No. 130323

IN THE SUPREME COURT OF ILLINOIS

HABDAB, LLC, an Illinois limited liability company, Plaintiff-Appellant, v. COUNTY OF LAKE, *et al* Defendant-Appellee.	Petition for Leave to Appeal from the Appellate Court of Illinois, Second District No. 2-23-0006 There Heard on Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County Hon. Jacquelyn D. Melius, Judge Presiding

PLAINTIFF-APPELLANT'S REPLY TO LAKE COUNTY'S RESPONSE BRIEF

ORAL ARGUMENT REQUESTED

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CYNTHIA A. GRANT
SUPREME COURT CLERK

POINTS AND AUTHORITIES

I. The Second District's Decision Eviscerates the Protection of the Impact Fee Law.

In its response brief, the County urges this Court to affirm the Second District's holding that any municipality can avoid complying with the Impact Fee Law (the "IFL") by simply requiring a landowner pay unconstitutional transportation impact fees at any time other than issuance of a building permit or certificate of occupancy. *See*, Brief of Defendant-Appellee County of Lake ("County Response"), pp. 16-20. Such a finding would essentially destroy the protections in the Impact Fee Law established for landowners.

A. In Illinois, Transportation Impact Fees Must Be Specifically and Uniquely Attributable to the Development for Which They Are Imposed.

The Second District claimed the unconstitutional conditions doctrine requires only that the exaction be roughly proportionate to the projected impact of the new development, noting this is a "federal" doctrine. However, as this Court noted in *Northern Illinois Home Builders*, different states vary in how they apply the federal doctrine to a constitutional analysis under their respective constitutions. "In some States, very generalized statements as to the necessary connection between the required dedication and the proposed development seem to suffice." *N. Illinois Home Builders Ass'n, Inc. v. Cnty. of Du Page*, 165 Ill. 2d 25, 33 (1995), *quoting Dolan v. City of Tigard*, 512 U.S. 374, 389 (1994). However, other states, such as Illinois, apply a specific and uniquely attributable test, a "very exacting correspondence." *Dolan*, 512 U.S. at 389, *citing Pioneer Tr. & Sav. Bank v. Vill. of Mount Prospect*, 22 Ill. 2d 375, 380 (1961). While the Supreme Court in *Dolan* declined to apply the "specific and uniquely attributable" test to its analysis under the United States Constitution, this Court in *N. Illinois Home Builders Ass'n, Inc.* held the *Pioneer Trust* specifically and uniquely attributable test is applicable to this exact situation—where transportation impact fees are imposed on a

property owner seeking to develop its property. *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 35-36.

The Second District failed to address this analysis, instead citing to *McElwain v. Office of Illinois Sec'y of State*, 2015 IL 117170, ¶ 30, as support for its assertion that this Court "has noted that rough proportionality is the proper standard under the unconstitutional conditions doctrine (which is a federal doctrine)." A 19, ¶ 55. The County seized on this conclusion in its response brief, repeating the Second District's failure to recognize this Court's direction in *N. Illinois*. *See*, County Response, p. 24. While *McElwain* is a more recent case than *N. Illinois*, it does not contradict or overrule this Court's analysis in *N. Illinois*. The "federal doctrine" of unconstitutional conditions that this Court cited in *McElwain* did not change between this Court's opinion in *Northern Illinois* and *McElwain*; in fact, both cases cite to *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) as the authority for that doctrine. *See*, *McElwain*, 2015 IL 117170, ¶ 29; *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 31-33. *McElwain* is not applicable here because the statute examined in that case for an unconstitutional condition involved a driver's consent to testing of their bodily fluids for alcohol and drugs. *McElwain* at ¶ 29. The constitutional right at issue there was the right to be free from unlawful searches and seizures. *Id.*

Here, this Court has previously held "that the road improvements for which impact fees are imposed must be specifically and uniquely attributable to the traffic demands generated by the fee payers, and that those fee payers must receive a direct and material benefit from the road improvements constructed, although not their exclusive use." *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 44. The County's exactions do not only need to pass the federal constitutional doctrine; they also need to comport with the laws and

constitution of this State. This analysis was lacking from the Second District's opinion, and the County's analysis of *N. Illinois* is similarly lacking.

Instead of addressing this Court's reasoning in *N. Illinois*, the County dismisses it summarily because *N. Illinois* "did not involve a municipality's imposition of a fee by way of a voluntary annexation agreement." County Response, p. 20. This is a distinction the County and Second District picked up from the Third District's unpublished Rule 23 decision in *Shore v. City of Joliet*, 2011 IL App (3d) 100911-U. *See*, County Response, pp. 11-12. In fact, the County's entire argument rests on this distinction, which is both false and meaningless.

B. *The County's Reliance on* Shore *Is Wrong Because the County and Second District Seized on Erroneous Reasoning by the Third District in* Shore *Which Is Not Applicable Here.*

The County's analysis of *N. Illinois* is superficial, as is its attempt to distinguish its road improvement impact fees assessed on property owners in the IGA from those sanctioned by the Illinois legislature in the IFL. *See*, County Response, pp. 19-20. In a single sentence, the County asserts *N. Illinois* is not applicable because *N. Illinois* involved an examination of road improvement impact fees imposed pursuant to the IFL, as opposed to road improvement impact fees imposed pursuant to an annexation agreement. *Id.* This is the same superficial analysis that the Third District misapplied in *Shore Development Co. v. City of Joliet*, 2011 IL App (3d) 100911-U, which was inappropriately cited by the County in the courts below, was "adopted" by the Second District, and highlighted by the County in its statement of facts in its Response Brief. *See*, County Response, pp. 11-12; A 13; *Price ex rel. Massey v. Hickory Point Bank & Tr., Tr. No. 0192*, 362 Ill. App. 3d 1211, 1221 (4th Dist. 2006) (holding that defendants' counsel erred by citing an unpublished Rule 23 order, and the trial court erred by permitting it to do so over plaintiffs' objection). However, the Second District

erred in adopting the reasoning of the Third District in *Shore* and applying that reasoning to this case.

In *Shore Development Co. v. City of Joliet*, 2011 IL App (3d) 100911-U, the city entered into an annexation agreement with the owner of a 100-acre parcel of farmland. *Id.* at ¶ 5. The annexation agreement provided the property owner would install all public improvements required by the city's subdivision regulations, which included provisions regarding a developer's contribution to roadway improvements made necessary by its development. *Id.* at ¶ 6-7. The 100-acre parcel was subsequently subdivided and portions of it were developed. *Id.* at ¶¶ 9-12. The plaintiff purchased a portion of the property and challenged the city's attempt to make the plaintiff pay for certain roadway improvements pursuant to the annexation agreement and the city's subdivision regulations, claiming those were transportation impact fees which did not comply with the IFL. *Id.* at ¶¶ 10-13.

First, the Third District noted that the challenged fees were not traditional "impact fees" because there were not "a charge levied by a unit of government in an effort to help defray the costs that the development will have on the surrounding, offsite, public areas, such as roads, schools and parks." *Id.* at ¶ 28. Rather, they were a cost for constructing roads that were on the property subject to the annexation agreement—not merely nearby, public property. *Id.* Second, the Third District held the fees charged by the city to the plaintiff were agreed to by the city and original property owner in the annexation agreement, and imposed on the plaintiff as a successor to the annexation agreement, and those fees did not have to comply with the IFL. *Id.* at ¶¶ 32-33. The city had argued for a distinction between IFL fees, which are issued in exchange for a building permit, and the annexation agreement fees, which were assessed upon annexation of the property and approval of a final plat, and the Third District accepted that distinction. *Id.* at ¶ 29. Finally, the Third District emphasized the

fact the plaintiff was challenging a fee that its predecessor had bargained for, accepted, and committed to. *See*, *id.* at ¶ 35. The plaintiff had been aware of the commitment made by its predecessor when it purchased the subject property, as a result of which it "likely paid less for the subject property, and is now attempting to skirt his liability entirely." *Id.* at ¶¶ 43-46. For all of these reasons, the Third District held that the city's requirement that the plaintiff pay for public improvements that had been bargained for in the annexation agreement between its predecessor and the city was valid and binding on plaintiff. *Id.* at ¶¶ 44-47.

Here, the trial court, the County, and the Second District all relied on *Shore* based on a superficial analogy between *Shore* and this case, which led to the wrong result here. Both cases involve a developer challenging fees assessed by a municipality for roadway improvements. *See*, *Shore Dev. Co.*, 2011 IL App (3d) 100911-U at ¶¶ 7-13. Both cases involve a property that was annexed into the municipality pursuant to an annexation agreement. *Id.* at ¶ 5. That is about where the similarities, and the County's, and the Second District's, analyses of *Shore*, end. *See*, A 13 ("The trial court determined, as had the court in *Shore*, that the Impact Fee Law did not apply, because the fees at issue did not constitute 'road improvement impact fees' under the Impact Fee Law since they were not levied upon the issuance of a building permit or certificate of occupancy").

The County has never addressed the material distinctions between this case and *Shore* highlighted on multiple occasions by plaintiff, instead repeating the argument prevalent throughout its brief: *Shore* "dealt with the imposition of road improvement fees by way of an annexation agreement," which the County asserts is all this Court needs to know to determine the Impact Fee Law has no bearing on the County's imposition of road improvement impact fees. *See*, County Response, p. 11-12.

For example, the County does not address the fact that the roadway improvements to be paid for and constructed by the developer in *Shore* were located on the property subject to the annexation agreement, and thus were not improvements to existing public roadways not located on the subject property. *See*, *Shore Dev. Co.*, 2011 IL App (3d) 100911-U at ¶ 16, ¶ 28 ("This case, however, does not involve an instance where the City attempted to levy a fee on Shore for an offsite road"). Here, the IGA fees are for roadway improvements on Peterson Road and other existing or planned roadways within the Central Lake County Area when the IGA was established in 2009. A 37. The fees the County is attempting to impose on plaintiff are not fees for the construction of roadway improvements on plaintiff's property. That element, creating a direct nexus between the challenged roadway improvements to the subject property in *Shore*, is lacking here.

But the biggest distinction between *Shore* and this case, is the fact that the annexation agreement in *Shore* contained an actual *agreement* between the property owner and the city that the roadway improvements would be provided and paid for by the owner. *See*, *Shore Dev. Co.*, 2011 IL App (3d) 100911-U at ¶¶ 7, 12. A successor to the original owner later challenged the bargain the previous owner had made, arguing the fees agreed to by the previous owner and the city were in violation of the Impact Fee Law. *Id.* at ¶ 13. The Third District held the Impact Fee Law did not apply, because these were not fees being assessed against the landowner for the impact of its development on offsite roadways. *Id.* at ¶ 28. Instead, they were fees resulting from the landowner's predecessor in interest's agreement with the city to construct public improvements on its own property. *Id.* As the successor to the original landowner, the plaintiff was held to the bargain its predecessor in interest had made. *Id.*

The County ignores this distinction, just as it ignores the actual agreement that is the heart of its "annexation agreement" argument. County Response, pp. 16-20. The problem with the County's attempt to liken *Shore* to this case is, that is not what happened here. Plaintiff did not "agree" to pay $8,120 per acre of its property annexed into the County as an impact fee—the exact same fee that was assessed against the truck terminal next door. *See*, A 38-43; A 54; C 1658-1659. Instead, plaintiff and the Village of Mundelein agreed that if the County prevails in this lawsuit, thus leading to a judicial determination that the County's end run around the IFL succeeded, and plaintiff is ordered to pay the IGA fees, then plaintiff will comply with the court's order. *See*, C 1419-1420.

The County's entire argument related to *Shore* (and the trial court's erroneous decision relying thereon) come apart when the language of the Second Amendment is understood to read exactly what it says: it is an indemnity agreement, nothing more. It is an acknowledgement by plaintiff that **if** it loses this lawsuit, and its challenge to the County's unconstitutional fees fails, then plaintiff will end up paying those unconstitutional fees whether it agrees to do so or not. It is **not**, contrary to the County's dogged insistence, an agreement by plaintiff to pay the fees regardless of whether they are constitutionally appropriate. *See*, *e.g.*, County Response, p. 20.

Finally, in addition to not being binding authority, this Court should not even consider *Shore* as persuasive authority because it was wrongfully decided. *See*, *e.g.*, Lisa Harms Hartzler, *The Stringent Takings Test for Impact Fees in Illinois: Its Origins and Implications for Home Rule Units and Legislation*, 39 N. Ill. U.L. Rev. 92, 138, fn. 267 (2018) (arguing the Third District in *Shore Development Co.* "headed in the wrong direction, relying on early decisions and ignoring the existing body of case law under the Illinois Constitution regarding the 'specifically and uniquely attributable' standard"). Because that decision was a rogue, or

wrong decision, this Court should not rely on the reasoning in *Shore Development Co. See*, *e.g.*, *Uptown People's Law Ctr. v. Dep't of Corr.*, 2014 IL App (1st) 130161, ¶ 20 (declining to following decision of Second District in an opinion the First District felt had been "wrongly decided").

C. *Interpreting the Definition of "Road Improvement Impact Fees" to Limit the IFL as Only Applicable to Impact Fees Collected at Certain Times Makes the Government's Compliance with the Statute Voluntary.*

Tellingly, the County completely fails to address plaintiff's argument that the Second District's decision, by sanctioning the scheme laid out by the County and the Villages in the IGA, has made the government's compliance with the restrictions imposed in the IFL for the protection of landowners entirely voluntary. By seizing on the definition of "road improvement impact fees" to eliminate all impact fees for road improvements collected by governing bodies at *any* point in the development process other than the issuance of a building permit or certificate of occupancy, makes the government's compliance with the IFL optional. The County makes no response to this argument, because of course that is exactly what it sought to do here: to opt out of the IFL.

If the Second District's decision is affirmed by this Court, then every municipality or county in this State will have the opportunity to do the same, by simply electing to collect its road improvement impact fees at any other time than the issuance of a building permit or certificate of occupancy. The government will have far more opportunities for avoidance of the statute than compliance. This result is in direct conflict with the IFL, which states that *no impact fees* shall be imposed on new development for the purposes of improving roads affected by the traffic generated by the development, unless in compliance with the IFL. 605 ILCS 5/5-904. The Second District's decision has eviscerated the protections for landowners established in the IFL.

II. Plaintiff Did Not Voluntarily Agree to Pay the County's Unconstitutional Fees.

The County argues it does not have to comply with the IFL because plaintiff agreed to pay the County's road improvement impact fees pursuant to a "voluntary annexation agreement." *See*, County Response, pp. 16-20. That is the scheme the County *tried* to establish in the IGA—to force landowners to "agree" to pay its impact fees as a condition of receiving annexation, other zoning relief, or highway access from the County or one of the participating municipalities—so they could not challenge the unconstitutionality of those fees. A 40-41. The County's fees would be collected by the participating municipality, or County, prior to granting "Final Development Approval." A 41, §V.2. "Final Development Approval" means the latter of the grant of zoning relief, annexation approval, or final plat approval. A 37, §II.5. If the development in question did not involve the grant of zoning relief, annexation approval, or final plat approval, the fees would be collected upon "the issuance of the earlier of a grading permit, a site development permit, a building permit, or a certificate of occupancy." A 37, §II.5. Moreover, a participating municipality was responsible for obtaining the landowner's "agreement" to pay the County's fees, and if it failed to obtain that agreement (as it did so here), the County would seek to collect the fees directly from the municipality (as it did so here). *See*, *e.g.*, C 1332-36.

In other words, the County and the Villages agreed among themselves they would compel any landowner who had to apply to one of them seeking zoning relief, annexation, or subdivision of its property to "agree" to pay the "highway improvement fees" as a condition of receiving any of several forms of land use relief from the applicable governmental unit. *See*, A 41, §V.2. This is the way the County presumes to escape the applicability of the IFL, because, as it points out, parties *may* agree to contract away their constitutional rights. *See*, *Gaylor v. Vill. Of Ringwood*, 363 Ill. App. 3d 543, 549 (2d Dist. 2006),

citing In re Nitz, 317 Ill. App. 3d 119, 124 (2d Dist. 2000). Of course, parties may do so only so long as such agreements are not contrary to public policy or some positive rule of law. *Id.* In determining whether a contract is against public policy, "[t]he test is the evil tendency of the contract, not its actual injury to the public in [a] particular case." *Rome v. Upton*, 271 Ill. App. 3d 517, 521 (1st Dist. 1995), *quoting Zeigler v. Ill. Trust & Savings Bank*, 245 Ill. 180, 183-84 (1910).

The County asserts that the IGA is not an unconstitutional attempt to avoid the requirements of the IFL because private landowners may decide if they want to contract away their constitutional rights, or not. However, plaintiff has **not** agreed to contract away its constitutional rights. And despite their attempt to do so on plaintiff's behalf, the County and the Villages cannot make that decision for plaintiff. *See*, *Willie Pearl Burrell Tr. v. City of Kankakee*, 2016 IL App (3d) 150655, ¶ 36 ("The unconstitutional conditions doctrine * * * vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up"), *quoting Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 604 (2013).

No matter how the County tries to make the case its IGA fees are "voluntary" because they are imposed pursuant to an annexation agreement, the facts of this case are in stark contrast to the County's argument. The County and the Villages all purported to agree between themselves to contract away the constitutional rights of the landowners in the Central Lake County Area whose land remained largely undeveloped. Then, if a landowner wanted to develop their property later down the road, they would have to bargain with a Village or the County for development approval or access to County roads. *See, e.g., Willie Pearl Burrell Tr.*, 2016 IL App (3d) 150655 at ¶ 39 (noting "land use permit applicants are especially vulnerable to unconstitutional conditions), *discussing Koontz*, 570 U.S. at 604-05.

Here, the bargaining position of the landowners is severely limited, because under the IGA, the landowner does not have the protection of the Illinois and United States constitutions requiring impact fees be specifically and uniquely attributable to their specific development. The County and the Villages are not required to negotiate from the standpoint of compliance with their constitutional obligations, because the County and the Villages have already decided those obligations do not apply to these properties. Instead of limiting their impact fees to only those specifically and uniquely attributable to the actual impact of the particular development on the public roadways, the County and the Villages have purported to set their own rules which, between themselves, they have agreed the landowners have no choice but to follow.

The County has no authority to strip plaintiff of its constitutional rights. Plaintiff has no obligation to pay to the County any road improvement impact fees other than those the County may assess in compliance with the IFL, *i.e.*, impact fees specifically and uniquely attributable to plaintiff's development. 605 ILCS 5/5-904; *see also*, *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 35-36.

Contrary to the County's insistence that the Second Amendment to plaintiff's annexation agreement with the Village is an indication the County succeeded in pressuring the Village to compel plaintiff to accept the IGA fees, the IGA fees challenged by plaintiff here were not imposed by way of a "voluntary annexation agreement." *See*, County Response, p. 16. The provision in the Second Amendment to plaintiff's annexation agreement with the Village does not contain plaintiff's agreement to or acceptance of the County's unconstitutional fees. C 1419-20. On the contrary, that provision directly acknowledged plaintiff's challenge to the County's unconstitutional fees in this lawsuit. C 1419, ¶ H. Plaintiff acknowledged that, if plaintiff loses this lawsuit, and the County's fees

are deemed constitutional, then the fees would have to be paid, and plaintiff would have to pay them. *Id.* In addition, plaintiff agreed to indemnify the Village if that challenge fails. *Id.* That is not an "agreement" by plaintiff to pay the fees, no matter how the County tries to characterize it. If anything, it is akin to a payment under protest, rather than, as the County urges this Court to accept, a "voluntary payment." *See*, *e.g.*, *Illinois Inst. of Tech. v. Rosewell*, 137 Ill. App. 3d 222, 225 (1st Dist. 1985) ("Payment under protest is the typical means by which a taxpayer signifies his contention that a tax is improper, but the absence of a protest alone does not require application of the voluntary payment doctrine").

III. The IGA Is an Illegal Attempt to Avoid the Requirements of the Road Improvement Impact Fee Law.

The IFL imposes strict conditions on a local government's ability to assess roadway improvement impact fees on a new development, in order to protect the developer's constitutional rights. The impact fees must be specifically and uniquely attributable to the traffic demands generated by that particular development. 605 ILCS 5/5-904. The fees must be approved by ordinance or resolution after detailed and compulsory procedures, which include adoption of a comprehensive road improvement plan, preparation of land use assumptions, establishment of an advisory committee, public notice and hearing. 605 ILCS 5/5-905. A developer who is assessed roadway improvement impact fees may appeal the land use assumptions used in finding those fees to be specifically and uniquely attributable to traffic demands generated by his development. 605 ILCS 5/5-917. Moreover, any impact fees not used for roadway improvements due to traffic demands generated by the development must be returned to the developer. 605 ILCS 5/5-916.

The IGA does not assess roadway improvement impact fees that are generated by a particular development, let alone specifically and uniquely attributable to the traffic demands of that development. Instead, in the IGA, the County and the Villages decided arbitrarily

that the cost of funding public roadway improvements would be borne 50% by the County, and 50% by the future developers within the Central Lake County Area. A 34, 37-38. As for the fees to be charged each individual property owner/developer, those would be assessed solely on a per-acre basis, with no attention paid to the use that land is actually being put to, nor any traffic demands to be generated by that use. A 37-41. The IGA was entered into in 2009, over nine years before plaintiff entered into its annexation agreement with the Village. A 33, A 62. The "cost per acre" assigned by the County to plaintiff's property is at best, an estimate of future regional or area traffic demands, not traffic demands related to or attributable to any particular development, let alone specifically and uniquely attributable to it. A 54-56, A 37-41.

The procedures for determining whether a roadway improvement impact fee assigned to a particular development is specifically and uniquely attributable to the traffic demands generated by that development were not followed in the IGA. 605 ILCS 5/5-905. The County did not consider the specific and unique impacts of plaintiff's use of its property before determining that plaintiff's property, located in Area 5, warranted a roadway impact fee of $8,120 per acre, while others, for example those in Areas 1, 2 and 6 pay less than half that amount per acre. See, A 54; *see also*, C 1269. Instead, in 2009, the County determined that would be the fee it would seek to collect from the owner of plaintiff's parcels, regardless of what use they intended to put those parcels to, whether plaintiff seek to construct a residential subdivision with 10 homes, an office park for 6,000 employees, or a trucking terminal like the SAIA development next door. C 1467; C 1652; C 1659. The roadway improvement impact fees the County purports to insist the Village collect from plaintiff pursuant to the IGA do not comply with the IFL. 605 ILCS 5/5-904. Because they are not specifically and uniquely attributable to plaintiff's development, they are

unconstitutional. *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 33. Moreover, because they are assessed on a per-acre basis, without *any* consideration given to plaintiff's actual use of the property, let alone the "class of development" plaintiff's use is in, and the traffic demands generated therefrom, they are fundamentally unfair.

CONCLUSION

The Second District erred in finding the County's road improvement impact fees are not "road improvement impact fees" subject to the Impact Fee Law simply because the County seeks to collect its impact fees at times in the development process other than issuance of a building permit or certificate of occupancy. The Second District further erred in finding plaintiff agreed to pay the County's impact fees, regardless of the unconstitutional manner in which the County seeks to impose those fees. The Second District's erroneous decision should be reversed.

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By: Robert T. O'Donnell
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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14 pages.

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PLEASE TAKE NOTICE that on May 29, 2024, the undersigned attorney caused to be electronically filed with the Supreme Court of Illinois, 200 E. Capitol Ave, Springfield, Illinois, this Plaintiff-Appellant's Reply to Lake County's Response Brief, a true and correct copy of which is hereby served upon you.

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By: _____
One of its attorneys

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Copies of the Plaintiff-Appellant's Reply to Lake County's Response Brief were served upon the addressee(s) set forth hereinabove via email transmission on May 29, 2024. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

Signature: _____*/s/Hayleigh K. Herchenbach*__