IN THE CIRCUIT COURT OF MARYLAND FOR FREDERICK COUNTY

JOHN DOES (VC) 1-8,	*	
Plaintiffs,	*	
v.	*	Case No.: C-10-CV-23-000645
STATE OF MARYLAND,	*	
Defendant.	*	

* * * * * * * * * * * * *

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs come before the Court, by and through counsel, and submit this, their Opposition to the State of Maryland's Motion to Dismiss (the "Motion").

INTRODUCTION

In 2023, the Maryland General Assembly passed landmark legislation—the Child Victim's Act ("CVA")—to open the Courthouse door to survivors of childhood sexual abuse who had previously been blocked from obtaining justice for their abuse by an outdated statute of limitations. Just hours after passage, Maryland's Governor endorsed and signed the CVA into law, proclaiming: "There is no statute of limitations on the pain these victims continue to feel. There is no statute of limitations on the hurt that endures for decades."

With the CVA, the State acknowledged that our civil justice system should be open to survivors of child sexual assault now ready to come forward, tell their stories, and hold accountable those who committed, facilitated, condoned, and concealed these assaults. Plaintiffs' case is an effort to do exactly that. As children, these Plaintiffs, after (supposedly) being placed under the protection of the State, were raped, molested, and otherwise brutally assaulted by the very people the State assigned to care for them. As the Complaint sets forth, the State's negligence, indeed

reckless indifference, allowed this criminal and life-shattering abuse and pedophilia to occur. [1]

With this action, Plaintiffs seek acknowledgement of how dramatically the State failed them and thousands of other children it was supposed to be taking care of and protecting. And while no amount of compensation can ever erase the trauma of being raped and molested as a child, it can help support Plaintiffs in the courageous efforts they undertake every day to address their trauma and live good and productive lives.[2]

Until recently, the State's Attorney General seemed to support the "expanded chance for justice" the legislature and Governor provided through the CVA.[3] Before the law's passage, the Attorney General himself affirmed that he "c[ould] in good faith defend the legislation should it be challenged in Court."[4] After the law went into effect, members of the Attorney General's office encouraged Plaintiffs and their counsel to engage in a months-long process aimed at resolving, without protracted litigation, the claims brought against the State pursuant to the CVA. During that process, Plaintiffs provided the State detailed information about the incidents of sexual assault

[1] Plaintiffs have named the State as the sole Defendant in this litigation, acting through its agencies the Maryland Department of Juvenile Services ("DJS") and the Maryland Department of Health, formerly known as the Maryland Department of Health and Mental Hygiene ("MDH"). In its Motion, the State seeks removal of MDH as a named Defendant. While MDH is not a named Defendant in this action, it is relevant to Plaintiffs' claims because Plaintiffs allege a pattern of abuse at several juvenile detention centers, including the Victor Cullen Center, that spans decades, including the time period during which MDH supervised the State's juvenile facilities. *See, e.g.*, Complaint at ¶¶ 11, 48, 152, 184.

[2] As one survivor has advised others abused by the State, "[i]t's OK to scream until you are heard. You deserve to be heard and you deserve your story to be told, and you deserve the healing that comes from it as well." Mike Hellgren, *Maryland sexual assault survivor tells story about abuse inside juvenile facility*, CBS News (March 18, 2025).

[3] *See* Letter from Attorney General Anthony G. Brown to Governor Wes Moore *re: House Bill 1 and Senate Bill 686, "Civil Actions – Child Sexual Abusee – Definition, Damages, and Statute of Limitations (The Child Victims Act 2023)"* (Apr. 10, 2023).

[4] *Id.* Two months ago, the Maryland Supreme Court affirmed the legislation's constitutionality. *See Roman Catholic Archbishop of Washington v. Doe*, 2025 WL 375996, *11 (Feb. 3, 2025).

they suffered, the permanent injuries that criminal assault caused, and how the State's actions and inactions contributed to this criminal conduct. Plaintiffs did all this in the hopes that both they, and the State, might achieve resolution and closure without the need for protracted litigation.

Unfortunately, those hopes have now faltered. After nearly 18 months of effort, the State still has not made a meaningfully offer to settle Plaintiff's claims. And now, with this Motion to Dismiss, the State argues that Plaintiffs' claims are not valid at all. Rather, faced with the horrific abuse and pedophilia the State allowed to occur at the Victor Cullen Center, the State insists it is immune from liability for its conduct and the harms Plaintiffs suffered while in the State's care. The State claims that its choice to pay a private company to run Victor Cullen eliminated any duty the State had to protect the children confined at the facility. Much as it might like, the State cannot so easily absolve itself of responsibility for the horror that occurred at Victor Cullen. It was the State that took these children under its (supposed) protection and the State that was supposed to make sure they were safe. The idea that the State could just delegate that sacred duty away is morally appalling—and legally incorrect.

The State also complains that Plaintiffs' allegations are not "well-pled." That's wrong too. The allegations in the Complaint provide the State all the notice the rules require regarding the nature of Plaintiffs' claims and the specific facts Plaintiffs intend to prove. If that were not enough, the State has voluminous data Plaintiffs have willingly provided as part of their efforts at resolution; those data details specific instances of sexual assault at the Victor Cullen and also reveal patterns of neglect, indifference, and inaction that permeated the State's entire system of juvenile detention facilities.

The State's arguments about details lacking in Plaintiffs' factual allegations are particularly ironic given the State's refusal to answer Plaintiffs' duly served discovery requests, many of which

seek exactly the details the State claims are lacking. Indeed, the State has moved for a protective order to prevent Plaintiffs from obtaining any discovery at all until after the Court has ruled on the State's Motion to dismiss. *See* Defendant's Motion for Protective Order Staying Discovery. The Court should not permit the stonewall Plaintiffs from discovering particular facts relevant to its allegations while, at the same time, seeking to kill Plaintiffs' case for lacking sufficient particularity.

As further explained below, Plaintiffs' claims are neither novel nor controversial. They allege that the State owed Plaintiffs non-delegable duties of care arising from the State's constitutional and statutory obligations, as well as its special relationship with the children in its care who depend on the State for their safety and protection from abuse. The State breached its duties by enabling, condoning, and failing to prevent the abuse that ran rampant at the Victor Cullen Center—and throughout the State's juvenile detention system—for decades.

The State's negligent conduct extended to its hiring, training, retention, supervision and education of staff at the Victor Cullen Center, as well as its hiring, retention, and supervision of Youth Services International ("YSI") as a subcontractor to operate and manage the Victor Cullen Center for a portion of the relevant time period. The State is further liable for the negligence of YSI in operating and managing the Victor Cullen Center on behalf of the State, including YSI's negligence in the hiring, training, retention, supervision and education of is staff. The State's knowledge of and indifference to the abuse that occurred at the Victor Cullen Center constituted gross negligence, and the State, at all times the owner and possessor of the Victor Cullen Center, owed further non-delegable duties to the children it confined on its premises, including Plaintiffs, which it breached by failing to protect those children from the known dangerous condition posed by the staff at the facility.

Finally, in turning a blind eye to the abuse occurring at the Victor Cullen Center and throughout Maryland's juvenile detention system, the State acted with deliberate indifference to Plaintiffs' rights to substantive due process derived from Article 24 of the Maryland Declaration of Rights.

Accordingly, this Court should deny Defendant's motion to dismiss. At a minimum, Plaintiffs respectively request that the Court grant Plaintiffs leave to amend any defects it identifies in its pleading per Md. Rule 2-341(c). Allowing that leave would be with the State's purported "sympath[y] to survivors of sexual abuse, including the allegations of sexual assault contained in the Complaint." Motion at 7.

LEGAL STANDARD

"The primary purpose of pleadings is notice." *C.M. v. J.M.*, 295 A.3d 193, 204 (Md. App. 2023) (citing *Tshiani v. Tshiani*, 81 A.3d 414, 423 (2013)). "When deciding whether to grant a motion to dismiss a complaint as a matter of law, a trial court is to assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff." *Ceccone v. Carroll Home Services, LLC*, 165 A.3d 475, 481 (2017). Further, "[t]here is, of course, a big difference between that which is necessary to prove the commission of the tort and that which is necessary merely to allege its commission." *Sharrow v. State Farm Mut. Auto. Ins. Co.*, 511 A.3d 492, 500 (1986). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Ricketts v. Ricketts*, 903 A.2d 857, 864 (2006).

If a claim is dismissed, "an amended complaint may be filed only if the court expressly grants leave to amend." Md. Rule 2-322(c). However, amendments to pleadings "shall be freely allowed when justice so permits." Md. Rule 2-341(c). "As a result, 'leave to amend complaints

should be granted freely to serve the ends of justice' and 'it is the rare situation in which a court should not grant leave to amend.'" *Matter of Jacobson*, 286 A.3d 600, 623 (2022) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 994 A.2d 430, 451-52 (2010)).

ARGUMENT

1. Negligence (Count 1)

In order to sustain a claim for an action in negligence, a plaintiff must allege facts demonstrating "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *McNack v. State*, 920 A.2d 1097, 1106 (2007) (quoting *Remsburg v. Montgomery*, 831 A.2d 18, 26 (2003)). Defendant asserts that Plaintiffs have not adequately pleaded that the State was under a duty to protect Plaintiffs from sexual abuse while confined by the State at the Victor Cullen Center or, alternatively, that Plaintiffs have not adequately pleaded that the State breached any applicable duties. The State's arguments fail.

A. The State of Maryland is Subject to Duties to Protect Children in its Custodial Care Arising from the U.S. and Maryland Constitutions, Statute, and the Special Relationship between the State and those Children.

Plaintiffs allege that the State of Maryland was under duties to protect them from injury arising from the U.S. and Maryland Constitutions, from statute, and from the special relationship between the State and Plaintiffs as juveniles in the State's custody. *See* Complaint ¶¶ 35-43 (describing statutory obligations to, among other things, provide a safe, humane, and caring environment for children); *id.* at ¶¶ 44-45 (asserting duties arising from the U.S. Constitution and Maryland Constitution), *id.* at ¶ 104 (asserting duties arising from the special relationship between

the State and Plaintiffs). These duties are each well-established and overlapping, and each is sufficient to sustain a negligence action against the State.

A recent case from the federal District of Maryland is illustrative. In *Gilliam v. Department of Public Safety and Correctional Services*, 2024 WL 5186706, *26 (D. Md. Dec. 20, 2024), the federal district court affirmed that transgender inmates confined in Maryland correctional facilities plausibly alleged that the Maryland Department of Public Safety and Correctional Services ("DPSCS") "had a duty to take reasonable measures to protect them from foreseeable harm." The court identified duties arising from DPSCS's policy documents, while also relying on *Makdessi v. Fields*, 789 F.3d 126, 132 (4th Cir. 2015), which identifies the U.S. Constitution as a source of prison officials' duty "to take reasonable measures to guarantee inmate safety," and *State v. Johnson*, 670 A.2d 1012, 1017 (Md. App. 1996), which identifies the "special relationship between a jailer and his prisoner" as a source of "a duty to protect prisoners."

i. Constitutional Duties

The 8th Amendment of the U.S. Constitution imposes a duty on states to ensure the "reasonable safety" of confined juveniles. *See Helling v. McKinney,* 509 U.S. 25, 35 (1993) ("The [Eighth] Amendment, as we have said, requires that inmates be furnished with the basic human needs, one of which is "reasonable safety."). Further, deliberate indifference to the substantial risk of sexual assault violates confined juveniles' right to freedom from cruel and unusual punishment. *See Farmer v. Brennan*, 511 U.S. 825, 843 (1994). The 14th Amendment of the U.S. Constitution imposes a duty on states to provide confined juveniles with reasonably safe conditions of confinement and to protect confined juveniles from physical assault and the use of excessive force by staff. *See Youngberg v. Romeo*, 457 U.S. 307, 315-24 (1982). Put succinctly, "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon

it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago Cty. Dept. of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

Article 24 of the Maryland Constitution's Declaration of Rights establishes overlapping duties on the State to protect the individuals in its custody. *See Williams v. Wilzack*, 573 A.2d 809, 814 (Md. 1990) (adopting Supreme Court precedent granting to persons in state custody, safe conditions of confinement on Fourteenth Amendment due process grounds). Furthermore, Maryland case law is clear that the substantive due process rights provided by Article 24 are more extensive than those provided by the U.S. Constitution. While federal substantive due process law is instructive, it is not controlling. "Article 24 has independent protective force and can be interpreted more broadly." *Smith v. Bortner*, 193 Md. App. 534, 553 (2010) (citing *Koshko v. Haining*, 921 A.2d 171, 194 n.22 (2007)).

ii. Statutory Duties

As Plaintiffs set out in their Complaint, these Constitutional duties are echoed by the State's statutory duties springing from Title 9, Subtitle 2 of the Human Services Article of the Maryland Code. *See* Complaint ¶¶ 35-43. These statutes impose a duty on the State to adopt regulations that require each State residential program, including the Victor Cullen Center, to provide "a safe, humane, and caring environment" and to adopt regulations that "prohibit abuse of a child." Md. Code, Human Services, § 9-227; *see also* Complaint ¶¶ 36-38. Consistent with these statutory obligations, DJS has implemented regulations for state-operated residential facilities that prohibit acts of abuse within state facilities, including the "physical injury of a youth by any employee under circumstances that indicate the youth's health or welfare is significantly harmed or at risk of being significantly harmed," and the "sexual abuse of a youth, whether or not physical injuries are sustained." Md. Code Regs. § 16.18.02.01-02.

The State's statutory obligation to establish regulatory standards for juvenile detention facilities applies to those facilities that are operated by the Department of Juvenile Services directly as well as those facilities operated "by private agencies under contract with the Department." Md. Code, Human Services, § 9-237; *see also* Complaint ¶¶ 36-38. The State is also statutorily obligated to "adopt a code of conduct for staff of the Department; and . . . require each private agency under contract with the Department to adopt a code of conduct for its staff that is in substantial compliance with the code of conduct for staff of the Department." *See* Md. Code, Hum. Servs. § 9-207(e); *see also* Complaint at ¶ 40.[5]

These statutes and regulations establish a binding duty on the State. This is so because they do not create a duty to the public at large, but rather to a specific class of individuals—the children in the custody of the State's juvenile detention facilities—to which Plaintiffs belonged. *See Remsburg v. Montgomery*, 831 A.2d 18, 27 (2003) ("Evidence of negligence may be established by the breach of a statutory duty 'when the plaintiff is a member of the class of persons the statute was designed to protect and the injury was of the type the statute was designed to prevent.'"). Accordingly, the public duty doctrine does not apply, and these duties are enforceable in tort. *See Horridge v. St. Mary's Cnty Dep't of Soc. Servs.*, 854 A.2d 1232 (2004) (holding that

[5] Plaintiffs set out all of the foregoing statutory and regulatory duties in their complaint. Complaint at ¶¶ 35-41. Thus, the State's claim that Plaintiffs "cite to no duty imposed by any statute to support their claim" is nonsensical and contradicted by the plain text of the Complaint. The cited statutory obligations, which appear in the Human Services article at § 9-201 *et seq.*, were codified in 2007, but replaced statutory language appearing in former Art. 83C, §§ 2-118 and 2-135 "without substantive change." 2007 Md. Laws Ch. 3 (S.B. 6). Upon information and belief, the State was subject to substantially similar statutory and regulatory duties "at [all] relevant times." Complaint at ¶ 104. "The primary purpose of pleadings is to provide notice" and Plaintiffs have done so with regard to the State's statutory duties by identifying in their Complaint the Department's current duties that are "without substantive change" from those in effect prior to 2007. *C.M. v. J.M.*, 295 A.3d 193, 204 (Md. App. 2023) (citing *Tshiani v. Tshiani*, 81 A.3d 414, 423 (2013)).

a statutory obligation requiring the Department of Social Services to investigate reports of child abuse created a duty enforceable in tort); *see also Muthukumarana v. Montgomery Cnty.*, 805 A.2d 372, 395 (2002) (holding that the "public duty" doctrine "has no application when the court concludes that a statute or court order has created a special duty or specific obligation to a particular class of persons rather than to the public at large.").

Finally, to the extent the State attempts to rely on *Pendleton v. State*, 921 A.2d 196 (2007), for the proposition that the State cannot be subject to a statutory duty so long as it contracts with a third party, such reliance is misplaced. *Pendleton* involved a claim alleging that the State was negligent when it placed a child in a private foster home where he was subsequently sexually assaulted by his roommate. The *Pendleton* court affirmed the existence of statutory duties set out in the Family Law Article that could establish a duty and give rise to a negligence claim. *See Pendleton*, 921 A.2d at 208 (discussing the statutory obligations placed on the State in Md. Code, Family Law, § 5-501 *et seq.*). While the *Pendleton* court affirmed the dismissal of Appellant's claim based on the breach of a statutory duty, it did not do so because no such duty existed. Rather, the court affirmed the dismissal because the amended complaint did not allege "that the State was negligent in licensing or monitoring [the foster home]" and did not allege that "when the appellant was placed, [the foster home] was not then operating in compliance with applicable State licensing laws." *Id.* at 208. The *Pendleton* court further reconciled its holding from *Horridge*, in which the court affirmed a negligence claim against the State based on the breach of a duty established by statute, by explaining that "[i]n *Horridge*, there was no issue raised as to the sufficiency of the pleadings," whereas in *Pendleton*, "there are no well-pled factual allegations that the State ***failed to comply*** with a specific statutory requirement." *Id.* at 210 (emphasis added). Just like the plaintiffs in *Horridge and Pendleton*, Plaintiffs in the instant case have identified duties on the

State established by statute and, like the plaintiffs in *Horridge*, they have alleged breaches of those duties.

iii. Duties arising from the special relationship between the State and juveniles in the State's custody.

In addition to alleging constitutional and statutory duties, Plaintiffs allege a duty of care arising from the special relationship between the State and Plaintiffs. *See* Complaint ¶ 104, 105. The State claims in its motion that no special relationship exists between the State and the children confined in the State's custody, at least to the extent the juvenile detention facility was operated by a third-party. *See* Motion to Dismiss at 9-11. But this claim is contrary to settled Maryland law. While "[o]rdinarily, courts will not impose an affirmative duty to protect the interests of another, absent a special relationship between the parties[,]" it is established in Maryland law that a special relationship exists between the State and an incarcerated individual. *State v. Johnson*, 670 A.2d 1012, 1017 (Md. App. 1996) (citing *Prosser and Keeton on the Law of Torts* § 56, at 373-76 (5th ed. 1984)). This special relationship exists because "when the State incarcerates an individual, the inmate is entirely dependent on the State, which has exclusive control over the care and confinement of prison inmates." *Id.*; *see also State v. Young*, -- A.3d --, 2025 WL 926305, *13 (Md. App. March 27, 2025) (identifying a special relationship between state correctional officers and an inmate detained in Maryland state prison); (*Ashburn v. Anne Arundel County*, 510 A.2d 1078, 1085 n.2 (1986) (identifying that a special relationship, and attendant duty to prevent physical harm caused by another, attaches to "those who have custody of others."). And as the *Johnson* court recognized, because it is the ***State*** which exercises the power to confine an individual it is, accordingly, the ***State*** that retains "exclusive control" over the care and confinement of inmates. This is so even when the State delegates certain operations of its detention facilities to private contractors.

This special relationship applies with even greater force in the context of juvenile detention, where the State stands *in loco parentis* with regard to the children in its custody. As the Washington State Supreme Court articulated, "[a] special relationship results in a ***heightened duty*** where a person is helpless, totally dependent, or under the complete control of someone else for decisions relating to their safety." *Turner v. Washington State Dep't of Soc. & Health Servs.*, 493 P.3d 117, 126 (Wash. en banc 2021) (emphasis added). This condition of "helpless, total dependen[ce]" is precisely the experience of a child in juvenile detention and, in these conditions, a special relationship is formed with "an accompanying 'duty of care to protect the plaintiff from foreseeable harm,' which borders on strict liability." *Id.* (quoting *H.B.H*, 429 P.3d 484, 492 (Wash. en banc 2018).

To the extent the State relies on *Pendleton* for the proposition that no special relationship exists when a third-party assumes a role in the operation of a state juvenile-detention facility, that reliance is once again misplaced. Unlike *Pendleton*, which involved the placement of a juvenile in an privately owned and operated foster home, *see Pendleton*, 921 A.2d at 200, Plaintiffs allege that the Victor Cullen Center was at all times under the control of the State. *See, e.g.*, Complaint at ¶¶ 6-7, 10, 26-27. The *Pendleton* court itself makes this distinction clear, acknowledging that a special relationship may properly be alleged "where the State, ***having custody*** of the appellant" owed "a duty to exercise reasonable care in protecting him from other persons under the State's control." *See Pendleton*, 921 A.2d at 214. This is precisely what Plaintiffs have alleged: (1) that they were held in the custody of the State at the Victor Cullen Center, and (2) the State failed to protect them from the staff at the Victor Cullen Center, who were at all times under the control of the State.

iv. Each of the Foregoing Duties are Non-Delegable.

The State attempts to shirk the existence of the foregoing duties by asserting that they were inapplicable during the time period wherein the State contracted certain operations at the Victor Cullen Center to a third-party, Youth Services International ("YSI"). But, as Plaintiffs allege, the State's duties are non-delegable and exist in equal force whether the State directly executed all operations at the Victor Cullen Center or contracted some portion of those operations to a third party.

A non-delegable duty "arises in "***situations wherein the Law views a person's duty as so important and so peremptory that it will be treated as nondelegable***. Defendants who are under such a duty 'cannot, by employing a contractor, get rid of their own duty to other people, whatever the duty may be.'" Harper et al., *The Law of Torts* § 26.11, at 83 (2d ed. 1986) (quoting *Hardaker v. Idle Dist. Council*, 1 Q.B. 335, 340 (1896) (emphasis added)). "It is difficult to suggest any criterion by which the non-delegable character of such duties may be determined, other than the conclusion of the courts that ***the responsibility is so important to the community that the employer should not be permitted to transfer it to another.***" *Prosser and Keeton on the Law of Torts* § 71, at 512 (5th ed. 1984) (emphasis added). The duties owed by the State to ensure the safety of children in its custody meets these criteria, and both State and federal courts have routinely concluded that duties owed by states to both juvenile and adult inmates are nondelegable. *See J.H. v. Mercer County Youth Detention Center*, 930 A.2d 1223, 1233 (N.J. App. 2007) (holding that juvenile Detention Center supervisors "violated the Detention Center's ***non-delegable duty to protect the juveniles entrusted to its care from sexual abuse at the hand of employees granted supervisory authority over them***." (emphasis added); *Anderson v. Grant County*, 539 P.3d 40, 45-46 (Wash. App. 2023) ("The duty the County owes incarcerated individuals in its facilities is based on the special relationship between the jail and inmate because an incarcerated individual is

deprived of their liberty and ability to care for themselves. The special relationship ***creates a nondelegable duty for the jail to ensure the health, welfare, and safety of each inmate***." (emphasis added).) (citing *Shea v. City of Spokane*, 562 P.2d 264 (1977)); *Medley v. North Carolina Dep't of Corr.*, 412 S.E. 2d 654 (N.C. 1992) (finding that the duty to provide medical care to inmates arising from statute, state and federal constitutions, and the special relationship between the State and inmates to be non-delegable because it "is such a fundamental and paramount obligation of the state that the state cannot absolve itself of responsibility by delegating it to another."); *Rustgi v. Reams*, 536 F. Supp. 3d 802, 824 (D. Colo. 2021) ("The non-delegable duty doctrine essentially holds that the government cannot avoid § 1983 liability by contracting out its constitutional duties to a third party."); *Edison v. United States*, 822 F.3d 510, 523-24 (9th Cir. 2016) (holding that the Bureau of Prisons owed a non-delegable duty of care to prisoners arising from its ownership and management of property).

Furthermore, Maryland recognizes that the possessor of a property owes a non-delegable duty to invitees "to use reasonable and ordinary care to keep his premises safe for the invitee and to protect him from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for his own safety will not discover." *Rowley v. Baltimore*, 505 A.2d 494, 498 (1986). This duty is non-delegable in the sense that the possessor of property cannot "avoid or delegate the risk of non-performance of the duty." *Id.* at 499 (citing J. Dooley, *Modern Tort Law* § 17.05, at 422-23 (1985 Cum. Sup.) ("[W]here one invites another to come onto premises ostensibly maintained by him, his duty to the invitee cannot be circumscribed by the employment of an independent contractor."); Restatement (Second) Torts § 425 ("One who employs an independent contractor to maintain in safe condition land . . . is subject to the same liability for physical harm caused by the

contractor's negligent failure to maintain the land . . . in a reasonably safe condition, as though he had retained its maintenance in his own hands.")).

At all times, whether certain operations were contracted to a third party, the State was the possessor of the Victor Cullen Center facility. Accordingly, at all times, it owed its duties of care to the children it confined there. It defies logic to conclude that the State's common-law duty to maintain the safety of the Victor Cullen Center property—a general duty applicable to all property owners—is non-delegable while its constitutional, statutory, and special relationship duties—which function as essential checks on the State's authority to deprive its citizens of their liberty interest—can be dispensed of simply by hiring a contractor. Such duties are "so important and so peremptory" that they must be treated as non-delegable.

Finally, the non-delegable nature of the State's duties is confirmed by statute. Specifically, Md. Code, Hum. Servs., § 9-226 provides that "***the Department***" (emphasis added)—and no other third parties—may operate the Victor Cullen Center. It follows then that if the Legislature vested only DJS with the authority to operate the Victor Cullen Center, that DJS may not delegate the duties associated with that grant of authority.

B. The State of Maryland Breached its Duty of Care.

Plaintiffs plead facts sufficient to allege that the State of Maryland breached its duties of care, including (1) its statutory and regulatory duties to provide "a safe, humane, and caring environment" and "prohibit abuse" of the children in its care derived from Title 9, Subtitle 2 Human Services Article and its predecessor statutes, and (2) its duty to prevent foreseeable physical harm caused by another, derived from the special relationship between the State and Plaintiffs as juveniles in the State's custody.

The State claims in its motion that Plaintiffs "do not allege that VCC, while privately operated, was out of compliance with any statutory, regulatory, contractual, or licensing requirements, nor do the plead that the State knew of sexual abuse occurring at VCC during or prior to the abuse suffered by the named Plaintiffs." This is simply untrue.

Plaintiffs clearly allege that VCC was out of compliance with statutory and regulatory requirements to provide "a safe, humane, and caring environment," which applied regardless of whether VCC was operated directly by the State or by a private contractor. *See* Complaint ¶¶ 50-82 (detailing reports of the "illegal and damaging practices" at the Victor Cullen Center between 1967 and 2023, including numerous reported instances of abuse that reached the highest levels of State government including DJS leadership and the Governor).

Plaintiffs also allege that the abuse they suffered was foreseeable, and that the State's failure to prevent Plaintiffs' abuse violated both its statutory and special relationship duties. Specifically, Plaintiffs allege the State was on notice of abuse at its facilities for "several decades," supported by the fact that "the State has conducted numerous investigations into DJS operations." Complaint ¶ 48. The State does not appear to dispute the sufficiency or veracity of this factual allegation, likely because the State knows this to be true.[6] Instead, the State protests that the

[6] Details of the multitude of investigations conducted by media, the State, and the federal government, and the findings of those investigations, are set out in precise detail in the numerous Complaints filed in Circuit Courts across the State. For instance, an October 1, 2023 Complaint filed in Baltimore County alleging substantially similar claims against the State arising from the sexual abuse of children in the custody of the State's juvenile detention system identified a Baltimore Sun investigation, which found that four Victor Cullen Center guards were charged with assaulting juveniles and two other guards were charged with sexually abusing youths at the center in 2000 alone. Complaint, *McClain v. State*, C-03-CV-23-003939, ¶ 60 (Oct. 1, 2023). The same Complaint documents a State Performance Audit of Youth Services International, which found egregious failures in training, staffing and supervision and resulted in settlements between Youth Services International and the State of Maryland related to Youth Services International's breaches of its contractual obligations. *Id.* at ¶¶ 61-62.

Complaint "does not outline any reports of alleged ***sexual abuse*** of youth, except for the arrest, in the year 2020, of a former female VCC employee who was charged with sex abuse of a minor at the facility" and is therefore deficient. Motion at 9 (emphasis added). But this is both immaterial and untrue. Whether the factual allegations of reported abuse identified in the Complaint were physical or sexual in nature is immaterial to the sufficiency of Plaintiffs' negligence claims because the factual allegations suffice to show that the State was on notice of ongoing violations of its duties to protect the children in its care from harm, yet failed to take steps necessary to prevent that harm. The State's claim is also simply untrue because John Does 1-8 each allege *multiple* instances of sexual abuse occurring within the walls of the Victor Cullen Center. Complaint at ¶¶ 83-99. The State either knew or should have known that this abuse was ongoing whether or not it was reported by Plaintiffs at the time. Plaintiffs also allege that hundreds of reports of physical abuse were "altered, destroyed, or simply not filed at Victor Cullen" and it is reasonable to infer that this destruction of records was not limited to only those reports of physical abuse that were non-sexual in nature. Learning of the destruction of reports of abuse placed the State on notice of the risk of all species of physical harm to Plaintiffs and other children confined at the Victor Cullen Center, including sexual abuse. *See* Complaint at 58.

As the State has acknowledged, this Complaint fits in the broader context of "the twenty-nine (29) pending complaints filed in various circuit courts in Maryland against the above-named Defendants totaling 400 plaintiffs" and the "4,000 or more claimants who will file suit against the Defendants in the foreseeable future." Defendant's Motion for Extension of Time at ¶ 3. Among those 29 pending complaints are a complaint filed by 50 additional plaintiffs alleging sexual abuse at the Victor Cullen Center between 1970 and 2020, Complaint, *John Does (VC) 9-58 v. State*, C-10-CV-25-000173 (Feb. 14, 2025), and a complaint filed by 5 additional plaintiffs alleging sexual

abuse at the Victor Cullen Center between 1972 and 2017. Complaint, *Q.H. v. State*, C-10-CV-25-000256. Between the three complaints, the Victor Cullen Center has averaged more than one allegation of child sex abuse per year for fifty years. The sheer volume of survivors of sexual abuse in Maryland's juvenile justice system now coming forward with claims against the State arising from their sexual abuse illustrates the absurdity of the State's position that Plaintiffs have not sufficiently alleged that the State knew or should have known of the specific risk of *sexual abuse* in its facilities, including the Victor Cullen Center.

Since filing their Complaint, Plaintiffs have identified and provided to the State all requested information regarding their claims in the course of their good faith effort to support a global alternative resolution process for abuse claims. Plaintiffs expect to develop additional evidence through discovery; however, the State has refused to engage in the discovery process to date. *See* Defendant's Motion for a Protective Order Staying Discovery. "The primary purpose of pleadings is to provide notice," *C.M. v. J.M.*, 295 A.3d 193, 204 (Md. App. 2023) (citing *Tshiani v. Tshiani*, 81 A.3d 414, 423 (2013)), and there is "a big difference between that which is necessary to prove the commission of the tort and that which is necessary merely to allege its commission." *Sharrow v. State Farm Mut. Auto. Ins. Co.*, 511 A.3d 492, 500 (1986). Here, Plaintiffs have met their burden to plead a "clear statement of facts" necessary to support their negligence claim; however, to the extent the Court deems Plaintiffs' pleading to be deficient, Plaintiffs respectfully request leave to amend their complaint to address any defects.

C. Plaintiffs Are Not Pursuing Claims Against the State Personnel who Perpetrated Acts of Sexual Abuse in this Action.

The State argues that Plaintiffs' negligence claim must be dismissed to the extent the perpetrators of sexual abuse were directly employed by the State. This fundamentally misunderstands both Plaintiffs' complaint, and Maryland law. In this action, Plaintiffs bring

claims against the State directly, for which no limitations on the State's waiver of sovereign immunity apply. The plain language of the MTCA permits direct claims against the State. Md. Code, State Gov., § 12-104 ("The immunity of the State and of its units is waived as to a tort action, in a court of the State."). Section 5-222(a) of the Court and Judicial Proceedings Article sets out limitations to the foregoing waiver of the State's immunity, but only as to the tortious acts or omissions of *State personnel*—not the tortious acts of the State itself. Md. Code Ct. & Jud. Proc. § 12-104 ("Immunity of the State is ***not*** waived under § 12-104 . . . for: . . . [a]ny tortious act or omission of ***State personnel*** that: (i) Is not within the scope of the public duties of the State personnel; or (ii) Is made with malice or gross negligence.") (emphasis added). Because Plaintiffs do not pursue claims against the individuals who perpetrated the acts of sexual abuse against them or assert that the State is vicariously liable for the abusive acts of those personnel, and only pursue claims against the State itself, the limitations to the State's waiver of immunity set out in Section 5-222(a) is irrelevant.

2. Negligent Hiring, Supervision, Retention, Training and Education (Counts 2 & 3).

The State seeks dismissal of Plaintiffs' negligent hiring, supervision, retention, training, and education claims on the grounds that Plaintiffs have not pleaded facts that would suggest the alleged harm—i.e., the acts of sexual abuse perpetrated against Plaintiffs—was a foreseeable result of the State's negligent hiring, supervision, retention, training, and education of the staff at the Victor Cullen Center. *See* Motion at 16-17. Additionally, the State takes the position that it bears no responsibility for the hiring, supervision, retention, training and education of staff who were employed by a private third party contracted by the State to conduct certain operations at the Victor Cullen Center. *See id.* at 17-18. Both of the State's arguments fail and, once again, the State's

motion ignores the facts actually pleaded by Plaintiffs in their complaint as well as the pleading requirements at the Motion to Dismiss stage.[7]

First, Plaintiffs allege that the State was negligent in contracting and retaining Youth Services International ("YSI") to conduct certain operations at the Victor Cullen Center. Complaint ¶¶ 111, 118. Facts related to the State's decision to contract with YSI are in the sole possession of the State, which has refused to respond to Plaintiffs' discovery requests to date. However, upon information and belief, the State's hiring process was inadequate,[8] and the abuse of several Plaintiffs was a foreseeable, proximate result from the State's decision to hire YSI.

Similarly, Plaintiffs allege that the State negligently retained YSI by failing to terminate YSI following multiple reports of pervasive abuse at the Victor Cullen Center, as well as the destruction of reports of abuse at the Victor Cullen Center while YSI was responsible for certain operations at the facility. Complaint ¶¶ 54-63. Allowing YSI to continue to operate the Victor Cullen Center after the disclosure of YSI's misconduct created a foreseeable risk of abuse to the children confined at the facility, and the abuse of several Plaintiffs was a foreseeable, proximate result from the State's decision to retain YSI.[9]

---

[7] The State does not dispute that it was subject to duties related to the hiring, supervision, retention, training, and education of staff at the Victor Cullen Center as alleged by Plaintiffs. *See* Complaint at ¶¶ 39-40, 118, 145.

[8] The State is on notice via a separate complaint alleging abuse of children confined by the State at the Hickey School that the State contracted with YSI to conduct certain operations at both the Hickey School and Victor Cullen Center shortly after YSI was incorporated by the founder of Jiffy Lube. Complaint, *McClain v. State*, C-03-CV-23-003939, ¶ 57 (Oct. 1, 2023).

[9] The State is on notice via a separate complaint alleging abuse of children confined by the State at the Hickey School that a State Performance Audit beginning in April 2000 revealed that YSI was grossly deficient in the performance of its duties, including failing to provide training to all but one of its 108 employees, failing to provide adequate supervision, and record keeping, and failing to fully staff its facilities. Notably, this State-conducted audit directly linked YSI's failure to staff facilities to use-of-force incidents, which occurred primarily on short-staffed shifts.

In addition to alleging the State was negligent in its hiring and retention of YSI, Plaintiffs plead facts sufficient to allege that YSI's negligent hiring, training, supervision, and retention of staff is imputable to the State. *See, e.g.,* Complaint at ¶¶ 54, 106 (alleging the State contracted with YSI to perform certain operations at the Victor Cullen Center and that YSI acted as the State's agent in performing these services); *id.* at 100, 118 (asserting that the State's duties were at all times non-delegable and that the State is liable for the acts of its agents); *see also* Section 1.A.4, *supra*. Pursuant to Restatement (Second) Torts, § 414, "One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for bodily harm to others, for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care." As Plaintiffs allege in their Complaint, the Legislature assigned responsibility for the operation of the Victor Cullen Center to DJS, not to any entity DJS subcontracted with, thus the State "retained [] control" and cannot delegate the duties associated with the Legislature's grant of authority. Complaint at ¶ 106; Md. Code, Hum. Servs., § 9-226.

Plaintiffs further allege that DJS is statutorily obligated to set minimum standards for qualifications, training, and experience for employees, including a requirement that DJS complete criminal background checks prior to hiring and that DJS not only is required to "adopt a code of conduct for staff of the Department; and . . . require each private agency under contract with the Department to adopt a code of conduct for its staff that is in substantial compliance with the code of conduct for staff of the Department." Complaint at ¶ 39, 40. The State's claim that Plaintiffs have not pointed to the existence of standards against which qualifications and training could be

---

Despite these findings, the State did not terminate YSI's contracts. Complaint, *McClain v. State*, C-03-CV-23-003939, ¶¶ 62-63 (Oct. 1, 2023).

measured is therefore simply incorrect.

Finally, the State faults Plaintiffs for failing to plead facts regarding the identities, recruitment, employment, supervision or training of the specific Victor Cullen Center staff who perpetrated abuse against Plaintiffs. Plaintiffs have furnished the identities of the perpetrators who abused them to the State in connection with their discovery requests in this action. However, requiring Plaintiffs to put forward facts as to the recruitment, employment, supervision and training of the perpetrators—facts in the sole possession of the State—creates an impossible pleading standard so long as the State refuses to participate in discovery. *See* Defendant's Motion for a Protective Order Staying Discovery. At present, Plaintiffs have pleaded facts sufficient to show that the hiring, training, and retention processes at the Victor Cullen Center were generally inadequate. It is reasonable to infer from reports of pervasive abuse, *see* Complaint at ¶¶ 55-57, 62-64, as well as reports of the destruction of records of abuse perpetrated against children confined at the facility, *see id.* at ¶ 58, that the state hired and retained incompetent staff or failed to adequately train and supervise staff to perform their job functions in accordance with DJS policies. *See also id.* at 64 (alleging a staff member was hired at the Victor Cullen Center despite a criminal history of selling drugs). It is further reasonable to infer that the perpetrators of abuse against Plaintiffs were among the staff negligently hired, retained, trained or supervised by the State, at least until such time as discovery is completed.

"There is . . . a big difference between that which is necessary to prove the commission of the tort and that which is necessary merely to allege its commission." *Sharrow v. State Farm Mut. Auto. Ins. Co.*, 511 A.3d 492, 500 (1986). Here, dismissal would not be proper because the alleged facts and permissible inferences drawn would afford relief to Plaintiffs. *Ricketts v. Ricketts*, 903 A.2d 857, 864 (2006). Accordingly, Plaintiffs request that the Court deny the State's motion to

dismiss Plaintiffs negligent hiring, retention, training, supervision, and education claims. To the extent the Court deems Plaintiffs' pleading of this claim to be deficient, Plaintiffs respectfully request leave to amend their complaint to address any defects.

3. Gross Negligence (Count 4).

Plaintiffs plead facts sufficient to allege gross negligence on the part of the State in its failure to satisfy its duties arising from the U.S. and Maryland constitutions, statutes and regulations, and the State's special relationship with the children in its custody. Gross negligence "is an intentional failure to perform a manifest duty in reckless disregard of the consequences." *See Stracke v. Estate of Butler*, 214 A.3d 561, 568 (2019) (quoting *Barbre v. Pope*, 935 A.2d 699, 717 (2007). Accordingly, gross negligence requires a "deliberate or conscious choice." *Shabazz v. Dep't of Pub. Safety*, 313 A.3d 613, 629 (Md. App. 2024) (quoting *Stracke* 214 A.3d at 569). Plaintiffs put forward precisely such facts, which support the conclusion that the State consciously downplayed reports of abuse at the Victor Cullen Center and elsewhere in the juvenile detention system rather than working to end the abuse of the children in its care. *See* Complaint ¶¶ 51-52, 65-66.

The State largely ignores this element of Plaintiffs' complaint and chooses instead to focus its argument on its contention that the State is not liable for the gross negligence of its employees and/or agents who perpetrated acts of sexual abuse against Plaintiffs. But this is simply tilting at windmills. Plaintiffs do not allege in this action that the State is vicariously liable for the gross negligence of the employees and/or agents who perpetrated their abuse. In reality, Plaintiffs allege that the State "***intentionally failed to act*** on literally decades of complaints and allegations both from youth residents and independent evaluators which informed them that numerous staff had, and were continuing to, perpetrate sexual abuse upon the youth in their care." Complaint at ¶ 152;

see also id at ¶¶ 153-54 (emphasis added).

To the extent the State is arguing that Plaintiffs may not bring a gross negligence claim against the State, their position is inconsistent with the immunity provisions set out in the Maryland Tort Claims Act ("MTCA"). The plain language of the MTCA permits direct claims against the State. Md. Code, State Gov. § 12-104 ("***The immunity of the State and of its units is waived as to a tort action***, in a court of the State.") (emphasis added). Section 5-222(a) of the Court and Judicial Proceedings Article sets out limitations to the foregoing waiver of the State's immunity, but only as to the tortious acts or omissions of *State personnel*—not the State itself. Md. Code Ct. & Jud. Proc. § 12-104 ("Immunity of the State is ***not*** waived under § 12-104 . . . for: . . . [a]ny tortious act or omission of ***State personnel*** that: (i) Is not within the scope of the public duties of the State personnel; or (ii) Is made with malice or gross negligence.") (emphasis added). Thus there is no exception to the State's waiver of immunity for gross negligence claims against the State itself, or its agencies, in the text of the MTCA, and Maryland courts are "most reluctant to recognize exceptions in a statute when there is no basis for the exceptions in the statutory language." *Lee v. Cline*, 863 Md. 245, 256 (2004) (declining to recognize an exception in the MTCA for intentional torts or constitutional torts) (citations omitted). Further, if the General Assembly intended to limit the State's waiver of sovereign immunity as to gross negligence, intentional torts, or constitutional torts arising from instances of child sex abuse, it could have done so through the CVA's amendments to the MTCA. However, the CVA is silent as to any such limitations on the State's liability.

Accordingly, Plaintiffs request that the Court deny the State's motion to dismiss Plaintiffs gross negligence claim. To the extent the Court deems Plaintiffs' pleading of this claim to be deficient, Plaintiffs respectfully request leave to amend their complaint to address any defects.

4. Premises Liability (Count 5).

Plaintiffs have alleged a cognizable premises liability claim. The State argues that Plaintiffs failed to do so because "a person committing a criminal act is not a dangerous or defective condition. Rather a dangerous or defective condition is a physical state of the property that contributes to criminal activity." *See* Motion at 21 (citing *Ford v. Edmundson Village Shopping Center Holdings, LLC*, 254 A.3d 138, 150 (Md. App. 2021)). But this language articulates the standard a landlord owes to a tenant, not an owner or possessor's duty to an invitee. This distinction is critical, because an owner or possessor's duty to an invitee is broader and encompasses "a duty to use reasonable and ordinary care to keep the premises safe and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for his own safety, will not discover." *Rhaney v. University of Maryland Eastern Shore*, 880 A.2d 357, 366-67 (2005) (quoting *Southland Corp. v. Griffith*, 633 A.2d 84, 89 (1993)). As previously discussed, this duty is non-delegable. *See Rowley*, 505 A.2d at 499. And "[l]iability for breach of this affirmative duty may arise from a defective or unsafe condition ***or from dangers associated with employees or other invitees*** when that . . . owner, 'as a reasonably prudent person . . . should have anticipated the possible occurrence and the probable results of such acts.'" *Rhaney*, 880 A.2d at 367 (quoting *Eyerly v. Baker*, 178 A. 691, 694 (1936)).

Plaintiffs allege that they are invitees, *see* Complaint at ¶ 158, which accurately describes their relation to the State. For instance, Plaintiffs did not execute a lease agreement with the State for the term of their confinement at the Victor Cullen Center, nor did they pay rent to the State. Unlike a tenant to whom a landlord has leased premises, Plaintiffs did not "acquire[] an estate in the land" nor did Plaintiffs "become[] for the time being both owner and occupier, subject to all of the responsibilities of one in possession[.]" *Ford*, 254 A.3d 146-47 (describing the transfer of

rights and responsibilities attendant to a landlord/tenant relationship). Accordingly, the State owed Plaintiffs the heightened duty of care associated with the owner/invitee relationship, which encompasses a duty to protect invitees "from dangers associated with employees or other invitees." *Rhaney*, 880 A.2d at 367.

In sum, Plaintiffs have alleged facts that are more than sufficient at the pleading stage. Namely, that (1) the State permitted employees and/or agents with dangerous propensities for abuse to work at the Victor Cullen Center over a period of decades despite the State's non-delegable duty to keep the premises safe and protect Plaintiffs from injury, Complaint at ¶¶ 51-82, (2) that the State was on actual or constructive notice of the danger posed by the individuals working at the Victor Cullen Center by virtue of the steady stream of complaints and investigations detailing abuse between 1967 and 2020, *id.*, (3) that the State knew or should have known that Plaintiffs, as children, would be unable to protect themselves from the danger, *id.* at ¶ 11, and (4) that the State failed to take reasonable steps to make the Victor Cullen Center safe. *Id.* at ¶¶ 51-52 (alleging that the State ignored recommendations to close facilities like the Victor Cullen Center as early as 1967 and 1973); *id.* at ¶¶ 65-67 (alleging that State leadership was aware of the dangerous conditions posed by staff at the Victor Cullen Center but failed to act to remedy those conditions).

Accordingly, Plaintiffs request that the Court deny the State's motion to dismiss Plaintiffs premises liability claim. To the extent the Court deems Plaintiffs' pleading of this claim to be deficient, Plaintiffs respectfully request leave to amend their complaint to address any defects.

5. Constitutional Claims.

A. Article 24 – Substantive Due Process (Count 6)

The State argues that it is immune from substantive due process claims under the Fourteenth Amendment of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights because substantive due process requires a showing of "deliberate indifference" rather than mere negligence, and the State has not waived its sovereign immunity as to claims premised on gross negligence. Motion at 23-24. In the State's view, it is therefore immune from liability for violations of the constitutional rights of the children it confines in its juvenile detention facilities. This is plainly wrong.

Even assuming *arguendo* (1) that "deliberate indifference" is the appropriate standard for Article 24 substantive due process claims and (2) that "deliberate indifference" is functionally equivalent to gross negligence, gross negligence claims against the State are not barred by the MTCA. *See* Section 4, *supra*. Moreover, "[t]here are no exceptions in the [MTCA] for intentional torts or torts based upon violations of the Maryland Constitution." *Lee v. Cline*, 863 A.2d 297, 304 (2004). Accordingly, the State is not immune from Plaintiffs' substantive due process claim.

Furthermore, Maryland case law is clear that the substantive due process rights provided by Article 24 are more extensive than those provided by the U.S. Constitution. While federal substantive due process law is instructive, it is not controlling. "Article 24 has independent protective force and can be interpreted more broadly." *Smith v. Bortner*, 193 Md. App. 534, 553 (2010) (citing *Koshko v. Haining*, 921 A.2d 171, 194 n.22 (2007)). "Cases interpreting and applying a federal constitutional provision are only persuasive authority with respect to the similar Maryland provision," *Dua v. Comcast Cable of Md., Inc*, 805 A.2d 1061, 1071. (2002). Where required by fundamental fairness, Article 24 rights are broader than those provided by the Fourteenth Amendment. *Borchardt v. State*, 786 A.2d 631, 681 (2001) (Raker, J. dissenting).

While recognizing that Plaintiffs' Article 24 substantive due process rights are potentially broader than those provided by the U.S. constitution, Plaintiffs' Article 24 claim is adequately pleaded under the federal "deliberate indifference" standard established in *Farmer v. Brennan*, 511 U.S. 825 (1994). Plaintiffs allege that the State was on notice of the risk of abuse to children confined at the Victor Cullen Center from at least 1967 to 2020, *see* Complaint at ¶¶ 51-82, yet deliberately chose to ignore the danger, *see id.* at ¶¶ 51-52 (ignoring recommendations to replace its detention facilities as early as 1967 and 1973); *id.* at ¶¶ 62, 65-67 (asserting that the State was aware of violent abuse at the Victor Cullen Center but chose to downplay rather than remediate the conditions).

Accordingly, Plaintiffs request that the Court deny the State's motion to dismiss Plaintiffs Article 24 substantive due process claim. To the extent the Court deems Plaintiffs' pleading of this claim to be deficient, Plaintiffs respectfully request leave to amend their complaint to address any defects.

B. Article 24 - *Longtin* claim (Count 7)

Defendant argues only that Plaintiffs' *Longtin* claim must be dismissed because such claims "apply only to municipalities."[10] Motion at 26. Defendant reasons that because the *Longtin*

[10] The State makes no additional arguments as to the sufficiency of Plaintiffs' pleading of their *Longtin* claim. Plaintiffs have adequately pleaded (1) that a pattern of sexual abuse, in violation of Plaintiffs' substantive due process rights, existed at the Victor Cullen Center for decades, and (2) that this pattern resulted in Plaintiffs' abuse. This pattern was the result of the State's failure to train and supervise its employees, staff, and agents, its failure to implement effective procedures to prevent abuse, and its failure to effectively investigate abuse at the facility, in in gross disregard for the constitutional rights of the children detained there. Complaint at ¶¶ 180-190. The pervasiveness of the pattern of sexual abuse resulting from the State's oversight failure is further underscored by the thousands of claimants pursuing claims against the State for sexual abuse in Maryland's juvenile justice system. *See* Defendant's Motion for Extension of Time at ¶ 3 (acknowledging "the twenty-nine (29) pending complaints filed in various circuit courts in Maryland against the above-named Defendants totaling 400 plaintiffs" and the "4,000 or more claimants who will file suit against the Defendants in the foreseeable future.").

court only considered (and affirmed) the validity of a "pattern or practice" claim pursuant to the Maryland Constitution against a local governmental unit that a plaintiff may not assert an identical claim against the State or its agencies. But the *Longtin* court did not hold that a pattern or practice claim may not be maintained against the State. Rather, it did not consider the question because it was not at issue before the Court. The Appellate Court has rejected the State's position and affirmed that *Longtin* "pattern or practice" claims are cognizable against the State.

> Municipalities have long been held liable for encouraging the unconstitutional practices of their employees. It follows that the State should similarly be liable if its policies encourage employees to engage in actions that violate constitutional rights. We decline the State's invitation to read Longtin as explicitly limiting pattern or practice liability to only local governments. ***As such, an individual may, under appropriate circumstances, bring an unconstitutional pattern or practice claim against the State.***

See State v. Young, -- A.3d --, 2025 WL 926305, *9 (Md. App. March 27, 2025) (emphasis added). The *Young* court further held that a *Longtin* claim is cognizable against the State, independent of officer behavior, where a plaintiff "provide[s] evidence sufficient to show that the cause of his injury was the State's unconstitutional pattern or practice." *Id*. at *12.

In support of its argument, now squarely rejected by the Appellate Court, the State puts forward three stale opinions from the District Court of Maryland, now contradicted by *Young*. In *Rosa v. Board of Education of Charles County*, 2012 WL 3715331, at *9–10 (D. Md. Aug. 27, 2012), the plaintiff alleged a "pattern or practice claim" against the Board of Education, a State agency, alleging that the Board permitted unconstitutional sexual harassment to persist in her workplace. The case was decided on Eleventh Amendment grounds, which provides nonconsenting states with immunity from suit by private individuals ***in federal court***. *See Bd. Of Trs. Of Univ. of Ala. V. Garrett* 531 U.S. 356, 363 (2001) ("The ultimate guarantee of the Eleventh Amendment is that nonconsenting states may not be sued by private individuals ***in federal court***.")

(emphasis added). While the district court discussed the viability of *Longtin* claims against the state in dicta, its dismissal was based squarely on the Eleventh Amendment: "The *Monell* court expressly limited its holding to local government units which are not considered part of the State for Eleventh Amendment purposes." The second and third district court cases cited by the State, *Reid v. Munyan*, 2012 WL 4324908, *5 (D. Md. Sept. 18, 2012), and *Gandy v. Howard County Board of Education*, 2021 WL 3911892 (D. Md. Sept. 21, 2021), simply cited *Rosa* and provided no additional analysis that would support the dismissal of a *Longtin* claim against the State of Maryland in state court where the Eleventh Amendment does not apply.

The District of Maryland itself recognized the limits of the analysis in *Rosa* analysis and has recognized the viability of *Longtin* claims against the State and its agencies, even in federal court. *See Palmer v. Maryland*, 2024 WL 4349730, *9 (D. Md. Sept. 30, 2024) ("Considering . . . the absence of state court authority supporting the State's position, and the conflict in this Court's jurisprudence going in Plaintiffs' favor most recently, the Court ***declines to dismiss the Longtin claim as inherently inapplicable to the State or its agencies.***") (emphasis added).[11]

Notably, the State puts forward no Maryland precedent holding that a *Longtin* claim may not be maintained against the State because none exists. Multiple Circuit Courts have permitted *Longtin* claims to be presented to Maryland juries,[12] and after the State moved to dismiss Plaintiffs' Complaint, the Appellate Court affirmed the viability of such claims against the State in *Young*.

[11] The Palmer court found that the Eleventh Amendment was inapplicable despite the case proceeding in federal court because, "[w]here a state has waived immunity in its own courts, voluntary removal to federal court operates as a waiver of Eleventh Amendment immunity." *Palmer* at *7.

[12] The Young court notes that it affirmed a previous jury verdict based on a *Longtin* claim in an unreported opinion. *Young*, 2025 WL 926305 at n.4. The Maryland Supreme Court granted certiorari and the case was voluntarily dismissed after briefing and prior to oral arguments, *Wallace v. State*, 291 A.3d 775 (2023) (table), after the State Board of Public Works approved a $7 million

Accordingly, the State's argument that Plaintiffs may not maintain a *Longtin* claim against the State is without merit and Plaintiffs request the Court deny the State's motion to dismiss Plaintiffs' Count 7.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's motion to dismiss in its entirety. In the alternative, Plaintiffs request that the Court grant Plaintiffs leave to amend any defects the Court identifies in its pleading. Such leave to amend is consistent with both Md. Rule 2-341(c), which dictates that leave should by freely granted, as well as the State's purported "sympath[y] to survivors of sexual abuse, including the allegations of sexual assault contained in the Complaint." Motion at 7.

DATED: March 31, 2025

Respectfully Submitted,

BAILEY GLASSER LLP

D. Todd Mathews (AIS# 2408191012)
Samira Bode*
210 W. Division St.
Maryville, IL 62062
Phone: (618) 418-5180
Fax: (304) 342-1110
tmathews@baileyglasser.com
sbode@baileyglasser.com

Brian A. Glasser*
Aliya Khalidi*
1055 Thomas Jefferson Street NW

settlement to resolve Wallace's claims. Md. Board of Public Works, After Meeting Agenda Summary (March 1, 2023) *https://bpw.maryland.gov/MeetingDocs/2023-Mar-01-Summary.pdf*.

Suite 540
Washington, DC 20007
Phone: (202) 463-2101
Fax: (202) 463-2103
bglasser@baileyglasser.com
akhalidi@baileyglasser.com

David Selby*
3000 Riverchase Galleria
Suite 905
Birmingham, AL 35244
Phone: (205) 988-9253
Fax: (205) 733-4896
dselby@baileyglasser.com

RHINE LAW FIRM, P.C.
Joel R. Rhine*
Ruth A. Sheehan*
1612 Military Cutoff Road, Suite 300
Wilmington, NC 28405
Phone: (910) 772-9960
Fax: (910) 772-9062
jrr@rhinelawfirm.com
mjr@rhinelawfirm.com
ras@rhinelawfirm.com
ehw@rhinelawfirm.com

ANAPOL WEISS
Alexandra M. Walsh (AIS# 0409300007)
14 Ridge Square, 3rd Floor
Washington, DC 20016
Phone: (771) 224-8065
awalsh@anapolweiss.com

Holly Dolejsi*
60 S. 6th St., Suite 2800
Minneapolis, MN 55402
Phone: (651) 376-2872
hdolejsi@anapolweiss.com

Kristen Feden*
One Logan Square
130 Noth 18th Street, Suite 1600
Philadelphia, PA 19103
Phone: (252) 929-8822
kfeden@anapolweiss.com

DICELLO LEVITT LLP
Mark A. DiCello*
Nicholas Horattas*
8160 Norton Parkway, Third Floor
Mentor, OH 44060
Phone: (440) 953-8888
Fax: (440) 953-9138
madicello@dicellolevitt.com
nhorattas@dicellolevitt.com

Greg Gutzler*
485 Lexington Avenue
New York, New York 10017
Phone: (646) 933-1000
Fax: (646) 494-9648
ggutzler@dicellolevitt.com

Adam Prom*
10 North Dearborn, Sixth Floor
Chicago, Illinois 60602
Phone: (312) 214-7900
Fax: (312) 253-1443
aprom@dicellolevitt.com

**Pro hac vice forthcoming*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2025, a copy of the foregoing **Plaintiffs' Opposition to Defendant's to Dismiss** was served via Maryland Odyssey File&Serve to all attorneys of record:

Shelly E. Mintz
Karl A. Pothier
Assistant Attorneys General
Department of Juvenile Services
217 East Redwood Street
Baltimore, MD 21202
Shelly.Mintz@maryland.gov
Karl.Pothier@maryland.gov

Nicole Lugo Clark
Assistant Attorney General
Department of Health
300 West Preston Street, Suite 302
Baltimore, MD 21201
Nicole.LugoClark@marland.gov

/s/ D. Todd Mathews
D. Todd Mathews