

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN IMMIGRANT RIGHTS
CENTER,

Supreme Court Nos. 167300 & 167301

Plaintiff-Appellant,

Court of Appeals Nos. 361451 & 362515

v

Court of Claims No. 21-000208-MZ

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan,

Defendant-Appellee.

GOVERNOR WHITMER'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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Dated: March 21, 2025

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STATEMENT OF JURISDICTION

Defendant-Appellee Governor Whitmer agrees with Plaintiff-Appellant Michigan Immigrant Rights Center (MIRC) that this Court has jurisdiction to consider MIRC's appeal pursuant to MCR 7.303(B)(1) and MCL 600.215(3).

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. The notice provision of the Court of Claims Act, MCL 600.6431(1), provides that “a claim may not be maintained against this state” unless the claimant provides the required notice. MIRC filed a claim for injunctive and declaratory relief against Governor Whitmer in her official capacity. Does MCL 600.6431 apply to MIRC’s claims for prospective relief against Governor Whitmer?

Appellant’s answer: No.

Appellee’s answer: Yes.

Court of Claims’ answer: No.

Court of Appeals’ answer: Yes.

2. MIRC’s complaint seeks declaratory and injunctive relief from the Court of Appeals’ decision in *Sanchez v Eagle Allow Inc*, 254 Mich App 651 (2003). MIRC alleges that this decision began harming MIRC in 2017. Was MIRC’s 2021 complaint filed more than one year after the accrual of its claims?

Appellant’s answer: No.

Appellee’s answer: Yes.

Court of Claims’ answer: No.

Court of Appeals’ answer: Yes.

STATUTES INVOLVED

MCL 600.6431

(1) Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.

(2) A claim or notice under subsection (1) must contain all of the following:

(a) A statement of the time when and the place where the claim arose.

(b) A detailed statement of the nature of the claim and of the items of damage alleged or claimed to have been sustained.

(c) A designation of any department, commission, board, institution, arm, or agency of the state involved in connection with the claim.

(d) A signature and verification by the claimant before an officer authorized to administer oaths.

(3) A claimant shall furnish copies of a claim or notice filed under subsection (1) to the clerk at the time of filing for transmittal to the attorney general and to each of the departments, commissions, boards, institutions, arms, or agencies of this state designated in the claim or notice.

(4) For a claim against this state for property damage or personal injuries, the claimant shall file the claim or notice under subsection (1) with the clerk of the court of claims within 6 months after the event that gives rise to the claim.

(5) This section does not apply to a claim for compensation under the wrongful imprisonment compensation act, 2016 PA 343, MCL 691.1751 to 691.1757.

MCL 600.6419(1)(a)

(1) Except as provided in sections 6421 and 6440,1 the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. All actions initiated in the court of claims shall be filed in the court of appeals. The state administrative board is vested with discretionary authority upon the advice of the attorney general to hear, consider, determine, and allow any claim against the state in an amount less than \$1,000.00. Any claim so allowed by the state administrative board shall be paid in the same manner as judgments are paid under section 64582 upon certification of the allowed claim by the secretary of the state administrative board to the clerk of the court of claims. Except as otherwise provided in this section, the court has the following power and jurisdiction:

(a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

INTRODUCTION

MIRC seeks to overturn *Sanchez v Eagle Alloy*, a published Court of Appeals decision holding that undocumented workers cannot receive worker's compensation benefits. Rather than assisting a worker in appealing the denial of benefits and asking the Court of Appeals to revisit *Sanchez*, MIRC filed suit on its own behalf, arguing that *Sanchez* has caused it organizational harm. MIRC asked the Court of Claims for a novel relief: a declaration that *Sanchez* was wrongly decided. MIRC's approach has several flaws. Relevant to this appeal, MIRC was required to comply with the notice requirements of MCL 600.6431 and did not do so.

The requirements of § 6431 apply to prospective-relief claims such as MIRC's. This is reflected both in the text of § 6431 and in the general rule that statutes of limitations apply to claims for prospective relief. And contrary to MIRC's arguments, § 6431 sets forth mandatory procedural requirements for suing the State, regardless of whether sovereign immunity applies. Finally, even if, as MIRC now argues, § 6431 does not apply to claims against state employees, an official-capacity claim is a claim against the State under Michigan law.

MIRC did not comply with § 6431. Based on MIRC's allegations, its claim accrued when *Sanchez* began harming MIRC in 2017. MIRC argues that it has suffered ongoing wrongs and warns that, under the Court of Appeals' reasoning, claimants will have no recourse against repeated government wrongs. But unlike the hypothetical claimants MIRC discusses, MIRC has not suffered repeated wrongs. It alleges one wrong—*Sanchez*—that has caused MIRC ongoing harm. MIRC's claim, brought four years after the alleged harm began, is not timely.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

MIRC files suit to overturn *Sanchez v Eagle Alloy*.

MIRC filed suit against Governor Whitmer, in her official capacity, in November 2021, seeking declaratory and injunctive relief. (Compl, Pl's App'x, p 032a). MIRC's complaint did not focus on Governor Whitmer's past or future actions, nor did it primarily seek to challenge the constitutionality of a statute that the Governor enforces. Instead, MIRC sought declaratory and injunctive relief from a particular *case*, decided by the Court of Appeals in 2003: *Sanchez v Eagle Alloy, Inc*, 254 Mich App 651 (2003). (Compl, Pl's App'x, p 032a). MIRC asked the Court of Claims to do the impossible—to overturn a binding decision of the Court of Appeals by declaring it wrongly decided. (*Id.*, p 031a.)

The Court of Appeals in *Sanchez* resolved a dispute over MCL 418.361(1), which provides that an employer is not liable for worker's compensation benefits "for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime." (Compl, Pl's App'x, pp 010a–011a, ¶¶ 10–11.) According to MIRC, the Court of Appeals misread the statute by holding that it precluded undocumented workers from receiving benefits. (*Id.*, pp 017a–019a, ¶¶ 37–41.) MIRC claimed that this holding conflicted with federal law, (*id.*, pp 019a–020a, ¶¶ 45–47), as well as a subsequent case decided by the Michigan Supreme Court, (*id.*, pp 020a–023a, ¶¶ 48–56). MIRC also asserted that *Sanchez*'s reading of MCL 418.361(1) rendered the statute unconstitutionally vague. (*Id.*, pp 023a–024a, ¶¶ 57–63.)

MIRC asserted that it has been harmed by the Court of Appeals’ decision in *Sanchez*. (Compl, Pl’s App’x, pp 025a–026a, ¶¶ 68–77.) MIRC is a “legal resource center that serves Michigan’s immigrant communities.” (*Id.*, p 024a, ¶ 65.) Since opening its “Farmworker and Immigrant Rights” (FWIR) project in 2017, MIRC alleged that its staff “have had to field calls” relating to denials of worker’s compensation benefits under *Sanchez*. (*Id.*, pp 024a–025a, ¶¶ 66, 69–70.) MIRC alleged that, “[c]onsistent with its design and mission,” it sought to refer workers to private attorneys but that the “the private bar was unwilling to take the cases” because of *Sanchez*. (*Id.*, p 025a, ¶ 70.) As a result, according to MIRC, it has needed to divert resources to this area. (*Id.*, pp 025a–026a, ¶¶ 71–77.)

MIRC sought a ruling from the Court of Claims declaring (1) that MCL 418.361(1) is unconstitutional in light of *Sanchez*, (2) that *Sanchez* is unlawful, and (3) that “workers’ compensation officials” must instead apply *Sweatt v Department of Corrections*, 468 Mich 172 (2003), which MIRC reads as inconsistent with *Sanchez*. (Compl, Pl’s App’x, pp 023a–024a, 029a–030a, ¶¶ 60, 88, 97, 106.)

The Court of Claims denies summary disposition.

Governor Whitmer moved for summary disposition under MCR 2.116(C)(4), (C)(5), (C)(7), and (C)(8). The motion sought summary disposition on four bases: (1) failure to comply with the notice provision of the Court of Claims Act (COCA), (2) lack of an actual controversy for purposes of a declaratory judgment, (3) lack of standing, and (4) failure to exhaust administrative remedies. *Michigan Immigrant*

Rights Center v Whitmer, opinion and order of the Court of Claims, issued April 28, 2022 (Case No. 21-208-MZ) (Pl’s App’x, p 040a).

The Court of Claims denied summary disposition. Relevant for purposes of this appeal, the court concluded that the COCA’s notice provision, MCL 600.6431, did not apply to MIRC’s claim. (*Id.*, p 041a.) Relying on this Court’s decision in *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 128 (1995), the court stated summarily that “statutes of limitation do not apply in declaratory judgment actions.” (*Id.*, p 040a.) The Court of Claims also rejected Governor Whitmer’s remaining bases for summary disposition. (*Id.*, pp 041a–045a.)

The Court of Appeals reverses.

Following a complicated procedural history,¹ the Court of Appeals reversed, holding that MIRC’s claims were untimely under the COCA’s notice provision. *Michigan Immigrant Rights Center v Whitmer*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket Nos 361451; 362515) (Pl’s App’x, pp 001a–007a).

¹ Governor Whitmer originally filed a claim of appeal in the Court of Appeals. The Court of Appeals granted MIRC’s motion to dismiss the claim of appeal, holding that the denial of summary disposition was not a final order because it did not implicate governmental immunity. Governor Whitmer filed an application for leave to appeal in this Court, arguing that the failure to comply with MCL 600.6431 implicates governmental immunity. Governor Whitmer also filed an application for leave to appeal in the Court of Appeals on the three remaining grounds for summary disposition. This Court held Governor Whitmer’s application in abeyance and eventually remanded to the Court of Appeals for reconsideration in light of *Christie v Wayne State University*, 511 Mich 39 (2023). Following the remand, the Court of Appeals denied MIRC’s motion to dismiss and consolidated Governor Whitmer’s two appeals before issuing its opinion reversing the Court of Claims.

The Court of Appeals, relying in part on this Court’s decision in *Christie v Wayne State University*, 511 Mich 39 (2023), noted that § 6431 applies to “*all* claims brought against the state.” (*Id.*, p 003a.) Further, the court explained that a claim generally accrues “when all of the elements of the cause of action have occurred and can be alleged in a proper complaint.” (*Id.*, quoting *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 183 n 8 (2019) (*Bauserman I*.) In the context of a declaratory judgment action, an action accrues when an “actual controversy” arises. (*Id.*, p 004a.) Applying those principles to this case, the court held that MIRC’s claims had accrued “no later than 2019,” when MIRC alleged that it hired additional staff to address worker’s compensation benefits. (*Id.*)

The court rejected MIRC’s argument that its claims involved “an ongoing series of wrongful acts,” each of which could give rise to a new cause of action. (*Id.*, p 005a.) While an ongoing series of discrete wrongful acts can each give rise to a separate cause of action, the court explained, MIRC “alleges only ongoing harms.” (*Id.*) Unlike an individual worker harmed by the denial of benefits, MIRC’s “complaint clearly explains that its own harm” resulted from the court’s ruling in *Sanchez*. (*Id.*) Further, the court noted, MIRC did not allege that worker’s compensation magistrates are applying *Sanchez* incorrectly, only that *Sanchez* itself was wrongly decided. (*Id.*) Taking these facts into account, the court concluded that MIRC alleged “ongoing *consequences*” of a past wrong, not ongoing wrongs. (*Id.*) Finding dismissal appropriate under § 6431, the court declined to consider the three remaining grounds for summary disposition raised below. (*Id.*, p 2 n 2.)

STANDARD OF REVIEW

A grant or denial of summary disposition is reviewed “de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118 (1999). “In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition.” *Id.* (cleaned up).

Governor Whitmer moved for summary disposition, in relevant part, under MCR 2.116(C)(7). Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is barred “because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.” A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may, but is not required to, file supportive materials such as affidavits, depositions, admissions, or other documentary evidence; but if such documentation is submitted, the court must consider it. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432 (1994).

ARGUMENT

I. MCL 600.6431 applies to claims for prospective relief.

As always, statutory analysis must begin with the plain language of the statute at issue. See *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 278 (2016). Here, a plain language analysis is not difficult—the COCA explicitly encompasses claims for prospective relief within its purview, and § 6431 of the COCA applies to all claims brought against the State.

Moreover, contrary to the Court of Claims' reasoning below, the general rule is that statutes of limitations do apply to claims for prospective relief. Applying the notice requirements of § 6431 to claims to prospective relief, therefore, is neither an impossibility nor an anomaly.

Additionally, contrary to the arguments raised by MIRC and amici, the applicability of § 6431 does not depend on sovereign immunity. As this Court has recognized, the COCA establishes mandatory procedural requirements for suing the State, even absent sovereign immunity. Accordingly, MIRC's arguments against the applicability of § 6431 based on principles of sovereign immunity are misplaced.

Finally, MIRC's newest argument, raised for the first time before this Court, that § 6431 does not apply to its claim against Governor Whitmer as a state officer is also misplaced. Under Michigan law, official-capacity claims such as MIRC's are claims against the State.

Therefore, reading the provision according to its plain language, this Court should conclude that § 6431 applies to claims for prospective relief.

A. The statute by its terms applies to claims for prospective relief.

Absent certain exceptions not applicable here,² the COCA grants exclusive jurisdiction to the Court of Claims to hear claims against the State of Michigan and its departments or officers. See MCL 600.6419(1). The types of claims included within this jurisdiction are stated in sweepingly-broad terms: “any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, *equitable*, or *declaratory relief* or any demand for an extraordinary writ against the state or any of its departments or officers.” MCL 600.6419(1)(a) (emphasis added).

Clearly, then, claims for prospective relief are included within the scope of the COCA, as such claims are under the umbrella of “any claim . . . for monetary, equitable, or declaratory relief.”³ Indeed, the COCA is particularly clear regarding its exclusive jurisdiction over declaratory and equitable claims: in a case where a claimant demands a jury trial in circuit court on certain damages claims, the Court of Claims still retains exclusive jurisdiction over any declaratory or equitable claims included in the case. MCL 600.6421(2). Thus, far from exempting constitutional or

² The exceptions are found in MCL 600.6421, which concerns claims that carry a right to a jury trial, and MCL 600.6440, which concerns claims that have an adequate remedy in the federal court.

³ Claims for declaratory relief and equitable relief in the form of an injunction are inherently prospective in nature. See 26 CJS, Declaratory Judgements, § 1 (“Declaratory relief is by its nature prospective.”); 43A CJS, Injunctions, § 2 (“The [injunction] remedy grants prospective, as opposed to retrospective, relief . . .”). See also generally *Bauserman I*, 503 Mich at 183 n 9 (“[A] plaintiff can sometimes obtain prospective relief, such as declaratory relief under MCR 2.605 or injunctive relief under MCR 3.310, even if no actual harm has yet occurred.”).

declaratory claims from its purview, the COCA makes clear that such claims are squarely within the jurisdiction of the Court of Claims.

Turning to the notice provision, § 6431 is also stated in broad and unambiguous terms. The provision states plainly that “a claim may not be maintained against this state” unless either a notice of intent or the complaint itself is filed within a year of accrual. MCL 600.6431(1). As this Court concluded in *Christie*, a plain-language reading of § 6431 makes clear that “all claims against the state are subject to MCL 600.6431(1)’s notice requirements.” *Christie*, 511 Mich at 63. The “only exception” to the section’s notice requirements is contained within the section itself—the exception for claims brought under the Wrongful Imprisonment Compensation Act. *Id.* at 52–53, citing MCL 600.6431(5). Ultimately, this Court concluded that “all parties with claims against the state, except those exempted in MCL 600.6431 itself, must comply with the notice requirements of MCL 600.6431(1).”⁴ *Id.*

Another aspect of § 6431 further illustrates its applicability to claims for declaratory and injunctive relief. While § 6431(1) sets forth the general one-year notice period, § 6431(4) establishes a 6-month notice period for “a claim against this state for property damage or personal injuries.” MCL 600.6431(4). Under this scheme, then, the lion’s share of damages claims are covered by the separate 6-

⁴ MIRC is correct that this Court in *Christie* was specifically considering whether § 6431 applies to cases filed outside the Court of Claims. See *Christie*, 511 Mich at 57. This Court’s conclusion, however, that § 6431’s plain language “applies without limitation to all claims against state defendants” is also determinative of the question in this case. See *id.*

month notice period.⁵ If § 6431 did not apply to claims for prospective relief, namely declaratory- and injunctive-relief claims, then few claims would be left within the ambit of § 6431(1). This would be contrary to the structure of § 6431, which establishes § 6431(1)'s one-year notice period as “the general notice require[ment]” and § 6431(4)'s six-month notice period as applicable to a “subset” of claims. See *McCahan v Brennen*, 492 Mich 730, 739 (2012). Stated differently, if the COCA as a whole applies to “any demand for monetary, equitable, or declaratory relief,” MCL 600.6419(1)(a), and § 6431(4) covers the majority of monetary claims, then the reasonable conclusion is that the Legislature intended § 6431(1) to cover claims for equitable or declaratory relief.

Reading § 6431 according to its plain language, then, the statute clearly purports to apply to all claims against the state, including claims for prospective relief. The Legislature expressly included prospective-relief claims within the Court of Claims' jurisdiction and did not exempt such claims from § 6431. And the structure of § 6431, applying a separate six-month notice period for most damage claims, only further confirms this point.

⁵ This Court's past decisions reflect the fact that damages claims will almost always fall under the broad umbrella of personal injury claims. See, e.g., *Bauserman I*, 503 Mich at 180 (applying 6-month notice period to due process claims); *Mays v Governor*, 506 Mich 157, 182 (2020) (plurality opinion) (applying 6-month notice period to constitutional-tort claims). See also *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 281–282 (2005) (applying personal-injury statute of limitations to claims under the Elliot-Larsen Civil Rights Act).

B. Claims for declaratory and injunctive relief are subject to statutes of limitations generally.

This reading of § 6431 comports with the general rule that statutes of limitations apply to claims for declaratory and injunctive relief.⁶ This is reflected most clearly in MCL 600.5815, which explicitly states that statutes of limitations “shall apply equally to all actions whether equitable or legal relief is sought.” That statutes of limitations generally apply to such claims is also the rule reflected in national treatises. See 26 CJS, Declaratory Judgements, § 120 (“Generally, the period of limitation applicable to the underlying action at law or suit in equity should be applied to an action for declaratory relief.”); 43A CJS, Injunctions, § 312 (“A suit for an injunction must be brought within the time specified by any applicable statute of limitations.”).

This principle is also reflected in this Court’s decision in *Taxpayers*, on which both the Court of Claims and MIRC have relied. In that case, this Court considered whether claims for declaratory and injunctive relief were time-barred in the context of an action brought under the Headlee Amendment. *Taxpayers*, 450 Mich at 127–129. This Court ultimately concluded that applying the one-year statute of limitations to a claim to enjoin future unconstitutional taxation “would truncate the constitutional right.” *Id.* at 127. This Court further explained that applying the

⁶ As Governor Whitmer argued below, § 6431(1) is more than a mere statute of limitations. Compliance with § 6431’s requirements is a necessary precondition to the State’s limited waiver of sovereign immunity. See *Christie*, 511 Mich at 49–51. The rules governing statutes of limitations, however, further illustrate that the timing requirements of § 6431(1) can and do apply to claims for prospective relief.

statute of limitations in this context “would be very impractical,” given that the plaintiff would have valid causes of action following each unconstitutional tax in the future. *Id.* at 127–128. Thus, the Court ultimately declined to apply the statute of limitations to the plaintiff’s claims for declaratory and injunctive relief.

In reaching its holding, however, this Court explained that statutes of limitations *can and do* apply to claims for injunctive and declaratory relief generally. Regarding claims for injunctive relief, this Court noted that it “has long recognized that statutes of limitation may apply by analogy to equitable claims.” *Id.* at 127 n 9. And regarding claims seeking declaratory relief, this Court first noted that “[l]imitations statutes do not apply to declaratory judgements as such,” given that “[d]eclaratory relief is a mere procedural device.” *Id.* at 128, *citing Luckenbach Steamship Co v United States*, 312 F2d 545, 548 (CA 2, 1963). But this Court went onto explain that “[c]laims for declaratory relief necessarily derive from claims from substantive relief,” meaning that the statute of limitations applicable to the underlying substantive claim will also apply to the declaratory-relief claim. *Id.* at 128–129. In other words, “[d]eclaratory relief may not be used to avoid the statute of limitations for substantive relief.” *Id.* at 129.

Cases decided by the Court of Appeals since *Taxpayers* have emphasized that statutes of limitations do apply to claims for declaratory and injunctive relief, particularly in light of the Legislature’s enactment of MCL 600.5815.

In *Attorney General v Harkins*, the Court of Appeals noted that this Court in a case decided shortly before *Taxpayers* had intimated that statutes of limitations

do not apply to equitable claims. 257 Mich App 564, 571 (2003), abrogated on other grounds by *Garg*, 472 Mich at 290, citing *Taylor v SS Kresge Co*, 332 Mich 65, 75 (1952). The Court of Appeals concluded, however, that this holding was abrogated by the Legislature when it enacted MCL 600.5815. *Id.* at 571–572.

Similarly, in *Tenneco Inc v Amerisure Mut Ins Co*, the Court of Appeals noted that MCL 600.5815 “buttresses” the conclusion in *Taxpayers* that statutes of limitations apply to declaratory-relief actions. 281 Mich App 429, 456 (2008). Thus, the Court explained that “[t]he true nature of a plaintiff’s claim must be examined to determine the applicable statute of limitations.” *Id.* at 457.

Finally, in *Terlecki v Stewart*, the Court of Appeals noted that some past cases, including cases citing *Taxpayers*, have “suggest[ed] that because equitable relief redresses future harm, statutes of limitations do not apply.” 278 Mich App 644, 661–662 (2008). The Court of Appeals explained, however, that those past cases did not discuss MCL 600.5815 and noted further that *Taxpayers* recognized that statutes of limitations can apply to equitable actions. *Id.* at 622. Accordingly, the Court of Appeals concluded that plaintiffs’ action seeking to enjoin defendants from continuing to flood plaintiffs’ property was subject to the statute of limitations. *Id.* at 622–633.

Even *Township of Fraser v Haney*, 509 Mich 18 (2022), on which MIRC relies, applied a statute of limitations to a claim for prospective relief. There, the plaintiff township sought a permanent injunction to enforce certain zoning ordinances. *Id.* at 20. This Court did not simply hold that the statute of limitations did not apply

because the plaintiff sought prospective relief; instead, this Court analyzed the claim to determine when it accrued for purposes of the statute of limitations. *Id.* at 23–29.

Thus, in light of MCL 600.5815, as well as *Taxpayers* and its progeny, the Court of Claims erred by concluding that “statutes of limitations do not apply in declaratory judgment actions.” (COC Op, Pl’s App’x, p 040a.) For this conclusion, the Court of Claims quoted this Court’s statement in *Taxpayers* that “[l]imitations statutes do not apply to declaratory judgments as such.” (*Id.* at 041a, quoting *Taxpayers*, 450 Mich at 128). But, as discussed above, this Court went on to explain that statutes of limitations *do* apply to the substantive claims underlying declaratory-relief claims. Even more importantly, as recognized by cases since, MCL 600.5815 requires that statutes of limitations apply to all actions, legal and equitable. By reaching the opposite conclusion, the Court of Claims erred.

C. Compliance with the notice provision is necessary regardless of whether sovereign immunity applies to MIRC’s claims.

Putting aside the plain language of the statute, and the general rule that statutes of limitations apply to prospective claims, MIRC incorrectly argues that § 6431 does not apply to its claims because sovereign immunity does not attach to constitutional claims seeking prospective relief. (Pl’s Supp Br, pp 15–28.) MIRC argues at length that Michigan courts have adopted the principle, established in the federal courts under *Ex parte Young*, 209 US 123 (1908), that sovereign immunity does not extend to claims for prospective equitable relief. (Pl’s Supp Br, pp 15–20.)

Additionally, MIRC asserts that sovereign immunity does not extend to constitutional claims generally. (*Id.* at 21–28.) Based on this argument, both MIRC and amici warn that the unpublished decision below will have disastrous consequences. (See, e.g., Pl’s Supp Br, p 38 (“The Governor’s interpretation of MCL 600.6431(1) would force a constitutional showdown with this Court over whether the Judiciary’s ability to stop state officers from violating the law exists only at the whim of the other branches.”); Supp Br of Amici UFW et al., p 5 (“The Court of Appeals’ decision, in rejecting *Ex Parte Young* and related precedents, dangerously expands the scope of sovereign immunity.”).)

MIRC’s legal arguments, and warnings, are misplaced. Underlying MIRC’s argument is the assumption that, if sovereign immunity does not apply, then compliance with § 6431 is not required. (See Pl’s Br, pp 27–28 (“The Governor has no immunity for those alleged constitutional wrongs, and so cannot invoke her purported immunity under MCL 600.6431(1) against MIRC’s constitutional claims.”).) But the applicability of § 6431, or the COCA’s other procedural requirements, does not depend on sovereign immunity. Indeed, MIRC seemingly recognized this when it filed its claim in the Court of Claims, as required by § 6419 of the COCA, and verified its complaint, as required by § 6431(2)(d).

This Court recently recognized this point in *Progress Michigan v Attorney General*, 506 Mich 74 (2020). There, the Court of Appeals upheld summary disposition on the basis of sovereign immunity for failure to comply with the verification requirement of § 6431. *Id.* at 89. This Court explained, however, that

“[w]hether compliance with the COCA is properly considered a question of immunity or a question of compliance with the rules of the forum is a question of no moment because plaintiff was required to comply with the COCA either way.” *Id.* Accordingly, this Court concluded that it “need not decide whether compliance with the COCA is a question of immunity or a question of compliance with the rules of the forum because the answer is the same—plaintiff must comply with the COCA to maintain its claim against defendant.” *Id.* at 89 n 8.

In other words, while compliance with § 6431 is a necessary precondition to the State’s waiver of immunity, see *Christie*, 511 Mich at 58, the applicability of § 6431 is not limited to actions where immunity from suit is available. Stated abstractly, the fact that A (waiver of immunity) is dependent on B (compliance with § 6431) does not imply that B is dependent on A. While § 6431 does more than “merely establishing procedures for suing the state,” *Progress Mich*, 506 Mich at 89 n 8, it does not do less.

Moreover, the principle that the Legislature can place limitations on actions against the State, including constitutional claims, is well-settled. See, e.g., *Taxpayers*, 450 Mich at 125 (“We reject . . . the plaintiff’s argument that the one-year period of limitation, which places an outer limit on the time taxpayers can file suit, is unconstitutional.”); *Bauserman I*, 503 Mich at 196 (McCormack, C.J., concurring) (“A constitutional claim can become time-barred just as any other claim can. Nothing in the Constitution requires otherwise.” (cleaned up)). MIRC seemingly concedes this point, while continuing to argue that § 6431 is inapplicable

where there is no immunity from suit. (Pl’s Supp Br, p 40 n 10 (“MIRC does not argue that all statutory restrictions on remedies, such as statutes of limitations, are unconstitutional.”).)

Accordingly, MIRC and amici’s immunity-related arguments are not germane. For purposes of this case, this Court does not need to examine the contours of *Ex parte Young* under Michigan law.⁷ The procedural requirements of § 6431 are mandatory, regardless of whether sovereign immunity applies. And the Legislature acted within its authority by placing such procedural requirements on claims against the State.

D. Even under the Court of Appeals’ decision in *Pike*, § 6431 applies to claims against state officers in their official capacity.

Finally, MIRC argues for the first time that § 6431(1) does not apply to its claims under *Pike v Northern Michigan University*, in which the Court of Appeals held that § 6431 does not apply to claims against individual state employees. 327 Mich App 683, 694 (2019); (Pl’s Supp Br, pp 28–32.) This issue was first raised by amici at the application stage. (See Br of Amici ACLU et al., pp 7–11.) MIRC did not preserve this argument below or in its application brief and, as a result, neither the Court of Claims nor Court of Appeals considered it. For this reason alone, this Court should decline to reach this issue.

⁷ To the extent amici are concerned about the broader implications of the Court of Appeals’ sovereign-immunity analysis, such concerns are unfounded. Not only is the decision below unpublished, and therefore not binding, its sovereign-immunity analysis, for the reasons set forth above, was not necessary to its ultimate holding that § 6431 applies to all claims against the State, including prospective claims.

Regardless, *Pike* involved an individual-capacity claim. Here, by contract, MIRC brought its claim against Governor Whitmer in her official capacity. Since *Pike* was decided, the Court of Appeals has clarified that an official-capacity claim against a state official, unlike the gross-negligence individual-capacity claim at issue in *Pike*, is a claim against the State for purposes of § 6431. *City of Mt Pleasant v Acting Director of DTMB*, __ Mich App __ (2024), slip op at 11–12 (Def’s Attach A). See also *McDowell v Fuller*, 169 Mich 332, 336 (1912) (holding that an official-capacity suit is a suit against the state). Accordingly, this Court does not need to reach the issue of whether *Pike* was correctly decided. Even if § 6431 does not apply to claims against individual employees, it does apply to official-capacity claims like the one here.

MIRC intimates in passing that an official-capacity claim is not a claim against the state for purposes of § 6431 if it seeks only prospective relief. (Pl’s Supp Br, p 32 n 8.) True, in the federal courts under *Ex parte Young*, official-capacity suits for prospective relief “are not treated as actions against the State” for purposes of Eleventh-Amendment immunity. See *Kentucky v Graham*, 473 US 159, 167 n 14 (1985), citing *Ex parte Young*, 209 US at 123. As a matter of statutory law in Michigan, however, an official-capacity suit is equivalent to a suit against the State or the applicable governmental unit. See MCL 600.2051(4). See also MCR 2.201(C)(5) (providing same). Not surprisingly, then, while MIRC argues at length that Michigan law recognizes the principal that sovereign immunity does not extend to claims for prospective relief, MIRC does not identify Michigan caselaw holding

that official-capacity claims for prospective relief are not claims against the State. Indeed, *City of Mt Pleasant* itself involved a claim for declaratory relief, not damages. See slip op at 1, 12. Accordingly, MIRC's claim against Governor Whitmer in her official capacity is a claim against the State for purposes of § 6431, and MIRC was required to comply with its requirements.

II. MIRC did not comply with § 6431's notice requirement.

Having established that § 6431 applies to claims for prospective relief, the next question is when MIRC's claim accrued for purposes of the statute. This requires consideration of both the wrong that MIRC alleges and the timing of when that wrong first allegedly caused actionable harm to MIRC. Looking to MIRC's complaint, the wrong alleged is the Court of Appeals' decision in *Sanchez*, and MIRC alleges that this wrong began causing it harm in 2017. Accordingly, MIRC's claims accrued over a year before it filed suit in 2021. And while a series of ongoing wrongs may give rise to independent causes of action, MIRC's complaint identifies only one "wrong," as defined by this Court, even though MIRC alleges that this wrong has continued to cause it harm. As a result, MIRC's reliance on this Court's decisions in *Haney* and *Sunrise Resort* is misplaced, and its claims are untimely under § 6431.

A. MIRC's claims accrued more than a year before filing suit.

Under MCL 600.5827, a claim "accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." As this Court

has explained, “the date of the ‘wrong’ referred to in MCL 600.5827 is the date on which the defendant’s breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.” *Bauserman I*, 503 Mich at 183 (cleaned up). The relevant harms under this analysis are the “actionable harms” pled in the complaint. *Id.* (cleaned up). And the actionable harm is equivalent to the “event giving rise to the cause of action.” *Id.*, quoting MCL 600.6431(3). In the context of a claim seeking declaratory and injunctive relief, as discussed above, the cause of action accrues when the underlying substantive claim for relief accrues.⁸ See *Taxpayers*, 450 Mich at 127–129; *Tenneco*, 281 Mich App at 455–456.

Here, MIRC’s underlying substantive claim is best understood as a constitutional claim that, at bottom, seeks to overturn the Court of Appeals’ decision in *Sanchez*.⁹ MIRC claims that *Sanchez* is preempted by federal law, (Compl, Pl’s App’x, pp 019a–020a, ¶¶ 45–47), and interprets MCL 418.361(1) in a

⁸ The Court of Appeals below concluded that a declaratory judgment action accrues “when an actual controversy arises.” (COA Op, Pl’s App’x, p 4 (cleaned up).) See also *Glorycrest Carpenter Rd v Adams Outdoor Advertising*, __ Mich App __ (2024) (Docket No. 366261) (stating same). In a future case, this Court may be required to consider whether this articulation properly accounts for the fact that a declaratory judgment may be available before harm occurs. See *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586 (2020); 3 Restatement Judgment, 3d, § 33 (explaining that declaratory judgment can be brought before or after the underlying claim has accrued). But this Court does not need to consider that question in this case because, as explained further below, MIRC’s underlying claim has accrued.

⁹ This analysis is made difficult by the fact that MIRC seeks to bring a claim that, understandably, is without precedent: a declaratory judgement action that seeks explicitly to overturn a specific, binding case. In other words, MIRC improperly seeks to use the declaratory judgment statute to ask the Court of Claims to declare binding caselaw wrongly decided and unconstitutional.

way that renders the statute unconstitutionally vague, (*Id.*, pp 023a–024a, ¶¶ 57–63). And it is *Sanchez* that MIRC claims has caused its harms. (See Compl, Pl’s Appx, pp 025a–026a, ¶¶ 69–78.) Stated differently, if MIRC had attempted to bring its action as a claim for damages, rather than a declaratory judgment action, it would have been a constitutional tort claim with the decision in *Sanchez* being the tortious wrong.

Looking to the allegations in MIRC’s complaint, this underlying claim accrued in 2017 when MIRC opened its Farmworker and Immigrant Rights (FWIR) project. MIRC’s alleged actionable harm, for purposes of MCL 600.5827, is the increased workload on MIRC resulting from the implementation of *Sanchez*. (See Compl, Pl’s Appx, pp 025a–026a, ¶¶ 69–78.) And MIRC alleges that this harm began as soon as it opened its FWIR in 2017. (*Id.*, pp 024a–025a, ¶¶ 66, 69.) Thus, MIRC’s claims accrued well-over a year before it filed suit in 2021.

B. This case, unlike *Sunrise Resort* and *Haney*, does not involve repeated wrongs against MIRC.

MIRC does not meaningfully dispute that its claim accrued in 2017 but argues that its claim was nonetheless timely because it has suffered ongoing wrongs. (Pl’s Supp Br, pp 42–44.) In support, MIRC relies primarily on two recent cases—*Haney* and *Sunrise Resort*—in which this Court explained that a series of ongoing wrongs each gives rise to an independent cause of action. *Haney*, 509 Mich at 24–28; *Sunrise Resort Ass’n v Cheboygan Cty Rd Comm*, 511 Mich 325, 336–340 (2023). But MIRC’s reliance on *Haney* and *Sunrise Resort* is misplaced.

As an initial matter, MIRC conflates ongoing *harms* with ongoing *wrongs*. MIRC emphasizes that the *Sanchez*-based policy has “imposed costs on MIRC in the year prior to the Complaint,” (Pl’s Supp Br, p 42), but whether MIRC has continued to experience financial costs beyond 2017 is not the pertinent question. “Additional damages resulting from the same harm do not reset the accrual date or give rise to a new cause of action.” *Frank v Linkner*, 500 Mich 133, 155 (2017). Instead, “the question is at what point plaintiffs first incurred or suffered the actionable harm” *Bauserman I*, 503 Mich at 185. Per MIRC’s complaint, that point was the opening of its FWIR in 2017, meaning that is when its claims accrued.

As this Court recognized in *Haney* and *Sunrise Resort*, a case may involve a series of ongoing *wrongs* each giving rise to an independent cause of action, but that is not what MIRC has alleged here. This Court explained in *Sunrise Resort* that, to establish an ongoing series of wrongs, each “event” must satisfy all the elements of the claim at issue. 511 Mich at 337. This Court thus distinguished a case involving ongoing wrongs “from one in which an isolated incident caused successive injuries that do not give rise to a new cause of action.” *Id.* at 337 n 2.

Here, MIRC alleges only one such “event” giving rise to a cause action: the implementation of the *Sanchez* policy, which first allegedly caused actionable harm to MIRC in 2017. Per MIRC’s complaint, it is the *Sanchez* policy that has caused the private bar to refuse referrals, forcing MIRC to deviate from its “design and mission” and divert resources to assisting with worker’s compensation claims. (Compl, Pl’s App’x, p 025a, ¶¶ 70–71.) While MIRC has continued to experience

this alleged harm, MIRC has not experienced an ongoing series of wrongs, each giving rise to an independent cause of action.

Looking at MIRC's claim from another angle helps illustrate this point. If MIRC attempted to sue over an individual denial of worker's compensation benefits, MIRC would not be able to show standing. This is because no individual denial of benefits is the alleged cause of MIRC's injury; the cause of MIRC's injury, and the focus of its complaint and requested relief, is the *Sanchez* policy, which has caused the private bar to refuse to take worker's compensation cases. If not for *Sanchez*, MIRC would be able to refer cases to the private bar, in line with MIRC's "design and mission." (Compl, Pl's App'x, p 025a, ¶ 70.) As a result, allowing MIRC to amend its complaint to identify more recent denials of benefits would not save its claims. (See Pl's Supp Br, p 41 n 11.) No individual denial of benefits can be an event giving rise to a cause of action for MIRC.

Thus, this case is unlike the claims at issue in *Taxpayers*, *Haney*, and *Sunrise Resort*. In each of those cases, the claims involved a series of ongoing or future wrongs, each of which would permit an independent suit by the plaintiff. See *Taxpayers*, 450 Mich at 127–128 (refusing injunctive relief "would be very impractical given that those same plaintiffs may generally proceed with otherwise valid causes of action to refund taxes in excess of Headlee limitations"); *Haney*, 509 Mich at 28–29 ("A plaintiff is free to bring a new action each time a defendant commits a new violation."); *Sunrise Resort*, 511 Mich at 337 (identifying an independent cause of action within the limitations period). Instead, this case is

similar to *Harkins* and *Terlecki* where a single event giving rise to a cause of action has caused ongoing alleged harms. See *Harkins*, 257 Mich App at 572–573; *Terlecki*, 278 Mich App at 647, 661–662.

For this same reason, this case is also unlike the numerous hypotheticals offered by MIRC and amici to warn that this case will allow governmental wrongdoers to continue their wrongdoing unabated. (See Pl’s Supp Br, pp 45–46; Supp Br of Amicus NPAP, pp 3–5; Supp Br of Amici UFW et al., pp 17–21.) An individual suffering ongoing wrongs has an independent cause of action, assuming the elements of the claim are satisfied, each time he or she is wronged. In the context of a benefits dispute, an individual wrongfully denied benefits could have an independent cause of action each time he or she is denied benefits, even if this happened multiple times. The Court of Appeals’ reasoning, which recognized the distinction between ongoing harm and repeated wrongs, thus does not bar a claimant from seeking prospective relief from ongoing wrongs.

Moreover, the result in this case does not preclude a future challenge to *Sanchez*. An individual claimant, appealing the denial of worker’s compensation benefits under *Sanchez*, could ask this Court to consider whether *Sanchez* was correctly decided. To the extent MIRC’s declaratory-relief action was ever a proper vehicle for challenging *Sanchez*, however, its claim is untimely. MIRC is not suffering an ongoing series of wrongs; it identifies one alleged wrong causing it actionable harm beginning in 2017. MIRC’s claim, filed four years later, is barred by § 6431(1).

CONCLUSION AND RELIEF REQUESTED

Because the Court of Appeals correctly determined that MIRC was required to comply with § 6431 and did not do so, Governor Whitmer respectfully requests that this Court deny leave to appeal or issue an opinion affirming the Court of Appeals' opinion.

Respectfully submitted,

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Dated: March 21, 2025

WORD COUNT STATEMENT

This **supplemental brief** contains 6,718 words.

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