IN THE SUPREME COURT OF MARYLAND

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-23-767 (The Honorable Alex M. Allman)

AMICUS CURIAE BRIEF OF MARYLAND CRIME VICTIMS' RESOURCE CENTER, INC. IN SUPPORT OF APPELLEE

John B. Williams III
AIS # 0712120409
Melanie L. Bostwick (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400
jwilliams@orrick.com
mbostwick@orrick.com

Eliza Lehner (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
elehner@orrick.com

Rachael Jensen (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
300 West 6th Street, Suite 1850
Austin, TX 78701
rjensen@orrick.com

Counsel for Amicus Curiae

August 7, 2024

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF AMICUS CURIAE 1

INTRODUCTION 2

ARGUMENT 5

I. The General Assembly Intended To Extend The Statute Of Limitations Because Victims Often Do Not Report Childhood Sexual Abuse For Decades. 5

A. The House And Senate Bills Grew From A Long Effort To Expand The Maryland Limitations Period. 6

B. The Congressional Hearings And Written Testimony Focused On Enlarging The Time For Victims To Sue. 7

C. The Bills Passed Unanimously, Reflecting The Broad Support For Giving Victims More Time To File. 9

II. The Compromise In The Final Law Was The Heightened Standard Of Liability For Third Parties, Not A Statute Of Repose. 10

A. Legislators Negotiated A Compromise That Extended The Limitations Period In Exchange For Raising The Standard For Liability. 10

B. The Catholic Church Supported This Compromise—And Never Publicly Asked For A Statute Of Repose. 12

C. There Was Never Any Discussion About A Statute Of Repose. 13

D. The Bills' Sponsors Explained The Relevant Amendments As If They Addressed A Statute Of Limitations Or Made "Technical" Changes. 15

E. Generic Floor Reports, Policy Notes, And An Unsigned, Undated Document Do Not Show That Legislators Intended Or Understood The Law To Create A Statute Of Repose. 17

F. Post-Enactment, Legislators Emphasized That Their Bills Did Not Undo The Careful Compromise With A Statute Of Repose. 21

III. Reading The 2017 Law To Create A Statute Of Repose That Vests A Right To Be Free From Suit Clashes With The Law's Purpose And History. 23

CONCLUSION 26

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112 27

CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Watt v. Alaska,
451 U.S. 259 (1981) 5, 24

Maryland Cases

Anderson v. United States,
427 Md. 99 (2012) 4, 20, 23

Herd v. State,
125 Md. App. 77 (1999) 20

Kaczorowski v. Mayor & City Council of Baltimore,
309 Md. 505 (1987) 5, 23, 24

Warfield v. State,
315 Md. 474 (1989) 20

Weber v. State,
320 Md. 238 (1990) 20

Maryland Statutes

Md. Code Ann., Cts. & Jud. Proc. § 5-117 (2003) 6

Md. Code Ann., Cts. & Jud. Proc. § 5-117 (2017) 2, 3, 4 6, 7, 9, 21, 23, 24

Md. Code Ann., Cts. & Jud. Proc. § 5-117 (2023) 1, 2, 4, 22, 26

Md. Code Ann., Cts. & Jud. Proc. § 5-304 9

Bills and Legislative History Materials

House Bill 642, as introduced Feb. 1, 2017,
https://tinyurl.com/yrch35cz 5, 9, 10, 11, 14, 15

House Bill 642, Third Reading in Senate,
https://tinyurl.com/adedh4ha 9

House Bill 687, as introduced Feb. 7, 2019, https://tinyurl.com/yw6n6mxe 21

House Floor Action, Mar. 16, 2017, https://tinyurl.com/wedxuxbj 16, 17

House Floor Action, Mar. 17, 2017, https://tinyurl.com/28ybbvdr 10

House Floor Action, Mar. 16, 2019, https://tinyurl.com/zm8jdnwy 21, 22

House Judiciary Committee Hearing, Feb. 23, 2017, https://tinyurl.com/44x4wdr2 ..... 3, 6, 7, 8, 26

House Judiciary Committee Hearing, Mar. 15, 2017, https://tinyurl.com/34knnkdt 4, 12, 14

Senate Bill 505, as introduced Feb. 1, 2017, https://tinyurl.com/5f523cf4 ..... 5, 9, 10, 11, 17, 19

Senate Bill 505, Third Reading in House, https://tinyurl.com/4kpeh4df 9

Senate Floor Action, Mar. 14, 2017, https://tinyurl.com/mrxwmsty 15, 16

Senate Floor Action, Mar. 23, 2017, https://tinyurl.com/4r4m9yck 15

Other Authorities

Erin Cox & Justin Wm. Moyer, *When Maryland Gave Abuse Victims More Time to Sue, It May Have Also Protected Institutions, Including the Catholic Church*, Wash. Post (Mar. 31, 2019) 20, 21, 22

General Assembly of Maryland Department of Legislative Services, FAQ, https://dls.maryland.gov/faq/# (last visited Aug. 6, 2024) 19

Maryland General Assembly, Meetings, https://mgaleg.maryland.gov/mgawebsite/Meetings/Day/senate (last visited Aug. 6, 2024) 13

Jack Schwartz & Amanda Stakem Conn, *The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 Md. L. Rev. 432 (1995) 17

Thurgood Marshall State Law Library, *Guide to Maryland Legislative History Research*, https://tinyurl.com/y24ceasr (last visited Aug. 6, 2024) 19

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Amicus curiae the Maryland Crime Victims' Resource Center, Inc. ("MCVRC") is a non-profit corporate entity that represents the interests of victims of crime to ensure that courts properly understand the Maryland laws that grant crime victims their state constitutional and statutory rights in aid of their healing. For more than four decades, MCVRC has provided pretrial, trial, and appellate assistance to victims of crime and has advocated for policy changes to the criminal justice system. MCVRC has represented victims in state and federal courts at the trial and appellate levels. It also has filed amicus briefs in several courts, including this Court and the United States Supreme Court. MCVRC's focus on crime victims, and the legislation

---

[1] Amicus adopts the statement of the case, question presented, statement of facts, and standard of review of the Appellees Valerie Bunker and John Doe and Respondents John Doe, Richard Roe, and Mike Smith. *See* Appellee Br. 3-16; Resp. Br. 1-6. Appellants the Key School, Inc., et al. and the Board of Education of Harford County (together, "Key") and Petitioner the Roman Catholic Archbishop of Washington ("AOW") are together referred to as the "defendant institutions." MCVRC files this brief after obtaining the written consent of the parties pursuant to Rule 8-511(a)(1). No person other than amicus and its attorneys made a monetary or other contribution to the preparation or submission of this brief. MCVRC is filing a substantively identical brief in the three related cases, *Key School, Inc. v. Bunker*, No. SCM-MISC-0002-2024, *Board of Education of Harford County v. Doe*, No. SCM-REG-0010-2024, and *Roman Catholic Archbishop of Washington v. Doe*, No. SCM-REG-009-2024, because each case raises the question that MCVRC addresses: Does the Maryland Child Victims Act of 2023 impermissibly abrogate a vested right in violation of the Maryland Declaration of Rights and/or Constitution?

enacted to protect them, offers a perspective that differs from the parties in the case.

This case is particularly relevant to MCVRC's mission. Allowing victims of childhood sexual abuse to hold accountable non-perpetrator defendants who facilitated their abuse helps victims heal, as the General Assembly recognized in opening the courthouse doors to such victims. The General Assembly extended the time in which victims can file suit to meet them where they are and account for the barriers they face in reporting abuse.

INTRODUCTION

This Court should not undo the General Assembly's careful work extending the statute of limitations for victims of childhood sexual abuse in suits against institutions that facilitated the abuse. In 2017, the General Assembly unanimously enlarged the time in which victims could bring their claims because legislators understood—from personal experience or legislative testimony—that people who were abused as children often repress those traumatic and degrading experiences and struggle to report their abuse for decades (if they ever do report). This Court should not interpret the 2017 law to provide immunity to the institutions that enabled their abuse, as the defendant institutions propose in their challenges to the 2023 Child Victims

Act ("CVA")—a law that eliminated the statute of limitations for claims of childhood sexual abuse.

After years of trying to expand the limitations period, the General Assembly enacted the 2017 law. The 2017 law succeeded where others failed because it contained a carefully crafted compromise between legislators focused on victims and those concerned about frequently sued institutions, namely the Maryland Catholic Conference ("the Church"). In exchange for extending the limitations period to a victim's 38th birthday, CJP § 5-117 (2017) raised the standard for liability for claims brought after the victim's 25th birthday, making institutions who harbored abusers liable only if they were grossly negligent.

This legislative compromise was intentional and explicit. As Delegate C.T. Wilson—one of the bill's sponsors—explained, the goal of the bill was to allow victims to "face their [abuser]" and "those who protected that person" in court and say, "it is your fault and you were wrong." House Judiciary Committee ("HJC") Hearing, Feb. 23, 2017, at 56:27-56:33, https://tinyurl.com/44x4wdr2. In exchange for giving victims more time to sue, the law added a gross negligence standard and ensured public and private institutions would be treated the same. The compromise was clear: These changes were "the give and take for" expanding "the number of years"

in the limitations period. *See* HJC Hearing, Mar. 15, 2017, at 39:47-40:01, https://tinyurl.com/34knnkdt.

The defendant institutions now seek to undo this compromise and shield themselves against the claims of victims whose abusers they harbored for decades. So they concoct an out-of-context reading of the 2017 law that superimposes a statute of repose, pointing to language in the 2017 session law (not repeated in the enacted statute) that describes the non-perpetrator limitations period as a "statute of repose." *See* Key Br. 23-29; AOW Br. 27-38. This description, the defendant institutions argue, prevents the Court from enforcing against them the 2023 CVA's elimination of the statute of limitations because, they assert, the 2017 statute of repose vested a right for institutions like them to be free of liability after a victim's 38th birthday. *See* Key Br. 39-45; AOW Br. 44-49.

The Court should not adopt the institutions' reading because it directly conflicts with the legislative purpose and history. Courts must "look holistically at the statute and its history to determine whether it is akin to a statute of limitation or statute of repose." *Anderson v. United States*, 427 Md. 99, 124 (2012). Here, the purpose and legislative history make clear that the 2017 law enacted a new statute of limitations, not a statute of repose creating a vested right. A statute of repose was never discussed in any of the recorded hearings. And legislators introducing the House and Senate bills described

the relevant amendments as making "technical changes" or as if they merely addressed a statute of limitations.

The fact that the session law—but not the statute—uses the term "statute of repose" is not dispositive because "[t]he circumstances of the enactment of [this] particular legislation may"—and here, should—"persuade a court that [the General Assembly] did not intend words … to have th[eir] literal effect." *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 514 (1987) (quoting *Watt v. Alaska*, 451 U.S. 259, 265-66 (1981)). Those significant legislative "circumstances" include the amendments, relationship to prior and subsequent statutory history, and other legislative history materials. *Id.* at 514-15. And, again, that material here points exclusively to the time limit being a statute of limitations.

In light of the overwhelming evidence of legislative intent, this Court should not interpret a few words in the session laws to turn on its head the General Assembly's true purpose: giving victims of childhood sexual abuse more time to sue.

ARGUMENT

I. The General Assembly Intended To Extend The Statute Of Limitations Because Victims Often Do Not Report Childhood Sexual Abuse For Decades.

The General Assembly passed Senate Bill 505 ("SB505") and House Bill 642 ("HB642") to provide victims of childhood sexual abuse with enough time

to file their claims against non-perpetrator defendants. Leading up to the unanimous vote, the General Assembly heard significant evidence that victims often do not report the abuse until well into adulthood—far beyond age 25, which was when these claims expired under existing law.

A. The House And Senate Bills Grew From A Long Effort To Expand The Maryland Limitations Period.

The bills that became CJP § 5-117 (2017) were years in the making. In 2003, the General Assembly expanded the relevant limitations period to seven years. *See* Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-117 (2003). Recognizing that the law still left many victims without recourse, a handful of legislators repeatedly introduced legislation to expand the limitations period further. *See, e.g.*, Senate Judicial Proceedings Committee ("SJPC") Hearing, Feb. 14, 2017, at 31:44-31:55, https://tinyurl.com/4kzpwvz2. These efforts failed, due in part to the Church's "consistent[] oppos[ition]." AOW E.268, E.273; *see also e.g.,* AOW E.278-82.

One of the most persistent advocates was Delegate Wilson. Three years in a row, he advocated for an extension by telling the story of his experience of childhood sexual abuse to the HJC. *See* HJC Hearing, Feb. 23, 2017, at 46:58-47:20, 49:06-49:37. Repeatedly sharing his story was "the worst thing [he's] ever experienced"—including his military service in active combat. *Id.* at 52:22-52:31. But he persevered.

In 2017, Wilson and others' work resulted in two identical bills extending the statute of limitations to 20 years after majority being cross-filed in the House and Senate on the same day. The bills received hearings, were amended, put up for floor votes, and unanimously passed.

B. The Congressional Hearings And Written Testimony Focused On Enlarging The Time For Victims To Sue.

In the hearings on the bills that became the 2017 law, the General Assembly received extensive testimony that victims of childhood sexual abuse often do not report their abuse until well into adulthood, if they report it at all. Delegate Wilson explained that 25 is simply "too young" to require victims to bring or forfeit their claims because "folks don't even want to admit that happened" or "don't even realize it's wrong until they have kids of their own." HJC Hearing, Feb. 23, 2017, at 48:40-49:04.

Dr. Morgan Greenfield, a pediatric resident at Children's National Health System, spoke of witnessing adults disclose their experience with sexual abuse for the first time after their own children report being abused. *Id.* at 1:00:56-1:01:17, 1:03:45-1:03:53. Additionally, she explained that frontal lobe development (responsible for executive function and reasoning) is not complete until a person's twenties or thirties, so victims need until then "to develop the adult skills necessary to cope with their trauma and potentially disclose." *Id.* at 1:02:55-1:03:20, 1:00:45-1:00:56.

The SJPC heard similar testimony. Lisae Jordan, the Executive Director of the Maryland Coalition Against Sexual Assault, testified that when thinking about reporting or filing suit, "often people kind of push it back until they have kids and then their kids turn the same age they were" when they were abused. SJPC Hearing, Feb. 14, 2017, at 1:22:11-1:22:30. So it is important to extend the limitations period to "cover most of your childbearing years." *Id.*

The written record also included evidence that victims may delay disclosing abuse because the victim may depend on the abuser financially, fear the abuser, or fear backlash from her family or community for exposing the abuser. *See* Key E.119, E.261, E.263, E.265; AOW E.220-21.

Responding to this evidence, legislators "just" wanted "to get more time" for victims. HJC Hearing, Feb. 23, 2017, at 1:02:20-1:02:37. As Delegate Wilson told the HJC, what "I want is the thing that most victims want: they want to be able to face their [abuser] and those who protected that person and say it is your fault and you were wrong." *Id.* at 56:24-56:33. The goal for proponents of the bills was to "move the ball forward" and "solve the problem" of "leaving people without [an] effective remedy," "even if it's not a perfect bill, and doesn't solve every single case." SJPC Hearing, Feb. 14, 2017, at 1:12:20-1:12:37, 1:20:23-1:20:38 (Jordan testimony).

C. The Bills Passed Unanimously, Reflecting The Broad Support For Giving Victims More Time To File.

Responding to these calls for more time, in 2017, the General Assembly unanimously enacted SB505 and HB642. The codified 2017 law expanded the limitations period for claims involving childhood sexual abuse to 20 years after the age of majority (that is, age 38), (b)(2)(i); added a three-year window for victims to file suit against perpetrators after the perpetrator is convicted of a related crime, (b)(2)(ii); required that an action brought after the victim's 25th birthday against a non-perpetrator prove "gross negligence," (c)(3); and extended the limitations period for claims against non-perpetrators to 20 years but without the additional post-conviction three-year window available against perpetrators, (d). CJP § 5-117 (2017). In addition, to ensure that public and private institutions faced the same statute of limitations, the bills exempted childhood sexual abuse claims from the tolling provisions in government tort claims statutes, which had reduced the effective limitations period for claims against the government. *See* Key E.77-78, E.82-83; AOW E.164-65, E.169-70, E.268, E.273, E.278-79; *see, e.g.*, CJP § 5-304.

The bills passed by unanimous vote. *See* HB642, Third Reading in Senate, https://tinyurl.com/adedh4ha (passed 47-0); SB505, Third Reading in House, https://tinyurl.com/4kpeh4df (passed 139-0, with 1 not voting and 1 absent). When the House Bill passed, the room erupted into applause.

House Floor Actions, Mar. 17, 2017, at 8:04-8:25, https://tinyurl.com/28ybbvdr. The General Assembly had spoken with one voice to expand court access for victims of childhood sexual abuse.

II. The Compromise In The Final Law Was The Heightened Standard Of Liability For Third Parties, Not A Statute Of Repose.

The final bills reflected a compromise between proponents of the extended limitations period and those concerned about institutions' potential liability under the revised statutes. The bills provided a longer statute of limitations but a higher standard of liability. This compromise, just like the earlier statute of limitations extension, did not include conferring a right on institutions to be forever free from liability.

A. Legislators Negotiated A Compromise That Extended The Limitations Period In Exchange For Raising The Standard For Liability.

The original versions of SB505 and HB642 offered a variation on the final compromise. Like the final bills, the original bills would have extended the statute of limitations and equalized the treatment of public versus private institutions in claims for childhood sexual abuse. SB505, as introduced Feb. 1, 2017, https://tinyurl.com/5f523cf4; HB642, as introduced Feb. 1, 2017, https://tinyurl.com/yrch35cz; *see supra* 9. But unlike the final bills, they required that non-perpetrator defendants "had actual knowledge of

a previous incident … of sexual abuse." *See* SB505, as introduced Feb. 1, 2017; HB642, as introduced Feb. 1, 2017.

Foreshadowing a unique opportunity for its support, on the day of the SJPC's first hearing on SB505, the Church stated that it "neither support[ed] nor oppose[d]" the bills, unlike past "bills that the Church has consistently opposed." AOW E.268, E.273. And although the Church "continue[d] to maintain … that there is no need to change the … law," it admitted that the bills "reflect positive changes" from prior proposals because they "take some steps to reduce the law's inequitable treatment of public and private institutions," and "raise[] the standard of evidence necessary in order to bring a suit forward against an institution." *Id.* at E.268-69, E.273-74.

The subsequent bill negotiations focused on these two ideas. The negotiated agreement expanded the limitations period to 20 years after the age of majority for claims against third parties, but required plaintiffs bringing claims more than 7 years after the age of majority to prove that those third parties had been "gross[ly] negligen[t]." Key E.77, E.82; AOW E.164, E.169. And the bills continued to equalize the statute of limitations for public and private institutions. Key E.77, E.82; AOW E.164, E.169. What was not up for negotiation—and what never changed in the amendments—was that the law would meaningfully extend the statute of limitations for claims against defendants who actually facilitated abuse.

B. The Catholic Church Supported This Compromise—And Never Publicly Asked For A Statute Of Repose.

Delegate Wilson and the Church together presented this compromise to the HJC. Delegate Wilson testified alongside Mary Ellen Russell, then-Executive Director of the Maryland Catholic Conference and John Stierhoff, a lobbyist for the Maryland Catholic Conference. *See* HJC Hearing, Mar. 15, 2017, at 35:15-35:36.

Delegate Wilson stated that the compromise protected the core "goal" of the bill: "to preserve an individual's rights and their voice and allow them to … at least face their [abuser] and … go after [him] in civil court." *Id.* at 36:28-36:39. To that end, the bill still "extends the time they can sue them in civil court." *Id.* Addressing the gross negligence standard, Wilson said that because gross negligence is a factual question for a jury, the heightened standard would allow victims to testify in court even if they ultimately failed to prove gross negligence. *Id.* at 36:18-36:27. As to the undeniable fact that the gross negligence standard "does raise the bar, *that was the give and take for this, for the number of years*." *Id.* at 39:56-40:01 (emphasis added).

Speaking on behalf of the Church, Executive Director Russell reiterated the "very fair compromise." *Id.* at 37:29-37:45. She "recognize[d] what Delegate Wilson has been saying all along, that it does take victims a long time to come forward." *Id.* at 37:46-37:51. Referencing the gross negligence

standard, she continued that the bill "is a fair way of allowing those people to have their time in court while still being fair to institutions and defendants to be able to defend themselves in a fair way." *Id.* at 37:51-38:05. And she appreciated that "the bill appl[ies] equitably across the board" to public and private entities. *Id.* at 38:05:-38:09.[2]

The legislative compromise was clear and settled: the "give" was the heightened standard of liability for non-perpetrator defendants and treating public and private defendants alike; and the "take" was extending "the number of years" victims had to hold those defendants liable. *See id.* at 39:56-40:01.

C. There Was Never Any Discussion About A Statute Of Repose.

In all the extensive public testimony, hearings, and votes, there was never—not once—any substantive discussion of a statute of repose. That silence is in contrast to the clear and repeatedly articulated compromise discussed above.

Neither the word "repose" nor the idea of a vested right to be free from liability was mentioned in any committee hearing—not in the February 23rd

[2] There is no public recording of the SJPC's approval of the amendments on March 10, 2017, or its favorable report on the bill on March 13, 2017. *See* Maryland General Assembly, Meetings, https://mgaleg.maryland.gov/mgawebsite/Meetings/Day/senate (showing no hearings or voting sessions on those days) (last visited Aug. 6, 2024).

HJC hearing; the February 14th SJPC hearing; or the March 15th HJC hearing in which Delegate Wilson discussed the compromise and amendments. *See* HJC Hearing, Mar. 15, 2017, at 35:14-41:34; *supra* 12-13. It never came up in the seven Senate or House Floor Actions on March 14th, 15th, 16th, 17th, 24th, and 31st or April 4th. In *all* the publicly available recordings about this bill, there was *never* a discussion about a statute of repose or the bills' supposed creation of a vested right to be immune from suit.

That leaves the institutional defendants with only the March 23rd Senate Floor Action on HB642, where the word "repose" was said aloud for the first and only time. *See* Key Br. 13; AOW Br. 37-38. But the word was nothing more than said. No further comment, exposition, debate, or discussion was had regarding that one word. Moreover, the March 23rd Floor Action came after the substantive hearings and negotiations in committee, and after the Senate had twice voted to approve its identical bill with no mention of "repose." When introducing the bill for its second reading, one Senator simply recited without any clarification or even recognition of the inconsistency of his statement that the bill: expands the limitations period for claims of childhood sexual abuse; exempts those claims from certain anti-tolling laws; and "creates a statute of repose for specified civil actions relating to child sex abuse." Senate Floor Action, Mar. 23, 2017, at 2:16:46-

2:17:26, https://tinyurl.com/4r4m9yck. No discussion followed before the vote. The total time the Senate spent on HB642 was approximately one minute. *See id.* at 2:16:52-2:17:25.

Accordingly, not one of the roughly dozen hearings offers *any* support for the proposition that the General Assembly intended to confer sweeping new immunity rights on institutions that facilitated child sexual abuse.

D. The Bills' Sponsors Explained The Relevant Amendments As If They Addressed A Statute Of Limitations Or Made "Technical" Changes.

Not only was "repose" not mentioned in association with any amendments to the bills, but the bills' sponsors described the three amendments as if they addressed a statute of limitations and added merely "technical" details.

Amendment 1 modified the bills' "purpose" statement as part of a "technical change[]." *See* Key E.124, E.127; AOW E.223, E.226; Senate Floor Action, Mar. 14, 2017, at 15:23-17:04, https://tinyurl.com/mrxwmsty. Among other changes, it added to the list of the bills' purposes "establishing a statute of repose for certain civil actions relating to child sexual abuse." Key E.124, E.127; AOW E.223, E.226. The legislators described this amendment as "mak[ing] technical changes" to the text of the session law that was understood to create a statute of limitations. Senate Floor Action, Mar. 14, 2017, at 15:58-16:02; House Floor Action, Mar. 16, 2017, at 57:41-57:45,

https://tinyurl.com/wedxuxbj. That description does not reflect a massive shift in non-perpetrators' right to be free of liability.

Amendment 2 added, as relevant, the purported statute of repose in subsection (d). *See* Key E.125, E.128; AOW E.224, E.227. But neither the amended language itself nor the introduction of the amendment described the time limit as a statute of repose or as creating immunity rights. Instead, the presenting legislators simply said that subsection (d) "prohibit[ed] filing an action against [non-perpetrators] more than 20 years after the victim reaches the age of majority." Senate Floor Action, Mar. 14, 2017, at 16:33-16:43; House Floor Action, Mar. 16, 2017, at 58:05-58:14. To anyone on the Floor—or anyone reading subsection (d)—there was no clarification that this provision would, allegedly, operate differently than subsection (b)'s statute of limitations or than the prior extension of the statute of limitations. *See infra* 18-19.

Amendment 3 described the bills' retroactive and prospective applicability, and allegedly the statute of repose. *See* Key E.125, E.128-29; AOW E.224, E.227-28. Both the House and Senate speakers described Amendment 3 as clarifying the bills' application to claims before and after the October 1, 2017, effective date—again never mentioning the word "repose" or the idea of a vested right. *See* Senate Floor Action, Mar. 14, 2017, at 16:43-16:57; House Floor Action, Mar. 16, 2017, at 58:15-58:23. These descriptions

make little sense if the amendments conferred a vested right that undercut the statute and stymied its effect on institutions that protected abusers.

E. Generic Floor Reports, Policy Notes, And An Unsigned, Undated Document Do Not Show That Legislators Intended Or Understood The Law To Create A Statute Of Repose.

Ignoring the detailed legislative history, the defendant institutions cherry-pick the few documents in the record that say the word "repose" and construct an inaccurate narrative around them. They profess that these documents show that the General Assembly was aware of the supposed statute of repose, despite never having discussed it on the record. *See* Key Br. 29-32; AOW Br. 35-38.

The first set of documents relevant to their story are the Floor Reports compiled by the committees. *See* Key E.131-34, AOW E.230-33 (Floor Report on HB642); Key E.136-39, AOW E.235-38 (Floor Report on SB505). These reports are intended to "help the committee chairman describe a bill when it comes up for a floor vote." Jack Schwartz & Amanda Stakem Conn, *The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 Md. L. Rev. 432, 442 (1995).

But if the goal was to inform the legislators of a new—and unexpected—statute of repose and its effect, the Floor Reports did not do that. The Reports' "short summar[ies]" of the bills and descriptions of the

amendments do not mention repose. *See* Key E.131, E.136; AOW E.230, E.235. Where the Reports do say "repose," they repeat it generically and without explanation. First, the Reports state:

> "The bill establishes a 'statute of repose' prohibiting a person from filing an action for damages arising out of an alleged incident … of [childhood] sexual abuse … against a [third party] more than 20 years after the date on which the victim reaches the age of majority."

Key E.132, E.137; AOW E.231, E.236. This language (like the floor statements that referred to it, *supra* 17) describes a statute of limitations as much as a statute of repose: There is no mention of a vested right, and the description of the time limit sounds very much like that of the statute of limitations two paragraphs earlier. *See* Key E.131, E.137; AOW E.230, E.236 (describing the limitations period as requiring that "[a]n action … *must be filed* … within … 20 years after … the age of majority" (emphasis added)). Second, the Reports say the "statute of repose … must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Key E.132, E.137; AOW E.231, E.236. By explaining this use of "repose" in connection with the "statute of limitations," the Reports rebut the idea that a statute of repose operates differently from a statute of limitations.

The much-cited but derivative Senate Fiscal and Policy Note adds nothing more. *See* Key Br. 11-12, 30-31; AOW Br. 13, 37. The Department of Legislative Services creates these Notes to inform legislators about the fiscal—not the legal—impact of proposed legislation. *See* General Assembly of Maryland Department of Legislative Services, FAQ, https://dls.maryland.gov/faq/# (last visited Aug. 6, 2004). To set up its financial analysis, the Note simply repeats language from the amendments and Floor Reports, without any discussion. *See* Key E.141-42; AOW E.240-41.

The final document the institutional defendants offer is an unsigned, undated document in the bill file titled "Discussion of certain amendments in SB0505." *See* Key E.149-50; AOW E.248-49; Key Br. 13, 31-32; AOW Br. 14-15, 38. Bill files are compiled by the Department of Legislative Services, but a document's mere appearance in a bill file does not show who authored it, who viewed it, or who agreed with it. *See* Thurgood Marshall State Law Library, *Guide to Maryland Legislative History Research*, https://tinyurl.com/y24ceasr (last visited Aug. 6, 2024). Here, there is no indication that the document was submitted into the record prior to enactment and no evidence that legislators saw the document or adopted it before voting. In fact, several legislators—including Senator Bobby Zirkin, who introduced the amendments—publicly said following the bill's enactment

that they were never informed of the meaning of the repose language. *See* Erin Cox & Justin Wm. Moyer, *When Maryland Gave Abuse Victims More Time to Sue, It May Have Also Protected Institutions, Including the Catholic Church*, Wash. Post (Mar. 31, 2019), https://tinyurl.com/2zwh6rau. This confirms the colloquial casual use of the term "repose" and suggests that there was no difference between a statute of limitations and any statute of repose.

The institutional defendants nonetheless suggest that this Court can place heavy reliance on this undated, anonymous document because, in cases under entirely different circumstances, courts have mentioned such documents in recounting a bill's legislative history. *See* AOW Br. 38 (citing *Warfield v. State*, 315 Md. 474, 497 (1989); *Herd v. State*, 125 Md. App. 77, 90 (1999)); Key Br. 32 (citing same and *Weber v. State*, 320 Md. 238, 246 (1990)). But none of those cases relied on an undated, unsigned document to prove the General Assembly's knowledge about an area of law so obscure that the Court itself has explained it inconsistently. *See Anderson*, 427 Md. at 106-17 (describing the Court's own inconsistent use of the terms "statute of repose" and "statute of limitations"). And no case has relied on such a document when there was no provenance about who wrote the document or where the document came from, and the legislators denied having seen, heard, or understood any of the information in it. *See* Cox, *supra* 20. These cases are

thus inapposite and should not lead the Court to rely on one anonymous document to contradict the reported legislative history showing the General Assembly's intent to grant victims more time to come to court.

F. Post-Enactment, Legislators Emphasized That Their Bills Did Not Undo The Careful Compromise With A Statute Of Repose.

Post-enactment, the alleged statute of repose came up when legislators proposed a bill permitting victims of childhood sexual abuse to file their claims "at any time." *See* HB687, as introduced Feb. 7, 2019, https://tinyurl.com/yw6n6mxe. Opponents argued that the bill was unconstitutional because it conflicted with non-perpetrators' right to be free from suit. In response, legislators disavowed any statute of repose in the 2017 law. Delegate Wilson reminded his fellow legislators that "the whole purpose" of the 2017 law was "to get these victims an opportunity to come to court." House Floor Action, Mar. 16, 2019, at 2:02:05-2:02:16, https://tinyurl.com/zm8jdnwy. He recalled that "when we argued this on the Floor, nobody here heard anything about a 'statute of repose.'" *Id.* at 2:02:56-2:03:02. "It 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 2:04:55-2:05:01. Vanessa Atterbeary, the Vice Chair of the HJC, agreed that "[p]ermanent immunity 'was never discussed.'" Cox, *supra* 20.

The legislators emphasized that a statute of repose conflicted with their intent. Delegate Wilson said creating a statute of repose "was never my intent." House Floor Action, Mar. 16, 2019, at 2:05:39-2:05:45. Senator Zirkin said the same: "it wasn't anyone's intent" to provide institutions with a vested right to be free from suit. Cox, *supra* 20.

Following through on these statements, in 2023, the General Assembly eliminated any statute of limitations for claims of childhood sexual abuse and repealed any supposed statute of repose. CJP § 5-117 (2023).

In sum, the legislative purpose and history overwhelmingly show that the General Assembly's "goal" was to "get more time" for victims to sue. *Supra* § II.B. It reveals that the General Assembly turned this goal into reality by striking a "compromise" in which victims were permitted to bring claims until their 38th birthday, but for claims brought after the victim's 25th birthday, defendants who facilitated abuse would be liable only if they acted with gross negligence. *Supra* § II.B. The statute's history shows this compromise taking shape step-by-step. *Supra* § II.A & B. The negative evidence is as clear as the affirmative evidence, showing that the General Assembly never discussed adding a "statute of repose" that would undo its primary purpose. *Supra* § II.C. & D. Wrongdoers and their facilitators have no constitutional nor equitable vested right to avoid liability for the damage from their harmful behavior to victims, any more than bank robbers can keep

banks from recovering their stolen funds still in the possession of the bank robbers, just because the statute of limitations for criminal prosecution has passed.

III. Reading The 2017 Law To Create A Statute Of Repose That Vests A Right To Be Free From Suit Clashes With The Law's Purpose And History.

The 2017 statute's context, history, and purpose resolve this case under this Court's caselaw, for they show that the law created a statute of limitations, not a statute of repose with a vested right to be free of liability. Courts must "look holistically at the statute and its history to determine whether it is akin to a statute of limitation or a statute of repose," *Anderson*, 427 Md. at 124, and that history shows that the 2017 law established a statute of limitations.

The defendants try to override the statute's obvious purpose by emphasizing the words "statute of repose" used casually or in isolation. Key Br. 23-29; AOW Br. 30. But this Court should not, and does not, determine a statute's meaning by relying upon words granting immunity from prosecution never explained to, or by, the legislators simply because those words appear in the session law—particularly when the words carry mixed meaning, *see Anderson*, 427 Md. at 106, rendering the statute ambiguous, *see Kaczorowski*, 309 Md. at 513.

Rather, this Court recognizes that "[t]he circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have [their] literal effect." *Id.* at 514 (quoting *Watt*, 451 U.S. at 265-66). Specifically, the Court looks to the "bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal." *Id.* at 515. If ever there were a statute for which the circumstances of its enactment dictate its proper interpretation and prove that the General Assembly did "not intend words … to have [their] literal effect," *id.* at 514, it is this one.

Starting with the 2017 law's "relationship to earlier and subsequent legislation," this bill followed years of attempts to enact legislation with one purpose: to extend the statute of limitations for victims of childhood sexual abuse. *Supra* §§ I.A., II.A. Each year, the bills' sponsors explained the importance of that goal. *Supra* § I.A. And the limitations period is at issue now because the General Assembly continued that mission in 2023, eliminating the statute of limitations and disavowing any unintended limitation slipped into the 2017 law. *Supra* § II.F; *see* CJP § 5-117(b).

"[O]ther material that fairly bears on the fundamental issue of legislative purpose or goal" includes the hours of testimony telling legislators

the many reasons why victims struggle to report their abuse earlier. *Supra* § I.A & B. Only once in the entire discussion of the bill were the words that defendants rely on mentioned, and then only at a late stage in a routine recitation of the bill. *Supra* § II.C & D.

Finally, the "amendments that occurred as it passed through the legislature" are crucial here, because negotiation around them shows the agreement's contours: a longer limitations period in exchange for a higher standard of liability and more equal treatment of public and private entities. *Supra* § II.A & B. The amendments adding the "statute of repose" language were described as "technical" or in terms equally applicable to a statute of limitations because that language was not intended to operate differently from the negotiated limitations period. *Supra* § II.D. To the extent the General Assembly used the wrong word to do that in 2017 and subsequently corrected that error in later legislation, the Court should afford the earlier errors little weight.

The defendants' readings both fundamentally misrepresent the statute and betray the victims the General Assembly unanimously voted to help. In its entirety, the legislative record lacks any statements even hinting that the General Assembly intended to enact a bill that carved out for special protection grossly negligent institutions that could otherwise be sued for facilitating childhood sexual abuse. Relying upon a few subsequently

repudiated words from an otherwise silent record as evidence of deliberate legislative intent to create a permanent immunity for defendants who harbored abusers defeats the purpose of the statute. This Court should support the victims who successfully moved the General Assembly to give them an opportunity to tell the defendants who facilitated their abuse that "it is [their] fault and [they] were wrong." HJC Hearing, Feb. 23, 2017, at 56:27-56:33.

CONCLUSION

This Court should hold that the Maryland Child Victims Act of 2023 does not impermissibly abrogate a vested right in violation of the Maryland Declaration of Rights and/or Constitution.

Respectfully submitted,

/s/ John B. Williams III

John B. Williams III
AIS # 0712120409
Melanie L. Bostwick (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400
jwilliams@orrick.com
mbostwick@orrick.com

Eliza Lehner (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Rachael Jensen (specially admitted)
ORRICK, HERRINGTON & SUTCLIFFE LLP
300 West 6th Street, Suite 1850
Austin, TX 78701

Counsel for Amicus Curiae

August 7, 2024

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,839 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief was printed utilizing Century Schoolbook, 13 Point font and complies with the type size requirements stated in Rule 8-112.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/John B. Williams III
John B. Williams III AIS # 0712120409
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of August, 2024, the foregoing Brief of Amicus Curiae was filed and served electronically via MDEC upon all counsel of record:

Edmund J. O'Meally
Andrew G. Scott
Adam E. Konstas
PESSIN KATZ LAW, P.A.
901 Dulaney Valley Road, Suite 500
Towson, MD 21204

Counsel for Defendant-Appellant
the Board of Education of Harford County

Danielle Desaulniers Stempel
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

Counsel for Appellee John Doe

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/John B. Williams III
John B. Williams III AIS # 0712120409
Counsel for Amicus Curiae