



TO: Mr. Jerrold Nadler, Chair, Ms. Madeleine Dean, Vice Chair, and Honorable Members of the Committee on the Judiciary

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania, and Kathryn Robb, Executive Director, CHILD USAAdvocacy

RE: The Nondebtor Release Prohibition Act

DATE: October 27, 2021

Thank you for allowing me, Professor Marci Hamilton of CHILD USA, to offer our support of the Nondebtor Release Prohibition Act (NRPA) for the purpose of ensuring that survivors of sexual violence have fair access to justice.

By way of introduction, my name is Marci Hamilton, and I am the Founder & CEO of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am a Professor in the Fels Institute of Government and a Senior Resident Fellow in the Program for Research on Religion. I am also the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and am the leading expert on the history and constitutionality of SOL reform. CHILD USA is the leading national nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations reform, as well as other cutting-edge issues related to child protection.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically at its sister organization, CHILD USA, to advocate for more protective laws and policies in the States and at the federal level. Kathryn is also a survivor of child sex abuse.

The Nondebtor Release Prohibition Act would create a more trauma-informed federal bankruptcy law and serve the public's interest by prohibiting the release of nondebtors from liability in child sex abuse cases. In doing so, it would increase accountability in bankruptcy proceedings for nondebtor institutions that endanger children.



I. Under the Current Law, Child Sex Abuse Victims Suffer When Large Organizations File for Chapter 11 Bankruptcy

Child sex abuse is a widespread public policy crisis. Roughly 1 in 5 girls and 1 in 13 boys are sexually abused before the age of 18.ⁱ The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes.ⁱⁱ Victims come forward, on average, at age 52 and one-third never do.ⁱⁱⁱ

Currently, Chapter 11 results in injustice to victims of child sexual abuse with institutional claims. This is because victims of child sex abuse are brought into the Chapter 11 process with different needs, goals, and expectations than those of an average creditor. According to the CDC, there is a strong correlation between childhood abuse and negative consequences across the lifespan, including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability.^{iv} These adverse effects generate significant costs for victims over the course of their lifetimes.^v As a result, financial recovery can be instrumental to cover expenses associated with their healthcare, healing, and struggles arising out of PTSD and other ailments. For many, however, financial compensation is not the only reason to file a claim.

There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.^{vi} It is settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.^{vii} Consequently, trauma can have devastating impacts on the young adult brain in ways that lead to delayed disclosure of abuse.^{viii} It is a medical fact that victims of child sex abuse often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse.

As a result, when victims of child sexual abuse and sexual assault do come forward, they often find healing and empowerment in knowing they are safe and knowing they are heard, and are motivated by a burning conviction that no child ever again be harmed by the institution that hurt them. Those victims “seek to investigate [a debtor institution because] . . . exposing the organization’s negligence could reveal other potential defendants” and prevent future abuse.^{ix} Chapter 11’s release of organizations from sex abuse liability simply because they are nondebtors in bankruptcy court deprives victims of achieving these goals and may actually retraumatize them.^x

In part, because of its release of nondebtors from liability, Chapter 11 currently creates an incentive for organizations to file for bankruptcy when they are inundated with child sexual abuse claims. As the Second Circuit Court of Appeals explained,

“[A] nondebtor release is a device that lends itself to abuse. By it, a nondebtor can shield itself from liability to third parties. In form, it is a release; in effect, it may operate as a bankruptcy discharge arranged without a filing and without the safeguards of the Code. The potential for abuse is heightened when releases afford blanket immunity.”^{xi}

The “blanket immunity” Chapter 11 provides to nondebtor organizations through child sexual abuse bankruptcies fails to result in any actual accountability or motivation for third parties to

prevent future abuse. It also does not incentivize better child protection programs. The victims and the public lose; the immunized institutions bask in the ongoing secrecy.

Replacing “blanket immunity” with increased public disclosure of *all* the institutions implicated in the sex abuse, the number of claims made against them, and the proposed plan for reorganization serves the public policy of educating the public about the prevalence of child sex abuse, as well as empowering the public to understand the Chapter 11 process. Also, the costs of sex abuse are staggering. Child sex abuse generates many costs that impact the nation’s health care, education, criminal justice, and welfare systems, costing nearly \$2 trillion annually. Numerous, scholarly studies have concluded that the average cost of child maltreatment is approximately \$830,928 per victim.^{xii} It is unfair for the victims, their families, and taxpayers to bear this burden while institutions causing the harm are released from liability.

With institutions like the Catholic Church, USA Gymnastics, and the Boy Scouts of America filing for bankruptcy when faced with mass tort claims from victims of child sex abuse, reforms are desperately needed within the Bankruptcy Code to hold organizations accountable, provide the victims with a fair outcome, and prevent future abuse from happening within these youth-serving institutions. The NRPA is a step in this direction.

II. The Nondebtor Release Prohibition Act is Necessary to Prevent Nondebtor Organizations from Escaping Liability for their Role in Allowing Child Sex Abuse

As it currently stands, Chapter 11 allows nondebtors to be released from liability even if they were significantly involved in perpetrating child sexual abuse. When these nondebtors are released, victims of child sex abuse are robbed of the opportunity to hold *all* of the perpetrators and enabling institutions accountable. These releases also diminish the amount of recovery victims should equitably receive and prevent the public from understanding the full scope of an institution’s role in harboring child sex abuse.

a. The Archdiocese of Portland

For example, in July 2004, the Archdiocese of Portland, Oregon became the first Roman Catholic diocese in the United States to file for bankruptcy amidst pending lawsuits of victims alleging sexual abuse by members of the clergy.^{xiii} It announced its intention to file just as two civil trials were scheduled to begin related to allegations that it failed to remove a priest accused of abusing over 50 boys between the 1950s and the 1980s.^{xiv} The plaintiff in one case, James Devereaux, was seeking \$130 million in damages and said he was “determined to have a public hearing of his case against the church.”^{xv} Devereaux was an altar boy for Reverend Maurice Grammond, who was accused of molesting dozens of boys in the rectory, in his car, and on camping trips.^{xvi}

According to the Archdiocese, there were more than 60 additional claims pending at the time it filed for bankruptcy, and the diocese and its insurers had already paid more than \$21 million in settlements the previous year.^{xvii} Despite an estimated half-billion dollars in assets, Archbishop John G. Vlazny indicated that the estimate included parishes, schools, charities, and trusts which the diocese had no authority over “under canon law.”^{xviii} He insisted that filing for bankruptcy was

“not an effort to avoid responsibility;” nevertheless, the Archdiocese’s reorganization plan proposed releases for nondebtor parishes and other entities. After two and a half years pending in bankruptcy court, the case ended with the court approving a settlement plan that confirmed the nondebtor releases and distributed just \$75 million amongst all victim claimants.^{xxix} Thus, the Archdiocese’s parishes, where much of the abuse took place, escaped accountability. In the wake of this result, the Dioceses of Tucson, Arizona, and Spokane, Washington followed Portland in filing for bankruptcy under Chapter 11,^{xxx} alongside approximately 29 other Catholic dioceses and religious orders in the United States that have filed for bankruptcy since 2004.^{xxxi}

High-profile bankruptcy cases, including those of USAG and BSA, have catapulted the issues surrounding nondebtor releases into the public square. Proposed reorganization plans from both institutions seek to release numerous nondebtor parties from any liability.

b. USA Gymnastics

USA Gymnastics filed for bankruptcy in the U.S. District Court for the Southern District of Indiana in December 2018 following a wave of lawsuits filed by gymnasts who claimed that the organization failed to adequately protect them from sexual abuse by Dr. Larry Nassar.^{xxii} Over the course of three decades, Nassar sexually assaulted hundreds of gymnasts in his capacity as a team physician.^{xxiii} The bankruptcy court will oversee USAG’s reorganization plan, including the approval of its settlement agreement with the victims of Nassar’s prolific sexual abuse.^{xxiv}

USA Gymnastics initially proposed a \$215 million settlement plan in January 2020 that would have released the U.S. Olympic & Paralympic Committee (USOPC); USAG chief executive, Steve Penny; the former national team directors, Bela and Martha Karolyi; the former U.S. Olympic team coach, Don Peters; and others from all claims.^{xxv} John Manly, an attorney representing hundreds of victims, commented on the releases, stating, “Most disturbingly, this proposed plan attempts to absolve USOPC of any responsibility for these crimes which were committed under its watch. This plan from USAG is not just unworkable, it is unconscionable.”^{xxvi} USAG’S reorganization plan was soundly rejected by the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors’ Committee”).^{xxvii}

In August 2021, USAG and the Survivors’ Committee jointly proposed a reorganization plan of \$425 million—nearly double USAG’s initial proposal—to the bankruptcy court.^{xxviii} Under the new plan, USOPC would significantly contribute to the victims’ settlement fund.^{xxix} In exchange, the victims would release their claims against USAG, USOPC, and certain individuals within those organizations.^{xxx} The plan does not require the organizations and individuals to admit liability; indeed, USOPC and many individuals tied to USOPC and USAG continue to avoid taking any responsibility for Nassar’s sexual abuse. If the proposed reorganization plan is approved, they may never have to.

c. The Boy Scouts of America

Similarly, the Boy Scouts of America filed for reorganization under Chapter 11 on February 18, 2020, after more than 88,000 claimants filed lawsuits containing thousands of allegations of child sexual abuse perpetrated by scoutmasters.^{xxxi} The bankruptcy case is currently pending, as two tort claimants’ committees struggle to agree on a reorganization plan.^{xxxii}

In its reorganization plan, BSA included provisions that released nondebtor sponsors of local troops—such as churches, civic groups, and others—from liability in exchange for assigning their insurance rights and making a substantial contribution to the settlement fund.^{xxxiii} The Official Committee of Tort Claimants called the proposal a “get out of jail free card” for these organizations.^{xxxiv} If BSA’s plan is approved by the bankruptcy court, its sponsors will be absolved of wrongdoing and never face the public scrutiny warranted by perpetrators of child sex abuse.

These cases evidence the way reorganization plans that release nondebtors from liability adversely impact tort claimants who are victims of sexual abuse. The system has indeed become a cruel pathway for traumatized victims to find justice. Thus, legislation like the NRPA, which would prohibit such releases, is critical to both protecting victims and exposing the predators within these institutions who are responsible for the abuse.

III. Conclusion

Chapter 11 currently shelters institutions and affiliated nondebtors from being held accountable for pervasive child sexual abuse while ensuring the institution emerges intact. Moreover, the process subordinates the victim’s need to heal under the financial needs of a debtor institution, while retraumatizing the courageous victims who come forward with their abuse. Federal Bankruptcy law was never intended to be the clearinghouse for the coverup of child sex abuse. This playing field needs to be leveled for the sake of the victims, their families, and the public. Congress should enact the NRPA to ensure that survivors of sexual violence get the support, healing, and access to justice that they need and deserve.

Please do not hesitate to contact me if you have questions or if I can be of assistance in any other way.

Sincerely,



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ⁱ G. 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).

ⁱⁱ See *infra* notes iii-v and accompanying text.

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

^{iv} See, e.g., Felitti, at 245-58; R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARACH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders”); See Merricka; see also Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain- Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (explaining that adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV., 27 (2002) (finding that adult survivors of child sexual abuse are nearly three times as likely to report substance abuse problems than their non-survivor peers).

^v Fang, et al., *The Economic Burden of Child Maltreatment in the United States & Implications for Prevention*, 36 CHILD ABUSE & NEGLECT 156 (2012) (explaining that the estimated average lifetime cost per victim of nonfatal child sexual abuse includes, in part: \$32,648 in childhood health care costs, \$10,530 in adult medical costs, \$144,360 in productivity losses, \$7,728 in child welfare costs, \$6,747 in criminal justice costs, \$7,999 in special education costs; the estimated average lifetime cost per death includes: \$14,100 in medical costs, and \$1,258,800 in productivity losses).

^{vi} van der Kolk, B. *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*. Harvard Review of Psychiatry (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, Scientific Amer. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, Justice Canada 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter “Hoskell”).

^{vii} Jacobs-Kayam.A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, Frontiers in Psychol. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

^{viii} 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-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

^{ix} Juan Martinez, *Sexual Abuse & Bankruptcy: How Organizations Abuse Chapter 11 to Avoid Victims' Demands for Answers*, 37:1 EMORY BANK. DEV'TS. J. 214, 220-21 (2020).

^x *Id.* at 27.

^{xi} *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005).

^{xii} M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

^{xiii} *In re Roman Catholic Archbishop of Portland In OR*, U.S. Bankruptcy Court, D. Oregon (June 24, 2009).

- ^{xiv} Goodstein, L., *Oregon Archdiocese Files for Bankruptcy Protection*, THE NEW YORK TIMES (July 7, 2004) <https://www.nytimes.com/2004/07/07/us/oregon-archdiocese-files-for-bankruptcy-protection.html> (hereinafter “*Oregon Archdiocese*”).
- ^{xv} *Id.*
- ^{xvi} *Id.*
- ^{xvii} Press Release, Archdiocese of Portland in Oregon (July 6, 2004) (on file with author), available at <http://www.bishop-accountability.org/bankrupt/2004-07-06-Vlazny-Letter.htm>
- ^{xviii} Reilly, Marie T., *Bankruptcy in Catholic Dioceses*, 49 Seton Hall L. Rev. 871 (2019) (citing 1983 CODE C.11, 96-144). “The 1983 Code of Canon Law (‘canon law’) governs the conduct of all Catholics. It establishes the internal organizational structure and procedures of the Catholic Church and the property rights and agency relationships of entities within the Church.”
- ^{xix} *In re Roman Catholic Archbishop of Portland In OR*, U.S. Bankruptcy Court, D. Oregon (June 24, 2009).
- ^{xx} *In re The Roman Catholic Church of Diocese of Tucson*, Case No. 4-04-BK-4721-JMM (Bankr. D. Ariz. Feb. 21, 2008); *In re The Catholic Bishop of Spokane*, Case No. 04-08822-FPC11 (Bankr. E. D. Wash. Dec. 6, 2004).
- ^{xxi} *Bankruptcy Protection in the Abuse Crisis*, BISHOPACCOUNTABILITY.ORG, <https://www.bishop-accountability.org/bankruptcy.htm>.
- ^{xxii} *In re USA Gymnastics*, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. Dec. 5, 2018).
- ^{xxiii} *Id.*
- ^{xxiv} *In re USA Gymnastics*, Notice of Hearing To Approve Disclosure Statement and Plan Confirmation Procedures, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. Aug. 31, 2021).
- ^{xxv} *Id.*
- ^{xxvi} *Id.*
- ^{xxvii} *In re USA Gymnastics*, Chapter 11 Plan Of Reorganization Proposed By Usa Gymnastics, Case No. 18-09108-RLM-11 (Bankr. S.D. Ind. Jan. 30, 2021).
- ^{xxviii} *In re USA Gymnastics*, Joint Chapter 11 Plan Of Reorganization Proposed By Usa Gymnastics And The Additional Tort Claimants Committee Of Sexual Abuse Survivors, Case No. 18-09108-RLM-11 (Bankr. S.D. Ind. Aug. 31, 2021).
- ^{xxix} *Id.*
- ^{xxx} *Id.*
- ^{xxxi} *In re Boy Scouts of America and Delaware BSA, LLC*, Voluntary Petition, Case No. 20-10343 (Bankr. D. Del. Feb. 18, 2020).
- ^{xxxii} *In re Boy Scouts of America and Delaware BSA, LLC*, Order (I) Approving The Disclosure Statement And The Form And Manner Of Notice, (Ii) Approving Plan Solicitation And Voting Procedures, (Iii) Approving Forms Of Ballots, (Iv) Approving Form, Manner, And Scope Of Confirmation Notices, (V) Establishing Certain Deadlines In Connection With Approval Of The Disclosure Statement And Confirmation Of The Plan, And (Vi) Granting Related Relief, Case No. 20-10343 (Bankr. D. Del. Sept 30, 2021); *see also* Chutchian, M., *Boy Scouts OK ‘d to poll sex abuse survivors on bankruptcy plan*, REUTERS (Sept. 30, 2021) <https://www.reuters.com/legal/transactional/boy-scouts-okd-poll-sex-abuse-survivors-bankruptcy-plan-2021-09-30/>.
- ^{xxxiii} *In re Boy Scouts of America and Delaware BSA, LLC*, Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC, Case No. 20-110343 (Bankr. D. Del. Sept. 15, 2021)
- ^{xxxiv} *In re Boy Scouts of America and Delaware BSA, LLC*, Motion Of Official Committee Of Tort Claimants For Entry Of An Order Terminating The Debtors’ Exclusive Periods To File A Plan And Solicit Acceptances Thereof Pursuant To Section 1121 Of The Bankruptcy Code, Case No. 20-110343 (Bankr. D. Del. Sept. 15, 2021); *see also* Chase, R., *Committee Wants to File Own Plan in Boy Scouts Bankruptcy*, ASSOCIATED PRESS (Sept. 15, 2021) <https://www.usnews.com/news/us/articles/2021-09-15/committee-wants-to-file-own-plan-in-boy-scouts-bankruptcy>.