

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

Marci A. Hamilton
Paul R. Walker, Director of Public Law

PHONE: 215-353-8984
FAX: 215-493-1094
E-MAIL: hamilton.marci@gmail.com

1. Federal Constitution:

The United States Supreme Court has closed the door on retroactive criminal SOL legislation, but it has found retroactive civil SOL legislation to be constitutionally permissible. Compare *Stogner v. California*, 539 U.S. 607, 610 (2003), with *Landgraf v. USI Film Prods.*, 511 U.S. 244, 267 (1994).¹

2. Pennsylvania Remedies Clause and relevant cases:

There is a century-old case that has dictum on which the Catholic Conference hangs its hat. It is *Lewis v. Pennsylvania R. Co.*, 220 Pa. 317, 69 A. 821, 823 (Pa. 1908). There was a time when every court—federal and state--agreed on that principle. But that doctrine is now soundly rejected in federal cases and the majority of states, including Pennsylvania.

Recent Pennsylvania law case rejects the concept that there is a “vested right” in a statute of limitations: *McDonald v. Redevelopment Auth.*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), *appeal denied*, 600 Pa. 772, 968 A.2d 234 (Pa. 2009) (“[N]o one has a vested right in a statute of limitations or other procedural matters, and the legislature may at any time alter, amend or repeal such provision without offending constitutional restraints.”).

Pennsylvania’s Supreme Court has held retroactive legislation to be constitutional post-*Landgraf*: *Bible v. Dep’t of Labor & Indus.*, 548 Pa. 247, 260, 696 A.2d 1149, 1156 (Pa. 1997) (finding retroactive amendment to the Workers’ Compensation Act constitutional) (“We have used the same

¹ *Under the federal Constitution, retroactive civil legislation is constitutional if the legislative intent is clear and the change is procedural.* The Supreme Court in *Landgraf* explained the duty of judicial deference to legislative choice in these matters as follows: “legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” *Landgraf*, 511 U.S. at 272. The Court went on to observe that “the constitutional impediments to retroactive civil legislation are now modest. ... Requiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” *Id.* at 272-73. To be sure, there is an “antiretroactivity presumption” but this presumption can be readily overcome by express legislative intent. See *Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004); see also *Landgraf*, 511 U.S. at 267-68; *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 311-12 (1945).

reasonableness/balancing of interests analysis in applying the due process protections of the Pennsylvania Constitution. See *Krenzelak v. Krenzelak*, 503 Pa. 373, 469 A.2d 987 (1983). There we observed that "traditionally, retrospective laws which have been deemed reasonable are those which "impair no contract and disturb no vested right, but only vary remedies" *Id.* at 382-83, 469 A.2d at 991 (citations omitted)".

3. Public Policy:

The key policy point here is that institutional Defendants knew full well when they endangered and harmed children that they were violating the law. There is no unfair surprise in subjecting them to liability, because when they acted, they were on full notice that they should not have done what they did. The window or revival do no more than impose on them the liability they created through their own wrongful actions.

Given the shift toward deferring to lawmakers across the United States on a procedural rule like civil SOLs, why wouldn't Pennsylvania lawmakers want to give victims the opportunity to go forward? The constitutional arguments against are archaic and outdated, and the Pennsylvania Supreme Court won't rule again on the issue unless lawmakers try.

4. Recent state Supreme Court decisions following reasoning from above:

Sliney v. Previte, 473 Mass. 283, 41 N.E.3d 732 (Mass. 2015), available at <http://sol-reform.com/sliney.pdf>

Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 119 A.3d 462 (Conn. 2015), available at, <http://sol-reform.com/hartford.pdf>

Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 2011 Del. LEXIS 115 (Del. 2011), available at <http://sol-reform.com/sheehan.pdf>

Recent state Appellate Court decisions following reasoning from above, with State Supreme Court approval:

Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 80 Cal. Rptr. 3d 368 (Cal. Ct. App. 2008), review denied, 2008 Cal. LEXIS 11242 (Cal. 2008), available at <http://sol-reform.com/masonic.pdf>

Recent Federal Court decision following reasoning from above while, applying State retroactive law:

John Roe No. 8, et. al v. Ram, No. 14-00027 LEK-RLP, 2014 U.S. Dist. LEXIS 120830 (D. Haw. Aug. 29, 2014), available at <http://sol-reform.com/ram.pdf>