

IN THE  
INDIANA SUPREME COURT

No. 45S00-1409-PL-84 587

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.

AMENDED BRIEF OF APPELLANT

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STATEMENT OF SUPREME COURT JURISDICTION

This Court has jurisdiction over this appeal because the trial court entered a final judgment declaring Indiana Code Section 3-11-1.5-3.4 to violate Article 3, Section 1 (Distribution of Powers Clause) and Article 4, Section 23 (Special Legislation Clause) of the Indiana Constitution. Ind. Appellate Rule 4(A)(1)(b).

STATEMENT OF THE ISSUES

Indiana Code Section 3-11-1.5-3.4, enacted in 2014, directs the Lake County Board of Elections and Registrations to study the possibility of consolidating some of its uniquely high number of small precincts—those with less than 500 active voters—and to effectuate a consolidation plan to the extent permitted by the statutes governing the drawing of precinct boundaries. The trial court found that the statute violates the special legislation and separation of powers clauses of the Indiana Constitution. This direct appeal asks:

1. Is Indiana Code Section 3-11-1.5-3.4 unconstitutional special legislation where Lake County has a uniquely high amount of small precincts and has not taken efforts to consolidate them for administrative and fiscal benefits?

2. Does Indiana Code Section 3-11-1.5-3.4 violate the separation of powers by permitting local officials to consolidate precincts and consequently possibly eliminate a number of political party precinct committeeperson positions?

### STATEMENT OF THE CASE

*Nature of the case.* The State of Indiana appeals the trial court's final judgment declaring Indiana Code Section 3-11-1.5-3.4 to be unconstitutional in violation of Article 3, Section 1 and Article 4, Section 23 of the Indiana Constitution.

*Course of proceedings.* On July 31, 2014, Appellees filed a Complaint for Declaratory Judgment, Application for Temporary Restraining Order, and Motion for Preliminary Injunction (App. 12-22). The trial court granted the temporary restraining order (App. 23-25). A hearing was set for August 8, 2014, on the Motion for Preliminary Injunction (App. 10-11). Near the beginning of the hearing on the Motion for Preliminary Injunction and without prior notice to the State, Plaintiff John Buncich, Lake County Democratic Chairman, moved the trial court to advance and consolidate the hearing for preliminary injunction with a trial on the merits of the case (Tr. 6-7). On August 25, 2014, the trial court issued an order advancing and consolidating the matter, found Indiana Code Section 3-11-1.5-3.4 unconstitutional, and permanently enjoined the Defendants from implementing,

enforcing, adopting, or carrying out the statute (App. 149, Trial Court's August 25, 2014 Order<sup>1</sup> at 7).

On September 19, 2014, the State filed a Notice of Appeal (Online Docket). On September 24, 2014, the Notice of Completion of Clerk's Record was filed, and on October 14, 2014, the Notice of Completion of Transcript was filed (Docket). On November 6, 2014, the State filed an emergency motion for extension of time within which to file Brief of Appellant, which this Court granted on November 13, 2014 (Docket). In accordance with this Court's order, the Brief of Appellant is due December 1, 2014 (Docket).

### STATEMENT OF FACTS

In 1993, the legislature established a combined board of elections and registration that applied to any county with a population of between 400,000 and 700,000, which only included and still includes Lake County. Ind. Code § 3-6-5.2-1, et. seq. The Lake County Board of Elections and Registration ("Board") is comprised of the circuit court clerk and two members appointed by the county chairmen from each of the major political parties and the circuit court clerk. Ind. Code § 3-6-5.2-4. Additionally, a director and assistant director for the board is appointed by the two highest vote-getting parties in the Secretary of State's race. Ind. Code § 3-6-5.2-7. The Board has all of the powers and duties of a county election board, board of registration, circuit court clerk, and a county executive under Title 3, the election code. Ind. Code § 3-6-5.2-6. Since 1993, the legislature

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<sup>1</sup> Hereinafter "Order."

has amended the scope of the board's makeup and duties on several occasions. It does not appear that there has ever been a challenge to the legitimacy of the creation and powers given to the Board in its twenty-one year existence.

On March 24, 2014, the Indiana General Assembly enacted as part of a larger bill governing elections, Indiana Code Section 2-11-1.5-3.4:

- (a) This section applies to a county with a board of elections and registration established under IC 3-6-5.2.
- (b) As used in this section, "committee" refers to the small precinct committee established by subsection (c).
- (c) Effective June 1, 2014, the small precinct committee is established in the county.
- (d) The committee consists of:
  - (1) each member of the board of elections and registration; and
  - (2) any additional individual appointed by unanimous vote of the entire membership of the board.
- (e) The committee shall determine:
  - (1) which precincts within the county had fewer than five hundred (500) active voters (as defined in IC 3-11-18.1-2) as of June 1, 2014;
  - (2) if compliance with the precinct boundary standards set forth in section 4 or 5 of this chapter would prevent the combination of a precinct described in subdivision (1) with one (1) or more adjoining precincts; and
  - (3) the potential savings in the administration of elections resulting from the combination of precincts under this section.
- (f) Not later than noon August 1, 2014, the board of elections and registration shall:
  - (1) adopt a proposed precinct establishment order implementing the findings of the committee; and
  - (2) file the proposed order with the election division not later than noon August 8, 2014.
- (g) If the proposed precinct establishment order is approved under this chapter, the order takes effect January 1, 2015. However, if an

objection to the proposed order is filed under section 18 of this chapter, the proposed precinct establishment order takes effect January 1, 2015, unless at least three (3) members of the commission affirmatively vote to sustain the objection.

(h) This section expires January 1, 2016.

Ind. Code § 3-11-1.5-3.4 (Supp. 2014).

Just before the General Assembly passed the legislation regarding the small precincts, Lake County had more small precincts than the State's next seven most populous counties combined (App. 107-108; State's Ex. 2). At the time, the top eight counties with most active voters were Marion, Lake, Allen, Hamilton, St. Joseph, Vanderburgh, Porter, and Elkhart counties (App. 107-108; State's Ex. 2).<sup>2</sup> As of March 7, 2014, Lake County had 130 precincts with fewer than 500 active voters (App. 107; State's Ex. 2). The next closest county was Allen County with fifty-seven small precincts<sup>3</sup> (App. 107; State's Ex. 2). The combined total number of small precincts among Marion, Allen, Hamilton, St. Joseph, Vanderburgh, Porter, and Elkhart counties was 129 to Lake County's 130 (App. 107-108; State's Ex. 2).

As of July 31, 2014, Lake County had a total of 525 precincts, 174 of which were considered small precincts with fewer than 500 active voters (App. 105; Plaintiff's Ex. 1, 2; Tr. 15). The county in Indiana with the next highest number of small precincts was still Allen County with eighty-one small precincts (App. 104; Plaintiff's Ex. 2; Tr. 16). Although Lake County is the second largest county in the

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<sup>2</sup> Each of these counties has at least 100,000 active voters (State's Ex. 2).

<sup>3</sup> Using the terminology of the statute, a "small precinct" is one with less than 500 active voters. See Ind. Code § 3-11-1.5-3.4(c), (e).

state, it contained more small precincts than the three of the four most populous counties combined as summarized in the following graph taken from Plaintiff's Exhibits 1 and 2:

| Precincts by County |                |                 |                  |               |
|---------------------|----------------|-----------------|------------------|---------------|
| County              | Active Voters  | Total Precincts | Small Precincts* | Percentage    |
| Allen               | 224,115        | 333             | 81               | 24.32%        |
| Hamilton            | 190,739        | 217             | 28               | 12.90%        |
| <b>Lake</b>         | <b>314,726</b> | <b>525</b>      | <b>174</b>       | <b>33.46%</b> |
| Marion              | 518,182        | 598             | 65               | 10.87%        |
| St. Joseph          | 175,399        | 211             | 24               | 10.86%        |

\*Small Precinct is defined as having less than 500 active voters.

Following the enactment of Indiana Code Section 3-11-1.5-3.4 the Board appointed a committee on or about June 17, 2014, which was made up of the five Board members, Board Director Michele Fajman, and Board Assistant Director Patrick Gabrione (App. 69, 76-77; Plaintiff's Ex. 3 at 25, 32-33; Tr. 60-61). On July 15, 2014, the Board discussed the new legislation as part of their meeting (App. 69, 76; Plaintiff's Ex. 3 at 25, 32; Tr. 72-73). During the meeting, Gabrione noted that the committee had performed some of its work in reviewing small precincts and the potential savings to the county of combining them (App. 69-70; Plaintiff's Ex. 3 at 25-26). Gabrione also pointed out, and Fajman agreed, that Lake County had several precincts that were in violation of existing laws because they included more than 1200 active voters (App. 70, 74-75; Plaintiff's Ex. 3 at 26, 30-31).

Although Gabrione acknowledged that there was not a final report from the director, Gabrione stated that seventy-six of the precincts with fewer than 500 active voters could be reduced and Lake County would save approximately \$87,000

per election year (App. 71, 85; Plaintiff's Ex. 3 at 27, 41). Over the next five years, Gabrione estimated that the county would save \$435,000 (App. 71; Plaintiff's Ex. 3 at 27). He also noted that had the Board undertaken this action in 2010, the last time it was discussed before the board, the county could have saved \$304,000 (App. 71; Plaintiff's Ex. 3 at 27). The committee, which was empowered by the Board, had not held a formal meeting before the July 15 Board meeting and had not issued a public notice of a meeting (App. 78-81; Plaintiff's Ex. 3 at 34-37). The Board agreed to give notice of a special meeting of the committee and meet on the morning of August 1, 2014 (App. 88; Plaintiff's Ex. 3 at 44).

On July 31, 2014, the day prior to when the committee was scheduled to meet, Plaintiffs John Buncich, chairman of the Lake County Democratic Party Central Committee, and five Democratic precinct committee persons filed a complaint for declaratory judgment alleging the law was unconstitutional and a motion for a preliminary injunction (App. 12-22; Order at 2, *infra*). Buncich also sought a temporary restraining order the same day, which was granted by the trial court (App. 18-22; Order at 2, *infra*). *Id.* The trial court set a hearing on the preliminary injunction for August 8, 2014 (App. 10-11).

At the hearing on the preliminary injunction on August 8, Michelle Brzycki from the Indiana Election Division testified that twenty-nine of Indiana's ninety-one counties had thirty-three percent or more of their total number of precincts

classified as small precincts (App. 145; *Order* at 3, *infra*; Tr. 21).<sup>4</sup> However, only two of those counties had more than forty total precincts: Kosciusko County, with sixty-nine total precincts and twenty-three small precincts, and Lake County (App. 105; Plaintiff's Ex. 2). Lake County had more than seven times greater the number of small precincts than Kosciusko County (App. 105; Plaintiff's Ex. 2).

Several Lake County precinct committee chairpersons also testified at the hearing (Tr. 36-48). A precinct chairperson's responsibilities include registering voters in the precinct, assist in finding polling locations, hiring poll workers for elections day, and vote to fill vacancies in elected offices on behalf of their political party (Tr. 62).<sup>5</sup> Each elected chairperson is also entitled to serve as a member of a caucus under Indiana Code Chapter 3-13-11 that fills vacancies in elected offices of a town, city, township, county, and circuit, as well as for state legislative offices (Tr. 63-64). Ind. Code § 3-13-5-1; Ind. Code § 3-13-6-3; Ind. Code ch. 3-13-7; Ind. Code ch. 3-13-8; Ind. Code ch. 3-13-9; Ind. Code ch. 3-13-10; *Order* at 4, *infra*.

Each of the precinct chairpersons testified that they lived in Lake County, and that they were notified by Board Director Fajman that the consolidation of small precincts could mean that their precincts would be combined with others (Tr. 36-58). However, each of them also testified that no official plan of consolidation

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<sup>4</sup> The trial court found that there were twenty-eight counties, not twenty-nine, with thirty-three percent or more of their total number of precincts classified as small precincts (App. 145; *Order* at 3).

<sup>5</sup> Indiana Code section 3-13-11-5 sets out eligibility requirements for a committeeman.

had been approved by the Board, and no action of consolidation had occurred at the time of the hearing (Tr. 36-58, 66). Fajman confirmed that she had spoken with several of the chairmen and informed them that their precincts had fewer than 500 active voters, but that no official action had been taken (Tr. 61, 66). Fajman also conceded that the Indiana Code Section 2-11-1.5-3.4 did not mandate consolidation of any precincts, only that Lake County determine the size and characteristics of small precincts and potential cost savings of consolidation (Tr. 67-69). Ultimately, the trial court found in its consolidated order that there were no unique characteristics of Lake County that warranted the special legislation, and that cost savings could extend to all counties (App. 145; Order at 3, *infra*).

### SUMMARY OF THE ARGUMENT

Indiana Code Section 3-11-1.5-3.4 is not unconstitutional special legislation because its required small precinct consolidation study in Lake County is justified by the abnormally large number of small precincts in that county as compared to all others. Lake County has over fifteen percent of the State's small precincts—more than twice the percentage of the next closest county. Of counties with more than a third of precincts qualifying as “small precincts,” Lake County had over seven and a half times more small precincts than the next closest county. Among the State's four most populous counties, Lake County had as many small precincts, 174, as the other three counties (Marion, Allen, and Hamilton) combined. This uniquely high number of small precincts likely leads to administrative inefficiencies and the Lake County election board preliminarily estimated that it carried substantial

unnecessary financial burdens. The General Assembly was justified in enacting special legislation to address this problem that is unique to Lake County.

Indiana Code Section 3-11-1.5-3.4 does not unconstitutionally infringe upon the separation of powers, either. Indiana's separation of powers doctrine does not apply to localities or political party offices. At most, the precinct committeepersons who potentially stand to lose their party positions due to small precinct consolidation present an internal dispute for the major political parties in which the judiciary has historically declined to intervene. The trial court erred in stepping into that fray under the guise of the separation of powers.

Plaintiffs failed to prove that this statute is unconstitutional under every conceivable basis; indeed, their own evidence proves the statute's constitutionality. This Court should reverse the trial court's judgment and permanent injunction.

## ARGUMENT

### Standard of Review

Whether a statute is constitutional is a question of law and is reviewed by this Court *de novo* without any deference to the determination of the trial court. *Zoeller v. Sweeney*, \_\_ N.E.3d \_\_, No. 45S00-1309-PL-596, slip op. at 1 (Ind. Nov. 6, 2014). A statute challenged under Indiana's Constitution is presumed constitutional until "clearly overcome by a contrary showing." *Id.* (quoting *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996)). The party challenging the constitutionality of a statute bears the "heavy" burden of proof, and must show that "are no set of circumstances under which the statute can be constitutionally

applied.” *Id.* (quoting *Baldwin v. Reagan*, 715 N.E.2d 332, 337 (Ind. 1999)) (emphasis added in *Zoeller*).

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

Indiana Code Section 3-11-1.5-3.4 is not unconstitutional because it is justified by Lake County’s unique and undesirable status among Indiana counties. Lake County is unique because it has an abnormally large number of small precincts. Also, Lake County’s election officials have, until now, been unwilling to voluntarily undertake a precinct consolidation program to realize administrative and fiscal benefits. “In determining whether a legislative classification is ‘special,’ every reasonable presumption must be indulged in favor of the constitutionality of the statute.” *Williams v. State*, 724 N.E.2d 1070, 1085 (Ind. 2000) (citing *Tinder v. Music Operating, Inc.*, 142 N.E.2d 610 (Ind. 1957)). Determining whether a statute complies with Article 4, Section 23 requires a two part analysis: first, whether a statute is general or special; and second, if the statute is special, is it constitutionally permissible. *Id.* A special law is constitutionally permissible if there is a unique characteristic of the locale that justifies the special legislation. *State ex. rel. Att’y Gen. v. Lake Super. Ct.*, 820 N.E.2d 1240, 1249 (Ind. 2005). Lake County’s decision to maintain over double the amount of small voter precincts than any other county in Indiana justifies Indiana Code Section 3-11-1.5-3.4 under our Constitution (App. 107-08; St. Ex. 2).

**A. Indiana Code Section 3-11-1.5-3.4 is special legislation.**

Whether a law is special or general legislation is a threshold question for determining if it is constitutional under Article 4, Section 23. *Alpha Psi Chapter v. Auditor of Monroe County*, 849 N.E.2d 1131, 1136 (Ind. 2006). Indiana Code Section 3-11-1.5-3.4 is special legislation because it is directed only at Lake County by identifying it, alone, by its specific population range. Additionally, the two-year, limited time in which the statute has effect further ensures that it will likely only ever apply to Lake County. Ind. Code § 3-11-1.5-3.4(h). Legislation is “special” if it applies only to a particular location, entity, or person as opposed to the general public or all the entities or people within a class. *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 689 (Ind. 2003). While population classifications were formerly a valid basis for making a statute general and thereby constitutional, the Court has more recently explained that a population classification is instead an important consideration for constitutionally justifying special legislation. *See, e.g., Dorch v. Lugar*, 266 N.E.2d 25, 31 (Ind. 1971) (finding that it is constitutionally sufficient for Section 23 if the population classification is “reasonable and naturally inherent in the subject matter”); *Ind. Gaming Commission v. Moseley*, 643 N.E.2d 296, 301 (Ind. 1994) (finding different statutory treatment of Lake County was constitutionally justified by the population and density of that population on the waterfront); *Williams*, 724 N.E.2d at 1086 (finding Lake County, as more populous county, has inherent needs, like additional magistrates, which constitutionally justified special legislation). Here, Indiana Code Section 3-11-1.5-3.4 is special

legislation because it applies only to Lake County and none of Indiana's ninety-one other counties; nevertheless, this special law is justified and thus constitutional.

**B. Indiana Code Section 3-11-1.5-3.4 is constitutionally permissible.**

Lake County's extraordinarily high number of small precincts and the unwillingness of its election officials to address the added expense and burden that those precincts impose on the election system justifies Indiana Code Section 3-11-1.5-3.4. A special law is not per se unconstitutional. *Alpha Psi*, 849 N.E.2d at 1137. If there is a characteristic of the affected class that justifies the special legislation then it is constitutional. *Id.* at 1137-38. The reviewing court considers "whether there is something about the class that makes it unique and whether that uniqueness justifies the differential treatment. *Id.* at 1138. The party challenging the constitutionality of a statute bears the burden of negating "every conceivable basis which might have supported the classification." *Kimsey*, 781 N.E.2d at 694. Lake County had 174 small precincts,<sup>6</sup> more than two times the number of small precincts in any other county in Indiana (App. 104-06; Plaintiff's Ex. 2). Lake County officials' decisions in managing its precincts justified a special law to study the feasibility and possible financial savings from consolidation. Plaintiffs have not, because they cannot, meet their burden for injunctive relief.

The purpose of Indiana Code Section 3-11-1.5-3.4 is to direct Lake County to perform a study to determine the feasibility and cost savings of consolidating voting

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<sup>6</sup> The trial court order at no point finds the actual number of small precincts in Lake County, nor does it acknowledge that Lake County has over two times the number that in the next highest county (App. 143-49).

precincts. Simplifying election districts, particularly in a system that is unusually extensive, is likely to bring some administrative and financial benefits to a county. *See supra* at 5-6 (summary of board officials estimation of the benefits that small precinct consolidation would bring to Lake County). A limited study is prudent and justified when the subject of specific legislation may be disproportionately affected by government action due to the subject's unique characteristic and when the potential results are not certain or warrant further investigation. *See St. Luke Hospitals, Inc. v. Com, Cabinet for Health & Family Servs., Office of Certificate of Need*, 254 S.W.3d 830, 834 (Ky. Ct. App. 2008) (holding that a statute directing a study evaluating the risks of performing a stabilizing medical procedure be conducted only in two rural hospitals was not unconstitutional special legislation).

The statute does not mandate any particular consolidation, or even any consolidation at all. In some circumstances, consolidation of voting precincts may not be permitted under statutory precinct boundary standards. Ind. Code §§ 3-11-1.5-4, -5. Likewise, potential savings may not be significant enough to justify action or outweigh other considerations. *See* I.C. § 3-11-1.5-3.4(e)(3). Because the trial court enjoined the consolidation study before it was completed, we do not know what plan, if any, the Board would have adopted and the benefits it would have brought.

"If the subject matter of an act is not amenable to a general law of uniform operation throughout the State, the act is constitutional under Section 23."

*Williams*, 724 N.E.2d at 1085-86. Here, a general law directing studies in every

county would be counter-productive and would lead to needless studies in counties where small precincts are not rampant. Many counties in Indiana do not have a high number of small precincts (App. 107-08 ; St. Ex. 2). Other larger Indiana counties have taken significant action on their own initiative to address their overabundance of small precincts. Lake County has not, and its distinction as the county with by far the most small precincts warrants a legislatively-directed, limited study into the feasibility and benefits of consolidation. This directed legislative action is constitutionally permitted because it addresses Lake County's unique characteristics.

**The record sufficiently differentiates Lake County from the other counties in Indiana.**

Lake County's excessive number of small precincts compared to other counties in Indiana constitutionally justifies Indiana Code Section 3-11-1.5-3.4. Lake County is by far the county in Indiana with the most small precincts (App. 107-08; St. Ex. 2). This characteristic alone justifies a specific law directing a study to address this issue. If the legislation is related to a sufficiently differentiating characteristic, then it, by necessity, means that a general law cannot be made applicable. *Kimsey*, 781 N.E.2d at 692. The manner in which the statute identifies the locality need not be the characteristic that justifies the special legislation. *Kimsey*, 781 N.E.2d at 692. Here, Lake County's unique characteristics justify this special legislation.

In the context of constitutionally permissible special legislation, Lake County has consistently been found to be a unique county by this Court. *See Moseley*,

643 N.E.2d at 301 (Lake County's higher population concentration on the waterfront compared to other counties with waterways suitable for gambling vessels made differential treatment under statute constitutional); *Williams*, 724 N.E.2d at 1086 (Lake County's large population and the large amount of cases on its court dockets compared to other counties made differential treatment in regards to the statutory assignment of magistrates constitutional); *State ex rel. Att'y Gen.*, 820 N.E.2d at 1250 (Lake County's widespread issue with tax inequities and unusual valuation created a "reassessment problem of scale and complexity not found elsewhere in the state," which allowed for constitutionally permissible special legislation). When compared with other counties in Indiana, Lake County had more population density on waterfront (*Moseley*), a large population and larger court docket (*Williams*), and a more severe reassessment problem (*State ex rel. Att'y Gen.*); these unique characteristics constitutionally justified special legislation that dealt with those specific circumstances.

The trial court incorrectly concluded that the mere existence of small precincts in other counties forecloses any justification for a special law to address Lake County's heightened problem (App. 147-48; *Order* at 5-6, *infra*). In *Moseley*, other counties had municipalities on waterfronts. 643 N.E.2d at 301. In *Williams*, other counties had cases on their court dockets and required magistrates. 724 N.E.2d at 1086. In *State ex rel. Att'y Gen.*, other counties had property tax reassessment problems. 820 N.E.2d at 1250. Those characteristics did not

summarily negate the justification for special legislation because they were manifested in unique ways in Lake County.

The same is true here. The difference between the number of small precincts in Lake County and those in every other county in Indiana is dramatic. The General Assembly rightly understood that difference to justify special legislation to help identify a resolution to the problem.

Shortly before Indiana Code Section 3-11-1.5-3.4 was passed, Lake County had 130 small precincts<sup>7</sup> (App. 107; St. Ex. 2), or 15.57 percent of all the small precincts in Indiana. No other county comes close to Lake County in this regard.<sup>8</sup> Even among counties with more than 100,000 active voters, Lake County is an outlier:

- Lake: 337,381 active voters and 130 small precincts;
- Allen: 257,726 active voters and 57 small precincts;
- Hamilton: 198,542 active voters and 23 small precincts;
- Marion: 643,799 active voters and 19 small precincts;

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<sup>7</sup> There were two sets of numbers for small precincts 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.

<sup>8</sup> Allen County is the next closest with less than half of the number of Lake County's small precincts (App. 107; St. Ex. 2). Allen County had 57 small precincts for 6.83% of all small precincts statewide (App. 107; St. Ex. 2). The remaining counties each ranged from 3.23% to 0% of Indiana's total small precincts (App. 107-08; St. Ex. 2). Marion County, Indiana's most populous, had only 19 small precincts for 2.28% of all small precincts in the State (App. 107; St. Ex. 2).

- St. Joseph: 199,279 active voters and 16 small precincts;
- Vanderburgh: 124,888 active voters and 7 small precincts;
- Elkhart: 166,273 active voters and 4 small precincts; and
- Porter: 115,343 active voters and 3 small precincts.

(App. 107-08; St. Ex. 2). Additionally, of the three largest counties in Indiana, Lake is the only one that has not taken significant recent action to consolidate and save resources through modification of precincts and voting locations. See Vivian Sade, *County Plans to Move Voting Spots*, The Journal Gazette (Aug. 29, 2013), available at <http://www.fortwayne.com/apps/pbcs.dll/article?AID=/20130829/news/320117940> (describing Allen County's reorganization and consolidation of polling locations); Marion County Election Board, *Maps of Marion County Election Districts*, available at [http://www.indy.gov/egov/county/clerk/election/voter\\_info/pages/precinct%20maps%20and%20information.aspx](http://www.indy.gov/egov/county/clerk/election/voter_info/pages/precinct%20maps%20and%20information.aspx) (last visited December 1, 2014) ("Marion County adopted a new precinct map effective January 1, 2012, adding ten precincts (from 590 to 600) and changing a number of precinct boundaries.").

The trial court did not acknowledge the uniquely high number of small precincts in Lake County (App. 143-49; Order at 1-7). Instead, it compared the percentage of small precincts to the total number of precincts within individual counties (App. 145; Order at 3). For example, the trial court found that "[i]n 28 of Indiana's 92 counties, 33% or more of the precincts have less than 500 active voters" (App. 145; Order at 3). While this approach can be informative when analyzing a single county, it is not helpful when comparing counties to each other. Every other

county that has small precincts comprising at least 33% of its precincts had less than 70 total precincts; Lake County has 520 total precincts—over seven and a half times the total amount of precincts as the next closest county (App. 104-06; Plaintiff's Ex. 2).<sup>9</sup> The trial court's order is not supported by the facts in the record: those facts show that Lake County is unique in its number of small precincts.

Other ways of describing Lake County's unique characteristics relating to this statute exist and could have been presented to the trial court if it had allowed discovery and advance notice that it would combine the preliminary injunction hearing with the trial on the merits. At the hearing the State argued that additional analysis would further elucidate Lake County's uniqueness (Tr. 91-94), but the trial court rejected the need for further factual development and investigation (App. 145-46; *Order* at 3-4, *infra*). With adequate discovery and time to prepare, the State could have presented other facts relating to the movement and distribution of population within Lake County. For example, over the past four decades Lake County has lost the most population of any other county by over three times the amount. STATS Indiana, *Indiana County-Level Census Counts, 1900 to 2010*, available at [http://www.stats.indiana.edu/population/PopTotals/historic\\_counts\\_counties.asp](http://www.stats.indiana.edu/population/PopTotals/historic_counts_counties.asp) (last visited Nov. 25, 2014). From 1970 to 2010, Lake County lost more than 50,000 people in its total population (546,253 residents in 1970 compared to 496,005 residents in 2010). *Id.* Twenty-one other counties in Indiana have had population decreases from 1970 to 2010, the next most significant

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<sup>9</sup> Kosciusko County, with 69 total precincts and 23 small precincts (App. 105; Plaintiff's Ex. 2).

decrease in population was in Grant County which decreased from by 13,894 people (83,955 residents in 1970 to 70,061 residents in 2010). *Id.* Grant County has 8 small precincts out of its 63 precincts (13%), and 0.96% of all of Indiana's small precincts (App. 107; St. Ex. 2). Other additional comparisons could be made that consider directly related traits such as changes in the distribution of population within the counties.

The record differentiates the legislation from other acts that this Court has struck down under Article 4, Section 23. In *Kimsey*, a special law was passed to allow residents in St. Joseph County to block annexation with only a fifty percent majority of votes, while the remaining ninety-one counties in Indiana required sixty-five percent of the effected landowners to block annexation. *Kimsey*, 781 N.E.2d at 685. The reasons proffered for the special legislation was the need to preserve rural land around urban areas and to prevent competing cities within the same county from annexing each other's land. *Kimsey*, 781 N.E.2d at 694. Neither of these reasons was particular to the population range used in the statute, and more importantly, neither of these reasons turned on facts unique to St. Joseph County. *Id.* This Court found, "[i]n short, we are directed to nothing in the record and no relevant facts susceptible to judicial notice that are unique to St. Joseph County. Accordingly, this legislation is unconstitutional special legislation." *Id.*

Sufficient facts in this record prove that Lake County is unique and that this special legislation is constitutionally justified. But if that were not the case, then the proper result would be to remand the case to the trial court for a full factual

development of the unique characteristics that set Lake County apart from all the other counties in Indiana in regard to small voter precincts. But this is not necessary, because Plaintiffs bore the burden of negating “every conceivable basis which might have supported the classification,” *Kimsey*, 781 N.E.2d at 694, yet the record that they presented actually establish the very justifications they hoped to negate. The trial court erred in declaring the statute unconstitutional and this Court should reverse.

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

Article 3, Section 1, of the Indiana Constitution establishes our separation of powers doctrine:

The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

The purpose of the separation of powers doctrine is to rid each separate branch of State government from influence or control by another department. *Berry v. Crawford*, 990 N.E.2d 410, 415 (Ind. 2013) (quoting *A.B. v. State*, 949 N.E.2d 1204, 1212 (Ind. 2011), *reh’g denied*), *reh’g denied*. However, “the separation of powers doctrine prevents the courts from reviewing political, social, and economic actions within the exclusive province of coordinate branches of government.” *Berry*, 990 N.E.2d at 415 (citing *Peavler v. Bd. of Comm’rs of Monroe County*, 528 N.E.2d 40, 44 (Ind. 1988)). These concerns are not implicated by Indiana Code Section 3-11-1.5-3.4.

The trial court erroneously found that it was a violation of the separation of powers under the Indiana Constitution for the legislature to pass any legislation that may, albeit indirectly, affect committee chairpersons. The duties and election of precinct committeemen are purely functions of county government, not state positions. “[I]t has repeatedly been held that the separation of powers doctrine of Article [3] has no application at the local level.” *Willsey v. Newlon*, 316 N.E.2d 390, 391 (Ind. Ct. App. 1974) (citing *Mogilner v. Metropolitan Plan Commission of Marion County*, 236 Ind. 298, 318, 140 N.E.2d 220 (1957); *Baltimore & Ohio Railroad Company v. Town of Whiting*, 161 Ind. 228, 233, 68 N.E. 266 (1903) (“This provision of the Constitution relates solely to the state government and officers charged with duties under one of the separate departments of the state, and not to municipal governments and officers.”)). Therefore, there is no cognizable claim that a statute that affects the local committeemen may be challenged under the separation of powers doctrine of Article 3 of the Indiana Constitution.

Buncich’s argument below, that the committeeman’s powers to fill certain vacant positions within local government and the General Assembly elevates the position of county precinct committeemen to a State-level position, is misplaced. *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 fact that there is a statutory procedure for the fulfillment of local officers by a caucus of local committeemen does not render it an election or nomination which may be challenged under the law, but rather it is an appointment by a political party.

*Nolan v. Taylor*, 864 N.E.2d 419, 423 (Ind. Ct. App. 2007); *see* Ind. Code § 3-13-11-1 (“The caucus procedure prescribed by this chapter for filling vacancies in local offices must be followed whenever required by [Indiana Code Sections 3-13-6-2, 3-13-6-3(a), 3-13-7-1, 3-13-8-1, 3-13-9-1, or 3-13-10-1]. Selections made under this chapter [. . .] are appointments pro tempore for the purposes of Article 2, Section 11 of the Constitution of the State of Indiana.”). The county precinct committeeperson are not guaranteed any exclusive power as a branch of State government, and their power to participate in a caucus for appointment is merely local and political, to which the separation of powers does not apply.

Furthermore, the Court does not have jurisdiction to declare injunctive relief for purely political positions such as county precinct committeepersons. The election and definition of the powers of precinct committeepersons are provided for by statute, where each party whose nominee for state secretary of state in the last election may have precinct committeepersons elected in the primary election if provided for by the rules of the particular political party. Ind. Code § 3-6-2-1. However, county precinct committeemen are by their nature a political position, not a part of any particular branch of government. *See, e.g., 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). As such, a court does not have jurisdiction to hear complaints regarding the organization or functioning of political parties or their officers. *Id. See also 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].”).

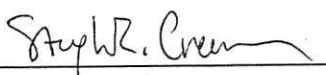
The General Assembly guided the Lake County Board to establish a committee to consider and study whether it could benefit from the consolidation of its small precincts. The Board was then to act on the committee’s recommendations. Any coincident removal of precinct committeemen would have been an action by the board, which would have then squarely placed the future of those positions in the hands of the party. *See* Ind. Code § 3-10-1-4.5(b) (The rules of a political party may specify whether a precinct committeeman elected under subsection (a) continues to serve as a precinct committeeman after the boundaries of the precinct are changed by a precinct establishment order issued under [Indiana Code Chapter] 3-11-1.5”). Committeemen are not State officers about which Article 3 has anything to say. The trial court erred in finding that Indiana Code Section 3-11-1.5-3.4 violates the separation of powers; this Court should reverse.

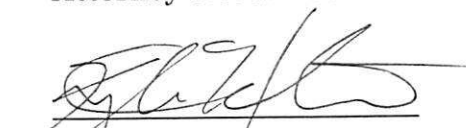
## CONCLUSION

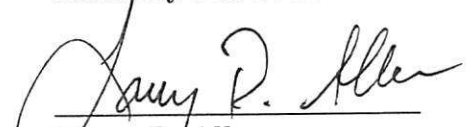
For the foregoing reasons, this Court should reverse the trial court's judgment.

Respectfully submitted,

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## WORD COUNT CERTIFICATE

I verify that this brief contains no more than 14,000 words.



Kyle Hunter  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I do solemnly affirm under the penalties for perjury that on December 2, 2014, I served upon the opposing counsel in the above-entitled cause two copies of the Amended Brief of Appellants by depositing the same in the United States mail first-class postage prepaid, addressed as follows:

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Filed in Open Court

STATE OF INDIANA )  
COUNTY OF LAKE )

IN THE LAKE CIRCUIT COURT  
AUG 25 2014 CROWN POINT, INDIANA

JOHN BUNCICH, in his capacity as Chairman  
of the LAKE COUNTY DEMOCRATIC  
CENTRAL COMMITTEE, et al.,

  
CLERK LAKE CIRCUIT COURT

Plaintiffs, )

v. )

LAKE COUNTY BOARD OF ELECTIONS AND )  
REGISTRATION, et al., )

Defendants. )

Case No. 45C01-1407-PL-00084

ORDER

This case coming before the Court on August 8, 2014, for a Hearing upon Plaintiffs' Motion for a Preliminary Injunction.

Plaintiffs, JOHN BUNCICH, Chairman of the Lake County Democratic Central Committee, CHRISTINE M. RUSSELL, individually, RANDOLPH PALMATEER, individually, RANDY DESALVO, individually, HERBERT SMITH, JR., individually, CATHLINE NAVEJAS, individually, EDUARDO D. BANDA, SR., individually, and SCOTT M. RAKOS, individually, appearing by counsel, CLAY M. PATTON.

Defendant LAKE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION appearing by its counsel-DAVID E. WICKLAND.

Defendant GREGORY ZOELLER, in his capacity as the Attorney General of the State of Indiana, appearing by his counsel JEFFERSON S. GARN and BETSY M. ISENBURG.

Prior to the commencement of the Hearing, Plaintiffs moved, pursuant to Trial Rule 65(A)(2) for the Court to order the trial of this case on the merits to be advanced and consolidated with the hearing of the application for preliminary injunction ("Motion to Advance and Consolidate").

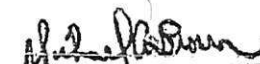
The Hearing was held and the case, including the Motion for Preliminary Injunction and Motion to Advance and Consolidate, were submitted and taken under advisement. At the conclusion of the Hearing, the Court allocated time to all Parties, until August 18, 2014, to file proposed findings of fact and conclusions of law.

I. FINDINGS OF FACT & CONCLUSIONS OF LAW

The Court having considered the evidence admitted at the Hearing, including the testimony of witnesses and the documents admitted; the arguments advanced by the Parties at the Hearing; and, the submitted proposed findings and conclusions, the Court makes and enters its findings of fact, conclusions of law, and order.

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CLERK LAKE CIRCUIT COURT

1. Any finding of fact that is in fact a conclusion of law is deemed a conclusion of law and any conclusion of law that is in fact a finding of fact is deemed a finding of fact.

2. Plaintiffs filed their Complaint for Declaratory Judgment, Application for Temporary Restraining Order, and Motion for Preliminary Injunction on July 31, 2014.

3. On August 8, 2014, Defendant Zoeller filed a Response in Opposition to Plaintiffs' Motion for Preliminary Injunction.

4. Plaintiff John Buncich is the Chairman of the Lake County Democratic Central Committee ("LDCC"). Each of the remaining Plaintiffs is (i) a resident of Lake County; (ii) registered to vote in Lake County; and, (iii) an LDCC Precinct Committeeperson; Each of the remaining Plaintiffs was elected as an LDCC Precinct Committeeperson on May 6, 2014 and each will serve terms of office in such positions until May 2018.

5. During the 2014 legislative session, I.C. §3-11-1.5-3.4 (the "Statute") was added to the Indiana Code.

6. The Statute creates "the small precinct committee" ("Committee") of Defendant Lake County Board of Elections and Voter Registration ("Board");

7. The Statute provides:

(e) The committee shall determine:

(1) which precincts within the county had fewer than five hundred (500) active voters (as defined in IC 3-11-18.1-2) as of June 1, 2014;

(2) if compliance with the precinct boundary standards set forth in section 4 or 5 of this chapter would prevent the combination of a precinct described in subdivision (1) with one (1) or more adjoining precincts; and

(3) the potential savings in the administration of elections resulting from the combination of precincts under this section.

I.C. §3-11-1.5-3.4(e).

8. The Statute goes on to require what the Committee is to do upon making the foregoing statutorily mandated determinations and further provides that:

(f) Not later than noon August 1, 2014, the board of elections and registration shall:

(1) adopt a proposed precinct establishment order implementing the findings of the committee; and

(2) file the proposed order with the election division not later than noon August 8, 2014.

I.C. §3-11-1.5-3.4(f)

9. The stated objective of the Statute, set forth therein, is "the potential savings in the administration of elections resulting from the combination of precincts."

10. Only 3 of Indiana's 92 counties of have no precincts under 500 active voters. Throughout Indiana, 1,109 of the 5,324 precincts (21%) have fewer than 500 active voters. By way of example, the evidence demonstrated that in Allen County, 81 of the 333 precincts (24%) have fewer than 500 active voters; in Johnson County, 35 of the 134 precincts (26%) have fewer than 500 active voters; and, in LaPorte County, 20 of the 89 precincts (22%) have fewer than 500 active voters.

11. In 28 of Indiana's 92 counties, 33% or more of precincts have less than 500 active voters. Some precincts in Indiana in fact have no active voters whatsoever.

12. The consolidation of certain precincts may, as a general matter, result in cost savings to elections boards and taxpayers wherever such consolidation is undertaken. Accordingly, should such a consolidation be undertaken, any associated cost savings would be realized throughout Indiana and not merely in a single county such as Lake County.

13. Any need or desire to save costs in the conduct of elections is not unique to or limited to a single county, such as Lake County, but instead extends to all Indiana counties.

14. The existence of precincts with less than 500 active voters is not limited to or unique to Lake County alone.

15. There are no unique circumstances that rationally justify the application of the Statute solely to Lake County and not to all of Indiana's remaining 91 counties.

16. Prior to the commencement of the Hearing, Plaintiffs made their Motion to Advance and Consolidate. Defendants were on notice that the trial of the action on the merits may be advanced and consolidated with the hearing on Plaintiffs' Motion for a Preliminary Injunction.

17. A total of eight (8) witnesses, called by the Plaintiffs, testified at the Hearing. The witnesses included (i) six (6) of the Plaintiffs, (ii) the Director of the Board, and (iii) the Voter Registration and Precinct Coordinator for the Indiana Election Division. Each witness was cross-examined by the counsel for Defendant Zoeller. Three (3) exhibits were admitted into evidence by Plaintiffs and Defendant Zoeller related to the numbers of active voters by precinct in each of Indiana's 92 counties.

18. Legal arguments were presented at the Hearing by counsel for the Plaintiffs and counsel for Defendant Zoeller upon Plaintiffs' Motion for a Preliminary Injunction and upon the Motion to Advance and Consolidate. No Party made any motion to continue the Hearing or to extend the time allocated for the submission of proposed findings and conclusions.

19. At the Hearing, Counsel for Defendant Zoeller argued that additional analysis needs to be done on the precinct numbers in all counties of the state, but did not identify

specific witnesses and evidence which, if admitted, could reasonably affect the disposition of the merits of this case.

## II. CONCLUSIONS OF LAW

20. The Board has all of the powers and duties provided in and by I.C. 3-6-5.2, *et seq.*, upon the administration of elections and voter registration in Lake County.

21. Defendant Zoeller, as the Attorney General of the State of Indiana, has the powers and duties conferred upon him by law in such capacity; while Defendant Zoeller is named in his official capacity as Attorney General, he is not properly named as a defendant to this case and, by separate order, this case is dismissed as to Defendant Zoeller.

22. Lake County is the only county in the State of Indiana to which the Statute applies.

23. The Indiana Constitution provides that "In all cases enumerated in the preceding section, and in all other case where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State. Ind. Const. Article IV, §23.

24. The Indiana Constitution provides in Article III, § 1 as follows: "The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided." Ind. Const. Article III, §1.

25. The duties of precinct committeepersons include the official governmental and administrative function of filling vacancies in a state legislative office under Indiana Code §3-13-5, certain circuit offices under Indiana Code §3-13-6, county offices under Indiana Code §3-13-7, city offices under Indiana Code §3-13-8, town offices under Indiana Code §3-13-9 and township offices under Indiana Code §3-13-10.

26. The Statute impacts precinct committeepersons within Lake County as is subjects them to removal from their offices on January 1, 2015, the date by which the Committee's report, which must be enacted by the Board, is to take effect under the terms of the Statute.

27. Such removal would terminate the precinct committeepersons' terms less than eight (8) months into their four (4) year terms and violates the separation of powers provision in Article III, Section 1 of the Indiana Constitution.

28. The Indiana Constitution bars the enactment of special legislation when a general law that is uniformly and generally applicable throughout Indiana can be made. A statute is

"special" if it "applies not to the entire state but to a particular area, person, class of persons, or set of circumstances exclusively." State v. Hoovler, 668 N.E.2d 1229, 1233 (Ind. 1996).

29. Even through certain laws applicable only in certain localities may be permissible under the Indiana Constitution, the purpose of Article IV, Section 23 is to prohibit the passage of any law applicable only to one or more counties. See Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc., v. Auditor of Monroe County, 849 N.E.3d 1131, 1136 (Ind. 2006). The mere possibility that a statute can apply outside of the area specified by its terms is not *de facto* evidence of its status as a "general" law. Id.

30. The analysis employed when examining special legislation to determine if a general law can be made applicable, begins with whether there are inherent characteristics of the affected class that justify special legislation. See Id. at 1138; citing Municipal City of South Bend v. Kimsey, 781 N.E.2d 683, 692 (Ind. 2003).

31. This inquiry then leads a court to consider (i) whether, in fact the statute is meaningful in a variety of places or whether relevant traits of the affected area are distinctive such that the law's application elsewhere has no effect and (ii) if those unique circumstances rationally justify the legislation. Id.

32. The Statute is applicable only to Lake County and there is little possibility, given the language of the Statute making its applicable only in Lake County, that the Statute would ever have any effect in any county in this state other than Lake County.

33. Lake County is not unique amongst Indiana counties when it comes to the existence of voting precincts with fewer than 500 active voters. Voting precincts with fewer than 500 active voters exist throughout this State as demonstrated by the evidence at the Hearing.

34. There are no unique circumstances that rationally justify the application of the Statute to Lake County alone out of all the counties in Indiana.

35. The Statute is impermissible special legislation that violates Article IV, Section 23 of the Indiana Constitution, as the Statute applies only to Lake County and not to all counties within the State of Indiana.

36. To obtain a preliminary injunction, the moving party has the burden of showing, by a preponderance of the evidence, that: (1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a *prima facie* case; (3) the threatened injury to the movant outweighs the potential harm to the non-movant resulting from the granting of the preliminary injunction; and, (4) the public interest would not be

discovered. Apple Glen Crossing, LLC v. Trademark Retail, Inc., 784 N.E.2d 484, 487-88 (Ind. 2003).

37. Plaintiffs' remedies at law are inadequate; an award of legal damages would not compensate or address the effects of the Statute. Moreover, Plaintiffs' remedies at law are inadequate due to the mandatory obligations imposed upon the Board and the Committee by the Statute which requires that the Committee makes its report to the Board and that the Board enact the recommendations within that report.

38. Plaintiffs have a reasonable likelihood of success on the merits as the Statute is impermissible special legislation that violates Article IV, Section 23 of the Indiana Constitution and as the Statute violates the separation of powers set forth in Article III, Section 1 of the Indiana Constitution.

39. The potential harm to Plaintiffs' in the absence of injunctive relief outweighs any potential harm to Defendants. If allowed to stand, the Statute will result in the Board enacting the changes to Lake County's precincts mandated by the Statute.

40. The public interest is not impeded by the granting of injunctive relief and in fact the public interest is advanced by the entry of injunctive relief in this case as the public has a substantial interest in uniform laws that are generally and equally applicable throughout the State of Indiana and in maintaining the balance and separation of powers amongst the three and co-equal branches of Indiana's government.

41. Trial Rule 65(A)(2) allows a trial court to advance and consolidate a trial on the merits with a preliminary injunction hearing either "[b]efore or after the commencement of the hearing of an application for a preliminary injunction."

42. The scope of the legal issues presented by this is not complex and the material facts that must be examined in determining whether the Statute is impermissible special legislation or whether the Statute violates the separation of powers are not subject to change over the passage of time; nor is it likely that additional material facts would be adduced by either the Plaintiffs or Defendants upon such issues. The terms of the Statute are as enacted the General Assembly and are applicable only to Lake County. There is no factual dispute that precincts with fewer than 500 active voters exist throughout Indiana; that the Statute would effect the removal of precinct committee persons from their offices prior to the expiration of their current terms of office during such terms; and, that the Statute applies only to Lake County.

43. The Motion to Advance and Consolidate should be granted.

III. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

A. That the Motion to Advance and Consolidate pursuant to Trial Rule 65(A)(2) is GRANTED.

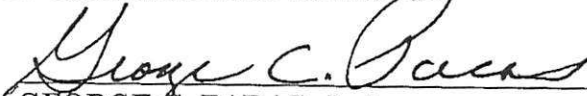
B. That the Statute is declared null and void as it violates the separation of powers in violation of Article III, Section 1 of the Indiana Constitution.

B. That the Statute is declared null and void as it constitutes impermissible special legislation in violation of Article IV, Section 23 of the Indiana Constitution.

C. That the Defendants are PERMANENTLY ENJOINED, RESTRAINED, AND BARRED from implementing, enforcing, adopting, or carrying out the Statute.

ALL OF WHICH IS HEREBY ORDERED AND ENTERED

Date: August 25, 2014

  
GEORGE C. PARAS, Judge  
Lake Circuit Court

