No. 17-1756

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.

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

BRIEF OF STATE APPELLEES

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JURISDICTIONAL STATEMENT

The Appellant's jurisdictional statement is not complete and correct. The district court had jurisdiction based on 28 U.S.C. §§ 1331 and 1343 because John Doe's amended complaint brought claims under 42 U.S.C. § 1983 that alleged an Indiana statute violated his constitutional rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment of the United States Constitution, and his Freedom of Speech rights under the First Amendment. The district court entered an Order on March 13, 2014, that granted the defendants' motions to dismiss. Final judgment was entered the same day. No tolling motions were filed. The Appellant filed a notice of appeal on April 11, 2017.

This Court has jurisdiction under 28 U.S.C. § 1291 because this is an appeal from a final judgment as to all parties and all claims.

STATEMENT OF THE ISSUES

Whether Appellant John Doe had standing to pursue his claims against Indiana Governor Eric Holcomb, Indiana Attorney General Curtis T. Hill, Jr., and Executive Director of the Indiana Supreme Court of State Court Administration Mary Willis (the State Defendants).

Whether Mr. Doe may bring his claims against the State Defendants under the *Ex parte Young* doctrine.

STATEMENT OF THE CASE

Mr. Doe moved to Indiana from Mexico in 1990 with his family (First Amended Complaint for Declaratory and Injunctive Relief ("Complaint"), Short App. 24 ¶ 24). The Department of Homeland Security granted Mr. Doe Deferred Action for Early Childhood Arrivals ("DACA") status in December of 2013, and in August of 2015, the United States granted him asylum (*Id*. ¶¶ 26, 28). He intended to apply for permanent residency in September of 2016 and after that residency is obtained, he must wait three years before applying for naturalization (*Id*. ¶ 29).

Mr. Doe is transgender (Complaint, Short App. 7 ¶ 30). His assigned sex at birth was female but he acknowledged his male identity to himself in 2010 (*Id*. ¶¶ 30, 33). Mr. Doe has undergone therapy, hormone treatment, and gender-affirming surgery (*Id*. 8 ¶¶ 35, 36). He wishes to change his name from Jane Doe to John Doe to accurately reflect his gender (See generally, Complaint, ¶¶ 33-44).

Indiana's name change statute requires proof of U.S. citizenship. Ind. Code § 34-38-2-2.5(a)(5). Mr. Doe alleges that the statute violates various provisions of the United States Constitution because it does not allow him, a non-U.S. citizen, to change his name to match his gender identity (Complaint, Short App. 1 ¶ 2). His I.D. has his legal female name "Jane Doe," which is inconsistent with his male appearance, and that has resulted in incidents of harassment and humiliation (See Complaint generally).

Mr. Doe filed the Complaint on October 7, 2016, against Governor Eric Holcomb, Attorney General Curtis T. Hill, Jr., Executive Director of the Indiana Supreme Court Division of State Court Administration, Mary Willis, and Marion County Clerk Myla Eldridge for alleged violations of the United States Constitution due to the operation of Indiana Code § 34-28-2-2.5(a)(5) (Complaint, Short App. 1). Mr. Doe's complaint sought: (a) a declaration that the Statute violates his rights under the Equal Protection, Due Process, and Free Speech clauses of the United States Constitution, (b) a permanent injunction enjoining the Defendants from enforcing the Statute, (c) an order requiring Eldridge to accept petitions for a change of name from non-citizens, and (d) attorney fees and costs pursuant to 42 U.S.C. § 1988.

On March 13, 2017, the district court entered an Order that granted motions to dismiss filed by the State Defendants and by Clerk Eldridge (Short App. 21). As to the State Defendants, the court held that dismissal was proper under Rule 12(b)(1) because it did not have subject matter jurisdiction due to Mr. Doe's lack of standing to sue these defendants.

SUMMARY OF THE ARGUMENT

I. Mr. Doe lacked standing.

Mr. Doe lacked Article III standing to pursue his claims against Governor Holcomb, Attorney General Hill, and Director Willis. To have standing, Mr. Doe 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. Mr. Doe has failed to establish any of the three standing requirements as to the State Defendants.

Mr. Doe sustained no injury in fact. His alleged injury is that petitioning for a name change would be futile because he is not a U.S. citizen. But an alleged injury in fact must be (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Mr. Doe simply assumes a court would deny his name change petition, but he overlooks the fact that his petition could raise a constitutional challenge to the citizenship requirement. A court might agree with his constitutional claim and grant his petition.

Mr. Doe's alleged injuries are not fairly traceable to the State Defendants. Governor Holcomb and Attorney General Hill, although they have general responsibility for enforcing Indiana laws, have no role in the enforcement or administration of the name change statute. This role is limited to the circuit courts. Director Willis simply provides forms to self-represented individuals, and has no responsibility for enforcing any laws.

Mr. Doe's injuries would not be redressed by a favorable judgment. Because the State Defendants have no ability to enforce the citizenship requirement, they cannot address Mr. Doe's alleged injury.

II. The *Ex parte Young* doctrine does not apply in this case.

The Eleventh Amendment bars actions against States that, as sovereign entities, have not consented to be sued in federal court. Under the

doctrine of *Ex parte Young,* "officers of the state, [who] are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings … to enforce against parties affected an unconstitutional act … may be enjoined by a Federal court of equity from such action." *Ex parte Young*, 209 U.S. 123, 155-56 (1908). But in *Young* itself the Court acknowledged that the sovereign immunity exception it creates applies only when the named state officials have "some connection with the enforcement of the act[.]" *Id.* at 157.

Because the State Defendants have no role in the enforcement of the citizenship requirement of the name change statute, the *Ex parte Young* doctrine does not apply. Mr. Doe complains that if there are no available defendants he is denied the opportunity to have his federal claims decided by a federal court. But the jurisdiction of federal courts is limited by Article III standing requirements, as well as the limitations of the Eleventh Amendment.

ARGUMENT

Standard of Review

This Court reviews a district court's dismissal for lack of subject matter jurisdiction *de novo*. *Silha v. ACT, Inc.*, 807 F.3d 169, 172 (7th Cir. 2015) (citing *Remijas v. Neiman Marcus Grp., LLC,* 794 F.3d 688, 691 (7th Cir.2015); *Apex Dig., Inc. v. Sears, Roebuck & Co.,* 572 F.3d 440, 443 (7th Cir.2009).

I.
Mr. Doe lacked Article III standing to pursue his claims against Governor Holcomb, Attorney General Hill, and Director Willis.

The jurisdiction of federal courts is limited to "Cases" and "Controversies" as described in Article III, Section 2 of the Constitution. No case or controversy exists if Mr. Doe lacks standing to challenge the defendants' alleged misconduct. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

To have standing, "[t]he 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. Robins*, 136 S.Ct. 1540, 1547 (2016) (citing *Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130). Mr. Doe has the burden of establishing these elements and must support each element "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan,* 504 U.S. at 561.

Here, Mr. Doe has failed to establish any of the three standing requirements as to the State Defendants.

A. Mr. Doe sustained no injury in fact

The district court assumed without deciding that Mr. Doe sufficiently pleaded injury-in-fact (Short App. 28). The State Defendants respectfully disagree.

An alleged "injury in fact" must be "(a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Silha v. ACT, Inc.*,

807 F.3d 169, 173 (7th Cir. 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 180–181 (2000) (citing *Lujan,* 504 U.S. at 560–61). Mr. Doe has not attempted to file a petition for a name change because he believes the petition would be futile (Dkt. 50, p. 8). But his belief that a petition inevitably would be denied is conjectural.

There is no reason Mr. Doe could not file a petition for name change, indicate that he is not a U.S. citizen, but also argue that the citizenship requirement is unconstitutional. The Attorney General would intervene under Indiana Code § 34-33.1-1-1, which provides as follows:

> If the constitutionality of a state statute . . . is called into question in an action, suit, or proceeding in any court to which any agency, officer, or employee of the state is not a party, the court shall certify this fact to the attorney general and shall permit the attorney general to intervene on behalf of the state and present: (1) evidence that relates to the question of constitutionality, if the evidence is otherwise admissible; and (2) arguments on the question of constitutionality.

The Attorney General would properly participate in his statutory role as intervenor to defend a challenged state statute, and not as a defendant. The constitutional question would then be fully briefed.

Mr. Doe's petition along with his constitutional challenge would be decided by a circuit court judge (Ind. Code § 34-28-2-1), not a bureaucrat with no discretion or no ability to decide legal issues. Like federal judges, Indiana judges take an oath to support the Constitution of the United States. See Ind. Const. art. XV, § 4. If a circuit court judge believed that the statutory restriction on U.S. citizens obtaining name changes was unconstitutional, the

judge could find the restriction was invalid and grant Mr. Doe's name change petition.

Mr. Doe simply assumes that any attempt to petition for a name change would be futile, and this assumption is not enough to establish injury in fact. *Silha*, 807 F.3d at 173.

B. Mr. Doe's alleged injuries are not fairly traceable to the State Defendants.

The alleged injury has to be fairly traceable to the challenged action of these defendants, and not the result of the independent action of some third party. *Lujan*, 504 U.S. at 560. Here, any injury to Mr. Doe from the operation of the statutory restriction on U.S. citizens obtaining name changes would be traceable only to the independent action of a circuit court judge. None of the State Defendants has any role in the administration or enforcement of the name change statute.

1. Governor Holcomb

Mr. Doe alleges that the Governor has the "responsibility to ensure that the laws of the State are properly and constitutionally enforced," which "includes the ability to direct state employees regarding enforcement of the law" (Complaint, Short App., 3 ¶ 9).

As a general matter, Mr. Doe fails to describe any manner in which the name change statute is "enforced." Circuit courts do not enforce the name change statute because there generally is no way a petitioner can "violate" the statute. The only enforcement element is the requirement that persons

with felony convictions notify certain law enforcement agencies of their name change petitions, and failure to do so is a Class A misdemeanor. Ind. Code §§ 34-38-2-3(c) and (g). Otherwise, the role of the circuit courts is to decide whether to grant or deny a petition.

Mr. Doe alleges that the Governor directs state employees with regard to enforcement of the statute, but he does not identify any state employees that have any role in the statutory name change process. Instead, "the circuit courts in Indiana may change the names of natural persons on application by petition." Ind. Code § 34-28-2-1. Only the circuit courts review a name change petition to see whether, as relevant in this case, the petitioner is a U.S. citizen. Mr. Doe has not alleged that the Governor has any supervisory authority over circuit courts or related personnel.

Simply having the responsibility to ensure enforcement of state laws is not enough to render the Governor or Attorney General a proper party. Federal courts have rejected lawsuits against governors based on their general duties. *See, e.g., Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) ("[t]he 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 cites cases where the Governor was named as a defendant, but these cases were all heard by Indiana courts (not federal courts) and each case involved a state agency over which the Governor had executive authority

(Appellant's Br. 25-26). *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013), *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009), and *Embry v. O'Bannon*, 798 N.E.2d 157 (Ind. 2003), all involved the Indiana Department of Education. The defendants in *Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991), included the Governor as well as the Indiana Department of Mental Health, and *Stoffel v. Daniels*, 908 N.E.2d 1260, 1271-72 (Ind. Ct. App. 2009), involved the Indiana Department of Local Government Finance.

To suggest that some state agencies have a connection to the challenged statute, Mr. Doe argues that the Bureau of Motor Vehicles "plays a crucial role in Indiana's discriminatory name-change scheme" because it requires a name-change court order to change the given name on an Indiana state I.D. (Appellant's Br. 26). He also insists that the Indiana State Police may request his driver's license, and "every routine police interaction will remain fraught with confusion and the potential for arrest" (*Id.*). Also, he says the Alcohol & Tobacco Commission enforces the state's drinking age by requiring bars to I.D. people (Appellant's Br. 27). He contends these are the Governor's agencies and therefore the Governor has a role in enforcing the name change statute.

But these state agencies have no separate policies regarding who is eligible to get a name change. There is no manner in which the BMV, State Police, and ATC participate in the name change procedures in Indiana Code chapter 34-28-2. These agencies are not "one of several persons who caused

the harm," or "the very last step in the chain of causation," because they are not even a part of the chain of causation (Appellant's Br. 27, citing *Lac Du Flambeau Band of Lake Superior Chippewa Indiana v. Norton*, 422 F.3d 490, 500 (7th Cir. 2005), *Banks v. Secy. of Ind. Fam. And Soc. Serv. Admin.*, 997 F.2d 231, 239 (7th Cir. 1993).

At page 28 of his brief Mr. Doe argues that the district court mistakenly relied on *Hearne v. Board of Education of the City of Chicago*, 185 F.3d 770 (7th Cir. 1999). Citing *Hearne*, the district court determined that "[t]he 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" (Short App. 28). *Hearne* was a challenge to Illinois statutes that applied only to the Chicago school system. This Court concluded that "the governor has no role to play in the enforcement of the challenged statutes, nor does the governor have the power to nullify legislation once it has entered into force." *Hearne*, 185 F.3d at 777.

Mr. Doe attempts to distinguish *Hearne* by noting that the statutes challenged in that case were targeted and, unlike the Indiana name change statute, did not have statewide applicability. Although the name change statute at issue in this case applies statewide, Governor Holcomb has no more of a role to play in its enforcement than did the Illinois governor in *Hearne*. Mr. Doe also points out that in *Hearne* a local school board remained as a defendant but in his case all defendants were dismissed, depriving him

of a federal forum to bring his claims (Appellant's Br. 28). As discussed below, Mr. Doe does not have a generalized right to a federal forum.

2. Attorney General Hill

Mr. Doe alleges that the Attorney General has the "duty to see that the laws of the State are uniformly and adequately enforced" (Complaint, Short App. 3 ¶ 10). The district court found Mr. Doe lacked standing to sue the Attorney General because "[a]s with [the Governor], Mr. Doe has not sufficiently alleged that the Attorney General has the ability to enforce, or is currently enforcing, the challenged statutes" (Short App. 30).

Mr. Doe argues that Attorney General Hill is a proper defendant because when a state statute is challenged as unconstitutional, the Attorney General has the duty to defend them in court (Appellant's Br. 28, citing Ind. Code § 34-33.1-1-1). But an attorney general's duty to support the constitutionality of challenged state statutes does not constitute enforcement of the statute in question. See *Mendez v. Heller*, 530 F.2d 457, 460 (2d Cir. 1976).

Mr. Doe next argues that the Indiana Attorney General has been a defendant in federal cases involving possible criminal penalties, and "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" (Appellant's Br. 29). But the contexts he proposes, perjury for example, are different from the statute at issue. There

is no way that Mr. Doe can "violate" the U.S. citizenship requirement of the name change statute such that he would be subject to criminal penalties. In *McCrimmon v. Daley*, 418 F.2d 366, 368 (7th Cir. 1969), this Court found an attorney general was not a proper party in a suit challenging a statute where he had no connection with its enforcement. Here, the challenged statute is not subject to criminal enforcement.

3. **Director Willis.**

Mr. Doe alleges that Director Willis produces forms that people may use to petition for name changes and the forms include the challenged citizenship requirement, which "prevent or discourage non-citizens from accessing changes of legal name" (Short App. 4 ¶ 12). He does not allege that the Director has any role in the process of granting or denying name change applications.

Mr. Doe's brief includes a link to the website where the forms may be obtained (Appellant's Br. 11). In addition to name change petitions, the website provides forms for matters such as child support, divorce, contempt, protection orders, small claims, and expungement (http://www.in.gov/judiciary/selfservice/2333.htm visited August 17, 2017). Under Mr. Doe's theory, any time a plaintiff brings a constitutional challenge to a state statute involved in these matters, the Director may be a potential defendant. But as the website cautions the public, the forms are prepared for convenience and are not a substitute for legal representation. Moreover, they

are not mandatory. The Director simply provides these forms as a convenience for self-represented individuals in relatively straightforward matters such as petitioning for a name change.

Mr. Doe contends the forms are "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" (Appellants Br. 36). The Director's forms, however, are based on existing law that the Director has no role in enacting or enforcing. It is the challenged statute, not the forms that represent the statutory requirements, that prevents Mr. Doe from petitioning for a name change.

Accordingly, Mr. Doe's alleged injuries are not fairly traceable to Director Willis.

C. Mr. Doe's injuries would not be redressed by a favorable judgment.

The district court concluded "if the Governor has no ability to enforce the challenged statute, he cannot redress Mr. Doe's injury" (Short App. 29, citing *Hearne*, 185 F.3d at 777 ("plaintiffs have not and could not ask anything of the governor that could conceivably help their cause"). As to the Attorney General, the court determined "[l]ikewise, [Mr. Doe] has not established that the Attorney General can redress Mr. Doe's injury" (*Id*. 30). The court did not even reach this issue as to Director Willis because it stopped after determining that Mr. Doe failed to establish any causal connection between the Director and his alleged injuries (*Id*. 31).

Mr. Doe cites *Carpenters Industrial Council v. Zinke*, 854 F.3d 1, 5 n. 1 (D.C. Cir. 2017), for the proposition that "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" (Appellant's Br. 38). But he failed to show that the State Defendants caused any injury. They cannot redress any injury they did not cause.

Accordingly, the district court properly found it lacked subject matter jurisdiction because Mr. Doe lacked standing to sue the State Defendants.

II.
The *Ex parte Young* doctrine does not apply in this case.

A. *Ex parte Young* does not apply.

At pages 14 to 20 of his brief Mr. Doe argues that the district court had jurisdiction under the *Ex parte Young* doctrine. The Eleventh Amendment bars actions against States that, as sovereign entities, have not consented to be sued in federal court. Under the doctrine of *Ex parte Young,* "officers of the state, [who] are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings … to enforce against parties affected an unconstitutional act … may be enjoined by a Federal court of equity from such action." *Ex parte Young*, 209 U.S. 123, 155-56 (1908). Because *Young* presumes some ability of the defendant state official to enforce the law at issue, it does not apply where such responsibility is lacking. In *Young* itself the Court acknowledged that the sovereign immunity exception it creates applies only when the

named state officials have "some connection with the enforcement of the act[.]" *Id.* at 157.

There is significant overlap between the standing requirement and the applicability of *Ex Parte Young*. *Air Evac EMS, Inc. v. Texas, Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 513–14 (5th Cir. 2017). This brief discussed the standing issue first because that analysis provided a framework for determining whether there was any connection with enforcement of the act so as to satisfy the "some connection" requirement of *Ex parte Young*. As discussed at length above, none of the State Defendants have any connection with enforcement of the challenged statute and, therefore, Mr. Doe lacked standing to sue them.

Relying on *Ex parte Young*, a district court in this Circuit held that a governor is not a proper defendant in an action challenging a name change statute. In *Watford v. Quinn*, No. 14-CV-00571-MJR, 2014 WL 3252201 (S.D. Ill. July 8, 2014), an inmate sued the Illinois governor to challenge a statute that prohibited prisoners from petitioning for name changes. Indiana has the same prohibition. Ind. Code § 34-38-2-1.5. And like Indiana, the Illinois law designates circuit courts as the venue for name changes. *Watford* at *2, citing 735 ILCS 5/21-101. The district court noted that "the statute makes clear that it is the exclusive prerogative of the state circuit courts, not the Governor, to grant a name change." *Id.* The court dismissed the case because "a state official cannot be sued for prospective injunctive relief unless

he or she has some connection to the enforcement or implementation of the particular law or conduct at issue," and "the statute indicates that there cannot be any connection with the Governor." *Id*. at *3, citing *Ex Parte Young*, 209 U.S. at 157. In Mr. Doe's case there is no connection between the Indiana name change statute and the Indiana Governor, or the Attorney General or Director Willis.

B. Mr. Doe's arguments lack merit.

Mr. Doe argues at page 17 of his brief that "[i]nsulating 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." Further, "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" (Appellant's Br. 18-19). Mr. Doe mistakenly believes he has a generalized right to bring him claims in federal court.

"Fundamental to our law is the understanding that '[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.'" *Transit Exp., Inc. v. Ettinger*, 246 F.3d 1018, 1023 (7th Cir. 2001) (quoting *Bender v. Williamsport Area School District,* 475 U.S. 534, 541 (1986)). Federal courts are also limited by the operation of the Eleventh Amendment. As discussed above, Mr. Doe lacks the standing

required by Article III, and *Ex parte Young* does not provide an exception to the State Defendants' Eleventh Amendment immunity in this case.

Mr. Doe complains at pages 19 to 20 of his brief that if he cannot have a federal forum, he will have to file a "futile" name change petition, "suffer an inevitable denial," "appeal that denial through the Indiana state court appeals system," and if he loses in the Indiana Supreme Court he would then have a shot at a federal court hearing but only if he can convince the U.S. Supreme Court "to hear a rare appeal from the state high court." He then discusses authorities to support his opinion that federal courts are better than state courts in ensuring federal rights. But his reliance on these authorities is misplaced.

Mr. Doe cites *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 827 n. 6 (1986), for the proposition 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'" (Appellant's Br. 20). The quoted language, however, is from the dissenting opinion. The majority in *Merrell Dow* held that removal of the case was improper because there was no federal question.

Mr. Doe cites a law review article for the proposition "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" (Appellant's Br. 20) (citing Martin H. Redish, *Judicial Parity, Litigant Choice, and Democratic Theory: A Comment on Federal Jurisdiction and Constitutional Rights*, 36 UCLA L. Rev. 329 (1988). But he overlooks the whole point of this comment, which was to react to an article written by Professor Erwin Chemerinsky: Chemerinsky, *Parity Reconsidered: Defining a Role for the Federal Judiciary*, 36 UCLA L. REV. 233 (1988). Professor Redish ultimately agreed with Professor Chemerinsky's conclusion "that a litigant, whether plaintiff or defendant, asserting a constitutional right may choose either federal or state court for the enforcement of that right." Redish at 330. As discussed above, a plaintiff's choice is limited by Article III standing requirements as well as the Eleventh Amendment.

Mr. Doe quotes the following from *Cooper v. Aaron*, 358 U.S. 1 (1958): "'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 …'" (*Cooper*, 358 U.S. at 18 (quoting *United States v. Peters*, 9 U.S. 115, 136 (1809)). The *Cooper* opinion held that the Governor and Legislature of Arkansas could not postpone implementation of the Supreme Court's school desegregation opinion in *Brown v. Board of Education of Topeka, Shawnee County, Kansas*, 347 U.S. 483 (1954). This opinion does not help Mr. Doe because he cannot

show that the Indiana legislature gave circuit courts authority over name change petitions in order to avoid oversight by federal courts.

Contrary to Mr. Doe's contention at page 19 of his brief, the grant or denial of a name change petition is not a "ministerial task" that the legislature could have assigned to non-judges who could be subject to a federal lawsuit. A circuit court must be satisfied that the petitioner is not motivated by fraudulent intent. See *Petition of Hauptly*, 262 Ind. 150, 312 N.E.2d 857 (1974). If the petition seeks to change the name of a minor, the court must decide whether the name change is in the best interest of the child. Ind. Code § 34-38-2-4(d).

As discussed above, if there are no suitable defendants for a federal challenge to the citizenship requirement of Indiana's name change statute, Mr. Doe may bring his challenge in the course of petitioning for a name change in a circuit court.

CONCLUSION

This Court should affirm the district court's decision that dismissed John Doe's claims against the State Defendants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 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. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ *Frances Barrow*
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