IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

GREATER PENSACOLA JUNIOR GOLF ASSOCIATION, INC. and WARRINGTON EMERGENCY AID CENTER, INCORPORATED

Plaintiffs,

v.

CASE NO.: 2026 CA 000624
DIVISION: Okaloosa, Div. 2

PAM CHILDERS, Clerk of the Circuit Court and Comptroller for Escambia County,

Defendant.
_______________________________________/

PLAINTIFFS' REPLY IN AVOIDANCE TO DEFENDANT'S FIRST AFFIRMATIVE DEFENSE OF ILLEGALITY

Plaintiffs, Greater Pensacola Junior Golf Association, Inc. ("First Tee Gulf Coast") and Warrington Emergency Aid Center ("WEAC"), hereby file this Reply in Avoidance to Defendant Pam Childers ("Childers") First Affirmative Defense asserted in her Answer to Plaintiffs' First Amended Complaint, and in support state:

ALLEGATIONS OF FACT WITHIN THE FIRST AFFIRMATIVE DEFENSE

As support for her claim that the payments to Plaintiffs are illegal, Childers makes the following statements of fact which are readily refuted by the exhibits attached to this pleading. The following are the statements of fact which Plaintiffs were able to discern from Childers' affirmative defense:

1. Neither charity has a contract with the County and no valid consideration exists
2. The code of ordinances prohibit the expenditures sought

While the legal arguments associated with these statements of fact are themselves conclusory and erroneous, both facts themselves are also demonstrably false.

I. The Existence of a Contract and Consideration

At the outset, the Community Support Funding application ("CSF Applications") which both WEAC and First Tee Gulf Coast were required to submit is in and of itself a contract. To remind Childers of the basic legal elements of a contract, a binding agreement, or contract, is formed when one party makes an offer to do something or provide something of value in exchange for something else of value, another party accepts that offer and provides something of value or to do something which they are otherwise not obligated to do.

In this context, Plaintiffs were offered funds in exchange for their commitment to complete a project or program and Plaintiffs committed to:

1. Make their "services with the Project or Program… available in a non-discriminatory manner"
2. Allow "on-site visits by the County or its designee"
3. "[P]roduce all documentation relating to the Project or Program" and consent "to provide audits" of their "financial affairs as may be required by the County"
4. "Provide any additional documentation relating to the provision of services associated with the Project or Program as may be required by the Escambia County Clerk of Court."
5. "[C]ertify that the requested funds will be used for the purposes set forth" in their application and consistent with Florida law.

Both Plaintiffs agreed to be bound by those requirements in exchange for the County's payment of the funds approved by the Commission. **Composite Exhibit A**.

Contrary to Childers's misleading claims about the importance of Plaintiffs' CSF Applications at the time the Commission votes, the policy approved by the Commission states very clearly: "A funding application is not required." **Composite Exhibit A**.

> **II. AUTHORITY:**
> Article VII, Section 10, Florida Constitution, and Section 125.01, Florida Statutes.
>
> **III. ELIGIBILITY CRITERIA:**
>
> **A.** Each fiscal year, the Board may allocate community support funding equally to each County Commissioner. Subject to the availability of budgeted funds, Commissioners may request Board authorization for a community support funding allocation to an eligible applicant or for a County project or program.
>
> **B.** Commissioners may request Board authorization for a community support funding allocation for a County project or program by submitting a recommendation with any supporting documentation for agenda placement. A funding application is not required.

Plaintiffs were required to expend funds, provide proof of the expenditures and submit additional documentation to the Commission in order to receive the payments appropriated by the Commission.

This process contemplated the majority of activity occurring ***after*** the Commission had already voted to appropriate the funds. For instance, the CSF Application was created after the Commission had already voted to appropriate funds to First Tee Gulf Coast. It was Childers herself who demanded that First Tee Gulf Coast submit information on the CSF Application after she initially denied First Tee Gulf Coast's requests for reimbursement. **Exhibit B**.

In Childers' own words: "There was a list of 12 organizations that received BCC approval prior to the Community Support Funds policy dated May 1, 2025… The list of 12 that requested reimbursement from the Clerk's office after May 1, 2025 did not automatically get paid. My office sent all documentation to OMB with direction to review the submission, possibility(sic) put on the proper form and to resubmit if qualified." **Exhibit B**.

Critically, Childers spent much of 2025 telling recipients of funds appropriated by the Commission to not submit their required paperwork, because she was "preemptively denying" their reimbursement requests. **Composite Exhibit C**. Childers also actively worked to dissuade the Commission from submitting payment requests to her office by notifying the Commission shortly after their votes that she was "preemptively" denying payments that the Commission had appropriated. **Composite Exhibit C**.

On December 11, 2025, Melanie Luna, the aide to Commissioner Ashlee Hofberger, stated in an email "I am truly sorry for this outcome. I understand the time and effort your team has invested in completing the required documentation, and I regret that this has resulted in a denial despite the allocation approval by the Board. This situation has also led our office to reconsider recommending allocations in the future, ***as we have continued to encounter these blanket denials.***" **Composite Exhibit C**.

That Childers was issuing "blanket denials" is evidence that she was not making this decision based upon the paperwork of any single organization but was more broadly vetoing the Commission's practice of appropriating funds to charities at all.

Childers admitted that she told Marty Stanovich that she "would reject" First Tee Gulf Coast's request for reimbursement "should the County re-submit" to her for payment. **Exhibit B**. Childers's clear intent was to dissuade First Tee Gulf Coast from complying with their obligations as directed by the Commission.

In any other context, Childers's actions would constitute tortious interference. Childers actively and repeatedly told the Commission, and in some circumstances, the organizations, not to comply with the requirements of their contracts, because she had asserted for herself the power to veto the Commission's lawful appropriations.

In the case of WEAC, Childers exhibited anger and frustration when she received WEAC's "request for payment" from Commissioner Kohler's office. **Exhibit D**. Childers stated "I assumed the topic and the request was understood as a denied request." **Exhibit D**.

Despite Childers's new and plenary excuses recited within her Return to the Alternative Writ of Mandamus and Showing of Good Cause, filed on July 20th, 2026, Childers's only justification for asserting an unlawful veto over the Commission's decisions at the time of her actions was her repeated refrain: "When the county levies and collects property taxes for county purposes it must also spend the revenue for county purposes. There must be a clearly identified and concrete public purpose as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished." **Exhibit D & C**.

II. Actions in Reliance Upon the Commission's Agreement to Reimburse Plaintiffs

Both Plaintiffs exhibited an additional element of the existence of a contract, reliance. The elements of reliance are 1) a clear promise, 2) dependance on that promise, and 3) resultant harm.

Both Plaintiffs expended funds after the Commission had promised reimbursement of those expenses.

Both Plaintiffs submitted evidence of their expenditures in the manner required of them by the Commission, as well as the documentation the Commission instructed them to provide.

Despite Childers's attempts to interfere with Plaintiffs as they complied with the terms of their contract with the Commission, both Plaintiffs satisfied all obligations of them sufficient to be entitled to reimbursement.

For First Tee Gulf Coast and WEAC, their obligations were slightly different, based solely upon the fact that the CSF Application itself was not created until after the Commission had appropriated the funds to First Tee Gulf Coast but before the Commission appropriated funds to WEAC.

On February 18th, 2025, First Tee Gulf Coast was instructed by the Commission to provide the following documents to receive the funding the Commission had appropriated to the organization:

1) An invoice to Escambia County for the total amount to be reimbursed,

2) the organization's W-9,

3) Copies of vendor invoices and contracts,

4) Proof of payment of those invoices,

5) A copy of the flyer or brochure for the event

Composite Exhibit E.

Below are the dates upon which First Tee Gulf Coast complied with the requirements of the Commission for each individual appropriation.

First Tee Gulf Coast – **Composite Exhibit E**			
Appropriating Commissioner	Amount	Documents Provided to Commission	Date of Compliance
May	$1,000	1. W9 2. Invoice for $1,000 3. Contract with Event Space 4. Copy of Check Paid to Event Space	April 21, 2025
Kohler	$1,500	1. W9 2. Invoice for $1,500 3. Contract with Production Company 4. Copy of Check Paid to	April 21, 2025

		Production Company	
Hofberger	$1,000	1. W9 2. Invoice for $1,000 3. Contract with Production Company 4. Copy of Check Paid to Production Company	April 29, 2025
Barry	$1,000	1. W9 2. Invoice for $1,000 3. Contract with Catering Company 4. Copy of Check Paid to Catering Company	April 21, 2025

WEAC, alternatively, received instructions from the Commission to qualify for payment after the Commission had appropriated $2,500 on October 16th, 2025. WEAC was told to provide 1) An invoice in the amount of $2,500 for the Commission to pay, 2) WEAC's W-9, 3) Receipts showing expenses in excess of the amount appropriated, and 4) Proof that those receipts were actually paid. **Composite Exhibit F**.

WEAC received a CSF Application from the Commission on October 9th, 2025 and submitted it to the Commission the very same day. **Composite Exhibit F**. The Commission voted on October 16th, 2025 to appropriate the $2,500 requested.

WEAC submitted all documentation required of it to the Commission as instructed. **Composite Exhibit F**.

As evidence of reliance, WEAC informed the Commission that it intended to spend $500 monthly to reach the $2,500 amount it had been appropriated. **Composite Exhibit F**. But for the appropriation to WEAC by the Commission, WEAC would not have spent those funds in that manner, yet they did so in reliance upon the Commission's appropriation and their entitlement to be reimbursed.

Despite WEAC's compliance with all requirements propounded by the Commission, when the Commission submitted its request for payment to WEAC, Childers responded that she'd "assumed the topic and the request was understood as a denied request." **Exhibit D**. Childers did not claim at the time that a contract did not exist, she claimed that it was an illegal payment because "This type of generous giving comes voluntarily from the people of Escambia Count(sic) and not from our government deciding to gift or donate tax revenues unconnected with County programs." Childers further stated that the "public purpose" of the payment was not "clearly identified and concrete." **Exhibit D**.

III. Childers's Misunderstanding of Ordinance 46-281 and its Relevance to Plaintiffs' Claims

In her affirmative defense, Childers claims that Ordinance 46-281 prohibits the subject payments, yet the ordinance did not create the Program. The relevance of the ordinance to Plaintiffs' Amended Complaint is that it contradicts Childers's repeated claim that the Commission can never grant funds to third party charitable organizations.

For over a year, Childers has repeatedly claimed that the Commission could not issue payments to charities because she deemed them to be "gifts" unconnected with "county programs" and that she was not satisfied that a public purpose was satisfactorily identified.

Childers's arguments for over a year consisted of her claim that grants to local charities did not serve a public purpose.

Taking her reasoning to its logical conclusion, if her repeated justification were to be found sufficient by this Court, then the public purpose identified within Ordinance 46-281 would also be deemed contrary to law.

The ordinance is not the mechanism by which the Commission possesses the authority to issue grants to charities such as WEAC and First Tee Gulf Coast, it is simply at risk of being found invalid if this Court agrees with Childers's legal arguments.

As clearly indicated by the CSF Applications submitted by both Plaintiffs, their payments were intended to support their respective charitable missions within the County, not as "recognition for outstanding community service" already rendered. The terms of the ordinance, and its purported $500 maximum, would only apply as a prohibition if the payments at issue were made pursuant to the ordinance, in recognition of prior services to the community.

The payments at issue were not made pursuant to the ordinance, they were made pursuant to the Commission's Community Support Funding Program. **Exhibit A**.

ADDITIONAL FACTS UNDERMINING CHILDERS'S CLAIM OF ILLEGALITY

I. Childers has Struggled to Identify how Payments to Plaintiffs are Unlawful

On July 21st, 2025, Childers sent an email to Commissioner Steve Stroberger, updating him on her meeting with Commissioner Ashlee Hofberger regarding the Commission's "Discretionary/Community Support Funds." **Exhibit G**. Childers told Commissioner Stroberger that Commissioner Hofberger "gets it" and "understands it" before encouraging Commissioner Stroberger to have his aide meet with Commissioner Hofberger's aide to further discuss the topic.

Childers attached to her email a document titled "7.17.2025 Outline D4 mtg. **Exhibit G**. Within her notes, Childers listed the reasons for her decision to start denying payments as "felt it was the right time to address," "DOGE letters" and "had convo with Chairman" among others.

On January 23rd, 2026, Childers sent an email to Commissioner Hofberger and Assistant County Attorney Kristin Hual and stated "It sort of sends the message that anything and everything is county public purpose, which ***in my opinion*** is not true." **Exhibit H** (emphasis added).

On April 2, 2026, Childers sent an email to the Office of Florida's Chief Financial Officer, Blaise Ingoglia. **Composite Exhibit I**. In her email, Childers asked the CFO for assistance in trying to stop the Commission from issuing payments through its discretionary funding program. Childers admitted in her email that the payments may not be illegal. *Id*. Her justification for her refusal to pay grants like those of Plaintiffs' was simply that "I do not believe property tax dollars should be given in increments of $500-$1,500 to the Commissioner's not-for-profit of choice just because it feels good…"[1] Childers ended her email to the CFO by asking him "if its not illegal, but 'wasteful' who is enforcing? The Comptroller? How? What statutes give that authority?" *Id*.

On April 14th, 2026, Childers sent the same email and attachment to the Florida Attorney General's Office. **Exhibit I**. In her email forwarding her communication, she described the County's program as "illegal and wasteful spending of property tax revenues." Childers has never distinguished whether she'd deemed either WEAC or First Tee's appropriations "illegal" or "wasteful," and Childers has never identified the statutory or constitutional authority she possesses that allows her to reject appropriations that she subjectively deems "wasteful."

On April 21st, 2026, Childers sent an email to Florida's CFO, Florida's Attorney General and to State Representative Michelle Salzman entitled "Andrade Demand Payments to Charities or Else – Commissioner Discretionary Spending -Property Tax Dollars." **Exhibit J**. Within her email, she stated "I hope to have a conversation with someone in Tallahassee regarding the use of the County's property tax dollars to fund charities." Childers' attempts at involving state cabinet officials in her confusion, again, appear to have been ignored. While her thought process

[1] It appears that Childers' request to Florida's CFO was ignored.

in sending the email to a state representative is undetermined, it appears that Childers is hoping to ***change*** a law to retroactively justify her unlawful refusals to pay otherwise lawful warrants as directed by the Commission.

II. Childers's Reasoning Justifying Payment to The American Legion Contradicts her Reasoning Denying Payment to Plaintiffs

On July 25th, 2025, Childers sent an email to county officials explaining why she'd decided to pay an appropriation to fund the travel of two to four children to attend Boys State in Tallahassee via American Legion Post 33. **Exhibit K**. Childers cited no statute or constitutional provision before stating the following:

> *The BCC has identified the County Public Purpose as: Sending youth to Tallahassee to learn about State government.*
>
> *This was a nationwide opportunity for all kids and the mission of Post 33 is to help fund the opportunity in Escambia County. (Escambia Childrens Trust is also a good resource).*
>
> *This was not direct funding to schools (Schools have their own budget through their taxing authority)*
>
> *The purpose was primarily achieved through the individuals attending and completing the event*
>
> *The safeguards existed for accomplishment*
>
> *My staff will keep a log of the "public purpose" to ensure uniformity and understanding. (Due to my conversations and understanding with DOGE, I expect this will be a review item if they continue their persistence in Escambia).*

American Legion Post 33 submitted the same documentation that both Plaintiffs submitted, and Childers never claimed they lacked a contract. For the same reason her approval of payment here is not a "gift," neither are the payments to Plaintiffs.

Nothing in Childers' determination of lawfulness is distinguishable from the purpose that either Plaintiff identified when requesting funds for their programs. The same justifications for issuing payments to American Legion Post 33 to finance a field trip for two children apply similarly to Plaintiffs, yet Childers is adamant that payment should not be issued to Plaintiffs. There is no rational basis for Childers's discriminatory decision to fund American Legion Post 33 and deny payments to Plaintiffs.

Furthermore, if no contract existed, and payment depended on the existence of a contract, then Childers's affirmative defense is yet another admission of her own incompetence, given her approval of payment to Post 33 in July of 2025. **Exhibit E**.

III. Childers's Actions Have No Basis in Law

In an email correspondence where Commissioner Hofberger asked Childers "Do you want to move towards only funding county projects?" Childers replied "In short summary, it is not the mission nor the objective of property tax dollars to provide bikes, as to funding school events as I've said before I will not fund these items because schools are a taxing district, and it appears one of the not-for-profits gets funding from the Children's Trust… Escambia County government is pretty clear about what its primary purpose is which can be readily decerned[sic] by looking at the items funded in the General Fund…" **Exhibit L**.

Nowhere has Childers ever cited her legal justification for her bizarre claim that "General Funds" are ***more*** restricted than the other sources of funds she repeatedly references as permissible to fund the payments she denied.

Childers's novel argument that a contract is required and that a contract does not exist has never been stated previously.

While Childers's contract arguments are novel, they are made in bad faith.

IV. Childers is not Authorized to Serve as the Commission's Contract Administrator

Childers has never been authorized by the Commission to serve as the Commission's contract administrator. Whether Plaintiffs complied with the terms of their contracts with the Commission is not within her purview.

Fla. Stat. § 125.74 assigns contract administration functions to the county administrator, not a clerk. Florida law expressly grants the power to enforce the terms of a Commission's contracts with the county administrator.

Childers's arguments related to her purported understanding of the relationship between the Commission and Plaintiffs are wholly irrelevant to this cause of action.

Childers cannot now disclaim her stated reasoning for vetoing appropriations for over a year and replace them with a new legal theory regarding the existence or non-existence of a contract.

This new legal theory constitutes yet another attempt by Childers to illegally assert to herself powers and duties that the law has never given to her.

It is and has always been the Commission and its county administrator's role to determine whether an entity has fulfilled the terms of a lawful contract and is entitled to payment. Childers's opinions about contract compliance are wholly irrelevant to the question of entitlement.

THE SOLE QUESTION TO BE ANSWERED: IS IT LAWFUL FOR THE COMMISSION TO APPROPRIATE COUNTY FUNDS TO PLAINTIFFS?

As this Court astutely found in a prior case related to a somewhat similar circumstance: "The Court finds that the resolution of this case depends primarily on two questions: (1) Is it lawful for elected officers (e.g., county commissioners), to participate in the Local Plan, and (2) if it is lawful for elected officers to participate in the Local Plan, does such participated constitute unlawful compensation?" *Order Resolving Disputed Issues and Denying Escambia County's Request for a Writ of Mandamus*, 2022-CA-0141.[2]

This Court accurately assessed the sole question(s) required to be answered: is the payment lawful or prohibited by statute?

While the Court determined that participation in the Local Plan was not lawful, this case turns on a much simpler assessment; and one which Childers continues to sidestep, deflect and avoid answering:

> Is it lawful for the Escambia County Commission to appropriate funds to WEAC to feed Escambia residents in need[3] and to First Tee Gulf Coast to provide recreational and educational opportunities to children in Escambia County; and are there any general laws prohibiting the expenditures?

The answers to these questions establish a clear entitlement to mandamus and undergird Plaintiffs' claims regarding the violations of their constitutional rights to equal protection and due process.

<u>THE ESCAMBIA COUNTY COMMISSION POSSESSES BROAD AUTHORITY TO DEFINE A PUBLIC PURPOSE</u>

The Commission is the primary legislative decision-maker on what constitutes a public purpose justifying the expenditure of public funds. Whereas here, the Escambia Commission's taxing power and credit are not involved, only a basic public purpose needs to be identified.

[2] Childers's second affirmative defense is viewed by Plaintiffs as patently ridiculous. This Court's order in 2022-CA-0141 was based upon whether or not a payment was lawful, not whether or not Childers could assert for herself the power to subjectively veto lawful expenditures.
[3] Childers's claim that WEAC only serves residents within the Pensacola city limits is patently ridiculous. Escambia residents in the unincorporated area largely show "Pensacola" as their residence on their driver's licenses.

Linscott v. Orange County Indus. Development Authority, 443 So. 2d 97, 101 (Fla. 1983).[4] Unless the Legislature has preempted a particular subject by general or special law, the Commission has "full authority to act" in the exercise of its home rule power. *Speer v. Olson*, 367 So. 2d 207, 211 (Fla. 1978).

A public purpose is satisfied when "the public interest, even though indirect, is present and sufficiently strong," but "public bodies cannot appropriate public funds indiscriminately, or for the benefit of private parties, where there is not a reasonable and adequate public interest" *Linscott* at 101.

Courts only review whether a particular expenditure "offends the Constitution of the State of Florida, laws of the State of Florida, or fundamental concepts of justice and fair play." *Palm Beach County v. Hudspeth*, 540 So.2d 147, 153 (Fla. 4th DCA 1989). Florida courts will not interfere with a county commission's public purpose determination unless such action "has no legal or practical relation to a valid county purpose." *Florida Power Corp. v. Pinellas Utility Bd.*, 40 So.2d 350, 354 (Fla. 1949).

In the same way, pursuant to Fla. Stat. § 129.09, a clerk's pre-audit review of an expenditure is limited to the same framework as that of a court. The only circumstance where a county commission's expenditure should be refused is if there is no legal or practical relation to a valid county purpose, or it offends the Constitution of the State of Florida, laws of the State of Florida, or fundamental concepts of justice and fair play.

Where a nonprofit functions as a conduit for delivery of genuinely public services, the expenditure by a commission has been repeatedly upheld. For instance, the Florida Supreme Court upheld a county's expenditure to construct a planetarium to be operated by a nonprofit

[4] "With the adoption of the Constitution of 1968, the "paramount public purpose" test developed by case law under the Constitution of 1885 lost much of its viability. The test is still applicable when a pledge of public credit is involved, but where such pledge is not involved, as here, it is enough to show only that a public purpose is served."

because the nonprofit was "in no sense a private concern," and "the actual beneficiaries of the arrangement are the county and its citizens." *Burton v. Dade County*, 166 So. 2d 445, 448 (Fla. 1964).

Similarly, the Florida Supreme Court found that the beneficiaries of a county's appropriation of funds to a nonprofit day-care "are the disadvantaged children," and that any benefit received by the nonprofit organization "itself is insignificant and cannot support a reasonable argument that this is the quality or quantity of benefit intended to be proscribed." *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1282 (Fla. 1983).

Simply stated: It is perfectly legal for a county commission to appropriate funds via a grant or contract to a charity that is serving its community.

CONCLUSION

In the nearly 200 years since the position of county clerk has existed in Florida, Plaintiffs cannot identify another example where a clerk has argued as strenuously that they were incompetent and derelict in their responsibilities to safeguard taxpayer funds.

Despite issuing hundreds of thousands of dollars in analogous payments since 2016, Childers spent all of 2025 claiming the payments she'd been making since 2016 were all illegal. Childers's new claim is based upon her subjective policy opinions, not on some deficiency in paperwork of individual organizations as she now appears to claim. By virtue of her arguments in 2025 and in this case, Childers is requesting the Court find her prior decade of service in her role as the Escambia Clerk and Comptroller was derelict to the point of malpractice.

To back into her desired role as Escambia's sixth commissioner, and to assert for herself the power to veto appropriations of the Commission she personally opposes, Childers latched onto the concept of what constitutes a "public purpose." In doing so, Childers ignored decades of Florida's case law and appears to be living in denial regarding the deference granted to county commissioners when they vote as a body. Prior to 2025, Childers seemed to comprehend the deference owed to county commissions.

Childers is disregarding the lawful directives of the Commission to undertake and perform her ministerial obligation to tender lawful payments as appropriated by the Commission. Childers cannot simply waive a magic wand and claim a payment is unlawful without any cognizable basis. Furthermore, Childers cannot claim illegality today without explaining how her decade long practice of issuing up to $1,000,000 in identical payments should not result in her immediate removal from office for malfeasance.

Plaintiffs have never argued that Childers is not obligated to ascertain whether a payment is lawful, as she repeatedly misstates. The basis for this litigation is that Childers's legality arguments are not based on any identifiable law that exists. They are a transparent attempt to assert a veto of lawful expenditures.

Because Childers has failed to establish the law that gives her the authority to refuse the lawful payments the Commission appropriated to Plaintiffs, they have suffered harm both financially and to their constitutional rights to due process and equal protection.

WHEREFORE, Plaintiffs respectfully request this Court find that Defendant, Pam Childers's First Affirmative Defense is invalid, and grant such other and further relief as this Court deems just and proper.

Dated this 29th day of July, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the following by e-service this 29th day of July 2026:

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