

JANE DOE RP, : SUPERIOR COURT OF NEW JERSEY,
Plaintiff, : LAW DIVISION: CAPE MAY COUNTY

v. : DOCKET NO. CMP-L-000004-21

MARIANIST PROVINCE OF THE :
UNITED STATES AND MARIANIST :
FAMILY CENTER, :
Defendants. :

BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFF

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, CHILD USA, is the leading national non-profit think tank working to end child abuse and neglect in the United States. CHILD USA pairs the best social science research with the most sophisticated legal analysis to determine the most effective public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA develops evidence-based solutions and information needed by policymakers, youth-serving organizations, courts, media, and the public to increase child protection and the common good.

CHILD USA works to protect children from abuse in various contexts including its national child sex abuse statute of limitations reform initiative. CHILD USA's interests in this case are directly correlated with its mission to increase public safety and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to New Jersey Court Rule 1:13-9. The Defendants challenge Plaintiff's request to move forward on her claims arising from childhood sexual abuse under pseudonym absent a protective order from this court requiring secrecy of information produced in discovery and shielding Defendants identity from public access. CHILD USA joins in Plaintiff's request that she be able to proceed on her claims under pseudonym, finding that Plaintiff's privacy interests outweigh the presumption of public access to

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court proceedings, and denying Defendants proposed protective order because the provisions are inconsistent with public policy.

Child sex abuse is rampant in the United States, affecting 1 in 5 girls and 1 in 13 boys in this nation.¹ Historically, 90% of child victims never go to the authorities and the vast majority of claims have expired before the victims were capable of getting to court.² The court's decision regarding the right of a victim of child sexual abuse to proceed anonymously against a named defendant will have a significant effect on victims of child sexual abuse throughout New Jersey, as well as protect future children from abuse by bringing to light perpetrators and the institutions that enable them. This case presents an opportunity for this court to hold that plaintiffs' right to privacy in civil sexual abuse cases is of paramount public interest as is the naming of perpetrator defendants. Accordingly, CHILD USA respectfully submits that this court exercise its discretion in upholding Plaintiff's request.

PROCEDURAL HISTORY

On January 6, 2021, Plaintiff filed a complaint against Defendant Marianist Province of the United States for the sexual abuse she endured decades ago by two of its clergy members while on the property of the Defendant Marianist Family Retreat Center in Cape May County, New Jersey. On March 29, 2021, the Defendants filed a Motion to Identify Plaintiff and to Strike

¹G. 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).

² 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-DisclosureFactsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014)).

Superfluous Historical Allegations and Immaterial and Impertinent Allegations of the Complaint pursuant to Rule 4:6-4(b). Therein, Defendants proposed that a protective order be issued to allow Plaintiff's identity to be disclosed to Defendants, but not the public. The proposed protective order also contains provisions that would permit Defendants to remain anonymous and keep secret documents and information produced during discovery as well as documents that are filed with the Court. CHILD USA incorporates by reference all facts set forth in the Plaintiff's Brief. See Plaintiff's Brief (Apr. 23, 2021). Therefore, CHILD USA files a Motion to File an Amicus Brief with this court.

ARGUMENT

Plaintiff should be permitted to proceed under pseudonym on her claims arising from childhood sexual abuse without being subject to Defendant's proposed protective order where the balance of interests weigh in favor of Plaintiff's individual privacy interests and the public's interests in identifying hidden predators and preventing future abuse.

I. THIS COURT MAY VALIDLY EXERCISE ITS DISCRETION IN FINDING THAT PLAINTIFF'S PRIVACY RIGHTS OUTWEIGH THE PRESUMPTION OF OPENNESS OF COURTS

The right to privacy is a constitutionally protected right and encompasses a plaintiff's interest in non-disclosure of personal information. *See Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (recognizing that "a right of personal privacy . . . does exist under the Constitution"); *see also Whalen v. Roe*, 429 U.S. 589, 599 (1977) (noting cases finding protected privacy interests include an "individual interest in avoiding disclosure of personal matters"); *see also, Burnett v. County, of Bergen*, 402 N.J.Super. 319, 332 (2008), *rev'd, in part, on other grounds*, 198 N.J. 408, 968 A.2d 1151 (2009) (explaining that the state's constitution guarantees

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the right of privacy which encompasses, “the right of an individual to be . . . protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.”). Despite the right to privacy, adult survivors seeking to proceed under pseudonym on their claims arising from childhood sexual abuse must overcome many hurdles, the most significant of which is the presumption of openness of courts. *See Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979) (discussing the common law rule of open civil and criminal proceedings); *see also Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997) (“Identifying the parties to the proceeding is an important dimension of publicness [of courts.]”); *Doe v. Doe*, 668 N.E.2d 1160, 1164 (Ill. App. Ct. 1996) (requiring parties to identify themselves “protects the public’s legitimate interest in knowing all of the facts involved in the case, including the identities of the parties”); *A.B.C. v. XYZ Corp.*, 282 N.J.Super. 494, 499 (N.J. Super. Ct. June 15, 1995) (“A trial is a public event. What transpires in a courtroom is public property . . . there is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.”). This presumption, however, is not absolute. *See James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (stating that openness “operates only as a presumption and not as an absolute, unreviewable license to deny”); *see also, Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (stating that the presumption of openness of judicial proceedings may be overridden in “exceptional circumstances”); *Stern v. Stern*, 66 N.J. 340, 343 n.1 (N.J. 1975) (recognizing that the identity of litigants may be disguised where the interest of minors are concerned as well as upon “other miscellaneous but rare occasions”).

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Federal courts consider a number of factors in determining whether to grant plaintiff leave to proceed under pseudonym on their claims. *See, e.g., Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 189-90 (2nd Cir. 2008) (identifying a non-exhaustive list of factors federal courts consider in balancing plaintiff's interest in proceeding anonymously against the presumption of openness of courts)³; *see also, Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 468 (E.D.Pa. 1977). Many state courts defer for guidance on this matter to federal courts. *See, e.g., A.B.C.*, 282 N.J. Super at 660 (adopting a balancing test developed by the federal courts and establishing a non-exhaustive list of factors to be considered in weighing competing interests). In short, the ultimate test for permitting a plaintiff to proceed anonymously or pseudonymously is whether the plaintiff's substantial right to privacy outweighs the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (citing *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981)). Courts exercise considerable discretion when determining whether a plaintiff may proceed under a pseudonym based on the factors established by federal courts and any other factors relevant to the case. *Id.*; *see also, Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y. 1996); *A.B.C.*, 282 N.J. Super at n.3 ("We do not intend to set forth any rigid standard here. In deciding the propriety of a party's use of pseudonyms the court should consider all relevant circumstances."); *Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006) ("It is within a district court's discretion to determine when a party may proceed anonymously.").

³ Some of the factors include, but are not limited to: (1) whether the litigation involves matters that are highly sensitive and of a personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously; (3) whether identification presents other harms and the likely severity of those harms including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure; (5) whether the suit is challenging the actions of the government or that of private parties; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity; and (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities.

Over time, federal and state courts have done more than implicitly approve of plaintiff anonymity; many courts have expressly recognized that in certain matters of a particularly private or sensitive nature, or where there is a potential harm to the plaintiff if their identity were to be disclosed, the presumptive practice of disclosing the parties' identities yields to a policy of protecting the plaintiffs' privacy. *See, e.g., Doe No. 2 v. Kolko*, 242 F.R.D. 193, 196 (E.D.N.Y. 2006) (holding in a childhood sexual abuse case that "courts have granted anonymity to protect against disclosure of a wide range of issues involving matters of the utmost intimacy, including sexual assault"); *Doe 130 v. Archdiocese of Portland in Or.*, No. CV. 07-1732-PK, 2008 WL 656021, *4 (D.Or. Mar. 6, 2008) (allowing adult plaintiff to maintain pseudonym in suit alleging child sex abuse by priest because of the risk to harm to which plaintiff was particularly vulnerable); *Doe v. Megless*, 2010 WL 3076246, *2 (E.D. Pa. 2010) (permitting plaintiff to proceed anonymously because the case involved highly sensitive and personal matters); *Doe v. Brown*, 2009 WL 5322462, *3 (Conn. Super 2009) (permitting pseudonym for adult plaintiff in suit concerning abuse that took place while a minor where it would serve the "overriding interest of protecting the plaintiff from exposure in the community of her private situation"); *Doe v. MacFarland*, 66 Misc.3d 604, 622 (NY Sup. Ct. Rockland County Dec. 10, 2019) (permitting plaintiff to proceed anonymously on claims under the Child Victims Act recognizing the sensitive and intimate nature of the claims); *Doe v. Diocese Corp.*, 647 A.2d 1067, 1072 (Conn. Super. Ct. 1994) ("One's sexual history and practices are among the most intimate aspects of a person's life. When one has a sexual history falling outside the realm of the 'conventional,' that privacy interest is enhanced greatly, whether one has created that history voluntarily or it is forced upon a person as a result of abuse.").

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The weight of authority thus suggests that plaintiff's privacy rights, particularly in the context of claims arising from sexual assault, are sufficiently "compelling" so as to outweigh to the presumption of openness of court proceedings. *See A.B.C.*, 282 N.J.Super. at 505, 660 ("Once such compelling circumstances have been shown, the litigant's privacy interest must be weighed against the constitutional and public interest in open judicial proceedings.").

A. The Involuntary Loss of Privacy Met By Victims of Sexual Assault When They Are Required to Publicly Disclose Their Identities, Deprives Them of Their Constitutional Right to Access Courts

Regardless of this nation's history of open courts, the presumption of openness significantly disadvantages victim plaintiffs who are forced to bear the tremendous burden on their privacy rights. *See Commonwealth ex rel. Platt v. Platt*, 404 A.2d 410, 429 (Pa. Super. Ct. 1979) (internal citation omitted) ("The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others."); *see also, EW v. N.Y. Blood Center*, 213 F.R.D. 108, 113 (E.D.N.Y. 2003) (granting plaintiff's motion to proceed anonymously because the facts of the case provided no basis for "imposing [the] invasion of privacy as the price for litigating a legitimate private complaint").

Victim plaintiffs have a constitutional right to access courts to seek legal redress for the harms they suffered as children at the hands of their perpetrators. *See, e.g., Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) ("Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment."); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (noting access to courts is a fundamental right). That right is significantly diminished if plaintiffs cannot

maintain their privacy by pursuing their claims anonymously or pseudonymously. *See Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588*F, 2002 WL 202464, *6 (Mass. Super. Feb. 4, 2002) (noting “[i]f the identit[ies] of these victims are not protected by the courts, then their access to the courts will be severely diminished, because they will not be able to turn to the courts for relief from or compensation of their emotional injuries without aggravating those same injuries.”). This involuntary loss of privacy amounts to a loss of access to the courts. *See Roe v. Providence Health System-Oregon*, Civil No. 061680-HU, 2007 WL 1876520, *4 (D.Or. June 26, 2007) (noting that the public had an interest in seeing a case decided on the merits, which might be undermined if plaintiffs were mandated to provide their true identity and were thereby deterred from continuing the lawsuit).

B. The Public Interest in Encouraging Victims to Disclose Sexual Abuse is Generally Coupled with a Lack of Public Interest in Knowing the Identity of Specific Victim Plaintiffs

Notwithstanding courts’ recognition of the presumption of openness of court proceedings, “[t]he equation linking the public’s right to attend trials and the public’s right to know the identity of the parties is not perfectly symmetrical.” *Stegall*, 653 F.2d at 185. Courtroom doors will not “close” to the public and reporters may still access and report on hearings, even if the plaintiff’s identity is unknown. *See Doe v. Evans*, 202 F.R.D. 173, 176 (E.D. Pa. 2001) (“[A]lthough the public certainly has an interest in the issues Mary Doe’s complaint raises, protecting her identity will not impede the public’s ability to follow the proceedings.”). In fact, many of the justifications for openness of courts are unimpeded by anonymous or pseudonymous plaintiffs. *See, e.g., Stegall*, 653 F.2d at 185 (explaining the “public right to scrutinize governmental functioning is not so completely impaired by a grant of anonymity to a party as it [would be] by [the] closure of the

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trial itself. Party anonymity does not obstruct the public’s view of the issues joined or the court’s performance in resolving them. The assurance of fairness preserved by public presence at a trial is not lost when one party’s cause is pursued under a fictitious name. These crucial interests served by open trials are not inevitably compromised by allowing a party to proceed anonymously.”).

The public interest in parties’ identities is derived from the public interest in open courts generally. While it is in the interest of the public to know who has been accused in court of child sex abuse for purposes of prevention, the public interest in knowing the name of the victim is considerably less. This is particularly true in the context of civil litigation wherein plaintiffs seek to vindicate private rights. *See, e.g., Doe v. City of New York*, 201 F.R.D. 100, 102 (S.D.N.Y. 2001) (“[P]laintiff is challenging government activity [. . .] indicates that there is a public interest in the facts of the incident at issue as opposed merely to a public interest in knowledge of the manner in which the courts function in resolving disputes.”); *Shakur*, 164 F.R.D. at 361 (noting that governmental bodies do not share the concerns about ‘reputation’ that private individuals have when they are publicly charged with wrongdoing.); *see generally, Doe v. Hartz*, 52 F. Supp. 2d 1027, 1046-47 (N.D. Iowa 1999). In the overwhelming number of civil cases, the public has little legitimate interest in knowing plaintiff’s identity if their identity has little or no bearing on the case.

Underlying the grant of anonymity is a strong public policy rationale that anonymity gives victims an incentive to come forward and vindicate their rights in court; to deny victims of the same, would lead to a “chilling effect” on their willingness to use the courts. *See, e.g., ARK 303 v. Diocese of Brooklyn*, 2020 N.Y. Slip Op. 33330 (N.Y. Sup. Ct. 2020). Accordingly, courts have increasingly resorted to plaintiff anonymity, recognizing the need to encourage plaintiffs to come forward.

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II. THE USE OF PSEUDONYMS SHOULD BE EXPLICITLY RECOGNIZED BY COURTS FOR VICTIMS OF CHILDHOOD SEXUAL ABUSE TO PREVENT RETRAUMATIZATION OF THE VICTIMS

One factor that is ubiquitous among courts considering whether to permit a plaintiff to proceed anonymously on their claims arising from childhood sexual abuse is whether identification of the victim will cause the victim suffer harm. *See, e.g., Frank*, 951 F.2d at 323; *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998); *Shakur*, 164 F.R.D. at 361; *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000); *Doe v. C.A.R.S. Protection Plus, Inc.*, 527 F.3d 358, 371 n. 2 (3d Cir. 2008).

Child sex abuse inflicts trauma that can result in lifelong harm that psychologically disables its victims. *See generally* Bessel Van Der Kolk, *The Body Keeps The Score: Brain Mind And Body In The Healing Of Trauma* (2014). Victims' experience of childhood sexual abuse is often dominated by negative emotions such as shame and embarrassment that ultimately creates a barrier to disclosure. *See* Paine, M. & Hansen, D., *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271, 271-75 (2002) (discussing shame and embarrassment about abuse, making victim feel to blame for abuse); *see also*, Hunter, S., *Disclosure of child sexual abuse as a life-long process: Implications for health professionals*, 32(2) AUSTRALIAN AND NEW ZEALAND JOURNAL OF FAMILY THERAPY 159-172 (2011) (explaining that feelings of fear, shame, and embarrassment decrease child victims desire to disclose abuse). This is true regardless of age. *See e.g., Doe v. Hartford Roman Catholic Diocesan Corp.*, No. CV074026864S, 2007 WL 4213153, *1 (Conn. Super. Ct. Nov. 5, 2007) (holding that fact that the childhood sexual abuse "occurred more than 20 years ago and is only being made the subject of a lawsuit now, does not

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detract materially from the notion that the alleged event was socially stigmatizing and that revealing the plaintiff's true identity now would promote or increase that stigmatization").

The nature of child sex abuse is such that re-victimization and harm is particularly acute, and extends beyond mere embarrassment and humiliation, when victims' identities are revealed when they need to remain private. *See, e.g.,* Kilpatrick, D. & Otto, R., *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 WAYNE L. REV. 7, 25 (1987) (describing secondary victimization by the justice system); *see also, Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588*F, 2002 WL 202464, * 6 (Mass. Super. Feb. 4, 2002) ("[F]or many victims of sexual abuse . . . public revelation of the abuse, if not sought by them, victimizes them yet again.").

The disclosure of the abuse itself can exacerbate existing emotional and psychological problems and seriously curtail survivors' efforts at recovery. *See, e.g., Doe v. Firn*, No. CV065001087S, 2006 WL 2847885, *5 (Conn. Super. Ct. Sept. 22, 2006) (explaining that, "[t]o force the plaintiff to proceed without the protection of the pseudonym Jane Doe could only subject the plaintiff to additional psychological harm and emotional distress."); *Archdiocese of Portland in Or.*, 2008 WL at *4 (explaining that, "[t]he experience of sexual abuse can be deeply psychologically traumatic, and public knowledge of such abuse can trigger new trauma even years after the fact. [Plaintiff] faces a real risk of harm to which he, as a survivor of clergy sexual abuse, is peculiarly vulnerable, and his fears regarding that risk are entirely reasonable."); *see also, Leone S., Protecting Rape Victims' Identities: Balance Between the Right to Privacy and the First Amendment*, 27 NEW ENG. L. REV. 883, 910-11 (1993) ("Each victim has a unique healing process and the public disclosure of her identity could disrupt that process before the victim is ready."). This is particularly true if courts are not supportive of victims claims or sensitive to their needs.

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See O'Leary, P., *The Effect of Severe Child Sexual Abuse and Disclosure on Mental Health during Adulthood*, 19(3) J. OF CHILD SEXUAL ABUSE 275-289, 277 (2010) (“A disclosure that is met with a dismissive, disbelieving, nonsupportive, hostile, or nonprotective response can be traumatic in itself and lead to long-term mental health symptoms.”); see also, Shakespeare-Finch, J. & Dassel T., *Exploring Posttraumatic Outcomes as a Function of Childhood Sexual Abuse*, 18 J. CHILD SEXUAL ABUSE 623, 634 (2009) (discussing a study finding that “lack of support was particularly deleterious to [the victims’] well-being”).

The fact that minor victims are afforded anonymity in civil and criminal proceedings, attests to the fact that child sex abuse can generate long-term psychological and physical illness. See, e.g., *Stegall*, 653 F.2d at 186 (conceding that plaintiff anonymity should be permitted in cases involving “vulnerable parties” and identifying the “safe-guarding the physical and psychological well-being” of children to be a “compelling state interest” such that the child’s age, psychological maturity and understanding as well as the nature of the crime factor into the courts determination about whether to close civil proceedings.); see also, *Stern v. Stern*, 66 N.J. 340, 343 n. 1 (N.J. 1975); Chen, L., et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) MAYO CLIN. PROC. 618, 627 (July 2010) (“[S]exual abuse survivors face a challenging spectrum of physical and mental health concerns, with associated higher health care use and greater medical expenditures. . . [S]exual abuse is associated with multiple psychiatric disorders, including lifetime diagnosis of anxiety disorders, depression, eating disorders, PTSD, sleep disorders, and attempted suicide.”). Adults who experience the insidious psychological effects of childhood sexual abuse are simply a manifestation of this recognition.

The psychological vulnerabilities that justify anonymity for child victims generally persist, and oftentimes intensify, during adulthood. See Hunter, M., *ABUSED BOYS*, 59 (Ballantine Books,

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1991) (“Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.”); Freyd, J., et. al., *The Science of Child Sexual Abuse*, 308 SCIENCE 501 (Apr. 22, 2005) (explaining that childhood sexual abuse is associated with serious mental and physical health problems even late into adulthood, including substance abuse, criminality, posttraumatic stress disorder, depression, and suicide, and interferes with attachment, emotional regulation, and major stress response systems).

The general presumption against pseudonyms for adult survivors does not reflect the experience of the vast majority of victims who typically disclose abuse decades after they turned eighteen and who still need and deserve protection from further psychological injury.⁴ Offering anonymity to those plaintiffs who would suffer psychological harm if their identities were publicly disclosed is an effective way to achieve the strong public interest in providing society-based justice for the victims and shifting the cost of the abuse from the victim to the ones who caused it.

III. THE AVAILABILITY OF PSEUDONYMS FOR ADULT SURVIVORS SEEKING LEGAL REDRESS ADVANCES THE PUBLIC POLICY OF ENCOURAGING DISCLOSURE OF CHILD SEXUAL ABUSE

The public needs to know who the hidden child predators are, and that means there is a compelling interest in not deterring child sex abuse victims from entering the legal system against their perpetrators. Permitting plaintiffs to proceed anonymously or pseudonymously promotes the

⁴ See generally, 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-DisclosureFactsheet-2020.pdf>.

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legislative intent embodied by the amendments to N.J. Stat. Ann. §§ 2A:14-2a and 2b which is to provide victims access to justice and discover hidden child predators in New Jersey to keep children safe from future abuse. These interests are further implicated by the prevalence of child sexual abuse and the social costs entailed in treating victims for the same.⁵ See, e.g., McGregor, K., et al., *Health Professionals' Responses to Disclosure of Child Sexual Abuse History: Female Child Sexual Abuse Survivors' Experiences*, 19(3) J. CHILD SEXUAL ABUSE 239, 240 (2010) (“Adult survivors of child sexual abuse are high users of health and mental health services and make up a significant proportion of many clinical health population groups.”); see also, Wurtele, S., *Preventing Sexual Abuse of Children in the Twenty-First Century: Preparing for Challenges and Opportunities*, 18(1) J. CHILD SEX ABUSE 1, 3 (2009) (citing a 1996 report from the Justice Department estimating medical costs stemming from childhood sexual abuse at around \$1.5 billion, and medical expenses by United States victims at around \$23 billion).

Despite the epidemic of child sex abuse that has ravaged youth-facing institutions and families, incidents of child sex abuse have been, and continue to be, significantly underreported.⁶ As child sex abuse remains hidden from public view for decades until disclosure, thereby enabling predators to victimize in perpetuity. See Frawley-O'Dea, M.G., *Perversion of Power: Sexual Abuse in the Catholic Church* 21 (Vanderbilt Univ. Press 2007) (“Secrecy...is the acknowledged cornerstone of sexual abuse.”); see also, Lanning, K., *Child Molesters: A Behavioral Analysis*, 37 (4th ed. 2001) available at http://www.cybertipline.com/en_US/publications/NC70.pdf (“A [. . .] child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime,

⁵ See generally, CHILD USA, *What's the cost of child sex abuse?*, CHILDUSA.ORG (last visited March 3, 2021), available at https://childusa.org/wp-content/uploads/2020/05/Copy-of-Whats-the-cost-of-child-sex-abuse_-2-2-pdf.jpg

⁶ *Supra* n.4. Do not use without permission of CHILD USA.

depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Barriers to public identification of perpetrators, such as plaintiff’s inability to proceed in civil claims under pseudonym, must be removed in order to protect children. Courts that do not permit plaintiffs to maintain anonymity create a chilling effect on victims’ willingness to identify and bring claims against their abusers. See *Doe v. Evans*, 202 F.R.D. 173, 176 (E.D. Pa. 2001) (permitting anonymity partly because “the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights”); *Shakur*, 164 F.R.D at 362 (acknowledging the “unfortunate result” that “victims of sexual assault will be deterred from seeking relief through civil suits if they are not permitted to proceed under a pseudonym”); see also, *MacFarland*, 66 Misc.3d at 608-09 (stating that, “plaintiff faces a Hobson’s choice if the Court denies her application [to proceed under pseudonym] — reveal herself and risk harm to herself and her children or discontinue the action and allow what *might* otherwise be a meritorious claim to go undetected.”). This chilling effect is exacerbated by the nearly instant and widespread dissemination of harmful, largely permanent, information on the internet and over social media. See, e.g., *Plaintiff B v. Francis*, 631 F.3d 1310, 1320 (11th Cir. 2011) (holding district court erred in ignoring the fact that minors filmed engaging in sexually explicit acts “had put on a convincing case that, by being identified, they will permanently be linked with the videos containing the footage of them.”); see also, *Kolko*, 242 F.R.D. at 197 (“[A]s courts in this Circuit have recognized, it is now possible to determine whether a given individual is a party to a lawsuit in federal court anywhere in the country by the simplest of computer searches, to access the docket sheet of any such case electronically, and . . . that entire case files will be accessible over the Internet. Given the ease with which the public could access court files

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in this case, it is reasonable that plaintiff's fears extend beyond ostracism in the Brooklyn community.”).

For the sake of the public interest, courts need to consider whether the denial of an application to proceed anonymously or under a pseudonym will affect the willingness of a party to proceed. *L.H. A.Z., K.K, & D.R. v. Schwarzenegger*, No. CIV. S-06-2042 LKK/ GGH, 2007 WL 662463, at 18 (E.D. Cal. Feb. 28, 2007) (noting that “[w]hen the willingness to file suit is chilled by fear of retaliatory action, the public interest in seeing the suit move forward on its merits outweighs the public interest in knowing the plaintiffs’ names”). If the opportunity to seek relief under New Jersey’s revival window is conditioned on plaintiffs’ involuntary disclosure of their identifying information, too many victims will simply forgo their action. *See N.Y. Blood Center*, 213 F.R.D. at 113 (granting plaintiff’s motion to proceed anonymously because the facts of the case provided no basis for “imposing [the] invasion of privacy as the price for litigating a legitimate private complaint”).

Granting anonymity to plaintiffs gives victims an incentive to come forward and to bring societies hidden perpetrators to light. This will increase public awareness regarding the prevalence of child abuse and may prevent harm to future victims.

IV. PERMITTING DEFENDENTS TO SHIELD THEMSELVES FROM PUBLIC SCRUTINY UNDER A PROTECTIVE ORDER WOULD THWART THE PUBLIC POLICIES UNDERLYING SOL REFORM

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short statutes of limitation (SOLs) that kept victims from obtaining justice and naming their perpetrators publicly. That is a major reason why the public knew so little about the epidemic of child sex abuse. By extending or eliminating SOLs, sexual abuse survivors

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will finally be able access justice for the harms inflicted upon them in decades ago. Yet, SOL reform laws such as N.J. Stat. Ann. §§ 2A:14-2a and 2b 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 the identification of hidden child predators and the institutions that enabled them, the cost of abuse is shifted from victims and society to those who created it, and the public is educated about the prevalence and harm from child sex abuse and learns how to prevent it in the future.⁷ Protective orders that permit defendants to shield their identities from public disclosure and avoid the public scrutiny attendant to civil liability thwart the these underlying public policies served by SOL reform.

A. Institutional Accountability Discourages Future Bad Acts and Fosters Prevention

Since the release of the Boston Globe's *Spotlight* investigative report in 2002 that uncovered rampant abuse in the Catholic Church, an alarming number of institutional scandals have emerged, with more institutions and perpetrators revealed to the public each succeeding year. Marci A. Hamilton, *We Failed Our Children for Too Long: The Case for SOL Reform*, THE ADVOCATE, J. OF THE OKLAHOMA ASS'N FOR JUST., 23 (Nov. 4, 2016). Appropriately, institutional responsibility for sexual abuse has since been at forefront of child sexual abuse reform. *Id.*, at 23-24. Widespread sexual misconduct like that in the catholic church does not, and did not, occur without the facilitation of others, emboldening and subsequently concealing the predatory behaviors of those over whom they have control. While an individual perpetrator's bad acts should be condemned, courts have historically limited fault to the perpetrator while underplaying the contribution of

⁷ See generally, CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited May 10, 2021), available at www.childusa.org/sol-report-2020.

institutions' actions (or omissions) that facilitated the abuse. See Chamallas, M., *Vicarious Liability In Torts: The Sex Exception*, 48 VALPARAISO UNIV. L. REV. 133, 168 (2013). As a result, institutions and organizations have been able to perpetuate their false narratives of powerlessness over individual perpetrators to avoid civil liability. Not only does this strategic denial result in failures to intervene to stop known abuse, it also affirmatively creates conditions that tend to embolden predatory individuals. O'Leary, P., et al., *Grooming and child sexual abuse in institutional contexts*, ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE, Sydney 16-18 (2017), available at <https://www.icmec.org/wp-content/uploads/2018/04/Research-Report-Grooming-and-childsexual-abuse-in-institutional-contexts-Prevention.pdf>.

Civil lawsuits provide an important avenue for transparency regarding the nature and scope of the abuse occurring within organizations, as well as the organizational responses to known abuse and the risks of abuse. The public scrutiny and criticism attendant to such civil cases forces institutions to answer for their conduct and often creates the pressure needed to reshape organizational culture and bring about important legislative reforms that increase the safety of children. Kropp, S., *Solving the Penn State Problem: Holding the Institution Accountable for its Conspiracy of Silence*, 42 CAP. U. L. REV. 167, 199-200 (2014) (hereinafter "Kropp").

Courts that permit institutional defendants to evade public scrutiny under a protective order, do so at the risk of public safety. History shows institutions must be coerced to protect the interests of children and other vulnerable persons. Kropp, at 200. Without civil liability and resultant public pressure, institutions have considered enacting protective policies costly, where there is little to no cost felt by institutions when a child is victimized by their employee. *Id.* Accountability changes the cost-benefit analysis for the benefit of victims by making institutional indifference

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economically burdensome. Cultures of secrecy shield organizations from public scrutiny and discourage victims from bringing abuse to light; protective orders that permit institutions to evade examination only serve to perpetuate such a culture.

B. The Public's Interest in Identifying Predators and Their Enablers is Reflected in Case Law Involving Claims of Sexual Abuse

State courts have utilized a balancing test to address the appropriateness of granting defendants anonymity, a number of them in the context of childhood sexual abuse. In *Doe v. Diocese Corp.*, 647 A.2d at 1072, a Connecticut state court considered requests for anonymity from both the plaintiff, a victim of sexual abuse by the clergyman defendant, and the perpetrator-defendant himself. The victim-plaintiff requested anonymity, fearing shame and humiliation from public disclosure of his abuse. *Id* at 164-65. The perpetrator-defendant sought anonymity under a protective order, arguing that the unproven and serious allegations of abuse would undermine the public trust necessary for the proper operation of their schools, social service programs, and fundraising activities. *Id*. Although the court granted the plaintiff's request for anonymity, the court denied the defendants' request, stressing the public's overriding interest in transparency regarding operation of a large religious organization. *Id* at 166-67. Similarly, this court in *T.S.R. v. J.C.*, 288 N.J.Super. 48 (N.J. Super. Ct. Feb. 29, 1996), also refused to allow a defendant minister to proceed anonymously in a case involving allegations of sexual abuse, despite his arguing that the case would release to the public meritless and baseless allegations that might damage his life, reputation, and family. 288 N.J.Super. at 58. In denying defendants request for anonymity, this Court emphasized that defendant was a minister with a sense of responsibility to the public who had been accused of criminal activity, and that the public had a substantial interest in knowing his identity. *Id* at 59.

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An Illinois court, relying on the cases, similarly denied a defendant's request to remain anonymous. *Doe v. Northwestern Memorial Hosp.*, 19 N.E.3d 178 (Ill. App. Ct. Sept. 19, 2014). In so doing, the court explained that defendants should not be permitted anonymity because, defendants do not face the same concerns as plaintiffs who wish to remain anonymous. *Id.* Anonymous litigation encourages litigants, who might otherwise be deterred from vindicating their rights for fear that they might be stigmatized or humiliated, to bring their cases to court; defendants may not be afforded anonymity because they are not exercising their right to sue but are being sued. *Id.*

CONCLUSION

For the foregoing reasons, *Amicus Curiae* asks this Court to grant Plaintiff's request to pursue her claims under pseudonym without adopting Defendants proposed protective order.

Respectfully submitted,

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