No. 122265

IN THE SUPREME COURT OF ILLINOIS

PAMINDER S. PARMAR, Individually and as Executor of the Estate of Surinder K. Parmer,	)	On Petition for Leave To Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-16-0286
Plaintiff-Appellee,	)	
v.	)	There Heard on Appeal from the Circuit Court of DuPage County,
LISA MADIGAN, as Attorney General of the State of Illinois, and MICHAEL W. FRERICHS, as Treasurer of the State of Illinois,	)	No. 15-MR-1412
Defendants-Appellants.	)	The Honorable Bonnie M. Wheaton, Judge Presiding.

BRIEF OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS

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INTEREST OF THE *AMICUS CURIAE*

The Board of Trustees of the University of Illinois is the governing body of the University of Illinois ("University"), the State's flagship system of public universities and its largest system of higher education. Operating over three campuses—Urbana-Champaign, Chicago, and Springfield—with an annual operating budget in excess of $5.5 billion, the University offers hundreds of undergraduate, graduate, and professional programs, many of them ranked among the best in the United States, to more than 80,000 students. In carrying out its land-grant mission for more than 150 years, the University has made lasting impacts in the fields of academic excellence, discovery and innovation, public service, economic development, and health care, both in Illinois and beyond.

As a system of public universities that receives public funding and is subject to public oversight, the University is an arm of the State.[1] That means lawsuits against the University's officers, officials, and employees are lawsuits against "the State" to the same extent that lawsuits against Defendants—the Illinois Attorney General and the Illinois Treasurer—are lawsuits against the State. Because this case presents an important issue regarding sovereign immunity for public officials under the State Lawsuit Immunity Act ("Immunity Act"), the outcome of this case will directly impact the University and its personnel.

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[1] *See, e.g. Schoeberlein v. Purdue Univ.*, 129 Ill. 2d 372, 379-80 (1989); *Ellis v. Bd. of Governors of State Colls. & Univs.*, 102 Ill. 2d 387, 393-94 (1984); *City of Chi. v. Bd. of Trs. of the Univ. of Ill.*, 293 Ill. App. 3d 897, 901 (1st Dist. 1997); *see also, e.g.*, *Kroll v. Bd. of Trs. of the Univ. of Ill.*, 934 F.2d 904, 907-08 (7th Cir. 1991); *Harvis v. Bd. of Trs. of the Univ. of Ill.*, 744 F. Supp. 825, 827 (N.D. Ill. 1990).

The Board of Trustees of the University of Illinois submits this brief as *amicus curiae* in support of Defendants because the decision below weakens critical protections that enable the University and other public officials to serve the public and the State effectively. The Appellate Court's ruling drastically expands the officer-suit exception to sovereign immunity, allowing countless lawsuits against public officials that traditionally have been heard in the Court of Claims to be adjudicated in the Circuit Courts. This result undermines the General Assembly's central purpose in enacting the Immunity Act—namely, to prevent litigants who seek money damages in the Circuit Courts from interfering with, influencing, and controlling the performance of government functions.

SUMMARY OF THE ARGUMENT

This brief elaborates on two specific issues that are critical to understanding the Appellate Court's error in this case.

First, the General Assembly granted sovereign immunity to the State so public officials could carry out their duties free of the fear that missteps could result in claims for damages. To balance that concern with the need to ensure that public officials comply with the law, the officer-suit exception for more than a century has allowed suits seeking *prospective* relief to go forward, but not "present claims" seeking monetary compensation for past harms. This middle ground has allowed courts to ensure that public officials comply with applicable law, while preserving the State's sovereign right to control the scenarios in which it can be held liable.

The decision below abandons that basic distinction. It holds that any plaintiff alleging violation of a legal duty by a public official may proceed in Circuit Court pursuant to the officer-suit exception, regardless of the relief sought. This holding undermines the precise rationale for adopting the Immunity Act—to avoid the burdens the State would face with retrospective litigation contesting official acts. For the State to effectively serve the public, the traditional equilibrium between prospective and retrospective claims must be restored.

Second, the Immunity Act creates an immunity from *suit*. The benefits of such an immunity are lost if a defendant must defend to judgment in the Circuit Court against a claim that the law actually assigns to the Court of Claims, regardless of whether that defendant ultimately prevails on the merits.[2] Accordingly, jurisdictional tests that define sovereign immunity should be easy to apply. One such rule long recognized by this Court is that a suit against a public official may proceed in Circuit Court only if the plaintiff seeks only prospective relief. Bright-line rules like this one reduce the risk that a trial court will erroneously deprive the State of the full protections intended by the General Assembly.

[2] Pursuant to its constitutional authority to reinstate sovereign immunity, Ill. Const. art. XIII, § 4, the General Assembly has prescribed highly specific rules that apply in the Court of Claims for the adjudication of claims against the State. Among those carefully drawn rules is that claims against the State are decided by the judge of the Court of Claims, rather than a jury, are limited to $100,000 on claims sounding in tort, and are not authorized to be litigated as class actions, but only as individual claims. 705 ILCS 505/8, 11 (2016).

Despite that need for clarity, the Appellate Court in this case held that Circuit Courts must perform complex factual findings tied to the merits of an underlying lawsuit just to determine jurisdiction—*i.e.*, whether the Immunity Act applies. In essence, its decision requires courts facing claims of sovereign immunity to conduct complex "mini-trials" regarding the merits of the plaintiff's allegations to determine the proper jurisdictional forum for the lawsuit. Surely that is not the law. This Court has long recognized that when defining the reach of an immunity from suit, simple, bright-line rules are needed so that lower courts can resolve claims of immunity without being effectively forced to resolve a case on the merits. Unless reversed, the Appellate Court's disregard of that cardinal rule effectively will make the Immunity Act a dead letter in Illinois.

ARGUMENT

I. The Immunity Act Should Be Applied Consistent With Its Important Purpose.

"The purpose of sovereign immunity is to protect the [S]tate from interference with the performance of governmental functions and to preserve and to protect [S]tate funds." *People ex rel. Manning v. Nickerson*, 184 Ill. 2d 245, 248 (1998). Without that immunity, the very "threat of [a] lawsuit" will often "chill officials' ability to serve the public good," thereby effectively "control[ling] State action." *DeRose v. City of Highland Park*, 386 Ill. App. 3d 658, 664 (2d Dist. 2008), *abrogated on other grounds by Gaffney v. Bd. of Trs. of Orland Fire Prot. Dist.*, 2012 IL 110012 (citing *Currie v. Lao*, 148 Ill. 2d 151, 159 (1992)).

The Appellate Court's decision in this case defies that critical purpose. The court labeled the case a "textbook instance of the officer-suit exception," only because it mistakenly held that the State lacks immunity whenever a plaintiff alleges that a public official violated nearly any type of legal duty. *See Parmar v. Madigan*, 2017 IL App (2d) 160286, ¶ 27. But when so broadly defined, this "exception" swallows the rule. Virtually every plaintiff suing the State or a public official alleges breach of a constitutionally or statutorily recognized legal duty. If the officer-suit exception is as broad as the Appellate Court held, the sovereign immunity enshrined in the Immunity Act does not perform its intended function.

A. The General Assembly Understood That The Immunity Act Would Apply Broadly.

Before 1970, sovereign immunity in Illinois applied to the maximum extent authorized by the Federal Constitution. Ill. Const. art. IV, § 26 (1870). As sweeping as that rule was on its face, however, the General Assembly had "for practical purposes, eliminated the sovereign immunity of the State by granting jurisdiction to the [C]ourt of [C]laims over '[a]ll claims against the State for damages.'" *Harvey v. Clyde Park Dist.*, 32 Ill. 2d 60, 64 (1964) (citation omitted).[3]

Against the backdrop of this practical reality, the 1970 Constitution overhauled sovereign immunity in Illinois by providing that "[e]xcept as the

[3] The General Assembly created the Court of Claims in 1903, 1903 Ill. Laws at 140-42, § 1, to replace the Commission on Claims, which, like the Court of Claims, was created "to hear and determine all unadjusted claims of all persons against the State of Illinois," 1877 Ill. Laws at 64, § 2. *See* Henry Novoselsky & John Peterson, *State Immunity in Ill.: The Court of Claims*, 15 DePaul L. Rev. 340, 344-45 (1966).

General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. art. XIII, § 4. This changed sovereign immunity in a critical respect: it shifted the central question from "whether the General Assembly has waived immunity" to "whether it has statutorily granted such immunity." *First Fin. Co. v. Pellum*, 62 Ill. 2d 86, 89 (1975).

When the 1970 Illinois Constitution went into effect, the General Assembly immediately enacted the Immunity Act. Pub. Act 77-1776, 1971 Ill. Laws 3446, 3447. Doing so "concurrently with the ratification of the 1970 Illinois Constitution indicates a legislative intent to codify" the pre-1970 sovereign immunity doctrines. *See Sneed v. Howell*, 306 Ill. App. 3d 1149, 1154 (5th Dist. 1999). Further, the General Assembly left little doubt as to why it did so. It believed that "maintaining limited sovereign immunity was extremely important and *necessary to prevent litigation chaos*." *Schoeberlein v. Purdue Univ.*, 129 Ill. 2d 372, 380 (1989) (citing 77th Gen. Assem., Senate Proceedings, Oct. 18, 1971, at 22) (emphasis added).

B. The Decision Below Cannot Be Squared With The Purpose The General Assembly Had For The Immunity Act.

Even before 1970, what came to be known as the "officer-suit exception" defined the outer-limits of who constituted a part of "the State" for purposes of sovereign immunity. *See PHL, Inc. v. PHL Pullman Bank & Tr. Co.*, 216 Ill. 2d 250, 261 (2005) (coining term "officer suit exception"). At that time, like the federal exception to Eleventh Amendment immunity described in *Ex Parte Young*, 209 U.S. 123 (1908), the officer-suit exception provided that a suit against:

> a state officer or the director of a department on the ground that, while claiming to act for the state, he violates or invades the personal and property rights of the plaintiff under an unconstitutional act, or under an assumption of authority which he does not have . . . is not against the state. The presumption obtains that the state, or a department thereof, will not, and does not, violate the Constitution and laws of the state, but that such violation, if it occurs, is by a state officer or the head of a department of the state, and such officer or head may be *restrained* by proper action instituted by a citizen.

Schwing v. Miles, 367 Ill. 436, 441-42 (1937) (citations omitted) (emphasis added); *see also Moline Tool Co. v. Dep't of Revenue*, 410 Ill. 35, 37 (1951) ("Whether or not a particular action falls within the prohibition of the constitution has …. depended upon the particular issues involved *and the relief sought*.") (emphasis added).

So when the General Assembly enacted the Immunity Act, the officer-suit exception was simple: an official-capacity suit against a public official could seek only prospective relief.[4] *Schwing*, 367 Ill. at 442; *accord Edelman v. Jordan*, 415 U.S. 651, 677-78 (1974). Indeed, the decision of this Court first recognizing the doctrine held that "[t]he test for determining whether a suit will lie against state officers is whether they were acting within the scope of their authority," in which case there was no claim at all, "or were transcending that authority," in which case it was for "*a court of equity* to entertain a bill against state officers." *Joos v. Ill. Nat'l Guard*, 257 Ill. 138, 144 (1912) (emphasis added). Of course at that time,

[4] It is significant that the Plaintiff here only asserts official-capacity claims. Had he pursued individual-capacity claims, the court would have first had to decide whether the nexus between Defendants' alleged conduct and their official duties means the purported private-party claims are just artfully pleaded claims against the State. *See Jinkins v. Lee*, 209 Ill. 2d 320, 330-31 (2004) (describing test for identifying artfully pleaded individual capacity claims).

courts of equity *only* could provide prospective relief. *See Lyle v. City of Chi.*, 357 Ill. 41, 42-45 (1934) (contrasting "writ of injunction," available in courts of equity "to afford preventative relief," and "mandamus," available in courts of law "to restore parties to rights of which they have been deprived").

It makes sense to distinguish prospective claims from present claims. *See, e.g.*, *Ellis v. Bd. of Governors of State Colls. & Univs.*, 102 Ill. 2d 387, 394-95 (1984) (equating "present claim" with claim for "money damages" and contrasting present claims with claims "to enjoin a State officer from taking future actions in excess of his delegated authority"). The point of the officer-suit exception is to vindicate the interest in securing compliance by government personnel with state and federal law without burdening the State with litigation regarding completed misdeeds. *See Nickerson*, 184 Ill. 2d at 248. Thus, in applying the officer-suit exception, a court can halt an ongoing (or impending) violation by ordering prospective injunctive relief, but cannot grant monetary recompense for completed violations that occurred in the past.

This long-accepted rule allows public officials to carry out the responsibilities of their offices secure in the knowledge that they will not subject the State to liability. *Id.* ("The purpose of sovereign immunity is to protect the [S]tate from interference with the performance of governmental functions and to preserve and to protect [S]tate funds."). The Appellate Court's decision in this case flouts that tradition. It holds that a plaintiff may sue public officials in their official capacities for money damages paid from the Illinois treasury (and

retrospective declaratory relief tantamount to a claim for money damages) *any time* a plaintiff alleges that a public official has violated a statutory or constitutional provision, *regardless of the relief sought*. *See Parmar*, 2017 IL App (2d) 160286, ¶¶ 8, 30. As illustrated above, that defies more than a century of sovereign immunity law in Illinois. If affirmed, it would mean that, for the first time, the State itself would be liable for the completed official acts of its officers.

C. This Court's Decision In *Leetaru* Does Not Upend Sovereign Immunity In Illinois.

In its decision, the Appellate Court relied heavily and incorrectly on this Court's decision in *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485. *Leetaru*, however, does not support the interpretation of the officer-suit exception espoused by the Appellate Court in this case.

The plaintiff in *Leetaru* had been placed on leave from his position at the University of Illinois during an investigation into his alleged misconduct. *Leetaru*, 2015 IL 117485, ¶¶ 5, 8. Leetaru claimed investigators were not following required procedures during the investigation and, for his relief, asked not for money damages, but "that defendants be preliminarily and permanently enjoined from proceeding with the investigation" without "adher[ing] to the policies and procedures promulgated by the University governing such investigations . . . ." *Id.*, ¶¶ 34-35, 49. In allowing the suit to proceed, this Court emphasized that "Leetaru's action does not seek redress for some past wrong. . . . [I]t seeks only to prohibit future conduct . . . undertaken by agents of the State in violation of statutory or constitutional law or in excess of their authority." *Id.*, ¶ 51. It then

noted that this fact distinguished *Leetaru* from "cases such as *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387 (1984), which sought damages and other relief based on discharge of a tenured university professor, or *Healy v. Vaupel*, 133 Ill. 2d 295 (1990), which sought damages for personal injuries sustained by a gymnast during university-sponsored gymnastics activities." *Id.*

The Appellate Court here incorrectly read *Leetaru* to discard the century-old prospective-relief/present-claim dichotomy. The plaintiff in *Leetaru* could proceed because his claims were against defendants in their official capacities for *prospective* injunctive relief. The Plaintiff here, however, asserts official-capacity claims for *retrospective* relief. In nevertheless holding that *Leetaru* makes the type of relief sought irrelevant, the Appellate Court relied almost exclusively on this Court's statement that "[t]he doctrine of sovereign immunity affords no protection . . . when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court." *See Parmar*, 2017 IL App (2d) 160286, ¶ 21 (quoting *Leetaru*, 2015 IL 117485, ¶ 45). But *Leetaru* does not purport to overturn the unanimous pre-*Leetaru* precedent holding that the officer-suit exception applies only to claims for prospective relief. Nor would it have made sense to do so in a case involving a claim only for prospective relief.

The Appellate Court's fundamental error, therefore, was taking seemingly broad language in *Leetaru* out of its proper context. If, as the Appellate Court held, any allegation that a public official has previously violated the law or

exceeded his or her authority is sufficient to trigger the officer-suit exception, regardless of the relief sought, then virtually any official-capacity lawsuit may access the State treasury without the State's consent. Such a holding would mean that public officials carrying out their governmental duties would face the risk that their actions could result in liability for their employer, the State—a situation fundamentally at odds with the Immunity Act itself.[5]

II. The Immunity Act Requires The Adoption Of Bright-Line Rules.

The Appellate Court's decision runs afoul of an equally fundamental principle: sovereign immunity can serve its intended purpose only if it is subject to easily administrable standards. Bright lines are particularly critical to this area of law because the immunity afforded under the Immunity Act is immunity from suit. *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 460-61 (1983); *see Nichol v. Stass*, 192 Ill. 2d 233, 238 (2000). As the United States Supreme Court has explained in the analogous context of immunity for public officials from federal lawsuits, immunity from suit "is in part an entitlement not to be forced to litigate the consequences of official conduct"; it is "effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985); *accord*

[5] The few cases the Appellate Court cited besides *Leetaru* also do not support its opinion. *Smith v. Jones*, 113 Ill. 2d 126, 131 (1986), holds (correctly) that an official-capacity breach of contract claim for money damages is barred by the Immunity Act, while *Healy v. Vaupel*, 133 Ill. 2d 295, 310-11 (1990), holds (correctly) that a negligence action for money damages is barred by the Immunity Act. And *CGE Ford Heights, L.L.C. v. Miller*, 306 Ill. App. 3d 431, 436-40 (1st Dist. 1999), holds only that a plaintiff may seek to enjoin a public official's *prospective* enforcement of a purportedly unconstitutional statute, not that a plaintiff may seek retrospective damages awards from a public official acting in an official capacity.

Texas v. Caremark, Inc., 584 F.3d 655, 658 (5th Cir. 2009) ("[T]he very object and purpose of sovereign immunity is to protect the state from the 'coercive process of judicial tribunals at the instance of private parties[.]'") (citation omitted).

For sovereign immunity to be an immunity from suit, courts of review must set clear rules that trial courts can easily administer.[6] The decision below utterly fails that test. It holds that the officer-suit exception applies, and immunity does not exist, if "the state officer is alleged to have acted in violation of statutory or constitutional law or in excess of [the officer's] authority," but not if "the plaintiff alleges a simple breach of contract and nothing more" or that "the officer exercised the authority delegated to him or her erroneously." *Parmar*, 2017 IL App (2d) 160286, ¶ 22 (internal quotation marks omitted). That exception-riddled standard requires complicated, fact-intensive inquiries just to resolve the threshold issue of whether the court has jurisdiction: What is the scope of the officer's authority? Has the plaintiff alleged a "simple breach," or "something more"? Is the plaintiff alleging that the officer exercised delegated authority erroneously or that the officer lacked the authority to take any action like the one alleged?

To be sure, this case is not the only recent decision to muddle immunity principles by insisting on complex factual inquiries. In the past year alone, the

[6] Because even bright lines can trigger vigorous dispute, the Supreme Court has directed lower courts to address immunity at the start of litigation. *E.g. Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982) ("Until th[e] threshold immunity question is resolved, discovery should not be allowed"). Further, it also has instructed lower courts to allow interlocutory appeals of denials of claims for qualified immunity precisely because it is an immunity from suit. *Mitchell*, 472 U.S. at 524-25.

First District held that sovereign immunity applies if the "gravamen" of a claim is the violation of a constitutional duty, and not a common-law duty, *Ill. Collaboration on Youth v. Dimas*, 2017 IL App (1st) 162471, ¶¶ 42-43, while the Fifth District held that sovereign immunity applies only if the duty breached is a duty the government owes to the public, *Cheng v. Ford*, 2017 IL App (5th) 160274, ¶ 28. Meanwhile, the Seventh Circuit construed Illinois law to hold that there is no immunity under the Immunity Act if the allegations have "potential merit," *Murphy v. Smith*, 844 F.3d 653, 659 (7th Cir. 2016),[7] while the Northern District of Illinois, after describing Illinois law as "not clear," held that the Immunity Act does not apply if a plaintiff alleges a violation of any statutory or constitutional provision. *Salaita v. Kennedy*, 118 F. Supp. 3d 1068, 1091-92 (N.D. Ill. 2015).

Application of sovereign immunity cannot be subject to such amorphous and uncertain standards. Under the officer-suit exception, when a plaintiff sues a public official in his or her official capacity, the suit may proceed in Circuit Court only if the plaintiff seeks prospective relief requiring the public official to comply with statutory or constitutional law going forward.[8] *PHL Pullman Bank*, 216 Ill.

[7] In this respect, the Seventh Circuit concluded that the officer-suit exception under Illinois law ostensibly differs from the *Ex Parte Young* exception it mirrors, which the Supreme Court has held does not consider the "potential" merits of the claim. *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002).

[8] A "present claim" seeks relief for "past harm," which is always true of claims for money damages, *Kalven v. City of Chi.*, 2014 IL App (1st) 121846, ¶ 10, and is sometimes true of claims for declaratory or injunctive relief, *see Joseph Constr. Co. v. Bd. of Trs. of Governors State Univ.*, 2012 IL App (3d) 110379, ¶¶ 46-52.

2d at 261, 267-68 (citing, *inter alia*, *Ex Parte Young*, 209 U.S. 123). When a plaintiff sues a public official in his or her individual capacity, the suit may proceed in Circuit Court only if it truly asserts an individual-capacity claim.[9] *Senn Park Nursing Ctr. v. Miller*, 104 Ill. 2d 169, 188 (1984).

By applying these traditional, straightforward rules, this case is easily resolved. The Plaintiff, Parmar, sued Defendants Madigan and Frerichs only in their official capacities, so the Circuit Court can provide Plaintiff only with prospective relief. As a remedy, Parmar is seeking the payment of money, a form of retrospective relief. And in substance, so too is the declaratory relief he seeks, which asks for a retrospective court order declaring that Madigan and Frerichs should not have applied an Illinois statute to him in the past. Thus, under the Immunity Act, Defendants had an immunity from suit. Accordingly, Defendants should not have "be[en] forced to litigate the consequences of official conduct" in the Circuit Court. *Mitchell*, 472 U.S. at 527. This case belonged in the Court of Claims from the start.

In sum, this Court should reaffirm that immunity under the Immunity Act is immunity from suit, not just liability, and rearticulate the simple, bright-line

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[9] *See Loman v. Freeman*, 229 Ill. 2d 104, 123 (2008) (discussing test to determine if individual-capacity lawsuit is, in substance, an "official capacity" lawsuit); *Jinkins*, 209 Ill. 2d at 330 (same); *Healy*, 133 Ill. 2d at 309 (same). In federal courts, even if a claim is properly pleaded as an individual-capacity claim, but relates to the defendant's official duties, there is still a qualified immunity from suit. *E.g.*, *Lane v. Franks*, 134 S. Ct. 2369, 2381 (2014). This Court, however, has not yet recognized a similar protection in Illinois.

rules that govern its application. To do otherwise, and sustain the decision below, would eviscerate the longstanding protections of the Immunity Act.

CONCLUSION

For the reasons set forth above, and in the Brief of Defendants-Appellants, the decision below should be reversed.

December 6, 2017

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Clifford W. Berlow, an attorney, certify that the **Brief Of The Board Of Trustees Of The University Of Illinois As *Amicus Curiae* In Support Of Defendants-Appellants** conforms to the requirements of Rule 341(a), Rule 341(i), and Rule 345(b). The length of this Petition, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the Rule 341(h)(1) statement of points and authorities, and the certificate of service, is 15 pages.

/s/ *Clifford W. Berlow*
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No. 122265

IN THE SUPREME COURT OF ILLINOIS

PAMINDER S. PARMAR, Individually and as Executor of the Estate of Surinder K. Parmer,	)	On Petition for Leave To Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-16-0286
Plaintiff-Appellee,	)	
v.	)	There Heard on Appeal from the Circuit Court of DuPage County, No. 15-MR-1412
LISA MADIGAN, as Attorney General of the State of Illinois, and MICHAEL W. FRERICHS, as Treasurer of the State of Illinois,	)	
Defendants-Appellants.	)	The Honorable Bonnie M. Wheaton, Judge Presiding.

NOTICE OF FILING

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on December 6, 2017, I caused the foregoing **Brief Of The Board Of Trustees Of The University Of Illinois As *Amicus Curiae* In Support Of Defendants-Appellants** to be electronically submitted with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

December 6, 2017

Respectfully Submitted,

/s/ Clifford W. Berlow

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CERTIFICATE OF SERVICE

I, Clifford W. Berlow, an attorney, hereby certifies that on December 6, 2017, I caused the foregoing **Brief Of The Board Of Trustees Of The University Of Illinois As *Amicus Curiae* In Support Of Defendants-Appellants to** be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I certify that upon acceptance of the electronic brief for filing, I will cause thirteen (13) copies of the **Brief Of The Board Of Trustees Of The University Of Illinois As *Amicus Curiae* In Support Of Defendants-Appellants** to be transmitted to the Court via UPS overnight delivery within 5 days of that notice date.

I certify that Plaintiff's counsel in this appeal, Nicholas P. Hoeft, is not a registered contact on the eFileIL system, and was served via email on December 6, 2017, at the following email address: nhoeft@jostock.us.

I further certify that I will cause one copy of the above named filing to be served upon the below listed counsel by email and by UPS overnight delivery, delivery charge prepaid, by delivering the filing to the UPS receptacle at 353 N. Clark St. Chicago, Illinois, on December 6, 2017.

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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.

/s/ Clifford W. Berlow
Clifford W. Berlow

E-FILED
12/13/2017 3:30 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK