

ARGUMENT

I. Dean Dallis-Comentale Has No Authority to Enforce the Challenged Statutes and, Thus, Is Not a Proper Defendant in a Lawsuit Challenging Those Provisions.

Vasel admits that his claim “is almost entirely established by the terms of Indiana’s current and former statutes regarding the selection of trustees for Indiana University.” (Opp. at 2.) He concedes that, with the passage of HEA 1001 effective May 6, 2025, “trustee elections were abolished and the Governor now appoints all the University trustees.” (Opp. at 4.) Yet Vasel insists that declaratory and injunctive relief against Dean Dallis-Comentale are still appropriate. He posits that Dean Dallis-Comentale “could have” unilaterally decided that HEA 1001 is unconstitutional, ignored the statutory framework put in place by HEA 1001, and proceeded with an election process that no longer exists under Indiana law. (Opp. at 5.) Her failure to do any of these things, in Vasel’s view, is “no defense” and makes her a proper defendant in this case. (Opp. at 5.) This is an extraordinary proposition that finds no support in basic principles of civil procedure, statutory construction, or constitutional law.

Vasel’s cases are inapposite. (Opp. at 5-6.) Indeed, they underscore why his Complaint against Dean Dallis-Comentale should be dismissed. In *American Civil Liberties Union v. The Florida Bar*, 999 F.2d 1486 (11th Cir. 1993), the court explained that “when 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. . . .” *Id.* at 1490 (citation omitted) (emphasis added). The court determined that the Florida Bar was an appropriate defendant in a lawsuit challenging a rule of judicial conduct because the Bar had the “authority to seek sanctions against a lawyer . . . for violating” the rule plaintiff alleged was unconstitutional. *Id.* at 1491.

In *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020), the Supreme Court held that the Governor was a proper defendant in a lawsuit challenging an annexation statute due to a

“peculiar combination of his constitutional authority and the unique nature of” the statute, which Bloomington alleged was unconstitutional. *Id.* at 1258. The Supreme Court concluded that “[t]he unique features of [the annexation statute] show that the Governor enforces the statute pursuant to his general executive power and his duty to take care that the laws are faithfully executed.” *Id.* at 1260-61.

In both *Florida Bar* and *City of Bloomington*, the defendants had been granted the authority to enforce the very provisions that were the subject of a constitutional challenge. Hence, the defendants were properly named in the lawsuits seeking to strike down those provisions. Unlike the defendants in *Florida Bar* and *City of Bloomington*, Dean Dallis-Comentale has no authority to enforce the challenged provisions of HEA 1001 as presently codified in Ind. Code § 21-20-3-2, *et seq.* (2025). The current statutes, which Vasel claims are unconstitutional, do not mention a librarian much less grant a librarian any powers regarding the Board of Trustees. The only individual with any role in the current statutory framework is the Governor, who appoints all nine members of the Board of Trustees. Ind. Code § 21-20-3-2 (2025). And unlike the Governor, the librarian of Indiana University does not have any authority unless granted to her by existing law. She certainly does not have the “general executive power and . . . duty to take care that the laws [of Indiana] are faithfully executed.” *Cf. City of Bloomington*, 158 N.E.3d at 1261 (describing Governor’s constitutional power); Ind. Const. art. 5, §§ 1, 16 (providing that “[t]he executive power of the State shall be vested in a Governor” who “shall take care that the laws are faithfully executed”).

II. Dean Dallis-Comentale Has No “Connection” to the Challenged Statutes and, Thus, Is Not a Proper Defendant in a Lawsuit Challenging Those Provisions.

Vasel’s reliance on *Ex parte Young*, 209 U.S. 123 (1908), is not to the contrary. (Opp. at 6.) According to *Young*, a defendant must have “some connection with the enforcement of the act”

– i.e., “the right and the power to enforce” the “act alleged to be unconstitutional[.]” *Id.* at 157, 161. But the only “act alleged to be unconstitutional” here is HEA 1001 as presently codified in Ind. Code § 21-20-3-2, *et seq.* (2025). *See id.* at 157. Dean Dallis-Comentale has no right and no power to enforce those challenged provisions. The complete absence of any authority springing from the only law Vasel alleges to be unconstitutional requires dismissal of his Complaint against Dean Dallis-Comentale. *See id.* at 158 (observing that where defendants “occupied the position of having no duty at all with regard to the act” being challenged, they “could not be properly made parties to the suit”).

Vasel tries to manufacture a “connection” by arguing that Dean Dallis-Comentale failed to conduct an election according to the process that was in place *before* the passage of HEA 1001. (Opp. at 6.) However, this does not establish the requisite connection between Dean Dallis-Comentale and *the challenged provisions of HEA 1001* as presently codified in Ind. Code § 21-20-3-2, *et seq.* (2025). It only shows a connection between her and a *previous statutory framework* – statutes that are not subject to constitutional challenge at this point because they have been repealed by the General Assembly. Vasel cannot bootstrap Dean Dallis-Comentale’s role within a previous statutory framework onto the challenged provisions of HEA 1001 and contend that her former role is enough to sue her as the “enforcer” of an entirely different set of statutes in which she has no role whatsoever. *See Doe v. Holcomb*, 883 F.3d 971, 976 (7th Cir. 2018) (holding that Governor was not a proper defendant when he “doesn’t do anything to enforce the *name-change statute*” – the only statute being challenged in the lawsuit) (emphasis in original). Her prior connection to an election process that no longer exists does not make her an appropriate target to defend the constitutionality of Ind. Code § 21-20-3-2, *et seq.* (2025) in its current form.

III. This Is Not a Typical Election Case, and Vasel’s Comparison is Inapt.

Vasel’s reliance on election cases is equally misplaced. (Opp. at 9-10.) In all of those cases, the defendants had the existing authority to oversee the elections at the time they were named in a lawsuit challenging some aspect of an election process they were charged with administering. *See, e.g., Vanderburgh Cnty. Election Bd. v. Vanderburgh Cnty. Democratic Cent. Comm.*, 833 N.E.2d 508, 509 (Ind. Ct. App. 2005) (“The Vanderburgh County Election Board . . . oversees elections in Vanderburg County, Indiana.”). Most of the cases Vasel cites involved secretaries of state, the undisputed chief election officers at the time they were sued. *See, e.g., Morales v. Rust*, 228 N.E.3d 1025, 1031 (Ind. 2024), *cert. denied*, 145 S. Ct. 177 (2024); *Common Cause, Ind. v. Indiana Sec’y of State*, No. 1:12-cv-1603-RLY-DML, 2013 WL 12284648, at *3-4 (S.D. Ind. Sept. 6, 2013). By statute, Indiana’s Secretary of State “is the state’s chief election official[,]” Ind. Code § 3-6-3.7-1, responsible for “perform[ing] all ministerial duties related to the administration of elections by the state.” Ind. Code § 3-6-4.2-2(a).

In contrast, at no time since Vasel initiated this action has Dean Dallis-Comentale had the authority to oversee elections of the Board of Trustees under the statutory framework put in place by HEA 1001 – again, the only “act alleged to be unconstitutional” in this case.¹ *See Young*, 209 U.S. at 157. Vasel himself acknowledges that Dean Dallis-Comentale does not presently “have the authority to conduct and administer alumni elections.” (Opp. at 4) (asserting that *if* the statutory changes in HEA 1001 are found to be unconstitutional, she “will again have [this] authority”). She is nothing more than a former election official who presided over a “repealed statutory scheme.” (Opp. at 8.) Vasel’s election comparison is inapt.

¹ The Governor signed HEA 1001 into law on May 6, 2025. Vasel initiated this action on May 7, 2025, and amended his Complaint to add Dean Dallis-Comentale as a defendant on June 9, 2025.

IV. There Is a Difference Between Compliance and Enforcement.

Vasel’s premise that Dean Dallis-Comentale’s failure to conduct an election according to the old process abolished by the General Assembly amounts to enforcement of the new process put in place by HEA 1001 defies logic and the law. (Opp. at 6.) The election process that Dean Dallis-Comentale used to administer has been repealed. As such, that election process no longer exists under Indiana law, and it is as if it never existed. *See Indiana State Highway Comm’n v. Ziliak*, 428 N.E.2d 275, 278-79 (Ind. Ct. App. 1981) (recognizing that the repeal of a statute “completely obliterates it and renders it as ineffective as if it never existed”). The absence of an election conducted pursuant to a process that is non-existent does not amount to the enforcement of anything.

Dean Dallis-Comentale’s compliance with the legislative changes embodied in HEA 1001 does not constitute enforcement of the challenged provisions of HEA 1001 either – especially when nothing in the challenged statutes grants her any rights or powers to enforce them. There is a difference between mere compliance and enforcement. *Accord Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 755 (1998) (“There is a difference between the right to demand compliance with state laws and the means available to enforce them.”); *see also* Compliance, Black’s Law Dictionary (12th ed. 2024) (“The act of yielding to some command, demand, requirement” or “[t]he state of being in conformity with some command, demand, requirement”). Only an officer endowed with the authority to enforce a law “alleged to be unconstitutional” is a proper defendant in a lawsuit challenging that law. *See Young*, 209 U.S. at 158; *see also LSP Transmission Holdings II, LLC v. Huston*, 131 F.4th 566, 576 (7th Cir. 2025) (concluding that even though statute granted incumbency rights of first refusal and the Indiana Utility Regulatory

Commission functioned as the repository for notice of those rights, it was not an “enforcer of the rights of first refusal” and had no “enforcement authority to police or enforce those rights”).

V. Vasel Concedes That His Prayer for Injunctive Relief is Overly Broad.

Vasel seems to concede that his prayer for injunctive relief is overly broad and that Dean Dallis-Comentale would have no authority to conduct an election outside the strict deadlines set forth in the statutes – that is, *if* the statutes are reinstated. (Opp. at 8.) Vasel maintains that the Court could “at the very least . . . order that an election occur as required by the former statute by July 1, 2026” (Opp. at 8),² apparently abandoning the request for relief in his Complaint that an election be ordered to occur “at the earliest practical opportunity. . . .” (Am. Compl., WHEREFORE clause, ¶ 2.)

VI. Vasel’s Complaint Does Not Plead a Substantive Claim for Declaratory Relief Against Dean Dallis-Comentale Herself.

As Dean Dallis-Comentale pointed out in her Motion to Dismiss, Vasel’s Complaint contains no substantive underlying cause of action against her and, on its face, requests only a permanent injunction against her. The only substantive cause of action presented in Vasel’s Complaint – a declaratory judgment action – was brought against the Governor stemming from the passage of HEA 1001 and the Governor’s alleged “actions to enforce the unconstitutional sections [of HEA 1001] by replacing the elected members of the Board of Trustees” with his own appointees. (Am. Compl., WHEREFORE clause, ¶ 1; *see also* ¶ 4 (seeking a “declaratory judgment that the new legislation is unconstitutional”).)

Vasel’s response to this argument is comprised of two sentences: that his Complaint “seeks a declaration that the new statutes are unconstitutional and void” and that “Dean Dallis-Comentale

² This date assumes that a final judgment is entered in Vasel’s favor and that all appeal rights are exhausted by then.

is not excluded from this request.” (Opp. at 7.) Vasel’s conclusory assertions cannot change the substance of his Complaint. And he does not articulate how Dean Dallis-Comentale “is not excluded” from his declaratory judgment action.³ (Opp. at 7.) Quite the opposite, she can do nothing until Vasel’s claims against the Governor are resolved in Vasel’s favor – i.e., until “this Court declares the statutory change unconstitutional and enjoins the Governor’s actions under the statute. . . .” (Opp. at 8.)

VII. Vasel Confirms the Speculative Nature of His Complaint Against Dean Dallis-Comentale.

Finally, to obtain a declaration under the Declaratory Judgment Act (“DJA”), it is well settled that the plaintiff’s claim must be ripe. *Holcomb v. Bray*, 187 N.E.3d 1268, 1285 (Ind. 2022). A declaratory judgment action is ripe if there exists a “real or actual controversy, or at least the ripening seeds of such a controversy” between the parties – “not merely a theoretical question or controversy. . . .” *Id.* at 1287. Vasel’s response is replete with statements confirming the speculative nature of any claim for declaratory relief against Dean Dallis-Comentale – even if it can be said that he included such a claim in his Complaint.

Vasel argues:

- “[I]n 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.” (Opp. at 4) (emphasis added).
- “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. . . .” (Opp. at 8) (emphasis added).

³ Vasel falls back on Indiana’s notice pleading standard as justification for the vagueness of his pleading against Dean Dallis-Comentale, insisting that his Complaint places her “on notice as to the operative facts.” (Opp. at 7, n.2.) But a complaint only “states a claim on which relief can be granted when it recounts sufficient facts that, if proved, would entitle the plaintiff to obtain relief *from the defendant.*” *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017) (emphasis added). Vasel must state a substantive claim for relief against *each* defendant he has sued.

- “[*I*]f this Court had found that the amended statute was unconstitutional it would have been necessary and appropriate for Dean Dallis-Comentale . . . to conduct the election.” (Opp. at 10) (emphasis added).
- “[*I*]f Justin Vasel prevails in this case, this Court can still craft an appropriate injunction. . . .” (Opp. at 10) (emphasis added).
- “[*O*]nce plaintiff prevails, this Court can order Dean Dallis-Comentale to hold the election as was required by the prior statute. . . .” (Opp. at 10-11) (emphasis added).

In short, Vasel makes precisely the point Dean Dallis-Comentale established in her Motion to Dismiss. The only way Vasel could have an actual controversy with her in the future is *if* the statutory changes in HEA 1001 are declared unconstitutional and void; *if* the Governor’s actions thereunder are declared void; *if* the former election process in which IU alumni elected three members of the Board of Trustees is reinstated; and *if* Dean Dallis-Comentale fails to comply with her obligations under the previous statutory framework. None of these things have happened, and it would be purely speculative to allege that Dean Dallis-Comentale may theoretically violate the law in the future if this chain of events were to unfold.

The problem here is the lack of an actual controversy between Vasel and Dean Dallis-Comentale which the DJA was designed to resolve. The concern is not that she has any “uncertainty about her state-law authority. . . .” (Opp. at 8.) She is clear on the extent of her power: she has none under the challenged provisions of HEA 1001 as presently codified in Ind. Code § 21-20-3-2, *et seq.* (2025). And Dean Dallis-Comentale will continue to have no power unless and until HEA 1001 is declared unconstitutional. This is a dispute between Vasel and the Governor that she herself has no authority to remedy.

CONCLUSION

For the reasons set forth herein and in her opening brief, the Court should dismiss Vasel’s Complaint against Dean Dallis-Comentale pursuant to Rule 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served electronically upon all counsel of record through the Indiana E-Filing System (IEFS) on September 12, 2025.

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