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TO: The Honorable Carol Hagan McEntee, Chair
and Members of the House Judiciary Committee

FROM: Attorney Thomas More Dickinson,
On behalf of the Rhode Island Catholic Conference

RE: Constitutionality of H7200/S2616

Background.

This memorandum addresses pending House Bill H7200 and its Senate companion S2616. The bills would amend R.I. Gen. L. sec. 9-1-51, which sets out a specific statute of limitations for “actions based on sexual abuse or exploitation of a child.” Because the bills revive claims that are barred by the statute of limitations, I conclude that they violate the Rhode Island Constitution’s Due Process Clause, Art. I, sec. 2. These bills also violate the constitutional doctrines of Separation of Powers and Judicial

Independence by intruding into the exclusive province of the Judicial Branch.

The existing statute of limitations for claims of this nature reads as follows:

(2) All claims or causes of action brought against a non-perpetrator defendant by any person alleging negligent supervision of a person that sexually abused a minor, or that the non-perpetrator defendant's conduct caused or contributed to the childhood sexual abuse by another person to include, but not be limited to, wrongful conduct, neglect or default in supervision, hiring, employment, training, monitoring, or failure to report and/or the concealment of sexual abuse of a child shall be commenced within the later to expire of:

(i) Thirty-five (35) years of the act or acts alleged to have caused an injury or condition to the minor; or

(ii) Seven (7) years from the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act.

Provided, however, that the time limit or commencement of such an action under this section shall be tolled for a child until the child reaches eighteen (18) years of age.

For purposes of this section "sexual abuse" shall have the same meaning as in subsection (e) of this section.

R.I. Gen. L. sec. 9-1-51(a)(2).

The extension of the statute of limitations to thirty-five years, with a seven-year discovery rule, was added in 2019. That amendment also added subsection (a)(3), which contained language to the effect that claims against a "perpetrator defendant" could be brought under the new 35-year provision,

even if the claims were time-barred under earlier statutes of limitations.

Subsection (4) provided that the retroactive revival provision did not apply for claims against persons other than the perpetrator.¹

The proposed amendment.

H7200 and S2616 would eliminate that statute of limitations for claims against perpetrators and any others whose actions or negligence caused or contributed to sexual abuse of a minor. Subsection (a)(2) of the proposed law would apply “regardless if the claims were time-barred under previous versions of the general laws on the effective date of this section . . .” This new language in subsection (a)(4) would revive claims that had long since been barred by existing statutes of limitations, permitting such claims to be filed “no later than June 30, 2028.” Subsection (a)(3) would overturn court judgments in cases that had already been dismissed under any existing statute of limitation. This proposed section provides:

(3) Any action dismissed solely as a result of the previous statute of limitations for child sexual abuse shall be revived by this section.

¹ The Supreme Court in *Houllahan v. Gelineau*, 296 A.2d 710 (R.I. 2023), made clear that the retroactive feature of the statute did not apply to claims against non-perpetrator defendants.

Reviving time-barred causes of action violates the Rhode Island Constitution.

The proposed language reviving expired claims clearly violates the Due Process Clause of the Rhode Island Constitution, Art. I, sec. 2. The Rhode Island Supreme Court squarely addressed this question in *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996). *Kelly* was in reality two separate cases, one from the United States District Court and one from the Superior Court. Both cases involved questions certified to the Rhode Island Supreme Court. Both cases involved claims of sexual molestation of minors by clergy and both included claims against various Church-employers of the alleged perpetrators. Both cases presented multiple certified questions. The pertinent question was whether the General Assembly could lawfully extend a limitation period when “an otherwise applicable limitation period had already run prior to the effective date” of the statute extending the period. The Supreme Court held that such an action by the General Assembly violated the Due Process Clause of the Rhode Island Constitution’s Declaration of Rights, R.I. Const. Art. I, sec.2.

Although years before *Kelly* the Supreme Court had approved the retroactive revival of time-barred claims generally, those older cases were all decided before adoption of the 1986 Constitution. Until 1986 the Rhode

Island Constitution had no Due Process Clause applicable in civil proceedings². In a pre-1986 case the Supreme Court noted that if Rhode Island had an applicable Due Process Clause the Court would be inclined to hold that an immunity from suit arising from expiration of a statute of limitations is “a vested right protected against legislative deprivation by due process concepts.” *Twomey v. Carlton House of Providence*, 320 A.2d 98, 101 (R.I. 1974). Without a Due Process Clause, however, the *Twomey* Court concluded that under then existing law the General Assembly could revive causes of actions that had lapsed.

In 1986, twelve years after *Twomey*, Rhode Island voters revised our Constitution and the new version included generally applicable Due Process and Equal Protection Clauses. R.I. Const., Art. I, sec. 2.

In 1996 the Court decided *Kelly*, holding that the 1986 Constitution’s addition of a Due Process Clause applicable to civil proceedings removed the ability of the General Assembly to revive time-barred claims. The holding in *Kelly* is crystal clear:

Although it is permissible for the General Assembly to enlarge an already existing action limitation period that would be

² Article I, sec. 10, which applied to criminal prosecutions, afforded due process protections to defendants in criminal cases but had no application to civil proceedings.

applicable to causes of action thereunder *not already time-barred* without offending any vested substantive right of the parties, *the amendment to art. 1, sec. 2, precludes legislation with retroactive features permitting revival of an already time-barred action* that would impinge upon a defendant's vested and substantive right and would offend a defendant's art. 1, sec. 2 due process protections.

Kelly, 678 A.2d at 883 (emphasis added). Notably, a unanimous Supreme Court reaffirmed *Kelly* in 2003 in *Theta Properties v. Ronci Realty Co.*, 814 A.2d 907 (R.I. 2003). The *Theta Properties* Court reiterated that the right to defend based on a statute of limitations “is a vested right, protected against legislative deprivation by due process concepts; and that even if that opportunity is not deemed a vested right, but only a remedy, it is no less entitled to constitutional protections.” *Theta Properties*, 814 A.2d at 916 (quoting *Kelly v. Marcantonio*, 678 A.2d at 883, and *Twomey v. Carlton House of Providence*, 320 A.2d at 270).

H7200 and S2616 purport to permit the revival of claims that have long since been barred under applicable statutes of limitations. As such the bills would impermissibly “impinge upon a defendant's vested and substantive right,” *Kelly, supra*, running afoul of the Supreme Court's

holdings in *Kelly* and *Theta Properties*. It is therefore clear that the proposed legislation would violate the Due Process Clause of the Rhode Island Constitution. Art. 1, sec. 2.

Enacting such an unconstitutional law is outside the powers of the General Assembly. In describing the legislative power, the Rhode Island Constitution explicitly states that “This Constitution shall be the supreme law of the state, *and any law inconsistent therewith shall be void.*” R.I. Const. Art. VI, sec. 1 (emphasis added).

The bills violate the constitutional doctrines of Judicial Independence and Separation of Powers by purporting to overturn existing court judgments.

The proposed subsection (a)(3) is a stark violation of Separation of Powers because it revives causes of action that have been dismissed by court judgments based on the statute of limitations. That type of legislative effort to revise or overturn a judicial judgment was precisely what our Supreme Court condemned nearly 170 years ago in *Taylor v. Place*, 4 R.I. 324 (1856) (Rhode Island Constitution adopted in 1843 established independence of judiciary and deprived General Assembly of authority to exercise or intrude on judicial power). Decided soon after adoption of the original Rhode Island Constitution, *Taylor* represents one of the Rhode Island Supreme Court’s

first pronouncements on the Constitution’s establishment of Judicial Independence as one of the bedrock principles of Separation of Powers. *Taylor* remains one of the most significant decisions in Rhode Island constitutional law, on a par with the United States Supreme Court’s landmark decision in *Marbury v. Madison*, 1 Cranch 137 (1803), at the federal level. The Rhode Island Supreme Court has consistently invalidated legislative intrusion into the judicial power, only recently reaffirming *Taylor* in *Andrews v. Lombardi*, 231 A.3d 1108 (R.I. 2020):

“A legislative body is ‘utterly powerless to enact legislation that would serve to interfere with, set aside, or reopen a judgment that had been entered by the [trial court].’”

Id. at 1119 (quoting *Taylor v. Place*, 4 R.I. 324 (R.I. 1956)); accord *State v. Parillo*, 158 A.3d 283 n.14 (R.I. 2017); *Rose v. State*, 92 A.3d 903 (R.I. 2014).

Subsection (a)(3) is a direct affront to the doctrines of Judicial Independence and Separation of Powers as our Supreme Court has articulated them. As noted above, the General Assembly lacks the authority to enact such an unconstitutional law. R.I. Const. Art. VI, sec. 1.

Other constitutional problems.

In addition to the clear due process and Judicial Independence problems, the bills could also present other constitutional defects. In a recent decision under the Maine Constitution, the Supreme Judicial Court of Maine examined legislation reviving claims that had expired under existing statutes of limitations. *Dupuis v. Roman Catholic Bishop of Portland*, 331 A.2d 294 (Me. 2025). Like our Supreme Court’s decision in *Kelly*, the Maine court held that the legislation violated Maine’s Due Process Clause. But the Maine court went further, discussing other constitutional defects. In particular the court addressed separation of powers problems where legislation had the effect of reviving expired claims, thereby raising concerns about intrusion into the judicial power, similar to the issue in *Taylor, supra*. Moreover, the Maine court noted that “to constitute a proper exercise of legislative power, a law must, in its nature, be ‘general and prospective.’” *Dupuis, supra* at 306. This bears some similarity to the Rhode Island Constitution’s provision that all laws “should be made for the good of the whole.” R.I. Const. Art. I, sec. 2. And the Maine Supreme Judicial Court’s concern about the revival of claims intruding on the judicial power has some echoes of the Rhode Island Supreme Court’s seminal *Taylor* decision, discussed *supra*.

Our Supreme Court in *Kelly* was not confronted with the “good of the whole” issue, but in light of the Maine Supreme Judicial Court’s suggestion, it is possible that there are other constitutional defects with these bills that counsel strongly against their enactment.

Conclusion.

In sum, I conclude that the proposed legislation’s revival of expired claims would violate the Due Process Clause in Art. I. sec. 2 of the Rhode Island Constitution as our Supreme Court articulated in *Kelly*. They also present an unwarranted intrusion into the powers of the judicial branch in violation of the long-standing doctrine of Judicial Independence and Separation of Powers as laid down in *Taylor v. Place* and its progeny.