STATE OF MICHIGAN
IN THE MICHIGAN 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.

Supreme Court Case No. ______________

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

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

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APPLICATION FOR LEAVE TO APPEAL BY PLAINTIFF MICHIGAN IMMIGRANT RIGHTS CENTER

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STATEMENT ON JUDGMENT BELOW AND ORDER APPEALED

On May 30, 2024, the Court of Appeals entered a consolidated per curiam opinion regarding Defendant's appeal as of right and discretionary appeal, Court of Appeals case numbers 361451 and 362515.[1] *Mich Immigrant Rts Ctr v Governor*, Nos 361451 & 362515, unpublished consolidated per curiam opinion of the Court of Appeals, issued [May 30, 2024] (Docket Nos. 72 & 43) (2024 WL 2790290). The consolidated opinion reversed the lower court's denial of summary disposition and orders remand for entry of an order of dismissal.

Plaintiff Michigan Immigrant Rights Center ("MIRC") seeks leave to appeal that judgment and filed this application within 42 days, as required by MCR 7.305(C)(2) and this Court has jurisdiction over this appeal pursuant to MCR 7.303 (B)(1).

For the reasons stated herein, this application establishes the grounds for review in MCR 7.305(B)(1), (2), (3), and (5)(a) and (b) and should be granted.

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[1] App'x, at 001a-007a (Order of Court of Appeals, May 30, 2024 (FEENEY, P.J., KELLY, J. and RICK, J.)).

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. WHETHER A CLAIM FOR PROSPECTIVE EQUITABLE RELIEF TO PREVENT PRESENT AND FUTURE INJURIES IS UNTIMELY UNDER MCL § 600.6431 SIMPLY BECAUSE SIMILAR CONDUCT INJURED THE PLAINTIFF MORE THAN ONE YEAR BEFORE IT FILED ITS VERIFIED COMPLAINT.

   Plaintiff's Answer: No.
   Defendant's Answer: Yes.
   Court of Claims' Answer: No.
   Court of Appeals' Answer: Yes.

2. WHETHER DEFENDANT CAN INVOKE SOVEREIGN IMMUNITY THROUGH MCL § 600.6431 WHEN THE PLAINTIFF SOLELY SEEKS PROSPECTIVE EQUITABLE RELIEF TO STOP OFFICIALS' UNLAWFUL CONDUCT.

   Plaintiff's Answer: No.
   Defendant's Answer: Yes.
   Court of Claims' Answer: Unaddressed.
   Court of Appeals' Answer: Yes.

3. WHETHER DEFENDANT CAN INVOKE SOVEREIGN IMMUNITY THROUGH MCL § 600.6431 WHEN THE PLAINTIFF SEEKS TO STOP OFFICIALS' UNCONSTITUTIONAL CONDUCT BECAUSE THE PLAINTIFF IS AN ORGANIZATION RATHER THAN AN INDIVIDIUAL.

   Plaintiff's Answer: No.
   Defendant's Answer: Yes.
   Court of Claims' Answer: Unaddressed.
   Court of Appeals' Answer: Yes.

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I. INTRODUCTION

Can the political branches of this State prevent the courts from requiring officials to comply with their legal obligations? Under the Court of Appeals' decision: yes. The panel below held that if the State's unlawful policy first caused the plaintiff's injury more than a year prior to the Complaint, MCL § 600.6431's requirement that a claim accrue within one year of filing prohibits that plaintiff from ever seeking to stop the policy. The panel held the definition of accrual means that if a defendant produces repeated injuries, unless a party races to court and files within the statutory time limit for the initial harm, no court can offer any relief, even prospective relief from future injuries. The panel below further held MCL § 600.6431 was an appropriate assertion of the State's sovereign immunity. In fact, it stated that immunity allows the legislature to impose any limits on suits against the State the legislature chooses. According to the panel, the legislature can declare when, if ever, the courts can grant relief, regardless of the nature of the claim.

The implications of the panel's holdings are untenable. Under its reasoning an employee subject to age discrimination would need to ask the courts to intervene at the first hint of a problem. If subsequently, motivated by the same policy, the employee was passed over for a promotion again, under the panel's definition of accrual the question would be whether the first action happened within the statute of limitations, not the second. The employee who tries to use internal dispute resolution procedures to resolve the first misconduct risks never being able to stop further applications of the unlawful policy.

Moreover, under the panel's sovereign immunity analysis, the State can fully immunize officials. Were the discriminatory employer the State, the legislature could choose to make that policy entirely unactionable. The State could even pass a law enacting school segregation and

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prevent this Court from hearing the NAACP's request that it enforce the rules of *Brown v. Board of Education* and enjoin the law.

Unsurprisingly, the decision below is wrong, although unfortunately, the panel is not alone in its errors. The panel inaccurately applied the law on when a claim accrues. This Court has been clear that (a) each new instance of misconduct that produces an injury separately accrues — restarting the clock; and (b) claims for forward-looking relief are by definition timely — requests to halt future injuries necessarily accrue within any statutory time limit. *Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm'n*, 511 Mich 325, 339; 999 NW2d 423 (2023); *Twp of Fraser v Haney*, 509 Mich 18, 28–29; 983 NW2d 309 (2022); *Taxpayers Allied for Const Tax'n v Wayne Cnty*, 450 Mich 119, 128; 537 NW2d 596 (1995). Yet, other panels too have said that if a plaintiff suffers repeated misconduct, such as property owners facing trespass or nuisance, and the defendant gets away with it for a certain period, they are allowed to keep violating the plaintiff's rights forever.

While the above errors alone warrant this Court's attention, the panel below also vastly overread this Court's statement that MCL § 600.6431 is "a limited waiver of the state's immunity from suit." *Christie v Wayne State Univ*, 511 Mich 39, 45, 52, 57, 61; 993 NW2d 203 (2023). It understood *Christie* to authorize the legislature to make the sovereign immunity expressed through MCL § 600.6431 extend as far as it liked, including to suits seeking prospective equitable relief and even to stop certain constitutional violations. But as this Court and other panels of the Court of Appeals have repeatedly made clear, government actors *have no right to immunity* in two circumstances, each of which applies here. First, there is no sovereign immunity where a plaintiff seeks prospective equitable relief to require officials to comply with the law, which is all the relief MIRC requests. Sovereign immunity from damages suits is one thing; forbidding courts from

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ordering government actors to follow the law is quite another. Second, in Michigan, state actors are not immune for their constitutional violations, whether or not the plaintiff seeks prospective relief. MIRC alleges Defendant is currently violating the Supremacy Clause of the U.S. Constitution and the Due Process Clauses of the Michigan and U.S. Constitutions, and those violations harm MIRC. It can request the courts enforce the federal and state Constitutions against government officials, no matter the legislature's attempt to say otherwise.

Relying on its faulty foundations, the panel dismissed MIRC's challenge to the state's enforcement of the Workers' Disability Compensation Act, which itself deserves this Court's attention. Citing *Sanchez v Eagle Alloy Inc*, 254 Mich App 651; 658 NW2d 510 (2003), workers' compensation officials — who are ultimately accountable to Defendant — maintain a policy that every undocumented worker is ineligible for wage-loss benefits. They state that being undocumented brings the worker within an exception to wage-loss benefits for a claimant who is unable to work due to the commission of a crime. MCL § 418.361(1). MIRC alleges (and the workers' compensation agency subsequently confirmed) this policy persists today.

The State's policy, as implemented by the executive branch officials working underneath the Governor, is transparently unlawful. Even if *Sanchez* says what the State believes (it does not), the Supreme Court of the United States has since held "[f]ederal law does not make it a crime for an alien to work without authorization, and th[e] Court has held that state laws criminalizing such conduct are preempted," *Kansas v Garcia*, 589 US 191, 196; 140 S Ct 791; 206 L Ed 2d 146 (2020) (citing *Arizona v United States*, 567 US 387, 403–407; 132 S Ct 2492; 183 L Ed 2d 351 (2012)). Further, after *Sanchez*, this Court held the commission of a crime alone is insufficient to deny a worker wage-loss benefits. *Sweatt v Dep't of Corr*, 468 Mich 172; 661 NW2d 201 (2003) (plurality opinion). Yet, under the guise of following the court of appeals decision in *Sanchez* — rather than

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more recent, contrary state and federal Supreme Court decisions — state officials are enforcing a policy based on an invalid interpretation of the statute, benefiting dangerous businesses at the expense of Michigan's most vulnerable workers.

In this manner, this case cries out for this Court's review. It involves significant legal questions and questions of public interest regarding when claims accrue, particularly claims for prospective relief. And it presents the fundamental question of whether the judiciary can order government officials to comply with their legal and constitutional obligations, or if, instead, the legislature can invoke sovereign immunity to limit that review as it sees fit. MCR 7.305(B)(2)–(3). Moreover, the decision below is inconsistent with this Court's and prior Court of Appeals' holdings regarding timeliness and when the State can invoke sovereign immunity. It is an ideal vehicle to repair the splits on these issues. MCR 7.305(B)(5)(b). Resolving these errors will also let the courts examine the State's current (mis)interpretation of the Workers' Disability Compensation Act, itself a question of significant public importance. MCR 7.305(B)(1)–(2). In contrast, allowing the decision below to stand will not only work material injustice against undocumented workers, but will greenlight further injustices by enabling officials and others to avoid accountability. MCR 7.305(B)(2), (3), (5)(a). This Court should grant leave to appeal and ultimately reverse the decision below.

II. STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

A. The Complaint Establishes The Relevant Facts

In November 2021, MIRC filed a Verified Complaint in the Court of Claims seeking declaratory relief under MCR 2.601(A)(1) and a related injunction under MCR 3.310 to stop the damage the unlawful policy is presently causing to MIRC.[2] Defendant solely sought to dispute

[2] See App'x at 009a-010a & 027a-030a (Complaint at ¶¶ 5–7 & 83-109).

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that Complaint based on the sufficiency of the allegations, without introducing any evidence. Thus, "[t]he contents of the complaint are accepted as true." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). MIRC must be provided the opportunity for all "factual development [that] could possibly justify" the relief sought. *Doe v Gen Motors, LLC*, 511 Mich 1038, 1039, 1041–42; 992 NW2d 275 (2023) (citation omitted).

1. Michigan's workers' compensation is administered in violation of the law, including the federal and state Constitutions

The Complaint explains Michigan officials presently enforce a policy "denying undocumented individuals' recovery for on-the-job injuries solely because of their immigration status."[3] The Workers' Disability Compensation Act provides wage-loss benefits to offset lost income for on-the-job injuries. However, it carves out a "person [who] 'is unable to obtain or perform work because of . . . [the] commission of a crime.'"[4] "Relying on a Michigan Court of Appeals decision, *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651 (2003), Michigan's workers' compensation officials . . . have concluded evidence a worker is an undocumented immigrant establishes the worker would 'commit a crime'" solely by seeking employment and "thus, the worker's status eliminates the worker's entitlement to wage-loss benefits."[5]

The Complaint provided two early examples of cases applying this rule soon after *Sanchez* was issued in 2003 and explained that the rule is presently being applied; so currently, "Michigan's workers' compensation officials have categorically disqualified undocumented workers."[6]

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[3] App'x at 009a (Complaint at ¶ 1).

[4] App'x at 010a (Complaint at ¶ 10) (quoting MCL 418.361(1)) (second alteration in original)

[5] App'x at 010a-011a (Complaint at ¶ 11).

[6] App'x at 009a &, 019a-027a (Complaint at ¶¶ 1, 42–47).

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Although not yet part of the record, MIRC explained to the Court of Appeals that in documents MIRC obtained following filing, the workers' compensation agency confirmed this remains the policy enforced today. MIRC could introduce this evidence at summary judgment or amend its Complaint to include this fact.

Regardless of whether workers' compensation officials' reading of *Sanchez* is correct (again, it is not), the State's policy is unlawful for three reasons. *First*, in cases post-dating *Sanchez*, the Supreme Court of the United States has explained "the [federal] Immigration Reform and Control Act makes 'it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers,' but also 'reflects a considered judgment that making criminals out of aliens engaged in unauthorized work — aliens who already face the possibility of employer exploitation because of their removable status — would be inconsistent with federal policy and objectives'"; and therefore the federal Constitution preempts any state law that criminalizes "working while undocumented."[7]. The State's policy, which holds that every injured employee who works while undocumented has "commi[tted] a crime," is squarely preempted by the federal rule.

Second, after *Sanchez*, this Court stated that even if an employee has committed a crime, "the employer still must pay wage-loss benefits to compensate for on-the-job injuries, unless the employer can establish" that the commission of a crime, rather than the injury, is what reduced the worker's earning potential.[8] If the injury, as opposed to the crime, is what reduced the employee's earning ability, the employee is entitled to wage-loss benefits regardless of any purported criminal history. Thus, "[i]n holding a worker's [immigration] status alone is sufficient to deny wage-loss

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[7] App'x at 011a (Complaint at ¶ 15)(quoting *Arizona*, 567 US at 405 and *Kansas*, 140 S Ct at 798))

[8] App'x at 012a (Complaint at ¶ 16)(citing *Sweatt*, 468 Mich 172).

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benefits, Michigan workers' compensation officials have wrongfully relieved employers of their evidentiary burdens and thereby improperly denied a host of workers compensation they are owed."[9]

Third, two decades of bitter experience since *Sanchez* demonstrate the ongoing application of the "commission of a crime" exception to undocumented workers violates the due process requirements of the federal and state Constitutions. The exception's vague terms and poor procedures mean that "[w]orkers enter a civil, administrative proceeding, and leave having been found to have engaged in criminal conduct, when no such crime exists, and without the proper party being obligated to present cognizable evidence that satisfies the burden of proof to eliminate benefits."[10] This misuse of the "commission of a crime" exception has proven it cannot be allowed to stand.

Although the workers' compensation agency and its magistrates administer the wrongful policy, the Governor's office, as the chief executive official in the state, is ultimately responsible for their conduct. Thus, to prevent the policy from persisting, MIRC seeks a declaratory judgment and injunction against the Governor, as the representative of her office. "The executive power is vested in the governor" and therefore the holder of that office is responsible for the executive branch's administration of the laws. *Duncan v. State*, 284 Mich App 246, 271; 774 NW2d 89 (2009) (quoting Const 1963, art 5, § 1). Indeed, the Constitution provides "the governor shall take care that the laws be faithfully executed." *Id.* (quoting Const 1963, art 5, § 8). Consistent with this, the Governor is responsible for appointing all the workers' compensation officials in charge of the statute's administration and can remove them if they fail to act consistently with her office's

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[9] *Id.*

[10] App'x at 012a (Complaint at ¶ 17).

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understanding of the law.[11] In other words, ordering the Governor to comply with the law will ensure all the officials administering the statute will abide by the law and prevent further harm from their unlawful conduct.

2. *Michigan's recurring misapplications of the workers' compensation statutes have repeatedly injured MIRC*

The misapplication of the commission of a crime exception not only injures workers, but also MIRC. "MIRC is a legal resource center that serves Michigan's immigrant communities."[12] In 2017, MIRC began a project focused on farmworkers, who make up a disproportionate amount of the State's undocumented workforce.[13] The project was designed to take on only cases that "could not be adequately addressed by the private bar."[14] Thus, MIRC intended to exclude workers' compensation cases from its work, "given the robust network of private workers' compensation attorneys that exist to handle those cases" and the fact that the workers' compensation system should ensure a sufficient financial incentive for that representation to continue.[15]

Yet due to the State's policy of denying undocumented workers compensation solely based on their immigration status, MIRC's farmworker program has experienced a regular flow of intakes from undocumented workers unable to secure compensation or representation.[16] Workers'

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[11] App'x at 015a (Complaint at ¶ 26).

[12] App'x at 024a (Complaint at ¶ 65).

[13] App'x at 024a (Complaint at ¶ 66).

[14] App'x at 024a (Complaint at ¶ 67).

[15] App'x at 024a-025a (Complaint at ¶¶ 67–68).

[16] App'x at 025a (Complaint at ¶¶ 69–70).

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compensation claims are initially handled by an employer's insurer; only if there is a basis to dispute the claim do the parties reach adversarial proceedings[17]. Given the State's consistent reinforcement of its policy, insurers predictably and repeatedly deny claims based exclusively on immigration status. Moreover, the private bar is "unwilling to take the cases" as it knows workers' compensation officials will use "*Sanchez* to deny wage-loss benefits," thus undercutting the bar's ability to receive compensation for their representation.[18]

Hence, from its founding to the filing of this case, MIRC's farmworker project has seen a steady stream of intakes from undocumented workers locked out of the workers' compensation system and with nowhere else to turn.[19] This has impaired the farmworker project's ability to pursue its planned, core agenda.[20] It has imposed hard costs in the form of money to purchase legal reference materials and to pay for travel to meet with workers in person.[21] In 2019, MIRC also hired a part-time staff member to address the unexpected volume of workers' compensation intakes. And these are just examples of MIRC's financial injuries. Moreover, all the activities associated with these intakes divert MIRC's staff from the organization's intended work.[22]

Lest there be any doubt the State's policy imposes recurrent injuries on MIRC, the same year that MIRC filed its Complaint, it received additional intakes that it needed to address, was preparing to take on representation of a worker in workers' compensation proceedings, and

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[17] App'x at 016a-017a (Complaint at ¶ 34).

[18] App'x at 025a (Complaint at ¶¶ 69-70).

[19] App'x at 025a & 027a (Complaint at ¶¶ 71 & 80).

[20] *Id.*

[21] App'x at 025a-026a (Complaint at ¶¶ 71–75).

[22] App'x at 025a-026a (Complaint at ¶¶ 69, 72–74, & 78).

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planned to produce educational materials to inform injured undocumented workers of their rights.[23] These costs are new injuries that result from each instance in which the State enforces its policy, pushing undocumented workers outside the standard workers' compensation system and to MIRC.[24] Because of its long experience with this process, MIRC has every reason to believe similar demands on its financial resources and staff will recur in the future.[25]

3. MIRC does not seek to recover damages for any past harms, but only seeks prospective declaratory and injunctive relief to require officials to follow the law in the future

The Complaint does not seek any form of damages or other retrospective relief. Indeed, in no way does MIRC seek to hold the State liable for the past harms it has suffered because of the unlawful policy to deny wage-loss benefits to injured undocumented workers.

Instead, the Complaint solely requests three prospective declaratory judgments: (a) that, consistent with the Supremacy Clause and the Supreme Court of the United States's recent holdings, immigration status alone can no longer be used to declare an undocumented worker has committed a crime and thereby deny wage-loss benefits; (b) that, consistent with this Court's discussion of the evidentiary burdens in the workers' compensation regime, immigration status alone can no longer be used to deny the benefits, but rather that the employer must prove the wage-loss is due to the commission of a crime rather than the on-the-job injury; and (c) that, in light of the evidence MIRC would develop, the commission of a crime language is unduly vague and inconsistent with due process and therefore unenforceable. The Complaint also seeks an injunction

[23] App'x at 027a (Complaint at ¶ 81).

[24] *E.g.*, App'x at 025a (Complaint at ¶¶ 69-70).

[25] App'x at 027a (Complaint at ¶82).

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to require the Governor and her agents to abide by these declarations.[26] The Complaint repeatedly explained the sole objective of the requested relief was to "reduce the extent to which [MIRC] will have to" expend resources in response to the unlawful administration of the Workers' Disability Compensation Act in the future.[27]

B. The Court of Claims' Decision

Defendant sought summary disposition based on the pleadings, contending Defendant was immune from suit because MIRC's Complaint was untimely under MCL § 600.6431, MIRC lacked an actual controversy or standing, and MIRC needed to exhaust matters before the workers' compensation agency before proceeding to court. Judge Gleicher, sitting by designation on the Court of Claims, considered and rejected each argument.

Defendant claimed MIRC failed to "provide notice" or initiate an action "within one year of the date on which a claim accrues" as required by MCL § 600.6431.[28] Judge Gleicher explained that, assuming she needed to apply MCL § 600.6431(1) to the facts of this case, MIRC's claims are timely, but also MIRC satisfied the timeliness requirement as a matter of law.[29] MIRC alleges it will incur future damage, and solely seeks to prevent those prospective injuries — not to recover for any past harms. Therefore, Judge Gleicher held, the notice or filing period could not yet have started, much less expired.[30] Moreover, this Court has explained that claims for forward-looking

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[26] App'x at 031a (Complaint at Prayer for Relief).

[27] App'x at 028a-030a (Complaint at ¶¶ 89, 98, & 107).

[28] App'x at 040a (Opinion & Order of Court of Claims, at 6).

[29] App'x at 040a-041a (Opinion & Order of Court of Claims, at 6-7).

[30] *Id.*

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relief are timely by definition, and thus as a matter of law it is unnecessary to apply MCL 600.6431(1)'s notice requirement.[31]

Judge Gleicher further held MIRC's expenditures due to Defendant's improper policy established an "actual controversy" and standing.[32] The costs the policy imposes on MIRC and MIRC's reduced ability to carry out its core mission amount to a "special injury" and "substantial interest" distinct from the "citizenry at large" that establishes both an actual controversy and standing.[33]

Finally, Judge Gleicher explained MIRC did not need to exhaust administrative proceedings before the workers' compensation agency because the agency's procedures are not "available to MIRC," which is of course an organization, not an injured worker.[34] Moreover, even if MIRC could appear before the agency, the agency could not grant the relief MIRC seeks, and therefore exhaustion is not required. 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)(l). "The workers compensation bureau is not a court of record."[35]

C. The Court of Appeals' decision

After several interlocutory motions regarding Defendant's ability to appeal, Defendant filed an appeal as of right regarding Defendant's claim of immunity under MCL § 600.6431(1),

[31] *Id*. (citing *Taxpayers Allied*, 450 Mich at 128).

[32] App'x at 041-044a (Opinion & Order of Court of Claims, at 7-10) (relying on *Citizens for Common Sense in Gov't v Att'y Gen*, 243 Mich App 43, 55; 620 NW2d 546 (2000); *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349; 792 NW2d 686 (2010)).

[33] App'x at 044a (Opinion & Order of Court of Claims, at 10).

[34] App'x at 044a-045a (Opinion & Order of Court of Claims, at 10-11).

[35] App'x at 045a (Opinion & Order of Court of Claims, at 11).

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and a discretionary appeal to raise all the issues she raised in the Court of Claims. Defendant also obtained a stay of factual development in the Court of Claims.

The Court of Appeals ultimately reversed the Court of Claims. The panel stated it would "presume . . . plaintiff has standing and has articulated an actual controversy."[36] It also declined to address Defendant's exhaustion argument.[37] But it held Defendant immune from suit because the case was not filed within one year of the claim accruing as required by MCL § 600.6431(1).[38]

The panel defined accrual as the point "when a party's need for a judicial determination to guide its conduct stops being merely hypothetical."[39] Relying on this definition, the panel stated that because MIRC suffered costs due to the misapplication of the workers' compensation statute as soon as its farmworker project "exist[ed]," MIRC's claim accrued more than a year before its Complaint.[40]

Yet, seemingly recognizing its holding was inconsistent with this Court's case law on claim accrual for repetitive wrongdoing, the panel next acknowledged that a "new cause of action can arise from each wrongful act."[41] To sidestep this precedent, the panel asserted that each instance in which the government reinforced its unlawful interpretation of the Workers' Disability Compensation Act is not a new act, but rather that every decision misapplying the law is tied

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[36] App'x at 004a (Opinion of Court of Appeals, at 4).

[37] *Id.*

[38] *Id.*

[39] *Id.* (citing *League of Women Voters of Mich v Sec'y of State*, 506 Mich 561, 586; 957 NW2d 731 (2020)).

[40] *Id.*

[41] App'x at 005a (Opinion of Court of Appeals, at 5) (citing *Haney*, 509 Mich at 28–29).

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together and constitutes a single "ongoing harm[]."[42] Though it is the repeated applications of the workers' compensation policy that injures MIRC, rather than the *Sanchez* decision which the government (mis)reads to justify that policy, the Court of Appeals concluded: "This Court's ruling in *Sanchez*" is "a single act."[43] And, regardless of subsequent decisions and decision makers who misread *Sanchez* and ignore intervening case law, the Court of Appeals concluded all of MIRC's harms are "ongoing *consequences of* [that] allegedly wrongful act[]," *i.e.*, the ruling in *Sanchez*.[44]

However, undermining its own reasoning, the panel also acknowledged that the repeated acts state officials in misapplying the workers' compensation statute had produced discrete injuries to MIRC well after *Sanchez*. It noted, "certainly plaintiff was aware of its alleged claims by 2019 when it hired personnel specifically to address the calls it was receiving due to denials of workers' compensation benefits on the basis of immigrant status alone."[45]

The panel attempted to address this internal inconsistency by stating MIRC "identified only two discrete instances of workers being denied benefits" based on immigration status, presumably the two early workers' compensation decisions given as examples, which are outside MCL § 600.6431(1)'s notice period.[46] The panel did not reconcile its focus on the two cited workers' compensation decisions with paragraph one of the Complaint, which alleges a current policy to deny benefits based on immigration status. Nor did the panel square its emphasis on this pair of

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] App'x at 004a (Opinion of Court of Appeals, at 4).

[46] App'x at 005a (Opinion of Court of Appeals, at 5).

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earlier denials with its recognition that MIRC had suffered an actionable injury in 2019, well after those two administrative decisions.

Acknowledging additional precedent that undermined its accrual analysis, the panel also recognized that "a declaratory judgment action may be brought before harm" accrues, which includes the future injuries that MIRC alleges and seeks to prevent, so a claim regarding those injuries could not be untimely.[47] However, to make this principle inapplicable, the panel asserted that forward-looking declaratory relief is unavailable where a statutory time-bar had run on the claim "for substantive relief."[48] It did not explain how MCL § 600.6431(1)'s one-year time limit could have started, much less expired, on MIRC's claims for substantive relief where MIRC solely seeks relief from future wrongdoing.

Finally, the panel recognized that Defendant was relying on MCL § 600.6431 as an expression of sovereign immunity and rejected MIRC's argument that the State cannot assert such immunity here. "There is no exception to sovereign immunity for claims merely because those claims seek prospective equitable relief . . . ."[49] The panel acknowledged the Supreme Court of the United States adopted such an exception for suits seeking prospective equitable relief in federal court against state official's unlawful conduct, *Ex parte Young*, 209 US 123; 28 S Ct 441; 52 L Ed 714 (1908). It also recognized this Court had expressed this same exception should apply in State court.[50] Yet, for the first time in any of the papers in this case, the panel characterized the

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[47] App'x at 004a (Opinion of Court of Appeals, at 4) (citing *Taxpayers Allied*, 450 Mich at 128).

[48] *Id*. (citing *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 456; 761 NW2d 846 (2008)).

[49] App'x at 005a (Opinion of Court of Appeals, at 5).

[50] *Id*. (citing *Li v Feldt* (After Second Remand), 439 Mich 457, 469; 487 NW2d 127 (1992) (opinion by CAVANAGH, C.J.)).

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statements in *Li* as a non-binding plurality opinion. It then declined to follow *Li*.[51] The panel did not address myriad other decisions from this Court and other panels of the Court of Appeals holding that sovereign immunity does not prevent suits to prospectively stop government misconduct.

Further, the panel agreed that this Court and the Court of Appeals have held there is no right to immunity from damages or prospective relief "where it is alleged that the state has violated a right conferred by the Michigan Constitution," claims that MIRC raises here.[52] But the panel held the exception to immunity for constitutional violations only applies when the plaintiff asserts its own, individualized constitutional rights. An organization like MIRC cannot seek to remedy violations. The panel cited cases describing instances in which litigants lack standing to challenge constitutional injuries to third parties, but those cases did not address immunity at all. And despite explicitly assuming that MIRC *does* have standing (and thereby has alleged an injury to itself as well as others),[53] the panel still held MIRC was not asserting injuries to its own rights and stated, "this exception to sovereign immunity is therefore inapplicable."[54]

The panel claimed its sovereign immunity analysis aligned with the fact that "[o]ur Supreme Court has unequivocally held compliance with MCL 600.6431(1) is a precondition to any suit (other than claims under WICA) against the state," in order to protect the State's

[51] App'x at 006a (Opinion of Court of Appeals, at 6).

[52] *Id*. (citing *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 686; 983 NW2d 855 (2022) ("*Bauserman II*"); *Duncan*, 284 Mich App at 268–69).

[53] App'x at 004a (Opinion of Court of Appeals, at 4).

[54] App'x at 006a (Opinion of Court of Appeals, at 6).

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immunity.[55] It did not address the tautology that the State must be allowed to assert immunity to protect its right to immunity.

The panel ordered the case dismissed, rejecting MIRC's request that it be allowed to amend to cure any pleading defects.

III. REASONS TO GRANT LEAVE TO APPEAL

The decision below gravely limits when a suit can be brought, enabling the most problematic misconduct to persist, and it does so in violation of this Court's and other Court of Appeals' controlling decisions. In what is a concerning trend, the panel below ignored this Court's recent holdings on accrual to declare that what is relevant is when the first violation injured the plaintiff, not the last. As a result, it insulates not just government policies, but all sorts of institutionalized wrongdoing from review. It does so even when the plaintiff does not seek damages, but solely seeks prospective relief to force future compliance with the law, despite this Court recognizing such requests are necessarily timely and thus do not require accrual analysis. In the panel's dystopia, a company's practice of overcharging consumers or a school board's declaration it will not entertain complaints of sexual harassment can only be pursued if the plaintiff brings a claim within whatever time limit the legislature choses to set as measured from the first violation, even when the plaintiff is subject to multiple wrongs.

Moreover, the panel below said the result here is not just a product of the meaning of accrual, but the State's sovereign immunity from suit. That is, in direct contradiction to precedent and the very structure of the Constitution, it held MIRC needed to comply with MCL § 600.6431 because without that the State was immune. In the panel's view, unless the legislature has authorized State officials to be sued under MCL § 600.6431 or otherwise, the judiciary cannot

[55] *Id*. (citing *Christie*, 511 Mich at 55–57, 64–65).

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order officials to comply with the law. Crafting an even more stringent rule for organizations like MIRC, the panel further provided that without legislative approval they cannot ask the judiciary to even enforce the Constitution.

As a result, the State is allowed to enforce a blatantly unlawful interpretation of the Workers' Disability Compensation Act. It can today and in the future keep undocumented workers from pursuing their claims for on-the-job injuries and divert those workers to MIRC, which must absorb the costs of aiding those workers in obtaining what little redress the State will allow. This case checks every box for granting leave to appeal. MCR 7.305(B)(1)-(3), (5).

A. The Panel Misunderstood When A Claim Accrues And Incorrectly Held MIRC's Claim Untimely

1. Assuming the courts need to decide whether MIRC's requests for prospective relief accrued within the last year, the Court of Appeals incorrectly held it did not

a. The panel misapplied this Court's decisions in *Haney* and *Sunrise*

If MIRC needs to show a claim arising within the year prior to the Complaint (it does not, as discussed *infra*), MIRC has a fresh claim. The Court of Appeals asserted the date of accrual is the very first time the harm caused by the defendant is not "merely hypothetical or anticipated."[56] *Haney* and *Sunrise* reject this statement.

There this Court has explained that "requir[ing] plaintiffs to file [their] claims at the first" violation or "forever lose their leverage to urge the government to remedy defects" would defy the "logic" of this Court's precedent. *Sunrise*, 511 Mich 340. Rather, *Haney* and *Sunrise* establish that "a plaintiff's failure to timely sue on the first violation in a series does not grant a defendant

[56] App'x at 004a (Opinion of Court of Appeals, at 4).

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immunity" for future violations. *Haney*, 509 Mich at 28. "[E]ach time a defendant commits a new violation," that is a new "wrong or injur[y]" to the plaintiff, and a new claim accrues. *Id.* at 28–29.

This Court's articulation of claim accrual — including its abrogation of the continuing wrongs — merely seeks to prevent a party from "recover[ing] for wrongs that occurred outside the statutory period." *Id.* at 27. Thus, a plaintiff who suffered "within the statutory period" cannot use that harm to "revive stale claims" even if they are related. *Id.* at 28. For instance, a plaintiff who was subjected to "adverse employment act[s] by a defendant" "may not recover for injuries" that started "outside the statutory period of limitations" even if the harms from those injuries are felt within the statutory period. *Id.* at 28–29.

At the same time, neither the definition of accrual nor the abrogation of the continuing wrongs doctrine prevents liability for "related" injuries "within the limitations period." *Id.* A new adverse employment action that passes over that employee for a second time, including one based on the exact same policy, is actionable. *Id.*

The panel's notion that the repeated misapplications of the workers' compensation statute at issue here are a "single act" unlike the "discrete act[s]" that occurred in *Haney* and *Sunrise* cannot be reconciled with doctrine, the Complaint, or the facts of those cases.

In *Haney*, this Court recognized a defendant may "keep committing wrongful acts of the same nature" and explained that neither the definition of accrual nor the limits on the continuing wrongs doctrine undermined proceedings against injuries from such wrongful acts. *Haney*, 509 Mich at 28. MIRC's injuries are thus actionable.

As the Supreme Court of the United States just held, standing is "familiar" whenever a "government regulation of a third-party" causes "downstream . . . economic injuries." *FDA v Alliance for Hippocratic Med,* 602 US 367, 385; 144 S Ct 1540; 219 L Ed 2d 121 (2024). It is also

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recognized that an organization is harmed whenever there is "a 'purportedly illegal action that increases the resources the group must devote'" to activities that keep it from its core work. *Hooker v Weathers*, 990 F2d 913, 915 (6th Cir, 1993) (quoting *Hous Opportunities Made Equal, Inc v Cincinnati Enquirer, Inc*, 943 F2d 644, 646 (6th Cir, 1991), in turn quoting *Spann v Colonial Vill, Inc*, 899 F2d 24, 27 (DC Cir, 1990) (Bader-Ginsburg, J.)).

Each wrongful denial of a workers' compensation claim, which leads to a downstream harm to MIRC, qualifies as an act causing a distinct injury. Thus, for purposes of accrual, the recent misapplications of the workers' compensation statute, which then lead undocumented workers to turn to MIRC, imposing costs on MIRC, are actionable. They are based on the same policy, *i.e.*, are of the same nature, but the State keeps committing to the policy, bringing about new injuries, so MIRC can seek to remedy those wrongs.[57]

Indeed, the Complaint alleges current harms from discrete wrongful acts. It states the Governor's policy is presently being enforced and causing undocumented workers to be denied wage-loss benefits.[58] The Complaint explains that each decision of the Governor's agents and workers' compensation officials to carry on with the unlawful policy independently creates precedent for insurers to divert workers from the workers' compensation regime and undermines

[57] Though the Court of Appeals did not reach the issue, Defendant has objected to MIRC citing federal standing law to establish an injury for standing. But Michigan courts have only rejected the "constraints of Article III" standing because Michigan law is *less* demanding*. Lansing*, 487 Mich at 363–66. A case that meets federal standing law necessarily satisfies Michigan law. *House of Reps & Senate v Governor*, 333 Mich App 325, 375; 960 NW2d 125 (2020) (TUKEL, J., concurring in part and dissenting in part on other grounds), *rev'd in part on other grounds*, 506 Mich 934; 949 NW2d 276 (2020); *Poe v Snyder*, 834 F Supp 2d 721, 731 n 4 (WD Mich, 2011). Perhaps more importantly, Michigan courts have recognized that organizations can sue for each financial harm to those organizations. *Ammex, Inc v Dep't of Treasury*, 272 Mich App 486, 493–94; 726 NW2d 755 (2006).

[58] App'x at 009a (Complaint at ¶ 1).

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the incentives for the private bar to pursue such claims.[59] The predictable consequence is that MIRC is presently forced to divert its attention and resources to intakes from such workers. Thus, the Governor's policy will presently and in the future "keep MIRC's [farmworker project] from pursuing its planned" activities, through imposing new financial costs on MIRC and drawing down its staff time.[60] That is not a single long-ago act with current reverberations, but a sequence of discrete unlawful choices, including ones going on today and in the future, each of which causes actionable injuries and creates a fresh claim.[61]

In fact, MIRC's allegations mirror those in *Haney* that were allowed to proceed. In *Haney*, the plaintiff brought a nuisance suit against neighbors "keeping . . . hogs on their property," even though the hogs arrived and the impacts on the plaintiff began outside the statute of limitations. 509 Mich at 25. Just as the Governor's persistent workers' compensation policy imposes repetitive harms stemming from repeated misconduct, *Haney* recognized that "[t]he presence of the hogs on the property constitutes the wrong, and that wrong, along with the attendant harms it causes, is being committed as long as the piggery operates." *Id*. Nonetheless, just like each application of the workers' compensation policy can produce a new injury to MIRC, this Court in *Haney* explained "the fact that defendants had hogs on their property *yesterday* is not a wrong that occurred until yesterday, and any claims arising from harms due to the hogs' presence yesterday could not have

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[59] App'x at 016a-017a & 025a (Complaint at ¶¶ 34 & 69–71).

[60] App'x at 027a (Complaint at ¶¶ 80–82).

[61] Even if the panel were right that the Complaint was insufficiently specific as to these most recent harms, the court should have granted leave to amend to provide further detail on the harms MIRC suffered within the year prior to filing. *See* MCR 2.118(A)(2) ("Leave [to amend] shall be freely given when justice so requires."); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997) ("A motion to amend ordinarily should be granted. . . ."); *Mack v City of Detroit*, 467 Mich 186, 203 n.20; 649 NW2d 47 (2002) (remanding to allow plaintiff to amend complaint to plead in avoidance of governmental immunity).

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accrued until then either." *Id.* The question is not whether past acts (bringing the pigs on the farm or devising the unlawful policy) might have produced comparable harms to the plaintiff. Rather, the question is whether there is recent misconduct that produces injuries (allowing the pigs to remain, or enforcing the policy anew). Here, as in *Haney*, there is. And so here, as in *Haney*, "the Court of Appeals erroneously concluded that plaintiff's action would be timely only under the continuing-wrongs doctrine." *Id*. at 27.

Sunrise is similar. In that case, the defendant had constructed a "drainage system" that initially produced flood damage to the plaintiffs' property outside the statute of limitations, and at that time the plaintiffs notified the defendant "more severe damage would likely result if the drainage system was not fixed." 511 Mich at 330. But even though the *Sunrise* plaintiffs could not sue for those earliest harms, this Court explained "each event has the potential to be its own independent cause of action" and the plaintiffs could sue for damages incurred by flooding within the statute of limitations. *Id.* at 340. The governor's unlawful policy here is equivalent to the defective drainage system in *Sunrise*. That the system was previously in place and the defendant knew if allowed to stand it would produce new, equivalent injuries does not matter. Each time that system diverts floodwater onto plaintiffs' land, or workers into MIRC's intake system, is actionable. This Court should grant review to make clear that the government cannot set up an unlawful system that will produce a series of recurrent injuries and keep that system running forever if it gets away with it for a year. *See, e.g.*, MCR 7.305(B)(2), (3), (5)(a)–(b).[62]

[62] Below Defendant tried to explain away *Haney* and *Sunrise* by claiming those cases address statutes of limitations, whereas MCL § 600.6431(1) is a condition precedent to sue. The panel below did not accept this premise, but for the avoidance of any doubt, Defendant's argument is nonsense. MCL § 600.6431(1) states a claim must be noticed or filed within "1 year after the claim has accrued," and *Haney* and *Sunrise* define when a claim accrues. Defendant did not explain why the meaning of accrual should differ between MCL § 600.6431 and other statutes. And it does not. Consider *Bauserman I*, a case interpreting MCL § 600.6431, in which this Court relied on the

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b. The panel's claim-accrual analysis splits from other courts' holdings

Confirming MIRC's reading of *Haney* and *Sunrise*, the panel's opinion is also inconsistent with how several other panels and the federal courts have applied that case law. *E.g.*, MCR 7.305(B)(5)(b) (recognizing this alone is a reason to take the case). *Allen v Village of Goodrich* concerned a "drain [that] was built in the late 1800s and substantially rebuilt and altered between 1950 and 1951. As early as 1994, the business plaintiffs were reporting excessive downstream water flow." No 359732, 2024 WL 1828582, at *1 (Mich Ct App Apr 25, 2024). The statute of limitations period was three years. But because the plaintiffs "alleged that they were damaged" during that three-year period "even though they had noticed the flooding many years earlier" the court held it was error to dismiss the case as untimely. *Id.* at *3. "Even if a plaintiff did not bring an action at the time of a previous injury," the meaning of accrual and the continuing-wrong doctrine's abrogation "does not prevent a plaintiff from bringing an action" if the "defendant commits a new violation" that produces new damage. *Id.*

Charter Township of Port Huron v. Churchill addressed another circumstance in which animals were unlawfully kept on property. No. 363272, 2023 WL 8292575 (Mich Ct App Nov 30, 2023). It explained that as in *Haney*, "there is a new harm each day" that the animals were present in violation of the law. *Id* at *5.

In the words of the Sixth Circuit Court of Appeals reviewing this Court's case law, that a "condition persists" does not prohibit "'suits based on 'new violations.'" *Moore Fam Tr v Bingham*, No. 22-1601, 2023 WL 5288120, at *7 (6th Cir Aug 17, 2023). Contrary to the notion

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discussion of claim-accrual in *Frank v Linkner*, a pure statute of limitations case. See *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 183–85, 188–90, 931 NW2d 539 (2019) ("*Bauserman I*") (citing *Frank v Linkner*, 500 Mich 133, 894 NW2d 574 (2017)).

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of the panel below that the moment a policy is in place is the point of accrual, the fact that a policy or practice previously caused an injury, even an identical injury, does not insulate the defendant from liability for future misconduct. Persisting with that practice and generating fresh consequences authorizes an injured party to sue. Thus, it follows MIRC can sue for the government's persistent misapplications of the Workers' Disability Compensation Act that injure MIRC.

c. The panel's erroneous claim-accrual analysis entrenches splits among the Court of Appeals and between the decisions of the Court of Appeals and this Court

This case is particularly worthy of this Court's attention because although the decision below is atypical, it is not isolated. *E.g.*, MCR 7.305(B)(1), (3) (disputes over how to apply MCL § 600.6431(1) and accrual law generally warrant this Court's attention). With facts similar to *Haney* but reaching the opposite outcome, in *Murray v Trinity Health Michigan*, another panel of the Court of Appeals held a plaintiff could not allege a helipad was causing a nuisance. No. 359778, 2023 WL 2717460, at *1 (Mich Ct App Mar 30, 2023). Like the decision below, the *Murray* panel stated because the plaintiff "became aware of th[e] problem" outside the statute of limitations, she could not sue for even the more recent harms. *Id.* at *3.

In *Gardiner v Hengeveld*, the plaintiff alleged each use of a recording of the plaintiff's phone call was unlawful and injured his privacy. *See* No 363240, 2023 WL 5314900, at *2, *6 (Mich Ct App Aug 17, 2023). But the Court of Appeals held that because there was only one unlawful recording that was made outside the statute of limitations the case was untimely. *Id.* at *6

Thus, while this Court has been clear "[a] plaintiff is free to bring a new action each time a defendant commits a new violation," *Haney*, 509 Mich at 28–29, like the panel below, courts

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have repeatedly misunderstood the limits on accrual, including the abrogation of the continuing wrongs doctrine. These courts have determined accrual is a simple inquiry where they identify when the first violation occurred and dismiss the case if that is outside the statute of limitations. In this manner, they have ignored this Court's direction to treat each instance of misconduct and injury as restarting the relevant time period, with statutory time limits only meant to prevent recovery for long-ago harms.

2. MIRC's claims for prospective relief are timely as a matter of law

Though the above demonstrates that MIRC has alleged facts showing its claim accrued within the year prior to the Complaint, that inquiry is actually unnecessary. As this Court has repeatedly made clear, requests for prospective relief are timely as a matter of law. Offenders cannot evade such relief simply because they began their misconduct long ago. Thus, because MIRC requests prospective relief, neither this Court nor the panel below needed to analyze the allegations to determine when injuries originally occurred. The request for forward-looking relief is necessarily timely.

In *Haney* and *Sunrise*, this Court acknowledged it narrowed the window in which a claim could accrue by abrogating the so-called continuing wrongs doctrine. However, it explained, that limit on accrual was solely to prevent "a plaintiff to reach back to recover for wrongs that occurred outside the statutory period of limitations." *Haney*, 509 Mich 27.

But MIRC does not seek to "recover for wrongs that occurred" more than a year prior to the Complaint. *Id.* It solely seeks to halt similar current and expected wrongdoing and prevent injuries in the future.

Haney stated a plaintiff cannot seek relief for an old injury by alleging continuing harms from that wrongful act, but that does not "immunize future wrongful conduct" from prospective

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relief. *Id.* at 28. This Court explained, requests for prospective relief have necessarily "accrued within the limitations period." *Id.* at 29.

Similarly, *Sunrise* distinguishes between "seek[ing] a remedy for those long-past [] problems" and cases where "by seeking an injunction" the plaintiff sought to prevent new injuries from occurring. 511 Mich at 339. Whatever the limits on accrual and the continuing wrongs doctrine mean, they do not prohibit the latter request for prospective relief. *Id.*

Haney and *Sunrise* follow from *Taxpayers*. In *Taxpayers*, this Court explained a statute of limitations defense "does not apply neatly to" claims for prospective injunctive relief. 450 Mich at 127. "Because a suit for injunctive relief may seek to prevent a future wrong, the cause of action necessarily arises before the wrong occurs." *Id.* Thus, it is "unnecessary . . . to describe plaintiff's injunctive claim in a way that makes it fit" within the statute of limitations. *Id.*

"To hold otherwise would truncate" rights by allowing the government to persist in misconduct merely because it began a long time ago. *Id.* It also would overwhelm the judicial system by forcing people to run to court to protect their rights at the first hint of trouble. *Id.* As a result, MIRC's claim is by definition timely because it seeks prospective relief from wrongs that will, but have not yet, occurred. There is simply no reason to shoehorn this suit into the accrual analysis.

The panel did not address the statements in *Haney* or *Sunrise* whatsoever, but stated that *Taxpayers* does not apply because declaratory relief must be tied to substantive relief and the time for MIRC's substantive relief had necessarily run.[63] To the contrary, *Taxpayers* presented "*two* actual controversies": requests for a retrospective "refund for taxes paid in the past" and prospective relief to avoid "increased tax in the future." 450 Mich at 129 (emphasis added). This

[63] App'x at 004a (Opinion of Court of Appeals, at 4).

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Court held plaintiffs could not use declaratory relief as an end run around the statute of limitations for the *first* controversy — a declaratory judgment that they had overpaid taxes in the past — because that would be tantamount to seeking a retrospective refund. *Id.* However, it explained, for those plaintiffs who sought not to pay an unlawful "tax in the future [ ] 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." *Id.* at 129. Thus, *Taxpayers* holds requests for prospective declaratory relief are connected to substantive claims for a prospective injunction, and both are always timely. Accordingly, MIRC's claims for declaratory and injunctive relief are also timely.

As part of holding *Taxpayers* inapplicable, the panel relied on the Court of Appeals decision in *Tenneco*.[64] But that case echoes rather than contradicts MIRC's reading of *Taxpayers*. *Tenneco* emphasizes that courts must "analyze the time of accrual separately for each type of relief." *Tenneco*, 281 Mich App at 455. The court distinguished a claim for "retrospective relief" from "prospective relief," explaining that in *Taxpayers*, the "claim for prospective relief from an alleged unconstitutional tax did not neatly fit a statute of limitations defense." *Id*. at 454–55. And, to cram a "claim for prospective relief from an alleged unconstitutional" government policy into "a statute of limitations defense" would be inconsistent with protecting rights. *Id.* at 455 (quoting *Taxpayers*, 450 Mich at 127). *Tenneco* did not apply the rules for prospective relief because that case solely concerned retrospective relief; the plaintiffs sought "declaratory relief and damages for breach of contract" regarding "cleanup costs it incurred" in the past. *Id.* at 431 & 454. In short, the panel below cited *Tenneco* for the proposition that the timeliness of a claim for declaratory relief is tied to the timeliness of the underlying substantive relief and that rendered MIRC's claims

[64] *See* App'x at 004a (Opinion of Court of Appeals, at 4).

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untimely. But it ignored *Tenneco*'s explanation that the case concerned retrospective relief, not the prospective relief MIRC seeks, and that in cases seeking prospective relief, the request would necessarily be timely.

Indeed, in addition to *Tenneco*, other courts, including other panels of the Court of Appeals, have affirmed MIRC's and the Court of Claims' conclusion *Taxpayers* establishes claims for prospective relief are by definition timely. "[W]hen a claimant uses a claim for declaratory relief as a shield from a threat of future or potential harm, 'the statute of limitations does not bar an otherwise valid claim for declaratory relief because it would derive from a claim for injunctive relief, which is not barred.'" *Ace Am Ins Co v Workers' Comp Agency/Dir*, No. 317501, 2015 WL 668960, at *2 (Mich Ct App Feb. 17, 2015) (quoting *Taxpayers*, 450 Mich at 129) (cleaned up). Therefore, because "plaintiffs' claims for declaratory relief were premised on a threat of future harm" they were necessarily timely. *Id.*; *see also Turner v J & J Slavik, Inc*, No. 303243, 2012 WL 1649093, at *2 (Mich Ct App May 10, 2012) ("Although plaintiff is barred from obtaining substantive relief for any past violations, he may be able to obtain injunctive relief to prevent future violations if the trial court determines" he still has an interest in the action.); *City of Riverview v Operating Eng'rs Loc 324 Pension Fund*, No. 18-11370, 2019 WL 1437266, at *6 (ED Mich Mar. 31, 2019) ("Plaintiff is seeking to prevent potential harms in the future, and so there is no applicable statute of limitations that would apply to Plaintiff's claims.").

In sum, the panel overlooked precedent making clear that limits on claim accrual, like the abrogation of the continuing wrongs doctrine, are not meant to immunize claims for forward-looking relief. It also wrongly distinguished the limited precedent it did consider, failing to recognize that precedent dismissed claims as untimely because the plaintiff sought retrospective relief. That authority instead confirmed that claims for prospective relief should go forward. *See*,

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e.g., MCR 7.305(B)(2), (3), (5) (authorizing this Court's review for issues of major significance and public interest where a panel diverges from binding precedent and is clearly erroneous, working a material injustice).

Under a correct understanding of the case law, MIRC should be allowed to proceed and challenge the State's interpretation of the Workers' Compensation Disability Act. MIRC is not seeking relief for past harms. Rather, MIRC seeks relief from future wrongful conduct — conduct which we know will cause MIRC future injuries because similar conduct has injured MIRC in the past and presently does so. The panel's decision that MIRC cannot request prospective relief because the statutory time limit has passed cannot be squared with this Court's case law that claims for prospective relief are timely as a matter of law. *See*, *e.g.*, MCR 7.305(B)(1), (2), (5)(b) (authorizing review to resolve important questions of public interest regarding the State and its statutes, and where the erroneous decision would work a material injustice).

3. The panel's reasoning will have grievous consequences

Further calling for this Court's attention, the panel's opinion would produce noxious results by making a history of wrongdoing the basis to evade accountability for repeated misconduct. Under the panel's logic, a bank that has a history of overcharging accountholders would escape all liability if a customer decided to overlook the first deduction, but finally became fed up when years of requests to cease went unaddressed.

Worse, the alleged wrongdoer here is the State, and "there is a great distinction between wrongs committed by one private individual against another and wrongs committed under authority of the state." *Bauserman II*, 509 Mich at 696 (quoting *Dorwart v Caraway*, 312 Mont 1, 16 (2002)) (alteration omitted).

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In fact, the panel's reasoning would kneecap courts from weighing in on new attempts to enforce laws of dubious constitutionality. For example, Michigan still has a law making sodomy a felony. *See* MCL § 750.158. If a Governor took office who refused to recognize *Lawrence v Texas*, 539 US 558; 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003), or if the Supreme Court of United States were to overturn *Lawrence*, under the panel's reasoning an LGBTQ person who suffered under the law before 2003 could not challenge new applications of the statute in state court because they were originally injured by the State's unconstitutional policy decades ago. They would even be time-barred from seeking prospective relief to prevent the chill of the Governor's policy on their conduct. Such results are simply "too far-fetched to infer from the language of" MCL § 600.6431. *Smith v Dep't of Pub Health*, 428 Mich 540, 641; 410 NW2d 749 (1987) (Boyle, J., concurring in part and dissenting in part on other grounds).

This Court has provided two distinct but related paths to avoid these indefensible outcomes: (a) defining accrual in such a manner that if the defendant repeatedly injures the plaintiff, each repetition renews the plaintiff's ability to seek relief and stop future injuries; and (b) explaining that requests for forward-looking relief are always timely as by definition they will not yet have accrued. The panel's erroneous reasoning to the contrary is dangerous not only to MIRC and undocumented workers, but to all inhabitants of this State who wish to protect their rights. Thus, this case is of exceptional public importance and deserves this Court's review. *See* MCR 7.305(B)(2), (3), (5)(a).

B. The Panel incorrectly immunized the State from claims for prospective relief and claims arising from constitutional violations.

The Court of Appeals not only erred in deciding MIRC failed to qualify for the exception to sovereign immunity found in MCL § 600.6431, it further erred by holding MIRC *needed* an exception to sovereign immunity in the first place. MIRC seeks only prospective equitable relief

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to prevent unlawful and unconstitutional conduct. Longstanding precedent confirms that state officials cannot claim immunity from such suits under MCL § 600.6431 or otherwise. *See Ex parte Young*, 209 US 123 (1908) (establishing no sovereign immunity in official-capacity suits for prospective equitable relief against state officials when brought in federal court); *Thompson v Auditor Gen*, 261 Mich 624, 628–30; 247 NW 360 (1933) (holding that if suits for prospective equitable relief can be brought against state officials "in the federal courts . . . there can be no reason why as liberal a rule ought not to prevail in the courts of the state").

Just two years ago, this Court described as "uncontroversial" the practice of vindicating rights through suits for prospective injunctive relief against government actors. *See Bauserman II*, 509 Mich at 699–700. And this Court has made clear that "the principle that . . . liability [for prospective equitable relief] is generally not barred by sovereign immunity [is] fundamental to sovereign immunity law." *Li*, 439 Mich at 469 (Cavanagh, C.J.), *overruled on other grounds by Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002). In short, MIRC need not rely on a statutory waiver of immunity in MCL § 600.6431 because Defendant *has no immunity to waive.*

To reach a contrary conclusion, the panel not only ignored that state officials cannot claim immunity in suits seeking prospective equitable relief, but also waved away precedent establishing the State may not invoke sovereign immunity in cases alleging constitutional violations. As a result, the panel effectively held the political branches can, through legislation, prevent the courts from ordering government officials to comply with their legal and constitutional obligations. Under the panel's logic, the legislature could tomorrow pass a law indefinitely postponing elections or banning the New Testament and immunizing government officials from state-court

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suits seeking to halt those statutes. A decision so antithetical to precedent and the separation of powers cannot stand.[65]

1. *The Court of Appeals misapplied this Court's decisions and its own precedent recognizing that government actors may not claim sovereign immunity from prospective equitable relief*

The courts' ability to order government officials to conform with the law is a backstop in our democratic system. But under the Court of Appeals' decision, the legislature can (and apparently has) passed a law extending statutory sovereign immunity to prospective claims for equitable relief. In holding that the legislature can do so, the panel did not rely on the limits of MCL § 600.6431. Thus, the panel's holding establishes the State could entirely prohibit claims for prospective relief as an expression of its sovereign immunity

In contrast, the seminal case of *Ex parte Young* establishes that sovereign immunity does exist in official-capacity suits for prospective relief to stop violations of federal law. 209 U.S. 123. Its logic fully applies here. If the officer "comes into conflict with the superior authority of that Constitution, . . . 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." *Id.* at 159–60; *see generally Smith*, 428 Mich at 583–89 (opinion of Brickley, J.) (discussing *Ex parte Young* and its progeny). The state cannot clothe an official with immunity for claims seeking to

[65] The Governor has throughout this case framed the relevant immunity as sovereign immunity, though occasionally referring instead to governmental immunity. *See generally Pohutski*, 465 Mich at 682 (explaining that "sovereign immunity" refers to the immunity of the State and its instrumentalities, while "governmental immunity" refers to the immunity of political subdivisions like townships but noting that the terms are often used interchangeably). For purposes of whether the Governor can assert immunity here, whether one calls that immunity sovereign or governmental makes no difference — after all, state and local officials are equally powerless to violate their constitutional obligations.

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stop unlawful conduct because the State, even acting as sovereign, has no right to break the laws it is obligated to uphold.

Though *Ex parte Young* applies in federal court, this Court has long since incorporated the conclusion of *Ex parte Young* into Michigan law. That is, when a state officer violates the law, she may be "subjected in [her] person to the consequences of [her] individual conduct" in the form of prospective relief. *Ex parte Young*, 209 U.S. at 160.

For example, in *Thompson v Auditor General*, this Court explained: "If cases of mandamus and injunction may be brought in the federal courts in the cases and under the circumstances indicated" in decisions like *Ex parte Young* "there can be no reason why as liberal a rule ought not to prevail in the courts of the state." 261 Mich 624, 629–30; 247 NW 360 (1933). In the nine decades since, this Court has repeatedly reaffirmed this foundational principle. *See infra*.

Against this venerable precedent, the Court of Appeals stated — without citation — that "[t]here is no exception to sovereign immunity for claims merely because those claims seek prospective equitable relief."[66] The panel made two errors in reaching this dangerously incorrect conclusion. It wrongly held that this Court's decision in *Li v Feldt*, which holds otherwise, is nonbinding. And it ignored the many other decisions of this Court and other panels of the Court of Appeals making clear that when a plaintiff seeks prospective equitable relief, a government defendant cannot invoke immunity. The panel's interpretation of MCL § 600.6431 to extend sovereign immunity to actions for prospective equitable relief "involves a substantial question about the validity of a legislative act," is an "issue [of] significant public interest" and "of major significance to the state's jurisprudence," is "clearly erroneous and will cause material injustice,"

[66] App'x at 005a; Opinion of Court of Appeals, at 5.

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and "conflicts with [both] Supreme Court decision[s] [and] []other decision[s] of the Court of Appeals." MCR 7.305(B)(1)–(3), (5)(a)–(b).

a. The Court of Appeals incorrectly held this Court's decision in *Li v Feldt* is not good law

Li v. Feldt is one of several decisions from this Court establishing there is no sovereign or governmental immunity from requests for prospective relief. 439 Mich 457. In *Li*, this Court held there was no public nuisance exception to immunity that allowed the plaintiffs to proceed. It did so by distinguishing cases in which the Court held government actors accountable for public nuisances, explaining those "cases involved plaintiffs seeking only prospective equitable relief." *Id.* at 468–69. This Court continued that those decisions did not control because the plaintiffs in *Li* sought damages rather than forward-looking relief: "[t]he distinction between the government's liability for prospective equitable relief and its liability for retrospective damages or compensation, and the principle that the former kind of liability is generally not barred by sovereign immunity, are fundamental to sovereign immunity law." *Id.* at 469.

This Court further noted that it had "recognized this basic distinction" in a prior case, *McDowell v State Highway Commissioner*, 365 Mich 268; 112 NW2d 491 (1961). *Li*, 439 Mich at 469. *McDowell* "[u]ph[eld] an assertion of governmental immunity" against "'plaintiffs [who] attempt to hold a department of the State, and so the State, responsible in damages for a tort,'" while simultaneously noting that "*a court of equity might properly grant*" prospective relief, such as abatement of a nuisance, without running afoul of immunity. *Li*, 439 Mich at 469-470 (quoting *McDowell*, 365 Mich at 269–70 (emphasis in original)). This recognized distinction between prospective equitable relief and retrospective damages liability is why the plaintiffs in the other cases could proceed, whereas the damages-seeking plaintiffs in *Li* and *McDowell* could not.

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The Court of Appeals asserted — for the first time by anyone involved in this case — that Chief Justice Cavanagh's lead opinion in *Li v Feldt* "is not binding, because it commanded no majority."[67] It did not bother to mention *McDowell*, upon which the relevant portion of Chief Justice Cavanagh's opinion relied. Nor did the panel address any other case, such as *Thompson*, *supra*, which made the same point.

Moreover, although it is true that Chief Justice Cavanagh wrote for himself and two other justices, at least two other justices would have gone *farther* in limiting immunity. *See Li*, 439 Mich at 477. Justice Boyle concurred separately to suggest there might be an even broader exception to immunity for government-created public nuisances than Chief Justice Cavanagh's opinion contemplated; she certainly did not endorse the idea that government actors might be immune even from requests for prospective equitable relief. *Id.* at 478–83. And Justice Levin concurred in part because he believed not only that a public nuisance exception to immunity existed, but also that one set of plaintiffs might qualify for that exception. *Id.* at 484–510. Indeed, *none* of the opinions disagreed with the lead opinion's observation that the principle the State may not claim sovereign immunity from prospective equitable relief is "fundamental to sovereign immunity law." *Id.* at 469.[68] If "a majority of [this] Court . . . agree[s] on a ground for decision," that "make[s] that binding precedent for future cases." *People v Anderson*, 389 Mich 155, 170; 205 NW2d 461 (1973), *overruled on other grounds by People v Hickman*, 470 Mich 602; 583 NW2d 267 (2004).

[67] App'x at 006a (Opinion of Court of Appeals, at 6).

[68] Of the remaining two justices in *Li*, Justice Riley concurred in the result without explanation, and Justice Griffin concurred in part to express dissatisfaction with the historical, rather than textual, mode of analysis employed in Chief Justice Cavanagh's opinion. *See* 439 Mich at 478, 483–84.

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In refusing to follow *Li*, the panel below not only misread that opinion, but also ignored various cases in which other panels of the Court of Appeals had already relied on Chief Justice Cavanagh's opinion in *Li* as controlling. *See, e.g.*, *Cheek v Twp of Clinton*, No 289403, 2010 WL 2867967, at *9 (Mich Ct App July 22, 2010) (relying on Chief Justice Cavanagh's opinion in *Li* to reject plaintiff's invocation of nuisance per se exception to governmental immunity); *Squier v City of Big Rapids*, No 259387, 2006 WL 1628473, at *1 (Mich Ct App June 13, 2006) (similar); *Jones v Reynolds*, No 250616, 2005 WL 782694, at *7 (Mich Ct App April 7, 2005) (similar); *McDowell v City of Detroit*, 264 Mich App 337, 347; 690 NW2d 513 (2004) (similar), *rev'd on other grounds*, 477 Mich 1079; 729 NW2d 227 (2007); *Krasinski v Swanton*, No 207564, 1999 WL 33435667, at *2 (Mich Ct App Sept 28, 1999) (similar); *Palmer v W Mich Univ*, 224 Mich App 139, 144–45; 568 NW2d 359 (1997) (similar); *Fox v Ogemaw Cnty*, 208 Mich App 697, 698, 700; 528 NW2d 210 (1995) (similar). Either the panel here erred in holding Chief Justice Cavanagh's opinion is nonbinding, or seven other panels erroneously relied on that very same part of the opinion. Thus, this Court should take this case to clarify the status of its precedent. *E.g.*, MCR 7.305(b)(2), (3), (5)(a)-(b).

b. The panel ignored other cases making clear that government actors may not claim immunity from prospective equitable relief.

Beyond *Li*, the Court of Appeals also failed to reckon with this Court's many other decisions that prevent the government from claiming immunity from prospective equitable relief. *McDowell* and *Thompson*, discussed above, are not outliers. *See, e.g.*, *Bauserman II*, 509 Mich at 699–700 ("Generally, enforcing constitutional rights through injunctive relief is uncontroversial . . . ." (citing *Brown v Bd of Educ*, 347 US 483; 74 S Ct 686; 98 L Ed 873 (1954))); *In re Bradley Estate*, 494 Mich 367, 389 n.54; 835 NW2d 545 (2013) ("[I]n some instances, a noncontractual civil wrong might exist, but instead of seeking compensation to remedy the harm, the plaintiff

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elects some other remedy, thus rendering governmental immunity inapplicable. For example, a plaintiff may ask a court to enforce his or her rights under the law" by seeking declaratory or injunctive relief); *Lash v Traverse City*, 479 Mich 180, 196; 735 NW2d 628 (2007) (holding that government was immune from damages suit, but that "[p]laintiff could enforce the statute by seeking injunctive relief . . . or declaratory relief"); *Hadfield v Oakland Cnty Drain Comm'r*, 430 Mich 139, 152 n.5; 422 NW2d 205 (1988) (Brickley, J., lead opinion) ("Generally, we do not view actions seeking only equitable relief, such as abatement or injunction, as falling within the purview of governmental immunity."), *overruled on other grounds by Pohutski*, 465 Mich 675. Because the panel's decision "conflicts with [numerous] Supreme Court decision[s]," this Court should grant review. MCR 7.305(B)(2), (3), (5)(b).

The panel's decision further "conflicts with . . . [other] decision[s] of the Court of Appeals," an independent reason to grant review. MCR 7.305(B)(5)(b). *See*, *e.g.*, *Morley v Twp of Bangor*, No 340636, 2019 WL 1867640, *6 (Mich Ct App Apr 25, 2019) (noting that this "Court [has] indicated that governmental immunity does not apply to claims seeking declaratory or injunctive relief"); *Gaskin v City of Jackson*, No 303245, 2012 WL 2865781, at *5 (Mich Ct App July 12, 2012) ("The Supreme Court's decision in *Lash* . . . demonstrates that governmental immunity does not apply to claims that request declaratory or injunctive relief."); *House Speaker v Governor*, 195 Mich App 376, 385; 491 NW2d 832 (1992) ("Plaintiffs have sought a declaratory judgment and an injunction, equitable relief, not money damages. Actions seeking only equitable relief do not normally fall within the purview of governmental immunity. . . . [Thus] the Governor is not immune from liability."), *rev'd on other grounds*, 443 Mich 560; 506 NW2d 190 (1993). To resolve this division within the Court of Appeals, and between the panel below and this Court's precedent, this Court should grant review of this question of immense public importance and make

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clear, once and for all, that government officials do not have immunity from claims seeking prospective equitable relief.

2. *The Court of Appeals misapplied this Court's case law establishing that government officials may not invoke immunity in suits alleging constitutional violations.*

While Defendant could not invoke immunity because MIRC sought prospective equitable relief, the panel decision was particularly problematic because MIRC brought statutory *and* constitutional claims — including that Defendant's policy is preempted by federal law and violates the state and federal Due Process Clauses. In holding the Governor immune from these constitutional claims, the panel ignored or misapplied this Court's and the Court of Appeal's additional precedent holding that the State may not invoke immunity in suits alleging constitutional violations, even in cases seeking damages. *See, e.g.*, *Bauserman II*, 509 Mich at 688 (noting that in *Smith*, 428 Mich 540, "four Justices agreed that governmental immunity was not a defense to allegations of constitutional torts"); *Mays v Governor*, 506 Mich 157, 187; 954 NW2d 139 (2020) (Bernstein, J., lead opinion) (similar); *Duncan*, 284 Mich App at 268–69 ("An action that establishes unconstitutional conduct 'may not be limited except as provided by the Constitution because of the preeminence of the Constitution.'" (quoting *Hinojosa v Dep't of Nat Res*, 263 Mich App 537, 546; 688 NW2d 550 (2004)); *see also Bauserman I*, 503 Mich at 194–98 (McCormack, C.J., concurring) (questioning the applicability of the immunity found in MCL § 600.6431 to cases alleging constitutional violations).[69]

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[69] Though such cases have often involved alleged violations of the state constitution, the same principle applies equally to conduct that violates the federal constitution, such as actions that are preempted by federal law. State officials have no more authority to violate the federal Constitution than they do the state constitution. *See* US Const, art VI, cl 2. Accordingly, a state official may not invoke the immunity of her office for violating one constitution but not the other. *Cf Duncan*, 284 Mich App 246 (no immunity in case alleging violations of state and federal constitutional rights to counsel).

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Rather than grappling with these cases, the Court of Appeals seemed to acknowledge that "governmental immunity [is] not a defense to allegations of constitutional torts,"[70] but then stated that MIRC "has not asserted or identified any constitutional right *of its own* that defendant is allegedly violating." *Id.*

That was not a basis to disregard the precedent allowing constitutional claims to proceed. Whether MIRC asserts a "constitutional right *of its own*," rather than a third party's, goes to standing — not immunity. The same authorities the panel relied on make this clear. In *People v Mahdi*, the court reiterated the familiar principle that the right to be free from unreasonable searches and seizures "cannot be invoked by a third party," but held that the defendant did have standing to challenge the search of his mother's apartment based on his reasonable expectation of privacy in the apartment. 317 Mich App 446, 458–59; 894 NW2d 732 (2016). *In re HRC* held that "a respondent in a child protective proceeding lacks standing to challenge the effectiveness of the child's attorney." 286 Mich App 444, 458; 781 NW2d 105 (2009). Neither *Mahdi* nor *In re HRC* had anything to do with the exception to immunity for constitutional violations. Instead, those cases turned on who suffers a constitutional injury. And here, the panel purported to assume that the Governor's unconstitutional conduct does injure MIRC.[71] If MIRC has standing (and it does, *see supra* at note 1), that is because MIRC is injured by Defendant's constitutional violations. And if MIRC is injured by Defendant's constitutional violations, Defendant cannot invoke immunity.

Indeed, this Court's cases remove immunity whenever a government actor violated their constitutional obligations; they do not turn on the nature of the injury. *See, e.g.*, *Bauserman II*, 509 Mich at 688 ("In *Smith* . . . four Justices agreed that governmental immunity was not a defense to

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[70] App'x at 006a (Opinion of Court of Appeals, at 6) (quoting *Bauserman II*, 509 Mich at 688),

[71] *See* App'x at 004a (Opinion of Court of Appeals, at 4).

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allegations of constitutional torts."); *Smith v State*, 428 Mich 540, 544; 410 NW2d 749 (1987) ("Where it is alleged that the state, by virtue of custom or policy, has violated a right conferred by the Michigan Constitution, governmental immunity is not available in a state court action."); *see also Burdette v State*, 166 Mich App 406, 408; 421 NW2d 185 (1988) ("Under *Smith*, defendant cannot claim immunity where the plaintiff alleges that defendant has violated its own constitution."). Though much of the relevant case law arose from constitutional tort actions for damages involving violations of individual rights, none of these cases suggests that immunity might apply to some constitutional violations, but not others.[72]

Moreover, the panel's distinction between injuries from violating individual rights and other injuries is unworkable because *any* constitutional right can also be described as a restriction on government that is not personal to any individual. *See Bauserman II*, 509 Mich at 691 ("One way to think of a right is in terms of the correlative duty it imposes on another to act or refrain from acting for the benefit of the right-holder." (citation omitted)); *Burdette*, 166 Mich App at 408–09 (1988) ("Constitutional rights serve to restrict government conduct. These rights would never serve this purpose if the state could use governmental immunity to avoid constitutional restrictions.").

Imagine if a future Governor tried to stay in office past his or her constitutionally allotted two terms. *See* Const 1963, art 5, § 30. A person injured by that Governor's unconstitutional

[72] The nature of the injury may matter for purposes of deciding the extent to which a plaintiff can quantify monetary damages. *See Duncan*, 284 Mich App at 270 ("Typically, a constitutional tort claim arises when a governmental employee, exercising discretionary powers, violates constitutional rights personal to a plaintiff." (citing *Reid v Michigan*, 239 Mich App 621, 629 (2000)). But the distinction does not matter for purposes of deciding whether government actors are immune in non-tort, non-damages actions arising out of the defendants' unconstitutional conduct. *See id* at 270–271 (noting that in a case that "prays for equitable relief" and "is not a tort liability action for money damages, nor [seeks] an appropriation of state funds . . . the trial court properly concluded that governmental immunity is not available to the state.").

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actions should be able to turn to the courts and the Governor should not be able to claim immunity, even though there is no "individual right" to have the Governor leave office when the state Constitution requires. The same would be true if the Governor began enforcing a statute passed by only one house of the state legislature. *Id.* art 4, § 26. No one has an individual right to these limitations on government authority. But many individuals might well be injured and have standing when a government official violates those constitutional provisions.

In *Ammex*, the Court of Appeals granted prospective declaratory relief against a Michigan tax that was preempted by federal law, paralleling both the relief and the federal constitutional claim that MIRC pursues here. 272 Mich App at 489, 496–509. The court did not bother to ask if there is an individual right not to be subject to a state law that is preempted by federal law, nor would such an inquiry have made sense. The state law cost the plaintiff money and that law was unconstitutional — just as the Governor's policy costs MIRC money and is unconstitutional. As *Ammex* demonstrates, in the context of cases like this, word games about whether the injury stems from violating an individual right serve no purpose. This Court's repeated holding is that when a state actor's unconstitutional conduct injures a plaintiff, that defendant cannot invoke immunity.

* * *

The panel's sovereign immunity holdings deserve review. The ability of this State's courts to ensure government officials conform their conduct to the law — and especially to their constitutional obligations — is unquestionably "a legal principle of major significance to the state's jurisprudence" and an "issue [of] significant public interest." MCR 7.305(B)(2)–(3). Further, the panel's decision splits from the precedent of this Court and other panels of the Court of Appeals on fundamental questions including whether the legislature can extend sovereign immunity to government actors even for claims seeking prospective relief, and whether this

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Court's holdings that those officials are not immune for their unconstitutional conduct applies to some constitutional violations, but not others. MCR 7.305(B)(2), (3), (5)(b). Further, the panel's holding that the legislature, by statute, extended immunity to cases like this one "is clearly erroneous and will cause material injustice." MCR 7.305(B)(5)(a). Finally, this case implicates "a substantial question about the validity of a legislative act": whether the legislature can — and, through MCL § 600.6431(1), has — forced the courts to abdicate their role in halting and preventing unlawful and unconstitutional government conduct. MCR 7.305(B)(1). Granting review and reversing the panel's decision will vindicate the role of the courts in ensuring the government cannot place itself above the law.

IV. CONCLUSION

The panel reached the wrong results on a litany of questions of immense legal and public importance. It misapplied this Court's accrual cases that hold wrongdoers cannot escape liability for their most recent harms simply because they are repeat offenders and that requests for prospective relief are necessarily timely. The panel further erred by holding that government officials are immune from prospective equitable relief, ignoring reams of precedent to the contrary, and by cabining this Court's landmark rulings that government officials are not immune for their unconstitutional conduct to just certain kinds of unconstitutional conduct. As a result, the panel kept MIRC from litigating its claim that the State is blatantly misapplying the Workers' Disability Compensation Act, using immigration status as a weapon to deny benefits to injured workers. Few cases present as many reasons to grant review, or as many reasons to reverse the judgment of the Court of Appeals.

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Date: July 10, 2024

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CERTIFICATE OF COMPLIANCE & WORD COUNT

I, John C. Philo, for Plaintiffs-Applicants, certify that the *Application For Leave To Appeal By Plaintiff Michigan Immigrant Rights Center* complies with the formatting and word limitations of MCR 7.212 and 7.305. This brief uses a 12-point proportional font (Times New Roman), has at least one-inch page margins, and its text is double-spaced, except for quotations and footnotes, which are single-spaced. According to the word count feature of Microsoft Word, the word processing program used to prepare the document, the sections of the brief (including footnotes) not excluded under MCR 7.212 (B)(2) contain 14,792 words.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2024, I:

a. Electronically filed the attached *Application For Leave To Appeal By Plaintiff Michigan Immigrant Rights Center* with the Clerk of the Michigan Supreme Court using the MiFILE system, which will send notification of such filing to all electronic case filing participants;

b. Mailed via first class mail with the United States Postal Service and emailed the attached *Application For Leave To Appeal By Plaintiff Michigan Immigrant Rights Center* to all parties; and

c. Electronically filed *Notice of Filing of the Plaintiff's Application* with the Clerk of the Michigan Court of Appeals using the MiFILE system, which will send notification of such filing to all electronic case filing participants.

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Respectfully Submitted,

By: /s/ John C. Philo___________

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Date: July 10, 2024