In the
Supreme Court of Maryland

SCM-REG-009-2024
September Term, 2024

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, d/b/a ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON

Petitioner,

v.

JOHN DOE, RICHARD ROE, and MARK SMITH, individually and on behalf of all others similarly situated,

Respondents.

On Bypass Review:
Circuit Court for Prince George's County
(Hon. Robin Gill Bright)

REPLY BRIEF OF PETITIONER ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, A CORPORATION SOLE

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Introduction

The thrust of Plaintiffs' brief is that the 2017 law is not what the Legislature said that it was. But the Legislature did not, as Plaintiffs contend, mistakenly mark CJ § 5-117(d) (West 2017) with the wrong "label." Instead, the Legislature explained that the 2017 law was animated by a dual purpose—"altering the statute of limitations" and "establishing a statute of repose."

That dual purpose is essential to the form *and* substance of the 2017 law. It is stated in the law's purpose paragraph. It is reflected in the body of the session law, which alters the preexisting limitations period, creates a totally new repose provision, and provides instructions for applying each provision. And it is reiterated in § 3, which distinguishes between "the statute of repose under § 5-117(d)" and "the period of limitations." Section 3 provides that § 5-117(d) "shall be construed … to provide repose" both prospectively and, as to already expired claims, retrospectively. From stem to stern, the 2017 law is brimming with evidence of the Legislature's intent: to expand the limitations period as against *all defendants* prospectively, and to provide peace—repose—to *non-perpetrator defendants* as to ancient claims.

The Legislature could not have been more clear in granting repose to non-perpetrator defendants. By using the two different terms, the Legislature showed that it understood the difference between them. By structuring the entire law around the two different types of statutes, the Legislature

communicated that these were not mere labels. And by stating that § 5-117(d) "provide[s] repose" as to claims that were *already expired* under the applicable statutes of limitations, the Legislature assured non-perpetrator defendants that ancient, expired claims against them were not coming back.

Once it is accepted that "the General Assembly … meant what it said and said what it meant," this case is an easy one. *Peterson v. State*, 467 Md. 713, 727 (2020). Under *Anderson v. United States*, "[s]tatutes of repose … create a substantive right protecting a defendant from liability after a legislatively-determined period of time." 427 Md. 99, 120 (2012). Under *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002), that substantive right, once conferred, may not be withdrawn. *Dua*'s rule reflects this Court's exhaustive review of more than a century of Maryland's vested-rights jurisprudence, including *Smith v. Westinghouse Electric Corp.*, 266 Md. 52 (1972), where this Court refused to revive a time-barred claim on due-process grounds.

This Court should reverse with instructions to dismiss the Complaint.

I. The CVA's Attempt to Revive Claims Extinguished by the Statute of Repose is Unconstitutional.

A. Section 5-117(d) is Clearly and Unambiguously a Statute of Repose.

Plaintiffs' reading of the 2017 law violates the "cardinal rule of statutory interpretation—to ascertain and effectuate the General Assembly's purpose

and intent," and to do so by "constru[ing] the statute as a whole, so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Elsberry v. Stanley Martin Cos.*, 482 Md. 159, 178-79 (2022) (cleaned up).

Plaintiffs' principal argument is that the Legislature affixed the wrong "label" to § 5-117(d), and intended for that provision to be a mere statute of limitations, not a statute of repose. For multiple reasons, that position is untenable.

1. The Legislature expressed the dual purpose of "altering the statute of limitations" and "establishing a statute of repose." This distinction is significant. It shows that the Legislature recognized the difference between these types of statutes; that one already existed under Maryland law, and the other did not; and that the 2017 law included one of each.

Plaintiffs concede that the purpose paragraph is a "part of the statutory text," *Elsberry*, 482 Md. at 187, yet suggest that, because it is not codified, it is entitled to minimal weight. But in Maryland, "the enactments contained in the various volumes of the session laws are the law," regardless of whether they are codified. *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 542 n.4 (1981). For that reason, the purpose paragraph in the 2017 law is easily distinguishable from the statutory caption in *SVF Riva Annapolis*

LLC v. Gilroy, which was "added by a legal publishing company" and "not passed by the Legislature." 459 Md. 632, 646 (2018).

The purpose paragraph, along with rest of the title, is important—it "'inform[s] legislators and the public of the general nature of the subject matter of pending legislation, so that, if interested, they will examine the body of the statute for its specific provisions.'" Md. Dep't of Leg. Servs., *Legislative Drafting Manual*, 54 (2024) (quoting *Jacobs v. Klawans*, 225 Md. 147, 153 (1961)). Here, the purpose paragraph sets the stage for the 2017 law's comprehensive scheme.

2. The 2017 law implements this dual purpose. Section 5-117(b) amends the preexisting statute of limitations, and § 5-117(d) establishes a totally new statute of repose. ADW Br. 30. To highlight the difference between the statutes, the Legislature placed them in different subsections. The 2017 law also explains the effect of the two statutes in two separate provisions: § 2 of the session law relates to § 5-117(b), and § 3 relates to § 5-117(d)—again, different provisions for different statutes.

Although Plaintiffs suggest (at 20-21, 27) that the term "statute of repose" appears only in the 2017 law's purpose paragraph, that is not the case. Section 3 also refers to "the statute of repose under § 5-117(d)," noting that it "provide[s] repose" not only prospectively, but also retrospectively as to claims "barred by the application of the period of limitations." If § 5-117(d) were a

mere statute of limitations, it would be superfluous to apply this provision retroactively to claims already barred by another statute of limitations.

Despite all this, Plaintiffs (at 28-30) deride the Legislature's designation of § 5-117(d) as a statute of repose as a mere "label." For this argument, Plaintiffs rely principally on cases presenting the question whether certain statutory provisions were an exercise of the regulatory power (a fee) or the taxation power (a tax). But in Maryland, those cases look to the "purpose" or "objective" of a law in assessing its constitutionality. *See, e.g.*, *E. Diversified Props., Inc. v. Montgomery County*, 319 Md. 45, 53 (1990). And here, the enactment of a statute of repose in § 5-117(d) was essential to the purpose of the 2017 law.

3. By the time the Legislature used the term "statute of repose" in the 2017 law, *Anderson* had clearly stated the distinction between statutes of limitations and repose, resolving any prior confusion about the terms. ADW Br. 34. The Legislature must be presumed to have understood that distinction when it both "alter[ed] the statute of limitations" and "establish[ed] a statute of repose." *See id.*

4. The CVA itself referred three times to the 2017 law's "statute of repose." 2023 Md. Laws Ch. 5 (E.175-176, 182); 2023 Md. Laws Ch. 6 (E.187-188, 194). Plaintiffs (at 25 n.9) brush aside those multiple references as an attempt to "make plain that nothing in any prior law should override the CVA's

intention to abolish time limitations for lawsuits by survivors of child sexual abuse." But the CVA used the term "statute of repose" three times for a simple reason: § 5-117(d) *is* such a statute.

5. The *Bunker* Plaintiffs (at 35) contend that § 5-117(d) is merely a statute of limitations provision that precludes the application of § 5-117(b)(2)(ii)'s tolling provision as to non-perpetrator defendants. Section 5-117(d), of course, does preclude the application of § 5-117(b)(2)(ii) to non-perpetrators, but it does more than that. As § 3 of the 2017 law (E.170) states, § 5-117(d) "shall be construed … to provide repose" as to claims already expired under the statute of limitations. If § 5-117(d) were a non-perpetrator-only statute of limitations, the Legislature would not have called it a "statute of repose" and would not have stated that it "provide[s] repose" to claims already expired under a statute of limitations.

B. The Legislative Record Reinforces the General Assembly's Intent to Expand the Statute of Limitations and Establish a Statute of Repose.

Plaintiffs maintain (at 43-44) that the statute of repose was a mere "technical amendment," and a "late addition," introduced in a "stealthy" and "secretive" way. The record, however, tells a different story.

1. In a legislative session of only 90 days, the amendment bearing the statute of repose was pending for nearly one month. The amendment was

introduced on March 9 (Rep.App.1-6), and the final vote took place on April 4.[1] During that time, the amended bill was the subject of readings, discussions, or votes on the Senate floor on March 14,[2] March 15,[3] March 23,[4] and March 24,[5] and on the House floor on March 16,[6] March 17,[7] and April 4.[8] The floor readings distinguished between "amendment one … [which] makes technical changes" and "amendment two [which] strikes language in the bill that would have created a heightened standard in all civil sex abuse actions against [non-perpetrators], [and] … prohibits filing an action against … [non-perpetrators] more than twenty years after the victim reaches the age of majority."[9] The dual purpose of the 2017

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[1] H. Floor Actions, S.B. 505, 437th Gen. Assemb., Reg. Sess., 1:25:29-1:25:54 (Apr. 4, 2017), https://tinyurl.com/bdhzafac. Dates indicate the calendar date, not the legislative date.

[2] S. Floor Actions, *id.*, 15:16-17:31 (Mar. 14, 2017), https://tinyurl.com/k279azeb.

[3] S. Floor Actions, *id.*, 2:06:55-2:07:19 (Mar. 15, 2017), https://tinyurl.com/287ty2s3.

[4] ADW Br. 14.

[5] S. Floor Actions, H.B. 642, 437th Gen. Assemb., Reg. Sess., 1:01:18-1:03:00 (Mar. 24, 2017), https://tinyurl.com/mv2tvc7a.

[6] H. Floor Actions, *id.*, 57:10-58:41 (Mar. 16, 2017), https://tinyurl.com/57t64m2c.

[7] *Id.*, 7:07-9:12 (Mar. 17, 2017), https://tinyurl.com/yckc4e2z.

[8] *Supra* note 1.

[9] *Supra* note 2, 15:20-17:05 (Senator Kelley); *supra* note 6 (similar).

bill—expanding the statute of limitations and establishing a statute of repose—was stated explicitly on the Senate floor, in House and Senate floor reports, and in the Fiscal and Policy Note. ADW Br. 12-14.[10]

2. The legislative record evinces a desire for finality. That sentiment is clear, of course, from the text of the amendment bearing the term "statute of repose." *Id.* The same desire for finality appears in the leadup to 2017, *id.* at 6-9,[11] comments on the Senate floor,[12] and Delegate Wilson's pledge not to "come back to the well," *id.* at 15. At the March 15, 2017 hearing, the Maryland

[10] Floor reports, which are provided to the bill's sponsors, are "key legislative history document[s]." *Hayden v. Md. Dep't of Nat. Res.*, 242 Md. App. 505, 530 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 130 (2018)). Fiscal and Policy Notes are "provided to the sponsor of the legislation, the committee assigned to consider the legislation, and the full chamber for second and third reading." Md. Dep't of Legis. Servs., *FAQ*, https://dls.maryland.gov/faq (last visited Aug. 25, 2024).

[11] That history "bears on the fundamental issue of legislative purpose." *Berry v. Queen*, 469 Md. 674, 687 (2020). Contrary to Plaintiffs' suggestion, bill files prior to 2017 reflect a desire to expand judicial access for victims *and* to afford due process and fairness to defendants. *See* ADW Br. 6-9; L. C. Jordan, Testimony in Support of H.B. 1376 with Amendments (Mar. 16, 2005) (Rep.App.11); Interdenominational Ministerial Alliance, Testimony in Opp'n to S.B. 668 (Mar. 12, 2015) (Rep.App.12); Capt. T. Delaney, Statement in Opp'n to S.B. 668 (Mar. 12, 2015) (Rep.App.13); Md. State Educ. Ass'n, Testimony in Opp'n to S.B. 69 (Mar. 8, 2016) (Rep.App.14).

[12] S. Floor Actions, H.B. 642, 437th Gen. Assemb., Reg. Sess., at 1:01:18-1:03:00 (Mar. 24, 2017), https://tinyurl.com/mv2tvc7a.

Catholic Conference's representative also made this point: "we really wanted to see this put to rest in a way that everybody could be very happy with."[13]

3. The evolution of the 2017 legislation shows an intent to provide repose to non-perpetrators as to ancient claims. The original versions of H.B. 642 and S.B. 505—the bills that became the 2017 law—required plaintiffs to show that the non-perpetrator *both* had "actual knowledge of a previous incident or incidents of sexual abuse" *and* "negligently failed to prevent the … sexual abuse that form[ed] the basis of the action." H.B. 642, sec. 1, § 5-117(c)(2), 437th Gen. Assemb., Reg. Sess. (Md. 2017) (App.32); S.B. 505, sec. 1, § 5-117(c)(2), 437th Gen. Assemb., Reg. Sess. (Md. 2017) (App.36); *see also* S.B. 585, sec. 1, § 5-117(c)(2), 437th Gen. Assemb., Reg. Sess. (Md. 2017) (Rep.App.9). That heightened standard applied regardless of when claims were filed against non-perpetrator defendants. At S.B. 505's hearing, Senators raised concerns with the fairness of confronting stale claims, and with the "actual knowledge" requirement. ADW Br. 12.[14]

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[13] H. Jud. Comm. Hearing, 437th Gen. Assemb., Sess. 1, 37:28-38:25 (Mar. 15, 2017), https://tinyurl.com/3ctr6x59.

[14] H.B. 641, which purported to revive expired claims, was not voted out of committee after a hearing in which a witness expressed doubts about that bill's constitutionality. H. Jud. Comm. Hearing, 437th Gen. Assemb., 1:14:47-1:17:14 (Feb. 23, 2017), https://tinyurl.com/yn7w5f3d.

The amendments to S.B. 505 responded to those concerns. As reflected in Senator Kelley's floor statement, *supra* 7, the amendments lowered the necessary *mens rea* for live claims against non-perpetrators from "actual knowledge" to negligence or gross negligence—making it easier for plaintiffs to pursue those claims—but conferred "repose" to non-perpetrators as to ancient claims—a protection not included in the earlier bill. ADW Br. 9-15.[15]

This history shows that, in balancing the rights of plaintiffs and non-perpetrator defendants, the Legislature intentionally provided repose to non-perpetrators, while lowering the burden of proof against those same defendants for not-yet-expired claims. This history eviscerates Plaintiffs' argument (at 40) that the 2017 "bargain" related only to the expanded limitations period in § 5-117(b) and the gross-negligence standard for certain claims under § 5-117(c)—and did not reflect the statute of repose in § 5-117(d). In fact, the Legislature provided repose to non-perpetrators, who were denied the heightened mental-state requirement of the original bill.

4. The bill file reflects additional consideration of the effect of repose. Contrary to Plaintiffs' suggestion, *Discussion of certain amendments in SB0505* (E.248-49), is wholly consistent with the text, legislative record, and extant case law. ADW Br. 14-15, 38. If (as this Court has recognized), ADW

[15] As amended, the bill required only negligence until the plaintiff attained the age of 25; after that point, gross negligence became the standard.

Br. 38, a document of unknown date and authorship can be used to inform an element of a criminal offense, *Discussion of certain amendments in SB0505* can surely be consulted to discern legislative intent here.

5. Plaintiffs (at 44) stress the lead House sponsor's statement in 2019 that "nobody here heard anything about a statute of repose."[16] That statement is refuted by the foregoing history, and conflicts with post-enactment comments by other members who voted on the bill. ADW Br. 16-17 (Sens. Casilly, Hough).

C. Section 5-117(d) Contains Structural Features Associated with Other Statutes of Repose.

Relying on *Anderson*, Plaintiffs (at 30) also maintain that the Legislature, whatever its intent, failed to enact a statute of repose, because § 5-117(d) supposedly lacks "[f]our essential elements." But *Anderson* commands that courts evaluate statutes "holistically," not using inflexible criteria or a specific multi-factor balancing test. 427 Md. at 124. *Anderson* sought to apply basic principles of statutory interpretation to a law, § 5-109, which lacked the clear textual statements present in § 5-117, and arose in a different context (medical malpractice). In that inquiry, *Anderson* considered features in statutes of repose from Maryland and elsewhere, while noting the

[16] H. Floor Actions, H.B. 687, 440th Gen. Assemb., Reg. Sess., 2:02:05-2:03:08 (Mar. 16, 2019), https://tinyurl.com/zm8jdnwy.

often-overlapping features of the statutes, and repeatedly stating that the law's "plain language" controls. *Id.* at 103, 106, 125. *Anderson* confirms that § 5-117(d) is a statute of repose.

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

There is apparently no dispute that § 5-117(d) imposes an absolute bar. As noted, § 5-117(b)(2)(ii) contains an express tolling provision beyond twenty years for certain specified offenses. That provision is made "subject to" § 5-117(d), which imposes a categorical cut-off of liability after twenty years, even if the claim would otherwise be eligible for tolling under § 5-117(b)(2)(ii). That is consistent with the rule that statutes of repose typically prohibit tolling. *Carven v. Hickman*, 135 Md. App. 645, 652 (2000), *aff'd*, 366 Md. 362 (2001).

Plaintiffs (at 25-26) dismiss § 5-117(d)'s statement that "in no event" shall an action be filed against a non-perpetrator beyond the repose period as "not a term of art or magic phrase." But the Office of the Attorney General opined in 2019, 2021, and 2023 that this language shows an intent to enact a statute of repose. (E.256, E.259, E.265). And for good reason. The phrase "'in no event' … admits of no exception and on its face creates a fixed bar against future liability," and thus is probative of a statute of repose. *Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497 (2017) (alteration omitted).

2. Section 5-117(d) Shelters a Legislatively-Designated Group from an Action After a Certain Period of Time.

There is also no dispute that § 5-117(d) applies only to a limited class of defendants—non-perpetrators. Plaintiffs (at 37-38) downplay the importance of this feature, but "[t]he label of statute of repose is used generally to describe a statute which shelters legislatively-designated groups from an action after a certain period of time." *Anderson*, 427 Md. at 118; *Gilroy*, 459 Md. at 636. Because statutes of repose are "defendant-focused," *Duffy v. CBS Corp.*, 458 Md. 206, 224 (2018), and confer substantive rights, it is important to specify what defendants obtain those rights.

With respect to this feature, Plaintiffs attempt to analogize § 5-117(d) to § 5-109(a), the statute of limitations in *Anderson*. Plaintiffs (at 38) say that, because § 5-109(a) applies only to "health-care providers," and is nevertheless a statute of limitations, the designated-class feature is not "sufficient." But § 5-109(a) covers *all* medical malpractice claims, regardless of whether they are asserted against the professional alleged to have committed malpractice or the entity responsible for supervising that professional. By contrast, § 5-117(d) puts a class of defendants—non-perpetrators—on notice that the Legislature has granted them "complete peace." *ANZ Sec.*, 582 U.S. at 510.

3. Section 5-117(d) Reflects a Balance of the Respective Rights of Potential Plaintiffs and Defendants.

Plaintiffs (at 34) contend that the balance struck in § 5-117(d) is not "in the public's economic best interests," and (at 38) that statutes of repose protect defendants from liability only for "laudable behavior that the State seeks to encourage." But this Court has never assessed whether a statute is one of repose or limitations based on whether, in its view, a statute of repose is in the best interests of the public. Instead, this Court merely asks whether the statute reflects "a legislative balance of the respective rights of potential plaintiffs and defendants" and is "motivated by considerations of the economic best interests of the public as a whole." *Gilroy*, 459 Md. at 636 n.1 (cleaned up). Nor does a statute of repose somehow condone the alleged conduct. Section 5-108(a), (b) is not an endorsement of the negligent design or construction of defective buildings, just as § 5-117(d) is not an endorsement of negligence in failing to prevent child sexual abuse.

Instead, the 2017 law reflects a balance between prospective plaintiffs and defendants. *Gilroy*, 459 Md. at 636 n.1. The law nearly triples the time within which to file suit prospectively (nearly seven times the three-year, generally-applicable limitations period in Maryland for claims accruing to minors, CJ § 5-201(a)), while providing non-perpetrators "repose" from ancient claims—and denying perpetrators that same protection. The record leading

up to 2017 reflects concern for the rights of plaintiffs and institutional defendants.[17] As that record shows, there is a public interest in granting repose to such institutions—and, by extension, the people they serve.

4. Section 5-117(d) Runs from a Date Unrelated to Plaintiff's Injury.

Plaintiffs argue (at 32-33, 36-37) that § 5-117(d) is not a statute of repose, because, they contend, it runs from the date of plaintiff's "injury," rather than from the date the "defendant acted." There are two flaws in this argument.

1. Section 5-117(d) runs from a date that is, in fact, unrelated to the date of plaintiff's injury. The injury occurs at the time of the abuse, *Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 180-81 (1997), and § 5-117(d) runs from the date that the child attains majority—a date that bears no relation to the date of the injury. Plaintiffs argue that tolling always occurs when a child is injured, but that does not change the fact that the date of majority is, in fact, unrelated to the date of injury.

2. More fundamentally, *Anderson* does not require that a statute of repose run from the date of the defendant's culpable act, rather than from the date of injury. *See* 427 Md. at 118. In many contexts—construction defects or medical malpractice, for example—the date of injury may be well after the date of the defendant's last culpable act. In such cases, statutes of repose are

[17] *See, e.g.*, ADW Br. 6-9, 22-23, 36-38; *supra* 8-9 & note 11.

commonly tied to the date of the defendant's last culpable conduct to avoid extended exposure, and impose an exact cut-off to liability. *See id.* at 125-26. In the case of sexual abuse, however, the two dates are the same: the date of injury is also the date of the defendant's last culpable act (the act of abuse or, in the case of the non-perpetrator, the failure to prevent the abuse).

Plaintiffs' argument (that a statute of repose must run from the date of the defendant's last culpable act), therefore, amounts to an argument that there can never be a statute of repose for claims of sexual abuse of a minor—unless the statute of repose begins to run before the plaintiff even attains the age of majority. Here, the Legislature took the more reasonable position that the statute of repose should not begin to run until the plaintiff reaches the age of majority—as have other states that have adopted statutes of repose for claims of sexual abuse of minors. ADW Br. 43. By recognizing the legal incapacity of a child, the Legislature did not become powerless to provide repose to non-perpetrator defendants.

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

Plaintiffs assert (at 35) that statutes of repose "must be capable" of extinguishing potential claims before they accrue. Some statutes of repose may have that effect under certain circumstances, but *Anderson* does not treat this as a requirement. And in cases of sexual abuse, where the claim generally

accrues simultaneously with the date of injury, such a requirement would make no sense.

But even if it were a requirement, this statute of repose *would* extinguish claims that had not yet accrued—for example, in a case of fraudulent concealment. Here, that doctrine is inapplicable. ADW Br. 50. But there may be a factual basis for a claim of fraudulent concealment in other cases—for example, if (after the alleged act of abuse) a victim inquires of an employer about the specific assailant's history, and the employer responds by concealing the assailant's past abuse that would support a claim of negligence against the employer. *See Archdiocese of Wash.*, 114 Md. App. at 189. In that case, fraudulent concealment could delay accrual of the negligence claim, *id.* at 186-87, but the statute of repose would still bar the claim once 20 years had passed after the plaintiff turns 18. *Supra* 12.

D. Section 5-117(d) Vested a Substantive Right in the Archdiocese to be Free of Plaintiffs' Claims.

Plaintiffs appear (at 50-52) to dispute that statutes of repose confer vested rights. This Court has, however, explained that "[s]tatutes of repose … create a substantive right protecting a defendant from liability after a legislatively-determined period of time." *Anderson*, 427 Md. at 120; *see* ADW Br. 44-45 (collecting cases). That "legislatively-determined period of time" is the 20-year period provided in § 5-117(d), which ran as to each Plaintiff's claim

prior to the enactment of the CVA. It is widely accepted that repose vests at the expiration of the statutory repose period. *See, e.g.*, *Se. Pa. Transp. Auth. v. Orrstown Fin. Servs. Inc.*, 12 F.4th 337, 351 (3d Cir. 2021).

If, as Plaintiffs contend (at 50), statutes of repose constitute a mere "inchoate defense" assertible only after a complaint is filed, statutes of repose would confer no repose at all. Plaintiffs' position would defeat "the object of a statute of repose, to grant complete peace to defendants." *ANZ Sec.*, 582 U.S. at 510. That is why, in *Duffy v. CBS Corp.*, 232 Md. App. 602, 622-23 (2017), *rev'd on other grounds*, 458 Md. 206 (2018), the Appellate Court of Maryland held that vested rights conferred by a statute of repose were irrevocable. This Court reversed that judgment because the statute of repose did not cover the at-issue claim. *Duffy*, 458 Md. at 236. But that says nothing about the quality of the Appellate Court's constitutional analysis, which was clearly correct.

Allstate v. Kim, 376 Md. 276, 283, 298 (2003) (cited at Plaintiffs' Br. 47, 39-50), held only that the common-law parent-child immunity in the context of car accidents, when asserted by a third-party insurer attempting to evade a policy obligation, vested when the lawsuit was filed. That immunity is readily distinguishable from a statute conferring repose after a specified time period. *See supra* 12-13, 17-18; App.8. *Kim* refused to articulate a broader rule applicable to all assertions of that immunity, much less to other immunities or defenses. To the contrary, *Kim* reiterated this Court's prohibition in *Dua* on

the revival of barred claims. 376 Md. at 293, 296-98. And even were this Court to construe *Kim* (contrary to its express terms) to mean that affirmative defenses do not vest until the time of suit, in Maryland, "a statute of repose is not an affirmative defense." *Mitchell v. WSG Bay Hills IV, LLC*, No. 12-2036, 2013 WL 6502875, at *2 (D. Md. Dec. 11, 2013) (citation omitted).

E. The CVA's Abrogation of Vested Rights Created by § 5-117(d) Is Unconstitutional.

The Maryland Constitution—in both its due process and takings clauses—"prohibits legislation which retroactively abrogates vested rights." *Dua*, 370 Md. at 623. As this Court has recognized, vested rights may take many forms, including the right to bring a cause of action and the right to be free of one. *See id*; ADW Br. 46-47. For that reason, this 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 reviving a barred cause of action, thereby violating the vested right of the defendant." *Dua*, 370 Md. at 633.[18] Plaintiffs' request to upend this precedent must be rejected.

[18] The Attorney General argues (at 11-12) that *Dua* would make § 5-117(d) unconstitutional because the statute retroactively abolished accrued rights of action. But § 5-117(d), as applied here, extinguished only causes of action which had expired under the applicable statutes of limitations. ADW

1. Plaintiffs' principal argument (at 53-54) is that *Dua*'s prohibition on the revival of expired claims is *dicta*, because that case presented a challenge to retroactive laws depriving petitioners of an accrued, unexpired right of action, rather than (as here) the right to be free of liability. But *Dua* set out the same rule for the right to bring an action and the right to be free of an action. 370 Md. at 633. It did so after an exhaustive survey of Maryland vested-rights cases tracing to 1835, in which this Court drew a clear parallel between the right to bring a cause of action and, after the expiration of the statutory period, the right to be free of liability. *Id.* at 623-28. In this Court's considered view, these were two sides of the same coin—and fell firmly within Maryland's long tradition of protecting vested rights.

Dua exemplifies Maryland's tradition of protecting vested rights—and that tradition is venerable. *See id.*; *see also* D. Friedman, *Does Article 17 of the Maryland Declaration of Rights Prevent the Maryland General Assembly From Enacting Retroactive Civil Laws?*, 82 Md. L. Rev. 55, 104 (2022). And *Dua*'s ban on the retroactive revival of claims was central to the reasoning in the case. "[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

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Br. 49-50. Because those claims were not "viable on the date the new statute was enacted," § 5-117(d) does not run afoul of *Dua*, 370 Md. at 633.

may be rooted in another point in the record." *Schmidt v. Prince George's Hosp.*, 366 Md. 535, 551 (2001). *Dua* plainly furnishes such a "deliberate expression" of this Court's opinion—one that was reiterated the very next Term. *See Kim*, 376 Md. at 296.

2. Plaintiffs suggest in passing that there is an exception to *Dua*'s rule, because this Court said that the Maryland Constitution "ordinarily" prohibits the revival of expired claims. This Court's ruling in *Muskin v. State Department of Assessments & Taxation* forecloses that argument. There, this Court acknowledged that retroactive legislation adjusting rules of evidence and remedies may affect vested rights, but not destroy them altogether. 422 Md. 544, 560-63 (2011). The CVA purports to do the latter: divest the Archdiocese of its right to repose and allow claims alleging decades-old conduct to proceed.

3. Plaintiffs (at 52-53) dismiss this Court's holding in *Smith v. Westinghouse*, 266 Md. at 52, as "inapposite" because it involved "not an ordinary time bar," but instead a "condition precedent to bring[ing] suit." This Court has not construed *Smith* so narrowly. In *Dua*, this Court read *Smith* this way: "[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 (emphasis added). *Smith* reflects the basic proposition

that, in Maryland, 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 Empls. Ret. Sys.*, 358 Md. 393, 405 (2000) (cleaned up).

Even if Plaintiffs were correct that *Smith* only holds that conditions precedent give rise to irrevocable rights, *Smith* would still require that § 5-117(d) be read to have conferred vested rights to the Archdiocese. That is because, as Plaintiffs acknowledge (at 53), conditions precedent are "substantive"—just like statutes of repose. *Anderson*, 427 Md. at 120. And courts have recognized that 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). It is for that reason that courts have refused to revive claims barred by statutes of repose, "lest they divest … a vested right"—even though those claims were not created by the statute imposing the time bar. *See id.* at 1385.

4. Plaintiffs ask this Court to apply (at 10-11, 17) rational-basis review or strict scrutiny. That is impermissible. "It has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." *Dua*, 370 Md. at 623. "This prohibition contains no exceptions, and the [Supreme Court] has repeatedly held that this protection applies *without regard to the State's legislative interests or motivations*." *Willowbrook Apt. Assocs. v. Mayor & City of*

Baltimore, 563 F. Supp. 3d 428, 445 (D. Md. 2021) (emphasis added). Plaintiffs have not even attempted to meet this Court's exacting test for overruling *Dua*'s *per se* ban on retroactive abrogation of vested rights. *See Wadsworth v. Sharma*, 479 Md. 606, 630 (2022).

According to Plaintiffs (at 10), this case presents a "facial challenge" and the Archdiocese must therefore show that the statute "always operates unconstitutionally." But the Archdiocese does not challenge every application of the CVA to every set of facts—the definition of a facial challenge. *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 361 (2020). It does not take the position that the CVA's revocation of the statute of repose may not be applied to claims that had not expired as of the effective date of the CVA. Instead, the Archdiocese takes the position that the CVA cannot be applied to claims, like those of these Plaintiffs, as to which the repose period under § 5-117(d) had already run prior to the CVA's effective date. That is an as-applied challenge to the CVA's abrogation of vested rights, subject to *Dua*'s bright-line test.

Plaintiffs (at 16) suggest that the Archdiocese's appeal sounds in substantive due process, rather than vested rights. That is wrong; those are different bodies of law, with different tests. *See Willowbrook*, 563 F. Supp. 3d at 444-49. The Archdiocese's challenge sounds in vested rights, and is therefore not subject to the tiers of scrutiny. *See id.*

Even if this Court applied strict scrutiny (and it should not), the CVA as applied here would fail that test, because it is not "necessary" to accomplish a compelling state interest. *Pizza di Joey*, 470 Md. at 346 (citation omitted). Plaintiffs argue (at 17-19) that the CVA is narrowly tailored to provide sex-abuse victims with "access to civil justice." But the 2017 statute of repose gave victims access to civil justice for a full 20 years after they turn 18. That was part of carefully crafted legislation that balanced all relevant interests. No one could say that it was "necessary" to strike a different balance, much less do what the CVA purported to do—eliminate all time limits, prospectively and retroactively, applicable to claims against persons who did not themselves perpetrate any act of abuse. And no one could say there are no alternatives "less restrictive" of the vested rights of non-perpetrators than the extreme measure of reviving all expired claims against them.

5. Lastly, this Court should reject Plaintiffs' throwaway contention, made only in a footnote (at 11 n.7), that the Archdiocese has abandoned its takings argument. The Archdiocese repeatedly argued that the CVA violated both the takings and due process clauses in its opening brief, and, as noted, the takings clause categorically bars the abrogation of vested rights. ADW Br. 2-3, 46-47, 49.

II. The CVA's Attempt to Revive Claims Barred by the Statute of Limitations is Unconstitutional.

Even if § 5-117(d) were a statute of limitations, Plaintiffs' claims would be barred by not one, but two, statutes of limitations—the original one that expired long ago and the one they say is contained in § 5-117(d). ADW Br. 49-50. The Legislature may not revive those long-expired claims. *Id*. at 51-52.

Plaintiffs (at 48-49) ask this Court to ignore prior statements that the revival of expired claims violates the Maryland Constitution. But as mentioned, *Dua*'s anti-retroactivity rule plainly bars revival of any time-barred claim, whatever the type of statute. *Supra* 19-21. And in *Doe v. Roe*, 419 Md. 687 (2011), this Court carefully considered when retroactive application of an earlier version of § 5-117(b) (West 2003) would be unconstitutional. *Doe v. Roe* held that, although the law applied retroactively to conduct occurring before enactment, it did not impair vested rights. But the Court 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 1 October 2003, the effective date of § 5-117." *Id*. at 707. The Court continued:

> As we said in *Rawlings v. Rawlings*, [362 Md. 535, 559 (2001)], 'a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights.' (quoting *Langston v. Riffe*, [359 Md. 396, 418 (2002))]. In the present case, we hold 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

> limitations for that violation has expired.' *Crum v. Vincent*, 493 F.3d 988, 997 (8th Cir. 2007).

Id. at 707 n.18. *Bunker* Plaintiffs deride this passage as *dicta*, but the implication is clear: as the Appellate Court expressly stated in *Rice v. University of Maryland Medical System Corp.*, "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." 186 Md. App. 551, 563 (2009).

Plaintiffs' cases (at 45-48) are not to the contrary. None arises in this situation—when the Legislature has attempted to revive claims barred under the statute of limitations. Plaintiffs note that *Rawlings* allowed 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." 362 Md. at 559 n.20 (emphasis added). But here, Plaintiffs' claims were expired, and thus no longer "actionable," on the CVA's effective date. ADW Br. 49-50. In addition, the CVA's retroactive application is not "remedial," because it "affect[s] substantive or vested rights." *Doe v. Roe*, 419 Md. at 703 (citation omitted).

Likewise, Plaintiffs' cases (at 45-48) involving the adjustment of limitations periods only reinforce the Archdiocese's position. Those cases make clear that, although the Legislature may shorten the limitations period, it must

provide a "reasonable time" after enactment for plaintiff to vindicate an accrued, unexpired right of action. *See, e.g.*, *Allen v. Dovell,* 193 Md. 359, 364 (1949); *Hill v. Fitzgerald*, 304 Md. 689, 702-03 (1985). Likewise, retroactive legislation may affect a vested right to be free of suit by deferring the date when vesting occurs, but not destroy that right once it has vested. *Supra* 19-26.

III. The Presumption of Constitutionality and Canon of Constitutional Avoidance Cannot Save Plaintiffs' Claims.

Plaintiffs place considerable emphasis on the presumption of constitutionality. That presumption, however, has never been applied to rescue a statute that abrogates vested rights from an as-applied challenge. Applying the presumption to save the CVA in this case would run roughshod over the Legislature's clear intent in the 2017 law, and longstanding Maryland vested-rights jurisprudence.

The canon of constitutional avoidance (rooted, as it is, in the presumption of constitutionality) cannot save Plaintiffs' claims, either. The only way to save the CVA would be to construe it *not* to revive long-extinguished claims, but only to revoke the statute of repose as to claims that had not yet been extinguished. That construction would not save Plaintiffs' claims, which were already extinguished by the statute of repose when the CVA became law. ADW Br. 52-53.

Conclusion

The Court should reverse the circuit court's judgment.

Respectfully Submitted,

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Certification of Word Count and Compliance with Rule 8-112

This brief contains 6,485 words, excluding the parts of the brief exempted from the word count by Rule 8-503. This brief also complies with the font, spacing, and type size requirements state in Rule 8-112.

/s/ Kevin T. Baine
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Certification of Service

I hereby certify that, on August 26, 2024, I filed this brief with MDEC, which will cause copies to be served electronically on counsel for Respondents, and that, within one business day I will mail two copies by first-class mail, postage prepaid, addressed to:

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Appendix to Petitioner's Reply Brief

[a] As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

[b] *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0585/?ys=2017rs (click on link under "First Reading Judicial Proceedings" in "History" section of the page).

[c] As contained in the bill file maintained by the Department of Legislative Services Library for H.B. 1376, 420th Gen. Assemb., Reg. Sess. (Md. 2005).

[d] As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 668, 435th Gen. Assemb., Reg. Sess. (Md. 2015).

[e] As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 668, 435th Gen. Assemb., Reg. Sess. (Md. 2015).

[f] As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 69, 436th Gen. Assemb., Reg. Sess. (Md. 2016).

SB0505/818470/2 **APRM**

BY: Senator Zirkin
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 505
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after the semicolon insert "establishing a statute of repose for certain civil actions relating to child sexual abuse;"; and in the same line, after "action" insert "filed more than a certain number of years after the victim reaches the age of majority".

AMENDMENT NO. 2

On page 2, in line 10, after "(a)" insert "**(1)**"; in the same line, strike the comma and substitute "**THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3)";

in the same line, strike "sexual" and substitute "**SEXUAL**"; strike beginning with "**AGAINST**" in line 13 down through "**ABUSE**" in line 14; and in line 17, strike "**WITHIN**" and substitute "**SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN**".

On pages 2 and 3, strike in their entirety the lines beginning with line 26 on page 2 through line 11 on page 3, inclusive, and substitute:

"**(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED**

(Over)

AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) 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.".

AMENDMENT NO. 3

On page 4, strike beginning with "That" in line 6 down through "Act" in line 8 and substitute "That this 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, 2017"; and in line 9, after "That" insert "the statute of repose established in § 5-117(d) of the Courts Article 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.

SECTION 4. AND BE IT FURTHER ENACTED, That".

UNOFFICIAL COPY OF SENATE BILL 505

SENATE BILL 505

D3 7lr2557
CF HB 642

By: **Senators Kelley, Benson, Brochin, Conway, Currie, Feldman, Ferguson, Guzzone, Kagan, Kasemeyer, Lee, Madaleno, Manno, McFadden, Middleton, Miller, Muse, Nathan-Pulliam, Peters, Robinson, Smith, and Zucker**
Introduced and read first time: February 1, 2017
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

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; providing that, in a certain action filed more than a certain number of years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not an alleged perpetrator only under certain circumstances; providing that a certain action is exempt from certain provisions of the Local Government Torts Claims Act; providing that a certain action is exempt from certain provisions of the Maryland Torts Claims Act; providing for the application of this Act; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 5-117 and 5-304(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article - Courts and Judicial Proceedings
Section 5-304(b)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article - State Government
Section 12-106(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

UNOFFICIAL COPY OF SENATE BILL 505

BY repealing and reenacting, without amendments,
Article - State Government
Section 12-106(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Courts and Judicial Proceedings

5-117.

(a) (1) In this section, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3) "~~sexual~~ SEXUAL abuse" has the meaning stated in § 5-701 of the Family Law Article.

(b) 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] ~~AGAINST THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE~~:

(1) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR

(2) ~~WITHIN~~ SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN THE LATER OF:

(I) [7] 20 years [of] AFTER the date that the victim [attains] REACHES the age of majority; OR

(II) 3 YEARS AFTER THE DATE THAT THE DEFENDANT IS CONVICTED OF A CRIME RELATING TO THE ALLEGED INCIDENT OR INCIDENTS UNDER:

1. § 3-602 OF THE CRIMINAL LAW ARTICLE; OR

2. THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME UNDER § 3-602 OF THE CRIMINAL LAW ARTICLE.

~~(C) (1) 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 AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT AN ALLEGED PERPETRATOR OF THE SEXUAL ABUSE:~~

~~(I) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR~~

UNOFFICIAL COPY OF SENATE BILL 505

~~(II) WITHIN 20 YEARS AFTER THE DATE THAT THE VICTIM REACHES THE AGE OF MAJORITY.~~

~~(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY ONLY ON A DETERMINATION BY THE FINDER OF FACT THAT THE PERSON OR GOVERNMENTAL ENTITY:~~

~~(I) PRIOR TO THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION, HAD ACTUAL KNOWLEDGE OF A PREVIOUS INCIDENT OR INCIDENTS OF SEXUAL ABUSE; AND~~

~~(II) NEGLIGENTLY FAILED TO PREVENT THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION.~~

(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) 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.

5-304.

(a) This section does not apply to an action **[**against**]:**

(1) AGAINST a nonprofit corporation described in § 5-301(d)(23), (24), (25), (26), (28), or (29) of this subtitle or its employees; OR

(2) BROUGHT UNDER § 5-117 OF THIS TITLE.

(b) (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

Article - State Government

12-106.

(a) This section does not apply to a claim that is:

(1) asserted by cross-claim, counterclaim, or third-party claim; OR

(2) BROUGHT UNDER § 5-117 OF THE COURTS ARTICLE.

UNOFFICIAL COPY OF SENATE BILL 505

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

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~~ That this 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, 2017.

SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose established in § 5-117(d) of the Courts Article 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.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

SENATE BILL 585

D3 7lr1344

By: **Senators Young, Benson, Brochin, Feldman, Ferguson, Guzzone, Kagan, King, Madaleno, Manno, Mathias, Miller, Muse, Nathan–Pulliam, Pinsky, Robinson, Salling, Smith, and Zucker**

Introduced and read first time: February 2, 2017
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Civil Actions – Child Sexual Abuse – Statute of Limitations and Required Findings

FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; providing that, in a certain action, damages may be awarded against a person or governmental entity that is not an alleged perpetrator only under certain circumstances; providing that a certain action is exempt from certain provisions of the Local Government Torts Claims Act; providing that a certain action is exempt from certain provisions of the Maryland Torts Claims Act; providing for the application of this Act; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
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Article – Courts and Judicial Proceedings

5–117.

(a) In this section, "sexual abuse" has the meaning stated in § 5–701 of the Family Law Article.

(b) 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**]** **AGAINST THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE:**

(1) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR

(2) WITHIN THE LATER OF:

(I) [7**] 20** years **[**of**]** **AFTER** the date that the victim **[**attains**]** **REACHES** the age of majority**; OR**

(II) 3 YEARS AFTER THE DATE THAT THE DEFENDANT IS CONVICTED OF A CRIME RELATING TO THE ALLEGED INCIDENT OR INCIDENTS UNDER:

1. § 3–602 OF THE CRIMINAL LAW ARTICLE; OR

2. THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE.

(C) (1) 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 AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT AN ALLEGED PERPETRATOR OF THE SEXUAL ABUSE:

(I) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR

(II) WITHIN 20 YEARS AFTER THE DATE THAT THE VICTIM REACHES THE AGE OF MAJORITY.

(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY ONLY ON A DETERMINATION BY THE FINDER OF FACT THAT THE PERSON OR GOVERNMENTAL ENTITY:

(I) PRIOR TO THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION, HAD ACTUAL KNOWLEDGE OF A PREVIOUS INCIDENT OR INCIDENTS OF SEXUAL ABUSE; AND

(II) NEGLIGENTLY FAILED TO PREVENT THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION.

5–304.

(a) This section does not apply to an action **[**against**]:**

(1) AGAINST a nonprofit corporation described in § 5–301(d)(23), (24), (25), (26), (28), or (29) of this subtitle or its employees**; OR**

(2) BROUGHT UNDER § 5–117 OF THIS TITLE.

(b) (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

Article – State Government

12–106.

(a) This section does not apply to a claim that is**:**

(1) asserted by cross–claim, counterclaim, or third–party claim**; OR**

(2) BROUGHT UNDER § 5–117 OF THE COURTS ARTICLE.

(b) Except as provided in subsection (c) of this section, a claimant may not institute an action under this subtitle unless:

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

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.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Maryland Coalition Against Sexual Assault, Inc.
Working to End Sexual Violence in Maryland

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Testimony in Support of House Bill 1376 with Amendments
Lisae C. Jordan, Director, Sexual Assault Legal Institute
March 16, 2005

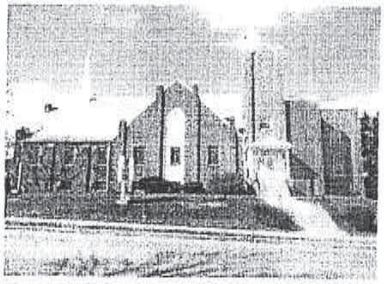
The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's nineteen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judiciary Committee to report favorably on House Bill 1376 with amendments.

House Bill 1376 – Extending the Statute of Limitations in Child Sexual Abuse Cases
House Bill 1376 expands on the good work done in the 2003 session by extending the statute of limitations in child sexual abuse cases to 28 years from the date the victim reaches the age of majority. The current statute of limitation gives these victims until age 25 to file suit. HB1376 would raise this to age 46.

The bill would only apply to cases involving sexual molestation or exploitation of a child by a parent; family or household member; or by a person with permanent or temporary care, custody or responsibility for supervision of the child (see Fam.L.Art §5-701). Many victims of this type of child sexual abuse take many years – even decades – to deal with the abuse. It is common for victims to come to terms with the abuse and the harm it caused only when their own children reach the age they were when they were molested. Expanding the statute of limitations until a victim's 46th birthday reflects this reality and is a more appropriate time frame to allow victims to seek justice.

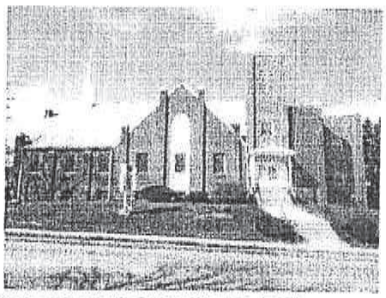
House Bill 1376 also proposes retroactively reviving now barred claims for one year. While this is a laudable goal, it conflicts with the *Dua v. Comcast* case, 370 Md. 604 (2002). This case found that retroactively reviving a claim violated Articles 19 and 24 of the Maryland Declaration of Rights and Article III, §40, of the Maryland Constitution. In view of this decision, the provisions regarding retroactive revival of claims should be amended out of HB1376.

The Maryland Coalition Against Sexual Assault urges the Judiciary Committee to report favorably on House Bill 1376 with amendments.



FRIENDSHIP BAPTIST CHURCH
6000 Loch Raven Boulevard
Baltimore, Maryland 21239

Rev. Dr. Alvin Gwynn Sr.,
Pastor
President of IMA



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Statement to the Senate Judicial Proceedings Committee
Re: Senate Bill 668-Civil Actions-Child Sexual Abuse-Statute of Limitations
March 12, 2015

OPPOSE

On behalf of the Interdenominational Ministerial Alliance, I write today to state our body's opposition to proposed legislation that would extend and/or set aside the existing statute of limitations on civil lawsuits in decades-old cases of child sexual abuse. We endorse the position of the Archdiocese of Baltimore, which we believe has already been communicated to you.

The Alliance opposes this kind of legislation because it would cause great financial harm to faith communities in our state and our city-particularly those that provide integral services in some of our city's poorest and most violent neighborhoods-and because it unfairly targets private institutions, while protecting public institutions where child abuse is vastly more prevalent.

The scourge of sexual abuse of minors is a sin and those who perpetrate such evil acts should be held accountable to God and to the law. Thankfully there is no criminal Statute of limitations on such acts in Maryland. It is grossly unfair, however, to expose institutions such as faith communities to monetary lawsuits by individuals who wait decades to come forward. Not only does it discourage timely reporting of such claims, thereby exposing others to harm and preventing immediate accountability on the part of the perpetrator, it also has the very real potential of bankrupting our churches and eradicating the many critical ministries and resources they provide to those most in need.

Secondly, if this legislation is intended to protect children (which we don't think it does) why are not public schools, foster homes, juvenile justice facilities, and the like exposed similarly'! It is well documented that the vast majority of abuse occurs in the home and in public settings-not in churches and other private institutions. Legislation that treats private institutions much worse than public institutions is offensive to all who believe in fair government and a vibrant role for faith communities and other participants in civil society.

We strongly agree that those who would harm children- whether priest, minister, rabbi, or imam-should be punished for their crimes. However, bankrupting our churches and the critical ministries they provide will not bring healing to victims or protection to children.

Sincerely Yours,

Rev. Dr. Alvin J. Gwynn,Sr.,
President of Interdenominational Ministerial Alliance

Statement to the Senate Judicial Proceedings Committee
Re: Senate Bill 668 - Civil Actions - Child Sexual Abuse - Statute of Limitations
March 12, 2015
OPPOSE

My name is Captain Timothy Delaney, and I offer this testimony in opposition to Senate Bill 668. My opposition to S.B. 668 stems from my professional experience. I am the retired Commander of the Family Services Division of the Montgomery County Police Department, and in that capacity I oversaw all domestic violence, child abuse and child sexual exploitation investigations in the county. In total, I spent nearly 20 years of my 30-year police career involved in investigating child abuse complaints. I also have served as Deputy Director of the International Criminal Investigative Training and Assistance Program at the United States Department of Justice.

I have two concerns with S.B. 668. First, the bill places an unreasonable burden on an organization to defend itself against old claims, especially if the claims have never before been reported. As a veteran investigator and commander, I can tell you how hard it is to verify the credibility of a claim raised for the first time after years have passed. It would be similarly difficult for an organization to conduct an internal investigation and mount a defense against a claim of which it was unaware for many years. To allow civil claims which carry the possibility of large damage awards to be brought against an organization for harms allegedly committed years or even decades prior—especially if the allegations were never reported before—only undermines the investigative process and does nothing to actually detect or prevent abuse.

Secondly, the focus of this bill is misplaced. All children in our state deserve the greatest protections the law can provide. But this bill does nothing to protect them. Most glaringly, the bill does not address what I see as one of the biggest threats to children's welfare in our state: the lack of consistent protections for children across Maryland. I have been impressed with how hard some private entities with which I am familiar have worked to ensure the safety of children and youth in their care. For example, the Archdiocese of Washington (whose policies I observed in my capacity during my service in the Montgomery County Police Department and on whose Child Protection Advisory Board I served for several years) mandates reporting of accusations of abuse to civil authorities, prompt internal investigations of reports of abuse, and permanent removal from service or ministry for any lay employee, clergy, or volunteer credibly accused of abuse. In addition, the Archdiocese mandates FBI criminal background checks, reporting, and safe environment education for all adults—employees, clergy and volunteers—who have substantial contact with children. These policies set a gold standard for how to take the protection of children seriously. Unfortunately, many organizations in our state, including many public school systems, aren't required by law to offer all of these protections, leaving children in these locations at higher risk. Recent revelations about the number of child abuse and exploitation accusations brought against employees of the public school systems in Maryland illustrate the very real dangers of the disparate treatment of private and public entities in Maryland. This bill does nothing to address the failure of a number of organizations in Maryland—including public entities, to whom this bill will not apply—to provide adequate protections for the children in their care. S.B. 668 will not make our children safer.

Finally, in Maryland, anyone who abuses a child can be criminally prosecuted until the day he or she dies. S.B. 668 would do nothing to encourage prompt reporting, which allows investigations to be more accurate and effective. And especially in today's climate, when more resources and support are available to victims of childhood sexual abuse than ever before, I do not see any compelling reason to lengthen the current, reasonable civil statute of limitations.

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Testimony in Opposition to Senate Bill 69
Civil Actions – Child Sexual Abuse – Statute of Limitations

Senate Judicial Proceedings Committee
March 8, 2016
1:00 p.m.

Randal Mickens
Government Relations

The Maryland State Education Association opposes this legislation, which would increase the statute of limitations for an action for damages in cases of child sexual abuse from 7 years to 20 years and applies retroactively to October 1, 2009.

Currently, if indicted for child sexual abuse by social services, a file is created and maintained as part of the Central Registry; thereby creating a necessary record for the protection of children. Here, extending the statute of limitations for civil damages to 20 years does not further the protection of children. Rather, it would unnecessarily expose the accused to an action with a decreased likelihood of accurate recall because of the passage of time. This statute provides a weak approach to providing a legal remedy due to its reliance on repressed memories rendering its intent virtually non-effective.

Furthermore, the retroactivity of the proposed legislation is inconsistent with the principles of general jurisprudence. Specifically, the retroactive effect of laws is not favored in most instances, particularly here where it increases exposure to civil damages for an act that occurred in the past. Here, retroactivity will not change past behavior or serve as a deterrent, and will only increase burdens on the courts and the administration of justice.

For these reasons, we strongly urge an unfavorable report on this bill.

TABLE OF INTERNET ADDRESSES IN PETITIONER'S REPLY BRIEF

Reply Br. Cite	TinyURL	Full URL
7 n.1	https://tinyurl.com/bdhzafac	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-62-?year=2017rs
7 n.2	https://tinyurl.com/k279azeb	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-43-?year=2017rs
7 n.3	https://tinyurl.com/287ty2s3	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-44-?year=2017rs
7 n.5	https://tinyurl.com/mv2tvc7a	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-51-?year=2017rs
7 n.6	https://tinyurl.com/57t64m2c	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-47-?year=2017rs
7 n.7	https://tinyurl.com/yckc4e2z	https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-46-?year=2017rs
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