

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT
Case Number: **53C08-2508-PL-002317**

Steven J. Sherman, et al.
Plaintiffs,

vs.

The Trustees of Indiana University et al
Defendants.

**PLAINTIFFS' REPLY
TO DEFENDANT'S OBJECTION
TO HEARING**

The defendant has filed an Objection to Immediate Preliminary Injunction Hearing, to Continue Hearing set for September 9, and for Responsive Pleading Deadline. The document has two parts: 1) a request for a continuance of the September 9 hearing on the preliminary injunction until after the defendant has filed an Answer or other responsive pleading, and 2) an argument on the merits why the preliminary injunction should not be granted.

1. Motion to delay the hearing

Plaintiffs oppose the defendant's motion to delay the hearing for the following reasons:

1. Trial Rule 65(A)(3) provides that in "all matters relating to ... preliminary injunctions," the judge "shall act and require the parties to act promptly." The defendant asks the court to do the opposite -- delay the hearing. The defendant does not explain how this comports with the promptness requirement and does not cite authority to support its request.

2. A request for an extension of time falls under Trial Rule 6(C) which requires the defendant to show "cause." The party requesting the extension must show that it will suffer prejudice if the request is not granted. *Scott v. Crussen*, 741 N.E.2d 743, 746 (Ind. Ct. App. 2000). Simply desiring more time to research and investigate a matter is not good cause. *Id.*

3. The defendant has made no showing that it would suffer any prejudice by holding the hearing as scheduled. The defense attorneys assert that they will have only 5 days to prepare (Def. Mot. ¶ 9), but that is false. The plaintiffs sent a copy of the complaint and motion for a preliminary injunction to the Trustees and the university's general counsel more than two weeks ago, on August 21, 2025. (Pl. Mot. ¶ 1). Formal service by registered mail was accomplished on August 25, 2025 and attorneys Hinkle and Emerson entered their appearances on the same day. They have already filed an 8-page response opposing the granting of a preliminary injunction and do not claim it is inadequate or that they would do anything else concerning the preliminary injunction if given more time.

4. The defendant speculates that it might be prejudicial to the Indiana Attorney General if a preliminary injunction were granted before the time for him to intervene expires (Def. Obj. ¶¶ 18-19). That is not prejudice *to the defendant* and is totally speculative. As the defendant concedes, the Attorney General was notified on August 19 and served with a copy of the complaint (Def. Obj. ¶ 19 and Ex. C). The complaint clearly indicates that plaintiffs will ask for a preliminary injunction (Remedy ¶A). The Attorney General could have entered an appearance by now if he had any intent to intervene prior to a hearing on a preliminary injunction.

5. The defendant asserts that plaintiffs "waited" 70 days to file the complaint. This assertion is based on the date on which the Trustees passed the policy, not the date that the plaintiffs became aware of it. The defendant has no authority that a brief delay between plaintiffs learning about the policy and filing the lawsuit is germane to anything somehow deprives the plaintiffs of their right to request a preliminary injunction. As far as plaintiffs can tell, the minutes to the June 12 Trustees' meeting that would have included policy BOT-19 still have not been publicly posted. See <https://institutionalmemory.iu.edu/aim/collections/e3bfc84a-1dcd-4b28-90e6-b954eb939a79>. Before they can be posted, they need to be approved by the Trustees, which does not meet until September

11, 2025. See IU Trustees website (trustees.iu.edu). In any event, the defendant offers no authority that any of this constitutes prejudice that warrants delaying the hearing.

The merits of granting the preliminary injunction

Four factors are relevant when the court considers a preliminary injunction: (1) Whether plaintiffs have a reasonable likelihood of success at trial, (2) whether their remedies at law are inadequate and they are at risk of irreparable harm, (3) whether the threatened injury outweighs the potential harm in granting the injunction, and (4) whether the public interest would be disserved. *Perry Cty. v. Huck*, 263 N.E.3d 138, 141 (Ind. 2025). The defendant does not suggest that plaintiffs have an adequate remedy at law or that a preliminary injunction would cause harm to the defendants or the public. The defendant argues only that the plaintiffs are not at risk of irreparable harm and that they have little likelihood of success on the merits.

(1) *Imminent harm to plaintiffs*. Plaintiff Sherman was elected to represent the retired faculty on the Bloomington Faculty Council which meets on September 23 (Verified Compl. ¶¶ 3-4). Plaintiff Skiba has been designated as a proxy for Prof. Tanford to represent the retired faculty at that meeting (*Id.* ¶¶ 9, 15-16). Prof. Tanford was elected to serve on the Bloomington Faculty Board of Review which is currently meeting and considering grievances. (*Id.* ¶ 10). Being denied the right to fill a governance position to which one has lawfully been elected or appointed by law is an obvious and irreparable harm recognized since *Marbury v. Madison*, 5 U.S. 137 (1803). Indeed, “where the action to be enjoined is unlawful, the unlawful act itself constitutes *per se* ‘irreparable harm’ for purposes of the preliminary injunction analysis.” *Clay Tp. of Hamilton County ex rel. Hagan v. Clay Tp. Regional Waste Dist.*, 838 N.E.2d 1054, 1063 (Ind. Ct. App. 2005).

The defendant speculates, in the absence of evidence, that there might not be any action items on the agenda for the September 23rd meeting. This contradicts the defendant’s own evidence, the

minutes from last year's first meeting of the Faculty Council (Ex. B), which shows a vote taking place at item 2.

(2) *Likelihood of success on the merits of the challenge to BOT-19.* In our motion for a preliminary injunction, plaintiffs supplied authority to show that the Trustees exceeded the scope of their statutory authority by disenfranchising emeriti faculty and dictating which faculty can serve on committees. They pointed to IC § 21-27-1-2, which prohibits the Trustees from disparaging the status of faculty in matters of academic policy unless necessary under IC § 21-39-2-3 to prevent unlawful acts that threaten to university. Participating on committees is obviously not an unlawful act threatening the university.

The defendant argues that this restriction does not apply to IC § 31-38-11-3 (the law being challenged) because it is not one of the “covered statutes” mentioned in IC § 21-27-1-5. (Def. Obj. § 23). The defendant has misunderstood the issue. The non-disparagement statute (21-27-1-2) says that the “covered statutes may not be construed” to reduce faculty status on policy matters. The twenty-one “covered statutes” are those that define the scope of the Trustees authority. None of them gives the Trustees authority to micro-manage faculty committees, and under IC § 21-27-1-2, they may not be construed to implicitly give the Trustees such authority. Therefore, the challenged statute disenfranchising the emeriti is *ultra vires*.

(3) *Likelihood of success on the merits of the challenge to IC § 21-38-11-3.* In our motion for a preliminary injunction, plaintiffs supplied authority to show that this provision (inserted at the last minute into the budget bill) violated the unity rule of Indiana Const., art. 4, § 19. In response, the defendant argues that statutes are presumptively constitutional and that Section 19 is typically given a liberal reading. (Def. Ob. ¶¶ 24-34). No one disputes that, but the Supreme Court says that this presumption is overcome when the title does not “fairly give notice of the legislative matter

contained therein,” and there is no “rational unity” between the act and the title. *Loparex, LLC v. MPI Release Tech., LLC*, 964 N.E.2d 806, 813-14 (Ind. 2012).

The defendant argues a strawman -- that the financing of the university and the appointment of Trustees would fall within the subject of the bill (“state and local administration” and “appropriations”). No one disputes that, but the statute taking away voting rights of the emeriti on an advisory body is unrelated either to financing the university or appointing trustees. Had the legislature given the faculty some actual role in university administration, the provision might have fallen within the bill’s title. But in their haste to retaliate against the faculty for their vote of no confidence in President Whitten, the legislature took away any role for the faculty and rendered faculty governance a toothless, advisory body that the administration does not have to pay attention to. IC § 21-38-11-4. The challenges statute is not an act of state administration.

WHEREFORE, Plaintiffs request that the court enter a preliminary injunction prohibiting the defendants from enforcing BOT-19 and Ind. Code § 21-38-11-3, in order to preserve the status quo until the case can be finally decided on the merits.

Date: September 8, 2025

Respectfully submitted by:

/s/ James A Tanford

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CERTIFICATE OF SERVICE

I certify that on the 8th day of September, 2025, I served the foregoing on attorney for the defendant, Matthew L. Hinkle and James Alex Emerson, Coots, Henke & Wheeler, P.C., 255 E Carmel Dr., Carmel, IN 46032 through the court's electronic case filing system.

s/ James A. Tanford
James A. Tanford (16982-53)