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**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

Case No. A-25-990

IN THE NEBRASKA COURT OF APPEALS

IN THE INTEREST OF ESPERANZA C.

**Appeal from the District Court of Douglas County, Nebraska
Honorable Vernon C. R. Daniels**

**Brief of Appellee
Department of Health and Human Services**

Respectfully submitted by:

**NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
JURISDICTION.....	5
STATEMENT OF THE CASE.....	6
PROPOSITIONS OF LAW.....	7
STATEMENT OF FACTS.....	8
ARGUMENT.....	10
CONCLUSION.....	17
CERTIFICATE.....	19

TABLE OF AUTHORITIES

Cases

<i>In re DeWayne G., Jr.</i> , 263 Neb. 43 (2002).....	17
<i>In re Gabriel B.</i> , 31 Neb. App. 21 (2022).....	16
<i>In re Hope L.</i> , 278 Neb. 869 (2009).....	8, 10
<i>In re Interest of A.H.</i> , 237 Neb. 797, 800 (1991).....	11
<i>In re Interest of Aaron D.</i> , 269 Neb. 249 (2005).....	6, 8, 15
<i>In re Interest of Alec S.</i> , 294 Neb. 784 (2016).....	15
<i>In re Interest of Alycia P.</i> , 258 Neb. 258 (1999).....	5, 7, 13
<i>In re Interest of Isabel P. et al.</i> , 293 Neb. 62 (2016).....	8, 16
<i>In re Interest of Joel T.</i> , 321 Neb. 106, 113 (2026).....	7, 12
<i>In re Interest of Octavio B.</i> , 290 Neb. 589 (2015).....	5
<i>In re Interest of S.R.</i> , 239 Neb. 871 (1992).....	11
<i>In re Interest of Samantha L.</i> , 286 Neb. 778 (2013).....	7, 12, 13
<i>In re Interest of Seth K.</i> , 22 Neb. App. 349 (2014).....	8, 16
<i>In re Jordon B.</i> , 316 Neb. 974 (2024).....	5, 7
<i>In re Mateo L.</i> , 309 Neb. 565 (2021).....	16
<i>In re Noah C.</i> , 306 Neb. 359 (2020).....	6, 12
<i>Lombardo v. Sedlacek</i> , 299 Neb. 400 (2018).....	5

Statutes

Neb. Rev. Stat. § 25-1127.....	13
Neb. Rev. Stat. § 25-1911.....	5
Neb. Rev. Stat. § 25-1912.....	5
Neb. Rev. Stat. § 43-246.....	11

Neb. Rev. Stat. § 43-247(3)(a).....	6,10, 12
Neb. Rev. Stat. § 43-283.01.....	5, 11, 13
Neb. Rev. Stat. § 43-292(2) (6) and (7).....	6, 7, 10, 11, 12, 14, 15, 16
Neb. Rev. Stat. § 43-1311.01.....	5, 10, 11, 14
Neb. Rev. Stat. § 43-1315.....	12
Neb. Rev. Stat. § 43-2,106.01.....	5
Miscellaneous	
Neb. Ct. R.App. P. § 2–109(D)(1).....	13

STATEMENT OF JURISDICTION

Appellant Smith appeals the order simultaneously overruling her motion for Negative Reasonable Efforts and terminating her parental rights, issued October 6, 2025 by the Douglas County Juvenile Court. The order denied the biological mother's motion alleging the lack of family finding efforts under Neb. Rev. Stat. § 43-1311.01, citing failure of proof. (T96). Under Neb. Rev. Stat. §§ 25-1911, 25-1912 and 43-2,106.01, the Court has jurisdiction over the present Appeal regarding the Termination of Parental Rights, but the Court lacks jurisdiction as to the finding of Negative Reasonable Efforts.

“Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.” *In re Jordon B.*, 316 Neb. 974, 982 (2024). “[T]o vest an appellate court with jurisdiction, a party must timely file a notice of appeal.” *Id.* at 149. “Jurisdictional statutes must be strictly construed.” *Lombardo v. Sedlacek*, 299 Neb. 400, 411 (2018). “To say that jurisdiction may be lodged in [an] appellate court in any other manner than that provided by the plain words of the statute amounts to judicial legislation.” *Id.* An order that affects a parent's substantial right in a special proceeding is appealable. *In re Interest of Octavio B.*, 290 Neb. 589, 599 (2015).

It is unclear based on the Appellant's brief which of the Mother's rights is being substantially affected regarding the order to overrule the motion to find Negative Reasonable Efforts. Neb. Rev. Stat. § 43-1311.01 provides a benefit for the minor child, not the parent. Accordingly, the child holds the right to enforce the statute or appeal incorrect decisions related to that statute; the parent lacks standing to do the same. *Cf. In re Interest of Alycia P.*, 258 Neb. 258 (1999) (holding “In order to have standing, a litigant must assert the litigant's own legal rights and interests, and cannot rest his or her claim on the legal rights or interests of third parties.”). However, assuming for the sake of argument that the parent does hold a right under Neb. Rev.

Stat. § 43-1311.01, this parent waived any right she had by waiting nearly four years after the statutory 30-day deadline to complain, and only now, at the brink of her parenthood, chooses to raise a complaint.

STATEMENT OF THE CASE

- 1. Nature of the Case** – This is an appeal of a termination of a Mother’s parental rights and the overruling of the Mother’s Motion for Negative Reasonable Efforts by the Department of Health and Human Services for failure to provide family finding services to the child within the first 30 days following the child’s removal from the parental home.
- 2. Issues Before the Lower Court** – Whether or not the Mother’s parentals rights should be terminated and whether the Department made reasonable efforts to reunify the child with family members.
- 3. How the Issues Were Decided by the Lower Court** – The trial court terminated the Mother’s parental rights and overruled the motion for Negative Reasonable Efforts.
- 4. Standard of Review** – Juvenile cases are reviewed de novo on the record; however, where the evidence is in conflict, the appellate court will consider and may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over another. *In re Noah C.*, 306 Neb. 359, 367 (2020). With an order terminating parental rights under § 43-292(7), appellate courts should be especially diligent in their de novo review of the best interests of the child. *In re Interest of Aaron D.*, 269 Neb. 249, 260 (2005).

PROPOSITIONS OF LAW

1. “[B]efore reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.” *In re Jordon B.*, 316 Neb. 974, 982 (2024).
2. In order to have standing, a litigant must assert the litigant’s own legal rights and interests, and cannot rest his or her claim on the legal rights or interests of third parties. *In re Interest of Alycia P.*, 258 Neb. 258 (1999).
3. Collateral attacks on previous proceedings are impermissible unless the attack is grounded upon the court’s lack of jurisdiction over the parties or subject matter. *In re Interest of Joel T.*, 321 Neb. 106, 113 (2026).
4. "Where an appellate brief fails to comply with the mandate of the appellate rule governing the form and content, the appellate court may proceed as though the party failed to file a brief or, alternatively, may examine the proceedings for plain error. Neb. Ct. R.App. P. § 2–109(D)(1); *In re Interest of Samantha L.*, 286 Neb. 778 (2013).
5. Parental rights should be terminated when a parent has substantially and continuously or repeatedly neglected and refused to give her children necessary parental care and protection. Neb. Rev. Stat. § 43-292(2).
6. Parental rights should be terminated when reasonable efforts to preserve and reunify the family, under the direction of the court, have failed to correct the conditions leading to the determination that the children come within subdivision (3)(a) of section 43-247. Neb. Rev. Stat. § 43-292(6).
7. Parental rights should be terminated when children have been in an out-of-home placement for fifteen or more months of most recent twenty-two months and it is in the children’s best interests. Neb. Rev. Stat. § 43-292(7).
8. The State has no obligation to prove the element of “reasonable efforts to preserve and reunify the family at any proceeding for

- termination of parental rights, except one brought under §43-292(6). *In re Hope L.*, 278 Neb. 869 (2009).
9. Neb. Rev. Stat. §43-292 requires that a court must find by clear and convincing evidence that the termination of parental rights is in the children's best interests. *In re Interest of Isabel P. et al.*, 293 Neb. 62 (2016).
 10. With an order terminating parental rights under § 43-292(7), appellate courts should be especially diligent in their de novo review of the best interests of the child. *In re Interest of Aaron D.*, 269 Neb. 249, 260 (2005).
 11. While the law does not require perfection of a parent, it does require a court to determine whether the parent has made continued improvement in parenting skills and whether the parent has established a beneficial relationship with the child. *In re Interest of Seth K.*, 22 Neb. App. 349, 357 (2014).

STATEMENT OF FACTS

The Statement of Facts in Appellant's brief is mostly accurate, but there are significant facts that were excluded from the Appellant's brief. Namely, the Appellant began to fail to meet the expectations of the court after March of 2023 which compelled the Department's motion suspend visitation to request no more reasonable efforts be provided (T45).

Following the order on July 20, 2021, the minor child was placed with the half-sister of the alleged father, who was believed to be the father at the time. Since that placement, the minor child has not changed placements and developed a bond with that foster parent, to which the Department had no reason to doubt the foster's care for the minor child. (75:24-25, 76:1-3).

During the ongoing proceedings of the case, the Appellant-Mother, Smith, has been absent from the most recent hearings. Smith failed to appear at the hearing on August 22, 2025 (9:11-16), the

hearing on September 8, 2025 (204:1-4), and the hearing on October 6, 2025 (290:9-10). In March of 2025, Smith was given permission to leave for a trip from Mar. 28th until April 8th by her probation officer. (183:14-23). Smith did not return as scheduled on April 8, 2025, and has been seemingly absent from Nebraska since that time, in violation of her probation. (189:3-6). She is also in violation of testing with her probation officer. (189:11-13).

There have also been numerous and consistent barriers to reunification in review and permanency planning hearings. Review and permanency planning hearings spanning from July 20th, 2021 up to November of 2024 cite the same, recurring barriers to reunification. The barriers from the review and permanency planning order from September 17, 2021, included (but were not limited to) material noncompliance with the Court's July 19th, 2021 order. (E101, p.38-40). The barriers from the review and permanency planning order from May 13th, 2022 included lack of housing, and noncompletion of therapy (E101, p.67-69). The barriers noted by the court during its May 17, 2023, hearing included inability to sustain stable housing, inconsistent visitation due to lack of transportation, profanity directed at case manager, hanging up on case manager, length of time child has been in care, and that the mother declined to execute releases of information so case managers could speak to providers. (E102, 6-8). The barriers from the review and permanency plan hearing from November 21st, 2023, included length of time child has been in care, lack of clarity whether mother has completed DV program, and inconsistent visitation by Smith. (E102, p.10-12). The barriers from the review and permanency planning hearing from May 16, 2024, included inconsistent therapy, inconsistent visits, pending abuse and neglect charges, a pending eviction, mother had only obtained employment two weeks prior to the court hearing. (E102, p.17-19).

Finally, the Court's stipulated order from July 17th, 2024, required Smith to participate in individual therapy and complete an anger management class. (E102, p.38-39). In its motion to terminate

parental rights, the State cited Smith's failure to participate in visitation with her child, failure to regularly participate in individual therapy, and lack of progress by the Mother in the three years and ten months since the minor child's removal from the parental home. (E102, p.52-55). Smith moved the court to find that there had been a lack of reasonable efforts provided (T66), which was overruled by the Court (T92). The Court entered an order terminating the Mother's parental rights on December 8th, 2025 (T105).

ARGUMENT

I. THE JUVENILE COURT CORRECTLY OVERRULED MOTHER'S MOTION FOR NEGATIVE REASONABLE EFFORTS FOR FAILURE OF PROOF

The State has no obligation to prove the element of "reasonable efforts to preserve and reunify the family at any proceeding for termination of parental rights, except one brought under §43-292(6). *In re Hope L.*, 278 Neb. 869 (2009). In such case, the State must prove that reasonable efforts under the direction of the court to preserve and reunify the family failed to correct the conditions under § 43-247(3)(a). When considering whether reasonable efforts have been made by the State, the minor child's health and safety must be the chief concerns of the Court. Neb. Rev. Stat. § 43-283.01(1). Under §43-292(6), the Department must make reasonable efforts to preserve and reunify the family while maintaining the focus of inquiry on the health and safety of the minor child.

The Appellant asserts that the Department failed to provide reasonable efforts to preserve and reunify the family by failing to provide family finding services. However, the Department engaged in informal family finding by asking about potential family placements, to which she identified and requested the minor child be placed with Breonna Berry (226-227:17-5). By inquiring and fulfilling the requested placement, the Department fulfilled its obligation to provide reasonable efforts as required under §43-1311.01. Additionally, the paramount concern of the reasonable efforts is the health and safety of

the minor child, and the child has remained with Breonna Berry since placement started (75:10), with no doubts as to Mrs. Berry's care for that child. (75:24-25, 76:1-3). Any allegations or implications as to the minor child's care with Breonna Berry relate to placement, which is not at issue in this appeal.

Furthermore, while the Department must to provide reasonable efforts under §43-1311.01(1), there is no mandate to provide family finding services specifically, unless so ordered by the Court. Smith has received services that constitute reasonable efforts to reunify and preserve the family, even if those services are not the particular services she requests. There is nothing in §43-283.01 that provides for a parent subject to removal proceedings must receive the specific reasonable efforts that they request. Rather, those specific reasonable efforts are those determined necessary to satisfy the law by the Court overseeing the proceedings. *In re Interest of A.H.*, 237 Neb. 797, 800 (1991). In fact, the Nebraska Supreme Court has held that the statutory duty to exercise reasonable efforts does not require that all possible alternatives are exhausted before the Court can order a termination of parental rights. *In re Interest of S.R.*, 239 Neb. 871 (1992), Neb. Rev. Stat. § 43-246.

Smith's dispute of reasonable efforts related to an alleged failure to find family beyond Breonna Berry; she also challenges the suitability of the current placement. Those arguments are misplaced and not at issue in this proceeding. Rather, this proceeding is about whether NDHHS complied with Neb. Rev. Stat. § 43-1311.01. Her substantive arguments were outside the scope of the proceeding of the trial court and therefore are outside the scope of this appellate proceeding.

Appellant Smith's motion alleging NDHHS failed to provide negative reasonable efforts for lack of family finding services is also untimely. The Mother had several opportunities prior to this appeal to raise the issue concerning family finding and preserve it, but she did not. There was no reason the Appellant could not object to the initial

efforts when those first 30 days lapsed over 4 years before this appeal. If reasonable efforts were truly lacking, it would be best for all parties that the wronged party respond in a timely manner, so that juvenile court can direct its attention to the issue and potentially provide a remedy. Here, the court and the Department have been given no time provide a remedy, as the Appellant allowed the alleged issue to culminate in a termination proceeding, making no previous attempt to preserve this issue for appeal. “One cannot silently tolerate error, gamble on a favorable result, and then complain that one guessed wrong.” *In re Interest of Samantha L.*, 286 Neb. 778, 787, (2013).

Moreover, the lower court held review hearings approximately once every six months in this matter, for four years. The court must determine whether reasonable efforts had been provided at each of these review hearings. Neb. Rev. Stat. § 43-1315. Appellant Smith’s motion pertained to the entire life of the case and was not limited to the most immediate review period. (31:10). Appellant Smith had the opportunity to challenge the court’s reasonable efforts findings when they were initially entered. She did not, and now seeks to challenge those findings years after they have been entered. This is an impermissible collateral attack. *In re Interest of Joel T.*, 321 Neb. 106, 113 (2026).

The facts adduced in the final hearings also support that reasonable efforts were exercised and that any failure to reunify was due to Smith’s unwillingness to improve her condition. While the review of the record on juvenile appeal is de novo, an appellate court will consider and may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over another. *In re Noah C.*, 306 Neb. 359, 367 (2020). Although, the testimony of Rachael Parker supports some of the Appellant’s assertions as to her fitness to reunify, the trial court ultimately found that Parker’s testimony was not reliable or credible, and was thus not entitled to the same weight as the testimony of the other witnesses because “she demonstrated bias towards the mother on what appears to be the witness’s lived experience.” (T105). The culmination of testimony from Berry, Clemons, Plambeck, Ott, Leon, and Dolezal

proves by clear and convincing evidence that the Department exercised reasonable efforts in satisfaction of Neb. Rev. Stat. §§43-283.01 and 43-292(6).

II. THE APPELLANT FAILS TO ARGUE ITS SECOND ASSIGNMENT OF ERROR

Where an appellate brief fails to comply with the mandate of the appellate rule governing the form and content, the appellate court may proceed as though the party failed to file a brief or, alternatively, may examine the proceedings for plain error. Neb. Ct. R.App. P. § 2-109(D)(1); *In re Interest of Samantha L.*, 286 Neb. 778 (2013). The Appellant's brief assigns error to the trial court for lack of specificity in its findings deny the motion for negative reasonable efforts but fails to point to any specific law or fact in support of the argument.

Furthermore, the trial court is not required to point to any specific evidence when ruling on a motion for negative reasonable efforts. The Appellant did not request that the court point to any specific evidence before filing an appeal and thus was not entitled to any explanation regarding the order on negative reasonable efforts. Neb. Rev. Stat. § 25-1127.

III. EVEN IF THE COURT FINDS THE STATE FAILED TO PROVIDE REASONABLE EFFORTS, IT IS HARMLESS ERROR

Any alleged error in family finding was harmless error and was not prejudicial to the Smith's rights, so Smith lacks standing to appeal. To have standing on appeal, an Appellant must be aggrieved or injured by a judgment. *See In re Interest of Alycia P.*, 258 Neb. 258 (1999). It is not clear how any injury was suffered by the Appellant by failure to find family other than Breonna Berry for placement. There has been no evidence provided to demonstrate that placement with Breonna Berry has caused injury to the minor child or the Appellant, despite the Appellant's objections. The right to family finding, as contemplated by

Neb. Rev. Stat. § 1311.01, belongs to the minor child, not the parent. Accordingly, the child alone holds the right to enforce it.

The Appellant fails to demonstrate how the alleged failure to provide reasonable efforts in family finding were prejudicial to her rights as a mother, where her failure to engage meaningfully in the rehabilitation process is thoroughly evidenced. Smith made minimal progress toward reunification between January 2022 and July 2024 with caseworker Clemons (152:8-21). Smith was consistently missing visits with the minor child during that same time. (27:2-4, 42:8-19). Smith has also not visited the minor child since May of 2024 (21:23-24). Nor has the minor child been placed with Smith since the removal in 2021. (75:1-3). Smith alleges it was her distrust of the Department and disagreement with the placement of the minor child with the half-sister of her abuser, Rico Chavez. (Appellant's Brief, p.19). Smith's lack of visitation contradicts the accusation, where a Mother, truly scared for the well-being of her child, would be compelled to spend as much time as possible with that child. In fact, due to her absence in recent hearings and lack of contact with caseworkers and her parole officer, it remains unclear whether Smith is in the State of Nebraska.

IV. EVEN IF THE COURT FINDS THE STATE FAILED TO
MAKE REASONABLE EFFORTS TO REUNIFY, THE
TERMINATION WAS STILL PROPER UNDER §43-292(2)
AND (7)

Assuming for the sake of argument that this court finds the Department failed to provide reasonable efforts in finding biological family members of the child under Neb. Rev. Stat. §43-1311.01(1), that does not invalidate the State's claims against Smith under Neb. Rev. Stat. §43-292(2) and (7).

Smith has made minimal progress toward reunification by failing to participate in therapy after the stipulated order and The factual support for this argument is the same as asserted earlier in this brief. (Appellee's Brief, NDHHS, p.11). The testimony of the many witnesses

provided by the State proves clear and convincing evidence that Smith has made little to no progress toward reunification. The Appellant failed to participate in visitation until it was suspended, has failed to participate in individual therapy since the stipulated court order, and has not appeared in proceedings since.

Furthermore, Smith's actions toward Department staff give the Department cause for concern as to the safety of the minor child with Smith. Smith has displayed aggression towards caseworkers during family team meetings with profanity-laden outbursts directed at caseworkers (219:1-10). Department staff expressed concern before and after this family team meeting about Smith's ability to emotionally regulate and provide necessary parental care and protection from such angry outbursts. (222:12-15).

The record demonstrates by clear and convincing evidence that Smith's parental rights were properly terminated pursuant to Neb. Rev. Stat. §43-292(2). Smith has substantially and continuously neglected and refused to give the minor child care and protection. Smith has routinely missed visits with the minor child. (354:12-19, 355:21-25, 356:10-14, 356:22-25, 357:3-8, 357:7-18, 358:8-22, 359:5-7). Smith has not visited the minor child since May 2024. (218:6-16).

The Appellant does not challenge the termination of parental rights under Neb. Rev. Stat. §43-292(7), which requires that the minor child be placed outside of the parental home for 15 or more of the previous 22 months. With an order terminating parental rights under Neb. Rev. Stat. § 43-292(7), appellate courts should be especially diligent in their de novo review of the best interests of the child. *In re Interest of Aaron D.*, 269 Neb. 249, 260 (2005). The minor child falls into this category, and thus the Court need only conclude whether the termination of parental rights is in the best interest of the child, while also proving that the mother is an unfit parent. When even just one statutory basis for termination under § 43-292 can serve as the basis for termination, the Court "need not consider the sufficiency of the

evidence concerning the State's other statutory bases for termination." *In re Mateo L.*, 309 Neb. 565, 582 (2021).

The record also demonstrates by clear and convincing evidence that the termination of Smith's parental rights was in the best interest of the minor child and that Smith is unfit to parent. Neb. Rev. Stat. §43-292 requires that a court must find by clear and convincing evidence that the termination of parental rights is in the children's best interests. *In re Interest of Isabel P. et al.*, 293 Neb. 62 (2016). The same evidence used to prove the statutory grounds under Neb. Rev. Stat. §43-292 is also relevant in analysis of the best interests of the child. *In re Interest of Alec S.*, 294 Neb. 784, 796 (2016), *In re Gabriel B.*, 31 Neb. App. 21, 34 (2022). To prove that termination would be in the best interests of the child, it must be proved by clear and convincing evidence that the parent is unfit. *Id.* There is a rebuttable presumption that the best interest of the child is served by having a relationship with the parent. *Id.* Parental unfitness is a personal deficiency or incapacity which has prevented, or probably will prevent, performance of a reasonable parental obligation in child rearing and which caused, or probably will result in, detriment to a child's well-being. *Id.* While the law does not require perfection of a parent, it does require a court to determine whether the parent has made continued improvement in parenting skills and whether the parent has established a beneficial relationship with the child. *In re Interest of Seth K.*, 22 Neb. App. 349, 357 (2014). Here, Smith has made no recent improvements in her parenting skills with the minor child, as she has not had any recent visitation, nor has she been in the State for the previous hearings. (Appellee NDHHS's Brief, p.8). Smith's relationship with the child is also lacking, where she was inconsistent with visitations before they were suspended and has not maintained a connection with the minor child otherwise. For these reasons, it is in the child's best interest that the Court terminate Smith's parental rights because she is an unfit parent. The system cannot and should not let children remain in limbo while waiting to see if the parent will mature. *In re DeWayne G., Jr.*, 263 Neb. 43, 56 (2002).

CONCLUSION

The Appellee asks the Court to dismiss the Juvenile Court's order overruling the motion for Negative Reasonable Efforts for lack of jurisdiction, or, in the alternative, affirm the same; and to affirm termination of the Appellant's parental rights, because the Appellant has not proven that the Department has failed to provide reasonable efforts, and the State has proven by clear and convincing evidence that the termination of Smith's parental rights are proper under Neb. Rev. Stat. §43-292(2), (6), and (7).

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**Certificate of Compliance with Nebraska Supreme Court Rules.
2-103**

The undersigned hereby certifies that this brief complies with Neb. Ct. R. App. P. sec. 2-103 (C) (3) (a). This brief contains 4,608 words, including all text, cover page, tables, captions, headings, quotations, signature block and other kinds of writing. This brief complies with the typeface, formatting and style requirements required by Neb. Ct. R. App. P. sec. 2-103 (C). The software used to type this brief is Microsoft Word for Microsoft 365 MSO (Version 2603 Build 16.0.19822.20086). This brief complies with the software requirements and was typed in Century Schoolbook, 12point type and line spacing at 1.15.

Signature: /s/ Patrick Ryan

CERTIFICATE

I hereby certify that on Wednesday, April 22nd, 2026 I provided a true and correct copy of this Brief of Department of Health and Human Services to the following:

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Certificate of Service

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