

No. 124798

IN THE SUPREME COURT OF ILLINOIS

SERGIU TABIRTA,

Plaintiff- Appellee,

v.

**JAMES J. CUMMINGS and
GILSTER MARY LEE CORP.,**

Defendants-Appellants.

BRIEF OF APPELLEE

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POINTS AND AUTHORITIES

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1. Illinois has a long and clear history of permissive venue law illustrating unambiguous legislative intent to include an “other office” as a basis for corporate residency.

(735 ILCS 5/2-102) (from Ch. 110, par. 2-102).....	4,8,10,11,12,15,26
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Indiana Civil Procedure Code § 75 A 4	
Kansas Civil Procedure Code § 60-604	
Kentucky Civil Procedure Code § 452.450	
Louisiana Civil Procedure Code § 42(1)	
Maryland Courts & Judicial Procedure Code § 6-201(a))	
Mississippi Civil Procedure Code § 11-11-3(1)(a)(i)	
Missouri Civil Procedure Code § 508.010	
New Jersey Civil Procedure Code § 4:3-2(b)	
New York Civil Procedure Code § 503(c)	
Ohio Civil Procedure Code § 2-3(C)	

Oklahoma Civil Procedure Code § 18-471	
Pennsylvania Civil Procedure Code § 231-2179	
Rhode Island General Laws § 9-4-4	
South Carolina Civil Procedure Code § 15-7-30	
South Dakota Civil Procedure Code § 47-1A-1330.1	
Texas Civil Procedure Code § 15.094	
Utah Civil Procedure Code § 78B-3-307	
Virginia Civil Procedure Code § 8.01-262	
Washington Civil Procedure Code § 4.12.025	
West Virginia Civil Procedure Code § 56-1-1	
Wyoming Civil Procedure Code § 1-5-105	
Other State Venue Statutes (combining “office” with “doing business”).....	10
Florida Civil Procedure Code § 47.051	
Maine Civil Procedure Code § 4-5-155.5	
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HB0164 (Re-referred to Rules Committee, March 29, 2019).....	11
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2. The Court must consider the plain language and meaning of the statute to determine legislative intent; here, the historical and current definition of “office” is unambiguous.	
<i>Jackson v. Bd. of Election Comm'rs</i>	
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<i>Metropolitan Life Insurance Co. v. Hamer</i> , 2013 IL 114234, 990 N.E.2d 1144.....	12
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<i>Office (History & Etymology)</i>	
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<i>citing Scott v. Atlanta Dairies Cooperative</i> , 238 S.E.2d 340 (1977)	
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3. Defendant Gilster Mary Lee is a resident in Cook County, Illinois, based on its office in Cook County. Both the Trial Court and Appellate Court were correct in finding the same.

U.S. Department of the Treasury, Internal Revenue Service (2018), Business Use of Your Home (Including Use by Daycare Providers) For Use in Preparing 2018 Returns (Cat. No. 15154T), Washington, DC: U.S. Government Publishing Office.....	21
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NATURE OF THE ACTION

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Both the Trial and Appellate Courts correctly found that venue is proper in Cook County based on Defendant-Appellant Gilster Mary Lee's [hereinafter “**Defendant**”] “other office.” See *Trial Court Order, C87; Judgement of Appellate Court, with Opinion, C256*. After a lengthy appeal process documented by Defendant in its appeal brief, this matter comes to the Supreme Court for supervisory review.

STATUTES INVOLVED

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(735 ILCS 5/2-102) (from Ch. 110, par. 2-102)(enacted 1977)

Sec. 2-102. Residence of corporations, voluntary unincorporated associations and partnerships defined. For purposes of venue, the following definitions apply:

(a) Any private corporation or railroad or bridge company, organized under the laws of this State, and any foreign corporation authorized to transact business in this State is a resident of any county in which it has its registered office or other office or is doing business. A foreign corporation not authorized to transact business in this State as a nonresident of this State.

**PLAINTIFF'S STATEMENT OF FACTS TO THE EXTENT DEFENDANT'S
STATEMENT IS INCOMPLETE**

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Defendant maintains an office in Cook County, Illinois, staffed by its W-2 salaried employee, James Bolton, who is paid an annual salary of \$56,192.31 to be Defendant's Chicago "Point Person." Defendant contends that prior factual-finding and holdings were mistakenly based on the residence of its agent, rather than the nature of an office or conduct undertaken within the residence; there is no evidence whatsoever to support such a claim.

Both the Trial and Appellate Courts' determination of Defendant's Cook County corporate residency was predicated on the fact that Defendant operated an office in Cook County out of the home of its employee. R7:22-24; C256. At no point did either of the lower courts indicate, as Defendant suggests, that the "residency of its employee alone" created Cook County corporate residency. To that end, the Trial Court found a Cook County corporate residence via "other office" due to the nature of the conduct undertaken at the "other office" and the nature of a corporate office; not based on mere residency of a part-time employee. R7:22-24 ("it's his office only because it's his home, but that doesn't mean it's not Defendant's office"); R8:1-8 ("If Mr. Bolton wasn't working out of his

home... they would be renting space in some office building”); R8:15-24 (“The simple facts that he’s working out of his home doesn't -- doesn't deny the fact that it's still a place where Defendant is doing business out of....that would be true regardless of whether he worked in his home or worked in an office building”); R9:2-8 (“what's most important about Mr. Bolton's deposition and testimony is that the work he says that he does is work that is plainly for the benefit of his employer”); R9:5-7,14-16 (“It's obviously an agreement that he reached with [...] he is servicing clients on behalf of his employer out of his office.”)

Likewise, the Appellate Court found that residency was not merely based on the “residence of a part-time employee.” *See Judgement of the Appellate Court, with Opinion, C256*. The Appellate Court specifically addressed Defendant's mischaracterization of its office, noting, “We further disagree that our decision would improperly subject a company to venue in 'any county where any of its agents or employees conduct any work out of their homes' and would thus 'defy the purpose of the [Illinois venue] statute,' which is designed to protect defendants against being subjected to a plaintiff's arbitrary choice of venue.” *Id.*

Rather than addressing the statute or the sworn testimony of its agent, Mr. Bolton, it is this employee-residence straw man argument that Defendant now attempts to defeat, relying on problematic post-deposition affidavit and an entirely inapplicable citation to *Peterson v. Monsanto*, 157 Ill. App.3d 508 (5th Dist. 1987).

CURRENT APPELLATE COURT JURISPRUDENCE

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Defendants have the burden to prove Plaintiff's venue selection was improper. *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285 (1987). In doing so, the defendant must set out specific facts, not conclusions, and show a clear right to the relief asked for. *Weaver* 116 Ill. 2d at 285 (citing *Taylor v. Southern Ry. Co.*, 350 Ill. 139, 143 (1932), and *Winn v. Vogel*, 345 Ill. App. 425, 430, 103 N.E.2d 673 (1952)). "Any doubts arising from the inadequacy of the record will be resolved against the defendant." *Id.*, citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

"The phrase 'other office' as used in Illinois venue statute means a fixed place of business at which the affairs of the corporation are conducted in furtherance of a corporate activity." *Melliere v. Luhr Bros.*, 302 Ill. App. 3d 794, 800 (5th Dist. 1999). "This other office may be, but need not be, a traditional office in which clerical activities are conducted." *Id.* The *Melliere* court concluded "that the phrase other office includes any fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities. The facility may be open to the public or may be a strictly private corporate operation." *Id.*

ARGUMENT I

Corporate Residency and Venue in Illinois

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- A. Illinois has a long and clear history of permissive venue law illustrating unambiguous legislative intent to include an "other office" as a basis for corporate residency.**

Illinois has a lengthy tradition of broad and permissive venue statutory construction dating back 124 years. Since the introduction of venue law in 1896, the

Illinois legislature has seen fit to modify corporate residence only once. Codified as Chapter 146 for eighty-one (81) years, venue in Illinois was understood only in the context of a change of venue and was written without regard for the party selecting venue (or, likewise, the party praying for a venue change). Ill. Rev. Stat. Ch. 146 ¶ 1 (Approved as part of the General Act of 1897, enforced December 1, 1897, repealed 1977).

In 1977, for the *first and only time since its 1897 creation*, the Illinois Legislature modified venue law regarding corporate residence while simultaneously transferring the venue legislation from Chapter 146 to inclusion within Chapter 110 [Practice]. *See* Ill. Rev. Stat. Ch 110, § 6 (1) (1977) (later recodified without alteration to 735 ILCS 5/2-102). It was at this time that the Illinois legislature first defined corporate residency for the purposes of venue. *Id.* Since 1977, the law has been and remains:

“Any private corporation or railroad or bridge company, organized under the laws of this State, and any foreign corporation authorized to transact business in this State is a resident of any county in which it has its registered office *or other office* or is doing business.

(735 ILCS 5/2-102) (from Ch. 110, par. 2-102) (enacted 1977) (emphasis added). The “other office” clause has thus functioned to create corporate residency wherever a corporation has an office (any office), without regard to that office's size relative to other offices of the corporation, and without regard to the location of the corporation's principal place of business. *Id.*; *Melliere v. Luhr Bros.*, 302 Ill. App. 3d at 799 (1999).

B. Illinois inclusion of “other office” is distinct when compared to other states’ venue statutes.

Illinois’ two centuries of permissive venue construction, including four decades of unchallenged “other office” corporate residency is not an oversight or omission of the

legislature, but rather a conscious effort based on a seminal tradition of permissive venue law. Illinois is one of only eight (8) states which allows for venue at any site where the corporation has an “office” or “other office,” or, as a few states put it, “maintain a place of business.” *See* Florida Civ. Pro. Code § 47.051; Iowa Civ. Pro. Code § 616.14 (“when a corporation...has an office”); Minnesota Civ. Pro. Code § 542.01 (“has an office, resident agent, or place of business”); Maine Civ. Pro. Code § 4-5-155.5; Michigan Civ. Pro. Code § 600.1621 (“has a place of business”); Montana Civ. Pro. Code § 1-3-A; Nebraska Civ. Pro. Code § 25-403.02.

Conversely, the bulk of states (26) have written their law to intentionally restrict corporate residency to a registered office or to where the corporation is “doing business.” *See* Alabama Civ. Pro. Code § 6-3-7; Arkansas Civ. Pro. Code § 16-55-213(a)(2)(B); California Civ. Pro. Code § 392; Colorado Civ. Pro. Code Rule 98; Georgia Civ. Pro. Code § 14-2-510; Indiana Civ. Pro. Code § 75 A 4; Kansas Civ. Pro. Code § 60-604; Kentucky Civ. Pro. Code § 452.450; Louisiana Code of Civ Pro § 42(1); Maryland Cts & Jud. Pro. Code § 6-201(a)); Mississippi Civ. Pro. Code § 11-11-3(1)(a)(i); Missouri Civ. Pro. Code § 508.010; New Jersey Civ. Pro. Code § 4:3-2(b); New York Civ. Pro. Code § 503(c); Ohio Civ. Pro. Code § 2-3(C); Oklahoma Civ. Pro. Code § 18-471; Pennsylvania Civ. Pro. Code § 231-2179; Rhode Island Gen. L. § 9-4-4; South Carolina Civ. Pro. Code § 15-7-30; South Dakota Civ. Pro. Code § 47-1A-1330.1; Texas Civ. Pro. Code § 15.094; Utah Civ. Pro. Code § 78B-3-307; Virginia Civ. Pro. Code § 8.01-262; Washington Civ. Pro. Code § 4.12.025; West Virginia Civ. Pro. Code § 56-1-1; Wyoming Civ. Pro. Code § 1-5-105.

Illinois has further planted itself in the minority of states by establishing a distinction between “doing business” and having an “other office” whereas many states conflate “having an office” with “having a place of business.” *See* Florida Civ. Pro. Code § 47.051 (“...where it has an office for transaction of its customary business”); Maine Civ. Pro. Code § 4-5-155.5 (“maintains a place of business”); Michigan Civ. Pro. Code § 600.1621; Montana Civ. Pro. Code § 1-3-A(1)(c) (“[The corporation]... shall be deemed to be a resident of each county [...] in which it has a place of business”). That is, in many states, and unlike in Illinois, having an office is equivalent to doing business. Illinois (and Nebraska) frames the clear intent to parse the definitions of maintaining an “other office” from the act of “doing business,” thus not requiring one to beget the other. 735 ILCS 5/2-102; Nebraska Civ. Pro. Code § 25-403.02 (“registered office or other office or is doing business”).

The result of Illinois’ differentiation between “doing business” and having an “other office” is significant, as it means that Illinois allows for three basis for corporate residency: a registered office *or* an other office, *or* doing business; three alternative conditions. *Id.* Therefore, it can hardly be suggested that the Illinois Legislature wrote and kept these words by omission or took an unexamined boilerplate approach to corporate residency like many other states. Taken together, Illinois’ lengthy history of venue law and its continued corporate residence stance among other states show its clear legislative intent to maintain a permissive corporate residence legal structure, one which consciously and specifically identifies an “other office” as a proper basis for venue.

C. The Trajectory of General Assembly Legislation demonstrates the “other office” clause is not a relic or an unintentional statutory inclusion.

In its 42 years of existence, the inclusion of the “other office” clause in 735 ILCS 5/2-102 has never been changed. There has never been a proposed House or Senate Bill suggesting its alteration or removal. *See* Senate Bills 1-2312; House Bills 1-3974; Senate Resolutions 1-833; and House Resolutions 1-620. The legislature has had four (4) decades of opportunity to reconsider corporate residency and the implication of the “other office” clause. Yet, no State Senator or State Representative from any political party has proposed a bill modifying, altering, or removing the 735 ILCS 5/2-102 “other office” clause from the statute. *Id.*

Likewise, two recent bills proposing limitation to corporate residency under 735 ILCS 5/2-102 do not introduce alteration or removal of the “other office” clause. *See* HB0164 (Re-referred to Rules Committee, March 29, 2019); *and* SB1438 (Re-referred to Rules Committee, March 22, 2019). Even the restrictive (and unsuccessful) HB0164, seeking to limit the scope of corporate venue exposure in Illinois by removing the “doing business” clause, does not in any way seek to abridge the “or other office” clause.

To date, the Illinois Legislature has expressed no interest in altering or limiting the scope of the 735 ILCS 5/2-102 “other office” basis for venue. As such, the intent of the legislature remains clear: “other office” is a valid avenue for corporate residency that the People of Illinois enacted in 1977. It remains the historical and textual evidence of the legislature’s intent and should be respected as the same.

ARGUMENT II

The word “office” is unambiguous and its plain application is proper.

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A. Plain statutory language is the guiding authority.

With an understanding of the legislature’s intent to include the “other office” clause, the crux of this case then turns to textual analysis of the keyword(s) in the statute: “other” and “office.” The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature. *Jackson v. Bd. of Election Comm'rs*, 2012 IL 111928 (2012). The best indication of legislative intent is the statutory language, which must be given its plain and ordinary meaning. *Metro. Life Ins. Co. v. Hamer*, 2013 IL 114234 (2013). It is improper for a court to depart from the plain statutory language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *Id.* Further, each word, clause, and sentence of a statute must be given a reasonable construction, if possible, and should not be rendered superfluous. *Prazen v. Shoop*, 2013 IL 115035, ¶ 21 (2013). **Where statutory language is clear and unambiguous, it will be given effect without resort to other aids of construction.** *Kunkel v. Walton*, 179 Ill. 2d 519, 534 (1997) (emphasis added).

B. The definition of “other” and “office” is not ambiguous and represents a clearly expressed legislative intent relevant to the context of 735 ILCS 5/2-102 and the facts of this case.

A plain review of the definition of “office” is appropriate since the instant case involves an office “other” than the registered office. The modern definition of “office” has remained largely unchanged since the 15th century. *Office (History & Etymology)*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (11rd ed. 2019). Beginning as early as Middle

English, “office” was used to refer to a “space used for business or domestic functions.”

Id. Five hundred (500) years later, in 1993, the *Melliere* court applied a strikingly similar definition of “office” for venue:

A place where a particular kind of business is transacted or a service is supplied. An office (place of business) may be operated to perform services for or transact a particular kind of business for the corporation without being open to the public. *Melliere* 302 Ill. App. 3d at 799, *citing Scott v. Atlanta Dairies Cooperative*, 238 S.E.2d 340 (1977), *citing Office*, WEBSTER'S NEW INTERNATIONAL DICTIONARY, (3d ed. 1993).

Today, MERRIAM-WEBSTER'S DICTIONARY continues to define “office” as “a place where a particular kind of business is transacted or a service is supplied: such as... the place in which a professional person conducts business.” *Office*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (11th ed. 2019). MERRIAM-WEBSTER includes the following example of “office:” “*we use the extra bedroom in our house as an office.*” *Id.* (emphasis added). Further, MERRIAM-WEBSTER'S LEARNER'S ENGLISH DICTIONARY, a publication for non-native English speakers learning the plain and ordinary meaning of words, defines “office” as “a room with a desk where a particular person works” and, likewise, “home office” as “a room in your house where you do office work.” *Office*, MERRIAM-WEBSTER'S LEARNER'S ENGLISH DICTIONARY (2019); *and Home Office*, MERRIAM-WEBSTER'S LEARNER'S ENGLISH DICTIONARY (2019) (defining said words and describing the dictionary's purpose as a dictionary to help users “learn spoken and written English as it is actually used”). Drawing from another source, OXFORD LEARNER'S DICTIONARY includes two relevant definitions of “office:” (1) “a room... where people work, usually sitting at desks,” and (2) “a room in which a particular person works, usually at a desk.” *Office*, OXFORD LEARNER'S DICTIONARY (9th ed., 2019). These

definitions share the unified theme of broad and inclusive terms for describing what an office is. Under these plain definitions, an “office” is self-evident.

Additionally clear from these definitions is that the plain and ordinary definition of “office” is a space where work is conducted and that this definition, per both MERRIAM-WEBSTER and OXFORD Dictionaries, *expressly includes an office located within the home*, without any regard to the number of people working there. Thus, looking at the plain and ordinary definition of “office,” there can be no uncertainty that Illinois' venue statute creates corporate residence where an employee performs work for the company (“office work”) from his or her office, regardless of whether that office is located in their home, a strip mall, or high rise and irrespective of the number of people working from that office. With these definitions in mind, an office is a room or area—a physical space—used for the performance of work. The type of physical space where work is performed is unimportant; *what matters when defining an “office” is that work is performed in a physical space*. There is no basis, legal, logical, or otherwise, for the assertion that an office within a residential domicile is somehow not an “office.”

A brief look at the definition of “other” only serves to further this point. MERRIAM-WEBSTER’S DICTIONARY defines “other” as “being the one or ones distinct from that or those first mentioned or implied.” *Other*, MERRIAM-WEBSTER’S DICTIONARY (11th ed. 2019). Of course, the “first mentioned or implied” office for any corporation would reasonably be presumed to be its registered office; its “other” office is, therefore, any office(s) distinct from the primary office. There can thus be no uncertainty when looking at the plain and ordinary definitions of both “other” and “office” that office work

performed for a corporation, performed by the corporation's employee, and performed at the employee's home office, meets the plain and everyday definitions for an “‘other’ and ‘office.’”

C. Neither the statute nor the definitions of “office” require a corporation’s “doing business” for an office to exist.

735 ILCS 5/2-102 expressly contemplated an office where a corporation is not necessarily doing business because that corporation creates corporate residency where it “has an other office *or* is doing business.” *Id.* (emphasis added). Likewise, the abovementioned dictionary definitions of “office” articulate the essence of an office as a physical space where work is performed. Absent from the definitions of office is a financial requirement of “doing business”—according to these definitions, an office is a physical place where business is conducted, but there is no financial requirement for an office to exist. This presents a notable distinction which renders Defendant's claims regarding both its denial of business activity in Cook County and its continued citation of a lack of need for Cook County presence entirely irrelevant. *See* Brief and Argument of Defendants at 16 (where Defendant suggests that other counties, such as DuPage County, would allegedly have been more desirable for its business operations). Defendant cannot defeat its Cook County residency simply because a different office location may have better served its purposes or because its office is located in Mr. Bolton's home, as neither is relevant for the purposes of establishing corporate venue under Illinois law.

ARGUMENT III**Defendant-Appellant Gilster Mary Lee is a resident in Cook County, Illinois, based on its office in Cook County.**

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In addition to the Illinois legislature's textually evident intent for a permissive approach to corporate residence and a 500-year consistent history in the use of "office" and "other" to support this legislative approach, a brief review of the facts underscore the lack of controversy associated with both the Trial and Appellate Courts' affirmation of Defendant's Cook County office.

A. Defendant's Agent James Bolton Operates and Staffs a Cook County Office on behalf of his employer Defendant Gilster Mary Lee.

Despite Defendant's affidavits claiming it has "no Cook County employees," discovery revealed Defendant had both an office and an employee conducting business on its behalf located in Cook County. *Tabirta v. Cummings* (Oral Arguments, 3/5/2019, Justice Hayden at 37:05); *See also* Thomas Welge's discovery deposition at E561-E563. Defendant established an office in Chicago, Cook County, Illinois, in 2011 through its agent and W2-salaried employee James Bolton. Mr. Bolton receives an annual salary of \$56,192.31 and was selected for the position of "point person" for the company due to both his experience and his residential proximity within Chicago, enabling him to quickly and easily service Chicago-area customers, both stated requirements for fulfilling the role of Defendant's position. E694; E697-703; E705-707.

In 2011, Mr. Bolton moved from Palatine, IL, to the Cook County residence at issue and, at the same time, became Defendant's salaried employee. *Id.* After selecting Mr. Bolton for the Chicago-area point-person position, Defendant set up its office in Mr. Bolton's home at 7327 S. Carpenter Street, Chicago, Cook County, IL 60621. Defendant

hired a point person located in the Chicago area such as to establish an office in Chicago. Indeed, Defendant expected Mr. Bolton to fully conduct Defendant's business from an office in his home .

To facilitate this work as Defendant's Chicago point person, Defendant provided Mr. Bolton with a series of standard office equipment. Such equipment included a full-sized computer, a corporate email address, and a 1-800 phone number. Defendant additionally guaranteed Mr. Bolton reimbursement for Defendant-related expenses including travel to and from his home office location, office expenses, and internet. Bolton Dep. E149:166; E153:24; E158:10; E157:23-158:1; E694. Equipped with these resources, and driven by a stated purpose to be a "point person" for Defendant, Mr. Bolton worked solely from the Cook County office to further Defendant's business and corporate interests. *Id.*

B. Defendant's connection and presence in Cook County

GLM's strategy for establishing the Cook County office met two related objectives:

1. It enabled Mr. Bolton to further Defendant's general corporate interests (thereby enhancing the corporation's reach) from an available and low-cost office; and
2. It further provided the corporation with a readily-available employee to respond to the needs of Defendant's multiple, large clients in Cook and nearby counties.

Bolton Dep. E149; E153:24; E158:10; E157:23-E158:1; E156:24. Deposition testimony from Mr. Bolton described his office, his work in Cook County, and his selection by Defendant as its "Cook County Point Person." Bolton Dep. E149:157 ("The

job actually is having a point person. [...] they are able to call me and then I take that information and pass that on to headquarter [sic]"); Bolton Dep. E153:24; E158:10; E157:23-E158:1; E156:24. Mr. Bolton was a W2 salaried Cook County employee, working from a Cook County office, paid with a Defendant-issued paycheck. Bolton Dep. E157. Concerning his employment with Defendant, Mr. Bolton stated, "*I do know they hired me because they needed somebody in Chicago.*" Bolton Dep. E177:19 (emphasis added). Stating further, Mr. Bolton testified that he "told them [he] would be available for Chicago [...]" and that he was the "local problem solver" in the Cook County area. Bolton Dep. E178:2; E173: 3.

As to Mr. Bolton's employment role with Defendant, there can be no suggestion that Mr. Bolton was a traveling salesperson with a laptop and briefcase who just happened to live in Cook County. Bolton Dep. E157. Mr. Bolton testified: "I don't actually sell anything unless a new item comes up" *Id.* Any argument that Mr. Bolton is simply an account representative for Defendant without any "real connection" to Cook County other than happening to live there is contrary to the evidence: He was specifically hired for his connection within Chicago, which is why Defendant established an [other] office for him in Cook County rather than expecting he perform his duties at some other company location.

Mr. Bolton further testified at his deposition that he had been employed with Defendant since 2011 because "[Defendant] needed somebody in the Chicago area to take care of several Cook County, Illinois accounts, and they wanted somebody on a [salaried] part-time basis to oversee those accounts." *Id.* at Bolton Dep. E156:24. At the

time of his hiring, Defendant provided Mr. Bolton with a computer terminal, a company email address to use in servicing its Cook County customers, a “1-800” extension for Cook County, and neighboring customers to reach him via telephone—at his office. Bolton Dep. E165:20-24; E172:14. Armed with these corporate resources and mandate from Defendant, Mr. Bolton corresponded with and serviced Defendant’s Cook County, Illinois customers. Bolton Dep. E159:20-E160:8. Mr. Bolton further testified that he has only ever worked in the Chicago area on behalf of Defendant and that he is available as Defendant’s Cook County point person if a local Chicago customer needs to talk about sales or “something of that nature.” He is the ‘point person’ representing Defendant. E9:20; 9:15. Further, when new products become available, he is tasked with selling the product in Cook County, Illinois on behalf of Defendant. E9:16.

C. Defendant’s Traditional Office Operation

Under oath, Mr. Bolton stated that he is the “point person” in Chicago for Defendant and able to be called upon by local [Chicago] customers due in part to his strategically located office in Cook County. Bolton Dep. E157:1. When Defendant’s Cook County, Illinois customers contact Mr. Bolton, they dial the company main 1-800 number (1-800-642-6541) and ask for extension ‘3646’ to be connected to James Bolton. He is in Defendant’s Chicago office. Mr. Bolton has no mobile/handheld computer, smartphone, or tablet with which he can do his work for Defendant; instead, he must be physically present at the office and at his [Defendant Gilster Mary Lee] computer terminal in order to do his work. Bolton Dep. E165.

When Defendant's customers have an issue, they will send Mr. Bolton an email to his Defendant-issued email address. Bolton Dep. E155:3; E159:10; E159:20. To access this corporate email, Mr. Bolton must be in his office, and using his [Defendant-provided] office computer. Mr. Bolton cannot access his [Defendant-provided] email on any computer except the computer Defendant provided him for his Cook County office, he cannot conduct his daily work any place other than at his office. *Id.* Mr. Bolton testified that he saves and retains his customer (Cook County) communications in email format, and then saves this data digitally on the Defendant-issued computer which is maintained in the Cook County, Chicago office. Bolton Dep. E172:6. Mr. Bolton engages in the traditional office work one would expect from the Defendant's "Chicago Point Person:" he manages customer emails; makes and receives telephone calls, sets up local appointments via his [Defendant Gilster Mary Lee] phone number; deals with customer issues and product inquiries; and otherwise services customers in Cook County and surrounding counties exclusively from his office in Cook County. Bolton Dep. E159:20.

Mr. Bolton's presence in Cook County is no coincidence, but rather is a fundamental requirement for his position. To this end, Mr. Bolton testified that he would have face-to-face meetings with Defendant's Cook County, Illinois customers. Bolton Dep. E172:10; E173:3. Defendant employee Mary Cissell would also contact him when corporate issues arise in Cook County, Illinois. Bolton Dep. E174:14. Mr. Bolton has remained employed in this fashion from 2011 to date. Bolton Dep. E157:10-12. He further confirmed that he wished to continue his employment with Defendant and intended to continue with the same Cook County office, managing the same Cook

County, Illinois customers. Bolton Dep. E181:20-24. Mr. Bolton and Defendant have and will continue to benefit from a Cook County presence: office, customers, sales, revenue, and profit. Yet, Defendant seeks to avoid accountability in this same venue.

D. Discussion of Mr. Bolton's and Defendant Deductions for the office expense under the Internal Revenue Service Guidelines.

Defendant's tax treatment of this Cook County office remains unclear. However, Internal Revenue Service (hereinafter "IRS") guidelines, at the time of the accident and presently, permit a home office deduction for either Mr. Bolton or Defendant for the use of part of Mr. Bolton's home as Defendant's office. U.S. Department of the Treasury, Internal Revenue Service (2018), *Business Use of Your Home (Including Use by Daycare Providers) For Use in Preparing 2018 Returns* (Cat. No. 15154T), Washington, DC: U.S. Government Publishing Office at page 3. Commencing for the tax year 2018, Mr. Bolton's [Defendant Gilster Mary Lee] office in his home remains a proper deduction for the employer Defendant with reimbursement to the employee. *Id.* Regardless of whether the employee or the employer took the office expense deductions, this Defendant office in Mr. Bolton's home is fully recognized by the IRS as an office and allowable deduction for the same.¹

In its explanations and criteria, the IRS provides a sample qualifying situation for the home office deduction. The example provided by the IRS bears striking resemblances to the instant case, with a worker operating a home office which is a valid office for

¹ Commencing for the tax year 2018, the home office expense deduction is taken by the employer with its reimbursement to the employee. Prior to 2018 and at the time of this occurrence, a deduction was proper for the employee or by the employer with its reimbursement to the employee.

deduction purposes. *Id.* at page 5, Example 2. In the example provided by the IRS, taxpayer “Pamela” has an office in her home that she uses exclusively and regularly to set up appointments and write up orders and other reports for the companies whose products she sells. *Id.* She occasionally writes up orders and sets up appointments from her hotel room when she is away on business overnight. *Id.* Pamela's business is selling products to customers at various locations throughout her territory. *Id.* To make these sales, she regularly visits customers to explain the available products and take orders. *Id.* In this example, the IRS finds that Pamela's home office qualifies as her principal place of business for deducting expenses for its use because she conducts administrative or management activities there, and she has no other fixed location where she conducts substantial administrative or management activities. *Id.* The home office deduction recognizes that part of Pamela’s home is used exclusively for work purposes, and therefore allows deductions for its use. The IRS specifically points out that the fact that she conducts some administrative or management activities in her hotel room (not a fixed location) does not disqualify her home office from being her principal place of business. As such, she may deduct expenses for the business use of her home. In this instance, the taxpayer “Pamela” qualified for the home office deduction. Returning to the case at hand, due exclusively to the activities performed in his home office, Mr. Bolton's home office was and remains an allowable IRS deduction for a home office, consistent with the Illinois Venue Statute for an “other office” and IRS-issued tax guidelines. Comparing the work situation of the fictional Pamela to the sworn testimony of James Bolton, Mr. Bolton’s efforts and office operation are far more traditional and localized to both his

office and Cook County than Pamela's office which includes hotel room work. Thus, the IRS holds that Mr. Bolton's home office lies well within the definition of a home office for tax deduction purposes notwithstanding if the deduction was taken.

E. Aware of the “Other Office” implications of Mr. Bolton's testimony, Defendant has attempted to retract his sworn testimony.

In concert with the historical and current definitions of “office” provided by numerous English-language dictionaries and the IRS, the conclusion that Defendant's presence in Cook County is an “other office” follows naturally. *See Office*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (11th ed. 2019) (“a place where a particular kind of business is transacted or a service is supplied: such as... the place in which a professional person conducts business”). In an apparent attempt to undermine such a logical conclusion, Defendant supplied a post-deposition affidavit executed by Mr. Bolton that lay in dramatic conflict with his previous sworn deposition testimony.² Bolton Affidavit E736-E739; R1-R22. Mr. Bolton's affidavit in whole attempted to subvert, retract, reframe and restate the body and effect of Mr. Bolton's own sworn deposition testimony. *Id.* Defendant relies heavily on this affidavit in its Brief to this Court rather than Mr. Bolton's clear deposition testimony, citing it often as irrefutable fact. Bolton Affidavit E736-E739; R1-R22; Brief and Argument of Defendant.

Despite Defendant's best efforts to subvert Mr. Bolton's testimony about Defendant's office in his home, the Trial Court found Mr. Bolton's deposition testimony credible in showing that Defendant does, in fact, have an office in Cook County. At the

² Counsel for Defendant did not ask Mr. Bolton a single question at his duly attended deposition, instead only filing its post-deposition affidavit as part of its reply brief. Bolton Dep. E182 at line 3.

same time, that Defendant eschewed the deposition testimony in its Brief and instead relied so significantly on Mr. Bolton's post-deposition affidavit also illustrates Defendant's awareness that its position is tenuous at best—Defendant fails to provide adequate support outside of the affidavit for the arguments contained in its Brief. Mr. Bolton's deposition testimony so clearly demonstrated Defendant's operation of an “office” under any definition, including for the purposes of corporate residency, that Defendant required an affidavit to roll back the sworn testimony.

It is worth noting that Mr. Bolton's post-deposition [reply brief] affidavit was supplied after Defendant's motion affidavit claimed that “it had no employees or agents in Cook County.” *See* Defendant-supplied affidavit claiming no Cook County employees attached as Exhibit 16 to Defendant's Motion to Dismiss for Venue E559-E560; Defendant's Response Brief in support of its Motion to Dismiss for Venue E714-E733; and James Bolton's post-deposition affidavit E736-E739. Similarly, the Illinois Association Of Defense Trial Counsel has offered an Amicus brief that also supplied facts not supported in the record, including reference to the use of a “laptop.” Motion For Leave To File Amicus Curiae Brief In Support Of Appellants, Page 12, 13; *See also* Bolton Dep. E165. (Q: And do you have a handheld computer device or smartphone or tablet that you use for your customer service work? A: No.); E159 (Q. The Chicago customers will send you the e-mail and let you know what the issue is? A. Yes. Q. Do you receive the email on your phone? A. No, on my computer. Q. And is it the computer that resides at the 7327 South Carpenter Street address? A. Yes.)

ARGUMENT IV
A “Home” Office is No Less an Office

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The thrust of Defendant's argument contends that because of the residential nature of its corporate space within Mr. Bolton's home, this space cannot appropriately be deemed an “office.” Defendant's argument goes as far as stating that the Appellate Court erred because “Appellate Courts previously have held that a 'home office' is not sufficient to establish venue under the [sic].” Brief and Argument of Defendant at 7. Defendant then concedes: “while the *Peterson* Court focused on the ‘doing business’ prong, its logic is also compelling in the ‘other office’ analysis.” *Id.* Despite conceding that *Peterson* does not address or even reference an ‘other office,’ Defendant next concludes that “[t]he Circuit Court and Appellate Court erred by not following *this* precedent, and this Court should reverse.” *Id.* (emphasis added). These statements and references to “precedent” are a blatant misapplication of the law. *Peterson v. Monsanto*, 157 Ill. App.3d 508 (5th Dist. 1987).

Defendant’s argument requires this Court to entirely recast the *Peterson* Court’s holding regarding an employee’s home office as a place of “doing business” analysis to an “other office” analysis. Defendant then asks this court to consider such a recasting as “precedent” to suggest that an office within a home is not an office for the purposes of corporate residency. *Peterson*, 157 Ill. App.3d 508, 510-11 (5th Dist. 1987). It has been well-documented throughout Defendant’s appeals that *Peterson* has no bearing to an “other office” analysis. *Tabirta*, 2019 IL App (1st) 172891-B, ¶ 31, 126 N.E.3d 576 (“we are unpersuaded by defendants' reliance on *Peterson* [...] Neither the parties nor the court

engaged in any analysis as to whether the employee's home office constituted an 'other office' within the meaning of the Illinois venue statute”).

Conclusion

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Defendant's contention that its Cook County office at 7327 S. Carpenter Street, Chicago, IL 60621 is not an "other office" under 735 ILCS 5/2-102 is wholly unsupported. This position is unsupported by the facts, the law, jurisprudential precedent, the Dictionary, the English language, the IRS, the sworn factual testimony of its employee, and the Circuit and Appellate Courts of the State of Illinois. Defendant's argument and treatment of "office" requires departure from the clear and unambiguous text of both the statute and the dictionary's definition. *See Kunkel v. Walton*, 179 Ill. 2d 519, 534 (1997) ("Where statutory language is clear and unambiguous, it will be given effect without resort to other aids of construction").

Plaintiff Tabirta's brief to this Court is not duplicative of his brief to the Appellate Court restating its facts and arguments, and instead addresses the text and meaning of the statute. Defendant has offered no textual examination of the word "office" within the statute and remains unable to provide a plausible explanation for why its office is not an office or how the statute is unclear in this regard. Instead, Defendant continuously cites Mr. Bolton's post-deposition affidavit that contests his deposition testimony and requests this court treat the *Peterson* "doing business" analysis as precedent for "other office." *Peterson*, 157 Ill. App.3d 508 (5th Dist. 1987). The application of Defendant's reasoning is to allow a corporation a presence in a county without the responsibility that comes with corporate residency. In other words, Defendant wishes this Court ignore textually based

legislative intent and bestow upon it venue immunity as a reward for its finding an employee willing to allow it to conduct business from his home rather than acquiring office space elsewhere. So great is Defendant's requested deviation from a reasonable construction of "office", that the more appropriate audience for their argument is the Illinois legislature.

The facts of this case present no policy concerns regarding the "dawn of a new digital age." In fact, Defendant and its employee, Mr. Bolton, employed technology no more advanced than what one would find in the 1990s. It cannot be argued that Mr. Bolton represents the forefront of technological advance: He could not even check his [Defendant-issued] email and client correspondence from his phone, instead needing to be in his office and at his company-issued computer to perform work on behalf of Defendant. Bolton Dep. E165.

Stepping outside of the facts of this case and addressing the general advancement of technology and its potential to reshaping corporate space, this Court is not faced here with the apocalyptic policy implications suggested by Defendant. The Court needs only to look at the facts at hand to determine that Defendant has an office in Cook County that this office fits within the statutory phrasing of "other office." The statute as written is both clear and perfectly drafted to handle the reshaping of how offices look; As such, Illinois venue law is better situated than most other states who may need to reexamine their statutes before companies begin claiming they have no offices at all other than a registered office in a venue they have forum-shopped for. In any event, the Illinois Legislature has not undertaken or even once proposed an amendment to the "other office"

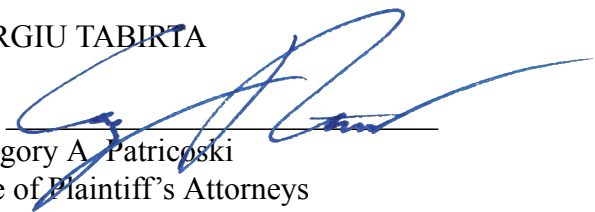
clause notwithstanding employees working from home and the widely applicable definition of “office.”

A review of the history of Illinois venue law, the clear and continued intent of the legislature, the definition of the word “office,” alongside the sworn testimony of James Bolton regarding the Chicago office and his work there as Defendant’s Chicago “point person” coalesce to put Defendant’s appeal into sharper focus: Defendant seeks the benefit of a Cook County office without corporate residence and therefore without any legal responsibility in Cook County. The Trial Court quickly got to the heart of the issue by noting the fortune of finding Mr. Bolton willing to establish a portion of his home as a corporate office does not change the fact that it is a Defendant office. R8. Defendant should not enjoy the benefits of its other office in Cook County, staffed with a local, W2 salaried employee, while being immune from corporate residency in Cook County. Such a finding would distort the plain definition of the word “office” as well as the clearly written statute and textual evidence of its intent.

WHEREFORE, Plaintiff, SERGIU TABIRTA, hereby requests this Court deny Defendant’s Appeal.

Respectfully Submitted:

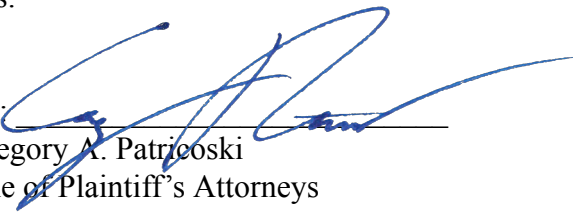
SERGIU TABIRTA

By: 
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One of Plaintiff’s Attorneys

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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 number of words in this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, is 6,764 words and 25 pages.

By: 
 Gregory A. Patricoski
 One of Plaintiff's Attorneys

CERTIFICATE OF SERVICE

Underpenalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Mark G. Patricoski, an attorney, states that I caused a copy of the attached documents, along with all applicable attachments to be served upon the above counsel of record as referenced above and additional interested parties by depositing the same in the U.S. Mail at 1755 S. Naperville Road Suite 206, Wheaton, IL 60189 and via email to as listed above at or before 5:00 p.m. on January 3, 2020.

Underpenalties 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.


 Mark Patricoski
 Attorney for Plaintiff

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IN THE SUPREME COURT OF ILLINOIS

SERGIU TABIRTA,

Plaintiff- Appellee,

v.

**JAMES J. CUMMINGS and
GILSTER MARY LEE CORP.,**

Defendants-Appellants.

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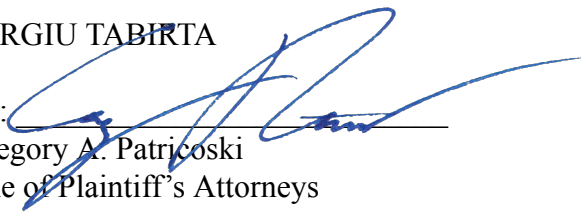
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YOU ARE HEREBY NOTIFIED that on January 3, 2020 we will cause to be filed electronically and submitted with the Clerk of SUPREME COURT OF ILLINOIS the following document, a copy of which is served upon you herewith: **Plaintiff-Appellee's Response Brief, Certificate of Compliance, Notice of Filing and Certificate of Service.**

SERGIU TABIRTA

By: 

Gregory A. Patricoski
One of Plaintiff's Attorneys

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