

STATE OF INDIANA     )  
 )                      )            IN THE MARION SUPERIOR COURT 11  
 )                      )            SS:  
 COUNTY OF MARION  )            CAUSE NO. 49D11-2302-PL-005795

CITY OF SOUTH BEND, WARREN OUTLAW,     )  
 and IRIS OUTLAW                             )

Plaintiffs,                                     )

v.   )

STATE OF INDIANA ELECTION COMMISSION, )

Defendant.                                    )

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

The Court should dismiss Plaintiffs’ complaint because it fails to state a claim upon which relief can be granted. Plaintiffs lack standing to bring this case because they have not shown any injury to a legally protected interest and because they have not connected their alleged injury to any action by the Defendant, the Indiana Election Commission (“the Commission”). Further, the Commission plays no actual role in the enforcement of the statutes named by Plaintiff and therefore a judgment against Defendant would afford Plaintiff no relief.

**FACTUAL AND PROCEDURAL HISTORY**

The Indiana General Assembly enacts legislation specifying the manners by which Indiana counties are to divide districts and hold elections for county commissioners and county council members. In their complaint, Plaintiffs attack those statutes that apply to the division of commissioner districts, and the rules governing the elections of county commissioners and county council members. The complaint names the Indiana Election Commission on the basis that the Commission

is “responsible for administering Indiana’s election laws and supervising local election officials.” The complaint goes further citing Indiana Code § 3-6-4.1-14 and stating “the Election Commission has the power to issue ballots the conform with Indiana law” – a power not enumerated within the statute or actually carried out by the Commission.

Plaintiffs seek judicial declarations that St. Joseph County should no longer be subject to these statutes based on the theory that these statutes violate the Equal Privileges and Immunities Clause, the Free and Equal Elections Clause, and the prohibitions on special legislation of the Indiana Constitution.

### **STANDARD OF REVIEW**

A motion to dismiss for lack of standing is properly brought under Trial Rule 12(b)(6) for failure to state a claim. *Thomas v. Blackford County Area Bd. Of Zoning Appeals*, 907 N.E.2d 988, 990 (Ind. 2009) (citing *Huffman v. Ind. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 813 (Ind. 2004). Standing “focuses on whether the complaining party is the proper party to invoke the trial court's jurisdiction.” *Liberty Landowners Ass’n, Inc. v. Porter Cnty Comm’rs*, 913 N.E.2d 1245 (Ind. Ct. App. 2009). Further, the doctrine of standing “constitutes a significant restraint upon the ability of Indiana courts to act because it denies courts any jurisdiction absent actual injury to a party participating in the case.” *Id.* (citing *Jones v. Sullivan*, 703 N.E.2d 1102, 1106 (Ind. Ct. App. 1998).

Further, a motion to dismiss under Trial Rule 12(B)(6) tests the legal sufficiency of the plaintiff's claim, not the facts supporting it. *Bellwether Properties*,

*LLC v. Duke Energy Indiana, Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). In reviewing the complaint, the Court takes the alleged facts to be true and considers the allegations in the light most favorable to the nonmoving party, drawing every reasonable inference in that party's favor. *Id.* A complaint states a claim on which relief can be granted when it recounts sufficient facts that, if proved, would entitle the plaintiff to obtain relief from the defendant. *Id.* See also *Marion Cty. Circuit Court v. King*, 150 N.E.3d 666, 671 (Ind. Ct. App. 2020), *reh'g denied* (Aug. 26, 2020), *trans. denied*, 165 N.E.3d 81 (Ind. 2021).

## ARGUMENT

Plaintiffs bring the instant action seeking relief under Indiana's Uniform Declaratory Judgment Act.<sup>1</sup> Generally, a party seeking to establish standing must show three elements: injury in fact, a causal relationship between the injury and the defendant's conduct, and that the injury would be redressed by a favorable decision. *Ind. Fam. Inst. Inc. v. City of Carmel*, 155 N.E.3d 1209 (Ind. Ct. App. 2020). Restated in the context of actions brought under the Declaratory Judgment Act, standing requires that plaintiffs "must be persons 'whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise. . . .'" *State ex rel. Cittadine v. Ind. Dept. of Transp.*, 790 N.E.2d 978, 984 (Ind. 2003) (quoting Ind. Code § 34-14-1-2). In addition, plaintiffs must "have a substantial present interest in the relief sought, not merely a theoretical question or controversy but a real or actual

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<sup>1</sup> Although Plaintiffs style their complaint as a "Complaint for Declaratory Judgment and Injunctive Relief," they ask this Court only for declaratory relief.

controversy, or at least the ‘ripening seeds of such a controversy,’” and must show “that a question has arisen affecting such right which ought to be decided in order to safeguard such right.” *Town of Munster v. Hluska*, 646 N.E.2d 1009 (Ind. Ct. App. 1995). These requirements invoke the “general rule of standing,” which “holds that ‘the proper person to invoke the court's power’ is limited to those ‘who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct.”” *Bd. of Comm’rs of Union Cnty v. McGuinness*, 80 N.E.3d 164 (Ind. 2017) (quoting *Cittadine*, 790 N.E.2d at 979).

**A. Plaintiffs do not have standing to bring this action under the Declaratory Judgment Act because they have not shown injury to a legally protected interest.**

Indiana’s Declaratory Judgment Act allows plaintiffs under certain circumstances to seek relief from a court in the form of a “declaratory judgment or decree.” Ind. Code § 34-14-1-1. However, the statute limits those plaintiffs who may bring actions under the act to “person[s] . . . whose rights, status, or other legal relations are affected by a statute...” Ind. Code § 34-14-1-2. Uninjured litigants may not bring any lawsuit they wish, rather, “[a]n aggrieved party must have a *legally protected interest*, such as personal or property rights, to seek judicial review or declaratory relief.” *Harmony Health Plan of Ind., Inc. v. Ind. Dept. of Admin.*, 864 N.E.2d 1083, 1091 (Ind. Ct. App. 2007) (emphasis added) (citing *Lake Cnty. Plan Comm’n v. Cnty. Council of Lake Cnty.*, 706 N.E.2d 601, 602-03 (Ind. Ct. App. 1999).

Plaintiffs in this case have not shown that the challenged statutes infringe on any legally protected interest. To begin with, the City of South Bend (“the City”) has

not alleged any interest at all in the outcome of this litigation. The complaint makes no reference to any rights infringed, any harm suffered, or even any effect whatsoever that the challenged statutes have on the City. In fact, the complaint only mentions the City to note first that the City is in St. Joseph County and second that the City is one of the areas in St. Joseph County in which Democratic Party voters are concentrated. Compl. at 1, 8.

Plaintiffs Iris and Warren Outlaw have likewise not pled an injury in the form of an affected “legally protected interest.” Each count in the Complaint is based on the same alleged harm: that the voting structure for county councilmembers and commissioners in St. Joseph County is different than the voting structure in other Indiana counties. Compl. at 13, 15-17, 19. Plaintiffs imply that because the structure of county government in St. Joseph County is not identical to that of every other county in Indiana, that Plaintiffs’ rights have been infringed. But Plaintiffs do not connect this mere difference in structure to any tangible harm they have suffered.

The only concrete interest articulated throughout the complaint is an assumed right to a particular structure of county government. However, Plaintiffs’ preferred county government structure is not a legally cognizable right, much less one that supersedes the authority of the people of Indiana expressed through General Assembly. In fact, county commissioners and county councilmembers are themselves offices created by the state legislature. *See* Ind. Code §§ 36-2-2-2, 36-2-3-2. In addition, Plaintiffs’ votes for county councilmembers and commissioners are

not treated differently from those of any other similarly situated voters. The process by which voters in other counties elect their county officers has no impact on Plaintiffs or any other voters in St. Joseph County. Plaintiffs' alleged harm does not amount to a substantial present interest because Plaintiffs have no greater or lesser voting power in relation to the government of their county than any other voter participating in their county's election.

**B. Plaintiffs do not have standing to bring this action because they have not connected any alleged injury to Defendant's conduct.**

While the Declaratory Judgments Act provides a specific form of relief available to proper plaintiffs, "it does not open the courts to resolving theoretical cases; it still 'requires a justiciable controversy or question.'" *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1256 (Ind. 2020) (quoting *Ind. Dep't of Environmental Management v. Twin Eagle, LLC*, 798 N.E.2d 839, 843 (Ind. 2003)). A justiciable controversy or question requires not only that the plaintiff be an injured party, but that the defendant's conduct must be connected to that injury. If the Indiana Election Commission does not play any role in the enforcement of the statute, then Plaintiffs' declaratory judgment action against it "would lack even the ripening seeds of a controversy and [Plaintiffs] could not obtain relief from [it]." *Id.* Therefore, if the Defendant does not play a role in enforcing the statute, it cannot be sued in this declaratory judgment action. *Id.* ("[W]e turn to the specific question of whether the [defendant] plays a role in enforcing the statute and, thus, whether he can be sued in this declaratory judgment action.").

Plaintiffs have named only the Commission as a defendant in their Complaint. However, the Commission does not play a role in enforcing the statutes Plaintiffs allege to be unconstitutional. Plaintiffs seek to connect the Commission to the statutory provisions at issue through a reference to the broad statutory language tasking the Commission with “[a]dminister[ing] Indiana election laws” and “[a]dvis[ing] and exercise[ing] supervision over local election and registration officers.” Ind. Code § 3-6-4.1-14(a), *see* Compl. at 1-2. However, the Commission plays no direct role in enforcing the laws regulating county commissioner and councilmember elections. Contrary to Plaintiffs’ assertion, the Commission does not print ballots. *See* Compl. at 2. It does not distribute ballots to voters. Except for ruling on challenges to candidates seeking state legislative, statewide, or judicial offices, the Commission plays no role in determining what content will appear on ballots. It does not conduct county elections. Instead, these powers are all vested in the county election boards themselves. Ind. Code § 3-6-5-14. Further, the Commission is specifically prohibited from divesting county election boards of any of their statutorily prescribed powers and duties, with the limited exception of the Commission’s supervisory role as a tie-break in case of deadlock. Ind. Code § 3-6-4.1-14. Without a role in enforcement, the Commission is not the proper defendant to this lawsuit.

## CONCLUSION

Defendant asks that the Court dismiss the Complaint because Plaintiffs have not demonstrated injury to a legally protected interest, and because the Indiana

Election Commission is not the proper defendant, as it does not play a role in enforcement of the challenged statutes. Thus, Plaintiffs lack standing, and therefore have failed to state a claim upon which relief may be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on April 10, 2023, I electronically filed the foregoing documents using the Indiana Filing System (IEFS).

I further certify that on April 10, 2023, the foregoing document was served upon the following person(s) via IEFS, if Registered Users, or by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user.

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