No. 18-6530

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED
OCT 20 2018
OFFICE OF THE CLERK

WENDELL WEAVER — PETITIONER
(Your Name)

vs.

RANDY NICHOLSON, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WENDELL WEAVER #R47387
(Your Name)

16830 S. BROADWAY STREET
(Address)

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QUESTIONS PRESENTED

1. Does *Wheat v. United States*, 486 U.S. 153 (1988) clearly establish that trial courts must consider reasonable alternatives before disqualifying a criminal defendant's counsel of choice.

2. When an entire defense strategy hinges on a critical piece of cross-examination evidence for the prosecution's only eyewitness, is it clearly established that forgetting to cross-examine the eyewitness on that issue constitutes ineffective assistance of counsel under *Strickland*.

3. Did the Seventh Circuit incorrectly conclude that the Illinois appellate court acted reasonably when it held that the prosecution did not knowingly use false testimony to convict Mr. Weaver.

PARTIES TO THE PROCEEDING

Petitioner Wendell Weaver is an inmate at Stateville Correctional Center in Crest Hill, Illinois. He was the petitioner at the district court and the appellant in the Seventh Circuit. Respondent Walter Nicholson is the Warden of Stateville Correctional Center. Mr. Nicholson was the appellee in the Seventh Circuit, and his predecessor Randy Pfister was the respondent in the district court.

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PETITION FOR WRIT OF CERTIORARI

Wendell Weaver ("Mr. Weaver") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1) is reported at 892 F.3d 878 (7th Cir. 2018). The district court's opinion (Pet. App. 65) is unreported but available at *Weaver v. Pfister*, No. 12-C-10100, 2016 WL 930550 (N.D. Ill. Mar. 11, 2016). The relevant Illinois appellate court opinions are unreported and available in Petitioner's Appendix at 16 and 36.

JURISDICTION

The Seventh Circuit entered judgment on June 15, 2018 and denied rehearing on July 24, 2018. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Full text of the Sixth Amendment and Fourteenth Amendment of the United States Constitution are included in Petitioner's Appendix at 109.

STATEMENT OF THE CASE

A. Case Background

Mr. Weaver insists that he was wrongfully convicted after the State's key (and only) eyewitness—Danny Callico—lied on the stand by claiming that he saw Mr. Weaver shoot Randy Sanders on April 4, 2002. Callico has since admitted in sworn testimony that this eyewitness identification was a lie. (Pet. App. 121–22). And the actual shooter—Gary "Lupe" Mullen—was murdered ten days after the victim's death. (Pet. App. 45). Regardless, Mr. Weaver's conviction should not be permitted to stand because Mr. Weaver was denied clearly established constitutional rights during the course of his trial.

First, Mr. Weaver should have been represented by his longtime personal attorney, Charles Murphy, but weeks before the trial was slated to begin, the prosecution moved to disqualify Murphy because he had previously represented a potential State witness, Rondell Traywick. (Pet. App. 126–27).

During the hearing on the State's motion to disqualify, Murphy explained that he had visited Traywick in prison to obtain a statement about Mr. Weaver's case; that Traywick discussed some recent criminal

charges and his intention to accept the State's plea offer; and that he was not representing Traywick during the interview. (Pet. App. 142–49; 163–64). Mr. Weaver made clear at this hearing that he was willing to waive any potential conflict of interest. (Pet. App. 136). And most importantly, alternatives to disqualification were available: (1) Mr. Weaver's co-counsel—Dawn Projansky—who was at counsel's table with Murphy during the hearing, was available to cross-examine Traywick if necessary, (Pet. App. 156-58), and (2) Murphy offered to strictly limit his cross-examination of Traywick to avoid any potential conflict of interest, (Pet. App. 156). Despite these two less extreme alternatives, the trial court disqualified Murphy due to "the appearance of impropriety." (Pet. App. 178). The State never called Traywick to testify during Mr. Weaver's trial.

Second, after Mr. Weaver's counsel was removed, his replacement counsel should have, but never, cross-examined the prosecution's key eyewitness with two prior statements claiming to see Mr. Weaver commit the murder "on foot," when all evidence showed that the shooting was a drive-by.

Callico was in the passenger seat of the victim's car when the victim was shot and killed on April 4, 2002. (Pet. App. 113). Several days after the murder, Callico told police that he did not see the shooter. (Pet. App. 121–22). Two other people witnessed the murder, Rosemarie Swiney and her father, Clifton Lewis. (Pet. App. 124). They told the police that the shots came from "the occupant of the front passenger seat" of a car that was right next to the victim's car. *Id.* Consistent with Lewis's and Swiney's version of the events, the forensic evidence collected at the scene indicated a drive-by shooting. *Id.*

Nearly a year later, the State re-interviewed Callico, who was then serving a ten-year sentence in state prison for a drug crime. (Pet. App. 115–16). A police report suggests that Callico "changed his mind," and told the officers that he saw Mr. Weaver "approach the driver's side of the vehicle *on foot*" and shoot the victim. *Id.* (emphasis added). Shortly thereafter, Callico testified before a grand jury that he saw Mr. Weaver "approach[ ] the driver's side of the car and start[ ] shooting." (Pet. App. 119–20). Callico has since recanted this testimony. (Pet. App. 121–22). Mr. Weaver was indicted for murder in August 2003, sixteen months after the shooting.

At the trial, Mr. Weaver's replacement counsel recognized that the State's case rose and fell with the testimony of Danny Callico. In an effort to show that Callico was lying, Mr. Weaver's replacement counsel intended to contrast Callico's prior statements that he saw the shooter approach the car "on foot," with the physical and testimonial evidence making it clear that the shooting was a drive-by. Replacement counsel set this up at multiple points throughout the trial: (1) in opening arguments, counsel told the jury that it was "very important" that no one was standing outside when the shooting occurred, (Pet. App. 185); (2) counsel cross-examined several State witnesses on whether the forensic evidence was consistent with a drive-by, (Pet. App. 188–93); (3) counsel only called one witness during the trial—Mr. Lewis—who testified that the shooter was in a car, (Pet. App. 195); and (4) counsel planned to (but was ultimately not allowed to) completely lay out the impossibility of Callico's eyewitness account in closing argument. (Pet. App. 199). But the jury never got to hear this argument. After replacement counsel cross-examined Callico, the State realized that counsel *never questioned Callico about the prior "on foot" statements.* Thus, nothing about those statements was put into evidence. Just before closing arguments, the

State moved to preclude any argument about Callico's prior statement that the shooter was on foot, and the trial court properly granted this motion. (Pet. App. 130–38). Mr. Weaver was convicted for the murder that same day.

Third, the State violated Mr. Weaver's Fourteenth Amendment right to a fair trial by permitting Callico to testify even though it knew—or at least should have known—that Callico's eyewitness identification was false. The evidence in the record makes this perfectly clear. In addition to the evidence discussed above (*i.e.*, Callico's inconsistent prior statement, the forensic and eyewitness testimony that the shooter was in a car, and Callico's post-trial recantation of his eyewitness testimony), the State was aware that Callico had given inconsistent reasons for not initially identifying Mr. Weaver as the shooter. (Pet. App. 116; 186–87). Most importantly, the prosecution was aware that another individual—Lupe Mullen, who was murdered two weeks after Sander's death—had confessed to being Sander's shooter. (Pet. App. 45).

At trial, the prosecution seemingly acknowledged on the record that the shooter was in a car. (Pet. App. 202). Yet this came *after* (1) securing Mr. Weaver's indictment with Callico's testimony that Mr. Weaver

approached the car on foot and shot Sanders and (2) moving at trial to preclude Mr. Weaver's counsel from mentioning Callico's prior statements about seeing the shooter on foot.

B. Procedural History

Mr. Weaver appealed his conviction, arguing among other things, that the disqualification of Charles Murphy violated Mr. Weaver's Sixth Amendment right to counsel of choice and Mr. Weaver's replacement trial counsel was ineffective for failing to adequately cross-examine Callico. The Illinois Court of Appeals rejected Mr. Weaver's arguments and affirmed his conviction. (Pet. App. 16–33). Mr. Weaver subsequently filed a petition for leave to appeal ("PLA") with the Illinois Supreme Court, which was denied.

Approximately nine months later, Mr. Weaver timely filed a post-conviction petition with the Circuit Court of Cook County, renewing some prior arguments and adding that the State's knowing use of Callico's false testimony violated due process. The Illinois Court of Appeals affirmed. (Pet. App. 65–106). Mr. Weaver then filed a PLA, which the Illinois Supreme Court denied.

On December 19, 2012, Mr. Weaver filed a petition for writ of habeas corpus in the Northern District of Illinois, reasserting a number of the claims denied by the state appellate courts. The district court denied the petition, (Pet. App. 107), and Mr. Weaver appealed to the Seventh Circuit. The Seventh Circuit affirmed, and declined to rehear the case. (Pet. App. 15; 108).

REASONS FOR GRANTING THE PETITION

A. Lower courts are split on whether *Wheat v. United States* clearly established that trial courts must consider reasonable alternatives before removing a defendant's counsel of choice.

Mr. Weaver's longtime personal attorney, Charles Murphy, was disqualified shortly before trial because Murphy had previously represented Rondell Traywick—a "potential" State witness who was never called. This should have never happened because there were readily available, reasonable alternatives to disqualification that the trial court failed to consider: (1) Mr. Weaver's co-counsel could have cross-examined the witness that created the potential conflict and (2) Murphy could have limited his cross-examination in a way that would prevent the conflict. But alternatives were never examined, and Mr. Weaver was forced to retain a new attorney weeks before trial was set to begin. Some

lower courts—including the Seventh Circuit in some cases—have held that it constitutes a violation of clearly established Sixth Amendment precedent to remove a defendant's chosen counsel when there are reasonable alternatives that would eliminate any potential conflict. Other lower courts disagree. This Court should grant Mr. Weaver's petition for certiorari to resolve this confusion.

The Sixth Amendment guarantees criminal defendants the right to be represented by the counsel of their choice. *Wheat v. United States*, 486 U.S. 153, 159 (1988); *see also United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (finding that this is a "structural right"). Although the right is not absolute, this Court has made clear that it can be denied only in certain limited circumstances. Importantly, the analysis must begin with a presumption in favor of the defendant's choice of counsel. *Wheat*, 486 U.S. at 164. And that presumption may be overcome only if there is an "actual conflict" or a "serious potential for conflict." *Id.*

In *Rodriguez v. Chandler*—which, like this case, was a habeas case from the Seventh Circuit—the appellate court concluded that there was no serious potential for conflict under *Wheat* when the conflict could be easily eliminated through alternative measures. 382 F.3d 670, 671–72

(7th Cir. 2004). As the Seventh Circuit later explained in *United States v. Turner*, failure to consider alternatives to disqualification constitutes an unreasonable application of *Wheat*:

> *Rodriguez* . . . explains how the availability of protective measures other than disqualification may make disqualification unreasonable. Rodriguez had two attorneys, one of whom had no prior relationship with the detective who was a potential witness. We noted that the co-counsel without the conflict could have cross-examined the detective if he had testified and this "would have eliminated all risks." This "easy solution," we said, made it unreasonable to deprive Rodriguez of his counsel of choice. We have also noted in another case that to avoid a conflict of interest, the district court may limit examination of a witness and may "on rare occasions" exclude evidence.

594 F.3d 946, 953 (7th Cir. 2010) (citations omitted).

Several lower courts outside the Seventh Circuit have also followed this approach. *See, e.g.*, *United States v. Baca,* No. CR-16-1613, 2018 WL 2422053, at *8 (D.N.M. May 29, 2018); *United States v. Turner*, 117 F. Supp. 3d 988, 990 (N.D. Ohio 2015); *United States v. Georgievski*, No. 2:12-CR-00004, 2015 WL 3378453, at *5–7 (D. Nev. May 22, 2015); *United States v. Bolivar*, No. CR 12-0128, 2012 WL 3150430, at *12 (D.N.M. July 20, 2012); *United States v. Kincade*, No. 2:15-CR-00071, 2016 WL 4577006, at *3 (D. Nev. Sept. 1, 2016); *United States v.*

Hawkins, No. CR-04-370-05, 2004 WL 2102017, at *8 (E.D. Pa. Aug. 26, 2004).

But, like in Mr. Weaver's case, some courts fail to consider whether reasonable alternatives to disqualification could eliminate any actual or potential conflict. *See e.g.*, *Weaver v. Nicholson*, 892 F.3d 878, 883–84 (7th Cir. 2018); *United States v. Register*, 182 F.3d 820, 831 (11th Cir. 1999); *United States v. Lumsden*, No. 1:05-CR-316, 2007 WL 9676967, at *4 (N.D. Ga. Mar. 19, 2007) (collecting cases), *superseded sub nom. United States v. Wings*, No. 1:05-CR-316-20, 2007 WL 9676968 (N.D. Ga. Aug. 10, 2007).

This case is important because it implicates a critical question at the heart of *Wheat*: can there be an "actual conflict" or a "serious potential for conflict" when the conflict can be completely avoided. Mr. Weaver's position—as explained in *Rodriguez v. Chandler* (among other cases)—is that there is no "serious potential for conflict" sufficient to justify disqualification of counsel when there are "easy solutions" that could "eliminate all risk" of the conflict. 382 F.3d at 671–73. Stated differently, *Wheat* clearly establishes a presumption in favor of letting criminal defendants keep their counsel of choice, so if a conflict can be

avoided through reasonable and readily-accessible alternatives, then disqualification is not proper. Some courts, however, think otherwise.

The Court should grant Mr. Weaver's petition for certiorari to resolve this important disagreement in the lower courts.

B. The Seventh Circuit's conclusion that it did not constitute ineffective assistance of counsel to forget to cross-examine the State's only eyewitness on the most important issue is contrary to Supreme Court precedent and creates a split with the Fifth and Tenth Circuits.

Under this Court's and other circuits' precedent, it would constitute ineffective assistance of counsel for an attorney to forget to ask the State's only eyewitness a critical question that the defendant's entire trial strategy was built on. That happened here, yet the Seventh Circuit concluded that this did not constitute ineffective assistance of counsel because the attorney cross-examined the witness on other, much less important, issues. *Strickland v. Washington* demands more. 466 U.S. 668, 688 (1984). This Court should grant Mr. Weaver's petition for certiorari to bring the Seventh Circuit in line with this Court's and other circuits' precedent.

During Mr. Weaver's motion for a new trial, the trial court acknowledged that "*basically this entire case rests on the testimony of*

Danny Callico." (Pet. App. 205). Understanding this, Mr. Weaver's replacement counsel's defense strategy involved showing that the eyewitness account Callico gave police and the grand jury—that Mr. Weaver approached the victim's car *on foot* and shot the victim—was impossible because all the evidence and other testimony established that the shooter was *in a car.* But replacement counsel was unable to mention Callico's previous "on foot" statements because he *forgot to cross-examine Callico on these statements during the trial.* The record is clear that trial counsel simply forgot to cross-examine Callico on the two prior "on foot" statements. When the State moved to preclude any argument related to these statements, trial counsel said that he "specifically asked [Callico] that" and that the "transcript w[ould] bear [him] out." (Pet. App. 199). It did not. This constituted ineffective assistance of counsel, and the Seventh Circuit's conclusion otherwise is inconsistent with this Court's settled habeas corpus case law.

The Seventh Circuit's conclusion that this did not constitute ineffective assistance because counsel only forgot to ask about a "particular statement" but otherwise engaged in a "vigorous cross-examination" is contrary to clearly established law given the importance

of the "particular statement" at issue. (Pet. App. 10). This Court has found that "even an isolated error of counsel" can deny a defendant his right to effective assistance "if that error is sufficiently egregious and prejudicial." *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

Replacement counsel's failure to remember to cross-examine Callico on his two previous "on foot" statements constitutes an "egregious and prejudicial" error—a cursory review of the trial record shows that this one omission fundamentally undermined a key component of Mr. Weaver's defense. Counsel started building this defense in his opening argument, emphasizing the importance of evidence that would show that no one was on the street when the shooting occurred. (Pet. App. 185) ("There was nobody on the street. Nobody. That's a very important item."). He then cross-examined multiple State witnesses about whether the evidence at the scene of the crime was consistent with the shooter being in a car. (Pet. App. 188–93). After the prosecution rested, he called only a single witness, Clifton Lewis, for the sole purpose of testifying that the shots came from a car, not someone on the street. (Pet. App. 195) ("Q. Was there anybody on the street out there shooting? A. No, no. They were in a car."). Finally, during closing arguments, counsel wanted to

argue the significance of Callico's prior statement that the shooter was on foot, but the prosecution (recognizing the critical nature of this fact) was successful in preventing him from making that argument. (Pet. App. 196–204).

Trial counsel's failure to cross-examine Callico on these critical statements meant: (1) trial counsel failed to keep his promise about what the evidence would show the jury; (2) trial counsel's cross-examinations about whether the evidence was consistent with a drive-by was pointless; (3) the testimony from the *sole witness* that trial counsel called was completely useless; and (4) trial counsel was prevented from telling the jury during his closing that Callico's eyewitness account *must be a lie* because what Callico claimed to see—the shooter "on foot"—was physically impossible and wholly incompatible with *all* of the evidence presented at trial. In short, regardless of how "vigorous" counsel's cross-examination was, forgetting these specific questions was egregious and—given the importance of the "on foot" versus "in a car" contradiction to Mr. Weaver's entire defense—clearly prejudicial.

At least two Circuits have held that *Strickland* requires counsel to impeach the State's sole eyewitness, especially when the eyewitness is

key to the State's case. *See Cargle v. Mullen*, 317 F.3d 1196, 1214 (10th Cir. 2003) (holding that there "is no plausible reason other than counsel's self-inflicted ignorance" for failing to impeach prosecution witness on prior inconsistent statement attributing guilt to others beside defendant); *Beltran v. Cockrell*, 294 F.3d 730, 734 (5th Cir. 2002) (holding that defense counsel's failure to impeach eyewitnesses identifying the defendant as the robber, where defense counsel should have been aware that these eyewitnesses had previously identified a different person, and where the state's case depended solely on eyewitness identifications, constituted ineffective assistance and prejudiced defendant).

The Seventh Circuit's decision is contrary to clearly established Supreme Court precedent and decisions in other circuits. Now there is Seventh Circuit authority for the proposition that, even when an entire defense strategy hinges on a critical piece of cross-examination evidence, forgetting to ask those critical questions does not constitute ineffective assistance under *Strickland* so long as there was at least *some* cross examination of the witness. This is plainly not what *Strickland* stands for. This Court should grant Mr. Weaver's petition for certiorari to

reiterate that *Strickland* and *Murray* clearly establish that Mr. Weaver's trial counsel's critical failure constituted ineffective assistance of counsel.

C. The Seventh Circuit disregarded clear and convincing evidence that the State knowingly permitted its key witness to perjure himself on the stand.

The Court should grant Mr. Weaver's petition for certiorari because the Seventh Circuit blatantly disregarded facts which make it clear that the State permitted a key witness to lie on the stand in violation Mr. Weaver's Fourteenth Amendment right to a fair trial. *See Napue v. Illinois*, 360 U.S. 264, 269 (1959). While Mr. Weaver understands that the Court "rarely" grants petitions for certiorari for "erroneous factual findings," *see* Sup. Ct. Rule 10, this is precisely the type of rare case where such review is warranted. The Seventh Circuit unexplainably ignored critical facts when it determined that Mr. Weaver failed to show "clear and convincing evidence" that the State knew Callico's testimony was false.

To prevail on a *Napue* claim, Mr. Weaver is required to "establish[] that 1) the prosecution's case included perjured testimony; 2) the prosecution knew, or should have known, of the perjury; and 3) there is any likelihood that the false testimony could have affected the judgment

of the jury." *United States v. Douglas*, 874 F.2d 1145, 1160 (7th Cir. 1989) (citing *Napue*, 360 U.S. at 269–71). The Illinois appellate court rejected Mr. Weaver's claim because it found that Callico's post-trial recantation lacked sufficient facts to establish that the State directed his testimony or knew that police forced Callico to perjure himself. (Pet. App. 58–61). The Seventh Circuit agreed, stating that "[b]ecause Weaver d[id] not point to clear and convincing evidence to the contrary," the court would "accept the state court's findings." (Pet. App. 13). But the courts below have ignored the mountains of evidence that make it clear that the State knew—or at least should have known—that Callico's testimony was false.

Starting from the beginning, the prosecution knew that when Callico spoke to police shortly after the crime, he could not identify who the shooter was. The prosecution also knew that Callico's story about why he did not initially name Mr. Weaver as the shooter changed over time. Callico first told the police that he feared retaliation, but at trial, Callico testified that he wanted to "take care of [Weaver]" himself. (Pet. App. 116; 187). *See United States v. Hill*, 749 F.3d 1250, 1262 (10th Cir.

2014) (noting that "a witness who changes his story may be less than truthful").

The prosecution also knew that Lupe had confessed to the crime and had been murdered himself shortly after Sanders. Indeed, the State filed a motion in limine to prevent Mr. Weaver's attorney from discussing Lupe's confession. (Pet. App. 45).

Most importantly, the prosecution knew that eyewitness testimony and the physical evidence from the scene established that the shots were fired from a car, not by someone on foot. Two other eyewitnesses told police that the shots came from "the occupant of the front passenger seat" of a car adjacent to Sanders's. (Pet. App. 124). And the State's own evidence established that the 17 shell casings recovered at the crime scene were scattered across Washington Boulevard, consistent with the shots being fired from a moving vehicle. *Id.*

At trial, the prosecution seemingly acknowledged that the shooter was in a car. (Pet. App. 202). Yet the State still took steps to ensure that the jury never heard anything about Callico's prior statement that Mr. Weaver was "on foot" when he allegedly shot Sanders. Rather than exercise its duty "to assure the accuracy of [Callico's] representations,"

United States v. Freeman, 650 F.3d 673, 680 (7th Cir. 2011), the State successfully moved to preclude Mr. Weaver's trial counsel from discussing during closing argument Callico's statement about Mr. Weaver being on foot. (Pet. App. 198–204).

Finally, Callico's sworn affidavit makes clear that the prosecution knew that he could not truthfully identify Mr. Weaver as the shooter. Callico testified that he "did not believe that the detectives were telling [him] the truth [about Mr. Weaver's involvement in the murder] because [Callico] knew Wendell and did not believe him to be a violent person;" he had to be "convinced" that Mr. Weaver was involved in the shooting; and he "eventually" agreed to say that he saw Mr. Weaver on the scene because he was being pressured by police. (Pet. App. 121–22).

Based on the above, the Illinois appellate court's finding that there was "no evidence in the record of any knowing use of perjured testimony by the State" was an unreasonable determination of the facts. (Pet. App. 61). The Seventh Circuit was incorrect to conclude otherwise. These courts ignored, or otherwise dismissed, ample record evidence showing that the State knew that Callico's testimony identifying Mr. Weaver as the shooter was untrue. The Court should grant Mr. Weaver's petition

for certiorari and find that the prosecution knowingly permitted Callico to present false testimony in violation of Mr. Weaver's Fourteenth Amendment right to due process and a fair trial.

CONCLUSION

For the foregoing reasons, Mr. Weaver's petition for writ of certiorari should be granted, and the judgment of the Seventh Circuit reversed.

Respectfully submitted,

Wendell Weaver #R47387
(Name)

OCTOBER 22, 2018
(Date)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

WENDELL WEAVER — PETITIONER
(Your Name)

VS.

RANDY NICHOLSON, WARDEN — RESPONDENT(S)

PROOF OF SERVICE

I, WENDELL WEAVER, do swear or declare that on this date, OCTOBER 22, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Lisa Madigan, David L. Franklin, Michael M. Glick, Evan B. Elsmer, Counsel for Respondent

100 West Randolph Street, 12th Floor

Chicago, Illinois 60601-3218

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 22, 2018

(Signature)