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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Riordan, P.J., O'Brien, and N.P. Hood, JJ.

STATE OF MICHIGAN, DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL,	Supreme Court No. 167917
Plaintiff-Appellant,	Court of Appeals No. 364206
v	Ingham Circuit Court No. 22-000441-CZ
NRK RX, INC. AND RAAD KOUZA,	
Defendants-Appellees. /	

BRIEF ON APPEAL OF APPELLANT MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL

ORAL ARGUMENT REQUESTED

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Dated: July 30, 2025

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STATEMENT OF JURISDICTION

On May 22, 2025, this Court granted the application for leave of Plaintiff Michigan Department of Health and Human Services, Office of Inspector General (the State). See MCR 7.303(B)(1), MCR 7.305(B). Thus, this Court has jurisdiction over this case.

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STATEMENT OF QUESTIONS PRESENTED

In this case, the Attorney General brought an action at law in the name of the Department of Health and Human Services to recover a Medicaid overpayment. Part of the cause of action was based on common law and statutory conversion. The Attorney General brought the action in Ingham County, based on the Attorney General venue statutes, which confer authority on the Attorney General to bring "any" action at law in the name of the state in Ingham County. However, the tort venue statutes indicate that actions involving multiple claims, one of which is a tort, "shall" be brought using the tort venue statutes. Under the tort venue statutes, venue is proper where the original injury occurred. Consistent with this Court's May 22, 2025 order, the questions presented for this Court are as follows:

1. What is the proper relationship between the Attorney General venue statutes (MCL 14.102 and MCL 600.1631(a)) and the tort venue statutes (MCL 600.1641(2) and MCL 600.1629) as applied to a civil action brought by the Department of Health and Human Services claiming statutory and common law conversion?

   Appellant's answer: The Attorney General venue statutes control.

   Appellees' answer: The Attorney General venue statutes do not control.

   Trial court's answer: The Attorney General venue statutes do not control.

   Court of Appeals' answer: The Attorney General venue statutes do not control.

2. If MCL 600.1629(1) controls, did the Court of Appeals correctly determine that the original injury occurred in Oakland County?

   Appellant's answer: No.

   Appellees' answer: Yes.

   Trial court's answer: Yes.

   Court of Appeals' answer: Yes.

3. If MCL 14.102 and MCL 600.1631(a) control, do these statutes apply only to actions in which the State of Michigan or the Attorney General is the named plaintiff, or do they also apply to an action brought by the Attorney General on behalf of a state department?

Appellant's answer:	The Attorney General venue statutes also apply to an action brought by the Attorney General in the name of a state department.
Appellees' answer:	Did not answer.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

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STATUTES AND COURT RULES INVOLVED

MCL 14.102

Any action at law brought by the attorney general in the name of the state or of the people of the state, for the use and benefit thereof, may be begun in the circuit court in and for the county of Ingham, and may be prosecuted to final judgment and satisfaction thereof, with like effect as though the cause of action arose in such count. In any such case process issued out of and under the seal of said court may be served anywhere within the state of Michigan.

MCL 400.111a(7)(d)

The department of community health shall have a priority lien on any assets of a provider for any overpayment, as a consequence of fraud or abuse, that is not reimbursed to the department of community health.

MCL 400.111b(16)

A provider promptly shall notify the director of a payment received by the provider to which the provider is not entitled or that exceeds the amount to which the provider is entitled. If the provider makes or should have made notification under this subsection or receives notification of overpayment under section 111a(17), the provider shall repay, return, restore, or reimburse, either directly or through adjustment of payments, the overpayment in the manner required by the director. Failure to repay, return, restore, or reimburse the overpayment or a consistent pattern of failure to notify the director shall constitute a conversion of the money by the provider.

MCL 400.111c(1)(c)(vi)

Upon the provider's failure to timely comply with the order, the director shall request the attorney general to petition a court of competent jurisdiction to enforce the order. Failure to appeal the final order within 30 days after receipt of a copy of the order shall foreclose the provider from collateral attack against the order or any underlying determination.

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MCL 400.111c(1)(c)(vii)

If the foregoing means are not adequate to secure recovery of payments, the director shall do 1 or more of the following:

> (C) Bring an action for other legal or equitable relief in a court of competent jurisdiction, including, but not limited to, an order to increase, for cause, the 25% withholding limit, an injunction to prevent the removal of attachable assets, an order to sequester assets, or an order for the appointment of a receiver to take possession of attachable assets.

MCL 600.1621

Except for actions provided for in sections 1605, 1611, 1615, and 1629, venue is determined as follows:

> (a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.
>
> (b) If none of the defendants meet 1 or more of the criteria in subdivision (a), the county in which a plaintiff resides or has a place of business, or in which the registered office of a plaintiff corporation is located, is a proper county in which to commence and try an action.

MCL 600.1627

Except for actions founded on contract and actions provided for in sections 1605, 1611, 1615, and 1629, the county in which all or a part of the cause of action arose is a proper county in which to commence and try the action.

MCL 600.1629

(1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

> (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

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(i) The defendant resides, has a place of business, or conducts business in that county.

(ii) The corporate registered office of a defendant is located in that county.

(b) If a county does not satisfy the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

(i) The plaintiff resides, has a place of business, or conducts business in that county.

(ii) The corporate registered office of a plaintiff is located in that county.

(c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action:

(i) The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

(ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

(d) If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action.

MCL 600.1631

The county in which the seat of state government is located is a proper county in which to commence and try the following actions:

(a) when the action is commenced by the attorney general in the name of the state or of the people of the state for the use and benefit thereof;

(b) when venue cannot be laid under any other of the venue provisions.

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MCL 600.1641

(1) Except as provided in subsection (2), if causes of action are joined, whether properly or not, venue is proper in any county in which either cause of action, if sued upon separately, could have been commenced and tried, subject to separation and change as provided by court rule.

(2) If more than 1 cause of action is pleaded in the complaint or added by amendment at any time during the action and 1 of the causes of action is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, venue shall be determined under the rules applicable to actions in tort as provided in section 1629.

MCR 2.222(A)

The court may order a change of venue of a civil action, or of an appeal from an order or decision of a state board, commission, or agency authorized to promulgate rules or regulations, for the convenience of the parties and witnesses or when an impartial trial cannot be had where the action is pending. In the case of appellate review of administrative proceedings, venue may also be changed for the convenience of the attorneys.

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INTRODUCTION

Raad Kouza stole millions in Medicaid funds and has yet to repay any of it. After stealing the funds, he laundered it, placing millions in the names of family, friends, and shell companies. He has recently been convicted of conspiracy to commit federal healthcare fraud and is awaiting sentencing. The State initiated an action in Ingham County to recoup these Medicaid funds, which belong to the State and that Kouza has unlawfully retained. But due to the Court of Appeals' incorrect decision, Kouza now gets to have the State's civil case transferred to the venue of his choice, further jeopardizing the State's recovery.

The primary question in this case is whether the trial court erred in transferring this case to Oakland County, when Ingham County was proper under both the Attorney General and tort venue provisions, and Kouza failed to establish that Oakland County was more convenient.

This case should have never been transferred to Oakland County because it is neither proper nor more convenient. More specifically, Ingham County is proper under the Attorney General venue statutes, which provide that the Attorney General may file suit on behalf of Michigan's executive departments in Ingham County, as it is the seat of Michigan's government. Ingham County is also proper under the tort venue provisions because it is the location of the original injury. More specifically, in a claim for conversion, the original injury occurs to the plaintiff *where the plaintiff* is located.

Under the Attorney General's enabling act, MCL 14.102, and the Revised Judicature Act (RJA), MCL 600.1631(a), the plain language of these provisions

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empower the Attorney General to file in Ingham Circuit when she brings an action on behalf of the State, as she has done here. As MCL 14.102 is substantive law and MCL 600.1631(a) is specific to the Attorney General, they govern over the procedural and more general tort statute. Thus, venue is proper in Ingham County.

Even if this Court applies the tort venue statutes, however, jurisdiction is still proper in Ingham Circuit. The lower courts disregarded binding case law, which establishes that for venue purposes, the "original injury" occurs where the harm to the plaintiff results, not where the defendant's wrongdoing takes place. The lower courts conflated the wrongdoing—withholding the overpaid Medicaid funds—with the resulting injury—the loss of those Medicaid funds. Here, the harm was in Ingham County, where the State lost possession of its funds and had to repay the federal share.

The Attorney General venue statutes apply to this case, where the state agency is the Department of Health and Human Services (MDHHS) and the Attorney General is suing in the name of the MDHHS to recover a Medicaid overpayment. In particular, the Attorney General venue statutes refer to suits brought by the Attorney General "in the name of the state or of the people of the state" and therefore, by their terms, apply to cases where the Attorney General is not a party but is counsel for the State or the People of the State. The statutes also apply when the party plaintiff is a state agency because a state agency is considered part of the State.

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STATEMENT OF FACTS AND PROCEEDINGS

Medicaid providers are responsible for repaying overpayments.

The MDHHS administers Michigan's Medicaid program (Medicaid). In addition to federal law, Michigan's Medicaid act, the Social Welfare Act, MCL 400.1 *et seq*., and Medicaid policies and procedures establish the terms and conditions of a provider's participation in Medicaid. Moreover, upon enrolling in the program, a provider enters into a contract with the State, which further dictates the provider's terms and conditions. MCL 400.111b(4).

The State regularly reviews providers' claims to ensure proper payment and, if an overpayment is identified, the burden is on the provider to establish entitlement to the funds received. *Prechel v Dep't of Social Servs*, 186 Mich App 547, 549 (1990); MCL 400.111b(10). As a result, providers are required to promptly notify Medicaid when they receive an overpayment and failure to return an overpayment constitutes a conversion. MCL 400.111b(16).

The Attorney General has authority to recover Medicaid overpayments by instituting civil actions.

Because a Medicaid provider is contractually and statutorily obligated to submit claims that are consistent with state and federal laws and regulations, the State may "petition a court of competent jurisdiction to enforce [a Medicaid overpayment]." MCL 400.111c(1)(b); MCL 400.111c(1)(c)(vi). In bringing an action, the State has a breach of contract claim, as well as a claim for conversion due to the provider's failure to return the funds. MCL 400.111b(16). Once a judgment is entered, the State may collect against the provider, and it also has a priority lien on

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all the provider's assets for overpayments due to fraud or abuse. MCL 400.111a(7)(d).

Defendants were overpaid.

This case[1] involves a pharmacy, NRK RX, Inc., operating under the assumed name "Food Town Drugs," that billed Michigan Medicaid one-half million dollars for drugs which the pharmacy could not show it purchased from an authorized wholesaler. (Appellant's App'x, p 9.) After learning that the pharmacy shared common ownership with four other pharmacies that also could not substantiate their billing, the State reviewed Food Town's claims and found that Food Town was unable to show that it purchased enough medication for the amount that it had billed to Medicaid. (*Id.*, p 26.)

Both administrative and judicial courts have upheld the overpayment.

After an administrative hearing, an administrative law judge issues a proposal for decision. MCL 24.281(1). Under both the APA and Social Welfare Act, a provider must file exceptions to the proposal for decision within 10 days "from the date of mailing the decision." MCL 24.281(3); MCL 400.111c(1)(b). Failure to file

[1] In total, the State has sued Kouza and his various pharmacies for over three million dollars in overpaid funds:

- Colosseum, Inc. et al. (ER Drugs) (Docket No. 20-718-CZ);
- NRK Rx., Inc. et al. (Food Town) (Docket No. 22-441-CZ);
- Rockwood Pharmacy P.C. (Rockwood) (Docket No. 22-439-CZ);
- Seaway Pharmacy P.C. (Seaway) (Docket No. 22-442-CZ); and
- IRXPlus.com, Inc. et al. (St. Paul) (Docket No. 22-440-CZ).

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such exceptions constitutes a waiver of objections not raised. *Attorney General v Pub Serv Comm*, 136 Mich App 52, 56 (1984). As a result, the proposal for decision becomes the final decision. MCL 24.281(3).

Here, Defendants requested and were given an administrative hearing, which upheld the overpayment. Defendants did not file exceptions within 10 days of the mailing of the proposal for decision. Thus, they waived their objections to the administrative decision. MCL 24.281(3). (Appellant's App'x, p 12, ¶ 30.) Thereafter, Defendants sought judicial review of the decision, and both the circuit court and Michigan Court of Appeals upheld the administrative decision. (Docket No. 356651.)

In federal court, Kouza and his brother, Ramis, were convicted of conspiracy to commit healthcare fraud for substantially the same overlapping time period. (*United States of America v Kouza et al*, the United States District Court for the Eastern District of Michigan, filed September 16, 2020, Docket No. 2:20-cr-20430-GAD-RSW).

The lower court transferred the case to Oakland County.

Following the final administrative decision, the State filed a civil action against Defendants in Ingham County in a case filed by the Department of Attorney General, pleading a claim for enforcement of the agency decision, conversion, statutory conversion, breach of contract, and unjust enrichment. (Appellant's App'x, p 7.) In the State's civil case, Defendants moved to change venue, and the Ingham Circuit Court granted their motion, holding that the tort venue provisions

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applied to the statutory claim of conversion established under the Medicaid act. (Appellant's App'x, p 4.) In addition, the court concluded that the location of the State's original injury occurred in Oakland County. *Id.*

The Court of Appeals upheld the circuit court's decision, ruling that "the original injury occurred in Oakland County, the county in which NRK has its corporate office and where it refused to return the funds to DHHS." (*Dep't of Health & Human Servs v NRK Rx, Inc*, ___ Mich App ___, ___ (2024) (majority opinion), slip op at 6). Justice Hood dissented:

> [The Attorney General venue statutes] exist in harmony with the [tort venue provisions], so that a party may properly establish venue under the AG venue statutes . . . *or* the tort venue statutes . . . . I would, therefore, remand to the Ingham County Circuit Court to determine whether it should transfer the case to the Oakland County Circuit Court in light of MCR 2.222(A). [*Id.* at ___ (Hood, J., dissenting), slip op at 1.]

STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo. *Reynolds v Robert Hasbany, MD PLLC*, 323 Mich App 426, 431 (2018). A motion to change venue is reviewed under the clearly erroneous standard. *Brightwell v Fifth Third Bank*, 487 Mich 151, 156 (2010). A decision is "clearly erroneous" if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Shiroka v Farm Bureau Gen Ins Co*, 276 Mich App 98, 102 (2007).

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ARGUMENT

I. The Attorney General venue statutes control the venue determination in this case and provide that venue is proper in Ingham County.

The Attorney General venue statutes control the venue determination in this case for three reasons. First, MCL 14.102 is a substantive law, and its use of the term "any" indicates that, so long as the requirements for the statute are met, the Attorney General venue statute applies regardless of other procedural venue provisions. Second, even though MCL 600.1641(2) mandates the application of MCL 600.1629, in turn, MCL 600.1629(1)(a) *does not* exclude the possibility that other venues may be proper as well, as shown by its use of the indefinite article "a." Third, the Attorney General statutes are more specific than the tort provisions, and therefore, the more general tort provisions do not override them.

A. Under the Attorney General's enabling act, the Attorney General has the right to commence any action at law in Ingham County, and the procedural rules established in the RJA mirror that right.

Substantive laws create new duties and rights that did not previously exist whereas procedural rules are remedial and do not create new rights or duties. *Buhl v City of Oak Park*, 507 Mich 236, 247 (2021); *White v Gen Motors Corp*, 431 Mich 387, 397 (1988). Procedural rules do not override substantive law. *Hogerheide v Hickey*, 2 Mich App 580, 584 (1966).

Here, the Attorney General enabling act, MCL 14.28 *et seq.,* created in the early 1900s, is a substantive law because it is express in granting the right to the

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Attorney General to commence *any* action at law in Ingham County. MCL 14.102 states that:

> Any action at law brought by the attorney general in the name of the state or of the people of the state, for the use and benefit thereof, may be begun in the circuit court in and for the county of Ingham, and may be prosecuted to final judgment and satisfaction thereof, with like effect as though the cause of action arose in such county . . . .

The Attorney General enabling act is substantive because, not only does it give the right to the Attorney General to initiate actions, but it also establishes the Attorney General's right to intervene in any action involving the State (MCL 14.101) as well as initiate numerous types of specific actions pertaining to collections (MCL 14.134), public schools and officers (MCL 14.143), charitable trusts (MCL 14.254), and public safety officers (MCL 14.316).

The Court of Appeals has recently held a different venue statute, MCL 722.714 (concerning the proper venue for paternity actions), is substantive law because it "involve[s] important public policy considerations concerning the welfare and support of children." *Rose v May*, ___ Mich App ___, ___ (2025) (Docket No. 371605); slip op at 6. The same is true for the Attorney General's enabling act, which serves important public policy considerations concerning the Attorney General's responsibilities.

The right to commence actions in Ingham County is broad based on the statute's use of the word "any." When interpretating statutes, courts first look to the plain language and give effect to that language unless it is ambiguous. *Achtenberg v East Lansing*, 421 Mich 765, 770 (1985). Here, "any" is undefined in the statute, but its plain meaning is "one or some indiscriminately of whatever

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kind" or "one, some, or all indiscriminately of whatever quantity." *Merriam-Webster's Collegiate Dictionary* (11th ed). This suggests that, so long as the statute is satisfied, then venue is proper, regardless of other venue statutes.

The preamble to MCL 14.102, Act No. 232, Pub Acts 1919, supports the conclusion that MCL 14.102 was meant to create a broad right for the Attorney General to initiate actions on behalf of the State. The preamble states that it is "[a]n Act to supplement the laws of the State relating to the powers and duties of the Attorney General and the institution and prosecution of actions thereby on behalf of the State, to authorize intervention in pending litigation on behalf of the people in certain cases, and to permit the bringing of any suit at law in which the State is a party plaintiff in the circuit court of Ingham County." (Appellant's App'x, p 408.)

In contrast, unlike the substantive rights created in the Attorney General's enabling act, the RJA was enacted to effect *procedural* improvements, not to create substantive laws. *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 151 (1972). Moreover, the RJA was enacted in 1961, after the Attorney General's enabling act, and it did not supersede but rather supported the Attorney General's authority to sue in Ingham County. In its preamble, the RJA repealed "all acts and parts of acts inconsistent with or contravening any of the provisions of [the] act." This is relevant because, rather than contravening or contradicting MCL 14.102, the RJA restated MCL 14.102 and supported that venue is proper in Ingham County under MCL 600.1631(a):

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> The county in which the seat of state government is located is a proper county in which to commence and try the following actions: (a) when the action is commenced by the attorney general in the name of the state or of the people of the state for the use and benefit thereof[.]

In sum, these provisions, i.e., the Attorney General venue statutes, establish that in cases brought by the Attorney General on behalf the State, venue in Ingham County is proper. These provisions govern here, as the Attorney General has brought and commenced the action in the name of the "State of Michigan, Department of Health and Human Services, Office of Inspector General" as the lead named party. The Court of Appeals erred in holding otherwise.

As stated, the RJA did not displace the rights created under the Attorney General's enabling act. But that is exactly what Defendants suggest here: that the RJA repealed the Attorney General's right to commence *any* action in Ingham County.

Under Defendants' proposed rule, suits initiated under the Attorney General's enabling act, if they happen to involve a tort, are improper in Ingham County and would have to be transferred to the county where the tort injury occurred. For example, under the Attorney General's enabling act, MCL 14.286, the Attorney General has the right to bring a charitable trust action in Ingham County. But if she happens to add a tort count to the action, then Defendants argue, the RJA requires venue to be based on where the tort occurred. This is a misunderstanding of the procedural nature of the RJA, which did not obviate the Attorney General's substantive right to commence actions in Ingham County.

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Because the basis of the Attorney General's authority to sue in Ingham County is rooted in the enabling act, *Attorney Gen v Kent Co Rd Comm*, 184 Mich App 525, 528 (1990) does not apply, as it was confined to the procedural rules of the RJA, and not the Attorney General's enabling act and the substantive rights created therein, MCL 14.28 *et seq*. Specifically, the Court of Appeals only reviewed the conflict between two procedural provisions of the RJA, MCL 600.1615 and MCL 600.1631(a). *Kent Co*, 184 Mich at 527. In other words, the sole question before that court was whether MCL 600.1615 applied rather than MCL 600.1631(a). Thus, the Court of Appeals never considered the Attorney General's right to bring actions in Ingham County under the enabling act, and therefore its reasoning does not apply here.

B. The tort venue provisions do not override the Attorney General venue statutes because they do not exclude the possibility that other venues may be proper as well.

The tort venue statutes, MCL 600.1641 and MCL 600.1629, act as "arrows" and not "stop signs" when directing parties on venue.

To begin, the language of the tort venue provisions bear mention. MCL 600.1641(2) provides that where there are multiple causes of action brought, if one of the causes of action is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, then the standard tort—venue statute, MCL 600.1629—applies. MCL 600.1641(2) ("venue shall be determined under the rules applicable to actions in tort as provided in section 1629").

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MCL 600.1629 places proper venue in a number of locations, applied in a hierarchy:

> (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:
>
> > (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
> >
> > > (i) The defendant resides, has a place of business, or conducts business in that county.
> >
> > > (ii) The corporate registered office of a defendant is located in that county.
> >
> > (b) If a county does not satisfy the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
> >
> > > (i) The plaintiff resides, has a place of business, or conducts business in that county.
> >
> > > (ii) The corporate registered office of a plaintiff is located in that county.
> >
> > (c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action:
> >
> > > (i) The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.
> >
> > > (ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.
> >
> > (d) If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action.

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It is true that MCL 600.1641(2), through its use of the word "shall," directs parties in tort suits to use MCL 600.1629 if there is an additional cause of action in the complaint. See *De Martinez v Lamagno*, 515 US 417 434 n 9 ("legal writers sometimes use . . . 'shall' to mean 'will' "). But, as Justice Corrigan acknowledged, MCL 600.1641 is not a substantive venue provision, but merely tells parties where to go when determining venue. *Massey v Mandell*, 462 Mich 375, 388 (2000) (Corrigan, J., concurring). Again, MCL 600.1641 is an "arrow" and not a "stop sign" and instead refers the reader to MCL 600.1629.

Turning to MCL 600.1629, that provision states that the place where the original injury occurred is "a" county in which to file. MCL 600.1629(1)(a). In other words, "although MCL 600.1641(2) mandates the application of MCL 600.1629, MCL 600.1629(1)(a) does not exclude the possibility that other venues may be proper as well." *NRK Rx, Inc*, ___ Mich App ___, ___ (2024) (Hood, J., dissenting), slip op at 7.

Thus, in using the indefinite article, "a," MCL 600.1629 contemplates that other venues may be proper and therefore it is not mandatory.

C. The Attorney General venue provisions are more specific.

Not only are the Attorney General venue statutes substantive, but they are also more specific than the tort venue provisions. See *Evanston YMCA Camp v State Tax Comm*, 369 Mich 1, 8 (1962) (noting the statutory rule that the more specific statute governs over the general).

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Courts should strive to read statutory provisions "together to produce a harmonious whole and to reconcile any inconsistencies whenever possible." *SMK, LLC v Dep't of Treasury*, 298 Mich App 302, 309 (2012). And it is well established that "if two statutes conflict, then the specific prevails as an exception to the general." *Bauer v Saginaw Co*, 332 Mich App 174, 199 (2020). Reading MCL 600.1641 together with MCL 600.1631(a), the latter describes a specific situation that would otherwise fall within the circumstances described by MCL 600.1641. If there is a conflict between the two statutes, the more specific provision should govern, and the State's choice of venue prevails. See *Evanston YMCA Camp*, 369 Mich at 8.

In other words, although MCL 600.1629 governs tort disputes generally, the more specific statute, MCL 600.1631(a), applies to tort cases filed by the State and commenced by the Attorney General. Indeed, MCL 600.1629 applies broadly to litigants in tort cases—the bulk of which involve only private party litigants. And the more specific statute governs that narrow band of cases where the State brings forward a tort action as here under MCL 600.1631(a).

This interpretation makes sense. The alternative—where MCL 600.1631(a) allows the Attorney General to sue in Ingham County for a single tort claim, but the addition of other counts triggers MCL 600.1629—lacks both legal and logical support.

This convoluted approach would lead to an absurd result: the Attorney General could hypothetically circumvent the tort venue statute altogether, even in a

tort case. This is because, according to Defendants' reading, MCL 600.1641(2) requires (by the use of "shall") application of MCL 600.1629 when multiple causes of action are combined, even when the Attorney General brings the suit. If that were true, then if the Attorney General were to bring only *one* cause of action and that cause of action is a *tort*, MCL 600.1629—being permissive in its language ("a proper venue")—would not necessarily apply. Thus, the Attorney General could use the Attorney General statute, MCL 600.1631(a) on a wholly tort case and circumvent the tort venue statute altogether by alleging only one count. This is not the case for private litigants, who would still need to apply MCL 600.1629 in a single count tort action. But because there is a venue statute specific to the Attorney General, MCL 600.1631(a), the Attorney General need not apply the tort venue statute on a single tort action.

This niche, non-sensical exception to the tort venue statute, which is based on *Defendants'* argument as to how the statutes should be interpreted, is evidence that the Attorney General venue statutes are more specific than the tort venue statutes.

Overall, the Attorney General venue statutes, MCL 14.102 and 600.1631(a), provide that *any* action filed in the name of state as a party and brought or commenced by the Attorney General allow venue to lie in Ingham County. The general venue statutes do not gainsay this conclusion, and even if they were read to be in conflict, the substantive and more specific Attorney General venue statutes would govern over the procedural, general tort venue statutes.

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II. Applying the tort venue provisions, venue is proper in Ingham County because that is where the original injury occurred.

Even if the tort venue provisions were applied instead of the Attorney General venue statutes, Ingham County is still the proper county because that is where the original injury occurred. MCL 600.1641(2) and MCL 600.1629(1)(b)(i). Here, the lower courts erred by disregarding binding case law, which holds that, for purposes of venue, the location of the "original injury" occurs where the harm results to the plaintiff, not where the defendant engages in wrongdoing.

A. Under the general venue tort statutes, the original injury was suffered by the State in Ingham County, which is the place where the State suffered a financial loss from Kouza's wrongdoing.

While quoted above, the general venue statute bears quotation again, as MCL 600.1629 places venue in a number of locations:

> (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:
>
> > (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
> >
> > > (i) The defendant resides, has a place of business, or conducts business in that county.
> >
> > > (ii) The corporate registered office of a defendant is located in that county.
> >
> > (b) If a county does not satisfy the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

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> (i) The plaintiff resides, has a place of business, or conducts business in that county.
>
> (ii) The corporate registered office of a plaintiff is located in that county.
>
> (c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action:
>
> (i) The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.
>
> (ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.
>
> (d) If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action.

As a preliminary matter, (1)(a)(i) and (1)(c)(ii) do not apply because they refer to *the defendant,* and Michigan courts have read these provisions to mean that the option does not apply when there are multiple defendants. *Massey v Mandell*, 462 Mich at 382. However, as discussed below, (1)(b)(i) and (1)(d) do apply based on the conclusion that, for the conversion of intangible, electronic funds, the place of the original injury is where the plaintiff is located at the time of the wrongful conduct, and thus, where venue lies.

Thus, if no county meets the criteria outlined in (1)(a), then venue is proper in the county in which the *original injury* occurred, so long as that county is also where the plaintiff resides, has a place of business, conducts business, or has a registered office. MCL 600.1629(1)(b)(i) (emphasis added).

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B. By itself, the plain meaning of "injury" may be ambiguous, but in the context of the tort venue statute, it refers to the plaintiff's injuries.

When interpretating statutes, courts first look to the plain language of the statute and give effect to that language unless it is ambiguous. *Achtenberg v East Lansing*, 421 Mich 765, 770–771 (1985). Here, *Black's Law Dictionary* defines "injury" as "any harm or damage," and therefore the plain meaning of "injury" could refer either to the location where the plaintiff suffered the injury or where the defendant committed the wrongful act. *Black's Law Dictionary* (11th ed).

But statutory text must be construed as a whole. *Gen Motors Corp v Erves*, 399 Mich 241, 255 (1976). And a word or phrase in a statute is presumed to bear the same meaning throughout. *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 293 (2020).

The statute here, MCL 600.1629, is limited to actions involving "personal injury, property damage or wrongful death," which are, as indicated by the terms themselves, defined by the type of injuries *plaintiffs* suffer, as opposed to the wrongful conduct or breach of the standard of care committed by defendants. Reading the statute as a whole, "original injury" refers to *plaintiff's* personal injury, *plaintiff's* property damage, or *plaintiff's* wrongful death. These terms are defined in the context of a plaintiff's experiences, not a defendant's actions.

C. *Dimmitt* compels the conclusion that "injury" is in terms of the plaintiff's injuries.

Dimmitt, and cases interpreting it, control the outcome of this case.

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In 2008, the Michigan Supreme Court addressed the definitions of "original" and "injury" head-on in *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618 (2008) and defined "the original injury" as the place of the plaintiff's first tangible harm, as opposed to the defendant's breach of the standard of care. *Id.* at 630 ("It is the original *injury,* not the original breach of the standard of care, that establishes venue under MCL 600.1629(1)(a) and (b).") (emphasis in original).

Notably, *Dimmitt* was a malpractice action, similar to this case, in that it lacked a tangible injury. As is the case here, the injury was a *financial* loss, resulting in the company being unable to satisfy its financial obligations. In particular, the plaintiff, a business that purchased accounts receivables from other businesses, sought the defendants' auditing services to assist in making investment decisions during a period of financial strain. Relying on the auditors' faulty reports, the plaintiff made ill-advised investments and subsequently filed an auditing malpractice action. The defendants moved to change venue. In determining the location of the first injury, this Court found that the first actual injury occurred when the plaintiff could not satisfy its financial obligations and was forced to liquidate assets, which occurred where the plaintiff was located. *Dimmitt*, 481 Mich at 631–632.

The *Dimmitt* decision was in keeping with prior precedent that had been established years earlier, when the Court of Appeals addressed the definition of "original" and "injury" in *Karpinsky v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 544 (1999). In that case, the Court of Appeals noted that "injury" could

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mean either the wrongdoing or the harm (noting that *Black's Law Dictionary* defines "injury" as "harm or damage"). *Id.* at 544. The Court of Appeals also noted how "original," was used to modify "injury," and defined "original" as "belonging or pertaining to the original or beginning of something." *Id.* Overall, *Karpinsky* held that the "original injury" in a wrongful death action refers to the injury resulting in death. *Id.* Implicit in this is that the injury pertains to the *plaintiff*, not the defendant. See also *Taha v Basha Diagnostics*, PC, 275 Mich App 76, 79 (2007) (The "original injury" for purposes of MCL 600.1629(1)(a) was "the physical harm to *the patient* that occurred as a result of defendants' alleged misinterpretation of the x-ray.") (emphasis added).

After *Dimmitt*, Michigan courts followed this precedent and noted that there is a significant difference between where the "original injury" occurred and where the "alleged violation" occurred. See, e.g., *Yono v Carlson*, 283 Mich App 567, 572 (2009) (holding that, in a per se defamation case, the injury occurred to the plaintiff's building project and thus occurred in the county where the project was located); *Brightwell v Fifth Third Bank of Mich*, unpublished per curiam decision of the Court of Appeals, issued April 9, 2009 (Docket Nos. 280820 and 281005) (holding that MCL 37.2801(2), the statute at issue, laid venue in the county "where the alleged violation occurred" which was significantly different than where "the original injury occurred" under MCL 600.1629); (Appellant's App'x, p 391); see also *Brightwell v Fifth Third Bank*, 487 Mich 151, 161 (2010) (holding that the location of the original injury in an employment discrimination action was where the

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plaintiff's "right to be free from actions that actually separate the employee from gainful employment for discriminatory reasons" was violated).

1. For intangible property, the first actual injury occurs where plaintiff is located.

Because the injury is distinct from the wrongful conduct that caused the injury, Michigan courts apply a two-step process, (1) identifying the wrongful conduct, and then (2) identifying the immediate actual injury flowing from it. *Dimmitt*, 481 Mich at 630.

For example, in *Dimmitt*, the Court noted that the plaintiff did not suffer the first actual injury when it relied on the allegedly faulty reports because, at the time that it relied on the reports in making the investment decisions, there was still no actual injury, only the potential for an injury. *Dimmitt*, 481 Mich at 631 ("At the time of plaintiffs' reliance, plaintiffs suffered only a *potential* injury, namely, that their investment decisions based on defendants' negligence *might* turn out to be poor ones that *might* injure plaintiffs."). Instead, the most immediate actual injury did not occur until the plaintiff was unable to meet its financial obligations and was forced to liquidate assets. *Id.*

In the context of other intangible property, such as electronic funds, trade secrets, or domain names, courts have found that the injury occurs to the plaintiff where the plaintiff is located. See, e.g., *LGT Enterprises, LLC, v Hoffman*, 614 F Supp 2d 825 (ED Mich, 2009); *Prescription Supply v Musa*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued

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February 27, 2017 (Docket No. 16-12070), p 4; *Bagsby v Gehres*, 195 F Supp 2d 957, 963 (ED Mich, 2002).

In accordance with *Dimmitt* and *Karpinsky*, these cases show that when intangible property interests are involved, the location of the plaintiff is where the injury occurs. It is where the loss is suffered.

2. In this case, the State was located in Ingham County at the time of the first actual injury and therefore Ingham County is where the original injury occurred.

Similar to *Dimmitt*, in this case the loss to the State is its loss of funds and concomitant obligation to return the federal share of the Medicaid overpayment back to the federal government. In this case, both the first intangible and tangible harms occurred in Ingham County, where the State suffered the loss of possession of its funds and then repaid the federal share back to the U.S. Government. That occurred where the Department of Health and Human Services is located: 333 S Grand Ave, Lansing, Michigan. Michigan Department of Health & Human Services.[2]

In contrast, the *wrongful conduct* occurred when Defendants retained the funds after the State demanded their return.[3] (Appellant's App'x, p 14.) Retention

[2] *Contact Us*, <https://www.michigan.gov/mdhhs/contact-mdhhs> (accessed July 10, 2025).

[3] The type of conversion alleged is based on Plaintiff's claim and demand for return of the overpayment. This type of conversion does not alter the venue analysis other than triggering the timing of when Defendants' wrongful action occurred. From there, the controlling factor is *Plaintiff's location* at that time of Plaintiff's actual injury.

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of the funds was wrongful at this point because Defendants' circuit court appeal did not include a motion to stay enforcement and no appeal bond was filed; therefore, the State was entitled to seek enforcement of the final agency decision. MCR 7.123(E). That was the time when the *wrong* occurred.

But the real question is *where the plaintiff* experienced the resulting injury, i.e., the location of the plaintiff. *Dimmitt*, 481 Mich at 630. As explained above, for purposes of the State's conversion claim, there is no physical harm because the State's cause of action is for the conversion of electronic funds, not physical stacks of cash. Specifically, the first resulting injury to the State as a result of Defendants' wrongful possession was that the State was deprived possession of those funds. This was an intangible injury, personal to the State. The loss was experienced in Ingham County.

Because the elements of conversion do not contemplate a physical injury in this case, an additional analysis is needed to identify the actual injury resulting from the conversion. *Dimmitt*, 481 Mich 630. The first actual injury would be the State's loss of possession of its funds. Here, both the trial court and Court of Appeals failed to identify the resulting harm in fact and instead found that the injury occurred when Defendants committed the wrongdoing and that occurred where Defendants were located. (Appellant's App'x, p 3.) See also *NRK Rx, Inc*, ___ Mich App ___, ___ ; slip op at 6 ("[T]he original injury occurred in Oakland County, the county in which NRK has its corporate office and where it refused to return the

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funds to DHHS."). This contradicts Michigan caselaw, dictating that the place of the original injury is where Plaintiff is located. See *Dimmitt*, 481 Mich at 630.

The Court of Appeals seemed to acknowledge *Dimmitt*'s binding precedence, citing it multiple times when reconciling the Attorney General statutes with the tort venue provisions, but failed to address or even acknowledge *Dimmitt*'s definition of "original injury," *NRK Rx, Inc*, ___ Mich App at ___; slip op at 4, which is a controlling, applicable holding.

Not only was that legally incorrect, but it establishes an unworkable rule that encourages wrongdoers to abuse the judicial process by cherry picking counties favorable to them. See *Brightwell v Fifth Third Bank*, 487 Mich 151, 160 (noting that, if the location of the defendant was dispositive, then defendants could unilaterally control venue). The result would be inefficient use of the State's resources in what should be straightforward debt collection.

In sum, the "original injury" is the harm to the State where it lies, in Ingham County.

D. The legislative history of the tort venue statutes supports that "injury" is in terms of the plaintiff's injuries because the statutes were amended for the purpose of narrowing the scope of possible venues based on where the plaintiff was injured.

Michigan's 1986 and 1995 tort reforms further support the interpretation that "original injury" pertains to the plaintiff's injury because the Legislature contemplated whether venue should lie where the "original injury" occurred or "where all or part of the action occurred."

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In 1986, the tort venue statutes were amended along with other provisions relating to personal injury and no-fault cases. This was based on the Michigan House of Representatives' special committee on insurance liability, which had identified problems with large jury awards rendered in Oakland and Wayne County. (Appellant's App'x, 375.) In addressing these problems, both the House of Representatives and the Senate rejected proposed language, which recommended changing the language to "in which all or part of the injury occurred," and instead elected the language: "where all or part of the cause of action arose." (Appellant's App'x, p 375.)

Thus, the Legislature decided that the location of either the wrongful conduct or resulting injury would control venue. (Appellant's App'x, p 383–384.) See also *Gross v Gen Motors Corp*, 448 Mich 147, 157–158 (1995).

But that changed in 1995, when the venue statute was amended again. (Appellant's App'x, p 386-387.) Like in 1986, the Legislature addressed issues with large jury awards and forum shopping related to personal injury cases. *Id.* But this time, the venue statutes were amended to prevent forum shopping by restricting venue to *where the original injury occurred*. (Appellant's App'x, p 388.) In particular, "The bill also would strengthen the provisions regarding venue or where a suit ought to be brought. It says cases should be brought 'where the original injury occurred' rather than, 'where part or all of the cause of action arose.' " *Id.*

Thus, the 1995 Legislature enacted the precise language ("original injury") that had been considered in 1986, i.e., using the location of the *plaintiff's injuries* to

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establish venue. In doing so, the Legislature accomplished the goal of reducing litigation in the greater Detroit area, where a majority of businesses and manufacturers were located.

E. Alternatively, venue is also proper under MCL 600.1629(1)(d), referring to MCL 600.1627, because Ingham County is where the cause of action arose.

Even if the Court finds that (1)(b) does not apply, there is no dispute that the (1)(d) does apply, and, under its terms, venue is proper in Ingham County.

Venue can exist in more than one forum. *Lorencz v Ford Motor Co*, 439 Mich 370, 377 (1992); *Gross*, 448 Mich at 154. MCL 600.1629(1)(d) provides that venue can be proper under either MCL 600.1621 *or* 600.1627. MCL 600.1629(1)(d).

Under MCL 600.1627, the county in which all or a part of the cause of action arose is a proper county. As discussed, the original injury and therefore the cause of action itself, as well as a part of the cause of action, arose in Ingham County, where the State was located at the time of injury. Therefore, venue is proper under MCL 600.1627 and any analysis of venue under MCL 600.1621 does not negate that venue is proper under the former.

F. Public policy favors Ingham County as the proper venue because it facilitates evidence collection and availability.

Venue considerations are driven by the policy objective of aligning the legal process with its geographical context. This alignment facilitates evidence collection and witness availability, as well as encourages community involvement. See MCR 2.222 (allowing for a motion to change venue to a more convenient forum); see

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also *Gross*, 448 Mich at 171–172 (noting that a more convenient county is one in which the majority of witnesses or evidence is located).

In the context of personal injury, property damage, and wrongful death, the Legislature specifically excepted those cases from the general tort provision, MCL 600.1621, and decided that venue should be controlled by the location of the "injury." Thus, the Legislature determined that the most relevant nexus to the action was the location of the plaintiff's injuries.

But even though this approach prioritizes plaintiffs' location, defendants also benefit from the proximity of witnesses and evidence. For example, in this case, Defendants approached the State to receive and hold in trust the public's funds. Defendants actively enrolled in the Medicaid program, and upon enrolling, they consented to joint and several liability for overpayments. They also consented to abide by all Medicaid rules, one of which states that withholding an overpayment constitutes a conversion. Therefore, this case revolves around the administration of the Medicaid program, including the surrounding facts and circumstances of Defendants' enrollment in Medicaid, their agreement to Medicaid rules, their request and receipt of public funds, and Medicaid's receipt and processing of Defendants' false claims. Thus, a majority of the documents, witnesses, and other evidence related to this case are located in Ingham County.

In sum, Ingham County is the most convenient location for evidence collection and witness availability.

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III. The Attorney General venue statutes, referring to suits brought "in the name of the state or of the people of the state," apply to cases including, but not limited to, when the Attorney General is not a party litigant but rather suing in the name of a state agency.

Under MCL 14.102 and MCL 600.1631(a), the Attorney General venue statutes apply to cases in which the Attorney General is counsel for a party plaintiff as well as in cases where the Attorney General files in the name of state agencies.

A. The Attorney General is statutorily authorized to bring actions as a party litigant on behalf of the State and the people of the State and may also serve as counsel for the State or an agency where it is the party litigant.

The Attorney General's enabling act gives authority to the Attorney General to bring suits in the name of the State or in the Attorney General's own name as the party litigant.

Bringing suit in the name of the State, or a state agency, differs from when the Attorney General is a party litigant. For example, under state law, the Attorney General may bring an action in her own name and thus as the party litigant in actions for mandamus, injunctions, and quo warranto. See, e.g., MCL 445.905(1) ("the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction"). Similarly, the Attorney General may intervene when the interests of the State require it and appear on behalf of the people of the State in any court. MCL 14.101. See also MCL 14.28 (Attorney General shall prosecute all actions in the supreme court where the state is an interested party).

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In contrast, other statutory provisions grant authority to the Attorney General to sue in the name of the State. For example, the Attorney General has the exclusive authority to represent the State before the Court of Claims. MCL 600.6416. The Attorney General has the duty to represent the governor, the secretary of state, the secretary of treasury, and the auditor general, as well as to prosecute and defend all matters in relation to those departments. MCL 14.29. Another example is that the Attorney General must defend and prosecute all actions in the Supreme Court in which the state is a party. MCL 14.28. Additionally, an assistant attorney general may be designated to appear for the State in any suit or action before any court, administrative body, or grand jury. MCL 14.35.[4]

In sum, there is a distinction between when the Attorney General brings suit in her own name versus when she sues in the name of or on behalf of the State and, under the Attorney General's enabling act, the Attorney General can do both in accordance with the provisions of the enabling act.

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[4] Another example is when a State seeks to intervene in a federal lawsuit: the Attorney General brings a case *in the name of* the State, including a state agency. 28 USC 2403(b). In particular, 28 USC 2403(b) provides that "[i]n any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene[.]" See also *Cameron v EMW Women's Surgical Ctr, PSC*, 595 US 267, 271 (2022) ("This case concerns a state attorney general's attempt to intervene in a federal appellate proceeding for the purpose of defending the constitutionality of a state law."); *Id.* at 282 ("the Court of Appeals [for the Sixth Circuit] erred in denying the attorney general's motion to intervene").

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B. The Attorney General venue statutes apply to cases both when the Attorney General is a party litigant and where the Attorney General is not a party litigant but files as counsel for the State or the people of the State.

The Attorney General venue statutes apply to situations including when the Attorney General is not the party plaintiff but rather is counsel for the plaintiff because of the express terms of the Attorney General statute, MCL 14.102, as well as the RJA, 600.1631(a).

Both statutes refer to suits brought "in the name of the state or of the people of the statute" and therefore apply to cases when the Attorney General is not a party but rather is counsel for a party. This is based on the plain meaning of "on behalf of" and "in the name of" which are synonymous terms meaning when an action is brought "in the place of someone else." *Sefcik v Home-Owners Ins Co*, unpublished per curiam decision of the Court of Appeals, issued January 28, 2021 (Docket No. 351137) (defining "on behalf of" as "in the name of, on the part of, as the agent or representative of").

This is supported by the preamble to MCL 14.102, Act No. 232, Pub Acts 1919, which states that it is "An Act to supplement the laws of the State relating to the powers and duties of the Attorney General and the institution and prosecution of actions thereby on behalf of the State, to authorize intervention in pending litigation on behalf of the people in certain cases, and to permit the bringing of any suit at law in which the State is a party plaintiff in the circuit court of Ingham County." (Appellant's App'x, p 408.)

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The numerous provisions within the Attorney General enabling act, allowing her to bring actions on behalf of the State, affirm that MCL 14.102 and MCL 600.1631(a) apply to situations when the Attorney General is counsel for the party plaintiff. For example, under MCL 14.101, the Attorney General has the authority to intervene in suits "whenever such intervention is necessary in order to protect any right or interest of the states" such as where authorized by statute to do so. See also for example, MCL 14.134 (the Attorney General may bring actions to collect past due moneys and accounts owing to the State, or any department, commission or institution thereof), MCL 14.143 (the Attorney General may institute civil actions for the recovery of any public moneys related to townships, school districts, or public officers), MCL 14.254(a) (the Attorney General shall represent the people of the state in all charitable trusts), and MCL 14.316(1) (the Attorney General may bring an action to restrain a person from violating the public safety solicitation act).

Here, this is not an action for mandamus or quo warranto and the Attorney General is not the party plaintiff, but rather the state agency is. This is supported by the applicable statute, the Social Welfare Act, which gives authority to the Attorney General to sue in the name of the MDHHS to recover Medicaid overpayments. MCL 400.111c(1)(b) ("Upon the provider's failure to timely comply with the order, the director shall request the attorney general to petition a court of competent jurisdiction to enforce the order.").

Thus, the Attorney General venue statutes apply here, even though the Attorney General is not the party plaintiff.

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C. The Attorney General venue statutes apply when the party litigant is a state agency.

For purposes of the Attorney General venue statutes, "the state" includes state agencies. In particular, when the Attorney General sues in the name of a state agency, the agency is considered a part of the "State" so long as the public interest is involved. *Wayne Co v Philip Morris*, 465 Mich 537, 545–546 (2002).

For example, in *Philip Morris*, the Attorney General sued numerous tobacco companies; however, the parties had previously entered into a settlement agreement, in which the State, as well as its subdivisions, released its claims. 465 Mich at 539. In deciding whether the Attorney General had the authority to release a Michigan county's claims as part of the settlement agreement, the Supreme Court affirmed that the Attorney General possesses authority to sue in the name of the State in matters of state interest, which means that the Attorney General necessarily had the authority to sue in the name of the State's political subdivisions in matters of state interest. *Id.* at 545–546.

The RJA supports the conclusion that "the state" includes state agencies because it includes state agencies in its definition of "State" when discussing actions against governmental units. MCL 600.1615 ("Any county in which any governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, exercises or may exercise its governmental authority is the proper county in which to commence and try actions against such governmental units, except that if the cause of action arose in the county of the principal office of

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such governmental unit, that county is the proper county in which to commence and try actions against such governmental units.").

Michigan case law mirrors this commonsense conclusion that, when the Attorney General sues in the name of a state agency, it is suing on behalf of the public interest and thus on behalf of the State, as has been recognized for more than a century. See, e.g, *Attorney General ex rel Muskegon Booming Co v Evart Booming Co*, 34 Mich 462 (1876); see also *Attorney General v Soule*, 28 Mich 153 (1873). Along those lines, Michigan Courts have treated a "state agency" as "the state" when holding that the Attorney General cannot sue a state agency as a party litigant and represent that agency at the same time without disclosing the conflict. *Attorney General v Mich Pub Serv Comm*, 243 Mich App 487, 506–507 (2000); see also *Olsen v Doerfler*, 225 F Supp 540, 541 (ED Mich, 1963) (a suit by an agent of the state as a nominal party in the name of the state presents a controversy to which the state is a party and cannot be removed based on a controversy between citizens).[5]

In this case, the MDHHS is considered "the state" because it is a state agency and the Attorney General is suing to recover a Medicaid overpayment, which is funded by the people of the State of Michigan. The MDHHS is the single state agency responsible for administering Michigan's Medicaid program. MCL 400.1 *et seq*. When an overpayment has not been repaid, the Social Welfare Act gives

[5] In contrast, when the State is a defendant, the "State" is distinguished from its agencies. See MCL 691.1401(a) (pertaining to governmental immunity); MCL 15.232(h) (pertaining to the Freedom of Information Act).

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authority to the Attorney General to sue to recover the overpayment. MCL 400.111c(1)(b).

The public interest is involved because Medicaid is jointly funded by state and federal taxes and, when a state identifies an overpayment, it has one year before it must return the federal portion. 42 USC 1396b(d)(2)(C). As a result, if an overpayment is not returned, the State has not only lost its share of the overpayment, but it also has to repay the federal share. Not attempting to recover the overpayment would contravene the Full Faith and Credit Clause of the Michigan Constitution, which requires that the State seek reimbursement for overpaid funds such as these. Const 1963, art 9, § 18 ("The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution."). This is especially applicable to this case here, because, in addition to retaining the funds, Defendants have dissipated assets. *In re Lewis' Estate*, 287 Mich 179, 184 (1938).

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CONCLUSION AND RELIEF REQUESTED

This case should have never been transferred to Oakland County as it is neither proper nor more convenient. The Attorney General venue statutes provide that the Attorney General may bring "any" action at law in the name of the State in Ingham County. Even if the tort venue provisions were applied, Ingham County is still a proper county. Finally, the Attorney General venue statutes also apply to cases in which the Attorney General is not the party plaintiff, but rather bringing an action in the name of a state agency.

The State asks this Court to hold that Ingham County is a proper venue for the Attorney General to bring her claims under MCL 14.102 and MCL 600.1631(a). Alternatively, this Court should hold that Ingham County is the place of the original injury in a Medicaid conversion case because it is where the Plaintiff is located at the time of the first actual injury under MCL 600.1629.

Respectfully submitted,

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WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.312(A) and 7.212(B) because, excluding the part of the document exempted, this **merits brief** contains no more than 16,000 words. This document contains 9,194 words.

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