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"Civil Liberties" and Uncivil Lies: What the New York Civil Liberties Union and the Catholic League for Religious and Civil Rights Have in Common – An Agenda to Keep Child Predator Identities Secret

By **MARCI A. HAMILTON**

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Yesterday, March 18, the New York Assembly Rules Committee passed the Child Victims Act (Assembly Bill A02596/Senate Bill S02568), which will extend the criminal and civil statute of limitations for child sex abuse by five years. It will also open a one-year window of opportunity for child sex abuse victims to go to court even if their statute of limitations already had expired. The next stop is the full Assembly and then on to the Senate.

The Child Victims Act was first introduced by Assemblywoman Marge Markey, who has doggedly stood by the bill. For three years, she shepherded it through the Assembly, only to be blocked by Sen. Joseph Bruno, now under federal indictment. Now that Democrats are a majority in the Senate and many support this bill, there is real hope that victims have a shot at justice in New York this time around.

The Urgent Need for States to Extend their Statutes of Limitations and Create "Windows" During Which Past Victims Can Sue

As I have discussed in previous columns [such as this one](#) and my book *Justice Denied: What America Must Do to Protect Its Children*, we do not know the identity of the vast majority of child sex predators, because we have crafted a legal system that prefers the adult perpetrators over the child victims. Hundreds of studies have shown that child sex abuse victims face enormous barriers to pursuing their perpetrators and those who aided the perpetrators. The same mismatch in power that permitted the abuse to happen in the first place severely undermines the ability of victims to pursue those who sexually abused them, not to mention those in positions of power in organizations that also permitted them to be abused. In the nature of things, adults are in an extremely powerful position vis-à-vis children, but when an adult can also exploit a position of trust as a parent, teacher, rabbi, priest, or Boy Scout leader, the scale tips so strikingly that the victim can be seriously disabled and disempowered for life.

Until relatively recently, most states had statutes of limitations that closed the courthouse doors before the victim was psychologically capable of coming forward. The result has been that perpetrators have continued to teach, advise, and guide our children in churches, synagogues, schools, and extracurricular activities – and to do so under legal cover. The fix is obvious: Eliminate, or at least lengthen, the statutes of limitations.

The New York bill has taken a moderate route. On one hand, it only extends the age by which victims

must sue, going forward, to 28 for civil and criminal claims. But it also permits those who were unfairly shut out of the courthouse in the past by uninformed, arbitrary statutes of limitations, for one year from the bill's passage, to come forward. In other words, even if their statute of limitations expired years earlier, they have one year from the bill's passage to bring a civil claim.

If this bill is passed, as it looks like it will be, the result will be that parents in New York will know many more names of perpetrators at the end of next year than they do today. When California enacted such a window in 2003, by comparison, 300 new perpetrators were publicly named.

In the best of all possible worlds, such a window would have been able to be opened in the criminal context, as well, so these perpetrators could not only be named but also sent to jail. Unfortunately, the Supreme Court, in *Stogner v. California*, held unconstitutional the criminal window that California had enacted (on the ground that the window violated the *Ex Post Facto* Clause, banning retroactive criminal laws). So today, the *only* tool we have in our legal arsenal to name perpetrators that escaped criminal punishment is to get victims into civil court, where they can publicly name perpetrators and teach the rest of us about the risks lurking next door.

There are two primary groups that do not want to have these perpetrators publicly named, and they have been working hard against the Child Victims Act. Their ridiculous positions have not gained a foothold, but it is still worthwhile to expose their positions for what they are. New York will not be the last state to pass such legislation and the truth needs to be inserted into the debate early and often.

The Proponents of New York's Statute-of-Limitations Legislation: Fighters for Children's Rights Who Should Be Honored

Before we turn to the two organizations fighting the uphill battle against the Child Victims Act, its proponents should be named, because a new coalition of fighters has emerged. Last fall, there was a historic press conference at Cardozo Law School, where I am a law professor. There, victims from within the Catholic Church met publicly for the first time with victims from within the Orthodox Jewish community. It was a moving meeting and mutually empowering to the two groups.

Since then, the public has been introduced to a new organization, Survivors for Justice, comprised of Orthodox victims and their supporters; and Orthodox rabbis have joined them on the sidelines. While a handful of rabbis joined the Catholic Conference to lobby members last week, the powerful Orthodox Union has issued a public statement that it will not be opposing the Child Victims Act. This is the largest Orthodox Jewish group in the country and a highly respected one. In a statement, the Orthodox Union said that it "generally supports the expansion of the statute of limitations to enable victims of sexual abuse to pursue legal claims" and is "not opposed to this legislation." In addition, according to a news story by Hella Winston for *The Jewish Week*, Uri L'Tzedek, another Orthodox Jewish organization, organized outreach to legislators as did the Committee for Safeguarding Orthodox Children and Am Echad. In addition, a new student group at Cardozo -- Cardozo Advocates for Kids -- has set up a website that will monitor statute of limitations developments nationally, www.sol-reform.com; held a conference on abuse in religious communities; and organized a student phone-a-thon in favor of the bill.

Meanwhile, Survivors for Justice has combined with Voice of the Faithful and New York SNAP (Survivors Network of those Abused by Priests) to organize support for the bill. The groups individually and together have been to Albany, sent postcards to every member of New York's Assembly, and worked tirelessly to get the bill passed. These are survivors (and their families and friends) with their own issues and jobs and families, who have chosen to make this their single priority.

Legislators should take note that these are the people fighting for this bill. No one knows better than the survivors and their families how necessary the bill is, or how much they need it to find some peace in their lives. Right now, from where they sit, they live in a society that chose to keep them out of court -- and therefore to let their perpetrators go to the next victim. They are demanding that the cycle of abuse end.

The Catholic League's Shameful Position on the New York Bill

On the other side of the debate is the ultra-conservative Catholic League for Religious and Civil Rights, which has been called the pit bull for the conservative aims of the Roman Catholic Church. It is led by one Bill Donohue, whose first-ever email to me accused me of being a Catholic-hater. We have not corresponded much since I responded that what I hate is child abuse and that I actually love my Catholic husband and children very much!

In any event, it would appear that Mr. Donohue must not be getting a lot of sleep lately, as the Catholic League has carpet-bombed Catholics with one lie after another in order to try to keep the Child Victims Act from passing. There is little question that the hierarchy his organization serves desperately seeks to keep its secrets about childhood sexual abuse, -- including the identity of the perpetrators. Also, and more importantly, it seeks to continue to cloak the identities of the bishops who knew about earlier abuse and who created the opportunities for further abuse. As I discussed in a [previous column](#), the opening of a statute-of-limitations window in California led the Los Angeles Archdiocese to agree to settle with 550 victims, in order to avoid trials. The Archdiocese paid the amount it had promised quickly, but it is now trying to block the release of the files it promised to make public as part of the settlement, with day-by-day, seemingly endless court challenges being mounted.

In New York, the hierarchy's fears of the release of new secrets are likely heightened. There, the courts have shut down out-of-time clergy abuse lawsuits, with the Court of Appeals most recently pointedly stating that this is an issue best left to the legislature. Thus, their secrets have been fairly secure. During the John Jay College's original survey of dioceses on abuse, which involved self-reporting by the bishops, the New York Archdiocese reported one of the lowest percentages of abusers in the country -- a report that invites skepticism.

The Catholic League and the Catholic Conference (the lobbyists for the bishops in each state) have pushed two primary arguments: (1) They say the bill is not fair because it does not treat public and private entities precisely the same (and we are supposed to draw from this that it is "targeted" at the Catholic Church); and (2) they say that it will bankrupt New York dioceses. The first is mere obfuscation, and the second is intentionally misleading.

Why the Catholic League's Objections to the New York Statute-of-Limitations Window Bill Are Completely Unpersuasive: The Bill Reaches Abuse in Secular, as Well as Religious, Contexts

First, let's consider the objection that public entities are not equally targeted. As noted above, New York's Child Victims Act eliminates for one year the statute of limitations for all childhood sexual-abuse victims. Those suing public entities, though, face an additional, separate hurdle, which is that they must file claims within 90 days. This is an administrative limitation placed on all citizens suing any public employee. This separate issue needs to be taken up in successor New York legislation and eliminated for childhood sexual abuse victims, for the same reasons that the statute of limitations needs to be removed. But to say that the bill is unfair because it does not close every loophole at once is sad. This bill is a huge step forward for victims and all citizens, even if more still needs to be done.

Moreover, this argument of targeting the Catholic Church is just a silly attempt to paint the Church as a victim more deserving than the victims its clergy and hierarchy helped to create. Obviously, the bill will apply to religious and secular entities outside the RCC – for example, Jewish or other religious organizations, and private schools and organizations.

Note to the Catholic League and the hierarchy: If you want to meet a group that actually has been persecuted by our society, spend some time with the victims of incest who have been called liars and expelled by their parents and families. The Catholic League apparently hopes that no one knows the facts of abuse, which document that the largest group of survivors have nothing to do with the Church. The bill redresses their suffering as well. The most numerous beneficiaries of the bill are the least organized group of victims in our society – those abused by family or family acquaintances, who constitute between 70 and 80 percent of all victims. The incest victims have a very small voice in our society; their truths are nearly unspeakable and when they do speak, they risk losing *everything* – family, home, and support.

The second argument – that the bill, if passed, will "bankrupt" New York dioceses -- lies so far outside the truth, it is stunning that the Catholic League expects parishioners to fall for it. There has been no diocese that has yet gone bankrupt as a result of having to provide fair compensation to those it harmed. Granted, there have been a handful of federal bankruptcies filed, but not because the dioceses lacked assets. Rather, they were filed to exploit the benefits of federal bankruptcy law to protect assets against those with valid claims. All of the so-called bankruptcies led to a settlement of claims, with the victims receiving less than they would have from trials, and with roughly 50% of the monies paid from insurance proceeds and 50% from non-religiously-devoted property.

More on point, the only bankruptcy ever filed in response to window legislation was that filed by the San Diego Diocese, which was thrown out of federal bankruptcy court. Why? Because it was not straight from the beginning about its massive assets and it misled the court about its assets. None of the other dioceses in California came close to declaring bankruptcy in response to the 2003 window.

The New York dioceses, like the San Diego diocese, own scads of land utterly unrelated to religious mission – consisting, for example, of office buildings, hotels, and other valuable property. (The public should also know that the vast majority of funds for Catholic Charities come from the federal, state, and local governments, not the Church.) The Catholic League and the hierarchy have tried this financial scare tactic, thinking that their believers will never investigate these truths. Here it is.

In sum, the Catholic League and hierarchy do not want their perpetrators and cooperating bishops publicly named. Rather, they seek to keep the public in the dark about predator identities, and face no financial dangers.

The New York Civil Liberties Union's Disappointing Anti-Child Victim Position – and Why It Is So Unpersuasive

Meanwhile, the New York Civil Liberties Union apparently does not want New York citizens to learn the identities of perpetrators, because they are the defendants the NYCLU would represent. They are taking the side of the perpetrators, making the patently ridiculous argument that it is not "fair" for those who preyed on children to be named decades after their abuse occurred, because memories are faulty. Once again, the truth has taken a hit from a group intent on misinforming the public for its own ends.

The NYCLU appears to be ignorant of the vast literature on child sex abuse over the last couple of decades, and has not accurately informed legislators or anyone else about how the burdens of proof are

apportioned in such cases. In fact, when the statute of limitations window is opened, and the statute's term is extended, the plaintiff still bears the initial burden of proof and if the plaintiff has no corroborating evidence, then the case is over. It is rare that a defendant has to defend himself or herself against claims that are solely the result of the victim's story, or the result of "faulty memories."

In the overwhelming majority of cases, instead, there are markers of abuse that can corroborate a victim's story. While the crime itself occurs usually with no one else there, child sex abuse victims display common characteristics that can be traced to the abuse, such as falling grades, depression, sexual confusion, and substance abuse. There is also evidence to be adduced about the availability of the victim to the perpetrator. For example, did the perpetrator call the child out of class on a regular basis for private "counseling" sessions? With respect to organizations, there are also employee files that often prove that the organization knew about the perpetrator's dangerous predisposition toward children, but did nothing. That is true of the Catholic Church, with its "secret archives," which so often provide all the information anyone would need to know the hierarchy's role in crafting the unsafe conditions that led to the abuse.

Some of the most important corroborating evidence, though, comes from the fact that most abusers have multiple -- and even, in some cases, hundreds -- of victims. When one brave survivor can find it within himself or herself to go to court, more victims stand up publicly. That has happened over and over, regardless of the circumstances of the abuse. When it happened in the home, sisters or brothers or cousins or grandchildren have raised their hands once the first went public. When it happened within an institution, the other victims (who are sometimes siblings and other family members of the first) also have stood up. In contrast, when the statute of limitations bars most suits, co-victims never identify each other and the perpetrator goes on to the next batch. Since perpetrators do not "age out" of abusing, they can go on for decades. Just one victim, though, can put a wrench in the cycle of abuse and make the state and the country safer for all victims and potential victims. That is what the Child Victims Act would do.

It is also now well-documented that it is rare that people concoct stories of child sex abuse. In California, there were less than a handful of false claims among the over-1000 claims filed. This is just not one of those kinds of claims (such as, for instance, a fraudulent claim that insurance is due) that are attractive to those who want to game the system. Branding oneself as having been sexually violated at a young age is hardly attractive. Moreover, significant studies now show that children rarely make up such stories. They are far more likely to be persuaded to falsely recant, than to make them up in the first place. The bill pending in the Assembly will extend the criminal and civil statute of limitations for child sex abuse by five years. It will also open a one-year window of opportunity for child sex abuse victims to go to court even if their statute of limitations already had expired.

The NYCLU, like the ACLU, is an institution that makes the world a worse place for children. The NYCLU and ACLU rarely, if ever, take the position of the child, unless the issue is free speech in public schools. Whether the issue is the medical neglect of children in faith-hearing homes, or the abuse of children in polygamous families, or the failure to educate children in Amish or Mennonite communities, they choose the religious parents to the detriment of the helpless children. It is a record that all those in the emerging civil rights movement for children have come to know well, and to be deeply disappointed by. The truth is that the NYCLU and ACLU seem incapable of factoring the rights of children into the mix. The ACLU might as well be called the Adult Civil Liberties Union. These organizations' knee-jerk reaction to the Child Victims Act is not only dangerous to children and families, but also based on outdated, inaccurate information about the reality of childhood sexual abuse.

Child sex abuse is a zero-sum game: Either we choose to let the victims tell their stories when they can,

or we choose to continue to cover up the abuse and empower the predators. It is really as simple as that. The lies and misinformation coming from the Catholic League for Religious and Civil Rights and the New York Civil Liberties Union are toxic to civil liberties, despite their names.

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