No. ___-___

IN THE

Supreme Court of the United States

THE ROMAN CATHOLIC BISHOP
OF OAKLAND, ET AL.,
Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Twenty years ago, California revived decades-old sexual-abuse claims, offering claimants a one-year window to sue even though the statute of limitations had expired long before. When that window closed at the end of 2003, the Catholic Church in California reached a series of settlements that paid out over a billion dollars without regard to the validity of any individual claim. The State tried to revive the same category of lapsed claims three more times between 2004 and 2018, but Governor Jerry Brown vetoed the bills each time. In 2019, however, the Legislature passed and Governor Gavin Newsom signed legislation reviving the claims for a second time, expressly seeking to impose "additional punishment" on the Catholic Church and other institutions for their past acts. This time, defendants' past conduct is subject not only to claims for compensatory and punitive damages that were previously time-barred twice over, but also to additional penalties (in the form of "treble" damages) based on a newly defined category of "cover up" activity.

The questions presented are:

1. Whether the *Ex Post Facto* Clause allows retroactive legislation that was enacted with an avowedly punitive purpose, imposes additional punitive liability for past conduct, and revives previously time-barred claims for punitive damages.

2. Whether the Due Process Clause allows a state to revive time-barred claims for a second time, after inducing widespread detrimental reliance on the statutory cut-off date that extinguished liability at the end of the first revival window.

PARTIES TO THE PROCEEDING

Petitioners are The Roman Catholic Archbishop of Los Angeles, a corporation sole; The Roman Catholic Bishop of Orange, a corporation sole; The Roman Catholic Bishop of Fresno, a corporation sole; The Roman Catholic Bishop of Monterey, California, a corporation sole; The Roman Catholic Bishop of Oakland, a corporation sole; The Roman Catholic Bishop of Sacramento, a corporation sole; The Roman Catholic Archbishop of San Francisco, a corporation sole; The Roman Catholic Bishop of San Jose, a corporation sole; and The Roman Catholic Bishop of Santa Rosa, a corporation sole. Petitioners were defendants in the trial courts and petitioners in the separate writ proceedings at the California Court of Appeal and California Supreme Court.

Respondents are the Superior Courts of the State of California in and for the Counties of Alameda and Los Angeles. They were respondents in the writ proceedings at the California Court of Appeal and California Supreme Court

Respondents also include the plaintiffs from the trial-court proceedings, who are real parties in interest to the writ proceedings initiated in the California Court of Appeal. *See* Pet.App.197a-201a (listing plaintiffs).

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state as follows: each Petitioner is a non-stock corporation sole under the law of California. No Petitioner has a parent corporation and no publicly held company owns 10% or more of any Petitioner's stock.

STATEMENT OF RELATED PROCEEDINGS

The cases that are directly related are:

- *In re Southern California Clergy Cases*, Case No. JCCP 5101, Superior Court of California for the County of Los Angeles. Cases pending.
- *In re Northern California Clergy Cases*, Case No. JCCP 5108, Superior Court of California for the County of Alameda. Cases pending.

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INTRODUCTION

In 2002, California enacted a one-year window for plaintiffs to bring lapsed sexual-abuse claims against the Catholic Church and other defendants, even if the statute of limitations had expired many decades before. During that window, Petitioners—nine California Catholic Dioceses and Archdioceses—faced a flood of more than a thousand lawsuits alleging misconduct dating back to the 1930s. Those claims proved extraordinarily difficult to investigate, much less verify, due to the extreme passage of time. In many cases the alleged perpetrators were deceased, witnesses were impossible to find or had no recollection of critical details, and crucial evidence had been lost. Defending these claims proved to be a difficult—and expensive—task.

After this one-year revival period ended, Petitioners reached a series of settlements that paid out more than a billion dollars to bring these matters to a close. To finance these settlements, they expended significant resources, sold vast swaths of Church property, and in some cases exhausted or relinquished insurance coverage for past and future abuse claims. In reaching these settlements, Petitioners relied on the explicit cutoff date in the California statute, which assured them that unasserted lapsed claims would be extinguished at the end of the one-year revival period.

That assurance proved to be false. In 2013, 2014, and 2018, the State attempted to enact *additional* revival statutes that would have allowed the same category of abuse claims to be asserted yet again. Governor Jerry Brown vetoed each bill, explaining that these double-revival statutes would be "unfair" to

the Catholic Church because, among other things, it had "resolve[d] . . . legacy claims" "[i]n reliance on" the "defined cut-off" contained in the 2002 revival statute. Pet.App.143a-45a; *see id.* at 141a-52a.

After Governor Gavin Newsom took office, however, California enacted a new double-revival statute, now with a three-year revival window. This time, the new law not only revives old claims (including claims for punitive damages), but also adds *new* punishment in the form of treble damages for a novel category of "cover up" activity. As various legislators proclaimed, this "draconian" measure was designed to "drastically expand[] the actionable conduct" and to make defendants "hurt" by creating "*another* revival period" and by subjecting them to "additional punishment" for decades-old claims. Pet.App.166a, 170a, 177a, 179a.

California's double-revival statute violates the Constitution in two ways. *First*, it violates the *Ex Post Facto* Clause by imposing new punishments on past conduct and reviving claims for punitive damages. In *Stogner v. California*, 539 U.S. 607, 632-33 (2003), this Court identified punitive revivals as *ex post facto* violations. But California's courts, despite recognizing that the statute "has changed the legal consequences of past conduct," including by "imposing new or different liabilities," Pet.App.110a-11a, 123a-24a, have allowed these claims to proceed because they purportedly seek to impose only "civil" liability, Pet.App. 30a, 123a-24a. That holding conflicts with both this Court's precedents and the original understanding of the *Ex Post Facto* Clause, which prohibit retroactive punishment regardless of the label "civil" or "criminal," *see E. Enters. v. Apfel*, 524 U.S. 498, 538-39 (1998) (Thomas, J., concurring).

Second, the California statute also violates the Due Process Clause, which prohibits "retroactively . . . creat[ing] liability" by reviving certain time-barred claims. *William Danzer & Co. v. Gulf & S.I.R. Co.*, 268 U.S. 633, 637 (1925). As an original matter, the Clause prohibited States from depriving defendants of ripened limitations defenses, which was understood to be a deprivation of property without due process of law. And while modern precedent has watered down that original rule, this Court's precedents still recognize that States cannot revive certain time-barred claims, particularly when it would impose a "special hardship[]." *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 316 (1945). The paradigmatic example is when a State induces reliance on a statutory time bar but then pulls out the rug by reviving the expired claim, *id.*—exactly what happened here. Having made significant outlays in reliance on the cutoff date at the end of the last revival period, Petitioners now face potentially ruinous liability as a result of California's virtually unprecedented *double*-revival law.

This Court's review is warranted because the decisions below conflict with this Court's precedents and threaten massive consequences both within California and around the country. Fully half of all States have already revived time-barred abuse claims once, and now seven States have introduced *double*-revival laws. It is thus critical for this Court to intervene to reiterate the limits imposed by the *Ex Post Facto* and Due Process Clauses. And review is critical *now*, before the Catholic Church in the largest State in the union is forced to litigate hundreds or thousands of cases seeking potentially billions of

dollars in retroactive punitive damages under an unconstitutional double-revival regime.

OPINIONS BELOW

The trial courts' opinions rejecting Petitioners' constitutional challenges are reproduced at Pet.App.6a-71a and Pet.App.72a-130a. The Courts' of Appeal denials of the requested writs are reproduced at Pet.App.1a-2a and Pet.App.3a. The California Supreme Court's denials of discretionary review are reproduced at Pet.App.4a and Pet.App.5a.

JURISDICTION

Petitioners' trial-court motions to declare the double-revival statute unconstitutional were denied on April 29 and June 11, 2021. Petitioners then instituted separate proceedings in the Court of Appeal through petitions for writs of mandate and/or prohibition. The Court of Appeal denied those petitions on September 1 and October 20, 2021. The Supreme Court of California denied review in both proceedings on November 17, 2021. This Court granted Petitioners an extension of time to file until April 16, 2022. This Court has jurisdiction under 28 U.S.C. § 1257(a).

PROVISIONS INVOLVED

Article I, § 10's *Ex Post Facto* Clause, the Fourteenth Amendment, and California's double-revival statute, California Code of Civil Procedure § 340.1, are reproduced at Pet.App.131a-40a.

STATEMENT OF THE CASE

This petition arises from two coordinated proceedings in California state court. The plaintiffs in these cases sued a host of Catholic entities, including Petitioners (collectively, "the Dioceses"). The merits of these claims have not been determined, but the plaintiffs generally allege that certain priests or other individuals sexually abused them when they were minors and that the Dioceses failed to protect them from the alleged abuse. *E.g.*, Pet.App. 6a, 13a-14a. The overwhelming majority of the plaintiffs' claims would be time-barred but for California Code of Civil Procedure § 340.1, 2019 Cal. Stat. ch. 861 (the "double-revival statute"). The viability of hundreds of underlying cases thus hinges on the constitutionality of California's double-revival statute.

A. California's Pre-Revival Statute of Limitations.

When the alleged conduct prompting these lawsuits occurred, "a person alleging childhood sexual abuse generally had one year . . . from the time he or she became an adult to file [an] action." *Tietge v. W. Province of the Servites, Inc.*, 64 Cal. Rptr. 2d 53, 55 (Ct. App. 1997). Before 2002, the running of the statute of limitations for non-perpetrator defendants (*i.e.*, defendants who did not themselves commit abuse) created "an *absolute bar* against instituting a lawsuit against" them. *Quarry v. Doe I*, 272 P.3d 977, 989 (Cal. 2012). And a ripened limitations defense was traditionally a vested right, thus rendering "inoperative" statutes that tried "to revive [a] right of action . . . which had become [time] barred." *Chambers v. Gallagher*, 171 P. 931, 933 (Cal. 1918).

In 2002, however, the California Legislature "revived any lapsed claims" alleging childhood sexual abuse against institutions such as the Dioceses. *Quarry*, 272 P.3d at 990-91. But "the claims were revived for only one year," so time-barred plaintiffs had to file their lapsed claims in 2003. *Id.* at 991 (emphasis omitted). The state courts upheld this statute (the "2002 revival statute"). *See*, *e.g.*, *Roman Cath. Bishop of Oakland v. Superior Ct.*, 28 Cal. Rptr. 3d 355, 359-69 (Ct. App. 2005).

B. The Dioceses Rely on the One-Year Cutoff to Settle Lapsed Claims.

During this revival window, the Dioceses faced more than 1,000 lawsuits, some alleging conduct dating back to the 1930s. Pet.App.143a. Plaintiffs here, however, did not bring their claims during that window.

The record shows that global settlements reached by the Dioceses—"in reliance on the closed-end, 2003 absolute time-bar"—collectively paid over a billion dollars to conclusively resolve these legacy claims. Pet.App.184a-85a; *see* Pet.App.143a. This required the Dioceses to, among other things, sell and mortgage real estate, deplete significant financial reserves, and incur massive indebtedness. *E.g.*, Pet.App.184a-85a. In addition, funding the settlements forced the Diocese of Orange to "exhaust[] all available insurance coverage available to it for occurrences related to alleged sexual misconduct that occurred prior to 2004," Pet.App.188a-89a, and required the largest diocese in the State, Los Angeles, to "relinquish[] all insurance coverage for then-current and future sex abuse claims," Pet.App.184a-

85a; *see also* Pet.App.14a. Together, these two dioceses contributed a substantial portion of the funds to settle these claims statewide. *See* Pet.App. 184a-85a, 188a-89a.

Going forward, these various steps made sense because the 2002 revival statute provided a clearly defined window, closing at the end of 2003, for plaintiffs to bring time-barred claims. And the California Supreme Court held that anyone who "failed to bring their action during th[is] revival period"—like Plaintiffs here—had "their action . . . barred" again, this time by the 2002 revival statute itself. *Quarry*, 272 P.3d at 992.

C. California Tries But Fails to Again Revive Lapsed and Barred Claims.

A year after the California Supreme Court held that lapsed claims were barred again, *id.*, the California Legislature passed a bill that would have created another one-year filing window.

Governor Jerry Brown vetoed it. He explained that "[t]here comes a time when an individual or organization should be secure in the reasonable expectation that past acts are indeed in the past and not subject to further lawsuits." Pet.App.141a. "With the passage of time," he went on, "evidence may be lost or disposed of, memories fade and witnesses move away or die." Pet.App.142a. Governor Brown specifically noted the impact revival would have on the Catholic Church; it had "reli[ed] on the clear language and intent of [the 2002 revival statute]" to "resolve these legacy claims," including by paying "more than $1.2 billion" in settlements. Pet.App.143a. He found it manifestly "unfair" that the Legislature

would "go back" to groups like the Church "that ha[d] already been subjected to the unusual 'one year revival period' and make[] them, and them alone, subject to suit indefinitely." Pet.App.145a.

Undeterred, the California Legislature passed similar revival legislation in 2014 and 2018, but Governor Brown again vetoed both bills. *See* Pet.App.146a-52a.

D. Governor Newsom Signs the Double-Revival Statute.

Soon after Governor Brown left office, however, the California Legislature enacted its fourth revival bill since the 2002 revival statute. This time, newly elected Governor Newsom signed it into law. The resulting statute, the one at issue here, has two relevant components.

First, "[n]otwithstanding any other provision of law," the statute "revive[s]" all non-litigated, childhood-sexual-assault claims for damages that "would otherwise be barred [by] . . . the applicable statute of limitations." Cal. Civ. Proc. Code § 340.1(q); *see id.* § 340.1(a). The statute offers plaintiffs a three-year window to assert their claims (ending on January 1, 2023), *id.* § 340.1(q), and it retroactively applies to "any action or causes of action that would have been barred by the laws in effect before the date of enactment," *id.* § 340.1(r).

Second, the statute adds punishment in the form of treble damages to claims for sexual assault "as the result of a cover up," *i.e.*, a "concerted effort to hide evidence relating to childhood sexual assault." *Id.* § 340.1(b). It also "retroactive[ly] changes . . . the burden of proof" for obtaining such relief—from

California's typical "clear and convincing" standard for punitive or treble damages to a mere "preponderance of the evidence." Pet.App.108a-10a.

In enacting these provisions, California was explicit about its punitive purpose. For the Legislature, the "little bit of hurt" under the 2002 revival statute was not enough; this new revival was designed to "make people hurt" even more. Pet.App.166a. Hence, the statute "revives old claims" to serve "an effective deterrent" by "raising the cost for . . . abuse." Pet.App.159a-60a; *see* Pet.App.24a. And it "drastically expand[s] the actionable conduct," "lessen[s] the burden on a victim to bring such a case," and adds treble damages for past conduct as "additional punishment." Pet.App.162a, 177a; *id*. at 177a (law intended to "increase[]" both "the conduct to which the extended limitations period and the enhanced damages apply"). California justified the "draconian" nature of its double-revival statute on the belief that these acts warrant "special treatment" and on the desire to "make a statement." Pet.App.24a, 128a, 179a.

E. Hundreds of Otherwise Time-Barred Plaintiffs Have Already Sued the Dioceses, Relying on This Double-Revival Statute.

The claims at issue, consolidated in two different Judicial Council Coordination Proceedings (the California equivalent of multidistrict litigation), are brought by hundreds of plaintiffs whose claims have previously lapsed—many nearly a half-century ago. Plaintiffs allege that the actions are timely because, under the double-revival statute, all civil claims of

childhood sexual assault are revived again. *See, e.g.*, Pet.App.13a-14a. Some of the revived actions are based on the revival statutes themselves, which California courts have read to imply private rights of action for violations of California *criminal* law prohibiting childhood sexual abuse. *See id.*; *Angie M. v. Superior Ct.*, 44 Cal. Rptr. 2d 197, 202 (Ct. App. 1995).

F. The Courts Below Reject the Dioceses' Constitutional Challenges to the Double Revival of Claims.

The Dioceses moved to have the provisions reviving claims and retroactively imposing treble damages, Cal. Civ. Proc. Code § 340.1(b), (q), (r), declared unconstitutional under the *Ex Post Facto* and Due Process Clauses.

The Alameda-based court rejected the challenges outright, holding that "reopening of the statute of limitation is not a violation of constitutional due process" or the "prohibition against ex post facto legislation." Pet.App.83a-86a. As for the treble-damages provision, the court concluded it was justified by "important state interests," even while finding it "problematic" under the *Ex Post Facto* Clause. Pet.App.114a, 123a-25a.

For its part, the Los Angeles-based court held that the retroactive treble damages provision violated the *Ex Post Facto* and Due Process Clauses, but it rejected the challenge to the revival provisions. It concluded that the *Ex Post Facto* Clause "extends to criminal statutes and penalties, not to civil statutes," even ones reviving punitive-damages claims. Pet.App.30a. And it also held that any due-process protections for the

Dioceses must "yield[] to important state interests." Pet.App.40a-41a.

The Dioceses initiated separate writ proceedings in the Court of Appeal, which denied relief. Pet.App.1a-3a. The California Supreme Court then denied review. Pet.App.4a-5a.

REASONS FOR GRANTING THE WRIT

I. THE DOUBLE-REVIVAL STATUTE VIOLATES THE *EX POST FACTO* CLAUSE.

California's double-revival statute imposes retroactive punishment for past conduct, and thus violates both this Court's precedent and the original meaning of the *Ex Post Facto* Clause.

A. The California Courts Defied This Court's Precedent on the Use of "Civil" Laws to Impose Retroactive Punishment.

1. As a shorthand, courts have sometimes said that the *Ex Post Facto* Clause applies "only to criminal laws," not civil laws. *Harvey v. Merchan*, 860 S.E.2d 561, 574 n.12 (Ga. 2021) (upholding child-sexual-abuse revival statute); *see also Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952). In the decisions below, the California courts relied heavily on this distinction. *See, e.g.*, Pet.App.29a ("criminal punishment"); Pet.App.80a, 86a ("effectively criminal"; "criminal in nature"). But as a matter of history and precedent, the civil/criminal line is not the test. The *Ex Post Facto* Clause forbids any "retroactive *punishment*," whether civil or criminal. *Smith v. Doe*, 538 U.S. 84, 92 (2003) (emphasis added); *see Cummings v. Missouri*, 71 U.S. 277, 325-26 (1866). Because the California courts—and courts around the country—have failed to respect this core

constitutional principle, this Court's intervention is urgently needed.

As Chief Justice John Marshall explained, the defining feature of an *ex post facto* law is that it "renders an act punishable in a manner in which it was not punishable when it was committed," either with "penalties on the person" or "pecuniary penalties which swell the public treasury." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138 (1810). It is "the effect, not the form, of the law that determines whether it is *ex post facto*," *Weaver v. Graham*, 450 U.S. 24, 31 (1981)—a retroactive punishment is thus no less *ex post facto* when "inflicted" through "a civil action," *United States v. Chouteau*, 102 U.S. (12 Otto) 603, 611 (1880).

This understanding informs this Court's two-part test that now governs the *ex post facto* inquiry. In essence, the test asks whether a law is punitive either "in purpose or effect." *Smith*, 538 U.S. at 92. At the first ("intent") step, courts must ask whether the legislature acted with punitive intent. If so, "that ends the inquiry," and the law violates the *Ex Post Facto* Clause regardless of whether the law is labeled "civil" or "criminal." *Id.* But even if the legislature meant to enact a nonpunitive scheme, a "further inquiry" is required to ensure that the law is not punitive in "its effects." *Id.* at 93. At this second ("effects") step, even a law that was not *intended* to be punitive still violates the *Ex Post Facto* Clause if the "clearest proof" shows that it is punitive in effect. *Id.* at 92.

The "civil" label, then, is not "dispositive." *Allen v. Illinois*, 478 U.S. 364, 369 (1986). Indeed, in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), this Court expressly recognized that the "[r]etroactive imposition

of punitive damages" in the civil context—including "treble" damages—"would raise a serious constitutional question" under the *Ex Post Facto* Clause. *Id.* at 281. For the same reason, the Court warned lower courts to "hesitate to approve the retrospective imposition of liability on any theory of deterrence" or "blameworthiness," which are the hallmarks of punitive damages. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976). Accordingly, some courts have heeded this warning by declining to give retroactive effect to punitive-damages statutes, recognizing the "potential *ex post facto* problem." *E.g.*, *Louis Vuitton S.A. v. Spencer Handbags Corp.*, 765 F.2d 966, 972 (2d Cir. 1985) (treble damages); *Ditullio v. Boehm*, 662 F.3d 1091, 1100 (9th Cir. 2011) (punitive damages); *cf. Chenault v. U.S. Postal Serv.*, 37 F.3d 535, 539 (9th Cir. 1994) (A statute "may not be applied retroactively to revive a plaintiff's claim that was otherwise barred under the old statutory scheme.").

2. *Stogner v. California*, 539 U.S. 607 (2003), should have removed any doubt that this Court was serious about policing efforts to retroactively impose punishment. *Stogner* addressed a California "criminal statute of limitations governing sex-related child abuse crimes." *Id.* at 609. The law "authorize[d] prosecution for criminal acts committed many years beforehand," including by permitting "resurrection of otherwise time-barred criminal prosecutions." *Id.* Because the law was "enacted after pre-existing limitations periods had expired," *id.*, this Court concluded that it impermissibly subjected the offender to punishment for past conduct that, "when the new law was enacted[,] did not trigger any such liability."

Id. at 613. By "inflict[ing] punishment[], where the party was not, by law, liable to any punishment," the law thus retroactively "aggravate[d]" the offense and violated the *Ex Post Facto* Clause. *Id.*

The Court grounded its holding in "basic concerns about retroactive penal laws and erosion of the separation of powers." *Id.* at 615. The "fundamental" danger was that "a legislature, knowing the accused and seeking to have the accused punished for a pre-existing crime, might enable punishment of the accused in ways that existing law forbids." *Id.*

3. In the decisions below, the California courts ignored these warnings and flouted this Court's precedent. By upholding the state law at issue even though it is clearly punitive in both purpose and effect, the courts serially violated this Court's guidance on the *Ex Post Facto* Clause.

First, the California courts either ignored or misunderstood this Court's critical threshold inquiry. Rather than evaluating whether the intention of "the legislature was to impose punishment," *Smith*, 538 U.S. at 92, the courts improperly relied on the formalistic point that the California law does not impose "criminal punishment" and is not "criminal in nature," Pet.App.29a, 86a. That contravenes this Court's teaching that the civil label is not dispositive. Instead, a retroactive law can survive at the first step only if "the intention was to enact a regulatory scheme that is civil *and nonpunitive*." *Smith*, 538 U.S. at 92 (emphasis added).

If the California courts had conducted the proper "intent" inquiry, there would be no doubt as to the outcome: the law is unconstitutional. California

passed this admittedly "draconian" law with the avowed intent to "make people hurt" and to serve as "an effective deterrent" by "raising the cost" for the abuse"—simply put, the Legislature wanted to "make a statement." Pet.App.23a-24a, 160a, 166a, 179a. Thus, though nominally civil, the Legislature plainly intended the double-revival statute to further "the two primary objectives of criminal punishment: retribution [and] deterrence." *Kansas v. Hendricks*, 521 U.S. 346, 361-62 (1997). In short, the "expressed intent of [the double-revival statute] was to punish select institutions for past behavior and to deter future abuse." Pet.App.23a; *see* Pet.App.80a (describing this statute as "punitive in nature").

This punitive purpose is further confirmed by the express imposition of "additional punishment" in the form of treble damages for past conduct, Pet.App.24a, 162a; *see* Cal. Civ. Proc. Code § 340.1(b). What is more, these enhanced damages are available on a showing of a mere "preponderance of the evidence." Pet.App.108a-10a. As this Court has observed, "[t]he very idea of treble damages"—much less treble damages on a reduced burden of proof—"reveals an intent to punish past, and to deter future, unlawful conduct." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 639 (1981). Indeed, two of California's own appellate courts have already rightfully deemed this exact provision "plainly" punitive because it does not "fulfill legitimate compensatory functions" but instead "is designed to punish those who cover up childhood sexual abuse." *L.A. Unified Sch. Dist. v. Superior Ct.*, 279 Cal. Rptr. 3d 52, 61, 64 (Ct. App. 2021); *see also X.M. v. Superior Ct.*, 284 Cal. Rptr. 3d 92, 94 (Ct. App. 2021).

For these reasons, the "conclusion that the legislature intended to punish" could hardly be more evident. *Smith*, 538 U.S. at 92-93. That should "end[] the inquiry" without "further" analysis of the "effects" of California's double-revival statute. *Id.*

Second, the courts below also violated this Court's precedent at the "effects" step. The "clearest proof" that the statute is punitive comes not only from the California Legislature, *see id.* at 97; *supra* pp. 14-15, but also from this Court's precedent. By resurrecting punitive-damages claims, the double-revival statute is *ex post facto* for the same reasons as the law in *Stogner*: It "inflict[s] punishments, where the party was not, by law, liable to any punishment." 539 U.S. at 613. True, the law here is labeled "civil" while the one in *Stogner* was labeled "criminal." But in light of the punitive nature of the revived claims, that is a distinction without a difference. *Supra* pp. 11-13; *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996) (recognizing that punitive damages are a form of punishment). The "fundamental concern" motivating this Court's decision in *Stogner* thus "applies with equal force to punishment like that enabled by California's law." 539 U.S. at 615.

If anything, this is an easier case than *Stogner*, because California's punitive law not only revives claims, but also imposes "*additional punishment*" for past acts via the treble-damages provision. Pet.App.24a, 162a (emphasis added). Even the *Stogner* dissenters would have recognized this imposition of new penalties (on a reduced burden of

proof) as an *ex post facto* violation. 539 U.S. at 633 (Kennedy, J., dissenting).[1]

* * *

The decisions below thus cannot be reconciled with this Court's precedent. They fail to recognize that even if retroactive laws operate under a "civil" label, they still violate the *Ex Post Facto* Clause if they are punitive in either purpose or effect. And they compound their error by ignoring the "clearest proof" that the double-revival statute is plainly punitive in both purpose *and* effect.

B. The California Courts Defied the Original Meaning of the *Ex Post Facto* Clause.

Certiorari is further warranted because the decisions below also contradict the original meaning of the *Ex Post Facto* Clause. Indeed, if the facts here do not amount to the "clearest proof" of an *ex post facto* violation, then this Court should use this case to realign its standard with the original meaning of the Clause.

1. A mountain of historical evidence shows that the *Ex Post Facto* Clause as originally understood prohibited "*retrospective* laws," both criminal and

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[1] To be sure, one of the California courts below recognized that the retroactive treble-damages provision violates the *Ex Post Facto* Clause (though it still endorsed the revival of claims, including claims for punitive damages). Pet.App.34a-35a. But that only heightens the need for review because there is confusion—and even a split among the California courts in this very case—on this important federal constitutional issue.

civil, especially when they imposed penalties. Oliver P. Field, *Ex Post Facto in the Constitution*, 20 Mich. L. Rev. 315, 319 (1922); *see id.* at 319-25 (collecting authorities).

That original meaning tracks the Constitution's plain text, which prohibits "*any* . . . ex post facto [l]aw," U.S. Const. art. I, § 10 (emphasis added), without distinguishing between civil and criminal. The framers understood the term *ex post facto* "synonymously" with *retrospective*. Field, *supra*, at 320. Members of the Constitutional Convention used the terms interchangeably—and as applying equally to civil laws. *Id.* at 319-20; *see*, *e.g.*, 2 *The Records of the Federal Convention of 1787*, at 440 (Max Farrand ed. 1911) (hereinafter *Records of the Convention*); *see also* Matthew P. Harrington, *Foreward: The Dual Dichotomy of Retroactive Lawmaking*, 3 Roger Williams U. L. Rev. 19, 27 n.44 (1997) (collecting authorities). Madison, for instance, deemed it unnecessary to specifically prohibit retroactive interference with contracts, which was "already done by the prohibition of ex post facto laws." *Records of the Convention*, *supra*, at 440. He reiterated this view in Federalist No. 43, describing the *Ex Post Facto* Clause as a "constitutional bulwark in favor of personal security and private rights." Not surprisingly, therefore, the Convention rejected a motion "to limit the meaning of the clause to criminal cases." Field, *supra*, at 321.

The state ratifying conventions echoed this understanding. *See id.* at 322-27. Supporters and opponents of the Constitution agreed that the *Ex Post Facto* Clause prohibited retroactive interference with civil matters such as retroactively abolishing paper

money and Continental debts. "In fact, the reported debates give no evidence of [anyone] using the term *ex post facto* in connection with a criminal case." *Id.* at 325.

2. Given all this, it came as a surprise to many, apparently including Chief Justice Marshall, when the Court indicated in *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798), that the *ex post facto* provisions "were confined to laws respecting criminal punishments." Thomas M. Cooley, *Constitutional Limitations* 373 (7th ed. 1903); *see* Edward S. Corwin, *John Marshall and the Constitution* 154 (1920) (Marshall later "manifest[ed] disapproval of the decision"); 1 William W. Crosskey, *The True Meaning of the Prohibition of the Ex-Post-Facto Clauses*, in *Politics and the Constitution in the History of the United States* 342 (1953). Although *Calder* had no occasion to consider state-imposed *civil penalties* (much less issue any holding about them), the seriatim opinions have mistakenly led courts to discount or outright reject application of the *Ex Post Facto* Clause in the civil-punitive context.

Other courts around the founding, though, applied the *Ex Post Facto* Clause to civil matters. Before *Calder*, opinions from Maryland, Virginia, and New Jersey suggested that the phrase "ex post facto" applied to both civil and criminal laws. Crosskey, *supra*, at 324, 336-27, 339-40. And even after *Calder*—in which Chief Justice Marshall did not participate—the Court explained the meaning of an *ex post facto* law in general terms as "one which renders an act punishable in a manner in which it was not punishable when it was committed." *Fletcher*, 10 U.S. at 138 (Marshall, C.J.).

Later Justices, on and off the bench, have expressed skepticism about the "soundness" of the atextual and ahistorical notion that the Clause applies "only in the criminal context." *Apfel*, 524 U.S. at 538 (Thomas, J., concurring); *see*, *e.g.*, 2 Joseph Story, *Commentaries on the Constitution of the United States* 219, 272 (5th ed. 1891) (questioning *Calder* as "an original matter"). Justice William Johnson, for example, noted "that some confusion has arisen from an opinion, which seems early, and without due examination, to have found its way into this Court; that the phrase '*ex post facto*,' was confined to laws affecting criminal acts alone"—an opinion he rejected. *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 286 (1827). He felt "duty[-bound]" to "record" his "investigations" into the Clause's original meaning, which "confirmed [him] in the opinion" that the Clause applied in both civil and criminal cases. *Satterlee v. Matthewson*, 27 U.S. (2 Pet.) 380, 414-16 & n.(a) (1829) (concurring op.).

3. The twin historical purposes of the *Ex Post Facto* Clause—preventing vindictive legislation and giving advance notice of sanctions—further confirm that the Clause must apply to all retroactive punishment regardless of whether it is labeled "civil" or "criminal." *See* Jane H. Aiken, *Ex Post Facto in the Civil Context: Unbridled Punishment*, 81 Ky. L.J. 323, 327-33 (1992) (collecting authorities).

First, the Clause "restricts governmental power by restraining arbitrary and potentially vindictive legislation." *Weaver*, 450 U.S. at 29. Punitive civil laws, such as the double-revival statute at issue here, implicate that concern just as much as criminal laws. However strong the desire for retribution or the "state

interests" in retroactive punishment, the Constitution does not "yield[]" to those interests or those passions, Pet.App.41a; rather, it "shield[s]" defendants from them, *Fletcher*, 10 U.S. at 137-38 (Marshall, C.J.); *see Does #1-5 v. Snyder*, 834 F.3d 696, 705-06 (6th Cir. 2016).

Second, the Clause ensures "fair warning of [a law's] effect[s]" so as to "permit individuals to rely on [its] meaning." *Weaver*, 450 U.S. at 28. California's double-revival statute undermines this interest regardless whether the law is labeled civil or criminal: Not only could the Dioceses not rely on the *original* statute of limitations, but they could not even rely on the original *revival statute*. "As the founders rightly perceived, as dangerous as it may be not to punish someone, it is far more dangerous to permit the government under guise of civil regulation to punish people without prior notice." *Snyder*, 834 F.3d at 706.

4. While this Court's precedents recognize that punitive civil laws can violate the *Ex Post Facto* Clause, *supra* pp. 11-13, lower courts have construed that precedent as stacked heavily in favor of any law that bears a "civil" label. *E.g.*, *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 530 (7th Cir. 2021) (en banc) ("This is a challenging standard for plaintiffs."). Courts have understood *Smith* and its progeny to allow the "civil" label alone to put a heavy thumb on the scale: if that label is used then the law is *presumptively valid*, and only the "clearest proof" can show that it is retroactively punitive. *E.g.*, *Does v. Wasden*, 982 F.3d 784, 798 (9th Cir. 2020) (Van Dyke, J., dissenting in part, concurring in part) ("[T]he 'clearest proof' standard is best understood as referring to a *presumption* that makes it harder for

plaintiffs to win their challenge." (collecting cases)); *Waldman v. Conway*, 871 F.3d 1283, 1294 (11th Cir. 2017) (per curiam) ("[N]one of the allegations in [the] complaint . . . provide the 'clearest proof' necessary to override the presumption [in favor of] Alabama's stated civil intent.").

The original meaning of the *Ex Post Facto* Clause suggests this burden should be reversed: retroactive laws are presumptively unconstitutional unless the government can show a non-punitive regulatory purpose with some historical pedigree. *Cf. Smith*, 538 U.S. at 93 (explaining that "imposition of restrictive measures on sex offenders adjudged to be dangerous is 'a legitimate nonpunitive governmental objective and has been historically so regarded'"). And as the decisions below indicate, there is real danger that this Court's current test can be employed to uphold laws that would plainly violate the *Ex Post Facto* Clause as originally understood. Accordingly, this case presents an opportunity for the Court to refine its *ex post facto* jurisprudence to more closely align with the original meaning of the Clause. *See Apfel*, 524 U.S. at 538-39 (Thomas, J., concurring).

II. THE DOUBLE-REVIVAL STATUTE VIOLATES THE DUE PROCESS CLAUSE.

Review is also warranted on the second question presented: whether the Due Process Clause prohibits the revival of claims that had already been revived by statute and expired once before, inducing widespread detrimental reliance on the cutoff date at the end of the previous revival window.

A. The California Courts Defied This Court's Due Process Precedent.

1. The Due Process Clause of the Fourteenth Amendment provides that no person shall be "deprived of life, liberty, or property without due process of law." Under the original meaning of this provision, it was widely understood that "the legislature could not retrospectively divest a person of vested rights that had been lawfully acquired under the rules in place at the time." Nathan S. Chapman & Michael W. McConnell, *Due Process As Separation of Powers*, 121 Yale L.J. 1672, 1781-82 (2012).

As Justice Thomas Lee recently explained in an opinion for the Utah Supreme Court, "a ripened limitations defense was historically viewed as a vested right beyond the reach of legislative authority." *Mitchell v. Roberts*, 469 P.3d 901, 909-10, 912-13 (Utah 2020) (collecting authorities). But in *Campbell v. Holt*, 115 U.S. 620 (1885), this Court departed from this traditional view and held that States generally may revive common-law claims even after the statute of limitations has expired. *Id*. at 628. As Justice Lee explained, *Campbell* was an "aberration" at the time and is wrong as an original matter. *Mitchell*, 469 P.3d at 909-10, 912-13. The California Supreme Court once said the same thing—that *Campbell* split from the "practically universal rule on the subject" and was wrong. *Chambers*, 171 P. at 933; *see also Campbell*, 115 U.S. at 632-34 (Bradley, J., dissenting) (collecting Fourteenth Amendment-era authorities). But despite its lack of fidelity to the original meaning of the Constitution, *Campbell* establishes the general rule that still governs today: Because States can unilaterally decide when a time bar will be treated as

a vested right under state law, "lifting the bar" is not a "per se" violation of the Due Process Clause. *Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO, Loc. 790*, 429 U.S. 229, 243-44 (1976).

In spite of *Campbell*'s aberrational holding, this Court has established two exceptions that preserve some portion of the Constitution's original prohibition against the revival of time-barred claims.

First, the Due Process Clause prohibits the revival of a time-barred claim when it would inflict "special hardships or oppressive effects." *Chase*, 325 U.S. at 316. A special hardship exists when some "course of action was undertaken" by the defendant in reliance on the time bar, such as if the defendant "sold unregistered stock depending on a statute of limitation for shelter from liability." *Id*. In such circumstances, allowing liability to be retroactively imposed on the defendant would be "oppressive" because his "conduct would have been different" had he not been induced to rely on the time bar. *Id*.

Second, a claim cannot be revived when the time bar was not just the result of the "general statute of limitations," but was instead "directed to [a] newly created liability so specifically as to warrant saying that it qualified the right" to recover on the claim. *Id*. at 312 n.8. As this Court has explained, where a particular liability is subject to a specific statute that "put[s] a period to its existence," then defendants are entitled to rely on that period, and "a retroactive extension of the period after its expiration amount[s] to a taking of property without due process of law." *Id*. This principle was first recognized in *Davis v. Mills*, 194 U.S. 451 (1904), and then reaffirmed in *William*

Danzer & Co. v. Gulf & S.I.R. Co., 268 U.S. 633, 637 (1925). Accordingly, in such circumstances, the retroactive "extension of . . . an expired civil limitations period can unconstitutionally infringe upon a 'vested right,'" regardless of whether the State recognizes the limitations defense as "vested." *Stogner*, 539 U.S. at 632.

2. In the decisions below, the California courts defied this Court's precedent by failing to respect both of these *Campbell* exceptions. The exceptions are only a meager remnant of the full protection that the Due Process Clause originally provided against the revival of time-barred claims. But they still provide essential federal constitutional backstops that state courts cannot ignore.

a. As to the first *Campbell* exception, there is no question that California's double-revival of claims imposes a "special hardship" on the Dioceses, because they were induced to rely on the cut-off date at the end of the previous revival window. As then-Governor Brown (repeatedly) explained when vetoing similar legislation, the Dioceses "took actions to resolve . . . legacy claims" "[i]n reliance on the clear language and intent of [the 2002 statute];" namely, its "defined cut-off time" for "all claims that had previously lapsed." Pet.App.143a, 150a. Accordingly, "[b]y 2007, the Catholic Church in California had paid out more than $1.2 billion to settle the claims filed during this one year revival period." *Id.*

Many Dioceses were forced to drastically restructure their affairs to fund these dramatic expenditures—for example, selling and mortgaging properties. In addition, some were forced to exhaust

or relinquish insurance coverage for past or future claims. *E.g.*, Pet.App.184a-85a, 188a-89a. As a result, the Archdiocese of Los Angeles and the Diocese of Orange no longer have insurance even to pay for the defense of these claims, and their ability to cover any resulting liability is greatly diminished. *See id.* And regardless of whether any liability is ultimately found, the defense of these claims alone is ruinously expensive. The claims are not only high in number (hundreds filed already, with more likely on the way), they are also exceedingly difficult to defend due to the extreme delay in filing: Most of the claims are several decades old, with some stretching back to the 1950s. *E.g.*, *Nichols v. Doe 1*, No. 21STCV02385 (Cal. Super. Ct.). Many of the alleged perpetrators are dead. Records and other evidence no longer exist. *E.g.*, Pet.App.141a-42a. Witnesses are frequently deceased, impossible to find, or have little if any recollection of the relevant facts. And the prospect of easy settlements has sadly increased the proportion of dubious claims that are impossible to verify but also very difficult to definitively disprove, especially in such highly charged cases.

It is undeniable that the "course of action" detailed above "was undertaken" in reliance on the end of California's first revival window. *Chase*, 325 U.S. at 316; *see* Pet.App.184a ("in reliance on the closed-end, 2003 absolute time-bar"); *see also id.* at 143a, 188a-89a. That cut-off date expressly "shelter[ed] [the Dioceses] from liability" on all subsequent claims after the one-year revival period ended. *Chase*, 325 U.S. at 316; *see Quarry*, 272 P.3d at 993. If California had told the Dioceses that the one-year cutoff was actually illusory, and that a new revival window would be

opened allowing thousands *more* claims in the same category, their calculus regarding settlement clearly "would have been different." *Chase*, 325 U.S. at 316. Now, the Dioceses are facing financial ruin because they must defend against another blizzard of claims, in some cases without the insurance the State induced them to drop. Even under this Court's modern precedents, this is exactly the type of "special hardship" and "oppressive" result the Due Process Clause does not allow.

Despite all of this, the California courts here held that there was "no legitimacy to any . . . reliance" interests asserted by the Dioceses. *See* Pet.App.124-25a; *id.* at 14a, 42a-43a (rejecting argument that defendants "reasonably and detrimentally relied on the 2002 adopted absolute time bar" when they "committed funds to pay [for] pre-enactment occurrences and exhausted insurance coverage for such claims"). The courts embraced broad propositions such as "there is no constitutional right to be free of the obligation to defend stale claims," Pet.App.38a, 42a, 87a, and that revival statutes "do[] not violate constitutional principles," Pet.App.84a. That approach was made possible by pre-existing California precedent that eviscerated the special hardships exception by holding that "due process notions [a]re not affected by the revival of a civil law claim," *e.g.*, *Bishop of Oakland*, 28 Cal. Rptr. 3d at 359—a proposition flatly contrary this Court's precedent.

b. California's double-revival statute also violates the second *Campbell* exception because Plaintiffs' revived claims seek to impose the same liability that was created—and limited by—the 2002 revival

statute. That statute created a new liability that otherwise would not have existed. Indeed, it was only because of "the 2002 amended statute" that the Dioceses were "exposed to liability" during the earlier revival window. *Quarry*, 272 P.3d at 989-90. At the same time, the revival statute specifically "limit[ed] the time within which [the new liability] [could] be enforced"—all claims had to be filed within one year. *Davis*, 194 U.S. at 454. And that means the Dioceses were entitled to rely on the one-year cutoff as creating a vested right, the deprivation of which "amount[s] to" a violation of due process. *Chase*, 325 U.S. at 312 n.8.

In short, the 2002 revival statute created a new liability with a built-in filing period—precisely the situation contemplated by this Court's precedents under the Due Process Clause. *See* Pet.App.105a. Nor could it be otherwise, as this Court has expressly recognized that after a statute of limitations expires, the defendant "[i]s not liable" on the claim. *Stogner*, 539 U.S. at 613. Accordingly, after the claims against the Dioceses became time-barred initially, the Dioceses had no liability for those claims, and it was only through the 2002 revival statute that the Dioceses were "subject[ed] . . . to a new liability." *Chase*, 325 U.S. at 312 n.8. Because that liability was "'specifically . . . qualified'" by the one-year cutoff, the State could not later pass a new *double*-revival statute without violating due process. *Id.*

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The decisions of the California courts below conflict with this Court's precedents providing the only remaining federal due-process limits on the revival of

time-barred claims. This Court should not let that conflict stand.

B. This Case Exemplifies the Confusion Among Lower Courts on How to Apply the *Campbell* Exceptions.

Granting review here is also warranted to dispel the confusion that has long prevailed among the lower courts about federal due-process limits on the revival of long-expired claims. While *Campbell*'s general rule is often stated, the exceptions are mostly ignored. Virtually no state supreme court has even *acknowledged* the federal due-process backstops, even as state courts repeatedly uphold revival statutes. And even the courts that recognize the federal issue do little more than mention it—and they are badly fractured on what the *Campbell* exceptions mean.

1. Like California, 21 other state-court systems have "allow[ed] the retroactive expansion of the statute of limitations to revive otherwise time-lapsed claims—seemingly without limitation." *Doe v. Hartford Roman Cath. Diocesan Corp.*, 119 A.3d 462, 509-10 (Conn. 2015) (collecting 18 States in this group, and joining it); *see also Pisula v. Roman Cath. Archdiocese of N.Y.*, 201 A.D.3d 88, 110 (N.Y. App. Div. 2021); *Dekker/Perich/Sabatini Ltd. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 495 P.3d 519, 525 (Nev. 2021). While there are 25 States that have invalidated revival statutes over the years, they have done so on *state-law* grounds. *Doe*, 119 A.3d at 510-11 (collecting cases); *see*, *e.g.*, *Mitchell*, 469 P.3d at 912 (Lee, J.). The result is a patchwork of decisions that—despite the *Campbell* exceptions outlined by this Court—leaves the viability of these revival statutes

almost entirely dependent on state law. *See Doe*, 119 A.3d at 508-14.

2. As far as the lower courts are concerned, *Campbell*'s "special hardships" exception is essentially a dead letter. In nearly eight decades, "no court has found the repeal of a limitations period to work any [special] hardship" in violation of the Due Process Clause. *United States v. Falcon*, 805 F.3d 873, 875 (9th Cir. 2015). This perhaps explains the sweeping view of the California courts that federal "due process notions" simply "[a]re not affected by the revival of a civil law claim." *Bishop of Oakland*, 28 Cal. Rptr. 3d at 359.

When courts do address the "special hardship" issue, moreover, they are inconsistent about how to apply it. Some courts properly focus on whether the defendant exhibited "reliance on the original running of the statute of limitations." *United States v. Singer*, No. 96-5356, 1997 WL 812459, at *2 (D.C. Cir. Nov. 10, 1997) (per curiam); *see*, *e.g.*, *Falcon*, 805 F.3d at 875; *Spagnoulo v. Bisceglio*, 473 A.2d 285, 289 (R.I. 1984). But other courts have adopted a more amorphous test: "a finding of hardship or oppression depends on a showing that the equities favor the claimant." *Riggs Nat'l Bank of Wash., D.C. v. District of Columbia*, 581 A.2d 1229, 1242 (D.C. 1990); *see*, *e.g.*, *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1260 (Del. 2011) (rejecting the Church's "special hardships" argument and upholding a revival statute because doing so was not "unjust"). Meanwhile, still other courts focus on other considerations, such as whether a party acting under the new limitations period engaged in "extreme delay" in filing suit. *Lee v. Spellings*, 447 F.3d 1087, 1089-90 (8th Cir. 2006); *see*,

e.g., *United States v. Distefano*, 279 F.3d 1241, 1244-45 (10th Cir. 2002).

3. Lower courts are likewise confused about the second *Campbell* exception, which bars the revival of a statutorily created liability that contained its own built-in limitations period. *Chase*, 325 U.S. at 312 n.8.

Judges have long debated whether courts are "misread[ing]" this rule. *Chevron Chem. Co. v. Superior Ct.*, 641 P.2d 1275, 1284 (Ariz. 1982) (collecting cases). And some courts certainly are. Even for "right[s] born of statute" that contain their own limitations periods, courts regularly uphold the revival of expired claims. *E.g.*, *Panzino v. Cont'l Can Co.*, 364 A.2d 1043, 1046 (N.J. 1976). Some courts have even explicitly tossed aside the "federal rule" in favor of a "more functionalist approach, weighing the defendant's interests in the availability of a statute of limitations defense with the need to correct an injustice." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d 1227, 1239 (N.Y. 2017); *see also*, *e.g.*, *Dekker*, 495 P.3d at 525; *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 831 (Minn. 2011).

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As these cases show, the California courts are not alone in failing to follow this Court's precedent. Many lower courts have proven unable or unwilling to apply the remaining due process limits this Court has recognized on the revival of time-barred claims. Accordingly, this Court's intervention is needed both to breathe life back into the Due Process Clause and to bring clarity to this area of law.

III. This Case Is Exceptionally Important and This Court's Review Is Urgently Needed.

The questions presented are exceptionally important, both for the direct stakes of this case and the implications for the many similar cases arising around the country with increasing frequency.

First, the potential consequences for the Catholic Church in California make this case exceptionally important in its own right. Under the new three-year revival window, there are already hundreds of cases pending against the Dioceses, and untold more that could yet be filed, that will need to go to trial. Since the State's previous revival statute induced the Dioceses to take dramatic steps to pay for the last round of revived claims, the Dioceses now stand largely defenseless against this second wave. The potential financial implications for the Church are thus nothing short of ruinous. If the Court does not intervene now, the Dioceses will have no way to avoid these unconstitutional harms imposed by California's punitive and unconstitutional double-claim revival.

Second, the punitive revival of decades-old claims has become a nationwide trend that is accelerating at a disturbing pace. In recent years, some 23 other States and the District of Columbia have revived time-barred abuse claims. *See* Pet.App.190a-94a (listing statutory revivals). In addition, seven other States (Alabama, Iowa, Kansas, New Mexico, Ohio, Oklahoma, and Pennsylvania) have introduced new revival legislation in their current legislative sessions. Pet.App.195a-96a. And most troublingly, seven States that previously revived claims (Georgia, Hawaii, Massachusetts, Michigan, New York, Rhode Island,

and Utah) have followed California's example and introduced *double*-revival legislation that may soon be enacted.[2] Since these decades-old claims are often difficult to verify or adjudicate in any reliable manner, their widespread revival shows that California's disregard for traditional notions of due process is not unique.

Before this problem becomes any worse—and before California's example of double-revival becomes any more widespread—this Court should address it. If it does not, there will be no limiting principle to protect other institutions from being subjected to an endless train of punitive claim revivals. So long as state law does not provide a "vested right"—or, even if it does, if "state interests" outweigh that right, Pet.App.40-41a, 124a—States may revive claims over and over until churches and other institutions throughout the country are bankrupted.

Third, this case also implicates the broader trend of States using putatively "civil" laws to accomplish what they could not constitutionally accomplish using criminal laws. *See* Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 Yale L.J. 1795, 1798 (1992) ("[P]unitive

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[2] *See*, *e.g.*, H.B. 109, 2021-2022 Reg. Sess. (Ga. 2021) (revival period of one year); S.B. 2649, 2717, 31st Leg. (Haw. 2022) (expand revival window to 2024); S. 1007, 1088, 192d Gen. Ct. (Mass. 2021) (eliminates statute of limitations, applies retroactively and revives all claims); H.B. 5962, 5963, 101st Leg. (Mich. 2022) (open two year window for victims of criminal sexual conduct); A3210, A618A, 2021-2022 Reg. Sess. (N.Y. 2021) (open 2 or 3 year window); H. 7409, Gen. Assemb., Jan. Sess. (R.I. 2022); H.J.R. 4, Gen. Sess. (Utah 2022) (amend state constitution to allow retroactive revival of child sexual abuse claims).

civil sanctions are rapidly expanding" and are "sometimes more severely punitive than the parallel criminal sanctions for the same conduct."). For example, here, California could not, consistent with *Stogner*, do with its criminal law what it did with this double-revival statute. This trend has not gone unnoticed by this Court, leading some Justices to question civil/criminal distinctions in other areas. *See, e.g.*, *Sessions v. Dimaya*, 138 S. Ct. 1204, 1229 (2018) (Gorsuch, J., concurring in part and concurring in the judgment).

IV. THIS CASE IS A STRONG VEHICLE.

This case also provides a clean vehicle to resolve the important questions presented. Unlike many other cases in this area, this one does not come to this Court mixed with questions about whether *state law* treats a ripened limitations defense as a vested right. Even though there are strong arguments that California law does, *Chambers*, 171 P. at 933, this petition does not present them; it is based purely on federal law.

This case also does not involve the review of interlocutory orders, but rather final judgments from the California courts. After two California trial courts issued separate rulings, the Dioceses initiated *original proceedings* for writs of mandate and/or prohibition or other relief challenging the California double-revival statute in a single Court of Appeal. *See* Pet.App.1a-3a. That court denied relief without an opinion, *id.*, and the Supreme Court of California denied discretionary review. Pet.App.4a-5a. This resulted in a final judgment because it fully and finally disposed of the writ proceedings. This Court has long held that a writ proceeding under California

law "is a distinct suit, and the judgment finally disposing of it is a final judgment." *Bandini Petroleum Co. v. Superior Ct.*, 284 U.S. 8, 14 (1931); *accord*, *e.g.*, *Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1349 (2020) (same under Montana law, because the "writ proceeding is a self-contained case, not an interlocutory appeal"); *see also* Stephen M. Shapiro et al., *Supreme Court Practice* § 3.8, at 171-72 (10th ed. 2013) (collecting cases).

Just four Terms ago, this Court granted review in a case arising out of California in precisely the same posture. *See*, *e.g.*, *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1068 (2018). As the United States explained in *Cyan*, the denial of the "original proceeding initiated by the [writ] petition" "establish[es] finality for purposes of 28 U.S.C. § 1257." United States Cert. Br. at 20, *Cyan*, 138 S. Ct. 1061 (No. 15-1439). The same is true here.

Nor does it matter that the courts in these writ proceedings declined to issue any opinions explaining their denial of Petitioners' claims. The same was true of the California courts in the writ proceedings in *Cyan*, 138 S. Ct. at 1068. And the same has been true before, yet this Court has still held that judgment is "final" when an "application for the writ of prohibition [i]s denied without an opinion." *Mich. Cent. R.R. v. Mix*, 278 U.S. 492, 494 (1929). In short, California's courts cannot evade this Court's jurisdiction by summarily rejecting challenges to laws that patently violate the Constitution.

CONCLUSION

The Court should grant certiorari.

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