

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF INDIANA**  
**HAMMOND DIVISION**

CITY OF HAMMOND, et al., )  
Plaintiffs, ) CASE NO. 2:21-cv-00160-PPS-JEM  
vs. )  
STATE OF INDIANA, INDIANA )  
SECRETARY OF STATE )  
DIEGO MORALES, in his official )  
Capacity, and THE LAKE COUNTY )  
BOARD OF ELECTIONS )  
Defendants. )

**DEFENDANT'S, LAKE COUNTY BOARD OF ELECTIONS, BRIEF IN SUPPORT  
OF MOTION FOR SUMMARY JUDGMENT**

Comes now Defendant, the Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, (“Election Board”), and file their Brief in Support of Motion for Summary Judgment. In support thereof, the Court is shown the following:

## I. LEGAL ARGUMENT

## A. Legal Standard

A party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is material if it is outcome determinative. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). An issue is genuine “only when a reasonable jury could find for the party opposing the motion based on the record as a whole.” *Pipitone v. United States*, 180 F.3d 859, 861 (7th Cir. 1999).

In determining whether a genuine issue of material fact exists, the court must view the record and all reasonable inferences in the light most favorable to the non-moving party. *National Soffit & Escutcheons, Inc. v. Superior Systems, Inc.*, 98 F.3d 262, 265 (7th Cir. 1996). The moving party bears the burden of demonstrating the “absence of evidence on an essential element of the non-moving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The non-moving party may not, however, simply rest on the pleadings, but must demonstrate by specific factual allegations that a genuine issue of material fact exists for trial. *National Soffit & Escutcheons, Inc.*, 98 F.3d at 265.

**B. The Plaintiffs Lack Standing to Sue the Election Board Because its Alleged Injuries and/or Damages are not Fairly Traceable to Any Acts or Omissions of the Election Board and There is No Evidence That the Election Board Engaged In Any Wrongdoing as Set Forth in the Plaintiffs' Second Amended Complaint.**

First, the judicial authority under Article III of the United States Constitution is limited to "cases or controversies." To have standing, a plaintiff must have "an injury in fact," a causal connection between the injury and the conduct complained of, and it must be likely (as opposed to speculative), that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury must be fairly traceable to the challenged action of the defendant. *Id.* The suit should be brought against entities that have legal responsibilities for the flaws Plaintiffs perceive in the system and from whom they ask something which would conceivably help their cause. *Hearne v. Board of Education*, 185 F.3d 770, 777 (7th Cir. 1999) The party invoking federal jurisdiction bears the burden of establishing the elements of standing. *Lujan* at 561.

As an initial matter and as correctly pointed out by the Plaintiffs in the Second Amended Complaint, the Election Board is simply “a local governmental unit that oversees elections in Lake

County Indiana and administers the retention votes for the Lake County Superior Court judges. Ind. Code § 33-33-45-42(f). [See Exhibit 1 at p. 3, ¶ 14.] The Election Board does not have the power to confer or deny the Plaintiffs, or others similarly situated, the right to vote for Judges in Lake County. Nor does the Election Board have the power to authorize the remedies sought by the Plaintiffs described in their Second Amended Complaint.

Second, there is no causal connection between the conduct of the Election Board in following the existing Indiana law as it relates to the selection of judges in the counties identified in the Second Amended Complaint and the Plaintiffs' alleged injury. In their Second Amended Complaint, the Plaintiffs are not alleging that the Election Board has done anything wrong or failed to do something. The harms alleged in the Plaintiffs' Second Amended Complaint are simply not fairly traceable to any conduct of the Election Board. Simply stated, there is no designated evidence that links the Plaintiffs' claims and/or allegations set forth in the Second Amended Complaint to any Election Board action.

For the above reasons, the Plaintiffs lack standing to bring this suit against the Election Board because there is no "case or controversy" as between the Plaintiffs and the Election Board within the meaning of Article III of the United States Constitution. There is also no connection between the conduct of the Election Board in following the existing laws relating to the selection of judges in the counties identified in the Second Amended Complaint and the Plaintiffs' alleged injury set forth in the Second Amended Complaint because the Plaintiffs are not claiming that the Election Board has done anything wrong or wrongfully failed to do something. The Election Board's Motion for Summary Judgment should be granted.

## **II. CONCLUSION**

Plaintiffs lack standing under Article III of the United States Constitution to sue the Election Board. The injuries alleged by the Plaintiffs in this case are not fairly traceable to the Election Board. There is no connection between the conduct of the Election Board in following the existing law and the Plaintiffs' alleged injury set forth in the Second Amended Complaint because the Plaintiffs are not claiming that the Election Board has done anything wrong or wrongfully failed to do something. The Election Board's Motion for Summary Judgment should be granted.

## **CERTIFICATE OF SERVICE**

I certify that on the 5<sup>th</sup> day of June 2023, service of a true, correct and complete copy of the foregoing pleading and/or paper was made upon all counsel of record via the Court's Pacer system and/or via United States first class mail with the proper postage affixed to:

Bryan H. Babb, # 21535-49  
Bradley M. Dick, #29647-49  
Bose McKinney & Evans, LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
Phone: (317) 684-500  
Fax: (317) 684-5173  
bdick@boselaw.com  
Attorneys for Plaintiffs

Theodore E. Rokita, # 18857-49  
Meredith McCutcheon, #32391-49  
Kari A. Morrigan, # 34706-49  
Indiana Attorney General's Office  
Indiana Government Center South  
302 W. Washington, Sr, 5<sup>th</sup> Fl.  
Indianapolis, IN 46204-2770  
Phone: (317) 233-8296  
Fax: (317) 232-7979  
Kari.morrigan@atg.in.gov  
Attorneys for Secretary of State Holly Sullivan

Rogelio Dominguez, # 4741-45  
7895 Broadway, Suite #R  
Merrillville, IN 46410  
Phone: (219) 769-6213  
Fax: (219) 769-7993  
roy@dominguezlawyer.com  
Attorney for Plaintiff, Thomas McDermott

/s/Michael E. Tolbert  
Michael E. Tolbert