STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-23-122

ROBERT E. DUPUIS et al.,

Plaintiffs-Appellees

v.

ROMAN CATHOLIC BISHOP OF PORTLAND,

Defendant-Appellant

On Appeal from Decision of the Business and Consumer Docket

BRIEF OF APPELLEE STATE OF MAINE

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INTRODUCTION

The State of Maine submits this brief in support of the commonsense proposition that the Maine Constitution does not, by virtue of the mere passage of time, grant those accused of sexual acts against minors a right to freedom from liability under article I, section 6-A. The Business and Consumer Docket (*McKeon, J.*) correctly determined that it was constitutionally permissible for the Maine Legislature to retroactively eliminate the statute of limitations for actions stemming from such conduct.

The trial court's conclusion that the running of the statute of limitations does not bestow a vested right accurately reflects both Maine and U.S. constitutional law. As the Supreme Court of the United States and the highest courts of many states have concluded, statutes of limitations generally govern the pursuit of remedies rather than substantive rights, and therefore their expiration does not give rise to a protected property interest. This reasoning holds particularly true in this case because (1) common-law tort liability is not extinguished when the corresponding statute of limitations runs, and (2) the strong reliance interests that typically underlie vested rights are absent here.

However, even if this Court were to conclude that potential defendants have a vested right in freedom from liability for alleged sexual misconduct, it

should nonetheless follow the lead of other states and conclude that the Maine Legislature's interest in protecting the victims of such conduct is strong enough to render retroactive elimination of the statute of limitations constitutional. The importance of ensuring that redress is available to those who claim to have suffered sexual abuse as children, individuals who may need additional time to come to terms with the harm they have suffered, eclipses the interest that defendants have in asserting an affirmative defense.

LEGISLATIVE AND PROCEDURAL HISTORY

A. Maine retroactively eliminated the statute of limitations for claims stemming from sexual acts against minors because it can be difficult for victims to bring such claims in a timely fashion.

No matter their length or form, statutes of limitations in Maine have never been ironclad. They are procedural rules, not jurisdictional mandates, and therefore they have long been subject to waiver, *see, e.g., Lister v. Roland's Serv., Inc.*, 1997 ME 23 ¶ 8, 690 A.2d 491 (citing *Norton v. Penobscot Frozen Food Lockers*, *Inc.* 295 A.2d 32, 33 (Me. 1972)), and tolling, *see, e.g.,* 14 M.R.S.A. § 853 (Westlaw Aug. 31, 2023) (tolling for disability).

In this vein, the Maine Legislature has, on multiple occasions, sought to ease the burden on individuals who claim to have suffered sexual abuse as children. While the general statute of limitations for tort claims has long been six years, 14 M.R.S.A. § 752 (Westlaw Aug. 31, 2023), in 1989 the Legislature

added a three-year discovery rule for claims stemming from sexual acts against minors, 14 M.R.S.A. § 752-C (1989) (Westlaw Aug. 31, 2023), *amended by* P.L. 1991, ch. 551, § 1 (effective Sept. 12, 1991); *McAfee v. Cole*, 637 A.2d 463, 465 n.2 (Me. 1994). Two years later, in 1991, it also extended the corresponding statute of limitations to twelve years, and doubled the discovery rule limitations period to six years. 14 M.R.S.A. § 752-C (1991) (Westlaw Aug. 31, 2023), *amended by* P.L. 1993, ch. 176, § 1 (effective Aug. 25, 1993); *see Cole*, 637 A.2d at 465-66.

The trend toward a longer limitations period reflects the Maine Legislature's recognition of a growing body of research demonstrating that it can take children many years to come to terms with and report sexual abuse. *See, e.g.,* Ramona Alaggia, et al., *Facilitators and Barriers to Child Sex Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20(2) Trauma, Violence, & Abuse 260, 276 (2019) (hereinafter "*Facilitators and Barriers*") (explaining that coming to terms with abuse is a "complex and lifelong process" with "disclosures . . . too often delayed until adulthood"); *accord An Act to Provide Access to Justice for Victims of Child Sexual Abuse: Hearing on L.D. 589 Before the J. Standing Comm. on the Judiciary* (2021) (Testimony of Rep. Lori K. Gramlich) (hereinafter "Gramlich Testimony"); *An Act to Provide Access to Justice for Victims of Child Sexual Abuse: Hearing on L.D. 589 Before the J. Standing Comm.*

on Judiciary (2021) (Testimony of Sen. Donna Bailey). The reasons for these delays vary. Children may be developmentally unable to process what transpired; feel "shame, self-blame, and fear;" or simply wish to avoid reliving the emotional trauma of sexual abuse. *Facilitators and Barriers* 278-79; Gramlich Testimony; *see also* Bill Analysis, L.D. 589, Office of Policy and Legal Analysis (Mar. 17, 2021).

In 2000, to better account for the variable timeframe during which victims come forward, the Maine Legislature eliminated the statute of limitations entirely for civil actions based on sexual acts towards minors.[1] *See* 14 M.R.S.A. § 752-C(1) (Westlaw Aug. 31, 2023); *see also, e.g., An Act Regarding the Statute of Limitations for Sexual Misconduct with a Minor: Hearing on L.D. 2453 Before the J. Standing Committee on the Judiciary* (2000) (Testimony of Rep. Benjamin F. Dudley) (noting that child sexual abuse "often is not reported or even recognized as abuse until years after it occurs"). But that law was prospective only, such that it left some victims of sexual abuse as children without recourse. Accordingly, in 2021, the Legislature passed, and the Governor signed, P.L. 2021, ch. 301, § 1, which made retroactive Section 752-

[1] "Sexual acts towards minors" are defined as sexual acts under 17-A M.R.S.A. § 251(1)(C), or sexual contact under 17-A M.R.S.A. § 251(1)(D), committed against a person under the age of majority. *See* 14 M.R.S.A. § 752-C(2) (Westlaw Aug. 31, 2023).

C(1)'s elimination of the statute of limitations. *See* 14 M.R.S.A. § 752-C(3) (Westlaw Aug. 31, 2023) (providing that Section 752-C applies "regardless of whether the statute of limitations on such actions expired prior to the effective date of this subsection").

B. The trial court denied the Diocese's Motion for Judgment on the Pleadings, ruling that the expiration of the statute of limitations did not create a vested right.

On June 16, 2022, Plaintiff Robert Dupuis filed a Complaint in Superior Court against Defendant Roman Catholic Bishop of Portland, Maine (the "Diocese"), alleging a variety of tort claims stemming from sexual abuse he suffered in 1961, when he was approximately 12 years old (*see* A. 1, 19-37). On November 22, 2022, after the case was transferred to the Business and Consumer Docket, the Diocese moved for judgment on the pleadings, contending that (1) retroactive application of Section 752-C is unconstitutional, such that the Complaint was untimely under the otherwise-applicable statute of limitations, and (2) Section 752-C does not apply to organizational defendants (A. 58-60).

The trial court (*McKeon, J.*) denied the motion. The court reasoned that "statutes of limitations are different than property rights" protected by the Maine Constitution because they are "creatures of statute within the prerogative of the Legislature" (A. 7-8). The Legislature permissively exercised

that prerogative here, accordingly to the court, based on "a unique and evolved societal recognition of the nature of child sexual abuse and the headwinds against victims' ability to bring their claim[s]" (A. 10).

In reaching its decision, the trial court reasoned that *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, 281 A.3d 618, is not instructive because that decision does not address a statute of limitations (A. 7-8). The court likewise distinguished *Dobson v. Quinn Freight Lines*, 415 A.2d 814 (Me. 1980), and *Morrissette v. Kimberly-Clark Corp.*, 2003 ME 138, 837 A.2d 123, on the basis that the relevant passages in those cases are dicta and do not explain why the expiration of a statute of limitations might give rise to a vested right (A. 8).

The trial court also relied on persuasive authority from the Supreme Court (*see* A. 8-9), which has held that the expiration of a statute of limitations does not create a protected property right under the Fourteenth Amendment, *see Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 311-16 (1945); *Campbell v. Holt*, 115 U.S. 620, 625 (1886). It likewise cited precedents from both the Supreme Court and this Court that suggest that something akin to rational basis review of Section 752-C(3)—the statute's retroactivity provision—is appropriate (A. 9-10 (citing *Califano v. Aznavorian*, 439 U.S. 170, 174, 178 (1978); *Norton v. C.P.*

Blouin, 511 A.2d 1056, 1060-61 nn. 5, 7 (Me. 1986); *State v. L.V.I. Grp.*, 1997 ME 25, ¶ 9, 690 A.2d 960)).

As to the applicability of Section 752-C to organizational defendants, the trial court adopted the reasoning of Justice Jabar in *Boyden v. Michaud*, No. CV-07-331, 2008 WL 4106441 (Sup. Ct., Ken. Cty., May 14, 2008). Specifically, based on both the plain meaning of the statute and its legislative history, the court concluded that Section 752-C is directed at actions stemming from particular types of harm, rather than conduct perpetrated by particular individuals, such that the statute covers claims against the Diocese (A. 11).

C. The trial court reported the matter to the Law Court, and the State was granted intervenor status.

On March 2, 2023, the Diocese moved under M.R. App. P. 24(c) to report this case, together with twelve related cases, to this Court (A. 127). The Diocese identified "the constitutionality of retroactive applicability" of Section 752-C, "associated questions of Maine constitutional law of broader importance, and the applicability of § 752-C to . . . organizations" as the issues for review (A. 129). The trial court granted the motion as to the constitutionality of retroactive application of Section 752-C, and whether the statute applies to organizational defendants (A. 14; *see also* A. 15-16).

On April 18, 2023, this Court consolidated the thirteen reported cases into a single case, and granted the State of Maine permission to file a brief as an appellee and to argue the case pursuant to M.R. Civ. P. 24(d) (Order Consolidating Appeals and Setting Course of Appeal (Apr. 18, 2023)).

SUMMARY OF ARGUMENT

The State of Maine urges this Court to hold, consistent with the prevailing view among the highest courts of many states and the Supreme Court, that the expiration of a statute of limitations—especially in the context of this case—does not bestow a vested right to freedom from liability. Retroactive application of Section 752-C is therefore permissible under article I, section 6-A of the Maine Constitution.

A statute of limitations reflects a difficult, and imprecise, legislative balancing of interests. It is a policy judgment, based on the scholarship available at the time, as to the appropriate timeframe for permitting litigants to pursue a given remedy. A statute of limitations is accordingly subject to change, and does not create an ironclad entitlement to freedom from liability. It follows, therefore, that its expiration does not generate a vested right protected by the Maine Constitution.

This logic holds especially true in this case because common-law causes of action are at issue. Unlike in the context of a statute that pairs a new cause

of action with a time limitation, as was at issue in this Court's *Dobson* and *Morrissette* decisions, a common-law right to recovery exists independent of any legislated time limit. Lengthening (or eliminating) a statute of limitations for a common-law cause of action therefore does not create a new liability, but rather simply restores a means of pursuing that liability. For this reason, and especially given the minimal reliance interests at play, the Diocese's interest in the running of the statute of limitations did not ripen into a vested right, and Section 752-C's retroactive elimination of the statute of limitations is constitutional.

That said, if this Court is inclined to conclude that the expiration of the statute of limitations bestowed a vested right on the Diocese, it should follow the highest courts of California, Massachusetts, New York, and Wisconsin and still conclude that Maine's interest outweighs that of potential defendants such that the statute's retroactivity is constitutional. A body of academic research has established that child victims of sexual abuse may not grasp the gravity of what they have experienced, or refuse to disclose it, until many years later. Ensuring that they can seek redress for the harms they allege is far more important than the impact of eliminating the statute of limitations on potential defendants. This Court should accordingly conclude that Section 752-C's retroactive application is constitutional under article I, section 6-A.

STATEMENT OF ISSUES PRESENTED

1) Whether retroactive elimination of the statute of limitations for claims arising from sexual acts towards minors is permissible under article I, section 6-A of the Maine Constitution.

2) Whether 14 M.R.S.A. § 752-C applies to organizational defendants.[2]

ARGUMENT

While this case is before the Law Court pursuant to a report under M.R. App. P. 24(c), the standard of review does not depart from that of any other appeal, *see* M.R. App. P. 24(d). Therefore, given the case presents only legal questions, the trial court's decision is reviewed *de novo. Kneizys v. FDIC*, 2023 ME 20, ¶ 11, 290 A.3d 551.

When duly-enacted legislation faces constitutional challenge, it is cloaked in a "strong presumption of constitutionality." *ACE Tire Co., Inc. v. Mun. Off. of City of Waterville*, 302 A.2d 90, 95 (Me. 1973). That presumption reflects the Legislature's status as a co-equal branch, and that "[t]he necessity for the statute and the manner of its enforcement are fundamentally legislative, not judicial, questions." *Id.* at 96.

[2] The State of Maine, as noted below, takes no position on this section issue. Further, the second issue the Diocese identifies in its brief, namely whether it was error to "allow revival of a barred action that would not have had any legal validity if timely presented" (Br. of Appellant Roman Catholic Bishop of Portland, Maine 2), was not identified in the Motion to Report or the Order granting that Motion (*see* A. 14, 129), such that it is not properly before this Court.

To prevail against the presumption, "the party challenging the statute must demonstrate convincingly that the statute and the Constitution conflict." *Bouchard v. Dep't of Pub. Safety*, 2015 ME 50, ¶ 8, 115 A.3d 92 (cleaned up); *see also Opinion of the Justices*, 623 A.2d 1258, 1262 (Me. 1993) (plaintiff can prevail over presumption "[o]nly if there is a clear showing by strong and convincing reasons that [a statute] conflicts with the Constitution" (cleaned up)). In assessing whether this "heavy burden" has been met, "all reasonable doubts must be resolved in favor of the constitutionality of the enactment." *Jones v. Sec'y of State*, 2020 ME 113, ¶ 18, 238 A.3d 982 (cleaned up).

I. The Diocese has no vested right in the expiration of the previously applicable statute of limitations.

"[T]he protection of vested rights has been rooted in the Maine Constitution since Maine became a state." *NECEC*, 2022 ME 48, ¶ 38, 281 A.3d 418. As early as 1823, in a case involving real estate, this Court recognized that "every citizen has the right of possessing and protecting property according to the standing laws of the State in force at the time of his acquiring it, and during the time of his continuing to possess it." *Proprietors of Kennebec Purchase v. Laboree*, 2 Me. 275, 290, 294-95 (Me. 1823) (cleaned up).

While various provisions of the Maine Constitution served as "proxies for due process protections" for nearly 150 years, last year this Court confirmed

that, since it was adopted in 1963, protection for vested rights has been in rooted in article I, section 6-A's due process clause. *NECEC*, 2022 ME 48, ¶ 42, 281 A.3d 418. Here, Section 752-C's retroactive application is entirely consistent with the due process rights protected by article I, section 6-A.

A. Statutes of limitations dictate when plaintiffs can pursue a remedy, not the vested rights of potential defendants.

It is "well settled law" in Maine that the Legislature can pass retrospective statutes that "affect remedies only," i.e., that neither impair vested rights nor create personal responsibilities. *NECEC*, 2022 ME 48, ¶ 39, 281 A.3d 418 (quoting *Coffin v. Rich*, 45 Me. 507, 514-15 (1858)); *accord Thut v. Grant*, 281 A.2d 1, 6 (Me. 1971) ("[T]he Legislature has full power and authority to regulate and change the form of remedies in actions if no vested rights are impaired or personal liabilities created."); *cf. Merrill v. Eastland Woolen Mills, Inc.*, 430 A.2d 557, 560-61 (Me. 1981) (holding retroactive application of amendment that changed forum in which relief could be obtained affected only remedies and did not impair vested rights).

As courts of several states and the Supreme Court have recognized, statutes of limitations are precisely this type of legislative enactment. *See, e.g., Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 428-30, 119 A.3d 462, 509-10 (2015) (gathering cases). They are "pragmatic devices" that

represent "expedients, rather than principles," and accordingly "have never been regarded as" giving rise to "'fundamental' right[s]." *Chase Secs. Corp.*, 325 U.S. at 314. Statutes of limitations are no different under Maine law, where they exist to "reconcile the interests of an injured party with those of the party responsible for compensation." *Harvie v. Bath Iron Works Corp.* 561 A.2d 1023, 1025 (Me. 1989).

A defendant's interest in the expiration of a statute of limitations is, in other words, "procedural rather than substantive." *City of Boston v. Keene Corp.*, 406 Mass. 301, 312, 547 N.E.2d 328, 335 (1989); *Miller v. Fallon*, 183 A. 416, 417 (1936) (defining statutes of limitations as "laws of process"); *accord Lister*, 1997 ME 23, ¶ 8, 690 A.2d 491.[3] Accordingly, the expiration of a statute of limitations does not, on its own,[4] create a protected property right, but rather grants potential defendants an affirmative defense. *See Berry v. Clary*, 77 Me. 483, 486, 1 A. 360 (1885) (retroactive application of statute was constitutional given existence of "statutory defense . . . gave [the defendant] no vested right"); *see also Chase*, 325 U.S. at 316 (expectation of ability to invoke time bar does

[3] The Diocese's citation to *Bellegarde Custom Kitchens v. Leavitt*, 295 A.2d 909 (Me. 1972) in this context is misguided (Br. of Appellant Roman Catholic Bishop of Portland, Maine 15). *Bellegarde* involves a statutory cause of action, not a common law cause of action, the significance of which is recognized by the *Bellegarde* court and discussed below. *See Bellegarde*, 295 A.2d at 912.

[4] When a court issues a final judgment dismissing a lawsuit as untimely, the analysis is different. In that circumstance, a vested right may be created. *See Campbell*, 115 U.S. at 628; *Chase*, 325 U.S. at 310; Coffin, 45 Me. at 512.

not give rise to a constitutional right); *cf. Heber v. Lucerne-in-Maine Vill. Corp.*, 2000 ME 137, ¶ 10, 755 A.3d 1064 ("An individual does not have a vested right in a particular procedure . . . .").

This understanding of statutes of limitations makes good sense in the context of sexual acts against minors and the common-law tort claims at issue in this case. Unlike, for example, in the context of real property rights, where the expiration of a statute of limitations can affect the possession of title, *see, e.g., Campbell*, 115 U.S. at 625-26 (recognizing "the difference between statutes whose effect is to vest title to property by adverse possession, and those which merely affect the remedy, as in case of contract"); *cf. Keene Corp.*, 406 Mass. at 312-13, 547 N.E.2d at 335 (noting that statutes of limitations are procedural except "in cases . . . involving claims to real property"), whether the lawsuit is time-barred here does not change the nature of the underlying conduct; there remains a victim who alleges to have suffered injury, *see Campbell*, 115 U.S. at 628-29 (distinguishing statutes of limitations from protected property rights). Accordingly, Section 752-C reflects merely a permissible adjustment of the rules for seeking recompense.

B. Article I, section 6-A is coextensive with the Fourteenth Amendment's due process clause, such that this Court should follow persuasive authority from the Supreme Court and conclude that the expiration of a statute of limitations does not create a vested right.

While federal precedent is not dispositive with respect to the meaning of the Maine Constitution, this Court may consider it to the extent that it is persuasive. *State v. Reeves*, 2022 ME 10, ¶ 41, 268 A.3d 281. Consequently, where this Court has determined that a provision of the Maine Constitution mirrors its federal counterpart, it has regularly followed federal case law. *See, e.g., Anctil v. Cassese*, 2020 ME 59, ¶ 17, 232 A.3d 245 (right to counsel); *State v. Martin*, 2015 ME 91, ¶¶ 8-17 & n.2, 120 A.3d 113 (warrantless search); *State v. Bennett*, 2015 ME 46, ¶¶ 17-20, 114 A.3d 994 (equal protection); *State v. Johansen*, 2014 ME 132, ¶¶ 12-18, 105 A.3d 433 (self-incrimination); *Doe I v. Williams*, 2013 ME 24, ¶¶ 23-24, 61 A.3d 718 (ex-post facto laws); *State v. George* 1997 ME 2, ¶ 6, 687 A.2d 958 (double jeopardy).

Maine's due process clause, contained in article I, section 6-A of the Maine Constitution, is one such matching constitutional provision. On its face, article I, section 6-A's requirement that "[n]o person . . . be deprived of life, liberty or property without due process of law" is essentially identical to the prohibition in Section 1 of the Fourteenth Amendment on "any State depriv[ing] any person of life, liberty, or property, without due process of law." This is unsurprising

given when the Maine Constitutional Commission proposed article I, section 6-A, it characterized the new provision as "[a] due process clause, similar to that which appears as the 14th Amendment," L.D. 33 (101st Legis. 1963), and intended the section to "embody due process . . . guarantees similar to those of the Fourteenth Amendment," Marshall J. Tinkle, *The Maine State Constitution* 45 (2d ed. 2013).

This Court has therefore "repeatedly held that federal and Maine due process rights are coextensive." *State v. Milliken*, 2010 ME 1, ¶ 16, 985 A.2d 1152; *see also MSAD 6 Bd. of Directors v. Town of Fyre Island*, 2020 ME 45, ¶ 36, 229 A.3d 514 ("The rights guaranteed by article I, section 6-A of the Maine Constitution are coextensive with those guaranteed by the Fourteenth Amendment of the United States Constitution."); *Penobscot Area Hous. Dev. Corp. v. City of Brewer*, 434 A.2d 14, 24 n.9 (Me. 1981) ("This Court has long adhered to the principle that the Maine Constitution and the Constitution of the United States are declarative of identical concepts of due process."). It has likewise traditionally relied upon federal precedent in cases involving the due process protections of article I, section 6-A. *See, e.g., Adoption of Riahleigh M.*, 2019 ME 24, ¶¶ 15-27, 202 A.3d 1174; *Bennett*, 2015 ME 46, ¶¶ 17, 21-26, 114 A.3d 994; *Doe I*, 2013 ME 24, ¶¶ 61-67, 61 A.3d 718; *Green v. Comm'r of Mental Health & Mental Retardation*, 2000 ME 92, ¶¶ 13-20 & n.2, 750 A.2d 1265; *see*

also Guardianship of Jeremiah T., 2009 ME 74, ¶¶ 19-23, 976 A.2d 955 (relying on Supreme Court precedent to determine, in assessing retroactivity, that assignment of burden of proof affects substantive rights).[5]

The Supreme Court's perspective on the constitutional question presented by this case is clear: no vested right in freedom from liability is bestowed by the expiration of a statute of limitations. In *Campbell v. Holt*, 115 U.S. 620 (1886), in the context of a dispute over a contractual debt, the Supreme Court held that, as a general matter, statutes of limitations pertain to remedies, not fundamental or vested rights. *See id.* at 625 (when the statute of limitations has run "the remedy alone is gone and not the obligation"); *cf. id.* at 628 ("It violates no right . . . when the legislature says time shall be no bar, though such was the law when the contract was made."). The Court was "unable to see how a man can be said to have *property* in the bar of the statute as a defense to his promise to pay," such that it did not "understand that a right to defeat a just debt by the statute of limitations is a vested right, so as to be beyond legislative power." *Id.* at 626, 629; *see also id.* at 628 ("[N]o right is destroyed when the law restores a remedy which has been lost.").

[5] The Law Court's decision in NECEC, which roots Maine's vested rights doctrine in article I, section 6-A of the Maine Constitution—just as the federal vested rights doctrine is rooted in the Fourteenth Amendment, *see Chase*, 325 U.S. at 309, 311-12; *Demorest v. City Bank Farmers Trust Co.*, 321 U.S. 36, 38-39 (1944)—is addressed in the next section.

The exception[6] to this rule, according to *Campbell*, is for matters where ownership in "tangible property, real or personal" is at issue. 115 U.S. at 622-23. The Court reasoned that "it may . . . very well be held that in an action to recover real or personal property, . . . the removal of the bar of the statute of limitations by a legislative act passed after the bar has become perfect . . . deprives the party of his property without due process of law," because "by the law in existence before the repealing act, the property had become the defendant's." *Id.* at 623. But the Court distinguished such circumstances from actions for payment of debts, where regardless of whether time has expired on the availability of the remedy—"a purely arbitrary creation of the law"—the underlying obligation remains. *Id.* at 624, 627-28.

Nearly sixty years later, in *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304 (1945), the Supreme Court confirmed that *Campbell*'s "view that statutes of limitation go to matters of remedy, not to destruction of fundamental rights" was "sound." *Chase*, 325 U.S. at 314-15. It accordingly reaffirmed that "a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby." *Id.* at 311.

[6] The Supreme Court also noted that an action cannot be revived once "the bar is complete," i.e., once final judgment is entered. *Campbell*, 115 U.S. at 628; *see also Chase*, 325 U.S. at 310 (distinguishing circumstance where time bar had been "fully adjudged so that legislative action deprived [a defendant] of a final judgment in its favor").

The Supreme Court has continued to adhere to this reasoning in subsequent cases. *See, e.g., Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO, Local 790, vs. Robbins & Myers*, *Inc.*, 429 U.S. 229, 243-44 (1976).

This Court should follow the Supreme Court's lead, just as the Supreme Court of Vermont recently did in in *A.B. v. S.U.*, 2023 VT 32, 298 A.3d 573.[7] In that case, after observing that Vermont's "cases ha[d] treated due process claims [under the Vermont Constitution] similarly to those made under the U.S. Constitution," *id.* ¶ 10, 298 A.3d at 576, the court deemed *Campbell* and *Chase* to be "logical, persuasive, and consistent with [its] past cases," *id.* ¶ 15, 298 A.3d at 578, and noted, as is the case here, that the challenging party had failed to explain why the Vermont Constitution provided any greater protection than the Fourteenth Amendment, *id.* ¶ 25, 298 A.3d at 582. It likewise observed that "[b]ecause a limitations statute is a legislated bar to a remedy . . . the expired limitations period does not endow a tortfeasor with a 'vested right.'" *Id.* ¶ 16, 298 A.3d at 578-79. The court therefore concluded that Vermont's elimination of the statute of limitations for child sexual abuse claims was constitutional. *Id.* ¶ 1, 298 A.3d at 574.

[7] The Diocese cites *Aurora Pub. Sch. v. A.S.*, 2023 CO 39, 531 P.3d 1036, as an example of a recent decision in which a court held the opposite. Notably, though, the Colorado Supreme Court did not reference *Campbell* or *Chase*, and it held not that the statute at issue violated a due process clause, but rather that it violated the Colorado Constitution's bar on retroactive legislation, a bar that does not exist in Maine's Constitution. *See id.* ¶¶ 38-42, 54-55, 531 P.3d at 1046-47, 1050.

Vermont is not the only state to draw such a conclusion, either. Indeed, Maine would be in good company were this Court to employ similar reasoning, especially among northeastern states. The highest courts of Connecticut (*Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 119 A.3d 462), Massachusetts (*Sliney v. Previte*, 473 Mass. 283, 41 N.E.3d 732 (2015)) and New York (*PB-36 Doe v. Niagara Falls City Sch. Dist.*, 182 N.Y.S.3d 850, 213 A.D.3d 82 (2023)), have all affirmatively concluded that revival of time-barred child sexual abuse claims does not violate defendants' due process rights. The same is true of courts in California, Delaware, and Montana, *see A.B.*, 2023 VT 32, ¶¶ 24-25, 298 A.3d at 581-82 (gathering cases), and, as to the revival of time-barred claims more broadly, courts in Arizona, Georgia, Hawaii, Idaho, Iowa, Kansas, Michigan, Minnesota, New Jersey, New Mexico, North Dakota, Washington, West Virginia, and Wyoming, *see Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 428, 119 A.3d at 509 (gathering cases).[8] The State submits that this Court should do the same.

[8] For the reasons explained in the next section, the Connecticut Supreme Court's characterization of Maine as a state that "support[s] the position that legislation that retroactively amends a statute of limitations that revises time barred claims is per se invalid" is erroneous. *See Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 430-41, 119 A.3d at 510-11.

C. Existing Maine case law does not suggest that the expiration of a statute of limitations creates a vested right, especially in the context of common-law causes of action.

1. NECEC *offers no support for the proposition that the expiration of a statute of limitations gives rise to a vested right.*

The principal case on which the Diocese relies is *NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48, 281 A.3d 618. But the Diocese's contention that the *NECEC* Court held that vested rights attach to "anything of value" (*see* Br. of Appellant Roman Catholic Bishop of Portland, Me. ("Diocese Br.") 3, 12, 20), is entirely unmoored from the language of that narrow decision.

NECEC involved a unique situation. After receiving a series of permits and approvals, the plaintiffs began construction on a major power transmission corridor, and "spent nearly $450 million" to that end. *NECEC*, 2022 ME 48, ¶¶ 1, 14-17, 281 A.3d 618. This included "cut[ting] 124 miles of right-of-way for direct current lines, clear[ing] the entire corridor for the alternating current line, erect[ing] transmission structures along the corridor, and prepar[ing] the converter site." *Id.* ¶ 17. Subsequently, a 2021 Citizen's Initiative required additional approvals for such projects. *Id.* ¶¶ 18, 23. Retroactive application of those requirements would, therefore, have significantly impacted the plaintiffs' finances and physical property. The Court concluded that if the plaintiffs could demonstrate that they had "engaged in substantial

construction . . . in good faith," then they gained a vested right in the construction project such that the relevant portion of the Citizen's Initiative could not be retroactively applied. *Id.* ¶ 52.

The standard the *NECEC* Court applied in reaching this infrastructure-specific holding, *see* 2022 ME 48, ¶ 47, 281 A.3d 618 ("[I]n the context of large-scale infrastructure development, we conclude . . . ."), underscores why the Diocese's "anything of value" contention is so misguided. The Court did not simply conclude that because the plaintiffs had some interest in the transmission corridor, they had "acquired a *cognizable* property right that the Maine Constitution protects from being impaired by retroactive legislation." *Id.* ¶ 44 (emphasis added); *see also id.* ¶ 45 (defining question as whether NECEC had "acquired a *constitutionally protected* property right" (emphasis added)). Rather, it announced a three-factor test, explaining that a claim for unconstitutional impairment of vested rights arises when (1) the claimant "holds a valid issued final permit, license, or other grant of authority . . . that is not subject to any further judicial review;" (2) the challenged law "would . . . eliminate or substantially limit the right to proceed with the activity authorized;" and (3) the claimant "undertook substantial good-faith expenditures on the activity within the scope of the affected permit prior to the enactment of the retroactive legislation." *Id.* ¶ 47.

It follows, then, that a claimant obtains a vested right in an infrastructure development only when its interest is strong enough to satisfy factors (1) and (3). But those criteria are inconsistent with there being a vested right in "anything of value." Even if a developer's permits are still subject to judicial review; a developer has spent less than what might qualify as "substantial"; or a developer has expedited its substantial expenditures in bad faith, it plainly could still have a valuable interest in the corresponding project. Yet, under *NECEC*, these interests, whether alone or tandem, would be insufficient to establish a vested right.

The *NECEC* Court did not specify, more broadly, when an interest becomes strong enough, due to reliance interests or otherwise, to become a vested right. Nor was there any need to do so in the unique factual context of that case. That said, the nature of the Diocese's interest here is far less substantial than that at issue in *NECEC*. The Diocese does not claim a right to a large-scale infrastructure project, but rather a right to an affirmative defense. It likewise does not claim to have spent time or money based on the availability of that defense nor, beyond a general feeling of repose, has it described any reliance interest at all.

Suffice to say, this Court's *NECEC* decision does not support the Diocese's contention that the running of a statute of limitations gives rise to a vested right

because it is "of value." Rather, if anything, it suggests that the absence of a meaningful reliance interest here is indicative of the opposite. *See Chase*, 325 U.S. at 316 (no Fourteenth Amendment violation from retrospective elimination of statute of limitations where the appellant had not "pointed out special hardships or oppressive effects which result from lifting the bar").

2. *The relevant passages in* Dobson *and* Morrissette *are unpersuasive dicta, and inapposite here*.

The Diocese also seeks to make great hay of *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814 (Me. 1980), and *Morrissette v. Kimberly-Clark Corp.*, 2003 ME 138, 837 A.2d 123, two cases involving claims under the Maine Workers' Compensation Act. The *Dobson* Court, as relevant here, suggested that "[n]o one has a vested right in the running of a statute of limitations until the prescribed time has completely run out and barred the action." 415 A.2d. at 816. The *Morrisette* Court cited *Dobson* when observing that "in the workers' compensation setting, amendments to the statute of limitations may be applied retroactively . . . , but *not* to revive cases in which the statute of limitations has expired." 2003 ME 138, ¶ 15, 837 A.2d 123. These cases are a poor fit for resolving the important, unresolved legal question presented by this case.

As an initial matter, the above-cited passages in *Dobson* and *Morrissette* are both dicta, such that neither should dictate the result here. The *Dobson*

Court held that the extension of a limitation period for an existing claim did not amount to retroactive legislation, 415 A.2d at 816-17, such that its description of the effect of retroactive legislation in other contexts, and corresponding references to vested rights, formed no part of the case's holding. Similarly, in *Morrissette*, the Court held that the level of an employee's prospective benefits is never final such that it can always be adjusted, 2003 ME 138, ¶¶ 15, 17, 837 A.2d 123, such that the corresponding comparison to a statute of limitations was peripheral to its reasoning.

Of course, dicta can still be persuasive. But the passages at issue here do not include the sort of detailed analysis necessary to render them so. *Dobson,* for its part, does not include any discussion of when, or why, an expired statute of limitations might give rise to a vested right. And the out-of-state authorities it cites either stand for the opposite proposition, *see Panzino v. Continental Can Co*, 71 N.J. 298, 303-05, 364 A.2d 1043, 1045-46 (N.J. 1976) (concluding that it is constitutional to revive a statutory claim, and distinguishing contrary precedent as pertaining only to contractual rights); *accord Short v. Short*, 372 N.J. Super. 333, 338, 858 A.2d 571, 574 (App. Div. 2004) ("[R]etroactive amendments to statutes of limitations resulting in a revival of an otherwise barred claim are not *per se* unconstitutional"), or are from states that have since adopted a holding contrary to what the Diocese seeks here, *see Nelson v.*

Flintkote, 172 Cal. App. 3d 727, 733 (Cal. 1985) (holding statutes of limitations for common law torts are procedural and do not confer vested rights); *Doe v. Silverman*, 287 Or. App. 247, 251-52, 401 P.3d 793, 795-96 (2017) (holding legislature can revive time-barred common-law claims).[9]

The dicta in *Morrissette* is similarly unpersuasive. It is not backed by constitutional analysis, and the cases on which it relies are *Dobson* and subsequent workers' compensation cases that cite *Dobson* and, like *Dobson*, do not decide whether the running of a statute of limitations gives rise to a vested right. In fact, the *Morrissette* Court itself implies that its observations regarding *Dobson* and its progeny are limited to the "workers' compensation setting" and "analogous context[s]." 2003 ME 138, ¶ 15, 837 A.2d 123.

But even if this Court were bound by the relevant passages in *Dobson* and *Morrissette*, it should still find that 752-C's retroactive application is constitutional because there is an essential difference between the cause of action at issue in those cases, and those at issue here. Specifically, while *Dobson* and *Morrissette*, like the subsequent Law Court cases that cite them, concern statutory claims set forth in the Maine Workers' Compensation Act, *see Dobson*,

[9] This Court subsequently characterized *Dobson* as standing for the proposition that a new statute of limitations can be applied retroactively because it affects only "the remedy, not . . . the substantive right." *Merrill*, 430 A.2d at 560-61 (noting "the statute in effect at the time . . . did not change the legal consequences of acts or events that had occurred prior . . . , but affected only the procedure for enforcement of claims."). That is precisely the State's position here.

415 A.2d at 815, 817; *Morrissette*, 2003 ME 139, ¶ 1, 837 A.2d 123; *see also Rutter v. Allstate Auto Ins. Co.*, 655 A.2d 1258, 1259-60 (Me. 1995); *Danforth v. L.L. Bean, Inc.*, 624 A.2d 1231, 1231 (Me. 1993); *Harvie,* 561 A.2d at 1024, this case involves a series of common law torts.

As both the Supreme Court and courts of other states have recognized, this distinction is of paramount significance. When a legislature establishes a statutory cause of action and includes a statute of limitations,[10] it creates a liability that extends only so far as the statute of limitations permits. *See, e.g., William Danzer & Co. v. Gulf & S.I.R. Co.*, 268 U.S. 633, 636-37 (1925) (distinguishing *Campbell*, and observing that statutes of limitations "sometimes constitute a part of the definition of a cause of action created by the same or another provision, and operate as a limitation upon liability"); *Donaldson v. Chase Secs. Corp.*, 216 Minn. 269, 277, 13 N.W.2d 1, 5 (1943) ("[W]here a cause of action is created by statute, . . . and the same statute prescribes a period of limitation . . . the period of limitation is a part of the cause of action . . . ."); *cf. Bellegarde Custom Kitchens*, 295 A.2d at 912 (limitations period for statutory cause of action "unknown to the common law" was "substantive" because the Legislature "saw fit to provide that this right should exist only during a limited

[10] The same may be true as to separately enacted statutes of limitations where explicitly "directed to the newly created liability" so as "to qualif[y] the right." *See Chase*, 325 U.S. at 312 n.8 (quoting *Davis v. Mills* 194 U.S. 451, 454 (1904)).

period."). When the statute of limitations expires for such actions, the claim itself is extinguished. *Owens v. Maass*, 323 Or. 430, 439, 918 P.2d 808, 813 (1996); *cf. Bellegarde Custom Kitchens*, 295 A.2d at 912 (court was without jurisdiction to entertain action after "the period of its availability ha[d] expired"). Accordingly, when a legislature retroactively eliminates the statute of limitations for a statutory claim, it creates a new liability that may, ultimately, warrant due process scrutiny. *See William Danzer & Co.*, 268 U.S. at 637 (refusing to construe Congressional act to apply retroactively to statutory cause of action as it would "create liability . . . without due process of law"); *Haase v. Sawicki*, 20 Wis.2d 308, 317, 121 N.W.2d 876, 881 (1963) (where "the very statute creating the liability also put a limit to its existence," retroactive extension of the statute of limitations violates due process).

The analysis is different in the context of common law causes of action. They exist independent of any legislative enactment, including statutes of limitations. *See Chase*, 325 U.S. at 312 n.8 (distinguishing *Danzer* because, for the cause of action at issue in *Chase*, "liability was implied by the state's common law"); *Brown v. Great Am. Indemn. Co.*, 298 Mass. 101, 103-04, 9 N.E.2d 547, 549 (1937) (statute of limitations for personal injury claim "is not the essence of the cause of action," such that it is not "a limitation upon the right" (quoting *McLearn v. Hill*, 276 Mass. 519, 522, 177 N.E. 617, 619 (1931)). As a

result, "[a] procedural time bar to a common-law claim does not 'extinguish' the claim." *Silverman*, 287 Or. App. at 252, 401 P.3d at 796.[11] When a legislature retroactively eliminates the statute of limitations for a common law cause of action, it thus does not create a new liability, and does not infringe on a vested right. *See Chase,* 325 U.S. at 312 n. 8 (endorsing state court holding that change in statute of limitations did not "subject appellants to a new liability" when finding that retroactive extension of the statute of limitations was constitutional); *Liebig v. Superior Court*, 209 Cal. App. 3d 828, 834-35 (Cal. 1989) (distinguishing "a limitations period for a liability created by statute" from liability created "by the common law," and concluding that the legislature "has the power to expressly revive time-barred civil common laws of action"); *cf. Miller*, 183 A. at 417 ("[W]here [statutes of limitations] do not extinguish the right itself, [they] are deemed to operate on the remedy only."); *Soper v. Lawrence Bros. Co.*, 56 A. 908, 913 (Me. 1903) ("[I]t is difficult to see why, if the Legislature may prescribe a limitation where none existed before, it may not change one which has already been established.").

In short, even if this Court reasons that the expiration of a statute of limitations for a statutory cause of action like that at issue in *Dobson* and

[11] If the Maine Legislature wished to amend the common law so as to extinguish a common-law cause of action upon expiration of a statute of limitations, it would have to do so by "clear and unambiguous language." *Batchelder v. Realty Resources Hosp., LLC*, 2007 ME 17, ¶ 23, 914 A.2d 116 (cleaned up).

Morrissette gives rise to a vested right, it should hold that no such vested right is created in the context of the common-law causes of action at issue in this case, and for which the Legislature retroactively eliminated the statute of limitations in Section 752-C.

D. The Diocese's references to the state of the common law at the time of the conduct at issue, and the recent modification of charitable organization immunity, are red herrings.

The Diocese appends two novel contentions to its brief. Specifically, it claims that (1) Section 752-C's retroactive scope is unconstitutional because it creates vicarious organizational liability when none purportedly existed at the time of the conduct at issue (Diocese Br. 32), and (2) a recent modification to the immunity of charitable organizations "amounts to unconstitutional retroactive liability" (*id.* 36). Each argument is outside the scope of the issues on report to this Court, and accordingly should not be addressed. Each is also meritless.

With respect to the Diocese's first novel theory, the State of Maine takes no position on the scope of Section 752-C.[12] Assuming, however, that Section

[12] To be clear, the State maintains that Section 752-C does not amount to a waiver of sovereign immunity, and therefore it does not override the two-year statute of limitations set forth in the Maine Tort Claims Act for suits against government entities. *See* 14 M.R.S.A. § 8110 (Westlaw Aug. 31, 2023); *see also id.* § 8103 (Westlaw) ("Except as otherwise expressly provided by statute, all government entities shall be immune from suit on any and all tort claims seeking recovery of damages. When immunity is removed by this chapter, any claim for damages shall be brought in accordance with the terms of this chapter.").

752-C does apply to organizational defendants, as the trial court ruled, the Diocese's argument is misguided.

As a matter of law, the Diocese is incorrect that organizational liability was unavailable at the time of the conduct at issue. While this Court recognized such liability in *Fortin v. Roman Catholic Bishop of Portland*, 2005 ME 57, 871 A.2d 1208, the *Fortin* Court made clear that, prior to that time, it was simply an open question as to whether such a tort existed under the common law. *Id.* ¶ 18-19 (noting that, prior to *Fortin*, the Court had not "adopted or rejected a cause of action for negligent supervision by an employer"). Further, while the Diocese argued in that case—as it does in its brief here (Diocese Br. 33, 38)—that, prior to *Fortin*, it was immune from tort liability under *Swanson v. Roman Catholic Bishop of Portland*, 1997 ME 63, 692 A.2d 441, this Court expressly rejected that reading of *Swanson*, noting that it "neither purported to establish a blanket tort immunity for religious organizations, nor [was] intended . . . to be the final word on the subject," *Fortin*, 2005 ME 57, ¶¶ 21-23, 871 A.2d 1208; *see also id.* ¶ 29 ("*Swanson* did not create blanket tort immunity for all actions of the Diocese relating to claims of sexual abuse by its clergy.").

The state of the common law at the time also has no bearing on whether applying Section 752-C's retroactively is constitutional. In making Section 752-C retroactive, the Maine Legislature did not modify the common law, nor did it

create a new theory of organizational immunity. It simply eliminated the statutory time limit for bringing certain common-law claims. The Diocese's theory that Plaintiff's claims are only viable by virtue of an intervening change in the law—which, as noted above, is inaccurate—is therefore not a reason to rule in their favor.

With respect to the Diocese's second novel theory regarding a change to the immunity of charitable organizations, the Diocese appears to explicitly recognize that it is not properly before the Court (*see* Diocese Br. 37 (admitting the Court "need not adjudicate (yet) the unconstitutionality of retroactive elimination of charitable immunity")). But, without citation, the Diocese also attempts to characterize the law in question as an "extension or reinforcement of [Section] 752-C," and urges the Court to consider their collective effect (*id.*).

The Diocese's concerns about a different statute should not factor into this Court's analysis of the sole constitutional issue before it. While, at best, it is contextually relevant to understanding the Diocese's interests (as discussed in the next section), its concerns about charitable immunity otherwise have no bearing on whether the Legislature's retroactive elimination of the statute of limitations violates the Maine Constitution.

II. Section 750-C's retroactive elimination of the statute of limitations is constitutional, even if it impairs vested rights, because of the compelling public interest it serves.

Should this Court conclude, for the first time, that the expiration of the statute of limitations granted the Diocese a vested right in freedom from liability, that should not end the inquiry. The existence of a vested right should not be an absolute bar on legislative action, but rather should trigger constitutional scrutiny under article I, section 6-A.[13]

Several states provide a model for what that scrutiny should look like. Under California law, vested rights are "not sacrosanct or immutable," and retroactive legislation "is not absolutely proscribed." *Nelson*, 172 Cal. App. 3d at 734. Rather, "[it] is justified where . . . retroactive application reasonably could be believed necessary to serve the public welfare." *Id.*; *see also Liebig*, 209 Cal. App. 3d at 834 (noting "vested rights are not immune from retroactive laws when an important state interest is at stake," and concluding that retroactive expansion of statute of limitations for sexual abuse of minors serves such an interest).

[13] This Court in *NECEC* suggested that the abrogation of a vested right in the infrastructure context is itself of a violation of the due process clause. *NECEC*, 2022 ME 48, ¶¶ 47 & n.16, 52-53, 281 A.3d 618. That infrastructure-specific conclusion does not, however, foreclose the adoption—and application—of a balancing test in this case.

New York applies a "functionalist approach." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 394, 89 N.E. 3d 1227, 1239 (2017). Its highest court has indicated that there is no "formal distinction between claim-revival statutes that intrude upon a 'vested' property interest and those that do not," and that it "weighs the defendant's interests in the availability of a statute of limitations defense [against] the need to correct an injustice." *Id.* Wisconsin courts, too, "weigh[] the public interest served by retroactively applying the statute against the private interest that retroactive application of the statute would affect." *Society Ins. v. Labor & Industry Review Comm'n*, 2010 WI 68, ¶ 30, 786 N.W.2d 385, 396 (quoting *Matthies v. Positive Safety Mfg. Co.*, 2001 WI 82, ¶ 27, 628 N.W.2d 842, 855).

Massachusetts, for its part, folds the question of whether a vested right is created into the balancing of interests approach used by other states. To "evaluat[e] the reasonableness of applying a statute retroactively," Massachusetts courts examine "three principal factors," namely "the public interest that motivated the . . . statute, the nature of the rights affected by the retroactivity, and the scope of the impact of the statute on those rights." *Sliney*, 473 Mass. at 291-92, 41 N.E.3d at 739. The retroactive statute must, moreover, be "reasonable in scope and extent" to be constitutional. *Id.* at 294, 41 N.E.3d

at 741 (quoting *Doe No. 8725 v. Sex Offender Registry Bd.*, 450 Mass. 780, 792, 882 N.E.2d 298, 308 (2008)).

Maine should employ a similar balancing test. Indeed, this Court has already utilized similar analytical approaches in due process cases. When, for example, this Court has assessed alleged procedural due process violations under article I, section 6-A, it has assessed the "balance between competing concerns" in order to adjudicate basic fairness. *See, e.g., State v. Gordon*, 2021 ME 9, ¶ 12, 246 A.3d 170; *Secure Environs., Inc. v. Town of Norridgewock*, 544 A.2d 319, 324-25 (Me. 1988). Likewise, when evaluating substantive due process claims, this Court has considered whether the government "engaged in conduct that shocks the conscience and violates the decencies of civilized conduct." *Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 20, 242 A.3d 182 (cleaned up).

Along these lines, in a series of cases cited by the trial court, including *Norton v. C.P. Blouin, Inc.*, 511 A.2d 1056 (Me. 1986) and *State v. L.V.I. Grp.*, 1997 ME 25, 690 A.2d 960, this Court has employed a three part test for analyzing due process claims involving retroactive economic legislation under article I, section 6-A. Specifically, it has directed that retroactive legislation is constitutional when it is intended to provide for the public welfare; the means are appropriate for achievement of the ends sought; and the manner of doing

so is not "unduly arbitrary and capricious." *L.V.I. Grp.*, 1997 ME 25, ¶ 9, 690 A.2d 960 (quoting *Tompkins v. Wade & Searway Const. Corp*, 612 A.2d 874, 878 n.2 (Me. 1992)). A balancing test of some form, tailored to the vested right the Diocese claims in this case, would thus fit neatly into this Court's article I, section 6-A jurisprudence.

No matter which approach the Court adopts—or the degree of scrutiny it deems appropriate—Section 752-C's retroactive application passes muster because the State's interest is compelling. As discussed above, it may take time for children who have suffered sexual abuse to come to terms with what they experienced, and they may delay disclosure into adulthood. *See, e.g., Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 437, 119 A.3d at 514-15. Child victims may also endure long-term mental and physical maladies, some of which may not appear for years, including "sexual problems, dysfunctions or compulsions, . . . problems with intimacy, shame, guilt and self-blame, low self-esteem . . . substance abuse," and depression. *See id.* Retroactive elimination of the statute of limitations accounts for these delays, and ensures that victims of sexual abuse can seek redress.

In sum, even if this Court were to conclude that the Diocese gained a vested right upon the expiration of the statute of limitations, it should balance

that right against the compelling public interest in Section 752-C's retroactive application and conclude that it is constitutional.

CONCLUSION

For the reasons stated above, the State of Maine respectfully requests that this Court conclude that the retroactive elimination of the statute of limitations for claims stemming from sexual acts against minors set forth in 14 M.R.S.A. § 752-C is constitutional.

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