

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

CITY OF HAMMOND, )  
THOMAS MCDERMOTT, in his )  
official and personal capacities, and )  
EDUARDO FONTANEZ, )

Plaintiffs, )

vs. )

LAKE COUNTY JUDICIAL )  
NOMINATING COMMISSION, )

Defendant. )

CASE NO. 2:21-cv-160-PPS-JEM

**INTERVENOR-DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT  
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Intervenor-Defendant State of Indiana, by counsel, files its Answer and statement of affirmative defenses in response to Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief.

**Introduction**

Approximately 74% of white residents in Indiana vote for their Superior Court judges. In contrast, approximately 72% of minority residents no longer enjoy the right to vote for their Superior Court judges. That right was taken away from them and given to judicial nominating commissions, including the Lake County JNC, but only in select counties with high minority populations. The method for selecting the Lake County JNC members also includes express racial and gender quotas. This race and gender-based system of selecting judges in Lake County violates the Equal Protection

Clause of the United States Constitution and the Voting Rights Act. In addition, the unique procedures for selecting judges in Lake County violate the Indiana Constitution. Either all Indiana citizens should vote for their judges or all judges should be selected by judicial nominating commissions. Going forward, all Indiana citizens must be treated equally.

**ANSWER:** This paragraph is an introductory statement which requires no response. To the extent a response is required, the assertions are denied.

### **PARTIES, JURISDICTION, AND VENUE**

1. Hammond is an Indiana municipality and governmental organization located in Lake County, Indiana, and its administrative offices are located at Hammond City Hall, 2nd Floor, 5925 Calumet Avenue, Hammond, Indiana 46320.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

2. Hammond frequently litigates in Lake County Superior Courts.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph.

3. When Hammond's police officers write traffic tickets or make arrests, those matters are frequently prosecuted in Lake County Superior Courts.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a

response from the State, the State lacks sufficient information to admit or deny this paragraph.

4. Hammond has a direct and substantial interest in ensuring that Lake County Superior judges are constitutionally selected.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State denies that Hammond's interest is legally different or unique as compared to taxpayers.

5. Thomas McDermott is the Mayor of Hammond, and is an attorney that resides in Lake County, Indiana, and is a registered voter.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph.

6. Eduardo Fontanez is Hispanic, a member of a minority group, and is a registered voter in Lake County, Indiana.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph.

7. Eduardo Fontanez is an attorney that resides in Lake County, Indiana, and was previously an East Chicago City Court judge.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph.

8. Eduardo Fontanez previously ran for election for the Lake County Superior Court county division, under Ind. Code § 33-33-45-43, but the Legislature repealed Ind. Code § 33-33-45-43 in 2011.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State admits Indiana Code § 33-33-45-43 has been repealed, but lacks sufficient information to admit or deny the other allegations in this paragraph.

9. Eduardo Fontanez previously had the right to vote for Lake County Superior Court judges of the county division, he voted in those elections, but the right to vote in those elections was taken away from him.

**ANSWER:** This paragraph raises a legal contention which requires no answer.

10. Eduardo Fontanez would have run for election for Lake County Superior Court since 2011 but he has been precluded from doing so because Lake County Superior Court judges are not elected.

**ANSWER:** The State lacks sufficient information to admit or deny the allegations in this paragraph.

11. Eduardo Fontanez has also been denied the right to vote for Lake County Superior Court judges.

**ANSWER:** This paragraph also raises a legal contention which does not require a response, but the State denies that the statute is unconstitutional.

12. The Lake County JNC is a local governmental unit that selects nominees only for Lake County Superior Courts and submits those appointees to the Indiana Governor.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

13. This Court has original jurisdiction over this matter under 28 U.S.C. § 1331 because claims in this matter arise under the laws and Constitution of the United States.

**ANSWER:** This paragraph states a legal conclusion which does not require a response.

14. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' state-law claims because they are closely related and form part of the same case or controversy over Plaintiffs' federal-law claims.

**ANSWER:** This paragraph states a legal conclusion which does not require a response.

## FACTUAL BACKGROUND

## **Current and Historical Method for Electing and Selecting Superior Court Judges**

15. Prior to 1971, all Superior Court judges in Indiana were elected, including in Lake County.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

16. Beginning in 1971, the Indiana Legislature disenfranchised Lake County voters (and St. Joseph County voters) and eliminated their right to elect Superior Court judges.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. The State denies that the Indiana legislature has disenfranchised voters.

17. The Legislature instead determined that in Lake County judicial nominees would be selected by the Lake County JNC, and the Governor would appoint Lake County Superior Court judges.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

18. In the early 1970s, residents in other Indiana counties were not similarly disenfranchised, and voters in 90 Indiana counties continued to elect their Superior Court judges.

**ANSWER:** This paragraph does not raise any allegations against the State, and this paragraph contains a legal conclusion, and accordingly does not require a response.

19. The method of selecting members to the Lake County JNC has varied through the years.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

20. From 1971 to 1995, Lake County attorneys elected three members of the Lake County JNC, the Governor selected three non-attorney members, and the Chief Justice of the Indiana Supreme Court was a member.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

21. Beginning in 1989, the Indiana Legislature provided that Lake County residents elected Lake County Superior Court county division judges, but the Legislature repealed this provision in 2011, again fully disenfranchising Lake County residents from voting for Lake County Superior Court judges.

**ANSWER:** This paragraph raises a legal contention that does not require a response. The law speaks for itself. To the extent this paragraph requires a response, the State denies that the law is unconstitutional or otherwise unlawful.

22. In 1995, the Legislature changed the selection process for members of the Lake County JNC.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

23. Beginning in 1995, Lake County attorneys elected four members to the Lake County JNC, the Lake County Board of Commissioners selected four members, and the Chief Justice of the Indiana Supreme Court was the final member.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response.

24. The process for selecting members of the Lake County JNC includes express racial and gender quotas.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

25. Ind. Code § 33-33-45-28(b) required that of the attorney members elected to the Lake County JNC two had to be women and one had to be a minority.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

26. The Northern District of Indiana previously enjoined “the application of the race and gender classifications in the selection of JNC attorney members.” *Back v. Carter*, 933 F.Supp. 738, 762 (N.D. Ind. 1996).

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, *Back v. Carter* speaks for itself.



27. Ind. Code § 33-33-45-28(c) provided that the Lake County Commissioners had to select two women and one minority member to the Lake County JNC.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

28. The Lake County JNC nominates Lake County attorneys to fill Superior Court vacancies, and the Governor then appoints Lake Superior Court judges from those nominees. Ind. Code §§ 33-33-45-35, 38.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

29. While Lake County residents no longer have the right to initially elect their Superior Court Judges, they vote whether to retain selected judges. Ind. Code § 33-33-45-42.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself. To the extent this paragraph requires a response, the State denies that the law is unconstitutional.

### **Minority Voters in Indiana Have Been Systematically Disenfranchised**

30. According to 2010 population data, Lake County had a minority population of 221,843 and 45% of Lake County residents are minorities.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a

response from the State, the State lacks sufficient information to admit or deny this paragraph because the assertion is vague.

31. In addition to Lake County, the Indiana Legislature has taken away the right to vote for Superior Court judges in Marion, St. Joseph, and Allen Counties.

**ANSWER:** This paragraph states a legal contention which does not require a response. To the extent this paragraph requires a response, the State denies that the law is unconstitutional.

32. All other residents of Indiana continue to have the right to vote for their judges.

**ANSWER:** This paragraph states a legal contention which does not require a response. To the extent this paragraph requires a response, the State denies that the law is unconstitutional.

33. According to 2010 population data, Marion County had a minority population of 365,488, St. Joseph County had a minority population of 65,230, and Allen County had a minority population of 83,540.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph because the allegations are vague.

34. According to 2010 population data, approximately 72% of minority residents in Indiana live in Lake, Marion, St. Joseph, Allen Counties.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph because the allegations are vague.

35. Approximately 72% of minority residents in Indiana no longer have the right to vote for Superior Court judges.

**ANSWER:** This paragraph states a legal contention which does not require a response. To the extent this paragraph requires a response, the State denies the allegations.

36. In contrast, approximately 74% of white voters in Indiana elect their Superior Court judges.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. To the extent this paragraph requires a response from the State, the State denies the allegations.

37. The procedure of removing the right to vote for Superior Court judges in high minority counties interacts with social and historical conditions to cause inequalities in the opportunity of minority residents in Indiana to vote for Superior Court judges.

**ANSWER:** This paragraph states a legal contention that does not require a response. To the extent this paragraph requires a response from the State, the State lacks sufficient information to admit or deny this paragraph because the allegations are vague.

**HB 1453**

38. On April 29, 2021, the Governor signed HB 1453 into law. A true and accurate copy of HB 1453 is attached as Exhibit A.

ANSWER: This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

39. HB 1453, as enacted, provides that the Governor appoints three members to the Lake County JNC, one of whom must be a woman.

ANSWER: This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

40. HB 1453 provides that the Lake County Commissioners select three members of the Lake County JNC, one of whom must be a minority.

ANSWER: This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

41. Under HB 1453, attorneys no longer elect members of the Lake County JNC.

ANSWER: This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

42. The Governor then selects Lake County Superior Court judges from nominees selected by the Lake County JNC.

ANSWER: This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

43. HB 1453 went into effect upon passage.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

**COUNT I– 42 U.S.C. § 1983 CLAIM THAT IND. CODE § 33-33-45-28 AND HB 1453 VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION**

44. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-43.

**ANSWER:** The State incorporates its answers to paragraphs 1–43.

45. The method for selecting members to the Lake County JNC includes express racial and gender quotas.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly does not require a response. Further, the law speaks for itself.

46. These racial and gender quotas violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

**ANSWER:** This paragraph states a legal conclusion which requires no answer. To the extent this paragraph requires a response, deny.

47. The use of gender and racial quotas to select members to the Lake County JNC should be enjoined.

**ANSWER:** This paragraph states a request for relief which requires no answer.

WHEREFORE, Plaintiffs seek an order doing the following: (1) enjoining the use of racial and gender quotas to select members of the Lake County JNC because they violate the Equal Protection Clause of the Fourteenth Amendment of United

States Constitution; (2) awarding Plaintiffs attorneys' fees under 42 U.S.C. § 1988; and (3) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that the applicable law is unconstitutional and deny that Plaintiffs are entitled to the requested relief.

**COUNT II-THE JUDICIAL NOMINATING PROCEDURES OF IND. CODE  
CHAPTER 33-33-45 VIOLATE THE VOTING RIGHTS ACT**

48. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-47.

**ANSWER:** The State incorporates its answers to paragraphs 1-47.

49. The Voting Rights Act provides that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

**ANSWER:** This paragraph is a statement of law which requires no answer. 52 U.S.C. § 10301(a) speaks for itself.

50. “A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have

less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

**ANSWER:** This paragraph is a statement of law which requires no answer. 52 U.S.C. § 10301(b) speaks for itself.

51. In Indiana, judicial nominating only occurs in select counties with high minority populations (including Lake County) that results in the abridgement of the right of minority residents to vote for judges.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that the applicable law violates the Voting Rights Act.

52. The majority of minority voters (including in Lake County) no longer have the right to vote for Superior Court judges because judicial nominating commissions (including the Lake County JNC) now select judicial candidates.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that the applicable law violates the Voting Rights Act.

53. Residents in other counties in Indiana have the right to vote for Superior Court judges.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that the applicable law is unconstitutional.

54. Approximately 72% of minority residents in Indiana have had the right to vote for Superior Court judges taken away from them.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that the applicable law denies the Voting Rights Act.

55. In contrast, approximately 74% of white residents in Indiana retain the right to vote for Superior Court judges.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies the allegations.

56. The political processes leading to the election of judges in Indiana are not equally open to the participation of minority residents in Indiana, and minorities in Indiana have less opportunity to elect Superior Court Judges.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that the applicable law violates the Voting Rights Act.

WHEREFORE, Plaintiffs seeks an order doing the following: (1) enjoining the Lake County JNC from nominating judicial nominees under the judicial nominating procedures of HB 1453 because they violate the Voting Rights Act; (2) providing that future openings on the Lake County Superior Court will be filled by election; and (3) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that the applicable



statute violates the Voting Rights Act and deny that Plaintiffs are entitled to the requested relief.

**COUNT III – DECLARATORY JUDGMENT THAT HB 1453 VIOLATES INDIANA CONSTITUTION ARTICLE 4 SECTION 23**

57. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-56 as if fully set forth herein.

**ANSWER:** The State incorporates its answers to paragraphs 1–56.

58. Indiana Constitution Article 4 Section 23 provides that “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

**ANSWER:** This paragraph is a statement of law which requires no answer. Article 1, section 23 speaks for itself.

59. HB 1453 is special legislation because it does not apply uniformly state wide.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that HB 1453 violates the Indiana Constitution.

60. HB 1453 is unconstitutional special legislation because there is nothing unique about Lake County that requires a judicial nominating committee or the Governor to nominate members to the Lake County JNC.

**ANSWER:** This paragraph states a legal contention which requires no answer. To the extent this paragraph requires a response, the State denies that HB 1453 violates the Indiana Constitution.

WHEREFORE, Plaintiffs seek a declaratory judgment from the Court that: (1) HB 1453 is unconstitutional special legislation in violation of Ind. Const. Art. 4 § 23; (2) future openings on the Lake County Superior Court will be filled by election, as occurs in 88 counties in Indiana currently; and (3) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that HB 1453 violates the Indiana Constitution and deny that Plaintiffs are entitled to the requested relief.

**COUNT IV– DECLARATORY JUDGMENT THAT HB 1453 VIOLATES  
INDIANA CONSTITUTION ARTICLE 1 SECTION 23**

61. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-60.

**ANSWER:** The State incorporates its answers to paragraphs 1–60.

62. Indiana Constitution Article 1 Section 23 provides that the “General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

**ANSWER:** This paragraph is a statement of law which requires no answer. Article 1, section 23 speaks for itself.

63. Previously, in all counties with a judicial nominating commission, attorneys elected or appointed members to the judicial nominating commission.

**ANSWER:** This paragraph does not raise any allegations against the State and accordingly requires no response.

64. Under HB 1453, attorneys in Lake County will no longer have the privilege of electing or selecting members to the Lake County JNC.

**ANSWER:** HB 1453 speaks for itself. This paragraph raises a legal contention which requires no response.

65. HB 1453 violates Ind. Const. Art. 1 § 23 because it grants privileges to attorneys in Marion and Allen counties that would no longer be enjoyed by attorneys in Lake County.

**ANSWER:** This paragraph states a legal conclusion which requires no response. To the extent this paragraph requires a response, the State denies that HB 1453 is unconstitutional.

WHEREFORE, Plaintiffs seek a declaratory judgment that: (1) HB 1453 violates Indiana Constitution Article 1, Section 23; and (2) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that the applicable law is unconstitutional and deny that Plaintiffs are entitled to the requested relief.

#### **COUNT V- INJUNCTIVE RELIEF**

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-65.

**ANSWER:** The State incorporates its answers to paragraphs 1-65.

67. HB 1453 is unconstitutional and illegal and should be enjoined.

**ANSWER:** This paragraph states a legal conclusion and a request for relief which require no answers. To the extent this paragraph requires a response, deny

that HB 1453 is unconstitutional and deny that Plaintiffs are entitled to the requested relief.

68. The Lake County JNC should be enjoined from selecting judicial nominees for Lake County Superior courts.

**ANSWER:** This paragraph states a legal conclusion and a request for relief which require no answers. To the extent this paragraph requires a response, deny that HB 1453 is unconstitutional and deny that Plaintiffs are entitled to the requested relief.

69. Upon enjoining enforcement of HB 1453 and enjoining the Lake County JNC from selecting judicial nominees, Lake County residents should elect Lake County Superior Court judges, as previously occurred.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that Plaintiffs are entitled to the requested relief.

70. Enjoining enactment of HB 1453 will not cause any harm because it is unconstitutional and illegal.

**ANSWER:** This paragraph states a legal conclusion which requires no answer. To the extent this paragraph requires a response, deny.

71. The public interest will be served by enjoining enactment of an unconstitutional law.

**ANSWER:** This paragraph states a legal conclusion which requires no answer. To the extent this paragraph requires a response, deny.

WHEREFORE, Plaintiffs seek an order doing the following: (1) enjoining enforcement of HB 1453; (2) enjoining the Lake County JNC from selecting judicial nominees; (3) providing that future vacancies on the Lake County Superior Court will be filled by election; and (4) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that Plaintiffs are entitled to the requested relief.

**COUNT VI- DECLARATORY JUDGMENT THAT INDIANA CODE ARTICLE 33-33-45'S JUDICIAL NOMINATING PROVISIONS VIOLATE INDIANA CONSTITUTION ARTICLE 1 SECTION 23**

72. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-71.

**ANSWER:** The State incorporates its answers to paragraphs 1-71.

73. In eighty-eight counties in Indiana, all citizens over the age of eighteen elect their Superior Court judges.

**ANSWER:** This paragraph raises no allegations against the State and accordingly requires no response. Further, the law speaks for itself.

74. In Lake County, citizens do not have the privilege of electing their judges.

**ANSWER:** This paragraph raises a legal contention and accordingly requires no response.

75. The judicial nomination provisions in Ind. Code Article 33-33-45 violate Indiana Constitution Article 1, Section 23 because citizens in Lake County do not

enjoy the privilege of electing their judges and citizens in eighty-eight other counties in Indiana enjoy this privilege.

**ANSWER:** This paragraph raises a legal contention and accordingly requires no response. To the extent this paragraph requires a response, deny that Indiana Code article 33-33-45 violates Article 1, section 23 of the Indiana Constitution.

WHEREFORE, Plaintiffs seek a declaratory judgment that: (1) the judicial nominating provisions of Ind. Code Article 33-33-45 violate Indiana Constitution Article 1, Section 23; (2) future openings on the Lake County Superior Court will be filled by election, as occurs in 88 counties in Indiana currently; and (3) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that Indiana Code Article 33-33-45 violates Article 1, section 23 of the Indiana Constitution and deny that Plaintiffs are entitled to the requested relief.

**COUNT VII- DECLARATORY JUDGMENT THAT INDIANA CODE  
ARTICLE 33-33-45'S JUDICIAL NOMINATING PROVISIONS VIOLATE  
INDIANA CONSTITUTION ARTICLE 4 SECTION 23**

76. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-75.

**ANSWER:** The State incorporates its answers to paragraphs 1-75.

77. In eighty-eight counties in Indiana, all citizens over the age of eighteen elect their Superior Court judges.

**ANSWER:** This paragraph raises no allegations against the State and accordingly requires no response. The law speaks for itself.

78. In Lake County, citizens do not elect their judges.

**ANSWER:** This paragraph raises no allegations against the State and accordingly requires no response. Further, the law speaks for itself.

79. Lake County's judicial nominating provisions in Ind. Code Article 33-33-45 are special legislation because they apply only in Lake County.

**ANSWER:** This paragraph states a legal conclusion and accordingly requires no response. To the extent this paragraph requires a response, deny that Indiana Code Article 33-33-45 violates the Indiana Constitution.

80. Lake County's judicial nominating provisions in Ind. Code Article 33-33-45 violate Indiana Constitution Article 4, Section 23 because there is nothing unique about Lake County that requires Superior Court judges being nominated rather than elected.

**ANSWER:** This paragraph states a legal conclusion and accordingly requires no response. To the extent this paragraph requires a response, deny that Indiana Code Article 33-33-45 violates the Indiana Constitution.

WHEREFORE, Plaintiffs seek a declaratory judgment that: (1) the judicial nominating provisions of Ind. Code Article 33-33-45 violate Indiana Constitution Article 4, Section 23; (2) future openings on the Lake County Superior Court will be filled by election, as occurs in 88 counties in Indiana currently; and (3) for all other just and proper relief.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that Indiana Code Article 33-33-45 violates Article 4, section 23 of the Indiana Constitution and deny that Plaintiffs are entitled to the requested relief.

WHEREFORE, and applicable to all Counts of this lawsuit, Plaintiffs seek the following relief through this suit:

- a) Plaintiffs seek only prospective relief;
- b) Plaintiffs seek to enjoin the Lake County JNC from seating new members under the unconstitutional HB 1453;
- c) Plaintiffs seek to enjoin the Lake County JNC from selecting future Lake Superior Court judge nominees;
- d) Plaintiffs seek an order that future Lake County Superior Court openings will be filled by election, not selection;
- e) Alternatively, Plaintiffs seek an order requiring the selection of all judges in all Indiana counties by judicial nominating commissions;
- f) Plaintiffs do not challenge the nomination and selection of current or former Lake County Superior Court judges;
- g) Plaintiffs do not seek damages; and
- h) Plaintiffs seek their costs and attorneys' fees bringing this suit.

**ANSWER:** This paragraph states a request for relief which requires no answer. To the extent this paragraph requires a response, deny that Plaintiffs are entitled to the requested relief.



**General Denial**

Any allegations in the Complaint that are not specifically admitted or denied are denied. The State reserves the right to amend its Answers as the interest of justice requires.

**Affirmative Defenses**

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. Some or all of the Plaintiffs may lack standing.
3. Plaintiffs are not entitled to attorneys' fees for claims arising under Indiana, not federal, law.

Respectfully submitted,

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