

In The  
**Supreme Court of Maryland**

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September Term, 2024

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

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THE KEY SCHOOL, INCORPORATED, et al.,  
Appellants,  
v.  
VALERIE BUNKER,  
Appellee.

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*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)*

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

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

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*ON PETITION FOR WRIT OF CERTIORARI from the Circuit Court for Harford  
County, Civil Case Number C-12-CV-23-767  
(The Honorable Alex M. Allman)*

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## INTRODUCTION

The amicus briefs submitted by ATRA and MABE do nothing to bolster Defendants’ arguments about the CVA’s constitutionality.<sup>1</sup> Amici primarily present policy arguments for why the legislature *should not* have enacted the CVA, claiming that the law implicates issues like record retention and insurance coverage, or that it will somehow negatively impact the civil justice system.

Those objections miss the mark for many reasons. But more importantly, not one of those arguments illustrates why the legislature *could not* constitutionally enact the CVA. The legislature appropriately balanced the need for access to justice for survivors of child sexual abuse against particular institutional interests. That policy decision falls squarely within the General Assembly’s purview and easily survives review.

Amici’s remaining arguments likewise fail. ATRA does not cite one Maryland case in which this Court has actually invalidated a law like the CVA, and as even ATRA is forced to admit, ample out-of-state precedent supports upholding the CVA.

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<sup>1</sup> Two groups submitted amicus briefs supporting Defendants: the Maryland Association of Boards of Education (MABE), the MABE Group Insurance Pool, and the Public School Superintendents’ Association of Maryland (collectively, “MABE”), and the American Tort Reform Association, American Property Casualty Insurance Association, and the Maryland Defense Counsel, Inc. (collectively, “ATRA”). We refer to these entities jointly as “Amici.”

And MABE’s premature claim that the CVA ineffectively waived sovereign immunity is not within the scope of this appeal.

This Court should hold the CVA constitutional.

## ARGUMENT

### I. AMICI’S POLICY ARGUMENTS FAIL TO SHOW THE CVA IS UNCONSTITUTIONAL.

This Court has “always recognized that declaration of the public policy of Maryland is normally the function of the General Assembly.” *Mayor & City Council of Baltimore v. Clark*, 404 Md. 13, 36 (2008) (citation omitted). The General Assembly “sets the public policy”—especially “social policy”—for the State. *Rausch v. Allstate Ins. Co.*, 388 Md. 690, 715 n.13 (2005). That is why “[t]his Court provides judicial deference to the policy decisions enacted into law by the General Assembly.” *Johnson v. State*, 467 Md. 362, 371 (2020) (quoting *Blackstone v. Sharma*, 461 Md. 87, 113 (2018)).

Amici urge this Court to disregard these baseline separation-of-powers principles, arguing the legislature *should not* have enacted the CVA. Mere policy disagreements do nothing to show why the legislature *could not* pass the CVA, nor do they come close to proving beyond a reasonable doubt that the CVA is unconstitutional. *See Mahai v. State*, 474 Md. 648, 662 (2021). The legislature appropriately balanced the need to give survivors of child sexual abuse a meaningful opportunity to seek justice against the interests of institutions like Defendants. *See*

Survivors Network of Those Abused By Priests (SNAP) and Current and Former Legislators Amicus Br. 18-22. This Court should “decline to enter [this] public policy debate.” *Clark*, 404 Md. at 36.

None of ATRA or MABE’s contrary arguments show the legislature’s decision to enact the CVA fails under the deferential review afforded such policy judgments. *First*, Amici argue that by reviving time-barred claims, the CVA undermines predictability and past business decisions, like how long to retain certain records. *See* ATRA Amicus Br. 3-4, 6-8, 12-17; MABE Amicus Br. 15-17. The legislature considered and rejected those concerns. In 2017, ATRA’s representative argued that lost evidence could make it difficult for defendants to refute older claims. H. Judiciary Comm. Hearing on H.B. 642, at 1:13:00-1:14:13 (Feb. 23, 2017), <https://tinyurl.com/4sn85ez9>. Legislators debated similar points in the Senate. *See* S. Jud. Proc. Comm. Hearing on S.B. 505, at 1:02:10-1:08:00 (Feb. 14, 2017), <https://tinyurl.com/mr3myapy>. The General Assembly weighed these considerations against testimony explaining the then-seven-year statute of limitations was inadequate and unanimously voted to extend the limitations period. *See* Maryland Crime Victims’ Resource Center, Inc. Amicus Br. 7-10.

ATRA raised these same contentions in 2023. *See* S.B. 686 Bill File at 23-35. And again, the legislature evaluated those views against the raft of testimony it heard from survivors and other experts and determined that ATRA’s policy

objections did not outweigh the benefits of identifying perpetrators, giving survivors a chance to litigate their claims, and shifting the costs of child sexual abuse to the individuals and institutions that caused these harms. *See* SNAP Amicus Br. 18-23. That choice was rational, related to a legitimate governmental interest, and well within the General Assembly’s discretion. *Cf. Rausch*, 388 Md. at 715 n.13; *see also* American Association for Justice (AAJ), Child USA, Change the Conversation, Maryland Association for Justice, and Public Justice Amicus Br. 14-16 (discussing the crippling costs to victims and the public from child sexual abuse).

*Second*, Amici argue that the CVA will unduly burden schools, businesses, or other entity defendants’ ability to gather evidence needed to refute allegations of long-ago abuse. MABE Amicus Br. 15-17; ATRA Amicus Br. 4, 8. That gets things backwards: As in every case, the plaintiff bears the burden of proof. *See, e.g., District of Columbia v. Singleton*, 425 Md. 398, 407 (2012) (“plaintiff retains his or her burden to prove the defendant’s negligence”). If records have been lost, a plaintiff bears the burden of gathering alternative evidence to support their case.<sup>2</sup> Defendants can move to dismiss or seek summary judgment if the plaintiff is unable to meet that burden. *See* Md. R. 2-322(b)-(c), 2-501(f).

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<sup>2</sup> MABE notes that certain student records are typically retained only until a student reaches 21. MABE Amicus Br. 16. But the 2003 and 2017 statutes of limitations both allowed survivors of sexual assault to file civil suits years *after* they turned 21. *See* CVA Response Br. 5-11. So MABE’s record-retention complaint is not a new issue.

*Third*, Amici’s fears that the CVA will spark a “barrage” of suits are overblown. ATRA Amicus Br. 7-8; *see* MABE Amicus Br. 13. Other states with laws like the CVA have seen a modest number of lawsuits. But to the extent there is some similarly modest increase in claims in Maryland, that was the very point: The legislature in 2023 concluded that the prior statute of limitations had unduly thwarted many survivors’ ability to seek justice. In particular, the legislature was well aware from the Attorney General’s report that the Catholic Church alone had covered up the abuse of *hundreds* of children. Attorney General of Maryland, *Report on Child Sexual Abuse in the Archdiocese of Baltimore* 1 (April 2023), <https://perma.cc/X4DF-6WLP>. Any increase in claims under the CVA shows that the law is working as the legislature intended. *See also* SNAP Amicus Br. 18-23.

*Fourth*, ATRA claims that upholding the CVA could lead to the revival of claims in other contexts in Maryland. ATRA Amicus Br. 9-11. That again is a policy issue for the legislature to decide after careful deliberation, as it did before enacting the CVA. *See* CVA Response Br. 5-13. And if the legislature proposes such a law, Amici may once again present these arguments to the legislature for its consideration.

*Finally*, Amici assert that requiring schools, businesses, and other entities to defend against CVA suits jeopardizes their ability to serve students and children. *See* MABE Amicus Br. 2, 14; ATRA Amicus Br. 4. That’s rich. The General

Assembly enacted the CVA to allow plaintiffs who were sexually abused as children to sue those very entities *because* they did not adequately protect the children within their care. Continuing to deny these realities risks perpetuating that dark cycle. *See* AAJ Amicus Br. 18-19 (documenting how covering up sexual abuse delays the ability to seek justice). Forcing these entities to take responsibility for their past bad acts serves all children in their care—past and future—including by naming existing abusers, encouraging the implementation of policies to prevent future abuse, and creating a safe environment that facilitates accountability and reporting. *See id.* at 19 (explaining the CVA ensures “that institutions are not rewarded for covering up sexual abuse and their complicity in it until the clock runs out”); *see, e.g.*, Lea Skene, *200 Victims Allege Child Sex Abuse in Maryland Youth Detention Facilities*, Associated Press, Feb. 8, 2024, <https://perma.cc/HD8J-9VNE> (cited at ATRA Amicus Br. 8) (highlighting that several juvenile detention facilities accused of facilitating rampant abuse have closed, while others “remain in operation”); *see also* Human Rights for Kids Br. 14-21 (describing the experiences of survivors of sexual abuse in Maryland’s juvenile detention facilities).

## **II. UPHOLDING THE CVA IS CONSISTENT WITH THE LAW IN MARYLAND AND MULTIPLE SISTER STATES.**

### **A. The CVA Is Constitutional Under Maryland Law.**

The CVA’s retroactive repeal of the 2017 law is constitutional. The 2017 law was a classic statute of limitations; even ATRA refers to it as such. *See, e.g.*, ATRA

Amicus Br. 3, 4, 6; *see* CVA Response Br. 19-42. Because statutes of limitations do not give rise to a vested right to be free from liability, the CVA is constitutional. *See* CVA Response Br. 49-59. But even if the 2017 law is a statute of repose, this Court has never recognized a “vested right” in a defendant’s ability to assert a statute of repose defense. *See id.* at 60-67.

ATRA nevertheless claims this Court “has already” held unconstitutional revival statutes like the CVA, citing many of the same cases on which Defendants rely. ATRA Amicus Br. 5, 19-20; *see* CVA Opening Br. 53-56. As we have explained, this Court has never held that the running of an ordinary statute of limitations or statute of repose creates a vested right to remain indefinitely free from liability, nor has it held unconstitutional a revival law like the CVA. *See* CVA Response Br. 54-60 (discussing *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604 (2002), *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52 (1972), and *Doe v. Roe*, 419 Md. 687, 703 (2011)). Quoting isolated pieces of dicta does not change that.

ATRA likewise overstates the holdings of the additional cases it cites. *See* ATRA Amicus Br. 19-20. ATRA cites *Johnson v. Mayor & City Council of Baltimore*, 430 Md. 368 (2013), in support of its claim that “[t]his Court has invalidated legislation that revived time-barred claims.” ATRA Amicus Br. 19. *Johnson* did no such thing. That case focused on the first step of the retroactivity inquiry—whether the legislature intended an amendment to apply retroactively.

*Johnson*, 430 Md. at 373, 381-382; *see* CVA Response Br. 46 n.11 (explaining the two-step inquiry).<sup>3</sup> Because *Johnson* held the legislature did *not* intend for the statute to apply retroactively, it did not reach the question at issue here—whether the statute could be applied retroactively without “impair[ing] vested rights.” 430 Md. at 395 n.18.

ATRA also mischaracterizes three cases as supposedly recognizing “that statutes of repose create a vested substantive right.” ATRA Amicus Br. 19 (citing *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632 (2018); *Anderson v. United States*, 427 Md. 99 (2012); *Duffy v. CBS Corp.*, 232 Md. App. 602 (2017)). At most, *Anderson* and *SVF Riva* suggest that a statute of repose might create a substantive right capable of vesting. *But see* CVA Response Br. 61 (noting that other principles underlying Maryland’s approach to vested rights cast doubt on that conclusion). That says nothing about whether that right *has* vested. *Id.* at 61-62; *see also* Attorney General Amicus Br. 9-11.

In fact, ATRA’s brief itself highlights one of the reasons why the CVA implicates no vested rights. ATRA says that the CVA “upends settled expectations upon which organizations have relied in making decisions.” ATRA Amicus Br. 4. In Maryland, however, a vested right must be “more than a mere expectation based

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<sup>3</sup> No one disputes that the legislature intended the CVA to apply retroactively. *See* CVA Opening Br. 15; MABE Amicus Br. 12 n.12.



upon the anticipated continuance of the existing law.” CVA Response Br. 43 (quoting *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003)); *see id.* at 47-49. As for *Duffy*, this Court reversed without reaching the vested rights issue, 458 Md. 206, 217 (2018), so the Appellate Court’s decision has no value in this analysis, *see* CVA Response Br. 65-66.

Finally, ATRA argues that “equal protection” principles require finding a vested right to be free from liability for facilitating child sexual abuse. ATRA Amicus Br. 20-21. According to ATRA, if the legislature cannot retroactively shorten a statute of limitations to a plaintiff’s detriment, it necessarily cannot lengthen one to the detriment of a defendant. *Id.* Defendants, however, did not raise this equal protection argument in their opening briefs. This Court has “long and consistently held to the view that ‘if a point germane to the appeal is not adequately raised in a party’s brief, the court may, and ordinarily should, decline to address it.’ ” *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004) (quoting *DiPino v. Davis*, 354 Md. 18, 56 (1999)); *see also, e.g., Snyder v. Phelps*, 580 F.3d 206, 216 (4th Cir. 2009) (“our Court and our sister circuits have consistently been wary, even prohibitive, of addressing an issue raised solely by an amicus”).

Nonetheless, ATRA’s argument is just wrong. The right to assert a “chose in action,” which Maryland has long recognized as a species of property, vests when that cause of action accrues. CVA Response Br. 45, 58; *see Dua*, 370 Md. at 631-

633 & n.10. Even then, however, the legislature can constitutionally curtail the limitations period if an alternative remedy is available or a reasonable time to assert the existing cause of action remains. CVA Response Br. 45. Even assuming a defendant has some equivalent “property interest” in a defense or immunity, *but see id.* at 43-47, 49-51, 61, applying these rules “equally” means the legislature *can* retroactively extinguish a defense or immunity, unless the defense has already been asserted in litigation or the defendant can prove substantial reliance, *id.* at 48. That is the rule Plaintiffs have asked this Court to apply here. *Id.* at 62-63, 67-68; *see also* Attorney General Amicus Br. 11-12 (explaining that under ATRA’s and Defendants’ interpretation of *Dua*, the 2017 law would have unconstitutionally extinguished plaintiffs’ rights of action); AAJ Amicus Br. 11-13 (same).

**B. Upholding The CVA Is Consistent With Out-Of-State Law.**

Like Defendants, ATRA cites out-of-state decisions that it says support a conclusion that the Maryland CVA is unconstitutional. ATRA Amicus Br. 22-25; *see* CVA Opening Br. 46-52, 56-57. Many involve circumstances far afield from child sexual abuse or in which Maryland has already elected to follow a different approach. *See, e.g., Gould v. Concord Hosp.*, 126 N.H. 405 (1985) (medical malpractice); *Johnson v. Garlock, Inc.*, 682 So. 2d 25 (Ala. 1996) (asbestos exposure); *see* CVA Response Br. 21-22, 65; SNAP Amicus Br. 15-17. Other decisions were founded upon the particular State’s long tradition of holding that the

running of an ordinary statute of limitations creates a vested right to be free from suit—something Maryland courts have never held. *See, e.g., Thompson v. Killary*, 683 S.W.3d 641, 648 (Ky. 2024) (noting that Kentucky has recognized that a statute of limitations creates a vested right for “nearly 200 years”); *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020) (similar); *Gould*, 126 N.H. at 408 (similar).

As ATRA admits, however, other States hold that the running of the statute of limitations does *not* create a vested right. ATRA Amicus Br. 25-26. In *Sheehan v. Oblates of St. Francis de Sales*, for instance, the Delaware Supreme Court held that, “[a]s a matter of constitutional law, statutes of limitation go to matters of remedy, not destruction of fundamental rights,” and so a statute that retroactively extends the statute of limitations does not affect “vested rights.” 15 A.3d 1247, 1259 (Del. 2011). Similarly, under Massachusetts law, “the running of a statute of limitations” does not create “a protected right to avoid legal claims.” *Sliney v. Previte*, 473 Mass. 283, 293 (2015). The Vermont Supreme Court has likewise recognized that “[b]ecause a limitations statute is a legislated bar to a remedy and does not create a right to be free of suit, the expired limitations period does not endow a tortfeasor with a ‘vested right.’ ” *A.B. v. S.U.*, 298 A.3d 573, 578-579 (Vt. 2023); *see also* CVA Response Br. 59 & nn.14-15 (collecting cases); AAJ Amicus Br. 20 & n.20 (same).

ATRA suggests these cases are inapplicable because “[t]hese states, unlike Maryland, typically follow the federal approach.” ATRA Amicus Br. 25-26. That conflates two different parts of the analysis: whether a retroactive law implicates a vested right and the level of protection if a vested right is implicated. Maryland law arguably provides more protection than federal law *if* a vested right is implicated. *See Dua*, 370 Md. at 623; *Muskin v. State Dep’t of Assessments and Tax’n*, 422 Md. 544, 556-557 (2011). But Maryland’s principles for *identifying* a vested right align closely with federal law, which rejects an absolute vested right in a statute of limitations defense before final judgment. CVA Response Br. 43-49; *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945); *Campbell v. Holt*, 115 U.S. 620 (1885); *cf. Doe v. Hartford Roman Cath. Diocesan Corp.*, 317 Conn. 357, 440 (2015) (holding that because retroactively extending the statute of limitations does not violate a vested right, the law need only survive rational basis review). Indeed, this Court has observed that federal law has “[t]he better reasoned view” on that issue. *Baltimore County v. Churchill, Ltd.*, 271 Md. 1, 12 (1974) (discussing *Chase*). Cases upholding laws like the CVA—even when aligned with federal law—thus provide the better analog and support finding the CVA constitutional.

### **III. MABE’S SOVEREIGN IMMUNITY ARGUMENT IS OUTSIDE THE SCOPE OF THIS APPEAL.**

MABE spends most of its brief arguing about issues that are well beyond the scope of this appeal and that rest on a series of future contingencies. MABE does

not dispute that Maryland Boards of Education lack standing to challenge the CVA, or that the boards, as creatures of the State, cannot have vested rights. *See* CVA Response Br. 69-70; Standing Response Br. 3-16. Instead, MABE argues that even if the CVA can generally apply retroactively to school boards, the specific provision increasing the damages cap to \$890,000 should only apply prospectively. MABE Amicus Br. 2-3, 11-13; *see* CJP § 5-303(a)(3)(i) (2023). According to MABE, if (1) a school board is found liable for facilitating child sexual abuse that occurred prior to 2023, and (2) the plaintiff is awarded damages above \$0, \$100,000, or \$400,000 (depending on when the abuse occurred), that would exceed the insurance limit in place when the injury occurred. MABE Amicus Br. 2-3, 11-12. MABE claims that, in that situation, the CVA’s waiver of sovereign immunity “would be ineffective” because the legislature would not have appropriated funds to cover those claims. *Id.*

That argument is not properly before this Court for several reasons. To start, MABE’s argument goes entirely to the issue of remedy if (1) a school board is found liable for abuse that occurred prior to the CVA’s enactment and (2) the damages award exceeds the prior cap. This case is exclusively about whether a school board can be found liable for facilitating that abuse in the first instance. Even the Harford County School Board (the “Board”) has recognized this distinction. In its briefing before the trial court, the Board argued that the CVA could not apply retroactively, but “in the event that the Court allows Plaintiff’s claims to proceed,” the CVA’s

increased damages should only be applied prospectively. E.471-473; *see* E.568 (counsel for Plaintiff stating that the damages cap is “potentially” an “issue[] for the trier of fact”). Perhaps for that reason, the trial court declined to issue a ruling on the remedy question. E.619 (deferring ruling “as to the application of the sovereign immunity cap”).

Moreover, despite briefing this question below, the Board itself never petitioned for review of this issue. *See* Pet. for Writ of Cert. at 2, *Board of Ed. of Harford County v. Doe*, No. 10 (April 17, 2024); Md. R. 8-131(b)(1) (“the Supreme Court ordinarily will consider only an issue that has been raised in the petition for certiorari”). Nor did this Court sua sponte certify that question or otherwise order briefing on it. The Board did not raise this point in its opening brief, either. This Court thus should “decline to address it.” *Oak Crest Vill., Inc.*, 379 Md. at 241 (citation omitted); *see also, e.g., Snyder*, 580 F.3d at 216.

Accordingly, there is no basis to consider MABE’s premature argument.

## CONCLUSION

For the foregoing reasons, and those in Appellees' response briefs, this Court should hold that the Maryland Child Victims Act of 2023 does not 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 and that the Board, as a subdivision of the State, does not have standing to challenge the constitutionality of the CVA.

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**CERTIFICATION OF WORD COUNT AND  
COMPLIANCE WITH RULE 8-112**

1. Pursuant to Rule 8-511(g), this brief contains 3,451 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the requirements stated in Rule 8-112.

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