

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN IMMIGRANT RIGHTS
CENTER,

Supreme Court No. 167300 & 167301

Plaintiff-Appellant,

Court of Appeals Nos. 361451 & 362515

v

Court of Claims No. 21-208-MZ

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

Defendant-Appellee.

**GOVERNOR WHITMER'S BRIEF IN OPPOSITION TO
MICHIGAN IMMIGRANT RIGHTS CENTER'S APPLICATION
FOR LEAVE TO APPEAL**

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COUNTER-STATEMENT OF JURISDICTION

Defendant-Appellee Governor Whitmer agrees with Plaintiff-Appellant Michigan Immigrant Rights Center (MIRC) that this Court has jurisdiction to consider MIRC's appeal pursuant to MCR 7.303(B)(1) and MCL 600.215(3). For the reasons discussed below, the Governor does not agree that this case presents the grounds for review set forth in MCR 7.305(B).

COUNTER-STATEMENT OF QUESTION PRESENTED

1. For all claims against the State of Michigan and its agents, MCL 600.6431 requires a claimant to either file suit or file a notice of intent to sue within one year of the claim accruing. MIRC filed suit against the Governor in 2021, seeking to limit or vacate a 2003 opinion of the Court of Appeals, the application of which allegedly harmed MIRC beginning in 2019 at the latest. Does MCL 600.6431 require the dismissal of MIRC's lawsuit?

Appellant's answer: No.

Appellee's answer: Yes.

Trial court's answer: No.

Court of Appeals' answer: Yes.

CONSTITUTIONAL PROVISION, STATUTES, AND RULE INVOLVED**Const 1963, art. 6, § 1**

Except to the extent limited or abrogated by article IV, section 6, or article V, section 2, the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

MCL 418.361(1)

An employer is not liable for compensation under section 301(7) or (8), 351, 371(1), or 401(5) or (6)¹ for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

MCL 418.841(1)

Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. The director may be an interested party in all worker's compensation cases in questions of law.

MCL 600.5827

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

MCL 600.6419(1)(a)

Except as provided in sections 6421 and 6440,¹ the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. All actions initiated in the court of claims shall be filed in the court of appeals. The state administrative board is vested with discretionary authority upon the advice of the attorney general to hear, consider, determine, and allow any claim against the state in an amount less than \$1,000.00. Any claim so allowed by the state administrative

board shall be paid in the same manner as judgments are paid under section 64582 upon certification of the allowed claim by the secretary of the state administrative board to the clerk of the court of claims. Except as otherwise provided in this section, the court has the following power and jurisdiction:

(a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

MCL 600.6421(2).

For declaratory or equitable relief or a demand for extraordinary writ sought by a party within the jurisdiction of the court of claims described in section 6419(1) and arising out of the same transaction or series of transactions with a matter asserted for which a party has the right to a trial by jury under subsection (1), unless joined as provided in subsection (3), the court of claims shall retain exclusive jurisdiction over the matter of declaratory or equitable relief or a demand for extraordinary writ until a final judgment has been entered, and the matter asserted for which a party has the right to a trial by jury under subsection (1) shall be stayed until final judgment on the matter of declaratory or equitable relief or a demand for extraordinary writ.

MCL 600.6431(1)

Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.

MCR 2.605(A)(1)

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

INTRODUCTION

The Michigan Immigrant Rights Center (MIRC) brought this suit seeking to overturn the Court of Appeals' 2003 decision in *Sanchez v Eagle Alloy, Inc*, which construed § 361(1) of the Workers' Disability Compensation Act. To accomplish this, MIRC sued Governor Whitmer and asked the Court of Claims to declare that *Sanchez* was wrongly decided.

Assuming this is even conceptually a proper way to attack *Sanchez*, the Court of Appeals properly held that MIRC's claims must be dismissed because MIRC failed to pursue them in compliance with § 6431 of the Court of Claims Act. As this Court recently reaffirmed, § 6431's requirements apply to *all* claims against the State, including MIRC's claims in this case. Because MIRC failed to comply with § 6431's notice provision, dismissal is required.

This case does not warrant this Court's further review. Just last year, in *Christie v Wayne State University*, this Court answered the pertinent question in this case—whether § 6431 permits implicit exceptions to its requirements—by stating definitively that the only exceptions to § 6431 are those explicitly included in the provision itself. Accordingly, this case does not raise a substantial question regarding the validity of a statute, MCR 7.305(B)(1), nor does it raise an issue of significant public interest or a legal principle of major significance, MCR 7.305(B)(2)–(3). Nor was Court of Appeals' decision clearly erroneous or in conflict with prior precedent. MCR 7.305(B)(5). As a result, the Governor respectfully requests that this Court deny leave to appeal.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

MIRC sues the Governor in order to overturn *Sanchez*.

MIRC asserts that it is a non-profit entity organized to provide legal assistance to Michigan's immigrant communities. (Compl, ¶ 25; App'x pp 021–022.)¹ In 2017, MIRC began its “Farmworker and Immigrant Rights” project. (*Id.*, ¶ 66; App'x p 031.) MIRC states that this project was designed to provide legal services to indigent farmworkers in Michigan with a focus on “immigration raids at workplaces, labor trafficking, wage-and-hour violations, and workplace discrimination, and ensuring proper employer-provided housing in compliance with federal and state regulations.” (*Id.*, ¶ 67; App'x pp 031–032.) MIRC further states that the project was not intended to assist immigrants with legal matters regarding workers' compensation. (*Id.*, ¶ 68; App'x p 032.)

MIRC alleges that based on the Court of Appeals' decision in *Sanchez v Eagle Alloy*, 254 Mich App 651 (2003), unidentified Michigan “workers' compensation officials” have “categorically disqualified undocumented workers” from receiving workers' compensation wage loss benefits “solely because the workers are undocumented.” (Compl, ¶ 42; App'x p 026.) It asserts that *Sanchez* allows the denial of workers' compensation benefits to undocumented workers under an improper application of MCL 418.361(1), which disallows benefits “for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.” (*Id.*, ¶¶ 28–56; App'x pp 022–030.)

¹ Appendix citations refer to the Governor's appendix filed in the Court of Appeals.

In support of its factual assertions, MIRC identifies two workers' compensation magistrate decisions, both of which are over 16 years old. (Compl, ¶¶ 43–44; App'x p 026.) According to MIRC, these decisions represent a policy of relying on *Sanchez* to unlawfully deny undocumented persons workers' compensation wage-loss benefits. (Compl, ¶¶ 42–44; App'x p 026.) MIRC does not, however, identify any individual undocumented worker who is currently being denied workers' compensation benefits based on an alleged unlawful application of the Workers' Disability Compensation Act.

Instead, MIRC claims that since the inception of its farmworker and immigrant rights project in 2017, it has been responding to phone calls from unidentified immigrant workers requesting legal assistance with workers' compensation claims. (Compl, ¶ 69; App'x p 032.) MIRC asserts that it would typically refer such callers to private counsel but that no lawyers will take the cases because the legal community believes that the claims will not be successful under the *Sanchez* policy. (*Id.*, ¶ 70; App'x p 032.) MIRC maintains that it has been required to devote significant time and resources in responding to workers' compensation inquiries, which has frustrated MIRC's intended mission and has taken time and resources away from the stated purpose of the farmworker and immigrant rights project. (*Id.*, ¶¶ 71–82; App'x pp 032–034.) MIRC specifically pled that it was required to hire a part-time law clerk in 2019 because of this drain on its resources. (*Id.*, ¶ 76; App'x p 033.)

Rather than identifying an undocumented worker that has been denied wage-loss benefits and appealing that denial through the administrative remedies provided by the Workers' Disability Compensation Act, MIRC instead opted to sue Governor Whitmer, in her official capacity, on behalf of itself to seek relief from the alleged drain on its resources. (Compl, ¶¶ 71–77; App'x pp 032–033.) MIRC's complaint seeks declarations that: the use of the words "commission of a crime" in § 361(1) of the Workers' Disability Compensation Act is unconstitutional; that workers' compensation officials cannot rely on the holding in *Sanchez* to deny wage-loss benefits; and that workers' compensation officials must analyze wage-loss claims consistent with the Supreme Court's decision in *Sweatt v Department of Corrections*, 468 Mich 172 (2003). (Compl, p 24; App'x p 021.)

The Court of Claims denies the Governor's motion for summary disposition.

The Governor moved for summary disposition under MCR 2.116(C)(4), (C)(5), (C)(7), and (C)(8). The Court of Claims denied summary disposition. *Michigan Immigrant Rights Center v Whitmer*, opinion and order of the Court of Claims, issued April 28, 2022 (Case No. 21-208-MZ) (App'x pp 001–012).

First, the court held that the notice provision in § 6431(1) of the Court of Claims Act (COCA), MCL 600.6431(1) did not apply to MIRC's complaint because MIRC was seeking declaratory and injunctive relief for wrongs that had not yet occurred. (App'x p 007.) Second, the court held that MIRC's complaint presented an actual controversy because it alleged "real and tangible injuries to MIRC" and

that “a declaratory judgment is required to guide MIRC’s future conduct to preserve its rights.” (*Id.*, pp 007–008.) Third, the court held that MIRC had organizational standing to pursue its claims. (*Id.*, pp 008–010.) And finally, the court held that there were no administrative remedies for MIRC to exhaust. (*Id.* pp 010–011.)

The Court of Appeals reverses, finding MIRC’s claim untimely.

Following a complicated procedural history,² the Court of Appeals reversed the Court of Claims, holding that MIRC’s complaint was untimely under § 6431 of the COCA. *Michigan Immigrant Rights Center v Whitmer*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket Nos 361451; 362515) (Attach A). The Court of Appeals, relying in part on this Court’s decision in *Christie v Wayne State University*, 511 Mich 39 (2023), concluded that § 6431 applied to MIRC’s claim and further held that MIRC’s claim had accrued more than a year before it filed suit and thus was barred by § 6431. (Attach A, pp 4–6.) Finding dismissal appropriate under § 6431, the Court of Appeals declined to consider the Governor’s three remaining grounds for summary disposition. (Attach A, p 2 n 2.)

² Following the Court of Claims decision, the Governor filed a claim of appeal in the Court of Appeals. The Court of Appeals dismissed the appeal, holding that the Court of Claims’ decision was not a final order because it did not implicate governmental immunity. The Governor then filed an application for leave to appeal in this Court arguing that failure to comply with MCL 600.6431 necessarily implicates governmental immunity. The Governor also filed an application for leave to appeal in the Court of Appeals on the three remaining grounds for summary disposition raised in the Court of Claims. This Court initially held the Governor’s application in abeyance and eventually remanded to the Court of Appeals for reconsideration in light of *Christie v Wayne State University*, 511 Mich 39 (2023). Following the remand, the Court of Appeals denied MIRC’s motion to dismiss and consolidated the Governor’s two appeals.

STANDARD OF REVIEW

A grant or denial of summary disposition is reviewed “de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118 (1999). “In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition.” *Id.*, citing *Groncki v Detroit Edison*, 453 Mich 644, 649 (1996).

The Governor moved for summary disposition, in relevant part, under MCR 2.116(C)(7).³ Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is barred “because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.” A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may, but is not required to, file supportive materials such as affidavits, depositions, admissions, or other documentary evidence; but if such documentation is submitted, the court must consider it. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432 (1994).

³ The Governor also moved for summary disposition under MCR 2.116(C)(4), (C)(5), and (C)(8), based on its arguments that MIRC had failed to allege an actual controversy, lacked standing, and failed to exhaust administrative remedies. As explained above, those issues are not properly before this Court because the Court of Appeals did not decide them.

ARGUMENT

I. The Court of Appeals properly held that MCL 600.6431 required the dismissal of MIRC's claims.

MIRC attempts to avoid the notice requirement of § 6431 in two ways: first, by arguing that § 6431 does not apply to its particular claims and, second, by asserting that its claims are of the type that are always timely. Neither argument holds up to § 6431's plain language or this Court's precedent. As to the first argument, this Court recently confirmed in *Christie* that § 6431 applies to *all* claims against the State. So too here, MIRC cannot evade the COCA's plain language, which makes clear that § 6431 applies to the type of claims that MIRC attempts to bring. As to the second argument, the caselaw on which MIRC relies to argue that its claims will always be timely applies to neither § 6431 nor the facts of this case.

A. MCL 600.6431 applies to MIRC's claims.

Both § 6431 and the COCA as a whole, make clear that the § 6431's requirements apply to all claims brought against the State apart from those explicitly exempted in the statute. MIRC asks this Court to recognize broad exceptions to § 6431 for all claims seeking prospective injunctive relief, as well as constitutional claims, arguing that all such claims are exempted from complying with the COCA. (Pl's App, pp 30–42.) The COCA, however, explicitly includes both declaratory and constitutional claims within its purview. Accordingly, looking to the statute's plain language, the COCA generally, and § 6431 specifically, apply to MIRC's claims.

1. MCL 600.6431 applies to all claims against the State.

The COCA is this State’s controlling waiver of immunity from suit and submission to the jurisdiction of a court. See *Greenfield Constr Co v Michigan Dep’t of State Highways*, 402 Mich 172, 195 (1978). In the COCA, the Legislature gave the Court of Claims exclusive jurisdiction “[t]o hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers[.]” MCL 600.6419(1)(a).

In § 6431 of the COCA, the Legislature established requirements for filing any claim against the State. Specifically, § 6431 provides that “a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state.” MCL 600.6431(1). By enacting § 6431, the Legislature conditioned its waiver of immunity upon the requirement that those seeking to bring claims against the state strictly comply with it. *McCahan v Brennan*, 492 Mich 730, 752 (2012). If the conditions precedent to bringing and maintaining an action against the state in the Court of Claims are not met, the case must be dismissed. *Id.* at 752.

As this Court explained in *Christie*, “the notice requirements of MCL 600.6431(1) apply to all claims against the state . . . except as otherwise exempted in MCL 600.6431 itself.” 511 Mich at 45. This conclusion is required by both the plain language of the statute, see *id.* at 52–57, and the COCA’s history and purpose

as a limited waiver of sovereign immunity, see *id.* at 57–64. As to the former, “under the unambiguous language of MCL 600.6431, *any claim against the state*, regardless of where it is filed, must comply with MCL 600.6431(1)’s notice requirements, except for claims brought under the WICA as exempted in MCL 600.6431(5).” *Id.* at 57 (emphasis added). And as to the latter, in enacting the COCA, the Legislature consented to suit upon the requirement that a plaintiff comply with the requirements of § 6431(1). *Id.* at 58–59. This is the “general rule that a party must follow . . . to overcome immunity and bring the state before a court.” *Id.* at 61. Ultimately, the *only* exception to § 6431 is contained in the statute itself, and there is “no similar exception for any other claim.” *Id.* at 53.

2. MCL 600.6431 expressly applies to the types of claims that MIRC attempts to bring.

In arguing that § 6431 does not apply, MIRC asserts its claims are exempted from complying with the statute because sovereign immunity does not apply to those claims. MIRC argues specifically that this Court has recognized broad exceptions to sovereign immunity for claims seeking declaratory relief and in cases alleging a constitutional violation. (Pl’s App, pp 30–42.) According to MIRC, both exceptions apply in this case, thus exempting MIRC from complying with § 6431.

Under *Christie* and the plain language of the COCA, however, the requirements of § 6431 clearly apply both to constitutional claims and claims for declaratory relief. Explicitly included within the Court of Claims’ exclusive jurisdiction are “*any claim or demand, statutory or constitutional,*” against the

State, including “any demand for monetary, equitable, or *declaratory* relief.” MCL 600.6419(1)(a) (emphasis added). Indeed, the COCA is particularly clear regarding its exclusive jurisdiction over declaratory and equitable claims: in a case where a claimant demands a jury trial in circuit court, the Court of Claims still retains exclusive jurisdiction over any declaratory or equitable claims included in the case. MCL 600.6421(2). Thus, far from exempting constitutional or declaratory claims from its purview, the COCA makes clear that such claims are squarely within the jurisdiction of the Court of Claims.

By extension, § 6431 also applies to *all* claims against the State, including constitutional and declaratory claims.⁴ See *Christie*, 511 Mich at 64 (“[T]he notice requirements of MCL 600.6431(1) apply to all claims against the state . . . except as otherwise exempted in MCL 600.6431 itself.”). As this Court explained in *Christie*, the Legislature reinforced the conclusion that § 6431 is universally applicable to claims against the State by creating a narrow exception for claims brought under the Wrongful Imprisonment Compensation Act. *Id.* at 52–54. By so doing, the Legislature demonstrated that it knew how to exempt certain claims from the purview of § 6431. And as demonstrated by the comprehensive list of claims in § 6419, the Legislature did not inadvertently overlook constitutional or declaratory

⁴ As MIRC briefly notes, Chief Justice McCormack in her concurrence in *Bauserman v UIA* questioned whether § 6431 applies to constitutional tort claims. (PI’s App, p 38); *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 194 (2019) (McCORMACK, C.J., concurring). Chief Justice McCormack’s concurrence came before the Legislature added the exception to § 6431, see 2020 PA 42, that informed this Court’s analysis in *Christie*, and this Court in *Christie* ultimately recognized that § 6431 does not permit any implicit exceptions.

claims but instead explicitly included those claims within the purview of the COCA. Indeed, given the COCA's emphasis on equitable and declaratory claims, an implicit exception from § 6431 for those claims would turn the statute on its head.

Further, the Legislature's constitutional authority to enact the COCA is not in question. See Const 1963, art. 6, § 1. See also *Glass v Dudley Paper Co*, 365 Mich 227, 229–230 (1961) (recognizing that the Legislature exercised its constitutional authority in creating the Court of Claims). The same is true of its authority to enact § 6431's procedural requirements. *Price v Hopkin*, 13 Mich 318, 320 (1865) (recognizing the Legislature's authority to enact statutes of limitations generally); *Rusha v Dept of Corrections*, 307 Mich App 300, 307 (2014) (“[I]t is well established that the Legislature may impose reasonable procedural requirements, such as a limitations period, on a plaintiff's available remedies even when those remedies pertain to alleged constitutional violations.”), citing *Taxpayers Allied for Constitutional Taxation v Wayne County*, 450 Mich 119, 126 (1995). Accordingly, the plain language of § 6431 controls and requires dismissal.

In sum, claims for injunctive and declaratory relief against the State fall squarely within the exclusive jurisdiction of the Court of Claims. MCL 600.6419(1)(a). And, to bring a claim against the State in the Court of Claims, a plaintiff must file that claim, or a notice of intent to file a claim, within one year of the claim accruing. MCL 600.6431(1). MIRC asks this Court to read exceptions for declaratory and constitutional claims into the statute, but if the Legislature wanted

such exceptions in § 6431 it would have explicitly done so, just as it did for claims brought under WICA. MCL 600.6431(5). Thus, § 6431 applies to MIRC's claims.

B. MIRC did not comply with the requirements of MCL 600.6431(1).

Section 6431 requires a claimant to either file suit or file a notice of intent to sue “within 1 year after the claim has accrued.” MCL 600.6431. A claim “accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.” MCL 600.5827. See also *Bauserman v Unemployment Ins Agency (Bauserman I)*, 503 Mich 169, 183 (2019) (“Under the common law, a claim generally accrues when all of the elements of the cause of action have occurred and can be alleged in a proper complaint.”) (cleaned up). “The date of the ‘wrong’ referred to in MCL 600.5827 is the date on which the defendant’s breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.” *Bauserman I*, 503 Mich at 183 (cleaned up). Thus, a court must determine “the date on which [MIRC] first incurred the harm [it] asserts” by looking to the “actionable harms” alleged in the complaint. *Id.* As the Court of Appeals properly recognized below, in the context of a claim for declaratory relief, determining the accrual date in the context of a claim for declaratory relief requires looking to when an actual controversy arose between the parties. (Attach A, p 4.)

The claims MIRC asserts accrued well over a year before it filed the complaint. The complaint reveals that the basis for MIRC’s lawsuit originated with the Court of Appeals’ *Sanchez* decision in 2003. (Compl, ¶¶ 28–56; App’x pp 022–

030.) MIRC further states that the *Sanchez* decision has been harming MIRC since the opening of its farmworker and immigrant rights project in 2017. (*Id.*, ¶¶ 66–82; App’x pp 031–034.) Throughout the complaint, MIRC states that the harm it has suffered, which allegedly gives it standing to pursue its claims, is the diversion of its “limited resources to respond to undocumented worker intakes from persons unlawfully denied wage-loss benefits.” (See *id.*, ¶¶ 5, 23, 68–72, 77, 85, 94, and 103; App’x pp 016, 021, 032–037.) Per MIRC, “since its founding [in 2017],” MIRC’s farmworker and immigrant rights project’s “staff have had to field calls from injured immigrant workers, including farmworkers, day laborers, and landscapers who were seeking legal assistance with their workers’ compensation claims because they were denied workers’ compensation on the basis that they had ‘committed a crime’; on numerous occasions a conclusion reached solely due to their immigration status.” (*Id.*, ¶ 69; App’x p 032.) MIRC further alleges that the project founded in 2017 “has seen no decline in workers’ compensation intakes since the project’s founding.” (*Id.*, ¶ 80; App’x p 034.) Finally, MIRC states that it had to hire a part-time law clerk in 2019 to help with wage-loss benefits intakes and related research. (*Id.*, ¶ 76; App’x p 033.)

Accordingly, the alleged harm on which MIRC’s claims are based was the diversion of its resources to address issues and questions relating to the denial of wage-loss benefits based on *Sanchez*. MIRC alleges that this harm began when it opened its farmworker and immigrant rights project in 2017. And MIRC specifically alleges that it had to hire a law clerk in 2019 to address this high

volume of inquiries. So, as the Court of Appeals held, MIRC's claims accrued in 2019, at the absolute latest. (Attach A, p 4.) MIRC filed its complaint on November 4, 2021—more than a year after its alleged claims accrued. Thus, MIRC's claims are untimely under § 6431.

MIRC argues that its claim is timely both because it alleges a recurring wrong, (Pl's App, pp 18–25), and because it seeks prospective relief, (Pl's App, pp 25–29). As to the former, MIRC's arguments are based on a misunderstanding of the “wrong” purportedly giving rise to an actual controversy in this case. As to the latter, MIRC misapplies the relevant caselaw.

In support of its argument that its claims are timely under a theory of recurring wrongs, MIRC relies on *Township of Fraser v Haney*, 509 Mich 18 (2022) and *Sunrise Resort Association v Cheboygan County Road Commission*, 511 Mich 325 (2023). Those cases set forth the principle that each wrong committed by a defendant gives rise to a new cause of action for the plaintiff. See *Fraser*, 509 Mich at 28–29; *Sunrise Resort Ass'n*, 511 Mich at 339–340. “In other words, a plaintiff's failure to timely sue on the first violation in a series does not grant a defendant immunity to keep committing wrongful acts of the same nature.” *Fraser*, 509 Mich at 28.

In this case, the purported wrong from which MIRC seeks relief is what it calls a policy of applying MCL 418.361(1) based on the Court of Appeals' decision in *Sanchez*. (Compl, Prayer for Relief; App'x p 038 (asking the court to declare MCL 418.361(1) unconstitutional and to overturn *Sanchez*.) It is this alleged policy that

MIRC alleges is causing it harm. (Pl’s App, p 4 (“MIRC filed a Verified Complaint in the Court of Claims seeking declaratory relief under MCR 2.601(A)(1) and a related injunction under MCR 3.310 *to stop the damage the unlawful policy is presently causing to MIRC.*”) (emphasis added).) As the Court of Appeals appropriately recognized below, this alleged policy had a specific starting point—the *Sanchez* decision interpreting MCL 418.361(1), or arguably the enactment of 103 PA 185, which added the language at issue to the statute. (Attach A, p 5.) MIRC seeks relief in kind, i.e. overturning *Sanchez* and declaring the statutory language unconstitutional. Thus, while MIRC is allegedly suffering ongoing harm, the purported wrong at issue occurred in 2003 at the latest, when *Sanchez* was decided. Any claim that MIRC might have had would have accrued when that alleged wrong first occurred, which then might have given rise to an actual controversy.

Moreover, even if each new application of *Sanchez* was a separate wrong, that wrong would apply to the individual denied benefits, not to MIRC. MIRC, as an organization, has never been denied worker’s compensation benefits. Nor does each individual denial of benefits harm MIRC: MIRC does not allege that every worker denied benefits is calling MIRC for a consultation. It is the application of *Sanchez* that is purportedly harming MIRC, preventing it from successfully referring clients as it would typically. (Compl, ¶ 70; App’x, p 032.) Thus, MIRC’s argument that it is suffering repeated wrongs, each restarting the clock for purposes of § 6431, does not fit the facts of this case.

Similarly, as to MIRC's argument that claims for prospective relief are always timely under § 6431, this argument is not supported by this Court's precedent. MIRC relies primarily on *Taxpayers*, 450 Mich at 119, but that decision does not control here. Most importantly, *Taxpayers* did not consider MCL 600.6431. And for the reasons outlined above, unlike a typical statute of limitations, the Legislature has taken pains to make clear that the COCA generally, and § 6431 specifically, do not permit exceptions apart from those explicitly included in the statute.⁵ Moreover, the concerns at issue in *Taxpayers* are not present in this case. In this case, the purported actual controversy is based on an alleged *past* wrong that is continuing to harm MIRC, not an anticipated future wrong. *Taxpayers*, 450 Mich at 127 ("Suffice it to say that § 308a(3) does not prevent a taxpayer from seeking to enjoin a governmental unit from imposing on him in the future taxes that violate the Headlee Amendment. To hold otherwise would truncate the constitutional right."). Unlike the plaintiffs at issue in *Taxpayers*, MIRC had an opportunity to bring its claim (or file a notice of intent to sue) and failed to do so.

Finally, MIRC's warnings of grievance consequences, (Pl's App, pp 29–30), have less to do with the Court of Appeals' holding below than with the novel approach MIRC has chosen for seeking to overturn *Sanchez*. MIRC essentially argues that applying § 6431 according to its terms will allow the government to continue wronging someone indefinitely. (*Id.*) Again, however, the purported

⁵ And as the Court of Appeals noted, MCL 600.6431 is not a statute of limitations. (Attach A, p 3, citing *Elia Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 69, 72–74 (2023).)

wrong at issue in this case is *Sanchez*, decided in 2003. MIRC had a year to either file suit or a notice of intent to sue based on the harm that *Sanchez* was purportedly causing to MIRC as an organization and failed to do so. But in issuing its dire warning MIRC overlooks the fact that *any individual worker* denied benefits can still challenge that denial that is based on *Sanchez*.⁶ Thus, to the extent the alleged policy is wrong, it can still be challenged. MIRC simply chose the wrong pathway to do so.

⁶ MIRC even said that it planned to represent a worker through that very benefit-denial challenge. (Compl, ¶ 81; App'x p 034.)

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals properly held that dismissal was required based on MIRC's failure to comply with the requirements of MCL 600.6431. MIRC's arguments that § 6431 either does not apply or was satisfied in this case are contrary to the plain language of the provision and this Court's case law interpreting it.

Accordingly, the Governor respectfully requests that this Court deny leave to appeal.⁷

Respectfully submitted,

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⁷ As discussed above, the Court of Appeals below decided only one of the four grounds for summary disposition raised by the Governor in its original motion. Were this Court to grant leave to appeal and reverse the Court of Appeals, the appropriate next step would be to remand to the Court of Appeals for consideration of the remaining grounds.

WORD COUNT STATEMENT

This answer in opposition contains 4,886 words.

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