

IN THE SUPREME COURT OF OHIO

U.W., Plaintiff-Appellee,  vs.  DEPARTMENT OF YOUTH SERVICES, Defendant-Appellant,	CASE NO.: 13-0824  ON APPEAL FROM THE TENTH DISTRICT APPELLATE DISTRICT  COURT OF APPEALS CASE NO. 12AP000959
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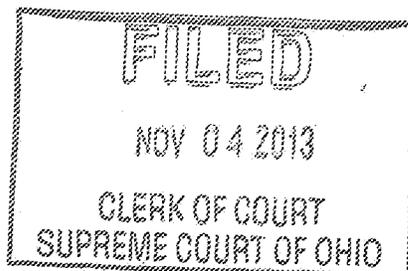
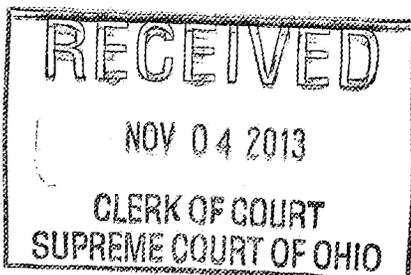
MERIT BRIEF OF APPELLANT U.W.

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## **STATEMENT OF THE FACTS AND STATEMENT OF THE CASE**

U.W. filed a complaint alleging that she was sexually abused while in the custody of the Department of Youth Services between the dates of April 2, 2000 and April 2, 2001. U.W. alleged that she was sexually abuse by employees of the Department of Youth Services. On August 22, 2012, the Department of Youth Services filed a “Motion to Dismiss” arguing that the Plaintiff failed to state a claim because the action was governed by the two-year limitation on actions set forth in ORC 2743.16(A). U.W. argued that her claim was governed by the statute of limitations set forth in ORC 2305.111 titled Assault or Battery Actions –Childhood Sexual Abuse. The Court of Claims ruled that U.W.’s claims were conclusively time-barred pursuant to the two-year statute of limitations set forth in ORC 2743.16(A).

The Court of Claims reasoned that the statute of limitations set forth in ORC 2743.16 regarding claims against the State takes precedence over all other statutes of limitations in the Ohio Revised Code. The Court reasoned further that U.W.’s action accrued when she turned 18, therefore, her claim was time-barred because she is suing the state rather than a private facility. The effect of this ruling is that childhood sex abuse victims have a two-year statute of limitation if they sue a state-operated facility and a twelve-year statute of limitations if they sue a private facility.

U.W. appealed this matter to the Tenth District Court of Appeals. The Tenth District Court of Appeals affirmed the Court of Claims decision. The Supreme Court of Ohio accepted this appeal. This Court ordered that the parties brief the following issue:

**THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF’S CLAIMS  
PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF’S CLAIMS ARE  
NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE OF LIMITATIONS OF A  
CHILDHOOD SEX ABUSE ACTION.**

**ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

**PROPOSITION OF LAW**

**THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S CLAIMS  
PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF'S  
CLAIMS ARE NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE  
OF LIMITATIONS OF A CHILDHOOD SEX ABUSE ACTION.**

The Court of Claims errantly dismissed U.W.'s claims pursuant to Civil Rule 12(B). The Court's dismissal was erroneous for several reasons. First, the legislature intended that a twelve-year statute of limitations apply to **all** civil actions for victims of child hood sexual abuse, including claims against State actors. Second, it would violate Ohio public policy to except public facilities and public officials from the longer statute of limitations. Finally, the Court violates U.W.'s right to Equal Protection under the law because there is no rational basis or compelling reason for treating similarly situated childhood sexual abuse victims differently under the law.

**THE LEGISLATURE INTENDED A LENGTHY STATUTE OF LIMITATIONS FOR  
ALL CIVIL ACTIONS INVOLVING CHILDHOOD SEX ABUSE**

The Court of Claims erred by dismissing U.W.'s claims pursuant to Civil Rule 12(B). Dismissal under Civ. R. 12(B)(6) was not proper based on a statute of limitations basis unless the complaint conclusively shows that the action is time-barred. *Leichliter v. Natl. City Bank of Columbus*, 134 Ohio App.3d 26 (10th Dist. 1999). A motion to dismiss is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio

St.3d 545, 548. When considering a Civ.R. 12(B)(6) motion to dismiss, a court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas* (1995), 72 Ohio St.3d 461, 461. A complaint will not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would warrant relief. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 71 O.O.2d 223, 327 N.E.2d 753, syllabus. U.W.'s claims fall squarely within the extended statute of limitations for childhood sex abuse under 2305.11. U.W. notes that she was 20 years old at the time of the enactment of the 2305.111 but still falls within the statutes parameters because the statute is retroactively applied and she had not yet discovered her abuse.

As a preliminary matter, U.W. made claims against a state-run facility but the essential character of this action is based on offensive sexual touching while U.W. was a child. This makes her claim subject to the statute of limitations for Childhood Sexual Abuse. *See Feeney v. Eshack* (Ohio App. 9 Dist., 08-19-1998) 129 Ohio App.3d 489, 718 N.E.2d 462, dismissed, appeal not allowed 84 Ohio St.3d 1447, 703 N.E.2d 326; *Tichon v. Wright Tool & Forge* (Ohio App. 9 Dist., 07-11-2012) 2012-Ohio-3147, 2012 WL 2832949 (Holding that when an intentional tort claim against an employer sounds in assault or battery, it is subject to a one-year statute of limitations governing suits for assault or battery); *Kuhar v. Marc Glassman, Inc.* (Ohio App. 8 Dist., Cuyahoga, 05-21-2009) No. 91989, 2009-Ohio-2379, 2009 WL 1424020, Unreported, appeal not allowed 123 Ohio St.3d 1424, 123 Ohio St.3d 1425, 914 N.E.2d 1065, 2009-Ohio-5340, certiorari denied 130 S.Ct. 1890, 176 L.Ed.2d 364, (Holding that Although store patron referenced the term "negligence" in his complaint against store, the factual allegations were that he was physically attacked and abused by store employees, and thus, he was bringing a claim for assault and battery); *Frederic v. Willoughby* (Ohio App. 11 Dist., Portage, 06-27-2008) No. 2007-P-0084, 2008-Ohio-3259, 2008 WL 2582593,

Unreported. (holding that the true nature of subject matter of neighbor's claims, against allegedly incompetent man who lived next door to her, for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress based on man's sexual assault of his neighbor in her home was intentional acts, i.e., assault and battery). Although, U.W. made claims in various forms, her action is based on sexual assault and battery.

U.W.'s claims were filed within the statute of limitations set for childhood sexual abuse. Ms. Watkins claim should be governed by the twelve-year statute of limitations that the legislature intended for sex abuse victims. The Legislature enacted ORC 2305.111, the childhood sexual abuse statute, to replace the common law discovery rule set forth *Ault v. Jasko* (1994), 70 Ohio St.3d 114. Under the common law discovery rule, a victim's claim for sexual abuse accrued upon discovery of the sex abuse or the party perpetrating the abuse. This rule left open the possibility that a cause of action may not accrue until decades. Under the "discovery rule," a plaintiff would have one year from the accrual of the action to file a lawsuit. The Legislature enacted ORC 2305.111 which made a claim for childhood sexual abuse accrue at the age of majority. The Plaintiff would then have 12 years to file a lawsuit after reaching the age 18. It was clear that the Legislature intended a lengthy statute of limitations for these types of cases.

The history of the legislation indicates that the legislature meant for the twelve-year statute to apply to *all* civil actions, including those brought against a state-run facility. The history of the legislation reads:

**HISTORY: 140 v S 183 (Eff 9-26-84); 149 v S 9. Eff 5-14-2002; 151 v S 17, § 1, eff. 8-3-06.** □

The provisions of § 3 of 151 v S 17 read as follows:

SECTION 3. (A) As used in this section, "childhood sexual abuse" has the same meaning as in section 2305.111 of the Revised Code, as amended by this act. The court need not find that any person has been convicted of or pleaded guilty to an offense under Chapter 2907. of the Revised Code that is specified in that definition in order for the conduct that is the violation constituting that offense to be childhood sexual abuse for purposes of this section.

(B) The amendments to section 2305.111 of the Revised Code made in this act shall apply to *all* civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurs on or after the effective date of this act, to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act, to *all* civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurred prior to the effective date of this act in relation to which a civil action for assault or battery has never been filed and for which the period of limitations applicable to such a civil action prior to the effective date of this act has not expired on the effective date of this act, and to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurred prior to the effective date of this act in relation to which a civil action for that claim has never been filed and for which the period of limitations applicable to such a civil action prior to the effective date of this act has not expired on the effective date of this act.

Emphasis added.

The purpose of a lengthy statute of limitations for child sexual abuse is obvious. Child sexual abuse is a large national problem. Research has shown that as many as one in four women and one in five men suffered abuse as a child and that almost 90% of abuse never gets reported. Considering how long victims often take to find the courage to speak out, the statute of limitations is detrimentally short and act as a barrier to justice. “It routinely takes the victims decades to come forward if they come forward at all. That's the nature of the reaction to child sexual trauma. It takes time.” John Salvesen, Executive Director of the foundation to abolish child abuse, *The Morning Call*, July 10, 2012. There is an extensive and persuasive body of scientific evidence establishing that child sexual abuse victims are harmed in a way that makes it extremely difficult to come forward. Therefore, victims typically need decades to do so. See Rebecca Campbell, Ph.D., “Neurobiology of Sexual Assault: Explaining Effects on the Brain,” National Institute of Justice (2012); *R.L. v. Voytac*, 199 N.J. 285, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006). See also, Elliot Nelson, et al., *Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study*, 59(2) *Archives of General*

Psychiatry, 139-45 (2002); Mic Hunter, Psy.D., Abused Boys (1991); R.C. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse Negl. 2, 177-93 (1983).

The Supreme Court of Ohio ruled in *Pratte v. Stewart*, 125 Ohio St.3d 473, that ORC 2305.111 unambiguously sets a twelve-year statute of limitations (time limit) for the filing of civil lawsuits based on childhood sexual abuse that occurred after the Aug. 3, 2006 effective date of that legislation and applies that same 12-year limitations period to the filing of suits based on abuse that occurred prior to Aug. 3, 2006, if no prior claim has been filed and if the limitations period under the previous version of the law had not expired before the new law took effect. The Court held further that the 12-year time limit for filing child sexual abuse suits does not begin to run until a child victim reaches the age of majority (18). The Court additionally held that after a victim's 18<sup>th</sup> birthday, the twelve-year limitations period is not tolled (stopped from running) based on the victim's failure to "discover" or recall the abuse due to repressed memories of those events because the legislation does not contain a tolling provision for persons with repressed memories.

The *Pratte* Court reasoned that legislature intended a lengthy statute for victims of childhood sexual abuse. The Court stated that

We can reasonably infer that the General Assembly considered repressed memory by increasing the limitations period for claims of childhood sexual abuse from one year to 12 years....It is reasonable to conclude that the legislature had *Ault* in mind when it increased the limitation period from one year to 12 years and sought to afford victims a greater period of time in which to recover their repressed memories.

*Id.* At Paragraphs 54 and 55.

The Court did not contemplate the statute in conjunction with ORC 2743.16 regarding claims against state. The legislature and the Court spoke strongly about the public interest of allowing childhood sexual abuse victims have access to the courts in light of psychological consequences of childhood sexual abuse trauma.

Prior to the enactment of ORC 2305.111, private institutions and state-operated institutions were subject to the same statute of limitations period. The Court of claims previously followed the discovery rule, meaning the Plaintiff's cause of action did not accrue until shortly after the discovery of the abuse. The Court of claims allowed claims that were filed well beyond the age of majority under this common law rule. Under the discovery rule, State and Private institutions were treated equally with regard to sex abuse.

The Ohio legislature indicated its strong public policy of lengthy statute of limitations by making long statutes of limitations for the prosecution of childhood sexual abuse perpetrators. Under Ohio criminal law, statutes of limitations are longer than two years past a child's 18<sup>th</sup> birthday. Pursuant to ORC 2901.13, the State may prosecute a child for a sex abuse act that occurs six years after the child reaches the age of majority. Depending on the circumstances, some acts have no statute of limitations. This law applies to all perpetrators and victims equally. The criminal statutes recognize that a sufficient length of time after a child becomes an adult is necessary for protection of victims. A two-year statute of limitations is unreasonable.

The Court of Claims relies on sovereign immunity statute of limitations law that the legislature and the Ohio Supreme Court did not contemplate. ORC 2743.16 states in pertinent part:

(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

The Court of Claims reasoned that U.W's claims accrued on her 18<sup>th</sup> birthday and that the statute of limitations set forth in ORC 2743.16 takes precedence over all other statute of limitations within the ORC. The Court cited *Cargile v. Ohio Department of Admin. Serv.*, 10<sup>th</sup> Dist. No. 11AP-743, 2012-Ohio-2470 which held that no Ohio Revised Code Section statute of limitations trumps the statute of

limitations set forth in 2743.16. This ruling violates public policy. It does not take into account psychological conditions associated with childhood sexual trauma such as repressed memories and the shame of coming forward with a sexual abuse allegation.

Other States with similar statutes of limitations for childhood sexual abuse either exempt sovereign immunity statutes of limitations and/or have legislation pending to overtly except the sovereign immunity within the text of the child sexual abuse statute. In Pennsylvania, the legislature enacted a childhood sexual abuse statute of limitations for twelve years past the victims 18<sup>th</sup> birthday. There is currently legislation pending to explicitly add language to that statute exempting sovereign immunity statute of limitations. PA Senate Bills 1103 and 238. In Illinois, the statute of limitations for civil childhood sex abuse is Age 18 plus 20 years past the age of majority. See 735 I.L.C.S. § 5/13-202.2. California Senate Bill 131 seeks to extend the statute of limitations to 30 years past the victim's 18<sup>th</sup> birthday. Senate Bill 29 in Delaware seeks to eliminate the statute of limitations in childhood sexual abuse cases and eliminate it for state actors who act with "gross negligence. The scientific evidence of this type of trauma supports the longer statute of limitations for childhood sexual abuse. Other states, legislatures are educated with regard to this scientific evidence regarding childhood sexual abuse trauma.

Ohio does provide for a twelve-year statute of limitations, but victims typically have a difficult time dealing with many issues, particularly such as repressed memories. Twelve years is a very short period of time within which to process the information, obtain the needed counseling to be ready to go to court, and then to find an attorney and proceed to the judicial process. Two years is unreasonable and blocks access to the court.

Ohio's children deserve a lengthy statute of limitations to protect sex abuse victims today and in the future, and to provide access to justice for the many victims suffering in silence. Ohio's

children deserve it for all civil cases involving sex abuse as the legislature intended.

**TWO DISPARATE STATUTES OF LIMITATIONS FOR CHILD SEXUAL ABUSE IN PRIVATE FACILITIES VERSUS PUBLIC FACILITIES VIOLATES EQUAL PROTECTION.**

The ruling of the Court of Claims deprives U.W. of equal protection of the law. U.W. will be deprived of equal protection of the law if there is a ten-year difference regarding the statute of limitations. The Fourteenth Amendment to the United States Constitution, provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. See *U.S. Const. amend. XIV*. The laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." *Glonn v. American Guarantee Co.*, 391 U. S. 73, 75-76 (1968).

"[D]iscrimination against individuals or groups is sometimes an inevitable result of the operation of a **statute**." *Roseman v. Firemen & Policemen's Death Benefit Fund* (1993), 66 Ohio St.3d 443, 446, 613 N.E.2d 574, 577. "The mere fact that a **statute** discriminates does not mean that the **statute** must be unconstitutional." *Id.* at 446-447, 613 N.E.2d at 577. *Reed v. Reed*, 404 U. S. 71, 75-76 (1971) "In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. *Barbier v. Connolly*, 113 U. S. 27 (1885); *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61 (1911); *Railway Express Agency v. New York*, 336 U. S. 106 (1949); *McDonald v. Board of Election Commissioners*, 394 U. S. 802 (1969). The Equal Protection Clause of that amendment does,

however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification `must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920)."

U.W. asserts that this case involves a fundamental right: the right to privacy. In determining whether a statute violates equal protection, the court must examine the class distinction drawn to decide if a suspect class or fundamental right is involved in order to determine what level of scrutiny to apply. *Id.* at 447, 613 N.E.2d at 577. The right to sue a political subdivision has been held not to be a fundamental right. *Fabrey, supra*, 70 Ohio St.3d at 353, 639 N.E.2d at 33. This case does not involve a suspect class, which has been traditionally defined as one involving race, national origin, religion, or sex. *Id.* However, U.W. asserts that this case involves the recognized fundamental right to Privacy, implicit in the Constitution. See *San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1.

In *Roe v. Wade* (1973) 410 U.S. 113, the court held that the right to privacy is a "right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and *sexual privacy* said to be protected by the Bill of Rights or its penumbras, see *Griswold v. Connecticut*, 381 U. S. 479 (1965); *Eisenstadt v. Baird*, 405 U. S. 438 (1972); *id.*, at 460 (WHITE, J., concurring in result); or among those rights reserved to the people by the Ninth Amendment, *Griswold v. Connecticut*, 381 U. S., at 486 (Goldberg, J., concurring)." Emphasis added. This case involves "sexual privacy" and the psychological reaction to childhood

sexual abuse. In *Planned Parenthood of Pennsylvania v. Casey*, the U.S. Supreme Court held that “Undue Burdens” could not be placed on a woman who was exercising her right to privacy. In *U.S. v. Vuitch* (1973), the U.S. Supreme Court determined that the word “health,” in the context of the right to privacy, includes a person’s psychological health.

Accordingly, this Court’s Equal Protection analysis should involve strict scrutiny of the application of the two-year statute of limitations for sex abuse victims. Strict Scrutiny means that the State’s system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a “heavy burden of justification,” that the State must demonstrate that its shorter statute of limitations has been structured with “precision,” and is “tailored” narrowly to serve legitimate objectives and that it has selected the “less drastic means” for effectuating its objectives. See *San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1. The State of Ohio cannot demonstrate that a two-year statute of limitations is narrowly tailored to serve its purpose. One purpose of R.C. 2743.16 is to preserve the fiscal resources of the political subdivision. Preserving state money can sometimes be a rational reason for creating a particular classification. However, when preserving state money is accomplished by treating an individual in an arbitrary manner, it is not a rational reason to classify. *Roseman, supra*, 66 Ohio St.3d at 450, 613 N.E.2d at 579.

The state of Ohio has alternative means to preserve money in these types of cases. First, the Plaintiffs must still make a prima facie case of sexual abuse. This will be difficult given that sexual abuse is often hard to prove. Often times, the sexual abuse took place in a setting with just the child and the perpetrator so there are no witnesses to the abuse. The longer it takes for a plaintiff to bring the suit, the more likely it will be the evidence will have been destroyed and memories will have

faded. Additionally, the victims may have repressed or partial memories of the events due to trauma. Although lawsuits may be filed, Plaintiffs will be limited in recovery because of the nature of sex abuse.

Another alternative way the state preserves money for these types of cases is the recent legislative tort reform. The primary type of damages awarded in childhood sexual abuse cases is non-economic and punitive damages. Ohio Revised Code §2315.18 establishes caps on “non-economic loss” in a “tort action.” Non-economic loss means non-pecuniary harm resulting from injury or loss to person or property including, but not limited to, pain and suffering, loss of society, consortium, companionship, education, disfigurement, mental anguish, and any other intangible loss. A tort action means any action for damages to person or property, but does not include, most significantly, actions for wrongful death, medical or dental malpractice or breach of contract. Non-economic loss is capped at \$250,000.00 or an amount equal to three times the economic loss, whichever is greater, to a maximum of \$350,000.00 for each plaintiff or a maximum of \$500,000.00 for each occurrence that is the basis of the tort action. If punitive damages are awarded, they are limited to two times the amount of compensatory damages. There is a further limit for individuals or “small employers” (less than 100 full time employees or, if a manufacturer, less than 500). If a defendant is an individual or a small employer, punitive damages are limited to the lesser of two times compensatory damages or 10% of the employer’s net worth, up to a maximum of \$350,000.00. Also, there is no prejudgment interest to be calculated on punitive or exemplary damages.

Under Ohio law, *even if there were no sovereign immunity statute of limitations*, the damages for such claims against government defendants are capped near \$250,000. These caps would be fairly applied to both private and public defendants. These reforms provide for a penalty for state

offenders and some justice for the victims without bankrupting the state with sex abuse litigation.

Even reviewing the application of the shorter statute of limitations according to the "rational basis" test, the application of the shorter statute does not pass this test. The must be upheld if it bears a rational relationship to a legitimate governmental interest. *Roseman, supra*, 66 Ohio St.3d at 684, 711, 576 N.E.2d 66 (A.W. Sweeney, J., concurring in part and dissenting in part). R.C. 2743.16 is a statute of limitations. The goal of any general statute of limitations is to prevent plaintiffs from sleeping on their legal rights to the detriment of defendants. On its face, R.C. 2743.16 bears a real and substantial relationship to this goal. However, once applied to childhood sex abuse victims, it produces unfair results. While the General Assembly may provide for suits against political subdivisions and define the limitations, it may not arbitrarily and irrationally decide who the plaintiffs will be. Childhood sexual abuse victims are not sleeping on their rights, they are psychologically processing severe trauma before they are able to make a civil claim.

A short statute of limitation for childhood sexual assault victims that sue the state does not accomplish the government interest of saving the State of Ohio money either. Currently, Ohio pays the price for abuse in several ways. First, the State suffers from reduced productivity of the victims because they have been disabled by the abuse. To the extent that they have not received justice or been made whole, they produce less tax-generating income. If Ohio shuts off justice before victims are able to come forward, many victims will more likely suffer depression and serious illness. Ohio bears the costs of divorces, substance abuse, broken homes, and neglected children, which is often issues in abuse survivors lives. This creates a drain on Ohio resources for guidance for troubled youths and state agencies to deal with troubled family. Additionally, the survivors' medical/psychological bills are likely to be subsidized by state and federal medical programs and funds.

Finally, this bar to justice for child abuse victims does not give the state an incentive to prevent abuse. This makes an endless cycle of expenses for the state to foot the bill for abuse survivors. Catholics have learned about the national scope and human impact of sexual abuse the hard way. Catholic and other private groups are motivated to prevent abuse because of massive, headlining civil litigation. But the facts clearly show that the sexual abuse of minors is in no way a uniquely — or even disproportionately — “Catholic” problem. There’s a good reason why SESAME, a national public-school abuse-victim group, has had difficulty organizing. Our state law makes it useless for any such group to organize or act. Civil claims are often the only way child sex abuse victims can obtain access to justice. In the context of clergy, Professor Timothy Lytton has shown that civil tort claims have been the only means by which survivors have been able to obtain any justice. Timothy Lytton,  Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse  (Harvard University Press, 2008). It has also been motivation for the catholic organizations to take measures to prevent sexual abuse. For kids that are abused in public facilities, civil justice is blocked.

The Court of Claims ruling effectively treats childhood sex abuse victims differently based on whether they were abuse at a private versus public facility. This distinction is arbitrary and could not have been intended by the legislature when it drafted ORC 2305.111. The Court of claims application of sovereign immunity sharply limits a family’s ability to sue a public school district, or similar public institutions, for the sexual abuse of their child or any other damaging activity. For Catholics, clergy, and any reasonable person, that raises two questions. First, why can a victim of teacher or clergy abuse in a Catholic school or parish wait a large length of time before initiating such litigation, while the victim *of exactly the same and even more frequent abuse* in a public school or facility setting loses his or her claim within two years of his or her 18<sup>th</sup> birthday? The facts also

show that too many public authorities have had too little accountability on the issues of sexual misconduct and abuse for too long. As a society, if Ohioans are really serious about ending the sexual abuse of minors, that needs to change.

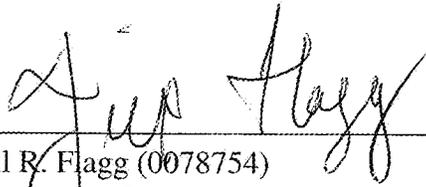
This case is easily distinguishable from *Cargile* and other statute of limitations cases where the Plaintiffs are limited to two years when suing the state. Those cases don't involve sexual privacy and offensive bodily touching. They don't involve the fundamental right to privacy. Those cases do not involve minors who experience the deepest type of psychological trauma. Those case don't involve the phenomenon of repressed memories. Additionally, as discussed above, the shortened statute to is not rationally related to fiscal interests of the State of Ohio because abuse survivors unable to seek justice costs the state more money because of the psychological consequences of abuse.

In conclusion, U.W. asserts that a two-year statute of limitations for childhood sex abuse victims that sue the State is unreasonable, unconstitutional, and was not intended by the legislature. On a matter as ugly and grave as the sexual abuse of minors, *exactly the same* civil and criminal penalties, financial damages, time frames for litigation and statutes of limitations should apply against both public and private institutions and their agents. That's fair, that's just, and it serves the ultimate safety of all our young people.

**CONCLUSION**

For the foregoing reasons, the judgment of the Court of Claims should be reversed. The Appellant requests an oral argument with regard to this matter.

Respectfully submitted,

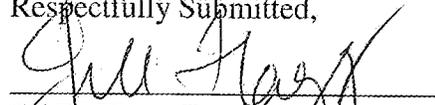
A handwritten signature in cursive script, reading "Jill R. Flagg", written over a horizontal line.

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Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, Jill R. Flagg, Attorney-At-Law, certify that a true and correct copy of the foregoing was sent by First Class United States Mail to Appellee's attorney, Eric Walker, Esq. at 150 E. Gay St., 18<sup>th</sup> Floor, Columbus, OH 43215 on November 1, 2013.

Respectfully Submitted,



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**SIGNAL**

IN THE SUPREME COURT OF OHIO

A-1

**URANUS WATKINS,**

**CASE NO. 13-0824**

**Appellant,**

**On appeal from Case No. 12AP-959  
Previously pending before Ohio's Tenth District  
Court of Appeals**

**v.**

**DEPARTMENT OF YOUTH  
SERVICES,  
Appellee.**

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**NOTICE OF APPEAL BY APPELLANT URANUS WATKINS**

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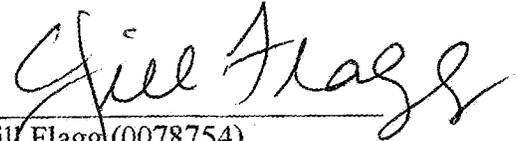
**FILED**  
**MAY 23 2013**  
**CLERK OF COURT  
SUPREME COURT OF OHIO**

**RECEIVED**  
**MAY 23 2013**  
**CLERK OF COURT  
SUPREME COURT OF OHIO**

**Notice of Appeal of Appellant Uranus Watkins**

Appellant Uranus Watkins hereby gives notice of Appeal to the Supreme Court of Ohio from the judgment issued by the Tenth District Court of Appeals in Case No **12AP-959**, on April 25, 2013. This Case raises substantial constitutional questions and questions of public or great general interest.

Respectfully submitted,



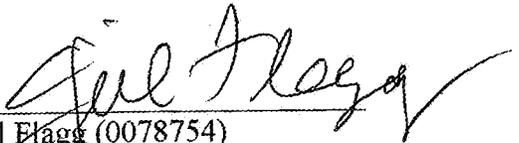
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CERTIFICATE OF SERVICE

I, counsel for Jill R. Flagg, do hereby certify that the foregoing pleading upon the State's attorney at 53 University Dr., Akron, Ohio 44308, on this 22, day of May, 2013, by way of regular U.S. mail delivery.

Respectfully submitted,



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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

U.W.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-959
	:	(Ct. of Cl. No. 2012-05851)
Department of Youth Services,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on April 25, 2013

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*Jill R. Flagg*, for appellant.

*Michael DeWine*, Attorney General, and *Eric A. Walker*, for appellee.

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APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} U.W. is appealing the dismissal of her claim against the Ohio Department of Youth Services. She assigns a single error for our consideration:

THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S CLAIMS PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF'S CLAIMS ARE NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE OF LIMITATIONS OF A SEX ABUSE ACTION.

{¶ 2} The issue before the trial court was which statute of limitations to apply to her claim. U.W. filed her lawsuit over ten years after the sexual assaults she alleged had

occurred. If the overarching statute of limitations for lawsuits against State of Ohio entities contained in R.C. 2743.16 applied, the lawsuit was not timely.

{¶ 3} If R.C. 2305.111 were the applicable statute of limitations, then the lawsuit arguably could proceed.

{¶ 4} R.C. 2743.16(A) reads:

Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

{¶ 5} R.C. 2743.16(C) provides for the statute of limitations to be tolled pursuant to R.C. 2305.16. R.C. 2743.16 does not provide for the tolling of the statute of limitations through the operation of R.C. 2305.111. R.C. 2305.111 reads:

(A) As used in this section:

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified section or division of the Revised Code in order for the conduct that is the violation constituting the offense to be childhood sexual abuse for purposes of this division. This division applies to any of the following violations committed in the following specified circumstances:

(a) A violation of section 2907.02 or of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of section 2907.03 of the Revised Code;

(b) A violation of section 2907.05 or 2907.06 of the Revised Code if, at the time of the violation, any of the following apply:

(i) The actor is the victim's natural parent, adoptive parent, or stepparent or the guardian, custodian, or person in loco parentis of the victim.

(ii) The victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim.

(iii) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the victim is enrolled in or attends that school, and the actor is not enrolled in and does not attend that school.

(iv) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution.

(v) The actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

(vi) The actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes.

(vii) The victim is confined in a detention facility, and the actor is an employee of that detention facility.

(viii) The actor is a cleric, and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(3) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(4) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(5) "Sexual contact" has the same meaning as in section 2907.01 of the Revised Code.

(6) "Victim" means, except as provided in division (B) of this section, a victim of childhood sexual abuse.

(B) Except as provided in section 2305.115 of the Revised Code and subject to division (C) of this section, an action for assault or battery shall be brought within one year after the cause of the action accrues. For purposes of this section, a cause of action for assault or battery accrues upon the later of the following:

(1) The date on which the alleged assault or battery occurred;

(2) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:

(a) The date on which the plaintiff learns the identity of that person;

(b) The date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

(C) An action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

{¶ 6} U.W. turned 18 in 2004. To that extent, she benefited from the clarity which R.C. 2305.111 brings to claims such as hers. However, the statutory framework enacted when the State of Ohio partially waived governmental immunity has not been amended to allow any claims to be pursued against the State of Ohio more than two years after the claims accrued. See for instance, *Cargile v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 11AP-743, 2012-Ohio-2470.

{¶ 7} Consistent with our prior rulings, which have always enforced the will of the Ohio legislature as we see it, we overrule the single assignment of error and affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

DORRIAN and McCORMAC, JJ.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

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