No. 129695

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>ANGEL CLASS,<br><br>Defendant-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-20-0903<br><br>There on Appeal from the Circuit Court of Cook County, Illinois, No. 02 CR 13513<br><br>The Honorable Angela Munari Petrone, Judge Presiding. |

# REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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## ARGUMENT

The People's opening brief demonstrated that the appellate court exceeded its authority when it *sua sponte* ordered substitution of the circuit court judge absent a finding of bias or prejudice. Although no rule of this Court expressly authorizes the appellate court to direct substitution of a circuit court judge, this Court has interpreted Rule 366(a)(5)'s broad language as conferring that authority upon the appellate court in civil cases, but only if the appellate court makes a finding of bias or prejudice. That limitation applies with equal force under Rule 615(b), which governs the appellate court's authority in criminal appeals. Given Rule 615(b)'s narrower and less specific language, it does not confer greater authority to direct substitution of judge than that provided by Rule 366(a)(5). Moreover, requiring a finding of bias or prejudice by the appellate court is consistent with the standard applicable to motions seeking a substitution of judge for cause in the circuit court and therefore ensures that litigants are held to the same standard regardless of when they raise a claim of judicial bias. Requiring a finding of bias or prejudice also supports our legal system's established and strong presumption that judges are impartial and limits substitution to the rare circumstance where a party overcomes that presumption by demonstrating that the judge cannot be impartial in a particular case.

By contrast, petitioner's proposed "suggestion of unfairness" standard provides no clear criteria to guide its application and gives the appellate court virtually unfettered discretion. This standard is unsupported by Rule 615(b)'s plain

language, inconsistent with the Court's precedent, and would lead to inconsistent application and undermine the presumptions that judges follow the law and act impartially.

Here, the appellate court erred in directing substitution because petitioner cannot demonstrate that the circuit judge was biased or prejudiced. The record shows that the circuit judge made only routine legal errors, and this Court's precedent clearly holds that these types of missteps in applying or understanding the law do not demonstrate bias or prejudice, such that reassignment would be proper. Indeed, petitioner fails to show that reassignment is warranted under any standard. Accordingly, the appellate court lacked authority to *sua sponte* direct substitution of the circuit judge.

## I. The Appellate Court Lacks Authority to Direct Substitution of a Circuit Judge Absent a Finding of Bias or Prejudice.

### A. Rule 615(b) authorizes the appellate court to direct substitution of a circuit judge only upon a finding of bias or prejudice.

As the People's opening brief established, this Court's rules do not grant the appellate court authority to direct substitution of a circuit judge absent a finding of bias or prejudice. *See* Peo. Br. 12-15.[1] Rule 615(b), which sets forth the appellate court's authority in criminal cases, does not specifically allow the appellate court direct substitution of a circuit judge. Rather, just as this Court has held that the

[1] "Peo. Br. __" and "Pet. Br. __" refer to the People's opening brief and petitioner's brief, respectively. Citations to the common law record appear as "C__," to the report of proceedings as "R__," and to the second supplement to the record as "SUP2 C __."

appellate court has the power to remand a criminal case "when used in connection with other authority specifically stated in Rule 615(b)," *People v. Young*, 124 Ill. 2d 147, 152 (1988), it may also find authority to reassign on remand under either Rule 366 or Rule 615. But even if Rule 615(b)(2) were construed to confer the authority to direct substitution of a circuit judge, as petitioner argues, *see* Pet. Br. 21-23,[2] nothing in its plain language confers broader authority to direct such substitution than Rule 366(a)(5).

As the Court has observed, "[t]he authority in civil cases, as set out in Rule 366, is much broader and more specifically stated than is the authority of a reviewing court in criminal appeals as stated in Rule 615(b)." *Young*, 124 Ill. 2d at 152; *see also People v. Vara*, 2018 IL 121823, ¶ 86 (Thomas, J., dissenting) ("It is difficult to conceive of a broader grant of power to a reviewing court than [Rule 366(a)(5)'s] power to grant any relief that the case may require."). Relevant here, the language in Rule 615(b)(2) granting the appellate court authority to "modify any or all of the proceedings subsequent to" the appealed-from judgment is at most equivalent to the authority granted the appellate court in Rule 366(a)(5) to "enter

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[2] Rule 615(b)(2) allows the appellate court to "set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken." The rule applies when a court is reviewing a circuit court judgment and allows the reviewing court to set aside, affirm, or modify circuit court proceedings that occurred subsequent to the appealed-from judgment or order. *See*, *e.g.*, *People v. Hammond*, 18 Ill. App. 3d 693, 696 (4th Dist. 1974) (order granting new trial on one charge not itself final and appealable judgment but may be modified because it is subsequent to the appealed-from judgment on other charges). It is unclear whether the rule also permits the appellate court to modify future proceedings that will occur after it reverses the appealed-from judgment or order.

any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, . . . that the case may require." And Rule 366(a)(5) allows the appellate court to direct substitution of a circuit judge only upon a finding of bias or prejudice. *See Raintree Homes v. Vill. Of Long Grove*, 209 Ill. 2d 262, 262-63 (2004); *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Thus, in both criminal and civil cases, the appellate court may not direct substitution of a circuit judge absent a finding of bias or prejudice.

Petitioner is incorrect that the absence of language in Rule 615 expressly prohibiting or restricting the circumstances in which the appellate court may direct substitution means that the appellate court has unlimited and unfettered discretion to do so. *See* Pet. Br. 21-29. Both Rule 366(a)(5) and Rule 615(b) *grant* powers to the appellate court, so the absence of language prohibiting or restricting the exercise of authority is not the equivalent of language granting such authority. *See People v. Shunick*, 2023 IL 129244, ¶ 76 (rejecting similar argument because "the lack of language prohibiting [something] is not the equivalent of permitting [it]"). Moreover, although Rule 366(a)(5)'s plain language does not expressly condition the appellate court's authority to direct substitution upon a finding of bias or prejudice, the Court has nevertheless imposed that limitation because circuit judges are "presumed to be impartial." *Raintree Homes*, 209 Ill. 2d at 263. Accordingly, the bar for removing a judge is high, and a party seeking substitution must overcome the presumption of impartiality. *Id.*

Petitioner acknowledges *Raintree Homes*'s holding that reassignment in that case was inappropriate under Rule 366(a)(5) because the plaintiff failed to show bias, but contends that this holding does not preclude other bases for reassignment. *See* Pet. Br. 29. Not so. *Raintree Homes* reversed the appellate court's order directing reassignment because the plaintiff failed to show bias or prejudice and emphasized that "erroneous findings and rulings by the trial court" were *not* sufficient bases for reassignment. 209 Ill. 2d at 263. In short, *Raintree Homes* makes clear that the appellate court must find bias or prejudice before it may direct reassignment on remand. Other decisions from this Court confirm that a finding of bias or prejudice is necessary to direct substitution of a circuit judge. *See*, *e.g.*, *Eychaner*, 202 Ill. 2d at 280-81; *People v. Vance*, 76 Ill. 2d 171, 181-82 (1979).

**B. The bias or prejudice standard is consistent with due process.**

Petitioner's argument that this Court's established standard for substitution is inconsistent with due process, *see* Pet. Br. 16-17, is likewise incorrect.

"Due process guarantees 'an absence of *actual bias*' on the part of a judge." *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (emphasis added). However, "'most matters relating to judicial disqualification [do] not rise to a constitutional level.'" *Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955), and *FTC v. Cement Inst.,* 333 U.S. 683, 702 (1948)). Because "[b]ias is easy to attribute to others and difficult to discern in oneself[,]" the United States Supreme Court applies "an objective standard . . . that avoids having to determine . . . whether a judge harbors an actual, subjective bias," and asks "whether, as an objective matter, 'the average judge in his position is

'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Williams*, 579 U.S. at 8 (quoting *Caperton*, 556 U.S. at 881). Thus, contrary to petitioner's arguments, the Due Process Clause protects against circumstances where "there is an impermissible risk of actual bias," *id.*, and not merely, as petitioner would have it, a "suggestion-of-unfairness," Pet. Br. 15-17.

Consistent with, and after reviewing, *Caperton*'s due process standard, this Court held that Illinois's bias-or-prejudice standard comports with due process. *See In re Marriage of O'Brien*, 2011 IL 109039, ¶¶ 32-33. In considering the standard for a request for substitution of judge for cause, the Court found that the actual bias standard protects litigants' due process rights. *Id.* ¶ 43, 46. The Court rejected the appearance-of-impropriety standard in the Code of Judicial Conduct as the standard for substitution because it "is less strict than the [due process standard] identified in *Caperton*," which requires recusal "when the 'probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Id.* ¶ 32 (citation omitted). And Illinois's for-cause substitution statute "ensures that any substitution coming after a substantive ruling has been made is the result of a proven bias or high probability of the high risk for actual bias." *Id.* ¶ 46; *see also id.* ¶ 33. Thus, the Court's bias-or-prejudice standard comports with due process.

None of petitioner's cited cases establishes otherwise. *Peters v. Kiff* is inapposite because it concerns the right to an impartial jury. 407 U.S. 493, 504 (1972) (systemic exclusion of black citizens from serving on juries violates due

process). *In re Lane* is an attorney discipline case that had nothing to do with the standard for whether a judge could preside over a case. 127 Ill. 2d 90 (1989). And petitioner's remaining cases merely confirm that the Due Process Clause protects against a "'probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable.'" *O'Brien*, 2011 IL 109039, ¶ 32 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)); *see Williams*, 579 U.S. at 11 (finding "impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case" because "same person serve[d] as both accuser and adjudicator"); *Taylor v. Hayes*, 418 U.S. 488, 501-02 (1974) (judge who charged petitioner with contempt and then convicted and sentenced him had become "embroiled in a running controversy with petitioner" and displayed "an unfavorable personal attitude toward petitioner, his ability, and his motives" such that he could not be impartial on the contempt issue).

Accordingly, the Court's bias-or-prejudice standard incorporates, and is not inconsistent with, the due process standard.

### C. Petitioner's proposed "suggestion of unfairness" standard is equivalent to providing the appellate court with supervisory authority, inconsistent with precedent, and unworkable.

Petitioner's proposed standard — which would permit the appellate court to direct substitution on remand if it finds a "suggestion of unfairness," Pet. Br. 15-16 — is inconsistent with Rule 615(b) and the Court's precedent, would give the appellate court supervisory authority over the circuit court, and is so discretionary that it is unworkable and will lead to inconsistent and absurd results.

To start, this Court has already rejected standards for substitution that require showings less than the due process bias-or-prejudice standard. *See* Peo. Br. 20. Parties in both civil and criminal cases share the interest protected by the Due Process Clause — to have impartial judges preside over their cases. Petitioner's suggestion that this Court has treated criminal cases differently than civil cases is incorrect. *See Eychaner*, 202 Ill. 2d at 280 (treating civil and criminal cases the same); *Vance*, 76 Ill. 2d at 180-81 (requiring showing of prejudice in criminal case).

In addition, as the People's opening brief explained, this Court has directed substitution to avoid the "suggestion of unfairness" without citation to any rule because this Court, unlike the appellate court, has virtually unfettered supervisory authority over the circuit court and may direct substitution under any standard. *See* Peo. Br. 22-24. Thus, petitioner's reliance on this Court's substitution cases is misplaced. *See id*. at 15-16. Moreover, despite its broad authority, this Court has ordered reassignment only in cases where it found the potential for unconstitutional bias or actual prejudice. *See id*. at 23-25. Indeed, in one case, the Court found that the circuit judge had violated the defendant's due process rights by supporting its decision to impose a capital sentence based on sources outside the record. *See People v. Dameron*, 196 Ill. 2d 156, 171-72 (2001); *see Eychaner*, 202 Ill. 2d at 280-81 ("party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias," which "can stem from an extrajudicial source").

Regardless of which standard this Court has employed in directing reassignment, it is well established that the appellate court does not have the same broad supervisory authority and that the appellate court's "power attaches only upon compliance with the rules governing appeals." *People v. Flowers*, 208 Ill. 2d 291, 308-09 (2003). Petitioner is therefore incorrect to suggest that the appellate court had authority to direct substitution in the absence of a finding of bias or prejudice merely because this Court might have done so.

Nor do petitioner's policy arguments warrant a departure from the settled bias-or-prejudice standard. According to petitioner, the appellate court needs "flexibility . . . to address unique, hard-to-predict challenges[,]" such as "trial judges who are unable or unwilling to follow a mandate." Pet. Br. 19. This argument rests on a false premise: that the appellate court has the ability to predict which circuit judges will not follow its mandate on remand and on what grounds. To be sure, the circuit court must follow a reviewing court's mandate, *e.g.*, *People v. Brown*, 2022 IL 127201, ¶ 20, but a court's failure to do so does not automatically require substitution, *see*, *e.g.*, *id.* ¶¶ 20-34 (this Court did not direct substitution despite finding that circuit judge "disobey[ed]" this Court's mandate). Rather, substitution might be warranted if a circuit judge repeatedly refuses to follow a mandate with the result that the record shows, "as an objective matter," that the judge harbors a partiality toward a particular outcome such that "there is an unconstitutional potential for bias." *Williams*, 579 U.S. at 8 (quotation marks omitted). Similarly, if the record shows that a circuit judge has refused to follow the law based on personal

views, *see*, *e.g.*, *People v. Bolyard*, 61 Ill. 2d 583, 587-88 (1975) (directing substitution where judge "expressed his opinion that perpetrators of [defendant's] crime should not receive probation" and "arbitrarily denied probation because defendant fell within the trial judge's category of disfavored offenders"), then the basis for substitution is not a mere "suggestion of unfairness" but demonstrated bias. *See* Pet. Br. 20 (citing *Bolyard* and *People v. Zemke*, 159 Ill. App. 3d 624, 627 (2d Dist. 1987), which followed *Bolyard*). In sum, this Court's precedent demonstrates that substitution of a circuit judge should be reserved for the highly unusual case where the record shows that the judge lacks impartiality.

Finally, petitioner's proposed "suggestion of unfairness" test is effectively standardless and thus unworkable. Petitioner proposes no objective criteria for assessing when a particular circumstance "suggests unfairness" and thus would give the appellate court virtually unlimited discretion. But if adopted, this approach would lead to arbitrary and inconsistent results, undermining confidence in the judiciary. Moreover, under petitioner's proposal, litigants could more easily obtain substitution in the appellate court than in the circuit court, where substitutions for cause are governed by the bias-or-prejudice standard. *See* Peo. Br. 22. This would lead to absurd results: the appellate court could affirm a circuit court's decision denying for-cause substitution because there was no showing of bias or prejudice but nevertheless direct substitution because it found a "suggestion of unfairness."

In short, petitioner's proposal lacks any "enforceable and workable framework[.]" *Williams,* 579 U.S. at 8. Accordingly, the Court should reject petitioner's invitation to depart from established precedent and reaffirm that a finding bias or prejudice is required before the appellate court may direct reassignment of a circuit judge.

## II. The Appellate Court Erred In *Sua Sponte* Directing Substitution In This Case.

Under any standard, the appellate court exceeded its authority when it *sua sponte* directed reassignment of the circuit judge in this case.

To start, the appellate court erred when it acted *sua sponte*. As the People's opening brief explained, it is well established that the appellate court should refrain from raising issues *sua sponte*. Peo. Br. 17. That rule is especially important when it comes to the reassignment of a judge because if reassignment was not requested, then no party has tried to overcome the presumption of impartiality. *See Eychaner*, 202 Ill. 2d at 280. Indeed, if a party does not view the record as warranting reassignment, then there is no reason for the appellate court to *sua sponte* raise the issue.

Petitioner's argument that the appellate court's reassignment order was nevertheless appropriate here because the issue was eventually briefed, after the People filed their petition for leave to appeal, Pet. Br. 47-48, misses the mark. The question here is whether the appellate court should have *sua sponte* directed substitution in the first instance. Of course, this Court has authority to address the issues presented, but it should reaffirm its precedent and hold that the appellate

court should grant reassignment only when requested or, at a minimum, after additional briefing.

In addition, as the People's opening brief established, the circuit judge's missteps in this case were routine legal errors insufficient to warrant reassignment. *See* Peo. Br. 17-20. Nothing in the record demonstrated "'a deep-seated favoritism or antagonism'" or any hostility to petitioner. *Eychaner*, 202 Ill. 2d at 281 (quoting *Liteky* v. *United States*, 510 U.S. 540, 555 (1994)). Rather, the circuit judge made common legal errors in its assessment of petitioner's claims and application of the legal standard for second-stage postconviction proceedings. *See* Peo. Br. 18-19.

Petitioner asserted that he was actually innocent and attached five affidavits to support his claim. The appellate court agreed with the circuit judge's decision to reject two of the affidavits, finding that Santana's affidavit was not newly discovered and Horton's lacked probative value. A21. And while the appellate court found that the circuit judge erred in her evaluation of the remaining three affidavits, there is nothing in the record to suggest that the judge's rulings were motivated by bias or prejudice. *See* Peo. Br. 17-19.

First, the appellate court disagreed with the circuit judge's finding that Stanley's information was not newly discovered. A24. Stanley had averred that he was present on the night of the shooting, that Salazar was the shooter, and that he did not see petitioner that night. C355-56. The record showed that petitioner's counsel was aware of Stanley and attempted to call him as a witness but was unable to locate him. R169; SUP3 R6. The circuit judge found that Stanley could

have been found through due diligence because he was in custody around the time of trial. A47. While the appellate court disagreed with this finding, *see* A24, this difference of opinion over how to apply the newly discovered evidence standard to a particular set of facts does not evince bias or prejudice. *See* Peo. Br. 17-18.

Nor does the circuit judge's mistaken application of the second-stage postconviction standard evince bias or prejudice. Stanley's affidavit had clear credibility issues, including because he contradicted his affidavit when he later told postconviction counsel that "neither he nor [petitioner] were there during the incident." *Compare* C355-56 *with* C567. And Sanchez's affidavit was vague. He stated that he was near the shooting, saw a gray car that belonged to either Ambrose or Salazar drive past at 10:00 p.m., and then saw a "light skin almost white individual fire." C359. But Sanchez failed to explain how he was able to recognize the car as it drove past at night or how he knew that petitioner was not involved. C359. Thus, the circuit judge's reasonably determined that Stanley's and Sanchez's affidavits were not believable. To be sure, she made a legal error in assessing the credibility of the affidavits at second stage, rather than ordering an evidentiary hearing to resolve her legitimate concerns about the affidavits' credibility, but this is not the type of mistake that suggests bias or prejudice. *See* Peo. Br. 17-18.

Similarly, the judge's dismissal of Pasco's affidavit did not reflect bias or prejudice. Pasco averred that the day after the shooting, Salazar told him that he "finally got [the victim] last night." C361. The circuit judge correctly identified this

statement as hearsay, but then incorrectly declined to consider it because she failed to recognize the exception to the hearsay rule in postconviction proceedings. *See* A23. While a legal error, this was not a sign of bias or prejudice.

Nor did the circuit judge's failure to cite *People v. Robinson*, 2020 IL 123849, , which the appellate court highlighted, *see* A18-19, indicate bias or prejudice. *Robinson* was decided a month before the judge issued her ruling and *after* the parties briefed and argued the People's motion to dismiss the petition, and neither party cited *Robinson* before the trial court. *See* R415-445; C505-09, 525-529; SUP2 C6-13. Thus, at worst, the judge overlooked *Robinson*.

In short, the circuit judge's dismissal of the postconviction petition was premature, but nothing in her decision suggests, much less demonstrates, that the judge harbored any bias toward petitioner such that she would not neutrally consider the evidence presented at a third-stage evidentiary hearing, "make a conscientious effort to set . . . aside [her prior view of the case,] and give dispassionate consideration to" that evidence. *Vance*, 76 Ill. 2d at 179-80.

This Court's decision in *Robinson* underscores this conclusion. *Robinson* clarified how trial courts should evaluate actual innocence claims in a successive postconviction petitions. 2020 IL 123849, ¶¶ 60-61. Applying the clarified standard to the facts presented, the Court held that "the lower courts [had] erred in applying an incorrect standard when considering the sufficiency of [the petitioner's supporting] affidavits" at the second stage, and that the circuit judge had further erred in failing to consider certain hearsay statements contained in those affidavits.

*Id.* ¶¶ 55, 61, 81. Despite the lower courts' errors, however, the Court remanded for further proceedings without reassigning the case to different circuit judge. *Id.* ¶ 85. The circuit judge's errors here were no more serious than the lower courts' errors in *Robinson*. As in *Robinson*, the proper remedy is to remand for further proceedings without reassigning the case. *See also People v. House*, 2021 IL 125124, ¶ 41 (without reassigning case, remanding for reconsideration in light of intervening decisions of this Court, including in *Robinson*).

Finally, petitioner's argument that the circuit judge's errors cumulatively demonstrate bias or prejudice rests entirely on speculation. Nothing in the record supports petitioner's assertion that the judge "combed" the "affidavits for weaknesses." Pet. Br. 45. Instead, the judge's errors evince a misunderstanding of law, not bias or prejudice. This is true whether the errors are viewed individually or together. The circuit judge's errors suggest confusion, which is not uncommon among circuit judges, regarding the standards at the second stage of post-conviction proceedings, but they do not show an unwillingness to follow the law after a reviewing court has clarified the correct approach.

Indeed, substitution would be unwarranted even if the Court were to adopt petitioner's "suggestion of unfairness" standard. Again, the circuit judge made routine legal mistakes, which do not suggest that the judge cannot fairly implement the appellate court's mandate by neutrally considering petitioner's postconviction claims at a third-stage proceeding. Petitioner contends that the judge would "face substantial difficulty in rethinking her finding." Pet. Br. 37. But petitioner points

only to common legal errors: a failure to recognize a hearsay exception, premature credibility determinations, and the application of the wrong standard. *Id.* at 38-39. These errors do not suggest unfairness. Accordingly, nothing in the record warrants reassignment on remand.

* * *

The Court should hold that the appellate court lacks authority to direct the substitution of the circuit judge absent a finding of bias or prejudice, and reaffirm that the appellate court should refrain from directing such substitution when no party raises the issue. This approach provides a clear framework that may be applied consistently in both the circuit and appellate courts while also providing the appellate court with authority to protect litigants in the rare cases where a circuit judge should, but fails to, recuse herself. Because the circuit judge here made legal errors that are insufficient to demonstrate bias or prejudice, the appellate court erred in directing reassignment of the circuit judge.

## CONCLUSION

For the reasons set forth above and in the People's opening brief, this Court should reverse the portion of the appellate court's judgment which ordered that the case be reassigned to a different circuit judge on remand.

October 17, 2024

Respectfully submitted,

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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 containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 17 pages.

/s/ Katherine Snitzer
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## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 17, 2024, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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