THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket No. 2024-0606

Randy Ball
Plaintiff,

v.

Roman Catholic Bishop of Manchester, et al.
Defendants.

Rule 7 Mandatory Appeal from Final Order of Belknap County Superior Court (211-2023-CV-00192)

BRIEF FOR APPELLANT RANDY BALL

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QUESTIONS PRESENTED FOR REVIEW

Whether the Legislature's enactment of RSA 508:4-g, abolishing the statute of limitations in cases brought by victims of criminal sexual assault, was a constitutional exercise of its police power designed to enhance community health and safety, or an unconstitutional deprivation of the Defendants' expectation that, because the statute of limitations had arguably passed based on the passage of time, they had escaped the possibility of being held accountable for the actions complained of in Mr. Ball's Complaint. App.[1] at 567–68.

Whether a viable statute of limitations defense constitutes a "vested right" akin to an interest in real property, the right to free speech, or an enforceable contract, and therefore is subject to the same constitutional protections as those rights even though the statute of limitations defense is a matter of legislative grace and the abolition of the defense results only in a defendant having to defend on the substantive merits of a plaintiff's claims. *Id*. at 563–67.

Whether the Trial Court wrongly determined that the Defendants' interest in enforcing their "vested right" to assert the defense of statute of limitations was a more important constitutional right than Mr. Ball's interest in pursuing recourse for the harm he suffered when a priest raped him when he was a little boy, explaining that the molestation was in essence all part of God's plan for him. *Id*. at 563–68.

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[1] Citations to the Appendix shall herein be abbreviated as "App."

STATUTES INVOLVED IN THE CASE

Part I, Article 23 of the New Hampshire Constitution

> [Art.] 23d. [Retrospective Laws Prohibited.] Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.

RSA 508:4-g

> Actions Based on Sexual Assault and Related Offenses. – A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2 may commence a personal action at any time.

STATEMENT OF THE CASE, INCLUDING FACTS

On August 18, 2023, Randy Ball filed his Complaint against the Defendants. App. at 1. His filing arose out of his sexual assault while a camper at the Defendants' Camp Fatima in the 1970s. *Id.* at 5–7. The gravamen of Mr. Ball's claim, as summarized by the Trial Court, is that the Defendants owed him a duty while he was in their care as a minor which they breached by failing to protect him from the priest who raped him who was "known by [the Defendants] to be a sexual predator, thereby causing him to be sexually abused and suffer damages." *Id*. at 578.

Like many who were sexually molested as young children, it took Mr. Ball decades to acknowledge the Defendants' role in the abuse and to reconcile himself to taking action to hold them accountable. *See id*. at 5. Mr. Ball's delay in prosecution was especially understandable where, at approximately eight years of age, he was told by the priest who raped him while at Camp Fatima that the rape was the product of God's love and all part of His plan. *See id*. at 7. It is unclear when Mr. Ball learned the

association between his rape and the Defendants' acts or omissions, although he did learn of that association prior to 2019.

Had Mr. Ball filed his Complaint in 2019, the court would have dismissed the case pursuant to the version of RSA 508:4-g as it then existed, and Mr. Ball would have been without recourse. In 2020, however, the Legislature amended RSA 508:4-g to abolish the statute of limitations for all actions involving felonious sexual assault. RSA 508:4-g now provides that: "A person, alleging to have been subject to any offense under RSA 632-A or an offense under RSA 639:2 *may commence a personal action at any time*." 2020 N.H. Laws 24:11 (HB 705), eff. Sept.18, 2020 (emphasis added).

Central to the issues on appeal is whether the revival of Mr. Ball's claims against the Defendants enabled by the 2020 abolition of the limitations period in sexual assault cases violated Part I, Article 23 of New Hampshire's Constitution.

The Legislature's 2020 amendment of RSA 508:4-g was the product of its careful deliberation spanning a decade and a half. App. at 15–17. The Legislature's path to its 2020 amendment of RSA 508:4-g began in 2005. *Id*. at 15. In 2005, the Legislature created a special law for minor sexual assault victims, allowing them to sue within seven years of their eighteenth birthday. *Id.* Senator Lou D'Allesandro, the prime sponsor of the bill that became RSA 508:4-g, testified that the enlarged period was intended to address the acknowledged barriers sexual assault victims must overcome before they can confront their assailants:

> Sexual assault is difficult to talk about and children often believe they were complicit in the acts perpetrated against

> them. It takes a great deal of support and strength for survivors to come forward. It often takes years before adult survivors can come forward. . . .
>
> . . .
>
> The current statute of limitations does not address the difficulty that young people have in coping with the harm done to them. Seven years will give them a little more time to mature, develop a support system and the knowledge and wherewithal to pursue the resources they need for healing. . . .
>
> . . .
>
> We are asking that the persons responsible for the harm to pay the damage. Otherwise, society may be paying for the damage in a variety of ways.

Senate Jud. Comm. Hearing Report Relative to SB 75-FN (Feb. 1, 2005), Comm. Minutes (App. at 171). Three years later, in 2008, the Legislature further extended the limitations period so that those under the age of 18 at the time they were feloniously sexually assaulted would have until age 30 to file suit against their abusers. App. at 16.

Twelve years after that, in 2020, the Legislature, in the face of ongoing nationally recognized instances of felonious sexual assault of minors, the prosecution of those like Harvey Weinstein who used their power to sexually assault women seriatim, along with a better understanding of victims' response to sexual assault and the harm done to them, abolished the time limitation on filing suit altogether in its enactment of the current version of RSA 508:4-g. *Id.* at 17.

The Legislature considered significant testimony concerning the importance of abolishing the limitations period to allow recourse by victims of felonious sexual assault. Among the testimony was that of Lyn Shollett:

> Due to the traumatic nature of sexual assault, it can take survivors years to come forward. The passage of this bill not only removes arbitrary barriers for victims to come forward, but also provides the opportunity for victims to identify their perpetrators in a court of law when they are ready. Currently, child sexual abuse victims who experienced sexual violence before the age of 18 only have until the age of 30 to hold an abuser accountable. This timeframe is even more restrictive for victims who experience assault after the age of 18, who only have three years to come forward. These timeframes do not stand up to what researchers and experts know about sexual assault and trauma.
>
> The removal of the civil statute of limitations shifts the financial burden of the abuse from the victim to the people and institutions who caused the abuse. Beyond personal expenses from abuse, the financial burden also extends to the state. New Hampshire pays the price of hiding predators in several ways. The state suffers from reduced productivity from victims, who may be unable to attend school or work as a result of the abuse.
>
> Additionally, New Hampshire bears the cost of divorces, broken homes, and suffering children, sadly prevalent circumstances in many survivors' lives. This creates a burden for local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities. In fact, it is estimated that child sexual abuse costs the federal government over $9 billion each year. These costs should not be borne by victims, their families or our government. Instead, they should be the responsibility of the abusers who caused the harm. It's time to hold abusers financially accountable.

Senate Jud. Comm. Meeting Minutes Relative to HB 705-FN (June 12, 2020), Testimony of Lyn Schollett (N.H. Coalition Against Domestic and Sexual Violence) (emphasis in original) (App. at 532). This testimony was echoed by others who supported the need to identify and hold predators accountable both as a matter of justice and so that they could be identified and thereby prevented from further predation. *See id.*

Mr. Ball contends that the Legislature was justified in removing the statute of limitations in cases involving sexual assault given the evidence regarding the reality that those victims do not seek legal recourse within the time frames set by the then-existing limitations period. When victims do not seek recourse, the harm to the individual and society caused by sexual predators goes unaddressed and unremedied.

The Legislature's exercise of its police power in removing the limitations period in sexual assault cases is fortified upon examination of the nature of the "right" of the Defendants to their statute of limitations defense. That "right" is oftentimes a fickle one in sexual assault cases like this where the accrual of the "right" depends upon the individual plaintiff's knowledge of the connection between the acts complained of and the acts and omissions of the corporate defendants like the Defendants here.

Also, it is problematic that a litigant can claim as a matter of "right" the ability to be free from accountability for the sorts of acts at issue. Simply put, it is one thing in a debt collection case to claim a right based on the passage of time to keep one's books in order. It is another thing altogether to claim freedom from accountability for one's part in the rape of a child because enough time has passed to make one believe they have escaped liability for the same.

On September 5, 2024, the Trial Court ruled that the Legislature was barred from exercising its police power to revive retroactively Mr. Ball's claims against the Defendants because Defendants' limitations defense constituted a "vested right" that, the Trial Court held, enjoys a special protected status from Legislative action. App. at 576–84. Mr. Ball filed a timely motion for reconsideration on September 16, 2024, *id.* at 585, which the Trial Court denied on October 3, 2024. *Id.* at 597. This appeal followed on November 1, 2024.

SUMMARY OF ARGUMENT

The Defendants argue that because the statute of limitations closed on Mr. Ball's claim prior to the Legislature's 2020 amendment of RSA 508:4-g, that statute of limitations defense constitutes a "vested right" that the Legislature could not constitutionally take away from them by enacting RSA 508:4-g. The Defendants' position, and the Trial Court's adoption of that position, err as a matter of law.

In arguing as they do, the Defendants wrongly minimize the scope of the Legislature's police power, which gives the Legislature wide discretion to enact laws that prefer the public interest over individual rights. The Legislature is limited only in that its actions must be warranted by the advancement of public safety, health, welfare, and morals. Where a statute is within the scope of legislative police power, the Court will not second-guess the wisdom of the policy expressed by the statute or substitute its discretion for that of the Legislature. It is axiomatic that to effectuate the public good it may be necessary that some may suffer a loss of their individual rights and liberty. The Court tolerates that individual loss so long

as it is outweighed by the public's gain. The Court defers to the Legislature's balancing of those interests. Here, the Legislature had a panoply of reasons for abolishing the statute of limitations defense in cases such as Mr. Ball's.

None of the Defendants' arguments against RSA 508:4-g have any force if the running of the statute of limitations in this case is other than a so-called "vested right." While this Court's prior decisions characterize a statute of limitations defense as such, the Court should revisit that precedent and reverse or limit it. Simply put, the passage of a random date should not transform a statute of limitations defense into a constitutionally protected "right." Statutes of limitation are matters of legislative grace; not immutable rights insulated from abridgement by further legislative action. It is important that while RSA 508:4-g takes away the Defendants' defense of the statute of limitations, the Defendants retain their right to defend against liability on the merits. The Defendants can also raise defenses such as laches that allow them to defeat Mr. Ball's claim if they can meet the terms of that equitable defense.

Characterizing the passage of time as giving rise to a "vested right" is especially odd in a case like this one where another plaintiff's claim identical to Mr. Ball's claim could persist if that hypothetical other plaintiff lacked the knowledge necessary to alert him or her to the existence of their claim against the Defendants. The Defendants would in that event have to defend against a claim substantively identical to Mr. Ball's despite their supposed "vested right" to a statute of limitations defense in Mr. Ball's case.

Finally, no constitutional right is absolute. This is a case where the Court should weigh the Defendants' "right" to claim sanctuary from accountability for the alleged sexual predation against Mr. Ball's "right" to recourse for that predation. Like the balancing that occurs in evaluating the Legislature's exercise of its police power, the Court should consider balancing these competing claims of constitutional right and tip the balance in favor of those who, like Mr. Ball, carry a lifetime of burden because of the execrable acts of a selfish few who put their prurient interests above all else.

ARGUMENT

Central to this appeal is whether the Legislature's enactment of RSA 508:4-g violated Part I, Article 23 of the New Hampshire Constitution and unconstitutionally revived Mr. Ball's cause of action against the Defendants. Whether a statute is constitutional is a question of law that the Court reviews *de novo*. *Akins v. Sec'y of State*, 154 N.H. 67, 70 (2006). A statute should only be declared constitutionally invalid if there are inescapable grounds. *Id.* "This means that we will not hold a statute to be unconstitutional unless a clear and substantial conflict exists between it and the constitution." *Sumner v. N.H. Sec'y of State*, 168 N.H. 667, 669 (2016) (citing *N.H. Health Care Ass'n v. Governor*, 161 N.H. 378, 385 (2011)). When doubt exists as to the constitutionality of a statute, those doubts must be resolved in favor of upholding that law. *Id.*

A. RSA 508:4-g Is the Result of the Legislature's Permissible Use of Its Police Power.

The Legislature's enactment of RSA 508:4-g was a constitutional exercise of its police power. The Trial Court rejected this argument and explained that an accrued statute of limitations defense was a "vested right" that the Legislature could not constitutionally abridge. This ruling improperly limits the Legislature's authority.

The Legislature's police power allows it broad latitude in legislating for the protection and preservation of the public's health, safety, morals, and general welfare. *Chung Mee Rest. Co. v. Healy*, 86 N.H. 483, 484 (1934); *see also Berman v. Parker*, 348 U.S. 26, 32–33 (1954), *Noble State Bank v. Haskell*, 219 U.S. 104, 111 (1911). "It is peculiarly the province of the Legislature to determine what rules and regulations are needed to achieve [those] ends." *Chung Mee Rest.*, 86 N.H. at 484 (citing *State v. Ramseyer,* 73 N.H. 31, 36 (1904)); *see also Tuttle v. N.H. Med. Malpractice Joint Underwriting Ass'n*, 159 N.H. 627, 640 (2010) (characterizing the police power as "the State's sovereign authority to safeguard the welfare of its citizens.").

By its very nature, the police power, in its reasonable preference of public over private interests, interferes in some respects with the liberty of citizens. *Miller v. Schoene*, 276 U.S. 272, 279–80 (1928). Given this accepted preference for the good of the whole, the Court only sets aside the Legislature's exercise of its police power as unconstitutional when there is no relation between the enactment and the object sought to be attained. *Velishka v. City of Nashua*, 99 N.H. 161, 165 (1954); *State v. Roberts*, 74 N.H. 476, 478 (1908). "And 'where legislative action is within the scope of

the police power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for that of the legislative body on which rests the duty and responsibility of decision.'" *State v. Lothrops-Farnham Co*., 84 N.H. 322, 324 (1930) (quoting *Standard Oil Co. v. Marysville*, 279 U.S. 582, 584 (1929)).

This Court has addressed the interplay between the Legislature's police power and individual rights protected by Part I, Article 23 of the New Hampshire Constitution on multiple past occasions, with the most closely analogous cases involving contract rights. For instance, in *Hayes v. LeBlanc*, 114 N.H. 141 (1974), the Court considered the Legislature's impairment of contract rights. *Hayes* begins by addressing the Contract Clause of the United States Constitution:

> Although U.S. Const. art. I, s. 10 prohibits a State from passing laws impairing the obligations of contracts, it is not an absolute bar to governmental regulation. The Supreme Court of the United States has recognized that this limitation must yield where it is reasonable for State government to regulate activities in the exercise of the police power.

114 N.H. at 145. *Hayes* concluded that these same principles were embraced by Part I, Article 23 of the New Hampshire Constitution: "*This principle* is also applicable to the general prohibition in N.H. Const. pt. I, art. 23 against retrospective laws." *Id.* (emphasis added).

As with all those rights protected by Article 23, *Hayes* determined that the protections of Part I, Article 23 "*must yield* where it is reasonable for State government to regulate activities in the exercise of the police power." *Id.* (emphasis added). This language is not limited solely to vested rights, nor does it exclude vested rights. Instead, *Hayes* applies with

uniformity to *all* protections of Part I, Article 23, including vested rights and otherwise. *See also Deere & Co. v. State*, 168 N.H. 460, 476 (2015) (noting that the State's interest in protecting agricultural equipment dealers from perceived abusive practices of manufacturers warranted impairment of manufacturers' contracts); *cf. Tuttle*, 159 N.H. at 658 (holding that a statute violated Part I, Article 23 because impairment of certain contract rights was not reasonable and necessary to serve an important public purpose).

The Supreme Court of Louisiana considered nearly the exact issue presented here, albeit in the context of a due process analysis, in *Bienvenu v. Defendant 1*, 386 So. 3d 280 (La. 2024). The issue in *Bienvenu*, as here, was whether a vested right to a statute of limitations defense was especially insulated from the Legislature's exercise of its police power.

Louisiana's Supreme Court described the right to the limitations defense as "an economic interest that does not implicate fundamental rights." *Id.* at 290. The court assessed the Louisiana legislature's abolition of the statute of limitations as an "attempt[] to address the societal costs of child sexual abuse," and was therefore social welfare legislation. *Id.* at 291. The *Bienvenu* court concluded that the Louisiana legislature's exercise of its police power was a sustainable one even if it deprived the defendants in that case of a vested defense. *Id.* at 292–93; *see also Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 507 (Conn. 2015) (concluding, in the context of a substantive due process analysis, that "laws of a retroactive nature, affecting the rights of individuals, not adverse to equitable principle, *and highly promotive of the general good*, have often been passed, and as often approved." (emphasis in original))

As the *Bienvenu* court recognized, there is no reason a defendant's economic interest in a statute of limitations defense should be insulated from the impact of legislation intended by the legislature to advance the public's welfare any more than is the case for contract, real property, free speech, and other rights. Absent any such special status accorded to Defendants' "vested right" to the limitations defense, the question for the Court is confined to whether there was a reasonable relationship between the Legislature's enactment of RSA 508:4-g, and the objective it sought to achieve by the change in the law.

The Legislature here had many good reasons for abolishing the limitations period governing the filing of lawsuits for felonious sexual assault that include: First, it is an acknowledged fact that sexual assault victims take time to process and muster the courage to file their case, with some legislative testimony stating that those sexually exploited as minors were unable to file against the perpetrators until they were in their fifties. Accordingly, by keeping the limitations period open it allows those who would otherwise be unable to seek recourse to do so.

Second, when victims fail to file a lawsuit because their claims are time-barred, the community loses an opportunity to identify a predator and thereby to act to prevent them from victimizing others. It also defeats society's ability to assess what safeguards the community should have had in place to prevent the sexual predation from occurring.

Third, sexual assaults result in significant financial damage to the victim and to the public generally. Those costs include educational and employment opportunity costs, costs associated with drug and alcohol

abuse, depression, and the likely perpetuation of a cycle of sexual violence that will haunt future generations.

In most instances, whether it be debt collection, personal injury, or breach of fiduciary duty claims, for example, there is no reason for delay. This general proposition is inapplicable to victims of sexual assault. For them it is not enough to know they have been assaulted. Rather, the evidence is that victims of sexual assault need time to reconcile themselves to filing a public lawsuit against someone who has exploited them in ways that shatter the core of who they are as human beings. The practical reality is that absent the Legislature's enactment of RSA 508:4-g, many of those victims will be unable to bring their claims, with both victims and the public suffering the consequences.

B. The Court Should Reconsider Its Characterization of An Accrued Statute of Limitations Defense as a "Vested Right."

This Court has historically characterized an accrued statute of limitations defense as a vested right, and any effort to abolish that right as violative of Part I, Article 23. *E.g.*, *Gould v. Concord Hosp.*, 126 N.H. 405 (1985) (wrongful death); *Willard v. Harvey*, 24 N.H. 344 (1852) (debt collection); *Woart v. Winnick*, 3 N.H. 473 (1826) (debt collection). Even though the Court should, as argued above, rule that the Legislature's police power trumps Defendants' asserted right no matter how characterized, Mr. Ball also asks that the Court revisit and reconsider its precedent on this subject or at least limit those prior rulings.

In challenging prior precedent, or seeking its limitation, the Court considers several factors:

> (1) whether the rule has proven to be intolerable simply by defying practical workability; (2) whether the rule is subject to a kind of reliance that would lend a special hardship to the consequence of overruling; (3) whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; and (4) whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification.

Union Leader Corp. v. Town of Salem, 173 N.H. 345, 352 (2020). "No single factor is dispositive because the doctrine of *stare decisis* is not one to be either rigidly applied or blindly followed." *Id*. (internal quotation and citation omitted).

The courts assess whether a law falls within the scope of Article 23 by distinguishing between "new laws that affect substantive rights and liabilities from those that solely affect procedures or remedies enforcing those rights." *In re Goldman*, 151 N.H. 770, 772 (2005). If the law adversely affects an individual's substantive rights, it is proscribed by Article 23, but if it is "remedial or procedural" in nature it may be applied to existing cases. *Id*. at 772–73. "[W]hile the demarcation between substantive rights and liabilities and procedures and remedies provides a helpful guidepost . . .," what is critical is "'the nature of the rights affected by the [new] act.'" *Id.* at 773 (quoting *Farnum's Petition*, 51 N.H. 376, 380 (1871) (alteration in original)).

The Court first analyzed the retroactive abolition of a statute of limitations defense in *Woart*. To determine whether the limitations defense was substantive or procedural/remedial in nature, the Court explored the purpose behind Article 23, which it saw as preventing *ex post facto* laws. The Court defined *ex post facto* laws as those

> which makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; or which aggravates a crime, and makes its greater, than it was when committed; or which changes the punishment, and inflicts greater punishment, than the law annexed to the crime when committed; or which alters the legal rules of evidence, and receives less or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender, is an *ex post facto* law.

3 N.H. at 475. In other words, as the *Woart* court observed it, Article 23 and its prohibition against retrospective laws was, at least in criminal matters, intended to bar changes in the law that turned formerly innocent actions into crimes, that enhanced the punishment associated with a criminal act after it was perpetrated, or that changed the rules governing the trial of an alleged criminal act. *See also Maplevale Builders, LLC v. Town of Danville*, 165 N.H. 99, 107 (2013) (noting that Article 23 prevents the Legislature from interfering with the expectations of individuals as to the legal significance of their actions taken prior to the enactment of a law). Accordingly, the reasons for the proscription of *ex post facto* laws per the *Woart* analysis were with respect to the substance of criminal prosecution.

Had the *Woart* court applied its definition of *ex post facto* laws to interpret the language "decision of civil causes," it is difficult to see how Article 23 would make unconstitutional the retroactive application of the abolition of a statute of limitations. This is especially so in the case of RSA 508:4-g. RSA 508:4-g does not, for instance, create a cause of action where none previously existed. Likewise, abolishing the statute of limitations in felonious sexual assault cases does not amplify any award of damages a plaintiff might prove at trial, nor does it change the rules by which the case

is decided on its merits. Indeed, as suggested by the Trial Court, it would not be unheard of for the limitations period in a case like Mr. Ball's to remain open even today to the extent that the putative litigant did not reasonably know the link between a defendant's conduct and his or her rape. Therefore, as a matter of statutory construction, the prohibition of "ex post facto" laws as they apply to the "decision of civil cases" should have been limited to those laws that change the substantive decision-making relative to the claim on its merits.

The *Woart* court's determination that the retrospective invalidation of a statute of limitations defense constituted a change to the substance of the decision making in a civil case was likely informed by the very different ability that parties in 1826 had to preserve evidence as compared to the current state. Today, evidence is routinely preserved in ways that were unimaginable (or at least unimagined) 200 years ago, such as electronic or cloud storage of digital documents, pictures, and emails, etc.

The Court's embrace of its analysis in *Woart* continued in *Gould*, a case involving claims of medical negligence. In *Gould*, the court quoted from *Woart* for the proposition that, "[a] vested right 'may relate to the grounds of the action, or the grounds of defense, both of which *seem* to be equally protected by the constitution." 126 N.H. at 408 (emphasis added). As in those cases decided since *Woart*, the *Gould* court recited the earlier decisions as controlling. The *Gould* court did not delve into an extensive analysis of whether retroactive abolition of the limitations defense involved a "vested right" since it ruled that the plaintiff's substantive right to recover for its injuries trumped the State's interest in securing the prompt

administration of estates, and it therefore allowed the plaintiff's case to proceed.

The cases in which this Court has recognized a vested right to a statute of limitations defense differ markedly from the instant case. The previous cases involved claims related to debt collection, *see Willard*, 24 N.H. at 345; *Woart*, 3 N.H. at 473, and wrongful death. *See Gould*, 126 N.H. at 405. Neither debt collection nor wrongful death implicate the same issues of delayed disclosure, which society now understands is common in cases of child sexual abuse. Indeed, the legislative history of the various bills extending the statute of limitations in cases of sexual abuse amply demonstrates that disclosure of sexual assault by people who were victimized as children is often delayed by decades, well into adulthood. *See* App. at 565–66. The tendency to delay disclosure is inherent in the nature of the abuse itself and thus is generally unique to injuries caused by sexual abuse. *Id.* at 566. Therefore, even if this Court chooses to uphold prior precedent and recognize a vested right to a statute of limitations defense in cases of debt collection and wrongful death, society's factual understanding of the delayed disclosure that often accompanies sexual assault "[has] so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification" as it relates to actions based on sexual assault. *See Union Leader Corp.*, 173 N.H. at 352. Thus, Mr. Ball urges this Court to limit its prior holdings related to a vested right to a statute of limitations defense to recognize that there can be no vested right to a statute of limitations defense in actions based on sexual assault.

The Supreme Court of Maryland recently considered whether retroactive abolition of the statute of limitations in sex abuse cases was

constitutionally permitted. *Roman Catholic Archbishop of Washington v. Doe*, --- A.3d ----, 2025 WL 375996 (Md. Feb. 3, 2025). Relevant here, the court considered as *dicta* earlier decisions wherein it was said that the court had "consistently held that the Maryland Constitution ordinarily precludes the Legislature . . . from retroactively creating a cause of action, or reviving a barred cause of action, thereby violating the vested right of the defendant." *Id*. at *12 (alteration in original). The court, however, had not squarely addressed whether "the expiration of an ordinary statute of limitations creates a vested right to be free of liability." *Id.* at *13. Upon consideration of the question, the court ruled there was no such vested right. *Id*.

The Maryland Supreme Court rejected the notion that an accrued statute of limitations defense created a vested right, reasoning that a limitations period is a procedural device intended to encourage parties to resolve their disputes in a timely manner and to promote fairness by requiring suit to be filed while memories are still relatively fresh and evidence otherwise more likely to have been preserved. *Id.* The limitations period, the Maryland court observed, "reflects a legislative determination to block access to a remedy for a cause of action that otherwise continues to exist after a designated period, not to absolve defendants from accountability." *Id.* As such, the limitations period is addressed to the remedy for a cause of action. "It follows that the cause of action continues to exist and to be subject to legislative regulation." *Id*. (citing *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (stating that the protection a statute of limitations provides is a matter of "legislative grace" and is

subject to legislative control)); *see also Doe*, 119 A.3d at 504[2] ("We have consistently interpreted the limitations period to be part of the remedy alone, unless the statute in which the period of limitations is found itself creates the right."); *but see Dupuis v. Roman Catholic Bishop of Portland*, --- A.3d ----, 2025 WL 310876 at *18 (Me. Jan. 28, 2025) ("Once a statute of limitations has expired for a claim, a right to be free of that claim has vested, and the claim cannot be revived.").[3]

Statutes of limitations are important tools to encourage parties to bring their disputes to court promptly, while memories are still fresh and evidence still available. Statutes of limitation are not, however, substantive law that determines the merits of a disputed claim. The Legislature as a matter of grace has set the limitations period and, as all matters of grace, the Legislature can alter that rule.

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[2] In *Doe*, the Connecticut Supreme Court collected the cases addressing the question of the retroactive application of the revised statute of limitations to revive claims in cases involving childhood sex abuse decided before the opinion was issued in 2015.

[3] The dissent in *Dupuis* took the opposite position, stating that, "'there is no such thing as a vested right to do wrong.'" 2025 WL 310876 at *41 (Douglas, J. and Lawrence, J., dissenting) (citing *Danforth v. Groton Water Co.*, 59 N.E. 1033, 1034 (Mass. 1901) (Holmes, C.J.)).

C. Assuming The Defendants' Defense of the Statute of Limitations Is a Protected Right That Is Beyond the Legislature's Ability to Alter Pursuant to Its Police Power, the Court Should Nonetheless Accord Randy Ball's Right to a Judicial Remedy Greater Priority.

When competing constitutional rights are in conflict, courts must engage in a balancing test. *See Sumner*, 168 N.H. at 669 (noting that the constitutional right of public access to governmental proceedings and records in Part I, Article 8 of the New Hampshire Constitution must be balanced against "the competing constitutional interests in the context of the facts of each case.").

In balancing the rights of the parties, the Court may consider that Mr. Ball's personal injury results from the Defendants negligently breaching their duties of care to Mr. Ball and permitting the sexual abuse of him as a child. As was presented to the Legislature during a hearing on the bill that would become RSA 508:4-g,

> [a] review of 166 studies between 1985 and 1997 found that, compared to boys who were never abused, sexually abused boys were four times more likely to suffer from major depression, three times more likely to be bulemic, and at least two times more likely to have antisocial personality disorder, behavioral problems, low self-image, or runaway behavior. In addition, sexually abused boys were one and a half to fourteen times more likely to attempt suicide.

Senate Jud. Comm. Hearing Report Relative to SB 75-FN (Feb. 1, 2005), Submission A, A Fact Sheet About Sexual Assault: The Mental Health Impact (citing Holmes, William C., "Sexual Abuse of Boys: Definition, Prevalence, Correlates, Sequelae, and Management," Journal of the American Medical Association, 1998, vol. 280, p. 1858).

Mr. Ball has alleged that he has suffered severe emotional and psychological distress and personal physical injury because of the wrongful conduct by Defendants in negligently permitting the rape of Mr. Ball by a known sexually abusive priest. Nothing suggests a parity of rights as between the Defendants' asserted right to a defense and Mr. Ball's right to seek recourse for the harm done him. The evidence, at least as offered to the Legislature, is that in comparing those "rights," the Court should have in mind that Mr. Ball's delay in filing was not due to a willful failure to protect his interests, but rather is the product of the difficulty suffered by those victimized by sexual predation to bring themselves to file suit. The comparison seems to favor the preservation of Mr. Ball's rights in this instance.

CONCLUSION

Over the last two decades, society's awareness of the extent and burden imposed upon it by sexual predation has evolved dramatically. Recognizing the extent of that burden, the Legislature has enacted a series of legislation designed to address the problem. The abolition of the statute of limitations is a key component of this remedial legislation. The Court should affirm the Legislature's right to redress the scourge of sexual assault by reversing the Trial Court's dismissal of Mr. Ball's claims and remand the case for further proceedings.

REQUEST FOR ORAL ARGUMENT

Mr. Ball requests oral argument. Scott Harris will argue for Mr. Ball.

CERTIFICATE PER SUPREME COURT RULE 16(3)(i)

Mr. Ball certifies that each appealed decision that is in writing is being submitted at the time of brief filing in a separate appendix.

Respectfully submitted,

RANDY BALL

By his Attorneys,

Dated: 2/21/2025 By: */s/ Scott H. Harris*

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CERTIFICATE OF SERVICE

I hereby certify that on today's date I served the foregoing pleading on counsel of record for all parties via NH File & Serve.

/s/ Scott H. Harris
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CERTIFICATE OF COMPLIANCE

I hereby certify this brief complies with the word limitation set out in Supreme Court Rule 16(11) and contains 6,081 words.

/s/ Scott H. Harris
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