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APPELLATE COURT 5TH DISTRICT

No. 5-26-0084

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

STILES MALONE SEYMENS, Plaintiff-Appellant, v. **ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, BOARD OF REVIEW; DIRECTOR OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY,** in his official capacity; **KWAME Y. RAOUL, ATTORNEY GENERAL OF ILLINOIS;** and **CARBONDALE COMMUNITY UNIT HIGH SCHOOL DISTRICT NO. 165,** Defendants-Appellees.	Appellate Court No. **5-26-0084** Appeal from the Circuit Court of Jackson County, Illinois. Circuit Court No. **2025-MR-16** The Honorable Michael A. Fiello, Judge Presiding.

Appeal from the Circuit Court of Jackson County, Illinois, No. 2025-MR-16.

The Honorable Michael A. Fiello, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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Plaintiff-Appellant, Pro Se

ORAL ARGUMENTS REQUESTED

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REPLY TO THE STATE'S STATEMENT OF FACTS

This appeal is from the clerk's docket entry recording the circuit court's striking of the petition for relief under section 2-1401 on January 23, 2026 (C. 703). The petition was filed January 15, 2026, and the striking was served by the clerk on January 28, 2026 (C. 703). The State, as appellee, filed a brief whose Statement of Facts occupies pages 4 through 7 of that brief.

The State's Statement of Facts attributes the striking to the court and the docket entry's language to the court's holdings. The State writes that "the circuit court struck Seymens's petition" and that "[s]pecifically, the court held that" and "[t]he court also noted that" specific findings were made (Defs. Br. 7). The document at C. 703 is captioned "Admin Review - Unemployment," signed "/s/Christian M Hale, Circuit Clerk (AJE)," and states "Take notice that the following entries were made"; no judge-signed order disposing of the petition appears in the record. *Id.* The characterization misstates the form of the ruling the petitioner received and the procedural posture of the appeal.

The State's Statement of Facts alters the tense of a direct quotation and places a paraphrase inside quotation marks. The State quotes the docket entry as stating Seymens "fail[ed] to state a meritorious claim" and that he alleged only "generally" that the Board's decision was incorrect (Defs. Br. 7). The record reads "Plaintiff *fails* to state a meritorious claim in his motion. He simply argues generally that the decision of the Board of Review misapplies controlling law and is against the manifest weight of the evidence" (C. 703). The SOF changes the present-tense finding to past tense and replaces the court's two specific grounds—misapplication of law and manifest weight—with the vague paraphrase "incorrect."

The State's Statement of Facts misattributes the forum for forfeiture of equitable arguments. The State writes that the Department argued Seymens forfeited equitable tolling and estoppel "by failing to raise them before the Board" (Defs. Br. 6). The

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Department's brief argued waiver based on "failure to present them during the hearing before the ALJ" (C. 515-16), and the Board expressly limited its review to "whether the Referee was correct in dismissing the appeal for lack of jurisdiction" (C. 415). The error misstates the administrative stage at which the issue was required to be preserved. Forfeiture of an equitable argument ordinarily turns on whether the objection was raised at the administrative stage the agency actually conducted, and the State's Statement of Facts answers that question with a stage the Department never invoked. See *Daka v. Director of Employment Security*, 2025 IL App (2d) 240294, ¶¶ 25, 44, 61 (the Board reviews the referee's decision on the record developed before the referee, which includes the claimant's written arguments at each stage).

The State's Statement of Facts omits the referee's explicit "good cause" finding. The State recites that the referee dismissed the appeal for untimeliness (Defs. Br. 4; C. 292). The same decision states: "The claimant has not shown good cause for filing the appeal outside the statutory 30-day time limit" (C. 292). The finding is the administrative predicate for the Department's and the State's arguments that *Hernandez v. Department of Labor*, 83 Ill. 2d 512, 519 (1981), bars equitable exceptions to the jurisdictional deadline (C. 515, 697); its omission leaves the SOF describing a timeliness ruling without the agency's resolution of the equitable question.

The State's Statement of Facts reports the amended complaint's "timely appeal" allegation but not the pleading's own internal conflict. The State notes the amended complaint alleged Seymens "timely appealed" (Defs. Br. 5; C. 129-30). The same pleading states that IDES issued a determination "on or about November 1, 2024" (C. 129), yet every agency document in the record is stamped July 16, 2024: the determination notice bears "Date Mailed: 07/16/2024" (C. 178); the Board recorded that the determination "was mailed to claimant's then last known address on 07/16/2024" (C. 415); and the circuit court ran the deadline from "the date that notice was mailed to him, July 16, 2024" (C. 682). The State's own Statement of Facts states that the Department

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"mailed Seymens a notice of a claims adjudicator's determination" "On July 16, 2024" (Defs. Br. 4). The November 1, 2024 date appears nowhere in the record outside Seymens's own pleading, and the State does not adopt it. The inconsistency is the pleading's own, and it is material to the timeliness calculation the SOF presents as undisputed.

ARGUMENT

ARGUMENT I — THE STATE'S DE NOVO FRAME IGNORES THE FACTUAL DISPUTE IT CREATED

The State argues for *de novo* review on two grounds: (a) dismissal for failure to state a claim is reviewed *de novo*, *PNC Bank, National Ass'n v. Kusmierz*, 2022 IL 126606, ¶ 10; and (b) the meritorious-claim question is "inherently a question of law," *Erickson v. Mitrione*, 2025 IL App (4th) 250297, ¶ 21; *Pekin Ins. Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 28. Defs. Br. 8–9. Both grounds assume a facial ruling. The State's own conduct puts the case outside that lane. The Department filed a written response disputing the petition's factual allegations. C. 696–98. The State's brief pleads extra-record facts in Point II-A—the July 16, 2024 mailing (C. 178), the "good faith" explanation at the administrative hearing (C. 286), and the August 2024 telephone call (C. 543–44). A genuine failure-to-state-a-claim ruling reads the four corners of the petition. This one did not.

Where a section 2-1401 petition's factual allegations are contested, the standard is **abuse of discretion**, the petitioner must prove the allegations by a preponderance, and a **full and fair evidentiary hearing** is required. *Warren County Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶¶ 38, 51 (citing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221, 223 (1986)). *Walters* expressly cites *Paul v. Gerald Adelman & Assocs., Ltd.*, 223 Ill. 2d 85, 95, 99 (2006), for reaffirming that abuse-of-discretion standard. *Walters*, ¶ 52.

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The State cannot have it both ways. If the Department's response operated as a motion to dismiss (Defs. Br. 9), the circuit court was adjudicating a factual dispute—and *Walters* requires a hearing. If the response did not operate as a motion to dismiss, the case is facial, review is *de novo*, and the State may not rely on the extra-record material it invokes in Point II-A. A facial sufficiency question cannot be answered with proof the pleader never tendered.

The authorities the State offers for *de novo* review do not support it. *Erickson* and *Pekin* hold only that whether a petition *alleges* a meritorious claim is "inherently a question of law." Whether a self-represented litigant received notice of a judgment, and what he did about it, is not a question of law. Seymens briefed it as a factual dispute in his opening brief. AT Br. 12–16. *In re Adoption of Konieczny*, 2022 IL App (2d) 210333, ¶ 10 (quoting *Vincent*, 226 Ill. 2d at 8), is likewise about the content of the pleading. It does not license a court to dismiss on a record the pleader never presented.

ARGUMENT II — THE PETITION STATED A MERITORIOUS CLAIM; THE STATE'S FORFEITURE ATTACK FAILS

A. The Petition Pleaded a Legal-Error Claim on the Existing Record.

The State faults Seymens for pleading only that the Board's decision was "contrary to the governing standards," "misapplie[d] controlling law," and "against the manifest weight of the evidence." Defs. Br. 11 (quoting C. 688, ¶ 3). That quotation omits the opening clause of the same paragraph, which states: "On the existing record, the Board of Review's decision is contrary to the governing standards under the Administrative Review Law…." C. 688, ¶ 3. The petition thereby pleads a legal-error claim on the record that was before the circuit court in the administrative review proceeding. The State's assertion that the petition "did not identify any 'supporting administrative materials' … See C688," Defs. Br. 12, is refuted by the paragraph the State itself cites.

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The State also skips the paragraphs that allege the specific, dated facts it says are absent: that the order was filed on November 14, 2025; that the eFileIL docket did not display it; that Seymens is self-represented and working full time; and that he first saw the judgment on January 15, 2026, and filed the same day. C. 688, ¶¶ 1–2. The State's brief does not say those allegations are untrue. It says they are not enough—which is a question about the standard of review, addressed in Argument I.

The State's own best authority, *Prenam No. 2, Inc. v. Vill. of Schiller Park*, 367 Ill. App. 3d 62, 66 (1st Dist. 2006), runs the other way. The First District reversed a *grant* of section 2-1401 relief because the petitioner had alleged facts pertaining to a meritorious defense "based upon issues which were apparent from the record." *Prenam*, 367 Ill. App. 3d at 66. *Prenam*'s rule exists to keep "facts not appearing in the record" from becoming the basis for relief. That is the opposite of what happened here: the State faults Seymens for failing to identify evidence the circuit court "should have considered," Defs. Br. 11, while the circuit court resolved the case on the very notice allegations Seymens swore to. Seymens's theory is that the Board misapplied the law to the record it already had—precisely the sort of claim *Prenam* treats as apparent from the record.

Whether e-delivery actually reached Seymens is precisely the disputed fact *Walters* requires a full and fair evidentiary hearing to resolve. The Department swears the notice went out; Seymens swore that when he checked the docket on December 26 the order was not there, and that he first saw the judgment on January 15.

OneWest Bank, FSB v. Hawthorne, 2013 IL App (5th) 110475, ¶ 26, is likewise no help to the State. It is a mortgage case in which the petitioner raised "only the possibility" of a defense. ¶ 21 states the principle the State needs and Seymens satisfies: dismissal requires an absence of "specific factual allegations." Seymens made specific factual allegations. *Mortimer v. River Oaks Toyota, Inc.*, 278 Ill. App. 3d 597, 605 (1st Dist. 1996), and *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 110 (1st Dist. 2009), are to the same effect—both concern allegations that bore no relation to the judgment challenged.

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The State's reliance on *In re Cnty. Treasurer*, 2023 IL App (1st) 220070, ¶ 48, is a correct statement of law applied backwards. A petitioner must "allege facts that would have prevented entry of the judgment if they had been known by the circuit court." The judgment at issue was entered because the circuit court believed Seymens's administrative appeal was untimely. C. 682–84. The fact that would have prevented entry is precisely the notice and diligence showing Seymens made—and it is what C. 688, ¶¶ 1–2 alleges. The State asks Seymens to plead around the circuit court's stated reason for entering judgment, rather than to contradict it.

B. The Forfeiture Attack Fails; The Argument Was Preserved.

The State insists Seymens "does not develop an argument explaining why his claim was meritorious," "merely states" the pleading-stage standard, and "By failing to explain in his opening brief how his claim had any merit… Seymens forfeited any argument to that effect." Defs. Br. 12. The State's brief quotes pages 6 through 23 of Seymens's opening brief. Those pages contain Argument I.D (the *Airoom* threshold showing), Argument I.E (the January 23 strike and the unresolved hearing request), Argument II.C (the verified statement and the January 15, 2026 first sighting), Argument II.D (the absence of findings on the notice dispute), and Argument IV (the Board's response). An argument that the State quotes in full has not been withheld. The forfeiture authorities the State cites do not fit: *In re H.B.*, 2022 IL App (2d) 210404, ¶ 41, and *Victor Twp. Drainage Dist. 1 v. Lundeen Family Farm P'ship*, 2014 IL App (2d) 140009, ¶ 37, concern failures to cite authority; Seymens cited authority. *Matlock v. Ill. Dep't of Emp. Sec.*, 2019 IL App (1st) 180645, ¶ 14, holds that pro se status does not excuse non-compliance with appellate rules—it is not authority for reading a fully briefed argument as unbriefed.

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C. The Alternative Merits Holding Is Irrelevant to the 2-1401 Sufficiency Inquiry.

The State's alternative ground—that Seymens has no meritorious claim "in any event," Defs. Br. 10, 14–15—shows only that the administrative appeal was untimely. It does not show the underlying benefits claim was meritless. The Board affirmed the referee's dismissal for lack of jurisdiction based on the untimely appeal, C. 415–18, so the Board's decision was never tested on the merits. The State quotes *Maskevich v. Ill. Dep't of Emp. Sec.*, 2022 IL App (1st) 210779, ¶¶ 20, 21, 31, and *Hernandez v. Dep't of Lab.*, 83 Ill. 2d 512, 519 (1981), for strict construction of the thirty-day period. But *Hernandez* involved a claimant who received notice and did not understand its contents. *Id.* at 518–519. Seymens's allegation is the opposite: that he never saw the circuit court's November 2025 judgment at all. C. 688, ¶ 2.

The State also dismisses the August 2024 telephone call as unsupported by evidence and barred by 735 ILCS 5/3-110. Defs. Br. 15. Seymens has already made that showing. Defs. Br. 5; C. 543–44. And the State's own account is that the Department told Seymens his request would be "taken care of." C. 543–44. If that is accurate, the administrative appeal was not filed late because Seymens neglected it. A section 2-1401 petition exists precisely to bring facts that were not in the administrative record to a court. 735 ILCS 5/2-1401(b). Section 3-110's bar on new evidence in the administrative proceeding does not defeat that statutory purpose; it explains why section 2-1401 is the vehicle.

ARGUMENT III — THE CIRCUIT COURT ERRED IN DISMISSING WITHOUT RESOLVING THE NOTICE DISPUTE

A. *Wells* Does Not Excuse a Ruling on a Disputed Record.

The State answers Seymens's hearing argument with a conditional: "If the petitioner fails to allege the existence of a meritorious claim, the petition is properly denied, and due diligence need not be addressed." Defs. Br. 16 (quoting *Wells v. St.*

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Bernard Hosp., 2013 IL App (1st) 113512, ¶ 47). The State drops the conditional's predicate. As shown in Argument II, the petition *did* allege a meritorious claim—notice and diligence facts that, if true, would have prevented entry of the November 14 judgment. Because the predicate fails, *Wells* does not apply.

The State's own alternative citation confirms the point: a circuit court may dismiss a petition sua sponte only where the allegations do not entitle the petitioner to relief. *Vincent*, 226 Ill. 2d at 12–13; *see also In re Marriage of Little*, 2014 IL App (2d) 140373, ¶ 9 (petition may be dismissed where it shows on its face that the petitioner is not entitled to relief). The circuit court did not reach that conclusion on the pleadings. It struck the petition without resolving the notice dispute Seymens swore to. C. 703. The January 23 docket entry states the court "ruled against Plaintiff on the merits" and that Plaintiff "had a right to appeal that decision, but he did not." C. 11; C. 703. That language recites a legal entitlement, not a factual finding about receipt. The notice of that entry was mailed to Seymens and emailed only to counsel and to the Department. C. 11. The assertion that the order itself was served by email is the State's, C. 696, ¶ 4; C. 697, ¶ 9.c, and the State supports it with the Department's Judici entries—not with the eFileIL docket Seymens was monitoring, C. 688, ¶ 2. Nothing in the entry addresses the eFileIL display problem alleged at C. 688, ¶ 2, or the allegation that Seymens "did not receive mailed notice of the judgment." C. 688, ¶ 2. The State's answer to the notice argument is a citation to a conditional rule, not a finding.

B. The Unresolved Hearing Request Required a Ruling Before Disposition.

Seymens moved to set a status hearing and requested an evidentiary hearing on January 21, 2026. C. 691–95. That request was never ruled on. AT Br. Argument I.E. The State's brief never mentions the motion. A request for a hearing on disputed facts, made before the ruling and never resolved, is not answered by pointing to a different ground for the same ruling.

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C. *K.A.* Is Distinguishable: The Docket Failure Was Not Seymens's Inattention.

The State invokes *In re K.A.*, 335 Ill. App. 3d 1095, 1099 (4th Dist. 2003), for the proposition that Seymens's diligence "alone" could not justify a collateral attack. Defs. Br. 19. *K.A.* holds that "section 2-1401 petitions may not be used as a means of obtaining a new time period in which to appeal from a trial court order," because a trial court lacks authority to extend the time for filing a notice of appeal. *Id.* at 1099 (citing *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 149 (1994)). That much Seymens does not dispute: he does not seek a new time in which to appeal. What *K.A.* turned on was the scope of the remedy, not the petitioners' diligence. The circuit court had granted the parents' petition; this Court dismissed their appeal as untimely. *Id.* at 1097–98. Their notice failure was stark—they had "no actual notice of its entry for well over 60 days," *Id.* at 1100—yet they still lost, because the only obstacle was the appeal deadline and an appellate court has no power to enlarge it. Here no such obstacle exists. Seymens does not ask this Court to review the November 2025 judgment; he asks it to reverse the striking of a petition. The order was never reflected on the Court's own eFileIL docket for weeks while Seymens was actively filing in that same docket. C. 688, ¶ 2 ("Petitioner continued monitoring the docket and on December 26, 2025 filed a notice while the eFileIL docket did not display the November 14 order that day"). The gap is not attributable to Seymens's inattention, which is the due-diligence showing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220–21 (1986), requires. Sixty-two days of a docket that silently omitted the order is the prejudice § 2-1401 exists to address, not a late-filer's problem.

The State then argues notice belonged in a Rule 303(d) motion, Defs. Br. 19, while Seymens's own motion to the circuit court established that the Rule 303(d) window had closed before the petition was filed. C. 692, ¶ 7. The State will say the same fact shows Seymens knew his appeal deadline had passed. It does. But 735 ILCS 5/2-1401(a) permits relief precisely because the ordinary routes are closed. A window that shut on

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January 14 is the reason this statute exists, not a reason to bar its use the next day. Seymens could not have filed that motion. The State's cited cases do not hold that a section 2-1401 petitioner must lose the only remedy left to him.

D. The "Collateral Attack" Frame Misreads the Petition.

The State's collateral-attack authorities—*Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757 (1st Dist. 2006), and *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 149 (1994)—hold that a section 2-1401 petition may not be used as a substitute for an appeal. Seymens does not use it that way. He does not ask this Court to review the November 2025 judgment; he asks it to reverse the striking of a timely, verified petition, which is the only jurisdiction the State concedes this Court has. *JPMorgan Chase Bank, N.A. v. Ontiveros*, 2015 IL App (2d) 140145, ¶¶ 16–17.

ARGUMENT IV — EQUITY AND *PAUL* SUPPORT REMAND

A. The Equitable Factors Support Remand, Not Affirmance.

The State argues Seymens raised no "recognized grounds for relief" because he alleged no facts supporting a meritorious claim. Defs. Br. 19. As shown in Argument II, the petition alleged specific facts concerning notice and diligence—facts that, if true, would have prevented entry of the November 14 judgment. The premise of the State's equitable argument is a fact claim the record does not support.

The State invokes *Vasquez v. Aguilar*, 2026 IL App (1st) 250894, ¶ 28 (Defs. Br. 20), and *Matlock* (Defs. Br. 12) against a pro se plaintiff. Seymens does not argue pro se status excuses non-compliance. He argues the statute is equitable, and an equitable court does not dispose of a verified petition while a hearing motion is pending and the factual dispute the petition raises remains unresolved. *Paul*, 223 Ill. 2d at 95, 99 (section 2-1401 is equitable; abuse of discretion standard applies); *Walters*, ¶ 52 (relying on *Paul* for that

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hether a court may review a pro se appellee's brief where no notice of appeal or cross-appeal was filed. It does not hold that a pro se petitioner must lose a meritorious claim on a ruling that bypassed the pending motion. *Konieczny*, 2022 IL App (2d) 210333, ¶ 10 (Defs. Br. 8), treats the petition as a pleading governed by ordinary rules.

The State's textual distinction of *Paul* fails. The State argues that "the section 2-1401 petition and attached documents in *Paul* not only specifically alleged, but had demonstrated, the petitioner's meritorious claim," Defs. Br. 20, and that the Supreme Court has "never invoked principles of equity to allow a petitioner to use a section 2-1401 petition to resurrect an untimely appeal." *Id.* The State's own formulation states the governing rule: relief requires allegations that are specific and supported. The petition is verified, and C. 688, ¶ 3 pleads expressly "on the existing record." *Paul* rejects rigid application; *Walters* relies on *Paul* for exactly that. "Resurrect an untimely appeal" is answered by Argument III.D—Seymens is not seeking review of the underlying judgment; he seeks reversal of the order striking his petition.

B. The Compressed Timeline Confirms the Absence of Process.

The petition was filed January 15. C. 688. The Board's response was filed January 22—seven days later. C. 696. The circuit court ruled January 23—eight days after filing. C. 11. Seymens moved for a status hearing on January 21, asking the court to manage the docket. C. 691–95. Compression combined with a ruling entered before the pending motion was addressed is not mere speed; it is a denial of the process the rules guarantee.

CONCLUSION

For the reasons stated above, Seymens respectfully requests that this Court **vacate or reverse** the circuit court's January 23, 2026 order striking his section 2-1401 petition, and **remand the cause** for further proceedings consistent with this Court's opinion, including an evidentiary hearing to resolve the contested issues concerning notice, receipt, and diligence.

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CERTIFICATE OF COMPLIANCE

(Illinois Supreme Court Rule 341(c))

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 3,733 words.

Date: September 28, 2026

/s/ Stiles Malone Seymens

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CERTIFICATE OF SERVICE

I, Stiles Malone Seymens, plaintiff-appellant, pro se, certify that on September 28, 2026, I filed the foregoing Reply Brief of Plaintiff-Appellant in the above-captioned appeal with the Clerk of the Illinois Appellate Court, Fifth District, through the Illinois Supreme Court's electronic filing system, eFileIL, per Ill. S. Ct. R. 9 and Fifth District Local Rule 101, and that the date and time of that filing are shown on the Notice of Electronic Filing generated for this submission.

Service of the foregoing Reply Brief was effected through eFileIL, which transmitted the document at the time of filing to the electronic service addresses of record of the other parties in Reviewing Court Case No. 5-26-0084. Those parties are:

(1) the Illinois Attorney General, counsel of record for the Illinois Department of Employment Security, Board of Review, and for Kwame Y. Raoul, Attorney General of Illinois, at the service email address designated for counsel of record for the Board of Review in this appeal, as shown on the Notice of Electronic Filing; and

(2) Carbondale Community Unit High School District No. 165, at the electronic service address designated for it, if any, in this appeal. If the District has neither counsel of record nor an electronic service address of record in this appeal, then a true copy of the foregoing Reply Brief was served by depositing it in the United States Mail, postage prepaid, addressed to Carbondale Community Unit High School District No. 165, 330 South Giant City Road, Carbondale, Illinois 62902, on the same date as filing.

I certify that the statements in this certificate are true and correct.

Date: September 28, 2026

/s/ Stiles Malone Seymens

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