No. 16-2327

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REBECCA HILL, RANETTE KESTELOOT, CARRIE LONG, JANE McNAMES, GAILEEN ROBERTS, SHERRY SCHUMACHER, DEBORAH TEIXEIRA, and JILL ANN WISE,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Plaintiffs-Appellants,	)	
v.	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS; MICHAEL HOFFMAN, in his official capacity as Director of Illinois Department of Central Management Services; and JAMES DIMAS, in his official capacity as Secretary of Illinois Department of Human Services,	)	No. 15-cv-10175
	)	The Honorable MANISH S. SHAH, Judge Presiding.
Defendants-Appellees.	)	

BRIEF OF STATE DEFENDANTS-APPELLEES MICHAEL HOFFMAN AND JAMES DIMAS

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JURISDICTIONAL STATEMENT

The jurisdictional statement of Plaintiffs-Appellants, Rebecca Hill, Ranette Kesteloot, Carrie Long, Jane McNames, Gaileen Roberts, Sherry Schumacher, Deborah Teixeira, and Jill Ann Wise, is not complete and correct. State Defendants ("State Defendants"), Michael Hoffman and James Dimas,[1] submit this jurisdictional statement as required by Circuit Rule 28(b).

Plaintiffs filed an amended complaint under 42 U.S.C. § 1983, against State Defendants and the Service Employees International Union, Healthcare Illinois, Indiana, Missouri, Kansas ("Union"), alleging violations of their rights under the First and Fourteenth Amendments to the United States Constitution and challenging the constitutionality, both facially and as applied to them, of various Illinois statutory provisions. R89-105 (A8-24). Because plaintiffs' section 1983 claims were brought pursuant to federal statutory law, the district court had federal question jurisdiction over those claims under 28 U.S.C. § 1331.

On May 12, 2016, the district court entered an order dismissing plaintiffs' claims. R243-49 (A77-83). That same day, the court entered judgment under Federal Rule of Civil Procedure 58. R250 (A84). No motions to alter or amend the judgment were filed. On June 1, 2016, plaintiffs filed a notice of appeal (R251-53 (A85-87)) that was timely under Federal Rule of Appellate Procedure 4(a)(1)(A). This Court thus has jurisdiction over this appeal under 28 U.S.C. § 1291.

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[1] Hoffman is the Acting Director of the Illinois Department of Central Management Services and Dimas is the Secretary of the Illinois Department of Human Services. R244 (A78).

ISSUE PRESENTED FOR REVIEW

Whether the statutory provisions qualifying plaintiffs as public employees for purposes of collective bargaining infringe on plaintiffs' First Amendment freedom to associate, or not to associate, with the Union.

STATEMENT OF THE CASE

State Defendants submit this brief statement of the case as a supplement to the one provided by the Union in its response brief. *See* Union Br. 1-10. State Defendants adopt the Union's statement of the case as to all matters not covered in this statement.

Statutory and Regulatory Background

The Illinois Department of Human Services administers the Home Services Program, which prevents the unnecessary institutionalization of people in need of long term care, in part through the provision of home-care services by a "personal assistant" to a "customer" pursuant to an individualized "service plan." 20 ILCS 2405/3(f) (2014); 89 Ill. Admin. Code §§ 676.10(a), 676.30, 676.40(a), 684.10, 684.50, 686.20. While the State pays the personal assistants, sets the requirements to qualify as a personal assistant, and helps customers use the program's services, *see* 20 ILCS 2405/3(f) (2014); 89 Ill. Admin. Code §§ 677.40(d), 684.10(a), 684.20, 686.10, 686.30, the customer is in charge of all other aspects of his or her relationship with the personal assistant, *see* 20 ILCS 2405/3(f) (2014); 89 Ill. Admin. Code §§ 676.10(c), 676.30(b)(3), 677.40(d), 677.200(g), 684.20(b). Plaintiffs Hill, McNames, Roberts, Teixeira, and Wise are all personal assistants who provide services under the Home Services Program. C92 (A11).

The Department of Human Services also administers the Child Care Assistance Program, which provides child care services to low-income families. 305 ILCS 5/9A-11 (2014). Under that program, the State pays for child care services by

qualified providers to eligible recipients. 305 ILCS 5/9A-11(c) (2014); 89 Ill. Admin. Code § 50 Subpart D. Plaintiffs Kesteloot, Long, and Schumacher are qualified child care providers who participate in the Child Care Assistance Program. C94 (A13).

The Illinois Public Labor Relations Act authorizes certain public employees to join a union and collectively bargain with their employer through a representative of their own choosing as to wages, hours, and other terms and conditions of employment, while also protecting an employee's "right to refrain from participating in any such concerted activities." 5 ILCS 315/6(a) (2014). Personal assistants who provide services under the Home Services Program and child care providers who participate in the Child Care Assistance Program qualify as "public employees" of the State under the Act. 5 ILCS 315/3(n-o) (2014); 20 ILCS 2405/3(f) (2014); 305 ILCS 5/9A-11(c-5) (2014). The State must therefore engage in collective bargaining with the exclusive representatives chosen by personal assistants and child care providers as to those terms and conditions of their employment that are within the State's control. *Id.*

Factual and Procedural Background

The Union was designated as the exclusive representative of the bargaining units comprised of personal assistants and child care providers. R96-97 (A15-16); *see* 5 ILCS 315/6(c) (2014). The Union then negotiated and entered into collective bargaining agreements with the State, through the Departments of Human Services and Central Management Services. R98 (A17), R19-70 (A25-76), R178-81. The collective bargaining agreements covered a number of issues, including the pay rates

for personal assistants and child care providers, the State's contributions to a health insurance fund administered by the Union, health and safety, training, payroll/withholding procedures, and grievance procedures. R19-70 (A25-76), R178-81.

Plaintiffs filed an amended complaint under section 1983, alleging that the statutory provisions qualifying them as public employees for purposes of collective bargaining forced them to "associate" with the Union in violation of the First and Fourteenth Amendments. R89-105 (A8-24). All defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). R140-62, R166-77.

The district court granted defendants' motions, dismissed plaintiffs' claims with prejudice, and entered judgment in favor of all defendants. R243-50 (A77-84). The court concluded that exclusive representation, in and of itself, did not impair plaintiffs' associational rights in light of the Supreme Court's decision to that effect in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). R247 (A81). The court also explained that *Knight*'s holding was not undermined by the subsequent decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), because *Harris* considered only the issue of compulsory fees, and that those two decisions "stand together for the proposition that the First Amendment prohibits some compulsory fees but does not prohibit exclusive representation." R247-48 (A81-82).

SUMMARY OF ARGUMENT

This Court should affirm the district court's dismissal of plaintiffs' claims because their complaint did not state a facially plausible claim of a violation of their First Amendment right not to associate with the Union. As the district court held, plaintiffs' claims fail at the first step of the analysis because the statutory framework they are challenging does not impair their freedom to associate, or not to associate, for expressive purposes with whomever they choose.

In *Minnesota Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), the Supreme Court held that a system of exclusive representation nearly identical to the one at issue here did not, by itself, infringe on the associational freedom of any members of the bargaining unit because those individuals were not required to join or support the exclusive representative and remained free to form whatever advocacy groups they liked. Unable to distinguish *Knight*, plaintiffs rely instead on *Harris v. Quinn*, 134 S. Ct. 2618 (2014). But plaintiffs' reliance is misplaced because *Harris* addressed the separate issue of whether the burden imposed by a requirement that non-union members support the union by paying "fair share fees" was justified by a sufficient state interest. And dismissal was warranted even independent of *Knight* because plaintiffs have not alleged that they have been compelled to support or subsidize the Union's speech or that the content of their own speech has been affected by the Union's collective bargaining activities.

ARGUMENT

I. Plaintiffs Must Allege A Facially Plausible Claim To Survive A Rule 12(b)(6) Motion To Dismiss.

The district court may grant a Rule 12(b)(6) motion to dismiss if the plaintiff's complaint "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To state a claim on which relief can be granted, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This Court reviews the dismissal of a claim under Rule 12(b)(6) *de novo*, construing all well-pleaded facts and all reasonable inferences therefrom in the light most favorable to the plaintiff. *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 829 (7th Cir. 2015).

II. The Statutory Provisions Qualifying Plaintiffs As Public Employees For Purposes Of Collective Bargaining Do Not Infringe On Plaintiffs' Freedom To Associate, Or Not To Associate, With Whomever They Please.

The Constitution guarantees individuals the freedom to associate with others to collectively exercise their First Amendment right to free speech. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984); *see Christian Legal Soc'y Chapter of the Univ. of Calif., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 680 (2010) ("speech and expressive-association rights are closely linked"). Because the freedom of expressive association necessarily includes a freedom not to associate, *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000), the government infringes on expressive association when it compels a person to subsidize the speech of another, *see Knox v. Serv. Emps. Int'l Union*, 132 S. Ct. 2277, 2288-89 (2012), or forces a speaker to host or accommodate

another speaker's message such that "the complaining speaker's own message was affected by the speech it was forced to accommodate," *see Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). *See also Kingstad v. State Bar of Wis.*, 622 F.3d 708, 712-13 (7th Cir. 2010) (freedom of association "includes the freedom to remain silent or to avoid subsidizing group speech with which a person disagrees"). Laws that impose burdens on expressive association must be justified by a sufficient state interest. *Clingman v. Beaver*, 544 U.S. 581, 586-87 (2005).

Plaintiffs have not stated a facially plausible claim of a violation of their right to expressive association because they have not alleged that they have been compelled to support or subsidize the Union's speech or that the content of their own speech has been affected by the Union's collective bargaining activities. Indeed, in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), the Supreme Court held that exclusive representation does not, by itself, impair the associational freedom of any bargaining unit members. In addition, the First and Second Circuits have rejected First Amendment challenges to other exclusive representation laws based on the holding in *Knight*. *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016); *Jarvis v. Cuomo*, 2016 WL 421029 (2d Cir. Sept. 12, 2016).[2] This Court should thus affirm the dismissal of plaintiffs' claims.

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[2] Although the *Jarvis* decision does not have any precedential effect because it is a ruling by summary order, it may still be cited pursuant to Federal Rule of Appellate Procedure 32.1.

A. The Supreme Court held in *Knight* that a system of exclusive representation, like the one plaintiffs challenge here, does not infringe on a bargaining unit member's associational freedom.

In *Knight*, a group of community college faculty instructors challenged the constitutionality of a law that established a procedure whereby bargaining units of public employees could choose an exclusive representative. 465 U.S. at 273-78. The statute granted employees the rights to "meet and negotiate" with their employers over the terms and conditions of employment and to "meet and confer" on other employment-related matters through their exclusive representatives. *Id.* at 274-75. While the law did not restrict an employee's ability to speak out on such matters and the college recognized "that not every instructor agrees with the official faculty view on every policy question," the college considered the views expressed by the exclusive representative during the "meet and confer" proceedings to be the faculty's "official collective position." *Id.* at 275-76. The Court held that the "meet and confer" provisions did not deprive the plaintiffs, who were not members of the exclusive representative, of any First Amendment rights. *Id.* at 280.

The Court in *Knight* reasoned that a state "must be free to consult or not to consult whomever it pleases" when making policy decisions, *id.* at 285, and that the plaintiffs' right to free speech did not include a right "to force the government to listen to their views," *id.* at 283. The Court explained that "[n]othing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues," pointing out that "[d]isagreement

with public policy and disapproval of officials' responsiveness *** is to be registered principally at the polls." *Id.* at 285 (citing *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915)).

The Court concluded that the "meet and confer" process did not infringe on the plaintiffs' freedom to speak and associate because "[t]he state has in no way restrained [plaintiffs'] freedom to speak on any education-related issue or their freedom to associate or not to associate with whomever they please, including the exclusive representative." *Knight*, 465 U.S. at 289-90. The Court reasoned that the plaintiffs' associational freedom had not been impaired because they were free to form whatever advocacy groups they liked and were not required to become members of the exclusive representative or support its representation activities. *Id.* at 289. While the Court recognized that some employees might feel pressure to join the exclusive representative to gain a voice in its adoption of positions on particular issues, such pressure was inherent in any majoritarian system of government and "[did] not create an unconstitutional inhibition on associational freedom." *Id.* at 289-90.

The statutory provisions plaintiffs challenge in this case are identical to those at issue in *Knight* for constitutional purposes. In both cases, the state has chosen to listen to the exclusive representative of a bargaining unit of public employees as to certain matters related to the unit members' terms and conditions of employment. *See* 20 ILCS 2405/3(f) (2014); 305 ILCS 5/9A-11(c-5) (2014); *Knight*, 465 U.S. at 274-75. And here, as in *Knight*, plaintiffs are not required to join or support the Union

and do not face any restrictions on their ability to speak or form associations with whomever they please. *See* 5 ILCS 315/6(a) (2014) (protecting "right to refrain from participating in any such concerted activities"); *Knight*, 465 U.S. at 275. Thus, *Knight*'s conclusion that the exclusive representation law at issue in that case "in no way restrained" the plaintiffs' "freedom to associate or not to associate with whom they please," *id.* at 288, disposes of plaintiffs' challenge here.

In fact, the First and Second Circuits already have applied *Knight* to reject freedom of association challenges to substantially similar laws. In *D'Agostino*, the First Circuit upheld the constitutionality of a law providing for the exclusive representation of family child-care providers while pointing out that the non-union plaintiffs in that case, like those in *Knight*, "could speak out publicly on any subject and were free to associate themselves together outside the union however they might desire." 812 F.3d at 243. And in *Jarvis*, the Second Circuit summarily affirmed the dismissal of a First Amendment challenge to a law "allowing home child-care providers within a state-designated bargaining unit to elect an exclusive representative to bargain collectively with the state," pointing out that "[a]s in *Knight*, plaintiffs were not here required to become members of the union—and, in fact, were not members of [the union]." 2016 WL 421029 at *1.

Despite the clear applicability of *Knight*, plaintiffs attempt to circumvent that decision in three ways. First, they argue that *Knight* does not apply here because the Court addressed a different constitutional question in that case. AT Br. 22-27. They then claim that the First Circuit's application of *Knight* in *D'Agostino* was wrong and

that the Eleventh Circuit's decision in *Mulhall v. UNITE HERE Local 355*, 618 F.3d 1279 (11th Cir. 2010), is more persuasive. AT Br. 27-28. Lastly, they maintain that the challenged statutes are unconstitutional under the Supreme Court's subsequent decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014). AT Br. 32-39. None of plaintiffs' attempts to evade the holding of *Knight* succeed.

In *Knight*, the Court directly addressed the question of whether the challenged law impaired the plaintiffs' First Amendment right "both to speak and to associate," and held that the state "in no way restrained" the plaintiffs' "freedom to associate *or not to associate* with whom they please, *including the exclusive representative*." 465 U.S. at 288 (emphases added). Indeed, the Court devoted an entire section of its opinion to that question. *Id.* at 288-90. The Court explained that the plaintiffs' associational freedom "has not been impaired," pointing out that the state had neither interfered with the plaintiffs' ability to speak nor required them to join the exclusive representative. *Id.* And the Court reached this conclusion in spite of the fact that the public employer in *Knight* considered the views expressed by the exclusive representative "to be the faculty's official collective position." *Id.* at 276. Plaintiffs' attempt to sidestep *Knight* by asserting they were forced to associate with the Union, rather than excluded from negotiations (AT Br. 24), presents a distinction without a difference: *Knight* considered, and rejected, the very challenge they now bring.

In addition, plaintiffs' reliance on *Mulhall* is misplaced because, as the Union explains, that decision addressed only whether the plaintiff had an associational

interest sufficient to support standing under section 302 of the Labor Management Relations Act, 29 U.S.C. § 186, and expressly declined to reach the merits of his First Amendment claim. *Mulhall*, 618 F.3d at 1286; Union Br. 31-33. Moreover, *Mulhall* does not help plaintiffs' attempt to distinguish *Knight* because that court never even mentioned *Knight* in its decision. And to the extent plaintiffs claim that "*D'Agostino* got it wrong," they fail to raise any issue with the portions of that court's decision interpreting *Knight*. AT Br. 28.

Finally, plaintiffs' contention that the challenged statutes are unconstitutional under *Harris* is fundamentally flawed because it assumes an infringement of their associational freedoms when *Knight* dictates that no such impairment has occurred. In *Harris*, the Court considered a law that required non-union members to support a union by paying "fair share fees," concluding that the burdens imposed by the payments were not justified by a sufficient state interest. 134 S. Ct. at 2634-41. By contrast, the statutory provisions challenged here do not place any burden on plaintiffs' freedom of expressive association because there is no dispute that plaintiffs are not required to join or support the Union. Thus, as the district court held, "*Harris* and *Knight* stand together for the proposition that the First Amendment prohibits some compulsory fees but does not prohibit exclusive representation." R248 (A82); *see also D'Agostino*, 812 F.3d at 244 ("What *Harris* did not speak to, however, was the premise assumed and extended in *Knight*: that exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the

bargaining unit."); *Jarvis*, 2016 WL 421029 at *1 (*Harris* "did not consider the constitutionality of a union serving as the exclusive representative of [non-full-fledged state employees] in bargaining with the State") (internal quotations omitted).

In sum, the district court correctly dismissed plaintiffs' claims because the Supreme Court held in *Knight* that exclusive representation, by itself, does not impair the associational freedoms of non-union bargaining unit members. Although plaintiffs try to distinguish *Knight*, they cannot do so because the Court directly addressed the issue of whether exclusive representation impairs the freedom of unit members "to associate *or not to associate* with whom they please, *including the exclusive representative*." *Knight*, 465 U.S. at 288 (emphases added). In addition, plaintiffs' reliance on *Mulhall*, which solely involved standing to sue, and *Harris*, which addressed a different issue based on fundamentally different facts, is equally unavailing. Accordingly, this Court should affirm the dismissal of plaintiffs' claims.

B. Dismissal was warranted even independent of *Knight* because plaintiffs' claims are precluded by other precedents concerning freedom of expressive association.

An individual's First Amendment freedom not to associate is infringed when that person is compelled to subsidize the speech of another, *see Knox*, 132 S. Ct. at 2289, or when a speaker is forced to host or accommodate another speaker's message such that "the complaining speaker's own message was affected by the speech it was forced to accommodate," *see Rumsfeld*, 547 U.S. at 63. Plaintiffs cannot plausibly claim that they have been compelled to subsidize the Union's speech as there is no dispute that they were not required to pay any fees to the Union or support the

Union. Thus, as the Union points out, plaintiffs' freedom of association theory is based on their claim that the Union's positions will be personally attributed to them. Union Br. 14; *see, e.g.*, AT Br. 18 (asserting Union's actions are "imputed" to plaintiffs). But plaintiffs' theory lacks merit because it is based on an untenable claim that they are engaged in a principal-agent relationship with the Union and entirely fails to address how the Union's speech affects their own ability to speak.

In making their argument, plaintiffs repeatedly compare their relationships with the Union to that of a principal and its agent. *See, e.g.*, AT Br. 15 ("An exclusive representative's agency authority to speak and contract for unconsenting individuals necessarily impinges on those individuals' associational rights."). But at the same time, they acknowledge that no individual bargaining unit member has the authority to control the Union's actions. AT Br. 14. Their proposed principal-agent analogy thus falls apart because the principal's ability to control the agent's actions is a fundamental component of the principal-agent relationship. *See Meyer v. Holley*, 537 U.S. 280, 286 (2003) (citing Restatement (Second) of Agency § 1(a) (1958)); *Chemtool, Inc. v. Lubrication Techs., Inc.*, 148 F.3d 742, 745 (7th Cir. 1998) (first part of agency test is "whether the alleged principal has the right to control the manner and method in which work is carried out by the alleged agent"). Indeed, in *D'Agostino*, the First Circuit rejected a similar attempt to characterize the union's role as a "fiduciary" for largely the same reasons. 812 F.3d at 244. Thus, for the reasons given here and in the Union's brief (Union Br. 27-28), plaintiffs' attempt to characterize their connections to the Union as a principal-agent relationship must fail.

Lastly, plaintiffs' claims find no support in the case law regarding associational infringements that occur when a speaker's own speech is affected by accommodating the speech of another. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 459-60 (2008) (Roberts, J. concurring) (citing *Rumsfeld*, 547 U.S. 47; *Dale*, 530 U.S. 640; and *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston, Inc.*, 515 U.S. 557 (1995)); *Rumsfeld*, 547 U.S. at 63-64 (citing *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1 (1986); and *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974)). Unlike that line of cases, in which a party was required to do something to accommodate another's speech while engaged in an expressive activity, *see, e.g.*, *Hurley*, 515 U.S. at 575 (parade organizer required to admit group into parade), here plaintiffs were not required to do anything to accommodate the Union's speech, much less alter their own speech. Just as "a law school's decision to allow recruiters on campus is not inherently expressive," *Rumsfeld*, 547 U.S. at 64, neither is a person's decision to work as a personal assistant or child care provider pursuant to a collective bargaining agreement negotiated by a union. And to the extent plaintiffs have any concern that someone will attribute the Union's speech to them, they are free to dissociate themselves from the Union by engaging in whatever communicative or associational activities they choose. *See PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 88 (1980) ("Appellants are not similarly being compelled to affirm their belief in any governmentally proscribed position or view, and they are free to publicly dissociate themselves from the views of the speakers or handbillers."). Plaintiffs thus have not alleged a facially

plausible claim of an infringement of their freedom to associate because they have not been compelled to subsidize the Union's speech or to accommodate the Union's speech in a way that affected their own ability to speak.

III. Plaintiffs Have Not Asserted That The Challenged Statutes Lack A Rational Basis.

The district court correctly determined that "absent any infringement, there is no need to balance the justifications for the regime in this case against the plaintiffs' interests in distancing themselves from the union." R247 (A81). Because plaintiffs have not argued that the challenged statutory framework would not satisfy rational basis review, this Court, like the district court, need not engage in any such analysis to affirm the dismissal of plaintiffs' claims. *See Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 224 (7th Cir. 2015).

CONCLUSION

For the foregoing reasons, this Court should affirm the dismissal of plaintiffs' claims.

September 23, 2016

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(A) because the brief, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), is no more than 30 pages from the Jurisdictional Statement through the Conclusion.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point Century Schoolbook BT.

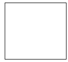
/s/ Frank H. Bieszczat
Frank H. Bieszczat

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on ___________________, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/__________________________________



CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on ___________________, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
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s/__________________________________