
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.
Case No. 1:16-cv-02431-JMS-DML,
The Honorable Judge Jane Magnus-Stinson.

**REPLY BRIEF OF
PLAINTIFF-APPELLANT, JANE DOE**

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ARGUMENT

Plaintiff John Doe (“Plaintiff” or “Mr. Doe”) brings constitutional claims against various state officials for their roles in enforcing Indiana’s statutory restriction of name changes to individuals with proof of United States citizenship. Indiana Code Section 34-28-2-2.5(a)(5). This non-discretionary, non-waivable, and discriminatory requirement forces Indiana’s circuit court judges to deny all name change petitions from non-citizen applicants like Mr. Doe. For this reason, Plaintiff has named those state officials whose role in the Indiana name change process establishes a connection between their actions and the enforcement of the discriminatory requirement. Each of the Defendants’ particular roles in enforcing the statute has been well-established by Plaintiff. (Appellant’s Br. 22-37).

Plaintiff’s injury – mischaracterized by Defendants – lies in the non-discretionary and mandatory discrimination against all non-citizens, depriving Plaintiff of a legal change of name and subjecting him to serious, daily harms because he is a transgender person. Placing the responsibility of the day-to-day application of this mandatory discriminatory practice on the circuit court judges of Indiana, despite their lack of discretion in this matter, (State Appellees’ Br. 8; Clerk Appellee’s Br. 7), does not insulate the discriminatory criterion from federal-court challenge. Thus, this case presents the question whether the State of Indiana can construct a discriminatory process with no opportunities for discretion or review, and then further prevent people such as Mr. Doe from pursuing a remedy of their own choosing and in their desired forum.

For the reasons stated in Appellant’s opening brief, and supported by the arguments addressed here, this Court should hold that Plaintiff has Article III standing to bring his constitutional claims in the forum he has chosen and against these Defendants—Governor Eric

Holcomb, Attorney General Curtis Hill, Executive Director of State Court Administration Mary Willis (collectively, the “State Defendants”), and Marion County Clerk of Court Myla Eldridge.

I. Defendants Argue that Plaintiff Lacks Article III Standing Based on a Mischaracterization of Plaintiff’s Injuries and Unsupported Assertions as to Causation and Redressability.

A. The Harm to Plaintiff and Unequal Treatment Resulting from the Challenged Statute is Sufficient to Prove Injury in Fact.

As discussed in Appellant’s opening brief, the injury suffered by Mr. Doe is 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.”

(Appellant’s Br. 3). That is, Defendants’ actions cause harm to Plaintiff in at least two distinct ways. First, Defendants’ enforcement of Indiana Code Section 34-28-2-2.5(a)(5) subjects Plaintiff to the harm of discriminatory treatment based solely on his non-citizen status. Second, Defendants’ ban on non-citizen name changes causes frustrating and potentially dangerous complications in Mr. Doe’s daily life because Mr. Doe is also transgender.

In an attempt to narrow the claims brought by Plaintiff, the State Defendants wrongly assert that Plaintiff’s injury is “his belief that a petition inevitably would be denied” and that, therefore, it is conjectural because Mr. Doe never underwent the discriminatory name change process. (State Appellees’ Br. 6-8).

As an initial matter, Plaintiff already established a concrete injury when he sufficiently alleged how the Indiana prohibition on non-citizen name changes, which forecloses any opportunity for Mr. Doe to amend his official documents, has caused significant, ongoing harm. (Appellant’s Br. 7-8; Short App. 9-11 (Complaint)). Plaintiff’s inability to acquire a change of legal name means he cannot possess official identification that reflects his true gender in his everyday life, leading to confusion, harassment, and unnecessary and nonconsensual disclosure

of his transgender status in interactions with law enforcement, health care providers, and restaurant staff, among others. *Id.* The uncertainty and well-pled harm caused by the challenged statute is sufficient to establish injury. *See Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 498 (7th Cir. 2005) (stating that “the present impact of a future though uncertain harm may establish injury in fact for standing purposes”). Accordingly, Plaintiff need not prove that he suffered a denial of his name change petition. Although denial is all but inevitable, even that need not be the case to establish concrete injury.

Moreover, this Court has held that when the harm alleged is “the denial of equal treatment,” the existence of contingent circumstances in which Plaintiff is not harmed is “irrelevant to standing analysis.” *Lac Du Flambeau*, 422 F.3d at 497-98 (citing *Northeastern Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (stating that “[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit . . . a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing”)); *see also Tarpley v. Jeffers*, 96 F.3d 921, 923 (7th Cir. 1996) (holding the same in the First Amendment context). Here, the Plaintiff alleges the denial of equal treatment in the Indiana name change process, and need not prove that he would have “obtained the benefit” despite the barrier created by Indiana Code Section 34-28-2-2.5(a)(5). That Plaintiff’s name change petition might be granted – only if and after an extraordinary constitutional challenge in the name-change process is favorably addressed by a court whose primary role is unrelated to such an extraordinary challenge – is irrelevant to the issue of standing.

Furthermore, it is untenable to claim that Plaintiff’s name change petition could ever be granted. Defendants cite no authority for that assertion. Although the State Defendants properly

identify some areas in which circuit court judges have discretion, (State Appellees' Br. 20, noting the availability of discretion to judges in cases of fraudulent intent or involving minors), the challenged statute in this case explicitly requires petitioners to present "proof that the person is a United States citizen." Indiana Code Section 34-28-2-2.5(a)(5). There is simply no question as to Mr. Doe's chances under this law. As a non-U.S. citizen, his name change petition could never have been granted. In their brief, State Defendants argue that Mr. Doe could present his constitutional challenge in the course of the name-change process, but that requirement is an injury in and of itself. No one seeking a name change, other than a non-citizen, is required to obtain representation from a constitutional lawyer and present a constitutional challenge in Indiana state court to what is, on its face, a mandatory, non-discretionary, and discriminatory criterion.

Hypothetically, if the law did make the U.S. citizen requirement discretionary, the added burden for non-citizens of presenting evidence and argument beyond that required of citizens seeking a name change would in itself be enough to constitute a cognizable injury for purposes of Article III standing. The same conclusion applies here where the discriminatory criterion is not discretionary, and, instead, Mr. Doe would be required to marshal the resources to pursue an extraordinary constitutional challenge in the state-court name-change process.

Plaintiff has met the requisite standard in pleading an injury resulting from Indiana's discriminatory name-change criterion, and Defendants are incorrect in asserting that he must suffer through Indiana's discriminatory name-change process as a precondition for standing in federal court.

B. Defendants Argue Lack of Causation and Redressability Based on the Assertion that the Statute is not Enforced at Any Level.

Plaintiff has argued, at length, that Indiana’s requirement for proof of U.S. citizenship in the name-change process is enforced at various stages. (Appellant’s Br. 22-37). Defendants unconvincingly assert that they lack any connection with the enforcement of Indiana Code Section 34-28-2-2.5(a)(5), (State Appellees’ Br. 16; Clerk Appellee’s Br. 4), and that Plaintiff has failed to identify any enforcement mechanisms. (State Appellees’ Br. 8, stating that “Mr. Doe fails to describe any manner in which the name change statute is ‘enforced’”). Defendants’ assertions, however, simply fail to refute the facts alleged by Plaintiff that Defendants’ various actions are all connected to the enforcement of Indiana’s discriminatory name-change regime.

1. Plaintiff has Met His Burden by Offering Evidence of the State Defendants’ Enforcement of the Challenged Statute and Redressability, Which State Defendants Simply and Unconvincingly Reject.

In his opening brief, Plaintiff demonstrated how each of the State Defendants had a hand in enforcing the restriction on non-citizen name changes, as well as how his injury is redressable. (Appellant’s Br. 24-30, 35-37). Defendants attempt to refute this evidence with regard to each State Defendant.

State Defendants concede Attorney General Hill’s role in enforcing Indiana’s discriminatory ban on non-citizen name changes. In ignoring the Plaintiff’s clear injuries and suggesting Plaintiff could simply bring constitutional challenges along with a name change petition in state court—as no U.S. citizen is required to do—State Defendants offer, “[t]he Attorney General *would* properly participate in his statutory role as intervenor to defend [the]

challenged state statute” (State Appellees’ Br. 7) (emphasis added).¹ This statement, that Mr. Doe’s only path to a change of legal name in state court involves facing the Indiana Attorney General’s Office as an adversary, could not make any clearer Attorney General Hill’s role in and intent to enforce Indiana’s ban on non-citizen name changes. An injunction prohibiting the Attorney General from this or any other enforcement of the non-citizen ban, and declaring the ban unconstitutional, would thus redress Plaintiff’s injury by allowing him to access a name change on equal footing with U.S. citizens. State Defendants also irrelevantly assert that 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.” (State Appellees’ Br. 13). However, any nexus with criminal punishment is irrelevant when the injury is not of criminal punishment, but the discriminatory denial of equal access to the benefit of a legal name change.

With regard to the Governor, State Defendants merely state without support that the state agencies over which the Defendant Governor has authority “have no separate policies regarding who is eligible to get a name change.” (State Appellees’ Br. 10). However, Plaintiff’s demonstration of causation does not relate to affirmative additional rules against non-citizen name changes. Plaintiff has explained how the Governor, through the agencies he oversees, plays a direct role in the two distinct harms Plaintiff suffers: (1) through the Governor’s authority over the Bureau of Motor Vehicles (BMV), which refuses to change the name on an Indiana driver’s license or state ID without a court order, thus ratifying the discrimination embodied in Indiana Code Section 34-28-2-2.5(a)(5); and (2) through his authority over state agencies

¹ The Attorney General admits that he would intervene even in a typically *pro forma* proceeding in Indiana Circuit Court in order to defend that State’s ban on non-citizen name changes, after citing Indiana Code § 34-33.1-1-1. It is unclear whether that statute confers a mandatory or discretionary duty for the Attorney General to intervene in cases in which the constitutionality of a statute is challenged. If mandatory, the Attorney General’s role in enforcing the State’s ban on non-citizen name changes is obvious. If discretionary, the State’s admission that the Attorney General “would” indeed intervene in a name change petition filed by Plaintiff also shows the Attorney General’s role and intent to enforce the ban, as well as the true extent of the discriminatory onus placed on non-citizens in need of changes of legal names in Indiana.

involved in law enforcement, such as the Indiana State Police and Indiana Alcohol and Tobacco Commission, which enforce laws that require Mr. Doe to show his current ID in various situations. (Appellant's Br. 26-27). State Defendants cannot simply assert an irrelevant and unsupported denial of direct supervisory responsibility. A favorable decision would redress the injuries the Governor has caused Mr. Doe by allowing him to satisfy the Governor's BMV requirements and obtain a name change on his official documents, and to present his ID to law enforcement and others free from fear of confusion, discrimination, or harassment related to his transgender status.

The Governor and Attorney General are appropriately named in this case because the challenged statute has state-wide applicability, *cf. McCrimmon v. Daley*, 418 F.2d 366, 368 (7th Cir. 1969) (dismissing a claim against the state Attorney General where the challenged statute was a city ordinance enforced locally), and because Plaintiff has offered sufficient evidence that these officials' actions are connected to the enforcement of the challenged statute. *Cf. Watford v. Quinn*, No. 14-CV-00571-MJR, 2014 WL 3252201, at *3 (S.D. Ill. July 8, 2014) (dismissing a plaintiff's claim against a defendant Governor where plaintiff failed to plead a connection between the Governor's authority and the enforcement of the statute). In contrast, here, the Governor has control over state agencies that directly and indirectly contribute to Plaintiff's harms, and the Attorney General has admitted that he would intervene to prevent Plaintiff from obtaining a change of legal name were Plaintiff to seek one in state court.

Finally, the State Defendants overlook the role played by the Defendant Director Willis' forms in enforcing the challenged statute, and understate the harm caused by the Director's Office's forms merely because they are not the determinative step in the name change process. (State Appellees' Br. 14). The 7th Circuit has held that "[a]n identifiable trifle is enough for

standing to fight out of a question of principle.” *Harris v. City of Zion*, 927 F.2d 1401, 1406 (7th Cir. 1991) (quoting *United States v. SCRAP*, 412 U.S. 669, 689 n.14 (1972)); *see also Baskin v. Bogan*, 12 F. Supp. 3d 1144, 1153 (S.D. Ind. 2014), *aff’d*, 766 F.3d 648 (7th Cir. 2014) (finding the Commissioner of the Indiana Department of Revenue to be a proper party based on the Plaintiff “having to fill out three federal tax returns in order to file separate returns for Indiana”). State Defendants note that the forms Director Willis prepares are “for convenience and are not a substitute for legal representation.” (State Defendants’ Br. 13). This disclaimer only furthers Plaintiff’s point. Director Willis prepares convenient name-change court forms for U.S. citizens only. Non-citizens are excluded from this benefit she provides to the public. While U.S. citizens may access legal name changes with the benefit of convenient forms, likely proceeding *pro se*, non-citizens, in State Defendants’ view, may only do so with access to and representation from constitutional litigators. (State Appellees’ Br. 7). Such a high bar and such a gap in access, facilitated by Director Willis, is well beyond a simple “identifiable trifle.” An injunction requiring Director Willis to remove the non-citizen exclusion from her court forms, and declaring that exclusion unconstitutional, would redress Mr. Doe’s injury by allowing him to proceed with his name change petition just as any U.S. citizen would.

2. Clerk Eldridge

In her response to the Plaintiff’s brief, the Clerk similarly attempts to refute the effects of her office’s actions in dissuading the Plaintiff from filing a name change petition. (Appellant’s Br. 35). However, as argued in the Plaintiff’s opening brief, the effect of the Clerk’s Office’s actions on Mr. Doe is sufficient to confer standing, (Appellant’s Br. 32), even if not determinative in nature. *See Harris v. City of Zion*, 927 F.2d at 1406 (stating that “[a]n identifiable trifle is enough for standing to fight out of a question of principle”) (internal citation

and quotation marks omitted); *Baskin v. Bogan*, 12 F. Supp. 3d at 1153. The Clerk repeats that her employees do not screen any other type of case, (Clerk Appellee’s Br. 13-14), but this only shows the extraordinary way in which the Clerk treats name change petitions. The Clerk’s office would not explain elements of a torts or contracts claim to a filer in its office; yet, the Clerk did and does explain the non-citizen exclusion to would-be name change applicants. Further, though the Clerk asserts that her office already does accept and process name-change petitions from all comers, this point is irrelevant to the relief Plaintiff seeks. Plaintiff’s complaint seeks relief “[p]ermanently enjoining enforcement by [all] Defendants” of the non-citizen exclusion. (Short App. 18 (Complaint)). As to the Clerk, this relief would include an injunction against advising non-citizens that they are ineligible for name changes, and discontinuing the practice of distributing forms and literature that exclude non-citizens from name changes. Plaintiff’s injury is thus redressable by the Clerk as well.

II. Defendants Contest Plaintiff’s Right to Choose His Forum and Attempt to Leave Him Without the Opportunity to Vindicate His Constitutional Rights.

A. It is Well-Recognized that a Plaintiff Asserting a Right May Elect the Forum of His Choice.

In their brief, State Defendants argue that Plaintiff has no right to bring his constitutional claims into federal court. (State Appellees’ Br. 17, stating that “Mr. Doe mistakenly believes he has a generalized right to bring him [sic] claims in federal court”).

This argument—that Plaintiff has no right to bring his constitutional claims in the forum of his choice—runs contrary to the well-supported proposition that a plaintiff does have a right to choose his forum to vindicate important rights. Notably, the *Ex Parte Young* 11th Amendment doctrine derives from this proposition. “If the question of unconstitutionality, with reference, at least, to the Federal Constitution, be first raised in a Federal court, that court, as we think is

shown by the authorities cited hereafter, has the right to decide it, to the exclusion of all other courts.” *Ex parte Young*, 209 U.S. 123, 160 (1908). The right to choose a forum is also well-recognized, generally. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) (stating that “the plaintiff’s choice of forum should rarely be disturbed”). It is further reflected in the right to removal, as well as the right to choose a venue. *See Davis v. Rodriguez*, 106 F.3d 206, 208 (7th Cir. 1997) (upholding a defendant’s right to remove based on asserted federal constitutional claims); *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 167-68 (1939) (stating that “the locality of a law suit—the place where judicial authority may be exercised—though defined by legislation relates to the convenience of litigants and as such is subject to their disposition”).

Defendants pursue this argument in an attempt to take away the Plaintiff’s opportunity to have his constitutional claims heard in a federal forum, and to force Plaintiff to forgo his claim or pursue his litigation in the state courts. (*See* State Appellees’ Br. 7 (stating that “[t]here is no reason Mr. Doe could not file a petition for name change . . . but also argue that the citizenship requirement is unconstitutional”). In attempting to defend their position that Plaintiff has no right to choose his forum, State Defendants highlight Erwin Chemerinsky’s proposition that “a litigant . . . asserting a constitutional right may choose either federal or state court for the enforcement of that right.” (State Appellees’ Br. 19 (citing Martin H. Redish, *Judicial Parity, Litigant Choice, and Democratic Theory*, 36 UCLA L. Rev. 329, 330 (1988))). Once this Court holds that Plaintiff has established Article III standing, Defendants must accept that because it is the Plaintiff who is asserting his constitutional right against Indiana’s discriminatory name change regime, he has the right to choose the federal court, rather than the state court, to hear his case.

B. If this Court Upholds the District Court’s Decision as to Article III Standing, Plaintiff Will Be Left Without the Opportunity to Vindicate his Constitutional Rights in Federal Court.

The State Defendants further argue that “any injury to Mr. Doe from the operation of the statutory restriction . . . would be traceable only to the independent action of a circuit court judge.” (State Appellees’ Br. 8). If an action can be deemed “independent” when it is in compliance with a facially mandatory and non-discretionary criterion, then the word would seem to lose all meaning. The attempt by both the State Defendants and Clerk Eldridge to break the chain of causation between Plaintiff’s injury and their actions would have the effect of robbing persons, such as Mr. Doe, of the opportunity to vindicate their constitutional rights in federal court.

As discussed in Appellant’s opening brief, state court judges are not appropriate defendants in this action because they “would likely assert they are cloaked with immunity.” (Appellant’s Br. 19). The State Defendants admit as much in their brief. (*See* State Appellees’ Br. 8 (stating that “Circuit courts do not enforce the name change statute . . .”). Thus, the Defendants’ assertion that no officer named by Plaintiff can be appropriately named as a Defendant effectively leaves Plaintiff without the opportunity to be heard in federal court altogether. He would only be left with the opportunity to vindicate his constitutional rights through the state-court system, and would be deprived of his opportunity to present his claims before an arbiter not employed by the very State he seeks to challenge.

Here, the Defendants ask the Court to provide less deference to constitutional discrimination claims, an area in which federal courts rarely defer to state courts, than they would, for example, to criminal defendants, in an area in which federal courts often defer to the state criminal justice system, while still providing the right to bring claims in the federal district

court beginning in the trial court through habeas corpus proceedings. Defendants would require non-citizen name-change applicants like Mr. Doe to initiate proceedings in state court and then be stuck with the resolution in the state court system, subject only to long-shot United States Supreme Court review following state supreme court resolution. Under longstanding practice and precedent, as described above, plaintiffs have the choice to seek federal district court review of claims of discrimination under the United States Constitution. Plaintiffs like Mr. Doe cannot be forced to express confidence – a confidence that plaintiffs may consider unwarranted – in state-court adjudication of federal rights, and further be required to accept the state-court resolution with no recourse to federal district court.

Defendants assert that Plaintiff “cannot show that the Indiana legislature gave circuit courts authority over name change petitions in order to avoid oversight by federal courts.” (State Appellees’ Br. 19-20). In effect, that is what State Defendants are now attempting to have the law do, and to prolong and broaden the injury to Mr. Doe in the meanwhile. Whether that was the state’s initial intent or not, the effect is the same, and nonetheless illegitimate.

CONCLUSION

If a hypothetical statute decreed that no unmarried woman may receive a legal change of name, the right to petition the federal district court to eliminate that requirement – without being required to pursue a constitutional claim against the discrimination solely in state court – would not be gainsaid. *See e.g., Whitlow v. Hodges*, 539 F.2d 582, 583 (6th Cir. 1976) (holding, in a civil rights action challenging a state law requiring women to adopt their husbands’ surname, that the federal courts can “afford redress” for the deprivation of a constitutional right under color of state law). The same ought to be true here.

The assertion of the right of non-citizens to equal treatment – particularly as presented by a transgender man – may not be burdened with more controversy other than assertions of the right to be free from discrimination as proscribed by the United States Constitution. In this context of greater current controversy, a plaintiff might well determine that it is best to assert the right to be free of such discrimination in the federal court system from beginning to end. Here, Defendants would seek to prevent Mr. Doe from making that choice by pointing fingers away from themselves, but leaving no alternative to potential relief in federal district court. The causation and redressability requirements of the federal-court standing doctrine do not exist to immunize state officials of violations of constitutional rights, but to ensure that the most appropriate defendants are in place and to ensure both the best and sharpest defense and the most efficacious remedy. Under the peculiar Indiana statutory scheme governing name changes, the Defendants named here are the appropriate defendants under Article III.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the rules contained in F.R.A.P. Rule 32(a)(7) for a brief produced with a proportionally spaced font. The length of this brief is 4,127 words.

/s/ Shawn Thomas Meerkamper
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PROOF OF SERVICE

I hereby certify that on September 5, 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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