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VIA e-mail: SenateJudiciary@rilegislature.gov
ATTN: Adriana Carlucci, Clerk Senate Judiciary Committee
State of Rhode Island Rhode Island State House
82 Smith Street
Providence, RI 02903

**RE: Senate Bill No. 2616 An Act Relating to Courts and Civil Procedure causes of action
(Amending 9-1-51 Limitations on actions based on sexual abuse or exploitation of a child)**

Dear Chairman LaMountain and Judiciary Committee Members:

I provide this testimony in support of the passage of Senate Bill 2616 and the companion House Bill 7200 which passed the House on April 7th by a large majority vote. Both bills reform the statute of limitations in cases arising from child sexual abuse and exploitation retroactively as to all parties and create a two year window for otherwise time barred claims.

I am a victim of Fr. John Gerard Brendan Smyth during his assignment at Our Lady of Mercy in East Greenwich from 1965-1968. Smyth is described in Appendix A of the Attorney General's investigative report of the Diocese of Providence. 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 by Smyth starting my first grade year as I turned from age 5 to age 6. My photograph from that school year is attached as Exhibit "A" and me and my siblings as Exhibit "B". The AG report details how the Diocese of Providence concealed the sexual abuses of so many children by selectively reporting credibly accused clergy to law enforcement, hiding behind their doctrine of "internal forum", hiding behind confidentiality and improperly investigating reports of child sexual abuse and grooming all while slow walking the process to run out the statute of limitations.

The case of Fr. John Gerard Brendan Smyth in Appendix A of the AG report is an egregious example of how the Diocese intentionally concealed early complaints about Smyth going back to the Spring of 1967 and early 1968, even up to 1994/1995 when the Providence Journal and other media contacted the Diocese about Smyth. The Diocese flat out lied that there were "no complaints", misleading the press, misleading the public, misleading victims, misleading trusting parents who entrusted their children to diocesan parishes and schools. It is this kind of egregious concealment that is so very dangerous and purposely places children in harms way.

I was also one of the two plaintiffs in the companion cases of *Helen Hyde and Jeffrey Thomas vs The Roman Catholic Bishop of Providence (Thomas Tobin)* filed in August of 2008

that dealt with an earlier version of the civil child sexual abuse statute of limitations and which was decided by the Rhode Island Supreme Court in 2016. After our cases were deemed time barred by the then applicable statute of limitations barring us by age 24, the Diocese cut off my therapy, knowing they now had the freedom to do as they pleased without any civil liability and lacking moral conscience. I struggled in the aftermath.

Since then, I just learned in reading the AG's 2026 report that the Diocese was on notice of Smyth sexually abusing a child as early as the Spring of 1967, before I even entered first grade! That fall of 1967 when I entered the first grade and the sexual abuse started other complaints were made against Smyth. In addition, according to the AG report two fathers provided sworn statements at the Diocese Chancery about their sons being abused by Smyth in early February 1968. The Diocese hid this information during the pendency of my court case, which was litigated from 2008-2016, even though ordered by the trial judge to provide records about Fr. Smyth and the reason for his return to Ireland in 1968! I have attached the pages (Exhibit C") the court transcript from 2011 where Diocesan lawyers at first said there were "no records", even offering to provide an affidavit to that effect, and then Superior Court Judge Vogel ordering the Diocese to produce records. Afterwards, the Diocese only produced two pages per the Court's order: 1) the Bishop McVinney letter of February 15, 1968 when Smyth was sent back to Ireland referenced in the AG report; 2) and a 1994 internal memorandum from the Diocesan director of communications about telling the media that there were "no complaints" should anyone ask about Smyth. A bold face lie.

I also just learned from the AG's report that Smyth, when confronted by Monsignor William Varsanyi and Father Sullivan in early 1968, "admitted freely that the charges (of sexually abusing altar boys) were true and that the most recent incidents WERE NOT THE ONLY ONES". See, AG Report, Appendix A, page 333. This is the first I have learned of this meeting and Smyth's admission in early 1968. There is no excuse for the Diocese and their legal counsel hiding these relevant and crucial records from us in our court cases. The injustice is appalling and raises legal and ethical considerations beyond the scope of this letter. Rhode Island courts have held that lies to the general public as opposed to directly to the victim, do not suspend the statute of limitations. This is why the passage of SB 2616 and HB 7200 is essential. How can victims go up against orchestrated lies and concealment by age 24, the time bar I was held to?

It is abundantly clear from the AG's report's Appendix A detailing information about the 17 Rhode Island victims of Fr. John Gerard Smyth that the Diocese has more records than the two pages produced by their attorneys, Melissa Darrigan and Howard Merten of Partridge, Snow. It remains unknown whether the attorneys held back the information or the Diocese continued to conceal records, defying the court's order. In either event this level of wrongdoing during a court case that was litigated from 2008-2016 demonstrates that victims of clergy sexual abuse in Rhode Island are not dealing with a level playing field when it comes to the Diocese of Providence, even in a court of law! The Diocese seems to hold all the cards and will not give up information unless forced to do so by virtue of a grand jury investigation and subpoenas in fully litigated civil suits.

In addition to withholding relevant records concerning Fr. Smyth, I discovered in 2017/2018 that either the Diocese or its lawyers were in communication with the Rhode Island Supreme Court judge who penned the opinion in my case. This information revealed itself when I filed an ethics complaint with the state Ethics Commissions against (now retired) Associate Justice Francis Flaherty for his failure to disclose his connections with the St. Thomas More law society and the Diocese on his annual financial disclosure filings, including when he presided over my case. How did Flaherty know information, known only to the defense and that was never presented to the court and not of public record? Flaherty knew the identity of the defense expert retained by the Diocese when there was no disclosure of experts in the case. Discovery had been stayed while the case was up on appeal. Judges are bound by the Judicial Canons to maintain independence and integrity of the judiciary and to avoid any appearance of impropriety at ALL TIMES. This kind of influence peddling by the Diocese and its lawyers needs to stop. If it happens with the Supreme Court, I can only imagine the influence peddling the Diocese engaged in with members of the General Assembly over the many years we have sought to reform the child sexual abuse statute of limitations. It needs to stop now. Any member of the General Assembly that sides with the Diocese has either been played, is incredibly naïve, or is complicit and should be ashamed. The Diocese lies, cheats and conceals to its own benefit.

Another example of judicial interference by the Diocese is referenced at pages 142-143 of the AG's report regarding Fr. Paul Henry Leech, who was facing criminal prosecution: "According to a memorandum in personnel records from Auxiliary Bishop Angell to Bishop Gelineau, dated October 4, 1985 (the Friday before Leech's Monday sentencing), Msgr. Salvatore Matano, then-Diocesan co-chancellor, was 'contacted by Bill Murphy, our legal counsel, and Father Matano will be in Judge Orton's chambers on this coming Monday, at 9:20AM.' There is no further record of the substance of Matano's meeting with Judge Orton, who that day sentenced Leech to 15 years imprisonment, with 12 years suspended with probation". Why was Monsignor Matano even in the judge's chambers? How many other instances of behind-the-scenes judicial interference and influence peddling by the Diocese exist? How can survivors and victims of clergy abuse possibly have a fair measure of justice when the Diocese engages in this wrongful behavior?

The Attorney General at his recent press conference on the AG Report described Rhode Island as "insular". How can victims of clergy abuse have any sense of fairness when the Diocese holds back records, engages in judicial interference and influence peddling and lies to the public? It is patently unjust and unfair. The Attorney General's (AG) report, although seemingly comprehensive, is limited to what records the Diocese voluntarily provided to the AG's office. The AG called the Report "weak tea" at his recent press conference because he lacked the ability to convene a grand jury that would have resulted in the release of a public report spanning back beyond the short 3 year statute of limitations for second degree sexual assault cases (nonpenetration sexual abuse). What other records exist? What was concealed? What records were destroyed by the Diocese? What was sent to the Archdiocese of Boston or the Vatican or out of the country to heads of religious order priests to avoid subpoena power?

For example, two fathers provided sworn statements about their sons being sexually abused by Smyth at the Diocesan Chancery in early February 1968, but those statements were not included in the files produced by the Diocese. See Appendix A, page 331, footnote

31. Yet notes and other records reference the sworn statements. **Where are the sworn statements that led to Fr. Smyth being sent back to Ireland in March of 1968 for “treatment”?** One cannot trust that all the information in the possession of the Diocese or to which it had access was provided to the AG. This is a past example of how low the Diocese will stoop, but the same tactics of concealment were used in my much more recent civil suit of 2008-2016.

We will never know more truth without civil suit subpoena power and forcing the hand of the Diocese. That will come in part through the passage of SB2616 and HB 7200. There are likely more victims than 17 Rhode Island victims of Fr. Smyth referenced in the AG’s report. He was convicted on over 100 counts of child sexual abuse in Ireland and Northern Ireland to which he admitted by pleading guilty. Do not be complicit in the coverup.

The time is now to take steps to level the playing field and pass Senate Bill 2616 and House Bill 7200. The Diocese has resisted reforms every step of the way, unless forced to act. Incredibly as a reaction to the AG’s 2026 investigative report they terminated the 2019 Memorandum of Understanding with the AG’s office. This is a clear sign that they have not reformed in the ways necessary to assure protection of Rhode Island children or properly investigate or report complaints of child sexual abuse or grooming. The Diocese’s reactionary and defensive approach is alarming, if not telling that they have learned very little through the process. It is all the more reason that the passage of Senate Bill 2616 and House Bill 7200 is essential.

First and foremost, you should be guided by the Attorney General’s investigative report of the Diocese. Understand that the passage of these bills is constitutional and the constitutionality is supported both by the history behind Rhode Island’s 1986 constitutional convention when it adopted state versions of the due process and equal protection clauses specifically expressing the intent to keep the law around due process and equal protection “ON PAR” with federal law. Federal law allows the retroactive expansion of statutes of limitations in civil cases. In addition, the chief law enforcer of your state supports the constitutionality of these bills as is indicated in the Attorney General’s report. There is no reason not to approve these bills and take them to the senate floor for passage, unless you chose to protect pedophiles and the institutions that engage in illegality to harbor and shuffle around pedophiles. Make the conscious choice to right this longstanding injustice for victims of childhood sexual abuse. The Supreme Court of Maryland just approved the constitutionality of the Maryland Child Victims Act of 2023 that eliminate their statute of limitations.

Beyond question, retroactive expansions of civil statutes of limitations are allowable under the Federal Constitution. The claim of those who oppose retroactive expansion or opening a short window to revive time barred claims is that it somehow 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 WHY it was adopted in 1986 in the first place. The RI civil due process clause is more recent enactment as compared to other states, for example Maine, with centuries old case law that predates any public awareness of the prevalence of child sexual abuse crisis and concealment of crimes and causes of action. Times have changed in our evolving understanding of the crimes against children, the dilemma of

delayed reporting and cover-up by the Catholic Church and by other institutions. If we are to look to other states, look to the Constitution State of Connecticut which in *Doe vs Hartford Archdiocese* held the Connecticut expanded statute of limitations (CGS 52-577d) was retroactive as to perpetrators and non-perpetrators alike. Connecticut's high courts have found its expanded, retroactive, statute of limitations constitutional under both the federal and state constitutions. Municipalities and institutions have not collapsed in Connecticut with these positive reforms to protect children.

Why should institutions like the Diocese, which has literally lied to the public and concealed crimes be entitled to say they have a "vested right in not being sued" or to the lapse of time when it's the Diocese that lied, concealed, hid the truth, interfered with the judicial process and engaged in influence peddling of public officials. It is patently unjust and unfair for the victims to be told they are "too late" for justice. 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 obstruction.

Significantly, the RI civil due process clause enacted in 1986 is much newer as compared to other states with robust case law dealing with their state constitution's due process clause many of which date to the 1800s. Other state cases are not necessarily decisive but recently Maryland, Louisiana and North Carolina have all upheld their retroactive statute of limitations reforms in the face of state constitutional challenges. Bear in mind that states like Colorado, which went the other way, had vastly different language in its constitutions largely due to property rights arising from the history of homesteading in that state. You need to compare the language in each state constitution to make a fair assessment. What IS decisive and binding for this committee, however, 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, like the Diocese, from the retroactive enlargement of statutes of limitations. The state constitutional amendment of 1986 was not designed to protect pedophiles or the Catholic church or Boy Scouts! If the expansion of the general personal injury statute from 2 to 3 years can

be retroactive in Rhode Island, as your state Supreme Court has held, and if an expansion can be applied to perpetrators retroactively, then why not all responsible parties including those who are negligent? There has never been a protected class of select individuals or entities who gets to avoid an expansion of a statute of limitations! The law does not work that way. 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 then 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. The notion that child sexual abuse was so prevalent, with the American Medical Association calling it an “epidemic” by the mid-1990s had yet to surface in the public consciousness.

Nowhere can it be found in the record of the Constitutional Convention 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 early 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 represented an aberrant and discriminatory application of the 1986 due process clause and what the Constitutional Convention intended. It is now time to fix that error with the body of knowledge we have today and supported by the Attorney General’s report.

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 case against a perpetrator (incest case) in Doe vs LaBrosse I and II decided in the early 1990s when an 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 Kleczeck 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’s equal protection law on par with the federal equal protection law”. In other words the state constitution’s 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 (as is elimination of a statute of limitation) then it 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 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).

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".

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 that provides for the discriminatory protection of entities, like the Diocese, at the expense of child victims of sexual abuse. There is nothing in the RI constitution's due process clause that prevents the General Assembly from reforming the child sexual abuse statute of limitations both retroactively and prospectively and opening a two year window. The Kelly vs Marcantonio case usurped the Constitutional Convention and will of the voters of RI when the voters ratified a state due process clause designed to mirror the 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.

We now have the benefit, though limited, of the 2026 AG report with information that is both horrific and alarming, meriting opening a window for survivors to come forward and revive

claims. Please take the steps necessary to approve SB 2616 and HB 7200 and send the bills to the Senate floor for a vote. The Supreme Court of Maryland just a few weeks ago upheld its 2023 Child Victims Act that eliminated the statute of limitations retroactively and rejected the Archdiocese of Baltimore's claims of unconstitutionality and a vested right not to be sued. Now is the time for Rhode Island to follow suit. Please approve of SB 2616 and HB 7200 and send it to the senate floor for passage. The time to rectify this horrific injustice is upon us.

Very Truly Yours,

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