Case No. CV-24-659

IN THE SUPREME COURT OF ARKANSAS

Steven Hedrick & X-Dumpsters,

Appellants,

v.

City of Holiday Island,

Appellee.

On Appeal from the Circuit Court of Carroll County, Arkansas

Hon. Scott Jackson, Circuit Judge
Case No. 08WCV-2023-85

BRIEF OF PACIFIC LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST AND IDENTITY OF AMICUS CURIAE

Founded in 1973, Pacific Legal Foundation (PLF) is a nonprofit, nonpartisan organization dedicated to defending individual liberty, economic freedom, and the structural limits on government power enshrined in federal and state constitutions. PLF litigates nationwide to ensure that all branches of government remain within their constitutional boundaries—the "ultimate purpose of [which] is to protect the liberty and security of the governed." *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991).

PLF has extensive expertise in defending this doctrine, particularly in cases involving the proper scope of delegated authority and the limits of governmental power. PLF's attorneys have served as lead counsel or counsel for amici in numerous landmark cases before the United States Supreme Court and state courts, addressing structural constitutional issues. *See, e.g.*, *Kisor v. Wilkie*, 588 U.S. 558 (2019) (amicus brief addressing separation of powers implications of judicial deference); *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590 (2016) (judicial review of agency overreach); *Patel v. Tex. Dep't of Licensing & Regul.*, 469

S.W.3d 69 (Tex. 2015) (amicus brief emphasizing the judiciary's duty to enforce constitutional limits against arbitrary economic regulation under the separation of powers). Through this work, PLF has developed a deep expertise in how separation of powers safeguards liberty by ensuring that governmental authority remains within constitutionally prescribed boundaries.

This case raises a critical separation of powers question under the Arkansas Constitution: whether the City of Holiday Island's Ordinance No. 2022-004 exceeds the authority delegated by Ark. Code Ann. § 8-6-211 and, if the statute permits such overreach, whether it violates constitutional limits like Article II, § 19's anti-monopoly provision by granting unchecked power. PLF offers a unique perspective, distinct from the parties' arguments, by framing this dispute as a structural constitutional violation. Drawing on first principles and Arkansas precedent, PLF seeks to assist the Court in reinforcing the limits on municipal power and protecting the integrity of the state's constitutional framework.

INTRODUCTION

The City of Holiday Island's Ordinance No. 2022-004 bans a licensed business from offering supplemental waste services, claiming authority under Ark. Code Ann. § 8-6-211. This ordinance—and the statutory interpretation enabling it—raise a critical separation of powers question: Can Arkansas law delegate municipal power so broadly that it permits local governments to exceed their constitutional bounds? The Arkansas Constitution clearly answers no. Its separation of powers doctrine ensures that only the General Assembly defines the scope of authority delegated to municipalities. When a municipality like Holiday Island extends that authority to prohibit services the statute doesn't address, it usurps legislative function.

The circuit court's dismissal of Appellants' challenge overlooked this fundamental structural concern. While section 8-6-211 permits municipalities to establish a solid waste system, nothing in the statute authorizes banning supplemental services that do not undermine the city's provider. This overreach threatens the General Assembly's exclusive legislative role and the constitutional checks on governmental power. This Court should reverse, holding that Holiday Island's

ordinance exceeds both statutory authority and constitutional limits—preserving the boundary between municipal administration and legislative policymaking that Arkansas's separation of powers doctrine demands.

STATEMENT OF THE CASE

Amicus curiae Pacific Legal Foundation adopts the Statement of the Case as set forth in Appellants' Brief.

ARGUMENT*

A. Arkansas's Constitutional Structure Reserves Lawmaking Power to the Legislature

The Arkansas Constitution vests the legislative power of the state in the General Assembly. While the separation of powers clauses in

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* No party's counsel authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief or otherwise collaborated in the preparation or submission of the brief. No person or entity other than amicus curiae, its members, or its counsel made monetary contributions to the brief or collaborated in its preparation. Ark. Sup. Ct. R. 4-6(c).

Article IV, §§ 1–2 apply formally to the three branches of state government, they reflect a broader structural commitment: only the General Assembly may exercise the sovereign lawmaking power of the state. Municipalities, as subordinate political subdivisions, may act only within the bounds of that authority. This structural safeguard ensures that no entity—state or local—may exercise powers not lawfully delegated to it. It also ensures that the General Assembly retains exclusive authority to set statewide policy unless it chooses to delegate otherwise.

This principle is deeply embedded in American constitutional tradition. As James Madison warned in Federalist No. 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." For the Framers, separation of powers was not a technical formality, it was a structural safeguard against arbitrary rule. Madison's concern with concentrated power reinforces the modern principle that subordinate government entities, including municipalities, must remain confined to the authority lawfully delegated to them.

Alexander Hamilton emphasized a related point in Federalist No. 78, observing that constitutional limits "can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void." That judicial duty applies with equal force to municipal overreach: when cities exceed their legislative grant of authority, it is the Court's role to enforce those structural limits.

Arkansas's constitutional framework emerged from this tradition. The state's first constitution in 1836 incorporated separation of powers principles, and subsequent constitutions—including the current 1874 Constitution—strengthened these structural safeguards. *See* Walter Nunn, *The Constitutional Convention of 1874*, 27 Ark. Hist. Q. 177, 189–91 (1968) (noting that the 1874 Constitution's framers were particularly concerned with limiting governmental power after Reconstruction-era experiences with overreach). The Arkansas Supreme Court has consistently recognized these historical foundations, observing that the state constitution's separation of powers provisions represent "a basic principle upon which our government is founded, and should not be

violated or abridged." *Hobbs v. Jones*, 2012 Ark. 293, 9, 412 S.W.3d 844, 851.

This separation of powers doctrine applies with particular force to municipal governments. This Court has long held that cities are creatures of the state, created to aid in the administration of local affairs, and may exercise only those powers derived from or delegated by the Constitution or legislature. *See Wood v. Setliff*, 229 Ark. 1007, 320 S.W.2d 655 (1959). In *City of Little Rock v. Raines*, the Court reaffirmed that municipalities have "no inherent powers" and may act only within the limits of express or necessarily implied statutory authority. 241 Ark. 1071, 1078, 411 S.W.2d 486, 491 (1967). Consequently, the validity of any municipal ordinance thus turns on whether the legislature has clearly authorized it.

Where a municipality acts outside the bounds of its delegated authority, its actions are invalid. For instance, in *North Little Rock Transportation Co. v. City of North Little Rock*, this Court struck down a municipality's attempt to enforce an exclusive taxicab franchise, holding that the municipality overstepped its delegated power in violation of Article II, § 19. 207 Ark. 976, 982, 184 S.W.2d 52, 55 (1944). The Court

acknowledged that "the anti-monopoly provision in our Constitution is to be read and considered along with the police powers and public welfare powers," but, it concluded, "even so, when as here there is a clear showing of absence of the proper exercise of the police and welfare powers then the questioned law should not be suffered to stand."

This limitation on municipal authority reflects a structural constraint essential to constitutional government. *See* Gary Lawson, *Delegation and Original Meaning*, 88 Va. L. Rev. 327, 339–43 (2002) (explaining that meaningful separation of powers demands narrow construction of delegated authority to prevent unauthorized policymaking by non-legislative actors). As the Arkansas Supreme Court explained in *Cumnock v. City of Little Rock*, powers not clearly granted must be denied, and any doubt is resolved against the municipality. 154 Ark. 471, 243 S.W. 57 (1922). In *Cumnock*, the Court endorsed Dillon's Rule—which was widely accepted at the time—holding that municipal corporations may exercise only powers granted in express terms; powers necessarily or fairly implied from those expressly granted; and powers essential—not merely convenient—to the accomplishment of their purposes. *Id.*; *see* David J. Barron, *Reclaiming Home Rule*, 116 Harv. L.

Rev. 2255, 2285–89 (2003) (tracing the development of the Dillon's Rule and its adoption by courts to constrain municipal authority absent clear legislative delegation).

Under Arkansas's 1971 Home Rule Act, municipalities gained broader powers over local affairs, but only within bounds set by state law. *See Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983) (acknowledging that the Home Rule Act expanded municipal authority beyond Dillon's Rule but emphasizing that such power remains contingent on clear legislative authorization and cannot conflict with state law; upholding a local ordinance limiting alcohol consumption at private clubs only after finding no state preemption and express statutory permission for local regulation). This Court has enforced this limit, striking ordinances that exceed delegated authority, as in *Protect Fayetteville v. City of Fayetteville*, 2017 Ark. 49, 510 S.W.3d 258 (invalidating ordinance conflicting with express state preemption). This framework ensures municipalities, while autonomous in municipal affairs, cannot legislate beyond the General Assembly's delegation.

Municipalities may claim that some ordinances are justified under their police power, but that power is not self-executing. It must be

exercised within the scope of legislative authorization and cannot be used to bypass structural constraints on municipal authority. *See Phillips v. Town of Oak Grove*, 333 Ark. 183, 189, 968 S.W.2d 600, 603 (1998) ("The police power of the state is founded in public necessity and this necessity must exist in order to justify its exercise . . . under reasonable laws."); *see also* Ark. Code Ann. § 14-55-102 (authorizing municipal ordinances only when "not inconsistent with the laws of this state"). While cities have a role in protecting public health and safety, they may not invoke the police power to prohibit otherwise lawful activity absent a clear legislative basis. Here, therefore, because the General Assembly has not granted authority to ban supplemental waste services, the City cannot supply that authority for itself by invoking general welfare.

B. Section 8-6-211 Does Not Authorize Ordinance No. 2022-004's Overreach

Section 8-6-211 authorizes municipalities to "provide a solid waste management system" and contract with one or more service providers for that purpose. Ark. Code Ann. § 8-6-211(a). But nothing in the statute authorizes municipalities to prohibit already-licensed private entities from offering supplemental, ad hoc services that do not interfere with the provision of regular municipal waste collection. Reading the statute to

authorize such a prohibition would not only stretch its text but invert the constitutional requirement that municipalities act only within clearly delegated authority.

Arkansas courts have long held that municipalities may not expand their authority beyond powers expressly granted by statute. In *Tuck v. Town of Waldron*, 31 Ark. 462, 1876 WL 1563, at *1 (1876), this Court struck down a municipal ordinance that prohibited liquor sales without a city license, holding that the ordinance exceeded the powers expressly granted by statute. Although the incorporation statute authorized towns to regulate or suppress tippling houses, the Court held that this specific delegation limited municipal power and could not be expanded by resort to the general clause allowing towns to promote "morals, order, comfort and convenience." *Id.* at 465–66, 1876 WL 1563, at *2–3. This Court emphasized that "if the legislature intended to authorize municipal corporations to require all persons who wish to engage in selling wines and liquors, in any quantities . . . to obtain corporation license, the intention should, and probably would, have been expressed in the act, and not left to inference." *Id.* at 465, 1876 WL 1563, at *3. That principle applies here as well: if the legislature intended to authorize

municipalities to grant themselves exclusive control over solid waste services—*and* to prohibit otherwise lawful competitors—it would have said so clearly. It did not. And under Arkansas law, the authority to regulate a subject matter does not include the authority to prohibit lawful activity within that field unless the legislature has clearly said so. *See Phillips*, 333 Ark. at 189–90, 968 S.W.2d at 603–04.

The broader statutory context offers no support for reading section 8-6-211 as authorizing municipalities to prohibit lawful, supplemental waste services provided by licensed entities. The relevant provision was enacted as part of Act 1007 of 1991, titled "An Act to Provide for the Collection of Solid Waste Fees." The Act focused on fee collection, recycling infrastructure, and compliance—not on restricting competition or granting municipalities the power to exclude licensed providers. The legislative goals were to ensure adequate collection and to fund proper waste management, not to prevent private entities from offering lawful, supplemental services. The City places undue weight on the statute's reference to "one or more" service providers, but that language merely permits flexibility in how a municipality structures its waste system to "adequately provide" for solid waste collection and

disposal—it does not confer authority to eliminate all other lawful services. Choosing to contract with one provider is not the same as barring others from offering distinct, supplemental services outside that contract's scope. After all, a small town might need just one provider for efficiency, while a larger city or rural area might require multiple service arrangements for different routes, customer types (e.g., residential vs. commercial), or waste streams (e.g., solid vs. hazardous). As in *Tuck*, the legislature's silence on broader licensing power compels a narrow reading, as nothing in section 8-6-211 suggests an intent to authorize municipal monopolies by implication. When the legislature delegates authority for a specific regulatory purpose, that authority must be exercised within its defined limits, not expanded to serve broader policy goals.

The City conflates its delegated duty to ensure adequate base-level service under section 8-6-211 with an entirely separate—and unauthorized—power to eliminate all alternatives. The statutory text authorizes the City to ensure waste is managed, not to police all possible waste-related transactions between private parties. This is not a new principle—Arkansas courts have long rejected municipal actions that

exceed express statutory grants, even when motivated by well-intended public purposes.

For instance, in *Town of Jacksonport v. Watson*, the Court held that a municipality could not spend corporate funds to operate free ferries outside its corporate limits because the power to do so was neither expressly granted nor indispensable to any statutory duty. 33 Ark. 704, 706, 1878 WL 1324, at *2 (1878). The Court emphasized that even public-spirited purposes must be grounded in actual statutory authority. *Id.* This Court reaffirmed the same principle in *Protect Fayetteville*, 2017 Ark. 49, holding that a city ordinance cannot stand where it exceeds or conflicts with limits imposed by state law. Although *Protect Fayetteville* involved express statutory preemption, the decision reflects the broader constitutional structure: municipalities have no inherent power and may not expand their authority beyond what the legislature has clearly authorized.

Even when a municipality invokes its police power, Arkansas law draws a constitutional line between regulation and prohibition. That issue was central in *Phillips v. Town of Oak Grove*, 333 Ark. 183, 968 S.W.2d 600 (1998), where the Court upheld a town ordinance banning the

commercial keeping of fowl, including emus, within town limits. While the majority accepted the ordinance as a rational exercise of the police power, the dissent raised serious structural concerns about its breadth. Writing separately, Justice Glaze warned that although municipalities may regulate lawful businesses, they may not prohibit them without express statutory authority. "[W]hat the majority's decision has accomplished," he wrote, "is nothing short of sending out a loud message that if municipalities want to get rid of what they wish to label an undesired activity, all they have to do is couch it in commercial terms." *Id.* at 199, 968 S.W.2d at 608 (Glaze, J., dissenting). That approach, he cautioned, risks empowering municipalities to eliminate lawful businesses simply by invoking general police-power language—contrary to this Court's longstanding recognition that "the power to prohibit a lawful business has not been conferred upon municipalities." *Id.*

Although the majority in *Phillips* upheld the ordinance on the narrow and distinguishable facts of that case, the dissent's structural concern is directly relevant here. The City of Holiday Island expressly invokes its police power, but it does so in support of a sweeping prohibition on lawful, licensed service providers—without any clear

indication that the legislature intended to grant such authority. Yet under Arkansas law, the police power is not self-executing: it must operate within the bounds of delegated legislative authority and cannot be used to sidestep structural or constitutional limits. The reasoning rejected by Justice Glaze in dissent—municipal overreach cloaked in regulatory language—is precisely what the City seeks to validate here.

While a municipality may invoke the police power to regulate genuine threats to public health, it may not prohibit lawful activity absent a demonstrable, concrete connection between the prohibition and the harm. Here, there is no claim that Appellants' licensed dumpster services caused dumping, noncompliance, or road damage. A speculative concern about "oversight" is not a basis for banning lawful competition under the guise of regulation.

The ordinance does not address any failure of the City's waste system or protect against any concrete public harm; it simply forecloses competition from lawful, private service providers who offer something the City does not. That is not regulation—it is economic protectionism cloaked as municipal policy.

C. If Section 8-6-211 Permits This Monopoly, It Violates the Constitutional Limits on Legislative Power

Even if this Court were to accept the City's reading of section 8-6-211—that it authorizes municipalities to prohibit otherwise lawful waste service providers from operating within city limits—that construction would render the statute unconstitutional. The Arkansas Constitution does not permit the General Assembly to delegate unchecked authority to municipalities to prohibit economic activity, particularly when doing so entrenches a government-created monopoly and displaces private actors who are fully licensed and otherwise lawful.

Article IV, §§ 1–2 of the Arkansas Constitution mandate a strict separation of powers, reserving legislative authority to the General Assembly alone. While municipalities may exercise powers delegated by statute, that delegation must include clear boundaries and cannot transfer to local governments the unrestrained power to define, prohibit, or monopolize entire sectors of economic activity. This Court has consistently held that municipalities are subordinate entities, created to administer—not supplant—state policy. *See Wood v. Setliff*, 229 Ark. 1007, 320 S.W.2d 655 (1959); *City of Little Rock v. Raines*, 241 Ark. 1071, 1078, 411 S.W.2d 486, 491 (1967).

Yet on the City's theory, section 8-6-211 authorizes municipalities not merely to manage solid waste, but to define its outer boundaries, control its market conditions, and eliminate all private alternatives. That is a classic legislative policy judgment—one the Constitution entrusts only to the General Assembly, not to 500-plus municipalities acting without uniform standards. *See Cosgrove v. City of W. Memphis*, 327 Ark. 324, 938 S.W.2d 827 (1997) (holding that any doubt about the existence of municipal power must be resolved against the municipality). If the legislature wished to empower cities to prohibit an entire class of licensed competitors, it would need to do so with clarity, justification, and limiting principles. Section 8-6-211 does none of these things.

This constitutional concern is heightened where a statute, like section 8-6-211, is interpreted to delegate broad regulatory power without meaningful standards. In *Walden v. Hart*, 243 Ark. 650, 420 S.W.2d 868 (1967), this Court struck down a statute authorizing police chiefs to designate emergency vehicles, like ambulances, as emergency vehicles—granting them privileges such as running red lights with sirens—because it failed to provide any legislative guidance or limitations. This power was significant because it let police chiefs

arbitrarily decide which vehicles could bypass traffic laws, potentially endangering public safety and creating inconsistent legal protections, as seen in this case where an ambulance's status affected liability after a crash with a car. *Id.* at 654, 420 S.W.2d at 871. The Court reaffirmed that under Article IV, "the functions of the Legislature must be exercised by it alone," and that power may not be delegated to another authority absent "reasonable guidelines." *Id.* at 652, 420 S.W.2d at 870. The same principle applies here: if section 8-6-211 is construed to allow municipalities to prohibit entire classes of lawful private services without clear legislative limits, it suffers from the same fatal defect. Such an open-ended delegation would violate the Arkansas Constitution's structural limits on the exercise of legislative power.

This delegation is especially suspect in light of Arkansas's constitutional protection against monopolies. Article II, § 19 provides that "[p]erpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed." This provision codifies a foundational principle of limited government: that economic liberty is the rule, and government-created exclusivity the rare exception. *See N. Little Rock Transp. Co. v. City of N. Little Rock*, 207 Ark. 976, 184 S.W.2d 52 (1944)

(striking down a municipally granted exclusive franchise absent proper exercise of police power). This Court confronted a similar issue in *Upchurch v. Adelsberger*, 231 Ark. 682, 332 S.W.2d 242 (1960), striking down a municipal ordinance that effectively created a monopoly for a favored printing contractor. There, as here, the city awarded exclusive access to a narrow class of providers—those authorized to use a specific union label—thereby excluding other qualified businesses from bidding. The Court held the ordinance violated Article II, § 19, reasoning that the city could not "follow a course by which all public contracts are channeled into the hands of favored bidders." *Id.* at 685, 332 S.W.2d at 244.

Now, to determine whether section 8-6-211 violates Article II, § 19 the Court must first consider whether the statute authorizes a monopoly—that is, whether it permits municipalities to grant exclusive control over a lawful occupation and exclude otherwise qualified service providers. If so, the next question is whether that delegation is constitutionally permissible. Article II, § 19 prohibits monopolies unless clearly justified by public necessity and accompanied by appropriate procedural safeguards. *See N. Little Rock Transp. Co.*, 207 Ark. at 982, 84 S.W.2d at 54. Thus, the statute must do more than simply allow

exclusivity in theory; it must constrain that authority in practice. If section 8-6-211 allows municipalities to eliminate lawful competition without specific standards, limits, or requirements—such as competitive bidding or findings of necessity—it risks authorizing arbitrary economic favoritism in violation of the Constitution. In short, a statute that delegates monopoly power without substantive guardrails may itself offend Article II, § 19.

The City attempts to justify its exclusivity ordinance by appealing to administrative concerns: consistency, oversight, and simplicity. But none of these constitutes a valid basis for extinguishing a licensed business's right to operate. *See Upchurch*, 231 Ark. at 685, 332 S.W.2d at 244 (rejecting administrative justifications for exclusive public contracts absent proper legislative process). There is no evidence that Appellants' roll-off dumpster services posed any threat to the public health, or interfered with the City's core waste system. Their exclusion serves no health or safety function; it merely eliminates competition. Again, the Constitution does not permit the legislature to authorize such arbitrary market control through silence or implication.

The City also leans heavily on cases asserting state-action immunity under federal antitrust law. But federal decisions like *Gold Cross Ambulance v. City of Kansas City*, 705 F.2d 1005 (8th Cir. 1983), and *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517 (8th Cir. 1985), concern whether municipalities are immune from federal antitrust liability—not whether Arkansas municipalities may, under the state constitution, eliminate lawful competitors absent clear legislative authority. That is a separate, state-law question governed by Article II, § 19. Similarly, *Guerin v. City of Little Rock*, 203 Ark. 103, 155 S.W.2d 719 (1941), is overly deferential, relying on a vague police power rationale that ignores separation of powers scrutiny and fails to reconcile municipal exclusivity with Article II, § 19's anti-monopoly mandate, especially absent explicit legislative authorization for such broad economic prohibitions.

Nor does *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997), support the City's position. There, the Court rejected a monopoly claim in part because the appellant failed to argue that the statute itself violated Article II, § 19. The Court also emphasized that the county *was performing the service itself*, not granting exclusive control to a private

vendor. *Id.* at 104–05, 947 S.W.2d at 752. That distinction is critical: Arkansas courts have long scrutinized exclusive public contracts that confer private economic privileges without clear legislative guidance. *See Upchurch*, 332 S.W.2d 242. Finally, *Massongill* reaffirmed that competitive bidding laws apply even when exclusive service arrangements are authorized—underscoring the need for procedural safeguards absent here. 329 Ark. at 105–06, 947 S.W.2d at 752–53. None of these cases supports the proposition that a municipality may foreclose competition in an otherwise lawful occupation simply because it prefers administrative simplicity. Arkansas law does not permit the legislature to authorize municipal monopolies by inference, let alone allow cities to invent such power on their own.

If section 8-6-211 is read to permit this monopoly, it lacks the guardrails necessary to satisfy constitutional limits on delegated authority. It delegates the power to prohibit a lawful occupation without meaningful constraints, invites economic favoritism at the local level, and subverts the Constitution's structural and economic liberty protections. To preserve the principle that legislative power must remain accountable and bounded, this Court should decline to adopt the City's

reading—and, if necessary, hold that section 8-6-211 cannot constitutionally authorize the ordinance at issue.

CONCLUSION

The Court should reverse the decision below and hold that Ordinance No. 2022-004 exceeds the authority delegated by Ark. Code Ann. § 8-6-211. If the statute is construed to permit the ordinance's exclusion of lawful competitors, the Court should hold that it violates the Arkansas Constitution's structural and anti-monopoly limits on municipal power.

DATED: April 1, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with Administrative Order No. 19 and that it conforms with the page-count limitations contained in Rule 4-6(g) of this Court's rules as it contains 4,341 words. The brief also does not contain hyperlinks to external papers or websites.

/s/ *Chris Burks*
CHRIS BURKS

CERTIFICATE OF SERVICE

I certify that on April 1, 2025, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

/s/ *Chris Burks*
CHRIS BURKS