No. 125785

IN THE
SUPREME COURT OF ILLINOIS

BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al*,
Appellants,

-v-

Daphne Moore,
Appellee.

Appeal from the Illinois Appellate Court
First District, No. 18-2391
There Heard on a Petition for Administrative Review
from the Board of Education of the City of Chicago
Nos. 18-1024-RS5 and 18-1024-EX11

REPLY BRIEF OF APPELLANTS BOARD OF EDUCATION OF THE CITY OF CHICAGO AND JANICE K. JACKSON

Counsel for Appellants:

Joseph T. Moriarty, General Counsel
Thomas A. Doyle, Senior Assistant General Counsel (Counsel of Record)
Board of Education of the City of Chicago, Law Department
One North Dearborn Street, Suite 900
Chicago, Illinois 60602
(773) 553-1720
tadoyle2@cps.edu
jtmoriarty@cps.edu

Linda Hogan
Law Offices of Linda Hogan
4044 North Lincoln Avenue, # 243
Chicago, Illinois 60618
(773) 259-5806
lindahoganattorney@gmail.com

October 28, 2020

Oral Argument Requested

E-FILED
10/28/2020 8:20 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

ARGUMENT

This Court should reverse the Appellate Court's decision and should reinstate the Board's October 24th Order, After a full hearing on the merits in a dismissal proceeding involving Daphne Moore, with multiple witnesses and extensive briefing, the Board imposed the lesser sanction of suspension. The Opposition Brief asserts that the less harsh sanction was improper because the Board's implementation of charges under 105 ILCS 5/34-85 (West 2016) limited the Board to either terminating her or reinstating her with full back pay. The Opposition Brief's analysis is contrary to this Court's precedent regarding the School Code and it conflicts with long-established principles of statutory interpretation.

I. The Opposition Brief does not contest many of the aspects of the Board's October 24th Order.

In several important ways, the Opposition Brief confirms that the parties in this Appeal have a narrow dispute.

The facts supported a suspension of ninety days. The Opening Brief discussed the events in Daphne Moore's eighth-grade classroom on September 13, 2016 *(Opening Brief at 4-7)*. The Opening Brief explained why Moore's conduct that day raised serious safety and disciplinary concerns *(id. at 10)*. The Opening Brief relied on the Board's findings of fact, and on administrative review "the findings of the administrative agency on questions of fact are *prima facie* correct." *Gravelle v. Gates*, 62 Ill. 2d 217, 222 (1976)(citation omitted). The Opposition Brief seems to ask this Court to

instead look to the hearing officer's recommendations *(Opp.Brief at 2-4)*, with no explanation for why the hearing officer's views should prevail. Under Section 34-85 of the School Code (105 ILCS 5/34-85 (West 2016)), the Board is the agency-level decision-maker, and the Board can make its own findings of fact based on the evidence, even if that means rejecting a hearing officer's recommendation. *Ball v. Bd. of Educ.*, 2013 IL App (1st) 120136, ¶36. More importantly, though, the Opposition Brief never argues that a ninety-day suspension was excessive under the facts.

There is no dispute about the Warning Resolution and remediation. In the Opening Brief, the Board explained why the Board's October 24th Order properly included a formal Warning Resolution and properly required Moore to undergo remedial training *(Opening Brief at 14)*. The Opposition Brief never addresses the Warning Resolution and remediation requirements in the October 24th Order.

The Board had authority to issue a suspension. The Board's Opening Brief explained that the Board had authority to suspend Moore for ninety days *(Opening Brief at 10-13)*. The Opposition Brief disagrees, contending that the Board could not impose any suspension on a time-served basis after a Section 34-85 dismissal proceeding (see, *e.g., Opp.Brief at 5*). But the Opposition Brief seems to acknowledge that the Board could have suspended Moore on a going-forward basis *(*see *Opp.Brief at 19,* arguing that Section 34-85 only prohibits retroactive suspensions*)*. If that is a correct

reading of the Opposition Brief, then there is no dispute regarding whether the Board had authority to issue a ninety-day suspension. The Opposition Brief only seems to take issue with how the Board accounted for its ninety-day suspension.

Still, a narrow question remains for this Appeal. Could the Board account for its ninety-day suspension by deducting it from the Moore's full-back-pay (that is, issue a time-served suspension)? As discussed below, the Board had that authority.

II. The Opposition Brief is incorrect when it argues that the Board lacked authority to suspend Moore for ninety days.

A. The Opposition Brief never accounts for the reasons that this Court held, in *Spinelli*, that school boards need to be able to use suspensions and other measures to address discipline and safety issues.

In the Opening Brief (*at 10-14*), the Board relied on this Court's opinion in *Spinelli v. Immanuel Lutheran Evangelical Congreg., Inc.*, 118 Ill. 2d 389 (1987), and the Opposition Brief responds that the Board's citation to *Spinelli* "evades the relevant analysis" (*Opp.Brief at 9*). But *Spinelli* is important here.

In *Spinelli*, this Court explained that "the power to suspend is an implied power necessary to carry into effect" a school board's duty "to adopt and enforce all necessary rules for the management and government of the public schools of their district." *Spinelli*, 118 Ill. 2d at 404 (citations omitted). Because the legislature has directed school boards to run their schools safely and efficiently, school boards need the power to suspend, so they can address teacher misconduct.

See *Id.* at 405 (citations omitted). Even though *Spinelli* arose in Central Illinois, *Spinelli* applies to the Board. Article 34 of the School Code directs CPS personnel to ensure the safety of students while they are at school. See, *e.g.*, 105 ILCS 5/35-84a (West 2016). Applying *Spinelli*, the Board can issue a temporary disciplinary suspension when appropriate to carry out that safety mandate. A sentence from Section 34-18 codifies that principle (105 ILCS 5/34-18 (West 2016)):

> The specifications of the powers herein granted are not to be construed as exclusive but the board shall also exercise all other powers that they may be requisite or proper for the maintenance and the development of a public school system, not inconsistent with the other provisions of this Article or provisions of this Code which apply to all school districts.

Spinelli means that the Board had the power to suspend based on student safety.

In *Spinelli*, this Court also explained that a school board's power to suspend a teacher does not arise from -- and is not limited by -- the School Code's procedures for dismissing teachers. *Spinelli*, 118 Ill. 2d 405-06. A suspension is a different sanction than dismissal, and the two remedies arise from different sections of the School Code. *Id.*

In reviewing the Board's October 24th Order, two separate Board powers are at issue: the power to suspend under *Spinelli* (which implicated the requisite-or-proper powers under Section 34-18) and the power to dismiss under Section 34-85. Thus, the Opposition Brief is incorrect when it argues that the Board "evades the relevant analysis."

B. The Opposition Brief incorrectly asserts that the Board has forfeited its ability to rely on Section 34-18 and *Spinelli*.

The Opposition Brief argues that "the Board cannot change the basis for its decision" on Appeal (*Opp.Brief at 13*), arguing that the Board forfeited any ability to rely on Section 34-18 or *Spinelli* because the Board did not cite those authorities in its October 24th Order. But that forfeiture argument rests on a distortion of what happened during the Board proceedings. Prior to the October 24th Order, the parties briefed whether the Board could reduce Moore's back-pay award as a sanction in lieu of dismissal (see *C195-201, C202-03*). In its October 24th Order (*A24-31*), the Board stated that it was imposing a ninety-day suspension (*A24 §2*) because Moore had failed to notify her colleagues in a timely fashion when a student was in distress in her classroom (*A30*). Moore's failure to act placed the student's well-being and safety in jeopardy (*A30*), and Moore's conduct was below the level expected from a reasonably prudent educator (*A30*). Moore "failed to act in a prudent and responsible manner upon learning of [the student's] emergent medical situation" (*A31*). Thus, the Board articulated its basis for suspending Moore. The Board has relied on that same factual basis here. The Board imposed the suspension on a time-served basis, accounting for it as a deduction after it had reinstated her *(A30-31).*

The Opposition Brief argues that, under the law, an agency forfeits any statutory section that is not cited in its order, citing *Dept. of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd.*, 2018 IL App (4th) 160827, and *Motor Vehicle*

Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983) (see *Opp.Brief at 13*). But neither case contains such a holding. In *Dept. of Cent. Mgmt. Servs.*, 2018 IL App (4th) 160827, the agency had provided no explanation for its decision (*id.* ¶29), and the Appellate Court said that the agency's lawyers could not articulate that basis for the first time on appeal (*id.* ¶36). In *Motor Vehicle,* the agency erred when it provided no explanation for its decision, which had involved a reversal of the agency's prior regulatory position. 463 U.S. at 48-50. In both of those cases, the agency-level decision had not discussed the relevant facts that led to the agency's order. Those cases have no application here, given that the Board explained the basis for its suspension decision (see, *e.g.*, *A30-31*). See also *McFarland v. Kempthorne*, 545 F.3d 1106, 1112-13 (9th Cir. 2008)(the *Motor Vehicle* rule applies when an agency gives "no reasons at all" for its decision, but an agency does not err when it explains its rationale, based on the facts). Despite the Opposition Brief's claim (*at 13*), *Dept. of CMS* and *Motor Vehicle* do not support Moore's forfeiture argument.

The Opposition Brief's forfeiture argument is also inconsistent with Illinois law, which permits a reviewing court to affirm an agency decision on any basis that appears in the record. *Younge v. Bd. of Educ.*, 338 Ill. App. 3d 522, 530 (1st Dist. 2003). An agency decision can be proper even if it "did not expressly rely upon" the relevant statute section. *Id.* at 534. A reviewing court may affirm an agency order if it is just and reasonable based on the

record, regardless of the agency's specific findings or the agency's stated basis for its decision. *Habinka v. Human Rights Comm'n*, 192 Ill. App. 3d 343, 372 (1st Dist. 1989). The Board has not forfeited any arguments under Section 34-18 and *Spinelli*.

III. The Opposition Brief presumes -- incorrectly -- that there is no way to reconcile Section 34-85 of the School Code with the Board's authority to issue a suspension under *Spinelli*.

The Opposition Brief argues that the statutory text of Section 34-85, as amended in 2011, forbids the Board from issuing a time-served suspension when the Board decides not to dismiss a teacher after a merits hearing *(Opp.Brief at 9-19)*. The Opposition Brief relies on a portion of Section 34-85 that relates to pre-hearing suspensions during the pendency of dismissal charges (105 ILCS 5/34-85(a)(2)(West 2016)):

> Pending the hearing of the charges, the general superintendent or his or her designee may suspend the teacher or principal charged without pay in accordance with rules prescribed by the board, provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation.

The Opposition Brief focuses on the phrase "must be made whole" in that section (see, *e.g., Opp.Brief at 5, 6)*. The Opposition Brief then contends that, when a school board decides not to dismiss a teacher at the end of a Section 34-85 merits hearing, the school board cannot do anything else to address the teacher's misconduct. There are several problems with the Opposition Brief's analysis.

The Opposition Brief does not attempt to reconcile Section 34-85 with *Spinelli*. Here, there are two sources of the Board's authority.

- First, the Board has powers under the teacher dismissal procedures of Section 34-85. The clause cited throughout the Opposition Brief -- "must be made whole" -- appears in the subsection that concerns whether a pre-hearing suspension will itself cause a teacher to suffer a loss. 105 ILCS 5/34-85(a)(2).
- Second, the Board has requisite-or-proper powers, which are needed to safeguard student safety, under Section 34-18, as construed by the *Spinelli* holding. See 118 Ill. 2d at 405. Those *Spinelli* powers permit the Board to issue a suspension. The Board's suspension powers are not constrained by the teacher dismissal procedures in Section 34-85. *Id.* at 405-06. See also *Part II.A*, above.

In this Appeal, there is a straightforward way to reconcile these two parts of the School Code. The October 24th Order first reinstated Moore, with back pay, as required by the "must be made whole" language from Section 34-85(a)(2). See *A31*. That reinstatement ensured that the pre-hearing suspension did not itself cause Moore any loss. Next, the October 24th Order imposed a ninety-day suspension, as permitted by the Board's requisite-or-proper powers in Section 34-18 and *Spinelli*. See *A31*. By viewing the October 24th Order as having two distinct parts, this Court can harmonize the two sections of the School Code. Whenever possible, Illinois courts read statutes

to avoid inconsistencies. *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 441-42 (2005); *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001). Here, Section 34-85(a)(7) specifically mentions that the Board may account for mitigation "and offsets," without providing an exhaustive list of what those offsets might involve. 105 ILCS 5/34-85(a)(7). That mention of offsets underscores that Section 34-85 can be read as consistent with the suspension power under Section 34-18.

While the Opposition Brief flags the clause "not inconsistent with the other provisions of this Article" from Section 34-18 (see *Opp.Brief at 15*), the Opposition Brief stops there, as if reciting the language exposes an inconsistency. The Opposition Brief further argues that specific provisions should govern over an inconsistent general provision (see *Opp.Brief at 14-15*). But as discussed above, Sections 34-18 and 34-85 are not inconsistent because they involve separate remedies. See *Part II.A*, above.

Despite the Opposition Brief's broad reading of Section 34-85(a)(2), that section should be read only as written. Based on the words used, Section 34-85(a)(2) only required the Board to ensure that the pre-hearing suspension procedure did not itself cause Moore to lose income. The text of that section does not cover whether the Board could suspend Moore without pay as a disciplinary and safety remedy.

The Opposition Brief ignores the *Lake County* single-order principle. The Opposition Brief ignores the principle -- discussed in the

Opening Brief *(at 19)* -- that when an administrative agency has two sets of powers, the agency may exercise both powers in a single order. In *Lake Cnty. Bd. of Review v. Prop. Tax Appeal Bd.*, 119 Ill. 2d 419 (1988), cited in the Opening Brief *(at 19)*, a taxing authority owed a property tax refund to a taxpayer, and the same taxpayer also owed a separate amount in other property taxes. The taxing authority acted properly when it issued a single order that credited the refund against the property taxes owed, netting both amounts out into a bottom-line balance. 119 Ill. 2d at 426-28. See also *Opening Brief* at 19.

Applied here, the *Lake County* principle means that the Board's October 24th Order can be read as awarding full back pay under Section 34-85 -- complying with the "must be made whole" language that applies to pre-hearing suspensions -- and then deducting for a ninety-day student-safety suspension under *Spinelli*. See *A31*. As discussed in the Opening Brief *(at 19)*, by accounting for the ninety-day suspension on a "time-served" basis, the October 24th Order permitted everyone to move on from this episode. This *Lake County* "single-order" approach is akin to a set-off, and it is a sensible, real-world solution. Section 34-85(a)(7) implicitly recognizes that the Board may use offsets, without providing an exhaustive list of which offsets might be needed. 105 ILCS 5/34-85(a)(7).

The Opposition Brief places great emphasis on the word "must" in Section 34-85(a)(2)(see *Opp.Brief at 6-7*), but the Board satisfies the word

"must" by using the single-order approach that this Court endorsed in *Lake County*. In *Lake County*, the taxing authority had a binding obligation to pay a refund (119 Ill. 2d at 423), and the taxing authority satisfied that binding obligation by issuing the refund as part of a setoff order (*id.* at 424-25). The same analysis should apply here. In the October 24th Order, the Board first satisfied its "must" obligation when it awarded back-pay for the period of the pre-hearing suspension, and then the Board issued a ninety-day suspension, and finally the Board netted out the balance in a single order.

The Opposition Brief's approach adds words to Section 34-85(a)(2) by implication. The Opposition Brief's approach would expand the scope of Section 34-85(a)(2) by reading words into the text that do not appear there. The Opposition Brief rests on the above-quoted language from Section 34-85(a)(2), which relates to pre-hearing suspensions during the pendency of charges. But the Opposition Brief reads that section as if it also includes a clause that says, in effect, "***and the board may not take any other action in response to the teacher's conduct***." The problem, of course, is that nothing like the boldfaced italicized clause appears in the actual text. See 105 ILCS 5/34/85(a)(2). Under long-established principles of statutory construction, this Court should not imply words into a statute to change its meaning. *Manago v. Cnty. of Cook*, 2017 IL 121078, ¶¶10, 14. The text of Section 34-85 does not expressly forbid the Board from pursuing non-dismissal sanctions based on the facts.

The Opposition Brief makes unsupported assertions about legislative intent. The Opposition Brief asserts that the General Assembly must have intended the phrase "must be made whole" to foreclose the Board from pursuing any remedy under its safety-and-discipline powers from Section 34-18 (as recognized in *Spinelli) (Opp.Brief at 6-7)*. But the text of Section 34-85 does not forbid the Board from issuing a disciplinary suspension after a dismissal proceeding concludes, and the General Assembly did not include any such prohibitory language in its 2011 amendment to Section 34-85(a)(2). The Opposition Brief does not point to any legislative finding or legislative history to support its claim about the General Assembly's intent. Instead, in a circular argument, the Opposition Brief asserts that the 2011 amendments to Section 34-85 must have overruled any of this Court's decisions from before 2011, including *Spinelli* (see *Opp.Brief at 9-12*). But in Illinois, a statute will not be construed to overrule a settled precedent unless the statute's terms "clearly require such a construction." *In re Will Cnty. Grand Jury*, 152 Ill. 2d 381, 388 (1992). Given that the suspension powers under *Spinelli* are not constrained by the teacher dismissal procedures of the School Code (see *Part II.A*, above), there is no reason to presume that the General Assembly intended to overrule *Spinelli* by amending the teacher dismissal procedures.

The Opposition Brief further argues about legislative intent, attempting to draw meaning from the General Assembly's efforts to define

mitigation of damages in the context of a Section 34-85 back-pay award (see *Opp.Brief at 7-8*). The Opposition Brief cites to the *expressio unius* principle to argue that Section 34-85's discussion of mitigation must be read to foreclose a time-served suspension (*id.*), but mitigation and setoff are two different legal principles, and Section 34-85 mentions both of them. 105 ILCS 5/34-85(a)(7). Moreover, the Board's suspension power does not arise from Section 34-85 (see *Part II.A*, above), which means that whatever is expressed in (or excluded from) Section 34-85 does not imply an intent to diminish the Board's suspension power. That is, applying the *expressio unius* principle to Section 34-85 does not resolve the question of whether (or how) the Board can issue a suspension.

The Opposition Brief is internally inconsistent. The Opposition Brief's approach is internally inconsistent, given that the Opposition Brief also acknowledges that the Board could have issued a suspension on a going-forward basis *(Opp.Brief at 19)*, and given that the Opposition Brief never challenges the Board's authority to adopt a Warning Resolution and a remediation plan in the October 24th Order (see *Part I*, above). The Opposition Brief does not contain a sensible analysis of how the phrase "must be made whole" limits the Board's authority.

The Opposition Brief wrongly brushes aside important practical considerations. In arguing for its broad reading of Section 34-85, the Opposition Brief urges this Court to reject the Board's arguments about

student safety in the real world, claiming that the Board should direct those concerns to the legislature (*Opp.Brief at 17-19*). But that ignores this Court's role when it considers a possible conflict between two parts of a statute, like the School Code sections here. When this Court considers how to reconcile provisions in a statute, this Court may consider the consequences of construing those provisions one way or the other. *Dynak v. Bd. of Educ*, 2020 IL 125062, ¶16. By looking at the real world implications for each competing statutory interpretation, this Court can avoid unjust results. *Id.,* ¶24. Hence, this Court can consider which construction -- the Board's suspension approach or the Opposition Brief's dismiss-or-nothing reading of Section 34-85(a)(2) -- would better ensure student safety at CPS.

As explained in the Opening Brief, Moore did not respond reasonably that day in her eighth-grade classroom when a student was in crisis. Given the important student safety issues involved, the Board imposed a proportional response when it issued a ninety-day suspension. That suspension was proper under *Spinelli*.

The Opposition Brief argues instead for a dismiss-or-nothing approach, claiming that at the end of a merits hearing, a school board can only dismiss or reinstate (see *Opp.Brief at 21*). The Opposition Brief rests that construction on its formalistic reading of Section 34-85(a)(2), claiming that tenured teachers deserve "maximum protection" (*Opp.Brief at 18*). But teacher tenure rights are narrowly construed because a broad construction

would wrongly interfere with a school board's ability to run its schools. See *Johnson v. Bd. of Educ.*, 85 Ill. 2d 338, 344 (1981). Moreover, under the Opposition Brief's suggested approach, school boards would have the fewest options in cases that might be serious enough to warrant considering dismissal. Under that approach, school boards would end up over-prosecuting some teacher misconduct while under-prosecuting others. No one would be better off under a dismiss-or-nothing approach. Because the Opposition Brief's dismiss-or-nothing approach is not the only viable reading of the School Code -- and because it is not a sensible approach -- this Court should reject it.

The *Mohorn-Mintah* Decision. In a final argument, the Opposition Brief contends that the Board has improperly cited to the unpublished decision in *Mohorn-Mintah v. Bd. of Educ.*, 2019 IL App (1st) 182011-U *(*see *Opp.Brief at 20)*. But the Board's Opening Brief pointed out that the *Mohorn-Mintah* decision was unpublished and explained that the Board had filed a motion under Rule 23(f) asking the Appellate Court to publish it *(Opening Brief at 18)*. See also Ill. S. Ct. R. 23(f)(eff. April 1, 2018). On October 23, 2020, the Appellate Court granted the Board's motion to publish the *Mohorn-Mintah* decision, stating that a new *Mohorn-Mintah* opinion would issue shortly. Copies of those orders are attached to this Reply Brief. When the Appellate Court publishes its replacement opinion, the Board will file an appropriate motion to alert this Court.

In sum, there is a way to reconcile the two sections of the School Code in this case. The Board's October 24th Order fully reinstated Moore with back pay, and then it charged a ninety-day suspension as an offset against that full back-pay award. This was a proper exercise of powers under Section 34-18 (and *Spinelli*) and under Section 34-85. Most importantly, the October 24th Order was a flexible response that promoted student safety.

CONCLUSION

This Court should reverse and vacate the Appellate Court's decision. This Court should also direct the reinstatement of the Board's October 24th Order.

October 28, 2020

Respectfully submitted,

/s/ Thomas A. Doyle
Thomas A. Doyle

Joseph T. Moriarty, General Counsel
Thomas A. Doyle, Senior Assistant General Counsel (Counsel of Record)
Board of Education of the City of Chicago, Law Department
One North Dearborn Street, Suite 900
Chicago, Illinois 60602
(773) 553-1700
tadoyle2@cps.edu

Linda Hogan
Law Offices of Linda Hogan
4044 North Lincoln Avenue, # 243
Chicago, Illinois 60618
(773) 259-5806
lindahoganattorney@gmail.com

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OLAYINKA MOHORN-MINTAH, Plaintiff-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al.* Defendants-Appellees.	)	No. 1-18-2011

ORDER

This cause coming to be heard on Defendants-Appellees' Motion to Publish and the Court having been fully advised in the premises;

IT IS HEREBY ORDERED THAT:

(1) Defendants-Appellees' motion to publish this Court's Rule 23 Order is **GRANTED.**

(2) The Rule 23 Order filed in this case on December 31, 2019 is hereby **WITHDRAWN.**

(3) A Modified Opinion Upon Denial of Rehearing will be filed in its stead in due course.

ORDER ENTERED

OCT 23 2020

APPELLATE COURT FIRST DISTRICT

Cynthia Y. Cobbs
Justice

Nathaniel Howse
Presiding Justice

Margaret S. McBride
Justice

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OLAYINKA MOHORN-MINTAH, Plaintiff-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al.* Defendants-Appellees.	)	No. 1-18-2011

ORDER

This cause coming to be heard on Plaintiff-Appellant's Petition for Rehearing and the Court having been fully advised in the premises;

IT IS HEREBY ORDERED THAT:

(1) Plaintiff-Appellant's Petition for Rehearing is **DENIED.**

(2) The Rule 23 Order filed in this case on December 31, 2019 is hereby **WITHDRAWN.**

(3) A Modified **Opinion** Upon Denial of Rehearing, in accordance with this court's Order granting the Defendants-Appellees' Motion to Publish, will be filed in its stead in due course.

ORDER ENTERED

OCT 23 2020

APPELLATE COURT FIRST DISTRICT

Cynthia Y. Cobbs
Justice

Nathaniel Howse
Presiding Justice

Margaret S. McBride
Justice

CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief conforms to the requirements of Rule 341(a) and (b). The length of this Reply Brief -- excluding the pages or words 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 -- is 3,909 words.

Verification by Certification: 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.

October 28, 2020 /s/ Thomas A. Doyle

CERTIFICATE OF SERVICE

I certify that:

1. On October 28, 2020, I filed the foregoing Reply Brief with the Clerk of the Illinois Supreme Court, by electronic means, using the Odyssey eFileIL service; and
2. On October 28, 2020, before 5 p.m., I served the foregoing Reply Brief on opposing counsel by electronic delivery (via the Odyssey eFileIL service) and by email, addressed to jgroff@laboradvocates.com (Josiah Groff, *Counsel for Daphne Moore*) and amaskaleris@atg.state.il.us (Ann Maskaleris, *Counsel for ISBE*).

Verification by Certification: 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.

October 28, 2020 /s/ Thomas A. Doyle

E-FILED
10/28/2020 8:20 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK