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)

Reg. 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)

JOINT RECORD EXTRACT

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TABLE OF CONTENTS

Valerie Bunker v. Key School, Inc. et al. Materials

[1] Key Defendants list of exhibits to the district court misidentified Exhibit 1 as "S.B. 642."

John Doe v. Board of Education of Harford County Materials

STAYED

U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:23-cv-02662-MJM

Bunker v. The Key School, Incorporated et al
Assigned to: District Judge Matthew J. Maddox
Demand: $75,000
Cause: 28:1332 Diversity-Torts

Date Filed: 09/30/2023
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Valerie Bunker

represented by **Elisha Nicole Hawk**
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Defendant

The Key School Building Finance Corporation

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Date Filed	#	Docket Text
10/01/2023	1	COMPLAINT against The Key School Building Finance Corporation, The Key School, Incorporated (Filing fee $ 402 receipt number AMDDC-10846416.), filed by Valerie Bunker. (Attachments: # 1 Civil Cover Sheet, # 2 Attachment Additional Counsel, # 3 Exhibit A, # 4 Summons, # 5 Summons)(Jenner, Robert) Modified on 10/5/2023 (mg3s, Deputy Clerk). (Entered: 10/01/2023)
10/01/2023		Case Assigned to Judge Richard D. Bennett. (kns, Deputy Clerk) Modified on 10/5/2023 (mg3s, Deputy Clerk). (Entered: 10/02/2023)
10/01/2023		Case Reassigned to District Judge Ellen Lipton Hollander. Judge Richard D. Bennett no longer assigned to the case. (kns, Deputy Clerk) Modified on 10/5/2023 (mg3s, Deputy Clerk). (Entered: 10/04/2023)
10/02/2023	2	Summons Issued 21 days as to The Key School Building Finance Corporation, The Key School, Incorporated. (ols, Deputy Clerk) (Entered: 10/02/2023)
10/04/2023	3	MOTION to Amend/Correct *Docket Entry* by Valerie Bunker (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Text of Proposed Order)(Jenner, Robert) (Entered: 10/04/2023)
10/04/2023	4	NOTICE of Appearance by Andrew David Freeman on behalf of Valerie Bunker (Freeman, Andrew) (Entered: 10/04/2023)
10/04/2023	5	NOTICE of Appearance by Anthony J May on behalf of Valerie Bunker (May, Anthony) (Entered: 10/04/2023)
10/05/2023	6	ORDER granting 3 MOTION to Amend/Correct Docket Entry. Signed by District Judge Ellen Lipton Hollander on 10/4/2023. (mg3s, Deputy Clerk) (Entered: 10/05/2023)
11/08/2023	7	SUMMONS Returned Executed by Valerie Bunker. The Key School, Incorporated served on 10/18/2023, answer due 11/8/2023.(Jenner, Robert) (Entered: 11/08/2023)
11/15/2023		Case Reassigned to Judge Matthew J. Maddox. District Judge Ellen Lipton Hollander no longer assigned to the case. (slss, Deputy Clerk) (Entered: 11/15/2023)
11/29/2023	8	-FILED IN ERROR- AFFIDAVIT of Service for Summons to Defendant The Key School Building Finance Corporation, Complaint and Demand for Jury Trial, Civil Cover Sheet, Exhibit A to Complaint, Plaintiff's Ex Parte Motion to Correct Docket Entry, Exhibit A to Plaintiff's Ex Parte Motion to Correct Docket Entry served on Jeffrey J. Hines, Esquire on 11/17/2023, filed by Valerie Bunker.(Jenner, Robert) Modified on 11/29/2023 (ols, Deputy Clerk). (Entered: 11/29/2023)
11/29/2023	9	QC NOTICE: 8 Affidavit of Service, filed by Valerie Bunker was filed incorrectly. ***Incorrect event used. Please refile using Summons Returned Executed. It has been noted as FILED IN ERROR, and the document link has been disabled.* (ols, Deputy Clerk) (Entered: 11/29/2023)
11/29/2023	10	SUMMONS Returned Executed by Valerie Bunker. The Key School Building Finance Corporation served on 11/17/2023, answer due 12/8/2023.(Jenner, Robert) (Entered: 11/29/2023)

12/08/2023	11	-PER COUNSEL FILED IN ERROR. TO BE REFILED- MOTION to Stay *pending Appellate Resolution of Constitutional Issue or, in the Alternative, for Extension of Time, With Request for Hearing* by The Key School Building Finance Corporation, The Key School, Incorporated (Attachments: # 1 Memorandum in Support, # 2 Exhibit 1A - MD Laws Chapter 5, # 3 Exhibit 1B - MD Laws Chapter 6, # 4 Exhibit 2 - Doe MTD, # 5 Exhibit 3 - Schappelle MTD, # 6 Exhibit 4A - Applegarth, # 7 Exhibit 4B - Benson, # 8 Exhibit 4C - Nyland, # 9 Exhibit 4D - Surrick, # 10 Exhibit 4E - Venton, # 11 Exhibit 5A - Chapter 5, # 12 Exhibit 5B - Chapter 6, # 13 Exhibit 6 - Docket Schappelle, # 14 Exhibit 7 - Board of Education, # 15 Text of Proposed Order, # 16 Request for Hearing)(Gugerty, Sean) Modified on 12/8/2023 (ols, Deputy Clerk). (Entered: 12/08/2023)
12/08/2023	12	MOTION to Stay *pending Appellate Resolution of Constitutional Issue or, in the Alternative, for Extension of Time, With Request for Hearing* by The Key School Building Finance Corporation, The Key School, Incorporated (Attachments: # 1 Memorandum in Support, # 2 Exhibit 1A - MD Laws Chapter 5, # 3 Exhibit 1B - MD Laws Chapter 6, # 4 Exhibit 2 - Doe MTD, # 5 Exhibit 3 - Schappelle MTD, # 6 Exhibit 4A - Applegarth, # 7 Exhibit 4B - Benson, # 8 Exhibit 4C - Nyland, # 9 Exhibit 4D - Surrick, # 10 Exhibit 4E - Venton, # 11 Exhibit 5A - Chapter 5, # 12 Exhibit 5B - Chapter 6, # 13 Exhibit 6 - Docket for Schappelle, # 14 Exhibit 7 - Board of Education, # 15 Text of Proposed Order, # 16 Request for Hearing)(Gugerty, Sean) (Entered: 12/08/2023)
12/13/2023	13	MOTION for Other Relief *Plaintiff's Motion to Certify Question of Law to the Supreme Court of Maryland* by Valerie Bunker (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Text of Proposed Order)(Jenner, Robert) (Entered: 12/13/2023)
12/13/2023	14	Request for Conference (Jenner, Robert) (Entered: 12/13/2023)
12/14/2023		Deficiency Notice for The Key School Building Finance Corporation and The Key School, Incorporated– Your Local Rule 103.3 disclosure statement has not been filed. The Statement must be filed by 12/21/2023 (ols, Deputy Clerk) (Entered: 12/14/2023)
12/19/2023	15	Local Rule 103.3 Disclosure Statement by The Key School Building Finance Corporation, The Key School, Incorporated identifying Party with Financial Interest Key School Building and Finance Ccorporation for The Key School Building Finance Corporation, The Key School, Incorporated.(Gugerty, Sean) (Entered: 12/19/2023)
12/22/2023	16	Joint MOTION for Extension of Time *Joint Consent Motion for Extension of Motion Response Deadlines* by The Key School Building Finance Corporation, The Key School, Incorporated (Attachments: # 1 Text of Proposed Order)(Gugerty, Sean) (Entered: 12/22/2023)
12/28/2023	17	ORDER granting 16 Joint MOTION for Extension of Time Joint Consent Motion for Extension of Motion Response Deadlines. Signed by District Judge Matthew J. Maddox on 12/28/2023. (mg3s, Deputy Clerk) (Entered: 12/28/2023)
01/02/2024	18	RESPONSE in Opposition re 12 MOTION to Stay *pending Appellate Resolution of Constitutional Issue or, in the Alternative, for Extension of Time, With Request for Hearing* filed by Valerie Bunker. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Text of Proposed Order, # 5 Request for Hearing)(Jenner, Robert) (Entered: 01/02/2024)
01/02/2024	19	RESPONSE re 13 MOTION for Other Relief *Plaintiff's Motion to Certify Question of Law to the Supreme Court of Maryland Opposition to Plaintiff's Motion to Certify Question of Law to the Supreme Court of Maryland, with Request for Hearing* filed by The Key School Building Finance Corporation, The Key School, Incorporated. (Attachments: # 1 Memorandum in Support, # 2 Index of Exhibits, # 3 Exhibit 1 - Motion to Dismiss in Doe, # 4 Exhibit 2 - Motion to Dismiss in Schappelle, # 5 Exhibit 3 - Plaintiffs' Opposition to Motion to Dismiss in Doe, # 6 Exhibit 4 - Plaintiffs' Opposition to Motion to Dismiss in

		Schappelle, # 7 Exhibit 5 - 2017 Md. Laws ch. 12 (S.B. 642), # 8 Exhibit 6 - 2017 Md. Laws ch. 656 (S.B. 505), # 9 Exhibit 7 - Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West 2017), # 10 Exhibit 8 - 2023 Md. Laws ch. 5 (S.B. 686), # 11 Exhibit 9 - 2023 Md. Laws ch. 6 (H.B. 1), # 12 Exhibit 10 - Letter from Anthony G. Brown, A.G. dated 2/22/23, # 13 Text of Proposed Order, # 14 Request for Hearing)(Gugerty, Sean) (Entered: 01/02/2024)
01/02/2024	20	MOTION to Dismiss for Failure to State a Claim*with Request for Hearing* by The Key School Building Finance Corporation, The Key School, Incorporated (Attachments: # 1 Memorandum in Support, # 2 Index of Exhibits, # 3 Exhibit 1 - 2017 Md. Laws ch. 12 (S.B. 642), # 4 Exhibit 2 - 2017 Md. Laws ch. 656 (S.B. 505), # 5 Exhibit 3 - 2023 Md. Laws ch. 5 (S.B. 686), # 6 Exhibit 4 - 2023 Md. Laws ch. 6 (H.B. 1), # 7 Exhibit 5 - Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West 2017), # 8 Exhibit 6 - 2003 Md. Laws ch. 360 (S.B. 68), # 9 Exhibit 7 - Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West 2003), # 10 Exhibit 8 - S.B. 68, First Reading (Md. 2003), # 11 Exhibit 9 - Testimony of Senator Delores G. Kelley (2/14/2017), # 12 Exhibit 10 - Amendment 252810/1 to H.B. 642 (Md. 2017), # 13 Exhibit 11 - Amendment 458675/1 to S.B. 505 (Md. 2017), # 14 Exhibit 12 - S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017), # 15 Exhibit 13 - S. Jud. Proc. Comm., Floor Report: H.B. 505 (Md. 2017), # 16 Exhibit 14 - Dept. of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, # 17 Exhibit 15 - Discussion of certain amendments in SB0505/818470/1, # 18 Exhibit 16 - Third Reading, H.B. 687, 427th Gen. Assemb. (Md. 2019), # 19 Exhibit 17 - Letter from Kathryn M. Rowe dated 3/16/2019, # 20 Exhibit 18 - Letter from Kathryn M. Rowe dated 6/23/2021, # 21 Exhibit 19 - Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West 2023), # 22 Exhibit 20 - Letter from Anthony G. Brown dated 2/22/2023, # 23 Exhibit 21 - Motion to Dismiss in Doe, # 24 Exhibit 22 - Motion to Dismiss in Schappelle, # 25 Exhibit 23 - Plaintiffs' Opposition to Motion to Dismiss in Doe, # 26 Exhibit 35 - Plaintiffs' Opposition to Motion to Dismiss in Schappelle, # 27 Text of Proposed Order, # 28 Request for Hearing)(Gugerty, Sean) (Entered: 01/02/2024)
01/16/2024	21	RESPONSE in Opposition re 20 MOTION to Dismiss for Failure to State a Claim*with Request for Hearing* filed by Valerie Bunker. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order, # 3 Exhibit List, # 4 Exhibit 1, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 4, # 8 Exhibit 5, # 9 Exhibit 6, # 10 Exhibit 7, # 11 Exhibit 8, # 12 Exhibit 9, # 13 Exhibit 10, # 14 Exhibit 11, # 15 Exhibit 12, # 16 Exhibit 13, # 17 Exhibit 14, # 18 Exhibit 15, # 19 Exhibit 16, # 20 Exhibit 17)(Jenner, Robert) (Entered: 01/16/2024)
01/16/2024	22	REPLY to Response to Motion re 12 MOTION to Stay *pending Appellate Resolution of Constitutional Issue or, in the Alternative, for Extension of Time, With Request for Hearing* filed by The Key School Building Finance Corporation, The Key School, Incorporated. (Gugerty, Sean) (Entered: 01/16/2024)
01/17/2024	23	NOTICE of Appearance by Elisha Nicole Hawk on behalf of Valerie Bunker (Hawk, Elisha) (Entered: 01/17/2024)
01/19/2024	24	REPLY to Response to Motion re 13 MOTION for Other Relief *Plaintiff's Motion to Certify Question of Law to the Supreme Court of Maryland* filed by Valerie Bunker. (Attachments: # 1 Memorandum in Support)(Jenner, Robert) (Entered: 01/19/2024)
01/30/2024	25	REPLY to Response to Motion re 20 MOTION to Dismiss for Failure to State a Claim*with Request for Hearing* filed by The Key School Building Finance Corporation, The Key School, Incorporated.(Gugerty, Sean) (Entered: 01/30/2024)
02/13/2024	26	MOTION for Other Relief *Plaintiff's Motion and Memorandum of Points And Authorities for Rule 5.1(b) Certification* by Valerie Bunker (Attachments: # 1 Exhibit 1, # 2 Text of Proposed Order)(Jenner, Robert) (Entered: 02/13/2024)
03/13/2024	27	NOTICE of Appearance by Mark E. Rollison on behalf of Valerie Bunker (Rollison, Mark) (Entered: 03/13/2024)

03/19/2024	28	Correspondence re: Supplemental Authority for the Court's Consideration (Attachments: # 1 Exhibit A)(Jenner, Robert) (Entered: 03/19/2024)
03/21/2024	29	NOTICE of Appearance by Michael James Wasicko on behalf of All Plaintiffs (Wasicko, Michael) (Entered: 03/21/2024)
03/25/2024	30	MOTION to Appear Pro Hac Vice for Melissa F. Hague (Filing fee $100, receipt number AMDDC-11166268.) by Valerie Bunker(Rollison, Mark) (Entered: 03/25/2024)
03/25/2024	31	MOTION to Appear Pro Hac Vice for Kelly N. Stevenson (Filing fee $100, receipt number AMDDC-11166379.) by Valerie Bunker(Rollison, Mark) (Entered: 03/25/2024)
03/26/2024	32	PAPERLESS ORDER granting 30 Motion to Appear Pro Hac Vice on behalf of Melissa F. Hague. Directing attorney Melissa F. Hague to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 3/26/2024. (mh4s, Deputy Clerk) (Entered: 03/26/2024)
03/26/2024	33	PAPERLESS ORDER granting 31 Motion to Appear Pro Hac Vice on behalf of Kelly N. Stevenson. Directing attorney Kelly N. Stevenson to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 3/26/2024. (mh4s, Deputy Clerk) (Entered: 03/26/2024)
04/03/2024	34	NOTICE by The Key School Building Finance Corporation, The Key School, Incorporated re 20 MOTION to Dismiss for Failure to State a Claim*with Request for Hearing Defendants' Notice of Supplemental Authority in Support of Motion to Dismiss* (Attachments: # 1 Exhibit A - Schappelle Memorandum Opinion and Order dated 4/1/24) (Gugerty, Sean) (Entered: 04/03/2024)
04/11/2024	35	MEMORANDUM. Signed by District Judge Matthew J. Maddox on 4/11/2024. (ols, Deputy Clerk) (Entered: 04/11/2024)
04/11/2024	36	ORDER granting 13 Plaintiff's Motion to Certify a Question of Law to the Maryland Supreme Court; denying without prejudice to renewal 20 Defendants' Motion to Dismiss for Failure to State a Claim; granting 26 Plaintiff's Motion for Rule 5.1(b) Certification. Signed by District Judge Matthew J. Maddox on 4/11/2024. (ols, Deputy Clerk) (Entered: 04/11/2024)
04/25/2024	37	RESPONSE re 36 Order on Motion for Other Relief,, Order on Motion to Dismiss for Failure to State a Claim,,, *The Parties' Joint Response to The Court's April 11, 2024 Order Requesting Submission of Any Objection to Proposed Certification Question* filed by Valerie Bunker. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Jenner, Robert) (Entered: 04/25/2024)
04/29/2024	38	MEMORANDUM. Signed by District Judge Matthew J. Maddox on 4/29/2024. (ols, Deputy Clerk) (Entered: 04/29/2024)
04/29/2024	39	ORDER directing Plaintiff and Defendant to provide a check to the Clerk of this Court payable to the Clerk of the Supreme Court of Maryland in the amount of $30.50 for their respective halves of the filing fee for docketing regular appeals within 7 days of the date this Order is docketed; granting 12 Defendants' Motion to Stay. Signed by District Judge Matthew J. Maddox on 4/29/2024. (c/m and em as directed 4/29/24 ols, Deputy Clerk) (Entered: 04/29/2024)
05/07/2024	40	Correspondence to Clerk of the Court of Appeals of Maryland re: Certification Order (c/m 5/7/24 ols, Deputy Clerk) (Entered: 05/07/2024)

05/07/2024		Transmittal of the certification order, record and two checks for filing fee sent to the Court of Appeals of Maryland mailed 5/7/2024 (ols, Deputy Clerk) (Entered: 05/07/2024)
05/13/2024	41	Correspondence from the Supreme Court of Maryland re: Certification Order (Attachments: # 1 Envelope) (ols, Deputy Clerk) (Entered: 05/14/2024)

PACER Service Center			
Transaction Receipt			
06/04/2024 22:56:08			
PACER Login:	gugerty4994	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:23-cv-02662-MJM
Billable Pages:	6	**Cost:**	0.60

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER
601 Coburg Road, Apt. 12
Eugene, Oregon 97401

Plaintiff,

vs.

THE KEY SCHOOL, INCORPORATED
534 Hillsmere Drive
Annapolis, Maryland 21403
(Anne Arundel County)

SERVE ON:
Marcella M. Yedid, Resident Agent
534 Hillsmere Drive
Annapolis, Maryland 21403

and

THE KEY SCHOOL BUILDING FINANCE CORPORATION
534 Hillsmere Drive
Annapolis, Maryland 21403
(Anne Arundel County)

SERVE ON:
Ronald Goldblatt
534 Hillsmere Drive
Annapolis, Maryland 21403,

Defendants.

Civil Action No. 1:23-cv-2662

COMPLAINT AND
JURY TRIAL DEMAND

COMPLAINT

Plaintiff Valerie Bunker, by and through her undersigned attorneys, for her causes of action against The Key School, Incorporated and The Key School Building Finance Corporation

(collectively "Key School" or the "Key School Defendants"), alleges upon personal knowledge and, where stated, upon information and belief, as follows:

NATURE OF THE ACTION

1. By this action, Ms. Bunker seeks to right a nearly 50-year-old wrong. In April 2023, the Maryland General Assembly enacted the Child Victims Act[1] (the "Act"), which eliminates the statute of limitations for civil child sex abuse actions. The Act took effect on October 1, 2023, enabling survivors like Ms. Bunker to seek long overdue justice.

2. From approximately 1973 through at least 1977, Key School teachers Eric Dennard and Vaughn Keith sexually and emotionally abused Ms. Bunker, a mere child in their care, beginning in the ninth grade. Predictably, Ms. Bunker suffered severe emotional trauma that has impacted every aspect of her life in the ensuing decades.

3. Dennard and Keith preyed upon Ms. Bunker and other young students as part of a wider pattern of serialized child abuse which Key School administrators and leaders fostered, and even encouraged.

4. Key School is an elite private school located in Annapolis, Maryland. A group of professors from nearby St. John's College founded the school in 1958 in part to ensure the "excellent" education of their own children.

5. Key Schools' founders modeled the school after the atmosphere of St. John's College, which encouraged a close relationship between students and faculty both inside and outside the classroom. The school de-emphasized rules and boundaries and encouraged teachers

[1] The Child Victims Act of 2023, 2023 Maryland Laws Ch. 6 (H.B. 1), *to be codified in relevant part at* Md. Ann. Code, Cts. & Jud. Pro. §§ 5-117, 303, 518, 12-303.

to engage with students as peers to promote intellectual growth. In practice, the school's blurred boundaries and lack of safeguards permitted child predators to flourish.

6. As early as 1970, several Key School faculty members engaged in systemic grooming and rampant sexual abuse of its student population.

7. This emotional and sexual abuse included grooming, molestation, vaginal rape, oral rape, orgies and group sex among students with adults, and the creation of child pornography.

8. Students were passed from teacher to teacher for abuse.

9. On many occasions, the teachers sexually abusing the students supplied them with drugs and/or alcohol.

10. Key School community members, including faculty, staff, school administrators, and board members, were aware of the abuse inflicted on its students, yet consistently and repeatedly refused to intervene.

11. Key School failed to take appropriate action, and in most cases failed to take *any* action, to protect Ms. Bunker and other students from widespread sexual abuse perpetrated by its faculty.

12. The sexual abuse was "common knowledge" and "well known" among Key School faculty and administrators, who viewed teachers and administrators who engaged in sex with underage students and the victims of this abuse as "cool."

13. In the aftermath of an investigative exposé in The Washington Post in 2018, the Key School Board of Trustees engaged the law firm of Kramon & Graham to investigate abuse allegations. In its six-month investigation, Kramon & Graham interviewed approximately 57 witnesses and reviewed a large volume of documents, including minutes from Board of Trustees

meetings, personnel files, yearbooks, and records from two prior investigations in the 1990's involving the same subject matter.

14. In January 2019, Kramon & Graham issued a report to the Key School Board of Trustees (the "Kramon & Graham Report").[2]

15. The Kramon & Graham Report concluded that at least 10 adults sexually assaulted at least 16 children over three decades.

16. The Kramon & Graham Report further observes that "members of the faculty and staff, administrators, and Board members, were aware of the abuse and inappropriate conduct and chose to remain silent rather than to intervene or report the situation to the administration."

17. The Kramon & Graham Report merely scratches the surface of the full extent of the horrors Ms. Bunker and other Key School students endured while school leaders buried their heads in the sand. For those horrors, Key School's deliberate indifference to them, and the completely preventable devastation Ms. Bunker has endured over her lifetime, she now seeks long-delayed justice to the fullest extent of the law.

PARTIES

18. Plaintiff Valerie Bunker is an adult individual who resides at 601 Coburg Road, Apt. 12, Eugene, Lane County, Oregon, 97401.

19. Defendant The Key School, Incorporated, is a corporation organized and existing under the laws of Maryland that maintains its principal place of business at 534 Hillsmere Drive, Annapolis, Anne Arundel County, Maryland 21403.

[2] A copy of the Kramon & Graham Report is attached as Exhibit A and is fully incorporated herein. The Report protects Key School student abuse survivors' identities by assigning them the name "Witness" and a number to indicate that the survivor had provided first-hand accounts of their abuse and abuse of others that they had witnessed. This Complaint adopts the naming conventions of the Kramon & Graham Report for witnesses other than Plaintiff.

20. Defendant The Key School Building Finance Corporation is a corporation organized and existing under the laws of Maryland that maintains its principal place of business at 534 Hillsmere Drive, Annapolis, Anne Arundel County, Maryland 21403.

21. References to any Defendant entity include the entity and its parent companies, subsidiaries, affiliates, predecessors, successors, agents, and assigns. In addition, an allegation that an entity engaged in an act, deed, or transaction means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

22. At all times material hereto, Key School acted by and through its respective agents, servants, and employees, including but not limited to Eric Dennard, Vaughn Keith, Paul Stoneham, Peter Perhonis, Richard Sohmer, and Andy Garrison.

JURISDICTION AND VENUE

23. Key School has purposely established significant contacts in the state of Maryland and has carried out, and continues to carry out, substantial, continuous, and systematic business activities in Maryland.

24. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds the jurisdictional threshold, exclusive of costs, is between citizens of different states, and Defendants have sufficient contacts with Maryland such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

25. Venue in the United States District Court for the District of Maryland is proper pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

THIS ACTION IS TIMELY UNDER THE CHILD VICTIMS ACT

26. The Child Victims Act of 2023 took effect on October 1, 2023, and provides in relevant part, "notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time."[3]

The Child Victims Act defines child sexual abuse as:

> "[A]ny act that involves:
>
> (1) An adult allowing or encouraging a child to engage in:
>
> (i) Obscene photography, films, poses, or similar activity;
>
> (ii) Pornographic photography, films, poses, or similar activity; or
>
> (iii) Prostitution;
>
> (2) Incest;
>
> (3) Rape;
>
> (4) Sexual offense in any degree; or
>
> (5) Any other sexual conduct that is a crime."[4]

[3] Civil Actions—Child Sexual Abuse—Definition, Damages, and Statute of Limitations (The Child Victims Act Of 2023), 2023 Maryland Laws Ch. 6 (H.B. 1).

[4] *Id. codified at* Md. Code Ann., Cts. & Jud. Pro. § 5-117.

27. As alleged below, Key School faculty subjected Ms. Bunker to sexual abuse, other sexual offenses, and sexual conduct constituting crimes under the Act while she was a minor. This action therefore falls within the Act's scope.

FACTS COMMON TO ALL COUNTS

28. Ms. Bunker enrolled at Key School for summer school and then for ninth grade in in fall 1973.

29. Key School is a private independent school accepting students from pre-kindergarten to 12th grade.[5]

30. The school's current website describes the founding philosophy: "These college professors, convinced that children possess inherent intellectual vitality that schools generally do not reach, agreed to bring discerning teachers and promising students together in small classes."[6]

31. According to the school's marketing materials, "From the outset, Key School worked to forge an identity that coupled experiential and innovative learning with a rigorous and essentially classical curriculum."[7]

32. Parents pay considerable yearly tuition to send their children to Key School and reasonably expect Key School to provide a safe learning environment with a staff fit to supervise, instruct, and mentor students.

33. Given its small size and connection to St. John's College, Ms. Bunker and her parents believed she would receive a top-notch education in a safe and nurturing environment.

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[5] Key School consists of four separate schools: First School (Kindergarten), Lower School (grades 1-4), Middle School (grades 5-8), and Upper School (grades 9-12). Each of the four schools is located on the same campus.

[6] *School History*, https://www.keyschool.org/about/mission/school-history (last visited September 29, 2023).

[7] *Id.*

34. Neither Ms. Bunker nor her family had any idea that school administrators, faculty, and staff promoted a highly sexualized environment in which faculty predators viewed minor students as sexual objects and exploited them.

A. The Two Faculty Predators

35. Two Key School faculty members, Eric Dennard and Vaughn Keith, sexually abused Ms. Bunker. Both men are now deceased.

36. Dennard taught art at Key School and was a ringleader in the predatory faculty culture of the Key School, creating and perpetuating the toxic sexual environment and sexually abusing, by one count, 25 underage students.

37. Dennard was the art teacher at Key School from 1969 to 1978. He died in 1993.

38. Keith taught foreign language and English at Key School. Like Dennard, he was a serial sexual abuser of Key School students. He hosted parties at his apartment at which he and other teachers plied students with drugs and alcohol. Keith and other teachers manipulated students into having sex with them.

39. Key School employed Keith from 1972 through 1976. His contract was not renewed at the end of the school year in 1976 after a parent complained to Key School's administration that he was having a sexual relationship with Ms. Bunker. Keith died in 1990.

B. Dennard Grooms and Sexually Abuses Ms. Bunker

40. Ms. Bunker came to Dennard's attention during her first year at Key School, in the 1973-1974 academic year.

41. Dennard soon began to groom Ms. Bunker, a vulnerable young teenage student. During that year, he invited her to his off-campus apartment to assist with art projects. Dennard lived in that apartment with Witness 1, who was a 12th grade Key School student at the time.

42. Initially, Ms. Bunker's visits to Dennard's apartment were not sexual. Ms. Bunker felt honored to be selected by her teacher for special art projects at his home and to be treated like a grownup. Early visits to his home involved just "hanging out" with Dennard and Witness 1, drinking beer and smoking cigarettes.

43. But Dennard's actions escalated very quicky. He soon began to make sexual advances and to pressure Ms. Bunker into sex. He asked Ms. Bunker to sleep over at his apartment with Witness 1, with whom he was having sex on a regular basis. During one of these first encounters, Ms. Bunker remembers lying naked in Dennard's bed with naked Dennard on one side of her and naked Witness 1 on the other side. Ms. Bunker was frozen with fear. Dennard and Witness 1 groped Ms. Bunker's body, trying to stimulate her sexually while also assuring her that sex was normal and fun and not to be feared.

44. These sleepovers became more frequent during her ninth-grade year. At these sleepovers, Dennard regularly raped[8] Ms. Bunker and pressured her into other sexual activity. Eventually, Ms. Bunker stayed most nights at Dennard's home, and she barely returned to her own home.

45. Dennard drove Ms. Bunker and Witness 1 to and from Key School daily, openly arriving at school together in the morning in full view of faculty and students. Dennard exploited young, trusting, and impressionable Ms. Bunker and manipulated her into believing he loved her and would be devoted to her forever because she was uniquely beautiful, talented, and lovable. Ms. Bunker also naively believed Witness 1 loved her.

[8] When used here, "rape" refers to vaginal intercourse between Ms. Bunker, a child, and adult men.

46. These sexual encounters at Dennard's apartment became routine. Daily, Dennard sexually abused Ms. Bunker by raping her, imposing oral sex on Ms. Bunker, and raping and engaging in oral sex with Witness 1 in Ms. Bunker's presence. Dennard also directed Ms. Bunker and Witness 1 to perform sexual activity with each other for his gratification when he was unable to have an erection, and they complied.

47. Ms. Bunker witnessed Dennard engaging in sex with other underage Key School students at his apartment and elsewhere.

48. Ms. Bunker also was present when Dennard organized orgies between Key School students, faculty members, and other adult men. Dennard compelled Ms. Bunker to attend these orgies, where random adult men raped her.

49. On a Key School class trip Dennard chaperoned, he brought Ms. Bunker to a hotel room with a minor male Key School student. Ms. Bunker had confided in Dennard that she had a crush on this male student, and she understood that Dennard intended for her to have sex with the male student to bring him into the circle of students whom Dennard and other faculty were sexually abusing. But when Dennard left them alone in the hotel room, Ms. Bunker was nervous and uncomfortable, and she declined to have sex with her peer.

50. Dennard continued to sexually abuse Ms. Bunker countless times during her time at Key School and until her graduation in 1977. Everywhere she went with Dennard, he gave her alcohol and drugs and subjected her to sexual activity.

51. Key School had a "bottomless drinking culture," in which underage students were introduced to alcohol and faculty and administrators routinely supplied minor students with alcohol and drank with them. Teachers gathered for happy hours at local bars in Annapolis and brought the students they were abusing to drink with them. Administrator Barbara Vaughan,

Kindergarten teacher Andy Garrison, Dennard, and Keith attended regularly, as did Paul Stoneham, who would eventually become the head of the Upper School and Key School's college counselor.

52. Dennard also frequently took students, including Ms. Bunker, off-campus in his van for lunch to engage in inappropriate sexual activity for his gratification. The group referred to themselves as the "Munch a Cunt for Lunch Bunch."

53. Additionally, various teachers at Key School hosted parties where a mix of teachers and students attended. At these parties, alcohol and drugs were served to underage students, and teachers sexually assaulted students. Many times, individual teachers sexually assaulted multiple students at the same party. During these parties, teachers would "pair off" with female students and rape them.

54. Key School students and faculty understood teachers, including Dennard, Keith, Stoneham and Richard Sohmer, the Upper School Russian and European history teacher and director of drama and music performances, were having sex with students.

55. Teacher/student sexual "relationships" were part of the fabric of Key School's culture. The most popular male faculty did not hide that they were having sex with their students; they often chose the prettiest girls and most popular girls to abuse. Ms. Bunker knew that her classmate, the beautiful Witness 11, was having sex with Sohmer. This pervasive culture caused Ms. Bunker to accept her sexual abuse and to believe it made her one of the "special" girl students.

56. Ms. Bunker's teachers taught her that becoming an adolescent and growing into a sexual person meant not having boundaries of personal and bodily integrity and to accept the objectification of her body for teachers' gratification. Her teachers taught her by their example that it was acceptable for young girls to flirt with grown men. Her conditioning also led her to

experiment sexually with other male and female students at Key School, sometimes at the direction of predator faculty.

57. On one occasion, Ms. Bunker was particularly frustrated with the Key School administration and, while intoxicated, she and Witness B entered then-Headmaster David Badger's office after hours when he was not there. They had sex on his office couch and crushed out cigarettes on his coffee table as a sign of disrespect.

58. It was widely known that Dennard, Stoneham, and other faculty predators did not respect Headmaster Badger, and, upon information and belief, they orchestrated his resignation at the close of the 1975-1976 school year.

C. Keith Grooms and Sexually Abuses Ms. Bunker

59. During one party at Keith's home, Dennard "gave" Ms. Bunker to Keith so that Keith could have sex with her. Ms. Bunker had previously been to parties at Keith's home at which Keith paid no attention to her. But when Dennard gave his express permission for Keith to have sex with Ms. Bunker, Keith led Ms. Bunker into an empty apartment next door to his; he told her she was beautiful, and he raped her.

60. More rapes soon followed, and, before long, Ms. Bunker was essentially living with Keith in his off-campus apartment. Ms. Bunker ate at his house, had clothes in his closet, drove his car, and openly commuted to and from school with Keith.

61. Keith took Ms. Bunker to the local bars after school for the Key School faculty happy hours with their abused students. Dennard, Stoneham, Garrison, and other teachers and administrators were regularly present at the bars.

62. Throughout her years at Key School, Ms. Bunker continued to be sexually abused by Dennard; however, his abuse became less frequent once Keith started to abuse her.

63. Keith exploited young, trusting Ms. Bunker, manipulating her to believe that he loved her and would be devoted to her forever. Keith wrote her poems about his love and his lust for her and published them in a booklet, copies of which circulated at Key School. He even told the young teenager that he loved her so much that he would commit suicide if she ever tried to end their "relationship."

64. Keith took Ms. Bunker to "sex parties" hosted by various adult men who were not on the faculty at Key School, where she was raped by strangers.

65. Even more shockingly, Keith subjected Ms. Bunker to sadomasochism. He often tied her down and whipped her painfully with a leather belt all over her body. Upon information and belief, one of Keith's housemates found Keith's abuse of Ms. Bunker so upsetting that he moved out of the apartment. At Keith's direction, sometimes Ms. Bunker would also tie Keith down and whip him.

66. Keith infected Ms. Bunker with the sexually transmitted disease herpes.

67. In the spring of 1976, a parent not related to Ms. Bunker reported to Key School administrators that they had witnessed Ms. Bunker and Keith holding hands in downtown Annapolis. As a result, Keith's contract was not renewed at the close of that academic year.

68. However, no Key School faculty, administrator, or Board member ever contacted Ms. Bunker to acknowledge that what Keith had done to her was wrong. No Key School employee reached out to Ms. Bunker to offer her assistance or to ensure she obtained the medical care or counseling she needed to recover. Instead, Ms. Bunker was left to face her trauma alone and without support.

69. In addition, Key School officials made no effort to inform the Key School community that faculty sexual abuse had occurred, to institute any policy or training to prohibit or prevent such abuse, and no report of child sexual abuse was made to law enforcement authorities.

70. Not surprisingly given the lack of reports, after Keith stopped teaching at Key School, he continued to subject Ms. Bunker to sexual abuse until she graduated from Key School in 1977. He also continued to play a central role in the Key School faculty/student sexual abuse social scene.

71. Ms. Bunker graduated Key School in June 1977 in an "alcoholic state," traumatized and broken.

72. In the fall, she went off to Kalamazoo College in Michigan. But Ms. Bunker had a serious alcohol abuse disorder, and she dropped out of school during or soon after her freshman year.

73. Keith moved on to sexually abuse another Key School minor student, Witness 7, in October 1977.

74. Ms. Bunker did not break free of the faculty predators' conditioning until she had children of her own when she was in her 30's. She describes breaking free of their "brainwashing" and coming to understand that what was done to her was criminal abuse. This understanding was a significant step toward recovery.

75. The trauma of being sexually abused by two different Key School teachers during Ms. Bunker's teenage years left Ms. Bunker physically and psychologically damaged. She dwelled in a dark emotional state for many years thereafter and continues to struggle emotionally and psychologically to the present.

D. Key School Knew or Should Have Known About Dennard's Patterns of Abuse

76. Upon information and belief, administrators, faculty, and staff knew Dennard was having sex with a student, Witness 1, beginning in 1972 when she was in the 11th grade at Key School, after her boyfriend was tragically killed in a car accident. Witness 1 moved in to live with Dennard in 1973-1974, during her senior year at Key School, and teachers (including Sohmer and Stoneham) along with students, attended highly sexualized, alcohol and drug-drenched parties at Dennard's home with Witness 1 present.

77. During a Christmas caroling event with faculty and student participants in December 1973, the group stopped at Dennard's house to sing, and Dennard came to the door with Witness 1—who was obviously alone with him at night in his home.

78. Dennard conducted an "art project" in which he created plaster casts of female student's breasts, which he prominently displayed in the school library. He also made a life-sized clay sculpture of Witness 1's torso that he painted in realistic flesh tones, including her breasts and nipples. This sculpture was prominently displayed atop a cabinet in the 11th grade art classroom, and it was widely known that the sculpture was of Witness 1.

79. During at least some of the years he was on the Key School faculty, Dennard also used Key School facilities to take photographs of unclothed, underage Key School students. Dennard enlisted another Key School student to develop the photos in the school darkroom.

80. Dennard was the faculty advisor for the 1973 school yearbook, and he exerted substantial control over its content. The photos Dennard included in the yearbook include: a photograph of a completely naked young boy; a photograph of a female Key School student's breast; and a photo of a female Key School teacher kissing a Key School student.

81. Dennard's sexual misconduct was so pervasive as to be impossible to miss. In her interview with Kramon & Graham, Witness 1 estimated that Dennard had sexual intercourse with approximately 25 students when he was on the Key School faculty, from 1969 to 1978.

82. Despite Dennard's open and obvious pattern of sexually abusing students, school administrators failed to take any meaningful action to stop the abuse and/or to help the victims of that abuse.

E. Key School Knew or Should Have Known About Keith's Patterns of Abuse

83. During his tenure at the Key School from 1972 through 1976, Keith hosted parties that were attended by Key School students and faculty. At these parties, minor students were supplied with alcohol and other drugs, and students were sexually objectified and sexually assaulted by their teachers.

84. Despite numerous faculty members attending these parties, including future head of the Upper School Stoneham, no action was taken to prevent Keith from supplying minor students with alcohol and other drugs or enabling and engaging in faculty sexual abuse of minor students.

85. In addition, Keith openly cohabitated with Ms. Bunker, driving with her to Key School in the morning daily, as everyone arrived at the beginning of the school day. Keith also took Ms. Bunker to local bars, while she was underage, to attend Key School faculty happy hour gatherings where predators and other faculty and administrators gathered with abused students and supplied them with alcohol.

86. Key School faculty and administrators witnessed and ignored Keith's open and obvious inappropriate and sexual relationship with Ms. Bunker on the Key School campus and at

off-campus Key School social events for years, yet they took no action until a parent complained in 1976.

87. Even though school leaders declined to renew Keith's contract, they made no report of child sexual abuse to law enforcement, provided no help to Ms. Bunker, and the Key School community was not alerted that child sexual abuse had occurred there.

88. Indeed, Ms. Bunker was never interviewed regarding this or other incidents until many years later, when outside investigations commenced. Even then, school officials did not acknowledge to her that what had been done to her was wrong, and they offered her no assistance.

89. In addition, Key School officials changed no policies, implemented no training, and took no meaningful action to change the Key School culture in which Ms. Bunker's abuse, and that of other students, was not only permitted but also encouraged.

F. Key School Has Eluded Accountability For More Than 50 Years

90. Key School's history of enabling and permitting serialized sexual abuse of students by faculty first came to light in 1993, when a survivor courageously called out the community's hypocrisy.

91. Dennard died in 1993, and not long thereafter, Key School held a memorial service in his honor.

92. During the memorial services, Witness 5 stood up and bravely asked, "Why are you honoring a teacher who [raped] me when I was 14 years old?"

93. Following this act of bravery, the then-current Key School Headmaster reached out to Witness 5 and apologized, but he claimed there was no institutional liability for Dennard's actions.

94. In 1996, Carolyn Surrick came forward and made Key School aware of her own abuse at the hands of Dennard and another Key School teacher. She also warned about the abuse inflicted on many other former students at the school. Due to Ms. Surrick's report, Key School instituted an investigation in 1996. However, the investigation's focus was whether Key School needed to report the abuse, rather than focusing on its institutional failures and the impact on its former students. Moreover, Key School had no desire to alert either the Key School community or the larger public to the atrocities that had occurred.

95. In 1997, Headmaster Ronald Goldblatt lodged two reports to child protective services/law enforcement concerning sexual abuse of certain Key School students by faculty: one concerning several students abused in the 1970's and one concerning suspected child abuse by a teacher in the 1990's. However, Key School leaders still refused to acknowledge the sexual abuse history to its own community or the public.

96. In 2017, Carolyn Surrick, inspired by the survivor testimony in the Larry Nassar sentencing and the #MeToo movement, started a social media #KeyToo movement concerning teachers' sexual abuse of students at Key School.

97. On August 18, 2018, the Washington Post published an article crediting accounts of faculty sexual abuse of students at Key School.

98. The Key School Board of Trustees responded in 2018 by hiring Kramon & Graham to conduct an in-depth independent investigation and to issue a report. The Kramon & Graham Report was delivered to the Board of Trustees in January 2019.

99. Since 2020, Key School has offered survivors modest reimbursement for counseling expenses, but the institution has otherwise failed to accept responsibility for the

decades of abuse and/or to meaningfully compensate the survivors for the unimaginable suffering they have endured.

G. January 2019 Investigative Report By Kramon & Graham

100. The Kramon & Graham Report concludes that former faculty members Dennard, Keith, Sohmer, Peter Perhonis, Stoneham, John Sienicki, William Schreitz, and Charles Ramos used their positions to sexually exploit students. The Kramon & Graham Report also concludes that Tad Erickson, who chaperoned Key School trips, sexually exploited students on those trips.

101. The Kramon & Graham Report also concludes that the Key School failed to protect students from these predators, including Dennard and Keith. In Dennard's case, the report finds that the school failed to protect at least six students from severe ongoing sexual abuse.

102. Critically, the report finds, "others in the school community including certain members of faculty and staff, administrators, and board members, were aware of the abuse and inappropriate conduct and chose to remain silent rather than to intervene or report the situation to the administration."

103. As it relates to Dennard's conduct, the report finds, "In interview after interview, he was identified by former students as one of the primary forces behind a subculture in the 1970s that encouraged sexual relationships between teachers and students alongside rampant drug and alcohol use."

104. The Kramon & Graham Report indicates that investigators received multiple accounts from witnesses that Dennard had forcibly raped them.

105. Dennard's "significant other" at the time, Witness 1, estimated that Dennard had sexual intercourse with 25 Key School students while he was on the faculty.

106. Moreover, Ms. Bunker and another former student, gave accounts to investigators that Keith sexually abused them while they were minor students at Key School.

107. The abuse did not stop even after Keith left the school. Keith abused Witness 7 after his contract to teach was not renewed and he was no longer a faculty member, but Keith was still active in the faculty/student sexual predator social scene.

108. Both witnesses told investigators that they recalled attending parties hosted by Keith in the 1970's and that these parties were attended by both faculty and students.

109. When Ms. Bunker was interviewed, she was far enough along in her recovery to be able to recount some of the details of her abuse at the hands of Dennard and Keith.

110. Additionally, investigators reviewed Key School Board meeting minutes dating back to 1959.

111. As to why school leaders failed to act to stop the abuse, the report indicates "it is clear that the Board's ongoing focus was on the school's financing, fundraising, and endowment, and, relatedly, its enrollment" as well as its reputation.

112. By the mid to late 1970's, the Board minutes revealed that the Board and administrators recognized that the Key School's informal culture "might be problematic," but their concerns focused on the impact the culture would have on enrollment and fundraising, and not on the welfare of students.

113. A fundraising survey Key School conducted in 1975 gathered concerns from parents that some Upper School teachers had an "unhealthy, guru-type relationship with students, . . . and [parents] commented on unprofessional relationships between faculty and students." Nevertheless, "There is no indication in the minutes that the Board or administrators interpreted such feedback as warranting further investigation or action."

114. Board members were also advised that they should not air concerns about the school to friends, but should instead bring problems to the board president, headmaster, or appropriate head of school.

115. When serious personnel matters were presented to the Board, those discussions were "not reflected or [were] glossed over in the minutes." The report concludes that these omissions "appeared to be intentional."

116. For example, the report points to a spring 1978 Board meeting in which a member criticized the minutes from a previous meeting as overly detailed and containing sensitive material. The Board agreed that future minutes would only include broad topics and would avoid details. The Board also voted to revise the previous meeting's minutes to omit sensitive details.

117. Additionally, three omissions from the minutes appeared "deliberate based on what was learned through the investigation" including: (a) despite multiple reports that a Board member resigned because of the handling of Sohmer's behavior, the minutes are silent on that issue; (b) despite multiple reports that the faculty, Board, and community were abuzz following a theatre teacher's intimate and inappropriate tribute to a graduating senior, the Board minutes contain no mention of this incident; and (c) despite investigation notes indicating that, in 1997, Mr. Goldblatt discussed Ms. Surrick's allegations of faculty sexual abuse with the Board, the minutes reflect no such discussion.

118. Overall, the Kramon & Graham Report is a disturbing—albeit incomplete—picture of the degree to which Key School leaders chose at every turn to ignore the systematic emotional, sexual, and physical abuse being inflicted upon the students they were charged with protecting.

H. The Abuse Ms. Bunker Suffered Inflicted Devastating Life-Long Harm

119. The abuse perpetrated upon Ms. Bunker and Key School's utter failure to protect her as a child in its charge has caused Ms. Bunker unimaginable harm that has impacted her education, work, relationships, and virtually every area of her life.

120. Because of her abuse, Ms. Bunker was emotionally unprepared for college and suffered from an addiction to alcohol. Accordingly, she dropped out of college during or soon after her first year and never completed her degree, resulting in significant lifetime lost earnings.

121. Ms. Bunker's alcohol addiction also impacted her health, earnings, and significant opportunities to advance her career. Her substance abuse had a profoundly negative impact on her personal and professional relationships. Eventually Ms. Bunker was able to seek help and attended Alcoholics Anonymous meetings for approximately 20 years.

122. As is typical for child sexual abuse survivors, Ms. Bunker struggled for years to understand appropriate boundaries and to know who she can trust. She endured additional abusive relationships, compounding her emotional distress.

123. Ms. Bunker has consistently required psychotherapy and anti-depressants to help her recover from the trauma she endured at the Key School and its aftereffects. She has also had several psychotic breaks and attempted suicide on multiple occasions, including one attempt while she was a student at Key School. The therapy has, and continues, to result in significant financial cost to Ms. Bunker.

124. Ms. Bunker is a true survivor who was eventually able to open a nursery school with the help of her daughter. But the fundamental breach of trust and horrors she endured at Key School have resulted in substantial economic loss in addition to the extreme emotional distress she will be forced to endure for her lifetime.

125. As a direct and proximate result of her trusted teachers' abuse and Key School's utter failure to protect her from the abuse, to acknowledge her experience, and/or to offer her help, Ms. Bunker has suffered, and continues to suffer, grievous harms and losses for which she is entitled to substantial economic and non-economic damages.

CAUSES OF ACTION

COUNT I
Negligence
(The Key School Defendants)

126. Ms. Bunker re-alleges and incorporates by reference the factual allegations contained in all prior paragraphs as if fully stated in this Count.

127. The Key School Defendants owed Ms. Bunker a duty of reasonable care to protect her from injury, because she was a young student committed to their care and custody.

128. The Key School Defendants owed Ms. Bunker a duty of care because it had a special relationship with Ms. Bunker.

129. The Key School Defendants owed a duty arising from the special relationship that existed with Ms. Bunker to properly train and supervise their representatives, agents, and employees.

130. The Key School Defendants owed Ms. Bunker a duty to protect her from harm because teacher Dennard was a faculty member and corporate representative, and his actions were effectively the actions of the Key School Defendants.

131. The Key School Defendants owed Ms. Bunker a duty to protect her from harm because teacher Keith was a faculty member and corporate representative, and his actions were effectively the actions of the Key School Defendants.

132. The Key School Defendants owed Ms. Bunker a duty to protect her from harm because of their oversight and employment of Dennard and Keith.

133. The Key School Defendants also had a duty to take reasonable steps to prevent Dennard and Keith from using their authority or the tasks, premises, and instrumentalities of their positions to target and sexually abuse children generally, including Ms. Bunker, specifically.

134. By establishing and/or operating as the Key School Defendants and holding their facilities and programs out to be a safe environment for Ms. Bunker, the Key School Defendants owed Ms. Bunker a duty to properly supervise Ms. Bunker to prevent harm to her from foreseeable dangers.

135. The Key School Defendants owed Ms. Bunker a duty to protect her from harm because it invited Ms. Bunker onto their property and Dennard and Keith posed a potentially dangerous condition on the Key School Defendants' property.

136. In breach of the duties owed to Ms. Bunker, the Key School Defendants, among other things:

a. failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe;

b. failed to protect Ms. Bunker from a known or potential danger;

c. failed to have sufficient policies and procedures in place to prevent child abuse and child sex abuse;

d. failed to properly implement policies and procedures to prevent child abuse and child sex abuse;

e. failed to take reasonable measures to ensure that policies and procedures to prevent child abuse and child sex abuse were effective;

f. failed to adequately inform families and children of the risks of child abuse and child sex abuse;

g. failed to investigate risks of child abuse and child sex abuse;

h. failed to properly screen prospective employees for hire and, once hired, to train and supervise their employees;

i. failed to fulfill their duty to report child abuse and child sex abuse to law enforcement authorities;

j. failed to investigate suspected child abuse and child sex abuse;

k. failed to dismiss faculty who were sexually abusing students in their care;

l. failed to inform the parents of students who were sexually abused;

m. failed to acknowledge to the students that wrongs had been committed against them, that they were not to blame, to offer any medical care or mental health care to the abused students, or to offer just compensation for their injuries;

n. failed to have any outside agency test their safety procedures;

o. failed to protect the children who were their students from child abuse and child sex abuse;

p. failed to adhere to the applicable standard of care for child safety;

q. failed to investigate the amount and type of information necessary to represent the Key School and its programs, administration, faculty, and staff as safe;

r. failed to train their representatives, agents, and employees properly to identify and report signs of child abuse and child sex abuse by fellow employees;

s. failed to create and foster a culture of accountability and shared responsibility for the welfare of the students in their care; and

t. failed to otherwise exercise ordinary and reasonable care to assure the safety of their students, and Ms. Bunker, specifically.

137. The Key School Defendants also breached their duty to Ms. Bunker by failing to warn Ms. Bunker and Ms. Bunker's family about the Key School Defendants' knowledge about child abuse and child sexual abuse committed against their students and about Dennard's and Keith's sexualization of female students and their sexual abuse of students.

138. The Key School Defendants knew or should have known that they had numerous agents, including faculty (and specifically including Dennard and Keith), who had sexually molested children. They knew or should have known that there was a specific danger of child abuse and sex abuse when male faculty were allowed to provide students with alcohol and drugs, to meet alone with them, to transport them from campus to off campus locations, to grope them, sodomize them, and to rape them.

139. Despite this knowledge, the Key School Defendants negligently allowed male faculty to meet alone with female students, to transport them from on campus locations to off campus locations, to supply alcohol and other drugs to students, to cohabitate with minor students and former students, to exhibit their sexual intimacy with minor students' bodies by publicly touching them and embracing them on the Key School campus, to display likenesses of female

students' breasts in the public space of the library, art classroom, and in the official school yearbook, and to engage in sexual relationships with students, and with Ms. Bunker, in particular.

140. The Key School Defendants' actions created a foreseeable risk of harm to Ms. Bunker. As a vulnerable minor at their facilities under the care and supervision of their faculty, Ms. Bunker was a foreseeable victim. Additionally, Dennard and Keith gained the opportunity to groom and abuse Ms. Bunker, a vulnerable minor student, because of their access to her through the Key School Defendants' programs and facilities.

141. The sexual abuse and resulting injuries to Ms. Bunker were caused solely and wholly by reason of the negligent failures of the Key School Defendants and their employees.

142. As a direct and proximate result of the foregoing acts of grooming and sexual abuse, Ms. Bunker sustained physical, emotional, and psychological injuries, along with untold pain, suffering and the loss of enjoyment of life. Ms. Bunker has required and continues to require intensive psychiatric and psychological care and will require lifelong mental health treatment. Ms. Bunker sustained physical and psychological injuries, including but not limited to, sexually transmitted infections, substance abuse disorders, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, panic attacks, loss of trust, severe shock to her nervous system, physical pain and mental anguish, as well as emotional and psychological damage. On information and belief, some or all of these injuries are of a permanent and lasting nature.

143. The sexual abuse Ms. Bunker suffered at the hands of the Key School Defendants' representatives, agents, and/or employees—the manipulative predatory adults entrusted with her care and those who enabled the predators—destroyed her ability to set boundaries and to form

healthy loving relationships. It made her susceptible to being victimized by other predators, which also came to pass. She has developed a distrust of authority and health care providers.

144. Importantly, the atrocities committed by the faculty and administration of the Key School Defendants stunted her emotional and intellectual development. It has only been with great resilience and persistence, and the assistance of intensive therapies, that Ms. Bunker has recovered sufficiently to build a life for herself. But she lost many years, suffered lasting harm, and continues to suffer egregiously.

145. The physical and psychological harm Ms. Bunker suffered as a direct and proximate result of the Key School Defendants' negligence resulted in lost wages, lost business opportunities, diminution in earnings, and a variety of other direct economic losses.

COUNT II
Negligent Hiring of Employees
(The Key School Defendants)

146. Ms. Bunker re-alleges and incorporates by reference the factual allegations contained in all prior paragraphs as if fully stated in this Count.

147. The Key School Defendants owed Ms. Bunker a duty to use reasonable care in their vetting of Dennard and Keith before hiring them, including without limitation by performing a background check, mental health screenings, psychological evaluations, and in-depth review of references and prior work history with children and youth.

148. In breach of that duty, the Key School Defendants failed to use reasonable care in their evaluation and selection of Dennard and Keith to serve as faculty at the Key School. The Key School Defendants' hiring procedures were insufficient to ensure that Dennard and Keith were competent and fit for the work assigned to them and that they would not cross professional or personal boundaries in their performance of faculty and administration services.

149. Had the Key School Defendants performed appropriate pre-hiring investigation methods, they would have discovered the unsuitability of Dennard and Keith for employment by the Key School Defendants and would not have retained them for this position in light of the information they knew or should have known.

150. Had the Key School Defendants been even minimally concerned with screening child sexual predators out of their workforce, despite hiring Dennard and Keith without appropriate pre-hiring investigation, they would have immediately recognized that Dennard and Keith were such predators.

151. As a direct result of the foregoing, Ms. Bunker was sexually abused and sustained emotional, physical, and psychological injuries as set forth with particularity, above.

152. The physical and psychological harm Ms. Bunker suffered as a direct and proximate result of the Key School Defendants' negligence resulted in lost wages, lost business opportunities, diminution in earnings, and a variety of other direct economic losses.

COUNT III
Negligent Supervision and Retention of Employees
(The Key School Defendants)

153. Ms. Bunker re-alleges and incorporates by reference the factual allegations contained in all prior paragraphs as if fully stated in this Count.

154. At all times material, Dennard and Keith were employed by the Key School Defendants and were under their direct supervision, employ, and control when they committed the wrongful acts alleged herein.

155. The Key School Defendants were under a duty to monitor and retain only those employees who were suitable for the position for which they were hired, and specifically, had a

duty to retain Dennard and Keith only if each acted in a professional and appropriate manner towards students in general, and Ms. Bunker, in particular.

156. In breach of that duty, the Key School Defendants failed to monitor the conduct and performance of Dennard and Keith in their provision of faculty and administration services and in each of their conduct with students generally, and Ms. Bunker, in particular.

157. Had they complied with their duty to monitor and observe the performance of Dennard and Keith, the Key School Defendants would have discovered each of their unsuitability for continued employment, and they would have discharged Dennard and Keith considering the information they would have discovered, and Ms. Bunker would not have been injured.

158. In fact, Dennard and Keith frequently drove Ms. Bunker to and from school each day in plain view of faculty and students.

159. As a direct result of the foregoing, Ms. Bunker was sexually abused and sustained emotional, physical, and psychological injuries as set forth with particularity above.

160. The physical and psychological harm Ms. Bunker suffered as a direct and proximate result of the Key School Defendants' negligence resulted in lost wages, lost business opportunities, diminution in earnings, and a variety of other direct economic losses.

PRAYER FOR RELIEF

WHEREFORE, Ms. Bunker respectfully prays that this Court grant her the following:

A. Award Ms. Bunker economic and non-economic compensatory damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00);

B. Award Ms. Bunker all pre-judgment and post-judgment interest allowed by law;

C. Award Ms. Bunker reasonable costs; and

D. Award Ms. Bunker any other such relief this Court deems just and proper.

JURY DEMAND

Plaintiff Valerie Bunker hereby respectfully demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	*	
Plaintiff,	*	
v.	*	**Civil Action No.: 1:23-cv-02662-MJM**
THE KEY SCHOOL, INCORPORATED, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * *

DEFENDANTS THE KEY SCHOOL, INC.'S AND
THE KEY SCHOOL BUILDING AND FINANCE CORPORATION'S
MOTION TO DISMISS, WITH REQUEST FOR HEARING

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and other applicable law, Defendants the Key School, Inc. and the Key School Building and Finance Corporation (collectively, "Key Defendants"), by their undersigned counsel, move to dismiss the Complaint for failure to state a claim upon which relief can be granted. Plaintiff's claims are barred by the applicable statute of repose and statute of limitations, and any legislative action reviving the claims is unconstitutional under the Maryland Constitution. Key Defendants incorporate by reference the accompanying memorandum setting forth the reasoning and authorities in support of the motion. A proposed order is attached.

Respectfully submitted,

/s/ Sean Gugerty

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	*	
Plaintiff,	*	
v.	*	**Civil Action No.: 1:23-cv-02662-MJM**
THE KEY SCHOOL, INCORPORATED, *et al.,*	*	
Defendants.	*	

* * * * * * * * * * * * *

DEFENDANTS THE KEY SCHOOL, INC.'S AND THE KEY SCHOOL BUILDING AND FINANCE CORPORATION'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, WITH REQUEST FOR HEARING

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Pursuant to Federal Rule of Civil Procedure 12(b)(6) and other applicable law, Defendants the Key School, Inc. and the Key School Building and Finance Corporation (collectively, "Key Defendants"), by their undersigned counsel, move to dismiss the Complaint for failure to state a claim upon which relief can be granted, and further state as follows:

INTRODUCTION

Plaintiff Valerie Bunker ("Plaintiff") has filed this action against the Key Defendants and two former teachers at the Key School. Ms. Bunker alleges that she was sexually abused as a minor while attending the school in the 1970s. *See generally*, Compl. Plaintiff's case is one of dozens of similar cases brought since the Maryland Child Victims Act of 2023 ("CVA") went into effect on October 1, 2023. In at least three other CVA actions, defendants have filed motions challenging the constitutionality of the CVA—including motions filed on November 3, 2023 in parallel cases in Montgomery and Prince George's County state courts.[1] On December 8, 2023, the plaintiffs filed oppositions to those motions to dismiss.[2] The plaintiff in the Montgomery County case is represented by the Jenner Law firm, which also represents Ms. Bunker.

The Maryland Legislature provided within the CVA a right to an immediate interlocutory appeal of any order denying a motion to dismiss challenging the constitutionality of the CVA. *See* Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 12-303(3)(xii). Thus, the Maryland trial courts' forthcoming rulings on motions to dismiss will be appealed to Maryland's appellate courts either via an interlocutory appeal (if dismissal is denied) or an appeal as of right (if dismissal is granted).

[1] *See* Ex. 21, Defendant's motion to dismiss filed in *Doe et al. v. Roman Catholic Archbishop of Washington*, Circuit Court for Prince George's County Case No. C-16-CV-23-004497 ("Doe"); Ex. 22, Defendant's motion to dismiss filed in *David S. Schappelle v. Roman Catholic Archbishop of Washington*, Circuit Court for Montgomery County Case No. C-15-CV-23-003696 ("Schappelle").

[2] *See* Ex. 23, Plaintiffs' opposition to motion to dismiss filed in *Doe*, Ex. 24, Plaintiff's opposition to motion to dismiss filed in *Schappelle*.

In light of the substantial resources that have already been devoted towards motion practice on the CVA's constitutionality in the state courts, Key Defendants moved to stay Ms. Bunker's action, pointing out that: (1) it would be unnecessarily wasteful of judicial and private resources for the parties to brief and this Court to also rule on the CVA's constitutionality and (2) Plaintiff will not be prejudiced by this course, as her interests will be more than adequately represented by counsel representing similarly-situated litigants on appeal (including Plaintiff's own counsel at the Jenner Law firm). (*See* ECF 12-1 at 6-9). In the alternative, Key Defendants moved for an extension of time to move to dismiss. *Id.* at 9.

Thereafter, on December 13, 2023, Plaintiff filed a motion asking this Court to certify the question of the CVA's constitutionality to the Maryland Supreme Court. (*See* ECF 13). Plaintiff's motion erroneously asserts that certification is appropriate simply because a Maryland appellate court has yet to issue a ruling as to the constitutionality of the CVA—which, again, is a statute that only went into effect just three months ago, on October 1, 2023. *Id.* at 7. That is wrong. The Fourth Circuit has held that a federal court should deny a motion to certify a question of law to the Maryland Supreme Court under the Maryland Uniform Certification of Questions Act, CJ § 12-603 when existing Maryland law "unambiguously resolves" the question a party seeks to certify. *Marshall v. James B. Nutter & Co.*, 758 F.3d 537, 540 n.2 (4th Cir. 2014). As explained in Key Defendants' Opposition to Motion to Certify being filed along with this instant motion, that standard is not met here because existing Maryland appellate precedent makes clear that the CVA's elimination of a 2017 statute of repose is unconstitutional under the Maryland Constitution's due process and taking clause provisions.

Key Defendants continue to believe that it is unnecessary and inconsistent with basic principles of judicial economy to make this case the vehicle for resolution of the CVA's

constitutionality, and thereby circumvent the state court process in which Maryland trial courts will soon issue rulings on the CVA's constitutionality. Thus, Key Defendants urge this Court to simply grant their motion to stay and defer issuing a ruling on: (1) Plaintiff's motion to certify a question of law to the Maryland Supreme Court and (2) this motion to dismiss.

However, if the Court elects to reach the merits of Plaintiff's motion to certify, the well-established standard in this Circuit for resolving such request will require the Court to consider whether the CVA is unconstitutional under *established* Maryland precedent, such that certifying the question is unnecessary. Thus, Key Defendants are filing the instant motion to dismiss at this procedural juncture so that the Court can have the benefit of full briefing on that issue.

* * *

Plaintiff's claims against the Key Defendants have been barred since the late 1970s or early 1980s, based on the limitations periods then in place. Thereafter, Plaintiff's potential claims were permanently and irrevocably extinguished when the Maryland legislature explicitly granted "repose" in 2017 to non-perpetrator defendants against abuse claims that were not brought within 20 years after the plaintiffs reaching the age of majority. Ex. 1 (2017 Md. Laws ch. 12), Ex. 2, (2017 Md. Laws ch. 656). The 2017 statute of repose provides: "[i]n no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." Ex. 1 (2017 Md. Laws ch. 12), § 1, Ex. 2 (2017 Md. Laws ch. 656), §1; *see also* Ex. 5, CJ § 5-117(d) (West 2017) (codifying these provisions). That provision, the law states, "shall be construed to apply both prospectively and retroactively *to provide repose* to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017," the

date the law went into effect. Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).

Plaintiff rests her hopes of litigating her long-expired claims on the CVA. The CVA not only abolished the statute of limitations altogether for claims of sexual abuse of minors going forward; it also purported to "repeal[]" the "statute of repose" that was enacted for non-perpetrator defendants in 2017, and to revive claims that had already been extinguished by the statute of repose. Ex. 3 (2023 Md. Laws ch. 5), Ex. 4 (2023 Md. Laws ch. 6). However, the attempt to repeal the statute of repose is unconstitutional.

Under well-settled Maryland law, a statute of repose creates substantive rights that vest in defendants once the statutory time period expires. *See Anderson v. United States*, 427 Md. 99, 120, 46 A.3d 426, 438-39 (2012). And the Maryland Supreme Court has held that under Article 24 of the Maryland Declaration of Rights (the due process clause), and Article III, Section 40 of the Maryland Constitution (the takings clause), that right, once vested, may not be withdrawn. *See, e.g.*, *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 623, 805 A.2d 1061, 1072 (2002).

Because the right to repose created by the 2017 statute has already vested, it cannot be retroactively taken away through the CVA, and the legislature's effort to do so was a violation of the due process clause and takings clause of the Maryland Constitution. Further, the legislature's 2023 effort to revive claims that had previously expired under the statute of limitations is also unconstitutional under Maryland precedent holding that "when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process." *See Rice v. Univ. of Md. Med. Sys. Corp.*, 186 Md. App. 551, 563, 975 A.2d 193, 200 (2009).

For these and other reasons set forth below, the CVA violates the Maryland Constitution to the extent it purports to revive long expired claims against the Key Defendants. Plaintiff's Complaint should, therefore, be dismissed.

BACKGROUND

I. Factual Allegations

The Key School is an independent, non-profit school for pre-kindergarten through twelfth grade. Compl. ¶ 4. In the Complaint, Plaintiff Valerie Bunker alleges that (a) she attended the Key School from 1973 through her graduation from high school in 1977; and (b) she was sexually abused by two former Key School faculty members: Eric Dennard and Vaughn Keith; and (c) Key School faculty and administrators knew or should have known of the abuse. *See id.* ¶ 2. While Plaintiff Bunker's age is not stated in the Complaint, she evidently turned eighteen (18) years of age in the late 1970s as she is alleged to have graduated Key School and entered college in 1977. *Id.* ¶ 72.

II. Legislative Record

Over the course of three decades, beginning in 1994, the Maryland legislature considered multiple proposals to expand the limitations period for civil claims arising from the sexual abuse of minors, both on a prospective and retroactive basis. As explained in detail below, the legislature extended the limitations period on a prospective basis in 2003 and 2017. But, recognizing the obvious constitutional impediment, the legislature repeatedly rejected proposals to revive claims that had already expired.

To the contrary, as part of a compromise when extending the limitations period in 2017, the legislature *explicitly* enacted a "statute of repose" for non-perpetrator defendants like the Key Defendants, conferring upon them a *right* to be free from stale claims that vests 20 years after a

victim reaches the age of majority. The legislature in 2017 thereby foreclosed the possibility that any future legislature might reconsider the question.

Thus, notwithstanding the legislature's most recent effort to revive extinguished claims, non-perpetrators like the Key Defendants have a vested right to repose that cannot be taken from them without violating the Maryland Constitution.

A. 1994 to 2016: The Legislature Repeatedly Declines to Revive Time-Barred Claims.

1. 1994: The Legislature Refuses to Extend the Limitations Period.

The general limitations period for civil causes of action in Maryland is three years. CJ § 5-101, 5-201.[3] The Maryland legislature "first considered in 1994 extending the generally-applicable three-year statute of limitations on civil claims by alleged child sexual abuse victims." *Doe v. Roe*, 419 Md. 687, 694, 20 A.3d 787, 791-92 (2011). That year, House Bill 326 passed the House of Delegates. The bill was referred to the Senate, but "received an unfavorable report" from the relevant Senate committee and was never enacted. *See id.* at 695, 20 A.3d at 792.

2. 2003: The Legislature Expands the Limitations Period Prospectively, but Refuses to Revive Time-Barred Claims.

In 2003, the Maryland legislature revisited the issue. That year, the legislature expanded the limitations period for claims arising from sexual abuse of a minor from three to seven years after the age of majority. Ex. 6 (2003 Md. Laws ch. 360); Ex. 7, CJ § 5-117 (West 2003). The 2003 law expressly disclaimed any attempt to revive time-barred claims. Ex. 6 (2003 Md. Laws ch.

[3] Under CJ §5-201(a), "[w]hen a cause of action . . . accrues in favor of a minor . . . that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed." *Id*.

360), § 2 ("[T]his Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003.").

The 2003 legislative record reflects concern about the lawfulness of reviving time-barred claims. An early, unenacted version of the 2003 bill purported to revive "any action that would have been barred by the application of the period of limitation applicable before" the bill's effective date. Ex. 8 (S.B. 68, First Reading (Md. 2003)), at 2.[4] That language was stricken, *see* Ex. 6 (2003 Md. Laws ch. 360), at 2 ll. 8-10, following the receipt of a letter from the Office of the Attorney General, drafted in response to questions from then-Senator Brian Frosh. *Doe v. Roe*, 419 Md. at 697-99, 20 A.3d at 793-94.

Assistant Attorney General Kathryn M. Rowe advised Senator Frosh that "it is possible, given the actions of other states, and its own statement in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002)], that the [Maryland] Court could conclude that retroactive application to revive barred causes of action violates Due Process." *Doe v. Roe*, 419 Md. at 698, 20 A.3d at 794 (quoting "Rowe Letter, at 4"). Accordingly, the bill was enacted with specific language disclaiming any intent to retroactively revive claims previously barred by the statute of limitations. Ex. 6 (2003 Md. Laws ch. 360), § 2.

[4] *Available at* https://mgaleg.maryland.gov/2003rs/billfile/sb0068.htm (click on "PDF" link ("Bill Text: First Reading (PDF)") in "Documents" section near the bottom of the page).

B. 2017: The Legislature Strikes a Balance Between the Rights of Plaintiffs and Non-Perpetrator Defendants.

1. The Text of the 2017 Law Explicitly States that it Extends the Limitations Period Prospectively, Does Not Revive Time-Barred Claims, and Enacts a Statute of Repose.

In 2017, the Maryland legislature returned to the issue. This time it enacted a law "[for] the purpose of altering the statute of limitations" and "*establishing a statute of repose*." Ex. 1 (2017 Md. Laws ch. 12) and Ex. 2 (2017 Md. Laws ch. 656) (emphasis added).[5]

Section 1 of the 2017 law modified CJ § 5-117(b) (West 2003) (Ex. 7) to authorize minors to bring suit at the time of injury, and to extend the statute of limitations for non-barred claims until the later of 20 years after the victim reaches majority or 3 years after the defendant is convicted of certain sexual abuse crimes. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(b) (West 2017). For claims filed against "a person or governmental entity that is not the alleged perpetrator of the sexual abuse" that are filed more than 7 years after the victim reaches the age of majority, the 2017 law required a showing of "gross negligence" (not simple negligence) in order to support liability. Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ §5-117(c) (West 2017).

Section 2 of the 2017 law provided that the expanded statute of limitations "may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before" the law's effective date. Ex. 1 (2017 Md. Laws ch. 12, § 2); Ex. 2 (2017 Md. Laws ch. 656, § 2).

In addition to providing that the expanded statute of limitations does not apply to claims that were already expired, the 2017 law went one step further—by establishing a new section, CJ

[5] This language appeared in the 2017 law's opening "purpose paragraph," which is required for all legislation under the Maryland Constitution. *See* Maryland Const. Art. III § 29.

§ 5-117(d) (West 2017) (Ex. 5), which sets forth a statute of repose for actions against non-perpetrator defendants like the Key Defendants:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(d) (West 2017).

Section 3 of the law provided that "*the statute of repose* under 5-117(d) (Ex. 5) . . . shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017," the date the law went into effect. Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).

In sum, the 2017 law unambiguously establishes a "statute of repose" for non-perpetrator defendants such as the Key Defendants. Under bedrock principles of Maryland statutory interpretation, "[i]f the language of the statute is clear and unambiguous, [courts] need not look beyond the statute's provisions and our analysis ends." *Smallwood v. State*, 451 Md. 290, 310, 152 A.3d 776, 787 (2017) (internal citations omitted). Here, this Court need look no further than the plain statutory text of Section 5-117(d), and the General Assembly's repeated reference to Section 5-117(d) (Ex. 5) as a "statute of repose," to conclude that it is, in fact, a statute of repose.

2. The Legislative Record States that the 2017 Law Does Not Revive Time-Barred Claims and that it Enacts a Statute of Repose.

The Maryland Supreme Court has explained that when interpreting a statute, it will "[o]cassionally" examine relevant legislative history "merely as a check of our reading of a statute's plain language." *Smallwood*, 451 Md. at 310, 152 A.3d at 787 (internal citations omitted).

Here, the legislative record confirms that the 2017 law did not revive time-barred claims, and established a statute of repose.

When asked whether "[t]his bill is entirely prospective," bill sponsor Senator Kelley responded, "Right, it's not retroactive." S. Jud. Proc. Comm. Hr'g, at 46:45-47:15 (Feb. 14, 2017).[6] She continued, "[a]nything that's barred up to the date when the new bill will become effective is still barred." *Id.* In her written testimony, Senator Kelley stated "[u]nder current law, and under the provisions of Senate Bill 505, a cause of action cannot apply retroactively to revive any action that was barred by the statute of limitations applicable before the new statute takes effect (in the case of SB 505, that would be October 1, 2017)." Ex. 9 (Testimony of Senator Delores G. Kelley Regarding S.B. 505 Before the S. Jud. Proc. Comm. (Feb. 14, 2017)), at 2.

The legislative record also refers repeatedly to the statute of repose, which was added by amendment on both the House and Senate sides.[7] On the floor, the Senate was told that the "[b]ill also creates a statute of repose for specified civil actions relating to child sex abuse," S. Floor, H.B. 642, 437th Gen. Assemb., Reg. sess., at 2:16:32-2:17:48 (Mar. 23, 2017 (emphasis added).[8] Committee reports also refer to the "statute of repose" enacted in CJ § 5-117(d) (West 2017) (Ex. 5). For example, the Senate Judicial Proceedings Committee Floor Report for H.B. 642 (Ex. 12) provided that *"[t]he bill also creates a statute of repose* for specified civil actions relating to child sexual abuse." Ex. 12 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 1 (Short

[6] *Available at* https://mgahouse.maryland.gov/mga/play/b7cad40e27314b558edd 37984c2aa82dld?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=1425000.

[7] *See* Ex. 10 (Amendment 252810/1 to H.B. 642, 437th Gen. Assemb., Reg. Sess. (Md. 2017)); Ex. 11 (Amendment 458675/1 to S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017)).

[8] *Available at* https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-50- ?year=2017RS.

Summary) (emphasis added).[9] Committee reports explained that the statute of repose in CJ § 5-117(d) (Ex. 5) shall apply prospectively and retroactively "to provide repose." Ex. 12 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 2 (Summary of Bill) ("The statute of repose created by the bill 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." (emphasis added).[10] The legislative record also states this language "confirms that the statute of repose applies retroactively to provide vested rights to defendants," and distinguished statutes of limitations from statutes of repose. Ex. 15 (Discussion of certain amendments in SB0505/818470/1), at 1 (emphasis added).

C. 2019-2021: The Legislature Declines to Eliminate the Statute of Limitations and the Statute of Repose.

1. 2019: The Legislature Refuses to Revoke the Statute of Repose After the Office of Attorney General Questions the Constitutionality of a Repeal.

In 2019, the lead House sponsor of the 2017 law sponsored a new bill eliminating the statute of limitations altogether and providing a two-year window within which previously time

[9] *See also* Ex. 12 (S. Jud. Proc. Comm., Floor Report: H.B. 642 (Md. 2017)), at 3 (Summary of Bill) *"The bill establishes a 'statute of repose'* prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." (emphasis added)); Ex. 13 (S. Jud. Proc. Comm., Floor Report: S.B. 505 (Md. 2017)), at 2 (Summary of Bill) (same)); Ex. 14 (Dept, of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, Third Reader-Revised: S.B. 505 (Md. 2017)), at 1 (providing that the bill "establishes a *statute of repose* for specified civil actions" (emphasis added)); *id.* at 2 (Bill Summary) *(The bill establishes a 'statute of repose'* prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." (emphasis added)). These three Exhibits are excerpted from bill files maintained by the Department of Legislative Services for H.B. 642 and S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

[10] *Accord* Ex. 13 (S. Jud. Proc. Comm., Floor Report: S.B. 505 (Md. 2017)), at 2 (Summary of Bill) (same); Ex. 14 (Dept, of Legis. Servs., Md. Gen. Assemb., Fiscal & Policy Note, Third Reader-Revised: S.B. 505 (Md. 2017)), at 1 (same).

barred claims could be brought. Ex. 16 (Third Reading, H.B. 687, 427th Gen. Assemb., Reg. Sess. (Md. 2010)), §§ 1-2.[11] Legislators and witnesses debated the meaning and effect of the 2017 statute of repose. The Office of Attorney General issued a letter opining that the 2017 law "must be read" to include a statute of repose, and that repealing the statute of repose "*would most likely be found unconstitutional* as interfering with vested rights as applied to cases that were covered by" CJ §5-117(d) (Ex. 5) and § 3 of the 2017 law. Ex. 17 (Letter from Kathryn M. Rowe, Asst. Att'y Gen., to Hon. Kathleen M. Dumais (Mar. 16, 2019)), at 1-2 (emphasis added). Accordingly, the proposed bill was not enacted.

2. 2020-2021: The Legislature Again Refuses to Revoke the Statute of Repose After the Office of Attorney General Questions the Constitutionality of a Repeal.

In 2020 (H.B. 974) and 2021 (H.B. 263, S.B. 134), bills reviving claims barred by the 2017 law were again proposed. In 2021, in response to a question from Senator William C. Smith, Jr., the Office of Attorney General again addressed the constitutionality of repealing the statute of repose to allow time-barred claims to be brought in a two-year "window." Assistant Attorney General Rowe reiterated that "it seems clear that there is a statute of repose" in CJ § 5117(d) (2017 West) (Ex. 5). Ex. 18 (Letter from Kathryn M. Rowe, Asst. Att'y Gen., to Hon. William C. Smith, Jr. (June 23, 2021)), at 2. As a result, the Attorney General's Office concluded, it is "unlikely that a court would find [] that a change in the law creating a new two year period during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose." *Id.* at 3. In other words, it was likely that a court would find the proposed

[11] *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0687?ys=2019rs#:~:text=History (expanding the "History" tab near the bottom of the page and clicking the link beginning "Text - Third - Civil Actions").

legislation modifying the statute of repose to be unconstitutional. Again, none of the proposed bills was enacted.

D. 2023: In the CVA, the Legislature Purports to Retroactively Repeal the Statute of Limitations and the Statute of Repose.

In 2023, however, the General Assembly passed, and the Governor signed into law, a bill purporting to abolish the statute of limitations and the statute of repose enacted in 2017.

1. The Text Repeals the Statute of Limitations and Statute of Repose.

The Child Victims Act purports to "repeal[] the statute of limitations" and "statute of repose" for civil actions "relating to child sexual abuse." Ex. 3 (2023 Md. Laws ch. 5 (S.B. 686)); Ex. 4 (2023 Md. Laws ch. 6 (H.B. 1)). The CVA modifies CJ §5-117(b) (West 2017) (Ex. 5) to eliminate the limitations period altogether for "an action for damages arising out of an alleged incident . . . of sexual abuse that occurred while the victim was a minor." Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1. Instead, such actions, "*notwithstanding* any time limitation[s] under a statute of limitations [or] a statute of repose[,] may be filed at any time," unless the "alleged victim of abuse is deceased at the commencement of the action.' Ex. 3 (2023 Md. Laws ch. 5), § 1 (emphasis added); Ex. 4 (2023 Md. Laws ch. 6), § 1 (emphasis added); *see also* Ex. 19, CJ § 5-117(b), (d) (West 2023) (codifying these provisions).

The CVA explicitly repeals §§ 2 and 3 of the 2017 law. Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1. Those provisions of the 2017 law (respectively) disclaimed the revival of time-barred claims and provided that "the statute of repose under §5-117(d) shall be construed to apply both prospectively and retroactively to provide repose . . . regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Ex. 1 (2017 Md. Laws ch. 12), §§ 2-3; Ex. 2 (2017 Md. Laws ch. 656), §§ 2-3. Section 2 of the CVA states "it is the intent of the General Assembly that any claim of sexual abuse that occurred

while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim." Ex. 3 (2023 Md. Laws ch. 5), § 2; Ex. 4 (2023 Md. Laws ch. 6), § 2. Section 3 of the CVA states "[t]hat this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023." Ex. 3 (2023 Md. Laws ch. 5), § 3; Ex. 4 (2023 Md. Laws ch. 6), § 3.

The CVA also eliminates the required finding of "gross negligence" under CJ § 5-117(c) (West 2017) (Ex. 5) for claims filed more than seven years after alleged abuse against "a person or governmental entity that is not the alleged perpetrator[.]" Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1. Under the CVA, a finding of simple negligence supports a judgment against non-perpetrator defendants, however long after the alleged abuse the action is filed.

Finally, the CVA raises the stakes for non-governmental defendants by increasing the cap on non-economic damages. The generally applicable cap started at $350,000 in 1986, increased to $500,000 in 1994, and has increased by $15,000 each October beginning on October 1, 1995. CJ § 11-108(b) (West 2023). Under that schedule, a claim that accrues today is capped at $935,000 in non-economic damages. *See id*. But the CVA created a special rule for claims against non-governmental defendants "that would have been barred by a time limitation before October 1, 2023." Ex. 19, CJ § 5-117(c) (West 2023). For those stale claims, the cap is $1,500,000. *Id*.

Recognizing that a court might well invalidate the CVA's revival of expired claims, the legislature included a specific provision that "if any provision of this Act or the application thereof . . . is held invalid, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of th[e] Act are declared severable." Ex. 3 (2023 Md. Laws ch. 5), § 4; Ex. 4 (2023 Md. Laws ch. 6), § 4. The legislature also provided for an interlocutory appeal from any order denying

a motion to dismiss that is "based on a defense that the applicable statute of limitations or statute of repose bars the claim . . . and any legislative action reviving the claim is unconstitutional." Ex. 3 (2023 Md. Laws ch. 5), § 1; Ex. 4 (2023 Md. Laws ch. 6), § 1; CJ § 12-303(3)(xii) (West 2023).

2. The Legislative Record Reflects Serious Doubts About the CVA's Constitutionality.

As in the past, *see supra* Background Sections II.A.2, II.C.1, II.C.2, the legislative record in 2023 reflected serious doubts about the constitutionality of reviving claims that had previously expired and for which non-perpetrators had been explicitly granted "repose." In a letter to the General Assembly, Attorney General Brown acknowledged that it was "possible" the CVA's "retrospective reach to time barred actions would be found to be unconstitutional" by the courts. Ex. 20 (Letter from Anthony G. Brown, Att'y Gen., to Hon. William C. Smith, Jr. (Feb. 22, 2023)), at 3. The Attorney General concluded that he could "in good faith defend the legislation should it be challenged in court," because, in his view, the CVA was "not clearly unconstitutional." *Id*. at 3.

ARGUMENT

I. Plaintiff's Claims Are Time-Barred.

A. Plaintiff's Claims Have Been Barred Under the Statute of Limitations Since No Later Than the Late 1970s or early 1980s.

Plaintiff's claims have long been barred by the applicable statute of limitations. Plaintiff evidently turned 18, the age of majority, in the late 1970s, as she is alleged to have graduated Key School and started at a college in 1977. Compl. ¶ 72. The general limitations period for civil causes of action in Maryland is three years from the date that the plaintiff reaches the age of majority, *see* Md. Code, Courts & Judicial Proceedings Article ("CJ") 5-101, 5-201,[12] and that was the statute

[12] Under CJ §5-201(a), "[w]hen a cause of action . . . accrues in favor of a minor . . . that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed." *Id*.

of limitations in effect in Maryland for claims of sexual abuse occurring while a plaintiff was a minor child until 1994. *Doe v. Roe*, 419 Md. 687, 694 (2011). Under established legal principles, any alleged claim that Plaintiff had against the Key Defendants arising from the acts of Dennard and Keith has been time-barred since Plaintiff turned 21, which would have occurred in the late 1970s or early 1980s. *See, e.g., Doe* v. *Archdiocese of Washington,* 114 Md. App. 169, 188 (1997) (alleged abuse "immediately" placed claimant on notice of potential claims against abusers' employer); *Scarborough v. Altstatt*, 228 Md. App. 560, 567, 140 A.3d 497, 501 (2016) (applying time bar from the age when the plaintiffs reached majority).

B. Plaintiff's Claims Were Extinguished by the 2017 Statute of Repose.

As described above, in 2017 the Maryland legislature granted "repose" to any "person or governmental entity that is not the alleged perpetrator" as to "an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor" after 20 years had passed since the claimant reached the age of majority. Ex. 1 (2017 Md. Laws ch. 12), §§ 1, 3; Ex. 2 (2017 Md. Laws ch. 656), §§ 1, 3; Ex. 5, CJ § 5-117(d) (West 2017). The statute of repose "appl[ied] both prospectively and retroactively." Ex. 1 (2017 Md. Laws ch. 12), § 3; Ex. 2 (2017 Md. Laws ch. 656), § 3. As to Plaintiff's claims, that 20-year period ended by, at the latest, the early 2000s. Accordingly, Plaintiff's claims were barred by the applicable statute of limitations, and pursuant to the 2017 law they are barred forever.

II. The CVA's Attempt to Revive Expired Claims Violates the Maryland Constitution's Prohibition on Abrogating Vested Rights.

A. The Maryland Constitution Does Not Permit the Revocation of Rights Vested Under the 2017 Statute of Repose.

"It has been firmly settled . . . that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." *Dua*, 370 Md. at 623, 805 A.2d at 1072 (endorsing categorical ban of legislation infringing vested rights). The Maryland Supreme Court has rooted

this principle in Article 24 of the Maryland Declaration of Rights, and Article III, Section 40 of the Maryland Constitution. *Id.*[13]

It is also well-established that "[s]tatutes of repose . . . create a substantive right protecting a defendant from liability after a legislatively-determined period of time." *Anderson v. United States*, 427 Md. 99, 120, 46 A.3d 426, 439 (2012). Section 5-117(d) (West 2017) (Ex. 5) is a statute of repose, which creates a substantive, vested right in the Key Defendants to be free from claims like Plaintiff's. The CVA's attempt to revive such claims is clearly unconstitutional.

1. Section 5-117(d) (West 2017) Is a Statute of Repose.

A statute of repose is fundamentally different from a statute of limitations. A statute of repose provides "an absolute bar to an action or a grant of immunity to a class of potential defendants after a designated time period," whereas a statute of limitations is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 637 n.l, 187 A.2d at 689 n.l (2018) (alteration and citations omitted). "Statutes of limitations are motivated by 'considerations of fairness' and are 'intended to encourage prompt resolution of disputes' by providing a means of disposing of stale claims. *Statutes of repose* are motivated by considerations of the economic best interests of the public as a whole and *are substantive grants of immunity* based on a legislative balance of the respective rights of potential plaintiffs and defendants." *Id.* (alteration omitted, emphases added, citations omitted).

[13] Article 24 of the Maryland Declaration of Rights is "often referred to as the Maryland Constitution's due process clause." *Dua*, 370 Md. at 628, 805 A.2d at 1075. Article III, § 40 of the Maryland Constitution "prohibits the taking of private property 'without just compensation.'" *Id.* at 628-29, 805 A.2d at 1075. Some older cases "simply take the position that retrospective statutes impairing vested rights violate the Maryland Constitution, without citing a specific constitutional provision and without using descriptive language indicating which constitutional provision or provisions are involved." *Id.* at 629, 805 A.2d at 1076 (collecting cases).

Section 5-117(d) is unquestionably a statute of repose. That is clear from "the plain meaning of the statutory language," which is what must be looked to "first." *Williams v. Morgan State Univ.*, 484 Md. 534, 546, 300 A.3d 54, 61 (2023) (citation omitted). And it is confirmed by the legislative record and other factors that the courts consider when the language is not as clear as it is in this case.

i. The plain text of the 2017 statute shows that it created a statute of repose.

"[I]f the language is unambiguous and clearly consistent with the statute's apparent purpose," the "inquiry generally ceases at that point." *Id*. (citation omitted); *see also Smallwood*, 451 Md. at 310, 152 A.3d at 787 (same); *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.,* 882 F.2d 862, 865 (4th Cir. 1989) (observing in context of a statute of repose that "while a statute's legislative history is often helpful in resolving ambiguity, one of the time-honored maxims of statutory construction is that when the language of a statute is clear, there is no need to rely on its legislative history"). Here the language and purpose of the law could not be more clear. The 2017 session law explicitly identifies the provision codified as CJ § 5-117(d) as a statute of repose multiple times.[14]

- The law states its "purpose" as both "altering the statute of limitations in certain civil actions relating to child sexual abuse" and "*establishing a statute of repose* for certain

[14] The relevant language here is the language of the session law enacted by the legislature, whether or not that language is subsequently codified. The session laws themselves "are the law." *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 544 n.4, 435 A.2d 796, 800 n.4 (1981); *see also, e.g., Roe v.. Doe*, 193 Md. App. 558, 565, 998 A.2d 383, 387 88 (2010) (interpreting uncodified section 2 of 2003 Maryland Laws chapter 360 to prohibit the retroactive revival of time-barred claims arising from alleged sexual abuse of a minor), *aff'd*, 419 Md. 687, 20 A.3d 787 (2011); *Arrington v. Sun Life Assurance Co. of Can.*, No. TDC-18- 0563, 2019 WL 2571160, at *5 (D. Md. June 21, 2019) ("Maryland law provides that the Annotated Code, as published by the Michie Company and West, [is] 'evidence' of the laws, but the laws actually consist of the bills as passed by the Maryland General Assembly and appearing in the annual session laws." (citations omitted)).

civil actions relating to child sexual abuse." Ex. 1 (2017 Md. Laws ch. 12) (emphasis added); Ex. 2 (2017 Md. Laws ch. 656) (emphasis added).[15]

- Section 3 of the law expressly refers to "§ 5-117(d) of the Courts Article as enacted by Section 1 of this Act" as a "*statute of repose*." Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).

- Section 3 also provides that "§ 5-117(d) . . . shall be construed . . . both prospectively and retroactively *to provide rep*ose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017." Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (same).

- The 2023 CVA expressly states that one of its purposes is to repeal "a statute of repose." Ex. 3 (2023 Md. Laws ch. 5); Ex. 4 (2023 Md. Laws ch. 6).

- And the CVA states that "*notwithstanding . . . a statute of repose . . .*" a plaintiff may now bring an action for abuse that occurred while the plaintiff was a minor "at any time." Ex. 3 (2023 Md. Laws ch. 5), § 1 (emphasis added); Ex. 4 (2023 Md. Laws ch. 6), § 1 (emphasis added).

The Court should conclude that CJ § 5-117(d) (West 2017) (Ex. 5) is a statute of repose based on statutory text alone. *Williams*, 484 Md. at 546, 300 A.3d at 61.

ii. The legislative history of the 2017 amendment confirms that it created a statute of repose.

Although the unambiguous language of the CVA settles the matter the legislative record also confirms that CJ § 5-117(d) (Ex. 5) is a statute of repose. That was acknowledged explicitly on the Senate floor before the bill was passed.

[15] *Elsberry* v. *Stanley Martin Cos.,* 482 Md. 159, 187, 286 A.3d 1,17 (2022) ("[T]he bill title and purpose *are* part of the statutory text—*not* the legislative history.").

- The Senate was told that the "*[b]ill also creates a statute of repose* for specific civil actions relating to child sex abuse," S. Floor, H.B. 642, 437th Gen. Assemb., Reg. sess., at 2:16:32-2:17:48 (Mar. 23, 2017) (emphasis added).

- In a reference to the "absolute bar" of the statute of repose in CJ § 5-1 17(d), *Anderson*, 427 Md. at 1 18, 46 A.3d at 437—38, the House was told that the bill "prohibits the filing of an action . . . more than 20 years after the victim reaches the age of majority." H. Floor, 57:40-58:24 (Mar. 16, 2017), *available at* https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-47-?year=2017RS.

- The record states that the "statute of repose" will create "vested rights," and that "claims precluded by the statute of repose cannot be revived in the future." Ex. 15 (Discussion of Certain Amendments in SB0505/818470/1), at 1-2.

- Multiple committee reports refer to the "statute of repose" and state that it will "provide repose" to covered claims. *See supra* Background Section II.B.

iii. The 2017 amendment has all the features of a statute of repose

Other factors that the courts consider when the language is not as clear as it is here also confirm that CJ § 5-117(d) (Ex. 5) is a statute of repose. *See Anderson*, 427 Md. at 123.

- Maryland courts have described statutes of repose as "provid[ing] an absolute bar" or "grant of immunity . . . after a designated time period." *Anderson,* 427 Md. at 118, 46 A.3d at 437-38. The Fourth Circuit has similarly held that a statute providing that "in no event" may claims be brought after a fixed date is plainly a statute of repose. *See Caviness v. DeRand Res. Corp.*, 983 F.2d 1295, 1300 & n.7 (4th Cir. 1993); *Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874, 895 (4th Cir. 2014). Here, CJ § 5-117(d) (Ex. 5) states that "[i]n no event" shall an action be filed against certain defendants more than 20 years after the victim reaches the age of majority. *Id.* This

language "shows an intent to provide the type of absolute bar to an action provided by a statute of repose." Ex. 17 (Letter from Rowe to Dumais (Mar. 16, 2019)), at 2; *accord* Ex. 18 (Letter from Rowe to Smith, Jr. (June 23, 2021)), at 2.

- Statutes of repose "shelter[] legislatively-designated groups from an action after a certain period of time." *Anderson*, 427 Md. at 121; *see, e.g., Hagerstown Elderly Assocs. Ltd. P'ship v. Hagerstown Elderly Bldg. Assocs. Ltd P'ship*, 368 Md. 351, 793 A.2d 579 (2002) (holding that CJ § 5-108(b) was a statute of repose because it exempted "architect[s], professional engineer[s], or contractor[s]" from "a cause of action for damages" "more than 10 years after the date the entire improvement first became available for its intended use"). Here, CJ § 5-117(d) (Ex. 5) applies only to a specific subset of potential defendants—"a person or governmental entity other than the perpetrator." *Id.* It does not apply to "perpetrators" of sexual abuse of minors. The repose granted to non-perpetrator defendants contrasts with CJ § 5-117(b) (West 2017) (Ex. 5), which sets out the statute of limitations periods applicable to claims against any Defendant (perpetrators and non-perpetrators alike).[16]

- The Maryland Supreme Court has observed that "[i]n common parlance, statutes of limitation and statutes of repose are differentiated consistently and confidently by whether the triggering event is an injury or an unrelated event; the latter applying to a statute of repose." *Anderson*, 427 Md. at 119, 46 A.3d at 438; *see also Statute of Repose*, Black's Law Dictionary (9th ed. 2009). Here, the trigger for the statute of repose in CJ § 5-117(d) (Ex. 5) is a date unrelated to the injury—namely, the date of majority. The limitations period in CJ § 5-117(b)(1) (West 2017) (Ex. 5), by contrast, is triggered by the injury. It authorizes the filing of an action immediately

[16] In 2003, when the legislature expanded the limitations period from 3 to 7 years after the age of majority, that limitations period was set out in CJ § 5-117(b) (West 2003) (Ex. 7). Thus, when the legislature expanded the limitations period prospectively in 2017, it modified CJ § 5-117(b). *Id.*

upon the infliction of the injury: "An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed (1) [a]t any time before the victim reaches the age of majority…"

- A statute of repose is a substantive grant of immunity "based on a legislative balance of the respective rights of potential plaintiffs and defendants." *SVF Riva Annapolis v. Gilroy*, 459 Md. at 637 n.1, 187 A.3d at 689 n.l. The 2017 law reflects just that sort of "legislative balance." The legislative record contains numerous references to the issue of sexual abuse of minors, the impact on victims, and delays in reporting by victims. It also reflects concern about the prejudice to defendants (including institutional defendants) in defending against stale claims based on long-ago conduct. The "legislative balance" of those competing considerations is also evident from the face of the 2017 law, which simultaneously extends the statute of limitations for unexpired claims, declines to revive expired claims, grants non-perpetrator defendants additional protections in the form of a statute of repose and a gross negligence standard of liability, and makes it easier to sue public entities. *See supra* Background Section II.B.

In short, there is no doubt that CJ § 5-117(d) (Ex. 5) is a statute of repose enacted for the benefit of defendants who are not themselves the perpetrators of sexual abuse.

2. The Statute of Repose Vested a Substantive Right in the Key Defendants To Be Free from Plaintiff's Claims.

Maryland courts have repeatedly held that "a statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Carven v. Hickman*, 135 Md. App. 645, 652, 736 A.2d 1207, 1211 (2000) (citing *First United Methodist Church of Hyattsville*, 882 F.2d at 865), *aff'd sub nom*. *Hickman v. Hickman v. Carven*, 366 Md. 362, 784 A.2d 31 (2001); *Anderson*, 427 Md. at 120, 46 A.3d at 438 (same). Thus, at the time of enactment, CJ § 5-117(d) (West 2017) (Ex. 5) vested a right in any "person or governmental entity

that is not the alleged perpetrator" to be free of "action[s] for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor" if "more than 20 years" had passed "after the date on which the victim reache[d] the age of majority," Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1; Ex. 5, CJ § 5-117(d) (West 2017). This covers Plaintiff's claims, as more than 20 years had passed since the Plaintiff attained the age of majority before the CVA took effect.

3. The CVA's Abrogation of the Vested Rights Created by Section 5-117(d) (West 2017) Is Unconstitutional.

Under Article 24 of the Maryland Declaration of Rights (the due process clause) and Article III, Section 40 of the Maryland Constitution (the takings clause), the legislature may not abrogate vested rights or take property without just compensation. The Maryland Supreme Court "has consistently held that the Maryland Constitution ordinarily precludes the Legislature . . . from . . . reviving a barred cause of action, thereby violating the vested right of the defendant." *Dua*, 370 Md. at 633, 805 A.2d at 1078 (applying due process and takings clauses). When the legislature passes a law abrogating a vested right, it violates the due process clause. *Id*. at 627-28, 805 A.2d at 1075 (citations omitted). Even before *Dua*, the Supreme Court of Maryland held that when a law retroactively revives a cause of action that was otherwise barred, the law violates due process. *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57, 291 A.2d 452, 455 (1972). The same state action independently violates the takings clause, by taking private property without compensation. *See Dua*, 370 Md. at 628-29, 805 A.2d at 1075-76.

The ban on violating vested rights is categorical. *Dua*, 370 Md. at 623, 805 A.2d at 1072 ("It has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights"). "No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property

right . . . ." *Id*. For this reason, the CVA may not revive claims against non-perpetrator defendants arising from alleged sexual abuse of a minor when more than 20 years have passed since the plaintiff reached the age of majority before October 1, 2023. To revive those extinguished claims would violate the due process rights of the Key Defendants, by abrogating their vested right to be free of those claims, and offend the takings clause as to the Key Defendants, by destroying that vested right without compensation.

B. The Maryland Constitution Precludes the Revival of Claims Barred by the Statute of Limitations.

Even if CJ § 5-117(d) (West 2017) (Ex. 5) were not construed to be a statute of repose, but merely a statute of limitations, the CVA's revival of previously expired claims would violate due process and the takings clause. *See* Md. Const., Declaration of Rights, art. 24; *id*. art. III, § 40.

The Appellate Court of Maryland has explicitly stated that "when a defendant has survived the period set forth in [a] statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process." *Rice*, 186 Md. App. at 563, 975 A.2d at 200. This is the case even in the absence of a statute of repose. As the Court explained in *Rice*, "the legislature may extend a statute of limitations that applies to a claim as to which the statute of limitations has not yet expired." *Id*. But it may not do what the legislature did here – "revive [an] expired claim" - without "violat[ing] the defendant's right to due process." *Id*. Thus, based on the holding in *Rice*, upon the expiration of the applicable limitations periods a right to be free from suit vested in the Key Defendants. And as here, "a statute having the effect of abrogating a vested property right, and not providing for compensation," violates both Maryland's due process and takings clauses. *Dua*, 370 Md. at 630, 805 A.2d at 1076.

This Court, sitting in diversity, must apply the governing state law. That includes state law issued by a state intermediate appellate court when the state's highest court has yet to specifically

address the issue, unless there is "persuasive data" that the state's highest court would rule differently. *Hickerson v. Yamaha Motor Corp., U.S.A.*, 882 F.3d 476, 484 (4th Cir. 2018); *Jones v. Liberty Mut. Ins. Co.* (*In re Wallace & Gale Co.*), 385 F.3d 820, 830-31 (4th Cir. 2004); *Assicurazioni Generali, S.p.A. v. Neil*, 160 F.3d 997 (4th Cir. 1998). Thus, this Court must apply the holding in *Rice* absent compelling data that the Maryland Supreme Court would not follow it.

Here, there is no such data—in fact, *dicta* from the Maryland Supreme Court strongly indicates that it would affirm the rule of law stated in *Rice*. In *Doe v. Roe*, 419 Md. 687, 20 A.3d 787 (2011), the Supreme Court held that the Legislature *can* modify a statute of limitations to extend claims for child sexual abuse so long as the limitations period for those claims has not yet expired. *Id.* at 419 Md. 707-710, 20 A.3d at 709-801. Yet the Supreme Court expressly distinguished its holding from claims where the limitations period had already run and the claim was time-barred when the Legislature extended the time to sue, pointedly noting that that is "a different situation entirely." *Id.* at 419 Md. 707, 20 A.3d 709. In a footnote, the Supreme Court further explained that, under Maryland law, "a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights," *id.* at 419 Md. 707 n.18, 20 A.3d 709 n.18 (quoting *Rawlings v. Rawlings*, 362 Md. 535, 559, 766 A.2d 98, 111 (2001)), and "an individual does not have a vested right to be free from suit or sanction for a legal violation *until the statute of limitations for that violation has expired*." *Id.* (citing *Crum v. Vincent*, 493 F.3d 988, 997 (8th Cir. 2007)) (emphasis added).

Moreover, the holding issued in *Rice* prohibiting the revival of expired claims is consistent with the purpose of statutes of limitations, which are motivated by "considerations of fairness,'" *Gilroy*, 459 Md. at 637 n.l, 187 A.3d at 689 n.l (citation omitted). As the Supreme Court of Maryland has observed, statutes of limitations "implicitly recognize[] that as time passes, difficult

evidentiary issues arise, such as proof of the cause of injury, faded memories, and the availability of witnesses." *Marsheck v. Bd. of Trs. of Fire & Police Emps. Ret. Sys. of City of Baltimore*, 358 Md. 393, 404-05, 749 A.2d 774, 780 (2000). Here, decades have passed since the alleged abuse, and many of the relevant witnesses are deceased. The unfairness of allowing old claims such as this one to proceed is compounded when those claims have previously expired. The Supreme Court of Maryland has emphasized that "without closure on the filing of. . . claims, potential defendants are often faced with uncertainty that may affect their future financial viability." *Id.*; *see also Newell v. Richards*, 323 Md. 717, 727, 594 A.2d 1152, 1157 (1991) (discussing limitation statutes as a response to a "so-called crisis" of stale medical malpractice claims); *DeBusk v. Johns Hopkins Hosp*., 342 Md. 432, 438—39, 677 A.2d 73, 75-76 (1996) (noting how both employers and employees benefit from workers' compensation statutes that balance competing interests). When stale claims expire, a measure of certainty is restored.

In sum, applying the rule of law in *Rice*, when the statute of limitations expired on Plaintiff's claims long ago, the Key Defendants acquired a right to be free from those claims. The Court, sitting in diversity, must apply that rule of state law, especially as the available data from *Roe v. Doe* indicates that the Maryland Supreme Court would reach the same conclusion as *Rice*. Accordingly, the CVA's attempt to retroactively nullify the Key Defendants' right to be free from time-barred claims is unconstitutional under Article 24 of the Maryland Declaration of Rights, and Article III, Section 40 of the Maryland Constitution.

CONCLUSION

WHEREFORE, the Key Defendants request this Honorable Court dismiss Ms. Bunker's claims against the Key Defendants with prejudice. A Proposed Order is submitted herewith.

Respectfully submitted,

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Attorneys for Defendants the Key School, Inc. and the Key School Building and Finance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of January 2024, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system and electronic notification of such filing is sent to all CM/ECF participants and counsel of record.

/s/ Sean Gugerty
Sean Gugerty (Federal Bar #21125)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	*	
Plaintiff,	*	
v.	*	**Civil Action No.: 1:23-cv-02662-MJM**
THE KEY SCHOOL, INCORPORATED, *et al.,*	*	
Defendants.	*	

* * * * * * * * * * * * *

LIST OF EXHIBITS TO
DEFENDANTS THE KEY SCHOOL, INC.'S AND THE KEY SCHOOL BUILDING AND FINANCE CORPORATION'S MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS, WITH REQUEST FOR HEARING

a. *Available at* https://mgaleg.maryland.gov/2003rs/billfile/sb0068.htm (click on "PDF" link ("Bill Text: First Reading (PDF)") in "Documents" section of the page).

b. As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 505, 437th Gen. Assemb., Reg. Sess., (Md. 2017).

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c. *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0642/?ys= 2017rs (click on "252810/1" link in the row beginning "House 3/16/2017" of the History table).

d. *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0505?ys= 2017RS (click on "458675/1" link in the row beginning "Senate 3/14/2017" of the History table).

e. As contained in the bill file maintained by the Department of Legislative Services Library for H.B. 642, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

f. As contained in the bill file maintained by the Department of Legislative Services Library for S.B. 505, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

g. *See supra* note f.

h. As contained in the bill file maintained by the Department of Legislative Services Library for H.B. 642, 437th Gen. Assemb., Reg. Sess. (Md. 2017).

i. *Available at* https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0687?ys=2019rs (expanding the "History" tab near the bottom of the page and clicking the link beginning "Text - Third - Civil Actions").

EXHIBIT

1

Chapter 12

(House Bill 642)

AN ACT concerning

Civil Actions – Child Sexual Abuse – Statute of Limitations and Required Findings

FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; establishing a statute of repose for certain civil actions relating to child sexual abuse; providing that, in a certain action filed more than a certain number of years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not an alleged perpetrator only under certain circumstances; providing that a certain action is exempt from certain provisions of the Local Government Torts Claims Act; providing that a certain action is exempt from certain provisions of the Maryland Torts Claims Act; defining a certain term; making certain stylistic changes; providing for the application of this Act; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–117 and 5–304(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 5–304(b)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–106(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 12–106(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

(a) **(1)** In this section~~,~~ **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3) ~~"sexual~~ **"SEXUAL** abuse" has the meaning stated in § 5–701 of the Family Law Article.

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed **[**within**]** ~~AGAINST THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE~~**:**

(1) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR

(2) ~~WITHIN~~ **SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN THE LATER OF:**

(I) [7**] 20** years **[**of**]** **AFTER** the date that the victim **[**attains**]** **REACHES** the age of majority**; OR**

(II) 3 YEARS AFTER THE DATE THAT THE DEFENDANT IS CONVICTED OF A CRIME RELATING TO THE ALLEGED INCIDENT OR INCIDENTS UNDER:

1. § 3–602 OF THE CRIMINAL LAW ARTICLE; OR

2. THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE.

~~(C) (1) AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR SHALL BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT AN ALLEGED PERPETRATOR OF THE SEXUAL ABUSE:~~

~~(I) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR~~

~~(II) WITHIN 20 YEARS AFTER THE DATE THAT THE VICTIM REACHES THE AGE OF MAJORITY.~~

~~(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY ONLY ON A DETERMINATION BY THE FINDER OF FACT THAT THE PERSON OR GOVERNMENTAL ENTITY:~~

~~(I) PRIOR TO THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION, HAD ACTUAL KNOWLEDGE OF A PREVIOUS INCIDENT OR INCIDENTS OF SEXUAL ABUSE; AND~~

~~(II) NEGLIGENTLY FAILED TO PREVENT THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION.~~

(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) IN NO EVENT MAY AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR MORE THAN 20 YEARS AFTER THE DATE ON WHICH THE VICTIM REACHES THE AGE OF MAJORITY.

5–304.

(a) This section does not apply to an action **[**against**]:**

(1) AGAINST a nonprofit corporation described in § 5–301(d)(23), (24), (25), (26), (28), or (29) of this subtitle or its employees**; OR**

(2) BROUGHT UNDER § 5–117 OF THIS TITLE.

(b) (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

Article – State Government

12–106.

(a) This section does not apply to a claim that is**:**

(1) asserted by cross–claim, counterclaim, or third–party claim**; OR**

(2) BROUGHT UNDER § 5–117 OF THE COURTS ARTICLE.

(b) Except as provided in subsection (c) of this section, a claimant may not institute an action under this subtitle unless:

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

SECTION 2. AND BE IT FURTHER ENACTED, ~~That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act~~ That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, April 4, 2017.

EXHIBIT

2

Chapter 656

(Senate Bill 505)

AN ACT concerning

Civil Actions – Child Sexual Abuse – Statute of Limitations and Required Findings

FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; establishing a statute of repose for certain civil actions relating to child sexual abuse; providing that, in a certain action filed more than a certain number of years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not an alleged perpetrator only under certain circumstances; providing that a certain action is exempt from certain provisions of the Local Government Torts Claims Act; providing that a certain action is exempt from certain provisions of the Maryland Torts Claims Act; defining a certain term; making certain stylistic changes; providing for the application of this Act; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–117 and 5–304(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 5–304(b)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–106(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 12–106(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

(a) **(1)** In this section~~,~~ **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3) ~~"sexual~~ **"SEXUAL** abuse" has the meaning stated in § 5–701 of the Family Law Article.

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed **[**within**]** ~~AGAINST THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE~~**:**

(1) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR

(2) ~~WITHIN~~ **SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN THE LATER OF:**

(I) [7**] 20** years **[**of**]** **AFTER** the date that the victim **[**attains**]** **REACHES** the age of majority**; OR**

(II) 3 YEARS AFTER THE DATE THAT THE DEFENDANT IS CONVICTED OF A CRIME RELATING TO THE ALLEGED INCIDENT OR INCIDENTS UNDER:

1. § 3–602 OF THE CRIMINAL LAW ARTICLE; OR

2. THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE.

~~(C) (1) AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR SHALL BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT AN ALLEGED PERPETRATOR OF THE SEXUAL ABUSE:~~

~~(I) AT ANY TIME BEFORE THE VICTIM REACHES THE AGE OF MAJORITY; OR~~

~~(II) WITHIN 20 YEARS AFTER THE DATE THAT THE VICTIM REACHES THE AGE OF MAJORITY.~~

~~(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY ONLY ON A DETERMINATION BY THE FINDER OF FACT THAT THE PERSON OR GOVERNMENTAL ENTITY:~~

~~(I) PRIOR TO THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION, HAD ACTUAL KNOWLEDGE OF A PREVIOUS INCIDENT OR INCIDENTS OF SEXUAL ABUSE; AND~~

~~(II) NEGLIGENTLY FAILED TO PREVENT THE INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT FORM THE BASIS OF THE ACTION.~~

(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) IN NO EVENT MAY AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR MORE THAN 20 YEARS AFTER THE DATE ON WHICH THE VICTIM REACHES THE AGE OF MAJORITY.

5–304.

(a) This section does not apply to an action **[**against**]:**

(1) AGAINST a nonprofit corporation described in § 5–301(d)(23), (24), (25), (26), (28), or (29) of this subtitle or its employees**; OR**

(2) BROUGHT UNDER § 5–117 OF THIS TITLE.

(b) (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

Article – State Government

12–106.

(a) This section does not apply to a claim that is**:**

(1) asserted by cross–claim, counterclaim, or third–party claim**; OR**

(2) BROUGHT UNDER § 5–117 OF THE COURTS ARTICLE.

(b) Except as provided in subsection (c) of this section, a claimant may not institute an action under this subtitle unless:

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

SECTION 2. AND BE IT FURTHER ENACTED, ~~That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act~~ That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, May 25, 2017.

EXHIBIT

3

Chapter 5

(Senate Bill 686)

AN ACT concerning

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)

FOR the purpose of altering the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse; establishing certain limitations on damages that may be awarded under this Act; repealing the statute of limitations in certain civil actions relating to child sexual abuse; repealing a statute of repose for certain civil actions relating to child sexual abuse; providing that a certain party may appeal an interlocutory order under certain circumstances; providing for the retroactive application of this Act under certain circumstances; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–117, 5–303(a), ~~and 5–518~~ 5–518, and 12–303
Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Education
Section 4–105
Annotated Code of Maryland
(2022 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–104(a)
Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

BY repealing
Chapter 12 of the Acts of the General Assembly of 2017
Section 2 and 3

BY repealing
Chapter 656 of the Acts of the General Assembly of 2017
Section 2 and 3

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

[(a) (1) In this section the following words have the meanings indicated.

(2) "Alleged perpetrator" means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

(3) "Sexual abuse" has the meaning stated in § 5–701 of the Family Law Article.**]**

(A) IN THIS SECTION, "SEXUAL ABUSE" MEANS ANY ACT THAT INVOLVES:

(1) AN ADULT ALLOWING OR ENCOURAGING A CHILD TO ENGAGE IN:

(I) OBSCENE PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY;

(II) PORNOGRAPHIC PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY; OR

(III) PROSTITUTION;

(2) INCEST;

(3) RAPE;

(4) SEXUAL OFFENSE IN ANY DEGREE; OR

(5) ~~UNNATURAL OR PERVERTED SEXUAL PRACTICES~~ ANY OTHER SEXUAL CONDUCT THAT IS A CRIME.

(b) **[**An**]** **~~NOTWITHSTANDING~~ EXCEPT AS PROVIDED UNDER SUBSECTION (D) OF THIS SECTION AND NOTWITHSTANDING ANY TIME LIMITATION UNDER A STATUTE OF LIMITATIONS, A STATUTE OF REPOSE, THE MARYLAND TORT CLAIMS ACT, THE LOCAL GOVERNMENT TORT CLAIMS ACT, OR ANY OTHER LAW, AN** action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor **[**shall be filed:

(1) At any time before the victim reaches the age of majority; or

(2) Subject to subsections (c) and (d) of this section, within the later of:

(i) 20 years after the date that the victim reaches the age of majority; or

(ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:

1. § 3–602 of the Criminal Law Article; or

2. The laws of another state or the United States that would be a crime under § 3–602 of the Criminal Law Article.

(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

(1) The person or governmental entity owed a duty of care to the victim;

(2) The person or governmental entity employed the alleged perpetrator or exercised some degree of responsibility or control over the alleged perpetrator; and

(3) There is a finding of gross negligence on the part of the person or governmental entity.

(d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority**] MAY BE FILED AT ANY TIME**.

(C) EXCEPT AS PROVIDED IN §§ 5–303 AND 5–518 OF THIS TITLE AND § 12–104 OF THE STATE GOVERNMENT ARTICLE, THE TOTAL AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED UNDER THIS SECTION TO A SINGLE CLAIMANT IN AN ACTION AGAINST A SINGLE DEFENDANT FOR INJURIES ARISING FROM ~~A SINGLE INCIDENT OR OCCURRENCE~~ AN INCIDENT OR OCCURRENCE THAT WOULD HAVE BEEN BARRED BY A TIME LIMITATION BEFORE OCTOBER 1, 2023, MAY NOT EXCEED $1,500,000.

(D) NO ACTION FOR DAMAGES THAT WOULD HAVE BEEN BARRED BY A TIME LIMITATION BEFORE OCTOBER 1, 2023, MAY BE BROUGHT UNDER THIS SECTION IF THE ALLEGED VICTIM OF ABUSE IS DECEASED AT THE COMMENCEMENT OF THE ACTION.

5–303.

(a) (1) Except as provided in paragraphs (2) **[**and**],** (3)**, AND (4)** of this subsection, the liability of a local government may not exceed $400,000 per an individual claim, and $800,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(3) If the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply:

(i) Subject to item (ii) of this paragraph, the combined award for both economic and noneconomic damages may not exceed a total of $890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established under item (i) of this paragraph, regardless of the number of claimants or beneficiaries who share in the award.

(4) IF THE LIABILITY OF A LOCAL GOVERNMENT ARISES FROM A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, THE LIABILITY MAY NOT EXCEED ~~$850,000~~ $890,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM ~~A SINGLE INCIDENT OR OCCURRENCE~~ AN INCIDENT OR OCCURRENCE.

5–518.

(a) (1) In this section the following words have the meanings indicated.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services provided or duties performed by the volunteer for a county board of education, and that are reimbursed to the volunteer or otherwise paid.

(3) "County board employee" means:

(i) Any employee whose compensation is paid in whole or in part by a county board of education; or

(ii) A student teacher.

(4) "County board member" means a duly elected or appointed member of a county board of education.

(5) "Volunteer" means an individual who, at the request of the county board and under its control and direction, provides services or performs duties for the county board without compensation.

(b) A county board of education, described under Title 4, Subtitle 1 of the Education Article, may raise the defense of sovereign immunity to **[**any**]:**

(1) ANY amount claimed above the limit of its insurance policy**;** or**[**, if**]**

(2) IF self–insured or a member of a pool described under § 4–105(c)(1)(ii) of the Education Article**:**

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM, ANY AMOUNT above $400,000**; OR**

(II) IF THE LIABILITY OF THE COUNTY BOARD OF EDUCATION ARISES FROM A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, ANY AMOUNT ABOVE ~~$850,000~~ $890,000 TO A SINGLE CLAIMANT FOR CLAIMS ARISING FROM ~~A SINGLE INCIDENT OR OCCURENCE~~ AN INCIDENT OR OCCURRENCE.

(c) **(1) [**A**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** county board of education may not raise the defense of sovereign immunity to any claim of $400,000 or less.

(2) IF LIABILITY OF A COUNTY BOARD OF EDUCATION ARISES UNDER A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, THE LIABILITY MAY NOT EXCEED ~~$850,000~~ $890,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM ~~A SINGLE INCIDENT OR OCCURRENCE~~ AN INCIDENT OR OCCURRENCE.

(d) (1) The county board shall be joined as a party to an action against a county board employee, county board member, or volunteer that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment, by the county board member within the scope of the member's authority, or by the volunteer within the scope of the volunteer's services or duties.

(2) The issue of whether the county board employee acted within the scope of employment may be litigated separately.

(3) The issue of whether the county board member acted within the scope of the member's authority may be litigated separately.

(4) The issue of whether the volunteer acted within the scope of the volunteer's services or duties may be litigated separately.

(e) A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board's liability.

(f) (1) A county board member, acting within the scope of the member's authority, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board's liability.

(2) In addition to the immunity provided under paragraph (1) of this subsection, a county board member is immune as an individual from civil liability for any act or omission if the member is acting:

(i) Within the scope of the member's authority;

(ii) Without malice; and

(iii) In a discretionary capacity.

(g) (1) The provisions of this subsection apply only to a volunteer.

(2) A volunteer who acts within the scope of the volunteer's services or duties is not personally liable for damages resulting from a tortious act or omission beyond the limits of any personal insurance the volunteer may have unless:

(i) The damages were the result of the volunteer's negligent operation of a motor vehicle; or

(ii) The damages were the result of the volunteer's willful, wanton, malicious, reckless, or grossly negligent act or omission.

(3) The limitations on liability contained in this subsection may not be construed or applied to affect any immunities from civil liability or defenses established by any other provision of the Code or available at common law to which the volunteer may be entitled.

(h) Except as provided in subsection (e), (f), or (g) of this section, a judgment in tort for damages against a county board employee acting within the scope of employment, a county board member acting within the scope of the member's authority, or a volunteer acting within the scope of the volunteer's services or duties shall be levied against the county board only and may not be executed against the county board employee, the county board member, or the volunteer personally.

12–303.

A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:

(1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;

(2) An order granting or denying a motion to quash a writ of attachment; and

(3) An order:

(i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause;

(ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause;

(iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction;

(iv) Appointing a receiver but only if the appellant has first filed his answer in the cause;

(v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;

(vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;

(vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver, or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of the Maryland Rules;

(viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article;

(ix) Granting a petition to stay arbitration pursuant to § 3–208 of this article;

(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; **[**and**]**

(xi) Denying immunity asserted under § 5–525 or § 5–526 of this article**; AND**

(XII) DENYING A MOTION TO DISMISS A CLAIM FILED UNDER § 5–117 OF THIS ARTICLE IF THE MOTION IS BASED ON A DEFENSE THAT THE APPLICABLE STATUTE OF LIMITATIONS OR STATUTE OF REPOSE BARS THE CLAIM AND ANY LEGISLATIVE ACTION REVIVING THE CLAIM IS UNCONSTITUTIONAL.

Article – Education

4–105.

(a) (1) Each county board shall carry comprehensive liability insurance to protect the board and its agents and employees.

(2) The purchase of insurance in accordance with paragraph (1) of this subsection is a valid educational expense.

(b) (1) The State Board shall establish standards for these insurance policies, including a minimum liability coverage of not less than**:**

(I) $890,000 FOR EACH OCCURRENCE FOR CLAIMS OF SEXUAL ABUSE MADE UNDER § 5–117 OF THE COURTS ARTICLE; AND

(II) **[**$400,000**]** ~~**$850,000**~~ for each occurrence **FOR ALL OTHER CLAIMS**.

(2) The policies purchased under this section shall meet these standards.

(c) (1) A county board complies with this section if it:

(i) Is individually self–insured for at least **[**$400,000**]** ~~**$850,000**~~ **$890,000** for each occurrence under the rules and regulations adopted by the State Insurance Commissioner; or

(ii) Pools with other public entities for the purpose of self–insuring property or casualty risks under Title 19, Subtitle 6 of the Insurance Article.

(2) A county board that elects to self–insure individually under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self–insurance.

(3) The terms and conditions of this individual self–insurance:

(i) Are subject to the approval of the State Insurance Commissioner; and

(ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

(d) A county board shall have the immunity from liability described under § 5–518 of the Courts and Judicial Proceedings Article.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) (i) Except as provided in **[**subparagraph**]** **SUBPARAGRAPHS** (ii) **AND (III)** of this paragraph, the liability of the State and its units may not exceed $400,000 to a single claimant for injuries arising from a single incident or occurrence.

(ii) If liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability shall apply:

1. subject to item 2 of this subparagraph, the combined award for both economic and noneconomic damages may not exceed a total of $890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and

2. in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established under item 1 of this item, regardless of the number of claimants or beneficiaries who share in the award.

(III) IF LIABILITY OF THE STATE OR ITS UNITS ARISES UNDER A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THE COURTS ARTICLE, THE LIABILITY MAY NOT EXCEED ~~$850,000~~ $890,000 TO A SINGLE CLAIMANT FOR

INJURIES ARISING FROM ~~A SINGLE INCIDENT OR OCCURRENCE~~ AN INCIDENT OR OCCURRENCE.

Chapter 12 of the Acts of 2017

[SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.**]**

[SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.**]**

Chapter 656 of the Acts of 2017

[SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.**]**

[SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.**]**

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that any claim of sexual abuse that occurred while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023.

SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, April 11, 2023.

EXHIBIT

4

Chapter 6

(House Bill 1)

AN ACT concerning

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)

FOR the purpose of altering the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse; establishing certain limitations on damages that may be awarded under this Act; repealing the statute of limitations in certain civil actions relating to child sexual abuse; repealing a statute of repose for certain civil actions relating to child sexual abuse; providing that a certain party may appeal an interlocutory order under certain circumstances; providing for the retroactive application of this Act under certain circumstances; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–117, 5–303(a), 5–518, and 12–303
Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Education
Section 4–105
Annotated Code of Maryland
(2022 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–104(a)
Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

BY repealing
Chapter 12 of the Acts of the General Assembly of 2017
Section 2 and 3

BY repealing
Chapter 656 of the Acts of the General Assembly of 2017
Section 2 and 3

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

[(a) (1) In this section the following words have the meanings indicated.

(2) "Alleged perpetrator" means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

(3) "Sexual abuse" has the meaning stated in § 5–701 of the Family Law Article.**]**

(A) IN THIS SECTION, "SEXUAL ABUSE" MEANS ANY ACT THAT INVOLVES:

(1) AN ADULT ALLOWING OR ENCOURAGING A CHILD TO ENGAGE IN:

(I) OBSCENE PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY;

(II) PORNOGRAPHIC PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY; OR

(III) PROSTITUTION;

(2) INCEST;

(3) RAPE;

(4) SEXUAL OFFENSE IN ANY DEGREE; OR

(5) ~~UNNATURAL OR PERVERTED SEXUAL PRACTICES~~ ANY OTHER SEXUAL CONDUCT THAT IS A CRIME.

(b) ~~An~~ **EXCEPT AS PROVIDED UNDER SUBSECTION (D) OF THIS SECTION AND NOTWITHSTANDING ANY TIME LIMITATION UNDER A STATUTE OF LIMITATIONS, A STATUTE OF REPOSE, THE MARYLAND TORT CLAIMS ACT, THE LOCAL GOVERNMENT TORT CLAIMS ACT, OR ANY OTHER LAW, AN** action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor **[**shall be filed:

(1) At any time before the victim reaches the age of majority; or

(2) Subject to subsections (c) and (d) of this section, within the later of:

(i) 20 years after the date that the victim reaches the age of majority; or

(ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:

1. § 3–602 of the Criminal Law Article; or

2. The laws of another state or the United States that would be a crime under § 3–602 of the Criminal Law Article.

(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

(1) The person or governmental entity owed a duty of care to the victim;

(2) The person or governmental entity employed the alleged perpetrator or exercised some degree of responsibility or control over the alleged perpetrator; and

(3) There is a finding of gross negligence on the part of the person or governmental entity.

(d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority**] MAY BE FILED AT ANY TIME**.

(C) EXCEPT AS PROVIDED IN §§ 5–303 AND 5–518 OF THIS TITLE AND § 12–104 OF THE STATE GOVERNMENT ARTICLE, THE TOTAL AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED UNDER THIS SECTION TO A SINGLE CLAIMANT IN AN ACTION AGAINST A SINGLE DEFENDANT FOR INJURIES ARISING FROM AN INCIDENT OR OCCURRENCE THAT WOULD HAVE BEEN BARRED BY A TIME LIMITATION BEFORE OCTOBER 1, 2023, MAY NOT EXCEED $1,500,000.

(D) NO ACTION FOR DAMAGES THAT WOULD HAVE BEEN BARRED BY A TIME LIMITATION BEFORE OCTOBER 1, 2023, MAY BE BROUGHT UNDER THIS SECTION IF THE ALLEGED VICTIM OF ABUSE IS DECEASED AT THE COMMENCEMENT OF THE ACTION.

5–303.

(a) (1) Except as provided in paragraphs (2) **[**and**],** (3)**, AND (4)** of this subsection, the liability of a local government may not exceed $400,000 per an individual claim, and $800,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(3) If the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply:

(i) Subject to item (ii) of this paragraph, the combined award for both economic and noneconomic damages may not exceed a total of $890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and

(ii) In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established under item (i) of this paragraph, regardless of the number of claimants or beneficiaries who share in the award.

(4) IF THE LIABILITY OF A LOCAL GOVERNMENT ARISES FROM A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, THE LIABILITY MAY NOT EXCEED $890,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM AN INCIDENT OR OCCURRENCE.

5–518.

(a) (1) In this section the following words have the meanings indicated.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services provided or duties performed by the volunteer for a county board of education, and that are reimbursed to the volunteer or otherwise paid.

(3) "County board employee" means:

(i) Any employee whose compensation is paid in whole or in part by a county board of education; or

(ii) A student teacher.

(4) "County board member" means a duly elected or appointed member of a county board of education.

(5) "Volunteer" means an individual who, at the request of the county board and under its control and direction, provides services or performs duties for the county board without compensation.

(b) A county board of education, described under Title 4, Subtitle 1 of the Education Article, may raise the defense of sovereign immunity to **[**any**]:**

(1) ANY amount claimed above the limit of its insurance policy**;** or**[**, if**]**

(2) IF self–insured or a member of a pool described under § 4–105(c)(1)(ii) of the Education Article**:**

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM, ANY AMOUNT above $400,000**; OR**

(II) IF THE LIABILITY OF THE COUNTY BOARD OF EDUCATION ARISES FROM A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, ANY AMOUNT ABOVE $890,000 TO A SINGLE CLAIMANT FOR CLAIMS ARISING FROM AN INCIDENT OR OCCURRENCE.

(c) **(1) [**A**] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** county board of education may not raise the defense of sovereign immunity to any claim of $400,000 or less.

(2) IF LIABILITY OF A COUNTY BOARD OF EDUCATION ARISES UNDER A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THIS TITLE, THE LIABILITY MAY NOT EXCEED $890,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM AN INCIDENT OR OCCURRENCE.

(d) (1) The county board shall be joined as a party to an action against a county board employee, county board member, or volunteer that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment, by the county board member within the scope of the member's authority, or by the volunteer within the scope of the volunteer's services or duties.

(2) The issue of whether the county board employee acted within the scope of employment may be litigated separately.

(3) The issue of whether the county board member acted within the scope of the member's authority may be litigated separately.

(4) The issue of whether the volunteer acted within the scope of the volunteer's services or duties may be litigated separately.

(e) A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board's liability.

(f) (1) A county board member, acting within the scope of the member's authority, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board's liability.

(2) In addition to the immunity provided under paragraph (1) of this subsection, a county board member is immune as an individual from civil liability for any act or omission if the member is acting:

(i) Within the scope of the member's authority;

(ii) Without malice; and

(iii) In a discretionary capacity.

(g) (1) The provisions of this subsection apply only to a volunteer.

(2) A volunteer who acts within the scope of the volunteer's services or duties is not personally liable for damages resulting from a tortious act or omission beyond the limits of any personal insurance the volunteer may have unless:

(i) The damages were the result of the volunteer's negligent operation of a motor vehicle; or

(ii) The damages were the result of the volunteer's willful, wanton, malicious, reckless, or grossly negligent act or omission.

(3) The limitations on liability contained in this subsection may not be construed or applied to affect any immunities from civil liability or defenses established by any other provision of the Code or available at common law to which the volunteer may be entitled.

(h) Except as provided in subsection (e), (f), or (g) of this section, a judgment in tort for damages against a county board employee acting within the scope of employment, a county board member acting within the scope of the member's authority, or a volunteer acting within the scope of the volunteer's services or duties shall be levied against the county board only and may not be executed against the county board employee, the county board member, or the volunteer personally.

12–303.

A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:

(1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;

(2) An order granting or denying a motion to quash a writ of attachment; and

(3) An order:

(i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause;

(ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause;

(iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction;

(iv) Appointing a receiver but only if the appellant has first filed his answer in the cause;

(v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;

(vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;

(vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver, or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of the Maryland Rules;

(viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article;

(ix) Granting a petition to stay arbitration pursuant to § 3–208 of this article;

(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; **[**and**]**

(xi) Denying immunity asserted under § 5–525 or § 5–526 of this article**; AND**

(XII) DENYING A MOTION TO DISMISS A CLAIM FILED UNDER § 5–117 OF THIS ARTICLE IF THE MOTION IS BASED ON A DEFENSE THAT THE APPLICABLE STATUTE OF LIMITATIONS OR STATUTE OF REPOSE BARS THE CLAIM AND ANY LEGISLATIVE ACTION REVIVING THE CLAIM IS UNCONSTITUTIONAL.

Article – Education

4–105.

(a) (1) Each county board shall carry comprehensive liability insurance to protect the board and its agents and employees.

(2) The purchase of insurance in accordance with paragraph (1) of this subsection is a valid educational expense.

(b) (1) The State Board shall establish standards for these insurance policies, including a minimum liability coverage of not less than**:**

(I) $890,000 FOR EACH OCCURRENCE FOR CLAIMS OF SEXUAL ABUSE MADE UNDER § 5–117 OF THE COURTS ARTICLE; AND

(II) $400,000 for each occurrence **FOR ALL OTHER CLAIMS**.

(2) The policies purchased under this section shall meet these standards.

(c) (1) A county board complies with this section if it:

(i) Is individually self–insured for at least **[**$400,000**] $890,000** for each occurrence under the rules and regulations adopted by the State Insurance Commissioner; or

(ii) Pools with other public entities for the purpose of self–insuring property or casualty risks under Title 19, Subtitle 6 of the Insurance Article.

(2) A county board that elects to self–insure individually under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self–insurance.

(3) The terms and conditions of this individual self–insurance:

(i) Are subject to the approval of the State Insurance Commissioner; and

(ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

(d) A county board shall have the immunity from liability described under § 5–518 of the Courts and Judicial Proceedings Article.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) (i) Except as provided in **[**subparagraph**]** **SUBPARAGRAPHS** (ii) **AND (III)** of this paragraph, the liability of the State and its units may not exceed $400,000 to a single claimant for injuries arising from a single incident or occurrence.

(ii) If liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability shall apply:

1. subject to item 2 of this subparagraph, the combined award for both economic and noneconomic damages may not exceed a total of $890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and

2. in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established under item 1 of this item, regardless of the number of claimants or beneficiaries who share in the award.

(III) IF LIABILITY OF THE STATE OR ITS UNITS ARISES UNDER A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5–117 OF THE COURTS ARTICLE, THE LIABILITY MAY NOT EXCEED $890,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM AN INCIDENT OR OCCURRENCE.

Chapter 12 of the Acts of 2017

[SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.**]**

[SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.**]**

Chapter 656 of the Acts of 2017

[SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017.**]**

[SECTION 3. AND BE IT FURTHER ENACTED, That the statute of repose under § 5–117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.**]**

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that any claim of sexual abuse that occurred while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023~~, if the action is filed before October 1, 2025~~.

SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION ~~4.~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, April 11, 2023.

EXHIBIT

5

West's Annotated Code of Maryland
Courts and Judicial Proceedings
Title 5. Limitations, Prohibited Actions, and Immunities (Refs & Annos)
Subtitle 1. Limitations (Refs & Annos)

This section has been updated. Click here for the updated version.

MD Code, Courts and Judicial Proceedings, § 5-117

§ 5-117. Sexual abuse of minor

Effective: October 1, 2017 to September 30, 2023

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Alleged perpetrator" means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

(3) "Sexual abuse" has the meaning stated in § 5-701 of the Family Law Article.

In general

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed:

(1) At any time before the victim reaches the age of majority; or

(2) Subject to subsections (c) and (d) of this section, within the later of:

(i) 20 years after the date that the victim reaches the age of majority; or

(ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:

1. § 3-602 of the Criminal Law Article; or

2. The laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

Actions brought more than 7 years after victim reaches age of majority

(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

(1) The person or governmental entity owed a duty of care to the victim;

(2) The person or governmental entity employed the alleged perpetrator or exercised some degree of responsibility or control over the alleged perpetrator; and

(3) There is a finding of gross negligence on the part of the person or governmental entity.

Actions against person or governmental entity not the alleged perpetrator

(d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Credits

Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003. Amended by Acts 2017, c. 12, § 1, eff. Oct. 1, 2017; Acts 2017, c. 656, § 1, eff. Oct. 1, 2017.

Notes of Decisions (5)

MD Code, Courts and Judicial Proceedings, § 5-117, MD CTS & JUD PRO § 5-117

Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

EXHIBIT

6

SENATE BILL 68

D4 3lr0443

HB 326/94 – JPR

By: **Senators Kelley, Britt, Conway, Exum, Forehand, Gladden, Grosfeld, Hollinger, Hughes, Jones, Kramer, Lawlah, Ruben, Stone, and Teitelbaum**

Introduced and read first time: January 20, 2003

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 2003

0360 MAY 22 '03

CHAPTER_____

APPROVED BY THE GOVERNOR

AN ACT concerning

Civil Actions – Child Sexual Abuse – Statute of Limitations

FOR the purpose of extending the statute of limitations in certain civil actions relating to child sexual abuse; providing for the ~~construction and~~ application of this Act; defining a certain term; and generally relating to child sexual abuse.

BY adding to

Article – Courts and Judicial Proceedings

Section 5–117

Annotated Code of Maryland

(2002 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

(A) IN THIS SECTION, "SEXUAL ABUSE" HAS THE MEANING STATED IN § 5–701 OF THE FAMILY LAW ARTICLE.

(B) AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR SHALL BE FILED WITHIN ~~12 YEARS OF THE LATER OF:~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

~~(1) THE VICTIM'S 21ST BIRTHDAY; OR~~

~~(2) THE DATE ON WHICH THE VICTIM KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE ALLEGED ABUSE WAS ACTIONABLE~~ 7 YEARS OF THE DATE THAT THE VICTIM ATTAINS THE AGE OF MAJORITY.

~~(C) THIS SECTION MAY NOT BE CONSTRUED TO PRECLUDE A COURT FROM APPLYING ANY OTHER APPLICABLE EXCEPTION TO THE RUNNING OF THE APPLICABLE STATUTE OF LIMITATIONS.~~

~~(D) THIS SECTION SHALL APPLY TO ANY ACTION COMMENCED ON OR AFTER OCTOBER 1, 2003, INCLUDING ANY ACTION THAT WOULD HAVE BEEN BARRED BY THE APPLICATION OF THE PERIOD OF LIMITATION APPLICABLE BEFORE OCTOBER 1, 2003.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2003.

Approved:

_____
Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

EXHIBIT

7

West's Annotated Code of Maryland
Courts and Judicial Proceedings
Title 5. Limitations, Prohibited Actions, and Immunities (Refs & Annos)
Subtitle 1. Limitations (Refs & Annos)

This section has been updated. Click here for the updated version.

MD Code, Courts and Judicial Proceedings, § 5-117

§ 5-117. Sexual abuse of minor

Effective: [See Text Amendments] to September 30, 2017

Sexual abuse defined in Family Law Article

(a) In this section, "sexual abuse" has the meaning stated in § 5-701 of the Family Law Article.

Within seven years of date victim attains age of majority

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor shall be filed within 7 years of the date that the victim attains the age of majority.

Credits
Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003.

MD Code, Courts and Judicial Proceedings, § 5-117, MD CTS & JUD PRO § 5-117
Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

EXHIBIT

8

Unofficial Copy 2003 Regular Session
D4 3lr0443
HB 326/94 - JPR

By: **Senators Kelley, Britt, Conway, Exum, Forehand, Gladden, Grosfeld, Hollinger, Hughes, Jones, Kramer, Lawlah, Ruben, Stone, and Teitelbaum**
Introduced and read first time: January 20, 2003
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Civil Actions - Child Sexual Abuse - Statute of Limitations

FOR the purpose of extending the statute of limitations in certain civil actions relating to child sexual abuse; providing for the construction and application of this Act; defining a certain term; and generally relating to child sexual abuse.

BY adding to
Article - Courts and Judicial Proceedings
Section 5-117
Annotated Code of Maryland
(2002 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Courts and Judicial Proceedings

5-117.

(A) IN THIS SECTION, "SEXUAL ABUSE" HAS THE MEANING STATED IN § 5-701 OF THE FAMILY LAW ARTICLE.

(B) AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR SHALL BE FILED WITHIN 12 YEARS OF THE LATER OF:

(1) THE VICTIM'S 21ST BIRTHDAY; OR

(2) THE DATE ON WHICH THE VICTIM KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE ALLEGED ABUSE WAS ACTIONABLE.

(C) THIS SECTION MAY NOT BE CONSTRUED TO PRECLUDE A COURT FROM APPLYING ANY OTHER APPLICABLE EXCEPTION TO THE RUNNING OF THE APPLICABLE STATUTE OF LIMITATIONS.

(D) THIS SECTION SHALL APPLY TO ANY ACTION COMMENCED ON OR AFTER OCTOBER 1, 2003, INCLUDING ANY ACTION THAT WOULD HAVE BEEN BARRED BY THE APPLICATION OF THE PERIOD OF LIMITATION APPLICABLE BEFORE OCTOBER 1, 2003.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2003.

EXHIBIT

9

SENATOR DELORES G. KELLEY
Legislative District 10
Baltimore County

Vice Chair
Judicial Proceedings Committee

Vice Chair
Executive Nominations Committee

Joint Committee on
Unemployment Insurance Oversight

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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TESTIMONY OF SENATOR DELORES G. KELLEY

REGARDING SENATE BILL 505-CIVIL ACTIONS-CHILD SEXUAL ABUSE STATUTE OF LIMITATIONS AND REQUIRED FINDINGS

BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

ON FEBRUARY 14, 2017

Mr. Chairman and Members:

Senate Bill 505 expands the statute of limitations for the filing of an action by a victim of child sexual abuse against the alleged perpetrator of the abuse. Prior to 2003, a victim could file such an action only until his/her 21st birthday (that was for three years upon attaining the age of majority).

In 2003, I successfully sponsored Senate Bill 68 , which increased the statute of limitations until the victim's 25th birth date (Chapter 360 of 2003). Senate Bill

505 would further increase the statute of limitations for a child sexual abuse victim to file suit against the perpetrator until the victim's 38th birthdate (that is 20 years from the date that the victim attained the age of majority). The discovery rule is applicable in all actions, and the cause of action accrues when the victim knew or should have known that Maryland law provides a right of action to a person so abused during his/her childhood.

Under current law, and under the provisions of Senate Bill 505, a cause of action cannot apply retroactively to revive any action that was barred by the statute of limitations applicable before the new statute takes effect (in the case of SB 505, that would be October 1, 2017). Senate Bill 505 additionally permits a child abuse victim to file a cause of action against the alleged perpetrator of the abuse at any time within three years of the perpetrator's conviction for the incident or incidents which comprised the abuse.

Additionally, Senate Bill 505 permits child sexual abuse victims to file an action against certain non-perpetrators of child sexual abuse, that is if a person or

governmental entity had actual knowledge of the abuse and negligently failed to do anything to prevent the incident or incidents that form the basis of the victim's action. Think about the Penn State case where athletic staff members of the University observed a colleague abusing young boys on University property, but did nothing to either prevent or to report the abuse.

Why, you might ask, should Maryland further extend the statute of limitations for filing an action against a perpetrator of child sexual abuse beyond the date of the victim's 25th birth date. Few, if any, young adults have knowledge of their legal right in Maryland to file an action against the perpetrator of their abuse. They also lack the financial means and the sophistication to file an action in a court of law to seek damages for crimes which they suffered as minors. Many young adults are still dependent upon the authority figures in their lives, some of whom still provide food, shelter, tuition and health care (as per the provisions of the Affordable Care Act), even beyond the young adult's 25th birth date (a later timeline than the current insufficient statute of limitations).

In addition, victims of sexual assaults fear unfair judgment and public humiliation if they air their pain and suffering in public; thus they often need much more time than the current 7 years from the age of majority to seek any legal remedy so that their healing may begin.

It is past time for victims of child sexual abuse to have great access to civil relief in the courts, so I ask for your favorable report of SB 505.

EXHIBIT

10

HB0642/252810/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 642
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after "abuse;" insert "establishing a statute of repose for certain civil actions relating to child sexual abuse;"; in the same line, after "action" insert "filed more than a certain number of years after the victim reaches the age of majority"; and in line 9, after "Act;" insert "defining a certain term; making certain stylistic changes;".

AMENDMENT NO. 2

On page 2, in line 9, after "(a)" insert "**(1)**"; in the same line, strike the comma and substitute "**THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3)";

in the same line, strike ""sexual" and substitute "**"SEXUAL**"; strike beginning with "**AGAINST**" in line 12 down through "**ABUSE**" in line 13; and in line 16, strike "**WITHIN**" and substitute "**SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN**".

On pages 2 and 3, strike in their entirety the lines beginning with line 25 on page 2 through line 11 on page 3, inclusive, and substitute:

"**(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED**

(Over)

AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) IN NO EVENT MAY AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR MORE THAN 20 YEARS AFTER THE DATE ON WHICH THE VICTIM REACHES THE AGE OF MAJORITY.".

AMENDMENT NO. 3

On page 4, strike beginning with "That" in line 6 down through "Act" in line 8 and substitute "That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017"; and in line 9, after "That" insert "the statute of repose under § 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That".

EXHIBIT

11

SB0505/458675/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 505
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, after "Kelley," insert "Young,"; in the same line, after "Kasemeyer," insert "King,"; in the same line, after "Manno," insert "Mathias,"; in the same line, after "Peters," insert "Pinsky, Ramirez,"; in the same line, after "Robinson," insert "Salling,"; in line 5, after the semicolon insert "establishing a statute of repose for certain civil actions relating to child sexual abuse;"; in the same line, after "action" insert "filed more than a certain number of years after the victim reaches the age of majority"; and in line 9, after the semicolon insert "defining a certain term; making certain stylistic changes;".

AMENDMENT NO. 2

On page 2, in line 10, after "(a)" insert "**(1)**"; in the same line, strike the comma and substitute "**THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) "ALLEGED PERPETRATOR" MEANS THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE SPECIFIC INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT SERVE AS THE BASIS OF AN ACTION UNDER THIS SECTION.

(3)";

in the same line, strike ""sexual" and substitute "**"SEXUAL**"; strike beginning with "**AGAINST**" in line 13 down through "**ABUSE**" in line 14; and in line 17, strike "**WITHIN**" and substitute "**SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, WITHIN**".

On pages 2 and 3, strike in their entirety the lines beginning with line 26 on page 2 through line 11 on page 3, inclusive, and substitute:

(Over)

"**(C) IN AN ACTION BROUGHT UNDER THIS SECTION MORE THAN 7 YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY, DAMAGES MAY BE AWARDED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR OF THE SEXUAL ABUSE ONLY IF:**

(1) THE PERSON OR GOVERNMENTAL ENTITY OWED A DUTY OF CARE TO THE VICTIM;

(2) THE PERSON OR GOVERNMENTAL ENTITY EMPLOYED THE ALLEGED PERPETRATOR OR EXERCISED SOME DEGREE OF RESPONSIBILITY OR CONTROL OVER THE ALLEGED PERPETRATOR; AND

(3) THERE IS A FINDING OF GROSS NEGLIGENCE ON THE PART OF THE PERSON OR GOVERNMENTAL ENTITY.

(D) IN NO EVENT MAY AN ACTION FOR DAMAGES ARISING OUT OF AN ALLEGED INCIDENT OR INCIDENTS OF SEXUAL ABUSE THAT OCCURRED WHILE THE VICTIM WAS A MINOR BE FILED AGAINST A PERSON OR GOVERNMENTAL ENTITY THAT IS NOT THE ALLEGED PERPETRATOR MORE THAN 20 YEARS AFTER THE DATE ON WHICH THE VICTIM REACHES THE AGE OF MAJORITY.".

AMENDMENT NO. 3

On page 4, strike beginning with "That" in line 6 down through "Act" in line 8 and substitute "That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017"; and in line 9, after "That" insert "the statute of repose under § 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that

were barred by the application of the period of limitations applicable before October 1, 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That".

EXHIBIT

12

SENATE JUDICIAL PROCEEDINGS COMMITTEE
BOBBY A. ZIRKIN, CHAIR · COMMITTEE REPORT SYSTEM
DEPARTMENT OF LEGISLATIVE SERVICES · 2017 MARYLAND GENERAL ASSEMBLY

FLOOR REPORT

House Bill 642

Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

SPONSORS: Delegate C. Wilson, *et al.*

COMMITTEE RECOMMENDATION: FAVORABLE

SHORT SUMMARY:

House bill 642 is identical to Senate bill 505, as unanimously passed by the Senate.

The bill (1) expands the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor and (2) exempts causes of action filed under the bill's provisions from the notice of claim requirement under the Local Government Tort Claims Act and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under the Maryland Tort Claims Act. The bill also creates a statute of repose for specified civil actions relating to child sexual abuse.

COMMITTEE AMENDMENTS: NONE

SUMMARY OF BILL:

An action for damages arising out of an alleged incident or incidents of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed (1) at any time before the victim reaches the age of majority or (2) within the later of 20 years after the date on which the victim reaches the age of majority or 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under § 3-602 of the Criminal Law Article (sexual abuse of a minor) or the laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

However, in an action brought more than seven years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if (1) the person or governmental entity owed

a duty of care to the victim; (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator; and (3) there is a finding of gross negligence on the part of the person or governmental entity. The bill defines "alleged perpetrator" as the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action arising from alleged sexual abuse under § 5-117 of the Courts and Judicial Proceedings Article.

The bill establishes a "statute of repose" prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The bill exempts causes of action filed under the provisions of the bill from the notice of claim requirement under LGTCA and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under MTCA.

The bill may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017. The statute of repose created by the bill 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.

CURRENT LAW:

Current statute of limitations: Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident(s) of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. The law is not to be construed to apply retroactively to revive any action that was barred by application of the period of limitations applicable before October 1, 2003.

Maryland Tort Claims Act and Local Government Tort Claims Act: MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. MTCA limits State liability to $400,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

MTCA also contains specific notice and procedural requirements. In general, a claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a

written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

LGTCA is the local government counterpart to MTCA. LGTCA limits the liability of a local government to $400,000 per individual claim and $800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. A local government is not liable for punitive damages. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

LGTCA also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. In general, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown, the court may entertain the suit even though the required notice was not given.

Limits on Liability for County Boards of Education: County boards of education are not covered under LGTCA. However, a county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above $400,000. A county board of education may not raise the defense of sovereign immunity to any claim of $400,000 or less. A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board, including damages that exceed the limitation on the county board's liability.

Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education must establish standards for these insurance policies, including a minimum liability coverage of not less than $400,000 for each occurrence. The policies purchased must meet the standards established by the State Board of Education.

A county board complies with this requirement if it (1) is individually self-insured for at least $400,000 for each occurrence under the rules and regulations adopted by the Insurance Commissioner or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

Gross Negligence: Gross negligence involves "an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is [liable] of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist." *Barbre v. Pope*, 402 Md. 157, 187 (2007) (citations omitted). Gross negligence is a level of neglect more egregious than simple negligence. *Holloway-Johnson v. Beall*, 220 Md. App. 195 (2014). However, "…a fine line exists between allegations of negligence and gross negligence." *Barbre* at 187. The existence of gross negligence depends on the facts and circumstances of the case. *Rodriguez v. State*, 218 Md. App. 573 (2014).

FISCAL IMPACT:

State Effect: Minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF) that occur well into the future if the bill results in payments in MTCA cases that would not be allowed to proceed under existing statute. Revenues are not affected.

Local Effect: The bill is not expected to significantly affect local expenditures. Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT's membership currently includes 17 counties, 144 municipalities, and 19 sponsored entities. LGIT advises that because the types of causes of action affected by the bill are rarely filed against a local government employee or official, the bill has virtually no impact on local governments, including LGIT members.

As previously mentioned, local boards of education and their employees are not covered under LGTCA. The Maryland Association of Boards of Education (MABE) advises that based on information provided by its insurance program and some school system administrators, MABE does not anticipate significant increased liabilities arising from the bill.

Small Business Effect: Potential meaningful impact on small business law firms that are allowed to litigate or proceed with cases as a result of the bill.

ADDITIONAL INFORMATION:

Prior Introductions: None.

Cross File: SB 505 (Senator Kelley, et al.) - Judicial Proceedings.

COUNSEL: April

EXHIBIT

13

SENATE JUDICIAL PROCEEDINGS COMMITTEE
BOBBY A. ZIRKIN, CHAIR · COMMITTEE REPORT SYSTEM
DEPARTMENT OF LEGISLATIVE SERVICES · 2017 MARYLAND GENERAL ASSEMBLY

FLOOR REPORT

Senate Bill 505

Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

SPONSORS: Senator Kelley, *et al.*

COMMITTEE RECOMMENDATION: Favorable with amendments (3)

SHORT SUMMARY:

Senate bill 505 (1) expands the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor and (2) exempts causes of action filed under the provisions of the bill from the notice of claim requirement under the Local Government Tort Claims Act (LGTCA) and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under the Maryland Tort Claims Act (MTCA).

COMMITTEE AMENDMENTS: There are 3 committee amendments

Amendment no. 1: Adds co-sponsors and makes technical changes.

Amendment no. 2: Strikes language in the bill that would have created a heightened standard in all civil sex abuse actions against certain persons and governmental entities. The amendment instead provides that, in an action brought more than 7 years after the victim reaches the age of majority, damages may only be awarded against a person or governmental entity that is not the alleged perpetrator of abuse if there is a finding of gross negligence on the part of the person or governmental entity. The amendment also prohibits filing an action against such persons and governmental entities more than 20 years after the victim reaches the age of majority.

Amendment no. 3: Clarifies the application of the bill to claims barred by the statute of limitations in effect before the bill's October 1, 2017 effective date.

SUMMARY OF BILL:

Under the bill, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor must be filed (1) at any time before the victim attains the age of majority or (2) within the later of 20 years after the victim reaches the age of majority or 3 years after the defendant is convicted of a crime relating to the alleged incident or incidents under § 3-602 of the Criminal Law Article or the laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

The bill further provides that, in an action brought more than 7 years (which is the current statute of limitations) after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the abuse if (1) the person or governmental entity owed a duty of care to the victim, (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator, and (3) there is a finding of gross negligence on the part of the person or governmental entity. The bill defines "alleged perpetrator" as "the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section."

The bill establishes a "statute of repose" prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The bill exempts causes of action filed under the provisions of the bill from the notice of claim requirement under the Local Government Tort Claims Act (LGTCA) and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under the Maryland Tort Claims Act (MTCA)

The bill may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017. The statute of repose created by the bill 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

CURRENT LAW:

Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident(s) of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the

age of majority. The law is not to be construed to apply retroactively to revive any action that was barred by application of the period of limitations applicable before October 1, 2003.

The statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The "discovery rule" is applicable generally in all actions, and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981).

If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority. Thus, on becoming an adult at age 18, a child victim of a tort other than one involving sexual abuse is required to file the suit before the victim reaches age 21.

BACKGROUND:

In response to growing recognition of the long-term impact of child sexual abuse, approximately 45 states and the District of Columbia have enacted laws that specifically address the statute of limitations for actions to recover damages stemming from this type of abuse. The approaches vary by state, with the simplest and most direct approach extending the limitations period for a civil action based on child sexual abuse for a specified number of years.

A number of state statutes contain a general "discovery" rule that allows any civil claim to proceed within a specific number of years after the injury was or should have been discovered, even if the discovery occurs beyond the expiration of the period of limitations. Other states have a specific discovery rule that tolls the statute of limitations until the abused individual discovers or should have discovered that sexual abuse occurred and that the sexual abuse caused the individual's injuries.

For example, Delaware allows a cause of action based upon the sexual abuse of a minor to be filed at any time if the cause of action is based upon sexual acts that would constitute a criminal offense under the Delaware Code. This statute of limitations applies to actions against perpetrators and actions for gross negligence by an employer of a perpetrator. However, in Arkansas, any civil action based on sexual abuse that occurred when the injured person was a minor (younger than age 18) must be brought by the later of (1) three years from when the person reaches age 21 or (2) three years from the injured person's discovery of the effect of the injury or condition attributable to the childhood sexual abuse.

FISCAL IMPACT:

State Effect: Minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF) that occur well into the future if the bill results in payments in MTCA cases that would not be allowed to proceed under existing statute. Revenues are not affected.

Local Effect: Depending on the cumulative value of claims or payments in cases against local governments awarded as a result of the bill, local expenditures may increase significantly, but not until well into the future. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are allowed to litigate or proceed with cases as a result of the bill.

ADDITIONAL INFORMATION:

Prior Introductions: None.

Cross File: HB 642 (Delegate C. Wilson, et al.) - Judiciary. Also, SB 585 (Senator Young, et al. - Judicial Proceedings) is identical.

COUNSEL: April

EXHIBIT

14

SB 505

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 505 (Senator Kelley, *et al.*)
Judicial Proceedings Judiciary

Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

This bill (1) expands the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor; (2) establishes a statute of repose for specified civil actions relating to child sexual abuse; and (3) exempts causes of action filed under the provisions of the bill from the notice of claim requirement under the Local Government Tort Claims Act (LGTCA) and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under the Maryland Tort Claims Act (MTCA).

The bill may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017. The statute of repose created by the bill 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.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF) that occur well into the future if the bill results in payments in MTCA cases that would not be allowed to proceed under existing statute. Revenues are not affected.

Local Effect: The bill is not expected to significantly affect local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are allowed to litigate or proceed with cases as a result of the bill.

Analysis

Bill Summary: An action for damages arising out of an alleged incident or incidents of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed (1) at any time before the victim reaches the age of majority or (2) within the later of 20 years after the date on which the victim reaches the age of majority or 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under § 3-602 of the Criminal Law Article (sexual abuse of a minor) or the laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

However, in an action brought more than seven years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if (1) the person or governmental entity owed a duty of care to the victim; (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator; and (3) there is a finding of gross negligence on the part of the person or governmental entity. The bill defines "alleged perpetrator" as the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action arising from alleged sexual abuse under § 5-117 of the Courts and Judicial Proceedings Article.

The bill establishes a "statute of repose" prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The bill exempts causes of action filed under the provisions of the bill from the notice of claim requirement under LGTCA and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under MTCA.

Current Law: Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident(s) of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. The law is not to be construed to apply retroactively to revive any action that was barred by application of the period of limitations applicable before October 1, 2003.

The statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The "discovery rule" is applicable generally in all actions, and the cause of action accrues when the claimant in

fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981).

If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority. Thus, on becoming an adult at age 18, a child victim of a tort other than one involving sexual abuse is required to file the suit before the victim reaches age 21.

Section 5-701 of the Family Law Article: Section 5-701 of the Family Law Article defines "sexual abuse" as any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. "Sexual abuse" includes (1) allowing or encouraging a child to engage in prostitution or specified activities involving obscene or pornographic photography; (2) human trafficking; (3) incest; (4) rape; (5) sexual offense in any degree; (6) sodomy; and (7) unnatural or perverted sexual practices.

Section 3-602 of the Criminal Law Article: Section 3-602 of the Criminal Law Article prohibits (1) a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor from causing sexual abuse to the minor and (2) a household member or family member from causing sexual abuse to a minor. Violators are guilty of a felony, punishable by imprisonment for up to 25 years. A sentence imposed for this offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of § 3-602 or a violation of § 3-601 of the Criminal Law Article (child abuse) involving an act of abuse separate from sexual abuse under § 3-602.

Section 3-602 defines "sexual abuse" as an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. "Sexual abuse" includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Maryland Tort Claims Act and Local Government Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially "…waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort." *Lee v. Cline*, 384 Md. 245, 262 (2004). However, the State remains immune from liability for punitive damages.

MTCA limits State liability to $400,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

MTCA also contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

However, pursuant to Chapter 132 of 2015, a court, upon motion of a claimant who failed to submit a written claim to the State Treasurer or the Treasurer's designee within the one-year time period under MTCA, and for good cause shown, may entertain the claimant's action unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

Pursuant to Chapter 623 of 2016, the submission of a written claim and denial of claim requirements do not apply if, within one year after the injury to person or property that is the basis of the claim, the State has actual or constructive notice of (1) the claimant's injury or (2) the defect or circumstances giving rise to the claimant's injury.

LGTCA is the local government counterpart to MTCA. LGTCA limits the liability of a local government to $400,000 per individual claim and $800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. A local government is not liable for punitive damages. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

LGTCA also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. Unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown, the court may entertain the suit even though the required notice was not given. Chapter 624 of 2016 provides an exception to the notice requirements for claimants against local governments under specified circumstances. Chapter 624 establishes that the requirement to submit a written claim within one year after the injury does not apply if, within one year after the injury to person or property that is the basis of the claim, the defendant local government has actual or constructive notice of (1) the claimant's injury or (2) the defect or circumstances giving rise to the claimant's injury.

Limits on Liability for County Boards of Education: County boards of education are not covered under LGTCA. However, a county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above $400,000. A county board of education may not raise the defense of sovereign immunity to any claim of $400,000 or less. A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board, including damages that exceed the limitation on the county board's liability.

Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education must establish standards for these insurance policies, including a minimum liability coverage of not less than $400,000 for each occurrence. The policies purchased must meet the standards established by the State Board of Education.

A county board complies with this requirement if it (1) is individually self-insured for at least $400,000 for each occurrence under the rules and regulations adopted by the Insurance Commissioner or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

Gross Negligence: Gross negligence involves "an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is [liable] of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist." *Barbre v. Pope*, 402 Md. 157, 187 (2007) (citations omitted). Gross negligence is a level of neglect more egregious than simple negligence. *Holloway-Johnson v. Beall,* 220 Md. App. 195 (2014). However, "…a fine line exists between allegations of negligence and gross negligence." *Barbre* at 187. The existence of gross negligence depends on the facts and circumstances of the case. *Rodriguez v. State,* 218 Md. App. 573 (2014).

Background: In response to growing recognition of the long-term impact of child sexual abuse, approximately 45 states and the District of Columbia have enacted laws that specifically address the statute of limitations for actions to recover damages stemming from this type of abuse. The approaches vary by state, with the simplest and most direct approach extending the limitations period for a civil action based on child sexual abuse for a specified number of years.

A number of state statutes contain a general "discovery" rule that allows any civil claim to proceed within a specific number of years after the injury was or should have been discovered, even if the discovery occurs beyond the expiration of the period of limitations. Other states have a specific discovery rule that tolls the statute of limitations until the abused individual discovers or should have discovered that sexual abuse occurred and that the sexual abuse caused the individual's injuries.

For example, Delaware allows a cause of action based upon the sexual abuse of a minor to be filed at any time if the cause of action is based upon sexual acts that would constitute a criminal offense under the Delaware Code. This statute of limitations applies to actions against perpetrators and actions for gross negligence by an employer of a perpetrator. However, in Arkansas, any civil action based on sexual abuse that occurred when the injured person was a minor (younger than age 18) must be brought by the later of (1) three years from when the person reaches age 21 or (2) three years from the injured person's discovery of the effect of the injury or condition attributable to the childhood sexual abuse.

State Expenditures: Special fund expenditures increase minimally for litigation costs and SITF payments in cases brought and damages awarded as a result of the bill's provisions. However, given the prospective application of the bill and the likely length of time between when a civil action involving child sexual abuse arises and when it is filed, such expenditures are not likely to occur until well into the future. According to the Treasurer's Office, most of the cases involving sexual abuse involve resident-on-resident or inmate-on-inmate behavior, not an authority figure employed by the State. The Treasurer's Office reports that it did pay a claim in one case in 2010.

The Treasurer's Office advises that the bill's impact on SITF expenditures depends on the judicial interpretation of the findings required under the bill in order for damages awarded against a nonperpetrator under specified circumstances. As previously noted, one of the required findings is gross negligence on the part of a person or governmental entity. A State employee is personally liable (and may be sued personally) and is not covered under MTCA if his/her tortious actions were grossly negligent. The Department of Legislative Services (DLS) advises that given the volume of claims and payments in child sexual abuse cases, special fund expenditures increase minimally.

Local Expenditures: The bill is not expected to significantly affect local expenditures.

Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT's membership currently includes 17 counties, 144 municipalities, and 19 sponsored entities.

LGIT advises that because the types of causes of action affected by the bill are rarely filed against a local government employee or official, the bill has virtually no impact on local governments, including LGIT members.

As previously mentioned, local boards of education and their employees are not covered under LGTCA. The Maryland Association of Boards of Education (MABE) advises that based on information provided by its insurance program and some school system administrators, MABE does not anticipate significant increased liabilities arising from the bill. Based on this assessment, DLS advises that the bill's fiscal impact on local governments is minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 642 (Delegate C. Wilson, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Harford, Prince George's, and Talbot counties; City of Bowie; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); *Maryland Law Encyclopedia*; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2017
md/kdm Third Reader - March 22, 2017
Revised - Amendment(s) - March 22, 2017

Analysis by: Amy A. Devadas

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EXHIBIT

15

SB 0505
Discussion of certain amendments in SB0505/818470/1

New Section 5-117(d) of the Courts and Judicial Proceedings Article provides a "statute of repose" for claims of sexual abuse 20 years after a plaintiff turns 18, but only for claims against governmental entities or persons other than the alleged perpetrators. This clarifies that although the alleged perpetrator might be sued after the victim turns 38, civil claims against the government or private entities could not be filed after the victim turns 38 (even if, for example, a perpetrator is convicted of child sexual abuse). Statutes of repose are related to statutes of limitations, and are used when the legislature balances various interests and determines an appropriate period of time after which liability for the defendant should no longer exist. A statute of limitations provides time during which a plaintiff may sue, whereas a statute of repose indicates time after which a defendant may not be sued. The Maryland legislature has enacted other statutes of repose, most notably in Section 5-108 of the Courts and Judicial Proceedings Article which creates a statute of repose for actions for contribution or indemnification relating to personal injury or wrongful death 20 years after a building is put into service. The statute of repose in § 5-108 specifically for architects, engineers, and contractors is only 10 years after a building is put into service.

The Amendments to Section 2 make the SB0505 apply retroactively in certain ways.

First, the amendment deletes the original language which limited SB0505 to apply only prospectively to actions arising after October 1, 2017. The original language would have provided additional time for alleged victims in the future but would not have provided any additional time to alleged victims of abuse in the past. The first sentence of Section 2 now makes clear, by adopting the same language used by the legislature in 2003 when the statute of limitations for sexual abuse claims was extended previously, that the bill will operate to extend the statute of limitations for claims that are not now barred by the applicable statute of limitations. That is, if someone is under 25 years old as of October 1, 2017, they will now have until their 38th birthday to file a claim regardless of how long ago in the past the abuse occurred. Such a "partial retroactive" application was upheld by the Maryland Court of Appeals in *Doe v. Roe*, 419 Md. 687 (2011) (applying the 2003 language to claim that had not yet been barred by limitations).

The second sentence of Section 2 makes clear that the statute of repose applies to any past claims relating to sexual abuse that are currently barred by the statute of limitations. That is, if someone is over 25 years old as of October 1, 2017, the statute of repose will apply and claims precluded by the statute of repose cannot be revived in the future. Although it appears that under the Maryland Constitution, the legislature could not revive a claim that is past the applicable statute of limitations, the second sentence of Section 2 confirms that the statute of repose applies retroactively to provide vested rights to defendants relating to claims that have already been barred by the statute of limitations. The second sentence of Section 2 has no impact on claims that have not yet been barred by limitations (e.g. anyone under 25 years old) and such claims can be brought at least until the plaintiff reaches 38 years old.

In sum, through SB0505 as amended, the legislature will substantially extend the time for filing a lawsuit for any victim under the age of 25 regardless of when the abuse occurred, while at the same time indicating that claims already barred by limitations will remain barred.

EXHIBIT

16

HOUSE BILL 687

D3, D4 9lr1025

By: **Delegates Wilson, Atterbeary, Bromwell, ~~and D.E. Davis~~ D.E. Davis, Moon, Lopez, Grammer, Bartlett, Crutchfield, McComas, R. Watson, Arikan, Shetty, and W. Fisher**

Introduced and read first time: February 7, 2019
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 13, 2019

CHAPTER _____

AN ACT concerning

Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations (Hidden Predator Act of 2019)

FOR the purpose of altering the definition of "sexual abuse"; altering the statute of limitations in certain civil actions relating to child sexual abuse; repealing a certain definition; ~~providing for the application of this Act~~ providing for the retroactive application of this Act under certain circumstances; and generally relating to child sexual abuse.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–117
Annotated Code of Maryland
(2013 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–117.

(a) **[**(1) In this section the following words have the meanings indicated.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

(2) "Alleged perpetrator" means the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action under this section.

(3) "Sexual**] IN THIS SECTION, "SEXUAL** abuse" ~~has the meaning stated in § 5–701 of the Family Law Article~~ **MEANS ANY ACT THAT INVOLVES:**

(1) ALLOWING OR ENCOURAGING A CHILD TO ENGAGE IN:

(I) OBSCENE PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY;

(II) PORNOGRAPHIC PHOTOGRAPHY, FILMS, POSES, OR SIMILAR ACTIVITY; OR

(III) PROSTITUTION;

(2) INCEST;

(3) RAPE;

(4) SEXUAL OFFENSE IN ANY DEGREE;

(5) SODOMY; OR

(6) UNNATURAL OR PERVERTED SEXUAL PRACTICES.

(b) An action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor **[**shall be filed:

(1) At any time before the victim reaches the age of majority; or

(2) Subject to subsections (c) and (d) of this section, within the later of:

(i) 20 years after the date that the victim reaches the age of majority; or

(ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under:

1. § 3–602 of the Criminal Law Article; or

2. The laws of another state or the United States that would be a crime under § 3–602 of the Criminal Law Article.

(c) In an action brought under this section more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if:

(1) The person or governmental entity owed a duty of care to the victim;

(2) The person or governmental entity employed the alleged perpetrator or exercised some degree of responsibility or control over the alleged perpetrator; and

(3) There is a finding of gross negligence on the part of the person or governmental entity.

(d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority**] MAY BE FILED AT ANY TIME**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitation applicable before October 1, 2019~~ shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2019, if the action is filed before October 1, 2021.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved:

_____

Governor.

_____

Speaker of the House of Delegates.

_____

President of the Senate.

EXHIBIT

17

BRIAN E. FROSH
ATTORNEY GENERAL

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CHIEF DEPUTY ATTORNEY GENERAL

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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

CONFIDENTIAL
March 16, 2019

The Honorable Kathleen M. Dumais
313 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Dumais:

You have asked for advice concerning House Bill 687, "Civil Actions - Child Sexual Abuse - Definitions and Statute of Limitations (Hidden Predator Act of 2019) with the amendments proposed by the Judiciary Committee. Specifically, you have asked for advice as to whether portions of the amendments repealing existing Courts and Judicial Proceedings Article ("CJ"), § 5-117(d) and the addition of language permitting cases that are already barred by past statutes of limitations to be brought within the two year window between the effective date of the bill and October 1, 2021 are constitutional. It is my view that these provisions would most likely be found unconstitutional as interfering with vested rights as applied to cases that were covered by CJ § 5-117(d) and Section 3 of Chapter 12 of 2017.[1]

The provision in question, CJ § 5-117(d), was enacted as Chapter 12 by House Bill 642 of 2017. Subsection (d) provides:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or a governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The difference between a statute of repose and a statute of limitations is that the former provides "an absolute bar to an action or a grant of immunity to a class of potential defendants after a designated time period," while a statute of limitations is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." *SVF Riva Annapolis*

[1] In a letter to The Honorable Luke Clippinger March 12, 2019, I advised the constitutional status of retroactive application of the bill as amended was not clear, but that it could possibly be upheld. This is essentially the same advice I gave to then Chairman Frosh in 2003. I admit, however, that I was unaware of Chapter 12 of 2017 which has the effect of making CJ § 5-117(d) a statute of repose rather than a statute of limitation. A copy of the Clippinger letter is attached.

v. Gilroy, 459 Md. 632 (2018).[2] The relevance of this difference with respect to House Bill 687 is that the substantive right of the protected class would most likely be deemed a vested right "to be free from liability after a legislatively-determined period of time." *Carven v. Hickman*, 135 Md. App. 645, 652 (2000).

The Court of Appeals has noted that "there are overlapping features of statutes of limitations and statutes of repose, and definitions aplenty from which to choose," and that there is "no hard and fast rule to use as a guide." *Anderson v. United States*, 427 Md. 99, 123 (2012). Rather, it is necessary to "look holistically at the statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Id.* at 124.

Black's Law Dictionary defines "statute of limitations" as a "law that bars claims after a specified period ... a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)," while it defines a statute of repose as a "statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." Black's Law Dictionary 1546 (9th ed. 2009), cited in *Anderson*, 427 Md. at 117; *see also id.* at 118-119. This difference does not hold with CJ § 5-117(d), which has a limitation of time identical to the statute of limitations found in CJ § 5-117(b)(2), and runs, as statutes of limitations applying to minors generally do, from the time the victim reaches the age of majority. CJ § 5-201(a).

Nevertheless the provision must be read as a statute of repose for at least two reasons. First, by saying that "in no event" may an action be filed more than twenty years after the victim reaches the age of majority, the statute shows an intent to provide the type of absolute bar to an action provided by a statute of repose. *Anderson*, 427 at 118. Moreover, and arguably more importantly, Section 3 of the bill refers to the subsection as providing "repose to defendants regarding actions that were barred by the period of limitations applicable before October 1, 2017." In contrast, Section 2 of Chapter 360 of 2003, which originally extended the statute of limitations said only that "[t]his Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003." Identical language appeared in Section 2 of Chapter 12 of 2017.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

[2] The Court further stated "Statutes of limitations are motivated by 'considerations of fairness' and are 'intended to encourage prompt resolution of disputes' by providing a means of disposing of stale claims. Statutes of repose are motivated by 'considerations of the economic best interests of the public as a whole and are substantive grants of immunity based on a legislative balance of the respective rights of potential plaintiffs and defendants.'" *SVF*, 459 Md. at 637.

EXHIBIT

18

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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

June 23, 2021

The Honorable William C. Smith, Jr.
2 East Miller Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Smith:

You have asked for advice concerning Senate Bill 134 and House Bill 263 of 2021,"Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations." You have asked generally about the constitutionality of the bills and have raised specific questions. Your questions and the answers thereto appear below.

The bills would have revised the definition of the term "sexual abuse," in Courts and Judicial Proceedings Article ("CJ"), § 5-117(a). They would also have deleted the current statute of limitation for sexual abuse of a minor, which requires that an action be brought before the victim reaches the age of majority or within the later of 20 years after the date the victim reaches the age of majority or 3 years after the defendant is convicted of a crime under Criminal Law Article, § 3-602 or an equivalent law in another jurisdiction. CJ § 5-117(a). The bills would also repeal provisions of current law that bar the award of damages against a person or government entity who is not the perpetrator more than seven years after the victim reaches the age of majority unless the person or governmental entity owed a duty of care to the victim, employed the perpetrator or exercised some degree of control over them, and there is a finding of gross negligence by the person or governmental entity, CJ § 5-117(c), and that bar the filing of an action for damages against a person or governmental entity that is not the perpetrator more than 20 years after the victim reaches the age of majority. CJ § 5-117(d). In the place of the current statute of limitation, the bills would provide that an action for damages for sexual abuse of a minor "may be filed at any time."

I have previously advised that eliminating a statute of limitation in this way may or not be unconstitutional, but that it was possible that retroactive application to barred cases could be found to violate the due process requirements of the Maryland Constitution. This conclusion is based on the fact that courts around the country have reached differing conclusions with respect to this question, and that the Maryland Court of Appeals had not yet addressed the issue. Letter to the Honorable Luke Clippinger from Kathryn M. Rowe, Assistant Attorney General, dated March 12, 2019; Letter to the Honorable Brian E. Frosh from Kathryn M. Rowe, Assistant Attorney General, dated March 10, 2003. This remains the state of the law. Thus, to the extent that the bill would

simply eliminate the statute of limitations without reference to whether the cause of action is already barred, it is not clearly unconstitutional.

The bills would also repeal uncodified sections of Chapter 12 of the Acts of 2017, and enact two new uncodified sections. The repealed sections from the 2017 legislation stated that the Act "may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017," and that "the statute of repose under § 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017."

The new uncodified sections would provide that the bills "shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2021, if the action is filed before October 1, 2023," and would further provide that "if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable."

Your specific questions relate to the repeal of the uncodified sections and the new language granting a "lookback window" during which an action could be brought with respect to matters that had been barred under previous law.

1) If there is a statute of repose, could the court find the bill constitutional because the lookback window under Section 2 is limited to 2 years?

As a preliminary matter, it seems clear that there is a statute of repose. The difference between a statute of repose and a statute of limitations is that the former provides "an absolute bar to an action or a grant of immunity to a class of potential defendants after a designated time period," while a statute of limitations is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." *SVF Riva Annapolis v. Gilroy*, 459 Md. 632 (2018). Courts and Judicial Proceedings Article, § 5-117(d) should be read as a statute of repose for at least two reasons. First, by saying that "in no event" may an action be filed more than twenty years after the victim reaches the age of majority, the statute shows an intent to provide the type of "absolute bar" to an action provided by a statute of repose. *Anderson v. United States*, 427 Md. 99, 118 (2012). Moreover, and arguably more importantly, the language of Section 3 of the bill refers to "the statute of repose under § 5-117(d) of the Courts Article" as providing "repose to defendants regarding actions that were barred by the period of limitations applicable before October 1, 2017."

Cases looking at similar statutes of repose have found that they grant a vested right against suit. In *Anderson v. Catholic Bishop of Chicago*, 759 F.3d 645, 648 (7th Cir. 2014), the court concluded that a statute of repose very similar to Maryland's created a vested right against suit "and that claims time-barred under the old law therefore remained time-barred even after the repose period was abolished in the subsequent legislative action." *Id*. at 648 ("but in no event may

an action for personal injury based on childhood sexual abuse be commenced more than 12 years after the date on which the person abused attains the age of 18 years."). In *Doe H.B. v. M.J.*, 482 P.3d 596 (Kan. App. 2021), the Court held that "[w]hen the timeframe in a statute of repose expires, the claim is absolutely abolished as a matter of law, even if the claim has not yet accrued under the relevant statute of limitations." *Id*. at 605, *see also Doe v. Popravak*, 421 P.3d 760 (Kan. App. 2017) ("[T]he legislature cannot revive a legal claim barred by a statute of repose because doing so would constitute taking the potential defendant's property (the vested right) without due process."). While Maryland courts have not addressed the meaning of this particular statute of repose, the Court of Special Appeals has said that a statute of repose "creates a substantive right in those protected to be free from liability after a legislatively-determined period of time," which is "typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason." *Carven v, Hickman*, 135 Md. App. 645 (2000), citing *First United Methodist Church of Hyattsville v. United States Gypsum Co.,* 882 F.2d 862, 866 (4th Cir.1989).

In light of the widely held view that a statute of repose grants a substantive right to be free of liability after the passage of a set amount of time, I find it unlikely that a court would find a that a change in the law creating a new two year period during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose.

2) If § 5-117 of the Courts Article does not contain a statute of repose, could the courts still find that the bills are unconstitutional?

If CJ § 5-117(d) is not a statute of repose, it would presumably be treated like a statute of limitations. As discussed above, states are split on whether a person has a vested right in a statute of limitations that has run. In light of that, if CJ § 5-117(d) is found to only be a statute of limitations, the bills could be found to be constitutional.

3) Is there a constitutional issues with the lookback window contained in Section 2, as applied to government entities?

Section 2, the lookback window, provides that the bills "shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2021, if the action is filed before October 1, 2023." Unlike other persons, government entities have no vested rights that they can assert against the action of a State law. The Court of Appeals addressed this issue with respect to a law that extended the period of limitations for suits against counties and municipalities in *Mayor and Council of Hagerstown v. Sehner,* 37 Md. 180 (1872):

> All the cases to which we have been referred, or our own researches have disclosed, are suits or actions between individuals, and all the legislation declared null and void on this ground, has been such as operated directly upon and divested rights vested in private persons or private corporations. Such is not the character or effect of the law here assailed. It is not directed against individuals or private corporations. It applies to the counties, incorporated towns and cities of the State, and to all of them. Between these public bodies and private citizens, there is a wide

> and substantial distinction, with respect to vested rights protected from legislative power. They are public corporations created by the Legislature for political purposes, with political powers, to be exercised for purposes connected with the public good, in the administration of civil government.
>
> They are instruments of government subject at all times to the control of the Legislature with respect to their duration, powers, rights and property. It is of the essence of such a corporation, that the government has the sole right as trustee of the public interest, at its own good will and pleasure, to inspect, regulate, control and direct the corporation, its funds and franchises.

Id. at 192-193. In short, it is my view that the General Assembly has the authority to change a statute of limitation or a statute of repose to allow suits against government entities which had previously been barred.

4) You have also asked that I discuss the severability clause.

The severability clause is found in Section 3 of the bills and provides that:

> if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

General Provisions Article ("GP"), § 1-210 provides:

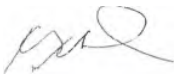
> (a) Except as otherwise provided, the provisions of all statutes enacted after July 1, 1973, are severable.
>
> (b) The finding by a court that part of a statute is unconstitutional or void does not affect the validity of the remaining portions of the statute, unless the court finds that the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent.

The Court of Appeals has stated that this provision "appears to be merely a codification of the common law principle that courts presume that an enactment is severable unless it appears that the legislative body intended otherwise." *Anne Arundel County v. Bell*, 442 Md. 539, 569 n. 18 (2015), citing *Park v. Board of Liquor License Com'rs for Baltimore City*, 338 Md. 366, 382 (1995); *Board of Supervisors of Elections of Anne Arundel Co. v. Smallwood*, 327 Md. 220, 245-46 (1992). The Article Review Committee for the General Provisions Article, however, expressed the view that the "language of the Maryland statute appears tougher than the test set forth in case law," which was "probably deliberately intended." Revisor's Note to GP § 1-210. The Revisor's Note also makes reference to the fact that "courts sometimes ignore severability clauses and apply

their own tests." *Id.* Nevertheless, where there is a concern that one or more provision of a bill may be found to be unconstitutional it is probably advisable to include a severability clause.

In this case, a severability clause could help save the changes in the definition of the term "sexual assault," as well as the application of the elimination of the statute of limitations and the statute of repose to cases that were not yet barred at the time of the passage of the bill.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
smith05

EXHIBIT

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West's Annotated Code of Maryland
Courts and Judicial Proceedings
Title 5. Limitations, Prohibited Actions, and Immunities (Refs & Annos)
Subtitle 1. Limitations (Refs & Annos)

MD Code, Courts and Judicial Proceedings, § 5-117

§ 5-117. Sexual abuse of minor

Effective: October 1, 2023
Currentness

Definitions

(a) In this section, "sexual abuse" means any act that involves:

(1) An adult allowing or encouraging a child to engage in:

(i) Obscene photography, films, poses, or similar activity;

(ii) Pornographic photography, films, poses, or similar activity; or

(iii) Prostitution;

(2) Incest;

(3) Rape;

(4) Sexual offense in any degree; or

(5) Any other sexual conduct that is a crime.

In general

(b) Except as provided under subsection (d) of this section and notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

Incident or occurrence that would have been barred by a time limitation before October 1, 2023

(c) Except as provided in §§ 5-303 and 5-518 of this title and § 12-104 of the State Government Article, the total amount of noneconomic damages that may be awarded under this section to a single claimant in an action against a single defendant for injuries arising from an incident or occurrence that would have been barred by a time limitation before October 1, 2023, may not exceed $1,500,000.

Deceased alleged victim

(d) No action for damages that would have been barred by a time limitation before October 1, 2023, may be brought under this section if the alleged victim of abuse is deceased at the commencement of the action.

Credits

Added by Acts 2003, c. 360, § 1, eff. Oct. 1, 2003. Amended by Acts 2017, c. 12, § 1, eff. Oct. 1, 2017; Acts 2017, c. 656, § 1, eff. Oct. 1, 2017; Acts 2023, c. 5, § 1, eff. Oct. 1, 2023; Acts 2023, c. 6, § 1, eff. Oct. 1, 2023.

Notes of Decisions (5)

MD Code, Courts and Judicial Proceedings, § 5-117, MD CTS & JUD PRO § 5-117
Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

EXHIBIT

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ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

February 22, 2023

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Senate Office Bldg.
Annapolis, Maryland 21401

Re: Senate Bill 686 – Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Dear Chair Smith:

Considering the number of times the Office of the Attorney General has weighed in on the constitutionality of previous legislation intended to provide victims of child sexual abuse a meaningful opportunity to hold wrongdoers accountable, I send this letter to confirm our view that Senate Bill 686, The Child Victims Act of 2023, is not clearly unconstitutional. If the General Assembly chooses to pass this legislation and it is enacted, I am comfortable defending the legislation should it be challenged in court.

No Maryland case is directly on point about the constitutional issue Senate Bill 686 raises. A law review article could be written evaluating the facets of the issue. As intellectually interesting as the debate is, however, the victims of childhood sexual abuse are forefront in my mind, along with my constitutional obligations to provide sound legal advice to State officials and to defend State laws. I have reviewed the various past letters of advice from the Office of the Attorney General as well as legal evaluations from others. The materials contain well-researched analyses and reach a reasonable difference of prediction as to how the Maryland Supreme Court would decide the issue. Accordingly, I conclude that, as Attorney General, I can make a good faith defense of the constitutionality of Senate Bill 686.

Several aspects of the issue are worth summarizing here. The primary issue is whether allowing a victim of child sexual abuse to file a civil action for sexual abuse at any time without limitation and without regard to previous time limitations, including any previously barred action, impairs a vested right. The answer turns in large part on whether Chapter 12, 2017 Laws of Maryland extended the statute of limitations for such claims or, alternatively, enacted a statute of repose.

The State's highest court has explained that a statute of limitations is "'a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered).'" *Anderson v. United States*, 427 Md. 99, 117 (2012) (quoting Black's Law Dictionary 1546 (9th ed. 2009)). Statutes of limitations are not substantive and can be tolled for reasons such as fraudulent concealment. *Id*. On the other hand, a statute of repose is a "'statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury.'" *Id*. "The purpose of a statute of repose is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period." *Id*. at 119. *See also Craven v. Hickman*, 135 Md. App. 645, 653 (2000) (noting that a statute of repose "is a substantive grant of immunity derived from a legislative balance of economic considerations affecting the general public and the respective rights of potential plaintiffs and defendants").

Before Courts and Judicial Proceedings Article ("CJP"), § 5-117 was amended by Chapter 12 (House Bill 642) in 2017, there was no question it was a statute of limitations. *See Doe v. Roe*, 419 Md. 687, 703 (2011) (confirming that the statute was procedural and remedial). Moreover, as introduced, there is little doubt that the legislative intent of House Bill 642 was to extend the limitations to allow victims more time to bring civil claims. Thus, if the bill was intentionally changed during the legislative process to become a statute of repose, we would have to conclude that the General Assembly intended to immunize from liability, solely by the passage of time, persons who owed a duty of care to the victims and were grossly negligent, even if those persons concealed their negligence.

On the contrary, a concealment would likely toll a statute of limitations. *See Poffenberger v. Risser*, 290 Md. 631, 637 (1981) (holding that to "activate the running of limitations [it must be proven that the plaintiff had] actual knowledge—that is express cognition, or awareness implied from 'knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry'"). Moreover, the legislature can extend statutes of limitations without concern about impacting substantive rights, and usually apply it retroactively. *Doe*, 419 Md. at 703.

While there is reason to doubt that the legislature intended to give any class of persons immunity from liability for their culpability in child sexual abuse after a certain time, we cannot ignore the arguments there was such intent. First, CJP § 5-117(d) states that "in no event" may an action be filed more than twenty years after the victim reaches the age of majority, which is the wording that is often used to establish the type of absolute bar to an action provided by a statute of repose. In addition, Section 3 of Chapter 12 refers to the subsection as providing "repose to defendants regarding actions that were barred by the period of limitations applicable before October 1, 2017."

Even if the 2017 enactment was intended to create a statute of repose, an elimination of a statute of repose may not impair a vested right in all cases. In 1991, the General Assembly amended CJP § 5-108, which is clearly a statute of repose, to add exceptions for asbestos claims. Citing to a 1990 letter of advice, the Attorney General's bill review letter for the 1991 legislation (Senate Bill 335) stated that "[w]e have previously advised that the statute of repose may be altered retroactively without violating due process." The 1990 letter noted that Maryland's highest court

would analyze whether the retroactive application would "divest or adversely affect vested rights." *See* Letter to the Honorable David B. Shapiro from Asst. Att'y Gen. Kathryn M. Rowe, Feb. 15, 1990. Because the Maryland case law on vested rights was scant at the time, the letter cited cases from other jurisdictions that looked at, among other things, the public interest served by the statute. The letter concluded CJP § 5-108 created no vested rights. The asbestos carve outs are still good law today.

In the 23 years since that letter was written, however, Maryland case law on vested rights has developed. A retrospective application of a limitations period may impair a vested right in some circumstances. The Maryland Supreme Court has pointed out that it "consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, *or reviving a barred cause of action, thereby violating the vested right of the defendant*." *Dua v. Comcast Cable*, 370 Md. 604, 833 (2002) (emphasis added). *See also Muskin v. State Dept. of Assessments & Taxation*, 422 Md. 544, 556-57 (2011) (announcing that "[i]t has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights. No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking of a person's property and giving it to someone else.").

The *Dua* and *Muskin* cases, however, did not involve the revival of a cause of action. And courts in other states have upheld retroactive extensions of the statute of limitations for child sexual abuse, largely relying on the compelling public interest. *See, e.g., Sliney v. Previte*, 41 N.E.3d 732 (Mass. Sup. 2015) and *Doe v. Hartford Roman Catholic Diocesan Corp*., 119 A.3d 462 (Conn. 2015). Moreover, in *Doe v. Roe*, the Maryland Supreme Court recognized that "an extended period of time during which alleged victims of child sexual abuse may seek redress in the courts 'improves' the child's right to seek compensation for the alleged wrongs committed against him or her." 419 Md. at 703. Consequently, while it is possible that Senate Bill 686's retrospective reach to time barred actions would be found to be unconstitutional, it is not a given that would be the outcome. It is an open question. *Id*. at 707 (making clear that the case at hand addressing retroactivity did not involve time barred claims and thus, "[b]ecause we are not presented with that scenario, we express no holding regarding the applicability of § 5-117 to child sexual abuse claims barred under the three-year statute as of 1 October 2003, the effective date of the new statute").

In summary, it is our view that Senate Bill 686 is not clearly unconstitutional. If the General Assembly chooses to provide victims of child sexual abuse an expanded chance for justice, I can in good faith defend the legislation should it be challenged in court.

Sincerely,

Anthony G. Brown

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	)	
	)	
***Plaintiff*,**	)	
	)	
v.	)	**Civil Action No. 1:23-cv-02662**
	)	
THE KEY SCHOOL, INC.*, et al.*,	)	
	)	
***Defendants*.**	)	

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiff, Valerie Bunker, by and through undersigned counsel, hereby opposes the motion to dismiss filed by Defendants The Key School, Inc., and The Key School Building and Finance Corporation. The grounds for Plaintiff's opposition are set forth more fully in the accompanying Memorandum of Points and Authorities.

WHEREFORE, for the reasons set forth herein, Plaintiff respectfully requests that the Court enter an order DENYING Defendants' Motion to Dismiss.

Dated: January 16, 2024

Respectfully submitted,

GRANT & EISENHOFER P.A.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 1:23-cv-02662**
	)	
THE KEY SCHOOL, INC., *et al.*,	)	
	)	
***Defendants*.**	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HER OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

INTRODUCTION

Defendants' Motion to Dismiss should be denied for two reasons. First, the basis for the motion – the alleged unconstitutionality of the Act that allows Ms. Bunker's claim to proceed – is subject to Plaintiff's Motion to Certify that very question of law to the Maryland Supreme Court. Accordingly, this Court's decision on that pending motion well may render the present motion moot. Second, the substantive arguments raised by Defendants are without merit, as set forth herein. Plaintiff therefore requests that this Court deny Defendants' motion in its entirety.

BACKGROUND

Plaintiff Valerie Bunker is a former student at a private school in Annapolis, Maryland, owned and operated by Defendants. She filed this action based upon sexual abuse she suffered at the school pursuant to the Maryland Child Victims Act ("CVA"), which eliminates time limitations for civil actions to recover damages arising from childhood sexual abuse. Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-117(b) (2023). The CVA is somewhat unique in that it permits a direct interlocutory appeal to the Maryland Supreme Court. Specifically, the statute permits an immediate appeal from any trial court on a motion to dismiss challenging the CVA's constitutionality under the Maryland Constitution. Because no case under the CVA can proceed until the Maryland Supreme Court decides that issue, Plaintiff filed a Motion to Certify Question of Law to the Maryland Supreme Court. Certifying the question will preserve the Court's and the parties' resources and will allow the appropriate court to decide the issue in the first instance.

Nonetheless, Defendants now seek to dismiss the Complaint pursuant the Federal Rule of Civil Procedure 12(b)(6), contending that Plaintiff fails to state a claim because the CVA violates the Maryland Constitution. As a threshold matter, Defendants' motion would be rendered moot if the Court grants Plaintiff's Motion to Certify; moreover granting that Motion will avoid this

Court's unnecessary analysis of Maryland's constitutional law. To the extent the Court does consider Defendants' substantive arguments, the arguments lack any merit under Maryland law, as discussed herein[1].

ARGUMENT

The Maryland General Assembly enacted the CVA in the wake of revelations of widespread sexual abuse and coverups of that abuse throughout Maryland. CJP § 5-117(b).[2] The CVA's purpose was to afford civil relief to survivors of child sexual abuse.

The CVA promotes a state policy to protect childhood abuse survivors' rights – such as Plaintiff Valerie Bunker – providing a remedy for years of torture and abuse. By enacting the CVA, the General Assembly acted within its power to remedy a horrendous societal ill. Childhood sexual abuse survivors may now seek to hold their abusers, the abusers' accomplices, and those who facilitated their abuse accountable. Moreover, the CVA recognizes the psychological trauma and other obstacles that have long prevented survivors like Ms. Bunker from coming forward.

Defendants The Key School, Inc. and The Key School Building and Finance Corporation (collectively "Key School Defendants") do not – and indeed cannot – deny that the General Assembly intended to provide a remedy to survivors of sexual abuse. Rather, Defendants argue that the 2017 amendment to the child sex abuse statute of limitations provided it with a "vested right" that renders the CVA unconstitutional under Maryland law. Defendants point to uncodified language in the 2017 law to claim that the prior amendment is a statute of repose rather than a statute of limitations. This argument fails under well-settled principles set forth by the Maryland

[1] In the alternative, we ask the Court to deny Defendants' motion without prejudice.
[2] Maryland was one of 14 states that changed its statute of limitations in 2023, establishing a total of 28 jurisdictions that have changed the applicable statute of limitations in child sexual abuse cases since 2002. Child USA, 2023 SOL Tracker, available at https://childusa.org/2023sol/.

Supreme Court that provide a framework for determining whether a law is a statute of repose or limitations. Applied here, those principles demonstrate that the CVA is a statute of limitations, which the General Assembly is free to modify under Maryland's constitution.

Further, even if recast as a statute of repose, the 2017 statute cannot immunize Defendants, as it does not excuse the Defendants' own misconduct – i.e. the longstanding and extensive cover-up of wrongdoing by its employees that they have perpetuated until very recently following an investigation by the law firm Kramon & Graham. *See* Ex. 1 (Kramon & Graham Report). Defendants' fraudulent concealment renders Plaintiff's claims well within any statute of repose. Even if Defendants had vested rights here, those rights can be modified based on the compelling justification for the CVA. Therefore, to the extent the Court considers Defendants' substantive arguments, Defendants Motion should be denied.

PLAINTIFF'S ALLEGATIONS

Plaintiff's Complaint sets forth the horrific abuse she suffered and, contrary to Defendants' Motion, Defendants' ample notice of Ms. Bunker's abusers' propensity for abusing children. Plaintiff incorporates those allegations by reference so that they need not be repeated here, *see generally* Pl.'s Compl., ECF No. 1., but notes that the facts reflect a predatory environment fostered by the culture Defendants sought to create. The Key School environment is described in detail by Kramon & Graham in an investigative report requested by the Key School Board of Trustees. *See generally* Ex. 1. This is the environment Ms. Bunker was subjected to as a young child, and she was not alone. Her trauma stemming from the vile abuse she suffered at the hands of Key School staff haunts her to this day.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) requires merely that the complaint must contain a

"short and plain statement of the claim showing the pleader is entitled to relief." This rule is intended to provide defendants with "fair notice" of the claim and the grounds upon which the plaintiff is entitled to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

To survive a motion under Rule 12(b)(6), a complaint must contain facts sufficient to "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. A plaintiff need not include "detailed factual allegations" to satisfy Rule 8(a)(2). *Twombly*, 550 U.S. at 555. The federal pleading standards "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 10 (2014) (per curiam). But, mere "'naked assertions' of wrongdoing" are generally insufficient to state a claim for relief. *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (citation omitted).

In reviewing a Rule 12(b)(6) motion, "a court 'must accept as true all of the factual allegations contained in the complaint,' and must 'draw all reasonable inferences [from those facts] in favor of the plaintiff.'" *Retfalvi v. United States*, 930 F.3d 600, 605 (4th Cir. 2019) (alteration in *Retfalvi*) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)). "A court decides whether [the] standard is met by separating the legal conclusions from the factual allegations, assuming the truth of only the factual allegations, and then determining whether those allegations allow the court to reasonably infer" that the plaintiff is entitled to the legal remedy sought. *A Society Without a Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011), *cert. denied*, 566 U.S. 937 (2012).

Defendants' sole argument for dismissal is that the CVA is unconstitutional under Maryland law. Thus, the Court must apply Maryland law to determine whether Defendants' arguments are valid. *See Maryland Shall Issue, Inc. v. Hogan*, 963 F.3d 356, 367 (4th Cir. 2020).

Under Maryland law, statutes enjoy a "strong presumption of constitutionality and the party attacking it has the burden of affirmatively and clearly establishing its invalidity" *beyond a reasonable doubt*. *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) (citations omitted); *see also State v. Gurry*, 121 Md. 534, ¶ 7 (1913) (holding that "unless it plainly, and beyond all question, exceeds the [legislative] power, there should be no judicial interference."). In other words, the challenger "must demonstrate 'a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.'" *In re Emergency Remedy by Maryland State Bd. of Elections*, 483 Md. 371, 391 (2023) (quoting *Mahai v. State*, 474 Md. 648, 662 (2021)).

Courts are "reluctant to find a statute unconstitutional if, by any construction, it can be sustained." *Whittington v. State*, 474 Md. 1, 19 (2021) (citations omitted). After all, "[c]ourts are under a special duty to respect the legislative judgment where the legislature is attempting to solve a serious problem in a manner which has not had an opportunity to prove its worth." *Bowie Inn, Inc. v. City of Bowie*, 274 Md. 230, 237 (1975). To the extent that this case turns on statutory interpretation, this Court's obligation is to ascertain legislative intent by looking first to the legislative text and then confirming its purposes by reviewing legislative history. *Harford Cnty. v. Mitchell*, 245 Md. App. 278, 283 (2020). When that leads to an unambiguous result, a court's "inquiry is at an end." *Id.* (quoting *Breitenbach v. N.B. Handy Co.*, 366 Md. 467, 473 (2001)).

I. THE GENERAL ASSEMBLY ENACTED A VALID EXTENSION OF THE STATUTE OF LIMITATIONS.

The Maryland Constitution vests the General Assembly with plenary power to legislate, limited only by any constitutional "prohibition against its adoption." *Kenneweg v. Allegany Cnty. Comm'rs*, 102 Md. 119, 62 A. 249, 250 (1905). Thus, the General Assembly defines the state's public policy through its exercise of the state's inherent power "to prescribe . . . reasonable regulations necessary to preserve the public order, health, safety, or morals." *Tighe v. Osborne*,

149 Md. 349, 131 A. 801, 803 (1925).

Within that broad authority, the General Assembly may enact statutes of limitations, reflecting "the legislature's judgment about the reasonable time needed to institute [a] suit." *Doe v. Maskell*, 342 Md. 684, 689 (1996). Limitation periods "represent expedients rather than principles" and "a public policy about the privilege to litigate." *Id*. (quoting *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)).

Moreover, statutes of limitations are "expression[s] of legislative policy to be implemented by and in the courts." *Murphy v. Liberty Mut. Ins. Co*., 478 Md. 333, 345-46 (2022). Although courts defer to the legislative choices expressed in a statute of limitations, the law recognizes that they are not "immutable," and the "deadline for filing an action seemingly set forth in a statute of limitations may be extended and, in some cases, shortened." *Id*. at 343-44. It falls to the courts to determine when a cause of action accrues. *Id*. at 344. Courts have also developed doctrines that delay accrual of a cause of action, such as a "discovery rule" and "judicial tolling." *Id*, at 344-45.[3] The judiciary can even issue an administrative tolling order that considers society-wide impediments to court access, as occurred during the COVID pandemic. *Id*. at 340. These examples demonstrate the General Assembly's broad powers to alter statutes of limitations.

The Maryland Supreme Court has recognized that altering statutes of limitations can be justified when "'possible injustice in these situations outweighed interests in repose and administrative expediency.'" *Id*. at 376 (quoting *Hecht v. Resol. Tr. Corp.*, 333 Md. 324, 335 (1994)). Judicially imposed tolling may take place based on "persuasive authority or persuasive

[3] The Indiana Supreme Court held that a discovery rule is constitutionally required by the privileges and immunities and open courts clauses of its state constitution. *Martin v. Richey*, 711 N.E.2d 1273, 1277 (Ind. 1999). The Maryland Constitution has similar provisions. *E.g.*, Md. Const. Decl. of Rts. Arts. 19, 24.

policy considerations" as long as tolling would be "consistent with the generally recognized purposes for the enactment of statutes of limitations." *Id*. at 377 (citation omitted).

If courts can modify statutes of limitations, the General Assembly certainly has the authority to do so. In fact,

> the Legislature has the power to amend a statute of limitations either by extending or reducing the period of limitations, so as to regulate the time within which suits may be brought, provided that the new law allows a reasonable time after its enactment for the assertion of an existing right or the enforcement of an existing obligation.

Hill v. Fitzgerald, 304 Md. 689, 702-03 (1985) (quoting *Allen v. Dovell*, 193 Md. 359, 363-64 (1949)).

Statutes of limitations can be modified because they are procedural in nature, rather than rights or remedies. *See State v. Smith*, 443 Md. 572, 594 (2015) ("[T]his Court has held that such procedural statutes (e.g. statutes that change a statute of limitations) operate retrospectively."); *Doughty v. Prettyman*, 219 Md. 83, 88 (1959) ("Included in the procedural matters governed by the law of this state is the statute of limitations."); *Roe v. Doe*, 193 Md. App. 558, 577-78 (2010), *aff'd*, 419 Md. 687, 20 A.3d 787 (2011) ("a lengthened statute of limitations is 'procedural' – that is, it does not alter substantive rights . . . ."). In addition, a change in the statute of limitations merely affects the remedy, rather than the cause of action. *Waddell v. Kirkpatrick*, 331 Md. 52, 626 A.2d 353, 356 (1993).

The procedural nature of limitations periods is significant because:

> "[N]o person has a vested right in a particular remedy for enforcement of a right, or in particular modes of procedure, or rules of evidence. The legislature may pass retroactive acts changing, eliminating, or adding remedies, so long as efficacious remedies exist after passage of the act."

Langston v. Riffe, 359 Md. 396, 423 (2000) (quoting 2 Norman J. Singer, Sutherland's Statutory Construction, § 41.16, at 429 (5th ed. 1993)) (footnote omitted). Indeed, "[t]here is, of course, no

absolute prohibition against retroactive application of a statute." *State Comm'n on Hum. Rels. v. Amecom Div. of Litton Sys., Inc*., 278 Md. 120, 123 (1976). That is why *Langston* held that, "if the statute contains a clear expression of intent that it operate retrospectively, or the statute affects only procedures or remedies, it will be given retroactive application." *Id*. at 124.

The CVA plainly qualifies for that approach. It changes the statute of limitations to provide a well-recognized remedy for childhood survivors of sexual abuse.

II. THE 2017 LAW IS A STATUTE OF LIMITATIONS, NOT A STATUTE OF REPOSE.

Defendants' argument that CJP § 5-117(d), as enacted in 2017, is a statute of repose is a quintessential example of form over function. Defendants repeatedly highlight examples of the 2017 law being dubbed a "statute of repose." However, as Abraham Lincoln once observed, calling a tail a leg does not make it a leg. David Herbert Donald, *Lincoln* 396 (1995) (cited by *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1167 (9th Cir. 2013)). Defendants avoid any analysis of the substantive issue: is the 2017 version of § 5-117(d) a "statute of repose" as a matter of law?

On this question, highlighting the number of "statute of repose" references in uncodified language of § 5-117(d) is neither dispositive nor relevant. Our courts have observed that statutes of repose may be close cousins to statutes of limitations, *Murphy*, 478 Md. at 344 n.5, "often used interchangeably" in error, *Mathews v. Cassidy Turley Md., Inc*., 435 Md. 584, 611 (2013), even by courts that should know better. *See Anderson v. United States*, 427 Md. 99, 117 (2012) (ascribing a certified question from a federal court to loose use of "repose" in a prior opinion). However, statutes of repose and statutes of limitations are distinct – and the distinction makes a critical difference. As set forth below, the plain language, structural makeup, and legislative history of § 5-117(d) reveals it is a statute of limitations, not a statute of repose.

A. Section 5-117(d) Is a Statute of Repose Based on Its Plain Language and Structure.

Defendants repeatedly cite *Anderson*, but misconstrue its holding. *Anderson*, Maryland's leading case distinguishing statutes of limitations from statutes of repose, establishes that § 5-117(d) does not qualify as a statute of repose. It instructs courts to "look holistically at [a] statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Id.* at 124. The only undisputed statute of repose in Maryland, § 5-108, limits claims against property owners, construction companies, engineers, and architects for injuries sustained because of negligent building design and construction. *See* CJP § 5-108.

Before *Anderson*, various Maryland opinions referred to a time bar for medical malpractice claims, § 5-109, as both a statute of repose and statute of limitations. *Anderson*, 427 Md. at 105-06. In 2012, *Anderson* definitively established that § 5-109 is a statute of limitations, primarily due to the statute's structure. *Id.* at 127. The court identified four structural factors that distinguish statutes of limitations from statutes of repose:

- **Statutes of repose involve time limits that relate to defendants' actions, not plaintiffs' injuries.** *Anderson* noted that a "statute of repose" is defined as a "statute barring any suit that is brought after a specified time since the *defendant acted* (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." *Id.* at 117 (emphasis added). *Anderson* concludes: "Statutes of repose differ from statutes of limitation in that the trigger for a statute of repose period is *unrelated* to when the injury or discovery of the injury occurs." *Id.* at 118 (emphasis added).

- **Statutes of repose can eliminate claims that have not yet accrued.** "[A] statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id.* at 119.

- **Statutes of repose cannot be tolled.** They are "an absolute time bar" which cannot be tolled "by fraudulent concealment," minority, or many other reasons. *Id.* at 121.

- **Statutes of repose are created due to public policy favoring absolute shelter for certain groups after a certain period of time.** *Anderson* notes that a statute of repose is one that "shelters legislatively-designated groups from an action after a certain period of time." *Id.* at 118. In enacting one, the legislature must "balance[] the economic best interests of the public against the rights of potential plaintiffs and determines an appropriate period of time, after which liability no longer exists." *Id.* at 121.

The last factor reflects the well-understood concept that, even when fundamental rights are impinged, the legislature may adjust the burdens and benefits of economic life where compelling interests exist. *See Montgomery Cnty. v. Walsh*, 274 Md. 502, 512 (1975).

All the *Anderson* factors establish that the 2017 version of § 5-117(d) is a statute of limitations.

1. Section 5-117(d)'s Clock Is Not Triggered By a Defendant's Actions.

Anderson acknowledges that the "plain language of the statute controls" whether the statute relates to plaintiff or defendant. *Id.* at 125. Based on the plain language, the Court concluded that § 5-109 is a statute of limitations largely because the statute's time limit is tied to "the date of an injury" which the Court observed does not necessarily "coincide . . . with the date of an allegedly wrongful act or omission." *Id.* at 126.

Anderson's analysis and holding tracks other cases. "A statute of repose . . . puts an outer limit on the right to bring a civil action. That limit is measured not from the date on which the claim accrues but instead from the *date of the last culpable act or omission of the defendant*." *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014) (emphasis added); *Mathews*, 435 Md. at 611-12 ("The chief feature of a statute of repose is that it runs from a date that is *unrelated to the date of injury* . . . . As a result, a statute of repose can sometimes foreclose a remedy before an injury has even occurred and before any action could have been brought.") (emphasis added).

Anderson likewise found that "the trigger for a statute of repose period is unrelated to when the injury or discovery of the injury occurs." 427 Md. at 118; *see also id.* at 119 (holding that

"statutes of limitation and statutes of repose are differentiated consistently and confidently by whether the triggering event is an injury or an unrelated event; the latter applying to a statute of repose"). This finding was a key justification for the *Anderson* Court's holding that § 5-109 was a statute of limitations, not a statue of repose. *Anderson*, 427 Md. at 127; *see also id.* at 121 ("The language of the statute of repose, § 5–108, indicated clearly that the Legislature intended to tie the accrual of the cause of action to the date of completion of a particular property improvement because traditional tolling mechanisms expanded the liability of defendants."). Like § 5-109, § 5-117(d) is triggered only by the existence of an alleged injury and the passage of time tied to the victim's age, not anything the potential defendant did.

In 2017, the General Assembly sought to modify § 5-117(d) governing the statute of limitations for childhood sexual abuse. In amending the statute, the legislature, through uncodified language, relabeled the statute of limitations a statute of repose. Yet, despite this uncodified language, the legislature failed to craft a statute of repose. The uncodified language of the 2017 law merely purports to bar "actions that were barred by the application of the period of limitations applicable before October 1, 2017," when the law became effective. *See* ECF No. 20. Merely calling something a statute of repose does not make it so. *Anderson*, 427 Md. at 102. Rather, the structure and elements of a statute of repose established in *Anderson* are required. Because § 5-117(d contains none of the elements required in *Anderson*, it remains a statute of limitations as it always was. Importantly, the supposed repose period remains inextricably linked to the operation of the preexisting statute of limitations, maintaining the injury trigger, rather than an act unrelated to the injury, as *Anderson* requires. In effect, the uncodified language of § 5-117(d) purports to dress a statute of limitations in the clothing of repose—that is, to call a tail a leg.

Defendants try to avoid this conclusion, suggesting that the clock in § 5-117(d) is triggered

by the date the plaintiff reaches the age of majority. *See* ECF No. 20. This argument, however, ignores that a statute of repose extinguishes or preempts an otherwise viable claim based on when the potentially actionable conduct occurred, not the plaintiff's status. Section 5-117(d) utterly omits reference to a "specified time since the defendant acted" (e.g., when a defendant hired an alleged abuser, or allowed an alleged abuser to continue working despite evidence of a propensity to abuse children). *Cf. Anderson*, 427 Md. at 117. Because § 5-117(d) "is not related to an event or action independent of the potential plaintiff," which is a hallmark of statutes of repose, it must be construed as a statute of limitations. *Id.* at 126.

Defendants' suggestion that the trigger is the date on which a plaintiff reaches majority as opposed to the date of an injury is of no consequence. Either way, the triggering event is plaintiff-focused and utterly unrelated to the defendant. Very simply, the timeline does not begin to run until a child is sexually abused. Section 5-117(d) is not implicated without that event occurring. The contrast with property-based or product-liability repose periods is stark. Each of those causes of action are affected by a repose period that commences once an improvement to property or placement of the product in the stream of commerce occurs. No potential plaintiff is even in the picture. Yet, the 2017 Act is entirely about the injured plaintiff in measuring an applicable time period. *Anderson* makes clear that that trigger only applies to statutes of limitation, even if labeled one of repose. Accordingly, in light of binding precedent, § 5-117(d) must be a statute of limitations and cannot be construed as a statute of repose.

2. Section 5-117(d) Does Not Bar Unaccrued Claims.

The second factor distinguishing § 5-117 as a statute of limitations, rather than a statute of repose, is that "a statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Anderson*, 427 Md. at 119; *see also Streeter v. SSOE Sys.*, 732 F. Supp. 2d 569, 577 (D. Md. 2010) ("[T]he difference between a statute of limitations and statute

of repose is that in the former, a cause of action has already accrued and a limitation is placed on the time an injured individual has to file a claim, and in the latter, a limitation is placed on the time in which an action may accrue should an injury occur in the future."). Section 5-108 (a recognized statute of repose) states that "no cause of action for damages accrues" when an injury related to an improvement to real property "occurs more than 20 years after the date the entire improvement first becomes available for its intended use." The *Anderson* Court observed that § 5-109 operates differently (and thus was not a statute of repose) because it "is triggered by the cause of action itself—the injury" and "[t]he time period is not related to an event or action independent of the potential plaintiff." 427 Md. at 126.

Here, too, § 5-117(d) does not apply unless and until an injury has accrued. Thus, this factor also requires construing the statute as a statute of limitations rather than a statute of repose.

3. Section 5-117(d) Is Subject To Tolling.

Third, subjecting a time limitation "to explicit tolling for fraudulent concealment and minority" is another factor in favor of finding a law to be a statute of limitations rather than a statute of repose. *Anderson*, 427 Md. 99 at 125. Both forms of tolling apply to § 5-117(d).

The provision specifies a time bar that implicitly incorporates minority-based tolling. It refers to cases that arise "out of an alleged incident or incidents of sexual abuse," tolls the time bar until "the victim reaches the age of majority," then offers an additional 20 years. *See* ECF No. 20. This provision mirrors § 5-109(e), which explicitly permits tolling based on minority. Because § 5-117(d) permits minority-based tolling, it cannot be considered a statute of repose.

The discovery rule also applies to § 5-117. The sponsor of Senate Bill 505 ("SB 505") testified: "The discovery rule is applicable in all actions, and the cause of action accrues when the victim knew or should have known that Maryland law provides a right of action to a person so abused during his/her childhood." *See* ECF No. 20. The legislature's expressed intent that the

discovery rule would apply to § 5-117 actions is strong evidence that subsection (d) is not a statute of repose, which by definition cannot be tolled. *Carven v. Hickman*, 135 Md. App. 645, 652 (2000).

When the General Assembly enacted § 5-117 in 2017, it did so with the insight of the *Anderson* decision five years earlier. *See Lawrence v. State*, 475 Md. 384, 414 (2021) (the "General Assembly is presumed to be aware of this Court's interpretation of its enactments") (quoting *Williams v. State*, 292 Md. 201, 210 (1981)).[4] Had the General Assembly intended § 5-117 to be a statute of repose, it would have drafted the statute so it was triggered based on an act independent of injury, eliminated unaccrued claims, and could not be tolled. Because these key characteristics are missing from § 5-117(d) – subsection (d) is triggered by injury, does not eliminate unaccrued claims, and tolls for minority – it is a statute of limitations.

4. The General Assembly Did Not Intend to Grant Special Immunity to Child Predators and Their Institutions.

Anderson urges courts to look to policy considerations to determine whether a law should be construed as a statute of limitations or statute of repose. *Anderson*, 427 Md. at 118, 121. The presumption is that statutes of repose are intended as "shelters [for] legislatively-designated groups." *Id.* at 118; *see also First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989) ("Statutes of repose are based on considerations of the economic best interests of the public as a whole and are substantive grants of immunity based on a legislative balance of the respective rights of potential plaintiffs and defendants.").

Defendants argue that, in enacting the 2017 law, the General Assembly recognized institutional defendants who hired sexual predators, facilitated their sexual abuse of innocent

[4] Similarly, Oregon courts held that its legislature could carve out child abuse from the state's ultimate statute of repose without offending the state constitution, even though it revived claims that were potentially decades old, because of tolling provisions that existed in the repose statute. *Sherman v. State*, 464 P.3d 144, 149 (Or. App. 2020), *aff'd*, 492 P.3d 3 (Or. 2021).

children, and covered up their crimes as a group worthy of legislative shelter. *See* ECF No. 20. Quite simply, the legislature could not have intended to provide a special and exceedingly rare legislative privilege – a statute of repose – in favor of every person and organization charged with protecting a child from sexual abuse but who failed to do so.

This conclusion is buttressed by considering the economic and policy factors that support Maryland's only statute of repose: § 5-108. That statute deals with professional liability for defective improvements to real property. Improvements to real property are economic drivers, and the protection of the statute of repose reflects the public interest in balancing redress with a strong economy. By contrast, there are no identifiable economic benefits, or any other public benefits, created by a statute sheltering those who enabled and committed child sexual abuse, a horrific and life-changing injury.

B. The Legislature Did Not Intend § 5-117(d) to Create a Statute of Repose or Create Vested Rights.

The legislative purpose and history of § 5-117 is relevant to evaluating whether the General Assembly intended to create a statute of repose and vested rights, as the Defendants suggest. *See Anderson*, 427 Md. at 106. Defendants attempt to paint a picture suggesting that amending § 5-117(d) to become a statute of repose permeated all conversations surrounding the law, but this is inaccurate. Defendants fail to identify any legislative record indicating that the constitutional and policy implications of a statute of repose were discussed, or the impact a statute of repose would have on the class of individuals the bill was designed to protect: survivors of childhood sexual assault. The legislative record lacks an intention by the General Assembly to create an immutable time bar or to create vested rights for those who failed to protect children from horrific sexual abuse. Rather, lawmakers were using the term "repose" colloquially without understanding or intending the implications that Defendants now suggests and which as *Anderson* notes is

commonplace – but erroneous.

1. The Legislative History Does Not Showcase Any Intent to Create Vested Rights.

House Bill 642 ("HB 642") and SB 505 were promoted continuously as benefiting survivors of childhood sexual abuse by expanding their statute of limitations. In his written testimony to the House Judiciary Committee, Delegate C.T. Wilson, the lead sponsor of HB 642, described the bill as "alter[ing] the statute of limitations on civil actions arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor." Ex. 2 (Written Testimony of C.T. Wilson). He concluded that the bill "will allow victims who have suffered through child sexual abuse and have endured the long-term emotional and psychological effects an opportunity to seek economic relief from those who have victimized them." *Id.* Similarly, written testimony from Advocates for Children and Youth stated, "We urge this Committee to issue a favorable report on HB 642 to raise the civil statute of limitations for sexual abuse from age 25 to age 38 to allow more victims of sexual abuse to pursue civil remedies for their victimization." Ex. 3 (Written Testimony of Advocates for Children and Youth, February 23, 2017). Studies were cited by various groups displaying the need for a longer statute of limitations period due to delayed reporting caused by a litany of factors. Ex. 4 (Written Testimony of David Lorenz); Ex. 5 (Written Testimony of Protect Maryland's Children, dated February 14, 2017); Ex. 6 (Written Testimony of Mid Atlantic P.A.N.D.A. Coalition, dated February 14, 2017).

Inoculating entities that harbored child sexual abusers under their employ from civil liability in perpetuity is not mentioned as one of the legislation's goals. Nor does the legislative record reflect written testimony explaining the actual impact of a statute of repose. This is because a statute of repose, as understood as a matter of law, was never intended to be included in the bill. Though uncodified language was inserted in the bill to suggest a statute of repose was crafted and

intended, this was done without a fully informed debate on the issue.

A comparison to the legislative history surrounding another legislative enactment related to a statute of repose, namely creating an asbestos exception to § 5-108, is critically instructive. During the 1990 and 1991 legislative sessions, the General Assembly considered and ultimately succeeded in amending § 5-108 to allow personal injury lawsuits to be brought for asbestos-related injuries, even if they had expired under the statute. The legislative record reflects that, while the amendment was being scrutinized, considerable discussion took place about the statute of repose and its impact. Ex. 7 (Senate Bill 335 Floor Report); Ex. 8 (Senate Bill 335 Bill Analysis); Ex. 9 (Written Testimony of Chief Legislative Officer David Iammucci). The debate yielded letters from the governor, attorney general, and the Department of Fiscal Services. *See* Ex. 10 (Written Testimony from Chief Legislative Officer David Iammucci, March 21, 1990); Ex. 11 (Letter from the Attorney General, April 30, 1991); Ex. 12 (Fiscal Note for Senate Bill 335). The Department of Legislative Reference also provided a detailed 11-page letter on how a statute of repose works, and the Attorney General also provided additional analysis during the prior legislative session. Ex. 13 (Letter from the Dep't of Legislative Services, dated January 11, 1990); Ex. 14 (Letter from the Attorney General, dated February 15, 1990). No similar discussion accompanied the purported statute of repose provision inserted in HB 642 and SB 505.

With one exception, Defendants fail to cite a single portion of the legislative record where "concern about the prejudice to defendants (including institutional defendants) in defending against stale claims based on long-ago conduct"[5] was discussed in relation to the impact of a statute of repose. *See* ECF No. 20. The exception – indeed, the only document amongst the 82 pages of

[5] Also, "disposing of stale claims" has been held to constitute a motivation for a statute of limitations and not a statute of repose. *SVF Riva Annapolis*, 459 Md. at 636 n.1.

the 2017 House and Senate bill files that uses the term "vested rights" – is Exhibit 15, a mysterious "Discussion of certain amendments in SB0505/818470/1." *See* ECF No. 20. Unlike all other written testimony in the bill files, this document is not addressed to anyone, does not identify an author, is undated, is not on letterhead, and does not specifically state it is written testimony. It is unclear whether any member or staff of the General Assembly saw it at all. It is not even clear if this document pertained to the final version of the bill. Defendants are utterly silent on these glaring issues with Exhibit 15. Because its provenance is unknown, it does not qualify for judicial notice. *See Faya v. Almaraz*, 329 Md. 435, 444 (1993) (requiring verification of documents noticed by a trial court). As such, the exhibit should be disregarded.

2. Defendants' Arguments on Legislative Intent Are of No Moment.

Here, Defendants spill considerable ink detailing legislative history from prior Maryland legislatures that declined to completely abrogate the statute of limitations applicable to childhood sexual abuse claims, imposed a so-called statute of repose, and were told and then chose not to abrogate the statute of repose. *See* ECF No. 20. But while legislative history can help determine legislative intent, *United States v. Wise*, 370 U.S. 405, 414 (1962), the information courts find useful in that endeavor is "with reference to the circumstances existing at the time of the passage." *Id*. at 411. Just as the views of subsequent legislatures are of "no persuasive significance," *id*., earlier legislative inaction has no import for the task at hand. *Cf. Automobile Trade Ass'n v. Insurance Comm'r*, 292 Md. 15, 24 (1981) (noting that rejection of a bill is a "rather weak reed upon which to lean in ascertaining legislative intent."). As the above-cited authority demonstrates, none of that history bears upon the meaning or scope of the 2023 statute.

III. THE 2017 LAW DOES NOT RENDER THE CVA UNCONSTITUTIONAL.

Defendants assail the CVA's constitutionality on the sole ground that the CVA amounted to an "unconstitutional" "abrogation" of the "vested right" created by the 2017 version of § 5-

117(d), in alleged violation of the due process and takings clauses of the Maryland Constitution. *See* ECF No. 20. This argument fails for at least four reasons: (1) The 2017 version of § 5-117 did not and could not have created vested rights; (2) even if that enactment created a statute of repose that provided an immunity from suit, the General Assembly has the authority to retroactively abrogate immunities; (3) the General Assembly, with the blessing of the Attorney General, has previously created an exception to the statute of repose at CJP § 5-108 with retroactive effect; and (4) the allegations against Defendants do involve a continuing violation of their duty as a fiduciary to the plaintiff and thus are not covered by the repose statute.

A. The 2017 Law Should Still be Read as a Statute of Limitations.

A court may dispose of a constitutional challenge on non-constitutional grounds and should endeavor to do so whenever possible. Sutherland on Statutory Construction § 72:3 (8th ed.) ("Courts presume legislation is constitutional and resolve any doubt about the validity of a statute or amendment in favor of sustaining the legislation, and an important corollary of this presumption directs courts to avoid the question about an act's constitutionality in the first place, if possible."). Under the canon of constitutional avoidance, a statute that can be read in a manner that makes it constitutional or in a manner that requires a determination of its constitutionality should be construed the first way whenever possible. *Koshko v. Haining*, 398 Md. 404, 425 (2007); *see also Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems."). For the reasons set forth above and consistent with the doctrine of constitutional avoidance, this court should find that the 2017 law is a statute of limitations.

B. Because the 2017 Version of § 5-117 is a Statute of Limitations, It Did Not Create Vested Rights.

Because the 2017 law was a statute of limitations, it did not create any vested rights. In Maryland, "a vested right is 'something more than a *mere expectation* based on the anticipated continuance of the existing law; *it must have become a title,* legal or equitable, to the present or future enjoyment of a property.'" *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 560 (2011) (citing *Allstate Ins. Co. v. Kim,* 376 Md. 276, 298 (2003)). "[R]etrospective statutes may not abrogate vested property rights." *Id.* For example, a statute that completely eliminates a remedy impermissibly abrogates a vested right. *See Muskin*, 422 Md. at 563 (by "'[c]ut[ting] off *all* remedy . . . in such a way as to preclude any opportunity to bring suit,' the Legislature 'deprive[s improperly] a party of his [accrued] cause of action'").

Still, the Maryland Supreme Court has identified an exception to that rule and "held consistently that the Legislature has the power to alter the rules of evidence and remedies, which in turn allows statutes of limitations and evidentiary statutes to affect vested property rights." *Id*. at 561; *see also Allen*, 193 Md. at 363–64 (holding that the Legislature has the power to amend statutes of limitations so long as there is a reasonable time for enforcement of a cause of action); *Thistle v. Frostburg Coal Co.*, 10 Md. 129, 145 (1856) (holding that the Legislature has the power to alter and remodel the rules of evidence and remedies).

As set forth above, the 2017 version of § 5-117(d) is a statute of limitations. As the Supreme Court has repeatedly indicated, statutes of limitation do not create vested rights. *See Hill*, 304 Md. at 702–03 (citing *Allen*, 193 Md. at 363–64); *Berean Bible Chapel, Inc. v. Ponzillo*, 28 Md. App. 596, 601 (1975) (citing *Allen*, 193 Md. at 359) (emphasis added)); *Muskin*, 422 Md. at 561-62 (2011); *Simmons v. Md. Mgmt. Co.*, 253 Md. App. 655, 699, *cert. denied*, 479 Md. 75 (2022). More generally, a party can have no vested right in an affirmative defense. The Supreme Court has

repeatedly observed that "[w]e along with other jurisdictions, . . . have determined that the elimination of an affirmative defense does not hinder, eliminate, or modify a substantive right, and thus, a statute or rule that eliminates an affirmative defense can be applied retrospectively." *Rawlings v. Rawlings*, 362 Md. 535, 560 n.21 (2001) (citing *Waddell v. Kirkpatrick*, 331 Md. 52, 59 (1993) (stating that a "statute of limitations affects only the remedy, not the cause of action")).

All of this is an application of the more general principle that "a person does not have an inherent vested right in the continuation of an existing law[.]" *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003). *State v. Smith*, 443 Md. 572, 594 (2015); M.L.E. Constitutional Law § 132 ("Except as they may be expressly protected by constitutional provisions, no one has a vested right in the rules of practice or modes of procedure in force when a cause of action accrues or an action is brought, and such rules or modes may be changed or modified without affecting vested rights.").

This is particularly the case in the context of remedial statutes like the CVA. Statutes are remedial if they "improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries" or "they are designed to correct existing law." *State v. Smith*, 443 Md. 572, 592 (2015) (*per curiam*) (citations omitted); *see also Langston*, 359 Md. at 409 ("[E]very statute that makes any changes in the existing body of law, excluding those enactment which merely restate or codify prior law, can be said to 'remedy' some flaw in the prior law or some social evil.") (Quoting Sutherland's Statutory Construction, § 60.02, at 152); *State v. Barnes*, 273 Md. 195, 208 (1974) (statutes are remedial if they are "designed to correct existing law, to redress existing grievances, and to introduce regulations conducive to the public good").

In *Rawlings*, for example, the petitioner appealed from a trial court order that applied Md. R. Civ. P. 15-207(e) retroactively and found him in civil contempt for failure to pay child support. *Id*. at 102. Because the statute did not affect any substantive rights of the parent or child, the

legislature was permitted to pass procedural acts "changing, eliminating, or adding remedies, so long as efficacious remedies exist after passage of the act." *Id*. at 112.

The CVA is self-evidently designed to correct existing law. Remedial statutes are valid if the legislature had the power to do in the initial legislation what it enacted in the curative legislation. *Berean Bible Chapel, Inc.*, 28 Md. App. at 600 (citing 2 Sutherland, Statutes and Statutory Construction § 41.11) ("The test usually used for determining the validity of curative acts may be stated thusly: if the legislature had the power to enact originally the matters now sought to be enacted as curative, such legislation is valid."). Moreover, "a remedial statute may be given retrospective effect without unconstitutionally infringing on vested rights if the new statutory remedy redresses a preexisting actionable wrong." *Rawlings*, 362 Md. at 535, 560 (citation omitted). In providing childhood sexual abuse survivors an appropriate length of time to seek redress, Ex. 15 (Delayed Disclosure Fact Sheet), the CVA clearly did just that.

C. The General Assembly Previously Has Retroactively Created an Exception to the Statute of Repose to CJP § 5-108 to Permit Recovery for Causes of Action Arising from Asbestos Exposure that has Never been Challenged or Repealed.

In 1970,[6] the General Assembly created a statute of repose for improvements to real property. CJP § 5-108. In 1991, the legislation was amended to add an exception for asbestos claims. Section 5-108(d)(2), which provides that the time limitations applicable to property owners (20 years) and architects, builders, and engineers (10 years), do not apply in certain actions arising from exposure to asbestos. CJP § 5-108(a)(2), (d)(2).[7]

The language of the enactment indicates the changes were to be applied retroactively to revive asbestos-related claims that had been extinguished because of expiration of the 10-year or

[6] *See* 1970 Md. Laws Ch. 666, attached as Ex. 16.
[7] *See* 1991 Md. Laws Ch. 271 (SB 335), attached as Ex. 17.

20-year periods of limitation. Under the 1991 law, property damage claims arising from the use of asbestos could be brought as to any structure made available for use after July 1, 1953. CJP § 5-108(d)(2)(iv)(3). Although § 5-108(a) and (b) would only allow claims for buildings put into use 10 or 20 years prior to the action being instituted, the new exception applied to buildings made available 38 years prior—indicating the 10- or 20-year periods did not apply to current or expired asbestos-related claims. And in § 5-108(d)(2)(iv)(5), the General Assembly set a two-year deadline by which claims under the asbestos exception needed to be filed. The legislation was a recognition of the long latency period for asbestos-related disease and the need to provide compensation to those injured. *See Duffy v. CBS Corp.*, 458 Md. 206, 230 (2018).

The legislative history of the enactment also indicated that the amendment was to apply retroactively, except only as to claims for which a final judgment was entered. *See* Senate Bill 335, section 2 (uncodified) (1991) (Ex. 17); Senate Bill 335 Floor Report (noting that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose") (Ex. 7); Senate Bill 335 Fiscal Note (stating, "This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.") (Ex. 12).

The Attorney General found no constitutional infirmity in this amendment. As then-Attorney General J. Joseph Curran, Jr. wrote, "We have previously advised that the statute of repose may be altered retroactively without violating due process." (Ex. 11 at 2.) A letter from then Assistant Attorney General Kathryn Rowe, regarding a predecessor bill that was vetoed and re-passed with amendments as Senate Bill 335, stated, "[I]t is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect

in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive." (Ex. 14 at 11.)

Moreover, *Duffy* acknowledged that the "1991 amendments to the statute of repose explicitly addressed defendants' liability in asbestos exposure cases by excluding 'asbestos manufacturers and suppliers' from the protections under the statute." 458 Md. at 228 (citing *Rose v. Fox Pool Corp.*, 335 Md. 351, 370 (1994)). The Court noted that the "legislative history of the statute of repose . . . is clear that the General Assembly intended to preserve the rights of individuals, who had suffered an asbestos-related injury, to file suit against manufacturers and suppliers of asbestos-containing products." *Id*. In fact, it was not the first time the General Assembly amended the statute of repose to "carve[] out additional exceptions to the protections afforded to defendants by the statute of repose." *Id*.

The General Assembly and the Attorney General approved of the amendment to § 5-108 – Maryland's only true statute of repose – that would have the retroactive effect of reviving time-barred claims. This amendment has been applied without question of its constitutionality continuously by Maryland's courts, as *Duffy* exemplifies. It strongly supports the idea that the CVA cannot be regarded as impairing vested and constitutionally protected rights.

D. The Cases Defendants Rely on to Support Their Vested Rights Argument are Inapplicable.

Defendants rely on *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57 (1972), to argue that "when a law retroactively revives a cause of action that was otherwise barred, the law violates due process." *See* ECF No. 20. *Smith* is inapposite. It concerned the retroactive application of a law lengthening the statute of limitations for a wrongful death claim – a creature of statute. See ECF No. 20.. The "statute of limitations" was not an ordinary time bar but was rather a condition

precedent to filing suit. *See, e.g.*, *Smith*, 266 Md. at 55-56; *Geisz v. Greater Balt. Med. Ctr.*, 313 Md. 301, 322 (1988) ("[T]he time period specified in the wrongful death statute is not an ordinary statute of limitations but is part of the substantive right of action.").

While a statute of limitations is procedural, a condition precedent is substantive. If the condition precedent cannot be met, then the plaintiff never had a cause of action that could be "revived." *Smith*, 266 Md. at 55-56. In other words, it would create liability for past acts where none existed. Statutes of limitations are different in that they affect only the remedy, not the underlying cause of action and are subject to waiver, unlike a condition precedent. *Georgia-Pac. Corp. v. Benjamin*, 394 Md. 59, 85 (2006).

Here, Plaintiff asserts only common law causes of action, where the statute of limitations is not a condition precedent to suit. CJP § 5-117 created no causes of action; rather, it applied a statute of limitations to common-law causes of action involving sexual abuse. As no condition precedent is at issue, *Smith* does not apply.

Indeed, then Assistant Attorney General Kathryn Rowe observed, when she commented on the bill that provided a retroactive abrogation of the statute of repose in § 5-108, as follows:

> No Court of Appeals case has extended the rationale of *Smith* beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. . . . Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the *Smith* case does not mandate the conclusion that it creates a vested right.

See ECF No. 20.

She also noted that *Smith* relied heavily upon *William Danzer & Co. v. Gulf of S.I.R. Co.*, 268 U.S. 633 (1925), which – while not explicitly overturned by the Supreme Court – was limited by *Inter'l Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers*, 429 U.S. 229 (1976). In that case, contrary to its holding in *Danzer*, the Supreme Court upheld retroactive extension of a

limitations period that was created simultaneously with the cause of action. *Id.* at 244.

Defendants also inaptly rely on *Dua v. Comcast Corp. of Md*., 370 Md. 604 (2002).[8] *Dua* concerns a factually distinct circumstance, where legislative action deprived the *plaintiffs* of a cause of action, versus a defense. Defendants fail to acknowledge that, as discussed above, the Supreme Court, *post-Dua*, held in *Kim*, that retroactive abrogation of an immunity did not impair vested rights, and distinguished between legislative action that retroactively impaired a cause of action versus retroactive impairment of a defense. This makes good sense. After all, Maryland has long recognized that a cause of action is a form of property, known as a "chose in action," and capable of assignment. *Med. Mut. Liab. Ins. Soc. of Md. v. Evans*, 330 Md. 1, 29 (1993). *Cf. Logan v. Zimmerman Brush Co*., 455 U.S. 422, 428 (1982) ("[A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."). It is created at the time of injury. On the other hand, when a defendant injures a person through misconduct, particularly intentional misconduct, it has no reliance interest or expectancy that it will not be subjected to liability that can be deemed a property right, sold, or assigned. Defendants' invocation of *Dua* wrongly conflates these two opposing effects of retrospective legislation and totally ignores *Kim.*

Dua further indicates that there is no total bar on impairment of vested rights. *See* ECF No. 20 ("The Maryland Supreme Court 'has consistently held that the Maryland Constitution *ordinarily* precludes the Legislature . . . from . . . reviving a barred cause of action, thereby violating the vested right of the defendant.'") (quoting *Dua*, 370 Md. at 633). Yet the Defendants

[8] Although Defendants mount both due process and takings challenges to the CVA, the analysis under each merge under *Dua*. *See Wynne v. Comptroller of Md.*, No. 1561, Sept. term 2021, 2023 WL 2521236, at *2 (Md. Ct. App. 2023) (unreported) ("Article 24 is a due process analog while Article III, § 40 is Maryland's version of the Federal Taking Clause. In *Dua*, the Court appeared to merge both provisions in its retroactivity analysis of state laws abrogating a person's right to a particular sum of money or a cause of action in a pending case."). Accordingly, they are both analyzed here under the rubric of vested rights.

try to contort the court's language in *Dua* suggesting that "[t]he ban on violating vested rights is categorical." *See* ECF No. 20. If Defendants were correct in their categorical approach, the asbestos exception to the statute of repose that Maryland courts have diligently implemented would be unconstitutional. Instead, the rational-basis test applicable to substantive due process applies and asks whether modifying a limitations period, a procedural regulation, is rationally related to a legitimate government interest. *See Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 352 (2020). The record here demonstrates that the General Assembly passed the CVA to vindicate the policy of providing survivors of childhood sexual abuse a remedy for longstanding psychological injuries resulting from that abuse and cover-up. Defendants have no vested right beyond the authority of the General Assembly to affect in a statute of limitations or statute of repose that would invalidate the constitutionality of the CVA.

E. Defendants' Due-Process Arguments Lack Merit.

Defendants make no assertion that the CVA violates any of their fundamental rights. Instead, they rely largely on a due-process claim.[9] Due process is subject only to rational-basis review, which is "the least exacting and most deferential standard of constitutional review" and sustains the legislation "so long as it is rationally related to a legitimate governmental interest." *Tyler v. City of Coll. Park*, 415 Md. 475, 501 (2010) (citations omitted).

The Connecticut Supreme Court rejected a similar argument holding a similar statute to be

[9] Although Defendants repeatedly claim a "substantive right," it nowhere in its memorandum uses the term "substantive due process." Substantive due process "refers to the principle that there are certain liberties protected by the due process clauses in the federal and State Constitutions from government interference, *unless the governmental action is narrowly tailored to satisfy an important government interest*." *Powell v. Maryland Dep't of Health*, 455 Md. 520, 548 (2017) (emphasis added). That is a form of "intermediate scrutiny" where the government interest must be "important," rather than compelling. *See Pizza di Joey, LLC*, 470 Md. at 347. Here, as established above, the interest is compelling.

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." *Doe v. Hartford Roman Cath. Diocesan Corp*., 317 Conn. 357, 405 (2015). The same result is warranted here.

The policies animating the CVA are compelling. The law promotes child safety and well-being by deterring child sexual abuse and providing victim-survivors with greater access to remedies to promote healing. *Cf. New York v. Ferber*, 458 U.S. 747, 756-57 (1982) ("It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling."); *Ashcroft v. Free Speech Coal*., 535 U.S. 234, 263 (2002) (O'Connor, J., concurring) ("The Court has long recognized that the Government has a compelling interest in protecting our Nation's children."). In fact, "[t]here is also no doubt that[] '[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.'" *Packingham v. North Carolina*, 582 U.S. 98, 98-99 (2017) (quoting *Ashcroft*, 535 U.S. at 244). "[A] legislature 'may pass valid laws to protect children' and other victims of sexual assault 'from abuse.'" *Id*. at 99 (citation omitted). *Cf. In re S.K*., 237 Md. App. 458, 469–70 (2018); *Dr. K. v. State Bd. of Physician Quality Assur*., 98 Md. App. 103, 120 (1993) ("[T]he State has a significant interest in protecting its citizens and the public health."). The CVA falls squarely within these compelling government interests. Defendants nowhere allege, and the record nowhere supports, that this enactment fails to advance these compelling interests.

Even if the Defendants could characterize the CVA as a taking, something that Plaintiff denies, the Takings Clause "do[es] not prohibit the government from taking property for public use." *Dabbs v. Anne Arundel Cnty*., 458 Md. 331, 348 (2018). There may be compensatory requirements when a taking goes too far, *Neifert v. Dep't of Env't*, 395 Md. 486, 517 (2006), but Plaintiff submits that that is not the case here – especially because the 2017 Act is not a statute of

repose. In addition, as established below, a principal allegation against the Defendants is not subject to the 2017 Act, even if it is a statute of repose.

F. The Continuing Nature of the Misconduct Also Renders Any Statute of Repose Analysis Immaterial.

Further, the Defendants engaged in a cover-up of the abuse of Plaintiff and others under their case, and fraudulently concealed the abuse of those children for decades. ECF No.1, Pl.'s Compl. ¶¶ 10-17, 76-118. MacBride v. Pishvaian, 402 Md. 572, 584 (2007), establishes that a statute of limitations may be tolled for "continuing unlawful acts." As a result, the "'continuing harm' or 'continuing violation' doctrine . . . tolls the statute of limitations in cases where there are continuing violations." *Id*. For that reason, "violations that are continuing in nature are not barred by the statute of limitations merely because one or more of them occurred earlier in time." *Id*.

The 2017 so-called repose statute invoked by Defendants measures the commencement of the "repose" period from the time of any "alleged incident or incidents of sexual abuse." CJP § 5-117(d) (2017). Thus, even if the 2017 act could be viewed as a statute of repose, despite *Anderson's* contrary instructions, it is irrelevant to the liability alleged against Defendants.

IV. PLAINTIFF'S CLAIMS ARE TIMELY REGARDLESS OF THE CONSTITUTIONALITY OF THE CVA.

The Court need not decide the constitutionality of the CVA to conclude that Plaintiff's claims are timely. Even under the law as it existed prior to the CVA, Plaintiff's claims are not time-barred. Plaintiff's Complaint alleges facts sufficient to establish that Plaintiff's claims were tolled under a theory of fraudulent concealment. Because Plaintiff's claims were tolled – and thus live – when the 2017 amendment was enacted, the law did not and could not extinguish them.

Defendants argue that, in passing the 2017 amendment, the General Assembly granted repose to non-perpetrator defendants for putative claims not asserted within 20 years after the plaintiff reached the age of majority and foreclosed traditional tolling exceptions. *See* ECF No. 20,

16. This characterization conveniently ignores the plain language of Section 3, which expressly conditions application of § 5-117(d) on the preexisting statute of limitations. Section 3 states that § 5-117(d) "shall be construed to apply both prospectively and retroactively to provide repose to defendants **regarding actions that were barred by the application of the period of limitations applicable *before* October 1, 2017.**" *See* ECF No. 20 (emphasis added). The General Assembly thereby limited retroactive application of § 5-117(d) to those claims that were already expired. Claims that were viable on September 30, 2017, were beyond the ambit and unaffected by § 5-117(d), and thus remained viable after the statute was enacted.

CONCLUSION

This Court need not wade into the morass of Maryland constitutional law and statutory interpretation. Rather, the Court should grant Plaintiff's Motion to Certify and render Defendants' Motion moot. To the extent the Court considers Defendants' substantive arguments, Defendants' Motion must be denied because the CVA reflects the General Assembly's considered judgment that survivors of childhood sex abuse, like Ms. Bunker, deserve a vehicle for long-delayed justice. The 2017 modification to the child sex abuse statute of limitations was merely a modification of the statute of limitations, which the General Assembly is free to further modify. Even if this Court were to find the law a statute of repose (which we urge the Court not to do), the General Assembly still had ample authority under the Maryland Constitution to modify it to revive claims based on child sex abuse. Accordingly, Ms. Bunker has a valid cause of action under Maryland law and Defendants' Motion should be denied.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court enter an order rendering Defendants' Motion MOOT or, in the alternative, DENYING Defendants' Motion to Dismiss. A proposed order to that effect is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, January 16, 2024, a true and correct copy of the foregoing was filed and served electronically via the CM/ECF system, which automatically sends a copy to all CM/ECF participants and counsel of record.

/s/ Robert K. Jenner
Robert K. Jenner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 1:23-cv-02662**
	)	
THE KEY SCHOOL, INC., *et al.*,	)	
	)	
***Defendants*.**	)	

[PROPOSED] ORDER

UPON CONSIDERATION of Defendants The Key School, Inc., and The Key School Building and Finance Corporation's Motion to Dismiss; and the Plaintiff's Opposition thereto, and the case records, it is this _____ day of _____, 202____, by the United States District Court for the District of Maryland, hereby

ORDERED, that Defendants' Motions shall be and the same hereby are DENIED.

_____
Judge, United States District Court for the District of Maryland

cc: All counsel of record

EXHIBIT LIST

Exhibit No.	Document
1	Kramon & Graham Report
2	Written Testimony of C.T. Wilson
3	Written Testimony of Advocates for Children and Youth, February 23, 2017
4	Written Testimony of David Lorenz
5	Written Testimony of Protect Maryland's Children, dated February 14, 2017
6	Written Testimony of Mid Atlantic P.A.N.D.A. Coalition, dated February 14, 2017
7	Senate Bill 335 Floor Report
8	Senate Bill 335 Bill Analysis
9	Written Testimony of Chief Legislative Officer David Iammucci
10	Written Testimony of Chief Legislative Officer David Iammucci, dated March 21, 1991
11	Letter from the Attorney General, dated April 30, 1991
12	Fiscal Note for Senate Bill 335
13	Letter from the Dep't of Legislative Services, dated January 11, 1990
14	Letter from the Attorney General, dated February 15, 1990
15	Delayed Disclosure Fact Sheet
16	1970 Md. Laws Ch. 666
17	1991 Md. Laws Ch. 271 (SB 335)

EXHIBIT 1

Report to the Board of Trustees of Key School

The content of this report is sensitive, personal, and graphic. It is not intended for children. Reader discretion is advised.

Andrew Jay Graham and Jean E. Lewis
Kramon & Graham, P.A.
January 2019

E.210

I. EXECUTIVE SUMMARY

This report ("Report") contains a summary of an investigation into allegations of sexual abuse and improprieties at the Key School ("the School" or "Key") and a review of the School's response, if any, at the time of the alleged occurrences or any report of those occurrences. The Report responds in part to concerns raised by a group of alumni under the moniker #KeyToo, after the #MeToo movement and the Larry Nassar sentencing hearing focused the nation's attention on sexual harassment and abuse. It also follows up on concerns raised more than twenty years ago by a particular alumna, who presented prior administrations with significant information concerning past sexual abuse by faculty members and by some who remained on staff. As set forth in greater detail below, this former student's ongoing attempts to get the School to acknowledge its history, and the current administration's willingness to do that, led in large part to this Report.

The Key School was founded in 1958 by several faculty members at St. John's College in Annapolis with the goal of creating an educational environment that provided a classical curriculum in small classes and fostered independent thinking even in young children. Dozens of former students reported to us that they valued the education they received at the School as well as the informal and progressive social atmosphere that generally existed at the School. As set forth below, however, our investigation confirmed allegations that in the 1970s a group of teachers took advantage of this atmosphere, abusing their roles as teachers to sexually exploit students and targeting in many cases students who were members of families suffering from various pressures resulting in less family supervision. We conclude that the School failed to protect students from these teachers and, further, that in each of the occurrences described below, there were other adults in the Key School community, including members of the faculty and staff, administrators, and Board members, who were aware of the abuse and inappropriate conduct and chose not to intervene.

Some of the most serious misconduct alleged concerns acts by Key School teachers Eric Dennard ("Dennard"), Richard Sohmer ("Sohmer"), Paul Stoneham ("Stoneham"), Peter Perhonis ("Perhonis"), and Vaughan Keith ("Keith") in the 1970s. Dennard taught art at the School from 1969-78; Sohmer taught a variety of subjects and directed school plays and informal music groups in the 1970s; Stoneham worked for the School from 1969-2015, teaching European and Russian History, serving as the Head of the Upper School from 1978-84, and functioning as the School's college advisor from the mid-1980s until he left; Perhonis taught ancient civilizations from 1969-78 and then returned to teach at the School in the 1980s; and Keith taught at the School from 1972-76.

The School's response (or lack thereof) to their misconduct spans decades, including not just a failure to intervene at the time of the abuse, but a decision in 1993 to host a memorial service for Dennard — one of the main perpetrators of the misconduct, who one witness estimates abused as many as 25 students. At that service, a former

student and survivor stood up and publicly asked the assembled group why the School was honoring someone who had "f*ck'd" her when she was 14 years old. The service revealed two important points: first, that the effects of abuse were not over for the survivors; and second, that the School had not come to terms with the fact of the abuse.

The memorial service also inspired another alumna, Carolyn Surrick, to come forward to the School in 1996 with specific information concerning the sexual abuse in the 1970s.[1] Ms. Surrick's efforts led the School to commission an investigation into past abuse and, ultimately, to report multiple incidents to the authorities. The School, however, allowed Stoneham, the School's college advisor and a former Head of the Upper School, to remain on the faculty, despite the fact that he almost certainly was aware of, and involved in, the events as they occurred in the 1970s. Further, outside of the discussions with Ms. Surrick, the School never offered any acknowledgement to survivors — public or private — of the School's failure to have kept them safe until recently.

As detailed below, in the course of this investigation 57 witnesses — including former students and current and former teachers, administrators, and Board members — have come forward with information concerning sexual abuse in the 1970s as well as occurrences in the 1980s and 1990s. Former students have described the abuse they suffered and its lasting effect on them; former and current faculty members and administrators have described their heartbreak and regret at not doing something, or something more, at the time of the abuse; and additional alumni and faculty members have come forward to express their support for their former classmates and students and the hope that the School will acknowledge this history and ensure that it never repeats itself.

This Report includes a synopsis of the interviews we conducted and the documents we reviewed over an eight-month period; it also contains the conclusions we arrived at based on that work. The Report does not contain recommendations for next steps as we view that as outside the scope of our retention.

Our intention is to allow the interviews and documentary evidence to speak for themselves as much as possible without characterization outside of the conclusions contained in Sections VI and VII. This Report will be disturbing to read, and we recommend reader discretion. We hope, however, that its publication will also be a small step toward institutional improvement, healing and reconciliation.

[1] Ms. Surrick has consented to the use of her name in connection with her efforts over the years to get the School to acknowledge and address the abuse.

II. INVESTIGATIVE PROCESS

A. Independence of Investigation

Current Head of School Matthew Nespole and Board Chair Joseph Janney retained us to conduct an independent investigation into the allegations of past sexual abuse and improprieties by members of the Schools' faculty. Before being retained, we ensured that Kramon & Graham ("K&G") had done no previous work for the School. In addition, none of the K&G attorneys who worked on this investigation had prior connections to the School. After our initial retention, we did not receive or take direction from anyone in the administration of the School or on its Board of Trustees as to the scope of the investigation or the contents of this Report. Nor did they attempt to direct us. We have, however, issued several requests for documents to the School and interviewed members of its administration in the course of the investigation, and the School was cooperative in the process. The School has paid our invoices, but has neither sought nor obtained legal advice or counsel from us as would typically be the case in an attorney-client relationship.

B. Outreach to Key Community

At the outset of the investigation, the School's administration sent an invitation to everyone in its alumni, faculty, and student databases to contact us if they wanted to provide information relevant to the subject of our investigation, and posted our contact information on the School website. (As of January 22, 2019, that information was still available on the School's website.) Additionally, some of the alumni who were the impetus for the investigation have helped to get our contact information out to people in other communities. When names of people who might have pertinent information have been mentioned in interviews, we have attempted to locate these potential witnesses and have followed up with requests for interviews. Additionally, the publication of an article in *The Washington Post* on August 18, 2018 concerning sexual abuse at the School produced a second wave of witnesses and concerned alumni who have contacted us.

C. Interviews and Review of Relevant Documents

We interviewed 57 people, several on multiple occasions. We reached out to an additional 16 people (again, several on multiple occasions), who have either declined to participate in an interview or did not respond to our inquiries. Given the passage of time since some of the events described in this Report, we have learned that several people with relevant information are no longer living.

We have reviewed minutes from the School's Board of Trustee meetings, documents provided by interviewees, yearbooks, the files from two prior (and related) investigations in the 1990s, and the personnel files for the School's faculty members whose names came up in interviews when those files could be located.

Unfortunately many of the personnel files we requested were not available. They were destroyed in a flood in an administrative building at the School over Thanksgiving weekend in 2013. We obtained insurance documents concerning the flood and also interviewed an administrative assistant involved in the clean-up after the flood to corroborate what we had been told concerning the timing of the flood and the fact that the majority of the School's archived personnel files were lost at that time.

D. Basis for Naming People and Confidentiality

We have determined generally to keep the names of witnesses and survivors confidential, except as set forth below. We recognize that several of the witnesses and survivors whose statements are included below were identified in the August 18, 2018 *Washington Post* article. We have not identified those individuals in this Report both for consistency with our treatment of other witnesses and because we sought to avoid any subconscious bias that might arise in readers familiar with certain allegations through that article and reaction to it on social media. The Report uses "Witness" together with a unique number to refer to people who provided us with information. The Report uses "Student" with a unique letter to refer to the former students whom we were unable to reach. Additionally, in places we have omitted the specific year of graduation or personal details of a witness or survivor if those details are not necessary to understanding the survivor's particular situation and would allow some in the Key community to easily identify a survivor or witness. During the late 1960s and 1970s, the Upper School student body was extremely small, with graduating classes as small as eight students.

Where there has been a report of abuse and some independent corroboration of the report, we have named the identified perpetrator in this Report, with one exception described below. We define "independent corroboration" as evidence, whether documentary or testimonial, that came from sources other than the alleged victim. Documentary evidence includes both writings that were created contemporaneously at the time of the incidents and reports made to local police departments, whether those were made at the time of the abuse or at a later date.

There is one perpetrator who has been identified in interviews and who is also a confirmed survivor. Because there is a clear connection between the nature of the abuse this person suffered and then inflicted on others we have determined not to identify her in this Report. By doing so we do not mean to suggest that the reports of abuse involving her are any less credible than the others contained in this Report or that the School has any less responsibility for that abuse.

A difficult issue that we confronted in the course of finalizing this report was the effect of naming faculty members who were identified in the course of a witness's statement but not as the perpetrator of sexual misconduct. The identification of these other faculty members was often a part of the witness's account; it also assisted us in assessing the credibility of the witness. We want to be absolutely clear, however, that to

the extent this Report includes the names of faculty members outside of the clearly identified perpetrators (*see* conclusions in Section VII, *infra*), it is not intended to suggest that we have concluded that the named faculty member did something wrong. Similarly, we concluded that a description of interviews with current and former members of the School's administration was important to the Report's completeness. Again, however, the inclusion of those interviews does not mean that we have concluded that each named administrator did something wrong. Our conclusions are contained in the final two sections of the Report, which describe the School's historical response and our specific conclusions.

The balance of the Report is organized as follows. Section III describes the corroborated reports of sexual abuse or harassment, organized by each responsible faculty member. Section IV summarizes our interviews with administrators and faculty members. Section V describes the additional documentary and electronic information provided to us. Section VI describes the School's response to the misconduct and our conclusions regarding that response. Finally, Section VII sets forth our specific conclusions.

III. SEXUAL MISCONDUCT BY EACH RESPONSIBLE FACULTY MEMBER

A. Eric Dennard

Dennard taught art at the Key School from 1969 to 1978. In interview after interview, he was identified by former students as one of the primary forces behind a subculture in the 1970s that encouraged sexual relationships between teachers and students alongside rampant drug and alcohol abuse. Leaving aside whether a teenage student can legally or effectively consent to a sexual relationship with a teacher in any circumstance, multiple witnesses made credible reports that Dennard had forcibly raped them. As set forth below, his "significant other" at the time estimated that he had sexual intercourse with 25 Key students while he was on the School's faculty. We interviewed nine of these students during the course of this investigation. Dennard died in 1993.

1. *Witness 1 on Dennard*

Witness 1 was a student at the School in the early 1970s. Her mother taught at the School throughout this period and her family lived on the campus. In October of her junior year, Witness 1's boyfriend died in a car crash; she was, according to multiple witnesses, devastated. She stopped going to class and, instead, spent all of her time in the School's pottery studio. Dennard stepped into the void. Witness 1 reports that they were having sexual intercourse at his apartment within a couple of months of her boyfriend's death. She resisted early on, but Dennard continued to pursue her and she gave in.

After Christmas of the same year, then Headmaster[2] David Badger came to Witness 1 and told her she needed to return to class. She has no recollection of anyone else reaching out to her during this period or anyone questioning the amount of time she was spending with Dennard.

During the spring that followed — again, while she was still a junior — Dennard forced Witness 1 to participate in sexual interactions with him and with other (adult) women. He also periodically became violent with her. A classmate of hers, Witness 2, reports that during this period she walked into the pottery studio in the Art Barn and saw Dennard "looming over" Witness 1 from behind at the potter's wheel, "groping, massaging, rubbing her chest." Witness 1 was sobbing. Neither Dennard nor Witness 1 saw Witness 2, and Witness 2 quickly left. She did not tell anyone what she had seen.

During her senior year, Witness 1 moved in with Dennard, going back to her own family's house a couple of nights per week. (She believes that her father did not know what was going on and that her mother's attention was focused on a new baby.) Witness 1 reports that throughout this period Dennard provided, and they both consumed, significant amounts of alcohol and marijuana at his apartment.

Witness 3 reports being well aware when she was in 8th grade (and Witness 1 was a senior) that Witness 1 was living with Dennard. She recalls caroling at their apartment with faculty members and other students, and working at faculty parties where Witness 1 came as Dennard's date.

After her high school graduation Witness 1 left Annapolis to go to college, but Dennard kept in regular contact and, after only a year, she left college and moved back to Annapolis. Again, she moved in with Dennard.

During this period, according to Witness 1, there were ongoing parties that included both faculty members and students at the house in Eastport where Witness 1 and Dennard lived and also in the apartment of former Key teacher, Keith. Witness 1 reports that Dennard arranged multiple orgies involving Key students during these years. She reports that she believes that Stoneham, soon to be Head of the Upper School, was well aware of the partying and sexual activity among students and faculty members that was going on. Several witnesses report seeing Stoneham at some of these parties.

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[2] Historically, the top administrator at Key was referred to as the "Headmaster" and administrators who reported to the Headmaster and led each of the school divisions were called "Heads of School." In recent years, the names of those roles have changed. "Head of School" is now used for the top administrator at Key; "Division Head," for the administrators leading the Elementary, Middle, and Upper Schools. In this report, we use the title by which the person was designated at the time of his or her tenure at Key.

In the spring of 1978, Dennard was asked to leave the School. Victim 1 states that Dennard was falling apart at this time and that she threatened to leave him. He made two suicide attempts during that summer and, in response, she agreed to marry him. Throughout this period he was physically abusive, throwing her against walls and choking her on multiple occasions.

Witness 1 estimates that Dennard had sexual intercourse with approximately 25 students from the School during the years she was living with him. She believes that this sexual activity with students ended when he stopped teaching at the School.

Dennard's unchecked access to Witness 1 during her time at Key continued to negatively impact her life after she graduated. Once Dennard was no longer at Key, Witness 1 reports that he focused his abuse more exclusively on her. Dennard and Witness 1 moved to the Eastern Shore and both became sober in 1983, but Dennard continued to be abusive. After several years of therapy, Witness 1 left Dennard.

2. *Witness 4 on Dennard*

Witness 4 was a student at the School from the late 1960s until the mid-1970s. When she was 13 years old, her mother dropped her off at Dennard's home so that Witness 4 could show him her artwork. Witness 4 believes that Dennard was aware that things were not stable in Witness 4's household at that time; he knew Witness 4's mother well as she, too, taught at the School, and Witness 4's parents were on the verge of separating. Dennard flattered Witness 4, telling her she was beautiful and smart, that she had choices, and that she could do anything she wanted with her life and with her body. He performed several sex acts on her that day. Several days later she rode her bike to his home and had sexual intercourse with him. Witness 4 believes that he understood that she was there to lose her virginity, at 13 years of age.

Months later, Dennard told Witness 4's mother that he would give Witness 4 a ride home from school. He told Witness 4 he needed to stop at his own home first. By this point in time, Witness 4 did not want to have sexual intercourse with Dennard and did not want to be alone with him. At his home she let him know she did not want to have sexual intercourse. Dennard, however, was not interested in how she felt and, after giving her a marijuana joint, ignored her attempts to push him away, and forcibly raped her.

Not long thereafter, Witness 4's parents separated and Witness 4 and her mother moved onto the School campus. Dennard asked Witness 4 to come to the photography dark room after school. When she got there he locked the door, and they had sexual intercourse.

Before too long, Witness 4 realized that she was pregnant. She was 14 years old. She confided to another teacher, Sohmer, that she was pregnant, and he told her to go to Dennard and ask him to pay for an abortion. Dennard at first denied that it could be he

who got her pregnant, but then agreed to give her $250.00 for an abortion. She told him that an abortion would be more expensive than that. Dennard's response was that she would have to get the rest of the money from someone else. (He suggested that Sohmer could also pay and told her that everyone knew she was having a relationship with Sohmer.) Ultimately, Sohmer drove her to Washington, D.C. to the Laurel Clinic to obtain an abortion.

Witness 4 believes that Dennard took and kept photographs of students in the nude and in sexual poses. She understands that he handed those photos off to a local photographer, whom Dennard viewed as a protégé of some sort. When Witness 4 approached that photographer about the photos he told her that he did not want to keep them or pass them onto anyone else and so destroyed them. The photographer did not respond to our requests for an interview.

3. *Witness 5 on Dennard*

Witness 5 came to the School in 1975 as a 7th grader. As a 14-year-old in the 9th grade, she took an art course taught by Dennard and Witness 1. Dennard taught the class for the 1st and 4th quarters of the school year. Witness 1 taught the course for the 2nd and 3rd quarters.[3] Witness 5 quickly became the "teacher's pet" and was frequently identified to other students as an example of both a talented and knowledgeable student.

Dennard and Witness 1, who were living together, asked Witness 5 to help Witness 1 work in her pottery studio at their home in Annapolis (on Chesapeake Avenue). Witness 5 went there with them after school on a regular basis during the winter of 1977-78 and, at some point, they started giving her alcohol and encouraging her to drink. During this period they took her to a party in Eastport; at that party, she admitted to them that she had a crush on a particular boy in the junior class ("Student A").[4] Not long after, Dennard told Witness 5 that he and Witness 1 had invited Student A over to their home and that Witness 1 had had sex with him.

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[3] Witness 1 disputes that she was ever a member of the faculty. Witness 5, however, provided us with two Key School report cards for her 9th grade art class signed by Witness 1. Additionally a separate witness, Witness 11, advised that Witness 1 taught Witness 11 and that Witness 11 also believed Witness 1 was a faculty member. Witness 1 admits that she frequently covered art classes for Dennard and did in fact complete report cards for Witness 5. Whatever Witness 1's employment status, we conclude that given her substantial role in at least one art class, Witness 1 was an apparent agent of the School.

[4] We are referring to this former student as "Student A" and not as a "Witness" because we did not have the opportunity to speak with him. Student A died in Florida in May 2012. We applied this method of identification throughout so that individual students who had knowledge of relevant issues and occurrences, but whom we were unable to

In April of 1978, Witness 5 and Student A went to Dennard's and Witness 1's home and hung out and drank beer. Dennard and Witness 1 asked Witness 5 and Student A to stay overnight at their house, which Witness 5 and Student A agreed to do. Witness 5 remembers Dennard leaning into her; she remembers Witness 1 and Student A having sex; she remembers Dennard and Student A having sex with her and that it hurt; and she remembers Dennard demonstrating on Student A how to engage in particular sexual acts. The next morning she remembers lying in Dennard's and Witness 1's bed as Dennard, Witness 1, and Student A had sex; she recalls that the others decided to leave her alone that morning. She remembers Dennard and Witness 1 driving her home in their white van.

Witness 5 recalls spending time with Witness 1 and Dennard not long after that night and that they were alarmed when they realized she was not on birth control. Witness 1 took her to a clinic to rectify that situation by obtaining a prescription for birth control pills.

From that point on, Witness 5 recalls multiple group sex sessions that involved Dennard, Witness 1, Student A, and Witness 5, and alcohol. She recalls Dennard instructing Student A to try particular sexual acts and remembers thinking that Student A was in significant physical and emotional pain as Dennard, with Witness 1's assistance, bent him into different positions.

On one occasion Dennard, Witness 1, Witness 5 and a 25-year-old former Key student went to Witness 1's parents' house. The 25-year-old had sexual intercourse with Witness 5.[5] He contacted her in February 2018 (as the "KeyToo" movement's presence on the internet expanded), to apologize and told her that Dennard had essentially "offered her" to him. Witness 5 was 14 years old at the time.

Witness 5 also remembers hearing of one occasion on which Dennard became violent with Student A. No one would tell her what prompted Dennard's anger, but at some point Student A stopped coming to these sessions, and the primary focus of both Dennard and Witness 1 shifted to Witness 5 exclusively. Dennard and Witness 1 later asked Witness 5 to bring boys or men she was interested in back to their house to join them in sexual activity.

In June of 1978, Dennard's contract at the School was not renewed for the following year. Nevertheless, he and Witness 1 remained a part of the School social scene, and Witness 5 continued to spend significant time with them. Former Key teacher, Keith, who had recently been fired after it was discovered he was having a sexual

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interview, are referred to by "Student" and a letter, as opposed to "Witness" and a number.

[5] Witness 5 did not identify this former student to us.

relationship with a student, and Stoneham were present at some of the social occasions involving Dennard, Witness 1, and Witness 5, who was still a Key School student.

Stoneham, the Head of the Upper School at that time, noticed a change in Witness 5's grades and brought her into his office a number of times during that period. Witness 5 is certain that Stoneham knew that she was spending significant time with Dennard and Witness 1 because she saw Stoneham at parties attended by teachers and students and at local hang-outs. However, Stoneham never asked her about it and never expressed concern that she was socializing with Dennard and Witness 1. Witness 5 believes that Stoneham and Dennard were friends.

Gretchen Nyland, who was also a teacher at Key, was present at Dennard's and Witness 1's home a couple of times when Witness 5 was also present and seemed very uncomfortable on those occasions. However, she never told Witness 5 that she should not be spending time with Dennard and Witness 1.

Witness 5 recalls at some point that Dennard and Witness 1 told her that that they would need to be more "discrete," suggesting that someone had said something to them about their relationship with Witness 5. Again, however, Witness 5 has no memory of anyone from the School counseling her about the amount of time she was spending with Dennard and Witness 1 or trying to learn what they were doing while spending out-of-school time together.

At some point while Witness 5 was still a student, Dennard and Witness 1 told her that they were going to get married and be monogamous, and that while they all could remain friends, they would no longer have group sex with her.

Somewhere around this time, Witness 5 confided in her half-sister, who was in her 20s and lived out-of-state, as to what had been going on over her freshman and sophomore years. Sometime after, it was "like a bomb went off." Her parents had spoken with her half-sister and learned what had been going on with Dennard and Witness 1 and were very upset. Witness 5 went over to Dennard and Witness 1's house for comfort; but Dennard and Witness 1 slammed the door on her and chastised her for not being "more mature than that." They told her she should not have told anyone about their activities.

Witness 5 reports that the period that followed was very difficult. Dennard and Witness 1 "cut her off" and were openly hostile whenever they saw her. Witness 5's mother confronted Stoneham about the situation and called him multiple times. Witness 5 recalls her mother quoting Stoneham's response: "They don’t work here anymore," referring presumably to Dennard and Witness 1. Per Witness 5, her mother never got over the discovery that her daughter had been victimized by Dennard and Witness 1. Witness 5 recalls her mother often stating that she blamed Stoneham for what happened. She told Witness 5 that she had contacted Stoneham for advice when Witness 5 began

visiting Dennard and Witness 1's house during her 9th grade year, but did not recall him being concerned.

During Witness 5's senior year, when she was trying to get into college, her father went to the Headmaster, who at that point was Rodney Beach. Witness 5 understands that her father told Mr. Beach, "you know what happened to [Witness 5] with those teachers; you need to help her." (This exchange is confirmed by notes of an interview taken of her father during the 1996 investigation.) Witness 5 was accepted to college not long after that.

Many years later, in 1993, Witness 5 learned that Dennard had died and that the School would be hosting a memorial service in Dennard's honor. She decided she needed to attend. She recalls entering the gym for the service and seeing Witness 1 and Stoneham, both of whom appeared surprised to see her. When there was an opportunity for attendees to speak, she stood up and asked, "why is the [S]chool honoring the guy who f*ck'd me when I was 14?" She then read from a prepared letter to Dennard describing the sexual abuse and how it had affected her. Witness 5 recalls that both Witness 1 and Stoneham appeared angry with her.[6] But more than anything Witness 5 recalls the silence that followed her remarks. Witness 5 recalls that the only person who talked with her after the memorial service was Dennard's first wife, Lynn, who followed her out and comforted her.

Witness 5 stated that sometime after the memorial service the then Headmaster Ronald Goldblatt called and asked her to come in and meet with him. At the meeting, he apologized to her, but denied that there was any institutional responsibility. Witness 5 said she asked Goldblatt why Stoneham, who was married to a former student and had known about what happened to her at the time, was still at the School; Goldblatt told her that he understood that Stoneham had not begun to date his wife until she was 18 years old and that Stoneham denied having any prior knowledge of the sexual abuse Witness 5 had suffered.

Around the same time Witness 5 was contacted by another former student, who had had similar experiences with Dennard (described elsewhere in this Report). Other than a brief conversation with two former teachers whom she ran into at a grocery store, Witness 5 was not contacted by anyone at Key School about what she had experienced with Dennard and Witness 1.

Several years later (in 1996), Witness 5 was at a family wedding in Maine that Key teacher Lee Schreitz also attended. A relative told Witness 5 that at the wedding festivities Ms. Schreitz was talking about Witness 5's reported prior sexual activity to

[6] She learned later from her employer that following the memorial service Witness 1 and others had contacted the employer to create problems for her.

wedding guests. Witness 5 confronted Ms. Schreitz in April 2018 about the comments she had made, and Ms. Schreitz apologized.[7]

In 1997, a detective from the Anne Arundel Police Department contacted Witness 5, apparently as part of an investigation being conducted at the School. Witness 5 made a report detailing the events described above. No one from School, however, reached out to her in connection with the investigation.

4. *Witness 6 on Dennard*

Witness 6 attended Key in the mid-1970s. She was a student of Dennard's. Early on he encouraged her to come over to his apartment, where they would drink beer and smoke cigarettes. At one point she was there with Witness 1 (who at the time was still a student), and Dennard asked them to sleep over. Witness 6 remembers lying in bed between the two of them and being "just frozen." The experience was completely beyond her prior experience. She recalls feeling scared but privileged at the same time. From there, it became a way of life — whenever she would go somewhere with Dennard and the other student, sex would be involved. At some point Dennard and the other student took Witness 6 to a party that Key teacher Keith was hosting. Her experiences with Keith are described below. As noted there, she later concluded that Dennard had "handed her off" to Keith.

5. *Witness 7 on Dennard*

Witness 7 attended Key for her junior and senior years in the 1970s. She had wanted very badly to leave her prior school and used college savings to cover her tuition at Key. Her parents had gone through a divorce, and her situation at home was "horrific." At some point, Stoneham approached her about leaving her home and moving in with a family on campus. She believes the School was trying to help her by allowing her to distance herself from her family turmoil and described the mother of that family as very kind. She recalls going with that mother and other friends to parties at Keith's apartment, with whom she eventually had a relationship (but who by that point was no longer teaching at the School). She stated that she does not believe Keith harmed her, and that she never saw him engage in exploitative behavior. Dennard, on the other hand, she believes was "extremely predatory." She viewed Dennard as "the center" of what was going on at the School and said that he sexually exploited her and others and that he encouraged a lot of female to female activity. He had sexual intercourse with her when she was 16 or 17 years old and a student.

[7] We have seen no evidence suggesting that Ms. Schreitz knew about the abuse of Witness 5 at the time it was occurring.

6. *Witness 8 on Dennard*

Witness 8 was also a student at Key during the 1970s. She reported that she participated in parties that involved teachers and students from the time she was 14 years old and that these parties were common knowledge among many of the students and faculty members. During this period (and while she was a minor and a student), she had sexual intercourse with Dennard.

7. *Witness 9 on Dennard*

Witness 9 also attended Key during the 1970s and had art class with Dennard. It was a morning class, and she reports that she was frequently the only student to show up. After she missed school one day, Dennard met with her and told her that she "needed a day of therapy." He drove her to a liquor store where he obtained liquor and then took her to a bird sanctuary where he "taught" her how to perform fellatio.

8. *Witness 10 on Dennard*

Witness 10 attended Key during the 1970s and was a member of Dennard's art group. He was very aware of the relationship between Dennard and Witness 1 during Witness 1's senior year. During this period he saw Dennard in a drunken state on multiple occasions and described him as "out of control." He recalls going on a trip to New Hampshire with Dennard and a group of approximately eight students for an art opening. They camped in the area. Witness 10 recalls that something akin to an orgy occurred. He recalls being extremely uncomfortable with the situation. He also recalls seeing Dennard attempt to engage in oral sex with a female student, who laughed and told Dennard to get away.

9. *Witness 11 on Dennard*

Witness 11 described Dennard as being "very tricky." She said he would choose female students who were vulnerable to exploitation, perhaps either because of family instability or some emotionally upsetting event. For example, Witness 11 reports being aware that as soon as Witness 1's boyfriend was killed in an accident, Dennard targeted her. Witness 11 believes Dennard saw her in a similar light because her mother was emotionally unstable and her father was an alcoholic. Dennard would suggest to Witness 11 (and to other students in similar situations) that they go to a coffee shop with him. He would speak critically of Sohmer (whom, as detailed below, was in an inappropriate relationship with her at the time) and tell Witness 11 that she should not spend time with Sohmer but rather spend time with Dennard in the art room. There were occasions during the day when she could smell alcohol on Dennard. She believes there was something of a power struggle occurring between Dennard and Sohmer, and she believed there had been a struggle or competition over Witness 4. Witness 11 never had a physical relationship with Dennard.

B. Richard Sohmer

Sohmer taught mathematics, directed plays, and facilitated rehearsals and performances for several informal Key-related music groups during the 1970s. His tenure at the School was relatively short, but during that time he engaged in sexual relationships with multiple students (and other faculty). According to several accounts, he used the plays and musical productions to develop relationships with young girls. He has not responded to our attempts to arrange an interview with him.

1. *Witness 4 on Sohmer*

Witness 4 was in several plays that Sohmer directed. When she was 13 years old, he held and kissed her after a rehearsal. From that point on, he would signal to her during rehearsals, and she would know she was to meet him in an empty room nearby. After months of this, Witness 4 had sexual intercourse with Sohmer in an empty second grade classroom. Witness 4 reports that eventually Sohmer told her that Headmaster Badger had called him into his office and confronted him about rumors that Sohmer was "messing around" with Witness 4. Mr. Badger reportedly told Sohmer this would need to stop. Not too long later, however, Witness 4 became aware that Sohmer was seeing another student, Witness 11. (As set forth below, Witness 11 confirms that prior to Sohmer's solicitation of her, she was aware that Sohmer had been involved with Witness 4.)

Witness 4 also later learned that Sohmer had been having an affair with Witness 4's mother around the same time he was seeing her. Witness 2 reports that at some point Sohmer's affair with Witness 4's mother became well-known. Witness 2 took a class on the first floor of the home in which Witness 4 and her mother lived. Witness 2 reports that Sohmer would come downstairs in the morning in a disheveled state and then would walk through the students to leave the house.

2. *Witness 11 on Sohmer*

Witness 11 attended Key starting in the late 1960s at age 11. She was in Sohmer's geometry class and also actively involved in the School's plays and musical groups, and played a major role in a School play at age 15. During this time, Sohmer flirted with her, but nothing more. When she was 16, however, he kissed her during a break from a rehearsal.

The relationship intensified when she filled in for a teacher who could not participate in a particular play. From that point on, Witness 11 spent substantial time with Sohmer, including hours in the bedroom he rented from an area resident. (This last fact has been confirmed by Witness 25, who had personal knowledge of the residence at the time.)

Witness 11 understood that Sohmer had been involved with another student and had been "warned off" continuing the relationship with that student. Looking back on it, she does not know why he was not fired at the time. She recalls walking alone with him on campus by the basketball court and him turning and telling her that he "[couldn't] imagine living without you." Her own home life was dysfunctional, and he was aware of that.

When in 1975 she advised her parents about the relationship with Sohmer, they were extremely upset. Her father, who was a member of the Board of Trustees, advised the School about Sohmer's improper relationship with Witness 11 (who was still a student) and resigned from the Board due in part to the situation. Sohmer was fired in 1975.

At the time Witness 11 felt that it was she who had done something wrong — that she had cost Sohmer his job and that she had acted inappropriately. Despite multiple reports that the Board and the administration were apprised of Sohmer's inappropriate relationship with Witness 11, and that the relationship was common knowledge, no one from the Board, faculty, or administration reached out to her to correct this perception or to take other responsible action; no one from the Board, faculty, or administration reached out to her at all.

After high school graduation, Witness 11 moved in with Sohmer and deferred going to college. She sang and played woodwinds in the Nymphs and Satyrs, a name that Sohmer gave to the musical group that included him, Witness 11, Witness 4, another student, and, at times, Key teacher Nancy Surrick. Finally, at age 25, with the assistance of therapy, Witness 11 left Sohmer and terminated the relationship.

Witness 11 reports that she knows Stoneham was aware of her relationship with Sohmer long before she told her parents; he had written, "Have a nice Sohmer" in her yearbook.

She noted in her interview that as a general matter there was a "murky" lack of proper boundaries between adults and students at the School. She believes that the students who spent most of their time in the art facility doing artwork "got it worse" than the students who were more active in music and theater.

3. *Witness 1 on Sohmer*

Witness 1 reports that while a student she had sexual intercourse with Sohmer. She never let Dennard know about that because she sensed that Dennard and Sohmer were very competitive and that Dennard would be very upset.

4. *Witnesses 9 and 25 on Sohmer*

Witness 9 advised that on one occasion while a student she "necked" with Sohmer in his van. She believes she was in 11th grade at the time. He was directing a play, and she was in the play. Witness 9 reported that Sohmer would supply marijuana to students and that "making out" was frequently involved. Witness 25 confirmed this description and reported multiple outings with Sohmer and Upper School students in Sohmer's yellow van.

5. *Perhonis letters on Sohmer*

As noted, Sohmer's relationship with Witness 11 appears to have been well-known on campus. Witness 10, for example, noted that it was common knowledge that Sohmer was having an ongoing relationship with Witness 11 (and before that with Witness 4). Another teacher, Peter Perhonis, took a sabbatical during the 1974-75 school year and wrote letters back to a student with whom he had had a sexual relationship. In a March 1975 letter he stated that he had heard that Sohmer had been fired because of his relationship with Witness 11 and asked the student to send him details. In a later letter, which we reviewed, he provided his perspective on the situation:

> the facts are, I guess that [Witness 11] is not legally an adult, as silly as that may seem. When she leaves her father's house and is in college it's a different matter. I can't blame her parents really, certainly not the [S]chool. I think myself that [Witness 11] might have done well to pick a different sort of man both now and later and as for Richard I believe he's already been married twice and, while I never disliked him, I couldn't take much interest in him because he struck me as scatter-brained.

C. **Peter Perhonis**

Perhonis taught Greek and ancient civilizations at the School in the 1970s, and, after several years away from the School, he returned in the fall of 1987 to teach again. He was controversial according to former students and faculty members: There were students who viewed him as an excellent teacher; others viewed him as needlessly cruel to students; still others saw him as simply odd.

We attempted to reach Perhonis on two occasions, but he did not respond to either request. We understand that he is very ill.

1. *Witness 9 on Perhonis*

Witness 9 entered Key in the 7th grade in the early 1970s, at the age of 12. Her family life was chaotic. She had moved abruptly with her mother and three siblings to Annapolis and away from her father, who had serious mental health issues.

Witness 9 was in Perhonis's ancient Greek class in the 7th grade. He began "grooming" her almost immediately, sitting very near her to look at her work and telling her how smart she was. He kissed her when she was in the 8th grade.

When she was 15 years old she was in a community theatre production with him. He started to give her rides home, but would stop at his own home on the way back. Witness 9 reports that he would give her advice (including, for example, how dangerous boys her own age were) and make sexual overtures. Though they did not have sexual intercourse at that time, he would undress her and take her to bed at his house. This happened approximately five times. After the play was over, he "dropped her."

Witness 9 told Stoneham about Perhonis's relationship with her. Stoneham made it clear that he was well aware of it, stating, "I know baby, I've got eyes!" This conversation occurred at a meeting that Stoneham initiated because she had been absent from class.

After Witness 9 graduated, Perhonis joined the Merchant Marines for a period of time and wrote long and detailed letters to her. Witness 9 provided us with copies of the letters, which confirm the prior sexual relationship that had commenced while she was still a Key student. At some point their relationship resumed even though she was living in New York and he had returned to Key and was living in Maryland. When she was in her early 20s, he came to New York to visit her and, in the course of that visit, mused about killing her, specifically about beating her to death. He did not act on the statements. However, she told her family what he had said, and they insisted that she break the relationship off. She ultimately broke up with him over the phone; he responded that her brother must have "gotten to her." He later showed up at Witness 9's mother's home in Annapolis, screaming in the front yard. Several years after the termination of the relationship he tried once again to contact Witness 9. As a result of Perhonis's abuse of her, she has felt "disconnected," self-conscious, and inferior, and has spent 35 years in therapy.

2. *Witness 12 on Perhonis*

Witness 12 described an experience with Perhonis in the 1990s that parallels the 1970s experience of Witness 9 in several respects. Witness 12 reported that she was a student in Perhonis's ancient civilizations class as a 14 year old and soon became one of his "favorites." By age 15 she was having "private lessons" in Latin and Greek with Perhonis in empty classrooms and, at times, the hallways. During those lessons they would translate texts with a sexual theme; at one point Perhonis told her that his favorite passage in a particular poem was when an older Greek man came upon a youth having sex with a girl and anally impaled the youth further into the girl. She recalls that he sat very close to her in these lessons and that the attention flattered her and made her feel grown up. On one occasion she dropped something and leaned over to pick it up; he told her she had "made his month" because of the view of her underwear under her skirt. Not

long after that, he invited her to go to the National Gallery with him in Washington, D.C., to see an exhibit of Greek sculpture. He said she could meet him at school and he would drive her to the exhibit. When her parents realized that she was the only student invited, however, they forbade her from going.

Perhonis sent books and letters to her over the summer at her work address. He continued to write to her after she went to college. Witness 12 has been unable to locate those letters, but reports that they were very similar to the portions of the letters to Witness 9, which were quoted in *The Washington Post*.

Witness 12 reported that she discussed Perhonis with a friend of hers, Student B, who was two years younger, while both were Key students. Student B later told Witness 12 that Perhonis had kissed her (Student B), but that she was not supposed to tell anyone. Witness 12 does not know whether the contact between Student B and Perhonis continued. We have been unable to locate Student B.

3. *Witness 13 on Perhonis*

Witness 13 was at Key student in the late 1980s and early 1990s. She had several classes with Perhonis during that time period. While there she heard rumors about Perhonis, including that he previously had a sexual relationship with a student. She forced herself, however, to ignore the rumors. She did note some of his behaviors in class were odd, including on several occasions selecting a girl to model reproduction jewelry from the Walters Museum for the class. He would also frequently open a bottle of seltzer water over the desks of people sitting in the first row; she reports that she purposefully sat in the second row to avoid sitting near him. She recalls that he would at times get very angry at students and then would make a point of counting to ten to calm himself down.

Witness 13 went to college at a local school and stayed in touch with Perhonis and his wife, another Key teacher, after Witness 13 left the School. When Witness 13 graduated from college, her family invited Perhonis and his wife to have a celebratory lunch with them. After lunch, Witness 13 walked with Perhonis back to his car. At his car, he turned and kissed her on the lips. She was extremely taken aback and felt it was a violation of their prior teacher-student relationship. She felt she needed to come forward and describe this experience, even though it did not occur while she was a Key student, because it might corroborate others' experiences.

D. Paul Stoneham

In contrast to the teachers described above, Stoneham spent close to his entire career at Key, serving different functions from 1969 until 2015. During that time he taught Russian and European History, served as Head of the Upper School from 1976 to 1984, and became the School's college advisor sometime in the 1980s.

As set forth below, numerous witnesses have come forward with reports of inappropriate behavior by Stoneham at different points of time in his career. Additionally, several former students who suffered abuse at the hands of other teachers report that Stoneham was well aware of their situations and did nothing despite his leadership position. Mr. Stoneham did not respond to multiple requests for an interview.

1. *Witness 3 on Stoneham*

Witness 3's parents were divorced when she was 11 years old, at which point she, her mother, and her brother moved from Baltimore to Annapolis, and she enrolled as a student at the School. Her mother suffered from severe depression and so Witness 3 was raised primarily by her brother. Stoneham was well aware that Witness 3 was challenged by these family issues. When Witness 3 was 16, she was waiting for a ride and Stoneham offered to drive her home from school. At this point, Stoneham was a teacher and also served as Head of the Upper School. While driving her home he spoke to Witness 3 about masturbation, orgasms, her sexual orientation, and similar subjects. When they got into her neighborhood Stoneham exposed himself and then leaned over, grabbed her, and forcibly kissed her. She jumped out of the car, ran down the road, and hid by a friend's house. Stoneham evidently described the incident to Dennard as the next day Dennard told Witness 3 that she should have let Stoneham have sex with her because she was so ugly that nobody else would want to. She advised a particular teacher, John Burrowes, about parts of this experience, excluding the exposure and the forcible kissing, and recalls that he did not seem shocked by Stoneham's comments. We were unable to interview Mr. Burrowes because he is deceased.

Witness 3 was very unhappy at the School afterwards; she feels she is very fortunate, however, that Mr. Burrowes helped her get into a college theatre arts program after her junior year at Key so that she was able to leave.

2. *Student C on Stoneham*

Student C described a similar incident to the attorney who conducted an investigation in 1996. We were not able to interview Student C but reviewed contemporaneous notes from the 1996 interview she gave. Student C was a student at the School in the 1970s; her mother was a teacher at the School. Student C reported that Stoneham gave her a ride home from a seminar and that while they were in the car he kissed her and fondled her breasts. She stated that there "couldn't be any mistaking his intentions," there was "a lot of tongue" and he "crushed her breasts." From that point on she "gave him a wide berth." Stoneham had previously said that she could not be in the seminar because "she looked like one of his past lovers." She described him as "visibly agitated" and "red and sweating" when he told her this.

Stoneham was asked about this incident during the 1996 investigation. According to the notes he stated he had "no recollection of driving her home," "doesn't recall ever

kissing her," but "[would not] say that she's lying if she says so"[8] — "if that's her recollection, that's her recollection."

3. *Student D on Stoneham*

Multiple witnesses report that it was common knowledge that Stoneham was in a relationship with a particular student in the 1970s and that Stoneham and the student eventually married. Witness 8 reports seeing them kissing at a party while Stoneham was a teacher, and the young woman was still a Key student.

That student, Student D, did not respond to our requests for an interview. She was, however, interviewed in connection with the 1996 investigation. Contemporaneous notes from that interview indicate that she asserted she was "not aware of any sexual involvement by faculty and students," and did not start seeing Stoneham on a social basis until after graduation. In the same interview she stated that Dennard was "not sexually involved with anyone at school as far as she knew" and that a particular student was "making up all kinds of strange stories."

Several former students were under the impression that Stoneham and Student D married shortly after she graduated. Court records from their divorce indicate that Stoneham and Student D married five years after she graduated and that they separated in 1990.

4. *Witness 14 on Stoneham*

Witness 14 reported an incident similar to those described by Witness 3 and Student C, but in the early 1990s. She recalls that she was in Stoneham's World History Class during her sophomore year and found the class to be very challenging and very good. She had additional contact with Stoneham during her junior year in connection with the college application process. She does not recall anything improper happening in those sessions. He helped her formulate her college essay.

During her senior year, she took Russian Studies, again, with Stoneham. This was a very small class that required a lot of work. Witness 14 felt special to be among the students allowed to take the class. In this class, Stoneham began to talk frequently about sex and made ongoing "lascivious jokes" and sexual references. Witness 14 noticed him staring at her breasts several times; she also became aware that he was standing closer to her than she found comfortable. One day during her senior year, Witness 14 was at her locker in the lower level of "the Barn." Stoneham appeared, which surprised her given that his office was not nearby. He walked up to her and rested his arm on the locker next to her, too close for comfort, and blocking her from moving away. She recalls looking toward two other teachers' offices and being dismayed that they were empty. She

[8] The notes say, "won't say she's lying if she says so."

attempted to duck under his arm and start walking away, but he grabbed her arm as she walked toward the door. He turned her around and kissed her on the lips. She pulled away and ran out the door to the back field. He did not follow her.

Witness 14 did not tell anyone else about the incident. Her father was on the Board and her instinct was not to rock the boat.

5. *Witness 5 on Stoneham*

As noted, Witness 5 was a student at Key in the 1970s and 1980s. Stoneham was the Head of the Upper School during much of this time, and when he noticed a negative change in Witness 5's grades met with her in his office a number of times during that year. She recalls that after one particular session with Stoneham, Stoneham stood and hugged her closely and that he had an erection. *See also* Section III.A.3, *supra*.

6. *Witness 1 on Stoneham*

Witness 1 reports memories of Stoneham throwing pennies on the ground so that she and others would lean over to pick them, at which point he would "pinch our bottoms." She states that he grabbed her inappropriately several times.

7. *Witness 4 on Stoneham*

Witness 4 reports that during the summer following 7th grade, Stoneham took her to the beach at Sandy Point. She recalls that he said that he wanted to show her that he was learning to swim and remembers thinking that he still was not a very good swimmer. She said he then proposed playing a game in the water that he said he played with his wife: "I hold you," he told her, "and you try to get away." She remembers thinking that the experience was creepy, but does not remember a lot more about it.

8. *Additional Reports regarding Stoneham*

Multiple witnesses — students and faculty members — have come forward with reports of inappropriate comments made by Stoneham. Witness 15, a Key student in the 1970s, described, for example, a meeting with Stoneham after she had been on a field trip to Assateague chaperoned by Dennard and Witness 1 during which there had been nude sunbathing. She recalls him leaning forward into her face and saying, "I could just see you and [another female student] rolling around out there." She stated that he referred to another student as "a pot-smoking piece of sh*t." She said he also frequently "badmouthed" her mother, saying things like he knew her mother did not care whether she came to school.

Another student, Witness 16, from the 1970s, described Stoneham as "just horrific." She stated that he pulled her aside at one point when she was a sophomore and asked, "What are you doing with me in class? Are you winking at me?" She felt at the

time that he was flirting and wanted to get involved. He then asked her (in front of the class) whether she was winking at him and told her to, "Stop it; it makes you look stupid!" When he became Head of the Upper School she realized she needed to leave. Witness 16 left the School and enrolled at a boarding school where she was very successful.

Witness 17 recalled that in class in the 1980s, Stoneham would sit on the desks of girls and play with his chest hair while flirting. He said he imagined it was humiliating for the girls but that he was relieved Stoneham was not picking on him. He also recalls Stoneham singing the "Key School Blues" at the Holiday Assembly, which included lyrics that suggested he was "more than friendly" with some of the students.

Witness 12 stated that it was understood among female students in the 1990s that they should avoid being alone with Stoneham.

Witnesses have also reported that Stoneham harassed female faculty members. One faculty witness, Witness 18, reports that Stoneham told her repeatedly, even after she asked him to stop, that he wanted to be the father of her next child in "the natural way," and that they could have sex in his office. She said this went on for years on a weekly basis. Other faculty members confirmed that they had witnessed Stoneham flirting and making unwanted advances toward female colleagues at faculty parties.

As set forth below, we are aware that Stoneham's conduct was the subject of an internal investigation in the 1990s. There is, however, no indication of that investigation in his personnel file.[9]

9. *Stoneham's Knowledge as a School Administrator*

Multiple witnesses reported exchanges with Stoneham concerning the conduct of others and his knowledge of the conduct. Witness 9, for example, reports that she told him about Perhonis's relationship with her and that he responded, "I've got eyes." Witness 11 reports that he wrote "Have a nice Sohmer" in her yearbook.

Witness 5's mother reportedly confronted Stoneham after she learned of Dennard's and Witness 1's abuse of Witness 5 and called him multiple times. Witness 5 recalls that at one point Stoneham was upset with her after her mother had called him about discovering birth control pills in Witness 5's room. Stoneham told Witness 5 that she needed to handle situations like this in a more adult way and that she had put him in an awkward situation. It appears that in 1983 Stoneham pursued criminal charges related to Witness 5's mother's persistent telephone calls to him. In notes from a later interview of Stoneham about the situation Stoneham seemed to make no connection between what had

[9] We understand that because Stoneham was still on the faculty as of 2013, his personnel file was not with the stored files of faculty members that were lost in the 2013 flood.

happened to Witness 5 and Witness 5's mother's persistent calls to him. Witness 5 felt very "exposed" and "vulnerable" around Stoneham, particularly concerning any issue that involved her mother.

Multiple witnesses report that Dennard, Witness 1, and Stoneham spent significant time together at "the Little Campus," a bar frequented by artists, aspiring writers, recent St. John's grads, and Key faculty and students in the 1970s. They also report seeing Stoneham at some (but not all) of the parties that included faculty and students.

A former teacher reports that when the School unexpectedly lost its physics teacher, it was Stoneham who proposed bringing back a teacher who had been let go due to a relationship with a student.

E. Vaughan Keith

Keith taught foreign languages and English at the School from 1972 to 1976. After his contract was not renewed at Key, he taught at a Connecticut school. In 1984, he began teaching at St. Alban's in Washington, D.C. Keith died in 1990.

1. *Witness 6 on Keith*

Witness 6 attended high school at Key in the 1970s. She was one of the students that Dennard encouraged to come to his apartment, where they would drink beer and smoke cigarettes. As noted above, she had multiple sexual encounters with Dennard and Witness 1. At some point while she was still a student and under the age of 18, Dennard and Witness 1 took her to a party that Key teacher Keith was hosting. During the party Keith took her to an empty apartment next door, told her she was beautiful, and had sexual intercourse with her. Keith hosted many of these parties that included a mix of teachers and students, usually around 30 people. Witness 6 and Keith "became an item." Witness 6 reported that Keith practiced bondage with her and also whipped her at times. Looking back on it she believes that Dennard "handed her off" to Keith.

Eventually a parent saw Keith and Witness 6 holding hands in downtown Annapolis and Keith was "let go." No one from the faculty, administration, or Board of the School, however, ever asked Witness 6 about what had occurred or inquired about her emotional state. Witness 6 went on to college but dropped out during her freshman year, in what she characterized as an "alcoholic" state.

Witness 6 noted that her background differs from many other students at Key as her mother did not have a lot of money. Witness 6 never told her mother about Keith's abuse of her; she reported that it "breaks her heart" to think of how hard her mother worked to gather the resources required to send Witness 6 to Key.

2. *Witness 7 on Keith*

Witness 7 went to many of the parties Keith hosted in the 1970s. She recalls that the parties included Key faculty and students and that Keith spent a lot of time standing in the closet picking records to play. Witness 7 eventually had a sexual relationship with Keith but reports that while she was still a student at the time, he was no longer a teacher at Key. She stated that she does not believe Keith harmed her. Dennard, on the other hand, she believes was "extremely predatory."

F. Charles Ramos

Charles Ramos ("Ramos") taught languages at the School from the mid to late 1990s. He did not respond to our request for an interview.

1. *Witness 19 on Ramos*

Witness 19 graduated from the School in the late 1990s. She was one of only a couple of girls in a language class Ramos taught and after a while it became obvious that he liked her. When she was studying in the library one day he came in, sat down and just started talking with her. He invited her and her friends out for drinks with him. Ramos also regularly came to dances and would attempt to spend time with Witness 19 at those events. He came to prom and asked her where she was going afterwards; Witness 19's date told Ramos that they would not tell him where they were going. She recalls walking by the old science hall at one point and seeing him standing there. Ramos grabbed her arm and wouldn't let her go until she pulled away. Witness 19 felt that Ramos's feelings for her and attempts to spend time with her were widely known among faculty members, particularly the languages staff, and yet no one did anything to intervene.

On the night Witness 19 graduated, Ramos came to her home and left a letter in her mailbox. He professed his love to her in the letter. Witness 19 was extremely upset by the contents of the letter and the fact that he knew where she lived. Witness 19's older half-sister read the letter and knew that something needed to be done. She called Ramos and told him that he should have no further contact with Witness 19 and that if he did they would call the police. Witness 19's parents brought the issue (and the letter) to Headmaster Goldblatt's attention. Mr. Goldblatt told Witness 19 it was not her fault. Ramos was allowed to resign in the late 1990s (and went on to work at another school). Both Mr. Goldblatt and another former teacher, Witness 20, confirmed that they reviewed the letter and that Ramos's contract was not renewed as a result.

G. John Sienicki

John Sienicki ("Sienicki") taught philosophy and science in the Upper School in the 1980s. One former teacher described him as a pied piper of students; he was perceived as brilliant and had a group of students that literally followed him around.

Sienicki was reportedly let go at the end of 1987 when the parents of a student complained about his relationship with their daughter. When the School unexpectedly lost its physics teacher in 1989 or 1990, however, Stoneham proposed that the School bring Sienicki back to finish the year notwithstanding the reason Sienicki was terminated in the first place. Sienicki has declined our request for an interview.

1. *Witness 21 on Sienicki*

Witness 21 graduated from Key School in the late 1980s. She was in Sienicki's physics class and was struggling. Sienicki told her that if she would sleep with him, she would get an "A." From that point on, she avoided being alone with him, but he frequently made inappropriate comments about her body.

2. *Witness 23 on Sienicki*

Witness 23 reports that when she was 17 years old (in the 1980s) she worked on the play *Midsummer Night's Dream* in different capacities. She recalls looking over and seeing Sienicki holding another student closely with his hand on her breast and the student leaning into him. She reports that she remembers this clearly. This report is consistent with a report she made in 2014 to the Anne Arundel County Police, which we reviewed in redacted form.

Witness 23 also believes that when she stopped participating in sports after school, Sienicki saw an opportunity to pull her into his world. He placed a series of late night calls to her. One of the topics in these calls was what happened at a particular church retreat; Sienicki wanted to know exactly what happened between Witness 23 and a boy who was also a Key student. (According to Witness 23, the boy attempted to kiss her, and she rebuffed his attempt.) After several calls, Sienicki told her that she had "failed his test" and that she would not be able to be in his group, which she referred to as "Life of the Mind." Witness 23 reports that, at the time, Sienicki's comments devastated her.

3. *Witness 20 on Sienicki*

A former member of the faculty, Witness 20, reports that Sienicki had a reputation for being brilliant, and that he also presented himself as a cultural icon within the School community and had a "dedicated legion" of students who followed him. Witness 20 reported that there was an incident with a particular girl[10] and that her parents came in and spoke with the administration (Mr. Beach was Headmaster at the time), and that as a result Sienicki was "let go" at the end of the school year. Two years later, the School unexpectedly lost a physics teacher mid-year. According to Witness 20, Stoneham came to him and said "we need a physics teacher," and proposed that the School bring Sienicki

[10] We have attempted to reach this former student, but she has not responded to our requests for an interview.

back to prepare students for the Advanced Placement examination. The witness recalled that Mr. Goldblatt, who became Headmaster after Mr. Beach, was opposed to bringing Sienicki back on campus, but that ultimately the School negotiated a short-term contract with Sienicki that required Sienicki to teach and then leave the campus immediately after class.

4. *Witness 22 on Sienicki*

Witness 22 attended the School in the 1980s. He reported that a friend of his was in an after-school science group that Sienicki led and that she told him at some point that Sienicki began taking her to his house and having sexual intercourse with her after the "group." At first she felt special; when she learned he was doing the very same thing with a friend of hers, however, she was very embarrassed and concluded that Sienicki was a predator. Witness 22 does not think she reported it to anyone but does not know. He would not identify her to us.

H. Tad Erickson

Tad Erickson ("Erickson") was not a member of the School faculty, but according to several witnesses, chaperoned multiple Key camping trips. Based on our attempts to locate him for an interview, we believe that Erickson died in 2013.

1. *Witness 24 on Erickson*

In the late 1970s and early 1980s, Key students would go on a camping trip of some sort each year in high school. When Witness 24 was 14 years old in the late 1970s, a group from the School went to Cape Hatteras. One of the adults who chaperoned the trip was Erickson. He was not a teacher, but was from the local ecological community. Witness 24 recalls "making out" with him in a tent. She does not think that the other teacher who was along, Lee Curry, was aware that this happened. Because Erickson was not a regular fixture on campus she did not see him again.

2. *Witness 22 on Erickson*

Witness 22 recalls a similar (perhaps the same) camping trip. He was 15 years old and remembers that a "counselor named Tad" was "acting out of line," rubbing a boy's chest and kissing a girl. Witness 22 believes that he told Mr. Curry about the incident shortly after the trip.[11]

[11] We saw no evidence that Erickson chaperoned any further field trips. We are unable to conclude, because we lack sufficient information from which to draw a conclusion, whether Erickson was terminated by the School because of inappropriate conduct or whether his interactions with students ceased for some unrelated reason.

I. William Schreitz

William Schreitz ("Schreitz") came to the School from the Bay Country School in the early 1970s. He taught science and mathematics until the Spring of 1975. He has not responded to our request for an interview.

1. *Witness 26 on Schreitz*

Witness 26 reports that during the summer of 1975, after Schreitz stopped teaching at the School, Schreitz was one of several chaperones on a backpacking trip for Key students. Witness 26 reports that while on the trip he asked her to sleep with him "under the stars," and that for the rest of the trip he had sexual intercourse with her each evening. She reports that there was another former teacher chaperoning the trip and that he was also having sexual intercourse with a student.[12] Multiple other witnesses confirmed that Schreitz was known to have engaged in an inappropriate relationship with Witness 26 while she was a Key Student.

IV. INTERVIEWS WITH ADMINISTRATORS

A. Former Headmaster David Badger

Mr. Badger served as the Headmaster of Key School from 1972 to 1976. He was 81 years old at the time of our interview.

He described the School as a "close community" in the 1970s and pointed to the fact that in several cases parents of students were also teachers and that some of those in dual roles also lived on campus. His two children attended Key while he was there.

He reports that he was aware to a "surface degree" of parties that were taking place that included both teachers and students, but also understood that a lot of the students that were there were also the children of other teachers. He did not probe that general situation. He reported, however, that when he found out about any specific situations that he believed were inappropriate, he acted immediately. When he learned that Keith, whom he had considered brilliant and a strong teacher, was "messing with" a student, he confronted him. When Keith confirmed an ongoing sexual relationship with the student, Mr. Badger fired him.

He recalled firing other teachers for similar reasons, including a female teacher, who had a relationship with a student.[13] When asked specifically about Sohmer, he

[12] We have spoken with this student, Witness 27, who confirms the incident. However, we have been unable to confirm that the adult involved was a former teacher.
[13] Mr. Badger provided us with what he believed was the name of that teacher, but the name he provided was not in the faculty database nor were we able to find that teacher in any of the yearbooks.

recalled confronting Sohmer about an ongoing relationship with a student, but could not recall if he actually fired him. He later recalled that the student was the daughter of a Board member, but had no recollection of any discussion regarding the situation at the Board level.

He recalls being aware that Dennard was dating the daughter of another faculty member and noted that he understood that Dennard and the student later married.

He stated that his last year as Headmaster at Key was very difficult. Board members had raised concerns about the School's ability to attract a sufficient number of students and to develop sufficient operating funds. As a result, Mr. Badger was conducting a review of the curriculum and was focused on trying to "rebrand" the School on some level to be more attractive to more students and their families. He noted that the School was based on the St. John's curriculum and was very different from most schools. The faculty had more freedom to do what they wanted in the classroom and, as Mr. Badger described it, "some stuff worked well; some stuff did not." He described it as a "time of experimentation," and observed that "we were trying different things," in response to the general belief that public schools were on the wrong track. At some point during the year, someone from the Board let him know that several teachers had lost confidence in him. He said he began to feel isolated at that point and ultimately resigned under pressure.

When asked if he ever felt a particular group of teachers were pushing for his removal, he stated that he understood that some faculty thought he was doing well, but that others did not. He stated he wished someone had told him more of what was going on between teachers and students.

B. Barbara Vaughan, Admissions

Ms. Vaughan was 89 years old at the time of our interview. Ms. Vaughan stated that she believes that much of what occurred in the 1970s was a reflection of the culture of the times. She joined the faculty of Key in 1969 when Edward (Ted) Oviatt was the Headmaster. She said Mr. Oviatt was a great leader and was very well respected by students and faculty. Mr. Oviatt was distressed when a public school in the area expelled multiple African-American students who participated in a demonstration related to the school integration that was then occurring in public schools. Mr. Oviatt reached out to the expelled students and suggested they apply to Key; ultimately four of those students became students at the School. According to Ms. Vaughan, that decision did not go over well with some members of the Board of Trustees and at the end of the school year, Mr. Oviatt's contract was not renewed.

David Badger was hired to be the new Headmaster in 1971 and Ms. Vaughan moved over to work in admissions. Ms. Vaughan recalls that in the summer after Mr. Oviatt's departure, parent after parent withdrew their children from the School. She said

it was a difficult time in Key's history, and that Mr. Badger did not have prior experience running a school. She said that a lot of young people from St. John's were hired as faculty members at Key School. At the same time, Key was gradually expanding into the upper grades. She believes that the combination of new young and enthusiastic faculty members with the gradually increasing number of older students, and the ongoing outdoor education activities (*e.g.*, hiking and skiing trips) contributed to a lot of camaraderie and socializing among students and faculty. As someone in her forties, she viewed some of the new teachers as an extension of the student body.

At some point she concluded that Mr. Badger was not the right person to serve as Headmaster for the School and went to him and told him he should resign, which he eventually did.

She thinks there was a sort of a caste system for students and that the "chosen" ones were the students who were socializing with faculty members, and that they were having a wonderful time. She observed that as the admissions person her role was to make Key look good. She remembers taking parents on tours of campus and being proud of the debate occurring within the classrooms but dismayed at the general lack of tidiness on the campus. She recalls walking up a staircase and noticing a sandwich stuck to the ceiling. On the same tour they then walked into the library, where there was a young couple lying on the floor in the throes of pre-sexual activity. She said the librarian was present and not doing anything. She pointed to this as an illustration of the tolerant atmosphere on the campus at the time.

During her tenure, she was stationed in the "little barn" with Dennard and became close friends with him. She remembers going with Dennard into the community to raise funds for scholarships. She was his "best woman" at two different weddings, including his wedding to a former student. She was aware of Sohmer's relationships with students. She recalls in particular having Sohmer over to her house and telling him, "you're so smart; can't you find some other way to behave?" But she did not feel she had any power to do anything more about the situation. All she could say is, "I am calling you out as one of your colleagues." Looking back on it at the time of our interview she wished she had been stronger.

C. Former Headmaster Rodney Beach

Rodney Beach served as the Head of School from 1976 to June 1989, and then continued to teach at the School until 1996. He died in September 2011.

D. Former Headmaster Ronald Goldblatt

Ronald Goldblatt was the Headmaster of the School from 1989 to 1999. Previously, he practiced law, both as a prosecutor and in private practice. His children attended Key while he was there. We spoke three times to Mr. Goldblatt.

Mr. Goldblatt describes the time period as a difficult ten years and felt that when he arrived, there was confusion about the culture at the School. He felt that many people believed that being a progressive place also meant being a permissive place. He stated he worked to change that culture, which is consistent with what we have heard from teachers at the time. He had heard rumors when he arrived about Dennard and about a lot of parties at a particular house, but nothing specific. He also recalled being concerned that Stoneham, who was still on staff, had married a former student.

He recalls that the memorial service for Dennard occurred on campus in or around 1993, and believes that may have been when he first heard specifics concerning what occurred in the 1970s. He recalls that there were "cross-currents" or differing opinions about whether the School should host the memorial service, but that no one told him anything concrete. He believes now that hosting the service was a mistake. He did not go to the service but recalled coming into the office the following day and hearing what had happened — that a former student had stood up and said she was raped by Dennard. He later recalled calling the alumna and apologizing for what happened. (As noted above, Witness 5 recalls coming into his office and talking with him.)

Mr. Goldblatt recalls that Carolyn Surrick came to him in 1996 about the abuse during the 1970s and early 1980s. He said that she showed up at his office unannounced and then told him that she had been abused as a middle and upper schooler and that some of it happened in the very house in which they were talking. He remembers that Ms. Surrick said she was there for herself and for others and that she provided specifics concerning what had occurred over those years. She suggested that the School should make funds available to cover the costs of therapy for the former students. After she left, he believes he called the Board President, but he is not certain who that was at the time. He knows that Jack Gallagher was on the Board at the time, and that Gallagher's law firm, Paul Hastings, agreed to conduct an investigation for no charge. As noted, the current administration obtained a copy of that file for us.

Mr. Goldblatt recalls doing his own review of the applicable statutes concerning whether the School needed to report the allegations to any governmental entities. After Paul Hastings concluded its investigation and submitted a report to the School, Mr. Goldblatt engaged the Baltimore firm of Gallagher, Evelius, & Jones to review the School's reporting responsibilities. Around the same time, he conducted an administrative review of the School policies at issue and worked with a committee of the Board to change some of those policies.

Mr. Goldblatt also went to teachers who had been at the School during the years described by Ms. Surrick, teachers he described as his "veterans." Mr. Goldblatt said that they were "very, very careful" about what they said to him. Stoneham was not among the teachers he went to because he understood that the ongoing investigation would include him. He said he "could not get a handle on what was happening," and that "nobody filled me in." He also wondered whether "a culture of silence" had developed at the School or

whether certain faculty members had a form of "bystander syndrome." He reported being very frustrated that his "veterans" were not more forthcoming with him regarding improper behavior that had happened before he arrived.

Mr. Goldblatt recalled hiring Sienicki to come back to the School midway through the school year at some point in the late 1980s or early 1990s to replace an AP Physics teacher who Mr. Goldblatt believed was having a breakdown. He recalled initially that he did not realize when he brought Sienicki back that there were allegations that Sienicki had been let go for having an affair with a student. (Sienicki departed the first time before Mr. Goldblatt was appointed Headmaster.) Another faculty member involved with the rehiring of Sienicki (Witness 20), however, recalled and believed that the School put very tight controls on Sienicki when he came back for the temporary post, precisely because the administrators were aware of the prior incidents. When prompted with Witness 20's recollection, Mr. Goldblatt did not dispute it and stated that putting in place additional controls is consistent with something he would have considered.

He recalled firing a teacher who wrote an inappropriate, "amorous" letter to a student. He recalled that the mother of the student brought the letter to him, that he showed the letter to the teacher and asked him whether he wrote it, and that when the teacher acknowledged he had sent the letter, Mr. Goldblatt fired him. Another senior teacher at the time confirmed that this was the Ramos letter, which is also consistent with Witness 19's statement.

Mr. Goldblatt stated that he fired Perhonis, but that it was not because of any sexual improprieties; he had no idea about that until reading the August 18, 2018 article in *The Washington Post*. Rather, he said that he fired Perhonis because Perhonis was "repeatedly and abusively critical of kids." (The 1996 investigation notes mention Perhonis, but there is no indication that this information was shared with Mr. Goldblatt or with anyone else at the School at the time.)

Finally, Mr. Goldblatt recalled an incident with a teacher at one of the graduations in the early 1990s. At the time, the School had a tradition of allowing each student to select a teacher to speak for a moment about the student. The teacher spoke about a particular student in the graduating class, and Mr. Goldblatt said that during those remarks, "our eyes all locked," and that he realized that the teacher was in a relationship with the student. He went to the student's mother, to the teacher, and to the student, all of whom denied that anything was going on.[14]

Mr. Goldblatt noted that "there were tradeoffs being made," that highly talented teachers were on some level forgiven for transgressions. He wondered whether the same

[14] The investigation notes from 1996 indicate that the School was later contacted by someone who was treating another student who had been in a relationship with the same teacher and that Mr. Goldblatt made an additional report to law enforcement.

traits that made some particular people compelling classroom teachers could also be used to make children vulnerable.

Mr. Goldblatt described the situation as heartbreaking and hopes that victims understand it was not a willful failure in the 1990s. His report to Anne Arundel authorities in early 1997 is the first time (of which we are aware) that an individual employed at the School reported suspected child sex abuse to law enforcement. Mr. Goldblatt also oversaw the implementation of improved policies and procedures at the School, including the sexual harassment policy in the mid-1990s, which was intended in part to ensure that the School's current faculty understood that sexual relationships with students were wholly unacceptable.

E. Former Head of School Marcella Yedid

Ms. Yedid was Head of School from 1999 until the end of the 2014-15 school year. She died in January 2016.

F. Head of School Matthew Nespole

Matthew Nespole became Head of School at the end of June 2015, by which point Ms. Yedid had already left the School. Mr. Nespole had limited interactions with Ms. Yedid before his appointment, but met her in connection with his initial interview in January 2015, and also at a Board retreat in March 2015. Ms. Yedid did not pass on to Mr. Nespole concerns about any faculty members past or present. Additionally, she left behind a limited set of files. As noted above, a flood destroyed the archived personnel files in 2013. The bulk of the files left for Mr. Nespole were accreditation materials and admissions statistics.

Since becoming Head of School, Mr. Nespole has retained Praesidium, a company that provides training and other services related to child abuse prevention, including a 24-hour hotline that allows callers to make anonymous reports of abuse. He arranged for Praesidium to provide a child-abuse prevention training program for all faculty and staff members in October of 2017. A follow-up training for new faculty and staff members was provided in August of 2018.

In February 2018, Mr. Nespole was contacted by Ms. Surrick, who recounted to him her prior attempts to raise the issues described in this Report with prior administrations. She told him about meeting with a Board member in 1993, about going to Headmaster Goldblatt in 1996, about cooperating with the School's investigation at that time, about reaching out to Head of School Yedid in 2003, about raising concerns regarding the School's continued employment of Stoneham with a Board Member in 2013, and her conclusion that nothing had resulted from those efforts.

Ms. Surrick explained to Mr. Nespole that the testimony of the gymnasts in the Nassar sentencing hearing had been "crushing" for her and that she began posting on social media so that other survivors of abuse at the School would know they were not alone. This was the beginning of the KeyToo group.

Mr. Nespole took the issue to Board Chair Joseph Janney, and together they determined to initiate an independent investigation of the concerns raised by Ms. Surrick and others in the KeyToo group.

G. Chair of Board Joseph Janney

Mr. Janney is the current chair of the School's Board of Trustees and has been on the Board since 2007. He agreed with Mr. Nespole that an independent investigation was the best way forward and authorized Mr. Nespole to retain a third party to conduct the investigation. He reported that he is comfortable "with letting the chips fall where they may" with respect to the current investigation.

Mr. Janney noted that when he became a Board member Ms. Yedid was Head of School. The only personnel or disciplinary issues he can recall Ms. Yedid bringing to the Board involved "adult on adult" behavior. His impression, as a general matter, is that the bar for appropriate faculty/student interactions has been raised over time, and he wants to make sure that the School handles any allegations of misconduct in an appropriate way.

H. Other Faculty Members

In the course of the investigation we interviewed six former and current faculty members who were members of the faculty during the years covered by the events described in this Report.

Several teachers observed that the culture at the School particularly in the 1970s through the 1990s allowed a closeness between teachers and students that enabled the teachers to communicate informally with students and to "be more honest" in dealing with tough questions.[15] Notwithstanding that closeness, several teachers reported lacking knowledge of anything concrete that was going on between other faculty members and students. One teacher described his lack of knowledge as the result of his avoiding the rumor mill and declining to partake in the gossip. He noted, however, that he now realizes that what he saw then as "innocence" was actually "lack of information," and that, as a result, he failed in his role as a "protector."

[15] All of the teachers we spoke with noted that while there may have been fewer formalities in terms of relationships between teachers and students, there was significant rigor and discipline in most classes.

Another teacher confirmed that it was easy to become "immersed" in gossip at the School. He noted, however, that on several occasions he was able to discuss with Mr. Goldblatt's administration concerns about a particular teacher's conduct and arrive at a solution. He observed, for example, that "no one wanted to be the person who took the risk of firing Stoneham," which could upset the School's college application process. He opined that this was a "Faustian bargain."

Several of the teachers we spoke with attended the 1993 memorial service for Dennard. One teacher wondered whether Witness 5's remarks at the memorial service were a wake-up call for several faculty members. Another teacher reported that it "hit [him] in the face," when *The Washington Post* article was published in August 2018, that he had done nothing — that he sat there and heard Witness 5 describe her pain at the memorial service and then he "did nothing." He said he understood then that he was part of the problem and stated that "[n]one of us adults can be excused from blame." He apologized for what he termed a "lack of courage."

Another teacher agreed that the approach to sexual abuse in the 1970s was "cavalier" and stated that "no one could claim they didn't know [about] it." Similarly, another teacher expressed with respect to a suspected relationship in the 1990s, that "in hindsight, I should have said something; I feel certain now."

Multiple veteran teachers described the evolution of the School's culture and approach to sexual misconduct over the years. One teacher observed that she thought the administration and Board were trying to move away from being a "Bohemian school" as early as the late 1970s. Another teacher confirmed that in the late 1980s, when Mr. Goldblatt became Headmaster, the approach to structure in general began to change. He thought Mr. Goldblatt was trying to build a "professional culture" where students would be treated with care. He believed that Head of School Yedid continued with that culture and described her as "tough as nails."

It appears from the interviews that as the size of the School has increased, so has the structure. One veteran teacher still at the School noted that the School is very different in many ways now — that the School is substantially larger and much more diverse, and that its financial situation is more secure. Another reported that it is clear to him that he can, and should, take issues to the Head of School, which he has done, even for incidents that occurred years ago.

V. OTHER REPORTS AND INFORMATION PROVIDED

A. Hard Drive to Anne Arundel County Police

In conjunction with the investigation, one former student, who is also the child of a former teacher (now deceased), arranged to have a hard drive picked up in Florida by the police and delivered to the Anne Arundel County Police Department. The student

believed the drive held pictures that her father had taken of boys from the School. The police department was unable to access any information on the hard drive.[16]

B. Minutes

The current administration provided copies of Board Meeting minutes from 1959 through the present. There are several gaps in the very early years, and, notably, a 1988 memorandum from the outgoing Director of Admissions and Advancement Marylou Symonds, which was characterized as a personal statement about the future of the School and which Board members were asked to keep confidential and consider with a grain of salt, is missing from the minutes record.

The minutes vary in detail, depending on the Board Chair and Headmaster at the time. As a general matter, it is clear that the Board's ongoing focus was on the School's finances, fundraising, and endowment, and, relatedly, its enrollment. The minutes also reveal that the Board had concerns about the School's reputation in 1970s, and that there was ongoing tension regarding the curriculum and educational environment at the School — specifically, whether the degree of freedom provided to faculty was a benefit to students or simply too much to be conducive to learning. Notably absent from the decades of minutes is concern that the School's curriculum and program, which, as noted, derives from that of St. John's College and encouraged a close relationship between students and faculty both inside and outside the classroom, came with inherent risks where those students were high school rather than college-aged. By way of example, this Report contains many accounts of sexual abuse that occurred at parties attended by both faculty and students. The 1971 Headmaster's Report, however, expresses concern that because teachers were currently overburdened and "able to do little more than teach classes[,]" they were unavailable to attend dances and outside events, and Key was at risk of losing the "vitality" and "spirit" produced by such interactions.

The minutes reflect that in the mid to late 1970s the Board and administrators recognized that Key's informal culture might be problematic, but these concerns were framed primarily as worries about the negative impact the culture had on enrollment and fundraising goals. Of note, a fundraising survey conducted over the winter of 1975 by a consultant reflected concerns from parents, students, and faculty that some teachers in the Upper School had an unhealthy, guru-type relationship with students, that teachers did not set good examples for students in actions or attire, and that some surveyed commented on unprofessional relationships between faculty and students. There is no indication in the minutes that the Board or administrators interpreted such feedback as warranting further investigation or action.

[16] Because we uncovered no other evidence that corroborated inappropriate conduct by this particular teacher, the teacher is not identified in the Report.

The minutes also reflect that the Board was at certain times troubled about recruitment and the very real concern that the School might need to shut down because of its overdependence on tuition. During the years when abuse was occurring Board members were advised that Board members should not air concerns about the School with friends, but rather should bring problems to the attention of the Board president, Headmaster, or appropriate Head of School. At the same time, they were reminded that speaking positively about the School in the community could do much for recruitment.

It is fairly clear that if or when serious personnel issues were presented to the Board, those discussions were not reflected or were glossed over in the minutes. That appears to have been intentional. In the spring of 1978, the period during which Dennard's teaching contract was not renewed, a Board meeting began with a Board member criticizing the minutes from the previous meeting as overly detailed and containing sensitive material. The Board member suggested that, going forward, broad issues be included in the minutes, but without specific detail. The Board voted to revise the previous meeting's minutes to omit sensitive details. Because we were not provided with the original version of the minutes in question, presumably because they do not exist, it is impossible to know if they referred to the problems with Dennard, or if the Board was concerned with removing different details, such as discussion of faculty salaries, which are mentioned in the revised minutes.

We observed three omissions that appear deliberate based on what was learned through the investigation. First, despite multiple reports that a Board member resigned because of the School's handling of Sohmer's behavior, there is nothing in the minutes about the issue. Second, despite multiple reports that the faculty, Board, and community were abuzz after a theatre teacher's intimate "tribute" to a graduating senior, the Board minutes contain no indication of any concern. To the contrary, one year later the minutes note that the teacher put the Key theatre program "on the map" and was leaving to become a professional playwright. Third, despite investigation notes that indicate in 1997 Mr. Goldblatt discussed Ms. Surrick's allegations with the Board, the minutes reflect no such discussion.

C. Other Reports

We received additional reports from witnesses that are not detailed in this report. The fact that those reports are not included does not mean that we concluded that an incident did not occur or that we found a witness to be non-credible. Rather, we have omitted reports when: (i) we have been unable to corroborate any aspect of a single witness's complaint; or (ii) when the complaint concerned the conduct of a faculty or staff member before or after they were associated with Key.

VI. THE SCHOOL'S HISTORICAL RESPONSE

Witness after witness who attended the School in the 1970s recounted that it was "common knowledge" or "well known" that teachers and students were in sexual relationships in the 1970s and early 1980s. That fact had an obvious effect on the lives of the students directly involved; it also impacted the lives of the other students in what was a small social scene. It is, accordingly, hard to understand — even given "the times" — why no one was checking with the students at the time to determine how this was affecting them.

The situation with Dennard is particularly troubling. There is little question that Dennard was a negative force on campus for a fairly large subset of Key's Upper School student body over a period of more than five years. The vast majority of witnesses from the time report that it was well known that he had an ongoing relationship with one particular student, after she survived the death of her boyfriend and stopped going to class during the fall of her junior year, and that he was partying and spending significant out-of-school time with multiple other students at this time and in the years that followed. As noted above, his partner during much of this time estimates that Dennard had sexual intercourse with approximately 25 Key students during this period. Yet, the administration and other faculty members at the time either ignored or did not notice the influence he wielded. Certainly no one intervened until his contract was not renewed in 1978.

Even in later years, it does not appear that many faculty members came to terms with the harm Dennard caused. The rationale behind asking Dennard to leave at the end of the 1977-78 school year was apparently ignored when the School agreed to host a memorial service in his honor shortly after his death in 1993 — a service that multiple faculty members attended, including Stoneham, who became Head of the Upper School just as Dennard left.

It appears that the School began to come to terms with Dennard's legacy only after a former student stood up at that service and questioned why the School was honoring a teacher who "f*ck'd" her when she was 14 years old. And even then the reaction from the adults in the community was extremely limited. The then-current Headmaster reached out to the alumna and apologized; he opined, however, that there was no institutional liability for Dennard's acts. No one else from the administration or faculty reached out to her until just recently.

In 1996, Ms. Surrick came forward to report her own experiences at the hands of Dennard and another Key teacher and to warn the School that the abuse reached many additional former students. During this period she met with six Board members, whom she described as "very sympathetic" and "sorry" and who, together with then Headmaster Goldblatt, put together a code for faculty conduct.

Ms. Surrick's report, and persistence, were significant factors leading the School to initiate an investigation in 1996. The focus of that investigation, however, was whether anything needed to be reported to the authorities and, if so, what. While interviews of some former students were conducted, no one acknowledged to any of the survivors that they had been abused by the adults charged with protecting them. Indeed, the notes indicate that there was no desire to let any of this become public at the time.

Nor does it appear that all claims were pursued. For example, although the investigation notes indicate that Perhonis's name was raised in the course of the investigation, there is no indication of any follow-up with him or his alleged victim during the investigation and no indication that his name was supplied to the administration or Board at the time — a surprising omission given that he had taught recently at the School.

As a result of that investigation, however, in early 1997, Mr. Goldblatt made a report of potential child abuse to Anne Arundel Department of Social Services concerning certain students and faculty members who were at the School in the 1970s. A few months later, he filed an additional report of suspected child abuse concerning a teacher employed at the School in the 1990s.

There was, of course, no public acknowledgement of the School's history, and, despite a request, no funds were made available to help support the intensive therapy that many survivors had undergone. And notwithstanding the explicit concerns raised about Stoneham's actions and knowledge, he was allowed to remain on campus as a member of the faculty and/or the administration for close to another 20 years.

The lack of acknowledgement and follow up by the School has had a lasting and negative effect on a number of survivors. One alumna reported reaching the end of her senior year at Key feeling "tainted," "like a failure," and "like a whore and [] damaged goods. . . ." No one intervened to correct her perception, which is consistent with a recurring theme we heard in interviews with survivors — that no one seemed to notice their distress; no teacher or administrator reached out to them to find out what was going on or whether intervention was necessary.

Many of the survivors report that notwithstanding the abuse they suffered, there were also good teachers at the School, and a stimulating environment in which academic debate flourished. Many witnesses went out of their way to describe to us Key's adaptation of the St. John's curriculum and the School's success in developing independent thinkers and strong writers. A number of the people who reached out to us initiated contact to report something they witnessed but also to express their support for former classmates or former students and their hope that the School would handle its history appropriately. These are positive aspects of the Key community.

But there is indisputable evidence that there were those in the community that took advantage of the lack of structure, the blurred boundaries between faculty and students, and what many witnesses described as a "normalization" of faculty-student relationships. There is also evidence that some in the community abused the general culture and used it to justify behavior that had a negative effect on the students in their charge.

Given the seemingly indisputable evidence that some of the abuse was common-knowledge, it is hard to understand how so many adults in the community (Key School administration and faculty and beyond) were not more proactive in addressing it. What the perpetrators did was inexcusable; it was in many instances criminal under the laws at that time. But the response of other adults in the community and at the School in particular is also cause for dismay. These were not sexual relationships between adults that went wrong; this was abuse by adults of the underage students in their charge, many times in plain view of other members of the community. Moreover, it appears that in many cases abusers targeted students dealing with family disruptions and less supervision outside of school.

Over more recent years, Key has put in place policies and safeguards to ensure that its students, faculty, and staff are protected against potentially abusive situations. By way of example, in the mid-1990s, the Board adopted a policy on sexual harassment. In 2009, it adopted a policy governing consensual relationships between adult employees after administrators learned that such a relationship was ongoing. And the current administration reports that it has already put in place several policies that it believes will prevent the problematic events of the past from recurring, including the addition of a third-party, anonymous hotline for reports of abuse and the institution of regular training in child abuse prevention for staff and faculty members.

It is no doubt easier to condemn past practices than it is to admit to fault in the present, and far easier to accuse people who are dead and gone of wrongdoing than it is to confront people we know and work with every day. Hopefully, however, the addition of the protections described in the foregoing paragraph will make it far more likely that any future abusers at Key would be identified and dealt with reasonably than was the case in the past, and far less likely that the culture of silence could ever exist again.

The majority of survivors interviewed in the course of this investigation want a public acknowledgement of what occurred, an apology from the School for allowing it to happen, and an apology for not being proactive sooner. They also want assurances that steps have been taken to keep this from happening in the future.

VII. SPECIFIC CONCLUSIONS

In summary, we conclude that:

Eric Dennard used his position as a faculty member to sexually exploit students, and the School failed to protect multiple students from Dennard, including at least Witness 1, Witness 4, Witness 5, Student A, Witness 6, and Witness 7.

Witness 1, a person with at least apparent authority at the School for a period of time, participated in at least portions of this abuse, including the exploitation of Witness 5, Student A, and Witness 6, although Witness 1's circumstances are admittedly different given Dennard's prior and ongoing abuse of her.

Richard Sohmer used his position as a faculty member to sexually exploit students, and the School failed to protect multiple students from Sohmer, including at least Witness 4, Witness 11, and Witness 9.

Peter Perhonis used his position as a faculty member to sexually exploit students, and the School failed to protect multiple students from Perhonis, including at least Witness 9 and Witness 12.

Vaughan Keith used his position as a faculty member to sexually exploit students while he was a teacher, and the School failed to protect Witness 6 from Keith.

Paul Stoneham used his position as a faculty member to have improper sexual contact with multiple students while he was a teacher, administrator, and college counselor, he harassed multiple students and faculty members at the School, and the School failed to protect multiple students from Stoneham, including at least Student C, Witness 14, and Witness 3.

Paul Stoneham knew when he was a Head of the Upper School that Dennard, Sohmer, Keith, and Perhonis had engaged in improper sexual relationships with students and chose to do nothing about it.

John Sienicki used his position as a faculty member to sexually exploit students, and the School failed to protect at least one student from Sienicki.

Charles Ramos, while a faculty member, improperly pursued a relationship with a student and, as a result, his contract was not renewed.

William Schreitz used his position as a chaperone on a Key School trip to sexually exploit a student, and the School failed to protect that student from Schreitz.

Tad Erickson used his position as a chaperone on a Key School trip to sexually exploit a student, and the School failed to protect that student from Erickson.

We conclude that in all of the scenarios described above, with the exception of the occurrences involving Tad Erickson, others in the School community including certain members of the faculty and staff, administrators, and Board members, were aware of the abuse and inappropriate conduct and chose to remain silent rather than to intervene or report the situation to the administration.

While we heard reports of other potential misconduct, as noted in Section V.C, *supra*, we could not reach a conclusion as to whether those reports were credible or not because the investigation did not uncover corroborating evidence.

* * *

This concludes our investigation. We very much appreciate the cooperation, assistance and courage of the literally scores of witnesses who came forward despite the inconvenience and, in several cases, the pain it caused them.

If anyone would like to report additional sexual misconduct, they may contact Head of School Matthew Nespole at 443-321-7800 or mnespole@keyschool.org, or the Praesidium hotline at 866.607.SAFE (7233). The hotline is available 24 hours a day, 7 days a week.

EXHIBIT 2

C. T. Wilson
Legislative District 28
Charles County

Economic Matters Committee
Chair
Business Regulation Subcommittee

House Chair, Veterans Caucus

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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony for HB 642
Judiciary Committee

Good afternoon Mr. Chair, Madame Vice Chair and distinguished members of the committee. I am Delegate C.T. Wilson and it's a privilege to be here to present **House Bill 642 entitled Civil Actions – Child Sexual Abuse – Statute of Limitations and Required Findings.**

Bill Overview:

This bill alter the statute of limitations on civil actions arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor.

Bill Outline:

1. Providing that, in a specified action, damages may be awarded against a person or governmental entity that is not an alleged perpetrator only on a determination by the finder of fact that the person or governmental entity prior to the incident or incidents of sexual abuse that form the basis of this action, had actual knowledge of a previous incident or incidents of sexual abuse and negligently failed to prevent the incident or incidents of sexual abuse that form the basis of this action.

2. Providing that a specified action is exempt from specified provisions of the Local Government Torts Claims Act.

Conclusion: This bill will allow victims who have suffered through child sexual abuse and have endured the long-term emotional and psychological effects an opportunity to seek economic relief from those who have victimized them.

Thank you for your time and I request favorable consideration for this bill. I am open to any questions or concerns you may have about this Bill.

EXHIBIT 3

ADVOCATES
FOR CHILDREN AND YOUTH

__Advocates for Children and Youth__ is a statewide non-profit focused on improving the lives and experiences of Maryland's children through policy change and program improvement. We champion solutions to child welfare, education, health, and juvenile justice issues, positioning us to influence the full spectrum of youth experiences. This multi-issue platform helps us to improve the entirety of children's worlds—the systems they touch, the people they interact with, and the environment where they live.

Testimony before the Judiciary Committee

In SUPPORT of

House Bill 642- Civil Actions – Child Sexual Abuse- Statute of Limitations and Required Findings

Melissa Rock, Child Welfare Director, Advocates for Children and Youth
February 23, 2017

Thank you for the opportunity to provide testimony on House Bill 642- Civil Actions – Child Sexual Abuse— Statute of Limitations and Required Findings. Advocates for Children and Youth (ACY) supports this bill.

A statute of limitations is the time within which a lawsuit has to be initiated by an injured party.[1] In Maryland, as in almost every state, in civil actions where the victim is a minor when the action occurred, the statute of limitations does not begin to run until that victim reaches the age of majority.[2] The statute of limitations for child sex abuse cases is often longer than other offenses against children because many children who were victims of sex abuse do not feel safe reporting the abuse until they are adults. HB 642 raises the statute of limitations from seven years after the age of majority (25 years old) to 20 years after the age of majority (38 years old). HB 642 also requires that the person or governmental entity being sued have "actual knowledge of a previous incident or incidents of sexual abuse." Having that high a standard will help protect the due process rights of the entity being sued is not the individual who committed the sexual abuse. Finally, HB 642 creates parity between private and public schools by exempting a suit against a public school from the written notice requirements under State Government § 12-106 (b).

In Maryland, over the last year, there were 1,131 cases where the Local Department of Social Services (LDSS) found that a child under 18 was sexually abused.[3] There were 679 child sexual abuse investigations by LDSS that were unsubstantiated, which means there was not enough evidence to find that the abuse had occurred, but it could not be ruled out either.[4] However, studies have shown that most sexual abuse is never even reported. For many adults who were sexually abused as children, it is not until they have received a great deal of therapy as an adult and have overcome the trauma from the abuse that they are able to pursue civil

[1] http://www.ncsl.org/research/human-services/state-civil-statutes-of-limitations-in-child-sexua.aspx
[2] Id.
[3] Department of Human Resources. Data and Reports. Monthly Child Welfare Data, December 2016, p.18.
[4] Id. at p.22.

remedies, and they might be much older than 25.[5] Extending the statute of limitations from seven to 20 years will help ensure that a greater percentage of child sex abuse victims are able to receive civil remedies.

We urge this Committee to issue a favorable report on HB 642 to raise the civil statute of limitations for sexual abuse from age 25 to age 38 to allow more victims of sexual abuse to pursue civil remedies for their victimization.

[5] http://sol-reform.com/what-is-a-sol/

EXHIBIT 4

SB 505

In Support of SB [redacted]

My name is David Lorenz and I have been testifying in support of extending the SOL for child abuse for more than 10 years. Forgive me for not being at the hearing on Feb 14, 2017 but I will be out of town on business.

As most of you have heard in previous years, I was abused by a Catholic priest at the age of 16. I told no one about the abuse until I was 32. I did not want to tell then but my hand was forced because the priest had been publicly accused and brought up on charges. It was only when I told people that my healing from this nightmare began. A quick synopsis of what I have said in the past. The average age for a victim to come forward is 46 years of age. That is if they come forward at all. Most suffer in silence out of guilt and shame and because they believe they are the only victim and they feel so alone. So the wound festers and rots many people from the inside out. Some survive but many turn to drugs or alchol or sexual addictions. A small percentage of the victims go on to become abusers themselves because that is what they learned as children and their sexual development is stunted by the abuse. There is just such a story in the news today. Jerry Sandusky serially abused many children at Penn state during his reaign of terror there. He also abused his own child. This child grew up and just this week, we learned that he too is an abuser of children. This is what happens. Almost all abusers were abused as children. Typical abusers have over 100 victims in their lifetime. If only 1% of the victims become abusers, the cycle perpetuates ... forever. It's like a disease and we are too afraid to look at it. But if we only look at it and take just the smallest steps to stop it, the cycle can be broken. What if we could cut the number of victims in half. Then we might stop this scourge in one or two generations.

How do you stop the cycle? You shed light on it as soon as possible. Extending the SOL for civil cases is one proven way that this can be done. When the earliest victims finally grow old enough and strong enough to expose their predator, the predator can be stopped before he commits more acts of atrocity. The number of victims can be capped when first victim finally comes forward. But that victim won't come forward if there are too many legal barriers in his/her way. Remove the legal barrier and eliminate the SOL. Stop the cycle of abuse that Jerry Sandusky and others use to perpetuate this plague on our society.

David Lorenz
6412 Glydon Ct
Bowie, MD 20720
301-262-6517

EXHIBIT 5

THE COALITION TO PROTECT MARYLAND'S CHILDREN

Our Mission: To combine and amplify the power of organizations and citizens working together to keep children safe from abuse and neglect.

Testimony before the Judicial Proceedings Committee - SUPPORT
SB505/SB585: Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

February 14, 2017

The Coalition to Protect Maryland's Children (CPMC) is a consortium of Maryland organizations and individuals formed in 1996 to promote meaningful child welfare reform. CPMC supports passage of SB505/SB585: Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings.[1]

> This bill expands the time period for survivors of child sexual abuse to file a civil action against an abuser. It also expands the time period to file suit against others responsible for the abuse if the other actor knew about the abuse and failed to prevent it.

Child sexual abuse survivors face substantial barriers to access to civil justice. The victims—children under the age of 18—are often traumatized by the experience of sexual abuse and afraid to come forward. Child sexual abuse may cause a wide variety of emotional and behavioral problems that make it difficult even for adult survivors to discuss their victimization because of the trauma, shame, and grief associated with the crime. *National Center for Victims of Crime (www.ncvc.org/reporting on child sexual abuse).* Survivors of child sexual abuse often wait years before they tell anyone what happened to them, with one study finding that nearly 50% wait over 5 years to disclose. *Smith et al. "Delay in Disclosure of Childhood Rape: Results from a National Survey," 2000.* Perpetrators contribute to the delay. Sex offenders use many tactics to prevent their victims from disclosing abuse. These range from threats against the victim or loved ones, manipulating the victim, convincing the victim nothing is wrong, and exploiting the victim's desire to keep a family together. Some victims remain financially and emotionally dependent on the perpetrator well into their early adulthood. Others face pressure from other family members to remain silent, or have a deep sense of shame. (*Testimony of MCASA – SB505/585).* Because perpetrators are often known to the victim and his or her family, it may be difficult for the child to come forward and painful for the family to hear or believe the victim's account of the crime. Victims who disclose the abuse may face anger, disagreement, and even rejection within the family and community which increase their guilt and shame. (*NCVC, id.)*

These effects and context of child sexual abuse create barriers to a survivor's ability to seek justice through a civil lawsuit. SB505/SB585 would help give survivors the time they need to have meaning access to the courts.

> For these reasons CMPC urges a **favorable** committee report on SB505/SB585: Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings.

[1] Members in support of position include: Advocates for Children & Youth, Citizens Review Board, Court Appointed Special Advocates, Family Tree, Franklin Law Group, Maryland Chapter-American Academy of Pediatrics, Maryland Chapter-National Association of Social Workers, Sabrena McAllister, Diana Phillips, Maryland Coalition Against Sexual Assault.

EXHIBIT 6

Mid Atlantic P.A.N.D.A. Coalition
5788 Endless Ocean Way, Columbia Maryland 21045

From: Mid Atlantic P.A.N.D.A. Coalition

To: Senator Zirkin. Chair
Judicial Proceedings Committee

Re: Senate Bill 505
Civil Actions – Child Sexual Abuse – Statute of Limitations and Required Findings

Date: February 14, 2017

The Mid-Atlantic P.A.N.D.A. is in Favor of House Bill 642 and Senate Bill 505

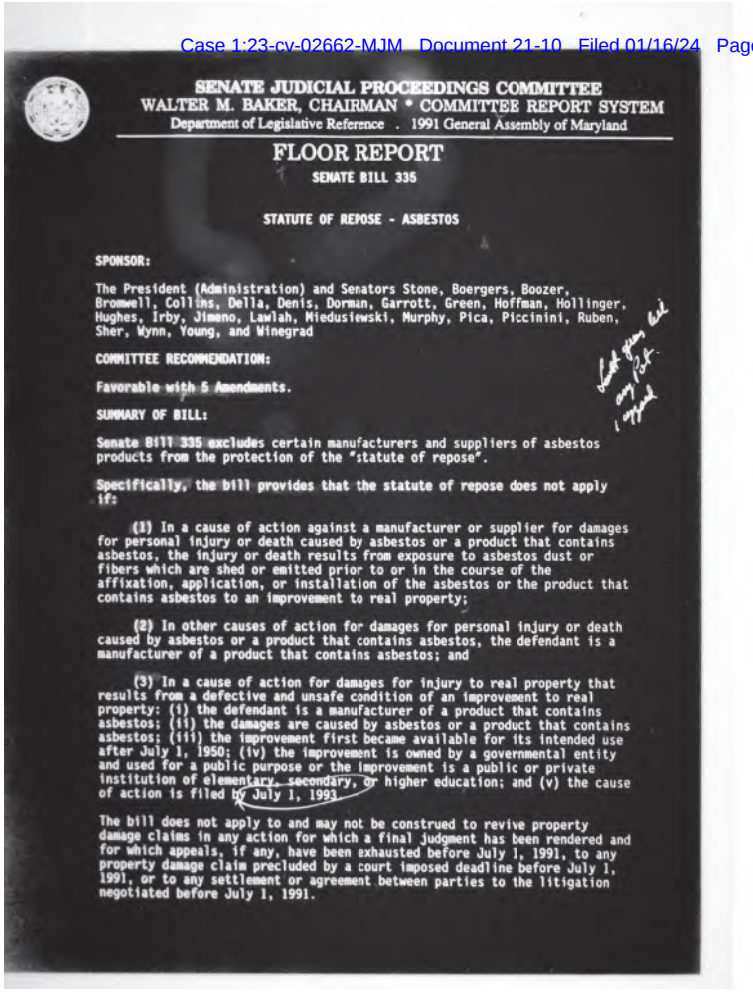
The Mid Atlantic P.A.N.D.A. Coalition (Prevent Abuse and Neglect through Dental Awareness) was established in 2000. Our mission is "To create an atmosphere of understanding in dentistry and other professional communities which will result in the prevention of abuse and neglect through early identification and appropriate intervention for those who have been abused or neglected."

The statute of limitations will be extended for alleged incidents of sexual abuse to a minor. Many times a minor is so traumatized that they do not tell those in authority, even their parents or care givers, what has been done to them. They are afraid for fear of retaliation. They suppress their feelings and by doing so it causes them to have difficulty relating to others, and they also can have trust issues. With all these side effects manifesting it takes time to have the courage and self esteem to face your abuser. This bill will establish different limitation to allow for allegations to be brought against their perpetrator at a later date. This will allow these victims to finally be able to have closure.

Thank you and we ask that you vote in favor of SB 505

Respectfully submitted
Mid-Atlantic P.A.N.D.A. Coalition
Susan Camardese, RDH, MS, President
Melissa Mulreney, DDS. Vice President
Carol Caiazzo, RDH, Secretary
Peter Holmes, MS, IOM, Treasurer
Suzanne Kim, DDS

EXHIBIT 7



SENATE JUDICIAL PROCEEDINGS COMMITTEE
WALTER M. BAKER, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1991 General Assembly of Maryland

FLOOR REPORT

SENATE BILL 335

STATUTE OF REPOSE - ASBESTOS

SPONSOR:

The President (Administration) and Senators Stone, Boergers, Boozer, Bromwell, Collins, Della, Denis, Dorman, Garrott, Green, Hoffman, Hollinger, Hughes, Irby, Jimeno, Lawlah, Miedusiewski, Murphy, Pica, Piccinini, Ruben, Sher, Wynn, Young, and Winegrad

COMMITTEE RECOMMENDATION:

Favorable with 5 Amendments.

SUMMARY OF BILL:

Senate Bill 335 excludes certain manufacturers and suppliers of asbestos products from the protection of the "statute of repose".

Specifically, the bill provides that the statute of repose does not apply if:

(1) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;

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

(3) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property: (i) the defendant is a manufacturer of a product that contains asbestos; (ii) the damages are caused by asbestos or a product that contains asbestos; (iii) the improvement first became available for its intended use after July 1, 1950; (iv) the improvement is owned by a governmental entity and used for a public purpose or the improvement is a public or private institution of elementary, secondary, or higher education; and (v) the cause of action is filed by July 1, 1993.

The bill does not apply to and may not be construed to revive property damage claims in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

COMMITTEE AMENDMENTS:

The Committee adopted 5 amendments to this bill.

Amendment No. 1

This is a sponsor amendment.

Amendment No. 2

This is a technical amendment.

Amendment No. 3

This amendment allows suits to be brought for property damages for buildings available for occupancy after July 1, 1950, rather than July 1, 1953.

Amendment No. 4

This amendment allows public or private institutions of elementary, secondary, or higher education to file suit for property damages.

Amendment No. 5

This amendment allows the bill to apply retroactively to property damage claims precluded by a partial summary judgment before July 1, 1991.

BACKGROUND:

"Statutes of limitations" and "statutes of repose" are types of laws that require a person who claims to have been injured to bring suit against the allegedly responsible party within a certain time frame. After the applicable period of time expires, the right to sue is extinguished.

The two terms are often used interchangeably, but there is a difference between the two types of statutes. The principal difference is the determination of the exact point in time when the limitations "clock" begins to "tick".

Typically, the point in time when the application of a statute of limitations begins is the time the actual injury is discovered. The periods of limitation in these statutes usually fall in the range of one to six years. However, if there was a defect in the design or construction of a building, an injury could occur at any time after completion of that structure, and the injury may be discovered even later. Under a typical statute of limitations, the injured party would then have a fixed amount of time from the date of discovery of the injury to bring an action. As a result, the persons involved in the design and construction of a building potentially could be subject to suit very far into the future if the plaintiff's injury did not occur (or become evident) until that time.

A statute of repose sets a specific time, usually the point of "substantial completion" of an improvement to real property (e.g. a bridge or building) as the beginning of the time period when the clock starts ticking. The statute of repose sets a time period within which all suits for deficiencies in design or construction must be commenced or they will be barred. This period is usually considerably longer than the statute of limitations.

In 1970, the General Assembly enacted the State's first statute of repose for a defective and unsafe condition in an improvement to real property (Chapter 666). The statute prohibited a person from bringing an action based on an injury arising out of a defective and unsafe condition more than 20 years after substantial completion of the improvement. Specifically, actions were barred against all persons except those who, at the time of the injury, were in actual possession and control of the property as owner, tenant, or otherwise.

1971

The Statute of Repose was amended in 1970 to add a separate 10-year period of repose applicable to claims against architects and professional engineers. Contractors were added to this class in 1980.

A number of judicial decisions in 1988 and 1989 held that the Statute of Repose applied to claims against manufacturers and suppliers of asbestos products incorporated into improvements to real property, and barred suits against them filed more than 20 years after an improvement first became available for its intended use. It was anticipated that the result of these court decisions would be to bar claims by individuals for personal injury or wrongful death resulting from exposure to asbestos and by building owners (including the State and local governments) to recover the cost of asbestos removal.

During the 1990 Session, the General Assembly passed Senate Bill 500, which provided that the Statute of Repose would not apply to a cause of action against a manufacturer for damages for wrongful death or personal injury resulting from a latent or occupational disease or for injury to real or personal property resulting from a defective or unsafe condition of an improvement to real property if the condition was caused by asbestos or an article that contains asbestos. Suppliers of material, equipment, machinery or another article that was part of an improvement to real property who knew or should have known that the article was in a defective condition or unreasonably dangerous would also have been excluded from the protection of the Statute of Repose. The bill would have applied to actions pending in a court on July 1, 1989, and to actions filed after that date, with the exception of actions for which final judgment was rendered and all appeals exhausted.

* Two circuit court decisions issued after the 1990 Session ruled that the Statute of Repose does not apply to claims by construction workers exposed to asbestos during the construction of buildings.

On May 25, 1990, the Governor vetoed Senate Bill 500, citing, among other reasons, the uncertainty and lack of finality that the bill would create. The Governor also noted that the recent circuit court decisions would allow almost all of the individuals who claimed injury to have their day in court.

In his veto message, Governor Schaefer promised to work with the sponsors and advocates on compromise legislation to address the problems of Senate Bill 500.

Senate Bill 335 is the result of the Administration's attempts to craft a compromise on the Statute of Repose.

SHR/eeo

EXHIBIT 8

SENATE JUDICIAL PROCEEDINGS COMMITTEE
WALTER M. BAKER, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1991 General Assembly of Maryland

BILL ANALYSIS

SENATE BILL 335

STATUTE OF REPOSE - ASBESTOS

SPONSOR:

The President (Administration)

SUMMARY OF BILL:

Senate Bill 335 excludes certain manufacturers and suppliers of asbestos products from the protection of the "statute of repose".

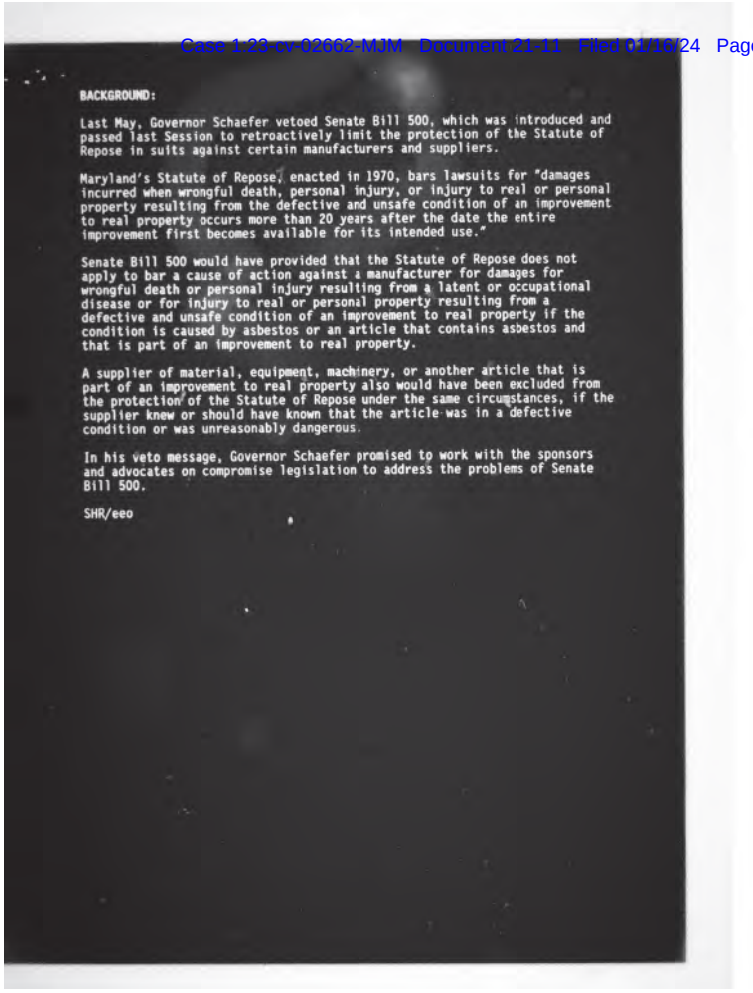
Specifically, the bill provides that the statute of repose does not apply if:

(1) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;

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

(3) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property: (i) the defendant is a manufacturer of a product that contains asbestos; (ii) the improvement first became available for its intended use after July 1, 1953; (iii) the improvement is owned by a governmental entity and used for a public purpose; and (v) the cause of action is filed by July 1, 1993.

The bill does not apply to and may not be construed to revive property damage claims in any action for which a final judgement has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a partial summary judgement or court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.



BACKGROUND:

Last May, Governor Schaefer vetoed Senate Bill 500, which was introduced and passed last Session to retroactively limit the protection of the Statute of Repose in suits against certain manufacturers and suppliers.

Maryland's Statute of Repose, enacted in 1970, bars lawsuits for "damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use."

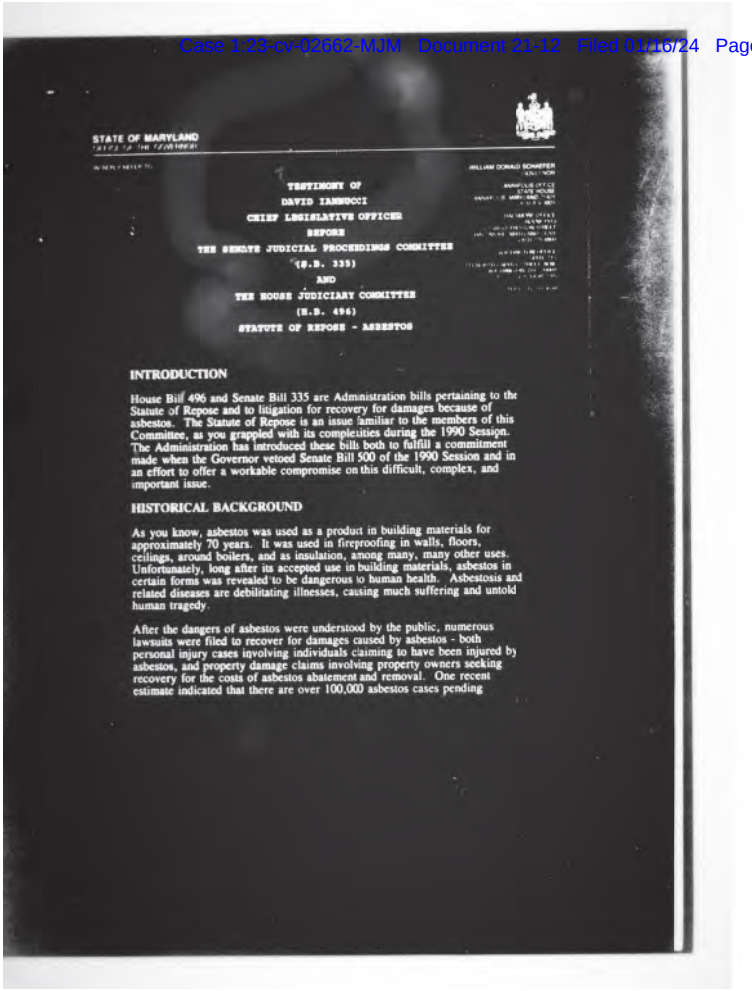
Senate Bill 500 would have provided that the Statute of Repose does not apply to bar a cause of action against a manufacturer for damages for wrongful death or personal injury resulting from a latent or occupational disease or for injury to real or personal property resulting from a defective and unsafe condition of an improvement to real property if the condition is caused by asbestos or an article that contains asbestos and that is part of an improvement to real property.

A supplier of material, equipment, machinery, or another article that is part of an improvement to real property also would have been excluded from the protection of the Statute of Repose under the same circumstances, if the supplier knew or should have known that the article was in a defective condition or was unreasonably dangerous.

In his veto message, Governor Schaefer promised to work with the sponsors and advocates on compromise legislation to address the problems of Senate Bill 500.

SHR/eeo

EXHIBIT 9



STATE OF MARYLAND

TESTIMONY OF
DAVID IANNUCCI
CHIEF LEGISLATIVE OFFICER
BEFORE
THE SENATE JUDICIAL PROCEEDINGS COMMITTEE
(S.B. 335)
AND
THE HOUSE JUDICIARY COMMITTEE
(H.B. 496)
STATUTE OF REPOSE - ASBESTOS

INTRODUCTION

House Bill 496 and Senate Bill 335 are Administration bills pertaining to the Statute of Repose and to litigation for recovery for damages because of asbestos. The Statute of Repose is an issue familiar to the members of this Committee, as you grappled with its complexities during the 1990 Session. The Administration has introduced these bills both to fulfill a commitment made when the Governor vetoed Senate Bill 500 of the 1990 Session and in an effort to offer a workable compromise on this difficult, complex, and important issue.

HISTORICAL BACKGROUND

As you know, asbestos was used as a product in building materials for approximately 70 years. It was used in fireproofing in walls, floors, ceilings, around boilers, and as insulation, among many, many other uses. Unfortunately, long after its accepted use in building materials, asbestos in certain forms was revealed to be dangerous to human health. Asbestosis and related diseases are debilitating illnesses, causing much suffering and untold human tragedy.

After the dangers of asbestos were understood by the public, numerous lawsuits were filed to recover for damages caused by asbestos - both personal injury cases involving individuals claiming to have been injured by asbestos, and property damage claims involving property owners seeking recovery for the costs of asbestos abatement and removal. One recent estimate indicated that there are over 100,000 asbestos cases pending

nationally, with about two-thirds of those cases in state courts. In Maryland, over the last decade, approximately 8,000 to 10,000 cases have been filed - most for personal injury.

Maryland has had a Statute of Repose since 1970. Similar to but distinct from a statute of limitations, a statute of repose allows an injured party a certain period of time after the occurrence of an event in which to bring a lawsuit. After this period of time passes, the right to sue is extinguished. In Maryland, the relevant statute of repose is 20 years after the date an improvement to real property first becomes available for its intended use. The purpose of statutes of repose is to avoid the problems inherent with old claims, such as proof problems, failed memories, failure to maintain a product adequately, lost records, etc.

A number of judicial decisions in 1988 and 1989 applied the protection of Maryland's Statute of Repose to manufacturers, suppliers, and installers of asbestos products who were defendants in both personal injury and property damage cases where plaintiffs sought recovery for damages because of asbestos. It was these decisions that led to the introduction and subsequent passage of Senate Bill 500, an attempt to retroactively overturn by legislation what had been lost in the courtroom.

However, in mid-May of 1990, before the Governor could sign or veto Senate Bill 500, Judge J. William Hinkel of Baltimore County and Judge Marshal A. Levin of Baltimore City partially reversed the earlier decisions and concluded that Maryland's Statute of Repose did not apply to injuries suffered by individuals (such as construction workers) who had handled asbestos before it became a fixture in a building. This allowed an estimated 95% of the personal injury cases to go forward, irrelevant of Senate Bill 500. That fact, coupled with what the Administration saw as significant interpretative problems and policy differences with Senate Bill 500, led the Governor to issue what he called one of his most difficult vetoes.

HOUSE BILL 496/SENATE BILL 335

Since the late summer and throughout the fall, the Administration has been attempting to craft a compromise on the Statute of Repose. The various parties to the discussions must be congratulated for their participation and good faith in the negotiations. Unfortunately, we were not successful in drafting language that all parties agree to in full. The Administration believes, however, that House Bill 496/Senate Bill 335 represent a reasonable, fair, and balanced compromise to the issue. Should this legislation pass as introduced, no one party would be happy with all of its provisions. However, the Administration's approach is a very workable,

straightforward solution to the problems caused by asbestos litigation and the Statute of Repose.

The bill divides the issue into two categories: personal injury and property damage.

Personal injury. The bill would preserve the right to sue for individuals suffering personal injury from exposure to asbestos before an improvement to real property was completed (e.g. the construction phase). This includes the right to sue suppliers, as well as manufacturers. (subsection (d)(2))

The bill would waive the protection of the Statute of Repose for manufacturers of products that contain asbestos, allowing all other individuals to sue for damages for personal injury caused by asbestos. This would allow the remaining 5% of personal injury cases to go forward. (subsection (d)(3))

Property damages. The bill would allow recovery for property damages against manufacturers of products that contain asbestos under specific circumstances:

- the defendant is a manufacturer of a product that contains asbestos;
- the damages to an improvement to real property were caused by asbestos;
- the improvement first became available after July 1, 1953;
- the improvement is owned by a governmental entity; and
- the cause of action is filed by July 1, 1993. (subsection (d)(4))

The bill also contains an uncodified section that states definitively that the bill is intended to apply only prospectively. (Section 2)

IMPORTANT CRITERIA

There are several important criteria that the Administration believes are necessary to resolve the problems with Senate Bill 500:

1. Suppliers. Suppliers are in a very different position than the manufacturers of products that contain asbestos, and House Bill 496/Senate Bill 335 prospectively exclude suppliers from liability. While a

manufacturer is responsible for the decisions that led to asbestos being contained in a building product, suppliers are usually in the position of filling purchase orders or delivering specified materials to a building site. They do not determine what goes into a building product or specify the materials to go into a building. The Administration believes that they should not be held liable for damages.

2. Asbestos. The legislation would waive the protection of the Statute of Repose only for asbestos. While other materials could later be found to be dangerous, later General Assemblies would be in a position to make the policy determinations relevant to those materials.

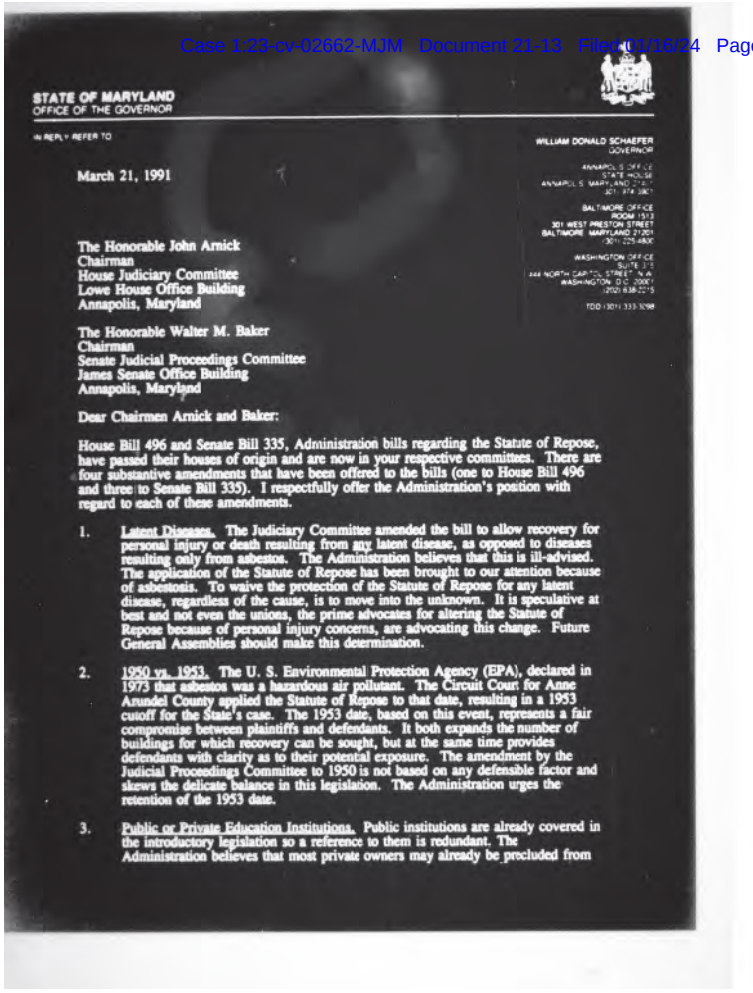
3. Finality. House Bill 496/Senate Bill 335 allow lawsuits to proceed, notwithstanding the Statute of Repose, for improvements that became available for their intended use after July 1, 1953. On April 6, 1973, the U. S. Environmental Protection Agency determined that asbestos was a hazardous air pollutant within the meaning of the (then) federal Clean Air Act, and was subject to regulation as such. From that date on, the public was officially on notice of the dangers of asbestos. A number of decisions in Maryland, applying the 20 year Statute of Repose to that date, cut off lawsuits for buildings available for occupancy before 1953. In evaluating the public buildings in this State for which recovery is being sought, the 1953 date strikes a fair and reasonable balance between the plaintiffs who wish no limit, and the defendans who seek some finality to their exposure.

4. Retroactivity. House Bill 496/Senate Bill 335 offer prospective relief from the Statute of Repose, and do not apply retroactively. Where either a plaintiff or a defendant was successful at the trial court level or on final judgement, the legislation would preserve such victories. The Administration believes that fairness dictates that this legislation be applicable only prospectively, and that the General Assembly should not retroactively reverse decisions of the judicial system.

CONCLUSION

House Bill 496/Senate Bill 335 represent an attempt to strike a sensible balance with an issue that is both difficult and divisive. Consistent with the definition of a true compromise, no one would obtain all the relief that they seek. But this legislation does offer a solution to a problem that the General Assembly has grappled with now for two years.

EXHIBIT 10



STATE OF MARYLAND
OFFICE OF THE GOVERNOR

IN REPLY REFER TO

WILLIAM DONALD SCHAEFER
GOVERNOR

ANNAPOLIS OFFICE
STATE HOUSE
ANNAPOLIS, MARYLAND 21401
301 974-3901

BALTIMORE OFFICE
ROOM 1512
301 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201
301 225-4800

WASHINGTON OFFICE
SUITE 315
444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D.C. 20001
(202) 638-2215

TDD (301) 333-3098

March 21, 1991

The Honorable John Arnick
Chairman
House Judiciary Committee
Lowe House Office Building
Annapolis, Maryland

The Honorable Walter M. Baker
Chairman
Senate Judicial Proceedings Committee
James Senate Office Building
Annapolis, Maryland

Dear Chairmen Arnick and Baker:

House Bill 496 and Senate Bill 335, Administration bills regarding the Statute of Repose, have passed their houses of origin and are now in your respective committees. There are four substantive amendments that have been offered to the bills (one to House Bill 496 and three to Senate Bill 335). I respectfully offer the Administration's position with regard to each of these amendments.

1. Latent Diseases. The Judiciary Committee amended the bill to allow recovery for personal injury or death resulting from any latent disease, as opposed to diseases resulting only from asbestos. The Administration believes that this is ill-advised. The application of the Statute of Repose has been brought to our attention because of asbestosis. To waive the protection of the Statute of Repose for any latent disease, regardless of the cause, is to move into the unknown. It is speculative at best and not even the unions, the prime advocates for altering the Statute of Repose because of personal injury concerns, are advocating this change. Future General Assemblies should make this determination.

2. 1950 vs. 1953. The U. S. Environmental Protection Agency (EPA), declared in 1973 that asbestos was a hazardous air pollutant. The Circuit Court for Anne Arundel County applied the Statute of Repose to that date, resulting in a 1953 cutoff for the State's case. The 1953 date, based on this event, represents a fair compromise between plaintiffs and defendants. It both expands the number of buildings for which recovery can be sought, but at the same time provides defendants with clarity as to their potential exposure. The amendment by the Judicial Proceedings Committee to 1950 is not based on any defensible factor and skews the delicate balance in this legislation. The Administration urges the retention of the 1953 date.

3. Public or Private Education Institutions. Public institutions are already covered in the introductory legislation so a reference to them is redundant. The Administration believes that most private owners may already be precluded from

asbestos recoveries because of statute of limitations problems. There may also be constitutional problems in distinguishing among private sector owners of buildings. However, to the extent that a need is proven, that they are not precluded by statute of limitations, and that there are no constitutional problems, relief for the independent colleges may be justified.

4. Partial Summary Judgement. The Judicial Proceedings Committee amendment striking "partial summary judgment" would allow the bill to be applied retroactively and would allow the revival of a number of decisions lost at the trial court level. One of the primary reasons that Senate Bill 500 was vetoed last Session was its retroactive application, and the perceived unfairness in undoing legislatively what had been lost in the courtroom. In drafting both House Bill 496 and Senate Bill 335, great care was taken to preserve the prior victories of both plaintiffs and defendants and to insure that the bill not apply retroactively. This amendment goes directly against that philosophy and risks fundamental damage to the balances struck in the Administration compromise. We strongly oppose this language.

In conclusion, we greatly appreciate the action of both the Judiciary Committee and the Judicial Proceedings Committee in moving the Administration's Statute of Repose legislation. We ask that you consider the points raised in this letter, and that the balance in the introductory bills be preserved.

Please let me know if you have any questions.

Sincerely,

David Iannucci
Chief Legislative Officer

cc: Delegate Joel Chasnoff
Senator Norman Stone
Mr. Doug Nestor
Ms. Susan Russell

EXHIBIT 11

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
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OFFICE OF
COUNSEL TO THE GENERAL ASSEMBLY
104 LEGISLATIVE SERVICES BUILDING
90 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1991
AREA CODE 301
BALTIMORE & LOCAL CALLING AREA 841-3889
WASHINGTON METROPOLITAN AREA 858-3889
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April 30, 1991

The Honorable William Donald Schaefer
Governor of Maryland
State House
Annapolis, Maryland 21401

Dear Governor Schaefer:

As requested, we have examined the following bills and hereby approve them for constitutionality and legal sufficiency:

House Bills				Senate Bills	
22	324	765	1083	77	589**
111	407***	823	1219	143	729
205*	470	855	1225	226*	741##
208	496#	864	1241	335#	749***
237**	583	916##	1249	451	
320	616	953		503	

Very truly yours,

J. Joseph Curran, Jr.
Attorney General

JJCjr./RAZ/ss
cc: David Iannucci
F. Carvel Payne
Hon. Winfield M. Kelly, Jr.

FOOTNOTES

* House Bill 205 is identical to Senate Bill 226.

** House Bill 237 and Senate Bill 589 are substantially identical. However, the House bill reenacts a number of additional provisions without change and makes non-substantive amendments to §12-6(a) of Article 33 of the Code.

*** The text of House Bill 407 is identical to that of Senate Bill 749 except that the Senate Bill, on page 3, lines 1-3 and 35-37 and on page 4, lines 32-34, places a $100 limit on required insurance benefits.

† Senate Bill 335 is identical to House Bill 496. We have previously advised that the statute of repose may be altered retroactively without violating due process, see letter to Delegate David B. Shapiro from Kathryn M. Rowe dated February 15, 1990. We have also advised that singling out asbestos does not violate Equal Protection. See, Hymowitz v. Eli Lilly and Co., 539 N.E.2d 1069 (N.Y.) cert. denied, 110 S.Ct. 350 (1989). Finally, it is our view that limitation of property damage actions to government buildings and schools is a rational approach to balancing the competing public interests involved and thus would also not violate Equal Protection.

†† House Bill 916 is identical to Senate Bill 741.

EXHIBIT 12

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE

SB 335

Senate Bill 335 (The President)(Administration)

Judicial Proceedings

OVERVIEW OF LEGISLATION: This administration bill clarifies that a manufacturer or supplier of articles containing asbestos or other material which is reasonably dangerous that is part of an improvement to real property is not exempt from liability for damages or injury under certain conditions.

This act does not apply to any action for which a final judgement has been rendered and for which all appeals have been exhausted.

STATE FISCAL IMPACT STATEMENT: The impact on State expenditures is discussed below. State revenues are not affected.

LOCAL FISCAL IMPACT STATEMENT: The impact on local expenditures is discussed below. Local revenues are not affected.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Department of Fiscal Services advises that a number of asbestos-related cases are currently pending resolution before the courts within Maryland, especially Baltimore City. This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only these current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.

LOCAL REVENUES: No effect.

LOCAL EXPENDITURES: Same affect as noted above under "State Expenditures".

INFORMATION SOURCE: Administrative Office of the Courts, Public Defenders Office, State's Attorneys' Coordinator

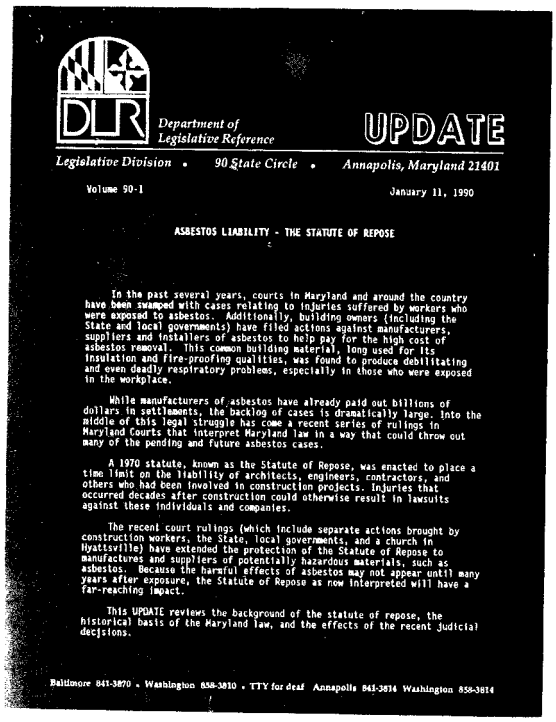
ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 8, 1991

Per: Paul O. Ballou
mld

William R. Miles, Supervising Analyst
Division of Fiscal Research

EXHIBIT 13



DLR Department of Legislative Reference

UPDATE

Legislative Division • 90 State Circle • Annapolis, Maryland 21401

Volume 90-1

January 11, 1990

ASBESTOS LIABILITY - THE STATUTE OF REPOSE

In the past several years, courts in Maryland and around the country have been swamped with cases relating to injuries suffered by workers who were exposed to asbestos. Additionally, building owners (including the State and local governments) have filed actions against manufacturers, suppliers and installers of asbestos to help pay for the high cost of asbestos removal. This common building material, long used for its insulation and fire-proofing qualities, was found to produce debilitating and even deadly respiratory problems, especially in those who were exposed in the workplace.

While manufacturers of asbestos have already paid out billions of dollars in settlements, the backlog of cases is dramatically large. Into the middle of this legal struggle has come a recent series of rulings in Maryland Courts that interpret Maryland law in a way that could throw out many of the pending and future asbestos cases.

A 1970 statute, known as the Statute of Repose, was enacted to place a time limit on the liability of architects, engineers, contractors, and others who had been involved in construction projects. Injuries that occurred decades after construction could otherwise result in lawsuits against these individuals and companies.

The recent court rulings (which include separate actions brought by construction workers, the State, local governments, and a church in Hyattsville) have extended the protection of the Statute of Repose to manufactures and suppliers of potentially hazardous materials, such as asbestos. Because the harmful effects of asbestos may not appear until many years after exposure, the Statute of Repose as now interpreted will have a far-reaching impact.

This UPDATE reviews the background of the statute of repose, the historical basis of the Maryland law, and the effects of the recent judicial decisions.

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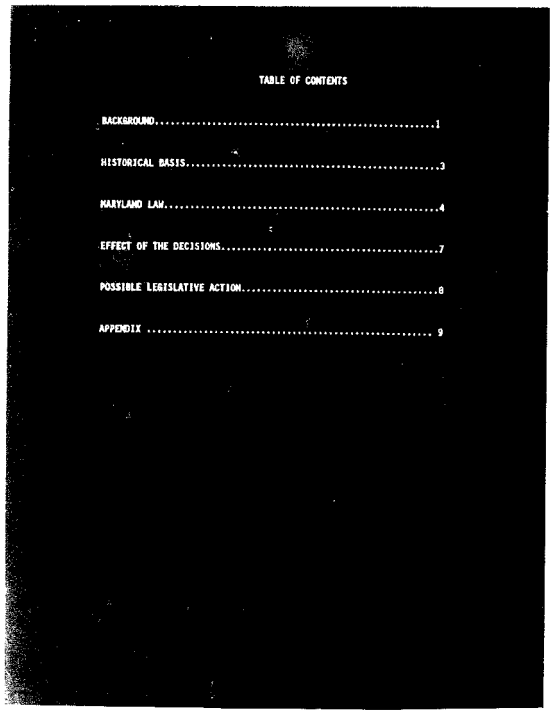

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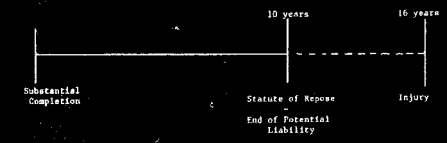
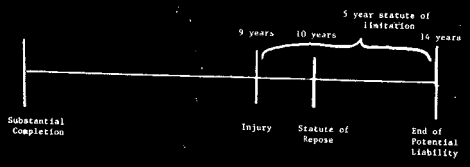
Example 2

Suppose there is a ten-year statute of repose with the facts set out in Example 1. Potential liability ends ten years after substantial completion, and a lawsuit cannot be brought.



Example 3

With the same laws in effect as in Example 2, suppose an injury occurs only nine years after substantial completion of the building. The statute of limitations would give the injured party five full years to bring suit after the injury, effectively extending the potential liability in this example to fourteen years, even with a ten-year statute of repose.



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BACKGROUND

"Statutes of limitations" and "statutes of repose" are types of laws that require a person who claims to have been injured to bring suit against the allegedly responsible party within a certain time frame. If time runs out the lawsuit cannot be brought. The two terms are often used interchangeably, but there can be, and usually is, a difference between the two types of statutes. The principal difference is the determination of the exact point in time when the limitations "clock" begins to "tick."

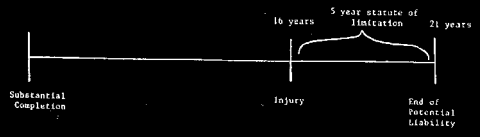
Typically, the point in time when the application of a statute of limitations begins is the time the actual injury is discovered. The periods of limitation in these statutes usually fall in the range of one to six years. However, if there were a defect in the design or construction of a building, an injury could occur at any time after completion of that structure, and the injury may be discovered even later. Under a typical statute of limitations, the injured party would then have a fixed amount of time from the date of discovery of the injury to bring an action. As a result, the persons involved in the design and construction of a building potentially could be subject to suit very far into the future if the plaintiff's injury did not occur (or become evident) until that time.

A statute of repose sets a specific time, usually the point of "substantial completion" of an improvement to real property (e.g. a bridge or building) as the beginning of the time period when the clock starts ticking. The statute of repose sets a time period within which all suits for deficiencies in design or construction must be commenced or they will be barred. This period is usually considerably longer than the statute of limitations.

In many cases, both a statute of limitations and a statute of repose apply. The three examples below illustrate how complex the application of these types of statutes may become.

Example 1

Suppose there is a five year statute of limitations, but no statute of repose, and an injury occurs sixteen years after substantial completion of a building. Potential liability for this specific injury would end twenty-one years after substantial completion of the building.



HISTORICAL BASIS

In 1970, the General Assembly enacted the State's first statute of repose (Chapter 666). The statute prohibited a person from bringing an action based on an injury arising out of a defective and unsafe condition in an improvement to real property more than 20 years after substantial completion of the improvement. Specifically, actions were barred against all persons except those who, at the time of the injury, were in actual possession and control of the property as owner, tenant, or otherwise.

The enactment of statutes of repose in Maryland and other states was a response to the elimination of the "privity of contract" doctrine. Previously, the privity doctrine had denied recovery to a third party who, after construction had been completed and accepted by an owner, sued a person involved in the design or construction, for injuries allegedly sustained as a result of the defective and unsafe conditions in the improvement.

The "privity of contract" doctrine provided that a contracting party had no responsibility to a third party with whom there was no contract. Slowly the courts began to make exceptions to this doctrine and in the 1950s, in cases specifically dealing with claims against architects and contractors, the courts rejected the "privity of contract" defense. With the elimination of the privity doctrine, existing statutes of limitations afforded little or no protection to an architect, engineer, or contractor because the limitation period began to run only when the third party was injured, even if the injury occurred many years after the design and construction of the structure.

Coupled with the elimination of the privity doctrine was the application of the "discovery rule" to these types of cases. The "discovery rule" provides that the action accrues and the statute of limitations begins to run when the plaintiff has in fact discovered that an injury has been suffered or by the exercise of reasonable diligence should have discovered the injury. With the application of the "discovery rule" to an owner's claim against an architect, engineer, or contractor, the statute of limitations afforded very little defense to an owner's actions against the architect, engineer, or contractor.

To counteract the increased potential liability, statutes of repose were enacted by many states to bar suits if the cause of action did not arise before the statutory period had elapsed. The effect of the statute of repose is to bar actions before they accrue; the injury need not yet have occurred, much less have been discovered.

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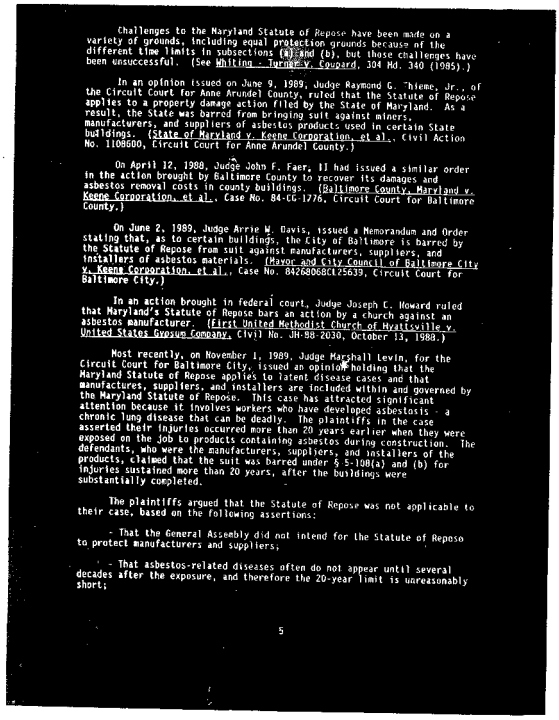
In many states, the statute of repose applies only to architects, engineers, and contractors. The Maryland law, discussed below, is much broader in its application, although there is considerable opinion that the General Assembly did not intend it to be so inclusive.

MARYLAND LAW

The Maryland Statute of Repose is set forth as follows in § 5-108 of the Courts and Judicial Proceedings Article:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) A cause of action for damages does not accrue and a person may not seek contribution or indemnity from any architect, professional engineer, or contractor for damages incurred when wrongful death, personal injury, or injury to real or personal property, resulting from the defective and unsafe condition of an improvement to real property, occurs more than 10 years after the date the entire improvement first became available for its intended use.
>
> (c) Upon accrual of a cause of action referred to in subsections (a) and (b), an action shall be filed within 3 years.
>
> (d) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (e) A cause of action for an injury described in this section accrues when the injury or damage occurs.

The history of the Maryland Statute of Repose is set forth in the attached Appendix.



Challenges to the Maryland Statute of Repose have been made on a variety of grounds, including equal protection grounds because of the different time limits in subsections (a) and (b), but those challenges have been unsuccessful. (See Whiting - Turner v. Coupard, 304 Md. 340 (1985).)

In an opinion issued on June 9, 1989, Judge Raymond G. Thieme, Jr., of the Circuit Court for Anne Arundel County, ruled that the Statute of Repose applies to a property damage action filed by the State of Maryland. As a result, the State was barred from bringing suit against miners, manufacturers, and suppliers of asbestos products used in certain State buildings. (State of Maryland v. Keene Corporation, et al., Civil Action No. 110600, Circuit Court for Anne Arundel County.)

On April 12, 1988, Judge John F. Faer, II had issued a similar order in the action brought by Baltimore County to recover its damages and asbestos removal costs in county buildings. (Baltimore County, Maryland v. Keene Corporation, et al., Case No. 84-CG-1776, Circuit Court for Baltimore County.)

On June 2, 1989, Judge Arrie W. Davis, issued a Memorandum and Order stating that, as to certain buildings, the City of Baltimore is barred by the Statute of Repose from suit against manufacturers, suppliers, and installers of asbestos materials. (Mayor and City Council of Baltimore City v. Keene Corporation, et al., Case No. 8826006BC125639, Circuit Court for Baltimore City.)

In an action brought in federal court, Judge Joseph C. Howard ruled that Maryland's Statute of Repose bars an action by a church against an asbestos manufacturer. (First United Methodist Church of Hyattsville v. United States Gypsum Company, Civil No. JH-88-2030, October 13, 1988.)

Most recently, on November 1, 1989, Judge Marshall Levin, for the Circuit Court for Baltimore City, issued an opinion holding that the Maryland Statute of Repose applies to latent disease cases and that manufacturers, suppliers, and installers are included within and governed by the Maryland Statute of Repose. This case has attracted significant attention because it involves workers who have developed asbestosis - a chronic lung disease that can be deadly. The plaintiffs in the case asserted their injuries occurred more than 20 years earlier when they were exposed on the job to products containing asbestos during construction. The defendants, who were the manufacturers, suppliers, and installers of the products, claimed that the suit was barred under § 5-108(a) and (b) for injuries sustained more than 20 years, after the buildings were substantially completed.

The plaintiffs argued that the Statute of Repose was not applicable to their case, based on the following assertions:

- That the General Assembly did not intend for the Statute of Reposo to protect manufacturers and suppliers;

- That asbestos-related diseases often do not appear until several decades after the exposure, and therefore the 20-year limit is unreasonably short;

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- That the exposure to asbestos occurred before the completion of the construction, and therefore the Statute of Repose did not apply; and

- That latent diseases (such as asbestosis) are excluded from the scope of the law.

In reaching his decision Judge Levin looked to the Statute of Repose in the District of Columbia, the only other jurisdiction that has language similar to Maryland's statute. The courts in the District of Columbia had determined that manufacturers of building materials were included within the scope of the law. (D.H. Westerman Co. v. Firemans Fund, Inc., 499 A. 2d 116 (D.C. App. 1985)) Persuasive to Judge Levin was the three part analysis undertaken by the Westerman Court. In that case the court first looked to the plain language of the statute, second the legislative history, and third the existence of statutes in other states limiting the class of covered defendants (e.g. architects and engineers). The fact that the District of Columbia statute of repose was specifically amended after the Westerman case to make the "statute inapplicable to any manufacturer or supplier of any equipment or machinery or other articles installed in the structure upon real property" was also persuasive to Judge Levin.

Applying the same analysis to the Maryland Statue of Repose, Judge Levin concluded that manufacturers and suppliers of building materials and equipment are indeed covered under § 5-108(a). Judge Levin stated that the language of subsection (a) is very broad and does not exclude anyone. "[W]hen the legislature has not expressly provided for an exception in a statute of this type, the court will not allow any implied or equitable exception to be engrafted upon it."

Responding to the plaintiffs' other arguments, the court said that

(1) legislatures have broad discretion in enacting laws which affect some groups of persons differently than others;

(2) a cause of action for injuries from exposure to dangerous substances over a period of time does not accrue until the effects are manifest;

(3) the statute of repose has been amended in the years since 1970, providing opportunities to specifically exclude latent diseases from the coverage of the law; and

(4) the statute of repose was specifically enacted to limit the discovery rule, a rule expressly enunciated to address the problem caused by latent disease.

Several issues need to be resolved, beyond the application of the Statute of Repose. The Judge stated at the end of his opinion "before a complete summary judgment may be granted there must be a determination by the trial judge, inter alia, of what improvements are involved, what real

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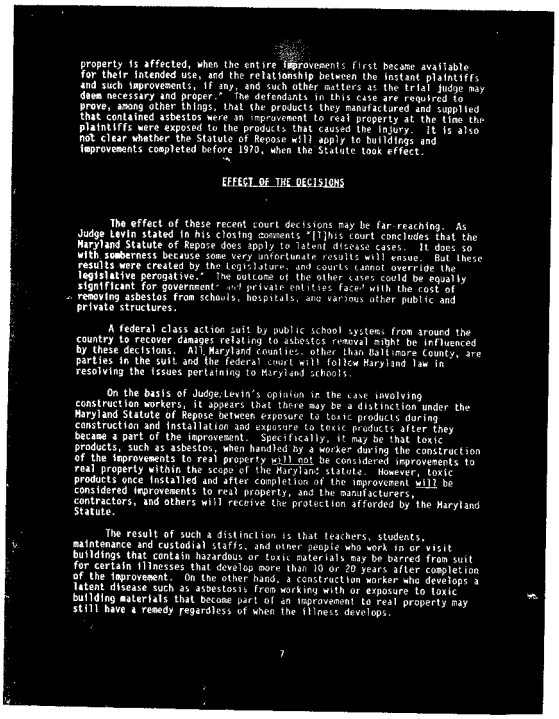

property is affected, when the entire improvements first became available for their intended use, and the relationship between the instant plaintiffs and such improvements, if any, and such other matters as the trial Judge may deem necessary and proper." The defendants in this case are required to prove, among other things, that the products they manufactured and supplied that contained asbestos were an improvement to real property at the time the plaintiffs were exposed to the products that caused the injury. It is also not clear whether the Statute of Repose will apply to buildings and improvements completed before 1970, when the Statute took effect.

EFFECT OF THE DECISIONS

The effect of these recent court decisions may be far-reaching. As Judge Levin stated in his closing comments "[T]his court concludes that the Maryland Statute of Repose does apply to latent disease cases. It does so with somberness because some very unfortunate results will ensue. But these results were created by the Legislature, and courts cannot override the legislative perogative." The outcome of the other cases could be equally significant for government and private entities faced with the cost of removing asbestos from schools, hospitals, and various other public and private structures.

A federal class action suit by public school systems from around the country to recover damages relating to asbestos removal might be influenced by these decisions. All Maryland counties, other than Baltimore County, are parties in the suit and the federal court will follow Maryland law in resolving the issues pertaining to Maryland schools.

On the basis of Judge Levin's opinion in the case involving construction workers, it appears that there may be a distinction under the Maryland Statute of Repose between exposure to toxic products during construction and installation and exposure to toxic products after they became a part of the improvement. Specifically, it may be that toxic products, such as asbestos, when handled by a worker during the construction of the improvements to real property will not be considered improvements to real property within the scope of the Maryland statute. However, toxic products once installed and after completion of the improvement will be considered improvements to real property, and the manufacturers, contractors, and others will receive the protection afforded by the Maryland Statute.

The result of such a distinction is that teachers, students, maintenance and custodial staffs, and other people who work in or visit buildings that contain hazardous or toxic materials may be barred from suit for certain illnesses that develop more than 10 or 20 years after completion of the improvement. On the other hand, a construction worker who develops a latent disease such as asbestosis from working with or exposure to toxic building materials that become part of an improvement to real property may still have a remedy regardless of when the illness develops.

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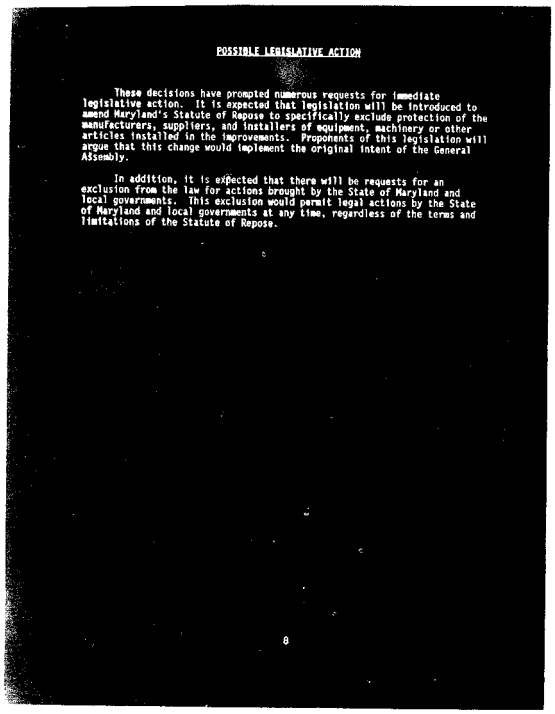

POSSIBLE LEGISLATIVE ACTION

These decisions have prompted numerous requests for immediate legislative action. It is expected that legislation will be introduced to amend Maryland's Statute of Repose to specifically exclude protection of the manufacturers, suppliers, and installers of equipment, machinery or other articles installed in the improvements. Proponents of this legislation will argue that this change would implement the original intent of the General Assembly.

In addition, it is expected that there will be requests for an exclusion from the law for actions brought by the State of Maryland and local governments. This exclusion would permit legal actions by the State of Maryland and local governments at any time, regardless of the terms and limitations of the Statute of Repose.

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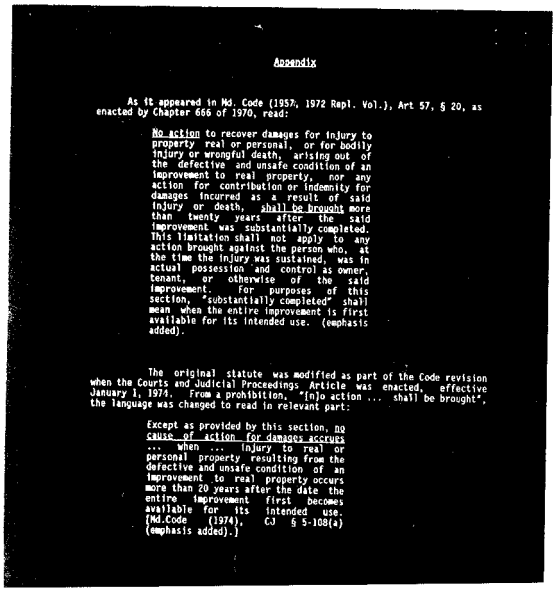


Appendix

As it appeared in Md. Code (1957, 1972 Repl. Vol.), Art 57, § 20, as enacted by Chapter 666 of 1970, read:

> No action to recover damages for injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "substantially completed" shall mean when the entire improvement is first available for its intended use. (emphasis added).

The original statute was modified as part of the Code revision when the Courts and Judicial Proceedings Article was enacted, effective January 1, 1973. From a prohibition, "[n]o action ... shall be brought", the language was changed to read in relevant part:

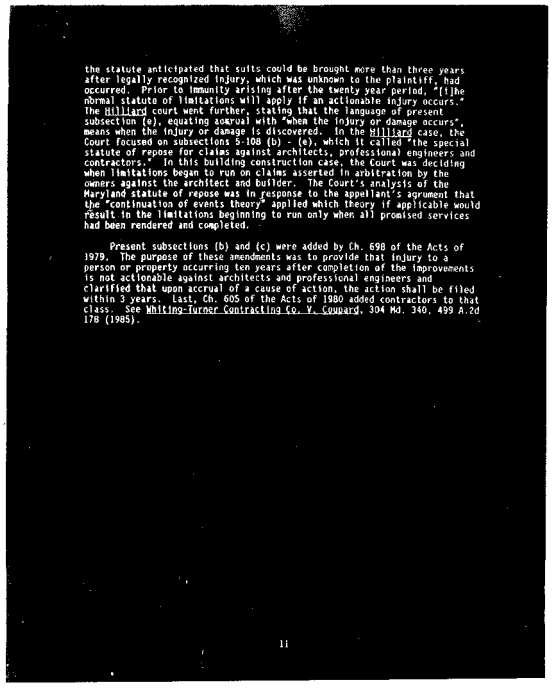
> Except as provided by this section, no cause of action for damages accrues ... when ... injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use. [Md.Code (1974), CJ § 5-108(a) (emphasis added).]

Present § 5-108(d) was subsection (b) in the 1974 enactment. The 1974 changes also added as subsection (c) the language now found in subsection (e) ("A cause of action for an injury described in this section accrues when the injury or damage occurs.").

The Revisor's Note explains the 1974 changes.

> This section is new language derived from Article 57, § 20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use. The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs.
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought. [Md.Code (1974), CJ at 182.]

In explaining the legislative history and this revisor's note, the Court of Appeals in Hilliard & Bartho v. Fedco Systems, 309 Md. 147 (1987) stated that the revisor's note "makes plain that § 5-108 was not intended to abrogate the discovery rule as it then applied to actions against architects, engineers, and contractors". (emphasis added) Inasmuch as the twenty year cutoff was intended to address the problem of latent defects,



the statute anticipated that suits could be brought more than three years after legally recognized injury, which was unknown to the plaintiff, had occurred. Prior to immunity arising after the twenty year period, "[t]he normal statute of limitations will apply if an actionable injury occurs." The Hilliard court went further, stating that the language of present subsection (e), equating accrual with "when the injury or damage occurs", means when the injury or damage is discovered. In the Hilliard case, the Court focused on subsections 5-108 (b) - (e), which it called "the special statute of repose for claims against architects, professional engineers and contractors." In this building construction case, the Court was deciding when limitations began to run on claims asserted in arbitration by the owners against the architect and builder. The Court's analysis of the Maryland statute of repose was in response to the appellant's agrument that the "continuation of events theory" applied which theory if applicable would result in the limitations beginning to run only when all promised services had been rendered and completed.

Present subsections (b) and (c) were added by Ch. 698 of the Acts of 1979. The purpose of these amendments was to provide that injury to a person or property occurring ten years after completion of the improvements is not actionable against architects and professional engineers and clarified that upon accrual of a cause of action, the action shall be filed within 3 years. Last, Ch. 605 of the Acts of 1980 added contractors to that class. See Whiting-Turner Contracting Co. V. Coupard, 304 Md. 340, 499 A.2d 178 (1985).

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EXHIBIT 14

J. JOSEPH CURRAN, JR.
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TTY FOR DEAF - ANNAPOLIS 841-3814 - D.C. METRO 858-3814

February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that establshed the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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6 The D. C. statute is similar to Maryland's, a point frequently noted by the courts construing them. See, President and Directors, Etc. v. Madden, 505 F.Supp. 557 (D.Md. 1980) aff'd 660 F.2d 91 (4th Cir. 1981); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89).

7 In fact, that issue is still not settled, as it has not yet been considered by a State appellate court, and lower courts' interpretations of law enjoy no presumption of correctness on review. Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

9 See Senate Bill 988 of 1977.

10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
>
> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ____ F.Supp. ____ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

EXHIBIT 15

DELAYED DISCLOSURE

CHILD USA 2023 FACTSHEET

A COMPREHENSIVE REPORT ON DELAYED DISCLOSURE IN CASES OF CHILD SEXUAL ABUSE. INSIGHTS, IMPLICATIONS, AND PATHWAYS FORWARD.

CHILD USA

ANDREW ORTIZ, M.S.S.P
SOCIAL SCIENCE DIRECTOR, CHILD USA

OVERVIEW OF DISCLOSURE

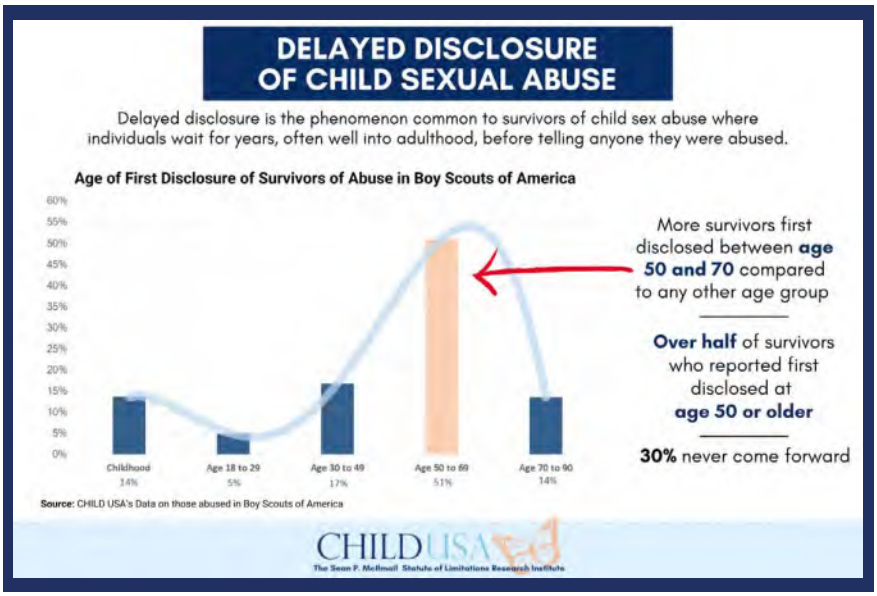
Disclosure refers to when a victim of child sexual abuse (CSA) tells someone about the abuse they endured, whether a peer, to a parent, another adult, or the authorities.

NOT ALL VICTIMS DISCLOSE, BUT FOR THE CSA VICTIMS WHO DO DISCLOSE, THE VAST MAJORITY NEED DECADES TO COME FORWARD.[1]

Disclosure of CSA is a complex, lifelong process.[2] The process of disclosure often takes decades, and the "ideal" timing of disclosure should be up to the victim. Over 70% of victims do not disclose within five years of their experience of abuse.[3] Most victims are only able to acknowledge and describe the abuse in adulthood.[4] Approximately 1 in 5 victims of CSA never disclose their experiences of abuse.[5]

CHILD USA ANALYZED DATA ON VICTIMS OF THE BOY SCOUTS OF AMERICA AND FOUND THAT OVER HALF FIRST DISCLOSED WHEN THEY WERE OVER 50.

Other studies found that among those victims who do come forward, the average length of time before disclosure is around 20 years.[6] Those who have experienced institutional abuse face an additional hurdle that appears to further delay disclosure.[7]



DISCLOSURE TO MANDATED REPORTERS AND LEGAL AUTHORITIES IS UNCOMMON.

Reports of CSA remain largely outside the legal system. CSA victims who disclose during childhood usually tell other youth, such as siblings or peers.[8] The Department of Justice estimated that 86% of CSA went unreported by victims before adulthood.[9]

Among 10–17-year-olds, 66% of CSA is not reported to parents or any adult at the time of the abuse, and police reports occur for only 19.1% of cases.[10] Similarly, one study estimated only 10-15% of all CSA is reported to legal authorities.[11]

Immediate disclosure is rare. Most victims are not able to disclose to a mandated reporter or legal authority for decades because of the barriers they face.

WHAT BARRIERS DO VICTIMS FACE?

CSA victims face a variety of barriers to disclosure. There are profound long-term psychological, physical, and behavioral impacts of CSA trauma, and many victims do not report their experiences of abuse at the time due to social, psychological, or institutional barriers.[12]

Trauma response: Early experiences of trauma impact the child's brain development and functioning.[13] The impact makes it more difficult to accurately recall memories of abuse and control emotions related to those memories.[14] During abuse, some CSA victims experience dissociation – feeling immobile, paralyzed, or detached from one's body.[15] This dissociative response also affects how memories are formed and makes it more difficult to describe the abuse in detail. Dissociation is often part of a victim's ongoing struggle with healing from trauma.

Inability to communicate: Young children are typically unable to fully understand CSA and lack the language to describe the abuse.[16] Children with developmental or intellectual disabilities face increased challenges to disclosure.

Psychological barriers: Following abuse, victims may respond to the trauma by blaming themselves for what happened and feeling a sense of guilt.[17] Other common trauma responses include shame and fear of negative consequences if they tell someone about the abuse, especially when they receive threats from the perpetrator.[18] These trauma responses often outweigh the desire or intention to talk about the abuse.[19] Many victims also experience confusion, distrust in their memory, and fear of being emotionally hurt or not being believed.[20]

Gender: Although girls are more likely to be abused, male victims tend to disclose abuse later in life. One study found that men needed nearly 30 years before they were able to have a helpful, in-depth discussion about the abuse.[21] Gender norms, stereotypes, and cultural pressures make it especially difficult for men and boys to discuss CSA; they are expected to show strength, not weakness or vulnerability, and they may worry about homophobic responses to disclosure.[22]

Relationship to Perpetrator: Perpetrators are most likely to be a family member or someone known to the child.[23] For their victims, the abuse is confusing, and the child may even feel like they need to protect the abuser.[24] Disclosure is more difficult for the child if the perpetrator is a family member or close to the family, especially if the perpetrator lives with the victim.[25] Negative reactions to disclosure are more common when the perpetrator is a relative.[26] Children are more likely to retract attempts to disclose than to fabricate the abuse.

Dysfunction in the family: CSA often occurs with other forms of child abuse or domestic violence, and survivors have reported fearing the reactions of others if they disclosed or the consequences of disclosure if police or other authorities became involved.[27]

Institutional setting: CSA occurs in institutional settings such as schools, residential schools, foster care, after-school programs, scouting groups, religious institutions, sporting organizations, and hospitals. ***In fact, it occurs wherever children are.*** Many perpetrators of institutional CSA have a close relationship with the victim and are often a trusted adult in a position of authority or power.[28] Abusers use their authority and power to take advantage of children who are isolated or have unmet needs.[29] This exploitation limits opportunities for disclosure and contributes to fear of not being believed.

Environmental & Cultural Barriers: Neighborhood or community conditions also act as a barrier, especially if there is a lack of family, school, or community support.[30] Social isolation is another barrier to disclosure because peers can encourage disclosure to trusted adults.[31] Disclosure is especially challenging in cultural contexts where it is taboo to discuss sexuality or to speak out against men and others in positions of authority.

WHY DOES DISCLOSURE MATTER?

Family members, lawmakers, and investigators need to understand the facts on disclosure so they can support victims who come forward and help them seek justice. The public also needs this information to protect kids and prevent child sex abuse.

By the time most victims are able to come forward, the arbitrary deadlines for pressing charges or suing perpetrators and responsible institutions—known as statutes of limitation (SOLs)—have expired. These short SOLs silence victims, assist perpetrators, and aid in institutional cover-ups.

PATH TO JUSTICE

CHILD USA is leading the way to reform SOLs nationwide.

Forty-nine states, or 98%, five territories, and the federal government have amended their criminal and civil CSA SOLs since January 2002.[32] Many states have done so several times. In the first half of 2023 alone, twelve states passed SOL reform legislation, including Maryland and Arkansas, which eliminated their civil SOLs and opened revival windows. Another thirty-eight states and the federal government have introduced SOL reform legislation this year.

Despite the tremendous progress that has been made since 2002, there is still work to be done both nationally and internationally. CHILD USA continues to fight for the protection of children through comprehensive civil and criminal SOL reform globally.[33]

FOR THE MOST RECENT UPDATES, CHECK OUT CHILD USA'S 2023 SOL TRACKER:
https://childusa.org/2023sol/

REFERENCES

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22. Alaggia et al., 2019. "Although women are at double the risk of being subjected to CSA, the ratio of women to men in most disclosure studies has not been representative. This finding may be indicative of male victims more likely delaying disclosing their CSA experiences, leaving male disclosure in child and youth samples underrepresented" (p.278).

23. Gewirtz-Meydan & Finkelhor, 2020.

24. Spalek et al., 2016.

25. Alaggia et al., 2019. "In addition, relationship with perpetrator is a factor whereby research indicates that disclosure is made more difficult when the perpetrator is a family member or close to the family" (p.277).

26. Gewirtz-Meydan & Finkelhor, 2020.

27. Alaggia et al., 2019. "Families with rigidly fixed gender roles, patriarchal attitudes, power imbalances, other forms of child abuse and domestic violence, chaotic family structure, dysfunctional communication, and social isolation have been found to suppress disclosure" (p.277).

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EXHIBIT 16

325.

(f) The rates set forth in [sections] *paragraphs* (a), (b), (c) and (d) above do not apply to sales for human consumption of any meals, food or drink (other than alcoholic beverages) as defined in Section 324(f)(1) of this subtitle; when such sales where the price is one dollar ($1), the tax is four cents (4¢); and on such sales where the price is in excess of one dollar ($1), the rate of tax specified in paragraph (e) above shall apply.

The tax shall be due and payable at the rates set forth herein on all sales of taxable property or services delivered to the purchaser on or after June 1, 1961.

Notwithstanding anything to the contrary hereinabove in this section, the rate of tax shall be as follows on the purchase of farm vehicles and all farm equipment to be used to prepare the soil, plant seeds, service growing crops and harvest crops, including (1) portable elevators and conveyors used to load harvested crops into storage facilities on the farm, and (2) also including but not limited to power spraying equipment, irrigation equipment and portable grain and hay dryers, and (3) also but not limited to milking machines:

(1) On each sale where the price is from fifty-one cents (51¢) to one dollar ($1.00), two cents (2¢);

(2) On each fifty cents (50¢) of price or fraction thereof in excess of one dollar ($1.00), one cent (1¢).

326.

(q) Sales of food or beverages of any nature if made in any [vehicles] *vehicle* which is being operated within this State in the course of interstate commerce.

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1970.

Approved May 21, 1970.

CHAPTER 666

(Senate Bill 241)

AN ACT to add new Section 20 to Article 57 of the Annotated Code of Maryland (1968 Replacement Volume), title "Limitations of Actions," to follow immediately after Section 19 thereof, to prohibit the bringing of actions based on injuries arising out of defective conditions of improvements to real property against certain persons after a specified period of time and providing that the provision of the Act shall not apply to actions accruing prior to its effective date.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Section 20 be and it is hereby added to Article 57 of the Annotated Code of Maryland (1968 Replacement Volume), title

"Limitations of Actions," to follow immediately after Section 19 thereof, and to read as follows:

20.

No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than ~~nine~~ TWENTY years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "substantially completed" shall mean when the entire improvement is first available for its intended use.

SEC. 2. *And be it further enacted,* That this Act shall not apply to any cause of action arising on or before June 30, 1970.

SEC. 3. *And be it further enacted,* That this Act shall take effect July 1, 1970.

Approved May 21, 1970.

CHAPTER 667

(Senate Bill 254)

AN ACT to repeal and re-enact, with amendments, Section 402 of Article 81 of the Annotated Code of Maryland (1969 Replacement Volume), AS AMENDED BY CHAPTER 5 OF THE ACTS OF THE SPECIAL SESSION, DECEMBER 16, 1969, title "Revenue and Taxes," subtitle "Admissions and Amusement Tax," changing the definition of roof garden or other similar place to eliminate the requirement that a performance be public in a public place in order for the tax to be applicable and adding members and guests as persons subject to the tax.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 402 of Article 81 of the Annotated Code of Maryland (1969 Replacement Volume), AS AMENDED BY CHAPTER 5 OF THE ACTS OF THE SPECIAL SESSION, DECEMBER 16, 1969, title "Revenue and Taxes," subtitle "Admissions and Amusement Tax," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

402. Levy and Amount.

There shall be levied, collected and paid a tax at the rate of four and one-half percentum (4½%) of the gross receipts of every person, firm or corporation derived from the amounts charged for (1) admission to any place, whether such admission be by single ticket, season ticket or subscription, (2) admission within an enclosure in

EXHIBIT 17

LAWS

OF THE

STATE OF MARYLAND

ENACTED

At the Session of the General Assembly Begun and Held in the
City of Annapolis on the Ninth Day of January, 1991
and Ending on the Eighth Day of April, 1991

VOLUME IV

CHAPTER 271

(Senate Bill 335)

AN ACT concerning

Statute of Repose – Asbestos

FOR the purpose of providing that provisions of ~~the~~ *a certain* statute of repose do not apply to certain manufacturers or suppliers of products that contain asbestos under certain circumstances; providing for the application of this Act; making provisions of this Act severable; and generally relating to ~~the~~ *a* statute of repose.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–108
Annotated Code of Maryland
(1989 Replacement Volume and 1990 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–108.

(a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.

(b) [A] EXCEPT AS PROVIDED BY THIS SECTION, A cause of action for damages does not accrue and a person may not seek contribution or indemnity from any architect, professional engineer, or contractor for damages incurred when wrongful death, personal injury, or injury to real or personal property, resulting from the defective and unsafe condition of an improvement to real property, occurs more than 10 years after the date the entire improvement first became available for its intended use.

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

(d) (1) IN THIS SUBSECTION, "SUPPLIER" MEANS ANY INDIVIDUAL OR ENTITY WHOSE PRINCIPAL BUSINESS IS THE SUPPLY, DISTRIBUTION, INSTALLATION, SALE, OR RESALE OF ANY PRODUCT THAT CAUSES ASBESTOS–RELATED DISEASE.

(2) This section does not apply if:

~~(1)~~ (I) [the] THE defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred;

~~(2)~~ ~~(I)~~ (II) IN A CAUSE OF ACTION AGAINST A MANUFACTURER OR SUPPLIER FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY ASBESTOS OR A PRODUCT THAT CONTAINS ASBESTOS, THE INJURY OR DEATH RESULTS FROM EXPOSURE TO ASBESTOS DUST OR FIBERS WHICH ARE SHED OR EMITTED PRIOR TO OR IN THE COURSE OF THE AFFIXATION, APPLICATION, OR INSTALLATION OF THE ASBESTOS OR THE PRODUCT THAT CONTAINS ASBESTOS TO AN IMPROVEMENT TO REAL PROPERTY; ~~AND~~

~~(II) IN THIS PARAGRAPH, "SUPPLIER" MEANS ANY INDIVIDUAL OR ENTITY WHOSE PRINCIPAL BUSINESS IS THE SUPPLY, DISTRIBUTION, INSTALLATION, SALE, OR RESALE OF ANY PRODUCT THAT CAUSES ASBESTOS–RELATED DISEASE;~~

~~(3)~~ (III) IN OTHER CAUSES OF ACTION FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY ASBESTOS OR A PRODUCT THAT CONTAINS ASBESTOS, THE DEFENDANT IS A MANUFACTURER OF A PRODUCT THAT CONTAINS ASBESTOS; *OR*

~~(4)~~ (IV) IN A CAUSE OF ACTION FOR DAMAGES FOR INJURY TO REAL PROPERTY THAT RESULTS FROM A DEFECTIVE AND UNSAFE CONDITION OF AN IMPROVEMENT TO REAL PROPERTY:

~~(I)~~ 1. THE DEFENDANT IS A MANUFACTURER OF A PRODUCT THAT CONTAINS ASBESTOS;

~~(II)~~ 2. THE DAMAGES TO AN IMPROVEMENT TO REAL PROPERTY ARE CAUSED BY ASBESTOS OR A PRODUCT THAT CONTAINS ASBESTOS;

~~(III)~~ 3. THE IMPROVEMENT FIRST BECAME AVAILABLE FOR ITS INTENDED USE AFTER JULY 1, ~~1953~~ ~~1950~~ *1953*;

~~(IV)~~ 4. THE IMPROVEMENT:

A. IS OWNED BY A GOVERNMENTAL ENTITY AND USED FOR A PUBLIC PURPOSE; OR

B. IS A PUBLIC OR PRIVATE INSTITUTION OF ELEMENTARY, SECONDARY, OR HIGHER EDUCATION; AND

~~(V)~~ 5. THE ~~CAUSE OF ACTION~~ *COMPLAINT* IS FILED BY JULY 1, 1993.

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not apply to and may not be construed to revive property damage claims in any action for which a final ~~judgement~~ judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a *partial summary judgment or* ~~partial summary judgement or~~ court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1991.

Approved May 14, 1991.

CHAPTER 272

(Senate Bill 8)

AN ACT concerning

Workers' Compensation Insurance – Uninsured Employers' Fund

FOR the purpose of altering assessments imposed against an uninsured employer; *providing for a delayed effective date;* and generally relating to the Uninsured Employers' Fund.

BY repealing and reenacting, with amendments,

Article ~~101 – Workmen's Compensation~~ – Labor and Employment

Section ~~91(d)(1)~~ 9–1005(a)

Annotated Code of Maryland

~~(1985 Replacement Volume and 1990 Supplement)~~

(As enacted by Chapter _____ (H.B. 1) of the Acts of the General Assembly of 1991)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

VALERIE BUNKER,	*	
Plaintiff,	*	
v.	*	**Civil Action No.: 1:23-cv-02662-MJM**
THE KEY SCHOOL, INCORPORATED, *et al.,*	*	
Defendants.	*	

* * * * * * * * * * * * *

DEFENDANTS THE KEY SCHOOL, INC.'S AND THE KEY SCHOOL BUILDING AND FINANCE CORPORATION'S REPLY IN SUPPORT OF MOTION TO DISMISS, WITH REQUEST FOR HEARING

Defendants the Key School, Inc. and the Key School Building and Finance Corporation (collectively, "Key Defendants"), by their undersigned counsel, submit this reply in support of their motion to dismiss Plaintiff's claims for failure to state a claim upon which relief can be granted, and further state as follows:

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INTRODUCTION

As pointed out in Key Defendants' opening brief, the Maryland Appellate Court has held that once a limitations period runs, defendants have a right to be free of expired claims. *See Rice v. Univ. of Md. Med. Sys. Corp.*, 186 Md. App. 551, 563 (2009); ECF 20-1 at 24-26.[1] Plaintiff has no answer to *Rice* and does not even cite it. Plaintiff's failure to respond to one of Key Defendants' standalone dismissal arguments is alone sufficient grounds to dismiss her claims.

Plaintiff fares no better on the remaining issue. The principal thrust of Plaintiff's opposition is that the legislation enacted in 2017 is not what it says it is. According to Plaintiff, although the law explicitly states that CJ § 5-117(d) (West 2017) is a "statute of repose," it is not a statute of repose after all because the legal consequences of repose were not sufficiently spelled out to the legislators who enacted it. That argument is untenable. If accepted, it would render all legislation subject to nullification on the ground that legislators didn't understand what they were voting for.

Equally untenable is Plaintiff's secondary argument—that § 5-117(d) is not a statute of repose because it does not share all of the features of other statutes of repose that Plaintiff identifies. As the Maryland Supreme Court has said, "there are overlapping features of statutes of limitations and statutes of repose, and plenty of definitions from which to choose," and, for that reason, there is "no hard and fast rule" for identifying statutes of repose. *Anderson v. United States*, 427 Md. 99, 123 (2012). There is certainly no formula for treating what is explicitly labeled a statute of repose as something else.

Section 5-117(d), in any event, closely resembles other statutes of repose in important respects: it protects a narrow category of potential defendants (entities that are not themselves perpetrators of sexual abuse), provides an absolute bar on liability after a certain period of time,

[1] ECF pin cites herein are to the parties' numbering at the bottom of each page.

and is triggered by a date other than the date of injury. And at least one other state (Illinois) has enacted a statute of repose much like this one—extinguishing claims arising from the sexual abuse of minors a certain number of years after the plaintiff reaches the age of majority.

The essential nature of a statute of repose is that it protects a specific category of defendants (here, non-perpetrators) from a specific kind of claim, regardless of whether limitations for that kind of claim has expired. That is what this statute does, and that is why it is a statute of repose.

Because § 5-117(d) is a statute of repose, this case is straightforward. It vests in non-perpetrator defendants a right to be free of abuse claims after a certain period of time, and under the due process and takings clauses of the Maryland Constitution that right may not be abrogated. *See* Md. Const. art. III, § 40 (takings clause); *id.*, Declaration of Rights art. 24 (due-process clause).

Here, it is undisputed that all of Plaintiff's claims are subject to the 2017 repose provision. Because the CVA's abrogation of those claims subject to the statute of repose is plainly unconstitutional under settled Maryland law, all of her claims should be dismissed with prejudice.

ARGUMENT

I. Plaintiff Ignores Case Law Holding that the Maryland Constitution Precludes the Revival of Claims Barred by the Statute of Limitations

The Maryland Appellate Court held in *Rice* that "when a defendant has survived the period set forth in [a] statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process." 186 Md. App. at 563. The Maryland Supreme Court has hinted that it would hold similarly. *See Doe v. Roe*, 419 Md. 687, 707 n.18 (2011) (noting that "an individual does not have a vested right to be free from suit or sanction for a legal violation *until the statute of limitations for that violation has expired*.") (emphasis added).

Plaintiff failed to address this argument, and thereby waived it. *See Wal-Mart Real Est. Bus. Tr. v. Garrison Realty Inv'rs, LLC*, 657 F. Supp. 3d 757, 767 (D. Md. 2023). While Plaintiff

cites to cases that she argues stand for the broad proposition that statutes of limitations do not create vested rights, *see* ECF 21-1 at 20-21, the cases held only that the legislature could ***shorten*** the time permitted for a ***plaintiff*** to file suit without offending due process. *See, e.g., Hill v. Fitzgerald*, 304 Md. 689, 703 (1985); *Berean Bible Chapel, Inc. v. Ponzillo*, 28 Md. App. 596, 601 (1975); *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 561-63 (2011). None of the cases address a legislative revival of claims after the limitations period had entirely expired. Thus, they do not undercut or rebut *Rice's* express holding.[2]

Because Plaintiff has waived this point, this Court can grant Key Defendants' motion to dismiss—and deny Plaintiff's request for certification—simply by relying on the holding in *Rice*.

II. The CVA Does Not Revive Plaintiff's Claims.

A. The Legislature Enacted a Statute of Repose in § 5-117(d) (West 2017).

1. The Legislature Called § 5-117(d) a Statute of Repose.

Plaintiff admits that the 2017 law describes § 5-117(d) (West 2017) as a statute of repose, but argues, incredibly, that this is not even "relevant." ECF 21-1 at 8. It is, of course, black-letter law that Maryland courts first look to the text of the law to ascertain legislative intent, and they presume that "the General Assembly . . . meant what it said and said what it meant." *Peterson v. State*, 467 Md. 713, 727 (2020). This principle applies when distinguishing statutes of repose from statutes of limitations. *Anderson*, 427 Md. at 125 ("[T]he plain language of the statute controls.").

Here, the 2017 law unambiguously describes § 5-117(d) as a statute of repose:

> ***[T]he statute of repose under § 5-117(d)*** . . . shall be construed to apply both prospectively and retroactively ***to provide repose*** to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

[2] Plaintiff also cites to *Simmons v. Maryland Management* Company, 253 Md. App. 655, 699 (2022), which held that courts have jurisdiction over cases filed after the statute of limitations runs. *Simmons* similarly did not address whether the revival of time-barred claims violates due process.

Ex. 1 (2017 Md. Laws ch. 12), § 3 (emphasis added); Ex. 2 (2017 Md. Laws ch. 656), § 3 (emphasis added).[3] Plaintiff dismisses the legislature's description of § 5-117(d) as "uncodified language." ECF 21-1 at 2, 8, 11, 16. But the session law (including uncodified language) "is the law." *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 544 n.4 (1981); *see* ECF 20-1 n.14. Plaintiff gives no reason to question this precedent and fails to even acknowledge it.

Plaintiff suggests that the General Assembly of 2017 used the term "statute of repose" "colloquially" and "'interchangeably' in error" with the term "statute of limitations." ECF 21-1 at 8, 15. But the text and structure of § 5-117(d) undermine Plaintiff's assertions:

- In the 2017 law's statement of purpose, the legislature differentiated a statute of limitations from a statute of repose. The session law's purpose is twofold: "altering the statute of limitations in certain civil actions relating to child sexual abuse" and "establishing a statute of repose for certain civil actions relating to child sexual abuse." Ex. 1 (2017 Md. Laws ch. 12); Ex. 2 (2017 Md. Laws ch. 656). The use of distinct terms to describe the law's different provisions shows the legislature understood that statutes of limitations and statutes of repose are distinct

- The 2017 law's description of the action taken as to each statute is also instructive. The law states its purpose as "***altering*** the statute of limitations"—*i.e.*, modifying a specific, pre-existing limitations provision at § 5-117(b) —and "***establishing*** a statute of repose"—*i.e.*, creating a new repose provision at § 5-117(d). Ex. 1 (2017 Md. Laws ch. 12) (emphasis added); Ex. 2 (2017 Md. Laws ch. 656) (emphasis added). Thus, contrary to Plaintiff's argument, the 2017 law did not simply "relabel[] the statute of limitations a statute of repose." *Cf.* ECF 21-1 at 11. Instead, the legislature enacted a wholly new provision and called it a statute of repose.

[3] The exhibits referenced herein were filed with Key Defendants' motion to dismiss at ECF 20.

- Section 3 of the law recognizes that the statute of repose and statute of limitations operate differently: the former "provide[s] repose to defendants regarding actions" while the latter "bar[s]" actions. Ex. 1 (2017 Md. Laws ch. 12), § 3; Ex. 2 (2017 Md. Laws ch. 656), § 3.

In short, the legislature repeatedly used language showing it understood the difference between a statute of repose and a statute of limitations—and a clear intent to enact a statute of repose for non-perpetrator defendants. Further, as Plaintiff acknowledges, the legislature is presumed to know the legal effect of the term "statute of repose." ECF 21-1 at 14. By 2017, Maryland courts had explained that "[t]he purpose of a statute of repose is to provide an absolute bar to an action . . . after a designated time period," and that the term "statute of repose . . . refers to a special statute with a different purpose and implementation than a statute of limitation." *Anderson*, 427 Md. at 118. This Court therefore must presume that, when the legislature enacted § 5-117(d) as a "statute of repose," it intended to create "an absolute bar" to claims like Plaintiff's.

2. The Legislative Record Confirms § 5-117(d) is a Statute of Repose.

Moreover, courts construing Maryland law may consult legislative history to confirm the plain text and "rul[ing] out another version of legislative intent alleged to be latent in the language." *Spiegel v. Bd. of Educ. of Howard Cnty.*, 480 Md. 631, 639 (2022). Here, the legislative record further confirms that § 5-117(d) (2017 West) is a statute of repose. Once the repose provision was added via amendment, *see* Ex. 10, Ex. 11, there is abundant record evidence showing that the General Assembly understood that it was enacting a new statute of repose:

- Floor reports and the Fiscal and Policy Note explicitly explained the effect of the amendment, which would "prohibit[] . . . action[s] for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which

the victim reaches the age of majority." Exs. 15-17; *see Hayden v. Md. Dep't of Nat. Res.*, 242 Md. App. 505, 530 (2019) (floor reports "are key legislative history documents").

- The amendment adding § 5-117(d) was introduced in both Houses, expressly referred to it as a statute of repose, differentiated it from the statute of limitations, and explained that § 5-117(d) would provide "repose" to non-perpetrator defendants. *See* Exs. 13-14.

- Floor statements also referred to the amended law as accomplishing two things: extending the "statute of limitations" and creating a "statute of repose." ECF 20-1 at 9-10, 21-22.

Plaintiff ignores this bounty of evidence, except to question a single document (Ex. 18), entitled "Discussion of certain amendments in SB0505/818470/1," which states that "claims precluded by the statute of repose cannot be revived in the future." *Id.* at 1. Plaintiff identifies no valid basis for this document's exclusion. As Plaintiff concedes, it is in the applicable 2017 bill file and thus is part of the "legislative record." ECF 21-1 at 17-18. Maryland courts have consistently held that documents in bill files are susceptible to judicial notice. *See, e.g.*, *Park v. Bd. of Liquor License Com'rs*, 338 Md. 366, 383 n.8 (1995) (taking judicial notice of bill file); *Herd v. State*, 125 Md. App. 77, 90 (1999) (consulting "undated and unidentified" note in bill file).

There is no valid basis for this Court to overlook this relevant and robust legislative history regarding the 2017 repose provision simply because, in Plaintiff's view, it does not sufficiently "showcase" the "constitutional and policy implications" of repose. *Cf.* ECF 21-1 at 15-18. Equally unpersuasive is Plaintiff's comparison between the legislature's debate over the repeal of an asbestos-related statute of repose in 1990-1991 and the later enactment of the statute of repose in § 5-117(d) in 2017. ECF 21-1 at 16-17. It is hardly surprising that there would be more discussion of whether the legislature may lawfully *repeal* a statute of repose when it is actually proposing to do so than when it is *enacting* a statute of repose in the first place.

3. Although There Are No "Hard and Fast Rules" for Fashioning a Statute of Repose, § 5-117(d) (2017 West) Contains Structural Features Associated with Other Statutes of Repose.

Plaintiff argues that the "elements of a statute of repose established in *Anderson* are required" for § 5-117(d) to be a statute of repose. ECF 21-1 at 11. But *Anderson* says the opposite:

- "First and foremost, the plain language of the statute controls," 427 Md. at 125;
- "[T]here are overlapping features of statutes of limitations and statutes of repose, and definitions aplenty from which to choose," *id.* at 123;
- "There is, apparently, no hard and fast rule to use as a guide" to distinguish statutes of repose and statutes of limitations. *Id*.

Here, the plain language of § 5-117(d) (West 2017) sets forth a statute of repose for actions against non-perpetrator defendants like the Key Defendants:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Ex. 1 (2017 Md. Laws ch. 12), § 1; Ex. 2 (2017 Md. Laws ch. 656), § 1. As pointed out in Key Defendants' opening brief, the Fourth Circuit has held that a statute providing that "in no event" may claims be brought after a fixed date is plainly a statute of repose. *See Caviness v. DeRand Res. Corp.*, 983 F.2d 1295, 1300 & n.7 (4th Cir. 1993); *Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874, 895-96 (4th Cir. 2014). Plaintiff does not rebut, or even address, that case law. Moreover, in using the language "[i]n no event" to denote an absolute bar, and in running the repose period from the date of majority, the Maryland legislature conformed § 5-117(d) to Illinois' statute of repose governing claims arising from sexual abuse of a minor:

Ex. 33 (Ill. Rev. Stat., 1990 Supp., ch. 110, (codified at 735 ILCS § 5/13-202.2(b))	**Exs. 1-2 (CJ § 5-117(d) (West 2017))**
[I]n no event may an action for personal injury based on childhood sexual abuse be commenced more than 12 years after the date on which the person abused attains the age of 18 years.	In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Courts have consistently enforced Illinois' statute of repose, even after its repeal. *Anderson v. Cath. Bishop of Chi.*, 759 F.3d 645 (7th Cir. 2014); *M.E.H. v. L.H.*, 685 N.E.2d 335 (Ill. 1997).

Thus, this Court should simply rely on (1) the plain language of § 5-117(d) (West 2017) and cases holding that similar statutes are, indeed, statutes of repose, (2) the confirmation by the General Assembly in the session law that § 5-117(d) establishes a statute of repose, *see supra 3-12*, and (3) legislative history confirming that the General Assembly was fully aware that it was enacting a statute of repose. *Id.* Nothing in *Anderson* requires any further analysis, or that specific "elements" be established. *See* 427 Md. at 124 (looking "holistically at the statute and its history to determine whether it is akin to a statute of limitation or a statute of repose.").

Even if *Anderson* did impose an inflexible requirement for all statutes of repose (and it does not), § 5-117(d) contains many features associated in that case with statutes of repose.

Runs from Unrelated Event. Plaintiff argues that § 5-117(d) is not a statute of repose because it is "not triggered by a defendant's actions," and because the "triggering event is plaintiff-focused." ECF 21-1 at 9-11. But there is "no hard and fast rule" on this question. *Anderson,* 427 Md. at 123. Although *Anderson* briefly refers to statutes of repose as running from a time "not related to an event or action independent of the potential plaintiff," *id.* at 126, the case says more than a half-dozen times that statutes of repose run from "an event that is unrelated to when the injury occurs." *Id.* at 118; *see also, e.g.*, *id.* at 119. The Maryland Supreme Court endorsed that

standard again after *Anderson*. *See Mathews v. Cassidy Turley Md., Inc*., 435 Md. 584, 611 (2013). And Plaintiff acknowledges this standard in her Opposition. ECF 21-1 at 10-11. There is no question that § 5-117(d) meets that standard, as the repose period runs from the age of majority.

Moreover, Plaintiff's argument ignores that for alleged child abuse, the ***only*** "potentially actionable conduct," *see* ECF 21-1 at 12, is the underlying abuse or failure to prevent that abuse—which by definition cannot be severed from the individual plaintiff. Thus, while repose for a device manufacturer can readily be structured to run from an action unrelated to an individual plaintiff (*e.g.*, the date of the device's manufacture), a statute of repose for non-perpetrator institutions like Key Defendants cannot be triggered with "[n]o potential plaintiff . . . even in the picture." *Id.* Nonetheless, courts have held that an Illinois statute closely akin to § 5-117(d) is a statute of repose. *Anderson*, 759 F.3d at 648; *M.E.H*, 685 N.E.2d at 339.

Post-Repose Accrual. Plaintiff twists language in *Anderson* stating that statutes of repose "***may*** extinguish a potential plaintiff's right to bring a claim before the cause of action accrues" 427 Md. at 119 (emphasis added) and conflates that with a requirement that § 5-117(d) must extinguish ***only*** unaccrued claims in order to qualify as a statute of repose. ECF 21-1 at 12-13. That position is nonsensical. If anything, there are more compelling reasons to grant repose against stale claims that could have been brought years ago than to grant repose against claims that have not yet arisen. Indeed, *Anderson* cited statutes of repose governing medical malpractice claims from Arkansas and North Carolina that bar *only* claims that have been deemed accrued. *See* 427 Md. at 124-25 & n.10. But those Arkansas and North Carolina laws are statutes of repose nonetheless (and are so described in *Anderson*) because they contain an "absolute bar" on claims after a certain period of time. Just so here; § 5-117(d) likewise imposes an absolute bar on all claims, whether accrued or unaccrued, against non-perpetrators. *See supra* pp. 7-8.

Moreover, even if an essential feature of a statute of repose were that it can extinguish a cause of action that has not yet accrued, that is true of § 5-117(d). For example, Section 5-117(d) can extinguish causes of action that have not yet accrued by application of the discovery rule. "The discovery rule provides that a *cause of action accrues* when a plaintiff in fact knows or reasonably should know of the wrong." *Duffy v. CBS Corp*., 458 Md. 206, 231 (2018). Yet § 5-117(d) extinguishes any potential claim 20 years after the plaintiff attains the age of majority, even when, by virtue the discovery rule, the claim has not yet accrued.

Absolute Bar to Suit. Plaintiff argues that § 5-117(d) (West 2017) does not impose an "absolute time bar," because it is supposedly subject to "implicit[]" tolling from the date of the injury to the date of majority. ECF 21-1 at 9, 13-14. That, of course, is not what the text of the law says—§ 5-117(d) ties the repose period to the date of majority, not to the date of injury. There is no reason to infer "implicit[]" tolling from § 5-117(d), particularly when the legislature *expressly* provided for tolling in § 5-117(b). As the Office of Maryland Attorney General explained, "by saying that 'in no event' may an action be filed more than twenty years after the victim reaches the age of majority, the statute shows an intent to provide the type of absolute bar to an action provided by a statute of repose." Ex. 20 at 2 (2019 letter); Ex. 21 at 2 (2021 letter). That inflexible 20-year period is the absolute bar after a "certain period of time" or "designated time period" that is the hallmark of a statute of repose. *Anderson*, 427 Md. at 118.

Sheltering Non-Perpetrator Defendants. A statute of repose "shelters legislatively-designated groups from an action after a certain period of time," and § 5-117(d) does just that for non-perpetrator defendants 20 years after the plaintiff reaches the age of majority. *See Anderson*, 427 Md. at 118. Section 5-117(d) is thus analogous to CJ § 5-108(b), a statute of repose that

exempts specific classes of defendants from liability arising from construction defects after a 10-year period from "the date the entire improvement first became available for its intended use." *Id.*

Nevertheless, Plaintiff argues that § 5-117(d) cannot be read to provide repose to non-perpetrator defendants because such an interpretation would, according to Plaintiff, have "no identifiable economic benefits." ECF 21-1 at 14. Of course, the statute of repose does not protect defendants who committed child sexual abuse. And there is, in fact, a public, economic interest in providing repose at some point to defendants who were not themselves perpetrators of abuse. The "public as a whole" benefits from providing a measure of certainty to those institutions, just as it benefits from providing a measure of certainty to architects, engineers, and contractors under § 5-108 after a period of time—even though that means that some plaintiffs may be unable to recover for injuries from (for example) negligently constructed buildings. *See H Hagerstown Elderly Assocs. Ltd. P'ship v. Hagerstown Elderly Bldg. Assocs. Ltd. P'ship*, 368 Md. 351, 362 (2002).[4]

In conclusion, there is every reason to treat § 5-117(d) as precisely what the statute says it is—a statute of repose.

B. The 2017 Statute of Repose Vested a Right in Key Defendants to be Free of Plaintiff's Claims, Which the CVA Unconstitutionally Abrogated.

Plaintiff essentially concedes that a statute of repose vests substantive rights in defendants to be free of claims. ECF 21-1 at 12 ("[A] statute of repose extinguishes or preempts an otherwise

[4] In addition to arguments Plaintiff makes based on misinterpreting *Anderson* as establishing a rigid standard with "elements" needed to label a statute as a statute of repose, Plaintiff also argues that § 5-117(d) (2017 West) should be construed as merely a statute of limitations by invoking the canon of constitutional avoidance. ECF 21-1 at 19. That doctrine permits a court to interpret an ambiguous statute narrowly to save it from constitutional infirmity. *Koshsko v. Haining*, 398 Md. 404, 425 (2007). But the canon cannot be stretched to twist an *unambiguous* statute (§ 5-117(d)) to say the opposite of what it says.

viable claim."); *id*. at 14 ("Statutes of repose . . . are substantive grants of immunity."). Nonetheless, Plaintiff makes a series of half-hearted attempts to justify the CVA's abrogation of those vested rights. All of those arguments fail under well-established Maryland precedent.

Retroactive Abrogation. Plaintiff first argues that "even if that enactment created a statute of repose that provided an immunity from suit, the General Assembly has the authority to retroactively abrogate immunities." ECF 21-1 at 19. Plaintiff's argument ignores that in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002) the Maryland Supreme Court held that "[t]his Court has consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, or ***reviving a barred cause of action***, thereby violating the vested right of the defendant." *Id.* at 633.

CVA as Remedial Law. Plaintiff asserts that the CVA is constitutional because it is a remedial law. ECF 21-1 at 20-22. Even assuming the CVA is such a statute, "generally, a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights." *Rawlings v. Rawlings*, 362 Md. 535, 559 (2001); *see also State v. Smith*, 443 Md. 572, 594 (2015) (same) and *Langston v. Riffe*, 359 Md. 396, 423 (2000) (same). Plaintiff cites dicta in a footnote in *Rawlings* for the proposition that "a remedial statute may be given retrospective effect without unconstitutionally infringing on vested rights if the new statutory remedy redresses a preexisting *actionable* wrong." ECF 21-2 (citing *Rawlings*, 362 Md. at 560 n.20 (emphasis added)). But the alleged wrong here was no longer "actionable" by the time of the CVA's enactment, because any legal claim based on that wrong had been extinguished by the statute of repose. Because the CVA would eviscerate Defendants' vested rights, it may not be "accorded retrospective application." *Id*.

The 1991 Asbestos Legislation. Plaintiff refers to a statute of repose for real property improvements and its 1991 amendment to add an exception for certain asbestos actions. ECF 21-1 at 22-24. Plaintiff argues that if Key Defendants are "correct" that the CVA's revocation of the statute of repose is unconstitutional, then the 1991 legislation that created an "asbestos exception to the statute of repose [for construction claims] . . . would be unconstitutional." *Id.* at 27.

Plaintiff ignores that the Maryland Appellate Court *did* declare the retroactive application of the asbestos exception in CJ § 5-108(d)(2) to be unconstitutional. *See Duffy v. CBS Corp.*, 232 Md. App. 602, 622, 161 A.3d 1 (2017), *rev'd on other grounds*, 458 Md. 206 (2018). *Duffy* involved a claim arising from asbestos exposure predating the statute of repose enacted for construction claims in 1970. The Appellate Court held that the 20-year statute of repose applied to the defendant, notwithstanding the 1991 partial repeal for asbestos claims. *Duffy*, 232 Md. App. at 611-15. Because the repose period had already run when the legislature repealed the statute, the court held that the defendant possessed a "vested right" under the statute of repose "not to be sued on 'a cause of action that was otherwise barred.'" *Id.* at 622-23 (quoting *Dua*, 370 Md. at 627). Although the Maryland Supreme Court disagreed with the Appellate Court's interpretation that the statute covered the claim at issue, the Supreme Court did not question the constitutional holding that, when a statute of repose creates vested rights, they may not be revoked.

Moreover, even the Attorney General's 2023 letter to the sponsor of the CVA acknowledged that, in the 23 years since an earlier Attorney General letter regarding the retroactive modification of the CJ § 5-108 repose provision, "Maryland case law on vested rights has developed"—citing specifically to the clear holding in *Dua* that revival of a barred cause of action deprives a defendant of a vested right. *See* Ex. 23. Thus, the General Assembly's pre-*Dua* modification of a statute of repose in 1991 should not sway this Court's analysis.

Applicability of Smith v. Westinghouse Electric, 266 Md. 52 (1972). Plaintiff argues that *Smith* is "inapposite," because it involved "not an ordinary time bar" but instead "a condition precedent to filing suit." ECF 21-1 at 24-25. The Maryland Supreme Court has not construed *Smith* so narrowly. In *Dua*, the Supreme Court read *Smith* to hold that "[a] statute, which retroactively created a cause of action, resulting in reviving a cause of action that was otherwise barred, was held to deprive the defendant of property rights in violation of Article 24 of the Declaration of Rights." 370 Md. at 627. And here, as in *Smith*, § 5-117(d) unquestionably protects vested rights.

Rational-Basis Review. Plaintiff also asserts that the CVA's abrogation of vested rights is constitutional because it satisfies rational-basis review. ECF 21-1 at 26-29. But she cannot muster a single case applying Maryland law to uphold a statute reviving time-barred claims or otherwise abrogating vested rights. That is because the Maryland Supreme Court has been clear that the prohibition on abrogating vested rights "contains no exceptions[.]" *Willowbrook Apartment Assocs., LLC v. Mayor & City Council of Baltimore*, 563 F. Supp. 3d 428, 445 (D. Md. 2021); *see Dua*, 370 Md. at 623 ("No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right[.]").[5]

III. Plaintiff's Claims Are Not Subject to Tolling.

Plaintiff argues that § 5-117(d) only extinguished claims that the statute of limitations already barred in 2017, and that hers claims remained viable at that time because they had been tolled. ECF 21-1 at 29-30. That is wrong for two reasons.

First, it ignores the explicit language in § 5-117(d) that "***[i]n no event may***" an action for damages be filed against a non-perpetrator "more than 20 years after the date on which the victim

[5] It appears that a majority of the state courts to have addressed the question have held that, as a matter of state law, the revival of time-barred claims is unconstitutional. *Doe v. Hartford Roman Cath. Diocese Corp*., 119 A.3d 462, 508-09 (Conn. 2015).

reaches the age of majority." (emphasis added). That language is categorical and does not contain an exception for claims that previously had been tolled.

Second, Plaintiff has failed to advance any plausible theory of tolling against the Key Defendants. The continuing harm doctrine requires that "a tortious act—not simply the continuing ill effects of prior tortious acts—fall within the limitation period." *Bacon v. Arey*, 203 Md. App. 606, 655-56 (2012). Moreover, to establish fraudulent concealment, Plaintiff must plead with particularity that defendants' fraud prevented her from discovering she had a cause of action. *Id.* at 653-55. Here, as in *Bacon*, "the complaint falls far short of setting forth specific allegations of how the fraud kept [Plaintiff] unaware of a cause of action, how the fraud was discovered, and why there was a delay in discovering the fraud." *Id.* at 661. Plaintiff alleges misconduct between 1973 and 1977. Compl. ¶ 2. Based on that misconduct, Plaintiff "was immediately on notice of potential claims" against Key Defendants, and the statute of limitations began to run from the dates of the alleged abuse and expired by (at the latest) the early 1980s. *Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 188 (1997).

In sum, the limitations period was never tolled on Plaintiff's claims, and the statute of repose would bar those claims even if they had ever been subject to tolling.

CONCLUSION

For these reasons and those given in Key Defendant's initial Motion to Dismiss (ECF 20), Plaintiff's Complaint should be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2024, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system and electronic notification of such filing is sent to all CM/ECF participants and counsel of record.

/s/ Sean Gugerty
Sean Gugerty (Federal Bar #21125)

EXHIBIT

A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MD

DAVID S. SCHAPPELLE,	*	
Plaintiff,	*	
v.	*	**Case No. C-15-CV-23-003696**
ROMAN CATHOLIC ARCHDIOCESE OF WASHINGTON, A CORP. SOLE, et. al.	*	
Defendants,	*	

MEMORANDUM OPINION AND ORDER

I. FACTUAL AND LEGAL BACKGROUND

Plaintiff was born in 1977. In 1986, when Plaintiff was nine years old, Plaintiff alleges in his amended complaint that he was repeatedly sexually abused by a priest and abused on one occasion by another priest in the fall of 1986.[1] Plaintiff reached the age of majority in 1995.

At the time Plaintiff reached the age of majority, the limitations period on civil claims arising from alleged sexual abuse was three years from the date it accrues. MD. CODE ANN., CTS. & JUD. PROC. §5-101 ("CJP"). For minors, the statutory time limits began to run once the child reached the age of majority. MD. CODE ANN., CTS. & JUD. PROC. §5-201. Thus, the statute of limitations for Plaintiff's claims began to run when he reached the age of majority and ended three years later. Under this timeline, Plaintiff's legal claims originally expired in 1998, one day before his 21st birthday.

In 2003, CJP §5-117 was enacted to extend the statute of limitation for claims arising

[1] Plaintiff's allegations as to the second priest do not form the basis for Plaintiff's claims against Defendants.

from sexual abuse of a minor from three years to seven years after a plaintiff attained the age of majority. The law also prohibited the revival of barred claims before October 1, 2003. Act of May 22, 2003, ch. 360, 2003 Md. Laws 2589.

In 2017, CJP §5-117 was amended to further extend the statute of limitations for claims arising from sexual abuse of a minor to twenty years after a plaintiff attained the age of majority. Again, the law prohibited revival of barred claims before October 1, 2017. Act of May 25, 2017, ch. 656, 2017 Md. Laws 3895, 3898. In addition, the statute provided that no claims could be filed against non-perpetrator defendants more than 20 years after the victim reached the age of majority. *Id.* Under this timeline, Plaintiff's legal claims expired in 2015, which was 20 years after he reached the age of majority.

In 2023, the Child Victims Act of 2023 ("CVA") was enacted. The Act abolished the statute of limitations for claims of sexual abuse of minors against both perpetrator defendants and non-perpetrator defendants. The Legislature repealed and replaced the 2017 language with the following:

> (b) … notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

MD. CODE ANN. CTS. & JUD. PROC. §5-117(b) (West 2023).

On October 1, 2023, Plaintiff filed an eight-count complaint against non-perpetrator Defendants alleging (1) negligence against Roman Catholic Archdiocese of Washington, a Corporation Sole ("Archdiocese") and St. Rose of Lima Catholic Church ("St. Rose"); (2) negligent hiring of employees against Archdiocese and St. Rose; (3) negligent supervision and retention of employees against Archdiocese and St. Rose; (4) premises liability against

Archdiocese and St. Rose; (5) negligence against St. Luke Institute, Inc. ("St. Luke")[2]; (6) negligent supervision against St. Luke; (7) fraudulent concealment against St. Luke; and (8) civil conspiracy against Archdiocese, St. Rose, and St. Luke.

On November 13, 2023, Defendant Archdiocese filed a motion to dismiss challenging the constitutionality of CVA. On December 6, 2023, Defendant St. Luke filed its motion to dismiss on the same grounds.

II. ISSUES PRESENTED

Defendants pose two arguments in support of their motion to dismiss:

1. The 2017 law created a statute of repose which grants a substantive right to Defendants that the Legislature cannot repeal.
2. Even if the 2017 law was a statute of limitations, the Legislature cannot retroactively revive a claim that was time barred under the Maryland Constitution.

III. STANDARD OF REVIEW

The instant motion to dismiss raises a constitutional challenge to the recently enacted Child Victim Act, effective October 1, 2023. Child Victims Act of 2023, ch. 5, 2023 Md. Laws 1.[3]

Whenever a constitutional challenge is made against a statute, the courts presume that the statute is constitutional, and the challenger must clearly establish the invalidity of the statute. *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) ("A statute enacted under the police power carried with it a strong presumption of constitutionality and the party attacking it has the burden of affirmatively and clearly establishing its invalidity; a reasonable doubt as to its constitutionality is sufficient to sustain it."). This includes interpreting the statute in such a way

[2] St. Luke Institute Foundation, Inc. was dismissed as a defendant by Plaintiff on January 19, 2024.
[3] Session law can be accessed at https://mgaleg.maryland.gov/2023RS/Chapters_noln?CH_5_sb0686t.pdf.

that it, "will be construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible." *Koshko v. Haining*, 398 Md. 404, 425 (2007); *Edgewood Nursing Home v. Maxwell*, 282 Md. at 427.

Analysis of the meaning of a statute and the intent of a legislature is first determined by looking to the language itself. *Harford County v. Mitchell*, 245 Md. App. 278, 283 (2020). The words are interpreted from their ordinary and common meaning within the context in which they are used." *Id.* at 284-85. Even if the language is unambiguous, it is useful to review legislative history to confirm that interpretation. *Id* at 285. However, this analysis of the legislative history is only done for confirmatory purposes and should not be done to seek contradiction of the plain language of the statute. *Duffy v. CBS Co.*, 458 Md. 206, 229 (2018). Only if the language is ambiguous, should a court consider the objectives and purpose of the enactment. *Harford County*, 245 Md. App. at 284. "Moreover, when the statute is part of a general statutory scheme or system, 'all sections must be read together . . . to discern the true intent of the legislature." *Id.* (quoting *Mayor & City Council of Balt. V. Johnson*, 156 Md. App. 569 at 593 (2004). The court should also seek to avoid illogical or unreasonable results when determining the legislative intent of a statute. *Harford County*, 245 Md. App. at 284.

IV. ANALYSIS

Defendants challenge the CVA on grounds that it violates Article 24 of the Maryland Declaration of Rights (the due process clause)[4] and the Maryland Constitution, Article III, Section 40 (the takings clause).[5] First, Defendants argue that the 2017 law was a statute of

[4] M.D. CONST. DECLARATION. OF RIGHTS art. XXIV, "That no man ought to be imprisoned or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by judgment of his peers, or by the law of the land."

[5] M.D. CONST. art. III, § 40, "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."

repose which created a vested right that could not be abrogated by the CVA. Second, Defendants argue that even if the 2017 law was not a statue of repose, but instead, a statute of limitations, the CVA cannot retroactively revive time-barred actions.

Plaintiff responds with four arguments: (1) that the CVA was an abrogation of a statute of limitations which was procedural in nature and readily applied retroactively, (2) that the Legislature can modify already vested rights for compelling reasons, (3) that even if the 2017 law was a statute of repose, defendant's fraudulent concealment tolls the time period, and (4) that Defendants continuing commission of unlawful acts render the CVA inapplicable as no time limitation began in the first instance.

For the reasons below, the Court finds that the CVA retroactively abrogated the substantive and vested rights of Defendants, and this abrogation violates the Maryland Constitution.

A. Legislative History - Child Sexual Abuse Claims

The general rule is that a civil action shall be filed within three years from the date it accrues. CTS. & JUD. PROC. § 5-101. For minors, CJP § 5-201 also reflects a firmly established rule that a cause of action accrues once the minor reaches the age of majority.

However, beginning in 1994, the Legislature repeatedly sought to enact exceptions to that general rule in child sex abuse cases without success. *See Doe v. Roe*, 419 Md. 687, 694 (2011).

In 2003, the Legislature debated not only an extension of the statute of limitations period, but also the retroactive application of the time period. After considering an earlier version of the bill that sought to retroactively revive time barred claims, the final enactment did not include the retroactive provision. *Id.* at 697-99. Instead, the General Assembly extended the statute of limitations to seven years after the age of majority and expressly stated that the "Act may not be

construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003. Act of May 22, 2003, 2003 Md. Laws at 2590.

In 2017, the Legislature again changed the law for child abuse claims after several unsuccessful bills between 2004 through 2016. *See* Def.'s Mot. to Dismiss for Failure to State a Claim, 7. The stated purpose of this new Act was:

> FOR the purpose of altering the **statute of limitations** in certain civil actions related to child sexual abuse; establishing a **statute of repose** for certain civil actions relating to child sexual abuse…

Act of May 25, 2017, 2017 Md. Laws at 3895. (emphasis added). The new law stated:

> **In no event** may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Id. at 3898 (emphasis added). Section 3 of the Act further provided that:

> That the **statute of repose** under 5-117(d) of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively to provide **repose** to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017

Id. at 3899 (emphasis added).

From 2019 to 2021, the Legislature considered but failed to pass any new laws to revive the claims barred by the 2017 laws. *See* Mem. In Supp. Of Mot. of Def.'s to Dismiss for Failure to State a Claim 11.

Finally, in 2023, in response to the Report on Child Sexual Abuse in the Archdiocese of Baltimore, (Anthony G. Brown, *Attorney General's Report on Child Sexual Abuse in the Archdiocese of Baltimore*, (2023)), the Legislature enacted the CVA to eliminate all time limitations for civil actions arising from childhood sexual abuse. Further, Section 3 provided

that

> this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023.

Child Victims Act of 2023, 2023 Md. Laws at 1.

B. The 2017 law created a statute of repose.

a. The Difference between a Statute of Repose and a Statute of Limitations

In determining the constitutionality of the CVA, the central issue in this case is whether the CPJ §5-117(d) of the 2017 Act was a statute of limitations or a statute of repose. *Anderson v. U.S.*, 427 Md. 99, 119 (2012) is the leading Supreme Court case distinguishing statutes of limitations from statutes of repose.

The *Anderson* Court considered whether CJP §5-109 was a statute of repose or a statute of limitations. There, the plaintiff filed a medical malpractice suit against the United States alleging negligent treatment at a veteran's hospital after the federal statute of limitations had expired. *Id.* at 103-04. However, pursuant to the Federal Tort Claim Act, the claim could be maintained if the plaintiff would have a cause of action under Maryland's statute. That Defendant argued that Maryland's medical malpractice statute created a statute of repose, and, because a statute of repose creates substantive law, Maryland's statute did not permit the plaintiff's claim. *Id.* at 105. The Federal Court of Appeals for the Fourth Circuit certified a question of law to the Maryland Supreme Court on whether CJP § 5-109(a)(1) was a statute of limitations or a statute of repose. *Id.* at 103.

In response to the certified question, the *Anderson* Court delved into the definition, nature, and meaning of the two types of statutes. The Court observed that these statutes are superficially similar because both provide a time limit on when a suit can be filed. *Id.* at 118. However, the statutes are enacted by the legislatures for different reasons. Statute of limitations,

"are enacted typically to encourage prompt resolution of claim, to suppress stale claims, and to avoid problems associated with extended delays in bringing a cause of action." *Id.* at 118. As a general matter, a "statute of limitations promote[s] judicial economy and fairness, but do[es] not create any substantive rights in a defendant to be free from liability." *Id.*

In contrast, a statute of repose "is used generally to describe a statute which shelter legislatively-designated groups from an action after a certain period of time." *Id.* Further, the purpose of the statute of repose, "is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period. *Id.* at 438.

These different purposes often lead statute of limitations and statute of repose to have distinct, identifiable characteristics despite a surface level similarity. The *Anderson* Court identified three differentiating characteristics often present in these statutes.

First, while a statute of limitations tends to run after the plaintiff suffers an injury, a statute of repose tends to run after some other event that is unrelated to the plaintiff's injury. *Id.* at 119. The *Anderson* Court noted that, "[n]umerous courts have also held that statutes of repose are characterized by a trigger that starts the statutory clock running for when an action may be brought based on some event, act, or omission that is unrelated to the occurrence of the plaintiff's injury." *Id.* For example, CJP § 5-108(a), a statute of repose, begins to run once an improvement to real property is completed and ends 20 years later. MD. CTS. & JUD. PROC. § 5-108.

Second, as a result of the non-injury based characteristic, potential future claims can be extinguished even before an injury occurs. For example, as seen in CJP § 5-108, if a potential plaintiff is injured by the improvement 21 years after the improvement was made, the plaintiff's claim is barred by the statute of repose.

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Third, since a statute of limitations is typically triggered by the accrual of a claim, tolling usually applies. *Id.* at 118. Similarly, general principles of the discovery rule may also apply to effect when the statute of limitations begins to run and when it expires. *See Id.* at 110.

However, a statute of repose generally does not allow the tolling of the time period because it is designed to balance the economic best interest of the public against the rights of potential plaintiffs. *Anderson*, 427 Md. at 121. To further effectuate this purpose, statutes of repose are generally not subject to tolling for any reason to avoid upsetting or disregarding the balance created by the legislature. *Id.*

While the *Anderson* Court carefully outlined the typical distinctions between the two kinds of statutes, the Court emphasized that these common characteristics can be blended together and are not quarantined from each other. *Id.* at 123. It is not uncommon for a statute to have characteristics of both a statute of limitations and a statute of repose. The *Anderson* Court observed that:

> [t]here are overlapping features of statute of limitations and statutes of repose, and definitions aplenty from which to choose. There is, apparently, no hard and fast rule to use as a guide. . . We choose not to rely on any single feature of [the statute] in determining its proper classification; rather, we look holistically at the statute and its history to determine whether it is akin to a statute of limitation or a statue of repose.

Id. at 123-24. Plainly, there is no single defining characteristic that distinguishes a statute of limitations from a statute of repose. To illustrate precisely that point, the Court noted that North Dakota's statute of repose for medical malpractice claims tolls for fraudulent concealment by the physician. *Id.* Thus, the only way to determine if a statute is one of limitations or repose is to closely analyze the words of the statute and the legislative history.

After analyzing the statute and its legislative history, the *Anderson* Court held that CJP § 5-109 was a statute of limitations. That Court's decision was largely based on the legislative

reaction to *Hill v. Fitzgerald*, 304 Md. 689 (1985), a case which first considered the constitutionality of CJP § 5-109. In relevant part, in *Hill,* the Supreme Court concluded that the term "injury" in the Act was "the date upon which the allegedly negligent act was first coupled with the harm." *Id.* at 109 (quoting *Hill*, 304 Md. at 699-700). The Governor was concerned that such an expansive interpretation of "injury" would allow for claims which did not manifest itself for years after the negligent act. *Id* at 110-11. As such, legislators offered Senate Bill 225, which proposed an amendment that replaced the old words, "the injury was committed" to "allegedly wrongful act or omission." *Id.* at 110. That proposed bill would have abrogated the *Hill* decision and clearly created an absolute bar to claims after five years. However, that language was rejected and deleted from the final statute, leaving in place *Hill*'s nuanced definition of injury. *See also Edmonds v. Cytology Services of Maryland, Inc.,* 111 Md. App. 233 (1996) ("the 1987 rejected amendments to S.B. 225 to overturn *Hill*…provides strong evidence that the General Assembly did not intend to create an ironclad rule that a medical malpractice claim would be barred if filed more than five years after the health provider's act"). The *Anderson* Court reasoned that because the legislature rejected the language that would have created an absolute bar on recovery after a time certain, and instead, accepted the word "injury" and its possibility of creating a long "tail,' the legislature intended to create a statute of limitations.

b. **Plain Language**

The primary indicator of the Legislature's intent is the language of the statute. *Whack v. State*, 338 Md 665, 672 (1995). The 2017 law at issue here begins with a purpose statement that the law was enacted "FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; establishing a statute of repose for certain civil actions relating to

child sexual abuse. . ." Act of May 25, 2017, 2017 Md. Laws at 3895. In relevant parts, §5-117(d) of the 2017 act states that:

> **In no event** may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a **person or governmental entity that is not the alleged perpetrator** more than 20 years after the date on which the victim reaches the age of majority.

Id. at 3898. (emphasis added). Section 2 of the Act clarifies,

> That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitation applicable before October 1, 2017.

and Section 3 of the Act states,

> That the **statute of repose under §5-117(d)** of the Courts Article as enacted by Section 1 of this Act shall be construed to apply both prospectively and retroactively **to provide repose** to defendants regarding actions that were barred by the application of **the period of limitations** applicable before October 1, 2017.

Id. at 3899. (emphasis added).

Defendants argue that the plain language of the statute reflects the Legislature's intent to create a statute of repose.

In opposition, Plaintiff posits that under the characteristics identified by the *Anderson* Court, the statute fails to satisfy the requirements of a statute of repose. Plaintiff argues that CJP § 5-117(d) is a statute of limitations because it is triggered by an injury, contains within itself a tolling period, and is never susceptible to foreclosure of future claims.

While the Court agrees with Plaintiff that some pertinent *Anderson* characteristics of a statute of repose are not present in the CVA, the Court is satisfied that *Anderson* did not dictate a hard and fast rule for what characteristics make a statute one of repose or limitations. The statute in this case is not similar to the statute at issue in *Anderson*. *Anderson* was a medical malpractice statute, readily definable by injury or a defendant's act of negligence. In contrast, the very nature of the issue that the Legislature sought to address in this statute precluded some

of the *Anderson* characteristics for statutes of repose from being at play – *i.e.* the claim being injury based, the claim being tolled until a victim reach majority, or that a future injury could be foreclosed. The critical feature of a statute of repose - the conclusiveness of the time after which liability is extinguished - is present and the statute creates an absolute bar against future suits to a distinct class.

Central to the Court's ruling in *Anderson* was that Court's determination that the legislature explicitly rejected the creation of an absolute bar against liability, a fact not found in the present case. To the contrary, the language here unequivocally prevents any suit from being filed against a non-perpetrator defendant after a specified amount of time, and the language leaves no exception for an extension of the time after that period of time. The statute also directly identifies a specific protected class, non-perpetrator defendants, which aligns with the purpose of a statute of repose to provide a repose to a named, specific class. *Id.* at 118. These are the saliant characteristics of a statute of repose.

Turning to the Act in full, Plaintiff summarily disregards the entire statutory context of the law, insisting that the Legislature did not mean what it said. Plaintiff dismisses Section 2 and 3 as uncodified provisions of the law and does not address the purpose paragraph. However, statutes are not read in a vacuum. Rather, the interpretation of a statute also depends on reading the whole statutory text. *Burson v. Capps*, 440 Md. 328, 344 (2014). *Elsberry v. Stanley Martin Companies*, LLC, 482 Md. 159, 187 (2022) ("As a matter of precision, the bill title and purpose *are* part of the statutory text-*not* the legislative history- even if both are used in service of ascertaining the intent of the General Assembly."). In addition, the law does not need to be codified for it to be legally binding. *Doe v. Roe*, 419 Md. 687, 700 n.11. (2011).

In this case, the whole statutory text of the law, including the purpose paragraph and the

uncodified sections, clearly indicate that the law is a statute of repose. The purpose statement outlines that one of the purposes of the bill is to establish a statute of repose. That language also differentiates the newly created statute of repose from the old statute of limitations. Act of May 25, 2017, 3027 Md. Laws at 3895. Section 2 of the Act is identical to the prior 2003 law that bars revival of expired claims. Section 3 of the Act: (1) plainly labels CJP § 5-117(d) as a statute of repose, (2) states that statute shall provide repose to those effected, and (3) again demonstrates that the Legislature made a distinction between the statute of repose that was being enacted, and the previous period of limitations that existed before. The Court finds that Plaintiff's interpretation of the law would render many words in the statute meaningless. The repeated identification and description of the law as one of repose would have to be ignored by the Court for Plaintiff to prevail. Such a reading violates a fundamental principle of statutory construction that the courts "interpret statutes to give every word effect, avoiding constructions that render any portion of the language superfluous or redundant." *Warsame v. State*, 338 Md. 513, 519 (1995). Certainly, the court should read and interpret a statute in a way to encourage the constitutionality of the legislature's actions. *Edgewood*, 282 Md at 427. However, this interpretation must be, "reasonably possible." *Koshko,* 398 Md. at 425. It does not appear to the Court that wholesale deletion of statutory language is a reasonably possible interpretation of the language. For these reasons, the Court finds that the Legislature intended CJP § 5-117(d) to be a statue of repose.

c. Legislative History

Even assuming that ambiguity does exist in the plain language of the statute, the Court would next look "holistically at the statute and its history to determine whether it is akin to a statute of limitations or a statute of repose." *Anderson,* 427 Md. at 124; *see also Western*

Correctional Inst. v. Geiger, 371 Md. 125, 141 (2002) ("Only when the statutory language is unclear and ambiguous, will courts look to other sources, such as the legislative history").

Here too, the Court finds that the legislative history confirms that the Legislature intended CJP §5-117(d) to be a statute of repose. The legislative history is replete with examples of the Legislature being provided with materials that used the term statute of repose and that consistently differentiated between a statute of limitations and statute of repose. This demonstrates to the Court that the Legislature knew the difference between the concepts, and purposely chose to adopt the CJP §5-117(d) as a statute of repose.

The House Floor Report consistently differentiates between the two statutes. The report states, "[t]he bill (1) expands the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor and . . . The bill also creates a statute of repose for specified civil actions relating to child sexual abuse." Pl. Ex. 15 at 1. The Floor Report also states that, "[t]he bill establishes a 'statute of repose' prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." *Id.* at 2. Finally, the Floor Report differentiates between the concepts again in the same sentence by stating, "[t]he statute of repose created by the bill 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." This sentence in particular highlights that there was an understanding that the Legislature was creating a new statute of repose.

The Senate Floor Report contains similar language as the House Report and maintains the

consistent separation and differentiation between a statute of limitations and a statute of repose. Pl. Ex. 16 at 2. For example, in the summary, the Report states that, "the bill establishes a 'statute of repose' prohibiting a person from filing an action for damages arising out of an alleged incident. . ." and, "[t]he statute of repose created by the bill 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." *Id.*

The Fiscal and Policy Note provided to the Legislature also demonstrates that the Legislature was informed of the clear distinction between the expansion of a statute of limitations, and the establishment of a statute of repose. Pl. Ex. 16 at 1. ("This bill (1) expands the statute of limitations. . . (2) establishes a statute of repose for specified civil actions") The Note also contains the exact same language as the floor reports on the effect of the statute of repose. *Id.* at 2.

Finally, the document entitled, "Discussion of certain amendments in SB0505/818470/1" confirms that the Legislature fully understood the effect that a statute of repose would have on the claims of potential plaintiff. The paper defines the term "statute of repose" and references another type of statute of repose, CJP §5-108, the statute of repose for improvements in property. Def's. Mot. to Dismiss, Ex. 18. The document clearly reflects the knowledge of the Legislature that "claims precluded by the statute of repose cannot be revived in the future." *Id.* Although the discussion paper does not contain identifying information, the Court considers this document as a part of the entire legislative history. *See Warfield v. State,* 315 Md. 474 (1989) (The Court considered a handwritten, undated and unidentified note in the legislative bill file as evidence of legislative intent).

In opposition, Plaintiff insists that the Legislature only used the word "repose"

colloquially, and without full understanding of the specific meaning. This argument lacks merit and is not reflected anywhere in the legislative record. Instead, the history shows the consistent and accurate differentiation between the two kinds of statute. This demonstrates that the Legislature knew that a statute of repose was different from statute of limitations. There is no evidence of confused usage in the legislative history. Plaintiff does not provide a single instance where the legislature conflated or confused the terms with each other. Moreover, it is "generally presume[d] that the Legislature had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law." *Collins v. State*, 383 Md. 684, 693 (2004) (quoting *Division of Labor v. Triangle General Contractors, Inc.*, 366 Md. 407, 422 (2001).

The legislative history, coupled with the presumption that the Legislature acts with full knowledge of the law, satisfies the Court that CJP §5-117(d) was knowingly intended by the Legislature to be a statute of repose.

C. A STATUTE OF REPOSE CREATES A SUBSTANTIVE AND VESTED RIGHT WHICH CANNOT BE RETROACTIVELY ABROGATED BY LEGISLATURE.

Even if the 2017 act created a statute of repose, Plaintiff responds that the General Assembly has the authority to retroactively abrogate the granted rights on two grounds. First, Plaintiff argues that only vested rights cannot be retroactively abrogated, and that the rights granted by the statute of repose are not vested. Second, Plaintiff argues that there is precedent that the Legislature previously had retroactively altered a statute of repose.

When considering the retroactive application of statutes to events that occurred prior to the statute's effective date, the Supreme Court has recognized four basic principles:

(1) statutes are presumed to operate prospectively unless a contrary intent appears;
(2) a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective;

(3) a statute will be given retroactive effect if that is the legislative intent; but
(4) even if intended to apply retroactively, a statute will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws.

Allstate Ins. Co. v. Kim, 376 Md. 276, 289 (2003) (quoting *WSSC v. Riverdale Heights Fire Co.*, 08 Md. 556, 563-64 (1987)). Those principles are considered through a two-part analysis. First, the legislative intent must be determined. Second, if the law was intended to be retroactive, the court must determine if the retroactive application would contravene some constitutional right or prohibition. *Allstate Ins. Co.* 376 Md. at 289-90.

In this case, the first step of the analysis is not disputed. There is no question that the CVA was intended to apply retroactively as the law states, "[§5-117(d)] shall be construed to apply both prospectively and retroactively". At issue here is the second step, whether giving effect to that intent impairs a vested right under the Maryland Constitution.[6] *Allstate Ins. Co.* 376 Md. at 293.

Plaintiff argues that that no "vested" rights were created by the 2017 act. Repeating his assertion that the law is a statute of limitations, Plaintiff sweepingly asserts that statutes of limitations do not create vested rights. Plaintiff also characterizes the law as an affirmative defense and cites to *Allstate v Kim* which recognized that "a person does not have an inherent vested right in the continuation of an existing law." *Kim*, 376 Md. at 298.

However, the Court is not persuaded that the critical distinction here is whether the right is called "vested" or "substantive." Maryland law has consistently found that a statute of repose creates a substantive right for the defendant to be free from suit. *Carven v. Hickman*, 135 Md. App. 645, 652 (2000) (finding a statute of repose, "is a substantive grant of immunity derived

[6] Unlike the federal standard for the United States Constitution, "[t]he state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the statute has a rational basis." *Dua*, 370 Md. at 623.

from a legislative balance of economic considerations affecting the general public and the respective rights of potential plaintiffs and defendants."); *First United*, 882 F.2d at 866 ("Statutes of Repose are based on considerations of the economic best interests of the public as a whole and are substantive grants of immunity. . ."); *See Washington Suburban Sanitary Com'n. v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 560 (1987) (finding an act granting immunity from civil torts is a, "rule of substantive law.").

In *Dua v Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002), the Supreme Court thoroughly analyzed the constitutionality of retroactive statutes under the Maryland Constitution. There, the Court struck down as unconstitutional two statutes that retroactively validated late fees in consumer contracts, and authorized subrogation actions by health maintenance organizations. The Supreme Court held that the statutes that abrogated the plaintiffs' pending causes of action for money damages in court violated the Maryland Constitution. There, the Court observed that "[i]t has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." *Id.* at 623. Moreover, in direct contrast to Plaintiff's broad position regarding remedial statutes being readily applicable retroactively, the *Dua* Court emphasized that "even a remedial or procedural statute may not be applied retroactively if it will interfere with **vested or substantive rights.**" *Id* at 623, 625 (emphasis added); *see also Hill v. Fitzgerald*, 304 Md. 689, 702 (1985) ("[i]t is thoroughly understood that a statute of limitations, which does not destroy a substantial right, but simply affects remedy, does not destroy or impair vested rights."). Notably, the *Dua* Court did not make a distinction between the word "vested" or "substantive" rights and its analysis did not center on any such distinction. Under *Dua*, it is unconstitutional for a retroactive statute to interfere with a substantive right.

Plaintiff and Attorney General factually distinguish *Dua* as a case involving accrued causes of action which rendered the rights to be vested, as opposed to the instant matter which involves a defense of an expired cause of action. The Attorney General gives great weight to the fact that the 2017 statute only prohibited the "filing" of claims after the time period, instead of employing words that would prohibit the "accrual" of claims after the time period. Br. Of Att'y General Pursuant to Cts. And Jud. Proc. §3-405(c) 8. The Attorney General argues that if the Legislature intended to provide a vested right to the defendants, the legislature would have used the word, "accrue" as it does in CPJ §5-108, as opposed to the word "file." *Id.*

However, the *Dua* Court's analysis and rationale cannot be so narrowly construed. That Court observed that "[t]he concept of vested property rights, in connection with retroactive civil legislation, has been developed in a multitude of this Court's opinions." *Id.* at 631. The Court notes with approval that the meaning of "property" under Maryland law is quite broad. *Id.* at 631 n. 10. With that background, the *Dua* Court goes on to observe that

> [t]his Court has consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, *or reviving a barred cause of action, thereby violating the vested right of the defendant.*

Id. at 633 (emphasis added). It is clear that *Dua* was not limited to accrued causes of action. That Court delineated and distinguished vested rights which may arise from "accrued cause[s] of action," "creation of a cause of action," or "reviv[al] of a barred cause of action."

Further, the Court is not persuaded by Plaintiff's argument that the Supreme Court's analysis in *Allstate Ins. Co. v. Kim* dictates that Defendants have no vested rights in a defense. In *Kim*, the defendant unsuccessfully argued that the Legislature's retroactive abrogation of parent-child immunity in torts cases unconstitutionally infringed upon their right to bring the immunity

as a defense. In defining a vested right, that Court stated that:

> [a] vested right, entitled to protection from legislation, must be something more than a *mere expectation* based upon an anticipated continuance of the existing law; *it must have become a title*, legal or equitable, *to the present or future enjoyment of property, a demand, or a legal exemption from a demand to another*.

Id at 298 (quoting *Godfrey v. State*, 84 Wash. 2d. 959, 632 (1975) (emphasis in original)). While that Court recognized that a right to pursue a cause of action vests when the cause of action arises, "[t]he right to assert a defense, on the other hand, does not arise and therefore cannot vest until the action is filed." *Id.* at 297. Finding that immunities were not favored in the law, that Court concluded that the defendant did not have a vested right.

This Court does not find *Kim* to be analogous to the instant case. That case involved a statute seeking to abolish the common law parent-child immunity retroactively. In characterizing the immunity as an affirmative defense that does not vest until an action is filed, that Court concluded that the defendant did not have a right to the continuation of a law. In contrast, the instant matter cannot be characterized as a mere affirmative defense. The Legislature affirmatively granted Defendants absolute immunity from suit upon the expiration of a time certain, regardless of whether a claim was filed. The creation of this absolute bar and the expiration of that time period is the, "something more than a mere expectation" that is required by *Kim*. As such, once a defendant has survived the legislatively determined time period, the substantive right granted by the statute of repose vests, and the Legislature can no longer abrogate that vested right.

Maryland courts have consistently found that a statute of repose bars all liability after a certain point in time. *See Carven*, 135 Md. App. at 652 (a statute of repose creates, "an absolute time limit beyond which liability no longer exists and is not tolled for any reason"); *See Anderson*, 427 Md. at 118 ("The purpose of a statute of repose is to provide an absolute bar to an

action or to provide a grant of immunity to a class of potential defendants after a designated time period.").

Other courts in the country that have addressed this issue have also concluded that that the Legislature may not abrogate those rights attendant to a statute of repose. *See Anderson v. Catholic Bishop of Chicago*, 759 F.3d 645 (2014) ("[child sexual abuse] claims time barred under the old law … remained time-barred even after the repose period was abolished in the subsequent legislative action."); *Bryant v. U.S.*, 768 F.3d 1378, 1383 (2014) (statute of repose acts as a substantive limit on a plaintiff's right to file an action, "a condition precedent to the action itself," and that an attempt by the government to retroactively expand this limit divest the defendants of their vested right not to be sued); *Doe v. Popravak*, 421 P.3d 760 (Kan. App. 2017) ("the legislature cannot revive a legal claim barred by a statute of repose because doing so would constitute taking the potential defendant's property (the vested right) without due process."). *Doe H.B. v. M.J.*, 482 P3d 596 (Kan. App. 2021) ("When the timeframe in a statute of repose expires, the claim is absolutely abolished as a matter of law").

The Court also does not find Plaintiff's reliance on one prior instance where the Legislature amended a statute of repose to be persuasive. In 1979, the Legislature enacted CJP §5-108, which, as previously discussed, established a statue of repose for improvements to real property. Subsequently, the statute was amended to exclude injuries relating to asbestos exposure and the changes were to be applied retroactively to revive extinguished claims. A perceived revival of expired claims was challenged in *Duffy v. CBS Corporation*, 232 Md. App. 602 (2017). The Appellate Court found that there was a revival of an expired claim which was unconstitutional because the act deprived the defendants of a vested right. *Id.* at 623. However, the Supreme Court reversed, not because they found that the revival was unconstitutional, but

because the Court found that the plaintiff's injury occurred before the statute of repose was enacted, and so the statute of repose was not implicated and did not bar the plaintiff's claims. *Duffy v. CBS Corporation*, 458 Md. 206, 236 (2018). The Supreme Court simply did not reach the issue of constitutionality because they found that the statute of repose did not apply to the case at hand. As such, this Court declines to speculate about the constitutional question left open in that matter by the Supreme Court.

Finally, Plaintiff argues that even if that the 2017 law created vested rights, compelling public policy considerations permit the Legislature to retroactively abrogate the Defendant's due-process rights. Plaintiff's argument lacks merit for two reasons. Plaintiff seeks to apply the rational basis test in determining if a law is constitutional under the U.S. Constitution. However, as *Dua* made clear, "the state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired and *not* whether the statute has a rational basis." *Dua*, 370 Md. at 623. The rational basis test is inapplicable to the due process analysis under the Maryland Constitution. The only relevant test of the constitutionality under the Maryland Constitution in this case is whether the CVA retroactively abrogates a vested right. The Legislature's compelling public policies cannot overcome and impair vested rights.

Plaintiff also mischaracterizes the *Anderson* Court's reference to a legislature's right to balance economic interests when creating statutes of repose as one reflecting "the well-understood concept that, even when fundamental rights are impinged, the legislature may adjust the burdens and benefits of economic life where compelling interests exit." Pl. Opp. To Def's Mots. To Dismiss, 9. *Anderson* does not state nor imply in any manner that legislatures may abrogate fundamental rights where compelling interests exist. Indeed, the *Anderson* Court pointedly noted that "[t]he impetus for the legislative enactment does not dictate alone" the

Court's reading of whether the statute was one of limitations or repose. *Anderson,* 427 Md. at 125. The Court flatly rejected that defendant's argument that because the legislature enacted the statute in response to an economic crisis, the statute must be one of repose. *Id.* Plaintiff cites to no authority for his sweeping statement that fundamental rights can be abrogated other than *Montgomery Cty v. Walsh*, 274 Md. 502 (512) (1975), a case discussing and applying the strict scrutiny test where constitutional right to privacy is involved. *Walsh* has no relevance to the issue at hand, and Plaintiff's argument lacks merit.

For the reasons stated above, the Court finds that Defendants have a substantive and vested right to immunity from Plaintiff's claim which arose more than twenty years after Plaintiff reached majority. Retroactive legislation that deprives a person of a vested right violates the Maryland Constitution. *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 625 (2002).

V. EVEN IF CVA IS A STATUTE OF LIMITATIONS, REVIVAL OF EXPIRED CLAIMS VIOLATES MARYLAND CONSTITUTION.

Even if the CJP §5-117(d) was not a statute of repose, but a statute of limitations, the Court finds that the CVA is unconstitutional as it seeks to revive time barred claims. In the present case, Plaintiff's claim expired in 1998 and was time barred by more than 25 years when the CVA took effect.

Maryland courts have held that the revival of claims that were time barred at the effective date of new laws generally impair vested rights. In *Smith v Westinghouse*, 266 Md. 52 (1972) the Supreme Court struck down as unconstitutional a statute that would revive a cause action which would otherwise be barred by the limitations period. There, the Legislature enacted a law effective July 1, 1971 that extended the statute of limitations for wrongful death from two years to three years. The law, as enacted, applied prospectively and retrospectively to any cause of

action arising prior to July 1, 1968.[7] In *Smith*, the plaintiffs claim had already expired when the new law took effect, although the three years under the new law had not lapsed. Citing to *Tucker v. State, Use of Johnson,* 89 Md. 471, 479 (1899) wherein the Court held that Article 67 of the Code…created a new cause of action, the *Smith* Court found that the time for filing suit was a condition precedent to filing and, as such, the new law unconstitutionally revived claims that had expired pursuant to the Declaration of Rights of the State of Maryland.[8] *Id.* at 55.

In *Dua, supra,* discussed above, the Supreme Court cites *Smith v. Westinghouse* with approval, and reiterates that the Maryland Constitution prohibits *reviving a barred cause of action, thereby violating the vested right of the defendant.*" *Id.* at 633 (emphasis added).

Similarly in *Rice v. University of Maryland Medical Systems Corp.*, 186 Md. App. 551 (2009), the Appellate Court considered the constitutionality of retroactive application of a saving statute for the filing of a certificate of merit in a medical malpractice claim. Although recognizing that the filing requirement was a condition precedent to filing a medical malpractice claim, the *Rice* court found that the appellants' claim had not expired within the meaning of *Smith v. Westinghouse* before the saving statute took effect. In reaching that conclusion, that court

> "agree[d] with UMMS that, when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process….In contrast…the legislature may extend a statute of limitation that applies to a claim as to which the statute of limitations has not yet expired."

Id. at 563.

Finally, in *Doe v. Roe*, 419 Md. 687 (2011), the Supreme Court had the opportunity to

[7] In *Rice v University*, 186 Md. App 551 (2009), the Court observed that the 1971 statute in *Smith* contained an "apparent drafting error," which the *Smith* Court refused to construe as such. *Rice*, 563 Md. App. at 565.

[8] The *Smith* Court also found the statute unconstitutional under the United States Constitution.

consider the constitutionality of an earlier version of the CVA from 2003. In that case, the plaintiff alleged that she was sexually abused as a child by her grandfather. *Id.* at 690. On September 29, 2001, that plaintiff reached the age of majority, at which time CJP. § 5-101 provided for a three-year statute of limitations. *Id.* On September 3, 2008, that plaintiff filed her complaint. *Id.* The *Doe* statute, CJP. § 5-117, extended the statute of limitation for child sexual abuse to seven years from the age of majority. That law explicitly did not apply retroactively, as it stated that it should not be construed to revive any action that was barred by the application of the period of limitation applicable before October 1, 2003." *Id.* The issue there was whether CJP. § 5-117 was intended to apply to causes of action that had accrued but were not yet time barred by the expiration of the old three year statute of limitations. In its analysis, the Court noted that no retrospectivity analysis was necessary in that matter as the cause of action was not yet time barred. *Id.* at 701 n.12. As such, that Court followed the principal that "a statute effecting a change in procedure only…ordinarily applies to all actions whether accrued, pending or future, unless a contrary intention is expressed." *Id.* at 708 (quoting *Rawlings v. Rawlings*, 362 Md. 535, 555 (2001)).[9] In concluding that CJP § 5-117 was a remedial and procedural statute, the Court repeatedly noted that "[w]e would be faced with a different situation entirely had Roe's claim been barred under the three-year limitations period as of October 1, 2003, the effective

[9] In its review of the legislative history, the Supreme Court observed that a prior version of the law in *Doe v. Roe* sought to have the law applied retroactively to any actions that would have been barred by the application of the period of limitation applicable before October 1, 2003. At First Reading, Senate Bill 68, the statute of limitations period was extended and included "any actions that would have been barred by the application of the period of limitations applicable before October 1, 2003." *Doe*, 419 Md. at 696 (citing S.B. 68, 417th Sess. (2003) (First Reading). Subsequently, then Senator Brian E. Frosh requested an opinion form the Attorney General of Maryland regarding the constitutionality of retroactive application of the law to cases that were barred prior to the effective date. *Id.* at 697. In response, the Attorney General's Office noted a national split in authority on the constitutionality of revival of claims that were time-barred, and advised that no Maryland mandated its unconstitutionality, but that it was possible in light of *Dua v Comcast*. *Id.* at 698. Notably, subsequent to that advisory opinion from the Attorney General's Office, the final version that became law did not include that retroactive provision.

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date of § 5-117." *Id.* at 707. That Court then held that "the extended limitations period does not "interfere with vested or substantive rights," as it is well established that "[a]n individual does not have a vested right to be free from suit or sanction for a legal violation *until the statute of limitation for that violation has expired*." *Id.* at 707 n.18 (quoting *Crum v. Vincent*, 493 F.3d 988, 997 (8th Cir. 2007)) (emphasis added).

The Supreme Court in *Doe v. Roe* observed that "[s]tatutes of limitations are neither substantive nor procedural per se but have 'mixed substantive and procedural aspects.'" *Doe*, 419 Md. at 705 (quoting *Sun Oil Co. v. Wortman*, 486 U.S. 717, 736 (1988)). These statutes vest to potential defendants when a defendant survives the time period that the law prescribes. Therefore, the Court finds that reviving a claim that had already expired by the then applicable statute of limitations would interfere with the defendant's substantive rights.

VI. FRAUDULENT CONCEALMENT AND CONTINUINING HARD DOCTRINE NOT APPLICABLE.

Plaintiff argues, without reference to any authority, that his claims have been tolled under a theory of fraudulent concealment. This theory, however, is contradicted by the plain language of the statute. The 2017 act states that, "[i]**n no event** may an action for damages. . ." be filed. Act of May 25, 2017, 2017 Md. Laws at 3898 (emphasis added). The phrase, "[i]n no event" clearly demonstrates that the Legislature did not intend for the statute of repose to be tolled for any reason, except for the specific minority exception outlined in the statute. *See contra* (N.D.'s medical malpractice statute of repose specifically tolls for "fraudulent conduct by a physician." Further, in *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862 (1989), a case cited with approval by the *Anderson* court, the 4th Circuit found that fraudulent concealment does not apply to a statute of repose. *Id.* at 865 (finding that permitting tolling due to fraudulent concealment would disturb and defeat the 20- year repose period that the Maryland

legislators had chosen).

Plaintiff also claims, without reference to any authority, that the CVA time limitations have no applicability to the present matter because of the continuing events theory. The continuing events theory tolls a statute of limitations during the existence of a fiduciary relationship between the parties. *MacBride v. Pishvaian*, 402 Md. 572 (2007). *See e.g. Vincent v. Palmer*, 179 Md. 365 (1941) (ongoing employment relationship); *Waldman v. Rohrbaugh*, 241 Md. 137 (1966) (ongoing medical treatment). There is no fiduciary relationship in the present case between Plaintiff and Defendants.

The continuing violation or harm theory tolls the statute of limitations in cases where there are continuous violations, not merely the continuing effects of prior tortious acts. *See MacBride* at 584. The amended complaint in this case alleges negligence, negligent hiring of employees, negligent supervision and retention of employees, premises liability, fraudulent concealment, and civil conspiracy by Defendants, all prior tortious conduct that was the proximate cause of Plaintiff suffering sexual abuse as a child. The Plaintiff fails to state what continuous violations are causing cognizable injury to this Plaintiff. The Court finds no merit to Plaintiff's arguments regarding fraudulent concealment and continuing violation.

VII. CONCLUSION

For the reasons stated above, the Court finds that CVA violates Article 24 of the Maryland Declaration of Rights and the Maryland Constitution, Article III, Section 40 and is unconstitutional.

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legislators had chosen).

Plaintiff also claims, without reference to any authority, that the CVA time limitations have no applicability to the present matter because of the continuing events theory. The continuing events theory tolls a statute of limitations during the existence of a fiduciary relationship between the parties. *MacBride v. Pishvaian*, 402 Md. 572 (2007). *See e.g. Vincent v. Palmer*, 179 Md. 365 (1941) (ongoing employment relationship); *Waldman v. Rohrbaugh*, 241 Md. 137 (1966) (ongoing medical treatment). There is no fiduciary relationship in the present case between Plaintiff and Defendants.

The continuing violation or harm theory tolls the statute of limitations in cases where there are continuous violations, not merely the continuing effects of prior tortious acts. *See MacBride* at 584. The amended complaint in this case alleges negligence, negligent hiring of employees, negligent supervision and retention of employees, premises liability, fraudulent concealment, and civil conspiracy by Defendants, all prior tortious conduct that was the proximate cause of Plaintiff suffering sexual abuse as a child. The Plaintiff fails to state what continuous violations are causing cognizable injury to this Plaintiff. The Court finds no merit to Plaintiff's arguments regarding fraudulent concealment and continuing violation.

VII. CONCLUSION

For the reasons stated above, the Court finds that CVA violates Article 24 of the Maryland Declaration of Rights and the Maryland Constitution, Article III, Section 40 and is unconstitutional. Defendants' Motion to Dismiss is GRANTED.

April 1, 2024

Jeannie E. Cho, Judge
Circuit Court for Montgomery County, MD

Entered: Clerk, Circuit Court for Montgomery County, MD
April 1, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VALERIE BUNKER, Plaintiff, v. THE KEY SCHOOL, INCORPORATED, *et al.*, Defendants.	Case No. MJM-23-2662

MEMORANDUM

On April 11, 2024, this Court issued a Memorandum and corresponding Order granting Plaintiff's Motion to Certify a Question of Law to the Maryland Supreme Court. ECF Nos. 35 & 36. The Order granted the parties 14 days to file any objections to the question proposed in the Court's Memorandum. ECF No. 36.

On April 25, the parties filed a joint response to the proposed certified question. ECF No. 37. "Defendants believe that the Court should retain the proposed certified question of law as stated" in its prior Order. *Id.* at 3. Plaintiff, however, responds that the proposed question "unintentionally sidelines the presumption of constitutionality accompanying any act of the General Assembly." *Id.* at 1. Accordingly, Plaintiff suggests "a reformulation of the proposed question would enhance the question's neutrality." *Id.* at 1. Plaintiff proposes "isolating the necessary sub-issues" by breaking the question down into four "component parts . . . to ensure all issues are clearly identified . . . ." *Id.* at 2. Specifically, Plaintiff proposes certifying the following questions:

1. Whether the 2017 version of CJ 5-117(d) is a statute of limitations or a statute of repose?

2. Whether defendants have a vested right not to be sued following the expiration of the statutory time limit set forth in the 2017 version of CJ 5-117 for child sexual abuse claims?

3. Whether the Maryland Child Victims Act of 2023 impermissibly abrogates a vested right of defendants?

4. Whether the Maryland Child Victims Act of 2023 is constitutional?

Id. at 2–3.

This Court has considered the parties' positions and finds that the original question, as proposed in the April 11 Memorandum, is sufficiently clear, concise, and neutral in its presentation. Breaking the question down into parts, as Plaintiff suggests, would be unnecessarily cumbersome without adding clarity. Indeed, it is likely that the state court will ultimately answer each of the questions Plaintiff proposes. Plaintiff's proposal, however, may implicate other issues that need not be resolved by the state court to address the question of the CVA's constitutionality. Moreover, the Supreme Court of Maryland, in its discretion, can "reformulate [the] question of law certified to it." Md. Code Ann., Cts. & Jud. Proc. § 12-604.

Accordingly, Plaintiff's objection is OVERRULED. A separate Order will issue, certifying the following question of law to the Supreme Court of Maryland: Does the Maryland Child Victims Act of 2023 (Md. Code Ann., Cts. & Jud. Proc. § 5-117) constitute an impermissible abrogation of a vested right in violation of Article 24 of the Maryland Declaration of Rights and/or Article III, Section 40 of the Maryland Constitution?

April 29th ,2024

/S/
Matthew J. Maddox
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VALERIE BUNKER, Plaintiff, v. THE KEY SCHOOL, INCORPORATED, *et al.*, Defendants.	Case No. MJM-23-2662

ORDER

Pursuant to the Maryland Uniform Certification of Questions Act, Md. Code Ann., Cts. & Jud. Proc. §§ 12-601, *et seq.*, and Maryland Rule 8-305, it is ORDERED that:

1. The United States District Court for the District of Maryland CERTIFIES the following question to the Supreme Court of Maryland:

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

2. The answer to the above question would be determinative of an issue in the instant case, and, currently, no controlling appellate decision supplies such an answer.

3. In accordance with Md. Code Ann., Cts. § Jud. Proc. § 12-604, "The Supreme Court of Maryland . . . may reformulate a question of law certified to it."

4. In accordance with Md. Code Ann., Cts. § Jud. Proc. § 12-606, the facts below are "relevant to the question" and show "fully the nature of the controversy out of which the question arose":

a. Plaintiff Valerie Bunker, a resident of Oregon, brings this action against The Key School, Incorporated and The Key School Building Finance Corporation (collectively, the "Key School" or "Defendants"). Compl. (ECF No. 1), ¶¶ 2, 4.

b. Plaintiff attended the Key School, a private school in Annapolis, Maryland, for high school from 1973 through 1977. *Id.*

c. Plaintiff's claims arise from the Key School's alleged failure to protect Plaintiff from sexual and emotional abuse committed by Key School teachers while Plaintiff was in high school. *See generally id.*

d. Plaintiff filed her Complaint in this Court on October 1, 2023, under diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). *Id.* ¶ 24.

e. The Maryland Child Victims Act of 2023 (the "CVA") took effect on October 1, 2023, the date this action was filed. Md. Stat. Ann., Cts. & Jud. Proc. § 5-117.

f. The parties contest the constitutionality of the CVA. Defendants contend that the CVA violates Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution by attempting to repeal Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (2017) (amended 2023) (hereinafter, "§ 5-117(d) (2017)"). *See* Defendants' Memorandum in Support of Motion to Dismiss (ECF No. 20-1) at 6–7. According to Defendants, § 5-117(d) (2017) was a statute of repose that conferred upon non-perpetrator defendants a substantive right against liability for "abuse claims that were not brought within 20 years after the plaintiffs reaching the age of majority." *Id.* at 6. Defendants argue that their substantive right could not be withdrawn once vested. *Id.* at 7. Plaintiff contends that § 5-117(d) (2017) was a statute of limitations rather than a statute of repose and, therefore, does not create

a vested right. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss (ECF No. 21-1) at 5–6.

5. Defendants shall be treated as the Appellants in the certification procedure. Plaintiff shall be treated as the Appellee.
6. Plaintiff and Defendants are each ORDERED to provide a check to the Clerk of this Court payable to the Clerk of the Supreme Court of Maryland in the amount of $30.50 for their respective halves of the filing fee for docketing regular appeals, pursuant to Maryland Rule 8-305(b), within seven (7) days of the date this Order is docketed.
7. Upon receipt of the filing fee referenced above, the Clerk of this Court SHALL transmit to the Supreme Court of Maryland, under the official seal of this Court, the original and seven copies of this Order, and seven copies of all other docket entries in this case, together with the filing fee.
8. The Clerk of this Court SHALL fulfill any request, upon notification, from the Clerk of Court for the Supreme Court of Maryland for all or part of the record in this matter.
9. In accordance with 28 U.S.C. § 2403 and Fed. R. Civ. P. 5.1(b), the Clerk of this Court SHALL send a copy of this Order to the Attorney General of Maryland, 200 St. Paul Place, Baltimore, MD 21202, and via email to civil_service@oag.state.md.us.
10. Defendants' Motion to Stay (ECF No. 12) is GRANTED. This case shall be STAYED pending the Supreme Court of Maryland's answer to the certified question.
11. The names and addresses of counsel of record are as follows:

    a. For Plaintiff Valerie Bunker:

    - Elisha Nicole Hawk
      Jenner Law, P.C.
      3600 Clipper Mill Road, Suite 240
      Baltimore, MD 21211

410-413-2155
Fax: 410-982-0122
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- Mark E. Rollison
  The Joel Beiber Firm
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  Towson, MD 21204
  804-358-2200
  Fax: 804-358-2262
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- Andrew David Freeman
  Brown Goldstein and Levy LLP
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  Baltimore, MD 21202-6701
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  Fax: 410-385-0869
  Email: adf@browngold.com

- Anthony J May
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  Fax: 410-385-0869
  Email: amay@browngold.com

- Kelly N. Stevenson
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  804-800-8000
  Fax: 804-358-2262
  Email: kstevenson@joelbieber.com

- Melissa F. Hague
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  804-800-8000
  Email: mhague@joelbieber.com

- Michael James Wasicko
  Joel Bieber Law Firm
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  Towson, MD 21024
  804-358-2200
  Email: mwasicko@joelbieber.com

- Robert Keith Jenner
  Jenner Law, P.C.
  3600 Clipper Mill Road, Suite 240
  Baltimore, MD 21211
  410-413-2155
  Fax: 410-982-0122
  Email: rjenner@jennerlawfirm.com

b. For Defendants The Key School, Incorporated, and The Key School Building Finance Corporation:

- Sean Leo Gugerty
  Goodell, DeVries, Leech & Dann, LLP
  One South Street, 20th Floor
  Baltimore, MD 21202
  410-783-4000
  Fax: 410-783-4040
  Email: sgugerty@gdldlaw.com

April 29th, 2024

/S/
Matthew J. Maddox
United States District Judge

NOTICE: Available

Case Detail

Case Information

Court System: **Circuit Court For Harford County - Civil**
Location: **Harford Circuit Court**
Case Number: **C-12-CV-23-000767**
Title: **John Doe vs. Board of Education of Harford County, et al.**
Case Type: **Tort - Negligence**
Filing Date: **10/03/2023**
Case Status: **Appealed**
Judicial Officer: **Allman, Alex**

Other Reference Numbers

Case Appealed: **ACM-REG-0188-2024**
Petition Filed: **SCM-PET-0059-2024**
Petition Granted: **SCM-REG-0010-2024**

Involved Parties Information

Defendant

Name: **Does (1-10), John**

Address: **Board of Education of Harford County**
Serve On: Jefferson Blomquist, Esq. County Attorney Harford
City: **BEL AIR** State: **MD** Zip Code: **21014**

Defendant

Name: **Board of Education of Harford County**

Address: **s/o: Aaron Poynton, M.D. Resident Agent and**
President of the Harford County Board of Education
City: **BEL AIR** State: **MD** Zip Code: **21014**

Attorney(s) for the Defendant

Name: **O'MEALLY, EDMUND JOSEPH**

Address Line 1: **PESSIN KATZ LAW, P.A.**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 500**
City: **Towson** State: **MD** Zip Code: **21204**

Name: **O'MEALLY, EDMUND JOSEPH**
Appearance Date: **11/10/2023**
Address Line 1: **PESSIN KATZ LAW, P.A.**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 500**
City: **Towson** State: **MD** Zip Code: **21204**

Name: **SCOTT, ANDREW GEORGE**
Appearance Date: **11/10/2023**
Address Line 1: **Pessin Katz Law, PA**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 400**
City: **TOWSON** State: **MD** Zip Code: **21204**

Name: **Konstas, Adam E**
Appearance Date: **11/10/2023**
Address Line 1: **PESSIN KATZ LAW, PA**
Address Line 2: **901 DULANEY VALLEY ROAD**
Address Line 3: **SUITE 500**
City: **TOWSON** State: **MD** Zip Code: **21204**

Plaintiff

Name: **Doe, John**

Address: **C/O Blank Kim, P.C., 8455 Colesville Road #920**
City: **SILVER SPRING** State: **MD** Zip Code: **20910**

Attorney(s) for the Plaintiff

Name: **BLANK, AARON MICHAEL**
Appearance Date: **10/03/2023**
Address Line 1: **Blank Kim, P.C.**
Address Line 2: **8455 Colesville Rd**
Address Line 3: **#920**
City: **SILVER SPRING** State: **MD** Zip Code: **20910**

Name: **McFarland, Michael J Esquire**
Appearance Date: **01/05/2024**
Address Line 1: **Laffey Bucci and Kent LLP**

Name: **D'Andrea, Gaetano A.**
Appearance Date: **01/05/2024**
Address Line 1: **Laffey Bucci & Kent, LLP**
Address Line 2: **1100 Ludlow Street**
Address Line 3: **Suite 300**
City: **Philadelphia** State: **PA** Zip Code: **19107**

Court Scheduling Information

Event Type	Event Date	Event Time	Judge	Court Location	Court Room	Result
Conference - Scheduling	**01/31/2024**	**14:00:00**	**Allman, Alex**	**Harford County Judge**	**Courtroom 2-03**	**Concluded / Held**
Hearing - Motion to Dismiss	**03/19/2024**	**13:30:00**	**Allman, Alex**	**Harford County Judge**	**Courtroom 2-03**	**Concluded / Held**
Conference - Scheduling	**06/24/2024**	**15:00:00**	**Allman, Alex**	**Harford County Judge**	**Courtroom A 01**	

Document Information

File Date: **10/03/2023**
Document Name: **Case Information Report Filed**
Comment: **Case Information Report**

File Date: **10/03/2023**
Document Name: **Complaint / Petition**
Comment: **Complaint - Civil Action**

File Date: **10/03/2023**
Document Name: **Supporting Exhibit**
Comment: **Supporting Exhibit A - Photo Dated 1988-1989**

File Date: **10/03/2023**
Document Name: **Supporting Exhibit**
Comment: **Supporting Exhibit B - Text Messages**

File Date: **10/03/2023**
Document Name: **Supporting Exhibit**
Comment: **Supporting Exhibit C - Case Summary - Criminal**

File Date: **10/03/2023**

File Date: **10/03/2023**
Document Name: **Summons Issued (Service Event)**
Comment:

File Date: **10/04/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Summons Issued Service Event - John Doe vs Board of Education HC**

File Date: **10/18/2023**
Document Name: **Affidavit - Service**
Comment: **Affidavit of Service - Board of Education of Harford County**

File Date: **10/18/2023**
Document Name: **Request to Re-Issue**
Comment: **Line to Re-Issue Writs**

File Date: **10/19/2023**
Document Name: **Summons Issued (Service Event)**
Comment:

File Date: **10/19/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Writ of Summons**

File Date: **11/01/2023**
Document Name: **Affidavit - Service**
Comment: **Affidavit of Service - Harford County Board of Education**

File Date: **11/01/2023**
Document Name: **Supporting Document**
Comment: **Affidavit of Service Attachment**

File Date: **11/10/2023**
Document Name: **Attorney Appearance - No Fee**
Comment: **Entry of Appearance of Edmund J. O'Meally**

File Date: **11/10/2023**
Document Name: **Attorney Appearance - No Fee**
Comment: **Entry of Appearance of Andrew G. Scott**

Comment: **Entry of Appearance of Adam E. Konstas**

File Date: **11/21/2023**
Document Name: **Motion / Request - To Dismiss**
Comment: **Motion to Dismiss and Request for Hearing**

File Date: **11/21/2023**
Document Name: **Memorandum**
Comment: **Memorandum in Support of Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Opposition**
Comment: **Plaintiff's Opposition to Defendant's Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit A to Plantiff's Oppostion to Defendant's Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Request for Hearing/Trial**
Comment: **Plaintiff's Request for Hearing**

File Date: **12/07/2023**
Document Name: **Motion / Request - For Special Admission of Attorney**
Comment: **Motion for Special Admission of Gaetano A. D'Andrea to Practice Pro Hac Vice**

File Date: **12/07/2023**
Document Name: **Motion / Request - For Special Admission of Attorney**
Comment: **Motion for Special Admission of Michael McFarland To Practice Pro Hac Vice**

File Date: **12/21/2023**
Document Name: **Reply to Opposition**
Comment: **Board's Reply to Plaintiff's Opposition to Motion to Dismiss**

File Date: **12/22/2023**
Document Name: **Memorandum**
Comment: **From Judge Curtin to Judge Allman Assigning case.**

File Date: **01/02/2024**

Comment: **[illegible] is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for Plaintiff. The presence of the Maryland attorney is not waived.**

File Date: **01/02/2024**
Document Name: **Order**
Comment: **Guy D'Andrea is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for Plaintiff. The presence of the Maryland attorney is not waived.**

File Date: **01/02/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order for Special Admission/G. D'Andrea**

File Date: **01/02/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order for Special Admission/M. McFarland**

File Date: **01/31/2024**
Document Name: **Hearing Sheet**
Comment: **(AMA/2-03) Matter before the Court for Scheduling Conference. Counsel for both parties appeared via Zoom. Hearing on Motion to Dismiss scheduled for 3/19/24 at 1:30pm.**

File Date: **01/31/2024**
Document Name: **Hearing Notice Issued**
Comment:

File Date: **03/14/2024**
Document Name: **Line**
Comment: **Line Supplementing Plaintiffs Opposition to Motion To Dismiss**

File Date: **03/19/2024**
Document Name: **Hearing Sheet**
Comment: **(AMA/2-03) Matter before the Court for Motion to Dismiss. Arguments heard. Court denies in part and grants in part Motion to Dismiss. Plaintiff to file amended complaint as stated on the record. Court to prepare and submit Order.**

File Date: **03/20/2024**
Document Name: **Order**

File Date: **03/20/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order**

File Date: **03/26/2024**
Document Name: **Interlocutory Appeal**
Comment:

File Date: **03/26/2024**
Document Name: **Civil Information Report - Appeal to ACM**
Comment:

File Date: **03/26/2024**
Document Name: **Supporting Document**
Comment: **Court's Order on Motion to Dismiss**

File Date: **04/08/2024**
Document Name: **Order to Proceed**
Comment:

File Date: **04/15/2024**
Document Name: **Transcript**
Comment: **Hearing 03/19/24**

File Date: **04/15/2024**
Document Name: **Transcript Cost Sheet**
Comment: **$89.00**

File Date: **04/17/2024**
Document Name: **Acknowledgement of Petition for Writ of Certiorari**
Comment: **Petition Docketing Receipt**

File Date: **04/18/2024**
Document Name: **Complaint - Amended**
Comment: **Amended Complaint - Civil Action**

File Date: **04/18/2024**
Document Name: **Supporting Document**

File Date: **05/02/2024**
Document Name: **Answer**
Comment: **Answer to Amended Complaint**

File Date: **05/02/2024**
Document Name: **Case Information Report Filed**
Comment: **Civil Non-Domestic Case Information Sheet**

File Date: **05/17/2024**
Document Name: **Notice of Hearing / Trial - Issued**
Comment:

File Date: **05/21/2024**
Document Name: **Notice of Discovery**
Comment: **NOSD-Subpoena to Harford County Sheriff's Office**

File Date: **05/23/2024**
Document Name: **Notice of Discovery**
Comment: **NOSD-Defendant's Interrogatories and RFPD to Plaintiff**

File Date: **05/29/2024**
Document Name: **Return/Affidavit of Served Subpoena**
Comment: **for Harford County Sheriff's Office**

File Date: **05/29/2024**
Document Name: **Order - Writ of Certiorari Granted**
Comment: **Ordered that the Petition is granted; ordered that this case shall be set for argument on September 10, 2024.**

File Date: **05/29/2024**
Document Name: **Consent Motion**
Comment: **Consent Motion for Entry of Order Requiring Production of Documents by the HCSO**

File Date: **05/30/2024**
Document Name: **Certificate Regarding Discovery**
Comment: **Certificate Regarding Discovery**

File Date: **06/03/2024**

Comment: **Harford County Sheriff's Office shall, within 10 business days of entry of this Order, produce to counsel for the parties in the above-captioned action all documents related to the investigation of Elwood Dehaven and Janice Konski. (Given the age of the documents at issue, HCSO may request, in writing to the Court, an extension of the 10 day period, if necessary.)**

File Date: **06/03/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order to Compel**

File Date: **06/07/2024**
Document Name: **Certification**
Comment: **Original Case Record**

File Date: **06/07/2024**
Document Name: **Original Record Sent**
Comment: **to ACM**

File Date: **06/10/2024**
Document Name: **Notice Filed**
Comment: **Notice from the Supreme Court To transmit the Record to the Supreme Court on or before June 11, 2024.**

File Date: **06/11/2024**
Document Name: **Certification**
Comment: **Original Case File**

File Date: **06/11/2024**
Document Name: **Original Record Sent**
Comment: **to SCM**

Service Information

Service Type	Issued Date
Summons Issued	**10/03/2023**
Summons Issued	**10/19/2023**

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

E-FILED; Harford Circuit Court
Docket: 10/3/2023 1:44 PM; Submission: 10/3/2023 1:44 PM
Envelope: 141[redacted]906

IN THE CIRCUIT COURT FOR Harford County (City or County) C-12-CV-23-000767

CIVIL – NON-DOMESTIC CASE INFORMATION SHEET

DIRECTIONS

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER (Clerk to insert)

CASE NAME: John Doe c/o Blank Kim, P.C. vs. Board of Education of Harford County

PARTY'S NAME: John Doe c/o Blank Kim, P.C. (Plaintiff) PHONE: 240-599-8916 (Defendant)

PARTY'S ADDRESS: 8455 Colesville Road, #920, Silver SPring, MD 20910

PARTY'S E-MAIL: ABlank@bkinjury.com

If represented by an attorney:

PARTY'S ATTTORNEY'S NAME: Aaron M. Blank PHONE: 240-599-8916

PARTY'S ATTTORNEY'S ADDRESS: 8455 Colesville Road, #920, Silver Spring, MD 20910

PARTY'S ATTTORNEY'S E-MAIL: ABlank@bkinjury.com

JURY DEMAND? ☒ Yes ☐ No

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known:

ANTICIPATED LENGTH OF TRIAL?: _____ hours 8 days

PLEADING TYPE

New Case: ☒ Original ☐ Administrative Appeal ☐ Appeal

Existing Case: ☐ Post-Judgment ☐ Amendment

If filing in an existing case, skip Case Category/ Subcategory section – go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (*Check one box.*)

TORTS
- ☐ Asbestos
- ☐ Assault and Battery
- ☐ Business and Commercial
- ☐ Conspiracy
- ☐ Conversion
- ☐ Defamation
- ☐ False Arrest/Imprisonment
- ☐ Fraud
- ☐ Lead Paint – DOB of Youngest Plt:_____
- ☐ Loss of Consortium
- ☐ Malicious Prosecution
- ☐ Malpractice-Medical
- ☐ Malpractice-Professional
- ☐ Misrepresentation
- ☐ Motor Tort
- ☒ Negligence
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability
- ☐ Specfic Performance
- ☐ Toxic Tort
- ☐ Trespass
- ☐ Wrongful Death

CONTRACT
- ☐ Asbestos
- ☐ Breach
- ☐ Business and Commercial
- ☐ Confessed Judgment (Cont'd)
- ☐ Construction
- ☐ Debt
- ☐ Fraud
- ☐ Government
- ☐ Insurance
- ☐ Product Liability

PROPERTY
- ☐ Adverse Possession
- ☐ Breach of Lease
- ☐ Detinue
- ☐ Distress/Distrain
- ☐ Ejectment
- ☐ Forcible Entry/Detainer
- ☐ Forclosure
  - ☐ Commercial
  - ☐ Residential
  - ☐ Currency or Vehicle
  - ☐ Deed of Trust
  - ☐ Land Installments
  - ☐ Lien
  - ☐ Mortgage
  - ☐ Right of Redemption
  - ☐ Statement Condo
- ☐ Forfeiture of Property / Personal Item
- ☐ Fraudulent Conveyance
- ☐ Landord-Tenant
- ☐ Lis Pendens
- ☐ Mechanic's Lien
- ☐ Ownership
- ☐ Partition/Sale in Lieu
- ☐ Quiet Title
- ☐ Rent Escrow
- ☐ Return of Seized Property
- ☐ Right of Redemption
- ☐ Tenant Holding Over

PUBLIC LAW
- ☐ Attorney Grievance
- ☐ Bond Forfeiture Remission
- ☐ Civil Rights
- ☐ County/Mncpl Code/Ord
- ☐ Election Law
- ☐ Eminent Domain/Condemn.
- ☐ Environment
- ☐ Error Coram Nobis
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prisoner Rights
- ☐ Public Info. Act Records
- ☐ Quarantine/Isolation
- ☐ Writ of Certiorari

EMPLOYMENT
- ☐ ADA
- ☐ Conspiracy
- ☐ EEO/HR
- ☐ FLSA
- ☐ FMLA
- ☐ Worker's Compensation
- ☐ Wrongful Termination

INDEPENDENT PROCEEDINGS
- ☐ Assupmtion of Jurisdiction
- ☐ Authorized Sale
- ☐ Attorney Appointment
- ☐ Body Attachment Issuance
- ☐ Commission Issuance
- ☐ Constructive Trust
- ☐ Contempt
- ☐ Deposition Notice
- ☐ Dist Ct Mtn Appeal
- ☐ Financial
- ☐ Grand Jury/Petit Jury
- ☐ Miscellaneous
- ☐ Perpetuate Testimony/Evidence
- ☐ Prod. of Documents Req.
- ☐ Receivership
- ☐ Sentence Transfer
- ☐ Set Aside Deed
- ☐ Special Adm. – Atty
- ☐ Subpoena Issue/Quash
- ☐ Trust Established
- ☐ Trustee Substitution/Removal
- ☐ Witness Appearance-Compel

PEACE ORDER
- ☐ Peace Order

EQUITY
- ☐ Declaratory Judgment
- ☐ Equitable Relief
- ☐ Injunctive Relief
- ☐ Mandamus

OTHER
- ☐ Accounting
- ☐ Friendly Suit
- ☐ Grantor in Possession
- ☐ Maryland Insurance Administration
- ☐ Miscellaneous
- ☐ Specific Transaction
- ☐ Structured Settlements

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

❒ Abatement	❒ Earnings Withholding	❒ Judgment-Default	❒ Reinstatement of Employment
❒ Administrative Action	❒ Enrollment	❒ Judgment-Interest	❒ Return of Property
❒ Appointment of Receiver	❒ Expungement	❒ Judgment-Summary	❒ Sale of Property
❒ Arbitration	❒ Financial Exploitation	☒ Liability	❒ Specific Performance
❒ Asset Determination	❒ Findings of Fact	❒ Oral Examination	❒ Writ-Error Coram Nobis
❒ Attachment b/f Judgment	❒ Foreclosure	❒ Order	❒ Writ-Execution
❒ Cease & Desist Order	❒ Injunction	❒ Ownership of Property	❒ Writ-Garnish Property
❒ Condemn Bldg	❒ Judgment-Affidavit	❒ Partition of Property	❒ Writ-Garnish Wages
❒ Contempt	❒ Judgment-Attorney Fees	❒ Peace Order	❒ Writ-Habeas Corpus
☒ Court Costs/Fees	❒ Judgment-Confessed	❒ Possession	❒ Writ-Mandamus
☒ Damages-Compensatory	❒ Judgment-Consent	❒ Production of Records	❒ Writ-Possession
☒ Damages-Punitive	❒ Judgment-Declaratory	❒ Quarantine/Isolation Order	

*If you indicated **Liability** above,* mark one of the following. This information is <u>not</u> an admission and may not be used for any purpose other than Track Assignment.

❒ Liability is conceded. ☒ Liability is not conceded, but is not seriously in dispute. ❒ Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

❒ Under $10,000 ❒ $10,000 - $30,000 ❒ $30,000 - $100,000 ☒ Over $100,000

❒ Medical Bills $ _____ ❒ Wage Loss $ _____ ❒ Property Damages $ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation ☒ Yes ❒ No
B. Arbitration ❒ Yes ☒ No
C. Settlement Conference ☒ Yes ❒ No
D. Neutral Evaluation ❒ Yes ☒ No

SPECIAL REQUIREMENTS

❒ If a Spoken Language Interpreter is needed, **check here and attach form CC-DC-041**

❒ If you require an accommodation for a disability under the Americans with Disabilities Act, **check here and attach form CC-DC-049**

ESTIMATED LENGTH OF TRIAL

*With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL.***

(Case will be tracked accordingly)

❒ 1/2 day of trial or less
❒ 1 day of trial time
❒ 2 days of trial time
❒ 3 days of trial time
☒ More than 3 days of trial time

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

***For all jurisdictions,** if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.*

❒ **Expedited -** Trial within 7 months of Defendant's response

❒ **Standard -** Trial within 18 months of Defendant's response

EMERGENCY RELIEF REQUESTED

COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE MANAGEMENT PROGRAM (ASTAR)

FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.

❒ **Expedited -** Trial within 7 months of Defendant's response

☒ **Standard -** Trial within 18 months of Defendant's response

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

❒ Expedited	Trial 60 to 120 days from notice. Non-jury matters.
❒ Civil-Short	Trial 210 days from first answer.
❒ Civil-Standard	Trial 360 days from first answer.
❒ Custom	Scheduling order entered by individual judge.
❒ Asbestos	Special scheduling order.
❒ Lead Paint	Fill in: Birth Date of youngest plaintiff_____.
❒ Tax Sale Forclosures	Special scheduling order.
❒ Mortgage Foreclosures	No scheduling order.

CIRCUIT COURT FOR BALTIMORE COUNTY

❒ Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
❒ Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
❒ Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of $100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
❒ Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

October 3, 2023
Date

Signature of Counsel / Party

1112130094
Attorney Number

Aaron M. Blank
Printed Name

8455 Colesville Road, #920
Address

Silver Spring MD 20910
City State Zip Code

E-FILED; Harford Circuit Court
Docket: 10/3/2023 1:44 PM; Submission: 10/3/2023 1:44 PM
Envelope: 14110906

JOHN DOE c/o Blank Kim, P.C. 8455 Colesville Rd #920 Silver Spring, MD 20910 v. BOARD OF EDUCATION OF HARFORD COUNTY Serve: Jefferson Blomquist, Esq. County Attorney Harford County Department of Law 220 S. Main Street Bel Air, MD 21014 and John Does (1-10) (said names being fictitious), Defendants.	: :	IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND C-12-CV-23-000767

COMPLAINT – CIVL ACTION

Plaintiff, John Doe, by and through his undersigned counsel, BLANK KIM, P.C, hereby brings the following Complaint in civil action before this Honorable Court and, in support thereof, avers the following:

PARTIES

1. Plaintiff, John Doe, is an adult male whose name and address is not contained in this Complaint so as to protect his privacy and identity as he incurred injuries and damages of a sensitive nature as a result of the intentional and negligent acts and failures of Defendants that lead to his sexual abuse as a minor, as outlined below. At all relevant times herein, Plaintiff was a minor. Information which would or could identify John Doe is not contained herein. Plaintiff may be contacted through his counsel as outlined herein.

2. Defendant Board of Education of Harford County (hereinafter "HCBOE") is a body politic and corporate with the power to sue and be sued pursuant to Md. Code Ann., Educ. Art. § 3-104, operating as the executive body of a Maryland school district within Harford County, Maryland and maintains an office at 102 South Hickory Ave, Bel Air, MD 21014.

3. Defendant HCBOE operates and/or operated Deerfield Elementary School, where Plaintiff attended elementary school, and where a teacher known to Plaintiff as Janice Konski was employed.

4. Defendant HCBOE also operates and/or operated Edgewood High School, where Plaintiff attended high school, and where a custodian named Elwood Dehaven was employed.

5. At all times material, Defendant HCBOE oversaw and/or operated the Deerfield Elementary School (referred to hereinafter as "Deerfield Elementary") and Edgewood High School (hereinafter "Edgewood HS"), and was authorized to conduct business and did conduct business in the State of Maryland.

6. Upon information and belief, Janice Konski ("Konski") was an employee, servant, or agent of Defendant HCBOE, working as a teacher, including as Plaintiff's teacher during his fifth-grade year in 1985-1986, at Deerfield Elementary and was acting within the scope of her aforementioned legal relationship with HCBOE. Accordingly, HCBOE is liable vicariously and derivatively for the acts of Konski under theories of respondeat superior master-servant, agency, and/or right of control, and directly liable for negligent hiring, retention, and supervision.

7. Upon information and belief, Elwood Dehaven ("Dehaven") was an employee, servant, or agent of Defendants HCBOE, working as a custodian, including at Edgewood HS during Plaintiff's high school years, and acting within the scope of his aforementioned legal relationship with HCBOE. Accordingly, HCBOE is liable vicariously and derivatively for the acts

of Elwood Dehaven under theories of respondeat superior master-servant, agency, and/or right of control, and directly liable for negligent hiring, retention, and supervision.

8. Defendants John Does 1-10 are fictitious persons who, at all relevant times, employed, supervised, controlled and/or oversaw Konski and Dehaven and/or who otherwise owed a legal duty to Plaintiff to prevent the incidents of child sexual abuse HCBOE schools, including the sexual abuse of John Doe, as are more fully alleged herein.

9. At all relevant times hereto, Defendant HCBOE was acting by and through their duly authorized actual and/or apparent agents, servants and employees, in particular, their directors, managers, board members, instructors, teachers, administrators, counselors, staff, custodians, and/or supervisors, acting within the course and scope of their actual and/or apparent agency and/or employment.

10. Defendant HCBOE is liable for the injuries and damages suffered by Plaintiff.

11. Defendant HCBOE is directly and vicariously liable to Plaintiff for injuries sustained as a result of negligence, gross negligence, outrageous conduct, and reckless misconduct, as described further herein, of persons or entities whose conduct was under their control, or right to control which conduct directly and proximately caused Plaintiff's injuries.

12. The conduct on the part of Konski herein described, for which Defendants are directly and vicariously liable, would constitute offenses, or a solicitation thereto, under: Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree); Md. Code Ann., Crim. Law § 3-304 (Rape in the second degree); Md. Code Ann., Crim. Law § 3-307 (sexual offense in the third degree); Md. Code Ann., Crim. Law § 3-308 (sexual offense in the fourth degree); Md. Code Ann., Crim. Law § 3-315 (Continuing course of conduct against a child); Md. Code Ann., Crim. Law § 3-324 (sexual solicitation of minors); Md. Code Ann., Crim. Law § 3-601 (Child abuse); Md. Code Ann., Crim.

Law § 3-602 (sexual abuse of a minor) (amended 2023 Md. Laws Ch. 691 (S.B. 57, et. al.)); Md. Code Ann., Crim. Law § 3-602.1 (Neglect of Minor by Persons with Responsibility of Care Prohibited); Md. Code Ann., Crim. Law § 3-602.2 (Failure to Report Suspected Abuse or Neglect of Child); and additional offenses under Maryland state criminal law.

13. The conduct on the part of Dehaven herein described, for which Defendants are directly and vicariously liable, would constitute offenses, or a solicitation thereto, under: Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree); Md. Code Ann., Crim. Law § 3-304 (Rape in the second degree); Md. Code Ann., Crim. Law § 3-307 (sexual offense in the third degree); Md. Code Ann., Crim. Law § 3-308 (sexual offense in the fourth degree); Md. Code Ann., Crim. Law § 3-315 (Continuing course of conduct against a child); Md. Code Ann., Crim. Law § 3-324 (sexual solicitation of minors); Md. Code Ann., Crim. Law § 3-601 (Child abuse); Md. Code Ann., Crim. Law § 3-602 (sexual abuse of a minor) (amended 2023 Md. Laws Ch. 691 (S.B. 57, et. al.)); Md. Code Ann., Crim. Law § 3-602.1 (Neglect of Minor by Persons with Responsibility of Care Prohibited); Md. Code Ann., Crim. Law § 3-602.2 (Failure to Report Suspected Abuse or Neglect of Child); and additional offenses under Maryland state criminal law.

14. The resulting injuries to Plaintiff were caused by the negligent actions and/or omissions of the Defendants.

VENUE AND JURISDICTION

15. This Court has jurisdiction over the subject matter and all parties pursuant to Md. Code §§ 6-102–03 of the Courts and Judicial Proceedings Article ("C.J.P.")

16. Pursuant to C.J.P. § 6-201, venue in Harford County is proper. All material events giving rise to this lawsuit took place in Harford County, Maryland.

17. This action is timely brought pursuant to the Maryland Child Victims Act of 2023,

C.J.P. § 5-117. Plaintiff is seeking all damages available pursuant to the Maryland Child Victims Act of 2023 for the injuries caused to Plaintiff by the acts and omissions of the Defendants more fully discussed herein.

OPERATIVE FACTS

18. This lawsuit is about an educational institution that had special responsibilities and obligations to protect the most innocent among us—children—from sexual abuse and the complete and abject failure of that same educational institutions to fulfill those responsibilities and obligations. Defendant HCBOE failed in its most basic legal and moral duties to guard against predators sexually abusing children, including Plaintiff. Defendant HCBOE failed in a myriad of ways, including but not limited to not properly vetting their staff, including the predators / perpetrators, Janice Konski and Elwood Dehaven; not properly training and/or supervising their staff; negligently retaining staff they knew or should have known were sexually abusing students, including Plaintiff; failing to recognize clear and obvious signs of grooming behaviors by staff; failing to investigate reports of concerning and/or criminal behavior; and failing to have in place any legitimate measures to protect against a teachers and/or staff sexually abusing a student, the very thing that happened to the Plaintiff in this suit. Defendants elected to stick their head in the sand and do nothing, and as a result, exposed possibly hundreds of vulnerable children to predators who used their position of authority as leverage over Plaintiff to seduce, groom, coerce and, ultimately, sexual assault him.

JANICE KONSKI'S ABUSE OF PLAINTIFF AT DEERFIELD ELEMENTARY

19. Janice Konski was, at all relevant times, acting in the course and scope of her employment as teacher and staff member at Deerfield Elementary, when she coerced, groomed and ultimately sexually assaulted Plaintiff, who was at the time a minor of approximately ten (10)

years of age. Konski engaged in a carefully orchestrated, yet easily discernable plot to control Plaintiff so that she could engage in illicit and illegal sexual activity with Plaintiff while on HCBOE and/or school district property. The Defendants' continued failure to act allowed Konski to continue her manipulation and sexual abuse of Plaintiff, resulting in severe and permanent injuries to Plaintiff.

20. Upon information and belief, Konski was hired by Defendants HCBOE prior to Plaintiff's fifth grade year and served as Plaintiff's fifth grade teacher in approximately 1985-1986.

21. Konski used her position and authority as Plaintiff's teacher to confine him to "in-room" lunchtime detentions, during which times she groomed, coerced, and ultimately sexually abused him on multiple occasions.

22. The first time Konski sexually abused Plaintiff John Doe was during an "in-room" lunchtime detention. Konski would give lunchtime detention to students who disobeyed rules or failed to turn in assignments. She had, in the upper right-hand corner of the chalkboard in her room, a white square; and in this square she would place names of students receiving in-room lunchtime detention. On the first day she sexually abused Plaintiff, she had written his name in the square, claiming he had failed to turn in an assignment. When lunchtime came, all the students except Plaintiff were permitted to go to the cafeteria to eat. Approximately ten (10) minutes into the detention, Konski came to Plaintiff's desk and asked him if he had ever kissed a girl, and if Plaintiff, a ten-year-old minor, had a girlfriend. She then asked him to be her boyfriend. She told Plaintiff she wanted to teach him how to kiss a girl, and asked him to stand up. She then leaned towards Plaintiff and kissed him on his mouth. She then told Plaintiff she was going to teach him

how to “French kiss” and began inserting her tongue into his mouth. She then reached around Plaintiff’s body and began rubbing his back while continuing to kiss him.

23. After a few minutes of Konski continuing to kiss Plaintiff in this manner, she told Plaintiff that she wanted him to touch her breasts and asked him if he had ever seen a woman naked, to which he responded that he had not. Konski then took Plaintiffs hand and placed it on her breast. She told Plaintiff to slowly massage them over her clothing. She then told Plaintiff that because she was his girlfriend that they “could be together sexually” and told him to continue touching her breasts. She then began to rub Plaintiff’s penis over his pants, causing him to become erect. This continued for several minutes until Konski said that lunch was almost over and that they needed to return to their desks. She told Plaintiff that they could only be boyfriend and girlfriend if they kept their relationship a secret. She told Plaintiff that if he told anyone that he would be in trouble, and they could not “be together.” She then continued to make Plaintiff touch her breasts and continued fondling his penis until just before the lunch period ended and students began returning to the classroom.

24. The second time Konski sexually abused Plaintiff John Doe was during another in-room lunchtime detention. Once all of the students had left, except for Plaintiff, Konski turned off the lights in the classroom and closed the classroom door. There was enough light coming in through the classroom windows to see clearly. Konski approached Plaintiff and told him now they can act like boyfriend and girlfriend because no one could see them. She again reminded him that he could not tell anyone or they would get into trouble, and she could no longer be his “girlfriend.” She then pulled Plaintiff towards her and began to kiss him on his mouth, including again inserting her tongue into his mouth. She again told Plaintiff to touch her breasts and again began fondling Plaintiff’s penis over his pants. She then quickly told Plaintiff to take off his shirt and pants and

she began to perform oral sex on Plaintiff. She then took off her top, exposing her breasts, and told Plaintiff she was going to show him how to "feel a woman up." She then took Plaintiff's hand and put them on her breasts, rubbing them in a massage-like movement. She told Plaintiff how good it felt for him to touch her and asked if he was enjoying what she was doing to him. Plaintiff was very confused at this point and asked Konski if she was married and if they should be doing this to each other. Konski told Plaintiff that she was going through a divorce and that it "was perfectly normal and ok" that the two of them kiss and touch each other. She then told Plaintiff that she needed to get dressed because lunchtime was almost over. She and Plaintiff put their clothes back on and Konski reminded Plaintiff that he could not tell anyone, or else they would get in trouble and they could not be boyfriend and girlfriend.

25. The third time Konski sexually abused Plaintiff was again during another in-room lunchtime detention where she ordered him to stay confined to her classroom while the other students left for lunch. Just as before, she waited until all other students left, closed the door and turned off the classroom lights. On this occasion, Konski had placed two multi-colored floor mats on the floor in the back of the classroom. Just before showing Plaintiff the floor mats, she told him how she had missed him and could not wait until they were alone again. She again pulled her close to her body, began kissing him and inserting her tongue into his mouth, and rubbing his penis over his pants. She then told Plaintiff that it was natural for boyfriends and girlfriends who love each other to have sex. She asked Plaintiff if he had ever had sex and she said "no." She then took him to the two mats and told him to undress to his underwear. She then told him to help her undress by removing her shirt and unzipping her pants. Konski then opened her bra, exposing her breasts and pulled off her pants, wearing only her underwear. She then laid back on the mats and told Plaintiff to lay on top of her. She explained to Plaintiff how men and women have sex and told him to rub

her vagina with his penis. She told Plaintiff to continue this, with the two of them rubbing their genitals together over their underwear, simulating sexual intercourse, for several minutes. She then told Plaintiff they need to stop and to get dressed, that he had made her very happy, and that "she loved being intimate with her boyfriend." As they got dressed she gain told Plaintiff he would be in trouble if he told anyone, and that he needed to keep their "relationship" a secret.

26. This type of activity went on for approximately three months. After these three months, Konski again confined Plaintiff to an in-room lunchtime detention. On this occasion, she told him that she could not continue to give him in-room detentions. However, just as before, she closed the door and turned out the lights in the classroom. Both multicolored mats were gain laid on the floor in the back of the classroom, and just as before, Konski told Plaintiff to lay on the mats and began kissing him and told him to undress, which he did. She again began to rub his penis, causing it to become erect, and began to perform oral sex on him. She then told Plaintiff to stand up and get dressed and began to unbutton her top. She removed the skirt she was wearing, exposing her underwear. She then told Plaintiff she wanted to teach him "how to please a woman sexually." She told him to rub her vagina over her underwear with his hand. After a few minutes, she told Plaintiff to lay on top of her. She again kissing Plaintiff and made him touch her breasts. She told him how "lucky" he was to be her "boyfriend" and asked him if he liked the smell of her perfume and if he thought she was pretty. This continued for several minutes until Konski told Plaintiff they needed to stop and get dressed. Konski told Plaintiff that she had spoken to his mother and arranged for after-school tutoring for Plaintiff on a regular basis for a few weeks.

27. On the first day of this arranged after school "tutoring" for Plaintiff, Plaintiff stayed in Konski's classroom when the other students left. Konski provided some additional math instruction to Plaintiff, but shortly thereafter again began sexually abusing Plaintiff. She once again

turned off the lights and brought Plaintiff to the back of the classroom where the mats were on the floor. She told Plaintiff how "special" it was that they were "boyfriend and girlfriend" and now they could spend more time together because of the "tutoring." She again began to kiss Plaintiff and insert her tongue into his mouth, and again began rubbing his penis over his pants and telling Plaintiff to touch her breasts. She then unzipped Plaintiff's pants and told him to take them off and remove his underwear. She then again performed oral sex on Plaintiff. She then again made Plaintiff lay on top of her and simulate sexual intercourse with their genitals rubbing over them underwear. While this was occurring, she explained to Plaintiff what semen was and told him that if he needed to ejaculate to do so on her stomach. This abuse continued for several minutes until Plaintiff ejaculated on Konski's stomach. Konski then told Plaintiff he needed to get dressed and that she was going to take him home that day. On the drive to Plaintiff's house, Konski once again told Plaintiff that he must keep what had occurred a secret, and that no one could find out, or else Plaintiff would be in trouble.

28. At some later point, Konski's abuse of Plaintiff escalated to her forcing him to engage in full intercourse with her in a similar matter as the previous instances of abuse.

29. At some point, Plaintiff tried to tell his parents about the abuse, but they did not immediately believe him. Later, when he continued trying to report what was happening as best as he could, a meeting was arranged with the Deerfield Elementary principal, or vice principal, Plaintiff, and his parents. Plaintiff, a minor, was forced to sign some type of "contract" or other paper wherein he agreed not to "bring up" or "tell" about what was occurring, as if Plaintiff was lying.

30. Thereafter, Konski became nasty and rude to Plaintiff, but was still assigned as his teacher. Eventually, on one occasion, she told Plaintiff that she no longer wanted to be his "girlfriend," due to him "telling."

31. A photograph of the teachers at Deerfield Elementary, with Konski circled, is attached hereto as **Exhibit A**.

ELWOOD DEHAVEN'S ABUSE OF PLAINTIFF

32. Tragically, the horrific abuse perpetrated against Plaintiff as a fifth grader at Deerfield Elementary was not the only form of sexual abuse he endured at a school operated by Defendant HCBOE. Plaintiff was also abused during his high school years by a custodian named Elwood Dehaven, known to Plaintiff and other students at the time as "Woody" (and referred to hereinafter as "Dehaven").

33. Dehaven was, at all relevant times, acting in the course and scope of his employment as custodian at Edgewood High School, when he coerced, groomed, and ultimately sexually assaulted Plaintiff, who was at the time a minor of approximately sixteen or seventeen (16 or 17) years of age. Dehaven engaged in a carefully orchestrated, yet easily discernable plot to control Plaintiff so that he could engage in illicit and illegal sexual activity with Plaintiff both while on HCBOE and/or school district property, and off of its campus. The Defendants' continued failure to act allowed Dehaven to continue his manipulation and sexual abuse of Plaintiff, resulting in severe and permanent injuries to Plaintiff.

34. The first time Dehaven sexually abused Plaintiff occurred in the beginning of Plaintiff's eleventh (11^{th}) grade year. Plaintiff was eating lunch in the cafeteria amongst friends and students when Dehaven sat down at their table and performed a "joke" he would regularly do to interact with students at Edgewood High. Dehaven took a coin or dollar bill from his pocket and

placed it over his pants atop his genitals. He told the students, including Plaintiff, that they could have the money but would have to take if from off his crotch. On this occasion, Dehaven singled out Plaintiff as the only student without food to eat and told Plaintiff if he needed the money to take if from off his "dick." Plaintiff refused and the other students laughed.

35. Plaintiff's next class was gym. Plaintiff would almost always wait until the last minute to get to the locker room and change, to allow for extra privacy. Plaintiff entered the locker room when most of the other students were leaving or had left and began to change. Dehaven approached Plaintiff and apologized for his previous "joke," and said he would buy Plaintiff something to eat from the teacher's lounge, which Plaintiff accepted. Within a few minutes, Dehaven returned with a candy bar and a soda and gave it to Plaintiff. Plaintiff thanked Dehaven and said he would repay him the next day, or soon thereafter, to which Dehaven replied that Plaintiff could repay him with a "blowjob." Plaintiff thought Dehaven was again joking, so he left and reported to his gym class.

36. During this gym class, Dehaven approached Plaintiff's gym teacher and told her that he needed Plaintiff to help him with something, and asked that Plaintiff be excused from class. The teacher called Plaintiff over and told him to go with Dehaven. Dehaven told Plaintiff to follow him to a hallway located behind the wall of the gymnasium. This corridor-like hallway led through a boiler room and to an open area where Dehaven's "office" was located.

37. Upon information and belief, Dehaven would allow or invite students to come to his secluded office to smoke cigarettes . Screenshots of comments referencing "Woody the janitor" from a Facebook group page dedicated to Edgewood High called "Edgewood Family" are attached hereto as **Exhibit B**, which include references to this office.

38. After Dehaven led Plaintiff into his office, he closed the door and locked it behind him. He then asked Plaintiff "do you want me to take my pants off, or do you want to do it?" Plaintiff was afraid and froze and did not answer the question. Dehaven then pulled off his uniform pants and underwear, exposing his genitals to Plaintiff. Dehaven ordered Plaintiff to undress, which Plaintiff, still terrified, did. He then ordered Plaintiff to perform oral sex on him, which Plaintiff did. Dehaven thereafter ejaculated into Plaintiff's mouth, gave him a can of soda ,and told him to spit the ejaculate into the can.

39. Dehaven then knelt down and performed oral sex on Plaintiff until Plaintiff ejaculated. Dehaven then went into a bathroom which was connected to his office and cleaned himself and put his clothes back on. Plaintiff put his clothes back on and started to walk to the exit of the office. However, Dehaven grabbed Plaintiff and began to kiss him on his mouth, and inserted his tongue into Plaintiff's mouth. He then told Plaintiff not to tell anyone about their "secret," as it would get them into trouble, and allowed Plaintiff to leave the office.

40. Dehaven continued to sexually abuse Plaintiff in this manner in his office, on school grounds, multiple times thereafter. During these times, he ordered Plaintiff to perform oral sex on him and he performed oral sex on Plaintiff.

41. On one occasion, Dehaven attempted to anally penetrate Plaintiff with his penis. The penetration did not work, but Dehaven told Plaintiff that the next time they "hooked up" he would "have his way" with Plaintiff because "he always gets what he wants."

42. On another occasion, Dehaven located Plaintiff in a hallway between the Edgewood High library and gymnasium "#2." In this hallway, there was a large double-door storage room that housed a number of tables and chairs. Dehaven grabbed Plaintiff's hand and pulled him into the closet, which he unlocked with a key, and locked the door behind them. The closet was dark,

but some light entered the room beneath the doors. Dehaven told Plaintiff that he would not turn the lights on because he did not want anyone to see that there were people in the storage room. Dehaven told Plaintiff that he "had to have" him and that he had been thinking about what he wanted to do to Plaintiff since the last instance of abuse. Dehaven took off his pants and told Plaintiff to do the same. Dehaven then performed oral sex on Plaintiff until Plaintiff ejaculated. He then told Plaintiff to perform oral sex on him. Plaintiff told Dehaven he did not want to swallow his ejaculate and Dehaven told him to spit it on the floor behind one of the stacks of chairs and tables in the room. When this instance of abuse was finally over, Dehaven told Plaintiff to exit the closet in a different direction, so that nobody would see them leaving together.

43. On another occasion, Dehaven told Plaintiff to meet him at Edgewood High very early in the morning before staff and students arrived, and that this would be a perfect time to meet because there would not be anybody at the school yet. Very early in the morning, Plaintiff parked on the side of the building closest to the teacher's lounge and cafeteria. Dehaven approached Plaintiff's car from inside the school and told him he had something for Plaintiff in his car. Dehaven walked to his trunk of his car and pulled out a bottle of Southern Comfort liquor and a carton of Newport menthol cigarettes and gave them to Plaintiff, who placed them in his car. Plaintiff followed Dehaven into the high school and into the teacher's lounge. Dehaven again undressed and told Plaintiff to perform oral sex on him. As Plaintiff was doing so, Harford County Sheriff's Office police vehicle could be seen through the teacher's lounge window pulling up behind Plaintiff's car in the parking lot. Dehaven saw this and quickly got dressed and went outside to speak to the officers. Dehaven told the officers that Plaintiff was his student assistant and was helping him go get the school cleaned before students and faculty arrived. The officers did not ask any additional questions and allowed Plaintiff and Dehaven to return to the school. Dehaven

immediately took Plaintiff back to the teacher's lounge, undressed, and told Plaintiff to do the same. He again told Plaintiff to perform oral sex on him, until he ejaculated. Dehaven then performed oral sex on Plaintiff. After this, Dehaven and Plaintiff put their clothes back on and Dehaven told Plaintiff that he would be able to meet at the school at the same time again soon.

44. Dehaven thereafter continued to coerce Plaintiff into meeting him at Edgewood High very early in the morning for the purpose of sexually abusing him. Dehaven told Plaintiff to park in the student lot and left a back door entrance to the school unlocked. He told Plaintiff to enter in the mornings and come find him. During these times, Dehaven continued to sexually abuse Plaintiff and continually asked Plaintiff to attempt anal sex, which Plaintiff continually was able to avoid.

45. Numerous instances of sexual abuse occurred within the school in various locations, including gymnasiums, the cafeteria/ kitchen, Dehaven's office, the nurse's office, the library, and the teacher's lounge.

46. Dehaven also coerced Plaintiff into meeting him outside of the school for the purpose of sexually abusing him. Dehaven abused Plaintiff at Dehaven's home, in his car, and took Plaintiff to an adult bookstore, as well.

47. Plaintiff reported his abuse to law enforcement in approximately November of 2020.

48. Upon information and belief, Elwood Dehaven abused other minors, **including Plaintiff's brother**. For these offenses, Dehaven was prosecuted by the Maryland State's Attorney in the Harford County Circuit Court. A screenshot of the Maryland Judiciary public page for Harford County Circuit Court criminal case # C-12-CR-22-000520 showing Elwood Dehaven's conviction for Child Abuse is attached hereto as **Exhibit C**.

49. Upon information and belief, Dehaven was granted the opportunity to enter an "Alford plea" to avoid a conviction which would require him to register as a sex offender.

50. A photograph from an Edgewood High yearbook depicting Elwood Dehaven is attached hereto as **Exhibit D.**

51. At all times relevant hereto, Defendants were acting by and through their employees, servants, and agents, in the operation of Deerfield Elementary and Edgewood High School and the hiring, admitting, assigning, retaining, and supervising of teachers, staff, and faculty members. Accordingly, Defendant HCBOE is liable vicariously and derivatively for the negligent acts and omissions of these employees, servants, and agents while engaged in the operation of Deerfield Elementary and Edgewood High and the hiring, admitting, assigning, retaining, and supervising of staff, including Janice Konski and Elwood Dehaven under theories of respondeat superior, master-servant, agency, and/or right of control as well as under the legal theory of ratification.

52. It is believed and therefore averred that employees, agents, directors, supervisors, and other individuals at HCBOE knew and/or should have known that Janice Konski and Elwood Dehaven were engaging in illegal and inappropriate sexual acts with John Doe on Defendants' school district property.

53. As a result of the above-described conduct, John Doe has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, loss of sleep, nightmares, disgrace, humiliation and loss of enjoyment of life; was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; has sustained and will continue

to sustain loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

54. As a direct and proximate result of the sexual abuse by Janice Konski and Elwood Dehaven, Plaintiff John Doe suffered physical and emotional injuries, as more fully set forth herein. As a result of the abuse by Konski and Dehaven, John Doe was severely physically, mentally, psychologically, and emotionally damaged. John Doe sustained severe psychological and emotional distress, which Plaintiff continues to suffer from until this day. The significant emotional and psychological injuries sustained by John Doe dramatically transformed Plaintiff's personality. Throughout Plaintiff's life since the abuse, John Doe has struggled with symptoms of post-traumatic stress disorder. John Doe has struggled in Plaintiff's intimate relationships and was prevented from having normal friendships and social experiences with others since the time of his abuse and thereafter.

55. All of the above physical, psychological, and emotional injuries were proximately caused by the negligence, carelessness, recklessness, and other tortious and outrageous acts or omissions of Defendants as set forth in this Complaint. John Doe's injuries were caused solely by the negligence of Defendants as set forth more fully herein and were not caused or contributed thereto by any negligence on the part of John Doe.

COUNT I
VICARIOUS LIABILITY
John Doe v. Defendants HCBOE and John Does #1-10

56. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set for hereinafter.

57. Janice Konski and Elwood Dehaven engaged in unpermitted, harmful, and offensive sexual conduct and contact upon the person of Plaintiff in violation of Maryland State

law. Said conduct was undertaken while Konski and Dehaven were employees and agents of Defendants, while in the course and scope of employment with Defendants, and/or was ratified by Defendants.

58. Prior to or during the abuse alleged above, Defendants knew, had reason to know, or were otherwise on notice of the unlawful sexual conduct of Konski and Dehaven. Defendants failed to take reasonable steps and failed to implement reasonable safeguards to avoid acts of unlawful sexual conduct in the future by Konski and Dehaven, including, but not limited to, preventing or avoiding placement of Konski and Dehaven in functions or environments in which contact with children was an inherent part of those functions or environments. Furthermore, at no time during the periods of time alleged did Defendants have in place a system or procedure to supervise and/or monitor employees, volunteers, representatives or agents to ensure they did not molest or abuse minors in the care of the Defendant.

59. Defendants' acquiescence and silence with respect to the known, or reasonably knowable, activities of Konski and Dehaven constituted a course of conduct through which acts of sexual perversion and the violation of childhood innocence were condoned, approved, and effectively authorized.

60. Through their failure to timely reprimand and sanction the acts referenced herein, and for all of the other reasons set forth in this Complaint including, without limitation, their failure to take the steps necessary to prevent the occurrence of such reprehensible acts, Defendants ratified said actions and, accordingly, are vicariously liable for the actions of Konski and Dehaven.

61. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation and loss of enjoyment of life;

was prevented and will continue to be prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT II
NEGLIGENCE
John Doe v. Defendants HCBOE and John Does, #1-10

62. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set forth hereinafter.

63. At all relevant times, Defendants owed a duty to maintain a safe environment for the children within the schools operated by Defendant HCBOE, specifically John Doe.

64. At all relevant times, Defendants had a duty to protect and safeguard Plaintiff John Doe from hurt, harm, and danger while he was under their supervision.

65. At all relevant times, Defendants occupied a position of *in loco parentis* to Plaintiff, and were under a duty to protect him, and to provide him with safety and supervision akin to that which would have been provided by his own parents.

66. At all relevant times, Defendants had a duty to ensure that its employees and agents were properly supervising children in their custody and care to protect them from the exact type of sexual abuse to which Plaintiff was subject.

67. At all relevant times, Defendants had a duty to ensure that its employees were not sexually abusing children at its schools.

68. At all relevant times, Defendants had a duty to provide for Plaintiff's basic human needs, including the safety of his person

69. By accepting custody of the minor Plaintiff, Defendants established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury.

70. At all relevant times, Defendants knew or should have known that its agent, employee, servant and/or staff members Konski and Dehaven were sexually abusing John Doe and/or a risk to sexually abuse John Doe.

71. Defendants knew, had reason to know, or were otherwise on notice of the unlawful conduct of Konski and Dehaven and failed to protect the safety of children in their care, including Plaintiff. Defendants failed to take reasonable steps and failed to implement reasonable safeguards to prevent acts of unlawful sexual abuse and to prevent or avoid placement of John Doe in functions or environments in which he would be endangered and abused.

72. Furthermore, at no time during the periods of time alleged did Defendants have in place a system or procedure to supervise and/or monitor Konski and/or Dehaven to ensure that children, including John Doe, were not abused.

73. Moreover, as set forth above, the incidents of abuse at Defendants' schools were neither isolated nor unusual. Konski and Dehaven were able to, over the course of months and years, target, groom, and sexually and physically assault Plaintiff John Doe. Defendants failed to reprimand, punish, report, or otherwise sanction Konski and Dehaven, who they knew or had reason to know was a danger to children at their schools. Defendants' acquiescence and silence

with respect to the known, or reasonably knowable, activities of Konski and Dehaven constituted a course of conduct through which acts of sexual violence and mental torment and the violation of the sanctity of children were condoned, approved, and effectively authorized.

74. Thus, Defendants knew, had knowledge, or had reasonable suspicion of harmful acts being committed by Konski and Dehaven on John Doe and/or other students and negligently, recklessly and/or intentionally violated their statutory duty to report such abuse as required by Maryland's Child Abuse and Neglect Laws Md. Code Ann., Family Law § 5-701, et. seq.

75. Furthermore, Defendants permitted Konski and Dehaven to violate Maryland criminal statutes: Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree); Md. Code Ann., Crim. Law § 3-304 (Rape in the second degree); Md. Code Ann., Crim. Law § 3-307 (sexual offense in the third degree); Md. Code Ann., Crim. Law § 3-308 (sexual offense in the fourth degree); Md. Code Ann., Crim. Law § 3-315 (Continuing course of conduct against a child); Md. Code Ann., Crim. Law § 3-324 (sexual solicitation of minors); Md. Code Ann., Crim. Law § 3-601 (Child abuse); Md. Code Ann., Crim. Law § 3-602 (sexual abuse of a minor) (amended 2023 Md. Laws Ch. 691 (S.B. 57, et. al.)); Md. Code Ann., Crim. Law § 3-602.1 (Neglect of Minor by Persons with Responsibility of Care Prohibited); Md. Code Ann., Crim. Law § 3-602.2 (Failure to Report Suspected Abuse or Neglect of Child); and additional sexual and/or child abuse offenses under Maryland state criminal law.

76. Defendants' violations of these statutes constitutes negligence.

77. Defendants were negligent by violating the laws of the State of Maryland, and other applicable local laws

78. Defendants' negligent, reckless and/or intentional failure to report such harmful acts allowed both Konski and Dehaven to continually sexually abuse Plaintiff, causing continuing

harm to Plaintiff and the injuries and damages described throughout this Complaint.

79. Such failure on part of Defendant was reckless, intentional, knowing, grossly negligent, deliberately and recklessly indifferent, outrageous, malicious and/or was a reckless and conscious disregard for the safety of Plaintiff.

80. Defendants' failures to report pursuant to their legal obligation under Maryland's Child Abuse and Neglect Laws Md. Code Ann., Family Law § 5-701, et. seq. proximately caused the harm to Plaintiff and the injuries and damages described above.

81. Through their failure to timely reprimand and sanction the acts referenced above, and for all of the other reasons set forth herein including, without limitation, their failure to take the steps necessary to prevent the occurrence of such reprehensible acts, Defendants ratified said actions and, accordingly, are vicariously liable for the actions of their individual employees, including Konski and Dehaven:

82. At all relevant times, Defendants failed to adequately and properly:

a. employ processes that screened out and/or prevented the hiring of predators such as Konski and Dehaven;

b. supervise their agents, employees, servants, staff members, directors, counselors, and/or students including Konski and Dehaven John Doe, and other individuals that knew or should have known Konski and Dehaven were sexually abusing John Doe;

c. train their agents, employees, servants, staff members, directors, counselors, and/or students, including Konski and Dehaven, John Doe, and other individuals that knew or should have known Konski and Dehaven were sexually abusing John Doe;

d. employ policies that screen out and/or prevent the retention of predators such as Konski and Dehaven;

e. investigate Konski" and Dehaven's backgrounds and/or information it knew or should have known during the course of their employment including that they were predators sexually abusing minors.

83. The negligent, reckless, intentional, outrageous, and deliberately and recklessly indifferent and unlawful acts and omissions of Defendants as set forth above and herein, consisted of *inter alia*:

a. permitting Konski and Dehaven to sexually abuse a minor child;

b. permitting Konski and Dehaven to engage in illegal sexual conduct with a minor child on Defendants' premises;

c. permitting Konski and Dehaven to groom John Doe, including engaging in sexual conversations and/or inappropriate touching and/or sexual activity on Defendants' property;

d. permitting and/or allowing an environment in which Konski and Dehaven violated or engaged in conduct that would constitute violations of Maryland criminal statutes, constituting negligence;

e. failing to properly and adequately supervise and discipline its employees to prevent the sexual abuse that occurred to John Doe;

f. failing to adopt, enforce and/or follow adequate policies and procedures for the protection and reasonable supervision of children who attend Defendants' schools, including John Doe, and, in the alternative, failing to implement and comply with such procedures which had been adopted;

g. failing to implement, enforce and/or follow adequate protective and supervisory measures for the protection of minors at Defendants' schools, including John Doe;

h. creating an environment that facilitated sexual abuse by employees including Konski and Dehaven;

i. failing to adopt, enforce and/or follow policies and procedures to protect minors against harmful influence and contact by its staff, including Konski and Dehaven;

j. violation of duties imposed by Restatement (Second) of Torts, §§ 302B, 314, 315, 317, 323, 324A, 343, 344 and 371 and Restatement (Second) of Agency § 213 to the extent adopted in Maryland and/or recognized as reasonable duties under Maryland law;

k. failing to warn John Doe of the risk of harm posed by Konski and Dehaven after Defendants knew or should have known of such risk;

l. failing to provide John Doe with any assistance in coping with the injuries sustained;

m. ratifying Konski's and Dehaven's conduct;

n. failing to warn John Doe of the risk of harm that John Doe may suffer as a result of further contact with Konski and Dehaven;

o. failing to warn or otherwise make reasonably safe the property which Defendants possessed and/or controlled, leading to the harm of John Doe;

p. failing to adopt/implement and/or enforce policies and procedures for the reporting to law enforcement, Maryland Child Protective Services, authorities within Defendants' organizational apparatus and/or hierarchies, and/or other authorities of harmful acts to children, including John Doe;

q. failing to report Konski's and Dehaven's harmful acts to law enforcement, Maryland Child Protective Services, authorities within Defendants' organizational apparatus and/or hierarchies, and/or other authorities of harmful acts to children, including John Doe;

r. failing to implement adequate and proper policies and/or by-laws regarding sexual abuse and/or harassment by staff and/or violating its own policies and/or by-laws regarding sexual abuse and/or harassment by staff;

s. failing to implement adequate and proper policies and/or by-laws regarding use of facilities, including lodgings, by staff and minors and/or violating its own policies and/or by-laws use of facilities, including lodgings, by staff and minors;

t. violating the requirements of Maryland's Child Abuse and Neglect Laws Md. Code Ann., Family Law § 5-705, constituting negligence;

u. ignoring, concealing, or otherwise mitigating the seriousness of the known danger that Konski and Dehaven posed;

v. failing to prevent the sexual abuse that was committed by Konski and Dehaven on John Doe;

w. allowing Konski and Dehaven to remain on staff after knowing that he sexually abused a minor student;

x. failing to properly supervise and/or discipline its employees including Konski and Dehaven;

y. failing to adequately and properly train its employees, including Konski and Dehaven regarding sexual abuse of minors by staff and/or employees and the red flags and/or warning signs of grooming and/or sexual abuse; and

z. negligently managing and/or operating Defendants' schools.

84. As a proximate and direct result of Defendants' negligence and/or reckless conduct described herein, John Doe was harmed and has sustained physical and emotional injuries, embarrassment, mental anguish, pain and suffering and loss of enjoyment of life and life's pleasures.

85. Plaintiff, John Doe has been and will likely, into the future, be caused to incur medical expenses and John Doe may likely incur a loss of earning capacity in the future.

86. Defendants knew or should have known about the severe risk of their failure to take any appropriate precautions outlined above and acted with a reckless disregard for such risk for which John Doe is entitled to and hereby seeks punitive damages pursuant to the requirements of Maryland law.

87. Defendants' actions and failures as described herein are outrageous and were done recklessly with a conscious disregard of the risk of harm to Plaintiff for which John Doe is entitled to and hereby seeks punitive damages.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT III
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
John Doe v. Defendants HCBOE and John Does, #1-10

88. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set forth hereinafter.

89. Defendants by and through their contact with Plaintiff, as described above, negligently and/or recklessly committed multiple acts of extreme and outrageous conduct which caused severe emotional, psychological, and psychiatric injuries, distress, and harm to Plaintiff, resulting in a physical impact upon his person and which also manifested in physical injuries to Plaintiff as set forth above in an extreme, outrageous and harmful manner.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
John Doe v. Defendants HCBOE and John Does, #1-10

90. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set forth hereinafter.

91. Defendants, by and through their contact with Plaintiff, as described above intentionally committed multiple acts of extreme and outrageous conduct which caused severe emotional, psychological, and psychiatric injuries, distress, and harm to Plaintiff, which also manifested in physical injuries to Plaintiff as set forth above, in an extreme, outrageous and harmful manner.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT V
NEGLIGENT FAILURE TO RESCUE

92. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set forth hereinafter.

93. The negligence and recklessness of Defendants in directly and proximately causing the injuries and damages to Plaintiff described herein, include:

a. failing to take reasonable and necessary steps to rescue the Plaintiff after placing him in a position of harm;

b. failing to exercise reasonable and necessary steps to prevent further harm after rendering Plaintiff in danger of further harm;

c. failing to take reasonable and necessary steps to give aid or assistance to Plaintiff after rendering him in danger of further harm;

d. failing to take reasonable steps to obtain aid or assistance for the Plaintiff after rendering him in danger of further harm;

e. failing to take reasonable and necessary steps to prevent the delay in the appropriate care of Plaintiff; and

f. violation of the duties set forth in Restatement (Second) of Torts, Sections 314A & 322, to the extent adopted in Maryland and/or recognized as reasonable duties under Maryland law.

94. As a proximate and direct result of Defendants' breaches described in the preceding paragraph, Plaintiff sustained psychological and physical harms and injuries as described above.

95. The aforementioned incidents resulted from the negligence, recklessness and/or intentional acts of Defendants and were due in no manner whatsoever to any act or failure to act on part of Plaintiff.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT VI
FAILURE TO WARN
John Doe v. Defendants HCBOE and John Does, #1-10

96. Plaintiff incorporates herein by reference the preceding paragraphs of this Complaint the same as if fully set forth hereinafter.

97. At all times material hereto, Defendants owed a duty to Plaintiff and the public to warn about Konski and/or Dehaven when they knew, or should have known, that Konski and/or Dehaven posed a risk to all persons, and in particular, to minor children.

98. Defendants breached their duty to warn that Konski and/or Dehaven posed a risk of harm. Defendants failed to exercise the reasonable care, skill, and diligence of an ordinarily prudent educational organization and/or school district would in warning parents and the public of the risks posed by Konski and/or Dehaven.

99. No negligence on the part of the Plaintiff contributed to the happening or the occurrence.

100. Plaintiff's injuries and damages as recited herein, occurred directly and were proximately caused by Defendants' breach of duty to warn as described herein.

101. As a direct and proximate result of Defendants' failure to warn the public and Plaintiff specifically, Plaintiff suffered serious injury, has required medical care and attention, has suffered mental anguish, severe pain, and agony as a result of the happening of the occurrence, and was otherwise injured and damaged, for which claim is made.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

COUNT VII
VIOLATION OF SUBTITLE 7 OF THE MARYLAND FAMILY LAW
MD. CODE ANN., FAMILY LAW § 5-701, et. seq.
John Doe v. Defendants HCBOE and John Does, #1-10

102. Plaintiff incorporates herein by reference all the allegations contained in the above paragraphs and throughout this entire complaint as if same were fully stated herein at length.

103. Defendants, by their operation of Deerfield Elementary and Edgewood High School are considered "a person who has permanent or temporary care or custody of [a] child" and/or "a person who has responsibility for supervision of [a] child" and/or "a person who, because of the person's position or occupation, exercises authority over [a] child" within the meaning of Md. Code Ann., Family Law. §5-701(b)(1)(i)(3), (4) and (5).

104. Defendants, by and through their actions described more fully above and herein, by way of constructive or actual knowledge, knowingly permitted or acquiesced to the sexual abuse committed by Konski and Dehaven upon John Doe within the meaning of Md. Code Ann., Family Law. §5-701(b)(1).

105. Defendants' violation of Md. Code. Ann. Family Law §5-701., et. seq. constitutes negligence.

106. Plaintiff, John Doe, seeks all damages available under Md. Code Ann., Family Law § 5-701, et seq., against Defendants, including, but not limited to, compensatory damages, punitive damages, costs of suit, reasonable attorney's fees, and such other relief as this Honorable Court deems equitable, just and proper.

WHEREFORE, Plaintiff John Doe demands judgment against Defendants HCBOE and John Does #1-10, jointly and severally, in an amount to exceed Seventy-Five Thousand Dollars ($75,000.00) for economic and non-economic damages, plus all costs and expenses of this litigation, plus post judgment interest at the legal rate from the date of the judgment.

Respectfully submitted,

AARON M. BLANK, AIS 1112130094
Blank Kim, P.C.
8455 Colesville Road, #920
Silver Spring, MD 20910
240-599-8916 Fax: 240-599-5012
ABlank@bkinjury.com
Attorney for Plaintiff

Dated: 10/03/2023

JURY DEMAND

Plaintiff elects to have all issues raised herein tried by a jury.

By: _____
Aaron M. Blank

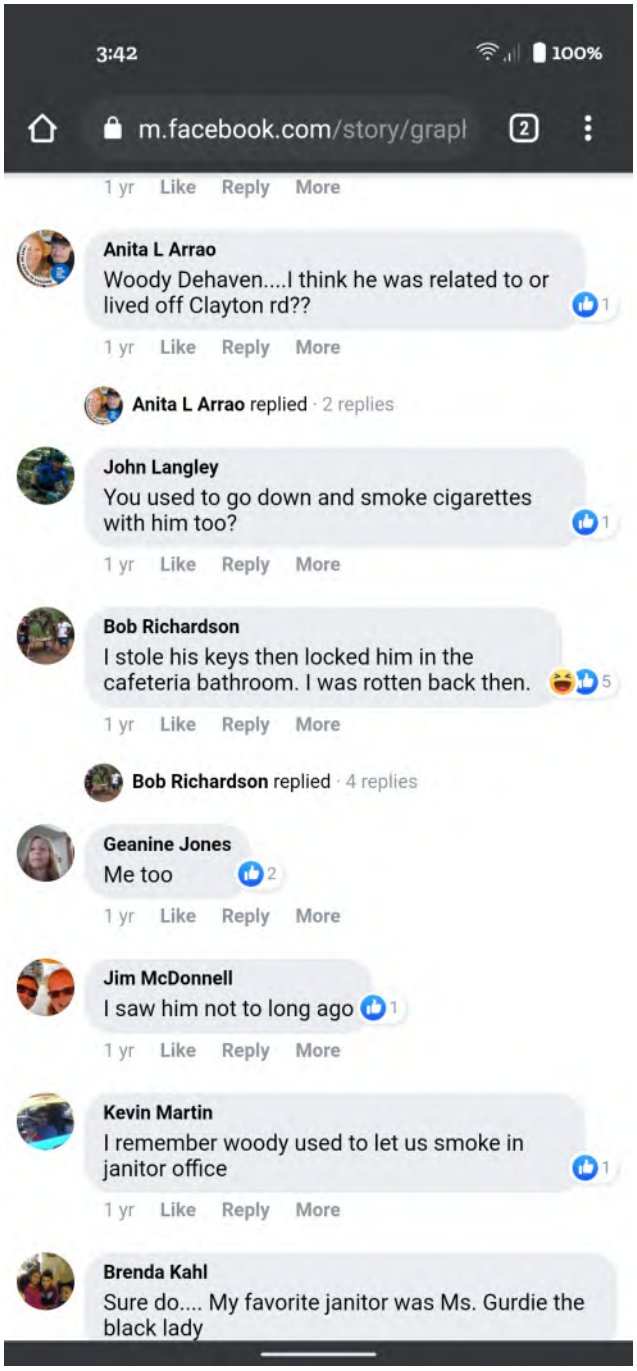
C-12-CV-23-000767

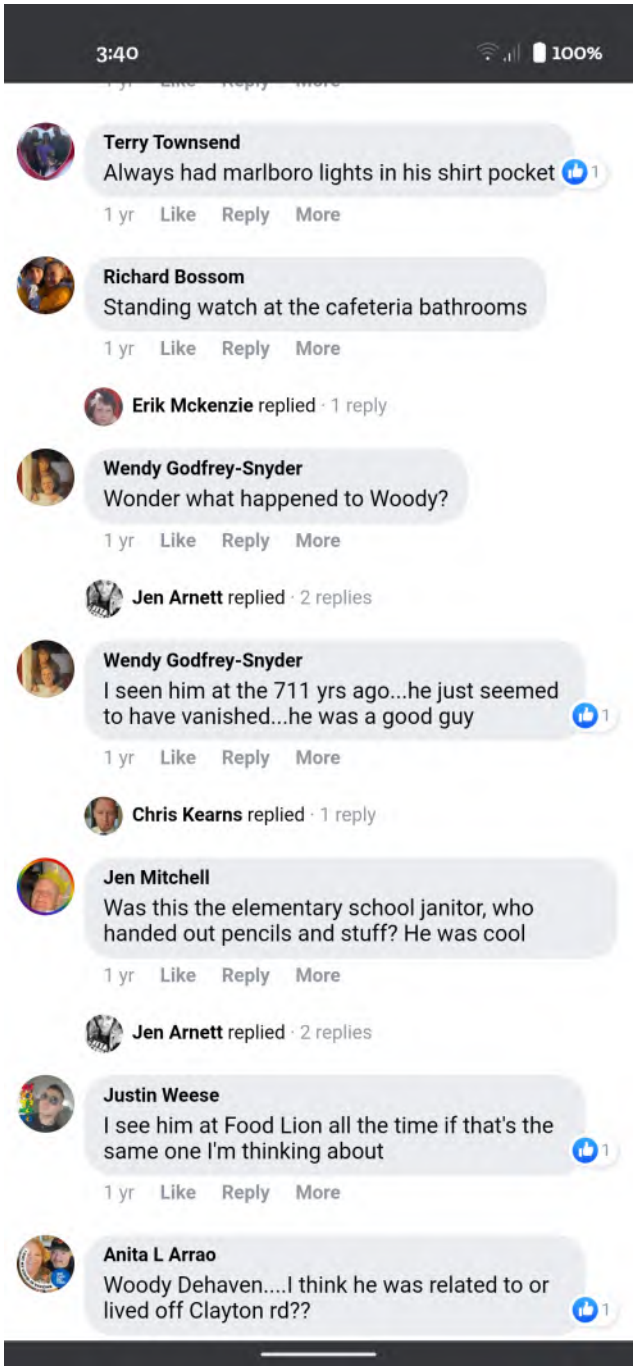
Exhibit A


DEERFIELD
ELEMENTARY
SCHOOL
FACULTY & STAFF
1988 1989

Exhibit B


3:40
100%
m.facebook.com/story/grapl
Edgewood Family
Erik Mckenzie ▸ Edgewood Family
November 9, 2019 at 7:43 AM · Facebook for Android ·
I'm this old....lol
Woody the janitor..
Like
Comment
Share
87
1 Share
Stephanie Martin Ehrlich
I loved Miss Gertie
4
1 yr Like Reply More
Jen Arnett replied · 6 replies
Geanine Jones
Me too
1
1 yr Like Reply More


3:42
100%
m.facebook.com/story/grapl
1 yr Like Reply More
Anita L Arrao
Woody Dehaven....I think he was related to or lived off Clayton rd??
1
1 yr Like Reply More
Anita L Arrao replied · 2 replies
John Langley
You used to go down and smoke cigarettes with him too?
1
1 yr Like Reply More
Bob Richardson
I stole his keys then locked him in the cafeteria bathroom. I was rotten back then.
5
1 yr Like Reply More
Bob Richardson replied · 4 replies
Geanine Jones
Me too
2
1 yr Like Reply More
Jim McDonnell
I saw him not to long ago
1
1 yr Like Reply More
Kevin Martin
I remember woody used to let us smoke in janitor office
1
1 yr Like Reply More
Brenda Kahl
Sure do.... My favorite janitor was Ms. Gurdie the black lady


3:40
100%
Terry Townsend
Always had marlboro lights in his shirt pocket
1
1 yr Like Reply More
Richard Bossom
Standing watch at the cafeteria bathrooms
1 yr Like Reply More
Erik Mckenzie replied · 1 reply
Wendy Godfrey-Snyder
Wonder what happened to Woody?
1 yr Like Reply More
Jen Arnett replied · 2 replies
Wendy Godfrey-Snyder
I seen him at the 711 yrs ago...he just seemed to have vanished...he was a good guy
1
1 yr Like Reply More
Chris Kearns replied · 1 reply
Jen Mitchell
Was this the elementary school janitor, who handed out pencils and stuff? He was cool
1 yr Like Reply More
Jen Arnett replied · 2 replies
Justin Weese
I see him at Food Lion all the time if that's the same one I'm thinking about
1
1 yr Like Reply More
Anita L Arrao
Woody Dehaven....I think he was related to or lived off Clayton rd??
1


3:42
100%
1 yr Like Reply More
Bob Richardson replied · 4 replies
Geanine Jones
Me too
2
1 yr Like Reply More
Jim McDonnell
I saw him not to long ago
1
1 yr Like Reply More
Kevin Martin
I remember woody used to let us smoke in janitor office
1
1 yr Like Reply More
Brenda Kahl
Sure do.... My favorite janitor was Ms. Gurdie the black lady
1 yr Like Reply More
Darlene Joy Roberts
Good old Woody ....I remember him! Good guy
1 yr Like Reply More
Matthew Garrigan
Would stand at the cafeteria bathrooms and take our ciggs be for we went in and then give em back when we came out
1 yr Like Reply More
Sherry Garrigan replied · 1 reply
Write a comment...
Post

E-FILED; Harford Circuit Court
Docket: 10/3/2023 1:44 PM; Submission: 10/3/2023 1:44 PM
Envelope: 14110906

Exhibit C

Case Information

Court System: **Circuit Court For Harford County - Criminal**
Location: **Harford Circuit Court**
Case Number: **C-12-CR-22-000520**
Title: **State of Maryland vs. ELWOOD SYLVESTER DEHAVEN**
Case Type: **Criminal Indictment**
Filing Date: **06/21/2022**
Case Status: **Closed**
Tracking Number(s): **197012016714**

Other Reference Numbers

Police Report Number: **202100110715**

Defendant Information

Defendant

Name: **DEHAVEN, ELWOOD SYLVESTER**
Race: **White** Sex: **Male** Height: **0'0"** Weight: **0**
HairColor: EyeColor:
DOB: **01/22/1949**
Address: **726 Greenwood Road**
City: **Tullahoma** State: **TN** Zip Code: **37388**

Attorney(s) for the Defendant

Name: **KEMPER, LAUREN**
Appearance Date: **07/13/2022**
Removal Date: **01/21/2023**
Address Line 1: **Office of the Public Defender-Harford Co.**
Address Line 2: **2 S. Bond Street**
Address Line 3: **Suite 203**
City: **BEL AIR** State: **MD** Zip Code: **21014**

Name: **Public Defender, Harford County**
Appearance Date: **07/13/2022**
Removal Date: **01/21/2023**
Address Line 1: **2 South Bond Street, Suite 203**
City: **Bel Air** State: **MD** Zip Code: **21014**

Involved Parties Information

Plaintiff

Name: **State of Maryland**

Attorney(s) for the Plaintiff

Name: **State's Attorney, Harford County Circuit Court**
Appearance Date: **06/21/2022**
Removal Date: **01/21/2023**
Address Line 1: **20 W Courtland Street**
City: **Bel Air** State: **MD** Zip Code: **21014**

Name: **TABONE, CHRISTOPHER MARK**
Appearance Date: **07/13/2022**
Removal Date: **01/21/2023**

Address Line 1: **Office Of The State's Attorney**
Address Line 2: **20 W. Courtland Street**
City: **BEL AIR** State: **MD** Zip Code: **21014**

Probation Officer

Name: **HARFORD COUNTY DIVISION OF PAROLE & PROBATION**
Address: **2 S. BOND STREET**
City: **BEL AIR** State: **MD** Zip Code: **21014**

Court Scheduling Information

Event Type	Event Date	Event Time	Judge	Court Location	Court Room	Result
Hearing - Video Bail / Bond Review	07/08/2022	13:30:00	ISHAK, PAUL W	Harford County Judge	Courtroom 3-01	Concluded / Held
Hearing - Video Bail / Bond Review	07/11/2022	13:30:00		Harford County Judge		CancelledReason: Cancelled/Vacated
Conference - Scheduling	08/01/2022	08:30:00	Bowen, M. Elizabeth	Harford County Judge	Courtroom 2-50	CancelledReason: Cancelled/Vacated
Hearing - Bail/ Bond Review	09/09/2022	13:30:00	Curtin, Yolanda L.	Harford County Judge	Courtroom 2-01	Reset
Hearing - Bail/ Bond Review	09/09/2022	13:30:00	Carr, William O.	Harford County Judge	GJ Room 2-52	Concluded / Held
Conference - Pre-Trial	12/07/2022	08:30:00	Adkins-Tobin, Diane E	Harford County Judge	Courtroom 3-01	Concluded / Held
Trial - Jury	12/08/2022	08:30:00		Harford County Judge		CancelledReason: Cancelled/Vacated

Charge and Disposition Information

Charge No: **1** CJIS Code: **1-0173** Statute Code: **27.35A**
Charge Description: **CHILD ABUSE:CUSTODIAN** Charge Class: **Felony Circuit Court**
Probable Cause:
Offense Date From: **02/16/1993** To: **02/14/1994**
Agency Name: Officer ID:

Disposition

Plea: **Alford Plea** Plea Date: **12/07/2022** Judge: **Adkins-Tobin, Diane E**
Disposition: **G** Disposition Date: **12/07/2022** Judge: **Adkins-Tobin, Diane E**

Sentence

Judge: **Adkins-Tobin, Diane E**

Jail

Life: **false**
Death: **false**
Start Date: **12/07/2022**
Jail Term: Yrs: **15** Mos: **0** Days: **0** Hours: **0**
Suspend All But: Yrs: **0** Mos: **0** Days: **154** Hours: **0**

Probation:

Start Date:
Supervised : **true** Yrs: **4** Mos: **0** Days: **0** Hours: **0**
UnSupervised : **false** Yrs: Mos: Days: Hours:

Warrants Information

Type	Issue	Judge	Last Status	Status Date
Arrest Warrant	06/21/2022	ISHAK, PAUL W	Warrant Served	07/07/2022

Bond Setting Information

Bail Date: **07/08/2022**
Bail Setting Type: **Percentage Bond**
Bail Amount: **$100,000.00**
Judge: **ISHAK, PAUL W**

Bail Date: **09/09/2022**

Bail Setting Type: **Set by Judge**
Bail Amount: **$25,000.00**
Judge: **Carr, William O.**

Bail Date: **06/21/2022**
Bail Setting Type: **Set by Judge**
Bail Amount: **$100,000.00**
Judge: **ISHAK, PAUL W**

Document Information

File Date: **06/21/2022**
Filed By:
Document Name: **Criminal Indictment**

File Date: **06/21/2022**
Filed By:
Document Name: **Transmittal Form**

File Date: **06/21/2022**
Filed By:
Document Name: **Warrant Request / Order**

File Date: **06/21/2022**
Filed By:
Document Name: **Arrest Warrant Issued**

File Date: **06/21/2022**
Filed By:
Document Name: **Bail Set**

File Date: **07/07/2022**
Filed By:
Document Name: **Warrant/Writ Served**

File Date: **07/08/2022**
Filed By:
Document Name: **Public Defender Eligible**

File Date: **07/08/2022**
Filed By:
Document Name: **Hearing Sheet**

File Date: **07/08/2022**
Filed By:
Document Name: **Bail Set**

File Date: **07/12/2022**
Filed By:
Document Name: **Defense Attorney Appearance Filed**

File Date: **07/13/2022**
Filed By:
Document Name: **Crime Victim Certificate of Compliance**

File Date: **07/13/2022**
Filed By:
Document Name: **Attorney Appearance for State**

File Date: **07/19/2022**
Filed By:
Document Name: **Scheduling Order**

File Date: **07/21/2022**
Filed By:
Document Name: **Writ - Habeas Corpus**

File Date: **08/08/2022**
Filed By:
Document Name: **Correspondence Regarding Discovery**

File Date: **09/01/2022**
Filed By:
Document Name: **Motion / Request - For Bail Review**

File Date: **09/02/2022**
Filed By:
Document Name: **Order**

File Date: **09/02/2022**
Filed By:
Document Name: **Writ /Summons/Pleading - Electronic Service**

File Date: **09/09/2022**
Filed By:
Document Name: **Hearing Sheet**

File Date: **09/09/2022**
Filed By:
Document Name: **Bail Set**

File Date: **10/21/2022**
Filed By:
Document Name: **Sheriffs Return**

File Date: **12/07/2022**
Filed By:
Document Name: **Hearing Sheet**

File Date: **12/07/2022**
Filed By:
Document Name: **Defendant Advised of Rights - Jury Trial Waived**

File Date: **12/07/2022**
Filed By:
Document Name: **Commitment Record Issued**

File Date: **12/07/2022**
Filed By:
Document Name: **Order - Probation/Supervision Docket**

File Date: **12/07/2022**
Filed By:
Document Name: **Release Order**

File Date: **12/07/2022**
Filed By:
Document Name: **Defendant Received Notice of Post - Trial Rights**

File Date: **12/09/2022**
Filed By:
Document Name: **Writ /Summons/Pleading - Electronic Service**

File Date: **12/13/2022**
Filed By:
Document Name: **Copy of MD Sentencing Guidelines filed**

E-FILED; Harford Circuit Court
Docket: 10/3/2023 1:44 PM; Submission: 10/3/2023 1:44 PM
Envelope: 14110906

Exhibit D

ABOVE: One of the EHS janitors is mopping the dirty floor from lunch. TO THE LEFT: Mr. Elwood sweeps with a smile.

E-FILED; Harford Circuit Court
Docket: 11/21/2023 1:40 PM; Submission: 11/21/2023 1:40 PM
Envelope: 14593717

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE	*	
Plaintiff,	*	
v.	*	Case No.: C-12-CV-23-000767
BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*	*	
Defendants.	*	

* * * * * * * * * * * * *

MOTION TO DISMISS AND REQUEST FOR HEARING

Defendant Board of Education of Harford County (the "Board"),[1] by its attorneys, Edmund J. O'Meally, Andrew G. Scott, Adam E. Konstas, and Pessin Katz Law, P.A., and pursuant to Maryland Rule 2-322(b)(2), hereby move this Honorable Court to dismiss all of the claims brought against it by Plaintiff in the above-captioned action. For the reasons set forth in detail in its accompanying Memorandum in Support of Motion to Dismiss, which is incorporated by reference herein, the Board respectfully requests that this Court dismiss with prejudice all of Plaintiff's claims for failure to state any claims upon which relief can be granted, and that the Court award such other and further relief as the Court deems appropriate.

[1] In addition to the Board, Plaintiff's Complaint names Jon Does 1-10 as fictitious defendants, *see* Complaint at ¶ 8, who, to the best of the Board's knowledge, have not been served. Accordingly, at this juncture, this Motion to Dismiss is filed on the Board's behalf only.

Respectfully submitted,

/s/ *Edmund J. O'Meally*
Edmund J. O'Meally (AIS No. 8501180003)
Andrew G. Scott (AIS No. 0712120247)
Adam E. Konstas (AIS No. 1312180106)
PESSIN KATZ LAW, P.A.
901 Dulaney Valley Road, Suite 500
Towson, MD 21204
(410) 938-8800 (telephone)
(667) 275-3056 (fax)

COUNSEL FOR THE BOARD OF EDUCATION OF HARFORD COUNTY

Request for Hearing

Pursuant to Rule 2-311(f), the Board respectfully requests a hearing on this Motion.

/s/ *Edmund J. O'Meally*
Edmund J. O'Meally

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21st day of November, 2023, a copy of the foregoing Motion to Dismiss, along with the accompanying Memorandum in Support Motion to Dismiss and proposed Order was served via this Court's electronic filing system on all counsel of record.

/s/ *Edmund J. O'Meally*
Edmund J. O'Meally

E-FILED; Harford Circuit Court
Docket: 11/21/2023 1:40 PM; Submission: 11/21/2023 1:40 PM
Envelope: 14593717

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE	*	
Plaintiff,	*	
v.	*	Case No.: C-12-CV-23-000767
BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*	*	
Defendants.	*	

* * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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

COUNSEL FOR THE BOARD OF EDUCATION OF HARFORD COUNTY

TABLE OF CONTENTS

Defendant Board of Education of Harford County (the "Board"),[1] by its attorneys, Edmund J. O'Meally, Andrew G. Scott, Adam E. Konstas, and Pessin Katz Law, P.A., and pursuant to Maryland Rule 2-322(b), hereby submits this Memorandum in Support of its Motion to Dismiss the Complaint filed against it by Plaintiff John Doe. For the reasons discussed below, this Court should dismiss all of Plaintiff's claims with prejudice for failure to state any claims upon which relief can be granted.

I. INTRODUCTION

This case involves allegations of child sexual abuse that Plaintiff allegedly suffered at the hands of two Board employees in the 1980s and 1990s when Plaintiff was a student attending schools owned and operated by the Board. It cannot be disputed that the statute of limitations on Plaintiff's claims ran more than twenty-five (25) years before Plaintiff filed the instant Complaint. Indeed, Plaintiff implicitly acknowledges this fact by alleging that his "action is timely brought pursuant to the Maryland Child Victims Act of 2023" (the "Act"), *see* Complaint at ¶ 17, which went into effect October 1, 2023, and purports to revive time-barred claims involving child sexual abuse. *See* 2023 Md. Laws Ch. 5; 2023 Md. Laws Ch. 6.

As discussed more fully below, Plaintiff's Complaint must be dismissed for several reasons. First, the provisions of the Act purporting to retroactively revive claims that were previously barred by the statute of limitations and the statute of repose violates the Maryland Constitution, and thus all of Plaintiff's claims are time-barred. Alternatively, even if the Act is constitutional, Plaintiff's claims must be dismissed because: (1) most of Plaintiff's claims seek to hold the Board vicariously liable for the alleged malicious acts of sexual abuse by two former school employees, Janice Konski and Elwood Dehaven, which is impermissible because that

[1] In addition to the Board, Plaintiff's Complaint names John Does 1-10 as fictitious defendants, *see* Complaint at ¶ 8, who, to the best of the Board's knowledge, have not been served. Accordingly, at this juncture, this Motion to Dismiss and Memorandum in Support of Motion to Dismiss are filed on the Board's behalf only.

alleged conduct was outside the scope of employment as a matter of law; (2) as to those few claims which seek to hold the Board directly liable and/or vicariously liable for alleged acts or omission of the unidentified Defendants John Does #1-10, Plaintiff's claims are completely unsupported by allegations containing specific facts required to state a viable claim for relief; (3) certain of Plaintiff's claims fail to state any cognizable cause of action under Maryland law; and (4) Plaintiff's claims based upon alleged abuse occurring when Plaintiff was in eleventh grade are barred by the doctrines of assumption of the risk and contributory negligence as a matter of law. In addition, to the extent that any of Plaintiff's claims survive the Board's Motion to Dismiss, they are subject to the $100,000 sovereign immunity cap in place at the time of the alleged wrongful acts.

II. FACTS[2]

Plaintiff's Complaint alleges that, at all times relevant, the Board operated Deerfield Elementary School ("Deerfield"), where Plaintiff attended elementary school and where teacher Janice Konski ("Konski") was employed by the Board, and Edgewood High School ("Edgewood"), where Plaintiff attended high school and where custodian Elwood Dehaven ("Dehaven") was employed by the Board. *See* Complaint at ¶¶ 3-4.[3]

Plaintiff alleges that Konski served as Plaintiff's fifth grade teacher at Deerfield during the 1985-1986 school year. *Id.* at ¶ 6. Plaintiff alleges that, during that school year, Konski "engage[d] in illicit and illegal sexual activity with Plaintiff while on HCBOE [*i.e.*, Board]

[2] The Board acknowledges that, for purposes of analyzing its Motion to Dismiss, this Court must accept as true all of Plaintiff's well-pleaded allegations and draw all reasonable inferences in favor of Plaintiff. *See Manikhi v. Mass Trans. Admin.*, 360 Md. 333, 344 (2000). As such, the facts provided herein are solely those contained in Plaintiff's Complaint. Nevertheless, the Board notes that "[a]ny ambiguity or want of certainty in the allegations must be construed against the pleader." *Id.* at 345.

[3] Neither Konski nor Dehaven have been sued by Plaintiff despite the fact that Plaintiff seeks to hold the Board vicariously liable for their alleged acts.

and/or school district property." *Id.* at ¶ 19. Specifically, Plaintiff alleges that Konski "confine[d] [Plaintiff] to 'in-room' lunchtime detentions, during which times she groomed, coerced, and ultimately sexually abused him on multiple occasions." *Id.* at ¶ 21. Plaintiff alleges that the sexual abuse, which occurred in Konski's classroom when no other adults or students were present, involved kissing, petting, oral sex, and simulated sexual intercourse, and that the abuse "went on for approximately three months" before "Konski told Plaintiff that she had spoken to his mother and arranged for after-school tutoring for Plaintiff on a regular basis for a few weeks." *Id.* at ¶¶ 22-26. Plaintiff alleges that Konski engaged in similar abuse during those after-school tutoring sessions, and that "Konski's abuse of Plaintiff escalated to her forcing him to engage in full intercourse with her[.]" *Id.* at ¶¶ 27-28. Konski alleges that "Plaintiff tried to tell his parents about the abuse," and that, although they initially did not believe Plaintiff, ultimately "a meeting was arranged with the Deerfield Elementary principal, or vice principal, Plaintiff, and his parents," at which meeting Plaintiff "was forced to sign some type of 'contract' or other paper wherein he agreed not to 'bring up' or 'tell' about what was occurring[.]" *Id.* at ¶ 29. Plaintiff alleges that, "[t]hereafter, Konski became nasty and rude to Plaintiff but was still assigned as his teacher," and that [e]ventually, . . . she told Plaintiff that she no longer wanted to be his 'girlfriend, due to him 'telling.'" *Id.* at ¶ 30. Plaintiff alleges that Konski's conduct "constitute[d] offenses . . . under Maryland state criminal law." *Id.* at ¶ 12.

Plaintiff alleges that Dehaven worked as a custodian at Edgewood when Plaintiff was in eleventh grade. *Id.* at ¶¶ 33-34.[4] Plaintiff alleges that Dehaven started abusing Plaintiff in the beginning of the school year when Dehaven approached Plaintiff and several other students during lunch period in the cafeteria, sat down at their table, and performed a joke whereby he

[4] Assuming Plaintiff did not skip or repeat any grades, Plaintiff's eleventh grade year was the 1991-1992 school year.

placed money on his crotch and told the students they "could have the money but would have to take it from off his crotch." *Id.* at ¶ 34. Plaintiff alleges that Dehaven approached Plaintiff later that same day in the locker room, apologized for the joke, bought Plaintiff food from the teacher's lounge, and told Plaintiff that he "could repay him with a 'blowjob.'" *Id.* at ¶ 35. "Plaintiff thought Dehaven was . . . joking, so he left and reported to his gym class." *Id.*

Plaintiff alleges that later that same day Dehaven "approached Plaintiff's gym teacher and told her that he needed Plaintiff to help him with something," that Plaintiff's gym teacher excused Plaintiff, and that Plaintiff followed Dehaven down a hallway, through a boiler room, and into Dehaven's office. *Id.* at ¶ 36. Plaintiff alleges that Dehaven then "ordered Plaintiff to perform oral sex on him, which Plaintiff did," and that Dehaven then performed oral sex on Plaintiff. *Id.* at ¶¶ 38-39. Plaintiff alleges that Dehaven then kissed Plaintiff and told him "not to tell anyone about their 'secret,' as it would get them into trouble[.]" *Id.* at ¶ 39. Plaintiff alleges that "Dehaven continued to sexually abuse Plaintiff in this manner in his office, on school grounds, multiple times thereafter," and that, "[o]n one occasion, Dehaven attempted to anally penetrate Plaintiff with his penis." *Id.* at ¶¶ 40-42.

Plaintiff also alleges that thereafter "Dehaven told Plaintiff to meet him at Edgewood High very early in the morning before staff and students arrived"; that Plaintiff complied by driving his car to Edgewood High School early in the morning for the purpose of meeting with Dehaven; that Dehaven gave Plaintiff cigarettes and a bottle of liquor; that Plaintiff "followed Dehaven into the high school and into the teacher's lounge" where Plaintiff performed oral sex on Dehaven; that, while engaged in the act, the two saw a Harford County Sherriff's Office patrol car pull up behind Plaintiff's car in the parking lot; that Dehaven exited and told the officers that Plaintiff "was his student assistant and was helping him go get the school cleaned

before students and faculty arrived"; that "[t]he officers did not ask any additional questions and allowed Plaintiff and Dehaven to return to the school"; and that the two returned to the teacher's lounge and resumed oral sex. *Id.* at ¶ 43. Plaintiff alleges that he drove to Edgewood several more times prior to the start of the school day, where additional sexual activity allegedly occurred. *Id.* at ¶ 44.

Plaintiff alleges that "[n]umerous instances of sexual abuse occurred within the school in various locations, including gymnasiums, the cafeteria/kitchen, Dehaven's office, the nurse's office, the library, and the teacher's lounge." *Id.* at ¶ 45. Plaintiff further alleges that "Dehaven also coerced Plaintiff into meeting him outside the school for the purpose of sexually abusing him," and that "Dehaven abused Plaintiff at Dehaven's home, in his car, and took Plaintiff to an adult bookstore, as well." *Id.* at ¶ 46. Plaintiff alleges that he reported Dehaven to law enforcement authorities in November 2020,[5] and that Dehaven "was granted the opportunity to enter an 'Alford plea' to avoid a conviction which would require him to register as a sex offender." *Id.* at ¶¶ 47-49. Plaintiff alleges that Dehaven's conduct "constitute[d] offenses . . . under Maryland state criminal law." *Id.* at ¶ 13.

Plaintiff alleges that the Board "is liable vicariously and derivatively for the negligent acts and omissions of [its] employees, servants, and agents while engaged in the operation of Deerfield Elementary and Edgewood High[.]" *Id.* at ¶ 51. Plaintiff further alleges that he has suffered physical, mental, psychological, and emotional harm as a result of Konski's and Dehaven's abuse and the "tortious and outrageous acts or omissions of Defendants" and that the Board is vicariously liable for those alleged malicious acts. *Id.* at ¶¶ 54-55. Based upon these allegations, Plaintiff's Complaint asserts the following seven (7) claims against the Board:

[5] Plaintiff does not allege that he similarly reported the abuse allegedly perpetrated by Konski.

- Vicarious liability (Count I);
- Negligence (Count II);
- Negligent infliction of emotional distress ("NIED") (Count III);
- Intentional infliction of emotional distress ("IIED") (Count IV);
- Negligent failure to rescue (Count V);
- Failure to warn (Count VI); and
- Violation of Md. Code Ann., Fam. Law ("FL") § 5-701 *et seq.* (Count VII).

See Complaint at pp. 17-29.

III. STANDARD OF REVIEW

Under Maryland Rule 2-322(b)(2), dismissal is warranted if the complaint on its face fails to disclose a legally sufficient cause of action. *See Heritage Harbour, LLC v. John J. Reynolds, Inc.*, 143 Md. App. 698, 704 (2002). In weighing the propriety of dismissal, a reviewing court must disregard "merely conclusory charges that are not factual allegations." *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995). Moreover, "the facts comprising the cause of action must be pleaded with sufficient specificity." *Bobo v. State*, 346 Md. 706, 708 (1997). Consequently, "[b]ald assertions and conclusory statements by the pleader will not suffice." *Id.* at 708-09. "Further, while the words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency." *Id.* at 709.

IV. ARGUMENT

A. The Complaint Must Be Dismissed Because the Provisions of the Act Purporting to Retroactively Eliminate the Statute of Limitations and Statute of Repose to Revive Previously Time-Barred Claims are Unconstitutional, and Plaintiff's Claims are Barred by the Three-Year Statute of Limitations That Was In Place at the Time He Reached the Age of Majority.

As discussed herein, notwithstanding the provisions of the Act, Plaintiff's claims are barred by the three-year statute of limitations that was then in existence at the time Plaintiff

reached the age of majority,[6] which was the general three-year statute of limitations set forth in Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-101.[7] Under that statute applied in conjunction with the Age of Majority Act and the common law "coming of age rule" in effect at that time,[8] Plaintiff would have been required to file his claims against the Board no later than the day before his twenty-first birthday in either 1996 or 1997. *See Mason v. Bd. of Educ. of Baltimore County*, 375 Md. 504 (2003) (applying the common law "coming of age rule" whereby a person's age changes on the day before the birth anniversary to affirm dismissal of a suit brought by a former student filed on her twenty-first birthday). Since Plaintiff did not file his suit against the Board within the requisite limitations period in effect at that time, his claims have been barred ever since.

Plaintiff's Complaint is based nonetheless upon the premise that his claims were revived on October 1, 2023, the effective date of the Act. The Act amended CJP § 5-117 and purports to revive previously time-barred claims of child sexual abuse[9] by retroactively eliminating the prior statute of limitations and statute of repose, providing:

---

[6] At this juncture, Plaintiff's identity and date of birth are presently unknown to the Board. However, based upon the allegations set forth in the Complaint at ¶ 6, Plaintiff was in the fifth grade during the 1985-1986 school year. Assuming the truth of that allegation, Plaintiff would have been approximately ten years old during the 1985-1986 school year, eighteen years of age at some point in 1993 or 1994, and twenty-one years of age at some point in 1996 or 1997.

[7] The general statute of limitations for civil claims set forth in CJP § 5-101 applied to claims brought by survivors of childhood sexual abuse until 2003 when the General Assembly enacted CJP § 5-117, setting forth a specific statute of limitations for such claims and providing such individuals seven years after becoming an adult within which to file their claims. *See* 2003 Md. Laws. Ch. 360; CJP § 5-117 (West 2003). Importantly, this new statutory limitations period did not apply retroactively. *See* 2003 Md. Laws Ch. 360. CJP § 5-117 was amended in 2017 to allow a suit to be filed between seven and twenty years after the alleged victim reaches the age of majority if there is a finding of gross negligence on the part of the person or governmental entity that employed the alleged perpetrator. *See* 2017 Md. Laws Ch. 12; 2017 Md. Laws Ch. 656. The 2017 amendment was also clear in stating that it did not extend the enlarged statute of limitations retroactively. *Id.* Significantly, the 2017 amendment also enacted a statute of repose barring all prospective and retroactive claims filed after twenty years of the alleged victim reaching the age of majority. *Id.*

[8] *See former* Md. Code Ann., Art. 1, § 24, now codified at Md. Code Ann., Gen. Prov. § 1-401.

[9] CJP §5-117(a) (West 2023) defines "sexual abuse" as follows:

> Notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.

2023 Md. Laws Ch. 5, § 1; 2023 Md. Laws Ch. 6, §1.

In doing so, the General Assembly expressed its clear and unambiguous legislative intent with the following non-codified language:

> SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that any claim of sexual abuse that occurred while the victim was a minor may be filed at any time without regard to previous time limitations that would have barred the claim.
>
> SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023.

See 2023 Md. Laws, Ch. 5, at p. 10; 2023 Md. Laws, Ch. 6, at p. 10.

Notwithstanding that stated legislative intent, the purported retroactive application of the Act "to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023" is unconstitutional for the reasons set forth herein.

(a) In this section, "sexual abuse" means any act that involves:
(1) An adult allowing or encouraging a child to engage in:
(i) Obscene photography, films, poses, or similar activity;
(ii) Pornographic photography, films, poses, or similar activity; or
(iii) Prostitution;
(2) Incest;
(3) Rape;
(4) Sexual offense in any degree; or
(5) Any other sexual conduct that is a crime.

1. The History on Legislative Efforts to Expand the Limitations Period for Sexual Abuse Claims in Maryland

Over the course of three decades, beginning in 1994, the Maryland General Assembly considered multiple proposals to expand the limitations period for civil claims arising from the sexual abuse of minors, both on a prospective and retroactive basis. As explained in detail below, the legislature extended the limitations period on a *prospective* basis in 2003 and 2017. However, in recognition of the obvious constitutional impediment, the legislature repeatedly rejected proposals to revive such claims that had already expired. In addition, the General Assembly in 2017 explicitly enacted a "statute of repose" to foreclose the possibility of any future legislative effort to expose non-perpetrator defendants such as Maryland school boards of education, thereby conferring upon such defendants a vested right to be free from claims such as those asserted by Plaintiff in this case.

As noted earlier, the general limitations period for civil causes of action in Maryland is three years. *See* CJP §§ 5-101, 5-201 (West 2023).[10] The General Assembly "first considered in 1994 extending the generally-applicable three-year statute of limitations on civil claims by alleged child sexual abuse victims." *Doe v. Roe*, 419 Md. 687, 694 (2011). That year, House Bill 326 passed the House of Delegates but "received an unfavorable report" in the Senate. *See id.* at 694-95. Significantly, had the 1994 legislation passed, it would have had an impact upon Plaintiff at that time because the limitations period had not yet run because Plaintiff was not yet twenty-one years of age in 1994.

In 2003, the General Assembly expanded the limitations period for claims arising from sexual abuse of a minor from three to seven years after the age of majority. *See* 2003 Md. Laws

[10] Under CJP § 5-201(a) (West 2023), "[w]hen a cause of action . . . accrues in favor of a minor . . . that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed."

Ch. 360; CJP § 5-117 (West 2003). However, the 2003 law expressly disclaimed any attempt to revive time-barred claims. *See* 2003 Md. Laws Ch. 360, § 2 (providing that "this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2003."). Accordingly, the bill was enacted with specific language barring the retroactive revival of claims previously barred by the statute of limitations. *Id.*

In 2017, the General Assembly enacted a law "[for] the purpose of altering the statute of limitations" and "establishing a statute of repose." *See* 2017 Md. Laws Ch. 12; 2017 Md. Laws Ch. 656. Section 1 of the 2017 law modified CJP § 5-117(b) (West 2003) to extend the statute of limitations for non-barred claims until the later of twenty years after the victim reaches the age of majority or three years after the defendant is convicted of certain sexual abuse crimes. *See* 2017 Md. Laws Ch. 12, § 1; 2017 Md. Laws Ch. 656, § 1; CJP § 5-117(b) (West 2017). For claims filed against "a person or governmental entity that is not the alleged perpetrator of the sexual abuse" that are filed more than seven years after the victim reaches the age of majority, the 2017 law required a showing of "gross negligence" (not simple negligence) in order to support liability. *See* 2017 Md. Laws Ch. 12, § 1; 2017 Md. Laws Ch. 656, § 1; CJP § 5-117(c) (West 2017). Section 2 of the 2017 law specifically provided that the expanded statute of limitations "may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before" the law's effective date. *See* 2017 Md. Laws Ch. 12, § 2; 2017 Md. Laws Ch. 656, § 2.

In addition to providing that the expanded statute of limitations does not apply to claims that were already expired, such as those that are now asserted in this case by Plaintiff, the 2017

legislation took the additional step of providing a statute of repose for actions against non-perpetrator defendants like Maryland school boards:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

See 2017 Md. Laws Ch. 12, § 1; 2017 Md. Laws Ch. 656, § 1; CJP § 5-117(d) (West 2017).

In 2019, legislation was introduced to completely eliminate the statute of limitations and provide a two-year window within which previously time-barred claims could be filed. The Office of Attorney General issued a letter opining that the 2017 law "must be read" to include a statute of repose, and that repealing the statute of repose "*would most likely be found unconstitutional* as interfering with vested rights,"[11] and the proposed legislation was defeated. In 2020 (HB 974) and again in 2021 (HB 263, SB 134), additional legislation was introduced seeking to revive time-barred claims, and these bills similarly did not pass. In 2023, however, the General Assembly passed the Act at issue in this case purporting for the first time to completely eliminate the statute of limitations for claims arising out of allegations of sexual child abuse, to eliminate the statute of repose enacted in 2017, and revive claims that were barred prior to October 1, 2023.

2. The Child Victims Act of 2023 Unconstitutionally Purports to Eliminate Both the Statute of Limitations and the Statute of Repose

The Act purports to "repeal[] the statute of limitations" and "statute of repose" for civil actions "relating to child sexual abuse." *See* 2023 Md. Laws Ch. 5; 2023 Md. Laws Ch. 6. The Act modifies CJP § 5-117(b) (West 2017) to completely eliminate the limitations period for "an action for damages arising out of an alleged incident . . . of sexual abuse that occurred while the

[11]*See* Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. Kathleen M. Dumais regarding H.B. 687, Mar. 16, 2019.

victim was a minor." *See* 2023 Md. Laws Ch. 5, § 1; 2023 Md. Laws Ch. 6, § 1; CJP § 5-117(b) (West 2023). Instead, such actions "*notwithstanding* any time limitation[s] under a statute of limitations [or] a statute of repose, . . . may be filed at any time," unless the "alleged victim of abuse is deceased at the commencement of the action." *See id.*; *see also* CJP § 5-117(d) (West 2023). Recognizing that a court might well invalidate the Act's attempt to allow the revival of expired claims, the General Assembly specifically provided that "if any provision of this Act or the application thereof . . . is held invalid, . . . the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of th[e] Act are declared severable." *See* 2023 Md. Laws Ch. 5, § 4; 2023 Md. Laws Ch. 6, § 4. The legislature also provided for an interlocutory appeal from any order denying a motion to dismiss that is "based on a defense that the applicable statute of limitations or statute of repose bars the claim and any legislative action reviving the claim is unconstitutional." *See* CJP § 12-303(3)(xii) (West 2023).

For nearly 200 years, Maryland courts have consistently limited the General Assembly's power to retroactively create or abrogate the rights of Maryland citizens. *See, e.g.*, *Berrett v. Oliver*, 7 G. & J. 191, 206 (1835) ("Can the Legislature exercise such a power [to retroactively annul deeds]? Unquestionably not."); *Thistle v. The Frostburg Coal Co.*, 10 Md. 129, 144-45 (1856) ("It is clearly not within the scope of the legislative power, to give to a law the effect of taking from one man his property and giving it to another, by any new rule of tenure, retroactive in its character."); *Grove v. Todd*, 41 Md. 633, 641-42 (1875) ("To concede to the Legislature the power [to transfer property from one person to another], by retroactive legislation, […] is at once to concede to it the power to divest the rights of property and transfer them without the forms of law, upon any notion of right or justice that the Legislature may think proper to adopt — a

concession that can never be made[.]"); *Comptroller v. Glenn L. Martin Co.*, 216 Md. 235, 258 (1958), *cert. denied*, 358 U.S. 820 (1958) (retroactive application of tax statute that sought "to reach transactions completed long before its enactment" unconstitutional); *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002) ("This Court has consistently held that the Maryland Constitution ordinarily precludes the Legislature . . . from retroactively creating a cause of action, or reviving a barred cause of action, thereby violating the vested right of the defendant.").

Maryland courts invoke Articles 19 and 24 of the Maryland Declaration of Rights[12] to strike down such legislation. Once the limitations period has run, a defendant has a "vested" substantive right to be free from liability after a legislatively determined period, and the General Assembly cannot constitutionally revive a time-barred claim thereby depriving the defendant of that vested right. This is especially so after the passage of the twenty-year statute of repose previously set forth in Md. Code Ann., Cts. & Jud. Proc. § 5-117 (West 2017), which operated as an "absolute bar" to any action more than twenty years after a plaintiff reached the age of majority.[13] The protection of this "vested" substantive right to be free from liability for previously time-barred claims is particularly important for the protection of the Board's budget, formulated and funded in accordance with the provisions set forth in Md. Code Ann., Educ. ("ED") § 5-101 *et seq.*, for the provision of instruction to students and the operation of the school system, and subject to the mandate set forth in Article VIII, § 3 of the Maryland Constitution that

[12] Article 19 of the Maryland Declaration of Rights provides: "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land." Article 24 of the Maryland Declaration of Rights provides: "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

[13] *See* Letter from Kathryn M. Rowe, Assistant Attorney General, *supra* n. 11.

"[t]he School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education."

Where the General Assembly has changed the statute of limitations for a claim, the general rule is that "when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim […] violate[s] the defendant's right to due process." *Rice v. Univ. of Maryland Med. Sys. Corp.*, 186 Md. App. 551, 563 (2009) (citing *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57 (1972)). In reviewing such legislation, the Maryland Supreme Court first looks to see if the intent of the legislation was to be retrospective/retroactive as to "transactions which have occurred or rights and obligations which existed before passage of the act." *State v. Goldberg*, 437 Md. 191, 205 (2014) (citing *Muskin v. State Dep't of Assessments & Taxation*, 422 Md. 544 (2011)). Clearly, the stated legislative purpose of the Act to allow "for the retroactive application of this Act under certain circumstances" demonstrates the Legislature's intent for the bill to be retroactive. However, that legislative intent is not the end to the inquiry. The Court must look to the interference with vested or substantive rights.

As a general rule, Maryland statutes are presumed to operate *prospectively* and are to be constructed accordingly. *See Roe v. Doe*, 193 Md. App. 558, 564 (2010), *aff'd*, 419 Md. 687 (2011) (citing *Washington Suburban Sanitary Comm'n v. Riverdale Heights Volunteer Fire Co.*, 308 Md. 556, 560–61 (1987)). Similarly, Maryland recognizes a general presumption that legislative enactments may not be applied retroactively. *See Langston v. Riffe*, 359 Md. 396, 406-07 (2000). Notably, a remedial or procedural statute may not be applied retroactively if, as in this case, it will interfere with vested or substantive rights. *Id*. at 418.

In *Rice,* plaintiffs filed for medical malpractice but failed to attach a proper expert certificate. 186 Md. App. at 553. During the pendency of the litigation, the Supreme Court of Maryland issued a decision holding that such a failure required dismissal of the claim. *Id.* at 552 (citing *Walzer v. Osborne,* 395 Md. 563, 585 (2006)). When the hospital defendant moved for dismissal, which was granted without prejudice, plaintiffs simultaneously appealed and refiled their claim. *Id.* The hospital then moved for dismissal of the refiled claim, arguing that the statute of limitations for the claim had expired, which was granted. *Id.* On appeal, the Appellate Court of Maryland confirmed that "when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim would violate the defendant's right to due process," *id.* at 562 (citing *Smith,* 266 Md. at 57), but also noted that the General Assembly "may extend a statute of limitations that applies to a claim as to which the statute of limitations has not yet expired," *id.* (citing *Zitomer v. Slate,* 21 Md. App. 709, 720 (1974)).

Applying *Rice,* no claim may be brought for claims where the statute of limitations has expired, yet for any claims where the statute of limitations was still open, the extension under the Act is allowed. Similarly, in *Roe,* the plaintiff alleged she was sexually abused as a minor. 193 Md. App. at 561. She reached the age of majority in late September 2001, and as of that time had the right to file a claim within three years. *Id.* at 562. In 2003, the General Assembly extended the time to bring a claim from three years to seven years, giving her until late September 2008 to file a claim. *Id.* In early September 2008, she filed a claim under CJP § 5-117 (West 2006). *Id.* at 563. The Court concluded that the extension of the period of limitation for claims not yet barred did not violate the due process rights of the defendant. *See id.* at 579.[14]

[14] Courts in other states have similarly barred the revival of claims after the statute of limitations has expired. *See Doe v. Diocese of Dallas,* 234 Ill. 2d 393, 917 N.E. 2d 475 (2009); and *Doe v. Roman Catholic Diocese of Jefferson*

Under both cases, the General Assembly may extend the time to file a claim *only* when the limitations period has *not yet run*. However, the General Assembly has no authority to revive a claim *after* the limitations period has closed as it purports to do in the Act.[15] In this case, Plaintiff's claims have been time barred since at least 1997 – more than twenty-five years ago. Notwithstanding the General Assembly's intentions, it cannot constitutionally divest the Board of its vested right to be free from liability for claims that have been barred for over two decades. Moreover, Plaintiff's claims are not only barred by the statute of limitations, but by the statute of repose enacted by the General Assembly in 2017 which "prospectively and retroactively" granted "repose" to any "person or governmental entity that is not the alleged perpetrator," such as the Board in this case, for any claims of sexual child abuse that occurred more than twenty years after the Plaintiff reached the age of majority. In this case, because the allegations in the Complaint plainly demonstrate that Plaintiff reached the age of majority at some point in 1993 or 1994, his claims against the Board are, and have been, forever barred.

For these reasons, the Board respectfully submits that this Court should conclude: (1) that the Act is unconstitutional to the extent that it purports "to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023"; (2) that Plaintiff's claims are, and have been, barred by the three-year general statute of limitations set forth in CJP § 5-101 and by the statute of repose previously set forth in CJP § 5-117 (West 2017); and (3) that Plaintiff's claims must be dismissed accordingly.

City, 862 S.W.2d 338 (Mo. 1993). *But see Baughn v. Eli Lilly & Co.*, 356 F. Supp. 2d 1166, 1171 (D. Kan. 2005) (product liability claim).

[15] *See also* Letter from Kathryn M. Rowe, Assistant Attorney General, *supra* n. 11.

B. <u>Alternatively, Each Count Must Be Dismissed For Failure to State a Claim Upon which Relief may be Granted.</u>

1. Count I (Vicarious Liability) Must be Dismissed Because No Such Stand-Alone Cause of Action Exists, and Even if it Did, the Board Cannot be held Vicariously Liable for the Alleged Sexual Abuse by its Employees.

Count I must be dismissed because Maryland law only recognizes *respondeat superior* as a theory of vicarious liability, not as a separate stand-alone cause of action. *See, e.g., Davidson-Ross v. Prince George's Cnty., MD*, No. CIV.A. DKC 11-1984, 2012 WL 1204087, at *1 (D. Md. Apr. 10, 2012) ("*Respondeat superior* is a theory of liability, not an independent cause of action."); *Mason v. Bd. of Educ.*, No. WMN–10–3143, 2011 WL 89998, at *2 n.3 (D. Md. Jan. 11, 2011) ("Respondeat superior is not a separate cause of action, but rather a doctrine that permits the imputation of liability on a principal or employer for the act of an agent or employee."); *Nadwodny v. Wal-Mart Assocs., Inc.*, No. CIV. A. CCB-07-2595, 2008 WL 2415035, at *5 (D. Md. June 3, 2008) (dismissing a stand-alone *respondeat superior* claim and explaining that "*[r]espondeat superior,* however, is not a separate cause of action, but rather is a doctrine that permits the imputation of liability on a principal or employer for the act of an agent or employee").

Alternatively, even if a claim for "vicarious liability" were viable as a stand-alone claim, to the extent Count I seeks to hold the Board vicariously liable for Konski's and/or Dehaven's alleged sexual abuse or John Does # 1-10 covering up of such abuse, such a claim fails because the commission of and/or intentionally failing to report such abuse is always outside the scope of public-school employment as a matter of law. "The doctrine of respondeat superior, in Maryland, allows *an employer* to be held vicariously liable for the tortious conduct of its employee when that employee was acting *within the scope of the employment relationship*." *Oaks v. Connors*, 339 Md. 24, 30 (1995) (emphasis added). Maryland courts have unequivocally

held that, as a matter of law, sexual abuse and other similar intentional wrongs committed by public school employees are *never* within the scope of the employee's employment and that there can be no vicarious liability for such acts. *See, e.g., Hunter v. Bd. of Educ. of Montgomery County*, 292 Md. 481, 491 n.8 (1982) (stating that, "[w]here, as here, it is alleged that the individual educators have willfully and maliciously acted to injure a student enrolled in a public school, *such actions can never be considered to have been done in furtherance of the beneficent purposes of the education system*") (emphasis added); *see also Montgomery County Bd. of Educ. v. Horace Mann Ins. Co.*, 154 Md. App. 502, 516-17 (2003) (stating that "sexual activity between an adult and a minor child is injurious *per se* and is a tort *that is only committed intentionally* by the adult," and thus concluding that "we cannot envision how any sexual relationship between a teacher/mentor and a minor student/mentee would be potentially be within the scope of employment and *not* be malicious, wanton, or intentional") (emphasis added), *aff'd*, 383 Md. 151 (2004); *Tall v. Bd. of Sch. Comm'rs of Baltimore City*, 120 Md. App. 236, 252-55 (1998) (explaining that when "the conduct of the servant is unprovoked, highly unusual, and quite outrageous, courts tend to hold that this in itself is sufficient to indicate that the motive was a purely personal one and the conduct outside the scope of employment"); *Matta v. Bd. of Educ. of Prince George's County*, 78 Md. App. 264, 274 (1989) (stating that it was not "even potentially possible for any court or reasonable jury to conclude that teachers are 'authorized' to sexually abuse or harass their students").

The Supreme Court of Maryland has made it clear that "the test for determining whether acts were within the scope of employment is whether the challenged acts were in furtherance of the employer's business and could be fairly termed 'incident to the performance of duties entrusted to' the employee." *Houghton v. Forrest*, 412 Md. 578, 592 (2010); *see also Oaks*, 339

Md. at 30-31 (explaining that "a master is liable for the acts which his servant does with the actual or apparent authority of the master, or which the servant does within the scope of his employment, or which the master ratifies with the knowledge of all the material facts"); *Wolfe v. Anne Arundel County*, 135 Md. App. 1, 13 (2000) (explaining that "the plaintiff must show that the offending conduct occurred within the scope of the employment of the servant or under the express or implied authorization of the master"). In short, Plaintiff would have this Court conclude that Konski and Dehaven were acting in furtherance of the Board's business and incident to the duties entrusted to them as public-school employees when they groomed Plaintiff for and ultimately engaged in sexual conduct with Plaintiff. Without belaboring the point, such an argument is meritless. *See, e.g., Hunter*, 292 Md. at 491 n.8 (stating that, "[w]here, as here, it is alleged that the individual educators have willfully and maliciously acted to injure a student enrolled in a public school, *such actions can never be considered to have been done in furtherance of the beneficent purposes of the education system*") (emphasis added). Additionally, knowingly failing to report child abuse—a charge seemingly leveled at Defendants John Doe #1-10, is also outside the scope of employment as a matter of law. *See* ED § 6-202(a)(1)(ii) (providing that "[o]n the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for: . . . (ii) Misconduct in office, including knowingly failing to report child abuse in violation of § 5-704 of the Family Law Article.").

2. Count II (Negligence) Must be Dismissed Because Plaintiff Fails to Assert Any Facts Supporting the Claim.

To establish a cause of action in negligence, a plaintiff must allege (and ultimately prove) "the existence of a duty owed by a defendant to him (or to a class of which he is a part), a breach of that duty, a legally cognizable causal relationship between the breach of duty and the harm

suffered, and damages." *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 51 (2016). "The absence of any one of those elements will defeat a cause of action in tort." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A*, 152 Md. App. 698, 717-18 (2003) (further adding that "a cause of action arises when facts exist to support each element"). Mere proof of injury is insufficient to establish a negligence claim; rather, a plaintiff must first establish duty, breach, and causation before damages are relevant. *See Owens-Illinois, Inc. v. Armstrong*, 326 Md. 107, 121 (1992) ("In a negligence claim, the fact of injury would seemingly be the last element to come into existence. The breach, duty, and causation elements naturally precede the fact of injury.").

Although it is well-settled in Maryland that the "relation of a school vis a vis a pupil is analogous to one who stands in loco parentis, with the result that a school is under a special duty to exercise reasonable care to protect a pupil from harm," *Lunsford v. Bd. of Ed. of Prince George's Cty.*, 280 Md. 665, 676 (1977), the Supreme Court of Maryland very recently explained:

> [S]imply establishing a duty does not establish a negligence claim. In determining whether there was a breach of duty, we recognize that **a teacher is not an insurer of safety of students, but rather, he or she is "held only to the standard of the reasonable care exercised by a person of ordinary prudence."** *Segerman [v. Jones]*, 256 Md. [109], 125 [(1969)]. **In many instances involving negligence claims against teachers and administrators, the plaintiffs' claim will rise or fall on the issue of foreseeability.**

Gambrill v. Bd. of Educ. of Dorchester County, 481 Md. 274, 315 (2022) (emphasis added).

Of course, the standard of "reasonable care" does not require that school officials monitor every movement of a pupil within the school building. As the Supreme Court of Maryland aptly stated in *Segerman*, "[t]here is no requirement that the teacher have under constant and unremitting scrutiny the precise spots wherein every phase of . . . activity is being pursued, nor

is there compulsion that the general supervision be continuous and direct." 265 Md. at 130-31. Students in middle school and high school are not generally so constrained or restricted in their movements so as to be rendered helpless and completely reliant on the care of school officials for their basic needs, their every movement in the building supervised and surveilled. To this end, the Fourth Circuit recognized in *Stevenson ex rel. Stevenson v. Martin Cty. Bd. of Educ.*, 3 F. App'x 25, 31 (4th Cir. 2001), that "[a]ttending school is not the equivalent of incarceration or institutionalization . . . [t]he state has not assumed total responsibility for the student's care."

Yet, by alleging that the Board "knew or should have known that [Konski] and [Dehaven] were engaging in illegal and inappropriate sexual acts with [Plaintiff] on Defendants' school district property," supported only by the allegation that the alleged abuse occurred multiple times in the school building (yet not witnessed by any other adult), Plaintiff asks this Court to disregard the "reasonableness" standard in favor of a standard which requires that school personnel be omniscient. Such a heightened standard does not apply in the school context, and Plaintiff does not allege any specific facts that could lead to the reasonable inference that any school official had prior actual or constructive knowledge of the risk of abuse at issue in this case. This Court should reject Plaintiff's unsupported claims.

Here, to the extent Plaintiff seeks to hold the Board vicariously liable for Konski's and/or Dehaven's alleged abuse, such attempt fails as a matter of law because, as discussed above, Konski's and Dehaven's conduct was outside the scope of employment as a matter of law. Additionally, to the extent Plaintiff seeks to hold the Board vicariously liable for Defendants John Doe #1-10 knowingly failing to report abuse, such conduct is also outside the scope of employment as a matter of law.

Moreover, to the extent Plaintiff attempts to hold the Board directly liable, such attempt also fails. Although Plaintiff alleges that "Defendants knew or should have known that . . . Konski and Dehaven were sexually abusing John Doe and/or a risk to sexually abuse John Doe," *see* Complaint at ¶¶ 70, 71, 74, Plaintiff offers ***no facts whatsoever*** in support of that allegation. Indeed, the only fact alleged which arguably might have put a person or entity on notice of abuse or potential abuse was the sheriff's deputies' discovery of Plaintiff alone at Edgewood with Dehaven before students and faculty arrived at the building, but even those law enforcement officers did not suspect abuse. *See* Complaint at ¶ 43. Maryland Rule 2-305 provides that the operative pleading must "contain a clear statement of the facts necessary to constitute a cause of action." "Simple notice pleading does not suffice" to satisfy the "stringent requirements of Maryland Rule 2-305." *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 721 (2015). Yet this is exactly what Plaintiff attempts to do.

Plaintiff further alleges that "at no time during the periods of time alleged did Defendants have in place a system or procedure to supervise and/or monitor Konski and/or Dehaven to ensure that children, including John Doe, were not abused." *Id.* at ¶ 72. But again, Plaintiff's allegation contains only conclusory statements, not specific facts to support the conclusion. Even more, Plaintiff does not even attempt to cite any statutory, regulatory, or policy-imposed mandate that the Board have such a system or procedure in place during the school years in question. This Court should reject any attempt by Plaintiff to impose current legal standards on Defendants' acts and/or omissions occurring more than three decades ago.

Plaintiff also argues that "Defendants failed to reprimand, punish, report, or otherwise sanction Konski and Dehaven," *id.* at ¶ 73, but that allegation is contradicted by Plaintiff's own admission that the Deerfield administration held a meeting upon receiving a report of Konski's

alleged conduct. Granted, Plaintiff alleges that the Deerfield administrator(s) directed Plaintiff not to discuss Konski's conduct, but it is undisputed by Plaintiff's own allegations that Konski's abuse ceased as of that meeting. Furthermore, as to Dehaven, Plaintiff himself alleges that he did not report Dehaven's conduct to anyone until December 2020—nearly thirty years after Dehaven's alleged abuse. Thus, Plaintiff has not alleged facts to show that any failure on the part of the Board to reprimand Konski and/or Dehaven breached any duty of care or proximately caused any of Plaintiff's alleged harm.

Plaintiff lastly argues that Defendants failed to report suspected abuse as required by FL § 5-701 *et. seq.* and they "permitted Konski and Dehaven to violate Maryland criminal statutes." Complaint at ¶¶ 74-75. However, pursuant to Plaintiff's own allegations, only the principal or vice principal of Deerfield had notice of Konski's conduct, and Plaintiff suffered no further harm from Konski following the meeting convened by that principal or vice principal. Thus, causation is lacking, and Plaintiff's claim fails for this additional reason.

"The critical inquiry is not whether the complaint specifically identifies a recognized theory of recovery, but whether it alleges specific facts that, if true, would justify recovery under any established theory." *Tavakoli-Nouri v. State*, 139 Md. App. 716, 730 (2001). Here, Plaintiff identifies theories of recovery without alleging specific facts to justify recovery under any theory. In other words, Plaintiff tells because he cannot show. He ignores the foundational principle that "what [courts] consider are allegations of fact and inferences deducible from them, not merely conclusory charges." *See Berman v. Karvounis*, 308 Md. 259, 265 (1987). For this simple reason, Plaintiff fails to state a claim for negligence against the Board.

3. Count III (NEID) Must be Dismissed Because No Such Cause of Action Exists.

Count III must be dismissed for the simple reason that "Maryland does not recognize the tort of negligent infliction of emotional distress." *Alban v. Fiels*, 210 Md. App. 1, 16 (2013).

4. Count IV (IIED) Must be Dismissed Because the Conduct upon which Count IV is Based was Outside the Scope of Employment as a Matter of Law.

In Count IV, Plaintiff alleges that "Defendants, by and through their contact with Plaintiff, . . . intentionally committed multiple acts of extreme and outrageous conduct which caused severe emotional, psychological, and psychiatric injuries distress, and harm to Plaintiff[.]" *See* Complaint at ¶ 91. Plaintiff's claim must be dismissed for two reasons. First, although unclear, to the extent Count IV is asserted against the Board based upon Konski's and Dehaven's alleged conduct, such conduct was outside the scope of employment as a matter of law for the reasons discussed above. And second, to the extent Count IV is asserted against the Board vicariously based upon the conduct of John Does #1-10, the only Board employees whose conduct Plaintiff describes with any particularity is the principal or vice principal of Deerfield, who allegedly "forced [Plaintiff] to sign some type of 'contract' or other paper wherein he agreed not to 'bring up' or 'tell' about what was occurring." *See* Complaint at ¶ 29. Such conduct is also clearly outside the scope of employment as a matter of law insofar as it cannot be said to have been "in furtherance of the employer's business and could be fairly termed 'incident to the performance of duties entrusted to' the employee." *Houghton*, 412 Md. at 592. In either event, Count IV must be dismissed.

5. Count V (Negligent Failure to Rescue) Must be Dismissed Because Plaintiff has Not Alleged any Facts to Support His Conclusory Allegation that Defendants Knew or Should Have Known that Konski and/or Dehaven Posed a Risk of Harm.

Although, "[a]s a general rule, there is no affirmative legal duty to rescue someone in peril," *Fried v. Archer*, 139 Md. App. 229, 244 (2001), "Maryland, like most other jurisdictions, recognizes a common law exception to the 'no duty to rescue' rule when there is a special relationship between the potential rescuer and the endangered person," *id.* at 246 (citing Restatement (Second) of Torts, § 314A). "Examples of special relationships that, as a matter of law, create a special duty to aid, protect, or rescue include relationships between . . . school and pupil[.]" *Id.* at 247.

Nevertheless, "[t]he duty in each case is only one to exercise reasonable care under the circumstances," and "[t]he defendant is not liable where he neither knows nor should know of the unreasonable risk, or of the illness or injury." Restatement (Second) of Torts, § 314A cmt. e. Moreover, "[t]he defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured." *Id.* cmt. f.

Here, despite conclusory allegations that Defendants knew or should have known that Konski and/or Dehaven posed a risk of harm to Plaintiff, Plaintiff has not alleged any facts whatsoever to support that contention. Consequently, Count V should be dismissed.

6. Count VI (Failure to Warn) Must be Dismissed Because Plaintiff Does Not Allege Facts Sufficient to Show that Defendants Knew or Should Have Known that Konski and/or Dehaven Posed a Risk of Harm.

In Count VI, Plaintiff alleges that "Defendants owed a duty to Plaintiff and the public to warn about Konski and/or Dehaven when they knew, or should have known, that Konski and/or Dehaven posed a risk to all persons, and in particular, to minor children." *See* Complaint at ¶ 97. Plaintiff alleges that Defendants breached that duty by failing to "warn[] parents and the public

of the risks posed by Konski and/or Dehaven." *Id.* at ¶ 98. Count VI must be dismissed because, as to actual knowledge, Plaintiff does not allege *any* facts to support the allegation that Defendants knew that: (1) Konski posed a risk of harm until Plaintiff and/or his parents reported the matter to the Deerfield administration, after which time Plaintiff suffered no further harm from Konski; and (2) Dehaven *ever* posed a risk of harm. Similarly, Plaintiff does not allege any facts to support the conclusory allegation that Defendants *should* have known that Konski and/or Dehaven posed a risk of harm. As with Count II (Negligence), Count VI is subject to dismissal for failure to state a claim because Plaintiff fails to support the claim with any factual allegations.

7. Count VII (Violation of FL § 5-701) Must be Dismissed Because No Private Right of Action Exists under that Statute.

In Count VII, Plaintiff alleges that "Defendants, by their operation of Deerfield Elementary and Edgewood High School are considered 'a person who has permanent or temporary care of custody of a child' and/or 'a person who has responsibility for supervision of a child' and/or 'a person who, because of the person's position or occupation, exercises authority over a child' within the meaning of Md. Code Ann., Family Law § 5-701(b)(1)(i)((3), (4), and (5)." *See* Complaint at ¶ 103. Plaintiff further alleges that "Defendants, . . . by way of constructive or actual knowledge, knowingly permitted or acquiesced to the sexual abuse committed by Konski and Dehaven upon John Doe within the meaning of Md. Code Ann., Family Law § 5-701(b)(1)." *See* Complaint at ¶ 104.

Count VII must be dismissed because, while FL § 5-701 *et seq.* is a statutory scheme generally requiring "educators" to report suspected child abuse and/or neglect,[16] it does not

[16] FL § 5-704 provides that "each . . . educator. . . acting in a professional capacity in this State who has reason to believe that a child has been subjected to abuse or neglect: (1) shall notify the local department or the appropriate law enforcement agency; and (2) if acting as a staff member of a . . . school . . ., shall immediately notify and give all information required by this section to the head of the institution or the designee of the head." FL § 5-701(b)(1) defines "abuse" as "(i) the physical or mental injury of a child under circumstances that indicate that the child's

provide for a private right of action for failure to report suspected abuse or neglect, nor does it provide a private right of action for commission of abuse or neglect, as Plaintiff appears to assert. *See Walmart Stores, Inc. v. Holmes*, 416 Md. 346, 376 n.8 (2010) ("Where the legislature has intended to create a private cause of action for violations of a statute, it has done so explicitly."); *Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643, 672 (2006) (rejecting argument for existence of private right of action under particular statute because "[t]he statute does not provide for such a remedy").

8. Plaintiff's Negligence-Based Claims based upon Dehaven's Alleged Abuse are Barred by the Doctrines of Assumption of the Risk and Contributory Negligence.

The allegations in Plaintiff's own Complaint reveal that Plaintiff's negligence claims relating to Dehaven's alleged abuse are barred by the doctrines of assumption of the risk and contributory negligence. "The law is clear in Maryland that a minor may, under certain circumstances, assume the risk of his or her injuries, completely barring recovery." *Tate v. Bd. of Educ. of Prince George's County*, 155 Md. App. 536, 547 (2004). To establish the defense of assumption of risk, the defendant must establish that the plaintiff (1) had knowledge of the risk of the danger, (2) appreciated the risk, and (3) voluntarily confronted the risk of danger. *See id.* Furthermore, "[i]n determining whether a plaintiff had knowledge and appreciation of the risk, an objective standard must be applied and a plaintiff will not be heard to say that he did not comprehend a risk which must have been obvious to him." *Casper v. Charles F. Smith & Son, Inc.*, 71 Md. App. 445, 473 (1987), *aff'd*, 316 Md. 573 (1989). Although the issue of "whether the

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health or welfare is harmed or at substantial risk of being harmed by: 1. a parent; 2. a household member or family member; 3. a person who has permanent or temporary care or custody of the child; 4. a person who has responsibility for supervision of the child; or 5. a person who, because of the person's position or occupation, exercises authority over the child; or (ii) sexual abuse of a child, whether physical injuries are sustained or not."

plaintiff assumed the risk is generally a question for the trier of fact, . . . [w]hen, however, the facts permit only one conclusion, assumption of risk may be found as a matter of law." *Id.*

Here, even if Plaintiff was legally incapable of consenting to the sexual conduct with Dehaven for criminal purposes (which the Board is not conceding), "there is no authority for the proposition that the legal impediment to the defense of consent in the criminal court is equally applicable in the civil court." *Tate*, 155 Md. App. at 548. In *Tate*, the Plaintiffs sought to hold the defendant board of education liable for negligence as a result of the fifteen-year-old student leaving the school building during the school day with an unauthorized adult male with whom she had consensual sex, and which later resulted in the adult male's conviction. In that case, the Court "put to rest any notion that the defense of assumption of risk is not available to a defendant who is sued by a minor plaintiff." *Id.* Ultimately, the Court held that because the plaintiff "consented to being in his company, knowing his intentions, even if she ultimately said 'no' to the sexual activity . . . [n]ot even by extension could the Board have been liable for the ultimate assault upon her." *Id.* at 550. The allegations in the instant Complaint reveal that the same result should be reached here.

Nowhere in the Complaint does Plaintiff allege that Dehaven forced Plaintiff to engage in sexual activity. To the contrary, the Complaint reveals that Plaintiff had numerous opportunities to extricate himself from Dehaven yet he chose not to do so. Glaringly, Plaintiff alleges that he voluntarily drove himself numerous times to Edgewood before any students or faculty were present to engage in sexual activity with Dehaven. Plaintiff again could have chosen not to do so, but he did. Plaintiff also could have informed the sheriff's deputies who discovered Dehaven and Plaintiff alone at school early in the morning about Dehaven's conduct, but again he chose not to. He can hardly now blame the Board and its employees for his choices.

Moreover, Plaintiff's own allegations reflect that Plaintiff acted with contributory negligence as to his interactions with Dehaven, completely barring Plaintiff's recovery for negligence. "Maryland continues to recognize the doctrine of contributory negligence." *Doe v. Bd. of Educ. of Prince George's Cty.*, 982 F. Supp. 2d 641, 663 (D. Md. 2013), *aff'd*, 605 Fed. Appx. 159 (4th Cir. 2015). Accordingly, "a plaintiff who fails to observe ordinary care for his own safety is contributorily negligent and is barred from all recovery, regardless of the quantum of a defendant's primary negligence." *Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 451 (1983). In Maryland, "a child, five years of age or over, may be guilty of contributory negligence." *Taylor v. Armiger*, 277 Md. 638, 645-46 (1976). Although children are not held to the standard applied to adults, they nevertheless must "use that degree of care which ordinarily prudent children of that age and like intelligence are accustomed to use under the circumstances[.]" *Id.* at 646. "The Maryland courts have not hesitated to find a plaintiff contributorily negligent as a matter of law where common experience reveals the foreseeable dangers of the plaintiff's actions." *Reid v. Wash. Overhead Door, Inc.*, 122 F. Supp. 2d 590, 594 (D. Md. 2000) (citing cases). "While contributory negligence is ordinarily a jury question, the Maryland Court of Appeals has established that a plaintiff can be contributorily negligent as a matter of law when there is no genuine dispute as to the plaintiff's own negligence." *Id.* (citing *Driver v. Potomac Elec. Power Co.*, 247 Md. 75 (1967)).

Here again, Plaintiff's own allegations lead to the inevitable conclusion that Plaintiff failed to observe ordinary care in interacting with Dehaven. Even though a minor at the time, Plaintiff was a sixteen- or seventeen-year-old high school junior. The Board respectfully submits that an ordinarily prudent minor of that age knows or should know that repeatedly engaging in

sexual conduct with an adult carries certain risks and consequences. Plaintiff's negligence-based claims should be dismissed accordingly.

C. In the Event that Plaintiff's Claims are Allowed to Proceed, they are Subject to the Sovereign Immunity Cap in Place at the Time of the Alleged Occurrence.

Although the Act also amends CJP § 5-518 to increase the sovereign immunity cap for boards of education to $890,000 for claims arising out of child sex abuse and similarly amends ED § 4-105 to increase the required minimum comprehensive insurance coverage to that amount for child sex abuse claims, these amendments are prospective only and should not be applied retroactively. As discussed previously, the Maryland Supreme Court looks to see if the intent of the legislation was to be retrospective/retroactive as to "transactions which have occurred or rights and obligations which existed before passage of the act." *Goldberg*, 437 Md. at 205. Unlike with the provisions of the Act purporting to eliminate the statute of limitations for sexual abuse claims, there is no expression of legislative intent that the increased sovereign immunity cap and comprehensive insurance coverage apply retroactively. Sovereign immunity waivers must be clear and unambiguous. *See Magnetti v. University of Maryland*, 402 Md. 548, 565 (2007) (reasoning that "this Court must read and 'construe legislative dilution of governmental immunity narrowly in order to avoid weakening the doctrine of sovereign immunity by judicial fiat'"); *Stern v. Board of Regents*, 380 Md. 691, 700 (2004) ("We have emphasized that the dilution of the doctrine of sovereign immunity should not be accomplished by the judiciary, and that any direct or implied diminution of the doctrine falls within the authority of the General Assembly."). In this case, although the General Assembly was clear in its prospective increase of the sovereign immunity cap, it did not clearly and unambiguously increase the cap retroactively for prior claims such as that asserted by John Doe.

Moreover, because the minimum statutory comprehensive insurance coverage set forth in ED § 4-105 is inextricably tied to the sovereign immunity cap, a retroactive increase in the sovereign immunity cap would leave boards of education without adequate insurance for claims that pre-date the October 1, 2023 effective date of the Act. Boards of education that fully complied each year with the requisite insurance levels required by ED § 4-105[17] would now find themselves under-insured if the new $890,000 sovereign immunity cap were to apply retroactively, thereby exposing the education budget to the payment of unforeseen tort judgments in excess of the pre-existing comprehensive insurance coverage. Such a consequence was surely not the intent of the General Assembly and would, in any event, create a consequence that is contrary to the mandate set forth in Article VIII, § 3 of the Maryland Constitution that "[t]he School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education."

Accordingly, for both the legal and practical reasons discussed above, the Court must view the change in the sovereign immunity cap and comprehensive insurance levels prospectively only and not retroactively. Any ruling to the contrary would have the untenable result of eroding the education budget devoted for the provision of instruction, teacher salaries, and textbooks to the payment of tort judgments. For these reasons, the Court should rule that the Act's increase of the sovereign immunity cap to $890,000 only applies prospectively to claims that arise after the October 1, 2023 effective date of the Act. In this case, the sovereign immunity cap in place at the time of the alleged occurrences set forth in Plaintiff's Complaint

[17] Prior to October 1, 2016, the sovereign immunity cap set forth in CJP § 5-518 (West 2016) was $100,000, and the corresponding comprehensive insurance requirement set forth in ED § 4-105 was similarly set at $100,000. *See* 2016 Md. Laws Ch. 680. The sovereign immunity cap and corresponding required insurance coverages were increased prospectively to $400,000 effective October 1, 2016. *See id.* at § 2 (providing that the amendment "shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action [arising] before the effective date of this Act") (bracketed text added).

was $100,000. As a result, in the event that the Court allows Plaintiff's claims to proceed, the claims must be capped accordingly at $100,000.

V. CONCLUSION

For the reasons discussed above, the Board respectfully requests that this Honorable Court grant its Motion to Dismiss, along with such other and further relief as the Court deems appropriate.

Respectfully submitted,

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E-FILED; Harford Circuit Court
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IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE	*	
Plaintiff,	*	
v.	*	Case No.: C-12-CV-23-000767
BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*	*	
Defendants.	*	

* * * * * * * * * * * * *

ORDER

Upon consideration of the Motion to Dismiss filed by Defendant Board of Education of Harford County, and any opposition thereto, good cause having been shown, it is this _____, hereby

ORDERED that the motion is **GRANTED**; and it is further

ORDERED that the Complaint is **DISMISSED** in its entirety **WITH PREJUDICE**.

_____
Judge, Circuit Court for Harford County

E-FILED; Harford Circuit Court
Docket: 12/6/2023 4:15 PM; Submission: 12/6/2023 4:15 PM
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IN THE CIRCUIT COURT
FOR HARFORD COUNTY, MARYLAND

JOHN DOE,	*	Civil Action No. C-12-CV-23-000767
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
BOARD OF EDUCATION OF HARFORD COUNTY, et al.,	*	
	*	
Defendants.	*	
	*	

PLAINTIFF JOHN DOE'S OPPOSITION TO
DEFENDANT HARFORD COUNTY BOARD OF EDUCATION'S
MOTION TO DISMISS

Table of Contents

Pursuant to Maryland Rules 2-322(b) and 2-311, Plaintiff John Doe (proceeding pseudonymously due to the sensitive nature of the sexual abuse he sustained when he was a minor; hereinafter "Doe" or "Plaintiff"), through undersigned counsel, hereby responds in opposition to the Defendant Board of Education of Harford County's Motion to Dismiss his Complaint. Defendant Board of Education of Harford County ("HCBOE" or "Board") argues that Plaintiff Doe's claims arising from sexual abuse he sustained as a minor student are time-barred due to Maryland's statute of limitations. Yet John Doe's claims are timely pursuant to the Maryland Child Victims Act of 2023, which eliminated the statute of limitations for civil cases relating to child sexual abuse claims and repealed any prior amendments relating to the statute of limitations for child victims of sexual abuse. Moreover, Plaintiff has properly alleged all other claims, including those of Vicarious Liability and all Negligence-based claims, against the Board (although Plaintiff concedes that his claim of Negligent Infliction of Emotional Distress ("NIED") in Count III should be dismissed under Maryland precedent). The financial extent of the Board's liability is also governed by the CVA of 2023, which caps damages against public school boards at $890,000 per incident of abuse—Moving Defendant is not entitled to the cap that existed at the time Plaintiff was sexually abused.

Plaintiff respectfully requests for this Court to deny the Board's motion to dismiss, and to instead direct the Board to Answer his Complaint, and to allow discovery to proceed against HCBOE.

INTRODUCTION

This matter arises from the sexual abuse suffered by Plaintiff John Doe when he was a child and student attending HCBOE's schools, occurring in both elementary school and high school. Plaintiff suffered sexual abuse at the hands of the Board's employees and teachers, Janice

Konski and Elwood Dehaven. Such abuse began when Plaintiff was only ten years old and a fifth-grade student at HCBOE's Deerfield Elementary. Janice Konski (hereinafter "Konski"), an HCBOE employee and teacher at Deerfield Elementary, used her position as Doe's teacher to groom and sexually abuse. Konski, along with HCBOE administrators, were aware of the sexual abuse and warned Doe repeatedly to keep the abuse a secret. Konski's abuse of Plaintiff spanned months. Other HCBOE employees eventually forced then ten-year old Plaintiff to sign a document wherein he agreed not to bring up or tell anyone about the sexual abuse he suffered while attending Deerfield Elementary. HCBOE mistakenly believed it had successfully buried the sexual abuse John Doe suffered while attending Deerfield Elementary. Moreover, HCBOE had actual knowledge that it was employing a child abuser and took no action to change its employment practices (except an attempted coverup).

Tragically, due to HCBOE's negligence in the operation of its schools and its negligent employment practices, the horrific abuse perpetrated against John Doe while he was ten years old at Deerfield Elementary was not the only time he would be abused while enrolled as a student in the HCBOE school system. When Plaintiff was only sixteen, Edgewood High School custodian Elwood Dehaven (hereinafter "Dehaven") began to coerce, groom, and sexually assault Doe while Dehaven was acting within the scope of his employment as a custodian at Edgewood High School. Dehaven used his position as an HCBOE employee to pull John Doe from class in order to sexually abuse him numerous times Plaintiff attended Edgewood High School. Moreove, Dehaven abused other minors at Edgewood High, and was eventually prosecuted by the Maryland State Attorney's Office in the Harford County Circuit Court, C-12-CR-22-000520, for sexual abuse he committed against students at Edgewood High. *See Plaintiff's Complaint*, attached hereto as Exhibit "A," at ¶ 49.

As a result of the childhood sexual abuse, he sustained at the hands of HCBOE agents and employees, Plaintiff has suffered and continues to suffer from emotional distress, shock, physical manifestations of emotional distress, embarrassment, loss of self-esteem, loss of sleep, and other serious ailments. Plaintiff was severely physically, mentally, psychologically, and emotionally damaged by such abuse. *Id*., ¶ 54. Utilizing the Child Victims Act of 2023, which eliminated the statute of limitations for child victims of sexual abuse, Plaintiff filed this lawsuit against the HCBOE, alleging: Vicarious Liability (Count I); Negligence (Count II); NIED (Count III); Intentional Infliction of Emotional Distress ("IIED") (Count IV); Negligent Failure to Rescue (Count V); Failure to Warn (Count VI); and Violation of Maryland Code § 5-701, *et seq*. (Count VII). Instead of answering Plaintiff's Complaint, Defendant HCBOE has moved to dismiss Plaintiff's complaint, arguing that the CVA is unconstitutional, and that Plaintiff's claims are both time-barred and insufficiently pled. For the reasons herein, HCBOE's motion to dismiss should be denied.

STATEMENT OF MATERIAL FACTS

At all times relevant, Plaintiff John Doe was a minor student attending HCBOE's schools when he was sexually abused by two separate HCBOE employees, with such serious sexual abuse occurring only due to the intentional and negligent acts and failures of HCBOE. *See* Exhibit "A", at ¶ 1. Defendant HCBOE is defined as a body politic and corporate with the power to sue and be sued pursuant to Maryland Code, Education., Art. § 104, operating as the executive body of a Maryland school district within Harford County, Maryland, and operating both the Deerfield Elementary School and Edgewood High School. *Id*., ¶ 2.

When Plaintiff was a ten-year old student at Deerfield Elementary School, HCBOE employee and teacher Janice Konski coerced, groomed, and ultimately sexually assaulted Doe

while he was a student in her classroom. *Id*., ¶ 19. Konski used her position and authority as Plaintiff's teacher to confine ten-year old John to "in room" lunchtime detentions, during which times she groomed, coerced, and ultimately sexually abused John on multiple occasions. *Id*., ¶ 21. The first time Konski sexually abused John was during an in-room lunchtime detention. Konski would give lunchtime detention as discipline to students who disobeyed classroom rules or failed to turn in assignments. *Id*., ¶ 22. Konski began to groom John by telling him that he was receiving in-room detention for failing to turn in an assignment. *Id*., ¶ 22. Plaintiff was confined to Konski's room, and Konski began to ask John, a ten-year old student, whether he had ever kissed a girl and whether he would be her "boyfriend." *Id*. Konski's initial grooming and abuse of Doe included directing him, a ten-year old student entrusted to her care, to touch her breasts while she rubbed his penis. *Id*., ¶ 23. During all such abuse, Plaintiff was confined within Konski's classroom. Plaintiff was admonished by his teacher to keep the abuse secret, otherwise they would get "in trouble." *Id*., ¶ 24.

Konski used the artifice of "in-room" detentions to abuse John on several other occasions. *See id*., ¶¶ 24-28. Eventually, the abuse led to full penetrative intercourse in Konski's classroom—Konski raped Plaintiff, her ten-year old student. *Id*., ¶ 28. The Complaint details multiple instances of sexual abuse perpetrated by Konski against Doe when he was only ten years old and a fifth-grade student, while Konski was acting as Doe's teacher and tutor. *Id*., ¶¶ 22-26.

Although Doe reported the sexual abuse to his parents at some point during Konski's sexual abuse of him, Doe's parents did not immediately believe him. *Id*., ¶ 29. Doe attempted to report what was happening, and a meeting was arranged with the Deerfield Elementary principal or vice principal, Plaintiff John Doe, and his parents. *Id*. At the meeting, Plaintiff, a minor, was forced to

sign a "contract" or other similar type document wherein he agreed not to bring up or tell anyone about what was occurring. *Id*.

Horrifically, (but foreseeably due to HCBOE's actions and inactions as an employer of sexual abusers of minors), Plaintiff was sexually abused again while a student within the HCBOE school system. While he attended Edgewood High School, an HCBOE custodian named Elwood Dehaven (aka "Woody"), coerced, groomed, and sexually assaulted Plaintiff, who was then only sixteen or seventeen years of age. *Id*., ¶ 33. Dehaven openly sexually harassed students in the cafeteria at Edgewood High School, including by sexually harassing Plaintiff by placing money on Dehaven's crotch and asking him to take the money off his "dick" when Plaintiff did not have lunch money. *Id*., ¶34. Dehaven would also allow or invite students to his secluded office to smoke cigarettes. *Id*., ¶37. Dehaven followed Plaintiff to class and approached Plaintiff's gym teacher, asking for Plaintiff to be excused from gym because Dehaven needed his help with a task. *Id*., ¶ 34. Once in Dehaven's office, Dehaven locked his office door and ordered Doe to undress before sexually assaulting him by ordering Plaintiff to perform oral sex on Dehaven. *Id*., ¶¶ 38–39. On another occasion, Dehaven stopped Plaintiff in the hallway at school between the library and gymnasium and sexually abused him by forcing him to give and receive oral sex. *Id*., ¶ 42.

Further, Dehaven would arrange for Doe to meet him early at Edwood High School in the teacher's lounge, where Dehaven would sexually abuse him prior to school starting. *Id*., ¶ 43. Numerous instances of sexual abuse were committed by Dehaven against Doe within the school in various locations, including gymnasiums, the teacher's lounge, Dehaven's office, the nurse's office, the library, and the teacher's lounge. *Id*., ¶ 45.

HCBOE knew or should have known that it hired, retained, employed, and negligently supervised sexually abusive employees who assaulted minor students in the care and custody of

the Board. *Id*., ¶ 29, 52, 58, 70, 71, 73. HCBOE also specifically knew that Plaintiff was a victim of sexual abuse at age ten at the hands of its employee Konski and took intentional actions to cover up his sexual abuse. HCBOE then did nothing to prevent Plaintiff from being abused again by another employee of the Board at a different school. Accordingly, HCBOE knew or should have known that it had a widespread problem of its employees perpetrating sexual abuse against the minor students in its care, yet it took no action to minimize or remedy such abuse.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings. Md. R. 2-322(b)(2). In considering a motion to dismiss, the Court "must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them[.]" *Chavis v. Blibaum & Assocs., P.A.*, 476 Md. 534, 551 (2021). The facts in the complaint "must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC v. BAA Md., Inc*., 413 Md. 638, 643 (2010). When reviewing a motion to dismiss, reasonable inferences are drawn in a light favorable to the non-moving party. *Id*.

The question of when a cause of action accrues "is ordinarily left to judicial determination." *Federick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76 (2000). "[A] motion to dismiss ordinarily should not be granted by a trial court based on the assertion that the cause of action is barred by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint that the statute of limitations has run. *Litz v. Md. Dep't of the Env't*, 434 Md. 623 (Md. 2013).

LEGAL ARGUMENT

A. The Maryland Child Victims Act of 2023 Repealed the Statute of Limitations Relating to Child Sexual Abuse Claims and Repealed the 2017 Statutory Amendments.

i. The Child Victims Act of 2023 Eliminated the Statute of Limitations Relating to Child Sexual Abuse Claims in Maryland.

Maryland's Child Victims Act of 2023 is constitutional. The crux of the Board's argument in its motion to dismiss is that Maryland's Child Victims Act of 2023 is unconstitutional, and thus, the Board argues, Plaintiff's sexual abuse-based claims against it are time-barred.[1] Although the Board details the history of legislative efforts to expand the statute of limitations for child sexual abuse victims, this historical foray is unnecessary where the plain language of the CVA is clear. The CVA was validly signed into law on April 11, 2023, with an effective date of October 1, 2023, making Maryland the sixteenth state in the United States to repeal or expand its statute of limitations for civil child abuse claims, and joining a growing number of states making it easier for survivors of child sexual abuse to bring civil suits based on abuse that occurred decades earlier. 2023 Md. Laws Ch. 5, 2023 Md. Laws Ch. 6; *see, e.g.*, N.Y. CPLR § 214-j; N.J. Stat. §§ 2A:14-2b(a); *Doe v. Hartford Roman Catholic Diocesan Corp*., 317 Conn. 357 (2015) (holding that an extended sexual abuse statute of limitations applied retroactively to revive a time barred cause of action because it was a rational legislative response to the unique factors that often result in delayed reporting of childhood sexual abuse, which frustrated the ability of victims to bring an action under earlier revisions of the statute of limitations, and thus did not violate a defendant's substantive due process rights).

[1] The Board argues that Plaintiff would have been required to file his claims against the Board in either 1996 or 1997. [MTD, p. 7]. Plaintiff Doe does not concede this point, but rather states that it is irrelevant due to the CVA of 2023, which eliminated the statute of limitations related to Plaintiff's claims.

Maryland's Child Victims Act of 2023 revises Courts and Judicial Proceedings Articles §§ 5-117 and 5-518, Education Article § 4-105, and State Government Article § 12-104, to allow victims of childhood sexual abuse to bring sexual abuse claims from "any time." The relevant revisions to Cts. & Jud. Proc. § 5-117(b) (2023) state: "Notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act, the Local Government Tort Claims Act, or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time." 2023 Md. Laws Ch. 5, § 1; 2023 Md. Laws Ch. 6, § 1. The General Assembly stated its legislative intent "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." 2023 Md. Laws, Ch. 5; 2023 Md. Laws, Ch. 6. Further, the CVA applies retroactively: "this Act shall be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023." *Id*.

The CVA of 2023 "repeal[ed] the statute of limitations" and repealed any "statute of repose" for civil actions "relating to child sexual abuse." 2023 Md. Laws Ch. 5, 2023 Md. Laws Ch. 6. In repealing any "statute of repose"—which bars claims from being filed that have expired under previous statutes of limitations—the CVA creates an unlimited lookback period and revives claims that were previously time-barred. Although some states have created limited lookback periods of one year or two years, such as New York and New Jersey, it is believed that Maryland is one of the first states to pass a lookback period of indefinite duration. N.Y. CPLR § 214-j; N.J. Stat. §§ 2A:14-2b(a). The CVA of 2023 therefore allows any person sexually abused as a minor in Maryland to file a claim regardless of when the injury occurred. Here, the parties agree that the legislative purpose of the Act is to apply retroactively under certain circumstances. *Id*.

Previously, pursuant to a 2017 amendment to the statute of limitations, survivors of child sexual abuse were able to file a civil suit only until they were 38 years of age, unless the abuse occurred prior to the passage of the 2017 amendment, in which case they could file a civil suit until they were 21 years old. *See* 2017 Md. Laws Ch. 656. The CVA entirely eliminates these statutes of limitations. Therefore, Plaintiff's claims are not barred any statute of limitations; the CVA of 2023 provides the basis for the timely filing of his claims against the Board for its role in facilitating his sexual abuse to occur.

ii. Maryland's Child Victims Act of 2023 is Constitutional

The Board argues that the CVA of 2023, as applied retroactively, violates its constitutional rights because it impermissibly enlarges the statute of limitations for child sexual assault victims. Despite the Board's contentions, in *Roe v. Doe*, the Court noted that "there is no Maryland civil case in which a defendant challenged the full or partial retrospective application of a statute enlarging an ordinary statute of limitations." *Roe v. Doe*, 193 Md. App. 558 (Md. Ct. Spec. App. 2010) (holding that the Legislature did not infringe on any vested or substantial right of Defendant when it extended the period of limitations on claims of sexual abuse of minors and made that extension applicable to claims that were not barred, as of the effective date of the new legislation, by expiration of the prior limitations period).

"[The] Legislature can amend, qualify, or repeal any of its laws, affecting all persons and property which have not acquired rights vested under existing law; all of the courts agree on this." *Dal Maso v. Bd. of County Com'rs of Prince George's County*, 182 Md. 200, 206-07 (1943). This special rule of statutory construction holds that rights, which are purely of statutory origin such as those in the 2017 Amendments to the statute of limitations, "are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights

concerned are vested." *Selig v. State Highway Admin*., 383 Md. 655, 676 (2004). "Thus, once the repealed sections of a statute fade into the mist, any claim to relief traced to a repealed section disappears as well." *Dabbs v. Anne Arundel County*, 458 Md. 331, 363-64 (2018). The Legislature "has the power to amend a statute of limitations either by extending or reducing the period of limitations, so as to regulate the time within which suits may be brought." *Roe v. Doe*, 193 Md. App. 558, 578 (Md. Ct. Spec. App. 2010).

These principles of statutory construction has been applied consistently to permit repeal or amendment of statutes where the rights are statutory and not vested. *Dabbs v. Anne Arundel County*, 458 Md. 331 (Md. 2018); *Aviles v. Eshelman Elec. Corp*., 281 Md. 529 (1977). "Vested" means an accrued right or one that has "been completed or 'consummated to precocious' it becomes impossible to be eradicated statutorily." *Id*. "In other words, to be vested, a right must be more than a mere expectation based on the anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand." *Id*.

Moving Defendant argues that the 2017 Amendments to the statute of limitations could not be statutorily repealed by the CVA of 2023 because, it argues, such a right was not statutory, but was vested.[2] A statute of repose is defined as "a statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury" *Anderson v. United States*, 427 Md. 99, 46 A.3d 426, 437 (2012).

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[2] The 2017 Amendment to the statute of limitations contained the following language:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

2017 Md. Laws Ch. 12, § 1; 2017 Md. Laws Ch. 656 (West 2017).

The state constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are impaired. *Dua v. Comcast Cable of Maryland, Inc*., 370 Md. 604 (2002); *Roe v. Doe*, 193 Md. App. 558, 578 (Md. Ct. Spec. App. 2010) ("A right cannot be regarded as vested unless it is something more than a mere expectation . . . based upon an anticipated continuance of the present laws. To be fully vested, there must be a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or legal exemption from a demand made by another. Litigation expectations are never final.") (citing *D.J.L. v. Armour Pharmaceutical Co.*, 307 N.J.Super. 61, 84-85, 704 A.2d 104, 115 (1997)). The 2017 Amendments to the statute of limitations for child sexual abuse claims simply created a litigation expectation, not a vested substantive right to defendants. "Statutes of limitations promote judicial economy and fairness, but do not create any substantive rights in a defendant to be free from liability." *Anderson*, 427 Md. at 118.

The court may construe a statute as applying retroactively where it affects only a non-vested right or mere expectancy, if there is a legislative intent to that end. *MdHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 999 A.2d 969 (July 22, 2010); *Roe v. Doe*, 193 Md. App. 558, 579 (Md. Ct. Spec. App. 2010) (holding that the legislature did not infringe any vested or substantial right of a defendant when it extended the period of limitations on claims of sexual abuse of minors and made that extension applicable to claims that were not barred, as of the effective date of the new legislation, by expiration of the prior limitations period). In addition, courts in other states considering whether retroactively expanding the statute of limitations violates a defendant's due process rights have held that a defendant's rights under its state and federal due process clauses were not violated by expanding the applicable statute of limitations. *See, e.g.*, *Doe v. Hartford Roman Catholic Diocesan Corp*., 317 Conn. 357 (2015) (holding that an extended

sexual abuse statute of limitations applied retroactively to revive a time barred cause of action because it was a rational legislative response to the unique factors that often result in delayed reporting of childhood sexual abuse, which frustrated the ability of victims to bring an action under earlier revisions of the statute of limitations, and thus did not violate a defendant's substantive due process rights).

Defendant also suggests that, even if the reform made to retroactively eliminate the statute of limitations relating to child sexual abuse claims is constitutional (which it is), then Plaintiff's claims are barred by a purported statute of repose passed by the Legislature in 2017. For support, Defendants rely on C.J. § 5-117(d). But § 5-117(d) is not a statute of repose. Contrary to Defendant's claims, § 5-117(d) is not a statute of repose. Unlike other statutes of repose codified under Maryland law, *see e.g.* C.J. § 5-108, the law cited by Defendant is no different than § 5-109, which Maryland's highest court has determined, despite arguments from institutional defendants to the contrary, is not a statute of repose but a statute of limitations. *Anderson v. United States*, 427 Md. 99, 127 (2012). In *Anderson*, the court analyzed four factors to determine whether or not § 5-109 constituted a statute of limitations or a statute of repose: (1) the event that triggers the running of the period, (2) whether the statute eliminates claims that have not yet accrued, (3) the purpose behind the statute, and (4) the legislative history surrounding the statute. *Anderson*, 427 Md. 99. In ultimately determining that § 5-109 was a statute of limitations and not a statute of repose, the court in *Anderson* noted that the statute was triggered by an event related to the injury suffered by the plaintiff (just like the now-repealed § 5-117(d)), that the statute did not eliminate claims that have not yet accrued (just like the now-repealed § 5-117(d)), and that the statute contained a tolling provision for fraudulent concealment and minority (just like the now-repealed § 5-117(d) which contains a tolling provision for minority). *Anderson*, 427 Md. At 122 – 127. When it comes to the

purpose behind § 5-117(d), it is unimaginable that the Legislature would have intended to blindly immunize an entire class of institutions from liability for their acts and omissions in committing, or permitting, the sexual abuse of children. For these reasons, § 5-117(d) is not a statute of repose and therefore does not act as a bar to any of Plaintiff's claims.

The CVA of 2023 constitutionally and validly repeals previous amendments and limitations to the statute of limitations for claims relating to child sexual abuse. Plaintiff John Doe respectfully requests for this Honorable Court to deny the Board's motion to dismiss his claims against it on the basis that the Child Victims Act of 2023 is unconstitutional.

B. John Doe Has Properly Averred Vicarious Liability and Negligence Claims Against the Board.

i. John Doe's Vicarious Liability Claim Is Properly Alleged

The Board has also moved to dismiss Plaintiff's claims against it due to what it contends are insufficient allegations upon which relief may be granted. Yet the Board's motion should be denied because—beginning with Count I—Plaintiff has properly averred a claim of Vicarious Liability against the Board. *See* Exhibit "A*"*, ¶¶ 56-61. A claim that an employer is vicariously liable for an employee's misconduct is distinct from a claim of negligent hiring or supervision. *Robinson v. Bd. of Education of Washington County*, 2023 WL 2499854 (Mar. 14, 2023); *Fidelity First Home Mortgage Company v. Williams*, 208 Md. App. 180, 56 A.3d 501 (2012) (affirming verdict where employer was found to be directly liable for negligently supervising and retaining an employee, and also vicariously liable for that employee's misconduct.). "It is well settled that an employer may be held vicariously liable under the doctrine of *respondeat superior* for tortious acts committed by an employee, so long as those acts are within the scope of employment." *Tall v. Bd. of Sch. Comm'rs of Baltimore City*, 706 A.2d 659, 667 (Md. 1998). Even where tortious acts

are outside the scope of employment, an employer "can also be found liable for the tortious acts of its employees if the employer subsequently ratifies its employees' tortious conduct, ***even if that conduct was outside the scope of employment***." *D'Aoust v. Diamond*, 424 Md. 549, 608 (2012) (emphasis added).

Here, the Complaint alleges that the Board "is liable vicariously and derivatively for the negligent acts and omissions of [its] employees, servants, and agents while engaged in the operation of Deerfield Elementary and Edgewood High[.]" *See* Exhibit "A", ¶¶ 6, 7. Konski was acting within the scope of her employment when she used her position as Doe's teacher, her classroom, and the authority granted to her by the Board, to groom and then confine Plaintiff to in-room detentions, where she committed sexual abuse against him. *Id*., ¶¶ 55-61. The Court of Appeals of Maryland has recognized the inherent authority granted to a teacher by virtue of her position, noting that "[a]t bottom, a teacher-student relationship is based on the student's trust and acquiescence to her teacher's authority." *Anderson v. State*, 372 Md. 285, 812 A.2d 1016, 1022 (2002). "By virtue of [a teacher's position], [a teacher is] able to exert influence" upon a student. *Id*. at 1033. Konski used the artifice of "in-room" detentions to abuse John on several other occasions. *See* Exhibit "A", ¶¶ 24-28. Eventually, the abuse led Konski raping Plaintiff in her classroom, with Konski engaging in all forms of sexual intercourse with her ten-year old student while purporting to tutor him. *Id*., ¶ 28. The Complaint details multiple instances of sexual abuse perpetrated by Konski against Plaintiff when he was only ten years old and a fifth-grade student, while Konski was acting as his teacher and tutor. *Id*., ¶¶ 22-29. Konski was furthering the Board's interest because she was purporting to teach and tutor Doe during her employment hours. Similarly, Dehaven used his position as an HCBOE employee and his authority over Plaintiff to groom and sexually abuse him on multiple occasions.

Moreover, the Board knew that it hired, retained, and employed sexually abusive employees and employees who abused minors, including Konski and Dehaven. *See* Exhibit "A", ¶¶ 29, 42-53, 56-61. HCBOE also specifically knew that Plaintiff was a victim of sexual abuse at age ten at the hands of its employee Konski and took intentional actions to cover up the sexual abuse of Doe. *Id*., ¶ 29. Once Plaintiff reported that he was being sexually abused by his teacher, a meeting was arranged between the Deerfield Elementary principal or vice principal, Plaintiff, and his parents. *Id*. At the meeting, Plaintiff, a minor, was forced to sign a "contract" or other unenforceable purportedly binding document wherein he agreed not to bring up or tell anyone about what was occurring. *Id*. Accordingly, even if the tortious acts of its agents are found to be outside the scope of employment (which Plaintiff does not concede), the Board acted to ratify their tortious conduct by attempting to bind minor Plaintiff to a contract whereby he was unable to report his own sexual abuse. *Id*. ¶¶ 26-29. Where fact questions exist as to whether an employee is acting within the scope of her employment, summary dismissal is not proper. *Williams v. Cloverland Farms Dairy, Inc*., 78 F. Supp. 2d 479 (D. Md. 1999) (applying Maryland law, denying a motion summary judgment where questions of fact existed as to whether a clerk was acting within the scope of her employment when she committed tortious acts).

Plaintiff has properly alleged a claim of Vicarious Liability against the Board for the acts of its employees Konski and Dehaven. *See* Exhibit "A", ¶¶ 55-61. To the extent that either of the Board's employees were acting outside the scope of their employment when they committed such misconduct of grooming and sexually, this abuse was known to the Board and ratified by the Board, which took direct actions to silence Plaintiff (and likely other victims as well). *See* Exhibit "A", ¶ 29. Regardless, whether Konski and Dehaven were acting within the scope of their

employment is not a question to be decided at this procedural juncture. Accordingly, the Board's motion to dismiss Plaintiff's claim of vicarious liability in Count I should be denied.

ii. John Doe's Negligence Claim is Properly Averred Against the Board

Doe has more than sufficiently pled facts to establish his Negligence claim in Count II against the Board, and dismissal is entirely unwarranted. *See* Exhibit "A", ¶¶ 62-87. To state a claim for Negligence under Maryland law, a plaintiff must allege that: (1) the defendant was under a duty to protect the plaintiff from injury; (2) defendant breached that duty; (3) the plaintiff suffered actual injury or loss; and (4) the loss or injury proximately resulted from the defendant's breach of duty. *Dehn v. Edgecombe*, 384 Md. 606, 619 (2005). Generally, whether there is adequate proof of the required elements needed to succeed in a negligence action is a question of fact to be determined by the fact finder; however, the existence of a legal duty is a question of law to be decided by the court.

Here, Plaintiff has more than sufficiently averred all four elements of Negligence against the Board. Plaintiffs' allegations lay bare that he was a student attending HCBOE's schools, on school premises, with school employees, during school hours, when he suffered sexual abuse at the hands of HCBOE's employees. There is simply no basis for the Board to disclaim its duty of care to Plaintiff, and in fact, the Board concedes that its relation to Plaintiff was analogous to one who stands "in loco parentis." [*See* HCBOE's Memorandum, p. 19-20 (citing *Lunsford v. Bd. of Ed. Of Prince George's County,* 280 Md. 665, 676 (1977) (It is well settled in Maryland that the "relation of a school vis a vis a pupil is analogous to one who stands in loco parentis, with the result that a school is under a special duty to exercise reasonable care to protect a pupil from harm.")]. Additionally, Plaintiff has alleged that the Board breached its duty of care to Plaintiff in countless ways. *See* Exhibit "A", ¶¶ 82 (a)–(e), 83 (a)-(z). These tortious actions include:

permitting its employees to sexually abuse Plaintiff on school grounds, failing to properly and adequately supervise and discipline its employees to prevent the sexual abuse of minors in their care; failing to implement, enforce or follow protective or supervisory measures for the protection of minors; failing to warn Plaintiff of the risk of harm posed by Konski and Dehaven after Defendants knew of the risks posed; failing to report its employees' harmful acts to law enforcement; violating the requirements of Maryland's Child Abuse and Neglect Laws, Md. Code Family Law, § 5-705; allowing known sexual abusers of minors to remain employed; failing to adequately and properly train its employees regarding sexual abuse of minors; and negligently managing its schools, among many other breaches. *Id*.

The issue of proximate causation is ordinarily a jury question not proper for a motion to dismiss. *Lashley v. Dawson*, 162 Md. 549, 562 (1932) ("The true rule is that what is proximate cause of an injury is ordinarily a question for the jury."); *Kiriakos v. Phillips*, 448 Md. 440, 470 (2016) (proximate causation is ordinarily a question of fact for the jury to decide). Here, Plaintiff has alleged that the harm he suffered was foreseeable to the Board, because the Board had actual and/or constructive knowledge that it was employing teachers who sexually abused minor students in their care. *See* Exhibit "A", ¶ 29.

Plaintiff has properly averred that he suffered harm as a result of the Board's negligence. The Court of Special Appeals of Maryland has specifically held as a matter of law that "any sexual contact between an adult and a child, whether or not accompanied by force, is injurious to the child." *Pettit v. Erie Ins. Exch*., 117 Md. App. 212, 699 A.2d 550, 559 (1997). "Sexual contact by an adult upon a minor child clearly falls within our society's definition of offensive and harmful contact." *Id*. at 557. Because Plaintiff has more than sufficiently averred a claim of Negligence

against the Board, and because the issue of foreseeability or knowledge on behalf of the Board is a question of fact for the jury to decide, the Board's motion to dismiss Count II should be denied.

iii. Plaintiff Consents to Dismissal of His Claim of Negligent Infliction of Emotional Distress

Plaintiff agrees with Defendant that, currently, no viable claim exists for Negligent Infliction of Emotional Distress under Maryland law. Accordingly, Plaintiff consents to the dismissal of this claim in Count III. *See* Exhibit "A", ¶¶ 88-89.

iv. Plaintiff Has Sufficiently Pleaded Intentional Infliction of Emotional Distress Against the Board

To prove a claim of intentional infliction of emotional distress ("IIED") in Maryland, a plaintiff must show: (1) intentional or reckless conduct; (2) extreme and outrageous conduct; (3) a causal connection between the conduct and the emotional distress; and (4) severe emotional distress. *Harris v. Jones*, 281 Md. 560 (1977). This tort is appropriate "where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id*. at 567 (citations omitted). In Count IV, Plaintiff brings his claim of IIED against the Board. *See* Exhibit "A", ¶¶ 90-91.

Plaintiff has alleged that the Board and its agents committed intentional or reckless conduct that was extreme and outrageous, which included the regular and repeated sanctioning of child sexual abuse and forcing a ten-year old Plaintiff to enter into a "contract" whereby he agreed to keep the sexual abuse he suffered as a student a secret. *Id.*, ¶ 29. It is clear that, taken as true, such averments would qualify as intentional or reckless as well as extreme and outrageous. Further, Plaintiff averred that such conduct proximately caused him harm. However, whether the Board's

actions were in fact outrageous is a question of fact for the jury. Accordingly, this Honorable Court should deny the Board's motion to dismiss Count IV.

v. Plaintiff's Claim of Negligent Failure to Rescue is Proper

Plaintiff's claim for Negligent Failure to Rescue in Count V is proper. *See* Exhibit "A", ¶¶ 92-95. To establish a cause of action for negligent failure to rescue, a plaintiff must prove the elements of Negligence, as noted *supra* in Section B(ii). In addition, the plaintiff must also show that a "special relationship" exists between the potential rescuer and the endangered minor. The special duty rule requires a showing that the affirmative act of the defendant induced the victim's specific reliance upon the defendant's protection. *See Southland Corp. v. Griffith*, 332 Md. 704 (Md. 1993) (holding that an employee of a business has a legal duty to take affirmative action for the aid or protection of a business invitee who is in danger while on the business's premises, provided that the employee has knowledge of the injured invitee.).

Here, Plaintiff has alleged the existence of a special relationship between himself and the Board as he was a minor student attending its schools; the Board and its agents were standing in a position *in loco parentis* to Plaintiff and were under a duty to keep Plaintiff safe from harm while he was in their care and custody. In addition, Plaintiff has alleged that the Board knew or should have known that its employees were committing sexual abuses against minors on school grounds during school hours. *See* Exhibit "A", ¶¶ 52, 58, 70, 71, 73. Therefore, the Defendant's motion to dismiss Count VI should be denied.

vi. Count VII (Violation of FL Section 5-701)

In Count VII, Doe brings a civil claim based on a violation of Family Law Section 5-701, the statutory provisions relating to sexual molestation of a child by a parent or other person who has permanent or temporary care of the child. See Md. Code, Family Law § 5-70(b)(1)(i)(3)(4)

and (5). In Maryland, it is a long-established rule "that the violation of a statutory duty is only evidence of negligence but does not establish negligence per se." *Absolon v. Dollahite*, 376 Md. 547, 831 A.2d 6 (2003). Maryland Courts have "consistently held that the violation of a statutory duty may furnish evidence of negligence." *Bentley v. Carroll,* 3555 Md. 312, 325 (1999). Therefore, Count VII pleads a proper theory of negligence via a violation of statute that the jury should be allowed to consider. Accordingly, dismissal of this claim is not necessary, as Count VII is not separate from Count II; Plaintiff's theory of negligence premised upon the Board and its agents' and employees' violation of these statutory provisions must be permitted to proceed.

C. Doe Did Not "Assume The Risk" of His Own Sexual Abuse At the Hands of the Board's Employees

The Board also advances an offensive and outlandish argument that John Doe's negligence -based claims based upon Dehaven's sexual abuse are barred by the doctrine of assumption of risk and contributory negligence because then 16- or 17-year-old Plaintiff "assumed the risk" of Dehaven's sexual abuse of him via consent. In Plaintiff's Complaint, he details sexual abuse occurring when he was ten years of age and approximately fifteen through seventeen years of age. *See* Exhibit "A", ¶¶ 19-30, 32-48. To suggest that a child can "consent" to his sexual abuse is morally outrageous and legally meritless.

The Court of Special Appeals of Maryland has specifically held that "children cannot consent to sexual acts with an adult." *Petitt v. Erie,* 117 Md. App. 212, 224 (1997). Whether or not force was used to accomplish the sexual abuse is irrelevant: as a matter of law "any sexual contact between an adult and a child, whether or not accompanied by force, is injurious to the child." *Pettit v. Erie Ins. Exch*., 117 Md. App. 212, 699 A.2d 550, 559 (1997). "Sexual contact by an adult upon a minor child clearly falls within our society's definition of offensive and harmful contact." *Id*. at 557. "[A]though consent is a defense to battery, consent to sexual contact with an adult cannot be

given by a child as a matter of law." *Id*. at 559. These offenses are "not predicated upon the victim's unwillingness to participate, but rather upon the societal notion that a child of tender years has not yet been able to form the necessary sophistication to fully comprehend the potentially adverse effects of sexual activity." *Id*.

As a childhood sexual assault victim at the hands of not one but two of the Board's employee beginning while he was only ten years old, Plaintiff did not and could not "assume the risk" of sexual contact with the Board's employees. The Board's attempt to evade liability on this basis is meritless and offensive.

D. The Child Victims Act of 2023 Governs Plaintiff's Damages

The Board also attempts to argue that it is only liable for a $100,000 sovereign immunity cap that was in place at the time of the wrongful acts which form the basis of Plaintiff's Complaint. Yet the CVA of 2023 increased the statutory cap on civil damages for child sexual abuse claims. Under the CVA, damages against public school boards and governmental entities are capped at $890,000, with the damages cap applying to each incident of abuse. 2023 Md. Laws Ch. 5, 2023 Md. Laws Ch. 6. The legislative intent was clearly to increase the amount of recovery for victims of childhood sexual abuse. The Board's motion to dismiss, insofar as it seeks to arbitrarily limit Plaintiff's damages, should therefore be denied as meritless.

CONCLUSION

In validly enacting the Child Victims Act of 2023, Maryland joined sixteen states (and counting) to expand the statute of limitations for victims of childhood sexual abuse. One such victim who utilized the CVA to pursue his claims relating to child sexual abuse is Plaintiff John Doe, who has brought claims against Defendant Harford County Board of Education stemming from the Board's actions and inactions and its negligence in employing known sexual abusers who

began to sexually abuse Plaintiff Doe when he was only ten years of age and a student within the Board's educational system. Although the Board attempts to evade responsibility for its failures by arguing that the elimination of the statute of limitations for claims relating to child sexual abuse is unconstitutional, the CVA repealed the statute of limitations and statute of repose in Maryland. Furthermore, Plaintiff has properly averred claims of vicarious liability and negligence-based claims against the Board. Although Plaintiff concedes dismissal of his NIED claim, the majority of the Board's arguments in its motion are meritless. Moreover, a minor cannot consent to his own sexual abuse; thus, there is Defendant's motion to dismiss should be denied accordingly.

WHEREFORE, Plaintiff John Doe respectfully requests this Honorable Court DENY the Defendant's Motion to Dismiss and for such other and further relief as deemed necessary and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of December 2023 a copy of the foregoing was electronically filed and served via MDEC to:

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IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE	*	
Plaintiff,	*	
v.	*	Case No.: C-12-CV-23-000767
BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * *

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

Defendant Board of Education of Harford County (the "Board"), by its attorneys, Edmund J. O'Meally, Andrew G. Scott, Adam E. Konstas, and Pessin Katz Law, P.A., hereby files this Memorandum in Reply to Plaintiff's Opposition to the Board's Motion to Dismiss. For the reasons discussed more fully below, and as discussed previously in the Board's earlier filed Memorandum in Support of Motion to Dismiss, this Honorable Court should dismiss Plaintiff's Complaint for failure to state any claims upon which relief can be granted.

I. ARGUMENT

A. The Child Victims Act's Purported Revival of Expired Claims Violates the Maryland Constitution's Prohibition Against the Abrogation of Vested Rights.

Plaintiff's Opposition predictably argues that the Child Victims Act (the "Act") does not run afoul of the Maryland Constitution in its attempt to retroactively eliminate the statute of limitations and statute of repose for suits, such as those brought by John Doe, that have been time-barred for decades. According to Plaintiff, such claims that have long since been barred were lawfully resurrected on October 1, 2023, when the Act went into effect. In making these arguments, Plaintiff takes the position that the 2017 amendments to Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017) (hereafter "CJP § 5-117(d)") did not constitute a statute of repose

and simply created a "litigation expectation" rather than a vested substantive right for defendants, such as the Board, to be free from litigation of long-expired claims. Plaintiff's arguments are incorrect as a matter of well-established law as well as the clear language and legislative history of CJP § 5-117(d).

According to the Maryland Supreme Court in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 623 (2002), it is "firmly settled . . . that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights." Such legislation violates the due process clause set forth in Article 24 of the Maryland Declaration of Rights as well as the takings provision set forth in Article III**,** Section 40 of the Maryland Constitution.[1] It is also well-established that "[s]tatutes of repose . . . create a substantive right protecting a defendant from liability after a legislatively-determined period of time." *Anderson v. United States*, 427 Md. 99, 120 (2012). Despite Plaintiff's arguments to the contrary, CJP § 5-117(d) is indeed a statute of repose which created a substantive, vested right for the Board to be free from the litigation of claims, such as those asserted by Plaintiff, which, despite having been barred, are now being asserted decades after their alleged occurrence. Accordingly, as discussed previously and as further discussed below, the Act's purported attempt to revive such long-barred claims is clearly unconstitutional.

1. CJP § 5-117(d) Is a Statute of Repose.

By its very language, CJP § 5-117(d) provided a statute of repose for actions against non-perpetrator employer defendants, like Maryland school boards, by providing an absolute bar to actions brought after a designated time period unrelated to the occurrence or discovery of the alleged sexual abuse itself. *See Anderson*, 427 Md. at 118-19 (explaining that a "statute of repose

[1] *See Dua*, 370 Md. at 628-29 (reviewing cases that "simply take the position that retrospective statutes impairing vested rights violate the Maryland Constitution").

is used generally to describe a statute which shelters legislatively-designated groups from an action after a certain period of time," and that the "purpose of a statute of repose is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period . . . unrelated to when the injury or the discovery of the injury occurs"). Here, the statutory language of CJP § 5-117(d), enacted five years after the *Anderson* decision, is both clear and unambiguous in establishing a statute of repose:

> In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.[2]

Notwithstanding Plaintiff's arguments to the contrary, the analysis set forth in *Anderson* plainly demonstrates that the statutory language quoted above is indeed a statute of repose. First, it "shelters a legislatively-designated group" – *i.e.*, persons or governmental entities that are *not* the alleged perpetrators.[3] Second, it establishes a fixed bar date for the filing of claims "unrelated to when the injury or the discovery of the injury occur"—*i.e.*, twenty years after the date upon which an alleged "victim reaches the age of majority" regardless of when the injury occurred or when it is discovered. Third, it plainly and unambiguously establishes an "absolute bar"—*i.e.*, "[i]n no event may an action for damages . . . be filed . . . ."

Although a statute of repose is similar to a statute of limitations to the extent that both bar the assertion of claims after a period of time, there is a substantive and fundamental difference between the

[2] CJP § 5-117(d) (West 2017). *See also* 2017 Md. Laws Ch. 12, § 1; 2017 Md. Laws Ch. 656, § 1.

[3] Plaintiff contends on page 15 of his Opposition that it is "unimaginable that the Legislature would have intended to blindly immunize an entire class of institutions from liability for their acts or omissions in committing, or permitting, the sexual abuse of children." However, the General Assembly's legislative actions in 2017 were not "blind" but were, to the contrary, a well-considered effort to *prospectively* expand the limitations period for claims against perpetrators and others, while at the same time placing a fixed repose of twenty years after the victim reaches majority age, for the filing of suits against persons or governments other than perpetrators. Here, the General Assembly clearly and purposefully distinguished persons or governmental entities that were *not* perpetrators from the perpetrators themselves.

two. A statute of repose provides "an absolute bar to an action or a grant of immunity to a class of potential defendants after a designated time period," whereas a statute of limitations is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 637 n.1 (2018). Statutes of limitations are "motivated by 'considerations of fairness' and are 'intended to encourage prompt resolution of disputes' by providing a means of disposing of stale claims," whereas statutes of repose "are motivated by considerations of the economic best interests of the public as a whole and are substantive grants of immunity based on a legislative balance of the respective rights of potential plaintiffs and defendants." *Id.* (quoting *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 865 (4th Cir. 1989)).

In this case, as discussed above, the plain statutory language of CJP § 5-117(d) and its clearly stated purpose unambiguously created a statute of repose. It is well established that "if the [statutory] language is unambiguous and clearly consistent with the statute's apparent purpose," the "inquiry generally ceases at that point." *Williams v. Morgan State Univ.*, 484 Md. 534, 546-47 (2023) (quoting *Thornton Mellon LLC v. Adrianne Dennis Exempt Trust*, 478 Md. 280, 313-14 (2022)).[4] The 2017 session law explicitly identifies the provision codified as CJP § 5-117(d) as a "statute of repose" multiple times.[5] The law unequivocally states its "purpose" as both "altering the statute of limitations in certain civil actions relating to child sexual abuse" and "***establishing a statute of repose*** for certain civil actions relating to child sexual abuse." *See* 2017 Md. Laws Ch. 12 (emphasis added); 2017 Md.

[4] *See also First United Methodist*, 882 F.2d at 865 (observing in context of a statute of repose that "while a statute's legislative history is often helpful in resolving ambiguity, one of the time-honored maxims of statutory construction is that when the language of a statute is clear, there is no need to rely on its legislative history").

[5] The relevant language here is the language of the session law enacted by the legislature, whether or not that language is subsequently codified. The session laws themselves "are the law." *Wash. Suburban Sanitary Comm'n v. Pride Homes, Inc.*, 291 Md. 537, 544 n.4 (1981); *see also, e.g., Roe v. Doe*, 193 Md. App. 558, 565 (2010) (interpreting uncodified section 2 of 2003 Maryland Laws chapter 360 to prohibit the retroactive revival of time-barred claims arising from alleged sexual abuse of a minor), *aff'd*, 419 Md. 687 (2011); *Arrington v. Sun Life Assurance Co. of Can.*, No. TDC-18-0563, 2019 WL 2571160, at *5 (D. Md. June 21, 2019) ("Maryland law provides that the Annotated Code, as published by the Michie Company and West, [is] `evidence' of the laws, but the laws actually consist of the bills as passed by the Maryland General Assembly and appearing in the annual session laws.") (citations omitted).

Laws Ch. 656 (emphasis added).[6] Section 3 of the law expressly refers to "§ 5-117(d) of the Courts Article as enacted by Section 1 of this Act" as a "***statute of repose***." *See* 2017 Md. Laws Ch. 12, § 3 (emphasis added); 2017 Md. Laws Ch. 656, § 3 (emphasis added). Section 3 specifically provides that "§ 5-117(d) . . . shall be construed . . . 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." *See* 2017 Md. Laws Ch. 12, § 3 (emphasis added); 2017 Md. Laws Ch. 656, § 3 (emphasis added). Indeed, the 2023 Act expressly states that one of its intended purposes was to repeal "a statute of repose." *See* 2023 Md. Laws Ch. 5; 2023 Md. Laws Ch. 6. Accordingly, this Honorable Court should conclude that CJP § 5-117(d) is a statute of repose based on the clear and unambiguous statutory text of stated purpose of CJP § 5-117(d) as well as the clear recognition in the enactment of the 2023 legislation resulting in the Act.

2. The Board Had a Vested Right to Be Free From Plaintiff's Suit.

There can be no doubt that the Board in this case had a vested substantive right to be free from a suit initiated by Plaintiff more than twenty years after he reached the age of majority at some point in either 1993 or 1994.[7] This right to be free from suit was not a mere "litigation expectation" as suggested by Plaintiff at page 14 of his Opposition but, rather, a vested substantive right. The Office of the Attorney General recognized that this was the case when, in 2019, a legislative effort was initiated to eliminate the statute of limitations altogether after it had just been expanded *prospectively* in 2017. Instrumental to the defeat of the 2019 legislation was a letter a letter from Assistant Attorney General Kathryn M. Rowe opining that the 2017 law "must be read" to include

[6] *See Elsberry v. Stanley Martin Cos.*, 482 Md. 159, 187 (2022) ("[T]he bill title and purpose *are* part of the statutory text—not the legislative history.").

[7] As noted in the Board's earlier filed Memorandum in Support of Motion to Dismiss, Plaintiff has not been identified by name, nor does the Complaint indicate his date of birth. Nonetheless, based upon the allegations set forth in the Complaint and in Plaintiff's Opposition, it is clear that Plaintiff would have been approximately ten years old during the 1985-1986 school year and eighteen years of age at some point in 1993 or 1994.

a statute of repose, and that repealing the statute of repose "*would most likely be found unconstitutional* as interfering with vested rights as applied to cases that were covered by" CJ § 5-117(d) and § 3 of the 2017 law.[8] Based upon the clear and long-standing Maryland precedent reflected in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002), and earlier cases,[9] it is abundantly clear that the Maryland Constitution precludes the enactment of legislation, such as the Act, that retroactively "reviv[ed] a barred cause of action, thereby violating the vested right of the defendant." *Id.* at 633. In this case, because the allegations in the Complaint plainly demonstrate that Plaintiff reached the age of majority at some point in 1993 or 1994, the Board had a vested right to be free from suit, and his claims against the Board are, and have been, forever barred.

For these reasons, the Board respectfully submits that this Court should conclude: (1) that the Act is unconstitutional to the extent that it purports "to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023"; (2) that Plaintiff's claims are, and have been, barred by the three-year general statute of limitations set forth in CJP § 5-101 and by the statute of repose previously set forth in CJP § 5-117; and (3) that Plaintiff's claims must be dismissed accordingly.

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[8] *See* Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. Kathleen M. Dumais regarding H.B. 687, Mar. 16, 2019.

[9] *See, e.g., Berrett v. Oliver*, 7 G. & J. 191, 206 (1835) ("Can the Legislature exercise such a power [to retroactively annul deeds]? Unquestionably not."); *Thistle v. The Frostburg Coal Co.*, 10 Md. 129, 144-45 (1856) ("It is clearly not within the scope of the legislative power, to give to a law the effect of taking from one man his property and giving it to another, by any new rule of tenure, retroactive in its character."); *Grove v. Todd*, 41 Md. 633, 641-42 (1875) ("To concede to the Legislature the power [to transfer property from one person to another], by retroactive legislation, […] is at once to concede to it the power to divest the rights of property and transfer them without the forms of law, upon any notion of right or justice that the Legislature may think proper to adopt — a concession that can never be made[.]"); *Comptroller v. Glenn L. Martin Co.*, 216 Md. 235, 258 (1958), *cert. denied*, 358 U.S. 820 (1958) (retroactive application of tax statute that sought "to reach transactions completed long before its enactment" unconstitutional).

B. <u>Alternatively, Each Count Must Be Dismissed For Failure to State a Claim Upon which Relief may be Granted.</u>

1. Count I (Vicarious Liability) Must be Dismissed Because No Such Stand-Alone Cause of Action Exists, and Even if it Did, the Board Cannot be held Vicariously Liable for the Alleged Sexual Abuse or Cover-Up of Same by its Employees.

In its Motion, the Board argued that Count I must be dismissed because: (1) Maryland law only recognizes *respondeat superior* as a theory of vicarious liability, not as a separate stand-alone cause of action; and (2) even if a claim for "vicarious liability" were viable as a stand-alone claim, the Board cannot be vicariously liable for the alleged abuse committed by Konski and Dehaven or the alleged covering up of such abuse by John Does # 1-10 because such conduct was outside the scope of public school employment as a matter of law. In his Opposition, Plaintiff makes several arguments, none of which are persuasive.

<u>First,</u> Plaintiff argues that "[a] claim that an employer is vicariously liable for an employee's misconduct is distinct from a claim of negligent hiring or supervision." *See* Opposition at 15. The Board does not disagree. The Board's point is that Plaintiff has separated out his vicariously-rooted negligence claim (in Count I) from his directly-related negligence claim (in Count II), which, as noted in the cases cited by the Board in its Motion, is not proper under Maryland law. Notably, Plaintiff does not reference the cases the Board cited in its Motion, much less attempt to distinguish or discredit them.

<u>Second,</u> while apparently conceding that Konski's and Dehaven's alleged sexual assaults were outside the scope of employment as a matter of law, Plaintiff argues that Konski and Dehaven were acting within the scope of their employment when they "groomed" Plaintiff for such sexual assaults because they used their "authority" and "influence" as public school employees in order

to ultimately sexually assault Plaintiff. *See* Opposition at 16. That argument is not only preposterous, it is contrary to well-settled Maryland law as discussed below.

The Appellate Court of Maryland has held that, within the public educational context, employee conduct which violates public policy, contravenes school board policy, and violates criminal law is outside the scope of employment as a matter of law. In *Tall v. Bd. of Sch. Comm'rs of Baltimore City*, 120 Md. App. 236, 239-40 (1998)—which the Board cited in its Motion but which Plaintiff tellingly did not discuss or make any attempt to distinguish—the parent of a nine-year-old child with Down syndrome sought to hold the Board of School Commissioners of Baltimore City vicariously liable for the actions of the child's teacher, which involved beating the child on the arms and legs with a ruler in response to the child having urinated on himself.[10] The circuit court granted the school system's motion to dismiss, and the Appellate Court affirmed. *Id.* at 239, 241.[11]

There, as here, the plaintiff alleged that the employee "was 'an agent, servant, and/or employee of the School Board acting within the scope of his employment while he was teaching [the student]," and he argued that "merely because [the employee's] acts were intentional, this does not compel the conclusion that his conduct was beyond the scope of employment," and that "it should be left to the fact finder to determine whether or not the acts were committed within the scope of employment." *Id.* at 247-48. The Court rejected those arguments and concluded that the school system could not be held vicariously liable for the employee's conduct because that conduct

[10] More specifically, the plaintiff brought assault, battery, and intentional infliction of emotional distress against the school system. *See Tall*, 120 Md. App. at 239. Here, although Plaintiff has styled Count II as one for negligence, the conduct for which Plaintiff attempts to hold the Board vicariously liable is undoubtedly intentional in nature.

[11] On appeal, the Appellate Court reviewed the trial court's ruling as if it had granted summary judgment insofar as the plaintiff-appellant had attached a copy of a Maryland statute, a local board policy, and a handout issued by the school system to parents. *See Tall*, 120 Md. App. at 240-41, 244-46.

was outside the scope of employment as a matter of law—notwithstanding the acknowledgment that it was "a fair and reasonable inference that [the employee's] responsibilities included . . . helping the students with their clothing, touching and cleaning them, and disciplining them if they misbehaved or failed to listen." *Id.* at 248, 251.[12] Citing authority and employing reasoning equally applicable to the instant matter, the Court explained:

> In analyzing the scope of employment issue in the educational context, *Hunter v. Board of Education of Montgomery County*, 292 Md. 481 (1982), is instructive. There, the Court observed that a school board "can only be held liable for the intentional torts of its employees committed while acting within the scope of their employment." *Id.* at 491 n. 8. In *dicta*, the Court also said:
>
> > Where, as here, it is alleged that the individual educators have willfully and maliciously acted to injure a student enrolled in a public school, *such actions can never be considered to have been done in furtherance of the beneficent purposes of the educational system.* Since such alleged intentional torts constitute an abandonment of employment, the Board is absolved of liability for these purported acts of its individual employees.
>
> *Id.* (Emphasis added).
>
> Appellant argues that the *dicta* in *Hunter* is not dispositive of the issue presented here. In observing that a school board could be liable for an employee's intentional torts committed within the scope of employment, he asserts that the *Hunter* Court contemplated that intentional torts could be "committed at least in part in the furtherance of the employer's business." Therefore, according to appellant, the ultimate determination in this case is one for a jury.
>
> * * *
>
> Although we have not uncovered any Maryland cases dealing with the precise issues presented here, other jurisdictions that have considered the scope of employment issue with respect to acts of assault or sexual child abuse committed by a teacher upon a student provide guidance. *Boykin v. District of Columbia*, 484 A.2d 560 (D.C.1984), is particularly illuminating.
>
> In *Boykin*, the field coordinator of a program for deaf and blind children, who was employed by the District of Columbia, sexually assaulted a student.

[12] In so concluding, the Court provided a comprehensive discussion of the principles Maryland courts consider in determining whether an employee's conduct is within the scope of employment. That discussion, while too lengthy to quote here, may be useful to the Court. *See Tall*, 120 Md. App. at 251-54.

Thereafter, the employee resigned and entered a guilty plea to a charge of assault. The child's mother, as the legal representative of the child, then filed suit against the employee and, based on the doctrine of *respondeat superior*, against the District of Columbia. After the trial court granted the employer's motion for summary judgment, appellant appealed. The *Boykin* court concluded that, as a matter of law, the employee's tortious conduct was not within the scope of his employment. *Id.* at 561. Acknowledging that scope of employment is ordinarily a question for the jury, the court nonetheless recognized that it "becomes a question of law for the court . . . if there is not sufficient evidence from which a reasonable juror could conclude that the action was within the scope of the employment." *Id.* at 562.

As in this case, the appellant in *Boykin* argued that the assault was a direct outgrowth of the employee's job assignment, because that assignment contemplated physical contact with the child. She asserted that "a deaf, blind and mute child can be taught only through the sense of touch," and because "physical touching was necessarily a part of the teacher-student relationship," she claimed that it was "foreseeable that sexual assaults could occur . . . ." *Id.* Rejecting this argument, the *Boykin* court stated that it did "not believe that a sexual assault may be deemed a direct outgrowth of a school official's authorization to take a student by the hand or arm in guiding her past obstacles in the building." *Id.* It reasoned:

> The sexual attack by [the employee] on [the student] was unprovoked. It certainly was not a direct outgrowth of [the employee's] instructions or job assignment, nor was it an integral part of the school's activities, interests or objectives. [The employee's] assault was in no degree committed to serve the school's interest, but rather appears to have been done solely for the accomplishment of [the employee's] independent, malicious, mischievous and selfish purpose.

Id.

The decision of the *Boykin* court is consistent with decisions from other jurisdictions that have refused to hold employers liable under the doctrine of *respondeat superior* for sexual assaults upon children perpetrated by school employees. . . .

These cases compel the conclusion that [the employee's] conduct was not within the scope of his employment. . . . . Moreover, as a result of his conduct, [the employee] was convicted of assault. Even if the criminal conviction is not dispositive of the issue, it surely establishes the egregiousness of [the employee's] misconduct, and lends support to the Board's claim that his action was outside the scope of his employment.

We are thus unpersuaded by appellant's argument that [the employee's] conduct should be considered in furtherance of the Board's objectives, because it

> was arguably incidental to its objective of educating students. We recognize that there are legitimate occasions when a teacher may have to touch a student. These instances may include assisting in breaking up fights, preventing an accidental injury, protecting oneself, providing appropriate aid to disabled students, or employing passive restraint with a student who has emotional disabilities. Certainly, it is foreseeable that a teacher of a child with special needs may have to touch the student in order to assist the child in clothing himself, clean the child after the child eats, help the student in the bathroom, ensure that the child does not physically injure himself, or attend to the child's health needs. That physical contact may be appropriate in certain situations, however, in no way constitutes implied authority for a teacher to beat a mentally disabled child as a means to discipline him. . . .
>
> In sum, we fail to see how the act of physically striking a disabled child could be considered in furtherance of the Board's objective of educating disabled children, particularly when, as here, both State and local law forbid the use of corporal punishment for discipline purposes. Therefore, we conclude that no material factual dispute existed concerning whether [the employee's] conduct was within the scope of employment; [the employee's] conduct was neither expected, foreseeable, nor sanctioned. Rather, it was so extreme in nature, and so far beyond the bounds of appropriate behavior, that it cannot possibly be considered to have been in furtherance of appellee's objectives. Even when we view the facts and inferences in the light most favorable to appellant, as we must, we cannot say that the trial court erred in granting summary judgment.

Tall, 120 Md. App. at 254-60.

Thus, *Tall* stands for the proposition that where a public school employee acts to physically harm a student, such conduct is outside the scope of employment as a matter of law and the employer public school board cannot be held vicariously liable for it. Applying that principle to the instant case, Konski's and Dehaven's alleged abuse, and John Does #1-10 alleged cover-up of that abuse, is so extreme in nature and so far beyond the bounds of appropriate behavior that it cannot possibly be considered to have been incidental to their job duties or in furtherance of the Board's objectives. Indeed, it can hardly be disputed that Konski's and Dehaven's conduct was far more extreme and outrageous than the teacher's conduct in *Tall*. Consequently, it is all the

more clear that their conduct was outside the scope of their employment as a matter of law, and Count I should be dismissed accordingly.[13]

To the extent this Court is not inclined to find *Tall* to be dispositive, the application of the more general scope-of-employment factors also compels the conclusion that the alleged conduct of Konski, Dehaven, and John Does #1-10 were outside the scope of employment. In what has become the seminal modern case on the scope-of-employment analysis under Maryland law, the Supreme Court of Maryland in *Sawyer v. Humphries*, 322 Md. 247 (1991), explained:

> **The general test set forth in numerous Maryland cases for determining if an employee's tortious acts were within the scope of his employment is whether they were in furtherance of the employer's business and were "authorized" by the employer.** In an often-quoted passage, the Court in *Hopkins C. Co. v. Read Drug & C. Co.*, 124 Md. 210, 214 (1914), explained:
>
> > **"'The simple test is whether they were acts within the scope of his employment; not whether they were done while prosecuting the master's business, but whether they were done by the servant in furtherance thereof, and were such as may fairly be said to have been authorized by him.** By "authorized" is not meant authority expressly conferred, but whether the act was such as was incident to the performance of the duties entrusted to him by the master, even though in opposition to his express and positive orders.'" (quoting from *Wood on Master and Servant* § 279 (1877)).
>
> *Accord, e.g., Wood v. Abell*, 268 Md. 214, 227 (1973); *Drug Fair v. Smith*, 263 Md. 341, 350 (1971); *LePore v. Gulf Oil Corp.*, 237 Md. 591, 595 (1965); *Lewis v. Accelerated Express*, 219 Md. 252, 255 (1959); *E. Coast Lines v. M. & C.C. of Balto.*, 190 Md. 256, 285 (1948).
>
> In applying this test, there are few, if any, absolutes. Nevertheless, various considerations may be pertinent. The Court, in *E. Coast Lines v. M. & C.C. of Balto.*, *supra*, 190 Md. at 285, summarized four of them:
>
> > **"To be within the scope of the employment the conduct must be of the kind the servant is employed to perform and must occur**

[13] The only case Plaintiff cites on this point is the criminal case, *Anderson v. State*, 372 Md. 285 (2002). That case, however, is inapposite because it addresses whether the perpetrator bore responsibility for the care of the minor victim at the time of the crime, as an element of that crime. *Anderson* does not address whether the criminal actor was acting within the framework of a principal-agent relationship which might vicariously extend responsibility for the criminal act to the perpetrator's employer.

> **during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the master.** *Mechem on Agency,* Section 36; *Huffcut on Agency,* Section 5; *American Law Institute, Restatement, Agency,* Section 228, comment (b)."

In *A. & P. Co. v. Noppenberger,* 171 Md. 378, 390–391 (1937), after setting forth the factors quoted above, the Court went on to quote with approval the *Restatement of Agency* § 229 (1933), as follows:

> **"On the other hand, certain conduct of the servant may be within the scope of his employment, although not intended or consciously authorized by the master, but '(1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized. (2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:—(a) whether or not the act is one commonly done by such servants; (b) the time, place and purpose of the act; (c) the previous relations between the master and the servant; (d) the extent to which the business of the master is apportioned between different servants; (e) whether the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant; (f) whether or not the master has reason to expect that such an act will be done; (g) the similarity in quality of the act done to the act authorized; (h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant; (i) the extent of departure from the normal method of accomplishing an authorized result, and (j) whether or not the act is seriously criminal.' *Id.*, 229."**

See Rusnack v. Giant Food, Inc., 26 Md.App. 250, 261–265 (1975); *Prosser and Keeton On The Law Of Torts* § 70 (5th ed. 1984); *Restatement (Second) Agency* §§ 228, 229 (1958).

In addition, an important factor is whether the employee's conduct was "expectable" or "foreseeable." *Cox v. Prince George's County,* 296 Md. 162, 171 (1983); *LePore v. Gulf Oil Corp., supra,* 237 Md. at 597, 600; *Central Railway Co. v. Peacock,* 69 Md. 257, 262 (1888).

Furthermore, and particularly in cases involving intentional torts committed by an employee, this Court has emphasized that where an

> **employee's actions are personal, or where they represent a departure from the purpose of furthering the employer's business, or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality, the employee's actions are outside the scope of his employment.** *LePore v. Gulf Oil Corp., supra,* 237 Md. at 596–598; *Carroll v. Hillendale Golf Club,* 156 Md. 542, 545–546 (1929); *Steinman v. Laundry Co.,* 109 Md. 62, 67 (1908); *Central Railway Co. v. Peacock, supra,* 69 Md. at 265.
>
> **Finally, "[w]here the conduct of the servant is unprovoked, highly unusual, and quite outrageous," courts tend to hold "that this in itself is sufficient to indicate that the motive was a purely personal one" and the conduct outside the scope of employment.** *Prosser and Keeton On The Law Of Torts, supra,* at 506. *See Henley v. Prince George's County,* 305 Md. 320, 330 n. 2 (1986); *Carroll v. Hillendale Golf Club, supra,* 156 Md. 542.

Sawyer, 322 Md. at 255-57 (emphasis added) (parallel citations omitted).[14]

Here, there is no conceivable way to conclude that Konski's and Dehaven's alleged conduct of engaging in sexual conduct with a student and John Does #1-10's alleged conduct of covering up that abuse was "of the same general nature as that authorized, or incidental to the conduct authorized." *Sawyer*, 322 Md. at 255. Indeed, applying the *Sawyer* factors set forth above, the conduct at issue was not "commonly done" by teachers, custodians,[15] or other school staff; the

[14] Applying those principles to the facts at hand, the *Sawyer* Court held that a police officer's conduct of throwing rocks at a citizen's car while off duty and in his personal car was outside the scope of his employment because, even though "a police officer may be 'on duty' 24 hours a day in the sense that he may be on call and may under certain circumstances have an obligation to act in a law enforcement capacity even when on his own time[,] [t]hat does not, however, lead to the conclusion that the officer is always acting in furtherance of the State's business of law enforcement and that all conduct is incidental to police work." *Sawyer*, 322 Md. at 258-59 (further reasoning that "[e]ven though a police officer may be said to be 'on duty' all of the time, cases regularly hold that a police officer acts outside the scope of his employment where he acts for his own personal reasons and not in furtherance of his employer's law enforcement function"). The Court further reasoned: "[W]hether or not tortious conduct occurs during duty hours or the normal period of employment is only one of many considerations in determining whether the conduct is within the scope of employment. Conduct may occur while one is on duty but still be outside of the scope of employment. In fact, in virtually all of the cases in which this Court has held that an assault by an employee was outside the scope of employment, the assault occurred at a time when the employee was 'on duty.'" *Id.*

[15] Beyond the obvious point that sexual abuse of a minor is outside the scope of an educator's employment as a matter of law, *any* substantive engagement or interaction between a school custodian and a student is also outside the scope of a custodian's employment, and thus Plaintiff's allegation that Dehaven acted "in the course and scope of his employment as a custodian" defies logic. Complaint at ¶ 33. Simply put, common sense does not permit any reasonable inference that the scope of a school custodian's employment includes any engagement with school children whatsoever. The scope of a school custodian's employment is to clean the school, not interact with students.

conduct at issue was "outside the enterprise of the master"; the Board would never have had "reason to expect such an act w[ould] be done"; the conduct at issue was a drastic "departure from the normal method of accomplishing an authorized result"; and the conduct was "seriously criminal." *Id.* at 256. Furthermore, given that the conduct at issue was undeniably intentionally wrongful, there is no reasonable way to conclude that the conduct constituted anything other than "personal conduct" which was "a departure from the purpose of further the employer's business." *Id.* at 256-57. In short, it cannot be seriously argued that the conduct at issue was anything other than "unprovoked, highly unusual, and quite outrageous," and that the employees' "motive was a purely personal one." *Id.* at 257. Consequently, the conduct at issue—even though allegedly committed on the job—was outside the scope of employment and the Board cannot be held vicariously liable for it.[16]

[16] *See Jones v. Family Health Centers of Baltimore, Inc.*, 135 F. Supp. 3d 372, 382-85 (D. Md. 2015) (granting summary judgment in employer's favor arising out of sexual harassment/assault of plaintiff by Chief Financial Officer of company on reasoning that "[t]here is no evidence in the summary judgment record that [the employee's] acts furthered [the employer's] business interests or were otherwise authorized by the organization"); *Perry v. FTData, Inc.*, 198 F. Supp. 2d 699, 709 (D. Md. 2002) (granting employer's motion to dismiss arising out of alleged extreme and pervasive sexual harassment of plaintiff by supervisor on the reasoning: "Plaintiff misunderstands the test for scope of employment. In order to determine FTData's liability, the question is whether McLallen, who allegedly committed the tortious acts, did so for FTData's purposes and with the actual or apparent authority of FTData. It is not, as Plaintiff would have it, whether McLallen's alleged tortious acts involved his actual or apparent authority over Plaintiff. While Plaintiff has alleged that McLallen used his supervisory authority over her to attempt to coerce her to engage in sexual activity, she does not allege that he did so in furtherance of FTData's business."); *Lins v. United States*, No. CV ELH-17-2163, 2018 WL 2183393, at *12 (D. Md. May 10, 2018) (granting motion to dismiss where employee psychologist "used her position of power and trust to induce Mr. Lins [*i.e.*, the patient] to engage in a sexual relationship with her under the guise of providing therapy" and "used her position as his VA counselor to induce him to continue the behavior" despite the fact that "[m]uch of this conduct occurred in the VA Hospital, while Dr. Burns was working as an employee of the VA and treating Mr. Lins during inpatient and outpatient addiction treatment programs," on the reasoning that "the question under Maryland law is whether Dr. Burns' actions 'represent a departure from the purpose of furthering the employer's business'") (quoting *Sawyer*, 322 Md. at 257); *Anderson v. Johns Hopkins Bayview Medical Ctr., Inc.*, No. 16-CV-01567-JFM, 2017 WL 220136, at *4 (D. Md. Jan. 18, 2017) (granting employer's motion to dismiss vicarious liability intentional tort claims arising out of supervisor's alleged sexual harassment of plaintiff on the reasoning that "[t]here is no question here that [the supervisor's] alleged actions were not actuated, at least in part, to serve his employer; rather, the allegations pled clearly suggest [the supervisor's] actions were personal in nature," and "[f]urthermore, the alleged sexual harassment actions were certainly not of the type Shields was hired to perform. Indeed, the alleged acts are in direct contrast with Hopkins' sexual harassment policies."); *McCoy v. Amateur Athletic Union of the U.S., Inc.*, No. CIV.A. MJG-13-3744, 2015 WL 302770, at *1, *7 (D. Md. Jan. 22, 2015), *aff'd*, 621 Fed. Appx. 182 (4th Cir. 2015) (finding the *Tall* Court's reasoning "persuasive" and granting summary judgment in favor of Amateur Athletic Union, "one of the largest, non-profit, volunteer, sports organizations in the United States . . . dedicated exclusively to the promotion and development of amateur sports and

Third, Plaintiff argues that "[t]o the extent that either of the Board's employees were acting outside the scope of their employment when they committed such misconduct of grooming and sexually [sic], this abuse was known to the Board and ratified by the Board, which took direct actions to silence Plaintiff[.]" Opposition at 17; *see also id.* at 16 (citing *D'Auost v. Diamond*, 424 Md. 549, 608 (2012)). That argument is completely meritless because, as explained in the sole case upon which Plaintiff himself relies, vicarious liability via ratification requires that "there was previous knowledge on the part of the principal of all the material facts and circumstances attending the act to be ratified." *See D'Aoust*, 424 Md. at 608 n.21 (quoting *Adams' Express Co. v. Trego*, 35 Md. 47, 69 (1872)). Here, Plaintiff has not alleged that any Board member had

physical fitness programs," with regard to sexual assault of a player committed by a coach, on the reasoning that the coach's "conduct had no relation to the business of a youth sports organization. Nor was his conduct an integral part of the AAU's activities, interests, or objectives. Rather, an alleged sexual assault of a student athlete by a coach appears to be 'quite outrageous' conduct that indicates 'the motive was a purely personal one,'" and further rejecting the argument "that because [the coach's] responsibilities purportedly involved significant hands on contact it was absolutely foreseeable that sexual, inappropriate contact would be made") (quoting *Sawyer*, 322 Md. at 257); *Samuels v. Two Farms, Inc.*, No. CIV.A. DKC 10-2480, 2012 WL 261196, at *10 (D. Md. Jan. 27, 2012) (granting summary judgment in employer's favor arising out of supervisor's alleged sexual harassment of plaintiff, reasoning: "Plaintiff makes much of the fact that Stevenson served as her supervisor and allegedly harassed her during business hours while performing company-authorized supervisory functions, but this contention misunderstands the test for scope of employment. In order to hold Defendant vicariously liable for Stevenson's purportedly tortious conduct, Plaintiff must demonstrate that those tortious actions occurred, at least in part, to further Defendant's business purposes. Nowhere does Plaintiff make such an allegation. Indeed, Defendant's written policy prohibiting sexual harassment in the workplace strongly supports the conclusion that the harassment Plaintiff allegedly suffered did not further any of Defendant's business purposes. Therefore, while certain workplace interactions between Stevenson and Plaintiff 'may [have been] appropriate,' and thus within the scope of employment, those interactions 'in no way constitute [d] implied authority' for Stevenson to harass Plaintiff sexually.") (quoting *Tall*, 120 Md. App. at 260); *Rosa v. Bd. of Educ. of Charles Cty.*, No. 8:11-CV-02873-AW, 2012 WL 3715331, at *5 (D. Md. Aug. 27, 2012) (granting employer's motion to dismiss on the reasoning that "courts have reasoned that sexual assault constitutes such an unexpected and outrageous act that one cannot reasonably conclude that the employer authorized it or that the employee committed it in furtherance of the employer's business. *See, e.g., Doe v. United States*, 769 F.2d 174, 175 (4th Cir.1985) (holding that employer was not vicariously liable for sexual misconduct of an Air Force social worker because employee was "acting for his personal gratification.")).

knowledge of Konski's or Dehaven's abuse, much less that a quorum of the Board had such knowledge.[17] Consequently, there can be no vicarious liability via ratification.[18]

2. Count II (Negligence) Must be Dismissed Because Plaintiff Fails to Assert Any Facts Supporting the Claim.

In its Motion, the Board argued that Plaintiff's negligence claim must be dismissed because: (1) although the Board owed Plaintiff a common-law tort duty rooted in the doctrine of *in loco parentis* to exercise reasonable care under the circumstances, it did not have the duty to be omnipresent or omniscient as Plaintiff contends; (2) Plaintiff has alleged no facts whatsoever to support his contention that the Board "knew or should have known that [Konski] and [Dehaven] were engaging in illegal and inappropriate sexual acts with [Plaintiff] on Defendants' school district property"; and (3) Plaintiff has not alleged sufficient facts to show that any of the Board's alleged actions or inactions proximately caused Plaintiff's alleged injuries.

In his Opposition, Plaintiff argues that the Board is attempting to "disclaim its duty of care to Plaintiff," but the Board is doing no such thing. As noted above, the Board acknowledges that it had a common-law duty to act reasonably under the circumstances and to protect Plaintiff from reasonably foreseeable harm, but it did not have the duty Plaintiff attempts to impose upon it—*i.e.*, to know that sexual abuse was occurring in its schools merely and solely because it occurred in its schools.

Plaintiff also argues that he "has alleged that the Board breached its duty of care to Plaintiff in countless ways," such as "permitting its employees to sexually abuse Plaintiff on school

[17] At most, Plaintiff has alleged that "the Board knew that it hired, retained, and employed sexually abusive employees and employees who abuse minors," *see* Opposition at 17 (citing various paragraphs of the Complaint), but that allegation is outrageously conclusory and is completely lacking any factual support.

[18] Plaintiff also argues that "[w]here fact questions exist as to whether an employee is acting within the scope of employment, summary dismissal is not proper." *See* Opposition at 17. However, at this stage of the litigation the Court must accept Plaintiffs' well-pleaded factual allegations as true, and those allegations permit no inference other than that the conduct at issue was outside the scope of employment.

grounds," failing to properly supervise its employees, "failing to implement, enforce or follow protective or supervisory measures for the protection of minors," and failing to train its employees. The Board does not disagree that Plaintiff has alleged all of those legal conclusions. The problem, however, is that Plaintiff has not alleged a single fact to support any of those conclusions.

Lastly, Plaintiff argues that he has alleged sufficient facts to establish causation because he "has alleged that the harm he suffered was foreseeable to the Board, because the Board had actual and/or constructive knowledge that it was employing teachers who sexually abused minor students in their care." Opposition at 19. Again, Plaintiff has not alleged a single fact that the Board knew or should have known that either Konski or Dehaven was abusing Plaintiff. At most, Plaintiff has alleged that certain unidentified administrators at Deerfield Elementary School received a report that Konski was abusing Plaintiff. But by Plaintiff's own allegations, no one at the Board was informed, and in any event Konski ceased her abuse immediately. Thus, Plaintiff has not alleged that any negligence on the part of the Board caused the alleged harm he allegedly suffered.

3. Count III (NEID) Must be Dismissed Because No Such Cause of Action Exists.

Plaintiff has consented to dismissal of Count III. *See* Opposition at 20.

4. Count IV (IIED) Must be Dismissed Because the Conduct upon which Count IV is Based was Outside the Scope of Employment as a Matter of Law.

In its Motion, the Board argued that Count IV must be dismissed because it attempts to hold the board vicariously liable for the alleged sexual abuse committed Konski and Dehaven and the alleged cover-up of that abuse by John Does #1-10 when that conduct was outside the scope of employment as a matter of law. In his Opposition, Plaintiff offers no retort, instead reiterating that such behavior was "intentional or reckless as well as extreme and outrageous." Opposition at 20. The Board agrees, which proves the Board's point—namely, that, "[w]here, as here, it is

alleged that the individual educators have willfully and maliciously acted to injure a student enrolled in a public school, such actions can never be considered to have been done in furtherance of the beneficent purposes of the education system." *Hunter*, 292 Md. at 491 n.8.

5. Count V (Negligent Failure to Rescue) Must be Dismissed Because Plaintiff has Not Alleged any Facts to Support His Conclusory Allegation that Defendants Knew or Should Have Known that Konski and/or Dehaven Posed a Risk of Harm.

In its Motion, the Board argued that: (1) although it had a duty to rescue based on the doctrine of *in loco parentis*, that duty was "only one to exercise reasonable care under the circumstances"; (2) a defendant who owes such a duty is "not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured"; and (3) here, despite conclusory allegations that the Board knew or should have known that Konski and/or Dehaven posed a risk of harm to Plaintiff, Plaintiff has not alleged any facts whatsoever to support that contention. *See* Motion at 25 (quoting Restatement (Second) of Torts).

In his Opposition, Plaintiff's sum-total argument is that "Plaintiff has alleged that the Board knew or should have known that its employees were committing sexual abuses against minors on school grounds during school hours." Opposition at 21 Yet Plaintiff does not attempt to cite to a *single factual allegation* in the Complaint to support that contention in order to refute the Board's argument that the Complaint contains no such factual allegations. This is not only telling, it is dispositive.

6. Count VI (Failure to Warn) Must be Dismissed Because Plaintiff Does Not Allege Facts Sufficient to Show that Defendants Knew or Should Have Known that Konski and/or Dehaven Posed a Risk of Harm.

Plaintiff does not offer any argument whatsoever in response to the Board's argument in its Motion as to why Count VI must be dismissed. Plaintiff has therefore abandoned Count VI. *See e.g., Ferdinand-Davenport v. Children's Guild*, 742 F. Supp. 2d 772, 777 (D. Md. 2010) ("By

her failure to respond to [the defendant's] argument [in its motion to dismiss], the plaintiff abandons [her] claim").

7. Count VII (Violation of Md. Code Ann., Fam. Law ("FL") § 5-701 *et seq.*) Must be Dismissed Because No Private Right of Action Exists under that Statute.

In its Motion, the Board argued that Count VII must be dismissed because FL § 5-701 does not provide for a private right of action. In his Opposition, Plaintiff appears to concede this point, clarifying that "Count VII pleads a proper theory of negligence via a violation of statute," and that "Count VII is not separate from Count II[.]" Opposition at 22. Count VII must be dismissed accordingly.[19]

8. Plaintiff's Negligence-Based Claims based upon Dehaven's Alleged Abuse are Barred by the Doctrines of Assumption of the Risk and Contributory Negligence.

In its Motion, the Board argued that the allegations in Plaintiff's own Complaint reveal that Plaintiff's negligence claims relating to Dehaven's alleged abuse are barred by the doctrines of assumption of the risk and contributory negligence. As to assumption of the risk, the Board cited the seminal case of *Tate v. Bd. of Educ. of Prince George's County*, 155 Md. App. 536, 547 (2004), wherein the Court explained that "[t]he law is clear in Maryland that a minor may, under certain

[19] Moreover, although Plaintiff correctly notes that "violation of a statutory duty may furnish evidence of negligence," *see* Opposition at 22, that principle is irrelevant in this case because the statute at issue requires that "educators" report suspected child abuse or neglect, *not* school board members or the Board as a corporate entity. *See* FL § 5-704 (requiring every "educator" to report suspected child abuse or neglect); FL § 5-701(g) (defining "educator" as "any professional ***employee*** of any . . . public, parochial or private educational . . . institution") (emphasis added). This duty on educators has been in effect since 1966. *See Craig v. State*, 76 Md. App. 250, 261 (1988) (explaining that "[s]ince 1966, every . . . education . . . . worker has been under a statutory obligation to make a written report" as to suspected abuse). And because intentionally failing to report child abuse is in contravention of state law and serves as a basis for termination of employment and suspension or revocation of certification, such conduct is always outside the scope of employment as a matter of law, and thus the Board cannot be held vicariously liable for it. *See* Md. Code Ann., 6-202(a)(1)(ii) (providing that professional school system employees may be suspended or dismissed for "[m]isconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article"); COMAR 13A.12.05.02(C)(4) (providing that "[a] certificate shall be suspended or revoked by the State Superintendent of Schools if the certificate holder knowingly fails to report suspected child abuse in violation of Family Law Article, § 5-701, Annotated Code of Maryland").

circumstances, assume the risk of his or her injuries, completely barring recovery," even where, as here, the minor may not have been legally capable of consenting as a matter of criminal law to the underlying sexual activity with the non-party offender. *See id.* at 548 (explaining that even where a civil plaintiff is legally incapable of consenting to the sexual conduct at issue for criminal purposes, "there is no authority for the proposition that the legal impediment to the defense of consent in the criminal court is equally applicable in the civil court," and ultimately concluding that a 15-year-old's claim against a school system for injuries allegedly sustained after leaving school with the offender, knowing his intentions, were barred by the assumption of the risk doctrine). As to contributory negligence, the Board cited case law that, in Maryland, "a child, five years of age or over, may be guilty of contributory negligence," *see Taylor v. Armiger*, 277 Md. 638, 645-46 (1976), and although children are not held to the standard applied to adults, they nevertheless must "use that degree of care which ordinarily prudent children of that age and like intelligence are accustomed to use under the circumstances[.]" *Id.* at 646.

In his Opposition, Plaintiff completely ignores *Tate* and instead relies solely on *Pettit v. Erie Ins. Exch.*, 117 Md. App. 212 (1996), for the propositions that "children cannot consent to sexual acts with an adult," and that "any sexual contact between an adult and a child, whether or not accompanied by force, is injurious to the child." *See* Opposition at 22. *Pettit* is distinguishable, and actually contemplates the exact defenses the Board is asserting.

There, the Court held that an adult insured's intent to injure is presumed as a matter of law when the insured sexually molests children, thereby triggering the applicability of intentional injury exclusions to coverage. *Pettit*, 117 Md. App. at 214. But in so holding, the Court did not preclude the application of the affirmative defenses of assumption of the risk or contributory negligence. To

the contrary, the Court acknowledged that there may be contexts wherein a minor can assume the risk of his injuries as a result of sexual activity with an adult:

> [W]hile a child's consent may be effective in certain instances, *see McQuiggan v. Boy Scouts of America*, 73 Md. App. 705, 714, 536 A.2d 137 (1988),[20] it is only effective if the child is "capable of appreciating the nature, extent and probable consequences of the conduct consented to." Restatement (Second) of Torts § 892A, comment b. We have no trouble in holding as a matter of law that seven and nine year old children are incapable of appreciating the nature, extent and probable consequences of sexual conduct with an adult, and thus, cannot provide valid consent.

Pettit, 117 Md. App. at 225. *Tate* decided the issue nearly a decade later, yet Plaintiff, as noted above, did not even make reference to it in his Opposition, much less try to distinguish it.

Here, of course, Plaintiff was sixteen years old (one year older than Ms. Tate) when he regularly engaged in sexual activity with Dehaven, including times when Plaintiff drove to the school early to meet Dehaven, knowing full well Dehaven's intentions. To the extent Plaintiff now argues that he did not appreciate the risk of engaging in such activity, the Court in *McQuiggan* made clear that "[i]n determining whether a plaintiff had knowledge and appreciation of the risk, an objective standard must be applied and a plaintiff will not be heard to say that he did not comprehend a risk which must have been obvious to him." *McQuiggan*, 73 Md. App. at 711. Similarly, as to contributory negligence, the Court in *McQuiggan* explained: "It is a fundamental principle of negligence that a person must use his Providence-given senses to avoid injury to himself. This tenet has been recognized since time immemorial." *McQuiggan*, 73 Md. App. at 713. The Board respectfully submits that Plaintiff's claims as to Dehaven's abuse are barred by the doctrines of assumption of the risk and contributory negligence.

[20] In *McQuiggan*, the Court affirmed the trial court's motion for judgment in favor of the defendant Boy Scouts, several scout leaders, and several fellow boy scouts on the doctrines of assumption of the risk and contributory negligence regarding injuries the twelve-year-old plaintiff sustained to his eye during a paper clip shooting game during a scout meeting.

C. <u>In the Event that Plaintiff's Claims are Allowed to Proceed, they are Subject to the Sovereign Immunity Cap in Place at the Time of the Alleged Occurrence.</u>

Plaintiff's Opposition devotes but a single paragraph to the application of the sovereign immunity argument and fails to cite a single case or statutory reference in support of his bald assertion that the Act applies *retroactively* to increase the sovereign immunity limits for Maryland school boards. As discussed in the Board's earlier filed Memorandum in Support of Motion to Dismiss, any modification or waiver of sovereign immunity must be accomplished through clear and unambiguous legislation rather than through judicial action. *See Magnetti v. University of Maryland*, 402 Md. 548, 565 (2007) (reasoning that "this Court must read and 'construe legislative dilution of governmental immunity narrowly in order to avoid weakening the doctrine of sovereign immunity by judicial fiat'"); *Stern v. Board of Regents*, 380 Md. 691, 700 (2004) ("We have emphasized that the dilution of the doctrine of sovereign immunity should not be accomplished by the judiciary, and that any direct or implied diminution of the doctrine falls within the authority of the General Assembly.").

At the time of the alleged occurrence in this case, the doctrine of sovereign immunity barred any claims in excess of $100,000.[21] Although the Act increases the sovereign immunity limits to $890,000 effective October 1, 2023, there is absolutely no statutory language or any expression of legislative intent that the increased sovereign immunity limits and comprehensive insurance coverages apply *retroactively* rather than prospectively. When compared to the clear expression of legislative intent regarding the attempted retroactive elimination of statutes of

[21] Prior to October 1, 2016, the sovereign immunity cap set forth in CJP § 5-518 (West 2016) was $100,000, and the corresponding comprehensive insurance requirement set forth in ED § 4-105 was similarly set at $100,000. *See* 2016 Md. Laws Ch. 680. The sovereign immunity cap and corresponding required insurance coverages were increased prospectively to $400,000 effective October 1, 2016. *See id.* at § 2.

limitations, the absence of a similar expression of legislative intention to retroactively modify sovereign immunity is glaring.

The absence of a clear legislative intent to retroactively increase the sovereign immunity limitations is fatal to Plaintiff's claim. In order to accomplish the increased sovereign immunity limits sought by Plaintiff, the General Assembly would have been required to clearly and unambiguously state within the body of the Act itself that the increased sovereign immunity limits are to apply *retroactively* to all claims regardless of when they allegedly occurred. The Act plainly evidences no such intent. Following from the Supreme Court's dictate in *Magnetti* that any "legislative dilution" to the doctrine of sovereign immunity be construed "narrowly" in order to "avoid weakening the doctrine of sovereign immunity by judicial fiat," 402 Md. at 565, this Court must conclude that the $100,000 sovereign immunity limits that were in place at the time of the alleged abuse in this case are applicable to any claims that Plaintiff may have should they survive the Board's Motion to Dismiss.

Moreover, for reasons similar to those raised earlier with respect to the statute of repose, the Board clearly has a vested substantive right to raise the defense of sovereign immunity except where that immunity has been clearly and unambiguously waived on a prospective basis. Here, the Board not only has a vested substantive right to be free from time-barred claims, it also has a vested right to be free from claims in excess of the sovereign immunity limits that were in place at the time of the alleged occurrence. Any holding to the contrary would expose education budgets to the payment of unforeseen tort judgments in excess of the pre-existing comprehensive insurance coverages statutorily mandated under Education Article § 4-105 and which are inextricably tied to the corresponding sovereign immunity limits. Such a consequence was surely not the intent of the General Assembly (which expressed no such intent in the passage of the Act), and would ultimately

expose education budgets to risks contrary to the mandate set forth in Article VIII, § 3 of the Maryland Constitution that "[t]he School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education."

Accordingly, it is respectfully submitted that this Court must hold that the Act's increase of the sovereign immunity limits to $890,000 applies *prospectively* only to claims that arise after the October 1, 2023 effective date of the Act and that, in the event that Plaintiff's claims survive the Board's Motion to Dismiss, they are subject to the $100,000 sovereign immunity limits in place at the time of the alleged occurrence.

II. CONCLUSION

For the reasons discussed above, as well as those discussed in the Board's Motion to Dismiss, the Board respectfully requests that this Honorable Court grant its Motion to Dismiss, along with such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/ *Edmund J. O'Meally*
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COUNSEL FOR THE BOARD OF EDUCATION OF HARFORD COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21st day of December, 2023, a copy of the foregoing Reply to Opposition to Motion to Dismiss was served via this Court's electronic filing system on all counsel of record.

/s/ *Edmund J. O'Meally*
Edmund J. O'Meally

E-FILED; Harford Circuit Court
Docket: 3/14/2024 4:51 PM; Submission: 3/14/2024 4:51 PM
Envelope: 15757790

IN THE CIRCUIT COURT
FOR HARFORD COUNTY, MARYLAND

JOHN DOE,	*	Civil Action No. C-12-CV-23-000767
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
BOARD OF EDUCATION OF HARFORD COUNTY, et al.,	*	
	*	
	*	
Defendants.	*	
	*	

LINE SUPPLEMENTING PLAINTIFF JOHN DOE'S OPPOSITION TO DEFENDANT HARFORD COUNTY BOARD OF EDUCATION'S MOTION TO DISMISS

Plaintiff John Doe (proceeding pseudonymously due to the sensitive nature of the sexual abuse he sustained when he was a minor; hereinafter "Plaintiff"), through undersigned counsel, hereby files this Line Supplementing Plaintiff's Opposition to Defendant Harford County Board of Education's Motion to Dismiss, and in support states as follows:

There is currently a hearing set on the instant motion to dismiss for March 19, 2024. At the time the motion and opposition were briefed and at the time this hearing was scheduled, there were no known cases filed under the Child Victims Act of 2023 ("CVA") for which motions to dismiss challenging the CVA's constitutionality had been ruled upon. Plaintiff's Counsel recently learned that a hearing was held on March 6, 2024, in the case of *Doe, et al., v. Roman Catholic Archbishop of Washington*, Case No. C-16-CV-23-004497 in the Circuit Court for Prince George's County, Maryland. In that case, the Honorable Judge Robin Bright denied a motion to dismiss that in part challenged the constitutionality of the CVA. Plaintiff's Counsel is actively working to obtain a rush delivery of the transcript from this hearing.

In light of this, Plaintiff's Counsel would like to notify the Court and Defendant's Counsel that he intends to rely on two additional cases that were discussed in this recent ruling as to the standard of review for the constitutional challenge raised in the instant motion to dismiss.

1) *Edgewood Nursing Home v. Maxwell*, 282 Md. 422, 427 (1978) (stating that a statute has a "strong presumption of constitutionality and the party attacking it has the burden to affirmatively and clearly establishing its invalidity; a reasonable doubt as to its constitutionality is sufficient to sustain it", and further that "the legislature is presumed to have acted within constitutional limits" when the constitutionality of a law is challenged).

2) *State v. Gurry*, 121 Md. 534, 551 (1913) (stating that when reviewing the constitutionality of legislation, the "courts may disagree as to the propriety of the legislation, [but] unless is plainly, and beyond all question, exceeds the [legislature's] power, there should be no judicial interference").

WHEREFORE, Plaintiff John Doe respectfully requests this Honorable Court DENY the Defendant's Motion to Dismiss and for such other and further relief as deemed necessary and just.

Respectfully submitted,

BLANK KIM, P.C.

By: _____

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March 2024 a copy of the foregoing was electronically filed and served via MDEC to:

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Aaron M. Blank

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE,

Plaintiff

vs. Civil Docket

BOARD OF EDUCATION OF No. C-12-CV-23-000767

HARFORD COUNTY, ET AL.,

Defendants

OFFICIAL TRANSCRIPT OF PROCEEDINGS

MOTION TO DISMISS HEARING

VOLUME I OF I

Bel Air, Maryland

Tuesday, March 19, 2024

BEFORE:

THE HONORABLE ALEX M. ALLMAN, JUDGE

APPEARANCES:

For the Plaintiff:

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AARON BLANK, ESQUIRE

For the Defendants:

EDMUND O'MEALLY, ESQUIRE

ANDREW SCOTT, ESQUIRE

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T A B L E O F C O N T E N T S

P R O C E E D I N G S

COURT OFFICER: This is civil case C-12-CV-23-000767. John Doe v. The Board of Education of Harford County, et al. Before the Court is a motion to dismiss. Counsel, please identify yourselves for the record.

THE COURT: Plaintiffs.

MR. D'ANDREA: Thank you, Your Honor. Good afternoon. Guy D'Andrea on behalf of the Plaintiff.

MR. BLANK: Good afternoon, Your Honor. Aaron Blank on behalf of the Plaintiff.

THE COURT: Mr. Blank and Mr. D'Andrea. And?

MR. O'MEALLY: Good afternoon, Your Honor. Edmund O'Meally on behalf of the Board of Education of Harford County.

MR. SCOTT: Good afternoon, Your Honor. Andrew Scott also on behalf of the Board of Education of Harford County.

THE COURT: Mr. Scott, Mr. O'Meally, good afternoon. We have some other --

MR. O'MEALLY: Yes, Your Honor.

THE COURT: -- employees present, but not part of the trial table it looks like.

MR. O'MEALLY: Our partner, Adam Konstas, and also with us is Ms. Kimberly Neal who is the General Counsel for the Harford County Public Schools.

THE COURT: Okay. Great. All right. Thank you everyone. So, I have spent a good bit of time reviewing all of

the pleadings and the motion that was filed, the response to the motion that was filed, the reply, and the supplemental that was filed I think it was a couple days ago by the Plaintiff. Defendant, you know, we have a number of arguments in the case. I know why most people are in the courtroom is mostly for the first argument that you're raising. That would be my guess.

The other arguments that are attacking the causes of action are more kind of squarely just related to the allegations in this particular complaint. I'll turn it over to you to see how you would like to start. If you'd like to start with that constitutional argument or if you'd like to start with the other arguments, but I'm happy to have -- hear your arguments as to where you'd like to begin, Mr. O'Meally.

MR. O'MEALLY: Thank you, Your Honor. And I will begin, Your Honor, with the constitutional arguments both with respect to the purported retroactive elimination of the statute of limitations and the statute of repose as set forth in the Child Victims Act of 2023. And also with respect to the contention that the Child Victims Act retroactively increases the sovereign immunity cap that is set forth in 5-518 in the courts and judicial proceedings article.

THE COURT: Do we need to deal with that one today? I mean, is that really pertinent to this -- whether this case moves forward?

MR. O'MEALLY: Well, Your Honor, I would respectfully

submit that it's an issue that has been fully briefed. It is an issue that, in part, relies upon the same argument as the retroactivity with --

THE COURT: But isn't that argument as to the amount of damages that are recoverable against this Defendant. Am I correct?

MR. O'MEALLY: That is correct, Your Honor.

THE COURT: So, I would say let's avoid that issue at least as the starting point and talk more about the other issue, the sort of heavier issue if you will, because --

MR. O'MEALLY: All right.

THE COURT: -- we can deal with the sovereign immunity cap later on in the litigation.

MR. O'MEALLY: All right. Very good. Thank you. And Mr. Scott will address the allegations that are specific to the separate counts of the complaint.

THE COURT: Okay.

MR. O'MEALLY: All right. So, with respect to the argument with respect to the Child Victims Act, I think it's important to have a few moments of background facts. I know it's been fully briefed and I know that you've read it, but --

THE COURT: It's a lot to read though, I have to say. It's a lot to read. It's a lot to digest. There's very confusing law that dates back 100 years, 200 years on this topic. And so, the background would be helpful 'cause I'd like

all of us in the courtroom to sort of frame the issue.

MR. O'MEALLY: Well, I won't go back 200 years, but I will go back to the 1980s. And so, in essence, the allegations are that the Plaintiff as a student at Deerfield Elementary School in 1985, 1986 while a 5th grader was abused by a non-Defendant and then was subsequently abused a few years later during 11th grade when he was 16 or 17 years old at Edgewood High School by another non-Defendant.

Based upon the allegations in the complaint, it appears that the Plaintiff would have reached the age of 18 at some of approximately 1993 or 1994, and the statute of limitations as then set forth, generally the 3-year statute of limitations, would have run once he turned 21 at some point around 1996 or 1997 depending upon the actual date of birth.

And the approximate date is relevant to the arguments but the precise date is not, Your Honor.

THE COURT: I understand.

MR. O'MEALLY: So, at the time the general 3-year statute of limitations set forth in 5-101 of the courts and judicial proceedings article was applicable. It wasn't until 2003 when the General Assembly enacted the first rendition of 5-117 creating a new 7-year statute of limitations, but as made clear in the Court of Appeals decision in Doe v. Roe, that increase to the limitations period did not apply retroactively to revive barred claims.

It did in the Doe v. Roe case operate to enlarge a period of limitations for a claim that was not yet barred. In 2017, of course, the General Assembly again amended 5-117 and this time it did several important and distinct things. First, it expanded the limitations period for perpetrators to the latter of 20 years or 3 years after conviction. Secondly, it expanded the limitations for non-perpetrator defendants from 7 to 20 years if there was a finding of gross negligence. And finally, and most important for today's arguments, the court -- or excuse me, the General Assembly created a statute of repose for any claims against a class of non-perpetrator persons or government entities that went into effect 20 years after the victim reached the age of majority.

And so, it is our position --

THE COURT: Is it critical to your argument that that section of the statute is a statute of repose?

MR. O'MEALLY: It's important to our argument. I don't believe it's critical, Your Honor. I am taking the position that with respect to the Board of Education, both the statute of limitations and the statute of repose in and of themselves bar any recovery in this case. That the Plaintiff's claims were barred in 1996 or 1997. They could not be retroactively revived either under a statute of limitations argument or under a statute of repose argument.

However, it is clear that the judicial handling of a

statute of repose gives that more substantive weight. If you look at the Anderson case and you look at the Dua case, the law is clear that when you have a substantive vested right, and I believe that --

THE COURT: Right.

MR. O'MEALLY: -- we do, that that substantive vested right cannot be abrogated retroactively. And of course --

THE COURT: Is it your argument -- I'm going to interrupt just because --

MR. O'MEALLY: I'm sorry. That's all right.

THE COURT: -- I'm going to interrupt. And I don't mean to derail your argument when I do so. It is that the existence of the statute of repose is what creates the vested right? Meaning that the statute of repose closes the opportunity for lawsuits regardless of when they were accrued and things like that against this category of defendants no matter what the circumstances are and, therefore, the vested right exists.

'Cause I'm just trying to understand whether or not a finding that that section, the 20-year section of the statute is a statute of repose is critical in order to get to the point of finding your client has a vested right.

MR. O'MEALLY: Your Honor, I don't think it's critical, but --

THE COURT: Well, then why focus -- why is it such a

big part of the brief and the argument and all of that? I'm just -- I'm honestly not sure. I'm confused about it.

MR. O'MEALLY: Well, thank you, Your Honor. I think that it's clear under the case law that a statute of repose creates a substantive vested right.

THE COURT: What case law is that?

MR. O'MEALLY: Well, I think that we have first the Anderson decision, which of course found that the purported statute of repose was not, in fact, a statute of repose but was rather a statute of limitations. We have the, of course, the Dua case, which talks about substantive vested rights --

THE COURT: But that case --

MR. O'MEALLY: But that's not a statute of repose case.

THE COURT Right. It didn't -- I'm just expressing my curiosity over why the existence of the statute, finding that it's a statute of repose is critical to finding that a vested right -- I mean, I can kind of understand because a statute of limitations is a defense to be raised. It's based on the accrual of a cause of action.

MR. O'MEALLY: Right.

THE COURT: Whereas a statute of repose is sort of this clear open-close point in time, and then because of that it sort of gives the Defendants a more reasonable opportunity to rely on no lawsuits coming their way perhaps.

MR. O'MEALLY: Well, and I think that going back to the statute of limitations and why I believe that my client has a substantive vested right, even if there is no statute of repose, not only does the Board of Education rely, as the other defendants have in other cases, upon Article 24, the due process provision and the takings provision, but important for boards of education we have an additional constitutional protection set forth in Article VIII, §3 of the Constitution as we've addressed on page 13 of our opening memorandum. And there --

THE COURT: I, candidly, did not focus on that other constitutional provision. So, why don't you give me a brief summary of what that pertains to.

MR. O'MEALLY: Well, so, Your Honor, under Article VIII, §3 of the Constitution, and again, Your Honor, this is addressed on page 13 of our opening memorandum, the Board of Education has the constitutional protection that provides that the school fund of the state should be kept in violet and appropriate only to purpose of education.

And while that is an argument that I have relied upon more with respect to the sovereign immunity piece of our position --

THE COURT: Right. That makes sense.

MR. O'MEALLY: -- it is also a position that I've relied upon in this section of our argument. And I think that that provision, with respect to educational funding, creates an

additional protection for the Board of Education, a public entity that has no taxing authority and is 100% dependent upon state and local funding sources beyond the Board of Education's control to provide it with substantive protections.

And, of course, in the cases dealing with a statute of repose, not only the Anderson case, but of course the Fourth Circuit's decision in First United Methodist Church v. U.S. Gypsum, which we've also cited in our memorandum, a statute of repose is an absolute bar to an action and it's a grant of immunity.

So, we do focus on that, and we use that term immunity not only with respect to sovereign immunity but because of the very important protection from suit after a period of time. And we contend that that cannot be retroactively abrogated as the Child Victims Act purports to do. It not only, you know, is an inconvenience, it is not only a procedural difficulty, but it is a substantive difficulty. It is a revival of an action that has been barred in this case for over 25 years.

How do you deal with something like that? How when you have constitutional limitations on the use of funds for the provision of education, the hiring of educators, the provision of textbooks and services to the school children of each of the 24 jurisdictions in Maryland -- how do you square that with that constitutional provision that applies only to boards of education. Does not apply to churches. Does not apply to

private schools. But only applies to a client such as the Board of Education --

THE COURT: I get it. It's sort of propping up the more important due process argument though. I mean, I understand that the funding issue they rely on their budget, and they got to create the budget based on many factors including potentially litigation exposure at some point.

MR. O'MEALLY: Indeed.

THE COURT: It's hard for me though to imagine a circumstance where a board of education is looking back and saying, "Well, okay. Well, we know all those kids from the 80's aren't going to sue us." I mean, maybe they do. I don't know. Okay. Well, continue.

MR. O'MEALLY: And that's exactly right, Your Honor. Who would expect to have to be in court in 2024 for a case that arises out of an allegation beginning in 1985 or 1986? And that's part of the public policy that is at issue behind a statute of repose. And in the case law that discusses the purposes behind a statute of repose, again from the First United Methodist Church case that I mentioned earlier, a statute of repose is motivated by considerations of the economic best interests of the public as a whole. And that ties exactly into that Article VIII, §3 position that I mentioned earlier.

So, in this case, what we have is the law that was enacted and went into effect October 1, 2023, purporting to

revive a claim that has been dead for over 25 years. And we would take the position very strongly that both under a statute of limitations or under a statute of repose they simply cannot do that. Now, we have addressed in our memoranda why this is, in fact, the 5-17 provision as enacted in 2017 -- why it is, in fact, a statute of repose. And keeping in mind that the court in Prince George's County just a week and a half ago found to the contrary, that it was not a statute of repose. And I would respectfully submit --

THE COURT: But again, I'm still curious why does that matter other than it lends support to your argument that it's a vested right.

MR. O'MEALLY: Right.

THE COURT: I'm just trying to understand from a legal perspective is the existence or the finding that that section of the statute is a statute of repose required in order for the Court to find that your client has a vested right in not being sued.

MR. O'MEALLY: And I think, Your Honor --

THE COURT: I don't know that anybody knows the answer to that question, to be honest with you.

MR. O'MEALLY: The answer to that question, the short answer, is no. You can find that even if this is not a statute of repose that we do have a vested right and cannot be -- have that right taken away retroactively. I think, for example, Your

Honor, that in the case of Langston v. Riffe, which is cited at length in the Dua case, Judge Cathell said that a remedial or procedural statute may not be applied retroactively if it would interfere with vested or substantive rights. And I think that that applies to a statute of limitations.

I think that another case that is cited in the Dua case with favor is the Cooper v. Wicomico County case. It's on page 625 of the Dua decision. And it's reported at 284 Maryland 576. Now, in Cooper what happened was there was a workers' comp case. So, this was not a statute of repose, statute of limitations case. It was a retroactive -- or retroactive change in vested rights. What we had was a worker's comp case, and the claimant in the workers' comp case was awarded a certain amount. The General Assembly then passed legislation that increased the maximum amount of an award in a worker's comp case and it was applied retroactively.

And the Supreme Court of Maryland in Cooper held that the General Assembly's purpose to alleviate the effects of inflation, hence the increase in the amount of the worker's comp award retroactively, violated the vested rights of Wicomico County in that case and, therefore, nullified the legislation. That it could not be applied retroactively. So, I think that's a long way of answering Your Honor's question. It doesn't necessarily depend upon the statute of repose, statute of limitations argument.

I say either, in either scenario, we have a vested substantive right for the reasons that I've shared. And in either case, whether we're dealing with the retroactive elimination of a statute of limitations here going back over 25 years, or the statute of repose that was put in place in 2017, we end up in the same place. That both attempts to retroactively abrogate the rights and immunity from suit that the Board of Education has violates our rights and, therefore, as applied to the Board of Education is unconstitutional.

THE COURT: All right. I may come back to this --

MR. O'MEALLY: All right.

THE COURT: -- point with you, Counsel, but let me hear from Plaintiff on this if I could.

MR. O'MEALLY: All right. Thank you, Your Honor.

THE COURT: Counsel.

MR. D'ANDREA: Thank you, Your Honor.

THE COURT: You probably are picking up what sort of the focus I have here is. Right? My understanding of the law is we have a law that was passed by the legislature which admittedly revives causes of action there were no -- that were not viable prior to the law being enacted. These causes of action were not pending at the time. It's not like cases had been filed and it's extending cause of action based on cases that were filed. These causes of action had expired. Maybe that's not the right word, but -- then we have, essentially, the

total elimination of any statute of limitation or any statute of repose, or however you'd like to call it, and opening up kind of an unlimited span of time for lawsuits to be filed.

Help me understand why we're not talking about a vested right on the part of the Defendant that was retroactively taken away by this 2023 statute.

MR. D'ANDREA: Absolutely, Your Honor. And I'm 100% going to address that very quickly.

THE COURT: Sure.

MR. D'ANDREA: I do want to point out sort of the burden that we are at, at this stage, in terms of the cases we supplemented our brief with, which was Edgewood Nursing Home v. Maxwell and State v. Gurley (phonetic). And so, in those cases, there is a -- in Edgewood, for instance, there is a strong presumption of the constitutionality and that the party challenging the constitutionality needs to do so beyond a reasonable doubt to prove that it is unconstitutional.

THE COURT: Yeah, I mean it's a big -- it's something to ask a trial judge to do something like this. I totally get that.

MR. D'ANDREA: Right. And State v. Gurley says essentially the same thing, Your Honor.

THE COURT: Right.

MR. D'ANDREA: So, to Your Honor's point though about vested versus non-vested, that truly is in many ways the

critical point that is raised. And, Your Honor, it's clear that that's critical because I -- I appreciate what Defense Counsel has said today, but his briefing, their briefing, spends a considerable amount of time on the differentiation between a statute of repose and a statute of limitations.

THE COURT: Right.

MR. D'ANDREA: And that's the critical piece here, right, Your Honor.

THE COURT: Right.

MR. D'ANDREA: So, a statute of repose would, in fact, provide a vested right to a party. Whereas a statute of limitations is a procedural statutory provision that can, Your Honor, if I may, the legislature can amend, qualify, or repeal any of its laws affecting all persons and property which have not acquired vested right or vested -- rights vested under existing law. All of the courts agree on this. And that's the Dal Maso decision.

And so, the distinction between vested and non-vested, defendants don't have -- or parties do not have a vested right in statute of limitations. That is a procedural -- what they have is an expectation, and the courts address that, Your Honor, but that's not a vested right. And so, in looking at what is the 2023 5-117, is that a statute of repose or that is a statute of limitations?

Clearly, it is the Plaintiff's position -- and the

Plaintiff's position of course is that, or our position, is that the law is clear on this. This is a statute of limitations by every definition that the courts have analyzed what a statute of repose is versus a statute of limitations.

And so, the Anderson case, Your Honor, is so critical because even within that the court recognizes and acknowledges that the highest court here in Maryland have, I don't know if they say this specifically, but maybe messed up a couple times, in essence, interchangeably using the words statute of repose versus statute of limitations.

And they want to put an end to that, meaning the Anderson court, and define once and for all what is and what is not a statute of repose and what is and what is not a statute of limitations. And they do that a couple of ways, Your Honor. One, they analyze 5-108, which deals with professional liability concerning defects in real property, which the court did find or other courts have found is in fact a statute of repose. And plaintiffs agree that is a statute of repose. And I'm going to explain why.

And they juxtapose that, Your Honor, with 5-109, which courts have repeatedly throughout Maryland sort of interchangeably said statute of repose versus statute of limitations. And the Anderson court said definitively 5-109, which is analogous to 5-117 what we're here for now, is a statute of limitations. And why? And here's what the court

said, and, Your Honor, this is from Anderson in one of their sub-chapters B, they put in italics what distinguishes a statute of limitation from a statute of repose.

There is an abundance of scholarly commentary aimed at clarifying the difference between statutes of limitation and statute of repose. We shall begin with the basics. Black's Law Dictionary defines statute of limitations as a law that bars claims after a specified period. A statute establishing a time limit for suing in a civil case based on the date when the claim accrued or when the injury occurred or was discovered.

Conversely, a statute of repose is defined of a statute barring any suit that is brought after a specific time since the Defendant acts such as by designing or manufacturing a product even if this period ends before the Plaintiff has suffered a resulting injury.

What does that really mean, Your Honor? A statute of limitations -- what is the critical, the triggering thing between a statute of limitations and a statute of repose is essentially who is it protecting or who is it addressing. So, a statute of limitations when you read statutory construction is based upon the injury, the claim to the Plaintiff, versus a statute of repose which is an act by a Defendant, which is almost always in circumstances like product, you know, manufacturing, real property, and there's a good reason for that. Right? In this -- right.

If you have a product, you want manufacturers who are maybe testing new materials or new products to know that if they're going to introduce a product into the stream of commerce --

THE COURT: Right.

MR. D'ANDREA: That they have a time limit in which they can be sued. It allows businesses to make decisions. Same thing with real property. When deeds are issued or there's other defects in real property, we want builders, and homeowners, and real property possessors, if you will, to know that their rights have vested.

When we're talking about causes of action, the triggering event, meaning the injury to the Plaintiff, which is what 5-117 identifies, that is the trigger event, it's the claim of the Plaintiff. When did that accrue? That --

THE COURT: Well, it's kind of in between. Right? I mean, although you're making some very good points on this topic, it's not focused on the Defendant and the Defendant's conduct such as the building of a building or the putting a product into the stream of commerce. It's based on the mere age of the Plaintiff because it's 20 years after the date the victim reaches the age of majority. Right?

MR. D'ANDREA: That's right, Your Honor.

THE COURT: Not when the cause of action accrues or the injury took place. I mean, the word -- "There is arising

out of an alleged incident that in no event may an action for damages" -- I'm reading the right section. Right?

MR. D'ANDREA: Yes.

THE COURT:

"Arising out an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or government entity that is not the perpetrator more than 20 years after in which the victim reaches the age of majority."

MR. D'ANDREA: That's right.

THE COURT: So, you're right. It's not focused on the Defendant's conduct. It's just sort of setting a clock from age 18 plus 20 years kind of close the door there.

MR. D'ANDREA: That's right, Your Honor. And, additionally, Anderson in quoting, or citing rather, First United, you know, statutes of repose different from statute of limitations in that the trigger for a statute of repose period is unrelated to when the injury or discovery of the injury occurs. Meaning, when you identify when does the statute start running, if it has to be tied to when a Plaintiff is injured, which is clearly what is 5-117, that by definition --

THE COURT: But it's not tied to when the Plaintiff suffers the injury. It's tied to the age of majority. Are you saying because a minor cannot possess a cause of action and it doesn't spring into existence until that individual strikes the

age of 18 and, therefore, the "injury" occurs at that moment in time?

MR. D'ANDREA: No, Your Honor. So, the 5-117 contemplates and, in fact, in the passage of that all of those causes of action -- any cause of action brought under 5-117 now, like as of today, had to have already accrued, which is what that statute is addressing.

And so, the injury -- so the reason it attaches to the injury is because the child had to be injured prior to the age of 18, otherwise you wouldn't be under the CVA. You would be -- or any Child Victim Act, you'll be an adult who was sexually assaulted. And so, the -- it's a tolling provision, which is also -- which Anderson cites and -- the tolling provision by definition, the courts unanimously have said this, and Anderson being one, turns - not turns into. It makes it -- it is in fact, a statute of limitations not a statute of repose because a statute of repose is irrespective of an injury. Doesn't -- there is -- it doesn't matter whether there's tolling or not tolling. It's a defendant. You have introduced a product into commerce, we have no idea whether or not someone at any point in time will ever be injured, but what we're going to say is that for 20 years whether someone is or isn't injured someone can bring a lawsuit --

THE COURT: So, two --

MR. D'ANDREA: Yeah.

THE COURT: Two questions ‘cause you're making a persuasive argument to me about this. The stricken Section III of the legislative history of the 2017 amendment says that “Statute of repose under 5-117(d) of the court’s article as enacted shall be construed to apply both prospectively and retroactively --”

MR. D’ANDREA: Yes.

THE COURT: “-- to repose Defendants regarding actions that were barred by the application of the period of limitations before October 1st of 2017.” I mean, the legislature, do I just ignore that and focus on the language of the statute and the argument that you're making here?

MR. D’ANDREA: In -- yes, Your Honor. In some ways. And --

THE COURT: I mean, they’re calling it a statute of repose.

MR. D’ANDREA: They did. And if you -- in some ways. If you look at the legislative history, there were assembly members who even sponsors did not realize that language is in there. Maybe shame on them, shame -- you know, but what is clear by the intent of the statute, and what the Anderson court and First United has said, is the General Assembly knows how to construct a -- a rose by any other name, I think, was one of the lines they used in the opinion.

I mean, it’s not -- codified or uncodified isn’t what

controls. Right?

THE COURT: I get it.

MR. D'ANDREA: So --

THE COURT: I get that. I get that.

MR. D'ANDREA: Yeah. So, the assembly knew --

THE COURT: But, I mean, I just noticed in my review of the --

MR. D'ANDREA: Sure.

THE COURT: -- legislative history that that sort of jumps out. I'm sure Mr. O'Meally was going to jump up and say that.

MR. D'ANDREA: Right.

THE COURT: At some point.

MR. D'ANDREA: But the claim reading and the law as it is written, and the General Assembly knowing how to construct statutes, is that this by every definition because of the tolling, because it affects -- the triggering event is the child when injured and then, of course, the tolling provision for 20 years if there's gross negligence under the 2017 --

THE COURT: But it's not -- the triggering event is not the child when injured. The triggering event is the child reaching the age of 18. That's --

MR. D'ANDREA: Well, that's the tolling. Right? So, there had to have been an injury prior to 18. And then child when turning 18, the tolling provision, has until 38 under the

2017 --

THE COURT: Oh, okay. Okay.

MR. D'ANDREA: -- statute. Now, of course, fully eliminated under the 2023.

THE COURT Okay. Got it. All right. The next question I have is sort of the subset of that argument, or part B of that argument by Mr. O'Meally is, you know what who cares? Who cares if it's a statute of repose? I don't care. It's something that the legislator cannot do to retroactively revive long-since dead causes of action and, in doing so, is depriving the Defendants of a vested right. What's your response to that?

MR. D'ANDREA: And that -- so, I don't mean to keep bringing it back, but that's why the first determination as to whether or not this is a statute of limitations versus a statute of repose is so critical.

THE COURT: Okay.

MR. D'ANDREA: Because as a statute of limitations, no party, no person has a vested right in statute of limitations. They have an expectation, which the courts identify is one thing. That is not a vested right. You need to have a statute of repose to have a vested right.

THE COURT: What's the best kind of case citation you have for that point, sir?

MR. D'ANDREA: Yes, Your Honor. If I may.

THE COURT: And I printed a bunch of them out, but I

don’t know if I have the one you're about to say in front of me.

MR. D’ANDREA: Well, I do point Your Honor to Dal Maso v. Board of County Commissioners, which the quote I gave earlier, “The legislature can amend, qualify, or repeal --"

THE COURT: Yeah.

MR. D’ANDREA: “-- any of its laws affecting all persons and property which have not acquired rights vested.” Right? The Roe v. Doe --

THE COURT: But that’s general principle. So, Roe v. Doe I do have.

MR. D’ANDREA: Yes. Roe v. Doe was critical in that, Your Honor, in that, you know --

THE COURT: Well, tell me why.

MR. D’ANDREA: Sure. I mean, the argument that -- if we take away that we’re eliminating the statute of limitations, the heart of the argument is the same though from Counsel. Right? It was deemed constitutional to extend the statute of limitations. If what Counsel is saying is true, right, then the argument could be made the Defendants come in and say, “Well wait a second. This Doe Plaintiff brought a cause of action five years after the age of majority. We were relying on the three-year.” Meaning prior to the passage of the extension.

You know, if Counsel’s argument is correct, it’s either vested or not. Whether it’s 25 years old or 3 years past the statute, the Roe court said you can extend the statute. So,

their argument that we had no -- we had -- there's no issue with constitutionality in that 'cause they even cite the Roe case. It's a little disingenuous.

THE COURT: Wait. We're talking about Roe v. Doe, 193 Maryland at 558. Right?

MR. D'ANDREA: Correct. Discussing the -- that it's not -- that the extension of the statute of limitations did not infringe on any vested or substantial right of the Defendant when it extended the period of limitations. And so, if it's a statute of limitations and extending the statute doesn't violate a -- 'cause there is no vested right. Then the same argument applies if there's no vested right in statute of limitations whether it's an extension of 20 years or whether it's a complete elimination. It's the same analysis.

THE COURT: I thought the Roe case, the case was -- that the litigation at issue was pending at the time that the legislature had extended the limitations period, and that was something that they hinged on. But I could be getting confused with all the cases I've read here. Was that your recollection of the Roe case?

MR. D'ANDREA: Your Honor, what we cite in our briefings is that the holding -- they held that the legislature did not infringe on any vested or substantial right of a Defendant when it extended the period of limitations on claims of sexual abuse of minors and made that extension applicable to

claims that were not barred as the effective date of the new legislation by expanding --

THE COURT: What is the page cite for that one?

MR. D'ANDREA: Yes, Your Honor. I have that page cite -- it's not 558. I can pull that, Your Honor, for you. I apologize.

THE COURT: It's okay.

MR. D'ANDREA: Okay.

THE COURT: I don't want to slow the process down here. I might be getting it confused with the number of cases I read, but I thought one of the -- and I don't think it's dispositive of your point, but I thought one of the cases I was reading, it may have been the Roe case, they kind of avoided the issue of the retroactivity of reviving a cause of action that was dead as to a particular plaintiff, and that in the Roe case, the case was pending at the time litigation had been extended and, therefore, they were like, "Well we don't have to touch this more important scary issue of if the causes of action are dead whether or not they can be revived."

MR. D'ANDREA: Oh, yes, Your Honor. I don't want to misspeak. That did not -- the Roe v. Doe did not address the retroactivity of a statute, but it did address whether or not extension of a statute of limitations violates a -- because the argument is once we are relying on a statute -- so child abuse in year one, we're relying on they have three years post the age

majority. And now the legislature comes along, you know, 2 years, 364 days in, and says, “No, actually now you get an additional 4 years.” Your argument could be the same that, wait a second, we were relying on once this child is three years out from the age of majority after being sexually abused on our watch, we were relying on the fact that we can’t be sued anymore.

Now they’ve extended it, which gives that child, now adult, another four years. Right? You either have a vested right or you don’t. And so the court addressed there that you don’t have a vested right, that’s the critical point, in the statute of limitations. Right? And so, regardless of the retroactivity, it was the analysis of the vested right issue concerning statute of limitations, and that’s why I keep going back. And I know -- I don’t want to sound like a broken record --

THE COURT: No, no. No. I’m fully -- I’m with you.

MR. D’ANDREA: Yeah.

THE COURT: Hundred percent. I heard your argument. I’m understanding what you're saying. Continue. What else would you like to say about it? Well, maybe I can go back to Mr. --

MR. D’ANDREA: Yes, Your Honor. Because once you determine, which obviously we’re asking, that this is a statute of limitations then the legislature can, as I read under the Dal

Maso and its progeny, can amend, qualify, repeal, change statutes.

THE COURT: Okay.

MR. D'ANDREA: And I reserve any time, Your Honor, if you have any additional questions --

THE COURT: Yeah. Of course. Thank you.

MR. D'ANDREA: Yeah. Thank you.

MR. O'MEALLY: Thank you, Your Honor.

THE COURT: Sure.

MR. O'MEALLY: You were asking Counsel for a page cite for Doe v. Roe or Roe v. Doe, and so I would like to draw the Court's attention to page 704 of the Supreme Court's decision in Doe v. Roe at 419 Maryland 687, page 704. And keeping in mind that we're dealing with the 2003 enactment of 5-117, which clearly was a statute of limitations, not a statute of repose --

THE COURT: Right. Right.

MR. O'MEALLY: -- the Court of Appeals Supreme Court says this in conclusion,

"Finally, in concluding that at least as applied to causes of actions not yet barred by the generally applicable three-year limitations period in 5-117 as a remedial and procedural statute, we are in accord with the overwhelming majority of jurisdictions that hold that a change to a limitations period when applied to claims not yet barred by the previous limitations period is procedural

or remedial in nature."

THE COURT: Right.

MR. O'MEALLY: And that is what the court dealt with.

THE COURT: I get it.

MR. O'MEALLY: The cause of action had not yet been barred. And the court upheld the extension of the limitations but very clearly is saying only with respect to claims that were not yet barred. That's not what we have in this case. What we have in this case are claims that were barred over 25 years ago. And following from the logic in Doe v. Roe, those claims clearly were barred at the enactment of the Child Victims Act.

Now, I'd like to go back and address, because Plaintiff's Counsel did address at length why in their opinion the Child Victims Act -- or rather 5-117 from 2017 is not a statute of repose, and I would like to respond to that. Because very clearly following the Anderson analysis, we have, number one, a statute of repose that "shelters a legislative designated group." And that is persons or governmental entities that are not the alleged perpetrators. That's important. And I'll come back to that because I believe that the court in Prince George's County missed that point.

Second, it established a fixed bar date. And the fixed bar date, as Your Honor was addressing a moment ago, is not tied to the accrual of the cause of action nor is it tied to the injury but rather is tied to the date upon which the

Plaintiff turns 18 and then 20 years hence.

THE COURT: But it's a plane of space focus. Right? I mean, admittedly we all agree on that. It's based on -- I mean, how many kids are graduating from how many schools over the many decades of time, and so there's a zillion different expirations of that 40 year -- is it 40 years, right, period of time. As opposed to -- this is something that was a bit of a disconnect in my mind when I was reading through all of this. As opposed to a situation where the Defendant builds a building and then certifies it as complete, and then off they go. And there's a statute of repose that says nobody can sue us if this building falls down in 30 years.

MR. O'MEALLY: Correct. And that's a construction matter and a building is finite. And we have children, multiple children, and the ages differ. But we, nonetheless, have a fixed date. That could, in a conceivable situation, the repose period could run before the cause of action actually accrues following from the discovery rule.

You could have, for example, the abuse of a disabled child and it's not discovered until more than 20 years after the disabled child turns 18. And so we do have that fixed bar date that could operate to repose a claim even before the cause of action is discovered and accrued.

And then, finally, it does establish that absolute bar. The language in the statute couldn't be more clear as it

was framed in 2017, five years after the Anderson case. In no event may an action for damages be filed. They used the word repose three times in the statute itself. First in the purpose clause and secondly and thirdly in the non-codified section law Section III.

THE COURT: It's not in the statute. It's in kind of the --

MR. O'MEALLY: Well, but the session law is the law. And --

THE COURT: Okay.

MR. O'MEALLY: -- there's could authority on that.

THE COURT: Fair enough.

MR. O'MEALLY: The session law is the law whether it's codified by West or not. It is the law. And it's certainly there. And Counsel is correct that, certainly, they had a roadmap from Anderson. And the Attorney General's Office, which guides the General Assembly in the drafting of legislation, was well aware of the Anderson case and -- but children are not buildings.

And so to the extent that the General Assembly very consciously wanted to accomplish two important goals in 2017, number one, extending the period of limitations by which a abused child could bring suit against a perpetrator, 5-17 extends that, but also at the same time wanting to provide a repose for non-perpetrator persons and governmental entities

that may have employed or supervised the alleged perpetrators.

THE COURT: Yeah. Okay. I mean, it's a little unfair to call them non-perpetrators. Right? Isn't there have to be some -- there is some liability that is attaching to this category of individuals.

MR. O'MEALLY: Vicarious only.

THE COURT: Well, maybe.

MR. O'MEALLY: Well --

THE COURT: Well, okay. So, you're right. The Child Victim Act would not apply to negligent supervision claim, for example.

MR. O'MEALLY: Right.

THE COURT: That's your claim. Okay. Yes. I understand.

MR. O'MEALLY: And --

THE COURT: So, only in the context of the vicarious liability. I fully understand --

MR. O'MEALLY: And I don't know if Your Honor has had occasion to read the decision, the bench ruling from Prince George's County.

THE COURT: No.

MR. O'MEALLY: Okay. All right. And I think that the --

THE COURT: Is that the only case that has heard this argument thus far?

MR. O'MEALLY: There have been -- there was one case that was heard by Judge Robin Gill Bright on March the 6th involving the Archdiocese of Washington. There was a case that was before Chief Judge Bredar, the United States District Court, who yesterday certified the question to the Supreme Court. And that was a case --

THE COURT: Well, jumped the gun. Didn't I?

MR. O'MEALLY: Yeah. That was the case involving the Church of Latter-Day Saints.

THE COURT: Okay.

MR. O'MEALLY: And --

THE COURT: Well, you said the words -- I don't want to cut you off, Mr. O'Meally, but I do have -- I want to progress on to the next arguments.

MR. O'MEALLY: Right.

THE COURT: What else, if anything, would you like to say on this point?

MR. O'MEALLY: Well, and if I could leave the argument with this --

THE COURT: Yes, sir.

MR. O'MEALLY: And the reason why I say vicarious is that unlike with perhaps other defendants, it is not possible under Maryland law, for the reasons that Mr. Scott will discuss, that a board of education can be held liable for the intentional wrongdoing of its employees. And that's the Hunter case and

other cases following from that. And I'll leave it to Mr. Scott for those.

THE COURT: Okay.

MR. O'MEALLY: Thank you.

THE COURT: All right. Let me ask Plaintiff to address that argument first, and I'll come back to you, sir.

MR. O'MEALLY: Okay.

THE COURT: Who's handling the vicarious liability argument? That would be the next one I'd like to talk about. Is that you, Counsel?

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Okay.

MR. D'ANDREA: And, Your Honor, (unintelligible) that we have passed the Counsel because we got the notes so recently this --

THE COURT Okay.

MR. D'ANDREA: -- is Judge Bright's -- this is the transcript from her orders if Your Honor would accept.

THE COURT: Yeah, Sure.

MR. D'ANDREA: Okay.

THE COURT: Is that -- any objection to that? I mean it's --

MR. O'MEALLY: I don't object. And I do have a copy. Counsel did send that to me yesterday. That's why I asked if Your Honor had seen it. And so, Your Honor, in the point that I

was going to make is that you read and consider Judge Bright's decision, at the end, I think that a flaw in her reasoning is that with respect to 5-117 she says it -- that the General -- there's nothing within the history that would say that the General Assembly attempted or chose to make these changes to protect sexual abusers. And we're not arguing --

THE COURT: Yeah. Yeah.

MR. O'MEALLY: - that 5-117 for purposes --

THE COURT: Right.

MR. O'MEALLY: -- of the statute of repose is designed to protect sexual abusers.

THE COURT: Right.

MR. O'MEALLY: And I think to the extent that the judge relied upon that in making her finding, the 5-117 was not a statute of repose. Here the legislatively defined class is very clearly non-perpetrator --

THE COURT: Right.

MR. O'MEALLY: -- persons and government entities.

THE COURT: I understand.

MR. O'MEALLY: Thank you.

THE COURT: Okay, okay. Yes, Counsel, I'm happy to --

MR. D'ANDREA: May I approach, Your Honor?

THE COURT: Yes. Please. So, on the vicarious liability point. There's two?

MR. D'ANDREA: Your Honor, the --

THE COURT: Or is this like the argument and then the ruling?

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Okay. Got it.

MR. D'ANDREA: The thinner version is the opinion by the court.

THE COURT: Got it.

MR. D'ANDREA: The oral opinion by the court.

THE COURT: Okay. Yeah, you guys get paid by the hour to talk. We don't.

MR. D'ANDREA: Not Plaintiff's Counsel, Your Honor.

THE COURT: Right. So, the point about vicarious liability, so I am a hauling company. I'm Judge Allman Dump Truck Hauling Company, right, and I have dump trucks out on the road. And I have my employees taking concrete to the dump. And I am authorizing them to, in the course of their employment, you know, drive on the roads. And one of my dump truck drivers runs a red light and crashes into somebody and kills them, and I'm responsible for it under a theory of vicarious liability, despite zero wrongdoing on my part. Correct?

MR. D'ANDREA: Correct.

THE COURT: So, in this case, the allegation would be these are intentional torts that the individual Defendants have engaged in for the most part. Correct? And my dump truck driver sees one of his enemies on the side of the road and is

driving down the road, and says, “Now’s my chance,” and then just veers off and just accelerates and kills somebody. I -- my understanding of the law vicarious liability, I wouldn’t be responsible for that.

MR. D’ANDREA: Maybe.

THE COURT: Maybe. So, fill in the maybe. And then we’ll talk to Mr. Scott about that.

MR. D’ANDREA: Yes, Your Honor. I would indicate from the outset the other claims outside of the constitutionality issue and potentially the cap on damages --

THE COURT: Right.

MR. D’ANDREA: -- generally speaking are issues for the trier of fact, but I will --

THE COURT: Right.

MR. D’ANDREA: I mean, it’s generally speaking.

THE COURT: Generally speaking, scope of employment would be a factual issue. I agree with you.

MR. D’ANDREA: Right. That I would need to adduce through discovery. So --

THE COURT: No doubt.

MR. D’ANDREA: Yeah. Okay.

THE COURT: And you had me at sort of issue of fact in a motion to dismiss argument thinking about that.

MR. D’ANDREA: Yes, Your Honor.

THE COURT: So, what is the dispute of fact here? I

think Mr. Scott's argument would be there is no dispute of fact. I mean, raping a child is an intentional tort.

MR. D'ANDREA: Mm-hmm.

THE COURT: Intentional act. And, as a result, where's the gray area in terms of scope of employment?

MR. D'ANDREA: Absolutely, Your Honor. So, I'll start if you don't mind with Your Honor's analogy.

THE COURT: Sure.

MR. D'ANDREA: So, if, you know, Company X hires a driver, and they don't know anything other than a clean background check. Day one that driver's out driving, sees his enemy, hits him with a car, kills him like day one, first hour driving. It's going to be really hard to bring a vicarious liability lawsuit against the organization. Okay?

THE COURT: Yeah.

MR. D'ANDREA: Now, fast forward, right, months, years. Depending on what the Defendant's knowledge is. You know, did the driver say, you know, among administrators or owners of the company, "If I ever see so and so out in that street, I don't care what car I'm in, I'm going to plow this guy over," and they keep giving him the keys to that truck knowing that that enemy lives in that community and that he's vowed that he's going to do that or they have reason to know that he may do that, well that's different, Your Honor.

And why is that different? That's different because

it's not as simple as -- of course, it's one of the potential factors of was this within the scope of employment. But the law is clear that an employer can also be found liable for the tortious acts of its employees if the employer subsequently ratifies his employee's tortious conduct, even if that conduct was outside the scope of employment. And that's under D'Aoust v. Diamond.

And so, what does that mean? Well, that's going to have to be a fact-intensive discovery. Now, we have obviously some facts as we alleged in our complaint under our notice pleading in Maryland that we believe suffice to show that the Defendant either ratified the conduct or acted in concert with, and when I say --

THE COURT: Paragraph 29. Right? There was a meeting with the principal. The principal or vice principal and the parents. Plaintiff was a minor but was forced to sign some contract or paper -- I'm not limiting you to this, but that is one thing that I kind of pulled out of your complaint as there being sort of some knowledge on the part of the Defendant, the non-perpetrator Defendant of condoning or -- that's the wrong word.

MR. D'ANDREA: Ratifying.

THE COURT: Ratifying.

MR. D'ANDREA: Yeah.

THE COURT: Yes. Correct. So, next point on this

issue before I go over to Mr. Scott is, is vicarious liability a standalone cause of action?

MR. D'ANDREA: Your Honor, defense raised the point that it's not. I have not found, and if I'm wrong I'm wrong, a case that definitively says it is not a standalone cause of action. It's -- can be subsumed within a negligence claim that an agent or an employee can be vicariously liable through that -- through its actions, from the Defendant's actions rather -- a direct or vicarious liability through what their employee did. Right?

So, here we have direct and vicarious claims against the school district. Or the Board of Education rather.

THE COURT: Right.

MR. D'ANDREA: So, I have not -- I mean, I --

THE COURT: What would the verdict sheet say? So, on count one -- this is the way I think about it, right, I'm preparing with Counsel. We submit the case to the Jury. What would the verdict sheet say? How do you find the Defendants on count one -- well, maybe a better question is what would the jury instructions say? What are the elements of the claim of vicarious liability?

MR. D'ANDREA: Right. I believe, Your Honor, I mean, we're getting -- but the jury instructions would read are -- is the Defendant, the Board of Education, vicariously liable for the acts of its agent employee, teacher, staff. However, we

define -- there's two different people in this case, Your Honor. There's one from the grade school. One from the -- two separate people. One from the grade school. One from the high school. So, the Jury would be asked to determine whether or not the Board of Education in some capacity was vicariously liable for the actions of its agent, it's employee.

THE COURT: Well, what the actions though? What is the cause of action that the agent or the employee's engaging in for which the employer is being found vicariously liable? I think that's really sort of cuts to the fundamental --

MR. D'ANDREA: This --

THE COURT: The cause of action would be, perhaps, the tort that the individual actor has engaged in for which the employer would be held vicariously liable. And what is the tort or claim that -- it is what? It's the intentional --

MR. D'ANDREA: It's the sexual abuse. It's the intentional touching --

THE COURT: Okay.

MR. D'ANDREA: Yes, Your Honor.

THE COURT: All right. I got it. Let me turn it over to Counsel over here. I know I'm bouncing around with these arguments, but I think that's the best way I have it organized in my brain. So, Counsel, let's speak to the vicarious liability argument if you would please.

MR. SCOTT: Sure.

THE COURT: Mr. Scott.

MR. SCOTT: Your Honor, yes. Thank you. So, Your Honor, it's black letter law in Maryland that the employer can only be held liable for an employee's conduct when that employee's conduct is -- or acts there in the furtherance of the employer's business. And we have a set of laws in Maryland that is even more specific, and it applies specifically to public school employment.

And we cite those cases in our papers, specifically Montgomery County Board of Education v. Horace Mann where the Appellate Court of Maryland 2003 said that --

"-- sexual activity between an adult and a minor child is injurious, per se. We cannot envision how any sexual relationship between a teacher and minor student would potentially be within the scope of employment."

Again, another case we cite in our papers, the Matta case, Matta v. Board of Education of Prince George's County from 1989. The court there said that "Not even potentially possible for any court or reasonable jury to conclude that teachers are authorized to sexually abuse or harass their students."

And even more broadly, if we go back to 1982, the seminal case Hunter v. Board of Education of Montgomery County, the court said that --

"-- whereas here it's alleged that the individual educators have willfully and maliciously acted to injure a

student such actions can never be considered to have been done in furtherance of the beneficent purposes of the education system."

The Court goes on to say that such acts constitute "an abandonment of employment."

THE COURT: Isn't that a better argument on summary judgment though. I mean, 'cause you're -- I'm getting hung up on this the conduct that the defendants -- the individual defendants are alleged to have engaged in involves a spectrum of activity, not just the act itself, the sexual act itself. It's other things. It's the interference with the child. It's the mental damage or mental injury, emotional distress, or whatever it is that they -- that these individuals have caused, some of which may be negligence. Some of which may be intentional tort. But it's spanning the grooming and all of these horrible things that are alleged in the complaint.

Wouldn't this argument be better on summary judgment once the evidence is out there to know what, if anything, the school board or the educators, what information they were privy to, what were the circumstances of these interactions between the teacher and the child, and maybe somebody should've noticed the doors were shut, the windows were closed, and the lights were off, and that kind of stuff.

I mean, I think it's -- the cases you cite are definitely persuasive on the issue, but they would be a lot more

persuasive to me in a summary judgment context as opposed to a motion to dismiss context where I'm kind of leaning in the direction of the Plaintiff on inferences to be drawn, and factual discovery that has yet to take place like --

MR. SCOTT: Well, I would agree with Counsel and the Court that ordinarily the issue of scope of employment is for the fact finder, but there is case law and we cite it in our papers, I believe, that where the issue is a pure matter of law --

THE COURT: Right.

MR. SCOTT: --the Court can make a preliminary basis -- the preliminary decision on a motion to dismiss. And --

THE COURT: It can, but this is a 30-age complaint with 106 allegations in it. And it seems to me that -- I mean, my impression of reading this complaint is it's alleging a very broad spectrum of activity over a very lengthy period of time involving two different employees and one child, and some allegations about administrators being aware of the situation. Some concerns about why didn't they get involved in it. Some concerns about, you know, whether this conduct could've been stopped, should've stopped, and some of that is direct liability. I get it. That has been alleged as well.

But on the vicarious point, I'm just struggling with the re-presenting this argument in a summary judgment context I think would really get a judge to dive into the factual

information. Your argument is the complaint on its face doesn't even get there, so you can toss it now, Judge.

MR. SCOTT: Correct, Your Honor.

THE COURT: Yeah.

MR. SCOTT: And furthermore, Counsel mentioned notice pleading, but we point out in our papers under Rule 2-305, the pleading standard in Maryland is higher than that.

THE COURT: This is not a notice pleading complaint. I mean, this complaint is littered -- you refer to as a notice complaint, but it's not.

MR. D'ANDREA: No, I was saying a requirement.

THE COURT: I mean, it's still the facts.

MR. D'ANDREA: No, we -- I don't plead that way in any state --

THE COURT: Right.

MR. D'ANDREA: -- regardless of the standard.

THE COURT: Right.

MR. D'ANDREA: I plead this way.

THE COURT: Yeah. Okay. All right. So, we also have, let's see, the next category of arguments, negligence not -- I'm going to get lost here 'cause there's a lot of papers up here. The -- let's look at the causes of action really quickly. I have another case coming in 3 o'clock, but this case is very important, so I can delay them a little bit. All right. So, count one we discussed. Count two is an allegation of straight

negligence toward the Board of Education and the John Does. Count three negligent infliction of emotional distress has been withdrawn. Am I correct?

MR. D'ANDREA: That's correct, Your Honor.

THE COURT: Right. Count four intentional infliction of emotional distress remains negligent. And count five negligent failure to rescue. Negligent failure to warn. They're all sort of the same -- different flavors of ice cream. Aren't they? Isn't it just negligence and then negligence, and then a different theory of negligence?

MR. D'ANDREA: Yes, Your Honor. And in the cases I've filed across the country on these specific issues, I like to cover all my bases because I've had certain judges in certain states say, "Why didn't you parse this out?"

THE COURT: Right.

MR. D'ANDREA: Some say, "I want it together." I mean, so I've just parsed it out to lay it clear as to how -- so there can be, hopefully, no confusion as to how each sort of these different flavors of negligence, as Your Honor pointed out --

THE COURT: Right.

MR. D'ANDREA: The different acts as alleged apply to those different sort of theories, in some respects of negligence.

THE COURT: And count seven would fall into that

category as well. You're citing the Maryland Family Law Article statutory reference, but it's just yet another --

MR. D'ANDREA: That's right, Your Honor.

THE COURT: So, count two, count five, count six, and count seven are all negligence causes of action, just different theories of negligence.

MR. D'ANDREA: That's right, Your Honor.

THE COURT: So, I wouldn't -- I think -- believe this case may be specially assigned to me, assuming we are at the stage of the Jury, wouldn't submit to the Jury a verdict sheet that had four, five different theories of negligence on it. It would just be negligence.

MR. D'ANDREA: And I would be -- right. That's how generally it happens when you go to a Jury. I just lay it out that way in the complaint so it's clear.

THE COURT: Okay.

MR. D'ANDREA: In terms of the different theories, so to speak, of applicable negligence.

THE COURT: Okay. All right. So, Mr. Scott, let's assume that these negligence cases -- these negligent theories are all bundled up into one count. I agree with your argument that I didn't see any express or implied right of action under 5-701. I think it's just a reference to a statutory citation that we use all the time in protective order cases.

Count two, count five, count six, and count seven,

let's assume that was all bundled together in one count, would you still have an argument that the complaint fails to establish a claim for which relief can be granted?

MR. SCOTT: Absolutely, Your Honor. And --

THE COURT: Okay. Tell me why.

MR. SCOTT: The complaint, despite being fairly lengthy, is notable in the sense that it alleges virtually no facts with respect to any school system employee or any member of the Board of Education having any knowledge whatsoever about either of the two abusers or John Does 1 through 10 for that matter. The only allegation we have in the entire complaint that touches on that briefly is this alleged meeting that occurred with one or more administrators at Deerfield Elementary once Konski's alleged abuse was brought to that person's attention.

But those - that kind of strays back into the vicarious liability argument because those employees allegedly in response forced the minor Plaintiff, or the adult Plaintiff now, to sign a contract silencing him, which is completely outside the scope of employment, is contrary to statutory law in terms of those employees' obligations to report child abuse, etc.

There's no allegation that that meeting or the existence of that meeting, or any information shared in that meeting, was ever communicated to the board. And as to Dehaven,

we don't have any facts whatsoever because the only allegation we have is that the -- his abuse was brought to the attention of law enforcement 30 years later. If anyone had any knowledge about Dehaven's abuse it would've been the sheriff's office who arrived at the school, but even those officers didn't suspect abuse.

And so, Your Honor, there's frankly no facts upon which the Board can be held directly liable for negligent supervision, negligent training, etc. Now, there are a lot of conclusory allegations, and I think a paragraph --

THE COURT: I'm looking at page 8 -- or paragraph 18 that talks about -- it's sort of an introductory paragraph. It talks about not properly vetting, not properly training, not properly supervising, negligent retaining staff, failing to recognize clear and obvious signs of grooming behavior by staff, failing to investigate reports of concerning and criminal behavior, and failing to place any legitimate measures to protect them against teachers, etc.

MR. SCOTT: Correct. There's not a single fact supporting any of those conclusory allegations. Not one.

THE COURT: Okay.

MR. SCOTT: And, Your Honor, I would also say although it's not explicit, I think there's an implicit theme throughout this complaint that the school board should be held liable for the standards that are currently imposed on it 2024 for the

context that existed in 1991 and 1985. And there's not a single assertion with respect to any statute, regulation, board policy that would've imposed certain standards on the Board.

THE COURT: That's an interesting point.

MR. SCOTT: I'm sorry?

THE COURT: You're talking from a legal standpoint or you're talking from an internal handbook rules and regulations the organization standpoint?

MR. SCOTT: Either. Either. There's not a single allegation that there was any outside source of law or policy that imposed a duty on the Board as of the times of this complaint to do the things that the Board allegedly failed to do. But more to the point, Your Honor, I think is the fact there's not a single fact alleged to support any of those allegations.

THE COURT: Okay.

MR. SCOTT: They are just conclusory allegations, which the case law is clear the Court does not need to accept for purposes of analyzing a motion to dismiss.

THE COURT: Okay. Thank you, Mr. Scott. Mr. D'Andrea, you want to respond to the argument that the complaint lacks specificity in terms of these factual allegations?

MR. D'ANDREA: Yes, Your Honor. We've submitted as an exhibit our complaint. I know Your Honor has that. Yes. As Your Honor indicated, this isn't just bold assertions. This is

not just one incident of abuse that took place in 1985, 1986, and then one instance of abuse that happened in 1991.

In both circumstances, both in the elementary and in the high school, this was repeated pervasive, systematic abuse by two separate teachers. Well, one wasn't even a teacher, and I'll get to that in a moment. One was a custodian.

THE COURT: I know.

MR. D'ANDREA: So --

THE COURT: But speak -- let's talk about the complaint.

MR. D'ANDREA: Yeah. So, that's all alleged in the complaint, Your Honor. And so this happened over months if not years. And so you -- when we talk about negligent supervision, we'll have experts. And we'll have -- that's why this is fact-intensive. We'll have the standards from 1985 that the school imposed. In terms of an employee handbook, I don't know have access to that, Your Honor. I need that through discovery.

I don't have access to what the high school standards and protocols were. But to say things were different, in 1985, I mean, for a child to be repeatedly removed from his peers outside of the classroom which this teacher taught and not one supervisor, not one staff member ever even remotely questioned it, that is the definition of negligent supervision.

THE COURT: So, it's taking the complaint -- the allegations in the complaint as true drawing reasonable

inferences there from and filling in the gaps where the complaint may be a little bit deficient in connecting the dots between foreknowledge of these Defendants, but you're asking for the opportunity to conduct discovery to explore those issue.

MR. D'ANDREA: Yes, Your Honor.

THE COURT: Fair summary of what you're saying here?

MR. D'ANDREA: Yes. And in terms of -- it's what the school -- it's not what they knew. It can be, of course. It's what they knew or should've known.

THE COURT: Right.

MR. D'ANDREA: Was it actual or constructive. And, in fact, at one point, and in the briefings the argument was there's no more injuries after the school, at Deerfield, learns of the sexual abuse because the teacher at that point broke up with the 10-year-old. Okay? Well, the school after having a 10-year-old sign this purported contract, okay, still has my client in that classroom with his abuser.

The thought that a child sexual assault victim is not going to be damaged or injured for days, weeks, months, years forced to interact with their abusers is outrageous. And that's what the school did here.

THE COURT: But again, you're making closing argument here. I mean, my focus is the four corners of this document and inferences that can be drawn from that. So, you're pointing out yet another inference. You're saying the kid is ringing the

alarm bells about the situation, and he's still going back there. So, that's an inference to be drawn.

MR. D'ANDREA: Well, we say it outright in the complaint, Your Honor.

THE COURT: Okay. Point me to that real quick.

MR. D'ANDREA: Yeah. So, we incorporate all the facts into the legal argument. So, we don't duplicate --

THE COURT: Of course you do.

MR. D'ANDREA: Yeah. I mean, so it's not really inferences. It's taking the facts as alleged and putting it into the complaint. I mean --

THE COURT: So, I'm not looking for allegations pertaining to the bad conduct the teachers engaged in. I'm looking for the allegations that the Defendants, the non-perpetrator Defendants -- although I'm struggling a little bit with that term. Right. It doesn't seem to be a fair characterization depending on, you know, where the case goes, but --

MR. D'ANDREA: Right. That's not how -- yeah, I'm not characterizing it that way, Your Honor.

THE COURT: The negligence causes of action against them are they knew or should have known, had a duty to do X, Y, and Z, so where's there -- where are the allegations in the complaint indicating that they knew or should've known of some certain conduct or should've known of some certain conduct?

MR. D'ANDREA: It goes back to the factual component, Your Honor, that we then incorporate. So, it's the allowing a child to be consistently alone behind closed or locked doors with a teacher. It's knowing of the abuse flat out and then not, one, reporting it as they were mandated to do and then making the child go back in front of that teacher. It's the unsupervised one-on-one that the teacher had with my client.

And then when you get to the custodian, I mean, the idea that a -- and I'm not disparaging, obviously, custodians, but for a custodian, janitor to go walk into a classroom and say, "I need this boy for the next" -- I mean it's -- that's alleged in here, Your Honor. So, how does a custodian walk into a gym class, a classroom, and say, "I'm taking John Doe out of the room for the next two hours" and not a single -- at least as alleged, a single teacher, principal, administrator say anything about it?

THE COURT: Got it. Okay. Did we sufficiently touch on all the arguments raised by the motion to dismiss? I believe. I mean, maybe that's not the right word, sufficiently. Did we at least touch on all the arguments in the motion to dismiss? I believe we did. Right? The cause of action arguments, if I can refer to them, that are -- that the cause of action failed to state a claim. The complaint is deficient in that regard. That the negligent infliction of emotional distress is out. That the duplicative negligence complaints are

there. The vicarious liability argument we certainly addressed, and we addressed the constitutional argument as well.

MR. SCOTT: The only argument we haven't discussed, Your Honor, is the assumption of risk and contributory negligence arguments.

THE COURT: Isn't that like a super-duper factual kind of thing?

MR. SCOTT: I'm sorry?

THE COURT: That wasn't really a legal way of saying things. Isn't that really, really factual based, factually based? How could I as a matter of law at this point in time find that how -- is he 10 years old and --

MR. D'ANDREA: Yeah.

THE COURT: -- in fifth grade or however old he was when he was in high school that he assumed a risk of being sexually abused because he consented to it.

MR. SCOTT: Well, Your Honor, we haven't made the argument with respect to the Konski abuse, only the Dehaven abuse.

THE COURT: That he consented to it?

MR. SCOTT: Well, Your Honor, and I'll limit it to this, we rely on the Tate case, which involved a 15-year-old. So, we think there is authorities --

THE COURT: As a matter of law for me to determine that based on the allegations in this complaint, that a 15-year-

old consented to be raped by a janitor at the school.

MR. SCOTT: Well --

THE COURT: I just want to make sure I'm understanding what you're suggesting here.

MR. SCOTT: I mean, Your Honor, we --

THE COURT: There's a case that talks about, as you've cited -- I did read it, but under the circumstances that I am presented with in this complaint, I just want to make sure I understand the argument.

MR. SCOTT: Your Honor, I would just argue that to the extent is detailed in this respect, it is notable in that Student Doe regularly engaged with Dehaven over a long period of time in numerous different settings. And the case law we've cited provides that a student as young as 15 can knowingly appreciate the risks of sexual activity with an adult.

THE COURT: Well, that perhaps may be the situation, but that is very factually based, I believe, under the circumstances. So, okay. So, we did address now -- we have now since addressed all the arguments. I'm going to take a brief recess, and I will come back, and assuming I'm kind of comfortable doing so today, give you my ruling. If for some reason I get hung up on an issue and I want to take it under advisement, I'll do that.

But I intend not to be back there for very long. Okay?

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you, Your Honor.

COURT OFFICER: (Unintelligible.)

(At 2:45 p.m., recess is proceedings.)

COURT OFFICER: Court is back in session. The Honorable Judge Alex M. Allman presiding. We are resuming case C-12-CV -23-000767. John Doe v. The Board of Education of Harford County, et al.

THE COURT: Have a seat everybody. Thank you.

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you, Your Honor.

THE COURT: Okay. All right. Let me commend all of you for the thorough, thoughtful, well-prepared, well-reasoned, well-researched arguments that I heard today. Not only today but as set forth in the briefs. This is obviously an important issue, not just to this case but to the community. It's an important issue to the Maryland legislature. Seems to be a very important determination that has kind of reached the level of the consciousness of the State of Maryland.

And for that reason, it is very helpful that you all put in the work that you did to really flush out these issues. I'm going to try and do it in the order that we conducted the argument. I've obviously given a lot of thought to this. I've obviously made some -- done my own independent research on the issues that are before me, and I've engaged with Counsel here to

try and get to the bottom of what all of this stuff means.

There is a high burden here. We're talking about invalidating the duly passed law of the legislature that was signed in by the governor and is in place right now. That is a lot to ask of a court to do. Must meet the high threshold that Mr. D'Andrea has referenced here before the Court. It doesn't mean that I couldn't do it, but it certainly is a high threshold and demands an extra level of attention as a result.

It does strike me that the real kind of critical issue to the constitutional analysis is whether or not § 1-17 as it was -- I'm sorry, § 5-117 of the courts and judicial proceedings article as it was enacted in 2017, we'll call it the 2017 legislation, created a statute of repose for which it would have given the Defendants or a category of defendants a vested right. A vested right as it's defined loosely numerous times throughout Maryland case law, I even think I read a few Maryland cases that say the concept of vest right is not necessarily fully fleshed out within the concept of Maryland case law. I think courts struggle with it. I think legislatures struggle with. And I think, you know, constitutional scholars probably struggle with it.

You know, I read this case Muskin v. SDAT, which wasn't a case that you all referenced, but it did engage in a lengthy analysis of what a "vested right" was. It was a bit of a different context, but there is some reference to it there.

So, if it is a statute of repose then the defendants argue here that it creates a vested right. And retroactively reviving a cause of action against what is otherwise a vested right on the part of the defendants would be unconstitutional. I heard Mr. D'Andrea sort of acknowledge or concede that point in his argument.

If it's not a statute of repose then it's either not a vested right or then we move on to the statute of limitations argument. One of the logical gaps in my mind, as I was reading through all of this, was, and thinking about what I understand statute of reposes to be, and that is a fixed, finite period of time that is measured by some act, some completion of a project, some product going to the stream of commerce that is independent of the plaintiff. And it sets an absolute bar over a -- after which -- after a period of time that the defendants can consider themselves immune from litigation.

This is primarily done, in my understanding, in the construction context. There's a building that's built and the contractor or the general contractor and the subcontractors would be able to cross off any concern of liability after a period of time that the statute of repose says they cannot be held liable.

This statute as set forth in 5-117, despite the references in the legislative enactment to a statute of repose, and despite -- and no one kind of argued this point, but I kind

of grabbed onto this, that in the 2023 reference there is a reference to notwithstanding any time limitation under a statute of limitations, a statute of repose, Maryland tort claim act, or the local government tort claim act, despite the legislature calling it a statute of repose, I don't find that it meets the definition of a statute of repose given that it is a plaintiff's based analysis.

The timeframe runs from the date that the plaintiff, this individual, turns 18 and then it is a period of time after that. And I think it was what four -- 20 years after the plaintiff reaches the age of majority. So, there are countless statute of repose out there that are based on each individual potential plaintiff reaching the age of majority at the age of 18, and it sort of flies in the face of logic that the school system is walking around kind of counting how many kids were 18 and when they were 18, and that by the time they reached 20 years after that then they're applying for their insurance rates based on that.

It does not seem to be the way that the school system would approach this. Unlike a statute of repose which would give the school system the ability -- and I'm using that kind of pejorative term, the school system. I realize the Defendant is identified differently. A statute of repose that says no lawsuits 30 years after Deerfield Elementary School is closed. And that point in time is fixed.

It's based on the Defendant's conduct, 30 years after that the liability shuts down and closes. As a result, the Defendant can say, "Well, there was 300 kids that graduated from Deerfield Elementary at that point in time, we know that we cannot be subject to any claims by those individuals." So, I don't find that the provision in the 2017 legislation created a statute of repose.

Now, the next question is, as Mr. O'Meally argues, is well so what, it's not a statute of repose. We still -- a vested right was created in our ability to -- in the Defendants in order to rely on the fact that these limitations period has expired. There's no dispute that 5-117 revives otherwise dead causes of action. It certainly weakens the argument of this being a vested right if we're not talking about a statute of repose. You did get me there, Mr. O'Meally. I understand the point that you were making between it makes it stronger if it's a statute of repose, but it's not critical or necessary for it to be a vested right if it's a statute of limitations.

So, I read about this late into the night last night. Woke up super early this morning and was reading all these cases. I could not get to the bottom of what a vested right is other than it does seem to be a right that is based on property, a right that is based in contract, and a right that seems to be if taken away by the government without just compensation would reach constitutional scrutiny.

Because we're talking about a statute of limitations period that's been manipulated 1, 2, 3, 4 times now in the last approximately 20 years, I can't envision how a defendant would be able to claim this is a vested right. Despite the revival of an otherwise dead cause of action. There's cases out there that say that the revival of otherwise dead cause of action is not an appropriate thing for the legislature to do. There seems to be cases out there that say unless it's a vested right then the legislature can do what they want with regard to these procedural mechanisms.

A statute of limitations being a defense to a cause of action and not necessarily a right vested in the hands of the defendant. And I go back to my conclusion on this point is the incredibly high bar that exists for a trial judge to invalidate the act of a legislature that was signed in by the governor. I would need to be persuaded by that high standard that there was no question in my mind that this a constitutional problem and that this -- I'm sorry. That there's no question in my mind that this statute is clearly unconstitutional. I can't get there.

Now, the legislature clearly knew they had a problem on their hands when they enacted 5-117 in that it gives the defendants an automatic right to an appeal. I'm sorry, that's in a different -- 12-303. They added to the courts and judicial proceedings article the denial of a motion dismiss under 5-17 of

this article based on the defense that the statute of limitations or the statute of repose, there it is again, bars the claim and any legislative action reviving the claim is unconstitutional. So, they added that in conjunction with 5-117 knowing that this was going to have to be a matter for the Appellate Courts to out given the confusion of what's a vested right in the face of a revival of an otherwise dead cause of action.

Given all the reasons that I've stated here, I am unable to declare this statute unconstitutional and, for that reason, I will deny the Defendant's motion to dismiss as to count -- no. No. I'm sorry. That is just the motion to dismiss as to the complaint in its entirety. We've already addressed the negligent infliction of emotional distress argument. That's out by consent of the Plaintiffs.

Then we have count two, count five, count seven -- six, and count seven. Let me make sure I circle this. Count two, count five, count six, and count seven are duplicative in nature. Each of those counts allege negligence in some form or fashion of each other. There's nothing wrong with pleading causes of action in the alternative, but we're not talking about different cause of action here. We're talking about different theories of negligence.

I believe that the Plaintiff here should amend the complaint to consolidate the negligence causes of action because

I, as the trial judge if this was a jury trial and we were submitting the case to the Jury, I would not give the Jury a verdict sheet with five different counts of negligence in it. And so for that reason, I think that there should be only one count of negligence. I will give the -- and we're going to talk about sort of procedurally where we go from here. I'm going to give the Plaintiffs a period of time to amend the complaint to consolidate counts two, five, seven -- six and seven. Excuse me.

As to the complaint -- the count for vicarious liability, I struggle with this because, Mr. Scott, your arguments about this no set of facts under which this conduct can be considered -- that the Defendants can be considered to be held vicariously liable for this behavior, I get your point. But we're so early in the litigation, and I am not comfortable looking at this complaint and considering the well-pled allegations in the complaints, the inferences to be drawn from those well-pled allegations, that there's not some element of opportunity for the Plaintiffs to establish, based on those inferences, vicarious liability on the part of the Defendants whether it was knowledge, whether it was -- help me. Consent. What was the word you used?

MR. D'ANDREA: Ratification, Your Honor.

THE COURT: I'm sorry?

MR. D'ANDREA: Ratification.

THE COURT: Ratification. Whether it was this conduct is balancing on the edge of scope of employment because they are in the school, they are in the classroom, there is at detention, it is in the janitor's office. Whether or not the intentional torts fall within the scope of employment or whether there's some negligent acts on the part of the individuals, it's too early for me to make that determination on a motion to dismiss basis. Things might be different on a motion for summary judgment basis.

The problem I have with count one is it's alleging vicarious liability, which is not a cause of action. It is a theory of liability for these Defendants. So, similar to my instruction to amend the complaint, that I believe there should be an allegation of a cause of action for which the, I'm going to call them institutional Defendants, not non-perpetrator Defendants, are to be held liable.

I mean, what am I telling the Jury? You are to be held vicariously liable for the conduct of this teacher and this janitor. They did what? What is the tort? What is the intentional tort? What is the theory of negligence? I don't have that. I need to know what the cause of action is that would apply to the individual actors for which the Defendants are to be held vicariously liable.

The way the complaint is drafted now is they did a bunch of horrible stuff and you're vicariously liable for that,

but what's the cause of action? Where is it? I can surmise what it is, but I think it needs to be part of the complaint. So, that -- and I'm not going to grant the motion to dismiss on the contributory negligence or assumption of risk because it's a factually based determination to be made by the Jury.

So, that leaves us where we are. I'm denying the motion to dismiss, but I'm granting the Plaintiff -- I'm granting it in part as to the consolidation of the negligence, cause of action -- I'll enter an order to this effect of course. I'm granting it in part as to the vicarious liability, but I'm giving the Plaintiffs a period of time to amend the complaint to correct it.

Now, I'm assuming as a result of this ruling the Defendants will exercise their right to appeal this interlocutory order, and I want to get that out to you all like tonight if possible so I don't hold this process up. Does the fact that I'm allowing the Plaintiffs to amend the complaint, that's not going to stop that process. Am I right? It's just -- interlocutory appeal will go right on from here?

MR. O'MEALLY: Your Honor, I believe that at this point we'll be running on two parallel paths.

THE COURT: Okay.

MR. O'MEALLY: It will be going to the Appellate Court seeking certiorari to the Supreme Court while at the same time Plaintiffs will be amending, and I presume that we'll engage in

discovery soon thereafter.

THE COURT: Okay. So, nobody's going to ask for a stay of the litigation, which --

MR. O'MEALLY: We are not going to ask for a stay.

THE COURT And I'm not encouraging you to ask for a stay.

MR. D'ANDREA: Well, I don't want to ask for a stay if they want to proceed with the discovery.

THE COURT: You do or don't?

MR. D'ANDREA: No. I would not want a stay.

THE COURT: Okay. Well, then the -- I'm going to get that order, like, hopefully tonight. I start a trial tomorrow for eight days, and I don't want that to delay the entry of the interlocutory order that I fully expect the Defendants to take an appeal from, so that doesn't -- that won't hold you all up. And my ruling instructing the Plaintiffs to amend the complaint based on a couple of these sort of, I don't know, deficiencies as I identified here is not going to stop you. I just want to make sure that that's --

MR. O'MEALLY: No.

THE COURT: Okay.

MR. O'MEALLY: No, Your Honor. And so, based upon the Court's ruling, we'll be answering while still raising the issue that will be going up to the Appellate Court.

THE COURT: Right. You're not waiving it.

MR. O'MEALLY: We're not waiving it.

THE COURT: Yeah. I mean, I'll leave you -- you would know how to plead your answer, you know, in such a way that it's not waiving any of those arguments.

MR. D'ANDREA: Your Honor, I would just say then so that Counsel doesn't waste his time, I wouldn't -- I mean, you do what you want, but I wouldn't answer this version of the complaint.

MR. O'MEALLY: Right.

MR. D'ANDREA: Okay.

MR. O'MEALLY: Right.

THE COURT: Yeah.

MR. O'MEALLY: The amended.

THE COURT: Okay. All right. And I don't need to certify anything, it being an interrogatory order under 12-303 gives you the right to just take it right up. Am I right?

MR. D'ANDREA: Yes, Your Honor.

MR. O'MEALLY: Correct, Your Honor.

THE COURT: Okay. All right. Well, again, I want to end where I began which is commending the lawyers here. This is a very difficult issue and, like I said, the legislature knew they had a problem on their hands when they enacted the statute and did so under 12-303 granting an immediate right to appeal on the very argument that I just heard for the last two hours.

So, it'll be an issue for the Maryland Supreme Court

to sort out. Hopefully, they'll clean up this for trial judges like me to understand what's a vested right, when does it come into existence, is a statute of repose necessary for it to come into existence or is the mere revival of a otherwise dead cause of action something that's a violation of the Constitution.

And we have a number of cases that are pending around in the Maryland court systems that are going to be affected by that ruling.

Okay. Thank you all. And good luck to you.

MR. O'MEALLY: Thank you, Your Honor.

MR. D'ANDREA: Thank you, Your Honor.

MR. O'MEALLY: Thank you.

(At 3:16 p.m., proceedings concluded.)

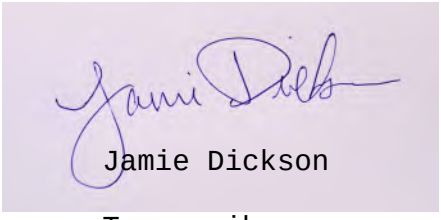
CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of John Doe v. Board of Education of Harford County, et al., C-12-CV-23-000767, heard in the Circuit Court for Harford County, Maryland, on March 19, 2024, were recorded by means of digital audio.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 72 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 20th day of March, 2024.



Jamie Dickson

Transcriber

WORD INDEX

E-SERVED Harford Circuit Court 3/20/2024 8:47 AM System SystemEnvelope:15811316
E-FILED; Harford Circuit Court
Docket: 3/20/2024 8:47 AM; Submission: 3/20/2024 8:47 AM
Envelope: 15811316

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE	*	
Plaintiff	*	
v.	*	**Case No. C-12-CV-23-767**
BOARD OF EDUCATION OF HARFORD COUNTY, et al.	*	
Defendants	*	

* * * * * * * * * * * * *

ORDER

This case was before the Court for a hearing on the *Motion to Dismiss* filed by Defendant Board of Education of Harford County (the "Board") and the *Opposition* thereto filed by Plaintiff John Doe. The Court having considered the arguments of counsel and the entire record herein, it is, for the reasons stated on the record in open court during the delivery of the oral opinion on March 19, 2024 and pursuant to Rule 2-322(c), by the Circuit Court for Harford County, hereby,

ORDERED that the *Motion to Dismiss* is GRANTED in part, DENIED in part, and DEFERRED in part; and it is further,

ORDERED that Defendant's argument that Md. Code Ann., Cts. & Jud. Proceedings § 5-117(b) (effective October 1, 2023) is unconstitutional is DENIED; and it is further,

ORDERED that thirty days leave to amend the *Complaint* is hereby GRANTED as to Count I (Vicarious Liability) and Counts II, V, VI, and VII (each asserting a claim for Negligence); and it is further,

Entered: Clerk, Circuit Court for
Harford County, MD
March 20, 2024

ORDERED that Count III (Negligent Infliction of Emotional Distress) is DISMISSED by consent of Plaintiff; and it is further,

ORDERED that a ruling on Defendant's argument as to the application of the sovereign immunity cap is DEFERRED at this time; and it is further,

ORDERED that all other arguments for dismissal of the *Complaint* raised by the Board are DENIED at this time.

03/19/2024 5:49:22 PM

March 19, 2024

Judge

Judge Alex M. Allman

cc: Counsel