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IN THE SUPREME COURT OF MARYLAND

Misc. No. 2, September Term, 2024
SCM-MISC-0002-2024

THE KEY SCHOOL, INCORPORATED, et al.
Appellants
v.

VALERIE BUNKER,
Appellee

CERTIFIED QUESTION OF LAW from the
United States District Court for the District of Maryland,
Civil Case Number 1:23-cv-02662-MJM
(The Honorable Matthew J. Maddox, Judge)

Misc. No. 10, September Term, 2024
SCM-REG-0010-2024

BOARD OF EDUCATION OF HARFORD COUNTY
Appellant
v.
JOHN DOE,
Appellee

ON PETITION FOR WRIT OF CERTIORARI from the
Circuit Court for Harford County,
Civil Case Number C-12-CV-23-000767
(The Honorable Alex M. Allman, Judge)

BRIEF OF SURVIVORS NETWORK OF THOSE ABUSED BY PRIESTS AND CERTAIN CURRENT AND FORMER MEMBERS OF THE MARYLAND GENERAL ASSEMBLY
AS *AMICUS CURIAE* SUPPORTING APPELLEES

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This brief is submitted with the written consent of the counsel of record for Appellants and Appellees under Rule 8-511(a)(1).

*The views expressed in this brief do not represent those of the University of Maryland Carey School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

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STATEMENT OF THE CASE

The Survivors Network of those Abused by Priests National Office and Maryland Chapter ("SNAP"); Maryland State Senators William C. Smith and William G. Folden; Maryland State Delegates C.T. Wilson, Luke Clippinger, Vanessa E. Atterbeary, David Moon; and former State Senator Ron Young (collectively, "SNAP-Legislators Amici") incorporate by reference the Statement of the Case of Appellee Valerie Bunker in Case Misc. 2 and Appellee John Doe in Case 10 (collectively, "Consolidated Appellees").

QUESTION PRESENTED

Do provisions of the Child Victims Act of 2023, codified at Maryland Courts & Judicial Proceedings Article §5-117, that apply retroactively to certain civil claims for child sexual abuse for which the period of limitations applicable before October 1, 2023, had expired, clearly and unequivocally violate Article 24 of the Maryland Declaration of Rights or Article III, Section 40 of the Maryland Constitution?

STATEMENT OF FACTS

SNAP-Legislators Amici incorporate by reference the Statement of Facts of the Consolidated Appellees.

INTERESTS OF AMICI

The Survivors Network of Those Abused by Priests ("SNAP") is an independent, peer network of survivors of institutional sexual abuse and their supporters. Formed to respond to growing evidence of a sexual abuse scandal in the Catholic Church, SNAP expanded to support all survivors of child sexual abuse. SNAP was founded in the United

States, boasts member organizations in several countries, and has statewide chapters throughout the U.S. The Maryland Chapter was founded by survivor David Lorenz and provides peer support, community education, and policy advocacy.

SNAP's mission centers on four goals. First, SNAP helps heal wounded survivors, providing support for survivors, connecting them to each other and to resources that enable them to thrive. Members share their stories and empower each other to confront the truth and find healthy ways to recover. Second, SNAP seeks to protect children and others vulnerable to abuse by advocating for laws and policies designed to prevent abuse, expose predators, and provide opportunities for survivors to bring claims of abuse in court. This includes advocating for reform of laws that impose a statute of limitations or otherwise limit criminal prosecution and civil responsibility for abusers and those who shielded them. Third, SNAP is dedicated to educating the community, including individuals, families, medical providers, and policy makers, about the impact of abuse. By understanding the complexities of the harm and the pathways to recovery, all members of the community can support survivors' healing. Fourth, SNAP is committed to exposing the truth about the role of both religious and non-religious institutions in perpetuating the harms of sexual abuse against children and other vulnerable people. Effective policy change and comprehensive healing can only come when the vagaries of the systemic protection of predators is subject to critical examination.

SNAP has advocated for law change in Maryland for more than two decades, including seeking the expansion of the statute of limitations for civil claims of child

sexual abuse in 2017 and the elimination of the statute of limitations in 2023. Therefore, SNAP has a deep interest in the legal issues presented to the Court in this case and a profound basis on which to support the Appellees, survivors of child sexual abuse.

Senators Smith and Folden; Delegates Wilson, Clippinger, Atterbeary, and Moon; and former Senator Young are current or former members of the Maryland General Assembly. With the exception of Delegate Clippinger, each was a sponsor of the 2017 legislation (Senate Bill 505/House Bill 642) that amended Maryland Courts & Judicial Proceedings Article, §5-117. Senator Smith and Delegates Wilson, Clippinger, and Moon were sponsors of the Child Victims Act of 2023 (Senate Bill 686/House Bill 1); Senator Folden and Delegate Atterbeary voted in favor of the legislation.[1] Senator Smith chaired the Senate Judicial Proceedings Committee and Delegate Clippinger chaired the House Judiciary Committee; those Committees heard the Child Victims Act. Each of the legislators has an interest in making sure that legislation they sponsored and voted for is interpreted and applied as they intended. The legislators are keenly interested in full implementation of the Child Victims Act of 2023, particularly including the retroactivity provisions that apply to claims that had been time-barred by previous limitations periods.

This brief is filed on behalf of SNAP and the identified legislators, collectively referred to as "SNAP-Legislators Amici".[2]

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[1] Young retired from the Senate prior to the start of the 2023 session.
[2] No person other than Amici and their attorney made a monetary or other contribution to the preparation or submission of the brief.

STANDARD OF REVIEW

Questions on the interpretation and constitutionality of statutes are reviewed *de novo*. *Spiegel v. Board of Education of Howard County*, 480 Md. 631, 639 (2023); *Mayor & City Council of Ocean City v. Commissioners of Worcester County*, 475 Md. 306, 311 (2021).

INTRODUCTION

This case presents the question of whether in 2017 the Maryland General Assembly intended to create a permanent, constitutionally protected right for organizations responsible for child sexual abuse to be free from lawsuits filed by certain survivors of that abuse. Thus, the case probes whether the 2017 Maryland General Assembly intended to permanently extinguish the rights of certain survivors of child sexual abuse to file lawsuits against organizations responsible for the abuse. There is a deeper aspect to the question presented that this Court should consider and that has to do with the elimination of legislative power. With that filter, the question changes: Did the General Assembly in 2017 clearly and unequivocally intend to deprive themselves of the power to allow survivors of child sexual abuse to file claims previously time-barred? Did the General Assembly give away this power for the purpose of providing organizations responsible for child sexual abuse permanent immunity from certain claims? Legislative language, history, and context lead to the conclusion that the General Assembly did not do so.

The General Assembly did not intend to eliminate their power to allow the filing of certain time-barred claims for child sexual abuse. It is clear and unequivocal that in 2023, the Maryland General Assembly used that power to give all living survivors of child sexual abuse the opportunity to file a lawsuit against an organization responsible for the abuse, regardless of when the sexual violence occurred. In the Child Victims Act of 2023, the General Assembly explicitly provides that opportunity with retroactive effect, permitting the filing of claims that had been barred due to the passage of time. *See* 2023 Md. Laws, ch. 5 and 6, §§2, 3 (Senate Bill 686; House Bill 1 (2023)). This legislation, deeply considered and with significant policy bases, should survive challenge in this Court, much as the Consolidated Appellees, SNAP members, and many others have survived the horrific harm forced upon them as children.

ARGUMENT

I. The principle that legislation passed by the General Assembly is presumed to be constitutional must guide this Court's analysis.

Legislation passed by the Maryland General Assembly is presumed to be valid. There is a presumption that legislation is constitutional and should take effect as intended by the legislature. This is not a simple matter of who holds the burden of proof in a challenge to the constitutionality of a statute; rather, this is a core principle in our system of government. The Maryland General Assembly holds plenary legislative power derived from the 10th Amendment to the United States Constitution and Article 3 of the Maryland Declaration of Rights. Separation of powers, a fundamental tenet in our federal and state democracy, undergirds that the judicial branch should only declare a statute

unconstitutional in the most extraordinary circumstances, when there is "a clear and unequivocal breach of the Constitution." *Anderson v. Baker*, 23 Md. 531, 628 (1865) (quoted most recently by this Court in *Mahai v. State*, 474 Md. 648, 661-62 (2021)).

The parties in this case will no doubt set out this axiom, replete with citations to this Court's innumerable opinions that reiterate the point made quite clearly in *Anderson v. Baker*,[3] and then move on to the heart of the question presented, the complex issues surrounding the 2017 and 2023 statutes of concern here. Lawyers, and likely jurists, often read these foundational concepts in an opinion or brief, nodding along, desirous of getting to the heart of the "real" legal question presented. The SNAP-Legislators Amici earnestly implore this Court to do more, to carry this imperative through the analysis in this case, to remember the reason why this strong presumption exists.

II. The intent of the 2023 General Assembly was to allow filing of civil claims of child sexual abuse that had been barred by any periods of limitation prior to October 1, 2023.

The Child Victims Act of 2023 could not be more clear or unequivocal that a survivor of child sexual abuse may file a civil action to recover damages caused by that abuse at any time. Md. Cts. & Jud. Proc. §5-117(b) ("an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor

[3] *See, e.g., Merchant v. State*, 448 Md. 75, 96 (2016); *Burruss v. Board of County Commissioners of Frederick County*, 427 Md. 231, 263 (2012); *Koshko v. Haining*, 398 Md. 404, 426 (2007); *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978).

may be filed at any time").[4] The General Assembly's intent that this provision apply regardless of any other statutes previously passed is likewise indisputable: "[N]otwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law," a survivor may file a claim at any time.[5] *Id*. And the General Assembly explicitly and directly indicates that the Child Victims Act is retroactive and "revive(s) any action that was barred by the application of the period of limitations applicable before October 1, 2023." 2023 Acts of Md., ch. 5 and 6, §3.

A review of the legislative files for Senate Bill 686 (2023) and House Bill 1 (2023) that became the Child Victims Act of 2023 confirms the conclusion that the General Assembly intended to permit the filing of time-barred claims for all living survivors of child sexual abuse. Moreover, the General Assembly did so rejecting opponents' arguments that the legislation may be unconstitutional when applied to such claims and passing the legislation with a unanimous vote in the House (133-0) and a near-unanimous vote in the Senate (42-4).

The role of the judiciary in interpreting and applying statues is to determine and effectuate the intent of the legislature. *Baltimore Police Department v. Open Justice*

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[4] All statutory citations throughout the brief are to the Maryland Courts and Judicial Proceedings Article.

[5] These points are buttressed by the uncodified language in 2023 Acts of Md., ch. 5 and 6, §2, which states "it is the intent of the General Assembly that any claim of sexual abuse that occurred while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim."

Baltimore, 485 Md. 605, 646-47 (2023) (citing *Matter of Collins*, 468 Md. 672, 689 (2020)); *see also Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006). The parties do not dispute that the General Assembly intended to allow the filing of previously time-barred claims via the Child Victims Act, making it unnecessary to allocate brief or argument space describing and confirming this point. At the same time, the point should not be glossed over. While the question on the constitutionality of the retroactive application of the Act is debated, this Court should approach answering that question with a goal of upholding and effectuating clear legislative intent, integrating the presumption of constitutionality into that analysis.

Of course, this case presents an additional application of the principles governing judicial interpretation of statutes because to determine the constitutionality of the Child Victims Act, this Court must construe the 2017 legislation that altered §5-117. This Court must determine and effectuate the intent of the General Assembly with respect to the 2017 legislation with the guiding principle that if there is an interpretation of the 2017 legislation that upholds the constitutionality of and allows full implementation of the Child Victims Act, that interpretation should govern. Interpretation of the 2017 legislation should not occur in a vacuum ignoring action the General Assembly took before or after passage of the legislation. A thorough, contextual analysis of the 2017 legislation provides this Court a legitimate path to uphold and allow full implementation of the Child Victims Act.

III. The 2017 legislation created a statute of limitations, not a statute of repose.

The General Assembly altered the existing statute of limitations and did not create a statute of repose when amending §5-117 in 2017. Maryland courts "look holistically at [a] statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Anderson v. United States*, 427 Md. 99, 124 (2012). Relevant in this inquiry are: 1) what triggers the running of the statutory period; 2) whether the statute eliminates claims that have not yet accrued; 3) the purpose behind the statute; and 4) the legislative history surrounding passage of the statute. *Id.* Prongs one and two of the analysis are related because the determination of what triggers the running of a time period determines whether claims that have not yet accrued are extinguished by the statute. "Statutes of repose differ from statutes of limitation in that the trigger for a statute of repose period is unrelated to when the injury . . . occurs. . . . Thus, a statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id*. at 118-19. Similarly, prongs two and three of the analysis are related because courts typically determine the purpose of the statute using the language of the statute and the legislative history behind its adoption.

Within this framework, Maryland courts have exhibited reluctance to interpret legislation as creating a statute of repose and have narrowly interpreted the one statute of repose in the Maryland Code. This Court variously referred to Courts and Judicial Proceedings §5-109, setting time limitations for claims of medical malpractice, as a

statute of repose and a statute of limitations. *See id.* at 127.[6] In 2012, the *Anderson* court held that §5-109 is a statute of limitations, creating no vested rights because the trigger for the running of the time period is when the injury occurs, not an unrelated event, and because §5-109 does not extinguish claims that had not yet accrued. *Id*. at 125-26. The Court was also persuaded by the fact that §5-109 contains tolling provisions, meaning the statute provides for conditions under which the running of the period for filing a claim is paused, or tolled. *Id*. at 126 (noting tolling during the plaintiff's age of minority or if the defendant engaged in fraudulent concealment). Tolling is the hallmark of a statute of limitations and antithetical to a statute of repose.

The *Anderson* court compared the language in §5-109 with the language in §5-108 relating to claims of faulty building design or construction, the only provision previously held to be a statute of repose. See *Whiting-Turner Contracting Company v. Coupard*, 304 Md. 340 (1985). The *Anderson* court explained that the General Assembly was aware of how to create a statute of repose—as it did so in §5-108 with language clearly indicating a cause of action "does not accrue" if the injury that would give rise to a cause of action occurs after the time period set in §5-108 runs. Section 5-109, with injury as the triggering event to begin the running of the established time period, not extinguishing

[6] The court discusses a series of cases analyzing §5-109 in which the statute is referred to as a statute of limitations and a statute of repose; the court appears apologetic about its contribution to confusion about the substantive impact of §5-109 as a result of the changing terminology used to describe the statute. *Anderson*, 427 Md. at 113-17.

claims before they could have accrued, and with certain conditions tolling the running of the period, was found to be a statute of limitations.

The statute used as a comparator in *Anderson* limits claims against property owners, construction companies, engineers, and architects for injuries sustained because of negligence in building design and construction. Section 5-108 operates to extinguish claims at year 20 (building owners) or year 10 (architects, engineers, and builders), even if no injury has occurred. The triggering event for the start of the running of the clock is the date the building "became available for its intended use," an event wholly unrelated to any injury. For example, in *Whiting-Turner*, this Court found that the builder-defendant could not be held liable for the plaintiff's injury even if the builder had been negligent because the plaintiff was injured more than 10 years after the building was available for its intended use. 304 Md. 340. The date of the plaintiff's injury was irrelevant as the statute prevent accrual of any cause of action once the 10-year period expired.

Maryland courts are loathe to construe §5-108 broadly, revealing the disfavor for statutes of repose hinted at in *Anderson*. Statutes of repose are extraordinary and unusual provisions. Because they may create vested rights, such provisions are narrowly construed. In *SVF Riva Annapolis*, 495 Md. 632 (2018), this Court construed an exception in §5-108 to allow a cause of action against an owner who remained in possession of the property for the 20-year period by which the statute of repose otherwise extinguished claims. And in *Carven v. Hickman*, 135 Md. App. 645 (2000), the Appellate Court of Maryland found §5-108 inapplicable to the plaintiffs' cause of action, finding

that the property owner's removal of evidence that the property had been a graveyard (i.e. tombstones and other grave markers) and obfuscation of the existence of the graveyard in deeds and other papers, did not constitute improvements to real property that would result in application of the statute of repose. Maryland's only statute of repose is narrowly construed, limiting the negative impact of this extraordinary provision.

Applying the *Anderson* test to the 2017 version of §5-117 supports that the General Assembly did not intend to create a statute of repose. First, one must look to determine the triggering event for the running of the 20-year time period and whether the statute extinguishes claims that have not yet accrued. Like in §5-109, the medical malpractice statute found not to be a statute of repose, claims subject to the 2017 version of §5-117 arise when a child is sexually abused; the period of time does not begin to run until there has been an injury. As a result, §5-117 does not extinguish claims that have not yet accrued. Additionally, §5-117 contains a tolling provision like §5-109, suspending the running of the period until the victim turns 18. There is no date certain on which liability for an act of sexual abuse automatically expires like there is for liability of building owners, builders, architects, and engineers in §5-108. As noted in *Anderson*, tolling the period during an injured person's period of minority is a trait found in a statute of limitations, not a statute of repose.

The language of the statute is likewise helpful in determining whether the 2017 version of §5-117 is a statute of limitations or repose. The *Anderson* Court notes that the Maryland General Assembly is aware of the language and conditions necessary to create

a statute of repose as the legislature did so in §5-108 by using particular language that clearly extinguishes claims before they have accrued. 427 Md. at 126; §5-108 (relevant causes of action "do not accrue" if period of time passed). No such language or substantive provision exists in §5-117; again, pushing to the conclusion that §5-117 is not a statute of repose. The mere fact that the term repose is used in §5-117(d) and in the uncodified language passed in 2017 does not alter this analysis. *See Kaczorowski v. City of Baltimore*, 309 Md. 505, 514-15 (1987) (courts are not limited to the words of the statute when discerning meaning). Rather, "courts consider not only the literal or usual meaning of the words [in a statute], but their meaning and effect in light of the setting, the objectives and purpose of the enactment." *State v. Fabritz*, 276 Md. 416, 422-23 (1975). When determining legislative intent, courts "may consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical unreasonable result, or one which is inconsistent with common sense." *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 75 (1986).

The *Anderson* court considered the intent of the legislature with respect to §5-108 and found validity to the assertion that the statute was adopted in response to a perceived crisis related to medical malpractice litigation that caused skyrocketing malpractice insurance rates and increasing numbers of malpractice actions against Maryland physicians. The legislature had considered the economic best interests of the public when passing §5-108. *Anderson,* 304 Md. at 124-25; *see also SVF Riva Annapolis*, 459 Md. at 636 n.1 (legislature creates a statute of repose in "consideration[] of the economic best

interests of the public"); *Carven*, 135 Md. App. at 652 (statute of repose reflects a "legislative balanc[ing]of economic considerations affecting the general public and the respective rights of the plaintiffs and defendants"). But this was not enough to support a finding that the statute was one of repose rather than of limitations. No such legislative history related to a consideration of the economic interests of the public exists for the 2017 changes. In fact, there appears to be no legislative history regarding the so-called repose provisions that were added via amendment. Sufficient, clear evidence of legislative intent is expected for an extraordinary provision like a statute of repose.

Applying the appropriate analysis to the 2017 version of §5-117 results in finding the provision to be a statute of limitations, not a statute of repose. The period of limitations runs as a result of an injury, is tolled during the victim's period of minority, and does not extinguish claims before they have accrued.

IV. The General Assembly did not intend to eliminate their power to provide survivors of child sexual abuse access to the courts.

The General Assembly has the power to create causes of action and regulate whether, how, when, by whom, and against whom litigation may proceed. That is a quintessential legislative power. *See generally Cain v. Midland Funding LLC,* 475 Md. 4 (2021); *Fangman v. Genuine Title LLC*, 447 Md. 681 (2016); *Johnson v. Maryland State Police*, 331 Md. 285 (1993). A logical corollary is that the General Assembly has the power to alter previous legislation creating or regulating access to the courts. The meaning and impact of creating a limitations period falls squarely within the authority of the Maryland

General Assembly. *See Anderson v. United States*, 427 Md. 99 (2012). Of course, legislative power is subject to constitutional constraints and words in legislation matter. That the 2017 legislation uses the term "statute of repose" is not inconsequential; indeed, it is primarily that terminology that gives rise to this litigation. As the analysis under the *Anderson* 4-prong test above shows, however, that language stands in stark contrast to the explicit, operational language in §5-108 that created a statute of repose. In addition to the text and history of the 2017 statute, the legislative history surrounding Maryland's only known statute of repose is informative.

First passed in 1970, §5-108 is Maryland's only statute of repose. The General Assembly amended §5-108 in 1991, reviving certain claims that were previously time-barred. Specifically, claims for property damage due to the presence of asbestos in a building could be brought as to structures made available for use after July 1, 1953. §5-108(d)(2)(iv)(3). This exception was limited to buildings owned and used by the government and buildings used as public or private institutions for education, including higher education. While the existing limitations set out in §5-108 would have only allowed claims for buildings made available 20 or 10 years prior, the 1991 exception applied to buildings made available up to 38 years prior, thereby reviving claims that had been previously time-barred for as many as 28 years. The General Assembly limited the period of revival for these claims, setting a 2-year deadline by which claims revived under the exception had to be filed. Plain and simple, the 1991 General Assembly partially repealed the statute of repose in §5-108, allowing previously extinguished

claims to be brought during the 2-year lookback period. The General Assembly that had created §5-108 recognized that the balance of equities in 1991 dictated a lifting of the statute of repose to revive some asbestos-related claims. In fulfilling its obligation to review legislation for constitutional sufficiency, the Office of the Attorney General found the 1991 revival constitutional.[7]

In 1991, the Maryland General Assembly demonstrated through clear and explicit action that, in their view, a statute of repose does not eliminate the legislature's power to revive claims nor give potential defendants a permanent right to be free of liability. The legislature can—and in 1991 did—respond to emerging information revealing the inequities created by a statute of repose by reviving time-barred claims. This Court chose not to assess the constitutionality of the 1991 change in the one case posing the question, instead interpreting the statute to avoid the constitutional question, and allowing the claims to proceed. *Duffy v. CBS Corp.*, 458 Md. 206 (2018).[8] *Duffy* evinces this Court's goal of interpreting a statute as constitutional to effectuate the intent of the legislature and reveals the Court's principled approach to construing limitations periods narrowly to

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[7] The letter confirming the constitutionality of Senate Bill 335 (1991) referenced advice on an unsuccessful 1990 bill that contained similar revival of asbestos-related claims that had been time-barred under §5-108. *See* Letter to Delegate David. B. Shapiro from Assistant Attorney General Kathryn M. Rowe dated February 15, 1990 (available in the bill file for Senate Bill 500 (1990)).

[8] In *Duffy*, this Court reversed the Appellate Court's decision, 232 Md. App. 632 (2017), that found that the 1991 revival of claims in §5-108 did not apply because application of that provision would have been unconstitutional based on the facts of the *Duffy* case. Reversal of a lower court's decision renders it a nullity. *Carpenter Realty Corp. v. Imbesi*, 369 Md. 549, 562 (2002) (citing *Balducci v. Eberly*, 304 Md. 664, 671 n.8 (1985)).

allow claims to be filed. The lack of a judicial decision determining the constitutionality of the 1991 revival does not render the legislative action insignificant or unhelpful. Rather, the deliberate action of the General Assembly informs our understanding of legislative intent when creating a limitations period.

In 1991, the General Assembly explicitly amended a statute of repose to revive claims that had been time-barred for as many as 28 years. When the General Assembly amended §5-117 in 2017, it did so with this history. A logical extrapolation is that even if the General Assembly created legislation that has some characteristics of a statute of repose, they did so with the understanding that they retained power to alter the limitations period with retroactive impact—because they had done exactly that in 1991. The General Assembly had demonstrated prior to 2017 that adopting a statute of repose does not eliminate the legislature's power to pass legislation reviving time-barred claims. Certainly they retained that power with the passage of the 2017 legislation that does not fit the functional description of a statute of repose. And when passing the Child Victims Act of 2023, the legislature relied on their own history to clearly and unequivocally allow the filing of previously time-barred claims.

This is the type of contextual examination of legislative intent required in this case where the statute being challenged is part of a collection of statutes establishing time limitations on filing various types of civil claims and the history of changes to those statutes provides insight into how the legislature interprets its own actions. While Appellants make much use of the word repose in the 2017 legislation, that term is not

free from ambiguity in Maryland, as demonstrated by the varying lower court decisions, referral of the question from the federal district court, and briefs of the Consolidated Appellees and other Amici. Determining the intent behind the 2017 legislation requires more than a superficial read or reliance on what other states' courts have decided the term means. Knowing that in 1991 the General Assembly revived claims that had been time-barred by §5-108, a statute of repose, leads to an appropriate interpretation of the 2017 legislation as leaving with the General Assembly the power to amend the statute to allow filing of previously time-barred claims. This interpretation of the 2017 legislation leads to upholding the clear and unequivocal intent of the General Assembly in 2023 and respects the presumption of constitutionality that legislation is entitled to.

V. The General Assembly did not provide extraordinary protection to those responsible for child sexual abuse.

Legislative history shows that the Maryland General Assembly, in 2017 and 2023, passed legislation intended to respond to the horrific crisis of child sexual abuse, to provide survivors a genuine opportunity to access the courts when previous limitations periods had not. The legislature was presented with significant testimony about the pervasiveness of child sexual abuse, the efforts many institutions engaged in to obscure the abuse and protect the predators, the short- and long-term harms of child sexual abuse, and the inability of many survivors to recognize the abuse and bring timely claims under previous provisions. There is no evidence that the Maryland General Assembly intended to pass legislation providing organizations and individuals responsible for child sexual abuse the permanent, constitutionally protected right to avoid civil liability. Such action

would result in an imbalance of justice, an absurd result. There are no legitimate public policy goals to support giving the broadest possible protection to those responsible for the most reprehensible, acutely damaging conduct. The legislative record—from written and oral testimony to discussion of the bills on the floor of the Senate and House—is void of any description of reasons the legislature would give such protection to those responsible for child sexual abuse. That is because the legislature did not intend such a result. Construction of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense should be avoided." *Consolidated Construction Servs., Inc. v. Simpson*, 374 Md. 434, 457-58 (2002); *see also Doe v. Catholic Relief Services*, 484 Md. 640, 652-53 (2023). There is nothing logical or just about providing extraordinary protection to those responsible for child sexual abuse. Common sense tells us that the General Assembly, when intending to provide broader access to the courts through the 2017 changes in §5-117, did not at the same time intend to provide super protection to the defendants against whom that broader access would be allowed.

The General Assembly passed the retroactive application provisions of the Child Victims Act of 2023 for profoundly impactful reasons to the members of SNAP and other survivors of child sexual abuse. SNAP has advocated for increased access to the courts for survivors of child sexual abuse in Maryland for more than a decade, including during the 2017 and 2023 sessions of the Maryland General Assembly. Legislators on this brief likewise sponsored and/or voted for the Child Victims Act of 2023 because they wanted to provide access to the courts to all living survivors of child sexual abuse. They most

certainly did not intend in 2017 to eliminate the legislature's power to retroactively alter the statute of limitations for such claims. We have lost many in the survivor network; some who passed away and others who had to step away from engagement on the issues because of the devastating impact of reliving the trauma when giving testimony or even listening to their peers testify. The campaign to open the courts to previously expired claims came at great cost to many. One need only watch testimony from relevant legislative hearings to learn of the trauma forced upon survivors when they were young children and to process how difficult public sharing of that violence must be. Many survivors who fought for the Child Victims Act have no plan to file a lawsuit, yet they fought for the right for other survivors and because prevailing in the legislature would be one small win against the organizations that should have long ago been forced to own up to their responsibility for child sexual abuse. Legislators who sponsored or otherwise advocated for fair access to the courts know the road traveled by survivors. They deeply respect the survivor community, keenly understand the unfairness of previous time limitations for bringing claims of child sexual abuse, and strategically pushed for legislation to remedy the harm caused by the law's stringent time limitations. This powerful effort resulted first in the extension of the statute of limitations in 2017 and then in the near-unanimous passage of the Child Victims Act of 2023. Having the 2017 success as a dagger to the viability of the 2023 success is inconceivable.

Child sexual abuse is a crisis and has been so for generations. In 2021 in Maryland, there were 2,066 reported victims of child sexual abuse. Of all types of reported child

abuse and neglect in Maryland, nearly one-third (32.8%) are cases of sexual abuse, exceeding the national rate (10.1%) threefold. *See* U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau. (2022) Child maltreatment 2021, Table 3-8, available at https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf. And these numbers are much lower than actual incidence of child sexual abuse given the myriad factors that interfere with reporting. C. Lemaigrea, E.P. Taylor, C. Gittoesc, *Barriers and facilitators to disclosing sexual abuse in childhood and adolescence: A systematic review*, 70 CHILD ABUSE & NEGLECT 39-52 (2017). While it is difficult to ascertain an average age of disclosure for survivors who are able to and choose to disclose, recent estimates suggest that most survivors who disclose as adults are between 40 and 50 years old, though longer delays have been reported. L. McGill and R. McElvaney, *Adult and Adolescent Disclosures of Child Sexual Abuse: A Comparative Analysis*, 38 J. INTERPER. VIOLENCE NP1163-NP1186 (Jan. 2022). Of course, some never disclose.

Much work has been done at the legal, policy, medical, and community level to prevent child sexual abuse and to improve reporting. For children from older generations of today, those changes came far too late to allow for timely filing of civil claims related to the abuse. Those survivors were subject to a 3-year statute of limitations to file claims to hold accountable those responsible for the abuse; younger generations were afforded 7 years. Neither period was sufficient; neither was fair. As a result, survivors were left with no means to seek recompense in the courts; this contributed to the continued perpetuation

of harm because individual predators and the organizations that harbored them were not held to account publicly.

In response to the crisis and to the unjust application of prior time limitations, the Maryland General Assembly intended to provide access to justice to survivors, not to hoist further harm on survivors by catapulting their predators to protected status. The General Assembly intended to support survivors and prevent future harm at the hands of organizations that have avoided public accountability for their horrific, inexcusable conduct, even from decades prior. Allowing survivors of child sexual abuse to bring civil claims against those responsible for the abuse regardless of when the abuse occurred remedies both harms that the previous strict limitations periods caused. Survivors whose claims had been time-barred when they were 21 or 25, well before most had even processed their trauma, can seek compensation in court. For those survivors, the retroactive application of the Child Victims Act provides the first genuine opportunity for them to bring a claim. And perpetrators, including organizations that harbored abusers, will face public exposure, contributing to accountability and deterrence. That is the just outcome.

Construing the 2017 changes to §5-117 as extinguishing the General Assembly's power to alter the limitations period for survivors' claims and giving those responsible for child sexual abuse an extraordinary, constitutionally protected right to be free from liability for their conduct is counter to the intent of the General Assembly and unjust. This Court has ample basis to conclude that the 2017 legislation is a statute of limitations

that the 2023 General Assembly had the power to alter, upholding the constitutionality of the Child Victims Act of 2023 and legislative intent. Legal principles and basic decency compel that outcome.

CONCLUSION

The Child Victims Act of 2023 clearly and unequivocally allows the filing of previously time-barred claims of child sexual abuse for all living survivors. The Act is entitled to a presumption of constitutionality and this Court's goal should be to give full effect to the General Assembly's intent. Legislative history and context reveal that the Maryland General Assembly did not intend to create a statute of repose in 2017. Survivors of child sexual abuse whose claims were time-barred by unfair limitations periods deserve a genuine opportunity to bring their claims to court. That is what SNAP has advocated for and what the legislators on this brief intended. Upholding the Child Victims Act is the right thing to do legally and morally.

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Respectfully Submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,254 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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RULE 8-504(a)(8) STATEMENT OF FONTS

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