

NO. 118781

IN THE SUPREME COURT OF ILLINOIS

JANE E. BLUMENTHAL,

Plaintiff - Appellant,

v.

EILEEN M. BREWER,

Defendant-Appellee.

Appeal from the Appellate Court, First District

Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division

No. 10 CH 48730

The Honorable Leroy K. Martin Presiding

DEFENDANT-APPELLEE EILEEN M. BREWER'S
PETITION FOR REHEARING

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INTRODUCTION

Defendant-Appellee Eileen M. Brewer (“Brewer”) hereby submits this Petition for Rehearing pursuant to Supreme Court Rule 367 and respectfully requests that this Court vacate its August 18, 2016 opinion (hereinafter “Majority Opinion”).¹ The Majority Opinion “overlooked or misapprehended” certain key points of law and fact, which materially affected this Court’s decision. Rule 367(b).

First, the Majority Opinion failed to adequately address a central issue briefed and argued by the parties and presented by the case: the constitutionality of the rule in *Hewitt v. Hewitt*, 77 Ill. 2d 49 (1979), which barred former unmarried partners from bringing common law property claims arising from a marriage-like relationship, as applied to same-sex couples who separated before such couples were legally able to marry under Illinois law. In the Court’s original majority opinion issued on August 17, 2016 (hereinafter “Original Majority Opinion” and annexed hereto as Exhibit 2), the Original Majority Opinion held that it is not unconstitutional to apply *Hewitt*’s rule to bar Brewer from bringing common law property claims relating to her 26-year relationship with Blumenthal, even though Brewer and Blumenthal were legally unable to marry in Illinois at any time during their relationship, because, according to the Original Majority Opinion, the couple could have married in Massachusetts during a trip there in 2005 and could have returned to Illinois and brought a legal action similar to *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 2689 (2013). Exhibit 2 at ¶ 88. The Original Majority Opinion also suggested that Brewer and Blumenthal could have brought a lawsuit challenging Illinois’s ban on

¹ All citations to the Majority Opinion, *Blumenthal v. Brewer*, 2016 IL 118781 shall refer to the Court’s opinion filed on August 18, 2016, with pages 29-38 corrected. The letter of the Court correcting the Opinion is attached hereto as Exhibit 1.

marriage by same-sex couples. *Id.* The Original Majority Opinion concluded: “In light of the possible remedies available at the time of the former domestic partners’ relationship, Brewer cannot now claim that her state and federal due process and equal protection rights were violated.” *Id.*

The analysis contained in paragraph 88 of the Original Majority Opinion rests on factual and legal errors. The parties could not have married in Massachusetts in 2005 because, at that time, Massachusetts law permitted out-of-state couples to marry in Massachusetts only if those couples could legally marry in their home states. Mass. Gen. Laws ch. 206, § 11 (repealed 2008). Both at that time and throughout the parties’ relationship, Illinois barred marriage by same-sex couples; therefore, Brewer and Blumenthal would not have been able to marry in Massachusetts in 2005, or any other time prior to the dissolution of their relationship. In addition, the lawsuit brought by Edie Windsor after the death of her spouse Thea Spyer (not by Edie Windsor “and her partner,” as indicated in the Original Majority Opinion, Exhibit 2 at ¶ 88) sought *federal* recognition of her marriage, which was valid and recognized by her home state of New York. *Windsor*, 133 S. Ct. at 2682. At no point during their relationship could the parties have entered into a marriage that would have been considered valid and recognized by their home state of Illinois. This was true because Illinois refused to recognize the out of state marriages of same-sex couples at any time during Brewer’s and Blumenthal’s 26-year relationship. *Id.* at 2683. Thus, even if Brewer and Blumenthal had been able to marry in Massachusetts or anywhere else, the State of Illinois would not have recognized their marriage. 750 ILCS 5/213.1 (West 2012) (repealed by Pub. Act 98-597 (eff. June 1, 2014)).

The analysis contained in paragraph 88 of the Original Majority Opinion also erroneously suggests that Brewer was obliged to bring a lawsuit relating to the end of her relationship more than a decade before the relationship ended, that Illinois's violation of her constitutional rights is somehow immunized by the fact that other states were not engaging in the same constitutional violation, and that litigants cannot challenge the constitutionality of a legal rule when it is actually applied to them. None of these arguments has any footing in constitutional law, which requires that each state, including Illinois, comply with the Fourteenth Amendment in its treatment of its own residents. See, e.g., *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584, 2607 (2015) (holding that the Fourteenth Amendment requires each state to permit same-sex couples to marry, even though such couples could already marry in a number of states).

On August 18, 2016, the Court issued an amended opinion, the Majority Opinion, that removed its discussion of this constitutional claim in its entirety, eliminating the analysis contained in paragraph 88 of the original opinion. See Exhibit 1. The Court did not replace its prior analysis and ruling with a new analysis or a new ruling on the constitutionality of *Hewitt*'s rule as applied to same-sex couples whose relationships ended before they were able to marry under Illinois law. As a result, the Majority Opinion fails to address a central legal issue presented by the case. Rehearing is warranted for this reason.

Second, the Majority Opinion overlooks or misapprehends certain key points of law and fact in its holding that a rule barring all former unmarried partners from bringing common law property claims, solely because they were in an unmarried relationship, is constitutional. As the Majority Opinion acknowledges, other litigants who agree to pool

their assets and finances, such as roommates or siblings, can bring claims based upon an implied contract. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 63. Yet, under *Hewitt*'s rule, unmarried partners are barred from bringing the very same common law claims, solely because their relationship included an intimate or romantic aspect. *Id.* Contrary to the Majority Opinion's analysis, such a rule penalizes individuals for exercising their protected constitutional right to enter into a non-marital relationship. See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (holding that the Fourteenth Amendment's Due Process Clause protects the right of unmarried persons to enter into intimate relationships and that such relationships must be treated with equal dignity and respect). As such, *Hewitt*'s rule violates the requirements of equal protection and due process. Rehearing is warranted for this independent reason as well.

PROCEDURAL HISTORY

The case arises out of the dissolution of the twenty-six year relationship between Brewer and Appellant Jane Blumenthal ("Blumenthal"), a same-sex couple barred from marriage in Illinois during the span of their relationship. In the course of their relationship, Brewer and Blumenthal pooled their assets, including jointly purchasing a family home, and raised three children together. Blumenthal moved out of the family home in 2008, ending the parties' relationship. This case began in 2010 when Blumenthal filed a complaint against Brewer seeking partition of their real property and division of other personal property. Brewer filed a five-count counterclaim. The circuit court dismissed all five counts with prejudice because it "consider[ed] itself compelled to [do so] . . . because of the authority of *Hewitt v. Hewitt*, 77 Ill.2d 49 (1979)." (R. C181). The court later denied

Brewer's motion to reconsider for the same reason, holding that it was bound by *Hewitt*. (R. C205). Brewer filed a timely appeal of those orders. (R. C255-56).

The Appellate Court vacated the circuit court's dismissal of Brewer's counterclaim under *Hewitt*, holding that the state's "public policy to treat unmarried partnerships as illicit no longer exists, that Brewer's suit is not an attempt to retroactively create a marriage, and that allowing her to proceed with her claims against her former domestic partner does not conflict with this jurisdiction's abolishment of common law marriage." *Blumenthal v. Brewer*, 2014 IL App (1st) 132250, ¶ 18. Blumenthal's subsequent petition for leave to appeal to this Court was granted. *Blumenthal v. Brewer*, 391 Ill. Dec. 792 (2015).

THIS COURT'S DECISION

On August 18, 2016, this Court reversed the decision of the Appellate Court, vacating in part and reversing in part the Appellate Court's decision. The Court held that the Appellate Court lacked jurisdiction to rule on Brewer's appeal of the Circuit Court's action dismissing counts I, II, IV and VI of Brewer's counterclaim in the partition action. *Blumenthal v. Brewer*, 2016 IL 118781. Accordingly, the Court vacated the Appellate Court's ruling as to the viability of those counts. *Id.* at ¶ 43. With respect to Brewer's appeal of the Circuit Court's action dismissing count III, this Court reversed the Appellate Court's ruling that "the application of *Hewitt* is no longer justified and that the state's evolving public policy now contradicts *Hewitt*'s rule." *Id.* at ¶ 74. This Court based its ruling on the continued statutory prohibition against common law marriage. *Id.* at ¶ 76.

With respect to the constitutional claims presented by the case, this Court held that *Hewitt*'s rule does not unconstitutionally discriminate against unmarried partners

because it does not prevent them entering into non-marital relationships, but rather merely provides that “the relationship itself cannot form the basis to bring common-law claims.” *Id.* at ¶ 85. In the Majority Opinion of August 18, 2016, the Court declined to address the other constitutional issue presented by this case – the constitutionality of *Hewitt*’s rule as applied to same-sex couples whose relationships ended before such couples were legally able to marry in Illinois, which Brewer argued violated federal and state requirements of equal protection and due process. *See Blumenthal v. Brewer*, 2016 IL 118781; Exhibit 1.

Two Justices of this Court partially concurred and partially dissented from the Majority Opinion. Justice Theis, joined by Justice Burke, concurred in the Majority Opinion’s vacation of the Appellate Court’s ruling with respect to Brewer’s appeal of the circuit court’s dismissal of counts I, II, IV and V of her counterclaim. *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 93. Justice Theis, joined by Justice Burke, dissented from the Majority Opinion’s reversal of the Appellate Court’s ruling that *Hewitt* is no longer good law and that the circuit court erred in dismissing count III of Brewer’s amended complaint. The dissenting opinion explained: “claims like Brewer’s do not implicate the Marriage and Dissolution of Marriage Act and, thus, do not undermine the public policy of Illinois, as expressed in the prohibition of common-law marriage, that individuals cannot create marriage-like benefits.” *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 114 (Theis, J., dissenting). Rather, Brewer “simply asks to bring the same common-law claims available to other people.” *Id.* Because the dissenting opinion would have reversed *Hewitt* on the ground that it conflicts with Illinois’s current public policies, it did not address Brewer’s constitutional claims.

ARGUMENT

Rehearing is warranted under Supreme Court Rule 367 for two independent reasons. First, the Court failed to address the constitutionality of *Hewitt*'s rule as applied to same-sex couples whose relationships ended before they were legally able to marry under Illinois law. Although the Court addressed and ruled on that issue in its Original Majority Opinion, the Majority Opinion of August 18, 2016 omitted any discussion of Brewer's claim that applying a rule designed to discourage non-marital cohabitation to couples who could not legally marry is irrational and, as such, violates the requirements of equal protection and due process. Second, the Court misapprehended governing law in concluding that *Hewitt*'s rule does not unconstitutionally discriminate against unmarried couples for entering into an intimate relationship protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

I. Rehearing Is Warranted Because This Court Failed To Rule On The Constitutionality Of *Hewitt*'s Rule As Applied To Same-Sex Couples Whose Relationships Ended Before They Were Legally Able To Marry Under Illinois Law.

A central issue in this case is the constitutionality of a rule barring former unmarried partners from bringing common law property claims as applied to same-sex couples who were legally unable to marry under Illinois before their relationships ended. Exhibit 2 at ¶ 88. The parties in this case, a doctor and a judge, were in a committed relationship for 26 years. Appellee's Br. at 3-4. During that time, they bought a home and other assets and raised three children together. From the time they began their relationship, in 1982, to the time they separated, in 2008, Illinois denied same-sex couples the freedom to marry. 750 ILCS 5/213.1 (West 2012) (repealed by Pub. Act 98-

597 eff. June 1, 2014))). As a result of that prohibition, Brewer and Blumenthal were legally unable to marry throughout the duration of their relationship.

As Brewer argued below, it is irrational to prevent same-sex couples from marrying and, at the same time, exclude them from common law property protections on the ground that, if they wished to have any property protections, they should have married. Appellee's Br. at 45-46. The federal constitutional requirements of equal protection and due process prevent states from subjecting individuals to such harshly arbitrary, irrational, and unfair treatment. Under both the equal protection and due process clauses, there must, at a minimum, be some rational relationship between a legal rule and the state interest or purpose it is designed to serve. *Romer v. Evans*, 517 U.S. 620, 635 (1996); *In re Detention of Samuelson*, 189 Ill. 2d 548, 561-62. Applying *Hewitt* to bar Brewer's claims in this case, as the Court's decision has done, violates that basic requirement. The purpose of *Hewitt*'s rule, according to the Majority Opinion, is to advance the state's interest in marriage by withholding protection from non-marital families. *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 79. Moreover, an essential basis of the Majority Opinion's analysis of why *Hewitt*'s rule does not discriminate against unmarried partners is that "marriage is a legal relationship that all individuals may or may not enter into." *Id.* at ¶ 87. Thus, based on the Majority Opinion's own analysis, applying *Hewitt*'s rule to withhold protection from same-sex couples who were legally barred from marriage serves no rational purpose. To the contrary, such an application of *Hewitt* creates an untenable double bind. That application of *Hewitt* conditions an important right—the ability to seek an equitable division of property when a relationship ends—on marriage, and then applies that restriction even to couples were legally barred

from marriage during the entire duration of their relationship, and even though that legal prohibition has now been ruled unconstitutional by the U.S. Supreme Court. *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015).

Since *Hewitt* was decided in 1979, an opposite-sex couple who wished to avoid being deprived of property protections under *Hewitt* for living in an intimate non-marital relationship could choose to marry. But until several years after Brewer and Blumenthal ended their relationship, Illinois law made it impossible for a same-sex couple to come within the protection of the law. The Court's decision fails to acknowledge the irrationality and unfairness of penalizing same-sex couples for failing to marry when the law barred them from doing so. As Brewer argued in her briefing to this Court, "[a]pplying *Hewitt* to bar the claims at issue in this case would violate equal protection in the most fundamental way, by punishing individuals for failing to enter into a relationship from which they were legally barred, based on laws that have now been recognized to be discriminatory and unfair." Appellee's Br. at 46.

In the Original Majority Opinion, the Court addressed this constitutional claim, suggesting that there was something Brewer and Blumenthal could have done to avoid Illinois's unconstitutional discrimination against their relationship:

Although Brewer correctly states that Illinois did not recognize same-sex marriage at the time the former domestic partners ended their relationship, Brewer was not without a legal remedy. In 2005, Blumenthal and Brewer could have married in Massachusetts, despite the inconvenience, and brought a legal action similar to the plaintiff and her partner in *Windsor*, who in 2007 traveled to Ontario, Canada, in order to be married because they could not marry where they resided. *Windsor*, 570 U.S. at ___, 133 S. Ct. at 2689. Additionally, Blumenthal and Brewer could have filed a legal action seeking to overturn, on constitutional grounds, Illinois's ban on same-sex marriage. (750 ILCS 5/213.1 (West 2012) (repealed by Pub. Act 98-597 (eff. June 1, 2014))), just as the plaintiffs in *Obergefell* did. *Obergefell*,

576 U.S. at ____, 133 S. Ct. at 2593. Yet, Blumenthal and Brewer chose none of these options. In light of the possible remedies at the time of the former domestic partners' relationship, Brewer cannot now claim that her state and federal due process and equal protection rights were violated.

Exhibit 2 at ¶ 88.

However, the Court itself apparently recognized the inaccuracy of that analysis. The next day, on August 18, 2016, the Court issued a corrected opinion that removed this paragraph. *Blumenthal v. Brewer*, 2016 IL 118781; see also Exhibit 1. There are numerous reasons why the analysis contained in the Court's original opinion is wrong. First, a couple in an ongoing relationship has no obligation—or legal standing—to bring a lawsuit seeking an advisory opinion addressing constitutional or other legal claims that may arise in the event the relationship ends. See *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375 (1977) (requirement of standing means that courts may not “pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events”). Like many other committed couples, Brewer and Blumenthal hoped and expected that their relationship, which was intended to be permanent, would endure. When the couple's relationship ended in 2008, Brewer was entitled to raise all of the claims legally available to her, including the claim that applying *Hewitt* to same-sex couples is unconstitutional since Illinois barred those couples from marriage.

Second, under the Fourteenth Amendment, a State's residents should not have to travel outside the state in order to exercise constitutionally protected rights, including the right to marry and to equal protection of the laws. Rather, *each state*, including Illinois, is required under the Fourteenth Amendment to provide due process and equal protection

of the laws. See, e.g., *Obergefell* 135 S.Ct. at 2607 (holding that each state must treat same-sex couples equally and respect their fundamental right to marry, even though such couples could already marry in some states).

Third, Brewer and Blumenthal could have not have legally married in Massachusetts in 2005, as Massachusetts law at that time barred out of state couples from marrying unless they could also marry in their own jurisdictions. Mass. Gen. Laws ch. 206, § 11 (repealed 2008). And finally, even if Brewer and Blumenthal had been able to marry outside the state, Illinois would not have recognized the marriage. 750 ILCS 5/213.1 (West 2012) (repealed by Pub. Act 98-597 eff. June 1, 2014))).

Thus, Brewer's situation was quite different than that of Edie Windsor, the widowed plaintiff in *Windsor*, who sought federal recognition of her state-recognized marriage after her spouse's death, based on the argument that the federal government had no right to withhold recognition of a marriage that was valid in the State where she lived. To the extent there is any valid comparison between Brewer and Windsor, it is that both women brought the constitutional claims available to them when those claims became ripe—Windsor when her spouse passed away and the federal government refused to recognize her marriage; and Brewer when her relationship ended and Illinois law sought to penalize her based upon its own unconstitutional refusal to permit her to marry.

In sum, as *Obergefell* conclusively established, Illinois unconstitutionally discriminated against same-sex couples by denying them the freedom to marry for the entire duration of Brewer's and Blumenthal's relationships. This Court's decision repeats and compounds that unconstitutional discrimination by excluding Brewer from the ability to bring common law property claims—claims available to all other litigants—solely

because she failed to enter into a relationship that Illinois law barred her from entering. Simply put, the rule in *Hewitt* can have no rational application to same-sex couples who were legally barred from marrying throughout the entire duration of their relationship.

The irrationality of applying *Hewitt*'s rule to same-sex couples who were barred from marriage is underscored by the Court's emphasis that the rule embodies "the public policy of Illinois that individuals acting privately by themselves, without the involvement of the State, cannot create marriage-like benefits." *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 61. Like many other similarly situated same-sex couples, Brewer and Blumenthal would have married if they could, and did all they could within their power to create a "marriage-like relationship." *Id.* at ¶ 1. But "without the involvement of the State," they were unable to marry. It is wholly irrational—and unconstitutional—to deny them the ability to bring common law property claims that are available to all other nonspouses, on the ground that such protections are "marriage-like benefits," when Illinois law categorically prevented them from formalizing their relationship through marriage. Without the State's involvement, there was nothing they could do to bring themselves within the law's protection.

Similarly, in the absence of any legal ability to marry, it is irrational to penalize same-sex couples for attempting to make their relationship as much like a marriage as they could. The Court's decision denies Brewer the ability to bring the same common law property claims available to roommates, siblings, friends, business partners, or any other litigants solely because she and Blumenthal sought to create a marriage-like relationship—all to enforce a rule whose sole purpose is to protect "the centrality of

marriage.” *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 80. As the Court itself notes, their relationship was different from other forms of cohabitation because it was “identical in every essential way to that of a married couple.” *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 63. And yet the Court’s decision penalizes Brewer—in the name of protecting marriage and encouraging couples to marry—for seeking to create a married relationship to the maximum extent permitted her by Illinois law. Plainly, the only purpose and effect of such a rule is to penalize same-sex couples whose relationships ended before they were able to legally marry, which the Constitution does not permit. *Windsor*, 133 S. Ct. 2675 (holding that laws whose purpose and effect are to impose a disadvantage on a particular group violate the requirements of equal protection and due process).

II. Rehearing Is Also Warranted Because *Hewitt*’s Rule Unconstitutionally Discriminates Against Persons For Entering Into A Constitutionally Protected Relationship

Another central question presented by this case is the constitutionality of excluding former non-marital partners from the same common law property claims available to others solely because they exercised their constitutionally protected right to enter into an intimate non-marital relationship. The Court’s decision acknowledges that the common law claims at issue here could be brought by other litigants, such as roommates or siblings, who similarly pooled their assets but lived together in non-intimate relationships. *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 63. In other words, under the Court’s rule, any two other litigants could have exactly the same degree of financial interdependence and seek to bring exactly the same property claims and would be permitted to do so, but litigants who were identically financially intertwined because

they had been in an intimate non-marital relationship are not permitted to do so. Such a rule facially discriminates based on the intimate nature of the litigants' relationship.

The Court's decision asserts, without explanation, that former partners who seek to bring the very same claims that could be brought by former roommates or siblings are instead seeking, "under the guise of an implied contract, the rights and protections specified in the Marriage and Dissolution Act." *Id.* at ¶ 85. That assertion overlooks several key factual and legal points.

First, as the Court's decision elsewhere acknowledges, any other two litigants may bring identical claims, also based on an implied contract, based on an agreement to pool their assets. *Id.* at ¶ 63. The legal nature of those implied contract claims does not change based on the motivation of the two persons involved—whether they agreed to pool their assets and resources based on friendship, necessity, duty, a business partnership, or for any other reason. The mere fact that two persons enter into such an agreement based on romantic love and commitment does not transform those identical common law claims into statutory marital claims.

Second, divorcing married couples have no ability and no need to bring common law property claims to divide their marital property. Instead, the division of such property must be based on the statutory directives and guidelines in the Illinois Marriage and Dissolution of Marriage Act. 750 Ill. Comp. Stat. Ann. 5/503. Indeed, one of the most important legal consequences of marriage is the ability of divorcing married couples to divide their marital property based on those statutory rules, which do not depend on the ability to establish the elements of common law claims. See *id.* Third, by depriving non-marital couples of basic legal protections available to all other litigants, solely because

they were in an intimate non-marital relationship, the Court's decision imposes a significant disadvantage on individuals for entering into such a relationship. As the Court acknowledged, the impact of that penalty on particular individuals can result in significant inequity and unfairness as between the parties. *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 63. In almost every case, the application of the Court's rule will lead to the unjust enrichment of one party and to unfairness to the other—most often to the party who is the most vulnerable and unsophisticated.

To claim that the Court's rule does not amount to a penalty on individuals who exercise their constitutional right to enter into an intimate relationship outside of marriage is not plausible. The Court's rule intentionally deprives persons who enter into non-marital relationships (and only those persons) of otherwise generally available legal protections—protections that are distinct from the statutory protections given to divorcing married couples and that are available to all other unmarried litigants who pool their assets regardless of the nature of their relationship. Such a rule targets unmarried couples for discriminatory treatment with pinpoint precision, based solely on their exercise of their constitutionally-protected liberty to enter into a non-marital intimate relationship.

The Court's suggestion that permitting former unmarried partners to bring claims based on an implied contract would reinstate common law marriage has no legal basis. *Blumenthal v. Brewer*, 2016 IL 118781 at ¶ 76. In states that continue to recognize common law marriage, couples who are found to have entered into a common law marriage are treated exactly the same as couples who formally married. *Id.* at ¶ 104 (Theis, J., dissenting). Thus, when those couples separate, they must obtain a formal divorce, and their marital property is divided based upon the same statutory criteria as

other married couples—not based on an implied contract or other common law property claims. The notion that permitting former unmarried partners to enforce an implied contract would reestablish common law marriage ignores the very definition, meaning, and legal consequence of common law marriage. Common law spouses are legal spouses and are treated as such in every way; they have no need of common law claims. In contrast, former unmarried partners are not spouses and cannot invoke the Illinois Marriage and Dissolution of Marriage Act; they must rely on common law property claims to resolve their property disputes. This Court’s decision does not deprive unmarried couples of remedies available to married couples; to the contrary, it deprives them of the only remedies available to unmarried litigants and thus leaves them uniquely disadvantaged, with no remedies at all. The only purpose and effect of such a rule are to discriminate against persons for being in an unmarried relationship, which the Constitution does not permit. See, *e.g.*, *Windsor*, 133 S.Ct at 2695.

CONCLUSION

For the reasons stated above, Brewer prays that this Court grant this Petition for Rehearing, address the constitutional issues, and grant appropriate relief.

DATED: September 7, 2016 Respectfully submitted by,

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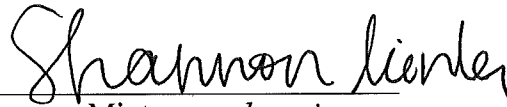
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the form and length requirements of Supreme Court Rule 341. The length of this brief excluding the pages containing the cover, statement of points and authorities, the certificate of compliance, the certificate of service, and the exhibits is 17 pages.

DATE: September 7, 2016

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NO. 118781
IN THE SUPREME COURT OF ILLINOIS

JANE E. BLUMENTHAL,)	Appeal from the Appellate Court,
)	First District;
Plaintiff - Appellant,)	Appeal from the Circuit Court of
)	Cook County
v.)	County Department
)	Chancery Division,
EILEEN M. BREWER,)	
)	Trial Court No. 10 CH 48730
Defendant – Appellee.)	
)	Hon. Leroy K. Martin
		Judge Presiding

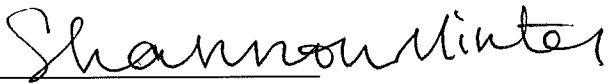
NOTICE OF FILING

TO:

Reuben A. Bernick
120 North LaSalle St., Suite 2750
Chicago, IL 60602
Attorney for Jane Blumenthal, Plaintiff-Appellant

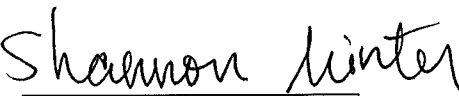
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PLEASE TAKE NOTICE that on September 8, 2016, the undersigned filed with the Clerk of the Supreme Court of Illinois, DEFENDANT-APPELLEE EILEEN M. BREWER'S PETITION FOR REHEARING. A copy is hereby served upon you.


Shannon Minter, Attorney for Defendant-Appellee

CERTIFICATION OF SERVICE

Shannon Minter, an attorney, certifies under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure that he served this document and the documents referred to herein on the Attorney and Reporter of Decisions named above by depositing the same with Federal Express at 870 Market Street, Suite 370, San Francisco, CA 94102, addressed to said Attorney and the Reporter of Decisions at the foregoing addresses, postage prepaid before the hour of 5:00 p.m. on September 7, 2016.


Shannon Minter, Attorney for Defendant-Appellee