

STATE OF MICHIGAN
IN THE SUPREME COURT

PROGRESS MICHIGAN,

Plaintiff-Appellant,

Court of Appeals No. 340921, 340956

Court of Claims No. 17-000093-MZ

v.

ATTORNEY GENERAL BILL
SCHUETTE, in his official capacity,

Defendant-Appellee,

APPLICATION FOR LEAVE TO APPEAL OF PROGRESS MICHIGAN

Detroit's Trusted Law Firm
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STATEMENT IDENTIFYING OPINION APPEALED AND DATE OF ENTRY

The opinion appealed is attached hereto as Exhibit 1 and was entered on June 19, 2018.

QUESTIONS PRESENTED FOR REVIEW

1. Is there a sovereign/government immunity defense to the failure to disclose public records?
2. If there is a sovereign/government immunity defense to the failure to disclose public records, has it been waived by the Freedom of Information Act?
3. Does the Court of Claims Act apply to an appeal under the Freedom of Information Act?
4. Do the notice and verification requirements of the Court of Claims Act for damages claims against the State apply to an appeal under the Freedom of Information Act?
5. Can a lawsuit be dismissed for failure to follow the verification requirement of the Court of Claims Act when the original complaint is not verified but the claimant files a verified amended complaint "within 1 year after such claim has accrued" as required under the Act?
6. Can amending a complaint subject it to dismissal under the Court of Claims Act despite the general rule that amended complaints related back to the date of the original pleading?

CONCISE STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

In the course of reviewing public records disclosed by Defendant-Appellee Schuette ("Schuette") pursuant to previous FOIA requests, Progress Michigan discovered that Schuette and his staff were performing official functions using personal email accounts, i.e., email accounts not issued by the State of Michigan.

Copies of the public records received by Progress Michigan disclosing the use of personal email accounts to conduct official functions were attached to the Complaint and are attached hereto as Exhibit 2. Those records reveal that, at a minimum, the following current or former employees of Schuette used personal email accounts to perform official functions:

- Schuette, Bill (Attorney General)
- Bitely, Andrea (Director of Communications)
- Bundy, Carter (Constituent Relations Representative)
- Bursch, John (former Solicitor General)
- Hills, Gerald (Rusty) (Director of Public Affairs)
- Isaacs, Carol (former Chief Deputy Attorney General)
- Lindstrom, Aaron (Solicitor General)
- Price, Shannon (former Constituent Relations Representative)
- Schneider, Matthew (Chief Deputy Attorney General)
- Sellek, John (Director of Public Affairs)
- Starner, Dennis (Constituent Relations Representative)
- Teszlewicz, Barbara (Assistant Attorney General)
- Yearout, Joy (Director of Communications)

Based on the discovery of this extensive usage of personal email accounts to perform official functions, on September 27, 2016 Progress Michigan sent a comprehensive FOIA request to Schuette seeking all emails sent or received by a group of twenty-one (21) individuals using a personal email account in the performance of any official function since November 1, 2010. See Exhibit 3.

On October 19, 2016 Schuette denied the request stating that, with one exception, the Department of Attorney General “does not possess records meeting your description.” As to the single email it did possess, the Department claimed an exemption. See Exhibit 4.

On November 26, 2016 Progress Michigan filed an internal appeal of the denial. See Exhibit 5. That appeal was denied, with the Department changing its rationale, claiming that “no such records exist.” See Exhibit 6.

Progress Michigan timely filed an unverified two-count complaint in the Court of Claims on April 11, 2017. The Complaint was filed within the 180-day period for appeals from denials of FOIA requests, MCL 15.240(1)(b), and within the 1-year period for filing claims under MCL 600.6431(1) of the Court of Claims Act.

Count I alleged that Schuette violated FOIA by “refus[ing] to disclose emails sent and received by defendant and his staff using personal email accounts in the course of performing official functions . . .” Count II, “Failure to Preserve State Records”, alleged that if the records existed and if the Department destroyed the records, Schuette violated the Management and Budget Act.

Schuette moved to dismiss based on Progress Michigan’s failure verify the complaint in compliance with MCL 600.6431(1). In addition, Schuette argued that the Court should dismiss

Count II because there was no private right of action for the claimed violation of the Management and Budget Act.

On May 26, 2017 Progress Michigan filed its First Amended Verified Complaint with nearly identical allegations as those raised in the original complaint. The amended complaint was signed, verified and filed “within 1 year after [the] claim ha[d] accrued,” as required under MCL 600.6431(1). Progress Michigan responded to the motion to dismiss, arguing: 1) that it was not required to comply with MCL 600.6431(1) when filing a FOIA action; 2) that its amended complaint was sufficient to satisfy the statute; and 3) that it could seek declaratory relief for the violation of the Management and Budget Act.

The Court of Claims dismissed Count II but denied the motion to dismiss Count I, the FOIA claim in Progress Michigan’s First Amended Verified Complaint. See Exhibit 7.

Schuetz filed an interlocutory appeal from the portion of the Court of Claims decision refusing to dismiss the FOIA count based on government immunity and sought leave to appeal from the balance of that opinion. Leave to appeal was granted and the cases were consolidated on appeal. In that consolidated appeal the Court of Appeals reversed the Court of Claims and remanded for entry of summary disposition on the FOIA count. See Exhibit 1. In its published decision, the Court of Appeals held that Schuetz had an appeal of right from the denial of his motion for summary disposition even though the Court of Claims Act does not confer governmental immunity. The Court of Appeals further held that Progress Michigan failed to comply with the Court of Claims Act even though it filed an amended complaint verifying its claim “within 1 year after such claim ha[d] accrued” as required by the Act.

This Application for Leave to Appeal is now timely filed.

Throughout this litigation Schuette has continued to use his personal email account to perform official functions. Attached as Exhibit 8 is yet another email showing Schuette's involvement with another government agency – the federal Environmental Protection Agency – where once again his private email is being used to discuss public policy. It details a discussion between EPA staff, in which Schuette is included on through his private email account, and energy policy discussions with a Washington D.C.-based publication.

INTRODUCTION

"Now is the time for policy leaders and the legislature to restore trust and transparency . . ."

- Bill Schuette
Detroit News
May 27, 2017

Desperate to avoid disclosing or explaining why hundreds, if not thousands, of emails between him and his top staff conducting government business using personal e-mail accounts have mysteriously disappeared, Schuette unsuccessfully sought dismissal by the Court of Claims of this lawsuit seeking disclosure of those emails under FOIA. He then took an interlocutory appeal to the Court of Appeals which reversed the Court of Claims.

As here demonstrated, this case raises very significant issues under the FOIA and Court of Claims Act. The Court should grant this Application, reverse the Court of Appeals, enforce the FOIA and hold Schuette to the law and to his own public promises of transparency and full disclosure, by requiring disclosure of the emails.

ARGUMENT

THE APPLICATION FOR LEAVE SHOULD BE GRANTED BECAUSE IT MEETS THE STANDARDS OF MCR 7.305(B)

"It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process."

- Michigan Freedom of
Information Act, MCL 15.231(2)

I. The Issue Has Significant Public Interest And The Case Is Against A State Officer (MCR 7.305(B)(2)).

The issue here – whether the State’s top law enforcement official will be permitted to conduct official government functions using personal email accounts and avoid public disclosure of those emails – clearly has significant public interest. It goes to the very heart of the question of transparency and accountability of democratically elected public officials.

Although a Michigan court has not directly ruled on this question, courts throughout the country have uniformly held that private emails used to conduct government business must be disclosed to the public under freedom of information laws. See, e.g., McLeod v Parnell, 286 P3d 509 (Alaska 2012); Bradford v Director, Employment Security Dept, 128 SW3d 20 (Ark App 2003); City of Champaign v Madigan, 992 NE2d 629 (Ill App 2013); Barkeyville Borough v Stearns, 32 A3d 91 (Pa Commw Ct 2012); Adkisson v Paxton, 459 SW3d 761 (Tx App 2015); West v Vermillion, 384 P3d 634 (Wash Ct App 2016).

Schuette has the same obligation under Michigan FOIA, an obligation he seeks to evade, first by denying the FOIA request and then by seeking dismissal of this lawsuit.

For these reasons alone leave should be granted pursuant to MCR 7.305(B)(2).

II. The Issue Involves Legal Principles Of Major Significance To The State’s Jurisprudence (MCR 7.305(B)(3)).

A. There Is No Sovereign/Government Immunity Defense To The Failure To Disclose Public Records.

Schuette’s arguments throughout this case are a paean to sovereign immunity but that issue is a red herring because there is no sovereign/government immunity defense to the failure to disclose public records.

The Court of Claims assumed without deciding that a government immunity defense is available here. The Court of Appeals did not address this issue, holding only that because Schuette asserted that he was entitled to government immunity, that was sufficient to give the Court of Appeals' jurisdiction over the interlocutory appeal. Slip op at 2-3.

Sovereign immunity dates to English law but this Court has held that Michigan citizens also have long had a robust common law right, grounded in English common law, to access and inspect public records and documents regardless of sovereign immunity:

If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules . . . Undoubtedly, it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books for the purpose of seeing how their money was being expended and how their business was being conducted. There is no such law and never was either in this country or in England.

....

"At common law, every person is entitled to the inspection, either personally or by his agent, of public records, including legislative, executive, and judicial records, provided he has an interest therein which is such that would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information." 23 R.C.L. p. 160.

Nowack v Auditor General, 243 Mich 200, 203-04, 205; 219 NW 749 (1928) (emphasis added).

As Nowack held, Michigan's common law right of access to public information antedates Michigan statehood and is based on English common law. That right was incorporated into the Michigan Constitution in Const 1963, Art III, Sec 7. As former Chief Justice Taylor noted, the English common law was adopted as part of Michigan jurisprudence through the Northwest Ordinance:

These ancient references concerning the status of the common law before Michigan's statehood are significant because in our earliest Constitution, by way of the ordinances

of 1787 for the government of the Northwest Territory, we adopted what was in essence the English common law in existence on that date.

Philips v Mirac Inc, 470 Mich 415, 426 n 10; 685 NW2d 174 (2004) (emphasis added.); see also In re Sanderson, 289 Mich 165; 286 NW 198 (1939) (“The common law, including the English statutes of general application, made the law of the Northwest Territory by the Ordinance of 1787, continued to be the law of Michigan during the territorial period.”).

The English common law was adopted in the Schedule, Section 1, of the very first Michigan Constitution of 1835, and readopted in Section 1 of the Schedule of the Michigan Constitution of 1850. The common law savings clause has been readopted in every Michigan Constitution since. The Court of Appeals in 1968 accurately summarized the state of the Michigan common law right of access to public records:

The fundamental rule in Michigan on the matter before us, first enunciated in the case of Burton v Tuite, (1889), 78 Mich 363, is that citizens have the general right of free access to, and public inspection of, public records. . . the Nowack decision has “placed Michigan at the vanguard of those states holding that a citizen’s accessibility to public records must be given the broadest possible effect.”

Booth Newspapers v Muskegon Probate Judge, 15 Mich App 203, 205, 207; 166 NW2d 546 (1968).

In 1976, the Michigan FOIA codified and simplified the public’s common right to access and inspect public records and documents, and nothing in it erects a sovereign/government immunity defense. See, e.g., Walen v Dept of Corrections, 443 Mich 240, 253-54; 505 NW2d 519 (1993) (Riley, J, concurring and dissenting) (“FOIA was enacted to continue this tradition of openness”); Evening News Assn v Troy, 417 Mich 481, 494-95; 339 NW2d 421 (1983). Thus whatever the scope of sovereign/government immunity to liability for damages for torts and other State government offenses, the

common law right to access to public records, now codified in FOIA, has never been subject to a sovereign or government immunity defense.

Nowhere in English or Michigan law have the courts ever recognized a sovereign/government immunity defense to the disclosure of public records, and the Court of Appeals fundamentally erred by allowing such a defense to be asserted.

B. Assuming *Arguendo* That A Government Immunity Defense Exists Here, The Freedom of Information Act Has Waived It.

Even assuming that a government immunity defense exists here – and it does not – the Michigan Freedom of Information Act has waived it by expressly allowing lawsuits to enforce it.

The general rule on the State's immunity from suit was set forth by this Court in Ross v Consumers Power (On Rehearing), 420 Mich 567, 600-01; 363 NW2d 641 (1984):

The State, as sovereign, is immune from suit, save as it consents to be sued, and any relinquishment of sovereign immunity [from suit] must be strictly interpreted.

The FOIA expressly waives sovereign immunity by authorizing civil lawsuits over denials of FOIA requests. See MCL 15.240(1)(b). The Court of Appeals recognized this clear waiver of sovereign immunity, slip op. at 5 (“§10 of the FOIA [is] consent[] to suit”), but then erred by misapplying MCL 600.6431 to bar this lawsuit, an error next described.

C. The Notice and Verification Requirements of the Court of Claims Act In MCL 600.6431 Do Not Apply To FOIA Appeals.

If a government immunity defense is available here and has not been waived – neither of which are true – Schuette made the novel argument that an appeal under the Freedom of Information Act is subject to the notice and verification requirements for damages claims in the Court of Claims Act, MCL 600.6431(1). The Court of Claims decision assumed without

deciding that those requirements apply to a FOIA appeal. The Court of Appeals improperly applied them to dismiss this case. See slip op at 4-5.

MCL 600.6431 does not apply in this case for 2 reasons.

1. This case was filed pursuant to FOIA, not the Court of Claims Act.

First, this case was not filed under the Court of Claims Act, but pursuant to FOIA, specifically MCL 15.240(1)(b):

If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

...
(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims. . .

(emphasis added).

Nowhere does the plain language of this provision or the clear text of the FOIA expressly import or adopt the notice and verification provisions of the Court of Claims Act, MCL 600.6431(1). The FOIA imposes no notice or verification requirements on the requester as a condition of appeal.

When the Legislature wants to impose notice requirements it knows how to do so expressly and clearly. See, e.g., MCL 691.1404(1) (requiring notice of injury caused by highway defects). Had the Legislature intended to impose the notice and verification requirements of MCL 600.6431(1) on FOIA appellants, it would have done so expressly such as by stating that the civil action is filed “pursuant to the Court of Claims Act,” “is subject to the procedures of the Court of Claims Act,” or similar language. But the Legislature did not and the Court of Appeals improperly read such requirements into the FOIA, usurping the Legislature’s role as lawmaker. See, e.g., Agriculture Department v Appletree Marketing, 485

Mich 1, 8; 779 NW2d 237 (2010) (“If the Legislature has clearly expressed its intent in the language of a statute, that statute must be enforced as written, free of any “contrary judicial gloss.”). In the absence of the Legislature clearly and expressly imposing notice and verification requirements on FOIA appellants, a court should not do so. Yet that is exactly what the Court of Appeals did here.

The Legislature’s decision not to impose the requirements of MCL 600.6431(1) on FOIA appellants makes sense because doing so is unnecessary, redundant, and would serve no useful purpose in the FOIA context.

FOIA actions filed in the Court of Claims are appeals from adverse decisions by public bodies denying access to public records, not an original “damages claim” under the Court of Claims Act. The purpose of MCL 600.6431 is to advise the state of a possible future damages claim so that it can preserve evidence. See, e.g., In re Estate of Fair v State Veterans Facility, 55 Mich App 35, 39; 222 NW2d 22 (1974). Here, Schuette had notice of the “claim” when the original FOIA request was filed and he has either preserved that evidence (the requested emails) or destroyed it. Thus the notice purpose of MCL 600.6431, even if applicable, has already been fulfilled or thwarted, and imposing it when a FOIA lawsuit is filed by Progress Michigan against Schuette serves no useful purpose.

The Court of Appeals wrongfully imposed Court of Claims Act notice and verification requirements on this FOIA lawsuit where the Legislature refused to do so.

2. By its own terms MCL 600.6431 does not apply to a FOIA appeal.

The Court of Appeals decision acknowledged that the “FOIA statute was not at issue,” slip op at 5, in this Court’s decision in McCahan v Brennan, 492 Mich 730; 822 NW2d 747 (2012), which involved a damages claim for personal injuries. Nonetheless the Court of

Appeals proceeded to apply McCahan to this FOIA case because “we view McCahan’s rationale as controlling.” Id.

In so doing the Court of Appeals ignored the history and purpose of the Court of Claims Act which is to provide procedures for redress of injuries and damages. See Ross, supra, 420 Mich at 599-600. Thus the text of MCL 600.6431 applies only to damages claims against the State:

(1) No claim may be maintained against the state unless the claimant, within 1 year after such 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 or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.

...

(3) In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action.

(emphasis added).

A FOIA appeal is not a claim for “damages” – it is an action seeking disclosure of public records. McCahan does not control in this case and its rationale is inapplicable because it was a damages case. The Court of Appeals ignored the plain text of MCL 600.6431 by imposing its requirements on a FOIA lawsuit.

D. The Court of Appeals Disregarded the Plain Language of MCL 600.6431(1), Which Allows a Plaintiff To Maintain a Claim If It Is Verified Within One Year.

Having made several fundamental errors regarding government immunity, the Court of Appeals compounded those errors with its misinterpretation of MCL 600.6431(1) when it erroneously analogized to medical malpractice claims to hold that an unverified complaint

cannot be “maintained” under the Court of Claims Act and therefore was a “nullity.” Slip op at 6-7.

MCL 600.6431(1) requires that a written, signed, and verified complaint be filed within a year of the claim’s accrual. Progress Michigan complied with this requirement and therefore had a valid complaint. Its FOIA request was denied on October 19, 2016, it filed an unverified complaint in the Court of Claims on April 11, 2017, and it filed an amended verified complaint on May 26, 2017. See, e.g., Arnold v Department of Transportation, 235 Mich App 341; 597 NW2d 261 (1999) (court has jurisdiction over an unverified complaint); Gilliland Construction Co v State Highway Department, 4 Mich App 618, 620-21; 145 NW2d 384 (1966) (amended complaint met statutory requirements); Anthonsen v State Highway Commissioner, 4 Mich App 345, 349-50; 144 NW2d 807 (1966) (same).

The Court of Appeal’s labored attempt to analogize MCL 600.6431(1) to the medical malpractice statute, MCL 600.2912d(1), fails because that statute and MCL 600.6431(1) are written very differently. They are not analogous at all.

MCL 600.6431(1) simply states that a verified claim must be filed within one year in order to “maintain” a claim. The courts have held that MCL 600.6431 creates a “window within which to file a claim or notice of intent to file a claim.” Rusha v Department of Corrections, 307 Mich App 300, 306; 859 NW2d 735 (2014). Progress Michigan amended its complaint to verify its claim within that window, as the Court of Claims correctly held here, see Exhibit 7 at 4 (citing Rusha). In contrast MCL 600.2912d(1) of the medical malpractice statute creates no such “window.” Instead, it expressly requires that an affidavit of merit “shall [be] file[d] with the complaint,” and the failure to do so renders the complaint itself void and incapable of amendment. See Scarsella v Pollak, 461 Mich 547, 549; 607 NW2d 711 (2000).

Indeed, it is the plain language of MCL 600.6431(1), in contrast to the medical malpractice statute, which provides that a claim must be verified in order to be “maintained.” As the Court of Appeals recognized, to “maintain” is to “continue something.” Thus, while MCL 600.6431(1) creates a “window” within which verified claims can be filed so that they may be “maintained,” there is no “window” at all in MCL 600.2912d(1), which speaks of what must be required in order to commence a civil action, rather than to maintain it. The statutes are not analogous but discordant, and the Court of Appeals wrongly applied the medical malpractice statute to the Court of Claims Act.

As a consequence of conflating the verification requirement of Court of Claims Act and the affidavit requirement of the medical malpractice statute, the Court of Appeals concluded that Progress Michigan’s complaint was a “nullity” and thus could not be amended. However, only a medical malpractice complaint filed without an affidavit is a “nullity” because the applicable statute requires that the affidavit be filed with the complaint. Since the Court of Claims Act contains no such requirement, but merely requires that a claim be verified within one year, Progress Michigan’s original complaint was not a “nullity” and it could be amended as it was.

E. The Court of Appeals Erred In Refusing To Allow the First Amended Verified Complaint to “Relate Back” To the Filing of the Original Complaint.

The Court of Appeals exacerbated its misreading of “maintaining” under MCL 600.6431(1) by refusing to allow the amended verified complaint to “relate back” under MCR 2.118 to the original complaint timely filed under the 180-day requirement of FOIA. See slip op at 6-7.

This holding is contrary to statute and case law. The Court of Claims' decision on this issue was straightforward, correct, and illustrates the error of the Court of Appeals in ignoring prior case law and governing statutes:

THE LIMITATIONS PERIOD DOES NOT BAR THE FOIA CLAIM

As an alternative, defendant argues that, even in assuming plaintiff could amend its complaint, the FOIA claim must be dismissed because it's untimely under the period of limitations applicable to FOIA actions. The FOIA sets forth a 180-period for commencing an action to compel disclosure of public records. MCL 15.240(1)(b); Prins v Mich State Police, 291 Mich App 586, 587-588; 805 NW2d 619 (2011). The 180-day limitations period set forth in MCL 15.240(1)(b) begins to run when the public body sends out and circulates the denial of the request. Prins, 291 Mich App at 591. Here, there is no dispute that plaintiff's original complaint was filed within the 180-day period. There also does not appear to be any dispute that the amended complaint was filed outside the limitations period. The issue before the Court is whether the original complaint tolled the limitations period and whether the amended complaint relates back to the original, timely complaint. The Court finds that it does and that the 180-day limitations period does not require dismissal.

MCL 600.5856(a) provides that the statute of limitations is tolled "at the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules." MCL 600.5856(a). Moreover, "[t]he filing of the original complaint will toll the running of the period of limitations pertaining to the claims reflected in the amended complaint . . . if it is found that the amended pleading relates back to the conduct, transaction, or occurrence set forth in the original pleading[.]" Sanders v Perfecting Church, 303 Mich App, 1, 9; 840 NW2d 401 (2013) (citations omitted). Stated differently, "an amendment relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth, in the original pleading." Doyle v Hutzel Hosp, 241 Mich App 206, 2012; 615 NW2d 759 (2000) (citation and quotation marks omitted). As articulated in Doyle:

The chief importance of the relation-back rule is to determine whether or not the statute of limitations has been satisfied. In broad terms, if the original complaint was timely, it satisfied the statute of limitations even if it was defective and even if the amendment that cured the defect was not made until after the running of the statute. [*Id.* at 212 n2, quoting Dean & Longhofer, 1 Michigan Court Rules Practice (4th ed), § 2118.11, p. 561.]

Here, the amended complaint asserts a claim arising out of the same conduct, transaction, or occurrence set forth in the original complaint. Accordingly, the amended complaint "relates back" to the original complaint. See Sanders, 303 Mich App at 9; Doyle, 241 Mich App at 212. And because the original complaint was timely, the amended complaint is timely as well. To this end, the Court finds a case on which defendant relies, Miller v Chapman Contracting, 477 Mich 102, 107; 477 NW2d 462

(2007), to be distinguishable and not dispositive in this case. At issue in Miller was an amendment sought to add a new party, which is a situation not pertinent to the instant case.

Exhibit 7 at 6-8.

There is an alternative basis to reverse the Court of Appeals here, MCR 2.118(A)(4), which states that “[u]nless otherwise indicated, an amended pleading supersedes the former pleading.” “Supersedes” means, according to the dictionaries, “replace,” “take the place of,” “take the position of,” etc. See, e.g., American Heritage Dictionary (“supersede: to take the place of; replace”); Merriam-Webster Dictionary (“supersede: to take the place or position of”); Cambridge Dictionary (“supersede: to replace”). Because Progress Michigan gave no “indication otherwise,” its First Amended Complaint simply superseded its original timely filed complaint under MCR 2.118(A)(4). Therefore there is no need to apply the “relation back” doctrine of MCR 2.118(D) or any other such doctrine because the statute of limitations is not implicated here at all, as it was tolled by the filing of the original complaint pursuant to MCL 600.5856(a). The First Amended Verified Complaint simply “replaces” or “takes the place of” the timely filed original Complaint.

The Court of Appeals decision never even mentioned, let alone considered, this alternative basis to uphold the Court of Claims.

For all these reasons, the Court of Appeals decision holding the FOIA claim untimely is wrong and should be reversed.

F. Conclusion: Leave Should Be Granted Under MCR 7.305(B)(3).

As demonstrated the Application meets the standards of MCR 7.305(B)(3) and leave should be granted.

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III. The Decision Of The Court of Appeals Was Clearly Erroneous, Will Cause Material Injustice, and Conflicts With Decisions Of This Court And The Court of Appeals (MCR 7.305(B)(5)(a) and (b)).

As detailed supra, the Court of Appeals decision is clearly erroneous in several ways, will cause material injustice in the pursuit of appeals under the FOIA, and conflicts with this Court's landmark decision in Nowack v. Auditor General, 243 Mich 200; 219 NW 749 (1928), and other decisions of the Court of Appeals, e.g., Booth Newspapers, supra; Arnold, supra; Rusha, supra; Sanders, supra; and Doyle, supra.

Leave to appeal should be granted under MCR 7.305(B)(5)(a) and (b).

CONCLUSION AND RELIEF SOUGHT

For all these reasons, the Court should grant leave to appeal, reverse the judgment of the Court of Appeals, and remand this matter to the Court of Claims for further proceedings.

Respectfully submitted,

/s/ Mark Brewer
Mark Brewer
Goodman Acker, P.C.
Attorneys for Plaintiff-Appellant
17000 W. 10 Mile Rd, 2nd Floor
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

Dated: July 29, 2018

EXHIBIT 1

STATE OF MICHIGAN
COURT OF APPEALS

PROGRESS MICHIGAN,

Plaintiff-Appellee,

v

ATTORNEY GENERAL,

Defendant-Appellant.

FOR PUBLICATION

June 19, 2018

9:10 a.m.

Nos. 340921; 340956

Court of Claims

LC No. 17-000093-MZ

Before: METER, P.J., and GADOLA and TUKEL, JJ.

PER CURIAM.

In Docket No. 340921, defendant, Attorney General (AG) Bill Schuette acting in his official capacity, appeals as of right the denial of summary disposition by the Court of Claims, arguing that the Court of Claims erred in finding that plaintiff, Progress Michigan, could amend its complaint to comply with the requirements of the Court of Claims Act, MCL 600.6401 *et seq.* In Docket No. 340956, defendant applied for leave to appeal, arguing that plaintiff failed to comply with the statute of limitations under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* This Court granted leave to appeal and consolidated the two appeals. *Progress Mich v Attorney General*, unpublished order of the Court of Appeals, entered December 20, 2017 (Docket No. 340956). For the reasons stated, we reverse and remand for entry of summary disposition in favor of defendant.

After reviewing public records it had received through other FOIA requests, plaintiff alleges that it learned that defendant and his staff were performing official functions using personal e-mail accounts. Consequently, on September 27, 2016, plaintiff made a request pursuant to the FOIA. The request covered all e-mails sent or received by a group of 21 AG Department staff members using personal e-mail accounts in the performance of any official function, from the date of November 1, 2010, onward. On October 19, 2016, defendant denied plaintiff's request. Defendant stated that he did not possess any such records meeting plaintiff's description, except for a single e-mail, which was not subject to disclosure because it was attorney work product. On November 26, 2016, plaintiff filed an internal appeal of the denial, which by letter dated December 12, 2016, defendant again denied.

On April 11, 2017, plaintiff filed its original complaint in this action in the Court of Claims. Plaintiff's complaint contained two counts: (1) violation of the FOIA and (2) failure to

preserve state records under the Management and Budget Act, MCL 18.1101, *et seq.* On May 16, 2017, defendant moved for summary disposition, arguing, in relevant part, that plaintiff's complaint was subject to dismissal for failure to comply with the Court of Claims Act's requirement that a claimant must sign and verify its claim, see MCL 600.6431(1), as the complaint was unsigned by plaintiff and unverified.

On May 26, 2017, plaintiff filed an amended complaint, which contained allegations identical to those in the original complaint. This time, however, the amended complaint was signed and verified. On June 13, 2017, defendant again moved for summary disposition on the amended complaint. First, defendant argued that procedurally improper claims cannot be cured by virtue of an amendment of a complaint because the timing requirements of the Court of Claims Act applies to "claims," not "complaints." Thus, defendant argued that complaints can be amended but claims cannot, as the two terms are not equivalent. Second, defendant argued that even if plaintiff could amend its complaint to comply with the requirements of the Court of Claims Act, it nevertheless was time-barred by the FOIA's statute of limitations, which provides for a 180-day limitations period. This was so, defendant argued, because the amended complaint was filed more than 180 days after the denial of plaintiff's FOIA request and, thus, could only be deemed valid if it related back to the filing date of the original complaint. Defendant argued, however, that because the amended complaint did not add a claim or defense, a requirement to constitute an amended complaint under the Michigan Court Rules, it was not a proper amended complaint, and its filing therefore could not relate back to the date of the filing of the original complaint. Thus, defendant argued that plaintiff's claim was time-barred by the FOIA's statute of limitations.

The Court of Claims denied defendant's motion for summary disposition with respect to plaintiff's FOIA claim. The Court of Claims rejected defendant's distinction between a "claim" and a "complaint," holding that plaintiff had complied with the signature and verification requirements of the Court of Claims Act when it filed its amended complaint within the one-year statutory period in MCL 600.6431(1). The Court of Claims also held that the amended complaint related back to the filing of the original complaint, so plaintiff had complied with the FOIA's statute of limitations. Regarding plaintiff's count pertaining to an alleged violation of the Management and Budget Act, the Court of Claims granted summary disposition in favor of defendant because it found that the act does not provide a private right of action. Plaintiff has not appealed the Court of Claims' dismissal of the Management and Budget Act count. Thus, the only count pertinent to these appeals is plaintiff's FOIA count.

I. PLAINTIFF'S CHALLENGE TO THIS COURT'S JURISDICTION

On appeal, plaintiff contests this Court's jurisdiction over defendant's appeals. In Docket No. 340921, defendant appealed as of right under MCR 7.203(A)(1) the denial of summary disposition. And in Docket No. 340956, defendant applied for leave to appeal, which this Court granted under MCR 7.203(B)(1).

"Whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). "The jurisdiction of the Court of Appeals is governed by statute and court rule." *Id.* Because

“[t]his Court reviews de novo the proper interpretation of statutes and court rules as questions of law,” this Court reviews de novo the question whether it has jurisdiction. *Id.*

MCR 7.203(A)(1) provides that this Court “has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6).” In turn, MCR 7.202(6)(a)(v) defines a “final judgment” or “final order” as “an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7).”

Plaintiff argues that the denial of summary disposition by the Court of Claims did not deny defendant governmental immunity because there is no governmental immunity for disclosure of public records, and, even if governmental immunity did apply to disclosure of public records, the FOIA had acted as a waiver of such immunity. However, plaintiff’s challenge to this Court’s jurisdiction fails.

The Michigan Supreme Court stated in *Fairley v Dep’t of Corrections*, 497 Mich 290, 297; 871 NW2d 129 (2015), that “while MCL 600.6431 does not ‘confer governmental immunity,’ it establishes conditions precedent for avoiding the governmental immunity conferred by the” Governmental Tort Liability Act, MCL 691.1401 *et seq.* Thus, contrary to plaintiff’s position, defendant’s assertion that plaintiff failed to comply with MCL 600.6431(1) does constitute a claim that he was entitled to governmental immunity. As a result, the Court of Claims’ denial of summary disposition constituted a denial of governmental immunity to a governmental party, and the order thus constituted a final order under MCR 7.202(6)(a)(v). Therefore, that aspect of the order is appealable of right under MCR 7.203(A)(1), thereby providing this Court with jurisdiction over the claim of appeal in Docket No. 340921. See also *Watts v Nevils*, 477 Mich 856 (2006); *Walsh v Taylor*, 263 Mich App 618, 625; 689 NW2d 506 (2004). Further, whether there is actually a governmental immunity defense to an alleged failure to disclose public records and whether the FOIA waives any such defense goes to the merits of the appeal, i.e., to whether defendant is actually entitled to governmental immunity in this case, not to the jurisdictional issue of whether the order appealed from denied him governmental immunity.

Additionally, in Docket No. 340956, plaintiff ignores the fact that this Court granted leave to appeal, undisputedly giving this Court jurisdiction over the appeal. See MCR 7.203(B)(1) (this Court “may grant leave to appeal from . . . a judgment or order of the circuit court and court of claims that is not a final judgment appealable of right”).

II. AMENDED COMPLAINT

A. STANDARDS OF REVIEW

This Court reviews issues of statutory interpretation de novo. *PNC Nat’l Bank Ass’n v Dep’t of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009). We also review a trial court’s decision on a motion for summary disposition de novo. *Spiek Dep’t of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(7) can be granted if the plaintiff’s claim is barred because of an “immunity granted by law” or because a claim is barred by the applicable “statute of limitations.” MCR 2.116(C)(7); see also *Genesee Co Drain*

Comm'r v Genesee Co, 309 Mich App 317, 323; 869 NW2d 635 (2015). "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court." *Id.* at 429.

B. DISCUSSION

Defendant argues that plaintiff's FOIA complaint is untimely and invalid. There are two statutes at issue here, with different timing requirements, and this appeal involves the interplay between them. In order to frame the legal issues presented, we note in summary fashion the timing of the relevant events:

October 19, 2016: Defendant denies plaintiff's FOIA request.

December 12, 2016: Defendant denies internal appeal of FOIA request.

April 11, 2017: Plaintiff files its original complaint in the Court of Claims.

May 26, 2017: Plaintiff files amended complaint in the Court of Claims.

There are two statutes which control the circumstances under which a party aggrieved by the denial of a FOIA request may challenge an agency's decision. Section 10 of the FOIA statute, MCL 15.240(1), provides in relevant part:

If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

* * *

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

Because the Department of Attorney General is a public body, in order to challenge its denial of the FOIA request through the filing of suit, plaintiff was required by subpart (b) to bring such an action in the Court of Claims. Court of Claims actions, in turn, have their own procedural requirements, as provided for by the Court of Claims Act:

No claim may be maintained against the state unless the claimant, within 1 year after such 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 or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths. [MCL 600.6431(1).]

It is a clearly established principle that “when the Legislature specifically qualifies the ability to bring a claim against the state or its subdivisions on a plaintiff’s meeting certain requirements,” that those requirements are strictly construed as written. *McCahan v Brennan*, 492 Mich 730, 746; 822 NW2d 747 (2012). While the Court of Claims Act provides generally that suits must be brought within one year of a claim’s accrual, MCL 600.6431(1), in cases involving claims for personal injury or property damage, a claimant “shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action,” MCL 600.6431(3). In *McCahan*, our Supreme Court construed that language, holding that “the statutory provision must be understood as a cohesive whole. Subsection (1) sets forth the general rule, for which subsection (2) sets forth additional requirements and which subsection (3) modifies for particular classes of cases that would otherwise fall under the provisions of subsection (1).” *McCahan*, 492 Mich at 742. “Accordingly, subsection (3) incorporates the consequence for noncompliance with its provisions expressly stated in subsection (1) and does not otherwise displace the specific requirements of subsection (1) other than the timing requirement for personal injury or property damage cases.” *Id.* “Therefore, the failure to file a compliant claim or notice of intent to file a claim against the state within the relevant time periods designated in either subsection (1) or (3) will trigger the statute’s prohibition that ‘[n]o claim may be maintained against the state’ ” *Id.*

Although the separate requirements of the FOIA statute were not at issue in *McCahan*, we view *McCahan*’s rationale as controlling. When “the state consents to suit, the Legislature may ‘place conditions or limitations’ on the state’s waiver of immunity.” *Id.* at 736 (citation omitted). Clearly the Legislature, through the enactment of § 10 of the FOIA, consented to suit by aggrieved parties. But equally clearly, in cases in which the adverse decision was made by a state public body, the Legislature has determined that suit can only be brought in the Court of Claims. Further, in the Court of Claims Act, the Legislature has set forth procedures which govern in all cases brought in the Court of Claims. Those procedures include the statute of limitations provisions of MCL 600.6431 and also include the requirement that a complaint “shall be signed and verified by the claimant before an officer authorized to administer oaths.” In the context presented here, where both a statute providing a cause of action against the state and the Court of Claims Act apply, and where each of them has distinct prerequisites to bringing suit, “the statutory provision[s] must be understood as a cohesive whole.” *McCahan*, 492 Mich at 742. Thus, in such circumstances, a plaintiff must comply with the prerequisites set forth in both of the statutes. Even “‘post-Court of Claims Act’ legislation waiving suit immunity . . . is limited by the terms and conditions of jurisdiction established in the Court of Claims Act.” *Greenfield Const Co Inc v Mich Dep’t of State Highways*, 402 Mich 172, 195-196; 261 NW2d 718 (1978). Preconditions to maintaining an action against the state do “not abrogate a substantive right, but rather provide[] the framework within which a claimant may assert that right.” *Rusha v Dep’t of Corrections*, 307 Mich App 300, 310; 859 NW2d 735 (2014).

Applying that rule to the facts here, plaintiff’s complaint fails. Plaintiff filed its initial complaint on April 11, 2017, less than 180 days after defendant’s denial of its FOIA request on

October 19, 2016.¹ The complaint thus was timely under each of the statutes. However, the complaint failed to comply with the Court of Claims Act because it was neither signed nor verified. The complaint thus triggered the Court of Claims Act's "bar-to-claim language" of MCL 600.6431 that "[n]o claim may be maintained against the state" if the claim failed to comply with the Court of Claims Act's strictures. *McCahan*, 492 Mich. at 742.

The Court of Claims Act's requirement that a claim may not be maintained unless it is signed and verified is analogous to the requirements for initiating a medical malpractice claim. In *Scarsella v Pollak*, 461 Mich 547, 549; 607 NW2d 711 (2000), our Supreme Court held that the plaintiff's failure to adhere to the statutory requirements for filing a medical malpractice claim meant that the filing was void, thereby making any attempt to amend the initial complaint futile. At issue in *Scarsella* was the requirement found in MCL 600.2912d(1), which provides that "the plaintiff in a medical malpractice action 'shall file with the complaint an affidavit of merit . . .'" *Id.* at 548, quoting MCL 600.2912d(1). Because the plaintiff in *Scarsella* did not file the required affidavit of merit with his initial complaint, the complaint "was insufficient to commence plaintiff's malpractice action" and therefore did not toll the limitations period. *Scarsella*, 461 Mich at 550.

Like the plaintiff in *Scarsella*, plaintiff here argues that it should have been allowed to amend the complaint such that the complaint then would comply with the statutory requirements. See *id.* However, we reject this argument because, as the Supreme Court noted, "it effectively repeals" the statutory requirement. *Id.* Under plaintiff's view, plaintiffs could routinely file their complaints without having the claims verified, only later to "amend" at a later date after the period of limitations had passed. In the words of the *Scarsella* Court, this would "completely subvert[]" the requirements of MCL 600.6431(1). *Id.*²

Plaintiff sought to correct the deficiencies in its complaint by attempting to amend the pleading pursuant to MCR 2.118 on May 26, 2017. The amended complaint was filed within one year of the accrual of plaintiff's claims, and thus was timely under the Court of Claims Act; however, the amended complaint was filed more than 180 days after the denial of plaintiff's FOIA request, and therefore was untimely under the FOIA.

¹ Plaintiff's counsel conceded at oral argument that the FOIA 180-day limitations period began to run from the October 19, 2016 date of defendant's initial denial of its request, not from the later date of the defendant's denial of plaintiff's internal appeal. This undoubtedly is correct, as the FOIA explains that such an internal appeal happens after a "final determination" is made. See MCL 15.240(1)(a). Thus, the public body's decision in the internal appeal, although later in time, is not a "final determination" under the statute.

² We are cognizant that the statutory language of MCL 600.6431(1) and MCL 600.2912d(1) differ, with MCL 600.6431(1) saying that a claim cannot be "maintained" unless other requirements are met and MCL 600.2912d(1) saying that an affidavit of merit "shall [be] file[d] with the complaint." However, both establish mandatory prerequisites to filing suit and thus present the same issue.

The only way in which either of the complaints which plaintiff filed could be deemed valid is if the amended complaint, the only one which complied with the signature and verification requirements of the Court of Claims Act, was deemed to relate back to the filing of the original complaint, which was itself defective but timely. However, the Court of Claims Act is clear that “[n]o claim may be maintained” unless certain conditions are satisfied, and the original complaint here undisputedly did not satisfy those requirements. “All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.” MCL § 8.3a. Because the word “maintained” as used in the Court of Claims Act is used in a technical legal manner to convey a particular legal result, we are thus required to construe it according to that “peculiar and appropriate meaning.” To “maintain” is pertinently defined as “[t]o continue (something)” or “[t]o assert (a position or opinion).” *Black’s Law Dictionary* (10th ed). Thus, in the absence of the claim being verified in plaintiff’s initial complaint, the claim could not be asserted and thus lacked legal validity from its inception. In other words, because the claim in the initial complaint could not be “maintained,” it was a nullity. See *Scarsella*, 461 Mich at 550 (stating that because the complaint did not comply with statutory prerequisites to filing, it “was insufficient to commence plaintiff’s malpractice action.”).

Because plaintiff’s complaint was invalid from its inception, there was nothing pending which could be amended. Thus, any attempt by plaintiff to amend under MCR 2.118 was ineffectual. Moreover, although MCR 2.118 creates a general right to amend a complaint, the statutory provisions of the FOIA and the Court of Claims Act, as substantive law, control over any conflicting court rule. See *Stenzel v Best Buy Co, Inc*, 320 Mich App 262, 279; 906 NW2d 801 (2017). The Court of Claims therefore erred by holding that the court rules permitted both an amended complaint and for that amended complaint to relate back to the date of the original complaint. In addition, because the complaint was fatally deficient from its inception, it could not and did not toll the limitations period. See *Scarsella*, 461 Mich at 550.³

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Patrick M. Meter
 /s/ Michael F. Gadola
 /s/ Jonathan Tukel

³ Although it could not amend its defective complaint to comply with the statutory requirements, as the initial complaint was neither signed nor verified as required by the Court of Claims Act, plaintiff was free at any time within the 180-day period provided by the FOIA to file a fresh, signed and verified complaint, which would have had the effect of commencing a civil action (as the original filing was a nullity and did not initiate a proceeding). See *Scarsella*, 461 Mich at 549, 550. The fact that plaintiff failed to do so in a timely manner forecloses the present suit.

EXHIBIT 2

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Wednesday, May 21, 2014 10:48 AM
To: johnsellek@yahoo.com; Schnelder, Matthew (AG); Hills, Rusty (AG); Cropsey, Alan (AG); Isaacs, Carol (AG); Yearout, Joy (AG)
Cc: Lollo, Sharon (AG); Gustafson, Holly (AG); Nurenberg, Beth (AG); Teszlewicz, Barbara (AG)
Subject: Mackinac - Detroit Regional Chamber

Please be aware that the AG is no longer able to attend the Detroit Chamber on Mackinac Island due to a conflict in his schedule.

Just so the "left" knows what the "right" is doing, please note the following travel schedules for staff:

Rusty Hills	Arriving late Tuesday (5/27), Departing Wednesday (5/28) – Now taking AG's
place at Grand Hotel (we couldn't get our deposit back, so I'm moving Rusty here)	
Matthew Schnelder	Arriving Tuesday (5/27) or Wednesday (5/28), Departing Friday (5/30) – Hart's
Inn (hotel has 3 night minimum)	
Alan Cropsey	Arriving Tuesday (5/27), Departing Friday (5/30) – Mission Point Resort (hotel
has 3 night minimum)	
John Sellek	Arriving Tuesday (5/27), Departing Friday (5/30) – Hart's Inn (hotel has 3 night
minimum) -- John, is this correct?	
Scott Greenlee	Arriving Wednesday (5/28), Departing Thursday (5/29) – Lilac Tree

It will be necessary for everyone (except John) to fill out a pre-travel form. This is to cover all your incidentals (ferry, mileage, meals, taxi). Please obtain receipts for everything.

Sharon/Beth/Holly – please work with BARB on the pre-travel forms in regard to the "Justification for travel" language. This is important.

Esther & I will continue to forward any invitations we receive. Please RSVP to those you wish to attend.

Thanks.

Lori Gay
Executive Assistant
Attorney General Bill Schuette
(517) 373-1113

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Tuesday, July 29, 2014 4:07 PM
To: Yearout, Joy (AG); Hills, Rusty (AG); Johnsellek@yahoo.com; Isaacs, Carol (AG); Schneider, Matthew (AG)
Cc: Allen, Sydney (AG); Gast, Sonya (AG); Jentzen, Esther E. (AG); Teszlewicz, Barbara (AG); Gustafson, Holly (AG)
Subject: propane press conference

Joy,

The AG could do a propane press conference the morning of Monday, August 18.
He is leaving it in your and Rusty's discretion whether it should be held in Saginaw or Lansing. He can't do Traverse City.

Pre-briefing being held tentatively for Wed. August 13, 1:00-2:00 PM in his office.

Lori

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Tuesday, July 29, 2014 6:11 PM
To: Yearout, Joy (AG); Hills, Rusty (AG); Johnsell@yaho.com; Isaacs, Carol (AG); Schneider, Matthew (AG)
Cc: Allen, Sydney (AG); Gast, Sonya (AG); Jentzen, Esther E. (AG); Teszlewicz, Barbara (AG); Gustafson, Holly (AG)
Subject: Rape Kit Approp press conference

Joy,

The AG would be available for a Rape Kit Approp press conference on Wed. Oct. 1 in Detroit.
I will hold the date for now until I hear confirmation from you whether all the players needed are free.
Once it is locked in, I'll set a date for a pre-briefing.

Thanks.

Lori

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Tuesday, August 12, 2014 4:10 PM
To: Rusty Hills; Hills, Rusty (AG); Yearout, Joy (AG); Joy.yearout@gmail.com; Johnsellek@yahoo.com; Isaacs, Carol (AG); Pascoe, DJ (AG); Fowler, Darrin (AG); Schnelder, Matthew (AG)
Cc: Teszlewicz, Barbara (AG); Nurenberg, Beth (AG); Gee, Mary (AG); Allen, Sydney (AG); Gast, Sonya (AG); Gustafson, Holly (AG)
Subject: RE: TOMORROW - time change/location change for Press Conference Briefing

Sorry, looping Matthew in.

Matthew/Holly – please note location/time change for tomorrow.

From: Gay, Lori (AG)
Sent: Tuesday, August 12, 2014 4:02 PM
To: 'Rusty Hills'; Hills, Rusty (AG); Yearout, Joy (AG); Joy.yearout@gmail.com; 'Johnsellek@yahoo.com'; Isaacs, Carol (AG); Pascoe, DJ (AG); Fowler, Darrin (AG)
Cc: Teszlewicz, Barbara (AG); Nurenberg, Beth (AG); Gee, Mary (AG); Allen, Sydney (AG); Gast, Sonya (AG)
Subject: TOMORROW - time change/location change for Press Conference Briefing

A propane press conference briefing with the AG is scheduled for tomorrow, Wednesday, August 13.

Please note the time & location have been changed.

NEW TIME: 11:30 AM – 12:00 NOON

NEW LOCATION:
 Warner, Norcross, & Judd
 One Michigan Ave Building
 120 N. Washington Sq.
 4th FL – Suite 410
 Downtown Lansing

Participants Include: Chief Deputy, Rusty, Joy, DJ, and Darrin.

Thank you.

Gustafson, Holly (AG)

From: Teszlewicz, Barbara (AG)
Sent: Thursday, October 30, 2014 2:08 PM *Uhaupt*
To: Schuette, Bill (AG); billschuette53@gmail.com; Gay, Lori (AG); Starner, Dennis; Jentzen, Esther E. (AG); Isaacs, Carol (AG); Sonneveldt, Daniel (AG); Schneider, Matthew (AG); Lindstrom, Aaron (AG); Gustafson, Holly (AG); Hills, Rusty (AG); Matt Hall (mc1hall@gmail.com); rawa@sbcglobal.net; shannonprice@gmail.com; Greenlee, Scott (AG); bundycar@gmail.com; Cropsey, Alan (AG); Lollo, Sharon (AG); johnsellek@yahoo.com; Yearout, Joy (AG); Nurenberg, Beth (AG); Gast, Sonya (AG); Allen, Sydney (AG); Lazet, John (AG); Filler, Graham (AG); Restuccia, Eric (AG); Sherman, Ann (AG); Slits, Jennifer (AG); Dalzell, Kathryn (AG); Wolanin, Amanda (AG); Zwierzchowski, Brittany (AG); Anderson, Carly (AG)
Subject: Luncheon - November 6th

We would like to have a "potluck" luncheon on Thursday, November 6th, in the Kelley Library.

Please sign up to bring a main dish, salad, dessert, or pop and table wear. The sign-up sheet is at Barb's desk.

Barb Teszlewicz
Senior Executive Management Assistant
Michigan Department of Attorney General
Teszlewiczb@michigan.gov
(517) 373-1116 / phone
(517) 373-3042 / fax

Gustafson, Holly (AG)

From: Gustafson, Holly (AG)
Sent: Friday, November 07, 2014 9:41 AM
To: Jentzen, Esther E. (AG); Lindstrom, Aaron (AG); Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'; Johnsellek@yahoo.com
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Teszlewicz, Barbara (AG)
Subject: RE: DeBoer messaging meeting
Attachments: Holly Gustafson.vcf

I've received the message and Matthew is aware of the call and will call in at 10:45 am.



From: Jentzen, Esther E. (AG)
Sent: Friday, November 07, 2014 9:40 AM
To: Lindstrom, Aaron (AG); Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'; Johnsellek@yahoo.com
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG); Teszlewicz, Barbara (AG)
Subject: RE: DeBoer messaging meeting

Whoever is in the office can meet in the executive conference room. I will dial them in as the host of this call.

For anyone else not in the office please call: 1-888-686-8807 and use passcode:

I am adding John Sellek to this email per the AG.

Please let me know that you have received this message. Thanks!

Esther

From: Lindstrom, Aaron (AG)
Sent: Friday, November 07, 2014 9:24 AM
To: Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG); Jentzen, Esther E. (AG)
Subject: RE: DeBoer messaging meeting

Esther says the AG would like to do the call at 10:45. She will set up a conference line for it. Please RSVP to her.

From: Lindstrom, Aaron (AG)
Sent: Friday, November 07, 2014 8:48 AM

Gustafson, Holly (AG)

From: Lindstrom, Aaron (AG)
Sent: Friday, November 07, 2014 9:56 AM
To: Jentzen, Esther E. (AG); Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'; JohnSellek@yahoo.com
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG); Teszlewicz, Barbara (AG)
Subject: RE: DeBoer messaging meeting

Carol suggested, wisely, that it might be helpful for us to talk before the AG gets on the line, so we can use his time more productively. So, if you are able, let's meet (or call in) at 10:15 to start identifying the issues and talking through them.

Aaron

From: Jentzen, Esther E. (AG)
Sent: Friday, November 07, 2014 9:40 AM
To: Lindstrom, Aaron (AG); Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'; JohnSellek@yahoo.com
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG); Teszlewicz, Barbara (AG)
Subject: RE: DeBoer messaging meeting

Whoever is in the office can meet in the executive conference room. I will dial them in as the host of this call.

For anyone else not in the office please call: 1-888-686-8807 and use passcode:

I am adding John Sellek to this email per the AG.

Please let me know that you have received this message. Thanks!

Esther

From: Lindstrom, Aaron (AG)
Sent: Friday, November 07, 2014 9:24 AM
To: Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG); Jentzen, Esther E. (AG)
Subject: RE: DeBoer messaging meeting

Esther says the AG would like to do the call at 10:45. She will set up a conference line for it. Please RSVP to her.

From: Lindstrom, Aaron (AG)
Sent: Friday, November 07, 2014 8:48 AM
To: Hills, Rusty (AG); Yearout, Joy (AG); Restuccia, Eric (AG); 'Bursch, John (jbursch@wnj.com)'
Cc: Isaacs, Carol (AG); Schneider, Matthew (AG); Gustafson, Holly (AG)
Subject: DeBoer messaging meeting

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Monday, November 10, 2014 9:52 AM
To: Yearout, Joy (AG); Isaacs, Carol (AG); Hills, Rusty (AG); John Sellek; Schneider, Matthew (AG); Stokes, Wanda (AG); Elizondo, Kelly (AG); Lollo, Sharon (AG); Cropsey, Alan (AG);
 1?? Joy.yearout@gmail.com
Cc: Teszlewicz, Barbara (AG); Nurenberg, Beth (AG); Gustafson, Holly (AG); Hopkins, Lois (AG); Jentzen, Esther E. (AG)
Subject: Meeting w/ AG

A briefing meeting has been scheduled with the AG for this Wednesday, November 12th from 1:00-1:45 PM in the executive conference room. The purpose of this briefing is to discuss:

- Recent licensing cases against compounding pharmacies (NECC, Specialty Medicine, Nu Vision)
- New legislative reforms governing compounding pharmacies
- Our regulation of compounding pharmacies, in general

This briefing will help prepare the AG for tentative media interviews. If you have specific questions concerning your role, please contact Joy Yearout.

Thank you.

*Lori Gay
 Executive Assistant
 Attorney General Bill Schuette
 (517) 373-1113*

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Tuesday, November 18, 2014 5:16 PM
To: Teszlewicz, Barbara (AG); johnsellek@yahoo.com; Cropsey, Alan (AG); Hills, Rusty (AG); Isaacs, Carol (AG); Lindstrom, Aaron (AG); Schnelder, Matthew (AG); Yearout, Joy (AG)
Cc: Jentzen, Esther E. (AG); Nurenberg, Beth (AG); Gustafson, Holly (AG); Lollo, Sharon (AG)
Subject: RE: Senior Staff Meetings - November

Please note -- Staff meeting on Wed. Nov. 19th will start at 10:45 AM.

From: Teszlewicz, Barbara (AG)
Sent: Thursday, November 13, 2014 8:47 AM
To: johnsellek@yahoo.com; Cropsey, Alan (AG); Hills, Rusty (AG); Isaacs, Carol (AG); Lindstrom, Aaron (AG); Schnelder, Matthew (AG); Yearout, Joy (AG)
Cc: Gay, Lori (AG); Jentzen, Esther E. (AG); Nurenberg, Beth (AG); Gustafson, Holly (AG); Lollo, Sharon (AG)
Subject: Senior Staff Meetings - November

The next Senior Staff meeting is set for Wednesday, November 19th --
 10:00 -- Carol, Rusty, Matthew
 10:30 -- Senior Staff

There is also a tentative meeting set for Tuesday, November 25th --
 10:00 -- Carol, Rusty, Matthew
 10:30 -- Senior Staff

You can send me agenda items at any time.

Thanks,
 Barb

Barb Teszlewicz
Senior Executive Management Assistant
Michigan Department of Attorney General
Teszlewiczb@michigan.gov
(517) 373-1115 / phone
(517) 373-3042 / fax

Gustafson, Holly (AG)

From: Gay, Lori (AG)
 Sent: Friday, November 21, 2014 3:46 PM
 To: Bursch, John (jbursch@wnj.com); Hills, Rusty (AG); Lindstrom, Aaron (AG); John Sellek; Yearout, Joy (AG); *???* joy.yearout@gmail.com; Isaacs, Carol (AG); Schneider, Matthew (AG); Restuccia, Eric (AG)
 Cc: rshler@wnj.com; Teszlewicz, Barbara (AG); Gustafson, Holly (AG); Sitts, Jennifer (AG); Nurenberg, Beth (AG); Jentzen, Esther E. (AG)
 Subject: conference call on MONDAY

John Bursch -

Are you available for a 9:15 AM conference call on Monday, November 24th re: DeBoer?
 If so, you can either participate in person or via phone.

Call-in number: 1-888-636-3807
 Passcode:

Other tentative participants: Aaron Lindstrom; Rusty Hills; John Sellek; Joy Yearout; Carol Isaacs; Matthew Schneider; Restuccia, Eric

Lori Gay
Executive Assistant
Attorney General Bill Schuette
(517) 373-1113

From: Lindstrom, Aaron (AG)
 Sent: Friday, November 21, 2014 1:25 PM
 To: Gay, Lori (AG)
 Subject: FW: RE:

Lori, will you please handle the coordination for the conference call?

From: Bill Schuette (<mailto:billschuette53@gmail.com>)
 Sent: Friday, November 21, 2014 11:37 AM
 To: Lindstrom, Aaron (AG)
 Cc: Rusty Hills; Aaron Lindstrom; John B. Sellek; Joy Yearout; Carol Isaacs; Matthew Schneider; Restuccia, Eric (AG); Lori Gay
 Subject: Re: RE:

Aaron, please send me the last draft. Also, we need to set up a 9:15 conference call on Monday please

Sent from my iPad

On Nov 21, 2014, at 5:16 AM, "Lindstrom, Aaron (AG)" <LindstromA@michigan.gov> wrote:

Thanks, Rusty. I've revised based on these suggestions. See my in-line comments below.

Gustafson, Holly (AG)

From: Gay, Lori (AG)
Sent: Tuesday, November 25, 2014 1:08 PM
To: Yearout, Joy (AG); Jentzen, Esther E. (AG); Gast, Sonya (AG); Allen, Sydney (AG); Sonneveldt, Daniel (AG); Wendy Anderson; shannongprice@gmail.com; bundycar@gmail.com; Schnelder, Matthew (AG); Lindstrom, Aaron (AG); John Sellek; Cropsey, Alan (AG); Lollo, Sharon (AG); Hills, Rusty (AG); Rusty Hills
Cc: Nurenberg, Beth (AG); Teszlewicz, Barbara (AG); Gustafson, Holly (AG)
Subject: RE: TIMELY-please read today

Also, I am mailing my check and the AG's check to Ron Robinson today. So if anyone wants to give me their check or cash, I can send all in one envelope. Or feel free to mail on your own as well.

From: Gay, Lori (AG)
Sent: Tuesday, November 25, 2014 1:04 PM
To: Yearout, Joy (AG); Jentzen, Esther E. (AG); Gast, Sonya (AG); Allen, Sydney (AG); Sonneveldt, Daniel (AG); Wendy Anderson; shannongprice@gmail.com; bundycar@gmail.com; Schnelder, Matthew (AG); Lindstrom, Aaron (AG); John Sellek; Cropsey, Alan (AG); Lollo, Sharon (AG); Hills, Rusty (AG); Rusty Hills
Cc: Nurenberg, Beth (AG); Teszlewicz, Barbara (AG); Gustafson, Holly (AG)
Subject: TIMELY-please read today

If you have not done so already, would you please RSVP to me (or you can send your response directly to Pler King) on whether you're attending the Detroit Holiday Party.
 They need to finalize a count TODAY for the caterer.

Date: Wednesday, December 10
 Time: 11:30 AM
 Location: Ford Piquette Avenue Plant (old Ford Museum)
 Cost: \$20/person -- checks made payable to Ron Robinson

Thank you!

From: MIAG-FYI
Sent: Tuesday, November 18, 2014 12:09 PM
To: AG-ALL Staff
Subject: SPECIAL FYI - REMINDER DETROIT HOLIDAY PARTY

Please be reminded about the Detroit Holiday Party quickly approaching. (see flyer) Be sure to get your reservation in.

Happy Holidays!!!!

Gustafson, Holly (AG)

From: Lori Gay <lorigay71@yahoo.com>
Sent: Friday, November 28, 2014 12:18 AM
To: Aaron Lindstrom; Lindstrom, Aaron (AG); Hills, Rusty (AG); Rusty Hills; Carol Isaacs; Isaacs, Carol (AG); alan cropsey; Cropsey, Alan (AG); Joy Yearout; Yearout, Joy (AG); johnsellek@yahoo.com; matthew.schnelder75@gmail.com; Schnelder, Matthew (AG); Sharon Lollo; Lollo, Sharon (AG)
Cc: tez928@att.net; Teszlewicz, Barbara (AG); Esther Jentzen; Jentzen, Esther E. (AG); Gustafson, Holly (AG); Beth Nurenberg; Nurenberg, Beth (AG)
Subject: STAFF MEETING ON MONDAY

Hope everyone enjoyed their Thanksgiving and has plenty of leftovers to graze over the weekend. I know I sure do!

There will be a staff meeting on Monday, December 1st at 10:30 AM in the AG's office.
 Please send your agenda items to Barb by 9:30 AM on Monday.

The weekly meeting with Carol, Rusty, and Matthew is set for 10:00 AM.
 (Carol, would you please let Barb or me know if you would like to join by phone?)

Also, a few other items for your calendars:

Farewell party for Joy set for Monday, December 15th.
 Bureau/Division Chief meeting also set for Monday, December 15th.
 Times for both are to TBD, but please block off 10:30 AM-1:30 PM.

Thank you.

Lori Gay
 Executive Assistant
 Attorney General Bill Schuette
 (517) 373-1113

Gustafson, Holly (AG)

From: Teszlewicz, Barbara (AG)
Sent: Monday, December 08, 2014 9:06 AM
To: Allen, Sydney (AG); Gustafson, Holly (AG); Schneider, Matthew (AG); Sellek, John (AG);
johnsellek@yahoo.com
Subject: DCDS - Enter Your Time This Morning
Importance: High

Thanks.

*Barb Teszlewicz
Senior Executive Management Assistant
Michigan Department of Attorney General
Teszlewiczb@michigan.gov
(517) 373-1115 / phone
(517) 373-3042 / fax*

Gustafson, Holly (AG)

From: Gustafson, Holly (AG)
Sent: Friday, December 26, 2014 9:21 AM
To: OnDutyBillSchuette@gmail.com
Subject: Breakfast
Attachments: Holly Gustafson.vcf

RSVP to the Breakfast for
Holly Gustafson, 517-582-8658
and Family (children Rose and Harlen).

Thank you for the invitation.



Gustafson, Holly (AG)

From: Bill Schuette <ondutylbillschuette@gmail.com>
Sent: Friday, December 26, 2014 11:55 AM
To: Gustafson, Holly (AG)
Cc: Greenlee, Scott (AG)
Subject: Re: Reception

Great Holly - Looking forward to having you all there for the breakfast and reception!

Best,

Team Schuette

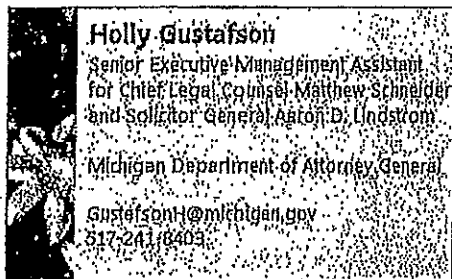
On Fri, Dec 26, 2014 at 9:22 AM, Gustafson, Holly (AG) <GustafsonH@michigan.gov> wrote:

RSVP to the Reception for

Holly Gustafson, [517-582-8658](tel:517-582-8658)

and Family (children Rose and Harlen).

Thank you for the invitation.



Gustafson, Holly (AG)

From: Teszlewicz, Barbara' (AG)
Sent: Monday, January 05, 2015 8:54 AM
To: Allen, Sydney (AG); Anderson, Wendy (AG); Armstrong, Cindy (AG); Bundy, Carter (AG); Cropsey, Alan (AG); Gay, Lori (AG); Greenlee, Scott (AG); Gustafson, Holly (AG); Hall, Matt (AG); Hills, Rusty (AG); Ianni, Robert (AG); Isaacs, Carol (AG); Kirkey, Alicia (AG); Lazet, John (AG); Lindstrom, Aaron (AG); Lollo, Sharon (AG); Moody, Laura (AG); Nurenberg, Beth (AG); Price, Shannon (AG); Schnelder, Matthew (AG); Schuette, Bill (AG); Sellek, John (AG); Sonneveldt, Daniel (AG); Starner, Dennis
Cc: Gast, Sonya (AG); johnsellek@yahoo.com
Subject: REMINDER - DCDS TODAY!
Importance: High

Please and thank you.

Barb Teszlewicz
Senior Executive Management Assistant
Michigan Department of Attorney General
Teszlewiczb@michigan.gov
 (517) 373-1115 / phone
 (517) 373-3042 / fax

Schuetzte, Bill (AG).

From: Bill Schuetzte <billschuetzte53@gmail.com>
 Sent: Tuesday, March 17, 2015 7:27 AM
 To: Allen, Sydney (AG)
 Cc: Schuetzte, Bill (AG); Bitely, Andrea (AG); Cropsey, Alan (AG); Gast, Sonya (AG); Hills, Rusty (AG); Isaacs, Carol (AG); Isaacs, Carol2; John Sellek-Personal; Lindstrom, Aaron (AG); Moody, Laura (AG); Rusty-Personal; Schneider, Matthew (AG); Sellek, John (AG); Nurenberg, Beth (AG)
 Subject: Re: Media Inquiries-3/16

team,

let's discuss the marijuana statements.. may just say let the voters decide.

can add to our discussion next week!

Sent from my iPad

On Mar 16, 2015, at 5:19 PM, "Allen, Sydney (AG)" <Allens20@michigan.gov> wrote:

Anthony Rizzo, CMU Public Radio (COMPLETE)

Re: Question about press release regarding Schuetzte's consumer tips to avoid IRS scams this tax season.

989-774-8654

Anthony.rizzo@cmich.edu

REPLY: Katharyn Baron provided sound bite.

Mike Arney, WSJM (COMPLETE)

Re: Question about tax scams press release

269-926-1112

REPLY: Katharyn Baron provided sound bite.

Melissa Burnor, The Blissfield Advance (COMPLETE)

RE: Many of our local municipalities are being asked to support a resolution on the increase in Michigan sales tax whose purported aim is to fund road improvements from the Michigan Municipal League. I read that the attorney general has taken a stance on the issue. Is there an official press release or could you clarify your position on this?

news@blissfieldadvance.com

REPLY: Sent Detroit News article.

Josh Sidorowicz, Fox 17 GR (COMPLETE)

Re: Seeking AG's official reaction to a petition drive for MJ legalization.

(616)581-9064

REPLY: "When it comes to the medical marijuana question, we all know people who suffer from great pain and we are monitoring the legislature's review of that law, but we absolutely must keep drugs out of kids' hands and that is why I am opposed to so-

Gustafson, Holly (AG)

From: John Sellek <johnsellek@yahoo.com>
 Sent: Thursday, April 09, 2015 12:12 PM
 To: Teszlewicz, Barbara (AG)
 Cc: Gustafson, Holly (AG); Nurenberg, Beth (AG); Sellek, John (AG)
 Subject: Re: Enbridge 6B pipeline settlement

Yes.

John Sellek • Attorney General Bill Schuette
 517.648.9543

On Apr 9, 2015, at 12:09 PM, "Teszlewicz, Barbara (AG)" <teszlewiczb@michigan.gov> wrote:

It looks like Carol and Rusty are available at 8:30-10:00 on Friday, April 24th.

John - are you available at that time?

-----Original Message-----

From: Gustafson, Holly (AG)
 Sent: Wednesday, April 08, 2015 12:05 PM
 To: Nurenberg, Beth (AG); Teszlewicz, Barbara (AG)
 Subject: FW: Enbridge 6B pipeline settlement

Beth and Barb - I'm going to have to finish scheduling this on Monday. Can you look at schedules for Rusty, John Sellek and Carol and tell me if there are any available times on:

Tuesday afternoon, April 21; all day on Wednesday, April 22; and all day on Friday, April 24.

Holly

-----Original Message-----

From: Hart, Nancy (AG)
 Sent: Wednesday, April 08, 2015 10:32 AM
 To: Gustafson, Holly (AG)
 Subject: RE: Enbridge 6B pipeline settlement

Not to be a pain, but would it be easier to get Ms. Isaacs' availability first -- since she is the hard one with scheduling?

I think Polly and Peter could adjust to her schedule.

And to help you out a little bit, I think both Polly and Peter would be available on Tuesday afternoon, April 21; all day on Wednesday, April 22, and all day on Friday, April 24.

Gustafson, Holly (AG)

From: Teszlewicz, Barbara (AG)
Sent: Monday, April 13, 2015 9:26 AM
To: Leach, Nicholas (AG); shannonprice@gmail.com; johnsellek@yahoo.com; Allen, Sydney (AG); Anderson, Wendy (AG); Armstrong, Cindy (AG); Barton, Denise (AG); Bitely, Andrea (AG); Bundy, Carter (AG); Cropsey, Alan (AG); Gast, Sonya (AG); Gay, Lori (AG); Greenlee, Scott (AG); Gustafson, Holly (AG); Hall, Matt (AG); Hills, Rusty (AG); Howd, Raymond (AG); Isaacs, Carol (AG); Kirkey, Alicia (AG); Lazet, John (AG); Lindstrom, Aaron (AG); Lollo, Sharon (AG); Manning, Peter (AG); Moody, Laura (AG); Morton, Bradley (AG); Nurenberg, Beth (AG); Potchen, Joseph (AG); Price, Shannon (AG); Schnelder, Matthew (AG); Schuette, Bill (AG); Sellek, John (AG); Sonneveldt, Daniel (AG); Starner, Dennis (AG); Stokes, Wanda (AG)
Subject: REMINDER - DCDS Today
Importance: High

For those of you who were not here on Friday, please enter your time in DCDS.

Barb Teszlewicz
Senior Executive Management Assistant
Michigan Department of Attorney General
Teszlewiczb@michigan.gov
(517) 373-1115 / phone
(517) 373-3042 / fax

Gay, Lori (AG)

From: Gay, Lori (AG)
 Sent: Wednesday, May 13, 2015 1:18 PM
 To: billschuette53@gmail.com
 Cc: Rusty Hills; John Sellen; Bitely, Andrea (AG)
 Subject: Radio

Are you willing to do live radio interview w/ WKZO at either 7:20 or 8:20 AM tomorrow morning? You will be in the car by 8:00 AM, so either time should work.

This is regarding \$75 Million Settlement for Enbridge's Kalamazoo River Oil Spill.

From: Tim Abramowski <tim.abramowski@mwcradio.com>
 Date: May 13, 2015 at 8:21:40 AM EDT
 To: "Bitely, Andrea (AG)" <BitelyA@michigan.gov>
 Subject: Fwd: Schuette, Wyant Announce \$75 Million Settlement for Enbridge's Kalamazoo River Oil Spill

Good morning Andrea,

Any chance that Mr. Schuette be available tomorrow morning (Thursday, May 14) at 7:20am or 8:20am to join our co-hosts Jay Morris and Jim McKinney of the Kalamazoo Morning News? It would be LIVE for approximately 6-8 minutes.

Let me know

Thank you for your time and consideration

Tim Abramowski
 Producer, AM 590 WKZO Radio
 The Kalamazoo Morning News
 Midwest Communications Inc.
tim.abramowski@wkzo.com
tim.abramowski@mwcradio.com

----- Forwarded message -----

From: AG Press <AGPress@govsubscriptions.michigan.gov>
 Date: Wed, May 13, 2015 at 7:01 AM
 Subject: Schuette, Wyant Announce \$75 Million Settlement for Enbridge's Kalamazoo River Oil Spill
 To: tim.abramowski@mwcradio.com

1011

Gay, Lori (AG)

From: Gay, Lori (AG)
Sent: Wednesday, May 13, 2015 5:22 PM
To: Lindstrom, Aaron (AG); Cropsey, Alan (AG); Lollo, Sharon (AG); Isaacs, Carol (AG); Sellek, John (AG); Bitely, Andrea (AG); Hills, Rusty (AG); Schneider, Matthew (AG); John Sellek; Rusty Hills; Matthew Schneider; fclsaacs@comcast.net; aaron.lindstrom@west-point.org; andrea.bitely@gmail.com
Cc: Nurenberg, Beth (AG); Teszlewicz, Barbara (AG); Jentzen, Esther E. (AG)
Subject: Staff Meeting on THURSDAY

Sorry for the late reminder...

Next staff meeting is tomorrow, Thursday, May 14 from 10:30-11:30 AM. Please send your agenda items to me by 10:00 AM Thursday morning.

Also, the next staff meeting will be on May 28 from 10:30-11:30 AM. This is confirmed.
The following staff meeting will be Wed. June 10 from 10:30-11:30 AM.

From: Gay, Lori (AG)
Sent: Wednesday, April 22, 2015 2:51 PM
To: Lindstrom, Aaron (AG); Cropsey, Alan (AG); Lollo, Sharon (AG); Isaacs, Carol (AG); Sellek, John (AG); Bitely, Andrea (AG); Hills, Rusty (AG); Schneider, Matthew (AG)
Cc: Gustafson, Holly (AG); Nurenberg, Beth (AG); Teszlewicz, Barbara (AG); Jentzen, Esther E. (AG)
Subject: senior staff mtgs

The next senior staff meetings have been scheduled for:

Thursday, April 30 – 12:00-1:00 PM
Thursday, May 14 – 10:30-11:30 AM

Tentative:
Thursday, May 28 – 10:30-11:30 AM

Thank you.

*Lori Gay
Executive Assistant
Attorney General Bill Schuette
(517) 373-1113*

EXHIBIT 3



PROGRESSMICHIGAN

POWERING PROGRESS TOGETHER

September 27, 2016

Email: AG-FOIA@mi.gov

Department of Attorney General
Attn: FOIA Coordinator
P.O. Box 30213
Lansing, MI 48909

Re: FOIA Request

Dear Attorney General Schuette,

On behalf of Progress Michigan and pursuant to Michigan Freedom of Information Act, M.C.L. § 15.231 et seq., I request all emails that the following individuals sent or received using a personal email account in the performance of any official function since November 1, 2010:

John Bandstra
Kathryn Barron
Andrea Bitely
John Bursch
Alan Cropsey
Lori Gay
Holly Gustafson
Gerald (Rusty) Hills
Carol Isaacs
Esther Jentzen
Aaron Lindstrom

Sharon Lollo
Peter Manning
Beth Nurenberg
Matthew Schneider
William (Bill) Schuette
John Sellek
Dan Sonneveldt
Dennis Startner
Barbara Teszlewicz
Joy Yearout

For purposes of this request, a 'personal email account' is any account not issued by the State of Michigan. For example, this definition would include an individual's Gmail account.

Please include any attachments that were part of these emails, such as word documents, spreadsheets, PDFs or other types of documents. In addition, please include copies of emails in which anyone on the list was "cc-ed" or "bcc-ed."

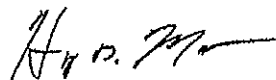
Pursuant to MCL § 15.234(c), we are requesting documents in an electronic format if available. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50.00. However, I would also request a waiver of all fees because the disclosure of the requested information is in the public interest and the request is limited in scope.



If you deny this request in whole or part, please cite each specific exemption you feel justifies the refusal to release specific emails and notify me of the appeal procedures available under the law.

When responding to this email, please do so via email, at hugh@progressmichigan.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hugh M.", with a stylized flourish at the end.

Hugh Madden

EXHIBIT 4

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

October 19, 2016

Hugh Madden, Communications Director
Progress Michigan
215 South Washington Square, Suite 100
Lansing, Michigan 48933
hugh@progressmichigan.org

Dear Mr. Madden:

This notice responds to your September 27, 2016 emailed letter (copy attached), received by the Department of Attorney General (Department) on September 28, 2016, requesting information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* A statutorily-permitted extension of time to respond was taken through October 19, 2016.

As to the 21 individuals identified in your FOIA request, you seek copies of "all emails that [they] sent or received [or were 'cc-ed or bcc-ed,' including any attachments] using a personal email account in the performance of any official function since November 1, 2010."

Your request is denied for the following reasons:

To the best of the Department's knowledge, information, and belief, the Department does not possess records meeting your description and associated with the 21 named individuals. The Department does possess a single email of one Department employee, Aaron Lindstrom, that falls under a part of your description and under the statutory definition of "public record;" namely, "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232(e).

An April 6, 2015 two-sentence email, which was inadvertently sent to Mr. Lindstrom's personal email address, is part of an email stream composed of three other emails, dated March 27, April 2, and April 3, 2015, generally concerning whether an amicus brief might be considered in the case of *Home Care Ass'n of America, et al v David Weil, et al.*

RECEIVED by MSC 7/30/2018 9:29:56 AM

Hugh Madden
Page 2
October 19, 2016

As to the information contained in the above-described document, the Department raises section 13(1)(h) of the FOIA, MCL 15.243(1)(h), which permits the nondisclosure of records subject to the attorney work product doctrine. See, *Messenger v Ingham County Prosecutor*, 232 Mich App 633; 591 NW2d 393 (1998), and MCR 2.302(B)(3)(a).

As to the denial of your request, under section 10 of the FOIA, MCL 15.240, the Department is obligated to inform you that you may do the following:

1) Appeal this decision in writing to the Attorney General, Department of Attorney General, 525 W. Ottawa, P.O. Box 30754, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the denial should be reversed. The head of the Department or his designee must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.

2) Commence an action in the Court of Claims within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements, and possible damages.

The Department's FOIA Procedures and Guidelines can be accessed at www.michigan.gov/foia-ag.

Sincerely,

Christy Wendling-Richards

Christy Wendling-Richards
FOIA Coordinator
Department of Attorney General
517-373-1162

Enc.

RECEIVED by MSC 7/30/2018 9:29:56 AM

EXHIBIT 5



PROGRESSMICHIGAN

POWERING PROGRESS TOGETHER

November 28, 2016

Bill Schuette, Attorney General
Department of Attorney General
525 W. Ottawa
P.O. Box 30754
Lansing, MI 48909

Re: Appeal of October 19, 2016
FOIA Request Denial

Dear Attorney General Schuette,

In a letter dated October 19, 2016, you denied my FOIA request September 27, 2016 (copy of original request attached).

You offered the following reason for denying the request: "To the best of the Department's knowledge, information, and belief, the Department does not possess records meeting your description and associated with the 21 named individuals." You then identified a single email sent to Mr. Aaron Lindstrom's personal email address on April 6, 2015, but denied disclosure of this email under one of the statutory exemptions. You did not clearly state, but strongly implied, that this email was stored on a government server or other government-controlled service.

I respectfully ask that you reverse your denial of my FOIA request. Contrary to your position, the Michigan Freedom of Information Act reaches emails sent or received using a personal email account in the performance of any official function, even if the email account is not possessed by the Department, but is possessed by an individual state officer or employee (i.e., an individual's Gmail account). The statute gives any person "a right to inspect, copy, or receive copies of the requested public record of the public body." M.C.L. 15.233(1). The statute defines a "public record" as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." M.C.L. 15.233(e). The statute then broadly defines "public body" to include not only entities ("agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government") but also individuals ("[a] state officer, employee"). M.C.L. 15.232(d) (i). Reading these definitions together with the disclosure right created by M.C.L. 15.233(1), a person has a right to receive copies of a writing prepared, owned, used, in the possession of, or retained by a state officer or employee in the performance of an official function, from the time it is created, even if the Department does not currently possess the requested writing.

Therefore, I again request what you have a statutory obligation to disclose: namely, all emails which the 21 named individuals sent or received using a personal email account in the performance of an official function, including such emails that solely reside on these individuals' personal email accounts and are otherwise not possessed by the Department.

Very truly yours,

Hugh Madden



EXHIBIT 6

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

December 12, 2016

Hugh Madden, Communications Director
Progress Michigan
215 South Washington Square, Suite 100
Lansing, Michigan 48933
hugh@progressmichigan.org

Dear Mr. Madden:

This notice responds to your November 28, 2016 emailed letter (Attachment 1), which you identify as an "appeal" of the Department of Attorney General's (Department) October 19, 2016 written notice (Attachment 2) denying your September 27, 2016 written request (Attachment 3) for records under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

The Department must uphold its denial for the following reasons:

Your FOIA request sought information that you described as "[the Attorney General's and 20 other current and former Department employees] emails [including any attachments] that [the individuals] sent or received [or were 'cc-ed or bcc-ed'] using a personal email account in the performance of any official function since November 1, 2010." You defined "a 'personal email account' [to mean] any account not issued by the State of Michigan." (Attachment 3.)

The Department responded in writing to your FOIA request and informed you that it "does not possess records meeting your description and associated with the 21 named individuals." You also were informed that the "Department does possess a single email of one Department employee, Aaron Lindstrom, that falls under a part of your description and under the statutory definition of 'public record,' namely, 'a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.' MCL 15.232(e)." (Attachment 2.)

You further were informed that Mr. Lindstrom's two-sentence email, dated April 6, 2015 email, is part of an email stream composed of three other emails, dated March 27, April 2, and April 3, 2015, and generally concerns whether an amicus brief might be considered in the case of *Home Care Ass'n of America, et al v David Weil, et al.* The Department exempted the email from public disclosure

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Hugh Madden, Communications Director
Progress Michigan
Page 2
December 12, 2016

under section 13(1)(h) of the FOIA, MCL 15.243(1)(h), which permits the nondisclosure of "[i]nformation or records subject to . . . privilege recognized by statute or court rule; in this case, the attorney work product doctrine privilege recognized under MCR 2.302(B)(3)(a). In further support of the exemption, the Department cited the FOIA case of *Messenger v Ingham County Prosecutor*, 232 Mich App 633; 591 NW2d 393 (1998). (Attachment 2.)

Your appeal does not comply with section 10(1)(a) of the FOIA, MCL 15.240(1)(a), because it fails to identify a reason or reasons for the reversal of the Department's denial of the above-described email under MCL 15.243(1)(h).

The Department notes that in your appeal you state that "[the Department] did not clearly state, but strongly implied, that [Mr. Lindstrom's April 6, 2015 email] was stored on a government server or other government-controlled service." (Attachment 1.) The Department's October 19, 2016 written notice makes no such implication. The Department merely stated that the April 6, 2015 email was inadvertently sent to Mr. Lindstrom's personal email address. (Attachment 2) Your request specifically referred to personal email accounts. The Department identified Mr. Lindstrom's April 6, 2015 email as a record that both falls under part of your description and meets the statutory definition of public record; but, nonetheless, is exempt from public disclosure under MCL 15.243(1)(h). (Attachments 2 and 3.)

You further state that "[c]ontrary to your position, the [FOIA] reaches emails sent or received using a personal email account in the performance of any official function, even if the email account is not possessed by the Department, but is possessed by an individual state officer or employee (i.e. an individual's Gmail account)." (Attachment 1.) The Department's written notice took no such contrary position. The Department's notice informed you that "[t]o the best of the Department's knowledge, information, and belief, the Department does not possess records meeting your description and associated with the 21 named individuals [other than Mr. Lindstrom's single April 6, 2015 email.]" (Attachment 2.)

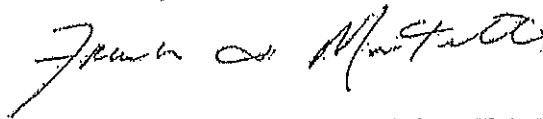
Thus, the denial was not based on a claim that records in personal email accounts that were generated in the performance of the Department's official function are not public records. After making reasonable inquiry, the Department determined that and explained to you that because no such records exist within personal email accounts of the Department employees and former employees listed in your FOIA request, no such records exist within the Department under your description or by another name reasonably known to the Department.

Hugh Madden, Communications Director
Progress Michigan
Page 8
December 12, 2016

As to the Department's upholding the denial of your FOIA request, under section 10 of the FOIA, MCL 15.240, the Department is obligated to inform you that you may file an action in the Court of Claims within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements, and possible damages.

The Department's FOIA Procedures and Guidelines can be accessed at www.michigan.gov/foia-ag.

Sincerely,



Frank J. Monticello, Division Chief
State Operations Division
Department of Attorney General
(517) 373-1162

Encs.

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EXHIBIT 7

STATE OF MICHIGAN
COURT OF CLAIMS

PROGRESS MICHIGAN,

Plaintiff,

v

BILL SCHUETTE,

Defendant.

OPINION AND ORDER

Case No. 17-000093-MZ

Hon. Cynthia Diane Stephens

Pending before the Court is defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), (C)(8), and (C)(7). Because plaintiff complied with MCL 600.6431(1) and the applicable period of limitations, the motion is DENIED in part. However, because there is no private right of action to enforce purported violations of the Management and Budget Act alleged by plaintiff, defendant's motion is GRANTED in part and Count II of the Complaint is DISMISSED with prejudice.

I. PERTINENT FACTS AND BACKGROUND

On or about September 27, 2016, plaintiff sent a Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, request to defendant, seeking e-mails purportedly sent or received from personal e-mail accounts by a group of 21 individuals who work for the Department of the Attorney General. The Department denied the request on or about October 19, 2016, claiming that, with one exception for which the Department cited a FOIA exemption, it did not possess any records matching plaintiff's description. Plaintiff appealed the decision with the Department pursuant to MCL 15.240(1)(a), and the Department denied the appeal on November 26, 2016.

Plaintiff filed a two-count complaint in this Court on April 11, 2017. Count I alleged that defendant violated FOIA by "refus[ing] to disclose emails sent and received by defendant and his staff using personal email accounts in the course of performing official functions . . ." Count II was labeled "Failure to Preserve State Records" and alleged that if the records existed and if the Department destroyed the records, defendant violated the Management and Budget Act. Plaintiff neither signed nor verified the complaint, contrary to MCL 600.6431(1).

Defendant moved to dismiss based on plaintiff's failure to comply with MCL 600.6431(1). Alternatively, defendant argued that the Court should dismiss Count II because there was no private right of action for the purported violation of the Management and Budget Act.

Shortly thereafter, plaintiff filed an amended complaint that contained nearly identical allegations as those raised in its original complaint. This time, the amended complaint was signed and verified before an officer authorized to administer oaths, as is required under § 6431(1). Plaintiff also responded to the motion to dismiss, arguing: (1) that it was not required to comply with § 6431(1) when filing a FOIA action; (2) that its amended complaint was sufficient to satisfy the statute; and (3) that it could seek declaratory relief for a violation of the Management and Budget Act.

This matter is now before the Court on defendant's motion for summary disposition filed in lieu of an answer to the first amended complaint.

II. COMPLIANCE WITH MCL 600.6431(1)

Again, there is no dispute that plaintiff's original complaint was neither signed nor verified. Nor is there any dispute that plaintiff's amended complaint was filed within the

relevant one-year time period established in § 6431(1). Rather, the first issue this case is whether plaintiff, by amending its complaint to add previously omitted notice and verification requirements, can demonstrate strict compliance with § 6431(1).

Section 6431(1) sets forth mandatory notice provisions for filing claims against the state and provides that:

No claim may be maintained against the state unless the claimant, within 1 year after such 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 or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths. [MCL 600.6431(1).]

Compliance with the notice provisions contained in MCL 600.6431 is a mandatory condition precedent to pursuing a claim against the state. *Fairley v Dep't of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015); *McCahan v Brennan*, 492 Mich 730, 732-733; 822 NW2d 747 (2012). The statute demands strict compliance, anything short of which requires dismissal. *Fairley*, 497 Mich at 292-293. See also *McCahan*, 492 Mich at 732-733. This state's appellate courts have confirmed that the statute applies to all types of claims, regardless of the nature of the underlying claim. See, e.g., *Rusha v Dep't of Corrections*, 307 Mich App 300, 307-308; 859 NW2d 735 (2014).

In *McCahan*, 492 Mich at 738, the Court held that § 6431's prohibition on maintaining an action in the Court of Claims was implicated "*as a consequence of a failure to file compliant notice within*" the statutory time period. (Emphasis added). The Court reiterated the idea that a compliant notice or claim had to be filed within the specified time period, but did not go so far as to declare that a plaintiff only had a single opportunity to file a compliant claim or notice. See

id. at 742 (“Therefore, the failure to file a compliant claim or notice of intent to file a claim against the state within the relevant time periods designated in either subsection (1) or (3) will trigger the statute’s prohibition that ‘[n]o claim may be maintained against the state’ ”). Indeed, it was the failure to file a compliant notice or claim *within* the statutory time period that was pertinent to invoking the so-called “bar-to-claim” language found in the statute. Consistent with this approach, the Court of Appeals in *Rusha*, 307 Mich App at 306, explained that MCL 600.6431 unambiguously sets forth a “window within which to file a claim or notice of intent to file a claim after an alleged” injury.

In light of the above, the Court rejects defendant’s assertion that a plaintiff has only one opportunity within the relevant time period in which to comply with the statute’s notice and verification requirements. The bar-to-claim language in § 6431 is triggered by the failure to file a compliant notice or claim *within* the statutory time period, and that an amended complaint, if timely filed and otherwise compliant, does not trigger the prohibition on maintaining a claim against the state. Turning to the instant case, plaintiff’s initial complaint plainly failed to satisfy § 6431(1) because it was neither signed nor verified. However, plaintiff filed a signed and verified complaint during the 1-year period for doing so. Accordingly, unlike the plaintiffs in cases such as *McCahan*, *Fairley*, and *Rusha*, plaintiff filed a compliant claim “within 1 year after such claim has accrued . . .” as is required by MCL 600.6431(1). The plain language of the statute does not, as defendant contends, contain language that would limit a plaintiff to only one opportunity to satisfy the statute’s requirements. Rather, as noted, the only limit imposed is a temporal one, and plaintiff has met that requirement in this case. In short, plaintiff has met the requirement of “strict compliance” with the one-year notice and verification requirements.

Despite defendant's contentions that plaintiff should not be permitted to file an amended complaint to comply with the verification requirements, the Court sees no reason that the "window" described in *Rusha*, 307 Mich App at 306, does not remain open for the entirety of the statutory period.¹ Indeed, the purpose of the statute is to give timely notice to the proper governmental entity, see *Fairley*, 497 Mich at 298-299, and defendant in this case received timely notice. Thus, the same concerns in *Fairley*, *McCahan*, and *Rusha* are not present in this case.

In so concluding, the Court rejects defendant's assertion that § 6431(1)'s use of the word "claim" is not synonymous with the term "complaint." Defendant notes that § 6431(1) can be satisfied by either a "written claim" or a "written notice of intention" (NOI) to file a claim. According to defendant, a "claim" cannot be amended; only a "pleading," such as a "complaint," can be amended. See MCR 2.118(A). Defendant essentially argues that a plaintiff can file a complaint and therein assert a "claim" that can satisfy § 6431(1), but the "claim" as that term is used in § 6431(1) is separate and distinct from a "complaint," and only the latter may be amended.

Adopting defendant's position would require the Court to accept that a "claim" is not a "pleading" as that term is used in MCR 2.110(A), yet it can nevertheless commence a cause of action. In essence, accepting defendant's position would require this Court to conclude that a

¹ The Court notes that the Court of Appeals recently sanctioned a similar approach. See *Council of Organizations & Others for Ed v State*, __ Mich App __, __ n 2; __ NW2d __ (2017); slip op at 5 n 2. In that case, the Court granted immediate consideration of an application for leave to appeal, and simultaneously allowed the plaintiffs "to make a filing(s) in the Court of Claims in accordance with the verification requirements of MCL 600.6431." *Id.* (citation and quotation marks omitted).

“claim” is a “pleading” for purpose of commencing a cause of action, but it is not a “pleading” for purposes of amendment under MCR 2.118(A). This cannot be squared with MCR 2.101(B), which specifies that “[a] civil action is commenced by filing a *complaint* with a court.” (Emphasis added). Alternatively, adopting defendant’s position would require the Court to conclude that a claim can be asserted in a complaint, and that the complaint can be amended, under MCR 2.118(A), but the “claim” asserted therein cannot be amended. Such a position does not find support in the plain language of MCR 2.118(A), which does not limit amendments that can be made in the manner suggested by defendant. The Court declines to read into MCR 2.118(A) the prohibition to amendment sought by defendant. Moreover, caselaw construing § 6431(1) has interpreted the term “claim” interchangeably with the term “complaint.” See, e.g., *Rusha*, 307 Mich App at 312. In sum, the Court sees no prohibition to amending a “claim” as the term is used in § 6431(1), so long as the amendment is timely under the act.

The Court also finds unconvincing defendant’s apparent concerns about unequal treatment amongst claim filers and NOI filers. Defendant contends in cursory fashion that a NOI cannot be amended once it is filed, and if the Court allows a claim to be amended, “it would be providing an additional right not available to a claimant who files” a NOI. Defendant ignores, however, that there is no prohibition against filing multiple NOIs. Indeed, a NOI does not commence an action, and the Court can conceive of no reason why a NOI could not be amended, or re-filed, multiple times, so long as the temporal requirements of § 6431(1) are satisfied.

THE LIMITATIONS PERIOD DOES NOT BAR THE FOIA CLAIM

As an alternative, defendant argues that, even assuming plaintiff could amend its complaint, the FOIA claim must be dismissed because is untimely under the period of limitations applicable to FOIA actions. The FOIA sets forth a 180-day period for commencing an action to

compel disclosure of public records. MCL 15.240(1)(b); *Prins v Mich State Police*, 291 Mich App 586, 587-588; 805 NW2d 619 (2011). The 180-day limitations period set forth in MCL 15.240(1)(b) begins to run when the public body sends out or circulates the denial of the request. *Prins*, 291 Mich App at 591. Here, there is no dispute that plaintiff's original complaint was filed within the 180-day period. There also does not appear to be any dispute that the amended complaint was filed outside the limitations period.² The issue before the Court is whether the original complaint tolled the limitations period and whether the amended complaint relates back to the original, timely complaint. The Court finds that it does and that the 180-day limitations period does not require dismissal.

MCL 600.5856(a) provides that the statute of limitations is tolled "at the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules." MCL 600.5856(a). Moreover, "[t]he filing of the original complaint will toll the running of the period of limitations pertaining to the claims reflected in the amended complaint . . . if it is found that the amended pleading relates back to the conduct, transaction, or occurrence set forth in the original pleading[.]" *Sanders v Perfecting Church*, 303 Mich App 1, 9; 840 NW2d 401 (2013) (citations omitted). Stated differently, "an amendment relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to

² To this end, the Court notes that plaintiff has not contested defendant's arguments concerning the proper date to use for determining on which day the period of limitations began to run. Given the lack of argument on this issue, and given the Court's agreement with plaintiff that the relation-back doctrine applies, see *infra*, the Court finds it unnecessary to address defendant's claim that the 180-day period began to run when the Department first denied the FOIA request, and not when it denied plaintiff's appeal.

be set forth, in the original pleading.” *Doyle v Hutzl Hosp*, 241 Mich App 206, 212; 615 NW2d 759 (2000) (citation and quotation marks omitted). As articulated in *Doyle*:

The chief importance of the relation-back rule is to determine whether or not the statute of limitations has been satisfied. In broad terms, if the original complaint was timely, it satisfied the statute of limitations even if it was defective and even if the amendment that cured the defect was not made until after the running of the statute. [*Id.* at 212 n 2, quoting Dean & Longhofer, 1 Michigan Court Rules Practice (4th ed), § 2118.11, p. 561.]

Here, the amended complaint asserts a claim arising out of the same conduct, transaction, or occurrence set forth in the original complaint. Accordingly, the amended complaint “relates back” to the original complaint. See *Sanders*, 303 Mich App at 9; *Doyle*, 241 Mich App at 212. And because the original complaint was timely, the amended complaint is timely as well.³ To this end, the Court finds a case on which defendant relies, *Miller v Chapman Contracting*, 477 Mich 102, 107; 477 NW2d 462 (2007), to be distinguishable and not dispositive in this case. At issue in *Miller* was an amendment that sought to add a new party, which is a situation not pertinent to the instant case.

COUNT II FAILS TO STATE A CLAIM

While the Court disagrees with defendant’s contentions under § 6431(1) and with regard to the period of limitations on Count I, the Court agrees with defendant that Count II must be dismissed for failure to state a claim under MCR 2.116(C)(8). Count II alleges a violation of the Management and Budget Act’s requirements regarding record retention. MCL 18.1285(1) requires that the “head of each state agency shall maintain records” regarding the operation of

³ As noted, the amended complaint fits within the one-year notice period. This opinion should not be viewed as permitting an amended complaint to circumvent the time period set forth in MCL 600.6431(1).

the state, the recording of certain activities, and records which are necessary for protecting the legal rights of the state. MCL 18.1285(2) requires the same head of each state agency to list the records on a retention and disposal schedule. Plaintiff alleges that “if” defendant has destroyed or failed to retain the alleged private e-mails, defendant violated the statute.

Count II fails to state a claim on which relief can be granted because there is no private right of action to enforce violations of the act. Indeed, MCL 18.1551(1) charges the Governor with enforcement of the act, and MCL 18.1551(2)-(3) give the Governor the authority to take certain action to enforce the act’s provisions. There is no other means of enforcement, let alone a private right to enforce violations of the act.

“Michigan jurisprudence holds that where a statute creates a new right or imposes a new duty unknown to the common law and provides a comprehensive administrative or other enforcement mechanism or otherwise entrusts the responsibility for upholding the law to a public officer, a private right of action will not be inferred.” *Claire-Ann Co v Christenson & Christenson, Inc*, 223 Mich App 25, 30-31; 566 NW2d 4 (1997). Moreover, as it concerns governmental entities, “Michigan caselaw holds that no cause of action may be inferred against a governmental defendant.” *Myers v City of Portage*, 304 Mich App 637, 643; 848 NW2d 200 (2014). Thus, even assuming a violation of the act, “no cause of action based on the statute may be maintained by plaintiff[.]” *Claire-Ann*, 223 Mich App at 31.

The fact that plaintiff has sought declaratory relief does not change the outcome in this case. “Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated.” *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 128; 537 NW2d 596 (1995) (citation and quotation marks omitted). “Claims for declaratory

relief necessarily derive from claims for substantive relief because declaratory relief lies only in cases of 'actual controversy,' and not merely for abstract declarations of right divorced from a factual context." *Id.* To that end, "[d]eclaratory relief is not proper as a substitute for a regular action.... It is a proper remedy when the plaintiff seeks a declaration of rights as a guide to future conduct." *Stark Steel Corp v Mich Consol Gas Co*, 165 Mich App 332, 339; 418 NW2d 135 (1987). And when a statute does not provide a means for enforcement of the act by private individuals, a court is not to read into the act a cause of action for declaratory relief. *Citizens for a Better Algonac Comm Schs v Algonac Comm Schs*, 317 Mich App 171, 180-181; 894 NW2d 645 (2016). Accordingly, Count II fails to state a claim upon which relief can be granted and it must be dismissed pursuant to MCR 2.116(C)(8).

CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is DENIED in part as it concerns defendant's claim that plaintiff failed to comply with § 6431(1) and the 180-day period of limitations applicable to FOIA actions.

IT IS HEREBY FURTHER ORDERED that, because there is no private right of action to enforce the purported violation of MCL 18.1285, defendant's motion is GRANTED in part and Count II of plaintiff's complaint is DISMISSED with prejudice.

This order does not resolve the last pending claim and does not close the case.

Dated: October 16, 2017

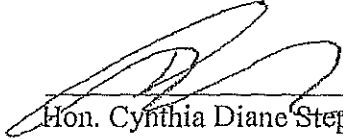

Hon. Cynthia Diane Stephens
Court of Claims Judge

EXHIBIT 8

From: Kime, Robin
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Meeting with Jerry Jung
Start Date/Time: Wed 7/26/2017 5:00:00 PM
End Date/Time: Wed 7/26/2017 5:30:00 PM
Jung Rethink Ethanol Opinion Washington Times EnergySection_Final (1).pdf
Bio (16).docx

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station.** Please arrive 10 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

From: Jerry Jung [<mailto:jerrold.m.jung@gmail.com>]
Sent: Friday, April 28, 2017 3:08 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Bill Schuette <billschuette53@gmail.com>

I reached out to Mr. Schuette to give me your contact information because I wanted to keep Mr. Pruitt's office in the loop regarding op eds in the Washington Times. The Times will be running a section on energy. When they have asked me to submit an op-ed on the topic of ethanol, they mentioned that they would also be publishing an op-ed from Mr. Pruitt.

Attached is what I have submitted. I suspect that my views are in line with those of Mr. Pruitt, but I wanted to provide him an opportunity to comment on what I wrote. Any comments or suggestions that his office has would be welcome.

Jerry Jung

586-850-8096

Jerrold M. Jung

586-850-8096

jerrold.m.jung@gmail.com

P.O. Box 7060 Novi, MI 48376

Employment background:

Over \$1,000,000,000 of shareholder value created by companies that I founded or controlled.

Surety Bond analyst for Travelers Indemnity Company from 1977 to 1978.

Director of Reservations for Continental Airlines from 1979 to 1982.

Designed from 1983 to 1985 passenger revenue optimization software still used by over 50 air carriers.

General Manager of Michigan CAT's Engine Division from 1983 to 1987.

Founded Landfill Energy Systems in 1987. The EPA awarded this alternate energy company a certificate that declared that methane reduction achieved by its power plants was equivalent to taking 800,000 cars off of the road. Company was sold in 2008.

CEO of Michigan CAT from 1988 to 2011. Market share rose to 60% from 25%. Revenues peaked at \$550,000,000 and employment at 880. The business was sold in 2011 because my children have other career interests.

Chairman and founder of Oak Adaptive, Inc. that provides software tailored to Caterpillar dealers as well as an innovative sentencing app that provides information for use within the criminal justice system.

Currently semi-retired and manage Rule of Ones, LLC an investment vehicle.

Educational background:

Graduated from Birmingham Seaholm High School in 1971. Received Bausch-Lomb Award for outstanding high school students. On committee that established Bingham Farms Nature Center. Varsity letter in Track.

Attended University of Michigan from 1971 to 1973. Phi Eta Sigma honor fraternity.

Graduated from Tulane University in 1975, 1st in class, summa cum laude with honors in economics. Phi Beta Kappa honor fraternity. Commodore of sailing club.

Attended Harvard Graduate School of Business in 1976.

Co-authored "Price Elasticity of Demand for Air Travel." Published in the 1976 fall edition of *Transport Economics and Policy*. This paper informed Congressional debate when airline fares were deregulated. It is still utilized as instructional material at the University of Chicago School of Public Policy.

Affiliations:

Chair of Michigan Colleges Alliance, a group of 15 private independent colleges.

Board member of the Michigan League of Conservation Voters.

Board member of Public School Academies of Detroit.

Board member of 6,000,000 member National Wildlife Federation.

Chair of the Michigan State Transportation Commission from 2010 until 2015.

Past Director of Warren Equipment Company, a Texas based gas compression fabricator and Caterpillar dealer with revenues in excess of \$1,000,000,000.

Past Vice-Chair of St. Mary Hospital in Livonia Michigan.

Past Trustee of the Nature Conservancy in Michigan.

Past President of the Michigan Construction Equipment Dealers Association.

Past Board Member of the Cooperative Tractor Dealers Association—a financing co-op.

Past Board Member of NWEA—the National Wood Energy Association.

Philanthropic Endeavors:

Supports a wide variety of environmental and educational initiatives that improve the legacy we leave to future generations.

Founded in conjunction with the Michigan Colleges Alliance the "Third 90" program that annually introduces hundreds of inner city high school students to nature as well as to private college professors, students and campuses.

Founded "RethinkEthanol.com" an entity that educates legislators and the public about the need for corn ethanol reform.

Honors:

Scenic Michigan—"Hero Award" 2009

Michigan Infrastructure and Transportation Association—Honorary Member Award: 2012

Michigan Aggregate Association—Distinguished Service Award: 2012

Detroit Public TV—Riley Stewardship Award: 2012

Michigan League of Conservation Voters—Lifetime Conservation Award: 2013

Tribute from Michigan Transportation Commission—Resolution 2015-2.

The State of Michigan named a roadside park in my honor.

Honorary Ph.D. from Adrian College in May of 2017.

References: (contact information provided upon request)

Governor Rick Snyder.

National Wildlife CEO Collin O'Mara.

Former CEO of Warren Equipment Company and Dallas Federal Reserve board member Richard Folger.

Director Michigan Department of Transportation Kirk Steudle.

CEO and Chairman of Caterpillar Tractor Company Doug Oberhelmen.

Congressman David Trott.

Michigan Republican Chair Ronna Romney McDaniel.

Former Secretary of Agriculture and Caterpillar Tractor Board Member Clayton Yeutter.

DTE Energy Chairman Gerry Anderson.

Recently retired CEO of International Transmission Company Joe Welch.

Past owner of Thompson McCully Paving Company and charter school visionary Bob Thompson.

Former Ambassador to Belgium Allan Blankenship.

Personal:

Reside in Birmingham Michigan.

Married to Eve Baughman Jung.

Have three children, three grandchildren and two stepchildren.

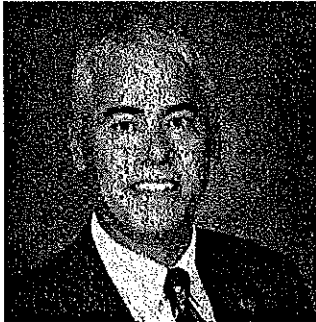
Enjoy outdoor activities such as gardening, hiking, hunting, fishing, golfing, sailing and skiing.

Practice "eco-restoration" on several properties in Michigan.

Own and manage for bio-diversity and carbon sequestration over 43,000 acres of forestland in central Tennessee.



It's time to rethink ethanol mandates



By Jerry Jung

This year the Environmental Protection Agency (EPA) has mandated that 15 billion gallons of ethanol be added to gasoline. As a result, most gasoline contains about 10 percent ethanol.

Initially, automotive manufacturers saw the mandate as a cheap way to increase octane ratings, and corn growers thought it would be a boon to the agricultural economy. Casual observers and even some conservation organizations thought that it was a renewable source of energy that would help the environment and reduce harmful emissions. Others saw it as a way to reduce dependence on foreign oil.

After eight years of dramatically increasing mandates, the results are in and it is apparent that none of these goals have been met — in fact, the opposite is true.

Due to an arcane and fraud-prone ethanol credit trading scheme, the price of higher-octane gasoline has skyrocketed, relative to lower grades; the farm economy continues its decline; finite resources such as phosphorus and subterranean aquifers are being depleted; wildlife and biodiversity are being threatened; harmful emissions have doubled; and the mandate has had no impact on reducing use of fossil fuels.

How can this be?

The answer is simple — it takes as much fossil fuel to produce ethanol from corn as it yields.

A Cornell University study estimates that it takes 40 percent more energy to produce corn ethanol than it yields. The actual distillation of corn into ethanol consumes about 28 percent as much energy as it produces; yet when all the inputs required to grow corn — such as the production of herbicides, insecticides, fertilizer and the fuel for tractors and transportation — are factored in, the equation changes. Even the U.S. Department of Agriculture, a misguided proponent of ethanol production, estimates that the energy output only slightly exceeds the inputs. The agency points

out that by-products from the distillation process can be fed to livestock, but studies such as one published by the University of Nebraska point out that the practice of feeding distillates to cattle shortens the shelf life of their meat. Other studies indicate that the practice alters the flavor of meat and can make livestock sick.

The price of corn shot up to \$8 per bushel when the mandate was dramatically ramped up nine years ago. As a result, there were food riots in some countries where corn is a dietary staple.

Since then, the amount of acreage de-

\$20 of value, and to cattle, about \$50 of value. It is this value-added chain that creates rural employment and economic diversity.

It is not uncommon to see hand-painted signs in Iowa that read "Family Farms, not Factory Farms." A poll conducted by a leading conservation organization shows surprising opposition to ethanol mandates in rural areas. It is no wonder, since these are the populations most affected in terms of water quality and outdoor recreational opportunities. These are the families that must confront chemical pollution

Republican primary in Iowa.

There are many other reasons to discontinue ethanol mandates. Dozens of diverse stakeholder groups, representing fiscal conservatives; small and marine engine users and manufacturers; food producers and food justice groups; charter boat captains; The Sierra Club, The National Wildlife Federation and the Audubon Society; and even the American Petroleum Institute are opposed to subsidized and mandated corn ethanol production.

Ironically, is it not, that a mandate sold to Congress and the public as "green" is

Ethanol is a low-value commodity. A bushel of corn will produce 2.8 gallons of ethanol worth about \$4.50. The same corn, fed to poultry, produces about \$20 of value, and to cattle, about \$50 of value. It is this value-added chain that creates rural employment and economic diversity.

voted to growing corn has increased to over 35 million acres in the U.S. (larger than most states) and the price is back where it started.

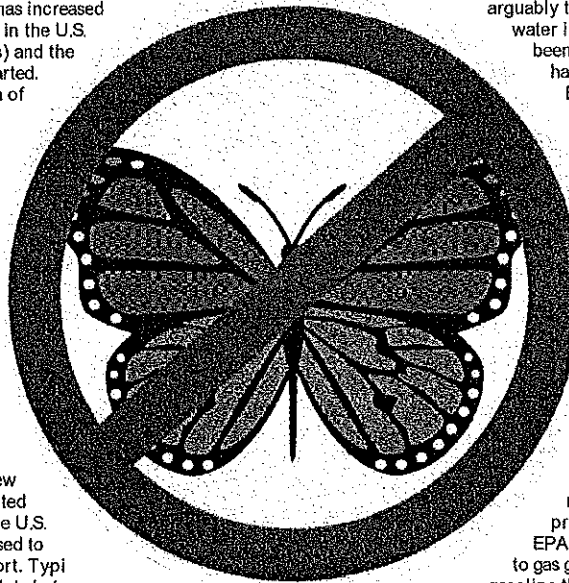
Unfortunately, much of this land is ecologically sensitive. The National Wildlife Federation estimates that 10 million acres in the U.S. have been converted from Conservation Reserve Programs — virgin prairie, woodlands and wetlands in the U.S. — to grow corn over the last 10 years.

The careful reader might question how 35 million acres are growing corn for ethanol, but "only" 10 million new acres have been converted to agricultural use in the U.S. Much of this acreage used to grow soybeans for export. Typically, farmers would rotate between corn and soybeans, but now many grow corn year after year.

South America has filled the void, with the result that Brazil now exports more soybeans than the U.S. — with the concomitant destruction of forest and grasslands in that country, not to mention an increased trade deficit here in this country.

A recent study discussed by a Conservative Political Action Committee panel in February concludes that the farm economy continues its decline despite — and perhaps because of — ethanol mandates.

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arguably the biggest polluter of air and water in the U.S.? The policy has also been a significant driver of what has aptly been termed the Sixth Extinction of biodiversity.

Fortunately, legislation has been introduced in the House of Representatives that would cap the ethanol content of gasoline at 10 percent and reduce mandates over time. Urge your members of Congress to support this legislation.

The EPA can also play a vital role as they work with automobile companies implementing improved fuel economy standards.

The first step in this regard would be to eliminate artificial incentives to produce ethanol. Currently, the EPA gives CAFE mileage bonuses to gas guzzlers if they can consume gasoline that is up to 85 percent ethanol. Credits are also given to compensate for the reduced energy content of ethanol as compared to pure gasoline. Given the environmental destruction and excessive use of fossil fuels consumed in the production of ethanol, these credits should realistically be debits. It is imperative that the EPA consider the overall economic and environmental impact of their policies and not focus solely on a single aspect of the overall picture.

Jerry Jung is a retired businessman and conservationist who became concerned when Monarch Butterflies stopped arriving at his hobby farm in central Michigan after migrating from Mexico. The monarch's population has declined by 95 percent since the ramp-up in ethanol mandates.