STATE OF INDIANA	)	IN THE LAKE SUPERIOR COURT
	) SS:	
COUNTY OF LAKE	)	CAUSE NO.: 45D01-2102-PL-000134

TED BILSKI; CHARLIE BROWN; CHRISTINE CID; DANIEL DERNULC; DAVID HAMM; CHRISTINE JORGENSEN; and ALDREDO MENCHACA

Plaintiffs,

v.

ERIC HOLCOMB, as Governor of the State of Indiana; and THEODORE ROKITA, as Attorney General of the State of Indiana,

Defendants.

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS

The Plaintiffs filed a complaint asserting that requiring them to have their motor vehicles emissions tested when residents of other counties do not have to undergo emissions testing is arbitrary and capricious in violation of the Equal Protection and Due Process clauses of the U.S. Constitution. But the Court should dismiss the complaint because the Plaintiffs sued the wrong individuals and will be unable to meet their heavy burden to show that there is no rational relation to a legitimate state interest or a rational reason to classify Lake and Porter Counties differently than the rest of Indiana's counties for vehicle emissions testing.

I. Introduction

The federal Clean Air Act (42 U.S.C. § 7401 *et seq.*) requires the Environmental Protection Agency to establish uniform national ambient air quality

standards (NAAQS) for six pollutants: sulfur oxides, carbon monoxide, ozone, particulate matter, nitrogen dioxide, and lead. 40 C.F.R. Part 50. The NAAQS establish a limit on the amount of each pollutant in the air that, allowing for an "adequate margin of safety," is required "to protect the public health." 42 U.S.C. § 7409(b)(1). Congress granted the EPA Administrator authority to designate air quality control regions as "necessary or appropriate for the attainment and maintenance of ambient air quality standards." 42 U.S.C. § 7407(c). These air quality control regions may span more than one state. *Id.* The State of Indiana contains ten air quality control regions.[1] Lake County and Porter County are a part of the Metropolitan Chicago Interstate Air Quality Control Region, along with nine Illinois counties. 40 C.F.R. § 81.14.[2]

EPA also designates areas of the U.S. as either "attainment" or "nonattainment"[3] for each of the six pollutants based on whether the area has attained the standard or contributes to a nearby area's nonattainment. 42 U.S.C. §

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[1] The East Central Indiana Intrastate Air Quality Control Region (40 CFR § 81.215), the Northeast Indiana Intrastate Air Quality Control Region (40 C.F.R. § 81.216), The South Bend-Elkhart-Benton Harbor Interstate Air Quality Control Region (40 C.F.R. § 81.73), the Southern Indiana Intrastate Air Quality Control Region (40 C.F.R. § 81.217), the Evansville-Owensboro-Henderson Interstate Air Quality Control Region (40 C.F.R. § 81.61), the Louisville Interstate Air Quality Control Region (40 C.F.R. § 81.35), the Metropolitan Cincinnati Interstate Air Quality Control Region (40 C.F.R. § 81.20), the Metropolitan Chicago Interstate Air Quality Control Region (40 C.F.R. § 81.14), the Wabash Valley Intrastate Air Quality Control Region (40 C.F.R. § 81.218), and the Metropolitan Indianapolis Intrastate Air Quality Control Region (40 C.F.R. § 81.29).

[2] Citing to statutes and regulations in a motion to dismiss does not bring in matters outside the pleadings, as the Court may consider matters of which it may take judicial notice. *See Moss v. Horizon Bank, N.A.*, 120 N.E.3d 560, 563–64 (Ind. Ct. App. 2019). Indiana Courts may take judicial notice of case law, statutes, and regulations. Indiana Rule of Evidence 201(b).

[3] EPA may also designate an area as "unclassifiable" due to insufficient information. 42 U.S.C. § 7407(d).

7407(d). The Seventh Circuit has recognized that, historically, the Chicago area has been classified as nonattainment for ozone standards. *See Indiana v. E.P.A.*, 796 F.3d 803, 807 n.1 (7th Cir. 2015). EPA recently found (and the D.C. Circuit Court of Appeals affirmed) that Lake and Porter Counties contributed to nonattainment in the Chicago area. *See Mississippi Comm'n on Env. Quality v. E.P.A.*, 790 F.3d 138, 163–65 (D.C. Cir. 2015).

States are largely responsible for ensuring that ambient air quality satisfies NAAQS. 42 U.S.C. § 7407(a). As a result, after EPA establishes NAAQS, states must submit an implementation plan (SIP) addressing each pollutant subject to NAAQS. 42 U.S.C. § 7410(a). SIPs must provide for "implementation, maintenance, and enforcement of [NAAQS] in each air qualify region (or portion thereof) within such State." 42 U.S.C. § 7410(a)(1). If a state has an area designated as nonattainment for ozone or, in some cases, carbon monoxide, the Clean Air Act requires the state to include motor vehicle inspection and maintenance (I/M) programs in its SIP for the nonattainment area. 42 U.S.C. § 7511a; 42 U.S.C. § 7512a; 40 C.F.R. § 51.350. The type of motor vehicle I/M program depends on factors such as the level of nonattainment (serious, moderate, etc.) and urbanized area populations. 40 C.F.R. § 51.20. Even if an area is later redesignated to attainment status, the state must retain the vehicle I/M program until the state can show EPA that "the area can maintain the relevant standard….without benefit of the emission reductions attributable to the I/M program." 40 C.F.R. § 51.350(c).

Once EPA approves a SIP, EPA promulgates the SIP as a federal regulation, which is federally enforceable. 40 C.F.R. § 52.25. A state may not revise its SIP without EPA approval. 42 U.S.C. § 7401(l). Failure to comply with SIP requirements, or failure to implement any regulation incorporated by an approved SIP, may result in significant penalties to the state, including withholding of grant funding for air pollution planning and control programs, a freeze on receiving federal highway funding, or a civil enforcement action by EPA. 42 U.S.C. § 7509; 42 U.S.C. § 7413; 40 C.F.R. § 52.25.

Indiana's SIP as approved by EPA is promulgated at 40 C.F.R. section 52.770. 40 C.F.R. § 52.770(a). The SIP incorporates numerous Indiana regulations, including Article 13 of Title 326 of the Indiana Administrative Code, which establishes Indiana's vehicle I/M program. *See* 40 C.F.R. § 52.770(b); (c) (Article 13). The challenged regulation is accordingly a part of the binding and federally enforceable SIP. *See* 40 C.F.R. § 52.25.[4] Indiana cannot revise or rescind the challenged regulation without EPA approval, 42 U.S.C. § 7401(l), even if Lake and Porter Counties are later redesignated to be in attainment status, 40 C.F.R. § 51.350(c).

The Indiana legislature has authorized the Environmental Rules Board to promulgate regulations in accordance with the discretionary authority granted to the State by the federal Clean Air Act and its regulations. Ind. Code § 13-17-3-11. In

[4] "Failure to comply with any provisions of this part, *or with any approved regulatory provision* of a State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act [42 U.S.C. § 7413]" (emphasis added).

fact, the legislature mandates that the Board promulgate regulations necessary to implement the Clean Air Act. Ind. Code § 13-17-3-4. This includes the regulations found in Title 326 of the Indiana Administrative Code regulating air pollution control and related to ambient air quality standards. *See* 326 Ind. Admin. Code 1-3-1.

Plaintiffs challenge 326 Indiana Administrative Code 13-1.1-2 as unconstitutional. That regulation requires motor vehicles, with some exemptions, to undergo I/M program testing, which is what Plaintiffs refer to in their complaint as having their motor vehicles emissions tested. The challenged regulation cites to Indiana Code sections 13-17-3-11 and 13-17-3-4 as authority for the rule, and this regulation is incorporated by reference into Indiana's SIP. *See* 40 C.F.R. § 52.770(c) (Article 13).

In their complaint, Plaintiffs argue that because 326 Indiana Administrative Code 13-1.1-2 applies only to residents of Lake County and Porter County, the regulation violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution. Instead of naming the state official responsible for enforcing this statute, Plaintiffs named the Governor of the State of Indiana and the Indiana Attorney General. Neither of the named Defendants are the proper party to a constitutional challenge, because, as the Indiana Supreme Court recently recognized in *City of Bloomington v. Holcomb*, general enforcement power does not necessarily give rise to redressability—a required element for standing.

Furthermore, this regulation does not violate the U.S. Constitution as a matter of law. As detailed above, vehicles in Lake and Porter Counties undergo required I/M testing to comply with the federal Clean Air Act. For this reason, Plaintiffs will not be able to show that the regulation requiring emissions testing is not rationally related to a legitimate state interest of complying with federal law or that there is no rational basis for the classification. Consequently, the Court should dismiss the Complaint under Indiana Trial Rule 12(B)(6).

II. Legal Standard

A trial court may grant a motion to dismiss if "it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances." *Guideone Ins. Co. v. U.S. Water Sys.*, 950 N.E.2d 1236, 1243 (Ind. Ct. App. 2011) (internal quotation omitted). A motion to dismiss "tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief." *Trail v. Boys & Girls Clubs*, 845 N.E.2d 130, 134 (Ind. 2006). For a court to dismiss a complaint for failing to state a claim, it must be "clear on the face of the complaint that the complaining party is not entitled to relief." *City of New Haven v. Reichhart*, 748 N.E.2d 374, 377 (Ind. 2001). Thus, the trial court will consider whether the facts alleged "have stated some factual scenario in which a legally actionable injury has occurred." *Trail*, 845 N.E.2d at 130.

III. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and the Court should dismiss the Complaint

While Plaintiffs do not expressly identify the cause of action under which they bring their Complaint, Plaintiffs only request a declaratory judgment from the Court. Presumably, Plaintiffs bring their Complaint under the Indiana Uniform Declaratory Judgment Act. *See* Ind. Code §§ 34-14-1-1; 34-14-1-2. However, the Indiana Governor and Indiana Attorney General have an insufficient nexus to the regulation's enforcement to be a proper party to a declaratory action challenging the regulation's constitutionality. Furthermore, there are no set of facts under which the challenged regulation violates the Equal Protection or Due Process Clauses of the Constitution, because the State will be able to show that the regulation is rationally related to a legitimate state interest and that the classification has a rational basis. Consequently, the Court should dismiss Plaintiffs' Complaint.

A. Defendants are not the proper party for a declaratory action challenging 326 Indiana Administrative Code 3-1.1-12 because they do not enforce this regulation

Neither the Governor nor the Attorney General are expressly tasked with enforcing this particular regulation. Accordingly, they are not proper parties and the Court should dismiss the Complaint against them.

A party seeking declaratory judgment under the Indiana Uniform Declaratory Judgments Act must have personal standing to bring suit. *Bd. of Commrs. of Union Cty. v. McGuinness*, 80 N.E.3d 164, 167 (Ind. 2017). Generally, standing requires that a party seeking redress must "have a personal stake in the outcome of the litigation and who show that they have suffered or were in

immediate danger of suffering a direct injury as a result of the complained-of conduct." *Id.* (quoting *Cittadine*, 790 N.E.2d 978, 979 (Ind. 2003)). And Indiana courts have applied the three-part standing test from *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), requiring actual injury, causation and redressability to show standing to bring a constitutional challenge. *See Hulse v. Ind. State Fair Bd.*, 94 N.E.3d 726, 730–31 (Ind. Ct. App. 2018); *see also Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019) ("[S]tanding…ensures that a judicial decree redresses an actual injury attributable to the defendant's wrong").

The Indiana Supreme Court recently explained that the principle of redressability requires that when a party seeks declaratory relief challenging the constitutionality of a particular statute, the proper defendant is the agency or official tasked with enforcing the statute. *See Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1260–61 (Ind. 2020). In *Holcomb*, the Indiana Supreme Court allowed a declaratory judgment act challenging the constitutionality of a statute to proceed against the Governor as a defendant, but the Court said that this was a "rare case" and involved an "extraordinary circumstance" where the Governor had enforcement authority over the challenged statute. *Id.* at 1260–61. The Court emphasized that

> the Governor's argument will win in most cases—his general constitutional powers and duties will not establish enough of a connection to a statute to allow a suit like this one under most circumstances. But, given the one-of-a-kind statute involved, the Governor's constitutional authority and duty, the significant injury suffered by Bloomington, and the ability to afford it redress through declaratory judgment, we must reach this unusual result.

Id. at 1261.

Unlike the statute at issue in *Holcomb*, which involved a unique area of law and where it was unclear who enforced the challenged statute, the question of who enforces the regulation that Plaintiffs challenge is much more straightforward. The Environmental Rules Board promulgated this regulation in accordance with Indiana's air pollution control laws. *See* Ind. Code § 13-17-3-4; Ind. Code § 13-17-3-11; 326 Ind. Admin. Code 13-1.1-2. The Commissioner of the Indiana Department of Environmental Management is responsible for enforcing rules promulgated under air pollution control laws. Ind. Code §§ 13-14-1-12; 13-17-3-3; 13-14-2-6; 13-30-3-1. Because the law authorizing the regulation also clearly dictates who enforces the regulation, the Governor is not the proper party to name in a challenge to the regulation's constitutionality.

The same reasoning should apply to the Indiana Attorney General here, whose general civil prosecution powers do not necessarily "establish enough of a connection to a statute to allow a suit like this." *Holcomb*, 158 N.E.3d at 1261. The Indiana Attorney General may be generally charged with directing "the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency." Ind. Code § 4-6-3-2. But the air pollution control laws specifically task the IDEM Commissioner with enforcing air pollution regulations. If the IDEM Commissioner elected to prosecute a violation of 326 IAC 13-1.1-2 in court, *see* Ind. Code § 13-14-2-6, the Attorney General would appear on his behalf to bring the action. Ind. Code 4-6-2-1; Ind. Code § 4-6-3-2.

The statute permitting the Attorney General to intervene to defend the constitutionality of a statute does not change this analysis. If the constitutionality of a "state statute, ordinance, or franchise affecting the public interest" is challenged in any "action, suit or proceeding in any court to which any agency, officer, or employee of the state is not a party," the court should first certify the question to the Attorney General and then allow him to intervene and present evidence and argument regarding the question of constitutionality. Ind. Code § 34-33.1-1-1. Appearing on the behalf of state officials permits the Attorney General to defend the constitutionality of the regulation as a part of his defense of the official, as opposed to intervening as of right. Critically, the statute does *not* require naming the Attorney General as a party any time the constitutionality of a statute or regulation is challenged.

Accordingly, any enforcement power the Governor or the Attorney General may have with respect to this regulation is too attenuated to give rise to standing. Neither the Governor nor the Attorney General are proper defendants for this constitutional challenge and the Court should dismiss the Complaint against them.

B. Even if Plaintiffs had named the proper party, Plaintiffs' Complaint fails to state a claim upon which relief can be granted because 326 Indiana Administrative Code 3-1.1-12 is not unconstitutional as a matter of law

Regardless of whether Plaintiffs have named the proper parties for a declaratory action challenging the constitutionality of 326 Indiana Administrative Code 3-1.1-12, their challenge nevertheless fails to state a claim upon which relief can be granted. Because no fundamental rights are implicated by the challenged

regulation, and because the regulation does not implicate a suspect classification, Plaintiffs will bear the burden to show that the regulation is not substantially related to a legitimate state interest and that there is no rational basis for the state's classification.

The constitutional analysis for the substantive due process claim and the equal protection claim is the same regardless of whether the state action challenged is a statute or regulation. The Indiana Supreme Court has explained that the dispositive factor for both an equal protection challenge and a substantive due process challenge is whether a claimant challenges a state action. *Ind. High School Athletic Ass'n v. Carlberg*, 694 N.E.2d 222, 236 (Ind. 1997) ("…the general standard of review of *state action* challenged under the equal protection clause is the rational basis test" (emphasis added) and also applying the same rationale to a substantive due process claim); *see also N.B. v. Sybinski*, 724 N.E.2d 1103, 1108 (Ind. Ct. App. 2000) ("The usual standard of review for a statute *or regulation* challenged on equal protection grounds is the rational basis test" (emphasis added) and applying the same rationale to a substantive due process challenge to a regulation).

For the following reasons, Plaintiffs will not be able to produce any set of circumstances under which their claim might succeed.

1. Plaintiffs fail to state a substantive due process claim

The Fourteenth Amendment to the U.S. Constitution "'guarantee[s] procedural and substantive due process.'" *City of Bloomington Bd. of Zoning Appeals v. UJ-Eighty Corp.*, 163 N.E.3d 264, 268 (Ind. 2021) (quoting *McIntosh v.*

Melroe Co., 729 N.E.2d 972, 975 (Ind. 2000)). "Procedural due process protects against the 'denial of fundamental procedural fairness,'" whereas "[s]ubstantive due process protects against arbitrary and oppressive government action." *Id.* (citing *Cty of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998)). "Substantive due process ensures that state action is not arbitrary or capricious regardless of the procedures used." *Leone v. Comm'n, Ind. Bureau of Motor Vehicles*, 933 N.E.2d 1244, 1257 (Ind. 2010). Because Plaintiffs have alleged in their complaint that the challenged regulation is arbitrary and capricious, Plaintiffs appear to bring a substantive due process claim.

To succeed on a substantive due process claim, "a party must show either that the law infringes upon a fundamental right or liberties deeply rooted in our nation's history or that the law does not bear a substantial relation to legitimate state interests." *Id.* (citing *Washington v. Glucksberg*, 521 U.S. 702 (1997)). The list of fundamental rights "is, however, a short one, including things like the right to marry, the right to have children, the right to marital privacy, the right to contraception, and the right to bodily integrity." *Sung Park v. Ind. Univ. Sch. of Dentistry*, 692 F.3d 828, 832 (7th Cir. 2012). Driving is not a fundamental right. *See Leone*, 933 N.E.2d at 1257 (citing *Mitchell v. State*, 659 N.E.2d 112 (Ind. 1995) for the proposition that "[n]either this Court nor the United States Supreme Court has ever held driving to be a fundamental right"). And to the extent Plaintiffs allege this regulation implicates a fundamental right based on choice of residency, only laws that impose a durational residency requirement have been found by courts to

implicate a fundamental right to travel. *Andre v. Bd. of Trustees of Village of Maywood*, 561 F.2d. 48, 52 (7th Cir. 1977) ("All residency restrictions have an effect on the right to interstate travel, but only those residency restrictions which can be characterized as 'durational' have been found to unconstitutionally impinge or penalize the right to travel...").

Because no fundamental right is implicated by the challenged regulation, the regulation "will stand if it passes rational basis scrutiny." *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1071 (7th Cir. 2013). The State must only show that the regulation "bears a rational relationship to a legitimate state interest" for a court to uphold the regulation as constitutional. *Mitchell v. State*, 659 N.E.2d 112, 116 (Ind. 1995). A regulation is constitutional "even if it is unwise, improvident, or out of harmony with a particular school of thought" so long as the regulation "bears a rational relationship to some legitimate end." *Goodpaster*, 736 F.3d at 1071 (cleaned up). A party seeking to attack a regulation on rational basis grounds have a "heavy burden" to "negate 'every conceivable basis which might support it.'" *Id.* (quoting *FCC v. Beach Comms., Inc.*, 508 U.S. 307, 315 (1993)). "[G]overnmental action passes the rational basis test if a sound reason may be hypothesized. The government need not prove the reason to a court's satisfaction." *N.B. v. Sybinski*, 724 N.E.2d 1103, 1112 (Ind. Ct. App. 2000) (quoting *Northside Sanitary Landfill v. City of Indianapolis*, 902 F.2d 521, 522 (7th Cir. 1990)).

Plaintiffs will be unable to meet their heavy burden to negate every conceivable basis for the regulation. Federal law *requires* Indiana to include a

vehicle I/M program in its SIP if Lake and Porter Counties are in a designated nonattainment area for ozone, and as the Seventh Circuit has recognized, historically these two counties have received nonattainment designations for ozone under either the 1-hour or 8-hour NAAQS. *See Indiana v. E.P.A.*, 796 F.3d 803, 807 n.1 (7th Cir. 2015). In fact, Indiana's SIP provides for a vehicle I/M program, and the State is required to continue carrying out that program so long as it is in the SIP. There is no question that the State has a legitimate interest in complying with federal law, especially when failure to comply with SIP requirements may result in a freeze on federal highway funding, EPA withholding air pollution program grant funding, or a civil action by EPA to enforce the SIP requirements. *See* 42 U.S.C. §§ 7413(a)(2); 7509.

Plaintiffs argue that because a list pulled from USA.com that ranks counties by air quality shows that there are more than 70 counties with poorer air quality than Lake county, this renders 326 Indiana Administrative Code 13-1.1-2 arbitrary and capricious because Plaintiffs have to have their motor vehicles tested, whereas residents of other counties with poorer air quality do not. There are a number of problems with this. First, the exhibit provides no context as to whether the list is sorted from better to worse air quality.[5] Second, as described in the introduction, it is not overall air quality that determines whether an area must implement vehicle emissions testing under the Clean Air Act, or whether an area has better overall air quality than other area. The determinative factor is whether the area has been

[5] The submitted exhibit frankly provides no context whatsoever and should be afforded little to no consideration as a result.

designated by EPA as nonattainment for ozone or carbon monoxide NAAQS. This list from USA.com does not appear to address air quality by particular pollutants or attainment/nonattainment status under the relevant NAAQS. And finally, the Supreme Court has explained that "[a] claim of arbitrariness cannot rest solely on a statute's lack of uniform geographic impact." *Hodel v. Indiana*, 452 U.S. 314, 332 (1981). To the extent that this exhibit submitted by Plaintiffs proves that Lake and Porter County have better air quality than several counties, the best-case scenario is that this suggests vehicle emissions testing *is working*.

But again, overall air quality is not the relevant factor in determining whether Lake and Porter County are required under the Clean Air Act to undergo vehicle emissions testing. Whether Lake and Porter Counties have better air quality overall than some other counties has no bearing on whether the State can show that the regulation is rationally related to a legitimate state interest of complying with the Clean Air Act. Even if these two counties achieve attainment under the relevant ozone NAAQS, the State cannot discontinue the vehicle I/M program without approval from EPA. 40 C.F.R. § 51.350(c). Accordingly, the Court should dismiss Plaintiffs' Complaint for failure to state a substantive due process claim.

2. 326 Indiana Administrative Code 3-1.1-12 does not violate the Equal Protection Clause of the Fourteenth Amendment

Because the regulation creates a classification of motor vehicles registered in Lake and Porter Counties, and this regulation neither implicates a fundamental right nor is based on a suspect class, Plaintiffs will be unable to meet their burden

to show the regulation violates the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Critically, "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Comms., Inc.*, 508 U.S. 307, 313 (1993); *see also City of Indianapolis v. Armour*, 946 N.E.2d 553, 559 (Ind. 2011). "Under the rational basis standard, laws are clothed with a strong presumption of constitutionality." *City of Indianapolis*, 946 N.E.2d at 560. "The party challenging the law bears the burden of proving that there is no rational basis for the government's classification, and this can be done only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes." *Id.* (cleaned up) (citing *F.C.C.*, 508 U.S. at 315 and *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)).

In 1984, the Maryland Court of Appeals faced a similar challenge. Residents and officials from Carroll County sought and received an injunction preventing the implementation of Maryland's vehicle emissions program, which Maryland appealed. *Dept. of Transp. Motor Vehicle Admin. v. Armacost*, 474 A.2d 191, 199 (Md. 1984). The plaintiffs claimed, in relevant part, that its inclusion in Maryland's vehicle emissions program violated the Equal Protection Clause because other

similarly situated rural counties did not have to participate in the program. The court explained that "[u]niformity of treatment throughout the State is not a prerequisite to satisfying the requirements of the equal protection clause" and that a statute is not unconstitutional "merely because it affects counties unequally." *Id.* The court found that, because Carroll County was designated a nonattainment area for ozone, Maryland had a rational reason for including Carroll County in the emissions program so that the State could comply with federal law. *Id*. Accordingly, the Court vacated the injunction, holding that the plaintiffs had not demonstrated a reasonable likelihood of success and that the trial court improperly enjoined the program. *Id.* at 207.

Plaintiffs will be unable to show that there is no rational basis for requiring emissions testing in Lake and Porter Counties but not in other counties given the requirements of the Clean Air Act. The Clean Air Act requires a state to implement a vehicle emissions testing program in nonattainment areas, but does not necessarily require such a program in attainment areas. Conceivably, the State requires emissions testing only in Lake and Porter Counties because those may be the only Indiana counties required by the Clean Air Act to undergo emissions testing.

Furthermore, Lake and Porter Counties are a part of the Metropolitan Chicago Interstate Air Quality Control Region. 40 C.F.R. § 81.14. States and EPA designate particular air quality control regions as a whole as either attainment, nonattainment, or unclassified for each of the NAAQS. 42 U.S.C. § 7407(a);(d).

Federal regulations that group Lake and Porter Counties into one air quality control region and all other Indiana counties into other regions (*see supra* note 1), where nonattainment and attainment statuses are informed by air quality control regions under the Clean Air Act, suggests a rational basis for classifying Lake and Porter Counties differently than other counties.

Plaintiffs will be unable to overcome the regulation's strong presumption of constitutionality and show a total absence of any conceivable set of facts that supports requiring motor vehicle emissions testing for Lake and Porter Counties but no other Indiana counties. Consequently, the Court should dismiss Plaintiffs' Complaint for failure to state a substantive due process claim.

IV. Conclusion

For the foregoing reasons, Plaintiffs' Complaint fails to state a claim upon which relief may be granted. The Court should consequently grant the Defendants' motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 16, 2021, the foregoing was filed using the Indiana Filing System ("IEFS"), and that the foregoing document was served upon the following person(s) via IEFS, if Registered Users, and by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user.

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