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ON BEHALF OF THE
AMERICAN TORT REFORM ASSOCIATION

REGARDING RAISED BILL 6532:
AN ACT REMOVING THE STATUTE OF LIMITATIONS

BEFORE THE CONNECTICUT
JOINT COMMITTEE ON THE JUDICIARY

MARCH 26, 2009

Chairmen McDonald and Lawlor, Members of the Committee, on behalf of the American Tort Reform Association ("ATRA"), I want to thank you for allowing me to testify before you today in regard to Raised Bill 6532, which would extend the statute of limitations and revive time-barred claims.

I am an attorney in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. I have written extensively on liability law and civil justice issues. I am a graduate of George Washington University, where I graduated with honors with degrees in law and public administration. I graduated from the State University of New York College at Geneseo with a B.S. in Management Science.

I serve as co-counsel to ATRA, a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Sexual abuse against a child is intolerable and should be punished, both through criminal prosecution and civil claims. I commend the Committee for considering steps to further protect victims of sexual abuse. My testimony today addresses only general principles underlying statutes of limitations, as well as the reasons why retroactive changes to such laws are often view unsound policy by legislatures and courts.

ATRA's interest in Raised Bill 6532 relates to preserving fundamental legal principles in civil cases and avoiding a serious problem that can arise in highly sympathetic situations like this one, namely, that bad facts can sometimes lead to the development of bad law. When legislation is driven by emotion, there can be adverse impacts that well-meaning legislators may not intend. To avoid this problem, lawmakers must approach these difficult cases with an appreciation of all the interests affected. Changes in the law must be examined objectively based on certain core principles. ATRA believes that in order for statutes of limitations to provide the predictability and certainty for which they are intended, they must be, at minimum: (1) finite; and (2) that any changes must be prospective only.

Statutes of Limitations: An Overview

Tort law, by its very nature, deals with horrible situations – accidents resulting in serious injuries that have a dramatic impact on a person's life, negligence in the workplace or a defective product that leads to person's death, and diseases contacted through exposure to toxic substances, for example. In each situation, however, the law provides a finite period in which to bring a civil claim. These are statutes of limitations. They are basically a legal "countdown" that begins when someone is injured. When the time period expires, a claim may no longer be brought.

Statutes of limitations are important because some period is needed to balance an individual's ability to bring a lawsuit with the ability to mount a fair defense and to protect courts from stale or fraudulent claims. As time passes, witnesses become difficult to locate or pass away, records are lost or discarded, and memories fade. Without statutes of limitations, litigation can become a "he said-she said" situation.

There's no magic number as to what is a fair length of time for a statute of limitations. Statutes of limitations are inherently arbitrary. As legislators, you must strike a difficult balance. On the one hand, potential plaintiffs should have an adequate opportunity to bring a claim. On the other hand, defendants and the courts must be protected from having to deal with cases in which the search for the truth may be seriously impaired by the loss of evidence, witnesses, and fading of memories. By striking this balance, statutes of limitations promote justice, discourage unnecessary delay, and preclude the prosecution of stale or fraudulent claims. These laws are essential to a fair and well-ordered civil justice system. The possibility of an unfair trial is heightened when heart-wrenching allegations are involved.

In addition, statutes of limitations also provide predictability and certainty to the business community as well as nonprofit organizations. It allows them to accurately gauge their potential liability and make financial and insurance coverage decisions accordingly.

Connecticut's General Statutes of Limitations

Every type of civil claim is subject to a finite statute of limitations. In Connecticut, personal injury claims must generally be brought within three years. Conn. Gen. Stat. § 52-577. Wrongful death claims must be brought within two years of death or five years from the date of the act or omission at issue. Conn. Gen. Stat. § 52-555. There is a generally a three-year period to bring product liability claims running from the time that the injury was sustained or when the injury was or should have been discovered with reasonable care. Conn. Gen. Stat. § 52-577a. Similarly, an action related to exposure to a hazardous substance must be brought but within two years from the date when the injury or damage complained of is discovered or in the exercise of reasonable care should have been discovered. Conn. Gen. Stat. § 52-577c. These laws reflect a legislative judgment that a two, three, or five year period provides claimants in these actions with an adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them.

Connecticut's Current Statute of Limitations for Sexual Acts Toward Minors Already Provides a Substantial Time to Bring a Lawsuit

In the case of childhood sexual abuse, the legislature has already struck that balance in favor of protecting victims by allowing the filing of a lawsuit three or more decades after the events occurred. The law has already been extended significantly, twice. In 1991, the law was extended from two years from the date such person attains the age of majority to seventeen years from the date such person attains the age of majority. In 2002, the statute of limitations was charged from seventeen years to thirty years, its current form. Now, Connecticut law provides individuals with thirty years from reaching the age of majority to bring a sexual abuse claim. Conn. Gen. Stat. § 52-577. Thus, a child abused at age eight has forty years to bring a claim. Connecticut law is significantly longer than the statute of limitations applicable to child sexual abuse claims in most other states.

Raised Bill 6532 Goes Too Far

Raised Bill 6532 would virtually eliminate the statute of limitations entirely, subjecting organizations to indefinite liability. By providing that a claim may be brought within three years of discovering new evidence, even after thirty years of a plaintiff reaching majority, the proposed legislation provides no true limit at all. If enacted, the bill sets a dangerous precedent for other types of litigation, in addition to placing nonprofit organizations such as schools, boys and girls clubs, and other organizations that work with children at risk for claims based on actions of employees that are long gone and where paperwork no longer exists.

The proposed legislation exacerbates the problems with abolishing the statute of limitations by doing so *retroactively*. In so doing, the legislature would permit expired cases, no matter how many years ago they occurred, to be filed whenever additional evidence is discovered in the future. While reviving cases in which the statute of limitations has expired may not be unconstitutional in Connecticut,[1] as it is in several other states,[2] there are sound public policy reasons for not taking such a step. As the Florida Supreme Court recognized, "retroactively applying a new statute of limitations robs both plaintiffs and defendants of the reliability and predictability of the law."[3] For example, nonprofit employers may have purchased insurance or more insurance had they known that they could be subject to lawsuits for an indefinite period of time. Records retention policies may have provided for discarding old personnel files after a

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[1] *Roberts v. Caton*, 619 A.2d 844, 224 Conn. 483 (1993).

[2] *See, e.g., Waller v. Pittsburgh Corning Corp.*, 742 F. Supp. 581, 583 (D. Kansas 1990) (citing numerous decisions); *M.E.H. v. L.H.*, 685 N.E.2d 335, 339 (Ill. 1997); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341 (Mo. 1993) (en banc); *Gould v. Concord Hospital*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Kelly v. Marcantonio*, 678 A.2d 873, 882-83 (R.I. 1996); *Baker Hughes, Inc. v. Keco R&D, Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Starnes v. Cayouette*, 419 S.E.2d 669, 673 (Va. 1992).

[3] *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994).

number of years. In addition, in most instances, retroactively eliminating the statute of limitations is likely to have little effect on those who perpetrated the abuse, the child abusers, who are unlikely to have any substantial means to be able to answer judgments, and many may be dead. The more likely groups affected are school districts, churches, other employers, and their insurers, who are faced, decades after the fact, with arguments that they should have prevented the harm that occurred from the acts of the perpetrator. They are faced with liability even though they may have taken significant steps to protect children from abuse since the allegations came to light.

Most states have rejected proposals to indefinitely and retroactively extend statutes of limitations in recent years. Legislatures in Maryland and New Jersey have decided against eliminating statutes of limitations in sexual abuse cases. In addition, state legislatures have refused to retroactively change the law in Colorado, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Pennsylvania, New York, and Ohio. Recognizing the unfairness of changing rules mid-stream, the extreme difficultly for organizations who are not directly responsible for the abuse to defend themselves against decades-old allegations involving teachers or clergy where witnesses and records are long gone, the bad precedent it sets for other types of lawsuits, most states have not taken this path.

Conclusion

In sum, while the reasons and motivation behind Raised Bill 6532 are understandable, it is important that Connecticut's civil justice system to maintain the predictability and certainty of statutes of limitations. Since Raised Bill 6532 is neither finite nor prospective only in nature, ATRA is concerned with the precedent it sets for the future.

These changes may lead to similar changes in the statutes of limitations applicable to other claims. Childhood sexual abuse claims are tragic. One cannot help but feel great compassion for these claimants. But the same thing could be said of many other tort claimants, such as people who have been horribly burned, severely disfigured, left paralyzed, developed cancer, or that have experienced substantial personal loss. If the legislature begins to make policy decisions with regard to statutes of limitations that are based on emotion rather than sound public policy and respect for the rule of law, we will have chaos. The exceptions to statutes of limitations will begin to swallow the clearly defined rule. For these reasons, ATRA opposes Raised Bill 6532.

I thank the Committee for the opportunity to testify today and would be pleased to answer any questions.