

In the
Supreme Court of Ohio

U.W.,	:	Case No. 2013-0824
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
DEPARTMENT OF YOUTH SERVICES,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 12AP-959
	:	

**MERIT BRIEF OF DEFENDANT-APPELLEE
DEPARTMENT OF YOUTH SERVICES**

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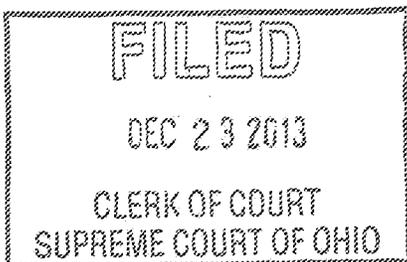


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INTRODUCTION

This case requires the Court to resolve which of two statutes of limitations applies to claims against the State allegedly arising out of childhood sexual abuse: the twelve-year childhood-sexual-abuse statute of limitations in R.C. 2305.111(C) or the two-year Court of Claims statute of limitations governing actions against the State in R.C. 2743.16(A). Consistent with longstanding precedent, both lower courts recognized that the Court of Claims statute of limitations applied for this Court of Claims case, and thus found Plaintiff U.W.’s claims time-barred. The lower courts correctly resolved this statutory-interpretation debate for three principal reasons.

First, the plain text of the two statutes of limitations compels courts to apply the Court of Claims statute of limitations on which the lower courts relied over the childhood-sexual-abuse statute of limitations on which U.W. relies. On the one hand, the Court of Claims statute of limitations contains absolute language—applying, without qualification, to “civil actions against the state.” R.C. 2743.16(A). On the other hand, the childhood-sexual-abuse statute of limitations is subject to a provision that contains equivocal language—indicating that its time limits apply “*unless* a different limitation is prescribed by statute.” R.C. 2305.03(A) (emphasis added). When an unconditional statute with no exceptions purportedly conflicts with a conditional statute with a broad carve out for precisely this situation, it is obvious which statute must yield. The General Assembly could not have been clearer that the Court of Claims statute of limitations displaces the childhood-sexual-abuse statute of limitations for actions against the State.

Second, decades of unbroken judicial practice support the lower courts’ decisions to apply the Court of Claims statute of limitations. The Tenth District has long held that R.C. 2743.16(A) “establishes a maximum two-year limitations period for *all* causes of action[]

brought under the Court of Claims Act.” *Jones v. Ohio Dep’t of Health*, 69 Ohio App. 3d 480, 483 (10th Dist. 1990) (emphasis added). The Tenth District has applied a different statute of limitations only once, and the court promptly overruled that decision and reaffirmed that R.C. 2743.16(A) governs all actions for money damages against the State. *Compare Senegal v. Ohio Dep’t of Rehab. & Corr.*, No. 93API08-1161, 1994 WL 73895, at *3 (10th Dist. Mar. 10, 1994) (applying six-year limitations period to a discrimination claim), *with McCoy v. Toledo Corr. Inst.*, No. 04AP-1098, 2005-Ohio-1848 ¶ 10 (10th Dist.) (rejecting *Senegal* as an “aberration”). U.W. provides no textual reason to depart from this longstanding judicial interpretation against which the General Assembly passed the childhood-sexual-abuse statute of limitations in 2006.

Third, because U.W. lacks textual grounding for her view, her requested exception to the Court of Claims statute of limitations would result in haphazard, unpredictable application of that time limit in cases against the State in the Court of Claims. The General Assembly structured the childhood-sexual-abuse statute of limitations in the same way as nearly every other statute of limitations that applies in the courts of common pleas. Many of those statutes provide limitations periods longer than R.C. 2743.16(A)’s two-year limit. If this Court holds that the childhood-sexual-abuse statute of limitations creates an exception to the Court of Claims statute of limitations, it could enact a sea change. Plaintiffs with other claims governed by longer limitations periods—including claims based on real estate, contract, tort, and more—will initiate litigation in the Court of Claims that everyone has long regarded as time-barred. Given that U.W.’s argument has no logical end point, the lower courts would have no guidance about what other statutes create similar exceptions to R.C. 2743.16(A). Far better to adopt a consistent rule grounded in text and history than a disruptive one based on policy arguments, no matter how compelling they are.

At day's end, U.W. recognizes that her statutory argument lacks merit. So she falls back on a constitutional argument, asserting that the Court of Claims statute of limitations violates the federal Constitution's Equal Protection Clause as applied to claims of childhood sexual abuse. But U.W. waived this argument by failing to raise it in the Court of Claims and to develop it in the Tenth District. Even if she had not waived the argument, moreover, it fails on the merits. Because the challenged statutory classification neither proceeds along suspect lines nor jeopardizes fundamental rights, U.W. must prove that no conceivable rational basis supports it. Yet this Court has already held that the Equal Protection Clause allows the General Assembly to adopt different procedures in the Court of Claims for actions against the State than the procedures that apply in the courts of common pleas for actions against private parties. Indeed, with respect to the precise question here, many other federal and state courts have rejected arguments that the Equal Protection Clause prohibits shorter statutes of limitations for actions against the government than apply for actions against private parties. U.W. offers no good reason for this Court to depart from this substantial body of authority against her position.

For these reasons, and those that follow, the Court should affirm the judgment below.

STATEMENT OF THE CASE AND FACTS

- A. The General Assembly enacted a statute of limitations providing that all actions for money damages against the State must be commenced no later than two years after the cause of action accrues.**

Historically, “the state and its officers were immune from tort and other liability for wrongs committed by agents of the state when acting in their official capacity.” *Conley v. Shearer*, 64 Ohio St. 3d 284, 285 (1992). Effective in 1975, however, the General Assembly adopted the Court of Claims Act, which allowed plaintiffs to bring actions for money damages against the State in the newly created Court of Claims. R.C. Chapter 2743; Am. Sub. H.B. No. 800, 135 Ohio Laws, Part II, 869-84 (eff. Jan. 1, 1975). The General Assembly vested the

Court of Claims with exclusive jurisdiction to hear such actions, R.C. 2743.03(A)(1), and provided that the State's liability shall generally be determined "in accordance with the same rules of law applicable to suits between private parties," R.C. 2743.02(A)(1). That general rule, however, "is subject to the limitations set forth in this chapter"—the Chapter governing the Court of Claims. *Id.*

Under the relevant "limitation" at issue here, a plaintiff's action for money damages against the State "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." R.C. 2743.16(A) (emphasis added), App'x Exh. B (hereafter, "Court of Claims statute of limitations"). The Act does not provide for the use of any *longer* limitations period applicable to private parties. But the Act does allow for the tolling of the limitations period if the plaintiff is a juvenile or "of unsound mind." R.C. 2743.16(C)(1) (incorporating R.C. 2305.16).

Unrelatedly, in 2006, the General Assembly amended the Title named "Courts—Common Pleas" to include R.C. 2305.111(C), which establishes a twelve-year limitations period for "[a]n action" raising childhood-sexual-abuse claims. Am. Sub. S.B. No. 17, 151 Ohio Laws, Part I, 1108, 1127-29. Whereas the General Assembly has enacted a one-year limitations period for most assault-or-battery actions, R.C. 2305.111(C) establishes a twelve-year limitations period for these actions if they raise "claim[s] resulting from childhood sexual abuse." R.C. 2305.111(C), App'x Exh. C (hereafter, "childhood-sexual-abuse statute of limitations"). This limitations period is also tolled if the claimant is a juvenile or of unsound mind. R.C. 2305.16. Notably, moreover, the General Assembly placed this provision in Chapter 2305, which identifies the general statutes of limitations that apply for an array of different actions in the courts of common pleas. The General Assembly has long specified that these various statutes of

limitations in Chapter 2305 apply “*unless* a different limitation is prescribed by statute.” R.C. 2305.03(A) (emphasis added), App’x Exh. D.

The childhood-sexual-abuse statute of limitations is the neighbor of two other statutes of limitations in Chapter 2305 potentially relevant to this case: the two-year limitations period for claims of negligent infliction of emotional distress and the four-year limitations period for claims of breach of fiduciary duty. R.C. 2305.10(A); R.C. 2305.09(D); *see Lawyers Coop. Publ’g Co. v. Muething*, 65 Ohio St. 3d 273, syl. ¶ 2 (1992) (R.C. 2305.10 provides a two-year limitations period for claims of negligent infliction of emotional distress); *Kotyk v. Rebovich*, 87 Ohio App. 3d 116, 120 (8th Dist. 1993), *overruled on other grounds by Sutton v. Mount Sinai Med. Ctr.*, 102 Ohio App. 3d 641, 644-46 (8th Dist. 1995) (R.C. 2305.09(D) provides a four-year limitations period for claims of breach of fiduciary duty).

B. U.W. brought an action for money damages against the State more than two years after her claims accrued, and the lower courts held that the action was time-barred.

In July 2012, U.W. filed her Complaint in the Court of Claims against the Ohio Department of Youth Services and two of its employees. The Complaint alleges that, at some point between April 2000 and April 2001, U.W. was sexually abused by the two employees. Compl. ¶ 15. During the time in question, U.W. was in custody at the Scioto Juvenile Correctional Facility, a residential facility in Delaware, Ohio. *Id.* ¶¶ 1-3. U.W.’s claims against the Department are based on allegations (1) that the Department “negligently and recklessly inflicted severe emotional distress” on U.W. by hiring and retaining the two employees, and (2) that the Department “breached a fiduciary duty” to her by hiring and retaining them. *Id.* ¶¶ 28-29. According to the Complaint, U.W. was born on August 1, 1986. *Id.* ¶ 4. Accordingly, her causes of action accrued on August 1, 2004, when she reached the age of majority. *See* R.C. 2743.16(C)(1) (cross-referencing R.C. 2305.16); *cf. Pratte v. Stewart*, 125 Ohio St. 3d 473,

2010-Ohio-1860 ¶ 3 (discovery rule does not toll the limitations period under R.C. 2305.111(C)). Because U.W. filed her Complaint on July 31, 2012—nearly eight years after her cause of action accrued—the Department moved, under Ohio Rule of Civil Procedure 12(B)(6), to dismiss her Complaint as time-barred.

The Court of Claims granted the Department’s motion and dismissed the action, concluding that the statute of limitations had run. *U.W. v. Ohio Dep’t of Youth Servs.*, No. 2012-05851 at 2 (Ct. of Cl. Sept. 18, 2012) (hereafter, “Trial Op.”), App’x Exh. A. The court held that the two-year Court of Claims statute of limitations applied for claims against the State. *Id.*; see R.C. 2743.16(A). Applying that statute, the court determined that U.W.’s causes of action accrued in 2004, on her eighteenth birthday. Trial Op. at 2; see R.C. 2743.16(C)(1) (tolling the Court of Claims statute of limitations until the plaintiff reaches the age of majority). Because U.W. filed suit more than two years after that date, her action was time-barred. Trial Op. at 2.

The Tenth District Court of Appeals affirmed. The court first held that under its decision in *Cargile v. Ohio Department of Administrative Services*, No. 11AP-743, 2012-Ohio-2470 (10th Dist.), the Court of Claims had correctly chosen the statute of limitations for claims against the State. *U.W. v. Dep’t of Youth Servs.*, No. 12AP-959, 2013-Ohio-1779 ¶ 6 (10th Dist.) (hereafter, “App. Op.”). *Cargile* held that the “General Assembly clearly intended for the two-year limitation period set forth in R.C. 2743.16(A) to take precedence over *all other statutes of limitation*” when a plaintiff brings an action against the State. 2012-Ohio-2470 ¶ 12 (emphasis added; internal quotation marks and alterations omitted). The court of appeals rejected U.W.’s suggestion that the limitations period in R.C. 2305.111(C) applies, noting that applying R.C. 2743.16(A) was “[c]onsistent with [the Tenth District’s] prior rulings.” App. Op. ¶ 7. To hold otherwise would also contravene “the will of the Ohio legislature.” *Id.* Because U.W. sued more

than two years after she turned eighteen, she did not timely file her cause of action. *Id.* ¶¶ 6-7. The court did not address U.W.’s one-page argument, raised for the first time on appeal, that applying the Court of Claims statute of limitations to her would violate the federal Equal Protection Clause. U.W. appealed, and this Court accepted review. *Case Announcements*, 2013-Ohio-3790 at 9 (Sept. 4, 2013).

ARGUMENT

Defendant-Appellee Department of Youth Services’ Proposition of Law No. I:

Under R.C. 2743.16, an action in the Court of Claims asserting a claim resulting from childhood sexual abuse is time-barred unless the claimant brings it within two years after the cause of action accrued.

A. R.C. 2743.16 applies to all actions for money damages against the State in the Court of Claims, including actions alleging childhood sexual abuse.

The Court should affirm the lower courts’ decisions to dismiss U.W.’s Complaint because the plain text of the relevant statutes illustrates that the Court of Claims statute of limitations applies here. *See* Part A.1. U.W.’s contrary arguments, by contrast, rely on policy arguments that cannot trump the statutory text. *See* Part A.2. Even wrongly assuming U.W.’s arguments, moreover, they do not establish that she timely filed this suit. *See* Part A.3.

1. The Court of Claims statute of limitations, not the childhood-sexual-abuse statute of limitations, unambiguously applies to U.W.’s claims in this case.

The lower courts correctly held that the two-year Court of Claims statute of limitations in R.C. 2743.16(A), not the twelve-year childhood-sexual-abuse statute of limitations in R.C. 2305.111(C), applies to U.W.’s claims. The traditional principles of statutory interpretation confirm that the lower courts reached the correct result.

First, consider the plain language of the Court of Claims statute of limitations. *See Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105 (1973); *see also MedCorp, Inc. v. Ohio Dep’t of Job & Family Servs.*, 121 Ohio St. 3d 622, 2009-Ohio-2058 ¶ 9 (“When construing a statute,

we first examine its plain language and apply the statute as written when the meaning is clear and unambiguous.”). It indicates: “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.” R.C. 2743.16(A). This two-year statute of limitations unambiguously applies to “civil actions against the state” like the action at issue in this case. *Id.*; see R.C. 2743.01(A) (defining “state” to include “all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state”). And nowhere does the statute contain any exceptions for claims against the State allegedly arising out of childhood sexual abuse (or any other categories of claims, for that matter).

Indeed, the General Assembly’s decision expressly to include two qualifications to this two-year period proves that it would also have expressly included U.W.’s implicit exception for childhood-sexual-abuse claims had it meant for that exception. See *State ex rel. Butler Twp. Bd. of Trs. v. Montgomery Cnty. Bd. of Comm’rs*, 124 Ohio St. 3d 390, 2010-Ohio-169 ¶ 21 (“The canon *expressio unius est exclusio alterius* tells us that the express inclusion of one thing implies the exclusion of the other.” (citation omitted)). For one thing, the two-year statute of limitations is “[s]ubject to division (B) of this section.” R.C. 2743.16(A). But that division sets special rules for persons injured by state employees who are on the job, requiring those injured persons to seek a settlement from the State or compensation from the State’s insurer before bringing suit. R.C. 2743.16(B). This qualification does not apply at all to the claims raised in this case.

For another thing, the Court of Claims statute of limitations explicitly imports *shorter* limitations periods from other statutes, which also reinforces that it does not contain an implicit exception for *longer* statutes of limitations found elsewhere. See *Butler Twp.*, 2010-Ohio-169

¶ 21. Normally, plaintiffs must bring actions in the Court of Claims within two years. R.C. 2743.16(A). But if a “shorter period” governs “similar suits between private parties,” that shorter limitations period applies. *Id.* The Act thus departs from the two-year rule for claims otherwise governed by shorter limitations periods but, critically, does *not* depart for claims otherwise governed by longer limitations periods (including childhood-sexual-abuse claims). This disparity reinforces that the General Assembly did not intend to create an exception for claims like the one here. In short, U.W.’s claims unambiguously fall within the two-year statute of limitations for “civil actions against the state” like the action that she brings in this case. *Id.*

Second, consider the plain language of the childhood-sexual-abuse statute of limitations. *See MedCorp*, 2009-Ohio-2058 ¶ 9. To be sure, it states broadly that “[a]n 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.” R.C. 2305.111(C). But—unlike the Court of Claims statute of limitations (which specifically applies to “civil actions *against the state*,” R.C. 2743.16(A) (emphasis added))—this statutory language does *not* specify the particular defendants that are subject to this statute of limitations. *See id.*

Critically, moreover, this childhood-sexual-abuse statute of limitations falls within Chapter 2305—the chapter that establishes general statutes of limitations for a variety of different claims brought in the courts of common pleas. The General Assembly recognized that these default limitations periods could at times be read to conflict with other limitations periods in other portions of the Revised Code designed for particular situations. So it unambiguously subjected these general limitations periods to an important qualification in R.C. 2305.03. That

qualification makes clear that “*unless a different limitation is prescribed by statute*, a civil action may be commenced only within the period prescribed in sections 2305.04 to 2305.22 of the Revised Code”—which encompasses the R.C. 2305.111(C) statute of limitations at issue here. R.C. 2305.03(A) (emphasis added). In other words, the childhood-sexual-abuse statute of limitations comes with an unambiguous disclaimer: It applies “*unless a different limitation is prescribed by statute*.” *Id.* (emphasis added). Here, the Legislature *has* prescribed a different limitation by statute—namely, R.C. 2743.16(A). The Court of Claims statute of limitations contains no similar “unless” clause. Thus, by its plain language, the childhood-sexual-abuse statute of limitations cannot apply where, as here, a different statute of limitations governs.

Third, consider these two limitations periods in the context of their entire statutory schemes. *See State v. Wilson*, 77 Ohio St. 3d 334, 336 (1997) (“In reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body.”). The General Assembly has provided instructions for resolving circumstances where procedural rules applicable to actions in the Court of Claims might differ from procedural rules applicable to actions between private parties. Specifically, procedures in the Court of Claims are governed by a general rule and an exception. The general rule: Actions for money damages against the State shall be governed by “the same rules of law applicable to suits between private parties.” R.C. 2743.02(A)(1). The exception: “[E]xcept that the determination of liability is subject to the limitations set forth in this chapter.” *Id.* In other words, the statutory scheme makes clear that identical procedures apply to cases in the courts of common pleas and the Court of Claims, except when the Court of Claims Act expressly specifies a distinct procedure. This case falls within the exception, not the rule. The Court of Claims statute of limitations is a “limitation[] set

forth in this chapter” (namely, R.C. Chapter 2743) and trumps any conflicting “rule[] of law applicable to suits between private parties” (namely, the childhood-sexual-abuse statute of limitations). *Id.*

The places in which the General Assembly codified these statutes of limitations further eliminates any doubt about which of them controls in this case. *Cf. W. Express Co. v. Wallace*, 144 Ohio St. 612, 616 (1945) (“[T]he title of the act may be utilized” in the “construction and interpretation of a law.”). The General Assembly placed the childhood-sexual-abuse statute of limitations in Title 23, named “Courts—Common Pleas.” Meanwhile, the General Assembly placed the Court of Claims statute of limitations in Chapter 2743, named “Court of Claims.” This difference further supports the conclusion that R.C. 2305.111(C) does not provide an exception to the Court of Claims statute of limitations for suits against the State in the Court of Claims. It falls within a title addressing different suits against different defendants in different courts.

Fourth, consider how these statutes of limitations comport with relevant case law. Courts “normally assume that, when [the legislature] enacts statutes, it is aware of relevant judicial precedent” in the area. *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010); *see Clark v. Scarpelli*, 91 Ohio St. 3d 271, 278 (2001) (“It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment.”); *Tax Comm’n v. Security Sav. Bank & Trust Co.*, 117 Ohio St. 443, 450 (1927) (noting that “[t]he Legislature is presumed to know the decisions of this court”); *see also* 82 C.J.S. Statutes § 377 (Supp. 2013). In 2006, when it adopted the childhood-sexual-abuse statute of limitations, the General Assembly well knew of two longstanding lines of cases—both of which point to the Court of Claims statute of limitations applying in this case.

Under one line of cases, the courts had interpreted the “unless” clause in 2305.03(A)—i.e., the clause indicating that statutes of limitations within Chapter 2305 must give way to different limitations periods—in accordance with its plain meaning. Accordingly, courts held that statutes of limitations outside of Chapter 2305 trump statutes of limitations within that chapter if the two both plausibly could apply to a given claim. *See, e.g., Abraham v. Nat’l City Bank Corp.*, 50 Ohio St. 3d 175, 178 (1990) (applying statute of limitations outside of Chapter 2305 over statute of limitations within that chapter because of the “unless” clause); *Mays v. Carl L. Mays Trust*, No. H-11-004, 2012-Ohio-618 ¶ 9 (6th Dist.) (same); *Dominion Res. Servs., Inc. v. Cleveland Div. of Water*, No. 90641, 2008-Ohio-4855 ¶ 6 (8th Dist.) (same); *Haack v. Bank One, Dayton, N.A.*, No. 16131, 1997 WL 205998, at *4 (2d Dist. Apr. 11, 1997) (same). The General Assembly thus presumably knew that by placing the childhood-sexual-abuse statute of limitations within Chapter 2305, it made the limitations period subject to that chapter’s clear qualification in the “unless” clause.

Under the other line of cases, the Tenth District has consistently held since at least 1984 that the Court of Claims statute of limitations “on its face applies to *all* civil actions against the state *regardless* of the nature of the cause of action.” *DiCesare v. Ohio Dep’t of Transp.*, 84AP-123, 1984 WL 147287, at *5 (10th Dist. Oct. 16, 1984) (emphases added); *see, e.g., Cargile v. Ohio Dep’t of Admin. Servs.*, No. 11AP-743, 2012-Ohio-2470 ¶ 12 (10th Dist.) (“[T]he longest limitations period applicable to actions in the Court of Claims is two years.”); *Simmons v. Ohio Rehab. Servs. Comm’n*, No. 09AP-1034, 2010-Ohio-1590 ¶ 6 (10th Dist.) (“[T]he legislature clearly intended for that two-year limitation period to take precedence over all other statutes of limitation in the Revised Code at large.”); *Anglen v. Ohio State Univ.*, No. 06AP-901, 2007-Ohio-935 ¶ 7 (10th Dist.) (“R.C. 2743.16, as relevant here, provides that all

actions against the state must be commenced no later than two years after the date of the accrual of the cause of action.”); *Taylor v. Ohio State Univ.*, No. 94API11-1639, 1995 WL 311413, at *3 (10th Dist. May 11, 1995) (describing R.C. 2743.16(A) as “the two-year statute of limitations on all suits against the state”); *Fellman v. Ohio Dep’t of Commerce*, 92AP-457, 1992 WL 249607, at *2 (10th Dist. Sept. 29, 1992) (R.C. 2743.16 “was clearly intended to take precedence over all other statute of limitations provisions of the Ohio Revised Code in situations where the state was being sued in the Ohio Court of Claims.”). The Court of Claims likewise had interpreted R.C. 2743.16(A) to “take[] precedence over all other statutes of limitations provisions in the Ohio Revised Code.” *Harris v. Ohio State Univ. Med. Ctr.*, No. 2005-10969, 2006-Ohio-6467 ¶ 10 (Ct. of Cl.).

Before the enactment of the childhood-sexual-abuse statute of limitations, the Tenth District had strayed from this absolute rule only once, but soon corrected course. When a state employee sued the Department of Administrative Services for age discrimination in 1994, the Tenth District applied the six-year statute of limitations applicable to discrimination claims rather than the two-year statute of limitations applicable to claims for money damages against the State. *See Senegal v. Ohio Dep’t of Rehab. & Corr.*, No. 93API08-1161, 1994 WL 73895, at *3 (10th Dist. Mar. 10, 1994). Over the next decade, the Tenth District, without discussing *Senegal*, properly applied the Court of Claims statute of limitations to discrimination claims against the State in at least three cases. *See Ripley v. Ohio Bureau of Employment Servs.*, No. 04AP-313, 2004-Ohio-5577 ¶ 20 (10th Dist.); *Hosseini pour v. State Med. Bd.*, No. 03AP-512, 2004-Ohio-1220 ¶¶ 14-15 (10th Dist.); *Schaub v. Div. of State Highway Patrol*, No. 95APE08-1107, 1996 WL 99756, at *1 (10th Dist. Mar. 15, 1996).

In 2005, the Tenth District addressed the inconsistency. *See McCoy v. Toledo Corr. Inst.*, No. 04AP-1098, 2005-Ohio-1848 (10th Dist.). The court, in an opinion by then-Judge French, called *Senegal* an “aberration” and stated that “virtually no other case has favored a longer statute of limitations contained in another Ohio Revised Code section over the specific two-year limit contained in R.C. 2743.16(A).” *Id.* ¶¶ 6, 10. Given that *Senegal* stood alone, the case “d[id] not represent existing law on [the Tenth District’s] application of the Court of Claims Act’s statute of limitations.” *Id.* ¶ 10. The court later “explicitly overrule[d] *Senegal*.” *McFadden v. Cleveland State Univ.*, No. 06AP-638, 2007-Ohio-298 ¶ 10 (10th Dist.); *see McFadden v. Cleveland State Univ.*, 120 Ohio St. 3d 54, 2008-Ohio-4914 ¶¶ 4-6 (discussing this history). It is highly unlikely that in 2006—just one year after the Tenth District had expressly reaffirmed its view that the Court of Claims statute of limitations trumps all other limitations periods—the General Assembly would have silently departed from this judicial interpretation via a provision in a distant chapter of the Revised Code that makes no reference to the Court of Claims.

Fifth, and finally, consider the consequences of U.W.’s requested departure from both the plain text of the limitations periods and the longstanding case law. *Cf. W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991) (noting that “it is [the Court’s] role to make sense rather than nonsense out of the *corpus juris*”), *superseded by statute on other grounds as stated in Landgraf v. USI Film Prods.*, 511 U.S. 244, 251 (1994). Her approach would have far-reaching, disruptive consequences. The childhood-sexual-abuse statute of limitations is similar in structure to most statutes of limitations in the courts of common pleas. *See, e.g.*, R.C. 2305.04-.22. If the Court finds that R.C. 2305.111(C) provides an exception to the Court of Claims statute of limitations, it would be unclear which of the many other limitations periods in Chapter 2305 provide similar

exceptions. Uncertainty would abound. That uncertainty would be all the worse because any exception for the childhood-sexual-abuse statute of limitations could not be grounded in statutory text. The result is that the lower courts (and eventually this Court) would face claims that long-time-barred causes of action should be revived under a longer limitations period applicable to suits between private parties. The courts would have no textual principle to divide meritorious timing arguments from meritless ones. And there would likely be an abundance of such claims, given that numerous causes of action are governed by longer limitations periods in the courts of common pleas. *See, e.g.*, R.C. 2305.04 (21 years); R.C. 2305.06 (8 years); R.C. 2305.07 (6 years); R.C. 2305.09 (4 years); R.C. 2305.113(C) (4 years); R.C. 2305.14 (10 years). In light of the number of claims filed against the State each year and the variety of forms those claims take, the unpredictability caused by a departure from the plain text would have widespread negative effects.

2. U.W.'s contrary arguments are mistaken.

In her Merit Brief, U.W. offers no argument to apply the childhood-sexual-abuse statute of limitations based on the text of the relevant statutes. She, for example, points to no word or phrase in R.C. 2305.111(C) suggesting that it is the lone statute of limitations that trumps the Court of Claims statute of limitations for actions brought against the State in the Court of Claims. Her various arguments why the Court need not follow the plain text all lack merit.

U.W. initially cites various cases standing for the proposition that a plaintiff cannot avoid the one-year statute of limitations for assault-and-battery claims “[t]hrough clever pleading or by utilizing another theory of law.” *Feeney v. Eshack*, 129 Ohio App. 3d 489, 492 (9th Dist. 1998) (internal quotation marks omitted); *see* U.W. Br. at 3 (citing cases). Ironically, however, these cases support the Department of Youth Services. They show that a plaintiff like U.W. cannot

use “cleaver pleading” to get around the statute of limitations that would otherwise apply to the main conduct alleged; instead, it is the “essential character” of the complaint that matters. *Feeney*, 129 Ohio App. 3d at 493 (citation omitted). Here, the “essential character” of U.W.’s Complaint is one against the State for money damages in the Court of Claims. The plain text of both the Court of Claims statute of limitations and the childhood-sexual-abuse statute of limitations shows that the former trumps the latter in this situation.

U.W. next cites to an uncodified section of the 2006 act that established the childhood-sexual-abuse statute of limitations, pointing out that this uncodified section repeatedly states that the “amendments” to R.C. 2305.111 apply “to all civil actions” resulting from childhood sexual abuse. U.W. Br. at 4-5 (quoting Am. Sub. S.B. No. 17, § 3(B), 151 Ohio Laws, Part I, 1108, 1181). But U.W. fails to explain how this helps her. The plain text of the “amendments” to R.C. 2305.111 does nothing to exempt that statute of limitations (like every other statute of limitations in Chapter 2305) from the “unless” clause in R.C. 2305.03(A). “[I]n all civil actions,” therefore, the “amendments” *still* condition that statute’s application on no other limitations period applying to the claim at issue. Further, U.W. places too much weight on this uncodified provision. Like many others, the provision simply identifies the *temporal* scope of the law. It states that the amendments generally apply to conduct that occurs after their effective date, but also retroactively apply to conduct that pre-dates the amendments if the older statute of limitations would not have run by the effective date. *Pratte v. Stewart*, 125 Ohio St. 3d 473, 2010-Ohio-1860 ¶ 35 (noting that the provision “includes strong, unequivocal declarations of retroactivity”). Simply stated, the General Assembly would not have hidden U.W.’s requested departure from the clear text of the codified statutes of limitations in an uncodified provision addressing a different topic.

U.W. also argues that a two-year limitations period “violates public policy” because of the time needed for children subjected to sexual abuse to recover and discover their injuries. U.W. Br. at 8; *see id.* at 5-6. To be sure, the Department of Youth Services and, more broadly, the State of Ohio know well the dangers of childhood sexual abuse and remain dedicated to protecting Ohio children and families. The General Assembly, for example, has enacted tough criminal sanctions for perpetrators of childhood sexual abuse, and the State maintains a registry of sex offenders. *See, e.g.*, R.C. Chapter 2950 (titled “Sexual Predators, Habitual Sex Offenders, Sexually Oriented Offenders”); R.C. Chapter 2907 (titled, “Sex Offenses”); R.C. Chapter 2971 (titled, “Sentencing of Sexually Violent Predators”). And the State of Ohio has been a leader in protecting children from sex crimes, having been the first State to comply with the Federal Adam Walsh Child Protection and Safety Act. *See* 2007 Am. Sub. S.B. No. 10.

Here, the General Assembly has taken into account these concerns by tolling the statute of limitations until children reach the age of majority. *See* R.C. 2743.16(C)(1). Perhaps someday it may choose to vindicate the concerns even more by making an exception to R.C. 2743.16(A)’s two-year statute of limitations for claims like the one U.W. raises. But it would take *legislative* change, not *judicial* interpretation, for that to happen. As the preceding discussion has shown, U.W.’s argument cannot be squared with the General Assembly’s intent as expressed in the unambiguous statutory text of the relevant provisions. Indeed, U.W. recognizes this very fact—by citing proposed *legislative* amendments to *other* States’ statutes of limitations for childhood sexual abuse. *See* U.W. Br. at 8 (citing amendments to Illinois, California, and Pennsylvania law). In short, a court may not “restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly’s wording” in the name of public policy. *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Educ.*, 131 Ohio St. 3d 478, 2012-Ohio-1484 ¶ 18. Instead,

the Court must “apply the statute as written,” *id.* ¶ 20, and leave policy arguments, no matter how compelling, to the General Assembly.

U.W. lastly turns to this Court’s decision in *Pratte*, which found it “beyond dispute from the unambiguous statutory language that R.C. 2305.111(C) governs a claim resulting from childhood sexual abuse.” 2010-Ohio-1860 ¶ 48; *see* U.W. Br. at 6. In context, this language cannot be read to apply here. The alleged abuser in *Pratte* was a private party, and the plaintiff sued in the Greene County Court of Common Pleas. As U.W. admits, in *Pratte*, “[t]he Court did not contemplate the statute in conjunction with ORC 2743.16 regarding claims against the state.” U.W. Br. at 6. Because the *Pratte* Court had no occasion to consider the intersection of these two statutes, *Pratte* provides no support for U.W.’s argument.

3. U.W.’s arguments, even if accepted, do not show that she timely filed suit.

Even assuming (wrongly) that the Court of Claims statute of limitations does not apply, that conclusion would not mean that R.C. 2305.111(C)’s twelve-year limitations period does. Unusually, U.W. did not sue the Department of Youth Services on a derivative-liability theory, in which the State consents to suit in place of its officers and employees. *See* R.C. 2743.02(F); R.C. 9.86. She instead sued the Department for its own alleged torts, raising claims of negligent infliction of emotional distress and breach of fiduciary duty for the Department’s hiring and retention of her alleged abusers. Compl. ¶¶ 28-29. Ohio law generally provides a two-year limitations period for claims of negligent infliction of emotional distress and a four-year limitations period for claims of breach of fiduciary duty. R.C. 2305.10(A); R.C. 2305.09(D); *see Lawyers Coop. Publ’g Co.*, 65 Ohio St. 3d at syl. ¶ 2; *Kotyk*, 87 Ohio App. 3d at 120. As U.W. acknowledges (U.W. Br. at 3-4), before concluding that R.C. 2305.111(C)’s limitations period applies to her claims, the Ohio courts would need to “determin[e] which limitation period will

apply”—the statute governing childhood sexual abuse or the ones governing negligent infliction of emotional distress and breach of fiduciary duty—by “look[ing] to the actual nature or subject matter of the case.” *Hambleton v. R.G. Barry Corp.*, 12 Ohio St. 3d 179, 183 (1984). That inquiry is best done by the Court of Claims, and thus this Court would vacate and remand (rather than reverse) even assuming (wrongly) that the Court of Claims statute of limitations does not apply.

Worse yet, even if the limitations periods for negligent infliction of emotional distress and breach of fiduciary duty do not apply, U.W. still has not properly pleaded facts illustrating that the amended R.C. 2305.111(C) governs her case. That statute took effect on August 3, 2006, two days *after* U.W.’s twentieth birthday. *See* Am. Sub. S.B. No. 17, 151 Ohio Laws, Part I, 1184; Compl. ¶ 4. The new R.C. 2305.111(C) applies to actions based on abuse that occurred prior to its effective date only if “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.” 151 Ohio Laws, Part I, § 3(B), at 1181. That period of limitations would have been only *one* year after the abuse or *one* year after the victim discovered the abuse. *See* former R.C. 2305.111; *Ault v. Jasko*, 70 Ohio St. 3d 114, syl. ¶ 1 (1994). In her brief to this Court, U.W. asserts that “she had not yet discovered her abuse” when R.C. 2305.111(C) became effective and that she thus falls within its coverage. U.W. Br. at 3. But nothing in her Complaint mentions that she discovered the alleged abuse so late. Given that this case arises from a Rule 12(B)(6) motion, which tests the sufficiency of the *complaint*, her failure to make such an allegation means that she has not properly alleged that the amended R.C. 2305.111(C) would apply to her. *Cf. Ault*, 70 Ohio St. 3d at 118 (the Court’s finding that she had not discovered the abuse was “[b]ased on the

complaint”). For this reason, too, her reliance on the childhood-sexual-abuse statute of limitations goes nowhere.

As a final matter, it should be mentioned that, while U.W. has no recovery against the Department of Youth Services, that does not mean that U.W. necessarily has no civil remedy. She initially named two state employees in her Complaint, and, although they were not proper parties in the Court of Claims, U.W. may still have causes of action against them in the court of common pleas. State employees may be personally liable for injuries they cause on the job when their actions are “manifestly outside the scope of [their] employment or official responsibilities” or when they act with “malicious purpose, in bad faith, or in a wanton or reckless manner.” R.C. 9.86. Although it is not invariably so, sexual misconduct may meet that standard and subject an employee to personal liability. *See Ohio Gov’t Risk Mgmt. Plan v. Harrison*, 115 Ohio St. 3d 241, 2007-Ohio-4948 ¶¶ 10, 17-18. U.W. may thus still be able to bring suit against those individuals here. Whether or not true here, moreover, other victims of sexual abuse could also be able to bring actions against state employees in their individual capacities in the courts of common pleas, thus allowing such victims a longer time to sue the alleged perpetrators.

B. R.C. 2743.16’s limitations period for actions against the State arising out of childhood sexual abuse does not violate the U.S. Constitution’s Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. U.W. contends that the Court of Claims statute of limitations violates that Clause as applied to plaintiffs raising claims of childhood sexual abuse. (She does not raise any argument under the Ohio Constitution.) U.W.’s argument is both waived and meritless.

1. U.W. has waived her constitutional argument, and, regardless, the General Assembly had a rational basis for the two-year statute of limitations.

As an initial matter, U.W. has not properly presented this constitutional argument to the Court. U.W. did not raise a constitutional argument in the Court of Claims, either in her Complaint or in her opposition to the Department's motion to dismiss. In her Tenth District brief, U.W. discussed the Equal Protection Clause for less than a page and offered no case law supporting her new constitutional argument. She did not file a reply brief. In its decision, the Tenth District rejected her statutory argument, but did not address her constitutional one. This outcome suggests that the Tenth District deemed any constitutional argument waived, either because U.W. did not raise it in the lower court or because she presented it to the court of appeals in a perfunctory manner. *See Dann v. Ohio Election Comm'n*, No. 11AP-598, 2012-Ohio-2219 ¶ 23 (10th Dist.) (finding an argument "waived" because the appellant did not raise it "before the lower court"); *Bank of N.Y. v. Barclay*, No. 04AP-48, 2004-Ohio-4555 ¶ 9 (10th Dist.) (holding that "undeveloped arguments are waived" (internal quotation marks omitted)). Finally, U.W. did not present to this Court a separate proposition of law raising a constitutional argument, and her Memorandum in Support of Jurisdiction again addressed the Equal Protection Clause in less than a page and without case support. For these reasons, and because "[i]t is well settled that this court will not reach constitutional issues unless absolutely necessary," *State v. Talty*, 103 Ohio St. 3d 177, 2004-Ohio-4888 ¶ 9, the Court should deem U.W.'s constitutional argument waived.

In any event, U.W.'s constitutional argument must fail on its merits. That result follows both from general sovereign-immunity principles and from application of the equal-protection standards specifically to the Court of Claims statute of limitations.

General Sovereign-Immunity Principles. When analyzed from a bird’s eye view, one that considers historical differences in treatment between suits against the State and suits against private parties, U.W.’s arguments cannot stand. This is not the first time the Court has considered how the Equal Protection Clause applies to limitations on damages actions against the State. After the General Assembly enacted the Court of Claims Act, the Court held that the State “may qualify and draw perimeters around the granted right [to sue the State] without violating equal protection.” *Conley v. Shearer*, 64 Ohio St. 3d 284, 290-91 (1992). And more than four decades ago, the Court held that the doctrine of sovereign immunity itself “does not offend the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.” *Krause v. State*, 31 Ohio St. 2d 132, syl. ¶ 4 (1972). In other words, the State does not violate the Equal Protection Clause even when it provides *no recovery whatsoever* to the victims of governmental tortfeasors—which was the rule for the first 172 years of the State—while allowing the victims of private tortfeasors *full recovery*. The holding in *Krause* has particular force given subsequent litigation in the U.S. Supreme Court. The *Krause* plaintiff appealed to that Court, which dismissed the case “for want of a substantial federal question.” *Krause v. Ohio*, 409 U.S. 1052, 1052 (1972). When the U.S. Supreme Court dismisses a case on that ground, it is an adjudication on the merits, and the result becomes binding precedent on the lower courts. *See Hicks v. Miranda*, 422 U.S. 332, 344 (1975). This Court’s decision in *Krause* thus represents the views of both this Court and the U.S. Supreme Court.

The U.S. Supreme Court had good reason to conclude that a constitutional attack on a State’s sovereign immunity did not even raise a substantial federal question, let alone a meritorious one. For decades, that Court has held that the Eleventh Amendment and the overall structure of the federal Constitution *protect* the States’ sovereign immunity from damages suits

by private parties. Accordingly, it has struck down federal laws in which Congress sought to abrogate that sovereign immunity, even when the laws merely allowed suits against the State to be brought by a state citizen in the State's own courts. See *Alden v. Maine*, 527 U.S. 706, 712 (1999); see also, e.g., *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 78-80 (2000); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58-60 (1996). The U.S. Supreme Court has thus made unmistakably clear that Congress's "powers under Article I of the Constitution do not include the power to subject States to suit at the hands of private individuals." *Kimel*, 528 U.S. at 80.

It would be odd to interpret the federal Constitution as both *protecting* and *prohibiting* state sovereign immunity at the same time. And it would be odder still to interpret the federal Constitution as both permitting a State to completely ban a plaintiff's suit against the State, but prohibiting the State from taking the much less drastic step of requiring a plaintiff to bring a suit against the State more quickly than a comparable suit against private parties. In short, general principles of sovereign immunity alone prove that a federal equal-protection attack on the Court of Claims statute of limitations cannot stand.

Specific Equal-Protection Test. This result is confirmed by traditional equal-protection principles. U.W. cannot establish that R.C. 2743.16(A) lacks any conceivable rational basis, as she must to show an equal-protection violation. "[A] classification neither involving fundamental rights nor proceeding along suspect lines cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose." *Cent. State Univ. v. Am. Ass'n of Univ. Professors*, 526 U.S. 124, 127-28 (1999) (internal quotation marks and ellipsis omitted). Courts reviewing statutes under this rational-basis review must uphold statutory classifications as long as the government has acted on the basis of "distinguishing characteristics relevant to interests the State has authority to

implement.” *Bd. of Trs. v. Garrett*, 531 U.S. 356, 366 (2001) (internal quotation marks omitted). In other words, the particular means the legislature chooses to achieve its policy goals must be upheld unless they are “so attenuated as to render the distinction arbitrary or irrational.” *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992).

Under this rational-basis review, classifications are “presumed constitutional.” *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012). As the party challenging the statutory classification, therefore, U.W. must negate “any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Garrett*, 531 U.S. at 367 (internal quotation marks omitted). And this rational basis need not be stated explicitly in the statute; even “hypothesized justifications” will suffice. *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002); see *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (It is “constitutionally irrelevant whether this reasoning in fact underlay the legislative decision.” (internal quotation marks omitted)). Instead, a statutory classification fails rational-basis review in only the rare case where “the facts preclude[] any plausible inference” that legitimate grounds support the statute’s difference in treatment. *Nordlinger*, 505 U.S. at 16.

Gauged by this deferential standard of review, the Court of Claims statute of limitations easily satisfies rational-basis review. The General Assembly has at least four legitimate reasons to apply a uniform statute-of-limitations rule to all individuals suing the State for money damages.

One: Protecting the fiscal resources of the State by limiting its tort liability in certain circumstances. This Court has recognized that the General Assembly has a legitimate interest in “conserv[ing] the fiscal resources” of the State “by limiting [its] tort liability.” *Menefee v. Queen City Metro*, 49 Ohio St. 3d 27, 29 (1990). The protection of taxpayer dollars is a

legitimate—indeed a compelling—state interest, as both this Court and the U.S. Supreme Court have held. *See id.*; *Fabrey v. McDonald Vill. Police Dep’t*, 70 Ohio St. 3d 351, 353 (1994); *Schweiker v. Wilson*, 450 U.S. 221, 238-39 (1981); *see also, e.g., Wilkins v. Gaddy*, 734 F.3d 344, 349 (4th Cir. 2013) (upholding law because it “protect[ed] the public fisc”); *Gould Inc. v. A & M Battery & Tire Serv.*, 232 F.3d 162, 170 (3d Cir. 2000) (noting that the law’s “distinction between privately and federally initiated judicial actions is rationally related to preserving the public fisc”).

Further illustrating the validity of this “public fisc” rationale, the Court has itself long provided differential treatment of defendants in actions brought by a *state* plaintiff as compared to actions brought by a *private* plaintiff. For over a century, this Court has followed the common-law rule that a statute of limitations—while it applies to private plaintiffs—does not apply when the State is a plaintiff, unless the statute specifically “include[s] the government.” *Trs. of Greene Twp. v. Campbell*, 16 Ohio St. 11, 14 (1864). The Court has continued to follow this rule after the adoption of the Court of Claims Act. *See Ohio Dep’t of Transp. v. Sullivan*, 38 Ohio St. 3d 137, syl. (1988) (noting that the rule serves to preserve public revenue). This ancient doctrine does not violate the Equal Protection Clause, and there is no principled reason to find a constitutional problem here simply because the State is the defendant rather than the plaintiff.

Two: Promptly identifying and correcting unlawful conduct by state employees. A shorter statute of limitations creates incentives for injured individuals to raise their claims promptly. When a meritorious action is filed within two years, there will be a greater likelihood that others will be saved from suffering the same injuries as the plaintiff than if the action were filed within twelve years. *See Eppley v. Tri-Valley Local Sch. Dist. Bd. of Educ.*, 122

Ohio St. 3d 56, 2009-Ohio-1970 ¶ 19 (“Resolving claims expeditiously is a legitimate government interest.”).

Three: Providing predictable procedural rules to government officials and the Court of Claims. When the State consented to suit in 1975, it had a legitimate interest in channeling this new liability through predictable rules. Further, unlike most litigants, the State of Ohio faces litigation across a broad spectrum of claims, from tort to real estate to contract to employment and more. The General Assembly has an interest in standardizing the procedures that govern this diversity of claims against the State, for the benefit both of state defendants and of the Court of Claims judges who adjudicate the claims. While U.W. may consider this standardization overinclusive as applied to claims of childhood sexual abuse, the General Assembly could reasonably decide that such overinclusivity is preferable to requiring the Court of Claims to undertake a case-by-case investigation of what procedural rules govern each of the various claims for money damages against the State. *See Weinberger v. Salfi*, 422 U.S. 749, 776 (1975) (“While such a limitation doubtless proves in particular cases to be ‘under-inclusive’ or ‘over-inclusive,’ in light of its presumed purpose, it is nonetheless a widely accepted response to legitimate interests in administrative economy and certainty.”).

Four: Matching the State’s potential liability with its preexisting budgetary practices. The Ohio Constitution provides that “no appropriation shall be made for a longer period than two years.” Ohio Const. art. II, § 22. As a result, the General Assembly budgets for a two-year period, and state agencies engage in financial planning primarily on a two-year cycle. The Court of Claims statute of limitations respects these practices by allowing the State roughly to predict its upcoming liability on a biennial cycle. Although the Ohio Constitution does not require a

two-year limitations period for actions for money damages against the State, the two-year limitations period rationally fits with how the State already manages its vast budget.

Any one of these legitimate interests supports R.C. 2743.16(A). Confirming that point, numerous courts have upheld statutes creating shorter statutes of limitations for public entities. The Oklahoma Supreme Court, for example, rejected this argument that a state statute “offended the Equal Protection Clause of the U.S. Constitution . . . by providing a shorter time period for the commencement of a tort action against a public tortfeasor than that which was then applicable to private tortfeasors.” *Black v. Ball Janitorial Serv., Inc.*, 730 P.2d 510, 512-13 (Okla. 1986). When doing so, the court relied on prior precedent holding that a statute treating public and private tortfeasors differently “further[s] legitimate state interests by fostering a prompt investigation while the evidence is still fresh; the opportunity to repair any dangerous condition[;] quick and amicable settlement of meritorious claims; and preparation of fiscal planning to meet any possible liability.” *Reirdon v. Wilburton Bd. of Educ.*, 611 P.2d 239, 240 (Okla. 1980); *see also, e.g., Nored v. Blehm*, 743 F.2d 1386, 1387 (9th Cir. 1984) (per curiam) (rejecting “contention that the Oregon statute violates equal protection by differentiating between governmental and private parties in a statute of limitations,” and citing additional cases); *Van Wormer v. City of Salem*, 788 P.2d 443, 444-45 & nn.3-4 (Or. 1990) (rejecting equal-protection claim based on the “*difference* between the statute of limitation applicable to a public body and that which applies to all other wrongful death defendants” under the Oregon Constitution, and “conclud[ing] that the same result obtains under the Fourteenth Amendment” of the federal Constitution).

If the Court strikes down R.C. 2743.16(A), therefore, it would create a conflict with these many other cases. The Court should instead hold that legislation establishing different statutes of

limitations for plaintiffs suing alleged governmental tortfeasors as compared to plaintiffs suing alleged private tortfeasors passes equal-protection scrutiny.

2. U.W.'s constitutional arguments lack merit.

U.W. all but concedes that R.C. 2743.16(A) can survive *rational-basis* review, noting that “[p]reserving state money can sometimes be a rational reason for creating a particular classification.” U.W. Br. at 11. She thus primarily argues that the Court should instead apply *strict scrutiny* to that statute. In her view, strict scrutiny applies because “this case involves a fundamental right: the right to privacy.” *Id.* at 10. This argument misreads the relevant equal-protection cases. Courts apply strict scrutiny on fundamental-rights grounds only when the government has denied a fundamental right to some while allowing it to others. *See, e.g., Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) (denying some but not all residents the right to vote due to poll tax); *Skinner v. Oklahoma*, 316 U.S. 535, 541-42 (1942) (denying some but not all residents the right to procreate due to sterilization law). Here, the General Assembly has not created any classification that prohibits one group from exercising the right to privacy while allowing another group to do so. Indeed, the statutory classification has nothing to do with the right to privacy at all. The two statutes at issue here, in combination, treat individuals differently on the basis of whether they bring suit against a private tortfeasor or a governmental one, not on their decision to exercise a fundamental right.

That makes this case like this Court’s decision in *Eppley*. There, the plaintiff argued that strict scrutiny applied to the General Assembly’s decision to enact a distinct saving statute governing wrongful-death actions, separate from the general saving statute. 2009-Ohio-1970 ¶ 16. More particularly, the plaintiff argued that “strict scrutiny is appropriate because parents have a fundamental right to enjoy a loving relationship with their children.” *Id.* This Court

rejected that argument, holding that the statute “addresses only the right to refile a wrongful death lawsuit” and “does not address the parent-child relationship.” *Id.* Likewise here, the Court of Claims statute of limitations addresses only the right to file an action for money damages against the State and does not address any right to privacy. Just as it did in *Eppley*, the Court must decline to apply strict scrutiny. *See also Zablocki v. Redhail*, 434 U.S. 374, 386-87 (1978) (“[W]e do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.”).

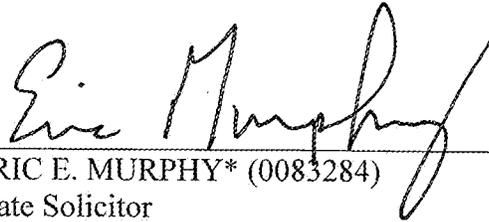
Finally, U.W. argues that R.C. 2743.16(A) as applied to claims of childhood sexual abuse does not advance the State’s legitimate interests. U.W. Br. at 11-13. She notes, for example, that the State could preserve taxpayer dollars through other means, such as by enacting damages caps. And she questions whether R.C. 2743.16(A) will in fact achieve its goals. But this kind of “second-guess[ing]” is not appropriate under rational-basis review. *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶ 173. Whatever the merits of U.W.’s arguments on this score, they do not meet her burden of establishing that the reasons for enacting R.C. 2743.16(A) are “so attenuated as to render the distinction arbitrary or irrational.” *Nordlinger*, 505 U.S. at 11. Under the proper standard of review, R.C. 2743.16(A) passes equal-protection review.

CONCLUSION

For these reasons, the Court should affirm the judgment below.

Respectfully submitted,

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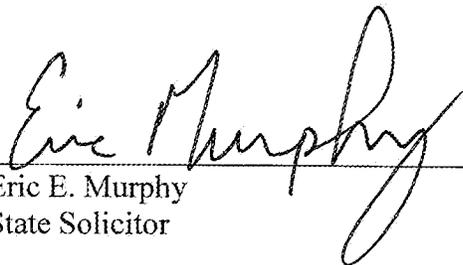
Counsel for Defendant-Appellee
Department of Youth Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Defendant-Appellee Department of Youth Services was served by U.S. mail this 23rd day of December, 2013, upon the following counsel:

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APPENDIX

EXHIBIT A



Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

URANUS WATKINS

Plaintiff

v.

OHIO DEPARTMENT OF YOUTH
SERVICES

Defendant

Case No. 2012-05851

Judge Joseph T. Clark

ENTRY OF DISMISSAL

FILED
COURT OF CLAIMS
OF OHIO
2012 SEP 18 PM 1:28

On August 22, 2012, defendant filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(6). Plaintiff filed a response on September 5, 2012.

In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling her to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975). Additionally, dismissal under Civ.R. 12(B)(6) based upon a statute of limitations is proper only when the face of 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).

According to the complaint, two employees of defendant sexually abused plaintiff while she was a youth in the custody of defendant at the Scioto Juvenile Correctional Facility between April 2, 2000, and April 2, 2001. Plaintiff claims that defendant was negligent in hiring, training, supervising, and retaining the alleged victimizers, and in otherwise failing to protect her from the alleged abuse.

In its motion, defendant asserts that plaintiff's claims are barred by the two-year limitation on actions set forth in R.C. 2743.16(A).

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EXHIBIT A

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OF OHIO

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Case No. 2012-05851

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ENTRY

R.C. 2743.16(A) provides that "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."

Pursuant to R.C. 2305.111(C), "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."

According to the complaint, plaintiff was a minor at all times relevant and reached the age of majority on August 1, 2004. Inasmuch as plaintiff filed her complaint more than two years after that date, on July 31, 2012, her claims are barred by the limitation on actions set forth in R.C. 2743.16(A).

Although plaintiff contends that she timely brought her claims by operation of R.C. 2305.111(C), which provides a twelve-year statute of limitations for claims resulting from childhood sexual abuse, it is well-settled that the limitations period set forth in R.C. 2743.16(A) applies to all actions against the state in the Court of Claims and takes precedence over all other statutes of limitation in the Revised Code. *Cargile v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 11AP-743, 2012-Ohio-2470, ¶ 12; *Simmons v. Ohio Rehab. Servs. Comm.*, 10th Dist. No. 09AP-1034, 2010-Ohio-1590, ¶ 6; *Grenga v. Youngstown State Univ.*, 10th Dist. No. 11AP-165, 2011-Ohio-5621, ¶ 17.

Based upon the foregoing, defendant's motion to dismiss is GRANTED and plaintiff's complaint is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.



JOSEPH T. CLARK
Judge

JOURNALIZED

FILED
COURT OF COMMONS
OF OHIO

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Case No. 2012-05851

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ENTRY

cc:

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JOURNALIZED

EXHIBIT B

R.C. 2743.16 provides:

Statute of limitations—compromise of claims.

- (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.
- (B) If a person suffers injury, death, or loss to person or property from the operation of an automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft by an officer or employee of the state while engaged in the course of his employment or official responsibilities for the state, the person or the representative of that person or of the estate of that person shall attempt, prior to the commencement of an action based upon that injury, death, or loss, to have the claim based upon that injury, death, or loss compromised by the state or satisfied by the state's liability insurance.

If the state, upon a request of the person or of his or his estate's representative to compromise such a claim, does not compromise the claim within a reasonable time after the request is made and at least sixty days prior to the expiration of the applicable period of limitations for commencement of an action based upon the injury, death, or loss, or if the amount of the claim is in excess of the state's liability insurance coverage, the person or his or his estate's representative may commence an action in the court of claims under this chapter to recover the claim or the unpaid amount of the claim from the state. Neither the person nor his or his estate's representative shall commence an action against the officer or employee to recover damages for the injury, death, or loss until after he commences the action in the court of claims against the state and the action in that court is terminated. If the court of claims determines that the state is not liable for the injury, death, or loss caused by the officer's or employee's operation of the automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft, the person or his or his estate's representative is not prohibited by this division from commencing an action against the officer or employee to recover the claim or the unpaid amount of the claim based upon the injury, death, or loss.

If a person or his or his estate's representative attempts, pursuant to this division, to have a claim compromised by the state or satisfied by the state's liability insurance, and if the state determines not to compromise the claim, the state's liability insurance will not cover the claim, or the claim is in excess of the state's liability insurance coverage, then the state shall so notify the person or his or his estate's representative in writing. The notice shall be provided as soon as possible after the state determines not to compromise the claim or it is determined that the state's liability insurance will not cover either the claim or the entire claim.

(C)

- (1) The period of limitations prescribed by division (A) of this section shall be tolled pursuant to section 2305.16 of the Revised Code.
- (2) If a person suffers injury, death, or loss to person or property from the operation of an automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft by an officer or employee of the state while engaged in the course of his employment or official responsibilities for the state, if the person or his or his estate's representative is required by division (B) of this section to attempt to have the claim based upon the injury, death, or loss compromised by the state or satisfied by the state's liability insurance prior to commencing an action based upon the injury, death, or loss, and if the person or his or his estate's representative complies with that division prior to the expiration of the applicable period of limitations prescribed by division (A) of this section for the commencement of an action in the court of claims based upon that injury, death, or loss, the period of time commencing with the submission of the claim to the state for the purposes of compromise or liability insurance satisfaction and ending with the state's compromise of the claim, the satisfaction of the claim by the state's liability insurance, or the provision of the written notice described in division (B) of this section shall not be computed as any part of the period within which an action based upon that injury, death, or loss must be brought.
- (3) If a person or his or his estate's representative commences an action to recover a claim, or the unpaid amount of a claim, against the state in the court of claims and that claim arises out of the operation of an automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft by an officer or employee of the state while engaged in the course of his employment or official responsibilities for the state, the statute of limitations on the claim against the officer or employee shall not run during any time when the action against the state is pending in the court of claims

EXHIBIT C

R.C. 2305.111 provides:

Assault or battery actions—childhood sexual abuse.

(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.

EXHIBIT D

R.C. 2305.03 provides:

Lapse of time a bar.

- (A) Except as provided in division (B) of this section and unless a different limitation is prescribed by statute, a civil action may be commenced only within the period prescribed in sections 2305.04 to 2305.22 of the Revised Code. If interposed by proper plea by a party to an action mentioned in any of those sections, lapse of time shall be a bar to the action.
- (B) No civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.