

CARDOZO

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SUBMITTED VIA EMAIL

Honorable Benjamin J.F. Cruz
Vice-Speaker
Suite 107
155 Hesler St.
Hagåtña, Guam 96910

RE: Hearing Before the Committee on Economic Development, Health and Human Services, and Judiciary, on Bill No. 334-30 (LS), Relative to the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (March 9, 2010)

Dear Vice-Speaker Cruz:

I commend you and the Committee for taking up Bill No. 334-30 (LS), which would establish 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. There are untold numbers of hidden child predators who are preying on one child after another, because the statutes of limitations have been configured to give them that opportunity.

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 Guam 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. This is a sunshine law for children.

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.

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Testimony of Prof. Marci A. Hamilton
Hearing for Bill No. 334-30 (LS)
March 9, 2010

There are three compelling public purposes served by window legislation:

- (1) the identification of previously unknown child predators to the public so children will not be abused in the future;**
- (2) giving child sex abuse survivors a day in court; and**
- (3) remedying the wrong done to child sex abuse survivors caused by an overly short statute of limitations that placed predators and their enablers in a preferred position to the victims.**

I have been involved in statute of limitations reform in numerous states. This is the only means of identifying 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).

Statute of limitations reform is the one tried and true means that will identify the many hidden child predators, who are grooming other children 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,¹ window legislation does far more than create justice for victims in the past. It also forestalls future abuse of today’s children.

Any claim that window legislation leads to bankruptcy of institutions is irresponsible. First, only two bankruptcies have followed window legislation, one in San Diego and the other in Wilmington. In both cases, the bankruptcy was a voluntary bankruptcy, which was intended to protect assets and avoid trials that would have revealed the Catholic hierarchy’s secrets regarding their role in endangering children. In San Diego, the bankruptcy court publicly stated that the diocese was not honest about its actual wealth and that there was no justification for the bankruptcy filing.

¹ 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.”).

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The window legislation in California brought justice to a large number of victims, exposed the identities of more than 300 perpetrators, and did not result in cuts in church services or even make a dent in ambitious plans for new cathedrals. Rather, the settlements were paid out of insurance proceeds and the sale of properties not dedicated to religious use.

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true, 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).

The majority of states have deferred to state legislative determinations and upheld retroactive statute of limitations. See Justice v. RMH Aero Logging, Inc., 42 P.3d 549 (Alaska 2002); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); 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); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kentucky Ins. Guar. Ass’n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000); Lott v. Haley, 370 So. 2d 521 (La. 1979); State v. Stowe, 829 A.2d 1036 (Md. 2003); Leibovich v. Antonellis, 574 N.E.2d 978 (Mass. 1991); Rookledge v. Garwood, 340 Mich. 444 (1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Kratochvil v. Motor Club Ins. Ass’n, 588 N.W.2d 565 (Neb. 1999); 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); Schoenrade v. Tracy, 658 N.E.2d 247 (Ohio 1996); Owens v. Maass, 918 P.2d 808 (Or. 1996); Bible v. Dep’t of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Jenkins v. Meares, 394 S.E.2d 317 (S.C. 1990); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Neiman v. Am. Nat’l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000); Hill v. Mayall, 886 P.2d 1188 (Wyo. 1994).

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Guam operates under the presupposition that is in place in many states, that legislation is not retroactive unless its intended retroactive is explicit. Guam Code Annotated § 702. Bill No. 334-30 (LS) is clearly retroactive and, therefore, should be applied accordingly.

Once again, I applaud you for introducing this legislation and the Committee for taking up the cause of child sex abuse victims in this way. Guam's children deserve the passage of Bill No. 334-30 (LS), which creates a two-year window of opportunity for Guam's child sex abuse victims to find justice and to identify their perpetrators.

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,

Marci A. Hamilton