

IN THE SUPREME COURT OF THE
STATE OF OREGON

J.M.,

Plaintiff-Appellant, Respondent
on Review,

v.

OREGON YOUTH AUTHORITY, a
state agency; and GARY LAWHEAD,
individually,

Defendants-Respondents,
Petitioners on Review,

and

RICHARD HILL, individually; and
FRANK JAMES MILLIGAN,
individually,

Defendants.

Marion County Circuit Court Case
No. 14C15773

Court of Appeals Case No.
A162416

Supreme Court Case No. S065487

**MOTION TO APPEAR AS *AMICI CURIAE*
AND FILE BRIEF ON THE MERITS**

MOTION

Pursuant to ORAP 8.15, prospective *Amici* National Center for Victims
of Crime (NCVC) and Oregon Trial Lawyers Association (OTLA) respectfully
move this Court for leave to appear in the above-captioned matter and file a

brief on the merits in support of the Respondent on Review. The proposed brief is attached to this motion.

NCVC is a nonprofit organization based in Washington, D.C., and is a leading resource and advocacy organization for all victims of crime. The mission of NCVC is to forge a national commitment to help victims of crime rebuild their lives. Dedicated to serving individuals, families, and communities harmed by crime, NCVC, among other efforts, advocates laws and public policies that create resources and secure rights and protections for crime victims. To that end, NCVC has filed amicus curiae briefs in cases across the country to advance the rights and interests of crime victims, including victims of child sexual abuse.

OTLA is an Oregon statewide organization of over 900 attorneys and 300 other professionals who represent individuals and businesses in civil court. For over 50 years, OTLA and its member attorneys have advocated for the rights of plaintiffs in cases involving harms and injuries such as those at issue in this case. OTLA promotes juries and jury service, and the civil justice rights of all Oregonians.

NCVC and OTLA do not seek to appear in this case in order to present private interests of their own, but rather to present a position as to the correct rule of law for the issues raised in this case—namely, whether the Court of

Appeals was correct in holding that the Oregon discovery rule allows for delayed discovery in 42 USC Section 1983 cases such as that of Respondent on Review.

RESPECTFULLY SUBMITTED this 13th day of August, 2018.

VIAL FOTHERINGHAM LLP

/s/ Kristian Roggendorf

Kristian Roggendorf, OSB #013990
17355 SW Boones Ferry Road, Suite A
Lake Oswego, OR 97035
Telephone: 503-684-4111
ksr@vf-law.com

Counsel for Prospective *Amici Curiae*

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

J.M.,

Plaintiff-Appellant, Respondent on Review,

v.

OREGON YOUTH AUTHORITY, a state agency; and GARY LAWHEAD,
individually,

Defendants-Respondents, Petitioners on Review

and

RICHARD HILL, individually; and FRANK JAMES MILLIGAN,
individually,

Defendants

Marion County Circuit Court
14C15773

CA A162416

SC S065487

AMICI CURIAE'S BRIEF ON THE MERITS

Review of the Decision of the Court of Appeals, Garrett J.
On Appeal from a Judgment of the Circuit Court for Marion County
Honorable Claudia Burton, Judge

Opinion Filed: November 1, 2017

(Counsel on following page)

Kristian Roggendorf, OSB #013990
Vial Fotheringham LLP
17355 SW Boones Ferry Rd., Suite A
Lake Oswego, OR 97035
Email: ksr@vf-law.com
Telephone: 503-684-4111

Attorney for *Amici Curiae* National
Center for the Victims of Crime and
Oregon Trial Lawyers Association

Dennis Steinman OSB #954250
Scott J. Aldworth OSB #113123
Kell, Alterman & Runstein, L.L.P.
520 S.W. Yamhill, Suite 600
Portland, Oregon 97204
Email: dsteinman@kelrun.com
Email: saldworth@kelrun.com
Tel: (503) 222-3531

Attorneys for Respondent on Review

Ellen F. Rosenblum OSB #753239
Attorney General
Benjamin Gutman OSB #160599
Solicitor General
Peenesh Shah OSB #112131
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97304-4096
Email: peenesh.h.shah@doj.state.or.us
Tel: (503) 947-4700

Attorneys for Petitioners on Review

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii – vii
INTRODUCTION	1
ARGUMENT	2
I. THE IMPACT OF CHILD ABUSE SIGNIFICANTLY DELAYS DISCLOSURE	4
A. Child Abuse is Significantly Underreported.	4
B. Why Children Do Not Disclose Abuse.	6
1. Denial of Any Understanding of the Abuse.	8
2. Minimization/Denial of Negative Impact.	10
3. Co-conspirator Guilt.	14
4. Fear of the Abuser or the Consequences of Disclosure. .	16
C. When Child Abuse Victims Do Disclose their Abuse.	18
II. Oregon’s Discovery Rule May be Applied to ORS 12.110 in Section 1983 Cases.	20
CONCLUSION	26

TABLE OF AUTHORITIES

STATUTES

42 USC § 1983	1
ORS 12.110	4, 20, 21, 25
ORS 12.117	20
ORS 419B.010	6

LEGISLATIVE HISTORY

Testimony, Senate Judiciary Committee, House Bill (HB) 2668, May 24, 1989	18
Exhibit T, Senate Judiciary Committee, HB 2668, May 24, 1989	18

CASES

<i>B.R. v. Horsley</i> , 345 P3d 836 (Wn App 2015)	19
<i>Berry v. Branner</i> , 245 Or 307, 421 P2d 996 (1966)	23
<i>Catt v. Dep't of Human Servs.</i> , 251 Or App 488, 284 P3d 532 (2012)	22
<i>Doe v. American Red Cross</i> , 322 Or 502, 910 P2d 364 (1996)	23, 24
<i>Duncan v. Augter</i> , 62 Or App 250, 661 P2d 83, <i>rev den</i> 295 Or 122 (1983) ...	23
<i>Elliott v. City of Union City</i> , 25 F3d 800 (9th Cir 1994)	21
<i>Evans v. Eckelman</i> , 265 Cal Rptr 605 (Cal App 1st Dist 1990)	19
<i>F.D.I.C. v. Smith</i> , 328 Or 420, 980 P2d 141 (1999)	22

<i>Gaston v. Parsons</i> , 318 Or 247, 864 P2d 1319 (1994)	23
<i>Hammer v. Hammer</i> , 418 NW2d 23 (Wis Ct App 1987)	19
<i>Hardin v. Straub</i> , 490 US 536 (1989)	21
<i>In re Application of Nash</i> , 317 Or 354, 855 P2d 1112 (1993)	12
<i>J.M. v. Oregon Youth Auth.</i> , 288 Or App 642, 406 P3d 1127 (2017)	1
<i>Jasmin v. Ross</i> , 177 Or App 210, 33 P3d 725 (2001)	19, 20
<i>Johnson v. Multnomah County Dep't of Cmty. Justice</i> , 344 Or 111, 178 P3d 210 (2008)	23
<i>Johnson v. State of California</i> , 207 F3d 650 (9th Cir 2000)	21
<i>K.E. v. Hoffman</i> , 452 NW2d 509 (Minn 1990)	19
<i>Meiers-Post v. Schafer</i> , 427 NW2d 606 (Mich Ct App 1988)	19
<i>Rice v. Rabb</i> , 354 Or 721, 725, 320 P3d 554 (2014)	22
<i>Silva v. Crain</i> , 169 F3d 608 (9th Cir 1999)	21, 22
<i>State v. Hansen</i> , 304 Or 169, 743 P2d 157 (1987)	12
<i>Stephens v. Bohlman</i> , 314 Or 344, 838 P2d 600 (1992)	22
<i>T.R. v. Boy Scouts of America</i> , 344 Or 282, 181 P3d 758, <i>cert den</i> 555 U.S. 825 (2008)	1, 24, 25
<i>Wallace v. Kato</i> , 549 US 384 (2007)	1
<i>Workman v. Rajneesh Found. Int'l</i> , 84 Or App 226, 733 P2d 908 (1987)	23

SECONDARY SOURCES

- ABC News, *Penn State Rape Victim Denies Assault, Jerry Sandusky's Lawyer Claims* <http://abcnews.go.com/US/penn-state-rape-victim-denies-sex-assault-lawyer/story?id=14953587> 10
- R. Alaggia, *Disclosing the Trauma of Child Sexual Abuse: A Gender Analysis*, 10 J. OF LOSS AND TRAUMA, 453 (2005) 11, 17
- R. Alaggia, *Many Ways of Telling: Expanding Conceptualizations of Child Sexual Abuse Disclosure*, 28 CHILD ABUSE & NEGLECT 1213 (2004) 6, 7, 18
- BLACK'S LAW DICTIONARY 1488 (7th ed 1999) 22
- J. Bradshaw, *HEALING THE SHAME THAT BINDS YOU* (1988) 5
- J. Briere, *Psychological Assessment of Child Abuse Effects in Adults*, in ASSESSING PSYCHOLOGICAL TRAUMA AND PTSD (Wilson and Keane eds. 2004) 9
- Child Information Gateway, *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws* (2010) 6
- 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 (1996) 14
- S. J. Collings, S. Griffiths, & M. Kumalo, *Patterns of Disclosure in Child*

<i>Sexual Abuse</i> , 35 SOUTH AFRICAN JOURNAL OF PSYCH., 270 (2005)	7
J. Crewsdon, BY SILENCE BETRAYED (1988); D. Hechler, THE BATTLE AND THE BACKLASH (1988)	18
I. Daigneault, M. Tourigny, H. Martine, <i>Self-attributions of Blame in Sexually Abused Adolescents: a Mediational Model</i> , 19 J. OF TRAUMATIC STRESS 153 (2006)	14
D. M. Elliott, <i>Traumatic events: Prevalence and delayed recall in the general population</i> , 65 J OF CONSULTING AND CLINICAL PSYCH. 811 (1997)	8
C. Feiring & L.S. Taska, <i>The Persistence of Shame Following Sexual Abuse: A Longitudinal Look at Risk and Recovery</i> , 10 CHILD MALTREATMENT: J. AM. PROF'L SOC'Y ON ABUSE CHILD 337 (2005)	5
H.H. Filipas, S.E. Ullman, <i>Child Sexual Abuse, Coping Responses, Self-Blame, Posttraumatic Stress Disorder, and Adult Sexual Revictimization</i> , 21 J. OF INTERPERSONAL VIOLENCE 652 (2006)	15
P.A. Frazier, H. Mortensen, J. Steward, <i>Coping Strategies as Mediators of the Relations Among Perceived Control and Distress in Sexual Assault Survivors</i> , 52 J OF COUNSELING PSYCH 267 (2005)	16
Maxine Hancock & Karen Burton Mains, CHILD SEXUAL ABUSE: HOPE FOR HEALING 33 (1987)	13
R. Hanson <i>et al.</i> , <i>Factors Related to the Reporting of Childhood Rape</i> , 23	

CHILD ABUSE AND NEGLECT 559 (1999)	5
I. Hershkowitz, O. Lanes, & M.E. Lamb, <i>Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents</i> , 31 CHILD ABUSE & NEGLECT 111 (2007)	7
G.R. Holmes, L. Offen, G. Waller, <i>See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?</i> , 17 CLINICAL PSYCHOL. REV. 69 (1997)	11
Horowitz et al., <i>A Classification Theory of Defense</i> , in REPRESSION & DISASSOCIATION (Jerome L. Singer ed., 1990)	8
M. Hunter, ABUSED BOYS (1991)	13
L. Johnson, <i>Litigating Nightmares: Repressed Memories of Childhood Sexual Abuse</i> , 51 S.C. L. REV. 939 (2000)	9
M.O. Hyde & E.H. Forsyth, M.D., THE SEXUAL ABUSE OF CHILDREN AND ADOLESCENTS 10 (1997)	5
C. Koverola and D. Foy, <i>Post-traumatic Stress Disorder Symptomatology in Sexually Abused Children: Implications for Legal Proceedings</i> , 2 J. OF CHILD SEXUAL ABUSE 119 (1993)	9
Rubin A. Lang et. al., <i>How Sex Offenders Lure Children</i> , 1 CANADA ANNALS OF SEX RESEARCH 303 (1988)	12

L.C. Malloy, S.P. Brubacher, & M.E. Lamb, <i>Expected Consequences of Disclosure Revealed in Investigative Interviews with Suspected Victims of Child Sexual Abuse</i> , 15 APPLIED DEVELOPMENTAL SCIENCE 8 (2011)	7
J.E.B. Meyers, 1 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES §1.27	6
E. Olafson, B. Boat, <i>Long Term Management of the Sexually Abused Child</i> , TREATMENT OF CHILD ABUSE (R. Reece, ed. 2005)	12
M.L. Paine and D.J. Hansen, <i>Factors Influencing Children to Self-Disclose Sexual Abuse</i> , 22 CLINICAL PSYCHOL. REVIEW 271 (2002)	12, 13, 14, 16, 17
D.R. Reinert, SEXUAL ABUSE AND INCEST (1997)	5, 17
L. Sorsoli, M. Kia-Keating, F. Grossman, <i>“I Keep That Hush-Hush”</i> : <i>Male Survivors of Sexual Abuse and the Challenges of Disclosure</i> , 55 J. OF COUNSELING PSYCH. 333 (2008).....	9
R.L. Thomas, <i>Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action</i> , 26 WAKE FOREST L. REV. 1245 (1991)	8
D. Viens, <i>Countdown to Injustice: The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children</i> , 38 SUFFOLK U. L. REV. 169 (2004)	5

INTRODUCTION

Amici Curiae (“*Amici*”) National Center for Victims of Crime (NCVC) and Oregon Trial Lawyers Association (OTLA) submit this brief for the Court’s consideration in its review of the Court of Appeals’ decision in *J.M. v. Oregon Youth Auth.*, 288 Or App 642, 645, 406 P3d 1127 (2017). The Defendants ask this Court to overrule its decision in *T.R. v. Boy Scouts of America*, 344 Or 282, 181 P3d 758, *cert den* 555 U.S. 825 (2008), and hold that *Wallace v. Kato*, 549 US 384 (2007), requires a victim of sexual abuse by a government actor to bring every possible 42 USC § 1983 suit against every potential defendant within two years of the sexual contact whether their culpability is or can be known, because federal accrual rules begin the running of the statute of limitations at the time of knowledge of injury. However, as *T.R.* correctly held, the discovery rule applicable to Section 1983 cases delays the running of the statute of limitations until Plaintiff discovers or should have discovered all elements needed to bring suit against each specific tortfeasor.

Even if *T.R.* did not draw a bright legal line between the concepts of accrual under federal law and the running of the statute of limitations under state law, this Court got it right in *T.R.*, and the Court of Appeals got it right in this case below. And if federal law demands that this Court call the Oregon discovery rule a tolling provision in order to see that justice is done, then that is exactly what this Court should do—declare the discovery rule to be a tolling

provision and allow it to operate in Section 1983 cases. There need be no conflict.

Moreover, this Court should not find any such conflict as a matter of policy, because requiring child abuse victims to bring suit immediately after abuse ignores the difficult realities facing child abuse victims—the avoidance and denial experienced by many children mean that they flatly *cannot* disclose that they are being abused while it is happening. After the abuse itself ceases, these child-victims are then left psychologically incapable of disclosing the abuse and asserting legal claims in the rapid, clinical, and detached manner envisioned and demanded by the State.

If the State's position is accepted over the opinion of the Court of Appeals here, then victims of child sexual abuse will be deprived of the means to seek justice for their injuries where they have been sexually molested by government agents entrusted with the power and responsibility for their care. That cannot be the law in any system of justice worthy of the name. The opinion of the Court of Appeals should be affirmed.

ARGUMENT

This brief seeks to provide information and background to the Court on: (1) the phenomenon of delayed or non-disclosure in child abuse cases; and (2) how the Oregon discovery rule can be seen to bridge the gap between the

strictures of federal accrual law and the actual impact that sexual molestation has on children without doing any violence to existing law or precedent.

Rather, explicitly declaring the discovery rule to be a tolling provision for 1983 purposes is the correct view of Oregon law, as caselaw overwhelmingly indicates.

Looking first to the impact of abuse on children, professional literature shows that shame, self-blame, avoidance and denial prevent children abused by trusted adults from understanding that the abuser caused them some type of legal injury, even if they know or perceive that the sexual contact itself is “wrong.” 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. So too, the recognized psychological conditions arising from abuse cause child victims to avoid, minimize, and otherwise dissociate from the abuse so that it is psychologically impossible to disclose their abuse near the time it occurred. These psychological impulses combine to maintain a child’s silence during and after sexual molestation, thereby guaranteeing injustice if prompt reporting and civil prosecution of a claim for relief is demanded by the law.

Next, this brief reviews the caselaw surrounding the Oregon discovery rule to demonstrate that its application as a tolling provision is not only consistent with existing Oregon law, but is in fact the proper analytical

approach in such cases. In other words, whatever the reasoning or under whatever terminology used, the *T.R.* opinion was correct in holding that the statute of limitations on a Section 1983 claim in Oregon does not begin to run until the plaintiff discovers the identity of the tortfeasor and that tortfeasor's individual tortious conduct.

Plaintiff here advances a compelling and correct argument in his Brief on the Merits that the Court of Appeals was correct in its assessment of the state of federal law both at the time *T.R.* was decided and now, and *Amici* here join in that argument. But it is also possible—and indeed proper—for this Court to hold expressly that the Oregon discovery rule, as articulated in numerous cases in a wide variety of contexts over the decades, is a specific state-law tolling provision that must be applied in all Section 1983 suits governed by ORS 12.110. Because federal law borrows the state statute of limitations plus any applicable tolling provisions, this Court can settle this issue once and for all. *Amici* urge this Court to make that clarification.

I. THE IMPACT OF CHILD ABUSE SIGNIFICANTLY DELAYS DISCLOSURE

A. Child Abuse is Significantly Underreported.

Research studies conclusively establish that sexual abuse can alter a child's physical, emotional, cognitive and social development. Damage from child sexual abuse often makes it impossible for many victims to speak about

their trauma. *See generally* D. Viens, *Countdown to Injustice: The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children*, 38 SUFFOLK U. L. REV. 169, 176 (2004) (describing effects of childhood sexual abuse). Abused children come to despise their own existence and are consumed by “shame”—a catch-all term modern psychology uses to describe utter self-hatred and loathing—as a result of childhood sexual trauma. *See* J. Bradshaw, *HEALING THE SHAME THAT BINDS YOU* (1988). *See also* C. Feiring & L.S. Taska, *The Persistence of Shame Following Sexual Abuse: A Longitudinal Look at Risk and Recovery*, 10 CHILD MALTREATMENT: J. AM. PROF’L SOC’Y ON ABUSE CHILD 337, 337-47 (2005). The physical and mental states of some victims remain scarred for life.

It is difficult to accurately estimate the number of children that are sexually abused each year due to the wide practice of under-reporting. R. Hanson *et al.*, *Factors Related to the Reporting of Childhood Rape*, 23 CHILD ABUSE AND NEGLECT 559, 559-569 (1999) (stating that nearly 85% of child abuse is not reported, indicating that the number of children sexually abused each year is dramatically higher than the number of incidents reported to authorities). As discussed below, there are numerous reasons for the under-reporting of childhood sexual abuse. *See* D.R. Reinert, *SEXUAL ABUSE AND INCEST* 34-38 (1997). In fact, childhood sexual abuse may be one of the most under-reported crimes in the United States. M.O. Hyde & E.H. Forsyth, M.D.,

THE SEXUAL ABUSE OF CHILDREN AND ADOLESCENTS 10 (1997). Under-reporting is so prevalent that virtually every state, including Oregon, *see* ORS 419B.010, has mandatory reporting statutes that make it a criminal offense for many professionals who interact with children to not report suspected child abuse to the proper authorities. Child Information Gateway, *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws*, <https://www.childwelfare.gov/pubPDFs/manda.pdf> (2010) (last visited August 8, 2018). Whatever the numbers truly are, it is inarguable that child abuse victims experience a great deal of pain and victimization that is simply never seen.

B. Why Children Do Not Disclose Abuse.

Children typically do not disclose sexual abuse during or immediately after the time they are abused. J.E.B. Meyers, 1 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES §1.27 at 62–67 (57% of children with sexually transmitted disease did not disclose abuse on first interview; 25% of children with medical indications of sex abuse refused to disclose). In one study, 58% of child sexual abuse victims did not disclose their abuse until adulthood. R. Alaggia, *Many Ways of Telling: Expanding Conceptualizations of Child Sexual Abuse Disclosure*, 28 CHILD ABUSE & NEGLECT 1213, 1218 (2004). Nearly a quarter of the study's subjects continued not to disclose, including instances of

outright denial of suffering any abuse at all. *Id.* at 1220. Another third of the study participants had no memory of the abuse as adults, even when abused in later childhood. *Id.* at 1220, 1223. The role of the abuser is also important, because when the abuser is “a significant caregiver, then attachment issues, [*i.e.*] traumatic bonding” discourage abuse. *Id.* at 1216.

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. Alaggia, *Many Ways of Telling*, 28 *Child Abuse & Neglect* at 1213–1227; 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).

There is a wide variety of documented psychological bases for delayed disclosure by boys in particular—such as the Plaintiff here—who were sexually abused by an adult in a position of responsibility. For purposes of this

appeal the most significant categories are: (1) denial/avoidance of the abuse entirely; (2) minimization/denial of any impact from the abuse; (3) the victim's perception of participation/co-conspirator guilt; and (4) fear of the abuser or the consequences of disclosure.¹ Each of these is examined in turn.

1. Denial of Any Understanding of the Abuse.

Denial is fundamentally different from not being able to remember the abuse. Denial is a concrete pattern of behavior and thinking, generated from the trauma, that separates the abuse from conscious life. Denial is classified as “the avoidance of awareness of some painful external reality ... accomplished by *withholding conscious understanding of the meaning and implications* of what is perceived.” R.L. Thomas, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action*, 26 WAKE FOREST L. REV. 1245, 1254 n.74 (1991), *quoting* Horowitz et al., *A Classification Theory of Defense*, in *REPRESSION & DISASSOCIATION* 60, 80 (Jerome L. Singer ed.,

¹ A further cause of non-disclosure of abuse is the inability to recall specific traumatic events, or at times any abuse at all. D. M. Elliott, *Traumatic events: Prevalence and delayed recall in the general population*, 65 J OF CONSULTING AND CLINICAL PSYCH. 811, 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”). *Amici* understand that this case does not involve delayed recall (sometimes called “repressed memory” or “traumatic amnesia” case), but it is certainly a documented effect of abuse. Because of the complexity of that issue, *Amici* do not address it here.

1990) (emphasis added). See J. Briere, *Psychological Assessment of Child Abuse Effects in Adults*, in ASSESSING PSYCHOLOGICAL TRAUMA AND PTSD 540–41 (Wilson and Keane eds. 2004) (“chronic child abuse promotes avoidance behaviors”). “[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 and D. Foy, *Post-traumatic Stress Disorder Symptomatology in Sexually Abused Children: Implications for Legal Proceedings*, 2 J. OF CHILD SEXUAL ABUSE 119-128 (1993). Well beyond mere “not thinking about it,” the victim *cannot* think about it.

In order for the child victim to avoid psychological breakdown, the defense mechanism of denial prohibits the conscious mind from examining or integrating the acts of child abuse into the child’s daily experience. The child’s mind splits the abuse off from normal life and compartmentalizes it.² In that way, the child can continue to function in the presence of a trusted abuser knowing that he has been sexually abused, and is likely to be abused again. Several men, looking back on their abuse, viewed it as something they put in a box and shelved for decades. L. Sorsoli, M. Kia-Keating, F. Grossman, “*I Keep That Hush-Hush*”: *Male Survivors of Sexual Abuse and the Challenges of*

² L. Johnson, *Litigating Nightmares: Repressed Memories of Childhood Sexual Abuse*, 51 S.C. L. REV. 939, 942 (2000) (“Sigmund Freud first proposed the theory of a ‘defense mechanism that serves to repudiate or suppress emotions, needs, feelings or intentions in order to prevent psychic pain.’”) (citation omitted).

Disclosure, 55 J. OF COUNSELING PSYCH. 333, 339-40 (2008). These coping mechanisms often cause the child not to realize or experience the symptoms of the sexual abuse for many years, until the symptoms are forced into plain view by therapy or a developmental “trigger.” Thomas, *Adult Survivors*, 26 WAKE FOREST L. REV. at 1254. Importantly, for purposes of Section 1983 cases involving child sexual abuse, these coping mechanisms begin immediately after the abuse.

A real-world example of this phenomenon was revealed in the Penn State investigation, when a Jerry Sandusky victim denied being abused despite the long-delayed (and self-incriminating) testimony of a direct witness. See ABC News, *Penn State Rape Victim Denies Assault, Jerry Sandusky's Lawyer Claims* <http://abcnews.go.com/US/penn-state-rape-victim-denies-sex-assault-lawyer/story?id=14953587> (last visited August 9, 2018). Indeed, in the Sandusky example, one can see the strength and persistence of denial: even when confronted with objectively reliable testimony from a third-party witness decades later, some victims still refuse to acknowledge they have been abused at all. Denial is not simply some “excuse” or emotional weakness—it is a powerful, and often irresistible, psychological protection mechanism.

2. Minimization/Denial of Negative Impact.

Sadly, many abused children truly believe that sexual contact with an adult, even a trusted adult who betrays that trust, caused no real harm. Indeed,

one of the most significant reasons for non-disclosure in men is that “[m]en do not define their childhood experiences as abusive, and do not think that their abuse experiences have had a negative impact.” G.R. Holmes, L. Offen, G. Waller, *See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?*, 17 CLINICAL PSYCHOL. REV. 69, 75 (1997).

Astoundingly, even severe abuse can be passed off as of no consequence. For example, a man with a 39-year history of severe psychological problems described being repeatedly oral and anally penetrated by older boys as “horseplay.” *Id.* In another case, a 22-year-old man admitted to a hospital after a suicide attempt described being anally raped by an older boy when he was 10 as just “mucking about.” *Id.* The conception of masculinity in society likewise plays a significant role, with boys not wanting to appear as a victim, or perceived as gay. Alaggia, *Many Ways of Telling*, 28 CHILD ABUSE & NEGLECT at 1214; R. Alaggia, *Disclosing the Trauma of Child Sexual Abuse: A Gender Analysis*, 10 J. OF LOSS AND TRAUMA, 453–470 (2005). Typically, some of this minimization is triggered by the very position of trust the perpetrator is using to gain access to and compliance from the victim:

Coupled with this feeling of having been a willing participant may be the fact that *boys may have been successfully “groomed” by the abuser—the sexual contact may be preceded by (and coupled with) affectionate ... substitute parenting, attention, and rewards.*

Males with these experiences may find it hard to acknowledge the abusive nature of the relationship.

See No Evil,¹⁷ CLINICAL PSYCHOL. REV. at 76 (emphasis added), citing Watkins & Bentovim, 1992.³

Denial of any impact—while acknowledging the sexual activity—is a classic adaptive response. One study indicated only 4% of men believed they had been harmed by childhood sexual abuse, while 57% felt it had “no effect” on them later in life, even though they “may be more likely [than female abuse victims] to develop psychological problems.” *Id.* at 77. *See also* E. Olafson, B. Boat, *Long Term Management of the Sexually Abused Child*, TREATMENT OF CHILD ABUSE 23, 27 (R. Reece, ed. 2005) (“vigorous denial of any impact of sexual abuse experiences ... is adaptive for some period of time”). Indeed, this reaction is not one of emotional weakness, it is one of self-preservation.

³ The term “groomed” or “grooming” has a specific psychological connotation. *In re Application of Nash*, 317 Or 354, 359 n3, 855 P2d 1112 (1993) (“As used in the context of child sexual abuse, the term ‘grooming’ has been described as ‘a lot of gift giving, a lot of affection, praising, rewards, anything to make the individual more comfortable even to the extent of dealing with lots of people surrounding this particular person, just getting into a comfortable role; in other words, feeling comfortable and being close to an individual. Yes, they often establish some emotional dependency.’ *State v. Hansen*, 304 Or 169, 174, 743 P2d 157 (1987)”). Child molesters themselves report using a slow courtship or “grooming process” to seduce children with gifts, attention, and affection. Rubin A. Lang et. al., *How Sex Offenders Lure Children*, 1 CANADA ANNALS OF SEX RESEARCH 303-317 (1988). “Perpetrators frequently seek out children who are particularly trusting and work to proactively establish a trusting relationship with them before assaulting them.” Paine & Hansen, *Factors Influencing*, 22 CLINICAL PSYCHOL. REVIEW 276 (multiple citations omitted).

Tragically, some victims of child sexual abuse do not view the sexual contact as abuse, instead viewing it as a loving relationship between the child and a parent or other adult figure. Such minimization is often just a cover for deeper problems waiting to emerge, after some type of triggering event. As clinician Mic Hunter explained:

Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, *a child who seemed unharmed by childhood abuse can develop crippling symptoms years later* and can have a difficult time connecting his adulthood problems with his past.

M. Hunter, ABUSED BOYS 59 (1991) (emphasis added). Part of this seems to be undeniably adaptive, given that the abuser is often a close, trusted adult, and most of the victims in at least one study described their relationship with the perpetrator as positive—with half reporting that they “loved him, liked him, needed or depended on him.” M.L. Paine and D.J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REVIEW 271, 276 (2002). In fact, abusers often manipulate the child victim into thinking that the relationship is built on mutual love. See Maxine Hancock & Karen Burton Mains, CHILD SEXUAL ABUSE: HOPE FOR HEALING 33 (1987) (citations omitted). In such cases, this irresolvable dichotomy of love and fear forces the mind to accommodate these contending impulses by denying harm from the abuse. But in any of these situations, the pressure to not disclose the abuse is heightened by the child’s inability to grapple with the fact that he has

been sexually harmed.

3. *Co-conspirator Guilt.*

A history of studies show that victims frequently feel that they are in some way responsible for their own abuse.

Regardless of the type of abuse experienced by a child, most children feel responsible for their own abuse (Ney, Moore, McPhee, & Trought, 1986). The dynamics of the abusive relationship and the insidious nature of the grooming process may lead victims to perceive themselves as willing participants in a “relationship” with the offender (Berliner & Conte, 1990; Kaufman et al., 1996). Similarly, victims may perceive themselves as coconspirators, acting to maintain the secret of the abuse (Furniss, 1991; Summit, 1983). A retrospective study using a sample of female undergraduates suggests children who do not disclose their sexual victimization immediately may be more reluctant to disclose subsequent incidents of abuse (Arata, 1998). Victim’s feelings of responsibility may be compounded by the intense feelings of shame and stigma associated with sexual abuse (Finkelhor, 1986; Furniss, 1991). Many children are reluctant to disclose their victimization for fear they will be blamed or judged negatively by others (Berliner & Conte, 1995; Gomes-Schwartz et al., 1990; Sauzier, 1989).

Paine & Hansen, *Factors Influencing*, 22 CLINICAL PSYCHOLOGY REVIEW at 281. Child victims 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); 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). Cf 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 re-victimized). The abuse victim feels responsible for their own abuse, as if they “seduced” an adult.

In particular, male disclosure of sexual abuse is hampered significantly by feelings of participatory guilt. “Unlike in females, male arousal is markedly visible and this can enhance... the ‘myth of complicity.’” Holmes, *See No Evil*, 17 CLINICAL PSYCHOL. REV. at 76. Because of male physical reactions to sexual stimulus, male victims may feel complicit in their abuse, believing that they either desired the abuse or somehow bought it on themselves.

The fact that males can have a clear physiological reaction during their abuse ... may also lead some males to rationalize their abuse as something that they desired or invited.

Id. (citation omitted).

Part of this guilt also has to do with the socialization of boys as needing to be strong, in control, and not see themselves as victims. *Id.* at 274. In this way, male victims of child sexual abuse are particularly unlikely to disclose their sexual abuse because they believe that they were willing, or at least

permissive, participants. This leads to the most pernicious aspect of abuse and the flip side of cooperative guilt: the feeling that it was the victim's own fault.

Clinically, self-blame can be viewed 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). However, that clinical

distance only serves to magnify the horror of a sexual assault victim blaming

himself for being raped. Nevertheless, if a victim feels it is his fault that he

was sexually assaulted, he will not disclose that abuse to authorities. *See* Paine

& Hansen, *Factors Influencing*, 22 CLINICAL PSYCHOL. REV. at 274-75.

4. *Fear of the Abuser or the Consequences of Disclosure.*

Finally, in some cases, victims simply fear their abuser. Paine & Hansen, *Factors Influencing*, 22 CLINICAL PSYCHOL. REV. at 281-82. "Personal threats to the victim may include threats of physical harm, punishment, and withdrawal of material goods, privileges, or affection." *Id.* at 282. The fear of incarceration would obviously be a significant fear along these lines. In some cases, abusers threaten the victim's family. *See* Paine & Hansen, *Factors Related to the Reporting*, 23 CHILD ABUSE & NEGLECT 564.

However, the fear of not being believed is also significant. *Id.* So too,

victims may fear the effect on their family. *Id.* Occasionally, victims also cite concern for the perpetrator's well-being as a factor inhibiting disclosure Paine & Hansen, *Factors Influencing*, 22 CLINICAL PSYCHOL. REV. at 282-83. A "pseudonormal" relationship is built upon the fact that an abuser often cares for a young and otherwise vulnerable child. *Id.* at 283. These factors also weigh the perception of social interactions, making the abusive conduct seem like a "fair exchange." *Id.* at 286.

Abusers may also manipulate the family into thinking that the abuser is someone who can be trusted and respected. A child may see how much their family respects and trusts the abuser. Some abusers shower the child with attention and buy the child gifts, making the child feel special. Children may be told by the abuser to keep the abuse a secret. See Reinert, SEXUAL ABUSE AND INCEST 34-35 (1997). Ultimately, compliance and silence are temporarily secured, even as other psychological mechanisms develop that will prevent disclosure once the immediate fear has subsided.

Additionally, as noted above, social stigma against abuse victims and LGBT individuals leads to a reluctance to report. For boys in particular, they fear—rightly or wrongly—the stigmatization of being labeled a victim or homosexual if they disclose their abuse. Alaggia, *Disclosing the Trauma*, 10 J. OF LOSS AND TRAUMA at 453–470. The phobic response to being labelled by society also regrettably silences victims of abuse.

C. When Child Abuse Victims Do Disclose their Abuse.

The overwhelming weight of the psychological research and scholarship on childhood sexual abuse and its victims shows that a substantial amount of time is generally required for victims to come to grips with the abuse and to recognize its impact. *See generally*, J. Crewsdon, *BY SILENCE BETRAYED* (1988); D. Hechler, *THE BATTLE AND THE BACKLASH* (1988). *See also* Testimony, Senate Judiciary Committee, House Bill (HB) 2668 (May 24, 1989) at 251 (statement of Jean Sherkoff, psychotherapist, Lutheran Family Services: “Many victims are in their late-20’s or early-30’s before they are able to identify [child sexual abuse] as a precursor to the problems in their lives.”). *See also*, Exhibit T, Senate Judiciary Committee, HB 2668 (1989), May 24, 1989 (statement of Lorah Sebastian, Ph.D.) (same). A review of several studies showed a mean range of disclosure anywhere between 3 and 18 *years* before victims told anyone of their abuse. R. Alaggia, *Many Ways of Telling*, 28 *CHILD ABUSE & NEGLECT* at 1215.

According to the scientific literature, apart from therapy directed at the abuse experience, the typical triggering event for discovery of a causal link between abuse and injury is usually a significant life event that causes intense reflection or replicates the environment of the abuse. In addition to adult sexual activity, events such as a job promotion or the victim’s child reaching

the age at which the victim was abused have been noted as triggers. Thomas, 26 WAKE FOREST L. REV. at 1254 n78, *also citing Evans v. Eckelman*, 265 Cal Rptr 605 (Cal App 1st Dist 1990) (oldest child's psychological blocking mechanisms broke down when he was convicted of sexual assault and ordered to undergo therapy); *K.E. v. Hoffman*, 452 NW2d 509 (Minn 1990) (memories of sexual abuse resurfaced while adult survivor was serving in Army); *Meiers-Post v. Schafer*, 427 NW2d 606 (Mich Ct App 1988) (thirty-year-old's repression of sexual relations with high school teacher unearthed while watching television show on sexual exploitation of students by teacher); *Hammer v. Hammer*, 418 NW2d 23 (Wis Ct App 1987) (victim discovered psychological damage when she realized sister was to inherit position as father's lover). *See also B.R. v. Horsley*, 345 P3d 836, 841 (Wn App 2015) (question of fact whether marital problems and sexual dysfunction were separate injuries triggering the renewal of the statute of limitations under Washington's statute of limitations that allows a renewed statute of limitations with each newly discovered symptom).

Moreover, Oregon law recognizes that an abuse victim can even be in therapy and talking about the sexual contact, but that the statute of limitations does not start to run until that abuse is perceived as abusive. *Jasmin v. Ross*, 177 Or App 210, 212-13, 33 P3d 725 (2001) (abuse by step-uncle was considered "loving" relationship until discussions with high school confidant

12 years from the last incident of sexual contact triggered recognition of injury). In *Jasmin*, it is notable that such delayed discovery of injury provided a timely claim under either the common law discovery rule or ORS 12.117. *Id.* at 215 (“[U]nder either [rule], plaintiff prevails if she presented any evidence from which a jury could find that she did not discover... facts creating a substantial possibility that her psychological or emotional injuries resulted from defendant’s sexual abuse of her”). There is no hard and fast rule by which a court can say a victim *must* have disclosed his abuse by a set date. In fact, those who do disclose have crossed the first and most difficult hurdle on their path to healing.

To meet such hard-won disclosure with a legal rule that ignores the tragic reality of child abuse is not logical, fair, or rational. Disclosure of child abuse is different from discovery of a sponge after a surgery—but at least the law recognizes that there is often no injury until that sponge is discovered. Demanding instead that in all cases of child molestation by a government official, a lawsuit must be brought almost within two years of sexual abuse—no matter the age or circumstances of the child victim—is fundamentally irrational.

II. Oregon’s Discovery Rule May be Applied to ORS 12.110 in Section 1983 Cases.

It is possible for this Court to synthesize the rules of federal accrual and

the application of the Oregon statute of limitations in 42 U.S.C. § 1983 cases in a way that does justice to child abuse victims and does no violence to any part of our legal structures. As noted below, Section 1983 cases use federal accrual but the forum state statute of limitations (and its tolling provisions) to determine the timeliness of a claim. And in fact, the point in time to which accrual is pegged under federal law is not the same as the point in time at which the state statute of limitations starts to run—accrual may occur while a statute of limitations may be tolled from running. Because the Oregon statute of limitations applied in Section 1983 cases—ORS 12.110—relies independently upon the Oregon discovery rule, and because that rule requires four specific elements to be met before it is satisfied, the statute of limitations may be considered to have been tolled in this case pending the plaintiff’s discovery of Lawhead’s culpable conduct despite the potential technical accrual of the Section 1983 claims under federal law.

Long-settled 42 U.S.C. § 1983 precedent provides that “[f]ederal law determines when a cause of action accrues and [therefore when] the statute of limitations begins to run for a § 1983 action.” *Elliott v. City of Union City*, 25 F3d 800, 801–02 (9th Cir 1994) (citation omitted). It is equally well-established that Section 1983 borrows “the law of the forum state regarding tolling.” *Johnson v. State of California*, 207 F3d 650, 653 (9th Cir 2000), citing *Hardin v. Straub*, 490 US 536, 537-39, 543 (1989). See also *Silva v.*

Crain, 169 F3d 608, 610 (9th Cir 1999) (“we apply the state’s general residual statute of limitations **and state rules which toll the running of that statute**”) (emphasis added). “Tolling” means to “suspend or stop temporarily[,] as the statute of limitations is tolled ... during the plaintiff’s minority.” BLACK’S LAW DICTIONARY 1488 (7th ed 1999). That is exactly what the discovery rule does, both conceptually and as a matter of existing Oregon precedent. Indeed, as this Court and the Court of Appeals have often discussed, the statute of limitations may be tolled until the elements of Oregon’s common law discovery rule have been met.

In Oregon, the statute of limitations itself—not simply accrual of a claim—is subject to tolling by the discovery rule: “[I]ike the notice period, **the statute of limitations can also be tolled by the discovery rule**. *Stephens v. Bohlman*, 314 Or 344, 349-50, 838 P2d 600 (1992).” *Catt v. Dep’t of Human Servs.*, 251 Or App 488, 507, 284 P3d 532 (2012) (emphasis added). *See also F.D.I.C. v. Smith*, 328 Or 420, 428, 980 P2d 141 (1999) (discovery rule in Oregon not only delays accrual of a claim but also “has the effect of **tolling** the commencement of [statutes of limitation] under certain circumstances”) (emphasis added), *quoted in Rice v. Rabb*, 354 Or 721, 725, 320 P3d 554 (2014). Indeed, the actual nature of the Oregon discovery rule has long been recognized to be a tolling provision, as articulated by our Court of Appeals over thirty years ago:

The cases have treated the discovery rule as having a tolling effect, *i.e.*, the statute does not begin to run until the plaintiff knows or reasonably should know the relevant facts. That is appropriate in cases such as *Berry v. Branner*, [245 Or 307, 421 P2d 996 (1966)], where the plaintiff discovered her right of action after the limitation period had elapsed.

Workman v. Rajneesh Found. Int'l, 84 Or App 226, 231 n4, 733 P2d 908 (1987). *See Duncan v. Augter*, 62 Or App 250, 258, 661 P2d 83, *rev den* 295 Or 122 (1983) (“[t]he general policy behind the ‘discovery rule’ is to delay the running of the statute of limitations until an injured person knows or should know that she has a cause of action so that the law does not strip her of a remedy before she could know she has been wronged”). *Workman* went on to discuss the objective standard for bringing suit once all of the elements of discovery of injury are known—a core component in limiting the scope of the discovery rule’s reach.

Oregon’s discovery rule requires that plaintiffs have an opportunity to discover *all four* elements of legal “injury” under Oregon law: (1) harm; (2) tortious conduct; (3) identity of the tortfeasor; and (4) causation. *Johnson v. Multnomah County Dep’t of Cmty. Justice*, 344 Or 111, 118 n2, 178 P3d 210 (2008), *citing Gaston v. Parsons*, 318 Or 247, 255, 864 P2d 1319 (1994). *See also Doe v. American Red Cross*, 322 Or 502, 513, 910 P2d 364 (1996) (“The nature of the harm suffered is important in determining whether a reasonable person would have been aware of a substantial possibility of tortious conduct”). There is an objective duty to investigate as well, because the statute of

limitations begins to run “when (1) the plaintiff knows, or a reasonable person should know, that there is enough chance that the defendant had a role in causing the plaintiff’s injury to require further investigation; and (2) an investigation would have revealed the defendant’s role.” *T.R. v. Boy Scouts of America*, 344 Or at 296. *Accord, Doe v American Red Cross*, 322 Or at 513-14.

Significantly, as *T.R.* pointed out, that investigation requirement is limited to what an injured child would be able to discover at the time of the abuse, even in the case of child sexual molestation by a government agent where a child would presumably be able to discover very little. *Id.* at 297 (in evaluating reasonableness of discovery of institutional malfeasance leading to sexual abuse, the court views the discovery or lack thereof “from the perspective of a reasonable person under the relevant circumstances, which include plaintiff’s minority”). As the *T.R.* Court wisely noted, “a teenager subjected to sexual abuse by a police officer reasonably may have believed that that officer’s acts were the acts of a man who was acting on his own, based upon his own sexual proclivities, and reasonably may not have suspected that higher city officials could have been to blame for his predicament.” *Id.* at 298. That is precisely the case here.

Because the Plaintiff as a teenage inmate could not seriously investigate State procedures and State officials’ knowledge about his abuser, it should be a

jury question as to the question of how long the statute of limitations should properly be tolled in this case. *See T.R.*, 344 Or at 297. Simply pointing to the date Plaintiff was molested and saying “good enough” under federal law is not, in fact, good enough to satisfy all four elements of legal “injury” under Oregon’s discovery rule. *Amici* pray this Court clearly state that the Oregon discovery rule is indeed a tolling provision under Oregon’s common law, and one that prevents the running of ORS 12.110 in Section 1983 cases until all four elements of injury are known or should be known as to each specific defendant, based on that individual defendant’s culpable conduct.

Because the trial court assumed that conscious awareness of unwelcome sexual contact was enough to trigger the statute of limitations, the dismissal of Plaintiff’s claims was in error and the Oregon Court of Appeals was correct in reversing that erroneous ruling by the trial court. Plaintiff needed to be aware of all four discovery rule elements before the statute of limitations could commence running—particularly Defendant Lawhead’s individual tortious conduct and its causal connection to Plaintiff’s injuries— even if the claim had otherwise accrued under federal law. The Court of Appeals should be affirmed and this case should be remanded for trial.

////

////

////

CONCLUSION

Amici, as organizations that advocate for victims, believe that the argument advanced by the State disregards the reality of the effect that child sexual abuse has on its victims. Demanding disclosure from a teenage inmate immediately after sexual molestation by a feared guard is not right or proper under a discovery rule analysis—particularly given the avoidance, denial, and minimization that happen in many children following sexual abuse.

RESPECTFULLY SUBMITTED this 13th day of August, 2018.

VIAL FOTHERINGHAM LLP

s/ *Kristian Roggendorf*

Kristian Roggendorf, OSB #013990
17355 SW Boones Ferry Road, Suite A
Lake Oswego, OR 97035
Telephone: 503-684-4111
ksr@vf-law.com

Counsel for *Amici Curiae* National
Center for the Victims of Crime
and Oregon Trial Lawyers
Association

CERTIFICATE OF COMPLIANCE

ORAP 5.05 WORD COUNT AND TYPEFACE LIMITATION

BRIEF LENGTH: I certify that this brief complies with the word-count limitation in ORAP 5.05(b)(i)(B) and the word count of this brief is 6,309 words, exclusive of front cover, index of contents and appendices, index of authorities, or certificates, but inclusive of headings, footnotes, and quoted material.

TYPE SIZE: I hereby certify that the size of the type in this brief is 14 point Times New Roman proportionally-spaced font, for both text and footnotes as required by ORAP 5.05(4)(f).

DATED this 13th day of August, 2018.

VIAL FOTHERINGHAM LLP

s/ *Kristian Roggendorf*

Kristian Roggendorf, OSB #013990
17355 SW Boones Ferry Road, Suite A
Lake Oswego, OR 97035
Telephone: 503-684-4111
ksr@vf-law.com

Counsel for *Amici Curiae* National
Center for the Victims of Crime and
Oregon Trial Lawyers Association

CERTIFICATE OF FILING AND SERVICE

I certify that on August 13, 2018, I filed this Motion to Appear as *Amici Curiae* and Proposed Brief on the Merits by electronic filing with the State Court Administrator at this address:

<https://appellate-efile.ojd.state.or.us/filing/filingExisting.do?csIID=167422>

I also certify that on August 13, 2018, I served the following counsel through the Court's electronic filing system:

DENNIS STEINMAN #954250
SCOTT J. ALDWORTH #113123
Kell, Alterman & Runstein, L.L.P.
520 S.W. Yamhill, Suite 600
Portland, Oregon 97204
Email: dsteinman@kelrun.com
Email: saldworth@kelrun.com
Tel: (503) 222-3531

Attorneys for Plaintiff-Appellant-
Respondent on Review

BENJAMIN GUTMAN #160599
Solicitor General
PEENESH SHAH 112131
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97304-4096
Email: peenesh.h.shah@doj.state.or.us
Tel: (503) 947-4700

Attorneys for Defendants-
Respondents-Petitioners on Review

DATED this 13th day of August, 2018.

VIAL FOTHERINGHAM LLP

s/ Kristian Roggendorf

Kristian Roggendorf, OSB #013990
17355 SW Boones Ferry Road, Suite A
Lake Oswego, OR 97035
Telephone: 503-684-4111
ksr@vf-law.com

Counsel for *Amici Curiae* National Center
for the Victims of Crime and Oregon Trial
Lawyers Association