



**TO:** Senator Anne Carney, Senate Chair, Representative Thom Harnett, House Chair and Honorable Members of the Joint Judiciary Committee

**FROM:** Marci Hamilton, CEO & Legal Director, CHILD USA; Professor, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USAAdvocacy

**RE:** LD 688: An Act to Promote Justice for Victims of Childhood Sexual Abuse

**DATE:** March 15, 2021

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Dear Chair Carney, Chair Harnett and members of the Joint Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding LD 688, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Maine. If passed, this legislation will make Maine a leader in the fight to protect children.

By way of introduction, Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor. She authored *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of SOL reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up LD 688, which would revive all expired claims for child sexual abuse.

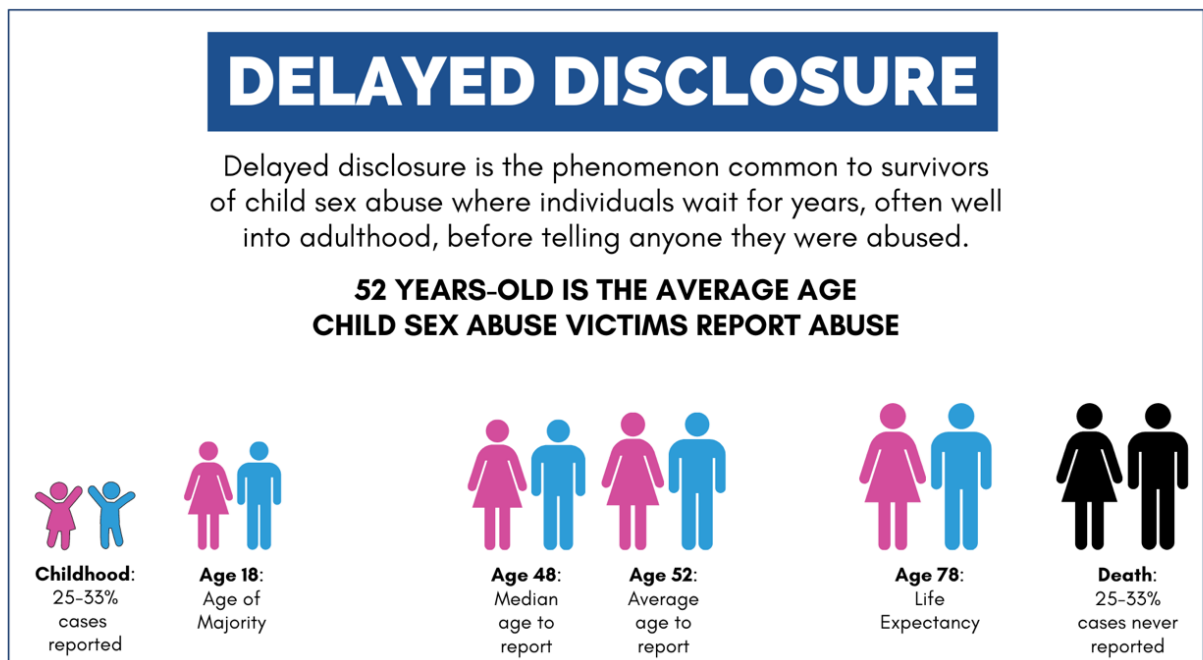


## I. Delayed Disclosure Science Supports SOL Reform for Child Sex Abuse

There is a worldwide epidemic of child sex abuse, with at least **one in five girls and one in thirteen boys sexually assaulted before they turn 18.**<sup>i</sup> The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.<sup>ii</sup> It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.<sup>iii</sup>

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”<sup>iv</sup> Studies suggest that many victims, as much as 33%, never tell anyone they were abused.<sup>v</sup> The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.<sup>vi</sup>

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**<sup>vii</sup> Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.



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It is a medical fact that victims of child sex abuse often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment.

## II. Revival Windows Serve the Public Good by Preventing Future Abuse and Restoring Justice to Victims

Statutes of limitations, or SOLs, are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from obtaining justice and naming their perpetrators publicly for fear of retaliation. There are untold numbers of hidden child predators in Maine who are preying on one child after another because the existing SOLs provide that opportunity. By opening a window, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of Maine.

**There are three compelling public purposes served by window legislation:**

- 1) SOL reform **identifies hidden child predators and the institutions** that allowed the abuse to the public so children will not be abused in the future;
- 2) It **shifts the cost of abuse** from the victims and society to those that caused it; and
- 3) It **educates the public** about the prevalence and harm from child sex abuse to prevent future abuse.

## HOW REVIVAL WINDOW/LAWS HELP EVERYONE



### Identifies previously unknown predators and institutions responsible

to the public, shielding other children from future abuse.



### Shifts the cost of abuse

from the victims and society to the perpetrators and the institutions that enabled them.



### Educates the public

about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.

SOL reform for child sex abuse validates victims and shifts the immense cost of abuse from victims and the public to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them - but with their victims.

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states, have shut down most cases. That is a major reason we knew so little about the epidemic of child sex abuse.

Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. By allowing claims for past abuse to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. This is especially important because predators have many victims and abuse into their elderly years. As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. Preventing further abuse only serves to help society—by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children today to grow into healthy adults.

SOL reform also educates the public about the danger of child sexual abuse and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse (i.e. Netflix's *Jeffrey Epstein: Filthy Rich* and HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*). By shedding light on the problem, parents and others are better able to identify abusers and responsible institutions and prevent further abuse. This knowledge helps to educate children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

The costs of sex abuse are staggering. Child sex abuse generates many costs that impact the nation's health care, education, criminal justice, and welfare systems, costing nearly \$2 trillion annually. Numerous, scholarly studies have concluded that the average cost of child maltreatment is approximately \$830,928.00 per victim. M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017). It is unfair for the victims and Maine taxpayers to be the only ones who bear this burden; LD 688 levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers. Further, if this revival window is passed Maine will gain millions of dollars in revenue from Medicaid reimbursements from settlement funds and damages awards survivors recover.

### **III. Maine Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Reviving Expired Child Sex Abuse Claims**

There is a vibrant national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL

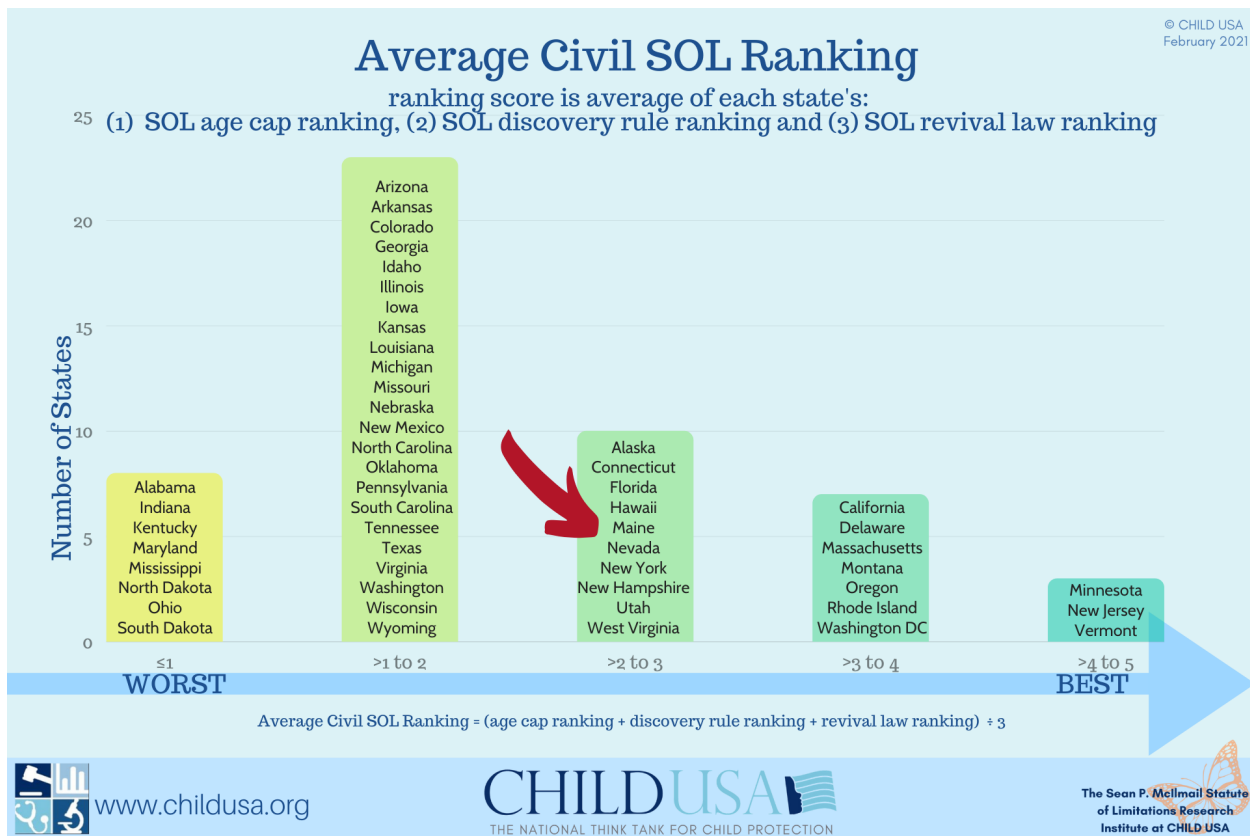
reform movement since 2002, see CHILD USA's Report: History of US SOL Reform: 2002-2020.<sup>viii</sup> 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in 2019.<sup>ix</sup> The powerful SOL reform wave rode its way into 2020, with 30 states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.<sup>x</sup>



This year, Maine is one of 30 states that have already introduced SOL reform bills for child sex abuse. Like Maine, there are 17 other states that are trying to revive civil claims for past abuse.<sup>xi</sup>

Maine has positioned itself as an early leader in the SOL reform movement by eliminating the civil SOL for child sex abuse claims in 2000. Yet, there is still more to be done. Maine has been climbing and this bill is an opportunity for the state to reach the top - for the children of yesterday, today and tomorrow. There has been incredible progress across the nation since 2000, and it's time for Maine to rejoin the movement.

The following graphic demonstrates how Maine ranks amongst other states regarding its current civil SOLs for child sex abuse. CHILD USA's average ranking of each state's civil SOL takes into account each state's age cap, discovery rule, and revival law. On a scale of 0-5, overall, Maine ranks as a 3, making it above average amongst the states, with room for improvement.



There is only one way to restore justice to adult victims of child sex abuse: to revive their expired civil claims that were barred by unfairly short SOLs. In other words, to fix the wrongs done to them, they deserve the opportunity to file civil lawsuits if they so choose. Revival laws recognize that society for too long did not understand the plight of those sexually abused as children and extinguished their rights long before they had the ability to report or seek justice for their abuse. Revival laws enable adult victims of child sex abuse to sue their abusers and/or the institutions responsible years after they were abused. These laws are not solely about justice for victims; there are also important public safety reasons for allowing older claims of abuse to proceed. When victims are empowered to disclose their abuse and sue for their injuries, the public benefits from finding out who the perpetrators are, the cost of abuse is shifted to those who created it and it learns how to prevent child sex abuse.

There are already 18 states, Washington D.C. and Guam that have enacted revival laws for child sex abuse claims, including 15 with revival windows.<sup>xii</sup> These revival laws have been instrumental in giving thousands of victims across America a long overdue opportunity for justice and educating the public about hidden predators and responsible institutions in their communities.

Maine has made great progress for recent survivors of child sex abuse, but has not yet given older survivors of child sex abuse access to justice. Unfortunately, all adult survivors whose claims expired before the 2000 elimination law went into effect are still barred from filing claims for their abuse.

The most effective way to remedy the wrong of having unreasonably short SOLs prior to 2000 is to completely revive all expired claims with a permanently open revival “window.” This is exactly



what Guam did in 2016 and Vermont did the same in 2019. Now any person that was sexually abused as a child in Vermont or Guam may sue their abuser or any responsible person or institution when they are ready. In effect, the law was shifted to accommodate the inherent barriers to disclosure of abuse.

The following graphic is a revival window report card, grading each state's window based on how helpful it is to survivors and to society by exposing hidden predators within the states. Vermont and Guam's permanent revival windows rank the highest, and this legislation would place Maine alongside these leaders.

Window Report Card		
A window is a law that revives expired civil claims and allows adult survivors to sue for child sex abuse they endured years ago while the window is open		
A+	Vermont & Guam	Window permanently open for claims against <u>all</u> types of defendants
A	California, Delaware, Hawaii New Jersey & New York	Window open for 2 or more years for claims against <u>all</u> types of defendants
B	Arizona, Minnesota & North Carolina	Window open for more than 1 year, but not explicitly applicable to claims against all types of defendants
B-	Montana	Window open for 1 year only
C	Washington D.C.	Window open for claims by survivors under age 40 only, with some exceptions
C-	Georgia & Utah*	Window open for claims against perpetrators only
D	Michigan	Window open for claims of abuse by perpetrator doctors only (Larry Nassar)
F	Maine & All Other States	No window, hidden predators are protected

States that have revived expired civil SOLs have learned about hidden child predators and institutions that harbored them while empowering victims. These revival laws do not yield a high number of cases,<sup>xiii</sup> but provide long-overdue justice to older victims of child sex abuse. They also address the systemic issue of institutional child sex abuse, which occurs with alarming frequency in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and by looking the other way or covering up abuse when it's reported, the **children these institutions serve remain at risk today**. A revival

window sends a strong message to youth serving organizations in Maine that the state will not tolerate “passing the trash” or looking the other way when a person is raping or molesting a child in their midst.

#### **IV. A Revival Window for Child Sex Abuse is Constitutional Under the United States and Maine Constitutions**

Legislation explicitly opening a revival window for expired claims of child sex abuse is constitutional under both the United States Constitution and Maine’s Constitution.<sup>xiv</sup> In Maine, if the Legislature intends for a statute to apply retroactively, it will be applied so long as it is not prohibited by the Maine Constitution. The Due Process clause of Maine’s Constitution, Art. 1, § 6-A, permits retroactive legislation so long as it is enacted to further a legitimate legislative purpose with rational means. The Maine Supreme Court has articulated this test as whether the retroactive legislation: (1) provides for the public welfare, (2) the means are appropriate to achieve its goals, and (3) the manner is not arbitrary or capricious.<sup>xv</sup> This three-part test is easily satisfied by LD 688. Revival windows for child sex abuse serve the compelling state interest in preventing future abuse by exposing hidden child predators and educating the public, shifting the cost of abuse from the victims and society to those that caused it, and remedying the injustice to adult survivors of blocking their claims with short SOLs before they were able to tell anyone of their abuse. Reviving expired claims, as 20 jurisdictions have already done, is a time-tested method for achieving the state’s compelling interests. Further, every appellate court across the nation to consider the reasonableness of a legislature’s decision to revive expired child sex abuse claims has determined that the remedial statute was rational.<sup>xvi</sup>

#### **V. Conclusion**

Once again, we commend you for supporting this legislation, which is desperately needed to help adult survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Maine’s children deserve SOL reform to protect them today and into the future. Opening a revival window is a positive step for Maine’s children and families. Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

Sincerely,



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- <sup>i</sup> G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).
- <sup>ii</sup> van der Kolk, B. *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*. Harvard Review of Psychiatry (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, Scientific Amer. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, Justice Canada 30 (2019), available at [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf) (hereinafter “Hoskell”).
- <sup>iii</sup> Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, Frontiers in Psychol. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.
- <sup>iv</sup> CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).
- <sup>v</sup> *Id.*
- <sup>vi</sup> Hoskell, at 24.
- <sup>vii</sup> CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.
- <sup>viii</sup> CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Feb. 10, 2021), available at [www.childusa.org/sol-report-2020](http://www.childusa.org/sol-report-2020).
- <sup>ix</sup> For more information on SOL reform in 2019, visit *2019 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at [www.childusa.org/2019sol](http://www.childusa.org/2019sol).
- <sup>x</sup> See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).
- <sup>xi</sup> *Id.*
- <sup>xii</sup> For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited March 3, 2021), available at [www.childusa.org/law](http://www.childusa.org/law).
- <sup>xiii</sup> See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/law](http://www.childusa.org/law).
- <sup>xiv</sup> *Landgraf v. USI Film Products*, 511 U.S. 244, 272-73 (1994) (“[r]equiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.”).
- <sup>xv</sup> *Tompkins v. Wade & Searway Const. Corp.*, 612 A.2d 874, 878 n. 2 (Me.1992) (citing *State v. Eaton*, 577 A.2d 1162, 1165–66 (Me.1990)).
- <sup>xvi</sup> See *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 496 (Conn. 2015); *Sliney v. Previte*, 41 N.E.3d 732, 741 (Mass. 2015); *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 779-80 (Mont. 1993); *K.E. v. Hoffman*, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990).