

January 27, 2023

The Honorable Martin LaLonde  
Chair, House Committee on the Judiciary  
Vermont State House  
115 State Street  
Montpelier, VT 05603

**Re: H. 8: Opposition to Reviving Time-Barred Claims**

Dear Chairman LaLonde:

Four 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. H. 8, which is scheduled for a hearing before the Committee on the Judiciary on February 2, shows that this slippery-slope continues.

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 should be 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."<sup>1</sup>

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 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 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."<sup>2</sup>

---

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

<sup>2</sup> *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).

The Honorable Martin LaLonde

January 27, 2023


Page two of two

Nevertheless, in 2021, the legislature expanded the revival of time-barred childhood sexual abuse claims to physical abuse by enacting S. 99 (2021). Now, before the judiciary has had an opportunity to rule on the constitutionality of the 2019 and 2021 laws, H. 8 proposes to extend the same approach to actions alleging injuries during childhood from emotional abuse. Unlike prior bills that were at least rooted in injuries stemming from conduct that violated criminal laws at the time it occurred, H. 8 vaguely anticipates the filing of decades-old claims alleging that a person (other than a parent) or organization that organized activities or services for minors “caused harm that impaired the child’s social, emotional, and cognitive development.”

No other state legislature has taken such action in reviving ill-defined “emotional harm” claims. If Vermont again eliminates a statute of limitations and revives time-barred claims here, you can expect others seeking similar treatment for conduct or harms that occurred many years 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 H.8. Rather, if members of the legislature view the current period for filing an emotional harm claim as inadequate—if such a tort claim is viable under Vermont law—an appropriate course is setting a longer, but finite, period and applying that period prospectively.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sherman Joyce', with a stylized flourish extending to the right.

Sherman Joyce  
President

cc: Members of the House Committee on the Judiciary