanding stare decisis, changes with the times. Although incest and child abuse are as old as recorded history, it is only recently that society as a whole, and victims as individuals, have had the courage to acknowledge the depth and extent of the problem. In enacting the extended statute of limitations, the Florida legislature has attempted to come to grips with the inability of abuse victims promptly to seek redress. It is error for the court below to rule as a matter of law on a motion to dismiss that there is no set of facts under which these

plaintiffs can maintain a cause of action in this matter. Nowhere in the complaint are facts alleged from which the court can determine the date on which the plaintiffs, because of the familial authority exercised by the perpetrators, were finally able to discover and act on the legal injury done to them by defendants.

But it is not just these plaintiffs and these defendants whose interests are at stake in this case. We acknowledge that, because of social, financial and practical reality, most cases of child sexual abuse will never reach the civil courts of this state. Even victims who are able to overcome all of the psychological and social obstacles will be hard pressed to find an economically feasible way to bring suit. See, e.g., Landis v. Allstate Insurance Co., 546 So.2d 1051 (Fla. 1989) (no homeowners insurance coverage for sexual molestation by babysitter).

But the legislature, as part of its efforts to combat child sexual abuse, has enunciated an unequivocal policy of opening up the courts to these victims. The trial court has rejected that policy as unconstitutional to the extent it revives extinguished claims. This case thus has implications for all of the alleged victims of child sexual abuse, their alleged perpetrators, and our society as a whole. It presents, in its specific context, important issues about legislative balancing to ensure that, consistent with our constitution, the courts of this state remain open for redress of injuries.

We urge this Court to affirm the decision of the district court, and to allow the victims of child sexual abuse access to

courts for whatever small amount of relief they may be able to obtain.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to: Christopher P. Jayson, Esquire, Suite 1700 201 East Kennedy Boulevard, P.O. Box 173077, Tampa, FL 33672; Martin Errol Rice, Esquire, P.O. Box 205, St. Petersburg, FL 33731; Anthony S. Battaglia, Esquire and Brian P. Battaglia, Esquire, P.O. Box 41100, St. Petersburg, FL 33743; and Richard J. DaFonte, Esquire, 1000 Belcher Road, South, Suite 2, Largo, FL 33641 this 10 day of March, 1994.

Respectfully submitted,

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