Kathleen Hoke
Professor
University of Maryland Carey School of Law
500 W. Baltimore St.
Baltimore MD 21201
(410) 706-1294
khoke@law.umaryland.edu

Testimony in Support of House Bill 722

Child Sexual Abuse Claims--Doctrine of Charitable Immunity--Abrogation
Before the House Judiciary Committee: February 19, 2026

House Bill 722 would eliminate the affirmative defense of charitable immunity with respect to claims of child sexual assault made under §5-117 of the Courts and Judicial Proceedings Article. Importantly, the bill would have retroactive impact on pending cases and on cases previously concluded or dismissed due to the defendant's assertion of charitable immunity. House Bill 722 offers the General Assembly the opportunity to fully realize the purpose of the Child Victims Act (CVA) of 2023, which eliminated the statute of limitations for claims of child sexual assault with retroactive impact. Although the Supreme Court of Maryland found the CVA constitutional in *Archbishop of Washington v. Doe*, 489 Md. 514 (2025), some survivors of child sexual assault have been unsuccessful in utilizing the law solely because the entity that harbored their abuser was a charitable entity. House Bill 722 would open the courthouse doors for all survivors of child sexual assault as the General Assembly intended when passing the CVA.

Following years of incremental changes in the statute of limitations and several efforts to eliminate the statute permanently and retroactively, survivors of child sexual assault were finally given the opportunity to bring claims regardless of when the sexual abuse occurred when the CVA passed in 2023. Section 5-117(b) of the Courts and Judicial Proceedings Article makes that clear: "notwithstanding any time limitation under a statute of limitations, . . . an action for damages arising out of a claim or claims for child sexual abuse that occurred while the victim was a minor may be filed at any time." The language of the statute and the extensive legislative history make clear that the General Assembly passed the CVA so that all survivors of child sexual assault could pursue civil claims against organizations that harbored abusers. Although amendments to the CVA last year (2025 Md. Laws ch. 104) added limits to the amount of damages a survivor may be awarded in certain circumstances and made other technical changes, the General Assembly did not interfere with survivors' access to the courthouse.

Contrary to the General Assembly's intent in passing the CVA, some survivors have been barred from pursuing their claims. The doctrine of charitable immunity is a court-created affirmative defense that allows charitable organizations to avoid civil liability. *Abramson v. Reiss*, 334 Md. 193 (1994). Courts adopted the doctrine for public policy reasons. Fundamentally, the doctrine is based on the principle that charitable organizations serve the public good and deserve special protection against liability. A successful civil claim against a charitable organization could deplete the organization's resources, interfering with its ability to fulfill its benevolent purposes and harming the public as a result. *Id*. The doctrine is antiquated, having been established in the 1800s when charitable organizations were few and operated on meager budgets; and when public benefits--like food, housing, and health care support--had not yet been created. The overwhelming majority of states have abolished the doctrine, acknowledging that equity favors providing access to the courts for people harmed by the negligence of a charitable organization. Some states limit damages and organizations may carry liability insurance to buffer against the financial blow of a successful claim. *See* Sydney Stewart, *The*

Charitable Immunity Doctrine in the United States History, Evolution and Contemporary Relevance, US Law Magazine (Fall 2025). In Maryland, however, people harmed by the negligence of a charitable organization—regardless of the type of harm—face the insurmountable defense of charitable immunity if the organization lacks liability insurance for the claim. Md. Courts and Judicial Proceedings Article §5-632 ("Each policy issued to cover the liability of a charitable institution for negligence or any other tort shall provide that, for a claim covered by the policy, the insurer may not assert the defense that the insured is immune from liability because it is a charitable institution."). This is a facet of tort law in which Maryland is unique and that harms people injured by the acts of employees of charitable organizations—even if the harm is negligently allowing the continued sexual violence against a child. That is not sound public policy.

House Bill 722 seeks to undue this injustice for survivors of child sexual assault, removing the affirmative defense for claims of child sexual assault against charitable organizations that negligently permitted the abuse to occur and continue. This is a narrow repeal of the doctrine and a public policy decision squarely within the purview of the General Assembly. The Supreme Court of Maryland has made clear that any change to the doctrine should come from the legislative branch. *Abramson*, 334 Md. at 209 (decisions about charitable immunity have been "in the hands of the Legislature" since 1885 and the Court will continue to look to the Legislature for changes to the doctrine).

The retroactive removal of the affirmative defense of charitable immunity is permissible and would survive legal challenge. "'[T]he elimination of an affirmative defense does not hinder, eliminate, or modify a substantive right, and thus, a statute or rule that eliminates an affirmative defense can be applied retrospectively.'" *State v. Smith*, 443 Md. 572 (2015)(quoting *Rawlings v. Rawlings*, 362 Md. 535, 560 n. 21 (2001)). More to the point, the Supreme Court of Maryland upheld the retroactive removal of the statute of limitations in the most salient case—*Archbishop of Washington v. Doe*, 489 Md. at 544, upholding the CVA. There the court found that a statute of limitations—an affirmative defense where applicable—does not create vested rights and retroactive elimination of the defense is constitutional. The same analysis applies to the retroactive elimination of the doctrine of charitable immunity. Hence, House Bill 722 is not only good policy, it is constitutional.

For too long survivors of child sexual assault have been forced to plead with the General Assembly to give them the opportunity to bring a civil claim against organizations that harbored their abusers. The CVA was intended to finally open the closed courthouse doors to generations of survivors who never had a fair chance. To fully realize the purpose of the CVA and give that fair chance to survivors, I urge a favorable report on House Bill 722.

Kathleen Hoke
Professor

This testimony is submitted on behalf of Professor Hoke and the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.