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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)

Misc. No. 10, September Term, 2024
SCM-REG-0002-2024

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)

BRIEF OF AMICI AMERICAN ASSOCIATION FOR JUSTICE, CHILD USA, CHANGE THE CONVERSATION, MARYLAND ASSOCIATION FOR JUSTICE, AND PUBLIC JUSTICE IN SUPPORT OF PLAINTIFFS-APPELLEES

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**Motion for Admission Pro Hac Vice Pending*

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CORPORATE DISCLOSURE STATEMENT

No amicus has a parent corporation, and no publicly held company owns 10% or more of the stock of any amicus.

STATEMENT OF INTERESTS

Amici curiae advocate for survivors of sexual abuse and other victims of wrongful conduct. Each has significant experience working with childhood sexual abuse victims—including many who did not disclose their abuse until well into adulthood. Some represent victims in court; others engage in policy advocacy to prevent sexual abuse, educate the public, and ensure that survivors have the support they need to heal.

Through their significant experience and expertise, amici all recognize that access to justice through the civil court system is essential for victims to heal and to deter wrongful conduct by institutions that enable abuse. They are well-positioned to offer current research and analysis regarding the constitutionality of the Maryland Child Victims Act, the statistics and science concerning the disclosure of sexual abuse by survivors, and the compelling public interest in reviving expired sexual abuse claims.[1]

[1] The parties consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no party beyond *amici* contributed any money toward the brief.

INTRODUCTION

The Maryland Constitution guarantees every person access to justice. *See* Md. Const. Decl. of Rts. art. 19. Yet for so many victims of child sexual abuse, that promise has long been an empty one. Manipulation by trusted abusers, concealment by culpable institutions, and the suppressive effects of trauma on memory and reporting have shielded perpetrators and their institutional enablers. And they have left victims to bear the lifelong costs of sexual abuse. The Maryland Child Victims Act ("CVA") was passed to address those realities. One of at least thirty similar laws passed in other states and territories, it makes good on the Maryland Constitution's promise of access to justice by offering abuse survivors a fair chance to pursue the relief they have long deserved.

The CVA is constitutional for three main reasons. ***First***, in lifting the previous time limit on when a sexual abuse suit could "be filed," Cts. & Jud. Proc. § 5-117(b) (2017), the CVA simply revived victims' procedural right to sue for the compensation that Defendants have long owed them; it did not affect Defendants' substantive liability, so it did not infringe any "vested" right protected by the Constitution. ***Second***, the 2017 law could not have created a vested right to be free from liability because that would have unconstitutionally impaired *victims*' rights in their pre-existing claims. ***Third***, the Act serves a compelling interest recognized in the Maryland Constitution itself: to give child sexual abuse victims access to justice. To hold, as Defendants argue, that the legislature may "extinguish" existing claims but may not reopen the courthouse doors would elevate a judicially created right to repose over victims' express constitutional right to recourse. The Court should allow the legislature, not the courts, to strike that balance.

BACKGROUND

Since "the late 1980's, lawmakers across the country" have become "increasingly aware that young victims often delay reporting sexual abuse because they are easily manipulated by offenders in positions of authority and trust, and because children have difficulty remembering the crime or facing the trauma it can cause." *Doe v. Roe*, 419 Md. 687, 704 (2011) (quoting *People v. Frazer*, 982 P.2d 180, 183 (Cal. 1999)). The CVA culminates a decades-long legislative effort to ensure remedies for victims of childhood sexual abuse by extending the deadlines to sue perpetrators and their institutional enablers.

In 2003, "in response to the outcry and evolving understanding of childhood sexual abuse," Maryland extended the statute of limitations from three to seven years from the date the victim turned 18. *Doe*, 419 Md. at 704–05. This Court held that that the extension constitutionally applied to claims that accrued prior to its effective date because, in modifying the limitations period, the law was "remedial" and did "not affect substantive or vested rights." *Id.* (quoting *Langston v. Riffe*, 359 Md. 396, 408-09 (2000)).

In 2017, "[i]n response to growing recognition of the long-term impact of child sexual abuse," the General Assembly again extended the statute of limitations for civil child sexual abuse claims. Md. Gen. Assemb., 90 Day Report, 2017 Sess., Part F (July 28, 2017). The law provided that, as to claims against direct perpetrators, "an action for damages . . . shall be filed" (1) any time before the victim turned 18 or (2) subject to certain conditions, within 20 years after they turned 18 (i.e., by age 38) or within three years of the date the defendant was convicted of sexual abuse. Cts. & Jud. Proc. § 5-117(b) (2017). As to claims against enabling institutions like Defendants, the 2017 law

provided that such a claim must be filed by the time the victim turns age 38. *Id.* § 5-117(d) (providing that an "action for damages" against a non-perpetrator must "be filed" within "20 years after the date on which the victim reaches the age of majority"). The law applied retroactively only to "actions that were barred by the application of the [seven-year] period of limitations applicable before October 1, 2017." 2017 Md. Laws c. 12, § 3.

The 2023 CVA was enacted in response to new revelations about the prevalence of child sexual abuse in Maryland and the barriers that prevented victims from getting justice. In 2018, the Attorney General launched an investigation into the "pervasive and persistent [child sexual] abuse by priests" within the Archdiocese of Baltimore and the longstanding efforts to "cover up . . . that abuse." Md. Att'y Gen., Attorney General's Report on Child Sexual Abuse in the Archdiocese of Baltimore 1 (Sept. 2023) ("Att'y Gen. Report").[2] The Attorney General's report of the investigation, released in September 2023, revealed a "common thread" in victims' stories: years and often decades-long delays in reporting the abuse. *Id.* at 19. "Some did not come forward until their parents had passed away to spare them the pain of knowing about the abuse." *Id.* "Many intended never to tell but were persuaded to come forward with the help of a therapist, support group, or on their own when they confronted the impact of the abuse on their lives and the lives of those close to them." *Id.* "Some victims repressed their memories and the recollections of abuse emerged only many years later." *Id.* "Still others only recognized that what they experienced was abuse once they reached adulthood; children, especially those who are groomed by their

[2] https://www.marylandattorneygeneral.gov/reports/AOB_Report_Revised_Redacted_Interim.pdf

abusers, may not recognize the behavior as abuse at the time it is happening." *Id.* As a result, many of the hundreds of victims who came forward in the investigation had no access to civil justice because their claims were time-barred.

The General Assembly passed the CVA in October 2023, soon after the Attorney General released the report of investigation. The Act seeks to provide victims access to justice by lifting the time limits in effect under the 2017 law. It states that claims arising from child sexual abuse may be filed at any time during the victim's life. Cts. & Jud. Proc. § 5-117 (2023). The Act applies retroactively to claims that would have been time-barred before its effective date, while capping the non-economic damages recoverable in such cases. *Id.* In doing so, it "express[es] 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." Md. 90 Day Report, 2023 Sess., Part F, Budget and State Aid (Apr. 14, 2023).

ARGUMENT

I. The Child Victims Act of 2023 Did Not Impair a Vested Right.

The CVA is fully consistent with the Maryland Constitution. In arguing otherwise, Defendants urge that when the legislature imposed the 20-year deadline in 2017, it gave abusers and their enablers an irrevocable "vested" property right to be free from the claims of their victims, such that in lifting that deadline, the CVA violated the Constitution. But the CVA did not impair any vested right because the 2017 law did not create one. This is for at least two reasons. ***First***, the 2017 law created only a statute of limitations, which does not confer a substantive right. ***Second***, regardless of how it was labeled by the

Legislature, the substance of the 2017 law lacks two features of a vested right: (1) it affected only remedies—when a claim must "be filed"—not substantive liability, and (2) it did not create a deadline that was "so substantially relied upon that retroactive divestiture would [have been] manifestly unjust.'" *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003).

A. The 2017 Law Created a Statute of Limitations, Not a Statute of Repose.

The 2017 law created a statute of limitations, not statute of repose. A statute of limitations is a "procedural device that operates as a defense to limit the remedy available for a pre-existing cause of action"; it "do[es] not create any substantive rights in a defendant to be free from liability." *Anderson v. United States*, 427 Md. 99, 118, 121 (2012) (citation omitted); *see also Campbell v. Holt*, 115 U.S. 620, 626 (1885) ("The statute of limitations only bars the plaintiff's remedy and not the debt."). Unlike a statute of repose, which can affect whether liability "accrues" or "exists" at all, a statute of limitations affects only the victim's remedy—whether they can "file a claim" in court to obtain relief. *Anderson*, 427 Md. at 121–22 (citation omitted). Because a statute of limitations affects only remedies, it does not give defendants any vested right that the Maryland Constitution protects. *See, e.g.*, *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 561 (2011) (explaining that this Court has "held consistently that the Legislature has the power to alter the rules of evidence and remedies," which include "statutes of limitations," even if they apply retroactively, because "[s]tatutes which do not destroy a substantial right, but simply affect a remedy, are not considered as destroying or impairing vested rights").[3]

[3] A statute of limitations does not create a vested right for another reason—because it is an affirmative defense. "[T]he elimination of an affirmative defense does not hinder,

The 2017 law imposed a statute of limitation for three reasons.

i. The 2017 Law Spoke to Remedies, Not Substantive Rights.

First, like the statute in *Anderson*, it speaks only to remedies, not substantive rights. In *Anderson*, the Court held that unlike Maryland's only statute of repose, which speaks in terms of how long "a cause of action" existed after it "accrued," Cts. & Jud. Pro. § 5-108, a statute that limited only how long a plaintiff had to "file" "an action for damages," was a statute of limitations. 427 Md. at 107, 125-26; *accord CTS Corp. v. Waldburger*, 573 U.S. 1, 16–17 (2014) (holding that a statute that referred to the period in which an "action" "may be brought" described a statute of limitations because it did not "define the scope of . . . liability"). The 2017 law used the same language: it limited only when an "action for damages . . . may be filed," not when liability accrued or for how long it existed. Cts. & Jud. Proc. § 5-117(d) (2017). It does not extinguish defendants' obligations. That aligns with the thrust of the 2017 amendment: to *expand* remedies for child abuse, not to absolve its enablers of all responsibility once they managed to run out the clock. *See, e.g.*, *Testimony of Senator Delores G. Kelley Re: S.B.505 Before the S. Jud. Proc. Comm.*, 2017 Leg., 437th Sess. 4 (Md. 2017) (testimony by the sponsor of the 2017 law urging its passage to give victims "access to civil relief in the courts" and to allow them to "seek any legal remedy so that their healing may begin"); S. Jud. Proc. Comm., Floor Report: S.B. 505

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eliminate, or modify a substantive right, and thus, a statute or rule that eliminates an affirmative defense can be applied retrospectively." *State v. Smith*, 443 Md. 572, 594 (2015) (quoting *Rawlings v. Rawlings*, 362 Md. 535, 560 n.21 (2001)).

(Md. 2017) (E.138) (framing the law as one among many state laws that constituted a "response to growing recognition of the long-term impact of child sexual abuse").[4]

ii. The 2017 Law Turned on Plaintiff-Specific Facts that Were Hard for Defendants to Ascertain, So It Did Not Provide a Predictable Deadline that Defendants Could Easily Rely Upon.

Second, like the statute of limitations in *Anderson*, the law started the clock when the victim reached the age of majority and could first file suit on their own, not on "the date of the last culpable act or omission of the defendant." *CTS Corp.*, 573 U.S. at 8. Such "plaintiff-focused language" is the hallmark of a "statute of limitations." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2452, 2456 (2024). ***Third***, the 2017 law effectively allowed for "equitable tolling" of past claims, another feature of "[s]tatutes of limitations, but not statutes of repose." *CTS Corp.*, 573 U.S. at 8. By making the limitations period depend on the ages of victims who were potentially unknown to the defendant institutions, and on the various fact-bound grounds for equitable tolling, the 2017

[4] Reading the 2017 law to impose a statute of repose would make Maryland an outlier: almost no other state applies a statute of repose to child sexual abuse claims—for good reason. Repose statutes usually aim to protect a particular "class of potential defendants," *Anderson*, 427 Md. at 118, to promote stability and in a particular industry. *See, e.g.*, Michael J. Vardaro & Jennifer E. Waggoner, *Statutes of Repose: The Design Professional's Defense to Perpetual Liability*, 10 J. of Civ. Rts. & Econ. Dev. 697, 712–13 (1995). For example, Maryland's statute of repose exists to protect the real estate industry—"builders, contractors, realtors, and landlords"—"from suits for latent defects in design, construction, or maintenance of an improvement to real property." *Carven v. Hickman*, 135 Md. App. 645, 652–654 (Ct. Spec. App. 2000). But those who commit and enable sexual abuse are not a particular "class" or industry whose protection would benefit the public; they are united only by the evil they committed or enabled. And imposing hard deadlines that do not permit equitable tolling is especially unfair in sexual abuse cases. *See infra* § III.

law made the filing deadline hard for defendants to ascertain or predict; it did not give them the certainty or reliability that characterizes a statute of repose, let alone a vested right.

Because they seek primarily "to encourage the plaintiff to 'pursu[e] his rights diligently,'" statutes of limitations start the clock when a plaintiff can first "file suit and obtain relief"—even if the defendant has no easy way to determine when that might be. *CTS Corp.*, 573 U.S. at 7, 9–10. For example, because "a child is disabled from bringing a tort action until he or she is 18 years old" unless their parents do so for them, *Piselli v. 75th St. Med.*, 371 Md. 188, 215 (2002), statutes of limitations for tort actions usually do not begin to run until a minor victim turns 18 and can first file suit on their own. *See CTS Corp.*, 573 U.S. at 17 (holding that a statute that started the clock when a minor victim turned 18 was a statute of limitations, not a statute of repose); *Anderson*, 427 Md. at 107, 127 (holding that statute that started the clock on the date of the injury or when "a minor . . . attained majority" was a statute of limitations). Put differently, tort statutes of limitations are generally "tolled," or paused, until the minor can sue. *See Anderson*, 427 Md. at 118 ("Tolling, typically for reasons of fraudulent concealment or minority, is applicable generally to statutes of limitation."). That is true even though it may be difficult for an institution to ascertain the identity and age of every potential victim, which (under a statute of limitations) makes it hard to be certain of when the risk of litigation will abate.

In contrast, "[s]tatutes of repose are defendant-focused statutes." *Duffy v. CBS Corp.*, 458 Md. 206, 224 (2018). They create "more certainty and reliability" because they fix an easily ascertainable date on which the defendant can be certain it will be "free from liability" by starting the clock on a date the defendant is sure to know about: generally,

"the date of the last culpable act or omission of the defendant." *Cal. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 498, 515 (2017). Relatedly, "[u]nlike statutes of limitation, statutes of repose may not be 'tolled' for any reason"—including for minority—"as tolling would deprive the defendant of the certainty of the repose deadline and thereby defeat the purpose of a statute of repose." 54 C.J.S. Limitations of Actions § 132.

Like the statutes of limitation in *CTS* and *Anderson*, the 2017 law started the 20-year clock when the plaintiff themself could first "file suit"—when they reached the age of majority—not on "the date of the last culpable act or omission of the defendant" or indeed any other event the defendant could easily ascertain and rely on. *CTS*, 573 U.S. at 7–8.[5] Even though many institutional defendants knew their employees were predators, many likely did not know of all their employees' victims or when they turned 18, especially given that so few victims promptly disclose their abuse. *See infra* § III(B). And because the 2017 law expressly depended on an undisputed statute of limitations—i.e., it applied retroactively *only* to claims that were already barred by the 2003 limitations period, 2017 Md. Laws c. 12, § 3—it introduced even more uncertainty: to know if the Act barred a given claim, the defendant would have to know if the claim was equitably tolled when the Act was passed. *See Anderson*, 427 Md. at 118 (noting that statutes of limitation are subject to tolling). Those twin features "deprive[d] the defendant of the certainty" that is "the purpose of a statute of repose." 54 C.J.S. Limitations of Actions § 132.

[5] Put differently, although the victim's parents could sue for the minor before he or she turned at 18, the law "tolled" the time limit until then. *CTS Corp.*, 573 U.S. at 17.

A. Regardless of the Label, the 2017 Law Did Not Create a Vested Right.

Largely ignoring what the 2017 law actually *did*—set a time limit only as to remedies that gave defendants no certainty as to when they could be sued—Defendants focus on how the legislature labeled it, as "a statute of repose." Appellant's Br. at 9–13.[6] But this Court has never held that anything called a "statute of repose" creates a vested right. And whatever one calls it, the operative text of the 2017 law simply did not create a substantive right. It still regulated only "remedies"—when a victim could file a lawsuit, not whether the defendant owed them compensation. *Muskin*, 422 Md. at 561; *see also Kelch v. Keehn*, 183 Md. 140, 144 (1944) ("Where the effect of the statute is not to obliterate existing substantial rights but affects only the procedure and remedies for the enforcement of those rights, it applies to all actions whether accrued, pending or future, unless a contrary intention is expressed."). Nothing in that text speaks to accrual, defines when a "cause of action" exists, or otherwise purports to affect substantive liability.

Plus, even if the 2017 law created a "substantive" immunity to liability, that would not mean it gave Defendants a vested right to be free from claims that arose before the CVA took effect. As this Court has held, a statutory defense or immunity remains

[6] As Plaintiffs point out, the term "statute of repose" is itself ambiguous. Courts have often used it to "refer[ ] to all provisions delineating the time in which a plaintiff must bring suit." *CTS Corp.*, 573 U.S. at 14. Indeed, Maryland courts—including this one—have stated that "[s]tatutes of limitation *are* statutes of repose." *Anderson*, 427 Md. at 119 (citation omitted) (emphasis added); *Llanten v. Cedar Ridge Counseling Centers, LLC*, 214 Md. App. 164, 177 (Ct. Spec. App. 2013). So especially in this context, the label used by the legislature in another section of the statute is "not dispositive." *CTS Corp.*, 573 U.S. at 13; *cf. Shaarei Tfiloh Congregation v. Mayor and City Council of Balt.*, 237 Md. App. 102, 137 (Ct. Spec. App. 2018) ("[I]n evaluating whether a development fee is a regulatory charge or a tax, the purpose of the enactment governs rather than the legislative label.").

contingent and does not vest pre-suit unless it "is so substantially relied upon that retroactive divestiture would be manifestly unjust.'" *Allstate*, 376 Md. at 297; *cf. Ellis v. McKenzie*, 457 Md. 323, 337 (2018) (holding that new law did not impair vested rights when defendants could show "no reasonable reliance or settled expectation" based on the pre-existing law). But as explained above, the 2017 law did not give Defendants any fixed deadline they could rely on—not without knowing every victim of every one of their abusive employees, when each victim turned 18, and whether their claim was tolled. Indeed, Defendants had been liable to many of the Plaintiffs for decades before the 2017 law passed, and none of the Defendants have named a single thing they did in reliance on the new 20-year time limit during the six years it was in effect. So the 2017 law did not create the kind of reliance interests that might make it irrevocable.

II. The 2017 Act Could Not Have "Extinguished" Victims' Claims Because that Would Have Violated the Maryland Constitution.

Conversely, if, as Defendants argue, the 2017 law *did* mean to "extinguish" their liability and grant them a substantive right to repose, Appellants' Br. 27, 38, it would have been void as applied to victims' pre-existing claims because it would have "retroactively abrogate[d]" *victims*' "vested rights" in those claims, which would violate the Maryland Constitution. *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 623 (2002).[7]

[7] Although *Dua* states that the Maryland Constitution "ordinarily" precludes the legislature from "reviving a barred cause of action, thereby violating a vested right of the defendant," 376 Md. at 633, that statement was dicta because *Dua* did not involve a statute of limitation or of repose, and this Court has since made clear that statutes that merely affect remedies or affirmative defenses—like statutes of limitation—do not abridge vested rights. *See supra* at 5 & n.3 (citing *Smith*, 443 Md. at 595, and *Allstate*, 376 Md. at 297–98).

The Constitution's anti-retroactivity principles cut both ways: to the extent they protect a defendant's right to be free from extinguished claims, they also preclude the "Legislature . . . from retroactively abolishing an accrued cause of action." *Dua*, 370 Md. at 633. On Defendants' own theory, that is exactly what the 2017 law did: it "extinguished" the Plaintiff victims' accrued claims. Appellants' Br. 27, 38. That is true even if the prior statute of limitations had run. Again, a statute of limitations does not affect vested rights; it affects only the procedural right to enforce them in court. *See Allen v. Dovell*, 193 Md. 359, 364 (1949) ("[A] statute of limitations, which does not destroy a substantial right, but simply affects remedy, does not destroy or impair vested rights."). So, before the 2017 law was passed, Defendants were liable to Plaintiffs, and the legislature and the courts could have given Plaintiffs a remedy by lifting or tolling the statute of limitations in appropriate cases. And even if the legislature had decided not to do so, Plaintiffs would have still had a remedy if Defendants waived or forfeited their statute of limitations affirmative defense. But as Defendants read it, the 2017 law cut off all those avenues to relief: it permanently and irreversibly erased Defendants' liability to Plaintiffs, eliminating Plaintiffs' accrued claims. If that is so, then the 2017 law violated the Maryland Constitution.

That Defendants' interpretation of the 2017 act would violate the state constitution is yet another reason to reject it. *See VNA Hospice of Md. v. Dep't of Health & Mental Hygiene*, 406 Md. 584, 610 (Ct. App. 2008) ("[I]f reasonably possible, a statute should not be construed to raise substantial constitutional issues."). In any event, such an unconstitutional law could not have given Defendants a vested right. *See Johnson v. State*,

271 Md. 189, 195 (Ct. App. 1974) ("[A]n unconstitutional act . . . cannot confer any right."). So the CVA took nothing to which Defendants were constitutionally entitled.

III. The Absolute Right Defendants Seek Would Unjustly Put Their Interest in Repose over Victims' Express Constitutional Right to Access Justice.

Principles of judicial restraint and the constitutional right to access to justice confirm that this Court should not provide Defendants with an absolute right to repose. When a party asks the court to recognize a new property right that lies beyond the legislature's power, "judicial self-restraint requires [the Court] to exercise the utmost care." *Samuels v. Tschechtelin*, 135 Md. App. 483, 537 (Ct. Spec. App. 2000) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)). Before a court nullifies the will of the people expressed through their elected representatives, the purported right claimed to justify that intrusion must be "considered against a background of Constitutional purposes, as they have been rationally perceived and historically developed." *Id.* But Defendants have not identified any tradition of protection for their proposed right to repose, and they assert no substantial reliance on the 2017 law that might justify such absolute protection. To the contrary, the express terms of the Maryland Constitution favor the victims here.

Like similar laws enacted in at least thirty states, the CVA serves a compelling interest recognized in the Maryland Constitution itself: access to justice. *See* Md. Const. Decl. of Rts. art. 19. Article 19 "protects two interrelated rights: (1) a right to a remedy for an injury to one's person or property; (2) a right of access to the courts." *Piselli*, 371 Md. at 205. The CVA serves both goals by providing a path to relief for hundreds of victims of childhood sexual abuse, who live with the lifelong psychological and economic costs of

the abuse. In doing so, it justly shifts those costs from victims (and from the public) to the people and institutions responsible for the harm. The Court should reject Defendants' position that the people's representatives lacked the power to strike that balance.

A. Child Sexual Abuse Imposes Crippling Costs on Victims and the Public.

The CVA addresses a widespread problem with devastating costs. An estimated 3.7 million children in the United States experience sexual abuse each year. Ctrs. for Disease Control and Prevention, Rep. to Congress on Child Sexual Abuse Prevention at 3 (Dec. 19, 2019). [8] It affects one in every four girls and one in every thirteen boys. *Id.* In Maryland, over two thousand children were *reported* to have been sexually abused in 2020 alone. Maryland Coalition Against Sexual Assault, *Fact Sheet: Incidence of Child Sexual Abuse in Maryland* (Dec. 2021).[9] In 2023, the Attorney General found that at least six hundred children had been abused by priests in the Archdiocese of Baltimore. Att'y Gen. Rep., *supra*, at 9. Based on low reporting rates for sexual abuse—studies estimate than less than a quarter of all rapes were reported in 2020—the true total is "likely far higher." *Id.*

Sexual abuse inflicts lasting mental, physical, and financial damage on its victims. Victims of childhood sexual abuse are more likely to develop both psychological and physical health issues than other children. They are more likely to develop serious anxiety, depression, PTSD, and borderline personality disorder; more likely to abuse drugs; more likely to experience obesity, eating disorders, and poor overall health; more likely to

[8] https://cdn.ymaws.com/www.safestates.org/resource/resmgr/policy/FY_2019_CDC_RTC_on_Child_Sex.pdf.
[9] https://mcasa.org/assets/files/Incidence_of_CSA_Fact_Sheet_2021.12.pdf.

struggle with family relationships, get divorced, and have difficulty parenting; and more likely to experience further abuse. *See* Darkness to Light, *The Issue of Child Sexual Abuse* 12–13 (2023) (citations omitted).[10] When the abuse includes penetration, victims are "nearly twelve times more likely to attempt suicide." Karen M. Matta Oshima et al., *The Influence of Childhood Sexual Abuse on Adolescent Outcomes: The Roles of Gender, Poverty, and Revictimization*, 23 J. Child Sexual Abuse 367, 369–70 (2014). And they are less likely to finish high school, attend college, or complete college. *Id.* at 370.

This all leads to crippling financial costs that snowball well into adulthood. Women with a history of childhood sexual abuse require healthcare with costs 16% higher than those who were not abused. Amy E. Bonomi et al., *Health Care Utilization and Costs Associated with Childhood Abuse*, 23 J. Gen. Internal Med. 294, 298 (2008). And female sexual abuse victims earn 20.3% less than other women. Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 Child Abuse & Neglect 413, 416 (2018). Studies have put the average lifetime cost of childhood sexual abuse at $282,734 as of 2015 for women ($14,357 in childhood healthcare costs, $9,882 in adulthood medical costs, $223,581 in lost earnings, $8,333 in child welfare costs, $2,434 in violence and crime costs, $3,760 in special education costs, and $20,387 in suicide death costs) and $74,691 for men—a conservative estimate due to insufficient data. *Id.* at 417. These studies estimate a loss in quality of life equal to around $40,000 per victim. *Id.*

[10] https://www.d2l.org/wp-content/uploads/2023/03/Child-Sexual-Abuse-Updates.pdf.

And the costs ripple far past the immediate victims; they also fall on the public at large. Victims' healthcare needs raise insurance premiums for employers and other consumers, and the government "bears the remaining costs through lost tax revenues and Medicare and Medicaid payments." Ted. R. Miller et al., Nat'l Inst. of Just., Off. Just. Programs, U.S. Dep't of Just., *Victim Costs and Consequences: A New Look* 19, 21 (1996).[11] As of 1993, insurance payments associated with child sexual abuse totaled $600 million. *Id*. When victims require child welfare services, special education, and drug and alcohol abuse treatment, those costs fall on the public, too. Letourneau, *supra*, at 416. When they struggle to complete degrees and find good jobs, their families lose earnings, the economy loses their contributions, and the government loses tax dollars. *Id.* at 422. A 2015 study put the total lifetime cost of child sexual abuse (i.e., the average lifetime cost per victim times the estimated number of new cases in 2015) at $9.3 billion. *Id.* at 419. So by opening a path to for victims to get compensation that they can use to pay for resources and services like therapy, job training, and education, the CVA relieves costs that would otherwise be borne not only by victims themselves, but also by the public at large.

B. The Act Lowers Well-Documented Barriers to Justice and Allows Victims Access to Remedies that Relieve the Costs of Abuse.

Without the CVA, victims and the public would be forced to bear these psychological and financial hardships on their own, while abusers and institutional enablers would benefit from psychological and institutional forces that suppress reports of abuse.

[11] https://www.ojp.gov/pdffiles/victcost.pdf.

"[C]hild sexual abuse is a unique tort in which the average victim does not come forward until they are 52 years old," long after statutes of limitation have usually run. *Bienvenu v. Defendant 1*, 386 So.3d 280, 291 (La. 2024). Trauma responses, repressed memories, guilt, shame, and fear all discourage disclosure, especially when children are abused in institutional settings like schools, residential treatment facilities, and churches. Andrew Ortiz, Child USA, *Delayed Disclosure: Child USA 2024 Fact Sheet* 2–3 (2024);[12] Dafna Tener & Sharon B. Murphy, *Adult Disclosure of Child Sexual Abuse: A Literature Review*, 16 Trauma, Violence, & Abuse 395, 398 (2015); Brief of Psychology and Psychiatry Scholars as Amici Curiae, *Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686 (6th Cir. 2022) (No. 21-3981), 2022 WL 500955, at *10–17 (outlining reasons why victims often do not recognize their abuse as such and delay reporting it, especially when it occurs within trusted institutions). As a result, 70–75% of survivors of child sexual abuse do not report within five years of the abuse. Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 Child Abuse & Neglect 123, 124 (2015). In fact, one study found that 44.9% of male and 25.4% of female child sex abuse victims first disclosed their abuse more than twenty years after it occurred. Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. Child Sexual Abuse 133, 138 (2008). This translates to a harsh reality: "over half of victims of child sexual abuse do not report it until they are over the age of 50." Att'y Gen. Rep., *supra*, at 19. More victims first

[12] https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf.

disclose their child sex abuse between ages *50 and 70* than at any other age. Child USA, History of Child Sex Abuse Statutes of Limitation Reform in the United States 2002 to 2021 3 (June 21, 2022);[13] *see also* Ortiz, *supra*, at 2–3 (noting that in a study of sexual abuse in the Boy Scouts of America, over half of survivors first disclosed their abuse at age 50 or older). As a result, most victims cannot bring their claims within the short timeframes historically allotted by statutory deadlines.

To make matters worse, institutions like Defendants have strong incentives to cover up sexual abuse until well after the statute of limitations has run. Indeed, the Maryland legislature passed the CVA in response to revelations of the Archdiocese of Baltimore's cover-up of hundreds of instances sexual abuse within the Archdiocese over a span of decades. *See* Att'y Gen. Rep., *supra*, at 9–19. Other examples of systemic institutional cover-ups abound. *See, e.g.*, Off. of the Ill. Att'y Gen., Rep. on Catholic Clergy Sex Abuse in Illinois (2023) (documenting cover-up of sexual abuse of more than 1,000 children in Illinois);[14] Pa. Att'y Gen., 40th Statewide Investigating Grand Jury Report 1 (May 2023) (documenting a similar cover-up in Pennsylvania);[15] *Snyder-Hill*, 48 F.4th at 691–92 (concerning decades-long cover up of abuse of hundreds of victims by Ohio State University athletic doctor); Off. of the Inspector Gen., U.S. Dep't of Justice, Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual

[13] https://childusa.org/6-17-2022-2021-sol-report-final.
[14] https://clergyreport.illinoisattorneygeneral.gov/download/report.pdf.
[15] https://www.attorneygeneral.gov/wp-content/uploads/2023/05/INVESTIGATING-GRAND-JURY-REPORT-NO.-1_FINAL_May-2023_Redacted.pdf.

Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar (July 2021);[16] Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Re: the Actions of The Penn. State Univ. Related to the Child Sexual Abuse Committed by Gerald A. Sandusky.[17] Such concealment has kept victims from learning of institutional defendants' complicity in the abuse—and often from realizing it was abuse at all—until decades later, and often well after the deadlines to sue have run. *See, e.g.*, *Snyder-Hill*, 48 F.4th at 694–97 (discussing plaintiffs who only realized they were abused decades later).

In lifting prior statutory deadlines, laws like the CVA thus give many victims "their first and only opportunity to bring suit." *Bienvenu*, 386 So.3d at 291. In doing so, the CVA justly "shifts the costs of the abuse from the victims and society to those who actually caused it," *id.*, a "highly legitimate—and decidedly compelling—government interest." *Id.* at 293 (Crichton, J., concurring). And they ensure that institutions are not rewarded for covering up sexual abuse and their complicity in it until the clock runs out.

At least thirty U.S. states and territories have recognized those compelling interests and passed laws to revive claims of childhood sexual abuse. *See* Alice Nasar Hanan, CHILD USA, *Revival Laws for Child Sex Abuse* (June 6, 2024) (listing state laws);[18] CHILD USA, *2024 SOL Tracker, National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse* (last updated July 11, 2024).[19] And the vast majority of courts that have

[16] https://oig.justice.gov/sites/default/files/reports/21-093.pdf.
[17] https://media.pennlive.com/midstate_impact/other/REPORT_FINAL_071212.pdf.
[18] https://childusa.org/wp-content/uploads/2023/11/US-WindowsRevival-Laws-for-CSA-Since-2002-11.1.23.pdf.
[19] https://childusa.org/2024sol/

considered the constitutionality of these revival laws have upheld them, even where they adopted a stricter standard of constitutionality than the federal standard.[20]

Like those legislatures, the General Assembly was well within its power to serve the compelling interest in justice for victims of sexual abuse when it passed the CVA.

CONCLUSION

Accordingly, amici respectfully urge this Court to uphold the Child Victims Act.

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[20] *See A.B. v. S.U.*, 298 A.3d 573, 578 (Vt. 2023) (upholding retroactive elimination of statute of limitations for sexual abuse claims because it only affected a "remedy" and not a "substantive right"); *Harvey v. Merchan*, 860 S.E.2d 561, 574 (Ga. 2021) (upholding Georgia revival statute because "statutes of limitations are generally procedural rules (rather than substantive ones)," and statutes that "govern only procedure" can take "retroactive effect"); *Coats v. New Haven Unified Sch. Dist.*, 259 Cal. Rptr. 3d 784, 792 (Cal. Ct. App. 2020) (same because "Legislation reviving the statute of limitations on civil law claims does not violate constitutional principles"); *Doe v. Hartford Roman Cath. Diocesan Corp.*, 119 A.3d 462, 496, 517 (Conn. 2015) (same because the revival law was "a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child"); *Sliney v. Previte*, 41 N.E.3d 732, 741–42 (Mass. 2015) (same because revival law was "tied directly to the compelling legislative purpose" of opening access to justice for child sex abuse survivors who do not process their injuries until well into adulthood); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1259 (Del. 2011) (upholding Delaware sexual abuse claim revival law); *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 779–80 (Mont. 1993) (upholding Montana revival law); *K.E. v. Hoffman*, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990) (upholding Minnesota revival law because it "has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy"); *Liebig v. Superior Ct.*, 209 Cal. App. 3d 828, 834 (Cal. Ct. App. 1989) (upholding California revival statute because "[e]ven if we were to assume *arguendo* that a vested right exists in repose of a cause of action, the law is clear that vested rights are not immune from retroactive laws when an important state interest is at stake"); *ARK269 Doe v. Archdiocese of New York*, No. 950301/2020, 2022 WL 2954144, at *1 (N.Y. Sup. Ct. July 19, 2022) ("Multiple New York courts and two federal district courts in the Second Circuit have held that the [New York revival statute] does not run afoul of due process because it remedies an injustice."); *Bernard v. Cosby*, 648 F. Supp.3d 558, 567–68 (D.N.J. 2023) (upholding New Jersey law).

Respectfully submitted,

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1. This brief contains 6,440 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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CERTIFICATE OF SERVICE

I CERTIFY that, on this 6th day of August, 2024, the foregoing Brief of Amici Curiae was filed and served electronically via MDEC on all counsel of record.

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