

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

John Doe 180,

Case Type: Personal Injury  
Court File No. 62-CV-11-5545

Plaintiff,

v.

The National Boy Scouts of America  
Foundation d/b/a The Boy Scouts of America,  
Northern Star Council Boy Scouts of America,  
River Hills United Methodist Church in  
Dakota County State of Minnesota, and Peter  
Stibal,

**AMICUS MEMORANDUM OF  
MINNESOTA ATTORNEY  
GENERAL**

Defendants.

### **INTRODUCTION**

The Minnesota Attorney General submits this amicus memorandum in support of disclosure of credible reports of sexual abuse in the Boy Scouts of America's Ineligible Volunteer Files.<sup>1</sup> There is a substantial public interest in disclosure of information documenting sexual abuse within trusted youth organizations like the Boy Scouts. The public interest in disclosure, however, must be balanced against fairness and privacy concerns.

As outlined below, to properly balance these competing interests, the Court should provide for individual evaluation of each file to determine if the sexual abuse allegation is credible. For files involving credible reports of sexual abuse, the public interest in disclosure outweighs any privacy concerns, and the file should be unsealed. For files containing allegations that are wholly unsubstantiated or otherwise not reliable, the file should remain sealed. Given

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the Attorney General certifies that: (1) no counsel for any party in this action authored this brief in whole or in part; and (2) no party or entity other than the amicus curiae made any monetary contribution to the preparation or submission of this brief.

the number of files and time involved in individually evaluating each allegation, the Minnesota Attorney General recommends that the Court appoint a Special Master to review each file and apply objective criteria to identify credible allegations that are in the public interest to unseal.

## DISCUSSION

### **I. There Is A Substantial Public Interest In Release Of Credible Information About Past Acts Of Sexual Abuse.**

There is a substantial public interest in disclosure of credible information about acts of child sexual abuse. *See, e.g., Bjerke v. Johnson*, 742 N.W.2d 660, 670 (Minn. 2007) (noting the “particularly strong interest in protecting children from sexual abuse”); *New York v. Ferber*, 458 U.S. 747, 756 (1982) (recognizing the “compelling” interest in safeguarding children against the physical and psychological harm resulting from sexual abuse). Child sexual abuse is among the most underreported and difficult-to-detect crimes, in part because offenders are often trusted adults highly adept at grooming victims.<sup>2</sup> It is critical that the public have access to information about credible reports of sexual abuse by offenders who use trusted youth organizations like the Boy Scouts to gain access to victims.<sup>3</sup>

Beyond enabling identification of offenders, public disclosure also increases public awareness about the dangers and dynamics of sexual abuse. Child sexual abuse is perpetuated by secrecy and lack of public understanding about the nature of the crime. *See* Ross E. Cheit, *Tort*

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<sup>2</sup> Grooming refers to “a preparatory process in which a perpetrator gradually gains a person’s or organization’s trust with the intent to be sexually abusive.” Daniel Pollack & Andrea MacIver, *Understanding Sexual Grooming in Child Abuse Cases*, 34 No. 11 Child L. Prac. 161 (2015). *See also* Julie M. Arnold, “Divine” Justice and the Lack of Secular Intervention: Abrogating the Clergy-Communicant Privilege in Mandatory Reporting Statutes to Combat Child Sexual Abuse, 42 Val. U. L. Rev. 849, 850-51 (2007) (recognizing that the overwhelming majority of sexual abusers are trusted adults known to the victim).

<sup>3</sup> Karen J. Krogman, Protecting Our Children: Reforming Statutory Provisions to Address Reporting, Investigating, and Disclosing Sexual Abuse in Public Schools, 2011 MISTLR 1605, 1622-23 (2011).

*Litigation, Transparency, and the Public Interest*, 13 Roger Williams U. L. Rev. 232 (2008) (recognizing that “[s]ecrecy plays into the dynamics that make the offense possible in the first place”). Until revelations of sexual abuse in the Catholic Church, many dismissed the idea that priests could commit such horrific crimes against children.<sup>4</sup> The ghastly crimes of Dr. Larry Nasser – who sexually abused over 300 young gymnasts under the guise of medical treatment – continued for over two decades in part because people assumed a respected doctor would never commit such acts.<sup>5</sup> Disclosure of credible abuse allegations furthers public recognition that sexual abuse occurs even within trusted youth organizations like the Boy Scouts. It also increases public awareness about how predators groom victims within institutional settings to facilitate acts of sexual abuse.<sup>6</sup>

Moreover, a greater understanding of sexual abuse and its prevalence contributes to an atmosphere where victims feel empowered to report sexual abuse and have their reports taken seriously. A recent Pennsylvania Grand Jury Report documented numerous cases in which child victims did not report sexual abuse by priests out of concern that nobody would believe them.<sup>7</sup> In other cases, victims reported abuse to their parents, but their parents did not believe them.<sup>8</sup> Openness about sexual abuse, including public disclosure of files documenting abuse occurring

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<sup>4</sup> See, e.g., Report I of the 40th Statewide Investigating Grand Jury, Office of Attorney General: Commonwealth of Pennsylvania, at 22, 280, 365, 484, 513, 552, 689, 698, 730, 756, 764 (July 27, 2018), available at: <https://www.attorneygeneral.gov/report/> (herein “Pennsylvania Grand Jury Report”).

<sup>5</sup> Report of Senator Jerry Moran & Senator Richard Blumenthal, *The Courage of Survivors: A Call to Action*, 9-12, 28-29 (July 30, 2019).

<sup>6</sup> See Daniel Pollack & Andrea MacIver, *Understanding Sexual Grooming in Child Abuse Cases*, 34 No. 11 Child L. Prac. 161 (Nov. 2015) (recognizing the dangers of grooming in institutional settings and advocating for greater awareness of grooming behaviors to prevent sexual abuse).

<sup>7</sup> Pennsylvania Grand Jury Report, at 20-25, 369, 398, 402, 455, 469, 477-78, 513, 621, 760.

<sup>8</sup> Pennsylvania Grand Jury Report, at 22, 280, 365, 484, 513, 552, 689, 698, 730, 756, 764.

within the Boy Scouts, encourages society to take reports seriously, and signals to victims that their reports will not be ignored.

Disclosure of credible reports of sexual abuse also furthers the strong public interest in ensuring appropriate institutional responses to sexual abuse. Systematic failures by large and trusted organizations have caused untold suffering by countless victims.<sup>9</sup> Public disclosure of files on predatory conduct within the Boy Scouts furthers public discussion and understanding about how institutions respond – or fail to respond – to sexual abuse. Indeed, public disclosure often serves as the instigator of institutional reforms that address sexual abuse.<sup>10</sup>

Finally, disclosure of files documenting sexual abuse, with victim and witness names redacted, will aid victims in the recovery process. Victims often experience feelings of isolation and shame, particularly when their abuser is a trusted adult.<sup>11</sup> Public disclosure gives legitimacy to the trauma that victims endure and signifies the seriousness to which society recognizes the wrongs inflicted upon so many children.

For all of these reasons, there is a substantial public interest in disclosure of credible reports of sexual abuse within the Boy Scouts.

## **II. Release Of The Files Should Include Procedural Protections To Ensure That Only Credible Allegations Are Disclosed.**

Beyond the substantial public interest in disclosure, the Court must also weigh privacy and fairness concerns. To address these concerns, the Court should provide for individualized review of each file to assess whether it contains a reasonably credible allegations of sexual

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<sup>9</sup> See, e.g., Pennsylvania Grand Jury Report, at 2-7 (summarizing the systematic failures to address sexual abuse within the Catholic Church); Report of Senator Jerry Moran & Senator Richard Blumenthal, *The Courage of Survivors: A Call to Action*, 5-17 (July 30, 2019) (noting multiple institutions that fails to protect minor athletes from sexual abuse).

<sup>10</sup> See *id.*

<sup>11</sup> Thomas P Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 Fordham Urb. L.J. 549, 611 (2004).

abuse. Individualized review provides a safeguard against release of files containing unreliable or wholly unsubstantiated allegations, while allowing for release of files containing credible information about acts of sexual abuse.

Considering the volume of files and time involved in thoroughly reviewing each file, the Attorney General recommends that the Court appoint a Special Master to apply objective criteria to determine whether each allegation is sufficiently credible to warrant release. *See* Minn. R. Civ. P. 53.01(a)(3) (providing that a district court may appoint a special master). If requested, the Attorney General's Office is willing to assist the Court by identifying potential candidates who would be able to fairly and efficiently conduct an individualized evaluation of each file.

Among the relevant factors that a Special Master could consider are: (1) the nature of the allegation; (2) the outcome of any police investigation or prosecution; (3) the results of any internal investigation; (4) whether the file contains admissions from an accused offender; (5) whether the file contains other information tending to corroborate the allegation; and (6) whether the allegation has circumstantial guarantees of trustworthiness. A comprehensive list of every potential relevant factor is not possible, but a neutral Special Master can review the totality of each file and make a case-by-case determination of whether an allegation is credible and therefore in the public interest to disclose.

The Court should also provide for release of files that are already publically available. Where information is already available publically from another source, privacy and fairness concerns are minimal. For example, information from at least some of the files may already be publically available through Scouting files submitted as evidence in other court cases.<sup>12</sup> The

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<sup>12</sup> The Los Angeles Times developed a database with information on over 5,000 offenders who the Boy Scouts excluded from volunteering between 1947 and January 2005. *See* Los Angeles Times, *Tracking Decades of Allegations in the Boy Scouts*,

public interest supports as full disclosure as possible, and this interest overrides any privacy concerns if the information is already public.

The Special Master should also ensure that any victim and witness information is appropriately redacted. *See* Minn. R. Pub. Access to Recs. of the Jud. Branch 4, subd. 1(m) (providing that information specifically identifying a minor victim of criminal sexual conduct is not public). There is no public interest in learning the identity of victims or witnesses, so such information should remain sealed.

In sum, the Attorney General recommends that the Court appoint a neutral Special Master to individually review each file. Applying objective criteria and considering the totality of the file, the Special Master can determine which files are in the public interest to unseal. Similarly, the Special Master can ensure all victim and witness information has been appropriately redacted. This type of individualized review allows for a proper, case-by-case determination of whether the public interest in disclosure of each file outweighs any privacy concerns.

### **CONCLUSION**

Considering the great trust parents place in the Boy Scouts, there is a substantial public interest in disclosure of files identifying individual offenders and documenting how the Boy Scouts respond to the dangers of sexual abuse. In order to balance the public interest in disclosure against fairness and privacy concerns, the Court should appoint a neutral Special Master to individually review each file and identify credible allegations of sexual abuse that are appropriate for disclosure. By appointing a Special Master to evaluate each file on a case-by-

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<http://spreadsheets.latimes.com/boyscouts-cases/> (last visited August 28, 2019). Many of these files contain specific information indicating that allegations resulted in a criminal conviction. Files containing or referencing court or police records generally will involve information that is already public. *See* Minn. Stat. § 13.82, subd. 7 (providing that criminal investigative data is ordinarily public once the investigation is no longer active); Minn. R. Pub. Access to Recs. of the Jud. Branch 2 (recognizing that court records are presumed public).

case basis, the Court would properly balance the substantial public interest in disclosure against fairness and privacy concern so that the public can have access to information about credible allegations of child sexual abuse.

Dated: September 6, 2019

Respectfully submitted,

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