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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

MICHIGAN IMMIGRANT RIGHTS CENTER,

Plaintiff,

v.

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

Defendant.

Supreme Court Case No. 167300-1

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)

PLAINTIFF-APPELLANT MICHIGAN IMMIGRANT RIGHTS CENTER'S SUPPLEMENTAL BRIEF IN SUPPORT OF THE APPLICATION

ORAL ARGUMENT REQUESTED

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I. STATEMENT ON JUDGMENT BELOW AND JURISDICTION

On May 30, 2024, the Court of Appeals entered an opinion resolving the Governor's appeal as of right and discretionary appeal, Court of Appeals case numbers 361451 and 362515. *Mich Immigrant Rts Ctr v Governor*, Nos 361451 & 362515, 2024 WL 2790290 (Mich Ct App May 30, 2024). On July 10, 2024, Plaintiff Michigan Immigrant Rights Center ("MIRC") timely sought leave to appeal that decision. MCR 7.305(C)(2). On December 2, 2024, this Court directed the Clerk to schedule oral argument and ordered supplemental briefing regarding MIRC's application for leave to appeal. Suppl. App'x, at 047a (Order of Michigan Supreme Cout, Dec. 2, 2024). This supplemental brief is filed within the time allowed, as extended by the Court. Suppl. App'x, at 048a. (Order of Michigan Supreme Cout, Dec. 18, 2024).

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II. QUESTIONS PRESENTED FOR SUPPLEMENTAL BRIEFING

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

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

2. ASSUMING THE COURT ANSWERS THE FIRST QUESTION IN THE AFFIRMATIVE, WHETHER THE PLAINTIFF'S CLAIMS WERE FILED WITHIN ONE YEAR AFTER THEY ACCRUED, SEE MCL 600.6431(1).

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

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III. PROVISION INVOLVED

> **MCL 600.6431 Court of claims; notice of intention to file claim; requirements; time; verification; copies; applicability to claims for compensation under the wrongful imprisonment compensation act.**
>
> (1) Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.

IV. INTRODUCTION

Can and has Michigan's Legislature cut off the Judiciary's ability to prevent future unlawful and unconstitutional conduct by state officers? In the Court of Appeals' and Governor's view, yes. They claim that by enacting MCL 600.6431 the Legislature asserted sovereign immunity over claims for prospective relief against state officers, establishing state officers are immune from any suit that does not fall within the statute's provided exceptions. On this basis, the Governor argued and the Court of Appeals held, MIRC cannot sue to stop the Governor's present and future enforcement of an unlawful and unconstitutional policy.

That outcome is baseless. This Court has repeatedly recognized Michigan's Constitution requires the Judiciary be able to compel officials to act lawfully. State officers cannot possess sovereign immunity from claims seeking prospective relief, as the Judiciary must be able to issue orders against them that enforce the law. No statute can change that. And even if this Court had not adopted that rule as to state-law claims, the Supreme Court of the United States has declared state courts cannot enforce sovereign immunity against federal claims seeking prospective relief against state officers, claims MIRC brings here. This Court has also held that officials cannot claim

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immunity when plaintiffs allege constitutional violations, another exception that covers most of MIRC's claims.

These background rules not only dictate the limits on MCL 600.6431 and require the conclusion that MIRC must be allowed to proceed, but are reflected in the statute's language. By its plain text, MCL 600.6431 only limits claims against "this state," not its officers. MCL 600.6431(1) also only bars "accrued" claims, brought or noticed more than "1 year after" the harm occurred. The statute does not cover MIRC's request for prospective relief to stop the Governor from causing future harms.

Further, even if all of the preceding were incorrect, recognizing its duty to ensure rights are meaningful and actionable, this Court has made clear claims like MIRC's are timely. MIRC alleges it suffered harms due to the enforcement of the Governor's policy in the year prior to its Complaint. The Governor and Court of Appeals disregarded those allegations because MIRC experienced similar injuries in the past. But this Court has explained each harm must be treated separately, so that new injuries establish new, timely claims. Past misconduct does not entitle a defendant to continue to act unlawfully in the future.

Were that not enough, the Court of Appeals' and Governor's positions are not just wrong; they are untenable. The Court of Appeals and Governor contend legislation can prohibit courts from ever bringing officials into line with the law. In their view, even the narrow window to seek relief under MCL 600.6431 exists solely as a matter of legislative grace. The consequence of that view is that the Legislature and Governor could, if they chose, violate Michigan residents' rights with impunity. They could use statutory extensions of immunity to declare courts could not order officers to comply with whatever legal or constitutional protection the Legislature and Executive no longer wished to abide. It is to avoid that very possibility that constitutional checks-and-

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balances exist and thus the courts have long held sovereign immunity cannot extend to cases where a plaintiff seeks to halt officials' ongoing illegal actions.

What is more, because the Court of Appeals and Governor take the position MIRC is untimely under MCL 600.6431 based on when MIRC's claims "accrued," their reasoning that MIRC cannot stop future harms due to its past injuries would have far-reaching consequences. When a claim accrues is the same question asked in MCL 600.6431 and non-immunity statutes of limitations. Thus, the Court of Appeals' and Governor's reasoning would prohibit not just those harmed by persistent government illegality from suing, but also victims of corporate fraud or other private misconduct, merely because those plaintiffs had also been wronged previously.

The decision below must be reversed.

V. STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

a. The Governor has solely contested MIRC's Complaint based on the sufficiency of the allegations, so the Complaint establishes the relevant facts, and must be taken as true.

In November 2021, MIRC filed suit seeking a declaratory judgment and injunction to stop the Governor's ongoing enforcement of an unlawful and unconstitutional workers' compensation policy. App'x, at 008a-024a (Complaint). The Governor has only disputed MIRC's Complaint by contesting the sufficiency of the allegations to overcome her claimed immunity and to establish an actionable controversy. The former argument is now before this Court.

Because the Governor has not put forward "documentation" in support of her motion for summary disposition, "[t]he contents of the complaint" establish the record and "are accepted as true." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

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b. MIRC alleges the Governor enforces an unlawful policy of denying undocumented workers wage-loss benefits solely based on their immigration status, which harms MIRC.

i. The workers' compensation scheme.

Michigan's Workers' Disability Compensation Act removes employees', including undocumented employees', tort remedies for on-the-job injuries. *See* App'x, at 010a, ¶¶ 8–10 (Complaint). In exchange, workers are meant to have access to an employer-funded and -insured no-fault (albeit capped) recovery system. That system includes compensation for lost future wages due to workplace injuries, referred to as wage-loss benefits. *Id.*

However, and central to this case, the Workers' Disability Compensation Act carves out an exception to injured employees' entitlement to wage-loss benefits if a "person 'is unable to obtain or perform work because of . . . [the] commission of a crime.'" App'x, at 010a ¶ 10 (Complaint) (quoting MCL 418.361(1)) (alteration in original).

The Governor oversees the implementation of the Act, including the commission-of-a-crime exception. She is responsible for appointing all the workers' compensation officials in charge of the Act's administration and can remove them if they fail to carry out their duties consistent with her understanding of the law. App'x, at 015a, ¶ 26 (Complaint). This includes the magistrates who adjudicate workers' claims denied by their employers. *Id.* In sum, as expressed in the Workers' Disability Compensation Act and its implementing rules, the Governor's appointees enforce the Act and she is responsible for ensuring they do so lawfully.

In addition to the Governor's statutory role in administering the Act and overseeing the workers' compensation agency, under Michigan's Constitution, the Governor is responsible for all aspects of the Executive branch's administration of the laws. *Id.*; *see also Duncan v State*, 284 Mich App 246, 271; 774 NW2d 89 (2009) (quoting Const 1963, art 5, § 1). This includes the workers' compensation agency and the appointees who adjudicate claims.

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ii. The Governor's interpretation of the commission-of-a-crime exception.

The Workers' Disability Compensation Act, as presently interpreted and implemented by the Governor through her appointees, denies "undocumented individuals' recovery for on-the-job injuries." *E.g.*, App'x, at 010a-011a, ¶¶ 1, 11 (Complaint). The Governor and her subordinates base this policy on the belief that undocumented workers' "immigration status" alone forecloses every one of those workers' claims for wage-loss benefits under the commission-of-a-crime exception. *Id.*

"Relying on a Michigan Court of Appeals decision, *Sanchez v Eagle Alloy, Inc.*, Michigan's workers' compensation officials" declare "evidence a worker is an undocumented immigrant establishes the worker would 'commit a crime'" solely by obtaining employment, and "[t]hus, the worker's status eliminates the worker's entitlement to wage-loss benefits." *Id*. (citation omitted). In other words, those acting on the Governor's behalf and with her consent deny undocumented workers wage-loss benefits on the theory that workers continuing to work without legal status would render them criminals and bring them within the commission-of-a-crime exception. As a result, an undocumented worker is "categorically disqualified" from wage-loss benefits. App'x, at 019a, ¶ 42 (Complaint).

In documents MIRC obtained following the filing of this case, Michigan's workers' compensation agency confirmed MIRC's allegation that this remains the policy today.

iii. The Governor's policy is unlawful.

MIRC disagrees that *Sanchez* read on its own supports the Governor's policy, but even if *Sanchez* justified the Governor's position at the time the Court of Appeals decided that case, at least three subsequent events establish the policy is illegal. *First*, in cases post-dating *Sanchez*, the Supreme Court of the United States made clear that federal law "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," so that federal law preempts any state law that criminalizes "working while undocumented." App'x, at 011a, ¶ 15 (Complaint) (quoting *Arizona v United States*, 567 US 387, 405; 132 S Ct 2492, 2504; 183 L Ed 2d 351 (2012)). Thus, the Governor's position that every person who accepts work while they are undocumented necessarily commits a crime is invalid under federal law. By enforcing a policy that all undocumented employees are criminals, a premise which under federal law is both incorrect and preempted, the Governor is violating the Supremacy Clause of the United States Constitution.

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. App'x, at 012a, ¶ 16 (Complaint) (citing *Sweatt v Dep't of Corr*, 468 Mich 172; 661 NW2d 201 (2003)) (plurality opinion)). If an on-the-job injury reduces a worker's earning ability, a worker who also cannot work because of their commission of a crime is still entitled to wage-loss benefits, unless the employer can show the commission of a crime, not the injury, reduced the workers' wages to zero. The Governor's policy improperly shifts that burden, relying on a worker's immigration status alone to bar benefits and relieve employers of their obligation to establish that a crime is the sole cause of the wage loss.

Third, two decades of experience since *Sanchez* demonstrates that the ongoing application of the commission-of-a-crime exception based on workers' immigration status violates the due process requirements of the United States and Michigan Constitutions. App'x, 012a-013a, ¶ 17 (Complaint).

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iv. The Governor's policy injures MIRC, so MIRC seeks a declaration and injunction to stop future enforcement of the policy and harm.

"MIRC is a legal resource center that serves Michigan's immigrant communities." App'x, at 024a, ¶ 65 (Complaint). In 2017, MIRC began a project focused on farmworkers, who make up a disproportionate amount of the state's undocumented workforce. *See* App'x, at 024a, ¶ 66 (Complaint). MIRC did not intend for the project to participate in workers' compensation cases "given the robust network of private workers' compensation attorneys that exist to handle those cases." App'x, at 024a-025a, ¶¶ 67–68 (Complaint).

Nonetheless, the Governor's policy means employers deny claims based on their belief that a worker is undocumented. And the private bar is "unwilling to take the cases" to workers' compensation magistrates, because it knows workers' compensation officials will necessarily "deny wage-loss benefits," undercutting the bar's ability to receive compensation for the representation. App'x, at 025a, ¶¶ 69–70 (Complaint).

Hence, from the founding of MIRC's farmworker project through the filing of this case, the Governor's policy has caused the project to receive a steady stream of intakes from undocumented workers locked out of the workers' compensation system and with nowhere else to turn. *Id*.. This has imposed costs that have impaired the project's ability to pursue its planned, core agenda. *E.g.*, App'x, at 025a, ¶ 71 (Complaint). Moreover, based on this history, there is no reason to believe the ongoing flow of intakes and associated costs will stop. App'x, at 026a-030a, ¶¶ 79, 82, 89, 98, 107 (Complaint).

Specifically, MIRC explains, the Governor's policy has imposed hard costs on MIRC. Those costs include obtaining legal reference materials and other expenses associated with understanding the undocumented workers' claims. App'x, at 025a-026a, ¶¶ 71–75 (Complaint). In addition, the number of intakes was such that, in 2019, MIRC hired a part-time staff member to

address the volume of workers' compensation intakes. App'x, at 026a, ¶ 76 (Complaint). Moreover, MIRC explains that it incurred additional research and representation costs due to the enforcement of the Governor's policy in the year before it filed its Complaint, stemming from the project receiving additional intakes, representing an undocumented worker, and developing materials to inform injured undocumented workers of their rights. App'x, at 026a-027a, ¶¶ 79–82 (Complaint).

To prevent future costs and thereby allow it to reorient resources toward its planned agenda, MIRC seeks a declaration that the Governor's policy is unlawful and an injunction preventing the Governor's unlawful conduct in the future. App'x, at 031a, (Complaint). MIRC's Complaint does not seek any form of damages or other retrospective relief. *Id.*

c. The Court of Claims' decision.

Judge Gleicher, sitting by designation on the Court of Claims, denied the Governor's motion for summary disposition. App'x, , at 035a-046a (Opinion & Order of Court of Claims). As relevant here, Judge Gleicher rejected the Governor's argument that MIRC's Complaint was untimely under MCL 600.6431. App'x, at 040a-041a (Opinion & Order of Court of Claims,).

She held that MIRC's claims could not be untimely under MCL 600.6431. *Id*. She explained that MIRC alleges it will incur future costs and solely seeks to prevent those prospective injuries, not to recover for any past harms. *Id*. Therefore, the purported time limit in MCL 600.6431(1), requiring MIRC's claims to be filed within one year after they accrued, could not have expired. *Id.*[1]

Further, relying on this Court's precedent, Judge Gleicher continued, "[b]ecause the complaint requests declaratory and injunctive relief to prevent future harm, the wrongs sought to

[1] MCL § 600.6431(1) also allows claims to be noticed within one year of when they accrued. MIRC agrees it did not file a notice, and instead, relies solely on the date it filed its Complaint.

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be vindicated have not yet occurred, and the one-year [] period set forth in MCL 600.6431(1) does not apply." *Id.* (citing *Taxpayers Allied for Const Tax'n v Wayne Cnty*, 450 Mich 119, 128; 537 NW2d 596 (1995)).

d. The Court of Appeals' decision.

Following a series of proceedings regarding the propriety and scope of an appeal, the Court of Appeals reversed the Court of Claims. App'x, at 026a-030a, 001a-007a (Opinion of Court of Appeals). The panel acknowledged several precedents calling into question the Governor's claimed application of MCL 600.6431(1) to this case, but declined to follow that law. Instead, the panel adopted the Governor's position that MCL 600.6431 defines the scope of her sovereign immunity and she is immune if the conditions in MCL 600.6431(1) are not met. Likewise, the panel recognized precedent indicating MIRC's allegations of new harms due to the present enforcement of the Governor's policy established MIRC's claims are timely under MCL 600.6431(1), but the panel would not enforce those rules.

MIRC explained that under this Court's and the U.S. Supreme Court's precedents, state officials cannot assert sovereign immunity against claims seeking prospective relief. App'x, at 005a-006a (Opinion of Court of Appeals). Because any immunity expressed in MCL 600.6431(1) could not apply, MIRC need not meet the statutory requirements for avoiding that nonexistent sovereign immunity. *Id*. (citing *Li v Feldt* (After Second Remand), 439 Mich 457, 469; 487 NW2d 127 (1992) (opinion by CAVANAGH, C.J.), *overruled on other grounds by Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002); *Ex parte Young*, 209 US 123; 28 S Ct 441; 52 L Ed 714 (1908)).

Nonetheless, the panel held the Governor could claim sovereign immunity in this case, and thus MIRC needed to comply with MCL 600.6431(1). App'x, at 005a (Opinion of Court of Appeals). The panel stated there was no binding authority in support of MIRC, asserting—for the

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first time in any of the papers in this case—that while *Li* articulated MIRC's claimed exception to sovereign immunity, those statements are not binding. App'x, at 006a (Opinion of Court of Appeals). The panel continued, because this Court has "held that compliance with MCL 600.6431(1) is a precondition to *any* suit," the immunity expressed in MCL 600.6431 must be applied to claims like MIRC's. *Id.* (citing *Christie v Wayne State Univ*, 511 Mich 39, 55–57, 64 993 NW2d 203 (2023)). Put another way, the panel reasoned that because the Legislature enacted MCL 600.6431, the courts must enforce it to its fullest, theoretical extent. The panel did not address the numerous other decisions from this Court and other panels of the Court of Appeals that provide state officers cannot claim immunity against suits for prospective relief to prevent their future misconduct, including failing to acknowledge the authority discussed in *Li*.

MIRC also explained, and the panel acknowledged, that this Court has carved out a separate limitation on sovereign immunity, "where it is alleged that the state has violated a right conferred by the Michigan Constitution," even if the plaintiff seeks retrospective damages or sues a state entity rather than an officer. App'x, at 006a (Opinion of Court of Appeals) (citing *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 688; 983 NW2d 855 (2022) ("*Bauserman II*"); and *Duncan*, 284 Mich App at 268–69). Thus, because MIRC alleges the Governor is violating the United States and Michigan Constitutions, she has no immunity to invoke against those claims, and MIRC need not satisfy MCL 600.6431(1)'s conditions for avoiding sovereign immunity.

Yet, the panel held that exception to immunity only applies when the plaintiff asserts "any constitutional right *of its own*," which it believed excluded MIRC's allegations. App'x, at 006a (Opinion of Court of Appeals). That is, sovereign immunity for constitutional claims turns on whether the "right guaranteed by the Constitution" is one specifically provided to the plaintiff,

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which the panel indicated was not true of MIRC's Supremacy and Due Process Clause claims. *Id*. In support of this conclusion, the panel cited cases denying plaintiffs standing to challenge constitutional injuries to third parties. *Id.* (citing *People v Mahdi*, 317 Mich App 446, 458–459; 894 NW2d 732 (2016); *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009)). The panel did not reconcile this approach with the fact it was addressing immunity, not standing. Nor did the panel explain how its reasoning fit with its earlier statement that the panel "presume[d] . . . plaintiff has standing and has articulated an actual controversy." App'x, at 004a (Opinion of Court of Appeals).

Finally, MIRC, relying on Judge Gleicher's opinion, explained that claims for prospective declaratory relief are designed to prevent future injuries, so the harm at issue could not have occurred over a year before the Complaint, and MCL 600.6431(1) could not bar MIRC's claims. App'x, at 004a (Opinion of Court of Appeals) (citing *Taxpayers*, 450 Mich at 128). Here too the panel agreed with MIRC's characterization that case law provides forward-looking claims are not prohibited by statutory time limits based on past harms. *Id.*

But the panel stated MIRC's request for declaratory relief must be related to a live claim "for substantive relief," and that MIRC's right to substantive relief accrued more than a year before its Complaint, making MCL 600.6431(1) a bar to proceeding. App'x, at 004a (Opinion of Court of Appeals) (citing *Taxpayers*, 450 Mich at 128; *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 456; 761 NW2d 846 (2008)). The panel did not identify MIRC's purportedly expired claim for substantive relief. It also did not explain how MCL 600.6431(1)'s one-year time limit could have run on MIRC's claims for substantive relief, given that MIRC solely seeks relief from future wrongdoing, rather than any sort of relief for past harms.

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Given that the panel stated MIRC must show its claims for forward-looking relief accrued within the year prior to the Complaint, the panel considered whether MIRC's Complaint met that standard, concluding it did not. The panel said that because MIRC alleged it suffered costs due to the unlawful enforcement of the commission-of-a-crime exception in the years prior to its Complaint, MIRC's allegations establish its claims accrued more than a year before its filing. App'x, at 004a (Opinion of Court of Appeals).

Regarding this issue too, the panel acknowledged its reasoning could appear in tension with this Court's precedent, which holds a "new cause of action can arise from each wrongful act" that results in an actionable harm to the plaintiff, so that MIRC's alleged recent costs due to the present enforcement of the Governor's policy should restart the clock under MCL 600.6431(1). App'x, at 005a (Opinion of Court of Appeals) (citing *Twp of Fraser v Haney*, 509 Mich 18, 28–29; 983 NW2d 309 (2022)).

However, the panel stated that each instance in which the Governor's agents enforce her policy, generating costs for MIRC, is not a new wrong causing new injuries. Instead, the panel believed that every instance of enforcement producing injuries to MIRC is tied together and constitutes a single "ongoing harm[]" stemming from the *Sanchez* decision. App'x, at 005a (Opinion of Court of Appeals). The panel recognized that MIRC seeks to end the present policy interpreting and applying *Sanchez*, and that MIRC does so based on intervening decisions and events post-dating *Sanchez*. App'x, at 002a & 005a (Opinion of Court of Appeals). Still, the panel concluded, all of MIRC's alleged harms are connected "consequences" of *Sanchez* and MIRC's claims are therefore untimely. App'x, at 005a (Opinion of Court of Appeals) , at 026a-030a,.

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

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VI. STANDARD OF REVIEW

Whether, in light of MIRC's allegations, the Governor is entitled to immunity is a question of law this Court considers *de novo*. *Maiden*, 461 Mich at 118.

VII. SUMMARY OF ARGUMENT

This Court should reverse. The Governor contends she has sovereign immunity from this suit because MIRC did not comply with the statutory conditions to avoid her immunity under MCL 600.6431(1).[2] *See, e.g.*, Gov's Opp'n to Mot for Leave to Appeal 8–9. That position rests on the premise she has immunity she can assert. She does not. This Court, following the Supreme Court of the United States, has long held that state officers cannot claim sovereign immunity when sued for prospective relief. The Judiciary's constitutionally prescribed role in preventing government abuse precludes the existence of such immunity. Indeed, the U.S. Supreme Court has held this principle to be so essential that where, as here, plaintiffs seek prospective relief to prevent federal constitutional violations in state courts, state officers may not invoke sovereign immunity. Thus, federal law requires this Court to permit MIRC to proceed on its federal claims, and this Court's precedent provides MIRC should be allowed to proceed on all of its claims.

Moreover, given the import of judicial review to the constitutional order, this Court has held that state officers have no immunity against allegations they have violated their constitutional obligations, whether plaintiffs seek prospective or retrospective relief. Consistent with those precedents, this Court has never held that MCL 600.6431(1) extends immunity to constitutional

[2] Though the case law sometimes uses the terms "governmental immunity" and "sovereign immunity" interchangeably, "governmental immunity" technically refers to the immunity of political subdivisions like townships, whereas "sovereign immunity" refers to the immunity of the state and its instrumentalities. *See generally Pohutski*, 465 Mich at 682. Here, because the Governor is a state officer rather than of a political subdivision, the dispute is whether she has sovereign immunity, not whether she has governmental immunity. *See, e.g.*, Gov's Opp'n to Mot for Leave to Appeal 8–9.

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claims. Neither the Governor nor the Court of Appeals has offered a reason to retreat from the decisions enabling this state's courts to protect fundamental constitutional rights. Thus, at the least, MIRC can proceed with its constitutional claims.

Further, the language of MCL 600.6431(1) does not alter the above principles, it incorporates them, providing a textual basis to reject the decision below. The text applies only to claims against the "state," and is deafeningly silent as to state *officers*. At the same time, numerous other provisions of the Court of Claims Act refer to the "state" and state "officers" separately, making clear the Legislature understood them as distinct entities.

Additionally, the text makes clear that MCL 600.6431(1) can only bar claims that have "accrued" based on harms that occurred in the past. But claims for prospective relief seek to prevent harms that will occur in the future. The wording of the statute simply does not fit the relief MIRC seeks.

And were the above to leave any doubt as to MCL 600.6431's inapplicability, this Court should resolve it in MIRC's favor. Reversing is the only outcome that preserves constitutional checks-and-balances, which require that the Judiciary be able to halt illegal government conduct. The Governor's position and panel's decision would allow the Legislature and Executive to craft never-before-heard-of immunities, preventing the courts from ordering officials to comply with the law.

Finally, even if MCL 600.6431(1) does apply to claims against state officers for prospective relief, including claims to halt ongoing constitutional violations, MIRC satisfies the statute. The Governor and Court of Appeals think MIRC waited too long to sue. But assuming MIRC needs to meet the conditions in § 600.6431(1), MIRC alleges that the Governor's most recent misconduct harmed MIRC within the year prior to its Complaint. This Court has repeatedly

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held that although parties cannot obtain redress for stale injuries, that rule does nothing to limit courts' ability to adjudicate fresh ones, even if the new harms resemble the old. To the extent it needs to reach the issue (and it does not), this Court should once again make clear that getting away with violating the law for some statutory period does not give defendants a perpetual get-out-of-jail-free card to keep inflicting unlawful injuries. Such a rule is essential not only to protect constitutional rights, but also to prevent repetitive private misconduct.

VIII. ARGUMENT

a. MCL 600.6431(1) does not apply to claims for prospective relief against state officers, especially when those claims seek to halt constitutional violations.

i. Michigan recognizes the longstanding rule that sovereign immunity cannot bar suits for prospective relief against state officers.

The Court of Appeals and Governor believe MIRC needed to comply with MCL 600.6431(1)'s conditions for avoiding sovereign immunity. *See* App'x, at 006a (Opinion of Court of Appeals); Gov's Opp'n to Mot for Leave to Appeal 8–9. For that to be true, the Governor must be entitled to sovereign immunity. She is not. State officers cannot invoke sovereign immunity when they are sued for prospective relief, which is all MIRC seeks in this matter.

The seminal case on this principle is *Ex parte Young*, in which the U.S. Supreme Court rejected a state attorney general's claim of sovereign immunity against a claim for injunctive relief. As that Court explained:

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

209 US at 159–60 (emphasis added); *see also Va Off for Protec & Advoc v Stewart*, 563 US 247, 254–55; 131 S Ct 1632; 179 L Ed 2d 675 (2011).

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In its modern form, "the *Ex parte Young* doctrine allows suits . . . for declaratory or injunctive relief against state officers in their official capacities" when plaintiffs allege those officers have violated federal law, notwithstanding the existence of state sovereign immunity in other contexts. *Reed v Goertz*, 598 US 230, 234; 143 S Ct 955; 215 L Ed 2d 218 (2023).

This Court has long recognized that the logic of *Ex parte Young* applies in Michigan state courts, allowing a plaintiff to seek prospective relief to stop a state officer's violations of Michigan law. In *Thompson v Auditor General*, a plaintiff sued in state court for prospective relief requiring a state officer to comply with his duty under a state statute. 261 Mich 624, 628; 247 NW 360 (1933). The officer "objected that, in effect, this [was] a suit against the state, and may not be maintained" under state sovereign immunity. *Id.*

This Court disagreed. It first described the *Ex parte Young* rule: "Actions or suits against individuals who are officers of the state, to recover property, compel the performance of a duty, and prevent a wrongful deprivation of rights are not suits against the state . . . ." *Id*. at 628. This Court continued, "[i]f cases of mandamus and injunction may be brought in the federal courts" in cases like *Ex parte Young*, "there can be no reason why as liberal a rule ought not to prevail in the courts of the state." *Id.* at 629–30. Echoing *Ex parte Young*, this Court concluded, the suit at bar was "not a suit against the state," and no immunity was warranted because it was against "the auditor general to compel the performance of a statutory duty." *Id.* at 656. *Thompson* stands for the proposition that under Michigan law, a government official may not claim sovereign immunity in state court when a plaintiff seeks prospective relief to halt further violations of law.

In the decades since *Thompson*, this Court has repeatedly reaffirmed that government defendants cannot invoke immunity from prospective relief. *See, e.g.*, *Progress Mich v Att'y Gen*, 506 Mich 74, 87 n6; 954 NW2d 475 (2020) (noting that "[t]here have always been exceptions to

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the background rule of absolute sovereign immunity for the state recognized at common law" including prospective relief such as "writs of mandamus and habeas corpus [which] existed before there was any legislative waiver of immunity from suit"); *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 225; 934 NW2d 713 (2019) (holding government defendant immune from claim for monetary damages, but specifying that the "plaintiff may nonetheless maintain a cause of action for declaratory and equitable relief"); *In re Bradley Estate*, 494 Mich 367, 389 n54; 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 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"), *abrogated on other grounds by Stegall v Res Tech Corp*, __ NW3d __, 2024 WL 3503503, at *6–7 (Mich July 22, 2024); *Hadfield v Oakland Cnty Drain Comm'r*, 430 Mich 139, 152 n5; 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; *McDowell v State Hwy Comm'r*, 365 Mich 268, 269–70; 112 NW2d 491 (1961) (rejecting damages action against state officers on sovereign immunity grounds but noting that "[n]o question of abatement of a nuisance, or of other relief a court of equity might properly grant, is or could be before us" (internal citation omitted)).[3]

[3] This rule is similarly well-established in the Court of Appeals. *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

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1. *The Court of Appeals erred in failing to recognize the above authority, relying instead on inapposite case law.*

The Court of Appeals never discussed *Thompson* or any other of the foregoing decisions of this Court. Instead, the panel held that one decision—Chief Justice Cavanagh's lead opinion in *Li*—was not binding because only two other justices signed on. App'x, at 006a (Opinion of Court of Appeals). On this basis, the panel dismissed *Li*'s recognition that "the principle that . . . liability [for prospective relief] is generally not barred by sovereign immunity [is] fundamental to sovereign immunity law." *Li*, 439 Mich at 469.[4]

MIRC disagrees that Chief Justice Cavanagh's opinion in *Li* is not binding. At least two of the justices who did not join Chief Justice Cavanagh's opinion in *Li* would have gone *farther* in limiting immunity, indicating an outright majority of that court agreed on Chief Justice Cavanagh's point that sovereign immunity cannot bar suits for equitable relief.[5] *See People v. Sexton*, 458 Mich

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).

[4] Chief Justice Cavanagh's opinion, like some of this Court's other opinions, frames the exception as being for "prospective *equitable* relief." *Li*, 439 Mich at 469 (emphasis added). The modern test under *Ex parte Young* is not whether "the relief may be labeled 'equitable' in nature," *Edelman v Jordan*, 415 US 651, 666; 94 S Ct 1347; 39 L Ed 2d 662 (1974), but instead "whether the complaint . . . seeks relief properly characterized as prospective," *Verizon Md, Inc v Pub Serv Comm'n of Md*, 535 US 635, 645; 122 S Ct 1753; 152 L Ed 2d 871 (2002) (cleaned up). MIRC seeks only prospective equitable relief. But for clarity, under the sovereign immunity rules discussed here, there are prospective *non-equitable* suits that are permitted. *Compare Thompson*, 261 Mich at 628 (state officer cannot claim immunity against prospective mandamus suit), *with Franchise Realty Interstate Corp v City of Detroit*, 368 Mich 276, 279; 118 NW2d 258 (1962) (noting that historically, "[m]andamus proceedings" were "filed and considered on the law side" of the law/equity divide).

[5] Justice Boyle concurred separately to suggest there might be a broader exception to immunity for government-created public nuisances than Chief Justice Cavanagh's opinion contemplated. *Li*, 439 Mich at 478–83. Justice Levin concurred in part because he believed not

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43, 65; 580 NW2d 404 (1998) ("The clear rule in Michigan is that a majority of the Court must agree on a ground for decision in order to make that binding precedent for future cases." (citation omitted)). Indeed, no justice in *Li*—concurring or dissenting—took issue with Chief Justice Cavanagh's recognition of the *Ex parte Young* principle.

Yet even if Chief Justice Cavanagh's opinion in *Li* is not binding, the Court of Appeals failed to mention, much less distinguish, the authority Chief Justice Cavanagh relied on, including *McDowell*. *Li* explained that *McDowell* granted immunity for claims seeking "damages for a tort," but carved out from that immunity prospective "relief a court of equity might properly grant." *Li*, 439 Mich at 469–70. Nevertheless, the panel below proceeded as if decisions like *McDowell* did not exist. *See* App'x, at 005a (Opinion of Court of Appeals) (discussing only *Li* and incorrectly stating that "our Supreme Court never adopted" the *Ex parte Young* principle).

Under *Thompson*, *McDowell*, and this Court's other precedents incorporating the *Ex parte Young* principle into Michigan law, MIRC wins whether Chief Justice Cavanagh's discussion in *Li* is binding precedent or merely an accurate description of the law. Moreover, to hold against MIRC would disregard the constitutional principle that state officers "necessarily [must be] subject to suit for" prospective relief notwithstanding otherwise "absolute sovereign immunity," "because, otherwise, [there] would be an empty promise" of accountability. *Progress Mich*, 506 Mich at 87 n6. The Judiciary must be able to order officials to comply with the law, or the rule of law is really just a set of suggestions.

The Court of Appeals also cited *Christie* as dictating its outcome, but *Christie* is inapplicable. That case concerned claims against a state university seeking retrospective damages

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only that such a public nuisance exception to immunity existed, but also that one set of plaintiffs might qualify for that exception. *Id.* at 484–510.

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related to the plaintiff's termination. *See, e.g.*, 511 Mich at 45. It did not consider, much less overrule, the precedents holding state officers cannot assert immunity against claims for prospective relief. In fact, the only question in *Christie* was whether MCL 600.6431 applies to claims against the university-defendant brought in circuit court rather than the Court of Claims. *Id.* at 47 & n11. Therefore, while *Christie* states MCL 600.6431 "applies to all claims against the state," *id.* at 52, it merely means the statute applies in all *venues*; not that it silently reversed core sovereign immunity law, as the decision below would have it.[6]

2. *Federal law requires allowing MIRC's federal claims to proceed.*

Even if this Court were to decide now to overrule *Thompson* and its other cases applying the *Ex parte Young* principle to *state* law claims, MIRC must still be allowed to proceed on its *federal* law claims. On the same day as *Ex parte Young*, the U.S. Supreme Court decided *General Oil Co v Crain*, 209 US 211; 28 S Ct 475; 52 L Ed 754 (1908), in which the Court "extend[ed] the rule of that case [*Ex parte Young*] to state-court suits." *Alden v Maine*, 527 US 706, 747; 119 S Ct 2240; 144 L Ed 2d 636 (1999). A state has no power to override that federal principle, so an officer cannot invoke immunity under MCL 600.6431 against state court claims for prospective relief regarding violations of federal law. William Baude *et al*, *Hart & Wechsler's The Federal Courts and the Federal System* 1195 (8th ed 2025) ("In *General Oil Co. v. Crain*, 209 U.S. 211 (1908), the [Supreme] Court imposed on state courts an obligation to furnish injunctive remedies similar to those available in federal court under *Ex parte Young*.").

[6] Below, the Governor relied on *McCahan v Brennan*, 492 Mich 730; 822 NW2d 747 (2012), claiming that because *McCahan* held MCL § 600.6431 must be enforced "as plainly written" that prevents the courts from recognizing any exceptions to sovereign immunity not spelled out in MCL § 600.6431. *Id.* at 733. As described *infra*, "as plainly written" MCL § 600.6431(1) applies neither to claims against state officers nor to claims for prospective relief. Moreover, *McCahan* solely addressed whether MCL § 600.6431(1) was enforceable if there was no "actual prejudice" to the defendant. *Id.* at 732. Like *Christie*, nothing in *McCahan* undermines or even considers the sovereign immunity holdings described here.

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State courts of last resort around the country have recognized that *Ex parte Young*, *Crain*, and *Alden* prevent state officers from claiming immunity in state court when sued for prospective relief to halt violations of federal law. *See Lee v Iowa*, 844 NW2d 668, 677 (Iowa, 2014) ("The view that the [*Ex parte Young*] doctrine is applicable in state courts is well established." (citing *Alden*, 527 US at 746–47)); *Gill v Pub Emps Retirement Bd of Pub Emps Retirement Ass'n of NM*, 135 NM 472, 480–81; 90 P3d 491 (NM, 2004) (recognizing that under *Alden*, state officers may not assert sovereign immunity in state-court suits for prospective relief to halt or prevent violations of federal law); *Prager v Kansas*, 271 Kan 1, 26–32; 20 P3d 39 (2001) (similar); *see also In re Mitchell*, 209 F3d 1111, 1120 (9th Cir 2000) (citing *Ex parte Young*, *Alden*, and *Crain* for the proposition that "parties [may] enforce their federal rights in *state or federal* court by suing government officials for prospective relief" (emphasis added)), *abrogation on other grounds recognized by Hibbs v. Dep't of Human Res*, 273 F.3d 844, 853 n6 (9th Cir 2001).

* * *

The constitutional balance of power requires that the Judiciary be able to order officials to comply with the law. Thus, the Governor cannot assert immunity against claims for prospective relief to halt ongoing unlawful violations, and whether MIRC complied with MCL 600.6431(1)'s conditions for avoiding immunity is irrelevant. Moreover, if this Court were to make the peculiar decision to abandon that rule as to state officers' violations of state law, the Court of Appeals still must be reversed so MIRC can press its claims for prospective relief to halt the Governor's alleged violations of federal law.

ii. The Governor cannot invoke sovereign immunity against allegations of state or federal constitutional violations.

The Governor also cannot claim immunity under MCL 600.6431(1) because this Court's decisions establish she cannot invoke immunity when sued for alleged constitutional violations.

Thus, even if she could claim immunity under MCL 600.6431(1) in *some* cases seeking prospective relief, she cannot do so when a plaintiff seeks that relief to require her to fulfill her constitutional obligations. That means MIRC must be permitted to proceed with its claims for prospective relief based on the United States Constitution's Supremacy Clause and the United States and Michigan Constitutions' Due Process Clauses.

1. *This Court has established that government officials cannot invoke immunity when sued for constitutional wrongs.*

This Court has held that sovereign immunity does not extend to constitutional wrongdoing. *See Bauserman II*, 509 Mich at 688 (noting that in *Smith v Dep't of Pub Health*, 428 Mich 540; 410 NW2d 749 (1987), a majority of this Court "agreed that governmental immunity was not a defense to allegations of constitutional torts"); *Mays v Governor*, 506 Mich 157, 187; 954 NW2d 139 (2020) (similar); *Smith*, 428 Mich at 544 ("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 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)); *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."). Whether or not the text of MCL 600.6431(1) purports to extend immunity to constitutional claims "is . . . irrelevant because it is axiomatic that the Legislature cannot grant a license to state and local governmental actors to

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violate the Michigan Constitution." *Sharp v City of Lansing*, 464 Mich 792, 810; 629 NW2d 873 (2001).

Though cases invoking this exception to immunity have often involved alleged violations of the Michigan Constitution, the same principle applies to conduct that violates the federal Constitution. Indeed, Michigan courts have had little trouble denying state defendants immunity in suits alleging violations of the federal Constitution. *See, e.g.*, *Duncan*, 284 Mich App 246 (no immunity in case alleging violations of state and federal constitutional rights to counsel).

This is because the logic of this Court's precedent again rests on the courts' constitutional role in protecting rights. For state or federal constitutional rights to be meaningful, they must restrict the state government, which means they must be enforceable by the courts. State officers cannot claim immunity for acts violating either Constitution. *Cf. Sharp*, 464 Mich at 810–11 ("[T]he power of judicial review does not extend only to invalidating unconstitutional statutes or other legislative enactments, but also to declaring other governmental action invalid if it violates *the state or federal* constitution." (emphasis added)).

MCL 600.6431(1), a statute, does nothing to alter the rule that as a matter of constitutional necessity officials have no immunity from constitutional claims. This Court has never held otherwise. As Chief Justice McCormack noted in *Bauserman v. Unemployment Insurance Agency* ("*Bauserman I*"), although MCL 600.6431(1) must be construed strictly as an expression of sovereign immunity as to *non*-constitutional claims, this Court has never "held that the same is true of constitutional claims." 503 Mich 169, 194–98; 931 NW2d 539 (2019) (McCormack, C.J., concurring).[7] Nor does it necessarily follow from MCL 600.6431(1)'s applicability to non-

[7] The Governor has suggested Chief Justice McCormack's concurrence in *Bauserman II* is obsolete after *Christie*. *See* Gov's Opp'n to Mot for Leave to Appeal 10 n4. But *Christie* dealt with purely statutory claims, *see* 511 Mich at 43, and, as noted above, was not concerned with the issues

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constitutional claims that the statute applies identically to constitutional claims, because, as this Court has recognized, constitutional violations are more concerning than nonconstitutional wrongdoings. *Bauserman II*, 509 Mich at 695–96.

Precedent provides this Court should hold the Governor cannot claim sovereign immunity against MIRC's constitutional claims. Because the Governor has no sovereign immunity from those claims in the first place, her argument that MIRC needed and failed to comply with MCL 600.6431(1)'s requirements for avoiding that immunity collapses.

2. *The Court of Appeals erroneously conflated third-party standing and immunity for constitutional wrongs.*

The Court of Appeals acknowledged this Court's precedents rejecting immunity for constitutional violations, but refused to follow that case law, instead citing cases for the proposition that MIRC does not have standing to vindicate third parties' rights. App'x, at 006a (Opinion of Court of Appeals). As noted above, this reasoning was internally inconsistent, as the panel elsewhere purported to assume MIRC *does* have standing. App'x, at 004a (Opinion of Court of Appeals).

Regardless, the panel erroneously conflated two lines of precedent: immunity and third-party standing. The authority the panel below relied upon rejects third-party standing, but does not address immunity of any kind. App'x, at 006a (Opinion of Court of Appeals) (first citing *Mahdi*, 317 Mich App at 448–59; and then citing *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009).

That is unsurprising, as standing and immunity are fundamentally different concepts. At a basic level, standing asks if someone is a proper *plaintiff*, whereas immunity asks if someone is a

presented here. Thus, Chief Justice McCormack's observations regarding MCL § 600.6431(1)'s application in a constitutional case remain true and relevant today.

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proper *defendant*. Whether the Governor can assert immunity under MCL 600.6431(1) does not turn on whether a plaintiff has suffered a cognizable injury. The Court of Appeals went astray in blending the two inquiries.

Additionally, although standing is not before this Court, the Court of Appeals further erred in characterizing MIRC's challenge as seeking relief based on third parties' injuries. MIRC does not base its claim on injuries to third-party undocumented workers, as the Court of Appeals suggested. App'x, at 006a (Opinion of Court of Appeals). Rather, MIRC seeks to halt enforcement of an unconstitutional policy that harms MIRC. Even if every undocumented worker unlawfully denied wage-loss benefits were eventually compensated for the violation of *their* rights—that is, if the injury to the putative third parties were fully remedied—MIRC would still be out the costs the organization incurred in the meantime. Those costs are independent injuries to MIRC, which arise separately from the harms the Governor's policy inflicts on undocumented workers. *Cf. Ammex, Inc v Dep't of Treasury*, 272 Mich App 486, 493–94; 726 NW2d 755 (2006) (organizations' financial harms are sufficient to establish an injury for the purposes of standing).

To the extent the Court of Appeals took issue with the fact that the Governor's unconstitutional policy injures MIRC via a chain of causation that includes third parties, that too is no basis for immunity from MIRC's claim. Neither the Governor nor the Court of Appeals has cited any precedent suggesting that this Court's decisions in *Smith, Mays,* and *Bauserman II*—removing immunity for constitutional violations—do not apply in such a case. Nor, to MIRC's knowledge, does any such precedent exist.

Moreover, a rule that a state officer is immune when their constitutional violation harms someone via a causal chain that includes third parties would lead to absurd results. A state officer who used excessive force against a pregnant mother would not have immunity against the mother's

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constitutional claim. But if the injuries to the mother resulted in separate harms to the fetus, the officer *would* have immunity against the fetus's claim, simply because the chain of causation flowed through the mother. *Cf. Mays*, 506 Mich at 184 (noting that plaintiffs in constitutional litigation arising from the Flint water crisis "alleged injuries that might include plaintiffs who suffered in vitro exposure to toxic water"). Nothing in this Court's precedent suggests such a troubling outcome.

Rather, this Court's decisions establish that state officers have no sovereign authority to violate their constitutional obligations, and thus cannot claim sovereign immunity for doing so. *See, e.g.*, *Burdette*, 166 Mich App at 408 (explaining that a "defendant cannot claim immunity where the plaintiff alleges that defendant has violated its own constitution"). It is the officer's violation, not the identity of the plaintiff, which strips away immunity.

3. *The Court of Appeals erred in examining the nature of the constitutional right at issue.*

The Court of Appeals' additional suggestion that state officials' immunity from constitutional claims changes depending on whether the claim stems from a constitutional provision that gives the plaintiff a right "*of its own*" or some broader provision, App'x, at 006a (Opinion of Court of Appeals), is equally nonsensical. All "[c]onstitutional rights serve to restrict government conduct," no matter how they are phrased. *Burdette*, 166 Mich App at 408–09. They do this by imposing on officials a duty to a "right-holder," which is actionable if a breach harms that right holder. *Bauserman II*, 509 Mich at 691. In this manner, broadly phrased constitutional provisions can create individual protections.

For instance, if a state tax is allegedly preempted by federal law, a company can sue over that structural constitutional violation if it can show that the tax imposed a cost on them. *Ammex*, 272 Mich App at 489, 496–509 (affirming prospective relief against preempted state tax). Such a

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plaintiff has suffered an individual wrong for which they are entitled to a remedy, even though the Supremacy Clause is solely directed at state actors, rather than providing anyone an individualized right "*of* [*their*] *own*" to the supremacy of federal law. App'x, at 006a (Opinion of Court of Appeals).

Moreover, cabining this Court's precedents that state officers lack immunity for their constitutional violations only to constitutional provisions directed at individuals is indefensible. The logic behind the rule that defendants lack immunity for constitutional violations is that officials have no power to violate their constitutional duties, and so cannot use their office as a shield when they do so. *See Smith*, 428 Mich at 643–44 (Opinion of BOYLE, J.) ("The primacy of the constitution must eclipse the power of immunity to countenance constitutional violations by the state without concomitant liability."). How the constitution phrases that duty does not change the courts' authority to review constitutional misconduct.

The Court of Appeals was wrong to state MIRC could not sue the Governor and attempt to prove her conduct injured MIRC because MIRC relies on insufficiently individualized rights. *Cf. Bauserman II*, 509 Mich at 707 ("[O]ur inherent judicial authority requires us to afford a remedy for *all* constitutional violations, not just those that we think are wise or justified.").

* * *

This Court should take this opportunity to make clear that no matter who a plaintiff is nor how a defendant's constitutional violation harms them, a state officer cannot claim immunity for alleged constitutional wrongdoing. Whatever impact the plaintiff and the nature of its harm has on the standing inquiry is properly distinguished from immunity. And state officers' immunity does not turn on how the constitutional provision they violated is worded. MIRC alleges that the Governor's constitutional violations have caused and will cause it financial injuries. The Governor

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has no immunity for those alleged constitutional wrongs, and so cannot invoke her purported immunity under MCL 600.6431(1) against MIRC's constitutional claims.

iii. The plain text of MCL 600.6431(1) provides the statute applies only to suits against "this state," not suits against state officers like the Governor.

To hold in favor of MIRC, this Court need not rest on precedent alone. MCL 600.6431(1)'s text applies only to claims against "this state," but has no application to suits for prospective relief against state officers like the Governor. In this manner, the language of MCL 600.6431(1) incorporates the rule of *Ex parte Young* and *Thompson* that state officers are not immune from claims for prospective relief. *See Malcolm v City of E Detroit*, 437 Mich 132, 139; 468 NW2d 479 (1991) ("[T]he Legislature is held to be aware of the existence of the law in effect at the time of its enactments . . . .").

When interpreting a statute, "[e]very word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible." *Baker v Gen Motors Corp*, 409 Mich 639, 665; 297 NW2d 387 (1980). Further, courts "must always read the [statutory] text as a whole." *TOMRA of N Am, Inc v Dep't of Treasury*, 505 Mich 333, 349; 952 NW2d 384 (2020). If "the Legislature uses different words, the words are generally intended to connote different meanings." *US Fidelity & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009).

By its text, MCL 600.6431 only bars claims against "this state," and makes no mention of claims against state *officers*. In contrast, throughout the rest of the Court of Claims Act, the Legislature explicitly and repeatedly distinguished between the state and its officers, and referred to each separately. Thus, when properly read on its own and in the context of the statute as a whole, MCL 600.6431(1) places no limits on claims for prospective relief against state officers, like

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MIRC's claims against the Governor. The statute thus preserves the courts' role in policing officials' abuses of authority.

Looking at that surrounding text in the Court of Claims Act, MCL 600.6419(1)(a), for instance, grants the Court of Claims jurisdiction "[t]o hear and determine any claim or demand . . . *against the state* or any of its departments *or officers* notwithstanding another law that confers jurisdiction of the case in the circuit court." (emphasis added). Likewise, MCL 600.6404(3) provides for the transfer of cases to the Court of Claims "upon notice of *the state* or a department *or officer* of the state" and requires "*[t]he state* or a department *or officer* of this state" to "file a copy of the transfer notice with the clerk of the court of appeals." (emphasis added).

Numerous other provisions of the Court of Claims Act similarly distinguish between the state and state officers. *See* MCL 600.6419(1)(b) (granting Court of Claims jurisdiction to hear counterclaims "on the part of *the state* or any of its departments *or officers*" and noting that "[a]ny claim of *the state* or any of its departments *or officers* may be pleaded by way of counterclaim in any action brought against *the state* or any of its departments *or officers*" (emphasis added)); MCL 600.6419(2) (noting that judgment of Court of Claims "either against or in favor of *the state* or any of its departments *or officers*" is res judicata (emphasis added)); *id.* (providing for setoffs "[u]pon the trial of any cause in which any demand is made by *the state* or any of its departments *or officers* against the claimant" (emphasis added)).

To read the phrase "or state officers" into "this state," as the Governor and Court of Appeals do in MCL 600.6431(1), would make all these separate references to state officers throughout the rest of the Court of Claims Act "surplusage or . . . nugatory." *Baker*, 409 Mich at 665. That is, if the "state" as used in the Court of Claims Act, including MCL 600.6431(1), already includes state officers, then the phrase "the state or any of its . . . officers" elsewhere in the Act actually means

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"the state or any of its officers *or any of its officers*," a redundancy the Legislature could not have intended.

Indeed, the choice throughout the Court of Claims Act to separate the "state" from its "officers," *see supra*, indicates the Legislature understood the difference in phrasing to "connote different meanings." *US Fidelity*, 484 Mich at 14. Accordingly, this Court should not assume that in drafting MCL 600.6431(1) the Legislature "omitted from its adopted text" a reference to state officers "it nonetheless intend[ed] to apply," given that the Legislature "has shown elsewhere in the [statute] that it knows how to make such a requirement manifest." *Jama v Imm & Customs Enf*, 543 US 335, 341; 125 S Ct 694; 160 L Ed 2d 708 (2005); *see also People v Peltola*, 489 Mich 174, 185; 803 NW2d 140 (2011). As a result, whether read alone or in context, MCL 600.6431(1)'s reference to "this state" means the state as distinct from officers like the Governor.

In decisions other than the one below, the Court of Appeals has already adopted this straightforward reading of MCL 600.6431. In *Pike v Northern Michigan University*, 327 Mich App 683; 935 NW2d 86 (2019), the plaintiff sued a state officer (her university physical education instructor), but did not comply with MCL 600.6431's requirement that she sign the notice of intent to sue. *Id.* at 687–90. The Court of Appeals rejected the defendant's argument that he was immune as a result of the plaintiff's failure "to comply with MCL 600.6431 . . . because the requirements of that notice statute do not apply to state employees." *Id.* at 694.

The Court of Appeals noted that in contrast to the other provisions in the Court of Claims Act that separately reference the state and state officers, "[c]onspicuously absent in the notice statute [MCL 600.6431(1)] is any reference to officers, employees, members, volunteers, or other individuals." *Id.* at 696. Thus, even assuming it would be "logical" to treat a claim against a state officer as "a claim against 'the state' to which MCL 600.6431 applies," the Court of Appeals

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explained, "we are not permitted to revise an unambiguous statute under the guise of interpretation to achieve a 'logical' result." *Id.* at 697. The same reasoning applies here. *See also Lavallii v. Cent Mich Univ*, No 346803, 2020 WL 703561, at *4 (Mich Ct App Feb 11, 2020) ("[B]ecause Dr. Jackson is an individual [state employee], MCL 600.6431 does not apply.").

As *Pike* recognized, the Court of Claims Act's clarity forecloses consideration of policy arguments in favor of an expansive reading of this "state" in MCL 600.6431(1). *Pike*, 327 Mich App at 697; *see also Williamson v AAA of Mich*, 513 Mich 264, 270; __ NW3d __ (2024) ("Courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature." (cleaned up)).

But were this Court to consider such arguments, "there is nothing illogical or improbable with the Legislature deciding not to apply" MCL 600.6431 to state officers. *Pike*, 327 Mich App at 699 (SWARTZLE, P.J., concurring). As Judge Swartzle explained in his *Pike* concurrence, the protections provided in MCL 600.6431 are designed to insulate the state from litigation and ensure it has the tools necessary to defend itself. *Id.* The import of those protections are lessened or eliminated in suits against individual officers, and so statutes like MCL 600.6431(1) "do not usually apply to claims brought against individual state officials or employees." *Id.* at 700 (collecting other state laws that "apply only against the state or its subdivisions, not against individual employees"). Moreover, reading the "state" narrowly to exclude officers aligns MCL 600.6431(1) with cases like *Thompson* and the background rules on sovereign immunity demanded by the Michigan and federal Constitutions.

In sum, this Court can begin and end with MCL 600.6431(1)'s text. The statutory language reflects the longstanding rule that sovereign immunity does not extend equally to the state and its officers. In drafting MCL 600.6431(1), the Legislature solely addressed claims against "this state."

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If the Legislature had wanted to include state officers within the ambit of MCL 600.6431, the rest of the Court of Claims Act demonstrates it certainly knew how. But it did not do so. Given that legislative choice, this Court has no power to pencil the words "or state officers" into the unambiguous statutory language of MCL 600.6431(1).[8]

iv. The plain text of MCL 600.6431(1) makes clear the statute only bars claims that accrued based on past harms, not claims for prospective relief.

The text of MCL 600.6431(1) provides another reason to rule for MIRC. The statute only limits claims filed or noticed more than "1 year after the claim has accrued." MCL 600.6431(1). A statute that bars claims based on harms that occurred over a year ago cannot stop claims like MIRC's to prevent harms that have yet to happen.

This Court held in *Bauserman I* that for purposes of MCL 600.6431(1), a claim "accrue[s]" not on "the date on which defendant breached his duty," but when that breach "harmed the plaintiff." 503 Mich at 183. So, for retrospective "claims seeking monetary relief," "when a claim accrues" is the date the plaintiff was injured by the breach. *Id.*

[8] Although not at issue here because MIRC solely seeks prospective relief, to the extent the Governor argues MIRC's plain-text reading of MCL § 600.6431(1) would unduly expose officers to damages suits, it may be possible to read the statute to foreclose cases against state officers that seek damages, while permitting suits like MIRC's that seek prospective relief. Unlike official-capacity suits seeking prospective relief, courts have historically construed damages claims against government officers as "in essence one for the recovery of money from the state," such that "the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Edelman v Jordan*, 415 US 651, 663; 94 S Ct 1347; 39 L Ed 2d 662 (1974) (quoting *Ford Motor Co v Dep't of Treasury*, 323 US 459, 464; 65 S Ct 347; 89 L Ed 389 (1945)); *see also McDowell*, 365 Mich at 269–70 (holding claims against a state officer for damages was really a claim against the state for sovereign immunity purposes, but distinguishing suits for prospective "relief a court of equity might properly grant"). Thus, although this Court need not and should not decide this question to hold in MIRC's favor, it may be possible to read MCL § 600.6431(1)'s text as importing the legal fiction that damages claims against state officers are really claims against the state, which would foreclose any parade of fiscal horribles the Governor may trot out.

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But claims for prospective relief are different. The point of prospective relief is to prevent an "actionable harm[]" before it happens. *Id.* Thus, where "a suit for injunctive relief . . . seek[s] to prevent a future wrong, the cause of action necessarily arises before the wrong occurs." *Taxpayers*, 450 Mich at 127. Accordingly, this Court has explained that when "[t]he statutory scheme" restricts claims for prior harms that have already "accrue[d] or come into being," it is "unnecessary" for a plaintiff seeking prospective relief to "make[] [the claim] fit the statute." *Id.*

As this Court explained in *Taxpayers*, any other result would demand the mind-bending approach of applying a statute concerned with long-ago injuries to suits about harms that have not begun. The *Taxpayers* plaintiffs asserted "two actual controversies": a request for a retrospective "refund for taxes paid in the past" and a request for prospective relief to avoid an "increased tax in the future." 450 Mich at 129. This Court held the statute of limitations barred the first claim based on when the prior harms accrued, but stated it "would be very impractical" to perform the accrual analysis on "the claims for [forward-looking] injunctive relief," so the plaintiffs must be allowed to proceed. *Id.* at 127.

A statute that starts the accrual timer when the harm occurs—as MCL 600.6431(1) does—logically cannot bar suits for prospective relief as untimely. *See also Ace Am Ins Co v Workers' Comp Agency/Dir*, No. 317501, 2015 WL 668960, at *2 (Mich Ct App Feb. 17, 2015) ("[W]hen a claimant uses a claim for declaratory relief as a shield from a threat of future or potential harm," MCL 600.6431(1) cannot bar relief because the request concerns "a threat of future or potential harm").

That the statute only bars claims brought more than "1 year *after* the claim has accrued" further confirms it does not restrict claims for prospective relief. MCL 600.6431(1) (emphasis added). The word "after" underscores that MCL 600.6431(1) is concerned only with limiting

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remedies for wrongs that have already happened, not cases addressing harms that will occur. Once again, another interpretation would require parties and courts to bend the space-time continuum, so that a plaintiff seeking prospective relief to prevent future harms would need to characterize the action as arising "after" the relevant harm occurred.[9]

It also makes perfect sense that a statutory time limit such as MCL 600.6431(1)'s would not prevent claims for prospective relief from future harms. This Court has explained accrual-based time limits exist to prevent a plaintiff from obtaining "a remedy for . . . long-past" problems. *Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm'n,* 511 Mich 325, 339; 999 NW2d 423 (2023). Such statutes create security for defendants, so they know financial liability cannot reach back past a certain date. *See Haney,* 509 Mich at 27 (accrual-based time limits are meant to stop "a plaintiff [from] reach[ing] back to recover for wrongs").

Unlike claims seeking financial compensation for long-ago wrongs, cases "seeking an injunction" or prospective declaratory relief do not raise the same concerns, as they impose no retrospective liability. *Sunrise*, 511 Mich at 339. Accrual-based time limits like MCL 600.6431(1)'s exist to let bygones be bygones. Allowing claims like MIRC's for prospective relief to proceed does nothing to disrupt that objective. *Taxpayers*, 450 Mich at 128 (there is no reason

[9] Certainly, as MIRC does here, parties seeking prospective relief may *reference* prior events, such as the costs the Governor's policy has previously imposed on MIRC. *See, e.g.*, App'x, at 026a, ¶ 76 (Complaint). But that does not mean a claim for prospective relief is *based* on those past harms. *See* App'x, at 041a (Opinion & Order of Court of Claims) ("Although MIRC's complaint describes substantive harms that have already occurred, MIRC seeks only prospective relief."). A claim for prospective relief is based instead on the future harm it seeks to prevent. *Taxpayers*, 450 Mich at 127. Evidence of past harms helps a plaintiff establish that future harms are so likely the plaintiff is entitled to prospective relief. *See, e.g., City of Los Angeles v Lyons*, 461 US 95, 102; 103 S Ct 1660; 75 L Ed 2d 675 (1983) ("Past wrongs [are] evidence bearing on 'whether there is a real and immediate threat of repeated injury.'" (citation omitted)). But that evidence is not always needed and it is the prospect of that future "repeated injury," *id.*, on which a claim for prospective relief is based.

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to apply statutes of limitations to requests for forward-looking relief as there is no "offsetting benefit in terms of enhancing the fiscal integrity of the defendant").

Further still, this Court has explained that "[t]o hold otherwise would truncate" rights. *Taxpayers*, 450 Mich at 127. Were this Court to hold claims for prospective relief can be barred by MCL 600.6431(1)'s one-year time limit, this Court would be stating that the most persistent scofflaws can continue indefinitely in their misconduct, simply because they began more than a year ago. After a year, plaintiffs would be stripped of any means to stop harms from recurring, effectively nullifying the impacted right. *See id.* That, in turn, would overwhelm the judicial system by forcing people to run to the courthouse at the first hint of trouble. *Id.* at 128.

The Court of Appeals insisted MCL 600.6431(1) must bar MIRC's claims for prospective declaratory relief because MIRC's claim for substantive relief accrued more than a year before. App'x, at 004a (Opinion of Court of Appeals). But this Court has explained that cannot be the case. When a plaintiff seeks prospective declaratory relief that cause of action "derive[s] from" the substantive "claim for [prospective] injunctive relief, which is not barred." *Taxpayers*, 450 Mich at 129; *see also* App'x, at 031a (Complaint) (requesting injunctive relief alongside declaratory relief).

The panel below relied on another Court of Appeals case, *Tenneco*, App'x, at 004a (Opinion of Court of Appeals), but that decision actually supports MIRC. *Tenneco* states that "claim[s] for prospective relief" do "not neatly fit a statute of limitations defense" based on past harms. 281 Mich App at 454–55. Indeed, to understand a statutory time limit triggered by past harms to bar a "claim for prospective relief from an alleged unconstitutional" government policy would be inconsistent with the courts' obligation to prevent violations of rights. *Id.* at 455 (quoting *Taxpayers*, 450 Mich at 127).

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In sum, MCL 600.6431(1) only prohibits claims if they are filed more than "1 year after the claim has accrued." Under this Court's precedent and their reasoning, the statute requires plaintiffs to sue within a certain time from when a harm occurred in the past, but does nothing to prevent claims for prospective relief, which are based on harms that have yet to occur. Thus, because MIRC solely seeks relief from future wrongful conduct that will cause future harms, MIRC's claim cannot be barred by MCL 600.6431(1). This is a distinct and independent textual basis on which this Court can reverse.

v. Constitutional principles require resolving any doubt about the applicability of MCL 600.6431(1) in MIRC's favor.

The foregoing sections establish beyond a shadow of a doubt that MCL 600.6431(1) does not prevent MIRC's effort to obtain prospective relief to stop the Governor's future unlawful and unconstitutional conduct. The statute does not apply in this case. This Court can stop here.

But even if this Court believes there is some residual ambiguity, it should nevertheless hold in MIRC's favor to avoid the serious constitutional questions that would follow from the position the Governor is immune unless MIRC complies with MCL 600.6431. And relatedly, if this Court were to conclude that MCL 600.6431(1) unambiguously purports to render state officers immune from claims like MIRC's, it should hold the statute unconstitutional because it would violate the Michigan Constitution's foundational separation-of-powers principles.

1. *Constitutional avoidance requires resolving any statutory ambiguity in MIRC's favor.*

Whatever else may be said of MCL 600.6431(1), a statute that mentions only the "state," does not *unambiguously* apply to state officers; and a statute that bars only claims made "after" the harm on which they are based has occurred does not *unambiguously* bar a claim for prospective relief. In other words, MIRC's interpretation of MCL 600.6431(1) is, at a bare minimum, plausible. In light of the doctrine of constitutional avoidance, that alone is enough for MIRC to prevail. That

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is, even if this Court were to conclude that both MIRC and the Governor provide permissible readings of MCL 600.6431(1), the doctrine of constitutional avoidance requires this Court to resolve such a dispute in MIRC's favor.

Constitutional avoidance reflects the rule that a "statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *People v Nyx*, 479 Mich 112, 124; 734 NW2d 548 (2007) (citation omitted). Thus, this Court need not go so far as to conclude that the Governor's interpretation of MCL 600.6431(1) would be unconstitutional, merely that her reading raises difficult constitutional questions, and that MIRC's reading is at least a permissible construction of the statute.

The Court of Appeals' and Governor's construction of MCL 600.6431(1) undoubtedly sets up serious constitutional concerns. The interpretation that MCL 600.6431(1) establishes the Governor's immunity from claims for prospective relief to halt her legal and constitutional violations rests on the premise that the Legislature can strip the courts of their power to prevent officials from acting unlawfully, and even unconstitutionally. Indeed, the Court of Appeals and Governor believe that even the limited exceptions in MCL 600.6431 exist only at the Legislature's discretion. *See, e.g.*, App'x, at 006a (Opinion of Court of Appeals); Gov's Opp'n to Mot for Leave to Appeal 8–12 ("[I]f the Legislature want[s] [] exceptions" to sovereign immunity, it must set them by statute, it is impermissible to "read exceptions" into the law).

As explained above, the separation-of-powers problems this understanding creates are obvious. The "judicial department" cannot meet its constitutional "duty . . . to say what the law is" if the Legislature can muzzle the courts by immunizing state officers from prospective relief to halt their ongoing unlawful actions. *Bauserman II*, 509 Mich at 703 (quoting *Marbury v Madison*, 5 US (1 Cranch) 137, 177; 2 L. Ed 60 (1803)). For this reason, this Court has already recognized

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that interpreting time bars like MCL 600.6431(1)'s to block prospective equitable remedies for constitutional violations would "truncate the constitutional right[s]." *Taxpayers*, 450 Mich at 127.

To underscore how the view that MCL 600.6431 provides immunity from prospective relief because the Legislature said so would render "rights . . . ethereal hopes," *Bauserman II*, 509 Mich at 692, consider the consequences. The Legislature could pass a law with two sections: one barring Black students from Michigan's schools, and another extending immunity to any conceivable government defendant. Or, the Legislature could ban abortion, despite Article I § 28 of the Michigan Constitution's protections of reproductive freedom, by declaring that every government defendant tasked with enforcing that policy is immune from suit.

The Governor's interpretation of MCL 600.6431(1) would force a constitutional showdown with this Court over whether the Judiciary's ability to stop state officers from violating the law exists only at the whim of the other branches. The doctrine of constitutional avoidance requires this Court to conclude that the Legislature has unambiguously called that question before this Court provides an answer. *Nyx*, 479 Mich at 124. Absent an unambiguous statute, "[t]he idea that our Legislature would indirectly seek to 'approve' acts by the state which violate the state constitution by cloaking such behavior with statutory immunity is too far-fetched to" accept. *Smith*, 428 Mich at 641 (opinion of BOYLE, J.).

For the reasons above, this Court's decisions and the plain text of the statute compel the conclusion that the Governor cannot assert immunity under MCL 600.6431(1) against MIRC's suit, avoiding the constitutional concerns her position raises. But, at minimum, MCL 600.6431(1) does not unambiguously purport to allow the Governor to assert immunity here. Thus, to avoid an unnecessary constitutional clash, any interpretive doubt about the meaning of MCL 600.6431(1) should be resolved in MIRC's favor.

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2. *If the text of MCL 600.6431(1) unambiguously applied to MIRC's claim, then the statute would be unconstitutional.*

For similar reasons, were the Court to reject all of MIRC's arguments above and conclude MCL 600.6431(1) unambiguously provides for the Governor's claimed immunity in a case like this, the Court would still have to reverse because MCL 600.6431(1) would violate the structure of the Michigan Constitution. If this Court were to read MCL 600.6431(1) and precedent so that state officers may claim immunity even when sued for prospective relief, this Court would demote itself from a co-equal branch of government to the constitutional equivalent of a vestigial limb. Upholding the Governor's interpretation would mean that an official who gets away with violating their legal and constitutional obligations for a year can treat those requirements as optional forever. Further, such a holding would allow the Legislature to close that one-year statutory window at will, giving the Legislative and Executive branches the ability to trample over legal and constitutional guardrails and to short-circuit rights.

This Court's "responsibility of interpreting and enforcing our Constitution" and laws, *Bauserman II*, 509 Mich at 692, compels the conclusion that the Legislature may not prevent the Judiciary from halting state officers' unlawful, and especially unconstitutional, abuses. Part-and-parcel of the judicial power is the authority to order state officers to stop breaking the law or violating the constitution. *See Duncan*, 284 Mich App at 255 ("[T]he role of the judiciary in our tripartite system of government entails, in part, . . . halting unconstitutional conduct. For state and federal constitutional provisions to have any meaning, we may and must engage in this role . . . ."). "It is beyond the power of the legislature to take from [the courts] that judicial power." *Johnson v Kramer Bros Freight Lines, Inc*, 357 Mich 254, 258; 98 NW2d 586 (1959); *see also Sharp*, 464 Mich at 808–09 (quoting with approval language from *Smith v Robinson*, 468 US 992; 104 S Ct 3457; 82 L Ed 2d 746 (1984), making clear the Supreme Court does "not regard the legislative

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branch as having the power through a statute to foreclose the ability of the judicial branch to order an end to constitutional violations"). Thus, if no reading of MCL 600.6431(1) is possible that avoids the conclusion it purports to render the Governor immune from MIRC's claims, the statute would be unconstitutional.[10]

b. *If MCL 600.6431(1) applies to MIRC's claims and MIRC needed to show an actionable harm in the year prior to the Complaint, MIRC's claims are timely.*

Assuming for the sake of argument that the Governor can assert immunity under MCL 600.6431(1) against suits for prospective relief to halt violations of law, this Court should nonetheless reverse. MIRC's allegations establish it was harmed within one year before it filed the Complaint, thus meeting MCL 600.6431(1)'s requirements. A contrary result would alter accrual analysis across the board, authorizing ongoing unlawful and unconstitutional conduct by officials and hamstringing judicial review of private misconduct related to everything from consumer fraud to workplace discrimination. That outcome is as unwarranted as it is undesirable.

As detailed above, MIRC alleges the Governor's commission-of-a-crime policy enables employers to deny wage-loss claims based solely on their belief that a worker is undocumented. *See* App'x, at 011a, ¶¶ 12–13 (Complaint). The private bar predictably will not pursue those denials, because they know that under the Governor's policy doing so is futile. App'x, at 025a,

[10] MIRC does not argue that all statutory restrictions on remedies, such as statutes of limitations, are unconstitutional. *Cf. Bauserman I*, 503 Mich at 194–98 (McCormack, C.J., concurring). However, statutes of limitations are subject to limits, such as reasonableness. *See Price v Hopkin*, 13 Mich 318, 324 (1865) ("It is of the essence of a law of limitation that it shall afford a reasonable time within which suit may be brought."). Relatedly, the Governor has consistently argued that MCL § 600.6431(1) is not a statute of limitations, but is instead an expression of her sovereign immunity from suit. *See, e.g.*, Gov's Opp'n to Mot for Leave to Appeal 16 & n5. Were MCL § 600.6431(1) a mere statute of limitations, MIRC would prevail. For instance, if the Governor took the position that MCL § 600.6431(1) is an ordinary, non-immunity statute of limitations, that would extinguish her effort to distinguish *Taxpayers*, which held that statutes of limitations based on when prior harms occurred do not bar claims for prospective relief. *See id.*

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¶¶ 68–70 (Complaint). Thus, it is unsurprising that MIRC—one of the state's premier immigrant rights organizations—receives intakes from undocumented workers denied workers' compensation. *See* App'x, at 025a, ¶ 71 (Complaint).

Most importantly, MIRC alleges that in the year prior to its Complaint, enforcement of the Governor's policy led MIRC to receive intakes that imposed financial costs on MIRC, and also led MIRC to incur other costs to address the claims of undocumented workers who came to MIRC due to the Governor's policy. App'x, at 026a-027a, ¶¶ 79–82 (Complaint); *see also* App'x, at 025a-026a, ¶¶ 69–74 (Complaint). These costs hindered MIRC from pursuing its planned, core work. App'x, at 024a-025a, ¶¶ 67–68 (Complaint). That is, MIRC alleges that in the year prior to the Complaint, undocumented workers who were caught up in the Governor's unlawful policy turned to MIRC, causing MIRC to expend its finite resources. App'x, at 026a-027a, ¶¶ 79–82 (Complaint).

Thus, assuming MIRC needs to show a claim based on a harm that occurred within the year prior to the Complaint, it has done so. "[E]ach time a defendant commits a new violation" harming the plaintiff, that constitutes a new claim that "accrued within the limitations period" and on which the plaintiff can proceed. *Haney*, 509 Mich at 28–29. MIRC's allegations, which at this stage must be taken as true, establish it suffered harms due to the enforcement of the unlawful policy within the year prior to it filing its Complaint. *Bauserman I*, 503 Mich at 183 (claim accrues under MCL 600.6431 on "the date on which the defendant's breach harmed the plaintiff"). MIRC has satisfied MCL 600.6431(1).[11]

[11] If this Court believes the allegations are insufficient to establish that the Governor's policy harmed MIRC in the year prior to the Complaint, it should modify the Court of Appeals' disposition to allow MIRC to amend its Complaint to furnish the necessary details. MIRC sought that relief below and the Court of Appeals did not explain why a remand to amend should not have been granted. *See* MCR 2.118(A)(2) ("Leave [to amend] shall be freely given when justice so

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i. The Court of Appeals erred in holding MIRC's claims were untimely because MIRC suffered similar wrongs more than a year prior to its Complaint.

This Court has squarely rejected the Court of Appeals' and Governor's reasoning that the Complaint was untimely because MIRC suffered analogous, but distinct, financial costs due to the Governor's policy more than a year before the Complaint. "[R]equir[ing] plaintiffs to file [their] claims at the first" injury or "forever lose their leverage to urge the government to remedy defects" would defy the "logic" of this Court's case law. *Sunrise*, 511 Mich at 340. "[A] plaintiff's failure to timely sue on the first violation in a series does not grant a defendant immunity" for future violations. *Haney*, 509 Mich at 28.

Put another way, a complaint can proceed so long as it identifies any timely, "actionable harms." *Id.* at 24. Because a claim accrues "when the plaintiff is harmed rather than when the defendant acted," the plaintiff can ensure its case is timely by identifying new harms that occurred within the statutory time limit, regardless of what happened in the past. *Id.*; *see also Sunrise*, 511 Mich at 338 (similar).

Thus, the question here is whether enforcement of the Governor's unlawful policy imposed costs on MIRC in the year prior to the Complaint. That is what the Complaint alleges. App'x, at 026a-027a, ¶¶ 79–82 (Complaint). The Governor has not yet disputed those allegations. The Court of Appeals erred in asking whether the policy imposed earlier costs.

Indeed, MIRC's allegations mirror those detailed in this Court's recent decision in *Haney*, which held a claim for prospective relief to stop a long-running unlawful practice to be timely. The *Haney* defendants had "kept hogs on the property" much longer than the statute of limitations. 509

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requires."); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997) ("A motion to amend ordinarily should be granted. . . ."). Nonetheless, for the reasons stated, the Complaint more than sufficiently alleges the Governor's policy harmed MIRC in the year prior to its filing.

Mich at 22. The "presence of the hogs on the property constitute[d] the wrong . . . along with the attendant harms" to the plaintiffs. *Id.* at 25. Eventually, the plaintiff brought a nuisance suit to enjoin the defendants from "keeping . . . hogs on their property." *Id. Haney* recognized "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 accrued until then either." *Id.*

Just as with the Governor's policy, in *Haney*, the first misconduct and harms originally occurred outside the statutory time limit, but the defendants' ongoing pattern of misconduct produced new harms within the statutory time limit. *Id.* Yet, contra to the analysis below, this Court rejected the notion that the accrual clock on the plaintiff's claim started when the first pig stepped foot on the *Haney* defendants' property. If defendants engage in a course of conduct that "violate[s] the law as long" as it is ongoing, and produces new, timely injuries—as is true here and was true in *Haney*—a claim based on those timely harms is actionable. *Id.* at 29.

This Court's even more recent decision in *Sunrise* is similar. The defendant in *Sunrise* constructed a "drainage system" that had caused flood damage to the plaintiffs' property outside the statute of limitations, and at the time of construction the plaintiffs notified the defendant that "more severe damage would likely result if the drainage system was not fixed." *Sunrise*, 511 Mich at 330. This Court explained that even though the *Sunrise* plaintiffs could not recover for those earliest harms from the drainage system, "each event has the potential to be its own independent cause of action" and the plaintiffs could sue for damages caused by flooding brought on by the faulty system, if the damages occurred within the statute of limitations. *Id.* at 340. That similar time-barred injuries occurred earlier and the plaintiffs could not "reach back and recover for" those injuries did not prevent the plaintiffs from proceeding on the new injuries. *Id.* Each time the

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drainage system flooded the plaintiffs' land was a harm on which they could proceed. So too here: Each time MIRC is underwater with calls resulting from the Governor's unlawful policy, that is a harm on which MIRC can proceed. The unlawful policy and concomitant flow of intakes persisted in the year prior to the Complaint, so MIRC had injuries that accrued within that year and its suit is timely under MCL 600.6431(1).

The Governor has previously attempted to distinguish cases like *Haney* and *Sunrise* by noting that those cases deal with statutes of limitations, whereas MCL 600.6431(1) is a condition precedent to avoiding immunity. *See, e.g.*, Gov's Opp'n to Mot for Leave to Appeal 16. That is a red herring. This Court has held "that there is no meaningful distinction" between the accrual analysis for MCL 600.6431(1) and the accrual analysis under regular statutes of limitations. *See Bauserman I*, 503 Mich at 184; *accord id.* at 18 (relying on *Frank v Linkner*, 500 Mich 133, 147; 894 NW2d 574 (2017), a pure statute of limitations case). Indeed, even the panel below cited *Sunrise* and several other statute of limitations cases for the definition of accrual. App'x, at 005a (Opinion of Court of Appeals). MCL 600.6431(1) uses the same terms to accomplish the same ends as a statute of limitations, so whether it is a statute of limitations is a semantic point, not a legally meaningful one. *Haney* and *Sunrise* govern.

ii. The Court of Appeals erred in holding all of MIRC's harms were untimely continuations of the earliest harm.

The Court of Appeals, following the Governor, attempted to justify its refusal to abide by *Haney* and *Sunset* on the theory that allowing MIRC to proceed would run afoul of "the abolition of the 'continuing harms doctrine.'" App'x, at 005a (Opinion of Court of Appeals). This fundamentally misunderstood this Court's discussions of the continuing-harms doctrine.

In *Garg v Macomb County Community Mental Health Services*, this Court explained it abolished the continuing-harms doctrine to prevent plaintiffs from seeking redress for injuries that

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originated outside the prescribed statutory time limits. 472 Mich 263, 282; 696 NW2d 646 (2005); *Haney*, 509 Mich at 27 (the doctrine concerned whether plaintiffs could "reach back to recover for wrongs that occurred outside the statutory period of limitations"). Eliminating the continuing-harms doctrine was meant to stop a plaintiff from "reviv[ing]" a stale claim of harm based on the fact that it was "'sufficiently related' to injuries occurring within the limitations period." *Garg*, 472 Mich at 282; *see also Haney*, 509 Mich at 28 (reading *Garg* in the same way). Thus, in *Garg*, this Court held plaintiffs could not seek to recover for long-ago injuries because they are related to injuries occurring "within the limitations period." *Garg*, 472 Mich at 286; *see also Sunrise*, 511 Mich at 338 (abrogating the "continuing-wrongs doctrine means that plaintiffs are prohibited from relying on the harm caused by the [timely] 2018 event to argue any claim based on the [stale] 2015 incident is timely").

This Court has been clear that in refusing to allow plaintiffs to recover for old injuries under the continuing-harms doctrine, it was not seeking to foreclose judicial review of any fresh injuries, whatever their association with prior harms. It stated its rejection of the continuing-harms doctrine does not mean a defendant may "keep committing wrongful acts of the same nature," producing similar injuries. *Haney*, 509 Mich at 28. Thus, although courts cannot "permit[] a plaintiff to recover for injuries outside the limitations period," *Garg*, 472 Mich at 282, plaintiffs may identify a long-running pattern of misconduct and seek redress for all harms that arise within a statutory time limit, even if they stem from that pattern. *Sunrise*, 511 Mich at 340.

Indeed, the contrary result would turn the accrual analysis and the abolition of the continuing-harms doctrine into an escape hatch for persistent wrongdoers. Under the Court of Appeals' and Governor's approach, a state employer who passed over a worker for a promotion due to discriminatory policy could not be sued if the worker waited for the next position to open a

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year later and only chose to litigate after they were again illegally denied the promotion they deserved.

Further, because the Court of Appeals' reasoning turns on when a claim accrues, it would apply to an enormous swathe of statutes of limitations that similarly limit suits for past private misconduct. For instance, a bank with a practice of small overcharges would forever escape liability and could continue to illegally deduct its customers' funds, if customers dismissed the first violations as unworthy of attention and did not bring breach-of-contract claims until the violations persisted beyond the statute of limitations for the original harm. *See* MCL 600.5807 (statute of limitations for contract claims). Similarly, a person who dumped waste on their neighbors' yard could do so indefinitely if the victimized neighbor mistook the first incident as an accident and the second did not occur until after the statute of limitations had passed. *See* MCL 600.5813 (statute of limitations for nuisance claims). In seeking to limit stale claims, this Court never intended to free such repeated misconduct from liability.

MIRC alleges the recent enforcement of the commission-of-a-crime exception injured MIRC within one year prior to the Complaint. App'x, at 026a-027a, ¶¶ 79–82 (Complaint). Under a proper understanding of this Court's case law, including the treatment of the continuing-harms doctrine, assuming MCL 600.6431(1) applies to suits for prospective relief against state officers, MIRC can proceed.

IX. CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals and remand for further proceedings so that, almost four years after MIRC filed this case, the Court of Claims may finally proceed to the merits.

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Date: February 14, 2025

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CERTIFICATE OF COMPLIANCE & WORD COUNT

I, John C. Philo, for Plaintiffs-Applicants, certify that the *Plaintiff-Appellant Michigan Immigrant Rights Center's Supplemental Brief in Support of the Application* 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 15,371 words.

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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

MICHIGAN IMMIGRANT RIGHTS CENTER,

Plaintiff,

v.

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

Defendant.

Supreme Court Case No. 167300-1

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)

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025, I 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 and all attorneys for the parties.

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