No. A10-1951

State of Minnesota
In Supreme Court

John Doe 76C,

Respondent,

vs.

Archdiocese of St. Paul and Minneapolis
and Diocese of Winona,

Appellants.

BRIEF AND APPENDICES OF *AMICI CURIAE* NATIONAL CHILD PROTECTION TRAINING CENTER AND NATIONAL CENTER FOR VICTIMS OF CRIME

Jeffrey R. Anderson (#2057)
Patrick W. Noaker (#274951)
Michael G. Finnegan (#033649X)
JEFF ANDERSON & ASSOCIATES, P.A.
366 Jackson Street, Suite 100
St. Paul, MN 55101
(651) 227-9990
Counsel for Respondent John Doe 76C

Thomas Wieser (#122841)
Jennifer Larimore (#0386663)
MEIER, KENNEDY & QUINN, CHTD.
Suite 2200, Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2100
(651) 228-1911
Counsel for Appellant Archdiocese of St. Paul and Minneapolis

Anna M. Restovich Braun (#323226)
GEORGE F. RESTOVICH & ASSOCIATES
117 East Center Street
Rochester, MN 55904-3757
(507) 288-4840
Counsel for Appellant Diocese of Winona

Bruce Jones (#179553)
FAEGRE & BENSON, LLP.
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
Counsel for Amicus Curiae Minnesota Religious Council

(Additional counsel listed on following page)

Daniel A. Haws (#193501)
Stacy E. Ertz (#0267181)
MURNANE BRANDT
30 East Seventh Street, Suite 3200
St. Paul, MN 55101
(651) 227-9411
Counsel for Amicus Curiae Minnesota Defense Lawyers Association

Thomas S. Deans (#21751)
Michelle D. Kenney (#236615)
KNUTSON, FLYNN & DEANS, P.A.
1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120
(651) 222-2811
Counsel for Amicus Curiae Minnesota School Boards Association

Michael J. Ford (#3082X)
Cally R. Kjellberg (#0390443)
QUINLIVAN & HUGHES, P.A.
400 South First Street, Suite 600
P.O. Box 1008
St. Cloud, MN 56302
(320) 251-1414
Attorneys for Amicus Curiae False Memory Syndrome Foundation

John D. Lamey III (#0312009)
LAMEY LAW FIRM, P.A.
980 Inwood Avenue North
Oakdale, MN 55128
(651) 209-3550
Attorneys for Amicus Curiae Leadership Counsel on Child Abuse and Interpersonal Violence

Amy J. Russell (#389634)
NATIONAL CHILD PROTECTION TRAINING CENTER
2nd Floor, Maxwell Hall
Winona, MN 55987
(507) 457-2890
Attorneys for Amici Curiae National Child Protection Training Center and National Center for Victims of Crime

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATE STATUTES

RULES

TEXTS AND TREATISES

STATEMENT OF INTEREST OF AMICI CURIAE

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.

NCPTC promotes reformation of current training, investigative and child welfare and prosecution practices by providing an educational curriculum to current and future child abuse and legal professionals. A significant component of this educational effort includes a seminary curriculum and scholarly articles and training segments on abuse which occurs within the boundaries of faith settings. The opportunities for abuse to occur, and the impact of such abuse, is unique in an already complex field. NCPTC has significant expertise in this aspect of the abuse of children.

NCPTC's core values include advocating for the prevention of child abuse through legislative and cultural change, protecting victims' rights through the criminal justice system and providing resources for survivors of sexual abuse.

[1] Minn. R. Civ. P. § 129.03 Certification: No party to this proceeding authored this brief in whole or in part. Further, no person or entity other than the *Amici Curiae*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

NCPTC's mission of preventing child abuse and protecting victims' rights gives it a profound interest in this case.

The National Center for Victims of Crime ("NCVC") is a leading resource and advocacy organization for crime victims and those who serve them. Since its inception in 1985, the NCVC has worked with grassroots organizations and criminal justice agencies throughout the United States. One of NCVC's core missions includes advocating for laws and public policies that secure rights, resources and protections for crime victims. As an advocate for victims' rights, including the rights of childhood sexual abuse victims, NCVC has a profound interest in this case.

STATEMENT OF THE LEGAL ISSUES, CASE AND FACTS

The statement of the legal issues, the case and the facts are set forth in the Respondent's brief.

ARGUMENT

I. THE PERVASIVE AND LONG-LASTING MENTAL, PHYSICAL, PSYCHOLOGICAL AND ECONOMIC IMPACT OF CHILDHOOD SEXUAL ABUSE SHOULD NOT BE BORNE BY MINNESOTA TAXPAYERS

Childhood sexual abuse is one of the most devastating crimes in our society. Most children who are sexually abused, if not all, go through a myriad of problems as a result of their abuse. There is a significant association between sexual abuse and a lifetime diagnosis of anxiety disorder, depression, eating disorders, posttraumatic stress disorder, sleep disorders and suicide attempts. Laura P. Chen et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders: Systematic Review and Meta-Analysis.* 85(7) MAYO CLIN. PROC. 618-629 (July 2010). A history of sexual abuse is

also associated with problems with authority, physical maladies, substance abuse and an increased risk of a lifetime diagnosis of multiple psychiatric disorders. *Id.*

The Centers for Disease Control and Prevention (CDC) researched the childhoods of 17,337 adults participating in a particular HMO. The researchers found that 24.7% of the women and 16% of the men were sexually abused as children. Centers for Disease Control, ADVERSE CHILDHOOD EXPERIENCE STUDY, *available at*: http://www.cdc.gov/ace/prevalence.htm (last visited November 27, 2011). Adults who suffered one or more "adverse childhood experience" were at higher risk for the following health problems: alcoholism and alcohol abuse; chronic obstructive pulmonary disease (COPD); depression; fetal death; illicit drug use; ischemic heart disease (IHD); liver disease; risk for intimate partner violence; multiple sexual partners; sexually transmitted diseases (STDs); smoking; suicide attempts; early initiation of sexual activity; and adolescent pregnancies. *Id.*

The onset of many of these problems is not until years after the abuse. The problems themselves and the delayed onset make it nearly impossible for children who are sexually abused to confront the sexual abuse, discover that their problems are the result of their childhood sexual abuse and begin the process of healing.

The financial costs of child abuse are also staggering. From the costs of medical treatment to the tab for addressing the psychological aftermath of abuse, child maltreatment costs this country upward of $103.8 billion every year in 2007 values. Prevent Child Abuse America, *Total Estimated Cost of Child Abuse and Neglect in the United States* (2007), *available at* www.preventchildabuse.org (last visited November 27, 2011). This expense increased from an estimated $94 billion in

2001, or $258 million per day. Prevent Child Abuse America, *Total Estimated Cost of Child Abuse and Neglect in the United States* (2001).

While these cost estimates include all forms of maltreatment, a recent study conducted in the State of Minnesota found the costs of child rape and child sexual abuse—per child—ran at a shocking $184,000 per year. Minnesota Department of Health, *Costs of Sexual Violence in Minnesota* 11 (July 2007). With over 22,100 incidences occurring each year, sexual victimization of children cost the state government over $4.06 million in 2005.

Clearly, the cost of the epidemic of child sexual abuse – to both the individual who suffers the direct assault, and the society in which he lives – are enormous. With the enactment of the Minnesota Delayed Discovery Statute, Minn. Stat. Ann. §541.073, the legislators recognized that the child or adult who falls prey to sexual victimization should be granted adequate time to become aware of his or her abuse and then to bring suit for damages if appropriate. This law permits victims of abuse to seek justice and to rightfully shift the economic burden created by perpetrators of sex crimes against children from society and the child victims themselves and back to the perpetrator of the abuse, where it belongs.

II. A WEALTH OF SCIENTIFIC LITERATURE DOCUMENTS THE REALITY OF MEMORY REPRESSION

A meta-analysis of social science research on child sexual abuse and recovered memories, dissociation, repression, repressed memory, traumatic amnesia, and dissociative amnesia results in far more than 550 articles dealing with the issue.[2]

[2] Searches conducted on November 26, 2011 on the keywords “child sexual abuse” and the following topics utilizing the PsychINFO database elicited the following article results: “recovered memory” –

Furthermore, over 90% of surveyed psychologists believe a repressed memory can be accurately recovered. Constance Dalenberg, *Recovered Memory and the* Daubert *Criteria: Recovered Memory as Professionally Tested, Peer Reviewed and Accepted in the Relevant Scientific Community*, 7(4) TRAUMA, VIOLENCE, & ABUSE 274, 281 (October 2006). While some uninformed academics and practitioners continue to doubt whether the concept exists, the key debate is not whether one can actually "forget" particular or traumatic memories. The true controversy lies in how the memory failed and what mechanism recovered it. Research on false memories should not be utilized to counter allegations of recovered memories, and in fact, may be utilized to assess or evaluate the reliability of the recovered memory itself. *See, e.g.*, Dalenberg (2006).

It is estimated that approximately 20% of girls and as many as 15% of boys are sexually abused during their childhood. John E.B. Myers, MYERS ON EVIDENCE IN CHILD, DOMESTIC AND ELDER ABUSE CASES 352 (2005). However, Finkelhor noted that because "sexual abuse is usually a hidden offense, there are no statistics on how many cases actually occur each year." David Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse*, 4 THE FUTURE OF CHILDREN 31, 32 (1994).

Part of the difficulty in understanding the full extent to which child sexual abuse occurs is the commonly acknowledged understanding that many children who are sexually victimized often delay or fail to report their abuse. In a retrospective study, Finkelhor surveyed adult men and women about sexual abuse and found 27% of the women and 16% of the men were victimized as children, but only 42% and

---

169; "dissociation" – 563; "repression" – 175; "repressed memory" – 296; "traumatic amnesia" – 3; and "dissociative amnesia" – 11.

33% respectively, reported they had ever disclosed the abuse to anyone. David Finkelhor et al., *Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors*, 14 CHILD ABUSE AND NEGLECT 19 (1990).

For years, academics and researchers have debated whether, and to what extent, children and adults delay in their reports of sexual victimization. While the debate continues to swirl around the definitions of "disclose"—including one narrowly defined as an initial statement made intentionally and directly to a law enforcement official by the alleged child victim—there is general acceptance in the field that children and adults do in fact delay their disclosures of victimization for a myriad of reasons. *See, e.g.*, Margaret-Ellen Pipe et al., *Factors Associated with Nondisclosure of Suspected Abuse During Forensic Interviews*, *in* CHILD SEXUAL ABUSE: DISCLOSURE, DELAY AND DENIAL 77 (M.E. Pipe, et al., eds, 2007). Well-known academics who generally challenge children's reports of abuse concluded, ""There is disagreement about children's willingness to provide details about sexual abuse..... However,…[d]espite these … difficulties, the overall pattern is that many children simply do not willingly tell." Kamala London et al., *Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications For Forensic Interviewers*, 16(1) MEMORY 29, 43 (2008).

Key reasons for these delays can be characterized as motivational and linguistic factors. Motivationally, external and internal influences come into play. These commonly include fear on the part of the victim: fear of the perpetrator, fear of

being in trouble with their parents, fear of being held responsible for their own victimization, fear of their own reactions or responses to the abuse, and fear of societal response to abuse, to name a few. *See* Kathleen Coulborn Faller, *Children Who Do Not Want to Disclose*, *in* INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE: CONTROVERSIES AND BEST PRACTICE 175 (K.C. Faller, ed., 2007). For some children, the extent of the fear they suffer may be so great, that not only do they fail to disclose their abuse, they dissociate or emotionally remove themselves from the abusive act. For some, this dissociation may be permanent. For others, certain triggers may recover memories of the traumatic events.

Linguistically, some children are too young to verbalize their sexual abuse experiences. Other children—due to their nascence—may not even recognize the acts against them were sexual in nature. One study found that half of the women who were abused as children said the onset of abuse occurred before the age of five. Steven N. Gold et al., *Characteristics of Childhood Sexual Abuse Among Female Survivors in Therapy*, 20 CHILD ABUSE AND NEGLECT 323, 328 (1996). Some experts contend the average age of sexual abuse victims is only three years old. Gavin de Becker, *Foreword* to ANNA SALTER, PREDATORS ix (2003). This inability to cognitively recognize or verbally report abuse may lead a child to pass such an event into a repressed memory, only to be known or recovered when another event, person or place triggers that "lost" memory. "One possible explanation is that elements of traumatic experiences are not encoded or are shallowly encoded." Lucy Berliner et al., *Children's Memory for Trauma and Positive Experiences,* 16(3) JOURNAL OF TRAUMATIC STRESS 229, 234 (June 2003).

The Supreme Court of Minnesota recently recognized the need for a "fair administration of justice" when it acknowledged that even adults may delay when sexually victimized, and that expert testimony on the topic is admissible. *State v. Obeta*, 796 N.W.2d 282 (Minn. 2011). Therefore, expert witnesses should be allowed to educate triers of fact with regard to the frequency of repressed memories, and inform them as to how memories are formed and the factors that may impair access to those memories. Furthermore, an expert witness can provide information regarding the recovery of memories as well as the general characteristics one might find in sexual assault victims who may suffer from memory repression.

III. THE COURT SHOULD APPLY THE HELPFULNESS STANDARD WHEN EVALUATING THE ADMISSIBILITY OF EXPERT TESTIMONY ON BEHAVIORAL SCIENCE MATTERS

In order to introduce scientific evidence into court, the Minnesota Supreme Court has applied the *Frye Mack* standard. *See State v. Roman Nose*, 649 N.W.2d 815 (Minn. 2002), *State v. MacLennan*, 702 N.W.2d 219, 230 (Minn. 2005). In *State v. Roman*, the Court stated,

> As a result of *Frye* and *Mack*, a two-pronged standard has emerged in Minnesota that must be satisfied before scientific evidence may be admitted. First, a novel scientific technique that produces evidence to be admitted at trial must be shown to be generally accepted within the relevant scientific community, and second, the particular evidence derived from the technique and used in an individual case must have a foundation that is scientifically reliable. *State v. Roman Nose* at 818-819.

Despite adopting the *Frye Mack* 2-prong test to the admissibility of scientific evidence, i.e., expert witnesses, the Minnesota Supreme Court has not applied the *Frye Mack* standard specifically to repressed memories in a child sexual abuse case.

A recent Court of Appeals decision, however, abandoned the use of the *Frye Mack* standard for repressed memory in child sexual abuse cases and instead opted for a test offered by the Minnesota Supreme Court in *State v. MacLennan. See Doe v. Archdiocese of St. Paul & Minneapolis,* 801 N.W.2d 203 (Minn. Ct. App. 2011). In *MacLennan,* the Court addressed battered-child syndrome and recognized "a fundamental difference between techniques and procedures based on chemical, biological, or other physical sciences as contrasted with theories and assumptions that are based on the behavioral sciences." *Doe* at 207 (citing *State v. MacLennan*, 702 N.W.2d at 231). The MacLennan court concluded that "expert testimony on syndromes, unlike DNA evidence or other physical science, is *not* the type of evidence that the analytic framework established by *Frye-Mack* was designed to address." *Id. (*citing *State v. MacLennan,* 702 N.W.2d at 233). Using the rationale offered by *MacLennan,* the Court of Appeals concluded:

> *Frye-Mack* is not the appropriate framework for evaluating the admissibility of the proffered expert testimony on the repressed-memory theory in this case. Unlike DNA evidence, for example, in this case, no technique [or] procedure based on chemical, biological, or other physical sciences exists for evaluation by the scientific community. Instead, the community is left to disagree about a social or physiological theory of behavior that cannot be subjected to a definitive scientific test. No "method" of testing the condition of repressed memory exists for general acceptance or non-acceptance by the scientific community. Similarly, no "scientific techniques" or "fancy devices" exist for presentation in court that could 'mislead lay jurors awed by an aura of mystic infallibility'". *Doe* at 207-208.

Upon their decision, the Court instructed the district court to use the *helpfulness test* provided by Minnesota Rules of Evidence section 702.

Expert testimony regarding repressed memories is governed by Minnesota Rule of Evidence 702 which reads:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

As stated above, Rule 702 requires that expert testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" to be admissible. When looking at this language offered by Rule 702, *Doe* applied a *helpfulness test* to the admissibility of expert witnesses versus the traditional *Frye Mack* standard. *Doe* at 208. The Court reasoned that the "reaction of a child to sexual abuse, under the circumstances alleged in this case, may be outside the common understanding of an average juror." *Doe* at 209. They went on to say, "Armed with the additional understanding provided through expert testimony, the jury may be able to determine whether the appellant suffered from repressed memory of his abuse, tolling the limitations period under Minn. Stat. § 541.073. *Id.*[3] In applying the *helpfulness test* the Court stated, "the expert's testimony should be limited to a description of memory repression and the characteristics that are present in an individual suffering from repressed memory." *Doe* at 209. "If the experts are allowed to testify, they may not testify to the 'ultimate fact' of whether appellant suffered from repressed memory; that question is reserved for the jury." *Id.* Therefore, the Court determined that expert witnesses should be allowed in child sexual abuse cases when they assist the trier of fact to further understand the general characteristics of repressed memory syndrome.

[3] *See also State v. Obeta,* 796 N.W.2d 282 (Minn. 2011) (holding that "the mental and physical reactions of adult sexual-assault victim may lie outside the common understanding of an average juror," reversing the district court's determination that the State's proffered expert testimony is inadmissible as a matter of law, and remanding to the district court "the specific application of Rule 702 and the subsequent question of admissibility to the sound discretion of the district court).

There is significant legal support for the admissibility of expert witnesses in child sexual abuse cases. This Court should apply the *helpfulness test* as outlined in *Doe* when permitting expert testimony in cases of repressed memory for child sexual abuse. Expert witnesses, when offering expert testimony under the *Doe* rationale, should limit their testimony to the general characteristics of repressed memory syndrome and not whether the particular victim possesses the requisite symptoms required for the syndrome, leaving this issue for the fact-finder in the case.

IV. DOE'S FRAUD CLAIMS HAD NOT ACCRUED BEFORE THE STATUTE OF LIMITATIONS HAD EXPIRED AS THE STATUTE WAS TOLLED BY HIS LACK OF AWARENESS OF THE ABUSE

Minnesota's statute of limitations was first enacted in 1989, but applies retroactively. *Doe*, 801 N.W. 2d at 205, n. 1. Subdivision 1 of § 541.05, reads, in pertinent part:

> Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within six years: … (6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. Minn. Stat. Ann. § 541.05.

The Minnesota Legislature also passed a discovery-delay statute[4] for personal injury actions resulting from sexual abuse to delay the running of the statute of limitations. The statute provides that "[a]n action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by sexual abuse." Minn. Stat. Ann. § 541.073, subd. 2(a) (WEST 2011). The Court must now determine

[4] The statute of limitations for personal injury actions is two years. Minn. Stat. § 541.07 (1996).

whether memory repression delays the discovery of fraud, such that the statute of limitations cannot run.

To establish a cause of action for fraud, a plaintiff must prove:

> That the defendant (1) made a representation (2) that was false (3) having to do with a past or present fact (4) that is material (5) and susceptible of knowledge (6) that the representor knows to be false or is asserted without knowing whether the fact is true or false (7) with the intent to induce the other person to act (8) and the person in fact is induced to act (9) in reliance on the representation and (10) that the plaintiff suffered damages (11) attributable to the misrepresentation. *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 684 (Minn. App. 2010).

A cause of action for fraud accrues when the aggrieved party discovers the facts constituting the fraud. *Klehr v. A.O. Smith Corp.*, 87 F.3d 231, 235 (8th Cir. 1996) (holding the plaintiff's fraud action was barred by the six-year statute of limitations, because the plaintiffs were on notice of a possible cause of action for fraud and required to conduct a reasonably diligent investigation of their feed storage silo). Once the cause of action accrues, the statute of limitation period begins, and plaintiff has six years to bring the case to court for relief. *Id.* The injured party must satisfy an objective reasonableness standard in discovering the facts constituting fraud. *Id*. (paraphrasing *Bustad v. Bustad*, 116 N.W.2d 552, 555 (Minn. 1962)). Facts constituting fraud are discovered when, "with reasonable diligence, they could and ought to have been discovered." *Klehr v. A.O. Smith Corp.*, 87 F.3d at 235 (quoting *Blegen v. Monarch Life Ins. Co.*, 365 N.W.2d 356, 357 (Minn. Ct. App. 1985)). A plaintiff must "exercise reasonable diligence when he or she has notice of a possible cause of action for fraud"; this has been interpreted by the courts in Minnesota to mean that a plaintiff need not have details of the evidence establishing a cause of action for fraud, but only that a cause of action for fraud exists. *Id.* (quoting

Buller v. A.O. Smith Harvestore Prods., Inc., 518 N.W.2d 537, 542 (Minn. 1994)). However, due diligence is an affirmative duty for the potential plaintiff to investigate "facts that might constitute a possible cause of action for fraud." *Klehr v. A.O. Smith Corp.*, 87 F.3d at 235 (paraphrasing *Buller*, 518 N.W. 2d at 542). The question is whether and when a plaintiff had reason to suspect fraud, which would trigger the duty to investigate. *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 685 (Minn. Ct. App. 2010) (holding the appellants' claim was time barred, but that they failed to establish the respondents had a duty to disclose, awarding summary judgment for the respondents.) Due diligence is a question of fact for the court to consider, but where reasonable minds could not differ on the issue because of the evidence, the court may resolve the issue as a matter of law. *Id.* at 684-85.

For sexual abuse cases, the courts in Minnesota have stated that "'the time at which the complainant knew or should have known that he/she was sexually abused' [is] subject to 'the objective, reasonable person standard.'" *Blackowiak v. Kemp*, 546 N.W.2d 1, 3, (Minn. 1996). This is typically a determination for the jury. *Johnson v. Elk River Area Sch. Dist.*, 2007 WL 7170854 (Minn. Ct. App. 2007). There is an exception; if the victim has some legal disability, such as "the victim's age, or mental disability, *such as repressed memory of the abuse*," (emphasis in original) leaving a reasonable person incapable of recognizing or understanding that he or she was sexually abused, then the limitations period does not begin to run. *W.J.L. v. Bugge*, 573 N.W.2d 677, 681 (Minn. 1998). In passing the delayed-discovery statute, the Minnesota legislature determined that repressed memory and other similar factors may prevent a victim of sexual abuse from coming forward and confronting his/her

attackers with a cause of action within the statute of limitations. *W.J.L. v. Bugge*, 573 N.W. 2d 677, 680 n.5 (Minn. 1998) (holding the plaintiff failed to present specific facts giving rise to a genuine issue of material fact that as to when she knew or had reason to know that she had been sexually abused). However, "'merely not thinking about the abuse is not enough to delay the running of the statute of limitations.'" *Britten v. Franciscan Sisters*, 2008 WL 1868334, *3-4 (Minn. App. 2008) (quoting *W.J.L v. Bugge*, 573 N.W.2d at 681). The courts have also stated that repressed memory of sexual abuse is a relevant factor for "determining if the victim knew or had reason to know of the abuse." *Johnson v. Elk River Area Sch. Dist.*, 2007 WL 4170854 (Minn. Ct. App. 2007) (explaining the holding of *W.J.L. v. Bugge*).

In order for the appellant to know he had a cause of action against the Diocese for fraud, he must first have known he was sexually abused. The appellant is not alleging otherwise. The issue is *when* the appellant knew he was sexually abused. He became aware in the 1980s that the priest had been accused of abusing other children, but if he could not remember his own abuse because of repressed memories, he would have no reason to bring a cause of action for fraud against the Diocese. *Doe v. Diocese of St. Paul & Minneapolis*, 801 N.W.2d at 210.

An important point of clarification for the court is that Doe was not "confused" with regard to his victimization, but instead, he "became aware" of sexual abuse. Therefore, this Court should follow the reasonable person standard when applying the statute of limitations. The Court in *W.J.L v. Bugge* determined that being confused about the sexual abuse that occurred was indication that the plaintiff knew sexual abuse had occurred; therefore, the statute of limitations was running and

her claim was not timely. 573 N.W.2d at 682. Believing that the plaintiff in *W.J.L v. Bugge* was arguing for a "wholly subjective inquiry into an individual's unique circumstance," the Court found this standard to be inconsistent with the statutory language requiring a "reasonable person" standard. *Blackowiak v Kemp*, 546 N.W.2d 1, 3 (1996).[5] "Becoming aware" of the sexual abuse, as Doe alleges in the case at bar, satisfies the reasonable person standard, because the question is when a reasonable person knew or would have known about the abuse. Accordingly, a person may only know or potential know of a situation after becoming aware of it.

CONCLUSION

Amici Curiae NCPTC and NCVC respectfully request this court to conclude that the phenomenon of repressed memory is an issue upon which triers of fact would find expert testimony helpful. The extent, costs and dynamics of child sexual abuse, as well as the characteristics of repressed memories, are fraught with misunderstandings and misrepresentations. Expert witnesses, whose testimony is admitted under the helpfulness standard, would benefit the criminal justice and civil trial systems by enabling triers of fact to make fully-informed decisions.

Furthermore, *Amici Curiae* NCPTC and NCVC request this court to find that the statute of limitations for sexual abuse and fraud did not accrue before the expiration of the statute of limitations for sexual abuse and fraud as Respondent was not aware of his own victimization.

[5] Additionally, the courts in *Britten v. Franciscan Sisters* and *ABC v. Archdiocese of St. Paul & Minneapolis* both declined to adopt a subjective standard based on the mental and emotional state of the individual victim. *See* 2008 WL 1868334 (2008), and 513 N.W.2d 482, 486 (Minn. Ct. App. 1994), respectively.

For all of the reasons listed above, as well as those outlined by Respondent, *Amici Curiae* NCPTC and NCVC respectfully request that this Honorable Court affirm the decision of the Court of Appeals.

Respectfully Submitted,

The National Child Protection Training Center and the National Center for Victims of Crime

By: _____
Amy J. Russell (#0389634)
One of Their Attorneys

Dated: November 28, 2011

For *Amici Curiae*

Victor I. Vieth, Executive Director
Amy J. Russell, Deputy Director
National Child Protection Training Center
2nd Floor, Maxwell Hall
Winona, MN 55987
Phone: 507/457-2890
Fax: 507/457-2899

Jeffrey R. Dion, Deputy Executive Director
National Center for Victims of Crime
2000 M Street NW, Suite 480
Washington, DC 20036
Phone: 202/467-8700
Fax: 202/467-8701

State of Minnesota
In Supreme Court

John Doe 76C,

Respondent,

CERTIFICATION OF
BRIEF LENGTH

v.

Appellate Court
Case No.: A-10-1951

Archdiocese of St. Paul & Minneapolis
& Diocese of Winona,

Appellants.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. §132.01, subds. 1 & 3, for a brief produced with proportional font. The length of this brief is 4,254 words. This brief was prepared using Microsoft Word 2010 software.

Dated: _____

NATIONAL CHILD PROTECTION
TRAINING CENTER

Amy J. Russell (#0389634)
2nd Floor, Maxwell Hall
Winona, MN 55987
Phone: 507/457-2890
Fax: 507/457-2899
Counsel for Amici Curiae National Child Protection Training Center and National Center for Victims of Crime

Appendices