No. 121124

IN THE SUPREME COURT OF ILLINOIS

BETTER GOVERNMENT ASSOCIATION, Plaintiff-Appellant, v. ILLINOIS HIGH SCHOOL ASSOCIATION, CONSOLIDATED HIGH SCHOOL DISTRICT 230, Defendants-Appellees.	On Appeal From the Appellate Court of Illinois, First Judicial District, No. 1-15-1356 There Heard on Appeal From the Circuit Court of Cook County, Illinois, Chancery Division No. 14 CH 12091 Hon. Mary L. Mikva, *Judge Presiding*

BRIEF OF METROPOLITAN PIER & EXPOSITION AUTHORITY AND NAVY PIER, INC. AS AMICI IN SUPPORT OF APPELLEES

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Dated: January 30, 2017

POINTS AND AUTHORITIES

POINTS AND AUTHORITIES
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Pursuant to Illinois Supreme Court Rule 345, the Metropolitan Pier & Exposition Authority ("MPEA") and Navy Pier, Inc. ("NPI") file this brief as *amici curiae* in support of defendants-appellees.

INTEREST OF THE AMICI CURIAE

MPEA is a unit of local government created in 1989 by the General Assembly to provide for the development and management of McCormick Place and Navy Pier. In 2011, MPEA entered into a long-term lease agreement with NPI, a private, not-for-profit corporation, under which NPI assumed responsibility for operating, maintaining, and developing Navy Pier within a business framework that provides for the long-term financial sustainability of Navy Pier.

MPEA and NPI are directly interested in the outcome of this appeal because they are defendants in a virtually identical lawsuit brought by the BGA in the Circuit Court of Cook County, *Better Government Ass'n v. Metropolitan Pier & Exposition Authority, et al.*, Case No. 2014 CH 10364. In that case, the BGA claims that NPI's documents are public records subject to disclosure under FOIA. As it does here, the BGA argues that NPI either (i) is a "subsidiary body" of MPEA and therefore a "public body" under FOIA or (ii) has contracted with MPEA to perform a "governmental function" and must therefore produce "public records" that directly relate to that "governmental function" under Section 7(2) of FOIA. Under either theory, the BGA claims that it is entitled to disclosure of the same broad categories of documents that it seeks from the IHSA in this case. Among other things, the BGA seeks information about or copies of all of NPI's agreements with its employees; information about or copies of all of the contracts and

leases NPI has entered into; the minutes of all of NPI Board meetings; and all of NPI's internal policies and procedures.[1]

To be clear: there is no dispute that these kinds of documents are subject to FOIA to the extent NPI provided them to MPEA. Because MPEA is a "public body," documents in its possession are generally subject to FOIA and must be produced in response to FOIA requests unless an exemption applies. 5 ILCS 140/1.2. The BGA, however, seeks not only NPI documents that are in MPEA's possession, but also NPI documents that have never been shared with any public body.

This is the first time that this Court has considered whether and to what extent the General Assembly intended to impose disclosure obligations on non-governmental actors like NPI and the IHSA under Illinois' Freedom of Information Act. This Court's construction of key statutory terms such as "subsidiary body," "public records," and "governmental function" will inevitably have a significant impact on the BGA's case against MPEA and NPI. Indeed, it is likely to have a significant impact on a wide variety of private, non-profit entities that have partnered with governmental entities to provide educational, recreational and entertainment opportunities to the people of Illinois. Some of those arrangements are new. But others are decades old. For example, NPI's lease of Navy Pier was patterned after the Lincoln Park Zoological Society's long-standing arrangement with the Chicago Park District under which the non-profit Society maintains

[1] On the first three categories, the BGA seeks (1) "[a] list of NPI's employees, titles, and salaries since the date NPI was created," along with all employment agreements; (2) "[a] list of all contracts to which NPI is a party, showing the name of the counterparty, the amount of the contract, the date of the contract, and the goods or services purchased. . . . If a list does not exist, [the BGA] request[s] copies of all such contracts"; and (3) "[a] list of all leases at Navy Pier showing the owners of each business, the date the lease began and the date the lease ended or will end, and the revenue generated....If a list does not exist, [the BGA] request[s] copies of all such leases."

and operates the Zoo. All of these types of arrangements are implicated by the BGA's attempt in this case to greatly expand FOIA's reach.

ARGUMENT

The BGA's appeal requires the Court to construe three key statutory terms. The first is "subsidiary body." FOIA section 2(a) defines a "public body" as:

> [A]ll legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, *any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof,* and a School Finance Authority created under Article 1E of the School Code.

5 ILCS 140/2(a) (emphasis added). Characterizing an entity as a "subsidiary body" of a State agency or local government has far-reaching consequences: because a subsidiary body is included within the definition of a "public body," *every* document the subsidiary body creates or possesses is subject to FOIA. In addition, because substantially the same definition is used in the Open Meetings Act, characterizing an entity as a "subsidiary body" of a public body means that any meetings it holds would have to be open to the public, subject to the exceptions in the OMA. 5 ILCS 120/1.02.

The second statutory term at issue here is "public records." FOIA Section 2(c) defines the term "public records" to include all records of any kind "pertaining to the transaction of public business. . . having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c). The Act does not define the "transaction of public business," but the scope of that term is necessarily limited by the requirement that the document itself must have been prepared by or for a public body or at the very least be under the control of a public body.

The third term the Court must construe is "governmental function." Under FOIA section 7(2):

> [a] public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2). Section 7(2) was enacted in 2010. FOIA does not define what constitutes a "governmental function," nor is there any legislative history that identifies the types of contracting relationships the General Assembly had in mind when it expanded FOIA to include public records that are not in the possession of a public body. As the First District recognized in this case, however, a document is not subject to disclosure under FOIA section 7(2) unless it is a "public record," 2016 IL App (1st) 151356, ¶¶ 45-47, which means that it must pertain to the "transaction of public business" and be under the control of a public body.

The BGA argues that all of these terms should be liberally construed to promote disclosure of public records. But that argument assumes the very conclusion that is at issue here—whether the documents in question qualify as public records. Liberally construing FOIA makes sense when a request is made of an entity that is indisputably a public body. *See, e.g., Stern v. Wheaton-Warrenville Community School Dist.*, 233 Ill.2d 396, 405 (2009) (liberally construing FOIA where there was no dispute that the defendant District was a "public body," that the request sought information about a public employee's contract, and that the contract was a "public record"). Under these circumstances, liberally construing FOIA promotes the State's public policy "that all persons are entitled to full and complete information regarding *the affairs of government*

and the *official acts and policies of those who represent them as public officials and public employees* consistent with the terms of this Act." 5 ILCS 140/1 (emphasis added).

But the same principle does not apply where, as here, the documents are *not* possessed by an entity that is indisputably a public body and were *not* created by public officials or public employees. Here, the primary question is whether and the extent to which the General Assembly intended FOIA to apply to a *private* entity. It makes no sense to liberally construe FOIA's definitions so that FOIA applies to as many private entities and private documents as possible. Indeed, that would be directly contrary to the General Assembly's statement that FOIA "is *not* intended to cause an unwarranted invasion of personal privacy." 5 ILCS 140/1 (emphasis added). Instead, the Court should apply the key statutory terms in accordance with their "plain and ordinary meaning," *People v. Fiveash*, 2015 IL 117669, ¶ 11, and avoid any construction that sweeps so broadly that it effectively erases the distinction between public and private entities.

That is precisely what the First District did here. The argument the BGA makes for a much broader construction of the key statutory terms is contrary to the plain language of the Act and would impose an enormous and unwarranted burden on private entities that provide crucial assistance to governmental entities.

I. The Lower Courts Have Properly Construed The Term "Subsidiary Body."

In deciding that the IHSA is not a "subsidiary body" of District 230—or any other school district—the First District properly applied the three-part test developed and applied in *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcohol & Drug Dependency*, 64 Ill. App. 3d 94 (2d Dist. 1978), *Hopf v. Topcorp, Inc.*, 170 Ill. App. 3d 85 (1st Dist. 1988), and *Hopf v. Topcorp, Inc.*, 256 Ill. App. 3d 887 (1993). Under that test, the court considers (i) whether the entity in question has an independent existence as

a private entity, (ii) the nature of the functions it performs, and (iii) the degree of government control exerted over it. 2016 IL App (1st) 151356, ¶ 21. In the Appellate Court, the BGA apparently agreed that this is the proper test. *See id.* (noting that "the parties" agree that the *Rockford Newspapers* test should apply). In this Court, however, the BGA contends that these factors are a "good start, but are too restrictive." BGA Br. at 16. The BGA argues that the concept of a "subsidiary body" should be "flexible," depending on the facts of each individual case. *Id.* at 17. At the same time, it suggests that any private actor that cooperates with a government entity to promote public purposes could properly be deemed a "subsidiary body," with all that such a designation entails. *Id.* at 16.

The BGA's broad and amorphous definition of a "subsidiary body" should be rejected. The BGA's reading of the statute is at odds with its plain language. A "[s]ubsidiary" is by definition an entity that is "controlled by a holding or parent company." The New Oxford American Dictionary (2d ed. 2005); *see also* Black's Law Dictionary (10th ed. 2014) (a "subsidiary corporation" is a "corporation in which a parent corporation has a controlling share"). The examples the General Assembly provided of the types of entities that would qualify as "subsidiary bodies" confirm that it used the term "subsidiary" in this ordinary sense. Thus, FOIA provides that a "subsidiary body" includes "committees and subcommittees" of a public body, which by definition would be both created and controlled by the public body. By focusing on the legal nature of the entity in question and whether it is subject to the control of a public body, the test the First District employed here properly implements FOIA's plain language and intent.

Furthermore, stretching the definition of "subsidiary body" to include private entities that are neither operated by public employees nor controlled by a public body would not promote the public policy behind FOIA and would be contrary to FOIA's stated intent to protect the privacy of non-public actors. There are many valid reasons why private entities may wish to shield documents from public disclosure, such as protecting the identities of and confidential information about their employees and shielding confidential and other sensitive information from their competitors, suppliers, tenants, and other contracting parties.[2] To take just one example—if NPI had to disclose all of the licenses and leases it enters into with Navy Pier tenants, its ability to effectively negotiate favorable terms with prospective tenants would be hopelessly compromised.

In addition, absent an express statutory direction to the contrary, the Court should not assume that the General Assembly intended to force a private entity run by private employees to shoulder the responsibilities of a public body.[3] As the preamble to FOIA recognizes, FOIA imposes significant "fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements." 5 ILCS 140/1. Among other things, a public body is required to "designate one or more officials" as its FOIA officer or officers. 5 ILCS 140/3.5(a). FOIA officers must successfully complete a training curriculum created by the Attorney General's Public Access Counselor, must comply with the Act's time limits for responding to FOIA requests, and must provide a

[2] Of course, tax-exempt and charitable corporations must disclose information required by IRS regulations and state laws designed to ensure that such entities properly use the contributions they receive.

[3] The General Assembly knows how to treat a private, non-profit entity as a public entity for FOIA and OMA purposes when it chooses to do so. For example, section 27A-5(c) of the Charter Schools Law, 105 ILCS 5/27A-5(c), provides that the "governing body of a charter school shall be subject to the Freedom of Information Act and the Open Meetings Act." By contrast, there is no such legislative mandate with respect to the IHSA (or NPI).

written explanation if an exemption is invoked to withhold requested documents. 5 ILCS 140/3.5; 5 ILCS 140/9(a), (b). A public body must also post information about itself and its FOIA policies on any website it maintains and in its offices. 5 ILCS 140/4. A requestor who prevails in a FOIA action is entitled to reasonable attorneys' fees and costs; if the court decides that the public body willfully and intentionally failed to comply with FOIA, it is subject to civil penalties of $2,500-$5,000 per occurrence. 5 ILCS 140/11(i), (j). The General Assembly could not have intended to impose such duties on private entities like the IHSA or to treat their private employees, who are hired and compensated without regard to the rules and regulations that apply to public employees, 2016 IL App (1st) 151356, ¶ 31, as if they were public servants.

The General Assembly also could not have intended to subject a private entity run by private employees to the provisions of the Open Meetings Act—yet that would be the result if the term "subsidiary body" were so broadly construed that it included private entities that are not under the control of any public body. Like FOIA, the OMA requires "members" of a public body, including subsidiary bodies, to take training courses to ensure compliance with the OMA; it also requires all "public bodies" to give notice of meetings and hold them publicly unless an exception applies. 5 ILCS 120/1.05. Anyone who violates the OMA is guilty of a Class C misdemeanor. 5 ILCS 120/4.

The BGA and its *amici* seem to think that no harm would come from expanding the definition of "subsidiary body" to include private non-profit entities. But that is utterly unrealistic. There are numerous non-profit organizations throughout the State that cooperate with governmental entities to provide recreational and other programs or operate venues such as museums, zoos and (in the case of NPI) Navy Pier—all of which

is done for the purpose of serving the people of Illinois. Forcing these organizations to comply with FOIA and the OMA would make their operations more costly, make it harder to recruit private citizens as Board members and employees, and impair day-to-day business operations. It would also adversely impact the fund-raising efforts of these types of entities, by raising privacy concerns among donors and discouraging donors who would not ordinarily choose to make charitable contributions to governmental entities.

That is why the BGA's suggestion that the definition of a "subsidiary body" should be "flexible" is particularly pernicious. Private entities must be able to determine *before* they enter into contracts with government entities whether or not they will be subject to FOIA and the OMA. Making them guess would serve only to chill participation by private entities and private citizens in partnerships designed to advance the public good.

II. The Analysis Adopted In *O'Toole* Should Be Applied Here.

FOIA applies only to "public records." That term is defined to mean records "pertaining to the transaction of public business. . . having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(a). This Court has never interpreted what "pertaining to the transaction of public business" means under FOIA. But it has interpreted a virtually identical phrase in the Illinois Tort Immunity Act, which defines a "local public entity" to include a "not-for-profit corporation organized for the purpose of conducting public business." 745 ILCS 10/1-206.

In *O'Toole v. Chicago Zoological Society*, 2015 IL 118254, this Court concluded that the not-for-profit entity that operates Brookfield Zoo was not a "local public entity" even though it was organized for the sole purpose of maintaining a zoo on land owned by

the Forest Preserve District of Cook County. *Id.* at ¶ 4-5. In so holding, the Court relied on the fact that the Society controlled daily zoo operations, was in charge of its own management and employees, had its own pension and workers' compensation funds, had its own liability insurance, was not required to obtain the District's approval of operating budgets, and was governed by a board of directors of which only 10% were also members of the District's board. *Id.* at ¶¶ 24-26. Although the Zoo Society received a substantial amount of public money, the Court concluded that its operation of the zoo did not constitute "conducting public business" and thus the Zoo Society could not be deemed a "local public entity" for purposes of the Tort Immunity Act. *Id.* at ¶ 30.

The same analysis should be applied in deciding whether a private entity constitutes a "public body" under FOIA and whether documents the entity never shared with a public body "pertain to the transaction of public business." The BGA argues (at 17) that *O'Toole's* analysis should not be applied in the FOIA context because FOIA is to be liberally construed, while immunities are to be narrowly construed. But for the reasons outlined above, the principle of liberal construction cannot logically be applied in deciding whether a private entity's own documents should be subject to FOIA. Furthermore, when the General Assembly uses the same terminology in different statutes that deal with similar subject matter, it is reasonable to assume that it intended that terminology to be construed and applied consistently. *See In re Estate of Wilson*, 238 Ill.2d 519, 564 (2010). For that reason alone, a private, non-profit entity cannot be deemed a "public body" for purposes of FOIA, but *not* a "public entity" for immunity purposes.

The *O'Toole* analysis should also be applied in deciding whether a private entity's documents qualify as "public records" because they pertain to the "transaction of public business." As the First District recognized, section 7(2) requires the disclosure only of "public records" and *not* all of the records created or possessed by a private entity that has contracted to perform a "governmental function." 2016 IL App (1st) 151356, ¶¶ 45-47. Thus, if a private entity is not engaged in conducting "public business" as that term is defined in *O'Toole*, its documents relating to its day-to-day business should not be subject to FOIA.

In the Appellate Court, the BGA argued that this interpretation of FOIA made the "governmental function" language in section 7(2) superfluous. But there is no getting around the fact that FOIA section 7(2) limits the required disclosure to "public records." Furthermore, it is the public body that is obligated to disclose those records—*not* the private entity that has contracted to perform a governmental function on the public body's behalf. Thus, as the definition of "public records" provides, the public body must have control over those documents even though they are not in the public body's possession. The requirement that the public body control documents that "pertain to the transaction of public business" dovetails perfectly with the analysis this Court applied in *O'Toole*.

III. The Court Should Reject The BGA's Expansive Definition Of "Governmental Function."

The First District concluded that the IHSA "does not perform public, governmental functions." 2016 IL App (1st) 151356, ¶¶ 46. In reaching that conclusion, the court held that the proper inquiry is whether the functions the IHSA performed are "necessarily governmental." *Id.*, ¶ 25. The mere fact that a "public body *could* perform

the same functions as the IHSA in developing, supervising, and promoting interscholastic competitions" is irrelevant to the inquiry. *Id.*, ¶ 28. What matters is that the very nature of the function is not inherently governmental, as evidenced by the fact that participation in the IHSA is both voluntary and open to private and public schools.

The First District's interpretation of "governmental function" is in line with the plain and ordinary meaning of that word. The BGA, however, argues that the Court should adopt a far broader construction. Noting the increase in "privatization," the BGA argues that section 7(2) should be interpreted to apply to *any* functions that were previously performed by a governmental entity or that *could be* performed by a governmental entity. For example, the BGA cites its *amici*'s argument that the recently created Illinois State Fair Foundation would be performing a governmental function if the Illinois Department of Agriculture were to "ced[e] its governmental authority and responsibility to maintain that property to a third [private] party." BGA Br. at 19, Illinois Press Association Br. at 7. As to the IHSA, the BGA argues that education is a governmental function and that the IHSA performs a governmental function because its mission is to enhance (both public and private) students' educational experience.

These arguments sweep far too broadly. Indeed, the BGA's approach would turn virtually *any* contract with a government entity into a contract to perform a "governmental function on behalf of" the contracting body. But if that is what the General Assembly intended, it would have said so, by extending FOIA to *all* government contractors without limiting section 7(2) to contractors who perform a governmental function. Similarly, if the General Assembly had intended FOIA to apply to all

government contractors who took over a function that had previously performed by a public body, it would have said so.

To be sure, the General Assembly was no doubt thinking about privatization of traditional government functions when it enacted section 7(2). As the BGA notes, if a public body were to delegate its police powers to a private entity, that private entity would be performing a governmental function on behalf of the public body. The same would be true if a public body hired private entities to perform other inherently governmental functions, such as operating prisons, fire-fighting, and providing public transportation. *See State ex rel Am. Ctr. for Economic Equality v. Jackson*, 53 N.E.3d 788, 794 (Ohio App. 2015) ("A 'governmental function' traditionally includes such tasks as providing police, fire, and emergency services, public education, and a free public library system, preserving the peace, regulating the use and maintenance of roads, operating jails, regulating traffic, and collecting refuse"). But the analysis is different when the functions in question have *never* been performed by a governmental entity (as is the case with the IHSA) or where the functions themselves are commercial or proprietary, rather than governmental. The BGA's case against NPI and the MPEA provides a good example of the latter category: it is hard to fathom how the development and operation of a tourist attraction and entertainment venue could possibly be deemed a governmental function.

Courts have long distinguished between governmental and "proprietary" functions. *See, e.g., Endsley v. City of Chicago*, 230 F.3d 276, 285 (7th Cir. 2000) (a governmental entity is carrying out a governmental function only when it acts in a regulatory role). The General Assembly must be presumed to have been aware of this

distinction when it enacted section 7(2). As a result, section 7(2) should be interpreted so that the delegation of a public body's *proprietary* functions—whether it be operating a zoo on park district land or operating an entertainment destination on land owned by the MPEA—does not trigger disclosure requirements under FOIA.

This interpretation is supported by cases in Illinois and elsewhere which have held that the operation of a variety of commercial and recreational venues on public lands does not constitute a governmental function. For example, in *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 972 N.E.2d 607, 611 (Ohio App. 2012), the plaintiff sued a private corporation the city had hired to run a public marketplace on city property under Ohio's Public Records Act, seeking, among other things, copies of agreements with merchants that subleased space in the market. The court rejected the argument that the defendant performed a government function—even though the public market had been managed by the city for over 150 years. As the court explained, it interpreted the term "'governmental function' in this context not as activities that the government has performed, but rather as activities that are uniquely governmental." The court held that the "management and operation of a public market, an activity ubiquitously performed by nongovernmental entities, is not a governmental function." *Id.*

The same analysis was adopted in *Woodland Park Zoo v. Fortgang*, 2016 WL 393727, at *5, 7 (Wash. App. Feb. 3, 2016) (a zoological society was not performing a "governmental function," which made it the "functional equivalent" of a "state or local agency" under the Washington Public Records Act, even though "[t]hese services undoubtedly provide a public benefit," because "serving public interests is not the exclusive domain of the government"); *Comastro v. Vill. of Rosemont*, 122 Ill. App. 3d

405, 408 (1st Dist. 1984) (operation of a public stadium or arena is "a non-governmental function"); *Application of Metro. Museum Historic Dist. Coalition v. De Montebello*, 787 N.Y.S.2d (N.Y. Sup. Ct. 2004), *aff'd*, 796 N.Y.S.2d 64 (App. Div. 2005) (not-for-profit corporation that operated art museum on city-owned property with substantial financial support from the city was not an agency subject to New York's FOIA because it was not controlled by the city "[n]or, however important its cultural purpose, does the Museum perform services that have been recognized as a government function"); *Bessey v. Spectrum Arena, L.P.*, 2011 WL 6779306, at *4-5 (E.D. Pa. Dec. 23, 2011) (sporting and entertainment venue was not engaged in governmental function, even though it was "serving a public function" and "receiving funds from a governmental entity").

So too, in this case, the term "governmental function" should be applied in its plain and ordinary sense to mean activities that are uniquely governmental and should *not* include functions that the government *could* perform or in the past *has* performed when, as in this case, the activities in question are of a nature routinely performed by private parties.

Contrary to the arguments made by the BGA and its *amici*, adopting this kind of commonsense interpretation of the term "governmental function" will not hinder the cause of transparency in government or the ability of the people to understand "the affairs of government and the official acts and policies of those who represent them as public officials and public employees." 5 ILCS 140/1. All communications between a private entity and a public body continue to be subject to FOIA. Thus, any contract between a private entity and a public body will be open to public scrutiny as will any and all financial arrangements, payments, reports, etc. What is not and should not be subject to

FOIA are the documents surrounding the day-to-day operations of a private entity that it does not share with any public body. Although the BGA and its *amici* invoke the general principle of transparency in government, they have not shown that the General Assembly intended section 7(2) to force private entities to reveal these types of documents.

CONCLUSION

For the foregoing reasons, the *amici* urge the Court to affirm the judgment below.

Respectfully submitted,

Dated: January 30, 2017

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One of the attorneys for *Amici*

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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 Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service is 16 pages.

s/ Michele Odorizzi

***** Electronically Filed *****

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02/07/2017

Supreme Court Clerk

No. 121124

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IN THE SUPREME COURT OF ILLINOIS

BETTER GOVERNMENT ASSOCIATION, Plaintiff-Appellant, v. ILLINOIS HIGH SCHOOL ASSOCIATION, CONSOLIDATED HIGH SCHOOL DISTRICT 230, Defendants-Appellees.	On Appeal From the Appellate Court of Illinois, First Judicial District, No. 1-15-1356 There Heard on Appeal From the Circuit Court of Cook County, Illinois, Chancery Division No. 14 CH 12091 Hon. Mary L. Mikva, *Judge Presiding*

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PLEASE TAKE NOTICE that on January 30, 2017, we electronically filed the MOTION OF METROPOLITAN PIER & EXPOSITION AUTHORITY AND NAVY PIER, INC. FOR LEAVE TO FILE INSTANTER AMICUS BRIEF IN SUPPORT OF APPELLEES, with a

Proposed Order, and the foregoing BRIEF OF METROPOLITAN PIER & EXPOSITION AUTHORITY AND NAVY PIER, INC. AS AMICI IN SUPPORT OF APPELLEES with the Clerk of the Illinois Supreme Court, copies of which are hereby served upon you.

Dated: January 30, 2017

s/ Michele Odorizzi
One of the attorneys for Proposed *Amici*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Proposed Amicus Metropolitan Pier & Exposition Authority and that she served the MOTION OF METROPOLITAN PIER & EXPOSITION AUTHORITY AND NAVY PIER, INC. FOR LEAVE TO FILE INSTANTER AMICUS BRIEF IN SUPPORT OF APPELLEES, Proposed Order, and the foregoing BRIEF OF METROPOLITAN PIER & EXPOSITION AUTHORITY AND NAVY PIER, INC. AS AMICI IN SUPPORT OF APPELLEES on all counsel of record by causing a copy thereof to be sent via email on January 30, 2017 to counsel at the email addresses listed below:

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