Filed: 9/16/2025 10:11 AM
Monroe Circuit Court 6
Monroe County, Indiana

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; DIANE DALLIS-COMENTALE, in her official capacity as Dean of University Libraries for Indiana University,	)
	)
Defendants.	)

Plaintiff's Memorandum in Support of his Motion for Summary Judgment

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Introduction

In 1891 the Indiana General Assembly enacted a statute providing that three members of the board of trustees of Indiana University were to be elected by alumni of the University. Ind. Act 1891, Ch. 53, Sec. 1 (Mar. 3, 1891). For the next 133 years, until 2025, Indiana University alumni elected some members of the board of trustees. And the General Assembly has also provided a statutory method for alumni to select members of the board of trustees at every other public university in Indiana that awards graduate and baccalaureate degrees.

This all changed with the 2025 legislative session and the passage of Indiana Code § 21-20-3-2 (eff. May 6, 2025), Section 253 of HEA 1001, and accompanying statutory changes, which stripped the ability of Indiana University alumni, and only Indiana University alumni, to have a say in the selection of any members Indiana University's board of trustees. The Governor responded by replacing the elected trustees with his own appointees and defendant Dean Dallis-Comentale, the Indiana University Librarian, responded by cancelling the trustee election that was to start on June 1 of 2025. This legislation, which uniquely targets Indiana University and its alumni, is most certainly a "special law" and inasmuch as there are no "unique circumstances" that "warrant the special treatment" meted out by the law, *City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70, 84 (Ind. 2019), the law is special legislation that is void as violating Article 4, Section 23 of the Indiana Constitution.

There are no contested issues of material fact. Justin Vasel is entitled to summary judgment. This Court should declare Indiana Code § 21-20-3-2 and the other statutory changes in HEA 1001 that ended the election process for trustees at Indiana University as unconstitutional and void. The Governor must be enjoined from appointing any other trustees pursuant to the statute and if the trustees who were appointed to fill the elected trustee positions do not voluntarily resign, one of the expiring trustee terms in each of the next three years should be filled through the electoral process that was in place prior to the enactment of HEA 1001. As a necessary part of this process, the Indiana University Librarian should be ordered to conduct the elections as she was under Indiana Code § 21-20-3-9 (repealed eff. May 6, 2025 by HEA Sec. 261).

Statement of uncontested facts with designated evidentiary matter

"The Indiana University Board of Trustees is the university's governing body. Established by the state legislature in 1820, the board has shaped the growth of the university since its beginning." Indiana University, *Board of Trustees,* https://trustees.iu.edu/index.html (last visited September 7, 2025).[1] Indiana law, both before and after May 6, 2025, provides that the Indiana University Board of Trustees consist of nine members. Ind. Code § 21-20-3-2.

I. The selection of trustees by alumni prior to May 6, 2025

[1] Judicial notice may be taken of government publications. *Stewart v.* Stewart, 521 N.E.2d 956, 960 n.2 (Ind. Ct. App. 1988) (citing *Kavanagh v. Butorac*, 140 Ind. App., 154-55, 221 N.E.2d 824, 833 (1966)), *trans. denied.*

As indicated above, from 1891 through 2024 Indiana University alumni elected a portion of the membership of the board of trustees. (Declaration of Diane Dallis-Comentale at 1 ¶ 5 ["Dallis-Comentale Dec."], Ex. 26 to defendant Governor Braun's Submission of Evidentiary Material, filed June 2, 2025). Prior to the passage and enactment of HEA 1001, Indiana Code § 21-20-3-4(a) (repealed eff. May 6, 2025 by Sec. 256 of HEA 1001), provided that three members of the board of trustees were to be elected by alumni of Indiana University. If a vacancy occurred among the three elected board of trustees members, the remainder of their term was filled by a person selected by the Indiana University alumni association. Ind. Code § 21-20-3-4(b) (repealed eff. May 6, 2025 by Sec. 256 of HEA 1001). The other six members were appointed by the Governor. Ind. Code §§ 21-20-3-12, 21-20-3-13 (amended eff. May 6, 2025 by Secs. 265 and 266 of HEA 1001).

Under the former statute, the trustee election was conducted by Indiana University's Librarian who was authorized to adopt rules and regulations to conduct the alumni election. Ind. Code § 21-20-3-9 (repealed eff. May 6, 2025 by Sec. 261 of HEA 1001). The statute provided that an alumnus could become a candidate to be a trustee if they secured a written nomination from at least 100 alumni. Ind. Code § 21-20-3-7(a) (repealed eff. May 6, 2025 by Sec. 259 of HEA 1001).[2] The Librarian was responsible for preparing,

[2] Although the statute specified that at least 100 alumni had to sign a nominating petition, Dean Dallis-Comentale indicates that 200 signatures had to be obtained. (Dallis-Comentale at 2 ¶ 8). The discrepancy is not significant.

sending out and collecting nomination packets. (Dallis-Comentale Dec. at 1 ¶ 3). Nominating petitions were to be submitted to the Librarian for verification by the April 1st prior to the election. (Dallis-Comentale Dec. at 2 ¶¶ 8-9).

Prior law required the University Librarian to mail a list of candidates to all alumni after April 1 but not later than June 1 of the year of the election. Ind. Code § 21-20-3-7(b) (repealed eff. May 6, 2025 by Sec. 259 of HEA 1001). It was the responsibility of the University Librarian to prepare, receive, verify, and safeguard the ballots that were received and then to count the ballots. (Dallis-Comentale at 3-4 ¶ 12).

The election was required to be held "on the secular day immediately preceding July 1." Ind. Code § 21-20-3-8 (repealed eff. May 6, 2025 by Sec. 260 of HEA 1001). The person receiving the greatest number of votes was declared the trustee and in case of a tie the University Librarian would cast lots to declare the winner. Ind. Code § 21-20-3-10 (repealed eff. May 6, 2025 by Sec. 262 of HEA 1001).

In 2010, Indiana University stopped mailing physical ballots to all graduates. (Dallis-Comentale at 4 ¶15). After that, ballots were mailed only to those who requested one. (*Id.*).[3] Any person who received a degree from the University was eligible to vote in

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[3] Although Dean Dallis-Comentale indicated that ballots were only sent to those who asked for them, the University Alumni Association stated that persons who voted in the last three elections would be sent ballots in addition to those who requested them. (Declaration of Justin Vasel at 1 ¶ 2 [attached to plaintiff's Motion for Summary Judgment]). Again, this discrepancy is not material.

the elections. Ind. Code § 21-20-3-5, 21-20-3-6 (repealed eff. May 6, 2025 by Secs. 257, 258 of HEA 1001). At the beginning of 2024 there were 790,033 living graduates and that year 19,960 voted in the trustee election. (Dallis-Comentale at 3 ¶¶ 10, 11).

The elected trustees served three-year terms beginning on the July 1st following the election. Ind. Code § 21-20-3-4 (repealed eff. May 6, 2025 by Sec. 255 of HEA 1001). Under the prior law, the Governor appointed five members of the board of trustees for three-year terms and one student trustee for a two-year term. Ind. Code § 21-20-3-12, Ind. Code § 21-20-3-13 (amended eff. May 6, 2025 by Secs. 265, 266 of HEA 1001).

II. The relevant changes created by HEA 1001

HEA 1001 repealed the alumni election of board of trustee members. Indiana Code § 21-20-3-2(a) (eff. May 6, 2025) now states that "[t]he board of trustees has nine (9) members appointed by the governor." Effective May 6, 2025, a new statute was created that provides that the governor could remove the board members who were elected and were on the board at the time of the change in the law. Ind. Code § 21-20-3-2.5 (expires January 1, 2028). Otherwise, these elected members could serve until the expiration of their elected terms. (*Id.*). HEA 1001 also repealed the statutes that had regulated the election process and that had imposed duties on the University Librarian. Ind. Code §§ 21-20-3-4 through 21-20-3-10 (repealed eff. May 6, 2025). And it removed references to the

elected trustees that had appeared elsewhere. *See* Ind. Code § 21-20-3-12 (amended eff. May 6, 2025).[4]

III. Justin Vasel and the planned election for the trustee position in 2025

At the time of the passage of HEA 1001, there were three alumni-elected members of the Indiana University board of trustees—Vivian Winston, Jill Maurer Burnett, and Donna Spears. (Plaintiff's Verified Amended Complaint, filed on June 9, 2025 ["Ver. Am. Comp."] at 8 ¶ 30).[5] Ms. Winston's term was set to expire effective July 1, 2025, and she was not seeking reelection. (*Id.* at 8-9 ¶ 31). The terms of Ms. Spear and Ms. Burnett were to expire in in 2026 and in 2027, respectively (*Id.* at 9 ¶ 32; Declaration of Justin Vasel ["Vasel Dec."] at 1-2 ¶ 3 [attached to plaintiff's Motion for Summary Judgment]).

The Indiana University Librarian, defendant Dean Dallis-Comentale, supervised the nomination process and six persons were verified as candidates for the election to replace Ms. Winston. (Dallis-Comentale at 4 ¶¶ 17-18). One of those candidates was Justin Vasel, who had received a PhD in physics from Indiana University. (*Id.* at 4 ¶¶ 18, 34; Ver. Am. Comp. at 9 ¶ 34).

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[4] HEA 1001, Section 266, changed the length of the term of the student representative on the board of trustees from two years to one year. Ind. Code § 21-20-3-13 (eff. May 6, 2025). Dr. Vasel is not challenging that statutory change.

[5] Of course, a verified complaint can be used as designated evidence in a summary judgment proceeding. *See, e.g., Perdue v. Gargano*, 964 N.E.2d 825, 841 (Ind. 2012) (noting that plaintiff designated her verified complaint in support of her summary judgment motion); *El Bey v. Roop*, 530 F.3d 407, 414 (6th Cir. 2008) (A "verified complaint therefore carries the same weight as would an affidavit for the purposes of summary judgment.") (further citations omitted).

Dr. Vasel spent a considerable amount of effort, time, and expense campaigning for the position. (*See* Vasel for IU Board of Trustees, https://vaselforiu.com/ [last visited Sept. 7, 2025]; Ver. Am. Comp. at 9-10 ¶ 39). However, even if Dr. Vasel had not been a candidate for the 2025 election, he would have voted in the election as he desires that alumni have a role in shaping the future of the university. (Ver. Am. Comp. at 10 ¶ 40).

Dr. Vasel followed the legislative developments that led to the passage of the statute that ended the more than 130-year history of alumni elections for some members of the board of trustees. (Vasel Dec. at 2 ¶ 4). He is aware that the statutory sections repealing alumni election of trustees were inserted into HEA 1001, the State's massive budget bill, very late in the legislative process such that no hearings or debates were held on the proposed changes before the budget bill was voted on and the repeal of the electoral process became law. (*Id.* at 2 ¶ 5).

The 2025 trustee election was to take place from June 1 to June 30, 2025. (Dallis-Comentale at 4 ¶ 16). Dean Dallis-Comentale was in the process of creating the paper ballots and printing envelopes when HEA 1001 was enacted on May 6, 2025. (*Id.* at 4-5 ¶ 19). After the enactment she sent an email to Justin Vasel on May 7, 2025, the body of which states:

> I'm writing to provide an update on the Indiana University Board of Trustees election, as state law stipulates the dean of IU Libraries manages the election.
>
> The biennial budget for the state—which was recently passed by the Indiana General Assembly and signed into law by Governor Mike Braun—

> includes a change to the composition of the Indiana University Board of Trustees. All nine trustees will be appointed by the governor. Additionally, the student trustee appointee's term will last one year instead of two.
>
> Due to this change, there will no longer be an election for the IU Board of Trustees.
>
> Thank you for your interest. We hope you continue to stay involved in the success of Indiana University.

(Exhibit 28 to Defendant Governor Braun's Submission of Evidentiary Material of June 2, 2025; Exhibit to Vasel Dec.).

If Justin Vasel prevails in this litigation, he intends to be a candidate for election to the trustees, no matter when the election may occur. (Vasel Dec. at 3 ¶ 4). He will also vote in all trustee elections. (*Id.*).

IV. The current membership of the University's board of trustees

Following the passage of Indiana Code § 21-20-3-2(a) (eff. May 6, 2025), the Governor appointed three new trustees to replace the three who were elected by the alumni. (defendant Governor Braun's Answer to Amended Complaint for Declaratory and Injunctive Relief Concerning Unconstitutionality of an Indiana Statute, filed on July 30, 2025 ["Answer to Amended Complaint by Governor Braun"] at 13 ¶ 44; Vasel Dec. at 2-3 ¶ 7). The new trustees, and the expiration dates of their terms, as listed on Indiana University's website, are Brian Eagle (June 30, 2027), Sage Steele (June 30, 2028), and James Bopp, Jr. (June 30, 2028). (Answer to Amended Complaint by Governor Braun at 13 ¶ 45; Vasel Dec. at 2-3 ¶ 7). They join the other five non-student members of the board:

W. Quinn Buckner (term expires June 30, 2028), David Hormuth, M.D. (term expires June 30, 2028), J. Timothy Morris (term expires June 30, 2026), Marilee Springer (term expires June 30, 2028), and Isaac Torres (term expires June 30, 2026). (Vasel Dec. at 2-3 ¶ 7).

V. The selection of trustees at Indiana's other public four-year universities that offer graduate and baccalaureate degrees

There are five Indiana public four-year universities that award graduate degrees and baccalaureate degrees—Indiana University, Purdue University, Ball State University, Indiana State University, and the University of Southern Indiana. (Answer to Amended Complaint by Governor Braun at 5-6 ¶¶ 16-17; Vasel Dec. at 3 ¶ 8-10). As noted below, each of them provide a method for their alumni to select members of their boards of trustees.

Ball State University: Although all members of Ball State University board of trustees are appointed by Governor, two must be alumni whose names are selected by the university's alumni council and are submitted to the Governor for his "immediate appointment." Ind. Code § 21-19-3-2, Ind. Code § 21-19-3-6.

Indiana State University: The Governor currently appoints all members of the board of trustees, but two are nominated by the university's alumni council. Ind. Code § 21-21-3-2, Ind. Code § 21-21-3-9.

Purdue University: The Governor appoints all members of the board of trustees, but three are selected by the Purdue Alumni Association. Ind. Code § 21-23-3-1 through Ind. Code § 21-23-3-3.

University of Southern Indiana: The Governor appoints all members of the board of trustees, but at least one must be an alumnus member selected by the screening committee created by the University's alumni association. Ind. Code § 21-24-3-5, Ind. Code § 21-24-3-6.[6]

Argument

I. Standard of review

The standard for deciding a motion for summary judgment is clear. "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting Ind. R. Trial P. 56(C)). There are no contested issues of material fact and Dr. Vasel is entitled to summary judgment.

II. Article 4, Section 23 prohibits "special" legislation unless there are unique circumstances justifying special treatment

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[6] Vincennes University does not offer graduate degrees and predominantly offers associates degrees. (Answer to Amended Complaint by Governor Braun at 6 ¶ 17; Vasel Dec. at 3 ¶ 9). The membership requirements for its board of trustees focus on membership by persons associated with local school corporations and the county in which the school is located. Ind. Code § 21-25-3-2 (one member must be a resident of Knox County); Ind. Code § 21-5-3-7 (the superintendents of the Vincennes Community, South Knox, and North Knox School Corporations are *ex officio* board members).

Ivy Tech is a "two (2) year state educational association." Ind. Code § 21-22-2-2. Its board of trustees is appointed by the Governor and consists primarily of persons appointed by geographic regions who have knowledge in one or more of the following areas: manufacturing, commerce, labor, agriculture, state and regional economic development needs, and Indiana's educational delivery system. Ind. Code § 21-22-3-3. It does not offer four-year undergraduate degrees or graduate degrees. (Vasel Dec. at 3 ¶ 10).

Article 4, Section 23 of the Indiana Constitution provides in pertinent part that in all "cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." The Indiana Supreme Court has held that "[a] statute is general if it applies to all persons or places of a specified class throughout the state." *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 689 (Ind. 2003) (quotation and citation omitted). Conversely, "[a] statute is special if it pertains to and affects a particular case, person, place, or thing, as opposed to the general public." *Id.* (quotation and citation omitted).

"The purpose of this provision is to prevent the legislature from providing a benefit to or imposing a burden on one locality and not others, as allowing such practices would encourage logrolling and result in an irregular system of laws." *State v. Buncich*, 51 N.E.3d 136, 141 (Ind. 2016). Therefore, the provision "requires we engage in two analytical steps: first, we determine whether the law is general or special; second, if it is a general law, we determine whether it is generally applied, and if it is a special law, we determine whether it is constitutionally permissible." *Id.* (citation omitted).

A special law is "constitutionally permissible . . . [i]f the subject matter of an act is not amenable to a general law of uniform operation throughout the State." *Williams v. State*, 724 N.E.2d 1070, 1085 (Ind. 2000). In this situation the "affected class's unique characteristics justify the differential legislative treatment." *City of Hammond*, 119 N.E.3d at 78. On the other hand, a special law is unconstitutional "when there are no unique

circumstances of an affected class that warrant the special treatment—meaning that a general law could be made applicable." *Id.* at 84 (citation omitted).

"[B]ecause a special-legislation challenge is a type of constitutional challenge, there is an overarching presumption 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 the differential treatment, the special legislation will be found unconstitutional. *Id.* at 85; *see also, e.g.*, *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1266 (Ind. 2020).

III. Indiana Code § 21-20-3-2(a), which uniquely denies Indiana University alumni the ability to select any members of the University's board of trustees, is special legislation

Therefore, the first question is whether Indiana Code § 21-20-3-2(a), which denies Indiana University alumni any voice in the selection of Indiana University trustees is special legislation. This does not appear to be a difficult question to answer. The legislation is directed only to Indiana University, ignoring the other similar public universities in Indiana.

In *State v. Buncich* the Supreme Court faced a statute that addressed only Lake County election precincts. 51 N.E. 3d at 139. There was no dispute that this was special legislation. "Both sides agree the Statute here is special because it is directed to Lake County alone." *Id.* at 141. Indeed, in a footnote attached to this sentence the Court noted that "it is now well-settled that if a piece of legislation distinguishes and identifies a

locality—whether by name or some other defining unique characteristic—it is a special law." *Id.* at 141 n.6 (citation omitted). Given that the statutory changes in HEA 1001 are directed to Indiana University alone, which is certainly comparable to a specific locality, the statutory change concerning the selection of the trustees is special legislation.

This is also apparent by looking at other cases. For example, in *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe County*, 849 N.E.2d 1131 (Ind. 2006), the statute that was challenged under Article 4, Section 23, permitted a retroactive filing extension that required the auditor to grant property tax exemptions that would otherwise be out of time. *Id.* at 1133. But the statute only provided this filing extension to property used for fraternities by Indiana University students that were previously granted property tax exemptions and that had paid taxes in the prior two years because of a failure to timely file exemptions. *Id.* at 1134. The Court found that the legislature had singled out the small group of Indiana University fraternities for special treatment as compared to the other property owning fraternities and sororities throughout the State. *Id.* at 1140. The Supreme Court concluded that "[i]t is difficult to imagine a piece of legislation more "special' than [this statute], which applies only to: (1) fraternities, (2) affiliated with Indiana University, (3) who were previously granted property tax exemptions, but (4) who have paid property tax in two specified years because of a failure to file an exemption." *Id.* at 1137. This precise targeting obviously made the legislation

"special." If a statute directed specifically at Indiana University was "special" in *Alpha Psi*, it is "special" here.

In *City of Hammond*, the General Assembly had enacted a statute that singled out Bloomington and West Lafayette for preferential treatment by exempting them from any limits on what the cities could charge local landlords to register rental properties, while imposing a $5.00 maximum on all other municipalities. 119 N.E.3d at 78. This targeted legislation was so clearly "special legislation" that it was not disputed by the parties. *Id.* at 85. Similarly, in *Holcomb* no party disputed that a statute prohibiting Bloomington from annexing particular areas for five years was "special." 158 N.E.3d at 1253-54, 1265.

"Special laws pertain to and affect a particular case, person, place or thing." *City of Greenfield v. Ind. Dep't of Local Gov't Finance*, 22 N.E.3d 887, 893 n.12 (Ind. Tax Ct. 2014). Indiana Code § 21-20-3-2(a) uniquely pertains to and affects Indiana University. It is special legislation.

IV. The special legislation is not justified here and is unconstitutional

Of course, just because legislation is "special" does not mean it violates Article 4, Section 23 of the Indiana Constitution. Generally speaking,

> the constitutionality of special legislation hinges on the uniqueness of the identified class and the relationship between that 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 the special treatment—meaning that a general law could be made applicable.

City of Hammond, 119 N.E.3d at 84 (citations omitted). The Court in *City of Hammond* stressed that once it is determined that the law is special, its proponent must establish a reason why the law could not operate more generally. *Id.* "This requires the legislation's proponent to clear a low bar by establishing a link between the class's unique characteristics and the legislative fix." *Id.* at 84-85. That is, the proponent must demonstrate "unique characteristics justifying" the legislation. *Holcomb*, 158 N.E.3d at 1265.

> If the proponent overcomes its initial hurdle to show a link between the unique characteristics and the special treatment, 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.

City of Hammond, 119 N.E.3d at 84-85.

Prior to May 6, 2025, the General Assembly had established by statute a system whereby alumni of every public institution of higher learning in Indiana that bestowed graduate and baccalaureate degrees could have a voice in selecting some of the trustees for the institution. It is the defendants' burden to establish that there is something unique about Indiana University that justifies stripping its alumni, and only its alumni, of any voice in the selection of any of the institution's trustees. There simply is nothing unique. While every institution is different, there are no "unique characteristics" or "unique

circumstances" between Purdue University and Indiana University, for example, that justify Boilermakers but not Hoosiers being allowed a role in trustee selection. The same can be said for alumni of the other similar public universities in Indiana.

In *City of Hammond* the statute's proponents attempted to justify the statute's fee exemption for Bloomington and West Lafayette by pointing out what they deemed to be distinctions between these two cities and other communities. 119 N.E. 3d at 85-87.[7] These distinctions did not save the statute from a finding that it violated Article 4, Section 23 as they

> demonstrate nothing more than a generalized uniqueness in Bloomington and West Lafayette. In other words, while there are characteristics of Bloomington and West Lafayette that may be uncommon or rare across the state, that is not enough; rather, there must be unique characteristics that justify the particular piece of legislation. . . . At the end of the day, the evidence does not indicate that Bloomington and West Lafayette—and those two cities alone—need the Fee Exemption's special treatment.

Id. at 86 (cleaned up).

There is no doubt that each of Indiana's public universities that grant graduate and baccalaureate degrees are unique institutions in the sense that they all have their

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[7] Of some interest in this case, the proponent of the legislation in *City of Hammond* argued that the exemption was appropriate because Bloomington and West Lafayette were populated by a high percentage of students who are "often unsophisticated first-time renters." 119 N.E.3d at 85. The Court noted that Bloomington and West Lafayette were not unique as "[f]or example, Muncie has Ball State University; Indianapolis has Indiana University-Purdue University; and Terre Haute has Indiana State University." *Id.* at 85-86. The student bodies are obviously not fungible. But neither do they possess unique characteristics that justified the special treatment. The same is true here concerning the universities.

strengths and weaknesses and that they may differ from one another in the educational offerings provided. But this uniqueness is the "generalized uniqueness" referred to in *City of Hammond*. What are the "unique characteristics" that justify denying alumni any voice in the selection of Indiana University trustees? There simply are not any.

As noted, in *Alpha Psi Chapter* the challenged statute granted a retroactive extension to the filing of otherwise untimely applications for property tax exemptions, but only to certain 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 throughout 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 similar public universities and their alumni.

In *Kimsey*, the Court concluded that an annexation statute applicable only to St. Joseph County was unconstitutional special legislation in violation of Article IV, Section 23. 781 N.E.2d at 684-85. None of the justifications given for the statute "turn[ed] on facts unique to St. Joseph County." *Id.* at 694.

Similarly, there is simply nothing unique about Indiana University that justifies the disenfranchisement of its alumni. This can also be seen by contrasting this case with decisions where the Supreme Court concluded that special legislation was constitutional.

For example, in *State v. Hoovler*, 668 N.E.2d 1229 (Ind. 1996), a challenge was mounted to a statute authorizing an economic development income tax to fund substance removal or remedial action only in counties having a population of more than 129,000 but less than 130,600, which meant that it only applied in Tippecanoe County. *Id.* at 1231. Of course, this was a special law. *Id.* at 1235. However, "[t]his decision was based in part on the fact that Tippecanoe County was the only county in Indiana in which the county itself was subject to possible Superfund liability under federal environmental laws." *Alpha Psi*, 849 N.E.2d at 1138. There were therefore "unique characteristics justify[ing] the differential treatment the law provides." *City of Hammond*, 119 N.E. 3d at 84.

In *State ex rel. the Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240 (Ind. 2005), the Supreme Court upheld the constitutionality of two statutes providing for countywide reassessments for property taxes that applied only to Lake County. *Id.* at 1245. Again, there was no doubt that the laws were "'special' for purposes of Article IV." *Id.* at 1248. But the Supreme Court concluded that "the long and tortured history of property taxation in Lake County, which included a one-of-a-kind situation in which only a few industrial sites were responsible for a large percentage of property tax revenue, constituted unique circumstances." *Alpha Psi*, 849 N.E.2d at 1138 (quotation and citation omitted). There are no unique circumstances here that allow the General Assembly to remove Indiana University's alumni voices from the trustee selection process.

Of course, prior to the challenged change in the law, Indiana University *was* unique

in that it provided a process for the direct elections of trustees by alumni as opposed to selection through designation by alumni associations as is statutorily required in all the other public universities that grant graduate and baccalaureate degrees. This can perhaps be explained by the fact that the Indiana University electoral method was established in 1891 but that in subsequent legislative sessions the General Assembly determined that using alumni associations was a better way to give alumni a voice and vote, without changing the method established for Indiana University.[8] The General Assembly is free to change the method it has provided since 1891 at Indiana University, provided that it is done in a uniform and generally applicable way. Thus, the General Assembly could have created an identical process for Indiana University that exists in the other universities—selection through an alumni association. Indeed, in responding to Dr. Vasel's since-withdrawn preliminary injunction motion, the Governor argued that "[g]iven the lack of alumni participation in electing a member of the board of trustees, it makes sense to excise this unique treatment for Indiana University alumni and allow the board of Indiana University to be chosen more like every other public university in the State." (Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction at 26, filed on June 2, 2025).[9]

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[8] For example, in 1929 the General Assembly amended Indiana law to provide that by resolution of the trustees of any university, college, or institution of learning operating under the Act, a number of trustees could be selected "by the active members of the alumnal association of such university, college or institution of learning." Ind. Act 1929, Ch. 210, Sec. 1 (Mar. 15, 1929).

[9] As noted, in the last election for a trustee at Indiana University, almost 20,000 alumni voted. (Dallis-Comentale at 3 ¶ 11). Although this was a small fraction of the total potential

But, of course, the General Assembly has not created a method to choose trustees "like every other public university in the State." It has uniquely disenfranchised Indiana University's alumni.

Having created a system governing all similar universities that give alumni a voice in selecting trustees, the General Assembly cannot constitutionally deny this ability to Indiana University alumni. If the General Assembly were "truly concerned" about allowing alumni to have a voice in trustee selection, "that concern would have applied equally across Indiana." *Holcomb*, 158 N.E.3d at 1266. Instead, the General Assembly focused only on Indiana University, enacting special legislation that violates Article 4, Section 23. Indiana Code § 21-21-3-2 and the other statutory changes to the former electoral process enacted by HEA 1001 are unconstitutional.

V. Justin Vasel is entitled to a permanent injunction

A. The requirements for the issuance of a permanent injunction are met

The statute is unconstitutional, and Justin Vasel is entitled to a declaration to that effect. Ind. Code § 34-14-1-1, *et seq.*; Ind. R. Trial P. 57. He is also entitled to a permanent injunction against both defendants.

The four factors that generally must be met to obtain a permanent injunction are that the "plaintiff's remedies at law are inadequate," the plaintiff has "in fact succeeded

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electorate of university alumni, it is certainly a significant number and the Governor has cited no general rule that persons lose their right to vote by not voting previously. Moreover, Dean Dallis-Comentale states that she only sent ballots to alumni who requested them. (*Id.* at 4 ¶ 15).

on the merits," "the threatened injury to the plaintiff outweighs the threatened harm a grant of relief would occasion upon the defendant," and "the public interest would be disserved by granting relief." *Ferrell v. Dunescape Beach Club Condominiums Phase I, Inc.*, 751 N.E.2d 702, 712-13 (Ind. Ct. App. 2001) (citations omitted).

Dr. Vasel has succeeded on the merits. 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 hardship in his favor." *B&S of Fort Wayne, Inc. v. City of Fort Wayne*, 159 N.E3d 67, 76 n.2 (Ind. Ct. App. 2020) (quotation and citations omitted), *trans. denied. see also, e.g., Sadler v. State ex rel. Sanders*, 811 N.E.2d 936, 955 (Ind. Ct. App. 2004) (inasmuch as the election board violated state law "[a]ppellees were not required to make a showing of irreparable harm or a balance of the hardship in their favor" (citation omitted and cleaned up). Given this *per se* rule and the unconstitutionality of the new statutes stripping electoral rights from Indiana University alumni, there is no need to consider irreparable harm and balance of hardships. Regardless, Dr. Vasel is suffering irreparable harm for which there is no adequate remedy at law, and the balance of hardships favor the issuance of a permanent injunction.

Justin Vasel has been deprived of any opportunity to win the election and become a trustee because of the challenged statutory changes.

> 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). "[W]hen a candidate is unconstitutionally deprived of access to the ballot—irreparable harm can be presumed." *Esshaki v. Whitmer*, 455 F. Supp. 3d 367, 379 (E.D. Mich. 2020), *partial stay granted pending appeal*, 813 Fed. App'x 170 (6th Cir. 2020). Obviously, being denied the "fair chance to win 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 the loss of any mechanism to have an alumni voice on the board of trustees. Dr. Vasel is suffering irreparable harm for which there is no adequate remedy a law.

As noted above, 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, the defendants cannot establish that they will suffer injury. Given that Dr. Vasel has established that the implementation of the new selection method for the board of trustees is unconstitutional, "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 & Davidson Cnty., Tennessee*, 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 defendants 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 with regard to violation of the Indiana Constitution. The balance of harms favor Dr. Vasel.

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 "[i]njunctions preventing the violation of constitutional rights are always in the public interest." *Mi Famila Vota v. Abbott*, 497 F. Supp. 3d 195, 220 (W.D. Tex. 2020) (quotation and citations omitted). This is no less true concerning the need to prevent violations of the Indiana Constitution.

The requirements for the issuance of a permanent injunction are met.

B. The injunction that should issue

The statutes enacted by HEA 1001 that ended the election of trustees at Indiana University are unconstitutional. The United States Supreme Court has made it clear that if an otherwise constitutional statute is amended and the amendments are unconstitutional, the former statute remains in effect. "[S]ince the amendment is void for unconstitutionality, it cannot be given . . . effect, because 'an existing statute cannot be recalled or restricted by anything short of a constitutional enactment.'" *Frost v. Corporation Comm'n*, 278 U.S. 516, 526 (1929) (quoting *Davis v. Wallace*, 257 U.S. 478, 485 (1922), and

citing *Truax v. Corrigan*, 257 U.S. 312, 341-42 (1921); *Waters-Pierce Oil Co. v. Texas*, 177 U.S. 28, 47 (1900)). The amendments in HEA 1001 that stopped the election of trustees at Indiana University and ended the election mechanism and procedures that were in effect (Sections 253-254, 256-263, 265) are void as unconstitutional and the prior statutes remain in existence.

"'The general rule is said to be that a statute declared unconstitutional is void *ab initio*.' . . .[G]enerally action based upon an unconstitutional statute cannot stand." *Indiana High School Athletic Ass'n, Inc. v. Reyes*, 694 N.E.2d 249, 255 (Ind. 1997) (quoting *Martin v. Ben Davis Conservancy Dist.*, 238 Ind. 502, 510, 153 N.E.2d 125, 129 (1958)). Therefore, the appointments that the Governor has made to replace the elected members of the board of trustees are void.

However, the Governor has argued that a court of equity has no ability to order the removal of persons appointed by executive officers. (Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction at 28, filed June 2, 2025). The Court need not address that issue as it does not have to order the Governor to remove the three persons he hastily appointed after removing the elected trustees following the passage of HEA 1001. Assuming that these members do not voluntarily resign, even after their appointments are declared unconstitutional, and barring the General Assembly enacting a constitutional statute, the Court should permanently enjoin the Governor from appointing any additional trustees in 2025, 2026, and 2027, until an alumni election is

conducted each year to elect one trustee as required by Indiana law as it existed prior to May 6, 2025. And elections should occur thereafter as required by the law as it existed prior to HEA 1001. If a trustee does resign, until there are again three alumni-elected trustees, the first vacancy each year "shall be filled by selection by the Indiana University alumni association executive council for the unexpired term," Ind. Code 21-20-3-4(b) (repealed eff. May 6, 2025), provided that there has not yet been a trustee elected that year.

Defendant Dean Dallis-Comentale must be permanently enjoined to conduct an alumni election for the trustee positions in 2026, 2027, and 2028 and thereafter and must be ordered to perform all the functions that she was required to perform under the statutes that existed prior to May 6, 2025.

Conclusion

Dr. Vasel is certainly aware of the fact that in a constitutional challenge to an Indiana law, the statute is "clothed with the presumption of constitutionality until clearly overcome by a contrary showing." *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996) (citations omitted). "There is an overarching presumption that the statute is constitutional." *City of Hammond*, 119 N.E. 3d at 84. However, the presumption is rebutted here and defendants will not be able to satisfy their burden "to show that a general law can't be made applicable." *Id.* at 84 (citation omitted). The May 6, 2025 statutory scheme that eliminated any possibility for alumni of Indiana University to have a voice in the

selection of any member of the University's board of trustees is special legislation. As Indiana University and its trustees possess no unique characteristics "that justify the particular piece of legislation," the statutory changes enacted as part of HEA 1001 that ended the lengthy legislative tradition of electing a number of trustees and that ended the electoral process, Sections 253-254, 256-263, and 265, are unconstitutional as violating Article 4, Section 23 of the Indiana Constitution. As there are no contested issues of material fact, summary judgment should be entered for the plaintiff, Justin Vasel.

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Certificate of Service

I certify that on September 16, 2025, a copy of the foregoing was filed using the Indiana E-filing System ("IEFS"). I also certify that on September 16, 2025, the foregoing document was served on all counsel of record though IEFS.

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