

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPERIOR COURT

PROVIDENCE, SC.

PHILIP EDUARDO,
Plaintiff

v.

C.A. No. PC-2019-09894

LOUIS A. GELINEAU, THE ROMAN
CATHOLIC BISHOP OF
PROVIDENCE, a Corporation Sole,
et als,
Defendants

MEMO IN SUPPORT OF
MOTION FOR LEAVE TO FILE AMICUS BRIEF

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INTRODUCTION

This case presents a very important question of public interest, whether the revival provisions of RIGL § 9-1-51 are constitutional. CHILD USA is uniquely positioned to offer useful legal analysis and public policy considerations undergirding the amendments to RIGL § 9-1-51, and it requests that this Court grant the Motion For Leave to File Amicus and accompanying Pro Hac Vice and allow CHILD USA to submit an amicus brief in this case.

First, this memo will outline the overwhelming precedent that federal and state trial courts have set for allowing amicus participation around the country. Second, this brief will share prior Rhode Island trial court cases that have accepted amicus participation. Finally, although there are no trial court amicus rules, this Court may use its discretion and the Rhode Island appellate amicus procedural rules to allow CHILD USA's amicus participation in this case, as the Rhode Island Superior Court has done in the past.

STATEMENT OF THE CASE

On September 30, 2019 Philip Edwardo filed a Complaint against Louis A. Gelineau, The Roman Catholic Bishop of Providence, Thomas Tobin, St. Anthony Church Corporation North Providence and John/Jane Doe 1-250, XYZ Corporations 1-250 (the Defendants) for various charges related to sexual abuse he

suffered as a minor. On December 19, 2019, the Defendants filed a Memorandum of Law in Support of their Motion to Dismiss, arguing in part against the constitutionality of the revival provisions in RIGL § 9-1-51.

When CHILD USA read about this case in the news, it contacted Edwardo's attorney, Timothy Conlon, on March 3, 2020 to see whether it could file an amicus brief in this case. Mr. Conlon has advised that on March 10, 2020, Plaintiff's counsel and the Defendants' attorneys met telephonically with this Court. In response to Mr. Conlon's inquiry, we are advised that this Court requested a memo accompanying a Motion for Leave to file an Amicus Brief, and that the Court specifically expressed an interest in the precedent that exists for this Court to accept amicus briefing at the trial level.

QUESTION PRESENTED

1. What is the precedent for trial courts in the United States and Rhode Island to consider amicus participation?

ARGUMENT

I. This Court will be in Accord with the Vast Majority of Federal and State Trial Courts in Allowing Amicus Participation in this Case

There is a trend among federal and state trial courts across the United States to allow or, in some cases, to even request amicus participation. Amicus briefs are

“friend of the court” briefs allowed before courts largely at their discretion. Amici have historically been filed “for the benefit of the court.” Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500–01 (S.D. Fla. 1991). In cases of general public interest, it is “preferable to err on the side of granting leave.” Animal Prot. Inst. v. Martin, No. CV-06-128 BW, 2007 WL 647567, at *3 (D. Me. Feb. 23, 2007) (citing Neonatology Assoc., P.A. v. C.I.R., 293 F.3d 128, 133 (3d. Cir. 2002)). The trial court has ultimate discretion to decide whether a brief will be accepted, and what the amicus brief should contain, in form and scope. U.S. v. Alkaabi, 223 F.Supp.2d 583, 592 (D.N.J. Sept. 23, 2002). CHILD USA is uniquely positioned as a qualified organization whose contribution to the important constitutionality and public interest issues presented in this case will benefit this Court. This Superior Court would be in accord with federal and state trial courts by permitting CHILD USA to participate as *amicus* in this matter.

A. Amicus Briefs are Nationally Accepted at the Federal and State Trial Court Level

There is a growing trend toward including amicus briefs at the trial court level. The overwhelming majority of states allow or encourage amicus briefing in state and federal trial courts.¹ Trial courts do not merely allow amicus briefing; they

¹ See Ala. St. Tenure Com’n v. Houston County Bd. of Educ., 495 So.2d 692, 695 (Ala. Civ. App. Aug. 13, 1986) (finding trial court’s grant of amicus proper); Miracle v. Hobbs, 333 F.R.D. 151 (D. Ariz. 2019); Goodwin v. Anheuser-Busch Cos., Inc., No. BC310105, 2004 WL 3143579, *1 (Cal. Super. Ct. Dec. 13, 2004); Lobato v. Taylor, 13 P.3d 821, 828 (Colo.App. 2000) (“On appeal, plaintiffs and their amici argue, as they did in the trial court, . . .”), rev’d on

other grounds, 71 P.3d 938 (Colo. 2002); Asjes v. Parish of Christ Church, No. CV960152470S, 1997 WL 614534, *1 (Conn. Super. Ct. Sept. 26, 1997) (20 Conn. L. Rptr. 461, 466) (granting permission for amicus curiae brief); In re Trulia, Inc. Stockholder Lit., 129 A.3d 884, 890 (Del. Ch. Jan. 22, 2016); Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500–01 (S.D. Fla. 1991); Chavez v. Credit Nation Auto Sales, Inc., 2014 WL 12780146, *4 (N.D.Ga. Jun. 5, 2014); In re Pub. Util. Com’n, 257 P.3d 223, 227 (Haw. Ct. App. May 31, 2011) (noting the circuit court invited an amicus brief in its decision); State v. U.S., 996 P.2d 806, 810 (Idaho Mar. 9, 2000) (finding trial court did not abuse discretion in allowing a Irrigators to participate as amicus curiae); In re Mortimer, 358 N.E.2d 92, 94 (Ill. App. Ct. Dec. 3, 1976) (finding appointment of amicus in “discretion of trial judge”); Himsel v. Himsel, 122 N.E.3d 935, 941 (Ind. Ct. App. Apr. 22, 2019) (referring to the trial court’s acceptance of amici); Hill v. Dedicated Res., Inc., No. 99-C-1714, 2000 WL 34001915 (Kan. Dist. Ct. Jul. 12, 2000); Com ex. Rel. Brown v. Interactive Media Ent. and Gaming Ass’n, Inc., 306 S.W.3d 32, 35 n.1 (Ky. 2010) (mentioning circuit court allowed gaming associations to participate as amici); Bowman v. James, 1834 WL 614, 6 La. 124, *1 (La. 1934) (mentioning amicus involvement during the trial); Alliance of Auto. Mfrs. v. Gwadowsky, 297 F.Supp.2d 305, 306 (D.Me.2003); Brunelle v. Lynn Public Schools, 1997 WL 785595, *3 (Mass. Super. Ct. 1997), vacated on other grounds, 433 Mass. 179 (2001); United States v. Michigan, 116 F.R.D. 655, 660 (W.D. Mich.1987); State v. Wicklund, 576 N.W.2d 753, 755 (Minn. Ct. App. Apr. 7, 1998) (stating the trial court allowed amicus curiae participation by Minnesota Civil Liberties Union and the Mall of America.); McCoy v. Briegel, 305 S.W.2d 29, 39 (Mo. Ct. App. Sept. 3, 1957) (finding the trial court did not abuse its discretion in allowing amicus curiae); Eberl v. Scofield, 244 Mont. 515, 520, 798 P.2d 536, 539 (1990); Hairr v. First Jud. Dist. Ct., 368 P.3d 1198, 1203 (Nev. 2016) (referring to trial court amicus curiae); U.S. v. Alkaabi, 223 F.Supp.2d 583 (D.N.J. Sept. 23, 2002); N.M. Chiropractors Ass’n v. Katz, 613 P.2d 424, 425 (N.M. 1980) (finding that because organization was permitted to file a brief in trial court, but never did so); U.S. v. Gotti, 755 F.Supp. 1157, 1157 (E.D.N.Y. Jan. 9, 1991); Time Warner Ent. Advance/Newhouse P’ship v. Town of Landis, No. 10 CVS 1172, 2014 WL 2921723 (N.C. Super. Ct. June 24, 2014); Matthews v. Ingleside Hosp. Inc., 254 N.E.2d 923, 925 (Ohio Ct. Comm. Pl. Oct. 2, 1969) (“[I]n cases involving questions of public interest the leave is generally granted to appear as Amicus Curiae.”); Kinney v. Bd. of Com’rs of Tulsa County, Okl., 894 P.2d 444, 445 n.2 (Okla. Ct. App. Mar. 21, 1995) (noting the trial court considered an amicus brief); In re Petition for Referendum to Amend. Home Rule Charter of City of Pittsburgh, 69 Pa. Commw. 292 (1982); Cambio v. G-7 Corp., No. 96-0705, 1998 WL 1472896 (R.I. Super. Ct. Feb. 11, 1998); Peck v. Jonathan Michael Builders, Inc., No. KM 06-0236, 2006 WL 3059981 (R.I. Super. Ct. Oct. 27, 2006); Cook v. South Carolina Dep’t of Highways & Pub. Transp., 309 S.C. 179, 184 (S.C. 1992) (finding the trial court did not err in allowing the Budget and Control Board to appear as *amicus curiae*); State ex rel. Com’r of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734, 759 (Tenn. Ct. App. July 11, 2001) (finding trial court had discretion to consider amicus brief); Flinn v. Krotz, 293 S.W. 625, 627 (Tex. Civ. App. Mar. 30, 1927) (finding trial court did not err in accepting amicus); Perry-Bey v. City of Norfolk, No. 2:08cv100, 2008 WL 11348007, *3 (E.D. Va. Aug. 14, 2008); E.E.O.C. v. Boeing Co., 109 F.R.D. 6, *8 n.2 (W.D. Wash. May 23, 1985); Ohio Valley Envtl. Coal., Inc. v. McCarthy, 313 F.R.D. 10 (S.D.W.V. Dec. 14, 2015); City of Madison v. Appeals Comm. of Madison Human Serv Com’n, 361 N.W.2d 734, 736 (Wis. Ct. App. Dec. 27, 1984) (finding trial court did not abuse its discretion in allowing amicus

even request amicus briefing in certain cases. See United States v. Strandlof, 2009 WL 5126540, at *3 (D.Colo. Dec. 18, 2009) (court “invite[d] amicus curiae brief[ing]” on novel issue of First Amendment law); Corcoran, Mullins & Jennison, Inc. v. Flanagan, 1999 WL 823855 (Mass. Super. Ct. 1999); McGonagle v. Home Depot, U.S.A., Inc., 75 Mass. App. Ct. 593, 598 (2009) (observing the “Superior Court judge prudently invited” an amicus brief). This Court may not only allow permissive requests for amicus briefs, it may even request briefs from potential amici when it wishes.

II. There is Ample Precedent for Considering Amicus Briefs at the Rhode Island Superior Court and CHILD USA Would Be a Beneficial Amicus Participant in This Case

It is well-settled that the Rhode Island Superior Court has the discretion to allow amicus briefing. Khan v. Town of Middletown et. al., No. C.A. NC-2017-0443 (R.I. Super. Cr. July 30, 2018) (amicus brief of Public Law Center), available at <https://www.publichealthlawcenter.org/sites/default/files/Amicus-Brief-Middletown-2018.pdf>; Morgan v. Kilmartin, No. KC-2018-0473 (R.I. Super. Ct. Oct. 12, 2018) (amicus brief of American Civil Liberties Union), available at <http://riaclu.org/documents/AmicusMemorandum.pdf>; Amico’s Inc. v. Mattos, 789 A.2d 899, 902 (R.I. 2002) (“The American Cancer Society, the American Heart Association, and the American Lung Association of Rhode Island participated in

participation); Briggs v. United States, 597 A.2d 370, 374 (D.C. 1991) (the Trial court limited the amicus to a “factual investigation of these two defined issues”).

the trial court proceedings as *amici curiae*”); R.I. Orthopedic Soc. v. Blue Cross & Blue Shield of R.I., 748 A.2d 1287, 1289 n.3 (R.I. 2000) (“At the [Superior Court], an amicus curiae brief was submitted by the Rhode Island Medical Society (RIMS), a Rhode Island nonprofit corporation whose membership consists of physicians who are licensed to practice medicine in Rhode Island.”); Corrado v. Providence Redev. Agency, 252 A.2d 920, 921 (R.I. Super. Ct. May 2, 1969) (“The trial justice granted the petition of the Maurania Corporation, a Rhode Island corporation which owned property in the area, to be heard and to file briefs as amicus curiae.”). In 1960, the Rhode Island Supreme Court, in reviewing the actions of the Superior Court stated “it should be observed here that nothing which we have said is to be construed to prevent the trial justice in his discretion from allowing Elizabeth E. Corr to appear as amicus curiae.” State ex rel. Montaquila v. Avery, 157 A.2d 886, 888 (R.I. 1960).

The Superior Court has allowed amicus briefing from multiple types of individuals and organizations, including but not limited to private corporations and public and private interest organizations. As recently as January 31st of this year, in K&W Auto., LLC v. Town of Barrington, multiple national and state organizations submitted amicus briefing to the Superior Court to support upholding an ordinance banning the sale of tobacco products to minors in the town of

Barrington. No. 2018-250-Appeal, --A.3d--, 2020 WL 501698 (R.I. Jan. 31, 2020). The Rhode Island Supreme Court noted:

“[T]he following entities, acting as amici curiae, filed a brief in Superior Court: the American Cancer Society Cancer Action Network, the American Heart Association; the American Lung Association; the Campaign for Tobacco-Free Kids; the Tobacco Control Legal Consortium; the Rhode Island Thoracic Society; the Truth Initiative; and the City of Providence, Rhode Island. The amici curiae argued in support of upholding the Tobacco Ordinance, asserting that it would serve to protect the Town’s residents, particularly its younger residents, from the health risks associated with tobacco use.”

K&W Auto., LLC v. Town of Barrington, No. 2018-250-Appeal, --A.3d--, 2020 WL 501698, *2 n.3 (R.I. Jan. 31, 2020). These organizations represent the interests of children and the interests of health, and they have specific expertise on those issues. The amici clearly had an interest in the outcome of the case, as stated by the Supreme Court, and they were able to share their expertise on those issues with the superior court. Id., at *2.

This case is similar to K&W Auto., LLC. Like K&W Auto., LLC, this case represents issues of public interest that have a direct effect on the health and safety of Rhode Island’s children. Likewise, the Superior Court in K&W Auto., LLC considered the validity of an ordinance passed by a Town Council; this Court is considering the validity of an amendment to RIGL § 9-1-51 crafted and passed by the Rhode Island Legislature.

CHILD USA resembles the organizations represented as amici in K&W Auto., LLC. Like the organizations mentioned above, CHILD USA is the leading national legal and social research-based think tank devoted to ending child abuse and neglect. It's CEO and Academic Director, Professor Marci A. Hamilton, has been a critical participant in the national movement for statute of limitations reform among the United States for the last 30 years. CHILD USA has been involved in the legislative reform of child sex abuse statute of limitations with states and the federal government and it was involved in the legislative hearings regarding the amendments to RIGL § 9-1-51. It has an interest in the outcome of this case, especially as it relates to the health and welfare of children in Rhode Island, and significant knowledge regarding the public policy issues affecting children in this state.

The superior court in K&W Auto. LLC was willing to entertain the amicus participation in a matter involving solely the residents of the town of Barrington. It is *substantially* more valuable for this Court to consider helpful amicus briefs from qualified organizations like CHILD USA in this case because the outcome of this case will impact adults and children across the entire state of Rhode Island. CHILD USA has particular legal expertise in the constitutionality of revival statutes that will be helpful to the Court. It has also spent three years conducting and compiling updated research on the widespread effects of child sexual abuse

and the realities of delayed disclosure. It is able to give the Court legal and policy perspective that may not be readily available to the parties' or other amici. According to national and Rhode Island case law, this Court has the full discretion to allow CHILD USA to participate as amicus, especially considering the guaranteed, widespread impact of this case.

III. This Court is Not Bound by Specific Amicus Rules and It has Broad Discretion to Consider an Amicus Brief from CHILD USA in this Case

This Court has broad discretion in considering amicus briefs in this case. Although there are no specific rules for Rhode Island Superior Courts, this Court may reference or defer to appellate rules on amicus procedure. CHILD USA offers a unique, expert perspective on issues of public interest in this case, and this Court may consider its amicus brief.

A. This Court Is Not Bound by Specific Rules when Considering an Amicus Brief

Despite the growing trend of amicus briefs in state and trial courts, most trial courts have no procedural rules governing amicus briefs. This is also the case for Rhode Island superior courts. See generally, R.I. State Ct. R., Super. Ct. R. of Civ. Proc. Where there are no trial level procedural rules, courts regularly apply the appellate amicus rules of civil procedure to their cases. Triad Int'l Maint. Corp. v. S. Air Transp., Inc., No. 2:04-CV-1200, 2005 WL 1917512, at *1-3 (S.D. Ohio Aug. 10, 2005); U.S. v. Gotti, 755 F.Supp. 1157, 1157 (E.D.N.Y. Jan. 9, 1991).

Rhode Island's Supreme Court contains appellate rules applicable to amicus briefs that it may likewise rely on as a guide for briefing. See R.I. R. S. Ct. Art. I. R. 16 (f), (h).

B. This Court has Broad Discretion when Considering when to Accept an Amicus Brief

This Court may consider amicus briefing at its discretion, especially given the important public interests at stake in this matter. Courts accept amicus briefing in cases of public interest, especially where there are matters that may otherwise escape the court's consideration. Miracle v. Hobbs, 333 F.R.D. 151 (D. Ariz. 2019) (allowing amicus participation in matter of public interest).

There are few cases that represent more of a public interest than this case. Conservative, verified sources estimate that as many as 1 in 4 girls and 1 in 20 boys are sexually abused by the time they reach age 18. NSOPW, Questions and Answers about Sexual Assault and Sexual Offending, U.S. Dept. Of Justice, <https://www.nsopw.gov/en/SafetyAndEducation/QuestionsAndAnswers>. This means that this case will impact the 30% of children in Rhode Island who have been directly victimized by sexual abuse, as well as the broader society who suffer indirectly as a result. As the leading national think tank on statute of limitation reform, CHILD USA has built expertise learning from hundreds of survivors of child sex abuse, it has had extensive interaction with courts and lawmakers on this issue, and it can provide helpful legal and public policy information not readily

available to this Court by the parties or other amici. In short, it is prepared to offer legal and research perspectives on this case that would benefit this Court's analysis. This Court has every freedom to allow CHILD USA to participate as an amicus curiae in this case, and it would be in accord with the vast majority of superior courts that also consider amicus briefing.

Trial courts even have the discretion to disregard inaccuracies or procedural errors in an amicus brief, and still consider other material in the brief. Bucci v. Hurd Buick Pontiac GMC Truck, LLC, 85 A.3d 1160, 1169 (R.I. 2014) (“we will not consider arguments that have been made by an *amicus curiae* but that were not advanced by a party.”); The Environment v. Southview Farm, 834 F.Supp. 1410, 1413 (W.D.N.Y. Apr. 7, 1993) (“to the extent [*amicus*] goes beyond its proper role by attempting to present wholly new issues, the court can remedy any possible prejudice to plaintiffs by simply declining to consider those issues.”); Eberl v. Scofield, 244 Mont. 515, 520, 798 P.2d 536, 539 (1990) (finding the trial court did not abuse its discretion in considering an amicus brief, while overlooking inaccuracies of irrelevant issues). CHILD USA has no intention of submitting a brief to this Court containing errors, distortion of fact or overreaching argumentation, but this Court has incredible latitude to consider amicus briefing, even if it only considers portions of a brief.

CONCLUSION

Rhode Island is one of the overwhelming majority states whose federal and state trial courts eagerly accept the participation of qualified amici in their cases. This case is one whose outcome will impact citizens across the entire state of Rhode Island. By allowing CHILD USA to participate as amicus curiae in this case, this Court will benefit from years of legal research on constitutionality of revival windows, and a vast library of current research and data on the science of delayed disclosure of child sexual abuse and the impacts of child sexual abuse on the people of Rhode Island. For the foregoing reasons, CHILD USA, through local counsel, Veronica Assalone, respectfully request this Court to grant the Motion, along with the accompanying Motion for Pro Hac Vice with the intention of filing an amicus brief in this case.

Dated: March 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jennifer J. Elliott, Paralegal for Assalone & Associates, LLC, hereby certify that on March 30, 2020:

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