IN THE SUPREME COURT OF MARYLAND

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, Defendant-Appellant-Petitioner, v. JOHN DOE, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs-Appellees-Respondents.	_____ Term, 2024 Petition Docket No. _____

BYPASS PETITION FOR CERTIORARI TO THE SUPREME COURT OF MARYLAND

The parties jointly request that the Supreme Court of Maryland grant *certiorari* on Defendant-Petitioner's appeal from the decision of the Circuit Court for Prince George's County upholding the constitutionality of the Maryland Child Victims Act of 2023 ("CVA").[1] This case is the first to address the issue of the CVA's constitutionality in any Maryland circuit court. Granting *certiorari* will expedite these proceedings by having the Supreme Court resolve the important constitutional issue in this case without waiting for a ruling from the Appellate Court of Maryland. Plaintiffs deserve clarity as to whether they can seek recovery on their claims for sexual abuse, and defendants deserve clarity as to whether they are to be

[1] 2023 Md. Laws chs. 5 and 6.

potentially held liable. Just as importantly, granting *certiorari* now will result in an expedient, efficient resolution of this significant legal question, as there is no doubt that review by the Supreme Court will be sought regardless of the decision reached by the Appellate Court of Maryland. Resolving this issue with finality via a decision from this Court as soon as practicable will promote judicial economy, is in the public interest, and will provide Marylanders with a final ruling on this most significant issue. Thus, the parties respectfully request that the Supreme Court of Maryland grant *certiorari* to consider the instant appeal without a ruling from the intermediate appellate court.

Procedural History

On October 1, 2023, Plaintiffs-Respondents filed a putative class action complaint against Defendant-Petitioner Roman Catholic Archbishop of Washington (hereinafter, the "Archdiocese") on behalf of all persons who were abused as minors by employees or agents of the Archdiocese, or on property owned or controlled by the Archdiocese, from 1939 to the present. The putative class representatives claim as follows: Plaintiff John Doe alleges that he was abused in the 1990s by a priest and a deacon at St. Martin of Tours Catholic Church and Catholic School in Montgomery County. Compl. at ¶¶ 127–42. Plaintiff Richard Roe alleges he was abused in the mid-1960s by an unidentified priest at St. Jerome Parish in Hyattsville. *Id.* at ¶¶ 150–58. Plaintiff Smith alleges that he was abused in or about 1965 by a priest at St.

Catherine Labouré in Wheaton. *Id.* at ¶¶ 160–68.

Plaintiffs' claims are brought under the CVA. The law states that it prospectively abolishes the statute of limitations for claims of sexual abuse of minors, and states that it retrospectively revives claims involving alleged child sexual abuse "notwithstanding any time limitation under a statute of limitations [or] a statute of repose." Md. Code Ann., Courts & Judicial Proceedings § 5-117(b) (2023).

On November 3, 2023, the Archdiocese moved to dismiss the Complaint, arguing that Plaintiffs' claims are barred by the 2017 version of § 5-117(d)—which the Archdiocese contends is a statute of repose—as well as by the applicable statutes of limitations. The Archdiocese argued that they possessed vested rights, and that those rights were abrogated by the CVA in violation of Article 24 of the Maryland Declaration of Rights (the due process clause) and Article III, Section 40 of the Maryland Constitution (the takings clause). Ex. 1 (Archdiocese Mem. Law).[2] Plaintiffs opposed, arguing that the 2017 law was a statute of limitations, not a statute of repose, and even if it was a statute of repose, the law created no vested rights; as such, the CVA was a valid legislative enactment. Ex. 2 (Plaintiffs' Mem. Law). The Attorney General of Maryland filed an *amicus* brief asserting that the CVA is

[2] For the sake of brevity, the voluminous exhibits referenced in Exhibits 1, 2 and 4 hereto have been omitted. They are available upon request.

constitutional. Ex. 3 (AG Mem. Law). The Archdiocese filed a reply. Ex 4 (Archdiocese Reply).

On March 6, 2024, the Circuit Court for Prince George's County (Bright, J.) heard argument and, ruling from the bench, concluded that the CVA is constitutional and thus denied the Archdiocese's motion. The Court docketed its order denying the motion on March 12, 2024. Ex. 5 (docket sheet); Ex. 6 (transcript of ruling).

On March 19, 2024, the Archdiocese noted an interlocutory appeal pursuant to a provision of the CVA authorizing such an appeal from an order "[d]enying a motion to dismiss a claim filed under § 5-117 of this article if the motion is based on a defense that the applicable statute of limitations or statute or repose bars the claim and any legislative action reviving the claim is unconstitutional." Md. Code Ann., Courts & Judicial Proceedings § 12-303(3)(xii).

Following the March 6 ruling, at least two other Maryland circuit courts have ruled on the issue. On March 19, 2024, the Circuit Court for Harford County affirmed the constitutionality of the CVA in *Doe v. Board of Education of Harford County*, explaining its reasoning from the bench. *See* Ex. 7 (Transcript, *Doe v. Board of Education of Harford County*, Case No. C-12-CV-23-000767). The Circuit Court for Montgomery County concluded that the CVA is unconstitutional. *See* Ex. 8 (Memorandum Opinion, *Schappelle v. Roman Catholic Archdiocese of Washington*, Case No. C-15-CV-23-003696 (April 1, 2024). These decisions have been or will be

appealed.

Additionally, the United States District Court for the District of Maryland has certified the question of the constitutionality of the CVA to this Court, or expressed its intent to do so, in two different cases. *See* Order, *Jane Doe v. The Church of Jesus Christ of Latter-Day Saints*, Case No. JKB-23-02900 (D. Md.) (April 5, 2024); Order, *Bunker v. The Key School, Inc.*, Case No. MJM-23-26662 (D. Md.) (April 11, 2024).

Questions Presented

Plaintiffs submit that the following questions are presented:

1. Whether the Child Victims Act of 2023 is constitutional;

2. Whether the 2017 version of Md. Code Ann., Courts & Judicial Proceedings § 5-117(d) is a statute of limitations or statute of repose;

3. Whether the General Assembly had the authority to abolish the time limitations applicable to minors who were sexually abused regardless of whether the 2017 version of Md. Code Ann., Courts & Judicial Proceedings § 5-117(d) established a statute of limitations or a statute of repose; and

4. Whether the 2017 version of Md. Code Ann., Courts & Judicial Proceedings § 5-117(d) created vested rights that, under Article 24 of the Maryland Declaration of Rights (the due process clause) or Article III, Section 40 of the Maryland Constitution (the takings clause), could not be abrogated by the General Assembly under any circumstances.

The Archdiocese submits that the following questions are presented:

1. Whether the 2017 version of Md. Code Ann., Courts & Judicial Proceedings § 5-117(d) is a statute of repose or a statute of limitations.

2. Whether the 2017 version of Md. Code Ann., Courts & Judicial Proceedings § 5-117(d) created substantive, vested rights in the Archdiocese, the abrogation of which violated Article 24 of the Maryland Declaration of Rights (the due process clause) or Article III, Section 40 of the Maryland Constitution (the takings clause).

3. Whether the applicable statutes of limitations created substantive, vested rights in the Archdiocese, the abrogation of which violated Article 24 of the Maryland Declaration of Rights (the due process clause) or Article III, Section 40 of the Maryland Constitution (the takings clause).

Pertinent Statutory Provisions

Md. Code Ann., Courts & Judicial Proceedings § 5-101; Md. Code Ann., Courts & Judicial Proceedings § 5-201; Md. Code Ann., Courts & Judicial Proceedings § 5-117 (2003, 2017, and 2023 versions); 2017 Md. Laws ch. 12; 2017 Md. Laws ch. 656; 2023 Md. Laws ch. 5; 2023 Md. Laws ch. 6.

Argument

A petition for *certiorari* to the Supreme Court of Maryland "may be filed either before or after the Appellate Court of Maryland has rendered a decision." Md. Code Ann., Courts & Judicial Proceedings § 12-201. At its discretion, the Supreme Court is authorized to "issue the writ of certiorari on its own motion." *Id*. This authority is referred to as the Court's "bypass jurisdiction." *Hollingsworth v. Severstal Sparrows Point, LLC*, 448 Md. 648, 654 (2016).

"If the Supreme Court of Maryland finds that review of the case described in § 12-201 of this subtitle is desirable and in the public interest, the Supreme Court of Maryland shall require by writ of certiorari that the case be certified to it for review

and determination. The writ may issue before or after the Appellate Court of Maryland has rendered a decision." Md. Code Ann., Courts & Judicial Proceedings § 12-203.

This Court regularly exercises bypass jurisdiction in cases of "public importance." *Montgomery Cnty. v. Glenmont Hills Assocs. Priv. World at Glenmont Metro Ctr.*, 402 Md. 250, 254 (2007). This case presents a matter of significant public importance. A ruling on the constitutionality of the CVA—the first of its kind at any appellate level—will have significant ramifications for potential plaintiffs and defendants.

Judicial economy would best be served by resolving this issue as soon as practicable for many reasons. One report estimated "hundreds of lawsuits" have been filed under the CVA. Alex Mann, *Federal Judge Plans to Send Child Victims Act Question to Maryland Supreme Court*, BALTIMORE SUN (Mar. 22, 2024), https://www.baltimoresun.com/2024/03/22/federal-lawsuit-maryland-child-victims-act. Additional potential plaintiffs and defendants alike have a strong interest in a prompt resolution of the constitutional question.

There is also great public interest in the question of the CVA's constitutionality. The media has reported extensively about its passage, the resulting

Chapter 11 bankruptcy filing by the Roman Catholic Archbishop of Baltimore,[3] and the challenges levied against the law. Given the substantial impact of the CVA, and the public attention to the law, it is essential that the constitutionality of the CVA be resolved by this Court—and that it be resolved expeditiously.

Finally, the parties respectfully request that this Court grant *certiorari* in this case rather than only addressing this issue through the certified questions. Plaintiffs in this case purport to represent all persons with potential claims against the Archdiocese. These parties, therefore, have a strong interest in being heard before this Court issues a ruling that will be binding on them. As seen in the briefing attached as exhibits, the motions practice at the circuit court involved a robust, comprehensive discussion of the substantive issues involved. The parties respectfully submit that this Court should have the benefit of the parties' arguments before addressing the constitutionality of the CVA. Thus, the parties respectfully request that this Court exercise bypass jurisdiction.

Other Matters Required by Rule 8-303(b)

This case is captioned *John Doe, et al., individually and on behalf of all others similarly situated v. Roman Catholic Archbishop of Washington*, in the Circuit Court

[3] On September 29, 2023—only two days before the CVA became effective—the Roman Catholic Archbishop of Baltimore filed for Chapter 11 bankruptcy. *See In re Roman Catholic Archbishop of Baltimore*, Case No. 23-16969-MMH (Bankr. Md.).

for Prince George's County, No. C-16-CV-23-004497. It is pending in the Appellate Court of Maryland, Roman Catholic Archbishop of Washington v. John Doe, et al., No. ACM-REG-0107-2024. No briefs have been filed, and no briefing schedule has been set. This interlocutory appeal is authorized by Md. Code Ann., Courts & Judicial Proceedings § 12-303(3)(xii).

Attached are the Circuit Court for Prince George's County's docket sheet, the transcript of the Circuit Court's ruling in this case, the transcript of the ruling in *Doe v. Board of Education of Harford County*, Case No. C-12-CV-23-000767 (March 19, 2024), and the written opinion in *Schappelle v. Roman Catholic Archdiocese of Washington*, Case No. C-15-CV-23-003696 (April 1, 2024).

Conclusion

For the foregoing reasons, the parties respectfully submit that this case meets the criteria justifying the Court's exercise of bypass jurisdiction. As such, the parties respectfully request that the Court issue a writ of *certiorari*.

Dated: April 16, 2024

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 1,948 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief is in Times New Roman, 14-point font and complies with the font, spacing, and type size requirements stated in Rule 8-112.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2024, a copy of the foregoing Bypass Petition for Certiorari to the Supreme Court of Maryland was served via MDEC on all parties entitled to service.

/s/ Jonathan Schochor
Jonathan Schochor (#7406010179)

EXHIBIT 1

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY

JOHN DOE, RICHARD ROE, and MARK SMITH, individually and on behalf of all others similarly situated, Plaintiffs, v. ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, Defendant.	Case No. C-16-CV-23-004497

MEMORANDUM IN SUPPORT OF DEFENDANT ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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Introduction

Plaintiffs, John Doe, Richard Roe, and Mark Smith, bring this putative class action against the Archdiocese of Washington,[1] alleging that they were sexually abused as minors. Plaintiffs' allegations date as far back as the 1960s. Under the applicable statute of limitations, the named Plaintiffs' claims against the Archdiocese have been barred since 2010 (Doe) and the 1970s (Roe and Smith), based on the limitations periods then in place. Plaintiffs' potential claims were permanently and irrevocably extinguished when the Maryland legislature explicitly granted "repose" in 2017 to non-perpetrator defendants against abuse claims that were not brought within 20 years after the plaintiff's reaching the age of majority. Ex. 1 (2017 Md. Laws ch.12); Ex. 2 (2017 Md. Laws ch. 656).

Plaintiffs rest their hopes of litigating their long-expired claims on the Child Victims Act of 2023 ("CVA"). The CVA not only abolished the statute of limitations altogether for claims of sexual abuse of minors going forward; it also purported to "repeal[]" the "statute of repose" that was enacted for non-perpetrator defendants in 2017 and to revive claims that were extinguished by the statute of repose. Ex. 3 (2023 Md. Laws ch. 5); Ex. 4 (2023 Md. Laws ch. 6). But a statute of "repose," by its very nature, cannot be retroactively "repealed," and the legislature's effort to do so was a clear violation of the due process clause and takings clause of the Maryland Constitution.

* * *

Over a period of decades, the Maryland legislature considered whether to extend the limitations period governing claims arising from sexual abuse of a minor. In 2003, it extended

[1] The Roman Catholic Archbishop of Washington, a Corporation Sole, operates under the trade name the Archdiocese of Washington.

the limitations period from 3 to 7 years after the plaintiff attained the age of majority. In 2017, the legislature again extended the limitations period—this time, from 7 to 20 years after the age of majority. But by their terms, both of those extensions applied only to claims that were not already time-barred. To eliminate any possibility that time-barred claims could ever be revived against a non-perpetrator defendant like the Archdiocese, the legislature in 2017 explicitly adopted for those defendants what it called a "statute of repose." *See* Ex. 1 (2017 Md. Laws ch. 12), § 3; Ex. 2 (2017 Md. Laws ch. 656), § 3.

The statute of repose provides: "[i]n no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 5-117(d) (West 2017). That provision, the law states, "shall be construed to apply both prospectively and retroactively *to provide repose* to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017," the date the law went into effect. Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added). The 2017 law thus reflected a careful balancing of interests by the legislature—a substantial extension of the limitations period for unexpired claims paired with (among other things) an air-tight guarantee that non-perpetrator defendants would never face revival of expired claims.

In Maryland, a statute of repose creates substantive rights that vest in defendants. *See Anderson v. United States*, 427 Md. 99, 120, 46 A.3d 426, 438–39 (2012). Specifically, the 2017 statute of repose vested a substantive right in the Archdiocese to be free from "[a]n action for

damages," like this one, "arising out of an . . . incident or incidents of sexual abuse that occurred while the victim was a minor . . . more than 20 years after the date [on which] the victim . . . reache[d] the age of majority." Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(d) (West 2017). Under Article 24 of the Maryland Declaration of Rights (the due process clause), and Article III, Section 40 of the Maryland Constitution (the takings clause), that right, once vested, may not be withdrawn. *See, e.g.*, *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 623, 805 A.2d 1061, 1072 (2002).

Indeed, even if the legislature had not explicitly enacted a "statute of repose" in 2017, its attempt in 2023 to revive claims that had previously expired under the statute of limitations would violate the due process and takings clauses of the Maryland Constitution. "[W]hen a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process." *Rice v. Univ. of Md. Med. Sys. Corp.*, 186 Md. App. 551, 563, 975 A.2d 193, 200 (2009); *see* Maryland Declaration of Rights, art. 24; *see also Dua*, 370 Md. at 623, 805 A.2d at 1072 (holding that Maryland's due process clause and takings clause each bars the abrogation of vested rights); Maryland Constitution, art. III, § 40.

For these and other reasons set forth below, the CVA violates the Maryland Constitution to the extent it purports to revive long expired claims against the Archdiocese. Plaintiffs' Complaint should, therefore, be dismissed.

Background

I. Factual Allegations

Plaintiffs purport to represent a class of "[a]ll persons . . . who were subjected to . . . sexual abuse or sexual misconduct as minors *at any time from 1939 through the present* . . . ." Compl. ¶ 181 (emphasis added). There are three named Plaintiffs.

John Doe. Plaintiff Doe is an adult, born in 1985, who alleges that he was sexually abused beginning in 5th grade by a deacon and, separately, a priest at St. Martin Catholic Church and Catholic School in Montgomery County. *Id.* ¶¶ 127–42. The Complaint alleges in conclusory terms that the Archdiocese "knew or should have known that [the deacon and priest] posed a danger to children before allowing them to minister in the Archdiocese and at St. Martin," *id*. ¶ 148, but it states no facts to support that allegation. The Complaint does not allege that the deacon or the priest had a history of abuse, much less that the Archdiocese was aware of any such history.

Although the Court must accept the allegations of the Complaint for purposes of this motion, the Archdiocese disputes the factual allegations and the legal basis for Plaintiff Doe's claims. Prior to receipt of the Complaint in this action, the Archdiocese had never received any allegation that the deacon or priest had ever engaged in any sexual misconduct. Both men are living and deny that they ever abused Plaintiff Doe or anyone else.

Richard Roe. Plaintiff Roe is an adult, born in the 1950s, who alleges that he was sexually abused as a minor by an unidentified priest at St. Jerome Parish in Hyattsville. *See id.* ¶¶ 150–58. Plaintiff alleges that the abuse occurred in the "mid-1960s" when he was an altar boy "roughly between the ages of 9 and 12." *Id*. ¶ 152. Again, the Complaint alleges in conclusory terms that the Archdiocese "knew or should have known that this [unidentified] priest was a danger to children before he was placed at St. Jerome," and that the abuse "was foreseeable to the Archdiocese before [this priest] was accepted by the Archdiocese and placed at St. Jerome." *Id.* ¶¶ 157–58. But the Complaint states no facts to support that allegation. The Complaint does not allege this unnamed priest had a history of abuse, or that the Archdiocese was aware of any such history. As noted, the priest who allegedly abused Plaintiff Roe is not

identified in the Complaint. Although the Court must accept the allegations of the Complaint for purposes of this motion, the Archdiocese disputes the factual allegations and the legal basis for Plaintiff Roe's claims.

***Mark Smith*.** Plaintiff Smith is an adult, born in or about 1953, who alleges that was sexually abused in or about 1965, when he was 12 years old, by Rev. Robert J. Petrella at St. Catherine Labouré in Wheaton. *See id.* ¶¶ 160–68. Petrella was permanently removed from ministry in 1989 and formally laicized in 2003. *Id.* ¶¶ 172, 174.

The Complaint alleges the Archdiocese "knew or should have known that Petrella was a danger to children before he was placed at St. Catherine's where he abused Smith," and that the abuse "was foreseeable to the Archdiocese before [Petrella] was accepted by the Archdiocese and placed at St. Catherine's." *Id.* ¶¶ 178–79. But the Complaint does not allege any facts to support this allegation. Again, although the Court must accept the allegations of the Complaint for purposes of this motion, the Archdiocese disputes the factual allegations and the legal basis for Plaintiff Smith's claims. While the priest identified by Plaintiff Smith is named on the Archdiocese's list of clergy who have been credibly accused of sexual abuse of a minor, the Archdiocese had no notice in 1965, when Smith was allegedly abused, that this priest posed a danger to minors.

II. Legislative Record

Over the course of three decades, beginning in 1994, the Maryland legislature considered multiple proposals to expand the limitations period for civil claims arising from the sexual abuse of minors, both on a prospective and retroactive basis. As explained in detail below, the legislature extended the limitations period on a prospective basis in 2003 and 2017. But recognizing the obvious constitutional impediment, the legislature repeatedly rejected proposals to revive such claims that had already expired. And to foreclose the possibility that any future

legislature might reconsider the question—at least for non-perpetrator defendants like the Archdiocese—in 2017 the legislature explicitly enacted a "statute of repose" for such defendants, conferring upon them a vested right to be free of claims like those asserted in this case.

A. 1994 to 2016: The Legislature Repeatedly Declines to Revive Time-Barred Claims.

1. 1994: The Legislature Refuses to Extend the Limitations Period.

The general limitations period for civil causes of action in Maryland is three years. CJ §§ 5-101, 5-201.[2] The Maryland legislature "first considered in 1994 extending the generally-applicable three-year statute of limitations on civil claims by alleged child sexual abuse victims." *Doe v. Roe*, 419 Md. 687, 694, 20 A.3d 787, 791–92 (2011). That year, House Bill 326 passed the House of Delegates. The bill was referred to the Senate, but "received an unfavorable report" from the relevant Senate committee. *See id.* at 695, 20 A.3d at 792. House Bill 326 was never enacted, and the three-year general limitations period continued to govern claims arising from alleged sexual abuse of a minor.

2. 2003: The Legislature Expands the Limitations Period Prospectively, but Refuses to Revive Time-Barred Claims.

In 2003, the Maryland legislature revisited the issue. That year, the legislature expanded the limitations period for claims arising from sexual abuse of a minor from three to seven years after the age of majority. Ex. 6 (2003 Md. Laws ch. 360); Ex. 7, CJ § 5-117 (West 2003). The 2003 law expressly disclaimed any attempt to revive time-barred claims. Ex. 6 (2003 Md. Laws

[2] Under CJ § 5-201(a), "[w]hen a cause of action . . . accrues in favor of a minor . . . that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed." *Id.* There is no statute of limitations for the prosecution of felony sexual abuse of a minor in Maryland. *See Clark v. State*, 364 Md. 611, 626 n.8, 774 A.2d 1136, 1144 n.8 (2001) ("Maryland has no statute of limitations on felonies or penitentiary misdemeanors beyond that imposed by the life of the offender.").

ch. 360), § 2 ("[T]his Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003.").

The 2003 legislative record reflects concern about the lawfulness of reviving time-barred claims. An early, unenacted version of the 2003 bill purported to revive "any action that would have been barred by the application of the period of limitation applicable before" the bill's effective date. Ex. 8 (S.B. 68, First Reading (Md. 2003)), at 2.[3] That language was stricken, *see* Ex. 6 (2003 Md. Laws ch. 360), at 2 ll. 8–10, following the receipt of a letter from the Office of the Attorney General, drafted in response to questions from then-Senator Brian Frosh. *Doe v. Roe*, 419 Md. at 697-99, 20 A.3d at 793-94.

The Assistant Attorney General advised Senator Frosh that "it is possible, given the actions of other states, and its own statement in *Dua* [*v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002)], that the [Maryland] Court could conclude that retroactive application to revive barred causes of action violates Due Process." *Doe v. Roe*, 419 Md. at 698, 20 A.3d at 794 (quoting "Rowe Letter, at 4"). Accordingly, the bill was enacted with specific language barring the retroactive revival of claims previously barred by the statute of limitations. Ex. 6 (2003 Md. Laws ch. 360), § 2.

3. 2005-2016: The Legislature Repeatedly Declines to Extend Limitations Period or to Revive Expired Claims.

After 2003, legislative attempts to expand the limitations period for claims arising from sexual abuse of a minor—and even in some cases to revive time-barred claims—continued. Bills were proposed in 2005 (H.B. 1376), 2006 (H.B. 1147, H.B. 1148), 2007 (S.B. 575), 2008 (H.B. 858), 2009 (H.B. 556, S.B. 238), 2015 (H.B. 725, 1214, S.B. 668), and 2016 (H.B. 1215, S.B.

[3] *Available at* https://mgaleg.maryland.gov/2003rs/billfile/sb0068.htm (click on "PDF" link ("Bill Text: First Reading (PDF)") in "Documents" section near the bottom of the page).

69). None was enacted. These bills elicited concern about the difficulty of defending against stale claims and the lawfulness of reviving expired claims. *See, e.g.*, Ex. 9 (Maryland Chamber of Commerce, Legislative Position: S.B. 238 to S. Jud. Proc. Comm. (Feb. 5, 2009)); Ex. 10 (Letter from Maryland State Bar Assoc. to S. Jud. Proc. Comm. (Feb. 5, 2009)); Ex. 11 (Testimony of Sen. Delores G. Kelley to S. Jud. Proc. Comm. (Feb. 5, 2009)).[4]

B. 2017: The Legislature Strikes a Balance Between the Rights of Plaintiffs and Non-Perpetrator Defendants.

1. The Text of the 2017 Law Explicitly States that it Extends the Limitations Period Prospectively, Does Not Revive Time-Barred Claims, and Enacts a Statute of Repose.

In 2017, the Maryland legislature returned to the issue. This time it enacted a law "[for] the purpose of altering the statute of limitations" and "establishing a statute of repose." Ex. 1 (2017 Md. Laws ch. 12); Ex. 2 (2017 Md. Laws ch. 656).

Section 1 of the 2017 law modified CJ § 5-117(b) (West 2003) (Ex. 7) to authorize minors to bring suit at the time of injury, and to extend the statute of limitations for non-barred claims until the later of 20 years after the victim reaches majority or 3 years after the defendant is convicted of certain sexual abuse crimes. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(b) (West 2017). For claims filed against "a person or governmental entity that is not the alleged perpetrator of the sexual abuse" that are filed more than 7 years after the victim reaches the age of majority, the 2017 law required a showing of "gross negligence" (not simple negligence) in order to support liability. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(c) (West 2017).

Section 2 of the 2017 law provided that the expanded statute of limitations "may not be

[4] As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 238, 426th Gen. Assemb., Reg. Sess., (Md. 2009).

construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before" the law's effective date. Ex. 1 (2017 Md. Laws ch. 12), § 2; Ex. 2 (2017 Md. Laws ch. 656), § 2.

In addition to providing that the expanded statute of limitations does not apply to claims that were already expired, the 2017 law went one step further—by establishing a statute of repose for actions against non-perpetrator defendants like the Archdiocese:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(d) (West 2017).

Section 3 of the law provided that "*the statute of repose under § 5-117(d) . . . shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017*," the date the law went into effect. Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added). The law also removed certain impediments to suing state and county governments. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; CJ § 5-304(a)(2); Md. Code Ann., State Gov't § 12-106(a)(2) (West 2017).

2. The Legislative Record States that the 2017 Law Does Not Revive Time-Barred Claims and that it Enacts a Statute of Repose.

The legislative record states that the 2017 law did not revive time-barred claims. When asked whether "[t]his bill is entirely prospective," bill sponsor Senator Kelley responded, "Right,

it's not retroactive." S. Jud. Proc. Comm. Hr'g, at 46:45-47:15 (Feb. 14, 2017).[5] She continued, "[a]nything that's barred up to the date when the new bill will become effective is still barred." *Id.* In her written testimony, Senator Kelley stated "[u]nder current law, and under the provisions of Senate Bill 505, a cause of action cannot apply retroactively to revive any action that was barred by the statute of limitations applicable before the new statute takes effect (in the case of SB 505, that would be October 1, 2017)." Ex. 12 (Testimony of Senator Delores G. Kelley Regarding S.B. 505 Before the S. Jud. Proc. Comm. (Feb. 14, 2017)), at 2.[6]

The legislative record refers repeatedly to the statute of repose, which was added by amendment on both the House and Senate sides.[7] On the floor, the Senate was told that the *"[b]ill also creates a statute of repose* for specified civil actions relating to child sex abuse," S. Floor, H.B. 642, 437th Gen. Assemb., Reg. Sess., at 2:16:32–2:17:48 (Mar. 23, 2017) (emphasis added).[8] Committee reports also refer to the "statute of repose" enacted in CJ § 5-117(d) (West 2017). For example, the Senate Judicial Proceedings Committee Floor Report for H.B. 642 provided that *"[t]he bill also creates a statute of repose* for specified civil actions relating to child sexual abuse." Ex. 15 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 1 (Short Summary) (emphasis added).[9]

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[5] *Available at* https://mgahouse.maryland.gov/mga/play/b7cad40e27314b558edd37984c2aa82d1d?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=1425000.

[6] Two Senators raised concerns about defendants' ability to confront stale civil claims in light of general record retention practices. *See* S. Jud. Proc. Comm. Hr'g, at 1:01:55–1:05:55 (Feb. 14, 2017); *see also supra* note 5.

[7] *See* Ex. 13 (Amendment 252810/1 to H.B. 642, 437th Gen. Assemb., Reg. Sess. (Md. 2017)); Ex. 14 (Amendment 458675/1 to S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017)).

[8] *Available at* https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-50-?year=2017RS.

[9] *See also* Ex. 15 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 3 (Summary of Bill) ("*The bill establishes a 'statute of repose'* prohibiting a person from filing an

Committee reports explained that the statute of repose in CJ § 5-117(d) shall apply prospectively and retroactively "to provide repose." Ex. 15 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 2 (Summary of Bill) ("*The statute of repose* created by the bill *must be construed to* apply both prospectively and retroactively to *provide repose* to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." (emphasis added)).[10] The legislative record also stated this language "confirms that the statute of repose applies retroactively to *provide vested rights to defendants*," and distinguished statutes of limitations from statutes of repose. Ex. 18 (Discussion of certain amendments in SB0505/818470/1), at 1 (emphasis added).

The Maryland Catholic Conference supported the 2017 bill, including the prospective extension of the limitations period for twenty years. *See* H. Jud. Comm. Hr'g, at 37:28–38:28 (Mar. 15, 2017) (Session #1).[11] As the lead sponsor of the House Bill explained: "[A]s part of

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action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." (emphasis added)); Ex. 16 (S. Jud. Proc. Comm., Floor Report: S.B. 505 (Md. 2017)), at 2 (Summary of Bill) (same)); Ex. 17 (Dept. of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, Third Reader—Revised: S.B. 505 (Md. 2017)), at 1 (providing that the bill "establishes a *statute of repose* for specified civil actions" (emphasis added)); *id.* at 2 (Bill Summary) ("*The bill establishes a 'statute of repose'* prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." (emphasis added)). These three Exhibits are excerpted from the bill files maintained by the Department of Legislative Services Library for H.B. 642 and S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

[10] *Accord* Ex. 16 (S. Jud. Proc. Comm., Floor Report: S.B. 505 (Md. 2017)), at 2 (Summary of Bill) (same); Ex. 17 (Dept. of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, Third Reader—Revised: S.B. 505 (Md. 2017)), at 1 (same).

[11] *Available at* https://mgahouse.maryland.gov/mga/play/c138ea702fa24d80a1d80bb8cc8a68d71d?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c.

this agreement in working with the Church, I've given my word that once this bill becomes law, that I won't come back to the well, I won't petition for anything, I won't try and quote-unquote improve the bill, and I will take it as it is. That's exactly what I plan on doing . . . . I'm just very grateful that the Church . . . did step up." *Id.* at 36:46–37:02.

C. 2019-2021: The Legislature Declines to Eliminate the Statute of Limitations and the Statute of Repose.

1. 2019: The Legislature Refuses to Revoke the Statute of Repose After the Office of Attorney General Questions the Constitutionality of a Repeal.

In 2019, the lead House sponsor of the 2017 law sponsored a new bill eliminating the statute of limitations altogether and providing a two-year window within which previously time-barred claims could be brought. Ex. 19 (Third Reading, H.B. 687, 427th Gen. Assemb., Reg. Sess. (Md. 2010)), §§ 1–2.[12] Legislators and witnesses debated the meaning and effect of the 2017 statute of repose. The Office of Attorney General issued a letter opining that the 2017 law "must be read" to include a statute of repose, and that repealing the statute of repose "*would most likely be found unconstitutional* as interfering with vested rights as applied to cases that were covered by" CJ § 5-117(d) and § 3 of the 2017 law. Ex. 20 (Letter from Kathryn M. Rowe, Asst. Att'y Gen., to Hon. Kathleen M. Dumais (Mar. 16, 2019)), at 1–2 (emphasis added). Accordingly, the proposed bill was not enacted.

2. 2020-2021: The Legislature Again Refuses to Revoke the Statute of Repose After the Office of Attorney General Questions the Constitutionality of a Repeal.

In 2020 (H.B. 974) and 2021 (H.B. 263, S.B. 134), bills reviving claims barred by the

[12] *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0687?ys=2019rs#:~:text=History (expanding the "History" tab near the bottom of the page and clicking the link beginning "Text - Third - Civil Actions").

2017 law were again proposed. In 2021, in response to a question from Senator William C. Smith, Jr., the Office of Attorney General again addressed the constitutionality of repealing the statute of repose to allow time-barred claims to be brought in a two-year "window." Assistant Attorney General Rowe reiterated that "it seems clear that there is a statute of repose" in CJ § 5-117(d). Ex. 21 (Letter from Kathryn M. Rowe, Asst. Att'y Gen., to Hon. William C. Smith, Jr. (June 23, 2021)), at 2. As a result, the Attorney General's Office concluded, it is "unlikely that a court would find [] that a change in the law creating a new two year period during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose." *Id*. at 3. In other words, it was likely that a court would find the proposed legislation modifying the statute of repose to be unconstitutional. Again, none of the proposed bills was enacted.

D. 2023: In the CVA, the Legislature Purports to Retroactively Repeal the Statute of Limitations and the Statute of Repose.

In 2023, however, the legislature passed, and the Governor signed into law, a bill purporting to abolish the statute of limitations and the statute of repose enacted in 2017.

1. The Text Repeals the Statute of Limitations and Statute of Repose.

The Child Victims Act purports to "repeal[] the statute of limitations" and "statute of repose" for civil actions "relating to child sexual abuse." Ex. 3 (2023 Md. Laws ch. 5 (S.B. 686)); Ex. 4 (2023 Md. Laws ch. 6 (H.B. 1)). The CVA modifies CJ § 5-117(b) (West 2017) (Ex. 5) to eliminate the limitations period altogether for "an action for damages arising out of an alleged incident . . . of sexual abuse that occurred while the victim was a minor." Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1; Ex. 22, CJ § 5-117(b) (West 2023). Instead, such actions "*notwithstanding* any time limitation[s] under a statute of limitations [or] a statute of repose, . . . may be filed at any time," unless the "alleged victim of abuse is deceased at

the commencement of the action." Ex. 3 (2023 Md. Laws ch. 5), § 1 (emphasis added); Ex. 4 (2023 Md. Laws ch. 6), § 1 (emphasis added); Ex. 22, CJ § 5-117(b), (d) (West 2023).

The CVA explicitly repeals §§ 2 and 3 of the 2017 law. Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1. Those provisions of the 2017 law (respectively) disclaimed the revival of time-barred claims and provided that "the statute of repose under § 5-117(d) . . . shall be construed to apply both prospectively and retroactively to provide repose . . . regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Ex. 1 (2017 Md. Laws ch. 12), §§ 2–3; Ex. 2 (2017 Md. Laws ch. 656), §§ 2–3. Section 2 of the CVA provides that "it is the intent of the General Assembly that any claim of sexual abuse that occurred while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim." Ex. 3 (2023 Md. Laws ch. 5), § 2; Ex. 4 (2023 Md. Laws ch. 6), § 2. Section 3 of the CVA states "[t]hat this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023." Ex. 3 (2023 Md. Laws ch. 5), § 3; Ex. 4 (2023 Md. Laws ch. 6), § 3.

The CVA also eliminates the required finding of "gross negligence" under CJ § 5-117(c) (West 2017) (Ex. 5) for claims filed more than seven years after alleged abuse against "a person or governmental entity that is not the alleged perpetrator" of the sexual abuse. Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1. Under the CVA, a finding of simple negligence supports a judgment against non-perpetrator defendants, however long after the alleged abuse the action is filed.

Finally, the CVA raises the stakes for non-governmental defendants by increasing the cap on non-economic damages. The generally applicable cap started at $350,000 in 1986, increased

to $500,000 in 1994, and has increased by $15,000 each October beginning on October 1, 1995. CJ § 11-108(b) (West 2023). Under that schedule, a claim that accrues today is capped at $935,000 in non-economic damages. *See id.* But the CVA created a special rule for claims against non-governmental defendants "that would have been barred by a time limitation before October 1, 2023." Ex. 22, CJ § 5-117(c) (West 2023). For those stale claims, the cap is $1,500,000. *Id.*[13]

Recognizing that a court might well invalidate the CVA's revival of expired claims, the legislature included a specific provision that "if any provision of this Act or the application thereof . . . is held invalid, . . . the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of th[e] Act are declared severable." Ex. 3 (2023 Md. Laws ch. 5), § 4; Ex. 4 (2023 Md. Laws ch. 6), § 4. The legislature also provided for an interlocutory appeal from any order denying a motion to dismiss that is "based on a defense that the applicable statute of limitations or statute of repose bars the claim . . . and any legislative action reviving the claim is unconstitutional." Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1; CJ § 12-303(3)(xii) (West 2023).

2. The Legislative Record Reflects Serious Doubts About the CVA's Constitutionality.

As in the past, *see supra* Background Section II.A.3, the legislative record in 2023 reflected serious doubts about the constitutionality of reviving claims that had previously

[13] The CVA also increased the damages cap for claims of sexual abuse made against the state, local governments, and county boards of education to $890,000. Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1; CJ § 5-303(a)(4) (West 2023). But those entities' exposure is still less than other defendants' under both the ordinary schedule and the CVA's increased cap for previously barred claims.

expired—indeed, for which non-perpetrators had been explicitly granted "repose." In a letter to the General Assembly, Attorney General Brown acknowledged that it was "possible" the CVA's "retrospective reach to time barred actions would be found to be unconstitutional" by the courts. Ex. 23 (Letter from Anthony G. Brown, Att'y Gen., to Hon. William C. Smith, Jr. (Feb. 22, 2023)), at 3. The Attorney General concluded that he could "in good faith defend the legislation should it be challenged in court," because the CVA was "not clearly unconstitutional." *Id.* at 3.

E. The Archdiocese of Washington Has Extraordinary Policies To Prevent Abuse of Young People

The legislative and public record in 2017 and in other years reflects the strong policies that have been adopted by non-perpetrator religious institutions in Maryland to prevent the abuse of young people.[14] The Archdiocese of Washington has had a zero-tolerance policy with respect to sexual abuse of minors for decades.[15] An Advisory Board oversees the Archdiocese's Child Protection Policy, and includes experts in law enforcement, the investigation of sexual abuse allegations, and the counseling of victims.[16] Its Office of Child Protection and Safe Environment oversees more than 200 child protection coordinators in parishes, schools and other locations.[17]

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[14] *See, e.g.*, Ex. 24 (Md. Catholic Conf., Testimony to the S. Jud. Proc. Comm. Re: S.B. 505 & 585 (Feb. 14, 2017)), at 2–4; Ex. 25 (Md. Catholic Conf., Testimony to H. Jud. Comm. Re: H.B. 642 (Feb. 23, 2017)), at 2–4; Ex. 26 (Md. Catholic Conf., Testimony Opposing H.B. 641 (Feb. 23, 2017)), at 3, 6–7; Ex. 27 (Md. Catholic Conf., Testimony Opposing H.B. 974 (Feb. 20, 2020)), at 3–4. These exhibits are excerpts from the bill files of S.B. 505 (2017), H.B. 642 (2017), and H.B. 641 (2017), and H.B. 974 (2020)—all maintained by the Department of Legislative Services Library.

[15] *See, e.g.*, Ex. 24 (Md. Catholic Conf. Testimony Re: S.B. 505 (2017)), at 3–4.

[16] *See* Ex. 28 (The Roman Catholic Archdiocese of Washington, Advisory Board, https://adw.org/about-us/resources/child-protection/advisory-board/ (last visited Oct. 23, 2023)).

[17] *See, e.g.*, Ex. 29 (Archdiocese of Washington, Advisory Board Child Protection & Safe Environment Annual Report (July 1, 2021–June 30, 2022)) (requiring that each parish and school have a child protection coordinator); Ex. 30 (Archdiocese of Washington, Who We Are, https://adw.org/about-us/who-we-are/ (last visited Oct. 23, 2023)) (identifying 139 parishes and

All clergy, and all employees and volunteers who have contact with children, are required to undergo criminal background checks and to participate in ongoing prevention and safe environment training workshops.[18] In addition, all 25,000 students in the Archdiocese's schools and religious education programs are required to receive annual safe environment and protection training.[19] Since 2003, the Archdiocese has spent an average of $350,000 annually on its child protection efforts,[20] not including what it spends on therapy and other assistance to victims regardless of whether the alleged abuse is substantiated or a legal claim against the Archdiocese can be established.[21]

Argument

I. Plaintiffs' Claims Are Time-Barred.

A. Plaintiffs' Claims Have Been Barred Under the Statute of Limitations Since No Later Than 2010 (Doe), 1979 (Roe), and 1974 (Smith).

Plaintiffs' claims have long been barred by the applicable statute of limitations.[22] Plaintiff Doe alleges abuse in the "early 5th grade," and that he was born in 1985. That means his abuse occurred in the mid-1990s. He attained majority in 2003. Therefore, the law

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90 schools).

[18] *See, e.g.*, Ex. 29 (Archdiocese of Washington, Advisory Board Child Protection & Safe Environment Annual Report (July 1, 2021–June 30, 2022)), at 3; *id.* at 1; *see also* Exs. 25–27, 31, *supra* note 14; *infra* note 20.

[19] *See* Ex.29, *supra* note 17, at 3.

[20] *See* Ex. 28 (The Roman Catholic Archdiocese of Washington, Advisory Board), *supra* note 17, at 4 (collecting annual reports disclosing expenditures from 2003 to 2022).

[21] *See, e.g.*, Ex. 29, *supra* note 17, at 4 (identifying annual financial amount devoted to therapy and counseling); Ex. 24 (Md. Catholic Conf. Testimony Re: S.B. 505 (2017)), at 4.

[22] The civil conspiracy claims "share a statute of limitations with the underlying tort." *Prince George's Cnty. v. Longtin*, 419 Md. 450, 480 (2011) (citing *Nader v. Democratic Nat'l Comm.*, 567 F.3d 692, 697 (D.C. Cir. 2009)).

extending the statute of limitations from three to seven years after the age of majority applied to Doe's claims, and those claims were time-barred in 2010.[23]

Plaintiffs Smith and Roe allege they were sexually abused by clergy in the mid-1960s, and reached the age of majority no later than the 1970s. At that time, any civil claim arising from sexual abuse sustained when he was a minor was subject to a statute of limitations for civil actions of no longer than three years.[24] *See Scarborough v. Altstatt*, 228 Md. App. 560, 567, 140 A.3d 497, 501 (2016) (applying time bar from the age when the plaintiffs reached majority). That three-year period lapsed for Roe no later than 1979 and for Smith in 1974, at which time Plaintiffs' claims were barred by the statute of limitations. *Id.* (affirming application of a three-year time bar against claims brought in 2014 by plaintiffs who reached the age of majority in 1972, 1976, and 1984).

B. Plaintiffs' Claims Were Extinguished by the 2017 Statute of Repose.

In 2017, the Maryland legislature granted "repose" to any "person or governmental entity that is not the alleged perpetrator" as to "an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor" after 20 years had passed since the claimant reached the age of majority. Ex. 1 (2017 Md. Laws ch. 12), §§ 1, 3; Ex. 2 (2017 Md. Laws ch. 656), §§ 1, 3; Ex. 5, CJ § 5-117(d) (West 2017). The statute of repose "appl[ied] both prospectively and retroactively." Ex. 1 (2017 Md. Laws ch. 12), § 3; Ex. 2

[23] "The age of majority is 18 years." Md. Code, Gen. Provisions § 1-401(a)(1).

[24] All of the Plaintiffs' claims would have been subject to the general statute of limitations for civil actions, which would have been at most three years. 1973 Md. Laws ch. 2, § 1 (three years, effective January 1, 1974). If Smith reached the age of majority before the 1973 law came into effect, a three-year general limit would still apply. *See McIver v. Russell*, 264 F. Supp. 22, 23 n.3 (D.C. Md. 1967) (replicating the pre-1974 statute of limitations—5 Md. Ann. Code art. 57, § 1 (1964 Replacement Vol.)—which also provided a three-year general statute of limitations).

(2017 Md. Laws ch. 656), § 3. As to Plaintiffs' claims, that 20-year period ended prior to 2000 for Smith and Roe and in 2023 for Doe. Accordingly, Plaintiffs' claims were barred by the applicable statute of limitations, and pursuant to the 2017 law they are barred forever.

C. No Tolling Exceptions Apply.

The statute of repose forecloses the tolling exceptions pleaded by Plaintiffs. Compl. ¶¶ 97–123. Plaintiffs allege their Complaint is timely "under the doctrines of fraudulent concealment, equitable estoppel, and equitable tolling." Compl. ¶¶ 121–22. But it is black-letter law that statutes of repose are "not tolled for any reason." *Carven v. Hickman*, 135 Md. App. 645, 652, 763 A.2d 1207, 1211 (2000) (explaining that a statute of repose "is not triggered by the discovery rule" or "tolled by a defendant's fraudulent concealment of the cause of a plaintiff's injury").

Even were this Court to construe CJ § 5-117(d) as a statute of limitations (and it should not, *see infra* Argument Section II.A.1), none of Plaintiffs' tolling exceptions applies. First, a "complaint relying on the fraudulent concealment doctrine must also contain specific allegations of how the fraud itself kept the plaintiff in ignorance of a cause of action, how the fraud was discovered, and why there was a delay in discovering the fraud, despite the plaintiff's diligence," and must plead fraud with particularity. *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 187, 689 A.2d 634, 643 (1997). Here, "[t]here is not a single specific allegation of conduct on the part of the Archdiocese that kept [Plaintiffs] in ignorance of [their] claims." *Id*. To the contrary, Plaintiffs were on notice of potential claims "against the priests as well as against the Archdiocese as their employer" when the alleged abuse occurred. *Id*.[25]

[25] In support of fraudulent concealment, the Complaint alleges that the Archdiocese had a "fiduciary, confidential, and special relationship" with Plaintiffs. Compl. ¶¶ 98, 103, 120. But the Complaint "does not offer any specific facts supporting such a relationship" between the Plaintiffs

Nor would equitable estoppel or equitable tolling apply. Equitable estoppel "will not toll the running of limitations absent a showing that the defendant 'held out any inducements not to file suit or indicated that limitations would not be pleaded,' and that the plaintiff brought his or her action within a reasonable time after the conclusion of the events giving rise to the estoppel." *Murphy v. Merzbacher*, 346 Md. 525, 535, 697 A.2d 861, 866 (1997). And "equitable tolling only will be applied to 'suspend the running of a statute of limitations . . . if the defendant holds out an inducement not to file suit or indicates that limitations will not be plead[ed]." *Kumar v. Dhanda*, 198 Md. App. 337, 353, 17 A.3d 744, 754 (2011). Here, again, there are no such alleged facts as to any Plaintiff—much less any alleged facts after the age of majority and during the applicable limitations periods that could warrant tolling.

Last, the alleged conduct plainly does not constitute a continuing violation, as Plaintiff alleges. Compl. ¶ 97. It is black-letter law that the "'continuing tort doctrine' requires that a tortious act—not simply the continuing ill effects of prior tortious acts—fall within the limitations period." *Bacon v. Arey*, 203 Md. App. 606, 662, 40 A.3d 435, 469 (2012). Here, there is no specific allegation that torts against Plaintiffs occurred after they reached the age of majority—much less that they occurred in the recent past, as would be required if Plaintiffs were to rely on this doctrine for timeliness.

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and the Archdiocese, *Dual Inc. v. Lockheed Martin Corp*., 383 Md. 151, 174, 857 A.2d 1095, 1108 (2004), and even assuming a fiduciary relationship existed, Plaintiffs were on notice of their potential claims at the time of the alleged abuse, *Archdiocese of Washington*, 114 Md. App. at 187, 689 A.2d at 643; *see Dual Inc*., 383 Md. at 174, 857 A.2d at 1108 (holding that, even had a fiduciary relationship existed, "the statute of limitations would begin to run against an aggrieved party if that party had knowledge of facts that would lead a reasonable person to undertake an investigation that, with reasonable diligence, would have revealed wrongdoing on the part of the fiduciary").

II. The CVA's Attempt to Revive Expired Claims Violates the Maryland Constitution's Prohibition on Abrogating Vested Rights.

A. The Maryland Constitution Does Not Permit the Revocation of Rights Vested Under the 2017 Statute of Repose.

"It has been firmly settled . . . that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." *Dua*, 370 Md. at 623, 805 A.2d at 1072 (endorsing categorical ban of legislation infringing vested rights). The Maryland Supreme Court has rooted this principle in Article 24 of the Maryland Declaration of Rights, and Article III, Section 40 of the Maryland Constitution. *Id.*[26]

It is also well-established that "[s]tatutes of repose . . . create a substantive right protecting a defendant from liability after a legislatively-determined period of time." *Anderson v. United States*, 427 Md. 99, 120, 46 A.3d 426, 439 (2012). Section 5-117(d) (West 2017) (Ex. 5) is a statute of repose, which creates a substantive, vested right in the Archdiocese to be free from claims like Plaintiffs'. The CVA's attempt to revive such claims is clearly unconstitutional.

1. Section 5-117(d) (West 2017) Is a Statute of Repose.

A statute of repose is fundamentally different from a statute of limitations. A statute of repose provides "an absolute bar to an action or a grant of immunity to a class of potential defendants after a designated time period," whereas a statute of limitations is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 637 n.1, 187 A.3d 686, 689 n.1 (2018)

[26] Article 24 of the Maryland Declaration of Rights is "often referred to as the Maryland Constitution's due process clause." *Dua*, 370 Md. at 628, 805 A.2d at 1075. Article III, § 40 of the Maryland Constitution "prohibits the taking of private property 'without just compensation.'" *Id.* at 628–29, 805 A.2d at 1075. Some older cases "simply take the position that retrospective statutes impairing vested rights violate the Maryland Constitution, without citing a specific constitutional provision and without using descriptive language indicating which constitutional provision or provisions are involved." *Id.* at 629, 805 A.2d at 1076 (collecting cases).

(alteration and citations omitted). "Statutes of limitations are motivated by 'considerations of fairness' and are 'intended to encourage prompt resolution of disputes' by providing a means of disposing of stale claims. *Statutes of repose* are motivated by 'considerations of the economic best interests of the public as a whole and *are substantive grants of immunity* based on a legislative balance of the respective rights of potential plaintiffs and defendants." 459 Md. at 637 n.1, 187 A.2d at 689 n.1 (alteration omitted) (emphases added) (citations omitted).

Section 5-117(d) is unquestionably a statute of repose. That is clear from "the plain meaning of the statutory language," which is what must be looked to "first." *Williams v. Morgan State Univ.*, --- Md. ----, 300 A.3d 54, 61 (2023) (citation omitted). And it is confirmed by the legislative record and other factors that the courts consider when the language is not as clear as it is in this case.

Statutory Language. "[I]f the language is unambiguous and clearly consistent with the statute's apparent purpose," the "inquiry generally ceases at that point." *Id.* (citation omitted).[27] Here the language and purpose of the law could not be more clear. The 2017 session law explicitly identifies the provision codified as CJ § 5-117(d) as a statute of repose multiple times.[28]

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[27] *See also First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 865 (4th Cir. 1989) (observing in context of a statute of repose that "while a statute's legislative history is often helpful in resolving ambiguity, one of the time-honored maxims of statutory construction is that when the language of a statute is clear, there is no need to rely on its legislative history").

[28] The relevant language here is the language of the session law enacted by the legislature, whether or not that language is subsequently codified. The session laws themselves "are the law." *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 544 n.4, 435 A.2d 796, 800 n.4 (1981); *see also, e.g.*, *Roe v. Doe*, 193 Md. App. 558, 565, 998 A.2d 383, 387–88 (2010) (interpreting uncodified section 2 of 2003 Maryland Laws chapter 360 to prohibit the retroactive revival of time-barred claims arising from alleged sexual abuse of a minor), *aff'd*, 419 Md. 687, 20 A.3d 787 (2011); *Arrington v. Sun Life Assurance Co. of Can.*, No. TDC-18-

- The law states its "purpose" as both "altering the statute of limitations in certain civil actions relating to child sexual abuse" and "*establishing a statute of repose* for certain civil actions relating to child sexual abuse." Ex. 1 (2017 Md. Laws ch. 12) (emphasis added); Ex. 2 (2017 Md. Laws ch. 656) (emphasis added).[29]

- Section 3 of the law expressly refers to "§ 5-117(d) of the Courts Article as enacted by Section 1 of this Act" as a "*statute of repose*." Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).

- Section 3 also provides that "§ 5-117(d) . . . shall be construed . . . both prospectively and retroactively *to provide repose* to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (same).

- Indeed, the 2023 CVA expressly states that one of its purposes is to repeal "a statute of repose." Ex. 3 (2023 Md. Laws ch. 5); Ex. 4 (2023 Md. Laws ch. 6).

- And the CVA states that a Plaintiff may now bring an action "at any time" "*notwithstanding … a statute of repose*." Ex. 3 (2023 Md. Laws ch. 5), § 1 (emphasis added); Ex. 4 (2023 Md. Laws ch. 6), § 1 (emphasis added).

The Court should conclude that CJ § 5-117(d) (West 2017) is a statute of repose based on statutory text alone. *Williams*, --- Md. ----, 300 A.3d at 61.

Legislative Record. Although the unambiguous language of the CVA settles the matter,

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0563, 2019 WL 2571160, at *5 (D. Md. June 21, 2019) ("Maryland law provides that the Annotated Code, as published by the Michie Company and West, [is] 'evidence' of the laws, but the laws actually consist of the bills as passed by the Maryland General Assembly and appearing in the annual session laws." (citations omitted)).

[29] *Elsberry v. Stanley Martin Cos.*, 482 Md. 159, 187, 286 A.3d 1, 17 (2022) ("[T]he bill title and purpose *are* part of the statutory text—*not* the legislative history.").

the legislative record also confirms that CJ § 5-117(d) is a statute of repose. That was acknowledged explicitly on the Senate floor before the bill was passed.

- The Senate was told that the "*[b]ill also creates a statute of repose* for specific civil actions relating to child sex abuse," S. Floor, H.B. 642, 437th Gen. Assemb., Reg. Sess., at 2:16:32–2:17:48 (Mar. 23, 2017) (emphasis added).

- In a reference to the "absolute bar" of the statute of repose in CJ § 5-117(d), *Anderson*, 427 Md. at 118, 46 A.3d at 437–38, the House was told that the bill "prohibits the filing of an action . . . more than 20 years after the victim reaches the age of majority." H. Floor, 57:40–58:24 (Mar. 16, 2017), *available at* https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-47-?year=2017RS.

- The record states that the "statute of repose" will create "vested rights," and that "claims precluded by the statute of repose cannot be revived in the future." Ex. 18 (Discussion of Certain Amendments in SB0505/818470/1), at 1–2.

- Multiple committee reports refer to the "statute of repose" and state that it will "provide repose" to covered claims. *See supra* Background Section II.B.

In addition, the lead House sponsor expressed his intent to forego any subsequent amendment to the 2017 law. *See supra* p. 11.

Other Features of Statutes of Repose. Other factors that the courts consider when the language is not as clear as it is here also confirm that CJ § 5-117(d) is a statute of repose. *See Anderson*, 427 Md. at 123.

- The Maryland courts have described statutes of repose as "provid[ing] an absolute bar" or "grant of immunity . . . after a designated time period." *Anderson*, 427 Md. at 118, 46 A.3d at 437–38. Here, CJ § 5-117(d) states that "[i]n no event" shall an action be filed

against certain defendants more than 20 years after the victim reaches the age of majority. *Id.* This language "shows an intent to provide the type of absolute bar to an action provided by a statute of repose." Ex. 20 (Letter from Rowe to Dumais (Mar. 16, 2019)), at 2; *accord* Ex. 21 (Letter from Rowe to Smith, Jr. (June 23, 2021)), at 2.

- Statutes of repose "shelter[] legislatively-designated groups from an action after a certain period of time." *Anderson*, 427 Md. at 121; *see, e.g.*, *Hagerstown Elderly Assocs. Ltd. P'ship v. Hagerstown Elderly Bldg. Assocs. Ltd. P'ship*, 368 Md. 351, 793 A.2d 579 (2002) (holding that CJ § 5-108(b) was a statute of repose because it exempted "architect[s], professional engineer[s], or contractor[s]" from "a cause of action for damages" "more than 10 years after the date the entire improvement first became available for its intended use"). Here, CJ § 5-117(d) applies only to a specific subset of potential defendants—"a person or governmental entity other than the perpetrator." *Id*. It does not apply to "perpetrators" of sexual abuse of minors. The legislative record explains that non-perpetrator defendants face special burdens when defending against stale claims and therefore need special protection.[30] The repose granted to non-perpetrator defendants contrasts with CJ § 5-117(b) (West 2017) (Ex. 5), which sets out the statute of limitations periods applicable to claims against *any* Defendant (perpetrators and non-perpetrators alike).[31]

- The Maryland Supreme Court has observed that "[i]n common parlance, statutes of limitation and statutes of repose are differentiated consistently and confidently by whether the triggering event is an injury or an unrelated event; the latter applying to a statute of

[30] *See* S. Jud. Comm. Hr'g at 5:46:45-5:50:32 (Mar. 12, 2015).

[31] In 2003, when the legislature expanded the limitations period from 3 to 7 years after the age of majority, that limitations period was set out in CJ § 5-117(b) (2003). Thus, when the legislature expanded the limitations period prospectively in 2017, it modified CJ § 5-117(b).

repose." *Anderson*, 427 Md. at 119, 46 A.3d at 438; *see also Statute of Repose*, *Black's Law Dictionary* (9th ed. 2009). Here, the trigger for CJ § 5-117(d) is a date unrelated to the injury—namely, the date of majority. The limitations period in CJ § 5-117(b)(1) (West 2017), by contrast, is triggered by the injury.[32] It authorizes the filing of an action immediately upon the infliction of the injury: "An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed (1) [a]t any time before the victim reaches the age of majority . . . ." *Id.*

- A statute of repose is a substantive grant of immunity "based on a legislative balance of the respective rights of potential plaintiffs and defendants." *SVF Riva Annapolis v. Gilroy*, 459 Md. at 637 n.1, 187 A.3d at 689 n.1. The 2017 law reflects just that sort of "legislative balance." The legislative record contains numerous references to the issue of sexual abuse of minors, the impact on victims, and delays in reporting by victims. It also reflects concern about the prejudice to defendants (including institutional defendants) in defending against stale claims based on long-ago conduct, and the substantial efforts taken by Catholic entities, in particular, to address and prevent sexual abuse of minors.[33] The "legislative balance" of those competing considerations is also evident from the face of the 2017 law, which

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[32] In Maryland, claims based on alleged sexual abuse of a minor accrue at the time of the abuse, "regardless of whether the victim is aware that the act is wrong." *Doe v. Archdiocese of Wash.*, 114 Md. App. at 186, 689 A.2d at 643. In Maryland, claims that accrue to minors are "toll[ed]" until the age of majority. *See Anderson*, 427 Md. at 111, 46 A.3d at 433 (describing CJ § 5-201, which provides that plaintiff may file claim that accrued as a minor within three years after the age of majority, as "tolling the limitation period for persons under a disability"). This understanding is reflected in the 2017 legislative record as well. Ex. 16 (S. Jud. Proc. Comm., Floor Report: Senate Bill 505, at 3) ("If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority."); *accord* Ex. 17 (Dept. of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, Third Reader—Revised: S.B. 505), at 3.

[33] *See* Ex. 24 (Md. Catholic Conf. Testimony Re: S.B. 505 (2017)), at 1–2; Exs. 25–27 (discussing child protection efforts by Catholic entities), *supra* n. 14.

simultaneously extends the statute of limitations for unexpired claims, declines to revive expired claims, grants non-perpetrator defendants additional protections in the form of a statute of repose and a gross negligence standard of liability, and makes it easier to sue public entities. *See supra* Background Section II.B.

In short, there is no doubt that CJ § 5-117(d) is a statute of repose enacted for the benefit of defendants who are not themselves the perpetrators of sexual abuse.

2. The Statute of Repose Vested a Substantive Right in the Archdiocese To Be Free from Plaintiffs' Claims.

Maryland courts have repeatedly held that "a statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Carven v. Hickman*, 135 Md. App. 645, 652, 736 A.2d 1207, 1211 (2000) (citing *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 865 (4th Cir. 1989)), *aff'd sub nom. Hickman v. Hickman v. Carven*, 366 Md. 362, 784 A.2d 31 (2001); *Anderson*, 427 Md. at 120, 46 A.3d at 438 (same). Thus, at the time of enactment, CJ § 5-117(d) (West 2017) vested a right in any "person or governmental entity that is not the alleged perpetrator" to be free of "action[s] for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor" if "more than 20 years" had passed "after the date on which the victim reache[d] the age of majority," Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(d) (West 2017). This covers Plaintiffs' claims, as more than 20 years had passed since the Plaintiffs attained the age of majority before the CVA took effect.

3. The CVA's Abrogation of the Vested Rights Created by Section 5-117(d) Is Unconstitutional.

Under Article 24 of the Maryland Declaration of Rights (the due process clause) and Article III, Section 40 of the Maryland Constitution (the takings clause), the legislature may not

EXHIBIT 2

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY, MARYLAND

JOHN DOE, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, Defendant.	Case No. C-16-CV-23-004497

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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INTRODUCTION[1]

In 2018, the Attorney General convened a grand jury investigation into allegations of child sexual abuse within the state, including acts committed within the Archdioceses of Washington and Baltimore. The culmination of this investigation was the discovery of horrific, "pervasive and persistent" acts of sexual and physical abuse of more than 600 young people by at least 156 clergy going back to the 1940s, as well as a "history of repeated dismissal or cover up of that abuse by the Catholic Church hierarchy." Ex. 1 (Attorney General's Report on Child Sexual Abuse in the Archdiocese of Baltimore: Revised Interim Public Release (Sept. 2023) (the "AG Report"))[2] at 1, 9. In response to these atrocities, the General Assembly enacted the Child Victims Act of 2023 ("CVA"), which eliminated time limitations for civil actions to recover damages arising from sexual abuse perpetrated against minors. CJP § 5-117(b). The clear and undeniable purpose of the law is to afford civil relief to victims of childhood sexual abuse.

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[1] As an initial matter, Plaintiffs are not aware of any indication that Defendant Roman Catholic Archbishop of Washington, a corporation sole, d/b/a Roman Catholic Archdiocese of Washington (the "Archdiocese"), having challenged the constitutionality of a state statute, has served the Attorney General as required by Maryland Code, Courts & Judicial Proceedings Article ("CJP") § 3-405(c). Although that failure does not deprive this Court of subject-matter jurisdiction, it may well deprive this Court of the ability to render a binding judgment if it were to give the Archdiocese the relief it seeks. The remedy for failure to serve the Attorney General may be to vacate any decision declaring a statute unconstitutional and "remand for further proceedings after notice to the Attorney General." *Gardner v. Bd. of Cnty. Comm'rs of St. Mary's Cnty.*, 320 Md. 63, 75 (1990). The failure may also be deemed sanctionable misconduct. *Id*. Subject to the exercise of the office's discretion, the Attorney General has a right to intervene to defend a statute's constitutionality. *See State ex rel. Atty. Gen. v. Burning Tree Club, Inc.*, 301 Md. 9, 37 (1984) ("[U]nder the Constitution and statutes of Maryland the Attorney General ordinarily has the duty of appearing in the courts as the defender of the validity of enactments of the General Assembly."). The Archdiocese is obligated to serve the Attorney General so that this Court's efforts on the present issue are not a waste of judicial resources.

[2] The AG Report was originally released in April 2023. A less-redacted version was released in September 2023.

By passing this legislation, the General Assembly acted well within its power to remedy a societal ill of enormous proportions. The legislature established, as the public policy of Maryland, that sexual predators, their accomplices, and their facilitators must be called to account in civil court for their actions. Moreover, by eliminating the statute of limitations, the General Assembly recognized the psychological injury and other obstacles that have long prevented victims from coming forward.

In its motion, the Archdiocese does not—and indeed cannot—deny that the General Assembly was intent on providing a remedy to victims of childhood sexual abuse. Rather, it contorts the prior statute, enacted in 2017, that the CVA amends and supersedes.[3] The Archdiocese argues the 2017 statute provides the Archdiocese with complete immunity, and that by abrogating the previously effective limitations period, the CVA unconstitutionally invades a so-called "vested right." This attempted feat of legerdemain rests on a game of semantics, hoping by alchemy to change what plainly is a statute of limitations by its operation and effect into a statute of repose, then bootstrapping wholesale immunity to it. The Archdiocese's efforts are wanting. The 2017 law cannot be anything but a statute of limitations, triggered as it is by unlawful sexual contact with a child. This conclusion is fatal to the Archdiocese's motion.

Further, even vested rights, if they were to exist here, are not immune from revision, as compelling reasons exist to overcome any asserted rights of the Defendant in this instance. And even if recast as a statute of repose, the 2017 law does not immunize the Archdiocese, as it provides no defense to the Archdiocese's longstanding and extensive cover-up perpetuated to this day. That fraudulent concealment renders the allegations well within any statute of repose.

[3] 2017 Md. Laws Ch. 12 (House Bill 642) and Ch. 656 (Senate Bill 505) (collectively, the "2017 statute" or "2017 law"). *See* Def. Exs. 1–2.

PLAINTIFFS' ALLEGATIONS

This putative class action was filed on October 1, 2023, the effective date of the CVA, by Plaintiffs John Doe, Richard Roe, and Mark Smith.[4] Doe attended St. Martin of Tours Catholic Church and St. Martin of Tours Catholic School (collectively, "St. Martin") throughout the 1990s, beginning at the age of 4 or 5. Compl. ¶¶ 124–28. Doe was groomed and sexually abused by two clergy there, Father Malone and Deacon Bel, in similar ways starting around fifth grade. *Id.* ¶¶ 133–43. Both men exploited their religious and professional authority as officials in his school to isolate Doe from other students, leaving Doe vulnerable to their predatorial advances. These advances, which began as over-the-clothes fondling, progressed to coerced oral sex whereby both clerics were orally stimulating Doe weekly over the course of years. These acts transpired under the guise of what the clergymen called "God's will" that demanded that Doe be violated. *Id.*

Roe served as an altar boy in the mid-1960s, roughly between the ages of 9 and 12, at St. Jerome Parish in Hyattsville. *Id.* ¶¶ 149–52. The priest in charge of the altar boys sexually abused Roe. Roe was lured into priest's bedroom in the rectory, adjacent to the church, after he completed his altar boy duties. *Id.* ¶ 153. The priest kept the boy engaged in a counseling-like conversation about Roe's personal life. *Id.* Once in the priest's bedroom, Roe was coerced to strip to his underwear to be "spooned" by the priest, who also stripped to his underwear and laid down with the child. *Id.* While spooning the boy, the priest fondled Roe's genitals, saying to the child "I want to make you feel better. Doesn't that feel good?" *Id.*

In the 1960s, Smith and his family were parishioners at St. Catherine Labouré Church in Wheaton. *Id.* ¶¶ 159–62. Smith attended elementary school at St. Catherine's. *Id.* When Smith was only 12 years old, Father Robert Petrella anally raped the child in the school nurse's office. *Id.* ¶¶

[4] Plaintiffs are proceeding under pseudonyms. *See* Nov. 2, 2023 Order.

166–168. Smith was on school premises volunteering for an after-hours function with his older brother and another student. *Id.* ¶ 165. Petrella deliberately isolated Smith by ordering the other children out of the building to complete tasks. *Id.* Petrella then led Smith directly to the nurse's office where he proceeded to anally penetrate the child, first with his fingers and then with his penis. *Id.* ¶¶ 166–67. Petrella acted with a high degree of efficiency, thus demonstrating that Smith was not Petrella's first time victim. *Id.*; *see also id.* ¶¶ 170–178. The rape only ceased because Smith's brother came looking for him. *Id.* ¶ 168.

In addition to Plaintiffs' individual allegations of sexual abuse at the hands of Archdiocesean clergy, Plaintiffs allege that when the Archdiocese was formed in 1939, the Catholic Church was already deeply mired in a long history of downplaying or concealing clergy sexual abuse of minors in their congregations. *See id.* ¶¶ 21, 35, 36, 40. The Catholic Church itself stood in juxtaposition; it portrayed itself to the world at-large as a moral and spiritual leader, while simultaneously enabling sexual abuse of children in its care. The Archdiocese has continually advanced policies and procedures protecting perpetrators of sexual abuse rather than the children who were their victims. *Id.* ¶¶ 35–36, 50, 52, 88. The Archdiocese has failed to investigate allegations of sexual abuse of children, refused to punish known violators, and has given predators unfettered access to children. *Id.* ¶¶ 52, 60–70, 88. The Archdiocese then used its substantial wealth and assets accumulated from parishioners to (1) conceal clergy sexual abuse of children, its own knowledge of the abuse, and its role in allowing it to continue, compounding the strategies employed by the abusers to keep the victims from stepping forward; and (2) engage in lobbying, public relations, and other activities designed to downplay or conceal clergy sexual abuse and its involvement and accountability for that abuse. *Id.* ¶ 40.

Plaintiffs set forth ten counts—negligence, negligence per se, and premises liability (Count I), gross negligence (Count II), negligent supervision and retention (Count III), negligent training (Count IV), breach of fiduciary duty (Count V), constructive fraud (Count VII), civil conspiracy (Count VIII), aiding and abetting (Count IX), and intentional infliction of emotional distress (Count X)—and seek class certification under Maryland Rule 2-231(c)(1), (c)(3), and (e).

STANDARD OF REVIEW

Statutes enjoy a "strong presumption of constitutionality and the party attacking it has the burden of affirmatively and clearly establishing its invalidity" beyond a reasonable doubt. *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) (citations omitted); *see also State v. Gurry*, 121 Md. 534, ¶ 7 (1913) (holding that "unless it plainly, and beyond all question, exceeds the [legislative] power, there should be no judicial interference"). In other words, the challenger "must demonstrate 'a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.'" *In re Emergency Remedy by Maryland State Bd. of Elections*, 483 Md. 371, 391 (2023) (quoting *Mahai v. State*, 474 Md. 648, 662 (2021)).

Courts are "reluctant to find a statute unconstitutional if, by any construction, it can be sustained." *Whittington v. State*, 474 Md. 1, 19 (2021) (cleaned up). After all, "[c]ourts are under a special duty to respect the legislative judgment where the legislature is attempting to solve a serious problem in a manner which has not had an opportunity to prove its worth." *Bowie Inn, Inc. v. City of Bowie*, 274 Md. 230, 237 (1975). To the extent that this case turns on statutory interpretation, this Court's obligation is to ascertain legislative intent by looking first to the legislative text and then confirming its purposes by reviewing legislative history. *Harford Cnty. v. Mitchell*, 245 Md. App. 278, 283 (2020). When that leads to a clear and unambiguous result, a

court's "inquiry is at an end." *Id*. (quoting *Breitenbach v. N.B. Handy Co.*, 366 Md. 467, 473 (2001)).

ARGUMENT

I. THE 2017 LAW IS A STATUTE OF LIMITATIONS, NOT A STATUTE OF REPOSE.

The Archdiocese's argument that CJP § 5-117(d), as enacted in 2017, is a statute of repose is a quintessential example of form over function. The Archdiocese repeatedly highlights examples of the 2017 law being dubbed a "statute of repose." However, as Abraham Lincoln once observed, calling a tail a leg does not make it a leg. David Herbert Donald, *Lincoln* 396 (1995) (cited by *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1167 (9th Cir. 2013)). The Archdiocese avoids all analysis of the pertinent substantive issue: is the 2017 version of § 5-117(d) a "statute of repose" as a matter of law? On this question, highlighting the number of "statute of repose" references in uncodified language of the 2017 law is neither dispositive nor terribly relevant. Our courts have observed that statutes of repose may be close cousins to statutes of limitations, *Murphy*, 478 Md. at 344 n.5, "often used interchangeably" in error, *Mathews v. Cassidy Turley Maryland, Inc*., 435 Md. 584, 611 (2013), even by courts that should know better. *See Anderson v. United States*, 427 Md. 99, 117 (2012) (ascribing a certified question from a federal court to loose use of "repose" in a prior opinion). However, statutes of repose and statutes of limitations are distinct—and the distinction makes a critical difference. As set forth below, the plain language, structural makeup, and legislative history of § 5-117(d) reveals it is a statute of limitations, not a statute of repose. Even if the Court finds any ambiguity in this regard, the issue must be resolved in favor of construing § 5-117(d) as a statute of limitations under the canon of constitutional avoidance.

A. Section 5-117(d) Is a Statute of Limitations Based on Its Plain Language and Structure.

The Archdiocese repeatedly cites *Anderson v. United States*, 427 Md. 99 (2012), Maryland's leading case distinguishing statutes of limitations from statutes of repose, but plainly misunderstands its holding. *Anderson* establishes that § 5-117(d) does not qualify as a statute of repose. It instructs courts to "look holistically at [a] statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Id.* at 124. The only undisputed statute of repose in Maryland, CJP § 5-108, limits claims against property owners, construction companies, engineers, and architects for injuries sustained because of negligent building design and construction. That statute states:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) Except as provided by this section, a cause of action for damages does not accrue and a person may not seek contribution or indemnity from any architect, professional engineer, or contractor for damages incurred when wrongful death, personal injury, or injury to real or personal property, resulting from the defective and unsafe condition of an improvement to real property, occurs more than 10 years after the date the entire improvement first became available for its intended use.

CJP § 5-108.

Before *Anderson*, various Maryland opinions referred to a time bar for medical malpractice claims, CJP § 5-109, as both a statute of repose and statute of limitations. *Anderson*, 427 Md. at 105–06. In 2012, *Anderson* definitively established that § 5-109 is a statute of limitations, primarily due to the statute's structure. *Id.* at 127. In doing so, the court identified four structural factors distinguishing statutes of limitations from statutes of repose:

- **Statutes of repose involve time limits that relate to defendants' actions, not plaintiffs' injuries.** *Anderson* noted that a "statute of repose" is defined as a "statute barring any suit that is brought after a specified time since the *defendant acted* (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." *Id.* at 117 (emphasis added). *Anderson* concludes: "Statutes of repose differ from statutes of limitation in that the trigger for a statute of repose period is *unrelated* to when the injury or discovery of the injury occurs." *Id.* at 118 (emphasis added).
- **Statutes of repose can eliminate claims that have not yet accrued.** "[A] statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id.* at 119.
- **Statutes of repose cannot be tolled.** They are "an absolute time bar" which cannot be tolled "by fraudulent concealment," minority, or any other reason. *Id.* at 121.
- **Statutes of repose are created due to public policy favoring absolute shelter for certain groups after a certain period of time.** *Anderson* notes that a statute of repose is one that "shelters legislatively-designated groups from an action after a certain period of time." *Id.* at 118. In enacting one, the legislature must "balance[] the economic best interests of the public against the rights of potential plaintiffs and determines an appropriate period of time, after which liability no longer exists." *Id.* at 121.[5]

Each factor militates in favor of determining § 5-117(d) to be a statute of limitations.

[5] This factor reflects the well-understood concept that, even when fundamental rights are impinged, the legislature may adjust the burdens and benefits of economic life where compelling interests exist. *See Montgomery Cnty. v. Walsh*, 274 Md. 502, 512 (1975).

1. Section 5-117(d)'s clock is not triggered by the defendant's actions.

On the issue of whether the statute relates to the plaintiff or defendant, *Anderson* acknowledges that the "plain language of the statute controls." *Id.* at 125. Based on the plain language, the Court concluded that § 5-109 is a statute of limitations largely because the statute's time limit is tied to "the date of an injury" which the Court observed does not necessarily "coincide . . . with the date of an allegedly wrongful act or omission." *Id.* at 126.[6]

Anderson's analysis and holding tracks other cases. "A statute of repose . . . puts an outer limit on the right to bring a civil action. That limit is measured not from the date on which the claim accrues but instead from the *date of the last culpable act or omission of the defendant*." *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014) (emphasis added); *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 611–12 (2013) ("The chief feature of a statute of repose is that it runs from a date that is *unrelated to the date of injury* . . . . As a result, a statute of repose can sometimes foreclose a remedy before an injury has even occurred and before any action could have been brought." (emphasis added)).

Anderson likewise found that "the trigger for a statute of repose period is unrelated to when the injury or discovery of the injury occurs." 427 Md. at 118; *see also id.* at 119 (holding that "statutes of limitation and statutes of repose are differentiated consistently and confidently by whether the triggering event is an injury or an unrelated event; the latter applying to a statute of repose"); *Wood*, 231 Md. App. at 701 (same). This finding was a key justification for the *Anderson* Court's holding that § 5-109 was a statute of limitations, not a statue of repose. *Anderson*, 427 Md. at 127; *see also id.* at 121 ("The language of the statute of repose, § 5–108, indicated clearly that

[6] Thus, it is widely recognized that statutes of repose "typically run from the date of manufacture, delivery, initial purchase, or sale of the product," 63B Am. Jur. 2d Products Liability § 1416, or when the improvement to real property is substantially completed. *Duffy v. CBS Corp*., 458 Md. 206, 222 (2018). The repose period begins though no injury may ever occur.

the Legislature intended to tie the accrual of the cause of action to the date of completion of a particular property improvement because traditional tolling mechanisms expanded the liability of defendants.").

Here, § 5-117(d) states:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Def. Ex. 1 at 3. Like § 5-109, § 5-117(d) is triggered only by the existence of an alleged injury and the passage of time tied to the victim's age, not anything the potential defendant did.

Per uncodified language of the 2017 law, Section 5-117(d) merely purports to bar "actions that were barred by the application of the period of limitations applicable before October 1, 2017," when the law became effective. Def. Ex. 1 at 4. Accordingly, the supposed repose period remains inextricably linked to the operation of the preexisting statute of limitations, thereby maintaining the injury trigger. In effect, § 5-117(d) purports to dress a statute of limitations in the clothing of repose—that is, to call a tail a leg.

The Archdiocese tries to avoid this obvious conclusion by suggesting that the clock in § 5-117(d) is triggered by the date the plaintiff reaches the age of majority. Def. Mem. at 26. This argument, however, ignores that a statute of repose extinguishes or preempts an otherwise viable claim based on when the potentially actionable conduct occurred, not the plaintiff's status. Section 5-117(d) utterly omits reference to a "specified time since the defendant acted" (e.g., when a defendant hired an alleged abuser, or allowed an alleged abuser to continue working despite evidence of a propensity to abuse children). *Cf. Anderson*, 427 Md. at 117. Because § 5-117(d) "is not related to an event or action independent of the potential plaintiff," which is a hallmark of statutes of repose, it must be construed as a statute of limitations. *Id.* at 126.

The Archdiocese's suggestion that the trigger is the date the plaintiff reaches majority as opposed to the injury is of no consequence. Either way, the triggering event is plaintiff-focused and utterly unrelated to the defendant. Very simply, the timeline does not begin to run until a child is sexually abused. Section 5-117(d) is not even implicated without that event occurring. The contrast with property-based or product-liability repose periods could not be starker. Each of those causes of action are affected by a repose period that commences once an improvement to property is completed or placement of the product in the stream of commerce occurs. No potential plaintiff is even in the picture. Yet, the sole focus of § 5-117—including subsection (d)'s time period—are plaintiffs who suffered a particular type of injury: childhood sexual abuse. *Anderson* makes clear that a plaintiff-focused trigger only applies to statutes of limitation, even if labeled one of repose. Accordingly, § 5-117(d) is a statute of limitations and cannot be construed as a statute of repose.

2. Section 5-117(d) does not bar unaccrued claims.

Another factor distinguishing statutes of repose from statutes of limitations is that "a statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Anderson*, 427 Md. at 119; *see also Streeter v. SSOE Sys.*, 732 F. Supp. 2d 569, 577 (D. Md. 2010) ("[T]he difference between a statute of limitations and statute of repose is that in the former, a cause of action has already accrued and a limitation is placed on the time an injured individual has to file a claim, and in the latter, a limitation is placed on the time in which an action may accrue should an injury occur in the future."). Section 5-108 (a recognized statute of repose) states that "no cause of action for damages accrues" when an injury related to an improvement to real property "occurs more than 20 years after the date the entire improvement first becomes available for its intended use." CJP § 5-108. The *Anderson* Court observed that § 5-109 operates differently (and thus was not a statute of repose) because it "is triggered by the cause of action

itself—the injury" and "[t]he time period is not related to an event or action independent of the potential plaintiff." 427 Md. at 126.

Here, too, § 5-117(d) does not apply unless and until an injury has occurred. Thus, this factor also requires construing the statute as a statute of limitations rather than a statute of repose.

3. Section 5-117(d) is subject to tolling.

Subjecting a time limitation "to explicit tolling for fraudulent concealment and minority" is another factor in favor of finding a law to be a statute of limitations rather than a statute of repose. *Anderson*, 427 Md. at 125. Both forms of tolling apply to § 5-117(d).

The provision sets out a time bar that implicitly incorporates minority-based tolling. It refers to cases that arise "out of an alleged incident or incidents of sexual abuse," tolls the time bar until "the victim reaches the age of majority," then offers an additional 20 years. Def. Ex. 1 at 3. This provision mirrors § 5-109(e), which explicitly permits tolling based on minority. Since § 5-117(d) permits minority-based tolling, it cannot be considered a statute of repose.

Tolling for fraudulent concealment applies as well. Statutes must be construed to be compatible with all other law. *U.S. v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 217–18 (2001); *see also Bolling v. Bay Country Consumer Fin., Inc.*, 251 Md. App. 575, 602 (2021). Thus, § 5-117(d) must be read consistent with § 5-203, a law of general applicability, which states: "If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud." CJP § 5-203.[7]

[7] If fraudulent concealment-based tolling did not apply, under the 2017 law, a person sexually assaulted at age 18 could avail themselves of fraud-based tolling but a child sexually assaulted at age 8 could not. In passing the 2017 law, the General Assembly clearly sought to enhance—not diminish—legal remedies afforded to childhood sexual abuse survivors, and thus could not have intended the law to be exempted from § 5-203.

The discovery rule also applies to § 5-117. In 2017, the sponsor of Senate Bill 505 ("SB 505") testified: "The discovery rule is applicable in all actions, and the cause of action accrues when the victim knew or should have known that Maryland law provides a right of action to a person so abused during his/her childhood." Def. Ex. 12 at 2. The General Assembly's expressed intent that the discovery rule apply to § 5-117 actions is strong evidence that subsection (d) is not a statute of repose, which by definition cannot be tolled. *Carven v. Hickman*, 135 Md. App. 645, 652 (2000).[8]

4. The General Assembly did not intend to grant special immunity to child sexual predators and their institutions.

Anderson holds that policy considerations may be relevant in determining whether a law should be construed as a statute of limitations or statute of repose. *Anderson*, 427 Md. at 118, 121. The presumption is that statutes of repose are intended as "shelters [for] legislatively-designated groups." *Id.* at 118; *see also First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989) ("Statutes of repose are based on considerations of the economic best interests of the public as a whole and are substantive grants of immunity based on a legislative balance of the respective rights of potential plaintiffs and defendants."); *SVF Riva Annapolis v. Gilroy*, 459 Md. 632, 636 n.1 (2018) (citing *First Union Methodist Church* and holding similarly).

The Archdiocese argues that, in enacting the 2017 law, the General Assembly recognized institutional defendants who hired sexual predators, facilitated their sexual abuse of innocent children, and covered up their crimes as a group worthy of legislative shelter. Def. Mem. at 26. Of course, the shelter equally protects all organizations that failed to protect children: those that claim

[8] Similarly, the Oregon courts held that its legislature could carve out child abuse from the state's ultimate statute of repose without offending the state constitution, even though it revived claims that were potentially decades old, because of tolling provisions that existed in the repose statute. *Sherman v. State*, 464 P.3d 144, 149 (Or. App. 2020), *aff'd*, 492 P.3d 3 (Or. 2021).

to have instituted policies to protect children and those that have not[9]; those that make worthwhile contributions to the economy and those that do not. Quite simply, the legislature could not have intended to provide a special and exceedingly rare legislative privilege—a statute of repose—in favor of every person and organization charged with protecting a child from sexual abuse but who failed to do so.

This conclusion is buttressed by considering the economic and policy factors that support Maryland's only statute of repose: § 5-108. That statute deals with professional liability for defective improvements to real property. Improvements to real property are economic drivers, and the statute's protection reflects the public interest in balancing redress with a strong economy. By contrast, no identifiable economic or public benefits are advanced by a statute sheltering those who enabled child sexual abuse, a horrific and life-changing injury.

* * *

When the General Assembly enacted § 5-117 in 2017, it did so with the benefit of the *Anderson* decision issued five years earlier. *See Lawrence v. State*, 475 Md. 384, 414 (2021) (the "General Assembly is presumed to be aware of this Court's interpretation of its enactments" (quoting *Williams v. State*, 292 Md. 201, 210 (1981))). Had the General Assembly intended § 5-117 to be a statute of repose, it would have drafted the statute so it was triggered based on an act independent of injury, eliminated unaccrued claims, and could not be tolled. Because these key characteristics are missing from § 5-117(d)—and because the General Assembly could not have

[9] The Archdiocese now claims to be a reformed organization that finally takes child sexual abuse seriously and sets forth exhibits purporting to demonstrate as much. *See* Def. Mem. at 16–17. The exhibits and claims resting thereon are entirely extraneous to the Complaint, not subject to judicial notice (the Archdiocese makes no argument otherwise), irrelevant, wholly improper, and should be disregarded. *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004); *Green v. H & R Block, Inc.*, 355 Md. 488, 501 (1999).

intended to grant shelter to sexual predators of children and their facilitators—it is a statute of limitations.

B. The Legislature Did Not Intend § 5-117(d) to Create a Statute of Repose or Vested Rights.

The legislative purpose and history of § 5-117 is relevant to evaluating the Archdiocese's claim that the General Assembly intended to create a statute of repose and vested rights. *See Anderson*, 427 Md. at 106. The Archdiocese attempts to paint a picture suggesting that amending § 5-117(d) to become a statute of repose permeated all conversations surrounding the law, but this is inaccurate. The Archdiocese fails to identify any legislative record indicating that the constitutional and policy implications of a statute of repose were discussed, or the impact a statute of repose would have on survivors of childhood sexual abuse (the class of individuals the bill was designed to protect). The legislative record lacks a clear intention by the General Assembly to create an immutable time bar or create vested rights for those who failed to protect children from horrific sexual abuse. Rather, lawmakers appear to have been using the term "repose" colloquially without understanding or intending the implications that the Archdiocese now suggests and, as *Anderson* notes, is commonplace but erroneous.

1. The legislative history does not showcase any intent to create vested rights.

In the 2017 legislative session, HB 642 and SB 505 were promoted continuously as benefiting survivors of childhood sexual abuse by expanding their statute of limitations. In his written testimony to the House Judiciary Committee, Delegate C.T. Wilson, who sponsored the legislation in the House, described the bill as "alter[ing] the statute of limitations on civil actions arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor." Ex. 2 (Written Testimony of C.T. Wilson). He concluded that the bill "will allow victims who have suffered through child sexual abuse and have endured the long-term emotional and

psychological effects an opportunity to seek economic relief from those who have victimized them." *Id.* Similarly, written testimony from Advocates for Children and Youth stated, "We urge this Committee to issue a favorable report on HB 642 to raise the civil statute of limitations for sexual abuse from age 25 to age 38 to allow more victims of sexual abuse to pursue civil remedies for their victimization." Ex. 3 (Written Testimony of Advocates for Children and Youth, Feb. 23, 2017). Studies were cited by various groups displaying the need for a longer statute of limitations period due to delayed reporting caused by a litany of factors.

Inoculating entities who harbored child sexual abusers under their employ from civil liability in perpetuity is not mentioned as one of the legislation's goals. Nor does the legislative record reflect testimony explaining the actual impact of a statute of repose. This is because a statute of repose, as a legal concept, was never intended to be included in the bill. Though uncodified language was inserted in the bill to suggest a statute of repose was crafted and intended, this was done without a fully informed debate on the issue.

The Maryland State Council on Child Abuse and Neglect ("SCCAN") submitted testimony on behalf of the Child Victims Act of 2023, which thoroughly summarizes the legislative history, including the lack of information about the impact of a statute of repose, on the 2017 modification to § 5-117(d):

> In 2017, there was no clear intent by the Body to vest constitutionally protected rights in perpetrators and organizations. The Legislature's apparent intent in 2017 was to implement a procedural remedy for child sexual abuse cases, not to create a vested right for defendants. In 2017, there was no discussion or debate of the constitutional implications of the so called "statute of repose" found in the amended version of HB 642 either in committee or on the floor of the House or Senate. Neither the 2017 committee bill files, nor the hearing and floor recordings reflect any discussion of the constitutional implications of the "statute of repose." Additionally, the Revised Fiscal and Policy Note for the amended 2017 bill makes no mention of the constitutional significance of a "statute of repose."
>
> In 2019, the sponsor of HB 687 (which included the same two year look back window, as the current bill) and other Members spoke on the House Floor saying

> that legislators had no understanding of the significance of the wording "statute of repose" (found in the uncodified section of the 2017 bill). In passing HB 687 in 2019 by a vote of 135-3 and HB 974 in 2020 unanimously, the House affirmed that there was no intent in 2017 to create a so called "statute of repose" creating constitutionally protected property rights in child sexual abuse predators. In addition, the bill sponsor and the Chair of the Senate Judicial Proceedings (JPR) Committee agreed during the 2019 JPR Committee Hearing that there was no understanding, mention, or discussion during the Committee hearings, meetings, or on the Floor of either Chamber of the "statute of repose", including, and most significantly, its constitutional consequence.

Ex. 4 (State Council on Child Abuse and Neglect (SCCAN) Testimony in Support of HB 1, Feb. 28, 2023) at 3.

Similarly, testimony by Professor Marci Hamilton, Founder and CEO of CHILD USA, speaks to the absence of indications in the legislative history of the 2017 law that the legislators intended to create vested rights:

> The legislative history of the 2017 bill amending § 5-117(d) shows that the General Assembly never intended to create a vested right in institutions and other entities that sheltered perpetrators of child sexual abuse. The legislative records for the original bills, HB 642/SB 505, reveal that the language of § 5-117(d) was not even included, indeed there was no mention of an SOR whatsoever. See Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017; Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017 ("SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act."). The SOR language was added later, behind closed doors without the opportunity for feedback in committee, sub-committee, or floor and without the knowledge of the original sponsors of the bill. Indeed, upon introduction of the amendment with the repose statute, members of the Judiciary Committee decried any suggestion that the legislature intended to grant permanent immunity to individuals and institutions responsible for child sexual abuse.

Ex. 5 (CHILD USA Testimony in Support of SB686, Mar. 24, 2023) at 4–5.

This testimony strongly suggests that, while discussing the bill, lawmakers used the term "repose" colloquially without knowledge or an intent to implement the corresponding legal ramifications. Certainly nothing submitted by the Archdiocese from the 2017 bill file indicates that

the legislature had an understanding of the constitutional implications of a purported "statute of repose" or that they were supposedly creating vested rights. *See* Def. Exs. 12–17.

A comparison to the legislative history surrounding another legislative enactment related to a statute of repose—namely, the creation of an asbestos exception to § 5-108—is instructive. During the 1990 and 1991 legislative sessions, the General Assembly considered and ultimately succeeded in amending § 5-108 to allow personal injury lawsuits to be brought for asbestos-related injuries, even if they had expired under the statute. The legislative record reflects that, while the amendment was being scrutinized, considerable discussion took place about the statute of repose and its impact. The debate yielded letters from the governor's office, attorney general's office, and the Department of Fiscal Services. *See* Ex. 6 (Ltr. from Office of the Governor, Mar. 21, 1991); Ex. 7 (Ltr. from Office of the Attorney General of Maryland, Feb. 15, 1990); Ex. 8 (Ltr. from Attorney General J. Joseph Curran, Jr., Apr. 30, 1991); Ex. 9 (Fiscal Note from Dept. of Fiscal Services). The Department of Legislative Reference also provided a detailed 11-page letter on how a statute of repose works. Ex. 10 (Ltr. from Dept. of Legislative Reference, Jan. 11, 1990). No similar discussion accompanied the purported statute of repose provision inserted in HB 642 and SB 505.

With one exception, the Archdiocese fails to cite a single portion of the legislative record where "concern about the prejudice to defendants (including institutional defendants) in defending against stale claims based on long-ago conduct"[10] was discussed in relation to the impact of a statute of repose. Def. Mem. at 26. The exception—indeed, the only document amongst the 82 pages of the 2017 House and Senate bill files that uses the term "vested rights"—is Defendant's

[10] Importantly, "disposing of stale claims" is a recognized motivation for a statute of limitations, not a statute of repose. *SVF Riva Annapolis*, 459 Md. at 636 n.1.

Exhibit 18, a mysterious "Discussion of certain amendments in SB0505/818470/1." Def. Ex. 18. Unlike all other pieces of written testimony in the bill files, this document is not addressed to anyone, does not identify an author, is undated, is not on letterhead, and does not specifically state it is written testimony. It is unclear which legislators, if any, read this document—or if it was even seen by any member or staff of the General Assembly at all. It is not even clear if this document pertained to the final version of the bill. The Archdiocese is utterly silent on these glaring issues. Because its provenance is unknown, Exhibit 18 does not qualify for judicial notice and should be disregarded. *Faya v. Almaraz*, 329 Md. 435, 444 (1993) (requiring verification of documents noticed by a trial court).

2. The Archdiocese's arguments on legislative intent are of no moment.

Legislative history can help determine legislative intent. *United States v. Wise*, 370 U.S. 405, 414 (1962). The information courts find useful in that endeavor is "with reference to the circumstances existing at the time of the passage." *Id*. at 411. Just as the views of subsequent legislatures are of "no persuasive significance," *id*., earlier legislative inaction has no import for the task at hand. *Cf. Automobile Trade Ass'n v. Insurance Comm'r*, 292 Md. 15, 24 (1981) (noting that rejection of a bill is a "rather weak reed upon which to lean in ascertaining legislative intent."); *In re Adoption/Guardianship of Dustin R.*, 445 Md. 536, 568 (2015) (describing reliance on rejected legislation as legislative history as a "red herring" that "has no bearing whatsoever" on the meaning of a current law and "is simply not relevant and does not assist this Court with ascertaining the General Assembly's intent"). Here, the Archdiocese spills considerable ink detailing legislative history from prior Maryland legislatures that declined to completely abrogate the statute of limitations applicable to childhood sexual abuse claims, imposed a so-called statute of repose, and were told and then chose not to abrogate the statute of repose. Def. Mem. at 6–13.

As the above-cited authority demonstrates, none of that history bears on the meaning or scope of the CVA.

In addition, the Archdiocese discusses how the General Assembly worked with the Church in 2017 to fashion legislation that garnered Church support and prompted the sponsoring legislator to give his "word" that no further amendments to the law would be sought. Def. Mem. at 11–12. Legislation is a public act, not a contract with a private party. No legislator can make promises about what the body itself will or will not do in the future, and no constituent is entitled to rely on any such promise. For that reason, the entire discussion is irrelevant both to the construction of the 2017 law or the General Assembly's authority to amend it.

C. As a Matter of Constitutional Avoidance, § 5-117(d) Should Be Read as a Statute of Limitations That Did Not Create Vested Rights.

A court may dispose of a constitutional challenge on non-constitutional grounds and should endeavor to do so whenever possible. Sutherland on Statutory Construction § 72:3 (8th ed.) ("Courts presume legislation is constitutional and resolve any doubt about the validity of a statute or amendment in favor of sustaining the legislation, and an important corollary of this presumption directs courts to avoid the question about an act's constitutionality in the first place, if possible."). Under the canon of constitutional avoidance, a statute that can be read in a manner that makes it constitutional or in a manner that requires a determination of its constitutionality should be construed the first way whenever possible. *Koshko v. Haining*, 398 Md. 404, 425 (2007); *see also Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems.").

As discussed, *Anderson* dictates that § 5-117(d) be construed as a statute of limitations. But even were the Court to find ambiguity in this regard, the canon of constitutional avoidance favors construing it as a statute of limitations.

II. THE CVA IS A VALID EXTENSION OF THE STATUTE OF LIMITATIONS.

The Maryland Constitution vests the General Assembly with plenary power to legislate, limited only by any constitutional "prohibition against its adoption." *Kenneweg v. Allegany Cnty. Comm'rs*, 102 Md. 119, 62 A. 249, 250 (1905). Thus, the General Assembly defines the state's public policy through its exercise of the state's inherent power "to prescribe . . . reasonable regulations necessary to preserve the public order, health, safety, or morals." *Tighe v. Osborne*, 149 Md. 349, ¶ 1 (1925).

Within that broad authority, the General Assembly may choose to enact statutes of limitations, which reflect "the legislature's judgment about the reasonable time needed to institute [a] suit." *Doe v. Maskell*, 342 Md. 684, 689 (1996). Limitation periods "represent expedients rather than principles" and "a public policy about the privilege to litigate." *Id*. (quoting *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)).

Moreover, statutes of limitations are "expression[s] of legislative policy to be implemented by and in the courts." *Murphy v. Liberty Mut. Ins. Co*., 478 Md. 333, 345–46 (2022). Although courts defer to the legislative choices expressed in a statute of limitations, the law recognizes that they are not "immutable," and the "deadline for filing an action seemingly set forth in a statute of limitations may be extended and, in some cases, shortened." *Id*. at 343–44. It falls to the courts to determine when a cause of action accrues. *Id*. at 344. Courts have also developed doctrines that delay accrual of a cause of action, such as a "discovery rule" and "judicial tolling." *Id*. at 344–

45.[11] The judiciary can even issue an administrative tolling order accounting for society-wide impediments to court access, as occurred during the COVID-19 pandemic. *Id*. at 340. These examples demonstrate that statutes of limitation can be changed to accommodate plaintiffs.

Adjustment of the statute of limitations can be justified when "'possible injustice in these situations outweighed interests in repose and administrative expediency.'" *Id*. at 376 (quoting *Hecht v. Resol. Tr. Corp.*, 333 Md. 324, 335 (1994)). Judicially imposed tolling may take place based on "persuasive authority or persuasive policy considerations" as long as tolling would be "consistent with the generally recognized purposes for the enactment of statutes of limitations." *Id*. at 377 (citation omitted). The CVA plainly qualifies for that approach. It changes the statute of limitations to provide a well-recognized remedy for childhood victims of sexual abuse.

Obviously, if judicial action can adjust a statute of limitations, the progenitor of the limitations period, the General Assembly, has ample authority to do so. In fact:

> [T]he Legislature has the power to amend a statute of limitations either by extending or reducing the period of limitations, so as to regulate the time within which suits may be brought, provided that the new law allows a reasonable time after its enactment for the assertion of an existing right or the enforcement of an existing obligation.

Hill v. Fitzgerald, 304 Md. 689, 702–03 (1985) (cleaned up).

One explanation for why the legislature can change a statute of limitations in this fashion is because they are procedural in nature, rather than rights or remedies. *See State v. Smith*, 443 Md. 572, 594 (2015) ("[T]his Court has held that such procedural statutes (e.g. statutes that change a statute of limitations) operate retrospectively."); *Doughty v. Prettyman*, 219 Md. 83, 88 (1959)

[11] The Indiana Supreme Court held that a discovery rule is constitutionally required by virtue of the privileges and immunities and open courts clauses of its state constitution. *Martin v. Richey*, 711 N.E.2d 1273, 1277 (Ind. 1999). The Maryland Constitution has similar provisions. Md. Const. Decl. of Rts. Arts. 19, 24.

("Included in the procedural matters governed by the law of this state is the statute of limitations."); *Roe v. Doe*, 193 Md. App. 558, 577–78 (2010), *aff'd*, 419 Md. 687 (2011) ("'[A] lengthened statute of limitations is "procedural"—that is, it does not alter substantive rights[.]'" (quoting *U.S. ex. rel. Thistlethwaite v. Polymer*, 6 F. Supp. 2d 263, 265 (S.D.N.Y. 1998))); *Harig v. Johns–Manville Products Corp*., 284 Md. 70, 75 (1978) ("Statutes of limitations are . . . a simple procedural mechanism to dispose of stale claims.").

Similarly, a change in the statute of limitations merely affects the remedy, rather than the cause of action. *Waddell v. Kirkpatrick*, 331 Md. 52, 59 (1993). The procedural nature of limitations periods is significant because "[n]o person has a vested right in a particular remedy for enforcement of a right, or in particular modes of procedure, or rules of evidence. The legislature may pass retroactive acts changing, eliminating, or adding remedies, so long as efficacious remedies exist after passage of the act." *Langston v. Riffe*, 359 Md. 396, 423 (2000) (quoting 2 Norman J. Singer, Sutherland's Statutory Construction, § 41.16, at 429 (5th ed. 1993)). Indeed, "[t]here is, of course, no absolute prohibition against retroactive application of a statute." *State Comm'n on Hum. Rels. v. Amecom Div. of Litton Sys., Inc*., 278 Md. 120, 123 (1976). "[I]f the statute contains a clear expression of intent that it operate retrospectively, or the statute affects only procedures or remedies, it will be given retroactive application." *Id*. at 124 (citations omitted).

As a statute of limitations, the 2017 law created no vested rights. In Maryland, "a vested right is 'something more than a *mere expectation* based on the anticipated continuance of the existing law; *it must have become a title,* legal or equitable, to the present or future enjoyment of a property." *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 560 (2011) (citing *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003)). "[R]etrospective statutes may not abrogate

vested property rights." *Id.* For example, a statute that completely eliminates a remedy impermissibly abrogates a vested right. *See Muskin*, 422 Md. at 563.

Still, the Supreme Court of Maryland has identified an exception to that rule and "held consistently that the Legislature has the power to alter the rules of evidence and remedies, which in turn allows statutes of limitations and evidentiary statutes to affect vested property rights." *Id*. at 561; *see also Allen*, 193 Md. at 363–64 (the legislature may properly amend statutes of limitations so long as there is a reasonable time for enforcement of a cause of action); *Thistle v. Frostburg Coal Co.*, 10 Md. 129, 145 (1856) (the legislature can alter and remodel the rules of evidence and remedies).

As discussed, the 2017 law created a statute of limitations, not a statute of repose. As Maryland courts have repeatedly held, statutes of limitation do not create vested rights, *Muskin*, 422 Md. at 561–62; *Hill*, 304 Md. at 702–03; *Berean Bible Chapel, Inc. v. Ponzillo*, 28 Md. App. 596, 601 (1975), and thus does not vest a defendant with a right to an affirmative action. *Simmons v. Md. Mgmt. Co.*, 253 Md. App. 655, 699, *cert. denied*, 479 Md. 75 (2022); *Rawlings v. Rawlings*, 362 Md. 535, 560 n.21 (2001); *see also Campbell v. Holt*, 115 U.S. 620, 628 (1885); *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 316 (1945). This is a natural extension of the more general principle that "a person does not have an inherent vested right in the continuation of an existing law[.]" *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003); *see also State v. Smith*, 443 Md. 572, 594 (2015).

This is particularly so with remedial statutes like the CVA. Statutes are remedial if they "improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries" or "they are designed to correct existing law." *State v. Smith*, 443 Md. 572, 592 (2015) (*per curiam*) (citations omitted); *see also Langston*, 359 Md. at 409 ("[E]very statute that makes

any changes in the existing body of law, excluding those enactment which merely restate or codify prior law, can be said to 'remedy' some flaw in the prior law or some social evil." (quoting Sutherland's Statutory Construction, § 60.02, at 152)); *State v. Barnes*, 273 Md. 195, 208 (1974) (statutes are remedial if they are "designed to correct existing law, to redress existing grievances, and to introduce regulations conducive to the public good").

The CVA is self-evidently designed to correct existing law. Remedial statutes are valid if the legislature had the power to do in the initial legislation what it enacted in the curative legislation. *Berean Bible Chapel, Inc.*, 28 Md. App. at 600. Moreover, "a remedial statute may be given retrospective effect without unconstitutionally infringing on vested rights if the new statutory remedy redresses a preexisting actionable wrong." *Rawlings*, 362 Md. at 535, 560 (citation omitted). In eliminating the statute of limitations applicable to claims of childhood sexual abuse, the CVA did just that.

III. EVEN IF THE 2017 LAW IS A STATUTE OF REPOSE, THE CVA IS CONSTITUTIONAL.

The Archdiocese assails the constitutionality of the CVA on the sole ground that the law amounts to an "unconstitutional" "abrogation" of the "vested right" created by the 2017 version of § 5-117(d), in alleged violation of the due process and takings clauses of the Maryland Constitution. Def. Mem. at 27. Even if that enactment created a statute of repose that provided immunity from suit, binding case law and the General Assembly's prior enactments that retroactively abrogated immunities granted by a statute of repose—both ignored by the Archdiocese—demonstrate the CVA passes constitutional muster. Moreover, the Archdiocese's attacks on the CVA rest on inapplicable case law and principles and should be rejected.

A. Statutes of Repose Are Subject to Retrospective Abrogation.

Even if the 2017 version of § 5-117(d) is deemed a statute of repose, it can be abrogated. The Supreme Court of Maryland has rejected the contention that applying a law that abolishes immunity from suit retrospectively to causes of action that arose before the enactment necessarily impairs vested rights. In *Allstate Insurance Co. v. Kim*, 376 Md. 276 (2003), which the Archdiocese does not discuss, the Court held that a law abolishing parent-child immunity permissibly applied retrospectively to a motor tort that arose arising prior to the law's enactment. 376 Md. at 299. A statute of repose also grants immunity.[12] Accordingly, *Kim* instructs that even if the 2017 law is a statute of repose, the CVA's retroactive abrogation of the statute is a valid legislative act.

Kim arose from an insurance claim a husband made on his and his son's behalf arising out of his wife's negligent failure to put a car in park before assisting their child that caused the car to run over and injure the child. On October 1, 2001—about three months *after* the incident—CJP § 5-806 became effective and provided:

> The right of action by a parent or the estate of a parent against a child of the parent, or by a child or the estate of a child against a parent of the child, for wrongful death, personal injury, or property damage arising out of the operation of a motor vehicle . . . may not be restricted by the doctrine of parent-child immunity or by any insurance policy provisions, up to the mandatory minimum liability coverage levels required by § 17–103(b) of the Transportation Article.

Id. at 283. The new law applied to any action for wrongful death, personal injury, or property damage filed on or after the effective date. *Id.*

Although the Court did not find any vested right to be impaired, it suggested that, as the

[12] *See Rose v. Fox Pool Corp.*, 335 Md. 351, 370 (1994); *Carven v. Hickman*, 135 Md. App. 645, 652 (2000) (describing a statute of repose as "a substantive grant of immunity derived from a legislative balance of economic considerations affecting the general public and the respective rights of potential plaintiffs and defendants").

Arizona and Washington Supreme Courts had held, an immunity, however created, may only be an "inchoate defense that cannot be asserted until an action in which it might be applicable has been filed and therefore cannot be regarded as a vested right before that time." *Id*. at 298. In support of that concept, the Court noted that "[i]mmunities are not favored in the law, and this one, in particular, has been under challenge, in both this Court and the Legislature, for several years." *Id*. The same is plainly true of the 2017 statute, which has been the subject of continued legislative debate resulting in its abrogation in 2023 a mere six years later.

Moreover, the General Assembly has previously retroactively created an exception to a Maryland's only accepted statute of repose—CJP § 5-108—to permit recovery for causes of action arising from asbestos exposure. Importantly, the legislature did so with the *Archdiocese's support*.

Section 5-108, originally enacted in 1970,[13] is a statute of repose for improvements to real property. The statute provides that causes of actions resulting from defective and unsafe conditions do not accrue after a certain period (10 or 20 years, depending on the status of the putative defendant) after the improvement becomes available. CJP § 5-108(a)-(b). In 1991, the General Assembly amended § 5-108 to carve out an exception to the statute of repose for asbestos claims against manufacturers and suppliers.[14] CJP § 5-108(d)(1), (d)(2)(ii)-(iv).

The 1991 law indicates the changes were to be applied retroactively to revive asbestos-related claims extinguished under the statute of repose. Under the 1991 law, property damage claims arising from the use of asbestos could be brought as to any structure made available for use after July 1, 1953. CJP § 5-108(d)(2)(iv)(3). Although subsections (a) and (b) would only allow such claims for buildings put into use 10 or 20 years earlier, the exception carved out by the 1991

[13] *See* Ex. 11 (1970 Md. Laws ch. 666 (S.B. 241)).

[14] *See* Ex. 12 (1991 Md. Laws. ch. 271 (S.B. 535)).

law applied to buildings made available *38 years prior*, thereby reviving previously barred property damage claims. The General Assembly set a two-year window for filing previously barred property damage asbestos claims. CJP § 5-108(d)(2)(iv)(5). Given the long latency period for asbestos-related disease and the need to compensate injured individuals, no "look back" window was imposed for personal injury asbestos claims. *See Duffy v. CBS Corp.*, 458 Md. 206, 230 (2018). Moreover, uncodified language of the 1991 law indicates its broad retrospective application, as it defines the limited set of claims *not* revived by the statute: only previously settled or adjudicated property damage claims. Ex. 12 (1991 Md. Laws. ch. 271 (S.B. 535)) at § 2.[15]

Ironically, the Archdiocese of Washington, the Archdiocese of Baltimore, and the Maryland Catholic Conference testified *in support of this bill*, and even requested that even older claims be revived.[16] The Church's full-throated support was born from financial self-interest, as the Archdiocese of Washington estimated the costs associated with asbestos remediation to be $2 million for their parish schools in Maryland, with more than $1 million for schools constructed before 1953.[17]

[15] The legislative history of the 1991 law also confirms it was to apply retroactively. Ex. 13 (Floor Report: S.B. 335) (noting that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose") at 1; Ex. 9 (Fiscal Note from the Dept. of Fiscal Services) ("This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.").

[16] *See* Ex. 14 (Archdiocese of Washington Testimony re: S.B. 376 and S.B. 335, Mar. 13, 1991); Ex. 15 (Archdiocese of Baltimore Testimony on S.B. 335 and S.B. 376, Mar. 13, 1991); Ex. 16 (Md. Catholic Conference Testimony re: S.B. 335 - Statute of Repose - Asbestos, Mar. 20, 1991).

[17] *See* Ex. 14 (Archdiocese of Washington Testimony re: S.B. 376 and S.B. 335, Mar. 13, 1991) at 1–2.

The Office of the Attorney General found no constitutional infirmity in this amendment. As then-Attorney General J. Joseph Curran, Jr. wrote, "We have previously advised that the statute of repose may be altered retroactively without violating due process." Ex. 8 (Ltr. from Attorney General J. Joseph Curran, Jr., April 30, 1991) at 2. In a letter regarding a predecessor bill that was vetoed and re-passed with amendments as SB 335, then-Assistant Attorney General Kathryn Rowe stated:

> [I]t is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

Ex. 7 (Ltr. from the Office of the Attorney General of Maryland, Feb. 15, 1990) at 11.

Moreover, *Duffy* acknowledged that the "1991 amendments to the statute of repose explicitly addressed defendants' liability in asbestos exposure cases by excluding 'asbestos manufacturers and suppliers' from the protections under the statute." 458 Md. at 228 (citing *Rose v. Fox Pool Corp.*, 335 Md. 351, 370 (1994)). The Court noted that the "legislative history of the statute of repose . . . is clear that the General Assembly intended to preserve the rights of individuals, who had suffered an asbestos-related injury, to file suit against manufacturers and suppliers of asbestos-containing products." *Id*. In fact, it was not the first time the General Assembly amended the statute of repose to "carve[] out additional exceptions to the protections afforded to defendants by the statute of repose." *Id*.

The General Assembly and the Office of the Attorney General approved of the amendment that retroactively revived claims barred by Maryland's only statute of repose. The 1991 law, moreover, has been faithfully applied for over three decades without question of its constitutionality, as *Duffy* exemplifies. Because the 1991 law validly revived claims previously

barred by a statute of repose, even if § 5-117(d) was a statute of repose, the General Assembly's determination to enact the CVA to revive previously expired claims passes constitutional muster.

B. *Smith* and *Dua* Do Not Support the Archdiocese's Vested Rights Argument.

The Archdiocese relies on *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57 (1972) to argue that "when a law retroactively revives a cause of action that was otherwise barred, the law violates due process." Def. Mem. at 28. *Smith* is inapposite. It concerned the retroactive application of a law lengthening the statute of limitations for a wrongful death claim—a creature of statute. *Id.* The "statute of limitations" was not an ordinary time bar but rather a condition precedent to filing suit. *See, e.g.*, *Smith*, 266 Md. at 55–56; *Geisz v. Greater Balt. Med. Ctr.*, 313 Md. 301, 322 (1988) ("[T]he time period specified in the wrongful death statute is not an ordinary statute of limitations but is part of the substantive right of action.").

While a statute of limitations is procedural, a condition precedent is substantive. If the condition precedent cannot be met, the plaintiff never had a cause of action that could be "revived." *Smith*, 266 Md. at 55–56. In other words, it would create liability for past acts where none existed. Statutes of limitations are different. They only affect the remedy, not the underlying cause of action, and are therefore subject to waiver, unlike a condition precedent. *Georgia-Pac. Corp. v. Benjamin*, 394 Md. 59, 85 (2006).

Here, Plaintiffs assert only common law causes of action, where the statute of limitations is not a condition precedent to suit. Section 5-117 created no causes of action; rather, it applied a statute of limitations to common law causes of action involving childhood sexual abuse. As no condition precedent is at issue, *Smith* does not apply.

Indeed, then-Assistant Attorney General Kathryn Rowe observed, when she commented on the 1991 bill enacting the asbestos exception to the statute of repose in § 5-108, as follows:

> No Court of Appeals case has extended the rationale of *Smith* beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. . . . Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the *Smith* case does not mandate the conclusion that it creates a vested right.

Ex. 7 (Ltr. from the Office of the Attorney General of Maryland, Feb. 15, 1990) at 9. She also noted that *Smith* relied heavily upon *William Danzer & Co. v. Gulf of S.I.R. Co.*, 268 U.S. 633 (1925), which—while not explicitly overturned by the Supreme Court—was limited by *Inter'l Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers*, 429 U.S. 229 (1976). In *Robbins*, contrary to its holding in *Danzer*, the Supreme Court upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. *Id.* at 244.

The Archdiocese also inaptly relies on *Dua v. Comcast Corp. of Md*., 370 Md. 604 (2002).[18] *Dua*, however, concerns a factually distinct circumstance, where legislative action deprived the *plaintiffs* of a cause of action, versus a defense. As discussed above, the Archdiocese fail to acknowledge that, post-*Dua*, *Kim* held that retroactive abrogation of an immunity did not impair vested rights and distinguished between legislative action that retroactively impaired a cause of action versus retroactive impairment of a defense. This is eminently sensible. After all, Maryland has long recognized that a cause of action is a form of property, known as a "chose in action," and capable of assignment. *Med. Mut. Liab. Ins. Soc. of Md. v. Evans*, 330 Md. 1, 29 (1993). *Cf. Logan v. Zimmerman Brush Co*., 455 U.S. 422, 428 (1982) ("[A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."). It is created at the time of injury. On the other hand, when a defendant injures a person through misconduct,

[18] Although the Archdiocese mounts both due process and takings challenges to the CVA, the analysis under each merges; both are analyzed under the rubric of vested rights. *Dua*, 370 Md. at 630.

particularly intentional misconduct as is at issue here, the defendant has no reliance interest or expectancy that it will not be subjected to liability that can be deemed a property right, sold, or assigned. The Archdiocese's invocation of *Dua* wrongly conflates these two opposing effects of retrospective legislation and totally ignores *Kim.*

The language the Archdiocese quotes from *Dua* further indicates that, consistent with the foregoing authorities, there is no total bar on impairment of vested rights. *See* Def. Mem. at 28 ("The Maryland Supreme Court 'has consistently held that the Maryland Constitution *ordinarily* precludes the Legislature . . . from . . . reviving a barred cause of action, thereby violating the vested right of the defendant.'" (quoting *Dua*, 370 Md. at 633)). Considering the foregoing, the Archdiocese is plainly incorrect in saying, in reliance on *Dua*, that "[t]he ban on violating vested rights is categorical." *Id.* If the Archdiocese's "categorical" approach were correct, the 1991 asbestos exception to the statute of repose in § 5-108 that Maryland courts have diligently implemented would be "categorically" unconstitutional. Instead, the rational-basis test applicable to substantive due process applies and asks whether the elimination of the limitations period, a procedural regulation, is rationally related to a legitimate government interest. *See Pizza di Joey, LLC v. Mayor and City Council of Baltimore*, 470 Md. 308, 352 (2020). That deferential review is fully validated by the General Assembly's undisputed concern that victims of childhood sexual abuse receive vindication in the law and their longstanding psychological injuries resulting from that abuse and cover-up be taken into account in determining whether their claims are stale.

C. The Archdiocese's Due Process Argument Lacks Merit.

The Archdiocese makes no assertion that the CVA violates any fundamental right it may assert. Instead, it relies largely on a due process claim.[19] Due process, though, is subject only to

[19] Although the Archdiocese repeatedly claims a "substantive right," nowhere does it use the term "substantive due process." Substantive due process "refers to the principle that there are certain

rational-basis review, which is "the least exacting and most deferential standard of constitutional review" and sustains the legislation "so long as it is rationally related to a legitimate governmental interest." *Tyler v. City of Coll. Park*, 415 Md. 475, 501 (2010) (citations omitted).

A due process argument against a similar statute in Connecticut was rejected because the statute was a "rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child." *Doe v. Hartford Roman Cath. Diocesan Corp*., 119 A.3d 462, 496 (Conn. 2015). The same result is warranted here.

In fact, the interest advanced by the CVA is compelling. In seeking to promote child safety and well-being by deterring child sexual abuse and providing survivors with greater access to remedies to promote healing, the CVA reflects a compelling interest in promoting child safety, public safety, and public health. *Cf. New York v. Ferber*, 458 U.S. 747, 756–57 (1982) ("It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling."); *Ashcroft v. Free Speech Coal*., 535 U.S. 234, 263 (2002) (O'Connor, J., concurring) ("The Court has long recognized that the Government has a compelling interest in protecting our Nation's children."). In fact, "[t]here is also no doubt that . . . the sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people." *Packingham v. North Carolina*, 582 U.S. 98, 98–99 (2017) (cleaned up). Clearly, "a legislature may pass valid laws to protect children and other victims of sexual assault from abuse." *Id*. at 99 (cleaned up). *Cf. In re S.K*., 237 Md. App. 458, 469–70 (2017); *Dr.*

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liberties protected by the due process clauses in the federal and State Constitutions from government interference, *unless the governmental action is narrowly tailored to satisfy an important government interest*." *Powell v. Maryland Dep't of Health*, 455 Md. 520, 548 (2017) (emphasis added). That is a form of "intermediate scrutiny" where the government interest must be "important," rather than compelling. *See Pizza di Joey*, 470 Md. at 347. Here, as established above, the interest is compelling.

K. v. State Bd. of Physician Quality Assur., 98 Md. App. 103, 120 (1993) ("[T]he State has a significant interest in protecting its citizens and the public health."). The CVA falls squarely within these compelling government interests. The Archdiocese nowhere alleges, and the record nowhere supports, that this enactment fails to advance these compelling interests.

Even if the Archdiocese could characterize the CVA as a taking—which Plaintiffs deny—the Takings Clause "do[es] not prohibit the government from taking property for public use." *Dabbs v. Anne Arundel Cnty.*, 458 Md. 331, 348 (2018). There may be compensatory requirements when a taking goes too far, *Neifert v. Dep't of Env't*, 395 Md. 486, 517 (2006), but that is not the case here (especially because the 2017 law is not a statute of repose).

IV. PLAINTIFFS' CLAIMS ARE TIMELY REGARDLESS OF THE CONSTITUTIONALITY OF THE CVA.

The Court need not decide the constitutionality of the CVA in order to conclude that Plaintiffs' claims are timely filed. Even under the 2017 law, Plaintiffs' claims are not time-barred because Plaintiffs have sufficiently pleaded that their claims were tolled under a theory of fraudulent concealment. Because Plaintiffs' claims were tolled—and thus live—when the 2017 law was enacted, the law did not and could not extinguish them.

A. The 2017 Law Did Not Extinguish Viable Claims.

The Archdiocese argues that, in passing the 2017 law, the General Assembly granted repose to defendants for claims arising from childhood sexual abuse not asserted within 20 years after the plaintiff reached the age of majority and foreclosed traditional tolling exceptions. Def. Mem. at 1, 19. This characterization conveniently ignores the plain language of uncodified language in § 3 of the 2017 law, which expressly conditions application of § 5-117(d) on the preexisting statute of limitations. Section 3 states that § 5-117(d) "shall be construed to apply both prospectively and retroactively to provide repose to defendants *regarding actions that were barred*

by the application of the period of limitations applicable before October 1, 2017." Def. Ex. 1 at 4 (emphasis added). The General Assembly thereby limited retroactive application of § 5-117(d) to those claims that were already expired. Claims that were viable on September 30, 2017 were beyond the ambit and unaffected by § 5-117(d), and thus remained viable after the statute was enacted.

In addition to ignoring the plain language of § 3, the Archdiocese's construction of the 2017 law violates the Maryland Constitution. *See Dua*, 370 Md. at 623 ("[T]he Constitution of Maryland prohibits legislation which retroactively abrogates vested rights [in a plaintiff's cause of action] . . . . [T]he State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else."); *WSSC v. Riverdale Fire Co.*, 308 Md. 556, 564 (1987) (A "statute, even if intended to apply retrospectively, will not be given that effect if it would take vested rights"). Sister states agree. *See, e.g.*, *Costello v. Unarco Indus., Inc.*, 490 N.E.2d 675, 678 (Ill. 1986) ("[C]auses of action which stem from occurrences prior to the effective date of the amendment and which . . . would 'accrue' at a later time should not be terminated by a statute of repose on its effective date." (citing *Moore v. Jackson Park Hosp.*, 447 N.E.2d 408, 415–16 (Ryan, C.J., concurring))). A contrary construction must be rejected. *Harrison-Solomon v. State*, 442 Md. 254, 287 (2015) ("[W]e will construe a statute to avoid conflict with the Constitution whenever it is reasonably possible to do so, even to the extent of applying a judicial gloss to interpretation that skirts a constitutional confrontation.").

As set forth below, Plaintiffs sufficiently plead that their claims were tolled by the Archdiocese's fraudulent concealment until April 2023. Because their claims were unexpired on the effective date of § 5-117(d), they are exempted from that provision's time limitation.

B. The Archdiocese Fraudulently Concealed—and Thereby Tolled—Plaintiffs' Claims.

Plaintiffs have alleged that the Archdiocese is liable for its own cover-up, breach of its special duty to the putative class, and fraudulent concealment. Compl. ¶¶ 93, 98, 104, 114, 115, 122, 189, 193, 261, 265, 272, 287, 288, 292, 302–304, 317, 338, 343, 354, 360. *MacBride v. Pishvaian*, 402 Md. 572, 584 (2007), establishes that a statute of limitations may be tolled for "continuing unlawful acts." As a result, the "'continuing harm' or 'continuing violation' doctrine . . . tolls the statute of limitations in cases where there are continuing violations." *Id*. For that reason, "violations that are continuing in nature are not barred by the statute of limitations merely because one or more of them occurred earlier in time." *Id*.

CJP § 5-203 was first enacted in 1868 and codifies Maryland's fraudulent concealment doctrine applicable to all actions. *Geisz v. Greater Balt. Med. Ctr.*, 313 Md. 301, 321 (1988). The statute provides: "If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud." § 5-203. "The principle underlying the statute is that it would be contrary to the plainest principles of justice, to permit one practicing a fraud and then concealing it, to plead the statute, when, in fact, the injured party did not know, and could not with reasonable diligence have discovered the fraud." *Geisz*, 313 Md. at 324–25 (cleaned up). Though "fraud appears in many guises," it is commonly understood as "a knowing misrepresentation of the truth or concealment of a material fact or a misrepresentation made recklessly without belief in its truth to induce another to act to his or her detriment." *Thomas v. Nadel*, 427 Md. 441, 450–51 (2012) (cleaned up).

At this stage, Plaintiffs' burden is to plead (1) how the Archdiocese's fraud kept them unaware of their causes of action; (2) how the fraud was discovered; and (3) why there was a delay in discovering the fraud. *Bacon v. Arey*, 203 Md. App. 606, 661 (2012). "A plaintiff must allege

facts which indicate fraud or from which fraud is necessarily implied." *Antigua Condo. Assoc. v. Melba Inv'rs Atl., Inc.*, 307 Md. 700, 735 (1986). Plaintiffs' well-pleaded facts easily clear this low hurdle.

First, the complaint sets forth numerous allegations detailing the Archdiocese's deceitful conduct that precluded Plaintiffs from discovering the tortious conduct at the heart their claims:

- The Archdiocese exercised a position of trust, confidentiality, and moral authority over Plaintiffs, and was "specially charged to protect" innocent children. Compl. ¶¶ 5–6, 66. Plaintiffs reasonably entrusted the Archdiocese to take measures to prevent foreseeable harm including sexual abuse at the hands of sexual predators, and thus had no reason to suspect the Archdiocese acted to facilitate such harm. *Id*. ¶¶ 37, 65, 67, 70, 98, 102, 114, 115, 299–302.
- The Archdiocese concealed credible reports of child sexual abuse within its ranks from the public and law enforcement, including police and child protective services, and declined to discipline or remove perpetrators. *Id.* ¶¶ 86, 88, 89, 110, 170–71.
- The Archdiocese knowingly accepted, transferred, but declined to expel credibly accused sexual predators within the Archdiocese without informing congregations of the danger posed by these priests. *Id.* ¶ 87(d). The Archdiocese publicized these transfers as routine movement of clergy and cause for celebration while providing false information about clergy members' sexual misconduct. *Id*. ¶¶ 109–110. The transfers were consummated to prevent further complaints and legal action. *Id*. ¶ 110.
- The Archdiocese actively mispresented material facts from Plaintiffs regarding numerous complaints and substantiated findings of clergy sexually abusing children. *Id.* ¶ 111.

- The Archdiocese taught Plaintiffs that its agents—and priests in particular—were infallible, could not err, and required complete obedience, thereby causing Plaintiffs to believe that the sexual abuse they suffered was normal, acceptable, an expression of love, and God's will. *Id.* ¶¶ 90–91, 102, 106, 144–45, 167.

Plaintiffs, moreover, sufficiently plead how the fraud was uncovered and the cause of the delay: they were unaware of their claims until April 2023 when the Maryland Attorney General released its Report on Child Sexual Abuse in the Archdiocese of Baltimore and announced a similar investigation against the Archdiocese of Washington was underway. *Id*. ¶¶ 100–01. The AG Report was the culmination of a secretive grand jury criminal investigation involving the production of hundreds of thousands of pages of records and hundreds of witness interviews,[20] and was the first comprehensive account of a decades-long cover up of child sexual abuse in Maryland at the highest levels of the Catholic Church. Ex. 1 (AG Report) at 1. Prior to the Report's release and the announcement of a similar investigation into the Archdiocese of Washington, no reasonable person could have discovered the fraud perpetrated by the Archdiocese.

The Archdiocese relies on *Doe v. Archdiocese of Washington*, 114 Md. App. 169 (1997), in arguing that the fraudulent concealment doctrine does not apply, but this case is readily distinguishable. In *Doe*, the Appellate Court of Maryland held § 5-203 inapplicable because the plaintiff failed to plead a "single specific allegation of conduct on the part of the Archdiocese that kept [the plaintiff] in ignorance of his claims." *Id*. at 188. Absent from the *Doe* complaint were factual allegations supporting a claim for fraud, how the plaintiff learned of the fraudulent scheme,

[20] *See* Md. Rule 4-642 (secrecy provisions applicable to grand jury investigations).

and why a diligent plaintiff could not have discovered it sooner. *Id*. at 189. As discussed, those key allegations are sufficiently pleaded here, rendering *Doe* inapposite.[21]

Plaintiffs' allegations regarding the Archdiocese's breaches of its special duty arising from a confidential relationship provide yet another basis for tolling under the fraudulent concealment doctrine. "A confidential relation exists between two persons when one has gained the confidence of the other and purports to act or advise with the other's interest in mind." *Buxton v. Buxton*, 363 Md. 634, 654–55 (2001); *see also Bass v. Smith*, 189 Md. 461, 469 (1948) (a confidential relationship exists "where one party is under the domination of another, or where, under the circumstances, such party is justified in assuming that the other will not act in a manner inconsistent with his or her welfare"). "For a priest and a parishioner to have a confidential relationship, there must be *actual* trust and confidence between the parties." *Latty v. St. Joseph's Soc'y of the Sacred Heart*, 198 Md. App. 254, 267 (2011) (emphasis in original).

A confidential relationship carries with it the requirement of the "utmost good faith and loyalty" that gives rise to an affirmative duty to disclose material facts. *Frederick Rd. Ltd. Pshp. v. Brown & Sturm*, 360 Md. 76, 100 (2000); *Hogan v. Md. State Dental Ass'n*, 155 Md. App. 556, 566 (2004). Failure to disclose such facts constitutes fraud that tolls limitations where the beneficiary lacks inquiry notice that the relationship has been abused. *Frederick Rd. Ltd. Pshp.* at 99–100. This rule is tempered, however, by the confiding party's right to relax their guard and rely on the good faith of the other party while the relationship continues to exist. *Id.* at 97–99; *Desser v. Woods*, 266 Md. 696, 709 (1972) ("Nor is the confiding party under any duty to make inquiry

[21] Further distinguishing this case is that the *Doe* plaintiff did not allege a single count of fraud. *Id.* at 187–88 (none of the sixteen counts "is entitled 'fraud.' Nor are facts alleged in any of the counts from which fraud may be inferred."). Plaintiffs, by contrast, plead three counts sounding in fraud: breach of fiduciary duty (Count V), constructive fraud (Count VI), and fraud (Count VII). Compl. ¶¶ 273–318.

to discover that the confidential relationship has been abused during the continuation of that relationship."). Whether a plaintiff's failure to discover a cause of action resulted from lack of due diligence or the defendant's concealment of wrongdoing is usually a question reserved for the jury. *Frederick Rd. Ltd. P'shp* at 100.

Throughout the complaint, Plaintiffs allege a continuing relationship with the Archdiocese marked by trust, dependence, and dominance, and thus sufficiently plead the existence of an ongoing confidential relationship that was never discharged due to the Archdiocese's knowledge of the issues without ever informing Plaintiffs. *See* Compl. ¶¶ 37, 63–65, 75–77, 98, 102, 114, 115, 144–45, 155, 212, 230, 275, 277, 279, 281, 289, 295, 297. Moreover, Plaintiffs allege that the Archdiocese breached its affirmative duty to disclose material facts, including by concealing its knowledge of perpetrators' acts of sexual abuse and dangerous propensities, failing to disavow perpetrators' representations that the sexual abuse Plaintiffs suffered was allowable, and failing to disclose the Archdiocese's tortious conduct that facilitated the sexual abuse and Plaintiffs' potential legal claims against the Archdiocese. *Id.* ¶¶ 104, 107, 248(d), (f), (g). The Archdiocese's non-disclosure of material facts amounts to continuing fraudulent concealment that kept Plaintiffs in ignorance of their causes of action, and thus tolled their claims under § 5-203. Because Plaintiffs' claims were tolled on September 30, 2017, by the express terms of the 2017 law, these claims were beyond the scope of § 5-117(d) and remained viable.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court enter an order DENYING Defendant's Motion to Dismiss.

Dated: December 8, 2023

Respectfully submitted,

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EXHIBIT 3

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

JOHN DOE, RICHARD ROE, and MARK SMITH, individually and on behalf of all others similarly situated,	*	
Plaintiffs,	*	
v.	*	Case No. C-16-CV-23-004497
ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON,	*	
Defendant.	*	

* * * * * * * * * * * *

BRIEF OF ATTORNEY GENERAL PURSUANT TO COURTS AND JUDICIAL PROCEEDINGS § 3-405(c) OR, IN THE ALTERNATIVE, AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL

Plaintiffs bring this class action individually and on behalf of all persons who were subjected to sexual abuse as minors, from 1939 to the present, by agents, servants, or employees of the defendant, Roman Catholic Archdiocese of Washington (the "Archdiocese"), or on premises owned or controlled by the Archdiocese.

The Archdiocese has moved to dismiss the complaint, asserting that the plaintiffs' claims are time-barred, and that the attempt by the General Assembly to revive time-barred claims by enactment of the Child Victims Act, 2023 Md. Laws ch. 5 (S.B. 686) (the "CVA") violates the Maryland Constitution.

As demonstrated below, the Archdiocese is incorrect. The General Assembly has broad authority to modify time restrictions for filing lawsuits, and the Archdiocese cites no

case in which a Maryland court has found the General Assembly to have exceeded that authority. Further, there is no basis to conclude that the General Assembly ever intended to create a "vested right" for the enablers of child sex abuse to avoid civil liability for their actions. The Archdiocese's argument that the CVA is unconstitutional should be rejected.

INTEREST OF AMICUS

The State of Maryland passed the CVA in 2023 to ensure victims of child sexual abuse have their day in court. The CVA passed the Maryland House and Senate by an overwhelming combined vote of 175-5. The Attorney General has a fundamental interest in the enforcement and defense of Maryland state laws. Attorney General Anthony Brown has vowed to defend the constitutionality of the law. Tracee Wilkins, *Washington Archdiocese challenges Maryland's Child Victims Act*, News 4 (November 4, 2023).[1]

ARGUMENT

I. THE CHILD VICTIMS ACT REMOVED BARRIERS TO VICTIMS SEEKING JUSTICE THROUGH THE COURTS.

The CVA took effect on October 1, 2023, and eliminated the statute of limitations for civil lawsuits filed by victims of child sexual abuse. Prior to the CVA, victims of child sexual abuse were required to file suit before they reached 38 years of age or within three years after the date that the perpetrator of the abuse was convicted of a crime relating to the alleged abuse. Md. Code Ann., Cts. & Jud. Proc. § 5-117(b) (LexisNexis 2013 and

[1] Available at https://www.nbcwashington.com/investigations/washington-archdiocese-challenges-marylands-child-victims-act/3470836/

Supp. 2017). The CVA removed those time limits by modifying this provision to state that a claim arising out of child sexual abuse "may be filed at any time."

In addition, the CVA also removed subsection 5-117(d), which required a victim to file claims against "a person or governmental entity that is not the alleged perpetrator" before the victim reaches 38 years of age.

In its motion to dismiss, the Archdiocese argues that the General Assembly's removal of § 5-117(d) from the statute violates the Maryland Constitution because that section created a "vested right" in the Archdiocese to be free of claims of child sexual abuse filed after the plaintiff reaches 38 years of age. Motion at 6. In support of this argument, the Archdiocese asserts that § 5-117(d) constituted a "statute of repose" that forever extinguished certain claims of child sex abuse, and that the General Assembly cannot revive those claims after the fact. Motion at 21. As shown below, the Archdiocese is incorrect.

II. THE GENERAL ASSEMBLY HAS AUTHORITY TO ENACT LEGISLATION REVIVING TIME-BARRED CLAIMS.

Maryland Courts recognize that the General Assembly has broad authority to address time restrictions for filing lawsuits. A statutory time period to file suit is "a policy judgment by the General Assembly that serves the interest of a plaintiff in having adequate time to investigate a cause of action and file suit, the interest of a defendant in having certainty that there will not be a need to respond to a potential claim that has been unreasonably delayed, and the general interest of society in judicial economy." *Ceccone*

v. Carroll Home Services, LLC, 454 Md. 680, 691 (2017). The General Assembly may also modify existing time periods for filing. *See Allen v. Dovell*, 193 Md. 359, 364 (1949) (explaining that the General Assembly can amend a filing period by "extending or reducing the period of limitations, so as to regulate the time within which suits may be brought").

Within its ability to set the time periods during which plaintiffs can file suit in court, the General Assembly has authority to revive causes of action that otherwise would be time-barred. This principle is well-established by federal courts and the courts of many other states and applies regardless of whether the provision effecting the bar is denominated a statute of limitations or a statute of repose. *See*, *e.g.*, *Campbell v. Holt*, 115 U.S. 620, 628 (1885) (holding that retroactive modification of statute of limitations that revives barred claims would not violate Constitution); *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 311-13 (1945) (holding that the Due Process Clause of the Fourteenth Amendment does not prohibit the revival of claims barred by a statute of limitations); *Shadburne-Vinton v. Dalkon Shield Claimants Trust*, 60 F.3d 1071, 1077 (4th Cir. 1995) (holding that revival of a cause of action through retroactive amendment of a statute of repose does not violate due process rights under the Federal Constitution); *Wesley Theological Seminary of the United Methodist Church v. U.S. Gypsum Co.*, 876 F.2d 119, 21-23 (D.C. Cir. 1989) (holding that revival of claims by amendment of a statute of limitations does not violate a defendant's due process rights under Federal Constitution); *20th Century Ins. Co. v. Superior Court*, 90 Cal. App. 4th 1247, 1262 (2001) ("The General

Assembly is constitutionally free to revive a civil cause of action that has become time barred under a former statute of limitations."); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-59 (Del. 2011) (upholding as constitutional Delaware's Child Victim's Act which eliminated statute of limitations for child sexual abuse claims and revived previously-barred claims by establishing a two-year "lookback window"); *City of Boston v. Keene Corp.*, 406 Mass. 301, 311 (1989) (holding that legislation reviving claims that were previously barred by the statute of limitations does not violate Massachusetts Constitution); *In re Individual 35 W Bridge Litig.*, 806 N.W.2d 820, 832-33 (Minn. 2011) (statutes resulting in revival of cause of action previously barred by statute of repose did not violate due process under either Federal or Minnesota Constitutions); *Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Ct. in and for Cnty. of Clark*, 495 P.3d 519, 531-32 (Nev. 2021) (holding that amendment to statute of repose that revives previously barred claims does not violate due process under the Nevada Constitution).

The CVA's revival of previously time-barred claims arising out of sexual abuse that victims suffered as children is wholly appropriate. It recognizes that child sexual abuse is an extraordinary problem and that, for a variety of reasons, victims often take years or decades to come to terms with what they endured as children. Perpetrators of child sexual abuse are overwhelmingly known to their victims, and often held positions of authority or trust over them. Centers for Disease Control and Prevention, *Fast Facts: Preventing Child*

Sexual Abuse (2022).[2] In addition, many of the incidents of child sexual abuse from decades ago fall outside statutes of limitations that previously existed for criminal charges to be brought. *See* Attorney General of Maryland, *Report on Child Sexual Abuse in the Archdiocese of Baltimore*, at 4-8 (April 2023) (summarizing history of child sexual abuse laws in Maryland).[3] Revival of victims' civil causes of action, therefore, is a critical step toward holding accountable those who perpetrated or enabled the harm.

III. Regardless of Whether the 2017 Statute Was a Statute of Limitations or a Statute of Repose, It Should Not Be Interpreted to Have Created Vested Rights on the Part of Perpetrators or Enablers of Child Sexual Abuse.

Maryland courts have never recognized a vested right of defendants to be permanently free from liability for time-barred claims, let alone free of liability arising out of sexual abuse of children. The Archdiocese, however, contends that "in 2017 the General Assembly explicitly enacted a 'statute of repose' for such defendants, conferring upon them a vested right to be free of claims like those asserted in this case." Motion at 6. By "claims like those asserted in this case," the Archdiocese evidently means claims for enabling child sexual abuse and harboring perpetrators from criminal or civil liability. The Archdiocese cites no binding legal authority supporting this extreme position.

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[2] Available at https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html

[3] Available at https://www.marylandattorneygeneral.gov/news%20documents/OAG_redacted_Report_on_Child_Sexual_Abuse.pdf

The Archdiocese attempts to support its claim of a "vested right" by quoting the statement in *Anderson v. United States*, 427 Md. 99, 120 (2012), that "[s]tatutes of repose . . . create a substantive right protecting a defendant from liability after a legislatively-determined period of time." Motion at 21. The Archdiocese then claims that Courts & Judicial Proceedings § 5-117(d), which the CVA eliminated, "is a statute of repose, which creates a substantive, vested right in the Archdiocese to be free from claims like Plaintiffs'." *Id.*[4]

Contrary to the Archdiocese's characterization, *Anderson* does not hold that defendants have a vested right to be free of a claim with an expired statute of repose. The language that the Archdiocese quotes is part of *Anderson*'s description of the Fourth Circuit's decision in *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862 (4th Cir. 1989). In that case, the Fourth Circuit held that Courts & Judicial Proceedings § 5-108, Maryland's statute of repose for injury claims arising out of improvements to property, cannot be tolled by Courts & Judicial Proceedings § 5-203, which delays accrual of claims when a defendant fraudulently conceals its misconduct. *First United Methodist Church of Hyattsville*, 882 F.2d at 866. The Fourth Circuit never ruled that defendants have a vested right in an expired statute of repose, nor did *Anderson*.

[4] Subsection (d) was added to § 5-117 by 2017 Md. Laws ch. 12 (H.B. 42) ("the 2017 statute"). The 2017 statute also extended the statute of limitations in § 5-117(b) for claims arising out of child sexual abuse from 25 years old ("7 years after the date that the victim attains the age of majority") to 38 years old.

The Archdiocese grounds its claim of a vested right in the 2017 statute, but the language of that bill does not support that argument. In particular, the Archdiocese points to both subsection (d) and the uncodified "Section 3" of the 2017 statute. Neither provision said anything about a "vested right." Subsection (d) provided that no action against a non-perpetrator may be "filed" after the plaintiff reaches 38 years of age. This "filing" of a claim is a procedural matter, and "'[n]o person can claim a vested right in any particular mode of procedure for the enforcement or defense of his rights,'" *State v. Goldberg*, 437 Md. 191, 226 (2014) (quoting 2 Sutherland's Statutory Construction § 674 (2d ed. 1904)).

If the General Assembly wanted § 5-117(d) to "extinguish" claims against perpetrators or enablers or child sexual abuse, as the Archdiocese argues, it could have easily done so. Courts & Judicial Proceedings § 5-108(a), discussed in *First United Methodist Church of Hyattsville*, is a statute of repose that addresses improvements to real property and instructs that "no cause of action for damages accrues" when an injury "occurs more than 20 years after the date the entire improvement first becomes available for its intended use." Similarly, § 5-108(b) limits claims against architects, professional engineers, and contractors, providing that "a cause of action for damages does not accrue" when an injury "occurs more than 10 years after the date the entire improvement first became available for its intended use." The General Assembly used clear wording in those provisions to strike the heart of a claim by preventing it from accruing at all. If the General Assembly wanted to take extreme action here by extinguishing victims' claims, it could

likewise have done so in clear terms. Instead, subsection (d) from the 2017 statute addresses only the procedural matter of when a claim can be "filed."

The uncodified Section 3 from the 2017 statute likewise does not support the Archdiocese's claim of a vested right. Section 3 stated that subsection (d) must "provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Section 3 does not explain what it means by "repose," though—and "repose" certainly is not synonymous with "vested right." For instance, statutes of limitations are themselves designed to, among other things, "grant repose to defendants when plaintiffs have tarried for an unreasonable period of time." *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 85 (2006). And Maryland case law is clear that statutes of limitations "do not create any substantive rights in a defendant to be free from liability." *Anderson*, 427 Md. at 118.

We are aware of no Maryland case holding that expiration of a statute of limitations or statute of repose provides a defendant with a vested right. What the Archdiocese asks this Court to rule would be unprecedented and would go against the consensus of federal law and the reasoned opinions of many other states.

IV. NO VESTED RIGHTS PROTECT THE ARCHDIOCESE AGAINST THE PLAINTIFFS' CLAIMS.

The Archdiocese highlights the statement in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002), that "the Maryland Constitution ordinarily precludes the Legislature . . . from . . . reviving a barred cause of action, thereby violating the vested right

of the defendant." Motion to Dismiss at 28. That statement, however, is non-binding dicta. The only case cited in *Dua* that addresses reviving a barred cause of action is *Smith v. Westinghouse Electric*, 266 Md. 52 (1972), which is inapplicable to statutes of limitations or statutes of repose. *Smith* involved a statute for wrongful death claims, and included within that statute was a limitation period for filing such claims. The Court determined that the statutory time period was a condition precedent to filing suit and held that retroactive application of an amendment of the time period from two years to three years violated the Maryland Constitution. *Id.* at 57. The Court distinguished the condition precedent in the statute from an ordinary statute of limitations, characterizing the latter as a procedural matter. Accordingly, *Smith* does not support the dicta in *Dua* as applied to an ordinary statute of limitations or statute of repose.

The Archdiocese's arguments fail for another reason: taking *Dua* at face value, child sexual abuse victims had constitutionally-protected, vested rights in their accrued causes of action that the 2017 statute could not constitutionally have abolished.

Dua did not just address vested rights to be free of liability. It also observed that "there is a vested right in an accrued cause of action," *Dua*, 370 Md. at 632, and stated that "the Maryland Constitution ordinarily precludes the Legislature . . . from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right." *Id.* at 633. For victims of child sexual abuse, their causes of action accrued when the sexual abuse took place. Thus, if *Dua*'s observations about vested rights are controlling,

§ 5-117(d) could not have "extinguished" the plaintiffs' claims, Motion to Dismiss at 18, as such an effect would have been unconstitutional. *See Johnson v. State*, 271 Md. 189, 195 (1974) ("[A]n unconstitutional act is not a law for any purpose, cannot confer any right, cannot be relied upon as a manifestation of legislative intent, and is, in legal contemplation, as inoperative as though it had never been passed." (quotation marks and citations omitted)). In turn, because the plaintiffs' claims were never abolished in the first place, the Archdiocese could not have obtained any vested right in the abolishment of the claims. And the Archdiocese, in turn, could not have acquired a vested right to be free of liability for those claims.

Moreover, the Archdiocese ignores that *Dua* did not even articulate those dicta categorically. Instead, it stated that "the Maryland Constitution *ordinarily* precludes the Legislature . . . from . . . reviving a barred cause of action, thereby violating the vested right of the defendant." 370 Md. at 633 (emphasis added). Even by the terms of *Dua*'s dicta, then, there are circumstances in which the claimed constitutional prohibition on reviving claims does not apply. These are such circumstances, as child sexual abuse is not an "ordinary" matter. *See Degren v. State*, 352 Md. 400, 421 (1999) (noting that child sex abuse causes "extensive emotional, psychological, or physical damage").

The Attorney General's recent investigation into the Archdiocese of Baltimore shows the extraordinary harm to children that can result from failures within a single organization. The investigation identified over one hundred clergy who sexually abused

child victims, and an extensive cover up by church leadership. *Report on Child Sexual Abuse in the Archdiocese of Baltimore*, at 9-11. Additionally, victims often do not disclose their abuse until many years after it occurs, if they do so at all. By one estimate, for example, only 11.9% of women who were sexually abused when they were minors had reported their abuse to authorities, and that number was even lower when they knew their abusers. *Id.* at 9. The revival of time-barred claims arising out of child sexual abuse is not "ordinary" because the harm to victims is extraordinary, and the need for accountability of the perpetrators and enablers is extraordinary. As a result, the dicta in *Dua* relied on by the Archdiocese is no constitutional impediment to the CVA.

CONCLUSION

This Court should reject the Defendant Archdiocese of Washington's argument that the CVA violates the Maryland Constitution.

Respectfully submitted,

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December 21, 2023

CERTIFICATE OF SERVICE

I certify that, on this 21st day of December, 2023, the foregoing was filed and served electronically by the MDEC system on all persons entitled to service.

/s/ Jeffrey S. Luoma
_____
Jeffrey S. Luoma

EXHIBIT 4

IN THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY

JOHN DOE, RICHARD ROE, and MARK SMITH, individually and on behalf of all others similarly situated, Plaintiffs, v. ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, Defendant.	Case No. C-16-CV-23-004497

REPLY BRIEF OF DEFENDANT ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON IN SUPPORT OF ITS MOTION TO DISMISS

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Argument

The principal thrust of Plaintiffs' opposition is that the legislation enacted in 2017 is not what it says it is. According to the Plaintiffs, although the law explicitly states that CJ § 5-117(d) (West 2017) is a "statute of repose," it is not a statute of repose after all—or should not be treated as such—because the legal consequences of a statute of repose were not sufficiently spelled out to the legislators who enacted it. That argument is untenable. If accepted, it would render all legislation subject to nullification on the ground that those who voted for it didn't understand what they were voting for.

Equally untenable is Plaintiffs' secondary argument—that § 5-117(d) is not a statute of repose because it does not share all of the features of other statutes of repose that Plaintiffs identify. As the Maryland Supreme Court has said, "there are overlapping features of statutes of limitations and statutes of repose, and plenty of definitions from which to choose," and, for that reason, there is "no hard and fast rule" for identifying statutes of repose. *Anderson v. United States*, 427 Md. 99, 123 (2012). There is certainly no formula for treating what is explicitly labeled a statute of repose as something else.

Section 5-117(d), in any event, closely resembles other statutes of repose in important respects: it protects a narrow category of potential defendants (entities that are not themselves perpetrators of sexual abuse), provides an absolute bar on liability after a certain period of time, and is triggered by a date other than the date of injury. Plaintiffs argue that the trigger date is not related to the defendant's conduct, as is true of some other statutes of repose. But a law that is explicitly labeled a statute of repose does not become something else—a mere statute of limitations—because it is not identical in all respects to all other statutes of repose. And at least one other state (Illinois) has enacted a statute of repose much like this one—extinguishing claims

arising from the sexual abuse of minors a certain number of years after the plaintiff reaches the age of majority.

The essential nature of a statute of repose is that it protects a specific category of defendants (here, non-perpetrators) from a specific kind of claim, regardless of whether the statute of limitations for that kind of claim has expired. That is what this statute does, and that is why the legislature called it a statute of repose.

Because § 5-117(d) is a statute of repose, this case is straightforward. It vests in non-perpetrator defendants a right to be free of abuse claims after a certain period of time, and under the due process and takings clauses of the Maryland Constitution that right may not be abrogated. *See* Md. Const. art. III, § 40 (takings clause); *id.*, Declaration of Rights art. 24 (due-process clause). Indeed, on multiple occasions over the years, the Office of the Attorney General office informed the legislature that § 5-117(d) "must be read as a statute of repose," and that its retroactive repeal "would most likely be found unconstitutional." Ex. 20 (2019 Letter); *see also* Ex. 21 (2021 Letter) (similar). The Office takes a somewhat different position now, but vested rights exist to protect against such shifting winds.

Moreover, as noted in our opening brief, even if § 5-117(d) were deemed to be a mere statute of limitations, the result would be the same. Once a limitations period runs, defendants have a right to be free of expired claims. *See Rice v. Univ. of Md. Med. Sys. Corp.*, 186 Md. App. 551, 563 (2009), *abrogated on other grounds by Kearney v. Berger*, 416 Md. 628 (2010); *Doe v. Roe*, 419 Md. 687, 707 & n.18 (2011). Plaintiffs have no answer to *Rice* or *Doe v. Roe*. They do not even cite them. Instead, Plaintiffs rely principally on cases in which the legislature shortened limitations periods on unexpired claims to argue that statutes of limitations do not create vested rights. But those cases, which require that shortened limitations periods still

provide a reasonable opportunity for suit, do not support Plaintiffs' position: they show that Maryland courts protect plaintiffs' right to bring accrued, *unexpired* claims. In the same way, Maryland courts protect defendants' right to be free of *expired* claims. Under Maryland law, "the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Marsheck v. Bd. of Trs. of Fire & Police Emps. Ret. Sys. of City of Baltimore*, 358 Md. 393, 405 (2000). And once that right "to be free of stale claims" vests (as it did here by 2010, 1979, and 1974, respectively), it may not be abrogated. *See* Md. Const. art. III, § 40 (takings clause); *id.*, Declaration of Rights art. 24 (due-process clause).

I. The CVA Does Not Revive Plaintiffs' Claims.

A. The Legislature Enacted a Statute of Repose in 5-117(d).

1. The Law Explicitly Labels § 5-117(d) a Statute of Repose.

Plaintiffs admit that the 2017 law identifies § 5-117(d) as a statute of repose, but argues, incredibly, that this is not "terribly relevant." Opp. 6. It is, of course, black-letter law that Maryland courts first look to the text of the law to ascertain legislative intent, and they presume that "the General Assembly . . . meant what it said and said what it meant." *Peterson v. State*, 467 Md. 713, 727 (2020). This principle fully applies when distinguishing statutes of repose from statutes of limitations. *Anderson*, 427 Md. at 125 ("[T]he plain language of the statute controls."); *see* Mot. 20-21. Courts may "neither add nor delete words to a clear and unambiguous statute" to change the law's "natural and ordinary meaning." *Peterson*, 467 Md. at 727.

As explained in the opening brief, the 2017 law is clear and unambiguous in its description of § 5-117(d) as a statute of repose:

> ***[T]he statute of repose under § 5-117(d)*** . . . shall be construed to apply both prospectively and retroactively ***to provide repose*** to defendants regarding actions that

were barred by the application of the period of limitations applicable before October 1, 2017.

Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).

The 2017 law's description of § 5-117(d) as a statute of repose is "clearly consistent with the statute's apparent purpose." *Williams v. Morgan State Univ.*, 484 Md. 534, 546 (2023). According to no less an authority than the legislature itself, the 2017 law was enacted for (among others) the purpose of "***establishing a statute of repose*** for certain civil actions relating to child sexual abuse." Ex. 1 (2017 Md. Laws ch. 12) (emphasis added); Ex. 2 (2017 Md. Laws ch. 656) (emphasis added). Because courts ascertain a law's purpose from "the language of the statute, giv[en] . . . its ordinary and natural meaning," the intent to enact a statute of repose must be enforced. *See Peterson*, 467 Md. at 727.

In short, the language of the 2017 law could not be more clear. As Senator Casilly later explained, "I was there. I knew that there was a statu[t]e of repose. I assumed everybody else did. . . . ***I couldn't imagine it being more obvious because I read the bill***." S. Jud. Proc. Hr'g at 3:43:00-3:43:15 (Feb. 2, 2021) (emphasis added).[1]

Plaintiffs dismiss the legislature's express description of § 5-117(d) as "uncodified language." Opp. 6, 10, 16; *see* AG Br. 8 (similar). But the session law (including uncodified language) "is the law." *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 544 n.4 (1981); *see* Mot. 20-21 nn.29-30. Plaintiffs provide no reason to question this precedent and do not even acknowledge it.

[1] *Available at* http://tinyurl.com/pcst853x.

Plaintiffs and the Attorney General suggest that the General Assembly used the term "statute of repose" "colloquially" and "'interchangeably' in error" with the term "statute of limitations." Opp. 6, 15, 17; *see* AG Br. 9. But the text and structure of § 5-117 show that the legislature did *not* use these terms colloquially or interchangeably.

- In the 2017 law's statement of purpose, the legislature differentiates the statute of limitations from the statute of repose. The session law's purpose is twofold: "altering the statute of limitations in certain civil actions relating to child sexual abuse" and "establishing a statute of repose for certain civil actions relating to child sexual abuse." Ex. 1 (2017 Md. Laws ch. 12); Ex. 2 (2017 Md. Laws ch. 656). The use of distinct terms to describe the two different provisions of the law reflects the legislature's understanding that statutes of limitations and statutes of repose are distinct.

- The 2017 law's description of the action taken as to each statute is also instructive. The law states its purpose as "***altering*** the statute of limitations"—*i.e.*, modifying a specific, pre-existing provision—and "***establishing*** a statute of repose"—*i.e.*, creating a new provision. Ex. 1 (2017 Md. Laws ch. 12) (emphasis added); Ex. 2 (2017 Md. Laws ch. 656) (emphasis added). This confirms that § 5-117(b) is a statute of limitations and that § 5-117(d) is a statute of repose. The 2017 law "alter[ed]" § 5-117(b), a pre-existing provision that was originally enacted in 2003, Ex. 6 (2003 Md. Laws ch. 360 (S.B. 68)), and it "establish[ed]" § 5-117(d), a new provision created in the 2017 law, Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; *see also Roe v. Doe*, 193 Md. App. 558, 560 (2010) (noting that § 5-117 was enacted in 2003), *aff'd* 419 Md. 687 (2011). Contrary to Plaintiffs' argument, the 2017 law did not simply "relabel[] the statute of limitations a statute of repose." Opp. 10. Instead, the legislature enacted a wholly new provision and called it a statute of repose.

- Section 3 of the law recognizes that the statute of repose and statute of limitations operate differently: the former "provide[s] repose to defendants regarding actions" while the latter "bar[s]" actions. Ex. 1 (2017 Md. Laws ch. 12), § 3; Ex. 2 (2017 Md. Laws ch. 656), § 3.

- Even the CVA recognizes that the 2017 law enacted "a statute of repose." That is why the CVA states that one of its purposes was "repealing a statute of repose for certain civil actions relating to child sexual abuse." Ex. 3 (2023 Md. Laws ch. 5); Ex. 4 (2023 Md. Laws ch. 6).

In short, the legislature repeatedly used language that reflected an understanding of the difference between a statute of repose and a statute of limitations—and a clear intent to enact a statute of repose for defendants who were not themselves perpetrators of sexual abuse. But even if there were not such repeated indications of the legislature's understanding of the difference between the two kinds of statutes, the legislature is presumed to know the legal effect of the term "statute of repose." *Lawrence v. State*, 475 Md. 384, 414 (2021) ("The General Assembly is presumed to be aware of this Court's interpretation of its enactments."). By 2017, Maryland courts had explained that "[t]he purpose of a statute of repose is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period," and that the term "statute of repose . . . refers to a special statute with a different purpose and implementation than a statute of limitations," *Anderson*, 427 Md. at 118. Plaintiffs and the Attorney General argue that courts have used the two terms interchangeably in the past, Opp. 6; *see* AG Br. 9, but, by the time of the 2017 legislative

session, the Maryland Supreme Court had cleared up any confusion and even chided past opinions for "conflat[ing]" the two terms, *Anderson*, 427 Md. at 120.

This Court therefore must presume that, when the legislature decided to call § 5-117(d) a "statute of repose," it intended that provision to operate as "an absolute bar" to claims like Plaintiffs'.

2. The Legislative Record Confirms § 5-117(d) Is a Statute of Repose.

Plaintiffs argue that this Court should not apply § 5-117(d) as a statute of repose because that provision was "inserted in the bill . . . without a fully informed debate on the issue." Opp. 16. That rests on an unsound legal premise and misstates the record.

a. Legislative History Cannot Supersede Unambiguous Text.

Start with the law. Plaintiffs cite no support for the notion courts should investigate whether legislators subjectively appreciated the legal significance of an unambiguous statute before enforcing it. To the contrary, courts are instructed to apply statutes as written when, as here, the language is unambiguous and clearly consistent with the statute's purpose. *See supra* p. 3-4; Mot. 20. The legislative record is a potentially relevant aid for interpreting an ambiguous statute—not a resource for rewriting unambiguous text of a statute. *See Williams*, 484 Md. at 546. When faced with unambiguous language, Maryland courts may consult legislative history only "in certain contexts" and for the limited purpose of "confirm[ing]" the plain text and "rul[ing] out another version of legislative intent alleged to be latent in the language." *Spiegel v. Bd. of Educ. of Howard Cnty.*, 480 Md. 631, 639 (2022). In this case, there is no need to consult legislative history at all because the text unambiguously makes § 5-117(d) a statute of repose.

b. The Record Repeatedly Refers to, and Describes the Effect of, the Statute of Repose.

Even if this court consults the legislative history, the record shows that the legislature understood that § 5-117(d) was a statute of repose, not a mere statute of limitations. *Contra* Opp. 15-18.

- The amendment adding § 5-117(d) was introduced in both Houses. Exs. 13-14. The amendment expressly referred to § 5-117(d) as a statute of repose, differentiated it from the statute of limitations, and explained that § 5-117(d) would provide "repose" to non-perpetrator defendants as to certain actions. *See* Exs. 13-14.

- Floor reports and the Fiscal and Policy Note explicitly explained the effect of the statute of repose, which would "prohibit[] . . . action[s] for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." Exs. 15-17; *see Hayden v. Md. Dep't of Nat. Res.*, 242 Md. App. 505, 530 (2019) (floor reports "are key legislative history documents").

- Floor statements also referred to the law as accomplishing two things: extending the "statute of limitations" and creating a "statute of repose." Mot. 9-10, 21-22.

c. The Bill File Is Susceptible to Judicial Notice.

Plaintiffs ignore this bounty of evidence, except to question the authenticity of a single document (Ex. 18), entitled "Discussion of certain amendments in SB0505/818470/1," which (like other items in the legislative record) discusses the effect of the statute of repose. Plaintiffs identify no valid basis for this document's exclusion. Opp. 18-19. As Plaintiffs concede, it is in

one of the "2017 House and Senate bill files," and thus is part of the "legislative record."[2] Opp. 18. Maryland courts have consistently held that documents in bill files are susceptible to judicial notice without an inquiry into whether they were actually reviewed by legislators. *See, e.g.*, *Park v. Bd. of Liquor License Com'rs*, 338 Md. 366, 383 n.8 (1995) (denying motion to strike and taking judicial notice of bill file); *see also Herd v. State*, 125 Md. App. 77, 90 (1999) (consulting "[a] handwritten note, undated and unidentified" in bill file). That is all the "provenance" that is required. *Contra* Opp. 19. Indeed, the fact that Plaintiffs challenge no other documents in the 2017 bill files—and submit additional excerpts from bill files in support of the Opposition—only confirms that this document is susceptible to judicial notice.

d. There Was No Need for the Legislature To Be Any More Explicit about the Legal Consequences of a Statute of Repose.

Plaintiffs argue that "the legislative history does not showcase any intent to create vested rights," and that there was no discussion in the legislative record of "the constitutional and policy implications of a statute or repose" or of "the impact a statute of repose would have" on the victims of sexual abuse. Opp. 15. But the "impact" on victims of sexual abuse is clear from the language of the statute: "In no event may an action for damages . . . be filed" against a non-perpetrator after a certain period of time. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1. And there is no requirement that the legislature "showcase" the legal effect of a law that is explicitly labeled a statute of repose, or that it stage a discussion of the "constitutional and policy implications" of a statute of repose.

Plaintiffs' point appears to be that no one ever explained that rights created by the statute of repose could not be revoked once they vested. That, of course, is contradicted by the

[2] This document was part of the 2017 H.B. 642 bill file, and was provided to Defendant by the Maryland Department of Legislative Services. *See* Mot. App. at ii n.k.

"Discussion of certain amendments in SB0505/818470/1," which states that "claims precluded by the statute of repose cannot be revived in the future." Ex. 18 at 1. But putting that document aside, it is hardly surprising that discussion of this point would be limited, given that the bill was seen as resolving the matter once and for all. It was not only the House sponsor who made that clear.[3] As Senator Hough later explained, "the idea was that this was going to be a well-crafted compromise that was going to be the end of this issue, because it's been around here for 20 years." S. Jud. Proc. Hr'g at 2:21:54-2:22:01 (Feb. 2, 2021).[4] "It was clear to all of us that the statute of repose added finality to this, that they would not come back. . . . [W]ith a statute of repose, it's a vested right." *Id*. at 2:28:48-2:29:17; *see also id*. at 2:28:00-06 (similar).

Plaintiffs also suggest that the legislative record evinces little "concern about the prejudice to defendants (including institutional defendants) in defending against stale claims based on long-ago conduct." Opp. 18 (quoting Mot. 26). But that concern is evident on the face of the statute: why else would the legislature "provide repose" to non-perpetrator defendants, unless it was concerned about the prejudice of their having to defend against stale claims? That was obviously the reason why the statute of repose was introduced into the bill.

When presented with a 20-year prospective expansion of the limitations period, Senators Norman and Casilly expressed concern about institutional defendants' ability to retain records and locate witnesses in order to defend themselves. *See* Mot. 9 n.8; *id*. at 16 n.17; S. Jud. Proc. Comm. Hr'g at 1:01:57-1:02:57 (Feb. 14, 2017) (Sen. Norman); *id*. at 1:04:41-1:05:20 (Sen.

[3] The point of our citing his comment that he would not "come back to the well" was not, as Plaintiff mischaracterizes it, that legislation is "a contract with a private party." Opp. 20. The point is that everyone agreed the 2017 bill was intended to provided finality, as all statutes of repose do.

[4] *Available at* http://tinyurl.com/pcst853x.

Casilly).[5] It was after these comments were made that the bill was amended to "provide repose" to non-perpetrator defendants after a certain period.[6]

Plaintiffs make much of the fact that there was more discussion of whether a statute of repose can be repealed in 1990-1991, when the legislature considered the repeal of an asbestos-related statute of repose, than there was in 2017, when it enacted the statute of repose in § 5-117(d). Opp. 18. But again, it is hardly surprising that there would be more discussion of whether the legislature may lawfully *repeal* a statute of repose when it is actually proposing to do so than when it is *enacting* a statue of repose in the first place. As the Appellate Court later ruled, the law partially repealing the asbestos statute of repose, which abrogated vested rights, was unconstitutional. *See infra* pp. 25-26. There is no constitutional question to discuss when the legislature enacts a statute of repose in the first place.

e. Pre- and Post-2017 Legislative History Relating to § 5-117 is Relevant.

It is more than a little surprising that after asking this Court to consider the legislative history of an *unrelated* statute concerning *asbestos* claims, the Plaintiffs would ask the court to disregard the legislative history concerning *related* measures concerning *sexual abuse* claims. Opp. 19-20. As the Maryland Supreme Court has observed, however, "it may be beneficial to analyze the statute's relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context

[5] *Available at* http://tinyurl.com/9crkr7vz; *see also* H. Jud. Comm. Hr'g at 37:51-38:28 (Mar. 15, 2017) (statement of Maryland Cath. Conf. representative), *available at* http://tinyurl.com/3ctr6x59.

[6] The amendments featuring the statute of repose were offered and passed the Senate and House in March 2017. For S.B. 505, *see* Ex. 34 (timestamped amendment) and http://tinyurl.com/2e5dk3vn ("History" table). For H.B. 642, *see* Ex. 35 (same) and http://tinyurl.com/24z8fh55 (same).

within which we read the particular language before us in a given case." *Berry v. Queen*, 469 Md. 674, 687 (2020); *see also Anderson*, 427 Md. at 124. Here, the legislative history confirms that the 2017 law was intended to put to rest a long-simmering issue. Year after year, legislators on the one hand expressed a desire for greater judicial access for victims of child sexual abuse, while on the other hand acknowledging the unfairness and questionable legality of reviving time-barred claims. Mot. 5-7. Those deliberations culminated in the specific balance struck in 2017—prospective expansion of the limitations period with no retroactive effect, a heightened standard for older claims, and an airtight guarantee that stale claims against non-perpetrators would not be revived. Statements after 2017 confirm this balance and reflect recognition of the legal impediments to retroactively repealing the 2017 law. *See supra* pp. 4, 10-11; Mot. 11-15.[7]

3. Although There Are No "Hard and Fast Rules" for Fashioning a Statute of Repose, § 5-117(d) Contains Structural Features Associated with Other Statutes of Repose.

Plaintiffs argue that "the structure and elements of a statute of repose established in *Anderson* are required" for § 5-117(d) to be a statute of repose. Opp. 11. But *Anderson* says the opposite:

- "First and foremost, the plain language of the statute controls," 427 Md. at 125;

[7] *See also* Ex. 31 (Md. Catholic Conf., Testimony to S. Jud. Proc. Comm. Re: S.B. 686 (Feb. 23, 2023)), at 3 ("[L]egislation seeking to retroactively revive claims currently time-barred in Maryland is unconstitutional . . . ."); Cary Silverman, H. Jud. Comm. Hr'g, at 3:13:59-3:14:15 (Mar. 2, 2023) (hereinafter "H. Jud. CVA Hr'g") ("[I]t would be unconstitutional to revive time-barred claims."), *available at* http://tinyurl.com/yc36tfu3; *cf*. Ex. 32 (Md. State Bar Ass'n, Testimony to H. Jud. Comm. Re: H.B. 1 (Mar. 2, 2023)), at 2 ("The proposed bill raises constitutional issues, particularly regarding the ability to revive civil claims after the statute of limitations has already ended."). At least one prominent proponent of the bill acknowledged that the constitutionality of the CVA was suspect. *See* Lisae C. Jordan, H. Jud. CVA Hr'g, at 2:24:33-2:24:46 ("[T]here are . . . still some real concerns about the constitutionality of reviving claims, and certainly any ethical attorney would advise a client of these risks.").

- "[T]here are overlapping features of statutes of limitations and statutes of repose, and definitions aplenty from which to choose," *id.* at 123;

- "There is, apparently, no hard and fast rule to use as a guide" to distinguish statutes of repose and statutes of limitations. *Id*.

Even if *Anderson* did impose an inflexible requirement for all statutes of repose (and it does not), § 5-117(d) contains many features associated in that case with statutes of repose.

a. Section 5-117(d) Shelters Non-Perpetrator Defendants from an Action After a Certain Period of Time.

As Plaintiffs seem to acknowledge, the text of § 5-117(d) contains a central feature of a statute of repose. Opp. 14-15. A statute of repose "shelters legislatively-designated groups from an action after a certain period of time," and § 5-117(d) does just that for non-perpetrator defendants 20 years after the plaintiff reaches the age of majority. *See Anderson*, 427 Md. at 118. Section 5-117(d) is analogous to CJ § 5-108(b), a statute of repose that exempts specific classes of defendants (architects, professional engineers, and contractors) from liability arising from construction defects after a 10-year period from "the date the entire improvement first became available for its intended use." *Id.*; *see Hagerstown Elderly Assocs. Ltd. P'ship v. Hagerstown Elderly Bldg. Assocs. Ltd. P'ship*, 368 Md. 351, 358-59 (2002) (deeming § 5-108(a), (b) statutes of repose). Section 5-117(d) contrasts with § 5-117(b), which all agree is a statute of limitations, and which sets out a general limitations period applicable to perpetrators and non-perpetrators alike. *See* Mot. 23.

Nevertheless, Plaintiffs argue that § 5-117(d) cannot be read to provide repose to non-perpetrator defendants, because "no identifiable economic benefits are advanced by a statute sheltering those who enabled and committed child sexual abuse." Opp. 14. Of course, the statute of repose does not protect defendants who committed child sexual abuse. And there is, in

fact, a public, economic interest in providing repose at some point to defendants who were not themselves perpetrators of abuse—just as there is an interest in § 5-108's protection of architects, engineers, and contractors from claims after a certain period of time. *See, e.g.*, S. Jud. Comm. Hr'g at 5:27:36-5:27:42 (Mar. 12, 2015) (Sen. Norman) ("[T]his is going to have huge ramifications for every agency where children are involved.").[8] The "public as a whole" benefits from providing a measure of certainty to those institutions, just as it benefits from providing a measure of certainty to participants in the construction industry under § 5-108 after a period of time—even though that means that some number of plaintiffs may be unable to recover for injuries derived from (for example) negligently constructed buildings. *See Hagerstown Elderly Assocs. Ltd. P'ship*, 368 Md. at 362 (explaining that § 5-108 protects certain defendants from claims "that did not become manifest until years" after the complained-of conduct).

Plaintiffs also fail to mention that statutes of repose balance "the respective rights of potential plaintiffs and defendants." *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 636 n.1 (2018). The 2017 law nearly tripled the period of time in which plaintiffs could bring suit, while also assuring non-perpetrator defendants that ancient claims, recognized as difficult to defend, *e.g.*, Exs. 9-10; Mot. 5-11; *supra* pp. 10-12, would not be revived.[9]

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[8] *Available at* http://tinyurl.com/ycyyvw4n.

[9] Plaintiffs argue that Defendant's evidence of extraordinary commitment to child protection is "entirely extraneous . . . irrelevant, and wholly improper." Opp. 14 n.9. But the legislative record is replete with evidence of concrete measures taken by the Archdiocese to address and prevent child sexual abuse. That evidence was available to lawmakers as they granted repose retrospectively to the Archdiocese and other non-perpetrator institutions, and helps explain the particular balance struck in the 2017 law. *See* Mot. 16-17. Other evidence of the Archdiocese's measures over time is taken from the Archdiocese website, which is cited and relied on by Plaintiff in its complaint, and is thus proper for judicial consideration. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) ("The [incorporation-by-reference] doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.").

b. Section 5-117(d) Imposes an "Absolute Bar" to Suit.

Plaintiffs argue that § 5-117(d) does not impose an "absolute bar," because it is supposedly subject to "implicit[]" tolling from the date of the injury to the date of majority. Opp. 12-13. That, of course, is not what the text of the law says—§ 5-117(d) ties the repose period to the date of majority, not to the date of injury. There is no reason to infer "implicit[]" tolling from § 5-117(d), particularly when the legislature *expressly* provided for tolling in § 5-117(b). Moreover, express, not implied, tolling is an indicium of a statute of limitations. *See* Mot. 7-8.

Even assuming there were some form of implied tolling, it would not "expand[] the liability of defendants" beyond twenty years after the plaintiff's date of majority. *Anderson*, 427 Md. at 121. That is because, far from extending the repose period, § 5-117(d) *forbids* tolling after the plaintiff turns 38 years old. As the Office of Maryland Attorney General explained, "by saying that 'in no event' may an action be filed more than twenty years after the victim reaches the age of majority, the statute shows an intent to provide the type of absolute bar to an action provided by a statute of repose." Ex. 20 at 2 (2019 letter); Ex. 21 at 2 (2021 letter). That inflexible 20-year period is the "certain period of time" or "designated time period" that is the hallmark of a statute of repose. *Anderson*, 427 Md. at 118.

In using the language "[i]n no event" to denote an absolute bar, and in running the repose period from the date of majority, the Maryland legislature conformed § 5-117(d) to Illinois' statute of repose governing claims arising from sexual abuse of a minor:

Ex. 33 (Ill. Rev. Stat., 1990 Supp., ch. 110, (codified at 735 ILCS § 5/13-202.2(b) (1992)))	**Exs. 1-2 (CJ § 5-117(d) (West 2017))**
[I]n no event may an action for personal injury based on childhood sexual abuse be commenced more than 12 years after the date on which the person abused attains the age of 18 years.	In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

State and federal courts have consistently enforced Illinois' statute of repose, even after its repeal. *See Anderson v. Cath. Bishop of Chi.*, 759 F.3d 645, 648 (7th Cir. 2014); *M.E.H. v. L.H.*, 685 N.E.2d 335, 339 (Ill. 1997). Under *Anderson*, Maryland's elected representatives were free to conform § 5-117(d) in part to Illinois' example.

c. Section 5-117(d) Runs from an Event Unrelated to Plaintiff's Injury.

Plaintiffs also argue that § 5-117(d) is not a statute of repose because it is "not triggered by the defendant's actions" and because the "triggering event if plaintiff-focused." Opp. 9-11. But there is "no hard and fast rule" on this question. *Anderson,* 427 Md. at 123. Although *Anderson* sometimes refers to statutes of repose as running from "a specified time since the defendant acted," *id.* at 117, or as running from a time "not related to an event or action independent of the potential plaintiff," *id.* at 126, the case says more than a half-dozen times that statutes of repose run from "an event that is unrelated to when the injury occurs." *Id.* at 118; *see also, e.g.*, *id.* at 119 ("[S]tatutes of limitation and statutes of repose are differentiated consistently and confidently by whether the triggering event is an injury *or an unrelated event*; the latter applying to a statute of repose." (emphasis added)). The Maryland Supreme Court endorsed that standard again after *Anderson*. *See Mathews v. Cassidy Turley Md., Inc*., 435 Md. 584, 611 (2013). And Plaintiffs acknowledge this standard in their Opposition. Opp. 10. There is no

question that § 5-117(d) (like the Illinois statute of repose, *see supra* pp. 15-16) meets that standard. Opp. 10.[10]

d. Post-Repose Accrual is not a Requirement of Statutes of Repose.

Lastly, Plaintiffs argue that § 5-117(d) cannot be a statute of repose, because "§ 5-117(d) does not apply unless and until an injury has accrued." Opp. 12. Plaintiffs suggest that § 5-117(d) must extinguish only unaccrued claims in order to qualify as a statute of repose. Opp. 11-12. But *Anderson* says only that statutes of repose "*may* extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Anderson*, 427 Md. at 119 (emphasis added). And Plaintiffs' position—that the legislature may not enact a statute of repose unless it extinguishes unaccrued claims—makes no sense. If a statute of repose can extinguish a cause of action that has not yet accrued and could never have been brought, surely a statute of repose can extinguish a cause of action that could have, and should have, been brought years ago. If anything, there are more compelling reasons to grant repose against claims that could have been brought years ago than to grant repose against claims that have not yet arisen.

Indeed, *Anderson* cited statutes of repose governing medical malpractice claims from Arkansas and North Carolina that bar *only* claims that have been deemed accrued. *See* 427 Md. at 124-25 & n.10. Those statutes deemed claims to have accrued by the date of the last wrongful act of the defendant. *See id*. (citing N.C. Gen. Stat. § 1-15(c) (2012); Ark. Code Ann. § 16-114-203 (2012)). Those statutes of repose, therefore, would never bar unaccrued claims. But they are statutes of repose nonetheless. That is because they contain an "absolute bar" on claims after a certain period of time—and that bar extinguishes the at-issue claims. Just so here. Like the

[10] In contrast to § 5-117(d), which runs the repose period from the date of majority regardless of when the injury occurred, § 5-117(b)(1) allows suit immediately upon injury. Injury is a trigger for § 5-117(b)(1)—which all recognize is a statute of limitations—but not for § 5-117(d). *See* Mot. 24.

Arkansas and North Carolina statutes of repose, § 5-117(d) imposes an absolute bar on all claims, whether accrued or unaccrued, against non-perpetrators. *See supra* pp. 15-16.

Finally, even if an essential feature of a statute of repose were that it can extinguish a cause of action that has not yet accrued, that is true of § 5-117(d). Section 5-117(d) can extinguish causes of action that have not yet accrued by virtue of fraudulent concealment, which Plaintiff argues applies here (Opp. 35-40), or by application of the discovery rule. "If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action *shall be deemed to accrue* at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud." *Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 186-87 (1997) (quoting CJ § 5-203) (emphasis added). Likewise, "[t]he discovery rule 'provides that a *cause of action accrues* when a plaintiff in fact knows or reasonably should know of the wrong.'" *Duffy v. CBS Corp*., 458 Md. 206, 231 (2018) (quoting *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 75 (2006)) (emphasis added), *rev'd on other grounds*, 458 Md. 206 (2018). In both cases, the statute of repose in § 5-117(d) extinguishes any potential claim 20 years after the plaintiff attains the age of majority, even when, by virtue of fraudulent concealment or the discovery rule, the claim has not yet accrued. *See Carven v. Hickman*, 135 Md. App. 645, 652 (2000), *aff'd*, 366 Md. 362 (2001).[11]

In conclusion, there is simply no reason not to treat § 5-117(d) as precisely what the statute says it is—a statute of repose.

B. The 2017 Statute of Repose Vested a Right in the Archdiocese to be Free of Plaintiffs' Claims.

[11] Plaintiff contends, because a legislator observed that § 5-117 is subject to the discovery rule, § 5-117(d) is not a statute of repose. Opp. 13. The cited legislative history (as at Opp. 16), predates the introduction of § 5-117(d), and thus is not probative of its meaning. *Compare* Opp. 16; Ex. 12 (February statements), *with supra* note 6 (March amendment). And as noted, § 5-117(d) extinguishes covered claims regardless of when they accrue.

Plaintiffs essentially concede that a statute of repose vests substantive rights in defendants to be free of claims. Opp. 10 ("[A] statute of repose extinguishes or preempts an otherwise viable claim."); *id*. at 13 ("Statutes of repose . . . are substantive grants of immunity."); *id*. at 16 (implying that a statute of repose "inoculat[e]s" certain defendants from liability). Plaintiffs make only one half-hearted attempt to justify the CVA's abrogation of those vested rights. That attempt should be rejected out of hand.

Plaintiffs argue that "[e]ven if the 2017 version of § 5-117(d) is deemed a statute of repose, it can be abrogated." Opp. 26; *see* AG Br. 7. For that argument, Plaintiffs rely on *Allstate Ins. Co. v. Kim,* 376 Md. 276, 298 (2003). But that case did not involve the retroactive repeal of a statute of repose. In *Kim*, the legislature abolished the common-law defense of parent-child immunity in tort actions arising from car accidents. *Kim* held that the common-law right at issue did not vest until commencement of suit, and therefore had not yet vested at the time of its abrogation. *Id*. In its reasoning, the court cited cases from other jurisdictions applying the defense of contributory negligence, and limited its holding to the case at hand. *See id*. The court also noted that the common-law immunity at issue had been "under challenge" in the courts and legislature "for years." *Id.*

Kim says nothing about the circumstances here. Opp. 26. There have been no judicial challenges to § 5-117(d) in the years since its passage, and the legislative debate repeatedly acknowledges impediments to that statute's retroactive repeal. *Supra* p. 10-12. More importantly, the right to repose here vests at the expiration of the repose period—not at the time of suit. A statute of repose creates "a substantive right protecting a defendant from liability after

a legislatively-determined period of time." *Anderson*, 427 Md. at 120.[12] That, of course, is consistent with "the object of a statute of repose," which is "to grant complete peace to defendants." *Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc*., 582 U.S. 497, 510 (2017). Here, Defendant's right of repose as to Plaintiffs' claims vested prior to the enactment of the CVA, after the repose period expired as to each Plaintiff's claims. Mot. 18-19.

For his part, the Attorney General argues that the statute of repose does not create vested rights because it does not use the words "vested rights." AG Br. 8-9. That argument is preposterous—the statute uses the words "statute of repose," which creates vested rights. If the Attorney General's argument were accepted, it would nullify not only § 5-117(d), but also § 5-108(b), a recognized statute of repose that does not expressly mention "vested rights," and any number of other statutes of repose around the country.

C. The CVA's Abrogation of Defendant's Vested Rights Is Unconstitutional.

Because § 5-117(d) vested rights in Defendant to be free of the claims in this case, and because the CVA abrogates those rights, there is no doubt the CVA is unconstitutional as applied. *Cf. Mahai v. State*, 474 Md. 648, 665 (2021). Plaintiffs' arguments for abrogating vested rights are incompatible with binding precedent.

1. *Dua* and *Kim* Protect Defendant's Vested Right to Be Free of Expired Claims.

Plaintiffs argue that *Dua* and *Kim* endorsed stronger protections for vested rights in accrued causes of action than for vested rights to be free of stale causes of action. Opp. 31-32. But those cases provide the same protection for both vested rights: "This Court has consistently

[12] Granted, as the Attorney General notes (at 7), that was not, strictly speaking, the holding of the case, because the court held that the statute at issue was not a statute of repose. *See Schmidt v. Prince George's Hosp*., 366 Md. 535, 551 (2001). But that statement about the effect of a statute of repose was central to the opinion in *Anderson* and is consistent with every other Maryland decision recognizing that statutes of repose create vested rights.

held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, or ***reviving a barred cause of action***, thereby violating the vested right of the defendant." *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002) (emphasis added); *accord Kim*, 376 Md. at 296 (same).

The Attorney General argues that this court should ignore this statement of law in *Dua* as dicta. AG Br. 10. But "[w]hen a question of law is raised properly by the issues in a case and the Court supplies a deliberate expression of its opinion upon that question, such opinion is not to be regarded as *obiter dictum*, although the final judgment in the case may be rooted in another point also raised by the record." *Schmidt*, 366 Md. at 551. *Dua*'s general prohibition on the revival of a barred cause of action is a deliberate expression of opinion on a question properly raised in the case. Although the issue in *Dua* was whether the Legislature could abolish accrued causes of action, *Dua* set out a retroactivity rule that applies equally to reviving barred causes of action. Thus, this court should follow the retroactivity rule from *Dua*.

It must also be noted that the Attorney General's position in this case marks a dramatic shift from prior opinions of that office in 2019 and 2021. Exs. 20-21. The Attorney General's Office predicted in 2019 and again in 2021 that the retroactive repeal of § 5-117(d) "would most likely be found unconstitutional as interfering with vested rights," based on the arguments that Defendant has made to this Court. Mot. 11-12. Even in 2023, when the Attorney General later opined, meekly, that the CVA was "not clearly unconstitutional," he acknowledged that, if the legislature intentionally enacted a statute of repose, "we would have to conclude that the General Assembly intended to immunize from liability" certain defendants. Ex. 23 at 3. Here, of course, there is no question that the legislature "intentionally enacted a statute of repose"—it explicitly

called § 5-117(d) a statute of repose.[13]

2. *Dua* Expressly and Categorically Forbids the Abrogation of Vested Rights.

Plaintiffs assert that the CVA's abrogation of vested rights is constitutional because it satisfies rational-basis review. Opp. 32-33 & n.19; AG Br. 3-5, 11.[14] But they cannot muster a single case applying Maryland law to uphold a statute reviving time-barred claims or otherwise abrogating vested rights. Opp. 32-33; AG Br. 4-5. That is because the Maryland Supreme Court has been clear that the prohibition on abrogating vested rights "contains no exceptions, and . . . has repeatedly held that this protection applies without regard to the State's legislative interests or motivations." *Willowbrook Apartment Assocs., LLC v. Mayor & City Council of Baltimore*, 563 F. Supp. 3d 428, 445 (D. Md. 2021); *see Dua*, 370 Md. at 623 ("No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking someone's property and giving it to someone else."); *id*. ("It has been firmly settled … that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights."). Under Maryland's due process and takings clauses, *Dua* and its progeny foreclose both rational-basis and intermediate-scrutiny review when a statute retroactively destroys vested rights without compensation. Opp. 32-33 & n.19.[15] Plaintiffs' and

[13] That the Attorney General's Office previously endorsed the position advanced by the Defendant in this case renders its current position "particularly dubious." *Bates v. Dow Agrosciences*, 544 U.S. 431, 449 (2005).

[14] The Attorney General does not endorse a standard of review. In a 2023 letter, the Office of Attorney General cited *Muskin* for the proposition that rational-basis review is inapplicable. Ex. 23.

[15] Nor could the CVA's application here survive the "narrow tailoring" inquiry floated by Plaintiffs, Opp. 33 n.19, as the 2023 legislature spurned less restrictive alternatives, including a victim's fund, which would have furthered the stated legislative interest. *See* Sen. Jud. Comm. Hr'g at 2:41:00-36 (Mar. 2, 2023), *available at* http://tinyurl.com/439zr2zb; *id.* at 2:42:40-45:00.

the Attorney General's string of out-of-jurisdiction citations—which apply rational-basis or some other lax form of review—should be ignored. Opp. 13 n.8, 24; AG Br. 4-5; *id.* at 11.[16]

In short, the prohibition on abrogating vested rights is absolute.

3. Under *Smith*, the Legislature May Not Revive a Barred Cause of Action.

Plaintiffs argue that *Smith v. Westinghouse Electric*, 266 Md. 52 (1972), is "inapposite," because it involved "not an ordinary time bar" but instead "a condition precedent to filing suit." Opp. 30; *see also* AG Br. 10 (similar). The Maryland Supreme Court has not construed *Smith* so narrowly. In *Dua*, the Supreme Court read *Smith* to hold that "[a] statute, which retroactively created a cause of action, resulting in reviving a cause of action that was otherwise barred, was held to deprive the defendant of property rights in violation of Article 24 of the Declaration of Rights." 370 Md. at 627. And here, as in *Smith*, § 5-117(d) unquestionably protects substantive rights. *See Duffy*, 232 Md. App. at 622-23.

Even if Plaintiffs were correct that *Smith* only holds that conditions precedent give rise to irrevocable rights, that case would still require that § 5-117(d) be read to have vested rights in Defendant. That is because a "statute of repose . . . acts as a condition precedent to the action itself." *Bryant v. United States*, 768 F.3d 1378, 1383 (11th Cir. 2014). As a result, "the General Assembly may not enlarge the plaintiffs' claim by statute because to do so would be to divest the [defendant] of a vested right." *Id*.

Smith also forecloses the Attorney General's assertion (again, contradicted by prior opinions of that Office) that *Dua* protects accrued rights of action in eternity, and that Maryland

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[16] It appears that a majority of the state courts to have addressed the question have held that, as a matter of state law, the revival of time-barred claims is unconstitutional. *Doe v. Hartford Roman Cath. Diocese Corp*., 119 A.3d 462, 508-09 (Conn. 2015).

courts have not recognized a right to be free permanently of time-barred claims. AG Br. 9-11. As in this case, in *Smith*, the plaintiffs' cause of action had accrued and then expired before the legislature attempted to revive those claims. *Smith*, 266 Md. at 54-55. But the Maryland Supreme Court held that the plaintiffs' cause of action was not protected for all time because the defendants acquired a vested right when the limitations period expired. *Id.* at 57; *see also Duffy*, 232 Md. App. at 622-23. Thus, causes of action do not exist into eternity, and the expiration of periods of limitation or repose vests a right to be free of barred claims that may not be destroyed.[17]

4. Remedial Laws May Not be Applied to Abrogate Vested Rights.

Plaintiffs and the Attorney General assert that the CVA is constitutional because it is a remedial or procedural law. Opp. 23-25; AG Br. 8. Even assuming the CVA is such a statute,[18] "generally, a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights." *Rawlings v. Rawlings*, 362 Md. 535, 559 (2001). As the Maryland Supreme Court explained, a statute that "divests a right through instrumentality of the remedy, and under the pretense of regulating it, is as objectionable as if [aimed] directly at the right itself." *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 563 (2011).[19]

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[17] Plaintiff argues that *William Danzer & Co. v. Gulf of S.I.R. Co.*, 268 U.S. 633 (1925), a case cited by *Smith v. Westinghouse Electric*, 266 Md. 52 (1972), was "limited" by subsequent Supreme Court precedent. Opp. 26. But whatever *Danzer*'s status, *Smith* remains good law, and it is *Smith* that reflects the Maryland constitutional rule. *See Dua*, 370 Md. at 635-36.

[18] Although the Maryland Supreme Court has not defined remedial statutes consistently over time, *Doe v. Roe* described such statutes as improving "remedies *already existing* for the enforcement of rights and the redress of injuries." 419 Md. at 703 (emphasis added). As applied here, the CVA revived extinguished rights—it did not improve an already existing remedy.

[19] Plaintiffs and the Attorney General argue that the report on the Archdiocese of Baltimore was the impetus for the CVA. But as noted, there were repeated efforts before 2023 to abolish the statute of repose and statute of limitations retroactively. *See* Mot. 11-12. Citing the

Plaintiffs cite dicta in a footnote in *Rawlings* for the proposition that "a remedial statute may be given retrospective effect without unconstitutionally infringing on vested rights if the new statutory remedy redresses a preexisting *actionable* wrong." *Rawlings*, 362 Md. at 560 n.20, (emphasis added). But the alleged wrong here was no longer "actionable" by the time of the CVA's enactment, because any legal claim based on that wrong had been extinguished by the statute of repose. Because the CVA would eviscerate Defendant's vested rights, it may not be "accorded retrospective application." *Id*.[20]

5. The 1991 Asbestos Legislation Was Declared Unconstitutional.

Plaintiffs argue that if the Archdiocese is "correct" that the CVA's revocation of the statute of repose is unconstitutional, then the 1991 legislation that created an "asbestos exception to the statute of repose [for construction claims] … would be unconstitutional." Opp. 32. But the Maryland Appellate Court *did* declare the retroactive application of the asbestos exception in CJ § 5-108(d)(2) to be unconstitutional in the *Duffy* case.

Duffy involved a claim arising from asbestos exposure predating the statute of repose enacted for construction claims in 1970. The Appellate Court held that the 20-year statute of repose applied to the defendant, notwithstanding the 1991 partial repeal for asbestos claims. *Duffy v. CBS Corp.*, 232 Md. App. at 611-15. Because the repose period had already run

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report, the Attorney General asserts that claims "from decades ago fall outside" previous criminal statutes of limitations. But that same report acknowledges that, by the 1960s, sexual abuse of a minor was a felony. Pl. Ex. 1 at 8. Maryland has no statute of limitations on felonies. Mot. 6 n.2.

[20] Neither *State v. Smith*, 443 Md. 572, 594 (2015) nor *Langston v. Riffe*, 359 Md. 396, 423 (2000) suggest anything to the contrary. Both cases expressly acknowledge retroactive application cannot interfere with vested rights. *E.g.*, *Smith*, 433 Md. at 594 ("Even if a statute applies retrospectively, a statute will not be given that effect if it would impair vested rights." (cleaned up)); *Langston*, 359 Md. at 418 ("A statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." (cleaned up)).

when the legislature repealed the statute, the court held that the defendant possessed a "vested right" under the statute of repose "not to be sued on 'a cause of action that was otherwise barred.'" *Id.* at 622-23 (quoting *Dua*, 370 Md. at 627). That right could not be abrogated. *Id*. Although the Maryland Supreme Court disagreed with the Appellate Court's interpretation that the statute covered the claim at issue, the Supreme Court did not question the constitutional holding that, when a statute of repose creates vested rights, they may not be revoked.

6. Exceptions for Tolling Do Not Establish the Power to Revive Expired Claims.

Lastly, Plaintiffs argue that the legislature possesses the power to abrogate vested rights, because it (and the courts) may fashion discovery rules and allow for the tolling of claims. Opp. 21-22. But as Plaintiffs concede elsewhere, statutes of repose extinguish claims regardless of whether they have accrued or are subject to tolling. Opp. 8. And doctrines of discovery and tolling do not establish that the legislature may revive expired claims—instead, they simply delay the date at which the claim accrues or the limitations period runs in the first place. The legislature may defer the day when claims expire, but, when that day comes, it may not revive them. Mot. 26-28.

II. The Maryland Constitution Precludes the Revival of Claims Barred by the Statute of Limitations.

Even if Plaintiffs and Attorney General are right that § 5-117(d) is a statute of limitations, they are wrong about its effect. Under Maryland law, the legislature may revise procedural matters, like an unexpired statute of limitations. But once the limitations period expires, defendants acquire a substantive right to be free of suit. Mot. 26-28. That is the upshot of *Marsheck*, where the Maryland Supreme Court explained, "the right to be free of stale claims in time comes to prevail over the right to prosecute them." 358 Md. at 404-05. Thus, "when a defendant has survived the period set forth in [a] statute of limitations without being sued, a

legislative attempt to revive the expired claim would violate the defendant's right to due process." *Rice*, 186 Md. App. at 563; *see also Doe v. Roe*, 419 Md. at 707 & n.18 ("[A]n individual does not have a vested right to be free from suit or sanction for a legal violation until the statute of limitations for that violation has expired.").

Plaintiffs and the Attorney General fundamentally misunderstand the substantive right that defendants acquire when a limitations period expires. Perhaps that is because they do not even cite *Marsheck*, *Rice*, or *Doe v. Roe*. Opp. 19-22; AG Br. 3-6. Instead, they invoke cases about the shortening of limitations periods—a mere procedural matter. Opp. 24; AG Br. 4-5. That distinction knocks down each of the cases cited by the Plaintiffs and Attorney General.

Start with *Hill v. Fitzgerald*, 304 Md. 689 (1985). There, the Maryland Supreme Court held that the legislature "cannot cut off all remedy and deprive a party of his right of action by enacting a statute of limitations applicable to an existing cause of action in such a way as to preclude any opportunity to bring suit." *Id.* at 703.[21] *Hill* then distinguished between "depriv[ing] a party of his right of action"—a substantive matter which would abrogate a vested right—and shortening the period of time in which to file a still-live claim—a mere procedural matter which would not. As *Dua* makes clear, just as the legislature may not deprive a party of his right to action, nor may it deprive a party of his right to be free of an expired claim. *See supra* pp. 20-23.

Similarly, *Berean Bible Chapel, Inc. v. Ponzillo*, held that the legislature could validly "shorten[] the statute of limitations, so long as no one's substantive rights were impaired." 28 Md. App. 596, 601 (1975). While the Court in *Berean Bible* said "the statute of limitations

[21] Thus, in *Hill*, "the three- and five-year limitation periods" in the relevant statute were "not so unreasonably short in relation to the purpose of the statute as to contravene due process." 304 Md. at 703. Plaintiffs do not dispute that, when they reached majority, the three-year statute of limitations governed their claims.

confers no vested rights," the Court was referring to a *plaintiff's* right to bring suit within a particular period of time, not to the *defendant's* right to be free of such suits. *Id*. That period of time could be shortened, so long as plaintiff still had time to bring his accrued claim.

Muskin v. State Department of Assessments and Taxation is in the same vein. There, the Maryland Supreme Court recognized that the legislature "has the power to alter the rules of evidence and remedies, which in turn allows statutes of limitations and evidentiary statutes to affect vested property rights." 422 Md. at 561. But *Muskin* made clear that a law that "purports to regulate vested rights, but in effect removes all remedies and extinguishes those rights completely" is constitutionally impermissible. *Id.* at 563. That is exactly what the CVA purports to do—destroy Defendants' right, vested long ago, to be free of Plaintiffs' claims.

Simmons v. Maryland Management Company does not help Plaintiffs either. There, the Appellate Court concluded that courts have jurisdiction over cases even if they are filed after the statute of limitations runs. 253 Md. App. 655, 699, *cert. denied,* 479 Md. 75 (2022). It did not address—one way or the other—the question whether the expiration of the limitations period creates a vested right in the defendant.

Next, there is the footnote from *Rawlings*. Opp. 24. In *Rawlings*, the court noted "that the elimination of an affirmative defense does not hinder, eliminate, or modify a substantive right, and thus, a statute or rule that eliminates an affirmative defense can be applied retrospectively." 362 Md. at 561 n.21. But in *Rawlings*, the court had no occasion to consider a situation like the one presented here, where the legislature attempts to revive long dead claims. In contrast, the Maryland Supreme Court explicitly noted that exact scenario in *Doe v. Roe* and strongly suggested that under *Rawlings* itself any such legislative act would be unconstitutional. *Doe v. Roe*, 419 Md. at 707 &

n.18 (citing *Rawlings*, 362 Md. at 559). Regardless, this lone sentence in the margins of the 23-year-old *Rawlings* opinion does not bind this court, nor is it entitled to any persuasive weight.

The Attorney General also cites a line from *Anderson*: "statutes of limitations 'do not create any substantive right in a defendant to be free from liability.'" AG Br. 9 (quoting *Anderson*, 427 Md. at 118). Like Plaintiffs, the Attorney General attempts to apply the rule in cases where the statute of limitations has not yet expired to a case where it has.

Left without a case to stand on, Plaintiffs and the Attorney General incant the general truism that no one has a "vested right in the continuation of an existing law." Opp. 24; AG Br. 8 (similar). As Maryland courts have repeatedly recognized, however, upon the expiration of a statutory limitations period, defendants possess a right to be free of the particular claim subject to that limitations period. Mot. 26-28. This court should ignore federal and out-of-state cases that apply different legal standards.

Finally, Plaintiff does not dispute that statutes of limitations are designed to prevent the exact unfairness presented by this case—namely, forcing a defendant to respond to allegations of misconduct from decades ago, long after memories have faded, key participants have died, and evidence may be missing. Nor do Plaintiffs dispute that reviving long expired claims destroys the certainty and finality inherent in statutes of limitations.

III. Plaintiffs' Claims Are Not Subject to Tolling.

Plaintiffs argue that § 5-117(d) only extinguished claims that the statute of limitations already barred in 2017, and that their claims remained viable at that time because they had been tolled. Opp. 10, 34-35. Plaintiffs are wrong.

First, § 5-117(d) explicitly provides that "***[i]n no event may***" an action for damages be filed against a non-perpetrator "more than 20 years after the date on which the victim reaches the age of majority." (emphasis added). The bar is categorical. It does not contain an exception for claims

that previously had been tolled. And as Plaintiffs acknowledge, Opp. 8, it is black-letter law that a statute of repose is not subject to tolling. *Carven*, 135 Md. App. at 652.[22] Plaintiffs rely upon language in § 3 of the law, which says that the statute of repose "shall be construed both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." But that provision merely confirms that the statute of repose *also* bars any action that had previously been barred by the statute of limitations; it cannot alter the explicit language of § 5-117 providing that "in no event" may an action against a non-perpetrator be brought more than 20 years after the victim reaches the age of majority.

Second, Plaintiffs cannot show their claims remained viable on "September 30, 2017," the day before § 5-117(d) went into force. *See* Opp. 35. Neither the continuing-violation doctrine, nor the fraudulent-concealment doctrine, nor a supposed fiduciary duty has tolled the limitations period. *See* Opp. 35-40. For starters, the continuing-harm doctrine requires that "a tortious act—not simply the continuing ill effects of prior tortious acts—fall within the limitation period." *Bacon v. Arey*, 203 Md. App. 606, 655-56 (2012). Plaintiffs nowhere attempt to show continuing abuse after the age of majority—much less in recent years.

Likewise, the complaint forecloses any theory of fraudulent concealment. Plaintiffs argue that the Archdiocese took certain actions that "precluded Plaintiffs from discovering the tortious conduct at the heart of their claims," and attempt to distinguish *Doe v. Archdiocese* on the grounds that it did not include a fraud claim. Opp. 37-39. But that case involved the same sorts of alleged

[22] Plaintiffs argue that § 5-117(d) may be tolled by fraudulent concealment, because it "must be read consistent" with § 5-203, which provides for tolling based on fraudulent concealment. Opp. 12-13. But that argument is foreclosed by the black-letter law that a statute of repose is not "tolled by a defendant's fraudulent concealment of the cause of a plaintiff's injury." *Carven*, 135 Md. App. at 652.

"fraud" as Plaintiffs recite here—*i.e.*, transferring the alleged perpetrator priest, concealing a history of abuse, and holding him out as "competent, fit, and moral." 114 Md. App. at 179-180, 188. The Maryland Appellate Court "reject[ed] the contention that these allegations are sufficient to toll the statute." *Id*. "To the contrary," the court explained, "when the priests molested Doe, he was immediately on notice of potential claims against the priests as well as against the Archdiocese as their employer. The statute of limitations begins to run when the potential plaintiff is on 'inquiry notice' of such facts and circumstances that would 'prompt a reasonable person to inquire further.'" *Id*. For the same reason, Plaintiffs were on notice long before the Maryland Attorney General published its report concerning the Archdiocese of Baltimore. Opp. 39.

Nor do the allegations in the complaint support tolling by reason of a fiduciary relationship. Opp. 39-40. As the Maryland Appellate Court has explained, "[i]t is not enough for the parties to have *theoretical* or *assumed* trust and confidence, merely by virtue of one party being a member of a church and the other party its spiritual leader." *Latty v. St. Joseph's Soc. of Sacred Heart, Inc*., 198 Md. App. 254, 267 (2011), *abrogated on other grounds by Plank v. Cherneski*, 469 Md. 548, 231 A.3d 436 (2020). Here, there are no specific allegations of actual dependence or contract between the Archdiocese and the individual plaintiffs. Even if there were a fiduciary relationship, the limitations period begins to run when that "party had knowledge of facts that would lead a reasonable person to undertake an investigation that, with reasonable diligence, would have revealed wrongdoing on the part of the fiduciary." *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 174 (2004). Plaintiffs had that knowledge at the time of the alleged abuse. And because Plaintiffs' claims were long expired by the time of the 2017 law's enactment, *supra* p. 3, that law did not abrogate any vested rights on the part of Plaintiffs. *Contra* Opp. 35.

IV. The CVA Cannot Be Saved by the Canon of Constitutional Avoidance.

Plaintiffs attempt to rescue the CVA by invoking the canon of constitutional avoidance. Opp. 6, 20-21. But the only construction of the CVA that can avoid a finding of unconstitutionality as applied here is one that ***does not*** abrogate the rights vested under the statute of repose enacted in 2017—and that outcome does not save Plaintiffs' claims. Plaintiffs' invocation of the canon of constitutional avoidance here is unprecedented. That doctrine permits a court to interpret an ambiguous statute narrowly to save it from constitutional infirmity. *Koshsko v. Haining*, 398 Md. 404, 425 (2007). Here, Plaintiffs seek to save an *unambiguous* statute (the CVA) from as-applied constitutional infirmity by interpreting *another unambiguous statute* (§ 5-117(d)) to say the opposite of what it says. That turns the doctrine of constitutional avoidance inside out.

Conclusion

For the foregoing reasons, the Complaint should be dismissed with prejudice.

Dated: January 17, 2024

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Rule 1–322.1 Certification

I HEREBY CERTIFY under Maryland Rule 1–322.1 that there is no personal identified information included within this filing.

/s/ Kevin T. Baine
Kevin T. Baine (AIS 8506010010)

Rule 20–201 Certification

I HEREBY CERTIFY under Maryland Rule 20–201(h)(2) that there is no restricted information included within this filing.

/s/ Kevin T. Baine
Kevin T. Baine (AIS 8506010010)

Certificate of Service

I HEREBY CERTIFY that on this seventeenth day of January 2024, a copy of the foregoing document was filed via the MDEC system, which will cause a copy to be served electronically on all counsel of record in this matter who are registered MDEC users.

/s/ Kevin T. Baine
Kevin T. Baine (AIS 8506010010)

EXHIBIT 5

2

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

DAILY SHEET

JOHN DOE, et. al
Plaintiff (not present)

Robert Peck, Jonathan Schochor
Howard Janet, Andrew Janet
Plaintiff's Attorneys

-v-
ROMAN CATHOLIC ARCHBISHOP
OF WASHINGTON

Defendant(not present)

John Bourgeois, Kevin Bane,
Richard Clearly
Defendant's Attorneys

Case # C-16-CV-23-004497

Judge Bright

Date 03/06/2024

Court Clerk 900JAJ

Tracking #:
☐ J ☐ C Day _____
(J=Jury Sworn)
(C=Court Trial)
Case Start Time:
Case End Time:

DOCKET ENTRIES

Defendant's Motion to Dismiss for Failure to State a Claim, argued.

Judge Bright, CS M1421

Motion – Denied

Brian Bright

ENTERED: 3-12-2024

4 USB

EXHIBIT 6

----------X

Case: John Doe, et al. v. Roman Catholic Archbishop of Washington - C-16-CV-23-004497

----------X

CERTIFIED TRANSCRIPT

[START MD-CVA_PGCC_AudioRecording_of_OA_on_D_MTD_from20240306_Vol2.mp3]

MALE VOICE: …back in session.

JUDGE ROBIN D. GILL BRIGHT: You may be seated. All right, thank you all for your patience. Recalling C-16-CV-23-004497, Jon Doe, et al. versus Roman Catholic Archbishop of Washington, or the Archdiocese of Washington, if you can just please introduce yourselves again for the record.

MR. ROBERT S. PECK: Robert Peck for the plaintiffs.

MR. JONATHAN SCHOCHOR: Your honor, Jonathan Schochor for the plaintiffs.

MR. ANDREW JANET: Andrew Janet for the plaintiffs.

MR. HOWARD JANET: Howard - -.

MR. JOHN BOURGEOIS: Good afternoon, your honor. John Bourgeois for the archdiocese.

MR. KEVIN BAINE: Kevin Baine for the archdiocese.

MR. RICHARD S. CLEARY JR. Richard Cleary for the archdiocese.

JUDGE BRIGHT: Thank you. All right.

Because this statute was enacted on October 1st, 2023, regardless of the court's decision today, it is likely that this case would ultimately be determined by the Supreme Court of Maryland. So but the court had an opportunity to review all the cases, had an opportunity to review the exhibits, and I just want to walk through the court's thought process. So first we had the complaint that was filed with the plaintiffs John Doe, Richard Doe, Mark Smith against the Archdiocese of Washington, and it was for several counts of negligence, breach of fiduciary duty, constructive fraud, and various other counts. There were ten counts.

So the issue in this case is primarily that the plaintiffs allege that they were victims of sexual abuse that occurred when they were minors. So the plaintiffs filed a motion to dismiss based on statute of limitations and statute of repose, and because they were, the plaintiffs are barred by those, the defendants state that the plaintiffs have failed to file a cause of action. The plaintiffs disagree and filed its opposition, and the court had an opportunity to review the amicus brief filed by

the attorney general's office. So the first thing we looked at is the statutory interpretation. As was stated throughout this morning, when the language of a statute is clear and unambiguous, the court goes no further. The plain meaning of the words apply. And so we know that the General Assembly creates a statute of limitations so that this would give plaintiffs adequate time to investigate a cause of action, file a lawsuit, and it would also allow defendants an opportunity to not have an unreasonable delay in the process or have claims that are so delayed that people's memories fade, evidence is no longer available. And all of this is in the interest of the public and judicial economy. So there is a general presumption that the statutes operate prospectively as was suggested earlier today. And that presumption is only rebutted if there are clear expressions in the statute to the contrary.

So now we have a statute of limitations and a statute of repose issue. The statute of limitations sets forth a deadline in which cases may be brought before the court. That may be

extended and in some cases, shortened, by the General Assembly. But what triggers the event is the accrual of the claim. And in this case, what is alleged is the action, the sexual abuse that the plaintiffs allege occurred when they were minors. It's a procedural device, and it operates to limit the remedy that may be available for a particular cause of action. The statute of repose, on the other hand, shelters certain groups after a certain period of time. The purpose is to provide an, bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period. So the period of time may be unrelated to when the injury occurs or in some cases, when there's discovery of the injury. Now there, all of the cases pretty much go back to the Anderson case, Anderson versus United States, 427 Maryland 99, 2012. And even the cases after that go back to the Anderson case. So when looking at whether this is a statute-of-limitations or a statute-of-repose issue, that's when the courts then look at, that's when the courts then look at the history of the case. So they look at what starts the time clock. They

also look at does it eliminate any claim to have not yet accrued? You look at what is the purpose behind the statute, and you look at the legislative history. That's what the courts look at in order to determine whether this is a statute-of-limitations statute or an issue involving a statute of repose.

So then let's look at Courts and Judicial Proceedings 5-117. Because now, we're looking at the legislative history of the statute. Until October 1st, 2023, I'm sorry, October 1st, 2003, the statute provided that an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed within seven years of the date that the victim attains the age of majority. And that was in effect all the way until October 1 of 2017, in which the statute was then changed and looking at 5-117(b), well for this case, it would be (c), because the allegations are that the archdiocese is not the perpetrator, the entity that the plaintiffs allege allowed this to occur. And based on the statute at that time, it was seven years after the victim reaches the age of

majority, but no more than 20 years, from seven to 20. And so that is what was operating prior to the plaintiffs filing this complaint.

When the plaintiffs filed the complaint in October of 2023, the statute had now changed, and the statute provides any time that, and removed the provision as to seven years after the age of majority up until 20 years. So that is what the change has been. And so was that, what was the purpose behind that? In order to determine what the purpose was behind that, not only did the court look at the various cases and statutes, but specifically looked at Courts and Judicial Proceedings 5-108. And that gave the court a lot of guidance as well. It was also referenced somewhat this morning. And when looking at 5-108, the statute currently provides that real property that occurs more than 20 years after the date the entire improvement first becomes available for its intended use. And that's in 5-108(a). That's the limitation that is allowed.

Now, what happened was prior to that statute being enacted, there was concern because manufacturers were unable, or shielded from

liability. And so there was a concern with the legislature because they were not being able to be prosecuted civilly for any products that they manufactured. So it went back and forth and back and forth. Some of the bills that were proposed were rejected. Some were vetoed by the then-governor. But then we have today's statute. And so that statute, which initially did not allow claims to be brought against these product manufacturers for asbestos, has now changed and has added that to clarify whether they can or cannot be liable for their actions.

And so what the statute of repose does is create that substantive right so that you no longer have to worry about any liability, you no longer have to worry about any claim coming before you. Now why did the legislature make that change in 5-108? They made the change because of the concern that was going forth. And now we go back to 5-117. Why did the legislature make that change? They made the change because initially, it was problematic when a minor could not bring suit. And then that's when they made the change to seven years after reaching the age of majority. And so the

whole point was to allow individuals at a certain age - - a certain time to bring suit. It was different from 5-108, because 5-108 was focusing on making sure that these manufacturers had a finite time in which a suit could be brought. And the court, or the General Assembly felt that there was a public interest to be served by making sure that cases would not go indefinitely. 5-117 is distinguished because based on the legislative history, there is nothing within the history that would say that the General Assembly attempted or chose to make these changes to protect sexual abusers. So that is distinguished from the 5-108 statute and is also distinguished in some of the cases that were cited, because the interest in having the statute of repose does not apply in this particular case based on the legislative history, the intent of the General Assembly, and the focus on not having sexual abusers be prohibited from prosecuted, being prosecuted civilly. The timeframes that they put in place were not meant to have a bar to recovery, but just a time as to the limitations in bringing forth the suit. As such, the court does not

find that 5-117 is a statute of repose, finds that the statute is clear and unbiguous [phonetic]. It allows for anyone at any time to bring suit, and that was done in this case. And so the motion to dismiss is denied. Thank you. Thank you.

MR. BAINE: Thank you, your honor.

[Crosstalk]

MR. PECK: Thank you, your honor.

MR. JANET: Thank you, your honor.

[END MD-CVA_PGCC_AudioRecording_of_OA_on_D_MTD_from20240306_Vol2.mp3]

C E R T I F I C A T E

I, Anne Edelmann, hereby certify that the foregoing transcript of proceedings in the case of John Doe, et al. v. Roman Catholic Archbishop of Washington/audio file titled MD-CVA_PGCC_AudioRecording_of_OA_on_D_MTD_from20240306_Vol2.mp3 was prepared using electronic transcription equipment and is a true and accurate record of the proceedings to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: Anne Edelmann

Date: March 14, 2024

2:4

EXHIBIT 7

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE,

Plaintiff

vs. Civil Docket

BOARD OF EDUCATION OF No. C-12-CV-23-000767

HARFORD COUNTY, ET AL.,

Defendants

OFFICIAL TRANSCRIPT OF PROCEEDINGS

MOTION TO DISMISS HEARING

VOLUME I OF I

Bel Air, Maryland

Tuesday, March 19, 2024

BEFORE:

THE HONORABLE ALEX M. ALLMAN, JUDGE

APPEARANCES:

For the Plaintiff:

GAETANO D’ANDREA, ESQUIRE

AARON BLANK, ESQUIRE

For the Defendants:

EDMUND O’MEALLY, ESQUIRE

ANDREW SCOTT, ESQUIRE

Transcribed from electronic recording by:

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T A B L E O F C O N T E N T S

P R O C E E D I N G S

COURT OFFICER: This is civil case C-12-CV-23-000767. John Doe v. The Board of Education of Harford County, et al. Before the Court is a motion to dismiss. Counsel, please identify yourselves for the record.

THE COURT: Plaintiffs.

MR. D'ANDREA: Thank you, Your Honor. Good afternoon. Guy D'Andrea on behalf of the Plaintiff.

MR. BLANK: Good afternoon, Your Honor. Aaron Blank on behalf of the Plaintiff.

THE COURT: Mr. Blank and Mr. D'Andrea. And?

MR. O'MEALLY: Good afternoon, Your Honor. Edmund O'Meally on behalf of the Board of Education of Harford County.

MR. SCOTT: Good afternoon, Your Honor. Andrew Scott also on behalf of the Board of Education of Harford County.

THE COURT: Mr. Scott, Mr. O'Meally, good afternoon. We have some other --

MR. O'MEALLY: Yes, Your Honor.

THE COURT: -- employees present, but not part of the trial table it looks like.

MR. O'MEALLY: Our partner, Adam Konstas, and also with us is Ms. Kimberly Neal who is the General Counsel for the Harford County Public Schools.

THE COURT: Okay. Great. All right. Thank you everyone. So, I have spent a good bit of time reviewing all of

the pleadings and the motion that was filed, the response to the motion that was filed, the reply, and the supplemental that was filed I think it was a couple days ago by the Plaintiff. Defendant, you know, we have a number of arguments in the case. I know why most people are in the courtroom is mostly for the first argument that you're raising. That would be my guess.

The other arguments that are attacking the causes of action are more kind of squarely just related to the allegations in this particular complaint. I'll turn it over to you to see how you would like to start. If you'd like to start with that constitutional argument or if you'd like to start with the other arguments, but I'm happy to have -- hear your arguments as to where you'd like to begin, Mr. O'Meally.

MR. O'MEALLY: Thank you, Your Honor. And I will begin, Your Honor, with the constitutional arguments both with respect to the purported retroactive elimination of the statute of limitations and the statute of repose as set forth in the Child Victims Act of 2023. And also with respect to the contention that the Child Victims Act retroactively increases the sovereign immunity cap that is set forth in 5-518 in the courts and judicial proceedings article.

THE COURT: Do we need to deal with that one today? I mean, is that really pertinent to this -- whether this case moves forward?

MR. O'MEALLY: Well, Your Honor, I would respectfully

submit that it's an issue that has been fully briefed. It is an issue that, in part, relies upon the same argument as the retroactivity with --

THE COURT: But isn't that argument as to the amount of damages that are recoverable against this Defendant. Am I correct?

MR. O'MEALLY: That is correct, Your Honor.

THE COURT: So, I would say let's avoid that issue at least as the starting point and talk more about the other issue, the sort of heavier issue if you will, because --

MR. O'MEALLY: All right.

THE COURT: -- we can deal with the sovereign immunity cap later on in the litigation.

MR. O'MEALLY: All right. Very good. Thank you. And Mr. Scott will address the allegations that are specific to the separate counts of the complaint.

THE COURT: Okay.

MR. O'MEALLY: All right. So, with respect to the argument with respect to the Child Victims Act, I think it's important to have a few moments of background facts. I know it's been fully briefed and I know that you've read it, but --

THE COURT: It's a lot to read though, I have to say. It's a lot to read. It's a lot to digest. There's very confusing law that dates back 100 years, 200 years on this topic. And so, the background would be helpful 'cause I'd like

all of us in the courtroom to sort of frame the issue.

MR. O'MEALLY: Well, I won't go back 200 years, but I will go back to the 1980s. And so, in essence, the allegations are that the Plaintiff as a student at Deerfield Elementary School in 1985, 1986 while a 5th grader was abused by a non-Defendant and then was subsequently abused a few years later during 11th grade when he was 16 or 17 years old at Edgewood High School by another non-Defendant.

Based upon the allegations in the complaint, it appears that the Plaintiff would have reached the age of 18 at some of approximately 1993 or 1994, and the statute of limitations as then set forth, generally the 3-year statute of limitations, would have run once he turned 21 at some point around 1996 or 1997 depending upon the actual date of birth.

And the approximate date is relevant to the arguments but the precise date is not, Your Honor.

THE COURT: I understand.

MR. O'MEALLY: So, at the time the general 3-year statute of limitations set forth in 5-101 of the courts and judicial proceedings article was applicable. It wasn't until 2003 when the General Assembly enacted the first rendition of 5-117 creating a new 7-year statute of limitations, but as made clear in the Court of Appeals decision in Doe v. Roe, that increase to the limitations period did not apply retroactively to revive barred claims.

It did in the Doe v. Roe case operate to enlarge a period of limitations for a claim that was not yet barred. In 2017, of course, the General Assembly again amended 5-117 and this time it did several important and distinct things. First, it expanded the limitations period for perpetrators to the latter of 20 years or 3 years after conviction. Secondly, it expanded the limitations for non-perpetrator defendants from 7 to 20 years if there was a finding of gross negligence. And finally, and most important for today's arguments, the court -- or excuse me, the General Assembly created a statute of repose for any claims against a class of non-perpetrator persons or government entities that went into effect 20 years after the victim reached the age of majority.

And so, it is our position --

THE COURT: Is it critical to your argument that that section of the statute is a statute of repose?

MR. O'MEALLY: It's important to our argument. I don't believe it's critical, Your Honor. I am taking the position that with respect to the Board of Education, both the statute of limitations and the statute of repose in and of themselves bar any recovery in this case. That the Plaintiff's claims were barred in 1996 or 1997. They could not be retroactively revived either under a statute of limitations argument or under a statute of repose argument.

However, it is clear that the judicial handling of a

statute of repose gives that more substantive weight. If you look at the Anderson case and you look at the Dua case, the law is clear that when you have a substantive vested right, and I believe that --

THE COURT: Right.

MR. O'MEALLY: -- we do, that that substantive vested right cannot be abrogated retroactively. And of course --

THE COURT: Is it your argument -- I'm going to interrupt just because --

MR. O'MEALLY: I'm sorry. That's all right.

THE COURT: -- I'm going to interrupt. And I don't mean to derail your argument when I do so. It is that the existence of the statute of repose is what creates the vested right? Meaning that the statute of repose closes the opportunity for lawsuits regardless of when they were accrued and things like that against this category of defendants no matter what the circumstances are and, therefore, the vested right exists.

'Cause I'm just trying to understand whether or not a finding that that section, the 20-year section of the statute is a statute of repose is critical in order to get to the point of finding your client has a vested right.

MR. O'MEALLY: Your Honor, I don't think it's critical, but --

THE COURT: Well, then why focus -- why is it such a

big part of the brief and the argument and all of that? I'm just -- I'm honestly not sure. I'm confused about it.

MR. O'MEALLY: Well, thank you, Your Honor. I think that it's clear under the case law that a statute of repose creates a substantive vested right.

THE COURT: What case law is that?

MR. O'MEALLY: Well, I think that we have first the Anderson decision, which of course found that the purported statute of repose was not, in fact, a statute of repose but was rather a statute of limitations. We have the, of course, the Dua case, which talks about substantive vested rights --

THE COURT: But that case --

MR. O'MEALLY: But that's not a statute of repose case.

THE COURT Right. It didn't -- I'm just expressing my curiosity over why the existence of the statute, finding that it's a statute of repose is critical to finding that a vested right -- I mean, I can kind of understand because a statute of limitations is a defense to be raised. It's based on the accrual of a cause of action.

MR. O'MEALLY: Right.

THE COURT: Whereas a statute of repose is sort of this clear open-close point in time, and then because of that it sort of gives the Defendants a more reasonable opportunity to rely on no lawsuits coming their way perhaps.

MR. O'MEALLY: Well, and I think that going back to the statute of limitations and why I believe that my client has a substantive vested right, even if there is no statute of repose, not only does the Board of Education rely, as the other defendants have in other cases, upon Article 24, the due process provision and the takings provision, but important for boards of education we have an additional constitutional protection set forth in Article VIII, §3 of the Constitution as we've addressed on page 13 of our opening memorandum. And there --

THE COURT: I, candidly, did not focus on that other constitutional provision. So, why don't you give me a brief summary of what that pertains to.

MR. O'MEALLY: Well, so, Your Honor, under Article VIII, §3 of the Constitution, and again, Your Honor, this is addressed on page 13 of our opening memorandum, the Board of Education has the constitutional protection that provides that the school fund of the state should be kept in violet and appropriate only to purpose of education.

And while that is an argument that I have relied upon more with respect to the sovereign immunity piece of our position --

THE COURT: Right. That makes sense.

MR. O'MEALLY: -- it is also a position that I've relied upon in this section of our argument. And I think that that provision, with respect to educational funding, creates an

additional protection for the Board of Education, a public entity that has no taxing authority and is 100% dependent upon state and local funding sources beyond the Board of Education's control to provide it with substantive protections.

And, of course, in the cases dealing with a statute of repose, not only the Anderson case, but of course the Fourth Circuit's decision in First United Methodist Church v. U.S. Gypsum, which we've also cited in our memorandum, a statute of repose is an absolute bar to an action and it's a grant of immunity.

So, we do focus on that, and we use that term immunity not only with respect to sovereign immunity but because of the very important protection from suit after a period of time. And we contend that that cannot be retroactively abrogated as the Child Victims Act purports to do. It not only, you know, is an inconvenience, it is not only a procedural difficulty, but it is a substantive difficulty. It is a revival of an action that has been barred in this case for over 25 years.

How do you deal with something like that? How when you have constitutional limitations on the use of funds for the provision of education, the hiring of educators, the provision of textbooks and services to the school children of each of the 24 jurisdictions in Maryland -- how do you square that with that constitutional provision that applies only to boards of education. Does not apply to churches. Does not apply to

private schools. But only applies to a client such as the Board of Education --

THE COURT: I get it. It's sort of propping up the more important due process argument though. I mean, I understand that the funding issue they rely on their budget, and they got to create the budget based on many factors including potentially litigation exposure at some point.

MR. O'MEALLY: Indeed.

THE COURT: It's hard for me though to imagine a circumstance where a board of education is looking back and saying, "Well, okay. Well, we know all those kids from the 80's aren't going to sue us." I mean, maybe they do. I don't know. Okay. Well, continue.

MR. O'MEALLY: And that's exactly right, Your Honor. Who would expect to have to be in court in 2024 for a case that arises out of an allegation beginning in 1985 or 1986? And that's part of the public policy that is at issue behind a statute of repose. And in the case law that discusses the purposes behind a statute of repose, again from the First United Methodist Church case that I mentioned earlier, a statute of repose is motivated by considerations of the economic best interests of the public as a whole. And that ties exactly into that Article VIII, §3 position that I mentioned earlier.

So, in this case, what we have is the law that was enacted and went into effect October 1, 2023, purporting to

revive a claim that has been dead for over 25 years. And we would take the position very strongly that both under a statute of limitations or under a statute of repose they simply cannot do that. Now, we have addressed in our memoranda why this is, in fact, the 5-17 provision as enacted in 2017 -- why it is, in fact, a statute of repose. And keeping in mind that the court in Prince George's County just a week and a half ago found to the contrary, that it was not a statute of repose. And I would respectfully submit --

THE COURT: But again, I'm still curious why does that matter other than it lends support to your argument that it's a vested right.

MR. O'MEALLY: Right.

THE COURT: I'm just trying to understand from a legal perspective is the existence or the finding that that section of the statute is a statute of repose required in order for the Court to find that your client has a vested right in not being sued.

MR. O'MEALLY: And I think, Your Honor --

THE COURT: I don't know that anybody knows the answer to that question, to be honest with you.

MR. O'MEALLY: The answer to that question, the short answer, is no. You can find that even if this is not a statute of repose that we do have a vested right and cannot be -- have that right taken away retroactively. I think, for example, Your

Honor, that in the case of Langston v. Riffe, which is cited at length in the Dua case, Judge Cathell said that a remedial or procedural statute may not be applied retroactively if it would interfere with vested or substantive rights. And I think that that applies to a statute of limitations.

I think that another case that is cited in the Dua case with favor is the Cooper v. Wicomico County case. It's on page 625 of the Dua decision. And it's reported at 284 Maryland 576. Now, in Cooper what happened was there was a workers' comp case. So, this was not a statute of repose, statute of limitations case. It was a retroactive -- or retroactive change in vested rights. What we had was a worker's comp case, and the claimant in the workers' comp case was awarded a certain amount. The General Assembly then passed legislation that increased the maximum amount of an award in a worker's comp case and it was applied retroactively.

And the Supreme Court of Maryland in Cooper held that the General Assembly's purpose to alleviate the effects of inflation, hence the increase in the amount of the worker's comp award retroactively, violated the vested rights of Wicomico County in that case and, therefore, nullified the legislation. That it could not be applied retroactively. So, I think that's a long way of answering Your Honor's question. It doesn't necessarily depend upon the statute of repose, statute of limitations argument.

I say either, in either scenario, we have a vested substantive right for the reasons that I've shared. And in either case, whether we're dealing with the retroactive elimination of a statute of limitations here going back over 25 years, or the statute of repose that was put in place in 2017, we end up in the same place. That both attempts to retroactively abrogate the rights and immunity from suit that the Board of Education has violates our rights and, therefore, as applied to the Board of Education is unconstitutional.

THE COURT: All right. I may come back to this --

MR. O'MEALLY: All right.

THE COURT: -- point with you, Counsel, but let me hear from Plaintiff on this if I could.

MR. O'MEALLY: All right. Thank you, Your Honor.

THE COURT: Counsel.

MR. D'ANDREA: Thank you, Your Honor.

THE COURT: You probably are picking up what sort of the focus I have here is. Right? My understanding of the law is we have a law that was passed by the legislature which admittedly revives causes of action there were no -- that were not viable prior to the law being enacted. These causes of action were not pending at the time. It's not like cases had been filed and it's extending cause of action based on cases that were filed. These causes of action had expired. Maybe that's not the right word, but -- then we have, essentially, the

total elimination of any statute of limitation or any statute of repose, or however you'd like to call it, and opening up kind of an unlimited span of time for lawsuits to be filed.

Help me understand why we're not talking about a vested right on the part of the Defendant that was retroactively taken away by this 2023 statute.

MR. D'ANDREA: Absolutely, Your Honor. And I'm 100% going to address that very quickly.

THE COURT: Sure.

MR. D'ANDREA: I do want to point out sort of the burden that we are at, at this stage, in terms of the cases we supplemented our brief with, which was Edgewood Nursing Home v. Maxwell and State v. Gurley (phonetic). And so, in those cases, there is a -- in Edgewood, for instance, there is a strong presumption of the constitutionality and that the party challenging the constitutionality needs to do so beyond a reasonable doubt to prove that it is unconstitutional.

THE COURT: Yeah, I mean it's a big -- it's something to ask a trial judge to do something like this. I totally get that.

MR. D'ANDREA: Right. And State v. Gurley says essentially the same thing, Your Honor.

THE COURT: Right.

MR. D'ANDREA: So, to Your Honor's point though about vested versus non-vested, that truly is in many ways the

critical point that is raised. And, Your Honor, it's clear that that's critical because I -- I appreciate what Defense Counsel has said today, but his briefing, their briefing, spends a considerable amount of time on the differentiation between a statute of repose and a statute of limitations.

THE COURT: Right.

MR. D'ANDREA: And that's the critical piece here, right, Your Honor.

THE COURT: Right.

MR. D'ANDREA: So, a statute of repose would, in fact, provide a vested right to a party. Whereas a statute of limitations is a procedural statutory provision that can, Your Honor, if I may, the legislature can amend, qualify, or repeal any of its laws affecting all persons and property which have not acquired vested right or vested -- rights vested under existing law. All of the courts agree on this. And that's the Dal Maso decision.

And so, the distinction between vested and non-vested, defendants don't have -- or parties do not have a vested right in statute of limitations. That is a procedural -- what they have is an expectation, and the courts address that, Your Honor, but that's not a vested right. And so, in looking at what is the 2023 5-117, is that a statute of repose or that is a statute of limitations?

Clearly, it is the Plaintiff's position -- and the

Plaintiff's position of course is that, or our position, is that the law is clear on this. This is a statute of limitations by every definition that the courts have analyzed what a statute of repose is versus a statute of limitations.

And so, the Anderson case, Your Honor, is so critical because even within that the court recognizes and acknowledges that the highest court here in Maryland have, I don't know if they say this specifically, but maybe messed up a couple times, in essence, interchangeably using the words statute of repose versus statute of limitations.

And they want to put an end to that, meaning the Anderson court, and define once and for all what is and what is not a statute of repose and what is and what is not a statute of limitations. And they do that a couple of ways, Your Honor. One, they analyze 5-108, which deals with professional liability concerning defects in real property, which the court did find or other courts have found is in fact a statute of repose. And plaintiffs agree that is a statute of repose. And I'm going to explain why.

And they juxtapose that, Your Honor, with 5-109, which courts have repeatedly throughout Maryland sort of interchangeably said statute of repose versus statute of limitations. And the Anderson court said definitively 5-109, which is analogous to 5-117 what we're here for now, is a statute of limitations. And why? And here's what the court

said, and, Your Honor, this is from Anderson in one of their sub-chapters B, they put in italics what distinguishes a statute of limitation from a statute of repose.

There is an abundance of scholarly commentary aimed at clarifying the difference between statutes of limitation and statute of repose. We shall begin with the basics. Black's Law Dictionary defines statute of limitations as a law that bars claims after a specified period. A statute establishing a time limit for suing in a civil case based on the date when the claim accrued or when the injury occurred or was discovered.

Conversely, a statute of repose is defined of a statute barring any suit that is brought after a specific time since the Defendant acts such as by designing or manufacturing a product even if this period ends before the Plaintiff has suffered a resulting injury.

What does that really mean, Your Honor? A statute of limitations -- what is the critical, the triggering thing between a statute of limitations and a statute of repose is essentially who is it protecting or who is it addressing. So, a statute of limitations when you read statutory construction is based upon the injury, the claim to the Plaintiff, versus a statute of repose which is an act by a Defendant, which is almost always in circumstances like product, you know, manufacturing, real property, and there's a good reason for that. Right? In this -- right.

If you have a product, you want manufacturers who are maybe testing new materials or new products to know that if they're going to introduce a product into the stream of commerce --

THE COURT: Right.

MR. D'ANDREA: That they have a time limit in which they can be sued. It allows businesses to make decisions. Same thing with real property. When deeds are issued or there's other defects in real property, we want builders, and homeowners, and real property possessors, if you will, to know that their rights have vested.

When we're talking about causes of action, the triggering event, meaning the injury to the Plaintiff, which is what 5-117 identifies, that is the trigger event, it's the claim of the Plaintiff. When did that accrue? That --

THE COURT: Well, it's kind of in between. Right? I mean, although you're making some very good points on this topic, it's not focused on the Defendant and the Defendant's conduct such as the building of a building or the putting a product into the stream of commerce. It's based on the mere age of the Plaintiff because it's 20 years after the date the victim reaches the age of majority. Right?

MR. D'ANDREA: That's right, Your Honor.

THE COURT: Not when the cause of action accrues or the injury took place. I mean, the word -- "There is arising

out of an alleged incident that in no event may an action for damages" -- I'm reading the right section. Right?

MR. D'ANDREA: Yes.

THE COURT:

"Arising out an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or government entity that is not the perpetrator more than 20 years after in which the victim reaches the age of majority."

MR. D'ANDREA: That's right.

THE COURT: So, you're right. It's not focused on the Defendant's conduct. It's just sort of setting a clock from age 18 plus 20 years kind of close the door there.

MR. D'ANDREA: That's right, Your Honor. And, additionally, Anderson in quoting, or citing rather, First United, you know, statutes of repose different from statute of limitations in that the trigger for a statute of repose period is unrelated to when the injury or discovery of the injury occurs. Meaning, when you identify when does the statute start running, if it has to be tied to when a Plaintiff is injured, which is clearly what is 5-117, that by definition --

THE COURT: But it's not tied to when the Plaintiff suffers the injury. It's tied to the age of majority. Are you saying because a minor cannot possess a cause of action and it doesn't spring into existence until that individual strikes the

age of 18 and, therefore, the “injury” occurs at that moment in time?

MR. D’ANDREA: No, Your Honor. So, the 5-117 contemplates and, in fact, in the passage of that all of those causes of action -- any cause of action brought under 5-117 now, like as of today, had to have already accrued, which is what that statute is addressing.

And so, the injury -- so the reason it attaches to the injury is because the child had to be injured prior to the age of 18, otherwise you wouldn’t be under the CVA. You would be -- or any Child Victim Act, you’ll be an adult who was sexually assaulted. And so, the -- it’s a tolling provision, which is also -- which Anderson cites and -- the tolling provision by definition, the courts unanimously have said this, and Anderson being one, turns - not turns into. It makes it -- it is in fact, a statute of limitations not a statute of repose because a statute of repose is irrespective of an injury. Doesn’t -- there is -- it doesn’t matter whether there’s tolling or not tolling. It’s a defendant. You have introduced a product into commerce, we have no idea whether or not someone at any point in time will ever be injured, but what we’re going to say is that for 20 years whether someone is or isn’t injured someone can bring a lawsuit --

THE COURT: So, two --

MR. D’ANDREA: Yeah.

THE COURT: Two questions ‘cause you're making a persuasive argument to me about this. The stricken Section III of the legislative history of the 2017 amendment says that “Statute of repose under 5-117(d) of the court’s article as enacted shall be construed to apply both prospectively and retroactively --”

MR. D’ANDREA: Yes.

THE COURT: “-- to repose Defendants regarding actions that were barred by the application of the period of limitations before October 1st of 2017.” I mean, the legislature, do I just ignore that and focus on the language of the statute and the argument that you're making here?

MR. D’ANDREA: In -- yes, Your Honor. In some ways. And --

THE COURT: I mean, they’re calling it a statute of repose.

MR. D’ANDREA: They did. And if you -- in some ways. If you look at the legislative history, there were assembly members who even sponsors did not realize that language is in there. Maybe shame on them, shame -- you know, but what is clear by the intent of the statute, and what the Anderson court and First United has said, is the General Assembly knows how to construct a -- a rose by any other name, I think, was one of the lines they used in the opinion.

I mean, it’s not -- codified or uncodified isn’t what

controls. Right?

THE COURT: I get it.

MR. D'ANDREA: So --

THE COURT: I get that. I get that.

MR. D'ANDREA: Yeah. So, the assembly knew --

THE COURT: But, I mean, I just noticed in my review of the --

MR. D'ANDREA: Sure.

THE COURT: -- legislative history that that sort of jumps out. I'm sure Mr. O'Meally was going to jump up and say that.

MR. D'ANDREA: Right.

THE COURT: At some point.

MR. D'ANDREA: But the claim reading and the law as it is written, and the General Assembly knowing how to construct statutes, is that this by every definition because of the tolling, because it affects -- the triggering event is the child when injured and then, of course, the tolling provision for 20 years if there's gross negligence under the 2017 --

THE COURT: But it's not -- the triggering event is not the child when injured. The triggering event is the child reaching the age of 18. That's --

MR. D'ANDREA: Well, that's the tolling. Right? So, there had to have been an injury prior to 18. And then child when turning 18, the tolling provision, has until 38 under the

2017 --

THE COURT: Oh, okay. Okay.

MR. D'ANDREA: -- statute. Now, of course, fully eliminated under the 2023.

THE COURT Okay. Got it. All right. The next question I have is sort of the subset of that argument, or part B of that argument by Mr. O'Meally is, you know what who cares? Who cares if it's a statute of repose? I don't care. It's something that the legislator cannot do to retroactively revive long-since dead causes of action and, in doing so, is depriving the Defendants of a vested right. What's your response to that?

MR. D'ANDREA: And that -- so, I don't mean to keep bringing it back, but that's why the first determination as to whether or not this is a statute of limitations versus a statute of repose is so critical.

THE COURT: Okay.

MR. D'ANDREA: Because as a statute of limitations, no party, no person has a vested right in statute of limitations. They have an expectation, which the courts identify is one thing. That is not a vested right. You need to have a statute of repose to have a vested right.

THE COURT: What's the best kind of case citation you have for that point, sir?

MR. D'ANDREA: Yes, Your Honor. If I may.

THE COURT: And I printed a bunch of them out, but I

don’t know if I have the one you're about to say in front of me.

MR. D’ANDREA: Well, I do point Your Honor to Dal Maso v. Board of County Commissioners, which the quote I gave earlier, “The legislature can amend, qualify, or repeal --"

THE COURT: Yeah.

MR. D’ANDREA: “-- any of its laws affecting all persons and property which have not acquired rights vested.” Right? The Roe v. Doe --

THE COURT: But that’s general principle. So, Roe v. Doe I do have.

MR. D’ANDREA: Yes. Roe v. Doe was critical in that, Your Honor, in that, you know --

THE COURT: Well, tell me why.

MR. D’ANDREA: Sure. I mean, the argument that -- if we take away that we’re eliminating the statute of limitations, the heart of the argument is the same though from Counsel. Right? It was deemed constitutional to extend the statute of limitations. If what Counsel is saying is true, right, then the argument could be made the Defendants come in and say, “Well wait a second. This Doe Plaintiff brought a cause of action five years after the age of majority. We were relying on the three-year.” Meaning prior to the passage of the extension.

You know, if Counsel’s argument is correct, it’s either vested or not. Whether it’s 25 years old or 3 years past the statute, the Roe court said you can extend the statute. So,

their argument that we had no -- we had -- there's no issue with constitutionality in that 'cause they even cite the Roe case. It's a little disingenuous.

THE COURT: Wait. We're talking about Roe v. Doe, 193 Maryland at 558. Right?

MR. D'ANDREA: Correct. Discussing the -- that it's not -- that the extension of the statute of limitations did not infringe on any vested or substantial right of the Defendant when it extended the period of limitations. And so, if it's a statute of limitations and extending the statute doesn't violate a -- 'cause there is no vested right. Then the same argument applies if there's no vested right in statute of limitations whether it's an extension of 20 years or whether it's a complete elimination. It's the same analysis.

THE COURT: I thought the Roe case, the case was -- that the litigation at issue was pending at the time that the legislature had extended the limitations period, and that was something that they hinged on. But I could be getting confused with all the cases I've read here. Was that your recollection of the Roe case?

MR. D'ANDREA: Your Honor, what we cite in our briefings is that the holding -- they held that the legislature did not infringe on any vested or substantial right of a Defendant when it extended the period of limitations on claims of sexual abuse of minors and made that extension applicable to

claims that were not barred as the effective date of the new legislation by expanding --

THE COURT: What is the page cite for that one?

MR. D'ANDREA: Yes, Your Honor. I have that page cite -- it's not 558. I can pull that, Your Honor, for you. I apologize.

THE COURT: It's okay.

MR. D'ANDREA: Okay.

THE COURT: I don't want to slow the process down here. I might be getting it confused with the number of cases I read, but I thought one of the -- and I don't think it's dispositive of your point, but I thought one of the cases I was reading, it may have been the Roe case, they kind of avoided the issue of the retroactivity of reviving a cause of action that was dead as to a particular plaintiff, and that in the Roe case, the case was pending at the time litigation had been extended and, therefore, they were like, "Well we don't have to touch this more important scary issue of if the causes of action are dead whether or not they can be revived."

MR. D'ANDREA: Oh, yes, Your Honor. I don't want to misspeak. That did not -- the Roe v. Doe did not address the retroactivity of a statute, but it did address whether or not extension of a statute of limitations violates a -- because the argument is once we are relying on a statute -- so child abuse in year one, we're relying on they have three years post the age

majority. And now the legislature comes along, you know, 2 years, 364 days in, and says, “No, actually now you get an additional 4 years.” Your argument could be the same that, wait a second, we were relying on once this child is three years out from the age of majority after being sexually abused on our watch, we were relying on the fact that we can’t be sued anymore.

Now they’ve extended it, which gives that child, now adult, another four years. Right? You either have a vested right or you don’t. And so the court addressed there that you don’t have a vested right, that’s the critical point, in the statute of limitations. Right? And so, regardless of the retroactivity, it was the analysis of the vested right issue concerning statute of limitations, and that’s why I keep going back. And I know -- I don’t want to sound like a broken record --

THE COURT: No, no. No. I’m fully -- I’m with you.

MR. D’ANDREA: Yeah.

THE COURT: Hundred percent. I heard your argument. I’m understanding what you're saying. Continue. What else would you like to say about it? Well, maybe I can go back to Mr. --

MR. D’ANDREA: Yes, Your Honor. Because once you determine, which obviously we’re asking, that this is a statute of limitations then the legislature can, as I read under the Dal

Maso and its progeny, can amend, qualify, repeal, change statutes.

THE COURT: Okay.

MR. D'ANDREA: And I reserve any time, Your Honor, if you have any additional questions --

THE COURT: Yeah. Of course. Thank you.

MR. D'ANDREA: Yeah. Thank you.

MR. O'MEALLY: Thank you, Your Honor.

THE COURT: Sure.

MR. O'MEALLY: You were asking Counsel for a page cite for Doe v. Roe or Roe v. Doe, and so I would like to draw the Court's attention to page 704 of the Supreme Court's decision in Doe v. Roe at 419 Maryland 687, page 704. And keeping in mind that we're dealing with the 2003 enactment of 5-117, which clearly was a statute of limitations, not a statute of repose --

THE COURT: Right. Right.

MR. O'MEALLY: -- the Court of Appeals Supreme Court says this in conclusion,

"Finally, in concluding that at least as applied to causes of actions not yet barred by the generally applicable three-year limitations period in 5-117 as a remedial and procedural statute, we are in accord with the overwhelming majority of jurisdictions that hold that a change to a limitations period when applied to claims not yet barred by the previous limitations period is procedural

or remedial in nature."

THE COURT: Right.

MR. O'MEALLY: And that is what the court dealt with.

THE COURT: I get it.

MR. O'MEALLY: The cause of action had not yet been barred. And the court upheld the extension of the limitations but very clearly is saying only with respect to claims that were not yet barred. That's not what we have in this case. What we have in this case are claims that were barred over 25 years ago. And following from the logic in Doe v. Roe, those claims clearly were barred at the enactment of the Child Victims Act.

Now, I'd like to go back and address, because Plaintiff's Counsel did address at length why in their opinion the Child Victims Act -- or rather 5-117 from 2017 is not a statute of repose, and I would like to respond to that. Because very clearly following the Anderson analysis, we have, number one, a statute of repose that "shelters a legislative designated group." And that is persons or governmental entities that are not the alleged perpetrators. That's important. And I'll come back to that because I believe that the court in Prince George's County missed that point.

Second, it established a fixed bar date. And the fixed bar date, as Your Honor was addressing a moment ago, is not tied to the accrual of the cause of action nor is it tied to the injury but rather is tied to the date upon which the

Plaintiff turns 18 and then 20 years hence.

THE COURT: But it's a plane of space focus. Right? I mean, admittedly we all agree on that. It's based on -- I mean, how many kids are graduating from how many schools over the many decades of time, and so there's a zillion different expirations of that 40 year -- is it 40 years, right, period of time. As opposed to -- this is something that was a bit of a disconnect in my mind when I was reading through all of this. As opposed to a situation where the Defendant builds a building and then certifies it as complete, and then off they go. And there's a statute of repose that says nobody can sue us if this building falls down in 30 years.

MR. O'MEALLY: Correct. And that's a construction matter and a building is finite. And we have children, multiple children, and the ages differ. But we, nonetheless, have a fixed date. That could, in a conceivable situation, the repose period could run before the cause of action actually accrues following from the discovery rule.

You could have, for example, the abuse of a disabled child and it's not discovered until more than 20 years after the disabled child turns 18. And so we do have that fixed bar date that could operate to repose a claim even before the cause of action is discovered and accrued.

And then, finally, it does establish that absolute bar. The language in the statute couldn't be more clear as it

was framed in 2017, five years after the Anderson case. In no event may an action for damages be filed. They used the word repose three times in the statute itself. First in the purpose clause and secondly and thirdly in the non-codified section law Section III.

THE COURT: It's not in the statute. It's in kind of the --

MR. O'MEALLY: Well, but the session law is the law. And --

THE COURT: Okay.

MR. O'MEALLY: -- there's could authority on that.

THE COURT: Fair enough.

MR. O'MEALLY: The session law is the law whether it's codified by West or not. It is the law. And it's certainly there. And Counsel is correct that, certainly, they had a roadmap from Anderson. And the Attorney General's Office, which guides the General Assembly in the drafting of legislation, was well aware of the Anderson case and -- but children are not buildings.

And so to the extent that the General Assembly very consciously wanted to accomplish two important goals in 2017, number one, extending the period of limitations by which a abused child could bring suit against a perpetrator, 5-17 extends that, but also at the same time wanting to provide a repose for non-perpetrator persons and governmental entities

that may have employed or supervised the alleged perpetrators.

THE COURT: Yeah. Okay. I mean, it's a little unfair to call them non-perpetrators. Right? Isn't there have to be some -- there is some liability that is attaching to this category of individuals.

MR. O'MEALLY: Vicarious only.

THE COURT: Well, maybe.

MR. O'MEALLY: Well --

THE COURT: Well, okay. So, you're right. The Child Victim Act would not apply to negligent supervision claim, for example.

MR. O'MEALLY: Right.

THE COURT: That's your claim. Okay. Yes. I understand.

MR. O'MEALLY: And --

THE COURT: So, only in the context of the vicarious liability. I fully understand --

MR. O'MEALLY: And I don't know if Your Honor has had occasion to read the decision, the bench ruling from Prince George's County.

THE COURT: No.

MR. O'MEALLY: Okay. All right. And I think that the --

THE COURT: Is that the only case that has heard this argument thus far?

MR. O'MEALLY: There have been -- there was one case that was heard by Judge Robin Gill Bright on March the 6th involving the Archdiocese of Washington. There was a case that was before Chief Judge Bredar, the United States District Court, who yesterday certified the question to the Supreme Court. And that was a case --

THE COURT: Well, jumped the gun. Didn't I?

MR. O'MEALLY: Yeah. That was the case involving the Church of Latter-Day Saints.

THE COURT: Okay.

MR. O'MEALLY: And --

THE COURT: Well, you said the words -- I don't want to cut you off, Mr. O'Meally, but I do have -- I want to progress on to the next arguments.

MR. O'MEALLY: Right.

THE COURT: What else, if anything, would you like to say on this point?

MR. O'MEALLY: Well, and if I could leave the argument with this --

THE COURT: Yes, sir.

MR. O'MEALLY: And the reason why I say vicarious is that unlike with perhaps other defendants, it is not possible under Maryland law, for the reasons that Mr. Scott will discuss, that a board of education can be held liable for the intentional wrongdoing of its employees. And that's the Hunter case and

other cases following from that. And I'll leave it to Mr. Scott for those.

THE COURT: Okay.

MR. O'MEALLY: Thank you.

THE COURT: All right. Let me ask Plaintiff to address that argument first, and I'll come back to you, sir.

MR. O'MEALLY: Okay.

THE COURT: Who's handling the vicarious liability argument? That would be the next one I'd like to talk about. Is that you, Counsel?

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Okay.

MR. D'ANDREA: And, Your Honor, (unintelligible) that we have passed the Counsel because we got the notes so recently this --

THE COURT Okay.

MR. D'ANDREA: -- is Judge Bright's -- this is the transcript from her orders if Your Honor would accept.

THE COURT: Yeah, Sure.

MR. D'ANDREA: Okay.

THE COURT: Is that -- any objection to that? I mean it's --

MR. O'MEALLY: I don't object. And I do have a copy. Counsel did send that to me yesterday. That's why I asked if Your Honor had seen it. And so, Your Honor, in the point that I

was going to make is that you read and consider Judge Bright's decision, at the end, I think that a flaw in her reasoning is that with respect to 5-117 she says it -- that the General -- there's nothing within the history that would say that the General Assembly attempted or chose to make these changes to protect sexual abusers. And we're not arguing --

THE COURT: Yeah. Yeah.

MR. O'MEALLY: - that 5-117 for purposes --

THE COURT: Right.

MR. O'MEALLY: -- of the statute of repose is designed to protect sexual abusers.

THE COURT: Right.

MR. O'MEALLY: And I think to the extent that the judge relied upon that in making her finding, the 5-117 was not a statute of repose. Here the legislatively defined class is very clearly non-perpetrator --

THE COURT: Right.

MR. O'MEALLY: -- persons and government entities.

THE COURT: I understand.

MR. O'MEALLY: Thank you.

THE COURT: Okay, okay. Yes, Counsel, I'm happy to --

MR. D'ANDREA: May I approach, Your Honor?

THE COURT: Yes. Please. So, on the vicarious liability point. There's two?

MR. D'ANDREA: Your Honor, the --

THE COURT: Or is this like the argument and then the ruling?

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Okay. Got it.

MR. D'ANDREA: The thinner version is the opinion by the court.

THE COURT: Got it.

MR. D'ANDREA: The oral opinion by the court.

THE COURT: Okay. Yeah, you guys get paid by the hour to talk. We don't.

MR. D'ANDREA: Not Plaintiff's Counsel, Your Honor.

THE COURT: Right. So, the point about vicarious liability, so I am a hauling company. I'm Judge Allman Dump Truck Hauling Company, right, and I have dump trucks out on the road. And I have my employees taking concrete to the dump. And I am authorizing them to, in the course of their employment, you know, drive on the roads. And one of my dump truck drivers runs a red light and crashes into somebody and kills them, and I'm responsible for it under a theory of vicarious liability, despite zero wrongdoing on my part. Correct?

MR. D'ANDREA: Correct.

THE COURT: So, in this case, the allegation would be these are intentional torts that the individual Defendants have engaged in for the most part. Correct? And my dump truck driver sees one of his enemies on the side of the road and is

driving down the road, and says, “Now’s my chance,” and then just veers off and just accelerates and kills somebody. I -- my understanding of the law vicarious liability, I wouldn’t be responsible for that.

MR. D’ANDREA: Maybe.

THE COURT: Maybe. So, fill in the maybe. And then we’ll talk to Mr. Scott about that.

MR. D’ANDREA: Yes, Your Honor. I would indicate from the outset the other claims outside of the constitutionality issue and potentially the cap on damages --

THE COURT: Right.

MR. D’ANDREA: -- generally speaking are issues for the trier of fact, but I will --

THE COURT: Right.

MR. D’ANDREA: I mean, it’s generally speaking.

THE COURT: Generally speaking, scope of employment would be a factual issue. I agree with you.

MR. D’ANDREA: Right. That I would need to adduce through discovery. So --

THE COURT: No doubt.

MR. D’ANDREA: Yeah. Okay.

THE COURT: And you had me at sort of issue of fact in a motion to dismiss argument thinking about that.

MR. D’ANDREA: Yes, Your Honor.

THE COURT: So, what is the dispute of fact here? I

think Mr. Scott's argument would be there is no dispute of fact. I mean, raping a child is an intentional tort.

MR. D'ANDREA: Mm-hmm.

THE COURT: Intentional act. And, as a result, where's the gray area in terms of scope of employment?

MR. D'ANDREA: Absolutely, Your Honor. So, I'll start if you don't mind with Your Honor's analogy.

THE COURT: Sure.

MR. D'ANDREA: So, if, you know, Company X hires a driver, and they don't know anything other than a clean background check. Day one that driver's out driving, sees his enemy, hits him with a car, kills him like day one, first hour driving. It's going to be really hard to bring a vicarious liability lawsuit against the organization. Okay?

THE COURT: Yeah.

MR. D'ANDREA: Now, fast forward, right, months, years. Depending on what the Defendant's knowledge is. You know, did the driver say, you know, among administrators or owners of the company, "If I ever see so and so out in that street, I don't care what car I'm in, I'm going to plow this guy over," and they keep giving him the keys to that truck knowing that that enemy lives in that community and that he's vowed that he's going to do that or they have reason to know that he may do that, well that's different, Your Honor.

And why is that different? That's different because

it's not as simple as -- of course, it's one of the potential factors of was this within the scope of employment. But the law is clear that an employer can also be found liable for the tortious acts of its employees if the employer subsequently ratifies his employee's tortious conduct, even if that conduct was outside the scope of employment. And that's under D'Aoust v. Diamond.

And so, what does that mean? Well, that's going to have to be a fact-intensive discovery. Now, we have obviously some facts as we alleged in our complaint under our notice pleading in Maryland that we believe suffice to show that the Defendant either ratified the conduct or acted in concert with, and when I say --

THE COURT: Paragraph 29. Right? There was a meeting with the principal. The principal or vice principal and the parents. Plaintiff was a minor but was forced to sign some contract or paper -- I'm not limiting you to this, but that is one thing that I kind of pulled out of your complaint as there being sort of some knowledge on the part of the Defendant, the non-perpetrator Defendant of condoning or -- that's the wrong word.

MR. D'ANDREA: Ratifying.

THE COURT: Ratifying.

MR. D'ANDREA: Yeah.

THE COURT: Yes. Correct. So, next point on this

issue before I go over to Mr. Scott is, is vicarious liability a standalone cause of action?

MR. D'ANDREA: Your Honor, defense raised the point that it's not. I have not found, and if I'm wrong I'm wrong, a case that definitively says it is not a standalone cause of action. It's -- can be subsumed within a negligence claim that an agent or an employee can be vicariously liable through that -- through its actions, from the Defendant's actions rather -- a direct or vicarious liability through what their employee did. Right?

So, here we have direct and vicarious claims against the school district. Or the Board of Education rather.

THE COURT: Right.

MR. D'ANDREA: So, I have not -- I mean, I --

THE COURT: What would the verdict sheet say? So, on count one -- this is the way I think about it, right, I'm preparing with Counsel. We submit the case to the Jury. What would the verdict sheet say? How do you find the Defendants on count one -- well, maybe a better question is what would the jury instructions say? What are the elements of the claim of vicarious liability?

MR. D'ANDREA: Right. I believe, Your Honor, I mean, we're getting -- but the jury instructions would read are -- is the Defendant, the Board of Education, vicariously liable for the acts of its agent employee, teacher, staff. However, we

define -- there's two different people in this case, Your Honor. There's one from the grade school. One from the -- two separate people. One from the grade school. One from the high school. So, the Jury would be asked to determine whether or not the Board of Education in some capacity was vicariously liable for the actions of its agent, it's employee.

THE COURT: Well, what the actions though? What is the cause of action that the agent or the employee's engaging in for which the employer is being found vicariously liable? I think that's really sort of cuts to the fundamental --

MR. D'ANDREA: This --

THE COURT: The cause of action would be, perhaps, the tort that the individual actor has engaged in for which the employer would be held vicariously liable. And what is the tort or claim that -- it is what? It's the intentional --

MR. D'ANDREA: It's the sexual abuse. It's the intentional touching --

THE COURT: Okay.

MR. D'ANDREA: Yes, Your Honor.

THE COURT: All right. I got it. Let me turn it over to Counsel over here. I know I'm bouncing around with these arguments, but I think that's the best way I have it organized in my brain. So, Counsel, let's speak to the vicarious liability argument if you would please.

MR. SCOTT: Sure.

THE COURT: Mr. Scott.

MR. SCOTT: Your Honor, yes. Thank you. So, Your Honor, it's black letter law in Maryland that the employer can only be held liable for an employee's conduct when that employee's conduct is -- or acts there in the furtherance of the employer's business. And we have a set of laws in Maryland that is even more specific, and it applies specifically to public school employment.

And we cite those cases in our papers, specifically Montgomery County Board of Education v. Horace Mann where the Appellate Court of Maryland 2003 said that --

"-- sexual activity between an adult and a minor child is injurious, per se. We cannot envision how any sexual relationship between a teacher and minor student would potentially be within the scope of employment."

Again, another case we cite in our papers, the Matta case, Matta v. Board of Education of Prince George's County from 1989. The court there said that "Not even potentially possible for any court or reasonable jury to conclude that teachers are authorized to sexually abuse or harass their students."

And even more broadly, if we go back to 1982, the seminal case Hunter v. Board of Education of Montgomery County, the court said that --

"-- whereas here it's alleged that the individual educators have willfully and maliciously acted to injure a

student such actions can never be considered to have been done in furtherance of the beneficent purposes of the education system."

The Court goes on to say that such acts constitute "an abandonment of employment."

THE COURT: Isn't that a better argument on summary judgment though. I mean, 'cause you're -- I'm getting hung up on this the conduct that the defendants -- the individual defendants are alleged to have engaged in involves a spectrum of activity, not just the act itself, the sexual act itself. It's other things. It's the interference with the child. It's the mental damage or mental injury, emotional distress, or whatever it is that they -- that these individuals have caused, some of which may be negligence. Some of which may be intentional tort. But it's spanning the grooming and all of these horrible things that are alleged in the complaint.

Wouldn't this argument be better on summary judgment once the evidence is out there to know what, if anything, the school board or the educators, what information they were privy to, what were the circumstances of these interactions between the teacher and the child, and maybe somebody should've noticed the doors were shut, the windows were closed, and the lights were off, and that kind of stuff.

I mean, I think it's -- the cases you cite are definitely persuasive on the issue, but they would be a lot more

persuasive to me in a summary judgment context as opposed to a motion to dismiss context where I'm kind of leaning in the direction of the Plaintiff on inferences to be drawn, and factual discovery that has yet to take place like --

MR. SCOTT: Well, I would agree with Counsel and the Court that ordinarily the issue of scope of employment is for the fact finder, but there is case law and we cite it in our papers, I believe, that where the issue is a pure matter of law --

THE COURT: Right.

MR. SCOTT: --the Court can make a preliminary basis -- the preliminary decision on a motion to dismiss. And --

THE COURT: It can, but this is a 30-age complaint with 106 allegations in it. And it seems to me that -- I mean, my impression of reading this complaint is it's alleging a very broad spectrum of activity over a very lengthy period of time involving two different employees and one child, and some allegations about administrators being aware of the situation. Some concerns about why didn't they get involved in it. Some concerns about, you know, whether this conduct could've been stopped, should've stopped, and some of that is direct liability. I get it. That has been alleged as well.

But on the vicarious point, I'm just struggling with the re-presenting this argument in a summary judgment context I think would really get a judge to dive into the factual

information. Your argument is the complaint on its face doesn't even get there, so you can toss it now, Judge.

MR. SCOTT: Correct, Your Honor.

THE COURT: Yeah.

MR. SCOTT: And furthermore, Counsel mentioned notice pleading, but we point out in our papers under Rule 2-305, the pleading standard in Maryland is higher than that.

THE COURT: This is not a notice pleading complaint. I mean, this complaint is littered -- you refer to as a notice complaint, but it's not.

MR. D'ANDREA: No, I was saying a requirement.

THE COURT: I mean, it's still the facts.

MR. D'ANDREA: No, we -- I don't plead that way in any state --

THE COURT: Right.

MR. D'ANDREA: -- regardless of the standard.

THE COURT: Right.

MR. D'ANDREA: I plead this way.

THE COURT: Yeah. Okay. All right. So, we also have, let's see, the next category of arguments, negligence not -- I'm going to get lost here 'cause there's a lot of papers up here. The -- let's look at the causes of action really quickly. I have another case coming in 3 o'clock, but this case is very important, so I can delay them a little bit. All right. So, count one we discussed. Count two is an allegation of straight

negligence toward the Board of Education and the John Does. Count three negligent infliction of emotional distress has been withdrawn. Am I correct?

MR. D'ANDREA: That's correct, Your Honor.

THE COURT: Right. Count four intentional infliction of emotional distress remains negligent. And count five negligent failure to rescue. Negligent failure to warn. They're all sort of the same -- different flavors of ice cream. Aren't they? Isn't it just negligence and then negligence, and then a different theory of negligence?

MR. D'ANDREA: Yes, Your Honor. And in the cases I've filed across the country on these specific issues, I like to cover all my bases because I've had certain judges in certain states say, "Why didn't you parse this out?"

THE COURT: Right.

MR. D'ANDREA: Some say, "I want it together." I mean, so I've just parsed it out to lay it clear as to how -- so there can be, hopefully, no confusion as to how each sort of these different flavors of negligence, as Your Honor pointed out --

THE COURT: Right.

MR. D'ANDREA: The different acts as alleged apply to those different sort of theories, in some respects of negligence.

THE COURT: And count seven would fall into that

category as well. You're citing the Maryland Family Law Article statutory reference, but it's just yet another --

MR. D'ANDREA: That's right, Your Honor.

THE COURT: So, count two, count five, count six, and count seven are all negligence causes of action, just different theories of negligence.

MR. D'ANDREA: That's right, Your Honor.

THE COURT: So, I wouldn't -- I think -- believe this case may be specially assigned to me, assuming we are at the stage of the Jury, wouldn't submit to the Jury a verdict sheet that had four, five different theories of negligence on it. It would just be negligence.

MR. D'ANDREA: And I would be -- right. That's how generally it happens when you go to a Jury. I just lay it out that way in the complaint so it's clear.

THE COURT: Okay.

MR. D'ANDREA: In terms of the different theories, so to speak, of applicable negligence.

THE COURT: Okay. All right. So, Mr. Scott, let's assume that these negligence cases -- these negligent theories are all bundled up into one count. I agree with your argument that I didn't see any express or implied right of action under 5-701. I think it's just a reference to a statutory citation that we use all the time in protective order cases.

Count two, count five, count six, and count seven,

let's assume that was all bundled together in one count, would you still have an argument that the complaint fails to establish a claim for which relief can be granted?

MR. SCOTT: Absolutely, Your Honor. And --

THE COURT: Okay. Tell me why.

MR. SCOTT: The complaint, despite being fairly lengthy, is notable in the sense that it alleges virtually no facts with respect to any school system employee or any member of the Board of Education having any knowledge whatsoever about either of the two abusers or John Does 1 through 10 for that matter. The only allegation we have in the entire complaint that touches on that briefly is this alleged meeting that occurred with one or more administrators at Deerfield Elementary once Konski's alleged abuse was brought to that person's attention.

But those - that kind of strays back into the vicarious liability argument because those employees allegedly in response forced the minor Plaintiff, or the adult Plaintiff now, to sign a contract silencing him, which is completely outside the scope of employment, is contrary to statutory law in terms of those employees' obligations to report child abuse, etc.

There's no allegation that that meeting or the existence of that meeting, or any information shared in that meeting, was ever communicated to the board. And as to Dehaven,

we don't have any facts whatsoever because the only allegation we have is that the -- his abuse was brought to the attention of law enforcement 30 years later. If anyone had any knowledge about Dehaven's abuse it would've been the sheriff's office who arrived at the school, but even those officers didn't suspect abuse.

And so, Your Honor, there's frankly no facts upon which the Board can be held directly liable for negligent supervision, negligent training, etc. Now, there are a lot of conclusory allegations, and I think a paragraph --

THE COURT: I'm looking at page 8 -- or paragraph 18 that talks about -- it's sort of an introductory paragraph. It talks about not properly vetting, not properly training, not properly supervising, negligent retaining staff, failing to recognize clear and obvious signs of grooming behavior by staff, failing to investigate reports of concerning and criminal behavior, and failing to place any legitimate measures to protect them against teachers, etc.

MR. SCOTT: Correct. There's not a single fact supporting any of those conclusory allegations. Not one.

THE COURT: Okay.

MR. SCOTT: And, Your Honor, I would also say although it's not explicit, I think there's an implicit theme throughout this complaint that the school board should be held liable for the standards that are currently imposed on it 2024 for the

context that existed in 1991 and 1985. And there's not a single assertion with respect to any statute, regulation, board policy that would've imposed certain standards on the Board.

THE COURT: That's an interesting point.

MR. SCOTT: I'm sorry?

THE COURT: You're talking from a legal standpoint or you're talking from an internal handbook rules and regulations the organization standpoint?

MR. SCOTT: Either. Either. There's not a single allegation that there was any outside source of law or policy that imposed a duty on the Board as of the times of this complaint to do the things that the Board allegedly failed to do. But more to the point, Your Honor, I think is the fact there's not a single fact alleged to support any of those allegations.

THE COURT: Okay.

MR. SCOTT: They are just conclusory allegations, which the case law is clear the Court does not need to accept for purposes of analyzing a motion to dismiss.

THE COURT: Okay. Thank you, Mr. Scott. Mr. D'Andrea, you want to respond to the argument that the complaint lacks specificity in terms of these factual allegations?

MR. D'ANDREA: Yes, Your Honor. We've submitted as an exhibit our complaint. I know Your Honor has that. Yes. As Your Honor indicated, this isn't just bold assertions. This is

not just one incident of abuse that took place in 1985, 1986, and then one instance of abuse that happened in 1991.

In both circumstances, both in the elementary and in the high school, this was repeated pervasive, systematic abuse by two separate teachers. Well, one wasn't even a teacher, and I'll get to that in a moment. One was a custodian.

THE COURT: I know.

MR. D'ANDREA: So --

THE COURT: But speak -- let's talk about the complaint.

MR. D'ANDREA: Yeah. So, that's all alleged in the complaint, Your Honor. And so this happened over months if not years. And so you -- when we talk about negligent supervision, we'll have experts. And we'll have -- that's why this is fact-intensive. We'll have the standards from 1985 that the school imposed. In terms of an employee handbook, I don't know have access to that, Your Honor. I need that through discovery.

I don't have access to what the high school standards and protocols were. But to say things were different, in 1985, I mean, for a child to be repeatedly removed from his peers outside of the classroom which this teacher taught and not one supervisor, not one staff member ever even remotely questioned it, that is the definition of negligent supervision.

THE COURT: So, it's taking the complaint -- the allegations in the complaint as true drawing reasonable

inferences there from and filling in the gaps where the complaint may be a little bit deficient in connecting the dots between foreknowledge of these Defendants, but you're asking for the opportunity to conduct discovery to explore those issue.

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Fair summary of what you're saying here?

MR. D'ANDREA: Yes. And in terms of -- it's what the school -- it's not what they knew. It can be, of course. It's what they knew or should've known.

THE COURT: Right.

MR. D'ANDREA: Was it actual or constructive. And, in fact, at one point, and in the briefings the argument was there's no more injuries after the school, at Deerfield, learns of the sexual abuse because the teacher at that point broke up with the 10-year-old. Okay? Well, the school after having a 10-year-old sign this purported contract, okay, still has my client in that classroom with his abuser.

The thought that a child sexual assault victim is not going to be damaged or injured for days, weeks, months, years forced to interact with their abusers is outrageous. And that's what the school did here.

THE COURT: But again, you're making closing argument here. I mean, my focus is the four corners of this document and inferences that can be drawn from that. So, you're pointing out yet another inference. You're saying the kid is ringing the

alarm bells about the situation, and he's still going back there. So, that's an inference to be drawn.

MR. D'ANDREA: Well, we say it outright in the complaint, Your Honor.

THE COURT: Okay. Point me to that real quick.

MR. D'ANDREA: Yeah. So, we incorporate all the facts into the legal argument. So, we don't duplicate --

THE COURT: Of course you do.

MR. D'ANDREA: Yeah. I mean, so it's not really inferences. It's taking the facts as alleged and putting it into the complaint. I mean --

THE COURT: So, I'm not looking for allegations pertaining to the bad conduct the teachers engaged in. I'm looking for the allegations that the Defendants, the non-perpetrator Defendants -- although I'm struggling a little bit with that term. Right. It doesn't seem to be a fair characterization depending on, you know, where the case goes, but --

MR. D'ANDREA: Right. That's not how -- yeah, I'm not characterizing it that way, Your Honor.

THE COURT: The negligence causes of action against them are they knew or should have known, had a duty to do X, Y, and Z, so where's there -- where are the allegations in the complaint indicating that they knew or should've known of some certain conduct or should've known of some certain conduct?

MR. D'ANDREA: It goes back to the factual component, Your Honor, that we then incorporate. So, it's the allowing a child to be consistently alone behind closed or locked doors with a teacher. It's knowing of the abuse flat out and then not, one, reporting it as they were mandated to do and then making the child go back in front of that teacher. It's the unsupervised one-on-one that the teacher had with my client.

And then when you get to the custodian, I mean, the idea that a -- and I'm not disparaging, obviously, custodians, but for a custodian, janitor to go walk into a classroom and say, "I need this boy for the next" -- I mean it's -- that's alleged in here, Your Honor. So, how does a custodian walk into a gym class, a classroom, and say, "I'm taking John Doe out of the room for the next two hours" and not a single -- at least as alleged, a single teacher, principal, administrator say anything about it?

THE COURT: Got it. Okay. Did we sufficiently touch on all the arguments raised by the motion to dismiss? I believe. I mean, maybe that's not the right word, sufficiently. Did we at least touch on all the arguments in the motion to dismiss? I believe we did. Right? The cause of action arguments, if I can refer to them, that are -- that the cause of action failed to state a claim. The complaint is deficient in that regard. That the negligent infliction of emotional distress is out. That the duplicative negligence complaints are

there. The vicarious liability argument we certainly addressed, and we addressed the constitutional argument as well.

MR. SCOTT: The only argument we haven't discussed, Your Honor, is the assumption of risk and contributory negligence arguments.

THE COURT: Isn't that like a super-duper factual kind of thing?

MR. SCOTT: I'm sorry?

THE COURT: That wasn't really a legal way of saying things. Isn't that really, really factual based, factually based? How could I as a matter of law at this point in time find that how -- is he 10 years old and --

MR. D'ANDREA: Yeah.

THE COURT: -- in fifth grade or however old he was when he was in high school that he assumed a risk of being sexually abused because he consented to it.

MR. SCOTT: Well, Your Honor, we haven't made the argument with respect to the Konski abuse, only the Dehaven abuse.

THE COURT: That he consented to it?

MR. SCOTT: Well, Your Honor, and I'll limit it to this, we rely on the Tate case, which involved a 15-year-old. So, we think there is authorities --

THE COURT: As a matter of law for me to determine that based on the allegations in this complaint, that a 15-year-

old consented to be raped by a janitor at the school.

MR. SCOTT: Well --

THE COURT: I just want to make sure I'm understanding what you're suggesting here.

MR. SCOTT: I mean, Your Honor, we --

THE COURT: There's a case that talks about, as you've cited -- I did read it, but under the circumstances that I am presented with in this complaint, I just want to make sure I understand the argument.

MR. SCOTT: Your Honor, I would just argue that to the extent is detailed in this respect, it is notable in that Student Doe regularly engaged with Dehaven over a long period of time in numerous different settings. And the case law we've cited provides that a student as young as 15 can knowingly appreciate the risks of sexual activity with an adult.

THE COURT: Well, that perhaps may be the situation, but that is very factually based, I believe, under the circumstances. So, okay. So, we did address now -- we have now since addressed all the arguments. I'm going to take a brief recess, and I will come back, and assuming I'm kind of comfortable doing so today, give you my ruling. If for some reason I get hung up on an issue and I want to take it under advisement, I'll do that.

But I intend not to be back there for very long. Okay?

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you, Your Honor.

COURT OFFICER: (Unintelligible.)

(At 2:45 p.m., recess is proceedings.)

COURT OFFICER: Court is back in session. The Honorable Judge Alex M. Allman presiding. We are resuming case C-12-CV -23-000767. John Doe v. The Board of Education of Harford County, et al.

THE COURT: Have a seat everybody. Thank you.

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you, Your Honor.

THE COURT: Okay. All right. Let me commend all of you for the thorough, thoughtful, well-prepared, well-reasoned, well-researched arguments that I heard today. Not only today but as set forth in the briefs. This is obviously an important issue, not just to this case but to the community. It's an important issue to the Maryland legislature. Seems to be a very important determination that has kind of reached the level of the consciousness of the State of Maryland.

And for that reason, it is very helpful that you all put in the work that you did to really flush out these issues. I'm going to try and do it in the order that we conducted the argument. I've obviously given a lot of thought to this. I've obviously made some -- done my own independent research on the issues that are before me, and I've engaged with Counsel here to

try and get to the bottom of what all of this stuff means.

There is a high burden here. We're talking about invalidating the duly passed law of the legislature that was signed in by the governor and is in place right now. That is a lot to ask of a court to do. Must meet the high threshold that Mr. D'Andrea has referenced here before the Court. It doesn't mean that I couldn't do it, but it certainly is a high threshold and demands an extra level of attention as a result.

It does strike me that the real kind of critical issue to the constitutional analysis is whether or not § 1-17 as it was -- I'm sorry, § 5-117 of the courts and judicial proceedings article as it was enacted in 2017, we'll call it the 2017 legislation, created a statute of repose for which it would have given the Defendants or a category of defendants a vested right. A vested right as it's defined loosely numerous times throughout Maryland case law, I even think I read a few Maryland cases that say the concept of vest right is not necessarily fully fleshed out within the concept of Maryland case law. I think courts struggle with it. I think legislatures struggle with. And I think, you know, constitutional scholars probably struggle with it.

You know, I read this case Muskin v. SDAT, which wasn't a case that you all referenced, but it did engage in a lengthy analysis of what a "vested right" was. It was a bit of a different context, but there is some reference to it there.

So, if it is a statute of repose then the defendants argue here that it creates a vested right. And retroactively reviving a cause of action against what is otherwise a vested right on the part of the defendants would be unconstitutional. I heard Mr. D'Andrea sort of acknowledge or concede that point in his argument.

If it's not a statute of repose then it's either not a vested right or then we move on to the statute of limitations argument. One of the logical gaps in my mind, as I was reading through all of this, was, and thinking about what I understand statute of reposes to be, and that is a fixed, finite period of time that is measured by some act, some completion of a project, some product going to the stream of commerce that is independent of the plaintiff. And it sets an absolute bar over a -- after which -- after a period of time that the defendants can consider themselves immune from litigation.

This is primarily done, in my understanding, in the construction context. There's a building that's built and the contractor or the general contractor and the subcontractors would be able to cross off any concern of liability after a period of time that the statute of repose says they cannot be held liable.

This statute as set forth in 5-117, despite the references in the legislative enactment to a statute of repose, and despite -- and no one kind of argued this point, but I kind

of grabbed onto this, that in the 2023 reference there is a reference to notwithstanding any time limitation under a statute of limitations, a statute of repose, Maryland tort claim act, or the local government tort claim act, despite the legislature calling it a statute of repose, I don't find that it meets the definition of a statute of repose given that it is a plaintiff's based analysis.

The timeframe runs from the date that the plaintiff, this individual, turns 18 and then it is a period of time after that. And I think it was what four -- 20 years after the plaintiff reaches the age of majority. So, there are countless statute of repose out there that are based on each individual potential plaintiff reaching the age of majority at the age of 18, and it sort of flies in the face of logic that the school system is walking around kind of counting how many kids were 18 and when they were 18, and that by the time they reached 20 years after that then they're applying for their insurance rates based on that.

It does not seem to be the way that the school system would approach this. Unlike a statute of repose which would give the school system the ability -- and I'm using that kind of pejorative term, the school system. I realize the Defendant is identified differently. A statute of repose that says no lawsuits 30 years after Deerfield Elementary School is closed. And that point in time is fixed.

It's based on the Defendant's conduct, 30 years after that the liability shuts down and closes. As a result, the Defendant can say, "Well, there was 300 kids that graduated from Deerfield Elementary at that point in time, we know that we cannot be subject to any claims by those individuals." So, I don't find that the provision in the 2017 legislation created a statute of repose.

Now, the next question is, as Mr. O'Meally argues, is well so what, it's not a statute of repose. We still -- a vested right was created in our ability to -- in the Defendants in order to rely on the fact that these limitations period has expired. There's no dispute that 5-117 revives otherwise dead causes of action. It certainly weakens the argument of this being a vested right if we're not talking about a statute of repose. You did get me there, Mr. O'Meally. I understand the point that you were making between it makes it stronger if it's a statute of repose, but it's not critical or necessary for it to be a vested right if it's a statute of limitations.

So, I read about this late into the night last night. Woke up super early this morning and was reading all these cases. I could not get to the bottom of what a vested right is other than it does seem to be a right that is based on property, a right that is based in contract, and a right that seems to be if taken away by the government without just compensation would reach constitutional scrutiny.

Because we're talking about a statute of limitations period that's been manipulated 1, 2, 3, 4 times now in the last approximately 20 years, I can't envision how a defendant would be able to claim this is a vested right. Despite the revival of an otherwise dead cause of action. There's cases out there that say that the revival of otherwise dead cause of action is not an appropriate thing for the legislature to do. There seems to be cases out there that say unless it's a vested right then the legislature can do what they want with regard to these procedural mechanisms.

A statute of limitations being a defense to a cause of action and not necessarily a right vested in the hands of the defendant. And I go back to my conclusion on this point is the incredibly high bar that exists for a trial judge to invalidate the act of a legislature that was signed in by the governor. I would need to be persuaded by that high standard that there was no question in my mind that this a constitutional problem and that this -- I'm sorry. That there's no question in my mind that this statute is clearly unconstitutional. I can't get there.

Now, the legislature clearly knew they had a problem on their hands when they enacted 5-117 in that it gives the defendants an automatic right to an appeal. I'm sorry, that's in a different -- 12-303. They added to the courts and judicial proceedings article the denial of a motion dismiss under 5-17 of

this article based on the defense that the statute of limitations or the statute of repose, there it is again, bars the claim and any legislative action reviving the claim is unconstitutional. So, they added that in conjunction with 5-117 knowing that this was going to have to be a matter for the Appellate Courts to out given the confusion of what's a vested right in the face of a revival of an otherwise dead cause of action.

Given all the reasons that I've stated here, I am unable to declare this statute unconstitutional and, for that reason, I will deny the Defendant's motion to dismiss as to count -- no. No. I'm sorry. That is just the motion to dismiss as to the complaint in its entirety. We've already addressed the negligent infliction of emotional distress argument. That's out by consent of the Plaintiffs.

Then we have count two, count five, count seven -- six, and count seven. Let me make sure I circle this. Count two, count five, count six, and count seven are duplicative in nature. Each of those counts allege negligence in some form or fashion of each other. There's nothing wrong with pleading causes of action in the alternative, but we're not talking about different cause of action here. We're talking about different theories of negligence.

I believe that the Plaintiff here should amend the complaint to consolidate the negligence causes of action because

I, as the trial judge if this was a jury trial and we were submitting the case to the Jury, I would not give the Jury a verdict sheet with five different counts of negligence in it. And so for that reason, I think that there should be only one count of negligence. I will give the -- and we're going to talk about sort of procedurally where we go from here. I'm going to give the Plaintiffs a period of time to amend the complaint to consolidate counts two, five, seven -- six and seven. Excuse me.

As to the complaint -- the count for vicarious liability, I struggle with this because, Mr. Scott, your arguments about this no set of facts under which this conduct can be considered -- that the Defendants can be considered to be held vicariously liable for this behavior, I get your point. But we're so early in the litigation, and I am not comfortable looking at this complaint and considering the well-pled allegations in the complaints, the inferences to be drawn from those well-pled allegations, that there's not some element of opportunity for the Plaintiffs to establish, based on those inferences, vicarious liability on the part of the Defendants whether it was knowledge, whether it was -- help me. Consent. What was the word you used?

MR. D'ANDREA: Ratification, Your Honor.

THE COURT: I'm sorry?

MR. D'ANDREA: Ratification.

THE COURT: Ratification. Whether it was this conduct is balancing on the edge of scope of employment because they are in the school, they are in the classroom, there is at detention, it is in the janitor's office. Whether or not the intentional torts fall within the scope of employment or whether there's some negligent acts on the part of the individuals, it's too early for me to make that determination on a motion to dismiss basis. Things might be different on a motion for summary judgment basis.

The problem I have with count one is it's alleging vicarious liability, which is not a cause of action. It is a theory of liability for these Defendants. So, similar to my instruction to amend the complaint, that I believe there should be an allegation of a cause of action for which the, I'm going to call them institutional Defendants, not non-perpetrator Defendants, are to be held liable.

I mean, what am I telling the Jury? You are to be held vicariously liable for the conduct of this teacher and this janitor. They did what? What is the tort? What is the intentional tort? What is the theory of negligence? I don't have that. I need to know what the cause of action is that would apply to the individual actors for which the Defendants are to be held vicariously liable.

The way the complaint is drafted now is they did a bunch of horrible stuff and you're vicariously liable for that,

but what's the cause of action? Where is it? I can surmise what it is, but I think it needs to be part of the complaint. So, that -- and I'm not going to grant the motion to dismiss on the contributory negligence or assumption of risk because it's a factually based determination to be made by the Jury.

So, that leaves us where we are. I'm denying the motion to dismiss, but I'm granting the Plaintiff -- I'm granting it in part as to the consolidation of the negligence, cause of action -- I'll enter an order to this effect of course. I'm granting it in part as to the vicarious liability, but I'm giving the Plaintiffs a period of time to amend the complaint to correct it.

Now, I'm assuming as a result of this ruling the Defendants will exercise their right to appeal this interlocutory order, and I want to get that out to you all like tonight if possible so I don't hold this process up. Does the fact that I'm allowing the Plaintiffs to amend the complaint, that's not going to stop that process. Am I right? It's just -- interlocutory appeal will go right on from here?

MR. O'MEALLY: Your Honor, I believe that at this point we'll be running on two parallel paths.

THE COURT: Okay.

MR. O'MEALLY: It will be going to the Appellate Court seeking certiorari to the Supreme Court while at the same time Plaintiffs will be amending, and I presume that we'll engage in

discovery soon thereafter.

THE COURT: Okay. So, nobody's going to ask for a stay of the litigation, which --

MR. O'MEALLY: We are not going to ask for a stay.

THE COURT And I'm not encouraging you to ask for a stay.

MR. D'ANDREA: Well, I don't want to ask for a stay if they want to proceed with the discovery.

THE COURT: You do or don't?

MR. D'ANDREA: No. I would not want a stay.

THE COURT: Okay. Well, then the -- I'm going to get that order, like, hopefully tonight. I start a trial tomorrow for eight days, and I don't want that to delay the entry of the interlocutory order that I fully expect the Defendants to take an appeal from, so that doesn't -- that won't hold you all up. And my ruling instructing the Plaintiffs to amend the complaint based on a couple of these sort of, I don't know, deficiencies as I identified here is not going to stop you. I just want to make sure that that's --

MR. O'MEALLY: No.

THE COURT: Okay.

MR. O'MEALLY: No, Your Honor. And so, based upon the Court's ruling, we'll be answering while still raising the issue that will be going up to the Appellate Court.

THE COURT: Right. You're not waiving it.

MR. O'MEALLY: We're not waiving it.

THE COURT: Yeah. I mean, I'll leave you -- you would know how to plead your answer, you know, in such a way that it's not waiving any of those arguments.

MR. D'ANDREA: Your Honor, I would just say then so that Counsel doesn't waste his time, I wouldn't -- I mean, you do what you want, but I wouldn't answer this version of the complaint.

MR. O'MEALLY: Right.

MR. D'ANDREA: Okay.

MR. O'MEALLY: Right.

THE COURT: Yeah.

MR. O'MEALLY: The amended.

THE COURT: Okay. All right. And I don't need to certify anything, it being an interrogatory order under 12-303 gives you the right to just take it right up. Am I right?

MR. D'ANDREA: Yes, Your Honor.

MR. O'MEALLY: Correct, Your Honor.

THE COURT: Okay. All right. Well, again, I want to end where I began which is commending the lawyers here. This is a very difficult issue and, like I said, the legislature knew they had a problem on their hands when they enacted the statute and did so under 12-303 granting an immediate right to appeal on the very argument that I just heard for the last two hours.

So, it'll be an issue for the Maryland Supreme Court

to sort out. Hopefully, they'll clean up this for trial judges like me to understand what's a vested right, when does it come into existence, is a statute of repose necessary for it to come into existence or is the mere revival of a otherwise dead cause of action something that's a violation of the Constitution.

And we have a number of cases that are pending around in the Maryland court systems that are going to be affected by that ruling.

Okay. Thank you all. And good luck to you.

MR. O'MEALLY: Thank you, Your Honor.

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you.

(At 3:16 p.m., proceedings concluded.)

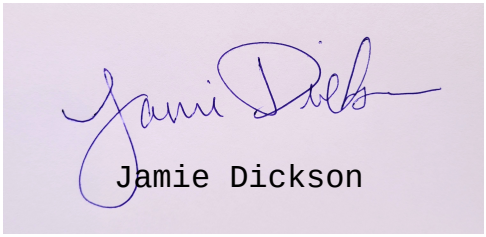
CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of John Doe v. Board of Education of Harford County, et al., C-12-CV-23-000767, heard in the Circuit Court for Harford County, Maryland, on March 19, 2024, were recorded by means of digital audio.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 72 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 20th day of March, 2024.



Jamie Dickson

Transcriber

WORD INDEX

EXHIBIT 8

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MD

DAVID S. SCHAPPELLE,	*	
Plaintiff,	*	
v.	*	**Case No. C-15-CV-23-003696**
ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, A CORP. SOLE, et. al.	*	
Defendants,	*	

MEMORANDUM OPINION AND ORDER

I. FACTUAL AND LEGAL BACKGROUND

Plaintiff was born in 1977. In 1986, when Plaintiff was nine years old, Plaintiff alleges in his amended complaint that he was repeatedly sexually abused by a priest and abused on one occasion by another priest in the fall of 1986.[1] Plaintiff reached the age of majority in 1995.

At the time Plaintiff reached the age of majority, the limitations period on civil claims arising from alleged sexual abuse was three years from the date it accrues. MD. CODE ANN., CTS. & JUD. PROC. §5-101 ("CJP"). For minors, the statutory time limits began to run once the child reached the age of majority. MD. CODE ANN., CTS. & JUD. PROC. §5-201. Thus, the statute of limitations for Plaintiff's claims began to run when he reached the age of majority and ended three years later. Under this timeline, Plaintiff's legal claims originally expired in 1998, one day before his 21st birthday.

In 2003, CJP §5-117 was enacted to extend the statute of limitation for claims arising

[1] Plaintiff's allegations as to the second priest do not form the basis for Plaintiff's claims against Defendants.

from sexual abuse of a minor from three years to seven years after a plaintiff attained the age of majority. The law also prohibited the revival of barred claims before October 1, 2003. Act of May 22, 2003, ch. 360, 2003 Md. Laws 2589.

In 2017, CJP §5-117 was amended to further extend the statute of limitations for claims arising from sexual abuse of a minor to twenty years after a plaintiff attained the age of majority. Again, the law prohibited revival of barred claims before October 1, 2017. Act of May 25, 2017, ch. 656, 2017 Md. Laws 3895, 3898. In addition, the statute provided that no claims could be filed against non-perpetrator defendants more than 20 years after the victim reached the age of majority. *Id.* Under this timeline, Plaintiff's legal claims expired in 2015, which was 20 years after he reached the age of majority.

In 2023, the Child Victims Act of 2023 ("CVA") was enacted. The Act abolished the statute of limitations for claims of sexual abuse of minors against both perpetrator defendants and non-perpetrator defendants. The Legislature repealed and replaced the 2017 language with the following:

> (b) … notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

MD. CODE ANN. CTS. & JUD. PROC. §5-117(b) (West 2023).

On October 1, 2023, Plaintiff filed an eight-count complaint against non-perpetrator Defendants alleging (1) negligence against Roman Catholic Archdiocese of Washington, a Corporation Sole ("Archdiocese") and St. Rose of Lima Catholic Church ("St. Rose"); (2) negligent hiring of employees against Archdiocese and St. Rose; (3) negligent supervision and retention of employees against Archdiocese and St. Rose; (4) premises liability against

Archdiocese and St. Rose; (5) negligence against St. Luke Institute, Inc. ("St. Luke")[2]; (6) negligent supervision against St. Luke; (7) fraudulent concealment against St. Luke; and (8) civil conspiracy against Archdiocese, St. Rose, and St. Luke.

On November 13, 2023, Defendant Archdiocese filed a motion to dismiss challenging the constitutionality of CVA. On December 6, 2023, Defendant St. Luke filed its motion to dismiss on the same grounds.

II. ISSUES PRESENTED

Defendants pose two arguments in support of their motion to dismiss:

1. The 2017 law created a statute of repose which grants a substantive right to Defendants that the Legislature cannot repeal.
2. Even if the 2017 law was a statute of limitations, the Legislature cannot retroactively revive a claim that was time barred under the Maryland Constitution.

III. STANDARD OF REVIEW

The instant motion to dismiss raises a constitutional challenge to the recently enacted Child Victim Act, effective October 1, 2023. Child Victims Act of 2023, ch. 5, 2023 Md. Laws 1.[3]

Whenever a constitutional challenge is made against a statute, the courts presume that the statute is constitutional, and the challenger must clearly establish the invalidity of the statute. *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) ("A statute enacted under the police power carried with it a strong presumption of constitutionality and the party attacking it has the burden of affirmatively and clearly establishing its invalidity; a reasonable doubt as to its constitutionality is sufficient to sustain it."). This includes interpreting the statute in such a way

[2] St. Luke Institute Foundation, Inc. was dismissed as a defendant by Plaintiff on January 19, 2024.
[3] Session law can be accessed at https://mgaleg.maryland.gov/2023RS/Chapters_noln?CH_5_sb0686t.pdf.

that it, "will be construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible." *Koshko v. Haining*, 398 Md. 404, 425 (2007); *Edgewood Nursing Home v. Maxwell*, 282 Md. at 427.

Analysis of the meaning of a statute and the intent of a legislature is first determined by looking to the language itself. *Harford County v. Mitchell*, 245 Md. App. 278, 283 (2020). The words are interpreted from their ordinary and common meaning within the context in which they are used." *Id.* at 284-85. Even if the language is unambiguous, it is useful to review legislative history to confirm that interpretation. *Id* at 285. However, this analysis of the legislative history is only done for confirmatory purposes and should not be done to seek contradiction of the plain language of the statute. *Duffy v. CBS Co.*, 458 Md. 206, 229 (2018). Only if the language is ambiguous, should a court consider the objectives and purpose of the enactment. *Harford County*, 245 Md. App. at 284. "Moreover, when the statute is part of a general statutory scheme or system, 'all sections must be read together . . . to discern the true intent of the legislature." *Id.* (quoting *Mayor & City Council of Balt. V. Johnson*, 156 Md. App. 569 at 593 (2004). The court should also seek to avoid illogical or unreasonable results when determining the legislative intent of a statute. *Harford County*, 245 Md. App. at 284.

IV. ANALYSIS

Defendants challenge the CVA on grounds that it violates Article 24 of the Maryland Declaration of Rights (the due process clause)[4] and the Maryland Constitution, Article III, Section 40 (the takings clause).[5] First, Defendants argue that the 2017 law was a statute of

[4] M.D. CONST. DECLARATION. OF RIGHTS art. XXIV, "That no man ought to be imprisoned or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by judgment of his peers, or by the law of the land."

[5] M.D. CONST. art. III, § 40, "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."

repose which created a vested right that could not be abrogated by the CVA. Second, Defendants argue that even if the 2017 law was not a statue of repose, but instead, a statute of limitations, the CVA cannot retroactively revive time-barred actions.

Plaintiff responds with four arguments: (1) that the CVA was an abrogation of a statute of limitations which was procedural in nature and readily applied retroactively, (2) that the Legislature can modify already vested rights for compelling reasons, (3) that even if the 2017 law was a statute of repose, defendant's fraudulent concealment tolls the time period, and (4) that Defendants continuing commission of unlawful acts render the CVA inapplicable as no time limitation began in the first instance.

For the reasons below, the Court finds that the CVA retroactively abrogated the substantive and vested rights of Defendants, and this abrogation violates the Maryland Constitution.

A. Legislative History - Child Sexual Abuse Claims

The general rule is that a civil action shall be filed within three years from the date it accrues. CTS. & JUD. PROC. § 5-101. For minors, CJP § 5-201 also reflects a firmly established rule that a cause of action accrues once the minor reaches the age of majority.

However, beginning in 1994, the Legislature repeatedly sought to enact exceptions to that general rule in child sex abuse cases without success. *See Doe v. Roe*, 419 Md. 687, 694 (2011).

In 2003, the Legislature debated not only an extension of the statute of limitations period, but also the retroactive application of the time period. After considering an earlier version of the bill that sought to retroactively revive time barred claims, the final enactment did not include the retroactive provision. *Id.* at 697-99. Instead, the General Assembly extended the statute of limitations to seven years after the age of majority and expressly stated that the "Act may not be

construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003. Act of May 22, 2003, 2003 Md. Laws at 2590.

In 2017, the Legislature again changed the law for child abuse claims after several unsuccessful bills between 2004 through 2016. *See* Def.'s Mot. to Dismiss for Failure to State a Claim, 7. The stated purpose of this new Act was:

> FOR the purpose of altering the **statute of limitations** in certain civil actions related to child sexual abuse; establishing a **statute of repose** for certain civil actions relating to child sexual abuse…

Act of May 25, 2017, 2017 Md. Laws at 3895. (emphasis added). The new law stated:

> **In no event** may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Id. at 3898 (emphasis added). Section 3 of the Act further provided that:

> That the **statute of repose** under 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide **repose** to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017

Id. at 3899 (emphasis added).

From 2019 to 2021, the Legislature considered but failed to pass any new laws to revive the claims barred by the 2017 laws. *See* Mem. In Supp. Of Mot. of Def.'s to Dismiss for Failure to State a Claim 11.

Finally, in 2023, in response to the Report on Child Sexual Abuse in the Archdiocese of Baltimore, (Anthony G. Brown, *Attorney General's Report on Child Sexual Abuse in the Archdiocese of Baltimore*, (2023)), the Legislature enacted the CVA to eliminate all time limitations for civil actions arising from childhood sexual abuse. Further, Section 3 provided

that

> this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023.

Child Victims Act of 2023, 2023 Md. Laws at 1.

B. The 2017 law created a statute of repose.

a. The Difference between a Statute of Repose and a Statute of Limitations

In determining the constitutionality of the CVA, the central issue in this case is whether the CPJ §5-117(d) of the 2017 Act was a statute of limitations or a statute of repose. *Anderson v. U.S.*, 427 Md. 99, 119 (2012) is the leading Supreme Court case distinguishing statutes of limitations from statutes of repose.

The *Anderson* Court considered whether CJP §5-109 was a statute of repose or a statute of limitations. There, the plaintiff filed a medical malpractice suit against the United States alleging negligent treatment at a veteran's hospital after the federal statute of limitations had expired. *Id.* at 103-04. However, pursuant to the Federal Tort Claim Act, the claim could be maintained if the plaintiff would have a cause of action under Maryland's statute. That Defendant argued that Maryland's medical malpractice statute created a statute of repose, and, because a statute of repose creates substantive law, Maryland's statute did not permit the plaintiff's claim. *Id.* at 105. The Federal Court of Appeals for the Fourth Circuit certified a question of law to the Maryland Supreme Court on whether CJP § 5-109(a)(1) was a statute of limitations or a statute of repose. *Id.* at 103.

In response to the certified question, the *Anderson* Court delved into the definition, nature, and meaning of the two types of statutes. The Court observed that these statutes are superficially similar because both provide a time limit on when a suit can be filed. *Id.* at 118. However, the statutes are enacted by the legislatures for different reasons. Statute of limitations,

"are enacted typically to encourage prompt resolution of claim, to suppress stale claims, and to avoid problems associated with extended delays in bringing a cause of action." *Id.* at 118. As a general matter, a "statute of limitations promote[s] judicial economy and fairness, but do[es] not create any substantive rights in a defendant to be free from liability." *Id.*

In contrast, a statute of repose "is used generally to describe a statute which shelter legislatively-designated groups from an action after a certain period of time." *Id.* Further, the purpose of the statute of repose, "is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period. *Id.* at 438.

These different purposes often lead statute of limitations and statute of repose to have distinct, identifiable characteristics despite a surface level similarity. The *Anderson* Court identified three differentiating characteristics often present in these statutes.

First, while a statute of limitations tends to run after the plaintiff suffers an injury, a statute of repose tends to run after some other event that is unrelated to the plaintiff's injury. *Id.* at 119. The *Anderson* Court noted that, "[n]umerous courts have also held that statutes of repose are characterized by a trigger that starts the statutory clock running for when an action may be brought based on some event, act, or omission that is unrelated to the occurrence of the plaintiff's injury." *Id.* For example, CJP § 5-108(a), a statute of repose, begins to run once an improvement to real property is completed and ends 20 years later. MD. CTS. & JUD. PROC. § 5-108.

Second, as a result of the non-injury based characteristic, potential future claims can be extinguished even before an injury occurs. For example, as seen in CJP § 5-108, if a potential plaintiff is injured by the improvement 21 years after the improvement was made, the plaintiff's claim is barred by the statute of repose.

Third, since a statute of limitations is typically triggered by the accrual of a claim, tolling usually applies. *Id.* at 118. Similarly, general principles of the discovery rule may also apply to effect when the statute of limitations begins to run and when it expires. *See Id.* at 110.

However, a statute of repose generally does not allow the tolling of the time period because it is designed to balance the economic best interest of the public against the rights of potential plaintiffs. *Anderson*, 427 Md. at 121. To further effectuate this purpose, statutes of repose are generally not subject to tolling for any reason to avoid upsetting or disregarding the balance created by the legislature. *Id.*

While the *Anderson* Court carefully outlined the typical distinctions between the two kinds of statutes, the Court emphasized that these common characteristics can be blended together and are not quarantined from each other. *Id.* at 123. It is not uncommon for a statute to have characteristics of both a statute of limitations and a statute of repose. The *Anderson* Court observed that:

> [t]here are overlapping features of statute of limitations and statutes of repose, and definitions aplenty from which to choose. There is, apparently, no hard and fast rule to use as a guide. . . We choose not to rely on any single feature of [the statute] in determining its proper classification; rather, we look holistically at the statute and its history to determine whether it is akin to a statute of limitation or a statue of repose.

Id. at 123-24. Plainly, there is no single defining characteristic that distinguishes a statute of limitations from a statute of repose. To illustrate precisely that point, the Court noted that North Dakota's statute of repose for medical malpractice claims tolls for fraudulent concealment by the physician. *Id.* Thus, the only way to determine if a statute is one of limitations or repose is to closely analyze the words of the statute and the legislative history.

After analyzing the statute and its legislative history, the *Anderson* Court held that CJP § 5-109 was a statute of limitations. That Court's decision was largely based on the legislative

reaction to *Hill v. Fitzgerald*, 304 Md. 689 (1985), a case which first considered the constitutionality of CJP § 5-109. In relevant part, in *Hill,* the Supreme Court concluded that the term "injury" in the Act was "the date upon which the allegedly negligent act was first coupled with the harm." *Id.* at 109 (quoting *Hill*, 304 Md. at 699-700). The Governor was concerned that such an expansive interpretation of "injury" would allow for claims which did not manifest itself for years after the negligent act. *Id* at 110-11. As such, legislators offered Senate Bill 225, which proposed an amendment that replaced the old words, "the injury was committed" to "allegedly wrongful act or omission." *Id.* at 110. That proposed bill would have abrogated the *Hill* decision and clearly created an absolute bar to claims after five years. However, that language was rejected and deleted from the final statute, leaving in place *Hill*'s nuanced definition of injury. *See also Edmonds v. Cytology Services of Maryland, Inc.,* 111 Md. App. 233 (1996) ("the 1987 rejected amendments to S.B. 225 to overturn *Hill*...provides strong evidence that the General Assembly did not intend to create an ironclad rule that a medical malpractice claim would be barred if filed more than five years after the health provider's act"). The *Anderson* Court reasoned that because the legislature rejected the language that would have created an absolute bar on recovery after a time certain, and instead, accepted the word "injury" and its possibility of creating a long "tail,' the legislature intended to create a statute of limitations.

b. **Plain Language**

The primary indicator of the Legislature's intent is the language of the statute. *Whack v. State*, 338 Md 665, 672 (1995). The 2017 law at issue here begins with a purpose statement that the law was enacted "FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; establishing a statute of repose for certain civil actions relating to

child sexual abuse. . ." Act of May 25, 2017, 2017 Md. Laws at 3895. In relevant parts, §5-117(d) of the 2017 act states that:

> **In no event** may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a **person or governmental entity that is not the alleged perpetrator** more than 20 years after the date on which the victim reaches the age of majority.

Id. at 3898. (emphasis added). Section 2 of the Act clarifies,

> That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitation applicable before October 1, 2017.

and Section 3 of the Act states,

> That the **statute of repose under §5-117(d)** of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively **to provide repose** to defendants regarding actions that were barred by the application of **the period of limitations** applicable before October 1, 2017.

Id. at 3899. (emphasis added).

Defendants argue that the plain language of the statute reflects the Legislature's intent to create a statute of repose.

In opposition, Plaintiff posits that under the characteristics identified by the *Anderson* Court, the statute fails to satisfy the requirements of a statute of repose. Plaintiff argues that CJP § 5-117(d) is a statute of limitations because it is triggered by an injury, contains within itself a tolling period, and is never susceptible to foreclosure of future claims.

While the Court agrees with Plaintiff that some pertinent *Anderson* characteristics of a statute of repose are not present in the CVA, the Court is satisfied that *Anderson* did not dictate a hard and fast rule for what characteristics make a statute one of repose or limitations. The statute in this case is not similar to the statute at issue in *Anderson*. *Anderson* was a medical malpractice statute, readily definable by injury or a defendant's act of negligence. In contrast, the very nature of the issue that the Legislature sought to address in this statute precluded some

of the *Anderson* characteristics for statutes of repose from being at play – *i.e.* the claim being injury based, the claim being tolled until a victim reach majority, or that a future injury could be foreclosed. The critical feature of a statute of repose - the conclusiveness of the time after which liability is extinguished - is present and the statute creates an absolute bar against future suits to a distinct class.

Central to the Court's ruling in *Anderson* was that Court's determination that the legislature explicitly rejected the creation of an absolute bar against liability, a fact not found in the present case. To the contrary, the language here unequivocally prevents any suit from being filed against a non-perpetrator defendant after a specified amount of time, and the language leaves no exception for an extension of the time after that period of time. The statute also directly identifies a specific protected class, non-perpetrator defendants, which aligns with the purpose of a statute of repose to provide a repose to a named, specific class. *Id.* at 118. These are the saliant characteristics of a statute of repose.

Turning to the Act in full, Plaintiff summarily disregards the entire statutory context of the law, insisting that the Legislature did not mean what it said. Plaintiff dismisses Section 2 and 3 as uncodified provisions of the law and does not address the purpose paragraph. However, statutes are not read in a vacuum. Rather, the interpretation of a statute also depends on reading the whole statutory text. *Burson v. Capps*, 440 Md. 328, 344 (2014). *Elsberry v. Stanley Martin Companies*, LLC, 482 Md. 159, 187 (2022) ("As a matter of precision, the bill title and purpose *are* part of the statutory text-*not* the legislative history- even if both are used in service of ascertaining the intent of the General Assembly."). In addition, the law does not need to be codified for it to be legally binding. *Doe v. Roe*, 419 Md. 687, 700 n.11. (2011).

In this case, the whole statutory text of the law, including the purpose paragraph and the

uncodified sections, clearly indicate that the law is a statute of repose. The purpose statement outlines that one of the purposes of the bill is to establish a statute of repose. That language also differentiates the newly created statute of repose from the old statute of limitations. Act of May 25, 2017, 3027 Md. Laws at 3895. Section 2 of the Act is identical to the prior 2003 law that bars revival of expired claims. Section 3 of the Act: (1) plainly labels CJP § 5-117(d) as a statute of repose, (2) states that statute shall provide repose to those effected, and (3) again demonstrates that the Legislature made a distinction between the statute of repose that was being enacted, and the previous period of limitations that existed before. The Court finds that Plaintiff's interpretation of the law would render many words in the statute meaningless. The repeated identification and description of the law as one of repose would have to be ignored by the Court for Plaintiff to prevail. Such a reading violates a fundamental principle of statutory construction that the courts "interpret statutes to give every word effect, avoiding constructions that render any portion of the language superfluous or redundant." *Warsame v. State*, 338 Md. 513, 519 (1995). Certainly, the court should read and interpret a statute in a way to encourage the constitutionality of the legislature's actions. *Edgewood*, 282 Md at 427. However, this interpretation must be, "reasonably possible." *Koshko,* 398 Md. at 425. It does not appear to the Court that wholesale deletion of statutory language is a reasonably possible interpretation of the language. For these reasons, the Court finds that the Legislature intended CJP § 5-117(d) to be a statue of repose.

c. Legislative History

Even assuming that ambiguity does exist in the plain language of the statute, the Court would next look "holistically at the statute and its history to determine whether it is akin to a statute of limitations or a statute of repose." *Anderson,* 427 Md. at 124; *see also Western*

Correctional Inst. v. Geiger, 371 Md. 125, 141 (2002) ("Only when the statutory language is unclear and ambiguous, will courts look to other sources, such as the legislative history").

Here too, the Court finds that the legislative history confirms that the Legislature intended CJP §5-117(d) to be a statute of repose. The legislative history is replete with examples of the Legislature being provided with materials that used the term statute of repose and that consistently differentiated between a statute of limitations and statute of repose. This demonstrates to the Court that the Legislature knew the difference between the concepts, and purposely chose to adopt the CJP §5-117(d) as a statute of repose.

The House Floor Report consistently differentiates between the two statutes. The report states, "[t]he bill (1) expands the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor and . . . The bill also creates a statute of repose for specified civil actions relating to child sexual abuse." Pl. Ex. 15 at 1. The Floor Report also states that, "[t]he bill establishes a 'statute of repose' prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." *Id.* at 2. Finally, the Floor Report differentiates between the concepts again in the same sentence by stating, "[t]he statute of repose created by the bill must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." This sentence in particular highlights that there was an understanding that the Legislature was creating a new statute of repose.

The Senate Floor Report contains similar language as the House Report and maintains the

consistent separation and differentiation between a statute of limitations and a statute of repose. Pl. Ex. 16 at 2. For example, in the summary, the Report states that, "the bill establishes a 'statute of repose' prohibiting a person from filing an action for damages arising out of an alleged incident. . ." and, "[t]he statute of repose created by the bill must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." *Id.*

The Fiscal and Policy Note provided to the Legislature also demonstrates that the Legislature was informed of the clear distinction between the expansion of a statute of limitations, and the establishment of a statute of repose. Pl. Ex. 16 at 1. ("This bill (1) expands the statute of limitations. . . (2) establishes a statute of repose for specified civil actions") The Note also contains the exact same language as the floor reports on the effect of the statute of repose. *Id.* at 2.

Finally, the document entitled, "Discussion of certain amendments in SB0505/818470/1" confirms that the Legislature fully understood the effect that a statute of repose would have on the claims of potential plaintiff. The paper defines the term "statute of repose" and references another type of statute of repose, CJP §5-108, the statute of repose for improvements in property. Def's. Mot. to Dismiss, Ex. 18. The document clearly reflects the knowledge of the Legislature that "claims precluded by the statute of repose cannot be revived in the future." *Id.* Although the discussion paper does not contain identifying information, the Court considers this document as a part of the entire legislative history. *See Warfield v. State,* 315 Md. 474 (1989) (The Court considered a handwritten, undated and unidentified note in the legislative bill file as evidence of legislative intent).

In opposition, Plaintiff insists that the Legislature only used the word "repose"

colloquially, and without full understanding of the specific meaning. This argument lacks merit and is not reflected anywhere in the legislative record. Instead, the history shows the consistent and accurate differentiation between the two kinds of statute. This demonstrates that the Legislature knew that a statute of repose was different from statute of limitations. There is no evidence of confused usage in the legislative history. Plaintiff does not provide a single instance where the legislature conflated or confused the terms with each other. Moreover, it is "generally presume[d] that the Legislature had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law." *Collins v. State*, 383 Md. 684, 693 (2004) (quoting *Division of Labor v. Triangle General Contractors, Inc.*, 366 Md. 407, 422 (2001).

The legislative history, coupled with the presumption that the Legislature acts with full knowledge of the law, satisfies the Court that CJP §5-117(d) was knowingly intended by the Legislature to be a statute of repose.

C. A STATUTE OF REPOSE CREATES A SUBSTANTIVE AND VESTED RIGHT WHICH CANNOT BE RETROACTIVELY ABROGATED BY LEGISLATURE.

Even if the 2017 act created a statute of repose, Plaintiff responds that the General Assembly has the authority to retroactively abrogate the granted rights on two grounds. First, Plaintiff argues that only vested rights cannot be retroactively abrogated, and that the rights granted by the statute of repose are not vested. Second, Plaintiff argues that there is precedent that the Legislature previously had retroactively altered a statute of repose.

When considering the retroactive application of statutes to events that occurred prior to the statute's effective date, the Supreme Court has recognized four basic principles:

(1) statutes are presumed to operate prospectively unless a contrary intent appears;
(2) a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective;

(3) a statute will be given retroactive effect if that is the legislative intent; but
(4) even if intended to apply retroactively, a statute will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws.

Allstate Ins. Co. v. Kim, 376 Md. 276, 289 (2003) (quoting *WSSC v. Riverdale Heights Fire Co.*, 08 Md. 556, 563-64 (1987)). Those principles are considered through a two-part analysis. First, the legislative intent must be determined. Second, if the law was intended to be retroactive, the court must determine if the retroactive application would contravene some constitutional right or prohibition. *Allstate Ins. Co.* 376 Md. at 289-90.

In this case, the first step of the analysis is not disputed. There is no question that the CVA was intended to apply retroactively as the law states, "[§5-117(d)] shall be construed to apply both prospectively and retroactively". At issue here is the second step, whether giving effect to that intent impairs a vested right under the Maryland Constitution.[6] *Allstate Ins. Co.* 376 Md. at 293.

Plaintiff argues that that no "vested" rights were created by the 2017 act. Repeating his assertion that the law is a statute of limitations, Plaintiff sweepingly asserts that statutes of limitations do not create vested rights. Plaintiff also characterizes the law as an affirmative defense and cites to *Allstate v Kim* which recognized that "a person does not have an inherent vested right in the continuation of an existing law." *Kim*, 376 Md. at 298.

However, the Court is not persuaded that the critical distinction here is whether the right is called "vested" or "substantive." Maryland law has consistently found that a statute of repose creates a substantive right for the defendant to be free from suit. *Carven v. Hickman*, 135 Md. App. 645, 652 (2000) (finding a statute of repose, "is a substantive grant of immunity derived

[6] Unlike the federal standard for the United States Constitution, "[t]he state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the statute has a rational basis." *Dua*, 370 Md. at 623.

from a legislative balance of economic considerations affecting the general public and the respective rights of potential plaintiffs and defendants."); *First United*, 882 F.2d at 866 ("Statutes of Repose are based on considerations of the economic best interests of the public as a whole and are substantive grants of immunity. . ."); *See Washington Suburban Sanitary Com'n. v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 560 (1987) (finding an act granting immunity from civil torts is a, "rule of substantive law.").

In *Dua v Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002), the Supreme Court thoroughly analyzed the constitutionality of retroactive statutes under the Maryland Constitution. There, the Court struck down as unconstitutional two statutes that retroactively validated late fees in consumer contracts, and authorized subrogation actions by health maintenance organizations. The Supreme Court held that the statutes that abrogated the plaintiffs' pending causes of action for money damages in court violated the Maryland Constitution. There, the Court observed that "[i]t has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." *Id.* at 623. Moreover, in direct contrast to Plaintiff's broad position regarding remedial statutes being readily applicable retroactively, the *Dua* Court emphasized that "even a remedial or procedural statute may not be applied retroactively if it will interfere with **vested or substantive rights.**" *Id* at 623, 625 (emphasis added); *see also Hill v. Fitzgerald*, 304 Md. 689, 702 (1985) ("[i]t is thoroughly understood that a statute of limitations, which does not destroy a substantial right, but simply affects remedy, does not destroy or impair vested rights."). Notably, the *Dua* Court did not make a distinction between the word "vested" or "substantive" rights and its analysis did not center on any such distinction. Under *Dua*, it is unconstitutional for a retroactive statute to interfere with a substantive right.

Plaintiff and Attorney General factually distinguish *Dua* as a case involving accrued causes of action which rendered the rights to be vested, as opposed to the instant matter which involves a defense of an expired cause of action. The Attorney General gives great weight to the fact that the 2017 statute only prohibited the "filing" of claims after the time period, instead of employing words that would prohibit the "accrual" of claims after the time period. Br. Of Att'y General Pursuant to Cts. And Jud. Proc. §3-405(c) 8. The Attorney General argues that if the Legislature intended to provide a vested right to the defendants, the legislature would have used the word, "accrue" as it does in CPJ §5-108, as opposed to the word "file." *Id.*

However, the *Dua* Court's analysis and rationale cannot be so narrowly construed. That Court observed that "[t]he concept of vested property rights, in connection with retroactive civil legislation, has been developed in a multitude of this Court's opinions." *Id.* at 631. The Court notes with approval that the meaning of "property" under Maryland law is quite broad. *Id.* at 631 n. 10. With that background, the *Dua* Court goes on to observe that

> [t]his Court has consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, *or reviving a barred cause of action, thereby violating the vested right of the defendant.*

Id. at 633 (emphasis added). It is clear that *Dua* was not limited to accrued causes of action. That Court delineated and distinguished vested rights which may arise from "accrued cause[s] of action," "creation of a cause of action," or "reviv[al] of a barred cause of action."

Further, the Court is not persuaded by Plaintiff's argument that the Supreme Court's analysis in *Allstate Ins. Co. v. Kim* dictates that Defendants have no vested rights in a defense. In *Kim*, the defendant unsuccessfully argued that the Legislature's retroactive abrogation of parent-child immunity in torts cases unconstitutionally infringed upon their right to bring the immunity

as a defense. In defining a vested right, that Court stated that:

> [a] vested right, entitled to protection from legislation, must be something more than a *mere expectation* based upon an anticipated continuance of the existing law; *it must have become a title*, legal or equitable, *to the present or future enjoyment of property, a demand, or a legal exemption from a demand to another*.

Id at 298 (quoting *Godfrey v. State*, 84 Wash. 2d. 959, 632 (1975) (emphasis in original)). While that Court recognized that a right to pursue a cause of action vests when the cause of action arises, "[t]he right to assert a defense, on the other hand, does not arise and therefore cannot vest until the action is filed." *Id.* at 297. Finding that immunities were not favored in the law, that Court concluded that the defendant did not have a vested right.

This Court does not find *Kim* to be analogous to the instant case. That case involved a statute seeking to abolish the common law parent-child immunity retroactively. In characterizing the immunity as an affirmative defense that does not vest until an action is filed, that Court concluded that the defendant did not have a right to the continuation of a law. In contrast, the instant matter cannot be characterized as a mere affirmative defense. The Legislature affirmatively granted Defendants absolute immunity from suit upon the expiration of a time certain, regardless of whether a claim was filed. The creation of this absolute bar and the expiration of that time period is the, "something more than a mere expectation" that is required by *Kim*. As such, once a defendant has survived the legislatively determined time period, the substantive right granted by the statute of repose vests, and the Legislature can no longer abrogate that vested right.

Maryland courts have consistently found that a statute of repose bars all liability after a certain point in time. *See Carven*, 135 Md. App. at 652 (a statute of repose creates, "an absolute time limit beyond which liability no longer exists and is not tolled for any reason"); *See Anderson*, 427 Md. at 118 ("The purpose of a statute of repose is to provide an absolute bar to an

action or to provide a grant of immunity to a class of potential defendants after a designated time period.").

Other courts in the country that have addressed this issue have also concluded that that the Legislature may not abrogate those rights attendant to a statute of repose. *See Anderson v. Catholic Bishop of Chicago*, 759 F.3d 645 (2014) ("[child sexual abuse] claims time barred under the old law … remained time-barred even after the repose period was abolished in the subsequent legislative action."); *Bryant v. U.S.*, 768 F.3d 1378, 1383 (2014) (statute of repose acts as a substantive limit on a plaintiff's right to file an action, "a condition precedent to the action itself," and that an attempt by the government to retroactively expand this limit divest the defendants of their vested right not to be sued); *Doe v. Popravak*, 421 P.3d 760 (Kan. App. 2017) ("the legislature cannot revive a legal claim barred by a statute of repose because doing so would constitute taking the potential defendant's property (the vested right) without due process."). *Doe H.B. v. M.J.*, 482 P3d 596 (Kan. App. 2021) ("When the timeframe in a statute of repose expires, the claim is absolutely abolished as a matter of law").

The Court also does not find Plaintiff's reliance on one prior instance where the Legislature amended a statute of repose to be persuasive. In 1979, the Legislature enacted CJP §5-108, which, as previously discussed, established a statue of repose for improvements to real property. Subsequently, the statute was amended to exclude injuries relating to asbestos exposure and the changes were to be applied retroactively to revive extinguished claims. A perceived revival of expired claims was challenged in *Duffy v. CBS Corporation*, 232 Md. App. 602 (2017). The Appellate Court found that there was a revival of an expired claim which was unconstitutional because the act deprived the defendants of a vested right. *Id.* at 623. However, the Supreme Court reversed, not because they found that the revival was unconstitutional, but

because the Court found that the plaintiff's injury occurred before the statute of repose was enacted, and so the statute of repose was not implicated and did not bar the plaintiff's claims. *Duffy v. CBS Corporation*, 458 Md. 206, 236 (2018). The Supreme Court simply did not reach the issue of constitutionality because they found that the statute of repose did not apply to the case at hand. As such, this Court declines to speculate about the constitutional question left open in that matter by the Supreme Court.

Finally, Plaintiff argues that even if that the 2017 law created vested rights, compelling public policy considerations permit the Legislature to retroactively abrogate the Defendant's due-process rights. Plaintiff's argument lacks merit for two reasons. Plaintiff seeks to apply the rational basis test in determining if a law is constitutional under the U.S. Constitution. However, as *Dua* made clear, "the state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the statute has a rational basis." *Dua*, 370 Md. at 623. The rational basis test is inapplicable to the due process analysis under the Maryland Constitution. The only relevant test of the constitutionality under the Maryland Constitution in this case is whether the CVA retroactively abrogates a vested right. The Legislature's compelling public policies cannot overcome and impair vested rights.

Plaintiff also mischaracterizes the *Anderson* Court's reference to a legislature's right to balance economic interests when creating statutes of repose as one reflecting "the well-understood concept that, even when fundamental rights are impinged, the legislature may adjust the burdens and benefits of economic life where compelling interests exit." Pl. Opp. To Def's Mots. To Dismiss, 9. *Anderson* does not state nor imply in any manner that legislatures may abrogate fundamental rights where compelling interests exist. Indeed, the *Anderson* Court pointedly noted that "[t]he impetus for the legislative enactment does not dictate alone" the

Court's reading of whether the statute was one of limitations or repose. *Anderson,* 427 Md. at 125. The Court flatly rejected that defendant's argument that because the legislature enacted the statute in response to an economic crisis, the statute must be one of repose. *Id.* Plaintiff cites to no authority for his sweeping statement that fundamental rights can be abrogated other than *Montgomery Cty v. Walsh*, 274 Md. 502 (512) (1975), a case discussing and applying the strict scrutiny test where constitutional right to privacy is involved. *Walsh* has no relevance to the issue at hand, and Plaintiff's argument lacks merit.

For the reasons stated above, the Court finds that Defendants have a substantive and vested right to immunity from Plaintiff's claim which arose more than twenty years after Plaintiff reached majority. Retroactive legislation that deprives a person of a vested right violates the Maryland Constitution. *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 625 (2002).

V. EVEN IF CVA IS A STATUTE OF LIMITATIONS, REVIVAL OF EXPIRED CLAIMS VIOLATES MARYLAND CONSTITUTION.

Even if the CJP §5-117(d) was not a statute of repose, but a statute of limitations, the Court finds that the CVA is unconstitutional as it seeks to revive time barred claims. In the present case, Plaintiff's claim expired in 1998 and was time barred by more than 25 years when the CVA took effect.

Maryland courts have held that the revival of claims that were time barred at the effective date of new laws generally impair vested rights. In *Smith v Westinghouse*, 266 Md. 52 (1972) the Supreme Court struck down as unconstitutional a statute that would revive a cause action which would otherwise be barred by the limitations period. There, the Legislature enacted a law effective July 1, 1971 that extended the statute of limitations for wrongful death from two years to three years. The law, as enacted, applied prospectively and retrospectively to any cause of

action arising prior to July 1, 1968.[7] In *Smith*, the plaintiffs claim had already expired when the new law took effect, although the three years under the new law had not lapsed. Citing to *Tucker v. State, Use of Johnson,* 89 Md. 471, 479 (1899) wherein the Court held that Article 67 of the Code…created a new cause of action, the *Smith* Court found that the time for filing suit was a condition precedent to filing and, as such, the new law unconstitutionally revived claims that had expired pursuant to the Declaration of Rights of the State of Maryland.[8] *Id.* at 55.

In *Dua, supra,* discussed above, the Supreme Court cites *Smith v. Westinghouse* with approval, and reiterates that the Maryland Constitution prohibits *reviving a barred cause of action, thereby violating the vested right of the defendant.*" *Id.* at 633 (emphasis added).

Similarly in *Rice v. University of Maryland Medical Systems Corp.*, 186 Md. App. 551 (2009), the Appellate Court considered the constitutionality of retroactive application of a saving statute for the filing of a certificate of merit in a medical malpractice claim. Although recognizing that the filing requirement was a condition precedent to filing a medical malpractice claim, the *Rice* court found that the appellants' claim had not expired within the meaning of *Smith v. Westinghouse* before the saving statute took effect. In reaching that conclusion, that court

> "agree[d] with UMMS that, when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process….In contrast…the legislature may extend a statute of limitation that applies to a claim as to which the statute of limitations has not yet expired."

Id. at 563.

Finally, in *Doe v. Roe*, 419 Md. 687 (2011), the Supreme Court had the opportunity to

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[7] In *Rice v University*, 186 Md. App 551 (2009), the Court observed that the 1971 statute in *Smith* contained an "apparent drafting error," which the *Smith* Court refused to construe as such. *Rice*, 563 Md. App. at 565.

[8] The *Smith* Court also found the statute unconstitutional under the United States Constitution.

consider the constitutionality of an earlier version of the CVA from 2003. In that case, the plaintiff alleged that she was sexually abused as a child by her grandfather. *Id.* at 690. On September 29, 2001, that plaintiff reached the age of majority, at which time CJP. § 5-101 provided for a three-year statute of limitations. *Id.* On September 3, 2008, that plaintiff filed her complaint. *Id.* The *Doe* statute, CJP. § 5-117, extended the statute of limitation for child sexual abuse to seven years from the age of majority. That law explicitly did not apply retroactively, as it stated that it should not be construed to revive any action that was barred by the application of the period of limitation applicable before October 1, 2003." *Id.* The issue there was whether CJP. § 5-117 was intended to apply to causes of action that had accrued but were not yet time barred by the expiration of the old three year statute of limitations. In its analysis, the Court noted that no retrospectivity analysis was necessary in that matter as the cause of action was not yet time barred. *Id.* at 701 n.12. As such, that Court followed the principal that "a statute effecting a change in procedure only…ordinarily applies to all actions whether accrued, pending or future, unless a contrary intention is expressed." *Id.* at 708 (quoting *Rawlings v. Rawlings*, 362 Md. 535, 555 (2001)).[9] In concluding that CJP § 5-117 was a remedial and procedural statute, the Court repeatedly noted that "[w]e would be faced with a different situation entirely had Roe's claim been barred under the three-year limitations period as of October 1, 2003, the effective

[9] In its review of the legislative history, the Supreme Court observed that a prior version of the law in *Doe v. Roe* sought to have the law applied retroactively to any actions that would have been barred by the application of the period of limitation applicable before October 1, 2003. At First Reading, Senate Bill 68, the statute of limitations period was extended and included "any actions that would have been barred by the application of the period of limitations applicable before October 1, 2003." *Doe*, 419 Md. at 696 (citing S.B. 68, 417th Sess. (2003) (First Reading). Subsequently, then Senator Brian E. Frosh requested an opinion form the Attorney General of Maryland regarding the constitutionality of retroactive application of the law to cases that were barred prior to the effective date. *Id.* at 697. In response, the Attorney General's Office noted a national split in authority on the constitutionality of revival of claims that were time-barred, and advised that no Maryland mandated its unconstitutionality, but that it was possible in light of *Dua v Comcast*. *Id.* at 698. Notably, subsequent to that advisory opinion from the Attorney General's Office, the final version that became law did not include that retroactive provision.

date of § 5-117." *Id.* at 707. That Court then held that "the extended limitations period does not "interfere with vested or substantive rights," as it is well established that "[a]n individual does not have a vested right to be free from suit or sanction for a legal violation *until the statute of limitation for that violation has expired.*" *Id.* at 707 n.18 (quoting *Crum v. Vincent*, 493 F.3d 988, 997 (8th Cir. 2007)) (emphasis added).

The Supreme Court in *Doe v. Roe* observed that "[s]tatutes of limitations are neither substantive nor procedural per se but have 'mixed substantive and procedural aspects.'" *Doe*, 419 Md. at 705 (quoting *Sun Oil Co. v. Wortman*, 486 U.S. 717, 736 (1988)). These statutes vest to potential defendants when a defendant survives the time period that the law prescribes. Therefore, the Court finds that reviving a claim that had already expired by the then applicable statute of limitations would interfere with the defendant's substantive rights.

VI. FRAUDULENT CONCEALMENT AND CONTINUINING HARD DOCTRINE NOT APPLICABLE.

Plaintiff argues, without reference to any authority, that his claims have been tolled under a theory of fraudulent concealment. This theory, however, is contradicted by the plain language of the statute. The 2017 act states that, "[i]**n no event** may an action for damages. . ." be filed. Act of May 25, 2017, 2017 Md. Laws at 3898 (emphasis added). The phrase, "[i]n no event" clearly demonstrates that the Legislature did not intend for the statute of repose to be tolled for any reason, except for the specific minority exception outlined in the statute. *See contra* (N.D.'s medical malpractice statute of repose specifically tolls for "fraudulent conduct by a physician." Further, in *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862 (1989), a case cited with approval by the *Anderson* court, the 4th Circuit found that fraudulent concealment does not apply to a statute of repose. *Id.* at 865 (finding that permitting tolling due to fraudulent concealment would disturb and defeat the 20- year repose period that the Maryland

legislators had chosen).

Plaintiff also claims, without reference to any authority, that the CVA time limitations have no applicability to the present matter because of the continuing events theory. The continuing events theory tolls a statute of limitations during the existence of a fiduciary relationship between the parties. *MacBride v. Pishvaian*, 402 Md. 572 (2007). *See e.g. Vincent v. Palmer*, 179 Md. 365 (1941) (ongoing employment relationship); *Waldman v. Rohrbaugh*, 241 Md. 137 (1966) (ongoing medical treatment). There is no fiduciary relationship in the present case between Plaintiff and Defendants.

The continuing violation or harm theory tolls the statute of limitations in cases where there are continuous violations, not merely the continuing effects of prior tortious acts. *See MacBride* at 584. The amended complaint in this case alleges negligence, negligent hiring of employees, negligent supervision and retention of employees, premises liability, fraudulent concealment, and civil conspiracy by Defendants, all prior tortious conduct that was the proximate cause of Plaintiff suffering sexual abuse as a child. The Plaintiff fails to state what continuous violations are causing cognizable injury to this Plaintiff. The Court finds no merit to Plaintiff's arguments regarding fraudulent concealment and continuing violation.

VII. CONCLUSION

For the reasons stated above, the Court finds that CVA violates Article 24 of the Maryland Declaration of Rights and the Maryland Constitution, Article III, Section 40 and is unconstitutional.

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VII. CONCLUSION

For the reasons stated above, the Court finds that CVA violates Article 24 of the Maryland Declaration of Rights and the Maryland Constitution, Article III, Section 40 and is unconstitutional. Defendants' Motion to Dismiss is GRANTED.

April 1, 2024

Jeannie E. Cho, Judge
Circuit Court for Montgomery County, MD

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