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COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
NO. 22-SC-0308

RICK JACKMAN;  
LOUISVILLE/JEFFERSON COUNTY  
METROPOLITAN GOVERNMENT;  
and LINDA THOMPSON,  
Appellants,  
vs.  
SAMANTHA KILLARY,  
Appellee.

)  
)  
) From the Court of Appeals of Kentucky  
) No. 2020-CA-0194  
)  
) Circuit Court of Jefferson County  
) No. 18-CI-2551  
)  
)  
)

**AMICUS BRIEF OF SOUTHERN BAPTIST CONVENTION, EXECUTIVE  
COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION, SOUTHERN  
BAPTIST THEOLOGICAL SEMINARY, AND LIFEWAY CHRISTIAN  
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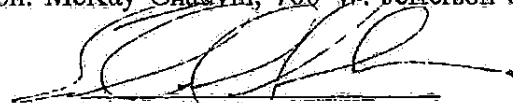
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**Certificate of Service**

The undersigned does hereby certify that the original and ten copies of this brief were mailed, via Federal Express, to the Supreme Court of Kentucky, Rm. 235, 700 Capitol Ave., Frankfort, KY 40601; and copies were served upon the following by first-class mail, on February 21, 2023: William H. Brammell, Jr., Wicker/Brammell, 323 W. Main St., 11<sup>th</sup> Floor, Louisville, KY 40202; Carol S. Pettitt, Vaughn Pettitt Legal Group, PLLC, 7600 West Highway 146, Suite 100, Pewee Valley, KY 40056; Kristie Walker, 200 S. Fifth St., Suite 300N, Louisville, KY 40202; Tad Thomas, Thomas Law Offices, PLLC, 9418 Norton Commons Blvd., Suite 200, Louisville, KY 40059; Kentucky Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601; and Hon. McKay Charvin, 700 W. Jefferson St., Louisville KY 40202.

  
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## **INTERESTS OF AMICI CURIAE AND PURPOSE OF BRIEF**

Amici Southern Baptist Convention (“SBC”), Executive Committee of the SBC, Southern Baptist Theological Seminary, and LifeWay Christian Resources submit this amicus brief in support of Appellants. In particular, Amici support Appellants’ argument that the General Assembly’s 2021 Amendments to KRS § 413.249 do not revive tort claims against non-perpetrator third parties after the applicable limitation periods have expired.

The SBC is a religious fellowship of over 47,000 Baptist churches scattered across the United States and its territories. The SBC operates for two days each year when the convention is taking place; the SBC does not exercise any authority or control over any other Baptist organization. The SBC’s Executive Committee is charged with conducting the work of the SBC between annual SBC meetings. The Southern Baptist Theological Seminary, located in Louisville, is the oldest of six seminaries following the Southern Baptist faith and tradition. LifeWay Christian Resources is a nonprofit corporation that publishes, distributes, and sells Christian books, literature, and music. LifeWay is a self-funded entity governed by its separate board of trustees.

Amici have a strong interest in the statute-of-limitations issue presented in this appeal. Amici are all named defendants in a separate civil action pending in a Kentucky circuit court that involves allegations of childhood sexual abuse dating back to 2003 (“Circuit Court Action”). Amici are not accused of perpetrating the sexual abuse alleged in the Circuit Court Action. Rather, they are non-perpetrator third parties who were allegedly made aware of the abuse and violated common-law duties in responding to it. Because the Circuit Court Action involves allegations of abuse occurring more than ten years ago, all filings remain under seal pursuant to KRS § 413.249(4).

The Circuit Court Action presents the same threshold limitations issue to be decided in this appeal: namely, whether the General Assembly's 2021 Amendments to KRS § 413.249 revive tort claims against non-perpetrator third parties after the applicable limitation periods have expired. Amici have filed motions to dismiss the Circuit Court Action arguing that the 2021 Amendments do not—and cannot—revive the plaintiff's expired claims. Those motions are being held in abeyance pending this Court's opinion in this appeal.

Amici therefore have strong interests in ensuring that this Court authoritatively resolves this important issue and corrects the Court of Appeals majority opinion's mistaken interpretation of KRS § 413.249. The outcome of this appeal will directly affect—and likely control—the timeliness of the Circuit Court Action and all cases presenting this recurring legal issue. Additionally, Amici are private entities that do not have any sovereign or governmental immunity, making this issue even more important to them and other similarly situated private parties.

As explained below, the panel majority (Caldwell & McNeill, JJ.) adopts an interpretation that directly conflicts with the General Assembly's expressed intent in the 2021 legislative enactment itself. It also violates this Court's well-established vested-rights doctrine forbidding the revival of expired claims, as the dissenting judge (Maze, J.) aptly explains. Amici, of course, do not dispute the laudable policy reasons for providing relief for victims of childhood sexual abuse. But not even the most sacrosanct policy can trump the clearly expressed legislative intent and fundamental due process concerns presented in this and similar cases involving the attempted retroactive application of KRS § 413.249 to expired claims.

## ARGUMENT

### I. The Majority Opinion Mistakenly Interprets The 2021 Amendments to KRS 413.249 As Reviving Expired Claims Against Non-Perpetrator Third Parties.

From its original enactment in 1998 through 2020, KRS § 413.249 applied a special limitations period for certain claims seeking “recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault.” KRS § 413.249(2). The statute initially provided a five-year limitations period (from 1998 to 2017), and a ten-year limitations period thereafter.

Because the statutory terms “childhood sexual assault” and “childhood sexual abuse” were statutorily defined as limited to certain criminal offenses, Kentucky courts uniformly held that KRS § 413.249’s special limitations period applied only to claims against perpetrators of childhood sexual assault or abuse. Thus, the statute (from 1998 through 2020) did not apply to claims against third parties incapable of committing such offenses. *See, e.g., Doe v. Logan*, 602 S.W.3d 177, 188 (Ky. App. 2020) (“The extended ten-year limitations period under KRS 413.249 does not apply to claims against non-perpetrator third parties.”); *Knaus v. Great Crossings Baptist Church, Inc.*, No. 2009-CA-000141, 2010 WL 476046, at \*2 (Ky. App. Feb. 12, 2010) (same); *Roman Catholic Bishop of Louisville v. Burden*, 168 S.W.3d 414, 417–18 & n.1 (Ky. App. 2004) (same); *B.L. v. Schumann*, 380 F. Supp. 3d 614, 637–39 (W.D. Ky. 2019) (same). Claims against non-perpetrator third parties remained subject to the ordinary statute of limitations applicable to the particular type of tort claim asserted. *See, e.g.,* KRS § 413.140(1)(a) (prescribing limitations period for personal-injury claims).

In 2021, the General Assembly extended KRS § 413.249’s special ten-year limitations period to certain tort claims asserted against non-perpetrator third parties. As

relevant here, the 2021 Amendments extend KRS § 413.249's statute of limitation to non-perpetrator third parties that "owed a duty of care to the plaintiff." 2021 Ky. Acts ch. 89 § 2; KRS § 413.249(3)(b). The 2021 Amendments, however, do not contain any language suggesting that this revision was intended to apply retroactively at all, let alone to revive claims after the previously applicable limitations period has expired. This absence of retroactivity language alone forecloses the majority opinion's finding of retroactivity because "[n]o statute shall be construed to be retroactive, unless expressly so declared." KRS § 446.080(3).

But here, the General Assembly went even further and removed any reasonable doubt about its intentions. The General Assembly not only omitted retroactivity language from this revision, it also affirmatively disclaimed any intention to apply the 2021 Amendments to expired claims against non-perpetrator third parties. Specifically, Section 3 of the bill adopting the 2021 Amendments (2021 HB 472) expressly states that the 2021 Amendments only apply "to causes of action accruing before the effective date of this Act[] if the applicable statute of limitations, as it existed prior to this Act, *has not yet run before the effective date of this Act.*" 2021 Ky. Acts ch. 89 § 3 (emphasis added). Thus, even if the legislature's extension of KRS § 413.249 to third parties applies retroactively, it would only do so if the previously applicable statute of limitations "has not yet run." *Id.* Although the LRC did not codify this language in the amended Kentucky Revised Statute itself, it did insert an LRC Note at the bottom of the statute that reflects Section 3's retroactivity directive nearly verbatim. *See* KRS § 413.249 (LRC Note).

This Court recently reaffirmed that Kentucky law effectuates precisely this type of legislative directive prescribing a statute's retroactive reach, even though it is not codified



in the text of the Kentucky Revised Statutes. *See, e.g., Martin v. Warrior Coal LLC*, 617 S.W.3d 391, 396–97 (Ky. 2021) (holding that uncodified retroactivity language in a legislative act and reprinted in a statutory LRC Note was legally sufficient to control the statute’s retroactivity); *Holcim v. Swinford*, 581 S.W.3d 37, 41 (Ky. 2019) (same). Consequently, the General Assembly’s expressed—and controlling—intent is that the 2021 Amendments are not retroactively applicable to expired claims against non-perpetrator third parties.

To be sure, the 2021 Amendments separately purport to revive certain expired claims, but not claims against non-perpetrator third parties. Specifically, the 2021 Amendments allow “claims for childhood sexual assault or abuse” to be brought within five years of the date on which the applicable statute of limitations expired. *See* 2021 Ky. Acts ch. 89 § 2; KRS § 413.249(7)(b). But that provision, by its own terms, does not apply to claims against non-perpetrator third parties. As noted above, Kentucky courts have long held that this same defined statutory language—“claims for childhood sexual assault or abuse”—only encompasses claims against perpetrators of sexual assault or abuse, not third parties. *See, e.g., Doe*, 602 S.W.3d at 188; *Schumann*, 380 F. Supp. 3d at 637–39; *Knaus*, 2010 WL 476046, at \*2; *Burden*, 168 S.W.3d at 417–18 & n.1.

Because the General Assembly legislates with knowledge of statutory definitions and common-law interpretations of statutory terms, its retention and use of the same statutory phrase in the 2021 Amendments necessarily incorporates its settled legal meaning. *See, e.g., Palmer v. Turner*, 43 S.W.2d 1017, 1019 (Ky. 1931) (holding that statutory language generally “must be given its common-law meaning” unless statutorily defined otherwise); *Aluminum v. Carkuff*, No. 2009-SC-000068-WC, 2009 WL 3526558,

at \*2 (Ky. Oct. 29, 2009) (giving “legal terms of art” statutorily defined meaning). Accordingly, any legislative intent to revive expired claims is limited to claims against perpetrators of “childhood sexual assault or abuse” and does not extend to tort claims against non-perpetrator third parties.

The majority opinion purports to be effectuating legislative intent in applying KRS § 413.249 retroactively to revive expired claims against third parties. Maj. Op. at 13–15. But it provides no statutory language, legislative directive, or any other evidence that the General Assembly intended the 2021 Amendments to apply retroactively to claims against non-perpetrator third parties, let alone to expired claims. And it overlooks the specific legislative directive, discussed above, expressly disclaiming any intent to apply the 2021 Amendments to expired claims against non-perpetrator third parties. *See* 2021 Ky. Acts ch. 89 § 3. Indeed, the majority opinion essentially rewrites the language that the General Assembly used in order to achieve a perceived policy goal, an approach to statutory interpretation that this Court has long rejected. *See, e.g., JP Morgan Chase Bank, N.A. v. Longmeyer*, 275 S.W.3d 697, 702 (Ky. 2009) (explaining that if statutes “are out of touch with modern policy or with the expectations of today’s community, it is the legislature’s task to amend the statutes, not this Court’s role to re-write them”).

For these reasons, the Court should hold that the 2021 Amendments are inapplicable to claims against non-perpetrator third parties that expired before the 2021 Amendments. Because legislative intent is clear and controlling, the Court need not consider the propriety and constitutionality of reviving expired claims to resolve the issue presented in this appeal. *See, e.g., Louisville/Jefferson Cnty. Metro Gov’t v. TDC Grp., LLC*, 283 S.W.3d 657, 660 (Ky. 2009) (collecting case law establishing “the long-standing

practice of this Court . . . to refrain from reaching constitutional issues when other, non-constitutional grounds can be relied upon”).

## **II. Reviving Expired Claims Against Non-Perpetrator Third Parties Would Violate Kentucky Supreme Court Precedent Protecting Vested Rights.**

Even if the General Assembly intended to revive expired claims against non-perpetrator third parties, the amendment would not survive Kentucky’s vested-rights doctrine. The dissenting opinion correctly recognizes and applies this Court’s vested-rights precedent. *See* Dissenting Op. at 20–26. Time and time again, this Court has held that, once a limitations period expires, the defendant’s right to rely on the limitations period irrevocably vests, and the legislature lacks the authority to divest the defendant of the defense. *See, e.g., Officeware v. Jackson*, 247 S.W.3d 887, 890 (Ky. 2008) (“[A]n amendment may extend a limitations period that has not run but may not revive a limitations period that has expired.”); *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854–55 (Ky. 2003) (“[A]n amendment that extends the period of limitation . . . may not be applied to revive a claim that has expired without impairing vested rights.”); *William A. Pope Co. v. Howard*, 851 S.W.2d 460, 462 (Ky. 1993) (“An amendment of a statute of limitations will not revive a cause of action previously expired.”); *Lawrence v. City of Louisville*, 29 S.W. 450, 452 (Ky. 1895) (explaining that it is “beyond the power of the legislature to divest” a defendant of a vested statute-of-limitations defense).

This longstanding body of law establishes that any legislative attempt to revive expired claims through the 2021 amendments would be invalid under this Court’s vested-rights doctrine. Although this Court has not—and need not—expressly ground its vested-rights doctrine in any particular constitutional provision, divesting defendants of vested limitation rights would violate Sections 1 and 2 of the Kentucky Constitution, which

guarantee due process of law and prohibit the exercise of arbitrary government power. Kentucky law cannot, consistent with these constitutional protections, statutorily assure a non-perpetrator defendant that it will not be subject to liability after a certain date, yet then revive extinguished tort claims after the defendant had lost the incentive to preserve evidence to defend against those stale claims. Indeed, a number of state supreme courts have held, as a matter of state constitutional law, that reviving an expired claim intrudes upon constitutionally protected property rights and thus violates state due process. *See, e.g., Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994); *M.E.H. v. L.H.*, 685 N.E.2d 335, 340–41 (Ill. 1997); *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773 (Neb. 1991); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Roark v. Crabtree*, 893 P.2d 1058, 1061–63 (Utah 1995).

At the very least, interpreting the 2021 Amendments to revive expired claims would raise serious constitutional questions, which weighs heavily against the majority opinion’s interpretation of KRS § 413.249. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 247–51 (2012) (collecting case law and discussing “long-standing principle” that “[a] statute should be interpreted in a way that avoids placing its constitutionality in doubt”).

The majority opinion sidesteps this Court’s longstanding vested-rights doctrine by dismissing it as a “[g]eneral[]” rule. Maj. Op. at 11. The opinion, however, does not—and cannot—cite any authority supporting the novel exception it creates in order “to ensure the intent of the General Assembly is given due respect.” *Id.* at 15. Moreover, the scope of the majority opinion’s new-found exception is unclear, and its proposed rule is unworkable. For example, the opinion cryptically states that the only cases that “shall get

the benefit of temporary retroactivity” are “cases which are still pending, as this one now before an appellate court.” *Id.* at 15. But the opinion provides no explanation for this limitation, frustrating lower courts’ ability to faithfully apply the majority’s proposed rule in the future.

The majority opinion also mistakenly claims that “the 2021 version of the statute expressly provide[s] a cause of action against third parties who ‘failed to act as a reasonable person or entity in complying with their duties to the victim.’” *Id.* at 16–17 (quoting KRS § 413.249(5)). Because this amendment creates a “new cause of action against third parties,” the majority reasons, the defendants’ limitations rights as to that cause of action had not vested at the time of the 2021 Amendments. *Id.* at 20. The statute, however, does not create a new cause of action—it just provides a special statute of limitations applicable to preexisting common law tort claims and legal theories.

In fact, the statute is contained in Chapter 413 of the Kentucky Revised Statutes, which is devoted exclusively to statute-of-limitations issues. And the statute uses traditional terminology invoking ordinary common law negligence principles—such as “duty of care” and “reasonable[ness]”—rather than language creating a new statutory cause of action. The majority opinion provides no basis—and Amici are aware of none—supporting the majority opinion’s interpretation of KRS § 413.249(5) as creating a new statutory cause of action. Indeed, far more explicit statutory language is needed to create a new cause of action. *See, e.g.,* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 313 (2012) (collecting case law and explaining that “[t]he creation of [a private right of action] must be either express or clearly implied from the text of the statute”).

In fact, the highest courts in several other states have summarily rejected arguments that similar legislative amendments created new statutory causes of action. *See, e.g., Roark*, 893 P.2d at 1060 n.4 (rejecting argument that statutory amendment extending limitations period for child sexual abuse claims created a new cause of action); *Anderson v. Eli Lilly & Co.*, 588 N.E.2d 66, 68 (N.Y. 1991) (holding that statutory amendment reviving certain previously barred tort claims “did not act to create any new causes of action”).

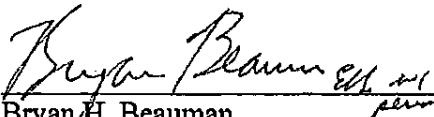
Accordingly, regardless of how the Court may rule upon any other issues raised in this appeal, it would be an invaluable service to the bench, bar, and legislative branch of this Commonwealth for the Court to clarify that new causes of action are not and cannot be created merely by amending statutes of limitation.

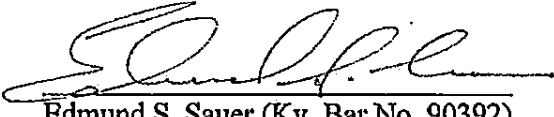
As explained above, the General Assembly’s amendments to KRS § 413.249 do not even purport to revive expired claims against non-perpetrator third parties. The legislative directive in the Sessions Laws (and the corresponding LRC Note) that the 2021 Amendments retroactively apply only to unexpired claims reflects the legislature’s awareness of the vested-rights doctrine and its intention to abide by it, at least as to non-perpetrator third parties. But if the amendments were interpreted to revive expired claims against non-perpetrator third parties, they would be invalid and/or unconstitutional under this Court’s vested-rights doctrine.

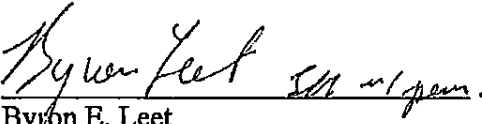
### CONCLUSION


For these reasons, Amici respectfully request that the Court reverse the Court of Appeals’s judgment and hold that the 2021 Amendments to KRS § 413.249 do not retroactively revive expired claims against non-perpetrator third parties.

Respectfully submitted,

  
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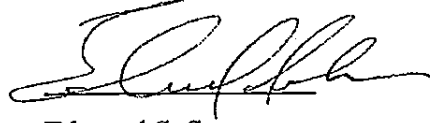
  
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February 21, 2023

**WORD-COUNT CERTIFICATE**

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