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In The

Supreme Court of Maryland

September Term, 2024

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)

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

BOARD OF EDUCATION OF HARFORD COUNTY,

Appellant,

v.

JOHN DOE,

Appellee.

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

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INTRODUCTION

In 2023, in the wake of the Maryland Attorney General's bombshell report documenting widespread abuse by priests and cover-ups of that abuse by a Maryland archdiocese, the Maryland General Assembly overwhelmingly passed the Child Victims Act (CVA) to eliminate the statute of limitations for claims of child sexual abuse. That law was the culmination of a decades-long effort to expand survivors' rights and remedies so that they could seek redress against their abusers and those that facilitated that abuse.

Several survivors of childhood sexual abuse subsequently brought suit. Their stories are horrifying. One Plaintiff alleged that school administrators looked the other way while two teachers raped her on multiple occasions in the 1970s. Another Plaintiff alleged that he was abused by his fifth-grade teacher and a custodian from the 1980s into the 1990s while the school ignored obvious warning signs and rebuffed the Plaintiff's attempt to report his abuse.

For these Plaintiffs, like many survivors, it took decades to realize that what had been done to them was sexual abuse. By eliminating the limitations period, the CVA gives survivors like Plaintiffs the opportunity to seek redress for the harms they suffered at the hands of the institutions responsible for protecting them.

Defendants ask this Court to strip survivors of those protections and declare the CVA unconstitutional. They contend that in 2017, as part of a prior attempt to

expand *survivors' rights*, the General Assembly also granted a permanent safe harbor to institutions that facilitated and enabled *child sexual abusers*. As Defendants see it, the 2017 law was not a run-of-the-mill "statute of limitations" but was instead a "statute of repose," which in turn gave rise to a "vested right" to not be sued for that egregious conduct.

To prevail on that argument, Defendants must clear a high bar: Maryland courts presume statutes are constitutional, absent clear and unequivocal evidence to the contrary. Defendants cannot demonstrate beyond a reasonable doubt that the CVA is unconstitutional.

The 2017 law was a classic statute of limitations, both in structure and substance. In *Anderson v. United States*, 427 Md. 99 (2012), this Court explained that statutes of limitations and statutes of repose have long been confused and identified four factors to help courts differentiate such provisions. *Every one* of those factors points toward classifying the 2017 law as a statute of limitations. The legislative history, which is replete with references to expanding survivors' rights to sue, likewise supports the statute's plain text.

The 2017 provision also did not confer a "vested" right to "be free from" liability for facilitating child sexual abuse. Opening Br. 1. Statutes of limitations do not create vested rights. Even if the 2017 law is considered a statute of repose, however, this Court has never recognized a "vested right" in a defendant's ability to

assert a statute of repose defense—let alone in a situation such as this, where a vested right to be free from liability for facilitating childhood sexual abuse would be contrary to law and justice. But insofar as this Court concludes that construing the 2017 law as a statute of repose would render the CVA unconstitutional, that is yet another reason to instead read it as a statute of limitations rather than declaring a duly enacted law unconstitutional. Finally, because the CVA does not implicate any vested rights, at most, it is subject to rational basis review—the least searching and most deferential form of constitutional scrutiny. The CVA easily clears that low bar. Indeed, it is hard to imagine a law more rationally related to a legitimate governmental interest than one designed to permit survivors to pursue justice against entities that facilitated their childhood sexual abuse.

Alternatively, the Court could hold that the CVA is constitutional as applied to these Defendants.

The Court should hold the CVA constitutional.

QUESTION PRESENTED

Does the Maryland Child Victims Act of 2023, 2023 Md. Laws ch. 5 (S.B. 686), (codified at 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?[1]

STATEMENT OF FACTS

A. Legislative Background

Maryland Law before 2003. Maryland generally recognizes a three-year statute of limitations for civil actions, tolled until the victim reaches the age of majority. Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-101. For decades, claims of alleged child sexual abuse were treated the same way.

In the 1980s, however, state legislatures across the country began to recognize that the sexual abuse of a child is no ordinary wrong. *See* Josephine Bulkley, *Introduction: Background and Overview of Child Sexual Abuse Law Reforms in the Mid-1980s*, 40 U. Miami L. Rev. 5, 6 (1985). Survivors of child sexual abuse often take years, sometimes decades, to disclose their abuse. Andrew Ortiz, ChildUSA, *Delayed Disclosure* 2-3 (2024); E.258-259, E.261, E.263. Many young survivors are traumatized, incapable of processing what happened to them, or reliant on or controlled by the same adults who perpetrated or covered up their abuse. *See* E.258-259, E.263. As a result, standard statutes of limitations can be uniquely unjust as applied to survivors of child sexual abuse. David Viens, *Countdown to Injustice:*

[1] Per this Court's June 23, 2024 Order, Plaintiffs address the second question presented in *Board of Education of Harford County v. John Doe*, Misc. No. 10, in separate briefing.

The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children, 38 Suffolk U.L. Rev. 169, 170 (2004). Recognizing these issues, States across the country began extending their child sexual abuse statutes of limitations to allow victims more time to seek justice against their abusers and those that helped facilitate that abuse. *See* Bulkley, *supra*, at 6-7.

The 2003 Law. In 2003, the General Assembly enacted Section 5-117, which extended the statute of limitations for sexual abuse claims of a child to seven years after the plaintiff attained the age of majority. *See* E.114. For many survivors of child sexual abuse, however, a seven-year limitations period still proved far too short. Over the next decade-plus, legislators repeatedly pushed to enlarge the statute of limitations beyond this brief seven-year period. No fewer than ten bills were introduced between 2005 and 2016 to expand the statute of limitations anywhere from 20 to 32 years past the age of majority. *See* H.B. 1376 (2005) (28 years); H.B. 1148 (2006) (24 years); H.B. 858 (2008) (32 years); S.B. 238 (2009) (32 years); H.B. 556 (2009) (32 years); H.B. 725 (2015) (20 years); H.B. 1214 (2015) (32 years); S.B. 668 (2015) (20 years); H.B. 1215 (2016) (20 years); H.B. 69 (2016) (20 years).

The 2017 Law. In 2017, legislators proposed further extending the limitations period in two ways. First, legislators proposed amending the existing statute of limitations in Section 5-117(b) to afford survivors more time to sue the direct perpetrators of their childhood sexual abuse. Survivors would have either

twenty years after they reached the age of majority or three years after the perpetrator was convicted of a crime related to the abuse to bring suit, whichever was later. H.B. 642; S.B. 505.[2] Second, a new subsection (c) was proposed, governing claims against "a person or governmental entity" that was not the direct perpetrator of the abuse but still facilitated it.[3] As originally proposed, the bills would have permitted a survivor to file a claim against a so-called "non-perpetrator" "within 20 years after the date that the victim reaches the age of majority" but would have limited damages to situations in which the non-perpetrator had "actual knowledge of" sexual abuse prior to the lawsuit and "negligently failed to prevent" the alleged abuse. H.B. 642; S.B. 505.

During the hearings on this proposal, legislators and advocates presented overwhelming support for giving survivors more time to bring these claims. They explained that few survivors possess "the financial means or sophistication" to pursue legal action against their abusers or enablers by age twenty-five—when the

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[2] Versions of the bills as originally proposed are available at https://perma.cc/YQ6S-SGFC (H.B. 642) and https://perma.cc/8NKM-CQZM (S.B. 505). The legislative bill files are available upon request from the Department of Legislative Services Library.

[3] The addition of public entities was an important change, and something the Catholic Church specifically highlighted in supporting these bills. *See* H. Judiciary Comm. Hearing on H.B. 642, at 37:45-38:09 (Mar. 15, 2017) ("Mar. 15, 2017 Hearing"), https://tinyurl.com/4rn2mh32.

then-existing limitations period ran out. *See* E.121. Delegate C.T. Wilson, the House bill sponsor and a survivor of child sexual abuse, testified that he knew this to be true from his own experience. *See* H. Judiciary Comm. Hearing on H.B. 642, at 48:45-49:10 (Feb. 23, 2017) ("Feb. 23, 2017 Hearing"), https://tinyurl.com/4sn85ez9. For many survivors, it takes years or decades to come to terms with the fact that what they suffered was sexual abuse. Many survivors who have confronted that terrible fact still do not disclose or discuss their abuse for decades because of the trauma, shame, and grief associated with childhood sexual abuse. *Id.*; *see also* E.263. Many young adults also remain dependent on these authority figures for "food, shelter, tuition, and health care" well into their early adulthood. *See* E.121; E.263. Legislators proposed the 2017 legislation to address these realities.

The "actual knowledge" and "negligen[ce]" standards for non-perpetrator defendants sparked debate, however. Some expressed concern that the actual knowledge standard was poorly worded. S. Jud. Proc. Comm. Hearing on S.B. 505, at 39:24-46:40, 47:25-48:06, 1:10:40-1:11:53, 1:15:10-1:21:00 (Feb. 14, 2017) ("Feb. 14, 2017 Hearing"), https://tinyurl.com/mr3myapy. Others argued that it set too high a bar for plaintiffs because current law required only simple negligence, and the proposed bill "trade[d] a couple of additional years" in which to bring suit

for "a significantly narrower window for actually winning [the] lawsuit," regardless of when it was brought. *Id.* at 51:30-59:55, 1:09:17-40.[4]

The General Assembly ultimately settled on a compromise: For cases seeking damages against a non-perpetrator brought within seven years of the age of majority, an ordinary simple negligence standard would apply. *See* E.124-125, E.127-128; Mar. 15, 2017 Hearing at 35:59-36:27. In cases against a non-perpetrator brought "more than 7 years after the victim reaches the age of majority," damages would be available only if the non-perpetrator owed a duty of care to the victim, employed or exercised some control over the alleged perpetrator, and engaged in "gross negligence." E.124-125, E.127-128. As Delegate Wilson explained, the legislative compromise served "to preserve an individual's rights and their voice and allow them to at least be able to face their accuser" by "extend[ing] the time to sue them in civil court," while at the same time "rais[ing] the bar" for damages. "[T]hat was the give-and-take for" extending the statute of limitations from seven years to

[4] As Defendants note (at 11), some legislators expressed concern over extending the statute of limitations from seven years to twenty years because of records-retention issues. Their theory was that because federal law only requires retaining employment records for seven years for tax purposes, institutions might lack the necessary records to refute certain allegations over conduct that occurred more than seven years earlier. Feb. 14, 2017 Hearing at 1:02:10-1:08:00. Of course, a failure to retain tax records that might somehow become necessary in a later sexual abuse suit would have *already* posed a problem under the pre-2017 law, which permitted a plaintiff abused at age five to sue up to age twenty-five, well beyond the seven-year tax-record retention period.

twenty. Mar. 15, 2017 Hearing at 36:27-36:39, 39:57-40:02. "Those are the main changes that this bill does," he explained. *Id.* at 36:39-36:43.[5]

But another amendment slid into this package: Section 5-117(d). That amendment restated the twenty-year limitations period for non-perpetrators that had originally appeared in subsection (c) in slightly different terms. In what the Floor Report described as a "technical" amendment, E.136, Section 5-117(d) provided that "[i]n no event" may a civil action for child sexual abuse 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.* The uncodified version of the law twice described this provision as a "statute of repose," once in the purpose statement and once in an uncodified Section 3. E.77-78.

That was a curious label. A statute of repose "bar[s] 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

[5] Delegate Wilson repeatedly shared his deeply personal story of his own sexual abuse as a child over multiple legislative terms, seeking to secure more justice for survivors of child sexual abuse. *See*, *e.g.*, Feb. 23, 2017 Hearing at 46:58-47:20, 48:40-49:37. At the conclusion of his statement about the "give-and-take" over the standard of proof, Delegate Wilson added that "as part of this agreement in working with the Church, I've given my word that once this bill becomes law, that I won't come back to the well, I won't petition for anything, I won't try and quote-unquote improve the bill, and I will take it as it is." *Id.* at 36:46-37:02. The follow-up questions from the committee member similarly focused on the difference between the negligence and gross negligence standards. *Id.* at 38:40-41:35.

resulting injury." *Statute of Repose*, Black's Law Dictionary (10th ed. 2014); *accord Anderson*, 427 Md. at 118. Statutes of repose are also quite rare; they apply primarily to fields like construction, manufacturing, or medical practice, in recognition of the economic benefits to shielding those professionals from long-tail liability after a defined number of years have passed. Section 5-117(d) was altogether different. And in sharp contrast to the raft of testimony about subsections (b) and (c), there was no public discussion, no debate, and no testimony regarding a statute of repose or subsection (d). *See infra* pp. 37-41. Nevertheless, Section 5-117(d) was enacted into law alongside amended Sections 5-117(b) and (c).

But soon after the 2017 law passed, it became clear that even a twenty-year limitations period did not offer sufficient protection or redress to victims of child sexual abuse, either. In the ensuing years, the General Assembly considered legislation to eliminate the statute of limitations for child sexual abuse entirely, which would "add Maryland to the growing list of states that have recognized the necessity of abolishing the statute of limitations for child sexual abuse." C.T. Wilson Testimony, H.B. 687 Bill File, at 2 (2019); *see also* Marci A. Hamilton, et al., ChildUSA, *History of U.S. Child Sex Abuse Statutes of Limitation Reform: 2002 to 2020*, at 72-73 (Feb. 26, 2021) (collecting States). These laws would have provided only a two-year "lookback" window to "enable victims previously barred by the statute of limitations to also seek justice for the harm that they have suffered."

Wendy Lane Testimony, H.B. 974 Bill File, at 27-28 (2020). None of these proposals passed.

The 2023 CVA. The movement toward eliminating the child sexual abuse statute of limitations gained newfound momentum in 2023, when the Attorney General's office released a staggering report documenting "pervasive and persistent" acts of sexual and physical abuse in the Archdiocese of Baltimore. Attorney General of Maryland, *Report on Child Sexual Abuse in the Archdiocese of Baltimore* 1 (April 2023), https://perma.cc/X4DF-6WLP. The report, which detailed a "history of repeated dismissal or cover up" of abuse by the Catholic Church hierarchy, *id.* at 1, found that more than 600 young people had been abused by at least 156 clergy members since the 1940s, *id.* at 9. The report also highlighted that "over half of victims of child sexual abuse do not report it until they are over the age of 50," and noted that many victims "suffer[] lifelong effects from" their abuse, including "vulnerability to substance abuse, challenges in emotionally connecting to spouses or other people close to them, depression, anxiety, anger, eating disorders and even chronic physical pain." *Id.* at 19-20.

The Attorney General's Report followed on the heels of another detailed report, undertaken by a private law firm at the behest of the Key School itself—a Defendant in this consolidated case—which found that the Key School had turned a blind eye to decades of misconduct. *See* E.210-254. The report found at least sixteen

former students were sexually abused or groomed by teachers from the 1970s to the 1990s. Key School faculty, staff, administrators, and Board members were "aware of the abuse and inappropriate conduct," but "chose not to intervene." E.214.

In late 2023, the General Assembly enacted the CVA, eliminating all time limitations for civil actions brought by survivors of child sexual abuse. *See* E.085-095, E.097-106. Unlike prior proposals, which would have allowed only a limited look-back period for survivors whose claims were time barred as of 2023, the CVA expressly provided that all survivors could sue at any time. By encouraging survivors to come forward, the CVA also "protects children now by exposing hidden predators and those that conceal them," preventing future abuse. Maryland State Council on Child Abuse & Neglect Testimony, S.B. 686 Bill File, at 52-53 (2023).

Section 5-117(b) now provides:

> Except as provided under subsection (d) of this section[[6]] 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.

Maryland's 2023 reform was in keeping with the national trend. Since 2002, thirty States and three territories have revived previously expired child sexual abuse

[6] Subsection (d) provides that "[n]o 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."

claims. *See* Alice Nasar Hanan, ChildUSA, *Revival Laws for Child Sex Abuse* 1 (June 6, 2024). These reforms have included eliminating the statute of limitations entirely (as in Maryland), lookback windows allowing otherwise extinguished claims to be filed during a set period after the law is passed, and provisions allowing claims to be filed until a survivor reaches a specific age. *Id.* at 7-9. Many of these reforms were enacted in the wake of similar reporting of widespread child abuse and institutional cover ups in other States. *See, e.g.*, Mich. Comp. Laws § 600.5851b; 2018 Mich. Legis. Serv. P.A. 183 (S.B. 872) (window reviving claims for victims of Larry Nasser); Ala. Code § 6-2-8(b)(2) (2024); S.B. 18, 2024 Leg., Reg. Sess. (Ala. 2024) (window for expired claims against the Boy Scouts of America bankruptcy estate).

B. Procedural History

Following the CVA's enactment, several adult plaintiffs who allege they were abused as children filed suit in Maryland state and federal courts against the perpetrators and associated entities. Two of these cases are at issue here.[7]

[7] Some of the other cases filed under the CVA include: *Applegarth v. The Key School, Inc.*, No. C-02-CV-23-002370 (Cir. Ct. for Anne Arundel Cnty.); *Benson v. The Key School, Inc.*, No. C-02-CV-23-002322 (Cir. Ct. for Anne Arundel Cnty.); *Nyland v. The Key School, Inc.*, No. C-02-CV-23-002321 (Cir. Ct. for Anne Arundel Cnty.); *Surrick v. The Key School, Inc.*, No. C-02-CV-23-002048 (Cir. Ct. for Anne Arundel Cnty.); *Venton v. The Key School, Inc.*, No. C-02-CV-23-002270, (Cir. Ct. for Anne Arundel Cnty.); and *Schappelle v. Roman Catholic Archdiocese of Washington*, No. C-15-CV-23-003696 (Cir. Ct. for Montgomery Cnty.). Three

Bunker v. The Key School, Inc. et al. Valerie Bunker filed this action under the CVA against the Key School and a related Defendant in the United States District Court for the District of Maryland. *See* E.8-38. Ms. Bunker alleged that Key School teachers sexually and emotionally abused her and other students as part of a pattern of abuse fostered by Key School administrators and leaders, *see id.*, as borne out by the extensive report detailing the school's "fail[ure] to protect students from these teachers," E.210-254. Ms. Bunker moved to certify the question of the CVA's constitutionality to the Maryland Supreme Court, which the Key School Defendants opposed. *See* E.4, 45-46.

Meanwhile, the Key School Defendants moved to dismiss, arguing that the CVA was invalid under the Maryland Constitution. *See* E.39-70. According to those Defendants, because the legislature in 2017 had at times labeled Section 5-117(d) a statute of repose, it must be a statute of repose, regardless of how that provision operates in practice. The Key School Defendants also argued that Maryland law does not permit a later legislature to amend an earlier statute of repose *or* statute of limitations, on the theory that both create a "vested right" to be free from liability in perpetuity.

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courts have ruled on the issue. Two decisions found the statute constitutional, both of which are on appeal to this Court: *Roman Catholic Archbishop of Washington*, No. 9, and *Board of Education of Harford County*, No. 10. One court found it unconstitutional: *Schappelle*.

Ms. Bunker opposed, explaining that Section 5-117(d) had all the hallmarks of a statute of limitations that this Court identified in *Anderson* and the legislative history confirmed the General Assembly did not pass a law permanently immunizing institutions that facilitated child sexual abuse. Ms. Bunker further explained that longstanding Maryland law holds a statute of limitations does not create a vested right to be free from liability for facilitating child sexual abuse, and that even if Section 5-117(d) was a statute of repose, it still did not create a vested right to be free from liability for facilitating child sexual abuse. *See* E.374-380.

The federal court granted Ms. Bunker's motion to certify without ruling on the motion to dismiss, and this Court accepted certification. *See* E.6-7.

Doe v. Board of Education of Harford County. Plaintiff John Doe sued the Board of Education of Harford County (the "Board") and several individuals, alleging that a teacher and custodian sexually abused him when he was a student and that the Defendants had facilitated that abuse. *See* E.390-422. The Board moved to dismiss, arguing that the CVA violated the Maryland Constitution. *See* E.437-474. Mr. Doe opposed, explaining that Section 5-117(d) was in fact a statute of limitations and that the CVA did not impinge any "vested rights." E.173-206.

Following a lengthy hearing, Judge Alex M. Allman held the CVA was constitutional. The court explained that there is a "high threshold" for "invalidating [a] duly passed law." E.589, E.593. The court concluded that Section 5-117(d) had

the key features of a statute of limitations, notwithstanding the last-minute label the legislature had affixed to it in drafting. E.590-592. Finally, the court held that altering the statute of limitations for child sexual abuse claims was squarely within the General Assembly's constitutional authority and did not violate any vested rights. E.592-594. Under the CVA's bypass provision, the Board Defendants appealed directly to this Court, *see* E.91-92, E.103-104, which granted certiorari.

The Court subsequently consolidated *Doe* and *Bunker* for briefing and argument. Grant Order, June 23, 2024.

STANDARD OF REVIEW

This Court reviews statutory interpretations *de novo*. *See Lawrence v. State*, 475 Md. 384, 398 (2021). When a case comes to this Court on a certified question without an opinion below, review is likewise *de novo*. *Williams v. Morgan State Univ.*, 484 Md. 534, 541 (2023).

ARGUMENT

"To declare an act of a coordinate branch of government unconstitutional is an exercise of judicial review 'of a grave and delicate nature, which never can be warranted but in a clear case.' " *Mahai v. State*, 474 Md. 648, 661 (2021) (quoting *Anderson v. Baker*, 23 Md. 531, 628 (1865)). Maryland courts "begin with a presumption that the statute is constitutional." *Id.* (quotation marks omitted). "[T]he party challenging the statute has the burden of" affirmatively proving otherwise, by

showing " 'a clear and unequivocal breach of the Constitution.' " *Id.* at 662 (quoting *Baker*, 23 Md. at 628). In an echo of the rigorous criminal standard of proof, this Court has explained that if there is any "reasonable doubt," the statute stands. *Id.*; *see State v. Gurry*, 121 Md. 534, 551 (1913) (barring "judicial interference" unless the challenged legislation "plainly, and beyond all question," is unconstitutional).

The Key School and Board Defendants (collectively, "Defendants") thus bear the burden of proving that the 2023 CVA is unconstitutional—clearly, unequivocally, and beyond any reasonable doubt. They cannot meet that formidable standard, whether their challenge is viewed as a facial one or an as-applied challenge.

I. THE CVA IS FACIALLY CONSTITUTIONAL.

To succeed, "a facial challenge must establish that there is no set of circumstances under which the statute would be constitutional." *Motor Vehicle Admin. v. Seenath*, 448 Md. 145, 181 (2016) (quotation marks and brackets omitted). Defendants cannot make that showing here with respect to claims that would have been time-barred under the 2017 iteration of Section 5-117(d) as of the CVA's enactment in 2023.

First, Defendants argue that Section 5-117(d) was a "statute of repose." That is wrong: Section 5-117(d) bears all the structural hallmarks of a statute of limitations, and its legislative history confirms that the General Assembly intended for the 2017 law to protect victims of child sexual abuse—not those who facilitated

that abuse. Defendants' position largely rests on the argument that because the legislature *labeled* this provision a "statute of repose," it must be so. The Court should decline the invitation to elevate form over substance, apply *Anderson*'s holistic analysis, and conclude that Section 5-117(d) functions in all relevant respects like a statute of limitations, regardless of its name tag.

Second, Defendants claim that, as a statute of limitations, Section 5-117(d) created a vested right not to be sued. Wrong again. A statute of limitations has nothing in common with the traditional property and contractual entitlements that can create vested rights under Maryland law. Defendants' contrary argument relies on isolated dicta in past cases, none of which supports deviating from this Court's longstanding precedent.

Third, even if Section 5-117(d) were a statute of repose as Defendants argue, they still cannot clearly and unequivocally prove that the CVA impermissibly abrogated a vested right to be free from suit. This Court has never held that a statute of repose creates such a right. And recognizing a vested right to be free from suit for facilitating child sexual abuse is particularly unwarranted as contrary to law and justice.

Finally, because the CVA does not implicate a vested right, it is constitutional. But the law also easily survives rational basis review, if that standard applies. Child sexual abuse is a scourge on society, and it often takes survivors decades to come to

terms with what they suffered. Eliminating the statute of limitations allows survivors to pursue justice against their abusers and those that enabled the abuse on survivors' own terms, while also disincentivizing future abuse. It is hard to imagine a law more rationally related to a legitimate governmental interest than this one.

A. The 2017 Law Was A Statute Of Limitations.

1. Anderson *Identified Four Criteria To Distinguish Between Statutes Of Limitations And Statutes Of Repose.*

This case involves two terms, "statute of limitations" and "statute of repose," each of which has a "distinct purpose." *CTS Corp. v. Waldburger*, 573 U.S. 1, 7-8 (2014).

A "statute of limitations" is a "law that bars claims after a specified period." *Statute of Limitations*, Black's Law Dictionary (10th ed. 2014). It "establish[es] 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)." *Id.* A statute of limitations thus operates "as a defense to limit the remedy available from an existing cause of action." *Anderson*, 427 Md. at 120 (quotation marks omitted). It does not, however, "create any substantive rights in a defendant to be free from liability." *Id.* at 118.

Statutes of limitations are common in Maryland. *See, e.g.*, CJP §§ 5-101 (three-year limitations period for civil actions); 5-102 (12 years for specialties actions); 5-103 (20 years for adverse possession action); 5-105 (one year for assault, libel, or slander actions). Statutes of limitations are "not immutable" and can be

amended, limited, or expanded as the legislature sees fit. *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 343 (2022); *e.g.*, *Allen v. Dovell*, 193 Md. 359, 364 (1949); *infra* pp. 49-53.

A statute of repose has a "different purpose and implementation." *Anderson*, 427 Md. at 118. A statute of repose "bar[s] 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." *Statute of Repose*, Black's Law Dictionary (10th ed. 2014); *accord Anderson*, 427 Md. at 118.

Statutes of repose are exceedingly rare; legislatures typically limit them to claims for construction or manufacturing defects, or for medical malpractice. *See, e.g.*, Adam Bain, *Determining the Preemptive Effect of Federal Law on State Statutes of Repose*, 43 U. Balt. L. Rev. 119, 129 (2014). In these professions, an injury from a latent defect could occur long after the construction or medical procedure. Suits involving newly manifest injuries—no matter how old the cause—will frequently be timely under a standard statute of limitations because the discovery rule tolls the limitations period until the injury's discovery. *See Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 443-445 (2000). The solution to that narrow policy problem is a statute of repose, which conclusively bars suits "after a certain period of time" has passed even if an injury arises later. *Anderson*, 427 Md.

at 118. Statutes of repose thus reflect a legislative judgment that defendants in the subject professions should enjoy immunity from liability. *Id.*

Maryland followed that approach for the construction industry. Section 5-108 generally bars claims for wrongful death, personal injury, or injury to personal property resulting from an improvement to real property more than twenty years after the improvement, and more than ten years after an improvement when brought against certain professionals. CJP § 5-108(a). This means that, if a ceiling caves in twenty-one years after a renovation, Section 5-108 prevents the homeowner from suing the contractor. The homeowner is similarly out of luck if a house was built with faulty wiring and burns down twenty-three years later because of a short. Section 5-108 thus reflects the General Assembly's considered decision to largely relieve "builders, contractors, landlords, and realtors of the risk of latent defects in design, construction or maintenance of an improvement to realty," *Hartford Ins. Co. of Midwest v. Am. Auto Sprinkler Sys., Inc.*, 201 F.3d 538, 542 (4th Cir. 2000) (quotation marks omitted), consistent with the narrow purpose of statutes of repose.

Like statutes of limitations, statutes of repose can be amended to ensure the statute strikes the appropriate balance between plaintiffs' rights to seek redress for their harms and the public-policy benefits of precluding potential long-tail liability for certain professions. *See infra* pp. 60-66. For example, the General Assembly in 1991 amended Section 5-108 to exclude manufacturers of asbestos-containing

products from the repose period. *See Rose v. Fox Pool Corp.*, 335 Md. 351, 367-370 (1994). That amendment, enacted more than twenty years after the original statute, allowed plaintiffs injured decades earlier by asbestos-containing products to seek redress. *See Duffy v. CBS Corp.*, 458 Md. 206, 228 (2018).

Despite their distinct purposes, the terms "statute of limitations" and "statute of repose" are often used interchangeably and imprecisely. *See Anderson*, 427 Md. at 119-120 (noting that prior court decisions had occasionally "muddied the waters"); *see also, e.g., Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 612 (2013) (noting that the phrases "statute of limitations" and "statute of repose" are "often used interchangeably"); *Hecht v. Resolution Tr. Corp.*, 333 Md. 324, 333 (1994) ("[s]tatutes of limitation are statutes of repose"). Many other courts similarly have acknowledged that the two terms are frequently misused, even "though they are distinct." *See, e.g., Ma v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 597 F.3d 84, 88 n.4 (2d Cir. 2010). Legislatures likewise blur these lines, often using one term to describe a statute that operates like the other. *See, e.g., Hanson v. Williams County*, 389 N.W.2d 319, 321 (N.D. 1986) (noting that the state legislature had erroneously described a statute of repose as one of limitations).

This Court in *Anderson* clarified the distinction between statutes of limitations and statutes of repose. The question in *Anderson* was whether Section 5-109(a)(1), which governs medical malpractice claims, was a statute of limitations or one of

repose. 427 Md. at 106. Section 5-109(a)(1) provided that "[a]n action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider . . . shall be filed within" either "(1) Five years of the time the injury was committed; or (2) Three years of the date the injury was discovered." Section 5-109(a)(1)'s five-year period had been described over the years as both a statute of limitations and a statute of repose. *See Anderson*, 427 Md. at 106-117.

To resolve that debate, the *Anderson* Court surveyed decades of case law and commentary, identified four key features of statutes of repose, and concluded that the medical malpractice statute was a statute of limitations.

First, this Court explained, statutes of repose characteristically have a trigger unrelated to the plaintiff's injury. *Id.* at 118-119. That independent triggering event is the best way to "consistently and confidently" "differentiate[]" between statutes of limitations and statutes of repose. *Id.* at 119.

Second, because a statute of repose is triggered by "some event, act, or omission that is unrelated to the occurrence of the plaintiff's injury," a statute of repose can eliminate claims based on injuries that have not even occurred yet. *Id.* For example, under Section 5-108(a), if an injury occurs twenty-one years after the improvement and the homeowner sues, the statute of repose will be found to have barred that claim before that injury even occurred. A statute of limitations, by contrast, can only be invoked as a defense *after* an injury has occurred. *Id.* at 121.

Third, statutes of repose typically are not subject to tolling: The accrual of the cause of action is unrelated to when the injury occurs—and thus unrelated to when the injury is discovered or when the plaintiff is competent to assert that injury in court. *See id.*

Fourth and finally, this Court observed that statutes of repose reflect a legislative determination that a certain class of defendants should receive special immunity "after a certain period of time" for policy reasons. *Id.* at 118-121.

Applying these criteria, *Anderson* held that Section 5-109(a)(1) was a statute of limitations. The injury was the event triggering the statutory period; the statute could only be invoked post-injury; and tolling was available. *Id.* at 123-124. Although the statute was tailored to a certain class of defendants—negligent healthcare providers subject to medical malpractice suits—that was not enough to transform it into a statute of repose. *Id.* at 124. In addition to its close textual and structural analysis, the Court also observed that a "focused critical evaluation of the entire suite of legislative history," including the "impetus for the legislative enactment," further "confirmed" that provision was a statute of limitations. *Id.* at 103, 125-126. "Taken as a whole," this evidence indicated "the Legislature did not intend to create a strict statute of repose." *Id.* at 126.

2. The 2017 Version Of Section 5-117(d) Was A Statute of Limitations.

Anderson sets the parameters for deciding whether a particular law is a statute of limitations or statute of repose. Faithfully applying those principles shows that Section 5-117(d)—the 2017 law the General Assembly repealed when it enacted the CVA—was a statute of limitations; Section 5-117(d) contained none of *Anderson*'s hallmark features of a statute of repose.

a. Section 5-117(d)'s trigger was directly related to the plaintiff's injury.

The "chief feature of a statute of repose is that it runs from a date that is unrelated to the date of injury." *Mathews*, 435 Md. at 611-612; *Anderson*, 427 Md. at 119. Two examples drawn from Maryland law explain the difference. Section 5-108(d), discussed above, provides that a cause of action against builders, contractors, and the like will not accrue after a certain period of years beyond the date a building becomes "available for its intended use"—a date unrelated to the date of injury. Section 5-109(a)(1), the statute at issue in *Anderson*, begins to run at the time of an injury "arising out of the rendering of or failure to render professional services by a health care provider." As this Court put it, "without the plaintiff's injury (the cause of action), the limitations period would not commence to run." *Anderson*, 427 Md. at 126.

Section 5-117(d) operated like the statute in *Anderson*. The twenty-year clock for Section 5-117(d) ran from the date "arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor." E.077. The "incident or incidents of sexual abuse"—the act causing the injury to the plaintiff—triggered the limitations period. *Id.* That trigger was inherently plaintiff-focused; indeed, prior to the plaintiff filing suit, the non-perpetrator defendant may not have known when the act triggering the limitations period occurred.

Defendants acknowledge this Court's repeated statements that "statutes of repose run from an event that is 'unrelated' to the plaintiff's injury." Opening Br. 35. They argue, however, that Section 5-117(d) met that mark, because its limitations period was triggered by the date the abuse victim reached the age of majority. *Id.* at 34-35. That is wrong. Section 5-117(d)'s "age of majority" language simply made express what is *always* implicit when a child is injured; under Maryland's minority-tolling rule, the applicable limitations period is simply suspended until the victim reaches the age of majority. *See infra* pp. 28-30. The triggering *event* was still the injury the child suffered—not some independent occurrence like the completion of a building or the placing of a product into commerce.

Defendants also downplay the injury-as-trigger, pointing (at Opening Br. 35) to *Anderson*'s statement that there is "no hard and fast rule to use as a guide" in

determining whether a statute was one of limitations or repose. 427 Md. at 123. But that was why *Anderson* took such pains to analyze the differences between the two. There may be no ironclad rules, but *Anderson* set the parameters of the inquiry by identifying the key guideposts. The independent-trigger guidepost is the "chief feature" of a statute of repose, *Mathews*, 435 Md. at 611-612, one that enables courts to "consistently and confidently" discern the difference between a statute of limitations and one of repose, *Anderson*, 427 Md. at 119. Indeed, the *Anderson* Court concluded "that § 5–109(a)(1) is a statute of limitations *because its trigger is an 'injury.' "* *Id*. at 127 (emphasis added).

b. Section 5-117(d) could not eliminate claims that had not accrued.

Another "key" feature of a statute of repose is whether the statute's terms bar even unaccrued claims. *Id.* at 122. As this Court explained, because statutes of repose "run from an event that is unrelated to when the injury occurs," they "may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id.* at 118-119. A statute of repose can therefore preemptively extinguish a claim before it even "com[es] into existence." *See, e.g.*, *Waldburger*, 573 U.S. at 16. Maryland's real-property improvement statute of repose thus provides that "no cause of action for damages *accrues*" after a certain time period—regardless of whether an injury later manifests. CJP § 5-108(a)-(b) (emphasis added); *see also Anderson*, 427 Md. at 122. *Anderson* directly contrasted that "explicit edict" with

the medical malpractice statute of limitations, which contained no such language. 427 Md. at 126 (quoting CJP § 5-108(a)-(b)).

This critical feature of a statute of repose was completely absent from Section 5-117(d). That is understandable: A cause of action for child sexual abuse "accrues" when the child is abused. Section 5-117(d) could never operate to extinguish such a claim before it accrued; it could be invoked only "after an injury has already occurred and a claim accrued." *Anderson*, 427 Md. at 121 (quotation marks omitted).

Defendants downplay this key factor, too, arguing that *Anderson* "says only that statutes of repose '*may* extinguish a potential plaintiff's right to bring a claim before the cause of action accrues.' " Opening Br. 38 (quoting *Anderson*, 427 Md. at 119). But again, *Anderson* identified factors to guide the analysis, and Section 5-117(d) did not satisfy this factor, either.

c. Section 5-117(d) is expressly subject to tolling.

"Tolling, typically for reasons of fraudulent concealment or minority, is applicable generally to statutes of limitations." *Anderson*, 427 Md. at 118. Because statutes of repose are designed to provide a date certain on which a cause of action automatically expires—*regardless* of the age or competency of the plaintiff, or any other externality—they are not usually "subject to tolling rules." *Mathews*, 435 Md. at 611; *see also Anderson*, 427 Md. at 118.

One of the most common instances of tolling is "minority tolling," which serves to preserve minors' remedies and access to courts. *Piselli v. 75th St. Med.*, 371 Md. 188, 214 (2002) (describing minority tolling as a bedrock "principle" that "has consistently been embodied in Maryland law"). Under this principle, a parent may bring a tort action "on the minor child's behalf" until the minor child turns eighteen; if no claim is brought before that time, the child may bring her claim herself once she comes of age, because her cause of action was tolled until then. *Id.* at 215.

The medical malpractice statute at issue in *Anderson* provided for minority tolling—a critical factor in classifying the law to be a statute of limitations. 427 Md. at 125. In this case, minority tolling was similarly built into Section 5-117(d)—indeed, the minority tolling provision was at the core of the statutory scheme. The statute's twenty-year limitations period was triggered by the sexual abuse of a child, but it was expressly tolled until "the victim reache[d] the age of majority." CJP § 5-117(d). That is consistent with Maryland's general approach to limitations periods for child sexual abuse claims, which historically did not begin running until "the date that the victim attains the age of majority." *E.g.*, E.114. What this Court said in *Anderson* is equally true here: Had the General Assembly intended Section 5-117(d) to be an "absolute time bar," it "likely would not have subjected the limitations" to minority tolling. 427 Md. at 125-126.

Defendants have no response to this. They cannot argue that Section 5-117(d) prohibited tolling—because it did not. They cannot argue that statutes of limitations are not subject to tolling—because they are. Thus, this factor likewise supports classifying Section 5-117(d) as a statute of limitations.

d. Public policy does not support construing Section 5-117(d) as a statute of repose.

A statute of repose reflects a policy decision to "shelter[] legislatively-designated groups from an action after a certain period of time." *Id.* at 118. When Section 5-108—the construction statute of repose—was passed, the legislature's intent to shield architects, engineers, and contractors from lingering liability was clear. The statute's passage was accompanied by significant discussion about the potential insurance crises that would result if such entities remained on the hook inevitably and the concomitant ramifications for the real property industry. *See Rose*, 335 Md. at 362-370. No similar evidence suggests the 2017 General Assembly thought that *institutions that harbored child sex abusers* were worthy of this type of rare protection.

Defendants argue that Section 5-117(d) nevertheless qualified as a statute of repose because it identified a "legislatively-designated group." Opening Br. 36 (quoting *Anderson*, 427 Md. at 121). The institutional defendants that hired sexual predators, facilitated their abuse of minors, and covered up their actions do indeed constitute a "legislatively designated group." But the medical malpractice statute in

Anderson similarly "legislatively designated" negligent doctors, and this Court held it to be a statute of limitations. 427 Md. at 122-127. The question is not whether the legislature identified a particular category of defendants subject to a statute of limitations (as is often the case); the question is whether it intended for public policy reasons *to permanently shelter those defendants from suit.*

Defendants also argue that there is a "public, economic interest" in sheltering the institutions that harbored those that sexually abused minors, which purportedly benefits the "public as a whole." Opening Br. 37. No one can look at the extensive legislative record and reasonably conclude that the General Assembly intended to further some "public economic interest" by sheltering institutions that fostered and protected child sexual abusers. The record is replete with references to the impact on victims of child sexual abuse and the prevalence of and reasons for delayed reporting. On the other hand, there was *no* debate among the legislators about any supposed upside of immunizing from liability those who *facilitated* that abuse as a justification for adopting Section 5-117(d).

e. Defendants' remaining arguments fail.

Against all of *Anderson*'s benchmarks, Defendants offer one primary argument: This Court should ignore how Section 5-117(d) operated in practice and instead treat as dispositive a label appearing in the uncodified version of the law. According to Defendants, the "text" of the label trumps all.

That label was indeed "text," in that it took the form of words. But courts "do not read statutory language in a vacuum," nor do they "strictly" confine their "interpretation of a statute's plain language to the isolated section alone." *Washington Gas Light Co. v. Maryland Pub. Serv. Comm'n*, 460 Md. 667, 685 (2018) (quotation marks omitted). Rather, a statute's text "must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute." *State v. Johnson*, 415 Md. 413, 421 (2010) (quotation marks omitted).

The "text" that Defendants trumpet was a label, nothing more. And *Anderson* cautioned against assigning too much significance to labeling, reminding readers that "a rose by any other name" smells just as sweet. 427 Md. at 102 (quotation marks omitted).

Anderson was not alone in this observation. In *Whittington v. State*, for example, this Court unanimously rejected the argument that a "court order . . . cannot constitute a valid warrant because of its label as a court order." 474 Md. 1, 24 (2021). A warrant must have certain key "criteria," this Court explained. *Id.* at 25-26. "[W]hen these criteria are met, it does not matter whether the order is labeled a 'warrant' " or something else. *Id.* at 26. "[I]t is the substance, not the nomenclature" that controls. *Id.* at 24; *see also, e.g.*, *Shaarei Tfiloh Congregation v. Mayor & City Council of Baltimore*, 237 Md. App. 102, 134-142 (2018) (holding that a statute

created a "tax" even though the drafters "labeled the charge a fee" because the act's "primary purpose" was to raise revenue).

So too here. The late-breaking amendment to Section 5-117 may have labeled subsection (d) a statute of repose. But if an animal walks like a duck, looks like a duck, and quacks like a duck, it is irrelevant if its name tag says "Dog." Elevating nomenclature over substance is particularly inappropriate here, given the longstanding confusion over the meanings of "statute of limitations" and "statute of repose." *Supra* p. 22; *see also Waldburger*, 573 U.S. at 13 (explaining that a label "is not dispositive" when assessing whether a provision is a statute of limitations or statute of repose, in part because these terms have long been used imprecisely).

Imagine, for instance, that the General Assembly had expressly labeled Section 5-108—the construction statute of repose—a "statute of limitations." Label aside, the structure and substance of Section 5-108 would still (1) contain an independent trigger, (2) explicitly extinguish the accrual of any claims after a date certain, (3) make no provision for tolling, and (4) evince a legislative intent to permanently insulate certain groups from liability. *Anderson*'s holistic analysis would not allow the "limitations" label to override those clear indicia that the provision was in fact a statute of repose; a reviewing court would instead look to the features of the statutory scheme to determine how it operated in practice and what the legislature intended. *See Anderson*, 427 Md. at 123-127. The same thought

exercise applies to *Anderson* itself; if the malpractice statute of limitations there had been labeled one of "repose," the analysis set forth in *Anderson* would not permit a reviewing court to override the structural and textual elements of the inquiry in favor of the label. In fact, despite noting in its background discussion that the provision contained the word "[l]imitations," the *Anderson* Court never mentioned this label in its analysis. *See* 427 Md. at 110-111.[8]

Defendants also argue that Section 5-117(d) imposed an " 'absolute bar' to suit" because it included the words "[i]n no event" to describe the twenty-year limitations period. Opening Br. 33-34. But *Anderson*'s inquiry is not a magic-words exercise: Courts are to look "holistically" at a statute to determine if it operates as one of limitations or repose. 427 Md. at 124. Indeed, nowhere in its exhaustive survey of precedents, statutes, and academic literature did *Anderson* mention the phrase "in no event" as signifying anything one way or another. That is understandable; we are unaware of any case stating that "in no event" carries special meaning in Maryland legislation, and Defendants have not pointed to one. *Cf. Anderson*, 427 Md. at 114 n.6 (noting California's medical malpractice statute of limitations contains this phrase).

[8] Defendants suggest that because Section 5-117(d) was enacted after *Anderson*, this Court should presume the legislature knew what it was doing when it labeled Section 5-117(d) a statute of repose. *See* Opening Br. 25. The opposite is true: *Anderson* articulated in detail the key features of a statute of repose, and Section 5-117(d) did not satisfy those criteria.

Moreover, there is another plausible interpretation of the "[i]n no event" phrase: It clarified how subsection (b)'s twenty-year limitations period applied to non-perpetrator defendants. Section 5-117(b)(2) of the 2017 law provided that a cause of action for child sexual abuse must be filed "within the later of" two events: twenty "years after the victim reaches the age of majority" or three "years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents" under Section 3-602—which has no statute of limitations. *Harris v. State*, 242 Md. App. 655, 673 (2019). The time limits in Section (b)(2) were "subject to" subsections (c) and (d), however. Subsection (c) limited actions against non-perpetrators to seven years after the victim reached majority, with some exceptions. Subsection (d) in turn provided that "[i]n no event" would the time to sue a non-perpetrator defendant extend beyond twenty years. In context, then, subsection (d)'s "in no event" language simply confirmed that, no matter when a perpetrator defendant was criminally convicted, the limitations period to sue an abettor defendant expired when the victim turned thirty-eight. Thus, even if a perpetrator was convicted of felony sexual abuse when the victim was forty years old, and even if an exception in subsection (c) would otherwise have applied, subsection (d) dictated that the limitations period on a claim against the abettor defendant would not restart.

Defendants have one last arrow in their quiver: They argue that reading Section 5-117(d) to be a statute of limitations would render the "statute of repose" label superfluous. Opening Br. 24. But reading the label as dispositive would render the *operative text* meaningless. As between the two, the operative text prevails.

3. The Legislative History Supports Classifying Section 5-117(d) As A Statute Of Limitations.

When distinguishing between a statute of repose and a statute of limitations, courts "look holistically at the statute and its history," *Anderson*, 427 Md. at 124, viewing the statute's text "within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute," *Johnson*, 415 Md. at 421 (quotation marks omitted). The legislative history of Section 5-117(d) confirms that the General Assembly intended to modify the prior statute of limitations to give survivors of child sexual abuse more time to pursue legal action for harms they suffered years earlier—not to forever insulate the institutions that facilitated that abuse. *See Rose*, 335 Md. at 359 ("Even when the words of a statute carry a definite meaning, we are not precluded from consulting legislative history as part of the process of determining the legislative purpose or goal of the law.") (quotation marks omitted); Opening Br. 29 (agreeing legislative history can be useful even if the text is unambiguous).

The 2017 amendments to Section 5-117 were adopted in response to a "growing recognition of the long-term impact of child sexual abuse" and the unique

reasons that many survivors of child sexual abuse delay pursuing civil justice. E.145. Two bills on the subject were introduced in the 2017 General Assembly session—House Bill 642 and Senate Bill 505. In their initial form, neither mentioned a statute of repose. *See* S.B. 505; H.B. 642. The bills proposed to extend the statute of limitations for civil suits against non-perpetrator defendants from seven years to twenty years past the age of majority. *See id.*

Over the course of two weeks, lawmakers voted a total of eight times to advance the legislation. *See* Tim Prudente, *Three words: How the Catholic Church and allies altered a bill to protect it from sex abuse lawsuits*, Balt. Banner (Mar. 14, 2023). *Not once* during the Senate's and House's extensive hearings did *any* legislator or witness discuss a statute of repose. *See* Feb. 14, 2017 Hearing; Feb. 23, 2017 Hearing; *see generally* S.B. 505 Bill File.

The first mention of a "statute of repose" in the publicly available legislative record appeared in a set of last-minute amendments to S.B. 505 (later incorporated into H.B. 642) purporting to establish "a statute of repose for certain civil actions relating to child sexual abuse" by inserting Section 5-117(d). *See* E.127-29. The amendments offered no further explanation of what that meant, how it operated, or whether it differed from the prior statute of limitations. *See id.*

Four days after those amendments first appeared—and with no public or recorded discussion or debate—S.B. 505 was sent to the full Senate with a favorable

report, approved by the Senate, and referred to the House Judiciary Committee. *See* S.B. 505 Legislative History, https://perma.cc/5H6G-R4R2; H. Judiciary Comm. Hearing on H.B. 642 (Mar. 29, 2017) ("Mar. 29, 2017 Hearing"), https://tinyurl.com/ymsj8cft. The delegate who presented the bill on the House floor characterized the "statute of repose" language as merely "technical." House Floor Actions at 57:38-58:26 (Mar. 16, 2017);[9] *see* E.136; *see also Whittington*, 474 Md. at 29-30 (emphasizing that a "technical" amendment does not alter the substance of a statute). The amendments were adopted without discussing that term. *See id.* The House Judiciary Committee subsequently conducted a thirty-second proceeding, in which the Senate sponsor said nothing about the "statute of repose" language, stating only that the House and Senate versions of the bill were "in the exact same posture." Mar. 29, 2017 Hearing at 13:05-13:30.

The legislative record is thus resoundingly silent as to any legislative intent to permanently immunize from liability institutions who failed to protect children from sexual abuse. Lest there be any doubt that the "statute of repose" label slid into Section 5-117 unremarked, many of the 2017 legislators themselves have publicly confirmed that they did not intend to confer immunity from suit on institutions that enabled and covered up the sexual abuse of children. *See* Prudente, *supra*, at 5-7;

[9] *Available at* https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-47-?year=2017RS.

Erin Cox & Justin Moyer, *When Maryland gave abuse victims more time to sue, it may have also protected institutions, including the Catholic Church*, Wash. Post (Mar. 31, 2019).

Defendants point to the few instances in the legislative history where the word "repose" appears. Opening Br. 29-32. But as we have explained, the amendments creating the purported "statute of repose" were added without discussion. And every official legislative reference to "repose" traces back to those same late amendments: The revised Fiscal and Policy Note parroted the same language. *See* E.141-147. So did the final Floor Reports. E.131-134; E.136-139; *see also* Opening Br. 30 (conceding these reports simply "[t]rack[]" the amendment's language). The only reference to a "statute of repose" on the floor was that the bill "also creates [a] statute of repose for specified civil actions relating to child sex abuse." Senate Floor Actions (Mar. 23, 2017) at 2:16:32-2:17:48. There is no indication from these rote statements that the General Assembly understood and agreed upon the definition of that term, let alone its potential legal significance.[10] That stands in stark contrast to

[10] Defendants suggest the General Assembly conformed Section 5-117(d) to Illinois' short-lived and long-repealed "statute of repose" for child sexual abuse claims. Opening Br. 35-36 (citing 735 Ill. Comp. Stat. § 5/13–202.2(b) (1992)). Illinois' statute was repealed over thirty years ago, and the few cases classifying it as a statute of "repose" under Illinois law assumed away the critical question whether the legislature had created a statute of limitations or one of repose. *See M.E.H. v. L.H.*, 177 Ill. 2d 207, 214 (1997); *Anderson v. Catholic Bishop of Chicago*, 759 F.3d 645, 647-648 (7th Cir. 2014). The footnoted dicta from a South Dakota court

the considerable discussion over important policy reasons motivating Maryland's construction statute of repose. *Rose*, 335 Md. at 368. It also stands in stark contrast to the legislative history of the 1991 amendment to that statute, which included an eleven-page letter from the Department of Legislative Reference explaining how a statute of repose works. *See* E.287-299.

The only other piece of legislative history Defendants muster is an undated, anonymous memorandum tucked into the House bill file. *See* Opening Br. 31. According to Defendants, this mystery memo "emphatically confirms" the Legislature's "full understanding" of the differences between statutes of limitations and statutes of repose and bolsters their purported intent to permanently immunize entities that facilitated the egregious sexual abuse of children within their care. *Id.*

Nothing could be further from the truth. That document—titled only "Discussion of certain amendments in SB0505/818470/1"—was not presented at any of the legislative hearings. There is no indication who wrote it, when it was written, where it came from, or who in the General Assembly, if anyone, might have read it. *See* E.149-150. Given its dubious origins, the document should be given the weight it deserves: None at all. Courts look to bill files when they supply

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labeling that state's statute one of "repose" likewise deserves no weight. *See* Opening Br. 36 (citing *Bernie v. Blue Cloud Abbey*, 821 N.W.2d 224, 230 n.9 (S.D. 2012)). Appellants cannot point to any evidence that the Maryland General Assembly knew about either of these provisions—let alone purposefully modeled the 2017 law after them.

"comments and explanations . . . by authoritative sources." *Witte v. Azarian*, 369 Md. 518, 525-526 (2002). "Statements by other unofficial groups and individuals" have far less probative value, particularly where there is no evidence that the group "had a special connection to the bill's preparation and proposal." 2A Norman Singer & Shambie Singer, Sutherland Statutory Construction § 48:11 (7th ed. 2023 update). And where the group or individual responsible for the statement is *unknown*, its probative value is nil.

None of the three cases Defendants cite counsel otherwise. *See* Opening Br. 32. In each, the reviewing court looked to notes in the bill file that were consistent with other evidence of legislative intent. In *Warfield v. State*, the "handwritten, undated and unidentified note" was part of an "uneventful" legislative process, where the amendments "did no more" than add various structures to be covered by a criminal trespass statute. 315 Md. 474, 497 (1989). *Herd v. State*, 125 Md. App. 77 (1999), merely quoted *Warfield* in recounting the legislative history of that same provision. And the "handwritten note" in *Webber v. State*, 320 Md. 238, 247 (1990), tracked other textual indicia. These cases differ significantly from the situation here, where Defendants rely on this undated, unauthored, and unauthenticated document to argue the 2017 law made robust, substantive changes that do not track the text, structure, or authenticated legislative history of the provision.

Legislative history, in all events, is meant to confirm the statute's text and meaning—not displace it. *See, e.g.*, *Elsberry v. Stanley Martin Cos.*, 482 Md. 159, 190 (2022) (legislative history serves as a "check" on textual interpretation). Plaintiffs' reading of the statute's full legislative history comports with this precept. Defendants' does not.

B. The Legislature Acted Well Within Its Constitutional Authority In Repealing Section 5-117(d).

Defendants contend that in repealing Section 5-117(d) in 2023, the General Assembly unconstitutionally deprived them of vested rights. *See* Opening Br. 53-58. But to qualify as a "vested right," the right in question must be capable of vesting *and* must have actually vested. The 2017 statute of limitations did not check either box.

Under Maryland law, the type of rights capable of vesting traditionally include property and contractual entitlements. Particular remedies and procedures do not give rise to vested rights. Nor do rights that would be contrary to equity and justice. But even when capable of vesting, a right cannot be deemed "vested" if it remains contingent on a future act. Consistent with these principles, abundant case law instructs that the legislature may retroactively abrogate a statute of limitations; there is no such thing as a "vested right" not to be sued. And even if such a right could exist, it cannot vest while it remains contingent. The CVA thus constitutionally repealed the 2017 statute of limitations.

1. A Vested Right Must Be A Right Capable Of Vesting And Must Have Vested.

In Maryland, a vested right is "something more than a mere expectation based upon 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." *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003) (quotation marks and emphasis omitted). The "vested right" label is often "conclusory, referring simply to rights protected from legislative interference without providing a useful test for their prior identification." *See, e.g.*, 2 Shambie Singer, Sutherland Statutory Construction § 41:4 (8th ed. 2023 update). That is likely why Maryland courts frequently observe the difficulties in drawing the line between vested and non-vested rights. *See, e.g.*, *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 560 (2011); *Langston v. Riffe*, 359 Md. 396, 419 (2000). Nevertheless, a few consistent principles for identifying a vested right emerge from historic and contemporary case law.

a. Traditionally, rights capable of vesting involve property or contractual entitlements.

Consistent with its constitutional origins, a property or contractual right is the quintessential right capable of vesting. *See Dua v. Comcast Cable of Md.*, 370 Md. 604, 623-624 (2002). Early Maryland court decisions invalidated retroactive laws that would "tak[e] from one man his property and giv[e] it to another." *Thistle v. Frostburg Coal Co.*, 10 Md. 129, 144 (1856).

Other early decisions held unconstitutional a law that retroactively altered the elements of adverse possession to make it easier to divest a property owner of his title, *id.* at 144-145, and a law that retroactively voided a deed and thereby divested a widower's right of dower, *Grove v. Todd*, 41 Md. 633, 642 (1875); *see also Regents of Univ. of Md. v. Williams*, 9 G. & J. 365, 412-413 (1838) (transfer of a private university's property to another entity without the university's consent violated Maryland's Constitution). Maryland also historically recognized vested property or contract rights arising in a deed or will. *See, e.g., Remington v. Metropolitan Sav. Bank*, 76 Md. 546 (1893) (distributees' rights to certain property in a will vested upon testator's death); *Garrison v. Hill*, 81 Md. 551 (1895) (identifying a "vested right in the property left" in a will); *see also Berrett v. Oliver*, 7 G. & J. 191, 206-207 (1835) (finding void the retroactive application of a statute vacating and annulling deeds).

In contemporary cases, Maryland courts continue to acknowledge property and contract rights as paradigmatic examples of vested rights. *See, e.g., Dua*, 370 Md. at 629 ("[R]etrospective statutes abrogating vested property rights (including contractual rights) violate the Maryland Constitution"); *Dryfoos v. Hostetter*, 268 Md. 396, 408 (1973) (legislature cannot constitutionally "take a property interest from one person and vest it in another"). In recent decades, Maryland courts have recognized several property and contract rights as vested for retroactivity purposes,

including those relating to a deed of trust, *Dryfoos*, 268 Md. at 407-408; a ground rent lease, *see, e.g.*, *Muskin*, 422 Md. at 560; the retroactive imposition of rental dwelling license fees, *Vytar Assocs. v. Mayor & Aldermen of City of Annapolis*, 301 Md. 558, 574 (1984); and the retroactive application of a tax increase on fully completed transactions, *Washington Nat'l Arena Ltd. P'ship v. Treasurer, Prince George's Cnty.*, 287 Md. 38, 55 (1980).

A person also can have a vested property right in an accrued cause of action. *Dua*, 370 Md. at 633. Under Maryland law, a cause of action is a form of property, known as a "chose[] in action." *Id.* at 631 n.10. Thus, a statute cannot retroactively "bar an accrued cause of action." *Id.* at 633. But "in the spectrum of vested rights recognized previously by this Court," even choses in action receive less protection than "vested real property and contractual rights which have been almost sacrosanct in [Maryland's] history." *Muskin*, 422 Md. at 561-562. There is no vested right in an *unaccrued* claim, and the legislature may retroactively impair even an accrued cause of action if an alternative remedy remains available. *E.g.*, *Dua*, 370 Md. at 623-633, 638. The legislature also may extend or curtail the limitations period for a suit if the new law allows a reasonable time to assert the existing cause of action. *E.g.*, *Hill v. Fitzgerald*, 304 Md. 689, 702-703 (1985).

b. A procedural or remedial law cannot create a right capable of vesting.

Certain "rights" are never capable of vesting, however. There "is no vested right in a particular remedy or procedure so long as an adequate remedy exists" to address a "preexisting actionable wrong." *Rawlings v. Rawlings*, 362 Md. 535, 559 n.20, 561 (2001) (quotation marks omitted); *see also Kelch v. Keehn*, 183 Md. 140, 144 (1944).[11] In other words, an interest in a procedural or remedial law is not the type of right capable of vesting.

A "procedural law" is one that "alter[s] the procedural machinery involved in the enforcement of those rights," while a remedial law "provide[s] a remedy, or improve[s] or facilitate[s] remedies already existing for the enforcement of rights and the redress of injuries." *Estate of Zimmerman v. Blatter*, 458 Md. 698, 729 (2018) (quotation marks omitted). Where a law retroactively alters the time to assert an affirmative defense, modifies the standard applicable to certain claims, or expands remedies to enforce existing rights, it is procedural and/or remedial. *See, e.g.*, *id.* at 733-736; *Gregg v. State*, 409 Md. 698, 715-716 (2009); *Langston*, 359 Md. at 420.

[11] As part of the first step in the retroactivity analysis, Maryland courts ask whether a law is procedural or remedial; if so, it may be applied retroactively where it does not impede a vested right. *E.g.*, *Rawlings*, 362 Md. at 559-560. In practice, "so long as efficacious remedies exist after passage of the act," a procedural or remedial law passes that test. *Id.* at 561 (quotation marks omitted); *see also infra* pp. 56-57 (discussing the rare exception where a limitations period is embedded in the statute creating the cause of action, which can affect vested rights).

c. There is no vested right to act in a manner contrary to equity and justice.

"Courts do not regard rights as constitutionally protected which are contrary to the equity and justice of the case." *Dryfoos*, 268 Md. at 406 (quotation marks omitted). Indeed, this Court has long held that "there can be no vested right to do wrong." *Grinder v. Nelson*, 9 Gill 299, 309 (1850) (quotation marks omitted). Maryland courts have accordingly found "no vested right to violate a moral duty, or to resist the performance of a moral obligation." *Id.*; *see, e.g.*, *Landsman v. Maryland Home Improvement Comm'n*, 154 Md. App. 241, 260 (2003); *Grove*, 41 Md. at 636.

d. A right premised on the continuation of an existing law or a claim contingent on any future act has not vested.

Just because a right *can* vest does not mean that it *has* vested. There is no vested right in the continuation of an existing law or a claim contingent on any future act. In Maryland, a right is not "vested" if it is "dependent on any future act, contingency or decision to make it more secure." *McComas v. Criminal Injs. Comp. Bd.*, 88 Md. App. 143, 149-150 (1991) (quotation marks omitted). This includes any expectation based "upon an anticipated continuance of the existing law." *Allstate*, 376 Md. at 298 (quoting *Godfrey v. State*, 84 Wash. 2d 959, 963 (1975)). To state the inverse, a right capable of vesting only vests when it is "accrued" or "completed and consummated." *Langston*, 359 Md. at 419; *see, e.g.*, *id.* at 420 ("a vested right

is an immediate right of present enjoyment or a present fixed right of future enjoyment").

A cause of action accordingly vests when it accrues—meaning when all the facts allowing a plaintiff to bring suit come into existence. *See Lumsden*, 358 Md. at 444. A defense or immunity, however, does not vest (if at all) until "it is actually assertable" or "is so substantially relied upon that retroactive divestiture would be manifestly unjust." *Allstate*, 376 Md. at 297 (quotation marks omitted and collecting cases); *see, e.g.*, *Landsman*, 154 Md. App. at 254 (petitioner "did not have a vested, legally enforceable right to compensation from the Fund until . . . the date on which the Commission determined that he was entitled to compensation"); *Alexander v. Worthington*, 5 Md. 471, 480 (1854) (no vested right related to a will until the testator's death). Until then, a defense or immunity is "merely an inchoate right which cannot be asserted until the happening of some future event." *Allstate*, 376 Md. at 297-298 (quoting *Hall v. A.N.R. Freight Sys., Inc.*, 149 Ariz. 130, 140 (1986)).

Applying these principles, this Court has upheld laws retroactively eliminating an affirmative defense or immunity. *See, e.g.*, *State v. Smith*, 443 Md. 572, 594 (2015) (per curiam) (no vested right in an affirmative defense, because there is no "inherent vested right in the continuation of an existing law") (quotation marks omitted); *Allstate*, 376 Md. at 298 (no vested right in an immunity); *see also*

Rawlings, 362 Md. at 560 n.21 (collecting sources finding no vested right in an affirmative defense of contributory negligence and noting that, under Maryland law, "a statute or rule that eliminates an affirmative defense can be applied retrospectively").

As explained below, these principles illustrate that the 2017 law did not create any right capable of vesting—and that even if it did, that "right" never vested before the CVA's enactment.

2. The CVA Constitutionally Repealed The 2017 Statute of Limitations.

a. The 2017 statute did not confer rights on future defendants, much less "vested" rights.

As a statute of limitations, Section 5-117(d) vested no rights for the CVA to impair. Maryland law is clear: "[T]he Legislature has the power to alter . . . statutes of limitations" without impermissibly abrogating a vested right. *Muskin*, 422 Md. at 561; *accord, e.g.*, *Berean Bible Chapel, Inc. v. Ponzillo*, 28 Md. App. 596, 601 (1975) (a "statute of limitations confers no vested rights"). This straightforward conclusion flows from several of the above principles governing vested rights.

First, a statute of limitations defense is not a property or contract right capable of vesting. Maryland courts have consistently recognized vested property and contractual rights like deeds, wills, and choses in action. *See supra* pp. 43-45. An individual cannot market or sell a limitations defense, nor can that affirmative

defense give rise to an independent cause of action. *See Muskin*, 422 Md. at 561-562 (contrasting statutes of limitations with "real property and contractual rights," which "are some of our most fundamental rights and a long-standing tradition under our common law").

Second, a statute of limitations is procedural and remedial, which likewise does not create a right capable of vesting. A "statute of limitations affects only the remedy, not the cause of action." *Rawlings*, 362 Md. at 560 n.21 (quotation marks omitted). Said differently, a limitations period affects how long a *plaintiff* can seek a remedy; it does not create or alter the underlying cause of action. Even Defendants agree that "statutes of limitations are procedural in nature, and act as a defense to limit the remedy available from an existing cause of action." Opening Br. 21 (quotation marks omitted). Thus, "[i]t is thoroughly understood that a statute of limitations . . . does not destroy or impair vested rights," so long as it does not eliminate all available remedies. *Allen*, 193 Md. at 363; *accord*, *e.g.*, *Hill*, 304 Md. at 702-703; *Rawlings*, 362 Md. at 561.

The 2017 law's extension of the statute of limitations from seven years to twenty was plainly procedural and remedial. Indeed, this Court has already held a prior iteration of Section 5-117 extending the limitations period from three years to seven fit that rubric. As the Court explained, the limitations extension "improves remedies already existing for the enforcement of rights and the redress of injuries"

by extending the time in which "victims of child sexual abuse may seek redress in the courts." *Doe v. Roe*, 419 Md. 687, 703 (2011) (quotation marks omitted).

Third, the right to evade liability for facilitating child sexual abuse is not capable of vesting; finding otherwise would be contrary to law and "the prevailing views of justice." *Danforth v. Groton Water Co.*, 178 Mass. 472, 477 (1901) (Holmes, J.); *supra* p. 47.

The Appellate Court of Maryland has applied this principle to uphold a law retroactively increasing the amount a homeowner can recover from a state fund due to a contractor's unsatisfactory work. *Landsman*, 154 Md. App. at 260. The homeowner there had contracted for a home improvement project, but before it was completed, the contractor abandoned the project and refused to repay the homeowner tens of thousands of dollars. *Id.* at 259-260. After the agreement fell through, but before the plaintiff filed a claim against the fund, the General Assembly raised the recovery limit. *Id.* at 246. The court held that applying this amendment retroactively would not impermissibly affect vested rights because "the only deprivation of property at issue" was that of the owner, as there can be no "vested right in being shielded from" owing money due. *Id.* at 260; *see also, e.g.*, *Grinder*, 9 Gill at 309 (a borrower "certainly can have no right as a matter of private justice, to repudiate his contract so as to escape from the payment of the sum actually received").

The same principle applies here. Abettor-defendants do not have a "vested right in being shielded from" liability for allegedly failing to prevent and covering up child sexual abuse. *See Landsman*, 154 Md. App. at 260. This also "is not a case where [such defendants'] conduct would have been different if the present rule had been known and the change foreseen." *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 316 (1945) *see Baltimore County v. Churchill, Ltd.*, 271 Md. 1, 12-13 (1974) (endorsing *Chase*'s reasoning and finding "no vested right [to retain] taxes which were collected in error"). Defendants do "not say, and could hardly say, that" entities that facilitated child sexual abuse failed to take any action to prevent child sexual abuse because they were counting on a limitations defense as a "shelter from liability." *Chase*, 325 Md. at 316. Disappointment about "the change of policy to [their] disadvantage" is not enough to confer a constitutionally protected "immunity from this suit," *id.*—especially given the critical policy interests in providing access to justice for victims of child sexual abuse.

Fourth, a statute of limitations is an affirmative defense that cannot vest through the mere passage of time. *See supra* pp. 47-49; *Rawlings*, 362 Md. at 560 n.21, 561; *see, e.g.*, Md. R. Civ. P. 2-323(g)(15) (statute of limitations is an affirmative defense). In *Smith*, for example, the court upheld the retroactive application of a Maryland rule eliminating the State's affirmative defense that the failure to appeal a conviction waives the right to seek certain relief. 443 Md. at 594.

The Court explained that there is no "inherent vested right in the continuation of an existing law," so the State had no vested right in what it claimed was its "primary defense." *Id.* (quotation marks omitted).

Other jurisdictions agree. The U.S. Supreme Court has long held that a civil limitations period does not, standing alone, create a vested right. As the Court explained in *Chase*, "it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment." 325 U.S. at 315-316. A defendant "may, of course, have the protection of the [public] policy [embodied in the statute] while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control." *Id.* at 314; *see Campbell v. Holt*, 115 U.S. 620, 628 (1885). The same is true here for entities whose statute of limitations defense was still entirely contingent when the General Assembly passed the CVA in 2023.

In short, the 2017 statute of limitations was procedural, remedial, and created an affirmative defense that vested no rights in entities that facilitated child sexual abuse. That is especially true given that any so-called vested right would be contrary to law and justice.

b. Defendants cannot clearly prove that retroactively removing a limitations defense for civil claims is unconstitutional.

This Court has never held that the running of an ordinary statute of limitations creates a vested right in a defendant to remain free from liability indefinitely. To support their contrary argument, Defendants point to three isolated pieces of dicta, none of which can bear the weight of their argument. *See* Opening Br. 53-56.

Defendants first argue that *Doe v. Roe* stands for the idea that the expiration of a statute of limitations creates a vested right "to be free of claims." Opening Br. 53. *Doe* held a law extending the limitations period could apply retrospectively to claims for child sexual abuse "not-yet barred by the previously-applicable" limitations period at the time the new law was enacted. 419 Md. at 707-710. In so holding, *Doe* explained that Section 5-117, like other statutes of limitations, is "remedial" because it "improves the child's right to seek compensation for the alleged wrongs committed against him or her" by extending the time period during which to seek redress in court. *Id.* at 703 (quotation marks omitted).

Doe says nothing about the situation presented here. In the *Doe* Court's own words: "Because we are not presented with" the "scenario" in which a plaintiff's claim was time-barred by the existing statute of limitations before the new limitations period took effect, "we express no holding regarding the applicability of § 5-117 to child sexual abuse claims" in that circumstance. *Id.* at 707; *see also id.*

at 693 n.5 (noting that question was not "before the Court"). Anything the *Doe* Court mentioned about time-barred claims is accordingly dicta. That is why Defendants can only say that *Doe* "suggested" or "impli[es]" that the 2017 statute of limitations vested them with rights. Opening Br. 53, 54.[12]

Defendants' reliance upon *Rice v. University of Maryland Medical System Corp.*, 186 Md. App. 551 (2009), is similarly misplaced. *Rice* involved a medical malpractice claim. While the plaintiffs there were in the "midst of pursuing" that claim in circuit court, this Court held in a different case that the failure to attach the expert report to the certificate of qualified expert in a timely manner mandates dismissal of a medical malpractice claim. *Id.* at 552-553 (citing *Walzer v. Osborne*, 395 Md. 563, 585 (2006)). The circuit court dismissed the claim under *Walzer*, at which point plaintiffs "refil[ed] the action" pursuant to a "savings statute" enacted in response to *Walzer*. *Rice*, 186 Md. App. at 553, 556-558. The defendant alleged the savings statute violated its "vested right" by "retroactively . . . reviving a barred

[12] Defendants (at 54) also point to a footnote in *Doe* declaring it to be "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 limitations for that violation has expired.' " 419 Md. at 707 n.18 (quoting *Crum v. Vincent*, 493 F.3d 988, 997 (8th Cir. 2007), which applied Missouri law). A footnoted phrase quoting a federal case applying a different state's law offers no insight into how to apply Maryland law to this case—particularly where that footnote is appended to a decision expressly declining to opine on the question presented here.

cause of action." *Id.* at 562-563 (quotation marks and emphasis omitted). The Appellate Court of Maryland disagreed, holding that plaintiffs' claim was permissible because they had followed the procedure specified in the savings statute and "the statute of limitations [had] not expired when the suit was originally filed." *Id.* at 570. The court then offered its view 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 563 (citing *Smith v. Westinghouse Elec. Corp.*, 266 Md. 52, 57 (1972)). As in *Doe*, however, *Rice* did not involve the retroactive removal of a statute of limitations defense or the revival of an expired claim, rendering this statement dicta.

The lone citation *Rice* offered for its dicta does not support its statement. *Smith v. Westinghouse* concerned the retroactive application of a law lengthening the statute of limitations for a wrongful death claim—a creature of statute. 266 Md. at 55. As the *Smith v. Westinghouse* Court explained, the time period specified in the wrongful death statute was "not an ordinary statute of limitations"; it was a condition precedent to filing suit, created as part of a new form of liability. *Id.* at 55-56, 58; *see Slate v. Zitomer*, 275 Md. 534, 542 (1975) ("[S]ince the wrongful death statute created a new liability not existing at common law," the limitations period was "a condition precedent to the right to maintain the action"). In other words, the statute of limitations there was "part of the substantive right of action" itself. *Geisz v.*

Greater Balt. Med. Ctr., 313 Md. 301, 322 (1988); *see also Chase*, 325 U.S. at 311-312 & n.8 (explaining this unusual situation).

Retroactively altering a limitations period therefore affects vested rights only in the rare event the limitation period is embedded in the very statute that creates the cause of action itself. But where—as here, and as is far more often the case—the basis for a defendant's "liability" already existed, legislation extending a statute of limitations merely "reinstate[s] a lapsed remedy." *Chase*, 325 U.S. at 311-312 & n.8; *see also Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 84 (2006) (explaining that a statute of limitations "is different" from Maryland's wrongful death statute); *Anderson v. Sheffield*, 53 Md. App. 583, 586 (1983) (explaining that statutory conditions precedent are distinct from "ordinary procedural statutes of limitations"). *Smith v. Westinghouse* accordingly does not apply.

Defendants also argue that dicta in *Dua* supports "the principle that a defendant in Maryland who has survived the running of a statute of limitations has a substantive, vested right to be free from liability." Opening Br. 55-56; *see id.* at 40-43. At the risk of sounding repetitive, *Dua*—just like *Doe* and *Rice*—did not involve the retroactive removal of a statute of limitations defense. It instead involved a challenge to legislation retroactively allowing late fees in certain amounts, which the plaintiffs argued deprived them of their vested right to recover what would have been excessive fees, paid prior to the law's enactment. *Dua*, 370

Md. at 610-611, 618. *Dua* held the plaintiffs had a vested right in their accrued cause of action for excessive fees. *Id.* at 632. That is consistent with Maryland courts' long-held recognition that a "chose in action" is a form of property. *See supra* p. 45.

Echoing the dicta in *Doe* and *Rice*, *Dua* includes a statement to the effect that "the Maryland Constitution ordinarily precludes the Legislature . . . from . . . reviving a barred cause of action." *Dua*, 370 Md. at 633. Once again, that statement was dicta.[13] The only case cited in *Dua* that could even conceivably support that proposition is *Smith v. Westinghouse*. *See Dua*, 370 Md. at 627, 635-636. But as explained, and as *Dua* itself acknowledged, *Smith v. Westinghouse* involved the unique circumstance in which "the period within which to file suit was part of th[e] statutory cause of action." *Dua*, 370 Md. at 635. Just one year after *Dua*, this Court held in *Allstate* that the retroactive abrogation of an existing immunity *does not* impair vested rights. 376 Md. at 296. The Court distinguished between a law that retroactively impaired a cause of action and one that retroactively impaired an immunity. Retroactively applying an immunity to abrogate a cause of action *would* violate a vested right, the Court explained; retroactively abrogating an existing

[13] Defendants also misrepresent a 2023 Maryland Attorney General letter as acknowledging "*Dua*'s *holding* that a revival of a barred cause of action deprives a defendant of a vested right." Opening Br. 44-45 (citing E.170) (emphasis added). The Attorney General did not describe *Dua's* dicta as a "holding." He said only that *Dua* had "pointed [this] out"—and then went on to explain that *Dua* "*did not* involve the revival of a cause of action." E.170 (emphasis added).

immunity from liability would not. *Id.* at 296-298. That makes sense: A defendant who causes harm to another has no reliance interest or expectation that it will not be subject to liability—much less an expectation or interest that can be deemed a property right, sold, or assigned.

In their final salvo, Defendants point to cases from a "handful" of other States, which they argue show that "the retroactive revival of claims time-barred under a statute of limitations violates a defendant's vested rights." Opening Br. 56. Of course, those decisions have no binding effect here. But if this Court is inclined to look to out-of-state precedent for guidance, it should also consider the many other States that have reached the opposite conclusion, holding that the running of the statute of limitations *does not* create a vested right to be free from suit.[14] Defendants also ignore that more than a dozen other jurisdictions' child sexual abuse claim revival laws have been *upheld* on that very basis.[15]

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[14] *See, e.g., Harding v. K.C. Wall Prods., Inc.*, 250 Kan. 655, 670 (1992) ("a defendant has no vested right in a statute of limitations"); *Southern States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 316 Ga. 701, 710 (2023) ("a statute of limitation is procedural and creates no vested right"); *McKinney v. Goins*, 290 N.C. App. 403, 416 (2023) ("[N]o claim to or interest in property invariably stems from a defendant's reliance on the procedural bar provided by the statute of limitations, and thus no vested right is impacted when that bar is lifted"), *appeal dismissed*, 898 S.E.2d 768 (N.C. 2024).

[15] *See John C D Doe v. Big Brothers Big Sisters of Am.*, No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021), *rev. denied*, No. CV-22-0003-PR (Ariz. April 8, 2022); *Huth v. Cosby*, No. BC565560, 2022 WL 17583301, at *4 (Cal. Super. Ct. Sep. 27,

C. Even If Section 5-117(d) Is A Statute Of Repose, The CVA Is Constitutional.

Even if this Court concludes that the 2017 law should be treated as a statute of repose, Defendants still lose. Under the principles laid out *supra* pp. 43-49, an inchoate statute of repose defense does not have the key features of a vested right. Indeed, this Court has never before recognized a "vested right" to assert a statute of repose defense—let alone a vested right to be free from liability for facilitating childhood sexual abuse, which would be contrary to law and justice. It should not break new ground and do so here. *See, e.g.*, *Samuels v. Tschechtelin*, 135 Md. App. 483, 537 (2000) (when recognizing a new due process right, "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care") (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

2022); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1259 (Del. 2011); *Bernard v. Cosby*, 648 F. Supp. 3d 558, 570-571 (D.N.J. 2023); *Harvey v. Merchan*, 311 Ga. 811, 811-812 (2021); *K.E. v. Hoffman*, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990); *Rupley v. Balajadia*, No. 20-00030 (D. Guam June 3, 2021); *Roe v. Ram*, No. 14-00027, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *Sliney v. Previte*, 473 Mass. 283, 295 (2015); *S.Y. v. Roman Catholic Diocese*, No. 20-2605, 2021 WL 4473153, at *4 (D.N.J. Sep. 30, 2021); *A.B. v. S.U.*, 2023 Vt. 32, (2023); *see Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 404-405, 439-442 (2015) (finding no substantive due process right and also holding the law would satisfy rational basis review); *cf. Bienvenu v. Defendant 1*, No. 2023-CC-01194, 2024 WL 2952499, *10-15 (La. June 12, 2024) (finding statute lawfully applied retroactively to revive causes of action relating to sexual abuse of a minor that were previously barred under any prescription period).

First, as explained in detail above, a statute of repose defense—like a statute of limitations defense—is substantively distinct from and does not enjoy nearly the same protection as the property and contract rights commonly recognized as a vested right in Maryland. *See supra* pp. 49-54.

Second, labeling a statute of repose "substantive" does not help Defendants. *See* Opening Br. 39-40. Even if a "substantive" statute of repose defense is *capable* of vesting—despite the differences between that right and traditional contract and property rights—that says nothing about whether the right *has* vested. *See Langston*, 359 Md. at 419-420 (distinguishing "substantive" laws from "vested rights").

Third, and as before, recognizing a vested right here would be contrary to law and justice. Permanently immunizing institutions that facilitated the sexual abuse of children is, in fact, the very definition of "contrary to law and justice." *Supra* pp. 51-52.

Fourth, an inchoate substantive right cannot vest when it remains contingent on the filing of a subsequent suit. This Court clarified in *Anderson* that a statute of repose is an immunity defense. *E.g.*, 427 Md. at 118 (describing a statute of repose as "a grant of immunity to a class of potential defendants"). Defendants acknowledge as much. Opening Br. 22, 39, 44. Immunity defenses do not give rise to vested rights through the mere passage of time. *See supra* pp.47-49; *see State v. Card*, 104 Md. App. 439 (1995) (upholding law retroactively waiving state sovereign

immunity where the conduct in question predated the statute, but the plaintiff did not file suit until after the statute was passed); *Foor v. Juvenile Servs. Admin.*, 78 Md. App. 151, 163-164 (1989) (explaining that an immunity defense can be retroactively waived for actions that have not yet been filed and would have been barred under the law in effect when the cause of action accrued).

Allstate exemplifies this approach. That case involved a law abolishing parent-child immunity for negligent conduct in motor tort cases. An automobile insurer argued this impaired its vested rights by retrospectively limiting its ability to invoke that immunity in defense to an insurance claim from an accident that predated the law. 376 Md. at 281. This Court disagreed, noting that there was no vested right in the ability "to assert the defense of parent-child immunity." *Id.* at 298. That immunity defense was necessarily contingent on the future filing of a lawsuit, so the right had not vested. *Id.* at 297-298. The Court emphasized that "[i]mmunities are not favored in the law, and [the parent-child immunity], in particular, ha[d] been under challenge . . . for several years." *Id.* at 298.

So too here. A statute of repose is an immunity "not favored in the law," *id.*; *see Anderson*, 427 Md. at 118, and Section 5-117(d) has been subject to continued legislative debate, which resulted in its abrogation only six years post-enactment, *see supra* pp. 10-13. At most, entities that facilitated child sexual abuse but had not yet been sued had a *hope* of being able to assert a defense of repose immunity—an

expectation entirely contingent on events that did not occur and on which they could not have substantially relied. That is not enough to create a vested right. *See supra* pp. 47-49.

Defendants argue that *Allstate* "says nothing about the circumstances here." Opening Br. 44. For support, they cite an opinion by the Montgomery County Circuit Court in another CVA case, *Schappelle v. Roman Catholic Archdiocese of Washington*, No. C-15-CV-23-003696, which sought to distinguish *Allstate* on the ground that parent-child tort immunity is "a mere affirmative defense," whereas a statute of repose immunity is "absolute." E.365.

That is inaccurate twice over. For one, *Allstate* did not characterize the immunity at issue there as a "mere affirmative defense"—that's only the *Schappelle* court's gloss. For another, the *Schappelle* court erred; a statute of repose is no more "absolute" than the immunity in *Allstate*. *See Anderson*, 427 Md. at 123 (noting that statutes of repose may be subject to tolling in certain instances); *see also, e.g.*, *Card*, 104 Md. App. 439 (upholding retroactive waiver of sovereign immunity).[16]

[16] Defendants acknowledge this tolling point early on, Opening Br. 23, but later pivot to a more categorical approach, citing *Anderson* in support, *id.* at 59. That portion of *Anderson*, however, merely summarized a Fourth Circuit decision, which stated that "a statute of repose is *typically*" not subject to tolling. *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989) (emphasis added). Numerous courts have recognized statutes of repose may in fact be tolled for fraudulent concealment. *See, e.g.*, *Wisniewski v. Diocese of Belleville*, 406 Ill. App. 3d 1119, 1151 (2011) (finding Illinois's child sexual abuse

Other courts outside Maryland have likewise upheld statutes retroactively abrogating immunities, concluding that immunities do not give rise to vested rights before suit. *See, e.g.*, *Mispagel v. Missouri Highway & Transp. Comm'n*, 785 S.W.2d 279, 281 (Mo. 1990) ("[s]tatutes waiving governmental immunity apply retroactively"; they "do not create new rights, but simply confer an authority to sue that has been previously lacking"); *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 27 n.12 (D.D.C. 1998) ("no vested right to nonliability for injuries caused by public officers before the enactment of a statute permitting recovery") (quotation marks omitted); *see also* 2 Sutherland Statutory Construction § 41:4 ("a wide range of rights are not vested, including those relating to" immunity against medical malpractice and tort immunity of public officers); *Dekker/Perich/Sabatini Ltd. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 137 Nev. 525, 531-532 (2021) (rejecting "statutes of repose as awarding an entitlement to be free from a state claim" and

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statute of repose subject to tolling for fraudulent concealment); *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 516 (Tenn. 2005), *as amended on reh'g* (Feb. 21, 2006) (same, for medical malpractice statute of repose).

Consistent with *Anderson*, if this Court rules the CVA is a statute of repose that creates vested rights, it should hold that a plaintiff may rely on tolling to save an otherwise-barred lawsuit. In the alternative, because Plaintiffs do not press a tolling theory here, and because this was not part of the question presented, this Court should reserve decision on the issue for a future case. In no circumstance should the Court hold that a statute of repose forecloses all tolling, as Defendants suggest.

finding that the application of a law extending the period before response immunity attached did not offend due process).

The General Assembly has previously exercised its authority to retroactively amend a statute of repose to revive time-barred claims. In the late 1980s, manufacturers of asbestos-containing products began routinely invoking Maryland's construction statute of repose, Section 5-108, to avoid liability for defects caused by their toxic products. *Rose*, 335 Md. at 367-369. The legislature subsequently amended the law to retroactively authorize suits against asbestos manufacturers dating back to improvements that became available for use in 1953—38 years before the amendment, and well beyond the expiration of the 10- and 20-year repose provisions. *See* CJP § 5-108(a), (b), (d)(2). The Attorney General's Office endorsed this amendment as constitutional, in part because of the strong "public interest" in "providing remedies for those injured by toxic and carcinogenic materials." E.308-311 (Assistant Attorney General); *see* E.283 (Attorney General) (observing that "the statute of repose may be altered retroactively without violating due process").

Defendants note (at 45) that the Appellate Court of Maryland questioned the retroactive application of the asbestos carve-out in *Duffy v. CBS Corp.*, 232 Md. App. 602, 623 (2017). That decision carries no precedential value, as this Court reversed, 458 Md. at 226-236, finding that the plaintiff's cause of action had not yet accrued. *See, e.g.*, *Balducci v. Eberly*, 304 Md. 664, 671 n.8 (1985) ("a general and

unqualified reversal of a judgment . . . leave[s] the case standing as if such judgment . . . had never been rendered"). On top of that, the Appellate Court's only authority for its vested-rights conclusion was *Dua*, citing *Smith v. Westinghouse*. *Duffy*, 232 Md. App. at 622-623. That echo-chamber of dicta does not control here.

Defendants also point to decisions from Illinois and Kansas striking down child sexual abuse claim revival laws. Opening Br. 46-48. Those decisions explicitly relied on a longstanding legal tradition in those States finding that the retroactive revival of a time-barred claim violated vested rights. *See M.E.H. v. L.H.*, 177 Ill. 2d 207, 214 (1997); *Doe v. Popravak*, 55 Kan. App. 2d 1, 11 (2017). Maryland lacks any such tradition—which is why Defendants cannot identify a single Maryland case *applying* such a rule in a holding.[17] And, again, the fact that some out-of-state courts took an approach based on their own state law does not come close to satisfying Defendants' burden to show that a *Maryland law* enacted by the *Maryland legislature* to provide a remedy for *Maryland survivors* of child

[17] Appellants also collect (at 48-52) various out-of-state cases involving products liability, construction, and asbestos exposure. *See Givens v. Anchor Packing, Inc.*, 237 Neb. 565, 568-569 (1991); *City of Warren v. Workers' Comp. Appeal Bd. (Haines)*, 156 A.3d 371, 377 (Pa. Commw. Ct. 2017); *Walker v. Miller Elec. Mfg. Co.*, 591 So. 2d 242, 243-245 (Fla. Dist. Ct. App. 1991); *Southern States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 316 Ga. 701, 701 (2023); *Colony Hill Condo. I Ass'n v. Colony Co.*, 70 N.C. App. 390, 395 (1984). Citations to a raft of cases involving *actual* statutes of repose in the traditional professional contexts of construction and products liability only reinforce that Section 5-117(d) was not like any of these.

sexual abuse is "clear[ly] and unequivocal[ly]" unconstitutional. *Mahai*, 474 Md. at 661 (quotation marks omitted).

Insofar as this Court disagrees, however, that is only further reason to construe Section 5-117(d) as a statute of limitations. Under the principle of constitutional avoidance, "a statute will be construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible." *Koshko v. Haining*, 398 Md. 404, 425-426 (2007) (quotation marks omitted). For the reasons explained *supra* pp. 25-42, it is at least "reasonably possible" to read Section 5-117(d) as a statute of limitations, which would not render the CVA unconstitutional.

D. The CVA Survives Rational Basis Review.

Because the CVA does not implicate any vested rights or take any property without just compensation, it is, at most, subject to rational basis review. *Compare Allstate*, 376 Md. at 298 (finding legislation did not "violat[e] . . . any vested rights" and not conducting further analysis), *with Tyler v. City of College Park*, 415 Md. 475, 501 (2010) (where legislation does not "interfere[] with a fundamental right," rational basis review applies). Rational basis review is "the least exacting and most deferential standard of constitutional review." *Tyler*, 415 Md. at 501. The legislation "will pass constitutional muster so long as it is rationally related to a legitimate governmental interest." *Id.*

The CVA easily clears that minimal hurdle. The legislature had ample, legitimate reasons for eliminating the statute of limitations for childhood sexual abuse. Child sexual abuse is a pervasive wrong that harms the most vulnerable members of our society. It often takes survivors years or decades to acknowledge that what they suffered was abuse, particularly when that abuse comes at the hands of the adults they trusted most. *Supra* pp. 4-5, 7, 10-13. Eliminating the statute of limitations allows survivors to pursue justice on their own timeline and prevents institutions that covered up abuse from evading liability. *Id.* Moreover, by encouraging survivors to come forward and name their abusers, the CVA may also help protect future children from these horrors. *Supra* p. 12.

The Court should defer to the legislature's rational, reasonable conclusion that eliminating the statute of limitations will help serve these important aims and hold the CVA constitutional.

II. THE CVA IS CONSTITUTIONAL AS APPLIED.

The CVA is also constitutional as applied to these particular Defendants, for two reasons.

First, for all the reasons explained, whether construed as a statute of limitations or a statute of repose, the 2017 law did not create the kind of right capable of vesting. But even if Section 5-117(d) *could* theoretically give rise to a vested right, that right never vested in these Defendants. They first raised—and could

raise—their defense based on the 2017 law only after Plaintiffs filed suit—after the CVA became effective in October 2023. Defendants have never suggested that they acted (or could have acted) in "substantial reliance" on the 2017 law, *see Allstate*, 376 Md. at 297—and any such assertion now would come far too late, *see, e.g.*, *Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994) (argument raised for the first time on reply is waived). The actions giving rise to their putative liability occurred long before 2017, after all. Defendants' only interest was in the mere "continuation of an existing law," which is insufficient to create a vested right. *Allstate*, 376 Md. at 298.

Second, the CVA is also constitutional as applied to the Board because a political subdivision of the State cannot have any vested rights. A political subdivision is a legislative creation. *Churchill*, 271 Md. at 8-9. Such entities "are instruments of government subject at all times to the control of the Legislature with respect to their duration, powers, rights and property." *State v. Board of Educ.*, 346 Md. 633, 645 (1997) (quotation marks omitted). "The rights and franchises of such" an entity therefore "*can never become such vested rights*" that the legislature cannot "take[] away." *Churchill*, 271 Md. at 9 (emphasis added and quotation marks omitted); *accord* E.162 (letter from Assistant Attorney General advising that "the General Assembly has the authority to change a statute of limitations or a statute of repose to allow suits against government entities which had previously been

barred"). These principles apply fully to county boards of education, like the Board here. *See, e.g.*, *Board of Educ. v. Secretary of Personnel*, 317 Md. 34, 44 n.5 (1989) ("It is settled that county boards of education are State agencies."); *see generally* Standing Response Br.

Because the CVA does not impinge the Defendants' vested rights, it is constitutional as applied to them. And insofar as the CVA must also clear rational basis, it does so for all the reasons already explained.

CONCLUSION

Defendants are asking this Court to hold—for the first time—that there exists a "vested right" in a defendant's ability to assert a limitations or repose defense, rendering them "absolutely free" of civil liability. Opening Br. 39-40. Their arguments in support of that startling request fail at every step. Applying this Court's guidelines from *Anderson*, Section 5-117(d) is a statute of limitations, not a statute of repose. Maryland caselaw is clear that the ability to assert a statute of limitations defense is not the type right capable of vesting, nor could it have vested when it remained entirely contingent until *after* the CVA was passed. Moreover, even if this Court deems Section 5-117(d) a statute of repose, Defendants cannot meet their high burden to prove that renders the CVA unconstitutional beyond any reasonable doubt—especially where the CVA is constitutional as applied to these Defendants.

For all of the foregoing reasons, this Court should hold that the Maryland Child Victims Act of 2023 does not constitute an impermissible abrogation of a vested right in violation of Article 24 of the Maryland Declaration of Rights and/or Article III, Section 40 of the Maryland Constitution.

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Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 17,627 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

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