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STATE OF WASHINGTON

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No. 84707-0-RRK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LISA UNRUH,

Plaintiff/Appellant,

vs.

DINO CACCHIOTTI, DDS and JANE DOE CACCHIOTTI, husband and
wife and the marital community composed thereof,

Defendants/Respondents

APPELLANT'S ANSWER TO AMICUS CURIAE BRIEFS OF
WASHINGTON STATE MEDICAL ASSOCIATION (WSMA) AND
WASHINGTON DEFENSE TRIAL LAWYERS (WDTL)

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I. INTRODUCTION

Appellant Unruh submits this consolidated answer to the amicus briefs of the Washington State Medical Association (WSMA) and the Washington Defense Trial Lawyers (WDTL).

II. ARGUMENT

A. The limitations periods in reenacted RCW 4.16.350 and elimination of tolling for minors in RCW 4.16.190 apply prospectively from the statutes' effective date (June 7, 2006).

The law is well-established in Washington that changes to statutes of limitations and repose are applied prospectively from the effective date of the statute. In *Merrigan v. Epstein*, 112 Wn.2d 709, 773 P.2d 78 (1989), this Court held that the limitations periods in the 1987 version of RCW 4.16.350 ran from the effective date of the amendments. *Merrigan*, 112 Wn.2d at 716; *id.* at 717 (“The time limit for bringing a claim under a new statute begins to run upon pre-existing claims only on the effective date of the statute.”). Because the effective date of the 1987 amendments to RCW 4.16.350 was April 29, 1987, the three-year limitations period in RCW 4.16.350 did not run as to pre-existing claims until April 29, 1990. *Merrigan*, 112 Wn.2d at 718.

Several other cases have likewise applied new statutes of limitations prospectively from their effective date. *See, e.g., O'Donoghue v. State*, 66 Wn.2d 787, 791-792, 405 P.2d 258 (1965); *Young v. Savidge*,

155 Wn. App. 806, 817, 230 P.3d 222 (2010); *Torkelson v. Roerick*, 24 Wn. App. 877, 879-880, 604 P.2d 1310 (1979); *see also State v. TK*, 94 Wn. App. 286, 291, 971 P.2d 121 (1999) (“When the Legislature enacts a new, shortened statute of limitations, Washington courts preserve claims which accrued before the new law was enacted and run the statute of limitations from the new statute’s effective date.”). The Legislature is presumed to have been aware of this established law when it enacted RCW 4.16.350 and RCW 4.16.190(2). *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994) (“[T]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating and a statute will not be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it.”).

In addition to being contrary to established law, WSMA’s argument that the amended statutes should be applied retroactively is also contrary to Respondent Cacchiotti’s reading of the statutes. Respondent Cacchiotti agrees that RCW 4.16.190(2) and RCW 4.16.350 should be applied prospectively (but misunderstands what prospective application of a statute of limitation means under Washington law). *See Respondent’s Supplemental Brief* at p. 1 (“The Legislature specified that the changes are effective prospectively from the effective date of the amendments”); p.7 (“the Legislature specifically provided for prospective application to

actions commenced on or after the effective date of the bill, June 7, 2006”); p.8 (“Here, the Legislature plainly expressed its intent that the statute apply prospectively from date of enactment. This would have been the presumption even without an express Legislative directive.”).

Washington courts rarely apply new statutes of limitations or repose retroactively, and only when the Legislature *clearly* intended for the new statutes to apply retroactively. *Hanford v. King County*, 112 Wash. 659, 661, 192 P. 1013 (1920) (amendments to statutes of limitations “will not be given a retroactive effect unless it appears that such was clearly the legislative intention”). Here, the Legislature simply stated that the effective date of the amendments to RCW 4.16.190 was June 7, 2006, and that the reenacted RCW 4.16.350 would apply to actions commenced on or after June 7, 2006, the effective date of the amendments. Contrary to WSMA’s claim, there is no clear legislative intent in RCW 4.16.190 and RCW 4.16.350 that the new provisions be applied retroactively – a result that would be rare under Washington law and would have been clearly expressed by the Legislature if it had been intended.¹ The fact that the Legislature did not state a clear intent that the

¹ WSMA argues that the Legislature’s use of the word “applied” (“be applied to actions commenced on or after the effective date of the statute”) indicates an intent that the statute be applied retroactively. But the courts have not interpreted the words “apply” or “applied” as suggesting that a

new statutes be applied retroactively and instead referred to their effective date as the operative date of their application requires that the new statutes be applied prospectively, with the new limitations periods beginning to run as to existing claims on the effective date of the new statutes (June 7, 2006).

Several cases have explained what it means for a statute of limitations or repose to apply prospectively: the new limitations period begins to run as to existing claims from the new statute's effective date. In this case, that means that the eight-year limitations period begins to run as to pre-existing claims on June 7, 2006, and that people with pre-existing medical malpractice claims filed after June 7, 2006 would have until June 7, 2014 until the eight-year period expired.

In *1000 Virginia Limited Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 146 P.3d 423 (2006), a general contractor brought a breach of

statute be applied *retroactively*. See, e.g., *Torkelson v. Roerick*, 24 Wn. App. 877, 880, 604 P.2d 1310 (1979) (“[W]hen an exception to a statute of limitations is amended or repealed, the new limitation or exception begins to *apply* at the effective date of the new tolling statute.” (emphasis added)). The Legislature's statement that the amendments to RCW 4.16.190 and RCW 4.16.350 apply to cases filed on or after the statutes' effective date is consistent with this Court's precedent applying new statutes of limitations and repose prospectively, with the new limitations periods running from the effective date of the statutes as to claims that pre-existed the new statutes. The language used by the Legislature does not demonstrate any intent to depart from established law applying new statutes of limitations and repose prospectively.

contract action against several subcontractors for construction defects resulting in water intrusion at an apartment complex. The certificate of substantial completion for the apartment complex was issued in December 1992. Leaks were noticed in early 1994, and additional problems came to the plaintiff's attention in 1996. The plaintiff knew that substantial repairs were needed by the end of 1998. The plaintiff's lawsuit was filed in September 2002. *1000 Virginia*, 158 Wn.2d at 571.

Among other things, the defendants argued that the six-year statute of repose for construction claims in RCW 4.16.326(1)(g) (enacted in 2003) applied retroactively. In discussing whether the new six-year limitations period applied retroactively, this Court noted that statutes are presumed to run prospectively, but "a statute or amendment to a statute may be retroactively applied if the legislature so intended, if it is clearly curative, or if it is remedial, provided that retroactive application does not 'run afoul of any constitutional prohibition.'" *1000 Virginia*, 158 Wn.2d at 584 (quoting *McGee Guest Home, Inc. v. Dep't of Soc. & Health Servs.*, 142 Wn.2d 316, 324, 12 P.3d 144 (2000)). The Court held that the amendment to the statute was not curative because it was intended to undo the judicial adoption of the discovery rule for construction defect cases, not to clarify an ambiguous statute. *1000 Virginia*, 158 Wn.2d at 586.

The Court also held that the construction statute of repose was not remedial. The Court noted that a statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right. *1000 Virginia*, 158 Wn.2d at 586. Although abolition of a *statutory* cause of action does not impair a vested right, an accrued cause of action is a vested right when it springs from contract or the common law. *1000 Virginia*, 158 Wn.2d at 587. Here, Ms. Unruh's dental malpractice claim derives from the common law. Her cause of action accrued in March 2006 -- before the effective date of RCW 4.16.190(2) and RCW 4.16.350 -- when she discovered the factual basis for a possible cause of action against Dr. Cacchiotti. Ms. Unruh's cause of action was therefore a vested right as of the effective date of the new statutes. In *1000 Virginia*, this Court stated that "statutes affecting vested rights will be construed as operating prospectively only." *1000 Virginia*, 158 Wn.2d at 586 (quoting *O'Donoghue v. State*, 66 Wn.2d 787, 790, 405 P.2d 258 (1965)). Because the plaintiff's claim in *1000 Virginia* was based in contract and had accrued before the effective date of the six-year statute of repose for construction claims, this Court held that the plaintiff had a vested right and that the statute could not be applied retroactively because "such application would affect the plaintiffs' accrued causes of action." *1000 Virginia*, 158 Wn.2d at 587.

The Court reached the same result in *Cambridge Townhomes, LLC v. Pacific Star Roofing, Inc.*, 166 Wn.2d 475, 209 P.3d 863 (2009). In *Cambridge Townhomes*, the plaintiff's claim accrued before the effective date of the new construction statute of repose, but the lawsuit was not filed until after the effective date of the new statute. *Cambridge Townhomes*, 166 Wn.2d at 486. This Court held that, because the plaintiff's claim accrued before the effective date of the new statute of repose, the statute of repose would not be applied retroactively. The Court stated that applying the new statute of repose retroactively to a claim that had accrued before the effective date of the new statute would be "contrary to [this Court's] precedent." *Cambridge Townhomes*, 166 Wn.2d at 486.

Here, the language of RCW 4.16.350 indicates an intent that the amendments to RCW 4.16.350 and RCW 4.16.190 be applied prospectively, as Respondent Cacchiotti acknowledges. Applying the new statutes prospectively requires that the new limitations periods begin to run as of the statutes' effective date for claims like Ms. Unruh's, which accrued before the statutes' effective date. RCW 4.16.350(3) provides that a plaintiff has three years after the act or omission or one year after discovery of the basis for the cause of action, "whichever period expires later," to file a medical malpractice lawsuit. Applying the three-year period (the later of the two periods) prospectively from the statute's

effective date, Ms. Unruh would have had until June 7, 2009 to file a lawsuit. Because her lawsuit was filed in October 2007, it was timely filed. CP 1-8.

B. Medical malpractice defendants' interests in finality must be weighed against the goal of the common law "to provide a remedy for every genuine wrong."

WDTL's quotation from this Court's decision in *1000 Virginia*, 158 Wn.2d at 579 – "compelling one to answer stale claims in the courts is in itself a substantial wrong" – ignores the first half of the quoted sentence:

A court must consider the goal of the common law "to provide a remedy for every genuine wrong" while recognizing, at the same time, that "compelling one to answer stale claims in the courts is in itself a substantial wrong."

1000 Virginia, 158 Wn.2d at 579 (quoting *Ruth v. Dight*, 75 Wn.2d 660, 665, 453 P.2d 631 (1969)). WDTL focuses only on the policy considerations favoring statutes of limitations and repose and completely ignores the public policy considerations that this Court has recognized in support of the discovery rule and prospective application of new or amended statutes of limitations or repose. WDTL's assertion that Washington has a "strong public policy favoring the finality of tort claims" ignores the strong countervailing public policy "to provide a remedy for every genuine wrong."

WDTL dismisses the significance of a minor, rather than an adult, having a tort cause of action as making no difference in the analysis. In *Gilbert v. Sacred Heart Medical Center*, 127 Wn.2d 370, 900 P.2d 552 (1995), however, this Court referred to “the right of every citizen to seek redress for injuries sustained during minority.” *Gilbert*, 127 Wn.2d at 377. This Court has repeatedly protected the right of minors to pursue a remedy for injuries sustained during minority.

WDTL and WSMA would have minors’ right to seek redress for injuries sustained during minority be dependent on the willingness and ability of their parents or guardians to pursue those rights. But this Court has refused to extinguish the rights of minors because of the action or inaction of their parents. *See, e.g., Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 492, 834 P.2d 6 (1992) (“A parent does not have legal authority to waive a child’s own future cause of action for personal injuries resulting from a third party’s negligence.”). If a parent cannot affirmatively waive a child’s cause of action by signing a release, it makes little, if any, sense to conclude that a parent can waive a child’s medical malpractice cause of action by failing to file a lawsuit on the minor’s behalf during the child’s minority, within the limitations periods set forth in RCW 4.16.350.

C. The reenacted eight-year limitations period violates separation of powers.

Appellant Unruh does not dispute that the Legislature has the authority to enact statutes of limitations and repose. The problem with the reenacted eight-year limitations period is that it is exactly the same language as the statute that this Court held violated the privileges and immunities clause of the Washington constitution in *DeYoung v. Providence Medical Ctr.*, 136 Wn.2d 136, 960 P.2d 919 (1998). The legislative purpose is not materially different than it was before. The Legislature's stated purpose for the reenacted RCW 4.16.350 acknowledges that it may have a negligible effect on medical malpractice insurance rates, one of the reasons that this Court held that it did not survive rational basis review under the privileges and immunities clause. The primary legislative intent expressed in support of reenacted RCW 4.16.350 is "to provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants." See "Purpose—Findings—Intent" following RCW 4.16.350. While acknowledging that this was a legitimate goal, this Court held in *DeYoung* that the "miniscule number of claims subject to the repose provision renders the relationship too attenuated to that goal." *DeYoung*, 136 Wn.2d at 149-150. The Legislature's statement in 2006 that the

statutes are acceptable even if they prevent only one defendant from having to answer a “stale claim” is in direct conflict with this Court's holding in *DeYoung* that the eight-year limitations period is too attenuated to the statute's goal to survive constitutional scrutiny if it applies to such a miniscule number of claims.

And while the reenacted RCW 4.16.350 applies to slightly more injured people than the previous version,² the fact that it bars minors from filing medical malpractice lawsuits before they even have the legal right to do so adds another level of unconstitutionality rather than curing the constitutional infirmity that caused the Court to strike it down in *DeYoung*. Further, if this Court holds that eliminating the right of minors to bring a lawsuit before they even have the legal ability to file a lawsuit is unconstitutional and strikes down the amendments to RCW 4.16.190, RCW 4.16.350's eight-year limitations period would apply to the same “miniscule number of claims” as the identical version of the statute that was struck down in *DeYoung*.

² The Legislature amended RCW 4.16.190 to eliminate tolling for minors when it reenacted the eight-year limitations period in 2006. However, the eight-year limitations period only affects minors whose parents do not discover the basis for their cause of action and file a lawsuit within eight years of the medical treatment at issue – a fraction of all minors with medical malpractice claims.

D. The eight-year limitations period in RCW 4.16.350 and elimination of tolling for minors in RCW 4.16.190(2) violate minors' right of access to courts.

Citing a 1990 case, *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 800 P.2d 367, WDTL asserts that the right of access to courts does not exist in Washington. WDTL completely ignores this Court's recent decision in *Putnam v. Wenatchee Valley Medical Center*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009) ("The people have a right of access to courts; indeed, it is 'the bedrock foundation upon which rest all the people's rights and obligations.'" (quoting *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991)); *id.* at 986 (Madsen, J., concurring) ("I do not dispute that there is right of access to courts inherent in article I, section 10 of the Washington State Constitution.")).

It is implicit in this Court's decision in *Gilbert v. Sacred Heart Medical Center*, 127 Wn.2d 370, 900 P.2d 552 (1995), that an eight-year statute of repose would violate minors' right of access to courts if it extinguishes their right to file a lawsuit before they reach the age of 18, which is the first time they are legally able to file a lawsuit and pursue a remedy for injuries occurring during their minority. In *Gilbert*, the issue was whether amendments to RCW 4.16.350 in 1986 and 1987, providing in part that the knowledge of a parent or guardian shall be imputed to minors and that such imputed knowledge "shall operate to bar the claim of

such minor to the same extent that the claim of an adult would be barred under this section," nullified the tolling effects of RCW 4.16.190 for minors. Because the tolling provisions for minors in RCW 4.16.190 had not been repealed by the Legislature, the Court construed the statutes together to preserve the integrity of the tolling statute and held that RCW 4.16.190 still tolled the limitations periods of RCW 4.16.350 until a minor reached the age of majority, at which point the minor would be charged with whatever knowledge his or her parents had regarding a potential malpractice claim. *Gilbert*, 127 Wn.2d at 375.

The Court stated that this reading of the statutes gave "effect to the language of both RCW 4.16.190 and RCW 4.16.350 and to *the right of every citizen to seek redress for injuries sustained during minority.*" *Gilbert*, 127 Wn.2d 377 (emphasis added). Although the Court did not reach the constitutional challenge to the application of the eight-year statute of repose to minors because it resolved the case on statutory interpretation grounds, the Court noted that the plaintiff's argument "that any other interpretation of the relationship between RCW 4.16.190 and RCW 4.16.350 would violate constitutional guaranties" was "compelling." *Gilbert*, 127 Wn.2d at 378. WDTL's position that abolishing tolling for minors in medical malpractice cases and applying the eight-year statute of

repose to minors does not violate constitutional guaranties was implicitly rejected by this Court in *Gilbert*.

WDTL's argument that the constitutional problems with eliminating minors' right to seek redress for injuries sustained during minority are resolved by the possibility that minors could petition the court for a guardian ad litem to bring suit for them is contrary to the observations that this Court has previously made about the difficulties that minors face with seeking redress for injuries sustained during minority. Before they reach the age of majority, minors lack the legal right to file a lawsuit on their own behalf, as well as the education, maturity, and intelligence to attempt to navigate the civil justice system and seek out legal counsel. If it is "arbitrary and unreasonable" to bar a minor's claim because a "friend or relative through inadvertence or ignorance fails to act," *Cook v. State*, 83 Wn.2d 599, 604-605, 521 P.2d 725 (1974), it is all the more arbitrary and unreasonable to expect 10- or 11-year old children to research the law, prepare and file legal pleadings, and petition a court to appoint someone to bring suit for them, as WDTL expects them to do.

WDTL's argument that the eight-year statute of repose does not create a barrier to filing suit, but simply sets a time limit, ignores the fact that some plaintiffs do not discover the basis for their medical malpractice claims until years after the medical treatment at issue. The potential

difficulty of discovering the existence of a medical malpractice cause of action is why this Court adopted the discovery rule in medical malpractice cases. *Ruth v. Dight*, 75 Wn.2d 660, 453 P.2d 631 (1969). Even assuming that a 10-year-old child could recognize the existence of a medical malpractice claim and marshal the resources necessary to file a medical malpractice lawsuit related to medical care that occurred at age 3, WDTL's argument ignores the impact of an eight-year statute of repose on minors who do not even know they have a medical malpractice claim until more than eight years after the medical treatment at issue. In situations in which medical malpractice is not discovered within eight years of the medical treatment, the statute of repose creates a clear and absolute barrier to a minor's right to file a lawsuit and obtain a remedy for injuries that have occurred.

If allowed to stand, the abolition of tolling for minors in RCW 4.16.190(2), combined with the eight-year limitations period for malpractice claims in RCW 4.16.350, would create an absolute bar to minors' rights to seek redress for injuries occurring as a result of malpractice during their minority, before they even have the legal right to seek redress for their injuries. Such a state of affairs clearly violates minors' right of access to courts and fundamental right to seek redress for injuries occurring during minority, when by law they are precluded from

filing a lawsuit to obtain a remedy for the wrongs that have been done to them. This is an entirely different situation than applying a statute of repose to bar the claim of an adult after eight years, because unlike minors, legally competent adults have the legal right to act on their own behalf and file a lawsuit. *Cf. DeYoung v. Providence Medical Ctr.*, 136 Wn.2d 136, 146, 960 P.2d 919 (1998) (“Minors are not similarly situated to adults because they are unable to pursue an action on their own until adulthood, RCW 4.08.050, and they generally lack the experience, judgment, knowledge and resources to effectively assert their rights.”). Because of the difference between minors’ and adults’ legal right to file a lawsuit, a ruling by this Court that RCW 4.16.190(2) and RCW 4.16.350 are unconstitutional because they violate *minors*’ right of access to courts would not lead to excessively broad interpretations of the right of access to courts and put statutes of limitations or repose that apply to *adults* in jeopardy of being struck down, as claimed by WDTL.

E. The statute of repose violates the privileges and immunities clause of the Washington Constitution.

As discussed by WSAJ Foundation, in *Grant County Fire Protection Dist. v. City of Des Moines*, 150 Wn.2d 791, 805, 83 P.3d 419 (2004), this Court held that the privileges and immunities clause of the Washington State Constitution, article 1, section 12, requires an

independent constitutional analysis from the equal protection clause of the United States Constitution. The Court noted that the terms “privileges and immunities”

pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship. These terms, as they are used in the constitution of the United States, secure in each state to the citizens of all states the . . . rights to the usual remedies to collect debts, and to enforce other personal rights

Grant County Fire Protection Dist., 150 Wn.2d at 812-813 (quoting *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)).

In *Grant County*, the Court held that a property owner’s “right” to petition for annexation did not constitute a privilege (i.e., fundamental right of state citizenship) within the meaning of the privileges and immunities clause. *Grant County*, 150 Wn.2d at 814-816. However, this Court has long recognized that the right to enforce personal rights through the civil justice system is an important and fundamental right. *See, e.g., Gilbert v. Sacred Heart Medical Ctr.*, 127 Wn.2d at 377 (referring to “the right of every citizen to seek redress for injuries sustained during minority”); *Hunter v. North Mason High School*, 85 Wn.2d 810, 539 P.2d 845 (1975) (“The right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person’s physical well-being and ability to continue to live a decent life.”).

Washington's privileges and immunities clause protects not only against the majoritarian threat of invidious discrimination against nonmajorities, but is also concerned with laws "serving the interest of special classes of citizens to the detriment of the interests of all citizens." *Grant County*, 150 Wn.2d at 806-807; *id.* at 808 ("Washington's addition of the reference to corporations demonstrates that our framers were concerned with undue political influence exercised by those with large concentrations of wealth, which they feared more than they feared oppression by the majority."). Here, legislation was enacted that grants special immunities to defendants in medical malpractice cases at the expense of the rights of minors to pursue a remedy for injuries occurring as a result of malpractice during their minority. No minor in any other tort context is burdened in this way (i.e., deprived of the benefit of tolling of limitations periods under RCW 4.16.190), and no other class of defendants is privileged in this way with regard to claims by minors. The legislation was specifically enacted with the intent to benefit the medical malpractice insurance industry, a small group of corporations of considerable economic and political clout. This is precisely the type of legislation that the privileges and immunities clause was intended to foreclose — legislation that sacrifices the fundamental rights of minors in order to grant a special immunity to a narrow class.

F. RCW 4.16.190(2) and RCW 4.16.350 cannot survive rational basis review because they treat similarly situated classes – minors and incapacitated adults – differently.

This Court has previously recognized that minors share many characteristics with incapacitated adults: “Minors . . . are unable to pursue an action on their own until adulthood, RCW 4.08.050, and they generally lack the experience, judgment, knowledge and resources to effectively assert their rights.” *DeYoung v. Providence Medical Ctr.*, 136 Wn.2d 136, 146, 919 P.2d 960 (1998). The same is true of incapacitated adults – they are unable to pursue an action on their own, and they lack the experience, judgment, knowledge, and resources to effectively assert their rights. WDTL’s claim that minors are more likely than incapacitated adults to have a parent or guardian who can protect their interests is simply speculation. Many incapacitated adults have friends, family members, or caregivers who look after their interests. Some children do not have parents, have parents who themselves are minors, or have parents who do not effectively assert their rights for a variety of reasons. The similarities between minors and incapacitated adults with regard to being able to assert and protect their legal rights are overwhelming in comparison to any differences. Both classes are dependent on others to assert their legal rights. Both classes should be treated similarly, yet RCW 4.16.190(2) and RCW 4.16.350 fail to do so. Discriminating between similarly situated

classes in this manner is not rationally related to the statutes' purposes of reducing malpractice insurance rates and barring stale claims.

WDTL attempts to justify the statutes' discriminatory treatment of minors on the basis that minors constitute a substantial portion of the population and receive "at least as much medical care as persons over 18." WDTL provides no citation for this claim. It is just as likely that incapacitated adults – simply by virtue of having serious medical problems and being incapacitated – are substantial consumers of medical services, many of them on a daily basis for those who are in nursing homes.

Even assuming that the class of minors is larger than the class of incapacitated adults, as a practical matter only a small percentage of minors are affected by the statutes' discriminatory treatment – those minors who do not discover the basis for their medical malpractice claims within eight years and those who do know that they have medical malpractice claims but whose parents or guardians fail to take action to protect their rights. Because the statutes' discriminatory treatment of minors vis-à-vis incapacitated adults is not rationally related to the statutes' purposes, it fails rational basis review.

RESPECTFULLY SUBMITTED this 26th day of January, 2011.

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