

## **The General Assembly Cannot Constitutionally Revive Civil Lawsuits After the Time to File Them Has Ended**

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**Background.** Prior to 1992, Rhode Island’s three-year statute of limitations for personal injury claims applied to lawsuits alleging injuries from childhood sexual abuse. That year, Rhode Island established a special cause of action for childhood sexual abuse claims, § 9-1-51.<sup>i</sup> For those claims, the General Assembly initially provided three years to file a lawsuit from when a victim discovered or reasonably should have discovered the injury caused by the abuse. The following year, the legislature extended this three-year period to seven years.<sup>ii</sup> In *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996), the Rhode Island Supreme Court considered this question: “Whether . . . it is constitutionally permissible for our General Assembly to revive a previously time-barred cause of action by application of § 9-1-51 to that cause of action.”<sup>iii</sup> The Court answered, no: “[O]ur State Constitution bars the retroactive application of § 9-1-51 to claims already time-barred by a statute of limitations in effect prior to the effective date of § 9-1-51.”<sup>iv</sup> This paper explains the *Kelly* decision and key developments since that time.

**The Rhode Island Supreme Court ruled in *Kelly* that the General Assembly cannot revive time-barred claims.** Pointing to the Rhode Island Constitution’s due process clause, the Court explained:

Although it is permissible for the General Assembly to enlarge an already existing action limitation period that would be applicable to causes of action thereunder not already time-barred without offending any vested substantive right of the parties, the amendment to art. I, 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 rights and would offend a defendant’s art. 1, sec. 2, due process protections.<sup>v</sup>

The Rhode Island Supreme Court acknowledged that the “general federal rule” is that reviving a time-barred civil action is permissible. It noted, however, that state appellate courts “are free to interpret and to construe their own state constitutional due process and equal protection provisions” to provide greater protections than offered by the U.S. Constitution.<sup>vi</sup> The Court concluded that “our State Constitution bars the retroactive application of [the extended statute of limitations] to claims already time-barred by a statute of limitations in effect prior to the effective date of [that extension].” This conclusion was consistent with prior rulings on statutes of limitations for other claims.<sup>vii</sup>

The Court observed that this interpretation of the due process clause protects both plaintiffs and defendants from unfair, retroactive amendments to statutes of limitations.<sup>viii</sup> Just as protection of vested rights prohibits the legislature from extending a statute of limitation in a manner that revives an expired claim, it also prohibits the legislature from retroactively shortening the period, cutting off a plaintiff’s ability to bring an accrued claim or leaving an unreasonable and inadequate time to do so.<sup>ix</sup>

**Since *Kelly*, there have been five significant developments.**

1. **The Rhode Island Supreme Court reaffirmed that the legislature cannot revive time-barred claims.** In a 2003 decision, the Court observed: “*Kelly* held that it would be permissible for the General Assembly to enlarge a limitation period and

apply the amendment retroactively to pending cases that were not yet time-barred, but that due process, under the amended constitutional provision, precluded legislation that retroactively revived a time-barred action. Thus, we concluded, such legislation would violate a defendant's vested and substantive rights to defend on statute of limitation grounds.”<sup>x</sup>

2. **The Rhode Island Supreme Court ruled that courts may toll (suspend) the running of the statute of limitations in cases alleging repressed recollection of past sexual abuse.**<sup>xi</sup> The Court had left this question unanswered in *Kelly*.<sup>xii</sup> The Court answered it in 2016.
3. **The General Assembly further extended the statute of limitations for lawsuits stemming from childhood sexual abuse in 2019.**<sup>xiii</sup> This law extended the period to file a lawsuit from 7 years to 35 years of turning 18 (age 53), and provided a 7-year period to bring a claim from when a victim discovers or reasonably should have discovered the injury. The General Assembly applied the extended period to lawsuits against both perpetrators of abuse and entities alleged to have negligently hired or supervised employees or volunteers. As introduced, the 2019 legislation would have applied these provisions retroactively and broadly revived claims for which the statute of limitations had already expired. Before enactment, however, the General Assembly amended the bill to permit time-barred claims against perpetrators only.
4. **The Rhode Island Supreme Court reaffirmed that the 2019 reviver applied only to claims against perpetrators. It has not revisited *Kelly*.** In a 2023 ruling, the Rhode Island Supreme Court found that the lower courts properly dismissed negligence claims stemming from abuse that occurred in the 1970s and 1980s, as these lawsuits were not revived by the 2019 law. Since the General Assembly had not revived those claims, the Supreme Court did not have reason to consider the 2019 law’s constitutionality.<sup>xiv</sup>
5. **Since Rhode Island enacted the 2019 law, four states have found similar reviver laws unconstitutional.**<sup>xv</sup> These courts joined what the Rhode Island Supreme Court described in *Kelly* as the approach followed by the “great preponderance” of state appellate courts.<sup>xvi</sup> This remains true today as it was in 1996. The Maine Supreme Court recognized in 2025 that “the majority of state courts of last resort continue to adhere to the view that revival is precluded” and “precedent from the minority of other jurisdictions that allow revival after their statutes of limitations have expired is not persuasive.”<sup>xvii</sup> The high court of a fifth state, New Hampshire, ruled in 2025 that legislation eliminating a statute of limitations could not revive time-barred claims. The New Hampshire Supreme Court observed: “The rule that a defendant has a vested right in a statute of limitations defense once the limitations period has run is simple to apply and understand. In fact, we have consistently and effectively applied this rule to resolve numerous cases across multiple centuries.”<sup>xviii</sup>

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<sup>i</sup> P.L.1992, ch. 84.

<sup>ii</sup> P.L.1993, ch. 274, § 1.

<sup>iii</sup> *Kelly v. Marcantonio*, 678 A.2d 873, 880 (R.I. 1996).

<sup>iv</sup> *Id.* at 884.

<sup>v</sup> *Id.* at 883.

<sup>vi</sup> *Id.* The U.S. Supreme Court has recognized that state constitutions can provide greater due process safeguards than the U.S. Constitution. See *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 312-13 (1945).

<sup>vii</sup> *Spunt v. Oak Hill Nursing Home, Inc.*, 509 A.2d 463, 465-66 (R.I. 1986) (holding that extension of the statute of limitations for wrongful death claims from two to three years could retroactively apply when it “does not act to revive a dead cause of action because the plaintiff’s claim was never time barred”).

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- <sup>viii</sup> *Kelly*, 678 A.2d at 883 (recognizing that an immunity from a lawsuit is as valuable a right as the right to prosecute that suit; both are vested rights protected against legislative deprivation by due process and both are entitled to constitutional protection).
- <sup>ix</sup> *See, e.g., Rotchford v. Union R. Co.*, 54 A. 932, 933 (R.I. 1903) (interpreting a reduction of the statute of limitations for personal injury actions from six years to two years to not apply retrospectively to accrued claims).
- <sup>x</sup> *Theta Properties v. Ronci Realty Co.*, 814 A.2d 907, 916-17 (R.I. 2003) (holding that a law extending the time to sue a dissolved corporation could not apply retroactively to allow claims after the two-year period that applied at the time had expired).
- <sup>xi</sup> *Hyde v. Roman Catholic Bishop of Providence*, 139 A.3d 460 (R.I. 2016) (finding that repressed recollection would toll the statute of limitations where the plaintiff at issue met the standard for unsound mind under Rhode Island law).
- <sup>xii</sup> *Kelly*, 678 A.2d at 879.
- <sup>xiii</sup> S. 315 Sub. A (R.I. 2019) (enacted and effective July 1, 2019) (amending R.I. Gen. Laws § 9-1-51).
- <sup>xiv</sup> *Houllahan v. Gelineau*, 296 A.3d 710 (R.I. 2023).
- <sup>xv</sup> *Aurora Public Schools v. Saupe*, 531 P.3d 1036 (Colo. 2023); *Thompson v. Killary*, 683 S.W.3d 641 (Ky. 2024); *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020); *Dupuis v. Roman Catholic Bishop of Portland*, 331 A.3d 294 (Me. 2025).
- <sup>xvi</sup> *Kelly*, 678 A.2d at 883.
- <sup>xvii</sup> *Dupuis*, 331 A.3d at 309.
- <sup>xviii</sup> *Ball v. Roman Catholic Bishop of Manchester*, 2025 N.H. 45, -- A.3d -- (N.H. Oct. 15, 2025).