



permanent injunction that, among other things, enjoins Dean Dallis-Comentale to conduct an election so that alumni can elect members of the Board of Trustees as would have occurred absent the creation of the new statutory structure. Dean Dallis-Comentale has now filed a motion to dismiss pursuant to Trial Rule 12(B)(6), arguing that plaintiff's amended complaint filed on June 9, 2025 does not demonstrate that she has done anything unlawful and that no relief can issue against her. The Governor, on the other hand, argues that only Dean Dallis-Comentale can remedy the injury alleged by plaintiff. (Governor Braun's Opposition to Plaintiff's Motion for Preliminary Injunction at 27, June 2, 2025). While the Governor errs to the extent that he argues that he is somehow blameless here and he cannot remedy plaintiff's injury, it is undoubtedly correct that relief can and should be entered against Dean Dallis-Comentale and her motion must be denied.

### Facts

Of course, "[i]n ruling on a motion to dismiss for failure to state a claim, the trial court is required to view the complaint in the light most favorable to the non-moving party with every inference in its favor." *Allen v. Clarian Health Partners, Inc.*, 980 N.E.2d 306, 308 (Ind. 2012) (citation omitted). There are few facts here, and the plaintiff's claim is almost entirely established by the terms of Indiana's current and former statutes regarding the selection of trustees for Indiana University.

Indiana Code § 21-20-3-4 (repealed eff. May 6, 2025), provided that three members

of the Board of Trustees of Indiana University were to be elected by alumni for three-year terms beginning on the July 1 following their elections. Indiana law further provided that “[a]ny one hundred (100) or more alumni of Indiana University may file with the librarian of Indiana University on or before April 1 in each year a written nomination for a trustee to be elected by the alumni at the next election” and the University librarian was responsible after April 1st, but before June 1st, for sending the list of candidates to each alumnus. Ind. Code § 21-20-3-7(a) (repealed eff. May 6, 2025). Under the former law, the University librarian was responsible for conducting the election and was responsible for “adopt[ing] rules and regulations as necessary” to conduct the election, and the persons who received the most votes would be declared the winner. Ind. Code §§ 21-20-3-9, 10 (repealed eff. May 6, 2025). The statute further provided that the election would occur “on the secular day immediately preceding July 1.” Ind. Code § 21-20-3-8 (repealed eff. May 6, 2025). If there were to be a tie, the University librarian had the statutory responsibility of casting lots to determine who would be declared the winner. Ind. Code § 21-20-3-10 (repealed eff. May 6, 2020).

The term of one of the trustees elected by Indiana University alumni was set to expire effective July 1, 2025, and the trustee was not seeking to be reelected. (Amended Complaint of June 9, 2025 [“Am. Comp.”] ¶ 31). One of the candidates running to be elected to the position was plaintiff Justin Vasel. (*Id.* ¶ 34). The election was to occur from June 1, 2005 through June 30, 2025, with the winning candidate to be announced

thereafter. (*Id.* ¶ 35).

However, effective May 6, 2025, with the passage of Sections 253-262 of HEA 1001, the trustee elections were abolished and the Governor now appoints all the University trustees. Ind. Code 21-20-3-2. Defendant Dallis-Comentale is the Indiana University Librarian. (Am. Comp. ¶¶ 7, 36). Dean Dallis-Comentale was set to issue paper ballots so that the election could occur. (*Id.* ¶ 36). Following the change in the law, Dean Dallis-Comentale notified all the candidates, including plaintiff Justin Vassel, that the election that was to have commenced on June 1, 2025, had been cancelled. (*Id.* ¶ 42). The Governor has now appointed three persons to replace the formerly alumni-elected members of the Board of Trustees. (*Id.* ¶ 45). However, in the event that the statutory changes are found to be unconstitutional and are enjoined, Dean Dallis-Comentale will again have the authority to conduct and administer alumni elections. (*Id.* ¶ 43).

### **Argument**

The amended complaint asks that this Court declare that the statutory change repealing the trustee election provisions is unconstitutional and that a permanent injunction be entered so that the election for the alumni representatives can occur as they were set to prior to the statutory change. Dean Dallis-Comentale argues that the amended complaint does not allege that she has done anything wrong and that no remedy can be sought against her. This is simply incorrect.

The question is whether Dean Dallis-Comentale has taken any actions to enforce

the allegedly unconstitutional statute and whether she has a role in providing relief if Mr. Vasel prevails. The answer to each question is clearly “yes.” Claims for relief are stated against her and she is a proper defendant in this action.

**I. It is appropriate to seek declaratory relief against Dean Dallis-Comentale**

Dean Dallis-Comentale could have acknowledged that the change in the statute for the selection of Indiana University trustees was unconstitutional and could have proceeded with the election as required by the former, constitutional, statutory arrangement. She obviously did not do so. It is simply no defense, as Dean Dallis-Comentale appears to argue, that she had no choice but to obey that law. “[W]hen a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule.” *ACLU v. Florida Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993) (citing *Diamond v. Charles*, 476 U.S. 54, 64 (1986)). Here, of course, Dean Dallis-Comentale did much more than “attempt to enforce the rule.” She actually enforced the unconstitutional statute.

The Indiana Supreme Court has also recognized that a state official who executes challenged laws is the proper defendant. Thus, in *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020), the Court stated that “[a] state official’s role in implementing or enforcing a statute can arise from the statute itself or the general law,” thus creating a

justiciable controversy. *Id.* at 1260.<sup>1</sup> In support, the Indiana Supreme Court quoted the United States Supreme Court's statement in *Ex parte Young* that "[t]he fact that the state officer by virtue of his office has some connection with the enforcement of the act is the important and material fact, and whether it arises out of the general law, or is specifically created by the act itself, is not material so long as it exists." 209 U.S. 123, 157 (1908) (as quoted in *City of Bloomington*, 158 N.E.3d at 1260). Of course, here Dean Dallis-Comentale had a direct connection with the enforcement of the unconstitutional change in the method of electing trustees.

*City of Bloomington* concerned a statute that did not explicitly implicate actions of the Governor, but merely prohibited the City of Bloomington from attempting to annex certain geographic areas. 158 N.E.3d at 1254. Even then, the Governor was deemed to be an appropriate defendant. However, in the case at bar, the challenged statute explicitly implicates Dean Dallis-Comentale and she acceded to the unconstitutional statutory change and cancelled the election that she was in charge of under the former statutes. Ind. Code §§ 21-20-3-9, 10 (repealed eff. May 6, 2025). Even more than Governor Holcomb in *City of Bloomington*, she had a primary role in "implementing or enforcing" the unconstitutional statutory procedure. *City of Bloomington*, 158 N.E.3d at 1260. It is appropriate that a declaratory judgment be entered against her that the amendments

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<sup>1</sup> The Court in *City of Bloomington* held that due to the Governor's enforcement authority and executive authority he was the appropriate defendant against whom declaratory relief could be sought. 158 N.E.3d at 1260-61.

creating that procedure are unconstitutional. However, Dean Dallis-Comentale argues that plaintiff did not seek a claim for declaratory relief against her. (Dallis-Comentale Memorandum at 8). Plaintiff's amended complaint seeks a declaration that the new statutes are unconstitutional and void. (Am. Comp. at 12). Dean Dallis-Comentale is not excluded from this request.<sup>2</sup>

## II. It is appropriate to seek injunctive relief against Dean Dallis-Comentale

“The test to determine the propriety of declaratory relief is whether the issuance of a declaratory judgment will effectively solve the problem involved, whether it will serve a useful purpose, and whether or not another remedy is more effective or efficient.” *Ember v. Ember*, 720 N.E.2d 436, 439 (Ind. Ct. App. 1999) (citation omitted). However, “[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate” and “affirmative relief” may be allowed along with declaratory relief “when the right thereto is established.” Ind. R. Trial P. 57. Thus, injunctive relief, where appropriate, may accompany declaratory relief. *See, e.g., IHSAA v. Schafer*, 598 N.E.2d 540, 558 (Ind. Ct. App. 1992) (affirming a declaratory judgment and narrowing the trial court’s injunction against the IHSAA), *trans. denied*.

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<sup>2</sup> In any event, “Indiana’s notice pleading system does not require a pleading to adopt a specific legal theory of recovery to be adhered to throughout the case; rather, Indiana Trial Rule 8 merely requires pleading the operative facts so as to place the defendant on notice concerning the evidence to be presented at trial.” *Winters v. Pike*, 171 N.E.3d 690, 697 (Ind. Ct. App. 2021) (citation omitted). The amended complaint certainly places Dean Dallis-Comentale on notice as to the operative facts.

Here, declaratory relief against Dean Dallis-Comentale is not enough. When Justin Vasel prevails on his claim that the amended statute concerning the selection of Indiana University trustees is unconstitutional, it will be appropriate to issue an injunction against Dean Dallis-Comentale. She is the election official who implemented the unconstitutional statutory change that blocked the election. Once this Court declares the statutory change unconstitutional and enjoins the Governor's actions under the statute, she will be the official to hold the election as required by the repealed statutory scheme that will now again be effective. She is most assuredly a "state official[ ]" who has a role in "implementing or enforcing" the statutory scheme of selecting trustees for the University. *City of Bloomington*, 158 N.E.3d at 1260.

Dean Dallis-Comentale argues that injunctive relief against her cannot be appropriate as she has "no authority to conduct and administer an election outside the strict timeframes set forth" in the now repealed statutory scheme. (Dallis-Comentale Memorandum at 10). But at the very least, this Court can simply order that an election occur as required by the former statute by July 1, 2026. Or the Court can fashion other appropriate injunctive relief. Dean Dallis-Comentale's uncertainty about her state-law authority only underscores the importance and necessity of an order telling her exactly what she must do to comply with constitutional norms.

The Governor goes so far as to argue that only Dean Dallis-Comentale can grant Justin Vasel relief if an injunction is granted. (Governor Braun's Opposition to Plaintiff's

Motion for Preliminary Injunction at 27, June 2, 2025). Plaintiff certainly does not agree that relief cannot be issued against the Governor, but concurs in his argument that injunctive relief against Dean Dallis-Comentale is appropriate if plaintiff prevails.

Not surprisingly, there are numerous cases where election officials have been the defendant or one of the defendants in actions that seek relief in challenges to the constitutionality of statutes or procedures concerning elections. *See Morales v. Rust*, 228 N.E.3d 1025, 1031 (Ind. 2024) (a suit against, among others, Indiana’s Secretary of State, seeking declaratory and injunctive relief challenging the statute concerning criteria for eligibility to appear on primary ballot), *cert. denied*, 145 S. Ct. 177 (2024); *State Election Board v. Behnke*, 261 Ind. 540, 307 N.E.2d 56, 57 (1974) (affirming a trial court’s permanent injunction against an act regulating county commissioner elections in counties having a population between 500,00 and 650,000 as violative of Art. 1, § 23 as it was special legislation); *Vanderburgh County Election Bd. v. Vanderburgh County Democratic Central Committee*, 833 N.E.2d 508, 509 (Ind. Ct. App. 2005) (granting a declaratory judgment interpreting Indiana law concerning the construction of election ballots); *see also Frank v. Lee*, 84 F. 4th 1119, 1132-33 1135 (10th Cir. 2023) (state secretary of state is an appropriate defendant in action for declaratory and injunctive relief challenging electioneering statute as unconstitutional as the secretary is the chief election officer), *cert denied*, 144 S. Ct. 1349 (2024); *Democratic Executive Committee of Fla. v. Lee*, 915 F.3d 1312, 1316, 1318 (11th Cir. 2019) (stay denial) (state secretary of state, the chief election officer in the state, is a proper

defendant in action for injunctive relief challenging the signature-matching provisions of Florida law as unconstitutional); *Common Cause, Indiana v. Indiana Secretary of State*, No. 1:12-cv-1603-RLY-DML, 2013 WL 12284648, at \*3-\*4 (S.D. Ind. Sept. 6, 2013) (Indiana's secretary of state, as the chief election official in Indiana, is the appropriate defendant in a challenge to election procedures for Marion County judicial candidates). That the election here is less traditional than other elections does not affect the applicability of this abundant jurisprudence.

The fact that Dean Dallis-Comentale is an appropriate defendant can also be seen by looking at the amended complaint as of the day that it was filed on June 9, 2025. On that date, before the July 1, 2025 date that the election was to have occurred, if this Court had found that the amended statute was unconstitutional it would have been necessary and appropriate for Dean Dallis-Comentale to be enjoined to conduct the election. Similarly, if Justin Vasel prevails in this case, this Court can still craft an appropriate injunction, and will need to do so. Dean Dallis-Comentale therefore errs in arguing that injunctive relief cannot be issued against her. (Dallis-Comentale at 9-10).

### **III. Conclusion**

Justin Vasel's amended complaint states a claim for relief against Dean Dallis-Comentale as it alleges that she complied with an unconstitutional statute and cancelled the 2025 election for the alumnus-elected Indiana University trustee position. Moreover, once plaintiff prevails, this Court can order Dean Dallis-Comentale to hold the election

as was required by the prior statute before it was replaced by a statute that must be voided to remedy the constitutional violation. Dean Dallis-Comentale's motion to dismiss must therefore be denied.

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### **Certificate of Service**

I certify that on September 3, 2025, a copy of the foregoing was filed using the Indiana E-filing System ("IEFS"). I also certify that on September 3, 2025, the foregoing document was served on all counsel of record through IEFS.

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