

STATE OF INDIANA) IN THE MARSHALL CIRCUIT COURT
) SS:
COUNTY OF MARSHALL) CAUSE NO.:50C01-2210-PL-31

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

INDIANA REPUBLICAN STATE)
COMMITTEE, INC.,)
)

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.)
)

**PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTION TO VENUE AND
MOTION FOR TRANSFER OF VENUE**

COME NOW Plaintiffs Thomas Dixon, in his capacity as Member of the St. Joseph County Election Board ("Dixon"), Indiana Republican State Committee, Inc. ("IRSC"), and St. Joseph County Republican Party ("SJCRP"), and for their Response to Defendants' Objection to Venue and Motion for Transfer of Venue, state as follows:

1. Plaintiffs filed their Complaint for Injunctive and Declaratory Relief, Verified Motion for Temporary Restraining Order, and Motion for Immediate Hearing Date for Preliminary Injunction on Monday, October 10, 2022.

2. Ind. Trial Rule 76(A) states, in part, that a motion to change venue “shall be granted only upon a showing that the county where suit is pending is a party.”

3. The Plaintiffs’ Complaint states, in part, that “because Glenn’s position is directly tied to the St. Joseph County judiciary, per Ind. Trial Rules 76(A) and (D), venue should be and is appropriate in an adjoining county.” The Clerk of Court, an elected officer of a county, is—as a constitutional matter, if not a matter of simple common sense—an agent of the county. Ind. const. art. 6 § 2; *see also* 1951 Op. Atty. Gen. No. 312. The Clerk of Court is, for example, subject to the notice requirements of the Indiana Tort Claims Act, clear evidence that the Indiana General Assembly (to say nothing of the framers of the Indiana Constitution) consider clerks of court to be direct representatives of the county, contrary to Defendants’ contention that “The County of St. Joseph, as a unit of government or municipal corporation, is not a party to this action.” Defendant’s Motion p. 3; *see also Poole v. Clase*, 476 N.E.2d 828, 831 (Ind. 1985). It is settled Indiana law that suits against an agent or officer of a government entity are suits against the principal government entity. *Crawford vs. City of Muncie*, 655 N.E.2d 614, 618 (Ind. Ct. App. 1995).¹ Therefore, this suit *is* against St. Joseph County and venue in St. Joseph County is improper under Ind. Trial Rule 76(A).

¹ Holding that a suit against the Chief of the Muncie Police Department was the same as a suit against the City of Muncie.

4. Defendants' Motion fails to address the simple fact that Defendant Rita Glenn is the Clerk of the St. Joseph Circuit and Superior Courts, rendering St. Joseph County an improper venue for this cause of action.

5. In short, Plaintiffs would be entitled to a change of venue if the case were filed in St. Joseph County. Plaintiffs have simply, in the interest of judicial economy, filed this matter in an adjoining county, in accordance with the text of Trial Rule 76.

6. Additionally, current St. Joseph Circuit Court and Superior Court Judges are seeking re-election or retention in the November 2022 election in which voters are currently casting absentee ballots. All Superior, Probate, and Circuit Court Judges in St. Joseph County are subject to election or retention, and are therefore subject to the rules and resolutions promulgated by the St. Joseph County Election Board. *See* Ind. Code § 33-33-71-43 (2021); Ind. Code § 33-31-1-3 (2021); Ind. Code § 33-28-2-1 (2021). Having these judicial officers determine the outcome of this case would be wholly improper.

7. Rather than address the merits of the Plaintiffs' case, the Defendants motion is an unfortunate delay tactic in a case involving substantial, current, ongoing harm. As of this week, citizens of St. Joseph County are voting by absentee ballot. **Every single absentee ballot cast in accordance with the Resolution at issue in this case may be subject to disqualification.** "The purpose of the automatic change of venue rule is to guarantee a fair and impartial trial." *City of Ft. Wayne v. State ex rel. Hoagland*, 265, 342 N.E.2d 865, 868 (1976); *see also State ex rel. Radbel v. Jasper*

Superior Ct., 467 N.E.2d 693, 694 (Ind. 1984). Defendants seek precisely the opposite by ignoring the clear intent of Trial Rule 76, and focusing instead on Trial Rule 75, a rule which is concerned with judicial economy and which is designed to prevent forum shopping.

8. A trial court may still rule upon emergency matters while a Motion for Change of Venue is pending. *State ex rel Kealing v. Clay Circuit Court*, 207 Ind. 259, 263, 192 N. E. 423 (1934); *see also Hoagland*, 342 N.E.2d 865, 168 Ind. App. 262 (Trial court has jurisdiction to grant a preliminary injunction pending perfection of change of venue). Therefore, Plaintiffs ask the Court to immediately rule upon Plaintiffs' Verified Motion for Temporary Restraining Order.

9. Defendants argue that venue is proper in St. Joseph County because St. Joseph County is a "preferred" venue under Indiana Trial Rule 75. Indiana case law, however, clearly establishes that Trial Rule 75 is "trumped" by Trial Rule 76 where the county of preferred venue is a party to the suit. *City of Lawrenceburg, Indiana v. Franklin Cnty., Indiana*, 59 N.E.3d 296, 297 (Ind. Ct. App. 2016). Thus, preferred venue is an issue of no moment to the case at bar.

10. Here Plaintiffs filed suit in Marshall County. Plaintiffs would be entitled to a change of venue to a county adjoining St. Joseph had the case been filed there originally. *Id. see also Scott v. Consol. City of Indianapolis*, 833 N.E.2d 1094, 1101 (Ind. Ct. App. 2005) ("According to the plain reading of Trial Rule 76, a change of venue occurs when the county is a party to the action."); *Bd. of Comm'rs of LaPorte Cnty. v. Great Lakes Transfer, LLC*, 888 N.E.2d 784, 790 (Ind. Ct. App. 2008) (holding

that T.R. 76(A) required that the trial court grant the motion for change of venue from LaPorte County where LaPorte County was a party to the action despite the fact that it was also a preferred venue.).

WHEREFORE. Plaintiffs ask the court to immediately deny Defendants Motion for Transfer of Venue, enter a Temporary Restraining Order, without bond, restraining Defendants from adopting and enforcing the Resolution, holding the Resolution violates no less than two Indiana statutes and has no statutory authority to be made, and for all other just and proper relief in the premises.

Respectfully Submitted,

JONES LAW OFFICE LLC

/s/ Andrew B. Jones

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the above and foregoing pleading was served upon all counsel of record via the IEFIS on October 14, 2022.

/s/ Andrew B. Jones

Andrew B. Jones (#29686-71)