



CONNECTICUT CATHOLIC PUBLIC AFFAIRS CONFERENCE, INC.
134 FARMINGTON AVENUE
HARTFORD, CONNECTICUT 06105-3784

MICHAEL C. CULHANE
EXECUTIVE DIRECTOR

DEACON DAVID W. REYNOLDS
LEGISLATIVE LIAISON

TO: Members of the General Assembly
State of Connecticut

FROM: Michael C. Culhane
Executive Director

A handwritten signature in black ink, appearing to read "Michael C. Culhane", is written over the printed name and title in the "FROM:" field.

RE: Further Clarification of HR 5473

DATE: April 22, 2010

To further substantiate our position regarding HR 5473, please find attached an opinion letter from Attorney Wesley Horton. I believe that this letter addresses any ambiguities which may still exist regarding this bill and I hope that a careful review of this letter will be helpful to you in your deliberations on this issue.

Thank you for your thoughtful consideration of the enclosed.

Enclosure



90 Gillett Street
Hartford, CT 06105
P: (860) 522-8338
F: (860) 728-0401

www.hortonshieldsknox.com

Kenneth J. Bartschi*
Sandra M. Bevans
Karen L. Dowd
Wesley W. Horton
Dana M. Hrelac*
Kimberly A. Knox
Daniel Jonah Krisch*
Brendon P. Levesque
Robert M. Shields, Jr.
Michael S. Taylor
*Also admitted in New York

via email

April 22, 2010

Michael C. Culhane
Executive Director
Connecticut Catholic Public Affairs Conference, Inc.
134 Farmington Avenue
Hartford, CT 06105

Re: *HB 5473*

Dear Mr. Culhane:

You have asked for my comments on Representative Bye's communication to all legislators on April 12 supporting passage of HB 5473, which would retroactively extend the statute of limitations beyond the current 30 years after the date of majority for civil actions involving sexual abuse to a minor.

Representative Bye states that the bill "was amended significantly" from the original version "in response to valid concerns voiced at the public hearing." The original bill had abolished the statute of limitations entirely. The revised bill added three conditions to its abolition. The first two state that one or more similar sexual abuse actions must already have been brought by someone else for misconduct by the same person. The third states that the plaintiff or the plaintiff's lawyer must file a good faith certificate at the start of the lawsuit identifying physical or documentary proof of the abuse.

The "valid concerns" Representative Bye points out in her communication are the possibility of frivolous or false claims, but the main thing the bill does now is assure her constituents over age 48 who want to sue St. Francis Hospital for the misdeeds of Dr. Reardon that they can do so.

These conditions are tailor-made for the litigation against St. Francis Hospital. Representative Bye indicates that Senator Handley has a constituent who was abused by a family member. Unless that family member has been sued by someone else for similar misconduct, that constituent, along with every other potential plaintiff who does not come within the Reardon scenario – (1) over 48, (2) other action pending by another plaintiff, (3) for conduct that is substantially similar, (4) committed by the same person, and (5) with physical or documentary proof – is out of luck. The Reardon case, after all, is unusual in the existence of documentary evidence from Dr. Reardon's house – the pictures found in the wall – of not only his

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misdeeds but also the identification of his victims. That the plaintiffs' lawyers in the Reardon litigation are satisfied with this so-called compromise language confirms the obvious: they are getting favored treatment.

The vice of providing special treatment to certain litigants is that other litigants will say, "What about me?" This plea led to the addition of § 2 concerning claims against the state. But why stop there? What about Senator Handley's constituent? And no doubt other Senators and Representatives will in the future be approached as well to plead for other exceptions applicable to them. The statute of limitations becomes like Swiss cheese.

The proper answer, as on most other subjects, is for legislators to decide what the law will be for acts in the future and to let the courts apply that law impartially to individual cases. Changing the law for acts that have already occurred is inherently unfair to all the citizens of the state that do not receive such special treatment.

What the authors of HB 5473 are really saying is that established statutes of limitations should be bypassed to accommodate specific constituents if a particular limitations period prevents their claims. Statutes of limitations are an attempt to balance two rights – the right to be made whole for a wrong committed, versus the right of society in general to put the past behind and move on. This is an especial problem when the plaintiff is much younger than the alleged abuser, because a statute of limitations longer than 30 years is likely to pit a 50-something plaintiff against an elderly or, as in the Reardon case, a dead opponent.

Up to some point, the right to be made whole outweighs the right of society to move on, but thereafter the scales tip the other way. That point is of course arbitrary, meaning that, as Representative Bye shows, some people just make the time limit while other just miss it. But the statute of limitations, like the voting age, has to have a specific cut-off point or it loses effectiveness. Wherever that point may be, it surely is not more than 30 years from the date of majority.

Very truly yours,



Wesley W. Horton

WWH:jt