MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. BCD-23-122

ROBERT E. DUPUIS et al.,

Plaintiffs-Appellees,

v.

ROMAN CATHOLIC BISHOP OF PORTLAND,

Defendant-Appellant.

On Appeal from the Business and Consumer Docket
No. CV-21-131

BRIEF OF *AMICI CURIAE* MAINE TRIAL LAWYERS ASSOCIATION, PUBLIC JUSTICE, AND AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF APPELLEES

Shelby Leighton
PUBLIC JUSTICE
1620 L St. NW, Suite 630
Washington, DC 20036
(202) 797-8600
sleighton@publicjustice.net

Thomas L. Douglas
DOUGLAS, MCDANIEL
& CAMPO, LLC, PA
490 Walnut Hill Road
North Yarmouth, ME 04097
(207) 591-5747
tdouglas@douglasmcdaniel.com

Counsel for Amici

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellees are survivors of horrific sexual abuse by employees of Appellant Roman Catholic Bishop of Portland (RCB) when they were children. In 2021, Maine's legislature enacted a law to provide survivors of child sexual abuse like Appellees an opportunity to finally obtain redress for the trauma they endured by allowing them to bring civil claims based on the abuse, regardless of how long ago the abuse occurred. The plain language of the statute does not create any new cause of action for abuse, but simply extends the statute of limitations for any claim "based upon" child sexual abuse, thus removing a procedural bar to survivors' existing claims. After the revival law was passed, Appellees filed suit against RCB to seek justice for the trauma and abuse they suffered, which they allege that RCB enabled and failed to prevent.

In the Business and Consumer Court below, RCB argued at length that the statute did not apply to it because it was not a "human actor" who directly abused Appellees. A. 79-86; 120-121. Judge McKeon disagreed, holding based on the plain language of the statute and Maine case law that the law did apply to institutional defendants like RCB, but he ultimately reported the question to this Court. A. 11-12; 14. Now, on appeal, RCB no longer makes the argument that the statute does not apply to institutional defendants, apparently conceding that it does. Instead, RCB argues that, by reviving time-barred claims against institutional entities, the statute

unconstitutionally creates a "novel ground" for liability. *Amici* submit this brief to explain that RCB's argument is wrong for three reasons.

First, as Appellees explain in their brief, the statute makes a procedural change, not a substantive one. It allows plaintiffs to bring any *existing* claims they had that were time-barred, but it does not create any new cause of action or theory of liability. As a result, whether Appellees can ultimately prove that RCB is liable for the abuse they endured as children has no bearing on whether it is constitutional to give them an opportunity to try, and the Court need not wade into the merits of Appellees' claims to decide the constitutional issue.

Second, even if the Court does address RCB's argument that Claimants cannot prove that it is liable under the law that existed at the time of the abuse—which it should not for the reasons described above—RCB is simply wrong as a matter of Maine law that "there has never been vicarious organizational liability" in these circumstances. To the contrary, Maine law has long recognized that an organization like RCB may be liable for the acts of its employees or agents, even when they are acting outside the scope of their employment.

Finally, other courts around the country have upheld as Constitutional the application of similar statutes to institutional entities. This Court should follow their lead and affirm the Business and Consumer Court's holding that the statute is

constitutional and can be applied to revive existing claims against institutional entities like RCB.

INTERESTS OF *AMICI CURIAE*

Amici are nonprofit organizations committed to ensuring access to justice.[1]

The **Maine Trial Lawyers Association** (MTLA) is a voluntary bar association dedicated to advancing the cause of those who deserve legal redress for injury and to preserving the ability of Maine citizens to seek justice in Maine's state and federal courts, including without limitation the victims of sexual abuse. MTLA has over six hundred member attorneys who primarily represent plaintiffs in Maine's court system.

Public Justice is a national public interest advocacy organization that fights against abusive corporate power and predatory practices, the assault on civil rights and liberties, and the destruction of the earth's sustainability. The organization maintains an Access to Justice Project that pursues high-impact litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of people who have been wrongfully injured or whose civil rights have been violated to seek redress in the civil court system. Towards that end, Public Justice has a longstanding practice of fighting for survivors of sexual abuse to have their day in

[1] No party or party's counsel authored this brief in whole or in part. No person, other than amicus curiae, its members, and its counsel, contributed money that was intended to fund the preparation or submission of this brief.

court. For example, Public Justice currently represents the appellant in *Sutton v. Marie*, Docket No. 22-2327, 2022 WL 3904100 (2d. Cir. Oct. 3, 2022), an appeal involving the application of New York's statute that temporarily revives the time-barred claims of survivors of child sexual abuse.

The **American Association for Justice ("AAJ")** is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including in Maine. Throughout its 77-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

ARGUMENT

I. The Statute Does Not Retroactively Create a New Theory of Liability

a. The statute merely removes a procedural barrier to bringing existing claims; it does not create new ones.

RCB's argument that it could not be held liable under the law at the time the abuse occurred concerns only the merits of Appellees' claims, which are not currently before this Court. The change in the statute of limitations here was merely "procedural in nature," *Myrick v. James*, 444 A.2d at 989, 995 (Me. 1982), and there

is absolutely no basis in the statutory language for RCB's argument that, by reviving the opportunity for Appellees to bring their claims, this Court would somehow be approving a new theory of liability *See* 14 M.R.S. § 752-C. To the contrary, the revival statute's only effect is to provide a new opportunity to bring claims that Appellees already had under existing law. *Id.*

If RCB is right (which it is not) that it had no legal duty to Appellees at the time they were abused, it can raise that argument in the trial court as a reason to dismiss Appellees' complaints on the merits. Likewise, it can argue, as it does here, that an independent tort for negligent supervision was not recognized at the time of the abuse. But whether Appellees in this particular case can prove the merits of their claims should have no bearing on the constitutionality of the Legislature's decision to revive the opportunity for them to file the claims in the first place. As a result, in ruling on the constitutionality and scope of the revival statute, the Court need not decide whether Appellees will succeed on their claims against RCB.

b. Organizations like RCB have long been subject to liability for the wrongdoing of their employees and agents under Maine law.

To the extent the Court does reach RCB's argument that, under Maine law, an institution could not be liable for its negligence in failing to prevent wrongdoing by its employees until very recently, RCB is profoundly incorrect. Throughout nearly all of its 200-year history, Maine law has recognized a cause of action against

organizations and individuals who failed to exercise proper oversight over those under their control. *See, e.g.*, *Bishop v. Williamson*, 11 Me. 495, 501 (Me. 1834) (As a matter of law, a postmaster is liable for the acts of a person who he allowed to access the mail in his office); *Kelly v. Tarbox*, 102 Me. 119, 86 A. 9, 12 (Me. 1906) (As a matter of law, sheriff liable for deputy's failure to properly execute judgment); *McClain v. Training and Development Corp.*, 572 A.2d 494, 498 (Me. 1990) (upholding jury verdict awarding damages to plaintiff from defendant employer for injuries arising from conduct of defendant's employee upheld, as employer's failure to supervise employee "made possible the tortious assault and battery he imposed upon [plaintiff]); *Dexter v. Town of Norway*, 1998 ME 195, ¶¶ 9-10, 715 A.2d 169 (adopting Restatement (Second) of Torts § 411 in holding that town can be held liable to third party for its negligent selection of a contractor).

RCB points to statements by the Law Court suggesting that Maine only recently recognized "the independent tort of negligent supervision." RCB Br. at 32 (quoting *Mahar v. Stonewood Transport*, 2003 ME 63, ¶ 10, 823 A.2d 540). But even accepting as true that there was no "independent tort" for negligent supervision at the time the abuse in these cases occurred, that does not mean that there were no other theories under which organizations could be liable for abuse committed by their employees. For example, Maine has long followed the approach of the Restatement (Second) of Agency—which was published in 1958—in holding

employers liable for the wrongdoing of their agents or employees. *See McLain*, 572 A.2d at 497-98 (citing Restatement (Second) of Agency § 228 (1958)). Although a vicarious liability is not automatic and a plaintiff in a given case must meet its burden to prove that the employer is vicariously liable, it was reasonable for the Legislature to decide to include suits based on vicarious liability theory within the scope of the revival statute, and, in doing so, it did not create any new theory of liability.

Further, RCB is wrong that "[t]here has never been vicarious organizational liability for the criminal sexual misconduct of a human actor outside the scope of the actor's authority or duties." RCB Br. at 32. Although the general rule is that the employer is liable only if the employee acts within the scope of their employment, the Restatement and Maine law recognize important exceptions to that rule. *See* Restatement (Second) of Agency § 219 (1958) ; *Picher v. Roman Catholic Bishop of Portland*, 2009 ME 67, ¶ 32, 974 A.2d 286 (explaining that Law Court looks to the Restatement for the law on vicarious liability). Here, Appellees are likely to succeed in holding RCB liable for the abuse by its employees under the Restatement approach by showing either that RCB was negligent in enabling or failing to prevent the abuse or that the abuser was aided in accomplishing the abuse by its relationship with RCB. *See* Restatement (Second) of Agency § 219(2)(b), (d); *see also McLain*, 572 A.2d at 498 (holding that jury could find employer vicariously liable for assault and battery by employee either on theory that employer failed to properly supervise

employee or because the "employment made possible the tortious assault and battery"); *Costos v. Coconut Island Corp.*, 137 F.3d 46, 50 (1st Cir. 1998) (applying Maine law and § 219(2)(d) of the Restatement to hold that employer hotel was liable for employee using key to enter guest's room and sexually assault her). Importantly, these theories of liability have existed since before 1958 when the Restatement was published, and the law has been clear since then that neither of those theories require a showing that the abuser was acting within the scope of their employment. *See id.* § 219(2). Thus, they are far from "novel" theories of liability, as RCB contends.

Finally, RCB's premise that Appellees would have lost these cases if they had brought them at the time of the abuse, RCB Br. at 33, is further undermined by the fact that most of the counts in Mr. Dupuis's complaint—including negligence, breach of fiduciary duty, fraudulent concealment, and intentional infliction of emotional distress—are all torts that unquestionably existed at the time of the abuse. For example, this Court has long held that schools and similar organizations may be liable for negligence when sexual assaults occur on their property. *See, e.g.*, *Brown v. Delta Tau Delta*, 2015 ME 75, ¶¶ 27-29, 188 A.3d 789 (holding that defendant fraternity had a duty of care in premises liability case to "exercise reasonable care and take reasonable steps to provide premises that are reasonably safe and reasonably free from the potential of sexual misconduct by its members"); *Schultz v. Gould Academy*, 332 A.2d 368, 370 (Me. 1975) (holding that boarding school had

duty "to exercise reasonable care in taking such measures as were reasonably necessary for her safety in light of all then existing circumstances").

Likewise, this Court has long recognized the rule set out in the Restatement (Second) of Torts—published in 1965—that organizations may be liable when there is a special or fiduciary relationship between the organization and the injured party or when the organization creates the danger that causes the injury. *See* Restatement (Second) of Torts § 315 (1965); *Bryan R. v. Watchtower Bible and Tract Society of N.Y., Inc.*, 1999 ME 144, ¶ 14, 738 A.2d 839 (applying Restatement § 315). That this Court only recently considered the application of that general rule to the specific context of RCB and the children abused by its employees does not mean that the law has changed or that such liability would have been unavailable at the time the abuse occurred. *See Fortin v. The Roman Catholic Bishop of Portland*, 2005 ME 57, ¶ 36, 871 A.2d 1208 (explaining that Court was not creating special relationship duty "from whole cloth" because "[f]or at least forty years, section 315(b) of the Restatement (Second) of Torts has recognized an actor's duty to protect from harm those individuals with whom the actor has a special relationship").

In short, RCB presents no argument as to why these causes of action in Appellees complaints are "novel" or why they would have been unavailable at the time the abuse occurred. And to the extent RCB is arguing that Appellees will be unable to prove the elements of those torts given the facts of their cases, as described

above, that is a question for the trial court that has no bearing on the constitutionality of the revival statute.

II. Other States Have Upheld the Application of Revival Statutes to Institutional Entities

That there is nothing unconstitutional about reviving claims against both the individuals who commit abuse and the institutions that enable that abuse is further supported by the fact that courts in other states around the country have upheld the application of similar revival statutes to negligence claims against institutions as well as individuals. *See, e.g.*, *S.Y. v. Roman Catholic Diocese of Paterson*, 2021 WL 4473153, *8 (D.N.J. Sept. 30, 2021) (upholding application of New Jersey revival statute to negligence claims against Roman Catholic Diocese); *Coats v. New Haven Unified Sch. Dist*., 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020); (upholding application of California revival statute to negligence claims against school district); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 518 (Conn. 2015) (upholding application of Connecticut revival statute to negligent supervision claims against Roman Catholic Diocese); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1259-60 (Del. 2011) (upholding application of Delaware revival statute to gross negligence claims against religious order); *ARK269 v. Archdiocese of New York*, No. 950301/2020, 2022 WL 2954144, at *1 (N.Y. Sup. Ct. July 19, 2022) (upholding application of New York revival statute to negligent training and supervision claims against Archdiocese of New York).

In particular, courts in New York and New Jersey applied revival statutes to institutional entities when those statutes contained language providing that they applied to any claim for an injury "resulting from" or "as a result of" sexual abuse. *S.Y.*, 2021 WL 4473153, *8 (applying N.J.S.A. 2A:14-2b); *ARK269*, No. 2022 WL 2954144, at *1 (applying N.Y. CPLR § 214-g). Although, like Maine's statute, neither statute specifically mentioned institutional or supervisory liability, the courts nonetheless held that claims against institutions were covered. *Id.* Indeed, Maine's statute is arguably broader because "based upon" does not require the same causal connection between the injury and the abuse as the "resulting from" language in the New York and New Jersey statutes.

Moreover, courts have not only upheld purely procedural revival statutes like Maine's but have also upheld the constitutionality of statutes that arguably *do* provide new substantive standards for liability. For example, Delaware's revival statute states that "[i]f the person committing the act of sexual abuse against a minor was employed by . . . [a] legal entity that owned a duty of care to the victim, or the accused and the minor were engaged in some activity over which the legal entity had some degree of responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity." 10 Del.C. § 8145. Despite the statute setting out a new test for institutional liability, the Delaware Supreme Court still upheld the statute as

constitutional over a due process challenge by the defendant religious institution. *Sheehan*, 15 A.3d at 1259-60. Here, on the other hand, the statute does not discuss the legal standards for institutional liability and simply extends the time within which existing claims may be brought. Thus, even accepting RCB's argument that Maine's statute creates a novel theory of liability—which it does not—*Sheehan* supports a finding that the statute is constitutional.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Business and Consumer Court holding that 14 M.R.S. § 752-C is constitutional and applies to institutional entities.

Dated: September 18, 2023

Respectfully submitted,

/s/ Shelby Leighton
Shelby Leighton
PUBLIC JUSTICE
1620 L St. NW, Suite 630
Washington, DC 20036
(202) 797-8600
sleighton@publicjustice.net

/s/ Thomas Douglas
Thomas L. Douglas
DOUGLAS, MCDANIEL
& CAMPO, LLC, PA
490 Walnut Hill Road
North Yarmouth, ME 04097
(207) 591-5747
tdouglas@douglasmcdaniel.com

Counsel for Amici

CERTIFICATE OF SERVICE

I, Thomas L. Douglas, hereby certify that copies of this Brief of Amici Curiae in support of Appellee were served upon counsel by email and first class mail at the addresses below on September 18, 2023.

Michael T. Bigos, Esq.
Berman & Simmons PA
PO Box 961
Lewiston, ME 04243-0961
bigosservice@bermansimmons.com
Attorney for Plaintiff-Appellees

Gerald F. Petruccelli, Esq.
Petruccelli Martin & Haddow LLP
PO Box 17555
Portland, ME 04112-8555
gpetruccelli@pmhlegal.com
Attorney for Defendant-Appellant

Jason Anton, Asst Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006
jason.anton@maine.gov

Dated: September 18, 2023

/s/ Thomas Douglas
Thomas L. Douglas
DOUGLAS, MCDANIEL & CAMPO LLC, PA
490 Walnut Hill Road
North Yarmouth, ME 04097
(207) 591-5747
tdouglas@douglasmcdaniel.com