No. 17-1637

IN THE

Supreme Court of the United States

JOHN DOE, formerly known as Jane Doe,
Petitioner,

v.

ERIC HOLCOMB, in his official capacity as the 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 Court, and JANE SIEGEL, in her official capacity as Chief Administrative Officer of the Indiana Supreme Court,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT MYLA ELDRIDGE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under settled law that he never challenged below and does not ask this Court to review, it was John Doe's burden to present evidence establishing his standing to sue the Marion County Clerk. He responded with no evidence at all. Instead, Doe proposed an expansive standing theory that would allow him to sue virtually any government official who is asked what a law says and gives an answer. Did he establish Article III standing?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III of the United States Constitution limits the jurisdiction of federal courts to cases and controversies:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2, cl. 1.

Indiana Code chapter 34-28-2, the state's name-change statute, is reproduced in the Supplemental Appendix at pages 1a to 10a.

STATEMENT OF THE CASE

I. Statutory and factual background

Indiana's name-change statute empowers courts to decide name-change petitions. Ind. Code §§ 34-28-2-1 & -4. Among other things, that law requires petitioners to provide proof of citizenship. Ind. Code § 34-28-2-2.5(a)(5). This requirement prohibits John Doe from changing his name because he is an asylee with legal

status but not a citizen. R. at 41 (¶¶ 23-29).[1] In Doe's words, submitting a petition would be "futile" because Indiana law requires the judge to deny it. R. at 47 (¶ 63); *see also* Pet. at 4 ("In fact, filing a petition would be futile because the requirement of United States citizenship is mandatory and non-waivable.").

The name-change statute provides no authority for county clerks to screen petitions. *See* Ind. Code ch. 34-28-2. The Marion County Clerk's Office accepts name-change petitions from citizens and non-citizens alike and forwards them to the circuit court for a decision. Supp. App. at 14a-15a (¶¶ 3-5). Just as it does not screen the claims in documents submitted in any other cases filed in Marion County courts, the Clerk's Office does not screen name-change petitions to determine whether they meet the requirements for obtaining a name change. *Id.* at 15a (¶ 5). A petition's merits are immaterial to the Clerk's task because Indiana law entrusts those decisions to judges, not county clerks. *Id.* (¶¶ 4-7); *see also* Ind. Code ch. 34-28-2. Whether the citizenship requirement is upheld or struck down, the Clerk's Office will continue to receive non-citizens' name-change petitions, process them, and forward them to the appropriate court for resolution.[2] *Id.* (¶ 8).

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[1] The long record on appeal is lodged with the Seventh Circuit in *Doe v. Holcomb, et al.*, No. 17-1756, and appears on the Seventh Circuit's docket at ECF No. 34-2.

[2] When this lawsuit began, only circuit courts had authority to decide name-change petitions. After a 2017 amendment, superior and probate courts may now decide them too. 2017 Ind. Legis. Serv. P.L. 44-2017 (S.E.A. 64) (West). Like its predecessor, the amended statute provides no authority for county clerks to screen or decide name-change petitions. *See* Ind. Code. ch. 34-28-2.

John Doe has never submitted a name-change petition to the Clerk's Office. *Id.* at 19a. He says he was dissuaded from submitting one in December 2013 because some unidentified Clerk's Office employee allegedly gave an answer when Doe asked if the name-change statute required proof of citizenship. R. at 46-47; *see also* Supp. App. at 20a-21a; Appellant's Br. at 6 ("Mr. Doe asked employees of Clerk Eldridge's Office to clarify that U.S. citizenship was a legal requirement to change his name."). He does not allege that anyone misled him. *See* Pet. at 4 (acknowledging that he received an accurate answer). Nor does he allege that anyone told him the Clerk's Office would not accept his name-change petition. *See* R. at 35-53. Instead, he acknowledges that a staff member told him about another non-citizen's petition that the Clerk's Office had accepted and sent to the circuit court. R. at 47 (¶ 60); Pet'r's App. at 42.

Although Clerk's Office staff are aware of the various requirements Indiana has established for obtaining a name change—and as a matter of customer service will answer questions about those requirements when asked—they are not permitted to discourage anyone from filing petitions and may not refuse to accept them. Supp. App. at 15a-16a (¶ 10); *see also* Ind. Code ch. 34-28-2 (providing no authority for county clerks to screen legal sufficiency of name-change petitions). Had Doe ever submitted a petition, it would have been accepted and forwarded to the circuit court for a decision. *See* Supp. App. at 15a-16a (¶¶ 4-10). Despite receiving assurances to that effect, Doe refuses to submit a petition. *See id.* at 21a.

II. Procedural background

Doe filed this lawsuit in September 2016. R. at 3. He sought a declaration that the name-change statute's

citizenship requirement violates his rights under the First and Fourteenth Amendments. R. at 25. He also sought prospective injunctive relief, costs, and attorneys' fees. R. at 25-26. Doe named as defendants Indiana's governor and attorney general as well as the Marion County Clerk. R. at 10. He asked the district court to enjoin each defendant from enforcing the citizenship requirement and order the Clerk to "accept and process petitions for a change of name from non-citizens." R. at 25-26.

After the Clerk's counsel informed Doe's counsel that the Clerk's Office accepts and processes name-change petitions from citizens and non-citizens alike, Doe amended his complaint. *See* Supp. App. at 21a; R. at 35-54. The amended complaint added Indiana's head of state-court administration as a defendant and added the allegations about Doe's purported visit to the Clerk's Office nearly three years earlier. *Compare* R. at 10-27, *with* R. at 35-54.

The Clerk then raised a factual challenge to the district court's subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) by submitting evidence calling it into question. Supp. App. at 11a-24a. She argued that Doe's claims against her must be dismissed because he lacks standing to sue her and, alternatively, because any claims against her are moot. R. at 105-126, 149-156. After concluding that the Clerk has no power to enforce the name-change statute—and already does the very thing Doe asked it to order her to do—the district court held that Doe failed to establish Article III standing to sue her. Pet'r's App. at 38-43. It did not reach the mootness argument. *Id.*

The Seventh Circuit affirmed, holding that "Doe failed to prove that he has standing to sue the Marion County Clerk of Court." *Id.* at 9-12.

SUMMARY OF THE ARGUMENT

Doe's dispute is with the State of Indiana. There is no good reason for this Court to review his claims against the Marion County Clerk. They implicate no circuit split, no conflict with a decision from this Court or a state court of last resort, no departure from the accepted and usual course of judicial proceedings, and no important question of federal law requiring this Court's guidance. *Cf.* Sup. Ct. R. 10. Rather, those claims failed because Doe did not make a basic evidentiary showing required by the Seventh Circuit's *Apex Digital* rule—a rule he never challenged below and does not ask this Court to review.

Even if he had supported his jurisdictional allegations with evidence, Doe still could not have established standing to sue the Clerk. Indiana law affords her no authority to enforce the name-change statute, and the undisputed evidence confirms that her office already does what Doe asked the district court to order it to do. Unable to produce any contrary evidence or identify any enforcement authority extending to county clerks, Doe instead proposes an expansive standing theory that would allow him to sue virtually any government official who is asked what a law says and gives an answer. He provides no legal support for that theory, and he has never explained how it could coexist with Article III's traceability and redressability requirements.

Although well-settled Article III standing principles required the Seventh Circuit to reject Doe's claims against the Clerk, nothing in its decision bars him

from challenging the name-change statute in federal court. Both the majority and dissenting opinions acknowledge that he could establish standing to sue one or more state officials who actually contribute to his injury. Doe has chosen not to sue those officials and instead seeks to revive these claims. That is his prerogative, but he cannot credibly suggest the Seventh Circuit has locked him out of federal court. It simply held that he cannot sue a county clerk with no authority to enforce the challenged statute and no ability to redress his injury.

That decision was sound. The Marion County Clerk is not responsible for defending a law she had no role in enacting and is powerless to enforce, and Marion County tax dollars should not be imperiled in its defense. Doe scarcely argues otherwise, devoting two paragraphs in his thirty-five-page petition to a cursory argument that he has standing to sue the Clerk—an argument squarely contradicted by the undisputed evidence in the record.

ARGUMENT

"[N]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Standing is therefore "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). It does not turn on common-law abstention doctrines or the policy concerns underlying federal civil-rights laws. It is a bedrock constitutional requirement that every would-be litigant must satisfy to remain in federal court. *See id.*

As the party claiming standing to invoke federal jurisdiction, Doe bore the burden of establishing the "irreducible constitutional minimum" of standing: that (1) he suffered an injury in fact, (2) the injury is fairly traceable to something the Clerk did, and (3) it is likely to be redressed by a favorable decision against the Clerk. *Spokeo*, 136 S. Ct. at 1547. Both the district court and the Seventh Circuit held that Doe failed to carry that burden. Those decisions were correct, and they do not merit this Court's review.

I. Doe's claims against the Clerk necessarily failed under Seventh Circuit authority that he never challenged below and does not ask this Court to review.

Injury in fact, traceability, and redressability are not mere pleading requirements. They are jurisdictional prerequisites. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). All three elements must therefore be supported like any other matter on which the plaintiff bears the burden of proof—"with the manner and degree of evidence required at the successive stages of the litigation." *Id.*

In *Apex Digital, Inc. v. Sears, Roebuck & Co.*, the Seventh Circuit considered whether the "manner and degree of evidence" required to establish standing at the pleading stage must always be no evidence at all. 572 F.3d 440 (7th Cir. 2009). To answer that question, it distinguished between a facial challenge to jurisdiction and a factual one. A facial challenge asks a court to determine whether the complaint adequately alleges a basis for subject-matter jurisdiction. *Id.* at 443. In that context, a plaintiff need not submit any evidence to prove jurisdiction. The allegations in the complaint are taken as true, and the court does not look beyond them. *Id.* at 443-44. But a factual challenge to

jurisdiction is different. In a factual challenge, the defendant submits evidence calling subject-matter jurisdiction into question even though the complaint may be facially sufficient. *Id.* at 444.

As *Apex Digital* explains, a court deciding a factual challenge may look beyond the jurisdictional allegations "and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Id.* (collecting cases). The "presumption of correctness that [courts] accord to a complaint's allegations falls away" once a defendant offers evidence calling subject-matter jurisdiction into question. *Id.* When that happens, "the plaintiff bears the burden of coming forward with competent proof that standing exists." *Id.* at 445-46 (collecting cases). If he fails to carry that burden, his claims must be dismissed for lack of subject-matter jurisdiction.[3] *Id.* at 445.

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[3] The *Apex Digital* rule reflects the universal consensus of all thirteen circuits. *See Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001) (noting that plaintiffs cannot rest on jurisdictional allegations and must instead come forward with evidence once a defendant raises factual attack on jurisdiction under Federal Rule of Civil Procedure 12(b)(1)); *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 57 (2d. Cir. 2016) (same); *Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016) (same); *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017) (same); *Superior MRI Servs., Inc. v. Alliance Healthcare Servs., Inc.*, 778 F.3d 502, 504 (5th Cir. 2015) (same); *Global Tech., Inc. v. Yubei (XinXiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015) (same); *Branson Label, Inc. v. City of Branson, Mo.*, 793 F.3d 910, 915 (8th Cir. 2015) (same); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (same); *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995) (same); *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335-36 (11th Cir. 2013) (same); *Macharia v. United States*, 334 F.3d 61, 67-68 (D.C. Cir. 2003) (same); *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1584 (Fed. Cir. 1993) (same).

Here, the Clerk raised a factual challenge calling subject-matter jurisdiction into question. She presented evidence showing that her office accepts name-change petitions from citizens and non-citizens alike and forwards them to the circuit court for a decision. Supp. App. at 14a-15a (¶¶ 3-5). That evidence also established that the Clerk's Office does not screen petitions to determine whether they meet the statutory requirements for obtaining a name change because Indiana law entrusts those decisions to judges, not county clerks. *Id.* at 15a (¶¶ 4-7); *see also* Ind. Code ch. 34-28-2. Likewise, the Clerk's evidence established that her office does not refuse name-change petitions that lack information required under Section 34-28-2-2.5 and that her staff may not dissuade anyone from filing a petition. Supp. App. at 15a-16a (¶¶ 4-10).

It became Doe's burden to present "competent proof that standing exists" once the Clerk's evidence called jurisdiction into question. *Apex Digital*, 572 F.3d at 444-45. He responded with no evidence at all, instead resting on allegations no longer entitled to a presumption of truth. *See* R. at 134-147. As a result, his claims against the Clerk necessarily failed under *Apex Digital*. *See* 572 F.3d at 444-45.

Just as that evidentiary failure was dispositive below, it should be dispositive of the petition for certiorari. Doe never challenged the *Apex Digital* rule below. *See* R. at 134-47 (never acknowledging that the Clerk raised a factual challenge and resting on the allegations in his amended complaint); Appellant's Br. at 1-39 (same). Any challenge to that rule has therefore been waived. *See United States v. Alvarez-Sanchez*, 511 U.S. 1599, 1605 n.5 (1994) (noting that arguments not raised below are waived absent exceptional circumstances); *see also Sprietsma v. Mercury*

Marine, 537 U.S. 51, 56 n.4 (2002) ("Because this argument was not raised below, it is waived.").

Moreover, Doe's petition for certiorari does not ask this Court to review the *Apex Digital* rule. *Compare* Pet. at i-35, *with* Sup. Ct. R. 14(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). As he did below, Doe ignores the evidentiary burden he bore under *Apex Digital*. Instead, he makes a cursory standing argument that squarely contradicts the undisputed evidence. *Compare* Pet. at 21-22 (claiming the Clerk's policies are "plainly" designed to deter name-change applicants like Doe to improve court efficiency), *with* Supp. App. at 14a-16a (¶¶ 3-10) (establishing that the Clerk's Office accepts petitions from citizens and non-citizens alike, does not screen them, and may not discourage any applicant).

Chief Judge Wood's dissent makes the same mistake. It faults the majority for "accept[ing] counsel's word for the fact that Clerks in the past have accepted applications that do not conform to Indiana's name-change law" and suggests the court was required "at this early stage in the proceedings" to accept Doe's claim that such petitions are normally rejected. Pet'r's App. at 15 (Wood, C.J., dissenting). That critique loses sight of the *Apex Digital* rule—a rule that placed the burden on Doe to prove standing once the Clerk's evidence called jurisdiction into question. *See* 572 F.3d at 444-45; *see also Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 966 (7th Cir. 2016) (Wood, C.J.) ("The district court must accept as true all material allegations of the complaint, drawing all reasonable inferences therefrom in the plaintiff's favor, *unless standing is challenged as a factual matter*." (emphasis added) (internal quotation marks omitted)).

Far from presenting a question warranting a writ of certiorari under Supreme Court Rule 10, this case turns on a plaintiff's failure to carry a basic evidentiary burden—a burden he neither challenged below nor asks this Court to review.

II. Even if Doe had supported his allegations with evidence, he cannot establish standing to sue the Clerk.

As Doe frames it, the question presented is whether his injury can be traced to the Clerk—and redressed by her—given that she enforces the name-change statute. Pet. at i. If that were the issue, the answer would be obvious. But Doe's framing assumes what he failed to establish in both courts below: that the Clerk enforces the name-change statute.

A. Doe proposes an unsupported standing theory subject to no meaningful limiting principle.

Despite claiming throughout this lawsuit that the Clerk has a duty to enforce the name-change statute, Doe has never identified any authority imposing that supposed duty. *See* R. at 134, 139, 141, 142, 144; Appellant's Br. at 2, 12, 30; Pet. at i. The unrebutted evidence demonstrates that no such duty exists and that the Clerk lacks power to screen petitions or otherwise enforce the name-change statute. Supp. App. at 14a-16a (¶¶ 3-10). Indiana law confirms it. Judges, not county clerks, decide name-change petitions. Ind. Code §§ 34-28-2-1 & -4; *see also Leone v. Comm'r, Ind. Bureau of Motor Vehicles*, 933 N.E.2d 1244, 1254 (Ind. 2010) (holding that "only a statutorily authorized court order gives legal sanction to a name change").

Doe hardly claims otherwise. He devotes most of his thirty-five-page petition to the *Ex Parte Young* principle and the policy goals underlying federal civil-rights laws. Those arguments might help him clear other hurdles to sue other defendants, but they have no bearing on his standing to sue the Clerk. He dedicates a mere two paragraphs to that question. *See* Pet. at 21-22. And that cursory argument never claims the Clerk actually enforces the name-change statute, suggesting instead that she "plays an informal gatekeeper role" because her office gives accurate answers when customers ask what the law says. *Id.*; *see also* Appellant's Br. at 6 (conceding that Doe "asked employees of Clerk Eldridge's Office to clarify that U.S. citizenship was a legal requirement to change his name"); Pet. at 4 (acknowledging that the answer he received stated the law accurately).

Unable to show that the Clerk actually enforces the name-change statute, Doe proposes an expansive standing theory that would allow him to sue virtually any government official who is asked what a law says and gives an answer. As long as learning what the law says dissuades Doe from doing something, he would have standing to sue the official who answered his question even though she is powerless to enforce the challenged law. *See* Appellant's Br. at 32 ("Despite the fact that . . . the Clerk lack[s] the authority to grant or deny the applications, simply informing [Doe] that his efforts will fail is sufficient to establish causation and redressability.").

Both courts below properly rejected that theory of Article III standing. Doe identified no authority anywhere in the country supporting it. *See Infra* at 15-19. Nor has he explained how his proposed standing theory could coexist with the "irreducible constitu-

tional minimum of standing," which requires him to trace his injury to something the Clerk has done and to demonstrate how an order directed to the Clerk could redress that injury. *Spokeo*, 136 S. Ct. at 1547.

As the district court observed, Doe's theory is not susceptible to any meaningful limiting principle. Pet'r's App. at 42 (noting that "Mr. Doe has identified no limit as to which statutes the Clerk could properly be seen as enforcing" if simply telling someone what a law says amounts to enforcing that law). Under that theory, Indiana's Legislative Services Agency would be a proper defendant in every challenge to an Indiana law in federal court. It has no authority to pass laws and is powerless to enforce them. But it does act under color of law, and it undoubtedly tells people what Indiana's laws say by publishing the Indiana code. The same logic would make the Government Publishing Office a proper defendant in every challenge to a federal statute or regulation.

Adopting that theory would nullify Article III's traceability and redressability requirements in any case challenging a federal, state, or local law. But traceability and redressability are not dispensable. They are necessary elements of the irreducible constitutional minimum of standing.[4] *Spokeo*, 136 S. Ct. at 1547.

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[4] Doe's standing theory also faces another obstacle. It makes sense only if the injury in fact for Article III purposes is learning what a law says. That would be a curious basis for standing. *Cf. Atkins v. Parker*, 472 U.S. 115, 130 (1985) ("All citizens are presumptively charged with knowledge of the law."); *N. Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283 (1925) ("All persons are charged with knowledge of the provisions of statutes . . . .").

B. Doe asks for permission to seek an advisory opinion.

Doe's redressability argument highlights the problem with his proposed standing theory. An order enjoining the Clerk from enforcing a law she is already powerless to enforce and commanding her to accept and process petitions that she already accepts and processes would itself accomplish nothing. But Doe insists it would nevertheless "fully resolve" his injury because Indiana judges deciding other cases are likely to respect the constitutional analysis in such an order. *See* Appellant's Br. at 32-33; Pet. at 22-23. If that were enough to establish standing, tracing an injury to some party who actually harmed you and could redress that harm would be irrelevant in every constitutional attack on a statute. A judgment striking down a statute entered against *anyone* will leave other courts less inclined to apply that law. Under that theory, Doe could just as well have filed this lawsuit against a county highway worker or a firefighter.

Doe may be right about one thing. State-court judges probably would respect a federal court's constitutional analysis in an advisory opinion. But the Constitution nevertheless forbids federal courts from issuing those decisions. Article III restricts their jurisdiction to those cases where the plaintiff establishes traceability and redressability. *Spokeo*, 136 S. Ct. at 1547. This is not such a case.

III. Doe's arguments have evolved as this case moved from court to court, but none supports his expansive standing theory.

A. At the district court, Doe ignored the dispositive distinction between his claims and the marriage-equality cases.

Doe attempted to establish traceability and redressability in the district court by invoking the marriage-equality cases, but he ignored a dispositive distinction. *See* R. at 139-42. County clerks were proper defendants in the marriage-equality cases he cited because they are tasked with granting or denying marriage licenses. *E.g.*, *Harris v. McDonnell*, 988 F. Supp. 2d 603, 613 (W.D. Va. 2013) ("Because [the clerk's] official duties include issuing the very thing plaintiffs claim they have been unconstitutionally denied, their alleged injury is directly traceable to him."). This case is different. Indiana's name-change statute places no comparable duty on county clerks, and it vests them with no enforcement authority. *See* Pet'r's App. at 40-42.

B. Doe raised new arguments on appeal, but they highlight the showing he cannot make.

Doe turned to different arguments on appeal. For example, he argued that a plaintiff does not lack standing "merely because the defendant is one of several persons who caused the harm." Appellant's Br. 31 (discussing *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 500 (7th Cir. 2005)). That rule is sound, but it has nothing to do with this case. *Lac du Flambeau* held that a tribal group had standing to sue the Secretary of the Interior because it challenged a tribal-state

compact that could not have taken effect without her approval. 422 F.3d at 493-94. She had explicit legal authority to block it and declined to do so, bringing her within the universe of officials who contributed to the tribal group's injuries. *Id.* at 501. County clerks have no comparable authority under Indiana's name-change statute.

Bennett v. Spear is not helpful either. *See* 520 U.S. 154, 168-69 (1997). The *Bennett* plaintiffs challenged a United States Fish and Wildlife Service biological opinion because they believed it would adversely affect a federal reclamation project and reduce their access to water. *Id.* at 158-60. The Bureau of Reclamation retained ultimate responsibility for determining whether the project would go forward, but the plaintiffs had standing to sue the Service because its biological opinion altered the legal regime governing that decision. *Id.* Although the Bureau technically could disregard the biological opinion, doing so would risk civil and criminal penalties that made the opinion "virtually determinative." *Id.* at 169-70. Under those circumstances, this Court applied a simple rule: a defendant's actions need not be "the very last step in the chain of causation" if they nevertheless have a "determinative or coercive effect" on the final decision-maker who injured the plaintiff. *Id.* at 168-69.

Campaign for Southern Equality v. Mississippi Department of Human Services, another case Doe relied on during his appeal, applied a similar rule. *See* 175 F. Supp. 3d 691, 697 (S.D. Miss. 2016). The plaintiff sued the director of Mississippi's Department of Human Services seeking to overturn a state law barring married same-sex couples from adopting. Although chancery courts ultimately decide adoption petitions, Mississippi law requires prospective adopters

to clear several Department-administered hurdles before their court proceedings may begin. *See id.* at 703-05. For example, the Department was responsible for screening and approving foster-care adoption applications, and the jurisdictional evidence showed that it had recently withheld approval based on the challenged law. *See id.* (noting other Department-administered requirements like mandatory training and home visits). Because the Department had authority to enforce the same-sex-adoption ban by blocking would-be adoptions during that initial screening process, the plaintiff had standing to sue its director. *Id.* at 697.

Those cases illustrate the traceability and redressability showing Doe cannot make. Unlike the plaintiff in *Lac du Flambeau*, his shortfall is not that some other party also contributed to his injury. His problem is that—however many officials might have a hand in enforcing the name-change statute against him—the Clerk is not among them. And unlike the Fish and Wildlife Service in *Bennett* or the director in *Campaign for Southern Equality*, the Clerk is also powerless to make initial screening decisions having a determinative or coercive effect on the circuit court's decision.

C. Doe's petition for certiorari provides no support for his standing theory.

Doe's petition scarcely addresses his standing to sue the Clerk. Cases like *Mitchum*, *McNeese*, and *Zwickler* examine a federal anti-injunction statute, the policy goals underlying federal civil-rights legislation, and a common-law abstention doctrine. *See Mitchum v. Foster*, 407 U.S. 225 (1972); *McNeese v. Bd. of Educ.*, 373 U.S. 668 (1963); *Zwickler v. Koota*, 389 U.S. 241 (1967). Those issues are important in their own right,

but they have nothing to do with Doe's standing to sue the Clerk. Whatever Congress and federal courts have accomplished through statutory schemes and common-law abstention doctrines, they cannot nullify the irreducible constitutional minimum of Article III standing.

The few standing cases in Doe's petition miss the mark too. *Associated General Contractors* holds that depriving someone of a chance to compete for work on an equal basis suffices to establish injury in fact. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 664-66 (1993). The Clerk never challenged Doe's claimed injury. She argued that he cannot trace his injury to her and that she cannot redress it. Doe's failure to establish those latter elements sunk his claims against the Clerk.

Doe then turns to *Lujan*, arguing that he satisfies causation and redressability because non-citizens like him are plainly the objects of the statutory language making it impossible for him to change his name. Pet. at 17. That again misconstrues the issue decided below. The question was not whether Indiana's name-change statute harmed Doe. It clearly did. The question was whether he could trace that harm to the Marion County Clerk—something he failed to do.

Simon v. Eastern Kentucky Welfare Rights Organization is also unhelpful. According to Doe, *Simon* allows him to sue the Clerk even though a judge makes the ultimate decision to grant or deny a name change. Pet. at 21 (citing *Simon*, 426 U.S. 26, 41-42 (1976)). But the Clerk never argued that Doe lacks standing merely because she is not the ultimate decision-maker. He lacks standing because—however many

officials might be able to enforce the name-change statute against him—she does not and cannot.[5]

IV. The Seventh Circuit did not leave Doe without a remedy in federal court.

The Seventh Circuit did not "block[] any federal-court challenge" to the name-change statute. *Contra* Pet at 11. The majority opinion details how Doe could have traced his injury to the Governor or sued the commissioner of Indiana's Bureau of Motor Vehicles. Pet'r's App. at 5-6. Even the dissent acknowledges that he could maintain claims in federal court by suing the commissioners of the Bureau of Motor Vehicles and the Indiana Department of Revenue. *Id.* at 19-20 (Wood, C.J., dissenting). And both Doe and the dissent raise compelling arguments that Indiana's attorney general enforces the name-change statute and should

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[5] Doe also appears to misunderstand the thrust of the *Simon* decision. The Court cautioned that Article III's case or controversy limitation "still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." 426 U.S. at 41-42. Doe seeks to distinguish *Simon* because the mandatory proof-of-citizenship requirement ties the circuit court's hands, meaning its decision is not a discretionary one. According to Doe, that means it cannot be an "independent" action of a third party not before the court. *See* Pet. at 18. That is not the sort of independence that matters for standing purposes. The question is not whether the third party's actions are wholly unfettered. The question is whether the third party takes those actions independently of *the defendant's* influence. Here, the answer is yes. The Clerk cannot screen name-change petitions or otherwise constrain the circuit court's decisions. That distinguishes this case from a case like *Bennett*, where the Fish and Wildlife Service issued an opinion that had a "determinative or coercive effect" on the third party's ultimate decision. *See supra* at 16.

be subject to suit. Pet. at 11-14; Pet'r's App. at 15-17 (Wood, C.J., dissenting).

Although Doe can pursue his claims in federal court, he must name the correct defendants. The Seventh Circuit applied settled Article III standing principles and concluded that the Clerk is not among them. Pet'r's App. at 9-12. That is an unremarkable outcome. Doe was not guaranteed a federal forum simply because he raised a constitutional claim. On the contrary, the Constitution forbids federal courts from exercising jurisdiction over his claims against the Clerk because he failed to establish standing to sue her. *See Spokeo*, 136 S. Ct. at 1547.

CONCLUSION

Whatever the Court may think about Doe's claims against the state defendants, there is no compelling reason to review his claims against the Marion County Clerk. They implicate no circuit split, no conflict with a decision from this Court or a state court of last resort, no departure from the accepted and usual course of judicial proceedings, and no important question of federal law requiring this Court's guidance. *Cf.* Sup. Ct. R. 10. The Court should therefore deny Doe's petition for certiorari to the extent it asks this Court to exercise jurisdiction over his claims against the Clerk.

Respectfully submitted,

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July 26, 2018

SUPPLEMENTAL APPENDIX

APPENDIX A

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

Effective: April 13, 2017

IC 34-28-2-1. Petition to circuit, superior, or probate courts

Sec. 1. Except as provided in section 1.5 of this chapter, the circuit courts, superior courts, and probate courts in Indiana may change the names of natural persons on application by petition.

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

IC 34-28-2-1.5. Incarcerated persons

Sec. 1.5. A person may not petition for a change of name under this chapter if the person is confined to a department of correction facility.

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

Effective: July 1, 2016

IC 34-28-2-2. Filing petition; procedure for change of name of minor

Sec. 2. (a) The petition described in section 1 of this chapter must:

(1) if applicable, include the information required by section 2.5 of this chapter;

(2) in the case of a petition filed by a person described in section 2.5 of this chapter, be subscribed and sworn to (or affirmed):

(A) under the penalties of perjury; and

(B) before a notary public or other person authorized to administer oaths; and

(3) be filed with the circuit court, superior court, or probate court of the county in which the person resides.

(b) In the case of a parent or guardian who wishes to change the name of a minor child, the petition must be verified, and it must state in detail the reason the change is requested. In addition, except where a parent's consent is not required under IC 31-19-9, the written consent of a parent, or the written consent of the guardian if both parents are dead, must be filed with the petition.

(c) Before a minor child's name may be changed, the parents or guardian of the child must be served with a copy of the petition as required by the Indiana trial rules.

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

Effective: January 1, 2016

IC 34-28-2-2.5. Requirements of petition

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.

Title 34. Civil Law and Procedure (Refs & Annos)
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

Effective: July 1, 2010

IC 34-28-2-3. Notice of petition; person with felony conviction

Sec. 3. (a) Upon filing a petition for a name change, the applicant shall give notice of the petition as follows:

(1) By three (3) weekly publications in a newspaper of general circulation published in the county in which the petition is filed in court.

(2) If no newspaper is published in the county in which the petition is filed, the applicant shall give notice in a newspaper published nearest to that county in an adjoining county.

(3) The last weekly publication shall be published not less than thirty (30) days before the day the petition will be heard as indicated in the notice.

(b) In the case of a petition described in section 2(b) of this chapter, the notice required by this section must include the following:

(1) The name of the petitioner.

(2) The name of the minor child whose name is to be changed.

(3) The new name desired.

(4) The name of the court in which the action is pending.

(5) The date on which the petition was filed.

(6) A statement that any person has the right to appear at the hearing and to file objections.

(c) Except as provided in section 1.5 of this chapter, in the case of a person who has had a felony conviction within ten (10) years before filing a petition for a change of name, at least thirty (30) days before the hearing the petitioner must give notice of the filing of the petition to:

(1) the sheriff of the county in which the petitioner resides;

(2) the prosecuting attorney of the county in which the petitioner resides; and

(3) the Indiana central repository for criminal history information.

(d) The notice given to the Indiana central repository for criminal history information under subsection (c) must include the petitioner's full current name, requested name change, date of birth, address, physical description, and a full set of classifiable fingerprints.

(e) The Indiana central repository for criminal history information shall forward a copy of any criminal records of the petitioner to the court for the court's information.

(f) A copy of the court decree granting or denying such a petition shall be sent to the Indiana state police.

(g) A person who violates subsection (c) commits a Class A misdemeanor.

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

Effective: July 1, 2010

IC 34-28-2-4. Proof of publication; time of hearing; notice requirements; determination on petition

Sec. 4. (a) Proof of the publication required in this chapter is made by filing a copy of the published notice, verified by the affidavit of a disinterested person, and when proof of publication is made, the court shall, subject to the limitations imposed by subsections (b), (c), and (d), proceed to hear the petition and make an order and decree the court determines is just and reasonable.

(b) In the case of a petition described in section 2(b) of this chapter, the court may not hear the petition and issue a final decree until after thirty (30) days from the later of:

(1) the filing of proof of publication of the notice required under subsection (a); or

(2) the service of the petition upon the parents or guardian of the minor child.

(c) In the case of a petition described in section 2(b) of this chapter, the court shall set a date for a hearing on the petition if:

(1) written objections have been filed; or

(2) either parent or the guardian of the minor child has refused or failed to give written consent as described in section 2(b) of this chapter.

The court shall require that appropriate notice of the hearing be given to the parent or guardian of the minor child or to any person who has filed written objections.

(d) In deciding on a petition to change the name of a minor child, the court shall be guided by the best interest of the child rule under IC 31-17-2-8. However, there is a presumption in favor of a parent of a minor child who:

(1) has been making support payments and fulfilling other duties in accordance with a decree issued under IC 31-15, IC 31-16, or IC 31-17 (or IC 31-1-11.5 before its repeal); and

(2) objects to the proposed name change of the child.

(e) In the case of a person required to give notice under section 3(c) of this chapter, the petitioner must certify to the court that the petitioner has complied with the notice requirements of that subsection.

Title 34. Civil Law and Procedure
Article 28. Special Proceedings:
Miscellaneous Civil Proceedings and Remedies
Chapter 2. Change of Name

IC 34-28-2-5. Court decree as evidence; copy sent to health department, and clerk of circuit court or board of registration

Sec. 5. (a) A copy of the decree of the court changing the name of any natural person, certified under the seal of the court by the clerk of the court, is sufficient evidence of the name of the person, and of a change having been made, in any court of Indiana.

(b) In the case of a petition described in section 2(b) of this chapter, the court shall send a copy of the final decree to the state department of health and to the local health department of the county.

(c) In the case of a petition filed by a person at least seventeen (17) years of age, the court shall send a copy of the final decree to the clerk of the circuit court or board of registration of the county where the person resides.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[Filed 12/12/16]

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

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 Court; and LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration,

Defendants.

MOTION TO DISMISS

For the reasons explained in the accompanying brief, Myla A. Eldridge respectfully moves the Court under Federal Rule of Civil Procedure 12(b)(1) to dismiss the claims alleged against her in her official capacity as the Marion County Clerk.

Respectfully submitted,

/s/ Donald E. Morgan
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and accompanying exhibits were filed electronically on this 12th day of December, 2016. This filing will be served on the following 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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/s/ Donald E. Morgan
Donald E. Morgan
Chief Litigation Counsel

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

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 Court; and LILIA G. JUDSON, in her official capacity as Executive Director of the Indiana Supreme Court Division of State Court Administration,

Defendants.

DECLARATION OF RUSSELL HOLLIS

I hereby declare as follows:

1. I am an adult of sound mind and have personal knowledge of the matters stated in this declaration,

2. I am employed in the Marion County Clerk's Office as Deputy Director. My responsibilities include serving as director of policy and communications for the office.

3. Indiana law provides that county circuit courts may change the names of natural persons on application

by petition. The decision whether a petition filed in Marion County is sufficient under the law is therefore a determination made by the Marion County Circuit Court.

4. Indiana law provides no role for a county clerk to decide whether a name-change petition meets the legal requirements for obtaining a name change.

5. As 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 (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). When a name-change petition is submitted, the Clerk's Office processes the petition and forwards it to the Circuit Court for resolution.

6. The particular legal requirements for obtaining a change of name are irrelevant to that task.

7. Specifically, 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.

8. Whether the challenged statute is upheld or struck down, the Clerk's Office will continue to receive petitions and forward them to the Circuit Court for resolution.

9. In fact, if John Doe were to come into the Clerk's Office today, his petition would be accepted, processed, and forwarded to the Marion County Circuit Court without regard to his citizenship status.

10. 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. But, consistent with their training, they are not permitted to dissuade anyone from filing a petition and may not refuse to accept petitions.

AFFIRMATION

I hereby affirm under the penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

Date: 11/21/2016

/s/ Russell Hollis
Russell Hollis
Deputy Director

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

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.

PLAINTIFF JOHN DOE'S RESPONSE TO DEFENDANT MYLA A. ELDRIDGE'S REQUESTS FOR ADMISSION TO PLAINTIFF JOHN DOE, SET ONE

Under Rule 36 of the Federal Rules of Civil Procedure, Plaintiff John Doe ("Plaintiff'), by and through counsel, objects and responds to Requests for Admissions to Plaintiff propounded by Defendant Myla A. Eldridge, in her official capacity as the Marion County Clerk, dated November 3, 2016, as follows:

GENERAL OBJECTIONS

1. Plaintiff incorporates each general objection below into each specific response. Specific responses may repeat a general objection for emphasis or some other reason. However, failure to repeat any general objection in any specific response shall not be interpreted as a waiver of any general objection to that response. Any information provided in specific responses is made without waiver of, and subject to, these general objections and any additional objections asserted in that specific response.

2. Plaintiff objects to the requests insofar as the requests assume the existence of facts that do not exist or the occurrence of events that did not take place. Plaintiff's responses are not intended and shall not be construed as admissions that such information exists or that any such information constitutes admissible evidence. Plaintiff's specific responses are not intended and shall not be construed as an admission, concurrence, or agreement with Defendant's characterization of facts, circumstances, or legal obligations stated in or implied by Defendant's requests. Plaintiff reserves the right to contest any such characterization and further objects to the extent Defendant's requests contain express or implied conclusions of law.

3. Plaintiff's responses are based on information and documents available to and located by Plaintiff as of the date of these responses. Plaintiff has not completed his investigation into facts related to these requests, and all information provided is based only on information specifically known or reasonably available to Plaintiff as of the date of these responses. Plaintiff reserves the right to amend, correct, clarify, or supplement his responses at a later date. If Defendant asserts an interpretation of any aspect of the requests

that is different from Plaintiff's interpretation, Plaintiff reserves the right to supplement responses if Defendant's interpretation is held to be applicable.

4. Plaintiff objects to the requests to the extent that responses would require Plaintiff to conduct an investigation or obtain information and/or documents not in his possession or control. Plaintiff additionally objects to the extent that requests would require Plaintiff to respond and/or produce information and/or documents on behalf of any other person or entity other than himself.

5. The preceding objections are referred to collectively as the "general objections."

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO.1:

Admit that you have never submitted a name-change petition to the Clerk's Office.

RESPONSE TO REQUEST FOR ADMISSION NO.1:

Plaintiff asserts all of the general objections listed above. Without waiving these objections, Plaintiff responds:

Admitted.

REQUEST FOR ADMISSION NO.2:

Admit that the article attached as Exhibit A accurately describes your statements to Olivia Covington and/or staff from the Indiana Lawyer.

RESPONSE TO REQUEST FOR ADMISSION NO.2:

Plaintiff asserts all of the general objections listed above. Plaintiff objects that this request seeks information not relevant to the subject matter of this action and not likely to lead to the discovery of admissible

evidence. Plaintiff further objects that the terms "accurately describes" and "your statements" are vague, ambiguous, and overbroad. Plaintiffs objects that the question is compound, in that "your statements" appears to reference a number of statements regarding a range of issues, events, thoughts, and opinions.

Subject to, and without waiving the foregoing objections, Plaintiff lacks sufficient information to admit or deny whether the article in question "accurately describes [his] statements to Olivia Covington and/or staff from the Indiana Lawyer." The article contains multiple quotations attributed to Plaintiff and paraphrases other statements allegedly made by Plaintiff concerning a wide variety of issues and events. Plaintiff does not recall, and has no independent record by which to verify, whether direct quotations attributed to him are wholly accurate. Plaintiff denies that the article accurately describes the entirety of Plaintiff's statements to the Indiana Lawyer; the article paraphrases statements and summarizes descriptions of events in ways that omit context and truncate Plaintiff's full accounts of events.

REQUEST FOR ADMISSION NO.3:

At paragraphs 59-62 of your complaint, you describe an alleged encounter with representatives of the Clerk's Office in 2013. Admit that this exchange ensued from your affirmatively asking the Clerk's Office what documentation you would need to provide to legally change your name on official paperwork and identification.

RESPONSE TO REQUEST FOR ADMISSION NO.3:

Plaintiff asserts all of the general objections listed above. Without waiving these objections, Plaintiff responds:

Admitted.

REQUEST FOR ADMISSION NO.4:

Admit that counsel for the Marion County Clerk has told you, through your lawyers, that it [sic] your name-change petition would be accepted, processed, and forwarded to the appropriate court for resolution if you submit such a petition to the Clerk's Office.

RESPONSE TO REQUEST FOR ADMISSION NO.4:

Plaintiff asserts all of the general objections listed above. Plaintiff objects that this request seeks information not relevant to the subject matter of this action and not likely to lead to the discovery of admissible evidence. Plaintiff further objects that the terms "processed" and "resolution" are vague and ambiguous. Plaintiff objects to the extent that this request seeks information protected by attorney-client privilege.

REQUEST FOR ADMISSION NO. 5:

Admit that, despite the assurances provided to you as described in Request No. 4, you still have not submitted a name-change petition to the Marion County Clerk's office.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Plaintiff asserts all of the general objections listed above. Without waiving these objections, Plaintiff responds:

Admitted.

Dated: December 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing responses has been duly served upon all parties listed below by United States mail, first-class, postage prepaid on December 6, 2016.

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VERIFICTION

I have read the foregoing responses to Defendant Myla A. Eldridge's Requests for Admission, Set One, and know the contents thereof. I am informed and believe, and on that basis allege, that the matters stated there are true.

I certify and declare under penalty of perjury under the laws of the United States of America that the foregoing responses are true and correct. Executed this 6th day of December, 2016 at Indianapolis, Indiana.

/s/ John Doe
John Doe