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Clerk
Marion County, Indiana

INDIANA COMMERCIAL COURT
IN THE MARION SUPERIOR COURT
CIVIL DIVISION

ANDREW R. ZAY, Plaintiff, vs. MICHAEL K. BRAUN, in his Official Capacity as Governor of the State of Indiana; MATTHEW BROWN, in his Official Capacity as the Director of the Indiana State Personnel Department; STEVE CARTER, in his Official Capacity as the Deputy Counsel for Appointments for the Office of the Governor; JOSHUA BAIN, in his Official Capacity as Commissioner of the Indiana Utility Regulatory Commission and Purported Successor to Andrew R. Zay; SUZANNE JAWOROWSKI, in her Official Capacity as the Secretary of Energy and Natural Resources; and the STATE OF INDIANA, Defendants.	)	Cause No. _____

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, QUO WARRANTO, AND TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

Plaintiff Commissioner Andrew R. Zay ("Commissioner Zay"), for his Verified Complaint for Declaratory Judgment, Quo Warranto, and Temporary, Preliminary and Permanent Injunctive Relief (the "Complaint"), states as follows:

I. INTRODUCTION

1. This action concerns the unlawful removal of Commissioner Zay from his duly appointed position as a Commissioner of the Indiana Utility Regulatory Commission ("IURC").

2. The Indiana General Assembly has expressly limited the Governor's authority to remove an IURC Commissioner. Indiana Code § 8-1-1-2(c) provides that members of the IURC

"may be removed at any time by the governor for cause." The statute does not permit an IURC Commissioner to be removed at the Governor's pleasure, based upon political disagreement, or simply because the Governor disagrees with the Commissioner's exercise of independent judgment.

3. That limitation is critical to the independence of the IURC. By statute, the IURC is charged with acting as an "impartial fact-finding body," and Commissioners assigned to formally docketed proceedings are prohibited from engaging in certain *ex parte* communications concerning disputed issues of fact or law. *See* Ind. Code § 8-1-1-5(a) and (e).

4. Commissioner Zay was appointed as Chair of the IURC in January 2026. While serving as Chair, he was assigned to participate in a pending rate proceeding involving Indianapolis Power & Light Company d/b/a AES Indiana ("AES") (the "AES Rate Proceeding"). Commissioner Zay understood from Indiana statutes his obligation to decide the AES Rate Proceeding based upon the evidence, the law, and his independent judgment, not according to the political preferences of the Governor or anyone else.

5. On August 3, 2026, Defendants Matthew Brown, Director of the Indiana State Personnel Department, and Steve Carter, Deputy Counsel for Appointments for the Office of the Governor, appeared in person at Commissioner Zay's office. They attempted to interview him and, when Commissioner Zay declined to proceed without counsel, presented him with a letter already signed by Governor Mike Braun purporting to remove him from the IURC "effective immediately" pursuant to Indiana Code § 8-1-1-2(c):

STATE OF INDIANA
OFFICE OF THE GOVERNOR
State House, Second Floor
Indianapolis, Indiana 46204

Mike Braun
Governor

August 3, 2026

Dear Andrew Zay

Pursuant to IC 8-1-1-2(c), I am removing you as a member of the Indiana Utility Regulatory Commission, effective immediately.

Sincerely,

Mike Braun

Mike Braun
Governor of Indiana

CC: Suzanne Jaworowski, Secretary of Energy and Natural Resources

Brown then required Commissioner Zay to collect his personal belongings and escorted him from the building.

6. Neither Governor Braun in his removal letter nor Brown nor Carter provided Commissioner Zay with any cause for his removal. Commissioner Zay was not provided notice of any specific allegations before his removal, was not afforded an opportunity to respond to any allegations, and was not informed of any process through which the purported grounds for his removal would be adjudicated.

7. Only after Commissioner Zay had been removed did a representative (or representatives) of the Indiana State Personnel Department ("SPD") provide statements to the media identifying purported "potential violations" of state policies or laws as supposed grounds for his removal. Mr. Kirollos Barsoum, spokesperson for SPD, was quoted by the media as directly stating that "Zay was discharged from employment with the State of Indiana today, August 3, 2026, for non-adherence to state policies and laws related to his role as Commissioner at the IURC."

8. Commissioner Zay denies the allegations made to justify removing him for cause. The alleged conduct does not constitute legally sufficient "cause" for removal under Indiana law.

9. More significantly, Governor Braun's own public statements reveal a materially different reason for Commissioner Zay's removal. Following the removal, Governor Braun publicly criticized Commissioner Zay's approach to utility rates and his participation in the AES Rate Proceeding, stating, among other things, that he wanted individuals who were "ratepayer-conscious" on the IURC, expressing disappointment with Commissioner Zay's approach to utility costs, and describing the other allegations against Commissioner Zay as "ancillary."

10. Indiana law does not permit the Governor to transform a statutory "for cause" appointment into an at-will political appointment. As the Indiana Court of Appeals has determined, an appointee who may be removed only "for cause" may be removed only for acts or omissions bearing upon the appointee's ability or fitness to perform the duties of the appointment—not merely for any reason the appointing authority in the exercise of unlimited discretion considers sufficient. *Waller v. City of Madison*, 183 N.E.3d 324, 332 (Ind. Ct. App. 2022).

11. Commissioner Zay therefore seeks immediate equitable relief restoring the status quo that existed before August 3, 2026 when he was removed as Commissioner of the IURC. He asks this Court to temporarily and preliminarily enjoin Defendants from giving effect to his purported removal and to restore him to his position as an IURC Commissioner while this Court determines whether his removal complied with Indiana Code § 8-1-1-2(c).

12. Immediate relief is necessary. Everyday Commissioner Zay remains excluded from the Commission, he is prevented from exercising the statutory responsibilities of the public office to which he was appointed, including participating in matters pending before the

IURC. The loss of the ability to exercise those governmental duties cannot adequately be remedied through an after-the-fact award of monetary damages.

13. Commissioner Zay accordingly brings this Verified Complaint for declaratory judgment, quo warranto, and temporary, preliminary, and permanent injunctive relief and requests that the Court restore him to his position as Commissioner pending final resolution of this action.

II. JURISDICTION, VENUE, AND COMMERCIAL COURT ASSIGNMENT

14. This Court has subject matter jurisdiction over this action pursuant to Article 7 of the Indiana Constitution, Indiana Code § 33-29-1-1.5, and Indiana Code § 34-17-2-1 because Commissioner Zay seeks declaratory, quo warranto, and injunctive relief arising under Indiana law.

15. Venue is proper in Marion County pursuant to Indiana Trial Rule 75 because the Defendants are governmental entities and officials whose principal offices are located in Marion County, Indiana, and the events giving rise to this action occurred in Marion County.

16. Plaintiff designates this action as a Commercial Court case pursuant to Indiana Commercial Court Rule 2.

III. PLAINTIFF

17. Commissioner Zay is a resident of Indiana.

18. Commissioner Zay was appointed by Governor Mike Braun to serve as a Chair of the Indiana Utility Regulatory Commission ("IURC") in January 2026.

19. Commissioner Zay was demoted from Chair to Commissioner in June of 2026 after he refused to resign at the request of Governor Braun and Secretary Jaworowski.

20. Since January of 2026, Commissioner Zay has served as a duly appointed member of the IURC and performed the statutory duties and responsibilities assigned to Commissioners under Indiana law.

21. As an IURC Commissioner, Commissioner Zay was required to act as part of an impartial regulatory body and to exercise independent judgment in matters pending before the Commission, including formally docketed evidentiary proceedings. *See* Ind. Code § 8-1-1-5(a) and (e).

22. As Chair, Commissioner Zay was assigned to participate in the pending AES Rate Proceeding and to make findings of fact and conclusions of law concerning matters presented in that proceeding.

23. On August 3, 2026, Governor Braun purported to remove Commissioner Zay from his position as an IURC Commissioner pursuant to Ind. Code § 8-1-1-2(c).

24. Commissioner Zay disputes the legality of that removal and contends that no legally sufficient "cause" existed for his removal as required by the statute. Governor Braun's removal letter provided no substantive explanation of the asserted cause and none has been provided verbally or in writing to Commissioner Zay.

IV. DEFENDANTS

25. Defendant Michael K. Braun ("Governor Braun") is the Governor of the State of Indiana and is sued in his official capacity. Under Ind. Code § 8-1-1-2(c), the Governor possesses the statutory authority to appoint an IURC Commissioner, but can only remove an IURC Commissioner "for cause."

26. On August 3, 2026, Governor Braun signed a letter purporting to remove Commissioner Zay as a Commissioner of the IURC, effective immediately, under Ind. Code

§ 8-1-1-2(c). The letter did not identify the alleged conduct constituting "cause" for Commissioner Zay's removal.

27. Defendant Matthew Brown ("Brown") is the Director of the Indiana State Personnel Department ("SPD") and is sued in his official capacity.

28. On August 3, 2026, Brown personally participated in effectuating Commissioner Zay's removal. Brown appeared at Commissioner Zay's IURC office with Defendant Steve Carter, attempted to interview Commissioner Zay, participated in delivering Governor Braun's already-signed removal letter, required Commissioner Zay to collect his personal belongings, and escorted Commissioner Zay from the premises.

29. As Director of SPD, Brown is also an appropriate Defendant for purposes of effectuating any order restoring Commissioner Zay's employment status, compensation, benefits, personnel status, or other incidents of his position that are administered through SPD.

30. Defendant Steve Carter ("Carter") is Deputy Counsel for Appointments for the Office of the Governor and is sued in his official capacity.

31. On August 3, 2026, Carter personally participated with Brown in effectuating Governor Braun's purported removal of Commissioner Zay, including appearing at Commissioner Zay's IURC office, attempting to interview him, and presenting or participating in the presentation of Governor Braun's already-signed removal letter.

32. Defendant Suzanne Jaworowski ("Jaworowski") is the Secretary of Energy and Natural Resources for the State of Indiana and is sued in her official capacity.

33. In her role as Secretary of Energy and Natural Resources, Jaworowski communicated directly with Commissioner Zay concerning the AES Rate Proceeding, Governor

Braun's dissatisfaction with the Commission's decision, and matters relating to Commissioner Zay's continued service on the IURC.

34. As more fully alleged below, Jaworowski personally participated in the events giving rise to this action, including conveying Governor Braun's dissatisfaction with the AES Rate Proceeding; participating in discussions concerning the AES decision; requesting that Commissioner Zay alter matters to be presented to the Commission; asking Commissioner Zay to resign from the IURC at the request of the Governor; and subsequently advising Commissioner Zay that she had persuaded Governor Braun that Commissioner Zay should remain on the Commission.

35. Jaworowski is an appropriate Defendant for purposes of declaratory and injunctive relief because she personally participated in the challenged conduct and remains a cabinet-level State official involved in matters concerning energy policy and the IURC.

36. Defendant State of Indiana ("State") is a sovereign State of the United States and is named in this action with respect to Commissioner Zay's claims for declaratory, quo warranto, and equitable relief arising from the acts of State officials and agents described herein.

37. Defendant Joshua Bain ("Bain") is a resident of Indiana and was appointed by Governor Braun on August 6, 2026 to serve as a Commissioner of the IURC following Governor Braun's purported removal of Commissioner Zay.

38. Bain was appointed to the same IURC Commission seat previously occupied by Commissioner Zay and presently occupies and exercises the powers and duties of that position.

39. Bain is sued in his official capacity because Commissioner Zay maintains that Commissioner Zay's removal was unlawful, that no lawful vacancy arose in his IURC Commission

seat, and that Commissioner Zay possesses the superior legal right to the position presently occupied by Bain.

40. Commissioner Zay does not allege that Bain participated in or caused Commissioner Zay's removal. Bain is named because complete relief requires a determination of Commissioner Zay's and Bain's respective entitlement to the IURC Commission seat.

41. Governor Braun, Brown, Carter and Jaworowski are collectively referred to herein as the "Individual Defendants." The State, Bain, and the Individual Defendants are collectively referred to as "Defendants."

V. STATEMENT OF FACTS

A. Commissioner Zay's Appointment to the IURC and the Commission's Statutory Independence

42. In January 2026, Governor Braun appointed Commissioner Zay to serve as Chair of the IURC.

43. The IURC is charged under Indiana law with serving as an "impartial fact-finding body." *See* Ind. Code § 8-1-1-5(a).

44. Indiana law further restricts communications involving Commissioners who are assigned to make findings of fact and conclusions of law in formally docketed evidentiary proceedings. Specifically, such Commissioners may not communicate concerning disputed issues of fact or law with a party or a party's representative except upon notice and with an opportunity for all parties to participate. *See* Ind. Code § 8-1-1-5(e).

45. Those statutory restrictions exist to preserve the impartiality and independence of the Commission and its members when exercising their adjudicative responsibilities.

46. Commissioner Zay understood that his duties as an IURC Commissioner required him to exercise his independent judgment based upon the facts, the evidence and the law applicable to matters pending before the Commission.

B. Commissioner Zay's Assignment to the AES Rate Proceeding

47. During Commissioner Zay's tenure on the IURC, AES Indiana ("AES") had a rate proceeding pending before the Commission (the "AES Rate Proceeding").

48. Commissioner Zay was assigned, together with Commissioner David Veleta and Administrative Law Judge Kristin Kresge, to manage the AES Rate Proceeding and make findings of fact and conclusions of law in the AES Rate Proceeding.

49. The Governor's Office was aware that Commissioner Zay was assigned to the AES Rate Proceeding.

50. In carrying out his responsibilities concerning the AES Rate Proceeding, Commissioner Zay believed he was legally obligated to remain impartial and to refrain from engaging in prohibited *ex parte* communications concerning disputed issues in the proceeding.

51. On June 17, 2026, Commissioner Zay participated in the Commission's decision approving a substantially reduced portion of the rate relief requested by AES.

52. The Commission's June 17, 2026 Order substantially reduced the rate relief sought by AES and represented an unusually significant reduction from the relief requested by a utility in a rate proceeding before the IURC.

53. Commissioner Zay understood that some level of additional revenue was necessary to permit AES to continue making investments necessary to provide reliable electric service to its customers.

C. The Governor's Office Pressured Commissioner Zay Concerning the AES Proceeding

54. During Commissioner Zay's service on the IURC, representatives of the Governor's Office sought to communicate with Commissioner Zay concerning the AES Rate Proceeding.

55. On June 15, 2026, two days before the IURC was scheduled to act on the AES Rate Proceeding, Jaworowski called Commissioner Zay and told him, "You know affordability is a big deal to this Governor."

56. On June 17, 2026, the IURC issued its decision in the AES Rate Proceeding.

57. Shortly thereafter, Jaworowski called Commissioner Zay and conveyed Governor Braun's disappointment with the outcome of the AES Rate Proceeding, namely that Commissioner Zay had voted in favor of any rate increase, even though the amount approved by the IURC was significantly less than the increase AES requested.

58. Later that day, Commissioner Zay attended a meeting with members of the Governor's Office and other State officials concerning the AES Rate Proceeding.

59. During that meeting, representatives of the Governor's Office criticized the Commission's decision and told Commissioner Zay, among other things, that he had "let the Governor down," that "we told you not to do this," and that "you know affordability is important to the Governor."

60. The following day, June 18, 2026, Commissioner Zay attended a meeting with Governor Braun, Jaworowski, Governor Braun's Chief of Staff Joshua Kelley, and Abby Gray, the head of the Indiana Office of Utility Consumer Counselor ("OUCC").

61. During that meeting, after discussion concerning utility rates and the AES Rate Proceeding decision, Governor Braun asked Gray, "how are we going to fix this?"

62. Commissioner Zay believed that continued discussion of the pending AES Rate Proceeding in that setting crossed into prohibited *ex parte* communications. Commissioner Zay therefore excused himself from the meeting and left.

63. Later that day, Commissioner Zay told Jaworowski that he believed discussing the active AES Rate Proceeding in that manner violated applicable *ex parte* statutory limitations on him as Commissioner and that he was uncomfortable participating in such meetings.

64. The Governor's Office also sought information concerning an open IURC investigation, sought an advance copy of an Investigative Inquiry on Energy Affordability Report that was not yet public, and requested that Commissioner Zay alter the timing of the presentation of the Investigative Inquiry on Energy Affordability Report to be presented to the Commission.

65. Commissioner Zay believed those requests violated the IURC's obligation to act independently and impartially and declined to comply with requests he believed were inconsistent with his legal and ethical obligations.

66. On June 22, 2026, Commissioner Zay sought guidance from the Indiana Inspector General regarding his concerns about *ex parte* communications and impartiality in his position as Commission of the IURC.

67. Later that same day, Jaworowski asked Commissioner Zay to change the agenda for an upcoming IURC meeting and to provide the Investigative Inquiry on Energy Affordability Report. Commissioner Zay declined, because he believed such actions were unlawful under Indiana statute.

68. On the afternoon of June 22, 2026, at the request of Governor Braun, Jaworowski asked Commissioner Zay to resign from the IURC.

D. Commissioner Zay Refused to Resign and Was Removed as Chair

69. Commissioner Zay did not resign from the IURC.

70. Governor Braun thereafter appointed Anthony Swinger to serve as Chair of the IURC, thereby removing Commissioner Zay from his role as Chair. Commissioner Zay remained an IURC Commissioner.

71. Commissioner Zay continued to carry out his responsibilities as an IURC Commissioner and continued to understand that he was required to act impartially and independently in matters pending before the IURC.

72. On July 1, 2026, Jaworowski contacted Commissioner Zay and told him that she wanted him to remain as a Commissioner. When Commissioner Zay asked what had changed since the request that he resign, Jaworowski stated that she had persuaded Governor Braun that Commissioner Zay should remain because "we need stability in the Commission right now."

73. Governor Braun's request communicated by Jaworowski that Commissioner Zay resign occurred after Commissioner Zay declined requests from the Governor's Office relating to IURC matters that he believed were inconsistent with the Commission's obligation to act independently and impartially and after Commissioner Zay had expressly raised concerns regarding prohibited *ex parte* communications.

E. Brown and Carter Summarily Removed Commissioner Zay as an IURC Commissioner

74. On Monday, August 3, 2026, Defendants Brown and Carter appeared at Commissioner Zay's IURC office.

75. Brown and Carter attempted to interview Commissioner Zay.

76. Commissioner Zay declined to participate in an interview without counsel.

77. Brown and Carter told Commissioner Zay that he could resign or he would be fired. When Commissioner Zay refused to resign, Brown and Carter then presented Commissioner Zay with a letter from Governor Braun that had already been prepared and signed before Brown and Carter arrived at Commissioner Zay's office.

78. The letter purported to remove Commissioner Zay "as a member of the Indiana Utility Regulatory Commission, effective immediately," pursuant to Ind. Code § 8-1-1-2(c).

79. Indiana Code § 8-1-1-2(c) provides that an IURC Commissioner "may be removed at any time by the governor for cause."

80. Governor Braun's August 3, 2026 letter did not identify any conduct allegedly constituting "cause" for Commissioner Zay's removal.

81. Brown and Carter likewise did not tell Commissioner Zay what conduct allegedly constituted cause for his removal.

82. Commissioner Zay was not given advance notice of any charges or allegations forming the purported basis for his removal.

83. Commissioner Zay was not given an opportunity to respond to any specific allegations before Governor Braun removed him.

84. Brown required Commissioner Zay to collect his personal belongings from his office while Brown watched.

85. Brown then escorted Commissioner Zay from the building.

F. Only After Commissioner Zay Was Removed Did SPD Publicly Announce Purported Reasons

86. Rather than provide Commissioner Zay with the alleged basis for his removal before or at the time it occurred, media outlets reported that SPD provided statements concerning Commissioner Zay's removal to members of the media.

87. Media outlets reported those statements asserted that Commissioner Zay had been removed for "multiple potential violations of state policy," including allegations that he: (a) "fail[ed] to file a required financial disclosure after his removal as Chair"; (b) "improperly award[ed] payments and personal gifts to employees"; and (c) "direct[ed] staff to alter a public meeting agenda without consulting the new Chair."

88. SPD spokesperson Kirollos Barsoum was quoted as stating that Commissioner Zay had been discharged for "non-adherence to state policies and laws related to his role as Commissioner at the IURC."

89. None of those purported grounds had been provided to Commissioner Zay before Governor Braun removed him.

90. The allegations publicly identified in at least some of SPD's statements were framed as "potential violations," rather than findings that Commissioner Zay had actually violated any identified law or policy.

G. The Purported Grounds Publicly Identified by SPD Do Not Establish Cause for Removal

91. Commissioner Zay denies that he committed any violations of law or policy, including the violations publicly attributed to him.

92. With respect to the alleged financial disclosure violation, Commissioner Zay timely filed the financial disclosure required under Ind. Code § 4-2-6-8(b) following his January 2026 appointment to the IURC.

93. Commissioner Zay's subsequent transition from Chair to Commissioner did not require him to file an additional financial disclosure because both positions required the filing of a disclosure, and Commissioner Zay had already satisfied that obligation by February 1 of 2026. *See* Ind. Code § 4-2-6-8(b).

94. With respect to the allegation that Commissioner Zay improperly awarded payments to employees, Commissioner Zay did not make any payments directly to IURC employees.

95. Any payments to IURC employees were processed through SPD and were made with SPD approval and the approval of Jaworowski.

96. Thus, the conduct publicly identified as a purported basis for Commissioner Zay's removal involved payments that would have been reviewed and approved by State officials, including Brown and Jaworowski.

97. Commissioner Zay did not use State funds to purchase personal gifts for IURC employees.

98. Commissioner Zay occasionally provided *de minimis* gifts to IURC employees using his own personal funds by giving them $8.00 Starbucks gift cards on their birthdays.

99. With respect to the allegation concerning the IURC meeting agenda, Commissioner Zay did not direct any member of the IURC staff to place any particular item on a public meeting agenda.

100. IURC staff prepare Commission meeting agendas as part of their job duties and circulate those agendas to Commissioners before they are publicly posted.

101. Commissioner Zay was unaware of any policy requiring approval from the Chair before an item could be placed on an agenda. Commissioner Zay is not aware of such a requirement during his tenure as Chair, and no such requirement has ever been communicated to him.

102. In fact, the new Chair spoke with Commissioner Zay on July 31, 2026 concerning the agenda items for the upcoming meeting before the agenda was publicly posted.

H. Governor Braun's Own Statements Identify a Different Reason for Commissioner Zay's Removal

103. After Commissioner Zay's removal, Governor Braun publicly addressed why he removed Commissioner Zay. In an interview reported on August 5, 2026, Governor Braun attributed the change to Commissioner Zay's "performance regarding utility costs" and stated that he was "disappointed that [Commissioner Zay] didn't take on affordability and holding utilities accountable." https://www.wrtv.com/news/wrtv-investigates/i-was-disappointed-gov-braun-explains-firing-of-iurc-commissioner-andy-zay (Last checked Aug. 6, 2026).

104. Governor Braun further indicated that the for cause allegations against Commissioner Zay were "ancillary." *Id.*

105. In a separate interview reported on August 6, 2026, Governor Braun explained that he had been looking for individuals who were "ratepayer-conscious" and referenced the IURC's granting of a significant rate increase. https://www.wthr.com/article/news/local/iurc-head-governor-talk-zay-firing-and-aes-hike-reconsideration-anthony-swinger-governor-mike-braun/531-36c2dd71-ac0b-4557-8c3a-c619ae703188 (Last checked on August 6, 2026).

106. Governor Braun further stated that if he did not have people working with him who were of the "same mindset," it was "better to find somebody that does." *Id.*

107. Governor Braun's public statements tied Commissioner Zay's removal to disagreement with Commissioner Zay's approach to utility regulation and the AES Rate Proceeding, while characterizing the subsequently announced policy violations as "ancillary."

I. Commissioner Zay Has Never Been Provided a Process to Establish the Alleged "Cause" for His Removal

108. To date, Commissioner Zay has never been provided with a written statement identifying the specific conduct that Governor Braun contends constituted statutory

"cause" under Ind. Code § 8-1-1-2(c), apart from the generalized allegations later reported by the media.

109. Commissioner Zay was not afforded any hearing or other opportunity to contest those allegations before his removal.

110. Commissioner Zay has not been informed of any administrative or other procedure through which he can challenge the alleged factual basis for the purported "for cause" removal.

J. Governor Braun Appointed Joshua Bain to Commissioner Zay's Seat

111. Following Commissioner Zay's purported removal, Governor Braun appointed Defendant Joshua Bain to replace Commissioner Zay as a member of the IURC.

112. Bain was appointed to the IURC Commission seat previously occupied by Commissioner Zay and now purportedly exercises the powers and duties associated with that position.

113. On August 6, 2026, Governor Braun publicly announced and discussed Bain's appointment on his official social-media account.

114. Governor Braun began the announcement by stating: "I have been clear, affordability is my top priority for Hoosiers."

115. Governor Braun then stated**:** "As families and businesses continue to feel the pressure of rising costs, it's essential that we have leaders who will be ratepayer conscious."

116. In the same statement, Governor Braun identified Bain as one of the individuals he had recently appointed to the IURC and stated that he was confident his appointees would keep "affordability" at the forefront of their decisions.

117. Governor Braun's August 6, 2026, statement expressly connected his appointment of Bain and the composition of the IURC with his stated policy priority of selecting Commissioners who would be "ratepayer conscious."

118. That statement followed Governor Braun's public criticism of Commissioner Zay's approach to utility rates and his statement that, if persons working with him did not share the "same mindset," it was "better to find somebody that does." https://www.wthr.com/article/news/local/iurc-head-governor-talk-zay-firing-and-aes-hike-reconsideration-anthony-swinger-governor-mike-braun/531-36c2dd71-ac0b-4557-8c3a-c619ae703188 (Last checked on August 6, 2026).

119. The timing and substance of Governor Braun's statements prove that support Commissioner Zay's removal as IURC Commissioner was motivated by Governor Braun's disagreement with Commissioner Zay's exercise of independent judgment as an IURC Commissioner and Governor Braun's desire to replace Commissioner Zay with someone aligned with Governor Braun's preferred approach to utility matters.

120. Governor Braun lacked legally sufficient "cause" to remove him under Ind. Code § 8-1-1-2(c), and therefore Commissioner Zay's purported removal did not create a lawful vacancy that Governor Braun was authorized to fill.

121. Bain's appointment therefore does not cure or otherwise validate Commissioner Zay's unlawful removal, and Commissioner Zay claims the superior legal right to the IURC Commission seat presently occupied by Bain.

K. The AES Rate Proceeding and Petition for Rehearing Remains Pending Before the IURC

122. On June 17, 2026, the IURC issued its final Order in Cause No. 46258 (the AES Rate Proceeding) concerning AES Indiana's request to increase its electric utility rates and charges.

123. The Commission voted 3-1 to approve AES's request, with significant modifications, resulting in an approximately $71 million annual increase in AES Indiana's rates.

124. The day after the Commission issued its Order in the AES Rate Proceeding, Governor Braun publicly criticized the Commission's decision as "unacceptable" and called for the decision to be "reconsidered."

125. On July 7, 2026, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a Petition for Rehearing and Reconsideration under Ind. Code § 8-1-3-2 and 170 IAC 1-1.1-22.

126. The OUCC's Petition asks the Commission to reconsider and modify numerous portions of the June 17, 2026, Order, including the authorized return on equity, rate-case expenses, payroll expenses associated with vacant positions, regulatory-asset recovery, fuel costs, and other components affecting the rates ultimately paid by AES Indiana customers.

127. The OUCC asks the Commission either to modify its Order based upon the existing evidentiary record or, alternatively, to reopen the proceeding for the receipt of additional evidence.

128. Accordingly, the AES Rate Proceeding remains pending before the IURC, and the Commission is required to determine whether and to what extent to reconsider or modify its June 17 Order.

129. On July 31, 2026, Commissioners Zay and Veleta and ALJ Kristin Kresge prepared an Order on OUCC's Petition for Rehearing and circulated it among the IURC

Commissioners in accordance with IURC statute and policy. The Petition for Rehearing was then placed on the agenda by the IURC staff for consideration at the next IURC meeting scheduled for August 5, 2026.

130. After the agenda was posted by the IURC staff at 10:00 a.m. on Monday, August 3, 2026, Governor Braun removed Commissioner Zay as IURC Commissioner.

131. At the August 5, 2026 IURC meeting, Chair Swinger tabled the Petition for Rehearing, and the Commission did not consider it.

132. Based upon the foregoing facts, including (a) Jaworowski's communications with Commissioner Zay concerning the AES Rate Proceeding decision; (b) Governor Braun's expressed dissatisfaction with the AES Rate Proceeding decision;)(c) Jaworowski's request that Commissioner Zay resign after he voted on the AES Rate Proceeding and raised concerns about *ex parte* communications with the Governor and his Office; Commissioner Zay's refusal to disclose IURC matters to the Governor prior to them being made public; (d) the timing of Commissioner Zay's ultimate removal, (e) Governor Braun's statements concerning Commissioner Zay's participation in and vote on the AES Rate Proceeding, (f) Governor Braun's immediate appointment of Bain following Commissioner Zay's removal; and (g) Governor Braun's public statements concerning the need for "ratepayer conscious" IURC leadership who are in line with him, it is clear that Commissioner Zay's removal as IURC Commissioner was motivated by a desire to alter the composition of the Commission before final action is taken on the Petition for Rehearing in the AES Rate Proceeding.

133. If the IURC acts upon the Petition for Rehearing while Commissioner Zay remains excluded and Bain occupies his seat, the Petition will be considered and voted upon by a Commission whose composition was unlawfully altered by Governor Braun, and

Commissioner Zay will permanently lose the opportunity to participate in that decision as one of the Commissioners assigned to the AES Rate Proceeding.

L. Immediate Reinstatement Is Necessary to Restore the Status Quo Ante

134. Commissioner Zay seeks immediate reinstatement to his position as an IURC Commissioner and restoration of the rights, authority, responsibilities, and incidents of that position.

135. Unless Commissioner Zay is immediately reinstated, he will continue to be deprived of the ability to impartially exercise the statutory duties and responsibilities of the position to which he was duly appointed.

136. Commissioner Zay's injury is continuing and cannot be adequately remedied through monetary damages. Each matter heard, considered, voted upon, or decided by the Commission during Commissioner Zay's exclusion constitutes an exercise of governmental authority in which Commissioner Zay is prevented from performing the duties of his position.

137. The appointment of Bain has further altered the circumstances that existed immediately before Commissioner Zay's removal and makes immediate equitable relief particularly necessary.

138. If Commissioner Zay ultimately prevails but is required to remain excluded from the IURC during the pendency of this litigation, no subsequent award of damages can restore to him the governmental decisions, deliberations, votes, and other official responsibilities from which he was excluded.

139. Commissioner Zay therefore seeks temporary and preliminary injunctive relief restoring the status quo ante – the circumstances existing immediately before his purported removal on August 3, 2026 – by reinstating him as an IURC Commissioner and prohibiting

Defendants from continuing to give effect to his unlawful removal while this action remains pending.

VI. STATEMENT OF CLAIMS

COUNT I

(*Declaratory Judgment – Violation of Indiana Code § 8-1-1-2(c)*)

140. Commissioner Zay incorporates the allegations of paragraphs 1 through 139 above, and, in addition, requests that the Court declare Governor Braun's purported removal of Commissioner Zay unlawful and without legal effect.

141. Indiana's Uniform Declaratory Judgment Act, Ind. Code § 34-14-1-1 et seq., authorizes courts of record to declare rights, status, and other legal relations and to determine questions concerning the construction or validity of statutes.

142. An actual, justiciable controversy exists between Commissioner Zay and Defendants concerning the validity of Governor Braun's purported removal of Commissioner Zay from the IURC and the meaning and application of Ind. Code § 8-1-1-2(c).

143. Indiana Code § 8-1-1-2(c) expressly limits the Governor's authority to remove an IURC Commissioner, providing that a Commissioner "may be removed at any time by the governor **for cause**." (Emphasis added).

144. The General Assembly's use of the phrase "for cause" limits the Governor's removal authority and does not permit an IURC Commissioner to be removed at the Governor's pleasure or merely because the Governor disagrees with the Commissioner's exercise of independent judgment.

145. Indiana courts construing statutes permitting removal of appointed public officials "for cause" have recognized that the phrase requires more than the appointing authority's subjective dissatisfaction with the appointee.

146. Accordingly, disagreement with an appointee's lawful exercise of independent judgment, political or policy disagreement, or a desire to replace an appointee with someone who shares the appointing authority's preferred "mindset" does not constitute "cause" within the meaning of Ind. Code § 8-1-1-2(c).

147. On August 3, 2026, Governor Braun purported to exercise the removal authority granted by Ind. Code § 8-1-1-2(c) and remove Commissioner Zay from the IURC effective immediately.

148. Governor Braun's removal letter did not identify any act or omission allegedly constituting "cause" for Commissioner Zay's removal.

149. Commissioner Zay was not advised before his removal of any specific allegation that allegedly rendered him unable or unfit to perform the duties of an IURC Commissioner.

150. The purported reasons subsequently released publicly by SPD do not establish that Commissioner Zay engaged in acts or omissions diminishing his ability or fitness to perform the duties of an IURC Commissioner.

151. Moreover, Governor Braun's subsequent public statements demonstrate that his dissatisfaction with Commissioner Zay concerned Commissioner Zay's approach to utility regulation, including his consideration of utility rates and the AES rate proceeding.

152. Governor Braun publicly stated that he wanted individuals who were "ratepayer-conscious," criticized Commissioner Zay's approach to utility costs, and stated that if the individuals working with him did not share the "same mindset," it was "better to find somebody that does."

153. Governor Braun further characterized the purported policy violations publicly attributed to Commissioner Zay after his removal as "ancillary."

154. Commissioner Zay's exercise of independent and impartial judgment in performing his statutory responsibilities as an IURC Commissioner, including his refusal to engage in communications prohibited by Indiana law and his exercise of independent and impartial judgment concerning matters pending before the IURC, does not constitute statutory "cause" for removal.

155. Because legally sufficient cause did not exist, Governor Braun lacked authority under Ind. Code § 8-1-1-2(c) to remove Commissioner Zay from his position as an IURC Commissioner.

156. Governor Braun's purported removal of Commissioner Zay was therefore contrary to Ind. Code § 8-1-1-2(c), exceeded the removal authority conferred upon the Governor by the General Assembly, and was unlawful and without legal effect.

157. Because Commissioner Zay was not lawfully removed from office, his purported removal did not create a lawful vacancy of his IURC Commission seat.

158. Commissioner Zay is therefore entitled to a declaration that:

(a) Ind. Code § 8-1-1-2(c) permits the Governor to remove an IURC Commissioner only upon legally sufficient "cause";
(b) the reasons asserted for Commissioner Zay's removal do not constitute legally sufficient "cause" under Ind. Code § 8-1-1-2(c);
(c) Governor Braun's August 3, 2026 removal of Commissioner Zay violated Ind. Code § 8-1-1-2(c) and was unlawful;
(d) Commissioner Zay's purported removal did not create a lawful vacancy in his position as an IURC Commissioner; and
(e) Commissioner Zay remains legally entitled to the IURC Commission seat from which he was unlawfully removed, subject to the Court's determination of the related quo warranto claim.

WHEREFORE, Plaintiff Andrew R. Zay respectfully requests that the Court enter judgment in his favor and against Defendants; declare Governor Braun's purported removal of Commissioner Zay unlawful and without legal effect; declare the rights and legal relations of the

parties as set forth above; award such injunctive relief as is necessary to effectuate the Court's declaration; award Plaintiff his costs to the extent permitted by law; and grant all other just and proper relief.

COUNT II

(Information in the Nature of Quo Warranto)

159. Commissioner Zay incorporates the allegations of paragraphs 1 through 158 above, and, in addition, requests that the Court determine that Commissioner Zay, rather than Defendant Bain, is legally entitled to hold the IURC Commission seat from which Commissioner Zay was unlawfully removed.

160. Indiana Code § 34-17-1-1 permits an information in the nature of quo warranto to be filed when a person "usurps, intrudes into, or unlawfully holds or exercises a public office" within the State of Indiana.

161. Indiana Code § 34-17-2-1 further authorizes a private person to bring an action on his own relation whenever that person claims an interest in the public office that is the subject of the action.

162. Commissioner Zay has a direct and personal interest in the IURC Commission seat presently occupied by Bain because Commissioner Zay was duly appointed to that office and maintains that he was never lawfully removed from it.

163. Indiana law recognizes quo warranto as the established remedy for determining competing claims to a public office and deciding which claimant is legally entitled to occupy that office. See, e.g., *Madden v. Houck*, 403 N.E.2d 1133, 1135 (Ind. Ct. App. 1980).

164. Indiana Code § 34-17-2-4 expressly provides that when multiple persons claim entitlement to the same office, an information may be filed to determine their respective rights to that office.

165. As alleged above, Governor Braun purported to remove Commissioner Zay as IURC Commissioner on August 3, 2026 pursuant to Ind. Code § 8-1-1-2(c).

166. Governor Braun thereafter appointed Bain on August 6, 2026 to occupy the IURC Commission seat previously held by Commissioner Zay.

167. Bain now purportedly occupies and exercises the powers and duties of the IURC Commission seat that Commissioner Zay is legally entitled to hold.

168. Bain's claimed entitlement to the office necessarily depends upon the existence of a lawful vacancy in Commissioner Zay's seat.

169. No lawful vacancy arose because Governor Braun lacked legally sufficient "cause" under Ind. Code § 8-1-1-2(c) to remove Commissioner Zay.

170. Governor Braun's purported removal of Commissioner Zay was therefore unlawful and without legal effect.

171. Because Commissioner Zay was not lawfully removed from office, his purported removal did not create a lawful vacancy of his IURC Commission seat.

172. Because no lawful vacancy existed, Bain's subsequent appointment did not divest Commissioner Zay of his legal right to the office and cannot provide Bain with a superior claim to the position.

173. Commissioner Zay therefore remains legally entitled to the IURC Commission seat from which he was unlawfully removed.

174. Commissioner Zay does not allege that Bain personally participated in, caused, or is otherwise responsible for Governor Braun's unlawful removal of Commissioner Zay.

175. Bain is named because he presently occupies the public office to which Commissioner Zay claims the superior legal right and because complete relief necessarily requires a determination of the parties' respective entitlement to that position.

176. Commissioner Zay is therefore entitled to judgment in quo warranto determining that:

(a) Commissioner Zay was not lawfully removed from his position as an IURC Commissioner;
(b) Commissioner Zay's purported removal did not create a lawful vacancy in his IURC Commission seat;
(c) Commissioner Zay possesses the superior legal right and title to the IURC Commission seat presently occupied by Bain;
(d) Bain is not entitled to continue occupying or exercising the powers of Commissioner Zay's IURC Commission seat during the period in which Commissioner Zay remains lawfully entitled to that office; and
(e) Commissioner Zay is entitled to be restored to and permitted to exercise the powers, duties, rights, and responsibilities of his position as an IURC Commissioner.

WHEREFORE, Plaintiff Andrew R. Zay respectfully requests that the Court enter judgment in his favor and against Defendant Joshua Bain; determine the respective rights of Commissioner Zay and Bain to the IURC Commission seat at issue; determine that Commissioner Zay possesses the superior legal right to that office; order Commissioner Zay restored to his position as an IURC Commissioner; grant such temporary, preliminary, and permanent injunctive relief as is necessary to effectuate that determination; award Plaintiff his costs to the extent permitted by law; and grant all other just and proper relief.

COUNT III

(*Application for Temporary, Preliminary, and Permanent Injunctive Relief*)

177. Commissioner Zay incorporates the allegations of paragraphs 1 through 176 above, and, in addition, requests that the Court temporarily, preliminarily, and permanently

enjoin Defendants from continuing to give effect to Governor Braun's unlawful removal of Commissioner Zay and restore Commissioner Zay to his position as an IURC Commissioner.

178. Indiana Trial Rule 65 authorizes this Court to grant temporary, preliminary, and permanent injunctive relief necessary to protect Commissioner Zay's rights and preserve meaningful relief pending final adjudication of this action.

179. Commissioner Zay has a reasonable likelihood of success on the merits because Ind. Code § 8-1-1-2(c) permits the Governor to remove an IURC Commissioner only "for cause," and legally sufficient cause did not exist for Commissioner Zay's removal.

180. Commissioner Zay has no adequate remedy at law and will suffer immediate and irreparable harm absent injunctive relief. Each day Commissioner Zay remains excluded from the IURC, he is prevented from exercising the powers, duties, and responsibilities of the public office to which he was duly appointed, including participating in Commission proceedings, deliberations, and votes that cannot later be recreated or remedied through an award of monetary damages.

181. The balance of harms favors Commissioner Zay because Defendants have no legally protectable interest in continuing to enforce a removal that exceeded the authority granted by Ind. Code § 8-1-1-2(c).

182. Injunctive relief is also in the public interest because the public has a substantial interest in ensuring compliance with statutory limitations on executive authority and preserving the independence and impartiality of the IURC.

183. The appropriate equitable relief is restoration of the status quo ante existing immediately before Commissioner Zay's purported removal on August 3, 2026.

184. A Petition for Rehearing in the AES Rate Proceeding remains pending before the IURC in a matter in which Commissioner Zay had been assigned to participate before his purported removal.

185. Commissioner Zay alleges that Governor Braun's removal of him was motivated, at least in substantial part, by a desire to alter the composition of the IURC before the Commission acted upon the pending Petition for Rehearing in the AES Rate Proceeding.

186. If the IURC votes upon or otherwise finally disposes of the Petition for Rehearing before this Court determines whether Commissioner Zay was lawfully removed, Commissioner Zay will be permanently deprived of the opportunity to participate in that decision in his capacity as a duly appointed Commissioner.

187. Accordingly, temporary and preliminary injunctive relief is necessary not only to restore Commissioner Zay to his position, but also to preserve the subject matter of this litigation and prevent the IURC from taking final action on the pending Petition for Rehearing before Commissioner Zay's entitlement to office is determined.

188. Commissioner Zay therefore requests that the Court temporarily and preliminarily:

(a) enjoin Defendants and all persons acting in concert or participation with them from continuing to enforce, implement, recognize, or give effect to Governor Braun's August 3, 2026 purported removal of Commissioner Zay;
(b) restore Commissioner Zay to his position as an IURC Commissioner and permit him to exercise the powers, duties, rights, and responsibilities of that office;
(c) restore Commissioner Zay's access to the offices, systems, records, personnel, and other resources reasonably necessary to perform his duties as an IURC Commissioner;
(d) enjoin Bain from occupying or exercising the powers and duties of the IURC Commission seat to which Commissioner Zay claims the superior legal right during the pendency of this action;
(e) grant such other relief as is necessary to restore the status quo ante and preserve meaningful relief pending final adjudication; and

(f) enjoin Defendants, and all persons acting in concert or participation with them, from causing, directing, permitting, or participating in any vote or other final disposition by the IURC on the pending Petition for Rehearing until Commissioner Zay has been restored to his position or until further order of this Court.

189. Upon final adjudication, Commissioner Zay requests that the Court permanently enjoin Defendants from giving effect to his unlawful removal and permanently restore him to the IURC Commission seat to which he is legally entitled for the remainder of his term.

WHEREFORE, Plaintiff Andrew R. Zay respectfully requests that the Court enter temporary, preliminary, and permanent injunctive relief as set forth above, award Plaintiff his costs to the extent permitted by law, and grant all other just and proper relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Andrew R. Zay respectfully requests that the Court enter judgment in his favor and against Defendants and grant the following relief:

a. Enter a declaratory judgment that Ind. Code § 8-1-1-2(c) permits the Governor to remove an IURC Commissioner only for legally sufficient "cause";

b. Declare that Governor Braun's August 3, 2026 purported removal of Commissioner Zay violated Ind. Code § 8-1-1-2(c), exceeded the authority conferred upon the Governor by Indiana law, and was unlawful and without legal effect;

c. Declare that Governor Braun did not remove Commission Zay for cause under Ind. Code § 8-1-1-2(c);

d. Declare that Commissioner Zay's purported removal did not create a lawful vacancy of his IURC Commission seat;

e. Enter judgment in quo warranto determining that Commissioner Zay possesses the superior legal right and title to the IURC Commission seat presently occupied by Defendant Joshua Bain;

f. Temporarily, preliminarily, and permanently enjoin Defendants, and all persons acting in concert or participation with them, from continuing to enforce, implement, recognize, or give effect to Governor Braun's purported removal of Commissioner Zay;

g. Order Commissioner Zay immediately reinstated and restored to his position as an IURC Commissioner, together with all powers, duties, rights, responsibilities, access, and other incidents of that office;

h. Temporarily, preliminarily, and permanently enjoin Defendant Bain from occupying or exercising the powers and duties of the IURC Commission seat to which Commissioner Zay is legally entitled;

i. Require Defendants to take all actions reasonably necessary to restore the status quo ante existing immediately before Commissioner Zay's purported removal, including restoration of access to offices, systems, records, personnel, and other resources necessary for him to perform his duties as an IURC Commissioner;

j. Temporarily and preliminarily enjoin Defendants, and all persons acting in concert or participation with them, from causing, directing, permitting, or participating in any IURC vote or other final disposition of the pending Petition for Rehearing until Commissioner Zay has been restored to his position or until further order of the Court;

k. Award Commissioner Zay his costs to the extent permitted by law; and

l. Grant all other relief the Court deems just and proper.

VIII. RESERVATION OF RIGHTS

Pursuant to the rules of pleading and practice, Commissioner Zay reserves the right to assert additional violations of federal and state law.

IX. VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true and correct to the best of my knowledge and belief.

Dated: Aug 10, 2026

Andrew Zay (Aug 10, 2026 09:47:36 EDT)

Mr. Andrew R. Zay

Respectfully submitted,

s/ *Sandra L. Blevins*
Sandra L. Blevins, Atty. No. 19646-49
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Verified Complaint - FINAL

Final Audit Report 2026-08-10

Created:	2026-08-10
By:	Jamie Maddox (jmaddox@betzadvocates.com)
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