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April 26, 2025

VIA e-mail: HouseJudiciary@rilegislature.gov
ATTN: Roberta DiMezza, Clerk House Judiciary Committee
State of Rhode Island Rhode Island State House
82 Smith Street
Providence, RI 02903

RE: House Bill No. 5909 An Act Relating to Courts and Civil Procedure Amending 9-1-51 Limitations on actions based on sexual abuse or exploitation of a child

Dear Chairmen Craven and Judiciary Committee Members:

I provide this testimony in support of the passage of House Bill 5909 and if possible kindly request my testimony be read into the record at the public hearing on the bill. Let me first tell you who I am. I will turn 64 this year, a mother, a lawyer, and now retired living in Colorado after spending most of my life in New England having been raised as a young child in East Greenwich, Rhode Island. For over 30 years, I was a practicing attorney in good standing in the State of Connecticut. After decades of dissociative amnesia blocking my traumatic memories of childhood sexual abuse, my memories surfaced in August of 2005. I had just finished the trial of a case for a male survivor of sexual abuse in Connecticut and was simultaneously helping my older sister overcome a relapse with alcoholism that stemmed from traumatic events in Rhode Island as a child. Tragically, my sister did not survive year 2005 and died that December at age 48 leaving behind her own family. The loss of my sister and the traumatic memories of my child sexual abuse in East Greenwich still remain in the background of my life each and every day.

From the ages of 5 to 12, years 1967-1973, I grew up in East Greenwich and attended Our Lady of Mercy ("OLM") Catholic school and parish where I was sexually assaulted. The sexual abuse started in the first grade by one of Ireland's and the United Kingdom's ("UK") most notorious pedophile priests, Fr. Brendan Smyth, known to me at the time as "Father Gerry". I had blocked out Smyth and his crimes until 2005 when I was trying to help my older sister with what I discover were similar deeply disturbing memories related to our childhood in East Greenwich. I reported to the Diocese of Providence in 2006. The Diocese provided a letter of apology and paid for my therapy from 2006 to 2016, suddenly cutting the payment for therapy off claiming that could not continue into perpetuity. The trouble is the damaging effects of child sexual abuse last a life time as hard as a try and as resilient I appear on the outside. It impacted my ability to work, raise a child and to support my family. It remains the backdrop of my day to day living with reminders like the Pope's recent death bringing back triggers, agitation and frustration at the injustice survivors of clergy abuse have endured by a morally bankrupt church and a judicial system that has inadequately protected the interests of children and adult survivors of child sexual abuse.

I was also one of the plaintiffs in the companion cases of Helen Hyde and Jeffrey Thomas vs Thomas Tobin, et al, that dealt with an earlier version of the child sexual abuse statute of limitations and was decided by the Rhode Island Supreme Court in 2016. When that case was deemed time barred, the Diocese conveniently cut off my therapy. Both the trial court and Supreme Court held that decades of blocking the traumatic child memories so I could function on some level, also known as a dissociative amnesia, did not suspend the statute of limitations and my case was time barred. So even though I could not access my childhood traumatic memories until August of 2005, I was time barred and Fr. Brendan Smyth got away with the perfect crime while the Diocese, which knew he was a pedophile and hid this information got away without consequences. The Rhode Island courts said I had to bring my claims by age 24, or for me when I was in law school, far off in New Orleans in 1985 (birth year of 1961, plus age of majority of 21, plus 3 years, age 24). Ironically had my abuse occurred in New Orleans or Connecticut or many other jurisdictions in this country, my claims would have been timely. The legal fiction of state boundaries blocked recovery.

The sexual assaults and penetration by Fr. Smyth aka Fr. Gerry were preceded by Smyth playfully tickling me while I sat on his lap at age 5 when he came to our new home in East Greenwich to bless the house. When I encountered him later, Smyth penetrated my vagina, anus and mouth. The locations of these crimes were at the OLM school, church, his car, the woods behind my house and my home. My older sister was also sexually abused by Fr. Brendan Smyth and I witnessed one of those incidents.

My brother, traumatized by what happened to our mom, who was attacked, we think raped by Smyth and threatened, also succumbed to his depression and suicided in 2008 at age 54. These crimes and the cover-up destroyed our family and destroys lives and families. I am aware of at least 6 families in our neighborhood with children sexually assaulted by Fr. Brendan Smyth. One of those families was that of Dr. Hubert Brennan, who has bravely testified in years past in support of legislation to extend the statute of limitations. The other was a naval family where the mother was found dead on St. Patrick's Day 1969 upon Smyth's return, a friend of my mom and no doubt sending a strong message of intimidation. Smyth had access to the children at Our Lady of Mercy as well as naval families and the children who attended Catholic CCD from the public school.

Smyth was a member of a Catholic religious order founded in 1120, the Norbertines, also known as the White Canons, Canons Premonte and Premonstratensians. After decades of a coverup by the Norbertines, Diocese of Providence and other entities in the hierarchy over a 40 year crime spree affecting hundreds of children, Fr. Brendan Smyth admitted to over a hundred crimes against children, having pled guilty to 117 combined counts of child sexual assault in the UK and Republic of Ireland. His letter of apology used at sentencing mentions the crimes in Rhode Island. His superior, a Norberine Abbott, also admitted Smyth abused children in Rhode Island and during his assignment in North Dakota. Smyth went to jail and died in an Irish prison in 1997. His case collapsed two governments, that of the Republic in 1994 when the Attorney General sat on the extradition request to Northern Ireland, resulting in the resignation of the Irish Prime Minster along with all his party's ministers, and the President of the Irish High Court. Smyth's case also collapsed the government of Northern Ireland following the hearings held by that country's independent investigation into child sexual abuse known as the Historical Abuse Inquiry

("HIA") in 2015-2016. The revelation of the cover-up of the crimes of Brendan Smyth also resulted in the resignation of two cardinals, plus the disgrace of his immediate superior who turned out to be a credibly accused pedophile as well. It was around that time that I finally received a response from the Vatican that they would do something, yet it simply turned out to be false hope. The Vatican letter arrived during Pope Francis papal visit to the United States and other than formation of a powerless papal commission for the protection of children, the Vatican has been slow to act and especially in the discipline of complicit bishops who have covered up crimes of serial pedophile priests that those in the Diocese of Providence.

I mention this background to highlight not just the horrific and damaging crimes against children that are at stake, plus the suicides of many victims who are not here to speak to you, but also to highlight the consequences of the negligent, willful and reckless misconduct of the very entities that cover up these crimes by protecting the perpetrators at the expense of causing great harm to children. The complicity in the cover-up of the crimes committed by my perpetrator is something I have direct experience with in Rhode Island. The bishop of Providence at the time, Russell McVinney, knew Smyth was sexually abusing children in Rhode Island as of February 1968, covered it up and allowed him back in the parish to perform religious services at our parish. He returned by March 1969 only to offend again.

When the news broke about Smyth in 1994 in the Irish press, a well-known reporter from London contacted the diocese of Providence and was told Smith committed "no crimes" in Rhode Island, a bold face lie, when Smyth had already been caught abusing children in Rhode Island in 1968. Smyth's crimes deeply impacted me, my family and other families. The institutions that protected him and covered up his crimes all these years caused even greater harm and they have been allowed to get away with it. They must be held accountable by elimination of the child sexual abuse statute of limitations and retroactively so. Myself and other adult survivors need our chance at restorative justice in the civil courts.

I tried to come forward and act as soon as I could at a time when I was horribly grief stricken by my sister's death. I was still shut out by the legal system while the Diocese of Providence and Norbertine Order got away with covering up crimes against children. This is not the way the legal system is intended to work – protect pedophiles and those who harbor them and let kids and adult trauma survivors suffer for a lifetime? Below I will explain how it is in your legislative power to right this terrible injustice by eliminating the child sexual abuse statute of limitations, both retroactively and prospectively.

There should be no confusion with respect to the constitutionality of the retroactive extension of a civil statute of limitations under the Rhode Island state or federal constitution. Beyond question, retroactive expansions of civil statutes of limitations are allowable under the Federal Constitution. The mantra of those who oppose retroactive expansion is that it conflicts with the due process clause of the RI state constitution. What is left unsaid is that there was NO civil due process clause in the RI state constitution from 1842 until 1986 or any mention of the intent behind its adoption in 1986. Incidentally the state due process clause was not in place for any child sexually abused prior to November 1986. So if the state due process clause is used as a sword by perpetrators and their institutional protectors by applying retroactively so should a

statute of limitations! The logic of naysayers is flawed as they want retroactivity only to work one way for them in order to shield pedophiles and those who protect them. This logic is flawed. So it is completely withing your power and makes sense to expand statues of limitations retroactively and even to eliminate a statute of limitations retroactively.

The RI civil due process clause is of more recent vintage in comparison to other states with robust case law relying on the specific language of their state constitution. Other state cases and state constitutions are not necessarily decisive but both recently Maryland, Louisiana and North Carolina have all upheld their retroactive statute of limitations reforms. What is decisive is looking at the history of the 1986 Rhode Island constitutional convention.

The civil due process and equal protection clauses in the RI state constitution were enacted during the 1986 Constitutional Convention and ratified by RI voters in the general election of November 1986. Prior to the 1986 amendments, federal due process under the U.S. Constitution's due process and equal protection was applied in Rhode Island via the 14th Amendment of the U.S. Constitution. In relation to Convention Resolution 86-00002A, which dealt with due process, the annotated Constitution of the State of Rhode Island in the state archives states in commentary:

> "The intent of the resolution was to include the due process and equal protection language of the 14th Amendment to the U.S. Constitution in the Rhode Island Constitution. The Committee Report stated that including these protections in the state Constitution 'would create an independent state foundation for individual rights. One advantage of including the due process and equal protection clauses in the Constitution would be to protect the citizens of the state if the federal judiciary adopted a narrow interpretation of the 14th Amendment.' (Committee Report, p. 6)".

In other words, the addition of a civil due process clause in the RI state constitution brought about no earth-shaking changes of favoritism in a categorically discriminatory fashion to protect select entities from the retroactive enlargement of statutes of limitations. The state constitutional amendment of 1986 was not designed to protect pedophiles or the Catholic church! If the expansion of the general personal injury statute from 2 to 3 years can be retroactive in Rhode Island and if an expansion can be applied to perpetrators retroactively, then why not all responsible parties including those who are negligent? There is never been a protected class of select individuals or entities who gets to avoid an expansion of a statute of limitations! Do not let Rhode Island be the pedophile protector state.

In 1986, the thinking at the time of Rhode Islanders was that the U.S. Supreme Court was shifting from the more liberal Justice Burger era to what was a more conservative era under Chief Justice Rehnquist that could result in an encroachment on individual rights. As is the case today, the abortion debate was controversial and raging with varying opinions. Protecting the unborn was a hot issue at the time and still remains a volatile issue but let us protect the kids that are born and walking this earth please; not pedophiles and pedophile protecting institutions.

Nowhere can it be found that the 1986 civil due process clause was designed to protect entities, like the Diocese of Providence, Baptist Church, Boy Scouts of America or other entities from retroactive application of civil statute of limitations. It is neither in the constitutional text,

nor in the commentary of the annotated RI state constitution. It became a legal fiction crafted by the RI Supreme Court as an issue of first impression ten years later in Kelly vs Marcantonio, 678 A.2d at 883 (1996) when the Diocese of Providence clergy abuse cases made their way through the courts. The result was to protect a single entity, the diocese of Providence, under an earlier version of 9-1-51 and for all the wrong reasons, lacking the support of the language of the constitution, the intent behind the drafters, and the case law. This case represented an aberrant and discriminatory application of the recently adopted 1986 due process clause in the state constitution. It is now time to fix that error.

More puzzling was that the RI Supreme Court had already held that an earlier expansion of the child sexual abuse statute of limitation could be retroactive in a direct action case against a perpetrator (incest case) in Doe vs LaBrosse I and II decided in the early 1990s when the earlier version of RI Statute 9-1-51 was enacted.

In addition, the RI case law leading up to 1986 allowed retroactive expansions of the civil statute of limitations. The key case being a slip and fall case where the general personal injury statute of limitations was extended from 2 years to 3 years. Twomey v Carlton House of Providence, Inc., 320 A.2d 98 (1974). Up until the Kelly case Rhode Island followed the federal rulings which allowed retroactive expansions of civil statutes of limitations.

Yet, the same was even true AFTER the state constitution was amended in 1986 in Kleczek vs RI Interscholastic League, Inc. 612 A.2d 734 (1992). That case dealt with an injunction action where a boy wanted to be on the girl's field hockey team. In reference to the equal protection provision of the 1986 state constitutional amendment the court said: "the constitutional amendment that became art. 1, sec. 2, was passed to bring Rhode Island equal protection law on par with the federal equal protection law". In other words the new state constitution equal protection clause of 1986 was not designed to do anything more than what was in place at the time on the federal level. The state and federal constitutional provisions were to be **ON PAR**. So why would the due process clause be treated any differently? If retroactive statute of limitations are allowed on the federal level they should be allowed on the state level and that is what the Rhode Island Supreme Court has said.

Then in a superior court case decided by now state Supreme Court Justice Maureen McKenna Goldberg in 1995, State of RI vs Weeks, 85-0146 (1995) the court said:

> "Due process like equal protection may be recent additions to the Rhode Island Constitution but have been long available and applicable to the citizens of this state through the Fourteenth Amendment. See, Kleczek vs Rhode Island Interscholastic League (citations omitted here for brevity).
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> Weeks relies on the comments contained in the Report of the Citizens Right Committee on Individual Rights from the 1986 Constitutional Convention in support of his argument that Article 1 Sec. 2 affords him greater due process protections than the Federal Constitution. Weeks implicitly suggests the Court should fashion a judicially created limitation on the period of commitment based on Article 1, Sec. 2 of the State's Constitution. Mr. Weeks' reliance is misplaced. These comments reflect a concern on the part of the committee

members and witnesses to **preserve** the protections afforded by the Fourteenth Amendment not **expand** them. These comments reflect a real concern about the conservative approach to constitutional rights recently demonstrated by the federal courts. Indeed, the comments to resolution 86-00032 (eg. the resolution that enacted the civil due process clause) which adopted the amendment state:

One advantage of including the due process and equal protection clauses into the State Constitution would be to protect the citizens of the state if the federal judiciary adopted a narrow interpretation of the 14th amendment. RI Const. Art. 1, Sec. 2 (annotated edition), Committee Report. p. 6. "

Goldberg went on to say: " Thus, the Court is without authority to adopt a broader application of the due process clause than its federal counterpart and the Court declines to do so".

Goldberg got it right when she was on the Superior Court but when the church cases came before her on the Supreme Court, like her colleagues, she became selectively protective of the Diocese of Providence showing blatant favortism. To sum up, RI may be unique in its later adoption of a civil due process clause in its state constitution, but there is nothing in the text, intent of the drafters, or case law before Kelly vs Marcantonio that provides for the discriminatory protection of entities at the expense of child victims of sexual abuse. The Kelly case represents a perversion of due process under 9-1-51 and begs for legislative correction. There is nothing in the RI constitution's due process clause that prevents the General Assembly from undertaking this reform by eliminating the child sexual abuse statute of limitations both retroactively and prospectively. The Kelly vs Marcantonio case usurped the will of the voters of RI when the voters ratified a state due process clause designed to mirror the federal version and federal law. The RI Supreme Court did this at the expense of victims of child sexual crimes to selectively shield one institution, the Diocese of Providence. It was a travesty and needs to be legislatively corrected so that victims of child sexual abuse can have their say in court.

Once again, there is no prohibition in the State or Federal Constitution that prevents the elimination and retroactive expansion of a civil statute of limitations. It is within your power to allow survivors of childhood sexual abuse to obtain some semblance of restorative justice after so many years of suffering and being caught in the various legislative enactments that have worked in favor of perpetrators and those who harbor and protect them. I would gladly make myself available to you for any questions or concerns.

Very Truly Yours,

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