No. 17-1756

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN DOE, formerly known as JANE DOE,

Plaintiff-Appellant,

v.

ERIC HOLCOMB, in his official capacity as Governor of the State of Indiana, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Indiana, No. 1:16-cv-02431-JMS-DML
The Honorable Jane Magnus-Stinson, Chief Judge

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT, JOHN DOE

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-1756

Short Caption: John Doe v. Eric Holcomb, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

John Doe

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Mexican American Legal Defense and Educational Fund

Transgender Law Center

Law Office of Barbara J. Baird

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: S/ Matthew J. Barragan Date: 6/21/17

Attorney's Printed Name: Matthew J. Barragan

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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N/A

Attorney's Signature: s/ Thomas A. Saenz Date: 06/21/17

Attorney's Printed Name: Thomas A. Saenz

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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N/A

Attorney's Signature: s/ Ilona M. Turner Date: 6/21/17

Attorney's Printed Name: Ilona M. Turner

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-756

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N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Shawn Thomas Meerkamper Date: 6/21/17

Attorney's Printed Name: Shawn Thomas Meerkamper

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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Attorney's Signature: s/ Barbara J. Baird Date: 6/21/17

Attorney's Printed Name: Barbara J. Baird

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant respectfully requests the opportunity for oral argument under Federal Rule of Appellate Procedure 34 and Seventh Circuit Rule 34. Oral argument is necessary given the importance of the legal argument in this case, affecting:

1. consistent standards for Eleventh Amendment immunity and Article III standing,
2. the purpose of declaratory judgment, and
3. federal judicial review of unconstitutional state laws.

JURISDICTIONAL STATEMENT

Plaintiff-Appellant, John Doe, a transgender man formerly known as "Jane Doe," filed this action under 42 U.S.C. § 1983, seeking a declaration that the restrictions of Indiana Code Section 34-28-2-2.5(a)(5) and Defendants-Appellees' enforcement of that law violate his rights under the First Amendment to the United States Constitution, and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Appellant's Required Short Appendix ("Short App.") 1-20. Mr. Doe also sought an injunction against Defendants in their official capacities. *Id.* Mr. Doe resides in Marion County, Indiana. *Id.* at 7. The District Court had subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1343.

This Court has jurisdiction over this appeal under 28 U.S.C. § 1291. The District Court issued an Order Granting Defendants' Motions to Dismiss on March 13, 2017. Short App. 35. No motion for alteration of the judgement or any other motion tolling the time within which to appeal was filed. Mr. Doe filed a timely Notice of Appeal on April 11, 2017. District Court Electronic Filing Number ("ECF No.") 65. This is not an appeal from a decision of a magistrate judge.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in concluding that Mr. Doe does not have Article III standing to pursue his claims against Governor Eric Holcomb, Attorney General Curtis T. Hill, Jr., Marion County Clerk of Court Myla Eldridge, and the Executive Director of the Indiana Supreme Court of State Court Administration, Mary Willis, where he alleged that

the provisions and enforcement by Defendants of Indiana Code Section 34-28-2-2.5(a)(5) violate his rights under the United States Constitution, where he sought access to a benefit that only the state can confer, and where that injury was redressable by appropriate judicial order.

STATEMENT OF THE CASE

This case raises constitutional challenges to the statute governing petitions for name changes in Indiana. Unlike any other state, Indiana prohibits any non-citizen from receiving a change of legal name. It does so by requiring name-change petitions in state courts to include proof of United States citizenship. I.C. § 34-28-2-2.5. The Indiana statute discriminating against non-citizens, applicable throughout the entire state of Indiana, is facially unconstitutional. Governor Eric Holcomb, Attorney General Curtis T. Hill, Jr., Marion County Clerk of Court Myla Eldridge, and the Executive Director of the Indiana Supreme Court Division of State Court Administration, Mary Willis have a state-law obligation to promulgate, administer, enforce, and defend this unlawful statute, which bans non-citizens, regardless of immigration status, from successfully petitioning any state circuit court in Indiana for a change of legal name.

Mr. Doe is a non-citizen with asylum status who, under Indiana Code Section 34-28-2-2.5(a)(5), is barred from changing his legal name because he cannot provide proof of citizenship. The non-citizen prohibition is particularly harmful to Mr. Doe because, as a transgender man, it prevents him from changing the traditionally feminine name on his official identification. Consistent with the Eleventh

Amendment and the allocation of government duties under Indiana law, Mr. Doe sued defendant government officials under 42 U.S.C. § 1983 to prevent this unlawful discrimination against non-citizens from being applied to him. There are no other public officials, other than judicially-immune court officers, with a specific legal authority to administer or enforce the statute under state law. This is a quintessential legal challenge to a statewide, unlawful, categorical denial of a state service or benefit to a class of persons. Mr. Doe seeks access to a right or benefit that only the state has the authority to confer. Thus, Mr. Doe named the state officials who are required to enforce the challenged law as defendants in this case.

Mr. Doe has adequately alleged a concrete injury—the denial of a legal change of name that is readily provided to similarly-situated U.S. citizens and that interferes with his constitutional right to live his life in accord with his male identity. Mr. Doe has adequately alleged a causal connection—Defendants' duties and actions under state law to administer and enforce the unlawful statute that discriminates against non-citizens. Finally, Mr. Doe has pleaded an entitlement to relief that would redress his injury—a declaratory judgment and an injunction that would overcome the Defendants' obligation to enforce the offending statute and require them instead to grant him access to a change of legal name in the same way that citizens are currently afforded that benefit. Where plaintiff seeks access to a right that only the state could confer, the officials who are obligated to enforce the challenged law to the detriment of the plaintiff are properly named defendants.

I. Indiana Code Section 34-28-2-2.5(a)(5)

On March 17, 2010, the Governor of the State of Indiana signed into law Public Law 61, effective July 1, 2010, which was codified, in part, as Indiana Code Section 34-28-2-2.5(a)(5). Short App. 11. The law amends the procedures to effect a change of legal name and lists the required contents of a petition to the state circuit courts for a change of name. *Id.* Subsection 5 states that a name-change petition must include "[p]roof that the person is a United States citizen." I.C. § 34-28-2-2.5. Under the challenged law, non-citizens are prohibited from obtaining a change of legal name in Indiana. Short App. 11. The District Court's Order Granting Defendants' Motions to Dismiss noted that its research had revealed no statute from any other state that requires proof of U.S. citizenship as part of a name-change petition. *Id.* at 23.

II. Mr. Doe, as an asylee, is barred from changing his name in Indiana, and he is particularly harmed because his legal name does not match his gender identity.

Mr. Doe, whose legal name is "Jane Doe," is a 31-year-old Latino. *Id.* at 3. Mr. Doe is a Mexican citizen who has lived in the United States for the last 27 years. *Id.* at 7. Mr. Doe's family moved from Mexico to Indiana in 1990. *Id.* Mr. Doe has lived in Indiana ever since. *Id.* Mr. Doe currently resides in Marion County, Indiana. *Id.* Mr. Doe is a man. *Id.* He is recognized as male on his official Indiana and US documentation. *Id.* at 8. Family, friends, coworkers, acquaintances, and strangers recognize Mr. Doe as a man. *Id.* However, many of them do not know that he is also transgender. *Id.* This means that Mr. Doe was assigned as female at birth, but his gender identity (his deeply felt understanding of

his own gender) is male. *Id.* at 4-5. In August 2015, the United States granted Mr. Doe asylum from Mexico, due to the risk that he would face persecution because he is transgender. *Id.* at 7. Mr. Doe became eligible to apply for permanent residency in September 2016. *Id.* After obtaining legal permanent residency status, Mr. Doe must wait three years to apply for U.S. citizenship through naturalization. *Id.*

Since a very young age, Mr. Doe was aware that he did not feel like a girl, but he did not know how to express how he felt. *Id.* Mr. Doe ultimately acknowledged his male gender identity to himself in 2010. *Id.* Mr. Doe has been in the continuous care of a licensed mental health clinician since 2010, who diagnosed Mr. Doe with Gender Dysphoria. *Id.* Gender Dysphoria is a condition recognized by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th edition. *Id.* at 5. It refers to clinically significant distress that can result when a person's gender identity differs from the person's assigned gender at birth. *Id.* Treatment for Gender Dysphoria is usually undertaken following the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("Standards of Care"), published by the World Professional Association for Transgender Health ("WPATH") since 1980. *Id.* Mr. Doe's clinician has helped guide his transition, following the World Professional WPATH Standards of Care. *Id.* at 7-8.

If left untreated, Gender Dysphoria may result in profound psychological distress, anxiety, depression, and even self-harm or suicidal ideation. *Id.* at 5. For Mr. Doe, an essential part of his treatment for Gender Dysphoria includes living in

accord with his gender identity in all respects, including the use of a male name and pronouns. *Id.* at 8. Also consistent with the WPATH Standards of Care, Mr. Doe's physician recommended and prescribed hormone treatment to treat his Gender Dysphoria. *Id.* Mr. Doe has been on hormone therapy since 2011, which has deepened Mr. Doe's voice, increased his growth of facial hair, and given him a more masculine appearance. *Id.* Mr. Doe has also undergone gender-affirming surgery. *Id.*

Mr. Doe is identified on all of his official documents, including his Indiana State ID and his immigration documents, as male. *Id.* But his legal name—his birth name—remains a traditionally female name. *Id.* Mr. Doe is not recognized by others as transgender unless he tells them, or, in some circumstances, until they see his ID, which identifies him by his legal name. *Id.* Mr. Doe faces discrimination and harassment regularly because he cannot obtain a change of legal name and update his official documents.[1] *Id.* at 9.

In December 2013, Mr. Doe appeared in person at the Marion County Clerk's Office to inquire about petitioning to change his legal name. *Id.* at 12. After requesting name-change forms, Mr. Doe asked employees of Clerk Eldridge's Office to clarify that U.S. citizenship was a legal requirement to change his name. *Id.* An employee said, "[i]t looks like the only requirement you don't meet is being a citizen," and "[i]f you do become a citizen, then we would have no problem changing

[1] The only way Mr. Doe can change his given name on his Indiana state ID is by presenting a court order to the Indiana Bureau of Motor Vehicles ("BMV"). To change a name, the BMV requires a marriage license, divorce decree, or court order. 140 Ind. Admin. Code 7-1.1-3(b)(1)(K).

your name." *Id.* at 13. An employee also told him that she knew about the non-citizen exclusion because another non-citizen had attempted to change a legal name and that the change was rejected by a judge. *Id.* Clerk Eldridge's office also gave Mr. Doe an informational packet about name changes, including forms prepared by the Indiana Supreme Court Division of State Court Administration, which listed the citizenship requirement. *Id.* at 12-13. Mr. Doe was deterred from filing his petition with the Clerk Eldridge's Office by the employees' statements and actions, as well as the written material he was provided. *Id.* at 13.

Mr. Doe is not a United States citizen and thus necessarily lacks any proof of U.S. citizenship. *Id.* at 12. Indiana Code Section 34-28-2-2.5(a)(5) therefore prohibits Mr. Doe from obtaining a change of legal name, and therefore bars him from changing his name on his Indiana driver's license, state ID, and federal immigration documents and records. *Id.*; 140 Ind. Admin. Code 7-1.1-3(b)(1)(K).

Mr. Doe's inability to change his legal name and update his ID has caused him serious emotional distress and difficulty in his day-to-day activities every time he is required to present his government-issued ID. Short App. 9. On one occasion, a police officer threatened to take him to jail because he did not believe that Mr. Doe was the individual identified in the ID. *Id.* Others have ridiculed or harassed him.[2] *Id.* at 9-10. Mr. Doe is aware of the startling rates of violence against

[2] In 2013, Mr. Doe had to show his ID when he went to the emergency room because of pain and immobility in his neck and shoulder. Short App. 10. The hospital staff was confused when they first saw his ID. *Id.* Once they realized that Mr. Doe is transgender, though, their confusion turned to ridicule. *Id.* Five of the nurses gathered around to laugh at Mr. Doe. *Id.* Mr. Doe's doctor was more professional, and he eventually received treatment. *Id.* Mr. Doe's wife was furious about the incident, but Mr. Doe was too embarrassed to raise the

transgender people. *Id.* at 11. While he has not yet been subject to physical attack, he lives in fear of it, waiting in dread for the day that something may happen to him. *Id.*

III. Defendants have state constitutional and statutory duties to promulgate, administer, defend, and enforce the challenged statute.

A. Governor Holcomb

In his official capacity, Governor Eric Holcomb is the executive officer of the State of Indiana. *Id.* at 3. The Indiana Constitution declares that "[t]he executive power of the State shall be vested in a Governor." Ind. Const. Art. 5 § 1. His primary duty is to see that the laws of the state are "faithfully executed." Ind. Const. Art. 5 § 16. In pursuit of these duties, the Governor is charged with organizing the various state agencies "[t]o promote the better execution of the laws, the more effective management of the executive and administrative branch of the government and of its agencies and functions, and expeditious administration of the public business." I.C. § 4-3-6-3. The Indiana Constitution also directs the Governor to manage the officers of the Administrative Department. Ind. Const. Art. 5 § 15.

The Governor has the authority to issue memoranda explaining any federal court's decision regarding the constitutionality of Indiana Code Section 34-28-2-2.5(a)(5) and to instruct executive branch agencies on what to do following any such court order. *See Love v. Pence*, 47 F. Supp. 3d 805, 807-08 (S.D. Ind. 2014). The governor's power extends to the Indiana Bureau of Motor Vehicles ("BMV"), the executive agency that issues Indiana IDs, which will change the name on such ID

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issue with hospital management. *Id.* No one from the hospital ever apologized to Mr. Doe or his wife for the degrading treatment he received. *Id.*

only upon receipt of a court order, which is unavailable to non-citizens. 140 Ind. Admin. Code 7-1.1-3(b)(1)(K).[3] The passage of Public Law 61 therefore created a regulatory scheme by which no non-citizen may ever change the given name listed on their Indiana state ID. The BMV is administered by a board appointed by the governor and led by a commissioner who "serves at the pleasure of the governor." I.C. § 9-14-9-2; I.C. § 9-14-7-2.

B. Attorney General Hill

In his official capacity, Attorney General Curtis T. Hill, Jr. is the chief legal officer of the State of Indiana. Short App. 3. He has a duty to see that the laws of the State are uniformly and adequately enforced. *Id.* His duties also include enforcing state criminal laws that relate to the disclosure of a person's legal name, such as criminal prohibitions on perjury and failure to accurately identify oneself to a police officer. I.C. § 35-44.1-2-1 (perjury); I.C. § 35-44.1-2-4 (knowingly making false statements about one's identity to public servants). Attorney General Hill also has the authority to issue memoranda explaining any federal court's decision regarding the constitutionality of Indiana Code Section 34-28-2-2.5(a)(5) and to advise executive branch agencies on what to do following any such court order.

C. Clerk Eldridge

In her official capacity, Marion County Clerk of the Court Myla Eldridge is responsible for processing name-change requests and maintaining vital records for identification. *Id.* Clerk Eldridge advises the public of state law regarding name

[3] The BMV's regulations also allow changes to surnames via marriage license or divorce decree. *Id.*

changes, including the law that excludes non-citizens from obtaining a change of legal name in the state. *Id.* Clerk Eldridge distributes forms that detail the citizenship requirement and prevent or discourage non-citizens from accessing changes of legal name. *Id.* Clerk Eldridge's Office maintains a website that lists the citizenship requirement for name changes. *Id.* at 13. The website instructs individuals to "bring proof of citizenship (i.e. birth certificate and/or passport)." *See* Marion County's Name Change Procedures, http://www.indy.gov/eGov/County/Clerk/civil/filing/Pages/Name-Change.aspx. Clerk Eldridge is identified as a county officer, and falls within the Administrative Department under the Indiana Constitution. Ind. Const. Art. 6 § 2. Clerk Eldridge has the capacity, in response to a court order or other change in legal obligation, to adopt a permanent, official policy that orders Clerk's Office employees to accept and process petitions for a change of name from non-citizens, to no longer advise the public of or distribute materials publicizing a non-citizen exclusion, and to cease discriminating against non-citizens in violation of the United States Constitution.

D. Director Willis

Mary Willis, Executive Director of the Indiana Supreme Court Division of State Court Administration, is responsible for producing forms used by Indiana residents to petition courts for a change of legal name. Short App. 4. The forms produced by her office include portions that detail the citizenship requirement and strongly discourage or even prevent non-citizens from accessing changes of legal name. *Id.* The name change forms are available at the Indiana Court's website.

See Form Petition, http://www.in.gov/judiciary/selfservice/2338.htm. The form petition instructs would-be petitioners to mark whether they have a U.S. passport or, if they do not, to write in what other proof of citizenship they can submit. *Id.* at 2, 5. The form order granting a name change includes the finding, "[t]he Petitioner has presented proof of United States citizenship." *Id.* at 9. Director Willis has the capacity, in response to a court order or other change in legal obligation, to remove the citizenship requirement from the name change forms, and to stop discriminating against non-citizens in violation of the United States Constitution.

IV. Procedural history

On September 13, 2016, Mr. Doe filed a complaint in the United States District Court for the Southern District of Indiana seeking a declaration that the provisions of Indiana Code Section 34-28-2-2.5(a)(5) and Defendants' enforcement of them violate his rights under the First Amendment to the United States Constitution, and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. ECF No. 1 at 16. Mr. Doe also sought an injunction against Defendants in their official capacities. *Id.* Mr. Doe filed his first amended complaint on October 7, 2016. Short App. 1-20. Defendants filed Motions to Dismiss for lack of subject matter jurisdiction. ECF Nos. 40, 52.

On March 13, 2017, the District Court dismissed this action for lack of jurisdiction and entered final judgment under Rule 58 of the Federal Rules of Civil Procedure. Short App. 35; Short App. 37. On April 11, 2017, Mr. Doe filed a timely Notice of Appeal. ECF No. 65.

SUMMARY OF THE ARGUMENT

The District Court erred in holding that Mr. Doe lacks standing to sue any of the named defendants. The required causal connection between state officials' acts and omissions and Mr. Doe's injuries exists through each defendant's statutory and constitutional responsibilities to enforce and give effect to the law, and in the absence of any other officials—besides bench officers who would claim judicial immunity—with the obligation or authority to enforce the challenged discriminatory law. Where plaintiff seeks access to a right or benefit that only the state can confer, the officials who are charged with enforcing the challenged law to the detriment of the plaintiff are properly before the District Court.

This principle derives both from standing doctrine and the related doctrine of *Ex parte Young*, which affirms the availability of federal court jurisdiction over unconstitutional state policies. Under the Supreme Court's well-established rule in *Ex parte Young*, injunctive or declaratory relief against the enforcement of an unconstitutional state statute may be sought by suing a state official rather than the State itself. 209 U.S. 123, 159-60 (1908) (establishing an exception to Eleventh Amendment immunity).

Similarly, the District Court's related conclusion that none of the defendants can redress Mr. Doe's injury was error. Defendants are state officials with the authority to direct the relief Mr. Doe seeks: a legal name change that will permit him to change the name shown on all forms of ID. The specific relief sought in this

action, a declaration that the provisions of Indiana Code Section 34-28-2-2.5(a)(5) and Defendants' enforcement of them violate Mr. Doe's constitutional rights, together with an appropriate injunction, will directly enable him to change his legal name.

In reaching its conclusion, the District Court relied heavily on this Court's decision in *Hearne v. Board of Educ. Of City of Chicago*, 185 F.3d 770 (7th Cir. 1999), while disregarding crucial distinctions that render the analysis in that case inapposite. Unlike in *Hearne*, Plaintiff here challenges a discriminatory statute with statewide applicability, rather than a discrete policy with exclusively local effect.

Because (1) Mr. Doe has suffered an injury-in-fact; (2) the harm is fairly traceable to the Defendants; and (3) the harm would be remedied by judicial decree addressed to Defendants, Mr. Doe has Article III standing to bring his claims.

ARGUMENT

I. Standard of review

This Court reviews *de novo* the District Court's dismissal of Mr. Doe's action for lack of jurisdiction, which presents a question of law. *United States v. 5 S 351 Tuthill Rd.*, 233 F.3d 1017, 1021 (7th Cir. 2001); *Perry v. Sheahan*, 222 F.3d 309, 313 (7th Cir. 2000). A complaint should not be dismissed for lack of standing unless there is no set of facts consistent with the complaint's allegations that could establish standing. *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 498 (7th Cir. 2005).

II. Federal court jurisdiction consistent with *Ex Parte Young* guarantees that state governments are held to account when their laws violate the Constitution.

The District Court erroneously dismissed Mr. Doe's case despite well-established Supreme Court precedent that state officers are appropriate defendants under the circumstances alleged in Mr. Doe's amended complaint. A case brought against a state officer in his official capacity is essentially a suit against the state. *See*, *e.g.*, *Diamond v. Charles*, 476 U.S. 54, 57 n. 2 (1986) (stating that "[a] suit against a state officer in his official capacity is, of course, a suit against the State"); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (noting that suits against state agents are just another way of pleading actions against the state). While states are immune from suit under the Eleventh Amendment, the doctrine set out by *Ex parte Young* allows a plaintiff to avoid this bar by naming a state official for the purpose of enjoining the enforcement of an unconstitutional state statute. 209 U.S. at 159-160. The Supreme Court held that where the action of a state official "is alleged to be unconstitutional, and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity." *Id.*; *see also David B. v. McDonald*, 156 F.3d 780, 783 (7th Cir. 1998) (*Young* treats state officials violating federal law "as renegades, acting *ultra vires*," and thus those individuals may be enjoined without implicating state sovereignty or violating the Eleventh Amendment).

Under the Supreme Court's longstanding interpretation of the Eleventh Amendment, it is appropriate to name any state officer with "some connection with

enforcement of the act," even if that connection "arises out of the general law" and is not specified in the statute under challenge. *Ex parte Young*, 209 U.S. at 157. Moreover, courts recognize that this "connection" is related to the causation and redressability requirements of standing. *Air Evac EMS, Inc. v. Texas, Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 513–14 (5th Cir. 2017) (noting there is "significant overlap between standing and *Ex parte Young*'s applicability); *Hartmann v. Cal. Dep't. of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013) (citations omitted) ("A plaintiff seeking injunctive relief against the State is not required to allege a named official's personal involvement in the acts or omissions constituting the alleged constitutional violation. Rather, a plaintiff need only identify the law or policy challenged as a constitutional violation and name the official within the entity who can appropriately respond to injunctive relief."). For a state officer to be a proper defendant, "[i]t is not necessary that his duty be declared in the act which is to be enforced." *Shell Oil Co. v. Noel*, 608 F.2d 208, 212 (1st Cir. 1979). "[T]he fact that the state officer by virtue of his office has some connection with the enforcement of the act is the important and material fact, . . . whether it arises out of the general law, or is specially created by the act itself[.]" *Lytle v. Griffith*, 240 F.3d 404, 409 (4th Cir. 2001) (quoting *Ex parte Young*, 209 U.S. at 157 (alterations in *Lytle*)).

A state official is properly the subject of injunction if the official has sufficient authority to enforce the statute. *See Noel*, 608 F.2d at 212; *see also, National Ass'n for Advancement of Colored People v. State of Cal.*, 511 F. Supp. 1244, 1255 (E.D.

Cal. 1981) *aff'd*, 711 F.2d 121 (9th Cir. 1983) ("A general obligation to enforce or execute state laws is sufficient to meet the connection with enforcement requirements."). All that matters is that the state official "play[s] a role in the operations of the [challenged law]" even if that connection is "indirect." *Back v. Carter*, 933 F. Supp. 738, 752 (N.D. Ind. 1996).

Applying the principles discussed above, courts have repeatedly held that governors and other state officials are proper defendants for purposes of *Ex parte Young* when their supervisory powers provide the authority to respond to an injunction by halting the unconstitutional practices of persons under their control. For example, in *S.C. Wildlife Fed'n v. Limehouse*, the Fourth Circuit held that the Executive Director of South Carolina's Department of Transportation was a proper defendant in a suit alleging state failure to comply with the National Environmental Policy Act because a state statute gave the Director "supervisory authority over the state's participation in the [Final Environmental Impact Statement] process." 549 F.3d 324, 333 (4th Cir. 2008); *see also Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (holding that Georgia governor's supervisory powers over state prosecutions made governor proper defendant in *Ex parte Young* suit challenging adequacy of indigent defense funding). Courts recognize that the central point under *Ex parte Young* is to "ensure[] that a federal injunction will be effective with respect to the underlying claim." *Limehouse*, 549 F.3d at 333.

In this case, the Governor, Attorney General, Clerk of the Court, and Executive Director of the Supreme Court Division of State Court Administration are directly liable for their enforcement of Indiana's unlawful statute, which therefore may be remedied by an injunction directed to them. Through Defendants' enforcement of the statute, non-citizens like Mr. Doe are barred from obtaining a legal change of name because they cannot provide proof of citizenship. In concluding that Defendants could not be held liable for propagating, administering, and enforcing a statute that disqualified Mr. Doe from receiving a change of legal name, the District Court would upend over 100 years of established Supreme Court precedent that allows for declaratory and injunctive relief against state officials who have "some connection with the enforcement of the [disputed] act." *Ex parte Young*, 209 U.S. at 157.

Insulating the state officials who administer and enforce the statute effectively leaves Mr. Doe wholly unable to enforce his federal constitutional rights in a federal court. These state officials are the "moving force of the [constitutional] deprivation" and are liable for their unconstitutional policy. *Graham*, 473 U.S. at 166 (internal citations and quotations omitted).

Moreover, Mr. Doe's claims against Governor Holcomb are not solely based on the Governor's general duty but also on his direct supervisory responsibility for all executive agencies, including the crucial agency with which Mr. Doe needs to change his name: the Indiana Bureau of Motor Vehicles. Governor Holcomb has the power to explain and instruct those agencies on how to effectuate changes of name

on various state documents. In fact, the Governor of the State of Indiana has issued memoranda to executive branch agencies on what to do following court orders affecting the validity of state statutes in the past, as evinced in the case of *Love*, 47 F. Supp. 3d at 807-08 (governor's issuance of memoranda to state agencies regarding enforcement of statute showed that district court's previous dismissal of defendant governor was based on inaccurate premise that governor played no role in enforcing statute); *see also Bowling v. Pence*, 39 F. Supp. 3d 1025, 1029 (S.D. Ind. 2014) (holding that a memorandum by governor also constituted such an act of specific enforcement).

Like most state laws, the text of Indiana Code Section 34-28-2-2.5 makes no reference to the Governor or other state officials with roles in executing and enforcing it. That is neither unusual nor of constitutional relevance. What matters is the state officials' ability to enforce any injunction issued by the District Court so that it will be effective in redressing Plaintiff's claim.

The United States Constitution guarantees that state governments may not infringe upon constitutional rights protected by the First and Fourteenth Amendments. Under our constitutional system, the judiciary exists as a check to ensure that accountability. The *Ex Parte Young* doctrine developed to ensure that the Eleventh Amendment, while barring damages, would not stand as an obstacle to preventing ongoing violations of constitutional rights.

Here, the effect of the District Court's decision would be to bar Plaintiff from a federal forum to expeditiously address an ongoing discriminatory denial of a

government benefit or service as dictated by an unconstitutional state statute. The only other appropriate state officials involved in changing a legal name are state court judges, who would likely assert they are cloaked with immunity.[4] Moreover, although circuit court judges in Indiana review and grant petitions for a legal name change, the judge hearing a petition has no stake in upholding the statute, had no part in enacting it, and is not the plaintiff's adversary. *See Grant v. Johnson*, 15 F.3d 146, 148 (9th Cir. 1994) (held that a judge is not a proper defendant in an action attacking a state statute, finding that 42 U.S.C. § 1983 does not "encompass suits against state judges acting in their adjudicative capacity."). "'[A] court should not enjoin judges from applying statutes when complete relief can be afforded' by enjoining other parties, because 'it is ordinarily presumed that judges will comply with a declaration of a statute's unconstitutionality without further compulsion.'" *Wolf v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004) (quoting *In re the Justices of the Supreme Court of Puerto Rico*, 695 F.2d 17, 23 (1st Cir. 1982)). Indiana cannot evade district court review by assigning an essentially ministerial task to judicial officers cloaked with immunity, then asserting that no other official may be appropriately named a defendant.

If the District Court's decision is upheld, Plaintiff's only apparent recourse would be to file a futile petition to change his name, suffer an inevitable denial, and then appeal that denial through the Indiana state court appeals system. If the Indiana Supreme Court rules against him, his first opportunity for a federal court

[4] Even absent concerns regarding immunity, a plaintiff would have to guess as to which circuit court judge to name as a defendant, or name all of them. Such an arduous course of litigation is not constitutionally required under Article III.

hearing would be after convincing the United States Supreme Court to exercise its discretion to hear a rare appeal from the state high court. As he goes through this lengthy process, Mr. Doe would continue to suffer the daily harms of being denied official documents with a name that accurately reflects his gender and appearance.

Under our system of government, federal review of state statutes that are facially discriminatory and unconstitutional is not and cannot be so arduous or limited. *See Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 827 (1986) (Brennan, J., dissenting) (opining that Supreme Court review of state courts alone cannot sufficiently ensure that federal rights are adequately protected due to "docket pressures, narrow review of the facts, the debilitating possibilities of delay, and the necessity of deferring to adequate state grounds of decision."); Martin H. Redish, *Judicial Parity, Litigant Choice, and Democratic Theory: A Comment on Federal Jurisdiction and Constitutional Rights*, 36 UCLA L. Rev. 329 (1988) (contending that federal judges are more independent and politically insulated than state court judges when reviewing abuses by state officials such as the Governor and state judicial officials). To hold otherwise risks effectively eliminating the protections the Constitution extends to individuals harmed at the hands of state officials. *Cf. Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (quoting *United States v. Peters*, 9 U.S. 115, 136 (1809) ("'If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the [C]onstitution itself becomes a solemn mockery . . . .'").

III. The District Court erred in concluding that Mr. Doe's allegations do not meet the elements for standing.

Indiana's statute barring non-citizens from obtaining a change of legal name caused Mr. Doe injury before he instituted this action; it caused him injury while the case was pending in the District Court; and it will continue to cause him injury, unless he obtains the relief he seeks in this case. He has named Defendants with a causal connection to enforcement of the discriminatory statute that creates his injury, and with the ability to redress his injury. The District Court committed legal error in concluding that Mr. Doe lacks standing.

The doctrine of standing preserves the limit on federal jurisdiction to real "cases" and "controversies" by "identify[ing] those disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The constitutional component of the standing doctrine requires that a plaintiff demonstrate the following three elements: (1) an "injury in fact"; (2) causation; and (3) a likelihood that a favorable decision will redress the injury. *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

The District Court committed legal error in concluding that Mr. Doe had not established a causal connection between the Defendants and his alleged injuries, and that his alleged injuries would not be redressed by a judgment against them. Short App. 9-14. These state officials have the ability to enforce the statute against Mr. Doe, or to halt its enforcement. Therefore, these state officials are proper

parties who can effectuate the relief sought by Mr. Doe, namely that they cease barring his path to a legal name change.

A. Mr. Doe has alleged an injury in fact.

To establish "injury in fact" Plaintiff must demonstrate the actual or imminent invasion of a concrete and particularized interest. *See*, *e.g.*, *Norton*, 422 F.3d at 495-96. This Court has interpreted this to mean that the injury "must affect the plaintiff in a personal and individual way," as opposed to an abstract disagreement with a government policy. *Id.* at 496.

In this case, as the District Court acknowledged, the allegations demonstrate that Mr. Doe has incurred a concrete and particular injury, and that he faces a real and immediate prospective injury. Short App. 8-11. Mr. Doe's inability to change his legal name and update his ID has caused him serious emotional distress and difficulty in his day-to-day activities every time he is required to present his government-issued ID. *Id.* at 9. The harms that Plaintiff has experienced and continues to experience from being denied a change of legal name solely based on his citizenship are sufficient to confer standing.

B. Mr. Doe has demonstrated that each Defendants' enforcement of Indiana Code Section 34-28-2-2.5(a)(5) causes him injury.

To satisfy the causation requirement of standing, Plaintiff need only show that his injuries are "fairly trace[able] to the challenged action of the defendant." *Norton*, 422 F.3d at 500 (internal citations omitted). Standing can be established even where the causal connection is "weak." *Banks v. Secretary of Ind. Family and Soc. Serv. Admin.*, 997 F.2d 231, 239 (7th Cir. 1993). Put another way, a defendant

in a constitutional challenge must play *some* role in the enforcement of the challenged statute. *See*, *e.g.*, *Love*, 47 F. Supp. at 807. The defendant need not be the only individual whose actions contribute to a plaintiff's harm, and those actions need not constitute "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168 (1997); *see also K.P. v. LeBlanc*, 627 F.3d 115, 123 (5th Cir. 2010) (holding that the harms were traceable to the defendant Fund Oversight Board despite fact that final decision rested with state judge).

Mr. Doe's injury is caused by the statutory requirement that Indiana petitioners for a legal name change provide proof of United States citizenship, which Mr. Doe, as a recent asylee, does not have. The amended complaint asserted facts demonstrating a connection between Defendants and the propagation, administration, and enforcement of the discriminatory Indiana Code Section 34-28-2-2.5(a)(5). Short App. 3-4, 12-13. The alleged facts demonstrate that each Defendant has a right, remedy, and power that must be exercised to enforce and/or defend the challenged law, to Mr. Doe's detriment. *Id.* Moreover, the complaint accurately asserts that these officials will continue, as they are bound by state law to do, to enforce this discriminatory prohibition against non-citizens absent judicial review. *Id.*

The mere fact that other individuals are also involved in the process of obtaining a legal name change does not bar Mr. Doe's ability to vindicate his constitutional rights with respect to *these* individuals. As this Court noted in *Norton*, "[w]hile the [defendant] may not be the only party responsible for the injury

alleged here, a plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm." 422 F.3d at 500.

In summary, the Governor, Attorney General, Clerk of the Marion County Court, and Executive Director of the Indiana Supreme Court Division of State Court Administration each play a role in causing the harm Mr. Doe suffers as a result of the discriminatory and unconstitutional noncitizen bar. Each will be addressed in turn below.

1. Governor Holcomb

The Governor's executive power is sufficient to render him a proper party in this case. Whether the requisite connection exists between a challenged statute and state official is ultimately a matter of state law. *See*, *e.g.*, *Ex Parte Young*, 209 U.S. at 157; *Limehouse*, 549 F.3d at 333. The Indiana Constitution provides that "[t]he executive power of the State shall be vested in a governor." Ind. Const. Art. 5 § 1. The Indiana Constitution requires that the Governor "take care that the laws are faithfully executed." Ind. Const. Art. 5 § 16. Accordingly, "the executive power of the government is vested not in the various departments and agencies, but in the Governor alone." *State ex rel. Sendak v. Marion County Superior Court*, 373 N.E.2d 145, 149 (Ind. 1978). Governor Holcomb has direct supervisory responsibility for all executive agencies. Ind. Const. Art. 5 § 1.

The Indiana Court of Appeals has thus described gubernatorial authority as "the 'power to execute the laws, to carry them into effect as distinguished from the power to make the laws and the power to judge them.' Although it is intuitive, by

express legislation the Governor has the responsibility of ensuring the efficient operation of the executive branch of government. Ind. Code § 4-3-6-3 provides in part that the Governor shall re-examine from time to time the organization of all agencies of State government and determine what changes are necessary to accomplish various purposes including 'to promote the better execution of the laws, the more effective management of the executive and administrative branch of the government and of its agencies and functions, and expeditious administration of the public business.'" *Nass v. State ex rel. Unity Team, Local 9212*, 718 N.E.2d 757, 763 (Ind. Ct. App. 1999) (internal citations omitted).

These principles are derived from the Indiana Supreme Court's earlier recognition that "the executive power is vested not in the 'Executive including the Administrative' department, but in one man, one officer, the Governor." *Tucker v. State*, 35 N.E.2d 270, 279 (Ind. 1941). "[T]he association of the governor with administrative state officers in the discharge of any duty not involving powers and privileges delegated by the constitution to either alone . . . is proper, and within the spirit of the provisions of the constitution." *French v. State ex rel. Harley*, 41 N.E. 2, at 7 (Ind. 1895).

Indiana courts thus routinely hear cases naming the Governor as a defendant. *See*, *e.g.*, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013) (challenge to school voucher program); *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009) (challenge to system of public school finance); *Embry v. O'Bannon*, 798 N.E.2d 157 (Ind. 2003) (challenge to program under which public schools received funds to

provide secular education to parochial school students); *Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991) (action to recover back wages for services performed by patients while committed to state psychiatric facilities); *Stoffel v. Daniels*, 908 N.E.2d 1260, 1271-72 (Ind. Ct. App. 2009) (challenge to statute transferring duties of certain township assessors to county assessors).

These state-law principles and state-court holdings demonstrate that the governor is an appropriate defendant here. The governor, with his power over the BMV, plays a crucial role in Indiana's discriminatory name-change scheme. While Indiana Code Section 34-28-2-2.5(a)(5) bars non-citizens from accessing name change proceedings in state circuit courts, that process is only the first step in what Mr. Doe actually needs: accurate identification from the BMV that reflects his masculine name and male gender identity. Though the Governor may not have the authority to change circuit court procedures, he oversees a range of executive functions that contribute to Mr. Doe's injuries. The Governor's BMV requires a name-change court order—a document only available to U.S. citizens—to change the given name on an Indiana state ID.

Indiana law also requires Mr. Doe to identify himself by name and show his driver's license when requested by law enforcement, including the Governor's Indiana State Police. I.C. §34-28-5-3.5. Until Mr. Doe can change his legal name and update his BMV ID, every routine police interaction will remain fraught with confusion and the potential for arrest. *See* Short App. 9.

The Governor's Alcohol & Tobacco Commission enforces the state's drinking age, thus requiring Mr. Doe to show ID when entering a bar or ordering a drink. I.C. §7.1-5-7-7. Until Mr. Doe can change his legal name and update his BMV ID, every social occasion with family or friends at which alcohol is served will bear the potential for mockery and humiliation. *See* Short App. 9.

Therefore, even if Governor Holcomb played no role in enforcing the specific provision of law that prevents Mr. Doe from changing his name in court, the governor's executive branch does (1) give effect to Indiana Code Section 34-28-2-2.5(a)(5) by requiring name-change court orders to amend state-issued IDs, thus extending the prohibition on non-citizen name changes, and (2) create conditions under which Mr. Doe must show his ID in various circumstances, which contribute to his injury. The governor thus assists in effectuating the bar on legal name changes for non-citizens. The result for Mr. Doe is an exclusion from public life that is the very essence of discrimination.

Put another way, "[w]hile [Governor Holcomb] may not be the only party responsible for the injury alleged here, a plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm." *Norton*, 422 F.3d at 500. The governor's power over name change policy at the BMV, and that policy's reliance on discriminatory state court orders, is enough to satisfy the "weak" causal connection required by this court. *Banks*, 997 F.2d at 239. *See also Bennett*, 520 U.S. at 168 (holding that a defendant's actions that obstruct and harm the plaintiff need not be "the very last step in the chain of causation").

Further, the District Court here mistakenly placed reliance on *Hearne*, a case involving more suitable, local public defendants than a governor. 185 F.3d at 776. *Hearne* involved an unusual state statute, with application to only one entity in the state of Illinois, the Chicago public school system. *Id.* at 772. Because of that targeted aspect of the statute, the governor had no particular role in operating or overseeing the Chicago public schools, and another entity, the Chicago school board, bore primary responsibility for operation of the school system. *Id.* at 776. Unsurprisingly, the court concluded that the governor should be dismissed, while leaving the local school board as a defendant. *Id.* First, as discussed above, unlike in *Hearne*, the Governor of Indiana plays a role in effectuating Indiana's ban on non-citizen name changes. Further, here Plaintiff challenges a statute of statewide applicability where no local government entity has exclusive or special responsibility for the enforcement of the statute in comparison to other officials throughout Indiana. Moreover, Mr. Doe has also named the Clerk as the appropriate local defendant. Finally, *Hearne* did not involve the dismissal of all defendants, leaving no alternative public officials able to be named in federal court to redress Plaintiff's injury.

2. Attorney General Hill

In his official capacity, Attorney General Hill is the chief legal officer of the State of Indiana. Short App. 3; I.C. § 4-6-3-2. He has a duty to see that the laws of the State are uniformly and adequately enforced. *Id.* When the constitutionality of state statutes are challenged, he has the duty to defend them in court. I.C. 34-33.1-

1-1. The Attorney General's broad authority to enforce the criminal law has been held sufficient to deem him a proper defendant even in cases where a criminal statute was not the principal evil challenged. In *Baskin v. Bogan*, the Indiana Attorney General was held to be a proper defendant solely because some criminal statutes were part of the state's legal framework prohibiting same-sex marriage. This despite that plaintiffs there had not expressly challenged any of those criminal statutes, the statute they did challenge defined no criminal penalties, and there was no finding that any plaintiff had been or was likely to be prosecuted under a criminal statute prohibiting same-sex marriage. 12 F. Supp. 3d 1144, 1152 (S.D. Ind. 2014), *aff'd*, 766 F.3d 648 (7th Cir. 2014); *see also Bowling,* 39 F. Supp. 3d at 1031 (enjoining Indiana Attorney General from enforcing general perjury statute against same-sex couples who might sign government forms indicating they were married). That is to say, Plaintiff need not show that the Attorney General enforces the challenged statute; it is enough that the Attorney General *may "assist"* in enforcing *some* statute *related* to the challenged statute. *Baskin*, 12 F. Supp. 3d at 1152; I.C. § 4-6-1-6.

Here, although the challenged statute does not include criminal provisions, Mr. Doe's inability to change his legal name could conceivably lead to criminal prosecution for using the name that matches his male identity instead of his legal name in a variety of contexts. Everyone in Mr. Doe's life knows him as John. He knows himself to be John and introduces himself to people he meets as John. Yet, because he cannot change his legal name to John, could potentially be viewed as

lying and thus committing a crime for using the name John on a government form, giving the name John in a deposition about unrelated matters, or telling a police officer that his name is John. *See, e.g.,* I.C. § 35-44.1-2-4 (knowingly making false statements about one's identity to public servants); I.C. § 35-44.1-2-1 (perjury); I.C. § 35-44.1-2-2 (obstruction of justice).[5] Attorney General Hill is therefore a proper defendant because of his broad authority to enforce the criminal law in ways that could someday penalize Mr. Doe for his inability to change his legal name.

3. Clerk Eldridge

Clerk Eldridge similarly has a state-imposed duty to enforce the unlawful statute that discriminates against non-citizens. Short App. 3-4. Moreover, Clerk Eldridge's Office is required to inform and educate the public about the law. *Id.* at 12-13. Clerk Eldridge's Office advises non-citizens that they are ineligible, maintains and distributes literature that advertises to non-citizens that they are ineligible, and processes name-change petitions through a system in which non-citizens have no chance of success. *Id.* at 3. Under the state's name change scheme, both the forms created by the Director and the actions taken by the Clerk's Office play a critical role in the process and have the ability to significantly obstruct the ability of an individual to obtain a legal name change, as was the case for Mr. Doe.

The District Court's decision acknowledges that the Clerk plays some role in administering the name-change process with the discriminatory noncitizen bar. *Id.*

[5] Plaintiff notes that any such prosecution of a transgender person for using their preferred name rather than their legal name would likely be unsuccessful and unlawfully discriminatory. However, the court in *Baskin* imposed no requirement that a conceivable prosecution be either likely or likely to succeed.

at 32-24 (crediting allegations that "the Clerk's staff members answer questions about the requirements to petition, that the Clerk's office distributes information relating to the petition, and that the Clerk 'process[es] petitions through a discriminatory system in which non-citizens have no chance of success.'"). In concluding that the Clerk is an improper defendant, however, the District Court appears to rely heavily on the fact that the Clerk's staff does not make the *ultimate* decision about whether the noncitizen bar will in fact be applied, as required by statute. *Id.* at 34 (noting allegation that "a Clerk's office employee informed him that a non-citizen's petition had just been denied by a judge.").

Perhaps implicit throughout the District Court's decision is the notion that a state court judge might be a more obvious target for the injunctive and declaratory relief sought by Plaintiff. Plaintiff's decision not to pursue potential remedies against a state court judge directly was a practical one based in recognition that the principle of judicial immunity could have presented difficulty in prevailing on such a claim. A plaintiff is not required to bring suit against *all* conceivable defendants where there are also other parties that play a role in the harm he suffers, the injunction of which will remove a meaningful barrier to obtaining the ultimate relief he seeks. As this Court noted in *Norton*, "[w]hile the [defendant] may not be the only party responsible for the injury alleged here, a plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm." 422 F.3d at 500. Similarly, a defendant's actions that obstruct and harm the plaintiff

need not be "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168 (1997); *see also LeBlanc*, 627 F.3d at 123.

In a recent decision, *Campaign for Southern Equality v. Mississippi Department of Human Services.*, the court held that plaintiff had standing to sue the Director of the state Department of Human Services ("DHS") to challenge a statute prohibiting same-sex adoption even though defendant lacked statutory authority to grant or deny adoptions. 175 F. Supp. 3d 691, 703 (S.D. Miss. 2016). After the *Obergefell* decision, plaintiffs contacted the Director of DHS, asking whether they could submit an application to become foster parents. The Director informed plaintiffs that they would not be able to adopt until the adoption ban was lifted. *Id*. at 704. The court held that plaintiffs established the causation and redressability requirements for standing because the Director "frustrated gay adoptions" through such procedures. *Id*. at 705.

Just as the Director of DHS frustrated the plaintiff's efforts in *Campaign*, Clerk Eldridge has frustrated Mr. Doe's efforts to petition for a name change. Despite the fact that both the Director and the Clerk lack the authority to grant or deny the applications, simply informing Plaintiff that his efforts will fail is sufficient to establish causation and redressability. Moreover, enjoining the Clerk from frustrating Plaintiff's efforts to obtain a name change will also, as a practical matter, fully resolve Plaintiff's injury, as "it is ordinarily presumed that judges will comply with a declaration of a statute's unconstitutionality without further

compulsion." *In re the Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 23 (1st Cir. 1982) (dismissing suit against judges).

Although they are employees of the judicial branch of government, like judges, neither the Clerk nor the Director may claim judicial immunity in this case. Section 1983, under which Plaintiff brings this constitutional challenge, provides for broad federal court jurisdiction against all state actors, including judicial officers, for violation of federal constitutional rights:

> Every person who, under color of any statute ... of any State, subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in ... [a] suit in equity ... except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. The only exception stated is where the officer's action is taken pursuant to his or her "judicial capacity," as opposed to an administrative or ministerial capacity. Here, the actions of the Clerk and the Director are plainly administrative and ministerial, not judicial.

As the district court found in *Boddie v. State of Conn.*, if the clerk and judge were *not* permissible defendants in a federal court action to challenge an unconstitutional policy limiting access to state courts for purposes of divorce,

> a state could immunize any unconstitutional policy against the injunctive power of the federal courts by entrusting its administration to an officer of its judicial branch. The proper defendant in a case such as this one is the state"s agent in the implementation of the allegedly unconstitutional policy; and the defendants do not allege that any officer of the State of Connecticut other than themselves is entrusted with administration of the statute.

286 F. Supp. 968, 971–72 (D. Conn. 1968) (finding standing was proper against state court judges and court clerk, but ultimately dismissing on the merits of the claim), *rev'd on other grounds sub nom. Boddie v. Connecticut*, 401 U.S. 371 (1971). On appeal, the U.S. Supreme Court agreed with the lower court's determination of the standing question, and went further, reversing its decision to dismiss the case on the merits. *Boddie v. Connecticut*, 401 U.S. 371, 375–76 (1971). The Supreme Court decision held that due process requires courts to ensure that individuals have meaningful access to the judicial process to seek outcomes over which state courts hold a monopoly—such as the legal name change Mr. Doe seeks. In situations where "the judicial proceeding becomes the only effective means of resolving the dispute at hand[,] . . . denial of a defendant's full access to that process raises grave problems for its legitimacy." *Id.* The Court held, therefore, that "a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, pre-empt the right to dissolve this legal relationship [marriage] without affording all citizens access to the means it has prescribed for doing so." *Id.* at 383.

The same conclusion applies to Indiana's statutory rule that preemptively bars non-citizens alone from accessing the judicially-controlled monopoly on legal name changes. That discriminatory rule—and, specifically, the Clerk's and Director's role in applying it—unconstitutionally bars Mr. Doe from accessing state court procedures, causing him ongoing harm. To meaningfully vindicate his rights,

he must be able to seek relief from the federal courts to protect him against the very same state government actors who caused his harm in the first place.

Finally, the District Court also relied heavily on the Clerk's unilateral assertion that its employees do "not refuse name-change petitions on the grounds that they lack some information required under Indiana Code § 34-28-2-2.5. The legal sufficiency of a petition is a determination for a judge, not the Clerk's office." Short App. 33. This contradicts the fact alleged in the Complaint, that Mr. Doe reasonably understood the comments of the Clerk's staff to not merely dissuade him from filing, but to outright bar his filing a petition. *Id.* at 12 (citing amended complaint). It appears likely that, following the institution of the present lawsuit, the Clerk has intentionally instructed staff to accept all petitions, regardless of their legal insufficiency. Such voluntary cessation of unlawful conduct does not suffice to moot a claim or undermine a defendant's responsibility for causing the plaintiff's harm at the time the injury occurred. *See Already, LLC v. Nike, Inc.*, 568 US. 85, 91 (2013) ("[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.") (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190 (2000)).

4. Director Willis

The forms produced and distributed by Director Willis include portions that detail the citizenship requirement. Short App. at 4. The statute and forms present

a serious impediment to non-citizens from obtaining changes of legal name, and helped to dissuade Mr. Doe from petitioning for a change of name. *Id.* at 13.

After a state circuit judge verifies that a petition conforms with the statute, the judge signs a form order, that has been prepared and approved by the Indiana Supreme Court Division of State Court Administration, and sends a copy to the clerk of the circuit court of the county where the person resides.[6] I.C. § 34-28-2-5. Further, name-change petitioners only come before a state circuit judge after completing a petition, most commonly on court forms prepared by the Division of State Court Administration, and interacting with a court clerk's office to file the petition. As discussed in greater detail below, both the forms and the Clerk's office play crucial roles in deterring and preventing non-citizens from filing and appearing before a judge for a name-change petition. I.C. § 34-28-2-5.

The District Court below faulted Plaintiff for not providing it a "copy of the subject forms." Short App. 10. The subject forms are published by the state court system—avoiding any need for authentication—and are publicly available on its website. *See* Indiana Judicial Branch Self-Service Legal Center, Verified Petition for Name Change for an Adult, at http://www.in.gov/judiciary/selfservicce/2338.htm. Therefore, the District Court could and should have taken judicial notice of such forms. Fed. R. Evid. 201(b) (courts may take judicial notice of "a fact that is not subject to reasonable dispute because it . . . (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."). The

[6] In effect, in this instance, circuit court judges are essentially performing a ministerial task of verifying compliance with all state-law requirements for a change of legal name. Nonetheless, judges would likely claim judicial immunity if named as defendants.

District Court erred by not taking judicial notice of the forms or, alternatively, giving Plaintiff leave to amend the Complaint to attach the relevant forms.

Similarly, the District Court asserted that because Plaintiff did not allege that the forms are mandatory and did not "provide[] any allegations as to what role the forms play in the grant, denial or processing of a name-change petition." Short App. 11. The forms guide both petitioners and judges by drawing a road map of the statutory requirements. *See* Indiana Judicial Branch Self-Service Legal Center, Verified Petition for Name Change for an Adult, at http://www.in.gov/judiciary/selfservice/23 38.htm ("In support of this Petition, Petitioner states as follows: . . . . 6. . . My proof that I am a United States citizen is _____."); Order on Verified Petition for Change of Name ("[T]he Court . . . now finds as follows: . . . . 7. That Petitioner has presented proof of United States citizenship."). They therefore serve as an open barrier to obtaining a legal name change, both by discouraging would-be noncitizen petitioners from filing petitions for name change, and by directing state court judges that noncitizens may not obtain legal name changes. If such allegations were required to be spelled out in the Complaint, the District Court should have granted Plaintiff leave to amend the Complaint to include those facts, and its decision not to allow such amendment was in error.

C. The requested relief would redress Mr. Doe's injury.

Additionally, as the Supreme Court has recognized, when a "plaintiff is himself an object of the action (or forgone action) at issue ... there is ordinarily little

question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561-62. Such is the case here.

The redressability requirement is satisfied if the requested relief provides "a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U.S. at 464; *Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 265 (1991) (finding standing where requested relief makes redress "likely"). The requirement of redressability is closely related to the causation analysis. Indeed, "Causation and redressability typically overlap as two sides of a causation coin. After all, if a government action causes an injury, enjoining the action usually will redress that injury." *Carpenters Industrial Council v. Zinke*, 854 F.3d 1, 5 n.1 (D.C. Cir. 2017) (citations omitted).

Mr. Doe has more than met this threshold requirement. If and when the requested relief is granted, Mr. Doe will be able to petition for a change of legal name. That will resolve the harms caused by the named defendants. Moreover, when the statute is declared unconstitutional, the state court judges that ultimately hear his petition will have no alternative but to grant the requested name change without regard for the discriminatory and unconstitutional noncitizen bar.

CONCLUSION

Mr. Doe has met the requirements for standing against each of the Defendants in this case. For the foregoing reasons, Mr. Doe respectfully requests

that this Court reverse and vacate the judgement of the District Court and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that this brief, including footnotes and issues presented, but excluding certificates, contains 11,939 words according to the word-count function of Microsoft Word, the word-processing program used to prepare this brief.

/s/ Matthew J. Barragan
Matthew J. Barragan

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system, which sent notification of such filing to the following:

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REQUIRED SHORT APPENDIX

Under Circuit Rule 30, Appellant submits the following as his Required Short Appendix. Appellant's Required Short Appendix contains all of the materials required under Circuit Rule 30(a) and Circuit Rule 30(b).

/s/ Matthew J. Barragan
Matthew J. Barragan

No. 17-1756

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN DOE, formerly known as JANE DOE,

Plaintiff-Appellant,

v.

ERIC HOLCOMB, in his official capacity as Governor of the State of Indiana, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Indiana, No. 1:16-cv-02431-JMS-DML
The Honorable Jane Magnus-Stinson, Chief Judge

REQUIRED SHORT APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

JOHN DOE, formerly known as JANE DOE, Plaintiff, v. MICHAEL PENCE, in his official capacity as Governor of the State of Indiana; GREGORY ZOELLER, in his official capacity as Attorney General for the State of Indiana; MYLA A. ELDRIDGE, in her official capacity as Marion County Clerk of the Court; and LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration Defendants.	Civil Action No. 1:16-cv-2431-JMS-DML

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit challenges Indiana Code Section 34-28-2-2.5(a)(5), which prohibits non-citizens from obtaining a change of legal name. *See* Indiana Code § 34-28-2-2.5(a)(5). That statute lists the required contents of a petition to the State circuit courts for a change of name. Subsection 5 requires "proof that the person is a United States citizen." The law was signed by the Governor of the State of Indiana on March 17, 2010, and it went into effect on July 1, 2010.

2. Plaintiff John Doe, whose legal name is Jane Doe, is a 31-year-old Latino who resides in Indiana. In August 2015, the United States granted Mr. Doe asylum from Mexico. Mr. Doe is transgender. Mr. Doe is being denied his need for a change of name from Jane Doe to John Doe. Mr. Doe is harmed by Indiana Code Section 34-28-2-2.5(a)(5) in that it prevents him from changing his name to match his gender identity. Plaintiff seeks a declaratory judgment that the provisions and enforcement by Defendants of Indiana Code Section 34-28-2-2.5(a)(5)

violate his rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Free Speech Clause of the First Amendment to the United States Constitution. Plaintiffs also seeks an injunction permanently barring enforcement of Indiana Code Section 34-28-2-2.5(a)(5).

JURISDICTION AND VENUE

3. Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

4. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

5. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief under Rules 57 and 65 of the Federal Rules of Civil Procedure §§ 2201 and 2202.

6. This Court has personal jurisdiction over Defendants because they are domiciled in the State of Indiana and/or have otherwise made and established contacts with the State to permit the exercise of personal jurisdiction over them.

7. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because all Defendants reside within the State of Indiana. Venue is also proper in this Court under 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to the claim occurred, and will occur, in this district.

PARTIES

A. Plaintiff

8. Plaintiff John Doe ("Mr. Doe"), whose legal name is Jane Doe, is a 31-year-old transgender Latino man who resides in Marion County, Indiana.

B. Defendants

9. Defendant Michael Pence is sued in his official capacity as the Governor of the State of Indiana. In his official capacity, the Governor is the executive officer of the State of Indiana. It is his responsibility to ensure that the laws of the State are properly and constitutionally enforced. This includes the ability to direct state employees regarding enforcement of the law. The Governor maintains an office in Indianapolis. Pence is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

10. Defendant Gregory Zoeller is sued in his official capacity as the Attorney General of the State of Indiana. In his official capacity, the Attorney General is the chief legal officer of the State of Indiana. It is his duty to see that the laws of the State are uniformly and adequately enforced. The Attorney General maintains an office in Indianapolis. Zoeller is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

11. Defendant Myla A. Eldridge is the Marion County Clerk of the Court. In her official capacity, the Clerk is responsible for processing name-change requests and maintaining vital records for identification. Eldridge ensures that name-change requests comply with relevant Indiana laws, including the law that excludes non-citizens from obtaining changes of legal name in Indiana. The Clerk distributes forms that detail the citizenship requirement and prevent or discourage non-citizens from accessing changes of legal name. The Clerk maintains

an office in Indianapolis. Eldridge is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

12. Defendant Lilia G. Judson is the Executive Director of the Indiana Supreme Court Division of State Court Administration. Judson is responsible for producing forms used by people in the State of Indiana to petition courts for changes of legal name. The forms produced by her office include portions that detail the citizenship requirement and prevent or discourage non-citizens from accessing changes of legal name. The Division of State Court Administration maintains an office in Indianapolis. Judson is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

FACTUAL ALLEGATIONS

A. Sex, Gender Identity, and Gender Dysphoria

13. Sex is a characteristic that is made up of multiple factors, including hormones, external physical features, internal reproductive organs, chromosomes, and gender identity. Gender identity—a person's deeply felt understanding of their own gender—is the determining factor of a person's sex.

14. A person's gender identity may be different from or the same as the person's sex assigned at birth. Gender identity is often established as early as two or three years of age, though a person's recognition of their gender identity can emerge at any time. There is a medical consensus that efforts to change a person's gender identity are ineffective, unethical, and harmful.

15. The phrase "sex assigned at birth" refers to the sex designation recorded on an infant's birth certificate. For most people, gender identity aligns with the person's sex assigned at birth, a determination generally based solely on the appearance of a baby's external genitalia

at birth. For transgender people, however, the gender they were assumed to be at birth does not align with their gender identity. For example, a transgender man is a person who was assigned female at birth but is in fact male. A transgender woman is a person who was assumed to be male at birth but is in fact female.

16. Gender Dysphoria is a condition recognized by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th edition ("DSM-5"). It refers to clinically significant distress that can result when a person's gender identity differs from the person's assumed gender at birth. If left untreated, Gender Dysphoria may result in profound psychological distress, anxiety, depression, and even self-harm or suicidal ideation.

17. Treatment for Gender Dysphoria is usually undertaken following the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("Standards of Care"), published by the World Professional Association for Transgender Health ("WPATH") since 1980. WPATH is an international, multidisciplinary, professional association of medical providers, mental health providers, researchers, and others, with a mission of promoting evidence-based care and research for transgender health, including the treatment of Gender Dysphoria. WPATH published the seventh and most recent edition of the Standards of Care in 2011.

18. Consistent with the WPATH Standards of Care, treatment for Gender Dysphoria consists of the person "transitioning" to living and being accepted by others as the sex corresponding to the person's gender identity. Transition can include social, legal, and medical aspects. A social transition, though specific to each person, typically includes adopting a new first name, using and asking others to use pronouns reflecting the individual's true gender,

wearing clothing typically associated with that gender, and using sex-specific facilities corresponding to that gender.

19. A legal transition includes the steps a person may take to change the name and/or gender marker on legal documents and forms of identification, such as obtaining a court-ordered name change and changing the name on one's driver's license or state ID, birth certificate, passport, and school or employment records.

20. Medical treatments, such as hormone therapy or surgical procedures, may also be undertaken to facilitate transition and alleviate dysphoria. Medical treatments are not necessary or appropriate in all cases.

21. For a transgender person, a change of name is in many cases a necessary part of treatment for Gender Dysphoria, and vital to their health and wellbeing. Being identified by a name traditionally associated with the person's sex assigned at birth can be a cause of deep distress and dysphoria. Being able to exclusively use a name consistent with the person's gender identity often significantly relieves that distress.

22. Transgender people face a heightened risk of discrimination, harassment, and violence when their transgender status is known to others. Being referred to by or having to identify oneself by a name traditionally associated with the person's sex assigned at birth, rather than with the person's lived gender, can "out" a transgender person to others, revealing their private medical information and putting them at serious risk of harm. Adopting and exclusively using a name that is consistent with a person's gender identity, on the other hand, can allow a transgender person to maintain the privacy of their transgender status.

B. Plaintiff.

23. Plaintiff John Doe is a Mexican citizen who has lived in the United States for the last 26 years. He is 31 years old.

24. His family moved from Mexico to Indiana in 1990. He has lived in Indiana ever since.

25. Mr. Doe currently resides in Marion County, Indiana.

26. In December 2013, the Department of Homeland Security granted Mr. Doe Deferred Action for Early Childhood Arrivals ("DACA") status.

27. Mr. Doe married his wife, a U.S. citizen, in July 2014. His marriage license includes his legal name "Jane." In July 2016, Mr. Doe's wife gave birth to their son.

28. In August 2015, the United States granted Mr. Doe asylum from Mexico, due to the risk that he would face persecution because he is transgender.

29. Mr. Doe will apply for permanent residency in September 2016. After Mr. Doe becomes a permanent resident, he will need to wait at least three years before applying for naturalization.

30. Mr. Doe is a man. He is also transgender. This means that his sex assigned at birth was female, but that designation does not accurately reflect his gender identity and his true sex, which is male.

31. Mr. Doe's legal name is "Jane."

32. Since a very young age, Mr. Doe was aware that he did not feel like a girl, but he did not know how to express how he felt.

33. Mr. Doe ultimately acknowledged his male gender identity to himself in 2010. Mr. Doe has been in the continuous care of a licensed mental health clinician since 2010, who diagnosed Mr. Doe with Gender Dysphoria. She has helped guide his transition, following the

WPATH Standards of Care. For Mr. Doe, an essential part of his treatment for Gender Dysphoria includes living in accordance with his gender identity in all respects, including the use of a male name and pronouns.

34. In 2012, Mr. Doe explained to his family and friends that he is a man. Mr. Doe also began using "John" as his first name in 2012. His friends, family, and coworkers recognize him as a man, and they refer to him using his male name and male pronouns.

35. Also consistent with the WPATH Standards of Care, Mr. Doe's physician recommended and prescribed hormone treatment to treat his Gender Dysphoria. Mr. Doe has been on hormone therapy since 2011. Among other therapeutic benefits, the hormone treatment has deepened Mr. Doe's voice, increased his growth of facial hair, and given him a more masculine appearance. This treatment helped alleviate the distress Mr. Doe experienced due to the discordance between his birth-assigned sex and his identity, and helped him to feel more comfortable with who he is.

36. In 2012, Mr. Doe also underwent gender-affirming surgery.

37. Mr. Doe is recognized as male on all official U.S. documents, including his Indiana state ID and his immigration documents, which show the gender marker "M." However, his legal name remains Jane, a traditionally female name.

38. Mr. Doe is not recognized by others as transgender unless he tells them, or unless they see his ID, with his legal name "Jane."

39. A change of legal name is required in order to change the name on an Indiana state ID or driver's license and on federal immigration documents. Mr. Doe has tried to change his legal name from "Jane" to "John" so that he could update his name on his official documents.

However, he is barred from petitioning to change his legal name because he is not a United States citizen.

40. Mr. Doe would change his name in Indiana but for the statute prohibiting non-citizens from obtaining a change of legal name.

41. Mr. Doe faces discrimination and harassment regularly because he cannot obtain a change of legal name and update his official documents. Mr. Doe's inability to change his legal name and update his ID has caused him serious emotional distress and difficulty in his day-to-day activities every time he is required to present his government-issued ID.

42. When others see Mr. Doe's ID, they often suspect or realize that he is transgender. Others question whether the ID is a fake and suggest that he is committing fraud. To allay those accusations of fraud, Mr. Doe is often forced to disclose and explain his transgender status.

43. Mr. Doe feels uncomfortable by the reactions of others when they see his ID. He fears harassment, arrest, or even violence at the hands of anyone who sees his ID.

44. The constant threat of harassment due to the inconsistency between Mr. Doe's name on his ID and his gender identity and expression makes him anxious and worried, even to leave his house.

45. In 2011, Mr. Doe was pulled over for a minor traffic infraction. After providing the officer with his state-issued ID, the officer did not believe that it was Mr. Doe's ID and repeatedly threatened to take him to jail because of this suspicion. That event was extremely frightening to Mr. Doe. He worried about what would happen to him if he were housed in a jail cell with other men. He also worried about other detainees finding out that he is transgender, and feared that he might get beaten up or even sexually assaulted. Mr. Doe then remembered

that he had a letter from his therapist explaining his transgender status, and he showed it to the officer. The officer seemed to believe him, but said with disgust that Mr. Doe's "weird situation" was annoying him. Because Mr. Doe did not have a valid license to drive at that time, he had to call his then-girlfriend (now his wife) to pick him up. When she arrived, the officer said to her, "You can take I-don't-know-what-*it*-is with you." Mr. Doe was humiliated to be dehumanized in such a way in front of his girlfriend.

46. In 2013, Mr. Doe had to show his ID when he went to the emergency room because of pain and immobility in his neck and shoulder. The hospital staff was confused when they first saw his ID. Once they realized that Mr. Doe is transgender, though, their confusion turned to ridicule. Five of the nurses gathered around to laugh at Mr. Doe. Mr. Doe's doctor was more professional, and he eventually received treatment. Mr. Doe's wife was furious about the incident, but Mr. Doe was too embarrassed to raise the issue with hospital management. No one from the hospital ever apologized to Mr. Doe or his wife for the degrading treatment he received.

47. In 2013, Mr. Doe attended a family birthday celebration at a restaurant. When he ordered a drink, the waiter asked to see his ID. The waiter laughed and he asked Mr. Doe why his ID said "Jane." His family celebration was put on hold while Mr. Doe tried to convince the waiter that his ID was real. Mr. Doe asked the waiter why he was worried about Mr. Doe's name when his age was all that mattered. The waiter said, "This is my restaurant, and I *am* worried about it!" As Mr. Doe sat silent, angry, and embarrassed, his friends and family were eventually able to convince the waiter that the ID was his and that he was over 21 years old.

48. Mr. Doe is aware of the startling rates of violence against transgender people. While he has not yet been subject to physical attack, he lives in fear of it, waiting in dread for the day that something will happen to him.

49. Being denied access to a change of legal name, and being called by the traditionally female name "Jane," causes Mr. Doe significant psychological distress, anxiety, and dysphoria.

C. Indiana Code Section 34-28-2-2.5

50. On March 17, 2010, the Governor of the State of Indiana signed into law Public Law 61, effective July 1, 2010, which was codified, in part, as Indiana Code Section 34-28-2-2.5. The law amended the procedures to effect a change of legal name.

51. Indiana Code Section 34-28-2-2.5(a) lists the required contents of a petition to the state circuit courts for a change of name for any person at least seventeen years of age. Subsection 5 requires "proof that the person is a United States citizen."

52. Indiana Code Section 34-28-2-2.5 was originally proposed as House Bill 1047 ("HB 1047"). According to the author of HB 1047, the goal of the legislation was to "help reduce the amount of identity theft from people who create new identities. It also would make is [sic] more difficult for illegal immigrants to create new identities, since the documentation to prove a person's current identity would be much stricter." (Press Release, Democratic Caucus, Cheatham Outlines Agenda for 2010 Legislative Session (Dec. 9, 2009)).

53. Under Indiana Code Section 34-28-2-2.5(a), non-citizens are prohibited from obtaining changes of legal name in Indiana.

54. According to the Indiana Bureau of Motor Vehicles ("BMV"), in order to change the name shown on a driver's license or state ID, a person must provide documentation of the

new name through a court order, a marriage license, a divorce decree, or an amended birth certificate. Therefore, an Indiana resident who cannot obtain a change of legal name cannot change the name on an Indiana driver's license or state ID.

55. In order to change the name on federal immigration-related documents and records, a person must provide documentation of a change of legal name. Therefore, an Indiana resident who cannot obtain a change of legal name cannot change the name on federal immigration-related documents or records.

56. In order for a person in Indiana to change their name through a court order they must satisfy the requirements of Indiana Code Section 34-28-2-2.5(a)(5) and provide proof of citizenship.

57. Mr. Doe is not a United States citizen and thus lacks any proof of citizenship. Indiana Code Section 34-28-2-2.5(a)(5) therefore prohibits Mr. Doe from obtaining a change of legal name, and therefore bars him from changing his name on his Indiana driver's license, state ID, and federal immigration documents and records.

58. But for the fact that Mr. Doe is not a United States citizen, he is legally qualified to petition for a change of legal name under the laws of Indiana and wishes to change his legal name in the State. Mr. Doe is over the age of seventeen, is not a sex or violent offender who is required to register under Indiana Code Section 11-8-8, and is not trying defraud creditors by changing his name.

59. In December 2013, Mr. Doe appeared in person at the Marion County Clerk's Office to inquire about petitioning for a change of legal name. When Mr. Doe requested name change forms, he was told by two different employees of the Clerk's Office that citizenship was a legal qualification to change his legal name. He was also given an information packet about

name changes that listed the citizenship requirement. That packet included forms prepared by the Indiana Supreme Court Division of State Court Administration.

60. One of the employees appeared to be a supervisor. That employee explained that another non-citizen had attempted to change a legal name and that the change was rejected by a judge.

61. That employee asked Mr. Doe about his citizenship status. Mr. Doe explained that he was not a citizen but had DACA. The employee asked what DACA was, and Mr. Doe explained. The employee asked if Mr. Doe had a social security number. Mr. Doe replied that he did have a social security number but the employee apparently then recalled that some non-citizens are assigned social security numbers. The employee then said, "It looks like the only requirement you don't meet is being a citizen," and said, "If you do become a citizen, then we would have no problem changing your name." The employee proceeded to explain the other legal requirements, such as newspaper publication and paying a filing fee.

62. Mr. Doe was dissuaded from filing his petition with the Marion County Clerk's Office because of the employee's actions. The Marion County Clerk's Office maintains a website that lists the citizenship requirement for name changes at: http://www.indy.gov/eGov/County/Clerk/civil/filing/Pages/Name-Change.aspx.

63. Even if Mr. Doe were allowed to submit a petition, such petition would be futile because he cannot prove that he is a United States citizen.

64. Because Mr. Doe cannot petition for or obtain a court-ordered name change, he is forced to use the name "Jane" for official purposes and on official identification, including his Indiana state ID and his immigration records.

65. Indiana Code Section 34-28-2-2.5 was first enacted as part of a measure targeting identity theft and with the specific purpose of making it "more difficult for illegal immigrants to create new identities." (Press Release, Democratic Caucus, Cheatham Outlines Agenda for 2010 Legislative Session (Dec. 9, 2009)).

CLAIMS FOR RELIEF

COUNT I:
Deprivation of Equal Protection
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

66. Plaintiff re-alleges and incorporates by reference all previous allegations.

67. Plaintiff states this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and challenges Indiana Code Section 34-28-2-2.5(a)(5) both facially and as applied to him.

68. The Fourteenth Amendment to the United States Constitution, enforceable under 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

69. Indiana Code Section 34-28-2-2.5(a)(5) was enacted with the purpose and intent to discriminate against non-citizens on the basis of alienage.

70. Indiana Code Section 34-28-2-2.5(a)(5) impermissibly and invidiously targets Plaintiff, a non-citizen with asylum status, by preventing him from changing his name.

71. Indiana Code Section 34-28-2-2.5(a)(5) impermissibly restricts name-change proceedings to United States citizens. Non-naturalized persons are therefore unable to choose and change their legal name. Thus, Indiana Code Section 34-28-2-2.5(a)(5) treats similarly-situated people differently by providing access to name-change proceedings to citizens, but not to non-citizens. As a result, non-citizens are denied the same tangible benefits afforded to

citizens. By purposefully denying name-change proceedings to non-citizens, Indiana Code Section 34-28-2-2.5(a)(5) discriminates against people on the basis of alienage.

72. The House Sponsor of the act that would become Indiana Code Section 34-28-2-2.5 was clear that the purpose of the provision was to make it "more difficult for illegal immigrants to create new identities." Indiana Code Section 34-28-2-2.5(a)(5) impermissibly discriminates against Plaintiff, a non-citizen, on the basis of alienage and deprives him of the equal protection of the laws within the meaning of the Fourteenth Amendment to the United States Constitution.

73. As applied to Plaintiff, and all other transgender non-citizens in the state, the harm caused by Indiana Code Section 34-28-2-2.5(a)(5) is particularly pronounced. Obtaining a name-change is medically necessary to reduce Plaintiff's Gender Dysphoria. Plaintiff cannot use his legal identification documents, such as his Indiana state-issued ID, without each time disclosing his former name and the sex assigned to him at birth, and thus revealing that he is transgender. As a transgender person, Plaintiff's inability to change his name causes him severe and ongoing humiliation, emotional distress, pain, suffering, psychological harm, and stigma.

74. Indiana Code Section 34-28-2-2.5(a)(5) is not narrowly tailored to advance a compelling government interest, nor is it rationally related to any legitimate government interest.

75. Indiana Code Section 34-28-2-2.5(a)(5) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT II:
Deprivation of Due Process
Right to Autonomy in Fundamental Decisions
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

76. Plaintiff re-alleges and incorporates by reference all previous allegations.

77. The Due Process Clause of the Fourteenth Amendment protects a person's right to make certain fundamental personal decisions without undue interference from the state.

78. For a transgender person like Plaintiff, living in accordance with his true male sex and his male gender identity is a deeply personal decision, fundamental to his autonomy, dignity, and self-determination.

79. For a transgender person like Plaintiff, living in accordance with his true male sex and his male gender identity is also essential to his medical treatment for Gender Dysphoria.

80. Because Indiana Code Section 34-28-2-2.5(a)(5) prohibits Plaintiff from obtaining a change of legal name, Plaintiff's ability to live in accordance with his true male sex and his male gender identity is deeply undermined.

81. Because Plaintiff cannot obtain a change of legal name, his transgender status and the fact that he was assigned the female sex at birth becomes apparent whenever he must use his ID. That sends the message to Plaintiff and anyone who sees his ID that he is not "really" a man, but rather that he is in fact a woman named Jane and should be treated as such.

82. Indiana Code Section 34-28-2-2.5(a)(5) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by depriving Plaintiff of his fundamental right to liberty.

COUNT III:
Deprivation of Due Process
Right to Privacy of Personal Information
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

83. Plaintiff re-alleges and incorporates by reference all previous allegations.

84. The Due Process Clause of the Fourteenth Amendment protects against unwanted disclosure of personal matters.

85. Plaintiff's transgender status and the sex he was assigned at birth constitute deeply personal information that he should not be forced to disclose against his will.

86. Plaintiff, like all adults, is asked or required to show his ID regularly.

87. Because of Indiana Code Section 34-28-2-2.5(a)(5), Plaintiff is required to use and show an ID bearing the name "Jane," a traditionally feminine name.

88. Plaintiff's sex assigned at birth and his transgender status is revealed or implied every time he is forced to disclose that his legal name is "Jane." Plaintiff is forced to disclose this deeply private information every time he shows his legal ID. The repeated forced disclosure of this information violates his right to privacy.

89. Indiana Code Section 34-28-2-2.5(a)(5) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by depriving Plaintiff of his fundamental right to privacy with respect to personal information.

COUNT IV:
Deprivation of Freedom of Speech
U.S. Const. Amend. I
(42 U.S.C. § 1983)

90. Plaintiff re-alleges and incorporates by reference all previous allegations.

91. Indiana Code Section 34-28-2-2.5(a)(5) violates the First Amendment right to freedom of speech by compelling speech from Plaintiff that betrays and falsely communicates the core of who he is.

92. For transgender persons, communicating their name and expressing their gender is speech protected by the First Amendment. Plaintiff's adoption of the traditionally masculine name "John" conveys the message that he is a man, an essential component of personal identity. Conversely, for Plaintiff to use the name "Jane" conveys the message that he is "really" a woman and should be treated as such.

93. Federal law, Indiana law, and private actors require Mr. Doe to show official identification for a variety of purposes, including when requested by law enforcement.

94. Because he cannot change the name on his identification documents, Mr. Doe is compelled to speak and display the name "Jane" each time he shows his ID, communicating a message that contradicts his deeply held personal knowledge and belief that he is a man.

95. Each time Mr. Doe is compelled to speak and display the name "Jane," he is disclosing his transgender status and the fact that he was assigned the female sex at birth, against his will. This disclosure subjects him to serious risk of discrimination and harassment—as he has already experienced—or violence.

96. Requiring Mr. Doe to communicate his transgender status and endorse the message that he is "really" a woman serves no compelling or rational government interest.

97. Indiana Code Section 34-28-2-2.5(a)(5) violates the Free Speech Clause of the First Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

A. Declaring that the provisions and enforcement by Defendants of Indiana Code Section 34-28-2-2.5(a)(5), and any other sources of Indiana law that exclude non-citizens from obtaining a change of legal name violate Plaintiff's rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Free Speech Clauseof the First Amendment to the United States Constitution;

B. Permanently enjoining enforcement by Defendants of Indiana Code Section 34-28-2-2.5(a)(5), and any other sources of Indiana law that exclude non-citizens from obtaining a change of legal name;

C. Requiring Defendant Marion County Clerk of the Court in her official capacity to accept and process petitions for a change of name from non-citizens;

D. Awarding Plaintiff his costs, expenses, and reasonable attorneys' fees under 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other relief as the Court deems just and proper.

F. The declaratory and injunctive relief requested in this action is sought against each Defendant; each Defendant's officers, employees, and agents; and against all persons acting in cooperation with any Defendant or under a Defendant's supervision, direction, or control.

Dated: October 7, 2016

Respectfully submitted,

/s Barbara J. Baird
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE, formerly known as JANE DOE, Plaintiff, vs. MICHAEL PENCE, in his official capacity as Governor of the State of Indiana, GREGORY ZOELLER, in his official capacity as Attorney General for the State of Indiana, MYLA A. ELDRIDGE, in her official capacity as Marion County Clerk of the Court, LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration, Defendants.	)	No. 1:16-cv-02431-JMS-DML

ORDER

Plaintiff John Doe, whose legal name is "Jane Doe", is a transgender man who resides in Marion County, Indiana. [1] He is originally from Mexico and has been granted asylum here in the United States. He seeks to legally change his name from Jane to John, so that his name conforms with his gender identity and physical presentation, which is male. Mr. Doe asserts that the Indiana statute governing name changes unconstitutionally prevents him from changing his name because it requires petitioners to provide proof of United States citizenship, which Mr. Doe, as an asylee, does not have.

Mr. Doe has brought suit against Defendants Governor Mike Pence ("Governor Pence"), Attorney General Gregory Zoeller ("Attorney General Zoeller"), Marion County Clerk of Court

[1] Per order of the Court, Mr. Doe proceeds anonymously. [Filing No. 42.]

Myla Eldridge ("Clerk Eldridge"), and the Executive Director of the Indiana Supreme Court Division of State Court Administration, Lilia Judson ("Director Judson"). Mr. Doe raises claims under the First Amendment to the United States Constitution and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Presently pending before the Court are Defendants' Motions to Dismiss for lack of subject matter jurisdiction. [Filing No. 40; Filing No. 52.] For the reasons that follow, the Court grants the Defendants' Motions to Dismiss.

I.
BACKGROUND

Mr. Doe, whose legal name is "Jane Doe", is a 31-year old Latino who resides in Marion County, Indiana. [Filing No. 24 at 1.] Mr. Doe's family moved to Indiana from Mexico in 1990, and he has lived in Indiana since that time. [Filing No. 24 at 7.] Mr. Doe is transgender. [Filing No. 24 at 1.] This means that Mr. Doe was assigned the sex of female at birth, but his gender identity (his deeply felt understanding of his own gender) is male. [Filing No. 24 at 4-5.] The United States granted Mr. Doe asylum in 2015, finding that he risked facing persecution on account of his transgender status if he returned to Mexico. [Filing No. 24 at 7.] Mr. Doe was eligible to apply for permanent residency in September 2016. [Filing No. 24 at 7.]

Mr. Doe has been under the care of a licensed mental health clinician since 2010. [Filing No. 24 at 7.] She diagnosed Mr. Doe with Gender Dysphoria, a condition that is characterized by clinically significant distress that can result when a person's gender identity differs from the person's assumed gender (or assigned sex) at birth. [Filing No. 24 at 5-7.] Under the care of his clinician, Mr. Doe has been on hormone therapy since 2011, which has deepened Mr. Doe's voice, increased his growth of facial hair, and given him a more masculine appearance. [Filing No. 24 at 8.] Mr. Doe has also undergone gender-affirming surgery. [Filing No. 24 at 8.]

He is recognized on all of his official U.S. documents, including his Indiana State ID and his immigration documents, as male. [Filing No. 24 at 8.] But his legal name remains a traditionally female name. [Filing No. 24 at 8.] Mr. Doe is not recognized by others as transgender unless he tells them, or unless they see his ID, which identifies him by his legal, female name. [Filing No. 24 at 8.] Mr. Doe has experienced negative reactions and harassment on multiple occasions when he has presented his ID, because his female name does not match his male gender identity and expression. [Filing No. 24 at 9.] On one occasion, a police officer threatened to take him to jail because he did not believe that Mr. Doe was the individual identified in the ID. [Filing No. 24 at 9.] Others have ridiculed or harassed him. [Filing No. 24 at 9-10.] Mr. Doe is also afraid of being physically attacked because of being forced to reveal his transgender status. [Filing No. 24 at 11.]

Mr. Doe seeks to legally change his name, but he believes that he is barred from doing so by Indiana Code Section 34-28-2-2.5, the statute governing petitions for name changes in Indiana. [Filing No. 24 at 11.] That statute became effective in July 2010, and it states that a name-change petition must include, among other things, "[p]roof that the person is a United States citizen." I.C. § 34-28-2-2.5.[2]

In December 2013, Mr. Doe appeared in person at the Marion County Clerk's Office to inquire about petitioning for a change of legal name. [Filing No. 24 at 12.] When Mr. Doe requested name-change forms, he was told by employees of the Clerk's Office that U.S. citizenship was a legal requirement to change his name, and that "[i]f you do become a citizen, then we would have no problem changing your name." [Filing No. 24 at 12.] An employee also told him that

[2] The Court notes that its research has revealed no other state statute requiring proof of U.S. citizenship as a requirement for a name-change petition.

another non-citizen had attempted to change a legal name and that the change was rejected by a judge. [Filing No. 24 at 13.] He was also given an informational packet about name changes, including forms prepared by the Indiana Supreme Court Division of State Court Administration, which listed the citizenship requirement. [Filing No. 24 at 12-13.] Mr. Doe has not submitted a petition for legal name change. [Filing No. 52-2 at 6.]

Mr. Doe challenges the name-change statute as unconstitutional, alleging that it violates the First Amendment of the United States Constitution, and the Equal Protection and Due Process clauses of the Fourteenth Amendment.

II.
LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) "allows a party to dismiss a claim for lack of subject matter jurisdiction." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). The burden is on the plaintiff to prove, by a preponderance of the evidence, that subject-matter jurisdiction exists for his or her claims. *See Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003).

Article III of the Constitution grants federal courts jurisdiction over "cases and controversies[,]" and the standing doctrine is the tool used to identify which cases and controversies the federal judicial process can appropriately resolve. *Whitmore v. Arkansas*, 495 U.S. 149, 154-55 (1990). Standing is "the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "[T]he 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 1547 (2016) (internal citations omitted).

This Court's jurisdiction depends on "an actual controversy [that] must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). Thus, if the controversy defined by a legal claim is no longer live, or the parties lack a legally cognizable interest in the outcome, the claim is moot, and the court must dismiss for want of jurisdiction. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (per curiam) ("Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions,' ... our impotence 'to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.'") (internal citations omitted).

III.
DISCUSSION

The Defendants have moved to dismiss Mr. Doe's Complaint under Rule 12(b)(1), arguing that Mr. Doe lacks standing to bring the lawsuit.[3] [Filing No. 40; Filing No. 52.] Governor Pence, Attorney General Zoeller, and Director Judson (collectively the "Joint Defendants") argue that Mr. Doe has not established that he has standing because (1) he has not shown that he suffered an injury-in-fact; (2) any injury that he has suffered was not caused by the Joint Defendants; and (3) regarding Attorney General Zoeller and Director Judson, a favorable judgment against them would not redress Mr. Doe's alleged injury.[4] [Filing No. 41.]

[3] Attorney General Zoeller and Director Judson also state that they seek dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. As their arguments refer solely to standing issues under Rule 12(b)1), which is jurisdictional, the Court deems the 12(b)(6) argument to be abandoned.

[4] Clerk Eldridge did not join in the Joint Defendants' Motion, and her Motion will be treated separately.

A. Joint Defendants

The Joint Defendants contend that Mr. Doe has not suffered an injury-in-fact. They argue that he has not actually been denied a legal name change, because he has not submitted a petition requesting one. [Filing No. 41 at 7-8.] They argue that Mr. Doe merely speculates that such a petition would be denied, and that this speculation is not sufficient to confer Article III standing.[5] In addition, they contend that Mr. Doe may apply for a name change once he establishes citizenship, so his legal claim amounts to a question of timing. [Filing No. 41 at 9.]

They also argue that Mr. Doe has not established the required causation element of standing—that his alleged injuries were caused by the actions of the Joint Defendants. [Filing No. 41 at 8.] As to Governor Pence and Attorney General Zoeller, the Joint Defendants argue that the Governor's and Attorney General's duties to enforce the laws of the state are defined by statute, and that no duties are imposed on either of those individuals to enforce the statute at issue. [Filing No. 41 at 8.] Regarding Director Judson, they contend that the mere publication of a form cannot have caused Mr. Doe's alleged injuries. [Filing No. 41 at 9.]

And finally, the Joint Defendants argue that Mr. Doe has not established that a favorable decision against Attorney General Zoeller and Director Judson will result in any relief, as required by the "redressability" element of the standing requirement. [Filing No. 41 at 9-10.] They argue that because those two individuals do not have the authority to amend or repeal the challenged law, and because they are not the individuals who evaluate name-change petitions, any declaratory or injunctive relief against them would not effectuate any change. [Filing No. 41 at 9-10.]

[5] The Defendants also style this as a ripeness argument. As described below, the Court assumes without deciding that Mr. Doe has established an injury-in-fact and that this claim is ripe for the Court's review.

Mr. Doe responds that he has demonstrated that he meets the requirements to establish standing. As to injury-in-fact, Mr. Doe contends that because the statute explicitly requires U.S. citizenship as a precondition for a name change, there is no question that his petition, were he to file one, would be denied. [Filing No. 50 at 8.] He contends that he need not engage in the futile process of filing the petition in order to establish his injury. [Filing No. 50 at 8.] In addition, Mr. Doe argues that his eventual citizenship is not a foregone conclusion, and that any number of intervening events could bar his path to citizenship. [Filing No. 50 at 6.] Therefore, the operation of the name-change statute and his ability to legally change will not necessarily be cured by the passage of time. [Filing No. 50 at 6.]

Regarding causation, Mr. Doe argues that his injuries are fairly traceable to the actions of the Joint Defendants. [Filing No. 50 at 6.] Mr. Doe alleges that Governor Pence and Attorney General Zoeller "have a duty to enforce the law," and that this law's enforcement against him caused his injuries. [Filing No. 24 at 3; Filing No. 50 at 6-7.] Regarding redressability, Mr. Doe argues that a favorable decision against the Joint Defendants would redress his injuries because injunctive relief will allow him to petition for a name change. [Filing No. 50 at 7.]

As noted, the "irreducible constitutional minimum of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547 (internal citations and quotations omitted). "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* "Where, as here, a case is at the pleading stage, the plaintiff must clearly ... allege facts demonstrating each element." *Id.* (internal citation and quotation omitted).

The Court assumes without deciding that Mr. Doe has sufficiently pled injury-in-fact and focuses its analysis on the causation and redressability elements.

1. Governor Pence

Mr. Doe argues that his alleged injuries are fairly traceable to Governor Pence because Governor Pence has the "responsibility to ensure that the laws of the State are properly and constitutionally enforced." [Filing No. 24 at 3; *see* Filing No. 50 at 6.] However, Mr. Doe cites no statutory or other authority for the proposition that Governor Pence has a duty of enforcement with respect to the statute at issue. In his brief in opposition to the Motion for Summary Judgment, Mr. Doe cites only his Complaint for the proposition that Governor Pence has any enforcement authority with respect to Indiana Code Section 34-28-2-2.5. [Filing No. 50 at 6.]

The general authority to enforce the laws of the state is not sufficient to render a particular government official the proper party to litigation challenging a law. *See Hearne v. Board of Educ. Of City of Chicago*, 185 F.3d 770, 777 (1999) (holding in analogous Eleventh Amendment context that "the governor has no role to play in the enforcement of the challenged statutes.… Technically, therefore, it is not the Eleventh Amendment that bars the plaintiffs' action for prospective injunctive relief against the governor; it is their inability to show that he bears any legal responsibility for the flaws they perceive in the system."); *see also Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) ("The requirements of *Lujan* are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute."); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) ("The mere fact that a governor is under a general duty to enforce state law does not make him a proper defendant in every action attacking the constitutionality of a state statute.").

Mr. Doe has not provided any specific allegations that Governor Pence is statutorily authorized or instructed to enforce Indiana Code Section 34-28-2-2.5. Nor has he alleged that Governor Pence acted in other ways to enforce the statute, such as by instructing state agencies or other officials on the implementation or enforcement of the statute. *See Love v. Pence*, 47 F. Supp. 3d 805, 807-08 (S.D. Ind. 2014) (concluding that the Governor was a proper defendant where memoranda showed that the Governor played a role in enforcing a statute that did not include specific enforcement authorization as to him). Absent any such allegations, Mr. Doe has not established that his alleged injuries are fairly traceable to Governor Pence. Moreover, if the Governor has no ability to enforce the challenged statute, he cannot redress Mr. Doe's injury. *See Hearne*, 185 F.3d at 777 (concluding that "plaintiffs have not and could not ask anything of the governor that could conceivably help their cause"); *see also Sweeney v. Daniels*, 2013 WL 209047, at *3 (N.D. Ind. 2013) (citing *Hearne*); *Mexicana v. State of Indiana*, 2013 WL 4088690, at **5-6 (N.D. Ind. 2013) (same).

For these reasons, the Court concludes that Mr. Doe has not met his burden to establish that he has standing to sue Governor Pence for his alleged injuries.

2. Attorney General Zoeller

Attorney General Zoeller raises the same arguments as Governor Pence regarding causation. And as with Governor Pence, Mr. Doe does not allege that Attorney General Zoeller is statutorily authorized or instructed to enforce Indiana Code Section 34-28-2-2.5. Mr. Doe has also not alleged that this statute encompasses enforcement of the criminal laws of the state, which, if alleged, could suffice to show an Attorney General's enforcement authority. *See Baskin v. Bogan*, 12 F. Supp. 3d 1144, 1152-53 (S.D. Ind. 2014), *aff'd*, 766 F.3d 648 (7th Cir. 2014) (concluding that the Attorney General had ability to criminally enforce compliance with related marriage

statutes and that "[t]he Attorney General has the broad authority to assist in the prosecution of any offense if he decides that it is in the public interest...Noting this broad authority, the court has previously found that the Attorney General is a proper party when challenging statutes regarding abortion.") (citing *Arnold v. Sendak*, 416 F.Supp. 22, 23 (S.D. Ind. 1976), *aff'd*, 429 U.S. 968 (1976) (finding "[t]he Attorney General thus has broad powers in the enforcement of criminal laws of the state, and is accordingly a proper defendant")).

As with Governor Pence, Mr. Doe has not sufficiently alleged that the Attorney General has the ability to enforce, or is currently enforcing, the challenged statute. Likewise, he has not established that the Attorney General can redress Mr. Doe's injury. The Court concludes that Mr. Doe has not met his burden to establish that he has standing to sue Attorney General Zoeller for his alleged injuries.

3. Director Judson

Mr. Doe alleges that his injuries have been in part caused by Director Judson, insofar as the forms published by her office "prevent or discourage non-citizens from accessing changes of legal name." [Filing No. 24 at 3.] As with Governor Pence and Attorney General Zoeller, Mr. Doe has not alleged that Director Judson is statutorily authorized or directed to enforce the statute at issue.

He appears to allege that Director Judson acts to enforce the statute by generating the forms referenced in the Amended Complaint. First, the Court notes that Mr. Doe has not provided a copy of the subject forms, so the Court does not have the benefit of reviewing their contents. *See Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013) ("when a plaintiff attaches to the complaint a document that qualifies as a written instrument, and [his] complaint references and relies upon that document in asserting [his] claim, the contents of that document become part of

the complaint and may be considered as such when the court decides a motion attacking the sufficiency of the complaint… we have taken a broader view of documents that may be considered on a motion to dismiss, noting that a court may consider, in addition to the allegations set forth in the complaint itself…documents that are central to the complaint and are referred to in it…") (internal citations omitted). The forms generated by Director Judson are both central to Mr. Doe's claim against her and referenced in the Amended Complaint.

Additionally, Mr. Doe has not alleged that the subject forms are mandatory—that is, he has not alleged that any of the Defendants, including Director Judson, required Mr. Doe to read or fill out the forms in order to submit his name-change petition for processing. In fact, he has not provided any allegations as to what role the forms play in the grant, denial, or processing of a name-change petition. Without any allegation regarding the role of the forms, Mr. Doe has not established that Director Judson acts to enforce the statute, and therefore that there is a causal connection between Director Judson and Mr. Doe's alleged injuries.

B. Clerk Eldridge

Clerk Eldridge, in her separate Motion, also contends that Mr. Doe lacks standing to bring suit against her. She argues that whatever injuries Mr. Doe may have suffered were not caused by the Clerk, and that a favorable decision against the Clerk cannot remedy the alleged injuries. [Filing No. 53 at 4-5.] Clerk Eldridge points out that Mr. Doe requests injunctive relief requiring the Clerk "to accept and process petitions for a change of name from non-citizens." [Filing No. 53 at 4.] But, Clerk Eldridge contends, the Clerk already does this. [Filing No. 53 at 4.] Clerk Eldridge states that:

> [b]ecause the Clerk has no legal authority to screen court filings and substitute her staff's opinions for those of a judge—and because the Clerk's Office already accepts and processes name-change petitions from non-citizens and forwards them

> to the appropriate court for resolution—[Mr.] Doe cannot trace any of his alleged injuries to the Marion County Clerk's conduct.

[Filing No. 53 at 4.] In other words, because the Clerk is already doing what Mr. Doe requests, she cannot have caused Mr. Doe's alleged injuries, and a favorable judgment against her would not afford Mr. Doe any relief. Clerk Eldridge also argues that this fact renders Mr. Doe's claim moot, because there is no "live controversy" between the parties. [Filing No. 53 at 6.]

Mr. Doe responds that the Clerk's Office "plays an active role in enforcing the statute" in "advising non-citizens, when asked, that they are ineligible for name changes; by maintaining and distributing literature that advertises the non-citizen exclusion; and by processing petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.] Mr. Doe also argues that his injury would be redressed by a favorable decision against the Clerk, because she would be prevented from engaging in the activities listed above. [Filing No. 58 at 8.] Mr. Doe also responds that his claims against the Clerk are not moot, because "the Clerk's office admits that it continues to inform and advise non-citizen[s] that they are ineligible for a change of legal name, thus treating non-citizens differently from U.S. citizens." [Filing No. 58 at 10.]

In support of her Motion to Dismiss, Clerk Eldridge submitted the declaration of Russell Hollis, the Deputy Director of the Marion County Clerk's Office. [Filing No. 52-1.] She has also submitted Mr. Doe's responses to her first set of Requests for Admission. [Filing No. 52-2.] "The district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). The Court therefore considers these submissions in determining whether Mr. Doe has established that he has standing.

In his Declaration, Mr. Hollis attests that "[a]s a matter of policy, the Marion County Clerk's Office does not screen petitions to determine whether they meet the legal requirements for

a change of name." [Filing No. 52-1 at 3.] He states that "[w]hen a name-change petition is submitted, the Clerk's Office processes the petition and forwards it to the Circuit Court for resolution." [Filing No. 52-1 at 3.] Further, Mr. Hollis attests that "[s]pecifically, the Clerk's Office does not refuse name-change petitions on the grounds that they lack some information required under Indiana Code § 34-28-2-2.5. The legal sufficiency of a petition is a determination for a judge, not the Clerk's Office." [Filing No. 52-1 at 3.]

Mr. Doe does not refute any of these statements, so Mr. Doe does not allege that Clerk Eldridge enforces the statute by either denying or refusing to accept petitions from non-citizens. Instead, Mr. Doe argues that Clerk Eldridge enforces the statute by "advising non-citizens, when asked, that they are ineligible for name changes; by maintaining and distributing literature that advertises the non-citizen exclusion; and by processing petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.]

Mr. Doe argues that the Clerk's role here is analogous to *Harris v. McDonnell*, 988 F. Supp. 2d 603 (D.W.V. 2013). In that case, a same-sex couple entered the Circuit Court Clerk's office and asked a deputy clerk whether same-sex couples could get married. The deputy clerk consulted with the Circuit Court Clerk, who responded that he "he had checked Virginia law and that same-sex couples could not get married in Virginia." *Harris*, 988 F. Supp. 2d at 612. The couple brought suit against the Clerk, among other government officials, requesting injunctive and declaratory relief. *Id.* at 605. The *Harris* court concluded that the couple had standing to sue the Clerk, as their injuries were fairly traceable to him. *Id.* at 613-14.

That court based its conclusion, however, on the fact that the Clerk was vested with the authority and responsibility to issue marriage licenses. The court concluded that:

> [a]s the Staunton Circuit Court Clerk, Roberts is tasked with issuing marriage licenses. A marriage license is precisely what plaintiffs seek. Because Roberts'

> official duties include issuing the very thing plaintiffs claim they have been unconstitutionally denied, their alleged injury is directly traceable to him. Roberts protests that he has no authority to amend Virginia law regarding same-sex marriage, nor the discretion to ignore it, yet he concedes that he has enforcement authority regarding the challenged law. It is this *enforcement authority* that makes the injury traceable to him, regardless of any discretion he does or does not possess.

Id. at 613-14 (emphasis added). As the above passage illustrates, the *Harris* court did not conclude that the Clerk's statement of the law constituted "enforcement" of the statute. Rather, the Clerk was tasked with issuing marriage licenses—*i.e.*, making a determination as to the eligibility of the applicants, and then granting or denying them the state's permission to proceed. It is that enforcement authority that rendered the plaintiffs' injury fairly traceable to the Clerk.

Analogous facts simply are not present here. Mr. Doe does not allege that Clerk Eldridge has or exercises the authority to grant or deny name change petitions. He alleges only that the Clerk's staff members answer questions about the requirements to petition, that the Clerk's office distributes information relating to the petition, and that the Clerk "process[es] petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.] The Court cannot conclude that any of these activities constitute enforcement. And, the Court notes, if those activities were sufficient to constitute enforcement, Mr. Doe has identified no limit as to which statutes the Clerk could be properly seen as enforcing.

Mr. Doe has also not established that a judgment against Clerk Eldridge will afford him the relief he seeks. Clerk Eldridge has submitted evidence showing that the Clerk already accepts and processes petitions from non-citizens. Indeed, Mr. Doe's own experience confirms that this is the case, as he states in his Amended Complaint that a Clerk's office employee informed him that a non-citizen's petition had just been denied by a judge. [Filing No. 24 at 13.]

Mr. Doe has not established a causal connection between Clerk Eldridge and his alleged injuries, or that his alleged injuries would be redressed by a judgment against the Clerk.

IV.
CONCLUSION

For the aforementioned reasons, the Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), [Filing No. 40; Filing No. 52], are **GRANTED,** and the case is **DISMISSED FOR LACK OF JURISDICTION**. Final judgment shall enter accordingly.

Date: March 13, 2017

Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE, formerly known as JANE DOE, Plaintiff, vs. MICHAEL PENCE, in his official capacity as Governor of the State of Indiana, GREGORY ZOELLER, in his official capacity as Attorney General for the State of Indiana, MYLA A. ELDRIDGE, in her official capacity as Marion County Clerk of the Court, LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration, Defendants.	)	No. 1:16-cv-02431-JMS-DML

FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 58

For the reasons detailed in the accompanying Order, the Court now enters FINAL JUDGMENT PURSUANT TO FED. R. CIV. PRO. 58. The action is dismissed for lack of jurisdiction.

Date: March 13, 2017

Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

Laura A. Briggs, Clerk

BY: _____
Deputy Clerk, U.S. District Court

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