

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Fitzgerald, P.J., and Meter and Boonstra, JJ.

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No. 146626

Plaintiff-Appellant,

Court of Appeals No. 307102

v

Cheboygan County Circuit Court
No. 2011-004309-FC

CHAD JAMES GARRISON,

Defendant-Appellee.

BRIEF OF ATTORNEY GENERAL BILL SCHUETTE AS *AMICUS CURIAE*

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INTEREST AND STATEMENT OF POSITION OF AMICUS CURIAE

The Attorney General is the chief law enforcement officer for the State of Michigan. One of the Attorney General's most important duties is to protect the rights of crime victims as guaranteed by our Constitution and to ensure that they receive full restitution under the Crime Victim's Rights Act. The court rules provide that the Attorney General may file a brief as *amicus curiae* without seeking permission from this Court. MCR 7.306(D)(2).

STATEMENT OF QUESTION PRESENTED

In an order dated May 3, 2013, this Court directed the Clerk to schedule oral argument on the People's application for leave to appeal. The Court ordered the parties to address the following question:

Whether the victims' travel expenses were properly included in the amount of restitution that the defendant was ordered to pay?

The trial court answered:	Yes.
The Court of Appeals' majority answered:	No.
The Court of Appeals' dissent answered:	Yes.
The People of the State of Michigan answer:	Yes.
Attorney General Schuette answers:	Yes.
Defendant Garrison answers:	No.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Const 1963, art I, § 24 states:

(1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

In pertinent part, MCL 780.766(2) states:

Except as provided in subsection (8), when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make *full restitution* to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate... [Emphasis added.]

MCL 769.1a(2) states:

Except as provided in subsection (8), when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make *full restitution* to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate. [Emphasis added.]

MCL 780.767(1) states:

In determining the amount of restitution to order under section 16, the court shall consider the amount of the loss sustained by any victim as a result of the offense.

INTRODUCTION

Nothing. After Defendant Chad Garrison's victims drove over 2,200 miles to secure the property he stole and to attend the restitution hearing intended to make them whole, the Court of Appeals said Garrison owed his victims nothing for their travel expenses. But the Crime Victim's Rights Act requires defendants to pay "*full* restitution" to their victims. "Full restitution" necessarily includes travel costs incurred by a defendant's theft and the victims' attendance at a restitution hearing intended to make them whole.

The concept of making victims whole is such an important principle in Michigan that, years after the Crime Victim's Rights Act became law, Michigan's citizens overwhelmingly voted to amend the state's Constitution to include a bill of crime-victim rights. Among those rights are the right to restitution and the right to attend a defendant's trial and all other court hearings.

Here, three of Garrison's victims drove thousands of miles from their homes to Cheboygan County because of Garrison's criminal acts. These victims had a constitutional right to so attend and felt compelled to do so because Garrison stole their property. The plain language of the Crime Victim's Rights Act requires "full restitution." Here, full restitution includes the travel costs incurred by the victims to secure their property and to attend the restitution hearing.

This Court should reverse the Court of Appeals and reinstate the restitution the trial court ordered.

COUNTER-STATEMENT OF FACTS

Attorney General Schuette adopts the People's recitation of facts as accurate and complete.

ARGUMENT

I. Victims have a constitutional and statutory right to “full restitution” for expenses incurred as a result of a defendant’s crimes—including their travel to and from court proceedings.

Michigan is a state that honors the sacrifice of its crime victims. The Michigan Crime Victim’s Rights Act (CVRA) was enacted in 1985 “in response to growing recognition of the concerns of crime victims.” *People v Grant*, 455 Mich 221, 230 n 10; 565 NW2d 389 (1997). And in 1988, over 80% of Michigan voters decided that the rights of crime victims should be enshrined in our Constitution.¹

Here, Chad Garrison’s victims had to travel thousands of miles to secure the property Garrison stole and attend the restitution hearing designed to make them whole. But the Court of Appeals’ majority relied on *People v Jones*, 168 Mich App 191; 423 NW2d 614 (1988), to hold that the CVRA provides restitution only for the return of the property, the fair market value of the property, and/or the cost of seizure or impoundment. *People v Garrison*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2012 (Docket No. 307102) (attached as Appendix A). But the Court of Appeals’ reliance on *People v Jones* was faulty for three reasons.

¹ http://www.michigan.gov/documents/sos/Const_Amend_189834_7.pdf.

First, *People v Jones* is not consistent with the broad statutory language indicating that a victim is entitled to “full restitution.” In fact, the Court of Appeals’ majority ignored its own binding precedent holding that the CVRA must be broadly construed to make victims “as whole as they can fairly be made.” *People v Gubachy*, 272 Mich App 706, 713; 728 NW2d 291 (2006). Second, *Jones* was decided before Michigan voted to incorporate into this state’s Constitution a crime victim’s rights to restitution and to attend trial and other hearing. Third, the Court of Appeals’ majority’s narrow reading has been rejected by other states with broad language similar to the “full restitution” used in the CVRA. Accordingly, this Court should reverse and reinstate the trial court’s restitution award.

A. The Crime Victim’s Rights Act requires “full restitution.”

The Crime Victim’s Rights Act mandates a sentencing court to order “*full restitution* to any victim of the defendant’s course of conduct that gives rise to the conviction.” MCL 780.766(2) (emphasis added). The general restitution statute uses the same “full restitution” language. MCL 769.1a. This Court’s goal in “interpreting a statute is to ‘ascertain and give effect to the intent of the Legislature’ as manifested in the plain language of the statute.” *People v Lown*, 488 Mich 242, 254; 794 NW2d 9 (2011), quoting *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). “If the language is ‘clear and unambiguous,’” this Court goes no further. *Id.* at 254-255, quoting *Davis*, 468 Mich at 79.

The CVRA's plain language entitles crime victims to full restitution.

Restitution is "1. The act of restoring to the rightful owner something that has been taken away, lost, or surrendered.... 2. The act of making good or compensating for loss, damage, or injury; indemnification [and] 3. A return to or restoration of a previous state or position." American Heritage Dictionary (2nd College ed 1985), p 1054. Full is used as an adjective to describe the amount of restitution awarded. The word "Full" is defined as "1. Containing all that is normal or possible.... 2. Complete in every particular.... 3a. Of maximum or highest degree...." American Heritage Dictionary (2nd College ed 1985), p 538. Thus, the CVRA's plain language entitles a victim to complete restitution, i.e., the restitution awarded must return a victim to the status quo ante as much as it is possible to do so. See *Gubachy*, 272 Mich App at 713 (noting that "the Legislature has clearly manifested an intent to make victims of a crime as whole as they can be fairly made").

The Court of Appeals has limited the phrase "full restitution" to the categories of restitution that the CVRA lists as exemplary. *Jones*, 168 Mich App at 195-196. Specifically, section 3 of the act provides that the order of restitution "shall" require the defendant to return the property, pay full market value, and/or pay the costs of seizure or impoundment or both. MCL 780.766(3). But if the Legislature had intended to narrowly define "full restitution" to include no more than these exemplary categories, it would have done so by limiting recovery to that provided in sections (3)-(5). Just the opposite is true, because the sentencing court is to consider the *total* amount of loss in determining restitution. MCL 780.767(1).

In other words, if *Jones* was correct, restitution would simply be mechanically calculated based on the mandatory amounts set forth in MCL 780.766(3)-(5). Such a reading would render the phrase “full restitution” nugatory, in contradiction to the rules of statutory interpretation. *People v Couzens*, 480 Mich 240, 249; 747 NW2d 849 (2008). The phrase “full restitution” must be read in light of the CVRA’s purpose of making victims as whole as is possible. Based on its plain language, the CVRA requires the trial court to award restitution for the value of the property, MCL 780.766(3), as a subset of the total “loss sustained by any victim as a result of the offense.” MCL 780.767(1). In other words, “full restitution” means *full* restitution—placing the victim back to the status quo ante.

In the context of another undefined term in the CVRA, this Court held that the statute should be given “a broad construction” to best effectuate the intent of the Legislature. *People v Gahan*, 456 Mich 264, 271; 571 NW2d 503 (1997). The Legislature’s desire for a “broad” construction is consistent with the provision that directs trial courts to award restitution by “consider[ing] the amount of loss sustained by any victim as a result of the offense.” MCL 780.767(1). This broad scope of restitution is consistent with the ordinary meaning of the term “full restitution.”

Moreover, an earlier, binding Court of Appeals’ decision read the CVRA just this way. In *Gubachy*, the defendant was convicted of breaking and entering a building with the intent to commit a larceny after he stole three trucks from his former workplace. The victim had to take an inventory to determine what was

stolen and was awarded \$2,746 to reimburse his total labor expenses. *Gubachy*, 272 Mich App at 707-708. The defendant appealed, claiming that his victim's labor costs were not authorized under the restitution statutes. The Court of Appeals undertook its analysis by noting that the CVRA "was enacted to enable victims to be compensated fairly for their suffering at the hands of convicted offenders." *Id.* at 710, quoting *People v Crigler*, 244 Mich App 420, 423; 625 NW2d 424 (2001). *Gubachy* rejected the argument that MCL 780.766(3) requires an order of restitution that simply returns the victim's property or provides for an amount equal to the value of that property. *Gubachy*, 272 Mich App at 711-712. Rather the Court held that such a narrow reading of the statute was inconsistent with the "broad construction" that should be applied to the CVRA. *Id.* at 712, citing *Gahan*, 456 Mich at 271.

Specifically, the Court noted that the CVRA "was not intended to be narrowly construed merely as a special-purpose replevin action: the focus is consistently not on what a defendant took, but what a victim lost because of the defendant's criminal activity." *Id.* The Legislature's use of the term "full restitution" and ordering a court to consider "the amount of loss sustained" is wholly consistent with such a "broad construction." *Id.* at 712-713, citing MCL 780.766(2) and MCL 780.767(1). That is, the plain language of the CVRA evinces the Legislature's intent to provide for the maximum possible recovery to make victims as whole as possible. Because the victim's labor costs were incurred as a direct result of the defendant's criminal act, the Court of Appeals held restitution was appropriate:

In this case, the testimony presented to the trial court was that Wilbur expended 30 hours at a cost of \$ 67.06 an hour, and another employee spent 14 1/2 hours at a cost of \$ 49.82 an hour, taking inventory and reequipping the trucks. The total cost to the victim company, other than the lost property itself, was uncontroverted. The restitution order of \$ 2,746.65 was therefore reasonable and supported by uncontested evidence. *Because the constitution provides the victim with the right to restitution, and because it was also authorized by the CVRA, we perceive no abuse of discretion by the trial court. [Gubachy, 272 Mich App at 713-714. (emphasis added).]*

A broad reading of the phrase “full restitution” is also consistent with other portions of the CVRA. For instance, the CVRA provides limited restitution for parents of minor victims. MCL 780.766(24). That limited restitution includes reimbursement for “mileage.” MCL 780.766(24)(c). It cannot be that a parent could receive restitution for mileage travelling to and from court, but that the victim him or herself could not.

In sum, “full restitution” is a broad term, which is consistent with the CVRA’s purpose of making victims whole to the greatest extent possible. *Gubachy, 272 Mich App at 713*. And, despite the fact that this Court has given “broad construction” to other undefined terms within the same CVRA, *Gahan, 456 Mich at 271*,² the Court of Appeals’ majority here read it narrowly. Garrison’s victims traveled over 2,200 miles to secure the property he stole from them and to testify at the restitution hearing designed to make them whole. Their travel costs were incurred “as a result of the offense.” MCL 780.767(1). Therefore, the “full restitution” to which the victims are entitled includes their travel costs.

² The Court of Appeals’ majority did not cite *Gahan*, let alone analyze whether *Jones* survived this Court’s determination that the CVRA should be broadly construed.

B. Michigan's Constitution gives crime victims a right to restitution as well as the right to attend all court proceedings.

One cost associated with being a crime victim is that incurred by travelling to court and other proceedings. In 1988, three years after *Jones* was decided, Michigan's citizens overwhelmingly voted to include crime victims' rights in our Constitution. Among the rights now recognized are:

- The right to attend trial and all other court proceedings the accused has the right to attend.
- The right to confer with the prosecution.
- The right to make a statement to the court at sentencing.
- The right to restitution. [Const 1963, art I, § 24.]

And the CVRA makes clear that this constitutional "right to restitution" is the right to *full* restitution. MCL780.766(2).³

The Court of Appeals majority failed to recognize that *Jones* was decided before the ratification of the Crime Victim's Rights Amendment that expressly gives victims the right to attend every hearing and makes the right to restitution a constitutional right. One of the "losses" that victims suffer as a result of a defendant's actions are those incurred to exercise their constitutional right to attend trial and other court hearings. The Court of Appeals' majority in the instant case did not even *discuss* a crime victim's constitutional right to be present at trial, let alone explain why that new right did not change *Jones's* result.

³ The Constitution specifically provides that "[t]he legislature may provide by law for the enforcement of the section." Const 1963, art 1, § 24(2).

The majority should have considered the plain language of the CVRA in light of the constitutional significance of both the rights to restitution and the right to be present at court hearings. In light of that, *Jones* cannot stand.

In fact, before Arizona enshrined the rights of victims in its constitution,⁴ its courts held similarly to *Jones* and narrowly construed a victim's right to restitution. *State v Wideman*, 165 Ariz 364, 369; 798 P2d 1373 (Ariz App 1990). In *Wideman*, the trial court ordered the defendant to pay for his murder victim's travel costs to attend trial as part of his restitution. The Arizona Court of Appeals, just like *Jones*, narrowly construed the restitution act, holding that the victims were not entitled to travel costs because their attendance "was a matter of choice and not an economic loss caused by defendant's crime." *Id.*

But after the victim's right to attend trial was incorporated into Arizona's constitution, the Arizona appellate court recognized that its earlier holding could not stand. *State v Madrid*, 207 Ariz 296, 299-300; 85 P3d 1054 (Ariz App, 2004). The Court noted that characterizing a victim's attendance at trial as a "choice" could not be reconciled with their right to attend trial:

We begin by noting that *Wideman* predated by several months the passage of Article 2, Section 2.1 of the Arizona Constitution, effective November 26, 1990, commonly referred to as the Victim's Bill of Rights, which conferred constitutional status on Victim's rights, including the rights to attend court proceedings and receive prompt restitution. In 1991, the legislature, in furtherance of the Victim's Bill of Rights, enacted the Victim's Rights Implementation Act, 1991 Ariz

⁴ Ariz Const art 2, § 2.1. Just like Michigan's Victim's Rights Amendment, Arizona guarantees a victim's right to restitution and his or her right "to be present at, and upon request, to be informed of all criminal proceedings where the defendant has the right to be present."

Sess Laws, ch 229, § 7; ARS §§ 13-4401 to -4437 (Supp. 2003), which enumerated various Victim's rights and included a statement of legislative intent emphasizing that the constitutional rights of "innocent persons [who] suffer economic loss" should be fully protected. 1991 Ariz Sess Laws, ch. 229, § 2.... Given the constitutional status now accorded a victim's right to attend all court proceedings, *Wideman's* description of the murder victim's family's attendance at court hearings as simply a matter of "choice" or "desire" is outdated. [*Madrid*, 207 Ariz at 299.]

The same is true here. All three victims traveled to Cheboygan County from their homes as a direct result of Garrison's criminal act. They did not merely "choose" to attend the restitution hearing, they had a constitutional right to do so. Const 1963, art 1, § 24. Each victim made his long drives to either secure the snowmobiles that Garrison stole or to exercise his constitutional right to restitution and to be present at court hearings. In other words, each victim incurred travel costs "as result of the offense." MCL 780.767(1). Therefore, they are entitled to restitution for travel costs.

C. Other states with like language in their restitution statutes allow victims to recover their travel costs as restitution.

In addition to Arizona, other states with broad restitution statutes provide for full recovery for losses incurred as a result of a defendant's crime—including travel costs. For instance, Alabama's restitution statute requires criminals "to fully compensate all victims of [their crimes] for any pecuniary loss, damage, or injury as a direct or indirect result thereof." Ala Code § 15-18-65. Such "full[] compensation" includes travel expenses, because they are causally related to a defendant's crimes. *Butler v State*, 608 So2d 773, 775-776 (Ala App 1992).

Likewise, California's restitution statute requires defendants to "fully reimburse the victim or victims for every determined economic loss incurred as a result of the defendant's criminal conduct" Cal Penal Code § 1202.4(f)(3). This "full reimbursement" includes mileage expenses for parents of a murder victim to attend trial. *People v Crisler*, 165 Cal App 4th 1503, 1508-1510 (Cal App 2008).

Florida requires defendants to "make restitution to the victim for 1. Damage or loss caused directly or indirectly by the defendant's offense; and 2. Damage or loss related to the defendant's criminal episode." Fla Stat Ann §775.089(1)(a). The Florida Court of Appeals held that the restitution statute applies to travel expenses incurred by the owner of a stolen car to testify at trial. *Neal v State*, 688 So2d 392, 394 (Fla App, 1997), receded from on other grounds by *Locke v State*, 719 So2d 1249, 1250 (Fla App, 1998).

Under Minnesota's crime victim's rights act, "a victim of a crime has the right to restitution," including "out-of-pocket expenses resulting from the crime." Minn Stat § 611A.04. The Minnesota Supreme Court held that travel costs are such out-of-pocket expenses. *State v Palubicki*, 727 NW2d 662, 667 (Minn 2007). The Court reasoned that victims are in court "as a direct result of [defendant's] crime." *Palubicki*, 727 NW2d at 667. The victims did not "choose" to be at the trial rather, as a direct result of the defendant's crime, they "were unavoidably entwined in the criminal proceedings." *Id.* Therefore, the Court held that it was proper to award restitution for lost wages and transportation to the trial. *Id.*

In sum, states with broad restitution language similar to Michigan's "full restitution" have held that such broad language encompasses travel costs incurred by crime victims to come to court because of a defendant's criminal activity.

In contrast, states that do not provide for recovery of travel costs have very narrow restitution statutes. Indiana provides for a limited range of restitution and only allows compensation for property damage, medical and hospital costs, laboratory tests, lost wages, and funeral or burial costs. Ind Code § 35-50-5-3.

And Vermont requires a "direct link" between the crime and the financial injury for which restitution is sought. 13 Vt Stat Ann § 7043. The Vermont Supreme Court noted that its restitution statute is "much narrower" than other jurisdictions and that under their "narrow" statute, travel expenses are not recoverable. *State v Kevin*, 38 A3d 26, 36 (Vt, 2011).

Here, the Court of Appeals' majority opinion cannot be reconciled with either the language of Michigan's constitution or the broad-based statutory right to restitution. The Legislature's use of the term "full restitution," MCL 780.766(2), MCL 769.1a, demonstrates its intent to provide "complete" restitution to the victim in order to put them as much as possible in the same position as they were before the crime was committed. Likewise, the Legislature instructed trial courts to consider "the amount of the loss sustained . . . as a result of the offense." MCL 780.767(1).

Here, the victims had to travel hundreds of miles from their homes to Cheboygan County both to secure their property and to exercise their constitutional rights to restitution and to “attend trial and all other court proceedings.” Const 1963, art I, § 24. It cannot be disputed that the victims only made these trips “as a result of the offense.” The Court of Appeals majority’s conclusion that the trial court cannot impose restitution for these costs—a direct result of the defendant’s crime—is inconsistent with crime victims’ right to “*full* restitution.”

CONCLUSION AND RELIEF REQUESTED

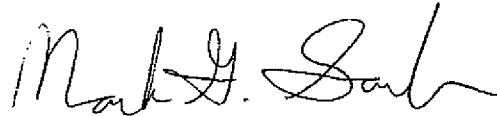
Garrison’s victims have a constitutional and statutory right to “full restitution” for “the amount of loss sustained . . . as a result of the offense.” Const 1963, art 1, § 24; MCL 780.767(1). Because a criminal stole their property, the three victims had to travel hundreds of miles to recover and secure their property. They had to make the same long drive to exercise their constitutional right to attend the restitution hearing. Const 1963, art 1, § 24. Review of the restitution hearing transcript shows that their testimony was necessary to secure their statutory and constitutional right to restitution. The victims’ travel expenses only occurred because the defendant committed crimes against them. Under the CVRA’s plain language, an award of “full restitution” must include their travel expenses.

Accordingly, *Amicus Curiae* Attorney General Bill Schuette respectfully urges this Court, in lieu of granting leave to appeal, to peremptorily reverse the Court of Appeals’ majority and reinstate the trial court’s order of restitution that made the victims whole.

Respectfully submitted,

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APPENDIX A

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UNPUBLISHED
December 20, 2012

No. 307102
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LC No. 11-004309-FC

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

METER, J. (*concurring in part and dissenting in part*).

I respectfully dissent from that portion of the majority opinion holding that the trial court abused its discretion in ordering defendant to pay his victims for travel expenses related to his criminal conduct. I would affirm this appeal in its entirety.

I acknowledge that this Court, in *People v Jones*, 168 Mich App 191, 196; 423 NW2d 614 (1988), concluded that victims' travel expenses are not compensable as restitution. However, MCR 7.215(J)(1) states:

Precedential Effect of Published Decisions. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.

Because *Jones* was decided before November 1, 1990, the prosecution correctly asserts that it is not binding law.

The prosecution is also correct that the imposition of restitution is *mandatory* (except in certain circumstances not applicable here). MCL 780.766(2). The purpose of restitution is to make victims whole for the losses they have suffered as a result of a defendant's criminal course of conduct. MCL 780.766(2); *People v Gahan*, 456 Mich 264, 271-272; 571 NW2d 503 (1997); *People v Gubachy*, 272 Mich App 706, 713; 728 NW2d 891 (2006). In *Gubachy, id.*, this Court stated that "the Legislature has clearly manifested an intent to make victims of a crime as whole as they can be fairly made and to leave the determination of how best to do so at the trial court's discretion . . ." The Court concluded that a victim's labor costs in inventorying and restocking lost merchandise were properly included in a restitution award. *Id.* at 713-714. In reaching this

conclusion, the Court indicated that MCL 780.766 provides a non-exhaustive list of remedies. *Id.* at 711-714.

Especially in light of *Gubachy*, I believe that the designation of victims' travel expenses as restitution is allowable under MCL 780.766. It serves the intended purpose of making victims as whole as possible.¹

I would affirm this appeal in its entirety.

/s/ Patrick M. Meter

¹ The majority cites *People v Slocum*, 213 Mich App 239, 242; 539 NW2d 572 (1995), for the proposition that assessed "costs" must be expressly authorized by statute. Even assuming that restitution-based travel expenses are encompassed by the term "costs" as employed in *Slocum*, I find that these expenses are authorized by virtue of MCL 780.766

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CHAD JAMES GARRISON,

Defendant-Appellee.

PROOF OF SERVICE

The undersigned certifies that on July 22, 2013, she served a copy of Brief of Attorney General Bill Schuette as *Amicus Curiae* upon the following attorneys by mailing same in an envelope bearing postage fully prepaid, plainly addressed as follows:

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