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May 14, 2026

The Honorable Matthew L. LaMountain
Chairman
Senate Committee on Judiciary
State House, Room 313
Providence, RI 02903

Re: SR 3275: Resolution requesting a written opinion of the Supreme Court

Dear Chairman LaMountain and Members of the Senate Judiciary Committee:

I write to convey my concern with SR 3275, introduced on May 8, 2026 (the Resolution), which seeks an advisory opinion from the Supreme Court of Rhode Island (SCORI) regarding the constitutionality of certain provisions in Senate Bill 2616. For the reasons set forth below, I believe the Resolution is ill-advised and unnecessary.

Before turning to the various reasons that militate against seeking an advisory opinion on SB 2616, I would like to begin with some general observations.

First, no victim of child sexual abuse – not one – has asked the General Assembly to seek such an opinion.

Second, while it can be expected that the bill's constitutionality will be raised in defense of lawsuits brought by victims, in that circumstance, SCORI would have the benefit of a trial court record, and full briefing by interested parties, before rendering an opinion on the law's constitutionality. Moreover, resolving the question in the context of an actual "case or controversy" would result in a clearer, more certain resolution for victims, defendants, and all interested parties to this law, because the Court's decision would constitute a *binding final judgment*, whereas an advisory opinion to the Senate would not. *In re Advisory Opinion to the Governor (Casino)*, 856 A.2d 320, 323 (R.I. 2004).

Third, as I have said before, and as I reiterate later in this letter, my Office has carefully studied this legislation, and we remain convinced of its constitutionality. But even assuming that constitutionality is not *guaranteed*, victims want and deserve to bring actions against their abusers and their enablers *now*. Out of respect for them and their suffering, I respectfully submit that the Senate should lean forward on their behalf and vote on SB 2616, rather than deferring that important decision until after an advisory opinion is sought and (possibly) obtained.

Fourth, the Resolution as drafted makes no mention of the highly compelling public policy rationale behind SB 2616, nor of my Office's recent Report on Child Sexual Abuse in the Diocese of Providence. This suggests a view that the policy rationale behind this legislation may somehow be immaterial to the constitutional analysis—but that is not so. Many (if not most) laws implicate due process or equal protection concerns, and yet they pass constitutional muster because they satisfy either the rational basis or heightened scrutiny review, as may be applicable. The rationale behind this legislation—recognition that victims of child sexual abuse suffer life-long injuries as a result of the abuse and frequently do not report their abuse until decades later—would be crucial to SCORI's consideration of the issue. During this Office's recent investigation into the Diocese of Providence, we identified over 300 documented victims of clergy sexual abuse—many of whom suffered in silence for years or decades before disclosing what had been done to them by Diocesan priests. We are certain there are many more victims who have yet to come forward. Critically, we also found that the Diocese and its leaders bore their own responsibility for this tragedy: by failing to remove accused priests from ministry and instead allowing them to remain in active service and in proximity to minors, the Diocese contributed to the sexual abuse of additional children. These are cases with actual victims, suffering actual harms, by actual perpetrators, and actual institutions who allowed it to happen. It is in *that* context that SCORI should consider the constitutionality of the proposed legislation.

Fifth, our Supreme Court has held “with a regularity bordering on the monotonous,” *United States v. Mala*, 7 F.3d 1058, 1063 (1st Cir. 1993) (Selya, J.), that the legislative enactments of this body enjoy a great presumption of constitutionality. *See also State v. One 1990 Chevrolet Corvette*, 695 A.2d 502, 505 (R.I. 1997). As SCORI has stated, “[b]ecause of the broad plenary power of the General Assembly, this [C]ourt's evaluation of legislative enactments has been extremely deferential; moreover, we have interfered with such enactments only when the legislation at issue palpably and unmistakably could be characterized as an excess of legislative power.” *City of Pawtucket v. Sundlun*, 662 A.2d 40, 44-45 (R.I. 1995). The General Assembly regularly enacts laws where the constitutionality is disputed without seeking an advisory opinion (more on this below). And this Office has defended, and as I have stated on numerous occasions with

respect to SB 2616, will continue to defend, the constitutionality of our laws, including this one if enacted.

Against this backdrop, and for the additional reasons described below, I urge the committee to table this Resolution and vote on SB 2616.

A. Advisory Opinions are Rarely Sought, and Even More Rarely Issued, for Good Reason.

While the Rhode Island Constitution (Art. X, § 3) provides a mechanism for either chamber of the General Assembly to seek an advisory opinion from the Supreme Court regarding pending legislation, as a general matter those requests are exceedingly rare, and the Court actually granting such a request and issuing an advisory opinion is even rarer.

By our tally, since the Court decided *Kelly v. Marcantonio* in 1996, the Senate has sought an advisory opinion from SCORI on only *two* occasions. The Court answered the Senate's questions on one occasion, and declined to answer the Senate's questions on the other.¹ During the same 30-year-period since *Kelly*, the House of Representatives and the Governor have only sought advisory opinions on four and six occasions, respectively.² In total, the two chambers of the General Assembly have sought advisory opinions only six times since *Kelly*, and SCORI has declined to issue advisory opinions on two of those occasions.³ Indeed, the last time our Supreme Court issued an advisory opinion—and the

¹ See *In re Request of the Senate for an Advisory Opinion*, 696 A.2d 277 (R.I. 1997) (advising that the General Assembly may provide prospectively for the filling of a vacancy in the office of Lieutenant Governor without offending the constitution, but that this power was exhausted once the Governor exercised the power to fill the vacancy); *In re Advisory Opinion to Senate (Beacon Mut.)*, 911 A.2d 276 (R.I. 2006) (declining to answer the question presented because the composition of the Senate would change as a result of an intervening general election).

² See *In re Advisory to the Governor*, 732 A.2d 55 (R.I. 1999) ; *In re Request for Advisory Opinion from Governor (Work Station Project)*, 812 A.2d 789 (R.I. 2002); *In re Advisory Opinion to House of Representatives (Casino II)*, 885 A.2d 698 (R.I. 2005) (declining to answer questions regarding constitutionality of legislation because, *inter alia*, it would require fact-finding); *In re Advisory Opinion to Governor*, 856 A.2d 320 (R.I. 2004); *In re Advisory Opinion to the Governor*, 904 A.2d 67 (R.I. 2006); *In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council)*, 961 A.2d 930 (R.I. 2008); *In re Advisory Opinion to the Governor*, 688 A.2d 288 (R.I. 1997); *In re Advisory Opinion to House of Representatives*, 911 A.2d 274 (R.I. 2006); *In re Request for Advisory Opinion from Governor*, 860 A.2d 242 (R.I. 2004); *In re Request for Advisory Opinion from House of Representatives*, 875 A.2d 445 (R.I. 2005).

³ See *In re Advisory Opinion to Senate (Beacon Mut.)*, 911 A.2d 276 (R.I. 2006) (declining to answer questions regarding constitutionality of legislation because, *inter*

last time that either the General Assembly or the Governor requested one—was *nearly twenty years ago*, in 2008. See *In re Request for Advisory Opinion from House of Representatives (Coastal Res. Mgmt. Council)*, 961 A.2d 930 (R.I. 2008).

So positioned, the instant Resolution is highly unusual.

1. The General Assembly Has Not Sought Advisory Opinions in Other Instances Where the Constitutionality of a Legislative Proposal Was in Question.

The General Assembly regularly enacts legislation—even controversial legislation—without taking the anomalous step of seeking an advisory opinion from the Supreme Court. Most notably, in 2019, the General Assembly passed the most recent amendment to R.I. Gen. Laws § 9-1-51, “Annie’s Law” (the very statute the current legislation seeks to amend). Although that law posed a nearly identical issue to the one referenced in the present Resolution—revival of expired civil claims for child sexual abuse—the House and Senate passed the legislation without seeking an advisory opinion.

There are several other recent examples where, in the face of vociferously-raised public questions regarding the constitutionality of a given legislative proposal, the General Assembly has gone ahead and enacted the legislation rather than holding back and seeking an advisory opinion from the Supreme Court:

- **Shoreline access:** One example is the shoreline access legislation enacted in June 2023. There, a legislative study commission established several years before the legislation was passed took evidence and made recommendations for a new shoreline access law. In that context, concerns were raised that codifying a public access area beyond the mean high water line discussed in SCORI’s 1982 decision in *State v. Ibbison* would be an unconstitutional taking of private

alia, it would require fact-finding); *In re Advisory Opinion to House of Representatives*, 911 A.2d 274 (R.I. 2006) (declining to answer questions posed because it would be unable to issue an opinion before the composition of the House changed due to the recent general election). In an additional advisory opinion issued by SCORI where the Court answered two of the questions presented, the Court also declined to answer two other questions posed in the request. See *In re Advisory Opinion to House of Representatives (Casino II)*, 885 A.2d 698 (R.I. 2005). And on two occasions since *Kelly*, SCORI declined to issue an advisory opinion to the Governor. See *In re Request for Advisory Opinion from Governor (Warwick Station Project)*, 812 A.2d 789 (R.I. 2002) (declining to issue an advisory opinion because it would require fact-finding); *In re Advisory Opinion to the Governor*, 904 A.2d 67 (R.I. 2006) (declining to entertain request for an opinion from the governor because he did not have a present constitutional duty to implement the proposed constitutional amendment at issue).

property. Instead of seeking an advisory opinion, the General Assembly went ahead and enacted the legislation. While our Office strongly believes this law is constitutional and continues to vigorously defend it, the Superior Court deemed it an unconstitutional taking in two cases, which are now before the Supreme Court on a writ of certiorari.

- **Sports gambling:** In 2018 and again in 2019, the General Assembly enacted legislation authorizing and expanding legalized sports betting in Rhode Island. There were significant questions about the constitutionality of these proposals at the time the laws were passed, given the R.I. Constitution’s unique provision (Article VI, Sec. 22) requiring that any law expanding the types or locations of gambling in the state be approved by state and local voter referenda. House Republicans “called” on the General Assembly to seek an advisory opinion from SCORI, but the legislature declined to do so—and the laws were challenged almost immediately upon their passage. Our Office successfully defended these laws before Judge Stern in *Harrop v. Rhode Island Lottery* (on the grounds that a prior referendum had the effect of providing the requisite voter approvals for sports gambling before the General Assembly passed these laws).
- **Evergreen contracts:** In 2019, the General Assembly passed the “evergreen” (or “continuing”) contract amendments to R.I. Gen. Laws §§ 28-9.3-12 and 28-9.4-13, which provide that in the event a successor contract is not reached, certain terms and conditions of municipalities’ prior collective bargaining agreements with teachers and municipal employees shall remain in effect during future contract negotiations and until a successor agreement is reached. Approximately eighteen Rhode Island municipalities promptly challenged the amendments under the Contracts Clause and Home Rule Charter provisions of the Rhode Island Constitution; the ensuing litigation lasted until 2025, when the Superior Court granted the Defendants’ Motion for Summary Judgment and the municipalities did not appeal. Before the amendments passed, multiple municipal officials, the Rhode Island League of Cities and Towns, and numerous op-eds had raised strident objections to the evergreen contract amendments and their financial impact, including raising the issue of whether they violated the Rhode Island Constitution’s Home Rule provisions. Yet neither the Senate nor the House sought an advisory opinion from the Supreme Court prior to enacting the legislation.
- **SORNA:** In 2023, the U.S. District Court in Rhode Island deemed a 2015 amendment to the Sex Offender Registration and Community Notification Act (SORNA) that barred Level III sex offenders from residing within 1,000 feet of a “school” to be unconstitutionally vague. *See Chapdelaine v. Neronha*, No. 1:15cv-00450-JJM-LDA, ECF No. 101 (D.R.I. March 15, 2023). Nonetheless, just earlier

this session, the Senate passed another version of this law, SB 2281, that left completely unchanged the definition of “school” that the federal court deemed too ambiguous to pass constitutional muster.

These and other examples (such as truck tolls and gun violence prevention legislation) raise an obvious question: if the Senate, in the context of recent legislation addressing other weighty issues of public policy, refrained from seeking an advisory opinion in those instances, and instead proceeded to enact the laws at issue despite known questions about their constitutionality—why, in the context of *this* particular bill, which has been before the Senate for the past several years, and which seeks to provide justice to long-silenced victims of child sexual abuse, should the Senate seek an advisory opinion rather than let the future take its natural and ordinary course?

2. The R.I. Supreme Court may well decline to answer the Senate’s questions.

While the language of Article X, § 3, appears to leave no room for discretion (“The judges of the supreme court *shall* give their written opinion . . . *whenever requested*”), SCORI has declined to provide advisory opinions on numerous occasions. *See, e.g., In re Advisory Opinion to House of Representatives (Casino II)*, 885 A.2d 698, 713 (R.I. 2005) (declining to answer questions regarding constitutionality of legislation because, *inter alia*, it would require fact-finding); *In re Request for Advisory Opinion Regarding House Bill 83–H–5640*, 472 A.2d 301 (R.I. 1984) (declining to address questions that would require the exercise of the judiciary’s fact-finding power to answer); *Opinion to the House of Representatives*, 433 A.2d 944 (R.I. 1981) (declining to respond to questions propounded by the House of Representatives due to pending litigation in the Superior Court).

In the present context, the Court may well decline to answer the Senate’s questions due to the impending general election in November. The Court’s “jurisprudence clearly indicates that the justices of this Court refrain from answering requests for advisory opinions from either House of the General Assembly **when the composition of the legislative body that propounded the question inevitably will change as a result of an intervening general election.**” *In re Advisory Opinion to Senate (Beacon Mut.)*, 911 A.2d 276, 277 (R.I. 2006) (mem.) (emphasis added) (citing *Advisory Opinion to the House of Representatives of the State of Rhode Island and Providence Plantations*, 108 R.I. 151, 153, 272 A.2d 925, 926 (1971) (explaining that because this Court’s constitutional obligation to render advisory opinions is implicated only by “question[s] pending and awaiting action in the body which seeks our assistance[,] * * * [o]ur constitution * * * does not require the justices to give an opinion to a succeeding legislative body in reply to a request propounded by a preceding legislative body”); *see*

also *Opinion to House of Representatives*, 206 A.2d 221, 222 (R.I. 1965) (noting “[i]f the Honorable House as it is now constituted as a result of the election of November 3, 1964, desires to have these questions answered it should make its wishes known by the adoption of new resolutions”).

In *In re Advisory Opinion to Senate (Beacon Mut.)* the Senate introduced a resolution in June 2006 that asked the Court whether “[a]rticle [9], [s]ection 5[,] of the Rhode Island Constitution require that the [G]overnor’s next appointments to the board of directors of Beacon Mutual Insurance Company be made by and with the advice and consent of the Senate?” *Id.* at 276. The Senate recessed the following day. *Id.* The Court did not issue its order until November 22, 2006, wherein it declined to entertain the request; the general election had been held on November 7, 2006, and because the Court had not requested briefing from parties or set a date for argument, it determined that it would not be able to respond before the newly composed senate engaged in January. *Id.* at 276-77. The Court might likewise decline to issue an advisory opinion here, due to the general election in November and the newly-elected Senate that will take office in January 2027.

The Court could also determine that it needs to engage in fact-finding to answer the questions presented and decline to answer them on that basis. The Court “will not issue advisory opinions [that] require a direct or indirect exercise of [its] fact-finding power.” *In re Request for Advisory Opinion from Governor (Warwick Station Project)*, 812 A.2d 789, 790 (R.I. 2002) (quoting *In re Advisory Opinion to the Governor*, 732 A.2d 55, 72 (R.I. 1999)). “Because fact-finding inheres in the Court as the judicial branch of the state government, judges acting in their individual capacities lack this power and therefore lack the power to issue advisory opinions which implicate fact-finding.” *Id.* (quoting *In re Advisory to the Governor*, 732 A.2d at 72). If the Court determines that it needs to engage in factfinding to analyze, for example, whether a rational basis exists for this law, whether individuals have been provided a “meaningful opportunity to be heard,” or on any other number of issues, then the Court could decline to issue an advisory opinion.

In short, setting aside how unusual it is for the Senate to engage in this exercise, its ability to submit questions to SCORI is by no means a guarantee that the Court will in fact answer the Senate’s questions. The Court’s precedent offers ample justification for the Court to decline. Moreover, even the process by which that declination could be delivered could take many months, resulting only in additional delay in providing victims with the opportunity to seek redress for the suffering they have already lived with for many years. This is even more reason for the Senate to table this Resolution and vote on SB 2616.

3. Questions regarding SB 2616’s constitutionality should be *actually litigated*.

It is important to note exactly what an advisory opinion is and, more significantly, what it is *not*. The Court has noted that

[w]hen issuing advisory opinions, “the justices of this Court do not speak *ex cathedra*, from the chair of judgment, but only as consultants somewhat like the jurisconsults under the Roman law Speaking in our individual capacities as legal experts rather than Supreme Court justices, we are unable to exercise the fact-finding power of the Court Because this opinion is not an exercise of judicial power, it is not binding and ‘it carries no mandate.’”

Casino II, 885 A.2d at 701 (quoting *In re Advisory Opinion to the Governor (Casino)*, 856 A.2d 320, 323 (R.I. 2004)). Put differently, when issuing advisory opinions, the justices act like consultants to the General Assembly (or the Governor) by providing their individual opinions as expert jurists. The non-binding opinions have limited precedential value and are no substitute for decisions rendered by the full Court in the normal course of litigation.

Our Supreme Court should address any questions posed by SB 2616 in the traditional way legal questions are presented and answered: in litigation, where the Court would have the benefit of refined legal issues and a fully-developed factual record. Indeed, the Court has observed that “the United States Supreme Court consistently has refused to give advisory opinions because such opinions are ‘advance expressions of legal judgment upon issues which remain unfocused because they are not pressed before the Court with that clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multiface[te]d situation embracing conflicting and demanding interests” *Casino II*, 885 A.2d at 714 (quoting *United States v. Fruehauf*, 365 U.S. 146, 157, 81 S. Ct. 547 (1961)).

The questions posed in the instant Resolution are not “precisely framed.” *Id.* The Resolution refers to “constitutionally sufficient notice and a meaningful opportunity to be heard and defend against such claims.” 2026 – SB 3275. In addition to presupposing a constitutional injury in the question itself, it is entirely unclear what “constitutionally sufficient notice” and “meaningful opportunity to be heard” (language typically used in challenges based on procedural, rather than substantive, due process) refer to in this context. *Id.*

Should an advisory opinion be sought, the questions also would not enjoy “adversary argument exploring every aspect of a multiface[te]d situation embracing conflicting and demanding interests[.]” *Id.* This can only come from a factual record developed by parties in litigation. Such a record would explore the many factual and legal aspects involved in reviving civil claims for child sexual abuse. Indeed, our Supreme Court has repeatedly expressed a preference for lower courts grappling with legal issues before the Court undertakes its own review. *See, e.g., In re Christopher S.*, 776 A.2d 1054, 1056 (R.I. 2001) (quoting *Employers Mutual Casualty Co. v. Martin*, 671 A.2d 798, 802 (R.I. 1996)) (“In recent years, we have expressed our alarm ‘at the use of certified questions as a means of short-circuiting the proper procedure for resolving matters in controversy”). The reason is clear: the Court benefits from developed facts and law and the perspective of other jurists when deciding legal questions.

For these reasons, I respectfully submit to this Committee, and the Senate as a whole, that it should forego the Resolution and vote on SB 2616.

I believe that the arguments in support of finding SB 2616 constitutional have been more than adequately laid out both before this Committee and in *amicus* briefs previously filed by my Office in the *Houllahan v. Gelineau* case, but as previously stated by both my Office and by the Hon. Judge William E. Smith (Ret.), those arguments are more properly made to the judiciary.

Nevertheless, to the extent it would aid the Committee and the Senate in evaluating next steps, I offer here a brief and summary overview of the general arguments in support of this law. This summary is not intended to be exhaustive or cover all the possible defenses in support of this legislation. (Indeed, I am aware of at least one additional substantial argument that is addressed in testimony submitted by The Hon. William E. Smith, relying on article I, section 23 of the Rhode Island Constitution, the Victims’ Rights Amendment, as an independent basis to find the legislation constitutional.) But these points should offer more than enough comfort to those who are eager to finally correct a grave historic injustice and afford victims of child sexual abuse an opportunity to seek redress and compensation in our courts.

B. The Proposed Legislation Is Constitutional.

1. *Kelly v. Marcantonio* (1996) and Due Process

Invariably, opponents of this legislation point to SCORI's decision in *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996) as foreclosing the revival of previously expired civil statutes of limitations. In *Kelly*, SCORI addressed the question of “whether, under both the Federal and the State Constitutions, it is constitutionally permissible for our General Assembly to revive a previously time-barred cause of action” for sexual abuse against perpetrator defendants. The question was certified to SCORI by both the U.S. District Court for the District of Rhode Island (Judge Torres) and the Superior Court (Judge Israel) in the context of ongoing civil litigation by survivors of Diocesan clergy abuse. The statute at issue in *Kelly* was enacted by the General Assembly in July 1993 and enlarged the limitations period for civil claims against perpetrators of abuse from three to seven years. Critically, *that statute*, unlike SB 2616, was silent on whether it could apply to previously expired claims. The distinction is important, as the legislative intent was not as clear there as it is here.

The *Kelly* Court (Justice Bourcier) held that retroactively applying the new limitations period to revive already-lapsed civil claims violated the due process clause of the R.I. Constitution. The Court acknowledged the general federal rule—still in effect today—that there is no “vested right” under the federal due process clause in an expired statute of limitations (because statutes of limitations are generally procedural in nature and affect only remedies, not rights). *See, e.g., Campbell v. Holt*, 115 U.S. 620 (1885); *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945). Nonetheless, the Court observed that in 1986, the R.I. Constitution was amended to add a due process clause applicable to civil claims; and, with very little analysis, the Court construed the clause to bar the revival of already time-barred actions. The Court's sparse reasoning referenced two main points: first, that “a great preponderance of state appellate courts” to have addressed the question *at that time* had declined to follow the federal rule (i.e., they interpreted their own state constitutions to confer a “vested right” of due process protection for civil limitations periods); and second, the fact that in a previous 1974 case, *Twomey v. Carlton*, SCORI wrote that it would be “inclined” to follow the approach of those state appellate courts if Rhode Island had a civil due process clause (which it gained in 1986).

The 30-year old *Kelly* decision should not foreclose legislative action today. Its reasoning was based on the decisions of other state appellate courts, and SCORI's assessment *at that time* (1996), that a “great preponderance” of state courts declined to follow the federal rule that there is no “vested right” in an expired statute of limitations. It is decidedly no longer the case that a “great preponderance” of states reject the federal rule. In a decision from last year upholding its own revival statute, the Maryland Supreme Court observed that “[a]t least **18 states** permit revival of at least some claims previously barred by a statute of

limitations,” in comparison to “[a]t least 21 states [that] forbid revival of claims barred by a statute of limitations.”⁴ *Roman Catholic Archbishop v. Doe*, 489 Md. 514, 544 n.15 (2025).

The legal landscape has shifted dramatically since *Kelly*: (1) the states are now effectively *split* on this issue (unlike in *Kelly*); (2) our neighboring states of MA and CT are among those that have permitted the revival of at least some claims (though admittedly both NH and ME recognize a vested right in expired claims); and (3) the more recent trend appears to favor allowing the revival of civil claims (doubtlessly in part due to what we have learned about delayed disclosures in the context of institutional sexual abuse scandals).

But there are additional reasons to believe that today’s SCORI would not find the *Kelly* rationale binding. Our Court has expressed a willingness to consult the legislative record and legislative intent when interpreting our Constitution—and there is some indication in the case law (with references to the relevant Constitutional Convention Committee Report from 1986) that the actual intent behind our state due process clause was for it to be *coextensive* with the Fourteenth Amendment’s established protections *at that time*. In 1986, the Fourteenth Amendment conferred no “vested right” in a statute of limitations. *See Campbell v. Holt*, 115 U.S. 620 (1885); *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945). That same federal rule persists today. *See, e.g., U.S. v. Falcon*, 805 F.3d 873, 875 (9th Cir. 2015) (holding that the federal law eliminating statutes of limitations on actions to recover on defaulted federal student loans did not violate student debtors’ due process rights). As this Office noted in our Superior Court amicus in the *Houllahan* case: “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*. *State v. Weeks*, 1995 WL 941467, *5 (R.I. Super. Ct. Aug. 22, 1995). The Committee ‘wanted to protect the citizens of the state if the federal judiciary were to adopt a *narrow* interpretation of the Fourteenth Amendment *in the future*.’ *Jones v. State of R.I.*, 924 F.Supp. 25, 35 (D.R.I. 1989) (emphasis added) (citing Committee Report, p. 6).”

Consistent with federal precedent, SCORI “has traditionally employed a balancing test in cases involving retroactive statutes in which the court weighs the public interest in retroactivity against the unfairness created[,]” and “[t]he unfairness of a retroactive statute is ‘measured best by the party’s reliance on the preexisting state of the law.’” *Rhode Island Depositors Econ. Prot. Corp. v. Brown*, 659 A.2d 95, 104 (R.I. 1995) (quoting *Brennan v. Kirby*, 529 A.2d 633, 640 (R.I. 1987)). “If the unfairness outweighs the benefit, the statute lacks a rational basis.” *Id.* (citing *Lawrence v. Anheuser-Busch, Inc.*, 523 A.2d 864, 870-71 (R.I. 1987)). In the 1995 *DEPCO* decision, our Supreme Court

⁴ The 18 states referenced by the Maryland Supreme Court as “permit[ting] revival of at least some claims previously barred by a statute of limitations” are AZ, CT, DE, GA, KS, MA, MN, MT, NJ, NC, WY, NY, LA, WI, CA, ID, NM, and HI.

criticized the “vesting” concept that was employed in *Kelly* the following year as “merely conclusory and disfavored when considering due process challenges.” *Id.* at 103. It stated that “[a]lthough a statute has retroactive effect that implicates property rights, it does not necessarily follow that the statute is unconstitutional.” *Id.* Rather, the Court instructed, courts must employ a balancing test to determine whether the public interest in retroactivity outweighs any unfairness.⁵ Nevertheless, the *Kelly* Court neither applied nor even addressed this precedent when reaching the conclusion that it did, just a year after *DEPCO*. Properly applied in this context, I believe that the great public interest in affording to victims of heinous crimes access to our courts easily outweighs any alleged unfairness posed by retroactivity.

Again, in the very least, the existence of these facts and principles—and their complete absence from the Court’s decision in *Kelly*—weigh strongly in favor of SCORI revisiting, and appropriately addressing, the constitutionality of reviving civil claims.⁶ Our Supreme Court, contrary to the claims of church lawyers and this bill’s opponents, has *not* chained itself inexorably to the doctrine of *stare decisis*. In a 2002 concurring opinion, Justice Flanders observed that the doctrine of *stare decisis* “has more force in statutory analysis than in constitutional adjudication because, in the former situation, [the legislature] can correct our mistakes through legislation.” *Strynar v. Rahill*, 793 A.2d 206, 209-10 (R.I. 2002) (Flanders, J., concurring) (quoting *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 695 (1978)). In the event of a constitutional challenge to SB 2616, SCORI arguably has greater leeway to depart from prior rulings like *Kelly*.

More generally, SCORI has repeatedly referenced SCOTUS decisions when discussing *stare decisis* and the circumstances in which it may depart from that principle. *See, e.g., Woonsocket School Committee v. Chafee*, 89 A.3d 778, 792 (R.I. 2014) (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)) (“this Court always makes a concerted effort to adhere to existing legal precedent . . . however, bear[ing] in mind that ‘*stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and

⁵ The Rhode Island Supreme Court has also repeatedly stated, since *Kelly*, that Rhode Island’s due process clause is “parallel” to the due process clause in the United States Constitution. *Fed. Hill Cap., LLC v. City of Providence by & through Lombardi*, 227 A.3d 980, 988 (R.I. 2020), *as corrected* (June 20, 2020) (quoting *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1150 (R.I. 2006)); *see also DiBiccari v. State*, 352 A.3d 147, 156 (R.I. 2026) (quoting *State v. Germane*, 971 A.2d 555, 583 (R.I. 2009)).

⁶ Also absent from the *Kelly* decision is any discussion of the applicability of article I, section 23 of the Rhode Island Constitution, the Victims’ Rights Amendment, as an additional basis for the constitutionality of reviving civil claims for survivors of child sexual abuse.

questionable when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience”). One prominent consideration at the federal level is the ultimate “quality of the precedent’s reasoning,” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 407 (2024)—and one can hardly contest that *Kelly v. Marcantonio* is poorly reasoned.

In short, *Kelly* is no barrier to the Senate passing SB 2616. Laws evolve in the face of shifting jurisprudential landscapes, and legislatures do not ordinarily seek permission from the courts to proceed. Ultimately, it will be up to our Supreme Court to decide what force, if any, the *Kelly* decision should have now. But the Court should do so in the context of litigation, as it would in any other case. What we do know, with certainty, is that under the United States Constitution, and in many states that, like Rhode Island, do not have specific constitutional provisions or statutes on retroactivity, laws such as this one have been upheld as constitutional.

2. Other Recent Supreme Court Cases—*Houllahan v. Gelineau* (2023) and *Theta Properties* (2003)—Pose No Barrier, Either

More recently, in *Houllahan v. Gelineau*, 296 A.3d 710 (2023), the Rhode Island Supreme Court had an opportunity to revisit the issue of the constitutionality of retroactive revival of civil claims, but it declined to do so—not even in *dicta*. *Houllahan* concerned “Annie’s Law,” the law passed by the General Assembly in 2019 that extended the limitations period for civil claims of sexual abuse from 7 to 35 years. “Annie’s Law” contains a revival provision that resurrected previously-expired claims, but only against “perpetrator defendants.”

The *Houllahan* plaintiffs (clergy abuse survivors) sued the institutional enablers of their child sexual abuse by Diocesan priests, including Bishop Gelineau, in Superior Court. Gelineau and the institutional defendants moved to dismiss on statute of limitations grounds, arguing that they were not “perpetrator defendants,” and so the retroactive 35-year limitations period did not apply to them. The Superior Court agreed and granted the Church’s motion to dismiss. On appeal, SCORI affirmed the Superior Court’s dismissal, and held that Gelineau and the other institutional defendants were not “perpetrator defendants” because there were no allegations they had either abused the plaintiffs or acted as aiders or abettors to that abuse. The Supreme Court relied heavily on statutory text and legislative history behind the current version of § 9-1-51 in concluding that the institutional defendants were meant to be treated differently for purposes of the statute of limitations and the discovery rule. The Court wrote, “[i]t would be most inappropriate for this Court to accomplish by judicial decree that which the General Assembly refused to enact by statute.” *Id.* at 724. In other words, the Supreme Court would not legislate in place of this body.

Notably, the Court did not indicate that the General Assembly *could not* have extended the statute of limitations to non-perpetrators had it chosen to.

As a secondary argument in support of their motion to dismiss, the institutional defendants had also argued that even if they were found to be “perpetrator defendants,” Annie’s Law’s revival provision was unconstitutional. Since SCORI resolved the case on the statutory text, it never reached the constitutional question. *Id.* at 726. At the same time, the fact that the Court could have, but declined, to address, even in passing, that constitutional question lends some support for our position: if Court had any serious reservations about the constitutionality of a revival provision like the one before the Senate now, that issue was before the Court in *Houllahan*—and the Court passed.

Church lawyers and opponents to SB 2616 have also cited *Theta Properties v. Ronci Realty Co., Inc.*, 814 A.2d 907 (R.I. 2003) to argue that SCORI has effectively “doubled down” on *Kelly*’s holding that our due process clause confers a vested right in an expired statute of limitations. But *Theta Properties* is plainly distinguishable for several reasons. First, it involved inapposite facts and law. There, a partnership sued a dissolved corporation that had mistakenly conveyed property to the partnership, seeking to reform the deed and re-convey the property back to the corporation; SCORI was called to examine a statute concerning the time period for a corporation to wind up its business (not a statute of limitations or any vested right in its protection, let alone the statute of limitations that applies to civil claims for sexual abuse). Second, the relevant part of *Theta Properties* that discusses *Kelly* is nonbinding dicta that carries no weight in this context.

3. Reviving Previously Dismissed Claims

The second proposed question in the Resolution is whether SB 2616’s provision specifically reviving previously-dismissed civil claims passes muster under Art. V of the R.I. Constitution regarding the separation of powers. The relevant provision of SB 2616 (specifically section (a)(3)) states that “[a]ny action dismissed solely as a result of the previous statute of limitations for child sexual abuse shall be revived by this section.” We recognize that this issue may, indeed, present a closer call under our case law, and would likewise benefit from thorough briefing. However, this is the type of question that can be readily, and quickly, addressed by the courts in any pending case through a motion to dismiss, or the process of certifying a question to the Supreme Court. As SB 2616 also contains a severability provision, should SCORI find this subsection of the statute to be constitutionally infirm, the remainder of the statute would nonetheless survive.

Thank you for the opportunity to present my views and the reasons for them to the Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Neronha', with a large, stylized loop at the end.

Peter F. Neronha
Attorney General

Cc: Honorable Valarie J. Lawson, Senate President