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**20-0547**

**IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

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| MATT CHAPMAN, | ) | Appeal from the Circuit Court of |
| | ) | Cook County, Chancery Division |
| Plaintiff-Appellee, | ) | |
| | ) | Circuit Court No. 18 CH 14043 |
| -vs- | ) | Hon. Sanjay T. Tailor |
| | ) | |
| CHICAGO DEPARTMENT OF FINANCE, | ) | |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

**APPELLEE'S BRIEF**

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## I. NATURE OF THE CASE

This is a Freedom of Information Act case seeking the release of the column headings and names of spreadsheets that make up Defendant City of Chicago Department of Finance's parking and traffic citations database. CDF denied Plaintiff Matt Chapman's FOIA request for this information under FOIA Section 7(1)(o). After hearing and weighing live witness testimony on both sides, the circuit court ruled that CDF failed to meet its burden of proving that the records are exempt from disclosure. CDF appeals the circuit court's trial ruling. No questions are raised on the pleadings.

## II. ISSUES PRESENTED

1. Whether the circuit court's ruling at trial that CDF failed to prove by clear and convincing evidence that release of column heading and spreadsheet names would jeopardize the security of CDF's database was against the manifest weight of the evidence where the circuit court heard and relied on detailed expert witness testimony unequivocally stating that it would not.

2. Whether, despite FOIA's narrow construction rule and other canons of statutory construction, a public body need only show that a record is a "file layout" to be subject to Section 7(1)(o) without proving that its release would jeopardize the security of a computer system, and if so, whether CDF adequately preserved this claim by failing to raise it until the eve of trial and whether CDF has proven that column headings and spreadsheet names qualify as a "file layout" given the evidence at trial that they are not.

3. Whether column headings and spreadsheet names can be withheld where FOIA Section 5 expressly requires such information to be disclosed.

## III. STATEMENT OF THE FACTS

On August 30, 2018, Chapman submitted a FOIA request to CDF seeking "[a]n index of the table and columns within each table of CANVAS," along with the "column data type." C 13. Chapman referred to this information as the "database schema." C 13-15. The CANVAS system referenced in Chapman's requests is CDF's Citation Administration and Adjudication System ("CANVAS"), which tracks parking and traffic citations within Chicago. C 42.

On September 12, 2018, CDF denied the request under section 7(1)(o), claiming that "dissemination of these pieces of network information could jeopardize the security of the systems of the City of Chicago." C 17. Chapman then filed suit. C 8-12. CDF filed an answer but asserted no affirmative defenses. C 23-29. The parties then briefed summary judgment, and the circuit court found that CDF's supporting affidavit was conclusory but that one of the statements in the expert affidavit submitted by Chapman was unclear and left open an issue of fact for trial on the extent to which release of the schema could be used to attack and jeopardize the CANVAS system. C 31-36, 41-48, 51-59, 62-68; R 12-13. That trial was held on January 9, 2020. R 15-197.

During the pre-trial disclosure process, CDF argued for the very first time in the case that it was not required to prove that release of the schema would jeopardize security, but only that it qualified as a "file layout" or "source listing." R 25-26. Chapman objected to this new argument as untimely. R 27-28, 31-32, 35. The circuit court heard argument and rejected CDF's argument, holding that the phrase "if disclosed, would jeopardize the security of the system" qualifies everything that precedes it, including "file layouts" and "source listings." R 34. The circuit court also noted that

because the "issue has not been framed by any of the pleadings[,] . . . it would be unfair to raise it here on the first day of trial." R 35.

CDF then called Bruce Coffing, a City of Chicago IT employee, as its only witness. R 57. Mr. Coffing stated that the CANVAS is the computer system CDF "uses to store and process and track citation information around parking tickets, speed-light camera tickets, stoplight traffic tickets, [and] booting and towing tickets," R 59, and that the "CANVAS is a competently built system" that "is built on best practices in the industry." R 80. To attempt to support CDF's exemption claim, Mr. Coffing claimed that an adversary without the information at issue would be more "noisy" during an attack, R 62, but he also acknowledged that the general public already knowns what type of information is stored in the CANVAS, R 90-91, and that other public bodies release their database schema. R 100. He also conceded that there are no known vulnerabilities in the CANVAS. R 70-73, 76. Finally, to support the new argument CDF raised for the first time at trial, Mr. Coffing defined a file layout as "the instructions that the database management system uses to create the database that the data is then stored in," R 67-68, and a source listing, or "source code," as the "instructions on how to . . . setup the database, the tables, the columns within each of those tables and the data types that those columns represent," R 68. CDF offered no other evidence.

Chapman then offered testimony from his expert witness, Thomas Ptacek. R 110. Mr. Ptacek has worked in the field of information and software security for over 25 years and has five patents. R 111, 113. He is a principal of Latacora, an information security company, where Mr. Ptacek "look[s] for vulnerabilities in systems" and helps his client companies "remediate vulnerabilities" that he finds. R 110-13. He "hack[s] systems for

a living." R 111. Mr. Ptacek's clients include a variety of companies from start-ups to large technology companies like Microsoft, including "large financial organizations, banks, insurance companies, [and] electric grid operators[.]" R 112.

Mr. Ptacek explained that as "a professional based on [his] 25 years of experience doing precisely this kind of work, [he] could not think of a thing [he] would do with [the schema information at issue] that would allow [him] to in any way more effectively attack or compromise the system or do so more precisely or quietly." R 118. He testified unequivocally there is no value to an adversary in having the schema prior to attacking the system. R 118-19, 136. He stated that he "cannot think of a way which publicly disclosing the schema would jeopardize the security of that system," R 120, and that "[i]n no case could the attacker use the schema to breach the system." R 133.

He also squarely disputed CDF's central claim, testifying that having the schema "would not make it easier" for an adversary to go undetected because "there is already a huge amount of noise" in database systems, and "the schema doesn't change the amount of noise" that an adversary generates. R 135. Nor would it make an attack more effective. R 148-49. In sum, he testified that the schema is "the product of an attack and not the predicate," R 135-36, 151, and that knowledge of that information would not make it any easier for an adversary to carry out an attack, even "in conjunction with [the] other information" that was made public about the CANVAS system. R 131-33.

In response to CDF's claim that the schema discloses information about the database that might attract adversaries, Mr. Ptacek explained that such information is already visible to would-be adversaries through the HTML source code available through the web browser by visiting the website. R 138-39. He further explained that would-be

adversaries would rely on that information, not the schema, to identify preferred targets. R 138-39.

Finally, Mr. Ptacek testified that "absolute secrecy of the schema" is not how the industry protects databases. R 140. He specifically noted that there are private companies and government agencies that release their schema to the public, including his clients. R 112, 143-45. Mr. Ptacek testified that there are schemas that are "readily" available for downloading on data.gov, but that if he were to download those schemas he would not be able to break into their corresponding systems. R 144-45.

In addition to his testimony about security, Mr. Ptacek addressed CDF's claim that that a schema is a "file layout" or a "source listing," which CDF belatedly argued is all that it needed to show. R 145. He testified clearly that a schema is neither a file layout nor a source listing. R 145. Nor is it considered "a blueprint of the database" because "there is a lot more information that would go into the configuration of the database." R 126. Rather, "schema" is "a term of art that we use to describe all of the fields and the databases that sit behind these applications." R 122-23. Mr. Ptacek compared the schema to "a collection of spread sheets," including the names of the spreadsheets and the column headings in each one. R 123.

At the close of evidence, after weighing the testimony and credibility of these witnesses, the circuit court issued a ruling. R 193-96. It found that CDF "has not met its burden of proof" on whether disclosure of the database schema "would jeopardize the security of the CANVAS system." R 193. The court explained that, while Mr. Coffing vaguely testified that knowledge of the schema could allow an adversary to "more precisely plan and execute an attack without making noise," R 193, he did not "go into it

more beyond that, as far as explaining how that would work, at least not in a way that [the court] found persuasive," R 194. The circuit court was instead persuaded by Mr. Ptacek's testimony that "knowledge of the schema would not in any way provide a threat actor [with an] advantage in attacking a system like CANVAS," R 194, and that "the schema is the product of the attack and not the predicate of the attack," R 195. The court further found that knowledge of the schema "does not make it easier" to attack the system, R 195; that knowledge of the schema "in no way makes the system more vulnerable" to any attacks, R 196; and that the schema cannot be used "in combination with" other publicly available information to assist an adversary, R 196. Finally, the court found, based on the expert testimony, that whether the schema may help guide an adversary "on which system he might want to pursue" "is really of no moment" because the CANVAS "by definition" contains "the kind of information that would attract a threat actor." R 195-96. Because CDF "failed to meet its burden on its defense under Section 7(1)(o) of FOIA," the circuit court entered judgment for Chapman and against CDF and ordered CDF to produce the records. R 196; C 79.

## IV. LEGAL STANDARDS

The General Assembly has made clear that the purpose of FOIA is to facilitate transparency and allow the public to participate meaningfully in decisions that affect them. "Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act." 5 ILCS 140/1. The General Assembly

specifically acknowledged that "[s]uch access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." *Id*. As a result, "[t]he General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." *Id*.

When determining whether information may be kept from the public, courts must interpret the FOIA statute in light of these transparency objectives. "Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people." *Id*. Therefore, FOIA provisions "shall be construed in accordance with this principle." *Id*.

Accordingly, this requires courts to apply a narrow construction in favor of disclosure. *Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396, 406, 410-11 (2009); *Kalven v. City of Chicago*, 2014 IL App (lst) 121846, ¶ 19. "Based upon the legislature's clear expression of public policy and intent set forth in section 1 of the FOIA that the purpose of that Act is to provide the public with easy access to government information, this court has held that the FOIA is to be accorded 'liberal construction to achieve this goal.' Accordingly, we have, on several occasions held that the exceptions to disclosure set forth in the FOIA are to be read narrowly so as

not to defeat the FOIA's intended purpose." *S. Illinoisan v. Illinois Dep't of Pub. Health,* 218 Ill. 2d 390, 416 (2006).

As explained in a case ordering the disclosure of federal grand jury subpoenas issued to former governor Blagojevich by federal prosecutors:

> We are not surprised that governmental entities, including the United States Attorney generally prefer not to reveal their activities to the public. If this were not a truism, no FOIA would be needed. Our legislature enacted the FOIA in recognition that (1) blanket government secrecy does not serve the public interest and (2) transparency should be the norm, except in rare, specified circumstances. The legislature has concluded that the sunshine of public scrutiny is the best antidote to public corruption, and Illinois courts are duty-bound to enforce that policy.

*Better Gov't Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 818 (2008).

## V. ARGUMENT[1]

At the conclusion of trial, the circuit court found that CDF failed to prove that disclosing the CANVAS system's column headings and spreadsheet names (also known as the "schema") would jeopardize the security of the system. R 119-20, 193-96. In doing so, the circuit court weighed conflicting witness testimony and evaluated the trial evidence. R 193-96. This is not a question that this Court considers *de novo*. Rather, the circuit court must be affirmed unless its ruling was arbitrary, unreasonable, and not based on the evidence. CDF has not shown anything of the sort that would justify reversing the circuit court on this highly deferential issue.

CDF also raises a litany of new arguments and theories throughout its brief, but these arguments have been forfeited or waived. They also fail on the merits. The General Assembly did not make any item listed in Section 7(1)(o), including "file layout," *per se* exempt, but rather, subjected that list to the exemption's "would

[1] Chapman adopts CDF's jurisdiction and statutory provision involved sections. *See* Appellant's Br. at 2-3.

jeopardize" clause. To the extent there is any ambiguity, which there is not, FOIA's narrow construction rule defeats CDF's claim.

Even if the General Assembly had made file layouts *per se* exempt, however, CDF improperly relies on an admittedly "broad" definition of "file layout," and in any event, the evidence at trial affirmatively showed that a schema is not a file layout. Nor can CDF's argument be reconciled with FOIA Section 5, which affirmatively requires the disclosure of exactly the kind of information Chapman requested.

This Court should affirm the circuit court.

## A. The circuit court's ruling that disclosing the schema would not jeopardize the security of the CANVAS is not against the manifest weight of the evidence and should be affirmed.

This Court should not disturb the circuit court's finding that disclosure of the schema would not jeopardize security of the CANVAS. Circuit courts are afforded great deference under the manifest weight of the evidence standard because the circuit court "is in the best position to observe the conduct and demeanor of the parties and the witnesses." *Tully v. McLean*, 409 Ill. App. 3d 659, 670 (2011). "A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on the evidence, or when the opposite conclusion is clearly evident from the record." *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96 (2010). Under the manifest weight of the evidence standard, "all reasonable presumptions are made in favor of the trial court, the appellant has the burden to affirmatively show the errors alleged, and the judgment will not be reversed unless the findings are clearly and palpably contrary to the manifest weight of the evidence." *Id.* (quoting *In re Estate of Vail*, 309 Ill.App.3d 435, 438 (1999). This Court and the Illinois Supreme Court have previously held that a reviewing court will not substitute its own judgment "for that of the trial court regarding

the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *E.g.*, *id.*; *Best v. Best*, 223 Ill. 2d 342, 350–51 (2006)*; Tully*, 409 Ill. App. 3d at 671.

CDF nonetheless asks this Court to hold that the circuit court should have weighed the evidence differently and seems to suggest that government testimony must always be accepted as true. *See* Appellant's Br. at 42-50. CDF's reliance on *Garlick* for that claim is clearly improper because the case is readily distinguishable: the requester "offered no counter[-]affidavit or other evidence." *Garlick v. Naperville Twp.*, 2017 IL App (2d) 170025, ¶ 49. Here, Chapman offered a counter-affidavit at summary judgment and trial testimony from Mr. Ptacek that squarely contradicted CDF's own witness testimony, and the circuit court is entitled to great deference in its decision of which witness's testimony to credit. C 58-59; R 110. The circuit court accepted Mr. Ptacek's testimony that "knowledge of the schema would not in any way provide a threat actor advantage in attacking a system like CANVAS." R 193, 194. That fact, which the circuit court was well within its discretion to accept, defeats any claim that release of the schema "would jeopardize" the CANVAS database, even under the overbroad interpretation for which CDF advocates on appeal, as discussed below.

Because the circuit court has vast discretion on which witness's testimony should be accepted or rejected, this Court need not go any further to deny CDF's appeal. But if this Court elects to re-weigh the evidence, which it should not, the circuit court's decision to reject the testimony of CDF's witness, Mr. Coffing, is more than adequately justified. As the circuit court explained, Mr. Coffing provided only vague and undeveloped testimony about a would-be hacker being less "noisy" if he had the information Chapman

requested. R 62-63, 193-94. The circuit court rejected his testimony because Mr. Coffing failed to "explain[] how that would work." R 194. Such a ruling can only be disturbed if the circuit court's decision was against the manifest weight of the evidence, and not simply because this Court would disagree in a *de novo* proceeding. *E.g.*, *Wirtz Realty Corp. v. Freund*, 308 Ill. App. 3d 866, 877 (1999); *Flynn v. Cohn*, 154 Ill. 2d 160, 166 (1992) ("a reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the trier of fact").

While this alone is sufficient to affirm the circuit court, Chapman discusses the trial testimony in greater detail below.

**1. The circuit court justifiably relied on Mr. Ptacek's testimony.**

The circuit court reasonably relied on Mr. Ptacek's testimony that disclosure of the schema would not jeopardize the security of the CANVAS. R 118-20. The circuit court heard evidence that the CANVAS's schema is a collection of spreadsheets with the column headings of those spreadsheets, but it does not show the actual data points beneath the column headers, R 123-24, and that a system's schema is the "product of an attack and not a predicate of an attack." R 135-36. The trial testimony did not establish that adversaries would be at all likely to collect a schema prior to an attack; that is because having a schema would not make the attack "easier." R 118-19, 131, 134-36. This is supported by Mr. Ptacek's own real work experience with companies hiring him to test their systems' security. R 119, 136.

Mr. Ptacek further testified that an adversary with the schema would not be any more successful than an adversary without the schema. R 127. The trial evidence

showed that there is simply no incremental value in having the schema prior to an attack. R 118-19. Under any interpretation of "would jeopardize," even CDF's unduly expansive one, the circuit court had more than sufficient basis to rule for Chapman.

There was also more than sufficient competent evidence before the circuit court that release of the schema, not secrecy, would actually follow industry best practices. Private companies and other government agencies make their schema publicly and readily available for anyone to download. R 143-45 (Mr. Ptacek testifying that he "would not be able to use that information to break into the systems."); C 54 (citing data.gov and other federal government websites where federal, state, and local agencies make their schema publicly available). The circuit court was more than justified in concluding, therefore, as further support, that if a public schema jeopardized the security of a system, none of those companies or government agencies would make their schema public. And because Mr. Coffing himself testified that the CANVAS is built on the best practices in the industry, the circuit court's conclusion is far from being against the manifest weight of the evidence. R 80-81.

Similarly, there was substantial evidence that hiding the schema is not an accepted practice for defending against attacks because it does not work. R 140; C 59. Rather, it is the application "source code"—something entirely different that Chapman did not request—that an adversary would want to launch an attack. R 123, 125-28, 135; *see also* C 58-59; R 128-31 (defining SQL injection attack). Since the source code is not responsive to the request, the focus must only be on the schema, which Mr. Ptacek explicitly testified in his experience would not allow an adversary "in any way more effectively attack or compromise the system or do so more precisely or quietly." R 118.

In light of all this, CDF attempts to distract from Mr. Ptacek's testimony by claiming that merely knowing what kind of information is stored in a system jeopardizes the security of the system. *See* Appellant's Br. at 44-45. The circuit court rejected this argument as "of no moment" because the evidence showed that the public already knows what general information the CANVAS stores. R 195; *see also* R 59-61, 86, 90-91 (revealing the general information stored in the CANVAS); C 42 (same). Similarly, the circuit court heard testimony showing that a would-be attacker can easily discover the contents of the CANVAS by using their web browser to look at the HTML source code, which would allow that person to understand the contents of the database. R 139. In other words, because the public already knows that CANVAS contains information about the issuance and payment of parking tickets, for example, there was simply no evidence at trial showing that disclosing information about the column headings and names of spreadsheets would jeopardize the CANVAS system. Thus, the circuit court's ruling that "knowledge of the schema in no way makes the system more vulnerable" is more than adequately supported by the trial record and may not be disturbed. R 139-40, 196.

CDF's other line of attack is its focus on the amount of "noise" an adversary would allegedly make if it lacked the schema before beginning an attack. *See* Appellant's Br. at 42-43. "Noise" is data that is generated when a user interacts with a database. R 62-63. But the circuit court heard evidence on this issue and rejected it. R 135. While Mr. Coffing testified that having the schema would make an adversary less noisy, R 62, Mr. Ptacek testified that the amount of noise adversaries generate is irrelevant to system security; nor would the schema change the amount of noise the adversary makes anyway. R 135 ("The schema would help me not at all to not make

noise in that application. I would be equally noisy with or without the schema of the application."), 154 ("The schema has nothing to do with how much noise I would make as an attacker."). Indeed, and again, as the circuit court found, it is the application source code that would help an adversary be less noisy, but Chapman did not request the application source code. R 124, 154, 195 ("It is a source code which is what is necessary to attack the system."). The circuit court was well within its discretion to credit Mr. Ptacek's testimony over Mr. Coffing's on this point as well.

This Court can only disturb the circuit court's ruling if it was against the manifest weight of the evidence. *E.g., Wirtz Realty Corp.*, 308 Ill. App. 3d at 877. Mr. Ptacek testified, among many other things that support the circuit court's ruling, that he "cannot think of a way which publicly disclosing the schema would jeopardize the security of the system." R 119-20. Therefore, the circuit court's ruling is not against the manifest weight of the evidence, and this Court should decline to disturb the circuit court's ruling.

**2. CDF now relies for the first time on appeal on an improperly broad interpretation of the exemption despite bedrock case law requiring exemptions to be narrowly construed, but fails even under that interpretation anyway.**

CDF claims in this appeal that it only needs to show a "possibility of harm" in disclosing the schema to establish that its disclosure "would jeopardize the security" of the system. *See* Appellant's Br. at 31-32. The Court should reject that argument as waived, irrelevant, and legally wrong.

"It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Cochran v. George Sollitt Const. Co.*, 358 Ill. App. 3d 865, 872–73 (2005). Theories raised for the first time on appeal are also waived. *Vill. of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 15. Nearly

all of CDF's opening brief addressing whether disclosing schema would jeopardize the security of the CANVAS (Section II) amounts to new legal theories, and none of the federal cases it relies on as the basis for this new theory were presented to the circuit court. *Compare* C 41-48, 62-67 *with* Appellant's Br. at 31-50.

Even if CDF is permitted to make these new arguments, however, they would still fail on the merits. To begin, and dispositively, CDF would still lose under its own purported definition. Mr. Ptacek testified that "knowledge of the schema would not in any way provide a threat actor advantage in attacking a system like CANVAS." R 194. As a result, the circuit court found that "knowledge of the schema in no way makes the system more vulnerable[.]" C 18. Thus, even under CDF's claim that "jeopardize" means that release would "expose" the system to "danger or risk," CDF still loses. *See* Appellant Br. at 32.

Should the Court elect to interpret the provision anyway, it should reject CDF's interpretation. The crux of that argument is that CDF need only show some "possibility" of danger to the system. To support that claim, it relies federal cases. *See* Appellant's Br. at 35-50. Those cases are readily distinguishable and conflict with Illinois FOIA. They also cannot be reconciled with the rule in Illinois that all exemptions must be narrowly construed. *E.g.*, *S. Illinoisan v. Illinois Dep't of Pub. Health*, 218 Ill. 2d 390, 416 (2006).

There are key differences and no parallel language between Section 7(1)(o) and the federal FOIA exemptions cited in those cases. While Illinois courts look to federal case law for interpreting similar statutes, that principle does not apply where there are "key differences" between the statutes, including when there is no federal equivalent to

an Illinois FOIA exemption and when there is no "parallel language" between exemptions. *Kelly v. Vill. of Kenilworth*, 2019 IL App (1st) 170780, ¶¶ 43, 44. This Court does not follow federal FOIA case law when the General Assembly has "clearly chosen" to handle Illinois FOIA differently. *Id.* at ¶ 56 (declining to follow federal FOIA case law on requests with voluminous law enforcement records).

CDF has identified no federal FOIA exemption that sufficiently parallels Section 7(1)(o). Instead, it relies on case law interpreting a federal exemption applicable to law enforcement guidelines, techniques, and procedures where release "could reasonably be expected to risk circumvention of the law." Appellant's Br. at 35-40; *see* 5 U.S.C. § 552(b)(7)(E). But the exemption here does not say "could reasonably be expected" to jeopardize; it says "would jeopardize." And this Court noted in *Kelly* that "could" versus "would" is a legally important distinction. *Kelly v. Vill. of Kenilworth*, 2019 IL App (1st) 170780, ¶¶ 43-44 ("key differences exist between the two statute"; "while the federal FOIA provides an exemption where disclosure 'could' interfere with enforcement proceedings (5 U.S.C. § 552(b)(7)(A) (2018)), the Illinois FOIA provides an exemption only where disclosure 'would' interfere with enforcement proceedings or obstruct an ongoing investigation (5 ILCS 140/7(1)(d)(i), (vii)"). Thus, while federal FOIA might allow withholdings based on mere "chances" and "possibilities," Appellant Br. at 36-37, our own statute clearly does not. And notably, CDF does not even rely on the only Illinois exemption that might parallel federal Exemption 7(E)—Illinois FOIA Section 7(1)(d)(v). *See* 5 ILCS 140/7(1)(d)(v).

Further, the General Assembly established a higher burden of proof in the Illinois FOIA than Congress has for the federal FOIA, which does not require government

agencies to prove exemption claims by clear and convincing evidence. *Compare* 5 ILCS 140/1.2, 11(f) *with* 5 U.S.C. § 552. CDF even admits that federal FOIA uses a lower bar for the government to meet. Appellant's Br. at 37 (quoting *Water Commission, U.S.-Mexico*, 740 F.3d 195, 204-05 (D.C. Cir. 2014); *Blackwell v. Federal Bureau of Investigation*, 646 F.3d 37, 42 (D.C. Cir. 2011)). As a result, the federal case law interpreting Exemption 7(E), which CDF relies upon, is inapplicable to Section 7(1)(o). Thus, while *Long* might have addressed a database schema, it did so under a different statute based on different trial evidence. *Long v. Immigration & Customs Enf't*, 464 F. Supp. 3d 409, 418-23 (D.D.C. 2020).

This Court should not be led astray by CDF's attempt to cast these drastically different provisions as "similar." *See* Appellant's Br. at 36. This Court should "give effect to the statute's plain and ordinary meaning" of "would jeopardize," which is a higher threshold than "could reasonably be expected to circumvent." *See Kelly*, 2019 IL App (1st) 170780, ¶ 29. Thus, the low bar set for federal agencies in Exemption 7(E) has no bearing on the high bar established for Illinois public bodies in Section 7(1)(o).

Moreover, the Section 5 requirement for public bodies to disclose the field names and descriptions for how public data is maintained is not present in Federal FOIA. *Compare* 5 ILCS 140/5 *with* 5 U.S.C. § 552. In none of CDF's federal cases did the federal courts have to balance this additional requirement with the already low bar set for the government. Indeed, due to these vast differences between Illinois and federal FOIA, the present issue for this Court to address is a novel one and CDF's federal cases do not provide guidance on an Illinois public body's requirement under Illinois FOIA to disclose the requested information.

While the lack of support for CDF's belated legal argument on this point is more than enough to defeat it, there are additional reasons why it must be rejected. CDF admits that the Court must look at the statute as a whole in order to ascertain the legislature's intent. Appellant's Br. at 33. Yet, nowhere in the FOIA statute does it state that a public body need only show a "possibility" of harm. Indeed, the FOIA statute explicitly and unambiguously states twice that "[a]ny public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence." 5 ILCS 140/1.2, 11(f) (emphasis added). The circuit court correctly found that CDF failed to provide clear and convincing evidence that Section 7(1)(o) applies.

CDF presents no valid justification for why this Court should disregard the General Assembly's use of "would" in Section 7(1)(o) and interpret it to mean "only a possibility." Nor is there any precedent in this state for applying a "low bar" in favor of the government as in the federal cases on which CDF relies. CDF's approach is inconsistent with the basic tenets of statutory interpretation and should not be adopted by this Court now. Indeed, the circuit court looked for clear and convincing evidence showing that disclosure would jeopardize security, found that CDF failed to meet its burden of proof, and held based on the witnesses' testimony that disclosure of the schema would not jeopardize the security of the CANVAS. R 193-96. Therefore, the circuit court's ruling is not contrary to the manifest weight of the evidence, and this Court should not disturb that ruling.

**B. CDF's "file layout" argument is legally incorrect and factually unsupported.**

In addition to arguing that the circuit court somehow committed reversible error under the deferential standard of review despite relying on testimony that expressly

defeated CDF's claims, CDF argues that it need not even satisfy the "would jeopardize" requirement because ***all*** "file layouts" are supposedly exempt, with no further showing required. That argument was not properly presented below and has been waived, lacks support in the statutory text, and has not even been factually established anyway.

**1. File layouts are not *per se* exempt.**

In response to CDF's last-minute argument on the eve of trial, the circuit court found that "would jeopardize" modifies all of the items listed in Section 7(1)(o). R 34. That interpretation was correct.

It is well settled that the Illinois Supreme Court and this Court "narrowly" construe the FOIA exemptions in favor of disclosing records. *E.g.*, *S. Illinoisan v. Illinois Dep't of Pub. Health*, 218 Ill. 2d 390, 416 (2006); *Kelly v. Vill. of Kenilworth*, 2019 IL App (1st) 170780, ¶ 29. As a result, CDF bears a heavy burden in attempting to interpret Section 7(1)(o) expansively. It has not met that burden.

Statutes must be read as a whole. *E.g.*, *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23. "Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Id.* Under the series qualifier canon, "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Paroline v. United States*, 572 U.S. 434, 447 (2014). Similarly, if "there is no reason consistent with any discernible purpose of the statute to apply" the antecedent phrase to only the last item in the list, then the phrase should apply to all items in the list. *United States v. Bass*, 404

U.S. 336, 341 (1971); *see also Oommen v. Glen Health & Home Mgmt. Inc.*, 2020 IL App (1st) 190854, ¶ 43. These doctrines plainly defeat CDF's claim here.

Section 7(1)(o) states:

> Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, ***file layouts***, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, ***and any other information that, if disclosed, would jeopardize the security of the system*** or its data or the security of materials exempt under this Section.

5 ILCS 140/7(1)(o) (emphasis added). Thus, Section 7(1)(o) begins with a general provision ("administrative or technical information"), which is followed by a list of examples that fall within that provision (including "file layouts"), which is then followed by a limitation that logically applies to everything on the list ("if disclosed, would jeopardize security of the system or its data or the security of materials exempt under this Section"). Under these well-established canons of construction, not to mention FOIA's narrow construction rule that resolves any ambiguity or equally plausible interpretations in favor of disclosure, the "would jeopardize" clause modifies "file layouts," and file layouts are not *pe se* exempt.

Further, had the General Assembly wanted to make all "administrative and technical information" exempt, there would be no need to include the closing phrase "and any other information that, if disclosed, would jeopardize the security of the system or its data" because any such information would necessarily be "administrative and technical." It certainly knows how to make things *per se* exempt without any showing of a specific harm when it wants. *See, e.g.*, 5 ILCS 140/2(c-5) (listing exempt items without requiring a showing of harm), (q) (same). Thus, the "would jeopardize" clause only makes sense if

it applies to all administrative and technical information, including file layouts. And for good reason: it would be absurd to say that all "administrative and technical information" about all government databases are *per se* exempt, even if no harm would result from their disclosure, under a statute that gives primacy to transparency as a necessary condition for a functioning democracy. *See Kelly*, 2019 IL App (1st) 170780, ¶ 29 ("Where a literal reading of a statute would lead to inconvenient, unjust or absurd results, "the literal reading should yield.") (quoting *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶ 12).

Ignoring all of this, CDF attempts to rely on the last antecedent rule, but because Section 7(1)(o) is not ambiguous, contains a simple and parallel list of items, and is an "and" statute, the last antecedent canon does not apply. "The last-antecedent rule is a grammatical canon of construction resorted to only when terms are ambiguous." *State Farm Mut. Auto. Ins. Co. v. Murphy*, 2019 IL App (2d) 180154, ¶ 35 appeal denied, 132 N.E.3d 305 (Ill. 2019)). CDF has not shown that Section 7(1)(o) is ambiguous. As explained above, Section 7(1)(o) is not ambiguous, and CDF does not even argue that it is. And even if there had been any ambiguity, the narrow construction rule removes that ambiguity in favor of transparency anyway. 5 ILCS 140/1; *S. Illinoisan v. Illinois Dep't of Pub. Health*, 218 Ill. 2d 390, 416 (2006); *Kelly*, 2019 IL App (1st) 170780, ¶ 29. Thus, there is no place for the last antecedent canon here. *See State Farm Mut. Auto. Ins. Co.*, 2019 IL App (2d) 180154, ¶ 34 (rejecting use of last antecedent canon where text is not ambiguous). That is especially so because "the rule of the last antecedent is not an absolute[.]" *Oommen*, 2020 IL App (1st) 190854, ¶ 43 (citing and quoting *Lockhart v. United States*, 136 S. Ct. 958, 963 (2016)) (rejecting last antecedent rule and holding that

"funded, in whole or in part by the State" applied to "nursing home" in provision "a licensed physician who practices his or her profession, in whole or in part, at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State" because when "the listed items are simple, parallel, and of the type a reader would expect to see together . . . the reader will intuitively apply the final modifier to each item in the list").

CDF also argues that the placement of a comma in Section 7(1)(o) should control this Court's construction, but it admits that the existence or lack of a comma is not dispositive. Appellant's Br. at 27. Indeed, in *State Farm*, "by a person" was not offset by a comma, and the Court still held that the limitation applied to the entire list. *See State Farm Mut. Auto. Ins. Co.*, 2019 IL App (2d) 180154, ¶¶ 34-35.

It would be particularly misguided to make determinations about the FOIA statute in particular based on commas because the General Assembly has inconsistently used commas throughout the FOIA statute. For example, not all test questions and scoring keys are exempt. Instead, there are only two instances where test questions and scoring keys are exempt, and both are qualified by language that is not offset by a comma. 5 ILCS 140/7(1)(j)(i) ("The following information pertaining to educational matters: (i) test questions, scoring keys and other examination data ***used to administer an academic examination***") (emphasis added); 5 ILCS 140/7(1)(q) ("Test questions, scoring keys, and other examination data ***used to determine the qualifications of an applicant for a license or employment***.") (emphasis added). Under CDF's interpretation, "used to administer an academic examination" and "used to determine the qualifications of an applicant for a license or employment" only modify "other examination data" because they are not offset

by a comma, and thus all test questions and scoring keys in a public body's possession, regardless of purpose, would be *per se* exempt in two different exemptions. And demonstrating even further that the General Assembly does not follow a rigorous methodology of comma usage indicative of legislative intent, it used a serial comma in Section 7(1)(q) and not in Section 7(1)(j), even though they otherwise parallel each other. *See id.*

While this is all more than enough to reject CDF's improperly expansive interpretation of an exemption that must, by law, be narrowly constructed, another independently sufficient indicia of the General Assembly's intent is the use of "and" in Section 7(1)(o), which indicates that the examples and the "any other information" are part of the same group being modified by the "would jeopardize" language. *City of LaSalle v. Kostka*, 190 Ill. 130, 137 (1901) ("The conjunction 'and' is a co-ordinate conjunction. It is not explanatory, but signifies and expresses the relation of addition."). Although "and" can be read to mean "or" and vice-versa, "this is not done except in cases where there is an apparent repugnance or inconsistency in a statute that would defeat its main intent and purpose." *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶ 31. No such repugnancy or inconsistency exists here. Nor has CDF argued that this Court should read Section 7(1)(o) to say "or other information." Thus, by using "and" the General Assembly intended to signify the relation between all items in the list.

The use of "and" in Section 7(1)(o) also defeats CDF's reliance on *McMahan*, *Newton*, and *Davis*, all of which are "or" statutes. *See* Appellant's Br. at 22-26; *McMahan v. Indus. Comm'n*, 183 Ill. 2d 499, 511 (1998) ("guilty of unreasonable ***or*** vexatious delay, intentional under-payment of compensation benefits, ***or*** has engaged in

frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act" (emphasis added)); *People v. Newton*, 2018 IL 122958, ¶ 16 ("within 1,000 feet of the real property comprising any church, synagogue, ***or*** other building, structure, ***or*** place used primarily for religious worship" (emphasis added)); *People v. Davis*, 199 Ill. 2d 130, 133 (2002) ("a pistol, revolver, rifle, shotgun, spring gun, ***or*** any other firearm, sawed-off shotgun, a stun gun or taser as defined in paragraph (a) of Section 24–1 of this Code, knife with a blade of at least 3 inches in length, dagger, dirk, switchblade knife, stiletto, ***or*** any other deadly or dangerous weapon ***or*** instrument of like nature" (emphasis added)). This Court should instead follow the series qualifier canon and not the last antecedent canon, as CDF suggests, which it applies to "or" statutes because Section 7(1)(o) is an "and" statute. As explained above, the series qualifier canon along with the use of "and" provide more accurate indicia of the General Assembly's intent, and in any event, the narrow construction rule under FOIA is all this Court really needs to consider to reject CDF's expansive interpretation anyway.

Finally, CDF relies *Lieber v. Board of Trustees of Southern Illinois University*, which involved a prior version of the personal privacy exemptions. 176 Ill. 2d 401, 408-09 (1997); *see* Appellant's Br. at 24. But that provision used an entirely different structure in which "information which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy," then stated that "[i]nformation exempted under this subsection (b) shall include but is not limited to" specific categories. *See Healey v. Teachers Ret. Sys.,* 200 Ill. App. 3d 240, 243 (1990). As such, the case is irrelevant to the question here.

The Court should reject CDF's interpretation of Section 7(1)(o) as making every "file layout" exempt even if release would not jeopardize security. But as discussed in the following sections, the Court need not even reach this issue because it has been waived and because CDF did not prove that a schema is a "file layout" anyway.

**2. CDF waived this argument by failing to properly raise it before the circuit court.**

While the circuit court properly rejected CDF's belated argument on the merits, this Court should also hold that CDF failed to raise this issue in a timely manner and is therefore waived, rather than encourage parties to offer entirely new arguments and theories on the eve of trial. "Theories not raised during summary judgment proceedings are waived on review." *Vill. of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 15 (citing *Cochran v. George Sollitt Const. Co.*, 358 Ill. App. 3d 865, 872–73 (2005)). The circuit court reached a similar conclusion before rejecting this belated theory on the merits. R 34-35 ("this issue has not been framed by any of the pleadings to date and it would be unfair to raise it here on the first day of trial").

Further, like Illinois's rule that new theories on appeal are waived, under federal FOIA, there is "a general rule [that the government] must assert all exemptions at the same time, in the original district court proceedings." *Maydak v. U.S. Dep't of Justice*, 218 F.3d 760, 764 (D.C. Cir. 2000). That is because "FOIA was enacted to promote honesty and reduce waste in government by exposing an agency's performance of its statutory duties to public scrutiny." *Id.* Thus, "delay caused by permitting the government to raise its FOIA exemption claims one at a time interferes both with the statutory goals of efficient, prompt, and full disclosure of information . . . and with interests of judicial finality and economy." *Id.* (internal quotation and citation omitted).

These same principles apply here. After missing its statutory deadline to respond to Chapman's request, CDF denied the request under FOIA Section 7(1)(o) because disclosure "***could*** jeopardize the security systems of the City of Chicago." C 25 (emphasis added). CDF did not assert Section 7(1)(o) as an affirmative defense—or any other affirmative defense—with its answer. C 23-28. Only at summary judgment did CDF advance the argument that disclosure "***would*** jeopardize the [CDF's] CANVAS system." C 44 (emphasis added); *see also Kelly v. Vill. of Kenilworth*, 2019 IL App (1st) 170780, ¶ 44 (noting the important difference between "would" and "could.").

At trial, CDF altered its argument yet again and claimed that it no longer needed to show that disclosure "would jeopardize" the security of the system, so long as CDF shows that schema is a source listing or a file layout, but the circuit court ruled this new argument has "not been framed by any of the pleadings." R 25-27, 35. Now on appeal, CDF dropped the source listing argument and only argues that schema is a file layout. Appellant's Br. at 16-17 n.2. Because this affirmative defense was not properly pled or presented to the circuit court, it must be rejected. *Landreth v. Raymond P. Fabricius, P.C.*, 2018 IL App (3d) 150760, ¶ 35 (holding that failing to plead affirmative defense results in its waiver); *Ruddock v. First Nat. Bank of Lake Forest*, 201 Ill. App. 3d 907, 918 (1990) (holding that defendants waived an affirmative defense by raising it for the first time during closing argument and never moving to amend the pleadings); *Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 508 (1988) (holding that affirmative defenses "will be waived if not raised in a timely fashion in the trial court").

**3. CDF's belated legal argument pushing a "broad" definition of "file layout" fails on the merits, especially in light of FOIA's narrow construction rule.**

Even if this Court allowed CDF to argue that "file layout" and the other listed terms are *per se* exempt, a schema is still not a "file layout" and this Court should not adopt "broad" definition of "file layout" to capture a schema.

CDF asks this Court to disturb the circuit court's ruling based on "broad" dictionary definitions of "file" and "layout." Appellant Br. at 29-31. The items listed under Section 7(1)(o) are highly technical terms, and the multi-word items cannot so simply be defined by looking at their pieces in isolation. *See* 5 ILCS 140/7(1)(o). Notably, by solely relying on these new "broad" dictionary definitions, CDF does not even try to use Mr. Coffing's own testimony when trying to define "file layout." *Compare* Appellant Br. at 29-31 *with* R 67-68 ("the instructions that the database management system uses to create the database that the data is then stored in"). This Court should not adopt CDF's "broad" definitions because they conflict with fundamental principles of statutory interpretation.

First, CDF's push for a "broad" interpretation of these words runs contrary to the long line of Illinois Supreme Court cases requiring FOIA exemptions to be read narrowly in favor of disclosure. *E.g.*, *S. Illinoisan*, 218 Ill. 2d 390, 416 (2006); *Kelly*, 2019 IL App (1st) 170780, ¶ 29. Even the General Assembly declared that the FOIA statute "shall be construed to require disclosure." 5 ILCS 140/1. CDF repeatedly admits that it is arguing for this Court to adopt "broad" dictionary definitions, ignores the narrow construction binding case law, and relies on a case interpreting the federal Clean Air Act to incorrectly claim that a broad interpretation is "necessary." Appellant's Br. at 29.

Second, CDF's "broad" definition that a file layout is an "arrangement of the information stored in the database" conflicts with the FOIA Section 5 requirements,

which require disclosure of a list of the "categories of records under [the public body's] control" and "a description of the manner in which public records stored by means of electronic data processing may be obtained." 5 ILCS 140/5; s*ee* Appellant's Br. at 30; *see also* 5 ILCS 140/1 ("The provisions of this Act shall be construed in accordance with th[e] principle" that "the people of this State have a right to full disclosure of information"), 1.2 ("All records in the custody or possession of a public body are presumed to be open to inspection or copying."). There is "a fundamental principle of statutory construction . . . that all provisions of an enactment should be viewed as a whole and words and phrases should be read in light of other relevant provisions of the statute." *Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 19; *see also People v. Freeman*, 404 Ill. App. 3d 978, 988 (2010) (presumption against statutes contradicting each other). When viewing Section 7(1)(o) in light of the other FOIA sections that affirmatively require the disclosure of information about the arrangement of a database, presume that records are open to inspection and copying, and require the FOIA statute to be construed in furtherance of that presumption, then CDF's "broad" definition making file layouts exempt fails.

Since a schema is not a "file layout" under a narrow construction favoring disclosure, a schema must instead fall under "any other information." *See* 5 ILCS 140/7(1)(o). There is no dispute that "would jeopardize" modifies "any other information." Therefore, applying the longstanding and fundamental principles of reading statutes as a whole and of narrowly construing the FOIA statute in favor of disclosure, a schema is not a "file layout" but rather falls under "any other information."

Even if this Court adopts CDF's "broad" definition of "file layout," the evidence presented to the circuit court demonstrates that a schema is not a "file layout." CDF's new "broad" definition conflicts with the testimony of its own witness. *Compare* Appellant's Br. at 30 *with* R 67-68. When asked to define "file layout" and "source listing" Mr. Coffing defined both as "instructions" and claimed the requested records are both too. R 67-68. But "file layout" and "source listing" are different terms with different meanings, and CDF no longer argues that a schema is a "source listing." *See* Appellant's Br. at 16-17 n.2. In addition to abandoning the "source listing" argument, CDF does not rely on Mr. Coffing's testimony as it attempts to "broadly" define "file layout." *See* Appellant's Br. at 29-31.

**4. The evidence shows that a schema is not a "file layout."**

Finally, this Court really need not resolve the definition of "file layout" anyway. That is because Mr. Ptacek testified, in no uncertain terms, based on his substantial experience in the industry, that a schema is not a "file layout." R 145 ("schemas are not file layouts."). Given that Mr. Ptacek is a computer expert and "file layout" is a computer term, CDF failed to meet its "file layout" burden and the circuit court should be affirmed on this ground, even if CDF was otherwise correct in its "file layout" arguments.

Because it is CDF's burden of proof, and Mr. Ptacek testified that a schema is not a "file layout," while Mr. Coffing failed to demonstrate by clear and convincing evidence that it is a "file layout," this Court can affirm the circuit court's ruling. In the alternative, because the circuit court did not rule on whether the requested records are a "file layout," this Court should remand the case to make those determinations. But there is certainly no

basis in the record for this Court to hold in the first instance that CDF proved by clear and convincing evidence that the requested schema is a file layout.

**C. FOIA Section 5 requires CDF to produce the schema.**

The purpose of FOIA is to enable the public to monitor the government and "ensure that that it is being conducted in the public interest." 5 ILCS 140/1. Section 5 of FOIA supports this purpose by ensuring access to basic information about the kinds of information the government has:

> As to public records prepared or received after the effective date of this Act, ***each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control***. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. ***Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained*** in a form comprehensible to persons lacking knowledge of computer language or printout format.

5 ILCS 140/5 (emphasis added).

CDF does not dispute that database records are "public records" under FOIA. Mr. Coffing even conceded that the schema is the field names (*i.e.* column headers) and a description of the data stored within those fields. R 105. Section 5 therefore affirmatively requires CDF to disclose the field names (*i.e.* categories of records) and descriptions of what they contain (*i.e.*, "the list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act"), both of which are necessary to allow a person to obtain the data in a comprehensible format. 5 ILCS 140/5.

An appellee may "defend a judgment on review by raising an issue not previously ruled upon by the trial court if the necessary factual basis for the determination of such point was contained in the record." *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975). Although the circuit court did not rule in regards to Section 5, Plaintiff raised this

argument on summary judgment and at trial, C 56; R 41-42, 187, and Mr. Coffing's testimony establishes the necessary factual basis, R 105. As this argument is uncontroverted by Mr. Coffing's testimony, Section 5 is an equally sufficient reason to affirm the circuit court's ruling. Therefore, because the CANVAS's schema amounts to a list of the category of records stored within the CANVAS, CDF must disclose the schema in compliance with Section 5 of FOIA. At the very least, CDF's interpretation of Section 7(1)(o) cannot be reconciled with Section 5 and must therefore be rejected. *See Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 19.

## VI. CONCLUSION

For these reasons, the circuit court should be affirmed.

Dated: February 10, 2021

RESPECTFULLY SUBMITTED,

*/s/ Merrick J. Wayne*

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

Dated: February 10, 2021

/s/ *Merrick J. Wayne*

**20-0547**

**IN THE APPELLATE COURT OF ILLINOIS**
**FIRST DISTRICT**

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| MATT CHAPMAN, | ) | Appeal from the Circuit Court of |
| | ) | Cook County, Chancery Division |
| Plaintiff-Appellee, | ) | |
| | ) | Circuit Court No. 18 CH 14043 |
| -vs- | ) | Hon. Sanjay T. Tailor |
| | ) | |
| CHICAGO DEPARTMENT OF FINANCE, | ) | |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

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## NOTICE OF FILING

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To: Elizabeth Tisher
30 N. LaSalle Street, Suite 800
Chicago, Illinois 60602
elizabeth.tisher@cityofchicago.org

***Attorneys for Defendant-Appellant Chicago Department of Finance***

PLEASE TAKE NOTICE that on February 10, 2021, I electronically filed the foregoing Appellee's Brief with the Clerk of the Appellate Court, First District, in the above-entitled case, a copy of which is attached hereto and hereby served on you.

Dated: February 10, 2021

*/s/ Merrick J. Wayne*
Attorneys for Plaintiff-Appellee

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is one of the attorneys for Plaintiff-Appellee and that he caused the foregoing Appellee's Brief and Notice of Filing to be served on all counsel of record on February 10, 2021 by filing said documents electronically via Odyssey eFile and designating the following counsel for service at the email addresses listed below:

Elizabeth Tisher
30 N. LaSalle Street, Suite 800
Chicago, Illinois 60602
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, 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.

*/s/ Merrick J. Wayne*