

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JOHN DOE, formerly known as JANE DOE,

Plaintiff,

v.

MICHAEL PENCE, in his official capacity as Governor of the State of Indiana; GREGORY ZOELLER, in his official capacity as Attorney General for the State of Indiana; and MYLA A. ELDRIDGE, in her official capacity as Marion County Clerk of the Court, and LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration,

Defendants.

Case No. 1:16-cv-02431-JMS-DML

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS MICHAEL PENCE,
GREGORY ZOELLER, AND LILIA JUDSON'S MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

In this action, Plaintiff challenges a state law prohibiting him, as a non-citizen, from being granted a change of legal name. Consistent with the Eleventh Amendment and the allocation of governance duties under Indiana law, Plaintiff has sued the governor, attorney general, and state court administrator (collectively, the "State Defendants")¹ under 42 U.S.C. 1983 to prevent this unlawful discrimination against non-citizens from being applied to him. This is a quintessential legal challenge to an unlawful categorical denial of a state service or benefit to a class of persons, yet the State Defendants assert that this federal court may not properly hear and determine this ordinary constitutional claim.

¹ Plaintiff has also named as a defendant Marion County Clerk of Court Myla A. Eldridge, who is not joined in the instant Motion to Dismiss.

The State Defendants assert that Plaintiff cannot satisfy any of the requisites of Article III standing. However, Plaintiff has adequately alleged a concrete injury—the denial of a legal change of name that is readily provided to similarly situated U.S. citizens. He has adequately alleged a causal connection—the State Defendants’ duty under state law to enforce the unlawful statute that discriminates against non-citizens. Finally, he has pleaded an entitlement to relief that would redress his injury—a declaratory judgment and an injunction that would overcome the State Defendants’ obligation to enforce the offending statute and require them instead to grant him a change of legal name in the same way that citizens are currently afforded that benefit.

None of the State Defendants’ contentions, including an assertion that waiting years—on the assumption that Plaintiff is able to secure citizenship sometime in the future—somehow eliminates his injury, can overcome Plaintiff’s satisfaction of the three requisites of standing. Finally, the State Defendants’ assertion that Plaintiff must take the futile step—in the face of a clear and mandatory exclusion in the challenged state law—of applying and being denied a change of legal name cannot deprive Plaintiff’s claims of ripeness. The Court should deny the State Defendants’ Motion to Dismiss.

I. INTRODUCTION

On March 17, 2010, the Governor of the State of Indiana signed into law Public Law 61, effective July 1, 2010, which was codified, in part, as Indiana Code Section 34-28-2-2.5(a)(5) (the “Statute”). The Statute prohibits non-United States citizens from obtaining a change of legal name.²

Plaintiff was granted asylum by the United States in August 2015 because he is transgender. (First Amended Complaint (“Complaint”), Dkt. 24, ¶ 28). He has lived in Indiana

² The Statute lists the required contents of a petition to the State circuit courts for a change of name. Subsection 5 requires “proof that the person is a United States citizen.”

since 1990. (Complaint, ¶ 23). Plaintiff is in the process of obtaining permanent residency status, and after he becomes a permanent resident, he must wait at least three years before he can apply for naturalization in hopes of one day becoming a United States citizen. (Complaint, ¶ 29).

Plaintiff is particularly harmed by the Statute in that it prevents him from changing his name to match his gender identity. (Complaint, ¶ 41). Because of the Statute, Plaintiff cannot legally change his name from Jane Doe to John Doe. (Complaint, ¶ 39). He faces discrimination and harassment regularly because his official documents show a traditionally female name, which reveals his transgender status to others without his consent. *Id.* Plaintiff's inability to change his legal name and update his ID to reflect his male identity has caused him serious emotional distress and difficulty in his day-to-day activities every time he is required to present his government-issued ID. *Id.*

II. STANDARD OF REVIEW

The State Defendants filed their Motion to Dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Their arguments, however, relate solely to the issue of standing, and do not address Plaintiff's substantive claims, other than the bare assertion that the complaint fails to state a claim for relief. (Dkt. 41 at 5). Therefore, any possible objection to the sufficiency of the allegations regarding the substantive merits of Plaintiff's claims should be understood as waived.

A motion under Rule 12(b)(1) tests the sufficiency of the allegations of the Complaint to establish subject-matter jurisdiction over the case. *Ezekial v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). When considering the sufficiency of a complaint under Rule 12(b)(1), just as under Rule 12(b)(6), a court must accept all of the complaint's well-pleaded factual allegations as true and

draw all reasonable inferences in plaintiff's favor. *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 968 (7th Cir. 2016).

III. ARGUMENT

A. Plaintiff Has Standing to Sue.

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

First, as the State Defendants note, Plaintiff must establish the actual or imminent invasion of a concrete and particularized interest to establish “injury in fact.” *See, e.g., Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 495-96 (7th Cir. 2005). The Seventh Circuit has interpreted this to mean that the injury “must affect the plaintiff in a personal and individual way,” as opposed to an abstract disagreement with a government policy. *Id.* at 496. The harms that Plaintiff has experienced and continues to experience from being denied a change of legal name solely based on citizenship are sufficient to confer standing.

The unconstitutional Statute harms Plaintiff directly and personally by preventing him from changing his legal name to reflect his gender identity, an injury that has serious consequences in his life. Because he cannot change the name on his identification documents, Plaintiff is compelled to speak and display the name “Jane” each time he shows his ID, communicating a message that contradicts his deeply held personal knowledge and belief that he

is a man. (Complaint, ¶ 94). He faces discrimination and harassment regularly because he cannot obtain a change of legal name and update his official documents. (Complaint, ¶ 57). His inability to change his legal name and update his ID has caused him serious emotional distress and difficulty in his day-to-day activities every time he is required to present his government-issued ID. *Id.* When others see Plaintiff's ID, they often suspect or realize that he is transgender. (Complaint, ¶ 57). Others question whether the ID is a fake and suggest that he is committing fraud. *Id.* Plaintiff has been threatened with arrest (Complaint, ¶ 45), mocked while seeking medical care for severe pain (Complaint, ¶ 46), and singled out and humiliated in front of friends and family (Complaint, ¶ 47). To allay those accusations of fraud, Plaintiff is often forced to disclose and explain his transgender status. (Complaint, ¶ 57). For a transgender person like Plaintiff, living in accordance with his true male sex and his male gender identity is also essential to his medical treatment for Gender Dysphoria. (Complaint, ¶ 57). Because Plaintiff cannot obtain a change of legal name, his ability to live in accordance with his true male sex and his male gender identity is deeply undermined. (Complaint, ¶ 80).

Rather than acknowledge or address these very real harms, the State Defendants attempt to entirely deny that Plaintiffs injuries can give him standing to challenge the law because, they argue, he may have the opportunity several years down the road to become a citizen, and at that point he would be able to change his name legally. (Dkt. 41, at 9). Once that chain of possible events occurs, they claim, Plaintiff will have suffered no harm at all. *Id.*

The State Defendants' arguments are unavailing. A defendant cannot evade responsibility for a present and ongoing deprivation by asserting that the passage of several years *may* bring about a state of affairs by which a plaintiff *may* cease membership in a group targeted for unconstitutional discrimination. It is widely recognized that "justice delayed is justice

denied.” Plaintiff is harmed every day that he is denied the ability to live freely in accordance with his male gender identity. Additionally, that harm may not be merely temporary: it is far from certain that Plaintiff will in fact successfully obtain citizenship and thus that he will ever be freed from the unconstitutional bar imposed by the Statute. Any number of intervening events, in this uncertain time, could bar his path to citizenship. Regardless, however, the State of Indiana may not require a person to seek and obtain citizenship before he can receive equal treatment under the law. Rather, our Constitution requires that citizens and noncitizens be treated equally *now*, regardless of whether they may have the opportunity to change status several years in the future. Plaintiff has satisfied the injury requirement.

Second, to satisfy the “causal connection” requirement, “the injury has to be fairly trace[able] to the challenged action of the defendant.” *Norton*, 422 F.3d at 500 (citations omitted). This requirement is a low bar; standing can still be established even if the connection is “weak.” *Banks v. Secretary of Ind. Family and Soc. Serv. Admin.*, 997 F.2d 231, 239 (7th Cir. 1993).

Here, Governor Pence and Attorney General Zoeller have a duty to enforce the law. (Complaint, ¶¶ 9-10). In addition, the forms produced and distributed by Director Judson include portions that detail the citizenship requirement. (Complaint, ¶ 12). The Statute and forms present a serious impediment to non-United States citizens from obtaining changes of legal name, and indeed demonstrated to Plaintiff that he could not lawfully petition for a change of name. *Id.* Thus, Plaintiff has alleged a concrete injury that is attributable at least in part to the State Defendants’ actions, following their state duties, in enforcing the Statute.³ As the Seventh

³ For these reasons, Plaintiff has also satisfied the requirements of the Eleventh Amendment. Under the Eleventh Amendment, a person ordinarily cannot sue a state in federal court unless the state consents. However, the Supreme Court created an exception to that immunity in *Ex Parte*

Circuit noted in *Norton*, “While the [defendant] may not be the only party responsible for the injury alleged here, a plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm.” 422 F.3d at 500.

Last, Plaintiff’s injury must be “redressable” by a decision in his favor.⁴ *Banks*, 997 F.2d at 240-41. An injunction prohibiting each of the State Defendants from enforcing the Statute and a declaratory judgment that the Statute is unconstitutional will remedy Plaintiff’s injury because it will allow him to petition for and obtain a change of legal name. This will eliminate the actual and immediate harms that Plaintiff faces because he is denied a legal name change solely on the basis of citizenship, and therefore forced to identify himself with the traditionally female name “Jane” that is inconsistent with his gender identity. An injunction enjoining the State Defendants from enforcing the Statute against Plaintiff will prevent further harm to Plaintiff and prevent further enforcement of the unconstitutional statute. Therefore, Plaintiff satisfies the redressability requirement.

B. The Court Has Subject Matter Jurisdiction under Federal Rule 12(b)(1) Because Plaintiff’s Claims are Ripe for Adjudication.

The State Defendants assert that the Court must dismiss Plaintiff’s First Amended Complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because Plaintiff’s claims are not ripe because he has not filed a petition for a change of legal name and received the inevitable, formal denial. (Dkt. 41 at 8). Though State Defendants

Young. 209 U.S. 123 (1908). Under that doctrine, “a private party can sue a state officer in his or her official capacity to enjoin prospective action that would violate federal law.” *Ameritech Corp. v. McCann*, 297 F.3d 582, 585-86 (7th Cir. 2002) (quoting *Dean Foods Co. v. Brancel*, 187 F.3d 609, 613 (7th Cir. 1999)).

⁴ The State Defendants appear to concede that Plaintiff has met his burden of establishing redressability as to Governor Pence. Their argument only addresses redressability as to Attorney General Zoeller and Director Johnson. (Dkt. 41 at 9).

concede that such a petition would be denied (Dkt. 41 at 8), they would have this Court require Plaintiff to file and pay for a frivolous petition.

Litigants are not required to engage in futile gestures to establish that their claims are ripe. *See, e.g., Nyquist v. Mauclet*, 432 U.S. 1, 6 n.7 (1977) (non-citizen barred from state educational financial aid program not required to apply for assistance before bringing suit); *Montana Nat. Bank of Billings v. Yellowstone Cty., Mont.*, 276 U.S. 499, 505 (1928) (taxpayer seeking refund not required to exhaust where “any such application [would have been] utterly futile since the county board of equalization was powerless to grant any appropriate relief” in face of prior controlling court decision); *Sammon v. New Jersey Bd. of Med. Examiners*, 66 F.3d 639, 643 (3d Cir. 1995) (aspiring midwives’ claims ripe despite not having applied for license through allegedly unconstitutional licensing scheme). “The ripeness doctrine requires a live, focused case of real consequence to the parties. It does not require . . . [parties] to jump through a series of hoops, the last of which it is certain to find obstructed by a brick wall.” *Triple G Landfills, Inc. v. Bd. of Comm’rs. of Fountain Cnty., Ind.*, 977 F.2d 287, 291 (7th Cir. 1992). Even if Plaintiff were allowed to submit a petition, such petition would be obviously futile because he is not a United States citizen and thus cannot prove that he is a United States citizen, as required by the Statute. (Complaint, ¶ 63).

Here, State Defendants have a duty to enforce a Statute that prohibits Plaintiff from obtaining a change of legal name, discriminates against Plaintiff on the basis of citizenship, and causes a range of difficulties and dangers in his everyday life. There is therefore a live controversy of real consequence to these parties. The case is ripe for judicial review, and Plaintiff has standing to bring it.

IV. CONCLUSION

Plaintiff has alleged facts that support his claims that the Statute violates the United States Constitution. The district court must accept these factual allegations as true. The State Defendants' Motion to Dismiss Plaintiff's First Amended Complaint on the basis that his claims are supposedly not ripe, or that his injuries are merely contingent or speculative, or that State Defendants lack responsibility for their state's own law, are all refuted by the well-pled and undisputed facts.

For the above-stated reasons, Plaintiff respectfully requests this Court deny the State Defendants' Motion to Dismiss, or, if the Court determines that Plaintiff has not sufficiently pled jurisdiction or stated a cause of action, grant Plaintiff leave to amend his pleadings and/or hold an evidentiary hearing, if necessary, to determine jurisdiction.⁵

Dated: December 6, 2016

Respectfully submitted,

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⁵ Under Federal Rule of Civil Procedure 15, a party may amend his pleading with the written consent of the other parties or the Court's leave should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2).

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2016, a copy of the foregoing *Plaintiff's Response in Opposition to Defendants Michael Pence, Gregory Zoeller, and Lilia Judson's Motion to Dismiss First Amended Complaint* was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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