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SUBMITTED VIA EMAIL/PHONE CONFERENCE

Hon. Roger Hunt, Chair
Hon. Brian Gosch, Vice Chair
House Judiciary Committee
State Capitol, Room 415
500 East Capitol Avenue
Pierre, SD 57501-5007

RE: Hearing Before Judiciary Committee on H.B.1218, Rescinding the Statute of Limitations for Civil Actions Involving Childhood Sexual Abuse (February 6, 2012, 10:00 a.m.)

Dear Representatives Hunt and Gosch:

I commend you and the Committee for taking up H.B.1218, which would eliminate the statute of limitations for civil actions brought by minor victims of sexual offenses. **If passed, it will put South Dakota in the forefront of child protection.**

There are untold numbers of hidden child predators in South Dakota 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 South Dakota'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 three to four girls is sexually abused and at least one in five to six 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 South Dakota by making it possible for victims to come forward and identify their perpetrators in a court of law. It is overdue, but 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.

Hundreds of research studies have shown conclusively that sexual abuse can alter a child's physical, emotional, cognitive and social development and impact their physical and mental health throughout his or her lifetime. A 2002 study by Elliot Nelson, M.D., et. al. reaffirmed that childhood sexual abuse has a profound negative impact throughout the victim's life. Elliot Nelson et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) Archives of General Psychiatry, 139, 139-45. This study examined both members of nearly two thousand same-sex twins (1159 female and 832 male). Id. at 139. Twins were used to separate the effects of childhood sexual abuse from possible negative effects of family background, such as parental alcohol related problems, fighting and conflict, physical abuse, and neglect. Id. at 143-44. The study looked at same sex twin pairs where one of the twins was sexually abused as a child and one was not. Id. at 139. The study found that a person with a history of childhood sexual abuse had an increased risk for subsequently occurring adverse outcomes of:

- Major depression,
- Suicide attempt,
- Conduct disorder,
- Alcohol and/or nicotine dependence,
- Social anxiety,
- Rape after the age of 18 years old, and
- Divorce.

Id. at 142.

South Dakota pays the price of abuse in several ways. First, the state suffers from reduced productivity from victims, because they have been disabled by the abuse. To the extent that they are not made whole, they are producing less tax-generating income. The fact that South Dakota law currently shuts off most prosecution and civil claims before victims are ready to come forward means that most victims have no chance to achieve justice and, therefore, are more likely to suffer serious depression and illness. Second, South Dakota bears the cost of divorces, broken homes, and suffering children, which are a sadly prevalent fact in many survivors' lives. This creates a drag on local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities. Third, the survivors' medical bills generated by the abuse, whether it is psychological or physical treatment, are likely to have to be subsidized by state and federal medical programs and funds.

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). Statute of Limitations reform has very few detractors other than the Catholic bishops, who have misleadingly argued that window legislation is

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unconstitutional on the theory that it “targets” the Church. Statutes of limitations reform legislation does not target any particular perpetrator or organization. A federal trial court in the Ninth Circuit persuasively upheld the California bill against such an argument. See Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

This is a vibrant national movement to protect our children. Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in South Dakota right now, thus 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 Hawaii,⁵ Connecticut,⁶ New Jersey,⁷ New York,⁸ and Oregon.⁹

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. 1933, 26th Leg. Sess., 2012 Reg. Sess. (Haw. 2012) (pending) (extending and toll statute of limitations for civil actions brought by minor victims of sexual offenses; *and* reviving via a civil “window” for two (2) years some actions for which the statute of limitations had previously lapsed); S.B. 2588, 26th Leg. Sess., 2012 Reg. Sess. (Haw. 2012) (pending) (extending and toll statute of limitations for civil actions brought by minor victims of sexual offenses; *and* reviving via a civil “window” for two (2) years some actions for which the statute of limitations had previously lapsed).

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) (extending 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).

Bills eliminating the statute of limitations, and creating a most important civil “window” were recently introduced in both houses of the Pennsylvania legislature as well.¹⁰ Information on the nationwide statutes of limitations for child sex abuse can be found on my website, www.sol-reform.com.¹¹

Once again, I applaud you for introducing legislation that is desperately needed to help childhood sexual abuse victims, and the Committee for taking up the cause of child sex abuse victims. South Dakota’s children deserve the passage of statutes of limitations reform to protect children today and in the future. The elimination of the statute of limitations in cases arising out of child sex abuse is a decisive step forward for South Dakota’s children and families.

Please do not hesitate to contact me if you have questions or if I can be of assistance in any other way as South Dakota takes the steps necessary to protect its children.

Sincerely,

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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 While elimination of the statute of limitations in child sex abuse cases is a huge step forward for South Dakota’s children, I believe strongly that the only true way to obtain justice for all victims is elimination of the SOL **combined** with the creation of a civil “window.” This legislation would revive for one (1) or two (2) years some actions for which had been procedurally time-barred, creating a “window” of opportunity for South Dakota’s child sex abuse victims who were locked out of the courthouse by unfairly short limitations periods. 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.