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STATE OF MICHIGAN
IN THE SUPREME COURT

SUSAN CHRISTIE,

Plaintiff-Appellee,

v

WAYNE STATE UNIVERSITY,

Defendant-Appellant.

SC: 162706
COA: 350321
Wayne CC: 19-004888-CD

_____/

UNIVERSITY OF MICHIGAN'S AMICUS CURIAE BRIEF

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QUESTIONS PRESENTED

The University of Michigan agrees with Wayne State University's statement of the Question Presented for Review

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INTEREST OF AMICUS CURIAE

As a state university that regularly litigates cases implicating both MCL 600.6431 and MCR 7.203, the University of Michigan shares Appellant Wayne State University's interest in the proper interpretation and application of those provisions. The Court of Appeals interpretation and application of MCL 600.6431 conflicts with the plain language of that statute and unwinds the comprehensive notice scheme the Legislature enacted for lawsuits against state institutions. Similarly, that Court's interpretation and application of MCR 7.203 ignores the common sense understanding of the straightforward rule that a party can appeal by right an order denying governmental immunity.

The University of Michigan submits this supplemental brief in accordance with the Court's order granting Wayne State's application for leave to appeal. See *Christie v Wayne State Univ*, 967 NW2d 379 (2021). That order invited amici who appeared at the application stage to submit supplemental briefs. See *id.* ("Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae."). The Court previously granted the University of Michigan's motion to leave to file an amicus curiae brief. See *Christie v Wayne State Univ*, 957 NW2d 822 (2021).

The University of Michigan affirms that no party to this case or their counsel authored this brief in whole or in part, and that no party or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. See MCR 7.312(H)(4).

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SUPPLEMENTAL ARGUMENT

The University of Michigan's amicus curiae brief at the application stage detailed how the Court of Appeals misinterpreted both MCL 600.6431 and MCR 7.203. The parties' supplemental briefs have since reinforced that the Court should reverse the Court of Appeals judgment. At bottom, MCL 600.6431 means what it says and should be interpreted and applied as written to cover claims filed in the circuit court. With respect to MCR 7.203, longstanding case law makes clear that Wayne State University could appeal the circuit court's order denying governmental immunity by right. The University of Michigan submits this brief to address certain arguments in Christie's supplemental brief.

A. MCL 600.6431 Does Not Conflict with the Elliot-Larsen Civil Rights Act or the Persons with Disabilities Civil Rights Act

At issue is whether MCL 600.6431 applies to claims filed in circuit court. For at least three reasons—the statute's text, context, and purpose—it does. Faced with these reasons, Christie implicitly accepts that premise at some points in her supplemental brief, yet argues that MCL 600.6431 conflicts with the immunity waivers in the Elliot-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.* (Christie Supp Br at 2–6.) Christie asserts that, given this conflict, MCL 600.6431 cannot apply to claims under these acts. (*Id.*) She reaches that conclusion based on the interpretive canon that, when two relevant statutes conflict, the more specific governs over the more general. (*Id.* at 1.) This argument lacks merit because no conflict exists between these acts and MCL 600.6431.

When interpreting a statute, the Court's primary goal is to effectuate the Legislature's intent. *Badeen v PAR, Inc*, 496 Mich 75, 81; 853 NW2d 303 (2014). A statute's text provides "the most reliable evidence of the Legislature's intent." *Id.* The Court also looks to context, including "statutory history." See *People v Pinkney*, 501 Mich 259, 277 n 41; 912 NW2d 535

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(2018) ("Unlike legislative history, statutory history—the narrative of the statutes repealed or amended by the statute under consideration—properly forms part of the context of the statute.") (cleaned up). Although purpose cannot trump text, when a statute's recognized purpose aligns with its plain meaning, it provides yet another reason to believe the Legislature meant what it said. See *McCahan v Brennan*, 492 Mich 730, 744; 822 NW2d 747 (2012) (concluding that the unambiguous text of MCL 600.6431 aligns with its purpose).

1. Christie implicitly acknowledges that MCL 600.6431 applies to her claims

Christie's supplemental brief implicitly accepts as an underlying premise that § 6431 applies to her claim. For good reason. Text, history, and purpose establish the baseline that MCL 600.6431 applies to nearly all claims a plaintiff brings against divisions of the state.

Beginning with the statute's text, the plain language in MCL 600.6431(1) creates a clear, comprehensive notice scheme. The rule is that a plaintiff cannot sue the state unless she follows the requisite notice in the court of claims:

> (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.

MCL 600.6431(1) (emphasis added). The statute also incorporates the notice provision's lone exception:

> (5) This section does not apply to a claim for compensation under the wrongful imprisonment compensation act, 2016 PA 343, MCL 691.1751 to 691.1757.

MCL 600.6431(5) (emphasis added).

On its face, MCL 600.6431 requires a notice of intent for any claim against the state, except a claim under the wrongful imprisonment compensation act. It creates no exception for

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claims filed in the circuit court. And it creates no exceptions for Elliot-Larsen claims or PWDCRA claims.

Section 6431's history supports that the Legislature intended this clear language to apply to all claims against the state. The Court of Claims Act's notice provisions used to read—as Christie would like them to now—as only addressing claims filed in the court of claims. (See Michigan Attorney General's Br at 12–15.) But the Legislature amended them in 1941 to use broader categorical language that provided that "***no claim***" could be maintained against the state absent the required notice. (See *id.* (emphasis added).) This language remained effectively intact until 2020, when the Legislature identified a lone exception to the notice requirement: wrongful imprisonment compensation act claims. (See *id*; see also The University of Michigan's Amicus Br Supporting Wayne State University's App for Lv to Appeal at 5–8 (explaining that the statute's amendment history in 2013 and 2020 also support this conclusion). In carving out wrongful imprisonment compensation act claims, the Legislature could have also removed Elliot-Larsen or PWDCRA claims from § 6431's reach. It did not.

The text and history of § 6431 show that it applies to Christie's claims; so too does the statute's recognized purpose. The Court has long held that the Legislature enacts notice provisions like MCL 600.6431 "to provide the state with the opportunity to investigate and evaluate claims, to reduce the uncertainty of the extent of future demands, or even to force the claimant to an early choice regarding how to proceed." *McCahan*, 492 Mich at 744. The Court reasoned both "plaintiffs and defendants alike" benefit from having notice go to the proper governmental entity. See *id.* The state has an interest, as it would with any other claim, to investigate, evaluate, and defend in Elliot-Larsen and PWDCRA cases. It is little surprise, then, that § 6431(1) encompasses those claims—and all others not expressly carved out—too.

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2. Christie identifies no conflict between the Elliot-Larsen Civil Rights Act / Persons with Disabilities Civil Rights Act and MCL 600.6431

With the text, history, and purpose in perfect alignment to show MCL 600.6431 applies to circuit court claims, Christie seems to acknowledge that she needs an extra-textual basis to avoid application of § 6431 to her claims. So she asserts that the immunity waivers in the Elliot-Larsen Civil Rights Act and the PWDCRA "conflict" with MCL 600.6431. (Christie Supp Br at 2–6.) She argues that this conflict triggers the interpretive maxim that a more specific statutory provision controls over a more general one. Applying that logic here, Christie reasons that the Elliot-Larsen Civil Rights Act and the PWDCRA "control" over the Court of Claims Act and § 6431.[1]

This argument lacks merit because no conflict exists. Indeed, Christie does not identify which statutory provisions conflict, let alone attempt to reconcile the purported conflict using traditional interpretive methods. Rather, she seems to suggest that the notice requirements in § 6431 "conflict" with the general concept that Elliot-Larsen Civil Rights Act and the PWDCRA claims may be filed in circuit court. See MCL 37.2801(2) ("An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business."); MCL 37.1606 (2) (similar).

But on their face, those statutes do not conflict with the Court of Claims Act. No one has suggested that MCL 600.6431 precludes a party from filing damages claims under Elliot-Larsen or the PWDCRA in circuit court. And without a conflict, Christie cannot invoke an interpretive canon to reconcile competing statutory provisions. See *Woll v Kelley*, 409 Mich 500, 516; 297

[1] Taking Christie's argument to its logical conclusion, she suggests that there would exist a conflict between any statute and the Court of Claims Act whenever another statute waives immunity without referencing MCL 600.6431. For obvious reasons, that cannot be.

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NW2d 578 *decision clarified sub nom Woll v Att'y Gen*, 300 NW2d 171 (Mich 1980) ("Woll contends that the Worker's Disability Compensation Act is a specific statute which comprehensively addresses the entire subject matter of workers' compensation claims and a general statute such as the solicitation statute does not apply. This aid to construction is inapplicable where, as here, there is no conflict between the statutes.") (cleaned up).

Put simply, two statutes allow plaintiffs to file certain claims in a circuit court. Another—in this case § 6431—requires filing notice of those claims in the court of claims before they do. There is no conflict between them.[2]

For these reasons and those set forth in the University of Michigan's amicus brief at the application stage, the Court should hold that MCL 600.6431 applies to all claims that a plaintiff brings against the state unless otherwise exempted by § 6431(5) and overrule *Tyrrell v Univ of Michigan*, 335 Mich App 254; 966 NW2d 219 (2020).

B. Orders Denying Application of MCL 600.6431 Are Appealable by Right

The Court of Appeals also erred in holding that Wayne State University could not appeal the circuit court's order denying its motion for summary disposition as a matter of right. (See, e.g., The University of Michigan's Amicus Br Supporting Leave to Appeal at 9–14 (explaining how the order qualified as one "denying governmental immunity" under MCR 7.203).) To try to salvage the Court of Appeals' judgment that Wayne State needed leave to appeal, Christie selectively cites this Court's decision in *Fairley v Dep't of Corr*, 497 Mich 290; 871 NW2d 129

[2] The Court of Claims Act requires that all claims against the state for declaratory and equitable relief be filed in the Court of Claims, which inherently includes Elliot-Larsen and PWDCRA claims when those claims seek such relief. See MCL 600.6419. It would thus make little sense for an Elliot-Larsen or PWDCRA plaintiff who seeks an equitable remedy—over which the court of claims has exclusive jurisdiction—to have to file a notice for that claim only, but not the portion of her claim seeking traditional monetary damages that may otherwise proceed in circuit court.

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(2015). There, the Court held that, "while MCL 600.6431 does not 'confer governmental immunity,' it establishes conditions precedent for avoiding the governmental immunity conferred by the GTLA, which expressly in-corporates MCL 600.6431." *Id.* at 297. Christie asserts that because § 6431 does not "confer" immunity, an order refusing to grant a motion based on that statute cannot be an order denying governmental immunity.

Christie is wrong because she misunderstands how immunity works for state institutions. A statute need not "confer" immunity on the state. See *Fairley*, 497 Mich at 298 ("It is well established that governmental immunity is not an affirmative defense, but is instead a characteristic of government."). Rather, the Legislature removes immunity through statutes that govern "whether and on what terms" a plaintiff can sue the state. *McCahan*, 492 Mich at 732. If a plaintiff fails to follow the terms the Legislature creates, the state retains its inherent immunity and the plaintiff's claim cannot go forward.

An order denying a motion based on failure to follow notice requirements in MCL 600.6431 is an order denying governmental immunity. Such a motion necessarily asserts that the plaintiff failed to satisfy a condition precedent for the state to waive its inherent immunity. In other words, the motion asserts that the state remains immune from suit altogether because the plaintiff failed to file a statutorily required notice. If a court denies that motion, it is denying the state application of governmental immunity.

While not outcome determinative in this case, the Court should expressly hold that appeals of orders denying application of § 6431 are appealable by right under MCR 7.203.

CONCLUSION

For all these reasons and those outlined in the University of Michigan's brief in support of Wayne State University's application for leave to appeal, the Court should reverse the Court

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of Appeals judgment, overturn *Tyrrell*, and hold that MCL 600.6431 applies to all claims against the state, wherever filed. The Court should also hold that orders denying motions based on § 6431 are appealable by right under MCR 7.203.

Dated: April 1, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2022, I electronically filed the foregoing using the TrueFiling/MiFile System, which will send notification of this filing to all registered counsel of record.

Date: April 1, 2022

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