

**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; MYLA)
A. ELDRIDGE, in her official capacity as)
Marion County Clerk of Court; and LILIA G.)
JUDSON, in her official capacity as Executive)
Director of the Indiana Supreme Court)
Division of State Court Administration,)
)
Defendants.)

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

BRIEF SUPPORTING MOTION TO DISMISS

Mr. Doe challenges the Indiana statute specifying legal requirements for obtaining a name change. His dispute is with the State of Indiana—not the Marion County Clerk.

When the Clerk’s Office receives a petition, it processes the petition and forwards it to the appropriate court for resolution. Judges, not Clerk’s Office staff, determine whether a petition meets the legal requirements for a name change under Indiana law. Regardless of the outcome in this lawsuit, the Clerk’s Office will continue to receive petitions, process them, and forward them to the appropriate court for resolution.

After counsel for the Clerk’s Office inquired about Doe’s basis for claims against the Clerk, Doe amended his complaint to add allegations about a purported 2013 encounter in the Clerk’s Office. Those allegations still do not establish standing to pursue claims against the Clerk. His alleged harm traces from the challenged statute, not the fact that he now knows what

it says. Had Doe actually submitted a name-change petition before he sued the Clerk, his petition would have been processed and forwarded to the Circuit Court for resolution. And even if Doe once had standing, his claims against the Clerk are moot. If he would actually submit a name-change petition, it would be processed and forwarded to the Circuit Court for resolution.

RELEVANT ALLEGATIONS AND JURISDICTIONAL FACTS

Doe admits he has never submitted a name-change petition to the Clerk's Office. Dkt. 52-2 at Admission No. 1. And his complaint does not (and cannot) allege that the Clerk has ever refused accept and process name-change petitions that do not meet one of the state's statutory requirements. *See generally* Dkt. 24. Instead, he alleges that he was dissuaded from submitting a name-change petition in December 2013 because (1) a Clerk's Office employee allegedly provided an information packet with documents prepared by the Indiana Supreme Court Division of State Court Administration that listed the statutory requirements for a name change, (2) a Clerk's Office employee mentioned that a judge had denied a petition because it lacked proof of citizenship and otherwise noted the citizenship requirement under state law, and (3) the Clerk's Office website lists Indiana's statutory requirements for obtaining a name change. Dkt. 24 ¶¶ 59-62. That alleged exchange followed his affirmatively asking Clerk's Office staff what documentation would be required to legally change his name. Dkt. 52-2 at Admission No. 3.

As a matter of policy, the Clerk's Office does not screen petitions to determine whether they meet the legal requirements for a change of name (just as it does not screen the adequacy of the legal contentions in pleadings received in any other type of legal proceeding filed in Marion County courts). Dkt. 52-1 ¶ 5. Nevertheless, Doe seeks an injunction requiring the Clerk to "accept and process petitions for a change of name from non-citizens." Dkt. 24 at 19.

The Clerk's Office already accepts name-change petitions from citizens and non-citizens alike and forwards them to the Marion County Circuit Court for resolution. Dkt. 52-1 ¶¶ 3-5. The particular legal requirements for obtaining a name change are irrelevant to the Clerk's Office's task because the legal sufficiency of a petition is a determination for a judge, not the Clerk's Office. *Id.* ¶¶ 4-7. Whether this Court upholds the citizenship requirement or strikes it down, the Clerk's Office will continue to receive petitions and will continue to forward them to the Circuit Court for resolution. *Id.* ¶ 8.

If Doe were to submit a name-change petition today, it would be accepted, processed, and forwarded to the Marion County Circuit Court without regard to his citizenship status. *Id.* ¶ 9. Although Clerk's Office staff are aware of the state's statutory requirements for obtaining a name change and may direct customers to those requirements if asked, they are not permitted to discourage anyone from filing a petition and may not refuse to accept petitions. *Id.* ¶ 10.

To date, despite assurances from Clerk's Office representatives that his petition would be accepted and processed consistent with the office's usual policy and practice, Doe has never submitted a name-change petition to the Clerk's Office. Dkt. 52-2 at Admission No. 5.

ARGUMENT

As the party invoking federal jurisdiction, Doe bears the burden of establishing it. *Hughes v. Chattem, Inc.*, 818 F. Supp. 2d 1112, 1116 (S.D. Ind. 2011) (citing *Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003)). If he cannot, his claims must be dismissed under Federal Rule of Civil Procedure 12(b)(1).

Although courts generally are limited to the well-pled allegations at the motion to dismiss stage, motions challenging jurisdiction under Rule 12(b)(1) permit the Court to look beyond

jurisdictional allegations to “whatever evidence has been submitted on the issue to determine whether in fact subject-matter jurisdiction exists.” *Freedom from Religion Found., Inc. v. Franklin Cnty.*, 133 F. Supp. 3d 1154, 1157 (S.D. Ind. 2015) (citing *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995)).

I. Doe lacks Article III standing to pursue claims against the Clerk.

This Court lacks jurisdiction over Doe’s claims against the Clerk unless he can establish standing to pursue them. *Hughes*, 818 F. Supp. 2d at 1116. To establish standing, he must show three things: (1) an injury-in-fact, which is an invasion of a legally protected interest that is concrete and particularized, actual or imminent, and not conjectural or hypothetical; (2) a causal linkage between the defendant’s conduct and the injury; and (3) likelihood that a favorable decision will remedy the alleged injury. *Id.* (citing *Tobin for Governor v. Ill. State Bd. of Elections*, 268 F.3d 517, 527 (7th Cir. 2001)).

A. Doe’s alleged injuries were not caused by the Clerk.

Here, Doe challenges the requirements for a name-change petition under Indiana Code § 34-28-2-2.5 and, accordingly, sues state officials responsible for enforcing Indiana law. But he also seeks an injunction requiring the Marion County Clerk “to accept and process petitions for a change of name from non-citizens.” Dkt. 1 at 17. Because the Clerk has no legal authority to screen court filings and substitute her staff’s opinions for those of a judge—and because the Clerk’s Office already accepts and processes name-change petitions from non-citizens and forwards them to the appropriate court for resolution—Doe cannot trace any of his alleged injuries to the Marion County Clerk’s conduct. *Cf. Hughes*, 818 F. Supp. 2d at 1116. Indeed, he has never even submitted a petition to the Clerk’s Office. Dkt. 52-2 at Admission Nos. 1, 5.

Doe's amended complaint attempts to manufacture standing to proceed against the Clerk through allegations that in 2013 unidentified Clerk's Office employees provided him with state-prepared forms and made him aware of the statutory requirements for obtaining a name change. Yet there is nothing illegal (or even troublesome) about a Clerk's Office employee answering a question about what a law says. Dkt. 52-2 at Admission No. 3 (admitting that the alleged 2013 exchange in the Clerk's Office ensued after Doe affirmatively asked about the documentation required to legally change a name). If Doe was dissuaded from filing a name-change petition, he was dissuaded not by the act of pointing him to what the state's law says but by that law itself, which he says would make filing a petition "futile." *See* Dkt. 24 ¶ 63. Put differently, the source of his alleged injury is not the fact that he now knows what the law says. It is the challenged law.

Under Doe's standing theory, any person may ask a government official what a law says then sue her under Section 1983 if she answers. As long as learning what the law says dissuades the questioner from taking some action, he would have standing even if the questioned official has no authority to enforce that law (like here). The Clerk is aware of no authority supporting Article III standing under these circumstances. Because Doe lacks Article III standing to pursue his claims against the Clerk, and they should be dismissed for want of subject-matter jurisdiction.

B. A favorable decision as to the Clerk cannot remedy the alleged injuries.

Doe also lacks standing to sue the Clerk because a favorable decision as to the Clerk will not provide Doe with any remedy or alter the status quo. *Cf. Hughes*, 818 F. Supp. 2d at 1116. Whatever this Court may decide about the legal requirements under Indiana's name-change statute, determining whether a name-change petition satisfies those requirements is a task entrusted to circuit court judges, not county clerks' offices. *See* Ind. Code § 34-28-2-1. So

whether this Court upholds the challenged statute or strikes it down, the Clerk’s Office will continue to accept name-change petitions, process them, and forward them to the Circuit Court for resolution. This is true for citizens and non-citizens alike. Dkt. 52-1 ¶¶ 5-7.

II. If Doe ever had claims against the Clerk, they are moot.

Even if Doe could establish standing, his claims against the Clerk are moot. A claim is moot (and federal courts lack jurisdiction over it) if “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Freedom from Religion Found.*, 133 F. Supp. 3d at 1157 (quoting *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 297 (2000)).

Here, Doe’s claims against the Clerk are moot because there is no live controversy between Doe and the Clerk. He seeks an injunction requiring the Clerk to “accept and process petitions for a change of name from non-citizens”—something the Clerk’s Office already does. Compare Dkt. 24 at 19, with Dkt. 52-1 ¶ 5-10. If Doe were to walk into the Clerk’s Office today and submit a name-change petition, it would be accepted, processed, and forwarded to the Circuit Court for resolution. That would have happened already had he actually submitted a petition before suing the Clerk. See Dkt. 52-2 at Admission Nos. 1, 5. Because the Clerk’s Office already provides the very service he asks this Court to order, Doe’s claims for relief against the Clerk are moot.

* * * * *

Doe’s claims against the Clerk should be dismissed. His alleged injury traces to the state’s statute, not the Clerk’s Office. And this Court cannot provide meaningful relief on his claims against the Clerk because the Clerk already provides the exact relief he seeks in this

lawsuit. Whether viewed through standing analysis or mootness analysis, subject-matter jurisdiction is wanting.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was filed electronically on this 12th day of December, 2016. This filing will be served on the following counsel by operation of the Court's electronic case filing system, and parties may access this filing through the Court's system.

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