UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

US RIGHT TO KNOW,
Plaintiff,

v.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,
Defendant.

Civil Action No.
1:23-cv-01055-DJN-WEF

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE THE ERDMAN DECLARATION AND A SHORT SUPPLEMENTAL BRIEF

Plaintiff seeks leave to file James E. Erdman III's declaration and a supplemental brief of no more than five pages. Mr. Erdman's declaration is necessary to rebut the government's own declarations chiefly on the issue of segregability, and the accompanying brief explains the declaration's impact on summary judgment.

Mr. Erdman's declaration is submitted with this motion along with Plaintiff's request for expedited *Touhy* authorization from the CIA and ODNI. Exhibit A. Undersigned counsel received the declaration at 12:39 a.m. on November 17, 2026, and shared the declaration with the government that same day. Ex. B ¶¶ 4–6.

I. Plaintiff pursued the testimony promptly and kept the Court informed.

The Government filed its summary-judgment papers on September 29, 2026. That filing first gave Plaintiff the detailed sworn factual justifications Plaintiff needed to evaluate and rebut. Plaintiff began reviewing them immediately. ECF No. 30-5 ¶¶ 2–5.

When Mr. Erdman contacted undersigned counsel on October 2, Plaintiff immediately began efforts to obtain rebuttal testimony from him. *Id.* ¶¶ 6–11, 13.

Plaintiff filed its opposition to the government's motion for summary judgment on October 27, but explained that the signed, cleared declaration remained unavailable. Undersigned counsel expressly committed to seek leave promptly once it became available. ECF No. 38-1 ¶ 11.

On Monday, November 16, Mr. Erdman's counsel informed undersigned counsel that the CIA's Prepublication Classification Review Board had granted prepublication clearance on Friday, November 13. The signed declaration arrived at 12:39 a.m. on November 17. Ex. B ¶¶ 2–4. Plaintiff submits it exactly as it was received, including its typographical and formatting errors. *Id.* ¶ 4.

Undersigned counsel mailed a *Touhy* authorization request and declaration to both agencies on November 17. He also emailed the complete packet to AUSA Matthew J. Mezger and requested that he share it. Ex. B ¶¶ 5–6. Plaintiff maintains that *Touhy* authorization is not required in this case. The request nevertheless required a proffer, and that is why authorization could not have been sought sooner: the CIA's regulation requires a description of the testimony sought. 32 C.F.R. § 1905.4(d) (requiring "a reasonably detailed description of the testimony sought"). Plaintiff could not reliably proffer such a detailed description until the it was confirmed that classification did not prevent counsel from knowing the nature of the testimony on November 16. Ex. B ¶¶ 2–4.

II. Plaintiff's documented diligence justifies leave to file after the deadlines have elapsed.

Plaintiff maintains, as it previously argued, that it would be reversible error to proceed to summary judgment without the opportunity for Mr. Erdman's testimony to be procured. ECF No. 38 at 25. Even if Plaintiff's request is untimely, however, good cause and excusable neglect justify accepting the material today.

Fed. R. Civ. P. 6(b)(1)(B) permits an extension after a deadline has expired upon a showing of good cause and excusable neglect. Rule 6(c)(2) also permits the Court to allow an opposing affidavit at another time. The Fourth Circuit has upheld consideration of an executed affidavit filed roughly five weeks too late because the district court had discretion to accept that important evidence. *Lovelace v. Lee*, 472 F.3d 174, 204 (4th Cir. 2006).

The excusable-neglect inquiry considers prejudice, the length of the delay and its effect on the proceedings, the reason for the delay and whether it was within the movant's reasonable control, and good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). The Court should apply those factors to the specific circumstances documented here.

The reason for the delay strongly favors the instant motion for leave. Plaintiff promptly sought testimony directed to the sworn factual assertions the Government had filed. The October 27 opposition explained that prepublication review remained pending and that Plaintiff could not control its completion. ECF No. 38-1 ¶¶ 3–5, 11. The reported clearance occurred on November 13, but undersigned counsel learned of it only on November 16. The executed declaration arrived early the following morning. Ex. B ¶¶ 2–4. Plaintiff is presenting Mr. Erdman's testimony promptly after that obstacle was removed.

The declaration became available three weeks after Plaintiff's opposition deadline. During that interval, the Government filed a third Ulman declaration with its November 10 reply, again changing the evidentiary record. ECF No. 39-1. That declaration describes additional November 4 releases following further review, including unclassified open-source endnotes. *Id.* ¶¶ 15, 45. A short supplement would let the Court consider Mr. Erdman's testimony against the evolving evidentiary record. Plaintiff's request is modest: a brief of no more than five pages, tendered today with this motion, on the day Plaintiff received the signed declaration.

The advance notice Plaintiff provided the defense and the Court of the anticipated testimony undercuts any argument from the defense that it is prejudiced. Plaintiff identified Erdman and the subjects of his anticipated testimony before its opposition deadline. ECF No. 38-1 ¶¶ 3, 6–10. ODNI addressed that anticipated testimony in its reply. ECF No. 39 at 15–19. The government now has the actual declaration and authorization request. Ex. B ¶¶ 5–6. ODNI can address the completed testimony and the supplemental brief on their merits. These same steps demonstrate Plaintiff's good faith.

Plaintiff recognizes the force of the Court's October 13 order. ECF No. 35 at 2. The present request rests on a material change: Mr. Erdman's declaration is complete, reported cleared, signed, and available for the Court's inspection. Plaintiff seeks leave to file this rebuttal evidence and a short explanation of its significance. To the extent the requested relief modifies the briefing schedule, the same documented diligence and newly available evidence establish good cause under Rule 16(b)(4).

III. The declaration warrants a short supplement, and Plaintiff has promptly sought *Touhy* authorization.

Mr. Erdman describes his CIA employment, ODNI assignment, work on COVID-19 issues, and review of proposed redactions. Erdman Decl. ¶¶ 2, 5–10 (Ex. A, enclosure). He explains the organization of finished intelligence products and the location and separability of source-identifying material. *Id.* ¶¶ 12–17, 25–29. Those observations bear directly on the factual premises of the Government's assertions that no additional meaningful nonexempt information can be segregated. See ECF No. 27-2 ¶¶ 22, 31, 42; ECF No. 39-1 ¶¶ 47–50.

The proposed supplemental brief explains that connection and addresses the Government's objections. ODNI also objects that CIA authorization is required. ECF No. 39 at 17–19. Plaintiff has now requested expedited authorization from both the CIA and ODNI for the exact testimony enclosed. Ex. A at 1–2. Plaintiff will notify the Court promptly when that request is resolved, without waiving its position that no *Touhy* authorization is required. Undersigned counsel acted promptly. Undersigned counsel learned of the clearance on November 16. The signed declaration followed early on November 17. Undersigned counsel transmitted the declaration and authorization request to the government that same day. Ex. B ¶¶ 2–6.

Conclusion

The Court should grant leave to file the attached Erdman declaration as part of Plaintiff's opposition to summary judgment, and accept the accompanying supplemental brief of no more than five pages upon granting leave.

Respectfully submitted November 17, 2026,

US RIGHT TO KNOW
By Counsel:

/s/ Matthew D. Hardin
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HARDIN LAW OFFICE

EXHIBIT A

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November 17, 2026

Litigation Division
Office of General Counsel
Central Intelligence Agency
Washington, DC 20505

Office of General Counsel
Office of the Director of National Intelligence
Washington, DC 20511

Re: Expedited *Touhy* request for the declaration of James E. Erdman III
US Right to Know v. ODNI, No. 1:23-cv-01055-DJN-WEF

To the CIA and ODNI Offices of General Counsel:

I represent US Right to Know in *US Right to Know v. Office of the Director of National Intelligence*, No. 1:23-cv-01055-DJN-WEF (E.D. Va.). I request expedited written authorization for James E. Erdman III to provide the enclosed declaration and for USRTK to file and rely on it in opposing summary judgment. This request is made under 32 C.F.R. Part 1905 and, to the extent applicable, Part 1703. ODNI has objected that CIA authorization is required. ECF No. 39 at 17–19. Prompt authorization would resolve that objection and permit the Court to consider the testimony on its merits.

USRTK's position is that the enclosed voluntary written declaration falls outside the definition of a demand in 32 C.F.R. § 1905.2(b). USRTK has used no compulsory process and requested no appearance. This request seeks to resolve the government's assertions to the contrary without conceding that either agency's regulations require authorization in these circumstances. If your office determines that authorization is unnecessary, please confirm that determination in writing.

Mr. Erdman served as a CIA Operations Officer and senior manager from 2013 until his retirement on June 30, 2026. He also served on a joint duty assignment to the DNI's Director's Initiatives Group from April 2025 until its dissolution in January 2026. His work included investigations concerning the origin of COVID-19 and related life sciences matters. Erdman Decl. ¶¶ 2–9. I am addressing both offices because the declaration draws on his CIA employment and his ODNI assignment.

The requested authorization covers the enclosed declaration in its entirety. It is a signed statement under penalty of perjury containing the exact proposed testimony. The statement alone therefore provides the detailed description of anticipated testimony contemplated by 32 C.F.R. § 1905.4(d). This request concerns written testimony already prepared and voluntarily given. It seeks no deposition, hearing appearance, additional testimony, or agency records.

Mr. Erdman's testimony bears directly on whether nonexempt information can be segregated from the intelligence products at issue. Mr. Erdman describes the standard organization of finished intelligence products, the location of source citations and descriptors, and the ability to remove those passages without rewriting the analysis. He also describes proposed redactions he personally reviewed. He explains that scientific discussion remained intelligible after sourcing information, collection

methods, and foreign government information were removed. Erdman Decl. ¶¶ 10, 12–29. His experience includes the product categories identified by the government in its briefing and accompanying index as V-2 and V-3. *Id.* ¶ 31.

Mr. Erdman reported submitting the enclosed declaration for prepublication review on October 19, 2026. On November 16, Carol Thompson informed me that CIA's Prepublication Classification Review Board had confirmed clearance on November 13. She forwarded the cleared text with her November 16 email. I received Mr. Erdman's signed declaration at 12:39 a.m. today, November 17.

Until the final, cleared text cleared that review and reached me, I could not reliably proffer the testimony Mr. Erdman would be permitted to give. Early this morning, I first received the executed declaration containing that final, cleared testimony. I am proceeding promptly upon its receipt.

The reported prepublication clearance is directly relevant to any concern that the enclosed text contains classified information. I recognize that your offices may treat litigation authorization as a separate determination. I request that determination now, limited to the enclosed text. Mr. Erdman is retired, has already completed the declaration, and receives no compensation from either party. Erdman Decl. ¶¶ 1–2. Authorization would require no further work by him or search for agency records. Those circumstances favor approval under the considerations in 32 C.F.R. §§ 1905.4(c) and 1703.4(c).

Expedited action is warranted because summary-judgment briefing in the above-referenced case has concluded, and USRTK intends promptly to seek leave to file this newly available declaration and a short supplemental brief. Assistant United States Attorney Matthew J. Mezger emailed me on November 16. He reported that, at that day's classified hearing, the Court directed an inquiry into the declaration's prepublication review status. A prompt decision would allow the Court to address the declaration with the authorization issue resolved.

Please acknowledge receipt and issue an expedited written decision. If your office needs further information, please identify it promptly and state when a decision can be expected. If any portion of the declaration is not authorized, please identify the affected paragraphs and the specific grounds, and authorize the remaining testimony. Please coordinate between your offices as needed and communicate the decision to me and Mr. Mezger so that ODNI's objection can be resolved without further delay.

Regards,



Matthew D. Hardin

Enclosure: Signed declaration of James E. Erdman III (9 pages)

cc: Matthew J. Mezger, Assistant United States Attorney
matthew.mezger@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

US RIGHT TO KNOW,)
)
Plaintiff,)
)
v.) No.1:23-CV-1055 (DJN)
)
OFFICE OF THE DIRECTOR OF NATIONAL)
INTELLIGENCE,)
)
Defendant.)
)

DECLARATION OF JAMES E. ERDMAN III

I, James E. Erdman III, do hereby declare and state as follows:

1. I am over the age of 18 years old, and otherwise competent to testify. The information contained in this declaration is made on personal knowledge. I am not a party to this case, nor am I employed by or compensated by either party.
2. I was employed by the Central Intelligence Agency (CIA) as an Operations Officer and senior manager from 2013 until my retirement on June 30, 2026.
3. I hold a Bachelor of Science degree in Biology, with a minor in Chemistry, from Western Oregon University. My undergraduate research was in phylogenetics, under the supervision of Dr. Sarah Boomer. That work involved the purification and characterization of bacterial genomes of heat-resistant bacteria, the associated laboratory procedures, and sequence analysis using the Basic Local Alignment Search Tool. I have conducted reverse transcription polymerase chain reaction testing.

4. I am further familiar, in a professional capacity, with gas chromatography, liquid chromatography, mass spectrometry, the enzyme-linked immunosorbent assay, and related laboratory and analytical techniques.

5. On April 8, 2025, the Director of National Intelligence (DNI) established the Director's Initiatives Group (DIG). I joined the DIG in April 2025, upon authorization of a joint duty assignment in that month, and I worked for the DIG from its inception until its dissolution in January 2026.

6. The DIG was comprised of inter-agency personnel, including personnel of the CIA and the Defense Intelligence Agency (DIA).

7. My investigative work while at the DIG focused on the origin of the COVID-19 pandemic and related life sciences and gain-of-function matters. This investigative work required collaboration with various intelligence agencies, including the CIA and DIA.

8. As an Operations Officer and senior manager of the CIA I reviewed finished intelligence products in the ordinary course of my duties over approximately thirteen years. The products I reviewed during my assignment to the DIG concerned the subjects described in the preceding paragraph.

9. I received annual training in derivative classification and in original classification authority.

10. I personally reviewed redactions proposed on products concerning COVID-19, and on other products, that were being considered for public release.

11. In conducting investigations for the DIG I made use of, and oversaw the use of, the Data Analysis Tool, the same system used to retrieve documents in response to requests under the Freedom of Information Act.

12. In the course of my normal duties as an Operations Officer at the CIA and as a member of the DNI's DIG, I regularly reviewed finished intelligence products of the kinds described in the Declaration of Rebecca M. Flowers, ECF No. 27-2, ¶ 11.b.1.

13. Reports and analytic products of those kinds are authored in a standard format. That format consists of a classification banner and portion markings applied paragraph by paragraph; a title; a date of publication and a product serial; key judgments or an executive summary; a scope note stating what the product examines; a body or discussion in which assertions drawn from reporting carry superscript reference numbers; source reference citations presented as sequentially numbered endnotes following the body; and, where used, source descriptors within the body, a source summary statement, a tearline version, and charts, graphics and appendices.

14. Of the elements described in the preceding paragraph, the following are prescribed by Intelligence Community Directive 206, Sourcing Requirements for Disseminated Analytic Products, dated January 22, 2015, which supersedes the directive of the same number issued October 17, 2007. Section D.2 provides that every disseminated version of a covered analytic product shall contain sourcing information, except in accordance with Sections D.4 and D.7. Section D.3 provides that the presentation of sourcing information shall be in the form of source reference citations, appended reference citations, source descriptors, and source summary statements. Section D.3.a requires that covered products contain source reference citations, and Section D.3.a(1) provides that those citations be presented as sequentially numbered endnotes that correlate to superscript numbers in the main body of the product. Section D.3.c provides that a source descriptor should be included in the main

body of the text, and that if it is not, a source descriptor shall be included in the source reference citation. Section D.3.d provides that source summary statements are strongly encouraged.

15. The remaining elements described in paragraph 13, including the classification banner, the title, the date of publication and product serial, the key judgments or executive summary, the scope note, and the charts, graphics and appendices, are not prescribed by Directive 206. The portion marking of classified material is required by Executive Order 13526. The others are formatting practices I observed in the ordinary course of reviewing products of these kinds.

16. The consequence of that format, which I observed in the ordinary course of reviewing such products, is that the information identifying and characterizing intelligence sources is concentrated in the source reference citations and the source descriptors, rather than distributed throughout the analytic text. Because source reference citations appear as sequentially numbered endnotes following the body, and because each portion of the product carries its own classification marking, the passages that identify or characterize a source are ordinarily identifiable on the face of the document and can be removed without rewriting the analytic text.

17. A source descriptor is defined in the directive's glossary as a brief, narrative exposition of factors that affect or indicate the quality or credibility of a single source, distinct from the information elements in a source reference citation, and addressed to factors such as accuracy and completeness, possible denial and deception, currency, technical elements of collection, and source access, validation, motivation, bias or expertise. A source descriptor

appearing in the main body is therefore a discrete narrative passage addressed to the character of a source rather than to the subject of the analysis. In my experience such a passage is identifiable as such on the face of the product, and its removal does not remove the analytic assertion it accompanies.

18. Intelligence Community Directive 203, Analytic Standards, requires that analytic products properly distinguish between underlying intelligence information and analysts' assumptions and judgments. Products of the kinds described above are prepared consistent with that requirement, and in my experience the distinction is observable on the face of the document.

19. Executive Order 13526, Section 1.6(c), provides that with respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. Products of the kinds described above are portion marked paragraph by paragraph.

20. Section D.4.a of Intelligence Community Directive 206 provides that downgraded or sanitized copies of covered analytic products should contain sourcing information; that in instances where covered analytic products are intended for public release, sourcing information will be removed prior to publication; and that sourcing information shall be appropriately modified, or if necessary removed, from downgraded or sanitized copies of a covered analytic product, consistent with Intelligence Community Directive 710.

21. Section D.4.b provides that in covered analytic products that include a tearline, source reference citations should be inserted after the body of the report and before the tearline

version. Where a product of the kinds described above contains a tearline, that tearline is a version of the product prepared for dissemination at a lower classification level. A tearline prepared at a lower classification level is not thereby unclassified, and I do not state that the existence of a tearline establishes that a product or any portion of it is suitable for public release.

22. Section D.4.c provides that if necessary, one or more source reference citation data elements can be omitted so that the resulting endnote does not exceed the classification of the main body, but still provides sufficient information to search and discover the source in an appropriately authorized system.

23. Section D.4.d provides that where an Intelligence Community Identifier is used to meet the requirement of the unambiguous source identifier, it may remain as the only source reference citation element after downgrading or sanitization, because such identifiers are unclassified and releasable.

24. Section D.6 provides that the covered analytic product with all appropriate sourcing information shall be retained as a document of record, along with associated downgraded, sanitized, or tearline products, and that identical versions shall also be submitted to the Library of National Intelligence or successor systems, consistent with the implementation of Intelligence Community Directive 501.

25. In the preparation of products for release described below, I observed finished intelligence products carrying proposed redactions, and I observed sourcing information removed from products in the course of that preparation. I did not observe tearline versions of those products.

26. Certain sections of such products, in particular the title, the date, the scope note, definitional material, and background and context drawn from published scientific literature or from other finished intelligence products, typically contain solely factual information that does not reasonably reveal intelligence sources or methods. In the products I reviewed concerning the origin of COVID-19, scientific analysis of this character was present throughout the body of the product and was not confined to those sections.

27. In my experience, material of this kind in such products is frequently drawn from other finished intelligence products or from published sources rather than from raw reporting. Where material is drawn from another finished intelligence product, it carries the classification determination made in that originating product, and that determination may be that the material is classified. The significance of the practice is that the classification of such a passage has been adjudicated in an identifiable other document, rather than arising from the reporting underlying the product in which it appears.

28. The factual and scientific passages in products of these kinds are statements about biological and technical subject matter. Their meaning does not depend on the identity of the source that reported the underlying information, or on the method by which it was collected. In the products I reviewed, removing the sourcing apparatus, the description of collection methods, and foreign government information left the scientific discussion, and the analytic judgments resting on it, intelligible to a reader.

29. My training in biology and chemistry, together with the work described in paragraphs 3, 4 and 8 above, is the basis on which I state that the scientific analysis contained in products of these kinds remains intelligible when sourcing information is removed.

30. Products of the kinds described above also commonly identify information the Intelligence Community does not possess, that is, intelligence gaps. The updated index accompanying the Declaration of Wayne Ulman, ECF No. 32-1, describes the record designated V-1 as containing "a listing and assessment of information unknown." In my experience, a statement of what is not known does not itself identify an intelligence source or a method of collection. The existence of such gaps concerning the origin of COVID-19 has been publicly disclosed by the Intelligence Community itself.

31. During the course of my normal duties while assigned to the DIG, and while conducting investigations into the origins of COVID-19 and related life sciences and gain-of-function matters, which included investigations of and with the DIA, I regularly reviewed Defense Intelligence Digest products and products of the National Center for Medical Intelligence. The updated index accompanying the Declaration of Wayne Ulman, ECF No. 32-1, describes the record designated V-2 as a Defense Intelligence Digest document and the record designated V-3 as a document from the National Center for Medical Intelligence. Products of those categories are authored in the standard format described in paragraphs 13 through 24 above.

32. I am unable to identify V-1, V-2 or V-3 as particular documents I reviewed, because the document titles for those records remain redacted.

33. The DIG was tasked by the Director of National Intelligence with declassifying documents relating to the origin of COVID-19. I so testified before the Senate Committee on Homeland Security and Governmental Affairs on May 13, 2026, and that testimony is a public document.

34. In the course of my duties with the DIG I heard the Director of National Intelligence state, on more than one occasion, that material relating to the origin of COVID-19 should be pushed out for release.

35. I observed finished intelligence products relating to the origin of COVID-19 that had been sent to the Information Management Office of the Office of the Director of National Intelligence, and to other agencies of the Intelligence Community, for processing for release. The agencies responsible for the information contained in those products proposed redactions to it. That material was intended for release to the public.

36. To my knowledge that material was not released. Apart from the public release of COVID-19 documents made by the Director of National Intelligence on June 18, 2026, I am not aware of any of the material described in the preceding paragraph having been released.

37. I offer the observations in paragraphs 33 through 36 for the limited purpose of their bearing on whether material concerning this subject matter can be segregated and released in redacted form. I do not state that any of that material is a record at issue in this case, and I am unable to say whether it is.

I declare that the foregoing is true and correct to the best of my knowledge and belief and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.

17 NOV 2026

Dated: [DATE]

James E. Erdman III

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

US RIGHT TO KNOW,
Plaintiff,

v.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,
Defendant.

Civil Action No.
1:23-cv-01055-DJN-WEF

DECLARATION OF MATTHEW D. HARDIN
IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE

1. I represent Plaintiff US Right to Know in this action. I am an adult and competent to testify to the matters set forth herein. I make this declaration from personal knowledge of my work, communications, and receipt and transmission of the documents described below.
2. On November 16, 2026, Carol Thompson, Mr. Erdman's attorney, informed me that the CIA's Prepublication Classification Review Board had confirmed clearance of his declaration on November 13.
3. Shortly thereafter, on the afternoon of November 16, I updated Assistant United States Attorney Matthew J. Mezger about the reported clearance.
4. At 12:39 a.m. on November 17, I received Mr. Erdman's signed declaration in this case. That declaration is the enclosure to Exhibit A. I have preserved it as received, including its typographical and formatting errors.

5. On November 17, I sent the letter and enclosed declaration reproduced in Exhibit A by U.S. Mail to the CIA's Office of General Counsel, Litigation Division, and to ODNI's Office of General Counsel.
6. On November 17, I also emailed the letter and declaration to Mr. Mezger and asked him to share them. I thus transmitted the completed declaration to the Government's attorney and mailed it to both agencies on the same day I received it.
7. The letter requests expedited authorization for the enclosed testimony and its filing and use in this case. As of this declaration, I have received no agency determination on that request. I will promptly inform the Court of any determination received.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2026

/s/ Matthew D. Hardin
Matthew D. Hardin