

CHILD USA's Pro Bono Amicus Advocacy Project: Taking on Cutting Edge Child Abuse and Neglect Legal Issues

Legal Department

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One of CHILD USA's initiatives you may not know about is our Pro Bono Amicus Advocacy Project. Attorneys Alice Bohn and Jessica Schidlow, and Alice Hanan, when the issue involves statutes of limitation, are doing first-rate research and drafting of amicus briefs in child abuse and neglect cases. Since the new year, CHILD USA has submitted seven amicus ("friend of the court") briefs in courts across the country—both state and federal—including two in the United States Supreme Court. The legal team also has two additional briefs in the works.

Our amicus briefs address issues related to our research and [public policy initiatives](#). We have designated 2020 as the year to "Focus on the Facts", and that is often the message sent by our briefing along with sophisticated constitutional and statutory analysis.

In the last two months alone, CHILD USA addressed issues involving the family court crisis, the constitutionality of SOL revival laws, or windows, and the harm to children that arises when women cannot obtain access to contraception. In the family court case involving the needs of a disabled child, CHILD USA submitted an amicus brief encouraging the court to give primary consideration to the recommendations of physicians and experts when rendering custody determinations for children with special needs. In another case, CHILD USA urged the court to ensure that sexually exploited can seek civil relief. CHILD USA also co-authored with Professor Leslie Griffin a brief in response to government rules that reduce women employees' access to contraceptive insurance, arguing that such rules endanger children and violate the separation of powers and the First Amendment.

CHILD USA has also exercised its legal expertise in a number of pivotal cases concerning the parameters of religious liberty in the context of child sexual abuse. In each of these cases, religious institutions called for the courts to adopt a broad theory of "autonomy"—or immunity—that would provide unqualified insulation for a range of harms, including child sex abuse. Our briefs focused on well-established First Amendment principles that makes harm to others an outer limit on the free exercise of religion and permits religious actors to be held accountable under neutral laws of general applicability. CHILD USA explicates and uncovers the larger consequences of providing religious institutions with such "autonomy" from the laws that protect the vulnerable.

Likewise, CHILD USA has been involved in a growing number of cases addressing the constitutionality of state revival laws, sometimes called "windows," for victims of childhood

sexual abuse. CHILD USA is the only organization tracking SOL reform across the United States. The social science department and CHILD USA's Postgraduate Fellows follow, study, and analyze legal, medical, social science, and child sex abuse policy developments, which makes it possible for our amicus briefs to educate the courts (and lawmakers) about the science of child sex abuse delayed disclosure and the public's need for SOL reform. .

While our amicus briefs serve a variety of purposes and address a panoply of issues, CHILD USA maintains an unwavering commitment to evidence-based arguments so that courts can understand how best to protect children and adult survivors of childhood sexual abuse, and how the principles upon which the Constitution was drafted should guide their decisions. For this reason, attorneys across the country continue to actively seek support from CHILD USA to ensure that the information provided to the courts reflects the scope of the problem and potential effects of court decisions.

Moving forward, CHILD USA will be concentrating our legal efforts on upcoming issues and expanding our presence in the federal circuit courts of appeal, the state supreme courts, and, of course, the United States Supreme Court. We expect amicus activity to increase as the highest courts take up the expanding array of complex issues involving child abuse and neglect. Our overriding goal is to prevent future harm to children and to raise the judiciary's collective understanding of children's civil rights.

We have been delighted to work with numerous attorneys across the United States, and welcome partnerships with law firms to work on pro bono matters with us. We were delighted to work on *Steven Douglas Rockett v. N.S.*, case no. 19-35955, in the Ninth Circuit Court of Appeals, with Paul Killion and his colleagues at Duane Morris LLP. If you are an attorney who needs amicus support or would like your firm to have the opportunity to work on cutting edge amicus briefs involving child protection, please contact us at info@childusa.org

Below is an overview of the five most recent amicus briefs submitted by CHILD USA. To read the briefs in their entirety or to access a comprehensive list of amicus briefs submitted by CHILD USA click [here](#).

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Recent Amicus Briefs

In re: Diocese of Lubbock, Relator, Case No. 20-0127; Filed April 6, 2020 in the Supreme Court of Texas

On April 6, 2020, CHILD USA filed an amicus brief in the Supreme Court of Texas regarding *In re Diocese of Lubbock* in partnership with the Georgetown Institute for Constitutional Advocacy and Protection. In *Lubbock*, the Diocese of Lubbock published an online list of priests credibly accused of sexually abusing a "minor," including Respondent Jesus Guerrero. Mr. Guerrero is accused of having sexually abused an adult woman, whom the Church defines as a "minor" because of her mental capacity. The Diocese argues that its statements were privately made, and that the inquiry of whether the Diocese defamed Mr. Guerrero by applying the Church's definition of "minor" to his situation offends First Amendment principles. This amicus brief argues that the First Amendment does not protect the Diocese's statements, that

expanding the Diocese’s ability to defame members and employees will silence victims, and that the religious autonomy principle touted by the Diocese is a departure from any reasonable interpretation of First Amendment protections historically available to religious entities, and, finally, that adopting a “religious autonomy” doctrine will inevitably harm children.

Donald J. Trump, et. al. v. Pennsylvania, et. al., Case No. 19-454; Filed April 6, 2020 in the Supreme Court of the United States.

CHILD USA co-authored an amicus brief with Prof. Leslie Griffin in the United States Supreme Court on behalf of Dignity USA, New Ways Ministry, The Quixote Center, the Women’s Alliance for Theology, Ethics & Ritual, and The Women’s Ordination Conference. In this case, two government rules that reduce employees’ access to contraceptive insurance are at issue. The amicus brief argues that the government’s restrictive amendments to contraception insurance put children at risk and are illegal because they have taken benefits away from employees, and that the government’s interpretation of RFRA and its allowances violates separation of powers by aggrandizing the Executive Branch’s powers at the expense of Congress and the Courts.

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T.M. v. Oder of St. Benedict of New Jersey Inc., et. al., Docket No. MRS-L-399-17; Filed April 2, 2020 in the Superior Court of New Jersey

In *T.M.*, an individual brought various claims against the Defendant related to sex abuse he endured as a child. The Defendants challenged the constitutionality of N.J. Stat. Ann. §§2A:14-2a and 2b, which revive expired civil claims for child sex abuse in New Jersey. This amicus brief argues that the revival provisions are constitutional under the United States Constitution and the New Jersey Constitution because the law passes rational basis scrutiny, the Legislature expressly intended to revive the claims, no due process protections were violated, and reviving the expired claims does not result in manifest injustice. Moreover, the New Jersey window serves the compelling interest in the protection of children.

In re the Marriage of Sharmila Ahmed v. Serv Wahan, Case No. 79491-4-1; Filed March 30, 2020 in the Court of Appeals, Division I, of Washington State.

In *Ahmed*, the trial court adopted a permanent parenting plan for the custody of two sons, one of whom has special needs. This plan relied on advice of a Guardian ad Litem who did not have adequate experience or expertise regarding children with disabilities, who significantly altered the prior temporary parenting plan, despite encouragement from current medical care providers to maintain stability and consistency in the schedule of the son with the disability. This amicus brief argues that it is in the best interest of children for courts to prioritize current medical provider feedback and experts over input of Guardians ad Litem without special training because of the unique needs presented in cases of disability. This amicus brief also argues that Guardians ad Litem in Washington state should be required to consider and prioritize current provider feedback and experts in their recommendations as part of the mandate to serve a child’s best interest, given Washington state’s compelling interest in child protection.

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Our Lady of Guadalupe School v. Agnes Morrissey-Berru, Case No. 19-267, and *St. James School v. Darryl Biel as Personal Representative of the Estate of Kristen Biel*, Case No. 19-348; Filed on March 11, 2020 in the Supreme Court of the United States *Biel*

In *Lady of Guadalupe*, CHILD USA, together with professors and other organizations, signed onto a brief written by Leslie Griffin, Professor of Law at the Boyd School of Law at the University of Las Vegas, to argue that a former elementary school teacher at a Catholic school was terminated for telling the school that she had cancer and would need to miss class in order to undergo chemotherapy. The issue before the Supreme Court is whether the First Amendment's Religion Clauses prohibit lay teachers at religious elementary schools from bringing employment discrimination claims. This amicus brief argues that civil courts can and should hear disability and age discrimination claims in accordance with neutral principles of law, in part because sex abuse cases show us that it is important to protect victims from harm, even by religious actors.