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CYNTHIA A. GRANT  
SUPREME COURT CLERK

No. 129453

**IN THE  
SUPREME COURT OF ILLINOIS**

DAN CAULKINS; PERRY LEWIN;	)	On Direct Appeal from the Circuit
DECATUR JEWELRY & ANTIQUES	)	Court of the Sixth Judicial Circuit,
INC.; and LAW-ABIDING GUN	)	Macon County, Illinois
OWNERS OF MACON COUNTY, a	)	
Voluntary unincorporated association,	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	No. 2023-CH-3
	)	
Governor JAY ROBERT PRITZKER,	)	
In his official capacity; KWAME RAOUL	)	
In his capacity as Attorney General;	)	
EMANUEL CHRISTOPHER WELCH, in	)	
in his capacity as Speaker of the House; and	)	
DONALD F. HARMON, in his capacity as	)	
Senate President,	)	The Honorable
	)	RODNEY S. FORBES,
Defendants - Appellants.	)	Judge Presiding.

**MOTION FOR RECUSAL/DISQUALIFICATION**

Now Come Plaintiffs-Appellees, Dan Caulkins, Perry Lewin, Decatur Jewelry & Antiques, Inc, and Law-Abing Gun Owners of Macon County, a voluntary unincorporated association, by their attorneys, Jerrold H. Stocks and Brian D. Eck, Featherstun, Gaumer, Stocks, Flynn & Eck, LLP, and for their Motion for Recusal/Disqualification of Justices Rochford and O'Brien from consideration of this matter, state:

**I. INTRODUCTION**

The instant appeal addresses the subject matter of the constitutionality of recently enacted legislation criminalizing the possession, use or sale of assault weapons for some citizens while

extending immunities (and other benefits) from criminal prosecution to others for the possession, use, and sale of assault weapons. (R.C. 840-48). Plaintiffs request the recusal/disqualification of Justices Elizabeth Rochford and Mary Kay O'Brien [hereinafter: "Justices" or "the Justices"] from consideration of the instant appeal based on: (1) an appearance that unreasonably large campaign contributions accepted by the campaign committees for said Justices in the 2022 election cycle from one or more Defendants, lawyers for Defendants and/or affiliates of the Defendants [hereinafter: "campaign contributions" or "the campaign contributions" and donors "stakeholders"] undermine public confidence in the independence and impartiality of the Judiciary, in the decision of the Court or otherwise informs a basis to reasonably question impartiality free from the appearance of political influence and pressure; and/or (2) statements or pledges [hereinafter: "pledge(s)"] attributed to the Justices, as candidates, disclosing a position favoring assault weapons prohibitions, an issue the reasonable candidate should have foreseen as likely for Court consideration, inconsistent with impartial performance of the adjudicative duties of the Court on the issues presented by this appeal.

## **II. FACTS**

(Supporting Record filed [S.R.] separately under affidavit of counsel)

1. Campaign contributions to Rochford Campaign Committee pursuant to Illinois State Board of Elections in connection with her candidacy for the Illinois Supreme Court show the following from reporting periods July 1, 2021 to December 31, 2022 (S.R. 1 to 153):

Total Individualized Contributions: \$2,113,213.00. (S.R. 2, 38, 75, 99, 118, 136). Total Transfer-In Contributions (from other Committees): \$1,401,475.00. (S.R.2, 38, 75, 99, 118, 136). On September 23, 2022, JB for Governor Transferred In the sum of \$500,000.00. (S.R. 64). On October 27, 2022, Jay Robert Pritzker Revocable Trust Individually Contributed \$500,000.00.

(S.R. 9). On October 13, 2022, the campaign committee for Defendant Welch Transferred In \$150,000.00. (S.R.20). Attorneys<sup>1</sup>, inclusive of respective firms/partners, appearing for one or more Defendant in this appeal contributed the sum of \$117,750.00 (S.R. 13, 42, 55, 56, 57, 76, 81, 105, 106).

2. Campaign contributions to O'Brien Campaign Committee pursuant to Illinois State Board of Elections in connection with her candidacy for the Illinois Supreme Court show the following from reporting periods July 1, 2021 to December 31, 2022 (S.R. 154 to 298):

Total Individualized Contributions: \$2,113,213.00. (S.R. 155, 159, 169, 193, 217, 260). Total Transfer-In Contributions (from other Committees): \$1,401,475.00. (S.R. 155, 159, 169, 193, 217, 260). On May 24, 2022, JB Exploratory committee Transferred In the sum of \$500.00. (S.R. 202). On September 29, 2022, JB for Governor Transferred In the sum of \$500,000.00. (S.R. 242). On October 28, 2022, Jay Robert Pritzker Revocable Trust Individually Contributed \$500,000.00. (S.R. 268). In October, 2022, the campaign committee for Defendant Welch Transferred In the sum of \$350,000.00. (S.R. 276). Attorneys<sup>2</sup>, inclusive of respective firms/partners, appearing for one or more Defendant in this appeal contributed the sum of \$62,750.00 (S.R.219, 232, 233, 234, 236, 270).

3. The Justices were two of the G-PAC endorsed candidates that won the 2022 General Election with the support of G-PAC and Giffords PAC. The organizations claimed that they were heavily involved in delivering victories in many contested races. To earn the endorsement of G-PAC and Giffords PAC, **each candidate voiced their support of the organizations' top legislative priority: banning assault weapons and large-capacity**

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<sup>1</sup> Power, Rogers (Defendant Harmon counsel). Amount excludes spouses.

<sup>2</sup> Power, Rogers (Defendant Harmon counsel). Amount excludes spouses.

**magazines in Illinois. Looking toward veto and lame duck session before the 103rd General Assembly is sworn in this coming January, the gun violence prevention movement will be forcefully advocating to pass the measure into law.** <https://gpacillinois.com/g-pac-and-giffords-pac-celebrate-88-victories-in-general-election/>

(S.R., 304-05).

To earn a gun safety endorsement, each candidate demonstrated strong support for banning assault weapons and large-capacity magazines. Each endorsed candidate supported [as a candidate] the #1 legislative priority when the General Assembly is called into session: banning assault weapons and large capacity magazines. Included as endorsed candidates are the Justices, Defendant Welch, Defendant Raoul and Defendant Harmon. <https://gpacillinois.com/2022-generalendorsements/>

(S.R., 299-301)

4. Public perception questioning the independence and impartiality of the Justices based on campaign contributions or pledges already has manifest.

<https://www.chicagotribune.com/opinion/commentary/ct-column-illinois-supreme-court-seats-washington-20221017-54p3wpeycvcidjnt6frdz2phk4-story.html>

(S.R. 308-12)

### **III. LEGAL GROUNDS**

1. Procedurally, there is no specific Illinois Supreme Court Rule specifying the disqualification remedy sought. Thus, the instant Motion is pursuant to IL S. Ct. R. 361 and presented to the Court, as a whole. Alternatively, each Justice, individually, has the duty to

consider recusal independently in the absence of a Motion to Disqualify. ILLINOIS CODE OF JUDICIAL CONDUCT OF 2023, Canon 2, Rule 2.11, *comment 2*.

2. Canons of judicial conduct provide guidance to each Justice when addressing the issues presented. ILLINOIS CODE OF JUDICIAL CONDUCT OF 2023, Preamble and Scope, para 3 (2022-07-01; *effective* January 1, 2023). Professional codes of conduct provide more protection than due process requires. *Williams v. Pennsylvania*, 579 U.S. 1, 13 (2016). More particularly, the following Canons of the ILLINOIS CODE OF JUDICIAL CONDUCT, Rules thereunder and comments thereto, and Illinois Supreme Court Rules (in effect at time of campaign contributions and pledges) compellingly support recusal by the Justices, if exercising their own independent inquiry, or disqualification under the Motion to Disqualify (*emphasis added*):

**CANON 1: A Judge shall uphold and promote the independence, integrity, and impartiality** of the judiciary and shall avoid impropriety and the **appearance of impropriety** in all of the judge’s activities.

COMMENT: An independent ... judiciary is indispensable for creating and preserving public trust and confidence in the legal system.

\* \* \*

#### **RULE 1.2: PROMOTING CONFIDENCE IN THE JUDICIARY**

A judge shall act at all times in a manner that **promotes public confidence in the independence, integrity and impartiality** of the judiciary...

COMMENTS: [2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by this Code.

[3] Conduct that ... **appears to compromise the independence, integrity and impartiality** of a judge undermines public confidence in the judiciary.

[5] The test for appearance of impropriety is whether the conduct would create in **reasonable minds a perception** that the judge violated this Code or engaged in other conduct that **reflects adversely on the judge's ... impartiality**.

\* \* \*

CANON 2: A Judge shall perform the duties of judicial office **impartially**...

Rule 2.2: A judge shall uphold and apply the law and **shall perform the duties** of judicial office fairly and **impartially**.

\* \* \*

RULE 2.4: ... (B) A judge shall not permit ... **political**, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. (C) A judge shall not convey or **permit others to convey the impression that any person or organization is in a position to influence the judge**.

COMMENTS: [1] ... **Confidence in the judiciary is eroded** if judicial decision-making is **perceived to be subject to inappropriate outside influences**.

\* \* \*

RULE 2.10: ... (B) A judge shall not, in connection with cases, controversies, or **issues that are likely to come before the court, make pledges, promises, or commitments** that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

COMMENTS: [1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

RULE 2.11: DISQUALIFICATION

(A) A judge shall be disqualified in any proceeding in which the judge's impartiality\* might reasonably be questioned, including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of facts that are in dispute in the proceeding.

\* \* \*

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

COMMENTS: [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. For example, the participation in a matter involving a person with whom the judge has an intimate relationship or a member of the judge's staff may require disqualification.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

\* \* \*

CANON 4: A judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

#### RULE 4.1: POLITICAL AND CAMPAIGN ACTIVITIES IN PUBLIC ELECTIONS

(C) A judicial candidate:

(1) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(4) **shall not:**

(a) **make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court;**

COMMENTS: [1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, **judges and judicial candidates must, to the greatest extent possible, be free and**

**appear to be free from political influence and political pressure.** This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates.

**[3] Public confidence in the independence, integrity, and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.**

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices...

RULE 4.4: Campaign Committees

COMMENTS:[1] ... to establish campaign committees to solicit and **accept reasonable** financial contributions or in-kind contributions.

[3] The campaign committee may solicit and accept campaign contributions from **lawyers and others who might appear before the candidate.** The candidate **should instruct the campaign committee to be cautious in connection with such contributions so it does not create grounds for disqualification.**

[4] During the campaign, the candidate and the campaign committee should be **aware that a contribution may affect the independence, integrity, and impartiality of the judge and may create grounds for disqualification if the candidate is elected to office.**

\* \* \*

ILLINOIS SUPREME COURT RULE 67(A)(3)(d)(i) (*in effect at time of campaign contributions and pledges*):

A candidate for judicial office shall not make statements that commit or **appear to commit the candidate with respect to cases, controversies, or issues within cases that are likely to come before the court;**

ILLINOIS SUPREME COURT RULE 67(B)(2) (*in effect at time of campaign contributions and pledges*):

[Campaign] committees may solicit and accept **reasonable** campaign contributions...



3. The reported pledge to support a contemplated assault weapons prohibition during the campaign conveys a direct appearance of lack of impartiality on an issue before the Court. ILLINOIS CODE OF JUDICIAL CONDUCT, Rule 4.1 (c)(4). The pledge is not remote. In fact, the reported pledge identified the legislative timing and legislative content from which the instant appeal arises. Under the circumstances, it is unreasonable to conclude that public perception would accept a decision as impartial. Public confidence in any decision will suffer if the Justices participate in consideration of the instant matter.

A contention that campaign money informs an appearance that a Justice is not free from political influence finds support in the campaign contributions. The amount of the campaign contributions comprising cash accepted by the Justice's committees dominated fundraising. Viewed in rank-order, stakeholders (inclusive of attorneys) to this litigation occupied the highest levels of itemized contributors of cash. The significance of the campaign contributions cannot be understated as often in politics, cash follows cash, especially when one considers the stake the Governor and/or Speaker were taking in the race(s). Thirty-Nine percent (39%) of Justice O'Brien's cash came from litigation stakeholders. Thirty-Six percent (36%) of Justice Rochford's cash came from litigation stakeholders. At time of the acceptance of the campaign contributions, it was likely that the contributors would appear as counsel or parties, individually or in official capacities, on a routine and regular basis. Litigation related to Second Amendment issues presenting to the Justices was foreseeable and likely contemplated based on the content of the reported pledges.

Understanding the command to preserve the appearance of independence and impartiality, one fairly asks: "What were the Justices or their committees thinking when they accepted the campaign contributions?" Perhaps, the better question is: "How were the Justices or

their committees thinking at the time the campaign contributions were accepted? As political candidates or as potential Justices?” The canons and rules required judicial candidates to think as a Justice and accept only reasonable contributions. See: ILLINOIS CODE OF JUDICIAL CONDUCT, Rule 4.4, *comments* 3 and 4. “Reasonable” does not appear limited to an assessment of an amount, but, includes (or should include) limiting from whom the contribution is accepted to preserve the appearance of independence from the other branches of government. Judicial candidates, especially for the Supreme Court, must zealously protect against the appearance that the Executive or Legislative branch influences the independence of the judiciary. After all, it is the Supreme Court that often presents the last chance to check an abuse of power by the other two branches. The pervasive ideas and aspirations, if not direct requirements, of the ILLINOIS CODE OF JUDICIAL CONDUCT and predecessor Illinois Supreme Court Rule impel recusal of the Justices upon their own respective assessments.

4. “The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise, there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias.” *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 883 (2009). Due process requires an objective inquiry into whether the contributors’ influence on the election under all the circumstances “would offer[s] a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.”

*Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 885 (2009). Substantively, due process under the 14<sup>th</sup> Amendment of the United States Constitution requires recusal/disqualification under the standards established in *Caperton* with respect to the campaign contributions accepted by the campaign committees of Justices Rochford and O'Brien in connection with the 2022 election cycle. Together or independently, the pledges also require recusal/disqualification to preserve the due process rights of the Plaintiffs.

Whether the campaign contributions were a necessary and sufficient cause of victory for either Justice is not the proper inquiry. Much like determining whether a judge actually is biased, proving what ultimately drives the electorate to choose a particular candidate is a difficult endeavor, not likely to lend itself to a certain conclusion. See: *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 885 (2009).

Whether the Pritzker campaign contributions were lawful or not is immaterial to the appearance of political influence. Judicial candidates must be free and **appear to be free** from political influence and political pressure. ILLINOIS CODE OF JUDICIAL CONDUCT, Canon 4, Rule 4.1, *comment 1. (emphasis added)*. While one could disregard the stringing of contributions by separate Pritzker controlled/influenced entities to identify the real interest seeking to influence the independence of the judicial candidate (as it is obvious to anyone possessed with common sense) to argue an unlawful contribution, each contribution amount failed to pass any test for reasonableness or, more importantly, the appearance of reasonableness. Considering the ways campaign money may be “softened,” it is fair to infer that Pritzker well wanted it known that he was the preeminent cash contributor to their election success. To reiterate, the money at issue comes from those in control of the other branches of government against which the judiciary checks abuse and balances power for the protection of the citizenry.

In this circumstance, the impact of the political influence is far more corrosive to the appearance of an independent judiciary than large contributions from one private contributor. If one private contributor gave one million dollars to a campaign and had one case come before the Court, would there be any hesitation to recuse? Here, the source for the money yields the perception that the judiciary is a “rubber stamp” for the executive and/or legislative branch. If this Court approves the apparent influence from the campaign contributions at issue, then that approval is an unmitigated invitation for the same political influence in future election cycles that will erode public confidence in the independence of the judiciary.

5. In the instant case, there is more than the temptation to not hold the balance nice, clear and true. See: *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 885 (2009). Here, it is reported that the Justices (as candidates) pledged to perform judicial duties to ban assault weapons which is an “actual” indication or, at least, the appearance to the public, that impartiality on the instant issues of this appeal will not result. (See: Part I Facts: Paragraph 3, above). Under the appearances arising from the instant record, public confidence in the impartiality or independence of the judiciary will be diminished by participation of the Justices in the consideration of the instant appeal. The participation of the Justices in the consideration of this appeal risks invalidating any action by the Court even if the majority of the remaining justices concur in the determination of the appeal. *Williams v. Pennsylvania*, 579 U.S. 1, 15 (2016). “A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are

necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless.” *Williams v. Pennsylvania*, 579 U.S. 1, 15-16 (2016).

6. Public perception is Illinois government reeks of corruption. The litany of convictions and indictments of Illinois public officials, both political parties, proffers convincing evidence to support this pervasive public opinion. The ILLINOIS CODE OF JUDICIAL CONDUCT commands judges to rise above the appearance of corruption and to transcend that which the Executive and Legislative branches tolerate in their pursuit of political power. “The role of judge is different from that of a legislator or executive branch official even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices.” ILLINOIS CODE OF JUDICIAL CONDUCT, Canon 4, Rule 4.1, *comment* 11. The Justices (then candidates), by allowing their campaign committees to accept the unreasonable campaign contributions and pledging a position on the issues now presented in this appeal, erode public confidence in their independence to consider this case. This Motion presents the occasion for the Court to take measure of the public perception of Illinois government and to assure that the judiciary preserves its integrity. Throughout the State, state’s attorneys and sheriffs have pledged to nullify the law at issue in this appeal pursuant to their respective oaths to honor the Constitution. It is fair commentary to perceive a state of crisis in public confidence in state government. Appearances are critical to legitimacy. The subject matter of this case intensifies the command for judicial integrity beyond all question.

The undersigned counsel recognize a duty to preserve the integrity of the Court and understand that canons of judicial conduct are not a sword to wield to gain advantage in a

civil proceeding. The relief sought seeks to serve the former. When the undersigned counsel, with their clients, find themselves in the well of this Court to argue the issues of this appeal, they will look to the table of the opposing counsel and see the leading cash donors, approximately \$2,681,000.00 of campaign contributions to the Justices, present or represented and look up to the dais to see Justices pledged to support the agenda at issue. Thus, this Motion seeks to shield Plaintiffs from a denial of due process.

#### **IV. RELIEF REQUESTED**

For one or more of the reasons stated herein, Plaintiffs respectfully request that each Justice (Rochford and O'Brien) recuse herself on her own inquiry or, alternatively, that the Court disqualify the Justices from any involvement in the consideration of issues presented in this appeal.

Dan Caulkins, Perry Lewin, Decatur Jewelry &  
Antiques, Inc and Law-Abiding Gun Owners  
of Macon County, a voluntary unincorporated  
Association,

Plaintiffs/Appellees

FEATHERSTUN, GAUMER, STOCKS,  
FLYNN & ECK, LLP, their Attorneys,

By: /s/ Jerrold H. Stocks

/s/ Brian D. Eck

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### **Verification by Certification of Counsel**

The factual support for the relief requested does not appear of record. Accordingly, pursuant to Illinois Supreme Court Rule 361(a) and under penalties of law under Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

March 28, 2023

/s/ Jerrold H. Stocks

No. 129453

IN THE  
 SUPREME COURT OF ILLINOIS

DAN CAULKINS; PERRY LEWIN;	)	On Direct Appeal from the Circuit
DECATUR JEWELRY & ANTIQUES	)	Court of the Sixth Judicial Circuit,
INC.; and LAW-ABIDING GUN	)	Macon County, Illinois
OWNERS OF MACON COUNTY, a	)	
Voluntary unincorporated association,	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	No. 2023-CH-3
	)	
Governor JAY ROBERT PRITZKER,	)	
In his official capacity; KWAME RAOUL	)	
In his capacity as Attorney General;	)	
EMANUEL CHRISTOPHER WELCH, in	)	
in his capacity as Speaker of the House; and	)	
DONALD F. HARMON, in his capacity as	)	
Senate President,	)	The Honorable
	)	RODNEY S. FORBES,
Defendants - Appellants.	)	Judge Presiding.

**PROOF OF FILING (SERVICE) MOTION FOR RECUSAL/  
 DISQUALIFICATION**

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**Jerrold H. Stocks**

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 & Antiques Inc., and Law-Abiding  
 Gun Owners of Macon County,  
 a voluntary unincorporated  
 association



PROOF OF SERVICE ON MOTION FOR RECUSAL/DISQUALIFICATION

I certify that on the 29th day of March 2023, I electronically filed the foregoing **Motion for Recusal/Disqualification** with the Clerk of the Supreme Court of Illinois by using the Qdyssey eFileIL system. I further certify that the other participants in this appeal, named below, are registered service contacts on the Qdyssey eFileIL system, and thus will be served via the Qdyssey eFileIL system.

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Under the penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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