

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 THE GOVERNOR OF THE STATE OF INDIANA, ET AL.,

Defendants-Appellees

**Appeal from the United States District Court
For the Southern District of Indiana
Case No. 1:16-cv-02431-JMS-DML
The Honorable Jane Magnus-Stinson**

BRIEF OF APPELLEE MYLA A. ELDRIDGE

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Appellate Court No: 17-1756

Short Caption: John Doe f/k/a Jane Doe v. Eric Holcomb, in his official capacity as Gov. of State of Ind., et al.

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Attorney's Signature: s/ Donald E. Morgan Date: May 4, 2017

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JURISDICTIONAL STATEMENT

The appellant's jurisdictional statement is not complete and correct. Mr. Doe sought to invoke the district court's federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343(a), claiming under 42 U.S.C. § 1983 that Indiana's name-change statute violates the First and Fourteenth Amendments. Dkt. 24 at ¶¶ 66-97. The district court held that Doe lacks standing to sue the Marion County Clerk, Myla Eldridge, and it therefore dismissed his claims against her for want of subject-matter jurisdiction. Dkt. 63. It also held that Doe lacked standing to sue various state officials. *Id.* The district court entered final judgment disposing of all claims on March 13, 2017. Dkt. 64. No party filed a motion tolling the time to appeal. Doe timely filed his notice of appeal on April 11, 2017. Dkt. 65.

This Court has jurisdiction over Doe's appeal under 28 U.S.C. § 1291. *See Banks v. Sec'y of Ind. Family & Soc. Servs. Admin.*, 997 F.2d 231, 237 (7th Cir. 1993) ("dismissal of an action for lack of subject matter jurisdiction is a final judgment").

STATEMENT OF THE ISSUES

1. To establish standing to sue the Marion County Clerk, Doe must show that his alleged injury is fairly traceable to the Clerk's conduct and that a favorable decision against her would redress it. The Clerk submitted jurisdictional evidence showing that Doe meets neither requirement. Doe, in turn, offered no evidence at all. Instead, he argued for an expansive, unsupported standing theory that would for all practical purposes do away with Article III's traceability and redressability requirements. Did the district court err when it held that Doe failed to establish standing to sue the Clerk?

2. A claim is moot unless the parties have a live controversy. Doe seeks a court order requiring the Clerk to accept and process name-change petitions from non-citizens – something the unrebutted evidence establishes that she already does. Indiana’s name-change statute permits no other policy. It entrusts decisions on name-change petitions to circuit court judges, not county clerks. Does Doe have a live controversy with the Clerk, or is his claim against her moot?

STATEMENT OF THE CASE

I. Statutory and factual background

Indiana’s name-change statute empowers county circuit courts to decide name-change petitions. Ind. Code § 34-28-2-1. Among other things, the statute requires petitioners to provide proof of citizenship. *Id.* § 34-28-2-2.5(a)(5). That requirement appears to prohibit Doe from changing his name because he is an asylee with legal status but not a citizen. Dkt. 24 ¶ 2. In Doe’s words, submitting a petition would be “futile” because Indiana law would require the judge to deny it. *Id.* ¶ 63; *see also* Dkt. 58 at 3; Appellant’s Br. 19.

The Clerk’s Office accepts name-change petitions from citizens and non-citizens alike and forwards them to the circuit court for a decision. Dkt. 52-1 ¶¶ 3-5. Just as it does not screen the contentions in pleadings submitted in any other type of case filed in Marion County courts, the Clerk’s Office does not screen name-change petitions to determine whether they meet the statutory requirements for obtaining a name change. *Id.* ¶ 5. A petition’s merits are immaterial to the Clerk’s task because Indiana law entrusts those

decisions to circuit court judges, not county clerks. *Id.* ¶¶ 4-7; *see also* Ind. Code § 34-28-2-1. Whether the citizenship requirement is upheld or struck down, the Clerk’s Office will continue to receive non-citizens’ name-change petitions, process them, and forward them to the circuit court for a decision. Dkt. 52-1 ¶ 8.

Doe has never submitted a name-change petition to the Clerk’s Office. Dkt. 52-2, Admission No. 1. He says he was dissuaded from filing a petition in December 2013 because some unidentified Clerk’s Office employee allegedly answered when Doe asked if the name-change statute had a citizenship requirement. *See id.* at Admission No. 3; Appellant’s Br. 6 (“Mr. Doe asked employees of Clerk Eldridge’s Office to clarify that U.S. citizenship was a legal requirement to change his name.”). He does not allege that anyone told him the Clerk’s Office would not accept his name-change petition. *See* Dkt. 24. And he acknowledges that a staff member told him about another non-citizen’s petition that the Clerk’s Office had accepted. *See id.* ¶ 60; Dkt. 63 at 14.

Although Clerk’s Office staff know about the requirements Indiana has set for obtaining a name change—and as a matter of customer service will answer questions about those requirements—they are not permitted to discourage anyone from filing petitions and may not refuse to accept them. Dkt. 52-1 ¶ 10; *see also* Ind. Code ch. 34-28-2 (providing no authority for county clerks to screen the legal sufficiency of name-change petitions). If Doe were to submit a petition, it would be accepted and forwarded to the circuit court for a decision. Dkt. 52-1 ¶ 9. Despite receiving assurances to that effect, Doe refuses to submit a petition. *See* Dkt. 52-2, Admission No. 5.

II. Procedural background

Doe filed this lawsuit seeking a declaration that the name-change statute's citizenship requirement violates his rights under the First and Fourteenth Amendments. Dkt. 24 at 18-19. He sued Indiana's governor, attorney general, and executive director of state court administration, and he also sued the Marion County Clerk. Dkts. 1, 24. He asked the district court to enjoin the defendants from enforcing the citizenship requirement and order the Clerk to "accept and process petitions for a change of name from non-citizens." Dkt. 24 at 19. He also seeks costs and attorneys' fees. *Id.*

The Clerk moved to dismiss the claims against her under Federal Rule of Civil Procedure 12(b)(1) because Doe lacks standing to sue her and, alternatively, because his claims are moot. Dkts. 52-53, 59. The district court did not reach the mootness argument, but it agreed that Doe lacked standing. Dkt. 63 at 11-14. Noting that the Clerk plays no role in enforcing the name-change statute and already does the very thing Doe asked it to order her to do, the district court dismissed the claims against the Clerk. *Id.*

SUMMARY OF THE ARGUMENT

Doe's dispute is with the State of Indiana. The Marion County Clerk is not responsible for defending a law she had no role in enacting and is powerless to enforce, and Marion County tax dollars should not be imperiled in its defense.

Indiana law and the unrebutted evidence both confirm that the Clerk lacks authority to enforce the name-change statute. The evidence likewise shows that her office already does what Doe asked the district court to order it to do. Unable to produce

contrary evidence or identify any enforcement authority extending to county clerks, Doe proposes an expansive theory that would confer standing to sue any government official who is asked what a law says and gives an answer. But he provides no legal support for that theory, and he never explains how it could coexist with Article III's traceability and redressability requirements. Given those evidentiary and legal failures, the portion of the district court's judgment dismissing Doe's claims against the Clerk must be affirmed.

The claims against the Clerk are also moot. Doe seeks an injunction ordering the Clerk to accept and process name-change petitions from non-citizens. The unrebutted jurisdictional evidence confirms that she already does. And Indiana law permits no other policy, so there can be no reasonable expectation that the Clerk's Office will change course. Dismissal of Doe's claims against the Clerk should therefore be affirmed even if he could establish standing to sue her.

ARGUMENT

I. The district court correctly held that Doe lacks standing to pursue his claims against the Clerk.

"[N]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). As the party claiming standing to invoke federal jurisdiction, Doe must establish the irreducible constitutional minimum – that (1) he suffered an injury in fact, that (2) the injury is fairly

traceable to the Clerk's alleged conduct, and that (3) his injury is likely to be redressed by a favorable decision against the Clerk.¹ *Id.*

Standing is a jurisdictional prerequisite – not a “mere pleading requirement” – so it must be supported “in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009). Although federal courts generally accept a complaint's allegations as true at the motion-to-dismiss stage, that presumption falls away if a defendant raises a factual challenge to standing under Rule 12(b)(1). *Id.* at 444. When that happens, the trial court is “free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.* (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)).

When a Rule 12(b)(1) motion includes evidence calling standing into question, “the plaintiff bears the burden of coming forward with competent proof that standing exists.” *Id.* (collecting cases). If he fails to carry that burden of proof, his claims must be dismissed for lack of subject-matter jurisdiction. *Id.* at 445. Any legal questions resolved in such dismissals are reviewed *de novo*. *Id.* at 443. If the district court resolved any factual

¹ Doe devotes much of his opening brief to the Eleventh Amendment. See Appellant's Br. 14-20. The Clerk did not raise an Eleventh Amendment defense, and she likely is not a state official for Eleventh Amendment purposes. See *Winters v. Mowery*, 884 F. Supp. 321, 323 (S.D. Ind. 1995) (holding that the Marion County Clerk is not a state official for Eleventh Amendment purposes). Although there may be some parallels between Eleventh Amendment analysis and standing analysis, the district court dismissed Doe's claims against the Clerk because he lacked standing to sue her. Dkt. 63 at 11-14.

disputes, its factual determinations are reviewed for clear error. *Winkler v. Gates*, 481 F.3d 977, 982 (7th Cir. 2007).

A. Doe cannot trace his alleged injury to the Clerk.

Doe claims that his concrete injury for standing purposes is his inability to change his name under Indiana law. Appellant’s Br. 3, 22. He says that injury is fairly traceable to the Clerk because her office allegedly enforces the name-change statute, tells customers what it says when they ask, and “processes name-change petitions through a system in which non-citizens have no chance of success.” Appellant’s Br. 30; *see also* Dkt. 58 at 1, 3. That first claim misstates Indiana law and contradicts the un rebutted evidence before the district court. The second relies on an expansive, unsupported standing theory with virtually no meaningful limiting principle. And the third admits that the Clerk already does what Doe asked the district court to order her to do—all but conceding that his alleged injury does not derive from anything the Clerk is doing.

1. The Clerk has no authority to enforce the name-change statute.

Doe argues that the Clerk “has a state-imposed duty to enforce the unlawful [name-change] statute that discriminates against non-citizens.” Appellant’s Br. 30. Despite repeating that claim often, he never once identifies any legal authority imposing that supposed duty. *See id.* at 2, 12, 30; Dkt. 58 at 1, 6, 8, 9, 11. The un rebutted evidence demonstrates that the Clerk has no such duty. Dkt. 52-1 ¶¶ 3-4, 7-8; *cf. Apex Digital*, 572 F.3d at 443 (affirming dismissal where plaintiff failed to rebut defendant’s jurisdictional evidence). Indiana law confirms it—empowering circuit courts to decide name-change petitions but not county clerks. Ind. Code § 34-28-2-1; *see also Leone v. Comm’r, Ind. Bureau*

of Motor Vehicles, 933 N.E.2d 1244, 1254 (Ind. 2010) (holding that “only a statutorily authorized *court order* gives legal sanction to a name change” (emphasis added)).

The district court correctly held that the name-change statute provides the Clerk’s Office no authority to screen court filings and substitute its opinions for those of a judge. *Cf.* Ind. Code ch. 34-28-2. The Clerk is no more responsible for enforcing that law than for deciding summary judgment motions or sentencing criminal defendants. Indiana law entrusts those decisions to judges.

2. Doe provides no support for his expansive standing theory.

Notwithstanding Doe’s repeated claims that the Clerk has some duty to enforce the name-change statute, he appears to concede that is not actually true. Instead, he says the Clerk’s Office “plays some role in administering the name-change process” because it tells customers what the law says when they ask. *See* Appellant’s Br. 30; Dkt. 58 at 8.

According to Doe, getting an answer to his inquiry about the proof-of-citizenship requirement dissuaded him from filing a petition and therefore confers standing to sue the Clerk even though she is powerless to enforce it. Appellant’s Br. 32 (“Despite the fact that . . . the Clerk lack[s] the authority to grant or deny the applications, simply informing [Doe] that his efforts will fail is sufficient to establish causation and redressability.”); *see also* Dkt. 52-2, Admission No. 3. Under that theory, Article III allows Doe to invoke federal jurisdiction any time he asks a government official what a law says and gets an answer. As long as learning what the law says dissuades him from doing something, he will have standing to sue the official who answered his question even if she has no authority to enforce the challenged law.

The district court rejected Doe’s theory in part because it is not susceptible to any meaningful limiting principle. *See* Dkt. 63 at 14 (noting that “Mr. Doe has identified no limit as to which statutes the Clerk could properly be seen as enforcing” if simply telling someone what a law says amounts to enforcing that law). If Doe were right, Indiana’s Legislative Services Agency would be a proper defendant in every case challenging an Indiana statute. It plays no role in passing state laws and is powerless to enforce them. But it is a government actor, and it undoubtedly tells people what the state’s laws say by publishing the Indiana code. The same logic would make the Government Publishing Office a proper defendant in every lawsuit challenging a federal statute or regulation.

The Clerk is aware of no authority supporting such an expansive standing theory, and Doe cites none.

3. Doe all but concedes the Clerk is not the source of his alleged injury.

Doe also seeks to trace his injury to the Clerk because she “processes name-change petitions through a system in which non-citizens have no chance of success.” Appellant’s Br. 30. That argument acknowledges that the Clerk accepts and processes non-citizens’ petitions and that the real problem is the state’s law dooming them to failure after they reach the circuit court. *Cf.* Dkt. 24 ¶ 63 (alleging that the name-change statute makes filing his petition “futile”); *see also* Dkt. 52-1 ¶¶ 3-10 (establishing that the Clerk’s Office accepts and processes non-citizens’ petitions).

In acknowledging that the Clerk is doing all she is empowered to do – accepting petitions and processing them through a system in which she is powerless to control the

outcome—Doe confirms that he cannot trace his injury to her. *See* Appellant’s Br. 32 (acknowledging that the Clerk lacks authority to grant or deny name-change petitions).

B. A favorable decision as to the Clerk will not redress Doe’s alleged injury.

Doe must also show that a favorable decision against the Clerk will redress his injury. *Spokeo*, 136 S. Ct. at 1547. He claims that it will, saying he “will be able to petition for a change of legal name” if his requested relief is granted. Appellant’s Br. 38. But the unrebutted evidence shows that Doe was already free to petition for a name change. The Clerk’s Office already accepts and processes name-change petitions from citizens and non-citizens alike and forwards them to the circuit court for a decision. Dkt. 52-1 ¶¶ 3-9; *see also* Dkt. 63 at 14 (observing that Doe’s own experience confirms that the Clerk’s Office accepts and processes petitions from non-citizens). An injunction ordering the Clerk to do something she already does cannot possibly redress Doe’s injury. He acknowledges as much when he says petitioning the circuit court would be “frivolous and futile” because the statute requires the judge to deny it. *See* Dkt. 58 at 2, 7; Appellant’s Br. 19.

Doe’s actual injury is his inability to change his name. *See* Appellant’s Br. 3, 22. An injunction against the Clerk cannot redress that injury. *See supra* pp. 7-8. Recognizing that, Doe seems to suggest it should not matter. Even though the injunction itself would accomplish nothing, he argues that a court order striking down the citizenship requirement will discourage circuit court judges from applying it. *See* Appellant’s Br. 32-33. If that were enough to establish standing, tracing an injury to some party that actually harmed you would be irrelevant in every constitutional attack on a statute. After all, a judgment striking down a statute entered against *anyone* will leave other courts less

inclined to apply it. Under that theory, Doe equally has standing to file this lawsuit against the county surveyor or even the mayor of Los Angeles.

C. The authorities Doe emphasizes on appeal highlight the showing he cannot make.

To trace his injury to the Clerk, Doe must establish that she has some authority to enforce the name-change statute against him. He attempted to do that below by invoking the marriage-equality cases. County clerks were proper defendants in those cases because they are responsible for granting or denying marriage licenses. *See Harris v. McDonnell*, 988 F. Supp. 2d 603, 613 (W.D. Va. 2013) (“Because [the county clerk’s] official duties include issuing the very thing plaintiffs claim they have been unconstitutionally denied, their alleged injury is directly traceable to him.”).² As the district court correctly held, this case is different. Dkt. 63 at 13-14. Indiana’s name-change statute places no comparable duty on county clerks, and it vests them with no enforcement authority.

Doe emphasizes different cases on appeal, but they too highlight the sort of showing he cannot make. For example, he argues that a plaintiff does not lack standing “merely because the defendant is one of several persons who caused the harm.” Appellant’s Br. 31 (citing *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 500 (7th Cir. 2005)). That rule comes from *Lac du Flambeau*, where this Court held that a tribal group had standing to sue the Secretary of the Interior because it

² Indiana’s governor also played a role in enforcing the state’s marriage laws. But it was not because he told someone what those laws say. It was because he directed state officials how to enforce them. *See Love v. Pence*, 47 F. Supp. 3d 805 (S.D. Ind. 2014). It is undisputed that the Clerk’s Office has no authority to instruct anyone how to enforce the name-change statute.

challenged a tribal-state compact that could not have taken effect without her approval. 422 F.3d at 493-94. Although the Secretary was not one of the parties to the compact, she had explicit legal authority to block it and declined to do so. *Id.* at 501.

Bennett v. Spear likewise highlights a showing Doe cannot make. 520 U.S. 154, 168-69 (1997). The *Bennett* plaintiffs challenged a United States Fish and Wildlife Service biological opinion because they believed it would adversely affect a federal reclamation project and reduce their access to water. *Id.* at 158-60. The Bureau of Reclamation retained ultimate responsibility for determining whether the project would go forward, but the plaintiffs had standing to sue the Service because its biological opinion altered the legal regime governing that decision. *Id.* Although the Bureau technically could disregard the biological opinion, it would do so at the risk of civil and criminal penalties that made the biological opinion “virtually determinative.” *Id.* at 169-70. Under those circumstances, the Supreme Court applied a simple rule: a defendant’s actions need not be “the very last step in the chain of causation” if they nevertheless have a “determinative or coercive effect” on the final decision-maker who injured the plaintiff. *Id.* at 168-69.

Doe points to *Banks* for the proposition that standing may be established where the causal connection is “weak.” Appellant’s Br. 22, 27 (quoting *Banks*, 997 F.2d at 239).³ Even taking Doe’s abridged quotation at face value, *Banks* also illustrates the traceability

³ The full *Banks* quotation is much more nuanced. See 997 F.2d at 239 (“Although standing is not necessarily lost because of the weakness of the causal connection, a nexus sufficiently strong between the plaintiffs’ injury and the defendant’s putatively illegal conduct must be present to assure this court that granting relief will personally benefit the plaintiffs.”).

showing Doe cannot make. The Medicaid Act charges the Secretary of the Department of Health and Human Services with approving only those state plans that comply with federal law. *Id.* at 240. Federal law also empowers the Secretary to withhold funding from states that do not administer their plans in the manner the Medicaid Act and related regulations require. *Id.* The *Banks* plaintiff sued to enforce those laws. She had standing because the Secretary had authority to enforce the very laws she was suing to enforce. *See id.* at 240-41.

Campaign for Southern Equality v. Mississippi Department of Human Services also illustrates the sort of showing Doe cannot make. *See* 175 F. Supp. 3d 691, 697 (S.D. Miss. 2016). The plaintiff sued the director of Mississippi's Department of Human Services seeking to overturn a state law that barred married same-sex couples from adopting. Although chancery courts ultimately decide adoption petitions, Mississippi law requires prospective adopters to first clear several Department-administered hurdles before court proceedings begin. *See id.* at 703-05. For example, the Department was solely responsible for screening and approving foster-care adoption applications, and the jurisdictional evidence showed that it had recently withheld approval based on the challenged law. *See id.* (noting other Department-administered requirements like mandatory training and home visits). Because the Department had authority to enforce the same-sex-adoption ban in that initial screening process, the plaintiff had standing. *Id.* at 697; *see also K.P. v. LeBlanc*, 627 F.3d 115, 123 (5th Cir. 2010) (holding that plaintiffs had standing to sue board that made initial eligibility determination being challenged, especially where initial determination "unilaterally" precluded them from claiming certain benefits).

These cases illustrate the sort of traceability and redressability showing that Doe cannot make here. Unlike the plaintiff in *Lac du Flambeau*, Doe's shortfall is not that some other party has also contributed to his injury. His problem is that – however many parties may have authority to enforce the name-change statute against him – the Clerk is not among them. Unlike the Secretary of the Department of Health and Human Services in *Banks*, the Clerk is powerless to grant or deny the requested relief (a legal name change). And unlike the Fish and Wildlife Service in *Bennett* or the director in *Campaign for Southern Equality*, the Clerk is also powerless to make some sort of initial screening decision that will have a determinative or coercive effect on the circuit court's decision on the merits.

Boddie v. Connecticut does not support Doe's claims either – in no small part because it says nothing about standing. See Appellant's Br. 33-34 (citing *Boddie v. Connecticut*, 401 U.S. 371, 375-76 (1971)). *Boddie* held that due process forbids states from denying access to a divorce based solely on a petitioner's inability to pay court fees – a decision deriving from “the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship.” *Boddie*, 401 U.S. at 374. Even if *Boddie* had been about standing, Doe's problem is not that he cannot access the judicial process. Dkt. 52-1 ¶¶ 7-9. His problem is that he wants a different outcome when he does. See Dkt. 24 ¶ 63. A county clerk is powerless to give him that relief.

II. Even if he had standing, Doe's claims against the Clerk are moot.

Because Doe lacks standing to sue the Clerk, the district court did not reach the mootness argument. *See* Dkt. 53 at 6; Dkt. 59 at 5-6. But this Court may affirm a dismissal for lack of jurisdiction on any ground the record supports. *Sykes v. Cook Cnty. Circuit Court Probate Div.*, 837 F.3d 736, 740 (7th Cir. 2016). So even if Doe could establish standing, the district court's judgment should be affirmed.

Article III limits federal jurisdiction to "actual, ongoing controversies." *Fed'n of Adver. Indus. Reps., Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003). Put differently, federal courts have jurisdiction only if the issue presented is still "live" such that the parties have a legally cognizable interest in the outcome. *Delgado-Arteaga v. Sessions*, 856 F.3d 1109, 1114 (7th Cir. 2017). If there is no live controversy, the claim must be dismissed for lack of jurisdiction. *Id.* at 1114-15.

There is no live controversy between Doe and the Clerk. He seeks an injunction requiring the Clerk to "accept and process petitions for a change of name from non-citizens." Dkt. 24 at 19. The Clerk already does that. Dkt. 52-1 ¶¶ 5-10. If Doe were to walk into the Clerk's Office and submit a name-change petition, it would be accepted, processed, and forwarded to the circuit court for a decision. *Id.* ¶ 9. That would have happened already had he submitted a petition before he filed this lawsuit. *See* Dkt. 52-2, Admission Nos. 1, 5. Because the Clerk already does what he asked the district court to order her to do, his claims against her are moot.

Doe never challenged that jurisdictional evidence. *See, e.g.*, Dkt. 58 at 10 (calling the Clerk’s commitment “laudable”). Instead, he argued that the voluntary cessation doctrine saves his moot claims. *Id.* That argument fails for two reasons.

First, the Clerk has always treated citizens and non-citizens the same. The Clerk’s Office answers questions about the name-change statute from both citizens and non-citizens. *See* Dkt. 52-1 ¶ 10. And it accepts and processes name-change petitions from both citizens and non-citizens. *Id.* ¶¶ 4-10. Although Doe now speculates that the Clerk “has intentionally instructed staff to accept all petitions[] regardless of their legal insufficiency” because of this litigation, that claim contradicts the unrebutted jurisdictional evidence. *Compare* Appellant’s Br. 35, *with* Dkt. 52-1 ¶¶ 3-7. Doe’s own complaint does not allege that the Clerk’s Office has *ever* refused to accept and process name-change petitions from non-citizens. *See generally* Dkt. 24. As the district court correctly noted, it appears to confirm the opposite. Dkt. 63 at 14 (pointing to Doe’s allegation that a staff member told him about another non-citizen’s petition the Clerk’s Office had accepted).

Second, even assuming for the sake of argument that Doe had presented evidence that the Clerk’s Office used to refuse non-citizens’ petitions, he invokes the voluntary cessation doctrine as it applies in cases between private parties. That doctrine applies differently to public officials’ corrective actions “so long as they appear genuine.” *Fed’n of Adver. Indus. Reps.*, 326 F.3d at 929-30. Otherwise, courts would have to presume that public officials acted in bad faith—something they ordinarily do not presume. *Id.*

In the government context, the voluntary cessation doctrine does not save a moot claim absent evidence creating a “reasonable expectation” that the government will resume the challenged conduct. *Id.* Doe offers no evidence that the Clerk’s Office has ever refused to accept and process non-citizens’ name-change petitions – much less evidence justifying a reasonable expectation that the Clerk would resume such a policy (if it ever existed). Indeed, Indiana law appears to preclude it. The name-change statute provides county clerks no authority to screen a petition’s legal sufficiency. *See* Ind. Code ch. 34-28-2. With no reasonable expectation that the Clerk will begin enforcing a policy inconsistent with Indiana law, Doe’s claims against her are moot.

CONCLUSION

The portion of the district court’s judgment dismissing Doe’s claims against the Clerk should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32 because it contains 4,678 words, excluding parts of the brief exempted under Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements in Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements in Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in Microsoft Word 2016 using a size-twelve proportionally spaced typeface, Book Antiqua.

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CERTIFICATE OF SERVICE

I hereby certify that I caused this brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit on July 21, 2017 using the Court's CM/ECF system. The following counsel were served simultaneously through that system:

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