Supreme Court of Ohio

OAKWOOD VILLAGE ET AL.,	:	Case No. 2025-0175
	:	
Appellant,	:	On appeal from the Montgomery
	:	County Court of Appeals,
v.	:	Second Appellate District
	:	
L.H. HIPSHIRE, BY AND THROUGH	:	Court of Appeals Case No. 30045;
HIS NATURAL MOTHER, KELLY	:	Trial Court Case No. 2021 CV 03096
HIPSHIRE,	:	
	:	
Appellees.	:	

REPLY BRIEF OF APPELLANT OAKWOOD VILLAGE

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INTRODUCTION

This case presents a significant, but straightforward, question of statutory construction. What factual elements must be present to establish that a landlord is strictly liable as a "harborer" under Ohio Rev. Code 955.28(B)?

The Appellees contend that statutory strict liability for a dog bite attaches whenever a landlord "merely acquiesces" to the presence of a dog on its property. While acquiescence is a necessary element to establishing that a person is a harborer (it goes to intent, as discussed below), acquiescence is not and cannot be the *sole* element necessary to establish strict liability under Chapter 955. As reflected in the case law and as discussed in Judge Welbaum's well-reasoned dissent in the Appellate Court decision below, the law also requires that the harborer have "responsibility [for the animal], [it]s care and control, *i.e.*, a direct or close relationship with an animal." *See L.H. Hipshire v. Sun Secured Financing, LLC,* 2024-Ohio-5948, 2024 Ohio App. LEXIS 4583 (2d Dist.) Par. 35; Welbaum, J. dissenting).

As this Court has declared repeatedly, "[o]ur duty in construing a statute is to determine and give effect to the intent of the General Assembly as expressed in the language it enacted." *Fisher v. Hasenjager*, 116 Ohio St. 3d 53 (2007). The Court is thus called upon to provides a unified, harmonious interpretation of the word "harborer" both in Section 955.28(B) and in over 100 different instances in Chapter 955 (Dogs) as a whole. "Where the same word or phrase is used more than once in a statute, in relation to the

same subject and the same purpose, if it is clear in one connection and doubtful or obscure in another, it will have the same construction in the latter as in the former, unless a different construction is plainly called for." *State ex rel. Bohan,* v. *Industrial Commission,* 146 Ohio St. 618 (1946) (paragraph one of the syllabus). *Bohan* eliminates any suggestion that the term harborer in Section 955.28(B) can be interpreted through the lens of "mere acquiescence" because that standard produces illogical results when applied elsewhere in the statute. The absurdity is resolved, however, when the statute is read as a whole and it is recognized that the multitudinous other statutory uses of the term "harborer" only make sense if the statutory term harborer is limited to a person or entity that has responsibility for a dog that is under the harborer's care and control, *i.e.*, a direct or close relationship with an animal.

Chapter 955 covers a gamut of matters, encompassing administrative considerations,[1] tort matters,[2] and criminal penalties for failing to control a dog that Chapter 955 imposes uniformly on "owners, keepers, and harborers" alike.[3] Nothing in Chapter 955 (Dogs) states or even implies that the Legislature intended the recurring phrase "owner, keeper, or harborer" to have different meanings or standards of application in different sections, let alone that Section 955.28(B) would impose a unique,

[1] Ohio Revised Code, Sections 955.05 and 955.06 (harborer must register dog).
[2] Ohio Revised Code, Section 955.22 (harborers must keep dogs on leash).
[3] Ohio Revised Code, Section 955.99 (imposing various criminal penalties for violating certain sections of Chapter 955). Indeed, the very fact that the statute imposes criminal penalties on a "harborer" for failing to control a dog undercuts mightily the notion that mere acquiescence suffices to establish a landlord is a harborer.

highly relaxed "mere acquiescence" standard of strict liability applicable solely to landlords who have no direct contact with, or control over, the dog.

As Judge Welbaum noted, "[I]nterpretations of the meaning and application of 'harboring' have not always been consistent." *Hipshire*, Par. 50. This appeal thus presents the Court with the opportunity to interpret the term "harborer" not only in the context of a particular fact dispute, but within the context of Chapter 955 as a whole, an analysis that is absent from the Appellees' brief.

LAW AND ARGUMENT

The following two sections address the Appellees' arguments on the two propositions of law before this Court.

A. Proposition of Law 1: The Appellate Court Erroneously Interpreted the Statutory Term "Harborer," Resulting in Both Clear Error and an Impermissible Expansion of the Scope of the Law.

In eliminating the element of direct responsibility over the dog that the case law has historically required to establish one's status as a "harborer," the effect of the decision by the Court of Appeals was to impose strict liability on any landlord who simply permits a tenant to keep dogs, thus effectively making every such landlord a *de jure* insurer in every tenant dog-bite case. *Hipshire*, Par. 48 (majority decision puts landlords in the position of insurers; J. Welbaum, dissenting). The Appellees espouse just that result on a strict liability basis, namely that mere acquiescence by a landlord to the presence of a pet

is sufficient to make any commercial landlord a harborer. Resp. at 5.[4]

As an initial observation, the mere acquiescence rule sits uneasily with the realities of a landlord-tenant relationship. As noted in *Ward v. Humble*, 2022-Ohio-3258 (2d Dist. Ct. App. 2022), the mere acquiescence standard rests on a "fiction that a landlord retains day-to-day control over a dog despite not being present at or in possession of the premises on which the dog lives." (Emphasis added.) It is undisputed that no one from the Appellant exercised custody or control over the tenant's dog; no one from the Appellant cared for the dog in the owner's absence, fed it or tended to it; and no one from Appellant was present at the time of the injury.

The concept of "harborer," like keeper, has historically required -- just as Judge Welbaum concluded -- an element of intent to control the dog and the actual exercise of such care, custody, or control.[5] The Appellate Court decision, which abandoned any

[4] What, for example, are the owners of apartment buildings (especially multi-story structures that need hallways and elevators to accommodate their tenants) to do? Tenants must use common areas like hallways and elevators and, under the "mere acquiescence" standard, every landlord will be liable for any dog bite if it allows the keeping of pets. In those circumstances, no landlord could possibly prohibit the presence of dogs in common areas unless it adopted a total ban on dog ownership. Even Judge Tucker (the author of the majority opinion below) acknowledged that the majority ruling "puts landlords in a difficult position." *Hipshire*, Par. 21

[5] The Appellees' brief uses intemperate and unsupported language, arguing that the cases cited in the Appellant's brief have been "misrepresented" or that the cases cited actually "undermine" the Appellant's arguments. Not so. Acquiescence is certainly a consideration in assessing whether a person or entity is a "harborer," but the discussion of that element in the case law does not mean it is the sole deciding factor. The arguments advanced by the Appellants track those of Judge Welbaum, whose reasoned analysis

concept of care or control over the dog, is inconsistent with Ohio law and adopts what is essentially a "fiction" as concluded in *Ward.*

Ultimately, the Appellees' arguments rests on selected quotes on acquiescence from several cases, most of which Judge Welbaum discussed and distinguished in his dissenting opinion. Contrary to any suggestion in the Appellees' brief, the underlying facts in those cases -- which often involved families and friends -- typically show that something more than mere acquiescence was present to establish liability on a commercial landlord.

For example, in *Sengel*, the Court did not confront a commercial landlord. Rather, a daughter was found to be a harborer of her mother's dog where the mother and her dog lived with the daughter, where the daughter had *control* and possession of the premises, and with the daughter's acquiescence, dog made its home on the premises. *See Hipshire*, Par. 37 (*distinguishing Sengel*; Welbaum, J).

Likewise, *in Trenka v. Cipriani Invest. Co*., 1983 WL 2635, *1 (8th Dist. Oct. 6, 1983), the defendant -- a commercial landlord -- rented a home to a tenant where a dog bite severely injured the plaintiff. There was no evidence that the landlord cared for, or exercised control over, the dog. Merely renting the house alone was legally insufficient

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cannot be dismissed as a "misrepresentation" of the law.

to establish liability under Section 955.28.

In *Dilgard v. McKinniss*, 2024-Ohio1106, ¶ 14, and 16-22 (3d Dist.), the grandparents owned a house where their grandson lived. The grandparents knew their grandson maintained a dog but did not tell him to remove it, thus "acquiescing" in its presence. The Third District held that "the mere fact that the landlord has control over whether a dog is allowed to live on the premises with its owners is not sufficient to transform a landlord into a harborer."

Interrelationship between "keeper" and "harborer": In an apparent effort to lower the definitional elements of what constitutes a "harborer," Appellees argue that the Appellants are conflating the concepts of keeper and harborer. In fact, the words have long been recognized -- both in Ohio and in other jurisdictions -- as having similar meanings:

• Section 217.01 of 2 Ohio Jury Instructions (1994) offers a combined definition of "keeper or harborer" as "a person who has the possession, care, and control of the dog, temporary or otherwise, even though he does not own it." [Emphasis added.]

• *Pawlowski v. American Family Mutual Ins. Co.*, 777 N.W.2d 67, 322 Wis. 2d 21 (2009)("The concepts of "harbor" and "keep" are similar, and the liability of one who harbors a dog and one who keeps a dog is the same.")

• Black's Law Dictionary defines "[k]eeper of dog" as "[a] harborer of a dog." (11th Ed. 2019)

• *Steinberg v. Petta*, 114 Ill. 2d 496 (1986) (holding landlord was not a "harborer" of a tenant's dog: "Harboring or keeping an animal therefore involves some measure of care, custody, or control, and it is in those senses that the terms 'harbor' and 'keep' have been construed under this and similar legislation.")

Judge Welbaum's dissent further noted that keepers and harborers have a similar meaning. *Hipshire*, Par. 28 (*citing Ryan v. DeWalle*, 1977 WL 200726, *2 (10th Dist. Dec. 29, 1977)(referencing the pre-1951 statute and noting there appeared to be no legal difference between "harborer" and "keeper"). *See also Osborn v. Leach*, 2 Ohio Law Abs. 458 (2d Dist. 1924).

Reasonable Rules For Pet Control: The Appellant imposed common-sense restrictions on tenants and required that any dog on a common area such as roadways, parkways and the playground had to be leashed at all times.

The Appellate Court created a legal conflict and laid an intractable problem for landlords when it paradoxically held that, in adopting that reasonable rule to limit animal-related incidents, the Appellant's conduct actually helped establish its status as a harborer. *Hipshire*, Par. 17, FN 4.

Other appellate decisions have recognized, however, that "if the landlord has established rules for the maintenance of pets by his tenants, such rules *militate against the finding of acquiescence*." *Godsey v. Frantz,* 1992 WL 48532 (6th Dist. Mar. 13, 1992)(emphasis added). Likewise, the Twelfth District has held, "[E]stablishing trailer park rules for the maintenance of animals or pets by one's tenants or residents, does not make one an owner, keeper or harborer of a dog." *Bundy v. Sky Meadows Trailer Park*, 1989 Ohio App. LEXIS 4005 (12th Dist. October 23, 1989, Decided) (unreported).

Moreover, in telling dog owners to keep their dogs on a leash while in a common

area, *the Appellant was doing no more than reinforcing what Ohio law already requires dog owners to do.* Under Section 955.22(C), every dog that is off its owner's premises (except when lawfully engaged in hunting) must be kept "under the reasonable control of some person." To similar effect, pursuant to Section 955.22(B), any dog that is in heat must be "properly in leash" when off the owner's property. Failure to comply with either Section 955.22(B) or Section 955.22(C) is subject to payment of a criminal fine. Ohio Rev. Code, Section 955.99.

The notion that a landlord subjects itself to the heightened risk of incurring strict liability for encouraging tenants to comply with the state leash laws is contrary to logic and sound legal policy. In fact, exposing landlord to heightened liability because they instructed tenants to act in compliance with the law makes society less safe as a whole.

Section 955.28(B) is Subject to Strict Construction: Appellees make the inherently misguided argument that Section 955.28(B) should be expansively construed to reflect its remedial purpose. Resp. at 11. That argument, however, is contrary to settled law, which states that laws imposing strict liability on persons are to be strictly construed. *Fulton, Supt. of Banks,* v. *B. R. Baker-Toledo Co.,* 128 Ohio St., 226, 190 N. E., 459 (1932) (declaring, "If the legislative intent had been that which is contended for by the superintendent of banks, the Legislature would have used apt language to express that intent." A careful reading of the entire section must convince that the Legislature used apt language to express the opposite intent.)

Fulton thus is instructive in two separate, but related, regards.

First, had the legislature wanted to impose strict liability on landlords, they could and would have done so directly by using "apt" language rather than doing so by sweeping them in by implication indirectly. Indeed, the Ohio legislature knows the distinction when it wants to draw it: The legislature has passed at least one statute imposing taxes on "landlords" who permitted an "owner, keeper, or harborer" to maintain dogs on the landlord's land. *See Mirick v. Gims*, 79 Ohio St. 174 (1908). Having a history of carving out landlords and harborers, the legislature certainly could have done so once again in Section 955.28 if it intended to target landlords for simply being landlords that allow pets.

Second, as discussed below in Section B of this Reply Brief, a "careful reading of the [entirety of Chapter 955] must convince that the Legislature used apt language to express the opposite intent," that is, mere acquiescence, standing alone, is insufficient to establish that a landlord is a "harborer."

B. Proposition of Law 2: The Majority Decision Is Inconsistent With Chapter 955 (Dogs) As A Whole.

Ultimately, this case is about the interpretation of the undefined statutory term "harborer" in a strict liability section of a statute, which is the same term used dozens of times in Chapter 955. Appellants submit that the mere acquiescence standard advanced by the Appellees as the touchstone for interpreting Section 955.28 is impossible to reconcile with the language of Chapter 955 as a whole.

As an initial observation, Appellees point to nothing from any reported case rejecting the Appellant's fundamental argument that Section 955.28(B) and the words used therein must be read in conjunction with the provisions of Chapter 955 (Dogs) as a whole.[6] "Where the same word or phrase is used more than once in a statute, in relation to the same subject and the same purpose, if it is clear in one connection and doubtful or obscure in another, it will have the same construction in the latter as in the former, unless a different construction is plainly called for." *State ex rel. Bohan v. Industrial Commission*, 146 Ohio St. 618 (1946) (paragraph one of the syllabus). In contrast, this Court has held, "It is a well-settled rule of statutory interpretation that statutory provisions be construed together, and the Revised Code be read as an interrelated body of law." *Summerville v. Forest Park*, 128 Ohio St. 3d 221 (2010).

Defying the principles set forth in *Summerville* and *Bohan*, Appellees, however, try to divorce Section 955.28 from the rest of Chapter 955 (Dogs) by claiming that the Chapter is essentially an "administrative code" that has no direct bearing on the liability issue addressed in Section 955.28(B). That argument fails.

Chapter 955 naturally includes administrative elements, but it also contains multiple provisions that go far beyond administrative matters. Chapter 955 covers a gamut of matters relating to "harborers," encompassing not only administrative matters,

[6] This is perhaps unsurprising because "few Ohio cases involve liability for landlords as harborers in common areas," as Judge Welbaum observed. *Hipshire* at Par. 51.

but safety regulations and *criminal* sanctions for violating certain subsections of Chapter 955. Thus, to select just a limited set of examples out of potentially dozens:

ADMINISTRATIVE

- **Section 955.05** mandates that "[a]fter the thirty-first day of January of any year, except as otherwise provided in section 955.012 or 955.16 of the Revised Code, every person, *immediately upon becoming the owner, keeper, or harborer* of any dog more than three months of age or brought from outside the state during any year, shall file like applications, with fees, as required by section 955.01 of the Revised Code."

- **Section 955.25** mandates that "No person shall *own, keep, or harbor* a dog wearing a fictitious, altered, or invalid registration tag or a registration tag not issued by the county auditor in connection with the registration of such animal."

SAFETY

- **Section 955.22(B)** mandates that no "*owner, keeper or harborer* of any female dog shall permit it to go beyond the premises of the owner, keeper, or harborer at any time the dog is in heat unless the dog is properly in leash."

- **Section 955.22(C)** mandates that except when "a dog is lawfully engaged in hunting and accompanied by *the owner, keeper, harborer, or handler* of the dog, no owner, keeper, or harborer of any dog shall fail at any time to do either of the following:

  (1) Keep the dog physically confined or restrained upon the premises of the *owner, keeper, or harborer* by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

  (2) *Keep the dog under the reasonable control of some person."*

- **Section 955.22(D)** mandates that except when a "dangerous dog" is lawfully engaged in hunting and accompanied by the owner, keeper, harborer, or handler of the dog, *no owner, keeper, or harborer of any dog shall fail at any time to do either of the following*:

  (1) While that dog is *on the premises of* the *owner, keeper, or harborer*,

securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
(2) While that dog is *off the premises of the owner, keeper, or harborer*, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

CRIMINAL PROVISIONS

- *Section 955.99 mandates that a violation by an owner, keeper, or harborer of Section 955.25, 955.22(B), 955.22(C), 955.22(D) are subject to various forms of criminal penalties* that vary in severity depending on the section violated, ranging from criminal fines to conviction of misdemeanor, with certain offenses potentially calling for *imprisonment* for not more than 30 days. [All emphasis added.]

Several points flow from this partial exegesis of Chapter 955.

First, Chapter 955 is no mere administrative statute that, as Appellees seem to intimate, just happens to have a stand-alone strict liability provision tacked on as Section 955.28(B). Chapter 955 is a comprehensive, internally cohesive law that addresses a raft of different legal considerations associated with dogs and "owners, and keepers and harborers." The comprehensive nature of the statute militates against the notion that the legislature had the *unexpressed* intent that the term "harborer" in Section 955.28(B) would

be subject to a unique definitional standard. *See Bohan, supra.*

Second, *each of the foregoing examples from the statute inherently contemplates that a harborer within the meaning of Chapter 955 must have some direct and immediate contact with and control over the dog.* To take just a few examples, a "harborer" must restrain or muzzle dangerous dogs, actively supervise the animal, or control it with a leash. None of those duties make sense if the legislature intended that the statutory term "harborer" would encompass a landlord that "merely acquiesced" in the presence of a dog in a multi-tenant, multi-pet property development.

Third, the law contemplates potential *criminal* penalties if a "harborer" fails, for example, to ensure that the dog is kept under reasonable control when outside the home of its owner. Once again, particularly where a landlord faces potential criminal liabilities, it is clear that the term harborer must mean something more direct and significant than merely allowing tenants to keep a pet dog.

In sum, nothing in Chapter 955 (Dogs) states or even implies that the Legislature intended the recurring phrase "owner, keeper, or harborer" to have different meanings in different sections, let alone that Section 955.28(B) would impose a *unique,* more expansive "mere acquiescence" standard applicable to landlords in strict liability dog bite cases. In dozens of instances, the General Assembly used the word "harborer" in a way that unambiguously contemplates direct control over and a relationship with the dog. How else may a "harborer" license, leash, muzzle, tether, or crate a dog? The very nature

of those duties presupposed exactly what Judge Welbaum concluded was the touchstone for defining a statutory "harborer": a direct relationship with and control over the dog.

Appellees offer no cogent argument to the contrary. Rather, the Appellees simply misstate the thrust of the Appellant's arguments about the absurdity of results that flow from the mere acquiescence test if applied to other sections of Chapter 955. Resp. Br. at 11. As the Appellees now try to *recast* the argument, they posit that the Appellants are suggesting that the courts must now impose "administrative" or "regulatory" duties on landlords because they acquiesced in the presence of dogs. That is incorrect and misses the point entirely.

The point is not that the "mere acquiescence" standard exposes landlords to administrative duties.[7] The fact that the legislature unambiguously imposed those kinds of duties on the statutory class of "harborers "speaks directly to the legislative intent behind Chapter 955 (Dogs) as a whole and Section 955.28(B) in particular.

The ultimate conclusion here is that the statutory structure and language clearly

[7] These absurd outcomes, however, necessarily would flow from the application of a mere acquiescence standard to define who is a statutory "harborer" throughout Chapter 955. *See Bohan* (words are presumed to have a single. consistent meaning throughout a statute). In interpreting statutes, however, this Court has stated that it is to presume that "a just and reasonable result" as well as a "result feasible of execution" is intended by the legislature's drafting choices. R.C. 1.47. *See also State ex rel. Dispatch Printing Co. v. Wells* (1985), 18 Ohio St.3d 382, 384, 481 N.E.2d 632, 634 (discussing the axiom of judicial interpretation that "statutes [are to] be construed to avoid unreasonable or absurd consequences"). Any absurd results, however, are dispelled by recognizing that the statutory language requites direct involvement with, and control over, the dog.

contemplate that a "harborer" will have a sufficient degree of direct, actual contact with, and control over, a dog in order to be legally and constitutionally responsible for such matters as paying license fees, controlling dogs in heat, crating or chaining dangerous animals, and controlling dogs on walks. This interpretation harmonizes the statutory term "harborer" as used throughout all of Chapter 955, including Section 955.28(B).[8]

Precedent: The Appellees next suggest that rejecting the Appellate Court's mere acquiescence standard would overturn decades of precedent. Again, not so.

First, as Judge Welbaum noted, landlord cases under Section 955.28(B) have been "few" in Ohio and, in the cases that have been addressed, the outcome (as Judge Welbaum concluded) hinged on the presence of an active, direct relationship between the harborer and the dog. He further noted: "The *scarcity* of such cases in well over 100 years since strict liability laws were passed supports the common sense approach I have discussed." *Hipshire*, Par. 50 (emphasis added). Thus, even if Appellees were correct that rejecting the "mere acquiescence" standard would overrule some precedents, the cases affected are limited and the statutory language of Chapter 955 must in any event govern. A decision circumscribing the "mere acquiescence" standard and recognizing that strict liability attaches under Chapter 955 and Section 955.28(B) only where there is (a)

[8] In fact, the interpretation advanced by Appellants essentially has been the law in Illinois for decades. *See Steinberg v. Petta, 114 Ill. 2d 496 (1986)* ("Harboring or keeping an animal therefore involves some measure of care, custody, or control, and it is in those senses that the terms 'harbor' and 'keep' have been construed under this and similar legislation.").

acquiescence (knowledge and intent)[9] coupled with (b) an actual relationship to, and control over, the dog presents a unified legal standard that harmonizes all elements of Chapter 955 and provides greater clarity under the law.

Second, a decision by this Court recognizing that "mere acquiescence" to the presence of dogs is insufficient to establish strict liability on a landlord leaves Section 955.28 fully intact. Owners always will remain liable by virtue of their legal status. Keepers and harborers likewise will all continue to be liable, just as they always have been, when the facts support it. And, in the event that a plaintiff may not be able to impose strict liability, landlords still remain prospectively liable for claims sounding in negligence.

Benefits: The Response Brief injects a new twist on Appellees' arguments, suggesting that landlords should be deemed "harborers" because they receive the "benefit" of being able to rent to dog owners. This argument falls under its own weight. If the "benefit" of being able to rent to dog owners is enough to establish one's status as a statutory "harborer," then that same argument must apply to Chapter 955 as a whole. It is not rational to argue, however, that every Ohio landlord who has the "benefit" of leasing to a dog owner is exposed to a raft of duties such as the potential criminal consequences that follow when a dog is not leashed.

[9] Acquiescence requires knowledge and intent. *Bundy v. Sky Meadows Trailer Park* (Oct. 23, 1989), Butler App. No. 89-01-002.

Against that speculative "benefit" lies the observation of both the majority and dissenting opinions below that the mere acquiescence rule imposing strict liability "puts landlords in a difficult position." *See Hipshire,* Par. 21 (majority opinion) *and* Par. 48 (landlords should not be put into the position of unwilling insurers; J. Welbaum dissenting). We respectfully submit that the place to make a cost/benefit analysis of this kind is in the legislature, not the courtroom.

If the legislature wants to impose strict liability on landlords who merely acquiesce to the presence of dogs owned by tenants, it has the ability to do so. *See Mirick v. Gims*, 79 Ohio St. 174 (1908)(discussing law taxing landlords who rent to harborers of dogs).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decision of the Appellate Court and reinstate summary judgment in favor of Appellants.

Respectfully submitted,

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I certify that a copy of the foregoing Reply Brief of Appellant was served by e-mail this 25th day of August, 2025, upon the following counsel:

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