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Honorable Anne Carney
Senate Chair, Committee on Judiciary
State House
Augusta, ME 04333

Honorable Thom Harnett
House Chair, Committee on Judiciary
State House
Augusta, ME 04333

RE: LD 688, An Act To Promote Justice for Victims of Childhood Sexual Abuse and LD 589, An Act To Provide Access to Justice for Victims of Child Sexual Abuse

Dear Senator Carney and Representative Harnett:

Please accept this testimony in opposition to LD 688, An Act To Promote Justice for Victims of Childhood Sexual Abuse and LD 589, An Act To Provide Access to Justice for Victims of Child Sexual Abuse. I present this testimony on behalf of the American Property Casualty Insurers Association (APCIA) and the Roman Catholic Diocese of Portland. First, both APCIA and the Roman Catholic Diocese of Portland strongly support protecting children from sexual abuse and in no way condone or excuse sexual misconduct of any type at any time. Sexual abuse of any kind is intolerable and Maine's laws should reflect that.

APCIA and the Roman Catholic Diocese of Portland oppose LD 688 and LD 589 because those bills seek to revive actions that have been previously barred by applicable statutes of limitations. These bills allow civil actions for claims based upon sexual acts towards a minor even if the statute of limitations on such actions has already expired.

Maine courts already provide wide access for civil claims based on sexual acts towards minors. Approximately twenty-two years ago, in 1999, 14 MRSA § 752-C was amended to abolish the statute of limitations for civil actions based on sexual acts towards minors from the effective date of the Act; this applied to all such claims that had not yet been barred by the statute of limitations in force on the effective date of this Act.

As of 1999 when the statute of limitations based on sexual acts towards minors was abolished, the applicable statute of limitations for such claims was 12 years from the time the cause of action had accrued. The statute of limitations also had a provision that applied to discovery of a sexual act or contact in childhood that had previously been unknown or repressed to the individual and was not discovered until later in life, often through a therapeutic process; as of 1999, the statute of limitations based on discovery was 6 years from the time discovery was made, or reasonably could have been made.

Accordingly, as of today, the existing statute of limitations for actions based upon sexual acts towards minors is essentially 34 years. The discovery rule remains in place so that a discovery of a child sexual act or contact that occurred on any date, that could not reasonably have been discovered sooner, is in place. Accordingly, Maine courts are already very accessible to individuals with actions based upon sexual acts towards minors going back many, many years.

Statutes of limitation exist for reasons of fundamental fairness. The reason civil procedure exists is to allow the parties to obtain underlying evidence of the claim before presenting their case to a factfinder. This cannot be done when claims are old and have been barred by the SOL.

This is not the first time the Judiciary Committee has considered this issue. In 2012, the Committee considered LD 1825, An Act to Change the Statute of Limitations on Prosecution for Crimes of Sexual Abuse and for Civil Actions for Sexual Abuse When the Actor is in a Position of Authority. It was amended to be limited to crimes of prosecution of psychiatrists, psychologists and social workers. The bill failed on the floor.

There are important issues of fundamental fairness of a legal system in not reawakening claims previously barred by the statute of limitations. Regardless of the nature of the claim, any participant in litigation is entitled to be able to evaluate a claim and address it meritoriously. Defendants and courts must be protected from having to deal with cases that are so aged that no response is possible, be it as a result of loss of evidence, death, the passage of time and natural erosion of memory or lack of documentation.

If LD 688 and 589 were to pass, potential claims filed in Maine courts will not just involve an alleged perpetrator of child sexual assault but will implicate untoward numbers of organizations, camps, schools, municipalities, counties, and health care providers such as physicians, nurses, psychiatrists, psychologists and social workers. There is also the potential for both employees and volunteers of such organizations and businesses to be personally sued or at least brought into the litigation process as potential witnesses. This includes teachers and principals, coaches, camp counselors, Sunday school teachers, and classroom chaperones, just to name a few – the number of people who will be dragged into the litigation process for very old claims is endless. Many or perhaps even most of these individuals and organizations may have had no reasonable basis to know of any child sexual abuse that occurred a long time ago. Punishing an innocent defendant with civil liability is no less unjust than denying compensation to a deserving victim. Tyler T. Ochoa and Andrew Wistrich, *The Puzzling Purposes of Statutes of Limitations,*28 PAC.L.J. 453, 472 (1997).

"Preventing peace of mind also does not adequately distinguish between the innocent and the guilty. While some may benefit more than others from the promotion of peace of mind, almost everyone benefits to some degree. Every person, whether innocent or not, is a potential defendant. No one is immune from suit, ill-founded though the claims may be. Even the most confident or the most righteous defendant may find litigating an unfounded claim distracting,

time-consuming and expensive; and for the ordinary individual, the financial and emotional burden of potential litigation cannot be underestimated. In addition, our system of justice is sufficiently imperfect that even the innocent sometimes have reason to fear an adverse outcome. Thus, promoting peace of mind benefits all members of society, including the innocent and the risk-averse, not just those who actually have committed a legal wrong." *The Puzzling Purposes of Statutes of Limitations,* p. 462.

The duty to defend is broader than the duty to indemnify so even if many potential claims based upon allegations involving childhood sexual assault turn out to be unfounded and ultimately dismissed, significant resources will need to be expended to defend these claims to reach a dismissal. Under an insurance company's broad duty to defend, if a complaint reveals even just a "*potential*… that the facts ultimately proved may come within the coverage, a duty to defend exists." *Penney v. Capitol City Transfer, Inc*., 1998 ME 44, ¶ 4 (quoting *Travelers Indem. Co. v. Dingwell,* 414 A.2d 220, 226 (Me. 1980); *Cox v. Commonwealth Land Title Ins. Co.,* 2013 ME 8, ¶ 9. The costs of defending such claims will be significant.

The courts are already under tremendous pressure from the backlog of cases resulting from the court access restrictions in place as a result of the pandemic. Reviving cases currently barred by the statute of limitations will create even more pressure on the burdened court system.

Members of a society have a "vested interest" in the statute of limitations once the prescribed time has completely run and barred the action. *See e.g., Dobson v. Quinn Freight Lines, Inc*., 415 A.2d 814, 816 (1980) (citations omitted). In the workers compensation setting the Law Court held "amendments to the statute of limitations may be applied retroactively to extend the statute of limitations, but *not* to revive cases in which the statute of limitations has expired" because the expiration of the statute of limitations "results in a final disposition of the case." *Morrissette v. Kimberly-Clark Corp.,* 2003 ME 183, ¶ 15 citing *Dobson v. Quinn Freight Lines, Inc*., 415 A.2d 814, 816 (1980) (other citations omitted).

For these reasons, APCIA and the Roman Catholic Diocese of Portland respectfully urge the Committee to unanimously report LD 688 and LD 589 as ought not to pass.

Respectfully submitted,

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