

SB2588

CARDOZO

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February 3, 2012

SUBMITTED VIA WEB DROP/EMAIL

Hon. Sen. Clayton Hee, Chair
Hon. Sen. Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary & Labor
State Capitol
Conference Room 016
415 South Beretania Street
Honolulu, HI 96813-2425

RE: Hearing Before Committee on Judiciary and Labor on S.B.2588 Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (February 3, 2012, 10:00 a.m.)

Dear Senators Hee and Shimabukuro:

I commend you and the Committee for taking up S.B 2588 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, 2011.¹ Virginia² also passed and signed into law legislation extending its statutes of limitations in 2011. Florida³ and Illinois⁴ 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,⁵ Connecticut,⁶ New Jersey,⁷ New York,⁸ and

¹ 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>.

² 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).

³ 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).

⁴ 735 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).

⁵ 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).

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

Information on the statutes of limitations for child sex abuse can be found on my website, 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,¹¹ 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).

⁶ 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.)

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

⁸ 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”).

⁹ H.B. 4100, 76th Gen. Assemb., 2011-2012 Reg. Sess. (Or. 2012) (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).

¹⁰ 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).

¹¹ KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 5, 37 (4th ed. 2001) available at 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.

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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THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

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DATE: February 3, 2012

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: S.B. 2588
Limitation of Actions; Sexual Offenses Against Minors

Senator
SSuzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Senator
Carol Fukunaga

Frank Haas

David I. Haverly

Linda Jameson

Roland Lagareta

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

Paul B.K. Wong

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Committee on Judiciary and Labor. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

The SATC supports the intent of S. B. 2588. It is commendable to attempt to expand the ability of sex assault victims to seek civil compensation. However, we have two concerns about the requirements of subsection (d). First, as currently written, a notarized statement from a prospective plaintiff's therapist regarding a reasonable basis to believe the plaintiff would be required. The role of the SATC therapist is to provide direct treatment services. We do not investigate the validity or veracity of alleged sex assaults. Our therapists can comment on assessment, treatment modalities and outcomes, but they should not have to judge their client's credibility or corroborate their claims. With respect to the attorney certificate of merit, SATC does not believe this is needed since there is a "good faith" requirement already imposed on attorneys via the Hawaii Rules of Civil Procedure requiring them to bring only meritorious claims before the Court.

Secondly, the bill as it stands would waive the victim-counselor or patient-therapist privilege before a suit is filed (or concurrent with a suit being filed) as opposed to a waiver during the discovery process. Filing sensitive mental health information with the Court as a matter of public record should not be taken lightly and the client may not be fully informed of the ramifications of waiving privilege so early in the process.

In summary, SATC supports the intent of this bill to enlarge the statute of limitations without the added requirements in subsection (d). Thank you for allowing SATC to provide input into this important piece of legislation.

Dear Chair Hee, Vice Chair Shimabukuro, and committee members:

I am a survivor of childhood survivor abuse and I support SB2588.

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 seen various therapists 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



HAWAII CATHOLIC CONFERENCE

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Email to: JDCTestimony@Capitol.hawaii.gov
Hearing on: February 3, 2012 @ 10:00 a.m.
Conference Room # 016

DATE: January 31, 2012

TO: Senate Committee on Judiciary & Labor
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: OPPOSITION TO SB2588 RELATING TO LIMITATION OF ACTIONS

Honorable Members of the Senate Committee on Judiciary, 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 this bill 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 sex 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.