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IN THE SUPREME COURT OF INDIANA

Cause No. 23S-OR-311

State of Indiana ex rel. Richard Allen, Relator, v. Carroll Circuit Court and The Honorable Frances C. Gull, Special Judge, Respondents.	)	Original Action from the Carroll Circuit Court Trial Court Cause No. 08C01-2210-MR-000001

RESPONDENT'S BRIEF IN OPPOSITION TO RELATOR'S VERIFIED PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION

This Court has never issued a writ to reinstate a criminal defendant's counsel whom the trial court removed for engaging in multiple acts of gross negligence, causing the trial court to conclude that the accused was not receiving competent representation. In disqualifying Relator's counsel, Respondent did not violate an absolute duty. Moreover, Relator's remedies on appeal are wholly adequate. Appellate courts in Indiana and across the country routinely resolve issues regarding a criminal defendant's Sixth Amendment right to counsel of his choice through the ordinary appellate process. Whether Relator's counsel withdrew or were removed, this Court should deny the Petition.

Relator's Petition further fails on the merits. Relator's Sixth Amendment right to effective assistance of counsel outweighs his limited right to select his counsel. Respondent has discretion to remove Relator's counsel where, as here, the record supports that Attorneys Baldwin and Rozzi were providing ineffective assistance of counsel. Relator's counsel (i) failed on multiple occasions to take reasonable steps to safeguard confidential case materials, (ii) made extrajudicial statements that had a material likelihood of prejudicing the case, and (iii) provided false information to the court. Before removing Relator's counsel, Respondent afforded Relator with notice and opportunity to be heard through written submissions as well as argument in chambers and on the record in open court.

Relator's request for this Court to disqualify Respondent fails because Respondent alleges no bias or prejudice against Relator or his current counsel. Relator's lone assertion for Respondent's removal is the trial court's ruling to

disqualify Relator's prior counsel. But a trial judge's adverse rulings are insufficient to demonstrate the judge has a personal bias or prejudice. This Court should deny the Petition.

STANDARD OF REVIEW

The Supreme Court "has the power, by writ of mandate and prohibition, to confine a lower court within its lawful jurisdiction." *State ex rel. City of New Haven v. Allen Superior Court*, 699 N.E.2d 1134, 1135-36 (Ind. 1998). Writs of mandamus and prohibition are extraordinary remedies which "are viewed with disfavor and may not be used as substitutes for appeals." Ind. Original Actions Rule 1(C); *see also generally State ex rel. Goldsmith v. Superior Court of Marion Cnty., Criminal Div., etc.*, 463 N.E.2d 273 (Ind. 1984). This Court will not issue a writ unless Relator has a clear and unquestioned right to relief, and only where the trial court has an absolute duty to act or refrain from acting. *State ex rel. Woodford v. Marion Superior Court*, 655 N.E.2d 63, 65 (Ind. 1995); *State ex rel. Commons v. Pera*, 987 N.E.2d 1074, 1076 (Ind. 2013).

ARGUMENT

I. Relator's Petition Fails the Mandatory Procedural Requirements for Seeking a Writ.

A. Relator Does Not Have a Clear and Unquestioned Right to Have His Counsel Reinstated.

This Court has never issued a writ to reinstate counsel where, as here, the trial court removed counsel based on the court's reasonable findings that counsel had engaged in multiple acts of gross negligence, compromising the accused's Constitutional right to competent assistance of counsel. And contrary to Relator's

assertion, neither this Court nor the United States Supreme Court has held that a trial court may remove an accused's selected counsel in two circumstances only: where (i) counsel is not a member of the state bar; or (ii) counsel has an actual conflict of interest. *See Relator's Brief in Support of Petition for Writ of Mandamus* (hereinafter "Brief") at 15. Relator does not have a clear and unquestioned right to the relief he seeks. *See Woodford*, 655 N.E.2d at 65; *Pera*, 987 N.E.2d at 1074.

To the contrary, this Court in *State ex rel. Jones v. Knox Superior Court No. 1*, denied the relief Relator requests here. 728 N.E.2d 133, 134 (Ind. 2000). In *State ex rel. Jones,* the relator (who had been indicted for murder and rape) requested a writ of mandamus to reinstate his attorneys whom the trial court had removed. *Id.* The Court denied the petition. *Id.* at 135. In dictum, the Court observed that it was "generally of the view that a trial court is limited in its authority to remove a criminal defendant's court-appointed counsel. However, the Court finds it unnecessary to explicate the parameters of that authority here." *Id.* at 134. This Court's dictum in *State ex rel. Jones* does not provide Relator with a clear, unquestioned right to relief or establish that Respondent violated an absolute duty. *Id.*

Relator relies for the most part on cases from outside Indiana. *See* Petition at ¶ 28; Brief at p. 15 (listing cases). But these cases are not binding on the trial court, much less do they impose on Respondent an absolute duty to act. When interpreting the Sixth Amendment, the trial court must follow the law of Indiana's appellate courts and the United States Supreme Court. Relator identifies no case from this

Court or the United States Supreme Court that affords him a clear right to an extraordinary writ for the relief he seeks.

B. Relator's Remedies by Appeal Are Wholly Adequate.

"All petitions . . . shall state facts showing clearly that . . . the remedy by appeal will be wholly inadequate." Ind. Original Actions Rule 3(A)(6). "Far too frequently writs of prohibition and mandate are sought to be used as a short-cut to an appeal on the merits[,]" which "cannot be done." *State ex rel. Durham v. Marion Circuit Court*, 162 N.E.2d 505, 508 (Ind. 1959). If Relator believes that cases from other jurisdictions are persuasive in how Respondent should interpret the Sixth Amendment, Relator may present those arguments on interlocutory or direct appeal. Relator cannot file an original action to circumvent the normal appellate process.

Indiana's appellate courts, as well as other state and federal appellate courts, routinely consider Sixth Amendment challenges on interlocutory or direct appeal, including disputes about choice or removal of counsel. *See generally, e.g., Latta v. State,* 743 N.E.2d 1121 (Ind. 2001); *Hanna v. State*, 714 N.E.2d 1162 (Ind. Ct. App. 1999); *Barham v. State*, 641 N.E.2d 79 (Ind. Ct. App. 1994); Ind. Appellate Rule 14(B); *see also generally United States v. Panzardi Alvarez*, 816 F.2d 813 (1st Cir. 1987); *United States v. Dinitz*, 538 F.2d 1214 (5th Cir. 1976); *People ex rel. Robert James Rainey*, 527 P.3d 387 (Colo. 2023); *State v. Taylor*, 177 Conn. App. 18 (2017); *Clements v. State*, 306 Ark. 596 (1991); *People v. Davis*, 114 Ill. App. 3d 537 (Ill. Ct. App. 1983); *Harling v. United States*, 387 A.2d 1101 (D.C. 1978); *McKinnon v. State*, 526 P.2d 18 (Alaska 1974). Notably, Relator cites *Latta*, *Hanna, Harling* and *McKinnon* in his Petition and Brief – all cases on appeal. Those cases defeat Relator's

assertion that his remedy available by appeal would be wholly inadequate. Petition, pp. 8, 10-12; Brief, pp. 14-15.

Relator asks this Court to use an original action to rule, for the first time in Indiana, that the Sixth Amendment prohibits a trial court from removing counsel whom the trial court has reasonably found to have been grossly negligent. But this Court will consider an extraordinary writ only when the law is settled and the trial court's duty is absolute. *Woodford*, 655 N.E.2d at 65; *Pera*, 987 N.E.2d at 1074. This Court should decline Relator's invitation to use an original action to alter Indiana law.

II. The Trial Court Did Not Violate Relator's Sixth Amendment Rights by Removing Relator's Counsel.

A criminal defendant's Sixth Amendment right to effective assistance of counsel outweighs his limited right to select counsel. "The Sixth Amendment to the Constitution guarantees that 'in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.'" *Wheat v. United States*, 486 U.S. 153, 158 (1988). "[T]he essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will be inexorably represented by the lawyer whom he prefers." *Id.* (internal citations omitted).

A. Respondent Properly Exercised Her Discretion to Protect Relator's Sixth Amendment Right to Effective Assistance of Counsel by Removing Baldwin and Rozzi.

As this Court has explained, "[t]he right to counsel in a criminal proceeding does not mean the defendant has an absolute right to be represented by counsel of

his choosing. The appointment of pauper counsel is within the discretion of the trial court and will be reviewed only for abuse of that discretion." *Harris v. State*, 427 N.E.2d 658, 660 (Ind. 1981). The "qualified right to choose one's own counsel" must be placed "against the backdrop of judicial discretion." *Dinitz*, 538 F.2d at 1219. "Traditionally, courts enjoy broad discretion to determine who shall practice before them and to monitor the conduct of those who do." *Id.* "The Sixth Amendment's right to *choice* of counsel merely informs judicial discretion – it does not displace it." *Id.* (emphasis in original).

The trial court is granted considerable discretion to remove counsel so that the trial court has the tools to preserve an accused's Sixth Amendment right to competent and effective assistance of counsel. This Court has explained that "the trial court must be given latitude in its efforts to navigate the Scylla and Charybdis posed by the conflicting Sixth Amendment rights to counsel of one's choice and to competent counsel. We conclude that trial court discretion is necessary because the tension between these two important rights that must be resolved by the trial court . . . ." *Latta*, 743 N.E.2d at 1130. "Gross incompetence . . . or contumacious conduct that cannot be cured by a citation for contempt may justify the court's removal of an attorney, even over the defendant's objection." *Harling*, 387 A.2d at 1105 (citing *United States v. Dinitz*, 538 F.2d 1214 (5th Cir. 1976)). Moreover, the trial court need not delay taking remedial action until counsel's incompetent representation causes the entire trial proceedings to be Constitutionally defective. "[W]e must remember that reversals are but palliatives; the cure lies in those remedial measures that will

prevent the prejudice at its inception." *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *see also United States v. Howard*, 115 F.3d 1151, 1155 (4th Cir. 1997) (affirming disqualification of defense counsel on the grounds that the trial court "has an obligation to foresee problems over representation that might arise at trial and head them off beforehand."). The trial court retains the discretion to remove counsel to preserve an accused's Constitutional rights to effective assistance of counsel and due process.

Respondent acted well within her discretion to remove Baldwin and Rozzi over Relator's objections. The record supports that the trial court could reasonably conclude Baldwin and Rozzi committed multiple violations of the Rules of Professional Conduct, compromised Relator's defense, and that "the totality of the circumstances demonstrate[d] gross negligence and incompetence on the part of the defense team." Supp. Record p. 15.[1]

1. Baldwin and Rozzi failed to take reasonable steps to safeguard confidential case materials, including crime scene photos. *See* Ind. Professional Conduct Rule 1.6, Comment 16; Ind. Professional Conduct Rule 1.15(a). Baldwin's friend and former employee, Mitchell Westerman, went into Baldwin's office conference room, reviewed confidential photos of the crime scene, took pictures of those photos, and shared them with at least one other unauthorized person. Record, Vol. I, pp. 214-215, 223-225, Vol. II, p. 34; Supp. Record, pp. 14-15. The photos leaked

[1] Respondent filed the transcript of the October 19, 2023, *in camera* meeting with counsel as a supplemental record in response to Relator's Motion for Transcript and in compliance with the Court's Orders dated November 8, 2023, and November 9, 2023.

to the public, which prompted the police to investigate. Record, Vol. I, pp. 223-225; Supp. Record, pp. 14-15. An individual with whom Westerman shared the confidential photos committed suicide the night after police questioned him. Record, Vol. I, pp. 223-224; Supp. Record, pp. 14-15. Rozzi and Baldwin agreed to use Baldwin's conference room as "home base" for confidential case materials. Record, Vol. I, p. 214. Rozzi understood that Westerman would regularly visit Baldwin's office and that Baldwin would share with Westerman information about the case to obtain Westerman's feedback. *Id.*

2. Baldwin emailed confidential work product to an unauthorized person and Baldwin and Rozzi failed to timely report the leak to the trial court or prosecutor. The leak of crime scene photos was not the first time that Relator's counsel were involved in a leak of confidential case materials. In December 2022, Baldwin sent an email to a person named Brandon Woodhouse (a defendant in an unrelated criminal case) that contained an outline of the discovery materials the State had provided to Baldwin. Supp. Record, p. 14. Baldwin apparently intended to send the email to Rozzi. Record, Vol. I, pp. 224, 242; Supp. Record, p. 14. Baldwin and Rozzi did not promptly notify the trial court or the prosecution of this leak. Supp. Record, p. 14.

3. Baldwin and Rozzi made extrajudicial statements that had a substantial likelihood of materially prejudicing the case. Ind. Professional Conduct Rule 3.6. Baldwin and Rozzi issued a press release on November 29, 2022. Record, Vol. I, p. 46-48; Supp. Record pp. 13-14. They included in their press release detailed extrajudicial statements about the case, along with other information that would not

normally be revealed, and proclaimed Relator's innocence. Record, Vol. I, p. 46-48; Supp. Record p. 14. Baldwin and Rozzi did not limit their press release to information that Rule 3.6(b) expressly permits, nor did they confine the press release to information necessary to mitigate adverse publicity under Rule 3.6(c). Record, Vol. I, p. 46-48; Supp. Record p. 14. Baldwin and Rozzi knew or should have known that the press release potentially violated Professional Conduct Rule 3.6. Brief, p. 3; Supp. Record, p. 13. Moreover, at the time of the press release, Baldwin and Rozzi knew that the State had filed a motion for a gag order, which was pending before the trial court. Record, Vol. I, pp. 9-11, 48; Supp. Record, pp. 13-14. Prior to issuing the press release, Baldwin and Rozzi assured the trial court that they did not intend to "try this case in the media." Supp. Record pp. 13-14. Baldwin and Rozzi's decision to issue the press release prompted the trial court to issue the gag order until further hearing. Supp. Record p. 14. Baldwin and Rozzi issued the press release knowing that the trial court would likely soon issue a gag order. Record, Vol. I, pp. 11, 48; Supp. Record pp. 13-14.

4. Baldwin and Rozzi provided false information to the trial court. Ind. Professional Conduct Rule 3.3(a); Supp. Record, p. 14. On or about June 20, 2023, the trial court held a hearing on Relator's Motion to Reconsider Safekeeping Order. Record, Vol. I, p. 24. At the hearing, the State presented evidence that "clearly demonstrated the falsity" of Relator's claims. Supp. Record, p. 14. On July 19, 2023, the trial court issued an order on the motion finding that: "The evidence presented at the hearing . . . did not support many of the allegations advanced by defendant

counsel. In fact, the evidence presented demonstrated that the Defendant is treated more favorably than other inmates housed at the Westville Correctional Facility." Record, Vol. I, p. 26.

As a result of these events, the trial court became "gravely concerned" with Relator's "rights to have competent, non-negligent representation." Supp. Record, pp. 15-16. The record demonstrates that the trial court, based on the totality of circumstances, could reasonably conclude that counsel's representation of Relator fell objectively short of the prevailing professional norms and that counsel's deficient performance prejudiced the defense in violation of Relator's Sixth Amendment right to competent counsel. *See Conley v. State*, 183 N.E.3d 276, 282-83 (Ind. 2022) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012)) (counsel is ineffective where "(1) counsel's performance was deficient based on prevailing professional norms; and (2) the deficient performance prejudiced the defense."). The professional norms in Indiana are violated when counsel fails to safeguard confidential case materials, provides false information to the court and makes extrajudicial statements that are likely to prejudice the case. And Respondent's filing complaints against Baldwin and Rozzi with the Disciplinary Commission would not have ensured that Relator would receive competent representation throughout the remainder of the proceedings. The trial court's decision to remove Baldwin and Rozzi did not violate Relator's Sixth Amendment rights.

B. The Trial Court Afforded Relator Adequate Notice and an Opportunity to Be Heard Before Removing His Counsel.

Relator argues that "removal proceedings should occur at a hearing where the defendant and his chosen counsel are provided notice and an opportunity to be heard on why the attorney-client relationship should be severed." Brief, p. 16 (citing *State v. Huskey*, 82 S.W.3d 297, 311 (Tenn. Crim. App. 2002)). Relator cites no Indiana rule, statute, or case requiring notice, a hearing or an opportunity to be heard. In any event, the record confirms that Respondent provided Relator with ample notice that the trial court was considering disqualifying Baldwin and Rozzi before October 19, 2023.

On October 11, 2023, Relator wrote a letter to Respondent requesting that Baldwin and Rozzi continue to represent him and acknowledging that the prosecutor was seeking Baldwin and Rozzi's disqualifications. Record, Vol. I, p. 221. On October 12, 2023, Rozzi wrote a letter to Respondent arguing why he and Baldwin should not be disqualified. Record, Vol. I, pp. 214-220. On the morning of October 19, 2023, an attorney representing Baldwin filed a "Memorandum Regarding Possible Disqualification and Sanctions." Record, Vol. I, pp. 233-37. Relator had adequate notice and opportunity to argue against Respondent's disqualification of Baldwin and Rozzi. Baldwin and Rozzi also had the opportunity to proceed with the scheduled court hearing on October 19, 2023, but chose to withdraw instead. Supp. Record, pp. 18-21. At the October 31, 2023, hearing, Baldwin and Rozzi further argued against their disqualification after filing new appearances, and the trial court afforded them

an opportunity to be heard on the record, including via Baldwin's counsel. Record, Vol. II, pp. 23-31. The trial court afforded Relator adequate process.

III. Relator's Request for this Court to Order Respondent's Disqualification Fails Because Respondent Has Shown No Bias or Prejudice Toward Relator, His Current Counsel or His Former Counsel.

Relator's assertion that Respondent must be disqualified because she removed Relator's former attorneys is flawed. First, Baldwin and Rozzi no longer represent Relator, and Relator does not assert that Respondent has any personal bias or prejudice toward himself or his current counsel. Second, on the merits, Relator presents no relevant facts supporting Relator's assertion that Respondent is biased or prejudiced against Relator's former counsel.

"[J]udges have an affirmative duty to preside over cases unless disqualification is mandatory." *Zavodnik v. Harper*, 17 N.E.3d 259, 269 (Ind. 2014); *see also* Code of Judicial Conduct Rule 2.7 ("A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law."). Disqualification is mandatory in the rare instance that the judge displays "a personal, individual bias against the litigant" or the litigant's lawyer. *Zavodnik*, 17 N.E.3d at 269 (citation omitted); Code of Judicial Conduct Rule 2.11(A)(1). Moreover, as the Commentary to the *Code of Judicial Conduct* emphasizes, a judge's unwarranted disqualification compromises the system of justice.

> Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Code of Judicial Conduct Rule 2.7, *Commentary*.

"The law presumes a judge is unbiased and unprejudiced." *Garland v. State*, 788 N.E.2d 425, 433 (Ind. 2003) (citing *Lasley v. State*, 510 N.E.2d 1340, 1341 (Ind. 2003)); *see also Mathews v. State*, 64 N.E.3d 1250, 1253 (Ind. Ct. App. 2016) ("Judges are presumed impartial and unbiased."). To overcome this presumption, Relator "must demonstrate actual personal bias." *Willis v. Dilden Bros.*, 184 N.E.3d 1167, 1187 (Ind. Ct. App. 2022) (citation omitted). Actual bias or prejudice "exists only where there is an undisputed claim [of judicial bias] or the judge has expressed an opinion on the merits of the controversy before h[er]." *L.G. v. S.L.*, 88 N.E.3d 1069, 1071 (Ind. 2018) (citing *Cheek v. State*, 79 N.E.3d 388, 390 (Ind. Ct. App. 2017)). "Adverse rulings and findings by a trial judge are not sufficient reason to believe the judge has a personal bias or prejudice." *Id.* at 1073 (citation omitted); *see also Voss v. State*, 856 N.E.2d 1211, 1217 (Ind. 2006) (citing *Ware v. State*, 567 N.E.2d 803, 806 (Ind. 1991)) ("The mere assertion that certain adverse rulings by a judge constitute bias and prejudice does not establish the requisite showing.").

A. Baldwin and Rozzi No Longer Represent Relator, and Relator Alleges No Bias Toward Himself or His Current Counsel.

Respondent removed Baldwin and Rozzi from representing Relator on October 31, 2023. Record, Vol. II p. 28. Respondent appointed new counsel, Robert Scremin and William Lebrato, to represent Relator. Record, Vol. I p. 4. Relator is represented in this Original Action by Mark Leeman and Cara Wieneke. Relator accuses Respondent of exhibiting bias or prejudice exclusively toward Baldwin and Rozzi. Relator never suggests that Respondent is biased or prejudiced against Relator or his

current counsel. Given that Baldwin and Rozzi are no longer counsel of record, Relator's sweeping assertions that "for all rulings going forward, the public will question the judge's impartiality" and that a new special judge must be appointed "[t]o restore the public's trust in the integrity of the judicial process" amount to blind speculation.

B. Relator Fails to Show that Respondent Has Actual Bias or Prejudice Against Baldwin and Rozzi.

Even if Baldwin and Rozzi still represented Relator, Respondent has exhibited no actual bias or prejudice against them. Relator offers a scant two sentences to support his assertion that Respondent has exhibited bias or prejudice. According to Relator, Respondent's "f[inding] that counsel were grossly negligent and publicly proclaim[ing] that she ha[d] 'grave concerns about their representation'" warrant Respondent's disqualification. Brief, p. 18. But a judge's findings adverse to a party do not show, or even imply, bias or prejudice. *L.G.*, 88 N.E.3d at 1073; *Zavodnik*, 17 N.E.3d at 269; *Voss*, 856 N.E.2d at 1217. Further, these findings do not demonstrate actual personal bias. Respondent did not state that she had "grave concerns" about Baldwin and Rozzi personally. Rather, she had concerns only about their representation of Relator and his right to competent representation. Supp. Record, pp. 15-16. Respondent's legal findings regarding Balwin and Rozzi's representation are insufficient to overcome Indiana law's presumption that Respondent is unbiased and unprejudiced. *Willis*, 184 N.E.3d at 1187 (quoting *In re Estate of Wheat*, 858 N.E.2d 175, 183-84 (Ind. Ct. App. 2006)); *Mathews*, 64 N.E.3d at 1253.

IV. The Court Should Deny Relator's Request to Reinstate the Trial Date. Relator Requested the Continuance.

Relator requests this Court to reinstate the January 2024 trial date. But Relator's counsel requested the trial continuance because counsel will not be ready to try the case in January. Record, Vol. II, pp. 23, 26-28. Respondent did not violate an absolute duty by granting Relator's own motion.

V. The Court Should Deny Amicus's Request to Refer Appointment of Replacement Counsel to the State Public Defender.

Amicus Indiana Public Defender Council ("IPDC") argues that the trial court's appointment of Relator's current counsel was procedurally defective. But Relator raises no objections to the Respondent's process for appointing new counsel to replace Baldwin and Rozzi. Amicus may make arguments in support of Relator's requests for relief, but the Court should not entertain amicus's separate requests for relief.

Neither IPDC nor Relator assert that Relator's newly appointed counsel (one of whom, as the IPDC notes, is Allen County's chief public defender) is incompetent. The IDPC merely claims that the trial court circumvented the County's "comprehensive plan" for public defender assignments. However, the trial court has discretion to appoint "counsel other than counsel provided for under the board's plan . . . when the interests of justice require." Ind. Code § 33-40-7-10(a). The trial court's method of appointing Relator's new counsel did not violate Indiana law, the Sixth Amendment, or any other absolute duty under the law.

CONCLUSION

Respondent the Honorable Frances C. Gull respectfully requests that this Court deny Relator's Verified Petition for Writs of Mandamus and Prohibition.

Respectfully submitted,

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VERIFIED STATEMENT OF WORD COUNT

Pursuant to Rule 3(B) of the Indiana Rules of Procedure for Original Actions, undersigned counsel certifies that the foregoing contains fewer than 4,200 words, as counted by the word processing system used to prepare the Brief (MS Word). Undersigned counsel verifies that this brief contains 4,027 words.

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CERTIFICATE OF SERVICE

I certify that on November 27, 2023, I electronically filed the foregoing document using the Indiana Electronic Filing Service ("IEFS"). I certify that on November 27, 2023, a copy of the foregoing was served on the following persons using the IEFS:

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