

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

STATE OF MAINE
CUMBERLAND, ss.
ROBERT E. DUPUIS, et al.,

Docket No. BCD-23-122

Plaintiff-Appellees,

v.

ROMAN CATHOLIC BISHOP OF
PORTLAND

Defendant-Appellant.

DEFENDANT-APPELLANT
ROMAN CATHOLIC BISHOP OF
PORTLAND'S RESPONSE TO
CHILD USA'S MOTION FOR
LEAVE TO PARTICIPATE IN ORAL
ARGUMENT AS *AMICUS CURIAE*

Defendant-Appellant Roman Catholic Bishop of Portland (“Diocese”) objects as follows to the CHILD USA Motion.

CHILD USA’s cited reasons for seeking leave to participate in oral argument are not “extraordinary,” which is the standard required for a such a motion to be granted pursuant to M.R. App. P. 7A(e)(1)(C). Its self-proclaimed accolades are extraordinary; its claim that it is “uniquely positioned to provide this Court” with policy rationale for a sea change in Maine Constitutional law is extraordinary; but neither is an extraordinary reason to allow it to argue orally.¹

Regardless of whether CHILD USA is permitted to participate in oral argument, the Diocese objects to any unequal or asymmetrical expansion of the

¹ The Diocese does not concede and need not dispute the movant’s claims about its expertise or reputation. If oral argument is allowed, its merits (or not) are determined by Maine constitutional law, not the credentials or reputation of the advocate.

combined time the Appellees and their Amici are to be allotted for oral argument. The Court has set equal and additional time for both sides, and adding any further additional time for oral argument in support of Plaintiff-Appellees would be unfair.

If CHILD USA plans to use oral argument only as an opportunity to repeat the arguments it has briefed (arguments that fail meaningfully to address Maine law), that cannot qualify as an extraordinary justification for allowing it to participate. If CHILD USA means to say something more than what is already in its brief, one of two things must be true. Either CHILD USA will make a legal argument that it failed to raise in its brief, which the Court should not consider, *Chadwick-BaRoss, Inc. v Martin Marietta Corp.*, 483 A.2d 711, 717 (Me. 1984), or CHILD USA's attorney will offer what amounts to extra-record testimony from a non-scientist, about what is asserted to be science. That kind of "evidence" also does not belong in an appellate oral argument. *Tisdale v Rawson*, 2003 ME 68, ¶14, 822 A.2d 1136, 1140 (citing *Sturtevant v Town of Winthrop*, 1999 ME 84, ¶9, 732 A.2d 264, 267).

As the Diocese acknowledged in its briefs, the Plaintiffs may have been reluctant to disclose information about their experiences during their respective childhoods, when the statute was in any event tolled, and during the applicable limitations periods after reaching their respective ages of majority. No lawyer can assist the Court in oral argument, however, by claiming to know science showing that any plaintiff, much less every Plaintiff, was unable to proceed, or prevented from proceeding, within the time allowed. Nor can any lawyer assist the Court in oral

argument by claiming to know whether eliminating statutes of limitations retroactively on child sex abuse claims will incrementally deter future would-be abusers, especially since there has been no statute of limitations in Maine since August 2000 on any such claim that was not time barred by August 1988. Nothing the motion proposes to present in oral argument can assist the Court in determining whether the Maine Legislature may constitutionally retroactively authorize litigation of an action that has been precluded for thirty-five years or longer. Oral argument in the Law Court on a matter of Maine constitutional law should be about the law, and more precisely, about Maine law. CHILD USA's brief is noteworthy for its paucity of legal argument grounded in the law of Maine.

Ultimately, of course, the Diocese recognizes that the Court will know best whether the proffered contribution of CHILD USA to oral argument will be helpful, but the Diocese respectfully suggests that this proffer fails to meet the Court's published standard.

OCTUBER 30, 2023
Date



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CERTIFICATE OF SERVICE

I, Gerald F. Petruccelli, Esq. hereby certify that one copy of the Response of Defendant-Appellant Roman Catholic Bishop of Portland, to CHILD USA's Motion for Leave were served electronically upon counsel for Appellees Robert Dupuis, et al., State of Maine, and Amici at the addresses set forth below by email October 30, 2023:

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