SC-2022-0836

In the Supreme Court of Alabama

Tiara Young Hudson,
Appellant,

v.

Kay Ivey, in her official capacity as Governor of Alabama; Patrick Tuten in his official capacity as appointee to Madison County, Alabama's Twenty-Third Judicial Circuit; and Tom Parker in his official capacity as Chair of the Judicial Resource Allocation Commission,
Appellees.

On Appeal from the Montgomery Circuit Court (CV-22-900892); Civil Appeals Court: CL-22-0936)

Reply Brief of the Appellant

Oral Argument Requested

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant, Tiara Young Hudson ("Ms. Hudson") respectfully requested oral argument in this matter pursuant to Rule 28(a)(1) and Rule 34(a) of the Alabama Rules of Appellate Procedure. Br. i; Ala. R. App. P. 28(a)(1), 34(a). Defendant-Appellees Chief Justice Tom Parker and Governor Kay Ivey's ("Appellees") response brief highlights why oral argument is necessary in this matter.

Under Rule 34(a)(3), the Court's "[d]ecisional process" would be "significantly aided" by oral argument because there is a fundamental dispute between Appellees and Ms. Hudson on what the cause of action is in her complaint and the relief she seeks. Ala. R. App. P. 34(a)(3). Specifically, (1) Appellees mischaracterize the gravamen of Ms. Hudson's cause of action, such that it is imperative that this court provide clearer guidance on the distinction between a declaratory judgment action and an action requiring a writ of *quo warranto,* (2) Alabama's "standing" jurisprudence cannot allow such shallow treatment of standing as evidenced in the error below, and (3) this matter presents a matter of first impression concerning a new statutory provision and established interpretation of the Alabama Constitution.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

SUMMARY OF THE ARGUMENT

Appellees' arguments against reversal fail for three reasons. *First*, Ms. Hudson does not challenge the circuit court's dismissal of Judge Tuten as a defendant in this matter. Rather, her remaining cause of action is a declaratory judgment action against Chief Justice Parker in his official capacity as the chair of the Judicial Resource Allocation Commission ("JRAC")[1] and Governor Ivey, in her official capacity as the head executive of the State of Alabama. *C*_12. The relief she requested is a declaration that Ala. Code § 12-9A-2 is unconstitutional. *C*_14. Thus, the circuit court had subject-matter jurisdiction to hear this claim.

Second, Ms. Hudson's injury is: (1) traceable to the actions of the JRAC (of which the Chief Justice is the chair) and the Governor as the chief executive who provided approval of the commission's unconstitutional exercise of legislative authority, and (2) redressable by this Court. Ms. Hudson applied to the Jefferson County Judicial Commission ("JCJC") to fill a vacant judgeship in Jefferson County. *C*_7. However, JCJC halted this process because JRAC voted to eliminate the

[1] If this Court believes that Ms. Hudson had to name JRAC as a party, either in addition to or in lieu of its chair, she can amend her complaint under Rule 15 to do so. *See* Ala. R. Civ. P. 15.

Jefferson County judgeship and create a judgeship in Madison County. *C*_12. The Governor compounded this injury to Ms. Hudson when the Governor accepted and considered JRAC's nominations for the circuit court judgeship in the newly created seat in Madison County. *C*_7. The circuit court can redress Ms. Hudson's injury by issuing a judgment declaring that Ala. Code § 12-9A-2 unconstitutionally delegates legislative authority to JRAC.

Third, Ms. Hudson stated a plausible claim because JRAC "supersede[d]" an act of the Legislature, Ala. Code § 12-17-20, when it altered the number of judges in the circuit courts. *See Freeman v. City of Mobile*, 761 So. 2d 235, 236–37 (Ala. 1999). The power to "supersede" an act of the Legislature cannot be delegated. *Id.* Thus, this Court should reverse the circuit court's decision.

ARGUMENT

I. Ms. Hudson's sole claim is for declaratory judgment that JRAC and the Governor's actions were unconstitutional.

The circuit court erred by disregarding Ms. Hudson's claim for declaratory judgment when it dismissed the entire suit on grounds that "the only way" it could have jurisdiction was through a writ of *quo warranto*. *See C*_830. To the contrary, Article VI § 142(b) of the Alabama Constitution and Ala. Code § 6-6-222 confer jurisdiction on the circuit court to issue a declaratory judgment in this case, the only relief Ms. Hudson now seeks. Ala. Const. art. VI § 142(b); Ala. Code § 6-6-222.

Ms. Hudson does not challenge the dismissal of Judge Tuten from this case because he is not a proper party for a declaratory judgment action as to the actions of JRAC and the Governor. Though he was a proper party given his obvious interest in the matter, and insofar as Ms. Hudson also originally sought injunctive relief as to him, *C*_14, Ms. Hudson no longer intends to pursue an injunction against Judge Tuten, should this Court remand. Thus, a declaratory judgment action—not a writ of *quo warranto*—is the appropriate action for Ms. Hudson based on her legal interests and demand for relief.

"The general jurisdiction conferred on circuit courts by the Alabama Constitution, and further by the Declaratory Judgment Act, grants them the authority to hear actions in which parties seek a declaratory judgment as to the constitutionality of a statute." *Boyd v. State*, 960 So. 2d 722, 725 n.4 (Ala. 2006) (See, J., concurring). Declaratory judgment actions focus on "the interpretation of a statute," whereas a writ of *quo warranto* concerns whether someone was properly "appointed" or "qualified" for public office. *Ex Parte Sierra Club v. Ala. Env't Mgmt. Comm'n,* 674 So. 2d 54, 58 (Ala. 1995).

Here, Ms. Hudson alleged that Ala. Code § 12-9A-2 is unconstitutional because it delegates to JRAC the "power to repeal, amend, or otherwise supplant an act of the Legislature," *Freeman*, 761 So. 2d at 236–37, by eliminating judgeships in one county and creating new judgeships in a separate county. She seeks only a declaration that Ala. Code § 12-9A-2 is unconstitutional, *C*_14—the exact type of relief awarded in a typical declaratory judgment action, *see* Ala. Code § 6-6-222. Ms. Hudson's claim does not ask whether Judge Tuten was "appointed" correctly or "qualified" for his office. *See Ex Parte Sierra*

Club, 674 So. 2d at 58.[2] Rather, this cause of action posits that the very law used to appoint Tuten is void for want of constitutional authority or support. Therefore, the circuit court had jurisdiction under Ala. Code § 6-6-222 to hear Ms. Hudson's claim and this Court should reverse the circuit court's conclusion to the contrary.

II. Ms. Hudson pled sufficient facts to establish her standing.

Ms. Hudson is not a party who "lacks an injury to a legally protected right," as the circuit court incorrectly concluded. *See C*_830. Ms. Hudson alleged facts in her complaint explaining how she was injured. *See C*_7–12. It is insufficient to merely conclude—with no analysis of the complaint—that a party lacks a justiciable interest. When a statutorily created judgeship has a vacancy to be filled through a constitutionally prescribed process, *see* Ala. Const. Jefferson Cnty. §§ 8–9, as was undertaken by JCJC, that process is deserving of protection.

Ms. Hudson, as one of the few interested candidates for the Jefferson County judgeship, is the beneficiary of that process. Appellees' actions disrupted that process and caused its termination. *C*_7–12. The offending

[2] A plaintiff in Madison County may well have a writ of *quo warranto* claim against Judge Tuten if this court declares Ala. Code § 12-9A-2 unconstitutional; however, Ms. Hudson is not pursuing such a claim.

actions constitute an injury that may be redressed by a declaration from the circuit court. *See* Ala. Code § 6-6-222.

A. Ms. Hudson's injury is traceable to the Appellees and can be redressed by a declaration.

A claim is traceable to a party if there is a "causal connection between the injury and the conduct complained of." *Ala. Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C.*, 890 So. 2d 70, 74 (Ala. 2003) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Here, JRAC caused Ms. Hudson's injury when it eliminated the Jefferson County judgeship and created the Madison County judgeship pursuant to Ala. Code § 12-9A-2. *C*_7–12. Ms. Hudson applied to JCJC to fill the vacant Jefferson County judgeship through the process guaranteed by the Alabama Constitution. *C*_5; *see* Ala. Const. Jefferson Cnty. §§ 8–9. However, JCJC halted its obligation because of JRAC's actions. *C*_12.

The Governor compounded this unconstitutional injury by accepting and considering the nominations for the Madison County judgeship. *Id.* Thus, there is a sufficient causal connection between Appellees' conduct and Ms. Hudson's injury.

Appellees' argument that Ms. Hudson's injury is not redressable because JRAC and the Governor cannot "undo" their actions also fails. *See* R. Br. 23. A claim is redressable if there is "a likelihood that the injury will be 'redressed by a favorable decision.'" *Ala. Alcoholic Beverage Control Bd.*, 890 So. 2d at 74 (quoting *Lujan,* 504 U.S. at 560–61).

Here, Ms. Hudson requested a declaration that Ala. Code § 12-9A-2 is unconstitutional. *C*_14. This declaration would redress her injury by resolving the issue of whether JRAC's elimination of the Jefferson County judgeship pursuant to Ala. Code § 12-9A-2 violated Ala. Const. art. IV § 44. Prior acts are annulled if they are declared unconstitutional. *See Beavers v. Cnty. of Walker*, 645 So. 2d 1365, 1378 (Ala. 1994) ("Because the Commission's grant of local approval was based on an unconstitutional and void contract, that grant of local approval is also void."). Thus, Ms. Hudson's claim is redressable.

Appellees cite to *Ex parte State ex rel. James* in support of their redressability argument, but this case is distinguishable. 711 So. 2d 952 (Ala. 1998); *see* R. Br. 22–24. In *Ex parte State ex rel. James*, the plaintiffs filed suit against Chief Justice Hooper of the Alabama Supreme Court in his official capacity as "administrator" of the judicial system to stop

permitting circuit judges from beginning court with prayer and putting up religious depictions of the Ten Commandments on the walls of the court. 711 So. 2d at 962.

This Court held that Chief Justice Hooper, as the "administrator" of the judicial system, did not have the power to stop these acts. *Id.* at 963. The Court dismissed the claim because the relief the plaintiffs sought could not be provided for. *Id.* at 964.

Here, by contrast, Ms. Hudson does not request that JRAC be required to do anything. Instead, she requests a declaration that Ala. Code § 12-9A-2, which authorized JRAC to eliminate the Jefferson County judgeship and create the Madison County judgeship, is unconstitutional. *See C*_14. Thus, the relief she seeks could be provided.

Appellees also rely on *Stamps v. Jefferson Cnty. Bd. of Educ.,* 642 So. 2d 941 (Ala. 1994); *see* R. Br. 22–24, but Ms. Hudson distinguished this case in her opening brief, *see* Br. 25. In *Stamps*, the plaintiffs sought a declaration that a county provision would subject them to prosecution under the Nursing Practices Act. 642 So. 2d at 941. This Court held that plaintiffs erred by not naming "the only entity expressly charged with enforcing" the Nursing Practices Act, *id.* at 944, because absent naming

that prosecuting entity as a defendant, a ruling would not "*terminate the uncertainty or controversy* giving rise to the proceeding," *Id.* at 944 (quoting Ala. Code § 6-6-229).

Here, Chief Justice Parker is a proper party because, as the chair of JRAC, he acted in an official capacity pursuant to Ala. Code § 12-9A-2 to eliminate the Jefferson County judgeship and create the Madison County judgeship. A declaration invalidating Ala. Code § 12-9A-2 would therefore "terminate the uncertainty" generating this proceeding. *See Stamps*, 642 So. 2d at 944.

B. JRAC does not need to be a named defendant for this Court to declare Ala. Code § 12-9A-2 unconstitutional.

Appellees argue that Ms. Hudson needed to name JRAC and not the Chief Justice as the chair of the commission because the chair has only one vote and thereby has no power to affect Ms. Hudson's rights. *See* R. Br. 22. This argument fails for two reasons. First, the Chief Justice's individual vote is irrelevant. It is his action as chair of JRAC to carry out the decision of the agency that curtailed Ms. Hudson's rights.

Second, the requested relief was to declare Ala. Code § 12-9A-2 unconstitutional. *C*_14. All that is required for a court to afford this relief

is a "justiciable controversy." *Ex parte State ex rel. James*, 711 So. 2d at 959. A controversy is "justiciable" when party A seeks to obtain judgment from a court against party B because of an act done to party A by party B, and both parties dispute the legality of the act. *See Reid v. City of Birmingham*, 150 So. 2d 735, 744 (1963).

As the chair of JRAC, the Chief Justice is an appropriate official representative of the agency and, therefore, an appropriate defendant against whom to issue a declaratory judgment. Ms. Hudson was impacted when JRAC eliminated the Jefferson County judgeship. *C*_7–12. Ms. Hudson and the Appellees both dispute whether Ala. Code § 12-9A-2 is unconstitutional. Thus, there is a "justiciable controversy" between the parties to this action. *Reid*, 150 So. 2d at 744.

C. Ms. Hudson had the right to amend her complaint to add JRAC.

Nevertheless, if this Court decides that Ms. Hudson needed to name the other members or JRAC itself as defendants, the circuit court still erred because it should have allowed Ms. Hudson to amend her complaint to add them. Under Rule 15, "a party may amend a pleading without leave of court, but subject to disallowance on the court's own motion or a

motion to strike of an adverse party, at any time more than forty-two (42) days before the first setting of the case for trial." Ala. R. Civ. P. 15.

In this instance, there has not been a "first setting of the case for trial." *See* Ala. R. Civ. P. 15. Moreover, this is the first time that Appellees argue that Ms. Hudson should have named JRAC as a defendant. Ms. Hudson could have alerted the circuit court and amended the complaint to add JRAC if Appellees had raised this issue earlier. *J.C. Jacobs Banking Co. v. Campbell*, 406 So. 2d 834, 850–51 (Ala. 1981) ("The absence of a necessary and indispensable party necessitates the dismissal of the cause without prejudice or a reversal with directions to allow the cause to stand over for amendment."). Given that the Chief Justice is a proper party to the action, the circuit court would have had subject-matter jurisdiction to dismiss without prejudice. Therefore, this Court should reverse the circuit court's decision.

III. This Court should reverse the circuit court's decision because Appellees incorrectly applied Rule 12(b)(6).

In a motion to dismiss, the court reviews the complaint "most strongly in the pleader's favor," and "does not consider whether the plaintiff will ultimately prevail." *Nance v. Matthews,* 622 So. 2d 297, 299

(Ala. 1993). All that the pleader must prove is that they may "possibly prevail." *Id.* Moreover, "a motion to dismiss is rarely appropriate in a declaratory-judgment action." *Harper v. Brown, Stagner, Richardson, Inc.,* 873 So. 2d 220, 223 (Ala. 2003).

Ms. Hudson alleged that Ala. Code § 12-9A-2 violates the Alabama Constitution because it delegates to JRAC the "power to repeal, amend, or otherwise supplant an act of the Legislature." *See Freeman,* 761 So. 2d at 236–37. Ms. Hudson and the Appellees agree that any delegation of this lawmaking power is impermissible under the Constitution. *See* R. Br. 32. Moreover, both parties agree that the question of whether there are "reasonably clear standards," *Folsom v. Wynn*, 631 So. 2d 890, 894 (Ala. 1993), does not apply when reviewing delegation of lawmaking power, *see* R. Br. 32.

"It is settled law that the Legislature may not constitutionally delegate its powers, whether the general power to make law or the powers encompassed within that general power[.]" *Folsom*, 631 So. 2d at 894. Included within the Legislature's general power is "the power to make, alter, amend and repeal laws." *Point Properties, Inc. v. Anderson*, 584 So. 2d 1332, 1337 (Ala. 1991) (quoting Black's Law Dictionary (6th

Ed. 1990)). Thus, delegation of lawmaking power is *per se* unconstitutional. *Folsom*, 631 So. 2d at 894.

Because the "reasonably clear standards" question does not apply here, and the court must review the complaint "most strongly in the pleader's favor" at this stage, *Nance,* 622 So. 2d at 299, the first question the circuit court should have asked was whether it is "possibl[e]" Ala. Code § 12-9A-2 delegates the "power to repeal, amend, or otherwise supplant an act of the Legislature," *Freeman,* 761 So. 2d at 236–37.

Only after the circuit court found that this was not "possible" could it then have reviewed whether the delegation was impermissible due to the "possib[ility]" of there not being "reasonably clear standards." The circuit court erroneously did the inverse, which Appellees do not dispute.

A. JRAC uses lawmaking power reserved for the Legislature when it eliminates and creates judgeships.

Appellees' Response misapprehends the reality of what occurred when JRAC reallocated the judgeship from Jefferson County to Madison County. Jefferson County permanently lost the Place 14 Criminal Division judgeship. *C*_12. JRAC eliminated this seat. Likewise, Madison County permanently gained a seat because JRAC created this position.

*C*_12. This elimination and creation changed the total number of judges in both counties, which requires power that Ms. Hudson argues cannot be delegated. *C*_12.

Appellees disregard Ala. Const. art. VI § 142(a) and 151(b) and Ala. Code § 12-17-20 when they argue that Ms. Hudson does not cite to authority for the proposition that the legislative power to eliminate and create judgeships is "non-delegable." *See* R. Br. 31. Section 142(a) empowers the Legislature to pass "laws" that provide for the number of judges in each circuit. Ala. Const. art. VI § 142(a). The Legislature exercised this power to enact Ala. Code § 12-17-20, which establishes that there shall be exactly "27 circuit judges" in Jefferson County and exactly "seven circuit judges" in Madison County. Ala. Code § 12-17-20(b)(8), (b)(20).

When JRAC reallocated the judgeship from Jefferson County to Madison County pursuant to Ala. Code § 12-9A-2, it usurped the power of the Legislature to overwrite the statutorily prescribed number of judgeships in Jefferson and Madison counties. Indeed, JRAC's action rendered Ala. Code § 12-17-20(b)(8) and (b)(20) entirely obsolete. In other

words, acting pursuant to Ala. Code § 12-9A-2, JRAC "supplant[ed] an act of the Legislature." *See Freeman,* 761 So. 2d at 236–37.

Appellees argue that *Freeman* is distinguishable because the challenged provision in *Freeman* "stands in stark contrast" to Ala. Code § 12-9A-2. R. Br. 36. In *Freeman*, this Court reviewed a conflict between a statute enacted by the Legislature and a rule enacted by the Mobile County Personnel Board. 761 So. 2d at 235. This Court invalidated the rule because it would "supplant an act" of the Legislature. *Id.* at 237.

The Court reasoned that the Personnel Board could not adopt rules that "supersede the enactments of" the Legislature because "[t]he delegation of power to make rules and regulations cannot extend to the making of rules which subvert the statute giving such power or which repeal or abrogate the statute." *Id.* (quoting *Jordan v. City of Mobile*, 71 So. 2d 513, 517–18 (1954)).

The same rationale applies here. The Legislature gave JRAC the power to "supersede" Ala. Code § 12-17-20, setting up a conflict between an administrative rule and legislative statute concerning the number of judgeships in each district. Appellees argue that this conflict is

permissible because the elimination and creation of judgeships is "carrying out the Legislature's will." R. Br. 36.

However, the elimination and creation of judgeships is not akin to lawful delegation of "administrative power" that "merely relates to the execution of the statute law." *Monroe v. Harco, Inc.,* 762 So. 2d 828, 831 (Ala. 2000) (citation omitted). In this instance, § 142(a) of the Alabama Constitution requires the number of judges in each circuit court be "provided by law," Ala. Const. art. VI § 142(a), and the Legislature did in fact pass a law listing the exact number of judgeships per circuit. *See* Ala. Code § 12-17-20. Thus, eliminating and creating judgeships does not "execut[e] statute law"; it subverts it. *See Monroe*, 762 So. 2d at 831. Setting the number of judgeships per circuit is the exact power the Constitution confers on the Legislature. Moreover, any change to the number of judgeships by JRAC "supersedes" what the Legislature provided for in Ala. Code § 12-17-20. Thus, *Freeman* applies to Ms. Hudson's case.

Ms. Hudson also alleged that Ala. Const. art. VI § 151(b) does not permit the elimination and creation of judgeships to be delegated away from the Legislature because it states that "[n]o change shall be made in

the number of circuit or district judges . . . unless authorized by an act." Ala. Const. art. VI § 151(b). This requires an actual "act" to be passed by the Legislature.

Even if the Court were to agree with Appellees' argument that the total number of judges did not change, the circuit court still erred because Ala. Const. art. VI § 142(a) and Ala. Code § 12-17-20 must be read *in pari materia* with Ala. Const. art. VI § 151(b). The Legislature enacted Ala. Code § 12-17-20 to specify exactly how to allocate judgeships across judicial circuits. Interpreting § 151(b) to allow JRAC to change the number of judges in districts as long as the total number of judges statewide does not change "would produce an absurd and unjust result that is clearly inconsistent with" the restrictions of Ala. Const. art. VI § 142(a) and Ala. Code § 12-17-20. *See Lane v. State*, 66 So. 3d 824, 828 (Ala. 2010) (citation omitted).

Additionally, Appellees incorrectly claim that *King v. Campbell*, 988 So. 2d 969 (Ala. 2007), does not support Ms. Hudson's case. *See* R. Br. 40. The Supreme Court in *King* provided persuasive guidance on how not to "emasculate[]" constitutional provisions by interpretating them incorrectly. *Id.* at 981. The provision in *King* provided that "[a]ll judges

shall be elected by vote of the electors." 988 So. 2d at 981 (quoting Ala. Const. art. VI § 152). The Legislature created a judgeship that would be initially appointed by the governor. *Id.* at 972. This Court held that this violated § 152 and would be an "emasculation" of the provision. *Id.* at 981.

Here, Ala. Const. art. VI § 142(a) and § 151(b) and Ala. Code § 12-17-20 are "emasculated" when JRAC is permitted under Ala. Code § 12-9A-2 to change the number of judges in judicial circuits by an administrative rule and not an "act." Therefore, this Court should reverse the circuit court's decision.

B. Ms. Hudson alleged that Ala. Code § 12-9A-1 does not contain reasonably clear standards.

Ms. Hudson does not dispute that it is a question of law whether Ala. Code § 12-9A-1 prescribes "reasonably clear standards." *Folsom*, 631 So. 2d at 894. However, there are interrelated questions of fact that make this question inappropriate to decide on a motion to dismiss. JRAC is permitted to review "any other information deemed relevant by the commission" when deciding to eliminate or create judgeships. Ala. Code § 12-9A-1(d)(5). Without reviewing what information JRAC actually "deemed relevant," the circuit court could not evaluate whether that

standard was "reasonably clear." Additionally, at this stage all Ms. Hudson is required to prove is that it is "possible" that this standard is not "reasonabl[e]." Ms. Hudson met this low standard.

Contrary to Appellees' reasoning, the delegation standards discussed in *Monroe* are distinguishable. *See* R. Br. 30–31. In *Monroe*, the standards set a ceiling on how much power the party could use and how the party could use it. 762 So. 2d at 833. JRAC, however, has no limit on what it can consider when eliminating or creating judgeships.

In *Monroe,* retailers challenged a Department of Revenue regulation that gave the department commissioner the power to limit a sales-tax discount that could be claimed by retailers. *Id.* at 829. The retailers argued that this power could not be delegated away from the Legislature. *Id.* The Court first held that the sales-tax discount did not require the "power to make a law" or encroach on the "[L]egislature's power to levy taxes." *Id.* at 831–32.

The Court then reviewed whether the delegation had "reasonable limits." *Id.* at 832. The Court found that the Department of Revenue did not have "unlimited discretion" because the authorizing statute set a ceiling on the discount amount and conditions on receiving the discount.

Id. at 833. Here, by contrast, Ala. Code § 12-9A-1 does not restrict what JRAC can consider before eliminating or creating judgeships. *Monroe* thus does not apply. Therefore, this Court should reverse the circuit court's decision.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests this Court to reverse the circuit court's decision.

Dated: November 1, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify compliance with the font and world limits as required by Rule 32(d) of the Alabama Rules of Appellate Procedure because this Motion contains 4,610 words and uses Century Schoolbook 14-point font.

Dated: November 1, 2022

/s/ Ellen Degnan
Ellen Degnan

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing Brief with the Clerk of Court using AlaFile, which will send notification of such filing to all counsel of record.

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