

**STATEMENT OF JOHN C. KING
In Opposition to Raised Bill No. 6532**

**“An Act Concerning the Statute of Limitations for
Bringing an Action for Damages for the Sexual Assault of a Minor”**

I am John C. King of Updike, Kelly & Spellacy and I am here to testify on behalf of the Archdiocese of Hartford, and the Dioceses of Bridgeport and Norwalk against Raised Bill No. 6532. If passed, Raised Bill 6532 will be inequitable in its application because, in contrast to private entities, it will not apply generally to municipalities, public school boards or any other governmental entities due to the immunity that these political subdivisions enjoy under current Connecticut law. While the purpose of the Raised Bill is to provide an even greater means of redress for minor victims of alleged sexual abuse, passing a bill that does not apply to public schools and other related public entities, where sexual abuse also has been demonstrated to have occurred, is simply unfair to private, non-governmental entities.

Pursuant to Connecticut General Statutes Section 52- 557n, political subdivisions of the state are subject to tort liability for claims arising out of acts which are considered “ministerial acts”; but are not subject to tort liability for claims arising out of acts which are “discretionary.” For those not familiar with this important distinction, the word “ministerial” refers to a “duty which is to be performed by the political subdivision in a prescribed manner without the exercise of judgment.”¹ By way of example, if a legally sufficient number of signatures is received by a governmental body, a candidate’s name must be placed on a ballot.

In contrast, where a municipality, school board or other political subdivision must

¹ *Durrant v. Board of Education of the City of Hartford*, 284 Conn. 91, 96 (2007).

exercise discretion in connection with a decision, such decision is protected from tort liability by the doctrine of sovereign immunity. In this regard, Connecticut courts have consistently held that the supervision and hiring of teachers and other employees is a discretionary (not ministerial) act.² Therefore, school boards and municipalities have escaped liability when faced with claims that their negligent supervision of a teacher or other employee caused the sexual abuse of a minor.

To put this in a more specific context, when an action is brought alleging the sexual abuse of a minor, whether the act be committed in a public or private school for example, the scope of the supervision of the defendants sued is virtually the same in either case. In the private school context, such as a claim against a teacher, the alleged offending teacher, private school board and the private school are all named as defendants in the lawsuit. Similarly, in the public school context, the teacher, the superintendent, the school board and the municipality are also all named as defendants. The private and public entities themselves are typically sued for claims based on negligent supervision, negligent hiring and failing to have proper policies and procedures to prevent such alleged abuse. The alleged individual offender is often without assets, perhaps in jail or otherwise unable to pay any judgment that might be had in the case, so the involvement of the entities themselves is crucial to the payment of any potential judgment.

While the claims that are brought in alleged sexual abuse lawsuits are essentially identical between public and private schools and other institutions, the outcomes are remarkably different. As stated above, the claims against the municipalities and public school boards are routinely dismissed, at the outset of the case often through the summary

² See, e.g., *Doe v. Petersen*, No. CV020820770S, 2004 Conn. Super. LEXIS 3598 (Conn. Super. Ct. Nov. 30, 2004); *Doe v. Bd. of Educ.*, 76 Conn. App. 296 (2003).

judgment process, based on the doctrine of sovereign immunity. Indeed, our research has not revealed a single Connecticut case where a municipality or a public school board was held liable or under theories of negligence in connection with the sexual abuse of a minor. Moreover, there are numerous cases, including Connecticut Appellate Court authority, where Connecticut Courts have consistently immunized public schools and boards from liability in circumstances where private institutions, such as the three (3) Dioceses of Connecticut, would have been required to stand trial and face liability`.

While there are limited exceptions to the sovereign immunity doctrine, none has been found applicable by the courts to a public, governmental entity's negligence.³

One other significant advantage that public entities enjoy that private, non-governmental entities do not, is in the context of a claim for indemnification by or due to an employee's actions. Pursuant to Conn. Gen. Stat. Section 7-465, a municipality is required to indemnify its employees against damages arising from acts of the employee "in the performance of his duties and within the scope of his employment, and if such occurrence, accident, physical injury or damage was not the result of any willful or wanton act."

Although municipalities themselves are generally immune from liability and not required to indemnify their employees in cases of alleged sexual abuse, because sexual abuse by an employee has universally been found to be outside the scope of his or her employment, claims for indemnification are nevertheless still brought by plaintiffs against

³ Exceptions include: (i) identifiable person subject to imminent harm; (ii) statute specifically provides for a cause of action against a municipality; and (iii) where act involves malice, wantonness or intent to injure rather than negligence. *Durrant*, 284 Conn. 97.

municipalities.⁴ In other words, where an employee commits an alleged act of sexual abuse, often times the plaintiff will directly sue the municipality under Conn. Gen. Stat. Section 7-465, claiming that the employer owes indemnity to the employee. Likewise, the employee, when sued, will also sometimes assert a claim against his municipal employer seeking indemnification.

Such claims for indemnification are usually defeated, again on grounds that the municipality is not liable for indemnification due to the intentional act of the employee. However, the significance of the fact that the claims are nevertheless brought is that in order to allege an indemnification claim under Section 7-465, the plaintiff or the employee must meet two specific statutory time deadlines in order to preserve the claim. First, the plaintiff must, within six (6) months after the cause of action arose, notify the municipality of his or her intent to bring suit; and second, the suit must thereafter be commenced within two (2) years after the cause of action accrued.

Thus, the municipality (unlike a private entity) is given notice of such claims for indemnification within just six (6) months after the claim arises and then is aware of any such suit with two (2) years of claim having occurred. This is remarkably different from the 30 or 40 years that non-governmental entities, such as churches within the state and other non-public organizations, often wait before they first come to learn about an alleged claim of sexual abuse due to the significantly longer limitations period within which such claims may be brought against these private entities.

In closing, the only way to fully and fairly pass legislation that will provide

⁴ Much the same way that claims based on the intentional acts of private employees are brought against their private employers, even though the law is clear that private employer is not responsible for the acts of its employees committed outside scope of employment.

meaningful relief to abused minors in Connecticut is to pass a bill that applies to both governmental and nongovernmental entities equally. In order to do this, the General Assembly must amend Conn. Gen. Stat. Sections 52-557 and 7-465, neither of which appears to have been carefully reviewed or proposed in connection with raised Bill 6532. Until the legislature is prepared to treat all entities fairly, and this is a policy decision for this committee and the General Assembly, inequitable legislation such as Raised Bill 6532 should not be passed.