IN THE SUPREME COURT OF THE STATE OF OREGON

JOSEPH ARNOLD, CLIFF ASMUSSEN, GUN OWNERS OF AMERICA, INC., and GUN OWNERS FOUNDATION,

Plaintiffs-Adverse Parties,

v.

KATE BROWN, Governor of the State of Oregon, in her official capacity; and ELLEN ROSENBLUM, Attorney General of the State of Oregon, in her official capacity, TERRI DAVIE, Superintendent of the Oregon State Police, in her official capacity,

Defendants-Relators.

Harney County Circuit Court No. 22CV41008

SC _____

MANDAMUS PROCEEDING

STAY REQUESTED

RELATORS' MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR A PEREMPTORY OR ALTERNATIVE WRIT OF MANDAMUS

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RELATORS' MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR A PEREMPTORY OR ALTERNATIVE WRIT OF MANDAMUS

INTRODUCTION

The people of Oregon enacted Measure 114 in the November general election to prevent "horrific deaths and devastating injuries due to mass shootings, homicides and suicides." (ER-28, Preamble). As pertinent here, Measure 114: (1) prohibits the purchase and restricts the use of large-capacity magazines, and (2) requires a permit to purchase firearms. (ER-29–39).

Plaintiffs sued seeking immediate injunctive relief, arguing that Measure 114 violates Article I, section 27, of the Oregon Constitution, which protects "the right to bear arms" for self-defense. (ER-1–26). The Harney County Circuit Court enjoined enforcement of Measure 114 in its entirety. (ER-347).

The trial court committed fundamental legal error in doing so. As explained below, Article I, section 27, protects weapons commonly used for self-defense in 1859 and, as to those, allows restrictions that reasonably relate to public safety. *State v. Christian*, 354 Or 22, 33, 307 P3d 429 (2013); *State v. Hirsch*, 338 Or 622, 677–78, 114 P3d 1104 (2005), *overruled on other grounds by Christian*, 354 Or at 40; *State v. Delgado*, 298 Or 395, 400–01, 692 P2d 610 (1984). Measure 114 easily satisfies those constitutional standards. This court should issue a writ of mandamus to vacate the order of injunctive relief that, if allowed to stand, poses an immediate threat to public safety in Oregon.

BACKGROUND

A. Measure 114

As stated in Measure 114's preamble, the people of Oregon "ha[d] seen a sharp increase in gun sales, gun violence, and raised fear in Oregonians of armed intimidation." (ER-28). The measure thus sought "to enhance public health and safety in all communities" by combating gun violence, in particular, the "horrific deaths and devastating injuries due to mass shootings, homicides and suicides." (ER-28). To that end, Measure 114 generally prohibits the sale and restricts the use of large-capacity magazines; it also requires a permit to purchase firearms.

1. Large-Capacity Magazines

Measure 114 generally prohibits the manufacture, importation, possession, use, purchase, sale, or transfer of magazines that hold more than 10 rounds of ammunition ("large-capacity magazines"). (ER-38, § 11(2); *see also id.* § 11(1)(d) (defining large-capacity magazine)). Measure 114 allows existing owners of large-capacity magazines to keep them. Owning the large-capacity magazine when Measure 114 went into effect and maintaining it lawfully is an affirmative defense to a charge of its unlawful possession, use, or transfer. (ER-39, § 11(5)(a)–(b)). This affirmative defense allows a large-capacity magazine to be kept on one's own property; used at a shooting range, for hunting or sport shooting, and in defined educational programs; repaired or

serviced at a registered gun dealer or gunsmith; and transported for a permissible use in a locked container. (ER-39, § 11(5)(c)).

In addition, a large-capacity magazine may be modified or altered to comply with the law. (ER-38, § 11(3)(a)(C); ER-338, ¶ 7; ER-340–41, ¶ 14). It is permissible, but not required, to voluntarily surrender a large-capacity magazine to law enforcement. (ER-39, § 11(5)(d)). The large-capacity magazine restrictions do not apply to law enforcement officers and other government agents acting within the scope of their official duties. (ER-39, § 11(4)(c)). And Measure 114 also provides a 180-day transition period for licensed gun dealers to transfer unsold large-capacity magazines out of state. (ER-38, § 11(3)).

2. Permit-to-Purchase

Under Measure 114, most firearm transfers require the recipient to have a permit to purchase the firearm. (ER-32–38, §§ 6–9). A permit-to-purchase is issued to an applicant by a municipal police agency or a county sheriff, called permit agents. (ER-28, § 3(5)). Under the measure, the Oregon State Police (OSP) must develop the application form for permits-to-purchase. (ER-30, § 4(4)(a)). A permit agent receiving an application must (1) verify the applicant's identity; (2) fingerprint and photograph the applicant, and (3) "conduct any investigation necessary" to determine whether the applicant is qualified to receive a permit. (ER-29, § 4(1)(d), (e)).

Permit agents must also ask OSP to conduct "a criminal background check, including but not limited to a fingerprint identification, through the Federal Bureau of Investigation [(FBI)]." (ER-29, § 4(1)(e)). After OSP has completed the background check and determined "whether the permit applicant is qualified or disqualified from purchasing or otherwise acquiring a firearm the department shall report the results, including the outcome of the fingerprint-based criminal background check, to the permit agent." (ER-29, § 4(1)(e)).

Permit agents "shall issue" the requested permit within 30 days of the application if the permit agent has verified the applicant's identity and determined that the applicant is qualified to receive a permit under the measure. (ER-30, § 4(3)(a)). That permit remains valid for five years. (ER-30, § 4(7)(a)). The permit agent "may charge a reasonable fee reflecting the actual cost of the process," capped at $65. (ER-30, § 4(3)(b)). A permit-to-purchase is valid for five years and may be renewed under a streamlined process. (ER-30, § 4(7)). Permit holders must present a copy to a transferer when required. (ER-30, § 4(3)(c)).

If a permit application is denied, or if no written response has been received within 30 days of the application, the applicant may file an action in state circuit court to compel the issuance of the permit. (ER-31, § 5(1), (5)). The court reviews the issue de novo and must issue a decision on the matter "within 15 judicial days of filing or as soon as practicable thereafter." (ER-31,

§ 5(8), (10)). That decision is appealable as a matter of right to the Oregon Court of Appeals, like any other civil matter. (ER-32, § 5(11)).

> A person is qualified to be issued a permit-to-purchase if the person:
>
> (A) Is not prohibited from purchasing or acquiring a firearm under state or federal law, including but not limited to successfully completing a criminal background check as described under paragraph (e) of this subsection;
>
> (B) Is not the subject of an order described in ORS 166.525 to 166.543;
>
> (C) Does not present reasonable grounds for a permit agent to conclude that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence;
>
> (D) Provides proof of completion of a firearm safety course as defined in subsection (8) of this section; and
>
> (E) Pays the fee described in paragraph (b) of subsection (3) of this section.

(ER-29, § 4(1)(b)).

Notably, the first two requirements for obtaining a gun are not newly established by the permit-to-purchase system. *See, e.g.*, ORS 166.525–.543. Measure 114 also does not change which transfers require background checks. *See* ORS 166.412, 166.435, 166.436, 166.438.

B. The trial court's injunction

In the November general election, a majority of Oregon voters approved Measure 114. The measure was slated to go into effect when the Governor

proclaims the result of the election on December 8. Or Const Art IV, § 1(4)(d). On December 2, 2022, Plaintiffs sued challenging the facial constitutionality of Measure 114 under Article I, section 27 of the Oregon Constitution; plaintiffs requested a temporary restraining order enjoying Measure 114. (ER-1–27).

On December 6, 2022, the trial court held a hearing on plaintiffs' motion for injunctive relief. Before the hearing began, the U.S. District Court for the District of Oregon held that Second Amendment facial challenges to the large-capacity-magazine restrictions and the permit-to-purchase requirement were unlikely to succeed but—at the state's request—enjoined enforcement of the permit-to-purchase provisions of Measure 114 for thirty days to allow for orderly implementation of the permitting process. (APP-4, 43). Defendants notified the trial court of this development and provided the court with a copy of the federal district court's order. Nevertheless, the trial court granted plaintiffs' motion for injunctive relief and enjoined enforcement of Measure 114 in its entirety less than two days before the measure's effective date. (ER-347–50).

ARGUMENT

A. The trial court committed fundamental legal error in enjoining enforcement of Measure 114.

The trial court issued a temporary restraining order barring defendants from enforcing Measure 114 in its entirety. That injunction was wrong for two reasons. First, the court committed fundamental legal error in determining that

plaintiffs' substantive claims had any merit, much less sufficient merit to support the extraordinary injunctive relief it granted. Second, the court's decision to issue an injunction fell outside the range of permissible discretionary choices for the trial court. Either reason warrants vacating the temporary restraining order.

1. Injunctive relief requires showing a strong right to relief, irreparable harm, balance of hardships, and public interest.

Under ORCP 79 A, injunctive relief "may" be allowed if the plaintiff is "entitled to relief" and would suffer injury during the litigation. As a general rule, however, injunctive relief is an "extraordinary remedy" that should be granted sparingly. *Jewett v. Deerhorn Enters. Inc*., 281 Or 469, 473, 575 P2d 164 (1978).

Oregon courts apply traditional equitable factors to determine whether to exercise their discretion to award this extraordinary relief. First, "clear and convincing proof" on the merits is required. *Jewett*, 281 Or at 473. Second, the party seeking an injunction must show that "irreparable harm" will occur and that "there is no adequate legal remedy." *Gildow v. Smith*, 153 Or App 648, 653, 957 P2d 199 (1998); *Josephine Cty. v. Garnier*, 163 Or App 333, 336–37, 987 P2d 1263 (1999) ("proof of irreparable harm is a prerequisite of injunctive relief generally"). Third, courts consider the "relative hardship likely to result to the defendant if the injunction is granted and to the plaintiff if

it is denied." *York v. Stallings*, 217 Or 13, 23–25, 341 P2d 529 (1959). Finally, courts consider the public interest. *Bennett v. City of Salem*, 192 Or 531, 546, 235 P2d 772 (1951) ("[T]here are situations where the public interest would be so seriously affected by the issuance of an injunction that the court will deny an application therefor.").

Thus, although a trial court has some discretion to decide whether to issue a preliminary injunctive relief, that relief is inappropriate as a matter of law unless the plaintiffs makes a sufficiently strong showing that (1) the plaintiff will likely prevail in the litigation; (2) the plaintiff is likely to suffer irreparable harm without an injunction; (3) that harm outweighs any harm that an injunction will cause to the defendant; and (4) the public interest favors an injunction. *See Elkhorn Baptist Church v. Brown*, 366 Or 506, 518–19 (2020) (describing standard).

2. The large-capacity-magazine challenge fails as a matter of law.

As to Measure 114's restrictions on large-capacity magazines, plaintiffs failed to establish the threshold requirement of a meritorious legal claim. They further failed to show any irreparable harm. The trial court committed fundamental legal error in ruling otherwise.

a. Article I, section 27, allows Measure 114's restrictions on large-capacity magazines.

Article I, section 27, provides that "[t]he people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power." As a threshold matter, the right to bear arms under the provision extends only to weapons that constitute "arms" within the meaning of Article I, section 27. Specifically, the right extends to the "kind of weapon, as modified by its modern design and function, [that] is of the sort commonly used by individuals for personal defense during either the revolutionary and post-revolutionary era, or in 1859 when Oregon's constitution was adopted." *Delgado*, 298 Or at 400–01 (footnote omitted). By contrast, the right does not extend to "advanced weapons of modern warfare [that] have never been intended for personal possession and protection." *State v. Kessler*, 289 Or 359, 369, 614 P2d 94 (1980).

As summarized by the Court of Appeals, to implicate Article I, section 27, "a weapon must satisfy three criteria: (1) although the weapon may subsequently have been modified, it must be 'of the sort' in existence in the mid-nineteenth century; (2) the weapon must have been in common use; and (3) it must have been used for personal defense." *Or. State Shooting Ass'n v. Multnomah Cnty.*, 122 Or App 540, 544, 858 P2d 1315 (1993), *rev den*, 319 Or 273 (1994) (citing *Delgado* and *Kessler*). Relatedly, "while technological

advancement does not necessarily mean that a weapon is not 'arms' within Article I, section 27, there is a point at which that advancement renders the constitutional protection inapplicable." *Id.* (citing *Kessler*). As pertinent here, selling what were in 1857 military-grade weapons to civilians "cannot be used to bootstrap these weapons into person defense weapons so that they come within the constitutional protection." *Id.* at 548; *see id.* at 549 (upholding a ban on semi-automatic firearms).

Plaintiffs' challenge fails this threshold inquiry. A modern firearm with a large-capacity magazine is not "of the sort" that was in common use for self-defense in 1857. To the extent that any mid-Nineteenth Century multi-shot firearms employed high-capacity magazines, they were regarded as "experimental" and unreliable. (ER-187–96, ¶¶ 18–31 (describing early "experimental" multi-shot guns and the difficulty of developing reliable, commercially successful multi-shot guns until after the Civil War)). Commercially successful multi-shot guns were not developed until after 1857. (*Id.*) Indeed, large-capacity magazines were not widely marketed to civilians until recent decades. (ER-218, ¶ 16 & tbl 2; ER-338 ¶ 6). As such, large-capacity magazines are not "arms" within the meaning of Article I, section 27.

And even if they were, plaintiffs' challenge to Measure 114's provisions on large-capacity magazines still fails as a matter of law. The State may "restrict arms possession (and manner of possession) to the extent that such

regulation of arms is necessary to protect the public safety." *Hirsch*, 338 Or at 677. To pass constitutional muster, a restriction need only "satisfy the permissible legislative purpose of protecting the security of the community against the potential harm that results from the possession of arms." *Id.* at 677–78.

Put simply, preventing mass shootings is a permissible legislative aim. As pertinent here, since the federal ban on large-capacity magazines expired in 2004, every mass shooting that caused 14 or more deaths has used a large-capacity magazine, and mass shootings using large-capacity magazines were 62% more lethal than those that did not. (ER-142–43, ¶¶ 27-28; ER-215–16, ¶¶ 12–13; ER-252). Indeed, regression analysis using data from all fifty states show that prohibitions of large-capacity magazines are associated with a "48% lower risk of fatal mass shootings." (ER-297; *see* ER-255 (similar sentiment)).

Moreover, plaintiffs cannot show that a restriction on large-capacity magazines operates as a wholesale ban on firearms. Self-defense firearms that accept a magazine with a capacity exceeding 10 rounds can also accept a magazine with a capacity of 10 rounds or fewer. (ER-338–40, ¶¶ 7–11). For that reason, the Ninth Circuit recently explained that an outright ban on large-capacity magazines "outlaws no weapon, but only limits the size of the magazine that may be used with firearms." *Duncan v. Bonta*, 19 F4th 1087, 1103 (9th Cir. 2021) (en banc), *vacated and remanded*, 142 S Ct 2895 (2022).

In sum, large-capacity magazines do not fall within the ambit of Article I, section 27. Even as to arms that are protected, this court has been clear: Courts are to defer on the reasonableness of weapons restrictions, recognizing that the state "has wide latitude to enact specific regulations restricting the possession and use of weapons to promote public safety." *Christian*, 354 Or at 33. The trial court's order of injunctive relief contravened that explicit directive.

b. Plaintiffs have not shown irreparable harm.

Plaintiffs' claim similarly fails on the second factor required to warrant the extraordinary remedy of injunctive relief: irreparable harm. Below, plaintiffs appeared to argue that they will be irreparably harm simply because they allege a constitutional violation. Plaintiffs are mistaken. An injury based on a plaintiff's loss of constitutional rights requires the plaintiff to establish it is likely to succeed on its constitutional claim. *See Associated Gen. Contractors of Cal., Inc. v. Coal. For Econ. Equity*, 950 F2d 1401, 1412 (9th Cir 1991). For the reasons explained above, they failed to make that showing.

Moreover, as a practical matter, plaintiffs can continue to "bear arms" while a court decides the merits of their claims. Plaintiffs allege that they already own large-capacity magazines; Measure 114 allows them to keep those magazines in their home and to use them outside the home for limited purposes. Both firearms and magazines are durable goods with a long, useful life. (ER-

343, ¶ 19). Plaintiffs further can use their existing firearms with a compliant magazine.

Indeed, plaintiffs can continue to use compliant magazines and firearms to defend themselves, inside or outside of the home, regardless of Measure 114. The National Rifle Association's database on the use of firearms shows that more than 10 rounds are fired in only 0.3% of defensive uses of firearms. (ER-128–29, ¶ 10). Plaintiffs cannot establish that large-capacity magazine will be used, let alone necessary, for them to defend themselves.

3. The permit-to-purchase challenge fails as a matter of law.

The merits arguments above apply with equal force to plaintiffs' challenge to Measure 114's permit-to-purchase restrictions. "[A]s a general rule, the constitutionality of laws are traditionally determined in the context of an actual factual setting that makes a particular determination of the rights of the parties necessary." *Christian*, 354 Or at 39. As a result, "overbreadth challenges are not cognizable in Article I, section 27, challenges." *Id.* at 40. A party may raise a facial challenge to a weapons restriction, but such facial challenges are "limited to whether the [restriction] is capable of constitutional application in *any* circumstance." *Id.* (emphasis added).

As noted, the state "may specifically regulate the manner of possession and use of protected weapons." *Id.* at 38. To pass constitutional muster, a restriction need only "satisfy the permissible legislative purpose of protecting

the security of the community against the potential harm that results from the possession of arms." *Hirsch*, 338 Or at 677–78. Courts thereby defer to legislative judgments on the reasonableness of such restrictions. *Christian*, 354 Or at 33.

Here, the shall-issue permit-to-purchase requirements under Measure 114 reasonably promote public safety by ensuring that purchasers who pass a background check are not barred from possessing firearms and can safely handle them. Plaintiffs do not, and cannot, argue otherwise, and for that reason they cannot show the likelihood of success on the merits required by ORCP 79.

Even if they could, plaintiffs' claim would still fail. On a motion for a temporary restraining order, a court must consider "whether, if the injunction is not issued, the party will be irreparably harmed during the litigation of the claim." *See Elkhorn Baptist Church*, 366 Or at 519. There is no such harm here, both because Plaintiffs' claim fails on the merits, and because a federal court had already enjoined enforcement of the permit-to-purchase provisions of Measure 114 before the trial court heard argument and issued its order. (APP-1–43). Put another way, the trial court ruled that plaintiffs had shown immediate irreparable harm from aspects of a statutory scheme that will not go into effect for at least thirty days. Such an order defies logic, reason, and law.

4. The trial court exceeded its discretion.

Merits aside, the other factors tip so decidedly against injunctive relief that it fell outside the trial court's range of discretionary choices. Whatever harm plaintiffs may experience if Measure 114 takes effect pales in comparison to the threat to public safety if enforcement of the measure is enjoined. The public interest thus weighs heavily against an injunction.

"Public safety should be considered by a court when granting equitable relief." *Dahl v. HEM Pharms. Corp.*, 7 F3d 1399, 1404 (9th Cir 1993) (citation omitted). Here, robust peer-reviewed academic work shows "that laws requiring firearm purchasers to be licensed through a background check process supported by fingerprints and laws banning [large-capacity magazines] are the most effective gun policies for reducing fatal mass shootings." (ER-287). The equities disfavor a preliminary injunction that would forestall Oregon's effort to reduce the risk of a massacre within its borders. *See Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1282 (ND Cal 2014), *aff'd sub nom. Fyock v. Sunnyvale*, 779 F3d 991 (9th Cir 2015) ("[T]he risk that a major gun-related tragedy would occur is enough to at least balance out the inconvenience to Plaintiffs in disposing of their now-banned magazines.").

By contrast, there is no shortage of widely available firearm magazines that comply with the limits of Measure 114. Measure 114 further specifically allows permanent alterations to reduce magazine capacity. Virtually all self-

defense uses of firearms involve fewer than ten shots. Firearms incorporating magazines that already comply with the restriction are widely available, and firearm owners who currently use non-compliant magazines generally can substitute a compliant magazine or permanently alter the magazine to comply. Owners who decline to do either will be permitted to use large-capacity magazines they currently own in restricted ways, but can avoid those restrictions if they use a lower capacity magazine in situations where a high-capacity magazine is unlawful.

In short, this is a "minimal burden" on plaintiffs' use of firearms for self-defense. *Duncan*, 19 F4th at 1103. As explained by the en banc Ninth Circuit, "[t]he law has no effect whatsoever on which firearms may be owned; as far as the challenged statute is concerned, anyone may own any firearm at all. Owners of firearms also may possess as many firearms, bullets, and magazines as they choose." *Id.*

Moreover, whatever discretion a court might otherwise have had here, a preliminary injunction like the one the court issued—enjoining Measure 114 in its entirety—was outside the range of permissible choices. As this court has made clear, injunctive relief should be as narrow as possible to achieve the necessary end. As a general rule, courts should "refrain from constitutional holdings unless ordinary legal principles cannot resolve the dispute." *Lloyd Corp., Ltd. v. Whiffen*, 307 Or 674, 680, 773 P2d 1294 (1989). For example, in

Lloyd, the Supreme Court reversed and remanded an injunction that "went too far" by broadly enjoining protected activity that the trial court did not need to reach given the facts of that case. *Id.* at 687–88.

Here, Measure 114 has a severability clause, specifically providing that any portion of the law found unconstitutional should be severed, and the remainder should go into effect. (ER-39, § 12); *see also* ORS 174.040 (severability of unconstitutional statutes). The trial court ignored that clause and statutory command and enjoined Measure 114 wholesale, even though plaintiffs never challenged some of its provisions. For example, the measure closes the so-called Charleston Loophole, which allows some firearms transactions to go through without completed background checks. (ER-33, § 6(3)(c)). Plaintiffs offered no argument that that provision was unconstitutional. The trial court thus "went too far" in so cavalierly disregarding the will of Oregon's voters. *Lloyd*, 307 Or at 687–88.

B. This court should exercise its discretion to issue a writ of mandamus because of the profound statewide importance of the issue.

Mandamus lies within this court's discretion. But this case presents the sort of extraordinary circumstances that warrant exercising that discretion. Mandamus is the only means for defendants to obtain appellate review of the preliminary injunction. *See State ex rel. Keisling v. Norblad*, 317 Or 615, 623, 860 P2d 241 (1993). It is an appropriate vehicle when the preliminary

injunction is either based on a "fundamental legal error" or "outside the permissible range of discretionary choices open to the trial court." *Id.* As explained above, the injunction here is both: It is based on a fundamentally flawed interpretation of Article I, section 27, and it is beyond the trial court's discretionary authority.

The life-and-death stakes of this case justify this court's exercise of mandamus authority here, as a recent tragedy in California illustrates. California is one of 12 other states that prohibits large-capacity magazine sales. Its law was challenged in the U.S. District Court for the Southern District of California. On March 29, 2019, the district court granted summary judgment against California and issued a permanent injunction but ultimately stayed its injunction pending appeal. *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (SD Cal 2019) (subsequent history omitted).

The following week, a 19-year-old man bought a rifle and several 10-round magazines in San Diego; the stay prevented him from purchasing any large-capacity magazines. Two weeks later, wearing a tactical vest, he entered a synagogue and began shooting. His stated goal was to kill as many Jews as possible. He managed to kill one congregant and injure three others; congregants were able to end his attack when he stopped shooting to reload a magazine cartridge. A large-capacity magazine would not have afforded that

opportunity. *See United States v. Earnest*, No. 3:19-cr-1850 (SD Cal), ECF 125 at 14–16 (transcript of plea hearing) (Sept 17, 2021).

CONCLUSION

This court should exercise its original mandamus jurisdiction in this matter under Article VII (amended), section 2 of the Oregon Constitution and ORS 34.250. The court should issue a peremptory writ of mandamus directing the circuit court to vacate its preliminary injunction. Alternatively, the court should immediately stay the injunction and issue an alternative writ of mandamus directing the trial court to vacate the injunction or to show cause for not doing so.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on December 7, 2022, I directed the original Relators' Memorandum of Law in Support of Petition for a Peremptory or Alternative Writ of Mandamus to be electronically filed with the Appellate Court Administrator, Appellate Records Section, by using the electronic filing system.

I further certify that on December 7, 2022, I directed the Relators' Memorandum of Law in Support of Petition for a Peremptory or Alternative Writ of Mandamus to be served upon Tony L. Aiello, Jr. and Tyler D. Smith, attorneys for adverse parties, and upon Honorable Robert S. Raschio, circuit court judge, by mailing two copies, with postage prepaid, in an envelope addressed to:

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