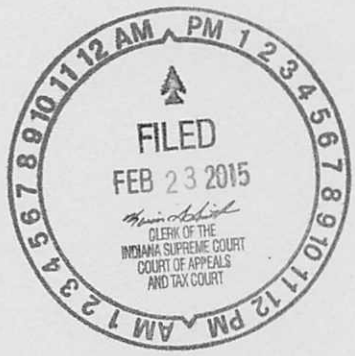

IN THE
INDIANA SUPREME COURT

No. 45S00-1409-PL-587

STATE OF INDIANA, Appellant (Defendant below), v. JOHN BUNCICH, Chairman of the Lake County Democratic Central Committee, et al., Appellees (Plaintiffs below).	Appeal from the Lake Circuit Court, No. 45C01-1407-PL-84, Hon. George C. Paras, Judge.

REPLY BRIEF

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REPLY BRIEF

Lake County has a uniquely large problem with small precincts. The legislature properly understood this and properly fashioned a narrow solution to address the issue through Indiana Code Section 3-11-1.5-3.4. Plaintiffs implicitly concede Lake County's unique characteristics insofar as they fail to make a complete analysis of the facts and statistics in the record or give full consideration to the applicable jurisprudence. The political-party Plaintiffs bears the heavy burden of negating every conceivable basis which might have supported the classification, and showing that there are no set of circumstances under which the statute is constitutional. They have not carried their burden, and this Court should reverse the trial court's decision that Indiana Code Section 3-11-1.5-3.4 is unconstitutional special legislation.

Moreover, Section 3-11-1.5-3.4 does not violate the doctrine of separation of powers. A precinct committeeman is a political-party office and not an elected or

executive office, and so the doctrine of separation of powers is not implicated by this statute. The committeeman's ability to participate in the caucus to fill a vacancy in an elected office is a political privilege to undertake the most political of acts: choosing elected officials. In this sense, a precinct committeeman is no more an executive branch official than an ordinary voter. Indiana courts decline to exercise jurisdiction over the exercise of political rights by a political-party officer like a precinct committeeman, and the trial court erred in doing otherwise.

Lastly, there is no cognizable harm to any of the complaining parties because the statute only mandates that a study be done, considered, and implemented. The way that the study findings are implemented is within the discretion of the county election board. If the board elects to consolidate precincts, it would be up to the political parties to decide which precinct committeemen maintain their positions and which do not. Indiana Code Section 3-11-1.5-3.4 does not violate the doctrine of separation of powers, and this special legislation is justified by Lake County's unique precinct plan. The statute is constitutional.

ARGUMENT

I. Indiana Code Section 3-11-1.5-3.4 is constitutionally permissible special legislation.

The Plaintiffs' argument does not properly respect the presumption of constitutionality that Indiana Code Section 3-11-1.5-3.4 is entitled. A statute challenged under Indiana's Constitution is presumed constitutional until "clearly overcome by a contrary showing." *Zoeller v. Sweeney*, 19 N.E.3d 749, 751 (Ind. 2014). This presumption of constitutionality is strong, and to overcome this

presumption the party challenging the statute must negate "every conceivable basis which might have supported the classification," *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 694 (Ind. 2003), and show that there are "no set of circumstances" under which the statute is constitutional. *Zoeller*, 19 N.E.3d at 751. Thus, if any portion of the record can justify the special legislation, then the statute must be held to be constitutional. Here, the evidence overwhelmingly shows that the legislature properly focused its efforts on Lake County's uniquely problem.

Plaintiffs would have this Court flip the presumption and standard on its head, and hold that Lake County is indistinguishable from all other Indiana counties based on only a single, isolated, arbitrary, and inconclusive statistical threshold to find Section 3-11-1.5-3.4 unconstitutional. This Court should instead apply the well-settled presumption and standard, consider all of the facts presented, and find the statute to be constitutionally permitted special legislation.

A complete consideration of all relevant facts shows that Lake County is unique. Instead of addressing every conceivable basis which might support the classification, as is required by *Kimsey*, Plaintiffs point to a single statistic—that 33 % of Lake County's precincts are small precincts—and then conclude that because 28[1] other counties have the same or higher percentage of small precincts within those counties that Lake County is not unique and the statute is thereby

[1] Plaintiffs incorrectly state that 29 Indiana counties have 33 % or higher small precincts (Appellee's Br. 6, 11). A total of 28 counties, including Lake County, have 33 % or higher small precincts (Appellant's App. 104-06). Presumably because Rush County is mistakenly listed twice in the exhibit, the Plaintiffs likely inadvertently counted it twice in their brief.

unconstitutional (Appellee's Br. 11). Plaintiffs may not rest upon an isolated, non-determinative statistic to overcome the constitutional presumption; they must show that under any conceivable interpretation of all of the facts that the application of this statute to Lake County alone is unjustifiable. *Kimsey*, 781 N.E.2d at 694. They have not, and indeed cannot, carry that burden.

Plaintiffs ignore all the statistics in the record aside from this 33% threshold. They never acknowledge the number of small precincts in Lake County (Appellee's Br. 1-16).[2] Also notably absent is any acknowledgement that Lake County has over two times the small precincts of any other county in Indiana. Even their reliance on the 27 other counties with 33% small precincts or higher is superficial and unconvincing. Compared with the other counties in this group, Lake County is unique.

All of the other counties with 33% or more small precincts are considerably smaller than Lake County. Compared with the 520 total precincts in Lake County, all of these other counties have fewer than 70 total precincts each; all but one of them having fewer than 40 total precincts; and 15 of the 27 have fewer than 20 total precincts (Appellant's App. 104-06). Under the numbers presented by the Plaintiffs, Lake County has 174 small precincts, while these other counties each have fewer than 30 small precincts (Appellant's App. 104-06).

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[2] Again, two sets of numbers for small precincts were presented at the hearing (App. 104-06, 107-08). The numbers presented by the State were taken before the passage of Indiana Code Section 3-11-1.5-3.4, so they are representative of the numbers that would have been considered by the legislature. Regardless, under either data set the difference between Lake County and every other county in Indiana is stark.

Likewise, under the numbers presented by the State,[3] Lake County had 337,381 active voters, while the active voters in these other counties range from 4,613 to 50,034 with 20 of those counties having fewer than 20,000 and 11 of those having fewer than 10,000 active voters (Appellant's App. 107-08). Lake County is unique because it is far and away the largest county with a small precinct percentage of 33% or higher.

Lake County's number of small precincts is also unique when compared to all of the counties in Indiana (See Appellant's Br. 17-20; Appellant's App. 104-08). By only addressing a single statistic in isolation, Plaintiffs ignores their burden and implicitly concede that a full consideration of the facts shows Lake County has a unique characteristic which justifies this special legislation.[4]

Plaintiffs argue that because every county would see a cost savings from reducing small precincts a general law is appropriate (Appellee's Br. 13). That contention ignores how drastic Lake County's small precincts problem is. Moreover, it ignores what the statute actually requires of election officials. This statute does not require an automatic reduction of precincts in Lake County, but instead requires Lake County to perform a study and consider each of three mandated

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[3] Plaintiffs did not include a count of active voters in the summary of information presented to the trial court (Appellant's App. 104-06).

[4] Plaintiffs also make no effort to distinguish this case from a number of other cases which find special legislation constitutional which addresses the uniquely severe character of other matters in Lake County. *See Ind. Gaming Commission v. Moseley*, 643 N.E.2d 296 (Ind. 1994) (population density on waterfront), *Williams v. State*, 724 N.E.2d 1070 (Ind. 2000) (large population and court docket), *State ex. rel. Att'y Gen. v. Lake Super. Ct.*, 820 N.E.2d 1240 (Ind. 2005) (severe reassessment problem).

factors relating to the cost, benefits, and legality of reducing small precincts and implement a plan that reflects its considerations. I.C. § 3-11-1.5-3.4. The legislature's goal is not to abolish small precincts; it is merely to investigate the feasibility of reducing small precincts. A study like this will yield the most telling results if it is done in a highly populated county with a severe problem with small precincts. Only Lake County fits this bill.

A general form of this legislation would require a feasibility study in all 92 counties. This would create an undue burden on many of the small counties where elimination of precincts is not practical because of the geographic distribution of its limited population. Similarly, counties which have recently addressed this problem on their own initiative would be forced to waste resources by duplicating a process it just recently completed (see Appellant's Br. 18). Additionally, forcing the study of a problem in counties that do not have a problem is needless, and would only waste money for significantly diminished returns.[5] Counties like Porter County, where three of its 123 precincts are small precincts, (Appellant's App. 105), would be forced to perform a study to address a problem of no significance to that locale.

The legislature selected the most grievous offender, the county with the most small precincts by over double the next closest, to perform a study to determine the feasibility of reducing the problem of small precincts. This is reasonable and supported by the facts of the circumstance. The trial court may not stand in the place of the legislature and select an arbitrary threshold for comparison, whether

[5] Eighty two of Indiana's counties have less than 20 small precincts (Appellant's App. 104-06)

33% of a county's precincts are small precincts, to determine whether Lake County is unique. It should have instead determined whether facts exist in the record to support the singling out of Lake County. Those facts are established, and so this Court should reverse judgment and find Section 3-11-1.5-3.4 constitutional.

II. Indiana Code Section 3-11-1.5-3.4 does not violate the separation of powers among the branches of State government.

This Court has refused to exercise its jurisdiction to address the loss—or in this case, the potential loss—of a political right such as what party position a person holds. *See State ex rel. Coffin v. Super. Ct. of Marion Cnty.*, 196 Ind. 614, 149 N.E. 174, 176 (1925) ("The fact that a statute provides for the election of precinct committeemen and defines their powers as members of the county committee and city committee, respectively, does not affect the application of the rule [that a court has no jurisdiction regarding political rights]."); *see also Porter Cnty. Democratic Party Precinct Rev. Comm. v. Spinks,* 551 N.E.2d 457, 459 (Ind. Ct. App. 1990) (holding that courts have no jurisdiction to grant injunction in removal of precinct committeeperson where it does not involve civil property rights).[6] The right to fill certain vacancies is a right given to the political party of the prior officeholder. Ind. Code § 3-13-5-0.1. The right to participate in the caucus

[6] Although the Court in *Spinks* discussed "civil property rights," courts have long held that the Court does not have jurisdiction in cases not involving civil or property rights. *See State ex rel. Givens v. Super. Ct. of Marion Cnty.*, 117 N.E.2d 553, 556 (Ind. 1954); *Haupt v. Schmidt*, 70 Ind. 260, 122 N.E. 343, 344 (Ind. 1919) ("Political rights consist in the power to participate, directly or indirectly, in the establishment or management of government. Civil rights are those which have no relation to the establishment, support, or management of the government; these consist in the power of acquiring and managing property, of exercising paternal and marital relations, and the like.") (internal citations and quotation marks omitted).

which appoints a replacement from a particular political party is a political right given to the precinct committeemen within the jurisdiction of that vacancy. Ind. Code § 3-13-5-1. Thus, the duty of precinct committeemen to vote in caucus to fill vacancies in certain offices is exercising the party's right to fill the vacancy, not one particular to the individual committeeman. This Court does not exercise jurisdiction over actions affecting the political rights of precinct committeemen.

Plaintiffs surmise that because precinct committeemen are involved in the process used by political parties to fill vacancies in elected offices that a precinct committeeman is an officer of state government (Appellee's Br. 14-15). Precinct committeemen are not officers of the State. *See, e.g., Trevino v. Pastrick,* 573 F. Supp. 806, 807 (N.D. Ind. 1983) ("[A] precinct committeeman in Indiana is an official of a political party"). The political position of precinct committeemen is allowed by the legislature. Ind. Code § 3-6-2-1. The statute does not mandate that political parties have committeemen, and is instead permissive, stating that parties with "ten percent of the votes for in the state for secretary of state at the last election for that office may have precinct committeemen . . . if provided by the rules of the political party." *Id.* Political-party officers, like precinct committeemen, are not considered to be holding office under the Indiana Constitution. I.C. § 3-6-1-15; *see also* I.C. § 3-5-2-17 ("Political party offices (such as precinct committeemen and state convention delegate) are not considered to be elected offices") (parenthetical aside in original). Committeemen do not represent the citizens of any jurisdiction, but instead represent the interests of a political party within a jurisdiction.

Because precinct committeemen are political-party officers and not elected officers Article 3, Section 1 provides them no protection from precinct realignment.

Plaintiffs argue that *State v. Monfort*, 723 N.E.2d 407 (Ind. 2000), prevents the removal of a precinct committeeman during her term (Appellee's Br. 15). While *Monfort* provides some protection for elected officials to fulfill their term, political-party offices such as precinct committeemen have no right or guarantee of a particular term as other elected officers might. *See also* Ind. Const. art. 15, § 3 (stating that if a specific term for an officer is provided in the Constitution or statute, then the officer "shall hold his office for such term"); *but see* I.C. § 3-6-1-15 (a precinct committeeman is "not considered to be holding an office for purposes of Article 15 of the Constitution of the State of Indiana"). Any guarantee provided to elected officials in *Monfort* does not apply to political-party offices such as precinct committeeman. The legislature contemplated and provided for the likely situation that precinct realignment would happen during the term of a committeeman, and gives to the political party the power to control if a committeeman will continue in his or her office. I.C. § 3-10-1-4.5. Otherwise, it would be impossible to reassess the number of precincts in a county in the middle of a precinct committeeman's term and frustrate the efficient management of elections. Precinct committeemen are not protected by the doctrine of the separation of powers because they are political-party officers.

What makes the Plaintiffs' argument even more untenable is that there is no certainty or evidence in the record that shows that any specific committeemen in

Lake County has or will lose their political positions, or which committeemen would be removed if a possible consolidation of precincts were to occur. Indiana Code Section 3-11-1.5-3.4 only directs that a study be done and that the county election board considers the finding of that study. There is no direct effect from the legislation on a single precinct committeeman, and full discretion is left to the county election board to determine if action is prudent considering the results of the study and which, if any, precincts should be consolidated. I.C. § 3-11-1.5-3.4. If a decision to consolidate is made, it is entirely up to the political parties to determine which precinct committeemen maintain their positions and which do not. Thus, any hypothetical harm to any individual committeeman would result from an exercise of the discretion of the county election board and their political party and not be a direct result of action by the legislature.

Ultimately, because precinct committeeman is a political party office, and because there is no cognizable or direct effect on the political rights of any precinct committeeman this Court has no jurisdiction and this statute cannot violate the separation of powers doctrine. Indiana Code Section 3-11-1.5-3.4 is not unconstitutional special legislation and does not violate the constitutional doctrine of separation of powers; this Court should reverse the incorrect decision of the trial court.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's judgment.

Respectfully submitted,

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WORD COUNT CERTIFICATE

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CERTIFICATE OF SERVICE

I certify that on February 23, 2015, the foregoing document was served upon the following persons by first-class United States mail, postage prepaid:

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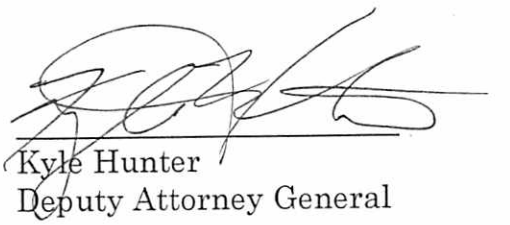

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