

WRITTEN TESTIMONY OF BRIAN WENGER, ESQ. BEFORE THE PENNSYLVANIA SENATE JUDICIARY COMMITTEE

Re HB 962 and 963

Wednesday October 2, 2019, Harrisburg, PA

Chair Baker, Chair Farnese, and Honorable Members of the Senate Judiciary Committee:

Thank you for the opportunity to provide testimony on this important issue. While I live in Minnesota, my wife and I have deep ties to Pennsylvania. I received my law degree from Villanova University in 1986. My wife grew up in Pennsylvania, and we met while we were in law school. Three of our sons graduated from Villanova. All of my in-laws live in Pennsylvania. We care deeply about this state.

Personal Background

By way of background, I was in private law practice for many years, and ultimately served as the Chair of Briggs and Morgan, then a Minneapolis based firm with over 180 attorneys. Briggs and Morgan acts as outside legal counsel for the Archdiocese of St. Paul and Minneapolis. From 2007 to 2013, I was an active member of the Archdiocese's Finance Council and its Chair. In 2014, I left private practice to become Chief Legal Officer and Executive Vice President of a \$100 billion company. I recently left that position and am developing a business that assists seniors, serving on a number of boards, and doing volunteer work for charitable organizations. From time to time, I provide advice to the Archdiocese of St. Paul and Minneapolis on a pro bono basis.

Introductory Perspective

I join with leaders of the Catholic Church in the pursuit of healing and reconciliation for those children who were abused by Catholic clergy and others in public and private schools and institutions. And I understand that all the dioceses in Pennsylvania have taken actions to pursue actively this healing and reconciliation, and to provide economic payments in a humane and nonconfrontational way to those who were abused as children years ago. Specifically, I understand the dioceses have employed voluntary compensation programs for those whose claims would have been barred by the statute of limitations.

No one can ever fully atone for the pain they have endured. The issue before the Pennsylvania Senate is not whether such atrocious acts should be condoned, but whether an extension of the statute of limitations for civil sexual abuse lawsuits is appropriate to address the sexual abuse crisis for all affected parties, including:

- victims/survivors;
- the vast faithful who have never harmed a child;
- those in need who are currently being served by the resources of the dioceses, and their charities and schools; and

- those currently served by public resources that will be imposed upon to cover services the dioceses can no longer provide.

Through the course of my testimony, I will discuss the legislation in Minnesota that extended the statute of limitations for victims/survivors abused as minors, how it resulted in bankruptcy proceedings for all but one diocese in the state, and the delay, costs and prolonged impacts associated with bankruptcy on victims/survivors, the Archdiocese, students, the poor and charitable organizations providing social services. Of equal import, I also will discuss our interactions with victims/survivors in Minnesota and why I believe the analogous concerns of victims in Pennsylvania, along with the interests of all affected parties (except plaintiffs' lawyers), already have been best addressed by the way the dioceses have engaged with these victims to date. In essence, I submit that those engagements have made the idea of extending the statute of limitations moot, at least as it relates to Catholic entities.

Minnesota Experience

In 2013, Minnesota passed the Child Victims Act which, much like Pennsylvania HB 962 and 963 propose to do, revived claims for child sexual abuse that were then barred by the state's statute of limitations. While the Minnesota statute on its face did not purport to target the Catholic Church, the Church was the primary target of plaintiffs' lawyers and disproportionately affected by the legislation. The statute of limitations was extended for 3 years in Minnesota. And, as a result, by 2018, all but one of Minnesota's Catholic Dioceses had been forced into bankruptcy in order to address hundreds of claims filed under the Child Victims Act. Dioceses in other states continue to file bankruptcy in response to window legislation like that under consideration here. The Diocese of Rochester New York went bankrupt a few weeks ago as a result of New York's recently passed window legislation. These bankruptcies are not limited to small dioceses. I note that the Archdiocese of St. Paul and Minneapolis is larger than every diocese in Pennsylvania except for the Archdiocese of Philadelphia. Other dioceses, and other institutions, surely will follow in states where the statute of limitations is extended or reopened.

The Archdiocese of St. Paul and Minneapolis was faced with numerous claims by victim-survivors before it filed for bankruptcy. The Archdiocese lacked the resources to address these claims in civil proceedings and filed for bankruptcy protection in 2015. Prior to the bankruptcy claim deadline 442 individuals filed sexual abuse claims.

Approximately ninety percent of those claims arise from acts that were alleged to have occurred in the 1940's through the 1970's. Most clergy responsible for the abuse or for the supervision of the alleged abusers were deceased or removed from the Church and not held accountable. It was difficult, if not impossible, to meaningfully evaluate or defend many of these claims.

The circumstances that the Archdiocese and sexual abuse victims/survivors encountered during this process may inform your deliberations as to whether an extension of Pennsylvania's

statute of limitations for sexual abuse claims is based on sound public policy in light of the actions that have occurred to date in Pennsylvania. I believe it is not for the following reasons:

- Delay. The Minnesota Child Victims Act was passed in 2013, and victims/survivors of sexual abuse making claims against the Archdiocese will not receive full payouts until sometime this year or even later—they have had to wait six years or more for full compensation. Even worse, seventeen victims/survivors passed away before they received compensation.
- Extraordinary Attorneys' Fees and Costs. A trust administrator appointed by the Bankruptcy Court ultimately received over \$210 million from the Archdiocese of St. Paul and Minneapolis to resolve sexual abuse claims, an average of approximately \$475,000 per claim. Attorneys' fees for lawyers representing the Archdiocese and other parties in the bankruptcy totaled over \$20 million. At least \$7 million was held for unidentified future claimants and trust administration costs are unknown. Plaintiffs' attorneys representing the claimants received 33% to 40% of the total amounts awarded to claimants plus expenses. All told, plaintiffs' attorneys likely received payments exceeding \$60 million. The Bankruptcy Judge noted that plaintiffs' attorneys were the largest stakeholders in the bankruptcy proceedings. In the end, we estimate that the average payout to sexual abuse claimants likely will be approximately \$250,000.
- Impacts on Schools, Social Services, and Charitable Organizations. Organizations within the Archdiocese of St. Paul and Minneapolis are the second largest provider of social services to Minnesota's poor and displaced and the second largest educator in its area. Please note that this is not unique to the Archdiocese of St. Paul and Minneapolis.

A 2016 study by the Program for Research on Religion and Urban Civil Society (PRRUCS) at the University of Pennsylvania found that the annual economic impact of the social services provided by the Archdiocese of Philadelphia (\$4.2 billion) exceeded the *entire* annual General Fund budget for the City of Philadelphia. That study also reports that in the early 2000's Catholic organizations in Philadelphia provided 7.1% of the City's nursing home beds and 8.1% of the City's hospital beds. Those organizations also educated 18.7% of the City's elementary school students, 11% of the City's high school students, and 18% of students attending the City's colleges and universities. Catholic organizations in Philadelphia positively impacted the lives of over 550,000 individuals in need last year and served over 11 million meals. Those numbers grow significantly when the efforts of other Pennsylvania dioceses are considered.

There are 90 Catholic schools in the Archdiocese of St. Paul and Minneapolis with an enrollment of over 30,000 students. Catholic organizations in the region provide nearly 3 million meals a year, over 5,000 places to sleep for the homeless, a home for children from troubled families, and 2,000 low-income housing units. Archdiocesan support programs serve and provide advocacy support for the poor, the handicapped, persons with AIDS, people in prison, refugees, displaced immigrants, and others with special

needs. The viability of these schools and social service providers was placed at risk as a result of the Child Victims Act.

In Minnesota, aggressive plaintiffs' counsel made every effort to take every available asset from charities, schools, and other Catholic entities regardless of impacts on those institutions or the public good. Attorneys for victims/survivors persistently claimed the Archdiocese was hiding \$1 billion of assets until they were admonished by the Judge to stop spreading falsehoods. In these highly contentious proceedings, plaintiffs' lawyers attempted to force the following independent Catholic entities into the Archdiocese's bankruptcy:

- 187 parishes and consolidated schools
- The St. Paul Cathedral
- The Catholic Community Foundation
- Catholic Finance Corporation
- Catholic High Schools
- Catholic Cemeteries
- African and Spanish Chaplaincies

Plaintiffs' attorneys in Minnesota even tried to unwind millions of dollars of proper payments to lay and priest retirement plans, employee benefit plans, Catholic Charities, parishes, schools, universities and other charitable organizations. Services of great value to the public would have been severely impacted if these efforts had succeeded. Further, the charitable intent of hundreds of thousands of donors would have been thwarted.

- Potential For Dissolution. Further delaying proceedings, counsel for sexual abuse victims/survivors eventually moved for approval of a plan of reorganization that would have caused the functional dissolution of the Archdiocese. While this motion was denied, it needlessly placed a cloud over the affairs of the Archdiocese. Many donors withheld funding to parishes, schools and critical charities out of concern that their donations would not be used for the intended purposes, but rather would be diverted to litigation expenses. Those parishes, schools and charities that relied on the support of donors continue to struggle today to regain the trust of donors.
- Wrongdoers Not Targeted. Clergy committing sexual abuse and others responsible for their oversight did not face retribution. Again, ninety percent of the sexual abuse resulting in claims occurred before 1980. Thus, most offending clergy or those responsible for their oversight were either deceased or out of the Church when the statute of limitations was extended. Instead, as discussed herein, the burden of addressing these claims fell on the faithful placing their hard-earned dollars into the offering plate, and clergy, employees and teachers who had nothing to do with creating this crisis. Services to children, the poor, displaced and outcast were compromised.

- Unforeseen Impacts. The St. Paul Cathedral (dedicated as a federal historical landmark) lost a multi-million dollar fund dedicated to its maintenance and operation. Three Catholic high schools diverted millions of much needed funding to purchase land underlying the schools from the Archdiocese. The Archdiocese sold its office buildings to fund the settlement. It also funded the settlement with millions of dollars diverted from the Archdiocese's Medical Benefit Plan and Insurance Trust that were established for the benefit of hundreds of employees. Employee wages were frozen, and the Archdiocese terminated staff and reduced its budget to fund the settlement. Ongoing operations will be affected by the issuance of a \$5 million promissory note that will be paid out over five years. Parishes also were required to contribute some of their scant resources in order to achieve resolution.
- Judicial Oversight of Operations. Archdiocese financial management was subject to judicial oversight for about four years. Any corporate restructuring required court approval. Investment in future charitable endeavors for the poor and displaced was delayed and compromised.
- Revictimization of Survivors. Victims/survivors of sexual abuse were re-victimized pursuing their claims in contentious proceedings and waiting for compensation while fruitless disputes ensued. Again, at least seventeen victims/survivors died prior to resolution. Others pled with the court for a quicker, more efficient process.
- General Impact. The process placed the viability of all vital services provided by the Archdiocese at risk and placed victims/survivors of sexual abuse through unnecessary risk, costs, stress and delays.

In the course of Archdiocese discussions with victims/survivors of sexual abuse, we learned that victims/survivors primarily seek three things:

(1) Protection of Children. First, victims/survivors seek to make sure this never happens again to another child. In Minnesota, the Archdiocese of St. Paul and Minneapolis adopted Child Protection Protocols that according to prominent plaintiffs' lawyer, Jeff Anderson, made the Archdiocese of St. Paul and Minneapolis the "safest archdiocese in the country." I have been advised that Pennsylvania dioceses have adopted similar protocols and require that all claims of sexual abuse be reported to police.

(2) Transparency. Second, victims/survivors seek disclosure of clergy facing sexual abuse claims. I am advised that clergy facing credible claims of sexual abuse have been disclosed by the various Pennsylvania dioceses and the Pennsylvania Attorney General's investigation. I also understand that all Catholic clergy and entities in Pennsylvania face oversight by law enforcement agencies. Those responsible for abuse of children can be criminally prosecuted.

(3) Compensation. Third, 442 victims/survivors who filed claims in the Minnesota Archdiocese bankruptcy recovered an average of approximately \$475,000 per claim. While a full accounting has not been made available, after paying legal fees and costs to plaintiffs' lawyers and paying other costs, we estimate that victims/survivors ultimately will receive an average of roughly \$250,000 per claim. I note that the recovery by victims/survivors in the Archdiocese of St. Paul and Minneapolis is similar to other diocesan bankruptcies across the country that have been caused by window legislation similar to HB 962 and 963. In a 2019 study, Penn State University Law Professor Marie T. Reilly found that the median recovery for claimants in diocesan bankruptcies has been \$288,000, with victims in four dioceses recovering \$60,000 or less. According to that study, recovery in bankruptcy takes an average of two years and four months.

Why Create the Generational Harm of Further Bankruptcies?

Compare this to the publicly reported results of the independent compensation programs operated by Kenneth Feinberg and Camille Biros in Pennsylvania. According to the latest available public reports of the IRRP for victims of abuse in Philadelphia, victims/survivors have recovered an average of approximately \$228,000 through the private settlement program. Victims of abuse in Pennsylvania dioceses less affluent than the Archdiocese of Philadelphia have recovered less, but I understand that the recoveries by victims from each of the participating dioceses in Pennsylvania have been within the range of recoveries from bankrupt dioceses, as reported by Professor Reilly. I have been advised that there are over 1,000 registrants in the Pennsylvania diocesan alternative resolution programs. Registrants need not share their recovery with a lawyer, meaning every penny can go to the victim to aid them on their path to healing. Those victims/survivors who do not have a lawyer are provided independent pro bono counsel to advise them. I also have been advised that it typically takes just 90 days for victims/survivors in these alternative dispute resolution programs to be paid. The process was not contentious, and those pursuing claims were not or will not be re-victimized with interviews, depositions or cross examination.

The victims had a fixed period of time to file a claim in the independent compensation programs, just like they would have if a statute of limitations were opened. But the victims received that opportunity without the need to ever open the statute. And, not only that, the programs, as I understand them, provide advantages because (a) an independent respected body decides the payouts; (b) the victims receive the money years earlier than they would in a bankruptcy; and (c) the victims are treated humanely and respectfully throughout the process with their confidentiality being respected.

These programs also are far better for the dioceses because they can deal with the funding issues in an orderly fashion while still allowing them to continue their ministries. Finally, these programs are far better for the contributors to the ministries who can trust that they are giving money to the ministries that they intend and, therefore, they will continue to give. All of this supports the broader community.

In light of the proactive approach taken to date and the extensive payouts to be made in the voluntary programs, and the numerous bankruptcies filed by other dioceses around the country as a result of window legislation, an extension of the statute of limitations in Pennsylvania inevitably will result in bankruptcies. I am told that many of the dioceses already have emptied their coffers. The only people who “win” from the passage of a window, and the resulting bankruptcies, are lawyers. Who loses? Diocesan bankruptcies impair the Church and disrupt schools and the important social services that dioceses and similar institutions provide to the community. The general public also loses to the extent they have to step in, to some extent, to feed the poor, clothe the poor, provide job training, provide medical care, educate the children, and more – services now provided by the Church.

Indeed, I fear that if plaintiffs’ lawyers have their way, bankruptcies could result in the functional financial liquidation of several dioceses, with almost half of their remaining assets going into lawyers’ pockets. Consider the devastating impact on this state if the Catholic Church no longer provided the social services and schooling it provides today. Rather than requiring dioceses to file bankruptcy as a result of bills like HB 962 and 963, victims/survivors have received and will receive fair benefits, in a much more timely, non-adversarial fashion, through Pennsylvania diocesan alternative resolution programs.