



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 1933, RELATING TO LIMITATION OF ACTIONS.**

**BEFORE THE:**

**HOUSE COMMITTEE ON HUMAN SERVICES**

**DATE:** Monday, January 30, 2012 **TIME:** 8:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Randolph Slaton, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and does not oppose the bill, but makes the following comments and recommendations.

There are two virtually identical bills, H.B. No. 1933 and H.B. No. 2139, being heard at the same time before this committee.

These bills differ only in that H.B. No. 1933 contains the additional wording on page 1 of the bill at lines 10 -13, "provided that an action against a person who was a minor at the time the person committed the act of sexual abuse may be commenced when that person reaches the age of majority."

Since the following paragraph already sets forth that the time to commence an action under this section is "eight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later," the additional wording is not necessary and it may cause confusion as to when the time actually starts to run.

We would recommend that this phrase be deleted.

Also, to avoid any conflict of interest, we would recommend an additional change to subsection (d) relating to the notarized statement of a medical or mental health care professional as follows:

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff. The certificate of merit shall include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J

- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

who is knowledgeable in the relevant facts and issues involved in the action ~~[and]~~, who is not a party to the action~~[- ]~~, and who is not currently treating nor had previously treated the plaintiff.

We respectfully request that this bill be amended to include the stated changes.



**HAWAII CATHOLIC CONFERENCE**

6301 Pali Highway  
Kaneohe, HI 96744-5224

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Hearing on: January 30, 2012 @ 8:30 a.m.

Conference Room # 329

**DATE:** January 27, 2012

**TO:** House Committee on Human Services  
**Representative John M. Mizuno, Chair**  
**Representative Jo Jordan, Vice Chair**

**FROM:** Walter Yoshimitsu, Executive Director

**RE: OPPOSITION TO HB 1933 AND HB 2139 RELATING TO LIMITATION OF ACTIONS**

Honorable Chair Mizuno and members of the House Committee on Human Services, I am Walter Yoshimitsu, representing the **Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents the Catholic Church in Hawaii. **We oppose these two bills for the following reasons:**

These bills could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs. The bills expand the statute of limitations for commencement of a tort action for acts of child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707. Further, the bills provide a two-year window for revival of all actions that are presently time-barred, no matter how long ago the sexual abuse occurred, except as against the State. Although claims are revived against all others, the bills specifically provide that the State is exempt from revived claims. Finally, the bills substantially expand the concept of child sexual abuse to now include abuse of the child by another minor.

While people often single out the Catholic Church for past instances of abuse, the problem is by no means unique to the Church. There is always the potential for abuse in any institution that deals with, supervises or cares for children.

Studies actually indicate that the institutions most likely to foster an atmosphere of abuse are not private institutions, but public ones. As indicated by a study prepared for the federal Department of Education, 6.7% of students in public schools nationwide have reported being sexually abused by an educator, a much higher percentage than the reported incidence of clergy abuse of children. (U.S. Department of Education, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (2004).) Government reports also indicate that, across the country, there has been a high incidence of sexual abuse in juvenile detention facilities, with 10.3% of incarcerated youth reporting they had been sexually abused by a facility staff member during the prior year. (U.S. Department Justice, Bureau of Justice Statistics, "Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09" (2010).)

These rates of abuse are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church.

These bills, however, do not recognize this. Instead of protecting children in such situations, these bills perversely and explicitly exempt the State from liability for time-barred claims, while at the same time reviving such claims against all other institutions.

There is no rational basis for making such a distinction, especially given the empirical data regarding incidents of abuse occurring in public institutions. Further, the clear message this legislation sends is that children who have suffered abuse by State employees or under the State's control are not as worthy of legal redress as those who have suffered abuse in a private setting. For example, if a child is abused by a teacher in a private school, under these bills there is a revived right to assert a claim against the school. If the same identical situation occurred in a DOE school, however, there would be no ability to recover.

Although the State in these bills is exempted, many other institutions, including private elementary and secondary schools, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys' and Girls' Clubs, childcare programs, preschools, after school programs, camps, churches, and youth-at-risk programs, will be substantially affected by the revival of claims already barred by the statute of limitations. **Because of the lapse of time, many institutions potentially subject to suit under these bills no longer have the ability to meaningfully defend themselves from such claims.**

The reason for statutes of limitation is to reflect the fact that, over time, individual memories fade, witnesses who may prove or disprove a claim have died or are no longer available, and written records may no longer be available that would have relevance to the case. Especially in the case of nonprofits, record-keeping over a prolonged period may be far from ideal. Boards and staff change, and institutional memories are lost.

These bills, however, would now allow the assertion of claims going back for an unlimited period of years. Many institutions may be put in the situation of defending themselves in situations where not only is there a lack of evidence, but the abuser and anyone who may have been at fault for negligently overseeing or supervising the abuser are long gone. All that remains as a target for litigation may be the institution, which is now without any practical way to defend itself from the allegations.

These bills would have substantial negative impacts on the ability of nonprofits to remain open and provide services. Many nonprofits that provide services for children and families do so on very thin budgets, especially in these economically challenging times. The cost of defending against a single claim brought under this bill could have a devastating impact. Further, to the extent that such claims can be insured against, it would seem that premiums for such insurance could increase substantially if this bill became law. Again, many nonprofit organizations may not be able to pay for such insurance, and it is quite possible that such organizations would simply cease to provide services rather than the organization, as well as its directors and officers, being exposed to suit.

Another very disturbing feature of these bills is that they appear to expand the scope of claims considered child sexual abuse beyond abuse by adults against children. Bill 1933 explicitly also covers claims for recovery of damages "against a person who was a minor at the time the person committed the sexual abuse." Although Bill 2139 does not state this explicitly, it also purports to extend the statute of limitations to within "[e]ight years of the date the plaintiff or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later."

Thus, no longer is the concern of this legislation the preservation of claims where it involves sexual abuse of a minor resulting from the actions of an adult such as a coach, teacher or pastor. Now, the concept of child sexual abuse is being expanded to include situations where two minors are sexually involved with one another. Have the ramifications of this been thought through? Are schools now exposed to liability where something occurred in the vicinity of a school dance? What about actions of juvenile campers with each other, of which the camp was not even aware? Are claimants now able to say that the camp should be liable because it was "responsible" for campers at the camp?

Finally, these bills will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, as we have previously testified, we believe that the focus of efforts at preventing sexual abuse should be on prevention. Over the past few years, as this problem has come to light, churches, schools and other nonprofits have taken substantial steps to reduce the possibility for abuse to occur, including substantially increased screening and background checks on potential teachers and employees, accountability and reporting procedures, and supervisory procedures to ensure that children are not put in situations and environments where they could be abused. These bills, however, which resuscitate claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

For these reasons, we believe these bills should be held in committee.

Thank you for the opportunity to testify.

Testimony for HUS 1/30/2012 8:30:00 AM HB1933

Conference room: 329  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Laulani Teale  
Organization: Individual  
E-mail: [laulani@gmail.com](mailto:laulani@gmail.com)  
Submitted on: 1/28/2012

Comments:

My apologies; I erroneously checked the support position when I am in fact in opposition to the measure at this time.

It is important that victims of abuse not be subject to the statute of limitations, particularly in regard to cases related to clergy or other positions of power. I am not in support of undue persecution of anyone, and believe in ho'oponopono or other healing solutions whenever possible. Historically, however, children in these cases are often dismissed, and it is important that they be able to bring closure to the matter as adults, if necessary.

The following has been pointed out to me, and upon reading the measures, I must generally agree with this:

- 1) The civil bills do not expose the individuals or organizations that knew about, facilitated and covered up abuse
- 2) The bills do not punish organizations that conspired to cover-up the sexual abuse of children
- 3) The bills have no teeth and do not allow victims access to third party discovery, depositions and PROOF that will show the actions and crimes of their abusers
- 4) The bills completely disenfranchise victims. No attorney will be able to take a case that they will not be able to prove (because the proof lies with the third party enablers) and for which they will not be compensated
- 5) These bills - in the very way they are written - give the power to predators. Since victims will have little to no access to the evidence they need, predators will have no problem turning around and getting their attorney's fees reimbursed by the victim
- 6) These bills reduce the civil system to a "he said, she said." The beauty of our civil justice system is in the fact that it allows victims to come forward and publicly investigate the crimes against them in the discovery process. This law intentionally and maliciously deprives victims of that opportunity. In the end, it will force victims to remain isolated in shame and silence, since they are allowed no access to the evidence and people who will support their story.

7) these bills especially disenfranchise poor victims, many of whom are Native, who do not have the money to pay an attorney to take their case.

Mahalo nui loa.

TO: Representative Mizuno, Chair  
Representative Jordan, Vice Chair  
Human Services Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: January 30, 2012

RE: Strong Support for HB1933, Relating to Limitations of Actions

Good Morning Representatives and thank you for this opportunity to provide testimony on this measure.

One of the bigger national news scandals of 2011 was the **Sandusky/Penn State child sexual abuse case**. Covered by media everywhere, it was impossible not to hear the story of how a football coach - and respected member of the community - was observed sexually assaulting a young boy years ago in a shower stall by a teaching assistant. The teaching assistant did the right thing and reported to his superiors, yet the superiors failed to act and the list of victims grew. The victims in this case waited as much as **9 years** before they finally had the strength, courage and resolve to step forward and launch a formal complaint against their abuser.

Suppose these boys - now young men - were told "Nope, sorry - times up. You should've said something sooner. Can't help ya - good luck with that therapy thing"? The story wouldn't have broke because there would've been no story to tell; a sexual predator would be able to live his life free from charge, free to abuse again using the same tactics he did in silencing these victims, the victims who stepped forward would receive no form of justice for the crimes committed against them yet be left to suffer with the consequences of their abuse for the rest of their lives in shame and silence. Is THAT what we'd like to see happen to victim-survivors who ask for justice for crimes committed against them?

Child sexual abuse is a bigger problem than you might think. In an article entitled "Sexual Abuse of Children" from the *American Academy of Experts in Traumatic Stress (AAETS)*. The following alarming statistics and facts are laid out:

- In the United States **one out of three females and one out of five males have been victims of sexual abuse before the age of 18 years.**
- A report released by the National Institute of Justice in 1997 revealed that of the **22.3 million children between the ages of 12 and 17 years in the United States, 1.8 million were victims of a serious sexual assault/abuse.**



- Evidence suggests that **the negative psychological impact of child sexual abuse persists over time, often into adulthood.**
- It is estimated that approximately **one third of child sexual abuse victims experience PTSD as adult survivors.**
- It is rare for a child to speak directly about sexual abuse.
- **In most cases of sexual abuse, there are no physical indicators of the crime.**
- It is rare to actually have positive medical findings upon medical examination.
- The legal process can be especially intimidating, confusing, and frightening for children. Many aspects of the process (such as providing testimony and multiple interviews) can be overwhelming for children.
- It is estimated that **the average number of interviews a child victim whose case is going through the court system undergoes is eleven.**
- It is often said that during this time, a child can potentially be “re-traumatized.” The pre-trial phase can be more distressful for the child than the disclosure phase because the pre-trial phase often involves **ongoing investigation, multiple interviews, and protracted fear of perpetrator retaliation.**

Who would want to go through ANY of this as a child? By the time these children are willing and able enough to come forward to seek justice it's often too late for anything to be done. Our laws are supposed to strenuously protect our most vulnerable and the majority NOT the place a perpetrator's rights to be protected from justice above and before this. **Justice is supposed to right the wrongs or provide vindication for crimes that have occurred, its primary purpose is not to assist a perpetrator in averting charges and prosecution for his/her crimes; our statutes should reflect this.** Please support this measure to allow justice to be served to those who deserve it.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Sunday, January 29, 2012 10:53 AM  
To: HUSstestimony  
Cc: hamilton02@aol.com  
Subject: Testimony for HB1933 on 1/30/2012 8:30:00 AM

Testimony for HUS 1/30/2012 8:30:00 AM HB1933

Conference room: 329  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Marci A. Hamilton  
Organization: Individual  
E-mail: hamilton02@aol.com  
Submitted on: 1/29/2012

Comments:

Marci A. Hamilton is one of the United States' leading church/state scholars and holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University. She is the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008) and *God vs. the Gavel: Religion and the Rule of Law* (Cambridge University Press 2005, 2007). She is a regular columnist on constitutional issues. She has been a visiting professor at Princeton University, New York University School of Law, Emory University School of Law, and the Princeton Theological Seminary.

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07

January 30, 2012

## SUBMITTED VIA WEB DROP/EMAIL

Hon. John M. Mizuno, Chair  
Hon. Jo Jordan, Vice Chair  
House Committee on Human Services  
State Capitol  
Conference Room 329  
415 South Beretania Street  
Honolulu, HI 96813-2425

RE: Hearing Before Committee on Human Services on H.B.1933 Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (January 30, 2012, 8:30 a.m.)

Dear Representatives Mizuno and Jordan:

I commend you and the Committee for taking up H.B.1933, which would extend and toll the statute of limitations for civil actions brought by minor victims of sexual offenses, and revive for two (2) years some actions for which the statute of limitations had previously lapsed. **If passed, it will put Hawaii in the forefront of child protection.**

There are untold numbers of hidden child predators in Hawaii who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity. This bill reduces the present danger to Hawaii's children.

**This bill is a sunshine law for children.** There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and at least one in five boys. Sadly, 90% never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. Most victims are abused by family or family acquaintances. This bill would protect the children of Hawaii by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also bring delayed, but still welcome, justice to these victims.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My most recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), makes the

case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues.

**There are three compelling public purposes served by window legislation:**

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;**
- (2) It gives chance child sex abuse survivors a fair chance at justice; and**
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.**

I have been involved in statute of limitations reform in numerous states. This is the only tried and true method of identifying the many hidden child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008).

**This is a vibrant national movement to protect our children.** Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Guam's bill removing the statute of limitations and creating a two-year window was signed into law by Governor Calvo on March 10, 2011.<sup>1</sup> Virginia<sup>2</sup> also passed and signed into law legislation extending its statutes of limitations in 2011. Florida<sup>3</sup> and Illinois<sup>4</sup> each extended or eliminated their statute of limitations in 2010. Bills that would eliminate, extend, or create windows for the statutes of limitations covering child sex abuse are pending or have passed in South Dakota,<sup>5</sup> Connecticut,<sup>6</sup> New Jersey,<sup>7</sup> New York,<sup>8</sup> and

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<sup>1</sup> Bills No. B033 & B034-31(COR), Acts To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, removing the statute of limitations and establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims, now Public Laws No. 31-06 & 31-07 (2011); Erin Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

<sup>2</sup> VA. CODE ANN. § 8.01-243(D) (2011), formerly H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

<sup>3</sup> FLA. STAT. ANN. § 95.11(7) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

<sup>4</sup> 735 ILL. COMP. STAT. 5/13-202.2 (2010) (enacted) (expanding statute of limitations for injury based on childhood sexual abuse to within 20 (previously 10) years of the date the limitation period begins to run or within 20 (previously 5) years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and the injury was caused by that abuse).

<sup>5</sup> H.B. 1218, 87th Leg. Sess., 2012 Reg. Sess. (S.D. 2012) (pending) (rescinding the statute of limitations for any civil cause of action arising out of childhood sexual abuse).

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Oregon.<sup>9</sup> Bills—including two creating a most important civil “window”-- were recently introduced in both houses of the Pennsylvania legislature as well.<sup>10</sup>

Information on the statutes of limitations for child sex abuse can be found on my website, [www.sol-reform.com](http://www.sol-reform.com).

Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in Hawaii right now. The window in California led to the public identification of over 300 perpetrators previously unidentified. Delaware also enacted a window, which has led to the public identification of dozens of perpetrators previously hidden. Given that most child perpetrators abuse many children over the course of their lives,<sup>11</sup> window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

SOL reform has very few detractors other than the Catholic bishops, who have misleadingly argued that window legislation is unconstitutional on the theory that it “targets” the Church. Window legislation does not target any particular perpetrator or organization. A federal trial court in the Ninth Circuit persuasively upheld the California window against such an argument. See Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

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<sup>6</sup> S.B. No. 784, 2011 Gen. Assemb., 2011 Reg. Sess. (Conn. 2011) (pending) (eliminating limitation of time for bringing a civil action with respect to a new occurrence of sexual abuse, sexual exploitation or sexual assault in order to recognize the severity of such occurrences and give victims increased access to the civil court system.)

<sup>7</sup> No. S.2405, 214th Legis. Sess., 2010-2011 Reg. Sess. (N.J. 2011) (pending) (eliminating statute of limitations for child sex abuse).

<sup>8</sup> No. A.5488, 234th Gen. Assemb., 2011-2012 Reg. Sess. (N.Y. 2012) (pending) (extending the statute of limitations in criminal and civil actions for certain sex offenses committed against a child less than eighteen years of age, and creating a one year civil “window”).

<sup>9</sup> H.B. 3057, 76<sup>th</sup> Gen. Assemb., 2011 Reg. Sess. (Or. 2011) (pending) (eliminating criminal statute of limitations for sexual abuse crimes committed against minors). Oregon extended its civil limitations period regarding injuries arising out of child sex abuse in 2009. OR. REV. STAT. §12.117 (2009).

<sup>10</sup> H.B. 832, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (eliminates the statute of limitations for number of enumerated criminal offenses involving child sexual abuse); H.B. 878, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends the statute of limitations in all civil cases not encompassed by House Bill 832 by allowing claims to be brought in court up to 32 years after majority; **and** establishes civil “window” which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two-year period); S.B. 1392, 220th Gen. Assemb., 2011-2012 Reg. Sess. (Pa. 2012) (pending) (extends statute of limitations from to 32 years from majority; **and** establishes all important 2 year civil “window” to allow for previously procedurally time-barred child sex abuse claims to commence).

<sup>11</sup> KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 5, 37 (4<sup>th</sup> ed. 2001) available at [http://www.cybertipline.com/en\\_US/publications/NC70.pdf](http://www.cybertipline.com/en_US/publications/NC70.pdf). (“Except for child prostitution, most sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true under the federal Constitution, as the United States Supreme Court has explained: “The presumption against statutory retroactivity had special force in the era in which courts tended to view legislative interference with property and contract rights circumspectly. In this century, legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf v. USI Film Prods., 511 U.S. 244, 272 (1994); see also Republic of Austria v. Altmann, 541 U.S. 677 (2004).

In a case decided last year, the Delaware Supreme Court, sitting en banc, upheld a two-year window against a due process challenge. Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011). The California one-year window also was held to be constitutional. See Deutsch v. Masonic Homes of California, Inc., 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008).

The majority of states has not found retroactive statutes of limitations unconstitutional. See Catholic Bishop of N. Alaska v. Does, 141 P.3d 719 (Alaska 2006); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999), superseded by statute, Arizona Rev. Stat. § 12-505 (2010); Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 760, 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008); Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. Ct. App. 3d 1989); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); Shell Western E&P, Inc. v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Roberts v. Caton, 619 A.2d 844 (Conn. 1993); Whitwell v. Archmere Acad., Inc., C.A. No: 07C-08-006 (RBY), 2008 Del. Super. LEXIS 141 (Del. Super. Ct. April 16, 2008); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229 (D.C. 1990); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661 (Ga. 1996); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Roe v. Doe, 581 P.2d 310 (Haw. 1978); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161 (Idaho 1985); Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Ripley v. Tolbert, 921 P.2d 1210 (Kan. 1996); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kienzler v. Dalkon Shield Claimants Trust, 686 N.E.2d 447 (Mass. 1997); Rookledge v. Garwood, 340 Mich. 444 (Mich. 1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Panzinov. Continental Can Co., 364 A.2d 1043 (N.J. 1976); Alsenz v. Twin Lakes Village, 843 P.2d 834 (Nev. 1992); Bunton v. Abernathy, 73 P.2d 810 (N.M. 1937); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415 (Ohio 2010); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); McDonald v. Redevelopment Auth., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); Bible v. Dep't of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914 (Wash. 2006) superseded by statute, Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061 (Wash. 2007); Neiman v.

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BROOKDALE CENTER • 55 FIFTH AVENUE • NEW YORK, NY 10003-4391

Dear Chair Mizuno, Vice Chair Jordan, and committee members:

I am a survivor of childhood survivor abuse and I support HB1933.

As a child victim of sexual abuse, you are very confused and scared, especially if the perpetrator is someone from your family, such as my half-brother, or from an institution that you are told you can trust, such as a church, school, etc. Besides being confused on who you can trust, there are feelings of shame and guilt that the abuse was your fault. Imagine having these feelings as an 11 year old child; it would be very difficult to come out and tell someone about your situation. I am now 35 years old and am finally able to freely talk about my abuse. I have been in therapy for the past 9 years and have overcome addictions, anger, and low self-esteem. Unfortunately, the statute of limitations for civil and criminal action has passed in the state of Washington where the abuse occurred.

As you can see, child sexual abuse can be crippling. It is estimated that 1 out of 6 men have been sexually abused. The number maybe higher but it is hard to quantify because many men live in silence due to fear and shame. It can take years for a man to even admit that he was sexually abused, let alone be strong enough to name his perpetrator in court. Knowing that the statute of limitations has passed may contribute to men not confronting their past and seeking help to improve their mental well-being.

I urge the committee to support the intent of this bill and demonstrate to the boys and girls, men and women, who have been victims of sexual abuse, that the State of Hawaii believes their stories, and that they too can have their day of justice and feel whole again. Thank you.

Andre Blsquera

Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000) (open question); RM v. State Dept. of Family Servs., Div. of Public Servs., 891 P.2d 791, 792 (Wyo. 1995).

Hawaii law supports the window. The Hawaii Supreme Court has upheld retroactive application of a newly extended statute of limitation to revive claims that previously expired. Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) (holding that “[t]he right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. . . . [W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations.”); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999).

Hawaii does provide for a two-year (2) statute of limitations for repressed memory cases, but victims typically have a difficult time dealing with such memories. Two years is a very short period of time within which to process the information, obtain the needed counseling to be ready to go to court, and then to find an attorney and proceed to the judicial process. The window would help them as well as the vast majority of victims, who do not have repressed memories and simply could not get to court before the statute of limitations expired.

Once again, I applaud you for introducing legislation intended to help childhood sexual abuse victims, and the Committee for taking up the cause of child sex abuse victims in this way. Hawaii's children deserve the passage of statutes of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. This bill creates a two-year (2) window of opportunity for Hawaii's child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods. This is a huge step forward for Hawaii's children.

Please do not hesitate to contact me if you have questions regarding window legislation or if I can be of assistance in any other way.

Sincerely,

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