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MEMORANDUM

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**TO:** Members of Senate Judiciary Committee  
**FROM:** Alida Kass, President & Chief Counsel  
**SUBJECT:** S477  
**DATE:** March 7, 2019

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NJCJI supports the core objective of S477. We recognize the value of allowing victims of abuse to bring to justice both the perpetrators and those who allowed known abusers to continue their criminal behavior. Unfortunately, the reviver language of S477 would create retroactive liability, not only for perpetrators and their enablers, but also for public entities and a wide array of local leaders serving civic organizations who had no reason to know that anything was amiss.

The most compelling argument for this legislation has always been about the predators themselves, and those in positions of authority who *knew* that predators were abusing children, and either did nothing or took action that simply allowed the abuse to continue. The documentation of such behavior, as revealed in the Pennsylvania Grand Jury Report, was shocking in its detail. The specific examples of such knowing and willful behavior is the reason that the legislature is now poised to take the extraordinary step of retroactively reviving stale claims.

But claims over this sort of egregious conduct do not turn on a failure to meet a particular standard of care. Such claims should be brought against the perpetrators themselves, and against the supervisors who *knew* about the behavior and *willfully* allowed it to continue. And the extraordinary remedy of a retroactive reviver should be narrowly tailored to reach that extraordinary behavior.

This legislation, by contrast, would subject employees, supervisors – and the organizations they serve – to retroactive liability without any knowledge of wrongdoing, on a standard of simple negligence.

And whereas a negligence standard is workable in conjunction with a reasonable statute of limitations, it is much more dangerous in the application of the reviver. The question is whether the employee or organization departed from the relevant standard of care. But the “standard of care” appropriate in the context of non-profits, especially those serving children, has evolved significantly over the past several decades. Prior to the early 2000s, for example, it simply was not the norm to

conduct background checks, or to adhere to other supervisory protocols that we take for granted today. But with an open-ended reviver, past actions inevitably end up being judged by modern standards.

We believe the individuals and organizations that engaged in this sort of behavior can be held accountable, while limiting the collateral damage. We therefore continue to request the following amendments to the reviver language currently found in Section 7 of SCS for S477.

7. (New section) a. Notwithstanding the statute of limitations provisions of N.J.S.2A:14-2, section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1), that occurred prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and which action would otherwise be barred through application of the statute of limitations, shall be commenced within two years immediately following the effective date. To the extent applicable, any action brought pursuant to this subsection shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Notwithstanding the statute of limitations provisions of subsection a. of this section, or section 6 of N.J.S.2A:14-2, P.L. , c. (C. ) (pending before the Legislature as this bill), an action against any public entity, nonprofit, corporation, society or association organized exclusively for religious, charitable, or educational purposes (collectively, “the Organization”), or its trustee, director, officer, employee, agent, servant or volunteer (collectively, “the Organization’s Agents”) for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1), that occurred before January 1, 2003 may only proceed upon a showing that the Organization or the Organization’s Agents acted knowingly or willfully in causing, or allowing, a sexual assault or any other crime of a sexual nature or sexual abuse, as defined under C.2A:61B-1, and the injury was of such a nature that it was the result of the Organization or the Organization’s Agent’s behavior.