In the
United States Court of Appeals
for the Seventh Circuit

NO. 17-1756

JOHN DOE, formerly known as JANE DOE,

Plaintiff-Appellant,

v.

ERIC HOLCOMB, in his official capacity as Governor of the State of Indiana, CURTIS T. HILL, JR., in his official capacity as Attorney General for the State of Indiana, MYLA ELDRIDGE, in her official capacity as Marion County Clerk of the Court, and MARY WILLIS, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration,

*Defendants-Appellees.**

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

ARGUED SEPTEMBER 27, 2017 – DECIDED MARCH 2, 2018

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* Michael Pence has been replaced by Eric Holcomb as Governor of Indiana, Gregory Zoeller has been replaced by Curtis T. Hill, Jr., as Attorney General for the State of Indiana, and Lilia G. Judson has been replaced by Mary Willis as Executive Director of the Indiana Supreme Court Division of State Court Administration.

Before WOOD, *Chief Judge*, and FLAUM and KANNE, *Circuit Judges*.

KANNE, Circuit Judge. John Doe, whose legal name is Jane Doe,[1] is a transgender man residing in Marion County, Indiana. Though Doe is originally from Mexico, the United States granted him asylum in 2015 because of the persecution he might face in Mexico for being transgender. But this suit arises out of Doe's treatment in the United States. He alleges that he faces harassment and discrimination in the United States when he gives his legal name or shows his identification bearing it to others. Consequently, Doe seeks to legally change his name from Jane to John so that his name conforms to his gender identity and physical appearance, which are male.

Doe asserts that the Indiana statute governing name changes is unconstitutional because it requires name-change petitioners to provide proof of U.S. citizenship. Ind. Code § 34-28-2-2.5(a)(5) (2016).[2] As an asylee, Doe can't provide such proof. He brought this case against the Governor and Attorney General of Indiana, the Marion County Clerk of Court, and the

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[1] On November 22, 2016, U.S. Magistrate Judge Debra McVicker Lynch granted the plaintiff's unopposed motion to proceed anonymously, ordering that he be referred to in court filings as John Doe (or John Doe formerly known as Jane Doe). (R. 42 at 1, 4.)

[2] "(a) If a person petitioning for a change of name under this chapter is at least seventeen (17) years of age, the person's petition must include at least the following information: . . . (5) Proof that the person is a United States citizen."

Executive Director of the Indiana Supreme Court Division of State Court Administration in their official capacities. He seeks a declaration that the citizenship requirement violates his First and Fourteenth Amendment rights and an injunction to prevent the defendants from enforcing it.

The district court dismissed Doe's case against all the defendants for lack of standing after the defendants filed motions to dismiss for lack of subject-matter jurisdiction. Doe appeals. We review the district court's dismissal *de novo*, accepting well-pleaded allegations as true and drawing reasonable inferences in favor of Doe. *See Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 966 (7th Cir. 2016); *Evers v. Astrue*, 536 F.3d 651, 656 (7th Cir. 2008). For the reasons discussed below, we affirm.

I. Analysis.

Federal courts have jurisdiction over certain cases and controversies. U.S. Const. art. III, § 2. Standing is "the irreducible constitutional minimum" that determines which cases and controversies "are of the justiciable sort referred to in Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The party invoking federal jurisdiction must establish the elements of standing: (1) that he suffered an injury in fact, (2) that the injury is causally connected to the challenged conduct of the defendant, and (3) that the injury is likely to be redressed by a favorable judicial decision. *Id.* at 560-61.

But even if a plaintiff could otherwise establish that he has standing to sue a state or a state official, the Eleventh Amendment generally immunizes those defendants from suit in federal court. A plaintiff can avoid this bar, however, by naming a state official who has "some connection with the enforcement" of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement. *Ex parte Young*, 209 U.S. 123, 157 (1908).

Thus, where a plaintiff sues a state official to enjoin the enforcement of a state statute, the requirements of *Ex parte Young* overlap significantly with the last two standing requirements – causation and redressability. That is, a plaintiff must show that the named state official plays some role in enforcing the statute in order to avoid the Eleventh Amendment. But, in order to satisfy the requirements of causation and redressability, he must also establish that his injury is causally connected to that enforcement and that enjoining the enforcement is likely to redress his injury.

Here, Doe sued three state officials – the Governor, the Attorney General, and the Executive Director of the Indiana Supreme Court Division of State Court Administration – and one county official – the Marion County Clerk of Court. We take each defendant in turn to address whether Doe can sue them in federal court. He cannot.

A. The Eleventh Amendment bars Doe's suit against the named state officials.

Doe has not shown that any of the named state officials are connected with the enforcement of the name-change statute, so the Eleventh Amendment bars his suit against them.

1. The Governor

"The mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979). Instead, Doe must allege that the Indiana Governor played some role in enforcing the name-change statute.

Doe's strongest argument, though it still fails, is that the Governor plays a role in enforcing the name-change statute as head of the Bureau of Motor Vehicles ("BMV"). The BMV law provides that applications for driver's licenses or state-issued IDs must include "the full legal name of the applicant." Ind. Code § 9-24-9-2(1) (2016). And the BMV will not issue an ID to an applicant that reflects a different full name than what appears on the person's other legal documents unless the applicant provides a court order approving a full name change. *See* 140 Ind. Admin. Code 7-1.1-3(b)(1)(K) (2017). Together, Indiana's name-change statute and the BMV's requirements deny non-citizens the privilege of a full-name change on their identification.

Doe may have been able to overcome the Eleventh Amendment had he sued the Governor to enjoin the enforcement of the BMV's requirements. Instead, Doe sued the Governor in his official capacity to prevent him from enforcing the name-change statute. But the Governor was not specifically charged with a duty to enforce the name-change statute, *see Ex parte Young*, 209 U.S. at 158, and he has not taken on any duty to enforce it either, *see Love v. Pence*, 47 F. Supp. 3d 805, 808 (S.D. Ind. 2014). In short, the Governor doesn't do anything to enforce the *name-change statute*; if Indiana's statute permitted non-citizens to obtain a name change, then the BMV would, too. Consequently, the Eleventh Amendment bars this suit against the Indiana Governor. *See Watford v. Quinn*, No. 14-cv-00571-MJR, 2014 WL 3252201, at *2-3 (S.D. Ill. July 8, 2014) (noting that an Illinois statute prohibiting prisoners from petitioning for name changes "makes clear that it is the exclusive prerogative of the state circuit courts, not the Governor, to grant a name change," and holding that, consequently, the Eleventh Amendment barred the suit against the governor).

2. The Attorney General

An attorney general cannot be sued simply because of his duty to support the constitutionality of a challenged state statute. *See Mendez v. Heller*, 530 F.2d 457, 460 (2d Cir. 1976). This duty does not make an attorney general an adverse party, but rather "a representative of the State's interest in asserting the validity of its statutes." *Id.* Instead, in order for a plaintiff

to overcome the Eleventh Amendment, the attorney general must play some role in enforcing (not just defending) the complained-of statute.

Doe argues that the Attorney General enforces the name-change statute because he is vested with the broad authority to enforce criminal laws. To the contrary, however, the general rule in Indiana is that the Attorney General cannot initiate prosecutions; instead, he may only join them when he sees fit. *See* Ind. Code § 4-6-1-6 (2016); Ind. Code §§ 33-39-1-5, 12-15-23-6(d) (2017); *State v. Holovachka*, 142 N.E.2d 593, 603 (Ind. 1957). *But see Arnold v. Sendak*, 416 F. Supp. 22, 23 (S.D. Ind. 1976) (holding that the Attorney General was a proper defendant in a suit challenging a statute that made "abortion . . . a criminal act" because of his "broad powers in the enforcement of the criminal laws of the state"), *aff'd without addressing standing*, 429 U.S. 968 (1976).

Moreover, there are no criminal penalties for violating Ind. Code § 34-28-2-2.5(a)(5). It is true that the Attorney General could assist a local prosecuting attorney in a perjury prosecution if Doe perjured himself on his name-change petition by indicating he was a citizen. *See* Ind. Code §§ 4-6-1-6, 34-28-2-2(a) (2016); Ind. Code § 35-44.1-2-1 (2014). Some courts have suggested this would be enough. *See, e.g.*, *Baskin v. Bogan*, 12 F. Supp. 3d 1144, 1152-53 (S.D. Ind. 2015) *aff'd without addressing standing*, 766 F.3d 648 (7th Cir. 2014). But that connection is too attenuated, especially considering that the Attorney General could not initiate the prosecution himself. Permitting Doe's complaint

challenging § 34-28-2-2.5 to bring the Attorney General into court would extend *Ex parte Young* past its limits.

The Attorney General has not threatened to do anything, and cannot do anything, to prosecute a violation of § 34-28-2-2.5. *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1415 (6th Cir. 1996) ("*Young* does not apply when a defendant state official has neither enforced nor threatened to enforce the allegedly unconstitutional state statute."). Our ultimate inquiry is whether the Attorney General's connection to the enforcement of the name-change statute "is sufficiently intimate to meet the requirements of *Ex parte Young*." *Shell Oil Co.*, 608 F.2d at 210. In this case, it is not. The Eleventh Amendment bars Doe's suit against the Attorney General from being heard in federal court.

3. The Executive Director of State Court Administration

Doe also named the Executive Director of the Indiana Supreme Court Division of State Court Administration as a defendant. He alleges that the Director caused his injuries because her office "prevent[s] or discourage[s] non-citizens from accessing changes of legal name." (R. 24 at 4.) The Director's office generates a form that is available online or at the clerk's office to help petitioners file name-change petitions. The form instructs petitioners to provide proof of U.S. citizenship. The Director's office also generates a form order

for the state court's use that includes the finding that "[t]he Petitioner has presented proof of United States citizenship." (Appellant's Br. at 11 (alteration in original).) These forms are provided for convenience; they are not mandatory.

Even though the Director works for the judiciary, she is nonetheless a state official for the purpose of the Eleventh Amendment. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 48 (1994) ("[T]he impetus for the Eleventh Amendment [is] the prevention of federal-court judgments that must be paid out of a State's treasury."). The Director's generation and publication of non-mandatory forms are not connected to the enforcement of the name-change statute. Accordingly, the Eleventh Amendment bars Doe from bringing this suit against the Director in federal court.

B. Doe failed to prove that he has standing to sue the Marion County Clerk of Court.

The Marion County Clerk of Court concedes that she is not a state official, and therefore the Eleventh Amendment does not bar Doe's suit against her. Nonetheless, Doe does not have standing to bring this suit against the Clerk. Though Doe alleged an injury in fact, he did not satisfy the final two requirements for standing: causation and redressability.

1. Doe alleged an injury in fact.

An injury in fact must be "concrete and particularized," *Lujan*, 504 U.S. at 560, and "actual or imminent,"

id. (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). "When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, . . . [t]he 'injury in fact' . . . is the denial of equal treatment resulting from the imposition of the barrier." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993).

This is the case here. Though Doe never submitted a petition, he alleged an actual, concrete, and particularized injury: that the statute denies him the benefit of obtaining a name change simply because he is not a U.S. citizen. *See Associated Gen. Contractors* at 666; *see also Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 496 (7th Cir. 2005) (noting that a plaintiff does not "lack[] standing merely because [he] asserts an injury that is shared by many people"). In fact, the barrier Doe faces is much worse than the one in the affirmative-action cases like *Associated General Contractors*, because it makes it impossible – not just difficult – for people in his class to obtain the desired state benefit, and that benefit is freely available to persons in the favored class (U.S. citizens).

This injury supports his due process and free speech claims just as it supports his equal protection claim. If the Indiana statute permitted citizens and non-citizens alike to change their legal names, Doe would not need to bring this suit claiming that he is denied due process and freedom of speech by not being able to change his.

2. Doe has not satisfied the final two standing requirements of causation and redressability.

There must be a causal connection between the plaintiff's injury and the conduct of which he complains. *Lujan*, 504 U.S. at 560. That is, the plaintiff's injury must be "fairly traceable" to a defendant's actions. *Id.* Standing is not always lost when the causal connection is weak, *Banks v. Sec'y of Ind. Family & Soc. Servs. Admin.*, 997 F.2d 231, 239 (7th Cir. 1993), and a defendant's actions need not be "the very last step in the chain of causation," *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997).

Once a plaintiff establishes an adequate causal connection, he must show that it is likely a favorable decision against the named defendant would redress the plaintiff's injury. *Lujan*, 504 U.S. at 561.

Doe argues that he has standing to sue the Clerk because her office distributes the Director's forms advertising the noncitizen exclusion, advises non-citizens that the statute requires proof of citizenship when they ask about the statute's requirements, and processes name-change petitions through an allegedly unconstitutional system.

But in processing the name-change petitions, the Clerk has no power to grant or deny a petition. She is tasked only with accepting and processing petitions without any authority to screen them. In fact, Doe's complaint acknowledged that the Clerk filed at least one non-citizen application in the past. (R. 24 at 13.) Because Doe failed to show that the Clerk has any

authority in the name-change process, Doe has failed to show that his injury is fairly traceable to the Clerk's action of processing petitions. *Cf. Campaign for S. Equal. v. Miss. Dep't of Human Servs.*, 175 F. Supp. 3d 691, 703-05 (S.D. Miss. 2016) (finding that the plaintiffs had standing to sue the director of human services in a constitutional challenge to a state statute prohibiting adoptions by same-sex couples because the department of human services had the ability to block adoption applications).

The Clerk's other two actions can best be characterized as educating and informing the public about the name-change statute's requirements. Even assuming Doe's injury was fairly traceable to this activity, Doe has not shown that any injunction the court may issue against the Clerk would be likely to redress his injury. The state courts would still deny Doe's petition on the basis of the citizenship requirement regardless of what information the Clerk provided to him.

II. CONCLUSION.

The Eleventh Amendment bars Doe's suit against the named state officials. And though the Marion County Clerk of Court is not a state official, Doe does not have standing to sue her. We therefore AFFIRM the district court's dismissal of Doe's suit. The federal courts are not the proper forum for his claims.

WOOD, Chief Judge, dissenting. This is an unusual case, but in the end it is not one that we should bar from adjudication. I therefore dissent from the majority's conclusion that John Doe's suit to change his name cannot move forward in its present form. As the majority notes, Doe is a Mexican national who is lawfully in the United States after a grant of asylum. As a transgender male, he wants to change his name from his birth-name of "Jane Doe" to the gender-appropriate name "John Doe." His efforts have been blocked by an Indiana law that requires name-change petitioners to provide proof of U.S. citizenship. Ind. Code § 34-28-2-2.5(a)(5) (2016).

My colleagues conclude that Doe's suit must be rejected before it is ever considered. They first note that Indiana's Governor is under no legal obligation to enforce the name-change statute. This fact, they say, means that the Eleventh Amendment bars Doe's suit against the Governor. *Ante* at 5-6. (I do not understand why a conclusion that a certain action lies outside the scope of a statute conferring authority on an official leads inexorably to a conclusion that the state's sovereign immunity also shields that official, but I put that question to one side for present purposes.) Next, they conclude that the state Attorney General is not a proper defendant, because they can identify no criminal penalties associated with name changes. *Id.* at 7. The Executive Director of State Court Administration falls out of the case because all the Director does is create non-mandatory forms, and they regard the link between those forms and name changes as too tenuous to

support this lawsuit. *Id.* at 7-8. Finally, they conclude that Doe lacks standing to sue the Marion County Clerk of Court because Doe can neither establish a link between the Clerk's authority and a name-change order nor can he show that any court order addressed to the Clerk would make a difference. *Id.* at 9-10.

In my view, the majority's analysis gives insufficient weight to the significant roles played by the Attorney General, Executive Director, and Clerk in enforcing the name-change statute and preventing Doe from securing official recognition of his identity. Because the authority and duties of all three undergird the deprivation of constitutional rights asserted by Doe, all three must answer to his suit. Moreover, while I agree with the majority that the Governor's role in administering section 34-28-2-2.5(a)(5) is attenuated, I would give Doe an opportunity to amend his complaint to name other executive-branch officials whose responsibilities include the policing of the name a person uses in order to receive services or to deal with the state.

Looking first at the Executive Director and the Clerk, one can see that their authority to create forms, issue guidance, and move along petitions, enables them to exert substantial influence on the name-change process. This is best illustrated by example. Suppose, for example, the Executive Director's name-change form stated at the top that no traditionally Muslim names could be submitted, and that the Clerk routinely discouraged or refused to accept applications with such names. Over and above the psychic harm of such an action (which itself would be at least as

offensive as forbidding the teaching of a particular language, for instance, see *Meyer v. Nebraska*, 262 U.S. 390 (1923)), the chilling effect on name-changes for the group experiencing such discrimination would be powerful – powerful enough, I should think, to support an injunction against that practice.

I therefore do not agree with the majority that the Clerk's role is so minor that no effective relief can come from that quarter. Doe seeks to compel the Clerk to accept an application with a name that does not reflect his birth name and to stop discouraging attempts to submit such an application. The majority accepts counsel's word for the fact that Clerks in the past have accepted applications that do not conform to Indiana's name-change law, but at this early stage in the proceedings we do not have a complete record on this point. We must accept Doe's representation that such applications are normally rejected for noncompliance with Indiana law, and that an application from him would suffer the same fate.

As for the Attorney General, the majority acknowledges that Indiana's *courts* have the power to punish perjurers or those who commit a fraud on the court, but that is where it leaves matters. It observes that there are no criminal penalties directly tied to violations of Ind. Code §§ 34-28-2-2 and 34-28-2-2.5, and from this it assumes that the Attorney General has no meaningful role to play in their implementation. In fact, both perjury and fraud can also be prosecuted independently: Indiana recognizes perjury as a stand-alone crime, see Ind. Code § 35-44.1-2-1 (a felony; see also

Ind. Code § 34-28-2-2(a) (requiring that name-change petitions include proof of citizenship and be sworn "under the penalties of perjury"), as well as obstruction of justice, see Ind. Code § 35-44.1-2-2 (a felony). Nonetheless, the majority appears to treat these consequences as too indirect to sweep in the Attorney General. I would not dismiss them so readily.

Furthermore, even if the majority has correctly assessed those criminal remedies, there is more to Doe's case than the possibility of abuse of the state court's process. Doe also cites the misdemeanor of "false identity statement," which punishes knowing material misstatements of identity in connection with official proceedings or investigations, when done with the intent to mislead public servants. Ind. Code § 35-44.1-2-4. This is a big problem for Doe: if he presents himself in a manner that accords with his gender identity – that is, as John Doe, rather than under his "legal" name, Jane Doe – he is at risk of being prosecuted for a Class A misdemeanor. *Id.* at 35-44.1-2-4(a). And that is not all. For example, an applicant for a driver's license must provide "[t]he full legal name of the applicant." Ind. Code § 9-24-9-2(a)(1). Failure to comply with this requirement (or any other rule in that chapter of the Indiana Code) is a Class C infraction. Ind. Code § 9-24-9-6. These might not be the strictest penalties in the world, but they lie within the authority of the Attorney General to pursue, see Ind. Code § 4-6-1-6, and they easily support injury-in-fact, causation, and redressability. (Although Doe did not cite the BMV provision in his briefs, we are entitled to take judicial

notice of Indiana's statutes. The extent to which these matters are addressed by the state's statutes is a pure question of law within this court's *de novo* review powers.) Taking all these provisions into account, Doe's case proves to be much closer to *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), than the majority allows. Indeed, I would find it controlled by *Baskin* insofar as he is suing the Attorney General.

Last, we have the state's Governor. I agree with the majority that he was properly dismissed. From a practical standpoint, as it notes, one should not be able simply to sue the Governor every time some part of the state's executive branch does something objectionable. Instead, it is necessary in each instance to see how directly the Governor is connected with the contested action. If the Governor has meaningful oversight over a particular area, it has been established since at least *Ex parte Young*, 209 U.S. 123 (1908), that an aggrieved person may sue him or her as the responsible official for prospective injunctive relief without running afoul of the Eleventh Amendment. If instead the responsibility is lodged in a department head, such as the Commissioner of the BMV, then that official is the proper person to sue under the *Ex parte Young* regime. There are practical reasons for taking care not to have a system under which the Governor automatically stands in for every department head. Such a rule would burden the Governor's office with litigation over countless matters for which state law assigns primary responsibility to other officials (some of whom, such as the Attorney General, are independently elected).

The majority hints that Doe might "have been able to overcome the Eleventh Amendment had he sued the Governor to enjoin the enforcement of the BMV's requirements." *Ante* at 5. But then it immediately says that such a suit would have failed, because the Governor has no duty to enforce the name-change statute. Yet someone must have the authority to enforce that statute; I have explained above why I believe that one such person is the Attorney General, and I add here that another such person would have been the Commissioner of the BMV. This is not a case that forces us to accept the unpalatable notion that alleged constitutional violations escape all judicial review.

Consider the consequences if any state function entrusted to the state-court system were placed beyond the power of the federal courts to address (an outcome, I note, that would be incompatible with *Mitchum v. Foster*, 407 U.S. 225 (1972), which upheld the power of the federal courts to issue civil-rights injunctions against state-court proceedings). A state hypothetically could refuse to allow an African-American person to change his or her surname on an identification-card to that of a Caucasian spouse, in flagrant violation of *Loving v. Virginia*, 388 U.S. 1 (1967), or it could pass a statute refusing to allow a single surname for a same-sex couple, in disregard of the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). The expedient of placing final authority for name-changes in the state court system cannot operate to avoid accountability for potential violations of the federal constitution by other state officials. Nor can it have the

effect of negating the right of any person to bring an action under 42 U.S.C. § 1983, which lies within the subject-matter jurisdiction of the federal courts, see 28 U.S.C. §§ 1331, 1343(a).

In the end, I believe that the majority has attached too much importance to the fact that the state courts are the ones charged with the duty of issuing name-change orders. The fact that this responsibility is lodged in the courts does not mean that Doe's suit is nonjusticiable. Name changes are not the only state function that is assigned to state courts. Uncontested divorces go straight to the state court, for example, as do probate matters when a will needs to be probated, or an estate needs to be administered. When there is a problem in the system, those aggrieved by that problem sue the state official best suited to the situation. As I noted earlier, in addition to the avenues he chose, Doe could have sued the Commissioner of the BMV to compel the director to issue a driver's license to him in the name of "John Doe." If the Commissioner had refused, Doe could have raised his complaints about Indiana's name-change statute in a lawsuit in state or federal court. It is likely that the Commissioner would have defended his action in such a lawsuit on the basis of the state statute, but Doe's response to such a defense would have rested on his constitutional rights.

Suing each department head, one by one, for particular redress would not be a particularly efficient system, but that seems to be the only path the majority has left open for an action in federal court. Evidently it acknowledges that Doe could sue the Commissioner

of the BMV in order to get the proper name on his driver's license; the Commissioner of the Indiana Department of Revenue for the right to file his taxes under the proper name; the Recorder of Deeds where he lives in order to have a property deed listed under the proper name, and so on. I also understand the majority to be leaving open the door to a more general suit in state court. Such a suit might be triggered by the state court's predictable rejection of Doe's application for a name change. Doe might have a right to appeal that rejection to a higher Indiana court. If he does, then he can raise his federal claims there. If no such right of appeal exists – that is, if the name-change court is "the highest court of [the] State in which a decision could be had," 28 U.S.C. § 1257(a) — he could go straight to the U.S. Supreme Court. See *Thompson v. City of Louisville*, 362 U.S. 199, 202 (1960) (*certiorari* to local police court whose decisions were not otherwise appealable within the state-court system). What the majority has not explained to my satisfaction, however, is why the same suit cannot be brought in the form and forum Doe has chosen – that is, in a federal court, when no conflicting state-court proceeding or judgment exists.

What we know is enough to support Doe's lawsuit. We know that state *law* presently stands in the way of Doe's name change, because it insists on U.S. citizenship even though Doe is lawfully in the country and is here as a recipient of asylum, meaning that he cannot safely return to his own country. The defendants (save the Governor) whom Doe already has named have the

power to do something about his quandary. To repeat, Doe is alleging that the various state officials are refusing to process *his* case to correct his name, and that the state court would similarly deny relief unless the underlying law demanding U.S. citizenship is enjoined or otherwise set aside. This is more than enough to permit adjudication of the question whether such an injunction or declaratory judgment should be entered.

I would find that Doe can move forward against the Executive Director, the Clerk, and the Attorney General. I agree with my colleagues that the Governor was the wrong defendant. As I understand them, in addition, if Doe had named the various heads of agency or department who were responsible for recording a name on the different state-issued documents he holds, they may have come to a different result. In my view, Doe did not need to take the latter step, although if that is all that is needed to save the case, I would remand to give him the opportunity to do so. The underlying principle Doe is trying to vindicate is an important one, which has a broader application than may initially be apparent. I therefore respectfully dissent.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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FINAL JUDGMENT

March 2, 2018

Before: DIANE P. WOOD, *Chief Judge*
JOEL M. FLAUM, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*

No. 17-1756	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

Originating Case Information:
District Court No: 1:16-cv-02431-JMS-DML Southern District of Indiana, Indianapolis Division District Judge Jane E. Magnus-Stinson

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE, formerly known as JANE DOE, Plaintiff, vs. 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 the Court, 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.

ORDER

(Filed Mar. 13, 2017)

Plaintiff John Doe, whose legal name is "Jane Doe", is a transgender man who resides in Marion

County, Indiana.[1] He is originally from Mexico and has been granted asylum here in the United States. He seeks to legally change his name from Jane to John, so that his name conforms with his gender identity and physical presentation, which is male. Mr. Doe asserts that the Indiana statute governing name changes unconstitutionally prevents him from changing his name because it requires petitioners to provide proof of United States citizenship, which Mr. Doe, as an asylee, does not have.

Mr. Doe has brought suit against Defendants Governor Mike Pence ("Governor Pence"), Attorney General Gregory Zoeller ("Attorney General Zoeller"), Marion County Clerk of Court Myla Eldridge ("Clerk Eldridge"), and the Executive Director of the Indiana Supreme Court Division of State Court Administration, Lilia Judson ("Director Judson"). Mr. Doe raises claims under the First Amendment to the United States Constitution and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Presently pending before the Court are Defendants' Motions to Dismiss for lack of subject matter jurisdiction. [Filing No. 40; Filing No. 52.] For the reasons that follow, the Court grants the Defendants' Motions to Dismiss.

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[1] Per order of the Court, Mr. Doe proceeds anonymously. [Filing No. 42.]

I.

BACKGROUND

Mr. Doe, whose legal name is "Jane Doe", is a 31-year old Latino who resides in Marion County, Indiana. [Filing No. 24 at 1.] Mr. Doe's family moved to Indiana from Mexico in 1990, and he has lived in Indiana since that time. [Filing No. 24 at 7.] Mr. Doe is transgender. [Filing No. 24 at 1.] This means that Mr. Doe was assigned the sex of female at birth, but his gender identity (his deeply felt understanding of his own gender) is male. [Filing No. 24 at 4-5.] The United States granted Mr. Doe asylum in 2015, finding that he risked facing persecution on account of his transgender status if he returned to Mexico. [Filing No. 24 at 7.] Mr. Doe was eligible to apply for permanent residency in September 2016. [Filing No. 24 at 7.]

Mr. Doe has been under the care of a licensed mental health clinician since 2010. [Filing No. 24 at 7.] She diagnosed Mr. Doe with Gender Dysphoria, a condition that is characterized by clinically significant distress that can result when a person's gender identity differs from the person's assumed gender (or assigned sex) at birth. [Filing No. 24 at 5-7.] Under the care of his clinician, Mr. Doe has been on hormone therapy since 2011, which has deepened Mr. Doe's voice, increased his growth of facial hair, and given him a more masculine appearance. [Filing No. 24 at 8.] Mr. Doe has also undergone gender-affirming surgery. [Filing No. 24 at 8.]

He is recognized on all of his official U.S. documents, including his Indiana State ID and his

immigration documents, as male. [Filing No. 24 at 8.] But his legal name remains a traditionally female name. [Filing No. 24 at 8.] Mr. Doe is not recognized by others as transgender unless he tells them, or unless they see his ID, which identifies him by his legal, female name. [Filing No. 24 at 8.] Mr. Doe has experienced negative reactions and harassment on multiple occasions when he has presented his ID, because his female name does not match his male gender identity and expression. [Filing No. 24 at 9.] On one occasion, a police officer threatened to take him to jail because he did not believe that Mr. Doe was the individual identified in the ID. [Filing No. 24 at 9.] Others have ridiculed or harassed him. [Filing No. 24 at 9-10.] Mr. Doe is also afraid of being physically attacked because of being forced to reveal his transgender status. [Filing No. 24 at 11.]

Mr. Doe seeks to legally change his name, but he believes that he is barred from doing so by Indiana Code Section 34-28-2-2.5, the statute governing petitions for name changes in Indiana. [Filing No. 24 at 11.] That statute became effective in July 2010, and it states that a name-change petition must include, among other things, "[p]roof that the person is a United States citizen." I.C. § 34-28-2-2.5.[2]

In December 2013, Mr. Doe appeared in person at the Marion County Clerk's Office to inquire about

[2] The Court notes that its research has revealed no other state statute requiring proof of U.S. citizenship as a requirement for a name-change petition.

petitioning for a change of legal name. [Filing No. 24 at 12.] When Mr. Doe requested name-change forms, he was told by employees of the Clerk's Office that U.S. citizenship was a legal requirement to change his name, and that "[i]f you do become a citizen, then we would have no problem changing your name." [Filing No. 24 at 12.] An employee also told him that another non-citizen had attempted to change a legal name and that the change was rejected by a judge. [Filing No. 24 at 13.] He was also given an informational packet about name changes, including forms prepared by the Indiana Supreme Court Division of State Court Administration, which listed the citizenship requirement. [Filing No. 24 at 12-13.] Mr. Doe has not submitted a petition for legal name change. [Filing No. 52-2 at 6.]

Mr. Doe challenges the name-change statute as unconstitutional, alleging that it violates the First Amendment of the United States Constitution, and the Equal Protection and Due Process clauses of the Fourteenth Amendment.

II.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) "allows a party to dismiss a claim for lack of subject matter jurisdiction." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). The burden is on the plaintiff to prove, by a preponderance of the evidence, that subject-matter jurisdiction exists

for his or her claims. *See Lee v. City of Chicago*, 330 F.3d 456, 468 (7th Cir. 2003).

Article III of the Constitution grants federal courts jurisdiction over "cases and controversies[,]" and the standing doctrine is the tool used to identify which cases and controversies the federal judicial process can appropriately resolve. *Whitmore v. Arkansas*, 495 U.S. 149, 154-55 (1990). Standing is "the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "[T]he 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 1547 (2016) (internal citations omitted).

This Court's jurisdiction depends on "an actual controversy [that] must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). Thus, if the controversy defined by a legal claim is no longer live, or the parties lack a legally cognizable interest in the outcome, the claim is moot, and the court must dismiss for want of jurisdiction. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (per curiam) ("Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions,' . . . our impotence 'to review moot cases derives from the requirement of Article III

of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' ") (internal citations omitted).

III.

DISCUSSION

The Defendants have moved to dismiss Mr. Doe's Complaint under Rule 12(b)(1), arguing that Mr. Doe lacks standing to bring the lawsuit.[3] [Filing No. 40; Filing No. 52.] Governor Pence, Attorney General Zoeller, and Director Judson (collectively the "Joint Defendants") argue that Mr. Doe has not established that he has standing because (1) he has not shown that he suffered an injury-in-fact; (2) any injury that he has suffered was not caused by the Joint Defendants; and (3) regarding Attorney General Zoeller and Director Judson, a favorable judgment against them would not redress Mr. Doe's alleged injury.[4] [Filing No. 41.]

A. Joint Defendants

The Joint Defendants contend that Mr. Doe has not suffered an injury-in-fact. They argue that he has not actually been denied a legal name change, because

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[3] Attorney General Zoeller and Director Judson also state that they seek dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. As their arguments refer solely to standing issues under Rule 12(b)1), which is jurisdictional, the Court deems the 12(b)(6) argument to be abandoned.

[4] Clerk Eldridge did not join in the Joint Defendants' Motion, and her Motion will be treated separately.

he has not submitted a petition requesting one. [Filing No. 41 at 7-8.] They argue that Mr. Doe merely speculates that such a petition would be denied, and that this speculation is not sufficient to confer Article III standing.[5] In addition, they contend that Mr. Doe may apply for a name change once he establishes citizenship, so his legal claim amounts to a question of timing. [Filing No. 41 at 9.]

They also argue that Mr. Doe has not established the required causation element of standing—that his alleged injuries were caused by the actions of the Joint Defendants. [Filing No. 41 at 8.] As to Governor Pence and Attorney General Zoeller, the Joint Defendants argue that the Governor's and Attorney General's duties to enforce the laws of the state are defined by statute, and that no duties are imposed on either of those individuals to enforce the statute at issue. [Filing No. 41 at 8.] Regarding Director Judson, they contend that the mere publication of a form cannot have caused Mr. Doe's alleged injuries. [Filing No. 41 at 9.]

And finally, the Joint Defendants argue that Mr. Doe has not established that a favorable decision against Attorney General Zoeller and Director Judson will result in any relief, as required by the "redressability" element of the standing requirement. [Filing No. 41 at 9-10.] They argue that because those two individuals do not have the authority to amend or repeal the

[5] The Defendants also style this as a ripeness argument. As described below, the Court assumes without deciding that Mr. Doe has established an injury-in-fact and that this claim is ripe for the Court's review.

challenged law, and because they are not the individuals who evaluate name-change petitions, any declaratory or injunctive relief against them would not effectuate any change. [Filing No. 41 at 9-10.]

Mr. Doe responds that he has demonstrated that he meets the requirements to establish standing. As to injury-in-fact, Mr. Doe contends that because the statute explicitly requires U.S. citizenship as a precondition for a name change, there is no question that his petition, were he to file one, would be denied. [Filing No. 50 at 8.] He contends that he need not engage in the futile process of filing the petition in order to establish his injury. [Filing No. 50 at 8.] In addition, Mr. Doe argues that his eventual citizenship is not a foregone conclusion, and that any number of intervening events could bar his path to citizenship. [Filing No. 50 at 6.] Therefore, the operation of the name-change statute and his ability to legally change will not necessarily be cured by the passage of time. [Filing No. 50 at 6.]

Regarding causation, Mr. Doe argues that his injuries are fairly traceable to the actions of the Joint Defendants. [Filing No. 50 at 6.] Mr. Doe alleges that Governor Pence and Attorney General Zoeller "have a duty to enforce the law," and that this law's enforcement against him caused his injuries. [Filing No. 24 at 3; Filing No. 50 at 6-7.] Regarding redressability, Mr. Doe argues that a favorable decision against the Joint Defendants would redress his injuries because injunctive relief will allow him to petition for a name change. [Filing No. 50 at 7.]

As noted, the "irreducible constitutional minimum of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547 (internal citations and quotations omitted). "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* "Where, as here, a case is at the pleading stage, the plaintiff must clearly . . . allege facts demonstrating each element." *Id.* (internal citation and quotation omitted).

The Court assumes without deciding that Mr. Doe has sufficiently pled injury-in-fact and focuses its analysis on the causation and redressability elements.

1. Governor Pence

Mr. Doe argues that his alleged injuries are fairly traceable to Governor Pence because Governor Pence has the "responsibility to ensure that the laws of the State are properly and constitutionally enforced." [Filing No. 24 at 3; *see* Filing No. 50 at 6.] However, Mr. Doe cites no statutory or other authority for the proposition that Governor Pence has a duty of enforcement with respect to the statute at issue. In his brief in opposition to the Motion for Summary Judgment, Mr. Doe cites only his Complaint for the proposition that Governor Pence has any enforcement authority with respect to Indiana Code Section 34-28-2-2.5. [Filing No. 50 at 6.]

The general authority to enforce the laws of the state is not sufficient to render a particular government official the proper party to litigation challenging a law. *See Hearne v. Board of Educ. Of City of Chicago*, 185 F.3d 770, 777 (1999) (holding in analogous Eleventh Amendment context that "the governor has no role to play in the enforcement of the challenged statutes. . . . Technically, therefore, it is not the Eleventh Amendment that bars the plaintiffs' action for prospective injunctive relief against the governor; it is their inability to show that he bears any legal responsibility for the flaws they perceive in the system."); *see also Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) ("The requirements of *Lujan* are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute."); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) ("The mere fact that a governor is under a general duty to enforce state law does not make him a proper defendant in every action attacking the constitutionality of a state statute.").

Mr. Doe has not provided any specific allegations that Governor Pence is statutorily authorized or instructed to enforce Indiana Code Section 34-28-2-2.5. Nor has he alleged that Governor Pence acted in other ways to enforce the statute, such as by instructing state agencies or other officials on the implementation or enforcement of the statute. *See Love v. Pence*, 47 F. Supp. 3d 805, 807-08 (S.D. Ind. 2014) (concluding that the Governor was a proper defendant where memoranda showed that the Governor played a role in

enforcing a statute that did not include specific enforcement authorization as to him). Absent any such allegations, Mr. Doe has not established that his alleged injuries are fairly traceable to Governor Pence. Moreover, if the Governor has no ability to enforce the challenged statute, he cannot redress Mr. Doe's injury. *See Hearne*, 185 F.3d at 777 (concluding that "plaintiffs have not and could not ask anything of the governor that could conceivably help their cause"); *see also Sweeney v. Daniels*, 2013 WL 209047, at *3 (N.D. Ind. 2013) (citing *Hearne*); *Mexicana v. State of Indiana*, 2013 WL 4088690, at **5-6 (N.D. Ind. 2013) (same).

For these reasons, the Court concludes that Mr. Doe has not met his burden to establish that he has standing to sue Governor Pence for his alleged injuries.

2. Attorney General Zoeller

Attorney General Zoeller raises the same arguments as Governor Pence regarding causation. And as with Governor Pence, Mr. Doe does not allege that Attorney General Zoeller is statutorily authorized or instructed to enforce Indiana Code Section 34-28-2-2.5. Mr. Doe has also not alleged that this statute encompasses enforcement of the criminal laws of the state, which, if alleged, could suffice to show an Attorney General's enforcement authority. *See Baskin v. Bogan*, 12 F. Supp. 3d 1144, 1152-53 (S.D. Ind. 2014), *aff'd*, 766 F.3d 648 (7th Cir. 2014) (concluding that the Attorney General had ability to criminally enforce compliance with related marriage statutes and that "[t]he

Attorney General has the broad authority to assist in the prosecution of any offense if he decides that it is in the public interest . . . Noting this broad authority, the court has previously found that the Attorney General is a proper party when challenging statutes regarding abortion.") (citing *Arnold v. Sendak*, 416 F.Supp. 22, 23 (S.D. Ind. 1976), *aff'd*, 429 U.S. 968 (1976) (finding "[t]he Attorney General thus has broad powers in the enforcement of criminal laws of the state, and is accordingly a proper defendant")).

As with Governor Pence, Mr. Doe has not sufficiently alleged that the Attorney General has the ability to enforce, or is currently enforcing, the challenged statute. Likewise, he has not established that the Attorney General can redress Mr. Doe's injury. The Court concludes that Mr. Doe has not met his burden to establish that he has standing to sue Attorney General Zoeller for his alleged injuries.

3. Director Judson

Mr. Doe alleges that his injuries have been in part caused by Director Judson, insofar as the forms published by her office "prevent or discourage non-citizens from accessing changes of legal name." [Filing No. 24 at 3.] As with Governor Pence and Attorney General Zoeller, Mr. Doe has not alleged that Director Judson is statutorily authorized or directed to enforce the statute at issue.

He appears to allege that Director Judson acts to enforce the statute by generating the forms referenced

in the Amended Complaint. First, the Court notes that Mr. Doe has not provided a copy of the subject forms, so the Court does not have the benefit of reviewing their contents. *See Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013) ("when a plaintiff attaches to the complaint a document that qualifies as a written instrument, and [his] complaint references and relies upon that document in asserting [his] claim, the contents of that document become part of the complaint and may be considered as such when the court decides a motion attacking the sufficiency of the complaint . . . we have taken a broader view of documents that may be considered on a motion to dismiss, noting that a court may consider, in addition to the allegations set forth in the complaint itself . . . documents that are central to the complaint and are referred to in it . . . ") (internal citations omitted). The forms generated by Director Judson are both central to Mr. Doe's claim against her and referenced in the Amended Complaint.

Additionally, Mr. Doe has not alleged that the subject forms are mandatory—that is, he has not alleged that any of the Defendants, including Director Judson, required Mr. Doe to read or fill out the forms in order to submit his name-change petition for processing. In fact, he has not provided any allegations as to what role the forms play in the grant, denial, or processing of a name-change petition. Without any allegation regarding the role of the forms, Mr. Doe has not established that Director Judson acts to enforce the statute, and therefore that there is a causal connection between Director Judson and Mr. Doe's alleged injuries.

B. Clerk Eldridge

Clerk Eldridge, in her separate Motion, also contends that Mr. Doe lacks standing to bring suit against her. She argues that whatever injuries Mr. Doe may have suffered were not caused by the Clerk, and that a favorable decision against the Clerk cannot remedy the alleged injuries. [Filing No. 53 at 4-5.] Clerk Eldridge points out that Mr. Doe requests injunctive relief requiring the Clerk "to accept and process petitions for a change of name from non-citizens." [Filing No. 53 at 4.] But, Clerk Eldridge contends, the Clerk already does this. [Filing No. 53 at 4.] Clerk Eldridge states that:

> [b]ecause 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—[Mr.] Doe cannot trace any of his alleged injuries to the Marion County Clerk's conduct.

[Filing No. 53 at 4.] In other words, because the Clerk is already doing what Mr. Doe requests, she cannot have caused Mr. Doe's alleged injuries, and a favorable judgment against her would not afford Mr. Doe any relief. Clerk Eldridge also argues that this fact renders Mr. Doe's claim moot, because there is no "live controversy" between the parties. [Filing No. 53 at 6.]

Mr. Doe responds that the Clerk's Office "plays an active role in enforcing the statute" in "advising non-citizens, when asked, that they are ineligible for name changes; by maintaining and distributing literature that advertises the non-citizen exclusion; and by processing petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.] Mr. Doe also argues that his injury would be redressed by a favorable decision against the Clerk, because she would be prevented from engaging in the activities listed above. [Filing No. 58 at 8.] Mr. Doe also responds that his claims against the Clerk are not moot, because "the Clerk's office admits that it continues to inform and advise non-citizen[s] that they are ineligible for a change of legal name, thus treating non-citizens differently from U.S. citizens." [Filing No. 58 at 10.]

In support of her Motion to Dismiss, Clerk Eldridge submitted the declaration of Russell Hollis, the Deputy Director of the Marion County Clerk's Office. [Filing No. 52-1.] She has also submitted Mr. Doe's responses to her first set of Requests for Admission. [Filing No. 52-2.] "The district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). The Court therefore considers these submissions in determining whether Mr. Doe has established that he has standing.

In his Declaration, Mr. Hollis attests that "[a]s a matter of policy, the Marion County Clerk's Office does not screen petitions to determine whether they meet the legal requirements for a change of name." [Filing No. 52-1 at 3.] He states that "[w]hen a name-change petition is submitted, the Clerk's Office processes the petition and forwards it to the Circuit Court for resolution." [Filing No. 52-1 at 3.] Further, Mr. Hollis attests that "[s]pecifically, the Clerk's Office does not refuse name-change petitions on the grounds that they lack some information required under Indiana Code § 34-28-2-2.5. The legal sufficiency of a petition is a determination for a judge, not the Clerk's Office." [Filing No. 52-1 at 3.]

Mr. Doe does not refute any of these statements, so Mr. Doe does not allege that Clerk Eldridge enforces the statute by either denying or refusing to accept petitions from non-citizens. Instead, Mr. Doe argues that Clerk Eldridge enforces the statute by "advising non-citizens, when asked, that they are ineligible for name changes; by maintaining and distributing literature that advertises the non-citizen exclusion; and by processing petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.]

Mr. Doe argues that the Clerk's role here is analogous to *Harris v. McDonnell*, 988 F. Supp. 2d 603 (D.W.V. 2013). In that case, a same-sex couple entered the Circuit Court Clerk's office and asked a deputy clerk whether same-sex couples could get married. The deputy clerk consulted with the Circuit Court Clerk,

who responded that he [sic] "he had checked Virginia law and that same-sex couples could not get married in Virginia." *Harris*, 988 F. Supp. 2d at 612. The couple brought suit against the Clerk, among other government officials, requesting injunctive and declaratory relief. *Id.* at 605. The *Harris* court concluded that the couple had standing to sue the Clerk, as their injuries were fairly traceable to him. *Id.* at 613-14.

That court based its conclusion, however, on the fact that the Clerk was vested with the authority and responsibility to issue marriage licenses. The court concluded that:

> [a]s the Staunton Circuit Court Clerk, Roberts is tasked with issuing marriage licenses. A marriage license is precisely what plaintiffs seek. Because Roberts' official duties include issuing the very thing plaintiffs claim they have been unconstitutionally denied, their alleged injury is directly traceable to him. Roberts protests that he has no authority to amend Virginia law regarding same-sex marriage, nor the discretion to ignore it, yet he concedes that he has enforcement authority regarding the challenged law. It is this *enforcement authority* that makes the injury traceable to him, regardless of any discretion he does or does not possess.

Id. at 613-14 (emphasis added). As the above passage illustrates, the *Harris* court did not conclude that the Clerk's statement of the law constituted "enforcement" of the statute. Rather, the Clerk was tasked with issuing marriage licenses—*i.e.*, making a determination as

to the eligibility of the applicants, and then granting or denying them the state's permission to proceed. It is that enforcement authority that rendered the plaintiffs' injury fairly traceable to the Clerk.

Analogous facts simply are not present here. Mr. Doe does not allege that Clerk Eldridge has or exercises the authority to grant or deny name change petitions. He alleges only that the Clerk's staff members answer questions about the requirements to petition, that the Clerk's office distributes information relating to the petition, and that the Clerk "process[es] petitions through a discriminatory system in which non-citizens have no chance of success." [Filing No. 58 at 4.] The Court cannot conclude that any of these activities constitute enforcement. And, the Court notes, if those activities were sufficient to constitute enforcement, Mr. Doe has identified no limit as to which statutes the Clerk could be properly seen as enforcing.

Mr. Doe has also not established that a judgment against Clerk Eldridge will afford him the relief he seeks. Clerk Eldridge has submitted evidence showing that the Clerk already accepts and processes petitions from non-citizens. Indeed, Mr. Doe's own experience confirms that this is the case, as he states in his Amended Complaint that a Clerk's office employee informed him that a non-citizen's petition had just been denied by a judge. [Filing No. 24 at 13.]

Mr. Doe has not established a causal connection between Clerk Eldridge and his alleged injuries, or

that his alleged injuries would be redressed by a judgment against the Clerk.

IV.

CONCLUSION

For the aforementioned reasons, the Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), [Filing No. 40; Filing No. 52], are **GRANTED**, and the case is **DISMISSED FOR LACK OF JURISDICTION**. Final judgment shall enter accordingly.

Date: March 13, 2017 /s/ Jane Magnus-Stinson
Hon. Jane Magnus-Stinson,
Chief Judge
United States District Court
Southern District of Indiana

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IC 34-28-2-2.5

34-28-2-2.5 Requirements of petition

Effective: January 1, 2016

Sec. 2.5. (a) If a person petitioning for a change of name under this chapter is at least seventeen (17) years of age, the person's petition must include at least the following information:

(1) The person's date of birth.

(2) The person's current:

(A) residence address; and

(B) if different than the person's residence address, mailing address.

(3) The person's valid:

(A) Indiana driver's license number;

(B) Indiana identification card (as described in IC 9-24-16) number; or

(C) Indiana photo exempt identification card (as described in IC 9-24-16.5) number.

(4) A list of all previous names used by the person.

(5) Proof that the person is a United States citizen.

(6) A statement concerning whether the person holds a valid United States passport.

(7) A description of all judgments of criminal conviction of a felony under the laws of any state or the

United States that have been entered against the person.

(b) A petition under subsection (a) is subject to Indiana Rules of Court Administrative Rule 9.