Order

Michigan Supreme Court
Lansing, Michigan

December 12, 2025

167300-1

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

MICHIGAN IMMIGRANT RIGHTS CENTER,
Plaintiff-Appellant,

v

SC: 167300-1
COA: 361451, 362515
Ct of Claims: 21-000208-MZ

GOVERNOR,
Defendant-Appellee.

_____/

On October 8, 2025, the Court heard oral argument on the application for leave to appeal the May 30, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*dissenting*).

I respectfully dissent from this Court's denial of leave to appeal in this case. I would have granted plaintiff's application and reversed the Court of Appeals because I believe it erred in applying the Court of Claims Act's one-year notice provision to plaintiff's declaratory judgment action seeking prospective relief. In my view, the notice provision only applies to claims based on past harms; it does not apply to the future harms plaintiff sought to prevent.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff Michigan Immigrant Rights Center (MIRC) is a nonprofit organization that provides legal resources to immigrants in Michigan. In 2017, MIRC launched its "farmworker and immigrant rights" program and was immediately overwhelmed by calls from undocumented immigrant workers who claimed to have been denied workers' compensation benefits due to their immigration status. MIRC hired additional staff in 2019 to deal with the high volume of calls and alleges that the denial of benefits to undocumented immigrants strained its resources.

In *Sanchez v Eagle Alloy, Inc*, 254 Mich App 651 (2003), the Court of Appeals held that workers' compensation benefits could not be paid to a person "whenever commission of a 'crime' prevents the person from obtaining or performing work." *Id*. at 669. Specifically, it held that the use of false documents to obtain employment constituted a "crime" that prevented the plaintiffs from obtaining workers' compensation benefits. *Id*. at 672-673. MIRC filed suit in 2021 against Governor Gretchen Whitmer in her official capacity, seeking a declaratory judgment that denying undocumented immigrants workers'

compensation benefits was unconstitutional or otherwise invalid.[1] MIRC only seeks to stop the Governor from maintaining this policy in the future. It does not seek damages for past harm resulting from this policy.

In response, defendant moved for summary disposition on multiple grounds. Relevant here, defendant sought summary disposition under MCR 2.116(C)(7), arguing that the notice provision of the Court of Claims Act (COCA),[2] MCL 600.6431, required MIRC to file a notice of intent to sue or to file its complaint within a year of the accrual of its claims. Defendant argued that MIRC's suit accrued no later than 2019, which is when it hired additional staff to service the increased demand for legal assistance to undocumented workers. As a result, defendant argued that MIRC's 2021 complaint should be dismissed because MIRC never filed a notice of intent to sue and the lawsuit was filed more than one year after the claim accrued.

The Court of Claims disagreed with defendant, reasoning that because MIRC sought only prospective declaratory relief, the notice provision of the COCA did not apply. The Court of Appeals reversed, holding that the notice provision of the COCA applied to MIRC's declaratory judgment suit for prospective relief. *Mich Immigrant Rights Ctr v Governor*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket Nos. 361451 and 362515), p 4.[3]

In reaching this conclusion, the Court of Appeals interpreted the notice provision to apply to "*all* claims brought against the state" unless the notice statute provides for a specific exemption. *Id*., citing *Christie v Wayne State Univ*, 511 Mich 39, 55-57, 64-65 (2023). The Court of Appeals noted that, generally, " '[a] claim accrues, for the purposes of the statute of limitations, when suit may be brought.' " *Mich Immigrant Rights Ctr*, unpub op at 3, quoting *American Federation of State, Co, & Muni Employees, AFL-CIO, Mich Council 25 & Local 1416 v Highland Park Bd of Ed*, 457 Mich 74, 90 (1998) (alteration in original). Because MIRC did not file its complaint or a notice of its complaint

---

[1] Specifically, MIRC sought "a declaratory judgment (1) that the 'commission of a crime' language in MCL 418.361(1) is unconstitutional and therefore unenforceable; (2) that *Sanchez* wrongly held that working while undocumented is itself a crime; and/or (3) that *Sanchez* was significantly curtailed by later precedent of our Supreme Court." *Mich Immigrant Rights Ctr v Governor*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket Nos. 361451 and 362515), p 2.

[2] MCL 600.6401 *et seq*.

[3] The Court of Appeals assumed without deciding that plaintiff had standing because it dismissed plaintiff's action based on its interpretation of the COCA's notice provision. *Id*. at 4.

within one year of the date when it could first bring a declaratory action, the Court of Appeals reasoned that it must dismiss the case for lack of the required notice.

MIRC appealed to this Court, and we ordered argument on the application for leave to appeal. We directed the parties to brief whether the notice provision applies to claims for prospective relief against state officers and, if so, whether MIRC's claims were filed within one year after they accrued. *Mich Immigrant Rights Ctr v Governor*, ___ Mich ___; 13 NW3d 631 (2024).[4]

II. THE COURT OF CLAIMS ACT AND ITS NOTICE PROVISION

The COCA is "this state's controlling legislative expression of waiver of the state's sovereign immunity from direct action suit against it and its agencies and of their submission to the jurisdiction of a court." *Christie*, 511 Mich at 58 (quotation marks and citation omitted).[5] At issue here is the COCA's presuit notice requirement, MCL 600.6431(1).

This Court has explained that meeting the notice requirements of MCL 600.6431 is necessary " 'to successfully expose the defendant state agencies to liability.' " *Christie*, 511 Mich at 49-50, quoting *Fairley v Dep't of Corrections*, 497 Mich 290, 298 (2015). For context, the purpose of this notice requirement is to "ensure that the proper state entity learns about a potential claim, can prepare for litigation, and can create reserves to cover potential liability." *Christie*, 511 Mich at 63-64. See also *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197 (2007) (considering the notice provision of the governmental tort liability act, MCL 691.1404).

The text of the notice provision states:

> 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

---

[4] Defendant raised other grounds for dismissing the lawsuit against her, including that plaintiff lacked standing, that there was no "actual controversy," and that plaintiff failed to exhaust its administrative remedies. *Mich Immigrant Rights Ctr*, unpub op at 2 n 2. Our oral arguments order focused only on the notice issue because that is how the Court of Appeals resolved the case.

[5] For more explanation of the history of the COCA, see Part IV(B) of this Court's recent opinion in *Christie*, 511 Mich at 57.

> or any of its departments, commissions, boards, institutions, arms, or agencies. [MCL 600.6431(1).]

The COCA's notice provision also details the information that must be contained in the notice, including when and where the claim arose, the nature of the claim and damages alleged, the government entity involved, and a verified signature by the claimant. MCL 600.6431(2).

III. DISCUSSION

In my view, the Court of Appeals erred when it ruled that notice was required for an alleged future harm and that the accrual period had expired. In *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119 (1995), the plaintiff filed suit against Wayne County in 1991 to challenge a tax increase adopted in 1981. *Id*. at 121. Both the circuit court and the Court of Appeals granted defendant's motion for summary disposition on the basis that the suit did not comply with the one-year statute of limitation period. *Id*. at 121-122. This Court reversed, emphasizing that "[w]e analyze the time of accrual separately for each type of relief sought." *Id*. at 123.

The *Taxpayers Allied* plaintiff sought three types of relief: declaratory relief seeking a judgment that the tax increase was invalid, an injunction prohibiting the future assessment and collection of the increased taxes, and a refund of all monies paid pursuant to the resolution increasing the tax. *Id*. This Court clarified that the limitations period applies to claims for retroactive relief, but does not apply to claims for prospective injunctive relief. We reasoned that the plaintiff's claims for a refund accrued when the taxes became due. As a result, the applicable limitations period barred the plaintiff's claims for a refund for taxes due more than a year before the plaintiff filed suit. *Id*. at 123-124. But we specifically noted that "[d]efendant's statute of limitations defense does not apply neatly to plaintiff's claim for injunctive relief. Because a suit for injunctive relief may seek to prevent a future wrong, the cause of action necessarily arises before the wrong occurs." *Id*. at 127.

Importantly, the Court acknowledged that the statutory scheme implies that a claim cannot accrue before the wrong occurs. See *id*., quoting MCL 600.5827 (" '[T]he claim accrues at the time the wrong upon which the claim is based was done regardless of the time when the damage results.' "). As a result, we reasoned that the statute of limitations at issue "does not prevent a taxpayer from seeking to enjoin a governmental unit from imposing [unconstitutional taxes] on him in the future . . . ." *Taxpayers Allied*, 450 Mich at 127. This Court reasoned that holding otherwise would truncate the plaintiff's legitimate claim. *Id*. We reiterated that a limitations period applies to claims for declaratory relief when the underlying substantive claim is retroactive, but the limitations period does not apply when the underlying substantive claim seeks prospective relief. *Id*. at 128, citing *Luckenbach Steamship Co v United States*, 312 F2d 545, 548 (CA 2, 1963).

As a result, this Court separated the *Taxpayers Allied* plaintiff's claims into two separate substantive categories. "The first is whether plaintiff may obtain a refund for taxes paid in the past. The second is whether [taxpayers] must pay the increased tax in the future." *Taxpayers Allied*, 450 Mich at 129. The limitations period prevented plaintiff from obtaining a judgment declaring that defendant must refund past taxes because "[d]eclaratory relief may not be used to avoid the statute of limitations for substantive relief." *Id*., citing *Finlayson v West Bloomfield Twp*, 320 Mich 350 (1948). But for the purposes of challenging the future taxes, we held that "the statute of limitations would not bar an otherwise valid claim for declaratory relief because it would derive from a claim for injunctive relief, which is not barred." *Taxpayers Allied*, 450 Mich at 129.

Applying *Taxpayers Allied* to the facts of the present case, my view is that the notice provision prevents MIRC from seeking declaratory relief for any past economic damages it suffered. But MIRC does not seek economic damages; MIRC seeks only prospective relief. The goal of MIRC's litigation is to prohibit the continued enforcement of a policy it alleges is unconstitutional. The COCA's notice provision does not prevent MIRC from seeking declaratory relief for harm that has not yet happened. As we established in *Taxpayers Allied*, we need not truncate the plaintiff's legitimate claim to prospective relief to make it fit the notice requirement. The notice requirements do not apply to future harm.

I believe both the text and purpose of the COCA's notice provision support this conclusion. First, the statute requires that the notice include a "statement of the time when and the place where the claim arose" along with a "detailed statement of the nature of the claim and of the items of damage alleged or claimed to have been sustained." MCL 600.6431(2)(a) and (b). It is impossible to satisfy this requirement for a harm that has not yet occurred. Second, the purpose of the notice provision is to allow the state to engage in timely discovery and to create reserves to cover potential liability. *Christie*, 511 Mich at 63-64. Neither of those purposes are served when noticing claims for prospective relief against ongoing government action. There is no risk of stale discovery for an ongoing government action, and the government does not need to create reserves for harm that has not yet happened and for which no damages are sought.

IV. CONCLUSION

In my view, the Court of Appeals erred when it reasoned that a claim for declaratory relief based on prospective harm can accrue and be subject to the COCA's notice provision. Declaratory relief must be based on a live controversy, but that live controversy can be based on either past or future harms. Statutes of limitations and notice provisions apply to declaratory relief based on past harm, but they do not apply to declaratory actions based on future harm. For these reasons, I would have granted plaintiff's application and reversed the Court of Appeals, and I respectfully dissent from the Court's denial of leave in this case.

THOMAS, J. (*dissenting*).

We have long recognized our 1963 Constitution's Declaration of Rights, and the rights provided by our federal Constitution, as more than a mere hope or wish. *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 691 (2022). Rather, it is "fundamental to representative government" itself and " 'the bedrock upon which all else in the constitution may be built.' " *Id*., quoting 1 Official Record, Constitutional Convention 1961, p 106 (remarks of Governor John B. Swainson). Consequently, we have said that the courts exist to vindicate our constitutional rights because "a right must have a remedy" or else it is merely " 'a voluntary obligation that a person can fulfill or not at his whim[.]' " *Id*., quoting Zeigler, *Rights Require Remedies: A New Approach to the Enforcement of Rights in the Federal Courts*, 38 Hastings L J 665, 678 (1987).

We also recognize that "the state and its instrumentalities are generally immune from suit" absent a waiver of the state's sovereign immunity. *Christie v Wayne State Univ*, 511 Mich 39, 48 (2023).[1] Our caselaw has suggested that this sovereign immunity is inherent in Michigan's statehood. See *Pohutski v Allen Park*, 465 Mich 675, 682 (2002) ("From the time of Michigan's statehood, this Court's jurisprudence has recognized that the state, as sovereign, is immune from suit unless it consents, and that any relinquishment of sovereign immunity must be strictly interpreted.").[2] However, the state may consent to suit, and the Legislature may set limitations on its waiver of immunity. *Christie*, 511 Mich at 58. In enacting the current Court of Claims Act (COCA), MCL 600.6401 *et seq*., the Legislature conditioned waiver of the state's sovereign immunity on compliance with the act's notice provision. See *Christie*, 511 Mich at 58; MCL 600.6431(1).

These principles intersect when, as here, someone sues the state or a state official to vindicate their constitutional rights. As discussed herein, the ability to hold the state accountable for violations of constitutional rights necessarily implies at least some diminishment of its ability to immunize itself from suit. This case presents the opportunity to reconcile sovereign immunity with the enforcement of the state and federal Constitutions. Regardless of the merits of the underlying constitutional claims, which are not before the Court, I would have taken the opportunity to decide the preliminary question addressing whether and under what conditions state and federal constitutional claims for prospective relief can be brought against state officials.

---

[1] See also *Progress Mich v Attorney General*, 506 Mich 74, 86-87 (2020).

[2] See also *Puerto Rico Aqueduct & Sewer Auth v Metcalf & Eddy, Inc*, 506 US 139, 146 (1993) (explaining that "the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity").

I. FACTS AND PROCEDURAL HISTORY

Plaintiff, Michigan Immigrant Rights Center (MIRC), brought this case against defendant, Gretchen Whitmer, in her official capacity as Governor. MIRC alleges that the Governor maintains a policy of denying workers' compensation benefits to undocumented employees who were injured on the job, and it claims that this policy violates the due-process protections of the Fourteenth Amendment of the United States Constitution and Article 1, § 17 of the Michigan Constitution of 1963. MIRC seeks only prospective relief in the form of an injunction against the Governor's continuing enforcement of the policy.

The Governor argued below, among other things, that the suit should be dismissed because MIRC did not comply with the notice provision in the COCA. See MCL 600.6431(1). Our Court of Appeals agreed, ordering the Court of Claims to dismiss the case. See *Mich Immigrant Rights Ctr v Governor*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket Nos. 361451 and 362515). MIRC, however, argues that the notice provision does not cover suits for prospective relief brought against state officers and is a condition of waiving sovereign immunity that cannot be enforced because state officers do not have immunity against official-capacity claims for prospective relief.[3] This Court held oral argument on the application for leave to appeal and directed the parties to address: "(1) whether MCL 600.6431 applies to claims for prospective relief against state officers; and (2) if so, whether the plaintiff's claims were filed within one year after they accrued, see MCL 600.6431(1)." *Mich Immigrant Rights Ctr v Governor*, ___ Mich ___, ___; 13 NW3d 631, 631 (2024).

II. COURT OF CLAIMS ACT

First, despite its broad application, I am not persuaded that the COCA's notice provision in MCL 600.6431 applies to the relatively narrow set of constitutional claims seeking prospective relief against state officers, considering the language of the provision. Under the COCA, the Legislature has given jurisdiction to the Court of Claims "[t]o hear and determine . . . 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); see also MCL 600.6419(2). The Legislature specifically named claims against state "officers," as well as the state and its departments, when describing the claims that are within the Court of Claims' jurisdiction. However, the notice provision at issue states, "[A] claim may not be maintained against the state unless the claimant, within 1 year after the claim has accrued, files . . . either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards,

---

[3] MIRC also argued that, if required to comply with the COCA, it had done so. Because I would decide this case on whether MIRC must comply with the COCA's notice provision, I do not address that contention.

institutions, arms, or agencies." MCL 600.6431(1). In contrast to the jurisdictional provision, which applies to suits against "the state or any of its departments or *officers*," MCL 600.6419(1) (emphasis added), the notice provision does not apply to state officers and instead applies only to claims against the "state or any of its departments, commissions, boards, institutions, arms, or agencies," MCL 600.6431(1).

This may seem a small distinction. But the interpretation of a statute requires courts to read the statute's words in " 'their context within the statute and [to] read them harmoniously to give effect to the statute as a whole,' " *Janetsky v Saginaw Co*, ___ Mich ___, ___ (July 25, 2025) (Docket Nos. 166477 and 166478); slip op at 8, quoting *Johnson v Recca*, 492 Mich 169, 177 (2012), avoiding interpretations that " 'render any part of the statute surplusage or nugatory,' " *Johnson*, 492 Mich at 177, quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002). Thus, we consider the "placement of the critical language in the statutory scheme." *Johnson*, 492 Mich at 177 (emphasis omitted). Including "state officers" in the jurisdictional provision but not in the notice provision, when both include "the state" and "its departments," appears to be an indication of legislative intent that the notice provision not apply to state officers. Cf. *Pike v Northern Mich Univ*, 327 Mich App 683, 695-696 (2019) (distinguishing suits against individual employees from suits against the state and noting that "conspicuously absent in [MCL 600.6431] is any reference to officers . . . or other individuals").

Even if we ignore the statutory text and believe that the Legislature intended MCL 600.6431 to apply to constitutional claims for prospective relief against state officers, I am not convinced that it can because of underlying questions around whether sovereign immunity applies, as I will explain further below. Suffice to note here that, given the history and longstanding precedent on the lack of sovereign immunity for constitutional claims seeking prospective relief against state officials, it is reasonable to make our typical assumption that the Legislature was aware of this significant body of law and took it into account when it chose this particular language.[4] See *Yang v Everest Nat'l Ins Co*, 507 Mich 314, 325 (2021) (" '[W]e must presume that the Legislature knows of the existence of the common law when it acts.' "), quoting *People v Moreno*, 491 Mich 38, 46 (2012); see also *Garwols v Bankers Trust Co*, 251 Mich 420, 423-424 (1930).

III. SOVEREIGN IMMUNITY FROM MIRC'S FEDERAL DUE-PROCESS CLAIMS

[4] Additionally, I think this approach is consistent with the general principle that we seek to avoid complex questions concerning constitutional law where alternative modes of decision are available. See, e.g., *People v McKinley*, 496 Mich 410, 415-416 & n 4 (2014) (discussing the doctrine of constitutional avoidance); *Sole v Mich Economic Dev Corp*, 509 Mich 406, 419-420 (2022) (discussing the constitutional-doubt canon).

Next, I examine the underlying state and federal law on state sovereign immunity to suits against state officials. I first look at the caselaw in which a federal constitutional violation is alleged and pursued against a state official in state court. And I conclude that the Governor is not immune from MIRC's suit seeking prospective relief concerning its federal due-process claims.

The United States Supreme Court recognizes states as generally immune from suit absent waiver. See *Va Office for Protection & Advocacy v Stewart*, 563 US 247, 253-254 (2011) (concerning federal courts); *Alden v Maine*, 527 US 706, 745 (1999) (concerning state courts). In 1908, in *Ex parte Young*, the Court held that this immunity is not available to an official performing an unconstitutional act:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. [*Ex parte Young*, 209 US 123, 159-160 (1908).]

The United States Supreme Court has recognized that "the plan of the [Constitutional] Convention contemplate[d] a regime in which federal guarantees are enforceable so long as there is a justiciable controversy." *Idaho v Coeur d'Alene Tribe of Idaho*, 521 US 261, 271 (1997) (opinion of Kennedy, J.).[5] The rule of *Ex parte Young* has been consistently applied for the last century.

To be sure, the ability to sue a state official under *Ex parte Young* is not without its limits. Such a suit must " ' "allege[] an ongoing violation of federal law and seek[] relief properly characterized as prospective." ' " *Va Office for Protection & Advocacy*, 563 US at 255, quoting *Verizon Md Inc v Pub Serv Comm of Md*, 535 US 635, 645 (2002), in turn quoting *Coeur d'Alene Tribe of Idaho*, 521 US at 296. Generally, this means that a suit must seek "declaratory or injunctive relief against [the] state officer[] in their official capacit[y]," *Reed v Goertz*, 598 US 230, 234 (2023), rather than retrospective relief such as monetary damages, *Edelman v Jordan*, 415 US 651, 663-667 (1974).[6] In this case,

---

[5] See also The Federalist No. 80 (Hamilton) (Rossiter ed, 1961), p 495 (declaring it an "obvious consideration" that "there ought always to be a constitutional method of giving efficacy to constitutional provisions").

[6] But see *Milliken v Bradley*, 433 US 267, 289 (1977) ("*Ex parte Young* . . . permits federal courts to enjoin state officials to conform their conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state treasury.").

MIRC presents the Court with an allegation that fits within the limits of *Ex parte Young*. It asserts that the Governor is maintaining an unconstitutional policy and seeks declaratory and injunctive relief to prevent her from enforcing it in the future.

Both this Court and the United States Supreme Court have recognized that *Ex parte Young* applies to federal constitutional claims raised in state courts. See *Alden*, 527 US at 747, citing *Gen Oil Co v Crain*, 209 US 211, 226-227 (1908); *Thompson v Auditor General*, 261 Mich 624 (1933). As our own Justice POTTER observed, "[i]f cases of mandamus and injunction may be brought in the Federal courts in the cases and under the circumstances indicated, in the face of the eleventh amendment to the Constitution of the United States, there can be no reason why as liberal a rule ought not to prevail in the courts of the State." *Thompson*, 261 Mich at 629-630.[7] Moreover, application of *Ex parte Young* to federal cases in the courts of this state is in accord with our application of United States Supreme Court decisions to issues of federal law. See *Abela v Gen Motors Corp*, 469 Mich 603, 606 (2004).[8]

As the New Mexico Supreme Court has explained:

> "The principle of sovereign immunity as reflected in our jurisprudence strikes the proper balance between the supremacy of federal law and the

---

[7] I note that this recognition of the rule of *Ex parte Young* in *Thompson* predates the original COCA's notice provision, which required notice for suits against " 'the state or any of its departments, commissions, boards, institutions, arms or agencies' " but did not list state officials. *Christie*, 511 Mich at 55-56 (describing the statutory history of the COCA and quoting 1941 PA 137, § 11a).

[8] Likely in recognition of this principle, our sister courts in several states have also applied federal immunity principles to federal claims brought in their courts. See, e.g., *Ex parte Retirement Sys of Ala*, 182 So 3d 527, 539 (Ala, 2015) ("[T]his Court has applied the Eleventh Amendment to bar federal claims brought against State officials in state courts in various contexts."); *Lee v Iowa*, 844 NW2d 668 (Iowa, 2014); *Anthony K v Neb Dep't of Health & Human Servs*, 289 Neb 540, 546-548 (2014); *Sullins v Rodriguez*, 281 Conn 128, 132-139 (2007); *Alas Dep't of Health & Social Servs, Div of Family & Youth Servs v Native Village of Curyung*, 151 P3d 388, 402-404 (Alas, 2006) (addressing immunity for claims under 42 USC 1983 and discussing *Ex parte Young*); *Gill v Pub Employees Retirement Bd of Pub Employees Retirement Ass'n of NM*, 135 NM 472 (2004); *Prager v Kan Dep't of Revenue*, 271 Kan 1 (2001); *Lindas v Cady*, 150 Wis 2d 421, 429 (1989) (addressing immunity for claims under Title VII of the federal Civil Rights Act); see also *Martinez v California*, 444 US 277, 284 (1980) ("It is clear that the California immunity statute does not control this [§ 1983] claim even though the federal cause of action is being asserted in the state courts."); see also *id*. at 284 n 8.

> separate sovereignty of the states." Although entitled to the immunity necessary to preserve their autonomy as separate sovereigns, states are bound to recognize the supremacy of the United States Constitution. "The good faith of the States thus provides an important assurance that '[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.' " Thus, under the federalist compact, the obligation of states to respect federal law and rights created thereunder is an essential corollary of state sovereignty. [*Gill v Pub Employees Retirement Bd of Pub Employees Retirement Ass'n of NM*, 135 NM 472, 477 (2004), quoting *Alden*, 527 US at 755, 757, in turn quoting US Const, art VII.]

Such respect certainly applies to the Bill of Rights and the Fourteenth Amendment. Therefore, while I would have decided this case on a statutory basis, I also believe that *Ex parte Young* applies under our precedent. Consequently, I would hold that the COCA's notice provision is inapplicable to MIRC's alleged federal due-process claims seeking prospective relief.

IV. SOVEREIGN IMMUNITY FROM MIRC'S STATE DUE-PROCESS CLAIMS

Equally important is whether the rationale in *Ex parte Young* applies to claims brought to vindicate the rights in our own state Constitution. We have previously addressed the availability of immunity in the context of constitutional torts, concluding that sovereign immunity is "not available in a state court" where the claims "allege[] that the state, by virtue of custom or policy, has violated a right conferred by the Michigan Constitution[.]" *Smith v Dep't of Pub Health*, 428 Mich 540, 544 (1987).[9] The *Smith* majority was, however, unable to coalesce around reasoning to support that conclusion.

Whether sovereign immunity applies to state constitutional claims for prospective relief against state officers in their official capacity appears to be a question of first impression. However, it is a question of immense importance. " 'In our constitutional form of government, the sovereign power is in the people, and "[a] Constitution is made for the people and by the people." ' " *Mays v Governor*, 506 Mich 157, 188 (2020) (opinion by BERNSTEIN, J.), quoting *Smith*, 428 Mich at 640 (BOYLE, J., concurring in part and dissenting in part), in turn quoting *Mich Farm Bureau v Secretary of State*, 379 Mich 387, 391 (1967). It constitutes "fundamental law" that serves as "a limitation on the plenary power of government." *Mays*, 506 Mich at 189 (opinion by BERNSTEIN, J.).

---

[9] Though the text in *Smith* refers to "governmental immunity," it is "sovereign immunity" that relates to the state and its departments. *Pohutski*, 465 Mich at 682. "Governmental immunity" applies to local governments. *Id*. While these terms " 'have been . . . used interchangeably in [past] decisions,' " they " 'are not synonymous.' " *Id*., quoting *Myers v Genesee Auditor*, 375 Mich 1, 6 (1965) (opinion of O'HARA, J.).

Accordingly, "[a] 'major function[]' of the judiciary is to 'guarantee[]' the rights promised in our constitution." *Bauserman*, 509 Mich at 693, quoting 2 Official Record, Constitutional Convention 1961, p 2196 (second and third alterations in *Bauserman*).[10] "And if the rights guaranteed in our Constitution are to be enforceable, then enforcement must fall to us, absent an explicit constitutional provision limiting our authority in this regard." *Bauserman*, 509 Mich at 693. This is a proposition with which many of our sister courts agree. See *id*. at 695 (collecting cases).

In *Ex parte Young*, the United States Supreme Court explained that "the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of and one which does not affect the State in its sovereign or governmental capacity." *Ex parte Young*, 209 US at 159. This is in accord with our own conception of the Michigan Constitution of 1963 as a limitation on the state's power. There are, of course, differences in the analysis of a state claim. Most obviously, a state constitutional claim does not implicate the supremacy of federal law over the states, as in *Ex parte Young*. It does, however, implicate the supremacy of our Constitution over the legislative, executive, and judicial branches of state government.

Typically, the Legislature has the authority to define the outer bounds of the state's sovereign immunity. Cf. *Christie*, 511 Mich at 58 ("The COCA . . . 'stands as this state's controlling legislative expression of waiver of the state's sovereign immunity from direct action suit against it and its agencies and of their submission to the jurisdiction of a court.' "), quoting *Greenfield Constr Co v Dep't of State Hwys*, 402 Mich 172, 195 (1978) (opinion by RYAN, J.). This authority includes the ability to prescribe conditions to bringing suit where the Legislature waives immunity, such as the notice provision at issue in this case. See *Christie*, 511 Mich at 58. But sovereign immunity, like other characteristics of state government, is necessarily subject to the limitations imposed by the people when they adopted our Constitution. See *Mays*, 506 Mich at 189 (opinion by BERNSTEIN, J.). And "the Legislature cannot grant a license to state and local government actors to violate the Michigan Constitution." *Sharp v Lansing*, 464 Mich 792, 810 (2001). We are also limited by the constraints the people imposed in our Constitution. See, e.g., *Bauserman*, 509 Mich at 703 ("There are instances in which the Constitution specifically tasks the Legislature with implementing the rights it affords."). As the *Bauserman* Court explained:

> [W]e agree that weighing policy considerations to pick and choose which harms the state should be liable for and to what extent is not within our purview. But neither is it within the purview of the Legislature. That

---

[10] See also *Bivens v Six Unknown Named Agents of Fed Bureau of Narcotics*, 403 US 388, 407 (1971) (Harlan, J., concurring) ("[T]he judiciary has a particular responsibility to assure the vindication of constitutional interests . . . .").

> consideration has been completed, and those choices are contained within the Constitution. [*Id*. at 704.]

Accordingly, our constitutional system is consistent with adoption of the rule from *Ex parte Young* as applied to claims brought under our own Michigan Constitution of 1963.

Additionally, as noted earlier, the COCA refers to state officers in the jurisdictional provision but not in the notice provision. Compare MCL 600.6419(1) with MCL 600.6431(1). It would seem odd to presume that the COCA's alignment with *Ex parte Young* is mere coincidence, particularly given the COCA's history as providing the conditions to the state's waiver of sovereign immunity. See *Christie*, 511 Mich at 57-58. Instead, it seems consistent with the Legislature's recognition that state officers are not immune from official-capacity suits for prospective relief under our Constitution.[11]

While I would have decided this case on the basis of the statutory text, the question of whether we allow the vindication of state constitutional rights through suits for prospective relief against state officers is one that this Court should examine.

V. CONCLUSION

Our Court of Appeals erred by holding that the COCA's notice provision applies in this case, in which a suit seeking prospective relief against our state's officers alleges a violation of state and federal constitutional rights. This ruling ignores the language of the statute and more than 100 years of sovereign-immunity law. It also risks placing formalism above the rights and freedoms enshrined in our federal and state Constitutions. This case presented the opportunity to clarify the application of the COCA's notice provision and the application of *Ex parte Young* to both state and federal constitutional claims brought in our courts.

I respectfully dissent from the Court's decision to decline to do so in this case. Fortunately, neither the Court of Appeals' unpublished decision nor this Court's denial order constitutes the final word on this issue. See MCR 7.215(C)(1); *Haksluoto v Mt Clemens Regional Med Ctr*, 500 Mich 304, 314 n 3 (2017) ("[D]enials of leave to appeal

---

[11] Several other state supreme courts have adopted a similar rule. See, e.g., *Dep't of Transp v Mixon*, 312 Ga 548 (2021); *DiGiacinto v Rector & Visitors of George Mason Univ*, 281 Va 127, 137-138 (2011); *Ex parte Bessemer Bd of Ed*, 68 So 3d 782, 789-790 (Ala, 2011).

do not establish a precedent."). It is my hope that the Court will revisit these issues in the appropriate future case.

CAVANAGH, C.J., joins the statement of THOMAS, J.