

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

MICHIGAN IMMIGRANT RIGHTS CENTER,

Plaintiff,

**OPINION AND ORDER DENYING**  
**DEFENDANT’S MOTION FOR**  
**SUMMARY DISPOSITION**

v

Case No. 21-000208-MZ

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

Hon. Elizabeth L. Gleicher

Defendant.

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Plaintiff Michigan Immigrant Rights Center (MIRC), a non-profit organization providing “legal resources and services to Michigan’s immigrant communities,” brings this action seeking a declaratory judgment and injunctive relief. MIRC avers that agents of defendant Gretchen Whitmer, Governor of the State of Michigan, are illegally denying the workers compensation claims of undocumented immigrants “solely because of their immigration status,” in contravention of state and federal law. Defendant seeks summary disposition under MCR 2.116(C)(4), (C)(5), (C)(7), and (C)(8), contending that plaintiff’s claims are non-justiciable or subject to dismissal on a variety of other grounds. The motion for summary disposition is DENIED.

**I. PERTINENT BACKGROUND**

Plaintiff’s complaint alleges that “as Governor, Defendant Gretchen Whitmer is responsible for enforcing the laws in the State of Michigan and is in charge of administering

Michigan’s workers’ compensation regime.” According to the complaint, injured and undocumented immigrant workers are being routinely foreclosed from obtaining workers’ compensation benefits based on workers’ compensation officials’ interpretation and application of a Court of Appeals decision, *Sanchez v Eagle Alloy, Inc*, 254 Mich App 651; 658 NW2d 510 (2003). Plaintiffs allege that the Court of Appeals’ holding in *Sanchez* has been effectively preempted by the Supreme Court of the United States in two cases,<sup>1</sup> and by the Supreme Court of Michigan in *Sweatt v Dep’t of Corrections*, 468 Mich 172; 661 NW2d 201 (2003) (opinion by MARKMAN, J.).

The issue presented in *Sanchez* was whether MCL 418.361(1), which relieves an employer from liability to pay benefits “for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime,” applied to the workers’ compensation claims of two undocumented immigrant workers. *Sanchez*, 254 Mich App at 668, quoting MCL 418.361(1).<sup>2</sup> A magistrate found that the claimants in *Sanchez* had used “fake documents to obtain employment,” constituting the commission of a crime, and therefore were entitled to benefits only until their employer learned of their undocumented employment status. *Id.* at 672. At that point the employer “could not legally retain them as employees or find them other work” due to their undocumented status, because according to the magistrate, “working in the United States without a valid Social Security card, or without permission of the United States government is illegal.” *Id.* The appellate commission affirmed the magistrate, and the Court of

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<sup>1</sup> The two cases are *Arizona v United States*, 567 US 387, 404-405; 132 S Ct 2492; 183 L Ed 2d 351 (2012), and *Kansas v Garcia*, \_\_ US \_\_; 140 S Ct 791; 206 L Ed 2d 146 (2020).

<sup>2</sup> MCL 418.361 was amended after the issuance of the *Sanchez* decision in 2011 PA 266, but the pertinent language in the current version is similar to that which was at issue in *Sanchez*.

Appeals affirmed. The Court of Appeals held that after the *Sanchez* plaintiffs' undocumented status came to light, they "became unable to obtain or perform work 'because of' the commission of crime within the meaning of subsection 361(1)," and therefore were not entitled to on-going, weekly wage-loss benefits. *Id.* at 672-673.

MIRC's complaint avers that contrary to the holding in *Sanchez*, "Federal law does not make it a crime for an alien to work without authorization, and th[e Supreme] Court has held that state laws criminalizing such conduct are preempted." And in *Sweatt*, plaintiff contends, the Michigan Supreme Court held that in applying § 361(1), a workers' compensation "adjudicator" must consider, among other things, the extent to which a "plaintiff's loss of wage-earning capacity is because of the 'commission of a crime.'" (Emphasis omitted). Contrary to the Court of Appeals' opinion in *Sanchez*, the complaint continues, *Sweatt* stands for the proposition that disqualification from eligibility for wage-loss benefits is not automatic when a worker's undocumented status comes to light. Rather, an employer may decrease a wage-loss award only after determining the extent to which the worker's reduction in subsequent wage-earning capacity is due to "the commission of a crime."

Despite these holdings, the complaint contends, "Michigan's workers' compensation regime has allowed officials to declare that working while undocumented itself amounts to the 'commission of a crime,' thereby "categorically" disqualifying undocumented workers from benefits. As a result, plaintiff claims that as an organization, it has suffered a legally redressable harm:

23. ... [T]he State's administration of the Workers' Compensation Act harms MIRC. The Michigan Immigrant Rights Center must dedicate a significant portion of its highly limited resources to respond to intakes involving undocumented workers who have been unlawfully denied wage-loss benefits. This

diversion of resources frustrates MIRC's mission by keeping it from pursuing the legal activities it was specifically set up to undertake; and this diversion of resources and frustration of mission will continue as long as Michigan officials' inappropriate application of the law persists.

The complaint further details the alleged harms in paragraphs 68 through 78:

68. MIRC's [Farmworker and Immigrant Rights] practice was not set up or intended to handle workers' compensation cases, given the robust network of private workers' compensation attorneys that exist[s] to handle those cases, as well as the fact that the workers' compensation system should, by virtue of its existence, ensure protections of injured workers.

69. Nonetheless, since its founding, MIRC's FWIR staff have had to field calls from injured immigrant workers, including farm workers, day laborers, and landscapers who were seeking legal assistance with their workers' compensation claims because they were denied workers' compensation on the basis that they had "committed a crime"; on numerous occasions a conclusion reached solely due to their immigration status.

70. Consistent with its design and mission, MIRC's FWIR staff sought to refer those injured workers to private counsel, yet numerous such referrals were unsuccessful because the private bar was unwilling to take the cases, given the court['s] reliance on *Sanchez* to deny wage-loss benefits based on the determination that an undocumented worker has by definition "committed a crime."

71. As a result, MIRC's FWIR project has been forced to divert a substantial amount of its highly limited resources to evaluating workers' compensation claims, frustrating its ability to pursue the legal activities it was designed to pursue.

72. For example, MIRC's FWIR staff have had to attend workers' compensation trainings, review treatises specific to workers' compensation practice in Michigan, join workers' compensation specific listservs, and consult with local workers' compensation attorneys to be able to counsel and advise immigrant injured workers being denied wage loss benefits.

73. MIRC's FWIR attorneys have also had to dedicate time to handling intakes, investigating and pursuing claims, and advising undocumented workers regarding wage-loss benefits.

74. Due to MIRC and the FWIR project's limited resources, where intakes have resulted in representing a client, it has only been for the limited purpose of representing the individual in workers' compensation proceedings, not the project's stated goals.

75. That representation has imposed additional costs on MIRC's FWIR project, such as the mileage involved in serving injured workers across the state and the purchase of treatises specific to workers' compensation practice in Michigan.

76. Due to the ongoing drain on its resources, in 2019, MIRC's FWIR project hired a part-time law clerk to help with wage-loss benefits intakes and related research.

77. MIRC would not have needed to expend these resources absent workers' compensation officials' improper application of Section 361(1).

78. This diversion frustrates MIRC's FWIR project's mission because, but for workers' compensation officials' incorrect application of the law, MIRC would have dedicated its attorney time and resources to its intended advocacy, such as regarding wage-and-hour violations, labor trafficking, agricultural employer-provided housing, workplace discrimination, and non-citizen access to benefits like unemployment insurance. MIRC's FWIR project would also conduct further outreach to migrant workers.

The complaint sets forth three counts seeking declaratory judgements, and a summary of the requested relief as follows:

#### PRAYER FOR RELIEF

For the foregoing reasons, plaintiff MIRC respectfully requests an order and judgment:

- a. Declaring that Section 361(1)'s "commission of a crime" language is unconstitutional and null and void;
- b. Declaring that [ ] workers' compensation officials and their agents cannot rely on a worker's undocumented immigration status to remove wage loss benefits, as had been authorized under *Sanchez v Eagle Alloy Inc.*, 254 Mich App 651 (2003);
- c. Declaring that undocumented workers' claims for wage-loss benefits and allegations that they have "committed a crime" must be considered by workers' compensation officials and their agents consistent with *Sweatt v Dep't of Corrections*, 468 Mich 172 (2003);
- d. Ordering Defendant, as well as all officers, agents, employees, attorneys, and other persons in active concert or participation with Defendant, to comply with the court's declarations; and

[e]. Providing any further relief, including equitable relief, that tis Court deems just and proper.

Defendant Whitmer’s motion for summary disposition raises four legal arguments, that:

(1) MIRC has failed to comply with the notice provision of the Court of Claims Act, MCL 600.6431; (2) MIRC has failed to allege an “actual controversy” as required by MCR 2.605; (3) MIRC lacks standing, and (4) MIRC has failed to exhaust administrative remedies. The Court finds no merit in any of these arguments.

## II. ANALYSIS

### A. MCL 600.6431 DOES NOT BAR THE REQUESTS FOR DECLARATORY RELIEF

Defendant first contends that MIRC’s declaratory judgment claims are barred by MCL 600.6431(1), which requires a plaintiff to provide notice to a state defendant within one year of the date on which a claim accrues. MIRC did not file a notice of intent before initiating this lawsuit.

A claim accrues when “ ‘the wrong upon which the claim is based was done regardless of when the damage results.’ ” *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 289; 769 NW2d 234 (2009), quoting MCL 600.5827. The time at which a claim accrues depends on the nature of the wrong to be vindicated and the relief sought. *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 455; 761 NW2d 846 (2008). In a case seeking declaratory relief to prevent a future wrong, the plaintiff’s cause of action necessarily arises before a “wrong” has been committed. Accordingly, in *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 128; 537 NW2d 596 (1995), the Supreme Court held that statutes of limitation do not apply in declaratory judgment actions, adopting the rationale of the United States Court of Appeals for the Second Circuit:

Limitations statutes do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated. There are no statutes which provide that declaratory relief will be barred after a certain period of time. Limitations periods are applicable not to the form of the relief but to the claim on which the relief is based. [*Luckenbach Steamship Co v United States*, 312 F2d 545, 548 (CA 2, 1963).]

Although MIRC's complaint describes substantive harms that have already occurred, MIRC seeks only prospective relief. Because the complaint requests declaratory and injunctive relief to prevent future harm, the wrongs sought to be vindicated have not yet occurred, and the one-year notice period set forth in MCL 600.6431(1) does not apply.

#### B. MIRC'S COMPLAINT ALLEGES AN ACTUAL CONTROVERSY

MCR 2.605(A)(1) states: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." Our Supreme Court has explained that "[a]n actual controversy exists when a declaratory judgment is needed to guide a party's future conduct in order to preserve that party's legal rights." *League of Women Voters of Mich v Sec'y of State*, 506 Mich 561, 586; 957 NW2d 731 (2020). "What is essential to an 'actual controversy' under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000) (citation and quotation marks omitted). A merely hypothetical future injury does not give rise to an actual controversy. *Id.*

Plaintiff's complaint describes a controversy that is not merely hypothetical, but that has resulted in real and tangible injuries to MIRC. According to the complaint, the MIRC's present legal rights are negatively affected by defendant's alleged misapplication of *Sanchez* and a

declaratory judgment is required to guide MIRC's future conduct to preserve its rights. These allegations suffice to create an actual controversy under MCR 2.605(A)(1).

### C. MIRC HAS STANDING

Defendant argues that MIRC lacks standing to advance "the legal rights of unidentified third parties." Anticipating MIRC's response, defendant contends that an organization has standing only if the members of the organization have a "sufficient interest." See *Trout United, Muskegon White River Chapter v White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992). And MIRC's failure to include its "members" as plaintiffs dooms its suit, defendant argues, because the "proper parties" are those who have been denied workers' compensation benefits.

MIRC grounds its standing argument in a well-established line of federal cases beginning with *Havens Realty Corp v Coleman*, 455 US 363, 379; 102 S Ct 1114; 71 L Ed 2d 214 (1982), in which the United States Supreme Court recognized that an organization may have standing to sue on its own behalf if it has suffered an injury. In *Havens*, an organization dedicated to the goal of promoting equal opportunity housing (HOME) sued a realty company and one of its employees under the Fair Housing Act, claiming that the defendants had engaged in unlawful racial steering. HOME alleged that it: "has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff ... has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices." *Id.* at 379. The Supreme Court found this allegation sufficient to establish the organization's standing:

If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income homeseekers, there can be no question that the organization has suffered



injury in fact. Such concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests[.] ... We therefore conclude, as did the Court of Appeals, that in view of HOME’s allegations of injury it was improper for the District Court to dismiss for lack of standing the claims of the organization in its own right. [*Id.*].

The “organizational standing” doctrine is now widely accepted in the federal courts. For example, in *Online Merchants Guild v Cameron*, 995 F3d 540, 547 (CA 6, 2021), the Sixth Circuit explained that “[t]o establish direct standing to sue in its own right, an organizational plaintiff ... must demonstrate that the ‘purportedly illegal action increases the resources the group must devote to programs independent of its suit challenging the action.’ ” (Citation omitted). In that case, the plaintiff “diverted resources that could have been expended elsewhere to address the Attorney General’s price-gouging investigations, and price gouging is an issue that the [plaintiff] had previously spent a negligible amount of time on.” *Id.* at 548. Rejecting the defendant’s argument that the organization’s expenditures were part of the organization’s existing mission, the Sixth Circuit emphasized that “within-mission organizational expenditures are enough to establish direct organizational standing.” *Id.* See also *Poe v Snyder*, 834 F Supp 2d 721, 732 (WD Mich, 2011) (“[T]he organizational Plaintiffs do have standing because SORA has ‘perceptibly impaired’ their ability to accomplish their missions of providing overnight shelter to homeless persons, which ‘constitutes far more than simply a setback to [their] abstract social interests.’”).

While acknowledging the federal courts’ embrace of organizational standing, defendant replies that a plaintiff who satisfies federal standing requirements does not necessarily have standing under Michigan law. Defendant accurately observes that there is no Michigan caselaw adopting (or rejecting) organizational standing in the context of the issue presented in this case.

In the federal courts, standing is rooted in Article III, § 1 of the United States Constitution, which grants federal courts only the “judicial power,” and Article III, § 2, which limits the judicial power to certain “Cases” or “Controversies.” In *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), our Supreme Court firmly rejected that federal standing jurisprudence applies in Michigan, holding that “the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable.” *Id.* at 355, citation omitted. The Supreme Court summarized:

We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan’s long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.* at 372].

Applying these principles to the organizational standing concept described in federal caselaw, the Court readily concludes that MIRC has organizational standing to sue. As discussed above, MIRC has met the requirements for seeking declaratory judgment under MCR 2.605. MIRC’s complaint demonstrates that MIRC has a “special injury” or a “substantial interest” that is “detrimentally affected in a manner different from the citizenry at large.” This suffices to confer standing under *Lansing Schools*.

#### D. SUBJECT-MATTER JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

Lastly defendant argues that this Court has been deprived of jurisdiction because MIRC failed to exhaust its administrative remedies. “Summary disposition for lack of jurisdiction under

MCR 2.116(C)(4) is proper when a plaintiff has failed to exhaust its administrative remedies.” *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

“The doctrine of exhaustion of administrative remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court.” *Cummins v Robinson Twp*, 283 Mich App 677, 691; 770 NW2d 421 (2009). If the Legislature has expressed an intent to grant a state agency exclusive jurisdiction over a particular type of dispute, “courts must decline to exercise jurisdiction until all administrative proceedings are complete.” *L & L Wine & Liquor Corp v Liquor Control Comm'n*, 274 Mich App 354, 356; 733 NW2d 107 (2007) (citation and quotation marks omitted).

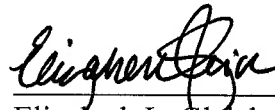
Defendant has failed to identify an administrative procedure available to MIRC that would address MIRC’s specific grievances regarding the harms detailed in the complaint. Moreover, the complaint seeks declaratory relief, and the power to issue a declaratory judgment is vested only in Michigan’s “court[s] of record.” MCR 2.605(A)(1). The workers compensation bureau is not a court of record. Indeed, the bureau is not even a court, and it has no ability to declare *Sanchez* inapplicable to certain workers’ compensation claims. *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 546; 303 NW2d 35 (1981) (“While we fully acknowledge that the bureau has exclusive jurisdiction to determine ‘all disputes relating to workmen’s compensation’, it must also be borne in mind that it is an administrative tribunal only and not a court possessing inherent judicial powers.”). See also *Yakowich v Dep’t of Consumer & Indus Servs*, 239 Mich App 506, 511; 608 NW2d 110 (2000). Because no administrative remedy exists for MIRC to exhaust, defendant’s argument lacks merit.

III. CONCLUSION

IT IS HEREBY ORDERED that defendant's January 18, 2022 motion for Summary disposition is DENIED.

This is not a final order and it does not resolve the last pending claim or close the case.

April 28, 2022



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Elizabeth L. Gleicher  
Judge, Court of Claims