

October 4, 2019

The Hon. Lisa Baker
Senate Committee on the Judiciary
Pennsylvania General Assembly
19 East Wing Main Capital
Harrisburg, PA 17120

Re: The constitutionality of H.B. 963, opening a 2-year window for claims of childhood sexual abuse.

Dear Chairwomen Baker:

At the close of my testimony last Wednesday, I was asked to address in writing what right would underlie the defense that a statute of limitations had expired. To that end, it is worth quoting at length the following language from the U.S. Supreme Court's 2003 *Stogner* decision, *answering that question in the analogous criminal context*:

In making its second argument, which denies the existence of significant reliance interests, the dissent ignores the potentially lengthy period of time (in this case, 22 years) during which the accused lacked notice that he might be prosecuted and during which he was unaware, for example, of any need to preserve evidence of innocence. ... Memories fade, and witnesses can die or disappear. ... Such problems can plague child abuse cases, where recollection after so many years may be uncertain, and "recovered" memories faulty, but may nonetheless lead to prosecutions that destroy families. Regardless, a constitutional principle must apply not only in child abuse cases, but in every criminal case. And, insofar as we can tell, the dissent's principle would permit the State to revive a prosecution for *any* kind of crime without *any* temporal limitation. Thus, in the criminal context, the dissent goes beyond our prior statements of what is constitutionally permissible even in the analogous civil context. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 312, n. 8 (1945) (acknowledging that extension of even an expired *civil* limitations period can unconstitutionally infringe upon a "vested right"). ...

As to the dissent's third argument, we agree that the State's interest in prosecuting child abuse cases is an important one. But there is also a predominating constitutional interest in forbidding the State to revive a long-forbidden prosecution. And to hold that such a law is *ex post facto* does not prevent the State from extending time limits for the prosecution of future offenses, or for prosecutions not yet time barred.

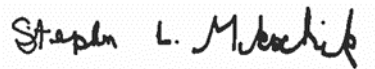
In sum, California's law subjects an individual such as *Stogner* to prosecution long after the State has, in effect, granted an amnesty, telling him that he is "at liberty to return to his country ... and that from henceforth he may cease to preserve the proofs of his innocence," It retroactively withdraws a complete defense to prosecution after it has already attached, and it does so in a

manner that allows the State to withdraw this defense at will and with respect to individuals already identified. “Unfair” seems to us a fair characterization.

Stogner v. California, 539 U.S. 607, 647-48 (most citations omitted).

I remain willing to assist the Committee in what ways I can as it addresses this most difficult, but most compelling issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen L. Mikochik". The signature is written in a cursive, slightly slanted style.

Stephen L. Mikochik