

STATE OF INDIANA) IN THE ST. JOSEPH _____ COURT
) SS:
COUNTY OF ST. JOSEPH) CAUSE NO.

ST. JOSEPH COUNTY COUNCIL,)
RAFAEL MORTON, individually and in)
his official capacity, DIANA L. HESS,)
individually and in her official capacity,)
ROBERT KRUSZYNSKI, JR., individually)
and in his official capacity, MARK A.)
CATANZARITE, individually and in his)
official capacity, JOSEPH F. CANARECCI,)
individually and in his official capacity, and)
COREY D. NOLAND, individually and in)
his official capacity,)

Plaintiffs,)

v.)

ST. JOSEPH COUNTY BOARD OF)
COMMISSIONERS, COMMISSIONER)
ANDREW T. KOSTIELNEY, in his official)
capacity, COMMISSIONER DEBORAH A.)
FLEMING, in her official capacity,)
COMMISSIONER DEREK D. DIETER,)
in his official capacity, and ST. JOSEPH)
COUNTY ELECTION BOARD,)

Defendants.)

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the St. Joseph County Council, Rafael Morton, individually and in his official capacity, Diana L. Hess, individually and in her official capacity, Robert Kruszynski, Jr., individually and in his official capacity, Mark A. Catanzarite, individually and in his official capacity, Joseph F. Canarecci, individually and in his official capacity, and Corey D. Noland, individually and in his official capacity, for their Verified Complaint for Declaratory and Injunctive Relief against the Defendants, the St. Joseph County Board of Commissioners, Commissioner Andrew T. Kostielney, in his official capacity, Commissioner Deborah A. Fleming,

in her official capacity, and Derek D. Dieter, in his official capacity, and the St. Joseph County Election Board state the following:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff St. Joseph County Council is the legislative and fiscal body of the St. Joseph County, Indiana, government, with its offices located at 227 W. Jefferson Boulevard, South Bend, Indiana, 46601.

2. Plaintiff Rafael Morton is the President of the St. Joseph County Council. He is a resident of St. Joseph County, is an African American and member of a minority group, and is a registered voter.

3. Plaintiff Diana L. Hess is the President Pro-Tempore of the St. Joseph County Council. She is a resident of St. Joseph County and a registered voter.

4. Plaintiff Robert Kruszynski, Jr. is the Vice President Pro-Tempore of the St. Joseph County Council. He is a resident of St. Joseph County and a registered voter.

5. Plaintiff Mark A. Catanzarite is a member of the St. Joseph County Council. He is a resident of St. Joseph County and a registered voter.

6. Plaintiff Joseph F. Canarecci is a member of the St. Joseph County Council. He is a resident of St. Joseph County and a registered voter.

7. Plaintiff Corey D. Noland is a member of the St. Joseph County Council. He is a resident of St. Joseph County and a registered voter.

8. Defendant St. Joseph County Board of Commissioners (the “Board of Commissioners”) is the executive body of the St. Joseph County government responsible for dividing the county into three commission districts under Ind. Code § 36-2-2-4, with its offices located at 227 W. Jefferson Boulevard, South Bend, Indiana, 46601..

9. Defendant Andrew T. Kostielney is the President of the St. Joseph County Board of Commissioners.

10. Defendant Deborah A. Fleming is the Vice President of the St. Joseph County Board of Commissioners.

11. Defendant Derek D. Dieter is a commissioner on the St. Joseph County Board of Commissioners.

12. Defendant St. Joseph County Election Board (the “Election Board”) is the entity that provides election services for the county. The Election Board administers all county and municipal elections. Its offices are located at 101 South Main Street, South Bend, Indiana, 46601.

13. The Court has personal and subject matter jurisdiction over this case.

14. Pursuant to Indiana Trial Rule 75(A), venue is proper in this Court.

FACTUAL BACKGROUND

Special Legislative Scheme for Election of St. Joseph County Commissioners and County Council Members

15. The Indiana General Assembly has singled out St. Joseph County for special treatment with respect to the redistricting and election of county commissioners and county council members.

16. Indiana Code § 36-2-2-4(a) provides the general rule for the drawing of county commissioner districts and applies to eighty-nine (89) of the ninety-two (92) Indiana counties. The only exceptions are Lake County, Marion County, and (at least until recent population changes) St. Joseph County.

17. Indiana Code § 36-2-2-4(a) provides in relevant part that “[t]he executive shall divide the county into three (3) districts that are composed of contiguous territory and are reasonably compact,” and “[t]he district boundaries . . . must not cross precinct boundary lines and

must divide townships only when a division is clearly necessary to accomplish redistricting under this section.”

18. Prior to recent population changes, St. Joseph County has not been required to draw its county commissioner districts pursuant to Ind. Code § 36-2-2-4(a). Instead, St. Joseph County has been subject to Ind. Code § 36-2-2-4(c), which “applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

19. Indiana Code § 36-2-2-4(c) provides in relevant part that “[t]he executive shall divide the county into three (3) single-member districts that comply with subsection (d),” which requires that each single-member district: “(1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes),” “(2) contain, as nearly as is possible, equal population,” and “(3) not cross precinct lines.”

20. Until recent population changes, St. Joseph County was the *only county in Indiana* subject to Ind. Code § 36-2-2-4(c). Thus, St. Joseph County has been subject to a unique statutory scheme for the drawing of county commissioner districts.

21. Until recent population changes, St. Joseph County has also been subject to a special legislative scheme for the election of county commissioners.

22. In nearly every other county in Indiana, county commissioners are elected by the voters of the entire county. By contrast, in St. Joseph County, each county commissioner has been elected only by the voters of that commissioner’s single-member district.

23. Indiana Code § 36-2-2-5(d) provides in relevant part that, until recent population changes, for *only two counties*, St. Joseph County and Lake County, “one (1) member of the executive shall be elected by the voters of each of the three (3) single-member districts established”

for the county. Indiana Code § 36-2-2-5(d) further provides, “[i]n other counties, *all three (3) members of the executive shall be elected by the voters of the whole county.*” Ind. Code § 36-2-2-5(d) (emphasis added).

24. Thus, in St. Joseph County, voters have enjoyed the lesser and unequal right to vote for only one of their three county commissioners, whereas voters in nearly every other Indiana county enjoy the right to vote for all three of their county commissioners.

25. Likewise, until recent population changes, St. Joseph County has been subject to a unique statutory scheme for county council districts and elections.

26. Indiana Code § 36-2-3-4(a) provides the general rule for county council districts and historically applied to eighty-nine (89) of the ninety-two (92) Indiana counties. The only exceptions have been Lake County, Marion County, and St. Joseph County (until recent population changes).

27. Indiana Code § 36-2-3-4(a) states in relevant part that “[t]he county executive shall, by ordinance, divide the county into four (4) contiguous, single-member districts that comply with subsection (d).”

28. Indiana Code § 36-2-3-4(a) further states that “[o]ne (1) member of the fiscal body shall be elected by the voters of each of the four (4) districts,” and “[t]hree (3) at-large members of the fiscal body shall be elected by the voters of the whole county.”

29. In a county subject to Ind. Code § 36-2-3-4(a), there are seven (7) county council members. Three (3) county council members are at-large members elected by voters of the whole county, and four (4) county council member are elected by the voters of each of the four (4) districts.

30. Thus, in a county subject to Ind. Code § 36-2-3-4(a) (or eighty-nine (89) of Indiana’s ninety-two (92) counties historically), each voter may cast a vote for up to four (4) county council members—three (3) at-large members and one (1) from the voter’s district—*i.e.*, a majority of the county council.

31. Until recent population changes, St. Joseph County has not been subject to Ind. Code § 36-2-3-4(a). Instead, St. Joseph County has been subject to Ind. Code § 36-2-3-4(c), which “applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

32. Until recent population changes, St. Joseph County has been the *only county in Indiana* subject to Ind. Code § 36-2-3-4(c).

33. Indiana Code § 36-2-3-4(c) states in relevant part that “[t]he fiscal body shall divide the county into nine (9) single-member districts that comply with subsection (d).”

34. Indiana Code § 36-2-3-4(c) further states in relevant part that “[t]hree (3) of these districts must be contained within each of the three (3) districts established under IC 36-2-2-4(c)”—the three single-member county commissioner districts—and “[o]ne (1) member of the fiscal body shall be elected by the voters of each of these nine (9) single-member districts.”

35. Thus, at present, in St. Joseph County, there are nine (9) county council members, each from a single-member district, with three (3) county council member districts nested within each of three (3) county commissioner districts.

36. In previous elections in St. Joseph County, each county voter has been able to cast a vote for only one (1) of nine (9) county council members—*i.e.*, each voter may vote only for the county council seat in the district where the voter resides.

37. This is a unique statutory scheme for county council members/districts that has been applicable only to St. Joseph County.

38. As a result of this special statutory scheme, in previous elections, St. Joseph County voters have enjoyed lesser and unequal voting rights with respect to the election of both county commissioners and county council members. In previous elections, St. Joseph County voters have been able to cast a vote for only one (1) of their three (3) county commissioners, and only one (1) of their nine (9) county council members. By contrast, voters in nearly every other county in Indiana may vote for all three (3) of their county commissioners, and four (4) of their seven (7) county council members.

39. According to 2020 U.S. Census data, the population of St. Joseph County is now 272,912. Accordingly, by the express terms of the statutes that singled out St. Joseph County for special legislative treatment, St. Joseph County should no longer be subject to special treatment, and St. Joseph County voters should enjoy the full privileges enjoyed by other voters throughout Indiana with respect to the election of county commissioners and county council members.

40. Despite these population changes, the Board of Commissioners has proceeded with redistricting for purposes of the 2022 county elections (and beyond) as though St. Joseph County remains subject to the special legislative scheme.

41. Despite these population changes, there is no indication whether the Election Board will administer the upcoming elections according to the statutes generally applicable to Indiana counties, and the Election Board should be required to do so.

42. Accordingly, Plaintiffs bring this action seeking declaratory relief that (i) the special legislative scheme no longer applies to St. Joseph County due to changes in population, or, in the alternative, (ii) both the special legislative scheme applicable to St. Joseph County and the

recent redistricting by the Commission are unconstitutional under a variety of provisions of the Indiana Constitution, as set forth below.

St. Joseph County Voting Tendencies

43. On a county-wide basis, St. Joseph County tends to vote for candidates of the Democratic Party, both historically and in recent statewide and national elections.

44. Democratic Party voters in St. Joseph County are largely concentrated within the certain geographical areas, including the City of South Bend, whereas Republican Party voters are more widely geographically dispersed throughout the County.

45. The combination of the special legislative scheme historically applicable to St. Joseph County—which provides that county commissioners are elected only by the voters of their single-member districts, and county council members are elected only by the voters of their single-member districts with no at-large members—and the geographical concentration of Democratic voters within the county has led to skewed results that do not reflect the popular will of the collective population of St. Joseph County.

46. Thus, the special legislative scheme historically applicable to St. Joseph County effectively frustrates the popular will of a majority of St. Joseph County voters and leads to undemocratic outcomes on a county-wide basis.

2021 St. Joseph County Redistricting

47. Despite the recent population changes demonstrating that St. Joseph County's population now exceeds 270,000, the Board of Commissioners recently passed two resolutions, pursuant to Ind. Code § 36-2-2-4.7, that would purportedly result in the redistricting of the three county commissioner districts for St. Joseph County and, if effective, further weaken the voting rights of certain groups of St. Joseph County voters.

48. On November 16, 2021, the Board adopted new commissioner districts for St. Joseph County (the “New Commissioner Districts”) by the passage of Resolution No. R-28-C 2021, with supplemental findings made under Resolution No. R-29-C 2021.

49. Under Ind. Code § 36-2-2-4.7, a redistricting ordinance ordinarily must be adopted by ordinance and filed with the circuit court clerk. The only exception is for “a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).” Ind. Code § 36-2-2-4.7(c).

50. St. Joseph County’s population now exceeds 270,000. Accordingly, the New Commissioner Districts passed by the Board of Commissioners should be without any legal force or effect.

51. The New Commissioner Districts, if effective, would make significant geographic and demographic changes to the pre-existing commissioner districts for St. Joseph County (the “Old Commissioner Districts”). The result of these changes would be to further concentrate voters who tend to vote for Democratic Party candidates into a single commissioner district, while ensuring Republican Party control over the other two commissioner districts.

52. For example, under the Old Commissioner Districts, the minority population of St. Joseph County was more evenly distributed across the three districts than under the New Commissioner Districts.

53. Under the Old Commissioner Districts, the percentage of minority residents in each district was 25.38% (District 1), 37.14% (District 2), and 23.64% (District 3).

54. Under the New Commissioner Districts, the percentage of minority residents in each district would be 20.91% (District 1), 47.52% (District 2), and 17.49% (District 3).

55. Under the Old Commissioner Districts, the disparity between the highest-minority district and lowest-minority district was approximately 13.5%. By contrast, under the New Commissioner Districts, the disparity between the highest-minority district and the lowest-minority district would increase to approximately 30%—*i.e.*, more than double the disparity between the highest-minority district and the lowest-minority district under the Old Commissioner Districts.

56. Under the New Commissioner Districts, approximately 55% of the minority population of St. Joseph County would be concentrated within a single commissioner district. By contrast, under the Old Commissioner Districts, no commissioner district contained more than approximately 42% of the minority population of St. Joseph County.

57. Under the New Commissioner Districts, approximately 64% of the African American population of St. Joseph County would be concentrated within a single commissioner district. By contrast, under the Old Commissioner Districts, no commissioner district contained more than approximately 46% of the African American population of St. Joseph County.

58. The New Commissioner Districts, if effective—in tandem with the special legislative scheme previously applicable only to St. Joseph County that disallows county-wide voting for county commissioners or county council members—would have the effect of further frustrating the popular will of a majority of St. Joseph County voters.

59. Accordingly, and as set forth further below, Plaintiffs seek a declaration that (i) due to recent population changes, the foregoing special legislative scheme no longer applies to St. Joseph County, and (ii) in the alternative, to the extent that any portion of the special legislative scheme still applies to St. Joseph County, both the special legislative scheme and the New

Commissioner Districts violate the Indiana Constitution and are unlawful, and Plaintiffs further seek to enjoin the same.

60. On December 28, 2021, the St. Joseph County Council passed Ordinance No. 159-21 (a copy of which is attached hereto as **Exhibit A**), adopting three sets of “contingency” district maps for the County Council. The “Contingency 1” district maps would apply if this Court holds that the special legislative scheme previously applicable to St. Joseph County no longer applies or is unconstitutional. The “Contingency 2” district maps would apply if this Court finds that the special legislative scheme is still applicable and is not unconstitutional, but does hold that the New Commissioner Districts are unconstitutional. The “Contingency 3” district maps would apply if this Court holds that the special legislative scheme still applies and both it and the New Commissioner Districts are constitutional.

61. Plaintiffs further seek a declaration that the “Contingency 1” district maps have full legal force and effect, as they are the only district maps that comply with the generally applicable statutes that should apply to St. Joseph County.

COUNT I—DECLARATION THAT ST. JOSEPH COUNTY IS NO LONGER SUBJECT TO SPECIAL LEGISLATION DUE TO RECENT POPULATION CHANGES

62. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

63. Indiana Code § 36-2-2-4(c) “applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

64. Indiana Code § 36-2-3-4(c) “applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

65. Indiana Code § 36-2-2-5(d) provides that county commissioners “shall be elected by the voters of each of three (3) single-member districts” ***only*** for counties with a population of

“more than four hundred thousand (400,000) but less than seven hundred thousand (700,000)” or “more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

66. Indiana Code § 36-2-2-4.7 provides that for any county except one “having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000),” new county commissioner districts must be adopted by an ordinance. Only a county meeting the foregoing population parameters (population more than 250,000 but less than 270,000) may adopt two resolutions to create new county commissioner districts.

67. According to 2020 U.S. Census data, the population of St. Joseph County is 272,912.

68. By its own terms, Ind. Code § 36-2-2-4(c) no longer applies to St. Joseph County. Instead, St. Joseph County is now subject to the general provisions of Ind. Code § 36-2-2-4(a).

69. By its own terms, Ind. Code § 36-2-3-4(c) no longer applies to St. Joseph County. Instead, St. Joseph County is now subject to the general provisions of Ind. Code § 36-2-3-4(a).

70. Under the plain terms of Ind. Code § 36-2-2-5(d), St. Joseph County is now a county in which “all three (3) members of the executive shall be elected by the voters of the whole county.”

71. Under the plain terms of Ind. Code § 36-2-2-4.7, St. Joseph County is now a county in which new county commissioner districts must be adopted by ordinance, rather than through two resolutions.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that Ind. Code § 36-2-2-4(c) no longer applies to St. Joseph County, and St. Joseph County is instead subject to Ind. Code § 36-2-2-4(a); (2) declaring that Ind. Code § 36-2-3-4(c) no longer applies to St. Joseph

County, and St. Joseph County is instead subject to Ind. Code § 36-2-3-4(a); (3) declaring that under Ind. Code § 36-2-2-5(d), St. Joseph County is now a county in which “all three (3) members of the executive shall be elected by the voters of the whole county”; (4) declaring that under Ind. Code § 36-2-2-4.7, in St. Joseph County, new county commissioner districts must be adopted by ordinance; (5) declaring that the New Commissioner Districts have no legal force or effect, because they were not adopted by ordinance, as required by Ind. Code § 36-2-2-4.7; (6) declaring that the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, which conform to Ind. Code § 36-2-3-4(a), are lawful and should have full force and effect, including, but not limited to, in the 2022 St. Joseph County elections; and (7) granting Plaintiffs all other just and proper relief.

**COUNT II—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 4, SECTIONS 22 AND 23 (SPECIAL LEGISLATION)**

72. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

73. Indiana Constitution Article 4, Section 22 provides in relevant part that “[t]he General Assembly shall not pass local or special laws . . . [r]egulating the election of county and township officers.”

74. Indiana Constitution Article 4, Section 23 provides in relevant part that “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

75. Prior to recent population changes, the process set forth in Ind. Code § 36-2-2-4(c) for county commissioner districts previously applied only to St. Joseph County.

76. Prior to recent population changes, the two-resolution process set forth in Ind. Code § 36-2-2-4.7(c) for adopting new county commissioner districts applied only to St. Joseph County.

77. Prior to recent population changes, the single-member district process for county commissioner elections set forth in Ind. Code § 36-2-2-5(d) applied only to St. Joseph County and Lake County.

78. Collectively, the special processes set forth in Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), and 36-2-2-5(d) are referred to herein as the “Special County Commissioner Election Process.”

79. The Special County Commissioner Election Process is special legislation because it does not apply uniformly statewide. Rather, prior to recent population changes, it applied only to St. Joseph County and deviated from the general process applicable to eighty-nine (89) of the ninety-two (92) Indiana counties under Ind. Code §§ 36-2-2-4(a), 36-2-2-4.7(a), and 36-2-2-5(d).

80. The Special County Commissioner Election Process is unconstitutional special legislation because there is nothing unique about St. Joseph County that requires or justifies deviation from the typical practice used statewide for the redistricting and election of county commissioners.

81. The Special County Commissioner Election Process is unconstitutional because there is no reason why St. Joseph County voters should enjoy lesser and unequal rights to elect county commissioners than voters in nearly every other Indiana county.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that the Special County Commissioner Election Process, as embodied in Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), and 36-2-2-5(d), is unconstitutional special legislation; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for drawing county commissioner districts under Ind. Code § 36-2-2-4(a); (3) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for adopting new county commissioner districts

under Ind. Code § 36-2-2-4.7(a); (4) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), *i.e.*, the county-wide election of all three county commissioners; (5) declaring that the New Commissioner Districts have no legal force or effect; (6) enjoining the use or implementation of the New Commissioner Districts, including, but not limited to, in the 2022 St. Joseph County elections; and (7) granting Plaintiffs all other just and proper relief.

**COUNT III—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 4, SECTIONS 22 AND 23 (SPECIAL LEGISLATION)**

82. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

83. Indiana Constitution Article 4, Section 22 provides in relevant part that “[t]he General Assembly shall not pass local or special laws . . . [r]egulating the election of county and township officers.”

84. Indiana Constitution Article 4, Section 23 provides in relevant part that “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

85. The process set forth in Ind. Code § 36-2-3-4(c) for county council districts and elections (the “Special County Council Election Process”) previously applied only to St. Joseph County (prior to recent population changes). To the extent that this process still applies to St. Joseph County, this process deviates from the general process applicable to nearly every other Indiana county under Ind. Code § 36-2-3-4(a).

86. The Special County Council Election Process is special legislation because it does not apply uniformly statewide. Rather, to the extent that it still applies at all, it applies *only* to St.

Joseph County and deviates from the general process applicable to eighty-nine (89) of the ninety-two (92) Indiana counties under Ind. Code § 36-2-3-4(a).

87. The Special County Council Election Process is unconstitutional special legislation because there is nothing unique about St. Joseph County that requires or justifies deviation from the typical practice used statewide for county council member districts.

88. The Special County Council Election Process is unconstitutional special legislation because there is no reason why St. Joseph County voters should enjoy lesser and unequal rights to elect county council members than voters in nearly every other Indiana county.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that the Special County Council District Process embodied in Ind. Code § 36-2-3-4(c) is unconstitutional special legislation in violation of Ind. Const. Art. 4, Sections 22 and 23; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a); (3) declaring that the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, which conform to Ind. Code § 36-2-3-4(a), are lawful and should have full force and effect, including, but not limited to, in the 2022 St. Joseph County elections; and (4) granting Plaintiffs all other just and proper relief.

COUNT IV—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 1, SECTION 23 (EQUAL PRIVILEGES AND IMMUNITIES CLAUSE)

89. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

90. Article 1, Section 23 of the Indiana Constitution (the “Equal Privileges and Immunities Clause”) provides that the “General Assembly shall not grant to any citizen, or class

of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

91. In nearly every Indiana county other than St. Joseph County (prior to recent population changes), voters possess the right to vote for all three of their county commissioners.

92. Under Ind. Code § 36-2-2-5(d), however, St. Joseph County voters have been allowed in previous elections to cast a vote for only one (1) of three (3) county commissioners.

93. In nearly every Indiana county other than St. Joseph County (prior to recent population changes), voters possess the right to vote for a majority of the members of the county council.

94. Only St. Joseph County voters have been subject to the restrictive scheme of Ind. Code § 36-2-3-4(c) in previous elections, which allowed each voter to cast a vote for only one (1) of nine (9) county council members.

95. Indiana Code § 36-2-2-5(d), to the extent that it still singles out St. Joseph County for special treatment, violates the Equal Privileges and Immunities Clause, because it deprives St. Joseph County voters of the privileges afforded to voters in nearly every other county in Indiana to vote for all three of their county commissioners.

96. Indiana Code § 36-2-3-4(c), to the extent that it still singles out St. Joseph County for special treatment, violates the Equal Privileges and Immunities Clause, because it deprives St. Joseph County voters of the privileges afforded to voters in nearly every other county in Indiana to vote for a majority of their county council members.

97. There is no rational or legitimate basis for depriving St. Joseph County voters of the privileges afforded to voters in other Indiana counties, including the right to vote for all three county commissioners and the right to vote for a majority of the members of the county council.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that Ind. Code § 36-2-2-5(d) violates the Equal Privileges and Immunities Clause and is unconstitutional, because it deprives St. Joseph County voters of the privilege afforded to residents of nearly every other county to vote for all three county commissioners; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), *i.e.*, the county-wide election of all three county commissioners; (3) declaring that Ind. Code § 36-2-3-4(c) violate the Equal Privileges and Immunities Clause and is unconstitutional, because it deprives St. Joseph County voters of the privilege afforded to residents of nearly every other county to vote for a majority of the county council; (4) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a); (5) declaring that the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, which conform to Ind. Code § 36-2-3-4(a), are lawful and should have full force and effect, including, but not limited to, in the 2022 St. Joseph County elections; and (6) granting Plaintiffs all other just and proper relief.

COUNT V—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 1, SECTION 23 (EQUAL PRIVILEGES AND IMMUNITIES CLAUSE)

98. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

99. Article 1, Section 23 of the Indiana Constitution (the “Equal Privileges and Immunities Clause”) provides that the “General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

100. As set forth above, the combination of the special legislative scheme previously applicable to St. Joseph County—which provides that county commissioners are elected only by the voters of their single-member districts, and that county council members are elected only by the voters of their single-member districts with no at-large members—and the geographical concentration of Democratic Party voters within the county leads to skewed results that do not reflect the collective will of the entire population of St. Joseph County.

101. Moreover, the special legislative scheme previously applicable to St. Joseph County deprives voters of privileges enjoyed by voters of nearly every other county in the state—the right to vote for all three county commissioners and a majority of the county council.

102. The New Commissioner Districts, to the extent they have any legal force or effect, would exacerbate the lesser and unequal voting rights produced by the special legislative scheme previously applicable to St. Joseph County.

103. The New Commissioner Districts would concentrate a larger number of Democratic Party voters into a single commissioner district, thereby further limiting the ability of these voters to influence the overall composition of either the board of county commissioners or the county council on a county-wide basis.

104. Thus, to the extent that St. Joseph County remains subject to the special legislative scheme, the New Commissioner Districts would further deprive St. Joseph County voters of the privileges afforded to voters in nearly every other county in Indiana with respect to both the board of county commissioners and the county council.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that the New Commissioner Districts violate the Equal Privileges and Immunities Clause and are unconstitutional; (2) enjoining Defendants from using or implementing the New Commissioner

Districts, including but not limited to for the 2022 St. Joseph County elections; and (3) granting Plaintiffs all other just and proper relief.

COUNT VI—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 2, SECTION 1 (FREE AND EQUAL ELECTIONS CLAUSE)

105. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

106. Article 2, Section 1 of the Indiana Constitution (the “Free and Equal Elections Clause”) provides that the “All elections shall be free and equal.”

107. At a minimum, elections can satisfy the “equal” requirement only when the vote of every elector is equal in its influence to the vote of every other elector, and that each ballot is as effective as every other ballot.

108. In nearly every Indiana county other than St. Joseph County (prior to recent population changes), voters possess the right to vote for all three (3) members of the board of county commissioners.

109. Under Ind. Code § 36-2-2-5(d), however, St. Joseph County voters have been restricted in previous elections to voting for only one (1) of the three (3) members of the board of county commissioners.

110. In nearly every Indiana county other than St. Joseph County (prior to recent population changes), voters possess the right to vote for a majority of the members of the county council.

111. Only St. Joseph County voters have been subject to the restrictive scheme of Ind. Code § 36-2-3-4(c) in previous elections, which allows each voter to vote for only one (1) of nine (9) county council members.

112. Indiana Code § 36-2-2-5(d) violates the Free and Equal Elections Clause because, to the extent it still singles out St. Joseph County for special treatment, it deprives St. Joseph County voters of an equal influence to cast a vote and elect county commissioners that is afforded to voters in other counties throughout the State with respect to the election of county commissioners.

113. Indiana Code § 36-2-3-4(c) violates the Free and Equal Elections Clause because, to the extent that it still singles out St. Joseph County for special treatment, it deprives St. Joseph County voters of an equal influence to cast a vote and elect county council members that is afforded to voters in other counties throughout the State with respect to the election of county council members.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that Ind. Code § 36-2-2-5(d) is unconstitutional, because it violates Ind. Const. Art. 2, Section 1; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), *i.e.*, the county-wide election of all three county commissioners; (3) declaring that Ind. Code § 36-2-3-4(c) is unconstitutional, because it violates Ind. Const. Art. 2, Section 1; (4) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a); (5) declaring that the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, which conform to Ind. Code § 36-2-3-4(a), are lawful and should have full force and effect, including, but not limited to, in the 2022 St. Joseph County elections; and (6) granting Plaintiffs all other just and proper relief.

**COUNT VII—VIOLATION OF THE INDIANA CONSTITUTION,
ARTICLE 2, SECTION 1 (FREE AND EQUAL ELECTIONS CLAUSE)**

114. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

115. Article 2, Section 1 of the Indiana Constitution (the “Free and Equal Elections Clause”) provides that the “All elections shall be free and equal.”

116. At a minimum, elections can satisfy the “equal” requirement only when the vote of every elector is equal in its influence to the vote of every other elector, and that each ballot is as effective as every other ballot.

117. As set forth above, under the New Commissioner Districts, to the extent that St. Joseph County remains subject to the special legislative scheme, the votes of Democratic Party voters are not equal in influence to the vote of every other elector, and their ballots are not as effective as every other ballot.

118. Under the New Commissioner Districts, to the extent that St. Joseph County remains subject to the special legislative scheme, Democratic Party voters are denied a meaningful opportunity to affect the composition of the St. Joseph Board of County Commissioners and the County Council on a county-wide basis.

119. Under the New Commissioner Districts, to the extent that St. Joseph County remains subject to the special legislative scheme, the votes of Democratic Party voters are effectively diluted, and an election conducted under those districts will violate the Free and Equal Elections Clause.

WHEREFORE, Plaintiffs seek an order from the Court: (1) declaring that the New Commissioner Districts are unconstitutional, because they violate Ind. Const. Art. 2, Section 1; (2) enjoining Defendants from using or implementing the New Commissioner Districts, including but

not limited to for the 2022 St. Joseph County elections; and (3) granting Plaintiffs all other just and proper relief.

WHEREFORE, and applicable to all Counts of this lawsuit, Plaintiffs seek the following relief:

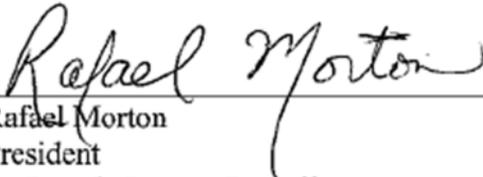
- a. A declaration that, due to recent population changes, St. Joseph County is no longer subject to special treatment under Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), 36-2-3-4(c), and 36-2-2-5(d);
- b. A declaration that, due to recent population changes, St. Joseph County is now subject to the statutory provisions generally applicable to other Indiana counties, including Ind. Code §§ 36-2-2-4(a), 36-2-2-4.7(a), 36-2-3-4(a), and 36-2-2-5(d), *i.e.* the county-wide election of all three county commissioners;
- c. A declaration that the New Commissioner Districts have no legal force or effect;
- d. A declaration that Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), 36-2-3-4(c), and 36-2-2-5(d) are unconstitutional special legislation in violation of the Indiana Constitution, Article 4, Sections 22 and 23;
- e. A declaration that Ind. Code §§ 36-2-3-4(c) and 36-2-2-5(d) are unconstitutional because they violate the Equal Privileges and Immunities Clause, Indiana Constitution, Article 1, Section 23;
- f. A declaration that Ind. Code §§ 36-2-3-4(c) and 36-2-2-5(d) are unconstitutional because they violate the Free & Equal Elections Clause, Indiana Constitution, Article 2, Section 1;
- g. A declaration that the New Commissioner Districts enacted by the St. Joseph County Board of Commissioners violate the Equal Privileges and Immunities Clause, Indiana Constitution, Article 1, Section 23;

- h. A declaration that the New Commissioner Districts enacted by the St. Joseph County Board of Commissioners violate the Free and Equal Elections Clause, Indiana Constitution, Article 2, Section 1;
- i. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for dividing county commissioner districts under Ind. Code § 36-2-2-4(a);
- j. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), *i.e.*, the county-wide election of all three county commissioners;
- k. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a);
- l. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the method of adoption of new county commissioner districts under Ind. Code § 36-2-2-4.7(a);
- m. A declaration that the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, which conform to Ind. Code § 36-2-3-4(a), are lawful and should have full force and effect, including, but not limited to, in the 2022 St. Joseph County elections;
- n. An order enjoining Defendants from using or implementing the New Commissioner Districts, including, but not limited to, in the 2022 St. Joseph County elections; and
- o. An order requiring Defendants to use and implement the “Contingency 1” district maps adopted by the St. Joseph County Council as part of Ordinance No. 159-21, including but not limited to, in the 2022 St. Joseph County elections.

VERIFICATION

I, Rafael Morton, President, St. Joseph County Council, do hereby affirm, under the penalties for perjury, that the facts alleged in the foregoing Verified Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge, information, and belief.

Dated: 12-30-21



Rafael Morton
President
St. Joseph County Council

Respectfully submitted,

ICE MILLER LLP

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