

STATE OF INDIANA        )  
                                  ) SS:  
MARSHALL COUNTY        )

IN THE MARSHALL CIRCUIT COURT  
  
CAUSE NO. 50C01-2210-PL-000031

THOMAS DIXON, in his capacity as the        )  
Republican Member of the St. Joseph County        )  
Election Board,                                        )

INDIANA REPUBLICAN STATE COMMITTEE, INC.,        )  
and    )  
ST. JOSEPH COUNTY REPUBLICAN PARTY,                )

Plaintiffs,    )

v.    )

RITA GLENN, in her official capacity as Clerk of        )  
the St. Joseph County Circuit Court and                )  
Secretary of the St. Joseph County Election        )  
Board, and    )

CHARLES LEONE, in his official capacity as the        )  
Chair of the St. Joseph County Election Board        )  
(Democrat),    )

Defendants.    )

**OBJECTION TO VENUE AND  
MOTION TO TRANSFER VENUE**

Defendants **Rita Glenn** and **Charles Leone**, by counsel and pursuant to Ind. Trial Rule 75(B), object to the filing of this action in this Court for the reason that Marshall County is not a county of preferred venue within the meaning of Ind. Trial Rule 75(A). The county of preferred venue is St. Joseph County. Defendants move for transfer of this action to St. Joseph County.

**Basis for Objection to Venue**

According to the allegations of the “Verified Complaint”, the Plaintiff Thomas Dixon and the majority of the defendants, Rita Glenn, Charles Leone and the St. Joseph County Republican Party, are all residents of St. Joseph County, Indiana. Complaint, ¶¶ 1, 3 and 4. The lone non-

resident is the Indiana Republican State Committee. Complaint, ¶ 2. Plaintiffs admit in their complaint that “all actions giving rise to this Complaint occurred in St. Joseph County, Indiana.” Complaint, ¶ 5. As required by Ind. Trial Rule 75(A)(1), preferred venue is the place of residence of the majority of the defendants. The preferred venue for this action is St. Joseph County, Indiana, which is the county in which the two (2) defendants reside and the county in which the action arose. Defendants Rita Glenn and Charles Leone object to the filing of this action in this Court.

### **Basis for Motion to Transfer Venue**

Defendants Rita Glenn and Charles Leone move for transfer of this action to St. Joseph County. Ind. Trial Rule 75(B)(1) requires that when a proceeding is filed in a court that is not a preferred venue under T.R. 75(A), and a proper objection is made, the action must be transferred to a preferred venue under the criteria listed in the rule. *Bostic v. House of James, Inc.*, 784 N.E.2d 509, 511 (Ind. Ct. App. 2003); *Lake Holiday Conservancy v. Davison*, 808 N.E.2d 119, 122 (Ind. Ct. App. 2004). A trial court’s order on a motion to change venue is subject to appellate review for an abuse of discretion. *Bostic v. House of James, Inc.*, *supra*, 784 N.E.2d at 510–11. As the preferred venue for this action is St. Joseph County in accordance with T.R. 75(A)(1), this action must be transferred to the preferred venue of St. Joseph County.

This action should have been properly filed in St. Joseph County. Contrary to Plaintiffs’ argument, there is no basis to transfer of this action out of St. Joseph County. Plaintiffs argue that venue should be in an adjoining county “because the St. Joseph County Election Board is a statutorily created county government entity in St. Joseph County” and defendant Rita Glenn’s position is tied directly to the St. Joseph County judiciary”. Complaint, ¶ 5. This argument does

not establish grounds for venue in Marshall County or any county other than St. Joseph County. Under Ind. Trial Rule 76(A), an automatic change of venue from the county can be granted only upon a verified motion showing that the county where the action is pending is a party or that the party seeking the change will be unlikely to receive a fair trial on account of local prejudice or bias.

It is manifest from the face of the complaint that St. Joseph County is not a party to this action. A county is a municipal corporation charged with corporate functions and duties, and invested with corporate powers. A county is also a territorial and political division of the state, established as an instrumentality of government and municipal regulation. *Vigo Twp. v. Bd. of Comm'rs of Knox County*, 111 Ind. 170, 12 N.E. 305, 306 (1887). A county is a municipal corporation. Ind. Code § 36-1-2-10 defines a “municipal corporation” to include a “unit”; Ind. Code § 36-1-2-23, defines a “unit” to include a county. A county is a “unit” within the meaning of the term “municipal corporation.” *Whitewater Valley Canoe Rental, Inc. v. Board of Franklin County Com'rs*, 507 N.E.2d 1001 (Ind. Ct. App. 1987). The County of St. Joseph, as a unit of government or municipal corporation, is not a party to this action.

Plaintiffs’ argument that venue in an adjoining county is proper because the St. Joseph County Election Board is a party is not well taken. A county acts through its board of commissioners. Ind. Code § 36-2-2-2 provides that the board of commissioners of the county is the executive to transact the business of the county. The St. Joseph County board of commissioners are not a party to this action.

The St. Joseph County Election Board as an entity is not a party to this action. The individual defendants Rita Glenn and Charles Leone are named defendants in their capacities as

members of the St. Joseph County Election Board; the Plaintiff Thomas Dixon brings this action in his capacity as a member of the County Election Board. The fact that the defendants Rita Glenn and Charles Leone are named defendants in their capacities as members of the St. Joseph County Election Board does not make St. Joseph County a party. The actions of county officials other than the county board of commissioners are not the actions of the county. See *Vigo Twp. v. Bd. of Comm'rs of Knox County*, 12 N.E. at 308; *Bd. of Comm'rs of Washington County. v. Menaugh*, 13 Ind. App. 311, 41 N.E. 605, 606 (1895). The preferred venue is St. Joseph County. The grounds for an automatic change of venue from St. Joseph County under T.R. 76(A) are not present here because St. Joseph County is not a party to this action.

The only other grounds under T.R.76(A) for a change of venue from the county is a showing by a verified motion that the moving party cannot receive a fair trial in the county due to local prejudice or bias. Plaintiffs have not submitted anything in furtherance of such showing. And, even if Plaintiffs could show a change of venue from St. Joseph County is required based on local prejudice or bias, it is not a foregone conclusion that Marshall County would be selected as the county for a change of venue. There are four (4) counties adjoining St. Joseph County (LaPorte, Starke, Kosciusko and Elkhart Counties) other than Marshall County to which the case could be transferred. Plaintiff presumptively filed this action in Marshall County that is not a county of preferred venue without following the procedures under T.R. 76(A) to move for a change of venue from St. Joseph County and without showing any grounds for a change of venue from St. Joseph County.

Pursuant to Ind. Trial Rule 75(C), Defendant requests that Plaintiffs be ordered to pay mileage expenses reasonably incurred by Defendants Rita Glenn and Charles Leone in resisting

venue. Should the court determine that this action was commenced in the wrong county in bad faith or without cause, Defendants Rita Glenn and Charles Leone further request an award of attorney fees in an amount reasonably incurred in resisting venue.

### **Conclusion**

Defendants Rita Glenn and Charles Leone object to the filing of this action in Marshall County and request that the Court transfer this case to the county of proper venue, St. Joseph County, and order Plaintiffs to pay the of refiling and Defendants' mileage charges incurred in resisting venue. Defendants further request an award of reasonable expenses, including attorney fees, and such other relief as the court deems proper.

Respectfully submitted,

*/s/ James A. Masters*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that service of a true and complete copy of the above and foregoing pleading was made upon the parties herein by the e-filing system and by e-mail to counsel of record shown below on October 12, 2022:

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*/s/ James A. Masters*

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