No. 128004

IN THE SUPREME COURT OF ILLINOIS

LATRINA COTHRON, *Plaintiff-Appellee*,

v.

WHITE CASTLE SYSTEM, INC., *Defendant-Appellant*.

Question of Law Certified by the United States Court of Appeals
for the Seventh Circuit, Case No. 20-3202

Question of Law ACCEPTED on December 23, 2021 under Supreme Court Rule 20

On appeal from the United States District Court for the Northern District of Illinois under
28 U.S.C. § 1292(b), Case No. 19 CV 00382
The Honorable Judge John J. Tharp, Judge Presiding

BRIEF OF *AMICI CURIAE* ILLINOIS MANUFACTURERS' ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, ILLINOIS HEALTH AND HOSPITAL ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS TRUCKING ASSOCIATION, MID-WEST TRUCKERS' ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, AMERICAN TRUCKING ASSOCIATIONS, INC., AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF PETITION FOR REHEARING OF DEFENDANT-APPELLANT WHITE CASTLE SYSTEM, INC.

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TABLE OF CONTENTS
AND POINTS AND AUTHORITIES

I. IDENTITY AND INTEREST OF AMICUS CURIAE[1]

The Illinois Manufacturers' Association ("IMA"), the National Association of Manufacturers ("NAM"), the Illinois Health and Hospital Association ("IHA"), the Illinois Retail Merchants Association ("IRMA"), the Chemical Industry Council of Illinois ("CICI"), the Illinois Trucking Association ("ITA"), the Mid-West Truckers' Association ("MTA"), the Chicagoland Chamber of Commerce, the American Trucking Associations, Inc. ("ATA"), and the American Property Casualty Insurance Association ("APCIA") (collectively, the "Associations"), trade associations which represent the interests of thousands of Illinois businesses, join together as *amici curiae* to submit this brief in support of the Petition for Rehearing of Defendant-Appellant White Castle System, Inc. ("White Castle"). The Associations' members include thousands of Illinois businesses providing employment for more than 2.9 million employees. These Illinois businesses are justifiably concerned about this Court's Opinion in *Cothron v. White Castle System, Inc.*, 2023 IL 128004 (the "Opinion"), in which the Court held that a violation of Sections 15(b) and 15(d) of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq*. (the "Act") occurs with each scan or transmission of biometric identifiers or biometric information. The Associations contend this holding could expose their members to liability totaling millions – if not billions – of

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[1] All parties have consented to the filing of this brief. No party's counsel authored any part of the brief or contributed money that was intended to fund the preparation or submission of this brief.

dollars, threaten their very existence and the employment of their employees, hinder technology development within the State of Illinois, and result in decreased health and safety for the citizens of Illinois. Respectfully, the Associations contend this holding and these absurd outcomes do not reflect the intent of the Illinois General Assembly when it enacted the Act and request that the Court rehear White Castle's appeal.

II. BACKGROUND

The Associations and their more than 30,000 members, which employ more than 2.9 million individuals in Illinois (approximately half of all workers in the State),[2] have a clear interest in the Court's decision in this matter. Like White Castle, many of the Associations' members use timekeeping systems and other forms of biometric technology[3] that require employees to scan their fingers, hands, or faces to record their hours worked, gain physical access to restricted spaces (including, for example, accessing controlled substances in healthcare settings), to access computer or point-of-sale systems, or in connection with the use of camera systems in vehicles. The use of biometric technology provides numerous benefits to both businesses and employees. Systems that include biometric functions are more accurate, easier to use, and

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[2] *See* https://www.bls.gov/oes/current/oes_il.htm (last visited March 9, 2023).

[3] The Associations do not concede that the systems used by their members collect, capture, disclose, redisclose, or otherwise disseminate biometric identifiers or biometric information and, therefore, are subject to the requirements of the Act.

save users from having to manage and update complicated passwords. Further, biometric technology can ensure that employees are correctly paid for all hours worked, safeguard confidential personal and health information, protect sensitive business and financial data, reduce retail theft, prevent unauthorized access to controlled substances in the workplace, and keep our roadways safe.

The Act was passed by the General Assembly and signed into law by the Governor of Illinois in 2008 in an effort to balance the benefits that the use of biometrics brought to this State with the perceived risk of identity theft associated with the use of biometrics based upon an incomplete understanding of biometric technology. 740 ILCS 14/5 (legislative findings and intent of the Act). While the Act was not the immediate source of litigation, in recent years, there has been an explosion of putative class actions filed against businesses operating in Illinois. Indeed, since 2019, more than 1,700 putative class action lawsuits alleging violations of the Act have been filed in state and federal courts, with a large number of those cases still pending.

The Associations have found that when their members have become aware of the Act's requirements, they have taken prompt, reasonable steps to ensure compliance and safeguard alleged biometric data by either: (i) obtaining knowing and voluntary employee consent to the collection of their alleged biometric data, using technology that requires consent to be given on the device itself, and following a compliant data retention and destruction policy, or (ii) discontinuing use of biometric technology altogether, thereby achieving the

"preventative and deterrent purposes" of the Act. *See Rosenbach v. Six Flags Ent. Corp.,* 2019 IL 123186, ¶ 37. However, even when businesses have taken such reasonable steps to ensure compliance, they are still being forced to defend against hundreds of class action lawsuits alleging violations of the Act.

Prior to the issuance of the Opinion, many businesses sought to resolve the lawsuits brought against them through settlements in which, based upon publicly available data, the average class member has received approximately $885 in lawsuits brought by employees against employers. This average class member award was based upon the collective belief of the parties that, if liability was found, courts were likely to award statutory liquidated damages of up to $1,000 per class member for negligent violations of the Act, if any damages at all. Even with average class member awards below $1,000 per person, this has resulted in scores of settlements of putative class actions with total settlement payments over $1 billion.

In the lone class action alleging violations of the Act which has been tried to verdict, the jury found in favor of a class of 45,600 truck drivers alleging that the defendant recklessly or intentionally violated the Act on 45,600 occasions, despite no evidence that class members' alleged biometric data was compromised, hacked, or improperly used in any way. *Rogers v. BNSF Ry. Co.*, Case No. 1:19-cv-03083, Notification of Docket Entry, ECF No. 223 (N.D. Ill. Oct 12, 2022). The federal district court then immediately entered judgment on the verdict and assessed damages of $228 million against the defendant based

on the Act's provision for statutory damages of $5,000 for each intentional or reckless violation of the Act identified by the jury. *Id.*

In the Opinion here, a majority of this Court held, in a 4-3 decision, that a claim under Sections 15(b) or 15(d) of the Act "accrues . . . with every scan or transmission of biometric identifiers or biometric information without prior informed consent." Opinion ¶ 45 (emphasis added). In doing so, the Court rejected White Castle's argument that "allowing multiple or repeated accruals of claims by one individual could potentially result in punitive and 'astronomical' damage awards that would constitute 'annihilative liability' not contemplated by the legislature and possibly be unconstitutional." Opinion ¶ 40. Respectfully, for the reasons set forth herein, the Associations urge this Court to reconsider this holding since applying a "per scan" damage theory would result in "annihilative liability" for businesses in Illinois facing putative class actions under the Act. Many businesses have been forced to defend claims under the Act which threaten their continued existence even when the perceived liability was on a per-person versus per-scan basis. Now, those businesses are confronted with the possibility of liabilities being assessed against them that are orders of magnitude greater than $1,000 or $5,000 per class member, which the Illinois General Assembly could not possibly have intended when it enacted the Act. This is particularly true where the risk of harm the Act was enacted to prevent has never materialized in the 15 years since it was passed into law. In fact, to the Associations' knowledge, there has

not been a single case, in the more than 1,700 cases filed since 2019, in which a plaintiff has alleged that his or her biometric data has been subject to a data breach or led to identity theft in any way. Thus, any such "astronomical" damages awards would be grossly disproportionate to the alleged harm the Act seeks to redress, particularly where there has not been a single case filed under the Act where an individual's alleged biometric data has been compromised or misused in any way.

III. ARGUMENT

A. The Opinion does not fully appreciate that concerns about potentially astronomical damage awards can and should be considered by the Court and not just the Illinois General Assembly.

In ruling that claims accrue under Sections 15(b) and 15(d) for each scan or transmission of biometric identifiers or biometric information, the Court dismissed the expressed concerns of White Castle and *amici* supporting White Castle's position that such a result could lead to "astronomical" damage awards that would constitute "annihilative liability" not contemplated by the legislature. Opinion ¶ 40. The Opinion notes "where statutory language is clear, it must be given effect, 'even though the consequences may be harsh, unjust, absurd or unwise,'" which here, may include White Castle facing the prospect of class-wide damages in excess of $17 billion even where the Plaintiff provided consent on more than one occasion during her employment and her alleged biometric data has never been compromised in the nearly 20 years she has been using the alleged biometric system at issue. *Id.* Respectfully, the

Court is not bound to interpret the Act to permit such harsh and unjust consequences, and the Associations request that the Court grant White Castle's petition for rehearing to fully consider the concerns expressed by the Associations regarding the astronomical damages that could be assessed under a "per scan" theory of damages. In construing the language of a statute, this Court should "assume that the legislature did not intend to produce an absurd or unjust result . . . and [should] avoid a construction leading to an absurd result, if possible." Opinion ¶ 59 (Overstreet, J., dissenting) (internal quotations omitted).

If the Act is interpreted to mean that a party may recover statutory liquidated damages of $1,000 or $5,000 per scan or transmission in violation of Section 15(b) or Section 15(d), the potential ramifications for businesses operating in Illinois – and the employees of those businesses – would be catastrophic. If an employee scans his or her finger (or hand, face, retina, etc.) on a time clock four times per day -- once at the beginning and end of each day, and again to "clock-out" and "clock-in" for one meal break -- over the course of a year, a single employee would have scanned alleged biometric identifiers or information 1,000 times. If a new claim accrues each time the employee scans his or her finger (or hand, face, retina, etc.) on the system, and the employee can recover a separate award of statutory liquidated damages for each scan, the potential damages for a single employee over the course of a year would total $1 million, which is more than 16 times the average annual earnings for Illinois

employees.[4] Given this Court's ruling in *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, that a five-year statute of limitations applies to claims under the Act, the potential damages for that same employee who used the time clock for five years would total $5 million. A small business with 50 such employees would face statutory liquidated damages of $250 million. Such a result would be absurd, unjust, and punitive – contrary to the Court's pronouncements regarding the intended preventative nature of the Act – and would have the practical effect of driving many Illinois companies out of business, leading to rampant unemployment across the State. Further, it incentivizes individuals to wait to bring claims under the Act if they believe each additional scan or use of a biometric system could lead to a higher damages award, which is antithetical to the purposes of the Act.

Such an outcome cannot possibly be the legislature's intent, and this Court should not interpret the statute in a way that causes illogical or unjust results. *See Nelson v. Artley*, 2015 IL 118058, ¶ 27 ("In construing a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results, and we will not, absent the clearest reasons, interpret a law in a way that would yield such results.") As noted by Justice Overstreet in dissent, taking into account the potential ramifications of the damages that could by awarded under a "per scan" theory of damages is not making a "policy-based

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[4] *See* U.S. Bureau of Labor Statistics, May 2021 State Occupational Employment and Wage Estimates, Illinois, at https://www.bls.gov/oes/current/oes_il.htm (last visited March 9, 2023).

decision about excessive damages." Opinion ¶ 62 (Overstreet, J., dissenting). Instead, evaluating the "potential imposition of crippling liability on businesses is a proper consequence to consider" in determining the intent of the General Assembly. *Id.*

A "per scan" theory of damages is wildly disproportionate to any alleged harm (if any at all) and would allow for the possibility of damages that bear no relation to the protections the statute was intended to provide. In *Rosenbach,* this Court noted that "whatever expenses a business might incur to meet the law's requirements are likely to be insignificant compared to the substantial and irreversible harm that could result if biometric identifiers and information are not properly safeguarded." ¶ 37 (emphasis added). However, the damages that could be assessed under a "per scan" approach are hardly insignificant. Rather, they are crippling. Moreover, any fears about a theoretical risk of "substantial and irreversible harm" has never come to fruition. There has never been a single claim filed under the Act to date that an individual's alleged biometric data has been breached, hacked, or misused by a malicious actor. The Associations urge this Court to reconsider a "per scan" interpretation of the statute, which would cause crippling potential liability for Illinois businesses.

Notably, a "per scan" theory of damages could result in substantial liabilities for even those businesses that are making efforts to faithfully comply with the Act. Employers are struggling to maintain staffing in a tight labor market, and turnover amongst employees – both nationally and in Illinois – is

extremely high. In the retail sector, which employs a large number of hourly employees who are likely to use timeclocks, turnover spiked as high as 69% in 2020, and that number only came down slightly to 65% in 2021.[5] Other sectors that employ large numbers of hourly workers are experiencing even higher rates of turnover, with leisure and hospitality experiencing a turnover rate of 85% in 2021.[6]

With such extensive turnover, even the most diligent employer may encounter issues with maintaining adequate staffing while also ensuring that all newly onboarded employees sign the consents required by the Act prior to those employees using a timeclock or other type of technology that may use alleged biometric identifiers or biometric information. Under a "per scan" theory of damages, an employer can incur significant liabilities if even just a handful of employees happen to briefly use an alleged biometric timeclock before signing consent forms. For example, an employer who employs 100 employees in a given year and who secures consent forms from 95% of its employees before using a timeclock could face statutory liquidated damages of $100,000 if the remaining five employees use the timeclock for a single week before the employer secures

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5 *See* 27 US Employee Turnover Statistics [2023]: Average Employee Turnover Rate, Industry Comparisons, And Trends" Zippa.com. Feb. 7, 2023, at https://www.zippia.com/advice/employee-turnover-statistics/ (last visited March 9, 2023).

6 *Id.*

consent forms from them.[7] Multiplied over a five-year period, the potential exposure would be $500,000 for an employer who is working diligently to ensure compliance with the Act while also juggling staffing issues and high turnover during a volatile labor market. This is true even if the employees sign consent forms after their first use of the timeclock, the employer complies with the Act in all other respects, and there is no compromise or misuse of the employee's alleged biometric data. Respectfully, while the Court has previously expressed that compliance with the Act should not be difficult, the practical reality is that ensuring that each and every individual signs a consent form prior to the first use of biometric technology at all times while running a business can be difficult, even for the best-intentioned business. *See Rosenbach*, 2019 IL 123186 ¶ 37 ("Compliance should not be difficult; whatever expenses a business might incur to meet the law's requirements are likely to be insignificant compared to the substantial and irreversible harm that could result if biometric identifiers and information are not properly safeguarded[.]").

The possibility of businesses incurring substantial liabilities under a "per scan" theory of damages for unintended violations of the Act also may have a significant adverse impact on the health and safety of the citizens of Illinois. One of the Associations, the Illinois Health and Hospital Association ("IHA"), has noted its member hospitals use biometric technology for not just time tracking

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[7] This calculation is based on five employees clocking-in and -out on a timeclock four times per day for five days.

but for security access, including monitoring access to controlled substances in locked medication cabinets. Illinois hospitals have reported difficulties in quickly onboarding staff while simultaneously ensuring new staff are able to access medication cabinets due to compliance concerns with the Act. This poses a risk to patients if a healthcare provider cannot provide treatments in a timely manner because they cannot access a medication cabinet where they have not first provided biometric consent. Given that the IHA's member hospitals employ over 290,000 individuals, and the health care industry is experiencing a 39% turnover rate, the potential for exorbitant damages due to inadvertent procedural violations of the Act is significant for these hospitals under a "per scan" liability theory.[8] The practical result of the Court's Opinion may ultimately affect patient care and prevent the use of state-of-the-art technologies that effectively prevent drug diversion and allow for quick access to life-saving drugs during medical emergencies.

The potential for significant liabilities despite businesses' best efforts to comply with the Act is leading some businesses to abandon the use of biometric technology altogether, which will lead to both lost efficiencies and decreased safety within the State of Illinois. Another of the *amici*, the Illinois Trucking Association, reports the Act is causing many trucking companies to remove video

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[8] *See* 27 US Employee Turnover Statistics [2023]: Average Employee Turnover Rate, Industry Comparisons, And Trends" Zippa.com. Feb. 7, 2023, at https://www.zippia.com/advice/employee-turnover-statistics/ (last visited March 9, 2023).

cameras that are used to teach drivers to be alert, avoid distraction, and improve their skills for fear of liability under the Act. This trend will only accelerate with "per scan" liability, and the further removal of these video cameras will become a hinderance to ensuring safety on Illinois's roadways. Even companies that have robust compliance programs have discontinued the use of state-of-the-art technologies given the fear of having to defend a lawsuit under the Act.

The Associations note that businesses abandoning the use of biometrics to avoid potentially crippling liabilities under the Act is contrary to the stated intent of the General Assembly. The General Assembly intended the Act to balance the potential benefits that biometrics could bring to the State with safeguarding individuals' biometric identifiers and biometric information. *Compare* 740 ILCS 14/5(a) ("The use of biometrics is growing in the business and security screening sectors and appears to promise streamlined financial transactions and security screenings"), *with* 740 ILCS 14/5(e) ("Despite limited State law regulating the collection, use, safeguarding, and storage of biometrics, many members of the public are deterred from partaking in biometric identifier-facilitated transactions"). Contrary to the intent of the General Assembly, "per scan" liability, and the threat of extreme liabilities resulting from even isolated, inadvertent violations of the Act can only lead to more businesses abandoning the use of biometrics altogether, leaving Illinois less safe and technologically behind other states. This was not the intent of the General Assembly in passing the Act, and the Associations urge this Court to revisit the Opinion and "per

scan" liability. Opinion ¶ 66 (Overstreet, J., dissenting) ("The legislature's intent was to ensure the safe use of biometric information, not to discourage its use altogether.").

B. The Opinion's holding that damages are discretionary rather than mandatory does not adequately address the potential for Illinois businesses suffering financially destructive damage awards under the Act.

The Court asserted that its holding was consistent with the General Assembly's intent to subject entities which violate the Act to "substantial potential liability." Opinion ¶ 40. The Court, however, further stated that "there is no language in the Act suggesting legislative intent to authorize a damages award that would result in the financial destruction of a business." *Id.* ¶ 42. In doing so, the Court cited to language in the Act in which it "appears that the General Assembly chose to make damages discretionary rather than mandatory." *Id. citing* 740 ILCS 14/20 (detailing the amounts and types of relief that a "prevailing party may recover") (emphasis in original). In the end, the Court concludes "that policy-based concerns about potentially excessive damage awards under the Act are best addressed by the legislature." *Id.* ¶ 43,

As recognized in the dissent, however, "the potential imposition of crippling liability on businesses is a proper consequence to consider," and "the legislature [did not] intend to impose damages wildly exceeding any remotely reasonable estimate of harm." Opinion ¶¶ 62-63 (Overstreet, J., dissenting). That the Act established statutory "liquidated damages of between $1000 and $5000 is itself evidence the legislature did not intend to impose ruinous

liability on businesses." *Id.* ¶ 63. Respectfully, the Associations contend the Opinion's holding that courts may have the discretion to reduce the Act's statutory liquidated damages awards – but apply those damages on a "per scan" theory of liability – is not supported by the text of the Act for the reasons noted by Justice Overstreet.

The Associations also respectfully contend that vesting individual judges with broad, standardless discretion to reduce the $1,000 or $5,000 damages award for each scan or transmission in violation of the Act will, itself, lead to absurd and inconsistent results which this Court should seek to avoid in interpreting a statute. Opinion ¶ 59 (Overstreet, J., dissenting) (citing *City of East St. Louis v. Union Electric Co.*, 37 Ill. 2d 537, 542 (1967)). More than 1,700 putative class action lawsuits alleging violations of the Act have been filed in state and federal courts since 2019, with a large number of those cases still pending. Many of the currently pending cases are now proceeding after stays were lifted following the issuance of the Opinion.

The defendants in these cases now are confronted with the choice of (i) seeking to settle the lawsuits with plaintiffs' attorneys emboldened by the possibility of "per scan" liability who may or may not be reasonable in their settlement positions, or (ii) spending months or years and countless dollars defending their lawsuits in the hope that, if liability is found, the individual judge assigned to the case will impose something less than the $17 billion that

White Castle faces as a result of the Court's ruling should it not prevail in its lawsuit.

The Associations previously posited an example of a case typical to those pending before the courts where a small business with 50 employees could face statutory liquidated damages of $250 million under the Court's "per scan" theory of liability.[9] This clearly would be a ruinous result for a business of that size and beyond the company's ability to pay. If that business chose to try to settle its lawsuit and opposing counsel was intransigent in their settlement demands, the business would have no choice but to incur the time and expense of taking the case to trial in the hope that the trial court would assess reasonable damages on the business if found liable. Given the complete discretion this Court appears to have vested in the trial courts in determining liquidated damages, providence may shine on the business, and it could be held to owe no damages or a nominal amount. The trial court could take into account any number of factors – perhaps the lack of actual harm suffered by any class member, the financial resources of the business, or the business's efforts to comply with the Act – and award no damages or a nominal amount to the prevailing plaintiffs. Or, the trial court could award upwards of $250 million plus attorneys' fees and costs, in which case, the business can appeal the award as unconstitutionally excessive or declare bankruptcy (assuming the litigation

[9] In the Spring of 2021, the Chicagoland Chamber of Commerce performed an analysis which showed that 46.7% of the pending cases at that time were against businesses with 500 or fewer employees.

costs alone did not already force it to do so), lose everything, and terminate the employment of everyone who relied on the business for a living.

This is an absurd result. Though hypothetical, these wildly varying outcomes are the foreseeable result of leaving judges with no guidance regarding how they should exercise their discretion to award damages under the Act. Further, the Court's ruling threatens to cause a massive backlog for the trial courts, appellate courts, and bankruptcy courts in Illinois given that fewer cases may resolve if businesses are forced to take their cases to trial when faced with unreasonable settlement demands premised on a "per scan" theory of liability.

Vesting complete discretion in the trial courts as to whether to award liquidated damages also would lead to the potential for rampant forum shopping by both the plaintiffs' and defense bar. Eventually, the trial courts will start to assess damages under the Act, and those awards may vary wildly from judge to judge or county to county. Once it becomes known, for example, that judges in a particular county in Illinois tend to issue statutory liquidated damage awards on a "per scan" basis and exercise little discretion with respect to those awards, the plaintiffs' bar will endeavor to find any basis to file suit in that county. Similarly, if it becomes known that judges in another county tend to issue minimal damages awards, the defense bar will endeavor to find any basis to transfer lawsuits to that county. The due process rights of defendants should not depend on the vagaries of their contacts with particular counties or

federal districts within this State or the whims of individual judges. *See Fennell v. Ill. Cent. R.R. Co.*, 2012 IL 113812 ¶ 19 ("Courts have never favored forum shopping.")

For all these reasons, this Court should grant the Petition for Rehearing of Defendant-Appellant White Castle and reconsider its holding that a violation of Sections 15(b) and 15(d) of the Act occurs with each scan or transmission of biometric identifiers or biometric information.

Dated March 10, 2023

Respectfully submitted,

By: /s/ Jeffrey L. Rudd

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CERTIFICATE OF COMPLIANCE WITH RULE 341

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statements 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 18 pages.

/s/ Jeffrey L. Rudd

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CERTIFICATE OF SERVICE

I, Jeffrey L. Rudd, an attorney, hereby certify that on **March 10, 2023,** I caused a true and complete copy of the foregoing **BRIEF OF *AMICI CURIAE* ILLINOIS MANUFACTURERS' ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, ILLINOIS HEALTH AND HOSPITAL ASSOCIATION, ILLINOIS RETAIL MERCHANTS ASSOCIATION, CHEMICAL INDUSTRY COUNCIL OF ILLINOIS, ILLINOIS TRUCKING ASSOCIATION, MID-WEST TRUCKERS' ASSOCIATION, CHICAGOLAND CHAMBER OF COMMERCE, AMERICAN TRUCKING ASSOCIATIONS, INC., AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF PETITION FOR REHEARING OF DEFENDANT-APPELLANT WHITE CASTLE SYSTEM, INC.** to be filed electronically with the Clerk's Office of the Illinois Supreme Court, using e-filing provider **Odyssey eFileIL**, which sends notification and a copy of this filing by electronic mail to all counsel of record.

I further certify I caused an additional courtesy copy of this filing to be served by electronic mail upon the following:

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Within five days of acceptance by the Court, the undersigned also states that he will cause thirteen copies of the Brief to be mailed with postage prepaid addressed to:

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Supreme Court Building
200 East Capital Avenue
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Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies the statements set forth in this certificate of service are true and correct.

/s/ Jeffrey L. Rudd

4868-4305-9798, v. 1