



American Tort Reform Association

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April 27, 2021

The Honorable Jill Krowinski
Speaker of the House
Vermont State House
Office of the Speaker
115 State Street
Montpelier, VT 05633
Speaker@leg.state.vt.us

Re: S. 99: Opposition to Reviving Time-Barred Claims

Dear Speaker Krowinski:

Two years ago, our organization, the American Tort Reform Association (ATRA), expressed concern that enacting legislation reviving lawsuits for which the statute of limitations had expired would set a troubling precedent that would undermine the predictability and fairness of Vermont's civil justice system. S. 99, which has passed the Senate and appears to be quickly advancing in the House, shows that this slippery-slope has arrived even sooner than we anticipated.

As you may recall, H. 330 (2019) retroactively eliminated the statute of limitations for claims alleging that an organization failed to prevent an employee or volunteer, decades ago, from sexually abusing a child. ATRA testified in opposition to that well-intentioned, but problematic bill. ATRA warned that tort (personal injury) law often addresses situations in which individuals experience serious life-long injuries, but that every civil claim has a finite statute of limitations and that changes to this period are made prospectively, not retroactively. As the Vermont Supreme Court has explained, statutes of limitations protect courts from cases "in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise."¹

We also warned that if the General Assembly took this approach for childhood sexual abuse lawsuits, it would not be long before legislators would be encouraged to eliminate statutes of limitations, and do so retroactively, for other types of claims. This is inevitable because, as any plaintiffs' lawyer will tell you, it is always difficult to tell a person who has experienced an injury that the time to sue has ended. Yet, without statutes of limitations, the civil justice system cannot accurately and fairly assess whether or not a party is responsible for an injury.

ATRA also testified in 2019 that the Vermont Supreme Court is likely to find legislation that revives time-barred claims unconstitutional. This principle does not allow the legislature to retroactively shorten a statute of limitations to take away a plaintiff's accrued cause of action, just as it does not allow the legislature to retroactively extend a statute of limitations to revive lawsuits that are otherwise too old

¹ *Investment Properties, Inc. v. Lyttle*, 739 A.2d 1222, 1226 (Vt. 1999) (quoting *United States v. Kubrick*, 444 U.S. 111, 117 (1979)).

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to be brought. The court has clearly indicated that while the legislature may extend a statute of limitation for a viable claim, it can only do so “where the time limitation has not run and thereby barred the action.”²

Now, before the judiciary has had an opportunity to rule on the constitutionality of the 2019 law, S. 99 proposes to extend the same approach to actions alleging injuries during childhood from *physical* abuse. To our knowledge, no other state legislature has taken such action. If Vermont again eliminates a statute of limitations and revives time-barred claims here, you can expect others seeking similar treatment. Why not take the same approach in other cases where there are allegations of wrongful conduct and that occurred decades ago? As discussed earlier, however, taking this approach will make Vermont’s civil justice system unpredictable, unreliable, and unfair.

ATRA urges the House not to enact S. 99 in its current form. Rather, if members of the legislature view the current period for filing a claim as inadequate, an appropriate course is setting a longer, but finite, period and applying that period prospectively.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Joyce', written over a horizontal line.

Sherman Joyce
President

² *Murray v. Luzenac Corporation*, 830 A.2d 1 (Vt. 2003); see also *Sanz v. Douglas Collins Construction*, 910 A.2d 914, 918 (Vt. 2006) (recognizing *Murray* indicates there is a vested right once the statute of limitations time limit has lapsed).