RECEIVED by MSC 3/17/2026 2:04:05 PM

STATE OF MICHIGAN

IN THE SUPREME COURT

KERAN ERNEST, as Personal Representative of the Estate of Maurice Ernest, Deceased ,

Plaintiff-Appellant,

-vs-

DR. PAUL W. BROWN, JR., ELMAHDI M. SAEED, DR. FAROUK M. BELAL. MCLAREN HEALTH CARE CORPORATION, CYPRESS CARDIOLOGY PLLC,

Defendants-Appellees.

Supreme Court No. 168462

Court of Appeals No. 368566

Oakland County Circuit Court No. Case No. 2020-179077-NH

_____/

BRIEF *AMICUS CURIAE* ON BEHALF OF THE MICHIGAN ASSOCIATION FOR JUSTICE

GRANZOTTO & WITTMANN, P.C.

MARK GRANZOTTO (P31492)
Attorney for Amicus Curiae, Michigan Association For Justice
2684 Eleven Mile Road, Suite 100
Berkley, Michigan 48072
(248) 546-4649

RECEIVED by MSC 3/17/2026 2:04:05 PM

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES ii

STATEMENT REGARDING QUESTIONS PRESENTED iv

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS 1

ARGUMENT 3

I. BASED ON THE UNAMBIGUOUS TEXT OF MCL 600.5838a(2) AND MCL 600.5856(c), *WALTZ* WAS WRONGLY DECIDED 3

I. 6

II. 12

II. *WALTZ* AND STARE DECISIS 15

RELIEF REQUESTED 17

CERTIFICATION PURSUANT TO MCR 7.312(A) 18

RECEIVED by MSC 3/17/2026 2:04:05 PM

INDEX OF AUTHORITIES

Cases **Page**

Casey v Henry Ford Health Systems,
235 Mich App 449; 597 NW2d 840 (1999) 13

Daher v Prime Healthcare Services-Garden City, LLC,
515 Mich 254; 29 NW3d 136 (2024) 11

Ernest v Brown,
___ Mich ___; 25 NW3d 673 (2025) 2

Haksluoto v Mt Clemens Regional Med Center,
500 Mich 304; 901 NW2d 577 (2017) 15

Miller v Mercy Memorial Hospital,
466 Mich 196; 644 NW2d 730 (2002) 12

Omelenchuk v City of Warren,
461 Mich 567; 609 NW2d 177 (2000) 5

People v Gardner,
482 Mich 41; 753 NW2d 78 (2008) 11

Robinson v Detroit,
462 Mich 439; 613 NW2d 307 (2000) 16

SBC Health Midwest, Inc. v Kentwood,
500 Mich 65; 894 NW2d 535 (2017) 14

South Dearborn Environmental Ass'n, Inc. v Dep't of Environmental Quality,
502 Mich 349; 917 NW2d 603 (2018) 11

Waltz v Wyse,
469 Mich 642; 677 NW2d 813 (2004) . . . . . iv, 1

Wickens v Oakwood Healthcare System,
465 Mich 53; 631 NW2d 686 (2001) 14

Statutes

MCL 600.2912b 1

MCL 600.5805(8) 1

MCL 600.5838(2) 13

MCL 600.5838a 3

MCL 600.5838a(2) 3

MCL 600.5852 2

MCL 600.5852(1) 3

MCL 600.5852(4) 3

MCL 600.5856(c) 1, 3

MCL 600.5856(d) 3

Court Rules

MCR 7.312(A) 18

MCR 7.312(H)(4) 1

RECEIVED by MSC 3/17/2026 2:04:05 PM

RECEIVED by MSC 3/17/2026 2:04:05 PM

STATEMENT REGARDING QUESTIONS PRESENTED

I. SHOULD THIS COURT OVERRULE ITS DECISION IN *WALTZ v WYSE,* 469 Mich 642; 677 NW2d 813 (2004) BECAUSE IT WAS INCORRECTLY DECIDED?

Amicus Curiae, the Michigan Association for Justice, says "Yes."

Plaintiff-Appellant says "Yes."

Defendants-Appellees say "No."

RECEIVED by MSC 3/17/2026 2:04:05 PM

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS[1]

All of the underlying facts of relevance to this appeal can be summarized in a chart:

Date of Malpractice	July 16, 2020
Death of Plaintiff's Decedent	July 17, 2020
Appointment of Keron Ernest as Personal Representative	June 7, 2021
Expiration of Two Year Statute of Limitation, MCL 600.5805(8)	July 16, 2022
Notice of Intent Mailed	February 10, 2023
Two Year Period After Appointment of Personal Representative	June 7, 2023
Plaintiff's Cause of Action "Barred by the Statute of Limitations"	June 8, 2023
182-day Mandatory Waiting Period of MCL 600.2912b Expires	August 11, 2023
Complaint Filed	September 10, 2023
Outside Date for the Filing of Plaintiff's Claim	December 6, 2023

On September 26, 2025, the Court issued an order directing the Clerk to schedule oral argument on the plaintiff's application for leave to appeal, directing the parties to address the question of whether "*Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004) correctly held that MCL 600.5856(c) does not toll the additional period permitted for finding wrongful death actions provided

[1]Pursuant to MCR 7.312(H)(4), the undersigned represents that no counsel for any of the parties was involved in the preparation of this brief. The undersigned further represents that neither party made a financial contribution toward the preparation of this brief.

in MCL 600.5852. . .” *Ernest v Brown*, ___ Mich ___; 25 NW3d 673 (2025).

RECEIVED by MSC 3/17/2026 2:04:05 PM

RECEIVED by MSC 3/17/2026 2:04:05 PM

ARGUMENT

I. BASED ON THE UNAMBIGUOUS TEXT OF MCL 600.5838a(2) AND MCL 600.5856(c), *WALTZ* WAS WRONGLY DECIDED.

The plaintiff in this case has asked the Court to revisit its decision issued twenty-two years ago in *Waltz*. Because the *Waltz* decision is contrary to the text of both MCL 600.5838a and MCL 600.5856(c), amicus curiae joins plaintiff in this request.

Waltz involved the interplay between what is generally referred to as Michigan's death savings statute, MCL 600.5852, and the tolling period that applies in medical malpractice cases during the presuit waiting period required by MCL 600.2912b. That tolling period is now contained in MCL 600.5856(c),[2] which provides:

> The statutes of limitations or repose are tolled:
>
> * * *
>
> (c) If, during the applicable notice period under section 2912b, a claim would be barred by the statute of limitations or repose, for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b.
>
> MCL 600.5856(c).

The relevant provisions of the death savings statute for purposes of this case are now contained in MCL 600.5852(1) and (4),[3] which provide:

> (1) If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.

---

[2]At the time *Waltz* was decided, this tolling provision was MCL 600.5856(d).

[3]At the time *Waltz* was decided, MCL 600.5852(4) did not exist. But the same three-year qualification now found in §5852(4) was incorporated into §5852(1).

RECEIVED by MSC 3/17/2026 2:04:05 PM

* * *

> (4) Notwithstanding subsections (1) to (3), an action shall not be commenced under this section later than 3 years after the period of limitations has run.

MCL 600.5852.

The death savings statute provides that a wrongful death action will be deemed timely, *i.e. it will not be barred by the statute of limitations*, if three time periods are satisfied: (1) plaintiff's decedent must die before the statute of limitations has run or within 30 days after the running of the statute; (2) a wrongful death action must be filed within two years of the appointment of the personal representative of the decedent's estate; and (3) a wrongful death action filed within two years of the appointment of the personal representative must also be filed within three years after the expiration of the statute of limitations.

In this case, plaintiff has alleged malpractice occurring on July 16, 2020. Maurice Ernest died the following day, on July 17, 2020, so the first requirement for the application of the death savings statute is satisfied. Keran Ernest was appointed personal representative of Maurice Ernest's estate on June 7, 2021. Thus, there is no question that this case would have been deemed timely, *i.e.* it *would not have been barred by the statute of limitations*, if it had been filed by June 7, 2023, the date two years after Keran Ernest's appointment as personal representative.

But, because this is a wrongful death action premised on medical malpractice, Keran Ernest could not proceed directly to filing his complaint on or before June 7, 2023. Due to the pre-suit notice requirement applicable to medical malpractice cases under MCL 600.2912b, he had to first mail pre-suit notices of his intent to sue to the defendants and observe the mandatory waiting period

RECEIVED by MSC 3/17/2026 2:04:05 PM

called for by that statute. Mr. Ernest's counsel mailed three notices of intent to the various defendants on February 10, 2023.

Due to the mandatory waiting period prescribed in §2912b, Mr. Ernest could not simply file his malpractice case by June 7, 2023, the two year anniversary of his appointment as personal representative. Instead, he had to delay the filing of his complaint for a period of at least 182 days. Mr. Ernest waited 212 days after mailing his notices of intent and, on September 10, 2023, he filed this wrongful death action.

What Mr. Ernest has argued in this case is that, after mailing his notices of intent on February 10, 2023, he should be entitled to the tolling effect of §5856(c), a tolling effect that would apply in every other medical malpractice action. This argument, however, was foreclosed by this Court's decision in *Waltz*.

In that case, the Court's majority found that §5856(c)'s tolling affect did not apply to a case whose timeliness was controlled by the death savings statute, §5852. In reaching this result, the *Waltz* majority relied on its conclusion that §5852 is a savings provision, not a statute of limitations. 469 Mich at 650-652. Based on that reasoning, the *Waltz* majority concluded that §5856(c)'s tolling effect was inapplicable to a malpractice action in which the timeliness of the complaint was controlled by §5852.[4]

---

[4]In arriving at this decision in *Waltz*, the Court's majority had to acknowledge that its ruling was at odds with its own assessment of the interplay between §5852 and §5856(c) announced only four years before in *Omelenchuk v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000), another wrongful death medical malpractice action. *Waltz*, 469 Mich at 652-655. In *Omelenchuk*, in an opinion joined by all five members of the Court who would later comprise the *Waltz* majority, The Court summarized the relationship between these two statutes as follows:

> In the present case, the plaintiffs' decedent died on February 13, 1994. The plaintiffs received their letters of authority the next day, February 14, 1994. Thus, the two-year

RECEIVED by MSC 3/17/2026 2:04:05 PM

The Court has granted oral argument on Mr. Ernest's application for leave to consider the question of whether *Waltz* was correctly decided. There are two distinct reasons why this Court should revisit the holding that the majority reached in *Waltz* and conclude that *Waltz* was incorrectly decided.

I.

The first of these reasons rests in the *Waltz* majority's basic misreading of the tolling provision contained in §5856(c). The literal text of §5856(c) leads to a completely different conclusion than that arrived at by the majority in *Waltz*.

The essence of the *Waltz* decision is that §5856(c) tolls "statutes of limitations" and, according to the *Waltz* majority, because §5852 is a savings provision, not a statute of limitations, the tolling effect of §5856(c) does not apply to a time period extended by §5852. Even if one were to assume the legitimacy of this central theme underlying the *Waltz* majority decision,[5] the *Waltz* Court erred in concluding that §5856(c)'s effect would not apply to a time period provided by §5852.

---

limitations period was set to expire on February 14, 1996.

> On December 11, 1995 (sixty-five days before the expiration of the limitation period) the plaintiffs provided the required notice to the defendants. *As a result of the notice, the limitation period was tolled one hundred eighty-two days. Rather than expiring on February 14, 1996, the limitation period thus was tolled from December 11, 1995, until June 10, 1996*; it then resumed for another sixty-five days until it expired on August 14, 1996.

461 Mich at 577 (emphasis added).

Thus, in *Omelenchuk*, the Court expressly indicated that §5856(c) *would* toll the time period for filing a medical malpractice wrongful death action whose timeliness was governed by the death savings statute.

[5]As will be addressed in the next section of this brief, the *Waltz* majority was also in error in its conclusion that in §5852 is not a statute of limitation.

RECEIVED by MSC 3/17/2026 2:04:05 PM

MCL 600.5856(c) provides that statutes of limitations are tolled:

> (c) If, during the applicable notice period under section 2912b, a claim *would be barred by the statute of limitations* or repose, for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b.

MCL 600.5856(c).

What §5856(c) provides is that its tolling effect will be applicable if during "the applicable notice period," *i.e.* during the mandatory waiting period called for by §2912b, the plaintiff's claim *would be barred by the statute of limitations*. Mr. Ernest mailed his notices of intent to the defendants on February 10, 2023. The question for purposes of the application of §5856(c)'s tolling effect is whether Mr. Ernest's cause of action, which clearly was *not* barred by the statute of limitations on the date his notices of intent were mailed, *would have been barred by the statute of limitations* during the 182 day period in which he was precluded from filing suit by operation of §2912b. The answer to this question is obvious.

Mr. Ernest's medical malpractice action accrued on July 16, 2020. This means that under the regular two-year statute of limitations period of MCL 600.5805(8) governing such actions, the statute of limitations on his malpractice claim would ordinarily expire on July 16, 2022. But, while the regular two year statute of limitations would normally expire on that date, what is critically important for purposes of the operation of the literal text of §5856(c) is that Mr. Ernest's cause of action *was not barred by the statute of limitations* at that point in time.

The reason for this lies in the savings provision of §5852. That statute provides that Mr. Ernest's wrongful death action would be saved from the operation of the statute of limitations, *i.e. it would not be barred by the statute of limitations*, until the expiration of either a two-year period

RECEIVED by MSC 3/17/2026 2:04:05 PM

after the date of the appointment of a personal representative or a five-year period after the date of the malpractice itself. MCL 600.5852(4).

Keran Ernest was appointed personal representative of Maurice Ernest's estate on June 7, 2021. This means that his cause of action, irrespective of when the two year statute of limitations of §5805(8) might expire, *would be barred by the statute of limitations* two years after his appointment as personal representative, on June 7, 2023. This also means that when Mr. Ernest's counsel mailed notices of intent to the defendants on February 10, 2023, this case fell precisely within the coverage of the tolling provision of §5856(c) because *Mr. Ernest's claim at that point was going to be barred by the statute of limitations on June 8, 2023, during the 182 day period that he was precluded from filing suit under §2912b.*.

The *Waltz* majority was fixated on the question of whether §5852 was a savings statute or a statute of limitations. In making this the focus of its attention, the *Waltz* majority completely failed to recognize or apply the language contained in §5856(c). In applying the actual language of §5856(c) to the facts of this case or, for that matter, to the facts presented in *Waltz*,[6] it is completely

[6]In *Waltz*, the malpractice alleged in that case took place, at the latest, on April 18, 1994, the date of the death of plaintiff's decedent. Plaintiff's counsel mailed notices of intent to the defendants over four years later, in January 1999. The plaintiff was not appointed personal representative until May 27, 1999, and the complaint was filed approximately one month later, on June 23, 1999. The regular limitations period on the plaintiff's claim was two years from the date of malpractice, which would have been some time in April 1996. But, because the *Waltz* case was a wrongful death action to which §5852 applied, the case was not "barred by the statute of limitations" at that point in time. Under the operation of §5852, the plaintiff in *Waltz* had either two years from the appointment of the personal representative or, at most, five years from the date of malpractice to file a claim on a timely basis based on §5852(4)'s provision that "an action shall not be commenced under this section later than 3 years after the period of limitations has run." Thus, applying the *actual* language of §5856(c), the *Waltz* action was barred by the statute of limitations in April 1999, the date five years after the date of the malpractice. And, because the plaintiff's action was "barred by the statute of limitations" within the 182-day period after her notice of intent was mailed in January 1999, the tolling effect of §5856(c) should have

RECEIVED by MSC 3/17/2026 2:04:05 PM

irrelevant whether §5852 is characterized as a statute of limitations or as a savings statute.

The *Waltz* decision is premised on an obvious misreading of the literal text of §5856(c). The *Waltz* majority predicated its ruling on its determination that §5852 was a savings provision, not a statute of limitations. But, this simplistic determination failed to account for what §5852 "saves" a case from. In the cases to which it applies, §5852 saves a case *from a statute of limitations defense* for some additional period of time. That is what is relevant under the actual text of §5856(c) and that is why §5856(c) and §5852 must be read together, regardless of whether the latter is classified as a savings provision or as a statute of limitations.

Even if §5852 is not itself a statute of limitations, in those cases to which it applies, *it most assuredly has some impact on when the statute of limitations bars a wrongful death action*. Thus, whether §5852 is or is not a savings statute is completely irrelevant to the actual question posed by the text of §5856(c): whether during the 182 day waiting period required by §2912b, "*a claim would be barred by the statute of limitations*." Since §5852, whether characterized as a savings provision or as a statute of limitations, has a great deal to say about when a wrongful death action "would be barred by the statute of limitations," there should have been no doubt as to the interplay between §5856(c) and §5852. The *Waltz* majority completely erred in its resolution of that interplay.

It is noteworthy that the *Waltz* majority's interpretation of §5856(c) and its fixation on characterizing §5852 as a savings statute and not a statute of limitations, might have been defensible if that statute had been written slightly differently. If that statute read that its tolling effect would apply only if "the statute of limitations would expire" during the applicable notice period, the *Waltz* majority might have been correct in its reading of the interplay between §5852 and §5856(c).

---

been triggered.

RECEIVED by MSC 3/17/2026 2:04:05 PM

If §5856(c) had been written in such a way that its tolling effect would only be triggered if during §2912b's the mandatory waiting period the "statute of limitations would expire," the *Waltz* majority's distinction between a savings provision (§5852) and a statute of limitations (§5805(8)) would have significance. This is because, if §5856(c) had used this alternative language, when Keran Ernest mailed notices of intent on February 10, 2023, the two year statute of limitations contained in §5805(8) would have already expired approximately six months before. Thus, had §5856(c) been written in such a way that its tolling effect could only be applied if the statute of limitations expired during the notice period, the plaintiff here would not be able to claim that statute's tolling effect and the *Waltz* majority's fixation on the difference between a savings statute and a statute of limitations might actually make some sense.

But that is not how §5856(c) is written. It provides, instead, that §5856(c) tolls the operation of any statute of limitations in any case where the case *would be barred by the statute of limitations* during the mandatory waiting period prescribed in §2912b. And, what is obvious from the facts of this case is that, because of the operation of the death savings statute, Mr. Ernest's cause of action was not "barred by the statute of limitations" when he mailed his notices of intent in February 2023; at that point his claim was "not barred by the statute of limitations" until 118 days later on June 8, 2023, the day after the expiration of the two year period from his appointment as personal representative. But, the fact that Mr. Ernest's claim was subject to a statute of limitations defense 118 days after he mailed his notices of intent means that this case fits squarely within §5856(c)'s tolling effect since his cause of action "was barred by the statute of limitations" during the 182 -day mandatory waiting period.

The holding in *Waltz* was not merely inconsistent with the literal text of §5856(c), it was also

RECEIVED by MSC 3/17/2026 2:04:05 PM

at odds with the obvious intent of the Legislature in enacting this tolling provision. This Court has consistently ruled that we look to the wording of a statute to ascertain legislative intent. *Daher v Prime Healthcare Services-Garden City, LLC*, 515 Mich 254, 263; 29 NW3d 136 (2024); *South Dearborn Environmental Ass'n, Inc. v Dep't of Environmental Quality*, 502 Mich 349, 360; 917 NW2d 603 (2018); *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008) ("The touchstone of legislative intent is the statute's language.").

In 1993, the Legislature enacted §2912b, requiring for the first time that a plaintiff intending to pursue a medial malpractice action case first mail a pre-suit notice to potential defendants and mandating a period after that mailing during which plaintiff was precluded from filing suit. The Legislature recognized in imposing this mandatory pre-suit waiting period in which a complaint could not be filed that there would be situations in which a case that could have been timely filed as of the time the notice of intent was mailed would be subject to a statute of limitations defense before the mandatory waiting period expired and a malpractice action could be filed.

It was precisely for this reason that what is now §5856(c)'s tolling provision was enacted in 1993 at the same time §2912b was added. Clearly, what the Legislature intended in enacting what is now §5856(c) was that any time that a notice of intent was mailed and "the claim would be barred by the statute of limitations" during the period in which the plaintiff was precluded by §2912b from filing suit, the limitations period applicable to such a claim would be extended by 182-days and a statute of limitations defense could not be interposed during that period of extension.

This is what the Legislature intended in enacting what is now §5856(c). In this case, Mr. Ernest could have filed an action that would have been timely under the death savings statute at any time before June 8, 2023. But Mr. Ernest could not proceed directly to file such a case; he had to first

RECEIVED by MSC 3/17/2026 2:04:05 PM

mail notice of his intent to sue and then wait 182 days before filing a complaint. But, by the time he could file his case consistent with the dictates of §2912b, that case would be subject to a statute of limitations defense.

The Legislature addressed this potential problem in 1993 when it passed §5856(c) and it decreed that the statute of limitations applicable to a malpractice claim must be tolled for 182 days where, during the mandatory waiting period required by §2912b, the plaintiff's claim "would be barred by the statute of limitations."

What the Legislature intended in enacting §5856(c) is that no malpractice litigant would be penalized for being required to observe the pre-suit waiting period that §2912b mandates. But due to the Court's erroneous ruling in *Waltz*, that is precisely what has happened here. A plaintiff who could have and would have filed a timely medical malpractice action at any time before June 8, 2023, lost the opportunity to do so because he was forced to observe the mandatory waiting period of §2912b. This is a result never intended by the Michigan Legislature when it enacted §5856(c).

For all of these reasons, the Court should conclude that *Waltz* erred in its interpretation of the interplay between §5856(c) and §5852.

II.

There is a second reason why the *Waltz* decision should be overturned. The Court's majority ruled in *Waltz* that §5856(c)'s tolling effect did not apply to a cause of action "saved" by the death savings statute based on its conclusion that the text of §5856(c) refers only to "statutes of limitations." As the *Waltz* majority held: "Section 5856[c] by its express terms, tolls only the applicable 'statute of limitations or repose.' As we recently stated in *Miller* [*v Mercy Memorial Hospital*, 466 Mich 196, 202; 644 NW2d 730 (2002)] the wrongful death provision, §5852, is a

RECEIVED by MSC 3/17/2026 2:04:05 PM

savings statute, not a statute of limitations." 469 Mich at 650 (emphasis in original). Thus, the essential predicate for the *Waltz* majority's holding was that §5852 is *not* a statute of limitations.

Several years before *Waltz* was decided, the Court recognized that there are two potential statutes of limitations applicable to a medical malpractice claim. *Miller*, 466 Mich at 202. The first of these statutes of limitations is the two year limitations period provided in §5805(8). The second statute of limitations applicable to malpractice claims identified by the Court in *Miller* is MCL 600.5838a. *See Miller*, 466 Mich at 202. This statute of limitations provides:

> Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 *or sections 5851 to 5856,* or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.
>
> MCL 600.5838a(2) (emphasis added).

MCL 600.5838a(2) is unusual in that a statute - one which this Court in *Miller* expressly recognized was a statute of limitations - *explicitly incorporates into the limitations period the extension of time to file a case allowed in §5852*.[7] The Michigan Legislature has, therefore, decreed in §5838a(2) that *§5852 is part and parcel of the statute of limitations applicable to medical malpractice actions.* At least with respect to claims grounded in medical malpractice, §5852 is not merely a "free standing" savings statute. Rather, by decree of the Michigan Legislature, §5852 has been expressly incorporated into the statute of limitations governing a medical malpractice action. *Cf Casey v Henry Ford Health Systems*, 235 Mich App 449, 453; 597 NW2d 840 (1999) (noting that "5838a(2) incorporates by reference the limitations of action for malpractice in §§5805 and 5851

[7]There are only two Michigan statutes of limitations that expressly incorporate §5852. One is §5838a(2). The other is MCL 600.5838(2), which applies to professional negligence claims other than those sounding in medical malpractice.

RECEIVED by MSC 3/17/2026 2:04:05 PM

and elsewhere.").

Thus, it is irrelevant whether §5852 standing alone is properly characterized as a savings provision or as a statute of limitations. What is relevant is that the Michigan Legislature has in §5838a(2) explicitly incorporated §5852 into the statute of limitations applicable to a medical malpractice claim. Since §5852 is, by legislative decree, a part of the statute of limitations applicable to a medical malpractice claim, this Court should have concluded in *Waltz* that 5856(c), which tolls "statutes of limitations," must apply to *any* time period provided in §5838a(2), including the time period provided in §5852.

Not only is this a reasonable interpretation of the effect of §5838a(2), it is the *only* interpretation of this statute which is appropriate under fundamental principles of statutory construction. A basic rule of statutory interpretation is that, in construing a statute, no part of the statute may be rendered nugatory or treated as surplusage. *SBC Health Midwest, Inc. v Kentwood*, 500 Mich 65, 71; 894 NW2d 535 (2017); *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). In this context, it is important to note that, for the death savings statute to apply to an action premised on medical malpractice, the Michigan Legislature did not *have* to incorporate §5852 directly into the medical malpractice statute of limitation as it did in §5838a(2). If the Legislature had not expressly incorporated §5852 into §5838a(2), the savings effect of §5852 would still apply to wrongful death actions premised on medical malpractice since that savings statute, as written, applies to all potential causes of action. But, what is of importance here is that the Michigan Legislature, in enacting the statute of limitations applicable to malpractice actions contained in §5838a(2), *decided to incorporate §5852 directly into that statute*. These words of incorporation contained in §5838a(2) must be given effect. They cannot be rendered nugatory or

RECEIVED by MSC 3/17/2026 2:04:05 PM

treated as surplusage.

Thus, to conclude that §5852 was *not* incorporated into the medical malpractice statute of limitations contained in §5838a(2) would render the reference to §5852 in that statute of limitations completely without effect. But, this Court's precedents prohibit any construction of a statute which would render statutory language surplusage. *SBC Health*, *Wickens, supra*. The unequivocal text of §5838a(2) provides that the tolling effect of §5856(c) must extend to a time period provided by §5852 precisely because that statute has *by legislative decree* been incorporated into §5838(a)(2), the statute of limitations applicable to this medical malpractice action.

For this additional reason, this Court should conclude that *Waltz* was incorrectly decided.

II. *WALTZ* AND STARE DECISIS.

The second issue that the Court has requested the parties to brief in this matter is whether the Court's incorrect interpretation of §5856(c) in *Waltz* "should nonetheless be retained under principles of stare decisis." *Ernest*, 25 NW3d 673.

Waltz's misinterpretation of the language of §5856(c) has created a breach between how the literal language of that statute reads and how that statute is applied in wrongful death actions premised on medical malpractice. As a result, *Waltz*'s misreading of the interaction between §5856(c) and §5852 has created "a trap for the unwary." People who can read and apply the actual text of §5856(c) in measuring when their case is to be filed, but fail to account for *Waltz*'s misreading of that statute's language, will discover to their surprise that their cause of action is barred by the statute of limitations. Since this Court has twice recognized that the Legislature in enacting this tolling provision could not have intended such a trap, *Haksluoto v Mt Clemens Regional Med Center*, 500 Mich 304, 322; 901 NW2d 577 (2017); *Omelenchuk*, 467 Mich at 576,

RECEIVED by MSC 3/17/2026 2:04:05 PM

n. 19, there would be little reason to recognize that *Waltz* was incorrectly decided and misconstrued the language of §5856(c), while leaving a trap that will unquestionably snare future litigants, like the plaintiff here, who unsuspectingly rely to their detriment on that statute's literal language.

Another factor that the Court has considered in addressing the force of stare decisis is the question of reliance on the holding announced in *Waltz*. Reliance interests require consideration of whether *Waltz*'s misreading of §5856(c) is so significant "to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." *Robinson v Detroit*, 462 Mich 439, 466; 613 NW2d 307 (2000).

The only parties "relying" on *Waltz*'s misinterpretation of §5856(c) are the defendants in wrongful death actions predicated on medical malpractice presented with that group of unwary plaintiffs who have filed their malpractice actions too late because they unfortunately relied on the actual language of that statute. This is not the type of "real world dislocation" that should serve to preserve *Waltz*'s misreading of §5856(c).

There is no reason to perpetuate the mistake made by the Court's majority in *Waltz*.

RECEIVED by MSC 3/17/2026 2:04:05 PM

RELIEF REQUESTED

Based on the foregoing, amicus curiae, the Michigan Association for Justice, requests that this Court conclude that *Waltz* was not correctly decided and that plaintiff's cause of action was timely filed under a correct reading of MCL 600.5856(c) and MCL 600.5852.

GRANZOTTO & WITTMANN, P.C.

/s/ Mark Granzotto
MARK GRANZOTTO (P31492)
Attorneys for Amicus Curiae Michigan Association For Justice
2684 Eleven Mile Road, Suite 100
Berkley, Michigan 48072
(248) 546-4649

Dated: March 17, 2026.

RECEIVED by MSC 3/17/2026 2:04:05 PM

CERTIFICATION PURSUANT TO MCR 7.312(A)

Mark Granzotto, attorney for amicus curiae, The Michigan Association for Justice, hereby certifies pursuant to MCR 7.312(A) that this brief was typed using the Corel Word Perfect word processing program. That program has a function which can calculate the total number of words contained in a document. According to that program function, there are 4,871 allowable words in this brief.

/s/ Mark Granzotto
Counsel for Amicus Curiae