

EXHIBIT 1

AFFIDAVIT OF JEROLD A. BONNET

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF HAMMOND,)	
THOMAS MCDERMOTT, in his official)	
and personal capacities, and)	
EDUARDO FONTANEZ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:21-cv-00160-PPS-JEM
STATE OF INDIANA, INDIANA)	
SECRETARY OF STATE)	
DIEGO MORALES, in his official)	
capacity, and THE LAKE COUNTY)	
BOARD OF ELECTIONS,)	
)	
Defendants.)	

AFFIDAVIT OF JEROLD A. BONNET

I, Jerold A. Bonnet, state under the penalties for perjury that the following facts are true to the best of my knowledge and belief:

1. I am over eighteen (18) years of age and competent to testify to, and have personal knowledge of, the matter set forth in this Affidavit.
2. I am employed by Office of the Indiana Secretary of State as General Counsel and I have served in that position since 2005.
3. My duties and responsibilities as General Counsel include, among others:
 - a. General administration of legal issues and affairs.
 - b. Agency compliance officer duties.
 - c. Agency ethics officer.

4. For over a century, Indiana's judges at all levels were selected by Hoosiers through partisan elections. This system led to criticism regarding impartiality, judicial independence, and the continued ability to select high quality trial judges.
5. Indiana has a compelling interest in protecting the public's confidence in its representative government officials, including judges, and does not require the State to wait until actual instances of fraud, undue influence, bribery, malfeasance, or breach of public trust have occurred.
6. To address these concerns and further the state's interest in protecting public confidence in government officials, Indiana's 1965 General Assembly passed an act establishing the Judicial Study Commission ("the Commission").
7. The Commission was tasked with evaluating Indiana's then judicial selection process through partisan political elections and to consider selection alternatives, as part of Indiana's judicial reform movement. *See* Edward W. Najam, Jr., *Merit Selection in Indiana: The Foundation for A Fair and Impartial Appellate Judiciary*, 46 IND. L. REV. 15, 17 (2013), attached hereto as **Exhibit 2**.
8. The Commission sent questionnaires to Indiana attorneys and judges as part of their study. *Id.* at 19.
9. The results of the questionnaires showed that 79% of Indiana attorneys believed the partisan election system "could not continue to provide . . . highly qualified trial judges," and 87% of responding attorneys believed

politics influenced judicial selection to varying degrees. *Id.* (internal citations omitted).

10. The Commission's findings and recommendations ultimately led to the General Assembly's initiation of the constitutional amendment process that included revisions adopting merit selection for Indiana Supreme Court justices and appellate court judges under a revised Article 7 of the Indiana Constitution. See John G. Baker, *The History of the Indiana Trial Court System and Attempts at Renovation*, 30 IND. L. REV. 233, 258 (1997), attached hereto as **Exhibit 3**.
11. The General Assembly adopted merit selection for counties in major Indiana metropolitan areas with the second through fifth largest cities, being the counties of Lake, St. Joseph, Allen, and Vanderburgh. *Id.*
12. In 1972, Senate Enrolled Act 22 directed the Commission to conduct a study specific to Lake County's court system and to report its findings during the 1973 legislative session. See Institute for Court Management ("ICM"), *Report: A Program for the Improved Administration of Justice in Lake County* at 1 (1972), attached hereto as **Exhibit 4**.
13. The Commission contracted ICM to perform the study. ICM's disturbing findings first note that of 25 deep dive studies they had conducted countrywide from 1970 through 1972, none "found such pervasive dissatisfaction with the function of the courts as we found in Lake County." *Id.* at 2 § (B).

14. The majority of Lake County attorneys and judges ICM interviewed were dissatisfied with partisan election of judges in Lake County, which ICM found contributed to an attorney-managed administration of justice, unequal caseloads among Lake County judges, inconsistent application of Indiana's trial rules, and an excessive number of cases being sent by Lake County judges to venues in outside counties. *Id.* at 4-6.
15. A version of this hybrid system remains in effect today for Lake County superior court judges, where merit selection is used to appoint judges, with retention elections for incumbents. If a judge loses the retention election, the seat is vacant and a new judge is appointed through the merit selection process.
16. In 2008, the Judicial Conference of Indiana developed a Strategic Plan for the future of Indiana's judicial branch, steered by a Strategic Planning Committee organized by former Chief Justice Randall T. Shephard. See *A Blueprint for Excellence and to Greater Accountability: Enhanced Access to Justice in Indiana's Judicial System*, INDIANA JUDICIAL BRANCH: STRATEGIC PLANNING COMMITTEE at 1, <https://www.in.gov/courts/iocs/files/strategic-white-paper.pdf>, attached hereto as **Exhibit 5**.
17. The plan describes a decades long reform measure to Indiana's judicial branch, including moving towards a unified court system, state-centralized funding source, and push for merit selection of trial court judges, among other things. *Id.* at 7-9.

18. A merit selection process is essential in a highly populated and highly diverse jurisdiction like Lake County to provide safeguards for limiting political influence in Lake County superior courts.
19. Besides occasional amendments to the nomination process and LCJNC's structure, the appointment and retention process has remained largely unchanged for the majority of Lake County's superior court divisions. Selection of the four county division judges did not change from elections to the hybrid process until Ind. Code § 33-33-45-25 was amended in 2011.
20. As amended by HEA 1453, under the current version of Ind. Code § 33-33-45-28(a) – (b), LCJNC members consist of Governor appointees, Lake County board of commissioner appointees, and Indiana's Chief Justice or their Justice designee.
21. The current appointment, selection, and retention process for Lake County superior court judges is a product of decades-old concerns and detailed study results to ensure fairness, integrity, impartial administration of justice, and judicial accountability. See Frank Sullivan, Jr., *“What I've Learned About Judging”*, 48 VAL. U. L. REV. 195, 198 (2013), attached hereto as **Exhibit 6**.
22. The State has a compelling interest in judicial independence, impartiality, fairness, and judicial accountability that has long required some specialization in Indiana counties to ensure the judicial selection process reflects the diversity of the jurisdiction.

23. “Because the governor may appoint only from these approved finalists, merit selection constrains the ability of political officials to stack the courts with partisan judges.” See Zachary Reger, *The Power of Attorneys: Addressing the Equal Protection Challenge to Merit-Based Judicial Selection*, 89 U. CHI. L. REV. 253 (2022), attached hereto as **Exhibit 7**.

24. Further, HEA’s elimination of local attorney elections for a certain number of LCJNC members prevents actual or public perception of apparent bias of nominee selections influenced by the attorneys who may practice before them. See Judicial Conference of Indiana – Strategic Planning Committee, *A New Way Forward*, at 22 (2008), attached hereto as **Exhibit 8**.

25. Statistics showing the annual total cases before Indiana trial courts were released by Indiana’s Judiciary for years 2020 and 2021, and include as follows:

County	2020	2021
All Counties	2,662,272	2,790,822
Marion County	480,580	516,776
Lake County	455,707	457,481
Allen	123,586	117,650
St. Joseph	91,913	99,775
Vanderburgh	84,214	89,877
Hamilton	50,188	50,716

See Indiana Trial Court Statistics by County,

<https://publicaccess.courts.in.gov/ICOR> (last visited June 5, 2023), attached

hereto as **Exhibit 9**.

26. Lake County's current hybrid system for selecting judicial officers involves various state and local officials through a process involving segregation of duties that vastly reduce the risks that any voter fraud could spill over into selection or retention of judges.

VERIFICATION

I verify under the penalties for perjury that the above facts are true to the best of my knowledge and belief.

Dated: June 5, 2023



Jerold A. Bonnet
General Counsel, Office of the Indiana
Secretary of State

STATE OF INDIANA)
)
COUNTY OF MARION)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for said County and State, this 5th day of June, 2023.

My commission expires: 11-23-2029 County of Residence: Tipton

Notary Public Signature: Geneva L. West

Printed Name: Geneva L. West

