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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,

Plaintiff/Appellant,

v

NRK RX, INC. and RAAD KOUZA,

Defendants/Appellees.

MSC Docket No. 167917
CoA Docket No. 364206
Ingham County Circuit Court
No. 22-441-CZ

BRIEF ON APPEAL - DEFENDANTS/APPELLEES

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING JURISDICTION

Defendants agree the Court has jurisdiction over this appeal. MCR 7.303(B).

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STATEMENT OF QUESTIONS PRESENTED

1. What is the proper relationship between MCL 14.102, MCL 600.1631(a), MCL 600.1641(2), and MCL 600.1629 where the Department of Health and Human Services brings a civil action claiming statutory and common-law conversion?

Plaintiff/Appellant answers:	MCL 14.102 and MCL 600.1631(a) control.
Defendants/Appellees answer:	MCL 600.1641(2) and MCL 600.1629 control.
Trial court answers:	MCL 600.1641(2) and MCL 600.1629 control.
Court of Appeals answers:	MCL 600.1641(2) and MCL 600.1629 control.

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

Plaintiff/Appellant answers:	No.
Defendants/Appellees answer:	Yes.
Trial court answers:	Yes.
Court of Appeals answers:	Yes.

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

Plaintiff/Appellant answers:	Apply to both.
Defendants/Appellees answer:	Apply only where Attorney General/State is named plaintiff.
Trial court answers:	Did not answer.
Court of Appeals answers:	Only apply where Attorney General/State is named plaintiff.

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INTRODUCTION

This appeal concerns a fundamental question of statutory interpretation: whether MCL 600.1641(2) means what it says when it mandates that venue "shall be determined" under MCL 600.1629 whenever any part of a complaint pleads a tort. The trial court and Court of Appeals correctly answered yes, rejecting Plaintiff's attempt to invoke other venue provisions to override the Legislature's clear directive.

Plaintiff's multi-count complaint alleged both tort claims (conversion and statutory conversion) and non-tort claims against Defendants. Under these circumstances, MCL 600.1641(2) unambiguously requires applying the tort venue hierarchy in MCL 600.1629, which led both courts to Oakland County. Oakland County was the location where NRK allegedly refused to return funds thus depriving Plaintiff of those funds. Oakland County is also the location of NRK's registered office. This straightforward application of mandatory statutory language produced the correct result.

Plaintiff's contrary arguments fail on multiple levels. First, Plaintiff abandoned its venue theory in the trial court, conceding that "the special venue provisions for torts would apply" before later changing positions. Second, the permissive Attorney General venue statutes (MCL 14.102 and MCL 600.1631(a)) cannot override MCL 600.1641(2)'s mandatory command that tort venue rules "shall" govern mixed complaints—a principle this Court and the Court of Appeals repeatedly recognize when mandatory venue provisions conflict with permissive ones. Third, even if MCL 14.102 and/or MCL 600.1631(a) applied, they require cases to be brought or commenced by the attorney general in the name of the state, but here the named plaintiff is the Department of Health and Human Services' Office of Inspector General, an "independent and autonomous entity" that is, as a matter of statute, not "the state."

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Finally, Plaintiff's policy arguments ask this Court to rewrite clear statutory language based on administrative convenience. That is the Legislature's prerogative, not this Court's. When statutory text is unambiguous—as MCL 600.1641(2) undeniably is—the role of the judiciary is to apply the statute as written, not to create exceptions the Legislature chose not to include.

The Court of Appeals' published decision correctly interpreted and applied Michigan's venue statutes. This Court should affirm and preserve the Legislature's carefully crafted hierarchy for determining venue in multi-count complaints that include tort claims.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Factual Background and Plaintiff's Complaint.

Defendant NRK RX, Inc., d/b/a Food Town Drugs ("NRK") was enrolled as a provider with the Michigan Department of Health and Human Services ("MDHHS") to provide pharmacy services. (Appellant's Appx, p 8, ¶¶ 1-2; p 9, ¶¶ 10-11.) NRK's registered office is in Oakland County, and the physical location of the pharmacy was in Monroe (Wayne County). (Appellant's Appx, p 8, ¶ 2.) Defendant Raad Kouza ("Kouza") allegedly owns NRK, and resides in Wayne County. (*Id*, ¶ 3.)

Plaintiff claimed that from January 1, 2011 through July 31, 2016, NRK received $612,630.47 in Medicaid payments, but failed to maintain documentation sufficient to justify entitlement to those payments.[1] (Appellant's Appx, p 9, ¶ 13.) MDHHS eventually reduced the alleged overpayment to $541,590.71. (*Id*, p 10, ¶ 17.) NRK contested Plaintiff's allegations. (*Id,* ¶ 18.) On June 19, 2019, an Administrative Law Judge issued a Proposal for Decision, recommending that "the Department's decision to recover $541,590.71 of overpayments made to Petitioner [NRK] be AFFIRMED." (Appellant's Appx, p 48-82.) On July 29, 2019, MDHHS issued a purported Final Order adopting the June 19, 2019 Proposal for Decision. (Appellant's Appx, p 85.)

On July 8, 2022, Plaintiff filed the above-captioned case seeking to collect the alleged overpayment from NRK and NRK's alleged owner, Kouza. Plaintiff's Complaint contains five purported causes of action against both Defendants: (1) "Final Agency Decision," (2) Conversion,

[1] This is unlike some Medicaid overpayment actions that involve allegations that services were billed but not rendered. Plaintiff acknowledges the alleged overpayments only resulted from NRK not producing documents satisfactory to MDHHS showing it bought medication from an authorized wholesaler. (Appellant's Brief, p 4.)

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(3) Statutory Conversion, (4) Breach of Contract, and (5) Unjust Enrichment. (Appellant's Appx, pp 11-17.)

Plaintiff filed its Complaint in Ingham County Circuit Court, asserting that "[v]enue is appropriate in Ingham County as it is the seat of state government. MCL 600.1631(a)." (Appellant's Appx, p 8, ¶ 5.)

II. Defendants' Motion to Change Venue; Plaintiff's Response.

On September 29, 2022, Defendants filed a Motion to Change Venue. (Appellant's Appx, pp 162-178.) Defendants' Motion argued that because Plaintiff's Complaint contained causes of action sounding in tort, the court must analyze venue according to the tort venue statutes, rather than under MCL 600.1631(a). *Id.* Defendants argued that when analyzed under the correct statutes, venue is improper in Ingham County, and the court must transfer venue. *Id*.

On October 21, 2022, Plaintiff opposed Defendants' Motion to Change Venue. (Appellant's Appx, pp 230-272.) Plaintiff's Response abandoned its pled claim that MCL 600.1631(a) set venue in Ingham County, and conceded that the venue statutes applicable to tort actions controlled: "In this case, Plaintiff asserted, among others, two tort claims: conversion and statutory conversion. Therefore, the special venue provisions for torts would apply." (*Id*, p 234.) Plaintiff, though, argued that after application of the tort venue statute (MCL 600.1629), venue was still proper in Ingham County. *Id*.

On November 3, 2022, Plaintiff filed a "Supplemental" brief taking its third position on venue, now arguing that the tort venue statutes did not control because the Complaint did not allege "corporeal injuries." (Appellant's Appx, p 179-180.) Plaintiff ostensibly changed its position based on an oral ruling issued the day before by a different judge in Ingham County, who ruled that the tort venue statutes did not apply unless the plaintiff is seeking damages for personal injury, property damage, or wrongful death. (Appellant's Appx, p 291.) The ruling of that other circuit

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court has since been peremptorily reversed by the Court of Appeals, and this Court denied leave. (*MDHHS-OIG v IRXPlus.com, Inc.*, CoA Docket No. 364030, MSC Docket No. 165869.)

The hearing on Defendants' Motion to Change Venue took place on November 9, 2022. (Appellant's Appx, p 138.)

III. The Trial Court's Ruling.

On November 28, 2022, the trial court issued an opinion and order granting Defendants' Motion to Change Venue, transferring venue to Oakland County. (Appellant's Appx, pp 1-4.) The trial court first recognized that *Angelucci v Dart Properties Inc*, 301 Mich App 209; 836 NW2d 219 (2013) foreclosed any "physical harms only" limitation and that MCL 600.1641(2) applies when any part of the complaint sounds in tort. (Appellant's Appx, p 2.)

Second, after holding that the tort venue statute applied, the Court followed the plain language of MCL 600.1629 and held that the "original injury" in a conversion case "occurs when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use." (Appellant's Appx, p 3.) As applied to the specific allegations here, the trial court held that "the first actual injury occurred when Defendants refused to return the electronic funds to which Plaintiff was entitled, thus converting those funds to defendants' own use. This first actual injury occurred in Oakland County, where Defendant [NRK] has its principle [sic] place of business and its corporate registered office." *Id*.

Thus, the trial court transferred venue to Oakland County pursuant to MCL 600.1629(1)(a)(ii). (Appellant's Appx, p 4.)

IV. Appellate History.

On December 19, 2022, Plaintiff filed an application for leave to appeal in the Court of Appeals (Dkt No. 364206). On June 13, 2023, the Court of Appeals denied the application. On July 11, 2023, Plaintiff filed an application for leave to appeal in this Court (Dkt No. 165868). On

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October 3, 2023, this Court remanded to the Court of Appeals for consideration as on leave granted.

On November 20, 2024, the Court of Appeals issued a published decision affirming the trial court's order transferring venue to Oakland County. (Appellant's Appx, p 353.) The Court of Appeals held that because MCL 600.1641(2) states that where a complaint pleads a cause of action based on tort venue "shall" be determined under MCL 600.1629, and because Plaintiff's Complaint pled two causes of action based on tort, "we must apply MCL 600.1629 to determine proper venue." (Appellant's Appx, p 357.) In other words, the Court rejected Plaintiff's contention that MCL 14.102 and/or MCL 600.1631 trump the mandatory language employed by MCL 600.1641(2) that venue "shall" be determined under MCL 600.1629.

The Court of Appeals then held that when applying MCL 600.1629, "the first step is to determine the county in which the original injury occurred," and here, the "original injury occurred when defendants refused to return the disputed Medicaid funds upon request." (Appellant's Appx, p 358.) The Court held that because the parties did not dispute that the registered office of the corporate defendant was in Oakland County, "[i]t follows, then, that the original injury occurred in Oakland County." *Id.* Thus, pursuant to MCL 600.1629(1)(a)(ii), the Court of Appeals affirmed the trial court's ruling that venue is proper in Oakland County because it was the location of the original injury and the county within which a corporate defendant has its registered office. *Id*; see also MCL 600.1629(1)(a)(ii) (venue proper in the county within which the original injury occurred and in which the corporate registered office of a defendant is located.)

The dissent opined venue could be established under MCL 14.102, MCL 600.1631, MCL 600.1641, or MCL 600.1629, and that venue was proper in Ingham County or Oakland County.

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The dissent also advocated for remand to determine whether venue should nonetheless be transferred to Oakland County for convenience under MCR 2.222(A).

On May 22, 2025, this Court granted leave to address the interplay among the so-called Attorney General venue statutes and the tort venue statutes, the original-injury ruling, and whether the AG venue statutes apply when neither the state nor the AG are the named plaintiff.

V. Related Cases.

At about the same time Plaintiff filed its initial 2022 application for leave to appeal in the Court of Appeals, applications for leave to appeal were filed in related cases brought by the same Plaintiff against at least one of the same Defendants (Raad Kouza). In every case, the Court of Appeals held—consistent with the now published opinion rendered by the Court below in this case—that MCL 600.1641(2) requires venue to be determined by MCL 600.1629.

A. MDHHS-OIG v IRXPlus.com Inc & Kouza et al. ("St. Paul") CoA Case No. 364030, MSC Case No. 165869.

In *St. Paul*, the trial court denied Defendants' Motion to Change Venue, holding that MCL 600.1641(2) did not apply. Defendants filed an application for leave to appeal, and the Court of Appeals peremptorily reversed holding that "[b]ecause some of appellee's causes of action sound in tort, MCL 600.1641(2) applies…." The Court ordered that the trial court determine venue "according to the rules applicable to tort actions as provided in MCL 600.1629."

Plaintiff appealed, and this Court denied leave.

B. MDHHS-OIG v Seaway Pharmacy PC & Kouza et al. ("Seaway") CoA Case No. 366394, MSC Case No. 166140.

In *Seaway*, the trial court denied Defendants' Motion to Change Venue, holding that venue did not have to be determined pursuant to MCL 600.1629. Defendants filed an application for leave to appeal, and the Court of Appeals peremptorily reversed. As in the *St. Paul* case, the Court

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of Appeals held that MCL 600.1641(2) applies and directed "that venue be determined according to the rules applicable to tort actions as provided in MCL 600.1629."

Plaintiff appealed, and this Court denied leave.

C. MDHHS-OIG v Rockwood Pharmacy PC & Kouza et al. ("Rockwood") CoA Case No. 366395, MSC Case No. 166141.

In *Rockwood*, the trial court also denied Defendants' Motion to Change Venue on the basis that venue did not have to be determined pursuant to MCL 600.1629. On Defendants' application, the Court of Appeals peremptorily reversed, holding that MCL 600.1641(2) applies and directed "that venue be determined according to the rules applicable to tort actions as provided in MCL 600.1629."

Plaintiff appealed, and this Court denied leave.

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STANDARD OF REVIEW

Venue is controlled by statute, and questions of statutory interpretation are reviewed de novo. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). Courts interpreting statutes must discern the intent of the Legislature based on the words expressed in the statute. *Massey v Mandell*, 462 Mich 375, 379-80; 614 NW2d 70 (2000). It is a "fundamental principle of statutory construction…that a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Id.* at 380 (internal quotations omitted). Likewise, "when the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is to apply the terms of the statute to the circumstances in a particular case." *Id* citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). Words used by the Legislature are to be given "their common, ordinary meaning." *Id* citing MCL 8.3a.

The Court reviews a trial court's ruling on a motion to change venue under the clearly erroneous standard, which the reviewing court will find only when it is left with a definite and firm conviction that the trial court made a mistake. *Dimmitt & Owens Financial, Inc*, 481 Mich at 624.

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ARGUMENT

This case turns on three straightforward principles of statutory interpretation. First, MCL 600.1641(2) mandates that venue "shall" be determined under MCL 600.1629 when any part of a complaint alleges a tort, and this mandatory command cannot be overridden by the permissive language in MCL 14.102 and MCL 600.1631(a). Second, applying MCL 600.1629's hierarchy as required leads to the conclusion that venue is proper in Oakland County. That is where the original injury occurred when defendants allegedly refused to return the funds, and Oakland County is also where the corporate defendant has its registered office. Third, even if the Attorney General venue statutes could somehow apply, they only reach cases where the State or Attorney General is the named plaintiff, not cases like this where the named plaintiff is an independent office within a Department of the State, and the Attorney General merely serves as its counsel. The trial court and Court of Appeals correctly applied these principles, and this Court should affirm.

I. MCL 600.1641(2) Controls and Requires Venue to be Determined by MCL 600.1629; Neither MCL 14.102 nor MCL 600.1631(a) Provide Otherwise.

MCL 600.1641(2) is a mandatory venue statute. It *requires* venue to be determined under § 1629 where any part of a complaint pleads a tort. It is clear, unambiguous, and without exception:

> 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.
>
> MCL 600.1641(2) (emphasis added).

Because MCL 600.1641(2) states venue "shall" be determined under section 1629, venue must be analyzed pursuant to MCL 600.1629. *See Smitter v Thornapple Tp*, 494 Mich 121, 136; 833 NW2d 875 (2013) ("The Legislature's use of the word 'shall' generally indicates a mandatory directive, not a discretionary act.")

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Plaintiff argues on appeal that MCL 600.1631(a) and/or MCL 14.102 control over MCL 600.1641(2). Both are permissive and otherwise general venue statutes that apply to actions commenced by the attorney general in the name of the state. MCL 600.1631(a) states:

> 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.
>
> MCL 600.1631(a) (emphasis added.)
>
> MCL 14.102 is similar:
>
> 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. 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 14.102 (Emphasis Added.)

A. Plaintiff Abandoned its Claim that MCL 14.102 and/or MCL 600.1631(a) Control.

Plaintiff's Complaint relied on MCL 600.1631(a) to try to establish venue in Ingham County. (Appellant's Appx p 8, ¶ 5.) Plaintiff abandoned that claim when it admitted venue is controlled by MCL 600.1641(2) and MCL 600.1629. Plaintiff's response to Defendants' Motion to Change Venue conceded:

> [S]pecial venue rules apply to tort claims and are primarily concerned with bringing the case where the resulting injury occurred. MCL 600.1629; see also MCL 600.1641(2). In this case, Plaintiff asserted, among others, two tort claims: conversion and statutory conversion. *Therefore, the special venue provisions for torts would apply*.
>
> (Plaintiff's Response to Defendants' Motion to Change Venue, Appellant's Appx., p 234 – emphasis added.)

"A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Czymbor's Timber, Inc v City of Saginaw*, 269 Mich App 551; 711 NW2d 442 (2006).

After first conceding MCL 600.1641(2) required analysis under MCL 600.1629, Plaintiff backtracked, arguing § 1641(2) should not apply because Plaintiff's Complaint did not seek damages for personal injury, property damage, or wrongful death, even though Plaintiff alleged two torts. (Appellant's Appx, p 180.)[2]

Plaintiff also now claims MCL 14.102 takes priority over MCL 600.1641(2). Although Plaintiff omitted it from its Brief on Appeal, Plaintiff admitted in its Application to this Court that

[2] Plaintiff's Brief on Appeal also appears to abandon its argument that MCL 600.1641(2) does not apply because it does not seek damages for personal injury, property damage, or wrongful death. If this Court considers that argument, it should be rejected for the reasons set forth by the trial court, the Court of Appeals in this case, and the Court of Appeals' opinion in *Angelucci*, 301 Mich App 209. In *Angelucci*, the Court of Appeals convened a special panel to resolve a conflict between *Angelucci v Dart Props, Inc*, 298 Mich App 592; 828 NW2d 724 (2012), vacated in part *Angelucci v Dart Props, Inc*, 298 Mich App 802 (2012), and *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 94; 738 NW2d 770 (2007). In *Angelucci*, the plaintiff argued that although its allegations included tort claims, MCL 600.1641(2) should not apply because it was "not seeking damages for 'personal injury, property damage, or wrongful death.'" *Angelucci*, 301 Mich App at 213. The original panel in *Angelucci* agreed based on the Court's prior holding in *Provider Creditors Comm*, which had adopted an interpretation consistent with the plaintiff's interpretation. However, the *Angelucci* panel voiced its disagreement with the holding in *Provider Creditors Comm*, and invoked the conflict resolution procedure set forth in MCR 7.215(K). The conflict panel in *Angelucci* overruled *Provider Creditors Comm*, and held that "MCL 600.1641(2) applies if one of the causes of action pleaded in a multiple cause of action complaint is based on tort, regardless of whether damages sought are for personal injury, property damage, or wrongful death." *Angelucci*, 301 Mich App at 217 (Emphasis Added). Here, Plaintiff's Complaint alleges conversion and statutory conversion. (Appellant's Appx p 14 Count II (alleging conversion for failing to repay an alleged overpayment); p 15 Count III (alleging statutory conversion in violation of MCL 600.2912a(1)(a).) There is no dispute that conversion and statutory conversion are torts. *Dep't of Agriculture v Appletree Mktg, LLC*, 485 Mich 1, 18; 779 NW2d 237 (2010) ("Conversion is an intentional tort"); *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 361; 871 NW2d 136 (2015) (statutory conversion is a "tort established in MCL 600.2919a(1)(a)…"). Thus, the trial court correctly held that MCL 600.1641(2) required venue to be determined pursuant to MCL 600.1629 even thought Plaintiff's Complaint did not seek damages for personal injury, property damage, or wrongful death.

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it never cited MCL 14.102 in the trial court. (Appellant's Application, p 8: "Here, it is true that the State did not rely on MCL 14.102 in the trial court.") The Court of Appeals recognized Plaintiff "did not cite MCL 14.102 in any of its filings in the trial court or in this Court" and that Plaintiff "first mention[ed] MCL 14.102 in its November 22, 2023 appellate brief on remand." (Appellant's Appx, p 359.) "Michigan generally follows the 'raise or waive' rule of appellate review." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). To preserve an issue for appellate review, a litigant must raise it in the trial court. *Id*. Accordingly, Plaintiff's entire argument that MCL 14.102 applies should be disregarded as unpreserved. *Herald Co, Inc v City of Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998) (explaining that appellate courts seldom review issues raised for the first time on appeal). Plaintiff's Brief on Appeal did not address waiver at all.

Although the Court of Appeals recognized that Plaintiff "failed to preserve this issue for appeal," over Defendants' objection, the Court of Appeals still considered the arguments that MCL 600.1631(a) and/or MCL 14.102 apply before ultimately rejecting them. This Court should similarly find that Plaintiff failed to preserve. Even if this Court follows the Court of Appeals' lead and considers the arguments, it should also reject them.

B. MCL 14.102 and MCL 600.1631(a) are Permissive Venue Statutes.

Neither MCL 600.1631(a) nor MCL 14.102 override MCL 600.1641(2)'s clear and unmistakable requirement that venue "shall" be determined by MCL 600.1629 where any part of a multi-count complaint pleads a tort. MCL 14.102 and MCL 600.1631(a) are both *permissive* venue statutes; MCL 600.1641(2) is mandatory.

This Court and the Court of Appeals routinely hold that mandatory venue statutes take priority over permissive statutes. For example, in *Attorney Gen on Behalf of People ex rel Michigan Dep't of Labor v Kent Co Rd Comm*, 184 Mich App 525; 459 NW2d 11 (1990), the attorney general sued in Ingham County asserting venue was proper under MCL 600.1631(a). The

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defendant claimed venue should have been determined under MCL 600.1615, which applies to actions against a governmental unit and sets the location of that unit as "the" proper venue. The Court of Appeals held that the indefinite article "a" in § 1631(a) was an expression of the Legislature's intent that Ingham County was merely "a" proper venue. On the other hand, § 1615 used mandatory language designating the home county of a governmental unit as "the" proper venue. Thus, because § 1615 used mandatory language, and § 1631(a) was merely permissive, venue should have been determined under § 1615 rather than § 1631(a).

The same is true here. MCL 600.1641(2) employs mandatory language much like § 1615, stating that in any action alleging a tort "venue *shall* be determined under the rules applicable to actions in tort as provided in section 1629." MCL 600.1641(2). *People v Lockridge*, 498 Mich 358, 387; 870 NW2d 502 (2015) ("As we have stated many times, 'shall' indicates a *mandatory* directive.") (Emphasis in original.) On the other hand, MCL 14.102 uses permissive and non-mandatory language much like that used in MCL 600.1631, stating that a cause of action brought by the attorney general "may" be commenced in Ingham County. *See Browder v Intl Fid Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982) ("A necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to the mandatory word 'shall' and the permissive word 'may' unless to do so would clearly frustrate legislative intent….").

On appeal, Plaintiff asserts MCL 600.1629 is permissive in the same way as MCL 600.1631, such that venue is appropriate in Ingham County under MCL 600.1631. *Compare* MCL 600.1629(1)(a) ("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") with MCL 600.1631(a) ("county in which the seat of state government is located is a proper county in which to commence and try the following actions"). But Plaintiff's argument ignores MCL 600.1641(2) which, by employing the

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mandatory verb "shall," requires venue to be analyzed under MCL 600.1629 where any part of a multi-count complaint pleads a tort. The plain language of MCL 600.1641(2) is clear, unambiguous, and must be enforced as written. *United States Fid & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 12; 795 NW2d 101 (2009) ("Court must enforce clear and unambiguous statutory provisions as written.") The Court of Appeals appropriately recognized as much when it held: "we agree with defendants that MCL 600.1631(a) and MCL 14.102 are permissive venue statutes, but MCL 600.1641(2) is mandatory and is controlling here." (Appellant's Appx, p 359.) The Court also held that it "cannot fathom a more unambiguous directive than that found in MCL 600.1641(2), 'venue shall be determined under the rules applicable to actions in tort as provided in section 1629.'" (Appellant's Appx, p 360.)

Plaintiff similarly claims it can choose whether to follow MCL 600.1631(a) or MCL 600.1629 because MCL 600.1629 uses the phrase "a county."[3] Plaintiff's interpretation would render MCL 600.1641(2) meaningless. "Courts must interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Esurance Prop & Cas Ins Co v Michigan Assigned Claims Plan*, 507 Mich 498, 508–09; 968 NW2d 482 (2021). Plaintiff's argument that it has the choice to follow MCL 600.1631(a) or MCL 600.1629 disregards MCL 600.1641(2)'s directive that venue "shall" be determined by MCL 600.1629 where the complaint alleges a tort. Nothing about MCL 600.1629 permits looking to MCL 600.1631(a). If MCL 600.1629 permitted Plaintiff to choose whether to follow MCL 600.1629 or apply other substantive venue statutes (such as MCL 600.1631(a) or MCL 14.102), then MCL 600.1641(2)'s requirement that venue be determined by

[3] *See* Appellant's Brief, p 7: "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." (*Emphasis in original.*)

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following MCL 600.1629 in any action alleging a tort has no meaning or utility. Plaintiff analogizes venue statutes to "arrows" and "stop signs," arguing that MCL 600.1641(2) is merely an "arrow" that directs readers to MCL 600.1629. (Appellant's Brief, pp 11 & 13.) Even if that were true, the "arrow" in MCL 600.1641(2) directing application of MCL 600.1629 is useless if Plaintiff can choose to ignore that arrow by following MCL 14.102, MCL 600.1631(a), or any other venue statute applicable to a non-tort cause of action in the Complaint.

The Court of Appeals recognized that interpreting the statutes as Plaintiff advocates would render MCL 600.1641(2) meaningless:

> [Plaintiff's] claim that it can choose whether to follow MCL 600.1631(a) or MCL 600.1629 because the latter statute uses the phrase 'a county' must be rejected. This interpretation ignores MCL 600.1641(2)'s directive that trial courts 'shall' follow MCL 600.1629, and there is nothing in MCL 600.1629 that allows MCL 14.102 or MCL 600.1631(a) to be determinative of venue. We agree with defendants that if [Plaintiff's] conclusion that it can choose whether to apply MCL 600.1629 or MCL 600.1631(a) is allowed, then the mandatory language of MCL 600.1641(2) is rendered meaningless and superfluous.
>
> Appellant's Appx, pp 360-61.

The Court of Appeals cited Justice Corrigan's concurring opinion in *Massey v Mandell*, 462 Mich 375; 614 NW2d 70 (2000), which aptly explained the practical effect of MCL 600.1641(2): MCL 600.1629 trumps over other venue provisions where plaintiff alleges a tort. Justice Corrigan stated:

> Subsection 1641(2) creates a preference for § 1629 over the other substantive venue statutes.
>
> Consider, for instance, a complaint that joins a cause of action sounding in tort with a cause of action sounding in contract. The proper venue for the tort cause of action would be determined by reference to § 1629, which is the substantive venue provision applicable to tort actions. The proper venue for the contract cause of action would be determined by reference to § 1621, which is the substantive venue provision applicable to contract actions. Under the general rule set forth in subsection 1641(1), either of these venues would be permissible for the entire case. Under the exception set forth in subsection 1641(2), however, only the venue determined proper by reference to § 1629 would be permissible for the entire case.

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> Thus, the practical effect of subsection 1641(2) is that, in cases involving joinder of multiple causes of action, venues determined by reference to § 1629 take precedence over venues determined by reference to the other substantive venue provisions.

Id. at 389-390 (Corrigan, J concurring).

Plaintiff's interpretation of MCL 600.1629 would render MCL 600.1641(2) meaningless, and is precisely what Justice Corrigan foreshadowed and counseled against.

Even if the statutes were not clear on their face, their legislative history provides additional support. MCL 14.102 was enacted in 1919, 40+ years before the Revised Judicature Act. By enacting MCL 600.1641(2) in 1995, the Legislature recognized that venue statutes might seemingly conflict or otherwise provide varying means to determine venue. Section 1641(2) serves as the "tie breaker" when the complaint pleads a tort and where there is any question about which venue statute to apply, because it states that "venue shall be determined under the rules applicable to actions in tort as provided in section 1629" whenever any of the causes of action "is based on tort." MCL 600.1641(2) (emphasis added). It contains no exception for suits filed by the Attorney General's office.

Perhaps equally as powerful as what the Legislature said is what the Legislature did *not* say. If the Legislature had intended that venue in a multi-count complaint containing a tort be determined under MCL 600.1629 except as provided by MCL 14.102 or MCL 600.1631(a), it could have said so. It didn't. Instead, it said venue "shall" be determined under MCL 600.1629, without exception. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 36; 528 NW2d 681 (1995) (holding that where the Legislature did not articulate any exceptions in a statute, it is "inappropriate for us to create one now."); *Arends v Grand Rapids R Co*, 172 Mich 448, 450-51; 138 NW 195 (1912) ("it is not the province of this court to make an exception where the Legislature has made none. The rule of construction is that the exception, if any, shall appear in the act.") The fact that the

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Legislature chose not to include any exceptions to MCL 600.1641(2) underscores that venue "shall" be determined by MCL 600.1629 where any part of a multi-count complaint pleads a tort.

C. Interpreting MCL 600.1641(2) as Controlling Over MCL 14.102 and MCL 600.1631(a) Avoids a Conflict.

Even if this Court were to determine that the statutes are ambiguous, the Court should interpret the statutes in the manner that avoids a conflict. *People v Stephan*, 241 Mich App 482, 498; 616 NW2d 188 (2000) ("if two statutes lend themselves to a construction that avoids conflict, that construction should control.")

Interpreting MCL 600.1631(a) and MCL 14.102 as permissive, and MCL 600.1641(2) as requiring venue to be determined under MCL 600.1629, is the only way to read all four statutes harmoniously to avoid a conflict. Plaintiff's contention that MCL 600.1631(a) and MCL 14.102 give it the option to file and maintain this action in Ingham County conflicts with the mandate in MCL 600.1641(2) that any action pleading a tort requires venue to be determined under MCL 600.1629. The correct way to apply the venue statutes is that the Attorney General may file an action in the name of the State in Ingham County, unless the Complaint alleges a tort, in which case venue "shall" be determined under § 1629. MCL 600.1641(2). In this regard, the Attorney General is no different than any other lawyer filing a case subject to various permissive venue statutes (such as MCL 600.1621), but who must follow the requirements of MCL 600.1641(2) and MCL 600.1629 where part of the Complaint alleges a tort.

D. MCL 600.1641(2) is More Specific Than MCL 14.102 and/or MCL 600.1631(a).

If MCL 600.1631(a) and MCL 14.102 are found to irreconcilably conflict with MCL 600.1641(2), MCL 600.1641(2) would still control because it is more specific than MCL 600.1631(a) and MCL 14.102.

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"If two statutes conflict, then the specific prevails as an exception to the general." *In re Forfeiture of Chevrolet Blazer*, 183 Mich App 182, 184; 454 NW2d 201 (1990).

MCL 14.102 and MCL 600.1631(a) are general. Read by themselves, they apply to every action filed by the Attorney General in the name of the State without regard to the causes of action alleged, subject matter, or relief sought. On the other hand, MCL 600.1641(2) applies only to a specific subset of cases that plead a tort as part of a multi-count complaint. So even if the statutes conflict, the general rule in MCL 600.1631(a) and MCL 14.102 must yield to the more specific rule in MCL 600.1641(2) requiring venue in tort cases to be determined under § 1629.

E. MCL 14.102 is not 'Substantive' in a Way That Displaces MCL 600.1641(2).

Plaintiff's "substantive-versus-procedural" framing of MCL 14.102 fails. To begin, Plaintiff does not explain why the distinction has any application here given that Michigan's substantive-procedural distinction is about retroactive versus prospective application of statutes. See *Buhl v City of Oak Park*, 507 Mich 236, 247; 968 NW2d 348 (2021).

Even if the distinction mattered here, Plaintiff's claim that MCL 14.102 is "substantive" whereas MCL 600.1641(2) is merely "procedural" fails to create a meaningful distinction that affects the outcome. Both statutes are venue provisions enacted by the Legislature to prescribe where cases may be filed. Michigan law recognizes that "[v]enue is controlled by statute." *Dimmitt & Owens*, 481 Mich at 624. MCL 14.102 does not create a substantive cause of action, impose new duties, or confer remedial rights; it simply permits certain actions to be filed in Ingham County using classically permissive language ("may"). Like other venue statutes, MCL 14.102 addresses "where" an action may be filed, not the underlying legal rights or obligations of the parties.

More fundamentally, even accepting Plaintiff's characterization, the Legislature has spoken clearly on priority: when any part of a complaint pleads a tort, venue "shall be determined

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under the rules applicable to actions in tort as provided in section 1629." MCL 600.1641(2). This mandatory language creates what Justice Corrigan described as "a preference for § 1629 over the other substantive venue statutes." *Massey v Mandell*, 462 Mich 375, 389-90 (Corrigan, J., concurring). The Court of Appeals correctly applied this directive and held that MCL 600.1641(2) "is mandatory and is controlling here" because it uses the word "shall," while MCL 14.102 and MCL 600.1631(a) are permissive. (Appellant's Appx, p 359). Attempting to elevate MCL 14.102 above MCL 600.1641(2) based on a substance-procedure distinction would render the Legislature's tie-breaking rule nugatory, which Michigan courts refuse to do. *Esurance Prop & Cas Ins Co*, 507 Mich at 508–09. The published opinion below properly rejected Plaintiff's approach and enforced the clear statutory hierarchy the Legislature established in MCL 600.1629.

II. Venue is Proper in Oakland County per MCL 600.1629.

After determining that MCL 600.1641(2) applied, the trial court and Court of Appeals appropriately turned to MCL 600.1629, which sets forth a hierarchy that courts must use to determine venue in an action alleging a tort.

MCL 600.1629 states:

> (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.

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(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.

In summary, a complaint containing a cause of action sounding in tort must be filed in the county in which "the original injury" occurred and in which "the defendant" resides, has a place of business, conducts business, or in which the corporate registered office of "a defendant" is located. MCL 600.1629(1)(a). If no such county meets these criteria, then venue is proper where "the original injury" occurred and in which the *plaintiff* resides, has a place of business, conducts business, or is the location of plaintiff's corporate registered office. MCL 600.1629(1)(b). If no counties meet either criteria, then the court looks to whether there is a county within which both "the plaintiff" and "the defendant" reside, have a place of business, conduct business, or have corporate registered offices. MCL 600.1629(1)(c).

A. The Original Injury Occurred in Oakland County.

The first step of any analysis under MCL 600.1629 is to determine the location of "the original injury." This requires looking at the allegations in the Complaint. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 631; 752 NW2d 37 (2008). Plaintiff's Complaint did not allege Defendants committed conversion by taking property that did not belong to them. On the contrary, Plaintiff's Complaint alleged Defendants committed conversion by failing to return funds Plaintiff claimed Defendants were no longer entitled to keep following a

demand for return of those funds by Plaintiff. (Appellant's Appendix, p 14, ¶¶ 46-49.) In actions alleging this type of conversion, "the original injury" occurs where the plaintiff is deprived of the property, which is also where the defendant is located when it fails to turn over possession of the property.

To Defendants' knowledge, the only appellate decision to address the location of the original injury in this type of alleged conversion is *Ground Development, Inc. v Doyle & Lang,* unpublished opinion *per curiam* of the Court of Appeals, issued November 1, 2005 (Docket No. 255202) (Appellant's Appx, p 177). In *Ground Development*, the defendant leased a piece of equipment to the plaintiff but repossessed the equipment for failing to make appropriate payments. *Id*. The plaintiff then issued a check for the full amount and contended it was entitled to the equipment. *Id.* The Court of Appeals held that the "original injury" occurred when the plaintiff made final payment under the lease, expected to obtain ownership, and the defendant refused to relinquish the equipment. *Id.* In that case, the "original tort injury occurred in Gladwin County" where the defendant was located when it refused to return the equipment. *Id*.

Here, as the trial court and Court of Appeals recognized, Plaintiff's first purported injury occurred when Defendants allegedly refused to return the funds to which Plaintiff claimed it was entitled, thus allegedly converting the funds to Defendants' own use and depriving Plaintiff of those funds. (Appellant's Appx p 014, ¶¶ 46-49.) Because neither Defendant was in Ingham County at the time of the alleged conversion, the trial court and Court of Appeals recognized that Defendants could not possibly have harmed (i.e., refused to turn over and thus deprived Plaintiff of funds) in Ingham County. Instead, the original injury occurred in Oakland County, where Defendants were located when they allegedly refused to return and therefore deprived Plaintiff of the funds.

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Below, Plaintiff argued *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618 (2008) rejected *Ground Development*, but that is not true. *Dimmitt* did not involve a claim of conversion. It was a malpractice case. The trial court recognized this, and addressed *Dimmitt* in its opinion and order. The trial court acknowledged that *Dimmitt* separated the wrongful conduct from the resulting injury, but held that "*Ground Development* and *Dimmitt* are not necessarily in conflict as it relates to the location of the first actual injury in a conversion case." (Appellant's Appx, p 3.) The trial court properly held that in a conversion case like this, the first actual injury occurs "when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use." *Id*.

Plaintiff tries to argue around this common-sense holding by claiming that "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." (Appellant's Brief, p 22.) Plaintiff's argument mischaracterizes the allegations it pled in its own Complaint. The Complaint does not allege Defendants wrongfully took (i.e., converted) funds from Plaintiff in Ingham County. On the contrary, Plaintiff's Complaint alleged the act of conversion occurred when Plaintiff made a demand for repayment, and Defendants refused to return the funds thereby allegedly converting them. As the trial court recognized, this occurred in Oakland County, where Defendant was located. As a result, Plaintiff's "injury"—that is, the place where it was deprived of its funds—occurred in Oakland County. The trial court ruled:

> As cited by Plaintiff's Complaint, ¶45, conversion occurs where the plaintiff had a right to immediate possession of some property, plaintiff made a legal demand to for [sic] that property, and 'the defendant under these circumstances refused to deliver the property to the plaintiff.' The Court finds that, in line with *Ground Development*, the first actual injury in a conversion case occurs when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use. In this case, then, the first actual injury occurred when Defendants refused to return the electronic funds to which Plaintiff was entitled,

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> thus converting those funds to Defendants' own use. This first actual injury occurred in Oakland County, where Defendant [NRK] has its principle [sic] place of business and its corporate registered office.
>
> Appellant's Appx, p 3.

The Court of Appeals similarly recognized that Plaintiff's Complaint alleged that it was injured when Defendants refused to return the funds upon request, distinguishing this case from other cases that might also allege conversion:

> Thus, with *Ground Development* as a guide, the original injury occurred when defendants refused to return the disputed Medicaid funds upon request. We acknowledge that a statutory conversion claim under MCL 400.111b(16) could encompass other types of conduct and other types of harms, including the harm that occurs as soon as a defendant wrongfully obtains money from state coffers, i.e., a conversion akin to that of straight-out Medicaid fraud. But that is not how DHHS alleges this conversion occurred. DHHS filed this case after administrative proceedings that determined the amount of the overpayment and defendants failure to return the overpaid funds. Thus, DHHS alleges that defendants' refusal to return the funds to it at that point constitutes a single injury.
>
> Appellant's Appx, p 358.

Plaintiff acknowledges the distinction between the loss of possession of funds and the alleged subsequent inability to use those funds to repay the federal government. (Appellant's Brief, p 22: "the State suffered the loss of possession of its funds and then repaid the federal share back to the U.S. Government." (Emphasis added)). But by arguing that its injury was somehow tied to its alleged repayment of a portion of the funds to the federal government, Plaintiff is conflating the injury with a later realized *consequence of the injury*.[4] Accepting the allegations as true, the inability to pay money to the federal government is, at best, a consequence of the original injury (alleged deprivation of funds).

[4] *See Moll v Abbott Laboratories,* 444 Mich 1, 18; 506 NW2d 816 (1993) (distinguishing, for purposes of the "discovery rule," between an injury and "a later realized consequence of the injury").

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Plaintiff cites a handful of non-binding and unpublished cases from various other courts to argue its original injury occurred in Ingham County. None of those cases is analogous, none analyzed venue, and none even mentioned MCL 600.1629, let alone addressed determination of where a plaintiff's "original injury" occurs in a conversion case. *LGT Enterprises, LLC v Hoffman*, 614 F Supp 2d 825 (ED Mich, 2009) and *Bagsby v Gehres*, 195 F Supp 2d 957 (ED Mich, 2002) analyzed minimum contacts for purposes of attempting to establish personal jurisdiction. To the extent that *LGT* is even remotely analogous, the case supports Defendants, not Plaintiff, because the court found that a Nevada resident's alleged conversion of funds in Nevada from a Michigan resident could not establish personal jurisdiction in Michigan. *Prescription Supply, Inc v Musa*, No. 16-12070, 2017 WL 747601 (ED Mich, 2017) addressed a choice of law issue and applied an Ohio choice of law analysis. It has no relevance to this case. Moreover, the court in *Prescription Supply* dismissed the plaintiff's conversion claim because it found there was no allegation that the defendant failed to return specific, identifiable funds. *Id.* at *7.

B. Venue is Proper in Oakland County Pursuant to MCL 600.1629(a)(1)(ii).

After determining that the location of the original injury was Oakland County, MCL 600.1629 next requires determining whether "the defendant resides, has a place of business, or conducts business" in the same county as the location of the original injury. MCL 600.1629(1)(a)(i). Plaintiff, Defendants, the trial court, and the Court of Appeals all agree that, pursuant to existing Supreme Court precedent, subsection (1)(a)(i) does not apply here because there is more than one defendant. *See Massey*, 462 Mich at 385 (subpart (1)(a)(i) does not apply to cases with more than one defendant because it refers to "the" defendant, not "a" defendant.)

Although subpart (1)(a)(i) does not apply, subpart (1)(a)(ii) does apply. That subpart sets venue in the county within which the original injury occurred and in which the corporate registered office of "a" defendant is located. Here, the trial court and Court of Appeals acknowledged that

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the parties "do not dispute that NRK's registered office is located in Oakland County." (Appellant's Appx, p 358.) Thus, the trial court and Court of Appeals held that venue is proper in Oakland County because the original injury allegedly caused by NRK and the corporate registered office of NRK are both located in Oakland County. Specifically, the Court of Appeals held:

> The parties also do not dispute that NRK's registered office is located in Oakland County. It follows, then, 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. In light of these circumstances, Oakland County is a proper venue under MCL 600.1629(1)(a)(ii).
>
> Appellant's Appx, p 358.

Under MCL 600.1629(1)(a)(ii), the alleged original injury occurred in Oakland County, and because the corporate registered office of NRK is also in Oakland County, venue was appropriately transferred to Oakland County.

Citing *Massey*, Plaintiff's Brief claims that "as a preliminary matter, [MCL 600.1629](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 where there are multiple defendants." (Appellant's Brief, p 17.) While that is true, Plaintiff's Brief says nothing about whether MCL 600.1629(1)(a)(ii) applies. The trial court and Court of Appeals both found that it does. Plaintiff's Brief omitted any analysis of subpart (1)(a)(ii), instead skipping ahead to subpart (1)(b), which neither the trial court nor the Court of Appeals reached because the analysis under MCL 600.1629 stops when subpart (1)(a)(ii) is satisfied.

C. Even if MCL 600.1629(1)(d) Applies, Venue is Still Improper in Ingham County but Proper in Oakland.

In the alternative, Plaintiff argues that venue is proper under MCL 600.1629(1)(d), which states that where a county does not satisfy the criteria under §1629(1)(a), (b), or (c), then a county that satisfies the criteria under MCL 600.1627 or MCL 600.1621 is a county in which to file and

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try the action. Plaintiff then posits that venue is proper in Ingham County under § 1627 because it is where the cause of action arose. Plaintiff is wrong for at least three reasons.

First, like the trial court and Court of Appeals, this Court should never reach an analysis under § 1629(1)(d), because subsection (1)(a)(ii) is satisfied by virtue of the fact that Oakland County is the location of the original injury and the location of NRK's registered office.

Second, even if the Court did reach an analysis under § 1629(1)(d), § 1627 looks to where a cause of action arose. Plaintiff's Complaint alleged Defendants committed conversion by failing to repay the alleged overpayment after receiving a demand for same. (Appellant's Appx p 14**,** ¶ 46-48.) Plaintiff did not present any evidence—or even make any allegations—that Defendants' alleged refusal to repay occurred in Ingham County or that the location of where Plaintiff was allegedly deprived of its funds was Ingham County.

Third, Plaintiff omits any analysis under MCL 600.1621. MCL 600.1621 provides that venue is proper where "a defendant" (as opposed to "the defendant") "resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located…." MCL 600.1621. There is no allegation that any defendant resides, has a place of business, or conducts business in Ingham County. Again, Plaintiff alleges Kouza resides in Wayne County, and that NRK is in Oakland County. (Appellant's Appx p 8, ¶¶ 2-3.) Nor has Plaintiff argued or submitted evidence establishing that Defendants have "systematic and continuous dealings inside [Ingham] county or conducts its 'usual and customary business' within [Ingham] county…" sufficient to satisfy the "conducts business" criteria in § 1621. *Miller v Allied Signal, Inc*, 235 Mich App 710, 719; 599 NW2d 110 (1999) citing *Chiarini v John Deere Co*, 184 Mich App 735, 738; 458 NW2d 668 (1990). Plaintiff bears the burden of proof and never presented any evidence—nor even made any allegations in its Complaint—that either Defendant resides in or

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conducts business in Ingham County. *Johnson v Simongton*, 184 Mich App 186, 188; 457 NW2d 129 (1990) ("When the defendant challenges venue, the plaintiff has the burden to establish that the county he chose is a proper venue.")

D. Plaintiff's Public Policy Argument Fails.

Plaintiff's argument that public policy favors venue in Ingham County because it "facilitates evidence collection and availability" (Appellant's Brief, p 26) misses the mark.

The trial court did not change venue under MCR 2.222(A) for convenience nor apply a convenience standard. Instead, the trial court granted the motion under MCR 2.223, finding that venue was improper in Ingham County under the plain language of the venue statutes as applied to the allegations in Plaintiff's Complaint.

In making its argument, Plaintiff is seemingly asking this Court to create an exception to statutory venue rules based on policy considerations. This request asks the wrong branch of government for relief. The Legislature writes venue statutes. This Court interprets them. And when statutory language is clear, courts cannot rewrite it based on policy preferences. *People v Harris*, 499 Mich 332, 356; 885 NW2d 832 (2016) (It is not the role of the Court "to rewrite the law or substitute our own policy judgment in the face of the text of the statute…."). The venue statutes contain clear language directing how to determine where tort claims must be filed. MCL 600.1629. The Legislature can change the venue statutes if the current rules create problems for the Office of Inspector General or Attorney General. Courts cannot.

III. MCL 14.102 or MCL 600.1631(a) Only Apply to Actions in Which the State of Michigan or the Attorney General are the Named Plaintiff.

This Court does not need to, and should not, reach the question of whether MCL 14.102 or MCL 600.1631(a) only apply to actions in which the State of Michigan or the Attorney General are the named plaintiff because MCL 600.1641(2) requires venue to be determined by MCL

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600.1629. However, to the extent the Court addresses the question, it should rule consistent with the Court of Appeals that these statutes only apply to cases in which the Attorney General or the State are the named plaintiff, neither of which is true here. (Appellant's Appx, p 361.)

MCL 600.1631(a) states it only applies to actions "commenced by the attorney general in the name of the state" and MCL 14.102 only applies to cases "brought by the attorney general in the name of the state." This case was not "brought" or "commenced" in the name of the state or the attorney general. The case was "brought" or "commenced" by the Department of Health and Human Service's Office of Inspector General, and the Attorney General's office is simply the lawyer representing DHHS-OIG. The plain language of the statutes control. "The principal goal of statutory interpretation is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018).

A. MCL 14.102 and MCL 600.1631(a) Only Apply Where the Attorney General is the Named Plaintiff.

Plaintiff's claim that the statutes apply any time the attorney general is acting as counsel is at odds with their plain language. By only applying to actions "brought by the attorney general" (MCL 14.102) and "commenced by the attorney general" (MCL 600.1631(a)), the statutes are limited to cases in which the Attorney General's office files an action as the plaintiff. The Court below illustrated this point well: "To illustrate the point, suppose that John Doe, an ordinary citizen, files a tort complaint against a particular defendant. We would correctly say that the action is "brought" or "commenced" by John Doe, not the attorney or law firm responsible for drafting and filing the complaint. So too here." (Appellant's Appx, p 361 n 15.)

The Attorney General frequently sues in its own name, but did not do so here. For example, in *Attorney Gen v Diamond Mortgage Co*, 414 Mich 603; 327 NW2d 805 (1982), the Attorney

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General was the named plaintiff in a case alleging violations of the Michigan Consumer Protection Act. The Court held venue was proper in Ingham County under MCL 600.1631(a). In *Kelley v Atwell*, 59 Mich App 219; 229 NW2d 387 (1975), the Attorney General was the named plaintiff in suit to enjoin violations of the Deceptive Advertising Act. The Court of Appeals found the action was properly filed in Ingham County under MCL 14.102. Here, the case was not commenced or brought in the name of the Attorney General, and thus, neither MCL 14.102 or MCL 600.1631(a) apply.

B. Alternatively, the Term "state" Does Not Include the Named Plaintiff in This Case.

If the Court interprets "commenced by" and "brought by" as including instances in which the attorney general is merely acting as the lawyer for the named plaintiff, then under those circumstances the statutes would only apply where the State of Michigan is the named plaintiff, not to cases in which an office within a department of the state is the named plaintiff. To avoid this result, Plaintiff asserts that the term "state" in MCL 14.102 and MCL 600.1631(a) encompasses not only the state, but also all departments and agencies of the state. Plaintiff's argument is unsupported and unpersuasive.

When the Legislature intends to include state departments and agencies in a statute, it says so. The language chosen by the Legislature in MCL 14.102 and MCL 600.1631(a) stands in stark contrast to language employed by the Legislature elsewhere referencing departments and agencies. For example, MCL 600.1615 broadly applies to actions against "any governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision…." Likewise, the Court of Claims Act specifies that it applies when a claimant intends to "file a claim against this state *or any of its departments, commissions, boards, institutions, arms, or agencies*." MCL 600.6431(1). These

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statutes make it clear that when the Legislature intends for an act to apply to departments or agencies of the State of Michigan, it knows how to say so. The Legislature did not do so here. Instead, the Legislature chose to use the narrow phrase "in the name of the state" in both MCL 14.102 and MCL 600.1631(a), rather than broader language that includes state departments or agencies. *United States Fidelity Ins & Guaranty Co*, 484 Mich at 14 ("When the Legislature uses different words, the words are generally intended to connote different meanings.")

Moreover, even if the term "state" encompassed departments or agencies of the state, the named plaintiff here is not a department or agency of the state. The named plaintiff is the Office of Inspector General, which is "an independent and autonomous entity within the Michigan Department of Health and Human Services." MCL 400.227. This independent status creates an even greater separation from "the state" for venue purposes.

Finally, the historical development of the statutes confirms their limited scope. MCL 14.102 was enacted in 1919. The preamble to the Act makes it clear it was designed "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 Appx p 408 – emphasis added.) This language confirms the Legislature's intent to limit the scope of MCL 14.102 to actions in which the State is a named plaintiff, not actions brought by an independent office, within a department, of the State.

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CONCLUSION AND RELIEF SOUGHT

MCL 600.1641(2) controls because the complaint includes tort claims, and it mandates that venue be determined under MCL 600.1629, which the lower courts correctly applied. Under MCL 600.1629's hierarchy, the original injury occurred where defendants allegedly refused to return the funds and thereby deprived Plaintiff of possession, which the record places in Oakland County. Oakland County is also where NRK's corporate registered office is located, making Oakland County proper under MCL 600.1629(1)(a)(ii). MCL 14.102 and MCL 600.1631(a) are permissive and cannot override the mandatory "shall" directive in MCL 600.1641(2). In any event, they apply to actions brought or commenced by the Attorney General in the name of the State, not to a suit filed by DHHS-OIG with the Attorney General merely serving as counsel. Plaintiff's contrary positions were abandoned or unpreserved below, and the Court of Appeals properly rejected them on the merits while recognizing the dispositive effect of the tort venue statutes in mixed-claim complaints.

For these reasons, the Court should affirm the trial court's transfer order and the Court of Appeals' published decision holding that venue is proper in Oakland County under MCL 600.1629(1)(a)(ii).

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Respectfully submitted,

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Dated: September 2, 2025

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.212(B)(1). The brief contains 9,973 words, excluding the parts exempted by MCR 7.212(B)(2).

/s/Christopher J. Ryan

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