

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,)

CASE NO. 2:21-cv-00160-PPS-JEM

LAKE COUNTY JUDICIAL)
NOMINATING COMMISSION,)
STATE OF INDIANA, INDIANA)
SECRETARY OF STATE)
HOLLI SULLIVAN, in her)
official capacity, and)
THE LAKE COUNTY)
BOARD OF ELECTIONS,)

Defendants.)

**ANSWER TO AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

The State of Indiana and the Indiana Secretary of State in her official capacity (collectively, “State Defendants”), by counsel, respectfully answer Plaintiffs’ complaint as follows:

Introduction

When Congress enacted the Voting Rights Act (“VRA”) in 1965, all Indiana residents enjoyed full voting rights for judges. From 1950 to 1970, the black populations in Marion and Lake Counties dramatically increased. It is in this context that in the 1970s the Indiana Legislature began abridging judicial voting rights—but only in high minority counties.

Today, approximately 82% of white Indiana residents continue to enjoy the full

voting rights they enjoyed when the VRA was enacted. But the story is not the same for minority voters. In Lake, Marion, and St. Joseph Counties, voters now only have an abridged voting right. They do not vote in free and open elections. Rather, they only get to vote on whether to retain judges appointed by the Indiana Governor. This selective abridgment of voting rights has had an extreme and disparate impact on minority voters. Today, approximately 66% of Indiana black residents and 49% of Indiana minority residents have lesser and unequal voting rights.

Selectively restricting voting rights in only certain high minority parts of the State violates the Indiana Constitution and it violates the VRA.

ANSWER: This paragraph is an introductory statement describing Plaintiffs' allegations and legal theories and accordingly does not require a response. To the extent a response is required, State Defendants deny that the challenged statutes violate the Voting Rights Act or the Indiana Constitution.

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 allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, admit that the City of Hammond is a municipality in Lake County, Indiana. State Defendants lack sufficient knowledge to admit or deny any other allegations in this paragraph.

2. Hammond frequently litigates in Lake County Superior Courts.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in 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 allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

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

ANSWER: This paragraph asserts a legal argument and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

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

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

6. Lonnie Randolph ("Randolph") is an Indiana Senator from Lake County, Indiana; is black, a member of a minority group; is an attorney; resides in Lake County,

Indiana; and is a registered voter in Lake County, Indiana.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

7. Eduardo Fontanez (“Fontanez”) is Hispanic, a member of a minority group, and is a registered voter in Lake County, Indiana.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

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

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

9. 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 allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants admit that the Indiana General Assembly repealed Indiana Code section 33-33-45-43 in 2011 but lack sufficient information to admit or deny any remaining

allegations in this paragraph.

10. Fontanez, Randolph, and McDermott previously had the right to vote for Lake County Superior Court judges of the county division, they voted in those elections, but the right to vote in those elections was taken away from them.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants admit that the Indiana General Assembly repealed Indiana Code section 33-33-45-43 in 2011 but lack sufficient information to admit or deny any remaining allegations in this paragraph.

11. 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: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

12. Fontanez, Randolph, and McDermott now only enjoy the lesser voting right of voting whether to retain judges.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants deny that the challenged statute is unconstitutional or otherwise unlawful but lack sufficient information to admit or deny any remaining allegations in this paragraph.

13. The State of Indiana is a proper defendant for a claim under the VRA because in enacting the VRA Congress abrogated sovereign immunity and the State of Indiana has enacted judicial voting laws that violate the VRA.

ANSWER: This paragraph is a legal argument that does not require a response. To the extent a response is required, deny.

14. The Lake County Board of Elections is a local governmental unit that oversees elections in Lake County Indiana and administers the retention votes for Lake County Superior Court judges. Ind. Code § 33-33-45-42(e).

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. The statute speaks for itself. To the extent a response is required, State Defendants deny any allegations inconsistent with the statute.

15. The Indiana Secretary of State is Indiana's chief election official, Ind. Code § 3-6-3.7-1, and she receives statements from judges wishing to be placed on the retention vote ballot. Ind. Code § 33-33-45-42(f).

ANSWER: This paragraph is a legal assertion and accordingly does not require a response. The statute speaks for itself. To the extent a response is required, State Defendants deny any allegations inconsistent with the statute.

16. The Lake County Judicial Nominating Commission ("Lake County JNC") is local government entity created by the Indiana Legislature.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. The law speaks for itself. To the extent a response

is required, State Defendants deny any allegations inconsistent with the statute.

17. 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 is a legal assertion and accordingly does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations inconsistent with the statute.

18. 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 is a legal assertion and accordingly does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations inconsistent with the statute.

FACTUAL BACKGROUND

Current and Historical Method for Electing and Selecting Superior Court Judges

19. When the VRA was enacted in 1965, all Superior Court judges in Indiana were elected in free and open elections, including in Lake County.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

20. 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 is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

21. 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 is a legal assertion that accordingly does not require a response. To the extent a response is required, deny any allegations that is inconsistent with the applicable statutes and deny that the challenged statute is unconstitutional or otherwise unlawful.

22. Lake County residents were then given the lesser and unequal voting right to vote on whether to retain judges appointed by the Governor, but Lake County residents could not run for judge or vote for the judge of their choice.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

23. 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 is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

24. 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 abridging Lake County residents' voting rights.

ANSWER: This paragraph contains a legal assertion that accordingly does not require a response. To the extent a response is required, admit that the Legislature repealed Indiana Code section 33-33-45-43 in 2011 but deny that the repeal was unconstitutional or otherwise unlawful.

25. Today, 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 contains a legal assertion that accordingly does not require a response. The statutes speak for themselves. To the extent a response is required, deny any allegations inconsistent with the statutes.

26. Today, Lake County residents do not have the right to elect Superior Court Judges of their choice or to run for election.

ANSWER: This paragraph is a legal assertion that does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

27. Instead, they only vote on whether to retain judges the Governor appoints.
Ind. Code § 33-33-45-42.

ANSWER: This paragraph contains a legal assertion that accordingly does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations inconsistent with the statute.

Minority Voters in Indiana Have Been Systematically Disenfranchised

28. According to 2020 population data, Lake County has a minority population of 247,594 and approximately 50% of Lake County residents are minorities

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

29. If elections for Superior Court Judges in Lake County were free and open, as they are in most of the State, minority residents would be able to elect judges of their choice.

ANSWER: This paragraph asserts a legal argument and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

30. Instead, the Governor who is elected in a state-wide election chooses Superior Court judges in Lake County.

ANSWER: Admit that the elected Governor of Indiana appoints Superior Court judges in Lake County, but deny any allegations that is inconsistent with the applicable statutes

and deny that the challenged statute is unconstitutional or otherwise unlawful.

31. While minorities make up almost half of Lake County's population, the State of Indiana as whole is 77% white.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

32. This is an extreme form of vote dilution.

ANSWER: This paragraph asserts a legal argument and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

33. In addition to Lake County, the Indiana Legislature has abridged voting rights in Marion and St. Joseph Counties.

ANSWER: This paragraph asserts a legal argument and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

34. According to 2020 population data, Marion County had a minority population of 383,538, which is approximately 49% of its population, and St. Joseph County had a minority population of 84,356, which is approximately 31% of its population.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

35. According to 2020 census data, Lake, Marion, and St. Joseph Counties are the most diverse counties.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

36. The only county that is even close to Marion, Lake, and St. Joseph Counties, in terms of percentage of minority residents, is Allen County, with approximately 30% of its population being minorities, and the Legislature has implemented a JNC in Allen County as well, followed by non-partisan elections.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants admit that there is a judicial nominating commission in Allen County but lack sufficient information to admit or deny any remaining allegations in this paragraph.

37. According to 2020 population data, approximately 49% of minority residents in Indiana live in Lake, Marion, and St. Joseph Counties.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

38. Approximately 66% of black residents in Indiana have abridged voting rights for Superior Court Judges.

ANSWER: This paragraph asserts a legal argument and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs have stated a claim upon which relief can be granted.

39. In contrast, approximately 82% of white, non-Hispanic voters in Indiana enjoy full election rights for their Superior Court judges.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

COUNT I—THE LESSER AND UNEQUAL VOTING RIGHTS IN LAKE COUNTY VIOLATE THE VRA

40. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-39.

ANSWER: State Defendants incorporate their answers to paragraphs 1-39.

41. The State of Indiana is only a Defendant for Count I, which is brought under the VRA.

ANSWER: Admit that Plaintiffs named the State of Indiana as a Defendant, but deny that the State of Indiana is a proper defendant.

42. 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 that does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations that are inconsistent with the statute.

43. “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 that does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations that are inconsistent with the statute.

44. 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 is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

45. In select counties with high minority populations (including Lake County),

residents only retain the lesser and unequal right to vote in retention elections for Superior Court judges.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

46. Residents in other counties in Indiana have full voting rights for Superior Court judges.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

47. Voting for Superior Court Judges is not equally open to all Indiana residents.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

48. By selectively implementing lesser voting rights only in high minority counties, Indiana has imposed a substantial burden on minority residents.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

49. This is not a mere inconvenience, but rather entirely blocks the rights of

voters in high minority counties to vote on Superior Court Judges of their choice or to run for election.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

50. The lesser and unequal voting rights afforded to select minority voters is a deviation from what existed in 1965 when Congress enacted the VRA and does not have a long pedigree, since all voters enjoyed full voting rights then.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that that the challenged statute is unconstitutional or otherwise unlawful.

51. In 1982, when the VRA was amended, Marion County residents still elected their Superior Court Judges, though Marion County's system was later declared unconstitutional for different reasons.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants deny that Plaintiffs have stated a claim upon which relief can be granted.

52. Likewise, in 1982, Allen County voters also elected their Superior Court Judges.

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State

Defendants deny that Plaintiffs have stated a claim upon which relief can be granted.

53. So the current state of abridged voting rights for voters in high minority areas is a stark departure from what existed in Indiana in 1965 and 1982.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, State Defendants deny that Plaintiffs have stated a claim upon which relief can be granted.

54. The size of the disparities imposed on minorities by Indiana's differential voting procedures is significant because 66% of Indiana's black residents live in Lake, Marion, and St. Joseph Counties, and 49% of Indiana's minorities live in those counties.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

55. Indiana does not have any alternate procedure that would allow minority voters in Lake, Marion, and St. Joseph Counties to participate in voting for Superior Court Judges.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

56. The State has no interest in imposing lesser voting rights only in Lake, Marion, and St. Joseph Counties because the Indiana Constitution mandates that all Circuit Court judges are elected and Superior Court Judges are elected in the vast majority

of Indiana counties.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the State imposes lesser voting rights.

57. 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 is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

58. Voters in Lake County have no incentive to vote to not retain Superior Court Judges because this will not result in them being able to participate equally in the selection and election of a replacement judge, but will instead only result in the JNC selecting new nominees and the Governor appointing one to replace the non-retained judge.

ANSWER: This paragraph is speculative and does not allege anything against State Defendants. To the extent a response is required, State Defendants lack sufficient knowledge or belief to admit or deny any allegations in this paragraph.

59. The Defendants should be enjoined from placing any Lake Superior Court on a ballot for a retention vote.

ANSWER: This paragraph is a legal assertion and a request for relief and accordingly

does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful and deny that Plaintiffs are entitled to any relief.

60. The State should be given the opportunity to enact judicial voting procedures in Indiana that do not violate the VRA, presumably free and open elections for Superior Court Judges state-wide.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful and deny that Plaintiffs are entitled to any relief.

WHEREFORE, Plaintiffs seeks an order doing the following: (1) declaring that the lesser and unequal voting rights for Lake County Superior Court judges violate the VRA; (2) enjoining the placement of any Lake County Superior Court judge position on a ballot for a retention vote; (3) providing the State with an opportunity to enact a voting procedure for Lake County Superior Court judges that does not violate the VRA, which would presumably be free and open elections; and (4) for all other just and proper relief.

ANSWER: This paragraph is a request for relief and accordingly does not require a response. To the extent a response is required, deny that the challenged statute violates the Voting Rights Act or is otherwise unlawful and deny that Plaintiffs are entitled to any relief.

COUNT II – DECLARATORY JUDGMENT THAT THE LAKE COUNTY JNC SELECTION PROCESS AND RETENTION VOTES VIOLATE INDIANA CONSTITUTION ARTICLE 4 SECTION 23

61. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-60 as if fully set forth herein.

ANSWER: State Defendants incorporate their answers to paragraphs 1-60.

62. 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 that does not require a response. The Indiana Constitution speaks for itself. To the extent a response is required, deny any allegations that are inconsistent with the cited constitutional provision.

63. The JNC selection process for Superior Court judges is only in place in Lake, Marion, St. Joseph, and Allen Counties.

ANSWER: Admit that only Lake, Marion, St. Joseph, and Allen Counties have a statutorily created judicial nominating commission.

64. Retention votes for Superior Court judges, as opposed to full elections, are only in place in Lake, Marion, and St. Joseph Counties.

ANSWER: Admit that voters may cast retention votes for Superior Court judges in Lake, Marion, and St. Joseph counties. The term “full elections” is vague and accordingly State Defendants lack sufficient information to admit or deny any remaining allegations in this paragraph.

65. The Lake County JNC selecting nominees for the Governor to appoint to

the Lake County Superior Court followed by a retention vote is special legislation because it does not apply uniformly state wide.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, admit that the challenged statute does not apply statewide but deny that the challenged statute is unconstitutional special legislation.

66. This process is unconstitutional special legislation because there is nothing unique about Lake County that requires a JNC to select nominees to be appointed by the Governor to the Lake County Superior Court followed by retention votes.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny.

WHEREFORE, Plaintiffs seek a declaratory judgment from the Court that: (1) The process for selecting, appointing, and retaining Lake County Superior Court judges 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 89 counties in Indiana currently; and (3) for all other just and proper relief.

ANSWER: This paragraph is a request for relief and accordingly does not require a response. To the extent a response is required, deny that the challenged statute violates the Voting Rights Act or is otherwise unlawful and deny that Plaintiffs are entitled to any relief.

COUNT III– DECLARATORY JUDGMENT THAT IND. CODE § 33-33-45-28 VIOLATES INDIANA CONSTITUTION ARTICLE 1 SECTION 23

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

ANSWER: State Defendants incorporate their answers to paragraphs 1-66.

68. 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 that does not require a response. The Indiana Constitution speaks for itself. To the extent a response is required, deny any allegations that are inconsistent with the cited constitutional provision.

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

ANSWER: This paragraph does not allege anything against State Defendants and accordingly does not require a response. To the extent a response is required, State Defendants lack sufficient information to admit or deny any allegations in this paragraph.

70. Under Ind. Code § 33-33-45-28, attorneys in Lake County no longer have the privilege of electing or selecting members to the Lake County JNC.

ANSWER: This paragraph is a statement of law that does not require a response. The statute speaks for itself. To the extent a response is required, deny any allegations that

are inconsistent with the statute.

71. Ind. Code § 33-33-45-28 violates Ind. Const. Art. 1 § 23 because under it attorneys in Lake County no longer have privileges afforded to attorneys in Marion and Allen Counties.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

WHEREFORE, Plaintiffs seek a declaratory judgment that: (1) Ind. Code § 33-33-45-28 violates Indiana Constitution Article 1, Section 23; and (2) for all other just and proper relief.

ANSWER: This paragraph is a request for relief and accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful and deny that Plaintiffs are entitled to any relief.

**COUNT IV- 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: State Defendants incorporate their answers to paragraphs 1-71.

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

ANSWER: State Defendants lack sufficient information to admit or deny the allegations in this paragraph.

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

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

75. The judicial nomination and retention vote 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-nine other counties in Indiana enjoy this privilege.

ANSWER: This paragraph is a legal assertion that accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful.

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 89 counties in Indiana currently; and (3) for all other just and proper relief.

ANSWER: This paragraph is a request for relief and accordingly does not require a response. To the extent a response is required, deny that the challenged statute is unconstitutional or otherwise unlawful and deny that Plaintiffs are entitled to any 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 a declaration that retention votes for Lake Superior Court judges violate the VRA;
- c) Plaintiffs seek to enjoin Lake County Superior Court judges from being placed on ballots for retention votes;
- d) Plaintiffs seek to enjoin the Lake County JNC from selecting future Lake Superior Court judge nominees;
- e) Plaintiffs seek an order that future Lake County Superior Court openings will be filled by election, not selection and retention votes;
- f) Plaintiffs do not challenge the nomination and selection of current or former Lake County Superior Court judges; and
- g) Plaintiffs do not seek damages.

ANSWER: This paragraph and its subparts is a request for relief and accordingly does not require a response. To the extent a response is required, deny that Plaintiffs are entitled to any relief.

GENERAL DENIAL

State Defendants deny all allegations that are not specifically admitted above.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. One or more of Plaintiffs' claims are not justiciable.

3. Plaintiffs cannot establish any discriminatory conduct occurred or will occur as a result of the challenged statutes.

4. Plaintiffs' rights, privileges, and immunities secured under the Constitution or laws of the United State or the State of Indiana have not been violated by any alleged action, inaction, or omission of Defendants. Defendants at all times acted reasonably, without malice, and in good faith.

5. The State of Indiana is immune from suit because of sovereign immunity secured by the Eleventh Amendment of the Constitution.

6. State Defendants reserve the right to assert any and all additional affirmative and other defenses that may become applicable based on information learned during discovery or for other appropriate reasons as required by the interests of justice.

WHEREFORE State Defendants respectfully request that Plaintiffs take nothing by their complaint, that judgment be entered in favor of State Defendants and against Plaintiffs, and any other such relief as the Court deems just and appropriate.

Respectfully submitted,

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Indiana Attorney General
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Date: August 31, 2022

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