

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

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,)
101 South Main Street)
South Bend, IN 46601)

and)

CHARLES LEONE, in his official)
capacity as the Chair of the St. Joseph)
County Election Board (Democrat))
Halpin Slagh PC)
521 West Colfax Avenue)
South Bend, IN 46601)

Defendants.)

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF, TEMPORARY
RESTRAINING ORDER, AND FURTHER INJUNCTIVE RELIEF**

COME NOW Plaintiffs Thomas Dixon, in his capacity as the Republican
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 Complaint for Declaratory and Injunctive Relief against Rita Glenn, in her official capacity as Clerk of the St. Joseph County Circuit Court and as Secretary of the St. Joseph County Election Board (“Glenn”), and Charles Leone, in his official capacity as Chair of the St. Joseph County Election Board (“Leone”), stating as follows:

PARTIES, JURISDICTION, AND VENUE

1. Dixon is domiciled in St. Joseph County and is a party to this action in his official capacity as the Republican Member of the St. Joseph County Election Board. As a Member of the St. Joseph County Election Board (“Election Board”), he is duly authorized and has standing to bring this action.

2. The IRSC is a political organization based in Indianapolis, Indiana. It has standing because the SJCRP operates as a subsidiary to it, because it has a permanent interest in preserving the integrity of elections, and because the actions at issue by the Election Board affect or are likely to affect the election of Republican officials in St. Joseph County, upon whose behalf the IRSC acts. Moreover, it contends that the delegation of the Election Board’s powers to Glenn violates Indiana law.

3. The SJCRP is a political organization based in St. Joseph County, Indiana. It has standing because it appoints the Republican member of the St. Joseph County Election Board and it contends that the delegation of the St. Joseph Election Board’s powers to Glenn violates Indiana law. Moreover, an election board reports to county chairpersons of the two (2) political parties “the number of: (1) absentee voter boards; (2) teams of absentee ballot counters; and (3) teams of couriers; to be

appointed under section 22 [IC 3-11.5-4-22] of this chapter.” Ind. Code § 3-11.5-4-23(a) (2022). The county chairperson of the Republican Party is responsible for recommendations to the county election board and the county election board is to make appointments as recommended. I.C. § 3-11.5-4-23(b)

4. Glenn and Leone are members of the St. Joseph County Election Board, Secretary and Chair respectively, and are named in their official capacity only as they are responsible for the passage and enforcement of a resolution affecting the St. Joseph County Election Board’s oversight of absentee voting in St. Joseph County, Indiana.

5. All actions giving rise to this Complaint occurred in St. Joseph County, Indiana. However, because the St. Joseph County Election Board is a statutorily created county government entity in St. Joseph County, Indiana and also 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.

FACTS

6. Indiana law provides that a county election board is to be comprised of the circuit court clerk, who is an ex officio member of the county election board, and two (2) persons appointed by the circuit court clerk with one (1) from each of the major political parties of the county. Ind. Code § 3-6-5-2 (2022).

7. Glenn, a Democrat, is the St. Joseph Circuit Court Clerk member of the Election Board.

8. Dixon, a Republican, is a Member of the Election Board.

9. Leone, a Democrat, is Chair of the Election Board.

10. Ind. Code § 3-11-10-10 (2022) provides:

During the period that absentee ballots are being received, each county election board shall keep the ballots in cabinets, boxes, or a room upon which there are two (2) locks, one (1) for each of the appointed members of the board. Each day the absentee ballots shall be placed in the cabinets, boxes, or room under the direction of the appointed members of the board. If an appointed member cannot be present each day, then that member shall designate someone from the member's political party to be present with the key to the lock at the time the ballots are secured and at the time the lock is opened the next day. The key of each appointed member of the board shall be kept secure in the manner determined by that appointed member.

Thus, under Indiana law, Dixon and Leone are responsible for lock access to absentee ballots and for determining how to secure the key for their respective party.

11. Ind. Code § 3-11.5-4-5 (2022) provides:

(a) Upon receipt of the absentee ballot and not later than election day, the county election board, or the absentee board members in the office of the circuit court clerk, shall compare the signature of the voter on the absentee ballot application, or, if there is no application, with the signature on the electronic poll book, with the signature on:

- (1) the voter's absentee ballot envelope; or
- (2) the computerized list, if there is no envelope.

(b) If a county election board finds that the signature on a ballot envelope or transmitted affidavit is genuine, the board shall enclose immediately the accepted and unopened ballot envelope, together with the voter's application for the absentee ballot, in a large or carrier envelope. If the county election board does not unanimously determine that the signature on a ballot envelope is genuine, the board shall also write on the ballot envelope described in subsection (c) or the transmitted affidavit from a voter under IC 3-11-4-6, the words "SIGNATURE DISPUTED". The board shall enclose in the same carrier envelope all absentee ballot envelopes and applications for the same precinct.

(c) The envelope shall be securely sealed and endorsed with the name and official title of the circuit court clerk and the following words: “This envelope contains an absentee ballot and must be opened only on election day under IC 3-11.5.”.

12. On or about October 7, 2022, the St. Joseph County Election Board passed a resolution wherein the St. Joseph County Election Board’s duties and responsibilities delegated to its members by statute were delegated to Glenn in her capacity as Circuit Court Clerk (the “Resolution”).¹ (A true and accurate copy of the Resolution is attached hereto as Exhibit 1 and is incorporated herein by reference.)

13. Dixon opposed the Resolution and voted against it. Glenn and Engel voted in favor of the Resolution and so have deemed it passed and applicable.

14. The Resolution further provides that “[t]he above approval shall be applied retroactively and proactively to the 2022 election cycle.”

15. At relatively the same time Glenn participated in passing the Resolution with retroactive applicability, local news outlets have published stories wherein it is alleged Glenn may have unlawfully accessed absentee ballots in May 2022, and that the matter is currently under investigation by the Indiana State Police.

16. According to the Resolution, the delegation of these statutory duties and responsibilities to Glenn exclusively came from Ind. Code § 3-6-5-19 (2022), which reads:

A circuit court clerk, with the approval of the county election board, shall exercise the powers and perform the duties imposed upon the board whenever the facilities of the clerk’s office make it more reasonable and

¹ At the time, Leone was absent, due to, upon information and belief, being out of the country and so his role as Chair was given to Michelle Engel (“Engel”). As of the date of filing, Engel is no longer serving as Chair and Leone has resumed that position.

efficient for the clerk to do so. Any action taken by the clerk with the approval of the board is considered an action of the board.

**COUNT I
DECLARATORY RELIEF**

17. Plaintiffs adopt and incorporate by reference Paragraphs 1-16 as though stated herein.

18. Glenn and Leone have interpreted I.C. § 3-6-5-19 to mean that the Board can delegate by a simple majority duties and responsibilities held by an election board member to the circuit court clerk. Specifically, they have taken two functions which are statutorily required to have bi-partisan participation (evaluation of absentee ballot signatures and maintaining and securing key access to absentee ballots) and have delegated them by a contested majority to the clerk's office, an elected position, ordinarily occupied by a member of one of the two (2) major political parties.

19. The Resolution makes no factual statement in support of the conclusion that the facilities of the clerk's offices make it more reasonable and efficient for the clerk to assume these duties and responsibilities.

20. The functions in those statutes are not duties of the election board generally but fall specifically to each board member appointed by his or her political party. On its face, I.C. § 3-6-5-19 neither permits the clerk to assume the roles of specifically designated board members nor permits an election board to decide by majority those matters which require unanimous consent by an election board.

21. Even if I.C. § 3-6-5-19 permitted the delegation of duties of partisan board members to the clerk, the statute plainly requires board oversight and approval

for each of the clerk's actions in order for those actions to be deemed actions of the election board.

22. Nothing in Indiana law permits an election board by a simple majority vote to delegate a partisan election board member's statutorily prescribed duties to the circuit court clerk. By contrast, when duties and responsibilities of the clerk are delegated to an election board employee, Indiana law requires a unanimous resolution and a specification of the duties and responsibilities to be exercised by the appointee. *See* Ind. Code § 3-6-5-14.5 (2022).

23. Indiana law has held that an absentee ballot must be endorsed by a Republican and a Democrat or it cannot be counted. *See Sullivan v. Krughoff*, 889 N.E.2d 1289, 1291–92 (Ind. Ct. App. 2008).

24. Glenn and Leone's interpretation of I.C. § 3-6-5-19 errs as a matter of law.

25. Glenn and Leone's interpretation of I.C. § 3-6-5-19 would furthermore render meaningless I.C. § 3-11.5-4-5 and I.C. § 3-11-10-10 as it would bypass, by a simple majority, the statutes' directive to delegate essential functions to each partisan election board member. If such powers could be overturned by a simple majority vote, the clerk (and the clerk's party) could coordinate to consolidate these and other essential functions of partisan election board members, essentially nullifying the role of the minority party board member on any election board.

26. The clerk's office's duties are already specifically provided by statute and cannot be supplemented by a majority-vote resolution.

27. Furthermore, there is no statutory authority to apply the Resolution retroactively and the sole motivation to do so is to exonerate Glenn for her actions in May 2022.

WHEREFORE, Plaintiffs pray this Court enter a declaratory judgment as follows:

- a. The Resolution cannot delegate statutory duties of partisan board members to the circuit court clerk by majority vote or resolution;
- b. The Resolution, and enforcement thereof, render I.C. § 3-11.5-4-5 and I.C. § 3-11-10-10 meaningless and are therefore ultra vires actions by the Election Board;
- c. The Resolution violates I.C. § 3-11.5-4-5 and I.C. § 3-11-10-10 by usurping and removing roles designated to partisan election board members;
- d. There is no basis in fact to hold it is more “reasonable or efficient” for Glenn to assume the duties conferred by the Resolution;
- e. The Resolution cannot be applied retroactively; and
- f. Grant all other just and proper relief.

**COUNT II
INJUNCTIVE RELIEF**

28. Plaintiffs adopt and incorporate by reference Paragraphs 1-27 of the Complaint as though stated herein.

29. Plaintiffs have no adequate remedy at law except declaratory and injunctive relief. There is no amount of damages, nor is there a civil damages

enforcement mechanism, to correct the improper delegation of election board member duties.

30. The actions of Defendants and the enforcement of the Resolution will cause irreparable harm in that they violate the requirements of I.C. § 3-11.5-4-5 and I.C. § 3-11-10-10 and will only subvert the public's confidence in the election to have a one-party supervision of these duties and responsibilities. Additionally, the actions could nullify several absentee ballots since they would not have the required signatures to be counted, disenfranchising several voters.

31. There is no threatened harm to Defendants should they be unable to enforce the Resolution as it would only return the duties under I.C. § 3-11.5-4-5 and I.C. § 3-11-10-10 to the rightful election board member(s).

32. For the same reasons provided above, the grant of injunctive relief would not dissolve or harm the public interest.

33. No bond need issue under these facts.

WHEREFORE. Plaintiffs ask the court to immediately enter an *ex parte* 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. Plaintiffs ask the court to set a hearing to convert the Temporary Restraining Order to a Preliminary and/or Permanent Injunction that, if granted, will bar Defendants from delegating duties of partisan election board members to the circuit court clerk by majority vote.

VERIFICATION

By my signature below, I verify that the foregoing factual allegations are true under pain and penalty of perjury.

/s/ Thomas M. Dixon
Thomas M. Dixon, Esq.

Respectfully Submitted,

JONES LAW OFFICE LLC

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