IN THE

Court of Appeals of Indiana

No. 71A05-1505-MI-381

ESPN, INC., *et al.*,	)	Appeal from the
	)	St. Joseph Superior Court
Appellants (Plaintiffs below),	)	
	)	No. 71D07-1501-MI-00017
v.	)	
	)	The Honorable
UNIVERSITY OF NOTRE DAME SECURITY POLICE DEPARTMENT,	)	Steven L. Hostetler, Judge
	)	
Appellee (Defendant below).	)	

BRIEF OF THE STATE OF INDIANA AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

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INTEREST OF THE STATE OF INDIANA AS *AMICUS CURIAE*

Pursuant to its authority under Indiana Code section 34-33.1-1-2, the State of Indiana, by the Attorney General, respectfully submits this brief as *amicus curiae* in support of Appellants ESPN, Inc. and Paula Lavigne. The decision below implicates the interests of the State of Indiana insofar as it holds that records kept by the Notre Dame Security Police Department (the "Police Department") in the exercise of delegated state police powers are not subject to disclosure under Indiana's Access to Public Records Act, Indiana Code chapter 5-14-3 (the "Act").

The trial court's decision runs contrary to "the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." Ind. Code § 5-14-3-1. A police officer is perhaps the quintessential public employee, cloaked in the authority of the State to investigate, detain, arrest, incarcerate, carry and discharge a firearm, and generally maintain the safety of the citizenry. The notion that a police department exercising these core state powers can be shielded from public scrutiny by dint of its affiliation with a private university is antithetical to the important policy interests underlying the Access to Public Records Act.

The Office of Attorney General frequently advocates in favor of these policy interests, arguing for greater transparency in government and clear and consistent application of the Act. *See, e.g.*, Brief of the State of Indiana as *Amicus Curiae* in Support of Appellants' Petition to Transfer, *Evansville Courier & Press v.*

Vanderburgh Cnty. Health Dep't, 17 N.E.3d 922 (Ind. 2014) (No. 82A04-1302-PL-57) (arguing that the Act does not exempt certificates of death from public disclosure). To this end, it is the policy of the Attorney General to support opinions of the Public Access Counselor that favor open records and government transparency.

In 2011 and 2012, the Attorney General's office and the Hoosier State Press Association co-hosted free public access seminars throughout the State designed to educate local government officials regarding their responsibilities under the Act. Speaking of his goal in hosting these seminars, Attorney General Zoeller stated: "To gain and maintain the trust of the public, government must be open and transparent in the way it conducts the public's business. If government officials huddle behind closed doors or refuse to release public records, then they won't enjoy the public's trust." Press Release, Zoeller: Public Access Seminar Events Benefit Citizens, Officials and Media, *available at* http://www.in.gov/portal/news_events/70328.htm (May 18, 2011).

The State submits this brief of *amicus curiae* to support the considered opinion of the Public Access Counselor—and the public policy underlying the Act—that state power and public oversight go hand-in-hand, and to advance the State's interest in ensuring that every police officer exercising delegated state authority is subject to public scrutiny through the Access to Public Records Act.

BACKGROUND

I. The Notre Dame Security Police Department

The Indiana legislature has authorized private postsecondary educational institutions to appoint police officers. Ind. Code § 21-17-5-2. Pursuant to this authority, at least eleven private Indiana universities employ police officers to protect and serve their students, campuses, and surrounding communities.[1]

Notre Dame is one such university. Appointed by the university's Board of Governors, the Notre Dame Security Police Department, is "fully authorized as a police agency by the State of Indiana." Notre Dame Security Police, *About NDSP*, http://ndsp.nd.edu/about-ndsp/ (last visited Aug. 13, 2015). "Notre Dame police officers complete state mandated training requirements established for law enforcement officers and have the same legal authority as any other police officer in Indiana." *Id.*

Indeed, all campus police officers appointed pursuant to Section 21-17-5-2 possess "[g]eneral police powers, including the power to arrest, without process, all persons who commit any offense within the view of the officer[,]" as well as "[t]he

[1] The following universities have appointed officers pursuant to Indiana Code section 21-17-5-2: Anderson University (http://www.anderson.edu/security/police.html), Butler University (https://www.butler.edu/bupd), Depauw University (http://www.depauw.edu/studentlife/campus-safety/publicsafety/public-safety-staff/), Huntington University (https://www.huntington.edu/student-life/campus-police/), Indiana Wesleyan University (https://www.indwes.edu/about/student-consumer-information/safety), Marian University (http://www.marian.edu/campus-life/campus-safety), Taylor University (http://www.taylor.edu/about/services/ehs/police/), Trine University (http://www.trine.edu/campus-safety/), University of Indianapolis (http://www.uindy.edu/police-department), University of Notre Dame (http://ndsp.nd.edu), and Valparaiso University (http://www.valpo.edu/vupd/).

same common law and statutory powers, privileges, and immunities as sheriffs and constables." Ind. Code § 21-17-5-4(a)(1)–(2). They may exercise their police powers both on university property and on roads passing through or adjacent to the university's property. Ind. Code § 21-17-5-5(b). The university may even extend an officer's jurisdiction to the entire State, or to any part of the State, if its board of trustees (1) "adopts a resolution specifically describing the territorial jurisdiction of" the officer, and (2) notifies the "superintendent of the state police department" and the "sheriff of the county in which the institution is primarily located[.]" Ind. Code § 21-17-5-5(c).

In addition to sworn police officers, the Police Department also employs "non-sworn campus safety officers who patrol campus and respond to emergencies." *About NDSP*, *supra*. Additional Police Department staff members also work as security monitors and in other support positions within the Department. *Id*.

II. ESPN's Records Request and the Opinions of the Public Access Counselor

On September 19, 2014, ESPN journalist Paula Lavigne requested incident reports from the Police Department pursuant to Section 5-14-3-3 of the Act. Appellants' App. 18 (hereafter, "App"). The Department denied this request and ESPN, in turn, filed a formal complaint with the Public Access Counselor alleging that the Department's refusal violated the Act. *Id*.

On October 31, 2014, the Counselor issued an opinion in which he found that the Police Department exercises the authority of the State and thus is a "public agency" subject to the Act. App. 18, 25. The Counselor observed that the

Department "is clearly operating under the color of the law, enforcing Indiana criminal code and not mere campus policy or disciplinary procedures," and noted that NDSP "even ha[s] a 911 dispatch." App. 24. Thus, said the Counselor, "[i]f a law enforcement agency has police powers, then they should be subject to the typical scrutiny given to traditional police forces." *Id*.

The opinion did not, however, go so far as to state that the Police Department violated the Act. Rather, the Counselor acknowledged that the Police Department's refusal to disclose its records was based on three opinions from previous public access counselors who had all reached the *opposite* conclusion. App. 25. Thus, the opinion merely put the Department "on notice" that the Counselor will consider it a public law enforcement agency for all future public access requests. *Id*.

ESPN made two more requests for records on November 4 and November 20, 2014, both of which the Police Department denied on the basis that it is not a public agency and did not have records responsive to the request. App. 19. Accordingly, ESPN filed a second formal complaint with the Counselor on December 8, 2014. *Id*. In his second opinion on this issue, the Counselor reiterated that the Police Department is a public agency under the Act and stated that "if the Notre Dame Security Police Department has documentation regarding any suspected crimes, accidents or complaints involving the individuals named in [ESPN's] request, and has not released that particular documentation, then they have violated the Access to Public Records Act." App. 19, 36.

The Police Department did not produce the requested records after receiving the Counselor's second opinion. App. 20. ESPN filed suit in the St. Joseph Superior Court alleging that the Department violated the Act. *Id*. The Police Department moved to dismiss and the parties filed cross-motions for judgment on the pleadings. App. 66, 91. On April 20, 2015, the court dismissed the complaint. App. 15.

III. The Decision Below

As an initial matter, the trial court held that "Notre Dame's campus police officers do not constitute a separate legal entity . . . [as t]he enabling statute that authorizes Indiana's private colleges and universities to appoint campus police officers, only allows the colleges and universities themselves to do so." App. 8 (citing Ind. Code § 21-17-5-1 *et seq*.). Thus, the court viewed the question raised by ESPN's complaint as whether "the entire University of Notre Dame[] is now required to produce all of its records (such as academic, business and financial records) simply because it appoints campus police officers." *Id*.

The answer to that question, said the court, is no. The Act applies only to records of a "public agency," which the University of Notre Dame, a private institution, is not. App. 9–10. The court acknowledged that Notre Dame police officers "have the authority to exercise the most critical police functions . . . including the authority to investigate criminal activity and make arrests." App. 10. The court also recognized that the Indiana Supreme Court has held that private campus police departments are "state actors" for purposes of determining the constitutional limits on their police powers. *Id*.

However, said the court, it does not follow that an entity is a public agency for purposes of the Act merely because it is a state actor for constitutional law purposes. App. 11. The court explained that the powers exercised by Notre Dame police officers "are not part of the executive, administrative, judicial or legislative power *of* the state. Rather, because the Legislature has granted those powers to private third parties, namely the 'governing board' of . . . the universities, they are powers *granted by* the state." *Id.*

The trial court also took note of Notre Dame's argument inferring that the legislature must not *want* to subject private university police departments to the Act's requirements, as it did not amend the Act after any of the three previous Counselor opinions finding the Act inapplicable to these departments. App. 13. Although the trial court acknowledged the absence of any authority applying this "doctrine of legislative acquiescence" to opinions of the Public Access Counselor, it nonetheless deemed this a "point [] well taken." *Id.*

Ultimately, despite the trial court's "discomfort with the notion that a private party can exercise police powers without providing to the public the access to records required by [the Act]," it was equally "uncomfortable with the notion that a private entity could be subject to [the Act] for all purposes without any clear expression that the Legislature intended such a result." App. 13–14. Thus, the court dismissed ESPN's complaint. App. 15.

SUMMARY OF THE ARGUMENT

In an effort to enhance campus safety at private Indiana colleges and universities, the General Assembly has delegated state police powers to officers appointed by these institutions pursuant to Indiana Code section 21-17-5-2. As a result, these private campus police officers receive the same training as every other law enforcement officer in the State and may exercise the same police powers, including the authority to make arrests. In authorizing these private police forces, however, the legislature surely did not intend that they would wield the power of the State with no oversight from—or accountability to—its citizens.

The Access to Public Records Act allows public scrutiny into the records of public agencies, which include "[a]ny board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state." Ind. Code § 5-14-3-2(n)(1). Private university police officers exercise the police power of the State—a core state function—and must therefore be subject to the Act's disclosure requirements to the extent the records sought relate to the exercise of the police power.

The trial court's conclusion to the contrary rests on a faulty premise: that because the Notre Dame Security Police Department and the University of Notre Dame are not "separate and distinct legal entities," the Police Department cannot be subject to the Act without subjecting the entire University to the Act. This holding has no basis in either the text or spirit of the Act, which is to be construed

liberally with a presumption in favor of disclosure. The Act's definition of "public agency" has nothing to do with an entity's legal status and everything to do with its exercise of state authority. A line of separation can easily be drawn between the Police Department (which exercises state police power), and the University (which does not). The Police Department fits neatly within the statute's definition of "public agency" as a "department" or "division" of Notre Dame "exercising . . . [the] power of the state." Ind. Code § 5-14-3-2(n)(1).

That said, while the Indiana Supreme Court has said that private university police officers are "state actor[s]" subject to constitutional limits on their power, *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003), that status is not determinative of whether an entity is also a public agency under the Act. State actor status is persuasive evidence that the Act should apply, to be sure, but it will not provide a suitable outward limit in all contexts. A private entity can be rendered a state actor for constitutional purposes by performing only a very limited government function (such as working with a state official to carry out a pre-judgment attachment order), but using the same test to declare that entity a public agency for purposes of the Act would be unreasonable. Accordingly, a private entity should be deemed a "public agency" under the Act only if it is exercising a *core* state power, such as the police power. Focusing on the precise nature of the state authority exercised would advance the Act's public-oversight purpose while excluding from coverage truly private actors who may exercise only incidental government authority.

Finally, the doctrine of "legislative acquiescence" has no place in this analysis. It applies at most to previous decisions with binding legal force—such as an opinion of a court or a decision of an administrative agency—not to advisory opinions. Like official Attorney General opinions, Public Access Counselor opinions merely offer guidance and do not carry the weight of law. Inaction following previous Counselors' opinions does not imply legislative approval.

ARGUMENT

I. The Notre Dame Police Department Can Be Subjected to the Act Without Extending the Act's Coverage to the Entire University

The trial court's rigid, all-or-nothing approach is rooted in its determination that the University of Notre Dame and its Police Department are not "separate and distinct legal entities." App. 8. Thus, said the trial court, to apply the Act to the Police Department would be to apply the Act to the entire University. *Id*. But the Access to Public Records Act applies to "public agencies," which it defines in terms of function, not legal status. Thus, a "public agency" is "[a]ny board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state." Ind. Code § 5-14-3-2(n)(1).

The Police Department fits comfortably within this definition as a separate "department," "division," or "office" of Notre Dame that exercises the police power of the State. Indeed, the definition's catch-all language—encompassing all entities "by whatever name designated"—demonstrates that the key inquiry is not what the

entity is called or how it is structured, but rather what function it performs. The Police Department exercises the delegated police power of the State—*that* is the salient point. Thus, applying the plain language of the Act, it is easy to draw a line of separation between the Police Department (which exercises state power) and the University (which does not).

Indiana courts have had no difficulty drawing such lines in the past. They have implemented the Act in ways that further the goal of government transparency while also excluding from coverage truly private entities and activity. In *Indianapolis Convention and Visitors Association, Inc. v. Indianapolis Newspapers, Inc.*, 577 N.E.2d 208 (Ind. 1991), the court held that the ICVA, a not-for-profit corporation, was "transformed into a public agency" subject to the Act because it was funded and supported by monies from the Marion County Capital Improvement Board. *Id.* at 215, 213–14. The ICVA had argued that subjecting it to the Act would risk sweeping in any company that does business with a governmental entity. *Id.* at 214. The court rejected this argument, drawing a line between private entities like the ICVA that are "maintained and supported by public funds" and private entities that are merely involved in *quid pro quo* situations with the government (*i.e.*, "measured goods or services given in exchange for payment based on identifiable quantities of goods or services"). *Id.*

Thus, it cannot be the case that an entity exercising state power can shield itself from public oversight by hiding behind its private parent entity. The Act is to be "liberally construed" with a presumption in favor of disclosure. *Evansville*

Courier & Press v. Vanderburgh Cnty. Health Dep't, 17 N.E.3d 922, 929–30 (Ind. 2014) (quoting Ind. Code § 5-14-3-1). Where reasonable lines can be drawn to isolate entities exercising the authority of the State from truly private entities and activities, courts should err on the side of disclosure and hold these entities accountable to the public.

II. The Police Department Is a Public Agency to the Extent It Exercises the Police Power of the State

A. State-actor status is evidence of, but not determinative of, whether the Act applies

The trial court was correct to state that an entity's status as a "state actor" for constitutional purposes is not determinative of whether it is also a "public agency" under the Act. App. 9. Nonetheless, state-actor analysis is a useful starting point for determining whether an entity is a public agency. Indeed, if an entity is a state actor for constitutional purposes, there is a strong likelihood that it is "exercising . . . part of the executive, administrative, judicial, or legislative power of the state" under the Act. Ind. Code § 5-14-3-2(n)(1).

The Indiana Supreme Court has held that private university police officers appointed pursuant to Indiana Code section 21-17-5-2 are state actors for constitutional purposes. In *Finger v. State*, 799 N.E.2d 528 (Ind. 2003), the court addressed the question as it related to Fourth Amendment limits on the conduct of a Butler University police officer. Stating that "[a] private entity is deemed a state actor when the state delegates to it a traditionally public function[,]" *id.* at 532, the court held that the officer was "a state actor subject to [ ] Fourth Amendment

restrictions on searches and seizures," *id.*, owing to the State's conferral of "general police powers" on private university police. *Id.* (quoting Ind. Code §§ 20-12-3.5-1(1) and -2 (1998) (predecessors to Ind. Code § 21-17-5-2)).

Thus, when Notre Dame police officers exercise the authority they are granted under Indiana Code section 21-17-5-4, they act under color of state law just like any other law enforcement officer in the State. *Id.* That these officers are appointed, employed, and paid by private universities did not factor into the *Finger* court's state-actor analysis in any fashion. *See id.* Rather, their status as state actors was entirely dependent on their exercise of state-delegated police powers. *Id.*; *see also Evans v. Newton*, 382 U.S. 296, 299 (1966) ("[W]hen private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state. . . .").

Again, however, while state-actor status lends significant support to the notion that private university police constitute a "public agency" for purposes of the Act, it is not conclusive evidence. Certainly there are private entities and individuals who are "state actors" for constitutional purposes but who cannot reasonably be swept within the coverage of the Act. For example, the United States Supreme Court has held that private creditors are state actors for purposes of 42 U.S.C. § 1983 when they work with state officers to implement garnishment and pre-judgment attachment procedures. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 941–42 (1982). Using the *Lugar* analysis, the Court has also concluded that a private company's use of peremptory challenges to exclude jurors on account of race

constituted state action as peremptory challenges (1) cannot be exercised "absent the overt, significant assistance" of the government, and (2) involve a "traditional function of the government." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 622–25 (1991). And the Ninth Circuit has held that a private lessee of public outdoor space exercises a "public function" and is a "State actor" for constitutional purposes when it attempts to regulate speech activities in the leased space. *See Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002) (holding that a private corporation that leased a large, open-air commons area from the City of Portland was a state actor when it attempted to regulate speech on the commons).

Applying the Act in any of these scenarios would sweep too broadly. These are predominantly private entities that perform predominantly private functions. That they may also perform a delegated state function in some limited capacity should not, without more, subject them to the Act's coverage.

B. The Police Department is a public agency because it exercises core state police powers

The Police Department, by contrast, is not only a constitutional state actor, but also serves an almost *exclusively* public function. The State has delegated more than just an incidental, limited power to private campus police departments; it has authorized them to exercise its most core sovereign power: the police power. Indeed, Notre Dame police officers carry out duties that lie at the very heart of the State's police power: they investigate, detain, arrest, and maintain the safety of the Notre Dame campus and the surrounding community. "The promotion of safety of persons and property is unquestionably at the core of the State's police power[.]"

Kelley v. Johnson, 425 U.S. 238, 247 (1976). It is the nature of the state authority the Police Department exercises—not merely its status as a state actor—that brings it within the coverage of the Act.

Using this same analysis, the Ohio Supreme Court recently concluded that the Otterbein University police department should be subject to Ohio's public records act. *See State ex rel. Schiffbauer v. Banaszak*, 33 N.E.3d 52 (Ohio 2015). An Ohio statute provided that "[t]he board of trustees of a private college or university may establish a campus police department and appoint members of the campus police department to act as police officers." *Id.* at 53–54 (quoting Ohio Rev. Code 1713.50(B)). Private campus police in Ohio undergo training approved by Ohio's peace officer training commission and exercise the full power of state-appointed police and sheriffs. *Id.* at 54.

Like Notre Dame, Otterbein University argued that its police department did not meet the definition of a "public office" under Ohio's Public Records Act: "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." *Id.* at 53 (quoting Ohio Rev. Code 149.011(A)). However, the Ohio Supreme Court held that "[b]ecause its officers are sworn, state-certified police officers who exercise plenary police power, . . . the Otterbein police department is a public office . . . [that] can be compelled to produce public records." *Id.* at 53.

Critically, the court explained that "the mere fact that Otterbein is a private institution does not preclude its police department from being a public office[,]" *id.* at 55, as the department is "performing a function that is historically a government function." *Id.* (quoting *State ex rel. Freedom Commc'ns, Inc. v. Elida Cmty. Fire Co.*, 697 N.E.2d 210, 213 (Ohio 1998)). Indeed, said the court, the Otterbein police department "is created under a statute for the express purpose of engaging in one of the most *fundamental* functions of government: the enforcement of criminal laws, which includes power over citizens as necessary for that enforcement." *Id.* (emphasis added).

The State urges this Court to follow Ohio's lead and adopt a similar analysis. Focusing on the precise nature of the delegated government power—and its centrality to the State's most critical functions—will further the Act's purpose of subjecting government officials to public oversight while excluding from the Act's coverage truly private entities and actors who may exercise only incidental government authority.

III. The Doctrine of "Legislative Acquiescence" Is Not Applicable to Opinions of the Public Access Counselor

The doctrine of legislative acquiescence—the notion that the legislature tacitly accepts an enforceable interpretation of a statute by not amending it—discourages courts from abandoning longstanding judicial and administrative interpretations of statutes. *See Ind. Bell Tel. Co. v. Ind. Util. Reg. Comm'n*, 715 N.E.2d 351, 358 (Ind. 1999) ("A long adhered to administrative interpretation dating from the legislative enactment, with no subsequent change having been

made in the statute involved, raises a presumption of legislative acquiescence which is strongly persuasive on the courts." (quoting *Shell Oil Co. v. Meyer*, 705 N.E.2d 962, 976 (Ind. 1998))).

The Court should decline Notre Dame's invitation to extend this doctrine to the opinions of the Public Access Counselor. Those opinions, unlike administrative and judicial decisions, do not carry the weight of law and bind neither the parties for whom they are written nor Indiana courts hearing cases on the matter involved. *Anderson v. Huntington Cnty. Bd. of Comm'rs*, 983 N.E.2d 613, 618 (Ind. Ct. App. 2013) *trans. denied.*

Indiana Code section 5-14-4-10(6) authorizes the Public Access Counselor to issue advisory opinions, and this Court has said before that "in the absence of case law or adequate statutory authority, [courts] should give considerable deference to the opinions of the Public Access Counselor." *Id.* Those opinions, however, are written for the parties to a complaint in order to provide guidance in complying with the law, not as binding authority. *Id.* Notre Dame has acknowledged this fact in relation to the Counselor's opinions here, Defendant's Br. Supporting Dismissal and Judgment on the Pleadings at 5, *ESPN, Inc. et al. v. Notre Dame Sec. Pol. Dep't.*, No. 71D07-1501-MI-0017, but nevertheless presumes that earlier, equally non-binding opinions should become law through the legislature's failure to amend the Act in response. *Id.* at 2. But the legislature's silence following the first three Counselor opinions is no more instructive than its silence in the wake of the most recent opinion reversing course. Simply put, the legislature does not react to

Counselor opinions like it might to administrative actions and orders because they do not have the same legal effect.

While this Court should certainly consider the persuasive value of all four Public Access Counselors' arguments on this issue, it is not required to defer to their opinions any more than the parties for whom they were written. The Public Access Counselor's opinions—like official Attorney General opinions—are advisory and do not become legislation simply through age.

Furthermore, even if this court were to hold that the Counselor's advisory opinions can become binding over time, the doctrine of legislative acquiescence would not apply in this case. Courts must occasionally give additional deference to administrative rulings under the doctrine, but it does not also bind the administrative agencies. As ESPN noted in its trial court brief, "an agency may change its course and is not forever bound by prior policy or precedent . . . where a policy or precedent is flawed and needs to be changed . . . as long as it explains the reason for doing so." Plaintiffs Brief in Opposition of Motion for Dismissal and Judgment on the Pleading and in Support of their Motion for Judgment on the Pleadings at 16, *ESPN, Inc. et al. v. Notre Dame Sec. Pol. Dep't.*, No. 71D07-1501-MI-0017 (quoting *Ind. Bell Tel. Co., Inc. v. Ind. Util. Reg. Comm'n*, 810 N.E.2d 1179, 1186 (Ind. Ct. App. 2004)). Previous counselors indeed addressed this issue three times before the current Counselor reversed course. But because the current Counselor noted his change in course and explained his reasonable disagreement

with those three opinions, he was entitled to advise the parties as he did. *Indiana Bell*, 810 N.E.2d at 1186.

CONCLUSION

This Court should reverse the decision of the trial court and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Indiana Rule of Appellate Procedure 44(E), I verify that this brief, excluding tables and certificates, contains less than 7,000 words according to the word-count function of the word-processing program used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2015, a copy of the foregoing was served via First Class United States mail, postage pre-paid, to the following:

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