

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12550

waives the statute [**19] of limitations for specified criminal actions] applies

(1) to all offenses occurring on or after the effective date of this Act; and

(2) to all offenses occurring before the effective date of this Act if the statute of limitations applicable to that offense on the day before the effective date of this Act has not expired, including any specific time periods for that offense under AS 12.10.020, as that section read the day before the effective date of this Act, and any period when the limitations period did not run under AS 12.10.040. n24

n24 Ch. 86, § 4, SLA 2001.

The plaintiffs argue that the lack of comparable language regarding the lifting of the statute of limitations for civil claims suggests that the legislature intended for AS 09.10.065 to apply retroactively.

3. Alaska Statute 09.10.065 does not revive time-barred civil claims.

The legislature inserted section four [**20] -- that is, it did not attempt to revive time-barred criminal claims -- because the prosecution of a lapsed criminal claim would constitute an *ex post facto* law. The Senate Judiciary Committee heard from the bill's drafter, Gerald Luckhaupt, who testified that reviving time-barred criminal provisions would violate the constitutional prohibition against *ex post facto* laws. n25 While the legislature clearly displayed [**25] its intention that the criminal sections of the 2001 amendments not be given retroactive effect, it does not follow that the legislature assumed that the civil sections of the statute would have such effect. The legislature never discussed whether the amendment would revive lapsed civil claims; retroactivity was raised only in regard to criminal prosecutions. When the legislature amended AS 09.10.065 in 2003, it specifically limited retroactive effect on time-barred civil claims to October 1, 2001, which was the effective date of the 2001 amendment. n26 Had the legislature intended to revive time-barred civil claims, it would have explicitly stated so. Indeed, the legislature knows how to indicate when a statute is to be fully retrospective [**21] and has shown its ability to do so. For example, AS 09.55.650, enacted at the same time as AS 09.10.060(c) (the predecessor of AS 09.10.065), was promulgated with a section specifically noting its applicability to "all ac-

tions commenced on or after February 2, 1990 regardless of when the cause of action may have arisen." n27 This provision clearly shows legislative intent to apply AS 09.55.650 retrospectively. Had the legislature intended AS 09.10.065 to apply retrospectively, it would have used similar language. That the legislature chose not to add such language, when considered along with the legislative history and the statutory presumption against retroactive statutes, leads us to conclude that AS 09.10.065 does not act retrospectively to revive time-barred claims. Thus, we conclude that the plaintiffs cannot rely on this statute as a basis for their claims.

n25 5/2/01 Senate Judiciary Comm. Minutes. Mr. Luckhaupt appears to have advised the legislature correctly. See *Stogner v. California*, 539 U.S. 607, 123 S. Ct. 2446, 156 L. Ed. 2d 544 (2003). Although *Stogner* was not decided until after the 2001 amendments, it validated Mr. Luckhaupt's testimony; the Court held that the *ex post facto* clause of the United States Constitution forbids resurrection of a time-barred prosecution and observed that "numerous legislators, courts, and commentators have long believed it well settled that the *Ex Post Facto* Clause forbids resurrection of a time-barred prosecution." *Id.* at 616. Cf. *State v. Creekpaum*, 753 P.2d 1139 (Alaska 1988) (extension of statute of limitations for crime whose original period of limitation had not yet expired was not unconstitutional *ex post facto* law).

[**22]

n26 Ch. 40, § 4, SLA 2003.

n27 Ch. 4, § 11, SLA 1990. (Emphasis added.) See also ch. 70, § 3, SLA 1996 ("This Act applies to civil actions commenced on or after the effective date of this Act regardless of when the cause of action may have arisen."). Section 2 of chapter 70 deleted a subsection of the former AS 09.10.060 which had provided a three-year statute of limitations for malicious prosecution actions.

This conclusion makes it unnecessary for us to consider the CBNA's argument that retroactive application of this statute would violate any rights of repose that vested once the original statute of limitations had expired or the plaintiffs' argument that AS 09.10.065 applies to claims against vicariously liable non-perpetrators.

B. Application of the Discovery Rule Is a Question of Fact.

In its present posture, this case is on review from the superior court's refusal to grant a motion to dismiss. A motion to dismiss should not be granted if "evidence may be introduced that will sustain a grant of relief to the plaintiff. [**23] " n28 Under the discovery rule, the date on which the statute of limitations begins to run is a question of fact. n29 We cannot rule out the possibility that evidence may be introduced that will show that the statute of limitations has not run. Therefore this case must be remanded for further proceedings. We observe that once sufficient discovery is conducted, the statute of limitations affirmative defense should be resolved in advance of trial. If a genuine issue of material fact is presented it should be resolved in advance of trial by the superior court as "a preliminary question of fact" following an appropriate evidentiary hearing. n30

n28 *Odom v. Fairbanks Mem'l Hosp.*, 999 P.2d 123, 128 (Alaska 2000).

n29 *John's Heating Serv. v. Lamb*, 46 P.3d 1024, 1031 (Alaska 2002).

n30 *Id.* at 1033 & n.28.

V. CONCLUSION

For the reasons noted above, we AFFIRM the decision of the superior court to hold the CBNA's motion to dismiss in abeyance pending [**24] further discovery. On remand, the superior court should conduct further proceedings in accordance with this opinion.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Charles
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MELANIE H., individually,

Plaintiff,

v.

DEFENDANT DOE 1; DOES 2 through
1000, inclusive.

SISTERS OF THE PRECIOUS BLOOD,
Counterclaimant,

v.

MELANIE H., individually, et al.,
Counterclaim Defendant.

STATE OF CALIFORNIA,
Intervenor-Plaintiff,

ROMAN CATHOLIC BISHOP OF SAN
DIEGO,
Third Party Counterclaimant,

v.

MELANIE H., STATE OF
CALIFORNIA, et al.,
Plaintiffs-Counterclaim Defendants;
Fourth Party Defendants.

Civil No. 04 -1596-WQH- (WMc)

ORDER

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1 Pending before the Court are Plaintiff's Motion to Dismiss the Counterclaim and
2 Defendants' Motion for Summary Judgment. On September 8, 2005, the parties appeared before
3 the Honorable William Q. Hayes for oral argument on both Motions. After considering the
4 arguments raised by the parties in their briefing and during oral argument, the Court now issues
5 the following rulings.

6 BACKGROUND

7 On December 30, 2004, Plaintiff Melanie H., a female adult proceeding under a pseud-
8 onym, filed a complaint in California State Court alleging that she was sexually molested by a
9 priest and parish/school worker at St. Mary's parish school between 1974 through 1977. The
10 Complaint alleges that the Defendant Sisters of the Precious Blood, the order of nuns that ran the
11 school, negligently failed to supervise the perpetrator and negligently failed to protect Plaintiff.

12 Plaintiff's Complaint alleges sexual abuse by Father Victor Uboldi. Father Uboldi was a
13 Catholic Priest incardinated at the Diocese of San Diego and assigned to St. Mary's Parish at the
14 time the alleged abuse occurred. Father Uboldi retired to Italy in the early 1980's and is now
15 deceased.

16 Defendant Sisters removed the action to Federal Court and filed an Answer asserting
17 fifteen affirmative defenses, including a defense based on the statute of limitations. Addition-
18 ally, Defendants filed a Counterclaim seeking declaratory relief.

19 Defendant Sisters allege they provided services at the School and Parish at the request of
20 the Bishop of San Diego. The Bishop intervened as a Defendant under the theory that if the
21 Sisters are liable to Melanie, then the Bishop is liable to the Sisters. The State of California
22 intervened as a matter of right to defend the constitutionality of Senate Bill 1779 (codified as
23 California Code of Civil Procedure section 340.1) (hereinafter "SB 1779").

24 Effective January 1, 2003, the California Legislature enacted SB 1779 in order to create
25 retroactive employer liability in certain types of child abuse actions. The Bill created a one year
26 window for filing certain sexual abuse cases that would have otherwise been barred by the
27 statute of limitations. Prior to 2003, Plaintiff's claim against the Defendants would have become

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1 barred by the statute of limitations on her 26th birthday. However, with the enactment of SB
2 1779, Plaintiff's claim would not be otherwise barred by the statute of limitations. In their
3 Counterclaim, Defendants request that the Court grant summary judgment and declare those
4 portions of California Civil Code of Procedure Section 340.1 which were amended by SB 1779
5 unconstitutional.

6 SB 1779 provides in pertinent part:

7
8 **§ 340.1. Childhood sexual abuse; certificates of merit executed by attorney; violations; failure to file; name designation of defendant; periods of limitation; legislative intent**
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10 (a) In an action for recovery of damages suffered as a result of
11 childhood sexual abuse, the time for commencement of the action
12 shall be within eight years of the date the plaintiff attains the age of
13 majority or within three years of the date the plaintiff discovers or
14 reasonably should have discovered that psychological injury or
15 illness occurring after the age of majority was caused by the sexual
16 abuse, whichever period expires later, for any of the following
17 actions:

18 (1) An action against any person for committing an act of
19 childhood sexual abuse.

20 (2) An action for liability against any person or entity who
21 owed a duty of care to the plaintiff, where a wrongful or
22 negligent act by that person or entity was a legal cause of the
23 childhood sexual abuse which resulted in the injury to the
24 plaintiff.

25 (3) An action for liability against any person or entity where
26 an intentional act by that person or entity was a legal cause of
27 the childhood sexual abuse which resulted in the injury to the
28 plaintiff.

(b) (1) No action described in paragraph (2) or (3) of subdivision
(a) may be commenced on or after the plaintiff's 26th birthday.

(2) This subdivision does not apply if the person or entity
knew or had reason to know, or was otherwise on notice, of
any unlawful sexual conduct by an employee, volunteer,
representative, or agent, and failed to take reasonable steps,
and to implement reasonable safeguards, to avoid acts of
unlawful sexual conduct in the future by that person, including,
but not limited to, preventing or avoiding placement of
that person in a function or environment in which contact

1 with children is an inherent part of that function or environ-
2 ment. For purposes of this subdivision, providing or requir-
3 ing counseling is not sufficient, in and of itself, to constitute
4 a reasonable step or reasonable safeguard.

5 (c) Notwithstanding any other provision of law, any claim for
6 damages described in paragraph (2) or (3) of subdivision (a) that is
7 permitted to be filed pursuant to paragraph (2) of subdivision (b)
8 that would otherwise be barred as of January 1, 2003, solely because
9 the applicable statute of limitations has or had expired, is revived,
10 and, in that case, a cause of action may be commenced within one
11 year of January 1, 2003. Nothing in this subdivision shall be con-
12 strued to alter the applicable statute of limitations period of an
13 action that is not time barred as of January 1, 2003.

14 Cal.C.C.P. § 340.1.

15 I. MOTION FOR SUMMARY JUDGMENT

16 On May 11, 2005, Defendant Roman Catholic Bishop of San Diego and the Sisters of the
17 Precious Blood filed a Joint Motion for Summary Judgment. The Motion raises several
18 constitutional issues. Among them, the Defendants contend that: (1) SB 1779 violates the First
19 Amendment Free Exercise Clause; (2) SB 1779 violates the First Amendment Establishment
20 Clause; (3) SB 1779 violates the Due Process Clause; (4) SB 1779 violates the Ex Post Facto
21 Clause; and (5) SB 1779 is an unconstitutional Bill of Attainder.

22 STANDARD OF REVIEW

23 Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure
24 where the moving party demonstrates the absence of a genuine issue of material fact and
25 entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(c); see also *Celotex Corp. v.*
26 *Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law,
27 it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
28 (1986). A dispute over a material fact is genuine if "the evidence is such that a reasonable jury
could return a verdict for the nonmoving party." *Id.*

A party seeking summary judgment always bears the initial burden of establishing the
absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving party may
meet this burden in two ways: (1) by presenting evidence that negates an essential element of the

1 nonmoving party's case or (2) by demonstrating that the nonmoving party failed to make a
2 showing sufficient to establish an element essential to that party's case on which that party will
3 bear the burden of proof at trial. *Id.* at 322-23. If the moving party fails to discharge this initial
4 burden, summary judgment must be denied and the court need not consider the nonmoving
5 party's evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60 (1970).

6 If the moving party satisfies its initial burden, the nonmoving party cannot defeat
7 summary judgment merely by demonstrating "that there is some metaphysical doubt as to the
8 material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586
9 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in
10 support of the nonmoving party's position is not sufficient."). Rather, the nonmoving party must
11 "go beyond the pleadings and by her own affidavits, or by the depositions, answers to interroga-
12 tories, and admissions on file, designate specific facts showing that there is a genuine issue for
13 trial." *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)) (internal quotations omitted).

14 In ruling on a motion for summary judgment, "[t]he district court may limit its review to
15 the documents submitted for purposes of summary judgment and those parts of the record
16 specifically referenced therein." *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026,
17 1030 (9th Cir. 2001). Therefore, the Court is not obligated to "scour the record in search of a
18 genuine issue of triable fact." *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing
19 *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)). The Court must view all
20 inferences drawn from the underlying facts in the light most favorable to the nonmoving party.
21 *Matsushita*, 475 U.S. at 587. "Credibility determinations [and] the weighing of evidence ... are
22 jury functions, not those of a judge, [when] he [or she] is ruling on a motion for summary
23 judgment." *Anderson*, 477 U.S. at 255.

24 DISCUSSION

25 I. *The First Amendment Free Exercise Clause*

26 The Free Exercise Clause of the First Amendment, which has been applied to the States
27 through the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303(1940),
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1 provides "Congress shall make no law respecting an establishment of religion, or prohibiting the
2 free exercise thereof..." U.S. Const. Amend. I. (emphasis added).

3 In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court held that the
4 right of free exercise of religion does not relieve persons of the obligation to comply with valid
5 or neutral laws of general applicability. In *Employment Division v. Smith*, the Supreme Court
6 held that the State was not prevented by the Free Exercise Clause from outlawing the use of
7 sacramental peyote and denying unemployment benefits to employees discharged for using
8 peyote. The Supreme Court explained that a State would prohibit the free exercise of religion if
9 it was to ban acts solely because of their religious motivation. However, the Supreme Court
10 found that the Free Exercise Clause was not violated when a State required compliance with an
11 otherwise neutral law that incidentally impacted religious practice. The Supreme Court ex-
12 plained:

13 The free exercise of religion means, first and foremost, the right to believe and
14 profess whatever religious doctrine one desires. Thus, the First Amendment
15 obviously excludes all "governmental regulation of religious beliefs as such."
16 *Sherbert v. Verner* at 402. The government may not compel affirmation of religi-
17 ous belief, see *Torcaso v. Watkins*, 367 U.S. 488 (1961), punish the expression
18 of religious doctrines it believes to be false, *United States v. Ballard*, 322 U.S. 78,
19 86-88 (1944), impose special disabilities on the basis of religious views or reli-
20 gious status, see *McDaniel v. Paty*, 435 U.S. 618 (1978); *Fowler v. Rhode Island*,
21 345 U.S. 67, 69 (1953); cf. *Larson v. Valente*, 456 U.S. 228, 245 (1982), or lend its
22 power to one or the other side in controversies over religious authority or dogma,
23 see *Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyte-*
24 *rian Church*, 393 U.S. 440, 445-452 (1969); *Kedroff v. St. Nicholas Cathedral*,
25 344 U.S. 94, 95-119 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevic*,
26 426 U.S. 696, 708-725 (1976).

21 *Employment Div. v. Smith*, 494 U.S. at 886 (emphasis added).

22 In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993),
23 the legislature passed a law forbidding animal slaughtering for sacrificial purposes while still
24 allowing animal slaughtering for other purposes, such as within the meat packing industry. The
25 Supreme Court held that the ordinance in question was unconstitutional because its clear *object*
26 was to prevent animal sacrifice for religious purposes, despite its facially neutral appearance.
27 The Supreme Court stated, "[t]he principle that government, in pursuit of legitimate interests,

1 cannot in a selective manner impose burdens only on conduct motivated by religious belief is
2 essential to the protection of the rights guaranteed by the Free Exercise Clause." *Id.* at 542-543.
3 The Supreme Court explained the circumstances under which the protections of the Free
4 Exercise Clause pertain. "At a minimum, the protections of the Free Exercise Clause pertain if
5 the law at issue discriminates against some or all religious beliefs or regulates or prohibits
6 conduct because it is undertaken for religious reasons." *Id.* at 532.

7 The Supreme Court in *Lukumi* cited to *McDaniel v. Paty*, 435 U.S. 618 (1978) and
8 *Fowler v. Rhode Island*, 345 U.S. 67 (1953) for examples of the type of cause of action that
9 would implicate the Free Exercise Clause. Both *Fowler* and *McDaniel* involved clear intrusion
10 by the State upon the practice of religion. In *Fowler*, the Supreme Court held that a public
11 ordinance which prohibited public preaching by a Jehovah's Witness, but not by a priest or
12 minister, was unconstitutional. In *McDaniel*, the Supreme Court invalidated a law prohibiting
13 clergymen from holding public offices. The Supreme Court found that the challenged provision
14 violated the First Amendment right to the free exercise of religion because it conditioned that
15 right on the surrender of the right to seek office.

16 The Court's decision in this case is guided by the rulings in both *Lukumi* and *Employment*
17 *Division*. However, the facts of this case differ significantly in that the legislation at issue is not
18 aimed at promoting or prohibiting religious beliefs, opinions or practices. Both *Lukumi* and
19 *Employment Division* involved regulation of religious practices, sacramental peyote use and
20 animal sacrifice respectively. In comparison, SB 1779 allows tort claims against a third party for
21 failure to supervise or negligent hiring to be filed retroactively.

22 Plaintiff contends that SB 1779 is "neutral, generally applicable legislation that retroac-
23 tively extended the statute of limitation for certain claims wholly without regard to the religious
24 or non-religious character of the defendant." Melanie H. Response at 1:22-2:1. Plaintiff
25 contends "...SB 1779 does not attempt to regulate any conduct because of its specifically
26 religious content. On this point, the contrast with *Church of Lukumi Babalu Aye* could not be
27 more striking. The ordinance invalidated in that case effectively forbade the church from
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1 engaging in a religious ritual. In this case, no one suggests that child abuse is a religiously
2 approved, much less religiously mandated, practice." *Id.* at 12:11-15. Plaintiff asserts that "SB
3 1779 is general, religiously-neutral legislation that extends the statute of limitations for certain
4 childhood sexual abuse claims against all private institutions that knew or should have known
5 about childhood sexual abuse committed by their employees, volunteers, representatives, or
6 agents and that failed to take reasonable steps to avoid future repetitions of such conduct." *Id.* at
7 6:9-13. Plaintiff further asserts "SB 1779 in no way targets inherently religious or religiously
8 motivated conduct...." *Id.* at 12:16-17.

9 Defendants concede that the inquiry ends if the law does not burden religious practices¹,
10 but provide several theories for asserting that SB 1779 violates the First Amendment. However,
11 a review of these arguments and the statute itself reveals that SB 1779 does not impermissibly
12 regulate the free exercise of religion because the legislation does not interfere with religious
13 beliefs, opinions, or practices.

14 Defendants contend that the legislation is unconstitutional because it took away the
15 "counseling defense" and, "as far as we are aware, only the Catholic Church provided and
16 required counseling as one of its responses to inappropriate sexual conduct." Joint Motion at
17 3:24-26. Defendants further argue that "[c]ourts and juries will second guess the ecclesiastical
18 decisions of Bishops and other Catholic leaders (who are now mostly dead) as to whether they
19 acted 'reasonable' when—years ago—they counseled, disciplined, and assigned priests and other
20 Catholic clergy." Reply Re: First Amendment at 7. Defendants contend, "[t]he Legislature then
21 cut off any argument that the Church had acted reasonably when it sent priests to counseling...."
22 Joint Motion at 6:24-26. Defendants further contend, "[t]he reason that counseling was excluded
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24 ¹ The Court: ...what if the law targets a Church, but the result of the law is that it doesn't
25 burden the religious practices of the Church, what happens then?

26 Mr. Hennigan [Counsel for Defendants]: If it doesn't burden religious practices, I think
we are pretty much at the end of the inquiry.

27 Oral Argument Transcript at 28:4-9.

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1 as a reasonable response that would allow Catholic institutions to assert the statute of repose
2 defense was that it was the response of the Catholic Church....” *Id.* at 16:16-19. Defendants
3 assert “[i]t is also a core belief of the Catholic Church that each priest represents the ‘presence of
4 Christ’ among the faithful, and that one of the highest duties of the Bishop is to exercise greatest
5 care in the progressive formation of priests. One context in which a Bishop does that is assuring
6 adherence to vows of celibacy. In that context, the Bishop engages in pastoral counseling, and
7 where, based on prayer and spiritual reflection, he determines that it is necessary and appropri-
8 ate, he may also refer a priest to lay counseling. Whatever approach he takes, the Bishop must
9 decide, based on the beliefs and teachings of the Church, whether a priest should continue in
10 ministry, with or without restrictions, or be excluded from public ministry.” *Id.* at 14:14-21.

11 The Court concludes that the provision of SB 1779 relating to counseling does not
12 regulate a religious practice. Counseling often occurs apart from any religious belief. Defen-
13 dants concede that counseling is utilized by the State and required in the Penal Code. Defendants
14 argue that “[m]andating that counseling was never a reasonable response to possible sexual
15 misconduct is also unreasonable because providing counseling for childhood sex offenders has
16 long been public policy in California....Counseling is expressly required as a condition of
17 probation for conviction of child molestation.” *Id.* at 22:3-9 (citations omitted). Furthermore,
18 the fact that counseling is not a “religious practice” is especially clear in light of the fact that the
19 Church no longer uses counseling when faced with abuse allegations. Accordingly, counseling
20 can not serve as the “religious practice” giving rise to First Amendment protection.

21 Defendants raise several arguments regarding the effects of SB 1779 upon the Church’s
22 practices of choosing, supervising, and retaining priests. Defendants argue “[a]t the heart of SB
23 1779 is the implicit command that a priest of the Church must be permanently removed from his
24 position, and from all future contact with children, whenever there is suspicion of misconduct.
25 This standard could never apply to the public schools, and it directly offends basic religious
26 principles of the Catholic Church. Like the public schools, the Church requires real proof and
27 due process before a Bishop can effectively destroy a priest’s vocation.” *Id.* at 18:8-12. Defen-

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1 dants also assert, "[f]reedom to choose clergy is protected by the Free Exercise Clause." *Id.* at
2 18:13-14. Additionally, Defendants contend, "[t]he legislative history of SB 1779 is marked by
3 intent to reform Catholic practices regarding choice of its clergy and to hold Catholic institutions
4 accountable for those practices." *Id.* at 18:17-19.

5 The Court concludes that SB 1779 does not burden the choice, supervision, or retention
6 of priests. While the gate keeping function of the statute does not allow an institution to avoid
7 litigation by showing that it counseled its members, the statute does not proscribe any procedure
8 for choosing, supervising, or retaining priests. SB 1779 also does not automatically impose
9 liability on the Church. Rather, it allows certain types of claims to be filed. While Defendants
10 argue that basic religious principles of the Catholic Church have been offended, and that SB
11 1779 intends to reform Catholic practices regarding choice of clergy, the Court finds that
12 Defendants have failed to show that the practices implicated involve religious beliefs, opinions
13 or conduct.

14 Furthermore, Defendants argue that the statute burdens the religious practices of the
15 Church by imposing financial burden. Counsel for Defendants described the economic impact
16 as an "economic holocaust" and stated:

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18 "...to date, in the few cases that have been settled out of a thousand cases pending
19 in the State—180 or so have been settled at the tune of hundreds of millions of
20 dollars. There's 700 cases left, one could do the math—that this is the biggest, if
it's survived, will be one of the largest transfers of wealth from an institution to its
former parishioners at the urging of the legislature that has ever occurred."

21 Oral Argument Transcript at 26:10-17. The Court concludes that financial burden in defending
22 lawsuits is not a burden on religious belief or practice. Financial burden incurred as a result of
23 having to defend a lawsuit does not implicate any religious belief, opinion, or practice. Any
24 defendant will incur financial burden in defending a lawsuit against it. Moreover, allowing First
25 Amendment protection under the circumstances presented would create a preference for the
26 Church over other institutions.
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1 A review of the statute itself does not reveal any reference to or attempt to regulate a
2 religious practice or belief. Third party liability for sexual assault does not implicate or effect
3 any religious belief, opinion, or practice. The failure to supervise or negligent hiring of a person
4 that commits sexual assault does not implicate or effect any religious belief, opinion, or practice.
5 SB 1779 regulates only conduct that the State is free to regulate. The Court concludes that SB
6 1779 is a general law, not aimed at the promotion or restriction of religious beliefs. The law
7 does not "discriminate against some or all religious *beliefs* or regulate or prohibit conduct
8 *because it is undertaken for religious reasons.*" *Lukumi* 508 U.S. at 532 (emphasis added). SB
9 1779 does not regulate religious beliefs or punish the expression of religious doctrine.

10 While the Bishop of San Diego and the Sisters of the Precious Blood are the Defendants
11 in this matter, the Court concludes that SB 1779 does not implicate any Catholic beliefs or
12 practices. Religious organizations are not entitled to First Amendment protection based simply
13 on their religious status. The Supreme Court has held that the First Amendment does not
14 provide automatic tort immunity for religious institutions or their clergy. *See United States v.*
15 *Ballard*, 322 U.S. 78, (1944); *see also Employment Division v. Smith* (explaining that the Court
16 has never held that an individual's religious beliefs excuse him from compliance with an
17 otherwise valid law.) In *Employment Division Smith*, the Supreme Court discussed the historical
18 conflict between otherwise neutral laws that incidentally effect religious practice and explained:

19 We have never held that an individual's religious beliefs excuse him from compli-
20 ance with an otherwise valid law prohibiting conduct that the State is free to
21 regulate. On the contrary, the record of more than a century of our free exercise
22 jurisprudence contradicts that proposition. As described succinctly by Justice
23 Frankfurter in *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 594-
24 595 (1940): "Conscientious scruples have not, in the course of the long struggle
25 for religious toleration, relieved the individual from obedience to a general law not
26 aimed at the promotion or restriction of religious beliefs. The mere possession of
27 religious convictions which contradict the relevant concerns of a political society
28 does not relieve the citizen from the discharge of political responsibilities (footnote
omitted)." We first had occasion to assert that principle in *Reynolds v. United*
States, 98 U.S. 145 (1879), where we rejected the claim that criminal laws against
polygamy could not be constitutionally applied to those whose religion com-
manded the practice. "Laws," we said, "are made for the government of actions,
and while they cannot interfere with mere religious belief and opinions, they may
with practices. . . . Can a man excuse his practices to the contrary because of his
religious belief? To permit this would be to make the professed doctrines of

1 religious belief superior to the law of the land, and in effect to permit every citizen
2 to become a law unto himself." *Id.*, at 166-167.

3 *Employment Div. v. Smith*, 494 U.S. at 879.

4 Defendants contend that "all briefs discussing free exercise agree that if SB 1779 targeted
5 Catholic institutions for disfavored treatment, then it would be unconstitutional." Reply Re:
6 First Amendment at page 1, line 14. However, the Court finds that the dispositive question is
7 whether the statute infringes on a religious *exercise*, meaning a belief or practice. Starting with
8 the very basic principle that "Congress shall make no law...prohibiting the free exercise [of
9 religion]"- it is clear that the legislation must impact some type of "exercise of religion."
10 Accordingly, the Court finds that SB 1779 does not impermissibly regulate the free exercise of
11 religion because the legislation does not interfere with religious beliefs, opinions, or practices.
12 Based on this finding, the Court need not address the arguments of the parties regarding the
13 neutrality and general applicability of SB 1779.

14 *II. The First Amendment Establishment Clause*

15 The Establishment Clause of the First Amendment, which has been applied to the States
16 through the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940),
17 provides that "Congress shall make no law *respecting an establishment of religion*, or prohibit-
18 ing the free exercise thereof...." U.S. Const. Amend. I.

19 Defendants contend that SB 1779 violates the Establishment Clause by disfavoring
20 Catholic institutions. Citing to *Lukumi*, 598 U.S. at 532, the Defendants contend "[t]he
21 establishment Clause forbids official disfavor of a particular religion." Joint Motion at 13.

22 Defendants further contend that SB 1779 violates the Establishment Clause because it
23 impermissibly entangles the State in the church minister relationship. Defendants argue
24 "[c]ourts and juries will second guess the ecclesiastical decisions of Bishops and other Catholic
25 leaders (who are now mostly dead) as to whether they acted 'reasonable' when-years ago-they
26 counseled, disciplined, and assigned priests and other Catholic clergy." Reply Re: First
27 Amendment at 7. Defendants raise several arguments regarding the Church's practices in

1 choosing, supervising, and retaining priests, and the effects of SB 1779 upon those practices:
2 "[a]t the heart of SB 1779 is the implicit command that a priest of the Church must be perma-
3 nently removed from his position, and from all future contact with children, whenever there is
4 suspicion of misconduct. This standard could never apply to the public schools, and it directly
5 offends basic religious principles of the Catholic Church. Like the public schools, the Church
6 requires real proof and due process before a Bishop can effectively destroy a priest's vocation."
7 Joint Motion at 18:8-12; "[f]reedom to choose clergy is protected by the Free Exercise Clause."
8 Joint Motion at 18:13-14; and "[t]he legislative history of SB 1779 is marked by intent to reform
9 Catholic practices regarding choice of its clergy and to hold Catholic institutions accountable for
10 those practices." Joint Motion at 18:17-19.

11 Citing to *McCreary County v. ACLU*, 125 S. Ct. 2722, 2733 (2005), Plaintiff contends
12 "[a]n Establishment Clause violation occurs only when a legislature acts with the predominant
13 purpose of advancing [or inhibiting] religion." Melanie H. Response at 13:25-26. Plaintiff
14 further contends "[t]he pertinent question is, therefore, whether section 340.1, as amended by SB
15 1779, has a 'principle or primary' effect of advancing or inhibiting religion." *Id.* at 13:27-28,
16 and that "[t]here is no need to interpret Church doctrine, since Church doctrine has no bearing on
17 the secular reasonableness of conduct that poses a threat of harm to innocent third parties." *Id.* at
18 15:17-19. Citing to *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002), Plaintiff contends "[d]isputes
19 between a church and its own ministers 'must be distinguished from disputes between churches
20 and third parties.'" Melanie H. Response at 18: 3-5.

21 The Establishment Clause prevents a State from enacting laws that have the "purpose" or
22 "effect" of advancing or inhibiting religion. *Zelman v. Simmons-Harris*, 536 U.S. 639, 649
23 (2002); see also *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993).
24 The Establishment Clause prohibits excessive State entanglement with religion. See *Lemon v.*
25 *Kurtzman*, 403 U.S. 602, 614-15 (1971). However, entanglement must be "excessive" before it
26 runs afoul of the Establishment Clause. *Agostini v. Felton*, 521 U.S. 203, 233 (U.S. 1997).

27 In *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 793 (9th Cir. 2005), the Ninth
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1 Circuit held "...suits seeking damages for sexual harassment do not pose a threat to First
2 Amendment rights, and are therefore permitted." *Id.* at 793. The Court further explained that
3 "[t]he effect of sexual abuse suits brought by parishioners on the employment practices of the
4 church is thus almost certain to be far greater than the effect of sexual harassment suits by
5 ministers. Yet it is clearly established law that such suits are not constitutionally barred, *see. e.g.*,
6 *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 430-31 (2d Cir. 1999);
7 *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 72-74 (D. Conn. 1995); *Moses v.*
8 *Diocese of Colorado*, 863 P.2d 310, 319-21 (Colo. 1993)." 397 F.3d at 792.

9 The First Amendment Establishment Clause does not prevent courts from deciding
10 secular disputes involving religious institutions even where they require reference to religious
11 matters. *See, e.g., Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976)
12 (resolution of the dispute would have to involve "extensive inquiry" into religious law and polity
13 before the First Amendment would bar a secular court from adjudicating a civil dispute);
14 *General Council on Fin. & Admin. v. Cal. Superior Court*, 439 U.S. 1369, 1373 (1978)(finding
15 that perceived dangers that the State will become entangled in essentially religious controversies
16 or intervene on behalf of groups espousing particular doctrinal beliefs are not applicable to
17 purely secular disputes between third parties and a particular defendant, albeit a religious
18 affiliated organization, in which fraud, breach of contract, and statutory violations are alleged);
19 *Watson v. Jones*, 80 U.S. 679, 714 (1872)([r]eligious organizations come before us in the same
20 attitude as other voluntary associations for benevolent or charitable purposes, and their rights of
21 property, or of contract, are equally under the protection of the law, and the actions of their
22 members subject to its restraints); *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 793 (9th
23 Cir. 2005) (holding "[t]he First Amendment protects a church's right to hire, fire, promote, and
24 assign duties to its ministers as it sees fit not because churches are exempt from all employment
25 regulations (for they are not), but rather because judicial review of those particular employment
26 actions would interfere with rights guaranteed by the First Amendment. As we explained in
27 *Bollard*, suits seeking damages for sexual harassment do not pose a threat to First Amendment

1 rights, and are therefore permitted."); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*,
2 196 F.3d 409, 431 (2d Cir. 1999) ([t]he First Amendment does not prevent courts from deciding
3 secular civil disputes involving religious institutions when and for the reason that they require
4 reference to religious matters."); *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 338 (5th
5 Cir. 1998) (citing *Smith*, 494 U.S. at 881; *Yoder*, 406 U.S. at 215; and *Destefano*, 763 P.2d at
6 283-84 and finding that "to invoke the protection of the First Amendment ...[a party] must assert
7 that the specific conduct allegedly constituting a breach of his professional and fiduciary duties
8 was rooted in religious belief."); *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 74
9 (D. Conn. 1995) (holding the common law doctrine of negligence does not intrude upon the free
10 exercise of religion, as it does not discriminate against [a] religious belief or regulate or prohibit
11 conduct because it is undertaken for religious reasons); *Mrozka v. Archdiocese of St. Paul &*
12 *Minneapolis*, 482 N.W.2d 806, 811 (Minn. Ct. App. 1992) (conduct by the Church that results in
13 external and secular harm is not protected by the First Amendment.)

14 The Court finds the *Malicki v. Doe* 814 So.2d. 347 (Fla. 2002) case instructive:

15 We recognize that the Free Exercise Clause and the Establishment Clause require
16 constant vigilance to prevent the government from either stifling the free exercise
17 of religion or excessively and impermissibly entangling itself with interpreting
18 religious doctrine on matters solely within the purview of religious institutions.
19 However, with regard to a third party tort claim against a religious institution, we
conclude that the First Amendment does not provide a shield behind which a
church may avoid liability for harm arising from an alleged sexual assault and
battery by one of its clergy members.

20 By holding that the First Amendment does not bar the court's consideration of the
parishioners' allegations, we expressly do not pass on the merits of the underlying
21 case. Our holding today is only that the First Amendment cannot be used at the
initial pleading stage to shut the courthouse door on a plaintiff's claims, which are
22 founded on a religious institution's alleged negligence arising from the institution's
failure to prevent harm resulting from one of its clergy who sexually assaults and
23 batters a minor or adult parishioner. To hold otherwise and immunize the Church
Defendants from suit could risk placing religious institutions in a preferred
24 position over secular institutions, a concept both foreign and hostile to the First
Amendment.

25 *Id.* at 365. Furthermore, the "court inquiring into the reasonableness of the steps a church has
26 taken to prevent or correct sexual harassment need intrude no further in church autonomy . . .

1 than [a court does], for example, in allowing parishioners' civil suits against a church for the
2 negligent supervision of ministers who have subjected them to inappropriate sexual behavior. "
3 *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 792 (9th Cir. 2005) (internal citations
4 omitted).

5 The Court concludes that Defendants have not shown that SB 1779 favors one religion
6 over another, or disfavors religion. Defendants have not shown that resolution of cases brought
7 under SB 1779 will involve excessive entanglement of Church and State. The First Amendment
8 does not protect every decision made by a religious leader. Furthermore, SB 1779 does not
9 impose liability, but rather, allows cases which were otherwise barred by the statute of limita-
10 tions to move forward. A determination of third party liability under SB 1779 whether the
11 Defendants negligently supervised a priest would not "prejudice or impose upon any of the
12 religious tenets or practices of Catholicism." *Malicki v. Doe*, 814 So. 2d 347, 363 (Fla. 2002).
13 "[The First] Amendment embraces two concepts, -- freedom to believe and freedom to act.
14 *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Neither is implicated here, and thus, the
15 Court finds that Defendants have failed to show that SB 1779 is unconstitutional under the First
16 Amendment Establishment Clause and will deny summary judgment on the First Amendment
17 Establishment Clause claims.

18 *III. The Due Process Clause*

19 Defendants contend that SB 1779 violates the Due Process Clause because the statute
20 deprives the Catholic Church of fair warning, unconstitutionally revives time barred claims, and
21 unconstitutionally vitiates vested property rights. The Defendants argue that their cases are not
22 defensible, that the witnesses are gone and the evidence lost. In their Counterclaim, Defendants
23 allege: "[t]here were four to five members of the Sisters present at St. Mary's parish between the
24 years of 1975 and 1980. At least three of the members are recently deceased, and one is
25 suffering from Alzheimer's disease. All Pastors of St. Mary's Parish and all Bishops of San
26 Diego at the time of the alleged events are now deceased." Counterclaim at 2. Defendants
27 further contend that "one-hundred-five Complaints, by 140 individuals, have been filed against
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1 the Bishop of San Diego since enactment. The claims involved date back as far as 1939; the
2 most recent is based on events more than a decade old. All but one allege acts prior to 1991
3 when the current Bishop was installed and amendment of CCPO §340.1 created the statutory tort
4 of childhood sexual abuse. At least one of the cases asserts claims that already resulted in a
5 judgment of dismissal based on the preexisting [s]tatute of [l]imitations." *Id.* at 11.

6 Defendants allege that, "[o]f the 43 priests with parish assignments in the Diocese of San
7 Diego who are subjects of complaints, 24 are dead. There are also claims based on alleged
8 misconduct by seven Nuns, ten Brothers, four other priests and seven lay persons. To the extent
9 that any information is available to the Bishop, it is that five of the seven Nuns are deceased; the
10 other is no longer affiliated with her Order and her last-known residence was outside of the
11 United States. At least three of the lay persons are deceased and two may be deceased." Joint
12 Motion at 11.

13 Plaintiff contends that SB 1779 does not violate Defendants Due Process rights because it
14 is a facially neutral, procedural statute. Plaintiff further contends that SB 1779 is permissible
15 legislation extending a civil statute of limitations. Plaintiff also contends that SB 1779 does not
16 deprive Defendants of fair warning, destroy property, or take vested rights.

17 In *International Union of Electrical v. Robbins & Myers, Inc.*, 429 U.S. 229, 243-244
18 (1976), the Supreme Court made clear that the lifting of a statute of limitation, so as to restore a
19 remedy lost through mere lapse of time, is not per se unconstitutional. The Supreme Court
20 explained:

21 Respondent contends, finally, that Congress was without constitutional power to
22 revive, by enactment, an action which, when filed, is already barred by the running
23 of a limitations period. This contention rests on an unwarrantedly broad reading of
24 our opinion in *William Danzer Co. v. Gulf & Ship Island R. Co.*, 268 U.S. 633
(1925). *Danzer* was given a narrow reading in the later case of *Chase Securities
Corp. v. Donaldson*, 325 U.S. 304, 312 n. 8 (1945). The latter case states the
applicable constitutional test in this language:

25 "The Fourteenth Amendment does not make an act of state legisla-
26 tion void merely because it has some retrospective operation. What it
27 does forbid is taking of life, liberty or property without due process
of law... Assuming that statutes of limitation, like other types of
legislation, could be so manipulated that their retroactive effects

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1 would offend the Constitution, certainly it cannot be said that lifting
2 the bar of a statute of limitation so as to restore a remedy lost
3 through mere lapse of time is per se an offense against the Four-
4 teenth Amendment." *Id.*, at 315-316.I

5 Applying that test to this litigation, we think that Congress might constitutionally
6 provide for retroactive application of the extended limitations period which it
7 enacted.

8 *Id.* at 243-244 (1976).

9 The Ninth Circuit Court of Appeals and the California State Courts have concluded that
10 the legislature can revive civil claims by enacting legislation that retroactively extends the statute
11 of limitations period. *See Underwood Cotton Co. v. Hyundai Merch. Marine*, 288 F.3d 405, 409
12 (9th Cir. 2002) (holding that there are circumstances in which a legislature can remove a statute
13 of limitations impediment retroactively and that the same can be true of a statute of repose² in
14 proper circumstances); *Osmundsen v. Todd Pacific Shipyard*, 755 F.2d 730, 733 (9th Cir. 1985)
15 citing *Davis v. Valley Distributing Co.*, 522 F.2d 827, 830 n.7 (9th Cir. 1975) (holding that
16 extending a statute of limitations does not violate due process, even if the right of action has
17 been time barred); *Starks v. S. E. Rykoff & Co.*, 673 F.2d 1106, 1109 (9th Cir. 1982) (holding
18 that retroactive application of a statute which serves to extend a lapsed statute of limitations is
19 not unconstitutional under the Fourteenth Amendment); *Tietge v. Western Province of the*
20 *Servites, Inc.*, 55 Cal. App. 4th 382, 386 (Cal. Ct. App. 1997) (relying on *Lent v. Doe* 40 Cal.
21 App. 4th 1177 (1995) finding that the legislature had the power to retroactively revive a cause
22 of action for childhood sexual abuse previously time-barred under prior statute of limitations);
23 *Liebig v. Superior Court*, 209 Cal. App. 3d 828, 830 (Cal. Ct. App. 1989) (holding the Legisla-

24 ²Defendants contend that the legislation in question is a statute of repose, and that "[a] completed
25 statute of repose provides vested rights that cannot be impaired by subsequent legislative act." Joint
26 Motion at 25:12-13. However, the courts have held that even in cases involving a statute of repose, the
27 legislature can act to revive a previously barred claim without offending the constitution. *See*
28 *Underwood Cotton Co. v. Hyundai Merch. Marine*, 288 F.3d 405, 409 (9th Cir. 2002) (holding that there
are circumstances in which a legislature can remove a statute of limitations impediment retroactively and
that the same can be true of a statute of repose in proper circumstances). Regardless of whether the
statute is one of limitations or repose, the Defendants have not shown that SB 1779 is unconstitutional.

1 ture has the power to retroactively extend a civil statute of limitations to revive a cause of action
2 time-barred under the former limitations period).

3 In *Roman Catholic Bishop of Oakland v. Superior Court*, 128 Cal. App. 4th 1155, 1162
4 (Cal. Ct. App. 2005), the California Court of Appeal discussed at length the past challenges to
5 previously revised sections of the same statute at issue here, and set forth a detailed analysis of
6 the cases as they relate to due process challenges. The court summarized:

7 It is equally well settled that legislation reviving the statute of limitations on civil
8 law claims does not violate constitutional principles. In *Chase Securities Corp. v.*
9 *Donaldson* (1945) 325 U.S. 304, 314 [89 L. Ed. 1628, 65 S. Ct. 1137], the court
10 held that due process notions were not affected by the revival of a civil law claim
11 because civil limitations periods "find their justification in necessity and convenience rather than in logic. ... They are by definition arbitrary, and their operation
12 does not discriminate between the just and the unjust claim, or the avoidable and
13 unavoidable delay. ... Their shelter has never been regarded as ... a 'fundamental'
14 right ... the history of pleas of limitation shows them to be good only by legislative
15 grace and to be subject to a relatively large degree of legislative control." (Fns.
16 omitted.) In *Liebig v. Superior Court* (1989) 209 Cal. App. 3d 828, 831-834 [257
17 Cal. Rptr. 574], the court held that the Legislature had the power to revive lapsed
18 common law claims based on childhood sexual abuse under an earlier version of
19 section 340.1.

20 *Roman Catholic Bishop of Oakland v. Superior Court*, 128 Cal. App. 4th 1155, 1162 (Cal. Ct.
21 App. 2005).

22 The Court finds that the mere passage of SB 1779 does not offend the Due Process
23 Clause of the Constitution. The Court concludes that the legislation is not per se unconstitu-
24 tional. While the facial challenge to the legislature's right to pass SB 1779 fails, the Court finds
25 that a determination of whether the statute "so manipulated that [its] retroactive effects [offend
26 the Constitution." See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 315 (1945) is
27 premature.

28 Defendants rely on *United States v. Marion* for the proposition that "the right to be free of
stale claims in time comes to prevail over the right to prosecute them." Reply Re: Due Process
at 2 citing *United States v. Marion*, 404 U.S. 307, 325 (U.S. 1971). However, in *Marion*, the
Court explained that even in the criminal context, the Court must evaluate the potential
prejudice on a case-by-case basis. "To accommodate the sound administration of justice to the

1 rights of the defendant to a fair trial will necessarily involve a delicate judgment based on the
2 circumstances of each case. It would be unwise at this juncture to attempt to forecast our
3 decision in such cases." *United States v. Marion*, 404 U.S. 307, 325 (U.S. 1971).

4 The Court concludes that it would be "unwise at this juncture" to "forecast a decision"
5 on the potential prejudice to Defendants as the necessary facts regarding time passed and
6 potential prejudice are not before the Court at this time. *See Id.* First, while many of the cases
7 may involve old claims, faded memories, and missing witnesses, it is not clear that these factors
8 will be involved in all of the cases impacted by the legislation. For example, there may be an
9 instance where a Plaintiff is attempting to recover from the Church and there are witnesses
10 available and evidence that has been preserved. Defendants contend that "[k]ey witnesses are
11 deceased. Memories of victim [sic] and witnesses are faded. Details are lost to time." Reply Re:
12 Due Process at 1:11. In order to determine whether Defendants' due process rights have been
13 violated, the Court would need to examine the circumstances of each case. The Court cannot
14 conclude that due process is per se violated simply because the legislation was enacted, or that
15 due process was violated because time passed. While there has been a significant passage of
16 time indicating potential prejudice to Defendants, such prejudice has not been established.
17 While the unavailability of witnesses and the absence of evidence may, in fact, impact a court's
18 decision on whether due process has been violated, that question is not currently before the
19 Court.

20 While the parties raise some arguments that relate to an "as applied" challenge, the Court
21 does not decide whether SB 1779 is unconstitutional as applied to the facts of this case or any
22 other case. The record on these issues stands undeveloped at this time. Accordingly, the Court
23 finds that the question of whether the due process rights of the Defendants have been violated is
24 premature. As previously noted, this is a facial challenge and a challenge to the statute as
25 applied may be raised after discovery has been conducted. Accordingly, the Court finds that the
26 enactment of SB 1779 is not per se unconstitutional and denies the Defendants' Motion for
27 Summary Judgment on this issue, without prejudice.

28

1 **IV. The Ex Post Facto Clause**

2 Defendants contend that SB 1779 violates the Ex Post Facto Clause of the U.S. Constitu-
3 tion because the legislative purpose and motive for the law was to punish the Catholic Church.
4 Defendants further argue that Ex Post Facto applies to both criminal and civil law and that the
5 Ex Post Facto clause prohibits retroactive penal legislation.

6 Defendants contend that the civil remedies of SB 1779 are simply the civil supplement to
7 a criminal statute, and that therefore, the statute falls within the ban on Ex Post Facto laws.
8 Melanie H. Opposition at 36:27-28. Defendants rely on *Handle v. Artukovic*, 601 F. Supp.
9 1421(D. Cal. 1985), a Central District Court case involving an extension of the statute of
10 limitations to file civil suits stemming from war crimes. In that case, Judge Rymer (then a
11 District Court Judge) held that the cause of action was for a violation of criminal law, and that
12 the civil statute was simply the civil supplement to a criminal issue. The Court therefore found
13 the statute unconstitutional. In *Handle*, the court explained "[s]tatutes of limitation are enacted
14 as matters of public policy designed to promote justice and prevent the assertion of stale claims
15 after the lapse of long periods of time. Statutes of limitation are not disfavored in the law. To
16 the contrary they are favored in the law because they promote desirable social ends and give
17 security and stability to human affairs." *Id.* at 1434 (internal citations omitted).

18 Plaintiff argues that Defendant's Ex Post Facto arguments fail because SB 1779 is not
19 penal for Ex Post Facto purposes. Plaintiff argues that "SB 1779's extension of the statute of
20 limitations imposes 'no affirmative disability or restraint' beyond an obligation to pay damages,
21 and that civil damages have historically been regarded as a civil remedy, not a criminal penalty."
22 Melanie H. Response at 30:20-22 citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168
23 (1963).

24 The Ex Post Facto Clauses of the U.S. Constitution prohibit the Federal Government and
25 the States from enacting laws with certain retroactive effects. See Art. I, § 9, cl. 3; *Stogner v.*
26 *California*, 539 U.S. 607, 610 (2003). *Stogner* involved a law that created a new criminal
27 limitations period extending the time within which prosecution was allowed. The Supreme
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1 Court explained:

2 Long ago the Court pointed out that the Clause protects liberty by preventing
3 governments from enacting statutes with "manifestly unjust and oppressive"
4 retroactive effects. *Calder v. Bull*, 3 U.S. 386, 3 Dallas 386, 1 L. Ed. 648 (1798).
5 Judge Learned Hand later wrote that extending a limitations period after the State
6 has assured "a man that he has become safe from its pursuit . . . seems to most of
7 us unfair and dishonest." *Falter v. United States*, 23 F.2d 420, 426 (CA2), cert
8 denied, 277 U.S. 590, 72 L. Ed. 1003, 48 S. Ct. 528 (1928). In such a case, the
9 government has refused "to play by its own rules," *Carmell v. Texas*, 529 U.S. 513,
10 533, 146 L. Ed. 2d 577, 120 S. Ct. 1620 (2000). It has deprived the defendant of
11 the "fair warning," *Weaver v. Graham*, 450 U.S. 24, 28, 67 L. Ed. 2d 17, 101 S. Ct.
12 960 (1981), that might have led him to preserve exculpatory evidence. F. Wharton,
13 *Criminal Pleading and Practice* § 316, p 210 (8th ed. 1880) ("The statute [of
14 limitations] is . . . an amnesty, declaring that after a certain time . . . the offender
15 shall be at liberty to return to his country . . . and . . . may cease to preserve the
16 proofs of his innocence"). And a Constitution that permits such an extension, by
17 allowing legislatures to pick and choose when to act retroactively, risks both
18 "arbitrary and potentially vindictive legislation," and erosion of the separation of
19 powers, *Weaver*, supra, at 29, and n 10, 450 U.S. 24, 67 L. Ed. 2d 17, 101 S. Ct. 960.
20 See *Fletcher v. Peck*, 10 U.S. 87, 6 Cranch 87, 137-138, 3 L. Ed. 162 (1810)
21 (viewing the Ex Post Facto Clause as a protection against "violent acts which
22 might grow out of the feelings of the moment").

23 *Id.* at 611. In *Calder v. Bull*, 3 U.S. 386, (1798), the Supreme Court set forth four categorical
24 descriptions of *ex post facto* laws:

25 1st. Every law that makes an action done before the passing of the law, and which
26 was innocent when done, criminal; and punishes such action. 2d. Every law that
27 aggravates a crime, or makes it greater than it was, when committed. 3d. Every law
28 that changes the punishment, and inflicts a greater punishment, than the law
annexed to the crime, when committed. 4th. Every law that alters the legal rules of
evidence, and receives less, or different, testimony, than the law required at the
time of the commission of the offence, in order to convict the offender. All these,
and similar laws, are manifestly unjust and oppressive.

20 *Id.* at 391 (U.S. 1798). The Court concludes that SB 1779 is not unconstitutional under the Ex
21 Post Facto Clause. The Court concludes that SB 1779 does not impose a criminal penalty and
22 SB 1779 is not an extension of criminal punishment. Rather, SB 1779 extends the statute of
23 limitations for the filing of a civil tort cause of action. Accordingly, the Court finds that
24 Defendants' Motion for Summary Judgment based on the Ex Post Facto Clause should be
25 denied.

26 ///

1 **V. Bill of Attainder**

2 Defendants contend that SB 1779 is an unconstitutional Bill of Attainder because of its
3 "retributive focus on legislatively-condemned past conduct by Catholic Institutions that cannot
4 possibly be undone." Joint Motion at 32:2-3. Defendants argue that the Bill of Attainder Clause
5 prohibits the legislature from "singling out disfavored persons" and "meting out summary
6 punishment for past conduct." *Id.*

7 Plaintiff contends that SB 1779 "does not impose punishment, let alone punishment
8 without trial. Section 340.1 enables trial; it does not bypass one." Melanie H. Opposition at
9 30:3-4.

10 The Constitution instructs Congress that "No Bill of Attainder ... shall be passed." U.S.
11 Const. art. I, § 9, cl. 3. A bill of attainder is "a law that legislatively determines guilt and inflicts
12 punishment upon an identifiable individual without provision of the protections of a judicial
13 trial." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1977).

14 Statutes are presumed constitutional. *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct.
15 2637, 125 L.Ed.2d 257 (1993). Only the clearest proof suffices to establish the
16 unconstitutionality of a statute as a bill of attainder. *Communist Party of United*
17 *States v. Subversive Activities Control Bd.*, 367 U.S. 1, 83, 81 S.Ct. 1357, 6
18 L.Ed.2d 625 (1961). In judging the constitutionality of [a statute, the Court will]
19 look to its terms, to the intent expressed by Members of Congress who voted its
20 passage, and to the existence or nonexistence of legitimate explanations for its
21 apparent effect.

22 *SeaRiver Maritime Financial Holdings, Inc. v. Mineta* 309 F.3d 662, 668 -669 (9th Cir. 2002). A
23 statute that (1) specifies the affected persons, and (2) inflicts punishment (3) without a judicial
24 trial, is a bill of attainder. See *Selective Serv. Sys. v. Minnesota Pub. Interest Research Group*,
25 468 U.S. 841, 847 (1984).

26 The Court finds that the third factor of the test is clearly dispositive, and therefore, the
27 Court need not discuss the first and second factors. Defendants have failed to show that the
28 statute inflicts punishment without a judicial trial. See *Selective Serv. Sys.* 468 U.S. at 847. SB
1779 extends the statute of limitations for the filing of a civil tort cause of action. SB 1779 does

1 not automatically impose liability on the Church. Rather, it allows certain types of claims to be
2 filed. Defendants have failed to show that the statute inflicts punishment without a judicial trial,
3 and the Court will deny Defendants' Motion for Summary Judgment based on the Bill of
4 Attainder Clause.

5 II. MOTION TO DISMISS

6 Plaintiff moves for dismissal on abstention grounds. Plaintiff contends that dismissal, or
7 in the alternative, a stay is required under three abstention doctrines. Plaintiff's Motion is only
8 filed against Defendant Roman Catholic Bishop. Therefore, Plaintiff does not contend that the
9 Court should abstain from hearing the claims by and against the Sisters. Additionally, the State,
10 who intervened to defend the constitutionality of the legislation, has not moved for abstention.

11 On August 6, 2004, Defendants removed the case to Federal Court on the basis of
12 diversity jurisdiction. Defendant Sisters of the Precious Blood is a non-profit Ohio Corporation;
13 Plaintiff is a citizen of California. Accompanying the Notice of Removal, Defendant filed an
14 Answer and Counterclaim. Defendant's Answer asserts fifteen affirmative defenses, including a
15 defense based on the statute of limitations.³ Additionally, Defendants filed five Counterclaims
16 seeking declaratory relief requesting that the Court declare California Civil Code of Procedure
17 Section 340.1 subdivisions (b)(2), (c) and (d) unconstitutional. The Bishop joined in the
18 Counterclaims and Melanie H. now asks the Court to refrain from deciding the constitutionality
19 issue as the Bishop is a party to many similar actions currently pending in State Court.
20

21 Plaintiff's arguments are moot. Plaintiff asks the Court to refrain from deciding the
22 constitutionality of the issue so that the decision cannot have a res judicata effect in the
23 coordinated proceedings pending in State court. However, as clear from this Order, the Court
24 finds that based on the current record, SB 1779 is constitutional. Thus, to the extent that the
25

26 ³Defendant's eighth affirmative defense reads: Plaintiff's claims are barred by the
27 applicable statute of limitations, including, without limitation, Cal.Code of Civ. Proc. Sections
28 335.1, 338, 340(c), 340.1, and 343.

1 Plaintiff attempts to prohibit a finding of unconstitutionality from "interrupting" the coordinated
2 proceedings pending in State court, the Court finds that the issue is moot. Accordingly, the
3 Court will deny Plaintiff's Motion to Dismiss as moot.

4 **CONCLUSION & ORDER**

5 The Court finds that SB 1779 does not violate the Free Exercise Clause or the Establish-
6 ment Clause of the First Amendment because SB 1779 does not target a religious practice, a
7 religious belief, or religious conduct of the Church.

8 The Court finds that SB 1779 is not per se unconstitutional under the Due Process Clause.
9 The Court further finds that many of the Due Process arguments are premature, and will deny
10 the portion of the Motion relying on Due Process without prejudice.

11 The Court finds that SB 1779 does not violate the Ex Post Facto Clause. The Defendants
12 have failed to show that the law is penal in nature. The Court further finds that SB 1779 is not
13 an unconstitutional bill of attainder. The Defendants have failed to show that the legislation
14 inflicts punishment without a judicial trial.

15 The Court finds that the Motion to Dismiss is moot. For these reasons, and for all of the
16 reasons discussed above, the Court will deny Defendants' Motion for Summary Judgment, and
17 deny Plaintiff's Motion to Dismiss or Stay this action as moot.

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Accordingly,

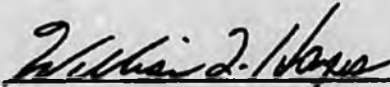
IT IS ORDERED Plaintiff's Motion to Dismiss is **DENIED** as moot.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment with respect to the Due Process Clause claim is **DENIED** without prejudice.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment with respect to the First Amendment, Ex Post Facto, and Bill of Attainder claims is **DENIED** with prejudice.

IT IS SO ORDERED.

Dated: 12/20/05



WILLIAM Q. HAYES
United States District Judge

CC: Magistrate Judge McCurine;
All parties

Mr. Chair & members of the Committee.
Thank you for letting me speak
today on behalf of SB 112. I am
representing myself...

My Yupik name is Apugen,
after my maternal grandmother.
My English name is Elsie Bondreau.
I am the youngest daughter
of the late Edgar and Theresa
Francis of St. Mary's, the grand-
daughter of the late Alfred and
Florence Francis of Pilot Station
and the late George and Martha
Apugen Peterson of Old Andreafsk.
I am married and have a
son and a daughter.

First of all, I want to
thank you, Mr. Chair, for
introducing this extremely
important bill to be considered.
I thank you not only as a
survivor of childhood sexual abuse,
but also as an advocate for
those who have yet to come
forward... who are unable to
speak their truth about a crime
committed against them, as children

The crime of child sexual abuse. It is with them in mind and on children and in heart that I speak today. A meager attempt to make a difference in the life of even just one child.

I was 10 years old. With long brown hair that my Mom so tightly braided and a blaaturk (scarf), all 85 lbs. of me boarded a plane to Nome for the summer where my oldest sister lived at the time. All I knew before that day was life in the village. I thought Nome was a big city then and I wasn't disappointed when I got there as I didn't know any differently. We had just gotten television not long before that, so I had little to no knowledge of the outside world. My world was my friends and family I had known all my life.

He was a priest. He was not just any priest, but a family friend and a father-figure. He knew my parents as he spent a significant amount of time in St. Mary's in years prior. I had every reason to trust him. His name was Fr. Poole, or Jim, as my sister and brother-in-law called him.

I remember the very first incident of child sexual abuse, though I didn't know there was such a term at the time or that it was sexual abuse. I had been playing outside with a couple friends when we were called into a ~~building~~ ^{cup of room} by Fr. Poole. He lined us up against the wall and asked us questions. I guess when we were done, he told us we could leave, but told me to stay. I did. He then told me that I was more mature than the other girls. And that is when it started. He would have me sit on his lap facing him and he

would kiss me for hours on end. French kiss; my 1st sexual experience. He would tell me that he was my brother, my father, my friend and my lover. I have since had memories of more detailed incidents where I know it was too painful to me to remain in my body. I was raped by this priest, this man of God.

This plagued my life every summer until I was 19 years old when I wrote him a letter stating I don't ever want to be alone with him again. After that, I never was. That is when my healing began and I put this part of my life behind me not knowing I had a right to file a claim against him or the Church and not knowing that the statute of limitations clock was ticking. In fact, it was only when my daughter turned 10, the same age I was when the abuse began, that I could no longer shield it from my consciousness. this truth

Knowing

Pictures

It was only after I filed a claim that he was removed from university. Unfortunately too late for the 5 girls, now women, who have since come forward with their truth after years of silence

moved him around to ~~other~~ further but did nothing. Instead, they had "problems" with giving girls I was even born, that in force Church increasingly know long before some friend shock and disbelief, that the have since discovered, to my After filing a civil suit, I

many of the victims
short
with well
in their
40's, 50's

and 40's. I was 10. He was in his
wanted to continue.
institutions that enable such
adult perpetrators and those
between child victims and the
recognize the power imbalance
their day in court. It would
and allow for victims to have
The nature of sexual abuse
would ~~allow~~ for full account
Senate Bill 112, if passed,

Who knows how many other women suffer in silence, a trademark of sexual abuse. But with the passage of this bill, these women (women: mine) could have an opportunity to seek their day in court and to speak the truth.

Asia has the highest rate of child sexual abuse in the nation. That has been a reality for too long. How many of our children are marked with stolen childhoods at the hands of an adult predator? How many more will endure this needless, unnecessary crime before the protections are put in place?

S1312 is about determining future wrong doing. It is about protection of our children: our grand children.

If only such a law was in place when I was 10. Maybe, just maybe, one of Mr. Porter's earlier victims would have come forward before I had the words to explain what happened to me.

Maybe, just maybe, I would not have endured the abuse I went through. Maybe I would not have suffered from depression like so many victims do. Maybe I would not have had relationship issues... or had to deal with feelings of shame, guilt, fear, terror, inferiority.

I now work as a victim Advocate and have spoken to close to a hundreds victims of child sexual abuse.

Many say, "I wonder what my life would be like if this did + happen? What would I be doing instead of drinking my life away to escape the pain. Maybe I'd have gone to college."


Many wish the pain of the abuse would just go away, like they have a death wish but would never take action. Many, unfortunately, have taken action and are no longer with us... are no longer able to speak the truth.

Most of the victims I talk to say they have come forward so that no one else will have to go through what they did.

SB 112 is about deterring future wrong doing. It is about protection of our children and our grandchildren. This is a public safety issue.

No one or no institution is in jeopardy unless it is proven they put kids in harms way. Those with nothing to hide would only support the passage of this bill.

I commend you, Mr. Chair & the Committee, for creating an incentive that enables victims to publicly expose the predators, to expose institutions that enable those predators, enforces accountability and lastly an incentive that enforces and encourages abuse prevention.

Thank you.  Guyana agrees.
very much

Mary Gail Frawley -

Remarks to Alaskan Legislators

O'Dea, Ph.D.

Mr. Chairman, members of the Senate Judiciary Committee, thank you for ~~having me here to~~ ^{letting me} speak on behalf of Senate Bill 112. My name is Dr. Mary Gail Frawley-O'Dea. I am a psychologist who has worked clinically with sexual abuse survivors for over 25 years and have taught and written widely on the topic. I was the only psychologist invited to address the United States Conference of Catholic Bishops at their seminal 2002 meeting on sexual abuse in Dallas. Today, I will speak about why sexual abuse victims do not disclose their victimizations earlier in life, what factors encourage them to disclose at some point, and how the window bill ^{will} ~~can~~ facilitate disclosure.

First, some facts and figure. Almost one third of all women and up to one fifth of all men were sexually abused before the age of 18. ~~Please look around this room and imagine every third woman and every fifth man standing together as a group and you can sense the magnitude of this social problem.~~ Almost half of sexual abuse is committed by family members; about another half is perpetrated by people known to and trusted by the victim: neighbors, teachers, clergy, family friends. Only about 6% of abuse is perpetrated by strangers. Most victims experience serious sexual abuse: unclothed genital contact like fondling or masturbation by, or of, the perpetrator. Almost a quarter of victims experience anal or vaginal penetration, or oral sex.

The long-term and unique impact of sexual abuse has been delineated in over 25 years of empirical research. Increasingly sophisticated brain imaging

studies also demonstrate that trauma not only engenders psychological deficits, but also disrupts brain functioning in ways that can be life lasting. As you have heard or will hear from survivors today, cognition, emotional regulation, self-esteem, the capacity to form healthy relationships, parenting capabilities; all often are significantly harmed by sexual abuse. Over 80% of female prostitutes and male hustlers have histories of sexual abuse. Sexual abuse survivors are 2-3 times more likely than non-abused individuals to make at least one serious suicide attempt. Sometimes they die. In 2002, in fact, William Cardinal Keeler, cardinal archbishop of Baltimore, equated sexual abuse with murder and called it evil above all else. Surely, it is soul murder.

So why don't victims disclose?

Secrecy is the cornerstone of sexual abuse and is imposed or elicited by perpetrators in many ways.

First, abusers may directly threaten victims: ~~if you tell, you will be blamed, taken from your home, it will kill your mother, I will kill you, I will kill your family, I will kill your dog.~~ Danny, for example, was sexually abused by his foster mother who said, "If you tell even one person that you have sex with me, I will tell your younger brother that you raped me, I will get rid of you, and he will become my lover." Danny felt that he was his brother's protector and would never put the younger boy in jeopardy. Further, the foster mother's threat that Danny would be sent away threatened separation from his little brother, the person he loved most in the world. Danny's secrecy was assured.

Second, sexual abuse victims may be afraid, often accurately, that no one will believe them if they tell about the abuse. Denial is the most common first reaction to disclosure of sexual abuse. It can be in some ways adaptive, therefore, for victims and survivors to preserve the fantasy that if they did tell someone, they would be believed and helped, ^{instead of} ~~rather than~~ risking rejection by disclosing to someone who may disbelieve or even scorn them.

Third, victims often care for their abusers. Knowing or sensing that harm could come to the perpetrator if ^{the} abuse is disclosed, the victim remains silent hoping that eventually the abuser will heal and stop the sexual victimizations.

Fourth, the abuser may also provide for the sexually abused child or adolescent in meaningful ways that make disclosure seem disloyal. An abusive teacher, for example, may also be the only adult from whom the child receives time, interest, and affection. Perpetrators are adept at choosing victims who are needy and therefore likely to respond to the caretaking the abuser provides, albeit it at a terrible cost.

Fifth, some perpetrators provide concrete emotional bribes like money, vacations, or activities that cause the young person to feel dirty, complicit in the abuse, and too ashamed to tell. One survivor was abused by a Catholic priest who took him to hockey games and brought him on beach vacations where the days were filled with fishing, swimming, and surfing. At night, the boy gritted his teeth while the priest anally penetrated him. This man told no one about the abuse until he read in the paper that the priest denied allegations made against

him by several men who had been altar boys in another parish. Then he came forward to support the other victims.

Some ~~Sixth, survivors do not disclose because they feel responsible for their abuse + are filled with guilt + shame.~~
~~Sixth, sexual abuse victims also do not disclose their violations until later in life because they successfully compartmentalize their experiences. They~~
Seventh, disclosure is delayed survivors
literally turn their minds eye away from the abuse so that some aspect of self continues to grow and develop, with the abuse split off from everyday consciousness. Only later in life do they realize that something is wrong *perhaps when their lives seem less functional than those of peers.*
Finally, when the sexual abuser is affiliated with an organization, like a

religious denomination, government agency, or school, the victim may fear the power of the institution to retaliate against the victim or his family. The abuser in fact may tell the victim that if s/he tells, the church, police, or school authorities will make sure the young person's parents lose jobs or standing in the community.

So, if sexual abuse survivors do not disclose their victimizations for years and years, what finally gets them to tell their secrets?

First, their lives may be sufficiently unworkable that survivors seek therapy or some other kind of counseling, ~~and only then begin to understand the impact of the abuse on their functioning.~~
and problems
It may be longer still before survivors can link their symptoms with the sexual abuse, and often even longer before they can contemplate telling family or friends what happened to them.

It is a difficult decision to risk attachment relationships by identifying someone in the family or community as a sexual abuser. People often respond

by supporting the perpetrator rather than the victim. When Elizabeth Evarts and the Hanson family of Phoenix went to court over Fr. Mark Lehman's molestations of their daughters, both families had their tires slashed and received death threats. Survivors understandably hesitate to disclose their abuse widely when they face such scorn and ridicule and when there is no hope of bringing accountability to the perpetrator. The window bill gives a survivor motivation to take this risk.

Second, the yearning survivors have to protect others or to provide support for other victims of their perpetrator cannot be underestimated. One survivor, for example, confronted her father and mother about the incest her father perpetrated on her between ages 5 and 13 only when a baby girl was born to her brother and his wife, and the survivor's father was designated as a child care resource. The victim of priest abuse mentioned above came forward only to support other victims who already had done so. The window bill, by allowing survivors to hold their perpetrators accountable, is crucial in empowering survivors to use their voice and expend their energies to help others *by publicly identifying a sexual predator.*

Representatives from various organizations will speak in opposition to this bill. It is important to remember, however, that not even half of all abusers perpetrate through their association with a school, church, daycare, or social organization. This bill is for EVERY survivor of sexual abuse. In fact, I hope that if the bill passes, the legislature will remind the media and the public that the victims of parents, grandparents, siblings, neighbors, friends of the family now have an opportunity to protect and to validate others by identifying individuals

who sexually abused them. Organizations who have adequately responded to sexual abusers in their midst have no reason to speak against this bill and, in fact, should support it given its potential to help heal sexual abuse survivors while protecting potential future victims.

I ask that you pass this legislation and would like now to answer any questions you may have for me.

Thank you.

MARY GAIL FRAWLEY-O'DEA, Ph.D.

Clinical Psychologist & Psychoanalyst

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www.mgfod.com

EDUCATION

- 5/96: Certificate in Psychoanalysis and Psychoanalytic Psychotherapy, Demer Institute, Adelphi University, Garden City, NY.
- 5/88: Doctor of Philosophy, Clinical Psychology, Demer Institute, Adelphi University, Garden City, NY.
- 5/86: Master of Arts, Clinical Psychology, Demer Institute, Adelphi University, Garden City, NY.
- 2/75: Master of Business Administration, Marketing, Cox School of Business, Southern Methodist University, Dallas, TX.

Member, Beta Gamma Sigma, National Honor Society for Business Students.

- 6/72: Bachelor of Arts, Saint Mary's College, Notre Dame, IN.

PROFESSIONAL POSITIONS

- 1/06 – present Psychoanalyst and Clinical Psychologist, Private Practice, Mathews, North Carolina. Psychoanalysis. individual and group psychotherapy, professional supervision. Specialty in treating adult survivors of childhood sexual abuse, including clergy abuse survivors.
- 6/01 – 6/05: Co-Director, Manhattan Institute of Psychoanalysis, New York, New York.
- 9/01 – 6/05: Executive Director, Trauma Treatment Center, Manhattan Institute of Psychoanalysis, New York, New York.

- 9/90 - 6/05: Psychoanalyst and Clinical Psychologist, Private Practice, Rockland County, New York. Psychoanalysis, individual and group psychotherapy, professional supervision. Specialty in treating adult survivors of childhood sexual abuse.
- 10/90 - 9/93: Clinical Psychologist, Incest and Sexual Abuse Recovery Affiliates, Rockland County, NY, a group of practitioners who met monthly for peer supervision and to keep current with the literature on psychological trauma, especially sexual abuse.
- 7/88 - 9/91: Psychologist II, Pomona Clinic, Rockland County Community Mental Health Center, Pomona, NY.
- Member, Rockland County Community Mental Health Center Sexual Abuse Team. Conducted individual and group therapy with adult survivors of childhood sexual abuse; attended and presented at weekly case conferences.
- Member, Rockland County Community Mental Health Center Eating Disorder Team. Conducted individual and group psychotherapy with outpatient eating disordered patients. Contributed to multi-disciplinary team of psychologists, psychiatrists, internists, nutritionists, social workers.
- Member, Committee on Continuing Education and Training which planned and executed center wide professional education and training programs for psychiatry, social work, nursing, psychology, and the nonprofessional staff.
- Member, Clinical Practice Committee. All attempted suicides and other cases with which clinicians were experiencing difficulty or on which there were interdepartmental or interdisciplinary disagreements were referred to this committee for review and recommendations.
- 7/88 - 8/90: Assistant Psychologist, Private Practice, Spring Valley, NY. Conducted individual psychotherapy within the practice of a licensed clinical psychologist.
- 7/87 - 6/88: Clinical Psychology Intern, Rockland County Community Mental Health Center, Pomona, NY.

TEACHING

- 5/02- 6/05: Faculty, Supervisory Training Program, National Institute for the Psychotherapies, New York. Teaching a course in contemporary approaches to psychodynamic supervision.
- 6/01- 6/05: Faculty and supervisor, Manhattan Institute of Psychoanalysis, New York, New York. Teaching a class in Gender & Sexuality.
- 5/00 – present: Faculty and Supervisor, National Training Program in Contemporary Psychoanalysis, New York, New York. (Division of NIP). Teach a course in Contemporary Issues in Transference and Countertransference.
- 5/98 – present: Continuing Education Faculty, National Psychological Association for Psychoanalysis, Inc., (NPAP), New York City. Conduct bi-weekly group supervision for five NPAP graduates.
- 9/97 - present: Faculty and Supervisor, Minnesota Institute for Contemporary Psychoanalytic Studies (MICPS). Teach a course in the Theory and Treatment of Psychological and Sexual Trauma.
- 9/95 – 12/01: Assistant Clinical Professor and Supervisor, Derner Institute for Advanced Psychological Studies, Adelphi University, Garden City, NY.
- 3/00 – 5/01: Taught an elective in psychological trauma in the post-doctoral program in psychoanalysis and psychoanalytic psychotherapy; supervised a case conference for fourth year post-doctoral students.
- 9/00 – 5/01: Supervised a junior doctoral faculty member teaching a two-semester course on psychological testing and supervising eight testing teaching assistants.
- 9/89 - 5/90: Taught a two semester course on psychodiagnosis, a one-semester course on the theory and treatment of trauma, supervised student psychodiagnosticians and therapists, served on doctoral dissertation committees, and supervised weekly clinical case conferences at which student therapists presented their work. Also served on Institute faculty committees.
- 4/97-4/99: Chair: Future of the Institute Committee. Chaired a six member committee whose mission was to gather data from faculty.

students, interns, alumni, externship and internship directors, and outside clinical supervisors in order to develop an Institute mission statement and specific recommendations for the next century.

9/85 - 5/87: Teaching Assistant, Psychological Testing, Derner Institute, Adelphi University, Garden City, NY. Taught psychological test administration and scoring to first year doctoral students.

APPOINTMENTS

- 08/06: Advisory Board, Leadership Council on Child Abuse and Interpersonal Violence, www.leadershipcouncil.org
- 08/06: Practice Committee, Division of Trauma Psychology (56), American Psychological Association, www.apatraumadivision.org
- 09/05 – 7/06 Pastoral Response Committee, Episcopal Diocese of North Carolina
- 05/04: Editorial Board, *Studies in Gender & Sexuality*, The Analytic Press, Hillsdale, NJ, www.analyticpress.com
- 04/04: Editorial Board, *Trauma and Dissociation*, Haworth Press., www.issd.org/indexpage/htm
- 01/04: Advisory Board, *Psychoanalytic Perspectives*, Journal of the National Institute for the Psychotherapies, www.psychperspectives.com
- 10/02 – 12/04 Advisory Board, National Organization of Male Sexual Victims
- 09/00: Publications Committee, Division of Psychoanalysis (39), American Psychological Association

PUBLICATIONS

(2007). *Perversion of Power and Sexual Betrayal in the Catholic Church: A Psychological Analysis of the Crisis*. Vanderbilt University Press.

_____ and Goldner, V., Eds. (2006). *The Catholic Sexual Abuse Scandal*. Edited collection of papers on the sexual abuse scandal to be published by The Analytic Press.

(2005). "Homosexual Priests Scapegoated in Sexual Abuse Scandal." *National Catholic Reporter*, December 7, 2005.

(2005). "The Experience of Sexual Abuse." *Trefoil: The South African Catholic Quarterly*, Number 268, 45-48.

(2005). 9/11: What do we call it? How do we work with it? Response to Elizabeth Goren and Michael Clifford. *Psychoanalytic Perspectives*, 2.

(2004). Guest Co-Editor, two special issues of *Studies in Gender & Sexuality* devoted to the scandal in the Catholic Church, Volume 5, Nos. 1 and 2.

(2004). Psychosocial anatomy of the Catholic sexual abuse scandal, *Studies in Gender & Sexuality*, 5, 121-138.

(2004). The history and consequences of the sexual abuse crisis in the Catholic Church. *Studies in Gender & Sexuality*, 5, 11-30.

(2003). When the trauma is terrorism and the therapist is traumatized too: working as an analyst since 9/11. *Psychoanalytic Perspectives*, 1, 67-90.

(2003). The impact of sexual abuse on the survivor. *Touchstone* (Newsletter of the National Federation of Priests' Councils), 18, 11-14.

(2003). Through the mind of abuse victims. *CMSM Forum* (Newsletter of the Conference of Major Superiors of Men), 86, 17-25.

(2003). Supervision is a Relationship Too: A Contemporary Model of Psychoanalytic Supervision. *Psychoanalytic Dialogues*, 13.

(2002). Puer Aeternus: adolescent psychosexual development and ephebophilia in some Catholic priests. *Psychologist-Psychoanalyst*, 23.

(2002). Psychoanalysis informs Catholic Bishops on the long-term effects of sexual abuse. *Psychologist-Psychoanalyst*, 22, 19 and 70.

_____ and Sarnat, J. (2001). *The Supervisory Relationship: A Contemporary Psychodynamic Approach*. New York: Guilford Press.

(1999). Society, politics, psychotherapy and the search for "truth" in the memory debate. In M. Rivera, Ed. *Fragment by Fragment: Feminist Perspectives on Memory and Child Sexual Abuse*. PEI, Canada: Gynergy Press.

(1999). Revisiting the "teach/treat" boundary in psychoanalytic supervision: when the supervisee is or is not in concurrent treatment." *The Journal of the American Academy of Psychoanalysis*, 26, 513-528.

(1998). What's an analyst to do? Shibboleths and "actual acts" in the treatment setting. *Contemporary Psychoanalysis*, 34, 615-634.

(1997). Free to fantasize: the liberation of fantasy in adult survivors of childhood sexual abuse. *Journal of Child Sexual Abuse*, 6, 93-106.

(1997). Transference paradigms at play in psychoanalytically oriented group therapy with female adult survivors of childhood sexual abuse. *International Journal of Group Psychotherapy*, 47, 427-441.

(1997). Who's doing what to whom?: supervision and sexual abuse. *Contemporary Psychoanalysis*, 33, 5-17.

(1997). P³: patients, politics, and psychotherapy in the true/false memory debate. In R. Gartner, Ed., *Memories of Sexual Betrayal*. Northvale, NJ: Jason Aronson.

(1996). Supervision amidst abuse: the supervisee's perspective. In M. Rock, Ed., *Psychodynamic Supervision*. Northvale, NJ: Jason Aronson.

(1996). Book review. "From the Trenches of Trauma: Trauma and the Therapist." *Psychologist Psychoanalyst*, 16, 30-32.

(1994). Fact or fiction: the validity of "recovered" memories of childhood sexual abuse. In the *Newsletter of the Rockland County Clinical Social Work Society*, June.

Davies, J.M. and _____. (1994). *Treating the Adult Survivor of Childhood Sexual Abuse*. New York: Basic Books, Inc.

(1992). Transference and countertransference in the treatment of adult survivors of childhood sexual abuse: one relational matrix. In *ASPP Newsletter*, 7, 16-18.

Davies, J.M. and _____. (1992). Dissociative processes and transference-countertransference paradigms in the psychoanalytically oriented treatment of adult survivors of childhood sexual abuse. *Psychoanalytic Dialogues*, 2, 3-36.

Davies, J.M. and _____. (1992). Response to Gabbard, Grotstein, and Shengold. *Psychoanalytic Dialogues*, 2, 77-96.

(1989). From secrecy to self-disclosure: healing the scars of incest. In G. Stricker and M. Fisher, Eds., *Self-Disclosure in the Therapeutic Relationship*. New York: Plenum Press.

(1986). Father-daughter incest: the secret is out. *High School Psychology Teacher*, 17, 2-3.

PROFESSIONAL PRESENTATIONS

(2006). *Litigation and Spiritual Sorrow: Special Issues in the Catholic Sexual Abuse Crisis*. Paper presented at the Annual Meeting of the American Psychological Association, New Orleans, August.

(2005). *Anatomy of a Scandal: Factors Contributing the Sexual Abuse Crisis in the Catholic Church*. Paper presented at the Twenty-fifth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(2002). Moderator, *Dreams in Supervision*. Panel presentation at the Twenty-second Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(2001). Participated in an interview about and discussion of *The Supervisory Relationship* (Frawley-O'Dea and Samat as above). Twenty-first Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Fe, April.

(1998). *The Silent "Fourth" in Supervision: The Supervisee's Analyst*. Paper presented at the Eighteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Boston, April.

(1997). *Supervision in the Second Century: A Relational Model of Supervision*. Paper presented at the Seventeenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Denver, February.

(1997). *Repression versus Dissociation: "Take Two."* Paper presented at the Seventeenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Denver, March.

(1996). *Who's Doing What To Whom? Supervision and Sexual Abuse*. Paper presented at the Sixteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(1995). *Tapestries of Transference in Group Treatment of Adult Survivors of Childhood Sexual Abuse*. Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1995). *What's an Analyst to Do?: Action as Psychoanalytic Subversion*. Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1995). *Supervision Amidst Abuse: The Supervisee's Perspective*. Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1994). *Object Relational Sequelae of Childhood Physical and Sexual Abuse*. Discussion presented at the Fourteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Washington, D.C., April.

(1993). *Free to Fantasize: the Liberation of Fantasy in Adult Survivors of Childhood Sexual Abuse*. Paper presented at the 101st Annual Meeting of the American Psychological Association, Toronto, August.

(1993). *The Analyst's Transference to Tradition as Countertransference in the Treatment of Adult Survivors of Childhood Sexual Abuse*. Paper presented at the Thirteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(1992). *Transference and countertransference in the psychoanalytic treatment of father-daughter incest survivors*. Paper read at the 100th Annual Meeting of the American Psychological Association, Washington, D.C., August.

(1992). *The Discovery of Childhood Sexual Abuse Through the Emergence of Traumatic Memories*. Paper read at the Twelfth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Philadelphia, April.

(1991). *Eliciting Disclosure of Childhood Sexual Abuse*. Paper read at the 99th Annual Meeting of the American Psychological Association, San Francisco, August.

LECTURES, CONFERENCES, AND TRAINING PROGRAMS (SINCE 1996)

- 5/06: *Surviving Soul Murder: Long Term Impact of Sexual Abuse by Priests. Reflecting on the Past, Healing Towards the Future*, Conference co-sponsored by Survivor Network for Those Abused by Priests and Voice of the Faithful, St. Peter's Episcopal Church, Charlotte, NC.
- 4/06: *The Theory and Treatment of Childhood Sexual Abuse*. One-day conference, Hamms Clinic, St. Paul, MN.
- 6/05: *Patients, Politics, and Psychotherapy: The Vicissitudes of Traumatic Memory*. Paper presented at a one-day conference on *Traumatic Memories: Where Are We Now?*, Long Island College Hospital, Queens, New York.

- 11/04: "Shepherds or Wolves: Why the Too Many Bishops Failed as Pastors." Paper presented at *Sexual Betrayal and Scandal in the Catholic Church: Psychoanalytic, Religious, and Social Perspectives*, a one-day conference cosponsored by the Trauma Treatment Center of Manhattan Institute for Psychoanalysis and the Sexual Abuse Service William Alanson White Institute, New York.
- 10/04: *Clericalism and Its Contribution to the Sexual Abuse Scandal in the Catholic Church*, keynote address to the Annual Meeting of the Psychoanalytic Society of the National Institute for the Psychotherapies, New York.
- 9/04: *The Valorization of Suffering Within Catholicism: One Factor in the Church's Sexual Abuse Crisis*. Paper presented at the Washington D.C. Chapter of the New York Freudian Society, Bethesda, MD.
- 04/03: *Anatomy of a Scandal: Psycho-Social Roots of the Sexual Abuse Crisis: Abusing Priests*. Presentation to and discussion with Voice of the Faithful, Winchester, MA.
- 04/03: *Anatomy of a Scandal: Psycho-Social Roots of the Sexual Abuse Crisis: The Hierarchy*. Boston College, Church in the 21st Century Program, Newton, MA.
- 03/03: *The Long-Term Impact of Childhood Sexual Abuse*. One-day conference with the Bronx Region of Jesuits, Bronx, NY.
- 02/03: *The Long-Term Impact of Childhood Sexual Abuse*. One-day conference with the Manhattan Region of Jesuits, including the staff of *America* magazine.
- 12/03: *The Sexual Abuse Crisis in the Catholic Church*, three Advent Lectures given at St. Anthony's Catholic Church, Nanuet, NY.
- 11/02: Rockland County Assembly of Priests. One-day consultation to discuss implications of Church sexual abuse crisis on local parishes.
- 11/02: *How Did We Get Here?* One-day consultation with Middle Atlantic Region of Capuchin Friars.
- 10/02: Region I Conference of Major Superiors of Men. Consultation on designing programs to reach out to victims of priest sexual abuse. Waltham, Ma.
- 10/02: *Supervision is a Relationship Too*. Grand Rounds, North Hospital, Long Island, NY.

- 8/02: *Where - In God's Name - Are the Victims?* Address to the Conference of Major Superiors Annual Assembly, Philadelphia, Pa.
- 6/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented to the Trauma Treatment Center, Manhattan Institute for Psychoanalysis, New York, NY.
- 6/02: *The Long-Term Effects of Sexual Abuse.* Televised address to the National Conference of Catholic Bishops, Dallas, TX.
- 5/02: *A Contemporary Model of Supervision.* Half-day workshop to the Vermont Psychoanalytic Society, Burlington, VT.
- 5/02: *Supervision is a Relationship Too.* Grand Rounds, Vermont Medical Center, Burlington, VT.
- 4/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented at a Scientific Meeting of the Westchester Center for the Study of Psychoanalysis, White Plains, NY.
- 4/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented at the Annual Meeting of the Rockland County Mental Health Association, Pearl River, NY.
- 03/02: *Supervision is a Relationship Too.* Colloquia presented at Manhattan Institute of Psychoanalysis, New York, NY.
- 11/01: *The Supervisory Relationship: A Relational Approach.* Workshop with Joan Sarnat, Ph.D. at Massachusetts Institute for Psychoanalysis, Cambridge, MA.
- 06/01: *The Supervisory Relationship: A Relational Approach.* Continuing Education Program, Rockland County Clinical Social Workers Society, Nyack, NY.
- 10/00: *The Supervisory Relationship: A Relational Approach.* Continuing Education Program, Tufts University Masters Program in Clinical Psychology, Medford, MA.
- 9/99: *Intersubjectivity in Psychoanalytic Supervision: A Relational Model.* Paper presented at the Institute for Contemporary Psychoanalysis' continuing education conference on intersubjectivity in the supervisory relationship, New York.

- 12/98: *Thanks for the Memories.* Panel member. Inns at Court, Uniondale Court House, Uniondale, NY. Panel presentation for judges, attorneys, law professors, and law students on the vicissitudes of memory.
- 5/98: *What's an Analyst to Do? Shibboleths and "Actual Acts" in the Treatment Setting.* New York University Post-Doctoral Program in Psychoanalysis and Psychotherapy, Annual Conference on Sexuality, New York, New York.
- 4/98: *What's an Analyst to Do? Shibboleths and "Actual Acts" in the Treatment Setting.* Colloquium, Long Island University Clinical Psychology Doctoral Program, Brooklyn, NY.
- 2/98: *What's an Analyst To Do? Shibboleths and "Actual Acts" in the Treatment Setting.* Continuing Education Program, Tufts University Clinical Psychology Masters Degree Program, Medford, MA.
- 6/97: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds, Four Winds Hospital, Katonah, NY.
- 2/97: *Supervision in the Second Century: A Relational Model of Supervision,* Continuing Education Program, Tufts University Clinical Psychology Masters Degree Program, Medford, MA.
- 12/96: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds, Jamaica Hospital, Jamaica, NY.
- 5/96: *Ah, Yes, I Remember It Well. Or Do I?* Annual Spring Meeting, International Society for the Study of Trauma, New York City.
- 3/96: *P3: Patients, Politics, and Psychotherapy in the True/False Memory Debate.* Keynote speaker, Annual Spring Meeting, Institute for Psychoanalysis and Psychotherapy of New Jersey, Edison, NJ.
- 2/96: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds New York University Medical Center, New York.

MEDIA APPEARANCES

- 06/06: Appearing in the documentary film, *Deliver Us From Evil*, opening at the Los Angeles Film Festival, Disarming Films, Amy Berg, Director.
- 05/06: *Charlotte Talks with Mike Collins.* Interview on the sexual abuse crisis in the Catholic Church.

06/02: C-SPAN II. *The Long Term Impact of Sexual Abuse by a Priest*. United States Conference of Catholic Bishops Semi-Annual Meeting, Dallas.

DISSERTATION

Frawley, M.G. (1988). The sexual lives of adult survivors of father-daughter incest. *Dissertation Abstracts International*, 49. (University Microfilms No. 88-06, 457).

PROFESSIONAL AFFILIATIONS

American Psychological Association
Division of Psychoanalysis
Section III: Women's Section
Clinical Division
Women's Division
Independent Practice Division
Trauma Division
Member, Practice Committee
Psychology of Religion Division

Manhattan Institute for Psychoanalysis Society

International Society for the Study of Dissociation

Leadership Council on Child Abuse and Interpersonal Violence

LICENSE

8/90: New York State License, Psychologist, 10292

6/06: North Carolina License, Psychologist 3247

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My name is Joelle Casteix. I am 35 years old and I currently live in Newport Beach, California. I am the Southwest Regional Director of SNAP, the Survivors' Network of those Abused by Priests. I am also the owner of a successful public relations and marketing business.

Why Am I Here? I am here because I am an accidental pioneer.

I am here today because I am an example of why Senate Bill 112 and its civil window are essential to the safety of children in Alaska.

I am here to show you how the California civil window has saved thousands of children from abuse, exposed predators across the state (many who were still abusing), helped law enforcement put predators behind bars, and helped hundreds of children, who like myself, were abused and discarded by giving us our day in court to prove our cases.

This law has also protected thousands of vulnerable children who would still be at risk if these predators had not been exposed.

And it was all because of a law like SB 112.

I am also here because I can answer specific questions you might have about how a law like SB 112 is really working to protect children and how a civil window is the ONLY way that many serial molesters in Alaska can be exposed and Alaska's children can be safer RIGHT NOW.

my abuser
Because I was able to sue the Diocese of Orange through our one-year window, I was not only able to expose Dr. Thomas Hodgman, the man who abused me, but I was able to get a hold of the documents that proved that he was a child molester - documents that the diocese kept hidden from me for 17 years, while they told me that the abuse never took place.

And I was able to alert the community that they were harboring a molester and a criminal - a criminal who was given a free pass by the Catholic church.

Without the tried and true legal system, I never would have been able to expose him and keep other girls from experiencing what I went through.

Let me just tell you about two of many, many cases in California that are examples of the utter importance of SB 112 - the Michaels

Former priests Michael Baker and Michael Wempe are two of the worst pedophiles in California. In fact, their names might be familiar because Cardinal Roger Mahony fought all the way to the U.S. Supreme Court (and lost, mind you) to keep their personnel files secret - even after Mahony acknowledged that he knew Baker was abusing kids.

Both men escaped criminal prosecution because their victims were abused too long ago - and as other people today will tell you, it takes many, many years for victims to come forward and report their abuse.