

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID CLOHESSY,)	
)	
Relator,)	
)	
v.)	Appeal No. _____
)	
THE HONORABLE ANN MESLI,)	
CIRCUIT COURT JUDGE,)	
DIVISION 7, MISSOURI CIRCUIT)	
COURT, 16TH JUDICIAL CIRCUIT,)	
JACKSON COUNTY, MISSOURI)	
)	
Respondent.)	

MOTION FOR LEAVE TO FILE SUGGESTIONS

The organizations described below (hereinafter collectively referred to as “Amici”), through their attorneys, hereby move this Court to allow them to participate in this matter as Amicus Curiae and file the attached Suggestions in Support of the Application for Writ of Prohibition. In their Suggestions, Amici offer a brief summary of the constitutional protections against the involuntary disclosure of confidential information from a discovery request to an entity or person that is not a party to the underlying litigation. Amici seek to participate here because the Court's decision in this case has enormous implications, not only for the ability of courts to ensure the fair administration of justice, but also for the protection of confidential information and the potentially chilling effect on the free speech and association rights of those individuals whose confidential information is subject to such involuntary disclosure.

PARTIES OPPOSED TO AMICI’S PARTICIPATION

Defendant Fr. Michael Tierney has formally refused consent for Amici to file their Suggestions in Support of the Application for Writ of Prohibition.

NATURE OF THE APPLICANTS' INTEREST

Amici are all dedicated to assisting child abuse survivors, and advocating for laws that take into account the difficulties faced by when a survivor discloses her abuse. Amici are as follows:

The Cardozo Advocates for Kids (“CAKids”) was founded in 2008 at the Benjamin N. Cardozo School of Law in New York City. The student-led organization aims to facilitate social, political and institutional change in order to bring justice for victims of childhood sexual abuse. Through lobbying representatives, hosting academic events, fostering relations between scholars and the community, and initiating grassroots action, the organization hopes to bring about awareness and results. CAKids also maintains a website, sol-reform.com, which provides information and resources about reforming state statutes of limitations for victims of sexual abuse. CAKids has an interest in this case due to the organization’s efforts in pursuing justice and concrete policy changes for the benefit of abuse victims, including both children and vulnerable adults.

Child Protection Project (“CPP”) is a 501(c)(3) that recognizes that many heinous abuses occur when religious organizations seek and hide behind specific religious exemptions under the law. Child sexual abuse victims often have no recourse to justice because of arcane statute of limitations laws. We support the removal of the statute of limitations for the crime of child sexual abuse as good public policy. Religions must be good corporate citizens and held to the same standard as secular organizations when dealing with children in their care. These exemptions allow religious organizations to hire people to work with children without performing character background checks routinely required of secular groups and with disastrous results for the children and families in their care. Often religious organizations will provide faith

healing only, allowing children and others to suffer or die from preventable illnesses. CPP's interest in this case is to ensure that the door is not opened for the facilitation of sexual abuse in religious organizations.

The Foundation to Abolish Child Sex Abuse ("FACSA") has a mission to influence state and federal governments, courts, the criminal justice system and the media to (1) protect children from sexual abuse; (2) hold those who sexually abuse children accountable; (3) hold institutions which condone and enable the sexual abuse of children accountable; and (4) help child sex abuse victims find justice. Its interests in this case are directly correlated with its mission.

Jewish Board of Advocates for Children, Inc. ("JBAC") is a New York nonprofit corporation whose primary goal is the protection of children from abuse – sexual, physical, and emotional – particularly in religious communities, including schools and houses of worship. JBAC advocates before legislatures and courts, seeking new laws and judicial decisions that will provide religious community children with the highest legal protection possible. JBAC members are primarily drawn from the American Orthodox Jewish community, and include rabbis, attorneys, physicians, mental health therapists, and other community leaders who are greatly anguished at the clergy sex abuse scandal in our Nation. JBAC believes religious institutions should be held legally accountable for their conduct, consistent with core American and Jewish values. The Declaration of Independence declares, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights..." The Torah, or Bible, declares at Genesis 1:26-27, that all people are created in the image of God. Granting special status, rights, or immunities to religious institutions, by expansively exempting them from statutory or tort law liability, would be antithetical to these core, shared values.

KidSafe Foundation is a Florida-based 501(c)(3) nonprofit started by two Mental Health Professionals, Educators, Authors and Moms – Sally Berenzweig, MEd, MA, and Cherie Benjoseph, LCSW, who believe that every child deserves the right to be safe. Our mission is to provide prevention education to children, parents, teachers and counselors to decrease child abuse. Over 18,000 children have been through our Prevention Education Programs and thousands of adults have been to our Seminars and Workshops. As Mental Health Professionals and Educators, we know that 1 in 3 girls and 1 in 6 boys will be sexually exploited before the age of 18 – those statistics are only the ones who TELL, however MOST children do not. Children don't tell because they feel scared, shame, guilt, embarrassment and many other feelings that only once they become an adult or have received help are they able to report the abuse they suffered. It is a well-known fact that child molesters do not “just” molest one time, it is an ongoing crime that affects the survivors for a lifetime, and as such they deserve to hold these criminals accountable for a lifetime. For that reason and so many more we support the removal of the statute of limitations for the horrific crime of child sexual abuse, and strongly support this *Amicus* Brief on behalf of all the survivors who deserve justice.

The National Black Church Initiative (“NBCI”) is a coalition of 34,000 African-American and Latino churches working to eradicate racial disparities in health care, education, housing, and the environment. In addition to our member churches, NBCI is a faith-based health organization dedicated to providing critical wellness information to all of its members. NBCI also runs the Baby Fund in response to the rising tide of abuse, neglect, and death among infants and young children in our society. The Fund will be both a source of assistance and advocacy to meet the needs of children who have little or no voice of their own. The Church's interest is in the moral obligation to protect children. The philosophical and theological underpinnings of the

Fund can be understood by all faith communities noting the supreme value placed upon children in scripture when God said, “Suffer the little children to come unto me, and forbid them not: for such is the Kingdom of God.” The NBCI’s interest in this case is to further the protection of children.

The National Center for Victims of Crime (National Center), a nonprofit organization based in Washington, DC, is the nation’s leading resource and advocacy organization for all victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. Dedicated to serving individuals, families, and communities harmed by crime, the National Center – among other efforts – advocates laws and public policies that create resources and secure rights and protections for crime victims. The National Center is particularly interested in this case and this brief because of its commitment to victims of sexual assault and child abuse.

Survivors for Justice (“SFJ”), is a not-for profit organization founded by advocates from within the Strictly Orthodox Jewish community dedicated to providing emotional support and legal assistance to victims of sexual abuse. One of our main goals is to ensure that within our insular community abuse is dealt with in a manner that complies with secular law. Indeed, while Jewish law (*halacha*) mandates compliance with civil law under the principle that the “law of the land is binding,” (*dina demalchusa dina*,) in practice such compliance is discouraged by the religious leadership within our community. Certain rabbis invoke ancient cultural taboos against “informing” on a fellow Jew to the secular authorities – and other misrepresentations of Jewish doctrine – to ensure that abuse is dealt with “internally,” with disastrous consequences for society. Those rare community members who do report can expect to face intimidation, threats and ostracism. Many of SFJ’s clients reported their abuse to rabbis and administrators of

religious schools and institutions only to be summoned to religious courts (*bet dins*) ill equipped to conduct a meaningful investigation and often compromised by myriad conflicts of interest and no real power to enforce their “verdicts.” These proceedings have invariably resulted in the protection of the abuser and no recourse for the victim. Government funded Orthodox Jewish organizations such as Agudath Israel of America and Ohel Children’s Home and Family Services openly defy civil and criminal statutes with impunity. Recently, Agudath Israel of America sponsored a CLE conference where participants were advised to defy New York State law obligating them to report sexual abuse to the authorities. Instead they were directed to report sexual abuse to their rabbis. These are but a few glaring examples of the danger to society inherent in allowing religious doctrine to trump civil law. SFJ’s interest in this case is that it stands for the belief that only adjudication by the civil justice system, without interference or involvement of religion, can protect society from the abuse of power that allows predators to thrive and operate freely within our schools and religious institutions.

The National Child Protection Training Center (NCPTC) is a non-profit organization dedicated to prevention and intervention for children who have been victims of or exposed to abuse and violence.¹ NCPTC works to significantly reduce—even end—child abuse in three generations through education, training, awareness, prevention, advocacy and the pursuit of justice. Since its inception in 2003, NCPTC has trained over 70,000 child protection professionals from all 50 states and several countries, responded to more than 10,000 requests for technical assistance and has published numerous scholarly and practical articles for front line child protection professionals. Each month, approximately 25,000 professionals from all 50 states receive NCPTC publications.

Voice of the Faithful is a worldwide movement of concerned mainstream Roman Catholics working to support survivors of clergy sexual abuse, support priests of integrity and increase the laity's role in governance and guidance of the Church. VOTF is a Massachusetts non-profit, non-sectarian corporation which has been in existence since 2002. This far ranging discovery demand threatens not only SNAP, but all advocacy and service groups, including VOTF, which depend on the confidence of victims, whistle blowers and many persons within powerful organizations who would be dismissed, or otherwise penalized, by those disadvantaged by the disclosures. VOTF members are aware that the residual effects, psychological and personal, of the sexual abuse often leave the victims in a vulnerable position. VOTF recognizes that SNAP and other organizations, including VOTF, are vital to the well-being of their members, and confidentiality is at the bedrock of SNAP's operations. One reason that VOTF is in support of this Brief is concern for the public policy to protect the communications of SNAP with members who have been compromised by the very actions of Father Michael Tierney and others. Another reason is the confidentiality of membership lists, the discovery of which would violate the anonymity and confidentiality of SNAP members and volunteers, together with third parties' constitutional rights to freedom of speech and association. A third significant reason is the right to privacy of SNAP members, volunteers, and numerous sexual abuse survivors (who are not involved in the Tierney litigation). This discovery would reveal the identity of thousands of sexual abuse victims, volunteers, and witnesses throughout the United States. This discovery would violate their privacy rights and, in many cases, jeopardize their jobs, their relationships, and their individual healing processes.

New Hampshire Voice of the Faithful (NH VOTF) organized in 2002 as lay Catholics in the Diocese of Manchester, NH responded to the involvement of its bishops in the clergy sexual

abuse scandal. The New Hampshire Attorney General's Office was to our knowledge the first in the nation to initiate a criminal investigation of a Diocese. The investigation found probable cause for charges of endangerment of children, with perjury as part of an indictment. A non-prosecution agreement between the State and the Diocese was negotiated that involved independent State audits of the Diocese's sexual abuse policy. NH VOTF gave strong support to the State's efforts over the five years of the audits; listens intently to survivors; advocates for statute of limitation reform, and calls the Diocese to transparency and accountability in implementing policies and procedures related to the sexual abuse of minors. NH VOTF has major interest in this case for the impact it has on the ability to protect children from predators, and help heal those abused in the past.

**QUESTIONS OF LAW THAT WILL NOT ADEQUATELY BE PRESENTED
BY THE PARTIES**

Amici believe that this Court would find helpful a concise discussion of the current status of constitutional law relating to the free speech and association rights of individuals and organizations that have provided information to a third-party with reasonable and legitimate expectation that the third-party would not disclose such information when the third-party has been compelled to disclose such information in litigation in which it is not a party.

Accordingly, Amici respectfully pray this Court to grant leave to file their Suggestions in Support of the Application for a Writ of Prohibition. Further, Amici has included their proposed Suggestions in Support with this motion and request that the Court order that such suggestions shall be deemed filed upon the Court granting Amici's motion for leave.

DATED this 28th day of December, 2011.

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CERTIFICATE OF SERVICE

I certify that on the 28th day of December, 2011, a true copy of the above and foregoing was sent via U.S. Mail, postage prepaid, to:

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