

CARDOZO

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RE: S.B. 1292 (civil actions/time limits/crimes) to Amend
Child Sex Abuse Statutes of Limitations

Jeffrey Dion of the National Crime Victims Center has asked me to answer one of the concerns raised by members of the Senate regarding the creation of a “window,” which would permit childhood sex abuse victims to sue those responsible for their abuse even if the statute of limitations previously expired.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My most recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), makes the case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues. I have provided testimony and testified in support of window legislation in numerous states.

Before responding to the question regarding the possibility of frivolous claims, I would like to point to the benefits of window legislation that is aimed at both the direct perpetrators and the institutions that foster conditions for abuse:

There are three compelling public purposes served by window legislation:

- (1) the identification of previously unknown child predators to the public so children will not be abused in the future;**
- (2) giving child sex abuse survivors a day in court; and**
- (3) leveling the playing field between individual and institutional entities that cause abuse and the victims. Without the window, the perpetrators win at the expense of their victims and at the expense of every child.**

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The expressed concern about the potential for frivolous lawsuits is one of the first objections typically raised to window legislation. This concern over adult reputation seems to be every adult's initial reaction. It is unfounded, but it is an understandable defense for an adult to be worried about how a law affects adults. Often this concern drowns out the needs of the children. I call it "adult preferentialism." **There is no basis in fact to support such a concern.**

It is a fact that child sexual abuse is a tort that people rarely fabricate. It is not like a slip and fall, where lying about injuring yourself on someone's premises does not implicate your sexuality, development, or imply a traumatic past. The shame attached to child sex abuse deters large numbers of false claims, which is why there have been very few false claims in response to window legislation in other states, including California and Delaware.

Out of the 1,000+ claims filed under the California window, only a handful were false, but they were efficiently and quickly washed out of the system through the certificate of merit provision (requiring a victim to consult a mental health professional and obtain an opinion regarding the merits of the victim's claims before filing suit) or through criminal investigation of the false claimant. There were no trials on the issue.

A cost/benefit analysis based on the experience in California shows that window legislation is well worth the small potential risk of harm to adult reputations: There were over 1000 claims, only a handful were false, but over 300 new perpetrators' identities were released to the public, along with crucial information regarding the way in which organizations had created dangerous conditions for children by covering up child sex abuse. That means that while 5 adults may have had to deal with rebutting the claims (and none ever had to do so in a trial), thousands of children were protected because most predators abuse many children over time.

I congratulate the Arizona Senate for taking up this crucial legislation, which offers the only tried and true means known to identify the many hidden child predators among us. You are joining the nationwide movement to effectively protect our children from childhood sexual abuse.

Please do not hesitate to contact me with any questions or further concerns regarding S.B.1292.

Sincerely,

Marci A. Hamilton

Sent via email