

IN THE SUPREME COURT OF MARYLAND

September Term, 2024

Pet. No. 59

BOARD OF EDUCATION OF HARFORD COUNTY

Petitioner

v.

JOHN DOE

Respondent

PETITION FOR WRIT OF CERTIORARI

Edmund J. O'Meally (AIS No. 8501180003)
Andrew G. Scott (AIS No. 0712120247)
Adam E. Konstas (AIS No. 1312180106)
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COUNSEL FOR PETITIONER
BOARD OF EDUCATION OF HARFORD COUNTY

PETITION FOR WRIT OF CERTIORARI

Petitioner Board of Education of Harford County (the “Petitioner”), by its undersigned counsel, respectfully petitions this Court for a writ of certiorari to review the decision of the Circuit Court for Harford County (“Circuit Court”) in *John Doe v. Board of Education of Harford County, et al.*, Case No. C-12-CV-23-000767, denying a motion to dismiss challenging the constitutionality of the provisions of the Maryland Child Victims Act, 2023 Md. Laws, Chs. 5 and 6 (“CVA”), providing for the retroactive elimination of the statute of limitations and statute of repose for previously barred claims.

I. Maryland Rule 8-303(b) Requirements

(A) The case name and docket number of the case in the Circuit Court is *John Doe v. Board of Education of Harford County*, Case No. C-12-CV-23-000767. Attached as **Exhibit 1** are the docket entries from the Circuit Court. Attached as **Exhibit 2** is the transcript of the ruling from the bench by the Circuit Court at the conclusion of the hearing held on March 19, 2024. Attached as **Exhibit 3** is the Circuit Court’s Order.

(B) Petitioner filed a Notice of Interlocutory Appeal to the Appellate Court of Maryland on March 26, 2024. The case is captioned as *Board of Education of Harford County v. John Doe*, No. ACM-REG-0188-2024, September Term, 2024. The case has not been decided by the Appellate Court.

(C) Briefs have not been filed in the Appellate Court. As of the date of this filing, the Appellate Court has not issued a Briefing Order.

(D) The Circuit Court’s Order did not adjudicate all claims in the action.

Petitioner noted its interlocutory appeal pursuant to Md. Code Ann., Cts. & Jud. Proc. §

12-303(3)(xii), which allows a party to appeal an interlocutory order entered by a circuit court denying a motion to dismiss a claim filed under Md. Code Ann., Cts. & Jud. Proc. § 5-117 “if the motion is based on a defense that the applicable statute of limitations or statute or repose bars the claim and any legislative action reviving the claim is unconstitutional.”

(E) The date of the Order sought to be reviewed is March 19, 2024.

(F) The questions presented for review are as follows:

(1) Whether the General Assembly in 2017 enacted a statute of repose as set forth in Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017) that granted repose to any “person or governmental entity that is not the alleged perpetrator” for any claims of sexual child abuse that are filed more than twenty years after the plaintiff reaches the age of majority.

(2) Assuming that a statute of repose was created as set forth in Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017), did the CVA unconstitutionally abrogate Petitioner’s vested substantive right or immunity from claims of child sexual abuse, such as those alleged by Respondent, which were filed more than twenty years after the alleged victim reaches the age of majority.

(3) Whether the CVA unconstitutionally abrogated Petitioner’s vested substantive rights, including those arising under the Due Process Clause of Article 24 of the Maryland Declaration of Rights, and impermissibly impaired the requirements of Article VIII, § 3 of the Maryland Constitution by retroactively abrogating the three-year statute of limitations under Md. Code Ann., Cts. & Jud.

Proc. § 5-101 and reviving claims of sexual abuse that have been barred for more than two decades.

(G) Review of these issues by the Supreme Court is desirable and in the public interest because the issues raised impact all of Maryland's 24 local school boards. The Circuit Court's ruling that the General Assembly did not create a valid statute of repose when enacting Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017), and that the CVA was a valid retroactive abrogation of the statute of limitations for non-perpetrator defendants, such as the Petitioner and other Maryland boards of education, exposes public school systems across the State to litigation and potential liability for claims that were previously time-barred and where, in many cases, records, witnesses, and even the alleged perpetrators themselves may no longer be available. The protection of the vested substantive right to be free from litigation and liability for previously time-barred claims is particularly important for the protection of public school board budgets, formulated and funded in accordance with Article VIII, § 3 of the Maryland Constitution and the budgetary requirements set forth in Md. Code Ann., Educ. § 5-101 *et seq.*, for the provision of education to students and the operation of the 24 local school systems. If the retroactive elimination of the statute of limitations and statute of repose by the CVA is found constitutional, Petitioner and the other local Maryland school boards will be subjected to the risk of liability for previously time-barred claims which were neither budgeted for nor insured against, thereby diverting current budgeted funds, duly appropriated for the expense of educating current school children, to the defense and resolution of old claims that were barred prior to October 1, 2023.

(H) The pertinent constitutional provisions, statutes, ordinances, or regulations

are:

Md. Const., Art. VIII, § 3;
Md. Const. Decl. of Rights Art. 24;
Md. Code Ann., Cts. & Jud. Proc. § 5-101;
Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017);
Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2023);
2017 Md. Laws, ch. 12;
2023 Md. Laws, chs. 5 and 6.

(I) This Petition concerns only questions of law. The material facts as alleged in Respondent’s Complaint are pertinent to the consideration of the legal issues presented as follows: Respondent alleges that he was sexually abused by his fifth grade teacher, an employee of Petitioner, during the 1985-1986 school year, and again by a janitor, also an employee of Petitioner, during the 1991-1992 school year when Respondent was in eleventh grade. Although Respondent’s claims had been time-barred for over two decades, Respondent sued Petitioner in October of 2023 shortly after the CVA went into effect.

(J) In argument in favor of the issuance of a writ of certiorari, Petitioner states that it is “firmly settled . . . that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights.” *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 623 (2002). In this case, Respondent’s claims have been barred for over two decades, and Petitioner has had a vested right or immunity to be free from suit both under the three-year statute of limitations prescribed by Md. Code Ann., Cts. & Jud. Proc. § 5-101 and under the statute of repose established under Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017) prohibiting the filing of claims “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.” In this case, the Circuit Court erred as a matter of law in concluding that the General Assembly did not enact a valid statute of repose and that the statute of limitations was merely a procedural mechanism that was subject to retroactive abrogation by the CVA, thereby breathing new life into Respondent’s previously time-barred claims. It is respectfully submitted that both holdings are incorrect as a matter of law.

It is well-established that a “statute of repose is used generally to describe a statute which shelters legislatively-designated groups from an action after a certain period of time,” and that the “purpose of a statute of repose is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period . . . unrelated to when the injury or the discovery of the injury occurs.” *Anderson v. United States*, 427 Md. 99, 118-19 (2012). The statutory language of Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017), enacted five years after the *Anderson* decision, is both clear and unambiguous in establishing a statute of repose. First, the purpose statement provided by the General Assembly stated that it was enacted “FOR the purpose of altering the statute of limitations in certain civil actions relating to child sexual abuse; establishing a **statute of repose** for certain civil actions relating to child sexual abuse . . .” 2017 Md. Laws, ch. 12 (emphasis added). Section 3 of that statute went on to provide that the intent of the statute was that it be “construed . . . to provide repose”:

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

Id. (emphasis added).

Finally, the codified language in the statute clearly provided an absolute bar:

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

Md. Code Ann., Cts. & Jud. Proc. §5-117(d) (West 2017).

Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017) met the analysis explained five years earlier in *Anderson* for determining the validity of a statute of repose. First, it “shelters a legislatively-designated group”—*i.e.*, persons or governmental entities that are *not* the alleged perpetrators. Second, it establishes a fixed bar date for the filing of claims “unrelated to when the injury or the discovery of the injury occur”—*i.e.*, twenty years after the date upon which an alleged “victim reaches the age of majority” regardless of when the injury occurred or when it is discovered. Third, it plainly and unambiguously establishes an “absolute bar”—*i.e.*, “[i]n no event may an action for damages . . . be filed . . .” Accordingly, it is respectfully submitted that the Circuit Court erred in concluding that Md. Code Ann., Cts. & Jud. Proc. § 5-117(d) (West 2017) did not create a statute of repose providing Petitioner with a vested substantive right or immunity to be free from Respondent’s suit.

The Circuit Court further erred in concluding that the statute of limitations that barred Respondent’s claims for over two decades prior to October 1, 2023 was merely a procedural mechanism subject to retroactive abrogation and that the revival of

Respondent's previously time-barred claims did not impact Petitioner's substantive vested right or immunity to be free from Respondent's suit. The revival of claims that are already time barred as of the effective date of newly enacted laws impairs vested rights. In *Smith v Westinghouse*, 266 Md. 52 (1972), the Supreme Court struck down as unconstitutional a statute that would have revived a cause of action that was otherwise barred by the limitations period. The Supreme Court in *Dua* reiterated that the Maryland Constitution prohibits "reviving a barred cause of action, thereby violating the vested right of the defendant." 370 Md. at 633 (emphasis added); see also *Doe v. Roe*, 419 Md. 687, 707 (2011) (concluding that the extension of the period of limitations for claims that were not yet barred did not violate the defendant's vested rights but noting that "[w]e would be faced with a different situation entirely had Roe's claim been barred under the three-year limitations period as of 1 October 2003" when the new legislation extending the limitations period went into effect).

"Statutes of limitations are neither substantive nor procedural per se but have 'mixed substantive and procedural aspects.'" *Doe*, 419 Md. at 705 (quoting *Sun Oil Co. v. Wortman*, 486 U.S. 717, 736 (1988)). The statute of limitations vests a substantive right to be free from suit once a defendant survives the limitations period prescribed by statute. In this case, Petitioner's right to be free from Respondent's suit vested upon the expiration of the three-year statute of limitations period prescribed by Md. Code Ann., Cts. & Jud. Proc. § 5-101 once Respondent "came of age" on the day before his twenty-first birthday. See *Mason v. Bd. of Educ. of Baltimore County*, 375 Md. 504 (2003) (applying the common law "coming of age" rule whereby a person's age

changes on the day before the birthdate thus affirming the dismissal of a suit filed by a former student on her twenty-first birthday which was one day after the expiration of the statute of limitations). Where the General Assembly has changed the statute of limitations for a claim, the general rule is that “when a defendant has survived the period set forth in the statute of limitations without being sued, a legislative attempt to revive the expired claim [...] violate[s] the defendant’s right to due process.” *Rice v. Univ. of Maryland Med. Sys. Corp.*, 186 Md. App. 551, 563 (2009) (citing *Smith*, 266 Md. at 57). *Accord Cooper v. Wicomico County Dept. of Pub. Works*, 284 Md. 576, 584 (1978) (holding that legislation retroactively increasing the amount of previously finalized workmen’s compensation awards unconstitutionally affected Wicomico County’s vested rights).

In this case, the CVA’s retroactive revival of claims that were for decades barred by the statute of limitations not only abrogates vested rights created by the statute of limitations itself and by the Due Process Clause of Article 24 of the Maryland Declaration of Rights, but impermissibly impairs the provisions of Article VIII, § 3 of the Maryland Constitution providing that the school fund “shall be kept inviolate, and appropriated only to the purposes of Education.” Accordingly, it is respectfully submitted that the Circuit Court erred in finding that the retroactive abrogation of the three-year statute of limitations for child abuse claims was merely a procedural mechanism and did not affect the Petitioner’s vested rights.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a writ of certiorari be issued so that the Supreme Court may review the Circuit Court’s decision denying

Petitioner's motion to dismiss based upon the argument that the CVA unconstitutionally revived Respondent's claims against it and that Respondent's claims are barred under the applicable statute of limitations and statute of repose.

Respectfully submitted,

/s/ Edmund J. O'Meally

Edmund J. O'Meally (AIS No. 8501180003)
Andrew G. Scott (AIS No. 0712120247)
Adam E. Konstas (AIS No. 1312180106)
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**COUNSEL FOR PETITIONER
BOARD OF EDUCATION OF HARFORD COUNTY**

CERTIFICATE OF WORD COUNT AND COMPLIANCE

This Petition contains 2654 words, excluding the parts of the Petition exempted from the word count by Rule 8-503. This Petition complies with the font, spacing, and type size requirements stated in Rule 8-112. The font of this Petition is Times New Roman, 13 point.

/s/ Edmund J. O'Meally _____

Edmund J. O'Meally

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 17, 2024 this Petition for Writ of Certiorari was served via this Court's electronic filing system on all counsel of record and that two copies of the Petition for Writ of Certiorari were sent via first-class mail, postage prepaid to:

Aaron M. Blank
Blank Kim, P.C.
8455 Colesville Road # 920
Silver Spring, Maryland 20910

And

Guy D'Andrea
Laffey Bucci & Kent, LLP
1100 Ludlow Street, Suite 300
Philadelphia, Pennsylvania 19107

/s/ Edmund J. O'Meally

Edmund J. O'Meally

Maryland Judiciary Case Search

NOTICE: Due to the upcoming conversion of Baltimore City's court records to Maryland Electronic Courts (MDEC), Case Search will be unavailable beginning Friday, May 3 @ 6pm until Monday, May 6 @ 8am. Please plan accordingly.

Case Detail

Case Information

Court System: **Circuit Court For Harford County - Civil**
Location: **Harford Circuit Court**
Case Number: **C-12-CV-23-000767**
Title: **John Doe vs. Board of Education of Harford County, et al.**
Case Type: **Tort - Negligence**
Filing Date: **10/03/2023**
Case Status: **Appealed**
Judicial Officer: **Allman, Alex**

Other Reference Numbers

Case Appealed: **ACM-REG-0188-2024**

Involved Parties Information

Defendant

Name: **Does (1-10), John**

Address: **Board of Education of Harford County**
Serve On: Jefferson Blomquist, Esq. County Attorney Harford
City: **BEL AIR** State: **MD** Zip Code: **21014**

Defendant

Name: **Board of Education of Harford County**

Address: **s/o: Aaron Poynton, M.D. Resident Agent and**
President of the Harford County Board of Education
City: **BEL AIR** State: **MD** Zip Code: **21014**

Attorney(s) for the Defendant

Name: **O'MEALLY, EDMUND JOSEPH**

EXHIBIT 1

Appearance Date: **11/10/2023**
Removal Date: **11/13/2023**
Address Line 1: **PESSIN KATZ LAW, P.A.**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 500**
City: **Towson** State: **MD** Zip Code: **21204**

Name: **O'MEALLY, EDMUND JOSEPH**
Appearance Date: **11/10/2023**
Address Line 1: **PESSIN KATZ LAW, P.A.**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 500**
City: **Towson** State: **MD** Zip Code: **21204**

Name: **SCOTT, ANDREW GEORGE**
Appearance Date: **11/10/2023**
Address Line 1: **Pessin Katz Law, PA**
Address Line 2: **901 Dulaney Valley Road**
Address Line 3: **Suite 400**
City: **TOWSON** State: **MD** Zip Code: **21204**

Name: **Konstas, Adam E**
Appearance Date: **11/10/2023**
Address Line 1: **PESSIN KATZ LAW, PA**
Address Line 2: **901 DULANEY VALLEY ROAD**
Address Line 3: **SUITE 500**
City: **TOWSON** State: **MD** Zip Code: **21204**

Plaintiff

Name: **Doe, John**

Address: **C/O Blank Kim, P.C., 8455 Colesville Road**
#920
City: **SILVER SPRING** State: **MD** Zip Code: **20910**

Attorney(s) for the Plaintiff

Name: **BLANK, AARON MICHAEL**
Appearance Date: **10/03/2023**
Address Line 1: **Blank Kim, P.C.**
Address Line 2: **8455 Colesville Rd**
Address Line 3: **#920**
City: **SILVER SPRING** State: **MD** Zip Code: **20910**

Name: **McFarland, Michael J Esquire**
Appearance Date: **01/05/2024**
Address Line 1: **Laffey Bucci and Kent LLP**

EXHIBIT 1

Address Line 2: **1100 Ludlow St, Suite 300**
 City: **Philadelphia** State: **PA** Zip Code: **19107**

Name: **D'Andrea, Gaetano A.**
 Appearance Date: **01/05/2024**
 Address Line 1: **Laffey Bucci & Kent, LLP**
 Address Line 2: **1100 Ludlow Street**
 Address Line 3: **Suite 300**
 City: **Philadelphia** State: **PA** Zip Code: **19107**

Court Scheduling Information

Event Type	Event Date	Event Time	Judge	Court Location	Court Room	Result
Conference - Scheduling	01/31/2024	14:00:00	Allman, Alex	Harford County Judge	Courtroom 2-03	Concluded / Held
Hearing - Motion to Dismiss	03/19/2024	13:30:00	Allman, Alex	Harford County Judge	Courtroom 2-03	Concluded / Held

Document Information

File Date: **10/03/2023**
 Document Name: **Case Information Report Filed**
 Comment: **Case Information Report**

File Date: **10/03/2023**
 Document Name: **Complaint / Petition**
 Comment: **Complaint - Civil Action**

File Date: **10/03/2023**
 Document Name: **Supporting Exhibit**
 Comment: **Supporting Exhibit A - Photo Dated 1988-1989**

File Date: **10/03/2023**
 Document Name: **Supporting Exhibit**
 Comment: **Supporting Exhibit B - Text Messages**

File Date: **10/03/2023**
 Document Name: **Supporting Exhibit**
 Comment: **Supporting Exhibit C - Case Summary - Criminal**

File Date: **10/03/2023**
 Document Name: **Supporting Exhibit**
 Comment: **Supporting Exhibit D - Photos**

EXHIBIT 1

File Date: **10/03/2023**
Document Name: **Summons Issued (Service Event)**
Comment:

File Date: **10/04/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Summons Issued Service Event - John Doe vs Board of Education HC**

File Date: **10/18/2023**
Document Name: **Affidavit - Service**
Comment: **Affidavit of Service - Board of Education of Harford County**

File Date: **10/18/2023**
Document Name: **Request to Re-Issue**
Comment: **Line to Re-Issue Writs**

File Date: **10/19/2023**
Document Name: **Summons Issued (Service Event)**
Comment:

File Date: **10/19/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Writ of Summons**

File Date: **11/01/2023**
Document Name: **Affidavit - Service**
Comment: **Affidavit of Service - Harford County Board of Education**

File Date: **11/01/2023**
Document Name: **Supporting Document**
Comment: **Affidavit of Service Attachment**

File Date: **11/10/2023**
Document Name: **Attorney Appearance - No Fee**
Comment: **Entry of Appearance of Edmund J. O'Meally**

File Date: **11/10/2023**
Document Name: **Attorney Appearance - No Fee**
Comment: **Entry of Appearance of Andrew G. Scott**

File Date: **11/10/2023**

EXHIBIT 1

Document Name: **Attorney Appearance - No Fee**
Comment: **Entry of Appearance of Adam E. Konstas**

File Date: **11/21/2023**
Document Name: **Motion / Request - To Dismiss**
Comment: **Motion to Dismiss and Request for Hearing**

File Date: **11/21/2023**
Document Name: **Memorandum**
Comment: **Memorandum in Support of Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Opposition**
Comment: **Plaintiff's Opposition to Defendant's Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit A to Plaintiff's Opposition to Defendant's Motion to Dismiss**

File Date: **12/06/2023**
Document Name: **Request for Hearing/Trial**
Comment: **Plaintiff's Request for Hearing**

File Date: **12/07/2023**
Document Name: **Motion / Request - For Special Admission of Attorney**
Comment: **Motion for Special Admission of Gaetano A. D'Andrea to Practice Pro Hac Vice**

File Date: **12/07/2023**
Document Name: **Motion / Request - For Special Admission of Attorney**
Comment: **Motion for Special Admission of Michael McFarland To Practice Pro Hac Vice**

File Date: **12/21/2023**
Document Name: **Reply to Opposition**
Comment: **Board's Reply to Plaintiff's Opposition to Motion to Dismiss**

File Date: **12/22/2023**
Document Name: **Memorandum**
Comment: **From Judge Curtin to Judge Allman Assigning case.**

File Date: **01/02/2024**
Document Name: **Order**

EXHIBIT 1

Comment: **Michael J. McFarland is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for Plaintiff. The presence of the Maryland attorney is not waived.**

File Date: **01/02/2024**

Document Name: **Order**

Comment: **Guy D'Andrea is admitted specially for the limited purpose of appearing and participating in this case as co-counsel for Plaintiff. The presence of the Maryland attorney is not waived.**

File Date: **01/02/2024**

Document Name: **Writ /Summons/Pleading - Electronic Service**

Comment: **Order for Special Admission/G. D'Andrea**

File Date: **01/02/2024**

Document Name: **Writ /Summons/Pleading - Electronic Service**

Comment: **Order for Special Admission/M. McFarland**

File Date: **01/31/2024**

Document Name: **Hearing Sheet**

Comment: **(AMA/2-03) Matter before the Court for Scheduling Conference. Counsel for both parties appeared via Zoom. Hearing on Motion to Dismiss scheduled for 3/19/24 at 1:30pm.**

File Date: **01/31/2024**

Document Name: **Hearing Notice Issued**

Comment:

File Date: **03/14/2024**

Document Name: **Line**

Comment: **Line Supplementing Plaintiffs Opposition to Motion To Dismiss**

File Date: **03/19/2024**

Document Name: **Hearing Sheet**

Comment: **(AMA/2-03) Matter before the Court for Motion to Dismiss. Arguments heard. Court denies in part and grants in part Motion to Dismiss. Plaintiff to file amended complaint as stated on the record. Court to prepare and submit Order.**

File Date: **03/20/2024**

Document Name: **Order**

Comment: **Ordered that the Motion to dismiss is granted in part denied in part and deferred in part. Ordered that the defendant's argument that MD Code Ann , Cts&jud Proceedings 5-117 is unconstitutional is Denied. etc**

EXHIBIT 1

File Date: **03/20/2024**
 Document Name: **Writ /Summons/Pleading - Electronic Service**
 Comment: **Order**

File Date: **03/26/2024**
 Document Name: **Interlocutory Appeal**
 Comment:

File Date: **03/26/2024**
 Document Name: **Civil Information Report - Appeal to ACM**
 Comment:

File Date: **03/26/2024**
 Document Name: **Supporting Document**
 Comment: **Court's Order on Motion to Dismiss**

File Date: **04/08/2024**
 Document Name: **Order to Proceed**
 Comment:

Service Information

<u>Service Type</u>	<u>Issued Date</u>
Summons Issued	10/03/2023
Summons Issued	10/19/2023

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

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 Service Desk: (410) 260-1114

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IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE,

Plaintiff

vs.

Civil Docket

BOARD OF EDUCATION OF

No. C-12-CV-23-000767

HARFORD COUNTY, ET AL.,

Defendants

OFFICIAL TRANSCRIPT OF PROCEEDINGS

MOTION TO DISMISS HEARING

VOLUME I OF I

Bel Air, Maryland

Tuesday, March 19, 2024

BEFORE:

THE HONORABLE ALEX M. ALLMAN, JUDGE

APPEARANCES:

For the Plaintiff:

GAETANO D'ANDREA, ESQUIRE

AARON BLANK, ESQUIRE

For the Defendants:

EDMUND O'MEALLY, ESQUIRE

ANDREW SCOTT, ESQUIRE

EXHIBIT 2

1 Transcribed from electronic recording by:

2 Jamie Dickson

3 Transcriber

4 CRC Salomon

5 2201 Old Court Rd, Baltimore, MD 21208

6 410-821-4888

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EXHIBIT 2

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T A B L E O F C O N T E N T S

Page

Motion to Dismiss by Defendants

5

Ruling on Motion to Dismiss

66

WITNESSES:

DIRECT: CROSS: REDIRECT: RECROSS:

None

EXHIBITS:

IDENTIFICATION: EVIDENCE:

None

EXHIBIT 2

1 MR. D'ANDREA: Thank you, Your Honor.

2 MR. O'MEALLY: Thank you, Your Honor.

3 COURT OFFICER: (Unintelligible.)

4 (At 2:45 p.m., recess is proceedings.)

5 COURT OFFICER: Court is back in session. The
6 Honorable Judge Alex M. Allman presiding. We are resuming case
7 C-12-CV -23-000767. John Doe v. The Board of Education of
8 Harford County, et al.

9 THE COURT: Have a seat everybody. Thank you.

10 MR. D'ANDREA: Thank you, Your Honor.

11 MR. O'MEALLY: Thank you, Your Honor.

12 THE COURT: Okay. All right. Let me commend all of
13 you for the thorough, thoughtful, well-prepared, well-reasoned,
14 well-researched arguments that I heard today. Not only today
15 but as set forth in the briefs. This is obviously an important
16 issue, not just to this case but to the community. It's an
17 important issue to the Maryland legislature. Seems to be a very
18 important determination that has kind of reached the level of
19 the consciousness of the State of Maryland.

20 And for that reason, it is very helpful that you all
21 put in the work that you did to really flush out these issues.
22 I'm going to try and do it in the order that we conducted the
23 argument. I've obviously given a lot of thought to this. I've
24 obviously made some -- done my own independent research on the
25 issues that are before me, and I've engaged with Counsel here to

EXHIBIT 2

1 try and get to the bottom of what all of this stuff means.

2 There is a high burden here. We're talking about
3 invalidating the duly passed law of the legislature that was
4 signed in by the governor and is in place right now. That is a
5 lot to ask of a court to do. Must meet the high threshold that
6 Mr. D'Andrea has referenced here before the Court. It doesn't
7 mean that I couldn't do it, but it certainly is a high threshold
8 and demands an extra level of attention as a result.

9 It does strike me that the real kind of critical issue
10 to the constitutional analysis is whether or not § 1-17 as it
11 was -- I'm sorry, § 5-117 of the courts and judicial proceedings
12 article as it was enacted in 2017, we'll call it the 2017
13 legislation, created a statute of repose for which it would have
14 given the Defendants or a category of defendants a vested right.
15 A vested right as it's defined loosely numerous times throughout
16 Maryland case law, I even think I read a few Maryland cases that
17 say the concept of vest right is not necessarily fully fleshed
18 out within the concept of Maryland case law. I think courts
19 struggle with it. I think legislatures struggle with. And I
20 think, you know, constitutional scholars probably struggle with
21 it.

22 You know, I read this case Muskin v. SDAT, which
23 wasn't a case that you all referenced, but it did engage in a
24 lengthy analysis of what a "vested right" was. It was a bit of
25 a different context, but there is some reference to it there.

EXHIBIT 2

1 So, if it is a statute of repose then the defendants argue here
2 that it creates a vested right. And retroactively reviving a
3 cause of action against what is otherwise a vested right on the
4 part of the defendants would be unconstitutional. I heard Mr.
5 D'Andrea sort of acknowledge or concede that point in his
6 argument.

7 If it's not a statute of repose then it's either not a
8 vested right or then we move on to the statute of limitations
9 argument. One of the logical gaps in my mind, as I was reading
10 through all of this, was, and thinking about what I understand
11 statute of repose to be, and that is a fixed, finite period of
12 time that is measured by some act, some completion of a project,
13 some product going to the stream of commerce that is independent
14 of the plaintiff. And it sets an absolute bar over a -- after
15 which -- after a period of time that the defendants can consider
16 themselves immune from litigation.

17 This is primarily done, in my understanding, in the
18 construction context. There's a building that's built and the
19 contractor or the general contractor and the subcontractors
20 would be able to cross off any concern of liability after a
21 period of time that the statute of repose says they cannot be
22 held liable.

23 This statute as set forth in 5-117, despite the
24 references in the legislative enactment to a statute of repose,
25 and despite -- and no one kind of argued this point, but I kind

EXHIBIT 2

1 of grabbed onto this, that in the 2023 reference there is a
2 reference to notwithstanding any time limitation under a statute
3 of limitations, a statute of repose, Maryland tort claim act, or
4 the local government tort claim act, despite the legislature
5 calling it a statute of repose, I don't find that it meets the
6 definition of a statute of repose given that it is a plaintiff's
7 based analysis.

8 The timeframe runs from the date that the plaintiff,
9 this individual, turns 18 and then it is a period of time after
10 that. And I think it was what four -- 20 years after the
11 plaintiff reaches the age of majority. So, there are countless
12 statute of repose out there that are based on each individual
13 potential plaintiff reaching the age of majority at the age of
14 18, and it sort of flies in the face of logic that the school
15 system is walking around kind of counting how many kids were 18
16 and when they were 18, and that by the time they reached 20
17 years after that then they're applying for their insurance rates
18 based on that.

19 It does not seem to be the way that the school system
20 would approach this. Unlike a statute of repose which would
21 give the school system the ability -- and I'm using that kind of
22 pejorative term, the school system. I realize the Defendant is
23 identified differently. A statute of repose that says no
24 lawsuits 30 years after Deerfield Elementary School is closed.
25 And that point in time is fixed.

EXHIBIT 2

1 It's based on the Defendant's conduct, 30 years after
2 that the liability shuts down and closes. As a result, the
3 Defendant can say, "Well, there was 300 kids that graduated from
4 Deerfield Elementary at that point in time, we know that we
5 cannot be subject to any claims by those individuals." So, I
6 don't find that the provision in the 2017 legislation created a
7 statute of repose.

8 Now, the next question is, as Mr. O'Meally argues, is
9 well so what, it's not a statute of repose. We still -- a
10 vested right was created in our ability to -- in the Defendants
11 in order to rely on the fact that these limitations period has
12 expired. There's no dispute that 5-117 revives otherwise dead
13 causes of action. It certainly weakens the argument of this
14 being a vested right if we're not talking about a statute of
15 repose. You did get me there, Mr. O'Meally. I understand the
16 point that you were making between it makes it stronger if it's
17 a statute of repose, but it's not critical or necessary for it
18 to be a vested right if it's a statute of limitations.

19 So, I read about this late into the night last night.
20 Woke up super early this morning and was reading all these
21 cases. I could not get to the bottom of what a vested right is
22 other than it does seem to be a right that is based on property,
23 a right that is based in contract, and a right that seems to be
24 if taken away by the government without just compensation would
25 reach constitutional scrutiny.

EXHIBIT 2

1 Because we're talking about a statute of limitations
2 period that's been manipulated 1, 2, 3, 4 times now in the last
3 approximately 20 years, I can't envision how a defendant would
4 be able to claim this is a vested right. Despite the revival of
5 an otherwise dead cause of action. There's cases out there that
6 say that the revival of otherwise dead cause of action is not an
7 appropriate thing for the legislature to do. There seems to be
8 cases out there that say unless it's a vested right then the
9 legislature can do what they want with regard to these
10 procedural mechanisms.

11 A statute of limitations being a defense to a cause of
12 action and not necessarily a right vested in the hands of the
13 defendant. And I go back to my conclusion on this point is the
14 incredibly high bar that exists for a trial judge to invalidate
15 the act of a legislature that was signed in by the governor. I
16 would need to be persuaded by that high standard that there was
17 no question in my mind that this a constitutional problem and
18 that this -- I'm sorry. That there's no question in my mind
19 that this statute is clearly unconstitutional. I can't get
20 there.

21 Now, the legislature clearly knew they had a problem
22 on their hands when they enacted 5-117 in that it gives the
23 defendants an automatic right to an appeal. I'm sorry, that's
24 in a different -- 12-303. They added to the courts and judicial
25 proceedings article the denial of a motion dismiss under 5-17 of

EXHIBIT 2

1 this article based on the defense that the statute of
2 limitations or the statute of repose, there it is again, bars
3 the claim and any legislative action reviving the claim is
4 unconstitutional. So, they added that in conjunction with 5-117
5 knowing that this was going to have to be a matter for the
6 Appellate Courts to out given the confusion of what's a vested
7 right in the face of a revival of an otherwise dead cause of
8 action.

9 Given all the reasons that I've stated here, I am
10 unable to declare this statute unconstitutional and, for that
11 reason, I will deny the Defendant's motion to dismiss as to
12 count -- no. No. I'm sorry. That is just the motion to
13 dismiss as to the complaint in its entirety. We've already
14 addressed the negligent infliction of emotional distress
15 argument. That's out by consent of the Plaintiffs.

16 Then we have count two, count five, count seven --
17 six, and count seven. Let me make sure I circle this. Count
18 two, count five, count six, and count seven are duplicative in
19 nature. Each of those counts allege negligence in some form or
20 fashion of each other. There's nothing wrong with pleading
21 causes of action in the alternative, but we're not talking about
22 different cause of action here. We're talking about different
23 theories of negligence.

24 I believe that the Plaintiff here should amend the
25 complaint to consolidate the negligence causes of action because

EXHIBIT 2

1 I, as the trial judge if this was a jury trial and we were
2 submitting the case to the Jury, I would not give the Jury a
3 verdict sheet with five different counts of negligence in it.
4 And so for that reason, I think that there should be only one
5 count of negligence. I will give the -- and we're going to talk
6 about sort of procedurally where we go from here. I'm going to
7 give the Plaintiffs a period of time to amend the complaint to
8 consolidate counts two, five, seven -- six and seven. Excuse
9 me.

10 As to the complaint -- the count for vicarious
11 liability, I struggle with this because, Mr. Scott, your
12 arguments about this no set of facts under which this conduct
13 can be considered -- that the Defendants can be considered to be
14 held vicariously liable for this behavior, I get your point.
15 But we're so early in the litigation, and I am not comfortable
16 looking at this complaint and considering the well-pled
17 allegations in the complaints, the inferences to be drawn from
18 those well-pled allegations, that there's not some element of
19 opportunity for the Plaintiffs to establish, based on those
20 inferences, vicarious liability on the part of the Defendants
21 whether it was knowledge, whether it was -- help me. Consent.
22 What was the word you used?

23 MR. D'ANDREA: Ratification, Your Honor.

24 THE COURT: I'm sorry?

25 MR. D'ANDREA: Ratification.

EXHIBIT 2

1 THE COURT: Ratification. Whether it was this conduct
2 is balancing on the edge of scope of employment because they are
3 in the school, they are in the classroom, there is at detention,
4 it is in the janitor's office. Whether or not the intentional
5 torts fall within the scope of employment or whether there's
6 some negligent acts on the part of the individuals, it's too
7 early for me to make that determination on a motion to dismiss
8 basis. Things might be different on a motion for summary
9 judgment basis.

10 The problem I have with count one is it's alleging
11 vicarious liability, which is not a cause of action. It is a
12 theory of liability for these Defendants. So, similar to my
13 instruction to amend the complaint, that I believe there should
14 be an allegation of a cause of action for which the, I'm going
15 to call them institutional Defendants, not non-perpetrator
16 Defendants, are to be held liable.

17 I mean, what am I telling the Jury? You are to be
18 held vicariously liable for the conduct of this teacher and this
19 janitor. They did what? What is the tort? What is the
20 intentional tort? What is the theory of negligence? I don't
21 have that. I need to know what the cause of action is that
22 would apply to the individual actors for which the Defendants
23 are to be held vicariously liable.

24 The way the complaint is drafted now is they did a
25 bunch of horrible stuff and you're vicariously liable for that,

EXHIBIT 2

1 but what's the cause of action? Where is it? I can surmise
2 what it is, but I think it needs to be part of the complaint.
3 So, that -- and I'm not going to grant the motion to dismiss on
4 the contributory negligence or assumption of risk because it's a
5 factually based determination to be made by the Jury.

6 So, that leaves us where we are. I'm denying the
7 motion to dismiss, but I'm granting the Plaintiff -- I'm
8 granting it in part as to the consolidation of the negligence,
9 cause of action -- I'll enter an order to this effect of course.
10 I'm granting it in part as to the vicarious liability, but I'm
11 giving the Plaintiffs a period of time to amend the complaint to
12 correct it.

13 Now, I'm assuming as a result of this ruling the
14 Defendants will exercise their right to appeal this
15 interlocutory order, and I want to get that out to you all like
16 tonight if possible so I don't hold this process up. Does the
17 fact that I'm allowing the Plaintiffs to amend the complaint,
18 that's not going to stop that process. Am I right? It's just -
19 - interlocutory appeal will go right on from here?

20 MR. O'MEALLY: Your Honor, I believe that at this
21 point we'll be running on two parallel paths.

22 THE COURT: Okay.

23 MR. O'MEALLY: It will be going to the Appellate Court
24 seeking certiorari to the Supreme Court while at the same time
25 Plaintiffs will be amending, and I presume that we'll engage in

EXHIBIT 2

1 discovery soon thereafter.

2 THE COURT: Okay. So, nobody's going to ask for a
3 stay of the litigation, which --

4 MR. O'MEALLY: We are not going to ask for a stay.

5 THE COURT And I'm not encouraging you to ask for a
6 stay.

7 MR. D'ANDREA: Well, I don't want to ask for a stay if
8 they want to proceed with the discovery.

9 THE COURT: You do or don't?

10 MR. D'ANDREA: No. I would not want a stay.

11 THE COURT: Okay. Well, then the -- I'm going to get
12 that order, like, hopefully tonight. I start a trial tomorrow
13 for eight days, and I don't want that to delay the entry of the
14 interlocutory order that I fully expect the Defendants to take
15 an appeal from, so that doesn't -- that won't hold you all up.
16 And my ruling instructing the Plaintiffs to amend the complaint
17 based on a couple of these sort of, I don't know, deficiencies
18 as I identified here is not going to stop you. I just want to
19 make sure that that's --

20 MR. O'MEALLY: No.

21 THE COURT: Okay.

22 MR. O'MEALLY: No, Your Honor. And so, based upon the
23 Court's ruling, we'll be answering while still raising the issue
24 that will be going up to the Appellate Court.

25 THE COURT: Right. You're not waiving it.

EXHIBIT 2

1 MR. O'MEALLY: We're not waiving it.

2 THE COURT: Yeah. I mean, I'll leave you -- you would
3 know how to plead your answer, you know, in such a way that it's
4 not waiving any of those arguments.

5 MR. D'ANDREA: Your Honor, I would just say then so
6 that Counsel doesn't waste his time, I wouldn't -- I mean, you
7 do what you want, but I wouldn't answer this version of the
8 complaint.

9 MR. O'MEALLY: Right.

10 MR. D'ANDREA: Okay.

11 MR. O'MEALLY: Right.

12 THE COURT: Yeah.

13 MR. O'MEALLY: The amended.

14 THE COURT: Okay. All right. And I don't need to
15 certify anything, it being an interrogatory order under 12-303
16 gives you the right to just take it right up. Am I right?

17 MR. D'ANDREA: Yes, Your Honor.

18 MR. O'MEALLY: Correct, Your Honor.

19 THE COURT: Okay. All right. Well, again, I want to
20 end where I began which is commending the lawyers here. This is
21 a very difficult issue and, like I said, the legislature knew
22 they had a problem on their hands when they enacted the statute
23 and did so under 12-303 granting an immediate right to appeal on
24 the very argument that I just heard for the last two hours.

25 So, it'll be an issue for the Maryland Supreme Court

EXHIBIT 2

1 to sort out. Hopefully, they'll clean up this for trial judges
2 like me to understand what's a vested right, when does it come
3 into existence, is a statute of repose necessary for it to come
4 into existence or is the mere revival of a otherwise dead cause
5 of action something that's a violation of the Constitution.

6 And we have a number of cases that are pending around
7 in the Maryland court systems that are going to be affected by
8 that ruling.

9 Okay. Thank you all. And good luck to you.

10 MR. O'MEALLY: Thank you, Your Honor.

11 MR. D'ANDREA: Thank you, Your Honor.

12 MR. O'MEALLY: Thank you.

13 (At 3:16 p.m., proceedings concluded.)
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EXHIBIT 2

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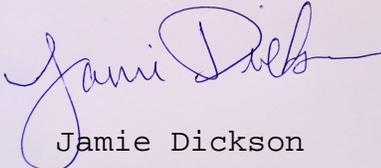
CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of John Doe v. Board of Education of Harford County, et al., C-12-CV-23-000767, heard in the Circuit Court for Harford County, Maryland, on March 19, 2024, were recorded by means of digital audio.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 72 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 20th day of March, 2024.



Jamie Dickson

Transcriber

EXHIBIT 2

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

JOHN DOE

*

Plaintiff

*

v.

*

Case No. C-12-CV-23-767

BOARD OF EDUCATION OF
HARFORD COUNTY, et al.

*

*

Defendants

*

* * * * *

ORDER

This case was before the Court for a hearing on the *Motion to Dismiss* filed by Defendant Board of Education of Harford County (the “Board”) and the *Opposition* thereto filed by Plaintiff John Doe. The Court having considered the arguments of counsel and the entire record herein, it is, for the reasons stated on the record in open court during the delivery of the oral opinion on March 19, 2024 and pursuant to Rule 2-322(c), by the Circuit Court for Harford County, hereby,

ORDERED that the *Motion to Dismiss* is GRANTED in part, DENIED in part, and DEFERRED in part; and it is further,

ORDERED that Defendant’s argument that Md. Code Ann., Cts. & Jud. Proceedings § 5-117(b) (effective October 1, 2023) is unconstitutional is DENIED; and it is further,

ORDERED that thirty days leave to amend the *Complaint* is hereby GRANTED as to Count I (Vicarious Liability) and Counts II, V, VI, and VII (each asserting a claim for Negligence); and it is further,

ORDERED that Count III (Negligent Infliction of Emotional Distress) is DISMISSED by consent of Plaintiff; and it is further,

ORDERED that a ruling on Defendant's argument as to the application of the sovereign immunity cap is DEFERRED at this time; and it is further,

ORDERED that all other arguments for dismissal of the *Complaint* raised by the Board are DENIED at this time.

March 19, 2024

03/19/2024 5:49:22 PM



Judge

Judge Alex M. Allman

cc: Counsel

EXHIBIT 3