UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF HAMMOND, et al.,	)	
	)	
Plaintiffs,	)	CASE NO. 2:21-cv-00160-PPS-JEM
	)	
vs.	)	
	)	
LAKE COUNTY JUDICIAL NOMINATING COMMISSION, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY TO THE STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Plaintiffs respectfully submit their reply to the State Defendants' Opposition to Plaintiffs' Motion for Summary Judgment.

A. The State's arguments about judicial appointments are misplaced.

The State first argues that "Lake County has a hybrid system that is not under the purview of Section 2 because the appointment is not an election." (Dkt. 99 p.3.) Plaintiffs do not challenge the appointment of judges by the Governor. (Dkt. 85 p.9 (describing how the Governor appoints judges in all counties, but in Lake County that appointed judge only faces a retention vote).)

The State then argues that *Bradley v. Work*, 154 F.3d 704, 710 (7th Cir. 1998), involved "the same claims as Plaintiffs make here." (Dkt. 99 p.4.) This is not accurate. *Bradley* addressed "a § 2 vote dilution claim." 154 F.3d at 710. Plaintiffs do not bring a vote-dilution claim. They claim that the lesser voting rights granted to voters in Lake County violates the Voting Rights Act ("VRA") under the *Brnovich* factors. (Dkt. 85 pp.11-21.) *Bradley* expressly left open the possibility that "[f]uture litigation may prove that the 'totality of the circumstances' under the revised system shows a violation of the mandates of the Voting Rights Act." *Bradley*, 154 F.3d at 710. But

the Court in *Bradley* held that the "retention elections stage of the Lake County process satisfies this definition of voting, and thus is governed by § 2 of the Voting Rights Act." *Id.* at 709.

B. Plaintiffs are entitled to summary judgment on their VRA claim.

The central theme in the State's Opposition is that this Court should look only to the state judicial circuit that encompasses Lake County to determine whether the VRA has been violated. But superior courts are state courts. The Indiana Legislature divided Indiana into state judicial circuits. The State's premise is flatly rejected by *Brnovich v. Democratic National Committee*, 141 S.Ct. 2321, 2339 (2021), because the United States Supreme Court directed that "courts ***must*** consider the opportunities provided by a State's ***entire*** system of voting." So, contrary to the State's assertion, this Court must consider Indiana's entire system of voting for superior court judges, and when this is done, the violation of the VRA is clear.

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In the Opposition, the State repeatedly argues that this Court should focus exclusively on how voters that reside in Lake County vote for superior court judges: "[h]ow other counties in Indiana select their superior court judges is not the question at issue—the question is whether all registered voters who vote for Lake County superior court judges have the same burdens." (Dkt. 99 pp.5-6.) The State appears to believe that superior courts in Indiana are county courts and that counties decide how they will elect superior court judges. The State is wrong on both counts. Superior Court judges are ***state*** officials elected in ***state*** judicial circuits. Indiana "trial courts are ***state*** entities." *Lake Cnty. Bd. of Comm'rs v. State*, 181 N.E.3d 960, 967 (Ind. 2022) (emphasis added). The Indiana Legislature has divided Indiana into ninety-one state judicial circuits. Ind. Code § 33-33-78-2 ("Switzerland County constitutes the ninety-first judicial circuit."); Ind. Code Art. 33-33. While the state judicial circuits generally correlate to the boundaries of a county, the seventh state judicial circuit includes the geographic territory of two counties. Ind. Code §33-33-

15-1(a). The Indiana Legislature then provides for differential voting rights in different state judicial circuits. *Compare* Ind. Code § 33-33-45-42(a) (providing for retention votes for superior court judges in the thirty-first judicial circuit (Lake County)), *with* Ind. Code § 33-33-2-9 (providing for election of superior court judges in the thirty-eighth judicial circuit (Allen County)).

The State's theory that this Court should focus exclusively on Lake County fails for two primary reasons. First, the plain language of the VRA provides a court must evaluate whether "the political processes leading to nomination or election ***in the State*** or political subdivision are not equally open." 52 U.S.C. 10301(b)(emphasis added). Because superior courts are state courts, for this Court to determine whether votes on superior court judges "are not equally open," this Court must look to the processes "***in the State***."

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Second, and consistent with this, *Brnovich* flatly rejects the State's theory that this Court should focus exclusively on the state judicial circuit that encompasses Lake County when deciding whether this differential voting scheme violates the VRA. In *Brnovich*, "in some counties, voters who choose to cast a ballot in person on election day must vote in their own precincts or else their ballots will not be counted." 141 S.Ct. at 2330. In evaluating the totality of the circumstances, the Supreme Court dictated that "courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision." *Id.* at 2339. "This follows from § 2(b)'s reference to the collective concept of a State's 'political processes' and its 'political processes' as a whole." *Id.* "[O]ne of the available options cannot be evaluated without also taking into account the other available means." *Id.* So, contrary to the State's contention, this Court must consider the opportunities to vote for state superior court judges across the entire state of Indiana, not just the state judicial circuit that encompasses Lake County.

In the state judicial circuit that encompasses Lake County, voters only vote on whether to retain appointed superior court judges. Ind. Code § 33-33-45-42(a). In other state judicial circuits, voters vote and actually choose judges in full elections. *See, e.g.*, Ind. Code § 33-33-9-9. "When an election law reduces or forecloses the opportunity for electoral choice, it restricts a market where a voter might effectively and meaningfully exercise his choice between competing ideas or candidates, and thus severely burdens the right to vote." *Common Cause Ind. v. Individual Members of the Ind. Election Comm'n*, 800 F.3d 913, 928 (7th Cir. 2015). So, voting rights in the state judicial circuit that encompasses Lake County are severely restricted. *Id.* And while there are "other available means" of voting for judges in Indiana, *Brnovich*, 141 S.Ct. at 2339, the only way a Lake County resident could avail themselves of these "other available means" of voting is by moving to another county at least thirty days before an election. Ind. Code § 3-7-13-1. As the Seventh Circuit has recognized, "citizens lumped into a district can't extricate themselves except by moving." *Frank v. Walker*, 768 F.3d 744, 753 (7th Cir. 2014). That is an extraordinary burden to exercising a full right to vote, and this burden is determined by what a Lake County voter would need to do to avail themselves of "other available means" of voting.

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The State relies upon *Quinn v. Illinois*, 887 F.3d 322 (7th Cir. 2018), for its theory that this Court should exclusively focus on Lake County. That case involved a challenge to appointments to Chicago's school board. *Id.* at 323. *Quinn* held that "unless an office is elected, § 2 as a whole does not apply." *Id.* at 325. *Quinn* stated that "Black and Latino citizens do not vote for the school board in Chicago, but neither does anyone else. Every member of the electorate is treated identically, which is what § 2 requires." *Quinn*, 887 F.3d at 325. *Quinn* is distinguishable because it involved an appointed local position, and it may be appropriate in those circumstances to focus only on the locality. But this case involves a state office that all voters across the state vote on.

The Supreme Court has dictated that in circumstances such as these "courts must consider the opportunities provided by a State's entire system of voting." *Brnovich*, 141 S.Ct. at 2339.

Brnovich dictates that the "size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider." *Id.* Based on its mistaken myopic focus on Lake County, the State never disputes that Indiana's two-tiered system of voting for superior court judges results in shocking racial disparities. (Dkt. 99 p.7.) The State not dispute that 65.94% of black voting age residents in Indiana live in state judicial circuits with lesser voting rights. (Dkt. 86 ¶ 13.) The State does not dispute that 81% of Indiana's voting age white residents live in judicial circuits where superior court judges are elected in contested elections. (*Id.* at ¶ 37.) These are extraordinary disparities, which the State does not dispute.

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Under the State's theory, a state would be free to implement draconian voter restrictions only in high minority voting precincts with impunity. It cites nothing that remotely supports this position. *Brnovich* used an example of "a museum in a particular city [that] is open to everyone free of charge every day of the week for several months." *Brnovich*, 141 S.Ct. at 2338 at n.11. But what if the museum was only open to residents that resided in predominantly white neighborhoods, and residents in predominantly minority neighborhoods could only enter limited parts of the museum. Under the State's theory, that would be fine. But under *Brnovich*, if this two tiered museum entry policy resulted in stark racial disparities, it would violate the VRA.

Brnovich dictates that "the degree to which a voting rule departs from what was standard practice when § 2 was amended in 1982 is a relevant consideration." *Brnovich*, 141 S.Ct. at 2338. The State does not dispute that in 1982 only Lake and St. Joseph Counties had retention votes for superior court judges. (Dkt. 85 p.16.) So, this was not "standard practice."

As to the State's interest, the State contends that Lake County being "highly populated," with a "heavy caseload" somehow requires judicial retention votes, rather than open elections. (Dkt. 99 p.8.) A retention vote for superior court judges, rather than an open election, does not alleviate a heavy caseload in any way. Both Hamilton and Allen Counties have high populations, but they retain full voting rights. (Dkt. 84-10 pp.3, 10.) The State cites a survey that allegedly showed dissatisfaction with judicial elections in Lake County, (Dkt. 99 p.8), but the State offers no evidence that similar dissatisfaction existed in Marion or St. Joseph Counties, which also receive lesser voting rights. The State contends that a Missouri Plan is necessary for "maintaining public confidence, judicial independence, impartiality, fairness, and judicial accountability." (Dkt. 99 p.8.) But this does nothing to justify implementing such a system with lesser voting rights only in high minority counties. The State's proffered justifications are not coherent, let alone compelling.

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In conclusion, the State's Opposition confirms that this Court should grant Plaintiffs summary judgment that Indiana's differential voting scheme violates the VRA.

C. Plaintiffs are entitled to summary judgment on the state-law claims.

1. Plaintiffs' Eleventh Amendment arguments are misguided.

The State argues that this Court should dismiss the Plaintiffs' state constitutional claims because the State is entitled to Eleventh Amendment immunity on those claims, without addressing whether Defendant Lake County Board of Elections and Registration ("Elections Board") also enjoys such immunity. (Dkt. 99 at 10-11.) The State further argues that they have "not waived immunity and Congress has not abrogated the Eleventh Amendment immunity." (*Id.*)

In the original Complaint, Plaintiffs did not name the State a defendant. (*See* Dkt. 1.) But Plaintiffs provided notice of constitutional challenge to the State. (Dkt. 6.) The State then "request[ed] permission to intervene" from this Court to "defend the constitutionality of the challenged State laws"; and this Court permitted the State's intervention. (Dkt. 13 at 1-2; Dkt. 15.) At the same time, the State filed an answer to the Plaintiff's complaint. (Dkt. 14.)

In the Amended Complaint, Plaintiffs expressly named the State, but only for the VRA claim, and the Secretary of State as defendants. (Dkt. 30; CITE.) The State conceded it is a proper defendant for the VRA claim. (*See* Dkt. 58 at 6; Dkt. 82 at 3.) And the State did not move to dismiss the state constitutional claims on the basis of Eleventh Amendment sovereign immunity until their response brief to Plaintiffs' motion for summary judgment. As explained below, the Secretary of State has waived any sovereign immunity defense, but regardless, the Elections Board is a proper defendant for the state-law claims and the State does not argue otherwise.

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"[T]he Supreme Court has repeatedly recognized that sovereign immunity is not absolute and that a state can waive sovereign immunity and consent to suit in federal court." *Plain Loc. Sch. Dist. Bd. of Educ. v. DeWine*, 486 F. Supp. 3d 1173, 1186 (S.D. Ohio 2020) (citing several U.S. Supreme Court decisions). A "state can waive its sovereign immunity though its litigation conduct." *Id.* at 1187. For example, if the state "appear[s] without objection and defend[s] the suit on the merits," that is considered a waiver of Eleventh Amendment Immunity. *Id.* (cleaned up).

The Seventh Circuit has found that "[w]hen a state chooses to intervene in a federal case, it waives its immunity for purposes of those proceedings." *Bd. of Regents of Univ. of Wis. Sys. v. Phoenix Intern. Software, Inc.*, 653 F.3d 448, 463 (7th Cir. 2011). Additionally, in *Plain Local School District Board*, the district court found sovereign-immunity waiver after noting that the State Board Defendants had briefed issues of standing and ripeness and moved for dismissal on

those grounds but had not moved "at that time to dismiss on the additional basis of sovereign immunity." 486 F. Supp. 3d at 1189. The district court further noted that "at no time during the discovery period did the State Board Defendants raise the issue of sovereign immunity—in connection with a discovery dispute or otherwise." *Id.* at 1190. This court should reach the same result as in *Board of Regents* and *Plain Local School District Board* and find waiver.

The State's conduct from the inception of the suit—most notably its motion to intervene in October 2021—to its failure to meaningfully argue the issue of sovereign immunity until the State's response brief to Plaintiffs' motion for summary judgment nearly two years later—points toward waiver of any sovereign immunity defense. Importantly, in the State's summary judgment brief, its does not once mention Eleventh Amendment sovereign immunity but rather argued (incorrectly) that this Ccourt could not hear the state constitutional challenges for other reasons. (*See* Dkt. 82 at 2-4.) Here, the State made a choice to intervene once the original complaint was filed; and based on that choice, the Plaintiffs in their amended complaint expressly named, as defendants, both the State and the Secretary of State. Given these facts, the Secretary of State should remain as a defendant for all claims; and this Court should decide the merits of the state constitutional claims, should it find against the Plaintiffs on their VRA claim.

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The State intervened in this matter to defend the constitutionality of state statutes. The State Defendants cannot now claim that this Court cannot decide those claims. In arguing that this Court cannot decide those claims, the State entirely ignores that the Elections Board is also a defendant in this case. The State does not make any argument that the Eleventh Amendment bars Plaintiffs from naming the Elections Board as a defendant. And, as explained in the reply to the opposition of the Election Board, the Eleventh Amendment does ***not*** bar suit against the Elections Board, which is a local government entity. As a result, even if the State had not waived this issue, it would

not matter: the State intervened in this matter to defend the constitutionality of these statutes, and thus is a proper defendant to those claims.

2. Plaintiffs are entitled to summary judgment on their special legislation claim.

The State has not carried its burden, as proponents of the special legislation, to show the challenged law is constitutional. This is explained below, and the Plaintiffs also incorporate their previously briefed special-legislation arguments. (*See* Dkt. 85 at 22-30; Dkt. 100 at 18-28.)

The State first argues that the legislation is justified because Lake County "is the second most populous county in the State." (Dkt. 99 at 12.) The State, however, fails to explain how the inherent characteristic of being "the second most populous county in the State" is ***linked*** to the legislative fix of an appointment-followed-by-retention-votes scheme. *See City of Hammond v. Herman & Kittle Props., Inc.*, 119 N.E.3d 70, 85 (Ind. 2019) (explaining that the special legislation's proponent must "demonstrat[e] a link between the class's unique characteristics and the legislative fix").

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Rather, the State believes that the Indiana Supreme Court case of *State v. Buncich*, 51 N.E.3d 136 (Ind. 2016), authorizes any special legislation directed at Lake County due to Lake County's "large population." (Dkt. 99 at 12.) The State misunderstands *Buncich*, which certainly did not offer the legislature a blank check to pass special legislation aimed at Lake County solely based on the fact that Lake County has the second largest population. Rather, in *Buncich*, the issue was whether certain special legislation that "created a Small Precinct Committee in Lake County" was constitutional. 51 N.E.3d at 138. The legislation "directed [the committee] to identify precincts with fewer than 500 active voters that may be amenable to consolidation, a measure intended to reduce election costs." *Id.* The Indiana Supreme Court found the special legislation constitutional because "at the time the Statute was enacted, Lake County had more small precincts than the other

seven most populous counties in Indiana combined," and this "abnormal number of small precincts . . . [was] sufficiently distinctive to justify the Statute." *Id.* at 143.

In other words, in *Buncich*, the proponent of the special legislation was able to establish the law's constitutionality because "a uniquely large number of small precincts in Lake County directly related to the special legislation reducing the number of small precincts." *Herman & Kittle*, 119 N.E.3d at 86 (citing *Buncich*, 51 N.E.3d at 143). Here, on the other hand, the State makes no attempt to actually link Lake County's inherent characteristic of being the second most populous county to the legislative fix of retention voting. To state it another way, the State fails to explain how the retention-voting scheme imposed on Lake County has anything to do with the county's status as being the second most populous in Indiana. This was the exact issue in the more recent *Herman & Kittle* decision, where Herman & Kittle, as the proponent of special legislation, pointed to unique characteristics of certain cities that were receiving preferential treatment through a law but failed to establish the link between "those characteristics and the [law's] preferential treatment." 119 N.E.3d at 87. And, regardless, population cannot be an appropriate justification for imposing an appointment-followed-by-retention-votes scheme when such a scheme is imposed on the first, second, and fifth most populous counties, but for some unexplained reason, not imposed on the third and fourth most populous counties. (*See* Dkt. 85 at 19 (explaining the order of counties with highest voting age population as Marion (highest), Lake, Allen, Hamilton, and St. Joseph)).

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The State next claims that the special legislation is constitutional because "Lake County has almost as many annual total cases as Marion County." (Dkt. 99 at 12.) Again, the State fails to explain how the inherent characteristic of having "almost as many annual total cases as Marion County" is linked to the legislative fix of a retention-voting scheme. And, again, the State misinterprets an Indiana Supreme Court decision—this time, *Williams v. State*, 724 N.E.2d 1070 (Ind.

2000)—as offering some blank check to impose special legislation on Lake County because of a large docket. In *Williams*, the Indiana Supreme Court evaluated the constitutionality of special legislation that provided "for the appointment of magistrates only in Lake County courts." 724 N.E.2d at 1086. The law was deemed constitutional because "[l]arger counties, or those with larger case dockets, have a need for the assistance of judges and magistrates." *Id.* at 1086. Here, on the other hand, the State fails to explain why Lake County's large docket translates into a "need" for a retention-only voting scheme. That is, how does imposing lesser voting rights on Lake County citizens help with Lake County's large docket? Just as in *Herman & Kittle*, the proponent of the special legislation here (the State) has failed to link the inherent characteristic of Lake County's "almost as many total cases as Marion County" to the legislative fix of a retention-only voting scheme for Lake County superior court judges.

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The State's third attempt to justify the special legislation is by pointing to a 1972 report that stated Lake County judges and lawyers were dissatisfied with partisan elections because those elections led to various issues within Lake County courts. (Dkt. 99 at 13.) First, the State does not explain how these issues are unique or inherent to Lake County; all that the State has offered is one report on one county—no evidence that proves other counties do not also deal with issues such as "inconsistent application of Indiana's trial rules" or "unequal caseloads . . . among judges." (*See* Dkt. 81-4.) In fact, the State's own statement of facts reveals that partisan elections have caused issues throughout Indiana—not just in Lake County and its retention-vote counterparts of Marion and St. Joseph counties. (*See* Dkt. 83 ¶¶ 5-6, 11.) In other words, while Lake County may have issues affecting its judicial system, those issues are no "different than those faced" by other counties in the State. *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe Cnty.*, 849 N.E.2d 1131, 1138 (Ind. 2006).

But even assuming the State has met its initial burden by linking certain unique inherent characteristics of Lake County to the legislative fix, the State cannot show that those characteristics are defining enough to justify the imposition of an appointment-followed-by-retention-votes scheme on only Lake County and its retention-vote county counterparts (Marion and St. Joseph counties). In other words, the State has failed to explain why the appointment-followed-by-retention-votes scheme cannot be made applicable throughout the State. The State's own cited sources advocate for a general law, not just an appointment-followed-by-retention-votes scheme on a select few counties. (*See* Dkt 81-3 at 4; 81-4 at 11-12, 81-5 at 28.) Given the State's own cited sources, the State cannot explain why a general law would be "inoperative in portions of the state" or "injurious or unjust" if imposed on all counties, *Buncich*, 51 N.E.3d at 141. The State offers one conclusory statement addressing why a general law cannot be made applicable: "While merit selection may be an option for any area, it has not been warranted in all Indiana counties as they all have different characteristics." (Dkt. 99 at 13.) But what exactly are these different characteristics? As stated above, the State's own sources believe that all counties could benefit from a nomination-followed-by-retention-vote scheme.

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Ultimately, the State fails to meet its burden in justifying the special legislation. Rather, the State offers only Lake County's "generalized uniqueness," as opposed to inherent characteristics that "justify the particular piece of legislation," *Herman & Kittle*, 119 N.E.3d at 86, and further fails to demonstrate why a general law cannot be made applicable throughout the State (and rather offers sources that urge a law of general uniformity). For those reasons, this Court should grant summary judgment in favor of the Plaintiffs on their special-legislation claim.

3. The Plaintiffs are entitled to summary judgment on their Privileges and Immunities Claim.

The State also fails to demonstrate that the challenged law does not violate the Privileges and Immunities Clause; and the Plaintiffs are accordingly entitled to summary judgment. Considerations presented by a Privileges and Immunities Clause challenge are "closely related" to considerations presented by a special legislation challenge. Kimsey, 781 N.E.2d at 692. For the same reasons that the law cannot survive a special-legislation claim challenge, the law cannot also survive a privilege-and-immunities claim challenge.

First, the State argues that the "Plaintiffs are comparing the wrong groups." (Dkt. 99 at 14.) The State misreads the plain language of the state constitutional provision, which expressly requires a comparison of a "class of citizens" to "all citizens" throughout Indiana. Ind. Const. art 1, § 23.

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Second, the State argues that unique characteristics of Lake County necessitated the legislation because of its high population, high caseload, and the county judges' and attorneys' "loss of faith" in partisan elections. (Dkt. 99 at 15.) But the State does not explain why other counties do not have these same characteristics; in fact, the State's own statement of facts note that "[f]or over a century, judges at all levels in Indiana were selected through partisan elections" and that "[t]his system led to criticism regarding impartiality, judicial independence, and the continued ability to select high quality trial judges." (Dkt. 83 ¶¶ 5-6.) Additionally, the State's facts explain that, in an evaluation of Indiana's partisan elections of judges, questionnaires to Indiana attorneys and judges revealed that "79% of Indiana attorneys believed the partisan election system 'could not continue to provide . . . highly qualified trial judges," and "87% of responding attorneys believed politics influenced judicial selection to varying degrees." (*Id.* ¶ 11.) These statements explain that partisan elections have caused issues throughout the State, not just in Lake County and its retention-vote

counterparts of Marion and St. Joseph counties. With its own set of facts, the State has disproved its own argument that "Lake County has been shown to be substantially different from other counties." (Dkt. 99 at 16.) The State, through its own cited sources, have also disproved its argument that "any classification based on [Lake County's] differences is not arbitrary." (*Id.*) The State offered a report, which explained that judicial "[s]election processes have been altered or created in an ad hoc fashion," underscoring the legislature's arbitrariness in imposing retention-vote only schemes on select counties. (Dkt. 81-5 at 21.)

Third, the State argues, pointing to the retention-vote counterpart of Marion County, that Indiana citizens "in these high population areas are afforded the same opportunities and the statutory scheme for [the] same is not unconstitutional." (Dkt. 99 at 17.) The State fails to explain, however, why St. Joseph County has a retention-vote scheme for superior court judges but Allen and Hamilton Counties do not—even though those latter two counties have higher voting age populations than St. Joseph County. (*See* Dkt. 86 ¶ 38.) In other words, contrary to the State's assertion, not all "high population area[]" Indiana citizens are treated alike. (Dkt. 99 at 17.)

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Finally, the State fails to meaningfully address the fact that the significant changes in Lake County's superior court judge selection process over time reveals that an appointment-followed-by-retention-votes scheme is not linked to any allegedly inherent characteristics of Lake County voters.[1] (*See* Dkt. 85 at 31.) Additionally, the State fails to meaningfully address the fact that there

[1] In fact, the State misstates the history of Lake Court's superior court judicial selection process. The State claims that since 1973 "the selection of the four county division judges did not change from partisan election to the hybrid process until 2011." (Dkt. 99 at 18.) This is incorrect. Beginning in the early 1970's, all Lake County superior court judges were subject to the appointment-followed-by-retention vote scheme; then in 1989, the legislature provided that three (not four) Lake County superior court judges were subject to partisan elections, Ind. Code § 33-5-29.5-42.5. Then, in 2011, partisan elections for those four judges were taken away. Ind. Code § 33-33-45-43; P.L. 201-2011. As explained in detail in prior briefing, this shifting back and forth on superior court elections undercuts any argument that there is any reasonable relation of Lake

is no data to show that inherent characteristics of Lake County have proven problematic in regards to the circuit court judge elections that have taken place, and continue to take place, in Lake County. (*Id.*)

Ultimately, as the Plaintiffs have explained in detail in their prior brief (Dkt. 85 at 30-32), Indiana Code article 33-33-45 violates the Privileges and Immunities Clause, and the Plaintiffs are entitled to summary judgment on that claim, as well.

CONCLUSION

In conclusion, Plaintiffs are entitled to judgment as a matter of law that Indiana's differential voting scheme violates the VRA and Indiana's Constitution.

Respectfully submitted,

/s/ Bryan H. Babb

Bryan H. Babb, Atty. No. 21535-49
Bradley M. Dick, Atty. No. 29647-49
Seema R. Shah, Atty No. 26583-49
BOSE McKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000
(317) 684-5173 (Fax)
bbabb@boselaw.com
bdick@boselaw.com
sshah@boselaw.com

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County's inherent characteristics to the scheme that disallows Lake County voters from electing their superior court judges.

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Kari A. Morrigan
Kari.morrigan@atg.in.gov

Candace C. Williams
cwilliams@tolbertlegal.com

Rogelio Dominguez
roy@dominguezlawyer.com

Michael E. Tolbert
mtolbert@tolbertlegal.com

Shelice R. Tolbert
stolbert@tolbertlegal.com

Meredith B. McCutcheon
Meredith.mccutcheon@atg.in.gov

/s/ Bryan H. Babb
Bryan H. Babb

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