

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JW DOE, : NO. 20-cv-1321
 :
 Plaintiff, : JUDGE MILAZZO
 :
 v. :
 : MAG JUDGE: DOUGLAS
 ARCHDIOCESE OF NEW ORLEANS :
 INDEMNITY, INC., et al ,
 :
 Defendants.

**MOTION FOR LEAVE OF CHILD USA, CHILD USADVOCACY, AND
THE NATIONAL CENTER ON SEXUAL EXPLOITATION TO FILE A
BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF’S SECOND
MOTION TO UNSEAL THE DEPOSITION OF LAWRENCE
HECKER AND REFER TO LAW ENFORCEMENT**

NOW INTO COURT, comes CHILD USA, CHILD USAdvocacy, and The National Center on Sexual Exploitation (“NCOSE”), through undersigned counsel, moves this court for leave to file an Amicus Curiae brief pursuant to F.R.A.P. 29(a)(4) in the above-captioned matter for the limited purpose of the upcoming ruling on Plaintiff’s Motion to Unseal the Deposition of Lawrence Hecker and Refer to Law Enforcement. The proposed brief is annexed hereto as **Exhibit A**. It is hereby stated as follows:

- 1) Plaintiff’s Counsel have consented to the filing of this brief. As of the time of filing, Counsel for Defendants have not responded to Amici’s request to obtain their position.

Do not use without permission of CHILD USA.

- 2) CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good.
- 3) CHILD USA Advocacy is a 501(c)(4) advocacy organization dedicated to ending child abuse and neglect by advocating for better laws for child protection. Drawing on the combined expertise of the nation's leading child advocates, specifically our sister organization and national think tank, CHILD USA, CHILD USA Advocacy is committed to protecting children's civil liberties and keeping children safe from abuse and neglect.
- 4) The National Center on Sexual Exploitation ("NCOSE") is a nonprofit organization, founded in 1962, that combats sexual exploitation and abuse by advocating in state and federal courts for survivors, engaging in corporate advocacy to encourage companies to adopt responsible and safe practices, and advocating for legislative change that protects survivors and promotes human dignity.

Do not use without permission of CHILD USA.

- 5) Amici are organizations dedicated to combating sexual abuse and exploitation and eliminating barriers to justice for victims. Amici have a significant interest in the outcome of this case which will impact victims' ability to access justice and hold institutions accountable for the abuses that they made possible.
- 6) Amici are uniquely positioned to provide this Court with current research and analysis regarding the traumatic impact of sexual abuse and the important public policy purposes served by enabling public access to court documents that contain facts of crimes against children and potential institutional coverups.
- 7) No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

WHEREFORE, we respectfully request that this Court grant the requested leave to file an Amicus Curiae brief in support of Plaintiff's Second Motion to Unseal the Deposition of Lawrence Hecker and Refer to Law Enforcement.

Respectfully Submitted,

/s/ D. Alex Onstott, Esq.
D. Alex Onstott, Esq.
CIOLINO ONSTOTT, LLC
400 Poydras Street, Suite 2145
New Orleans, LA 70130
Tel: 504-524-0120
alex@colaw.llc

Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by operation of the Court's electronic filing system on this 7th day of June 2023.

/s/ D. Alex Onstott, Esq.
D. Alex Onstott, Esq.

Do not use without permission of CHILD USA.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JW DOE, : NO. 20-cv-1321
 :
 Plaintiff, : JUDGE MILAZZO
 :
 v. :
 : MAG JUDGE: DOUGLAS
 ARCHDIOCESE OF NEW ORLEANS :
 INDEMNITY, INC., et al , :
 :
 Defendants.

ORDER

CONSIDERING THE FOREGOING MOTION for leave to file an Amicus Curiae brief, it is hereby GRANTED, and it ORDERED that the Amicus Curiae brief be submitted into and made part of the record in this matter.

Hon. Jane Triche Milazzo
United States District Court Judge
Eastern District Louisiana

NEW ORLEANS, LOUISIANA,
this, the ____ day of _____ 2023

Do not use without permission of CHILD USA.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JW DOE, : NO. 20-cv-1321
 :
 Plaintiff, :
 : JUDGE MILAZZO
 v. :
 :
 ARCHDIOCESE OF NEW ORLEANS : MAG JUDGE: DOUGLAS
 INDEMNITY, INC., et al ,
 :
 Defendants.

**BRIEF OF AMICUS CURIAE CHILD USA, CHILD USADVOCACY, AND
THE NATIONAL CENTER ON SEXUAL EXPLOITATION IN SUPPORT
OF PLAINTIFF'S SECOND MOTION TO UNSEAL THE DEPOSITION OF
LAWRENCE HECKER AND REFER TO LAW ENFORCEMENT**

D. Alex Onstott, Esq.
CIOLINO ONSTOTT, LLC
400 Poydras Street, Suite 2145
New Orleans, LA 70130
Tel: 504-524-0120
alex@colaw.llc
Counsel for Amici

On the brief:

Prof. Marci A. Hamilton, Esq.
Founder & CEO, CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
Tel: (215) 539-1906
marcih@sas.upenn.edu

Do not use without per

Kathryn Robb, Esq.
Executive Director, CHILD USAAdvocacy
3508 Market Street, Suite 201
Philadelphia, PA 19104
Tel: (781) 856-7207
krobb@childusadvocacy.org

Jessica Schidlow, Esq.
Legal Director, CHILD USA
jschidlow@childusa.org

Peter Gentala
Senior Legal Counsel
National Center on Sexual Exploitation
1201 F St. NW, Suite 200
Washington, DC 20004
Tel: (202) 393-7245
pgentala@ncoselaw.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST & IDENTITY OF *AMICI*..... 1

ARGUMENT..... 3

I. FULL TRANSPARENCY SERVES THE IMPORTANT PUBLIC INTEREST IN CHILD PROTECTION.....5

II. MAKING THE DEPOSITION ACCESSIBLE TO THE PUBLIC IS CONSISTENT WITH THE NATIONAL TREND IN UNCOVERING SYSTEMIC ABUSE AND ENSURING ACCOUNTABILITY9

III. YOUTH-SERVING ORGANIZATIONS SHOULD NOT BE PERMITTED TO USE THE BANKRUPTCY SYSTEM TO SUPPRESS THE TRUTH OF THEIR OWN WRONGDOING11

CONCLUSION..... 16

CERTIFICATE OF COMPLIANCE WITH RULE 32(a) 18

Do not use without permission of CHILD USA.

TABLE OF AUTHORITIES

Cases

<u>Farley v. Engelken</u> , 740 P.2d 1058, 1067 (Kan. 1987)	13
<u>Ferdon ex. Rel. Petrucelli v. Wisconsin Patients Compensation Fund</u> , 701 N.W.2d 440, 464 (2005).....	13
<u>In re Boy Scouts of America and Delaware BSA, LLC</u> , Voluntary Petition, Case No. 20-10343 (Bankr. D. Del. Feb. 18, 2020).....	19
<u>In re Gymnastics</u> , Motion to Allow Late Filed Claim to be Treated as Timely Filed, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. July 30, 2020)	20
<u>In re Roman Catholic Archbishop of Portland In OR</u> , U.S. Bankruptcy Court, D. Oregon (June 24, 2009)	17
<u>In re Roman Catholic Diocese of Harrisburg</u> , Case No. 20-599, (Bankr. M.D. Penn. Feb. 19, 2020)	18
<u>In re Roman Catholic Diocese of Syracuse, New York</u> , 628 B.R. 571, 575 (Bankr. N.D.N.Y. 2021).....	20
<u>In re The Roman Catholic Bishop of San Diego</u> , Bankruptcy Petition #: 07-00939-LA11, Case No. 3:07-bk-00939 (Bankr. S.D. San Diego, Feb. 27, 2007).....	17
<u>In re USA Gymnastics</u> , Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. Dec. 5, 2018)	19
<u>In re USA Gymnastics</u> , Notice of Hearing To Approve Disclosure Statement and Plan Confirmation Procedures, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. Aug. 31, 2021)	20

Statutes

11 U.S.C. § 362(a)(1).....	16
----------------------------	----

Other Authorities

Do not use without permission of CHILD USA.

Archibald, R.C., San Diego Diocese Settles Lawsuit for \$200 Million, THE NEW YORK TIMES (Sept. 8, 2007), <https://www.nytimes.com/2007/09/08/us/08church.html>17

Bankruptcy Protection in the Abuse Crisis, BISHOPACCOUNTABILITY.ORG, <https://www.bishop-accountability.org/bankruptcy.htm>.16

CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3 (June 21, 2022), <https://childusa.org/6-17-2022-2021-sol-report-final/>..... 8, 14, 15

Clark, L. USA Gymnastics offers \$215 million settlement to Larry Nassar victims, THE WASHINGTON POST (Jan. 30, 2020) <https://www.washingtonpost.com/sports/2020/01/30/usa-gymnastics-offers-215-million-settlement-larry-nassar-victims/>.....19

Comment, Relief from Tort Liability Through Reorganization, 131 U. PA. L. REV. 1227, 1233 (1983).....16

D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat’l Survey of Children’s Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015)7

Fang, et al., The Economic Burden of Child Maltreatment in the United States & Implications for Prevention, 36 CHILD ABUSE & NEGLECT 156 (2012).....11

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)7

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>16

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.pdf8

Do not use without permission of CHILD USA.

Hunter, S., Disclosure of child sexual abuse as a life-long process: Implications for health professionals, 32(2) AUSTRALIAN & NEW ZEALAND J. OF FAM. THERAPY 159, 164 (2011).....8

In re Fortieth Statewide Investigating Grand Jury, Nos. 75, 77-82, 84, 86-89, 106WM 2018, 2018 WL 3650493 (July 27, 2018).14

Jennifer Arlen, Tort Damages, 2 ENCYC. OF L. & ECON. 682, 702 (B. Bouckaert, ed., 2000)12

Juan Martinez, Sexual Abuse & Bankruptcy: How Organizations Abuse Chapter 11 to Avoid Victims’ Demands for Answers, 37:1 EMORY BANK. DEV’TS. J. 214, 221 (2020).....18

Kristina Cooke, et al, Special Report: Boy Scouts, Catholic dioceses find haven from sex abuse suits in bankruptcy, REUTERS (Dec. 30, 2022), <https://www.reuters.com/world/us/boy-scouts-catholic-dioceses-find-haven-sex-abuse-suits-bankruptcy-2022-12-30>20

Levenson, Michael, Pennsylvania Diocese, Facing More Abuse Claims, Files for Bankruptcy, THE NEW YORK TIMES (Feb. 19, 2020), <https://www.nytimes.com/2020/02/19/us/pennsylvania-church-sexual-abuse-victims.htm>..... 17, 18

M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011).....8

Macur, J., As Gymnasts Who Were Abused Seek Answers, They Are Offered Only Money, THE NEW YORK TIMES (March 3, 2020), <https://www.nytimes.com/2020/03/03/sports/olympics/biles-gymnastics-settlement-nassar.html>19

MATT CARROLL ET AL., BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (The Boston Globe, 2002); SPOTLIGHT (Open Road Films 2015), <http://www.bostonglobe.com/arts/movies/spotlight-movie>14

Michael Rezendes, Church Allowed Abuse by Priest for Years, THE BOSTON GLOBE: SPOTLIGHT SERIES (Jan. 6, 2002),

Do not use without permission of CHILD USA.

<https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>13

Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).....11

Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited June 2, 2022)10

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)8

Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).....8

Preventing Child Sexual Abuse, CDC.gov (last visited Feb. 22, 2022).....7

R. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005)8

Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>8

Reports of Attorneys General, Grand Juries, Individuals, Commissions, and Organizations, BISHOPACCOUNTABILITY.ORG (last visited Sept. 30, 2021), <https://www.bishop-accountability.org/AtAGlance/reports.htm>..... 12, 14

San Diego Roman Catholic Diocese Files for Bankruptcy, THE NEW YORK TIMES (Feb. 28, 2007), <https://www.nytimes.com/2007/02/28/world/americas/28iht-church.4748594.html>.17

Sarah E. Ullman, Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors, 16 J. CHILD SEX. ABUSE 19, 30 (2007), <https://pubmed.ncbi.nlm.nih.gov/17255075/>10

Do not use without permission of CHILD USA.

Timeline for key motions and actions regarding USA Gymnastics' bankruptcy case,
USAGYM.ORG (last visited Oct. 12, 2021),
<https://usagym.org/pages/aboutus/pages/bankruptcy.html>.....19

Vatican laws changed to toughen sexual abuse punishment, BBC (last visited Sept.
30, 2021), <https://www.bbc.com/news/world-europe-57318959>.....12

Do not use without permission of CHILD USA.

STATEMENT OF INTEREST & IDENTITY OF *AMICI*¹

CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good.

CHILD USA Advocacy is a 501(c)(4) advocacy organization dedicated to ending child abuse and neglect by advocating for better laws for child protection. Drawing on the combined expertise of the nation's leading child advocates, specifically our sister organization, CHILD USA, CHILD USA Advocacy is committed to protecting children's civil liberties and keeping children safe from abuse and neglect.

The National Center on Sexual Exploitation ("NCOSE") is a nonprofit organization, founded in 1962, that combats sexual exploitation and abuse by advocating in state and federal courts for survivors, engaging in corporate advocacy to encourage companies to adopt responsible and safe practices, and advocating for legislative change that protects survivors and promotes human dignity.

¹ No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these amici curiae, their members or their counsel contributed money that was intended to fund preparing or submitting this brief.

Amici have a significant interest in the outcome of this case which will impact victims' ability to access justice and hold institutions accountable for the abuses that they made possible. Amici argues that full document transparency serves the important public policy interests of identifying hidden predators and their enabling institutions, shifting the costs of abuse from the victims and taxpayers to those responsible for it, and educating the public about the prevalence and effects of sexual abuse so that it may be prevented.

Do not use without permission of CHILD USA.

ARGUMENT

Child sexual abuse is a national public health crisis, with **3.7 million children sexually abused every year.**² It affects **1 in 5 girls and 1 in 13 boys** in the United States.³ Child sexual abuse (CSA) victims are traumatized in a way that is distinguishable from victims of other crimes. The traumatic effects of CSA are complex and individualized, and they impact victims throughout their lifetime.⁴ Many victims suffer in silence for decades before they speak to anyone about their traumatic experiences.⁵ In fact, one study found that 44.9% of male victims and

² See Preventing Child Sexual Abuse, CDC.gov, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

³ 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); M. Stoltenborgh et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011); 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).

⁴ See 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; see also R. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005)

⁵ Hunter, S., Disclosure of child sexual abuse as a life-long process: Implications for health professionals, 32(2) AUSTRALIAN & NEW ZEALAND J. OF FAM. THERAPY 159, 164 (2011); Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

25.4% of female victims delay disclosure by *more than twenty years*.⁶ This translates to a harsh reality: more victims first disclose their abuse between ages *fifty and seventy* than during any other age.⁷ The decades before disclosure give perpetrators and institutions wide latitude to suppress the truth leaving parents and the public in the dark about the risks to children today. By the time victims come forward—assuming they come forward at all—they often find the courthouse doors are closed because the statute of limitation (SOL) on their claims expired long before they were psychologically ready to disclose.

The fallout of the Catholic Church from revelations of systemic clergy abuse prompted a national movement to uncover hidden predators and their enabling institutions and seek justice through transparency and accountability. States began amending their SOLs not only to remedy the long-standing injustice of unfairly short SOLs to CSA victims but also to mitigate the effects the public suffered because victims were forced to remain silent about the individuals and institutions that put children at risk. In turn, public understanding of the prevalence and nature of these crimes increased, and parents and guardians were empowered to make more informed decisions about their children's safety.

⁶ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

⁷ CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3 (June 21, 2022), <https://childusa.org/6-17-2022-2021-sol-report-final/>.

But the promises of SOL reform have been stymied by the federal bankruptcy system which has created a pathway through which youth-serving organizations can suppress the truth by preventing the disclosure of documents that would be harmful to their reputations. When victims and the public are denied access to court documents, the opportunity to bring chronic abuses and misconduct to the public and lawmakers' attention is lost, and children will be needlessly endangered. To protect guilty organizations is an affront to sensible public policy and a slap in the face to victims.

I. FULL TRANSPARENCY SERVES THE IMPORTANT PUBLIC INTEREST IN CHILD PROTECTION

The Catholic Church has, for decades, systematically ignored laws that require allegations of abuse to be reported to law enforcement and avoided disclosing to the public facts about its own crimes and endangerment of children. In furtherance of these efforts, Defendants seek to keep court documents containing facts about a known perpetrator and cover-up conspirators under seal. Child sexual abuse is a crime that is perpetuated in silence and secrecy. These crimes typically occur in private, and victims are often reluctant to disclose out of fear that they will not be

Do not use without permission of CHILD USA.

believed.⁸ Suppressing the truth in this way thus needlessly endangers children and leaves Louisiana citizens in the dark on facts it absolutely needs to know.

In contrast, the well-being and safety of children is best served by full transparency around institutional abuse. It allows communities to take necessary precautions and empowers parents and guardians to make informed decisions about their children's safety. Document transparency increases the public's understanding of the nature of these crimes and how predators use their positions of trust to groom victims within institutional settings.⁹ This knowledge protects the public by facilitating the identification of hidden predators so that they can be removed from positions of power and authority and prevented from having further contact with children. This, in turn, contributes to an atmosphere where victims feel empowered to disclose sexual abuse.

Child predators are compulsive sex offenders for whom there is still no cure. Many abuse children well into their elderly years.¹⁰ That is why public identification and incarceration are crucial to keeping children safe. Preventing further abuse only

⁸ See Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Aug. 17, 2022)

⁹ Sarah E. Ullman, Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors, 16 J. CHILD SEX. ABUSE 19, 30 (2007), <https://pubmed.ncbi.nlm.nih.gov/17255075/>

¹⁰ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

serves society by reducing the costs of healthcare for victims, allowing more people into the workforce, and increasing the ability of children to grow into healthy adults.¹¹

Keeping court documents under seal shields enabling institutions from public scrutiny, hindering efforts to identify systemic failures and implement necessary reforms. History shows that institutions need to be coerced into protecting children. For years, Church officials were aware of predatory clergy and spent obscene amounts of time and money to cover it up by moving predatory priests from parish to parish.¹² Untold numbers of children suffered as a result of their actions and yet the Church did not even attempt to change until a wave of civil litigation forced them to turn over troves of incriminating documents. The attendant public pressure also prompted Church officials, law enforcement authorities and child protection organizations to investigate and publish reports on clergy sexual abuse which forced

¹¹ 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).

¹² See generally Reports of Attorneys General, Grand Juries, Individuals, Commissions, and Organizations, BISHOPACCOUNTABILITY.ORG (last visited June 1, 2023), <https://www.bishop-accountability.org/AtAGlance/reports.htm>.

these institutions to adopt more protective policies.¹³ In this way, transparency acts as a powerful deterrent, sending the message to potential abusers and their would-be enablers that they will not enjoy immunity from exposure and accountability. The judicial rubber-stamping of protective orders to prevent public access to documents that could shed light on systemic abuse is therefore irrational and counterproductive because it “diminishes the deterrent effect of tort law.”¹⁴ Indeed, “[o]ptimal deterrence requires that injurers bear the full social cost of their risk-taking activities.”¹⁵ To best protect children from abuse, there must be some reasonable expectation and degree of assurance that youth-serving organizations will recognize when they fall short of public expectations and be held meaningfully accountable.

With every day that the Church is permitted to shield these documents from public scrutiny, children will be at risk of victimization, not just by Hecker himself but by any person with a secret history of sexual abuse and by organizations that have allowed it to happen time and again.

¹³ Vatican laws changed to toughen sexual abuse punishment, BBC (last visited Sept. 30, 2022), <https://www.bbc.com/news/world-europe-57318959>.

¹⁴ Ferdon ex. Rel. Petrucelli v. Wisconsin Patients Compensation Fund, 701 N.W.2d 440, 464 (2005); see also Farley v. Engelken, 740 P.2d 1058, 1067 (Kan. 1987).

¹⁵ Jennifer Arlen, Tort Damages, 2 ENCYC. OF L. & ECON. 682, 702 (B. Bouckaert, ed., 2000).

II. MAKING THE DEPOSITION ACCESSIBLE TO THE PUBLIC IS CONSISTENT WITH THE NATIONAL TREND IN UNCOVERING SYSTEMIC ABUSE AND ENSURING ACCOUNTABILITY

Historically, a wall of ignorance and secrecy has been constructed around child sexual abuse, which has been reinforced by unfairly short SOLs that have deterred or completely disabled victims from bringing civil claims. That is a major reason why the public knew so little about the epidemic of CSA and the insidious ways that our trusted institutions were enabling the crisis. The issue of CSA became the focus of intense public scrutiny and debate in 2002 when the Boston Globe published its groundbreaking *Spotlight* investigation revealing widespread clergy abuse in the Boston Archdiocese.¹⁶ The series played a significant role in positioning clergy sexual abuse as an institutional failure on the part of Catholic Church officials rather than merely a problem of a few “bad apple” priests. It also prompted Attorneys’ General in multiple states to initiate grand jury investigations into CSA cover-ups within their own states’ dioceses. Pennsylvania initiated one the broadest investigations in U.S. history revealing the systematic abuse of more than 1,000

¹⁶ Michael Rezendes, Church Allowed Abuse by Priest for Years, THE BOSTON GLOBE: SPOTLIGHT SERIES (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>; see also MATT CARROLL ET AL., BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (The Boston Globe, 2002); SPOTLIGHT (Open Road Films 2015), <http://www.bostonglobe.com/arts/movies/spotlight-movi>

children by over 300 priests.¹⁷ Other states have followed suit including Florida, Illinois, and Nebraska.¹⁸ These states became safer places for children because grand jury investigations were completed and, most importantly, their findings were published. The aggregate effect has been to provide citizens and lawmakers with a more complete account of the impact of clergy abuse in their own communities as well as the importance of SOL reform in obtaining justice for victims.¹⁹ Indeed, the revelations contained in these grand jury reports prompted calls for reform, and both the federal and state governments responded by making access to justice through SOL reform a priority.²⁰ Since January 2002, 49 states and five territories, or 98%, have amended their SOLs for child sexual abuse.²¹ Collectively these efforts reflect a societal commitment to justice, transparency, accountability, and prevention of abuse.

The Motion before this court seeks to contribute further to these objectives. The information contained within the deposition could aid ongoing investigations, empower victims by validating their experiences, and potentially uncover additional


¹⁷ In re Fortieth Statewide Investigating Grand Jury, Nos. 75, 77-82, 84, 86-89, 106WM 2018, 2018 WL 3650493 (July 27, 2018).

¹⁸ *Supra* n. 12.

¹⁹ See generally CHILD USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to 2021 3, 18 (June 21, 2022), <https://childusa.org/6-17-2022-2021-sol-report-final/>.

²⁰ *Id.*

²¹ *Id.* at 7.



instances of abuse or cover-ups. We know that victims are healed, and children best protected by the transparent and honest release of the full truth. It is time to prioritize the needs of Louisiana's children and victims above the pandering church leaders seeking to hide information about criminal actors and facilitators of abuse.


III. YOUTH-SERVING ORGANIZATIONS SHOULD NOT BE PERMITTED TO USE THE BANKRUPTCY SYSTEM TO SUPPRESS THE TRUTH ABOUT THEIR OWN WRONGDOING

The bankruptcy system was designed to restore viability to “an honest but unfortunate debtor”²² who has incurred overwhelming business debts, but youth-serving organizations and institutions have used the bankruptcy system as a strategy and solution to their failure to protect children from the sexual abuse they made possible. Of course the Bankruptcy Code was not created with victims of institutional abuse in mind and is in fact rife with procedures that result in significant injustice when applied to this population.²³ The current system allows culpable organizations to emerge from bankruptcy without providing the public or even their victims with any insight into the systemic failures and bad actors facilitating abuse.²⁴ It also forces victims to come forward regardless of whether they are psychologically

²² Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

²³ See e.g., 11 U.S.C. § 362(a)(1).

²⁴ Comment, Relief from Tort Liability Through Reorganization, 131 U. PA. L. REV. 1227, 1233 (1983).



prepared to do so. It is a perversion of the bankruptcy process to provide such protections to organizations that foster sexual abuse.

The history of Catholic dioceses in voluntary Chapter 11 bankruptcy proceedings show how the system not only deny victims their day in court, but also shields the Church from disclosing any evidence of knowledge or coverup. On July 6, 2004, on the eve of public trial, the Archdioceses of Portland Oregon became the first Catholic diocese in U.S. history to seek the protection of bankruptcy court.²⁵ It has since become the universal move of institutions seeking to avoid damaging trials with 29 Catholic dioceses and religious orders in having filed bankruptcy to date.²⁶

In 2007, the San Diego Catholic Dioceses filed for bankruptcy while facing more than 140 civil lawsuits related to clergy abuse.²⁷ According to the victims, the most important part of the cases would be having the church agree to release personnel documents that were expected to chronicle a history and pattern of abuse and to

²⁵ In re Roman Catholic Archbishop of Portland In OR, U.S. Bankruptcy Court, D. Oregon (June 24, 2009); see also 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>.

²⁶ Bankruptcy Protection in the Abuse Crisis, BISHOPACCOUNTABILITY.ORG, <https://www.bishop-accountability.org/bankruptcy.htm>.

²⁷ In re The Roman Catholic Bishop of San Diego, Bankruptcy Petition #: 07-00939-LA11, Case No. 3:07-bk-00939 (Bankr. S.D. San Diego, Feb. 27, 2007); see also San Diego Roman Catholic Diocese Files for Bankruptcy, THE NEW YORK TIMES (Feb. 28, 2007), <https://www.nytimes.com/2007/02/28/world/americas/28iht-church.4748594.html>.

“show lay Catholics that these victims are not about collecting money . . . They are about truth, justice, and the future protection of children.”²⁸ In short, what victims need is transparency and accountability.

Similarly, the Diocese of Harrisburg filed for bankruptcy in February 2020 on the heels of a grand jury report that found church leaders covered up CSA by more than 300 priests over a 70-year period.²⁹ The filing froze all 200 claims against the Diocese just as they were beginning to disclose an estimated 100,000 pages of internal documents related to clergy abuse from 1970 to 2002.³⁰ The victims had “wanted full transparency” but as a result of the filing would “inevitably be denied the opportunity to confront witnesses that have the answers to the questions that have haunted them for many years.”³¹

The Catholic Church is not the only institution to have found a safe haven from accountability in bankruptcy court. Other youth-serving organizations such as

²⁸ Archibald, R.C., San Diego Diocese Settles Lawsuit for \$200 Million, THE NEW YORK TIMES (Sept. 8, 2007), <https://www.nytimes.com/2007/09/08/us/08church.html>.

²⁹ In re Roman Catholic Diocese of Harrisburg, Case No. 20-599, (Bankr. M.D. Penn. Feb. 19, 2020).

³⁰ Levenson, Michael, Pennsylvania Diocese, Facing More Abuse Claims, Files for Bankruptcy, THE NEW YORK TIMES (Feb. 19, 2020), <https://www.nytimes.com/2020/02/19/us/pennsylvania-church-sexual-abuse-victims.html>

³¹ Id.

the Boy Scouts of America and USA Gymnastics have also availed themselves of Chapter 11 protections.³²


In the case of USA Gymnastics, the 2018 bankruptcy filing halted all lawsuits by Larry Nassar victims against USA Gymnastics and the USPOC's decertification process of USA Gymnastics.³³ The victims were seeking more than financial compensation when they filed their civil claims; they wanted "to 'get to the truth' of how the abuse continued for as long as it did and who within USA Gymnastics knew about it."³⁴ These brave victims sought to expose the organizations and actors responsible for enabling decades of abuse at the hands of Nassar, to prevent it from happening to future athletes. In response, the USOPC sought and obtained a protective order to limit victims' discovery requests thus turning the discovery process into a trickle as compared to what the public would learn through the traditional civil litigation process.³⁵ In January 2020, the institution proposed a settlement offer of \$215 million which was immediately rejected by the victims for

³² In re Boy Scouts of America and Delaware BSA, LLC, Voluntary Petition, Case No. 20-10343 (Bankr. D. Del. Feb. 18, 2020); In re USA Gymnastics, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. Dec. 5, 2018).

³³ Id.

³⁴ Juan Martinez, Sexual Abuse & Bankruptcy: How Organizations Abuse Chapter 11 to Avoid Victims' Demands for Answers, 37:1 EMORY BANK. DEV'TS. J. 214, 221 (2020).

³⁵ Timeline for key motions and actions regarding USA Gymnastics' bankruptcy case, USAGYM.ORG (last visited Oct. 12, 2021), <https://usagym.org/pages/aboutus/pages/bankruptcy.html>.




one reason—it failed to address the disclosure of documents that could indicate whether these organizations had prior knowledge of Nassar’s years of abuse.³⁶

Not only does Chapter 11 make it easier for organizations to shield their knowledge from public scrutiny, but it also permits a federal court to set bankruptcy bar dates without reference to the relevant state’s SOL.³⁷ Those dates are too often solely for the benefit of the organization, and they usurp states’ efforts to give justice to victims and make institutions accountable by cutting-short the time that we know victims need to be psychologically prepared to confront abuse.³⁸ In short, these organizations file for bankruptcy to undermine the impact of SOL reform. Indeed, the Boy Scouts of America, the New York boys & girls club and 13 Catholic

³⁶ 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); see also Clark, L. USA Gymnastics offers \$215 million settlement to Larry Nassar victims, THE WASHINGTON POST (Jan. 30, 2020) <https://www.washingtonpost.com/sports/2020/01/30/usa-gymnastics-offers-215-million-settlement-larry-nassar-victims/>; Macur, J., As Gymnasts Who Were Abused Seek Answers, They Are Offered Only Money, THE NEW YORK TIMES (March 3, 2020), <https://www.nytimes.com/2020/03/03/sports/olympics/biles-gymnastics-settlement-nassar.html>.

³⁷ In re Roman Catholic Diocese of Syracuse, New York, 628 B.R. 571, 575 (Bankr. N.D.N.Y. 2021).

³⁸ Humphreys maintained that she did not experience any physical or emotional effects of Larry Nassar’s abuse until she became pregnant with her first child in May 2019, past the bar date. In re Gymnastics, Motion to Allow Late Filed Claim to be Treated as Timely Filed, Case No. 18-09108-RLM-11 (Bankr. S. D. Ind. July 30, 2020).



institutions have cited to state laws extending abuse victims' right to sue as factors in their decisions to file for bankruptcy.³⁹

These youth-serving organizations have perverted the bankruptcy system, transforming it into a reputation management tool. This Court should not permit the Church to escape the full legal and societal ramifications of their misconduct by burying the possibility of future public exposure to the problems. It is time we put the safety and needs of children over those of dangerous adults.



CONCLUSION

For all the foregoing reasons, Amici respectfully requests that this Court grant Plaintiff's *Motion to Unseal the Deposition of Lawrence Hecker* so that the matter may be referred to the appropriate authorities.

Respectfully Submitted,

/s/D. Alex Onstott, Esq.
D. Alex Onstott, Esq.
CIOLINO ONSTOTT, LLC
400 Poydras Street, Suite 2145
New Orleans, LA 70130
Tel: 504-524-0120
alex@colaw.llc

³⁹ Kristina Cooke, et al, Special Report: Boy Scouts, Catholic dioceses find haven from sex abuse suits in bankruptcy, REUTERS (Dec. 30, 2022), <https://www.reuters.com/world/us/boy-scouts-catholic-dioceses-find-haven-sex-abuse-suits-bankruptcy-2022-12-30/>

Counsel for Amici

Prof. Marci A. Hamilton, Esq.
Founder & CEO, CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
Tel: (215) 539-1906
marcih@sas.upenn.edu

Kathryn Robb, Esq.
Executive Director, CHILD USA Advocacy
3508 Market Street, Suite 201
Philadelphia, PA 19104
Tel: (781) 856-7207
krobb@childusadvocacy.org

Jessica Schidlow, Esq.
Legal Director, CHILD USA
jschidlow@childusa.org

Peter Gentala
Senior Legal Counsel
National Center on Sexual Exploitation
1201 F St. NW, Suite 200
Washington, DC 20004
Tel: (202) 393-7245
pgentala@ncoselaw.org

Dated: June 7, 2023

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by operation of the Court's electronic filing system on this 7th day of June 2023.

/s/ D. Alex Onstott, Esq.
D. Alex Onstott, Esq.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

IT IS HEREBY CERTIFIED:

1. That the foregoing Brief of Amicus Curiae of CHILD USA, CHILD USA Advocacy, and the National Center on Sexual Exploitation in Support of Plaintiff's Second Motion to Unseal the Deposition of Lawrence Hecker and Refer to Law Enforcement complies with the limitation set forth by Fed. R. App. P. 29(a)(4) because this brief contains 3,567 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman Font.

/s/D. Alex Onstott, Esq.

D. Alex Onstott, Esq.
CIOLINO ONSTOTT, LLC
400 Poydras Street, Suite 2145
New Orleans, LA 70130
Tel: 504-524-0120
alex@colaw.llc

Counsel for Amici

Do not use without permission of CHILD USA.