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)

BRIEF OF RESPONDENTS

Jonathan Schochor (#7406010179)
Kerry D. Staton (#8011010366)
Joshua F. Kahn (#1012150095)
SCHOCHOR, STATON,
GOLDBERG AND CARDEA, P.A.
The Paulton
1211 St. Paul Street
Baltimore, Maryland 21202
jschochor@sfspa.com
kstaton@sfspa.com
jkahn@sfspa.com

Andrew S. Janet (#1812110188)
Tara L. Eberly (#0406150162)
Adina S. Katz (#1606210140)
JANET, JANET & SUGGS, LLC
Executive Centre at Hooks Lane
4 Reservoir Circle, Suite 200
Baltimore, Maryland 21208
asjanet@jjsjustice.com
teberly@jjsjustice.com
akatz@jjsjustice.com

Robert S. Peck (*pro hac vice*)
CENTER FOR CONSTITUTIONAL
LITIGATION, P.C.
1901 Connecticut Avenue, NW
Suite 1101
Washington, DC 20009
Robert.Peck@cclfirm.com

Counsel for Respondents John Doe, Richard, Roe, and Mark Smith on behalf of all others similarly situated

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Constitutional Provisions

Other Authorities

STATEMENT OF THE CASE

Plaintiffs-Respondents filed this putative class action on October 1, 2023 pursuant to the newly effective Child Victims Act of 2023 ("CVA"),[1] codified at Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-117, alleging that they suffered significant and horrific sexual abuse while minors from persons placed in a trusted position of authority by Defendant-Petitioner Roman Catholic Archbishop of Washington ("RCAW"),[2] which had long downplayed or concealed clergy sexual abuse of minors in their congregations. (E.29, ¶¶ 35−36, 40).

RCAW moved to dismiss, arguing that the CVA unconstitutionally infringed on a claimed "vested property right" to be free from potential liability for vested causes of actions for which the CVA provides a fresh remedy. Specifically, RCAW asserted that a 2017 law[3]—which the CVA amended and superseded—included a statute of repose. RCAW further claimed that the CVA's abrogation of the statute of repose violates the due process and takings clauses of the Maryland Constitution. Md. Decl. of Rts., art. 24 and Md. Const. art. III, § 40.

---

[1] 2023 Md. Laws Ch. 5 (S.B. 686) and Ch. 6 (H.B. 1). (E.174-96).

[2] RCAW covers the Maryland counties of Calvert, Charles, Montgomery, Prince George's, and St. Mary's, in addition to Washington, DC. (E.27, ¶ 20).

[3] 2017 Md. Laws Ch. 12 (H.B. 642) and Ch. 656 (S.B. 505). (E.161-70).

On March 6, 2024, after hearing argument, the circuit court denied RCAW's motion. The court explained that the 2017 statute was "clear[ly] and unambiguous[ly]" not a statute of repose. (E.146). It distinguished the 2017 law from Maryland's lone statute of repose, noting that the General Assembly never intended to protect putative defendants under the statute "from . . . being prosecuted civilly." *Id.* The court added that the CVA fit within the category of limitations periods that "may be extended and in some cases shortened by the General Assembly." (E.146, E.142).

RCAW timely noted an interlocutory appeal, and the parties jointly petitioned for certiorari. Pet. No. 57. This Court granted review on May 28, 2024.

QUESTION PRESENTED

Does the Maryland Child Victims Act of 2023, 2023 Md. Laws ch. 5 (S.B. 686) (codified at Md. Code Ann., Cts. & Jud. Proc. § 5-117), constitute an impermissible abrogation of a vested right in violation of Article 24 of the Maryland Declaration of Rights and/or Article III, Section 40 of the Maryland Constitution?

STATEMENT OF FACTS

A. Statutory Background

In 2018, the Attorney General convened a grand jury investigation of allegations of longstanding and systemic child sexual abuse by clergy, seminarians, deacons, and employees of the Archdiocese of Baltimore. (E.333) ("AG Report").[4] This investigation discovered 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 within the Archdiocese of Baltimore, as well as a "history of repeated dismissal or cover up of that abuse by the Catholic Church hierarchy." (E.333, E.341).[5]

In response to these atrocities, the General Assembly enacted the CVA, which generally eliminates time limitations for bringing civil actions arising from sexual abuse perpetrated against minors. CJP § 5-117(b). The General Assembly recognized that the unique psychological trauma inflicted upon survivors of childhood sexual abuse often prevents them from coming forward until well into adulthood, thereby allowing perpetrators and their facilitators

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

[5] The Archdiocese of Baltimore filed for bankruptcy protection days before the effective date of the CVA. More than 900 survivors of have submitted claims in that proceeding. A. Mann, Judge sends Archdiocese of Baltimore bankruptcy to critical mediation phase, Baltimore Sun, July 31, 2024, available at https://tinyurl.com/yextz7tw.

to escape civil justice under the timeframes specified in the 2017 law. To remedy this injustice, the legislature determined that child sexual predators—and their accomplices and facilitators—generally may be called to account in civil court "at any time." *Id.* In enacting the CVA, the General Assembly acted well within its power to remedy a societal ill of enormous dimension.

B. Underlying Allegations

Plaintiffs John Doe, Richard Roe, and Mark Smith filed this putative class action on October 1, 2023. (E.23).[6] Doe attended St. Martin of Tours Catholic Church and its school throughout the 1990s, beginning at age 4 or 5. (E.52, ¶¶ 125–28). He was groomed and sexually abused by two clergy there, Father Malone and Deacon Bell, in similar ways starting around fifth grade. (E.53, ¶¶ 133–43). Both men exploited their religious and professional authority as school officials to isolate Doe from other students to effectuate 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 for 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. (E.54, ¶¶ 150–52). The priest in charge of

[6] Plaintiffs are proceeding under pseudonyms.

the altar boys sexually abused Roe after luring him into the priest's bedroom in the rectory, adjacent to the church. (E.54–55, ¶ 153). Under the guise of a counseling-like conversation about Roe's personal life, 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, where Smith attended elementary school. (E.55–56, ¶¶ 160–62). When he was 12 years old, Father Robert Petrella anally raped the child in the school nurse's office. (E.56–57, ¶¶ 165–168). 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 RCAW clergy, Plaintiffs allege that when RCAW 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. (E.29, ¶¶ 35–36, 40). Even while portraying itself to the world at-large as a moral and spiritual leader, RCAW has continually advanced policies and procedures protecting perpetrators of sexual abuse rather than victimized children. (E.29, ¶¶ 35–36; E.34, ¶ 50; E.36, ¶ 52; E.44, ¶ 88). RCAW failed to investigate allegations of sexual abuse, refused to punish known violators, and gave

predators unfettered access to children. (E.36 ¶ 52, E.38–41 ¶¶ 60–70, E.44 ¶ 88). RCAW then used its substantial wealth and assets 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, its involvement, and any accountability. (E.29–30, ¶ 40).

Plaintiffs set forth ten counts—negligence, negligence per se, and premises liability, gross negligence, negligent supervision and retention, negligent training, breach of fiduciary duty, constructive fraud, civil conspiracy, aiding and abetting, and intentional infliction of emotional distress—and intend to seek class certification.

STANDARD OF REVIEW

This Court reviews constitutional questions *de novo*. *Corbin v. State*, 428 Md. 488, 498 (2012).

ARGUMENT

The CVA represents an appropriate legislative response to a horrific injustice. The Centers for Disease Control and Prevention calls child sexual abuse a "serious public health problem" affecting significant portions of the population and resulting in "long-term impact on health, opportunity, and well-being" generating a total lifetime economic burden that in 2015 reached

"at least $9.3 billion." CDC, "Child Abuse and Neglect Prevention: About Child Sexual Abuse," https://tinyurl.com/6964t38z (footnotes omitted) (last visited July 26, 2024).

Abuse survivors, even in adulthood, are uniquely traumatized as children and are tortured for life by memories of these sexual abuses. *See Hutton v. State*, 339 Md. 480, 491–93 (1995) (discussing literature and effects). They suffer a host of severe, debilitating sequelae, including diminished social, emotional, and cognitive development, incapacity to discuss or understand what happened to them, depression, inability to focus or trust others, and a tendency to engage in self-harm and suicide. *Id.* Survivors fear that they alone suffered those injuries, or were among an unfortunate few. Rochelle F. Hanson, Ph.D. & Elizabeth Wallis, M.D., "Treating Victims of Child Sexual Abuse," 175 Am J. of Psychiatry, 1064, 1065–67 (Nov. 1, 2018) (summarizing literature).

The Attorney General's investigation into the Archdiocese of Baltimore revealed the "staggering pervasiveness of the abuse" within the Catholic Church. (E.341). The Attorney General observed:

> The duration and scope of the abuse perpetrated by Catholic clergy was only possible because of the complicity of those charged with leading the Church and protecting its faithful. . . . They focused not on protecting victims or stopping the abuse, but rather on ensuring at all costs that the abuse be kept hidden. The costs and consequences of avoiding scandal were borne by the victimized children.

(E.343).

Upon the report's issuance, the General Assembly acted to pass the CVA to provide a remedy to adult survivors of childhood sexual abuse. The CVA represents the legislature's understanding that most children who experience sexual abuse do not disclose it or significantly delay any report. The abuse occurs when they lack the psychological maturity or sophistication necessary to recognize the harm inflicted, let alone pursue civil justice. This is particularly true of children abused by those touted as moral and spiritual leaders of their religious community and representatives of God. Even as adults, survivors often struggle with debilitating guilt and shame for decades, significantly delaying their ability to come forward and seek justice in court. Indeed, child abuse is so deeply personal and stigmatizing that Plaintiffs—two of whom are in their 70s—are proceeding under pseudonyms to protect their privacy.

The legislature understood that too many survivors of childhood sexual abuse are denied the opportunity to seek civil justice against their perpetrators and enablers. (E.789) (Testimony of Principal Sponsor C.T. Wilson). Absent curative legislation, many putative defendants and their facilitators escaped civil accountability due to the horrific, lifelong psychological trauma they inflicted on children.

To address this inequity, the CVA removed time limitations for survivors to file suit. The law serves compelling governmental interests in providing

survivors of childhood sexual abuse an avenue for civil justice and holding perpetrators and facilitators of child sexual abuse accountable. Yet, it need not meet that high standard of strict scrutiny to survive RCAW's constitutional attack. RCAW only claims that the CVA affects its substantive due process and takings rights. But whether framed as property interests or liberty interests, both of which are hard to discern and pale in comparison to the abuse survivors' constitutionally cognizable interests, RCAW claims no fundamental rights and cannot overcome a rational basis for the CVA. A right to avoid defending stale claims does not rise to a constitutionally protected interest. Even so, the CVA is narrowly tailored to achieve a compelling government interest, thereby meeting the strict-scrutiny test. No constitutional bar exists against restoring a remedy lost through mere lapse of time.

RCAW's argument that the 2017 statute was a statute of repose is fully rebutted by its text, which is completely plaintiff-focused and does nothing more than create a tolling period once a survivor reaches the age of majority. By its operative language, a holistic analysis, and the use of the definitional tools this Court has adopted, the 2017 law is a statute of limitations, subject to contraction and expansion by legislative choice. A proper examination of legislative history confirms that status.

Even if, arguendo, the 2017 law could be viewed as a statute of repose, it is not immutable but must yield to subsequent legislative decisions intended to further the cause of justice.

I. THE CVA IS PRESUMED CONSTITUTIONAL AND IMPLICATES NO FUNDAMENTAL RIGHT.

A. Rational-Basis Review Applies to the CVA's Constitutionality.

Statutes "carry a strong presumption of constitutionality." *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 353 (2020). RCAW asserts the CVA's unconstitutionality in every pre-enactment application. That appears to make its challenge a facial one, which asserts that the statute "always operates unconstitutionally." *Motor Vehicle Admin. v. Seenath*, 448 Md. 145, 181 (2016) (citation omitted). A facial constitutional challenge is "the most difficult to mount successfully." *Whittington v. State*, 246 Md. App. 451, 471 (2020) (citation omitted). Such a challenge must overcome a presumption that the legislature "acted within constitutional limits so that if any state of facts reasonably can be conceived that would sustain the constitutionality of the statute, the existence of that state of facts as a basis for the passage of the law must be assumed." *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) (citation omitted).

Further, RCAW must demonstrate that the CVA violates a fundamental constitutional right. *Seenath*, 448 Md. at 181. RCAW, however, asserts no such

right; it only asserts a due-process claim,[7] which subjects the CVA to review based on whether it "is rationally related to a legitimate governmental interest." *Pizza di Joey*, 470 Md. at 347 (citation omitted).

To the extent RCAW's challenge, as it was below (*see* E.106, E.109, & E. 137), is of the as-applied variety, which asserts that a statute is "unconstitutional on the facts of a particular case or in its application to a particular party," *Seenath*, 448 Md. at 181, rational-basis still provides the proper test. RCAW's burden is heavy and cannot be met; it must establish the CVA's invalidity beyond a "reasonable doubt." *Edgewood Nursing*, 282 Md. at 427.

Rational-basis review is the "least exacting and most deferential standard of constitutional review." *Tyler v. City of Coll. Park*, 415 Md. 475, 501

[7] RCAW also asserts a takings claim. *See* Br. of Petitioner 27 n.16 (hereinafter, "RCAW Br."). Still, it does not make any separate argument on takings. Instead, it cites the Maryland's constitutional takings provision only in a footnote. It further asserts that the alleged takings violation also "independently violates the due process clause," citing a single case. Finally, RCAW inaptly cites that case again to quote language prohibiting the State from "taking one person's property and giving it to someone else," RCAW Br. 27 n.16, 46, which begs the question of who received RCAW's supposed property. Because RCAW's takings argument is but a faded carbon copy of its due-process claim, its takings argument rises or falls on its due-process arguments. Moreover, because RCAW did not properly brief or argue the takings issue, it may be considered abandoned, *Logan v. Town of Somerset*, 271 Md. 42, 67 (1974), or waived. *Health Servs. Cost Rev. Comm'n v. Lutheran Hosp. of Maryland, Inc.*, 298 Md. 651, 664 (1984), and therefore warrants no further consideration.

(2010). Under this test, legislation "will pass constitutional muster so long as it is rationally related to a legitimate governmental interest." *Id*. To survive, this Court asks "whether the legislative enactment, as an exercise of the legislature's police power, bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of the State or municipality." *Id*. at 500 (citation omitted). The inquiry is "very limited," focuses on whether the "legislature exercised its police power arbitrarily, oppressively, or unreasonably" and does not consider the "wisdom or expediency" of the enactment. *Id*. (citation omitted). That deference reflects the judiciary's "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." *Id*. (citation omitted). As a result, "[w]here there are plausible reasons for the legislative action, the court's inquiry is at an end." *Id*. at 502 (citation omitted).

B. The CVA Satisfies Rational-Basis Review.

A statute of limitations represents

> a policy judgment by the Legislature 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). A statute of limitations reflects "the legislature's judgment about the reasonable time needed to institute [a] suit." *Doe v. Maskell*, 342 Md. 684, 689 (1996). They "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)).

When the legislature determines that its earlier handiwork "attempting to solve a serious problem" has not "prove[n] its worth,'" *Tyler*, 415 Md. at 500, or that the work of an earlier legislature should no longer be the state policy, *see Adler v. Am. Standard Corp*., 291 Md. 31, 46 (1981), it is free to adopt a new public policy it believes will succeed in solving that problem.

Indeed, "the legislature may pass retroactive acts changing, eliminating, or adding remedies, so long as efficacious remedies exist after passage of the act," because it is well-established that "no person has a vested right in a particular remedy for enforcement of a right, or in particular modes of procedure, or rules of evidence." *Langston v. Riffe*, 359 Md. 396, 423 (2000) (citation and footnote omitted).

Statutes of limitations fit handily within that analysis because they are procedural and remedial. *Roe v. Doe*, 193 Md. App. 558, 577-78 (2010) ("[A] lengthened statute of limitations is 'procedural'—that is, it does not alter substantive rights."), *aff'd*, 419 Md. 687 (2011). They regulate a plaintiff's

exercise of a right of action. *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 375, (2022). They can "extinguish the remedy for enforcing a right, not the right itself." *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md. 35, 54 (2022). As such, a "statute of limitations . . . does not destroy a substantial right, but simply affects remedy, [and] does not destroy or impair vested rights" that inhere in the putative plaintiff. *Allen v. Dovell*, 193 Md. 359, 363 (1949) (citation omitted). Although RCAW mischaracterizes the CVA as "reviving" rights plaintiffs had already lost, this Court's jurisprudence establishes that those rights continue to exist and needed no "revival," only a cognizable remedy, which the CVA supplied.

When a statute of limitations is extended, it prolongs the time for a plaintiff with an existing right of action to seek a remedy for that injury. The right of action remained vested in the plaintiff. After all, a cause of action in tort, even if unliquidated, is a form of property known as a "chose in action." *Hernandez v. Suburban Hosp. Ass'n, Inc.*, 319 Md. 226, 234 (1990) (citation omitted). Like other forms of property, it is subject to assignment, *id.*, or subrogation. *See Bachmann v. Glazer & Glazer, Inc.*, 316 Md. 405, 413–14 (1989). *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.") (footnote omitted)).

In choosing to protect that constitutionally cognizable form of property, the legislature may "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," because the underlying right remains valid as a matter of law. *Allen,* 193 Md. at 364 (quoted with approval in *Hill v. Fitzgerald*, 304 Md. 689, 702-03 (1985)).[8]

Given the problem the legislature sought to remedy—lack of access to civil justice for survivors of childhood sexual abuse—the legitimacy of the government's interest and its authority to act is beyond argument. Plainly, the General Assembly acts within its broad police powers when it remedies issues in furtherance of the health, morals, safety, and welfare of Marylanders. The CVA is a straightforward, plausible, and rational means of addressing the legitimate public-policy interest that inspired the legislature to act. The Court's analysis should end here; determination of fairness and desirability are matters for legislative, rather than judicial, determination. *Tyler*, 415 Md. at 502. Since the legislature has made a quintessentially legislative choice, this

[8] As a change affecting procedure, in this instance a statute of limitations, the statutes appropriately "applies to all actions [and matters] whether accrued, pending or future, unless a contrary intention is expressed." *Janda v. General Motors Corp*., 237 Md. 161, 168 (1964). No contrary intent is present here.

"Court provides judicial deference to the policy decisions enacted into law by the General Assembly." *Phillips v. State*, 451 Md. 180, 196 (2017).

Recently, the Louisiana Supreme Court undertook the same due-process analysis over Louisiana's newly enacted CVA. *See Bienvenu v. Defendant 1*, 2024 WL 2952499 (La. Jun. 12, 2024). It noted that no right of life, liberty, or property is absolute because it can be the subject of deprivation as long as due process is respected. *Id.* at *6. The substantive due-process guarantee, it said, "is not unqualified protection, but protection from arbitrary and unreasonable action." *Id.* A rational-basis analysis "leads inexorably to the conclusion that the revival provision in the Act is rationally related to a legitimate government interest." *Id.* at *7. Specifically, the court cited the bill's sponsor to find three public purposes served:

> (1) the provision assists in identifying hidden child predators so children will not be abused in the future; (2) shifts the costs of the abuse from the victims and society to those who actually caused it; and (3) educates the public about the prevalence and harm from child sexual abuse to prevent future abuse. These articulated interests are both legitimate and compelling.

Id.

It further recognized, as Maryland has, that it is "uniquely the role of the legislature to weigh the myriad policy considerations on both sides of a debate," while the "court's role is not to reweigh the legislature's policy decision." *Id.* The court found the statute advanced "Louisiana's legitimate interest in

protecting its citizens who were sexually abused as minors and in providing them with the ability to seek redress in the courts." *Id*. at *8.

The Louisiana decision follows the same analysis required here and warrants the same conclusion.

C. The CVA Even Satisfies Strict Scrutiny.

Although the CVA need only meet the rational-basis test, its underlying purpose—providing access to civil justice to those afflicted by the scourge of childhood sexual abuse—is actually compelling. *Cf. Bienvenu*, 2024 WL 2952499, at *7 (calling the state interest "legitimate and compelling"). Only if the 2017 law is more than a statute of limitations, which Plaintiffs dispute, would some scrutiny greater than rational basis apply. *See Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 564 (2011). While that suggests intermediate scrutiny, which asks whether the statute is substantially related to an important governmental objective, *Pizza di Joey*, 470 Md. at 347, the CVA even satisfies more rigorous test.

The strict-scrutiny test, sufficient to overcome even a fundamental right, requires that the statute "be suitably, or narrowly, tailored to further a compelling state interest." *Koshko v. Haining*, 398 Md. 404, 438 (2007) (citation omitted). This Court has previously recognized that the State's compelling interest "as *parens patriae* to ensure the well-being of Maryland's children." *Id*.; *see also State v. Hyman*, 98 Md. 596, 613 (1904) ("One of the legitimate and

most important functions of civil government is acknowledged to be that of providing for the welfare of the people by making and enforcing laws to preserve and promote the public health.").

Civil justice plays an important part in the healing process from horrific childhood sexual trauma, as the social science the General Assembly consulted made plain. For example, the State Council on Child Abuse and Neglect testified that "[e]xtensive research" established "profound, long-lasting, and sometimes lifetime-long negative effects on children" with costs borne by both the individual survivors and their families, as well as the State. (E.792–93).

Tort lawsuits also have a widely acknowledged deterrent effect on continued injurious behavior by defendants and others in similar circumstances. *See generally* Jill Wieber Lens, *Tort Law's Deterrent Effect and Procedural Due Process*, 50 Tulsa L. Rev. 115 (2014); Gary T. Schwartz, *Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?*, 42 UCLA L. Rev. 377 (1994). Deterrence further supports the State's compelling interest in enacting the CVA.

Moreover, the CVA advances a fundamental right. Article 19 of the Maryland Declaration of Rights "protects two interrelated rights: (1) a right to a remedy for an injury to one's person or property; [and] (2) a right of access to the courts." *Piselli v. 75th St. Med.*, 371 Md. 188, 205 (2002). This constitutional mandate supplies an additional compelling rationale for the

CVA because the Declaration of Rights, as part of the State's organic law, creates an enforceable mandate the State is obligated to support. *See Ashton v. Brown*, 339 Md. 70, 101 (1995) (no governmental immunity exists for violations of state constitutional rights).

The CVA amply satisfies the additional strict-scrutiny requirement of narrow tailoring. Narrow tailoring is satisfied "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Eanes v. State*, 318 Md. 436, 454 (1990) (citation omitted). Repeated attempts to vindicate the rights of survivors by, at first, smaller extensions of the statute of limitations and, then, larger ones, proved ineffective in achieving the goal of providing civil recourse to survivors of childhood sexual abuse. As CHILD USA testified, more than half of all survivors of child sexual abuse first disclosed the abuse at age 50 or older, with some waiting until age 70 and others never at all. (E.830–31). A study of survivors of abuse as Boy Scouts found that 51 percent disclosed their abuse for the first time after age 50. (E.831).

Thus, the failures of earlier efforts to provide sufficient time to vindicate survivors' right of action support the conclusion that the CVA is a narrowly tailored means to achieve a compelling interest. These various attempts by the legislature exemplify its proper evaluation of an earlier effort "attempting to solve a serious problem" that had not "prove[n] its worth," *Tyler*, 415 Md. at

500, and demanded more comprehensive action to accomplish this compelling legislative objective.

Thus, the facts and the legislature's actions inexorably lead to the conclusion that the CVA effectuates a compelling interest through narrowly drawn means: the abrogation of a statute of limitations, an approach well within the legislature's authority. Thus, the CVA satisfies strict scrutiny.

II. THE 2017 STATUTE REPLACED BY THE CVA WAS NOT A STATUTE OF REPOSE.

RCAW contends that the 2017 law abrogated by the CVA was an immutable statute of repose that renders the CVA unconstitutional. In its formulation, a statute of repose creates a vested property interest, immune to legislative revision. The argument is fundamentally flawed because the 2017 law was not a statute of repose.

A. A Label Does Not Dictate the Meaning of a Statute.

RCAW bases its argument heavily on the words "statute of repose" added to the 2017 law's statement of purpose, even as it retained its original undisputed purpose of establishing a statute of limitations. (E.162-70). As discussed below, this language is not controlling.

1. Contrary to RCAW's argument, the phrase "statute of repose" in the purpose paragraph is not controlling.

RCAW's reliance on the words "statute of repose" in the purpose paragraph is misplaced because neither a title nor a stated purpose unsupported by the statute's operative language dictates the statute's interpretation. To be sure, as RCAW points out, a bill's statement of purpose is "part of the statutory text." RCAW Br. 30 (quoting *Elsberry v. Stanley Martin Cos., LLC*, 482 Md. 159, 187 (2022)). But RCAW goes too far in claiming that a statute's stated purpose is "control[ling]." *Id.* RCAW Br. 30 (citing *Anderson v. United States*, 427 Md. 99, 125 (2012)). Importantly, *Elsberry* denies that a law's stated purpose controls or even merits much weight, but instead serves as just one of many tools available beyond text—including title, amendments, legislative history, and earlier and subsequent litigation—in "ascertaining the intent of the General Assembly." 482 Md. at 187. The "purpose paragraph" merely *describes* "what the bill does." *Id.* The bill's operative provisions are more important in determining what the bill actually accomplishes.

RCAW also misapprehends *Anderson*'s instruction that "the plain language of the statute controls." 427 Md. at 125. *Anderson* does not say that the purpose paragraph (*i.e.*, the three words on which RCAW hangs its argument) controls. Instead, *Anderson* holds that courts must "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. RCAW's simplistic approach disregards *Anderson*'s central holding.

Of course, a holistic understanding of a statute is not just a mandate found in *Anderson*, but fundamental to statutory construction. This Court "do[es] not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone." *State v. Bey*, 452 Md. 255, 266 (2017). Instead, plain-language statutory construction considers the entire "statutory scheme" so that laws are read "to operate together as a consistent and harmonious body of law." *Id.*

The U.S. Supreme Court takes a similar approach to interpreting statutes. In a relevant case where the "applicable limitations period" was described in the statute as a "statute of limitations" in four different places, the Court did not take the description at face value but instead did a deeper dive because such labeling, while "instructive, . . . is not dispositive." *CTS Corp. v. Waldburger*, 573 U.S. 1, 13 (2014).

In its examination of the term, the Court said that limitations periods have a "precise meaning, distinct from 'statute of repose,'" but also recognized that that distinction was not always appreciated, *id.*, much as this Court observed in *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 611 (2013), and *Anderson*, 427 Md. at 117.

Waldburger exemplifies the more holistic approach mandated by *Anderson*, while employing the same definitional standards this Court has adopted to distinguish between limitation and repose. In *Waldburger*, the U.S. Supreme Court analyzed whether a federal statute that applied to any "applicable limitations period" preempted both statutes of limitation and statutes of repose. The Court concluded that repose periods were not preempted because a statute of repose imposes a time bar that "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" *and* forecloses the creation of a cause of action once the repose period expires. 573 U.S. at 8, 16. These distinctive features separated the two different types of statutes.

The U.S. Supreme Court continues to distinguish between statutes of repose and statutes of limitations on similar bases. In *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2452 (2024), the Court based its decision on the well-established fact that statutes of repose measure their time bars "from the date of the last culpable act or omission of the defendant" and that "plaintiff-focused language makes [a statute] an accrual-based statute of limitations."

Consistent with *Waldburger*'s reading of the law before it, this Court applied definitional guideposts in *Anderson*. 427 Md. at 118–19. Definitions provide important limitations because this Court will not "judicially insert

language to impose exceptions, limitations or restrictions not set forth by the legislature." *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 75–76 (2004) (citation omitted).

If, as here, "the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Lockshin v. Semsker*, 412 Md. 257, 275 (2010) (citations omitted). That means this Court will examine the "statutory text in context, considered in light of the whole statute," using legislative history simply to confirm its conclusions. *Blue v. Prince George's Cnty.*, 434 Md. 681, 689 (2013) (citation omitted). Only if statutory text is ambiguous such that it is "plainly susceptible of more than one meaning" will the objectives and purpose of an act inform a court's construction of it, provided that it "avoids an illogical or unreasonable result, or one that is inconsistent with common sense." *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 75 (1986).

If further support were needed that the purpose paragraph's use of "statute of repose" is not dispositive of intent, it is amply supplied by *SVF Riva Annapolis v. Gilroy,* 459 Md. 632, 655 (2018), where this Court held that the caption for the 1991 amendments to the real property statute of repose, which declared the statute to contain exceptions for "asbestos-related claims," did not mean that an exception applicable to ownership and control of the property

was limited to asbestos cases. This Court concluded that the overall text controlled over this limited description of the law's purpose. *Id.* at 653. *SVF Riva* further explained that subsequent legislative enactments, like the CVA here, can provide "'persuasive evidence' of legislative purpose." *Id.* at 648 (citing *Rose v. Fox Pool Corp.*, 335 Md. 351, 360 (1994)). The CVA represents a considered judgment that what was enacted in 2017 merely was a statute of limitations, which did not pose an obstacle to achieving an extension of the limitations period for survivors of childhood sexual abuse.[9]

2. The text utilized in the 2017 law fails to transform a statute of limitations into a statute of repose.

RCAW also seeks refuge in language in the 2017 version of § 5-117(d) that uses the term "[i]n no event" to cut off actions filed against non-perpetrator defendants more than 20 years after the survivor reaches the age of majority. RCAW Br. 39. It asserts that the language indicates an intent to create a statute of repose, yet the argument is unavailing.

The use of "in no event" within a time constraint statute is not a term of art or magic phrase that has some special meaning in this arena. *Anderson*

[9] While RCAW may respond to this argument by saying that the CVA states it abrogates both any statute of limitations and any statute of repose, that statement should not be given much weight. The term "statute of repose" was included in the CVA 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. It cannot be read as a concession on the nature of the 2017 law.

evaluated a statute that was equally insistent that an action "shall be filed" within a designated period from when the injury was committed. Still, this Court deemed § 5-109 to be a statute of limitations, not one of repose. 427 Md. at 111.

RCAW relies upon *Calif. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 505 (2017), because it found a statute with the "in no event" language to be a statute of repose. RCAW Br. 39. However, *Calif. Pub. Employees'* actually supports Plaintiffs' position because it (as with the aforementioned U.S. Supreme Court precedent) notes statutes of limitations "begin to run 'when the cause of action accrues—that is, when the plaintiff can file suit and obtain relief,'" while "statutes of repose begin to run on 'the date of the last culpable act or omission of the defendant.'" *Id.* at 504–05 (quoting *Waldburger*, 573 U.S. at 7–8). The "in no event" language in that case applied to bar a suit after a period of time measured from when a securities offering occurred. *Id.* at 505 (citing 15 U.S.C. § 77m). It thus conformed to the definition of a statute of repose because the timing was tied to the defendant's conduct in making the offering, not the plaintiff's injury or status. Subsection (d) contains no similar bar on actions based on the timing of a defendant's conduct.

Other authority also supports Plaintiffs. In *Edmonds v. Cytology Servs. of Maryland, Inc.,* 111 Md. App. 233, 247 & n.18 (1996), *aff'd sub nom. Rivera v. Edmonds*, 347 Md. 208 (1997), our courts found California's medical-

malpractice statute of limitations "similar to Maryland's" and quoted Calf. Civ. Proc. Code § 340.5 as establishing a limitations period when it stated that "[i]n no event shall the time for commencement of legal action exceed three years unless tolled." Connecting a time limitation to the phrase "in no event" does not create a statute of repose. Rather, this phase can and does appear in statutes of limitations.

RCAW also points to § 3 of the 2017 law, which stated 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," the law's effective date. (E.165, E.170). That bare colloquial use of the term "repose" cannot provide a basis for making this statute of limitations into a statute of repose when the text's operative language does no such thing.

B. The 2017 Law Was Not a Statute of Repose, But a Statute of Limitations.

Dubbing the 2017 law a statute of repose elevates three words (form) over function. As Abraham Lincoln 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)).

Statutory interpretation prioritizes function over form, especially given this Court's duty to presume that the legislature "acted within constitutional

limits so that if any state of facts reasonably can be conceived that would sustain the constitutionality of the statute, the existence of that state of facts as a basis for the passage of the law must be assumed." *Edgewood*, 282 Md. at 427.

Consider the challenge heard in the U.S. Supreme Court to the individual mandate in the Patient Protection and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119 (2010). Before the House of Representatives, a violation of the act's individual mandate was termed a "penalty," rather than a tax. H.R. 3590, 111th Cong. § 5000A (2009). As passed, the act stated that "[i]f an applicable individual fails to meet the requirement of subsection (a) ... there is hereby imposed a penalty." *Fla. ex rel. McCollum v. U.S. Dep't of Health & Hum. Servs.*, 716 F. Supp. 2d 1120, 1134 (N.D. Fla. 2010) (quoting Act § 1501(b)(1)). Congress's studious avoidance of calling it a tax contrasted significantly from taxes Congress imposed in other sections of the same legislation. *Id*. at 1135. Equally importantly, Congress did not say it was utilizing its taxing authority, but instead relied on its Commerce Clause power. *Id*. at 1136; *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) ("Congress's decision to label this exaction a 'penalty' rather than a 'tax' is significant because the Affordable Care Act describes many other exactions it creates as 'taxes.'").

Nonetheless, the Supreme Court upheld the individual mandate as a tax, exercising its obligation to indulge "'every reasonable construction . . . in order to save a statute from unconstitutionality,'" because, even if not the "most natural interpretation of the mandate, . . . it is a 'fairly possible' one." *Id*. at 563 (citations omitted).

The Appellate Court similarly eschewed a label in favor of what a law actually did when it evaluated whether a stormwater remediation fee was a regulatory charge or a tax. In *Shaarei Tfiloh Congregation v. Mayor & City Council of Baltimore*, 237 Md. App. 102, 110 (2018), it concluded that, "despite its name, the Stormwater Fee is a tax because its primary purpose is to raise revenue and because property owners' only obligation under the statute is to pay the charge." In seeking to avoid that ruling, Baltimore City argued, to no avail, that the statutory text denominated the assessment to be a user fee, rather than a tax, and was supported in that argument by an Attorney General opinion. *Id*. at 135.

By applying definitions rather than labels, the *Shaarei Tfiloh* holding found support in this Court's examination of whether a development impact fee for county road construction was a valid regulatory fee or unauthorized tax in *E. Diversified Properties, Inc. v. Montgomery Cnty*., 319 Md. 45 (1990). *Shaarei Tfiloh,* 237 Md. App. at 135–39. In *E. Diversified,* this Court found the "legislative label" unhelpful and proceeded to examine the substantive criteria

for whether a government charge is a fee or tax. 319 Md. at 53. That type of substantive assessment plainly supports reading the 2017 law as a statute of limitations based on the distinct definitions of the time bars this Court has adopted.

1. Limitations and repose have distinct definitional features that support reading the 2017 act as a statute of limitations.

Statutes of repose may be close cousins to statutes of limitations, *Murphy*, 478 Md. at 343 n.5, but these statutory devices are erroneously "often used interchangeably," *Mathews*, 435 Md. at 611, even by courts that should know better. *See Anderson*, 427 Md. at 117 (describing a loose use of "repose" in a prior opinion).

Still, statutes of repose and limitations are distinct—and the distinction makes a critical difference. As already discussed, *Waldburger, Calif. Pub. Employees',* and *Corner Post* relied heavily on definitional differences between the two. In *Anderson*, this Court similarly utilized the distinctive definitions of the two terms in reaching its conclusion that the so-called medical-malpractice statute of repose was actually a statute of limitations. Four essential elements inform the analysis: statutes of repose involve time limits that relate to a defendant's conduct, not a plaintiff's injury, 427 Md. at 117–18; shelter specific groups because of public economic benefits derived from the underlying activity, *id*. at 121; can extinguish a claim before the cause of action accrues,

id. at 119; and do not involve tolling for fraudulent concealment or minority, among other things. *Id*. at 121.

a. Statutes of repose relate to a defendant's actions and are not plaintiff-focused.

Anderson adopted distinctions consistent with those articulated by the U.S. Supreme Court, although relying on Fourth Circuit precedent. *First United Methodist Church v. United States Gypsum Co.*, 882 F.2d 862, 865 (4th Cir. 1989), as *Anderson* quotes it, recognized that a limitation period is a procedural "defense to limit the remedy available from an existing cause of action." *Anderson*, 427 Md. at 120. A statute of repose, on the other hand, is 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). The last sentence, and most decisive factor, of *Anderson* is about whether the time bar can "immunize" a potential defendant "simply through the passage of time following its negligent act or omission." *Id.* at 127. It could not in *Anderson*, and it cannot here either.

A statute of repose's time bar must focus on a potential defendant's actions rather than anything plaintiff-focused. Black's Law Dictionary makes clear how well-established this requirement is by defining a "statute of repose" 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." Black's Law Dictionary, "statute of repose" (12th ed. 2024). Hence, this Court has called statutes of repose "defendant-focused statutes." *Duffy v. CBS Corp.*, 458 Md. 206, 224 (2018). The requirement has been found dispositive in many cases, including *Anderson*, *First United*, *Waldburger*, *Calif. Pub. Employees*, and *Corner Post*.

RCAW nonetheless attempts a conceit that fails. It recognizes *Anderson*'s 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." 427 Md. at 119. RCAW then claims the 2017 law fits the repose standard because its triggering event is not the survivor's injury, but the date the survivor reaches majority. RCAW Br. 42–43.

This argument does not work. The trigger remains the ***survivor's injury***, without which reaching the age of majority triggers nothing. The survivor's right to bring an action exists upon injury and continues to exist

under the 2017 law for 20 years past the age of majority. Tolling provisions such as this are associated with statutes of limitations, not statutes of repose. *Anderson*, 427 Md. at 126.[10] Moreover, it cannot be seriously disputed that the 2017 law's trigger for application is plaintiff-focused, not defendant-focused, an essential distinction separating statutes of limitations from statutes of repose.

b. Statutes of repose are created in anticipation of economic benefits to the public.

Statutes of repose also consider public economic interests to establish a time "after which liability no longer exists." *Id.* (citing *First United*, 882 F.2d at 865). They do so to encourage desirable economic behavior that benefits the state and its populace, such as innovation in real-property improvements. *Cf. 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").

[10] RCAW also claims support from an Illinois time bar, that was subsequently repealed and ran from the plaintiff's age of majority, because it was a statute of repose. RCAW Br. 43. Yet, under Illinois law, child sexual abuse claims that arose before the statute of repose was repealed can often be tolled for fraudulent concealment. *Wisniewski v. Diocese of Belleville*, 406 Ill. App. 3d 1119, 1151 (Ill. 2011). As already established, that status is inconsistent with Maryland law and thus inapposite. *See Anderson*, 427 Md. at 126. Moreover, if RCAW is endorsing the way Illinois handles child sexual abuse claims, it would be extremely damaging to their position in this case, where Plaintiffs also allege fraudulent concealment.

Maryland's only undisputed statute of repose, CJP § 5-108, accomplishes that objective by limiting claims against property owners, construction companies, engineers, and architects for injuries sustained because of negligent building design and construction. It encourages innovative improvements to real property by cutting off causes of action 20 years after the improvement's completion. CJP § 5-108. The Michigan Supreme Court helpfully explained that repose-styled time bars in the construction industry exist to

> encourage experimentation with new designs and materials. Innovations are usually accompanied by some unavoidable risk. Design creativity might be stifled if architects and engineers labored under the fear that every untried configuration might have unsuspected flaws that could lead to liability decades later.

O'Brien v. Hazelet & Erdal, 299 N.W.2d 336, 342 (Mich. 1980). To justify repose on this basis, this Court has held that it exists to protect defendants from claims "that did not become manifest until years" later. *Hagerstown Elderly Assocs. L.P. v. Hagerstown Elderly Bldg. Assocs. LP*, 368 Md. 351, 362 (2002).

No reason exists to believe child sexual abuse is in the public's economic best interests. In addition, there is no delayed manifestation of injury resulting from conduct the State wants to encourage. Treating the old law as a statute of repose would only encourage the contemptible behavior of complicity in child sexual abuse.

Although RCAW argues that "many" potential defendants affected by the 2017 law are non-profit organizations, RCAW Br. 42, the law's time bar is not so limited. It covers every non-perpetrator who facilitated child sexual abuse—intentionally or negligently—regardless of whether they are for-profit corporations, non-profit organizations, or individuals. There is no conceivable economic advantage for providing widespread protection to enablers of child sexual abuse. Nor, as the AG Report makes plain, was the staggering scope of the abuse and the Church's complicity leavened by its non-profit status. (E.341, E.343).

c. Statutes of repose can eliminate claims that have not accrued.

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. That means that it must be capable of "foreclos[ing] a remedy before an injury has even occurred and before any action could have been brought." *Mathews*, 435 Md. at 611–12. The 2017 law can never do that, as its time bars only apply after injury.

Streeter v. SSOE Sys., 732 F. Supp. 2d 569 (D. Md. 2010), explained that a time limit qualifies as a statute of limitations when "it is invoked 'after an injury has already occurred and a claim accrued and sets a limit on how long a plaintiff has to seek a legal remedy for that claim.'" *Id.* at 577 (citing *First*

United, 882 F.2d at 865 and quoted in *Anderson,* 427 Md. at 121). *Anderson* approvingly quoted *Streeter* for stating:

> the 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.

Id. (quoted in *Anderson*, 427 Md. at 122). *Streeter*'s (and *Anderson*'s) use of these definitional guideposts consistent with Black's definition, are the same ones the U.S. Supreme Court relied upon in *Waldburger*, *Calif. Pub. Employees'*, and *Corner Post*. As with § 5-109 in *Anderson*, in the 2017 law, "without the plaintiff's injury (the cause of action), the limitations period would not commence to run." *Anderson*, 427 Md. at 126. This provides further indicia that the 2017 law was a statute of limitations.

d. Statutes of repose usually cannot be tolled.

Anderson recognized that "tolling applies typically to statutes of limitations, rather than statutes of repose." *Id*. at 123. It also held that the medical malpractice act was a statute of limitations because the "General Assembly was free to choose a different statutory scheme, one that did not run the limitations period from an injury or toll the period for minority or otherwise, but it chose not to do so," making the enactment a statute of limitations. *Id*. at 125. *Anderson* went so far as to hold that 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. *Id*.

The operative language in the 2017 law tolls the time for filing suit for 20 years from majority after the sexual abuse has taken place. CJP § 5–117(d) (2017). The minority tolling provision is incompatible with a statute of repose.

e. RCAW's arguments that definitional factors are mere suggestions are unavailing.

In response to the clarity that these definitional factors provide, RCAW clings to *dicta* from *Anderson*: that in light of overlapping features between limitations and repose, "[t]here is, apparently, no hard and fast rule to use as a guide." 427 Md. at 123, cited in RCAW Br. 28. This quote, however, is used in *Anderson* to point out that some states allow statutes of repose to be tolled, so there is no hard and fast rule about tolling that applies *across the country*. 427 Md. at 123. *Anderson* never suggests that whether a time bar constitutes repose or limitations is a coin flip or unknowable. Rather, a holistic review takes place, as guided by the factors *Anderson* found decisive. Here, that holistic view and all of the *Anderson* factors support the conclusion that the 2017 law is a statute of limitations.

2. Specifying defendants does not change the principal feature of the 2017 act into a statute of repose.

RCAW's alternative argument for reading the 2017 law as a statute of repose fares no better. It claims the 2017 law provides time limitations to a

specific group of defendants—non-perpetrators—rendering the law a statute of repose. RCAW Br. 40. But singling out a specific group of defendants That analysis is wrong because it is plainly an insufficient does not create a statute of repose.

Consider how it did not change the result in *Anderson*. The medical-malpractice law at issue there applied only to health-care providers, 427 Md. at 108, yet that did not make it a statute of repose. Under RCAW's theory, that should have been sufficient. It was not.

The absurdity of relying on a defendant-specific metric is further demonstrated by the following hypothetical. If the legislature enacted a new law that created a 5-year time limit on injuries suffered as a result of an auto collision where the responsible driver was drunk, but a 3-year time limit if the driver was negligent but not intoxicated, RCAW's novel definition would treat the 3-year limit as a statute of repose because it applies to non-drunk drivers. Yet, plainly, as nothing more than a policy choice of different time limits based on degrees of culpability and not laudable behavior that the State seeks to encourage, the new law would still be a statute of limitations, not a statute of repose.

3. The 2017 act's legislative history does not transform this statute of limitations into a statute of repose.

The operative text of the 2017 act is unambiguous and thus requires no further explication to construe. It provides a 20-year extension of the statute of limitations, measured from the survivor's age of majority, in subsection (b) and then repeats the identical 20-year limitation, measured in the exact same manner, in subsection (d).

Nevertheless, this Court has found it useful to consult legislative history as a confirmatory tool or "check" on the conclusions drawn by a statute's plain text. *Elsberry*, 482 Md. at 190. That history confirms that no statute of repose was intended. The series of efforts by the General Assembly described by RCAW over more than two decades demonstrates legislative efforts to find an appropriate remedy to child sexual abuse that became more necessary as years passed.

Of particular relevance, in the 2017 legislative session, H.B. 642 and S.B. 505 were promoted continuously as benefiting survivors of childhood sexual abuse by expanding their statute of limitations. As RCAW recognizes, the principal sponsor of the 2017 act, Delegate C.T. Wilson, worked with the Church to achieve his goal of a 20-year extension of the statute of limitations by agreeing to the Church's demand for a heightened standard of proof for claims against non-perpetrators. RCAW Br. 36; *see also* H. Jud. Comm.

Hearing, Mar. 15, 2017, at 39:49-40:01; 36:441-38:09 (stating that the adoption of the gross negligence standard was a "very fair compromise" in exchange for allowing survivors "to have their time in court while still being fair to institutions.").[11]

Those two elements—an extended limitations period and a gross-negligence standard—constitute the bargain that resulted in the sponsor's statement that he was "grateful that the Church . . . did step up" and that, as part of the agreement, he would not seek to "improve" the bill. RCAW Br. 15 (citing H. Jud. Comm. Hearing, Mar. 15, 2017, at 36:46-37:02). Delegate Wilson further explained that the extension and "rais[ing] the bar" for damages were the "main changes that this bill does." H. Jud. Comm. Hearing, Mar. 15, 2017, at 36:27-36:39, 39:57-40:02, and 36:39-36:43.

Despite the extensive testimony given and hearings held, there was no discussion or debate on something as far-reaching, and contrary to everything else discussed, as a "statute of repose." That absence of discussion contrasts with the legislative history surrounding another legislative enactment involving a statute of repose—namely, the creation of an asbestos exception to § 5-108.

[11] Available at https://tinyurl.com/34knnkdt.

During the 1990 and 1991 legislative sessions, the General Assembly considered and ultimately succeeded in amending CJP § 5-108 to allow personal injury lawsuits for asbestos-related injuries, even if they had expired under the existing statute of repose. The legislative record reflects that, while the asbestos amendment was being scrutinized, considerable discussion took place about the statute of repose and its impact. The debate yielded letters containing substantive discussions of the import of the change from the Governor's office (E.838–39), Attorney General (E.840–850), and the Department of Fiscal Services. (E.853). The Department of Legislative Reference also provided a detailed 11-page letter on how a statute of repose works. (E.854–65). No comparable discussion or explanation accompanied the purported statute of repose provision inserted into H.B. 642 and S.B. 505 at the eleventh hour.

Due to its absence, RCAW relies largely on numerous times where different documents mechanically refer to the 2017 act as including a statute of repose. RCAW Br. 12–15, 36–38.[12] Not only do these mere mentions lack

[12] RCAW also cites seemingly equivocating letters about the constitutionality of extensions of the statute of limitations from the Attorney General. RCAW Br. 16, 17, 39. However, these letters have no more authority than an opinion letter from any other lawyer, *Pub. Serv. Comm'n of Md. v. Wilson,* 389 Md. 27, 57 n.18 (2005), and "no significance of its own." *State Ethics Comm'n v. Evans,* 382 Md. 370, 384 n.4 (2004).

substance, but it is clear that they only parrot language from the purpose paragraph and thus cannot bolster RCAW's argument.

With one exception, RCAW 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" was discussed in relation to the impact of a statute of repose. RCAW Br. 41. 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 an unadorned typewritten page "found" in the legislative files, "Discussion of certain amendments in SB0505/818470/1." (E.248); *see* RCAW Br. 38. Unlike all other pieces of written testimony in the bill files, this document is not directed to anyone, identifies no author, is undated, has no letterhead, and does not state it is written testimony. It is unclear which legislators, if any, read or even saw this document. Among all other legislative materials relied upon by RCAW, this document alone asserts that the proposed "statute of repose" will create "vested rights" and preclude certain claims.

Because its provenance is unknown, the document 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). Moreover, the examples RCAW cites of similar documents being considered do not apply here. In *Warfield v. State*, 315 Md. 474, 497 (1989), this Court consulted a

"handwritten note, undated and unidentified" to determine whether criminal intent was an element of a crime. Holding that the requirement is "usually implied" in a statutory offense and that an intent element was consistent with the common law, this Court found the legislative note confirmed the Court's other analytical tools, rather than supplied an answer by itself. *Id.* at 498. Significantly, no major substantive change had occurred during its legislative journey. *Id.* at 497; *see also Herd v. State*, 125 Md. App. 77, 89 (1999) (describing *Warfield*). This mysterious document cannot bear the weight RCAW assigns it.

As to the 2017 act, the statute of repose language was a late addition on the Senate side without involvement of the principal sponsor. These stealthy additions to the bill were characterized as providing nothing of substance but mere "technical" amendments without anyone articulating the phrase "statute of repose" or "vested rights," or describing the legislation as anything but a statute of limitations. (*See* E.223, E.226); *see also* H. Floor Action (Mar. 16, 2017), at 57:29–58:41;[13] S. Floor Hearing, Mar. 14, 2017, at 15:23–17:04,[14] which, by definition, does not change a bill's substance.

[13] Available at https://tinyurl.com/mu5bzs62.

[14] Available at https://tinyurl.com/mrxwmsty.

The secretive way that the language relied upon by RCAW was added to the 2017 bill is further exemplified by Delegate Wilson's remarks when he introduced new legislation in 2019. The 2017 act, he told the House, was designed "to get these victims an opportunity to come to court." House Floor Action, Mar. 16, 2019, at 2:02:05–2:03:08.[15] He added that "when we argued this on the Floor, nobody here heard anything about a 'statute of repose.'" *Id.* at 2:02:05-2:03:08. He further stated that "[i]t was never argued in committee, it was never argued on the floor, and at no time did anybody here know about a statute of repose." *Id.* at 2:03:46–2:05:06.

Legislative history, then, does not change the conclusion that the 2017 act was a statute of limitations.

III. STATUTES OF LIMITATIONS DO NOT CREATE VESTED RIGHTS.

As an alternative to its statute of repose argument, RCAW claims that even if the 2017 law is a statute of limitations, it created vested rights that the legislature may not revise, seeking refuge in what it characterizes as cases that "strongly implied" the existence of a vested right. RCAW Br. 51–52. This Court has not just implied but explicitly held that statutes of limitations do not create permanent, vested property rights and can be altered retroactively.

[15] Available at https://tinyurl.com/zm8jdnwy.

A statute of limitations represents policy judgment committed to the legislature's discretion, *Ceccone*, 454 Md. at 691, "about the reasonable time needed to institute suit." *Maskell*, 342 Md. at 689. A statute of limitations promotes judicial economy and fairness, but does not create any substantive rights in a defendant to be free from liability. *Anderson*, 427 Md. at 118 (citing *First United*, 882 F.2d at 865).

Because no substantive right is established, limitations periods cannot create vested rights and are "not immutable" but subject to extension and shortening, even by "both rule and case law." *Murphy*, 478 Md. at 344. They are subject to tolling through a "discovery rule" and "judicial tolling." *Murphy*, 478 Md. at 344–45. The judiciary can even issue an administrative tolling order that considers society-wide impediments to court access, as occurred during the COVID pandemic. *Id*. at 340. In addition, limitations periods can be judicially tolled to accomplish the legislature's intent to "prevent perversion of legislative policy and purpose." *Id*. at 345. In still other instances, parties can waive or agree to toll or lengthen the limitations period. *Id*.

Because limitations periods are subject to adjustment consistent with the legislative purpose and because extensions must reflect legislative policy choices, it naturally follows that the legislature retains authority to adjust the limitations periods it created. After all, the Maryland Constitution vests the General Assembly with plenary power to legislate. *Kenneweg v. Allegany Cnty.*

Comm'rs, 102 Md. 119, 62 A. 249, 250 (1905). The legislature plainly may revisit its earlier choices when they prove unsound or unwise. *See Tyler*, 415 Md. at 500; *Adler*, 291 Md. at 46.

Additional support for their adjustability without offending due process comes from the designation of statutes of limitations as procedural and not substantive. *Roe*, 193 Md. App. at 577–78; *Doughty v. Prettyman*, 219 Md. 83, 88 (1959) ("Included in the procedural matters governed by the law of this state is the statute of limitations."). That procedural and remedial status provides a separate and additional justification for the legislature's authority to change them retroactively. *Langston*, 359 Md. at 423; *State Comm'n on Hum. Rels. v. Amecom Div. of Litton Sys.*, Inc., 278 Md. 120, 124 (1976).

An extended statute of limitations prolongs the time in which a plaintiff with an existing right of action may seek a remedy for that injury. Since the plaintiff retains the right of action, the legislature has the authority "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," because the underlying right remains cognizable by law. *Allen*, 193 Md. at 364; *see also Janda,* 237 Md. at 168.

For these reasons, statutes of limitation do not create or impair vested rights. *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 561–62 (2011) (holding that statutes of limitations "do not impair vested rights, rather

they affect remedies"); *Rawlings v. Rawlings*, 362 Md. 535, 560 n.21 (2001) (holding 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"); *Hill*, 304 Md. at 702–03; *Berean Bible Chapel, Inc. v. Ponzillo*, 28 Md. App. 596, 601 (1975) (holding that a "statute of limitations confers no vested rights");. This conclusion 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).

That the CVA is also a remedial statute only enhances the legitimacy with which this Court should regard its extension of the limitations period. Remedial statutes "provide a remedy, or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries." *Langston*, 359 Md. at 408. The CVA is self-evidently designed to correct existing law that ended the availability of a remedy, in the legislature's judgment, prematurely. Remedial statutes are valid if the legislature had the power to enact the initial legislation to which it seeks to apply curative legislation. *Berean Bible Chapel,* 28 Md. App. at 600. Because the General Assembly undisputedly can establish a statute of limitations as part of the remedy for a legal violation, it is equally authorized to alter the statute of limitations. 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, 559 n.20 (citation omitted). In eliminating the statute of limitations applicable to claims of childhood sexual abuse, the CVA did just that for the underlying right to be free from tortious sexual contact.

RCAW's citations cannot change these clear holdings. It cites *Doe v. Roe*, 419 Md. 687, 707 n.18 (2011), to claim a vested right to be free from suit does not exist until the statute of limitations expires, RCAW Br. 51, but that statement does not change the fundamental principle that extensions of statutes of limitations may be given retroactive effect, particularly, as here, when a lesser "statute of limitations may effectuate a unique injustice in cases of child sexual abuse." 419 Md. at 694. The straw RCAW attempts to grasp in a footnote allows for unique circumstances, not present here, where a substantive statute creates a cause of action that did not previously exist and incorporates a limitations period within it. *Id.* at 706–07.

RCAW also inaptly relies on *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604 (2002) (cited in RCAW Br. 51). *Dua* involved a challenge to legislation that denied plaintiffs a vested cause of action to recover excessive fees paid before the challenged law's enactment. *Id.* at 610–611, 618, 632. It did not involve a statute of limitations or an unaccrued cause of action. It plainly does not

support RCAW's claim about statutes of limitations providing vested property rights.

The law is clear that retroactive application of the CVA impairs no vested rights derived from a statute of limitations and fits fully within legislative authority.

IV. THE CVA IS VALID EVEN IF THE 2017 ACT WERE CONSIDERED A STATUTE OF REPOSE.

A. Maryland Has Previously Abrogated Immunities and Statutes of Repose.

The AOW's position that statutes of repose are immutable and can never be revised is also fundamentally flawed as inconsistent with Maryland law. Even if the 2017 version of § 5-117(d) were deemed a statute of repose, legislative revision is permitted. For example, this Court has rejected the contention that applying a law that abolishes immunity from suit retrospectively to causes of action that arose before its enactment necessarily impairs vested rights. In *Kim,* 376 Md. at 299, this Court held that a law abolishing parent-child immunity permissibly applied retroactively to a motor vehicle accident that occurred before the law's enactment. Because a statute of repose is a comparable immunity from suit,[16] the CVA validly applies to retroactively abrogate the "statute of repose" in the 2017 law.

[16] *See Rose v. Fox Pool Corp.*, 335 Md. 351, 370 (1994); *Carven v. Hickman*, 135

Kim arose from a husband's insurance claim made on his and his son's behalf arising out of negligent vehicle operation by his wife and causing injury to the child. A 2001 law abrogated parent-child immunity. *Kim* suggested that an immunity may 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 law, which has been the subject of continued legislative debate resulting in its abrogation in 2023.

The legislature also previously created a retroactive exception to Maryland's only accepted statute of repose, CJP § 5-108, to permit recovery for asbestos exposure. In 1970, the General Assembly created the statute of repose for improvements to real property.[17] In 1991, the statute was amended to add an asbestos exception.[18] Section 5-108(d)(2) provides that the time limitations

---

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").

[17] *See* 1970 Md. Laws. Ch. 666 (S.B. 241). (E.867).

[18] *See* 1991 Md. Laws. Ch. 271 (S.B. 535). (E.869).

applicable to property owners (20 years) and architects, builders, and engineers (10 years) do not apply in certain actions arising from exposure to asbestos. CJP § 5-108(d)(1), (d)(2)(ii)-(iv).

The asbestos language indicates the changes apply retroactively to revive asbestos-related claims that had been extinguished because of expiration of the 10-year or 20-year repose periods. 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 claims for buildings put into use 10 or 20 years prior to the action being instituted, the new exception applied to buildings made available ***38 years prior***, thereby reviving previously barred property damage claims. And in § 5-108(d)(2)(iv)(5), the General Assembly set a 2-year deadline to file property damage claims under the asbestos exception. The legislation recognized the long latency period for asbestos-related disease and the need to provide compensation to those injured. *See Duffy v. CBS Corp.*, 458 Md. 206, 230 (2018).

Anticipating this argument, RCAW cites the Appellate Court's decision in *Duffy v. CBS Corp.*, 232 Md. App. 602 (2017). RCAW Br. 45, 48, 49. Though the court declared the asbestos exception unconstitutional, this Court reversed, holding that the 1991 exception was not implicated by the facts of the case. 458 Md. at 236. This Court's reversal rendered the Appellate Court's

decision relied upon by RCAW a nullity, as though it "had never been rendered." *Balducci v. Eberly*, 304 Md. 664, 671 n.8 (1985).

Notably, the Attorney General found no constitutional infirmity in the asbestos amendment, stating that a "statute of repose may be altered retroactively without violating due process." (E.852). 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 (citation omitted). This Court noted that "legislative history [made it] 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 CVA deserves no lesser treatment.

B. The Cases RCAW Relies Upon For Its Vested Rights Argument Are Inapplicable or Limited.

To support its argument, RCAW relies on cases like *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57 (1972), which says "when a law retroactively revives a cause of action that was otherwise barred, the law violates due process." RCAW Br. 46 *Smith* is inapposite. It concerned the

retroactive application of a law lengthening the statute of limitations for a wrongful death claim, which is a creature of statute. The "statute of limitations" was not an ordinary time bar but rather a condition precedent to filing suit. *Smith*, 266 Md. at 55–56; *see also 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.").

Although a statute of limitations is procedural, a condition precedent is substantive. If the condition precedent cannot be met, then the plaintiff never had a cause of action in the first place. *Smith*, 266 Md. at 55–56. In other words, an "extension" would create liability for past acts where none existed. Statutes of limitations are different in that they affect only the remedy, not the underlying cause of action and are 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. CJP 5-117 created no cause of action. As no condition precedent is at issue, *Smith* does not apply.

RCAW also inaptly relies on *Dua*. *Dua,* however, concerns a factually distinct circumstance, where legislative action deprived the *plaintiffs* of a cause of action, rather than a defense. *Kim,* however, subsequently 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 makes eminent good sense because, as discussed earlier, 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). *See* pgs. 17–18 *supra*. It is created at the time of injury. On the other hand, when a defendant injures a person through misconduct, it has no reliance interest or expectancy that it will not be subjected to liability that can be deemed a property right, sold, or assigned. RCAW's invocation of *Dua* wrongly conflates a plaintiff's vested cause of action with a defendant's unaccrued defense.

Moreover, *Dua* further indicates that there is no total bar on impairment of vested rights. 370 Md. at 633. The longstanding observation of the asbestos exception to the real-property improvement statute of repose demonstrates that.

Finally, citing *Dua*, RCAW asserts that a rational basis may be insufficient to overcome a vested right, if *arguendo*, one exists. *See* 370 Md. at 623 (holding the Constitution precludes abrogating vested rights "[n]o matter how 'rational' under the circumstances"). Here, as argued above, the CVA meets a more heightened level of scrutiny, even the requirements of strict scrutiny, so that much more than a rational basis exists and justifies the law.

Still, Plaintiffs submit that no vested right and no statute of repose are in play. The CVA is constitutional.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the circuit court and hold that the CVA is constitutional.

Respectfully submitted,

/s/ Jonathan Schochor
Jonathan Schochor (#7406010179)
Kerry D. Staton (#8011010366)
Joshua F. Kahn (#1012150095)
SCHOCHOR, STATON,
GOLDBERG AND CARDEA, P.A.
The Paulton
1211 St. Paul Street
Baltimore, Maryland 21202
Telephone: 410-234-1000
Facsimile: 410-234-1010
jschochor@sfspa.com
kstaton@sfspa.com
jkahn@sfspa.com

/s/ Andrew S. Janet
Andrew S. Janet (#1812110188)
Tara L. Eberly (#0406150162)
Adina S. Katz (#1606210140)
JANET, JANET & SUGGS, LLC
Executive Centre at Hooks Lane
4 Reservoir Circle, Suite 200
Baltimore, Maryland 21208
Telephone: 410-653-3200
Facsimile: 410-653-9030
asjanet@jjsjustice.com
teberly@jjsjustice.com
akatz@jjsjustice.com

/s/ Robert S. Peck
Robert S. Peck (*pro hac vice*)
CENTER FOR CONSTITUTIONAL
LITIGATION, P.C.
1901 Connecticut Avenue, NW
Suite 1101
Washington, DC 20009
Telephone: 202-944-2874
Robert.Peck@cclfirm.com

Counsel for Respondents John Doe, Richard, Roe, and Mark Smith on behalf of all others similarly situated

CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112

1. This brief contains 12,692 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief also complies with the requirements stated in Rule 8-112.

/s/Andrew S. Janet
Andrew S. Janet

TEXT OF RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

Maryland Declaration of Rights, Article 19

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.

Courts & Judicial Proceedings Article § 5-108

(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 or personal 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.

(c) Upon accrual of a cause of action referred to in subsections (a) and (b) of this section, an action shall be filed within 3 years.

(d)

(1) In this subsection, "supplier" means any individual or entity whose principal business is the supply, distribution, installation, sale, or resale of any product that causes asbestos-related disease.

(2) This section does not apply if:

(i) The defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred;

(ii) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a

product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;

(iii) In other causes of action for damages for personal injury or death caused by asbestos or a product that contains asbestos, the defendant is a manufacturer of a product that contains asbestos; or

(iv) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property:

1. The defendant is a manufacturer of a product that contains asbestos;

2. The damages to an improvement to real property are caused by asbestos or a product that contains asbestos;

3. The improvement first became available for its intended use after July 1, 1953;

4. The improvement:

A. Is owned by a governmental entity and used for a public purpose; or

B. Is a public or private institution of elementary, secondary, or higher education; and

5. The complaint is filed by July 1, 1993.

(e) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Courts & Judicial Proceedings Article § 5-109

(a) An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider, as defined in § 3-2A-01 of this article, shall be filed within the earlier of:

(1) Five years of the time the injury was committed; or

(2) Three years of the date the injury was discovered.

(b) Except as provided in subsection (c) of this section, if the claimant was under the age of 11 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 11 years.

(c)

(1) The provisions of subsection (b) of this section may not be applied to an action for damages for an injury:

(i) To the reproductive system of the claimant; or

(ii) Caused by a foreign object negligently left in the claimant's body.

(2) In an action for damages for an injury described in this subsection, if the claimant was under the age of 16 years at the time the injury was committed, the time limitations prescribed in subsection (a) of this section shall commence when the claimant reaches the age of 16 years.

(d) For the purposes of this section, the filing of a claim with the Health Care Alternative Dispute Resolution Office in accordance with § 3-2A-04 of this article shall be deemed the filing of an action.

(e) The provisions of § 5-201 of this title that relate to a cause of action of a minor may not be construed as limiting the application of subsection (b) or (c) of this section.

(f) Nothing contained in this section may be construed as limiting the application of the provisions of:

(1) § 5-201 of this title that relate to a cause of action of a mental incompetent; or

(2) § 5-203 of this title.

CERTIFICATE OF SERVICE

I hereby certify that, on August 7, 2024, the foregoing brief was filed and served electronically via MDEC on all counsel of record.

/s/Andrew S. Janet
Andrew S. Janet