

IN THE SUPREME COURT OF THE STATE OF OREGON

JACK DOE 1, an individual proceeding)	Clackamas County
under a fictitious name; JACK DOE 2, an)	Circuit Court Case No.:
individual proceeding under a fictitious)	CV-0802-0740
name; JACK DOE 3, an individual)	
proceeding under a fictitious name; JACK)	
DOE 4, an individual proceeding under a)	CA No.: A140979
fictitious name; JACK DOE 5, an individual)	SC No.: S059589
proceeding under a fictitious name; JACK)	
DOE 6, an individual proceeding under a)	
fictitious name; and JACK DOE 7, an)	
individual proceeding under a fictitious name)	
)	
Petitioners on Review,)	
v.)	
)	
LAKE OSWEGO SCHOOL DISTRICT, an)	
Oregon Public School District, authorized)	
and chartered by the laws of the State of)	
Oregon,)	
)	
Respondent on Review,)	
)	
-- and --)	
)	
JUDD JOHNSON, an individual,)	
)	
Defendant.)	

**BRIEF OF CHILD AND CRIME VICTIM ADVOCATE AMICI CURIAE
IN SUPPORT OF PETITION FOR RECONSIDERATION**

Petition for Review of the decision of the Court of Appeals from an Appeal of
the ORCP 67B Limited Judgment of Clackamas County Circuit Court
entered January 2, 2009, the Honorable James C. Tait, Circuit Court Judge.
Court of Appeals Opinion Filed: May 18, 2011

Author of Opinion: Hon. Darleen Ortega, Presiding Judge

AMICI ON REVIEW INTENDS TO FILE A BRIEF ON THE MERITS

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November, 2011

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Introduction

Amici Curiae are organizations that advocate for children, sex abuse survivors, and/or crime victims. Descriptions of these organizations and their missions, as stated in their motion to appear as *Amicus Curiae*, are appended.

Amici Curiae respectfully urge this Court to reconsider its denial of review of the Court of Appeals' decision in *Jack Doe 1 v. Lake Oswego School District*, 242 Or App 605, 615, ___ P3d ___ (2011). In that decision, the Oregon Court of Appeals held that a cause of action for abuse by an employee or agent of a public body accrues, and the statute of limitation begins to run, when the child is touched, without regard to whether the child knows that a legally protected interest has been invaded.

Amici believe such a rule of law is harmful and counter-productive to the protective societal goals of identifying child molesters and educating the public about the risks that trusted adults pose to children. Demanding disclosure from a fifth grader immediately after he is molested by a trusted adult is not a proper application of the discovery rule given the lack of understanding, avoidance, denial, and minimization that usually occurs in children after they are sexually abused.

Additionally, *Amici* believe the decision of the Court of Appeals is inconsistent with established precedent interpreting and applying statutes of limitation. *See, e.g.*, the recent decision of this Court in *Kaseberg v. Davis*

Wright Tremaine, LLP, ___ Or ___, ___ P3d ___ (Nov. 10, 2011); *see also T.R. v. Boy Scouts of America*, 344 Or 282, 296, 181 P3d 758 (2008).

If it is the policy of this state to apply such a rule to a vulnerable subset of victims of the torts of public bodies, then that policy and that interpretation of the statute should be clearly set out by this State's highest court. *Amici* respectfully urge this Court to reconsider its denial of review of the Court of Appeals' decision.

Arguments in Favor of Reconsideration

In presuming that a child who is sexually abused necessarily understands that a legally protected interest is invaded at the time of the abuse, the Court of Appeals held as a matter of law that no reasonable juror could believe that a child abused by a trusted adult was unable to understand that the sexual touching was harmful. However, professional literature shows that because of shame, self-blame, avoidance, and denial, children abused by trusted adults often do not understand that the abuser has acted wrongfully and invaded their interest.

Child victims of sexual assault often believe that they have somehow caused the abuse themselves or invited it, believing that they are the ones who did wrong.

Additionally, known psychological conditions arising from abuse cause child victims of abuse to avoid, minimize, and otherwise dissociate from the

abuse in a way that makes it psychologically impossible to disclose their abuse near the time it is occurring.

It is certainly within the realm of psychological probability for reasonable child sexual abuse victims to not recognize that childhood sexual abuse has caused injury until much later, sometimes several decades later. As the research shows, one of the most pernicious aspects of child abuse is that in the minds of many children, the abuse itself triggers coping mechanisms that force the victim to minimize, avoid, and deny the abuse.

Sadly, child sexual abuse is not uncommon. *See* John E.B. Meyers, 1 Evidence in Child Abuse and Neglect Cases §5.2 at 414 n. 23 (3d ed. 1997) (“as many as 10% to 15% of boys and 20% to 25% of girls experience at least one instance of sexual misuse prior to the age of 18”), *quoting* Friedrich, *et al.*, *Normative Sexual Behavior in Children*, 88 Pediatrics 456, 462 (1991).

Children typically do not disclose sexual abuse during or immediately after the time they are abused. *See* Meyers, Evidence, *supra* §1.27 at 62–67 (57% of children with sexually transmitted disease did not disclose abuse even on first interview; 25% of children with medical indications of sex abuse refused to disclose).

The pressures to remain silent are wide-ranging and often overwhelming, including pressure or threats from the perpetrator, a relationship with the perpetrator, fear of the anticipated consequences of telling, fear of negative

reactions from parents or family, fear of not being believed, and feelings of embarrassment, shame, and self-blame. R. Alaggia, *Many Ways of Telling: Expanding Conceptualizations of Child Sexual Abuse Disclosure*, 28 *Child Abuse & Neglect* 1213–1227 (2004); L.C. Malloy, S.P. Brubacher, & M.E. Lamb, *Expected Consequences of Disclosure Revealed in Investigative Interviews with Suspected Victims of Child Sexual Abuse*, 15 *Applied Developmental Science* 8–19 (2011); I. Hershkowitz, O. Lanes, & M.E. Lamb, *Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents*, 31 *Child Abuse & Neglect*, 111–123 (2007); S. J. Collings, S. Griffiths, & M. Kumalo, *Patterns of Disclosure in Child Sexual Abuse*, 35 *South African Journal of Psych.* 270–285 (2005). For boys in particular, they fear stigmatization—rightly or wrongly—of being labeled a victim or homosexual. R. Alaggia, *Disclosing the Trauma of Child Sexual Abuse: A Gender Analysis*, 10 *J. of Loss and Trauma*, 453–470 (2005).

In some children, when faced with the betrayal of abuse, “it may be that splitting off, denial, or avoidance is adaptive for some period of time[,]” and indeed, one clinical feature observed in sexually abused adolescents is a “vigorous denial of any impact of sexual abuse experiences.” E. Olafson, B. Boat, *Long Term Management of the Sexually Abused Child*, in *Treatment of Child Abuse* 23, 27 (R. Reece, ed. 2005). Many abused children truly believe

that sexual contact with an adult, even a trusted adult who betrays that trust, simply caused no harm.

Child victims also frequently engage in self-blame to avoid recognizing that the abuser has injured them. I. Daigneault, M. Tourigny, H. Martine, *Self-Attributions of Blame in Sexually Abused Adolescents: a Mediational Model*, 19 J. of Traumatic Stress 153-157 (2006). See P. Coffey, H. Leitenberg, K. Henning, T. Turner, & R.T. Bennett, *Mediators of the Long Term Impact of Child Sexual Abuse: Perceived Stigma, Betrayal, Powerlessness, and Self-blame*, 20 Child Abuse & Neglect 447, 452–53 (1996) (statistically significant correlation between child sex abuse and self-blame). C.f. H.H. Filipas, S.E. Ullman, *Child Sexual Abuse, Coping Responses, Self-Blame, Posttraumatic Stress Disorder, and Adult Sexual Revictimization*, 21 J. of Interpersonal Violence 652–672 (2006) (child abuse victims often experience self-blame, and those who do are statistically more likely to be revictimized). This self-blame and denial of impact are seen as means of asserting control to conquer the feelings of powerlessness associated with the sexual assault. See P.A. Frazier, H. Mortensen, J. Steward, *Coping Strategies as Mediators of the Relations Among Perceived Control and Distress in Sexual Assault Survivors*, 52 J of Counseling Psych 267–278 (2005).

Delayed recall of traumatic events is also not uncommon. D. M. Elliott, *Traumatic Events: Prevalence and Delayed Recall in the General Population*,

65 J of Consulting and Clinical Psych. 811–820, 812 (1997), (“some memory loss in trauma survivors may reflect dissociative avoidance strategies . . . traumatic memory loss may be understood as a form of avoidance conditioning, whereby access to memory is punished . . . thereby motivating the development of memory-inhibiting mechanisms”). As *Amici* understand it, this is not a delayed recall (sometimes called “repressed memory” case), but it is nonetheless a not uncommon resulting symptom of child sexual abuse.

Furthermore, “chronic child abuse promotes avoidance behaviors.” John Briere, *Psychological Assessment of Child Abuse Effects in Adults*, in *Assessing Psychological Trauma and PTSD* 540–41 (Wilson and Keane eds. 2004).

“[C]hildren suffering from PTSD often enter an avoidance phase” in which they deny abuse or recant because they cannot cope with the traumatic memories. C. Koverola & D. Foy, *Post Traumatic Stress Disorder Symptomatology in Sexually Abused Children: Implications for Legal Proceedings*, 2 J. of Child Sexual Abuse 119-128 (1993). These citations represent only a very small fraction of the peer-reviewed research available and relevant to this Court’s decision to reconsider its denial and inform the Court in any possible decision on the merits.

Because of the highly technical nature of both dissociative amnesia and PTSD as diagnoses and the symptoms arising from these disorders, it is imperative that qualified experts be allowed to testify to a jury as to why—even

when a child abuse victim may recall that he has been sexually touched—abuse victims remain unable to recognize or act upon an invasion of a legally protected interest. *See, e.g., State v. Calvert*, 879 S.W.2d 546, 549 (Mo. App. W.D. 1994) (expert “testified that it is common for sexually abused children to delay in reporting the incidents and to recant their allegations. This testimony was admissible to help explain the victim’s behavior so the jury may better evaluate and weigh the victim’s testimony”). Such an approach is consistent with this Court’s application of the discovery rule in *T.R. v. Boy Scouts*, in which it was held that the actions of a minor in discovering a cause of action under the discovery rule are examined “from the perspective of a reasonable person under the relevant circumstances, which include plaintiff’s minority.” 344 Or at 297.

Conclusion

Because the psychological condition and perception of injury of the victims in this case was central to the question of accrual of the cause of action, the Court of Appeals should not have summarily rejected any notion of delayed discovery in child sex abuse cases under the discovery rule, even in cases under

the Oregon Tort Claims Act. *Amici* therefore respectfully request this Court to reconsider its denial of review and to accept this case.

Dated this 30th day of November, 2011.

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

I certify that (1) this brief complies with the word count limitation in ORAP 5.05(2)(b)(ii), and (2) the word count of this brief (as described in ORAP 5.05(2)(a), inclusive of footnotes and headers, but exclusive of the cover, table of contents, table of authorities, certificates and signature block), comes to 1,720 words as determined by the word count feature of Microsoft Word 2007 (12.0.4158.1014).

I further certify that the size of the type in this brief is not smaller than 14 point, Times New Roman font, for the text of the brief and the footnotes, as required by ORAP 5.50(4)(f).

DATED this 30th day of November, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erin K. Olson", written over a horizontal line.

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APPENDIX

The Amici Curiae

The **Survivor's Network of those Abused by Priests ("SNAP")** was founded in 1989, and is the nation's largest, oldest and most active support group from women and men wounded by religious authority figures. SNAP has an interest in this case in ensuring the prevention of future sexual abuse by religious authorities and in changing the practices of religious institutions that allowed sexual abuse to occur.

National Center for Victims of Crime (NCVC), formerly the National Victim Center, was founded in 1985, and is a nonprofit organization headquartered in Washington D.C. NCVC is regarded as one of the nation's most effective resource and advocacy centers for victims of crime. The National Center has an interest in this case due to its extensive work and dedication in representing the interests of crime victims, including those who have been victims of sexual abuse, incest, rape and other violent crimes.

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.

Oregon Abuse Advocates and Survivors In Service (OAASIS) exists to support sexual abuse survivors and prevent future abuse. OAASIS is an alliance of survivors and advocates committed to employing our personal and collective strengths, energies, and experiences to advocate and support sexual abuse survivors, educate others and to eliminate future abuse. It partners with organizations and individuals who are committed to the mission of protecting future generations, and seeks to empower survivors and the public with information and resources regarding sexual abuse.

Crime Victims United was founded in 1983 to advance the rights of crime victims and enhance the safety of all law-abiding Oregonians by addressing problems in Oregon's criminal justice system.

KidSafe Foundation is a 501(c)3 nonprofit founded by Sally Berenzweig, MEd, MA and Cherie Benjoseph, LCSW, Child Safety Experts, Mental Health Professionals, Educators, Public Speakers, and Authors. KidSafe Foundation's mission is to provide Prevention Education Programs to children ages 4th-5th grade, parents, teachers and guidance counselors to decrease all forms of child abuse. KidSafe Programs empower children that they have the right to be safe, they have the right to have a voice, their bodies belong to them, the right to tell and how to access help.

Survivors for Justice is an organization that advocates and educates on child safety issues and provides support for survivors of childhood sexual abuse and their families from the Orthodox world. The aim is not only to educate people but to facilitate the creation of supportive networks within the community and empower victims to overcome the fear of social ostracism that prevents many from reporting abuse. SFJ's goal is to provide a safe environment for children.

Coalition of Jewish Advocates for Children (CJAC) is composed of Advocates, Rabbis, Survivors and Legislators working to keep our children safe. CJAC works with advocacy and service groups that are dedicated to the principle of keeping our children safe in our society.

Jewish Parents for Safe Yeshivas (JPSY) believes that all children deserve a safe place to learn and grow. Unfortunately, many of our schools have shown themselves to be less than vigilant in this area. Parents cannot rely on school administration to keep their children safe. JPSY advocates for schools to have certified mental health professionals on staff to facilitate observation of symptoms of abuse and to encourage confidential disclosing by children.

The **National Black Church Initiative (NBCI)** is a coalition of 34,000 African-American and Latino churches working to eradicate racial disparities in healthcare, technology, education, housing, and the environment. Among our member churches we have 12,000,000 congregants, plus the ability to access all Black churches nationwide. NBCI's mission is to provide critical wellness information to all of its members, congregants, churches and the public.

The Child Victim's Voice (CVV) offers the silenced a way to use their voices. CVV successfully advocated for an amendment to Delaware

law, the Child Victim's Act, to allow child victims of sexual abuse in the state of Delaware the chance to tell the truth and be heard in a court of law by removing the statute of limitations during a now completed two-year window and abolishing the civil statute of limitations on these crimes in the future. In doing so, CVV brought together a diverse coalition of citizens, including law enforcement officials, health professionals, youth-serving nonprofits, child advocacy groups, survivors of childhood sexual abuse, leaders of various religious denominations and a bipartisan list of legislative co-sponsors. CVV has also worked to root out abuse and cover-up in Delaware's private and public schools, Boy Scout troops, gymnasiums, athletic fields, families, religious denominations and neighborhoods.

Stop the Silence: Stop Child Sexual Abuse, Inc., is a nonprofit corporation whose mission is to expose and stop child sexual abuse and help survivors heal worldwide. The goals of the organization are to help stop child sexual abuse and related forms of violence, to promote healing of victims and survivors, and to celebrate the lives of those healed. They do this through programming aimed at awareness, prevention, and healing. Their activities focus on media and other advocacy, training of service providers, education of broad audiences, and referral and support for the healing of children and adults. They note the importance of educating audiences about the epidemic proportions of CSA, its root causes, its impact, how to recognize possible signs and symptoms, and what can be done by the public and policy makers to stop it.

Jewish Board of Advocates for Children, Inc. (JBAC), is a nonprofit corporation based in New York, founded three years ago by a group of lawyers, doctors, rabbis, other professionals, and activists who recognize the need for a new voice to be heard that addresses the painful problem of the sexual, physical, and emotional abuse of children in our religious communities. JBAC was born out of the recognition that existing efforts to curb child abuse are inadequate, and new solutions, judicial and legislative, need to be pursued.

The **National Child Protection Training Center (NCPTC)** is a 501c(3) non-profit. NCPTC was founded in 2003 through funding from the Department of Justice Office of Juvenile Justice and Delinquency Prevention Program. NCPTC serves as a national clearinghouse for child protection professionals by providing technical assistance, addressing legal issues, and

researching and publishing of materials on child abuse. NCPTC also provides training to frontline professionals throughout the country. NCPTP has an interest in promoting the accurate presentation of psychological issues in our Nation's courts.

CERTIFICATE OF SERVICE

I certify that on November 30, 2011, I filed the original and 12 copies of the foregoing **BRIEF OF CHILD AND CRIME VICTIM ADVOCATE AMICI CURIAE IN SUPPORT OF PETITION FOR RECONSIDERATION** ("**BRIEF**") with the State Court Administrator, Records Section, 1163 State Street, Salem, OR 97301.

I further certify that I served two copies of the foregoing **BRIEF** upon:

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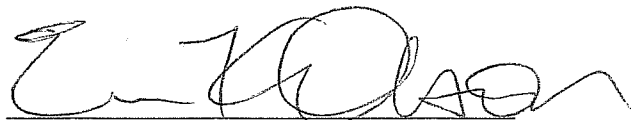
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