STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT
	)	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2505-PL-001288

JUSTIN VASEL,	)
	)
Plaintiff,	)
	)
v.	)
	)
MIKE BRAUN, in his official capacity as Governor of the State of Indiana,	)
	)
Defendant.	)

Memorandum in Support of Motion for Preliminary Injunction

Introduction

There are five public four-year universities in Indiana. Prior to May 6, 2025, all of them were governed by statutes that ensured that alumni had a voice in selecting some members of the boards of trustees that govern those institutions. That changed on May 6, 2025, when the Governor signed HEA 1001, the State's budget bill. Buried within that bill are amendments to the Indiana Code, effective immediately, that strip Indiana University's alumni from having any role in selecting any member of the University's Board of Trustees. Meanwhile, the alumni of every other four-year institution continue to have a voice in their institution's governance. These amendments, applying only to Indiana University, represent special legislation, and inasmuch as there is nothing unique about Indiana University that justifies the legislation, the amendments are void as

violating the Indiana Constitution's prohibition on special legislation. Ind. Const. art. 4, sec. 23.

Voting was set to begin on June 1, 2025 to pick a new alumni representative on Indiana University's Board of Trustees—an electoral process in place for more than a century—which has now been amended out of existence. Plaintiff Justin Vasel was a candidate in that election (not to mention a would-be voter) and is clearly being harmed by the amendments. All the requirements for the issuance of a preliminary injunction are met, and one should issue so the planned election can take place.

Legal background and facts

I. The prior method of selecting members of Indiana University's Board of Trustees

Under Indiana law, Indiana's public universities are governed by their Boards of Trustees. *See, e.g.,* Indiana University, *Board of Trustees*, trustees.iu.edu/index.html (last visited May 6, 2025) (describing the Board of Trustees as "the university's governing body"). Prior to the statutory amendments at issue here, Indiana Code § 21-20-3-2 provided that Indiana University's Board of Trustees consisted of nine members. Three of these members were to be elected by alumni for three-year terms beginning on the first of July following their elections. Ind. Code § 21-20-3-4 (repealed eff. May 6, 2025). Five were appointed by the Governor for three-year terms, and the Governor also appointed one full-time student member for a two-year term. Ind. Code §§ 21-20-3-12, 13 (amended eff. May 6, 2025).

This electoral process, allowing alumni to elect a number of trustees, was introduced into Indiana law in 1891 when the General Assembly enacted a statute providing that three members of the Board of Trustees "shall be elected by the Alumni of the University at the College Commencement of the year 1891." Acts 1891, Ch. 53, Sec. 1.

II. The selection of board of trustee members at Indiana's other public four-year universities

Alumni have a role in the selection of members at Indiana's other public four-year universities. Indiana law regulating the appointment of Ball State University's nine-member Board of Trustees provides that although all are appointed by the Governor, two must be alumni whose names are selected by the Ball State University Alumni Council and submitted to the Governor for the Governor's "immediate appointment." Ind. Code §§ 21-19-3-2, 6. All terms are for four years, with the exception of one Board member who must be a student and who is appointed for two years. Ind. Code § 21-19-3-8.

Similarly, the Governor appoints the nine members of Indiana State University's Board of Trustees, but two of them are nominated by the Indiana State University Alumni Council. Ind. Code §§ 21-21-3-2, 9. All terms are for four years, with the exception of one Board member who must be a student and who is appointed for two years. Ind. Code §§ 21-21-3-2, 3.

The Purdue University Board of Trustees consists of ten persons appointed by the Governor, although three are selected by members of the Purdue Alumni Association. Ind. Code §§ 21-23-3-1 through 3. All terms are for three years, with the exception of one

Board member who must be a student and who serves for two years. Ind. Code § 21-23-3-7.

And, the Board of Trustees of the University of Southern Indiana consists of nine persons appointed by the Governor, although there must be at least one alumnus member who is selected by the Governor from names provided by the screening committee created by the executive body of the University's alumni association. Ind. Code §§ 21-24-3-2, 6. All terms are for four years, with the exception of one Board member who must be a student and who serves a two year term. Ind. Code § 21-24-3-2.

III. Changes to election of the Board of Trustees of Indiana University in HEA 1001

HEA 1001 is the recently enacted budget bill, signed by Governor Braun on May 6, 2025. Late in the legislative process, Sections 253 through 266 were inserted into the bill, without any public hearing or discussion, and these provisions removed the ability of alumni of Indiana University to have any role in the selection of members of the Board of Trustees.

Under these late-added provisions, Indiana law now provides that although the Board of Trustees of Indiana University will continue to consist of nine persons, the Governor appoints all nine without a requirement that alumni be involved in any capacity. Ind. Code § 21-20-3-2 (eff. May 6, 2025). Indeed, all provisions providing for the election of any trustee by alumni have been repealed. Ind. Code §§ 21-20-3-4 through 21-20-3-11 (eff. May 6, 2025). Unlike the gubernatorial selection process for board members

of the other public four-year Indiana universities, there is no longer any mechanism for alumni or their associations to select members to be appointed by the Governor. Trustees at Indiana University will continue to serve three-year terms, but the one trustee who must be a student will now only serve a one-year term. Ind. Code § 21-20-3-12, 13 (eff. May 6, 2025).

The amendments' goal to remove all alumni influence on the trustee selection process is obvious, as Indiana Code § 21-20-3-2.5 (eff. May 6, 2025) allows the Governor to remove at any time the current Indiana University Board of Trustees members who had been elected by the alumni and whose terms have not yet expired. The trustee selection methods of Indiana's other public four-year institutions of higher learning remain unchanged so that as of May 6, 2025 Indiana University is the only institution where alumni have absolutely no say in the selection of any of the members of the Board of Trustees.

IV. Justin Vasel and the trustee election that was scheduled to begin on June 1, 2025

Currently the term of one of the members of the Indiana University Board of Trustees who had been elected by the alumni is set to end on July 1, 2025. (Verified Complaint ¶ 22). Plaintiff Justin Vasel, who received a PhD in physics from Indiana University, was one of the six candidates running to be elected to fill that vacancy. (*Id.* ¶¶ 23-24).

Under the procedure that existed prior to the amended statutes referred to above,

voting for the trustee position would take place from June 1, 2025 through 10:00 a.m. on June 30, 2025, with the winning candidate to be announced shortly after the close of the election and to take their position on the Board of Trustees on July 1, 2025. (*Id.* ¶¶ 25, 28). The University previously would issue paper ballots to any alumni who voted in the three prior elections or who requested a ballot. (*Id.* ¶ 26). The University has one of the largest alumni bodies in the world, totaling more than 790,000 persons. Indiana University-Alumni Association, Alumni by the numbers, https://alumni.iu.edu/about /alumni-census/index.html (last visited May 4, 2025).

Candidate Vasel has spent a considerable amount of effort, time, and expense in campaigning for the position and has a considerable interest as a candidate. *See* Vasel for IU Board of Trustees, https://vaselforiu.com/ (last visited May 4, 2025); Verified Complaint ¶¶ 29-30). However, even if he were not a candidate, he would vote in this election as he desires that alumni, even those not favored by the Governor, have a role in shaping the future of Indiana University. (*Id.* ¶ 30).

The preliminary injunction standard

Indiana law is clear that

> [g]enerally, to obtain a preliminary injunction, a party must demonstrate the following four elements by a preponderance of the evidence: (1) there exists a reasonable likelihood of success at trial; (2) the remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (3) the threatened injury to the movant outweighs the potential harm to the nonmovant from the granting of an injunction; and (4) the public interest would not be disserved by granting the requested injunction.

State v. Economic Freedom Fund, 959 N.E.2d 794, 803 (Ind. 2011) (citation omitted). However, when the activity to be enjoined is "clearly unlawful and against the public interest" Indiana courts have adopted a "per se" rule under which the other preliminary injunction factors are presumed to be met. *Indiana Family and Soc. Serv. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161-62 (Ind. 2002).[1]

Legal Argument

I. Mr. Vasel will prevail on the merits of his claim

As relevant here, the Indiana Constitution, Article 4, Section 23, provides that in all "cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State."[2] The Indiana Supreme Court has set out clear guidelines to determine if a law is an unconstitutional special law. Application of those guidelines points to only one conclusion—the challenged statutory changes that leave Indiana University alumni as the only alumni of Indiana's public universities who have no say in the selection of members of the universities' boards of trustees are

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[1] *Walgreen* speaks of clear violations of statutes as the justification for invoking the per se rule. *Walgreen*, 796 N.E.2d at 162. However, there is no reason to exclude constitutional violations from the rule. The Court of Appeals has certainly suggested that this is the case. In *Combs v. Daniels*, 853 N.E.2d 156 (Ind. Ct. App. 2006), in rejecting application of the rule the court noted that since the action challenged by plaintiffs "violates neither statutory nor constitutional law we therefore find that the per se rule does not apply in this case. Thus, Appellants must satisfy all four prongs [of the preliminary injunction standard] in order to receive a preliminary injunction." *Id.* at 162 (cleaned up).

[2] Article 4, Section 22 of the Indiana Constitution also prohibits a number of specifically enumerated local and special laws, none of which are implicated here.

unconstitutional.

A. The analysis under Article 4, Section 23

In *City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70 (Ind. 2019), the Court engaged in a lengthy analysis of the Indiana Constitution's limitations on special legislation and the cases that developed the framework for assessing challenges based on an alleged violation of Article 4, Section 23. *Id.* at 79-85. After its review, the Court concluded that

> the constitutionality of special legislation hinges on the uniqueness of the identified class and the relationship between the uniqueness and the law. More specifically, a special law complies with Article 4, Section 23 when an affected class's unique characteristics justify the differential treatment the law provides to that class. But, a special law violates Article 4, Section 23 when there are no unique circumstances of an affected class that warrant special treatment—meaning that a general law could be made applicable.

Id. at 84. (citations omitted). The Court stressed that "because a special-legislation challenge is a type of constitutional challenge, there is an overarching presumption that the statute is constitutional." *Id.* (citation omitted). This means that "in close cases, the special law will be upheld." *Id.* (citation omitted). On the other hand, if there are no unique circumstances that justify differential treatment, special legislation will be found to be unconstitutional. *Id. See also, e.g., Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1266 (Ind. 2020).

The first question in the analysis is whether the legislation is "special legislation," *i.e.*, does it apply to "a narrow group within the larger class"? *Alpha Psi Ch. of Pi Kappa*

Phi Frat., Inc. v. Auditor of Monroe Co., 849 N.E.2d 1131, 1137 (Ind. 2006). If a law is "special" the proponent of the legislation must "clear a low bar by establishing a link between the class's unique characteristics and the legislative fix." *City of Hammond*, 119 N.E. 3d at 854. If the proponent establishes this link

> but the case poses a question of degree—i.e., the characteristics used to justify the special law are common to the specified class and to those outside of the class—then the opponent of the legislation must show why the specified class's characteristics are not defining enough to justify the special legislation. By carrying this burden, the opponent demonstrates that the law's proponent has failed to justify the special treatment.

Id. at 85.

B. The changes enacted in HEA 1001, which deny Indiana University alumni the ability to select any member of the University's Board of Trustees, are unconstitutional special legislation

The first question is whether Sections 253 through 266 of HEA 1001, which uniquely deny Indiana University alumni the ability to have any say in the selection of members of the University's Board of Trustees, represent special legislation. This is not a difficult question, as the legislation is directed only to Indiana University and not to the other public four-year universities in Indiana. It is special because "it is directed to [Indiana University] alone." *State v. Buncich*, 51 N.E.3d 136, 141 (Ind. 2016). It is not "a general law of uniform application throughout the State." *Williams v. State*, 724 N.E.2d 1070, 1086 (Ind. 2000).

The second question, of course, is whether there are inherent characteristics or unique circumstances that warrant this special treatment. *City of Hammond*, 119 N.E.2d at

84; *Alpha Psi Chapter*, 849 N.E.3d at 1138; *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 692 (2003)**.** The Governor bears the burden to demonstrate this and he simply will not be able to do so. While it might start a fight between loyal alumni of each institution, there is nothing uniquely dissimilar between Purdue University, for example, and Indiana University that would justify Boilermakers being allowed a voice in trustee selection, but not Hoosiers.[3] The same can be said for alumni of the other public universities in Indiana.

In *Alpha Psi Chapter* the challenged statute granted a retroactive extension to file untimely applications for property tax exemptions, but only to Indiana University fraternities. 849 N.E.2d at 1134. In finding that this was unconstitutional special legislation, the Supreme Court noted that "there is nothing unique about the class specified in [the challenged statute]. The [proponents] provide no meaningful explanation as to why the problems they face are any different than those faced by landowning fraternities and sororities trough the state." *Id.* at 1138. The same is true here. There is nothing unique about Indiana University and its alumni as compared to the other public universities and their alumni.

In *City of Hammond*, the challenged law exempted Bloomington and West Lafayette

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[3] Much like Indiana University, Purdue has a huge number of alumni--over 600,000. Purdue University, *Alumni-Ever Grateful, Ever True*, https://www.purdue.edu/home/alumni/#:~:text=Once%20a%20Boilermaker%2C%20always%20a,time%20and%20talent%20to%20Purdue (last visited May 6, 2025).

from a statute that capped the fees that landlords could be charged to register their rental properties. *Id.* at 73. Proponents attempted to justify the differential treatment by arguing that Bloomington and West Lafayette possessed large populations of unsophisticated first-time student renters. As relevant here, in rejecting this argument the Court noted that all of Indiana's public universities were similar:

> Nor are Bloomington and West Lafayette the only two cities in Indiana containing a large public university with many students who are "often unsophisticated first-time renters." For example, Muncie has Ball State University; Indianapolis has Indiana University-Purdue University; and Terre Haute has Indiana State University.

Id. at 85-86. The Court deemed the universities and their students to be in the same class for Article 4, Section 23 purposes. The same is true here.

Of course, prior to the change in the law Indiana University *was* unique in that it provided a process for direct elections by alumni as opposed to selection through designation by alumni associations as is statutorily required in the other universities. This can perhaps be explained by the fact that these direct elections have apparently been allowed since 1891. The General Assembly is free to change this, provided it does so in a uniform and generally applicable way. That is, the General Assembly could have created the same process for selection of some trustees through the alumni association at Indiana University as exists in the other public universities in Indiana. But what it cannot do is to strip only Indiana University alumni of any say in trustee selection.

There is simply nothing unique about Indiana University that justifies the special treatment created by HEA 1001.[4] "While the bar to establishing the constitutionality of special legislation is by no means a high one, the proponent still must justify the special treatment afforded to the specified class." *City of Hammond*, 119 N.E.2d at 86. There simply is no justification here. Moreover, even if some unique characteristic could be hypothesized, and there certainly does not seem to be one, the characteristic is certainly "not defining enough to justify the special legislation." *Id.* at 85. Given this, the new statutory sections meting out this special treatment, Sections 253 through 266 of HEA 1001, are unconstitutional and void.

II. The other preliminary injunction factors are met here

A. Justin Vasel is faced with irreparable harm for which there is no adequate remedy at law

As noted previously, Indiana cases hold that "when the acts sought to be enjoined are unlawful, the plaintiff need not make a showing of irreparable harm or a balance of the hardship in his favor." *B&S of Fort Wayne, Inc. v. City of Fort Wayne*, 159 N.E.3d 67, 76

[4] In speaking about the legislative change, Governor Braun was quoted as expressing criticism of Indiana University's "curriculum to cost to the whole way one of our flagship universities has been operating." (*See Lawmakers give Braun total control over IU Board of Trustee*s, https://www.axios.com/local/indianapolis/2025/04/24/governor-control-indiana-unviersity-board-of-trustees (last visited May 4, 2025)). But the Governor's dissatisfaction with aspects of Indiana University "is hardly a fact that 'justifies' some form of special treatment" that allows alumni to be stripped of a say in selecting a minority of the members of the Board of Trustees. *Alpha Psi Chapter*, 849 N.E. 2d at 1139. The Governor's alleged unhappiness is certainly not an "inherent characteristic" justifying special legislation. *Kimsey,* 781 N.E. 2d at 692.

n.2 (Ind. Ct. App. 2020) (quotation and citations omitted), *trans. denied*. Given this *per se* rule and given the clear unconstitutionality of the challenged legislation, there is no need to discuss the irreparable harm and balance of hardships. However, even without this rule, it is apparent that the plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

Justin Vasel has been deprived of any opportunity to win the election to be a trustee because of the changes in the law.

> Irreparable harm is that harm which cannot be compensated for through damages upon resolution of the underlying action. Mere economic injury is not enough to support injunctive relief. The trial court should only award injunctive relief where a legal remedy will be inadequate because it provides incomplete relief or relief that is inefficient to the ends of justice and its prompt administration.

Coates v. Heat Wagons, Inc., 942 N.E.2d 905, 912 (Ind. Ct. App. 2011) (quotation and citations omitted). Obviously, being denied the "fair chance to with the election [is] a harm where monetary damages are inadequate." *Kim v. Hanlon*, 99 F.4th 140, 159 (3d Cir. 2024) (quotation and citation omitted). The same is true of the loss of the ability to vote in an election and, indeed, of the loss of any mechanism to have an alumni voice on the Board of Trustees at all. Mr. Vasel is facing irreparable harm for which there is no adequate remedy at law.

B. The balance of harms favors the issuance of a preliminary injunction

Given the clear unconstitutionality of the challenged legislation, the injunction should issue, regardless of whether "the plaintiff will suffer greater injury than the

defendant." *Short On Cash.Net of New Castle, Inc. v. Department of Financial Institutions*, 811 N.E.2d 819, 823 (Ind. Ct. App. 2004). But, again, there is no need to rely on this per se rule.

The plaintiff is asking that the *status quo* be maintained that has apparently existed in Indiana since 1891. "Preliminary injunctions are generally used to preserve the *status quo* as it existed before a controversy, pending a full determination on the merits of the dispute." *Stoffel v. Daniels*, 908 N.E.2d 1260, 1272 (Ind. Ct. App. 2009) (citation omitted). The Governor cannot successfully claim that he is burdened by maintaining the *status quo.*

Moreover, given that Mr. Vasel has established that he is likely to succeed on the merits of his claim, "no substantial harm to others can be said to inhere in" granting the injunction. *Déjà vu of Nashville, Inc., v. Metro Gov't of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001) (referring to a demonstration that a law violates the First Amendment). Instead, an injunction will only force the Governor to comply with the Indiana Constitution. Federal courts have stressed that the government has no interest in violating the United States Constitution. *See, e.g.. Christian Legal Society v. Walker,* 453 F.3d 853, 867 (7th Cir. 2006) (referring to the First Amendment). The same is true here.

C. The public interest favors the grant of the preliminary injunction

Given the clear constitutional violation, "the public interest is so great that the injunction should issue" regardless of the balance of harms between the parties and the existence of independent irreparable harm. *Short on Cash.Net*, 811 N.E.2d at 823. In any

event, "[p]rotecting civil and constitutional rights is always in the public's interest and would cause no harm." *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville,* --F. Supp. 3d --, 2025 WL 41647, at *11 (S.D. Ind. Jan. 7, 2025), *app. pending*, No. 25-1094 (7th Cir.).

D. The preliminary injunction should issue without bond

Trial Rule 65(C) requires that a bond be posted before a preliminary injunction may go into effect. However, "'[t]he fixing of the amount of the security bond is a discretionary function of the trial court,'" and where there is no evidence that the injunction will cause any monetary damages or injury, a bond need not be required. *Kennedy v. Kennedy*, 616 N.E.2d 39, 44 (Ind. Ct. App. 1993) (internal citation omitted), *trans. denied*. *See also*, *Crossman Communities, Inc. v. Dean*, 767 N.E.2d 1035, 1043 (Ind. Ct. App. 2002) (same). The Governor faces no risk of monetary losses or economic injury if the preliminary injunction is granted. No bond should therefore be imposed.

Conclusion

For the foregoing reasons, a preliminary injunction should issue without bond, enjoining Sections 253 through 266 of HEA 1001, Indiana Code §§ 21-20-3-2 through 21-20-2-13 (eff. May 6, 2025), so that the election scheduled to begin on June 1, 2025 for a member of the Indiana University Board of Trustees may take place and so the winner of that election may begin their term on July 1, 2025.

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Certificate of Service

I hereby certify that a copy of the foregoing was served on the below-name persons by first-class U.S. postage, pre-paid, on this 7th day of May, 2025.

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