

**IN THE CHANCERY COURT OF SUMNER COUNTY, TENNESSEE  
AT GALLATIN**

PASCAL JOUVENCE, )  
Plaintiff, )  
v. )  
PAIGE BROWN, in her official capacity )  
as mayor of the City of Gallatin, and )  
THE CITY OF GALLATIN )  
Defendants. )

Case No: 25-CV-263

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS  
THE PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE  
RELIEF AND, IN THE ALTERNATIVE, COUNTER-PETITION FOR DECLARATORY  
JUDGMENT**

Pursuant to Rule 12.02(6), T.R.C.P., Defendants Paige Brown, in her official capacity as Mayor of the City of Gallatin, and the City of Gallatin, by and through undersigned counsel, submit this Memorandum of Law in Support of their contemporaneously filed Motion to Dismiss the Plaintiff's Petition for a Declaratory Judgment and Injunctive Relief.

## **INTRODUCTION**

This action concerns a dispute between the Plaintiff, a member of the Gallatin City Council, and the Mayor of Gallatin (the “Mayor”), who presides over City Council meetings (the “meetings”) as prescribed by State law. The crux of the dispute is the Mayor’s – and other members of the City Council’s – insistence on formulating some form of procedural mechanism to govern the use of visual aids during City Council deliberations prior to voting on proposed ordinances.<sup>1</sup>

In his Petition for a Declaratory Judgment and Injunctive Relief, the Plaintiff argues that the Mayor's efforts to establish procedures pertaining to exhibits displayed during the meetings

<sup>1</sup> The Plaintiff also alleges the violation of certain purely procedural council rules.

she presides over is, in fact, an attempt to intrude into legislative prerogatives and undermine the council's deliberative functions. The Plaintiff also claims that the Mayor's and Council Members' attempts to establish procedures governing the use of exhibits are in violation of Gallatin law. Finally, the Plaintiff falsely believes Gallatin Municipal Code grants him the right to place items on the agenda.

On the basis of these incorrect arguments, the Plaintiff asks the Court to: (1) Issue a Declaratory Judgment that an ordinance<sup>2</sup> passed without the benefit of a visual aid the Plaintiff intended to provide during deliberations is invalid; (2) issue Declaratory Judgments that the Mayor cannot prevent the use of visual aids or demand council votes on the use of visual aids; (3) issue a Declaratory Judgment that the Plaintiff has the right to place items on the agenda; and (4) enjoin the Mayor from preventing the use of visual aids or requiring votes prior to their use.

The Plaintiff's requests are without merit such that this Court should dismiss his Petition. The Defendants will offer an explanation for the Plaintiff's bringing such unnecessary and unfounded claims: The Plaintiff is not getting his way at the meetings, and so now he comes to this Court in hopes that the Court will invalidate a duly passed ordinance and create procedural policies for the meetings that the Plaintiff knows the majority of the council does not will.

If the Court finds in their favor, the Defendants request that the Court take the following actions:

- (1) Decline to issue a Declaratory Judgment that Ordinance 25-0741 is void, or in the alternative, issue a Declaratory Judgment that Ordinance 25-0741 is valid.
- (2) Decline to issue Declaratory Judgments relating to procedures governing the use of visual aids at the meetings.

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<sup>2</sup> Ordinance 25-0741, rezoning certain portions of Gallatin from "Residential" to "Mixed Use".

(3) Decline to issue an injunction that the Plaintiff is entitled to place items on the agenda pursuant to Gallatin Municipal Code § 2-71(c).

(4) Decline to issue the requested injunctions.

## **BACKGROUND**

### **I. Standard of Review**

Rule 12.02(6), T.R.C.P., authorizes the Court to summarily dismiss a complaint for “failure to state a claim upon which relief can be granted” upon proper motion by the defendant. “The failure to state a claim upon which relief can be granted is determined by an examination of the complaint alone.”<sup>3</sup> For the purposes of the motion, the movant admits the factual allegations contained in the complaint and asserts that, even if true, the allegations fail to establish a cause of action.<sup>4</sup>

Courts are not required to accept as true assertions that are merely legal arguments, or “legal conclusions” couched as facts.<sup>5</sup> Thus, when the Plaintiff has not alleged facts, as here, that would entitle the Plaintiff to relief, the trial court should grant a motion to dismiss.<sup>6</sup>

“Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations ...”<sup>7</sup> A person whose rights or other legal relations are affected by a statute or municipal ordinance may have determined any question of construction or validity arising under the statute or ordinance.<sup>8</sup>

### **II. Procedural History and Facts as Alleged in the Complaint**

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<sup>3</sup> Cook By & Through Uithoven v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934,938 (Tenn. 1994).

<sup>4</sup> Brown v. Tennessee Title Loans, Inc., 328 S.W.3d 850, 854 (Tenn. 2010); see Freeman Indus., LLC v. Eastman Chem. Co., 172 S.W.3d 512,516 & 524 (Tenn. 2005) (“trial court properly granted the defendants’ motion to dismiss”).

<sup>5</sup> White v. Revco Disc. Drug Centers, Inc., 33 S.W.3d 713, 718 (Tenn. 2000) (“allegations of pure legal conclusions will not sustain a complaint”); cf. Riggs v. Burson, 941 S.W.2d 44, 47-48 (Tenn. 1997) (“inferences to be drawn from the facts or the legal conclusions set forth in a complaint are not required to be taken as true”).

<sup>6</sup> Donaldson v. Donaldson, 557 S.W.2d 60, 62 (Tenn. 1977).

<sup>7</sup> Tenn. Code Ann. § 29-14-102.

<sup>8</sup> Tenn. Code Ann. § 29-14-103.

This matter is still in its infancy, with the Petition for Declaratory Judgment and Injunctive Relief being filed on December 8<sup>th</sup>, 2025. The Plaintiff served the summons at a City meeting that day, no less. At this early stage, in which the Court is bound to accept the factual allegations in the Petition as true, the Defendants would only draw the Court's attention to a short list of facts offered in that Petition, while contending that all factual averments in this Memorandum do not contradict those contained in the Petition.

Paige Brown is the Mayor of Gallatin, and she is tasked with presiding over City Council meetings. A Gallatin Ordinance adopts Robert's Rules of Order as the primary parliamentary procedures of that body. (Paragraph 15).<sup>9</sup> The Plaintiff is upset because the Mayor and the Council have attempted to establish procedures (Complaint, Paragraph 26-27) governing the use of visual aids at City Council meetings because of conflict relating to their use that the Plaintiff does not agree with. (Complaint, Paragraph 28). One of those procedures required notice to the Mayor of the visual aid to be used. (Complaint, Paragraph 27). The Plaintiff made a conscious decision not to follow that procedure. (Id).

When the Plaintiff attempted to use visual aids during a vote on Ordinance 25-0741 without following that procedure, the Plaintiff was told that he could not. (Paragraph 42). A deliberation occurred without the use of the aid, which the Plaintiff voluntarily left, and the vote passed 5 to 1. (Complaint, Paragraphs 56-57). Thereafter, another council member, in another meeting, moved to establish a procedure governing the use of visual aids. (Complaint, Paragraphs 61-63).

## **ARGUMENT**

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<sup>9</sup> The rules are adopted as an ordinance, not by Charter. (See Gallatin Municipal Code, "Code of Ordinances", Chapter 2, Article II, Division 4, § 2-93).

The Petition for Declaratory Judgment and Injunctive Relief, taken alone, does call into question the validity of an ordinance, but in doing so, it does not provide a reason grounded in Gallatin or State law to invalidate Ordinance 25-0741. Therefore, the Court has no basis to invalidate that Ordinance. Further, the Court should not issue Declaratory Judgments interpreting an Ordinance to be illegal for lack of visual aids during deliberation when there is no law cited to interpret on that subject. Even if the alleged procedural violations had occurred<sup>10</sup> as alleged in the Petition, those violations would still not be a proper legal basis to invalidate Ordinance 25-0741. The Plaintiff cannot legitimately argue that alleged procedural violations, as stated in the Petition, constitute a violation of the principle of separation of powers, nor can he cite any law connecting the actions alleged in the Petition to a basis to declare the Ordinance invalid on the basis of a violation of the separation of powers.

A relatively simple application of the standard injunction framework demonstrates that the Plaintiff is not entitled to the extraordinary remedy of injunctive relief, or to have a properly voted upon ordinance invalidated, given that the underlying claims are so frail.

It is with these arguments in mind, as explained below, that the Court should deny all relief requested in the Plaintiff's Petition for Declaratory Judgment and Injunctive Relief.

### **III. Ordinance 25-0741's Passage Conformed to City Law, Allegations of Procedural Deficiencies, if True, Would Not Invalidate the Ordinance, and No City Ordinance or Charter Provision was Violated When the Plaintiff's Visual Aid was Disallowed.**

The correct analysis of the Plaintiff's Petition begins with its most consequential claim: that Ordinance 25-0741 is invalid. The Plaintiff's allegations that the Ordinance was not passed in conformity with Gallatin law are subject to dismissal by this Court at this preliminary stage in the proceedings because the violations of law alleged by the Plaintiff, even if true, would not provide

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<sup>10</sup> The Defendants do not stipulate to the facts as alleged in the Petition, and entertain their possibility only hypothetically for the purposes of the Court's analysis resolving a Motion to Dismiss.

an appropriate basis for the Court to invalidate the Ordinance. The Ordinance was passed by the necessary majority of City Council members after due deliberation, and in accordance with substantive applicable law. The parliamentary procedural deficiencies alleged in the Complaint, which amount to accusations that the Mayor interrupts the Plaintiff during meetings and attempted to establish council procedures for the use of visual aids during deliberations, even if true, are not appropriate bases to invalidate an Ordinance. Finally, the Plaintiff, although claiming that the Mayor violated Gallatin law in her attempts to establish procedures governing the use of visual aids during council deliberations, does not cite a provision of the City Charter or non-parliamentary procedure.

“The rules of order for government of the city council are mere rules of procedure adopted by itself for its guidance and convenience. They are no part of its legislative or legal charter, and rest upon no positive prescription of the statutes of the State … it is competent for the council to waive them, and certainly this is so with the consent of all the council present”.<sup>11</sup> Further, while it has long been held that a City’s charter requirements must be complied with to exercise legislative authority, there is an equally lengthy history of “uniformly” holding that “it is within the power of deliberative bodies to abolish, modify, or waive their own rules of procedure”.<sup>12</sup> Rather, “It is well-settled that a municipal ordinance may be declared void when ‘not passed regularly or according to the forms of law’”, rather than mere procedural quarrels.<sup>13</sup>

The Plaintiff’s Petition does not allege that the Charter of the City of Gallatin was violated. Rather, the only Gallatin law that the Plaintiff asserts was violated is Gallatin Municipal Code §

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<sup>11</sup> Bradford v. City of Jellico, 1901 Tenn. Ch. App. LEXIS 83 at \*23, 1 Tenn. Ch. App. 700 at \*718-719 (Tenn. Ct. Ch. App. 1901).

<sup>12</sup> Rutherford v. Nashville, 168 Tenn. 499, 505-506 (Tenn. 1935).

<sup>13</sup> Burnley v. Greeneville, 38 Tenn. App. 322, 226 (Tenn. Ct. App. 1954) (Ruling so only the in context of an evidentiary appeal, but finding that an ordinance not passed in conformity with the charter was invalid).

2-93, which adopts Robert's Rules of Order as the parliamentary procedure of the City of Gallatin. It is also important to understand that the Plaintiff does not assert in his Petition that he is simply barred from presenting visual aids, he asserts that it is a violation of the Charter of Gallatin for the members of the City Council to attempt to adopt procedures governing their use.<sup>14</sup> Both of these issues are self-evidently matters of parliamentary procedure. There is a legitimate basis in State law to say that the Court cannot invalidate a Municipal Ordinance on this basis, as waiving those procedures would be within the authority of the city council in passing a valid and binding ordinance.

Robert's Rules of Order, if adopted by a City legislative body, are subject to waiver by the legislative body.<sup>15</sup> In fact, Robert's Rules of Order, by their own terms, allow for the legislative body to do business with little regard for them by "unanimous, or silent, consent."<sup>16</sup> Therefore, there is no basis to invalidate the Ordinance on the grounds that Robert's Rules of Order, in particular, were violated. Tennessee law expressly permits their waiver by even silent consent. And by passing the ordinance by a majority vote in conformity with the Gallatin Charter, the council implicitly ratified the procedures governing their deliberations, including the waiver of any parliamentary procedures, if any violations were to, in fact, have occurred.

"Where the law is silent as to the mode of procedure, no particular formality in the enactment of the ordinance need be adopted. In the absence of other requirements it is only necessary that there by sufficient proof of the will of the governing body. In such case, the enacting body may choose its method."<sup>17</sup> There is a presumption in favor of the validity of an ordinance

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<sup>14</sup> The Plaintiff says as much in his Petition, where he acknowledges his refusal to conform to procedures before being allowed to present a visual display.

<sup>15</sup> Saylor v. Jackson, 575 S.W.2d 264, 267 (Tenn. 1978).

<sup>16</sup> Id. (Quoting Robert's Rules of Order).

<sup>17</sup> State ex rel Balsinger v. Madisonville, 222 Tenn. 272, 276-278.

and those questioning this validity have the burden of proof.<sup>18</sup> In determining the will of the governing body, the Court may look to whether the council members were aware of the nature of the matter and the effect of the ordinance on passage.<sup>19</sup>

There is no Municipal Ordinance or Charter Provision governing the admission or use of visual aids during City Council deliberations, and therefore the Mayor and the City Council were within their authority in improvisationally adopting procedures to govern their use when their use became a point of conflict at the meetings. The Petition does not contain any allegation that the Ordinance was not passed by the will of the governing body. In fact, the ordinance was passed by the requisite majority, and the Plaintiff cannot articulate one substantive Charter provision or non-parliamentary procedure that was violated. The Petition does not contain a claim that the council members were not aware of the nature of the matter or the effect of the ordinance on passage. Presumably, the ordinance, which rezoned a portion of Gallatin from residential to mixed-use status, was understood by the members of the City Council, because they passed it. This conclusion is strengthened by the presumption that a passed ordinance is valid, and, again, the City Council ratified the procedure governing their deliberations and the quality of their deliberations themselves when they passed the ordinance.

Importantly, the City of Gallatin originates from a Private Act Charter<sup>20</sup> and Cities that were created via Private Act Charters are not subject to certain provisions governing operations like City Council meetings, and, rather, are governed by their Charter.<sup>21</sup> While the Plaintiff does not allege a violation of Tennessee statute in relation to the passage of the Ordinance in his Petition,

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<sup>18</sup> Id. at 277. (citing State ex rel Senff v. City of Columbia, 208 Tenn. 59, 343 S.W.2d 888 (Tenn. 1961).

<sup>19</sup> State ex rel. Wilson v. Lafayette, 572 S.W.2d 922, 924 (Tenn. 1978).

<sup>20</sup> Chater 67 of the Private Acts of 1953.

<sup>21</sup> See Biltmore Hotel Court, Inc., v. Berry Hill, 216 Tenn. 62, 72 (Tenn. 1965) and State use of Newbern v. Flatt, 503 S.W.2d 216 (Tenn. 1974).

the Defendants simply note that any basis to invalidate the ordinance would likely arise from a violation of the Gallatin Charter, and there is no such allegation.

**IV. A Declaratory Judgment Cannot Be Issued Regarding the Use of Visual Aids During City Council Meetings Because There is no City Law for the Court to Interpret on that Topic and the Court Should Not Create City Procedural Law.**

The Defendants have previously identified that the Plaintiff does not cite any law in the Petition governing the use of visual aids during City Council deliberations. That is because there is not any. The fact that there are no City Council procedures or laws governing their use is evidence that the use of visual aids had not been a point of conflict in the Gallatin City Council before. The events that are allegedly the subject of a valid cause of action before this Court present the first time the City Council have the inclination to create such policy, and the Petition itself demonstrates that the City Council has taken to doing so.

However, as demonstrated, the Plaintiff does not like the courses of action that the Mayor and other members of the council have proposed and taken, so he now comes to the Court in hopes that it will create procedural policy for the counsel. In the same breath, the Plaintiff unironically asks the Court to invalidate a duly passed ordinance on the basis that the Mayor has violated the principle of separation of powers by presiding over the meetings as she is required to by Gallatin law. This hypocrisy is evidence of alternative motivations, which are evidenced by his Petition,<sup>22</sup> to use this Court as mechanism to supersede the will of the duly elected legislative body of the City of Gallatin. Precisely because this legislative prerogative is reserved for that City's legislative body, this Court should decline to create such procedural policy.

Indeed, the Court can know for certain that the Plaintiff is doing so because the Plaintiff has not provided any law on the subject for the Court to interpret and explicitly communicates in

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<sup>22</sup> The overarching request of the Plaintiff's Complaint is to invalidate duly passed law and to create parliamentary procedure for the council.

his Petition that the Mayor and Council are addressing the matter in a manner to which he dissents. The Plaintiff is coming to the Court in these circumstances as a final effort to invalidate policies that were duly passed by the City Council and to create parliamentary procedures that are against the will of the council, because that is what he wants, and he knows he will not get it if the will of the City Council is carried out. The Petition, taken as true, does not provide the Court with a valid legal basis to oblige the Plaintiff, and further, the Court should not, as that action would be in violation of the principle of the separation of powers.

**V. The Mayor Did Not Intrude in the City Council’s Deliberative Functions Because Deliberation, in Fact, Occurred, and Because the Mayor Acted Reasonably Within Her Authority.**

The Defendants reiterate, pursuant to the arguments *supra*, that the Plaintiff has not alleged any reason rooted in substantive law to question the validity of the ordinance, and therefore has not rebutted the presumption that the passed ordinance is valid. That presumption implies that the deliberative process was valid as well, another contention that the Plaintiff has not rebutted by alleging the violation of substantive law. Because the Plaintiff has not properly alleged that the ordinance was invalid, deliberation is presumed to have occurred, and the Plaintiff cannot logically and sensibly say that a violation of the principle of separation of powers occurred because the deliberation process has not been demonstrated to have been impeded.

The Mayor is within her rights in presiding over city council meetings to “perform such other duties as may from time to time be designated *or required* by the council and by the Charter”.<sup>23</sup> Gallatin law does not provide a definition of the word preside, but it is reasonable to interpret that word as something approximating it being the Mayor’s responsibility to ensure that

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<sup>23</sup> See Gallatin Municipal Code § 2-46(1) for the premise that the Mayor presides over City Council meeting and Gallatin Municipal Code § 2-46(16) for the contention that the Mayor may perform “such other duties as may from time to time be designated or required” of her by the Council and Charter.

the meetings are executed in an orderly fashion and in accordance with applicable law. As established, the Petition does not assert any violations of Gallatin law except for violations of Robert's Rules of Order. To the extent the Court is required to accept that accusation as true for the purposes of this Motion, the Defendants cannot deny it at this time. However, the Defendants would bring to the Court's attention that because the use of visual aids was becoming an issue, as alleged in the Petition, and because there was no applicable law establishing procedures for the use visual aids during Council deliberations, *the Mayor had a responsibility to attempt to establish order relating to the use of visual aids at Council meetings. The Mayor had a legal duty by the Charter to preside over the meetings and take such action as is sometimes required by those duties. Here, she did just that by preliminarily establishing procedures governing their use until such a time as a formal policy could be reduced to writing.* The Mayor observed a potential threat to the orderly execution of the meetings, had no law at her disposal to guide her actions, and justifiably believed her obligations to the City and the Council required her to adopt a working procedure for the display of visual aids. In doing so, she did exactly what the Office of Mayor required her to do.

Therefore, regarding the use of visual aids during Council deliberations, there is not only an absence of allegation of violation of law, but there also exists a binding legal duty and justification for the Mayor to attempt to establish parliamentary procedures governing their use in these circumstances.

**VI. Local Ordinance 2-71(c), Does Not, by its Own Terms, Provide that the Plaintiff has the Right to Place Items on the Agenda.**

The Plaintiff's interpretation of Gallatin Municipal Code § 2-71(c) is facially incorrect. That ordinance, in its entirety, states,

All department heads and all other persons desiring to present any matter to the council committee shall notify the mayor in writing of

the matter(s) to be placed upon the council committee agenda. Such notification must be made at least five (5) calendar days in advance of the date of the council committee meeting in order to be placed upon the agenda. The council committee may, upon majority vote, waive the five-day written notice. The mayor shall prepare the agenda and deliver such to the council committee at least two (2) days in advance of any meeting of the council committee. The council committee, may upon majority vote, consider any non-agenda matter.

Gallatin Municipal Code § 2-71(c).

This portion of the ordinance establishes a procedure for presenting proposed agenda items to the Mayor, but it does not establish a right to have those items placed on the agenda automatically. In fact, Gallatin Municipal Code § 2-71(c) establishes a criteria for when proposed agenda items will not be heard at the meetings for lack of notice. It is a negative prohibition, not a positive prescription.

Admittedly, that ordinance is subject to improvement, as it ostensibly allows “all persons” to notify the mayor of items they wish to place on the agenda. That is why this issue shares a common thread with all other issues identified in this matter: the ordinance is subject to revision by the City Council, of which the Plaintiff is a part. The Plaintiff is within his rights to bring these issues to the attention of the council and argue as persuasively as he can for amendment(s) by ordinance. He chooses not to do so, and instead brings this burdensome matter before this Court, because he does not want that deliberation process to occur. He does so because he wishes to circumvent the appropriate legislative process in order for his will to be established as Gallatin law. These Defendants submit that he does so because he knows the appropriate procedures will not yield exactly the outcome he desires.

## **VII. The Plaintiff is Not Entitled to Injunctive Relief.**

Rule 65.04(2), T.R.C.P., dictates that a temporary injunction may be granted during the pendency of an action if it is clearly shown by the verified complaint, affidavit, or other evidence

that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment. Permanent injunctions are ordinarily not entered during the pendency of a matter, particularly, not at this preliminary stage.

The Defendants briefly posit that there is no evidence that the Plaintiff's rights are being violated because the Petition does not contain any actionable claims, so much so that it is subject to dismissal for failure to state a claim. Therefore, if no injunctive relief is granted, the Plaintiff will suffer no injury, much less immediate injury, and the Plaintiff has the capacity as a Gallatin City Council member to amend the policies he petitions against if can convince his fellow members to do so. This Memorandum has demonstrated that the Plaintiff has not stated a claim that the Court can take action on. It immediately follows that the Plaintiff has not made the requisite showing to be granted a preliminary or permanent injunction.

### **VIII. Conclusion**

This Memorandum has demonstrated that the facts alleged in the Petition for Declaratory Judgment Injunctive Relief, taken as true, do not provide the Court with bases to invalidate Ordinance 25-0741, least of all for a violation of the separation of powers. This Memorandum also established that the Court cannot interpret parliamentary procedures that do not exist, and that it is the responsibility of the City Council, with which the Plaintiff should work, to create such policies. Finally, this Memorandum explained the proper interpretation of Gallatin Municipal Code § 2-71(c).

For those reasons, the Defendants moves this Court to:

- (1) Decline to issue a Declaratory Judgment that Ordinance 25-0741 is void, or in the alternative, issue a Declaratory Judgment that Ordinance 25-0741 is valid.

(2) Decline to issue Declaratory Judgments relating to procedures governing the use of visual aids at the meetings.

(3) Decline to issue an injunction that the Plaintiff is entitled to place items on the agenda pursuant to Gallatin Municipal Code § 2-71(c).

(4) Decline to issue the requested injunctions.

After doing so, the Defendants respectfully request that the Court dismiss this matter with prejudice as there are no remaining justiciable issues submitted.

Respectfully submitted,

/s/ Emmerson Y. Marlatt  
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*(Certificate of Service on Next Page).*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document, unless indicated otherwise below, has been served upon all remaining parties' counsel of record via this Court's CM/ECF system on January 8<sup>th</sup>, 2026.

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