IN THE
SUPREME COURT OF MARYLAND

September Term, 2024

Misc. No. 2

THE KEY SCHOOL INC., *et al.*,

Appellants,

v.

VALERIE BUNKER,

Appellee.

Certified Question of Law from the United States District Court
for the District of Maryland
(Matthew J. Maddox, District Judge)

BRIEF OF AMICUS CURIAE ATTORNEY GENERAL OF MARYLAND IN SUPPORT OF APPELLEE

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INTEREST OF AMICUS CURIAE AND STATEMENT OF THE CASE

During the 2023 regular legislative session, the General Assembly passed the Child Victims Act, 2023 Md. Laws ch. 5 (S.B. 686), to ensure that victims of child sexual abuse have the opportunity to seek justice. The Child Victims Act passed the Maryland House

and Senate by an overwhelming combined vote of 175-5. After child victims filed suit as permitted under the 2023 law, defendants, including those in this case, moved to dismiss the complaints. The defendants alleged that the plaintiffs' claims are time-barred and that the General Assembly's revival of time-barred claims through enactment of the Child Victims Act violates the Maryland Constitution. The Attorney Gen` eral has a duty to enforce and defend this Maryland law. *See Maryland State Admin. Bd. of Election Laws v. Talbot County*, 316 Md. 332, 341 (1988).

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?

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

The issue presented here is a question of law, which appellate courts review de novo. *Pabst Brewing Co. v. Frederick P. Winner, Ltd.*, 478 Md. 61, 74-75 (2022).

II. THE GENERAL ASSEMBLY HAS BROAD AUTHORITY TO SET AND MODIFY TIME LIMITS FOR FILING CIVIL CLAIMS, AND THE CHILD VICTIMS ACT WAS A LAWFUL EXERCISE OF THAT AUTHORITY.

A. The Text of the Maryland Constitution Does Not Prohibit Laws That Revive Civil Claims.

"The Maryland Constitution is not a grant of powers to the General Assembly, but a statement of limitations on its otherwise plenary powers." *Richards Furniture Corp. v.*

Board of County Comm'rs, 233 Md. 249, 257 (1963) (citation omitted). The question presented here is whether the Child Victims Act abrogates vested rights in violation of either of two provisions of the Maryland Constitution: Article 24 of the Maryland Declaration of Rights, which is often referred to as Maryland's "due process" clause, and Article III, § 40. Neither of these provisions bars the revival of civil claims, or limits legislative authority to revive such claims, either expressly or by necessary implication.

The text of Article 24 addresses neither revival of claims nor retrospective laws.[1] More broadly, it does not prohibit any specific laws or government actions at all. Instead, it conditions certain enumerated government actions that affect an individual on "the judgment of his peers" or "the Law of the land." Thus, nothing in the text of Article 24 would prohibit revival, by the Child Victims Act, of civil claims against enablers of child abuse.

As with Article 24, nothing in the text of Article III, Section 40 addresses revival of civil claims or any other retroactive law. That provision states only that "[t]he General Assembly shall enact no Law authorizing private property, to be taken for public use,

[1] Retroactive statutes (also called "retrospective" statutes) are "acts which operate on transactions which have occurred or rights and obligations which existed before passage of the act." *Langston v. Riffe*, 359 Md. 396, 406 (2000) (citation omitted). The only provision of the Maryland Constitution that expressly limits retroactive statutes is Article 17 of the Maryland Declaration of Rights, which prohibits ex post facto laws: "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required." That provision, however, relates only to penal or criminal laws. *Secretary, Dep't of Pub. Safety & Corr. Servs. v. Demby*, 390 Md. 580, 609 (2006) (citation omitted).

without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."

The absence of any textual limitation on the power to revive civil claims is notable, for other States' constitutions include explicit prohibitions on certain types of retroactive laws or on retroactive laws generally. Under Alabama's constitution, for example, "the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this state." Ala. Const. art. IV, § 95. Tennessee's constitution provides, "That no retrospective law, or law impairing the obligations of contracts, shall be made." Tenn. Const. art. 1, § 20. The Maryland Constitution, by contrast, includes no express prohibition on revival of civil claims or on retroactive laws generally. The framers could have added a clear provision limiting the General Assembly's ability to revive civil claims, but they did not.

Now, without any clear basis in constitutional text, the defendants ask this Court to hold that the Maryland Constitution prevents the General Assembly from reviving civil claims against enablers of child sexual abuse. As explained below, that argument runs directly contrary to this Court's precedents interpreting the power of the General Assembly.

B. The General Assembly Has Authority to Control Time Limits to File in Civil Cases, Including Authority to Revive Civil Claims.

This Court has recognized the General Assembly's broad authority to address time restrictions for filing lawsuits. As the Court has explained, a statutory period to file suit is "a policy judgment by the General Assembly that serves the interest of a plaintiff in having adequate time to investigate a cause of action and file suit, the interest of a defendant in

having certainty that there will not be a need to respond to a potential claim that has been unreasonably delayed, and the general interest of society in judicial economy." *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 691 (2017). Thus, the General Assembly may also modify existing time periods for filing. *Allen v. Dovell*, 193 Md. 359, 364 (1949) (explaining that the General Assembly can amend a filing period by "extending or reducing the period of limitations, so as to regulate the time within which suits may be brought").

The General Assembly's plenary power to set the time periods during which plaintiffs can file suit includes the authority to revive causes of action that otherwise would be time-barred. As other jurisdictions have recognized, this principle applies whether the provision effecting the bar is denominated a statute of limitations or a statute of repose (a question addressed at length in the Brief of Appellee). *See*, *e.g.*, *Campbell v. Holt*, 115 U.S. 620, 628 (1885) (holding that retroactive modification of statute of limitations that revives barred claims would not violate Constitution); *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 311-13 (1945) (holding that the due process clause of the Fourteenth Amendment does not prohibit the revival of claims barred by a statute of limitations); *Shadburne-Vinton v. Dalkon Shield Claimants Tr.*, 60 F.3d 1071, 1077 (4th Cir. 1995) (holding that revival of a cause of action through retroactive amendment of a statute of repose does not violate due process rights under the United States Constitution); *Wesley Theological Seminary of the United Methodist Church v. U.S. Gypsum Co.*, 876 F.2d 119, 21-23 (D.C. Cir. 1989) (holding that revival of claims by amendment of a statute of limitations does not violate a defendant's due process rights under the United States Constitution); *20th Century Ins. Co. v. Superior Ct.*, 90 Cal. App. 4th 1247, 1262 (2001)

("The General Assembly is constitutionally free to revive a civil cause of action that has become time barred under a former statute of limitations."); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-59 (Del. 2011) (upholding as constitutional Delaware's Child Victim's Act, which eliminated statute of limitations for child sexual abuse claims and revived previously barred claims by establishing a two-year "lookback window"); *City of Boston v. Keene Corp.*, 406 Mass. 301, 311 (1989) (holding that legislation reviving claims that were previously barred by the statute of limitations does not violate Massachusetts constitution); *In re Individual 35 W. Bridge Litig.*, 806 N.W.2d 820, 832-33 (Minn. 2011) (statutes resulting in revival of cause of action previously barred by statute of repose did not violate due process under either federal or Minnesota constitution); *Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Ct. in & for County of Clark*, 495 P.3d 519, 531-32 (Nev. 2021) (holding that amendment to statute of repose that revives previously barred claims does not violate due process under the Nevada constitution).

C. The Child Victims Act Was a Lawful and Important Exercise of the General Assembly's Authority.

The Child Victims Act's revival of previously time-barred claims arising out of sexual abuse that victims suffered as children was a lawful and critically important measure by the General Assembly. For many reasons, victims of child sexual abuse often take years or decades to come to terms with what they endured. Perpetrators of child sexual abuse are overwhelmingly known to their victims, and often hold positions of authority or trust over them. Centers for Disease Control and Prevention, *Fast Facts: Preventing Child*

Sexual Abuse (2022).[2] The Attorney General's recent investigation into the Archdiocese of Baltimore shows the extraordinary harm to children that can result from failures within a single organization. The investigation identified over 100 clergy who sexually abused child victims, and an extensive coverup by church leadership. Attorney General of Maryland, *Report on Child Sexual Abuse in the Archdiocese of Baltimore*, at 9-11 (Apr. 2023).[3] Additionally, victims often do not disclose their abuse until many years after it occurs, if they do so at all. By one estimate, for example, only 11.9% of women who were sexually abused when they were minors had reported their abuse to authorities, and that number was even lower when they knew their abusers. *Id.* at 9.

In addition, many of the incidents of child sexual abuse from decades ago fall outside statutes of limitations that previously existed for criminal charges to be brought. *See id.* at 4-8 (summarizing history of child sexual abuse laws in Maryland). Revival of victims' civil causes of action therefore is a critical step toward holding accountable those who perpetrated or enabled the harm.

III. DEFENDANTS HAVE NO CONSTITUTIONALLY PROTECTED, VESTED RIGHT AGAINST REVIVAL OF CIVIL CLAIMS.

The defendants claim that the Child Victims Act violates the Maryland Constitution because it infringes upon a "vested right" to a defense that they acquired from a 2017 amendment to § 5-117 of the Courts Article. 2017 Md. Laws ch. 12 (H.B. 642) (the "2017

[2] Available at https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html.

[3] Available at https://www.marylandattorneygeneral.gov/news%20documents/OAG_redacted_Report_on_Child_Sexual_Abuse.pdf.

Act") (codified at Md. Code Ann., Cts. & Jud. Proc. § 5-117(d)). The case law does not establish as much.

A. Maryland Cases Do Not Support a Vested Right in the Expiration of Time Limits for Plaintiffs to File Civil Claims.

The defendants assert a vested right to be permanently free from civil liability for time-barred claims. The case law, however, does not support that right.

Dua v. Comcast Cable of Maryland, Inc., 370 Md. 604, 633 (2002), for instance, on which the defendants heavily rely, does not support their position. That case held that "there is a vested right in an accrued cause of action and that the Maryland Constitution precludes the impairment of such right." *Id.* at 632. *Dua* was about the rights of plaintiffs; it had no need to address any "vested rights" of defendants. Thus, the Court's statements regarding vested rights of defendants formed no part of the holding and must be treated as dicta.

Rice v. University of Maryland Medical System Corp., 186 Md. App. 551 (2009), likewise does not support the defendants' assertion of a vested right in the expiration of a statute of limitations or repose for claims arising out of child sexual abuse. *Rice* involved the filing of a medical malpractice claim and an accompanying qualified expert certificate as required by Courts § 3-2A-04(b). Before the trial, this Court issued its decision in *Walzer v. Osborne*, 395 Md. 563 (2006), which examined § 3-2A-04. *Rice*, 186 Md. App. at 556. The *Rice* plaintiffs' qualified expert certificate was inadequate under *Walzer*, so the circuit court dismissed without prejudice.

During the 2007 legislative session, however, the General Assembly passed a saving statute that allowed refiling of cases that were initially filed within the applicable limitations period and were dismissed without prejudice during a specified time period. The *Rice* plaintiffs therefore refiled their case with an amended expert certificate that met the requirements from *Walzer*. 186 Md. App. at 560. The defendant argued that the saving statute was unconstitutional as applied to the plaintiffs' refiled claim because the initially applicable statute of limitations had expired. The appellate court, however, held that the plaintiffs' first case had never actually ended because it was still on appeal when the saving statute took effect; consequently, the claim had never become time-barred. The court accordingly did not hold that the defendant had a constitutionally protected right against revival of a claim, let alone a claim for child sexual abuse.

B. Even If the Defendants Had a Right to a Defense, that Right Never Vested.

The defendants claim that the 2017 Act gave them a right to a defense that vested once the period in § 5-117(d) expired—that is, when victims turned 38 years old. The Child Victims Act violates that vested right, in their view, because it revives civil claims by any plaintiff who was at least 38 years old when the Child Victims Act took effect. The defendants are mistaken. Any right that the 2017 Act may have given the defendants to a defense against a plaintiff's claims, whether under a statute of limitation or a statute of repose, did not "vest" until the plaintiff filed her claims, regardless of the plaintiff's age.

This Court's decision in *Allstate Insurance Co. v. Kim*, 376 Md. 276 (2003), supports that conclusion. There, this Court examined whether a statutory automotive torts

exception to the doctrine of parent-child immunity (which generally prevents parents and children from asserting civil claims against each other) could apply where the exception took effect after an injury occurred but before an action for that injury was filed. This Court held that the statute did not abrogate a vested right of the defendant because the right to the defense of parent-child immunity did not vest when the cause of action arose. Instead, the defense could vest only when the action was filed—which, in that case, was after the statute took effect. *Id.* at 297-98. This Court accepted the principle articulated by the Supreme Court of Arizona in *Hall v. A.N.R. Freight System Inc.*, 149 Ariz. 130, 140 (1986), which stated that "a right vests only when it is actually assertable as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust." *Hall* involved a statute that eliminated the defense of contributory negligence and upheld the law against a constitutional challenge for cases where the cause of action arose before, and the case filed after, the law took effect. The court determined that the defense of contributory negligence is an "inchoate right" that is contingent on a future event—the filing of a lawsuit. *Id.*

Allstate is on point here. The defendants claim, based upon § 5-117(d) of the 2017 Act, a right to a defense against cases arising out of child sexual abuse that are filed after victims reach 38 years of age. That time-bar defense is contingent on the filing of a case, just like the parent-child immunity defense in *Allstate* and the contributory negligence defense in *Hall*; indeed, all are affirmative defenses. *See Steele v. Diamond Farm Homes Corp.*, 464 Md. 364, 380 (2019) (statutes of limitation); *Ryman v. First Mortg. Corp.*, 443 F. Supp. 3d 642, 650 n.3 (D. Md. 2020) (statutes of repose); *Grier v. Heidenberg*, 255 Md.

App. 506, 539 (2022) (parental immunity); *Reiser v. Abramson*, 264 Md. 372, 377 (1972) (contributory negligence).

Thus, under *Allstate*, any rights of the defendants under § 5-117(d) of the 2017 Act would vest only when cases were filed, not when victims turned 38. Since the Child Victims Act repealed § 5-117(d) of the 2017 Act, and the cases here were filed against the defendants only after the Child Victims Act took effect, the defendants have no "vested" right to any statute of limitation or statute of repose defense under § 5-117(d).

IV. UNDER THE DEFENDANTS' INTERPRETATION OF *DUA*, THE 2017 ACT WOULD HAVE ITSELF BEEN UNCONSTITUTIONAL AND THUS COULD HAVE CONFERRED NO RIGHTS ON THEM.

Although the defendants rely on *Dua*, their reliance on that decision ultimately supports the plaintiff's right to bring this action. In *Dua*, the Court stated that "there is a vested right in an accrued cause of action," and that "the Maryland Constitution ordinarily precludes the Legislature . . . from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right." 370 Md. at 632-33. For victims of child sexual abuse, their causes of action accrued when the sexual abuse took place. So, if *Dua*'s observations about vested rights are controlling, § 5-117(d) of the 2017 Act could not have abolished the plaintiffs' claims, as doing so would have destroyed the plaintiffs' vested rights in their accrued causes of action. *See Johnson v. State*, 271 Md. 189, 195 (1974) ("[A]n unconstitutional act is not a law for any purpose, cannot confer any right, cannot be relied upon as a manifestation of legislative intent, and is, in legal contemplation, as inoperative as though it had never been passed." (quotation marks and citations omitted)).

But the 2017 Act's purported abolition of the plaintiff's claims is the very foundation of the defendants' current argument against the Child Victims Act's constitutionality.

In actuality, the 2017 statute was a lawful exercise of the General Assembly's authority to prescribe and adjust the time periods within which plaintiffs can sue—but so is the Child Victims Act. The Act does not create a new cause of action against the defendants. It does not lower the burden of proof needed to hold them liable. It simply removes time barriers in order to allow victims to seek justice against those who enabled or harbored their abusers.

CONCLUSION

The question presented should be answered in the negative.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,091 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Jeffrey S. Luoma

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Jeffrey S. Luoma

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CERTIFICATE OF SERVICE

I certify that, on this 7th day of August, 2024, the Brief of Amicus Curiae Attorney General of Maryland in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service, and that on the next business day two copies will be served by first class mail on all parties entitled to service:

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