

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
Consolidated Per Curiam Opinion of Feeney, P.J., Kelly, J., and Rick, J.

MICHIGAN IMMIGRANT RIGHTS
CENTER,

Plaintiff,

v.

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

Defendant,

MSC Case No. 167300

Court of Appeals Nos. 361451 & 362515
(Feeney, P.J., Kelly, M.J. and Rick, J.J.)

Court of Claims No. 21-000208-MZ
(Hon. Elizabeth L. Gleicher)

SUPPLEMENTAL BRIEF OF AMICI CURIAE
IN SUPPORT OF PLAINTIFF-APPELLANT

**THE UFW FOUNDATION
DETROIT JUSTICE CENTER
FARMWORKER LEGAL SERVICES
NATIONAL IMMIGRATION LAW CENTER
NATIONAL EMPLOYMENT LAW PROJECT
NATIONAL LAWYER'S GUILD – DETROIT & MICHIGAN CHAPTER**

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TABLE OF CONTENTS

INTERESTS OF AMICI CURIAE	v
INTRODUCTION	1
LEGAL ARGUMENT	3
I. MCL § 600.6431 Does Not Apply to Claims for Prospective Equitable Relief. 3	
A. The One-Year Notice Requirement in MCL § 600.6431 Applies Only to Claims for Damages, Not Equitable Relief.	3
B. <i>Ex Parte Young</i> and Related Precedents Mandate the Availability of Prospective Relief Against State Officials.....	5
C. Prospective Relief Is Essential for Addressing Ongoing Violations of Rights. ...	9
II. Even if MCL § 600.6431 Does Apply, Plaintiff’s Claims Are Timely..... 11	
A. The One-Year Notice Period Should Not Apply to Continuing Violations Under Michigan Law.....	12
B. MCL § 600.6431 Was Intended to Provide Fair Notice, Not to Bar Legitimate Claims for Ongoing Harms.....	14
C. The Court of Appeals Misinterpreted the Accrual of Claims Under Michigan Law.	15
D. The Court of Appeals' Application of MCL § 600.6431 Shields the State from Accountability.	17
III. The Court of Appeals' Ruling Conflicts with Established Precedents and Constitutional Principles. 21	
A. The Court of Appeals' Decision Expands Sovereign Immunity Beyond Its Proper Bounds.....	22
B. The Ruling Could Lead to Systemic Erosion of Civil Rights Protections.....	23
C. The Michigan Supreme Court Must Restore Balance by Reversing the Court of Appeals’ Decision to Prevent Further Harm.....	28
CONCLUSION	29

TABLE OF AUTHORITIES

MICHIGAN CASES

<i>Bauserman v. Unemployment Ins. Agency</i> , 503 Mich. 169; 931 NW2d 539 (2019) ..	13, 16
<i>Dep't of Civil Rights ex rel Burnside v Fashion Bug of Detroit, Inc.</i> , 473 Mich 863; 698 NW2d 404 (2005)	11
<i>House Speaker v Governor</i> , 195 Mich App 376 (1992), rev'd on other grounds, 443 Mich 560 (1993)	9
<i>Li v Feldt (After Second Remand)</i> , 439 Mich 457; 487 NW2d 127 (1992)	4, 7, 8
<i>Mays v Snyder</i> , No. 16-000017-MM, slip op (Mich Ct Cl Oct 26, 2016)	26
<i>McCready v Hoffius</i> , 459 Mich 131; 586 NW2d 723 (1998)	11
<i>McDowell v State Highway Commissioner</i> , 365 Mich 268 (1961)	4, 8, 22
<i>Mich Immigrant Rights Ctr v Governor</i> , unpublished opinion of the Court of Appeals, issued May 30, 2024 (Docket No. 361451), 2024 WL 2790290	17
<i>Mich Coalition of State Employee Unions v Civil Serv Comm'n</i> , 465 Mich 212, 219; 634 NW2d 692 (2001)	11
<i>People v Bewersdorf</i> , 438 Mich 55; 475 NW2d 231 (1991)	25
<i>Rowland v Washtenaw Cnty Road Com'n</i> , 477 Mich 197; 731 NW2d 41 (2007)	14
<i>Rusha v Dep't of Corr</i> , 307 Mich App 300; 859 NW2d 735 (2014)	25
<i>Sharp v City of Lansing</i> , 464 Mich 792, 802; 629 NW2d 873 (2001)	1, 11, 22, 25
<i>Smith v Dep't of Public Health</i> , 428 Mich. 540; 410 NW2d 749 (1987)	7, 22
<i>Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm'n</i> , 511 Mich 325, 999 NW2d 423 (2023)	1, 16
<i>Thompson v Auditor General</i> , 261 Mich 624; 247 NW 360 (1933)	8
<i>Township of Fraser v Haney</i> , 509 Mich. 18; 983 NW2d 309 (2022)	1, 13, 15, 16
<i>Wilcox v Wheatley</i> , 342 Mich App 551; 995 NW2d 594 (2022)	18

NON-MICHIGAN CASES

<i>Edelman v Jordan</i> , 415 US 651 (1974)	6, 10, 24
<i>Edwards v Ohio DOT</i> , 2016-Ohio-5221, 2016 WL 3902325 (Ohio Ct Cl 2016)	9
<i>Ex Parte Young</i> , 209 US 123 (1908)	passim
<i>Havens Realty Corp v Coleman</i> , 455 US 363 (1982)	13
<i>Idaho v Coeur d'Alene Tribe of Idaho</i> , 521 US 261 (1997)	9
<i>Marie O v Edgar</i> , 131 F3d 610 (CA 7, 1997)	9
<i>National Railroad Passenger Corp v Morgan</i> , 536 US 101 (2002)	13
<i>Verizon Md Inc v Public Serv Comm'n of Md</i> , 535 US 635 (2002)	5, 6, 9

STATUTES

MCL § 421.32a	19, 20
MCL § 421.33	20
MCL § 600.5503(1)	18

MCL § 600.6431	passim
MCL § 600.6431(1).....	12

OTHER AUTHORITIES

42 CFR § 435.912(c)(3).....	20
Mich Const art I, § 17	19

STATEMENT OF QUESTIONS PRESENTED

- I. WHETHER MCL 600.6431 APPLIES TO CLAIMS FOR PROSPECTIVE RELIEF AGAINST STATE OFFICERS

Amici answer: “no.”

Plaintiff’s answer: “no.”

Defendant’s answer: “yes.”

- II. IF MCL 600.6431 APPLIES, WHETHER A CLAIM FOR PROSPECTIVE RELIEF IS UNTIMELY IF SIMILAR CONDUCT INJURED THE PLAINTIFF MORE THAN ONE YEAR BEFORE FILING.

Amici answer: “no.”

Plaintiff’s answer: “no.”

Defendant’s answer: “yes.”

INTERESTS OF AMICI CURIAE¹

The Detroit & Michigan Chapter of the National Lawyers Guild (“NLG”) is a progressive association of lawyers, legal workers, and law students committed to defending civil rights and supporting social justice movements. NLG regularly advocates for individuals and groups challenging unconstitutional state actions. The NLG is concerned the Court of Appeals' ruling represents a significant procedural barrier that could prevent individuals and groups from challenging state actions that violate their civil rights. The organization recognizes the chilling effect this decision could have on civil rights litigation, and the disproportionate effect it will have on marginalized communities that are often the targets of state overreach. The NLG is committed to ensuring that these communities retain access to the courts and the legal remedies necessary to challenge unconstitutional actions and, therefore, joins this brief in support of overturning the Court of Appeals' decision.

The Detroit Justice Center (“DJC”) is a non-profit law firm working alongside Metro Detroit communities to create economic opportunities, transform the justice system, and promote equitable and just cities. Through DJC’s work, attorneys and staff regularly represent clients whose rights have been violated by the police and other state actors. DJC is deeply concerned that the Court of Appeals' decision will prevent those individuals and communities we work closely with from seeking justice through the court system. Many of DJC’s clients have little or no income. It regularly takes years for them to find an

¹ No party or counsel for a party authored this brief either in whole or in part. No person or entity other than the amici curiae, their members or their counsel, contributed money intended to fund preparing or submitting this brief.

organization willing to advocate for their rights. During that time, those clients have often been harmed repeatedly by the police or other state actors, and the Court of Appeals decision may very well foreclose any opportunity they might have for relief. In addition, DJC's work alongside movements also means that we collaborate with community groups and other organizations and file cases on their behalf. DJC and their partners have seen first-hand how harm inflicted on a single community member is harm inflicted on the whole. The Court of Appeals' decision rejects that fundamental truth and should not stand. DJC joins this brief to ensure that we can continue to challenge unconstitutional practices and advocate for justice for our community partners.

The UFW Foundation (“UFW”) is a Department of Justice-accredited immigration legal service provider that offers critical services and resources to farm workers and immigrant communities. UFW's regional offices, including a regional office in Michigan, annually serve over 100,000 immigrants in leading agricultural regions. The organization has a long history of fighting for safe working conditions and protection against exploitation, particularly for workers who are often marginalized and face significant barriers to justice. The organization is concerned that the Court of Appeals' decision will hinder the ability of workers to seek redress for ongoing violations of their rights, such as continuous wage theft, unsafe working environments, and discriminatory practices. The UFW Foundation joins this brief out of a commitment to ensuring that agricultural workers retain the ability to challenge these ongoing violations and to uphold the principles of fairness and justice central to its mission.

Farmworker Legal Services (“FLS”) is a division of the Michigan Advocacy

Program dedicated to ensuring that immigrant, migrant, and seasonal farmworkers have equal access to economic and social justice. FLS engages in civil impact litigation, particularly in employment and civil rights cases, to protect the rights of farmworkers who are often vulnerable to exploitation and discrimination. With a small team of dedicated staff attorneys, FLS provides direct legal representation to migrant farmworkers in Michigan, advocating for fair wages, safe working conditions, and protection against unlawful employment practices. The Court of Appeals' decision threatens to undermine the ability of farmworkers to seek justice for ongoing violations, such as continuous wage theft or discriminatory practices. FLS joins this brief to emphasize the importance of preserving legal remedies for these workers and to ensure that the courts remain a viable avenue for challenging ongoing injustices.

National Immigration Law Center (“NILC”) is a leading organization dedicated to defending and advancing the rights of low-income immigrants in the United States. Through its work, NILC ensures immigrant communities have access to justice and are protected against discriminatory practices and governmental overreach. The Court of Appeals' decision threatens to undermine the ability of immigrants to seek legal redress for ongoing violations of their rights, such as continuous discrimination or prolonged detention. NILC joins this brief out of a commitment to protecting the legal rights of immigrant communities and ensuring that the courts remain a viable avenue for challenging ongoing injustices.

Centro de los Derechos del Migrante (“CDM”) is a transnational organization dedicated to protecting the rights of migrant workers in the United States and Mexico.

CDM advocates for fair treatment, safe working conditions, and equal access to justice for migrant workers who often face significant barriers due to their immigration status and the cross-border nature of their work. The Court of Appeals' decision threatens to undermine the ability of migrant workers to seek redress for ongoing violations of their rights, such as ongoing exploitation or unsafe working conditions. By limiting the statute of limitations to the first instance of harm, the ruling effectively restricts migrant workers' access to legal remedies, particularly for those who experience ongoing abuses. CDM joins this brief out of a commitment to ensuring that migrant workers have the legal protections necessary to challenge these ongoing violations and to advocate for an interpretation of the law that upholds justice and fairness.

National Employment Law Project (“NELP”) is a national organization dedicated to advocating for the rights of workers, with a focus on promoting fair labor standards, ensuring safe working conditions, and protecting against wage theft and other forms of exploitation. NELP works to advance policies that support low-wage and immigrant workers, who are often the most vulnerable to ongoing labor violations. The Court’s decision poses a significant threat to the ability of workers to seek justice for continuous violations, such as ongoing wage theft, harassment, or unsafe working conditions. NELP joins this brief to emphasize the critical importance of maintaining access to legal remedies for workers facing persistent abuses and to advocate for a legal framework that upholds workers’ rights and ensures that justice is not denied due to arbitrary limitations on the ability to bring claims.

INTRODUCTION

The Court of Appeals' overly broad interpretation of MCL § 600.6431's one-year notice requirement extends its application to claims for prospective relief, effectively converting a procedural notice rule into a substantive immunity defense. This ruling insulates state officials from accountability for ongoing violations and would have the effect of chilling an individual's ability to seek relief from continuing constitutional harms.

This interpretation conflicts with longstanding precedent establishing claims for prospective relief are not subject to procedural notice requirements designed for damages claims. Both Michigan and federal courts have repeatedly held that sovereign immunity does not preclude injunctive relief to prevent ongoing violations. See, e.g., *Ex Parte Young*, 209 US 123 (1908); *Sharp v City of Lansing*, 464 Mich 792, 802; 629 NW2d 873 (2001).

Even if MCL § 600.6431 applies to claims for prospective relief, the Court of Appeals' interpretation is inconsistent with established precedent holding that each new application of an unlawful policy gives rise to a new cause of action. This Court has recognized that government misconduct does not become immune from challenge simply because an earlier violation went unaddressed. See, e.g., *Township of Fraser v Haney*, 509 Mich 18; 983 NW2d 309 (2022); *Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm'n*, 511 Mich 325 (2023). By rigidly applying the one-year notice requirement from the first injury, the Court of Appeals misconstrued precedent and insulated state official from judicial review for ongoing violations.

This misinterpretation of MCL § 600.6431 has serious implications beyond the case at bar. If allowed to stand, the interpretation risks limiting the ability of individuals and

organizations to challenging systemic violations by state actors, particularly where the harm is ongoing or recurrent. Under this framework, state agencies could continue enforcing unlawful policies indefinitely—so long as the first affected party did not file suit within a year. This result would undermine the judiciary’s role in enforcing the law and deny relief to those suffering continuous harm.

This Court’s review is necessary to resolve the misapplication of MCL § 600.6431 and to reaffirm that procedural notice requirements cannot bar prospective relief against state officials engaged in ongoing unlawful conduct. Amici curiae respectfully urge this Court to reverse the Court of Appeals' decision and clarify that plaintiffs seeking to enjoin continuous violations are not subject to the pre-suit notice requirements of MCL § 600.6431.

The amici curiae, who represent a diverse array of legal and advocacy organizations, are deeply concerned about the broader implications of the Court of Appeals' ruling. The decision directly impacts their ability to protect the rights of their clients and constituencies, particularly in cases involving ongoing violations of constitutional and statutory rights.

The amici curiae assert that the Court of Appeals' decision misapplies MCL § 600.6431 and departs from Michigan precedent, undermining long-standing principles governing sovereign immunity. The rigid application of the one-year notice requirement conflicts with the broader legal principles that govern the accrual of claims for ongoing violations.

LEGAL ARGUMENT

I. MCL § 600.6431 Does Not Apply to Claims for Prospective Equitable Relief.

The Court of Appeals erred in holding that MCL § 600.6431 applies to claims for prospective equitable relief. The statute governs procedural requirements for claims against the State, but its language, legislative intent, and judicial interpretations make clear that it applies only to suits seeking monetary damages. By contrast, Plaintiff seeks only prospective relief to halt the State's ongoing unlawful conduct, not to obtain compensation for past harm.

Longstanding precedent from both Michigan and federal courts confirm that procedural notice requirements do not bar injunctive claims against State officials. In these cases, courts have consistently distinguished between suits that seek financial recovery—which implicate sovereign immunity—and those that seek only to prevent continued unlawful action. Because Plaintiff's claims fall into the latter category, MCL § 600.6431 does not apply, and the Court of Appeals' ruling must be reversed.

A. The One-Year Notice Requirement in MCL § 600.6431 Applies Only to Claims for Damages, Not Equitable Relief.

Michigan courts have long recognized that sovereign immunity does not bar claims seeking prospective relief against government officials. Instead, procedural notice requirements such as those found in MCL § 600.6431 have historically been applied to claims for damages against the State, not to lawsuits seeking to enjoin unconstitutional conduct.

MCL § 600.6431's text, structure, and legislative purpose make clear that it was

enacted as a procedural safeguard to ensure that the State has adequate notice of monetary claims filed against it, rather than a blanket restriction on all lawsuits against government officials. The statute provides that “[n]o claim may be maintained against the state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims a written notice of intention to file a claim or the claim itself.” Notably, the statute does not define “claim” to include non-monetary relief, and its legislative history does not support an application beyond damages cases.

The Michigan Supreme Court has previously distinguished between claims for monetary relief—where procedural safeguards such as notice statutes are applied—and claims for prospective equitable relief, where these requirements do not serve the same function. In *Li v Feldt (After Second Remand)*, 439 Mich 457; 487 NW2d 127 (1992), overruled on other grounds by [*Pohutski v Allen Park*, 465 Mich 675, 686-689; 641 NW2d 219 \(2002\)](#), the Court declined to extend sovereign immunity to suits seeking only injunctive relief. Similarly, in *McDowell v State Highway Commissioner*, 365 Mich 268 (1961), the Court emphasized that claims challenging unlawful state policies cannot be dismissed on procedural grounds where plaintiffs seek only to enjoin ongoing violations.

This distinction aligns with federal precedent, particularly *Ex Parte Young*, 209 US 123 (1908), where the U.S. Supreme Court held that suits against state officials seeking to enjoin unconstitutional conduct are not barred by sovereign immunity. Courts have consistently held that procedural barriers, such as notice requirements or statutes of limitations, cannot be used to shield ongoing unconstitutional state actions from judicial review. In *Verizon Md. Inc. v Public Serv Comm’n of Md*, 535 US 635 (2002), the Court

reaffirmed that government officials may not invoke sovereign immunity or procedural defenses to avoid compliance with the law when facing claims for prospective relief.

MCL § 600.6431 must be interpreted in accordance with these well-established principles. Because Plaintiff seeks only prospective injunctive relief, rather than monetary damages, this procedural notice requirement is inapplicable and cannot serve as a basis for dismissal.

The Court of Appeals erred in assuming that MCL § 600.6431 applied to all claims against the State, regardless of the relief sought. As demonstrated in the following sections, even if MCL § 600.6431 did apply, the Court of Appeals' rigid interpretation of the notice provision and accrual doctrine is legally incorrect.

B. *Ex Parte Young* and Related Precedents Mandate the Availability of Prospective Relief Against State Officials.

The Court of Appeals' interpretation of MCL § 600.6431 not only misapplies the statute; it fundamentally distorts the established legal principles surrounding sovereign immunity. Sovereign immunity, while providing necessary protections to the state, was never intended to serve as a shield for ongoing unlawful conduct by state officials. The doctrine has always recognized a critical balance—protecting state interests without undermining the enforcement of federal and constitutional rights. However, by effectively barring prospective relief against state officials, the Court of Appeals' ruling threatens to erode this balance, allowing continuous violations of rights to persist unchecked. The Court of Appeals' decision, in rejecting *Ex Parte Young* and related precedents, dangerously expands the scope of sovereign immunity. This expansion not only conflicts with

Michigan's legal tradition but also places the state in opposition to well-established constitutional principles that protect individuals from ongoing harm inflicted by state actors.

1. Ex Parte Young Establishes That Sovereign Immunity Does Not Bar Suits for Prospective Relief.

Ex Parte Young and its progeny unequivocally establish that plaintiffs can seek injunctive relief against state officials to prevent ongoing or future violations of federal law. See *Edelman v. Jordan*, 415 U.S. 651 (1974) (drawing a distinction between barred claims for retroactive monetary relief and permissible claims for prospective injunctive relief); *Verizon Md., Inc.*, 535 U.S. at 635 (reiterating that procedural barriers cannot insulate state officials from compliance with federal law). This precedent recognizes that while states enjoy sovereign immunity, this immunity cannot extend to actions by state officials that contravene federal law or the Constitution. *Ex Parte Young*, 209 US at 155-56. By permitting courts to issue injunctions against state officials, *Ex Parte Young* provides a necessary mechanism to prevent ongoing harm and to ensure that state actions conform to constitutional requirements. *Id.*

The panel's assertion that forward-looking declaratory relief is unavailable when a statutory time-bar has run on the claim for substantive relief is directly at odds with established law. The U.S. Supreme Court made it clear that when a state official's actions conflict with federal law, they are stripped of their official character, and sovereign immunity does not protect them from prospective relief. *Ex Parte Young*, 209 US at 159-60 (1908). The Michigan Supreme Court has similarly recognized this principle. See *Sharp*

v City of Lansing, 464 Mich 792, 802 (2001) (holding that courts may grant injunctive relief to prevent ongoing constitutional violations by government entities).

The Court of Appeals' ruling, however, explicitly dismissed the applicability of *Ex Parte Young* to Michigan law, incorrectly asserting that sovereign immunity in Michigan does not allow for exceptions where claims seek prospective equitable relief. *Michigan Immigrant Rights Ctr v Governor*, No. 361451, 2024 WL 2790290 at 5-6. This misinterpretation not only conflicts with long-standing Michigan jurisprudence but also represents a significant departure from the principles that have guided state and federal courts in protecting constitutional rights against ongoing violations.

Despite its rejection of *Ex Parte Young*, the panel failed to address the fact that Michigan courts have held that sovereign immunity does not extend to claims seeking prospective equitable relief to stop government misconduct. See *Li v Feldt*, 439 Mich at 468 (emphasizing that state officials cannot invoke sovereign immunity to avoid compliance with constitutional obligations). By requiring claims to be filed within a rigid one-year notice period, even in the face of continuous violations, the Court of Appeals' decision undermines the very purpose of *Ex Parte Young*, creating a perverse incentive for state actors to prolong unconstitutional actions, secure in the knowledge that delayed discovery or procedural hurdles will protect them from judicial scrutiny.

2. The COA's Ruling Ignores Well-Established Doctrine and is a Precedential Outlier.

The decision by the Court of Appeals conflicts with well-established precedent, which firmly holds that sovereign immunity cannot be invoked to shield state officials from

being ordered to comply with the law. Michigan courts have long recognized the necessity of limiting sovereign immunity in circumstances where it would otherwise conflict with the enforcement of constitutional rights. See *Smith*, 428 Mich at 545 (acknowledging that precedent limits sovereign immunity for prospective relief); see also .

In *Li*, 439 Mich at 457, this Court explicitly stated that sovereign immunity does not bar claims seeking prospective equitable relief. The Court held that while governmental immunity might protect the state from damages claims, it does not preclude injunctive relief aimed at stopping ongoing unlawful actions. *Id.* This principle has been a cornerstone of Michigan's sovereign immunity doctrine, underscoring the distinction between immunity from retrospective damages and liability for prospective injunctive relief. Despite this clear precedent, the Court of Appeals erroneously asserted that *Li* was non-binding, mischaracterizing the opinion as “commanding no majority,” even though none of the Justices disputed Justice Cavanagh’s holding that limiting the State’s ability to claim sovereign immunity from prospective relief is “fundamental to sovereign immunity law.” *Id.* at 496. This misinterpretation of *Li* disregards the established understanding that Michigan courts have long upheld the availability of prospective relief in cases where ongoing harm is at issue.

The Court of Appeals ignored a wealth of other decisions reinforcing this principle. See, e.g., *McDowell v State Highway Commissioner*, 365 Mich 268; 112 NW2d 491 (1961) (reaffirming that sovereign immunity does not prevent courts from issuing injunctive relief to stop ongoing unlawful conduct); *Thompson v Auditor General*, 261 Mich 624; 247 NW 360 (1933) (holding that Michigan courts could, and indeed should, apply a "liberal rule"

in favor of prospective relief, ensuring that state officials cannot use sovereign immunity as a shield against being compelled to follow the law); *House Speaker v Governor*, 195 Mich App 376 (1992), rev'd on other grounds, 443 Mich 560 (1993) (reiterating that actions seeking only equitable relief, such as injunctions or declaratory judgments, do not fall within the purview of governmental immunity). The Court of Appeals' recent decision represents a significant departure from these well-established principles.

Furthermore, this decision places the Court of Appeals as an outlier in the broader context of American jurisprudence. Courts across various jurisdictions have consistently recognized that prospective relief is not subject to the same procedural requirements as claims seeking retrospective relief. See, e.g., *Idaho v Coeur d'Alene Tribe of Idaho*, 521 US 261, 281 (1997) (reaffirming that "an allegation of an ongoing violation of federal law where the requested relief is prospective is ordinarily sufficient to invoke the *Young* fiction."); *Verizon Md, Inc*, 535 US at 645 (holding the application of *Ex Parte Young* should focus on whether the complaint alleges an ongoing violation and seeks prospective relief); *Marie O v Edgar*, 131 F3d 610, 615 (CA 7, 1997) (holding state actions constituting new violations can and should be challenged in court); *Edwards v Ohio DOT*, 2016-Ohio-5221, 2016 WL 3902325 at *20-25 (Ohio Ct Cl 2016) (holding state officials cannot hide behind sovereign immunity to avoid accountability for continuous violations). The ruling by the Court of Appeals here diverges sharply from this consensus, potentially leaving individuals and organizations without recourse to challenge ongoing violations of their rights.

C. Prospective Relief Is Essential for Addressing Ongoing Violations of Rights.

The Court of Appeals' interpretation of MCL § 600.6431, in imposing the restrictive one-year pre-notice requirement on prospective relief, effectively shields the State from accountability for ongoing and future violations of constitutional rights. By starting the clock at the first instance of harm, this rule prevents plaintiffs from seeking relief for continuous or recurring violations, even when those harms persist well beyond the initial violation. This interpretation enables state actors to evade legal consequences by exploiting procedural technicalities. This interpretation disproportionately harms marginalized and vulnerable communities, who already face greater risks of state misconduct and systemic violations.

The judiciary has consistently recognized the necessity of prospective relief to address ongoing harm, particularly when the harm extends beyond the initial violation. This principle ensures that plaintiffs are not left without recourse simply because the statute of limitations has expired for the original wrongdoing. The availability of equitable remedies, such as injunctions and declaratory relief, is crucial in addressing continuous violations that can cause sustained damage to individuals and communities.

Precedent firmly establishes that courts must intervene when ongoing violations persist, regardless of whether the statute of limitations has run on the initial claims. See, e.g., *Ex Parte Young*, 209 U.S. at 123 (reaffirming that sovereign immunity does not shield state officials from suits seeking to enjoin unconstitutional conduct). The U.S. Supreme Court later clarified in *Edelman*, 415 US at 675-78, that while sovereign immunity bars retroactive monetary relief against the state, it does *not* prevent courts from granting injunctive relief to stop ongoing unconstitutional actions.

This issue is particularly significant for amici, whose advocacy often involves challenging government practices that systematically violate civil and employment rights or disproportionately impact immigrant communities. For many individuals affected by state misconduct, prospective relief is the only meaningful remedy available. Michigan courts, including this Court, have consistently granted such relief. See, e.g., *Dep't of Civil Rights ex rel Burnside v Fashion Bug of Detroit, Inc*, 473 Mich 863, 864; 698 NW2d 404 (2005) (upholding an injunction to stop ongoing racial discrimination in the workplace); *McCready v Hoffius*, 459 Mich 131, 142-44; 586 NW2d 723 (1998) (upholding an injunction to prevent housing discrimination); *Sharp v City of Lansing*, 464 Mich 792, 802; 629 NW2d 873 (2001) (affirming the authority of courts to grant injunctive relief against ongoing constitutional violations); *Michigan Coalition of State Employee Unions v. Civil Service Commission*, 465 Mich 212, 219; 634 NW2d 692 (2001) (recognizing the duty of courts to issue permanent injunctive relief for constitutional violations).

Without such prospective relief, systemic violations will persist unchecked, leaving affected individuals and communities without any legal mechanism to stop ongoing harm. The Michigan Court of Appeals' interpretation of MCL § 600.6431 directly threatens this legal tool, allowing state practices to continue without challenge. If left uncorrected, this precedent will not only bar future claims but also undermine the courts' ability to ensure compliance with constitutional protections.

II. Even if MCL § 600.6431 Does Apply, Plaintiff's Claims Are Timely.

Even if this Court finds that MCL § 600.6431 applies to claims for prospective

relief, Plaintiff's claims remain timely because ongoing violations trigger new accrual dates under Michigan law. The Court of Appeals' rigid application of the statute ignores the well-established precedent holding that continuing violations give rise to new claims, particularly where state action perpetuates ongoing harm rather than imposing a single discrete injury.

Here, Plaintiff does not seek damages for a single past act but instead challenges the State's ongoing unlawful practice of denying workers' compensation benefits to undocumented workers. Because each wrongful denial of benefits constitutes a renewed violation, the one-year notice period cannot be used as a shield to insulate the State from accountability for continuing harms. Accordingly, even if this Court finds that MCL § 600.6431 applies, it must still recognize that the statute does not bar claims where new violations continue to accrue.

A. The One-Year Notice Period Should Not Apply to Continuing Violations Under Michigan Law.

MCL § 600.6431(1) does not bar claims where the alleged harm is continuous rather than discrete. The Court of Appeals misapplied the one-year notice period by treating Plaintiff's claims as if they accrued at a single moment in time, failing to recognize that each new application of the State's unlawful policy constitutes a distinct injury. Michigan law rejects such a rigid application of claim accrual in cases where government misconduct results in an ongoing pattern of harm.

Michigan courts have long recognized that statutes of limitations do not bar claims for injuries that continue to occur after the initial wrongful act. In *Bauserman v*

Unemployment Ins Agency, 503 Mich 169, 183-86; 931 NW2d 539 (2019), this Court rejected a mechanical approach to claim accrual, holding that a due process claim did not accrue at the first moment of harm, but rather continued accruing so long as the harm persisted. Similarly, in *Township of Fraser v Haney*, 509 Mich 18, 26-29; 983 NW2d 309 (2022), this Court reaffirmed repeated government misconduct can restart the accrual period, allowing claims to be filed beyond an initial event if a party continues to suffer the consequences of state action.

This principle is consistent with federal jurisprudence which recognizes that the statutes of limitations should not bar claims when the injury is ongoing. See *Havens Realty Corp v Coleman*, 455 US 363, 380-81 (1982) (holding that each instance of a discriminatory practice constitutes a fresh violation); *National Railroad Passenger Corp v Morgan*, 536 US 101, 117-18 (2002) (affirming that where a government policy results in a series of injuries rather than a single harm, claims are not time-barred simply because one event fell outside the limitations period).

Here, Plaintiff does not seek relief for a single past denial of workers' compensation benefits. Instead, Plaintiff challenges the State's ongoing and unlawful refusal to provide benefits to undocumented workers. Every time a new worker is denied benefits under this policy, a new constitutional injury occurs. Because each wrongful denial constitutes a distinct and continuing violation, the one-year notice period should not be applied in a manner that bars claims for future or ongoing harms.

Rigidly applying MCL § 600.6431 to bar relief in cases of ongoing state misconduct would create a perverse result: allowing government officials to evade accountability

simply by maintaining an unlawful policy for long enough that the first injured party cannot meet the procedural deadline. Such an interpretation conflicts with Michigan case law on claim accrual and would insulate unconstitutional government action from judicial review—a result that is inconsistent with the fundamental principles of fairness and due process.

Accordingly, even if this Court determines that MCL § 600.6431 applies to claims for prospective relief, it must clarify that the one-year notice period does not bar claims where ongoing violations continue to accrue.

B. MCL § 600.6431 Was Intended to Provide Fair Notice, Not to Bar Legitimate Claims for Ongoing Harms.

The Michigan Legislature, in enacting MCL § 600.6431, intended to balance the State’s need for timely notice with the right of the individual to seek redress for harm. This statutory provision was designed to serve as procedural safeguard to ensure the State has adequate notice of claims and can prepare an appropriate defense. However, the statute was never intended to grant blanket immunity for ongoing misconduct by state officials, particularly when such actions infringe upon constitutional rights.

In *Rowland v Washtenaw Cnty Road Com’n*, 477 Mich 197; 731 NW2d 41 (2007), this Court emphasized the importance of notice provisions in helping to ensure the State’s ability to respond to claims efficiently. However, the analysis does not end there, as the Court cautioned that the notice provisions should not be applied in a manner that would defeat legitimate claims, particularly where ongoing harm is at issue. The Court’s holding in *Rowland* emphasizes that procedural safeguards must not override substantive rights. *Id.*

at 212-14.

By denying prospective relief based on an inflexible interpretation of the notice requirement, the Court of Appeals' decision upsets the balance that MCL § 600.6431 was intended to strike. It allows the state to continue unlawful conduct without judicial oversight, creating an unjust and legally unsound precedent that is inconsistent with Michigan's legal tradition and fundamental principles of fairness.

C. The Court of Appeals Misinterpreted the Accrual of Claims Under Michigan Law.

The primary purpose of MCL § 600.6431's notice requirement is to protect the State from being unfairly surprised by claims that arise long after the alleged incident occurred. However, the Court of Appeals' rigid interpretation misapplies established precedents on accrual, particularly in the context of continuing violations.

The Court of Appeals incorrectly held that the one-year notice requirement begins at the first instance of harm, regardless of whether the harm continues, or new violations occur. This interpretation conflicts with Michigan law, which recognizes that a plaintiff's failure to timely sue on the first violation does not grant the defendant immunity for subsequent violations. As this Court explained in *Haney*, 509 Mich at 28, "each time a defendant commits a new violation," a new claim accrues. The *Haney* decision makes it clear that ongoing violations—such as repeated misapplications of an unlawful policy—give rise to distinct, actionable claims each time the violation occurs. The Court of Appeals' approach disregards this principle and improperly narrows the window for plaintiffs to seek relief.

Similarly, the Court of Appeals’ reliance on the first instance of harm as the sole marker for claim accrual misapplies precedent set by this Court in *Sunrise Resort Ass’n, Inc v Cheboygan Cnty Rd Comm’n*, 511 Mich 325, 999 NW2d 423 (2023). In *Sunrise*, the Court recognized that ongoing or recurrent harm—such as environmental damage from a defective drainage system—creates a new and independent cause of action each time the harm occurs. *Id.* at 339-340. This interpretation of claim accrual recognizes that ongoing harms often require ongoing legal redress and ensures plaintiffs are not unfairly barred from seeking relief for repeated violations.

The Court of Appeals’ assertion that accrual begins when harm is "not merely hypothetical or anticipated" ignores this Court's reasoning in *Haney* and *Sunrise*. As articulated in *Haney*, “requiring plaintiffs to file their claims at the first violation or forever lose their leverage to urge the government to remedy defects” defies the logic of this Court’s jurisprudence. *Haney* explicitly rejected the notion that the first violation in a series should grant a defendant immunity for future violations, emphasizing that each new violation renews the claim. Additionally, this rigid interpretation conflicts with the principles laid out in *Bauserman*, 503 Mich at 183–85, 188–90 (relying on the discussion of claim accrual in *Frank v Linkner*, 500 Mich 133 (2017)). In *Bauserman I*, this Court affirmed that “accrual” should not be interpreted so narrowly as to preclude legitimate claims for ongoing or new harms.

MCL § 600.6431’s notice requirement was never intended to serve as a tool for state actors to evade accountability for continuous violations. The statute’s text does not mandate barring all claims related to ongoing violations simply because they were not initiated

within a year of the first instance of harm. Rather, it should be understood as a procedural safeguard, ensuring the state has fair notice—not as a substantive barrier to the enforcement of constitutional rights.

D. The Court of Appeals' Application of MCL § 600.6431 Shields the State from Accountability.

The Court of Appeals' interpretation of MCL § 600.6431, which triggers the one-year pre-notice requirement at the first instance of harm, creates substantial barriers to holding the state accountable for ongoing and future violations, fundamentally undermining accountability. By starting the clock at the first instance of harm, the ruling allows the state to continue harmful practices without fear of legal consequences, as long as the initial violation remains unchallenged within one year. *Michigan Immigrant Rights Ctr v Governor*, unpublished opinion of the Court of Appeals, issued May 30, 2024 (Docket No. 361451), 2024 WL 2790290. This interpretation has strong implications for individuals who continue to suffer ongoing violations of their rights, as it effectively bars them (or their representatives) from seeking redress from the ongoing harm.

By creating procedural barriers that insulate ongoing violations from judicial scrutiny, the Court of Appeals' interpretation of MCL § 600.6431 will make it significantly more challenging for Amici to effectively advocate for their clients. The additional burden of navigating heightened procedural hurdles will not only contribute to a strain on Amici's ability to serve vulnerable populations most likely to be harmed by these requirements but also leave many individuals without access to the legal remedies to which they would otherwise be entitled.

1. Impacts on Individuals Detained by the State.

Many individuals detained in Michigan facilities face denials of medical treatment—a situation the civil rights Amici are intimately familiar with. Under MCL § 600.5503(1), individuals in state custody are required to exhaust all available administrative remedies before filing an action against the state challenging conditions of confinement, which can consume a significant portion of the one-year pre-notice period. See *Wilcox v Wheatley*, 342 Mich App 551, 596-97; 995 NW2d 594 (2022). This process, governed by MDOC’s grievance policy, requires multiple stages of review and can take well over six months to complete. See **Exh. 1**. The policy outlines a four-step process: prior to even filing a formal grievance, an incarcerated individual is first expected to attempt to resolve the issue with the staff member involved. *Id.* at 4. Assuming the attempt is unsuccessful, the individual is then able to file a formal grievance. *Id.* at 5. The facility then has 15 business days to respond to the grievance, with a possible extension of an additional 15 business days. *Id.* If the grievance does not resolve the issue, the individual may file an appeal to the warden or designee; similarly, the facility has 15 business days to respond with the possibility of a 15-day extension. *Id.* at 6. If the situation remains unresolved, the individual can file an appeal to the MDOC’s Grievance and Appeals Section; “generally” these responses can come within 60 business days. *Id.* at 7. The whole process could take well over 120 business days (six months) to complete. *Id.* at 4-7.

This lengthy administrative process consumes a significant portion of the one-year period the individual would have to file notice of intent to sue the state on these claims, leaving very little for them to identify the specific cause(s) of action, secure legal

representation, and prepare the necessary documents to file their claims. The Court of Appeals' interpretation of MCL § 600.6431 effectively penalizes detained individuals for following the mandatory grievance process; by the time they have exhausted their administrative remedies, the notice period may have nearly or entirely run out, leaving them with no avenue for relief.

While Article I, § 17 of the Michigan Constitution guarantees due process of law, it is not unheard of for an individual to experience unlawful intrusions by state actors. Mich Const art I, § 17. Under the Court of Appeals' interpretation of MCL § 600.6431, the one-year pre-notice period would begin at the moment of the first violation. For instance, if MSP employs a "stop and frisk" policy, an individual repeatedly subjected to these unlawful intrusions would have only one year from the first instance of being unlawfully stopped to file a claim. If they fail to do so in that period, they are barred from challenging the practice altogether, even as the unconstitutional actions continue, effectively stripping them of their right to seek redress for the ongoing violations.

2. Impact on Individuals Who Rely on Government Benefits.

This interpretation of MCL § 600.6431 disproportionately impacts individuals who rely on government protections, particularly in the employment and benefits arenas, where immigrants, low-income workers, and vulnerable populations are most affected. Individuals who receive unemployment benefits may be subject to overpayment determinations by the Michigan Unemployment Insurance Agency ("UIA"). The process for contesting these determinations is rigorous and time-consuming. First, the individual must file a protest within 30 days. MCL § 421.32a (1). If they disagree with the UIA's

redetermination, they have 30 days to file an appeal to the Michigan Administrative Hearing System for a formal hearing. MCL § 421.32a (2). If either party disagrees with that decision, they have 30 days to appeal to the Michigan Compensation Appellate Commission. MCL § 421.33(2). Further appeals can be taken to the Michigan Court of Appeals. MCL § 421.33(2).

This administrative process can easily consume many months. Throughout this time, the overpayment determination continues to affect the individual's financial stability, leading to garnishments, loss of benefits, and potential legal actions by the state to recover the alleged overpayments. Under the Court of Appeals' interpretation of MCL § 600.6431, by the time the individual has exhausted all available administrative remedies, the one-year pre-notice period could be expired, leaving them unable to challenge the ongoing harm, even if the overpayment determination was incorrect.

In Michigan, many immigrants, low-wage workers, and formerly incarcerated individuals often rely on public benefits, such as MI Bridge, Medicaid, and the Family Independence Program to help fill the gap to meet basic needs. These programs are crucial for low-income families, immigrants, and formerly incarcerated individuals who are often attempting to establish stability. Despite this, the implication of the Court of Appeals' interpretation of MCL § 600.6431 will likely result in fewer eligible people successfully securing these services.

The process for securing Medicaid coverage is complex; individuals must either submit an application for the first time, or if formerly incarcerated, submit a renewal application. MDHHS then has up to 45 days to determine an individual's eligibility. 42

CFR § 435.912(c)(3). If MDHHS determines the individual is ineligible, they have either 90 or 120 days to request a State Fair hearing to appeal the decision. See **Exh. 2**. If the individual is unsatisfied with the administrative law judge's decision, they can ask Michigan Office of Administrative Hearings and Rules for a rehearing or reconsideration of the decision or appeal the decision to the circuit court within 30 days. *Id.* Because claimants must navigate multiple rounds of review before securing benefits, those experiencing wrongful denials—particularly individuals denied due process, such as non-English speakers denied translation services or individuals disqualified based on outdated criminal history records—are forced to exhaust their appeals process while continuing to suffer ongoing harm.

III. The Court of Appeals' Ruling Conflicts with Established Precedents and Constitutional Principles.

The Court of Appeals' interpretation of MCL § 600.6431 represents a significant departure from well-established legal principles governing sovereign immunity and prospective relief. The ruling conflicts with key precedents, such as the doctrines established under *Ex Parte Young*, 209 US 123 (1908), which firmly establishes that sovereign immunity does not bar claims seeking to prevent ongoing unlawful conduct. By restricting the availability of prospective relief and expanding the reach of sovereign immunity, the decision threatens to undermine civil rights protections and the judiciary's role in enforcing constitutional rights.

The consequences extend beyond the immediate case. If left uncorrected, this ruling would set a dangerous precedent, insulating state officials from accountability and allowing

ongoing constitutional violations to persist unchallenged. Individuals suffering continuous harm would be left without remedy, and the courts' ability to check unlawful state action would be severely weakened. This Court must act to prevent the erosion of judicial oversight and reaffirm that procedural barriers cannot be used to shield unconstitutional government conduct from legal challenge.

A. The Court of Appeals' Decision Expands Sovereign Immunity Beyond Its Proper Bounds.

The Court of Appeals' decision marks a dangerous expansion of the doctrine of sovereign immunity, transforming it into a shield for state officials who engage in unlawful conduct. This overreach is not only inconsistent with the purpose of sovereign immunity but also threatens to erode the fundamental rights protected by both the Michigan and U.S. Constitutions.

Sovereign immunity has traditionally served to protect the state from retrospective liability for damages, ensuring that state officials are not unduly burdened by lawsuits for actions taken in their official capacities. However, this immunity has never been absolute, particularly when it comes to ongoing violations of constitutional rights. The U.S. Supreme Court has consistently recognized that sovereign immunity does not bar suits for prospective relief, as established in *Ex Parte Young*, 209 US 123 (1908). The Michigan courts have similarly affirmed that sovereign immunity does not extend to actions seeking to enjoin ongoing unlawful conduct by state officials. See, e.g., *Sharp*, 464 Mich at 802 (holding that courts may grant injunctive relief to prevent ongoing constitutional violations by government entities); *McDowell*, 365 Mich 268 (1961); *Smith v Department of Public*

Health, 428 Mich 540 (1987) (describing federal limits on sovereign immunity that allow prospective injunctive relief but prohibit retroactive monetary relief). The Court of Appeals' ruling distorts this well-established legal framework, effectively allowing state officials to evade accountability even in cases of ongoing constitutional violations. By extending sovereign immunity to shield state officials from prospective relief, the Court of Appeals has expanded the doctrine beyond its proper bounds, contrary to both Michigan and federal jurisprudence.

If this expansion of sovereign immunity is allowed to stand, it could set a precedent that enables state officials to act with impunity, knowing that procedural barriers will protect them from accountability for ongoing violations. This outcome is legally unsound and erodes the protections guaranteed by the Michigan and U.S. Constitutions and undermines the fundamental principles of justice and fairness that form the foundation of our legal system. The Michigan Supreme Court must recognize the dangers inherent in this expansive interpretation of sovereign immunity and reverse the Court of Appeals' decision. By doing so, the Court can reaffirm its commitment to upholding the constitutional protections that are essential to the functioning of a just and equitable legal system.

B. The Ruling Could Lead to Systemic Erosion of Civil Rights Protections.

If left uncorrected, the Court of Appeals' decision threatens to create a dangerous precedent that could erode constitutional protections and embolden state actors to engage in unlawful conduct without fear of legal challenge. By expanding sovereign immunity and narrowly interpreting claim accrual, the ruling effectively sanctions ongoing rights violations, creating a legal landscape where individuals suffering continuous harm may be

left without remedy.

This precedent would have wide-ranging consequences extending beyond civil rights cases to areas such as employment law, immigration enforcement, and public benefits—where state actions have a direct and continuous impact on individuals' lives. The ruling undermines the judiciary's role in ensuring that constitutional rights remain enforceable and accessible to those harmed by unlawful state practices. This Court should reverse the Court of Appeals' decision and reaffirm the importance of access to the courts, the availability of prospective relief, and the protection of constitutional rights. Doing so is essential not only for the immediate parties involved but also for broader public interest litigation, ensuring that courts remain a meaningful avenue for justice.

1. The Inability to Seek Prospective Relief Undermines Constitutional Protections.

Denying prospective relief in cases of ongoing harm fundamentally weakens constitutional protections, leaving individuals and communities vulnerable to continued state abuses. Prospective relief—such as injunctions—is a crucial tool for ensuring constitutional rights are upheld and preventing state actions from causing prolonged harm.

Without this relief, state officials could continue violating constitutional rights indefinitely, free from judicial intervention. This concern is particularly acute in civil rights cases, where systemic abuses persist over time, compounding harm to affected communities. The denial of prospective relief removes a primary check on government power, weakening legal protections for marginalized individuals and undercutting judicial oversight of state misconduct.

Michigan and federal courts have long recognized the necessity of prospective relief in preventing ongoing violations. The U.S. Supreme Court has held that sovereign immunity does not bar suits seeking to enjoin unconstitutional conduct. See *Ex Parte Young*, 209 US at 123; *Edelman*, 415 US at 651 (holding that sovereign immunity bars retroactive monetary relief but not injunctive relief to halt ongoing unconstitutional actions). The Michigan Supreme Court has adopted these principles, recognizing that the availability of injunctive relief is fundamental to protecting constitutional rights. See *Sharp*, 464 Mich at 792, 802. The Court of Appeals' interpretation, which limits access to prospective relief, contradicts these principles and effectively shields ongoing government abuses from legal challenge.

This denial of relief has far-reaching implications across multiple legal fields where ongoing violations require judicial intervention. In civil rights litigation, for example, the inability to obtain injunctive relief would allow discriminatory practices to continue unchecked, exacerbating systemic injustices. Similarly, in employment law, state employers engaging in ongoing discrimination or harassment could escape accountability if victims are unable to challenge continuous misconduct through the courts.

2. The Court of Appeals' Interpretation Would Lead to Unjust Results.

Michigan courts have long held that statutory interpretation should not produce absurd or unjust results. See *People v Bewersdorf*, 438 Mich 55, 68; 475 NW2d 231 (1991). The Court of Appeals has also recognized that exceptions to notice requirements are warranted where strict application would produce “harsh and unreasonable consequences” that “effectively divest” plaintiffs of access to the courts. *Rusha v Dep't of Corr*, 307 Mich

App 300, 311; 859 NW2d 735 (2014).

Consider the Flint Water Crises of 2014, in which residents suffered lead contamination due to government action. See **Exh. 5**. Several suits were initiated—many settled or won—on behalf of the Flint residents who were impacted by the harm caused by the lead contamination. See **Exh. 6**. In *Mays v Snyder*, No 16-000017-MM, slip op (Mich Ct Cl Oct 26, 2016), the Court of Claims examined whether MCL 600.6431’s notice requirements should bar claims from Flint residents. Recognizing the unjust impact of enforcing a rigid six-month notice period—when the full extent of harm was not yet known—the court found that applying MCL 600.6431 in this context would “divest” plaintiffs of their ability to vindicate serious and ongoing harms. *Id.* at 9, 11-12.

Had the Court of Claims applied the Court of Appeals’ current interpretation, many claims arising from the Flint Water Crisis could have been barred outright—a blatantly unjust result. Michigan courts have historically refused to apply strict notice requirements in cases where harm is ongoing or not immediately apparent, recognizing that procedural barriers should not deprive plaintiffs of their right to seek relief.

3. *The Court of Appeals' Ruling Disproportionately Impacts Marginalized and Vulnerable Communities.*

The burden of this ruling falls most heavily on marginalized communities, including low-income individuals, immigrants, and formerly incarcerated people, who often face significant obstacles in accessing justice. The Court of Appeals' interpretation exacerbates these disparities, making it even more difficult for these groups to challenge unlawful state actions.

For example, the Elliott-Larsen Civil Rights Act (ELCRA) prohibits discrimination in employment, housing, and public accommodations based on race, sex, religion, national origin, and other protected statuses. An employee experiencing ongoing discrimination—such as a hostile work environment or an employer’s failure to accommodate religious practices—can file a complaint with the Michigan Department of Civil Rights (MDCR) within 180 days or sue in court within three years. See **Exh. 3**. MDCR investigations, however, can take months or over a year to complete. See **Exh. 4**. A state employee relying on an MDCR complaint to challenge workplace discrimination could find that their window to file notice for a constitutional claim against the state agency that employs them has closed, even as the discrimination persists.

Similarly, individuals relying on public housing programs, such as those administered by the Michigan State Housing Development Authority (MSHDA), are at heightened risk. Many formerly incarcerated individuals and immigrants face housing discrimination, including denials of rental applications, higher rent, and stricter lease terms. While these individuals may file complaints with MDCR within 180 days, see **Exh. 3**, the Court of Appeals’ rigid notice rule could bar their constitutional claims entirely before MDCR resolves their administrative complaint.

This disparate impact highlights the dangers of the Court of Appeals’ ruling: under its interpretation, the earliest-affected individual in a class of harmed people must file notice within one year of the first harm, or the entire group loses its right to seek relief. This approach fundamentally undermines access to justice, particularly for communities that already face barriers in securing legal representation or recognizing their legal rights.

C. The Michigan Supreme Court Must Restore Balance by Reversing the Court of Appeals' Decision to Prevent Further Harm.

This Court has a critical role in ensuring that constitutional protections remain enforceable, and that the judiciary remains accessible to those seeking relief from ongoing violations. The Court of Appeals' ruling undermines this accessibility by imposing procedural barriers that close the courthouse doors to individuals suffering continuous harm. To restore balance and protect constitutional rights, this Court must reverse the decision and reaffirm that procedural technicalities cannot be used to insulate ongoing constitutional violations from judicial scrutiny.

Ensuring the availability of prospective relief is essential to upholding the integrity of Michigan's legal system. The ability to seek injunctive relief against ongoing government misconduct is a fundamental check on state power. A reversal of the Court of Appeals' ruling would send a clear message that procedural rules cannot be manipulated to evade constitutional accountability, particularly when the stakes involve fundamental rights.

The amici curiae—representing a broad coalition of legal and advocacy organizations—strongly support reversing the Court of Appeals' decision. The ruling not only threatens the rights of those they serve but also weakens the judiciary's role in addressing unconstitutional conduct.

This case extends beyond the immediate parties; its implications will shape future access to the courts for individuals seeking to halt ongoing violations of their rights. A decision that preserves the availability of prospective relief would reaffirm the role of

Michigan's courts in upholding constitutional protections and ensure that procedural barriers do not become a shield for unlawful state action.

By reversing the decision, this Court would affirm its commitment to protecting individuals from continued state overreach and ensure that access to justice is not foreclosed by rigid procedural interpretations. Doing so is crucial to maintaining public trust in the judiciary and ensuring that Michigan courts remain a venue where ongoing constitutional violations can be addressed.

CONCLUSION

The Court of Appeals' interpretation of MCL § 600.6431 presents a direct threat to constitutional rights and access to justice. By improperly extending the one-year notice requirement to prospective relief, the ruling insulates ongoing violations from review and contradicts well-established legal principles governing claim accrual and sovereign immunity. This misinterpretation strips plaintiffs of their ability to challenge continued state misconduct, creating a dangerous precedent that undermines judicial oversight and due process protections.

This Court must intervene to correct this misapplication of MCL § 600.6431 and ensure that prospective relief remains available for individuals and organizations seeking to halt ongoing constitutional violations. Reversing the Court of Appeals' decision will reaffirm the judiciary's role as a safeguard against unlawful state action, preserving the rule of law and ensuring access to justice for all Michiganders.

Respectfully submitted,

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