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. STATE OF INDIANA, INDIANA SECRETARY OF STATE DIEGO MORALES, in his official capacity, and THE LAKE COUNTY BOARD OF ELECTIONS, Defendants.	)	Case No. 2:21-cv-00160-PPS-JEM

STATE DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Court should deny Plaintiffs' motion for summary judgment because Plaintiffs are not entitled to judgment as a matter of law. As to the Voting Rights Act claim, Plaintiffs' motion fails first because the VRA does not apply to judicial appointments, but also because the retention elections—to which the VRA applies—moves the factors outlined in *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2332 (2021) to favor State Defendants. The remaining claims are state constitutional claims over which this Court should decline to opine, but in any case do not make out state constitutional violations because Lake County's superior court judge appointment and retention process comports with Indiana's constitution.

I. STANDARD OF REVIEW

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant has the initial burden of production to "demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catratt,* 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the nonmovant must establish the existence of a genuine issue for trial. Fed. R. Civ. P. 56(e); *Lujan v. Nat'l Wildlife Fed'n.*, 497 U.S. 871, 884 (1990).

The nonmovant may not rely on the mere allegations of his pleadings to defeat the motion for summary judgment. Fed R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. Nor may the nonmovant defeat summary judgment by challenging the credibility of a supporting affidavit. *Walter v. Fiorenzo*, 840 F.2d 427, 434 (7th Cir. 1988). If the non-moving party fails to establish the existence of an essential element of the case on which he bears the burden of proof at trial, summary judgment is appropriate. *Celotex*, 477 U.S. at 322.

II. ARGUMENT

A. Indiana's Selection Process for Lake County Superior Court Judges Does Not Violate the VRA.

The selection process for Lake County superior court judges does not violate the Voting Rights Act (VRA). Initially, the VRA does not apply to judicial *appointments*, but rather to judicial elections. The Lake county judicial retention vote satisfies the requirement of the VRA because, in light of the *Brnovich* factors,

the totality of the circumstances show the selection and retention process to be legally appropriate.

1. The VRA does not apply to judicial appointments.

The VRA does not apply to the selection process for Lake County superior court judges. *See* ECF 82 ("State Defendants' Memo") at 4-7. Section 2 of the VRA prohibits voting prerequisites, practices, and procedures that discriminate on the basis of race or color. 52 U.S.C. § 10301(a). A Section 2 violation lies where a nomination or election is not equally open to a protected class and where those members are afforded less opportunities than other members to participate in the process and elect representatives of their choice. 52 U.S.C. § 10301(b); *see also Brnovich*, 141 S. Ct. at 2332. Section 2 does not apply where officials are appointed, rather than elected. *Sailors v. Bd. of Ed. of Kent Cnty.*, 387 U.S. 105, 110-11 (1967); *see also Quinn v. Illinois*, 887 F.3d 322, 324 (7th Cir. 2018); *Bradley v. Work*, 154 F.3d 704, 709 (7th Cir. 1998).

Lake County has a hybrid system that is not under the purview of Section 2 because the appointment is not an election. *See* State Defendants' SMF ¶ 14, 18-19, 35-36; *see also Quinn*, 887 F.3d at 324. In *Quinn*, the 7th Circuit considered a §2 case regarding appointment of officials by an elected individual. *Id.* There, plaintiffs argued the statute violated §2 of the VRA because voters in other political subdivisions were able to vote for their officials. *Id.* at 323. The court rejected plaintiffs' claims, noting there was no disparate impact amongst minority voters where all voters in the Chicago area—the only electorate that mattered—had the same rights and were treated "identically." *Id.* at 325.

Further, Lake County's method to choose superior court judges was held to be constitutional when challenged earlier. *See, generally, Bradley v. Work*, 154 F.3d 704 (7th Cir. 1998). In *Bradley*, with the same claims as Plaintiffs make here, the Court held that this same statutory scheme presented no violation of the VRA. *Id.* at 710. As decided there and as the 7th Circuit held in *Quinn,* the appointment phase of the selection of Lake County superior court judges is not governed by the VRA as a violation cannot occur where there is no election.

2. **The *Brnovich* factors.**

The *Brnovich* factors weigh in favor of the State Defendants. In *Brnovich*, the Supreme Court reviewed an alleged violation of §2 of the VRA. The Court held that previous tests of such violations were "less helpful" where the challenge pertained to a facially neutral time, place or manner voting rule. *Brnovich*, 141 S. Ct. at 2340. The Court also held that many of the factors in prior tests should be considered when reviewing the totality of the circumstances. *Id*. However, the Court "decline[d] in these cases to announce a test to govern all VRA § 2 claims involving rules . . . that specify the time, place, or manner for casting ballots." *Id*. at 2336.

Nevertheless, the Court did "identify certain guideposts" that led to their decision. *Id*. The 'guideposts' provided by the Court are 1) the "size of the burden imposed by the challenged voting rule;" 2) the "degree to which the voting rule departs from the standard practice when § 2 was amended in 1982;" 3) the "size of any disparities in a rule's impact on members of different racial or ethnic groups;" 4) the "opportunities provided by a State's entire system of voting;" and 5) the "strength of the state interests served by a challenged voting rule[.]" *Id*. at 2338-

2440. Further, however, the Court held "§ 2(b) requires consideration of 'the totality of circumstances." *Id*. at 2340.

B. The Selection of Lake County Superior Court Judges satisfies the *Brnovich* factors

The State's interest in a merit-based judicial system and the equal treatment of all Lake County voters push the *Brnovich* factors to favor the State Defendants. To begin, the correct electorate to compare the Lake County minority voters to is other Lake County registered voters and not Indiana as a whole. When comparing the rights of Lake County minority voters with the rights of other Lake County voters, the Lake County minority voters have no more or less burden, impact, or opportunities as other Lake County voters. Further, the statutory selection system in place in 1982 is virtually the same as the system in place today, excepting the current merit selection of four county division judges, which were selected in partisan elections in 1982. Moreover, the State has a compelling interest in the merit selection of judges. When reviewing the totality of the circumstances, all factors indicate the statutory scheme does not violate §2 of the VRA.

1. Size of Burden

Indiana's selection process for Lake County superior court judges does not create a severe burden because all Lake County registered voters have the same burden. How other counties in Indiana select their superior court judges is not the question at issue—the question is whether all registered voters who vote for Lake County superior court judges have the same burdens.

In *Quinn v. Illinois*, the 7th Circuit addressed the issue of comparing a certain subset of voters with the whole State. 887 F.3d at 323. There, plaintiffs claimed the appointment of Chicago's school board members was unconstitutional because voters in other parts of the State were able to elect their board members. *Id*. There, the Court held that it would be "misleading to say that political processes in Chicago are not equally open to participation by persons of all races [as e]very voter in Chicago exercises the same influence when voting for a candidate[.]" *Id*. at 325. The same is true here. All Lake County registered voters can vote for Lake County superior court judges in the same way. This factor weighs in favor of the State Defendants.

2. Degree Which Rule Departs from 1982 Standard

Plaintiffs claim that because other counties had and continue to have difference systems to select their judges, *see* ECF 85 ("Pls' Memo") at 15, the standard for this factor should be a comparison between the many systems in place in Indiana in 1982 and the current Lake County system. This comparison is faulty. The Court should be comparing what the Lake County superior court judge process was in 1982 with the current process. *See, e.g., Quinn,* 887 F.3d 322. As the selection processes between the 1982 Lake County process and the current Lake County process are virtually identical, it is clear the rule does not depart from the 1982 standard.

In 1973, the Indiana General Assembly adopted a hybrid appointment and retention merit system ("The Missouri Plan") for selection of Lake County superior

court judges. State Defendants' SMF ¶ 17. As Plaintiffs state, in 1982, four county division superior court judges were popularly elected rather than selected through the Missouri Plan. Pls' Memo at 15. In 2011, the General Assembly amended Indiana Code section 33-33-45-25 to include the four county division judges in the system. State Defendants' SMF ¶ 23. For all intents and purposes, the current statutory scheme is virtually the same as it was in 1982. *Id.* ¶ 18. This factor only weighs in favor of Plaintiffs to the extent the selection for the four county division superior court judges are reviewed.

3. Impact Disparity and Opportunity

For the same reasons that Plaintiffs are unable to support their claim of a severe burden, they are also unable to support their claim that minorities are impacted disparately or that they are given fewer opportunities to vote, *i.e.,* they have compared the Lake County electorate with other counties in Indiana, rather than comparing Lake County minorities' ability to vote for Lake County superior court judges with other Lake County registered voters' ability to vote for Lake County superior court judges.

Plaintiffs' claims hinge on the fact that more black residents live in the largest counties in Indiana than in other counties and they argue that because of that fact, the selection process for Lake County superior court judges disparately impacts those residents resulting in fewer voting opportunities than other groups. *See* Pls' Memo at 18-19. As stated *supra* Section II(B)(1), the only electorate at issue here is the one that votes for Lake County superior court judges, *i.e.,* Lake County

registered voters. *See Quinn*, 887 F.3d at 325. If Plaintiffs compare their voting opportunities and the openness of the elections to the proper electorate (all Lake County registered voters), all voters have the same opportunities as all others. Therefore, size of the impact and the overall opportunities afforded weigh in favor of State Defendants.

4. Strength of State's Interest* and *the Totality of Circumstances

Indiana has a compelling interest in the merit selection of trial court judges to aid in the selection of judges in a highly populated, heavy caseload area where the public has expressed concern regarding partisan bias. State Defendants' SMF ¶ 21. To address concerns regarding the public's confidence in the judiciary, Indiana created the Judicial Study Commission that contracted with the Institute for Court Management to conduct a study of the issue. *Id.* ¶ 15-16. The survey they conducted found that there was dissatisfaction with partisan elections of judges that led to attorney-managed administration of justice, unequal caseloads, inconsistent application of the rules, and an excessive number of cases being sent out of Lake County. *Id.* ¶ 16. Thereafter, the General Assembly adopted "The Missouri Plan" for selection of Lake County superior court judges. *Id.* ¶ 17. With this plan, the General Assembly shows the State's compelling interest in maintaining public confidence, judicial independence, impartiality, fairness, and judicial accountability. *Id.* ¶ 26; *see also Williams-Yulee v. Fla. Bar,* 575 U.S. 433, 445, 135 S. Ct. 1656, 1666, 191 L. Ed. 2d 570 (2015) (maintaining public confidence in an impartial judiciary that is independent and has integrity is a compelling interest that "dates back at least eight centuries to Magna Carta"). To accomplish such goals, some specialization in

different counties is required so they reflect the diversity of the jurisdiction. State Defendants' SMF ¶ 26. Further, the Missouri Plan constrains any partisan selection of these judges. *Id.* ¶ 27.

Plaintiffs claim that because Indiana has adopted different selection processes over the years and in different counties, any claimed state interests are negated. Pls' Memo at 20. However, if the history is looked at fully, it shows the population had expressed concern regarding the Lake County judiciary. The General Assembly took steps to address those concerns. In doing so, the statutory scheme has changed over the years. Such changes merely show the process by which the General Assembly has addressed the unique characteristics of Lake County in a fashion that is reasonably related to those characteristics.

To the extent Plaintiffs argue other options are available to select Lake County superior court judges, "Section 2 does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State's objectives." *Brnovich*, 141 S. Ct. at 2345-46. This factor, too, weighs in favor of the State Defendants as the State's interests are compelling are related to the legislative system in place to select the Lake County superior court judges.

As the overall weight of the above factors shows, the totality of the circumstances is in favor of State Defendants. Therefore, Plaintiffs' VRA claim fails and State Defendants request the Court enter summary judgment in favor of State Defendants and against Plaintiffs.

C. Indiana's Selection Process for Lake County Superior Court Judges Does Not Violate the Indiana Constitution

The Court should dismiss all the claims of Indiana Constitutional violation as they are barred by sovereign immunity. Nevertheless, to the extent this Court reviews these claims, the Court should grant summary judgment in favor of State Defendants as the special legislation is not unconstitutional and the statutes do not violate the privileges and immunities clause of the Indiana Constitution.

1. Plaintiffs' claims not related to the VRA are questions of Indiana constitutional law and it would be inappropriate for this Court to decide these issues.

The Indiana Constitutional challenges should be dismissed because these counts pose questions exclusively of state law against Indiana and an Indiana agency over which the Court must decline to exercise jurisdiction. These claims are barred under *Pennhurst State Sch. & Hosp. v. Halderman*. 465 U.S. 89, 98 (1984). *Pennhurst* held that federal suits brought by a "citizen against his own State" contravene the Eleventh Amendment. *Id.* Further, *Pennhurst* held that even where a federal court has pendent jurisdiction, that jurisdiction does not override the Eleventh Amendment. *Id.* at 121. Moreover, where the named State Defendants include not only the State of Indiana but also the Indiana Secretary of State Diego Morales in his official capacity, the state is the actual party of interest. *Kroll v. Bd. of Trustees of Univ. of Illinois*, 934 F.2d 904, 907 (7th Cir. 1991).

The claimed Indiana Constitutional violations are unquestionably state law claims brought by Indiana citizens against their own State and the Secretary of State, which is an Indiana agency. *Id.*; *see also* I.C. 4-5-1 *et seq.* Where Indiana has

not waived immunity and Congress has not abrogated the Eleventh Amendment immunity, the suit "must be dismissed." *Id*; *see also Cassell v. Snyders,* 990 F.3d 539, 544 (7th Cir. 2021) (the Eleventh Amendment bars relief from a federal court on "all the plaintiffs' state-law claims").[1]

2. Indiana's statutory scheme for selection of Lake County superior court judges is constitutional special legislation.

Article 4, Section 23 of the Indiana Constitution prohibits special legislation, or laws which apply strictly to a specific class, where a general law can be made applicable; however, not every special law is unconstitutional. Determining that a law is "special" is only a threshold analysis and does not automatically make the law unconstitutional under Section 23. *Mun. City of S. Bend v. Kimsey,* 781 N.E.2d 683, 692 (Ind. 2003). While the purpose of Section 23 was "to prohibit the passage of any law applicable only to one or more counties . . . It is clearly implied . . . and we know it to be true in fact, that in many cases local laws are necessary." *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe County*, 849 N.E.2d 1131, 1136 (Ind. 2006) (citing *Gentile v. State,* 29 Ind. 409, 411-12 (1868)). A special law is necessary when "there are inherent characteristics of the affected locale that justify local legislation." *Kimsey,* 781 N.E.2d at 692.

When determining whether a general law cannot be made applicable, and therefore a special law is necessary, it is important to keep in mind the presumption in favor of a statute's constitutionality as there is "a high degree of deference to the

[1] State Defendants incorporate their argument from their memorandum in support of their motion for summary judgment. *See* ECF 82 at 2-4.

legislature on section 23 questions." *Indiana Gaming Commn. v. Moseley*, 643 N.E.2d 296, 300 (Ind. 1994). Proponents of the law must "clear a low bar" by showing a link between the unique characteristics of the class and the legislative fix. *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1264 (Ind. 2020). A special law is necessary when 1) an affected class has unique characteristics which justify the special law and 2) those unique characteristics are linked to the legislative fix the special law seeks to remedy. *City of Hammond v. Herman & Kittle Properties, Inc.,* 119 N.E.3d 70, 84 (Ind. 2019). The burden is on the challenging party to show that the special law is not necessary by negating "every conceivable basis which might have supported the classification." *Kimsey*, 781 N.E.2d at 694.

Lake County has several unique characteristics. It is the second most populous county in the State. *See* ECF 86 ("Pls' SMF"), Exhibit 10, ¶ 18. The Indiana Supreme Court has held Lake County's large population qualifies as a unique characteristic justifying special legislation. *State v. Buncich*, 51 N.E.3d 136, 142 (Ind. 2016). Further, Lake County has almost as many annual total cases as Marion County, with 455,707 in 2020 and 457,481 in 2021, respectively. State Defendants' SMF ¶ 29 (citing Indiana Trial Court Statistics by County, https://publicaccess.courts.in.gov/ICOR (last visited June 5, 2023)). When asked to review a statute that allowed for appointment of magistrates, the Indiana Supreme Court held the unique characteristic of a being a large county with a large docket warranted the special legislation. *Williams v. State*, 724 N.E.2d 1070, 1086 (Ind. 2000).

Additionally, it was found that Lake County judges and attorneys did not have faith in the partisan selection of judges. State Defendants' SMF ¶ 16. Most thought that the partisan selection of judges in Lake County 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.* A similar "long and tortured" history that surrounded Lake County's property taxation was determined to be a unique circumstance that warranted the special legislation at issue there. *State ex rel. Atty. Gen. v. Lake Superior Ct.*, 820 N.E.2d 1240, 1249 (Ind. 2005), *reh'g denied, cert. denied.*

These inherent characteristics are inextricably tied to the necessity for the special legislation at issue here. These statutes require the merit selection and eventual retention vote for Lake County superior court judges. Therefore, the link is established between the unique characteristics of Lake County and the current statutory process to select Lake County superior court judges and the statutes are justified. *Holcomb*, 158 N.E.3d at 1264; *see also Kimsey,* 781 N.E.2d at 692. While merit selection may be an option for any area, it has not been warranted in all Indiana counties as they all have different characteristics.

3. Indiana Code § 33-33-45 does not violate the Privileges and Immunities Clause of the Indiana Constitution.

Article 1, Section 23 of the Indiana Constitution states the General Assembly cannot grant citizens a privilege or immunity that is not available to all citizens in the state. Ind. Const. art. 1, § 23. Though Indiana Code 33-33-45 *et seq.* provides for

the selection of superior court judges in Lake County, it does not violate the Privileges and Immunities Clause of the Indiana Constitution. As discussed *supra* Section II(B), Plaintiffs are comparing the wrong groups. Here, the only groups at issue are the minority registered voters of Lake County and other registered voters of Lake County. Therefore, there is no privilege being offered to one group over another—they have the same privileges. To the extent that this statute may be construed as offering a privilege to one group and not another, the so-called disparate treatment is reasonably related to the inherent characteristics of Lake County, as discussed *supra* Section II(C)(2).

The Indiana Supreme Court has recognized that when the General Assembly grants unequal privileges and immunities, there are two factors that must be met for the statute to be constitutional. *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758, 770 (Ind. 2010). The first factor is, "the disparate treatment accorded by the legislation must be reasonably related to inherent characteristics [that] distinguish the unequally treated classes." *Id.* (citing *Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994)). Further, under the first factor "a statute may result in different treatment for different classifications of people without offending Section 23 if both (a) the disparately treated classifications are rationally distinguished by distinctive, inherent characteristics, and (b) such disparate treatment is reasonably related to such distinguishing characteristics." *Id.* (internal citation omitted). The second factor to ensure the legislation does not violate Section 23 requires the preferential treatment to be "uniformly applicable and equally available to all

persons similarly situated." *Id.* (citing *Collins*, 644 N.E.2d at 80). In addition to these factors "in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative discretion." *Id.*

i. The statutes are reasonably related to the inherent characteristics of Lake County

Under the statute, Lake County selects its judges through the Lake County JNC, with the Governor making the final determination as to who is appointed based on the nominations submitted by the Commission. I.C. 33-33-45-38. The General Assembly is allowed to implement legislature to address the diverse circumstances of the county. *League of Women Voters of Indiana, Inc.*, 929 N.E.2d at 770; *see also Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994). Other counties have different statutory schemes to select their judges. *See* I.C. 33-33 *et seq*. (listing every counties' selection process). As discussed above, *supra* Section II(C)(2), such treatment is warranted where Lake County has distinctive, inherent characteristics that relate directly to the selection method of its superior court judges.

Here, the unique characteristics of Lake County necessitated the legislation. *See Collins*, 644 N.E.2d at 78 (quoting *Heckler v. Conter*, 206 Ind. 376, 187 N.E. 878, 879 (1933)) (inherent differences require legislation). Lake County judges and attorneys had lost faith in the partisan election of their superior court judges. The population as second most-populated county in the State, together with the high caseloads, linked with that loss of faith required the General Assembly make a change—which it did.

The General Assembly modified the selection process to address the needs of Lake County. This was similar, although not identical, to the processes put in place in St. Joseph County, Allen County, and Marion County—three other high population counties. The General Assembly's decision to initiate merit-selection of Lake County's superior court judges is reasonably related not just to address the population and caseload characteristics of Lake County, but also to address any mismanagement of the administration of justice, the unequal caseloads among the judge, the inconsistent application of Indiana's trial rules and the excessive number of cases being sent to venues outside of Lake County. The resolution is directly linked to those characteristics. As Lake County has been shown to be substantially different from other counties, any classification based on those differences is not arbitrary and the Court should not substitute its judgment for the legislature. *Collins*, 644 N.E.2d at 80 (quoting *Chaffin v. Nicosia*, 261 Ind. 698, 701, 310 N.E.2d 867, 869 (1974)). If this Court were to decide not only to review this Indiana Constitutional challenge, but also to decide the statutes related to the selection of Lake County superior court judges supposedly offering different privileges to Lake County minority voters, it should defer to the General Assembly as Lake County has inherent characteristics that are addressed by the resolution. *Id*.

ii. Uniform Applicability and Availability

All citizens in Lake County impacted by the legislation are treated equally. Each citizen in the county is served by appointed judges and all, who are eligible to vote, can vote in the retention election. Further, Lake County is similarly situated

to Marion County, the most populated county with the highest caseloads, that also has merit selection of its judiciary.

Lake County is the second most populous county in the state of Indiana with Marion County being first. Pls' SMF, Exhibit 10, ¶ 18. Both counties have legislation requiring the appointment of judges and retention votes. *See* Ind. Code §§ 33-33-45-25, -34 and § 33-33-49-13.1. Even though 89 counties in the state vote for the initial selection of their judges, rather than having their judges appointed through a merit-selection process, "[a] classification having some reasonable basis is not to be condemned merely because it is not framed with such mathematical nicety as to include all within the reason of the classification and to exclude all others." *Collins*, 644 N.E.2d at 80.

Here, both Lake County and Marion County have high populations and the attendant issues surrounding a high population. Both have merit-selection of their superior court judges. Indiana citizens who are similarly situated in these high population areas are afforded the same opportunities and the statutory scheme for same is not unconstitutional.

iii. *The legislation is reasonably related to the inherent characteristics of Lake County and is uniformly applied.*

The General Assembly chose to distinguish Lake County based on inherent characteristics, including population and caseload characteristics of Lake County, but also to address any mismanagement of the administration of justice, the unequal caseloads among the judge, the inconsistent application of Indiana's trial rules and the excessive number of cases being sent to venues outside of Lake

County. These characteristics set Lake County apart from other counties. Moreover, all citizens of the county are treated equally, and Lake County, as the second-most populous county in the State, is treated the same as the most-populous county in the State, *i.e.,* Marion County. Regardless, the legislature is provided great deference in statutory resolutions when the means to accomplish a task is tied to the inherent characteristics the statute is intended to address. *Id.*

Further, while the General Assembly may have implemented differing systems over the years, this does not prove the current statutory scheme is unconstitutional. It is agreed that Lake County superior court judges use to be selected in partisan elections. State Defendants' SMF ¶ 5. Further, it is undisputed that the Judicial Study Commission was tasked with evaluating that process and to consider alternatives, *id.* ¶ 9, which eventually led to the adoption of merit selection in Lake County. *Id.* ¶ 13. Initially, in 1973, the Indiana General Assembly adopted a hybrid appointment and retention merit system ("The Missouri Plan") for Lake County superior court judges. Despite periodic amendments to the nomination process and the appointment committee, the appointment and retention process have remained largely unchanged, except that the selection of the four county division judges did not change from partisan election to the hybrid process until 2011. *Id.* ¶ 23. Any changes to the statutory scheme do not make the current scheme facially unconstitutional as they merely illustrate the process by which the General Assembly has historically addressed the inherent characteristics of Lake

County. Therefore, the statutory scheme is reasonably related to the inherent characteristics of Lake County and is uniformly applied.

III. Conclusion

As the selection of Lake County superior court judges does not violate either the VRA or the Indiana Constitution, and where this Court lacks jurisdiction over the Indiana Constitutional claims, State Defendants request this Court deny Plaintiffs' Motion for Summary Judgment and enter judgment in favor of the State Defendants.

Respectfully submitted,

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