No. 22-3089

IN THE
SUPREME COURT OF THE UNITED STATES

TOM A. DE COLA,
Petitioner,
v.
STARKE COUNTY COUNCIL ET AL.,
Respondents.

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

APPENDIX

Tom A. DeCola
Pro se
7410 W. 250 S.
North Judson, IN 46366
574-249-3556
93sundial39@gmail.com

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 26, 2023* Decided May 30, 2023

Before
ILANA DIAMOND ROVNER, Circuit Judge DAVID F. HAMILTON, Circuit Judge MICHAEL Y. SCUDDER, Circuit Judge

No. 22-3089

THOMAS DECOLA, Plaintiff-Appellant v. Starke County Council, et al., Defendants-Appellees.	Appeal from the United State District Court for the Northern District of Indiana, South Bend Division No. 3:20-CV-869 JD Jon E. DeGuilio, Chief Judge.

*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral arguments would not significantly aid the court. FED R. APP. P. 34(a)(2)(C).

ORDER

Thomas DeCola challenged in state court the vote of the Starke County Council in Indiana to remove him from his elected seat after he threatened to expel from the county certain racial and religiousgroups. Having lost in state court, DeCola pursues this federal suit, re- alleging that the vote of the Council and its members deprived him of his right to due process. The district court rightly concluded that claim preclusion bars this suit; thus, we affirm.

DeCola's election to the Starke County Council in November 2018 was short-lived. At his first meeting in January 2019, council members questioned DeCola about his conduct at a December gathering of Indiana elected officials. According to the council members, at that gathering DeCola used vulgar epithets to describe racial and religious groups that he wanted to expel from the county. At the next month's council meeting, the five other council members all voted to unseat DeCola for violating his official duties.

DeCola challenged his removal in state proceedings and lost. First, he filed a state administrative action alleging that the Council violated his due process rights when it removed him. After losing there, he sought review in state court, and after a change in venue, the Marshall Superior Court ruled that DeCola did not state a due process claim and dismissed his suit. A state appellate court affirmed the dismissal. *DeCola v. Starke Cnty. Council,* 172 N.E.3d 709 (Ind. Ct. App. 2021) (table decision). The state supreme court declined to hear an appeal. *Id., trans. denied,* 176 N.E.3d 453 (Ind. 2021) (table decision).

Meanwhile, DeCola turned to federal district court, again suing the Council and the members who voted to unseat him and alleging that they violated his due process rights. 42 U.S.C. § 1983. The district court initially stayed the case in deference to the ongoing state-court proceedings. *See Colo. River Water Conservation Dist. v. United States,* 424 U.S. 800, 813 (1976). But once those ended, the district court granted the defendants' motion for judgment on the pleadings based on the defense of claim preclusion.

On appeal, the Council argues that DeCola's appellate argument is undeveloped and the appeal should be dismissed. FED. R. APP. P. 28(a)(8). We liberally construe the pleadings of litigants representing themselves, and in his brief DeCola attempts to argue why the district court erred. *See Atkins v. Gilbert,* 52 F.4th 359,361 (7th Cir. 2022). We prefer to decide cases on the merits when we can, *see id.,* and we can do so here.

The district court correctly concluded that, based on his earlier loss in state court, claim preclusion blocks DeCola's federal claim. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, we apply Indiana law to determine whether a prior state judgment precludes this suit. See *Robbins v. MED-1 Sols., LLC,* 13 F. 4th 652, 656 (7th Cir. 2021). Relying on matters of public record, the Council has shown that all the elements of claim preclusion are present. *See Ind. State Ethics Comm'n v. Sanchez,* 18 N.E.3d 988,993 (Ind. 2014). The state-court ruling was a judgment on the merits, the judgment was between the same parties (or their representatives), and it adjudicated essentially the same due process claim.

See ***id.*** For purposes of preclusion, it does not matter that the state suit started as an administrative proceeding. State administrative rulings that, as here, "have been subjected to state judicial review are entitled to both claim and issue preclusive effect in federal courts." *Staats v. County of Sawyer,* 220 F.3d 511,514 (7th Cir. 2000) (citing *Kremer v. Chem. Constr. Corp.,* 456 U.S. 461, 481-82 n.22 (1982)). Finally,

DeCola has identified no claim in this federal case that he could not have raised in the state suit.

AFFIRMED

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

THOMAS DE COLA,
Plaintiff,
v. Case No. 3:20-CV-869 JD
STARKE COUNTY COUNCIL, et al.
Defendants.

OPINION AND ORDER

The Defendants in this case have asked the Court to grant their motion for judgment on the pleadings and end Plaintiff Tom De Cola's efforts through this lawsuit to regain his seat on the Starke County Council and remedy the harm he feels he has experienced because of his expulsion from the governing body. Mr. De Cola, proceeding pro se, has opposed the Defendants' request and submitted a separate motion asking that the Court set a new trial in this matter. For the following reasons, the Court finds the Defendants are entitled to judgment on the pleadings and denies Mr. De Cola's request for a new trial.

A. Factual Background

Mr. De Cola was elected to the Starke County Council in November 2018 and received hiscertificate of election later that month. (DE 1 ¶ 1.) He officially took office and attended his first council meeting in January 2019. (*Id.* ¶¶ 2–4.) From the time he was elected through January 2019, Mr. De Cola alleges Starke County Commissioner Kathy Norem, one of

the defendants in this case, "maliciously defamed" him by repeatedly questioning his qualification for office. (*Id.* ¶ 5.) The questions about his qualifications led the majority of the councilmembers to decide during their January 2019 hearing that they wanted to expel Mr. De Cola from the Council. The members gave Mr. De Cola until the next scheduled meeting in February to provide a response to their intent to expel him. (*Id.* ¶ 6.) When the Council met next in February, Mr. De Cola gave a verbal response regarding his expulsion and the council members subsequently voted to expel him. (*Id.* ¶¶ 7–8.)

Mr. De Cola challenged his expulsion by filing an administrative appeal of the Council's decision in the Starke Circuit Court (*"De Cola I"*). He named the Starke County Council itself as the lone defendant in the case and alleged he had been expelled without justification, without an official charge, and without due process. (*Id.* ¶¶ 8–11; DE 1-4 at 5–7.) As the state case proceeded, venue was eventually changed to the Marshall Superior Court 2 (*Tom A. DeCola u Starke County Council*, Cause No. 50D02-2005-MI- 36). (*Id.* ¶ 12.) After the change of venue, Mr. De Cola amended his complaint to add allegations that his expulsion was the product of an illegal and unconstitutional civil conspiracy between the councilmembers and Ms. Norem. (DE 1-4 at 106–08, 186–89.) The Council then moved to dismiss Mr. De Cola's amended complaint. The Marshall Superior Court granted the Council's motion in part in September 2020. It found that Mr. De Cola had received adequate due process but declined to dismiss the case outright because the court could not conclude

that Mr. De Cola had been properly expelled under Indiana law. (DE 1 ¶ 14; DE 1-3 at 5.) The Council eventually moved the Marshall Superior Court to reconsider that decision.

Soon after receiving the state court's order, Mr. De Cola filed this lawsuit. The lawsuit mirrored *De Cola I* but packaged the constitutional claims related to deprivation of his elected office and harm from the alleged civil conspiracy as civil rights violations actionable under 42 U.S.C. § 1983. (DE 1 at 5–6, 10.) Mr. De Cola also named more defendants in the new suit, adding Dave Pearman, Freddie Baker, Kay Gudeman, Robert Sims, and Howard Bailey, the council members who voted to expel him, as well as Ms. Norem. He additionally moved this Court to enjoin the state proceedings, in effect asking the Court to act as an appellate forum to consider his disagreements with the way the state court had ruled. (DE 34 at 6–7.) The Defendants responded by moving the Court for a full dismissal of this federal case. While the parties were briefing the various motions in this case, the Marshall Superior Court dismissed *De Cola I* with prejudice after revisiting the merits in response to the motion for reconsideration the Council had filed. (DE 41-1.) Mr. De Cola decided to continue briefing this case while also appealing the Marshall Superior Court's dismissal decision to the Indiana Court of Appeals.

The Court eventually denied the Defendants' motion to dismiss and instead stayed this case based on the *Colorado River* abstention doctrine to allow the state court proceedings to run their course. (DE 39.) The Indiana Court of Appeals subsequently affirmed

the Marshall Superior Court's dismissal of Mr. De Cola's state claims and the Indiana Supreme Court then denied a transfer of jurisdiction. (DE 41-2 at 8–16.) With the state proceedings having reached their end, the Court lifted the prior stay in this case. (DE 39.) The Defendants proceeded to file their pending motion for judgment on the pleadings, (DE 40), and Mr. De Cola filed his motion for new trial, which also appears to serve as his response to the Defendants' motion for judgment on the pleadings, (DE 42).

B. *Standard of Review*

Federal Rule of Civil Procedure 12(c) permits a party to move for judgment on the pleadings after the parties have filed a complaint and answer. Fed. R. Civ. P. 12(c). Judgment on the pleadings is appropriate when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. *United Here Loc. 1 v. Hyatt Corp.*, 862 F.3d 588, 595 (7th Cir. 2017). A moving party is entitled to judgment on the pleadings when it appears beyond doubt that the non-moving party "cannot prove any facts that would support his claim for relief." *N. Ind. Gun & Outdoors Shows v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998).

The Court is confined to the matters addressed in the pleadings and must review allegations in the light most favorable to the non-moving party. *See Kiddy-Brown v. Blagojevich*, 408 F.3d 346, 355 (7th Cir. 2005). The pleadings include "the complaint, the answer, and any written instruments attached as exhibits." *N. Ind. Gun & Outdoor Shows,* 163 F.3d at 452 (citing Fed. R. Civ. P. 10(c)). The Court may also consider documents attached to the motion for

judgment on the pleadings provided they are referred to in the plaintiffs' complaint and are central to the plaintiffs' claims. *Adams v. City of Indianapolis*, 742 F.3d 720, 729 (7th Cir. 2014).

C. Discussion

The Court begins by addressing the Defendants' motion for judgment on the pleadings and then moves to briefly discuss Mr. De Cola's motion for a new trial.

1. Motion for judgment on the pleadings

The Defendants argue that judgment on the pleadings is appropriate here because the state courts have already fully resolved Mr. De Cola's claims and have therefore led to the claims being barred based on res judicata. Because state judicial proceedings have the same full faith and credit in federal courts that they do in the courts of the state from which they are taken, a federal court will look to relevant state law when determining the preclusive effects of the state courts' judgments. 28 U.S.C. § 1738; *Starzenski v. City of Elkhart*, 87 F.3d 872, 877 (7th Cir. 1996). Here, the relevant state courts and state laws are those of Indiana. Indiana courts recognize res judicata as a way to prevent "the repetitious litigation of disputes that are essentially the same." *Indianapolis Downs, LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. Ct. App. 205).

Indiana recognizes four requirements for a claim to be precluded under the doctrine of resjudicata:

(1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and

(4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies.

Id. Indiana courts further recognize that "it is helpful to inquire whether identical evidence will support the issues involved in both actions" as well as that a "party is not allowed to split a cause of action, pursuing it in a piecemeal fashion and subjecting a defendant to needless multiple suits." *Id.*

Mr. De Cola never filed a response to the Defendants' motion for judgment on the pleadings. He instead appears to have included an argument in opposition to the motion in his motion for new trial filed several weeks after a response to the Defendants' motion was due. (DE 42); N.D. Ind. L.R. 7-1(d)(2)(A). While Mr. De Cola's argument against res judicata within his motion for new trial is hard to parse, he appears to argue, without further explanation, only that the final judgment on the merits requirement for res judicata has not been met because the state proceedings constituted "breaches of ex post facto prohibition laws" and were contrary to "public policy." (DE 42 at 5.) First, the Court finds that this unexplained and unsupported argument against res judicata filed several weeks after the response deadline is waived as underdeveloped, even accounting for Mr. De Cola's pro se status. *See Shipley*

v. Chicago Bd. Of Election Commissioners, 947 F.3d 1056, 1063 (7th Cir. 2020) ("Arguments that are underdeveloped, cursory, and lack supporting authority are waived."); *see also Uncommon, LLC v. Spigen, Inc.*, 926 F.3d 409, 419 n.2 (7th Cir. 2019); *Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016).

Second, even if the Court were to credit Mr. De Cola's argument, it would note that he has only challenged the final judgment on the merits requirement for res judicata and, through silence, has waived opposition to any of the other three res judicata requirements. *Id.* Despite those waivers, the Court nonetheless proceeds to explain why the record supports a finding that each requirement for res judicata applies to preclude Mr. De Cola from receiving any of the relief he has sought through this lawsuit in light of the state court decisions.

The Defendants have demonstrated that each of the res judicata requirements are established here. First, the Marshall Superior Court, which rendered the original state decision, had "original and concurrent jurisdiction in all civil cases" as an Indiana state court. Ind. Code § 33-29-1-1.5(1). It therefore follows that the Marshall Superior Court was a court of competent jurisdiction that could consider and rule on the host of civil issues Mr. De Cola raised in his state complaint. (DE 41-3.)

Second, the Marshall Superior Court issued a final order on the merits. The court specifically made clear in granting the Starke County Council's motion to reconsider dismissal of Mr. De Cola's amended complaint that it had reviewed the merits of all of the relevant pleadings filed in the matter and decided to dismiss Mr. De Cola's state complaint in its entirety with prejudice. (DE 41-1.) Mr. De Cola then had the opportunity to appeal that decision to the Indiana Court of Appeals and raise any arguments in opposition to the decision that he thought relevant. (DE 41-2; DE 42 at 5.) The Indiana Court of Appeals

affirmed the Marshall Superior Court's dismissal in an order of its own, and, when Mr. De Cola appealed the appellate court's decision to the Indiana Supreme Court, the Indiana Supreme Court denied transfer. (DE 41-2 at 8–16.) Based on that clear record, the Court finds that there was a final judgment on the merits in Mr. De Cola's state case. *See Towne & Terrace v. City of Indianapolis*, 170 N.E.3d 659, 661– 62 (Ind. Ct. App. 2021) (recognizing that a denial of transfer from the Indiana Supreme Court represents a final decision).

Third, the claims Mr. De Cola raised in the current federal lawsuit were, or could have been, adjudicated in his state court action. As an initial matter, there is no dispute between the parties that Mr. De Cola's claims in both this case and his now- concluded state case arose from the Starke County Council's decision to expel him from his seat on the Council. (DE 1 at 3–6, 9; DE 41 at 5; DE 42 at 3; DE 41-3.) It is also clear from a review of the complaintin this case and the complaint Mr. De Cola filed in *De Cola I* that the allegations Mr. De Cola raised in the two cases are nearly identical. For example, both complaints raised allegations of wrongdoing in ejecting Mr. De Cola from his Council seat that Mr. De Cola argued violated Indiana Code Sections 36-2-3-9, 34-17-1-1(1), and 34-17-2-6(c), as well as the Fifth Amendment, Fourth Amendment, Sections 9 and 10 of Article I of the federal Constitution, and Section 24 of Article I of the Indiana Constitution. (DE 1 at 5–10; DE 41-3 at 1, 4.) While it is true that Mr. De Cola raised additional claims under 42 U.S.C. § 1983, the Ninth Amendment, and 18 U.S.C. §§ 241– 242 in this

federal case, those additional allegations do not preclude the application of res judicata here because there is no reason Mr. De Cola could not have asserted those claims in *De Cola I*. *See Indianapolis Downs*, 834 N.E.2d at 703 (holding that res judicata also extends to claims that "could have been determined in the prior action" and recognizing that claim splitting is not allowed).

To put a finer point on the similarity between the claims raised in this case and *De Cola I*, the Court turns to the identical evidence test, the test Indiana courts use to determine whether a claim could have been brought in a previous action. *See Indianapolis Downs*, 834 N.E.2d at 703; *Hilliard v. Jacobs*, 957 N.E.2d 1043, 1047 (Ind. Ct. App. 2011). After reviewing the two complaints, it is clear that all of the claims the complaints raised stemmed from the same factual occurrence, Mr. De Cola's expulsion from the Starke County Council, and that Mr. De Cola intended to rely on the same exhibits, namely the available documents associated with his expulsion, to support his claims in both lawsuits. (DE 1-3; DE 1-4; DE 1-5; DE 1-6; DE 41-3 at 6–17.) The Court therefore finds that the evidence that Mr. De Cola used to support his state claims would be either identical or substantially identical to the evidence he would use to support his federal claims, including the additional federal claims he did not raise in his state case, such that each of Mr. De Cola's federal claims could have and should have been brought in his state case. *See Hilliard*, 957 N.E.2d at 1047 (citing *Atkins v. Hancock Cnty. Sheriff's Merit Bd.*, 910 F.2d 403 (7th Cir. 1990)).

Finally, the Court finds that the adjudicated

state court controversy was between the same parties in the present suit or their privities. While the Starke County Council was the only defendant named in both *De Cola I* and this federal case, the additional defendants in the present case were all in privity with the Starke County Council in *De Cola I*. "The term 'privity' describes the relationship between persons who are parties to an action and those who are not parties to an action but whose interests in the action are such that they may nevertheless be bound by the judgment in that action." *Small v. Centocor, Inc.*, 731 N.E.2d 22, 27–28 (Ind. Ct. App. 2000); *see also Taylor v. St. Vincent Salem Hosp., Inc.*, 180 N.E.3d 278, 286 n.4 (Ind. Ct. App. 2021) (recognizing that a privy is one "whose interests are represented by a party to the action").

The defendants in this case who were not named in *De Cola I* were Starke County Councilmembers Dave Pearman, Freddie Baker, Kay Gudeman, Robert Sims, and Howard Bailey, as well as Starke County Commissioner Kathy Norem. (DE 1; DE 41-3.) As the Court has previously concluded, and Mr. De Cola has not subsequently challenged, Mr. De Cola sued each of the individual defendants in their official capacities for purposes of this federal case. (DE 34 at 9–10) (citing *Stevens v. Umsted*, 131 F.3d 697, 706–07 (7th Cir. 1997)) (explaining why the record indicates a lawsuit against the defendants in their official capacities). Their interests are thus the interests they have in their official capacities as Starke County officials, which align with the interests of the Starke County Council itself. It also follows that each of the defendants in this case not named as

parties in the *De Cola I* lawsuit would have been bound, in their official capacities, by any judgment in *De Cola I*, because they were the Starke County officials who would have been required to ensure that the Starke County Council reinstated Mr. De Cola's councilmember position and paid any damages Mr. De Cola may have been awarded through the state case. (DE 41-3 at 4.) Based on those facts, the Court concludes that the defendants in the present case were either also parties to the *De Cola I* lawsuit or were in privity with the Defendant Starke County Council in the *De Cola I* lawsuit such that the fourth requirement for application of res judicata is met.[1]

With each of the four requirements for res judicata established here, the Court finds Mr. De Cola cannot obtain any relief on his pending claims. The Defendants are therefore entitled to their requested judgment on the pleadings. *See United Here Loc. 1*, 862 F.3d at 595.

2. Motion for new trial

Before concluding, the Court briefly addresses Mr. De Cola's motion for a new trial. Mr. De Cola's filing is difficult to decipher and appears to once again ask this Court to act as an appellate body in which Mr. De Cola can voice his frustrations about his lack of success in state court and seek a reversal of the state courts' rulings on his efforts to regain his seat on the

[1] The Court notes that Mr. De Cola brought a separate case in Indiana court in February 2021 against the same defendants that raised the same claims. (Case Number 64C01-2106-CT- 6018). The Porter Circuit Court dismissed the case on res judicata grounds in February 2022 for the same reasons the Court has explained here.

Council. (DE 42.) As the Court has explained in more detail in prior orders, it cannot act as an appellate forum for state court decisions. (DE 34 at 6–7; DE 39 at 2); *Atl. Coast Line R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970). The Court thus once again denies Mr. De Cola's request to reverse the state courts' holdings to the extent Mr. De Cola is seeking that relief. Further, Mr. De Cola has failed to explain why a motion for new trial has any merit here. A motion for new trial is only proper after entry of final judgment, something that had not happened in this case at the time Mr. De Cola filed his motion. Fed. R. Civ. P. 59(b). The Court therefore denies Mr. De Cola's motion for a new trial as meritless.

D. *Conclusion*

For the foregoing reasons, the Court GRANTS the Defendants' Motion for Judgment on the Pleadings (DE 40) and DENIES Plaintiff Tom De Cola's Motion for a New Trial (DE 42). The Court directs the Clerk to enter judgment in favor of the Defendants.

SO ORDERED.
ENTERED: October 20, 2022

/s/ JON E. DEGUILIO
Chief Judge
United States District Court

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purposes of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE ATTORNEYS FOR APPELLEE

Thomas A. DeCola

Elizabeth A. Knight North Judson, Indiana
Katlyn M. Christman
Lisa A. Baron Knight Hoppe Kurnik & Knight Ltd.
Merrillville, Indiana IN THE COURT OF

APPEALS OF INDIANA

Thomas A. DeCola,
Appellant-Plaintiff,
v.
Starke County Council,

July 28, 2021
Court of Appeals Case No.
21A-MI-120
Appeal from the Appellee-Defendant
Starke Circuit
Court
The Honorable Dean A. Colvin, Judge
Trial Court Cause No.
50D02-2005-MI-36

May, Judge.

Thomas A. DeCola appeals following the trial court's order dismissing his amended complaint. We affirm.

Facts and Procedural History

In November 2018, DeCola won election to the Starke County Council. On December 7, 2018, DeCola swore and filed with the Clerk of the Starke Circuit Court an oath of office, which provided:

> I, [DeCola], do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully, impartially, and diligently discharge the duties of the office of County Council Member 4th District of this County, according to law and to the best of my ability.

(App. Vol. II at 127.) On December 12, 2018, DeCola attended the Association of Indiana Counties ("AIC") conference in Indianapolis.

On January 1, 2019, DeCola's term began, and he attended the first Council meeting of the year on January 22, 2019. At the meeting, the Council discussed and approved a motion to further investigate questions about DeCola's residency, and Starke County Commissioner Kathy Norem came before the Council and asked that they address DeCola's behavior at the AIC conference. She presented the Council with two witness statements and a police report. According to the witness

statements, DeCola approached a table of individuals at the conference and introduced himself as a councilman from Starke County. DeCola joined the group at the table, and in the course of conversation, "[h]e made the statement that he was an active member of the Aryan Brotherhood and that now 'n[*****]s and Jews' were no longer going to be allowed in Starke County. He went on to describe how he used to torture and abuse 'n[*****]s and Jews' in an underground bunker." (App. Vol. III at 94.) The other individuals at the table moved to a different table. DeCola followed them to the new table and continued talking "about [how] 'n[*****]s and Jews' after January 1st, will not be allowed into Starke County." (*Id.*) The Council then passed a motion for DeCola to address the allegations by the next Council meeting.

At the Council's next meeting on February 18, 2019, the Council continued its consideration and discussion of DeCola's behavior at the AIC conference. DeCola did not specifically deny the allegations, but he did state "that his best response is to follow the rules of procedure and that is all he has to say." (App. Vol. II at 174.) Council President Dave Pearman repeatedly asked DeCola if he preferred for the Council to schedule another hearing to address what actions the Council should take regarding DeCola's behavior at the AIC conference, but DeCola refused to answer. Councilman Brad Hazelton moved to have a separate hearing regarding the allegations against DeCola, but the motion failed. The county attorney then asked DeCola again if he wanted a hearing, and DeCola did not request a hearing. Councilman Robert Sims

moved to expel DeCola from the Council, and the motion passed with five votes in favor and one vote opposed.

On April 2, 2019, DeCola filed a complaint against the Council in the Starke Circuit Court. Following multiple changes of venue and changes of judge, the case was transferred to Marshall Superior Court. On June 24, 2020, DeCola filed an amended complaint. The amended complaint alleged "the cause of action of wrongful expulsion" and sought "reinstatement of [DeCola's] council office, compensatory reimbursement for the costs of this litigation and lost salary, and punitive damages as relief." (*Id.* at 121.) The Council then filed a motion to dismiss DeCola's complaint pursuant to Trial Rule 12(B)(6). The Council argued Indiana does not recognize a private cause of action for damages related to expulsion from a county council seat and DeCola failed to state a claim for any violation of his due process rights.

On September 28, 2020, the trial court issued an order granting the Council's motion to dismiss in part and denying it in part. The trial court concluded that DeCola could proceed on his claim for "wrongful expulsion" but DeCola did not state a claim for violation of his right to due process because he did not accept the Council's invitations for a hearing. (App. Vol. III at 6.) The Council then filed a motion to reconsider challenging the trial court's conclusion with regard to DeCola's claim for wrongful expulsion. On December 22, 2020, the trial court granted the Council's motion to reconsider and rescinded the portion of its September 28, 2020, order denying the Council's motion to dismiss. The trial court then

granted the Council's motion to dismiss.

Discussion and Decision

Initially, we note that DeCola represented himself before the trial court and proceeds pro se on appeal. "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (internal citation omitted), *reh'g denied*.
Indiana Appellate Rule 46 states:

A. Appellant's Brief. The appellant's brief shall contain the following sections under separate headings and in the following order:

* * * * *

(8) *Argument.* This section shall contain the appellant's contentions why the trial court or Administrative Agency committed reversible error.
(a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.
(Emphases in original). This Rule is meant "to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the

case." *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). "It is well settled that we will not consider an appellant's assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules." *Id.*

DeCola's appellant brief falls far short of Appellate Rule 46's requirements. DeCola's issue statement questions whether the trial court erred in granting the Council's motion to reconsider and dismissing his amended complaint, but DeCola spends most of his brief addressing whether the trial court's September 28, 2020, order---which preceded the trial court'sorder on the Council's motion to reconsider and was later rescinded by the trial court---amounts to an appealable order. Nonetheless, we cannot make sense of his argument on appeal. For instance, DeCola writes in the argument section of his brief:

DeCola states herein that the "magic language" doctrine determining whether an order is a final appealable order, as found in *Snyder*, 62 N.E.3d at 459, obstructs the common-sense merit-based approach of plenary logic and determinative discretionary process required to achieve the flexibility required for quickly resolving priority seeking administrative appeals involving election and office holding issues. Trial Court tact in eschewing the "magic language" can be used to deprive the relief seeking litigant of precious time only for the sole purpose of damaging them politically. The principles of equity far outweigh the "magic language" doctrine in determining whether an order is a final appealable order concerning election and office holding

administrative appeals on appeal.
(Appellant's Br. at 8) (errors in original). This excerpt and like statements leave DeCola's brief incomprehensible. Even though DeCola cites opinions of this court and our Indiana Supreme Court, he does not explain how those opinions support his contentions on appeal, as required by Appellate Rule
46. *See In re Moeder*, 27 N.E.3d 1089, 1103 (Ind. Ct. App. 2015) (holding party waived argument for appellate review by failing to identify and explain authorities in support of her argument), *reh'g denied, trans. denied.* Consequently, we hold DeCola waived all arguments on appeal. *See Martin v. Hunt*, 130 N.E.3d 135, 137-38 (Ind. Ct. App. 2019) (holding appellant's claims were waived because he did not present a cogent argument).

Conclusion

DeCola failed to support his arguments on appeal with cogent reasoning and citations to authority asrequired by Appellate Rule 46. Therefore, his arguments are waived, and we affirm the trialcourt.

Affirmed.

Bailey, J., and Robb, J., concur.

STATE OF INDIANA) IN THE
) STARKE CIRCUIT COURT
) SS:
COUNTY OF STARKE) 2020 TERM
CAUSE NO. 75C01-1904-MI-000016 TOM A. DE COLA,
Plaintiff, v.
STARKE COUNTY COUNCIL,
Defendant.

ORDER OF CHANGE OF VENUE

Plaintiff, TOM A. DE COLA (hereinafter referred to as "DE COLA"), having filed his Motion for Change of Venue on August 20, 2019 and the Court having issued its Order on March 11, 2020 and the parties having stricken all counties adjacent to Starke County with the exception of Marshall County, Indiana, the Court now Orders the above cause of action transferred to the docket of the Marshall Superior Court No. 2, at 211 W. Madison St. Ste. 201, Plymouth, Indiana 46563. Any costs incident to or chargeable as a result of this Change of Venue shall be paid by Plaintiff: TOM A. DE COLA. The Clerk of the court is directed to take all action necessary to effectuate this Order,

SO ORDERED this 7th day of April, 2020.

/s/ Jeffrey L. Thorne

Distribution: Tom A. DeCola
Lisa A. Baron, Esq.

STATE OF INDIANA) IN THEMARSHALL SUPERIOR COURT 2

)

COUNTY OF MARSHALL) CASE NO. 50D02- 2005- MI-000036

/s/ Deborah Van DeMark

TOM A. DE COLA
v.
STARKE COUNTY COUNCIL

ORDER ON MOTION TO RECONSIDER DISMISSAL OF PLAINTIFF'S AMENDED COMPLAINT

This matter comes before the Court on the Defendant's Motion to Reconsider, which reads in the following words and figures, to wit HI: The Court, after further review of the motion, pleadings and briefs filed in this matter, GRANTS the Defendant's Motion to Reconsider and rescinds the Order Denying the Defendant's Motion to Dismiss the Amended Complaint and enters the following order:

The Defendant's Motion to Dismiss the Plaintiff's Amended Complaint is hereby GRANTED with prejudice. Clerk to notify respective parties.

So ordered on this the 22nd day of December, 2020.

/s/ Dean A. Colvin Dean A. Colvin, Judge
Marshall Superior Court 2

STATE OF INDIANA) IN THE MARSHALL
) SUPERIOR COURT 2 COUNTY OF
MARSHALL)
CASE NO. 50D02-2005-MI-000036

/s/ Deborah Van DeMark TOM A. DE COLA
Plaintiff, v.
STARKE COUNTY COUNCIL
Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

This cause came before the Court on Defendant's Motion to Dismiss the above captioned cause of action pursuant to Indiana Trial Rule 12(B)(6). Having carefully considered the arguments and briefs of the respective parties, the Court now holds as follows.

FINDINGS

1. On or about November 27, 2018 Plaintiff Tom DeCola (hereafter "Plaintiff") obtained a "Certificate of Election to the Office of County Council Member" from the Starke County Circuit Clerk[1]. The Certificate certified that Plaintiff was elected to County Council "for a tern of four (4)

[1] Plaintiff's Amended Complaint, Exhibit A. This language is also consistent with Ind. Code § 36-2-3-3(b).

years, beginning January 1, 2019, and continuing until a successor is elected and qualified."

2. On or about December 7, 2019, Plaintiff filed with the Clerk of the Starke Circuit Court his "Oath of Office."[2]
3. On or about December 12, 2018, Plaintiff attended an event hosted by the Indiana Association of Counties (hereafter "IAC").[3]
4. 4. On or about December 17, 2019, the Starke County Council adopted its "Code of Conduct" pursuant to Ind. Code §36-2-3-9.[4]
5. On or about January 22, 2019, the Starke County Council at its January meeting addressed "the behavior and actions of Councilman DeCola when he was attending the Association of Indiana Counties Meeting in Indianapolis back in December."[5] It was decided at the meeting that Councilman DeCola would have until the February meeting to answer the behavior allegations made.[6]
6. On or about February 18, 2019, Plaintiff did not present a response to the allegations made against him at the January meeting while attending the Starke County Council's February meeting.[7] The Council then repeatedly asked Plaintiff if he wanted a hearing, to which the Plaintiff failed to

[2] Plaintiff's Amended Complaint, Exhibit B.
[3] Plaintiff's Amended Complaint; Defendant's Memorandum in Support of Its Motion to Dismiss, Exhibit A.
[4] Plaintiff's Amended Complaint, Exhibit D.
[5] Defendant's Motion to Dismiss, Exhibit A, pg. 2-3.
[6] Defendant's Motion to Dismiss, Exhibit A, pg. 3.
[7] Defendant's Motion to Dismiss, Exhibit A, pg. 1-2.

request one. The Council then voted 5-1 to expel Plaintiff.[8]

7. On or about March 22, 2019, notice was sent via letter by the Starke County Council reaffirming the Defendant's vote to expel Plaintiff at the February 18th Meeting after Plaintiff filed a claim with the Council.[9]
8. According to the chronological case summary, Plaintiff filed this cause in the Starke County Circuit Court on April 2, 2019.
9. On or about April 7, 2020, the Plaintiffs Motion for Change of Venue was granted and the above cause was transferred to Marshall County Superior Court No. 2.
10. On or about June 22, 2020, Plaintiff filed an Amended Complaint after being granted leave by the Court to do so.
11. On or about July 10, 2020, Defendant filed a Motion to Dismiss Plaintiff's Amended Complaint for a failure to state a claim upon which relief may be granted under Ind. Trial Rule 12(8)(6).
12. On or about September 22, 2020, the Court held a hearing to hear arguments on the Defendant's Motion to Dismiss and took such matter under advisement.

CONCLUSIONS

The legal standard for the Court granting the Defendant's Motion to Dismiss under Ind. Trial Rule

[8] Defendant's Motion to Dismiss, Exhibit B, pg. 2.
[9] Plaintiff's Amended Complaint, Exhibit C.

12(8)(6) is if the claimant fails to state a claim upon which relief may be granted, the claim shall be dismissed. However, the Court finds that the Plaintiff did in fact state a claim upon which relief may be granted. Because the Defendant's Motion to Dismiss is founded on several bases, the Court has individually addressed each of the Defendant's assertions below.

I. THERE IS NO PRIVATE RIGHT OF ACTION FOR DAMAGES RELATED TO THE EXPLUSION OF A COUNTY COUNCIL MEMBER.

The Defendant relies on Ind. Code §36-2-3-9 which states in relevant part the following:

"The fiscal body may:
(1) expel any member for violation of an official duty;
(2) declare the seat of any member vacant if the member is unable or fails to perform the duties of the member's office; and
(3) adopt its own rules to govern proceedings under this section, but a two-thirds (2/3) vote is required to expel a member or vacate a member's seat."

The Court finds that Defendant, Starke County Council, was not acting within its authority under Ind. Code §36-2-3-9 when it expelled Plaintiff from the Council. The alleged violations occurred before Plaintiffs term of office began. Thus, Plaintiff was not acting within his official duty when he attended the December 12, 2018 IAC meeting since his term of office did not begin until January 1, 2019. Therefore, Defendant could not lawfully expel him for violation of an official duty under Ind. Code §36-2-3-9 for Plaintiff's alleged actions that took place before his term of office began.

Although the Defendant argues Plaintiff had filed his Oath of Office prior to the IAC meeting and therefore he was under an official duty of his office, this Court does not find that compelling. Rather, the Court points to the language in Ind. Code §36-2-3-3(b) which states: "The term of office of a member of the fiscal body is four (4) years, *beginning January 1* after election and continuing until a successor is elected and qualified." [emphasis added].[10] The Defendant does not point to any circumstance or authority other than the Plaintiff filing his Oath of Office prior to the IAC meeting as to supporting the Defendant's contention that the Plaintiff was acting within his official duty at the time of the IAC meeting.

Since Plaintiff was unlawfully expelled from the Council, the Court does find that the Plaintiff does have a private right of action against the Defendant. While Ind. Code § 36-2-3-9 does not explicitly provide such a tight, the Court turns to Indiana Administrative Orders and Procedures Act (hereafter "AOPA") codified at Ind. Code §4-21.5-5- *et seq.* Ind. Code §4-21.5- 5-15 states there are remedies and relief available at law for administrative actions found to be prejudicial. More specifically, a court can grant relief Ind. Code §4-21.5-5-14(3) if a person seeking judicial relief for being "prejudiced by an agency action that is: ... in excess of statutory jurisdiction, authority, or limitation ... "

[10] This language of lnd. Code § 36-2-3-3(b) is also directly cited on Plaintiffs Amended Complaint, Exhibit A "Certificate of Election to the Office of County Council Member".

Here, the Defendant acted in excess of its statutory authority by expelling the Plaintiff for his alleged actions that occurred prior to him taking office. Thus, under Ind. Code §4-21.5-5- 14(d) Plaintiff is entitled to relief. Therefore, Plaintiff has a right to bring such an action.

II. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The Defendant argues that the Plaintiff fails to state a claim for "wrongful expulsion." However, as explained above, Plaintiff does have a claim since Plaintiff 1) does have a right of action for relief under Ind. Code §4-21.5-5-15 and 2) Plaintiff was not properly expelled pursuant to Ind. Code §36-2-3-9 because he was not violating his official duties for the allegations that took place prior to him entering office. Therefore, Plaintiff did state a claim upon which relief may be granted.

III. PLAINTIFF FAILS TO STATE A CLAIM OF DUE PROCESS VIOLATIONS.

The Defendant argues that the Plaintiff fails to state a claim of due process violations, for which this Court agrees. The Court does in fact find that the Plaintiff's Due Process rights were not violated as he was offered a hearing multiple times during the February 18, 2019 Starke County Council Meeting, for which he did not take advantage. [11]Thus, the Court finds that Plaintiff failed to state a claim of due process violations as the Plaintiff was provided due process and failed to utilize.

---

[11] Defendant's Motion to Dismiss, Exhibit B, pg. 1-2.

IV. PLAINTIFF FAILED TO PURSUE JUDICIAL REVIEW OF DEFENDANT'S DECISION TO EXPEL.

Defendant relies on Ind. Code §4-21.5-1-1 et seq. in arguing that the Plaintiff failed to pursue judicial review within 30 days of the decision. Under Ind. Code §4-21.5-5-5, "a petition for review is timely only if it [is] filed within thirty (30) days after the date that notice of the agency action is the subject of the petition for judicial review was served."

Here, Plaintiff's petition was timely in that Plaintiff filed his Complaint on April 2, 2019 within 30 days of the notice of the Starke County Board of County Council Letter dated March 22, 2019 was sent to Plaintiff. Within this letter from the Defendant, it states: "After discussion of your Claim and review of the record, the six members of the Council in attendance unanimously reaffirmed their decision of February 18 expelling you from the Starke County Council pursuant to their authority under Ind. Code 36-2-3-9."[12] Following the notice provided to the Plaintiff by the letter from Defendant dated March 22, 2019, Plaintiff then filed his petition in the Starke County Circuit Court on April 2, 2019. Thus, Plaintiff was timely in filing his petition for judicial review.

V. DEFENDANT IS ENTITLED TO IMMUNITY UNDER IND. CODE §34-13-3- 3(8).

Defendant argues immunity under the Indiana Torts Claim Act, thus the Comi should grant the

[12] Plaintiff's Amended Complaint, Exhibit C.

Defendant's Motion to Dismiss. The Defendant relies on Ind. Code §34-13-3-3(8), which states in relevant part a governmental entity is not liable if a loss results from "(8) the adoption and enforcement of or failure to adopt or enforce: (a) a law (including rules and regulations... " While this would be the case if the Defendant had properly enforced its auth0lity granted under Ind. Code §36-2-3-9, however, the Defendant did not do so. The Defendant failed to properly enforce its statutory authority granted by Ind. Code §36-2-3-9 when Defendant wrongfully expelled Plaintiff from the Council for alleged incidents taking place before Plaintiff's term started. Thus, the Plaintiffs Amended Complaint should not be dismissed based upon the immunity available under the Indiana Tort Claim Act. In conclusion, the Court finds that Plaintiff stated claims upon which relief may be granted in regards to Plaintiff possessing a right of action and relief available for wrongful expulsion.

However, the Court does agree that the Plaintiff failed to state a claim for violations of his Due Process Rights.

Therefore, the Court partially DENIES the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint regarding Plaintiff's claims for wrongful expulsion. The Court GRANTS the Defendant's Motion to Dismiss only for Plaintiff's Due Process Claim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED
that
Defendant Starke

County Council's Motion to Dismiss is hereby partially DENIED.

The clerk is directed to forward a copy of this order to the parties of record.

So ordered this 28th day of September, 2020

/s/ Dean A. Colvin

DEAN A. COLVIN, JUDGE
MARSHALL COUNTY SUPERIOR COURT

STATE OF INDIANA) IN THE
MARSHALL SUPERIOR COURT 3
)
COUNTY OF MARSHALL) CAUSE NO.
50D03-2005-MI-000036

TOM A DECOLA /s/ Deborah Van De Mark VS
STARKE COUNTY COUNCIL

ORDER ON PLAINTIFFS VERIFIED MOTION FOR RELEIF FROM JUDGEMENT.

1. On December 22, 2022, the Court entered an order granting Defendants Motion to Dismiss Plaintiffs Amended Complaint.

2. In response, Plaintiff elected in lieu of filing a motion under Trial Rule 60 and or a Motion to Correct Errors to pursue a direct appeal of the Court's order dismissing Plaintiffs claims.

3. On July 28, 2021, the Indiana Court of Appeals, after having the issue fully briefed, issued an eight- page Memorandum Decision affirming the trial courts Order of dismissal.

4. Subsequently on September 12, 2021, Plaintiff filed a Petition to Transfer. Said Petition was also fully briefed and on November 16, 2021, the Indiana Supreme Court denied Transfer.

5. Plaintiff on March 14, 2022 has now filed a Motion for Relief from Judgement under Indiana Trail Rule 60(8)(3), 60(B)(6) and 60(B)(8).

6. The Court having reviewed the Plaintiffs Pleading now finds that Plaintiff has failed to timely file said motion and or provide any evidence to support his claims of fraud, misrepresentation and or misconduct and or allege a meritorious claim as required by Indian Trial rule 60(8)(3).

7. The Court having reviewed the Plaintiffs Pleading now finds that Plaintiff has failed to timely file said motion and or provide any evidence that the judgment is Void under Indiana Trial Rule 60(8)(6).

8. The Court having reviewed the Plaintiffs Pleading now finds that Plaintiff has failed to timely file and or allege a meritorious claim and or provide any evidence or reason justifying relief from the operation of the court's Judgment under Indiana Trial rule 60(8)(8).

9. Accordingly, Plaintiffs Motion for Relief from Judgement under Indiana Trial Rule 60(8)(3), (6) and (8) are **DENIED.**

10. To the extent that Plaintiffs Motion requests a change of venue under Indiana Trail Rule 60(C), said motion is **DENIED.**

11. To the extent that Plaintiffs Motion

requests consolidation of this case with 64CO1- 2106-CT-6018, said motion is **DENIED.**

12. The Court further finds that Plaintiff has exhausted all available legal remedies with respect to review of the Courts December 22, 2022 Order dismissing Plaintiffs claim. As a result, Plaintiff is advised that filing further Trial Rule 608 motions, and or any other motion not supported by the Indiana Trail Rules, or existing Indiana Law, for the express purpose of attacking the Courts dismissal of his claims, may be deemed frivolous, exposing the Plaintiff to sanctions, which may include the awarding of Defendants Attorney fees incurred in response to further pleadings.

So Ordered 3/30/2022

/s/ Torrey J. Bauer Torrey J. Bauer, Special Judge
Marshall Superior Court 3

STATE OF INDIANA IN THE STARKE CIRCUIT COURT

COUNTY OF STARKE SITTING AT KNOX, INDIANA

TOM A.
DeCOLA,
Plaintiff, Cause No.
75C01-2102-CT-005

STARKE COUNTY COMMISSIONERS, STARKE COUNTY COUNCIL, DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, AND KATHY NOREM
(personally and official capacity),
Defendants. /s/ Kim Hall Filed in Open Court

ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND ORDERING A CHANGE OF VENUE

The Court having been advised by the Chief Administrative Officer of the Indiana Supreme Court to first rule on Defendants' Motion to Dismiss and then on Plaintiff's Motion for Change of Venue From the County now finds:

Motion to Dismiss

1. For purposes of ruling on a Motion to Dismiss the Court must assume the version of the facts most favorable to the non-moving party. Thus,
2. Plaintiff was duly elected to the Starke County Council in November, 2018.
3. On December 17, 2018 the Starke County Council passed a resolution outlining official duties of its members. The resolution also provided procedures for the censure and/or removal of members.
4. Plaintiff assumed his office on January 1, 2019.
5. On January 22, 2019 at its first business meeting subsequent to Plaintiff assuming office, The Council voted to remove Plaintiff from the Council pursuant to its late November resolution and IC 36-2-3-9
6. The Council reaffirmed their decision on February 18, 2019.
7. It appears that the alleged conduct that spurred the Council to expel the Plaintiff occurred prior to his assuming the office. The conduct, if true, is troubling but did not occur while he wasin office.
8. IC 36-2-3-9 empowers County Fiscal bodies (a/k/a County Councils) to expel members for "violation of an official duty". Itdoes not define "official duty".
9. It is not clear that a County Fiscal Body can self- define what constitutes an "official duty" under IC 36-2-3-9. It does allow for the adoption of rules to govern a proceeding.
10. It is clear that Plaintiff could not be engaged in an official duty prior to January I, 2019.
11. Thus, it appears that the Council's expulsion action was *ultra vires.*
12. Therefore, at least on the issue of Plaintiff's

expulsion and damages directly associated therewith, Defendants" Motion to dismiss is not well taken.

13. Defendants raise the issue of *res judicata* regarding prior actions in cause 50D02-2005-MI- 000036. An examination of the Chronological Case Summary and facts alleged in the pleadings herein indicate that the Court in that cause agreed that Plaintiff's expulsion was contrary to law but dismissed other parts of his complaint. On November 22, 2020 the Defendants in that action filed a Motion to Reconsider. Pursuant to Trial Rule *53* .4 that Motion was deemed denied after five days.
14. It appears that the Court in 50D02-2005-MI-36 may have belatedly granted Defendants' Motion for to Reconsider. It also appears that the Marshall County cause is in the Indiana Court of Appeals on several issues.
15. The action taken in 50D02-2005-MI-000036 was in response to a Motion to Dismiss. Counter to what the Defendants have stated. Cases disposed of by Motions to Dismiss are not always deemed to be decided on the merits.
16. The expulsion of a duly elected officeholder is a matter that public policy dictates must be decided on its merits. This Court is not fully convinced that this has been done. Therefore, to preserve this issue, it is inappropriate to grant Defendants' Motion to Dismiss at this time.
17. Clearly this may change after an appellate ruling in the Marshall County cause.

Change of Venue from the County

18. The Plaintiff has shown that he is entitled to a Change of Venue from Starke County. The parties have three days to select an adjoining County. After which this Court remands this matter back to the Starke County Clerk to provide the parties a striking list pursuant to Trial Rule 76(D).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Petition for Motion to Dismiss is denied. However, Petition for Change of Venue from the County is granted. The parties have three days to select an adjoining County.

So ordered this 25th day May, 2021.

/s/ Thomas Alevizos THOMAS ALEVIZOS, SPECIAL JUDGE STARKE CIRCUITCOURT

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

THOMAS DECOLA,
Plaintiff, v.

Case No. 3:20-CV-869 JD

STARKE COUNTY COUNCIL, et al.
Defendants.

OPINION AND ORDER

Plaintiff Thomas DeCola's time as a member of the Starke County Council ended abruptly when his fellow councilmembers voted to expel him from his elected position. Mr. DeCola responded by challenging his expulsion in state court, alleging it was illegal, violated his constitutional rights, and was the product of a civil conspiracy against him. He litigated his state case for a year and a half without success before deciding to try his luck in federal court by filing this case and asking the Court to enjoin the state court proceedings. The Defendants in this case oppose Mr. DeCola's requested injunction and have moved the court for a dismissal based on *Colorado River* abstention considerations. For the following reasons, the Court denies both Mr. DeCola's request for an injunction and the Defendants' motion to dismiss.

Statement of Facts

The Court construes Mr. DeCola's *pro se* pleading liberally and takes all well-pleaded allegations as

true. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Mr. DeCola was elected to the Starke County Council in November 2018 and received his certificate of election later that month. (DE 1 ¶ 1.) He officially took office and attended his first council meeting in January 2019. (*Id.* ¶¶ 2–4.) From the time he was first elected through January 2019, Mr. DeCola alleges Starke County Commissioner Kathy Norem, a defendant in this case, "maliciously defamed" him by repeatedly questioning his qualification for office. (*Id.*
¶ 5.) The questions about his qualifications led the majority of the councilmembers to decide during their January meeting that they wanted to expel Mr. DeCola from the Council. The members gave Mr. DeCola until the next scheduled council meeting in February to provide a response to their intent to expel him. (*Id.* ¶ 6.) When the Council met next in February, Mr. DeCola gave a verbal response to the Council regarding his expulsion and the Council subsequently voted to expel him. (*Id.* ¶¶ 7–8.)

Mr. DeCola challenged his expulsion by filing an administrative appeal of the Council's decision in the Starke Circuit Court ("*DeCola I*"). He named the Council itself as the lone defendant in the case and alleged he had been expelled without justification, without an official charge, and without due process. (*Id.* ¶¶ 8–11; DE 1-4 at 5–7.) As the state case proceeded, venue was eventually changed to the Marshall Superior Court 2 (*Tom A. DeCola v. Starke County Council*, Cause No. 50D02-2005-MI-36). (*Id.* ¶ 12.) Mr. DeCola subsequently tried to change venue again because of concerns he had about potential bias, but the state court denied his motion. He additionally

amended his complaint to add allegations that his expulsion was the product of an illegal and unconstitutional civil conspiracy between the councilmembers and Ms. Norem. (DE 1-4 at 106–08, 186–89.) The Council then moved to dismiss Mr. DeCola's amended complaint. The Marshall Superior Court 2 granted the Council's motion in part in September 2020. It found that Mr. DeCola had received adequate due process but declined to dismiss the case outright because the court could not conclude that Mr. DeCola had been properly expelled under Indiana law. (DE 1 ¶ 14; DE 1-3 at 5.)

Soon after receiving the state court's order, Mr. DeCola filed this lawsuit. The lawsuit largely mirrored *DeCola I* but packaged the constitutional claims related to deprivation of his elected office and harm from the alleged civil conspiracy as civil rights violations actionable under 42 U.S.C. § 1983. (DE 1 at 5–6, 10.) Mr. DeCola also named more defendants in the new suit, adding the councilmembers who voted to expel him as well as Ms. Norem. He additionally accompanied his complaint with a motion for preliminary injunction under 28 U.S.C. § 2283 asking the Court to enjoin the prior state order that denied his request to change venue and the prior state order that found he had been afforded adequate due process, because he alleged they infringed on his constitutional rights. (DE 10-1 at 2–3.)

The Defendants responded by opposing Mr. DeCola's motion for preliminary injunction and asking for a full dismissal of the federal case pursuant to Federal Rule of Civil Procedure 12(b)(6) and the *Colorado River* abstention doctrine. As the parties were briefing their

motions, the Marshall Superior Court 2 dismissed *DeCola I* with prejudice. Mr. DeCola has since appealed that dismissal and the appeal is currently pending before the Indiana Court of Appeals (Case No. 21A-MI-00120), which means there is not yet a final judgment in *DeCola I.*

II. Standard of Review

"'[A] preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it.'" *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of USA, Inc.*, 549 F.3d 1079, 1085 (7th Cir. 2008) (quoting *Roland Mach. Co.*

v. Dresser Indus., Inc., 749 F.2d 380, 389 (7th Cir. 1984)). A party seeking a preliminary injunction bears the burden of demonstrating that (1) absent a preliminary injunction, it will suffer irreparable harm in the interim prior to a final resolution; (2) there is no adequate remedy at law; and (3) its claim has a reasonable likelihood of success on the merits. *Turnell*

v. CentiMark Corp., 796 F.3d 656, 661–62 (7th Cir. 2015). A failure to satisfy any of those elements requires that the motion be denied. *Girl Scouts*, 549 F.3d at 1086. If those elements are met, the Court weighs their reparable harm that the moving party would endure without a preliminary injunction against any irreparable harm that the nonmoving party would suffer if the Court were to grant the requested relief using a sliding scale based on the parties' likelihood of success on the merits. *Id.* The Court also considers the public interest, including the effects of the relief on non-parties. *Id.*

In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted under Federal

Rule of Civil Procedure 12(b)(6), the Court construes the complaint in the light most favorable to the plaintiff, accepts the factual allegations as true, and draws all reasonable inferences in the plaintiff's favor. *Reynolds v. CB Sports Bar, Inc.*, 623 F.3d 1143, 1146 (7th Cir. 2010). A complaint must contain only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). That statement must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and raise a right to relief above the speculative level, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). However, a plaintiff's claim need only be plausible, not probable. *Indep. Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012). Evaluating whether a plaintiff's claim is sufficiently plausible to survive a motion to dismiss is "'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *McCauley v. City of Chi.*, 671 F.3d 611, 616 (7th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 678). Documents that are attached to the complaint that the plaintiff references in the complaint and relies on when outlining his claims "become part of the complaint and may be considered as such when the court decides a motion attacking the sufficiency of the complaint." *Williamson v. Curran*, 714 F.3d 432, 436
(7th Cir. 2013).

III. Discussion

The Court is presented with both Mr. DeCola's motion for preliminary injunction and the Defendants' motion to dismiss. The Court first addressesMr. DeCola's

motion for preliminary injunction, which asks for relief the Court cannot provide. The Court then moves to the Defendants' motion to dismiss, which correctly raises *Colorado River* abstention considerations but asks for a result that this Court, relying on Seventh Circuit precedent, does not find appropriate.

A. Preliminary Injunction

Mr. DeCola's motion for preliminary injunction asks this Court, pursuant to 28 U.S.C. § 2283, to "enjoin the Marshall Superior Court 2's order and judgment . . . by reviewing their unconstitutional decisions and abuse of procedure." (DE 10 at 1.) The specific decisions Mr.

DeCola references in his motion are the decisions from the state court that denied his request for a change of venue and found that the Council afforded him adequate due process before expelling him. (DE 10-1 at 3–4.) Mr. DeCola alleged that the state court decisions put him "under great, immediate, and irreparable loss of his constitutional rights," which is actionable under § 1983. (*Id.* at 1.) Because Mr. DeCola's motion asks this Court to stay the decisions of a state court under

§ 2283, known as the Anti-Injunction Act, the Court considers the Act's requirements. (DE 10-1 at 1.) The Anti-Injunction Act forbids a district court from enjoining pending state court proceedings "except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The purpose of the Act is to prevent friction and unnecessary interference between the federal and state courts. *Zurich American Ins. Co. v. Sup. Ct. of*

State of California, 326 F.3d 816, 824 (7th Cir. 2003) (citing *Atlantic C.L.R. Co. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 286–87 (1970)). Mr. DeCola ties his motion to § 1983, a recognized exception to the Act, *Mitchum v. Foster*, 407
U.S. 225, 243 (1972), so his motion is not barred outright. But it is also not automatically allowed. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 151 (1988) ("The fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue.") (emphasis in original). The Court must apply any exception to the Act narrowly and resolve any doubts about the propriety of a federal injunction against state proceedings "in favor of permitting the state courts to proceed in an orderly fashion to determine the controversy." *Atlantic Coast Line*, 398
U.S. at 297. The Court must also carefully consider the "principles of equity, comity, and federalism" that "restrain a federal court when asked to enjoin a state court proceeding" and ensure the injunction request meets the traditional preliminary injunction requirements. *Mitchum*, 407 U.S. at 243; *Zurich*, 326 F.3d at 825.

Mr. DeCola's motion is not proper in light of these necessary considerations. In requesting that this Court enjoin the state court's two orders "by reviewing their unconstitutional decisions and abuse of procedure" (DE 10 at 1), Mr. DeCola in effect asks the Court to act as an appellate forum for state court decisions with which he disagrees. It is well established that the Anti-Injunction Act does not give this Court the power to act as an appellate forum for state court decisions and that the Court must refrain

from acting in this manner. *Atlantic Coast Line*, 398 U.S. at 286 (holding the lower federal courts "were not given any power to review directly cases from state courts"). The appropriate forum for an appeal if Mr. DeCola disagrees with the orders is instead a court within the state system. *Id.* ("Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief in error, if any, through the state appellate courts."). Thus, the Court finds that it cannot grant Mr. DeCola's motion because doing so would greatly interfere with the state court system and violate the principles of equity, comity, and federalism the Anti-Injunction Act exists to protect. *See Mitchum*, 407 U.S. at 243.

B.* Colorado River *Abstention

The Court next turns to analyze the applicability of the *Colorado River* abstention doctrine given the similar state and federal proceedings currently pending. The *Colorado River* abstention doctrine allows a federal court to stay or dismiss a lawsuit "in exceptional circumstances when there is a concurrent state proceeding and the stay would promote 'wise judicial administration.'" *Clark v. Lacy*, 376 F.3d 682, 685 (7th Cir. 2004) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976)). Application of the doctrine is saved for "exceptional circumstances" because federal courts have a "virtually unflagging obligation" to exercise their jurisdiction. *Colorado River*, 424 U.S. at 817–18. The role of the federal court presented with the possibility of abstention is thus not to find a reason to exercise its jurisdiction but instead to determine

whether there is an exceptional circumstance that justifies it giving up that jurisdiction. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 (1983). In short, applying *Colorado River* abstention is the clear exception and should not be undertaken simply because there is a parallel proceeding pending in state court. *Clark*, 376 F.3d at 685 (citing *Sverdrup Corp. v. Edwardsville Comty. Unit Sch. Dist. No. 7*, 125 F.3d 546, 550 (7th Cir. 1997); *LaDuke v. Burlington N. R.R. Co.*, 879 F.3d 1556, 1558 (7th Cir. 1989)).

A court considering whether to apply *Colorado River* abstention conducts a two-part analysis. *Clark*, 376 F.3d at 685. First, the court considers whether the concurrent state and federal actions are actually parallel. *Id.* (citing *LaDuke*, 879 F.3d at 1559). If the court determines the suits are parallel, it then moves to consider several nonexclusive factors that dictate whether exceptional circumstances exist to warrant abstention. *Id.* The factors are:

(1) whether the state has assumed jurisdiction over property; (2) the inconvenience of the federal forum;

(3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forums; (5) the source of governing law, state or federal; (6) the adequacy of state-court action to protect the federal plaintiff's rights; (7) the relative progress of state and federal proceedings; (8) the presence or absence of concurrent jurisdiction; (9) the availability of removal; and (10) the vexatious or contrived nature of the federalclaim.

See id. (citing *LaDuke*, 879 F.3d at 1559; *Lumen Constr., Inc. v. Brant Constr. Co.*, 780 F.2d 691, 694-

95 (7th Cir. 1985)). If a court finds there are exceptional circumstances, it can then choose to abstain. The Supreme Court, in *Colorado River*, affirmed an abstention that resulted in a dismissal. 424 U.S. 800. However, it left open the question of whether a stay or dismissal was more appropriate in such circumstances. *Lumen*, 780 F.2d at 697–98. The Seventh Circuit has consistently held that the proper procedure is to stay because it wants to prevent the risk that the federal plaintiff will be time-barred from reinstating his federal suit if the state proceeding doesn't result in a final decision on the merits. *Id.* at 698.

The Court starts with the first prong of the abstention analysis, determining whether the pending state and federal actions are parallel. The two suits do not need to be identical to be considered parallel but instead are considered parallel "when substantially the same partiesare contemporaneously litigating substantially the same issues in another forum." *Clark*, F.3d 682 F.3d at 686 (citing *Interstate Material Corp. v. City of Chicago*, 847 F.2d 1285, 1288) (internal quotations omitted). It is further not necessary for there to be a "formal symmetry between the two actions," *Lumen*, 780 F.2d at 695, but there "should be a 'substantial likelihood that the state litigation will dispose of all claims presented in the federal case,'" *Clark*, 376 F.3d at 686 (citing *id.*).

After reviewing the complaint in this case (DE 1) and the amended complaint Mr. DeCola filed in his state action (DE 1-4 at 106–08), which he attached and referenced in the instant complaint, *Williamson*, 714 F.3d at 436, it is clear the suits are parallel because

they involve substantially the same parties and substantially the same claims. Both proceedings center on Mr. DeCola's contention that the Starke County Council illegally expelled him under Indiana law without required due process and as part of a civil conspiracy. (DE 1 at 3; DE 1-4 at 106– 08.) While the cases do have some differences, namely that Mr. DeCola added six new defendants and packaged his claims alleging deprivation of his constitutional rights under 42 U.S.C. § 1983 in his federal lawsuit, those differences do not preclude abstention because they are both largely superficial changes to a lawsuit that is still asking the Court to resolve the same central questions. (DE 1; DE 1-4 at 106–08.) The addition of the new defendants in the federal complaint does not make the two cases non-parallel because the parties all share the same interests. The additional defendants Mr. DeCola named in his federal complaint, the individual councilmembers and Commissioner Norem, all appear to have been sued in their official capacities as Starke County officials. First, Mr. DeCola never specified that they were being sued in their individual capacities, which creates a presumption they were sued in their official capacities. *See Stevens v. Umsted*, 131 F.3d 697, 706- 07 (7th Cir. 1997) (holding that a § 1983 complaint "that fails to specify the capacity in which the defendants are being sued is ordinarily construed to be against them in their official capacity"). And second, the individuals are acting as if they were sued in their official capacities by proceeding jointly using the same counsel that the Starke County Council used in *DeCola I* and not raising individual defenses like

qualified immunity. *See id.* (holding "[a] court must also consider the manner in which the parties have treated the suit") (internal citations omitted). Because the parties were sued in their official capacities as Starke County officials, they share the same interests as the Starke County Council and thus do not make this federal case materially different from *DeCola I* in terms of the parties' interests. *Clark*, 376 F.3d at 686 ("Parties with nearly identical interests are considered substantially the same for *Colorado River* purposes" and "[t]he addition of a party or parties to a proceeding, by itself, does not destroy the parallel nature of state and federal proceedings") (internal quotations omitted).

The addition of § 1983 claims into the federal proceedings (DE 1 at 3–4) also does not make the federal proceedings non-parallel. The new claims, just like Mr. DeCola's claims in *DeCola I*, still rise and fall on deciding whether Mr. DeCola was illegally expelled and had his constitutional rights violated. The claims for deprivation of constitutional rights are simply repackaged in this federal case under § 1983. *See Clark*, 376 F.3d at 686–87 ("Just as the parallel nature of the actions cannot be destroyed by simply tacking on a few more defendants, neither can it be dispelled by repacking the same issue under different causes of action.") Because the two suits involve substantially the same parties litigating substantially the same issues, the Court finds the two proceedings parallel for purposes of *Colorado River* abstention.

The Court next moves to the second prong of the *Colorado River* abstention analysis to determine, based on the ten underlying factors, whether

exceptional circumstances exist and support abstention.

1. Whether the state has assumed jurisdiction over property

The first factor weighs against abstention because there is no property at issue in either the state or federal proceedings. While the factor initially appears neutral, it actually weighs

against abstention because of the overriding presumption that a federal court should exercise its jurisdiction. *See DePuy Synthes Sales, Inc. v. Ortho LA, Inc.*, 403 F. Supp. 3d 690, 707–08 (S.D. Ind. 2019)

(citing *Huon v. Johnson & Bell, Ltd.*, 657 F.3d 641, 648 (7th Cir. 2011). Mr. DeCola argued the lack of property at issue doesn't just weigh against abstention but eliminates the potential for abstention altogether because "the *Colorado River* Doctrine applies only to *res* or property actions" and because the absence of property means all ten factors are not satisfied. (DE 29 at 4.) But Mr. DeCola's argument puts forward an incorrect reading of the law. The factors, including this first one, are non-exhaustive and do not come with a requirement that each be met for abstention to be appropriate. Instead, a court must carefully weigh the factors and tailor its analysis to the facts of the case at hand. *See Sverdrup*, 125 F.3d at 550 (holding the analysis does not require "a rote application of the ten factors without tailoring the facts and circumstances to the individual case"). The Court thus finds this factor does not preclude abstention but does weigh against it.

2. The inconvenience of the federal forum

The second factor also weighs against abstention. All

the parties to this case are in close proximity to the Court as they all appear to be either residents of or based in Starke County. (DE 1.) Further, all the underlying conduct alleged in this case appears to have occurred in Starke County, which suggests that any relevant evidence or witnesses are also similarly conveniently located near the Court. *See, e.g., DePuy*, 403 F. Supp. 3d at 708. Thus, the Court finds the federal forum would be convenient and that this factor weighs in favor of exercising jurisdiction.

3. The desirability of avoiding piecemeal litigation While the first two factors weigh against abstention, each of the remaining factors, including the risk of piecemeal litigation, weigh in favor of abstention. Concerns about piecemeal litigation arise from "concerns about the efficient use of judicial resources and the public's perception of the legitimacy of judicial authority," particularly when the two competing proceedings could result in conflicting adjudications. *Tyrer v. City of S. Beloit*, 456 F.3d 744, 756 (7th Cir. 2006). Allowing this case to move forward would not only waste the large amount of judicial resources the state court system and parties have already put into litigating the parallel state claims over the last roughly two years but also create the real risk of conflicting adjudications that could undermine the legitimacy of state judicial authority if this Court starts looking into and ruling on issues that are before the state courts. *See Clark*, 376 F.3d at 687. The Court thus finds this factor weighs in favor of abstention.

4. Order in which jurisdiction was obtained by the concurrent forums The order in which jurisdiction was obtained by the

concurrent forums also favors abstention. It is undisputed that Mr. DeCola filed his state case in April 2019 and did not file his federal case until roughly a year and a half later. (DE 1; DE 1-4.) The Indiana courts were clearly Mr. DeCola's first choice when deciding where to litigate his claims and he only seems to have brought this federal suit when he started feeling he might not be successful in state court. The clear discrepancy in time between when the state and federal courts gained jurisdiction over the claims thus supports abstention.

5. The source of governing law

This factor too favors abstention. Both *DeCola I* and the proceedings before this Court center on Mr. DeCola's claim that he was illegally expelled from the Council pursuant to Indiana law. (DE 1 at 8; DE 1-4 at 106–08.) While Mr. DeCola did allege § 1983 claims in this federal case and alleged deprivations of his constitutional rights in *DeCola I*, those claims are intertwined with his core contention that he was expelled in violation of state law and thus rest toa large extent on resolution of the underlying legality of his expulsion. The Marshall Superior Court 2 and Indiana Court of Appeals have particular expertise in resolving disputes centered on the exercise of Indiana state law, *see Day v. Union Mines, Inc.*, 862 F.2d 652, 660 (7th Cir. 1988), and should be allowed to use that expertise. Thus, the Court finds this factor favors abstention.

6. The ability of state-court action to protect Plaintiff's federal rights

The Court additionally concludes this factor weighs in favor of abstention. Mr. DeCola argued otherwise

because he believes this Court is better equipped to protect his constitutional rights and that the state courts have already taken too long and erred in addressing his concerns. (DE 1-4 at 106–08; DE 29 at 5.) The Court disagrees. First, it is widely understood that state courts are very capable of protecting a litigant's constitutional rights. *See Haywood v. Drown*, 556 U.S. 729, 735 (2009) ("state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law"). And second, the Court puts little weigh in Mr. DeCola's arguments to the contrary because the evidence shows the state courts have resolved the issues in *DeCola I* in a timely manner and after carefully weighing the evidence before them. (DE 1-4.) The fact that Mr. DeCola is concerned that some of those state decisions were averse to his case does not change the fact that the state courts are well-equipped to resolve his federal claims and have done so in a timely manner. The Court thus concludes this factor weighs in favor of abstention.

7. The relative progress of state and federal proceedings

The relative progress of the state and federal proceedings also clearly weighs in favor of abstention. In the roughly year and a half period before Mr. DeCola filed this federal case, the state courts decided numerous substantive motions and oversaw discovery in *DeCola I*. (DE 1- 4.) Thus, by the time this federal case was filed, there had already been significant progress in the state proceedings. Further, since that time, the lower state court has issued an order

dismissing Mr. DeCola's case with prejudice and Mr. DeCola has appealed that decision to the Indiana Court of Appeals. In contrast, this Court has decided two relatively minor procedural motions to date. (DE 19; DE 33.) The discrepancy in progress between the state and federal proceedings suggests that abstention is warranted.

8. The presence or absence of concurrent jurisdiction

The presence of concurrent jurisdiction also favors abstention. For purposes of *Colorado River* abstention, concurrent jurisdiction exists when claims in a federal proceeding may be brought in state court. *Clark*, 376 F.3d at 688. Not only did Mr. DeCola bring largely the same claims in both state and federal court (DE 1; DE 1-4 at 106–08), but state courts are recognized as having concurrent jurisdiction over each of Mr. DeCola's claims, including his federal claims that allege the Council, its members, and Ms. Norem violated his constitutional rights. *See Haywood*, 556

U.S. at 735. The Court thus finds the existence of concurrent jurisdiction weighs in favor of abstention.

9. The availability of removal

Removal is not available here, which also weighs in favor of abstention. Mr. DeCola waited far longer than thirty days after filing his amended state complaint to file this federal case, meaning removal of his state case was never possible while the two parallel proceedings were pending. *See* 28 U.S.C. 1446(b) (explaining the thirty-day deadline for removal); (DE 1-4 at 106–08.) The inability to remove the case to federal court gives the pending parallel state case adegree of separation that would not exist ifitwas

removable. *See Day*, 862 F.3d at 659–60 (there is a "policy against hearing a federal claim which is related to ongoing non-removable state proceedings"). That separation and lack of ability to remove the state case to federal court supports abstention.

10. The vexatious or contrived nature of the federal claim

Finally, Mr. DeCola's federal case appears to be of a vexatious and contrived nature. Mr. DeCola did not bring this federal case until he received an adverse ruling from the Marshall Superior Court 2 that concluded, despite Mr. DeCola's arguments otherwise, that he had received due process before his expulsion. (DE 10-1 at 106–08.) He responded to that order by calling it unconstitutional and by bringing this complaint to seemingly try his luck at convincing this Court of constitutional violations the state court had just found never happened. (DE 1.) Further, he filed the accompanying motion for preliminary injunction (DE 10) with the Court that, at its base, was a request for this Court to tell the state court it was wrong and then circumvent the state court system by allowing Mr. DeCola to start over again in federal court. Those circumstances strongly suggest that Mr. DeCola undertook this federal litigation in a vexatious and contrived manner and that this factor weighs in favor of abstention.

***

Having weighed each of the ten factors in the *Colorado River* abstention analysis and having tailored its analysis to the facts of this case, the Court concludes the factors, taken together, clearly show the presence of exceptional circumstances that warrant

abstention. The Court is then left with the question of whether abstention should take the form of a stay of federal proceedings until the state courts reach a final judgment on Mr. DeCola's claims or whether, as the Defendants' requested in their motion, the Court should dismiss the federal proceedings outright. While the Court acknowledges the Defendants' arguments that this case presents a clear justification for dismissal (DE 23 at 8), the Court, in the interest of preventing any potential for a time bar to Mr. DeCola's federal claims, follows the Seventh Circuit's longstanding position that a stay is the proper procedure for *Colorado River* abstention. *Lumen*, 780 F.2d at 698. The Court also acknowledges the Defendants moved for a dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) but does not find an independent basis for dismissal based on that rule because the Defendants Rule 12(b)(6) arguments all appear to have been tied exclusively to *Colorado River* abstention. The Court anticipates that a stay of the federal proceedings, as ordered here, will allow the state appeal to continue to completion and then allow the parties to seek whatever outcomes they believe are necessary in this case at that time.

IV. Conclusion

For the foregoing reasons, the Court DENIES Plaintiff Thomas DeCola's motion for preliminary injunction (DE 10) and DENIES the Defendants' motion to dismiss (DE 22). The Court further STAYS the proceedings in this case pending the outcome of the related state court proceedings pursuant to the *Colorado River* abstention doctrine.

SO ORDERED. ENTERED: April 29, 2021

/s/ JON E. DEGUILIO
Chief Judge
United States District Court

In the Indiana Supreme Court Thomas A. DeCola
Court of
Appeals Case No. 21A-MI-00120
Appellant(s), Trial Court Case No.
50D02-2005-MI-36

v.

Starke County Council, Appellee(s).

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana on 11/16/2021

/s/ Loretta H. Rush Loretta H. Rush

Chief Justice of Indiana All Justices concur.

CERTIFICATE OF ELECTION TO THE OFFICE OF COUNTY COUNCIL MEMBER

STATE OF INDIANA COUNTY OF STARKE

WHEREAS, Indiana Code 3-10-2-13 required that the office of County Council Member be filled by the electors at the General Election conducted on November 6, 2018; and

WHEREAS, the County Election Board of this County met following the close of the polls at the aforesaid election, tabulated the votes cast for the office of County Council Member, and did declare the candidate receiving the highest number of votes for that office to be elected County Council Member

NOW, THEREFORE, AS THE SECRETARY OF THE COUNTY ELECTION BOARD AND THE DULY ACTING CIRCUIT COURT CLERK OF THIS COUNTY, I CERTIFY THAT THOMAS DeCOLA was elected **COUNTY COUNCIL MEMBER, DISTRICT 4** for a term of four (4) years, beginning January 1, 2019, and continuing until a successor is elected and qualified.

WITNESS, MY HAND AND OFFICIAL SEAL, THIS THE 27TH DAY OF NOVEMBER 2018.

/s/ Vicki L. Cooley Circuit Court Clerk

OATH OF OFFICE

STATE OF INDIANA /s/ Vicki L. Cooley

COUNTY OF STARKE

I, the undersigned, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully, impartially, and diligently discharge the duties of the office of County Council Member 4th District of this County, according to law and to the best of my ability.

/s/ Tom A. DeCola

SUBSCRIBED AND SWORN TO BEFORE ME, THIS THE 7TH DAY OF DECEMBER 2018. /s/ Casey L.
Householder a NOTARY PUBLIC exp. 9/5/2026 NP0715682.

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

TOM A. DE COLA,
Plaintiff, Civil Cause No. 3:20cv869v.
Class 1: Administrative Appeal STARKE COUNTY COUNCIL,
Defendant,

Class 2: Civil Tort
STARKE COUNTY COUNCIL,
DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN,
ROBERT SIMS, HOWARD BAILEY, KATHY NOREM,
Defendants.

COMPLAINT

Comes now the Plaintiff, Tom A. DeCola, ("DeCola"), appearing *pro se* and hereby sues the Starke County Council, ("the Council or Class 1"), five (5) Starke County Councilmen Dave Pearman, Freddie Baker, Robert Sims, Howard Bailey, and Kay Gudeman, and Starke County Commissioner Kathy Norem, ("Class 2"), for the cause of action of wrongful expulsion, and or damages, a cause of information under Ind. Code§§

34-17-1-1(1)[1], -2-6(c)[2], a cause of action for a civil rights violation under 42 U.S.C. § 1983 as violations of DeCola's U.S. Const. Amends. V, XIV § 1, *et* IX[3], and being subject to violations under U.S. Const. Art. I§§ 9, 10, *et* Ind. Const. Art. 1 § 24[4], by being deprived of the liberty and the property associated with being a Starke County District 4 Councilman, without the due process of law but being subject to Class 1 *et* 2's abuses under the color of law or illegality *ipso jure* as a civil conspiracy in violation of 18 U.S.C. §§ 241 *et* 242.[5]

---

[1] **IC 34-17-1-1 Information; when filing allowed**
"Sec. 1. An information may be filed against any person or corporation in the following case: (1) When a person usurps, intrudes into, or unlawfully holds or exercises a public office or a franchise within Indiana or an office in a corporation created by the authority of this state."

[2] **IC 34-17-2-6 Usurping office; procedure**
"Sec. 6. (a) This section applies to an information filed against a person for usurping an office. (c) When an information described in subsection (a) is filed by any other person, the person shall state the person's interest in the matter and any damages the person has sustained."

[3] As provided in pertinent parts respectively, "... nor be deprived of life, liberty, or property, without due process. of law; ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.; The enumeration in the Constitution, of certain rights, shall not be construed todeny or disparage others retained by the people.".

[4] As provided in pertinent part, "No *ex post facto* law, ... , shall ever be passed."

[5] As provided in *toto* respectively:
"§241. Conspiracy against rights If two or more persons conspire to injure, oppress, threaten, or intimidate any person in

BACKGROUND

1. DeCola obtained from the Starke County Clerk, a **CERTIFICATE OF ELECTION TO THE OFFICE OF COUNTY COUNCIL MEMBER,**

---

any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.;

§242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

State Form 47928, (CEB-8)[6], on November 27, 2018.

2. DeCola filed with the Starke County Clerkhis **OATH OF OFFICE**[7] on December 7, 2018.
3. 3. DeCola took office on January 1, 2019 in accordance with Ind. Code§ 36-2-3-3(b), as provided in *toto:*

   "The term of office of a member of the fiscal body is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified."
4. DeCola attended the first regular organization meeting of the Council on January 22, 2019.
5. Starting in November of 2018 and continuing through January 22, 2019 Starke County Commissioner Kathy Norem, maliciously defamed DeCola by questioning hisqualification for office.[10]
6. The Council voted to take action to expel DeCola from the Council on January 22, 2019, DeCola was provided until the next meeting on February 18, 2019 to provide a response. DeCola was under the impression that he had thirty (30) days to respond to Norem's defamation.[9]
7. DeCola provided a verbal response to the Council at the February 18, 2019 meeting.

---

[6] Exhibit B p. 111.

[7] Exhibit B, p. 112.

[8] Exhibit C, audio MP3 file 2019 01.22_18.25_01at 24:43 – 30:30. [9] Statement made under the penalty of perjury and supported by Exhibits B *et* C.

8. The Council expelled DeCola without justification or an official count charge. DeCola could not ascertain what subsection of Ind. Code§ 36-2-3-9[10] he was expelled under or what for. An official expulsion letter or instructions in how to respond were not provided to DeCola.[11]
9. DeCola filed a notice of claim upon the Council on February 19, 2019.[12]
10. The supposed hearsay allegations laid against DeCola are unfounded and are outside the office term of DeCola. DeCola took office on January 1, 2019, the hearsay allegations laid forth supposedly happened on December 12, 2018. DeCola was not criminally charged based upon the hearsay allegations or the supposed events on December 12, 2018.[13]
11. DeCola filed an administrative appeal action on April 2, 2019 with the Starke Circuit Court as *Tom A. DeCola Starke County Council* as cause number 75C01-1904-Ml-16.[14]

---

[10] **IC 36-2-3-9 Expulsion of member of fiscal body; declaring seat of member vacant; procedure**
"Sec. 9. The fiscal body may:
(1) expel any member for violation of an official duty;
(2) declare the seat of any member vacant if the member is unable or fails to perform the duties of the member's office; and
(3) adopt its own rules to govern proceedings under this section, but a two-thirds (2/3) vote is required to expel a member or vacate a member's seat."

[11] Statement of DeCola made under the penalty of perjury.

[12] Exhibit B p. 113

[13] Statement of DeCola made under the penalty of perjury

[14] Exhibit B pp. 5 – 7

12. The venue was then changed to the Marshall Superior Court 2 under cause number
75C01-2005-Ml-36.[15]

13. DeCola objected to Special Judge Jeffrey L. Thorne selecting the Marshall Superior Court 2 and made multiple motions attempting to venue the case to the Marshall Circuit Court.[16]

14. Marshall Superior Court 2 issued an order on September 28, 2020 ruling that the Council's expulsion action against DeCola was wrongful and outside the Council's authority;[17]DeCola then asserted in a 28 U.S.C. § 2283 motion in this Court that the Marshall Superior Court 2 committed an abuse of procedure by claiming that Plaintiff failed to state a claim of due process violations by basing that decision upon falsity.[18]

SIX (6) COUNTS OF CIVIL RIGHTS VIOLATIONS

1. DeCola hereby asserts that Class 1 *et* 2 acted outside the scope of their duty, under the color of law, by depriving DeCola of his stated above rights when they illegally expelled him from his office, thus depriving him of liberty and property without due process of law, respectively denominated as counts 1, 2, *et* 3.

---

[15] Exhibit B, p. 95
[16] Exhibit B, pp. 96 – 97, 99 – 101, 132 – 133, 135 ¶I, 140 – 143
[17] Exhibit A pp. 2 – 8
[18] See VERIFIED BRIEF IN SUPPORT OF MOTION FOR INJUNTIVE RELIEF TO STAY STATE COURT PROCEDURE filed contemporaneously with this COMPLAINT.

2. DeCola asserts that Class 1 *et* 2 conspired under the color of law to deprive DeCola of the stated above rights by usurping his Starke County District 4 Councilman office, thus committing violations under Ind. Code§ 35-44.1-1-1(1)[19] and 18 U.S.C. §§ 241 *et* 242[20], respectively denominated as counts 4, 5, *et* 6.

3. DeCola shows the elements for a 42 U.S.C. § 1983 claim as found in *Adickes v. SH Kress* & Co., 398 US 144, 150- (1970), as provided in *toto:*

> "The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the "Constitution and laws" of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance,

[19] As provided in *toto:* "**IC 35-44.1-1-1** Sec. 1. A public servant who knowingly or intentionally: (1) commits an offense in the performance of the public servant's official duties;".

[20] As provided respectively in pertinent parts: "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same ... "; "Whoever, under color of any law, statute, ordinance, regulation, orcustom, willfully subjects any person. in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; ... ".

> regulation, custom, or usage, of any State or Territory." This second element requires that the plaintiff show that the defendant acted "under color of law.".

DeCola hereby shows forthright the two (2) elements of his 42 U.S.C. § 1983 claim against Class 1 *et* 2 herein to-wit:

a. Class 1 *et* 2, deprived DeCola of his stated above rights when they expelled him from the Council on February 18, 2019 under the color of Ind. Code § 36-2-3-9(1).

b. DeCola was not under an official duty prior to January 1, 2019, therefore any action before DeCola assumed office on January 1, 2019 could not be an official duty.

c. The hearsay allegations laid against DeCola as cause for his expulsion allegedly

> occurred on December 12, 2018, the policy that the Council used against DeCola was adopted on December 17, 2018.[21]

4 DeCola shows the elements of a civil conspiracy claim as found in *Halberstam u*

> *Welch,* 705 F.2d 472, 477 - (Ct. App. D. C. Cir.

1983), as provided in *toto:*

> "As pristine legal concepts, conspiracy and aiding-abetting can be distinguished clearly enough. A list of the separate elements of civil conspiracy includes: (1) an agreement between two or more persons; (2) to participate in anunlawful

[21] Exhibit B pp. 114 – 116

> act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme. *See, e.g., Ryan v. Eli Lilly&* Co., 514 F.Supp. 1004, 1012 (D.S.C.1981)."

DeCola hereby shows forthright the four (4) elements of his civil conspiracy claim against Class 2 herein to- wit:

a. Class 2 agreed to pursue an expulsion of DeCola on January 22, 2019, which was initiated by Starke County Commissioner Kathy Norem.[22]

b. Class 2 engaged in the unlawful act of depriving DeCola of the stated above rights under the color of Ind. Code§ 36-2-3-9(1) when they expelled DeCola on February 18, 2019.[23]

c. Class 2 usurped DeCola's office, thus injuring DeCola by depriving him of the associated salary and authority of the office.

d. Class 2 expelled DeCola in the common scheme of removing him under the color of Ind. Code§
36-2-3-9(1).

THE INAPPLICABILITY OF THE *ROOKER- FELDMAN* DOCTRINE

1. DeCola asserts that the *Rooker- Feldman* doctrine,

[22] Exhibit C, audio MP3 file 2019.01.22 18.25_01 at 24:43 – 30:30

[23] See CIVIL COMPLAINT form (INNDRev. 8/16) § entitled CLAIMS AND FACTS ¶3

is inapplicable to this case based upon the guidance found in *Centres Inc. v. Town of Brookfield, Wis.*, 148 F. 3d 699, 702 - (7th Cir. 1998)[24].

2. DeCola asserts that the *Rooker - Feldman* doctrine, does not apply to state administrative judgments which the Marshall Superior Court 2's ORDER ON DEFENDANT'S MOTION TO DISMISS[25] is such, reckoned as self-evident.[26]

3. DeCola asserts that Class 2 has not been sued under a civil tort claim in a state court over DeCola's

---

[24] As provided in pertinent part:

"Our case law also sets forth the basic analytical methodology to be employed in determining the applicability of the *Rooker- Feldman* doctrine: whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment.[5] See *Garry,* 82 F.3d at 1365. If the injury alleged resulted from the state court judgment itself, the *Rooker-Feldman* doctrine dictates that the federal courts lack subject matter jurisdiction, even if the state court judgment was erroneous[6] or unconstitutional.[7] See *id.* at 1365-66. A decision by a state court, no matter how erroneous, is not itself a violation of the Constitution actionable in federal court. See *Homola v. McNamara,* 59 F.3d 647, 650 (7th Cir.1995}. By contrast, if the alleged injury is distinct from the state court judgment and not inextricably intertwined with it, the *Rooker- Feldman* doctrine does not apply, although the doctrines of claim and issue preclusion may be applicable. See *Garry,* 82 F.3d at 1365-66.".

[25] Exhibit A, pp. 2 – 8

[26] As taken from *Centres, Inc. v. Town of Brookfield, Wis.*, 148 F.3d 699, 705, fn 5 - (7th Cir. 1998) as provided in *toto:* "The *Rooker-Feldman* doctrine does not apply to state administrative judgments. See Van Harken v. City of Chicago, 103 F.3d 1346, 1349 (7th Cir.}. *cert. denied,* U.S., 117 S. Ct. 1846, 137 l.e.2d 1049 (1997} (noting that "[i]f the *Rooker-feldman* is to be extended to administrative judgments, it will have to be done by the Court that created it").".

injury therefore the *Rooker-Feldman* doctrine does not apply.

SPECIAL INSTUCTIONS FOR THE COURT

1. DeCola's administrative appeal action against Class 1 is reviewableunder the abuse of discretion standard.

2. DeCola's civil tort action against Class 2 is reviewable under a *de novo* standard.

3. DeCola has preserved his right to a jury trial pursuant to Fed. R. Civ. P. 38(a)(b)(c) upon all triable issues, see DEMAND FOR JURY TRIAL filed contemporaneously with thiscomplaint.

DEMAND FOR RELIEF

Wherefore, DeCola respectfully requests, that the Court reinstate DeCola's Starke County Councilman District 4 office seat, and demands from Class 2 an award for compensatory and punitive damages. respectfully submitted,
/s/ Tom A. DeCola Plaintiff
7410 W. 250 S.
North Judson, IN 46366 574-249-3556

VERIFICATION STATEMENT

"I affirm, under the penalties of perjury, that the foregoing representation(s) is (are) true. /s/ Tom A. DeCola". Dated: October 19, 2020.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 19, 2020 a copy of the foregoing document was filed into the above captioned case and e-served via the IEFS to the following Defendant:
Starke County Council Lisa A. Baron (30517-64) lbaron@khkklaw.com
Katlyn M. Christman (34670-64) kchristman@khkklaw.com Elizabeth A. Knight (11865-45) eknight@khkklaw.com
Served pursuant to Fed. R. Civ. P. 4(e)(1)(2)(A) and Ind. Trial Rule 4.1(A)(1) to the following Defendants: Dave Pearman 6140 E. 25 N.
Knox, IN 46534
Freddie Baker 2635 E. 100 S.
Knox, IN 46534
Robert Sims 4193 E. 216 S.
Knox, IN 46534
Howard Bailey 1260 S. 250 E.
Knox, IN 46534
Kay Gudeman 319 Carlson Dr. Knox, IN 46534
Kathy Norem 599 N. 650 E.
Knox, IN 46534

/s/ Tom A. DeCola Plaintiff
93sundial39@gmail.com

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

TOM A. DECOLA, Civil Cause No. 3:20-cv-869-JD-MGG

Plaintiff, v.

Class 1: Administrative Appeal STARKE COUNTY COUNCIL,
Defendant,

Class 2: Civil Tort
STARKE COUNTY COUNCIL,
DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, KATHY NOREM,
Defendants.

BRIEF IN SUPPORT OF THE MOTIONS FOR INJUNCTIVE RELIEF TO STAY STATE COURT PROCEEDING AND SUBSEQUENT REQUEST FOR DECLARATORY JUDGMENT - A SUPPLEMENTAL TO THE ORIGINAL MOTION FOR INJUNCTIVE RELIEF

Comes now the Plaintiff, Tom A. DeCola, ("DeCola"), appearing *pro se* and hereby shows forthright, under 28 U.S.C. § 2283, and Fed. R. Civ. P. 65 *et* 57 as cause shown by the "expressly authorized" exception provided therein as 42 U.S.C. § 1983 as found in *Mitchum v. Foster,* 407 US 225, 242 - 243 - (Sup. Ct. 1972), that DeCola is under great, immediate, and irreparable loss of his constitutional rights protected

under U.S. Const. Amends. V, XIV§ 1, *et* IX[1] [42]and by being subject to violations under U.S. Const. Art. I §§ 9, 10, *et* Ind. Const. Art. 1 § 24[2]by being deprived of the liberty and the property associated with being a Starke County District 4 Councilman, without the due process of law but instead by being subject to the Starke County Council, ("the Council"), the Marshall Superior Court 2, and the Ind. Court of Appeals' continuance of illegality *ipso jure*. DeCola's motion for stay under 28 U.S.C. § 2283 herein stems from the Ind. Court of Appeals' abusive memorandum decision issued on July 28, 2021, whereby the Ind. Court of Appeals eschewed the ruling administrative appeals on appeal precedents of the "decision is illegal" doctrine as found in *Clay v. Marrero,* 774, N.E.2d 520- 521 - (Ind. Ct. App. 2002), in relation to two (2) trial court judges deeming the Starke County Council's expulsion action of DeCola illegal[3], and the applicability of the Administrative Orders Procedures Acts (AOPA) over administrative appeals as found in *Equicor Dev., Inc. v. Westfield-Washington Twp. Plan Comm'n,* 758, N.E.2d 34, 36-7 (Ind. Sup. Ct. 2001).

---

[1] As provided in pertinent parts respectively, "... nor be deprived of life, liberty, or property, without due process. of law; ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.; The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.".

[2] As provided in pertinent part, "No *ex post facto*, . . ., shall ever be passed."

[3] Exhibit A, pp. 2 – 8 *et* Exhibit F, p. 3 ¶¶10 – 11.

1. DeCola asserts that the Ind. Court of Appeals failed to provide an equitable andlawful review by eschewing their appellate courts' above stated two (2) precedents for administrative appeals on appeal within their memorandum decision when DeCola diligently argued both precedents from the state trial court through complete state appellate exhaustion upon which DeCola's appellate transfer was denied by the Ind. Supreme Court on November 16, 2021.[4]

2. DeCola asserts that the Ind. Court of Appeals within their memorandum decision openly violated his U.S. Const. Amend. XIV§ 1 equal protection of the law right by eschewing DeCola's argued prevailing precedents for equity and lawful determination of his appeal.[5]

THE VENERABLE FOUR-POINT FACTOR STANDARD

DeCola shows the elements associated with the venerable four-point factor standard for this case under the guidance found in *Abbot Laboratories v. Mead Johnson* & Co., 971 F.2d 6, 11 - 3 - (7th Cir, 1992).[6]

---

[4] Exhibit G, pp. 47 – 75 *et* Exhibit I, p. 2.

[5] Exhibit H, pp. 2 – 8 *et* Exhibit G, pp. 2 – 75.

[6] As provide in pertinent part:

"As a threshold matter, a party seeking a preliminary injunction must demonstrate (1) some likelihood of succeeding on the merits, and (2) that it has "no adequate remedy at law" and will suffer "irreparable harm" if preliminary relief is denied. *Lawson Prods.*, 782 F.2d at 1433; *Roland Mach.*, 749 F.2d at 386-87. If the moving party cannot establish either of these prerequisites, a court's inquiry is over and the injunction must be denied. If

DeCola shows the four-point factor standard herein: Factor (1): "some likelihood of succeeding on the merits." *Id.* 12.
a. DeCola shows the Ind. Court of Appeals' memorandum decision was unequitable for administrative appeals on appeal as the regimes of *Clay* at 520 - 521 and *Equicore Dev., Inc.* at 36 - 37

---

however, the moving party clears both thresholds, the court then must consider: (3) the irreparable harm the non-moving party if relief is denied; and (4) the public interest, meaning 12*12 the consequences of granting or denying the injunction to non- parties. *Lawson Prods.*, 782 F.2d at 1433; *Roland Mach.*, 749 F.2d at 387-88. The court, sitting as would a chancellor in equity, then "weighs" all four factors in deciding whether to grant the injunction, seeking at all times to "minimize the costs of being mistaken." *American Hosp. Supply,* 780 F.2d at 593. We call this process the "sliding scale" approach: the more likely it is the plaintiff will succeed on the merits, the less the balance of irreparable harms need weigh towards its side; the less likely it is the plaintiff will succeed, the more the balance need weigh towards its side. *Diginet, Inc. v. Western Union ATS, Inc.,* 958 f.2d 1388, 1393 (7th Cir. 1992): *Roland Mach.,* 749 F.2d at 387. This weighing process, as noted, also takes into consideration the consequences to the public interest of granting or denying preliminary relief. *Ping v. National Educ. Ass'n,* 870 F.2d 1369, 1371-72 (7th Cir.1989): *American Hosp. Supply,* 780 F.2d at 594, 60_1[3J While we have at times framed the sliding scale approach in mathematical terms, see *American Hosp. Supply,* 780 F.2d at 593-94, it is more properly characterized as subjective and intuitive, one which permits district courts to "weigh the competing considerations and mold appropriate relief." *Lawson Prods.*, 782 F.2d at 1436. We review a district court's decision to grant or deny a preliminary injunction under the abuse of discretion standard. *Id.* 13*13 at 1436-37. With regard to analysis of each of the four factors, a court abuses its discretion when it commits a clear error of fact or an error of law. *Lawson Prods.*, 782 F.2d at 1437; *Roland Mach.1* 749 F.2d at 392.".

that were argued by DeCola from the trial court throughappellate exhaustion for prevailing determinationof DeCola's appeal were tactfully eschewed by the Ind. Court of Appeals within their memorandum decision to disparage DeCola's equal protection of the law right.[7]

Factor (2): "that it has "no adequate remedy at law" and will suffer "irreplaceable harm" if preliminary relief is denied." *Id.* 12.

a. DeCola could mitigate the loss of his equal protection of the law right found under
U.S. Const. Amend XIV§ 1 by filing a writ of certiorari with the U.S. Supreme Court.

DeCola is not optimistic about this course of relief seeking based upon the U.S. Supreme Court's marginally low case acceptance rates.

Factor (3): "the irreparable harm the non-moving party will suffer if preliminary relief
is granted, balancing that harm against the irreparable harm to the moving party if relief is denied" *Id.* 12.

a. The Starke County Council will suffer no harm if DeCola's motion for stay and subsequent declaratory judgment is granted. DeCola's usurped Councilman District 4 office was appointed to Councilman White, the loser of the same office in the 2010 *et* 2014 Starke County General Elections. Wherefore, the Starke County Council will suffer no loss of anything protected under law.

b. If a motion for stay and subsequent declaratory judgment is denied DeCola will have his U.S. Const.

---

[7] Exhibit G, pp. 2 – 46.

Amend. XIV § 1 equal protection under the law right abrogated by the comity of Indiana courts for they did fail in providing equity pursuant to their own regimes found under *Clay* at 520 - 521 and *Equicore Dev., Inc.* at 36 - 37.

Factor (4): "the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Id.* 12.

a. The public would benefit if the court enjoined and subsequently produced a declaratory judgment over the Ind. Court of Appeals' memorandum decision. Producing an equitable guide for state administrative appeals on appeal,

would greatly promote the transparency of the comity of federal and state courts over administrative appeals on appeal within limited jurisdiction courts and the dynamically complex adjudicative processes thereof

that are not determinatively clear under Ind. Code and inherently equipped with the pitfalls created by the comity of federal and state courts.[8]

The public needs a

[8] How is the two (2) year statute of limitations affected for 42 U.S.C. § 1983 related civil tort claims to the administrative appeal filing? Has the no-exhaustion doctrine found within *Van Harken* at 1349 for administrative appeals seeking federal review from state to federal court been more clearly defined by DeCola's administrative appeals in Judge Leichty's opinions as found in case 3:2020-CV-409-DRL-MGG? Or in other words, does filing an administrative appeal within a limited jurisdiction state trial court kill a federal review? Is a 42 U.S.C. § 1983 civil tort claim barred in a federal court after a final judgment in a limited jurisdiction state trial court, even if it is timely filed within the two (2) year statute of limitations in either federal or state court as provided by *Irwin Mortg. Corp. v. Marion Cty. Treasurer,* 816 NE 2d 439 - (Ind. Ct. App. 2004)?, see *Stevens v. Department of Public Welfare,* 556 NE2d 544, 547

(Ind. App. 1991) and the duplicity of the administrative procedural handling over concurrent jurisdiction (limited v. general jurisdictions over the issue) *Hondo, Inc. v. Sterling,* 21 F.3d 775, (Ct. App. 7th Cir.) and *Thomas DeCola v. Starke County Election Board* as cause no. 3:20-CV-409 DRL-MGG [0kt. 39]. How can a limited jurisdiction administrative **priority** seeking claim nullify the two (2) year statute of limitations for the related 42 U.S.C. § 1983 claim and the discovery applications and the evidentiary review standards thereof to create the bar for the claim under the guise of the doctrine of *res judicata?* Judge Leichty is wrong when he stated "Because he [DeCola] appealed the Election Board's decision to the Indiana courts of general jurisdiction, he could have included his § 1983 claim. See, e.g., Andrade v. City of Hammond, 2020 U.S. Dist. LEXIS 39818,

26 (N.D. Ind. Mar. 6, 2020) (Springmann, J.) (holding that plaintiff could have brought his § 1983 claim in his administrative appeal to the Indiana trial court); Atkins v. Hancock Cnty. Sheriff's Merit Bd., 910 F.2d 403,404 (7th Cir. 1990) ("since the review proceeding had to be filed in a court of general trial jurisdiction, as the Indiana circuit court is, [plaintiff] could have joined with his petition to review the action of the merit board a complaint for violation of his federal civil rights"). And that is enough to trigger the application of res judicata, as Hondo acknowledges: "In fact, res judicata principles would seem to preclude a§ 1983 action which is not brought along with a judicial challenge to an auditor's decision." Hondo, 21 F.3d at 779.". DeCola appealed the administrative decision to a limited jurisdiction trial court as indicated within the inequitable and duplicit order produced therein by Special Judge now electorate dismissed Senior Judge Bergerson within case 75C01- 2002-Ml-11 filed on March 20, 2020 that the court does not stand as a trial court but regurgitated the Ind. Court of Appeals' duplicit precedent, found in *Clay v. Marrero,* 774 NE2d 520 (2002) concerning the very relevant AOPA over administrative handling when normally general jurisdiction trial courts have to act as limited jurisdiction trial courts for purposes of administrative review, see *Equicor Dev., Inc. v. Westfield- Washington Twp. Plan Comm'n,* 758, N.E.2d 34, 36-7 (Ind. Sup. Ct. 2001).

roadmap for state administrative appellate process and the related 42 U.S.C. 1983 civil tort claim that is not as dynamically complex as the one DeCola has encountered during this struggle *in fieri* for upholding the electorate's decision for councilman in Starke County and by being able to pursue a political career in the Republican Party as shown in *Thomas DeCola v. Starke County Election Board* as cause no. 3:20-CV- 409-DRL-MGG.

b. The consequences of denying DeCola's request for enjoining and subsequent production of a court declaratory judgment over the question of equity over administrative appeals on appeal within the comity of federal and state courts would produce a miscarriage of justice and lapse of providing the venerable governmental duty of checking and balancing the Starke County Council whose officers contravened the rule of law as shown by Judge Dean of the Marshall Superior Court 2 and Special Judge Alevizos of the Starke Circuit Court within their respective orders.[9]

CONCLUSION

DeCola respectfully requests under Fed. R. Civ. P. 65 *et* 57, that the Court enjoin the Ind. Court of Appeals' memorandum decision by producing a declaratory judgment upon the questions of equity over this case and the controversy thereof concerning the inequity of the Ind. Court of Appeals' memorandum decision over DeCola's administrative appeal on appeal therein and the associated questions of undetermined equity and

[9] Exhibit A pp. 2 – 8 *et* Exhibit F, p. 2 ¶¶10 – 11.

law as shown above in footnote 8.

Respectfully submitted,
/s/ Tom A. DeCola Plaintiff
7410 W. 250 S.
North Judson, IN 46366 574-249-3556

VERIFICATION STATEMENT

"I affirm, under the penalties of perjury, that the foregoing representation(s) is (are) true. *Isl* Tom A. DeCola". Dated: November 17, 2021.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on November 17, 2021 a copy of the foregoing document was filed via USPS first-class mail into the above captioned case and e- served via the IEFS to the following Defendants:
Lisa A. Baron (30517-64) lbaron@khkklaw.com
Katlyn M. Christman (34670-64)
kchristman@khkklaw.com Elizabeth A. Knight (11865-45)
eknight@khkklaw.com Attorneys for Defendants Starke
County Council
Dave Pearman Robert Sims Kay
Gudeman Freddie Baker

Howard Bailey Kathy Norem

Respectfully submitted,
/s/ Tom A. DeCola Plaintiff
7410 W. 250 S.
North Judson, IN 46366 574-249-3556

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

THOMAS DE COLA, Cause No. 3:20-cv-869-JD-MGG

Plaintiff, v.
STARKE COUNTY COUNCIL,
DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, AND KATHY NOREM.
Defendants.

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants, STARKE COUNTY COUNCIL, DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, and KATHY NOREM, by and through one of their attorneys, KATLYN M. CHRISTMAN (#34670-64) of KNIGHT, HOPPE, KURNIK & KNIGHT, LTD., respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 12(c) to grant their Motion for Judgment on the Pleadings. In support thereof, Defendants state as follows:

1. On October 19, 2020, Plaintiff filed this action, which arises out of Defendants' decision to expel Plaintiff from the Starke County Council pursuant to Ind. Code § 36-2-3-9, which was the subject of the state court cause entitled, *Tom A. DeCola v. Starke County Council*, Cause No. 50D02- 2005-MI-000036 (hereinafter referred to as "*DeCola*

I") in Marshall Superior Court 2. [DE #1]. *DeCola I* has reached a final judgment on the merits after the Marshall Superior Court's decision to dismiss the Amended Complaint was affirmed by the Indiana Court of Appeals and transfer was denied by the Indiana Supreme Court.

2. A plaintiff must plead sufficient factual matter that, if accepted as true, will state a claim for "relief that is plausible on its face" under Federal Rule of Civil Procedure 8. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3. Motions for judgment on the pleadings are reviewed under the same standard as a motion to dismiss under Rule 12(b). *Northern Indiana Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998).

4. A complaint must contain sufficient factual matter, accepted as true, that "state[s] a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678.

5. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

6. Dismissal of Plaintiff's Complaint is appropriate because it is barred under the doctrine of res judicata. In particular, in the cause entitled *Tom A. DeCola v. Starke County Council* ("*DeCola I*"), a decision on the merits occurred when the Indiana Supreme Court denied transfer (Cause Number 21A-MI-00120) from the Indiana Court of Appeals' decision affirming the Marshall Superior Court 2's order to dismiss the Amended Complaint (Cause Number 50D02- 2005- MI-000036). In addition, Plaintiff could have brought and/or did bring the claims asserted in this cause in

DeCola I and the parties of this action are in privity to those in *DeCola I*. Thus, Plaintiff's claims are barred under res judicata.

WHEREFORE, for the foregoing reasons, and the reasons set forth in Defendants, STARKE COUNTY COUNCIL, DAVE PEARMAN, FREDDIE BAKER, KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, and KATHY NOREM's Memorandum of Law contemporaneously filed within, Defendants respectfully request that this Court grant their motion for judgment on the Pleadings with prejudice and/or for any other relief deemed just and proper in the premises.

Respectfully submitted,
/s/ Katlyn M. Christman
KATLYN M. CHRISTMAN (#34670-64)

KNIGHT, HOPPE, KURNIKE & KNIGHT, LTD.
Attorney for Defendants
233 East 84th Drive, Suite 301
Merrillville, IN 46410
219/322-0830: FAX: 219/322-0834
E-Mail: Kchristman@khkklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2022, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

• **Lisa A Baron**
Lbaron@khkklaw.com, Dbotma@khkklaw.com
• **Katlyn M Christman** Kchristman@khkklaw.com, MJacobsen@khkklaw.com
• **Elizabeth A Knight** Eknight@khkklaw.com, Kmeyer@khkklaw.com
Manual Notice List:
Thomas DeCola, 7410 W. 250 S, North Judson, IN 46366

/s/ Miranda Jacobsen

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

TOM A. DE COLA, Cause No. 3:20-cv-00869-JD-MGG

Plaintiff, v.
Class 1: Administrative Appeal STARKE COUNTY COUNCIL,
Defendant,

Class 2: Civil Tort
STARKE COUNTY COUNCIL,
DAVE PEARMAN, FREDDIE BAKER,
KAY GUDEMAN, ROBERT SIMS, HOWARD BAILEY, KATHY NOREM.
Defendants.

VERIFIED MOTION FOR A NEW TRIAL

Comes now the Plaintiff, Tom A. DeCola, *prose* and hereby requests the United States District Court for the Northern District of Indiana of the South Bend Division, ("the Court") to set a new trial, in accordance with the pertinent provisions found under Fed. R. Civ.
P. 59, for the interests of equity and justice in view of an asserted miscarriage of justice and in intentional harmony under 28 U.S.C. § 2283 as the "expressly authorized" exception provided therein as 42 U.S.C. § 1983, as found in *Mitchum v. Foster,* 407 US 225, 242
- 243 - (Sup. Ct. 1972) for staying a state court action concerning DeCola's administrative appeal and civil

tort actions within the Indiana state trial courts seeking administrative and civil tort relief. In support of DeCola's above stated contentions as previously and exhaustingly argued by DeCola which show blatantly obvious irreparable loss within his administrative appeal and civil tort cases that amount to factual breaches of the prohibition of the *ex post facto* law provisions found under U.S. Const. Art. I §§ 9 -10 *et* Ind. Const. Art. 1 § 24 in conjunction with violations of DeCola's rights as protected under U.S. Const. Amend. V, XIV Sec. 1, *et* IX; DeCola hereby provides the following:

LAYING THE FOUNDATION FOR THE "NO EXHAUSTION" RULE OVER EXPULSION ACTIONS BY IND. COUNTY COUNCILS

In Ind. county level bodies such as the Starke County Council, ("the Council"), represented by council, any decision of the Council is reviewable by the local court of jurisdiction pursuant to prevailing practice as an implication of law; that court action is known as an administrative appeal which is not to be confused with a civil tort complaint for damages seeking justice against persons within their *in personam* and the governmental entity as shown by the intrinsic handling of the cases by the different review standards, ability for jury trial right, ability to conduct discovery, and associated statutes of limitations for filing a complaint for damages under the context of a 42 U.S.C. § 1983

Irwin Mortgage Corporation v. Marion County Treasurer, et alia, 816 N.E. 2d 439 (Ind. Ct. App. 2004)

right of action or the intrinsically degenerate route of vanity known as an Ind. Tort Claims Act pursuit. The above procedural schematics available to appellant/ plaintiff litigants are not the same in the two different case types. The Ind. General Assembly has not provided any direction for an orderly review which does not meet element one (1) of the exhaustion rule for state administrative appeals which the Court has placed DeCola under, see *Patsy v. Board of Regents of Fla.*, 457, 499 US 496 - (Ind. Sup. Ct. 1982) as provided in pertinent part,

> "The Court of Appeals reviewed numerous opinions of this Court holding that exhaustion of administrative remedies was not required, and concluded that these cases did not preclude the application of a "flexible" exhaustion rule. 634 F. 2d. at 908. After canvassing the policy arguments in favor of an exhaustion requirement, the Court of Appeals decided that a § 1983 plaintiff could be required to exhaust administrative remedies if the following minimum conditions are met: (1) an orderly system of review or appeal is provided by statute or agency rule;"

The Ind. General Assembly has not provided a specific right of action to seek relief against expulsion actions by a county council. Furthermore, the Ind. Supreme Court only has provided the Ml classification found under Ind. Administrative Rule 8(8)(3) for potentially

describing a county administrative appeal being filed in a state trial court proceeding under the etc. description thereof as a separate distinction from the EX classification for Ind. state agency administrative appeals which are directly appealed to the Ind. Court of Appeals pursuant to Ind. General Assembly and state agency guidance. Ind. county level administrative appeal proceedings for appealing an expulsion of a county councilman is afforded no guidance from the Ind. General Assembly; therefore, the issue under review is under the flexible standard which means that exhausting state procedures is not required, see *Id.* at 499.

ABUSE OF PROCESS WITHIN THE STATE TRIAL COURT ADMINISTRATIVE AND CIVIL TORT CASES -A FACTUAL PROCLAMATION OF JUDGMENT UPON THE MERITS BY THE JUDICIAL COMITY

DeCola has attempted to obtain a judicial appellate administrative review in state case 50D02-2005-Ml- 36 appealed under case 21A-Ml-120 (DE 1; DE 10; DE 35; DE 36). DeCola requested that his duly elected councilman seat be reinstated based upon the fact that DeCola was expelled by the Council for supposed conduct which was outside the term of him taking office under a cause of information. The Council's expulsion action is clearly unconstitutional and statutorily unprincipled on its face when confronted with theright of action specifications found under Ind.

Code § 36-2-3-9.[1] Judge Dean A Colvin of the state Trial Court produced a partially favorable order for DeCola which in effect found what DeCola has stated above but included an error of fact to cover for the Council's abuse of process, that of predicating their expulsion action upon the Council's lack of right of action under constitutional and statutory provisions previously provided; the above observation meets element one (1) of an abuse of process claim, as taken from *Reicharl v. City of New Haven,* 674, NE2d 27, 30
- (Ind. Ct. App. 1996) as provided in pertinent part:

> "In order to prevail upon a claim of abuse of process, a party must prove the following elements: 1) An ulterior purpose; and 2) a willful act in the use of process not proper in the regular conduct of the proceeding. *Broadhurst v. Moenning,* 633 N.E.2d 326
> (lnd.Ct.App.1994). "[O]therwise stated, 'abuse of process requires a finding of misuse or misapplication of process, for an end other than that which it was designed to accomplish.'" *Id.* at 333 (quoting *Tancos v. A.W, Inc.,* 502 N.E.2d

[1] As provided in *toto:* "IC 36-2-3-9 Expulsion of member of fiscal body; declaring seat of member vacant; procedure
Sec. 9. The fiscal body may:
(1) expel any member for violation of an official duty;
(2) declare the seat of any member vacant if the member is unable or fails to perform the duties of the member's office; and
(3) adopt its own rules to govern proceedings under this section, but a two-thirds (2/3) vote is required to expel a member or vacate a member's seat.".

109, 116 (lnd.Ct.App.1986). *trans. denied).".*

As a proving of element two (2), the Trial Court's willful act was that of inserting an openly false fact within the order described above to deny DeCola relief by additionally not providing the proper process upon the issue as exhaustingly argued in DeCola's appellate brief before the Ind. Court of Appeals whereby it was stated and shown by DeCola in pertinent part:

> "The Trial Court committed harmful error by asserting false fact as shown previously in the above excerpt on p. 5. DeCola filed his T.R. 59 motion to correct error. to appeal the clearly harmful error by showing the truth that DeCola did request hearing by seconding Councilman Brad Hazelton's motion for hearing.[20] The Council responded to the motion to correct error with motion to reconsider upon which the Trial Court violated the combined precedents found in Page v. State, 424 N.E.2d 1021, 1023 (Ind. Sup. Ct. 1981), Clay v. Marrero, 774 N.E.2d 520 (Ind. Ct. App. 2002), Crooked Creek Conservation and Gun Club, Inc.
>
> v. Hamilton County North BZA, 677 N.E.2d 544, 548 549 (Ind. Ct. App. 1997), Hubbard v. Hubbard, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998), and Snyder v. Snyder, 62 N.E.3d 455,458 (Ind. Ct. App. 2016) regarding the statutory regime for administrative appeals under Ind. Code

> 4-21.5-5-14(c)21, the standard of review thereof, and the procedural handling for final judgment in relation to motions to correct error *et* motions to reconsider.".

DeCola thus has shown the averment of a 42 U.S.C. § 1983 claim under the construct of a preliminary injunction action to stay the state court action for an abuse of process which should require a new trial to enforce constitutional authority in view of the blatant breaches of the provided law and the absolute showing of an unguided operation of action that has been arcanely crafted to be the most complex construct the judicial comity has ever produced with an added enhancement of a vain *Colorado River* staying doctrine.

The abuse of process cited above caused an intrinsic fraudulent circumstance over the case which fails to meet the standard for properly classifying the final judgment as one ruled upon the merits; this also fails to meet the elements for the doctrine of *res judicata* and that of collateral estoppel, see *Indianapolis Downs, LLC v. Herr,* 834 NE2d 699 - 705
- (Ind. Ct. App. 2005) and Judge Alevizos' order filed on March 25, 2021 in the related civil tort state trial case as 75C01-2102-CT-5; 64C01-2106-CT-6018, which in paraphrased pertinent parts from excerpted
¶¶10 - 16 clearly show breaches of *ex post facto* prohibition laws, preservation of the issue that the case was not decided upon its merits, and the importance of upholding public policy in view thereof (DE 36-1 Ex. F).

REQUEST FOR RELIEF

Wherefore, DeCola demands the Court set a new trial in order to remedy obvious and blatant violations of the prohibition of *ex post facto* law provisions as found under U.S. Const. Art. I §§ 9 – 10 *et* Ind. Const. Art. 1 § 24 in conjunction with violations of DeCola's rights as protected under U.S. Const. Amend. V, XIV Sec. 1, *et* IX. DeCola also requests the Court not use him to undermine U.S. Const. Amend. XIV § 1 in these classes of actions.[2]

Respectfully submitted,
/s/ Tom A. DeCola Tom A. DeCola Plaintiff
7410 W. 250 S.
North Judson, IN 46366 574-249-3556

VERIFICATION STATEMENT

"I affirm under the penalties of perjury, that the foregoing representation(s) is (are) true. /s/ Thomas DeCola". Dated July 12, 2022.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on July 12, 2022 a copy of the foregoing document was personally filed into the above captioned case and e- served via the IEFS to the following Defendants:

[2] DeCola also avers a complex masonic conspiracy against his rights which draws upon his repressed memories before September 11, 2001 during his term as a student within the Kankakee Valley School Corporation.

Starke County
Lisa A. Baron (30517-64) ibaron@khkklaw.com
Katlyn M. Christman (34670-64)
Kchristman@khkklaw.com Elizabeth A. Knight (11865-45) eknight@khkklaw.com Attorneys for Defendants
Starke County Council
Dave Pearman Robert Sims Kay
Gudeman Freddie Baker Howard Bailey
Kathy Norem

/s/ Tom DeCola Tom DeCola Plaintiff
93sundial39@gmail.com