

**IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

Nos. 75, 77-82, 84-89, 106 WM 2018

**IN RE: FORTIETH STATEWIDE INVESTIGATING
GRAND JURY**

**BRIEF OF *AMICI CURIAE*
CHILD USA AND BISHOPACCOUNTABILITY**

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STATEMENT OF *AMICI CURIAE*¹

Amicus curiae, CHILD USA, conducts evidence-based legal, medical, and social science research to improve the laws and policies affecting child protection. In addition to research, CHILD USA compiles evidence, promotes ideas, and proposes the most effective policies to prevent childhood abuse and neglect. With these facts, CHILD USA shines a light on the better pathways to truly protect all children from abuse and neglect. Sexual abuse and the maltreatment of children have an all too-frequent impact on children's health. These acts often occur in secret, behind closed doors, but have public consequences. Victims, their families, and the public pay a high price even decades after the violence ends. CHILD USA cuts through the shame and the secrecy to gather and analyze the data behind abuse and neglect.

CHILD USA draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread child abuse and neglect. All child victims deserve justice, and CHILD USA aims to find the path for them.

Amicus curiae, BishopAccountability.org (BA), is a library and internet archive of the Catholic clergy abuse crisis. BA is also a research institute doing

¹ Pursuant to Pa.R.A.P. 531(b)(2), *Amici* state that no one other than the *Amici*, their members, or their counsel paid for the preparation of this brief or authored this brief, in whole or in part.

basic analysis of the abuse problem. BA was founded in June 2003. BA maintains extensive archives, online and in our Waltham MA offices, of diocesan and religious order documents pertaining to clergy accused of abusing children and officials who have mismanaged those cases. BA currently has more than a million pages of documents and source materials in our brick-and-mortar library, 200,000 pages of which are available online. BA provides a public database of accused clergy, updated daily, which currently describes the cases of 4,400 accused bishops, priests, brothers, and nuns in the U.S. BA also maintains a public library of investigative reporting on the abuse problem totaling over 100,000 articles, as well as a library of reports by prosecutors, attorneys general, NGOs, and investigative bodies retained by Catholic institutions.

BA's mission is to increase public understanding of the Catholic clergy abuse problem, and to encourage transparency and accountability in Catholic institutions by providing accounts of Catholic clergy abuse and poor management practices, to the extent that these can be documented from publicly available sources.

SUMMARY OF THE ARGUMENT

There are two proven pathways to public disclosure of child sex abuse and institutional cover-up: (1) criminal prosecution and civil lawsuits and (2) grand jury investigations. Because the vast majority of victims do not come forward in childhood, the former rests on the need for generous statutes of limitation (“SOLs”). Short SOLs short-circuit judicial disclosure of the truth. In a state, like the Commonwealth of Pennsylvania, where there are short SOLs, the only path to justice for these victims and the only means of public disclosure is through the release of investigating grand jury reports. We urge this Court to continue the successful movement of truth by releasing the report of the Fortieth Statewide Investigating Grand Jury in its entirety as soon as possible.

INTRODUCTION

BishopAccountability and CHILD USA oppose *all* child sexual abuse. There is *never* any right, religious or nonreligious, to perpetrate sexual assault and abuse on children or to cover it up. We have worked nonstop for many years to end child sexual abuse. We appreciate the important role the Office of Attorney General’s grand jury investigation of sex abuse in six Pennsylvania dioceses can play in fighting abuse by holding those responsible accountable. We strongly support the immediate release of the Fortieth Statewide Investigating Grand Jury’s report, *including the identities of all the perpetrators*, for the benefit of the children of

Pennsylvania and the victims of child sex abuse from these dioceses. *In re Fortieth Statewide Investigating Grand Jury*, Nos. 75, 77-82, 84, 86-89, 106 WM 2018, 2018 WL 3650493 (July 27, 2018). Only the release with the names of the perpetrators will promote children's well-being and safety.

In contrast, the suppression of this Report and especially the names of the perpetrators and their enabling supervisors and administrators will endanger children needlessly and leave the public in the dark on facts it absolutely needs to know. Almost two years have passed since the Grand Jury first heard testimony of the horrific acts perpetrated against the Commonwealth's children. It is time to make those facts public.

Pennsylvania has taken the lead in investigating child sex abuse in institutional settings by empaneling numerous grand juries that have demonstrated troubling facts documenting the cover-up of abuse and the endangerment of children.² These reports have performed an extremely important and timely public service for the citizens of this Commonwealth and beyond. No other state has

² See, e.g., *In re: Cnty Investigating Grand Jury of Sept. 26 2001*, Misc. No. 03-00-00239, (Sept. 21, 2005), http://www.bishop-accountability.org/reports/2003_09_25_First_Philadelphia_Grand_Jury_Report.pdf; *In re: Cnty Investigating Grand Jury of Sept. 17, 2003*, Misc. No. 03-00-239, Sept. 15, 2005, https://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf [hereinafter 2005 Report]; *Cnty Investigating Grand Jury XXIII*, Misc. No. 0009901-2008, (Jan. 21, 2011), http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf.

gathered more critically important facts on the protection of children from sex abuse than the Commonwealth. These reports, including this most recent one, have investigated the range of illegal behaviors that protect child abusers, shield institutions from public accountability, and put children at risk, including the “failure to make mandatory reports, [the execution of] acts endangering the welfare of children, and obstruction of justice by church officials, local public officials, and community leaders.” *Fortieth Grand Jury*, at 1.

The current Grand Jury focused on six of the eight Pennsylvania Roman Catholic dioceses. Pennsylvania Attorney General Josh Shapiro prepared a report *exceeding 800 pages* detailing the history of callous disregard for children within these dioceses. The supervising judge also allowed people who were criticized in the report to submit responses to the allegations, as required by law. *Id.* at 2. The Grand Jury’s Report was ready to be released, so that the entire state could learn what had been uncovered. But, instead, in an unprecedented move, the dioceses were allowed to see the report well before release. *See* Jocelyn Brumbaugh, *Supreme Court Halts Release of Catholic Dioceses Grand Jury Report*, *The Meadville Tribune*, 2018 WLNR 19427017, Jun. 20, 2018. And—consistent with the hierarchy’s actions globally—there are now attempts to hide the identities of the alleged wrongdoers. *See, e.g.*, *The [Irish] Commission to Inquire into Child Abuse*, <http://www.childabusecommission.ie/index.html>; [Australian] Royal

Commission into Institutional Responses to Child Sexual Abuse, <https://www.childabuseroyalcommission.gov.au/>; Jane Chambers, *Chilean Bishops Acknowledge Failures in Handling Sexual Abuse of Minors*, Catholic News, Aug. 3, 2018, <http://www.catholicnews.com/services/englishnews/2018/chilean-bishops-acknowledge-failures-in-handling-sexual-abuse-of-minors.cfm>. The wrongdoers argue that release of the grand jury's report would deny them due process and harm their reputations.

The challengers to the release of the Report appear to be priests who are alleged to be perpetrators. In addition, there may be bishops and/or public officials who have engaged in child endangerment. Notwithstanding that they already have a right to write a response that would be published with the report itself, per 42 Pa. Cons. Stat. § 4552(e), they argue that they have an alleged constitutional right to keep their identities secret from the public, even though such a claim is both novel and self-serving. Presumably, these individual perpetrators are not being charged with a crime, because the statute of limitations has expired. Keeping their identities secret simply because the statute of limitations has expired on the crime they committed would be a travesty and a choice to once again prioritize dangerous adults above the needs of the Commonwealth's children and victims.

On June 25, 2018, this Court temporarily stayed the release of the Grand Jury's Report. *Id.*; see also *In re Fortieth Statewide Investigating Grand Jury*, No.

106 WM 2018, 2018 WL 3650493 (Pa. July 27, 2018). We urge this Court to immediately release it with the names of the alleged perpetrators intact. Thousands of children around the country have been harmed for many years, not only by the abuse itself, but also by the church's persistent secrecy and the attempts to hide its terrible conduct. As this state's Representative Mark Rozzi, a survivor of clergy abuse, insisted, "The millions of dollars of congregants' money spent on lawyers and lobbyists, the secrecy, scare tactics, collusion, and disgraceful cover-up of pedophiles—all of it must stop." See Liz Navratil & Angela Couloumbis, *Legal Wrangling Intensifies on Pa. Grand Jury Report on Clergy Sexual Abuse*, *The Inquirer*, Jul. 20, 2018, <http://www.philly.com/philly/news/breaking/legal-wrangling-intensifies-on-pa-grand-jury-report-on-clergy-sexual-abuse-20180720.html/>. We have learned, repeatedly, that sexual abuse survivors are healed and children are protected best by the transparent and honest release of the full truth, and not by letting church leaders hide information about their misconduct. We join the Attorney General, the abuse victims, and other children's advocates, in urging this Court to continue the successful movement of truth by releasing the report of the Fortieth Statewide Investigating Grand Jury in its entirety as soon as possible.

ARGUMENT

Child sex abuse is a global and national scourge that has flourished in youth-serving organizations and families. On average, 1 in 4 girls and 1 in 6 boys are sexually abused.³ Rarely is the perpetrator “stranger danger.” In fact, the vast majority of the abuse is perpetrated by individuals the child knows. See Kenneth Lanning, *Child Molesters: A Behavioral Analysis* 5 (2010), http://www.missingkids.com/content/dam/ncmec/en_us/desktop/publications/nc70.pdf. Frequently children are groomed by adults they trust, but they are often so disabled by the trauma that they cannot disclose the abuse until much later in life.⁴ A major study has determined that the average age of disclosure by victims is 52. N. Spröber et al., *Child Sexual Abuse in Religiously Affiliated and Secular Institutions*, 3 (Mar. 27, 2014), <https://www.childusa.org/search?q=BMC>. Child sex abuse is a secret activity that typically hides from public view as

³ NSOPW, *Raising Awareness About Sexual Abuse: Facts and Statistics*, U.S. DEPT. OF JUSTICE, <https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#reference> (last visited July 12, 2018). Other studies have placed the incidence of the sexual abuse of boys as low as 1 in 20, but the 20-25% figure for the abuse of girls has remained constant. See National Center for Victims of Crime, *Child Sexual Abuse Statistics*, NCVC, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics> (last visited July 12, 2018).

⁴ See generally BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN MIND AND BODY IN THE HEALING OF TRAUMA* (2014); Penelope K. Trickett et al., *The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational, Longitudinal Research Study*, 23 *DEVELOPMENT AND PSYCHOPATHOLOGY*, 453-76 (2011); SJ Berkowitz et al., *The Child and Family Traumatic Stress Intervention: Secondary Prevention for Youth at Risk Youth of Developing PTSD*, 52 *J. Child Psychol. Psychiatry*, 676-85 (Jun. 2011).

perpetrators operate to obtain multiple victims. The decades before disclosure give perpetrators and institutions latitude to suppress the truth to the detriment of children, parents, and the public. The institutions that fail to involve the authorities keep the poison of sex abuse circulating and consistently endanger more children.

I. Grand Juries Play an Important Role in Uncovering Hidden Child Sexual Abuse.

There are two proven pathways to public disclosure of child sex abuse and institutional cover-up: (1) criminal prosecution and civil lawsuits and (2) grand jury investigations. Because the vast majority of victims do not come forward in childhood, the former rests on the need for generous statutes of limitation (“SOLs”). Short SOLs short-circuit judicial disclosure of the truth. In the Commonwealth, SOLs historically have been too short for most victims. Even today, the criminal SOL lags behind the rest of the country. It is capped at age 50 while, in contrast, seven states have completely eliminated the SOL for at least the top felonies. *See*

Child Sex Abuse Statute of Limitations Reform in the Wake of the Boston Archdiocese Clergy Sex Abuse Scandal January 2002, CHILD USA, 18 (July 2018), https://static1.squarespace.com/static/5a120b962aeba581dd692cd4/t/5b6a73958a922df70e3ddb8b/1533703061694/SOLReport_July18.pdf [hereinafter *Child Sex Abuse SOL Reform Report*]. With cases limited because of the SOLs,

grand jury reports have been the most effective vehicle for serving the public's need to know the facts of child sex abuse and its cover-up in the Commonwealth.

The second pathway to protecting the public is to shine sunlight on the darkness of child sex abuse through a grand jury investigation. Recent history in the Commonwealth has witnessed groundbreaking grand jury investigations that brought to light the seriatim sex abuse otherwise buried from public view. The state of Pennsylvania leads the United States in its investigation of institution-based child sex abuse. The Philadelphia District Attorney alone released three reports on the incidence of clergy sexual abuse in the Philadelphia Archdiocese in 2003, 2005, and 2011. *In re: Cnty Investigating Grand Jury of Sept. 26 2001*, Misc. No. 03-00-00239, Sept. 21, 2005, http://www.bishop-accountability.org/reports/2003_09_25_First_Philadelphia_Grand_Jury_Report.pdf; *In re: Cnty Investigating Grand Jury of Sept. 17, 2003*, Misc. No. 03-00-239, Sept. 15, 2005, https://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf [hereinafter 2005 Report]; *Cnty Investigating Grand Jury XXIII*, Misc. No. 0009901-2008, Jan. 21, 2011, http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf. The 2005 Report investigated the extent of clergy sex abuse following the scandal and cover-up of clergy sex abuse in the Boston Archdiocese.

To date it has been the most comprehensive of the reports, with 418 pages and the identification of over 60 priests who had abused children.

The 2005 Grand Jury Report was important because it disclosed to the public the pattern of cover-ups and abuse in the Philadelphia Archdiocese. Dozens of priests were identified in a city where many resisted believing that its beloved clergy could harm children. All of the claims were beyond the statute of limitations. As a result, without the Report, many to this day might still believe that the scourge of clergy sex abuse skipped Philadelphia entirely, and therefore children are uncommonly protected. Instead, as a result of the grand jury findings, the citizens of Philadelphia learned:

This report contains the findings of the Grand Jury: how dozens of priests sexually abused hundreds of children; how Philadelphia Archdiocese officials – including Cardinal Bevilacqua and Cardinal Krol – excused and enabled the abuse; and how the law must be changed so that it doesn't happen again. Some may be tempted to describe these events as tragic. Tragedies such as tidal waves, however, are outside human control. What we found were not acts of God, but of men who acted in His name and defiled it.

But the biggest crime of all is this: it worked. The abuser priests, by choosing children as targets and trafficking on their trust, were able to prevent or delay reports of their sexual assaults, to the point where applicable statutes of limitation expired. Archdiocese officials, by burying those reports they did receive and covering up the conduct, similarly managed to outlast any statutes of limitation. As a result, these priests and officials will necessarily escape criminal prosecution. We surely would have charged them if we could have done so.

But the consequences are even worse than the avoidance of criminal penalties. Sexually abusive priests were either left quietly in place or “recycled” to unsuspecting new parishes – vastly expanding

the number of children who were abused. It didn't have to be this way. Prompt action and a climate of compassion for the child victims could have significantly limited the damage done. But the Archdiocese chose a different path. Those choices went all the way up to the top – to Cardinal Bevilacqua and Cardinal Krol personally.

2005 Report, at 1.

Consider again what that grand jury found. The 2005 Report revealed “Sexually abusive priests were either left quietly in place or ‘recycled’ to unsuspecting new parishes – vastly expanding the number of children who were abused.” *Id.* The Report, therefore, took up the slack that was created by inadequate SOLs, and informed the world of a child sex abuse dynamic that needed to be disclosed. It is one of the pillars in the worldwide movement to uncover the depth of the conspiracy to cover up child sex abuse in trusted institutions. The facts contained in the 2005 Report made it possible for the public and parents, e.g., of parochial school students, to make better informed decisions and to put appropriate pressure on the Archdiocese to adopt improved child-protective policies.

Without the 2005 Report, accountability would be attenuated at best. There is every reason to believe that the Report at issue here will yield similarly important information to the public.

The 2005 Report does not stand alone in its service to the public. Each child sex abuse grand jury report to date in the Commonwealth has revealed previously unnamed perpetrators:

1. The Philadelphia Archdiocese (2003)
120 perpetrators revealed
2. The Philadelphia Archdiocese (2005)
63 perpetrators revealed
3. The Philadelphia Archdiocese (2011)
41 perpetrators revealed
4. Pennsylvania State University
9 people knew about the abuse
5. The Solebury School
9 perpetrators revealed
6. The Johnstown-Altoona Diocese
42 perpetrators revealed⁵

⁵ These numbers were found in: Amanda Mott, *Penn Panel Reflects on the 2005 Philadelphia Grand Jury Report on Child Sex Abuse in the Archdiocese of Philadelphia*, (Nov. 2, 2015), at <https://penntoday.upenn.edu/news/penn-panel-reflects-2005-philadelphia-grand-jury-report-child-sex-abuse-archdiocese-philadelphia>; BishopAccountability, *Report of the Philadelphia Grand Jury*, at http://www.bishop-accountability.org/pa_philadelphia/Philly_GJ_report.htm#other_reports<http://www.philly.com/philly/news/Those-who-are-named-in-the-grand-jury-report.html>; *2011 Report of the Grand Jury*, http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf; Bill Chappell, *Penn State Abuse Scandal: A Guide And Timeline*, NPR, (Jun. 21, 2012), <https://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>; Sarah Bloomquist, *Grand Jury: Decades of Sexual Abuse at Solebury School*, ABC News, (Feb. 1, 2017), <http://6abc.com/news/grand-jury-decades-of-sexual-abuse-at-solebury-school-/1732557/>; and BishopAccountability, *Database of Publicly Accused Priests in the United States*, <http://bishop-accountability.org/member/psearch.jsp> (last visited August 4, 2018).

Without the names of the perpetrators—including those who cannot be indicted because of the SOLs—the reports would not be nearly as important or effective. They also have revealed that respected and trusted administrators have put children at risk. For example, in Philadelphia, we learned that the long-time Archdiocesan Vicar of Clergy, Msgr. William Lynn, failed to protect children. He awaits re-trial at this time for the crime of child endangerment. *See Com v. Lynn*, 631 Pa. 541, 590-91, 114 A.3d 796, 826 (2015) (“The plain reading and common sense of the phrase ‘supervising the welfare of a child’ leaves little doubt that Appellee’s actions constituted endangerment of D.G.”). Moreover, Penn State officials were convicted or pled guilty to child endangerment. Not only Coach Jerry Sandusky, but also Penn State’s President, Vice President, and Athletic Director. *See Commonwealth v. Spanier*, 2018 PA Super 184 (June 26, 2018); Camila Domonoske, *3 Ex-Penn State Officials Get Jail Time for Failure to Report Sandusky Abuse*, NPR, Jun. 2, 2017, <https://www.npr.org/sections/thetwo-way/2017/06/02/531243225/3-penn-state-officials-sentenced-to-jail-time-for-failure-to-report-sandusky>. These grand jury reports repeatedly expose hidden wrongdoers. The information released in grand jury reports has served the public in the past and will continue to do so when you release the most recent report, without limitations.

II. The Release of the Full Grand Jury Report Will Add to Our Understanding of Hidden Sexual Abuse in the Commonwealth.

Grand jury investigations into child sex abuse cover-ups provide otherwise unavailable information to the public regarding the individuals and institutions who put children at risk. A grand jury investigation is intended to uncover organized criminal behavior, corruption, and/or dangers to the public.

They exist first, for the protection of society, secondly, for the indictment of alleged criminals, thirdly, for the investigation of crimes and conditions which have created or are likely to create public harm, and fourthly, to protect from criminal charges innocent persons who have been erroneously or falsely accused of crime. Today, a grand jury is an arm of the criminal court and is the body by which an alleged criminal is (usually) indicted and brought to the bar of justice for trial.

The Hamilton Appeal, 407 Pa. 366, 382 (1962) (Bell, J. dissenting). In short, “the grand jury serves as the voice of the community in calling forth suspected criminals to answer for their alleged misdeeds.” *Barker v. Fox*, 238 S.E.2d 235, 236 (W. Va. 1977). Such investigations make it possible for prosecutors to put together the pieces of criminal puzzles, especially when the crime was committed through a conspiracy or organization that has otherwise successfully concealed the truth from the public. In the case of child sex abuse, grand juries serve an important public function of uncovering systemic abuses of power that threaten citizens of the Commonwealth. They have the power to force organizations to divulge relevant facts that have been buried from public view.

In child sex abuse cases, grand juries also serve the vital function of shielding victims during the course of an investigation. That reduces the likelihood of subtle and aggressive intimidation of victims that can deter their stories from ever reaching the public. Moreover, these investigations educate the public about the prevalence of sex abuse and the potential risks to children in settings where parents and caretakers might otherwise intuitively place trust.

This Court should not stand in the way of the release of the information in this Report, which will increase accountability and safety throughout the Commonwealth. There is strong evidence from these investigations that proactive synergies develop as transparency increases. First, grand jury investigations provide the large picture needed to understand the necessary legal reforms. For example, when the 2005 Philadelphia Archdiocese grand jury report was released, it included legal recommendations that led to significant improvements in the law. In particular, the Report strongly criticized Pennsylvania's short statutes of limitations. As a direct result of the report, Pennsylvania's criminal SOL for child sex abuse was extended from age 30 to age 50. *See Child Sex Abuse SOL Reform Report* at 18.

Second, there are increases in publicly available data, which in turn increases transparency and overall safety. For example, the team that produced the 2005 Philadelphia grand jury report prepared for their work in part by researching

the Catholic abuse problem using BishopAccountability.org. When the 2005 report was released, BA created a user-friendly presentation of the report, which DA Lynne Abraham's office linked to from their own website. Then the Archdiocese of Philadelphia chose to make some material published by Abraham available on the archdiocesan site. Other dioceses followed suit in the years following, and now more than forty dioceses and provinces of religious orders have published such lists of accused priests. *See Lists of Accused Priests Released by Dioceses and Religious Institutes*, Bishop Accountability, http://www.bishop-accountability.org/AtAGlance/diocesan_and_order_lists.htm (last visited July 13, 2018). Most recently, Bishop Lawrence Persico published a list of priests from the Erie, Pennsylvania diocese who have been credibly accused of abusing minors. *Public Disclosure*, Diocese of Erie, <https://www.eriercd.org/childprotection/disclosure.html> (last visited July 13, 2018). Bishop Persico was influenced by this case's grand jury report, which he anticipated in his April 6, 2018 statement, and also by other precedents, including the lists previously published by the Philadelphia Archdiocese and the Altoona-Johnstown Diocese. Press Release, Statement from The Most Rev. Lawrence T. Persico Bishop of Erie, (Apr. 6, 2018), http://www.bishop-accountability.org/diocesan_lists/Erie/2018_04_06_Erie_Bishop_Persico_Statement.pdf. The publication of these lists increases transparency and accountability in

the various dioceses and helps ensure that the young citizens of the Commonwealth are safer. Bill White, *Pennsylvania Grand Jury, East Penn Plagued by Secrets*, *The Morning Call*, (July 11, 2018), <http://www.mcall.com/opinion/white/mc-bw-pennsylvania-grand-jury-east-penn-20180711-story.html>.

Third, the revelations of the 2005 Report laid the groundwork for indictments flowing from the 2011 Grand Jury Report, leading to the prosecution of Msgr. William Lynn for child endangerment. *See Com. v. Lynn*, 631 Pa. 541, 593, 114 A.3d 796, 827 (2015) (finding “inconsequential and irrelevant” the idea that Lynn was innocent because he had not come into contact with children he endangered).

Following the reports on pervasive sex abuse in the Philadelphia Archdiocese, law enforcement’s attention turned to other arenas of child endangerment. For example, the Pennsylvania Office of Attorney General conducted a grand jury investigation in response to reports it had received involving sexual abuse of children by football coach Jerry Sandusky at Pennsylvania State University. That report was released on November 4, 2011 and led to the conviction of Sandusky and Penn State officials. *See Report of the Thirty-Third Statewide Investigating Grand Jury, available at* <https://cbschicago.files.wordpress.com/2011/11/sandusky-grand-jury->

presentment.pdf (last visited July 13, 2018); for a timeline of events, see CNN Library, *Penn State Scandal Fast Facts*, CNN.com (Mar. 28, 2018, 11:31 AM), <https://www.cnn.com/2013/10/28/us/penn-state-scandal-fast-facts/index.html>.

Two subsequent investigations also revealed shocking endangerment of children in settings where parents and the public assumed they were safe. The Bucks County District Attorney's Office investigated and released a report on the pervasive sex abuse in the elite boarding school Solebury School. *In re: County investigating Grand Jury of March 6, 2015*, Misc. No. 3280-2014, Feb. 1, 2017, <http://www.buckscounty.org/docs/default-source/default-document-library/solebury-school-report.pdf?sfvrsn=0>. These grand jury reports have played an essential role in child protection throughout the Commonwealth.

The Pennsylvania Office of Attorney General also released a grand jury report on the sexual abuse in the Altoona-Johnstown Diocese. Pa. Off. Att'y Gen., *A Report of the Thirty-Seventh Statewide Investigating Grand Jury*, (Mar. 2016), http://www.bishop-accountability.org/reports/2016_03_01_Pennsylvania_Grand_Jury_Report_on_Diocese_of_Altoona_Johnstown.pdf. In addition to confirming the modus operandi for the endangerment of children in the Philadelphia Archdiocese, that report also uncovered shocking facts regarding collusion between local and Catholic Church officials contributing to the abuse and the

cover-up. The report even included the following, and horrifying, chart of victim payoffs according to the level of clergy abuse:

<u>LEVEL OF ABUSE</u>	<u>RANGE OF PAYMENT</u>
I. Above clothing, genital fondling	\$10,000 - \$25,000
II. Fondling under clothes; masturbation	\$15,000 - \$40,000
III. Oral sex	\$25,000 - \$75,000
IV. Sodomy; Intercourse	\$50,000 - \$175,000

The chart is footnoted with “Factors to consider for valuation within a range.” Those “factors” are: number of occurrences; duration of abuse over time; age of victim; use of alcohol or drugs; apparent effect of abuse on victims (psychosis); and other aggravating circumstances.

See id. at 120.

In each and every one of these grand jury reports into child sex abuse, prosecutors were able to investigate and then inform the public of facts they have the right to know. The Commonwealth of Pennsylvania became a safer place for children because grand jury investigations were completed and, most importantly, their findings were published.

These reports have dramatically increased our understanding of hidden child sexual abuse. Reports of AGs and grand juries in other jurisdictions, and of the previous grand juries in PA, show that we can confidently expect further important revelations in the *Fortieth Statewide Investigating Grand Jury Report*. The extent and scope of the problem was extraordinary in these dioceses and the public

learned facts about risks to children that had been concealed. The result will be increased safety for the Commonwealth's children. See, e.g., Massachusetts Attorney General Thomas Reilly, *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston*, Mass. Off. Att'y Gen., (July 23, 2003), <http://www.bishop-accountability.org/resources/resource-files/reports/ReillyReport.pdf>; Mass. Off. Att'y Gen., *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston: Executive Summary and Scope of Investigation*, (July 23, 2003), <http://www.bishop-accountability.org/resources/resource-files/reports/ReillyExecSum.pdf>; New Hampshire Attorney General Peter W. Heed, et al., *Report on the Investigation of the Diocese of Manchester*, N.H. Off. Att'y Gen., (Mar. 3, 2003), http://www.bishop-accountability.org/reports/2003_03_03_NHAG/; Maine Attorney General G. Steven Rowe, *A Report by the Attorney General on the Allegations of Sexual Abuse of Children by Priests and Other Clergy Members Associated with the Roman Catholic Church in Maine*, Me. Off. Att'y Gen., (Feb, 24, 2004), <http://www.bishop-accountability.org/resources/resource-files/reports/MaineAG.pdf>; New York: Suffolk County (Foreperson Roseanne Bonventre, *Suffolk County Supreme Court Special Grand Jury Report May 6, 2002*, CPL 190.85(1)(C), (Jan. 17, 2003), http://www.bishop-accountability.org/reports/2003_02_10_SuffolkGrandJury/Suffolk_Full_Report.pdf

f; and Westchester County (*Report of the April 'E' 2002 Westchester County Grand Jury Concerning Complaints of Sexual Abuse and Misconduct Against Minors by Members of the Clergy* (June 18, 2002)), <http://www.bishop-accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf>.

The grand jury investigation at issue in this case has already led to the prosecution of Reverend John T. Sweeney for sexual abuse. Office of the Attorney General, *Attorney General Shapiro Charges Western PA Priest with Sexual Abuse*, (July 24, 2017), <https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-charges-western-pa-priest-with-sexual-abuse/>.

Yet, like the 2005 Report, the vast majority of cases are likely beyond the SOL. That is a function of Pennsylvania's historically short criminal SOLs—not that the Report unfairly names alleged perpetrators. Without the information in this report, and in light of the short SOLs, the Commonwealth, its children and families, and its citizens cannot learn the truth.

That result would be patently wrong. The reason that the Commonwealth has not adopted more capacious criminal and civil SOLs is directly attributable to the years of lobbying of the Catholic Conference and in particular, Philadelphia's Archbishop Charles Chaput. *See, e.g., Charles Chaput, Archbishop Outlines Dangers from Pa. Bill on Statutes of Limitations*, CatholicPhilly, (Jun. 6, 2016),

<http://catholicphilly.com/2016/06/archbishop-chaput-column/archbishop-outlines-dangers-from-pa-bill-on-statutes-of-limitation/>. The opposition to the Report arising from named perpetrators and cover-up conspirators cynically intends to protect their reputations and secrets from the truth, and at the expense of their victims. By blocking SOL reform and then trying to suppress the information contained in this Report, the pattern of cover-up and child endangerment is obvious. Suppression of this Report and the names it includes would doubly keep Commonwealth citizens in the dark. That is not healthy for its children or public policy.

As a result of its short statutes of limitation for victims of child sex abuse, Pennsylvania is behind the curve on access to justice for victims. Due to relatively short statutes of limitations in Pennsylvania, for example, the 2005 Report did not yield indictments. *See* 2005 Report, Sec. IV (A) (1) at 59.⁶ Yet, it paved the way for the 2006 extension of the criminal statute of limitations from age thirty to age fifty. *See Child Sex Abuse SOL Reform Report*, at 18. The current state of the law in Pennsylvania sets the criminal SOL at age fifty and the civil SOL at age thirty. CHILD USA, *The Laws that Should Protect Our Children - Pennsylvania*, <https://www.childusa.org/law/pennsylvania> (last visited July 13, 2018).

⁶ “Although we have a wealth of evidence against many of the abusers . . . we cannot indict any priest who abused a child for any of the crimes of which we are currently aware, because the relevant statutes of limitation have expired for every single act of abuse known to us.”

Pennsylvania's short statutes of limitation make it even more important to immediately obtain the information garnered from the current Grand Jury Report.

The experience with child sex abuse statutes of limitation in other states highlights how important it is for Pennsylvania to obtain the information garnered from this most recent grand jury report. Pennsylvania has yet to join the large majority of states to eliminate at least felonies from its criminal SOLs. The majority of states have abolished the age cap on child sex abuse felonies. *See Child Sex Abuse SOL Reform Report*. Pennsylvania's extension to age 50 for the criminal SOL was made in 2006 following the release and recommendations of the 2005 Report. Judiciary and Judicial Procedure: Other Offenses, 42 Pa. Cons. Stat. § 5552(b) (2014). The civil SOL at age 30 is increasingly short in comparison with the developments in the rest of the country. On a scale of 1-10, overall it ranks as a 5 (where 4 is the lowest combined score). *See Child Sex Abuse SOL Reform Report* at 25. When the 2005 Report was released, the grand jury recommended the following legal reforms to the civil SOLs to prevent the abuse and cover-up that report revealed:

As a grand jury, our function is of course limited to examination and application of criminal offenses. We recognize the reality, however, that civil liability may also provide a disincentive to the kind of systemic sexual abuse that occurred here. Indeed, Archdiocese officials never seemed to believe that clergymen could ever go to jail for abusing, or allowing the abuse of, children; but they did display an obvious fear that they would be sued for such conduct. For many victims of sexual abuse by priests, civil liability may be the only

available means to seek recognition of their injuries and a measure of repose. Moreover, unlike statutes of limitation for criminal offenses, the time for bringing a civil suit can be lawfully extended or revived even after the original limitations period has expired. Accordingly, we ask the legislature to consider lengthening or suspending civil statutes of limitation in cases of child sex abuse.

2005 Report, supra, at 75-76.

These recommendations have not yet been followed. Pennsylvania's civil SOL has been age 30 for sixteen years. *Child Sex Abuse SOL Reform Report*, at 18. There have been many efforts in the state to extend or eliminate it and to pass a window, but to date they have not been successful. As a result, information about systemic child sex abuse has had to come through grand jury reports and the few cases that have been able to be filed within the SOL.

The 2006 SOL extensions did not go far enough. This Report must be released in order to ensure justice for all child victims—in or out of statute.

III. Releasing this Grand Jury Report with All Alleged Perpetrators Named Protects Children in Pennsylvania Now.

The immediate release of the Fortieth Statewide Investigating Grand Jury Report with all alleged perpetrators named is essential to greater understanding of how to protect the children of the Commonwealth from abuse. Better information about child abuse within these six dioceses will help current victims and help prevent future victims. In the years since the Boston Globe released its *Spotlight* series on Clergy Sex Abuse in 2002, abuse in some contexts has become fairly well-documented; these documents in the church context have contributed to

improvements in other areas of society. Certainly, the success of the #MeToo movement has built on the awareness and partial transparency achieved around Catholic Abuse.

That transparency is still partial. In Pennsylvania, grand jury reports in Philadelphia and Altoona-Johnstown have improved the situation in those areas, but considerably less is known about the abuse problem among Catholic clergy and bishops in the six other Catholic dioceses in the Commonwealth. BA maintains databases of accused clergy in the Erie, Scranton, Pittsburgh, Greensburg, Harrisburg, and Allentown dioceses, but the Fortieth Statewide Investigating Grand Jury Report will transform our understanding of these six dioceses, making children safer in the process.

PA will be the first large state where grand juries have assembled a complete picture of clergy sex abuse in the Catholic Church. This is crucial, because, as is well established, for decades Catholic transfer practices moved accused priests to neighboring dioceses where the accused priests' crimes were not known. *See, e.g.,* Will Carless, *This is How Abusive Priests Are Able to Relocate Abroad*, Agence France-Presse, (Oct. 7, 2015), <https://www.pri.org/stories/2015-10-07/how-abusive-priests-are-able-relocate-abroad>. What we learn in the aggregate from the current grand jury reports will enhance accountability for these crimes in the Commonwealth, and provide a template for understanding them in other states.

The undisclosed actors who have attempted to block release of the Fortieth Statewide Investigating Grand Jury Report are standing in the way of information the public needs to guard against sexual abuse in institutions that have endangered children. In this instance, the pre-release of the Report should not be exploited to suppress the Report so as to protect the reputation of each diocese from the facts of its crimes and endangerment of children.

The Grand Jury Act provides for responses by persons mentioned in the report but not indicted and this Court has accorded them that possibility. 42 Pa. Cons. Stat. § 4552(e). The Act does not justify the report's suppression. Such suppression would undermine the Act and all future grand juries and their reports. Suppression or time-consuming redactions would also betray persons who testified before the grand jury, particularly survivors, who are already concerned that the delay of the report in effect offers comfort and support to sex offenders and their enablers, whilst casting doubts and disrespect on survivors and their testimony. The result of this for survivors could be grave indeed. Suppression or delay would undermine public confidence in the process and in Pennsylvania's resolve to address a well-known public problem. That problem has already been partially described in three Philadelphia grand jury reports, one Altoona-Johnstown grand jury report, and in the report on the Sandusky case.

Indeed, the well-funded opposition that the Fortieth Statewide Investigating Grand Jury Report has encountered shows that its contents are likely even more momentous than the Philadelphia and Altoona-Johnstown reports' contents were.

IV. Many Important Public Purposes Will Be Served by the Immediate Release of the Full Grand Jury Report, Published Along With Responses Provided for by the PA Grand Jury Act.

The following and important public purposes will be served by the immediate release of the full Grand Jury Report. The release will include the responses allowed by the Pennsylvania Grand Jury Act.

(1) The grand jury report would complete a statewide picture of Catholic clergy abuse of children begun by the Philadelphia grand jury reports and continued by the Altoona-Johnstown report. This complete picture is important to the public for many reasons. Perhaps the most important is that justice-friendly statute of limitations reform has been stymied in Pennsylvania, and a complete grand jury landscape of clergy abuse will provide citizens and their representatives with their first account of the impact of clergy abuse in their own communities as well as the importance of SOL reform in obtaining justice for victims.

(2) Judging from the findings of previous grand juries, here and elsewhere, this new grand jury report will reveal abuse by clergy of non-Catholics—for example, in Boy Scout troops that Catholic priests often have led. Catholic priests also work at prisons, hospitals, and universities, and in all those institutions, the

vulnerable population is not limited to Catholic children or Catholic vulnerable adults. These additional victims must be given the opportunity to come forward.

(3) Grand jury reports usually reveal the names and assignment histories of offenders whose identities were not publicly known previously. When these offenders are still alive, the communities where they reside become safer because their abusive pasts are known. Even when the newly-named offender is deceased, clear public purposes are served by the publishing of the offender's name. Survivors whose offender had been kept anonymous by the Catholic Church finally experience validation from the release of the offender's name. Serious effects in a family and a community, which were mysterious before, are suddenly understandable, once a priest is identified as an offender.

(4) Release of the names of offenders not previously identified, and of information regarding the complicity of church managers, will sometimes encourage other survivors to come forward. Thus the grand jury report is not the end of the story, but rather prompts additional revelations that confirm and extend the grand jury's findings and conclusions.

(5) Grand jury reports often provide information about the role of the Holy See in clergy abuse cases. For example, Vatican congregations and the Pope hold the power to remove and laicize offending priests. Diocesan handling of abuse cases is governed by canon law and, since 2002, by particular church law. *See,*

e.g., USCCB, *Promise to Protect Pledge to Heal: Charter for the Protection of Children and Young People Essential Norms*, United States Conference of Catholic Bishops, (June 2011), <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/2011-Charter-booklet.pdf>. It clearly serves a public purpose for Pennsylvania citizens to be informed if Vatican action or inaction endangers Pennsylvania minors.

(6) The Grand Jury had access to secret church archives and to testimony of individuals who had never before gone public. These documents and witnesses have revealed crimes perpetrated on Pennsylvania citizens, and public monies have been spent to acquire this information. It serves the interest of schools and youth-serving organizations that might hire those named in the report as well as those victims, and of their families, friends, and coworkers, that the facts revealed in those documents and testimony be made public.

(7) This Court's recent decision in *Com. v. Lynn* means that the actions of church managers in clergy abuse cases can more often be addressed as this Court confirmed that the state statute creates liability for administrators whether or not they are assigned oversight of specific children. *See generally* 631 Pa. 541 (2015). But, even when managerial malfeasance revealed in the Report is beyond statute or out of reach, information in the Report may prompt others to come forward with additional information in the public interest.

(8) Information about the actions of bishops and church managers in clergy abuse cases serves public purposes because bishops have been active through their Catholic Conference in lobbying against access to justice for child sex abuse victims. Hence, information in the Report about those bishops and their predecessors is relevant and useful to citizens and their representatives, when the lobbying of the Catholic leadership needs to be assessed.

(9) The Altoona-Johnstown Grand Jury report provided information about public officials who colluded with church authorities to conceal clerical abuse of children and frustrate prosecution of priests for those crimes. It serves a public purpose to show whether other public officials in the Commonwealth have colluded to shield perpetrators.

(10) The effects of child sexual abuse are deep, broad, and lasting in society. The effects include lost earnings; increased healthcare costs; decreased productivity, happiness, and ability to care for children; disrupted or destroyed marriages; drug addiction and its widespread effects and costs and degradation in the comfort that can be drawn from religion itself. *See Fiscal Impact of SOL Reform – PA Fiscal Impact*, CHILD USA, <https://www.childusa.org/fiscalimpact> (last visited August 6, 2018). These are only some of the societal effects that flow from the crimes detailed in the grand jury report. Revealing these effects so that they can be properly addressed and remedied serves a public purpose. Suppression

of the report, or time-consuming redaction with its attendant obfuscation, would not serve the public interest. It is enough that those named may add a response to the report as Pennsylvania law permits.

The immediate release of the Fortieth Statewide Investigating Grand Jury Report into child sex abuse with all alleged perpetrators named will provide essential information to the public regarding the individuals and institutions who put children at risk. This is necessary to provide justice for the victims of abuse in these dioceses and to prevent future child sex abuse.

CONCLUSION

No other conclusion is possible. This Court should immediately release the Grand Jury Report including the names of all alleged perpetrators and enablers in order to protect the safety and well-being of the children of the Commonwealth, their families, and their advocates.

Respectfully submitted,
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CERTIFICATION OF WORD COUNT COMPLIANCE

Per Pa.R.A.P. 531(b)(3), I hereby certify that this Brief of Amici Curiae CHILD USA and Bishop Accountability complies with the applicable word count limit, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b). This certificate is based on the word count of the word processing system used to prepare the brief.

Pursuant to Rule 127(a) of the Pennsylvania Rules of Appellate Procedure, I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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