No. 22-1735

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REYNA ANGELINA ORTIZ (Legal Name Raymond Ortiz), KEISHA ALLEN (Legal Name Wayne Allen), AMARI GARZA (Legal Name Armando Garza), HEAVEN EDWARDS (Legal Name Patrick Edwards), EISHA LATRICE LOVE (Legal Name Darveris Lamar Love), SHAMIKA LOPEZ CLAY (Legal Name Marcus Clay), SAVANNAH JOSEPHINE FRAZIER (Legal Name Tony Willis) and KAMORA LOVELACE (Legal Name Latuan Walker),

Plaintiffs-Appellants,

v.

KIMBERLY M. FOXX, not personally but solely in her capacity as Cook County State's Attorney, TIMOTHY C. EVANS, not personally but solely in his capacity as the Chief Judge of the Circuit Court of Cook County, and SANJAY T. TAILOR, not personally but solely in his capacity as the Presiding Judge of the County Division of the Circuit Court of Cook County,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Illinois
Case No. 19 CV 02923
The Honorable John F. Kness, Judge Presiding

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

Gregory E. Ostfeld
Brian D. Straw
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8400
ostfeldg@gtlaw.com
strawb@gtlaw.com

Attorneys for Plaintiffs-Appellants

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-1735

Short Caption: Ortiz v. Foxx, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Please see attached Exhibit A

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Greenberg Traurig, LLP and Transformative Justice Law Project of Illinois

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Gregory E. Ostfeld Date: 5/2/2022

Attorney's Printed Name: Gregory E. Ostfeld

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Greenberg Traurig, LLP, 77 W. Wacker Drive, Suite 3100

Chicago, IL 60601

Phone Number: (312) 456-8400 Fax Number: (312) 456-8435

E-Mail Address: ostfeldg@gtlaw.com

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EXHIBIT A

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Amari Garza (legal name Armando Garza)
Heaven Edwards (legal name Patrick Edwards)
Eisha Latrice Love (legal name Darveris Lamar Love)
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Savannah Josephine Frazier (legal name Tony Willis)
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N/A

Attorney's Signature: /s/ Brian D. Straw Date: 5/2/2022

Attorney's Printed Name: Brian D. Straw

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Greenberg Traurig, LLP, 77 W. Wacker Drive, Suite 3100

Chicago, Illinois 60601

Phone Number: (312) 456-8400 Fax Number: (312) 456-8435

E-Mail Address: strawb@gtlaw.com

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JURISDICTIONAL STATEMENT

Plaintiffs are eight transgender women[1] who commenced this case under 42 U.S.C. § 1983 ("Section 1983") to redress violations of their rights under the First and Fourteenth Amendments to the United States Constitution, resulting from Defendants' enforcement of the restrictions of the Illinois Change of Name Statute, 735 ILCS 5/21-101 et seq. (the "Statute"), as applied to Plaintiffs. Plaintiffs seek a declaration that the Statute is unconstitutional as applied to them, an injunction barring Defendants Circuit Court of Cook County's Chief Judge Timothy C. Evans and Presiding Judge Sharon M. Sullivan in their official capacities (the "State Judges") from denying Plaintiffs' name change petitions based on the disqualifying provisions of the Statute, and an injunction barring Defendant Cook County State's Attorney Kimberly M. Foxx in her official capacity (the "State's Attorney") from objecting to Plaintiffs' name change petitions. The District Court had subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

The District Court issued a Memorandum Opinion and Order [ECF No. 63] ("Opinion or Op."), Appendix ("App.") 003–19, granting Defendants' Motions to Dismiss on March 31, 2022, and dismissed Plaintiffs' Complaint for lack of jurisdiction, and a separate Judgment in a Civil Case [ECF No. 64] ("Judgment"),

[1] Sadly, Plaintiff Amari Garza passed away while this case was pending. The survival of Ms. Garza's Section 1983 claims has not yet been evaluated and their status is uncertain. *See Robertson v. Wegmann*, 436 U.S. 584 (1978) (holding state law governs survivorship of Section 1983 claims); *Strandell v. Jackson County, Ill.*, 648 F. Supp. 126, 133 (S.D. Ill. 1986) (holding Section 1983 claims survive under Illinois law); *cf. Lake View Towers Residents Ass'n, Inc. v. Mills*, 2016 IL App. (1st) 143621-U, ¶ 26 (finding claims for injunctive relief do not survive plaintiff's death). Ms. Garza is therefore named as a nominal plaintiff-appellant, with the survival of her claims to be addressed following remand.

App. A001–2. The Opinion and Judgment are final decisions of the District Court under 28 U.S.C. § 1291. *See Furnace v. Bd. of Trustees of S. Ill. Univ.*, 218 F.3d 666, 669–70 (7th Cir. 2000) (dismissal of a complaint without prejudice may constitute adequate finality for appeal if the "district court 'found that the action could not be saved by any amendment of the complaint which the plaintiff could reasonably be expected to make'") (citing *Benjamin v. United States*, 833 F.2d 669, 672 (7th Cir. 1987)); *see also Hoskins v. Poelstra*, 320 F.3d 761, 763–64 (7th Cir. 2003) (finding that "if an amendment would be unavailing, then the case is dead in the district court and may proceed to the next tier").

Plaintiffs timely filed a Notice of Appeal on April 28, 2022. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the District Court err in holding it lacked jurisdiction to decide Plaintiffs' federal constitutional challenges to the Statute, seeking declaratory and injunctive relief against the State Judges, where the Illinois legislature vested the power to administer the Statute in state judges acting in a ministerial and non-judicial capacity?

2. Did the District Court err in holding Plaintiffs lacked Article III standing to assert their federal constitutional challenge to the Statute, seeking declaratory and injunctive relief against the State's Attorney, where the Illinois legislature vested the power to enforce the Statute in the State's Attorney by granting her the authority to object to Plaintiffs' name change petitions?

STATEMENT OF THE CASE

Plaintiffs are eight transgender women compelled by law to retain legal names that do not match their gender identities or the names by which they identify themselves to the world. This compulsory self-identification is on account of the Illinois Change of Name Statute, which prevents two categories of convicted persons from changing their names either for ten years or permanently. Each Plaintiff is presently or permanently disqualified from receiving a name change under the Statute. These restraints have serious real-world consequences as applied to Plaintiffs, forcing them to present a discordant legal name and identification to the world in various settings (e.g., government offices, hospitals, banks, grocery stores, social service providers, etc.) and thereby exposing them to misidentification, false accusations, discriminatory treatment, delay or denial of services, harassment, ridicule, and physical danger.

Plaintiffs filed suit under Section 1983, challenging the application of the Statute's disqualifying provisions to Plaintiffs as a violation of their First and Fourteenth Amendment rights under the U.S. Constitution, and seeking declaratory and injunctive relief. Plaintiffs named two sets of Defendants: (1) the State Judges, in their official capacities as the officials responsible for administering the Statute and denying name changes; and (2) the State's Attorney, in her official capacity as the official responsible for initiating updates to criminal history transcripts and raising objections to name change petitions under the Statute.

The District Court acknowledged Plaintiffs' challenges are "weighty" and raise "important substantive questions," and Defendants presented no challenges to the substantive merits of Plaintiffs' claims in their Motions to Dismiss. Nevertheless, the District Court held it could not reach the merits of Plaintiffs' claims due to jurisdictional barriers. It concluded the State Judges acted in their judicial capacity, and therefore held it was not empowered to grant relief against the State Judges under principles of judicial immunity and comity, for lack of justiciability, and due to Section 1983's bar of injunctive relief against a judicial officer. *See* Op. at 11–16, App. A013–18. The District Court further held there was insufficient causal connection between the State's Attorney and enforcement of the Statute to satisfy standing under *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018). *See* Op. at 7–10, App. A009–12.

There are no other officials involved in the administration or enforcement of the Statute. Accordingly, the practical consequence of the District Court's ruling is to exclude the federal judiciary from deciding whether the Statute violates the U.S. Constitution in the face of weighty and important challenges. Plaintiffs respectfully submit this ruling is erroneous and has troubling implications as precedent a state legislature could follow to evade federal judicial review of state laws designed to thwart governing constitutional precedent. Plaintiffs therefore respectfully bring this appeal and seek reversal of the District Court's Opinion.

I. Factual Background

The Statute is one of the most onerous in the country, barring any persons with felony convictions from changing their legal names until ten years after the completion and discharge from their sentence. *See* 735 ILCS 5/21-101(b). Moreover, persons convicted of certain felonies or misdemeanors, including identity theft and specified sexual offenses, are never permitted to file petitions for name changes unless pardoned. *Id.* These arbitrary, overbroad, and unreasonable prior restraints have prevented Plaintiffs from changing their legal names to match their gender identities and chosen names. This results in Plaintiffs being forced to present an unmatched legal name and identification to the world and exposes them to humiliation, harm, and mental and physical danger.

A. The History of Name Changes in Illinois

Illinois followed the common law tradition of name changes unrestricted by legal proceedings until the early twentieth century. At common law, "every person [was] free not only to assume any surname he or she pleases, but also to change it at any time." *Thomas v. Thomas*, 427 N.E.2d 1009, 1010 (Ill. App. Ct. 1981). The common law reflected historical flexibility in changing names by guaranteeing the right to change names without any legal proceedings. *See Reinken v. Reinken*, 184 N.E. 639, 640 (Ill. 1933) ("At common law, and in the absence of statutory restriction, an individual may lawfully change his name without resort to any legal proceedings, and for all purposes the name thus assumed will constitute his legal

name just as much as if he had borne it from birth."); *see also* Julia Shear Kushner, Comment, *The Right to Control One's Name*, 57 UCLA L. REV. 313, 325 (2009).

Name change statutes are creations of the twentieth century. Illinois passed its original name change statute in the early 1900s to supplement the common law tradition of changing one's name. *Reinken*, 184 N.E. at 640 ("These statutory provisions are, however, not exclusive but are merely permissive, and they do not abrogate the common law right of the individual to change his name without application to the courts."); *see also* Lark Mulligan, *Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions*, 66 DEPAUL L. REV. 647, 654–656 (2017) (discussing history and evolution of name change laws). Illinois did not abrogate common law name changes until 2010. *See* 735 ILCS 5/21-105 ("[c]ommon law name changes adopted in this State on or after July 1, 2010 are invalid. All name changes shall be made pursuant to marriage or other legal proceedings.").

The Statute's disqualifying provisions based on criminal conviction are also of recent vintage; the Statute contained no such restrictions until the 1990s. A 1993 amendment marked the beginning of name change restrictions for persons with certain criminal convictions. Mulligan, *supra*, at 657–60 (discussing legislative history of the amendments imposing various criminal restrictions). In its current form, the Statute contains two blanket prohibitions against the filing of petitions for name changes: (1) "any person convicted of a felony in this State or any other state who has not been pardoned *may not* file a petition for a name change until 10 years

have passed since completion and discharge from his or her sentence," 735 ILCS 5/21-101(b) (emphasis added) (the "Ten-Year Prohibition"); and (2) "A person who has been convicted of identity theft, aggravated identity theft, felony or misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, felony or misdemeanor sexual exploitation of a child, felony or misdemeanor indecent solicitation of a child, or felony or misdemeanor indecent solicitation of an adult, or any other offense for which a person is required to register under the Sex Offender Registration Act in this State or any other state who has not been pardoned *shall not be permitted to file a petition for a name change* in the courts of Illinois." *Id.* (emphasis added) (the "Lifetime Prohibition").

B. Facts Specific to Plaintiffs

Plaintiffs are transgender women who live under chosen names that are fundamental to their self-expression and identities. *See* Complaint [ECF No. 1] ("Compl.") ¶ 1, App. A021. Each Plaintiff's chosen name is a personal message of self-expression based on individual background and circumstances, including family background, literal or symbolic meaning, aspirational goals, and fictional or real-life role models. *Id.* ¶¶ 1, 16, 27, 38, 50, 62, 72, 81, 91, App. A021–36. Plaintiffs Keisha, Shamika, Heaven, Eisha, and Reyna (the "Pre-2010 Name Change Plaintiffs") all adopted and used their names prior to the abolition of the common law name change, effective as of July 1, 2010. *Id.*; *see also id.* ¶¶ 118, 120, App. A040.

Plaintiffs have all been convicted of felonies within the past ten years subjecting them to the Ten-Year Prohibition, or other specified felonies or misdemeanors subjecting them to the Lifetime Prohibition. *Id.* ¶¶ 3, 17, 27, 39, 51, 63, 73, 82, 92, App. A021–36. Plaintiffs Reyna and Keisha are subject to the Lifetime Prohibition, while the other Plaintiffs are subject to the Ten-Year Prohibition. (*Id.*). Due to these convictions, Plaintiffs have been unable to legally change their names and have been regularly subjected to compulsory speech and discrimination as a result. *Id.* ¶¶ 17–21, 27–32, 39–43, 51–53, 63–67, 73–77, 82–86, 92–96, App. A024–36. Plaintiffs have each suffered harmful consequences, including physical assault, denial of access to mail, refusal of government services and benefits, refusal of government applications, denial or loss of employment, denial of clearance through airport security, loss of educational opportunities, inability to deposit checks, and public outing as transgender in unsafe circumstances. *Id.* ¶¶ 22–26, 33–37, 44–49, 54–61, 68–71, 78–80, 87–90, 97–99, App. A025–37. As a result, Plaintiffs avoid certain venues for fear of being outed and placed in danger. *Id.*

II. Constitutional Harms

Plaintiffs allege three distinct constitutional injuries as a result of the Statute: (1) violation of their First Amendment right to free speech, free expression, and freedom of thought; (2) violation of their Fourteenth Amendment right to self-identify; and (3) violation of their Fourteenth Amendment due process rights as the Statute has retroactively invalidated common law names assumed by Plaintiffs

Keisha, Shamika, Heaven, Eisha, and Reyna. The harms implicate Plaintiffs' fundamental rights and liberties.

A. Violation of Plaintiffs' First Amendment Right to Free Speech, Free Expression, and Freedom of Thought

The Supreme Court has held "that the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (holding that a state cannot require drivers to display a license plate carrying a political message, such as "Live Free or Die," because such compulsory speech violates drivers' First Amendment rights). Indeed, "[t]he right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" *Id.* (quoting *Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

A person's name is a vital manifestation of personal identity. Each Plaintiff in this case has chosen her name for deeply personal reasons. Reyna Angelina Ortiz chose her name Reyna (meaning queen in Spanish) as a teenager as an affirmation, and the name Angelina is a family name signifying the importance of family in her life. Compl. ¶ 20, App. A025. Heaven Edwards chose her name to symbolize a break from her troubled childhood and to represent the honest, kind, generous, and loyal person she strives to be today. *Id.* ¶ 54, App. A030. Eisha Latrice Love chose the name Eisha after a relative of a similar name who did not initially accept Eisha's transition. *Id.* ¶ 66, App. A032. Eisha strove to be a better version of her relative—and inspired her relative to accept her for who she is. *Id.* As discussed *supra*, at

Section I.B, each Plaintiff has a deeply personal story of coming to identify with their chosen name. The Statute's disqualifying provisions, however, compel each Plaintiff to retain and express a legal name that does not match their gender or personal expression of identity.

B. Violation of Plaintiffs' Fourteenth Amendment Right to Self-Identify

Plaintiffs' fundamental rights extend to personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. *See, e.g.*, *Eisenstadt v. Baird,* 405 U.S. 438, 453 (1972); *Griswold v. Connecticut,* 381 U.S. 479, 484–86 (1965). The Supreme Court has defined a test to identify fundamental rights which focuses on personal autonomy:

> In explaining the respect the Constitution demands for *the autonomy of the person in making these choices*, we stated as follows:
>
> > 'These matters, involving the most intimate and personal choices a person may make in a lifetime, *choices central to personal dignity and autonomy*, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the *right to define one's own concept of existence*, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.'

See Lawrence v. Texas, 539 U.S. 558, 574 (2003) (emphasis added) (*quoting Planned Parenthood of Se. Pa. v. Casey,* 505 U.S. 833, 851 (1992), *overruled on other grounds*, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2022 U.S. LEXIS 3057 (June 24, 2022)).

The fundamental liberty interests protected by the Fourteenth Amendment include choices central to personal dignity. Indeed, *Lawrence* specifically recognizes

a "right to define one's own concept of existence . . . ." 539 U.S. at 574. There is nothing more fundamental to the "right to define one's own concept of existence" than the right of individuals to live under their chosen names.

By forcing Plaintiffs to live under legal names which do not conform to their chosen names, the Statute—as enforced by Defendants—prevents Plaintiffs from making choices central to personal dignity and autonomy.

C. Violation of Plaintiffs' Fourteenth Amendment Due Process Rights

The Supreme Court has separately defined another test for determining fundamental rights by reference to "this Nation's history and tradition":

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," *id.,* at 503, 97 S.Ct., at 1938 (plurality opinion); *Snyder v. Massachusetts,* 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut,* 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest. *Flores, supra,* at 302, 113 S.Ct., at 1447; *Collins, supra,* at 125, 112 S.Ct., at 1068; *Cruzan, supra,* at 277–278, 110 S.Ct., at 2850–2851. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decisionmaking," *Collins, supra,* at 125, 112 S.Ct., at 1068, that direct and restrain our exposition of the Due Process Clause.

See Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997).

One's right to her own name is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Id.* As the District Court noted, "a 'name pronounced is the recognition of the individual to whom it belongs.'"

Op. at 2 (quoting Henry David Thoreau, *A Week on the Concord and Merrimack Rivers* 170 (2010)), App. A004.

At common law, "every person [was] free not only to assume any surname he or she pleases, but also to change it at any time." *Thomas*, 427 N.E.2d at 1010. Indeed, at common law "an individual may lawfully change his name without resort to any legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth." *Reinken*, 184 N.E. at 640. The right to common law name changes continues to be recognized by many courts today. *See* Kushner, *supra*, at 325. "[T]he common law right to change one's name is as it sounds: it protects the right to make a legally recognized change." *Id.* at 327. "Only a few states have explicitly abrogated the common law right." *Id.*, at 326. In this case, Plaintiffs Keisha, Shamika, Heaven, Eisha, and Reyna adopted new names at common law before Illinois amended the Statute to abrogate this common law right. The Statute thus, in effect, precludes their previously held right, rooted in history and tradition, by excluding their ability to secure a legally effective statutory name change giving effect to their common law name changes by prohibiting them from making use of the Statute's petition process. The effect is a deprivation without due process of Plaintiffs' common law rights to have and use the names they had already assumed.

III. Procedural History

Plaintiffs filed their Complaint for Declaratory and Injunctive Relief [ECF No. 1] ("Compl.") on May 1, 2019, seeking redress under Section 1983 for violations

of their First and Fourteenth Amendment rights resulting from Defendants' enforcement of the onerous disqualifying provisions of the Statute as applied to Plaintiffs. Defendants moved to dismiss the Complaint on July 15, 2019. [ECF Nos. 22-23, 25-26.] Defendants' Motions to Dismiss did not dispute the validity of Plaintiffs' constitutional claims. *Id.* Rather, Defendants argued that Plaintiffs should be left without redress for their constitutional injuries because Plaintiffs lack standing to sue Defendants or Defendants enjoy immunity from suit. *Id.* Plaintiffs filed their Combined Response to Defendants' Motions to Dismiss [ECF No. 31] on August 29, 2019, and Defendants filed their Replies [ECF Nos. 36, 37] on September 26, 2019. Plaintiffs filed Notices of Supplemental Authority in Opposition to Defendants' Motion to Dismiss [ECF Nos. 52, 62] on June 30, 2021 and December 17, 2021.

The District Court held oral argument on December 6, 2021. [ECF No. 61]. The District Court issued its Opinion and Judgment on March 31, 2022, dismissing Plaintiffs' Complaint, in its entirety, without prejudice, for lack of jurisdiction. Plaintiffs timely filed a Notice of Appeal [ECF No. 66] on April 28, 2022.

SUMMARY OF ARGUMENT

Plaintiffs seek federal judicial review and redress of Defendants' deprivations of Plaintiffs' First and Fourteenth Amendment rights caused by Defendants' enforcement of the Statute's disqualifying provisions. The District Court's Opinion denies Plaintiffs such review and redress, not on the merits of their claims, which have yet to be contested, but based on misapplied jurisdictional precedent. The real-world implication of the District Court's ruling is to deprive federal courts of authority to decide weighty and important federal constitutional questions in the first instance for any state law that vests its implementation with the state judiciary and clothes administrative or ministerial operations in the vestments of a state judge. Plaintiffs respectfully submit that federal courts are not so easily stripped of their most essential function. For more than 200 years, it has been "emphatically the province and duty of the judicial department to say what the law is," and "the very essence of judicial duty" to decide "which of these conflicting rules governs" where "a law be in opposition to the [C]onstitution." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177–78 (1803). The present case presents no sound reason to deviate from this core judicial role, and Plaintiffs respectfully submit the District Court erred in so holding for three reasons.

First, though the Statute at issue here is implemented by the state judiciary, its operation is administrative and ministerial—particularly as applied to Plaintiffs. Federal courts have jurisdiction under *Ex parte Young*, 209 U.S. 123 (1908), to grant injunctive and declaratory relief against state officials connected with the enforcement of an unconstitutional state statute—including state judges acting

outside of their judicial capacity. The State Judges named here are not performing a judicial function. The disqualifying provisions preventing Plaintiffs from changing their names allow for no judicial discretion. A state judge denying a name change petition under the Statute due to an applicant's prior conviction has no more leeway than a clerk, recorder, bookkeeper, or any other executive functionary carrying out a purely ministerial role.

Indeed, nothing about the statutory name change process, or the statutory disqualification of individuals based on prior convictions, is rooted in the traditional or historic function of the state judiciary. Name change petitions and the delegation of the function to grant or deny such petitions to state courts is an innovation of just the past thirty years. The two disqualifying provisions at issue in this appeal are of even more recent vintage. Until 2010, persons were free to change their names without resort to legal proceedings. There can be little question that, if the Statute had assigned the role of granting or denying petitions to a clerk in the Illinois Secretary of State's office—with no other changes to the law—federal courts could readily hear and decide the present case as a justiciable controversy. It is an aberrant consequence that federal courts could be deprived of judicial review of federal constitutional questions through the happenstance that a state judge, rather than a state clerk, must deny the petition when a petitioner cannot check the right boxes.

Because the State Judges are acting in an administrative rather than a judicial capacity with respect to the Statute, and especially so with respect to the

application of the disqualifying provisions at issue here, neither judicial immunity nor principles of comity bar suit against the State Judges. Likewise, the State Judges stand in an adversarial posture to Plaintiffs in their administration of the Statute, giving rise to a justiciable controversy. The problem here is not one of judicial error correctable through the appellate process, but of the unconstitutional consequences arising when state judges carry out the enforcement of their ministerial duties under the Statute. Accordingly, there is federal jurisdiction over a live case or controversy. Neither *In re Justices of the Supreme Court of Puerto Rico*, 695 F.2d 17, 21 (1st Cir. 1982) ("*Justices of Puerto Rico*"), nor *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 531–32 (2021), is contrary to this conclusion, as the State Judges here are not acting in a neutral adjudicatory role.

Second, the State's Attorney also has an important role in enforcing the Statute, sufficient to confer Article III standing and to support entry of injunctive and declaratory relief. The District Court misconstrued this Court's ruling in *Doe* to create what amounts to a sole causation rule for Article III standing, where a plaintiff only has standing to sue a state official under circumstances where the official's actions are the sole necessary cause of the constitutional deprivation in every case and where granting the injunctive or declaratory relief requested would thus necessarily afford complete redress for the constitutional violation. Following that logic, the District Court held Plaintiffs lack standing to sue the State's Attorney because she is not the last person responsible for granting or denying

name change petitions and has discretion whether to object to a given petition, and thus entry of injunctive relief against her would yield incomplete relief.

But that is not what *Doe* and *Ex parte Young* require; there need only be "some connection" between the official sued and the enforcement of the unconstitutional statute. *Doe*, 883 F.3d at 975 (quoting *Ex parte Young*, 209 U.S. at 157). A State's Attorney with the express statutory power to initiate an update to Plaintiffs' criminal history transcripts and to object to their petitions is intimately connected to the enforcement of the Statute and to the specific disqualifiers giving rise to Plaintiffs' constitutional deprivations.

It also cannot be assumed that injunctive and declaratory relief against the State's Attorney alone would necessarily fall short of complete redress. The test of Article III standing is *likelihood* of redress, not certainty. Even if the State Judges were themselves ultimately excluded from a judgment granting declaratory and injunctive relief—though Plaintiffs vigorously contend they should be subject to such relief—a federal court's declaration of Plaintiffs' constitutional right to a name change and injunction barring the State's Attorney from objecting to their petitions would still constitute compelling precedent the State Judges could not readily ignore in any properly constituted judicial proceeding in which they act as the true neutral adjudicators of Plaintiffs' ensuing petitions. Put another way, if the State Judges *are* neutral adjudicators under the Statute, then entry of relief against the State's Attorney would be sufficient to provide a likelihood of redress because such a ruling would also supply compelling federal precedent to the State Judges in

adjudicating Plaintiffs' name change petitions. Conversely, if the State Judges *are not* neutral adjudicators under the Statute, then they are proper Defendants for the reasons stated above, and the federal courts may enter direct relief against them.

Third, the District Court erred in ceding the federal judiciary's essential duty to decide constitutional controversies where a state law and the U.S. Constitution are in conflict. This Court should jealously guard the province of the federal courts to say what the law is, particularly where federal constitutional violations are concerned. No jurisdictional or prudential limitations upon the exercise of this essential federal judicial role are implicated here. There is no basis in precedent to deny Plaintiffs a federal forum to decide a federal constitutional question, and good reason to keep the federal courthouse doors open to such weighty and important substantive issues.

ARGUMENT

I. Standard of Review

This Court reviews the District Court's dismissal of the Complaint for lack of subject matter jurisdiction *de novo*. *Silha v. Act, Inc.*, 807 F.3d 169, 172 (7th Cir. 2015). "In evaluating a challenge to subject matter jurisdiction, the court must first determine whether a factual or facial challenge has been raised." *Id.* at 173 (citing *Apex Dig., Inc. v. Sears, Roebuck & Co.,* 572 F.3d 440, 443–44 (7th Cir. 2009)). A facial challenge is any challenge where defendants argue, as here, "that the plaintiff has not sufficiently '*alleged* a basis of subject matter jurisdiction.'" *Id.* (quoting *Apex Dig.*, 572 F.3d at 443 (emphasis in original)). "In reviewing a facial challenge, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff." *Id.* (citing *Apex Dig.*, 572 F.3d at 443–44).

An appeal of a "dismissal for lack of Article III standing" is also evaluated *de novo*. *Nowlin v. Pritzker*, 34 F.4th 629, 632 (7th Cir. 2022) (citing *Spuhler v. State Collection Serv., Inc.*, 983 F.3d 282, 285 (7th Cir. 2020)). "As the party invoking federal jurisdiction, a plaintiff bears the burden of establishing the elements of Article III standing." *Silha*, 807 F.3d at 173. To establish Article III standing:

> a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Id. (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Services (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

"[W]hen evaluating a facial challenge to subject matter jurisdiction under Rule 12(b)(1), a court should use *Twombly–Iqbal's* 'plausibility' requirement, which is the same standard used to evaluate facial challenges to claims under Rule 12(b)(6)." *Silha*, 807 F.3d at 174. This Court has been very clear that the standard for pleading standing is not higher than the standard for determining whether a complaint adequately states a claim. Indeed, "courts apply the same analysis used to review whether a complaint adequately states a claim." *Id.* at 173. When determining whether Plaintiffs have adequately pled standing, "courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Id.* (quoting *Warth v. Seldin,* 422 U.S. 490, 501 (1975)); *see also Apex Dig.,* 572 F.3d at 443; *In re Schering Plough Corp. Intron/Temodar Consumer Class Action,* 678 F.3d 235, 243 (3rd Cir. 2012).

II. The District Court Erred in Dismissing Plaintiffs' Claims Against the State Judges

Federal courts have jurisdiction under *Ex parte Young* to grant injunctive and declaratory relief against state officials connected with the enforcement of an unconstitutional state statute. *See* 209 U.S. 123 (1908). State judges acting outside of their judicial capacity are consequently not exempt from federal jurisdiction under any jurisdictional or prudential rule. The State Judges named here are not performing a judicial function. A state judge denying a name change petition under the Statute due to an applicant's prior conviction has no more discretion than a

clerk or functionary with the Illinois Secretary of State or Illinois Department of Health. They act as administrators, not judges. State legislators should not be permitted to divest the federal courts of the ability to review federal constitutional questions simply by assigning the administration of a statute to a state judge, rather than a state clerk.

Because the State Judges are acting in an administrative rather than a judicial capacity with respect to the Statute, and especially so with respect to the application of the disqualifying provisions at issue here, neither judicial immunity nor principles of comity bar suit against the State Judges. Likewise, the State Judges stand in an adversarial posture to Plaintiffs in their administration of the Statute, giving rise to a justiciable controversy. The District Court relied in error on inapposite judicial immunity and justiciability precedent. Where, as here, state judges carry out administrative and ministerial functions unrooted in the traditional or historic role of the state judiciary, their actions are properly subject to constitutional scrutiny by federal courts carrying out their judicial review function.

A. Federal Courts Have Jurisdiction under *Ex Parte Young* to Grant Injunctive and Declaratory Relief Against State Officials to Prevent Federal Constitutional Violations

The Eleventh Amendment to the Constitution limits the "Judicial Power of the United States" and provides that it "shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Supreme Court has held that the Eleventh Amendment stands:

> not so much for what it says, but for the presupposition which it confirms. That presupposition ... has two parts: first, that each State is a sovereign entity in our federal system; and second, that it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.

See Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 54 (1996).

The Supreme Court has, however, identified a number of exceptions to the Eleventh Amendment's bar on suits against the state—particularly where a state is violating an individual's constitutional rights. *Alden v. Maine*, 527 U.S. 706, 754-55 (1999) ("The constitutional privilege of a State to assert its sovereign immunity ... does not confer upon the State a concomitant right to disregard the Constitution or valid federal law."). Recognizing the need for a mechanism to stop ongoing constitutional violations, the Supreme Court recognized an exception to the doctrine of sovereign immunity for state officials who enforce statutes that are contrary to federal law. *See In re Nelson v. La Crosse Cnty. Dist. Att'y*, 301 F.3d 820, 836 (7th Cir. 2002) (citing *Alden*, 527 U.S. at 757).

Specifically, in *Ex parte Young* the Court found that state officials can be sued to enjoin the application of an unconstitutional state law "if by virtue of his office he has some connection with the enforcement of the act." 209 U.S. at 124. The Eleventh Amendment "does not bar suits against state officials if they are sued in their official capacities for 'prospective equitable relief' to remedy 'ongoing violations of federal law.'" *Mutter v. Rodriguez*, 700 F. App'x 528, 530 (7th Cir. 2017) (quoting *Peirick v. Ind. Univ.-Purdue Univ. Indianapolis Athletics Dep't*, 510 F.3d 681, 695 (7th Cir. 2007); *Ex parte Young*, 209 U.S. at 159–60)).

Accordingly, as this Court recognized in *Doe*, a plaintiff can avoid Eleventh Amendment immunity "by naming a state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement." 883 F.3d at 975 (quoting *Ex parte Young*, 209 U.S. at 157). The Court further recognized that the requirements of *Ex parte Young* "overlap significantly with the last two standing requirements—causation and redressability." *Id.* The Court found, however, that a mere "general duty" to enforce state law or to "support the constitutionality of a challenged state statute" is insufficient to give rise to standing; the state defendant must have "played some role in enforcing" and "not just defending" the "complained-of statute." *Id.* at 976–77. That test is met here.

B. State Courts Are Not Immunized from Federal Scrutiny When, as Here, They Act in an Administrative Rather Than Judicial Capacity

Though state judges present additional questions in determining whether they are proper defendants for injunctive and declaratory relief under *Ex parte Young*, they are not inoculated against all litigation solely by virtue of their office. Rather, the law draws a line between state judges acting in their *judicial* capacity, for which they generally cannot be made defendants, and state judges acting in an *administrative* or *ministerial* capacity, for which they are properly subject to federal jurisdiction under *Ex parte Young*. Whether the specific barrier to jurisdiction under consideration is judicial immunity, comity, justiciability, or Section 1983's statutory bar on injunctive relief against a judicial officer, in each instance precedent distinguishes between state judges acting in their judicial capacity and

state judges acting in a non-judicial capacity. Where, as in this case, state judges are acting in a non-judicial capacity, they are no different from any other state official and are properly named defendants.

Beginning with judicial immunity, this Court has long recognized that judicial immunity only extends to acts "performed by the judge 'in the judge's judicial capacity,'" that is, "judicial acts," not "ministerial or administrative acts." *Dawson v. Newman*, 419 F.3d 656, 661 (7th Cir. 2005) (quoting *Dellenbach v. Letsinger*, 889 F.2d 755, 758 (7th Cir. 1989); *Lowe v. Lestinger*, 772 F.2d 308, 311 (7th Cir. 1985)); *see also* Op. at 11, App. A013 (citing *Dawson*, 419 F.3d at 661 (quoting *Dellenbach*, 889 F.2d at 758)). In distinguishing the two types of acts, the Supreme Court has differentiated between "paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court" and "acts that simply happen to have been done by judges." *Forrester v. White*, 484 U.S. 219, 227 (1988). In *Forrester*, the Supreme Court found that judicial immunity, like other immunities, "is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches," and identified "an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform." *Id.* (emphasis in original). *See also Dellenbach*, 889 F.2d at 759 (citing *Forrester* and concluding that "every inquiry in the common law immunity context must be a *functional* one" (emphasis in original)).

Here, as described below, all relevant factors point to the State Judges' function being administrative and ministerial rather than judicial under the Statute: they do not exercise discretion or judgment, but must invariably deny all petitions to which the disqualifying provisions apply, no different from any state executive functionary assigned the same role; they are not performing a traditional judicial role in a contested proceeding but a recent statutorily-assigned administrative role; and petitioners deal with the judge as a statutory administrator, not in a true judicial capacity. *See* § II.C, *infra*. Accordingly, judicial immunity is inapplicable here.

The District Court also referenced "comity," citing the abstention doctrine under *Younger v. Harris*, 401 U.S. 37, 44 (1971). Op. at 16, App. A018. Abstention on grounds of comity or otherwise, however, "is the exception, not the rule." *SKS & Associates, Inc. v. Dart*, 619 F.3d 674, 677 (7th Cir. 2010) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976)). *Younger* abstention "generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." *Freeats.com v. Indiana*, 502 F.3d 590, 594 (7th Cir. 2007). It "is appropriate only when there is an action in state court against the federal plaintiff and the state is seeking to enforce the contested law in that proceeding." *Forty One News v. Cnty. of Lake*, 491 F.3d 662, 665 (7th Cir. 2007). The abstention doctrine is designed to prevent a party subject to proceedings in state court from "scurry[ing] to federal court" to enjoin the state proceeding. *Nader v. Keith*, 385 F.3d 729, 732 (7th

Cir. 2004). Moreover, when the state proceeding is civil, federal courts need only "abstain from enjoining ongoing that proceedings that are (1) judicial in nature, (2) implicate important state interests, and (3) offer an adequate opportunity for review of constitutional claims[.]" *Forty One News*, 491 F.3d at 666 (quoting *Majors v. Engelbrecht*, 149 F.3d 709, 711 (7th Cir. 1998)).

Here, there is no ongoing state court proceeding to enjoin, state name change proceedings are ministerial and not judicial in nature, and Plaintiffs have no adequate opportunity for review of their constitutional claims as part of these form proceedings. *See* § II.C, *infra*. Thus, principles of comity and *Younger* abstention have no application here.

With respect to justiciability, the District Court found that a state judge acting in a judicial capacity cannot create a justiciable case or controversy, because the remedy for legal error by a court acting in its adjudicatory capacity is "the appellate process," not a separate lawsuit against the judge as adjudicator. Op. at 12, App. A014 (citing *Dawson*, 419 F.3d at 660–61; *Lowe*, 772 F.2d at 311). The *Dawson* and *Lowe* cases on which the District Court relies, however, are judicial immunity cases, not justiciability cases, and are subject to the same limitations. *Dawson* acknowledges that the proper remedy for an error committed "in the judge's *judicial capacity*" is the "appellate process *Dawson*, 419 F.3d at 660 (emphasis in original); *see also Lowe*, 772 F.2d at 311 (excluding "ministerial or administrative acts"). The "appellate process" is of no benefit here, where the problem is not judicial error in a neutral adjudication of Plaintiffs' name change petitions, but

faithful ministerial application of statutory exclusions that unconstitutionally disqualify Plaintiffs from seeking name changes at all. There is no judicial "error" to correct; the defect is one of constitutional dimension, and it is one ill-suited to review by a state judge sitting in a ministerial capacity and evaluating only whether the correct boxes are checked on a pre-printed form. Indeed, as the Statute makes clear, Plaintiffs "*may not file* a petition for a name change." 735 ILCS 5/21-101(b) (emphasis added).

The test of ripeness and justiciability where declaratory relief is sought is whether "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Amling v. Harrow Indus.*, 943 F.3d 373, 377 (7th Cir. 2019) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *Maryland Cas. Co. v. Pac. Oil Coal Co.*, 312 U.S. 270, 273 (1941)). "There must be a 'definite and concrete,' 'real and substantial' dispute that 'touches the legal relations of parties having adverse legal interests' and 'admits of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" *Id.*

Plaintiffs' claims meet this test. They allege a definite and concrete impediment to securing a name change under the Statute, which is real and substantial as they are presently disqualified from petitioning for a name change. The dispute touches the legal relations of Plaintiffs and the State Judges, and the

parties have adverse legal interests as the State Judges must administer the Statute and have no neutral adjudicatory role to play but rather are statutorily constrained to ministerially deny Plaintiffs' petitions. A conclusive decree of Plaintiffs' right to a name change and of the unconstitutionality of the Statute's disqualifying provisions as applied to Plaintiffs would afford specific relief to Plaintiffs curing the constitutional deprivations.

The District Court also noted that Section 1983 bars injunctive relief against a judicial officer. Op. at 12, App. A014 (citing *Smith v. City of Hammond*, 388 F.3d 304, 307 (7th Cir. 2004)). That restriction, however, applies only to "an act or omission taken in such officer's judicial capacity[.]" 42 U.S.C. § 1983. Thus, it again hinges on the erroneous determination that the State Judges acted in a judicial role. Moreover, the Section 1983 exception still allows for declaratory relief even against a judicial officer acting in a judicial capacity. *Id.*; *see also Smith*, 388 F.3d at 306. Accordingly, Section 1983 does not bar Plaintiffs' claims.

C. The Illinois Courts Are Acting in an Administrative Role, Not a Judicial Role, When They Deny Name Changes to Convicted Felons and Other Offenders Under the Statute

The District Court erred in finding that the State Judges act in a judicial capacity when they deny name change petitions brought by statutorily disqualified petitioners. *See* Op. at 14, App. A016. The State Judges do not act in a judicial capacity when they deny a name change petition under the Statute's disqualification provisions, but rather stand in the same shoes of any other state administrator or functionary in carrying out a non-discretionary ministerial role. This Court has identified three factors that "generally govern the determination of

whether a particular act or omission is entitled to judicial immunity: '(1) whether the act or decision involves the exercise of discretion or judgment, or is rather a ministerial act which might as well have been committed to a private person as to a judge; (2) whether the act is normally performed by a judge; and (3) the expectations of the parties, i.e., whether the parties dealt with the judge as judge.'" *Dawson*, 419 F.3d at 661 (quoting *Lowe*, 772 F.2d at 312).

All three factors weigh heavily against the District Court's finding that the State Judges act in a judicial capacity with respect to the statute. First, name changes do not entail an exercise of discretion, particularly with respect to the denial of disqualified applicants; they are, generally, uncontested proceedings where the State Judges simply look over the form submitted and grant or deny the name change based upon whether the correct boxes have been checked. Second, both under the common law and for 90 years after the process was first codified in Illinois, name changes entailed no judicial act, but occurred without resort to legal proceedings. It can hardly be said that, in the history of Illinois, name changes were normally performed by a judge. Third, in the context of statutory name changes, petitioners are not "parties" who come before a judge with pleadings and briefs in a contested proceeding to receive a neutral adjudication, but "applicants" who present completed forms similar to those used by a Secretary of State or other administrative agency. Name change applicants, then, are not dealing with the judge as a judge, but as they would any other administrative agency in state government.

1. The Denial of Name Changes to Convicted Felons and Other Offenders Is Not Left to Judicial Discretion Under the Illinois Name Change Statute

The District Court held, without analysis, that "processing a name-change petition requires discretion and judgment." Op. at 14, App. A016. An examination of the Statute and the well-pled allegations of the Complaint demonstrates the opposite is true; the State Judges have no discretion to grant a name change to any of the Plaintiffs in this case. The Statute provides that "any person convicted of a felony in this State or any other state who has not been pardoned *may not* file a petition for a name change until 10 years have passed since completion and discharge from his or her sentence." 735 ILCS 5/21-101(b) (emphasis added). Individuals convicted of certain other felonies are, likewise, never "permitted to file a petition for a name change in the courts of Illinois." *Id.*

Illinois courts well understand the non-discretionary nature of this restriction, as reflected on the "How to Change Your Name (for an Adult)" form available online, which states:

> You **CAN NOT** change your name if you have been convicted of:
>
> - A felony and have not been pardoned or you finished your sentence less than 10 years ago;
>
> - . . .
>
> - Identity theft or aggravated identity theft and have not been pardoned; OR
>
> - Felony or misdemeanor: criminal sexual abuse when the victim at the time is under 18 years of age, sexual exploitation of a child, indecent solicitation of a child, or indecent solicitation of an adult, or any other offense that requires you to register as a sex offender, and have not been pardoned.

See How to Change Your Name (For an Adult), ILLINOIS COURTS (last accessed July 5, 2022), https://www.illinoiscourts.gov/Resources/b035f24b-78d9-4bfc-ab2d-56e0eda8a612/ Name_Change_Adult_How_to.pdf (emphasis in original).

The form "Order for Name Change (Adult)" likewise makes clear that the State Judges have no discretion in granting or denying Plaintiffs' name changes requests. *See Order for Name Change (Adult)*, ILLINOIS COURTS (last accessed July 5, 2022), https://www.illinoiscourts.gov/Resources/212650fc-0f8a-409b-b635-2a95ca332768/Name_Change_Adult_Order.pdf. The State Judges are required to simply check a box indicating that "[t]he statements made in the *Request for Name Change* **do not** meet the statutory requirements." *Id.* (emphasis in original).

Finally, the form for a Request for Name Change (Adult), similarly makes clear that the State Judges "cannot give [Plaintiffs] a name change." *See Request for Name Change (Adult)*, ILLINOIS COURTS (last accessed July 5, 2022), https://www.illinoiscourts.gov/Resources/d324e1a6-89ec-4f7c-a7dd-37c4d6aed72e/ Name_Change_Adult_Petition.pdf (emphasis in original). On each of these forms, the Illinois Courts have already supplied the relevant emphasis. The State Judges have no discretion. The State Judges "cannot give [Plaintiffs] a name change" because the State Judges are required to find that "[t]he statements made in the *Request for Name Change* **do not** meet the statutory requirements." *See Request for Name Change (Adult)* (emphasis in original); *Order for Name Change (Adult)* (emphasis supplied). For that reason, Plaintiffs "**CAN NOT** change [their] name[s]." *See How to Change Your Name (For an Adult)* (emphasis in original).

The State Judges' function does not "involve[] the exercise of discretion or judgment," but rather "is a ministerial act which might as well have been committed to a private person as to a judge." *Kowalski v. Boliker*, 893 F.3d 987, 998 (7th Cir. 2018) (quoting *Dawson*, 419 F.3d at 661); *see also Snyder v. Nolen*, 380 F.3d 279, 288–89 (7th Cir. 2004) (finding that maintaining official record was "purely ministerial" and involved "none of the discretion" of judicial role). The forms that the Illinois Courts are required to use make clear that the State Judges do not act as judges in denying disqualified name change petitions, but as any other state official might act. *Kowalski*, 893 F.3d at 998; *see also Hoard v. Reddy*, No. 97 C 2372, 1998 U.S. Dist. LEXIS 9395, at *10 (N.D. Ill. June 12, 1998) (holding that "[c]lerical processing of a petition for post-conviction relief, while arguably integral to the judicial process, impresses this court as a ministerial function rather than a discretionary one").

Nothing better illustrates that this "is a ministerial act which might as well have been committed to a private person as to a judge" than the fact that the Illinois Department of Health is empowered to change an individual's gender on their birth certificate and the Illinois Secretary of State is empowered to change an individual's gender on their driver's license—essentially the same relief Plaintiffs seek here to adopt legal names that match their genders.

For an individual born in Illinois, with an Illinois birth certificate, to change their gender on their birth certificate, they must "submit an Affidavit and Certificate of Correction Request form along with a Declaration of Gender

Transition/Intersex Condition form." *See Gender Reassignment*, ILL. DEP'T OF HEALTH (last accessed July 5, 2022), https://dph.illinois.gov/topics-services/birth-death-other-records/birth-records/gender-reassignment.html. The State of Illinois Affidavit and Certificate of Correction Request form simply requires an applicant to state what they want corrected. *See State of Illinois Affidavit and Certificate of Correction Request*, ILL. DEP'T OF HEALTH (last accessed July 5, 2022), https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/formsoppsaffidavitcertificatecorrectionre.pdf. The Declaration of Gender Transition or Intersex Condition simply requires a health care provider to state that an individual has "undergone treatment that is clinically appropriate for the purpose of gender transition, based on contemporary medical standards" and that "[t]he sex designation on such person's birth record should therefore be changed." *See Declaration of Gender Transition or Intersex Condition by Licensed Health Care Professional*, ILL. DEP'T OF HEALTH (last accessed July 5, 2022), https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/gender-reassignment-2017.pdf. Upon receipt of those forms, the Illinois Department of Health "shall establish a new certificate of birth." 410 ILCS 535/17(1)(d).

Similarly, the Illinois Secretary of State's Office will change the gender appearing on an applicant's driver's license or identification card if that applicant completes and submits a Gender Designation Change Form. *See Driver's License/Commercial Driver's License/State ID Card, Gender Change*, ILL. SEC'Y OF STATE (last accessed July 5, 2022), https://www.ilsos.gov/departments/drivers/

drivers_license/drlicid.html#gender. An applicant is solely required to attest to the fact that "this request for the selected gender designation to appear on my driver's license/ID card is for the purpose of ensuring that my driver's license/ID card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose." *See Gender Designation Change Form*, ILL. SEC'Y OF STATE (last accessed July 5, 2022), https://www.ilsos.gov/publications/pdf_publications/dsd_a329.pdf.

Both the Illinois Department of Health and Illinois Secretary of State interact with transgender individuals and determine whether "[t]he statements made in the [form] do not meet the statutory requirements." *See Request for Name Change (Adult)*. Reviewing the Request for Name Change (Adult) form thus does not "involve[] the exercise of discretion or judgment," but rather "is a ministerial act which might as well have been committed to a private person as to a judge." *Kowalski*, 893 F.3d at 998 (quoting *Dawson*, 419 F.3d at 661).

2. Name Change Petitions Are Not Acts Traditionally Performed by a Judge

Ruling on name changes is not, historically, an act "normally performed by a judge." *Dawson*, 419 F.3d at 661 (quoting *Lowe*, 772 F.2d at 312). At common law—extending back to British common law—there were no statutes governing name changes and people were afforded almost unlimited flexibility in naming themselves. *See* Kushner, *supra*, at 335. A person merely needed to consistently use the new name for a sufficiently long period of time. *Id.* at 325–26. In Illinois, it was

accepted that "at common law a person may assume any name which does not interfere with the rights of others." *Reinken*, 184 N.E. at 640.

The first name change statute in Illinois did not impose restrictions on this common law tradition, but instead came as part of an effort to keep more detailed records of residents once the state began to depend on identity documents for purposes of the selective service and other purposes. *See* David Lyon, *Identifying Citizens: ID Cards as Surveillance* 22–23 (2009). The Illinois Supreme Court acknowledged that "[t]hese statutory provisions are, however, not exclusive, but are merely permissive, and they do not abrogate the common-law right of the individual to change his name without application to the courts." *Reinken*, 184 N.E. at 640.

It was not until 1991—less than 30 years prior to the filing of this action—that Illinois' name change statute began to deviate from the common law tradition. The 1991 amendment to Illinois' name change statute provided for the process of petitioning the circuit court of the petitioner's county of residence. *See* 1991 ILL. HB 2440. Even following the 1991 amendment, the statute "d[id] not abrogate the common-law right of the individual to change his name without application to the courts." *Reinken*, 184 N.E. at 640.

In 1993, the Illinois legislature again amended the name change statute, this time to provide for a "two-year name-change waiting period beginning from the termination of a felony sentence." 1993 Ill. HB 967. Just two years later, in 1995, the Illinois legislature extended the waiting period to create a 10-year bar on name changes following the termination of a felony sentence—and added misdemeanor

sexual offenses to the list of convictions that would trigger that 10-year bar. *See* 1995 Ill. HB 3670. In addition, anyone required to register under the sex offender registration act was barred from petitioning the court for a name change so long as they were required to register under that act. *Id.* Still, the statute "d[id] not abrogate the common-law right of the individual to change his name without application to the courts." *Reinken*, 351 Ill. at 413.

In 2005, the Illinois legislature again amended the name change statute to add a lifetime ban for petitioning for a name change for identity theft, solicitation, any crime requiring sex offender registration, and certain enumerated sex crimes. *See* 2005 ILL. HB 4179. Nevertheless, the statute "d[id] not abrogate the common-law right of the individual to change his name without application to the courts." *Reinken*, 184 N.E. at 640. It was not until 2010, less than 10 years before the filing of this action, that the Illinois legislature enacted 735 ILCS 5/21-105, which provides that "[c]ommon law name changes adopted in this State on or after July 1, 2010 are invalid" and requires that "[a]ll name changes shall be made pursuant to marriage or other legal proceedings." *Id.*

Given that judges were not involved in the name change process in Illinois until 1991—and the common law path to name changes was not abrogated until 2010—it can hardly be said that ruling on name changes is an act traditionally "performed by a judge." *Dawson*, 419 F.3d at 661 (quoting *Lowe*, 772 F.2d at 312). Instead, the fact that the State Judges process the applications for name changes appears to be an artifact of the fact that the first name change statute in Illinois

was passed before the first driver's license statute. *Compare Reinken*, 184 N.E. at 640; *with Year of First State Driver License Law and First Driver Examination*, U.S. DEP'T OF TRANSP., FED. HIGHWAY ADMIN. (last accessed July 5, 2022), https://www.fhwa.dot.gov/ohim/summary95/dl230.pdf.

In Illinois, the Illinois Secretary of State maintains identification records, such as driver's licenses. The Illinois Secretary of State notes that "[a] name change requires you to apply for a corrected driver license/state ID." *See Driver's License/Commercial Driver's License/State ID Card, Name Change*, ILL. SEC'Y OF STATE (last accessed July 5, 2022), https://www.ilsos.gov/departments/drivers/drivers_license/drlicid.html#nameChange. Given that a name change issued by the State Judges only begins to be recognized by other governmental agencies once a "corrected driver license/state ID" is issued, the Secretary of State would be a more natural fit for processing name changes. Regardless, there is no support for the assertion that name changes are "traditionally" performed by a judge.

3. Name Change Applicants Do Not Deal with State Judges as Judges

Name change applicants do not deal with the State Judges as judges. *See Dawson*, 419 F.3d at 661. Instead, applicants present a form application and appear for a proceeding which often lasts less than a minute or two. Generally, there is no counterparty arguing an alternative understanding of facts or law. There are no pleadings and there is no briefing of issues. There is no discovery or fact-finding. Ultimately, the building where the proceeding occurs and the clothes the official is wearing are the only distinguishing features between a name change proceeding in

front of the State Judges and processing a Gender Designation Form in front of the Secretary of State.

The question of whether the "parties dealt with the judge as judge" requires delving into the traditional role of a judge. *Dawson*, 419 F.3d at 661. In *Whole Woman's Health*, 142 S. Ct. at 532, discussed *infra*, the Supreme Court clarified that Judge Austin Jackson was acting in a traditional judicial role and "not enforc[ing] state laws as executive officials might." *Id.* This traditional judicial role involved "work[ing] to resolve disputes between parties" or "resolve controversies about a law's meaning or its conformance to the Federal and State Constitutions." *Id.* This Court has determined that a judge is not acting in a judicial capacity where "the judge did not utilize his education, training and experience in the law" in acting. *McMillian v. Svetanoff*, 793 F.2d 149, 154–55 (7th Cir. 1986).

Similarly, in *Justices of Puerto Rico*, 695 F.2d at 21, discussed *infra*, the First Circuit determined that judges "sit as adjudicators, finding facts and determining law in a neutral and impartial judicial fashion." *Id.* The Sixth Circuit has found that "any time an action taken by a judge is not an adjudication between parties, it is less likely that the act is a judicial one" and "simply because rule making and administrative authority [have] been delegated to the judiciary does not mean that acts pursuant to that authority are judicial…rather it was delegated administrative authority." *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989).

In this case, the State Judges are administering the Statute precisely as an executive official might. The State Judges are not acting to "resolve controversies

about the law's meaning" nor using their "education, training and experience in law. *Whole Woman's Health*, 142 S. Ct. at 532; *McMillian*, 793 F.2d at 154–55. The State Judges are not required to "find[] facts and determine[e] law in a neutral and impartial judicial fashion," *Justices of Puerto Rico*, 695 F.2d at 21, as the name change petition is not an adversarial proceeding between parties—they are simply presented with a name change request and have to determine whether the statements made in the *Request for Name Change* meet the statutory requirements. *See Order for Name Change (Adult)*. The fact that it is not an adversarial proceeding means "it is less likely that the act" of issuing the form *Order for Name Change* "is a judicial one." *Morrison*, 877 F.2d at 466.

D. The District Court Erred in Applying *In re Puerto Rico* and *Whole Women's Health* to Exclude This Case from the Jurisdictional Reach of the Federal Courts

The District Court mistakenly concluded that, were it to hold that the State Judges' actions amount to a justiciable controversy, its ruling would be tantamount to a declaration that "every decision of a judge to apply a statute in ruling against a party could potentially give rise to a case or controversy between the judge and the party." Op. at 13, App. A015. It specifically relied on *Justices of Puerto Rico*, 695 F.2d at 21, and *Whole Woman's Health*, 142 S. Ct. at 531–32. Op. at 13–15, App. A015–17. Both cases are inapposite, as both involved efforts to enjoin state court judges from performing a traditional neutral adjudicatory function under state law, not, as here, an effort to secure declaratory and injunctive relief against state judges performing a non-traditional administrative role. Allowing Plaintiffs' suit to proceed against the State Judges, therefore, would mean only that the

assignment of a ministerial function to a state judge will not shield an unconstitutional state law from federal judicial review.

In *Justices of Puerto Rico*, plaintiffs sued, *inter alia*, the Puerto Rico Bar Association (the "Colegio"), the Bar Association Foundation, and the Justices of the Supreme Court of Puerto Rico under Section 1983, challenging the constitutionality of a bar association membership requirement to practice in Puerto Rico. *See* 695 F.2d at 18–19. The First Circuit held that, because the "only function" of the Justices with respect to the challenged statutes "is to act as neutral adjudicators, rather than as administrators, enforcers, or advocates," there was no "case or controversy" between plaintiffs and the Justices. *Id.* at 21. Notably, under the statutory scheme at issue, a complaint is commenced by the Colegio or the Secretary of Justice, and the Justices only "sit as adjudicators, finding facts and determining law in a neutral and impartial judicial fashion." *Id.* Thus, the Justices were named in their judicial capacity as neutral adjudicators over a traditional adversary proceeding in which they act as fact-finders and legal arbiters. The First Circuit observed that, in this context, "one seeking to enjoin the enforcement of a statute on constitutional grounds ordinarily sues the enforcement official authorized to bring suit under the statute," and "does not sue the court or judges who are supposed to adjudicate the merits of the suit that the enforcement official may bring." *Id.* at 21–22. The First Circuit also distinguished cases in which, as in this case, judicial defendants "act[] in a nonadjudicatory (enforcement) capacity," or

where "it is arguably necessary to enjoin a judge to ensure full relief to the parties." *Id.* at 23.[2]

Likewise, in *Whole Women's Health*, plaintiffs brought a pre-enforcement challenge seeking to enjoin, *inter alia*, a state court judge from taking any action to enforce a Texas law subjecting physicians to private civil claims if they violated a statutory prohibition on knowingly performing or inducing an abortion for a pregnant woman if they physician detected a fetal heartbeat. *See* 142 S. Ct. at 530. The Supreme Court held that *Ex parte Young* would not permit the issuance of an "*ex ante* injunction" against "all Texas state-court judges and clerks" preventing them from "hearing cases" where their role with respect to the state statute at issue was not to "enforce state laws as executive officials might," but instead "to resolve disputes between parties" after they are filed. 142 S. Ct. at 532. The Court found no case or controversy to exist "between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." *Id.* (quoting *Pulliam v. Allen*, 466 U.S. 522, 538, n. 18 (1984)).

In both *Justices of Puerto Rico* and *Whole Woman's Health*, therefore, the named judicial defendants were sued in a traditional neutral adjudicatory role presiding over cases between two other sets of adverse parties (a state bar association and bar member in *Justices of Puerto Rico*, a private citizen and a physician in *Whole Woman's Health*). Here, by contrast, the State Judges' role in

[2] The First Circuit did note a preference for declaratory relief in such cases, as "it is ordinarily presumed that judges will comply with a declaration of a statute's unconstitutionality without further compulsion." *Id.* (citations omitted).

administering the Statute is decidedly different. They do not sit as traditional neutral arbiters in a controversy between two adverse parties, but rather perform their statutorily-assigned ministerial function of reviewing a form petition, assessing whether the correct boxes are checked, and, if they are not, acting without discretion to deny the petition. No other party stands between Plaintiffs and their name changes but the State Judges—unless the State's Attorney objects—and the State Judge can render no outcome to disqualified petitioners like Plaintiffs other than denial. Allowing Plaintiffs' suit to proceed against the State Judges under these circumstances does not open the floodgates to litigation against judges as neutral adjudicators; it simply reaffirms that a state judge acting as a ministerial state law functionary is subject to the same legal remedies as any other state official performing such non-judicial roles.

III. The District Court Erred in Dismissing Plaintiffs' Claims Against the State's Attorney

The District Court likewise erred in holding that Plaintiffs pled an insufficient causal connection between the State's Attorney and enforcement of the Statute to satisfy standing under *Doe*, 883 F.3d at 975, and *Ex parte Young*, 209 U.S. at 157. *See* Op. at 10, App. A012. Viewing Plaintiffs' underlying Complaint in the light most favorable to them, as the District Court was required to do, *see Silha*, 807 F.3d at 173, it is clear Plaintiffs adequately alleged standing by pleading concrete injuries traceable to the State's Attorney's intimate role in enforcing the Statute's bar on name changes for any individuals with limiting or disqualifying criminal histories under the Statute.

Plaintiffs properly sued the State's Attorney, in her official capacity, as the only state official required to receive a copy of every name change petition and only state official empowered to raise objections to petitions. Aside from the State Judges, the State's Attorney is also the only state official with authority to initiate updates to criminal history transcripts under the Statute. *See generally* 735 ILCS 5/21-102.5.

Plaintiffs met their low burden of proving both standing and a specific duty excepting the State's Attorney from Eleventh Amendment immunity by "naming a state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement.'" *Doe*, 883 F.3d. at 975 (quoting *Ex parte Young*, 209 U.S. at 157). Moreover, Plaintiffs adequately alleged injuries in fact, fairly traceable to the State's Attorney's challenged conduct under the Statute, and likely to be redressed by an order enjoining the State's Attorney from complying with her prescribed role under the Statute. *See Silha*, 807 F.3d at 173 (quoting *Friends of the Earth, Inc.*, 528 U.S. at 180–81) (citing *Lujan v. Defenders. of Wildlife*, 504 U.S. 555, 560–61 (1992))); *see also Doe*, 883 F.3d at 975. Plaintiffs adequately pled standing against the State's Attorney pursuant to the Statute and the District Court erred in holding otherwise.

A. The State's Attorney Has a Clear and Prescribed Statutory Role in Enforcing the Illinois Name Change Statute

The State's Attorney has a clear, prescribed, and important role in enforcing the Statute, more than sufficient to confer standing on Plaintiffs to seek a declaration and to enjoin the State's Attorney from acting in that role. The District

Court, in dismissing Plaintiffs' claims, downplayed the State's Attorney's role by claiming that "at most, the State's Attorney can ask that the petition be denied," Op. at 9 (emphasis removed), App. A011, but the statutory text makes clear that her role is significantly more involved than that.

First, the Statute explicitly mandates that the State's Attorney shall be served with a copy of every name change petition filed under the Statute and grants the State's Attorney the sole and exclusive power to file an objection to any petition within thirty (30) days of service. 735 ILCS 5/21-102.5. Implicit in this mandate is the understanding that the State's Attorney is meant to review every petition filed and determine what action might be required, not simply collect and store copies of petitions.

Second, as part of the petition, every name change petitioner is required to provide a verified statement, under oath, stating whether the petitioner has been adjudicated or convicted of a felony or misdemeanor offense, or has had an arrest for which a charge has not been filed or a pending charge or a felony or misdemeanor offense. 735 ILCS 5/21-102(a). Then, in any situation where a petitioner's statement indicates an adjudication, conviction, or arrest, the State's Attorney has the exclusive statutory authority to "request the court . . . to initiate an update [of such petitioner's] criminal history transcript with the Department of State Police." 735 ILCS 5/21-102(b). The outcome of that transcript update is determinative of whether an applicant's request will be granted. The Statute's Ten-Year Prohibition and Lifetime Prohibition are directly at the heart of the State's Attorney's

enforcement role—and serve as the basis of Plaintiffs' constitutional challenges in their lawsuit below.

The clear language of the Statute therefore demonstrates that the State's Attorney's enforcement role is directly tied to ensuring that petitioners with disqualifying criminal histories, like Plaintiffs, are prohibited from changing their names under the Statute, and that the State's Attorney is provided the opportunity to object on that very basis. This direct causal connection provides the standing Plaintiffs need to continue their lawsuit against the State's Attorney.

B. There Is a Causal Connection Between the State's Attorney's Role in Enforcing the Illinois Name Change Statute and Plaintiffs' Inability to Obtain Name Changes

The District Court further misconstrued this Court's ruling in *Doe* to create a sole causation rule for Article III standing, where a plaintiff only has standing to sue a state official under circumstances where the official's actions are the sole cause of the constitutional deprivation in every case and where granting the injunctive or declaratory relief requested would thus necessarily afford complete redress for the constitutional violation. *See* Op. at 9, App. A011. Not so.

Doe does not and never did require a sole causal connection. Rather, *Doe* explicitly holds that there need only be "*some* connection" between the official sued and the enforcement of an unconstitutional statute. 883 F.3d at 975 (quoting *Ex parte Young*, 209 U.S. at 157) (emphasis added). Plaintiffs have adequately pled that connection here. An order barring the State's Attorney from objecting to Plaintiffs' petitions on the basis of an unconstitutional application of the applicable ten-year or lifetime prohibitions included in the Statute affords the Plaintiffs

redress. *See Lujan*, 504 U.S. at 560–61; *Holcomb*, 883 F.3d at 975. Nowhere did this Court in *Doe* hold that "the final decision whether to grant or deny" relief is required to afford standing, particularly at the early pleading stages of a case. *Cf. Doe*, 883 F.3d 975 (requiring only *some connection* to enforcement); *see also Silha*, 807 F.3d at 169, 173–74 (detailing the generous standard of review for analyzing pleadings in a complaint).

Plaintiffs have adequately pled *Doe*'s required connection. As evidenced by the plain language of the Statute, the State's Attorney is granted exclusive authority to object to a name change petition on the basis of a petitioner's criminal history. Put another way, the State's Attorney is explicitly provided the sole and exclusive authority to enforce the very unconstitutional restrictions central to Plaintiffs' claims—the Ten-Year Prohibition and Lifetime Prohibition standing in the way of Plaintiffs' ability to exercise their constitutional right to change their legal names. Unlike the Attorney General in *Doe*, who could not do "anything" to prosecute a violation of a state name change statute, 883 F.3d at 977, the Illinois State's Attorney's authority to object to the name change petition on the basis of a petitioner's violation of the statute provides precisely the casual connection *Doe* anticipated for standing. Enjoining the State's Attorney from objecting on the basis of Plaintiffs' criminal history will provide Plaintiffs the redressability they seek in their underlying lawsuit.

Nor is Plaintiffs' standing impeded by the fact that the State's Attorney could choose not to act against their petitions. Plaintiffs' standing under *Doe* and *Ex parte*

Young turns on the connection of the State's Attorney to enforcement of the Statute—not whether she chooses to exercise her function. Moreover, because the test of Article III standing is one of *likelihood* of redress, not certainty, *see Lujan*, 504 U.S. at 560–61, it cannot be assumed that injunctive and declaratory relief against the State's Attorney alone would fall short of complete redress. If it were assumed, contrary to the record presented above, that the State Judges act only as neutral adjudicators, then a federal court's declaration of Plaintiffs' constitutional right to a change of name and injunction barring the only remaining state official involved in the enforcement of the Statute, the State's Attorney, from objecting to their petitions on the basis of their criminal history would constitute federal precedent on a federal constitutional question that the State Judges could not readily ignore. *See Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 766 (Ill. 2013) ("Plaintiffs agree that where, as here, cognate provisions of our state and federal constitutions are concerned, Illinois courts will generally follow federal precedent absent a reason to depart from federal law.").

In short, to the extent the State Judges are acting in a judicial function, a federal declaration and injunction as to the State's Attorney would also afford a likelihood of redress to Plaintiffs as to the State Judges by providing precedent for the State Judges to follow. To the extent the State Judges are not acting in a judicial function, the need for redress confirms both the State's Attorney and the State Judges should be subject to declaratory and injunctive relief to address their respective non-judicial administrative and enforcement roles under the Statute.

C. The District Court Erred in Applying *Doe v. Holcomb* to Hold That Plaintiffs Lack Standing with Respect to the State's Attorney

The District Court further improperly narrowed the scope of the State's Attorney's role in enforcing the Statute to one in which the State's Attorney merely "may request an update to a petitioner's criminal history transcript, receive a copy of the petition, and file a written objection to a petition." Op. at 9, App. A011. Respectfully, this misconstrues the intimate nature of the State's Attorney's role in enforcing the Statute.

First, as explained above, the State's Attorney *must* receive a copy of each and every petition filed seeking a name change. 735 ILCS 5/21-102.5(a) ("The circuit court clerk *shall promptly* serve a copy of the petition on the State's Attorney . . . .") (emphasis added). Second, after receiving all petitions filed, the State's Attorney has the exclusive authority to "file an objection to the petition," in writing, within thirty days of service. 735 ILCS 5/21-102.5(b). Third, the State's Attorney is also given the authority to "request the court to . . . initiate an update of [a petitioner's] criminal history transcript with the Department of State Police." 735 ILCS 5/21-102(b).

Where the State's Attorney is the *only* official granted authority to file objections to petitions, the Department of State Police is notably also provided copies of each and every name change petition. 735 ILCS 5/21-102.5(a). The State's power to request that a petitioner update their criminal history transcript with the Department of State Police, and the department's involvement in the Statute, makes clear that the State's Attorney's enforcement role is in large part directed at

reviewing a petitioner's criminal history for compliance with the Ten-Year or Lifetime Prohibitions included in the Statute. Such an intimate connection to enforcement of the statute is more than sufficient to allow this case, which precisely targets those provisions, to continue. *Doe*, 884 F.3d 976–79.

IV. This Court Should Jealously Guard the Prerogative of Federal Courts to Decide Federal Constitutional Questions

This Court should not readily or willingly abdicate the "province and duty" of the federal courts "to say what the law is," which remains "the very essence of judicial duty." *Marbury*, 5 U.S. (1 Cranch) at 177–78. It is the "duty" of the courts "to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." THE FEDERALIST NO. 78 (Alexander Hamilton). As the Supreme Court has held in the separate but instructive context of judicial review of administrative action, "access to the courts is essential to the decision of" constitutional questions, and consequently, "when constitutional questions are in issue, the availability of judicial review is presumed" and courts should not readily "read a statutory scheme to take the 'extraordinary' step of foreclosing jurisdiction" absent a clear and convincing manifestation of such intent by Congress. *Califano v. Sanders*, 430 U.S. 99, 109 (1977). The federal courts should be even more reluctant to cede their jurisdiction to the whims of a state legislature that may seek to place its statutory actions outside the scope of federal judicial review by delegating administrative and ministerial functions to the state judiciary.

The District Court's Opinion places Plaintiffs in the exact scenario Judge Wood warned against in her dissent in *Doe*, where the Court is forced "to accept the unpalatable notion that alleged constitutional violations escape all judicial review." 883 F.3d at 981 (Wood, J., dissenting). As Judge Wood cautioned:

> Consider the consequences if any state function entrusted to the state-court system were placed beyond the power of the federal courts to address (an outcome, I note, that would be incompatible with *Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972), which upheld the power of the federal courts to issue civil rights injunctions against state-court proceedings). A state hypothetically could refuse to allow an African-American person to change his or her surname on an identification-card to that of a Caucasian spouse, in flagrant violation of *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967), or it could pass a statute refusing to allow a single surname for a same-sex couple, in disregard of the Supreme Court's decision in *Obergefell v. Hodges*, —— U.S. ——, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015). *The expedient of placing final authority for name-changes in the state court system cannot operate to avoid accountability for potential violations of the federal constitution by other state officials*. Nor can it have the effect of negating the right of any person to bring an action under 42 U.S.C. § 1983, which lies within the subject-matter jurisdiction of the federal courts, see 28 U.S.C. §§ 1331, 1343(a).

Id. at 981–82 (emphasis added).

Illustrating the District Court's error and the potential far-reaching consequences of its Opinion, consider the following potential state laws:

- A state legislature in disagreement with *Loving v. Virginia*, 388 U.S. 1 (1967), adopts an antimiscegenation statute prohibiting interracial marriages, and to implement the statute directs that marriage licenses may only be granted by petition to the state courts, with the issuance of such licenses prohibited where the petitioners cannot attest under oath that they are of the same race.

- A state legislature in disagreement with *Obergefell v. Hodges*, 576 U.S. 644 (2015), adopts a statute defining marriage as a union between one man and one woman and prohibiting same-sex marriage, and to implement the statute, as in the example above, directs that marriage licenses may only be granted by petition to the state courts, with the

issuance of such licenses prohibited where the petitioners cannot attest under oath that they are of different genders.

- A state legislature in disagreement with *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), adopts a statute prohibiting the possession of handguns in the home, and to implement the statute, directs that licenses are required to purchase handguns, which may only be granted by petition to the state courts, with the issuance of such licenses prohibited where the petitioners cannot attest under oath that they are not seeking to purchase a handgun for home possession.

- A state legislature in disagreement with *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, No. 20-842, 2022 U.S. LEXIS 3055 (June 23, 2022), adopts a statute prohibiting the public-carry of handguns, and to implement the statute, directs that licenses are required to carry handguns, which may only be granted by petition to the state courts, with the issuance of such licenses prohibited where the petitioners cannot attest under oath that they have a special need for self-defense identical to the restriction struck down in *Bruen*.

In each instance, the state statute at issue is unconstitutional under binding U.S. Supreme Court precedent. Yet in each instance, under the reasoning of the District Court's Opinion, the federal courts would be powerless to assert jurisdiction and to grant relief adjudicating the laws' unconstitutionality. Plaintiffs respectfully submit jurisdictional precedent requires no such outcome. Where, as here, a state legislature has assigned a function to the state judiciary distinct from its ordinary neutral adjudicatory function and not rooted in the judiciary's traditional role in the state, federal courts should not hesitate to assert jurisdiction to declare and enjoin state law deprivations of federal constitutional rights carried out by state judges.

CONCLUSION

Despite acknowledging that Plaintiffs' legal claims are "weighty" and raise "important substantive questions," the District Court determined that federal

courts are totally barred from conducting any review of the constitutionality of the Statute. The weight of the authority is clear: State judges only receive judicial immunity when they are acting in their judicial capacity. That limitation becomes meaningless if judges are immunized when there is no fact-finding, no analysis of law, no adversarial proceeding, no exercise of discretion, and no application of the specialized skills that make a judge a judge. In addition, Plaintiffs adequately pled standing with regard to the State's Attorney by "naming a state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement.'" *Doe*, 883 F.3d. at 975. Indeed, the State's Attorney is the only official required to receive a copy of every name change petition and empowered to raise objections to those petitions.

The District Court's decision sets a troubling precedent and lights a path any state legislature could follow if it seeks to evade federal review of an unconstitutional statute. Respectfully, the Seventh Circuit should reverse and make clear that placing administrative or enforcement responsibilities with the state judiciary will not divest federal courts of their "province and duty" to decide "which of these conflicting rules governs" where "a law be in opposition to the [C]onstitution." *Marbury*, 5 U.S. (1 Cranch) at 177–78.

Dated: July 8, 2022

Respectfully submitted,

/s/ *Gregory E. Ostfeld*

Gregory E. Ostfeld
Brian D. Straw
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
(312) 456-8400 (Telephone)
(312) 456-8435 (Facsimile)
ostfeldg@gtlaw.com
strawb@gtlaw.com

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I, Gregory E. Ostfeld, certify that:

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32(c) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 13,973 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in size 12-point Century font, with footnotes in size 11-point Century font.

Dated: July 8, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ *Gregory E. Ostfeld*
Gregory E. Ostfeld
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Dated: July 8, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ Gregory E. Ostfeld
Gregory E. Ostfeld
Attorneys for Plaintiffs-Appellants

CIRCUIT RULE 30(d) STATEMENT

In accordance with Circuit Rule 30(d), counsel certifies that all materials required by Circuit Rules 30(a) and (b) are contained the appendix.

Dated: July 8, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ *Gregory E. Ostfeld*
Gregory E. Ostfeld
Attorneys for Plaintiffs-Appellants

APPENDIX - TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

REYNA ANGELINA ORTIZ (legal name RAYMOND ORTIZ), KEISHA ALLEN (legal name WAYNE ALLEN), AMARI GARZA (legal name ARMANDO GARZA), HEAVEN EDWARDS (legal name PATRICK EDWARDS), EISHA LATRICE LOVE (legal name DARVERIS LAMAR LOVE), SHAMIKA LOPEZ CLAY (legal name MARCUS CLAY), SAVANNAH JOSEPHINE FRAZIER (legal name TONY WILLIS) and KAMORA LOVELACE (legal name LATUAN WALKER), Plaintiffs, v. KIMBERLY M. FOXX, in her official capacity as Cook County State's Attorney; TIMOTHY C. EVANS, in his official capacity as the Chief Judge of the Circuit Court of Cook County; and SHARON M. SULLIVAN, in her official capacity as the Presiding Judge of the County Division of the Circuit Court of Cook County, Defendants.	No. 19-cv-02923 Judge John F. Kness

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendants KIMBERLY M. FOXX, TIMOTHY C. EVANS, and SHARON M. SULLIVAN,

and against plaintiffs REYNA ANGELINA ORTIZ (legal name RAYMOND ORTIZ), KEISHA ALLEN (legal name WAYNE ALLEN), AMARI GARZA (legal name ARMANDO GARZA), HEAVEN EDWARDS (legal name PATRICK EDWARDS), EISHA LATRICE LOVE (legal name DARVERIS LAMAR LOVE), SHAMIKA LOPEZ CLAY (legal name MARCUS CLAY),

SAVANNAH JOSEPHINE FRAZIER (legal name TONY WILLIS) and KAMORA LOVELACE (legal name LATUAN WALKER), without prejudice.

Defendants shall recover costs from plaintiff.

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge John F. Kness on defendants' motions to dismiss (Dkt. 22, 25).

SO ORDERED in No. 19-cv-02923.

Date: March 31, 2022

JOHN F. KNESS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REYNA ANGELINA ORTIZ (legal name RAYMOND ORTIZ), *et al.* Plaintiffs, v. KIMBERLY M. FOXX, in her official capacity as Cook County State's Attorney; TIMOTHY C. EVANS, in his official capacity as the Chief Judge of the Circuit Court of Cook County; and SHARON M. SULLIVAN, in her official capacity as the Presiding Judge of the County Division of the Circuit Court of Cook County, Defendants.	No. 19-cv-02923 Judge John F. Kness

MEMORANDUM OPINION AND ORDER

This case concerns a challenge to the Illinois statute that governs whether and how people can change their legal names. Plaintiffs are a group of transgender persons who intend to change their names under the Illinois Change of Name statute. But Plaintiffs face an impediment: because each Plaintiff has been convicted either of a felony, certain sex crimes, or an identity-theft offense, Plaintiffs' ability to proceed with their name change petitions in the Illinois courts is precluded by the terms of the Change of Name statute. According to Plaintiffs, these elements of the statute violate Plaintiffs' rights under the United States Constitution.

In an effort to air their constitutional claims, Plaintiffs have sued Kimberly M. Foxx, the Cook County State's Attorney; and the Circuit Court of Cook County's Chief

Judge Timothy C. Evans and Presiding Judge Sharon M. Sullivan (the "State Judges"). Plaintiffs seek a declaration that the Change of Name statute is unconstitutional, and they also seek a federal injunction commanding the State's Attorney and the State Judges either not to oppose or to fail to grant Plaintiffs' anticipated name-change petitions.

This Court, however, cannot reach the merits of Plaintiffs' suit, because the Court lacks jurisdiction over this case. As explained below, Plaintiffs lack standing to proceed against the State's Attorney in federal court, and well-established doctrines—including the need to respect the value of comity between coordinate judicial systems—preclude the Court from commanding the State Judges not to apply the Change of Name statute.

It may be true, as Thoreau wrote, that a "name pronounced is the recognition of the individual to whom it belongs." Henry David Thoreau, A Week on the Concord and Merrimack Rivers 170 (2010). It is certainly true that Plaintiffs, who seek to secure the right to have pronounced their chosen names, have presented weighty arguments against the Illinois Change of Name statute. But because Plaintiffs have failed to demonstrate that federal jurisdiction exists over this action, those substantive arguments will need to be presented to another forum. For the reasons that follow, Defendants' motions to dismiss are granted.

I. BACKGROUND

In Illinois, whether and how a person can change their legal name is governed by statute. *See* 735 ILCS 5/21-101 *et seq*. ("Article XXI. Change of Name"). Of relevance to this case, the statute prevents two categories of convicted persons from

changing their names. First, a person cannot change their name for ten years if the person has been convicted of any felony. Second, a person is permanently prohibited from changing their name if the person has been convicted of identity theft, aggravated identity theft, or certain sexual offenses. 735 ILCS 5/21-101(b). Those restrictions maintain public safety by preventing felons, and particularly convicted fraudsters and sex offenders, from circumventing post-conviction registration requirements by changing their names. *See* H.R. Transcription Deb., 89th Gen. Assem., 108th Legis. Day, at 107 (Ill. 1996) ("Police agencies track convicted felons by name and date of birth. If a convicted felon changes his or her name, police agencies would not be able to determine his or her criminal record.") (statement of Rep. Pedersen).

Under the Change of Name statutory scheme, the process of changing a name is straightforward and starts with the filing of a petition in the circuit court for the petitioner's home county. 735 ILCS 5/21-101(a). Upon the filing of a petition, the circuit court clerk must serve copies of the petition on the State's Attorney and the Department of State Police. 735 ILCS 5/21-102.5(a).[1] If the name-change petition reflects that the petitioner "has been adjudicated or convicted of a felony or misdemeanor," or has an arrest for a felony or misdemeanor for which a charge is pending or filed, the State's Attorney may require the petitioner to update his criminal history transcript. 735 ILCS 5/21-102(b). The State's Attorney may then

[1] The statute was amended in 2021 such that "Department of" was replaced by "Illinois" preceding "State Police". See IL LEGIS 102-538 (2021), 2021 Ill. Legis. Serv. P.A. 102-538 (S.B. 2037). Neither party argues that change affects the substance of the statute or the merits of this suit.

choose to file an objection to a petition, *id.*, but nothing in the Change of Name statute makes the filing of an objection conclusive as to the validity of the petition.

Plaintiffs are a group of transgender persons with previous criminal convictions that disqualify them under the Change of Name statute from receiving name changes. (Dkt. 1 ¶ 3.) Plaintiffs have not yet attempted to change their names—but Plaintiffs allege that they have not done so because, in their view, the statute disqualifies them from receiving name changes. (*Id.*) This disability, Plaintiffs contend, violates their First and Fourteenth Amendment rights. (*Id.*) In support of these claims, Plaintiffs set forth in the complaint various experiences that demonstrate how the use of their legal names requires them to engage in compelled speech and subjects them to discrimination. (*Id.* ¶¶ 20–103.) Plaintiffs ask this Court to declare the statute as applied to them to be unconstitutional and to enjoin both the State's Attorney and the State Judges from applying the statute as enacted. (*Id.* at 24.)

Plaintiffs advance several theories in support of their claims for relief against Defendants. (*See generally id.*) Plaintiffs contend that the responsibilities of the State's Attorney under the Change of Name statute to request updates to criminal history transcripts, receive service of petitions, and file objections to petitions make her the proper state official defendant under *Ex parte Young*. (*Id.* ¶ 13); *see Ex parte Young*, 209 U.S. 123 (1908). As for the State Judges, Plaintiffs contend that they are proper defendants to this suit because the State Judges act as administrators when "promulgating the rules, regulations, and policies" of the circuit courts that enforce the Change of Name statute's restrictions. (Dkt. 1 ¶ 14.)

Now before the Court are two separate motions to dismiss brought by the State's Attorney and the State Judges. (Dkt. 22; Dkt. 25.) In her motion, the State's Attorney contends that Plaintiffs lack constitutional standing and that, even if standing were not a barrier, Plaintiffs' claims should be dismissed because they are barred by the Eleventh Amendment. (Dkt. 23 at 3.) In addition, the State's Attorney argues that, because some Plaintiffs began using their chosen names before a relevant statutory amendment in 2010, those Plaintiffs fail to allege an injury in fact and fail to state a claim upon which relief can be granted. (*Id.* at 2.)

For their part, the State Judges contend that, because there is no adverse legal interest between the State Judges and Plaintiffs, there is no case or controversy. (Dkt. 26 at 3.) The State Judges also argue that Plaintiffs' claim should be dismissed under the Eleventh Amendment because the State Judges lack a sufficiently close connection with the statute's enforcement. (*Id.* at 6–7.) Finally, the State Judges argue that the text of the civil rights statute, 42 U.S.C. § 1983, bars injunctive relief against judicial officers. (*Id.* at 7–8.)

II. LEGAL STANDARD

A motion under Rule 12(b)(6) "challenges the sufficiency of the complaint to state a claim upon which relief can be granted." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Each complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Those allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Although

legal conclusions are not entitled to the assumption of truth, *Iqbal*, 556 U.S. at 679, the Court, in evaluating a motion to dismiss, must accept as true the complaint's factual allegations and draw reasonable inferences in the plaintiffs' favor. *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011).

Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint generally need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). That short and plain statement must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (cleaned up).

Article III of the Constitution requires an actual case or controversy between the parties. *Deveraux v. City of Chicago*, 14 F.3d 328, 331 (7th Cir. 1994). Plaintiffs seeking to demonstrate that they have standing to sue must show (1) that they suffered a concrete and particularized injury in fact; (2) a causal connection between the injury and the challenged conduct of the defendant; and (3) that the injury will be likely redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Because "[s]tanding is an essential component of Article III's case-or-controversy requirement," defendants may seek the dismissal of nonjusticiable claims through a Rule 12(b)(1) motion for lack of subject matter jurisdiction. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (quoting *Lujan*, 504 U.S. at 561).

Under the Eleventh Amendment of the United States Constitution, states (and their officers) are generally protected from suit. As a "general rule," private individuals "are unable to sue a state in federal court absent the state's consent."

McDonough Assocs., Inc. v. Grunloh, 722 F.3d 1043, 1049 (7th Cir. 2013). That protection extends to state agencies and state officials acting in their official capacities. *Indiana Prot. & Advocacy Servs. v. Indiana Family & Soc. Servs. Admin.*, 603 F.3d 365, 370 (7th Cir. 2010).

Despite that general rule, the doctrine announced by *Ex parte Young*, 209 U.S. 123 (1908), provides an end-run around the general barrier to suit presented by the Eleventh Amendment. *Indiana Prot. & Advocacy Servs.*, 603 F.3d at 371. Specifically, a plaintiff can use the *Ex Parte Young* doctrine "by naming a state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement." *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018) (quoting *Ex parte Young*, 209 U.S. at 157). In applying *Ex parte Young*, a court needs to conduct a "straightforward inquiry" to determine if the complaint alleges an ongoing violation of federal law and whether the relief sought can be properly characterized as prospective. *McDonough Assocs.*, 722 F.3d at 1051.

III. DISCUSSION

A. The State's Attorney's Motion to Dismiss

Plaintiffs seek relief from the State's Attorney's "causal[] connect[ion] with the enforcement of the Illinois Name Change Statute." (Dkt. 1 ¶ 13.) They contend that some form of declarative[2] or injunctive relief against the State's Attorney could

[2] Plaintiffs assert that they seek declaratory relief in their complaint, but it is unclear whether they purport to proceed under the Declaratory Judgment Act, 28 U.S.C. § 2201. (Dkt. 1 ¶¶ 4, 13 (against State's Attorney), 14 (against State Judges)). It is true, of course, that a well-pleaded complaint need not plead legal theories. *Smith v. Med. Benefit Administrators Grp., Inc.*, 639 F.3d 277, 284 n.2 (7th Cir. 2011). But a district court "ought not grant declaratory relief unless there is an actual, 'substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a

redress their injuries. (*Id.*) Conversely, the State's Attorney argues that the connection between her office and that statute's enforcement is too tenuous to support the requested relief. (Dkt. 23 at 8 (citing *Holcomb*, 883 F.3d at 975).)

To survive dismissal, Plaintiffs must show an injury in fact, sufficient causal connection between the State's Attorney and her ability to enforce the statute, and that an injunction will address the harm. Any professed the injury must be traceable to the defendant's challenged conduct to support the finding of a causal connection. *Lujan*, 504 U.S. at 560. In the State's Attorney's view, because Plaintiffs fail to establish a sufficient connection between the State's Attorney's office and enforcement of the name-change statute, Plaintiffs cannot meet any of the three threshold issues necessary to find standing.

Central to the Court's resolution of this debate is *Doe v. Holcomb*, in which the district court dismissed a challenge to an Indiana name-change statute that required persons who sought a change of name to provide proof of United States citizenship. 883 F.3d at 75. In that case, the plaintiff, who sought a name change so that the plaintiff's name would "conform[]" to plaintiff's gender identity, sued various state officials, including the Indiana Attorney General, Marion County Clerk of Court, and Executive Director of the Indiana Supreme Court Division of State Court

declaratory judgment.' " *Nucor Corp. v. Aceros Y Maquilas De Occidente*, 28 F.3d 572, 578 (7th Cir. 1994) (quoting *Maryland Cas. Co. v. Pac. Coal Oil Co.*, 312 U.S. 270 (1941)); *see Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1064 (7th Cir. 2020) ("The Declaratory Judgment Act permits a federal court to award a declaratory judgment only in 'a case of actual controversy.' "). For the reasons set forth in this Opinion, even if Plaintiffs' case could fairly be viewed as seeking a declaratory judgment, Plaintiffs have failed to show the existence of a justiciable controversy that would warrant a declaratory judgment.

Administration. *Id.* at 974–75. Among other things, the district court held that the plaintiff lacked standing to proceed against the state Attorney General. *Id.* at 977.

On appeal, the Seventh Circuit, over the thoughtful dissent of Judge Wood, concluded that, because the "Attorney General has not threatened to do anything, and cannot do anything" adverse to the plaintiff under the name-change statute, permitting the plaintiff's complaint to go forward would "extend *Ex Parte Young* past its limits." *Id.* at 977. As the court explained, the Attorney General's "connection to the enforcement of the name-change statute" was not sufficiently "intimate" to allow the case to continue. *Id.* In addition, the majority dismissed the claims against all of the other defendants in *Holcomb* for lack of standing—either lack of injury or lack of causation and redressability. 883 F.3d at 976–79.

Holcomb establishes that Plaintiffs' case against the State's Attorney cannot go forward. Under the Change of Name statute, the State's Attorney has a limited set of responsibilities: she may request an update to a petitioner's criminal history transcript, receive a copy of the petition, and file a written objection to a petition. 735 ILCS 5/21-102.5. Not included in those duties, however, is the authority to grant or deny a name change—at most, the State's Attorney can *ask* that the petition be denied. But the final decision whether to grant or deny the petition rests with the adjudicative body: the circuit court.

Stated differently, the State's Attorney does not enforce the Change of Name statute. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 534 (2021) (noting the pitfalls of seeking an injunction against a state official who lacks "any enforcement authority . . . that a federal court might enjoin him from exercising."); (citing *Mendez*

v. Heller, 530 F.2d 457, 460 (2d Cir. 1976)); *Holcomb*, 883 F.3d at 977–78; *cf.* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 938 (2018) ("All [an] injunction does is prevent the named defendant[] from *enforcing* that law while the court's injunction remains in place."). As a practical matter, the State's Attorney's objection would not be the cause of any injury to Plaintiffs; they cannot show, therefore, that an injunction against the State's Attorney would redress their injuries. *See Holcomb*, 883 F.3d at 979 (finding that the plaintiff did not have standing to sue the county clerk who had no authority to grant or deny name changes).

Plaintiffs have failed to show that the State's Attorney is either the cause of, or the solution to, their objections to the Change of Name statute.[3] Put more precisely, Plaintiffs cannot show that they possess standing to proceed against the State's Attorney. Because standing is an essential component of subject matter jurisdiction, the State's Attorney's motion to dismiss is well-founded, and the claims against the State's Attorney must be dismissed for lack of jurisdiction.[4]

[3] The State's Attorney also separately seeks to dismiss the subset of Plaintiffs who chose their names before July 1, 2010, arguing that, because the statute invalidated only common law name changes adopted after July 1, 2010, those Plaintiffs fail to allege a cognizable injury. *See* 735 ILCS 5/21-105. Because the Court finds that all of Plaintiffs' claims against the State's Attorney should be dismissed, that issue is moot.

[4] Moreover, to fit within the *Ex parte Young* exception, an injunction prohibiting an official's conduct must be able to provide prospective relief. But for the same reason that the State's Attorney has only an advisory role, an injunction against her would fail to provide meaningful prospective relief. S*ee id.* at 975 ("[W]here a plaintiff sues a state official to enjoin the enforcement of a state statute, the requirements of *Ex parte Young* overlap significantly with the last two standing requirements—causation and redressability").

B. The State Judges' Motion to Dismiss

Plaintiffs also contend that the State Judges, in their official administrative capacities, are causally connected with enforcing the Illinois Change of Name statute such that declaratory and injunctive relief would redress Plaintiffs' injuries. (Dkt. 1 ¶ 14.) Plaintiffs assert that the State Judges act as administrators by "promulgating the rules, regulations, and policies" that enforce the Change of Name statute. (*Id.*) Whether the State Judges act as administrators of the Change of Name statute or, instead, as more traditional adjudicators of legal claims matters to this dispute, Plaintiffs explain, because conventional limitations on suing judges do not apply where judges act as "administrators." *Coleman v. Dunlap*, 695 F.3d 650, 653 (7th Cir. 2012) ("[J]udges have immunity only for the decisions they make as adjudicators, not the decisions they make as administrators[.]"

In contrast, the State Judges argue that, because judges who adjudicate petitions under the Change of Name statute do so in their judicial capacity, there is no live case or controversy between them and Plaintiffs. (Dkt. 26 at 3–5.) The State Judges also argue that they are not proper defendants to this challenge to the constitutionality of a state statute. (*Id.* at 6–7.)

As a general rule, "[j]udicial immunity extends to acts performed by the judge 'in the judge's *judicial capacity*.' " *Dawson v. Newman*, 419 F.3d 656, 661 (7th Cir. 2005) (quoting *Dellenbach v. Letsinger*, 889 F.2d 755, 758 (7th Cir. 1989)). That means "judicial acts," but not "ministerial or administrative acts." *Id.* (quoting *Lowe v. Letsinger*, 772 F.2d 308, 311 (7th Cir. 1985)). To be sure, there is "imprecision inherent in 'attempting to draw the line between truly judicial acts, for which

immunity is appropriate, and acts that simply happen to have been done by judges.' " *Id.* (quoting *Forester v. White*, 484 U.S. 219 (1988)); *see id.* at 660–61 ("The doctrine of judicial immunity has been embraced for centuries [and] confers complete immunity from suit, not just a mere defense to liability") (cleaned up).

Beyond judicial immunity, the justiciability of Plaintiffs' complaint against the State Judges depends on whether 42 U.S.C. § 1983 allows suit against the judges in their official capacity under *Ex parte Young*. But Plaintiffs start from a difficult position because section 1983 specifically bars injunctive relief against a judicial officer. *Smith v. City of Hammond, Indiana*, 388 F.3d 304, 307 (7th Cir. 2004). And the Seventh Circuit has explained that a state judge performing the judicial function cannot create a justiciable case or controversy. *Dawson*, 419 F.3d at 660–61. Ultimately, if a party is upset with the result of a judicial act—if a judge "errs 'through inadvertence or otherwise' " that party's " 'remedy is through the appellate process.' " *Id.* (quoting *Lowe*, 772 F.2d at 311).

As with the case against the State's Attorney, absent a showing of an adverse interest sufficient to create a live case or controversy, there cannot be federal jurisdiction to hear a case against the State Judges. *Kawasaki Heavy Indus., Ltd. v. Bombardier Recreational Prods., Inc.*, 660 F.3d 988, 999 (7th Cir. 2011). Determining whether an adverse interest exists, however, requires understanding the State Judges' role in granting a petition under the Change of Name statute.

To grant a name-change petition, the court must determine whether the statutory requirements for granting the petition are met. 735 ILCS 5/21-101. But the broad statutory language of the Change of Name statute does not mean the judge

who hears a name-change petition acts acting outside of an adjudicative capacity. Quite the opposite: judges can act with broad discretion without either imperiling their neutrality or negating a finding that they are performing a judicial function. *See, e.g., Nollet v. Justices of Trial Court of Com. Of Mass.*, 83 F. Supp. 2d 204, 211 (D. Mass. 2000) (judges acted in an adjudicatory capacity despite "wide latitude in fashioning the conditions" of restraining orders). Applying statutes on the path to reaching a legal holding is at the core of the judicial function, and that is just what judges do when ruling on a name-change petition: they apply controlling law to a set of facts.

Nor does the fact that a judge denies a name-change petition by applying the language of the Change of Name statute mean that the judge is legally "adverse" to the petitioner. Were that so, then every decision of a judge to apply a statute in ruling against a party could potentially give rise to a case or controversy between the judge and the party. That point was made by the First Circuit in *In re Justices of Supreme Court of Puerto Rico*, where the court held that plaintiffs seeking to challenge a statute did not have an "adverse legal interest" with the Justices of the Supreme Court of Puerto Rico. 695 F.2d 17, 21 (1st Cir. 1982) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–241 (1937)). In that case, the First Circuit concluded that no case or controversy existed because the "Justices' only function concerning the statutes being challenged is to act as neutral adjudicators rather than as administrators, enforcers, or advocates." *Id.* As that Court explained, the lack of role for the Justices to play in a statute's passage and their subsequent lack of role in enforcement undermine the alleged adversity in "the court or judges who are

supposed to adjudicate the merits of the suit that the enforcement official may bring." *Id.* at 22.

As in *In re Justices*, so too here. The State Judges have no legal interests adverse to name-change petitioners. The State Judges played no role in the statute's enactment, they do not initiate any actions or independent enforcement activity based on the Change of Name statute, and they possess no particularized interest in whether a given petitioner receives a name change. *See id.* at 21. Rather, the State Judges' role is purely adjudicative.

Plaintiffs' attempts to characterize the State Judges' acts as nonjudicial in character are unavailing. When determining whether an act is judicial, a court considers " 'whether it is a function normally performed by a judge,' and the 'expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.' " *Kowalski*, 893 F.3d at 998 (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). After all, processing a name-change petition requires discretion and judgment—factors that weigh in favor of considering an act to be judicial in nature. *See id.* Because name changes in Illinois are ordinarily handled by the courts and require the use of discretion, they are judicial acts.

Plaintiffs counter that suit is proper against the State Judges because they are acting in an administrative, rather than judicial, capacity by "promulgating the rules, regulations, and policies" that may lead to denial of their petitions. (Dkt. 1 ¶ 14.) Even assuming that Plaintiffs' claims do not suffer from a lack of ripeness, Plaintiffs cannot point to any specific rules, regulations, or policies, promulgated by the State Judges—only to the statute's text. But that text does not support Plaintiffs' claims.

On the contrary, the Change of Name statute explains that "[i]f it appears to the court that the conditions and requirements under this Article have been complied with and that there is no reason why the prayer should not be granted, the court, by an order to be entered of record, may direct and provide that the name of that person be changed in accordance with the prayer in the petition." 735 ILCS 5/21-101(d).

A recent decision of the Supreme Court further highlights the infirmity of Plaintiffs' effort to sue the State Judges. In *Whole Women's Health*, the Supreme Court declined to allow plaintiffs to continue their suit seeking injunctive relief against what would have eventually included "certification of a class including all Texas state-court judges and clerks and defendants." 142 S. Ct. at 531–32. The Court clarified that the *Ex parte Young* exception "does not normally permit federal courts to issue injunctions against state-court judges or clerks." *Id.* at 532. That is because "those individuals do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties. If a state court errs in its rulings, too, the traditional remedy has been some form of appeal, including to this [Supreme] Court, not the entry of an *ex ante* injunction preventing the state court from hearing cases." *Id.* Indeed, as the Court explained, "the state-court judges who decide [disputes] generally are not" sufficiently adverse to the party who brought the case such as to create an actual controversy. *Id.* Put another way, no " 'case or controversy' exists 'between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute.' " *Id.* (quoting *Pulliam v. Allen*, 466 U. S. 522, 538, n.18 (1984)).

More broadly, the principle of comity between distinct state and federal judicial branches suggests that a federal court should not lightly require a state judge to stand as a defendant to a federal suit challenging a state law the judge is bound to apply—let alone to compel that judge, through an injunction, not to apply the law as enacted. *See*, *e.g.*, *Younger v. Harris*, 401 U.S. 37, 44 (1971) (The concept of "Our Federalism" represents "a system in which . . . the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States."); *see also Ex parte Young*, 209 U.S. at 180 ("[A]n injunction against a state court would be a violation *of the whole scheme of our government*."). That is especially so when Plaintiffs have made no showing that the courts of Illinois, if presented with the same substantive constitutional arguments Plaintiffs seek to advance here, would not pay diligent and careful heed to those arguments. *See*, *e.g.*, *Zurich Am. Ins. Co. v. Superior Ct. for State of Cal.*, 326 F.3d 816, 827–28 (7th Cir. 2003) ("[G]iven principles of comity, we cannot lightly assume that a state court would disregard federal law."). And although parties are free to choose a federal forum over a state one for wholly subjective reasons, that choice can be effective only when the plaintiff can establish that the federal forum has jurisdiction over the controversy. In this case, Plaintiffs have sought relief against the State Judges that this Court is not empowered to provide. Accordingly, the State Judges' motion to dismiss is granted.

* * *

In the end, this case presents important substantive questions, but they are questions this Court cannot lawfully adjudicate. Relying on Judge Wood's dissent in

Holcomb, Plaintiffs argue that it would be "unpalatable" for "alleged constitutional violations [to] escape all judicial review." *Holcomb*, 883 F.3d at 981–82 (Wood, J., dissenting). But "[e]very legal right . . . does not necessarily have a legal remedy," *Jackson v. Duckworth*, 112 F.3d 878, 880 (7th Cir. 1997), and the serious justiciability concerns present in this case outweigh Plaintiffs' appeal to ensuring the availability in every case of a remedy in federal court. Because Plaintiffs cannot show that this Court has been presented with a justiciable case or controversy, the motions to dismiss must be granted.

IV. CONCLUSION

Defendants' motions to dismiss (Dkt. 22, 25) are granted, and the complaint is dismissed without prejudice for lack of jurisdiction.

SO ORDERED in No. 19-cv-02923.

Date: March 31, 2022

JOHN F. KNESS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REYNA ANGELINA ORTIZ (legal name **RAYMOND ORTIZ**), **KEISHA ALLEN** (legal name **WAYNE ALLEN**), **AMARI GARZA** (legal name **ARMANDO GARZA**), **HEAVEN EDWARDS** (legal name **PATRICK EDWARDS**), **EISHA LATRICE LOVE** (legal name **DARVERIS LAMAR LOVE**), **SHAMIKA LOPEZ CLAY** (legal name **MARCUS CLAY**), **SAVANNAH JOSEPHINE FRAZIER** (legal name **TONY WILLIS**) **and KAMORA LOVELACE** (legal name **LATUAN WALKER**), Plaintiffs, v. **KIMBERLY M. FOXX,** not personally but solely in her capacity as Cook County State's Attorney, **TIMOTHY C. EVANS,** not personally but solely in his capacity as the Chief Judge of the Circuit Court of Cook County, and **SHARON M. SULLIVAN,** not personally but solely in her capacity as the Presiding Judge of the County Division of the Circuit Court of Cook County, Defendants.	**Case No.**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Reyna Angelina Ortiz (legal name Raymond Ortiz), Keisha Allen (legal name Wayne Allen), Amari Garza (legal name Armando Garza), Heaven Edwards (legal name Patrick Edwards), Eisha Latrice Love (legal name Darveris Lamar Love), Shamika Lopez Clay (legal name Marcus Clay), Savannah Josephine Frazier (legal name Tony Willis), and Kamora Lovelace (legal name Latuan Walker) (collectively "Plaintiffs"), by their undersigned counsel, bring this Complaint for declaratory and injunctive relief and challenge the constitutionality of the Illinois Name Change Statute, 735 ILCS 5/21-101 *et seq*., as it applies to them, and state as follows:

NATURE OF THE CASE

1. Plaintiffs are transgender women who have been living under their chosen names, which are fundamental to their self-expression and identities, for years or decades. Due to arbitrary, overbroad, and unreasonable prior restraints contained in the Illinois Name Change Statute, however, Plaintiffs have been prevented from legally changing their names so that their legal names, and the names contained on their legal identifications, match their chosen names and identities. These arbitrary and unreasonable restraints have had serious repercussions for Plaintiffs' physical safety and mental well-being, as well as their liberty to express themselves, to express their identities, and to live in freedom and equality.

2. The Illinois Name Change Statute is by far the most onerous in the country in the wait time it imposes for persons convicted of felonies to file petitions for name changes, barring any persons with a felony conviction from changing their legal name until ten years after the completion and discharge from their sentence. 735 ILCS 5/21-101(b). Moreover, persons convicted of certain felonies or misdemeanors, including identity theft and specified sexual offenses, are not permitted to file petitions for name changes at all unless pardoned. *Id*.

3. Plaintiffs have each been convicted of felonies within the past ten years, or other specified felonies or misdemeanors set forth in the Illinois Name Change Statute, and are therefore prohibited from filing petitions for name changes to have their legal names conform to their chosen names. The restraints of the Illinois Name Change Statute, as applied to Plaintiffs, do not further and are not related to any legitimate or important state interest. To the contrary, the restraints are arbitrary, unreasonable, and serve only to infringe Plaintiffs' fundamental rights of speech, self-expression, liberty, and due process under the First and Fourteenth Amendments to the United States Constitution.

4. For these reasons, Plaintiffs bring this action for declaratory and injunctive relief, seeking a declaration that the Illinois Name Change Statute is unconstitutional as applied to them, and enjoining Defendants—the State of Illinois officials responsible in their official capacities for enforcing the Illinois Name Change Statute, preventing Plaintiffs from filing petitions for name changes, and denying any petitions for name changes filed by Plaintiffs—from (a) objecting to Plaintiffs' name change petitions; (b) preventing Plaintiffs' filing of name change petitions; and (c) denying Plaintiffs' name change petitions on the grounds that Plaintiffs have been convicted of felonies within the past ten years or have been convicted of other specified felonies or misdemeanors barring them from filing petitions for name changes under 735 ILCS 5/21-101(b).

PARTIES

5. Plaintiff Reyna Angelina Ortiz (legal name Raymond Ortiz) ("Reyna") is a citizen of the United States and a resident of Cook County, Illinois.

6. Plaintiff Keisha Allen (legal name Wayne Allen) ("Keisha") is a citizen of the United States and a resident of Cook County, Illinois.

7. Plaintiff Amari Garza (legal name Armando Garza) ("Amari") is a citizen of the United States and a resident of Cook County, Illinois.

8. Plaintiff Heaven Edwards (legal name Patrick Edwards) ("Heaven") is a citizen of the United States and a resident of Cook County, Illinois.

9. Plaintiff Eisha Latrice Love (legal name Darveris Lamar Love) ("Eisha") is a citizen of the United States and a resident of Cook County, Illinois.

10. Plaintiff Shamika Lopez Clay (legal name Marcus Clay) ("Shamika") is a citizen of the United States and a resident of Cook County, Illinois.

11. Plaintiff Savanna Josephine Frazier (legal name Tony Willis) ("Savannah") is a citizen of the United States and a Resident of Cook County, Illinois.

12. Plaintiff Kamora Lovelace (legal name Latuan Walker) ("Kamora") citizen of the United States and a Resident of Cook County, Illinois.

13. Defendant Kimberly M. Foxx ("State's Attorney Foxx"), not personally, but solely in her official capacity, is the Cook County State's Attorney. In her official capacity, State's Attorney Foxx is causally connected with the enforcement of the Illinois Name Change Statute, such that declaratory and injunctive relief against State's Attorney Foxx would redress Plaintiffs' injuries. State's Attorney Foxx is the official charged with requesting updates to Plaintiffs' criminal history transcripts, receiving service of Plaintiffs' name change petitions, and filing objections to Plaintiffs' name change petitions on behalf of the State of Illinois. *See* 735 ILCS 5/21-102(b); 735 ILCS 5/21-102.5. State's Attorney Foxx is being sued solely for declaratory and injunctive relief to address an ongoing violation of federal law, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

14. Defendants Timothy C. Evans ("Chief Judge Evans") and Sharon M. Sullivan ("Presiding Judge Sullivan"), not personally, but solely in their official administrative capacities, are, respectively, the Chief Judge of the Circuit Court of Cook County and the Presiding Judge of the County Division of the Circuit Court of Cook County. In their official administrative capacities, Chief Judge Evans and Presiding Judge Sullivan are causally connected with the enforcement of the Illinois Name Change Statute, such that declaratory and injunctive relief against Chief Judge Evans and Presiding Judge Sullivan would redress Plaintiffs' injuries. Chief Judge Evans and Presiding Judge Sullivan are the officials charged with promulgating the rules, regulations, and policies of the Circuit Court of Cook County and the County Division, the court

and division charged with granting or denying Plaintiffs' petitions for name changes under the Illinois Name Change Statute, and charged with enforcement of the prohibition against filing of petitions for name changes by persons convicted of felonies within the past ten years or convicted of other specified felonies or misdemeanors. *See* 735 ILCS 5/21-101; 735 ILCS 5/21-102(b); Cook County Circuit Court General Order No. 1.2.2.1(d). Chief Judge Evans and Presiding Judge Sullivan are being sued solely for declaratory and injunctive relief to address an ongoing violation of federal law, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

JURISDICTION AND VENUE

15. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. § 1983, to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution.

16. This Court has personal jurisdiction over each of the Defendants, because the Defendants reside and work in their official capacities in Illinois, and the official acts and omissions of each Defendant giving rise to Plaintiffs' claims occurred in Illinois.

17. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Defendants reside in this District and a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred within this District.

19. Plaintiffs have standing to bring this action because the Illinois Name Change Statute presently restrains and prohibits each Plaintiff from filing a petition for name change. Thus, the Illinois Name Change Statute is presently and will in the future continue to impose a prior restraint on Plaintiffs' constitutional rights of free speech and self-expression under the First Amendment to the United States Constitution, and is presently and will continue to deprive

Plaintiffs of their constitutional rights to due process under the Fourteenth Amendment to the United States Constitution. Because Defendants, in their official capacities, are each causally connected with the enforcement of the Illinois Name Change Statute, Plaintiffs have suffered injuries-in-fact that are fairly traceable to Defendants' official conduct and are likely to be redressed by the relief requested herein.

PLAINTIFFS' EXPERIENCES UNDER THE ILLINOIS NAME CHANGE STATUTE

A. Plaintiff Reyna Angelina Ortiz

20. Reyna has lived her life under her chosen name of Reyna Angelina Ortiz since 1993. She took the name "Reyna," which means queen in Spanish, as a teenager. "Angelina," is the name of her niece and signifies the importance of family. The name "Reyna Angelina Ortiz" is a manifestation and expression of her personal identity.

21. Reyna pled guilty to a charge of identity theft, forgery, and theft in 2003. Her conviction carries a lifetime ban on filing a name change petition under the Illinois Name Change Statute. Accordingly, as a result of her conviction, Reyna has lost the ability to legally change her name, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification containing her legal name ever since.

22. Since completing her sentence, Reyna has had no further convictions.

23. The Illinois Name Change Statute forces Reyna to speak and respond to a name that subjects her to discrimination every time she is required to present her government-issued identification in a public setting.

24. The ability to change her legal name would allow Reyna to live her life as herself, free from the forced outing that takes place every time she is required to present a government-issued identification or to be called by her legal name in public.

25. The Illinois Name Change Statute also denies Reyna her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

26. Reyna has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

27. On one such occasion, an employee of the U.S. Postal Service refused to give Reyna a package because the Postal Service employee did not believe her to be the person identified on her government-issued identification.

28. On another such occasion, Reyna applied to change the gender marker on her government-issued identification with the Illinois Secretary of State. On her first visit to the Secretary of State's office, she was repeatedly mis-gendered and the Secretary of State's office refused to accept her application. It was only after Reyna returned with an attorney that her application was processed appropriately.

29. On several occasions, Reyna has been put at risk when visiting a restaurant, bar, or casino when she is forced to out herself as a transgender woman by presenting her government-issued identification. In each of these situations the bouncer has loudly commented on her legal name and outed her to a crowd of people waiting.

30. Reyna's government-issued identification has also prevented her from pursuing her education. Reyna is currently employed as a social service worker. She has not gone back to school for her associate's degree, bachelor's degree, or master's degree because she would be required to register under her legal name and fears being outed in class. This significantly limits Reyna's earning potential.

B. Plaintiff Keisha Allen

31. Keisha has lived her life under her chosen name of Keisha Allen for the last twenty-five years. She took the name "Keisha" because she did not identify with her legal name and did not want to continue to be associated with a traditionally masculine name.

32. Keisha pled guilty in 1994 to a sexual offense requiring registration and carrying a lifetime ban on filing a name change petition under the Illinois Name Change Statute. Accordingly, as a result of her conviction, Keisha lost the ability to legally change her name, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification sporting her legal name ever since.

33. Since completing her sentence, Keisha has had no further convictions.

34. The Illinois Name Change Statute forces Keisha to speak and respond to a name that subjects her to discrimination every time she is required to present her government-issued identification in a public setting.

35. The ability to change her legal name would allow Keisha to live her life as herself, without the forced outing that takes place every time she is required to present a government-issued identification or is called by her legal name in public.

36. The Illinois Name Change Statute also denies Keisha her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

37. Keisha has faced discrimination when she presents her government-issued identification on numerous occasions.

38. On one such occasion, Keisha was denied food stamps when she applied under her chosen name. She was forced to re-apply for food stamps under her legal name before she was able to obtain this public benefit.

39. On several occasions, Keisha has been outed as a transgender woman while applying for jobs and, as a result, has had difficulty obtaining employment.

40. Twice in the last two years, Keisha has been subjected to physical assault in the workplace as a result of having been outed as a transgender woman. On each of these occasions, Keisha has left the job to seek employment where she could feel safe at the job site.

41. Due to the Illinois Name Change Statute, Keisha is continually forced to out herself as a transgender woman in the workplace. This has negatively impacted Keisha's ability to hold a steady, long-term job and limits Keisha's earning potential.

C. Plaintiff Amari Garza

42. Amari has lived her life under her chosen name of Amari Garza for about forty years. The name "Amari" is a manifestation of her personal identity, reflecting her strength and resiliency through a lifetime of struggles. "Amari" stands for love and faith, and is a symbol of her outlook on life, which is to remain positive in the face of adversity and to stand as an uplifting example for others.

43. Amari pled guilty to a charge of identity theft on April 10, 2003. Her conviction carries a lifetime ban on filing a name change petition under the Illinois Name Change Statute. Accordingly, as a result of her conviction, Amari lost the ability to legally change her name and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification sporting her legal name, Armando Garza, ever since.

44. Since completing her sentence, Amari has had no further convictions.

45. The ability to change her legal name would allow Amari to live her life as herself, free from the forced outing that takes place every time she is called by her legal name in public.

46. The Illinois Name Change Statute not only impinges on Amari's ability to express herself and identify with her true self, but it also forces her to speak and respond to a name that subjects her to discrimination every time she is forced to present her government-issued identification in a public setting.

47. The Illinois Name Change Statute also denies Amari her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is forced to out herself as a transgender woman by presenting her government-issued identification.

48. Amari has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

49. On one such occasion in September 2018, Amari was publicly humiliated when a Community and Economic Development Association of Cook County, Inc. office employee initially refused her service because she did not believe Amari was the person identified on her government-issued identification.

50. On another such occasion, Amari felt unsafe after being outed as a transgender woman in the waiting room of a large public aid office on the southside of Chicago, when other individuals in the waiting room began to mock and stare at her. Even though there was a security guard within earshot, he did nothing more than smirk at Amari.

51. Amari's government-issued identification has also prevented her from pursuing her education. She previously attempted to enroll in a social service program at Kennedy King College, but feared being outed in class after an admissions counselor explained that Amari must

be enrolled under her legal name, leaving the decision as to the name by which she would be addressed in class up to Amari's individual professors.

52. Amari has not gone back to school for her associate's degree, bachelor's degree, or master's degree because she would be required to register under her legal name and fears being outed in class. This significantly limits Amari's earning potential.

53. Amari is also frequently denied her fundamental rights of self-identity and self-expression during frequent visits to the hospital, where many individuals on the hospital staff refuse to call her by her chosen name, instead calling by her legal name and forcing Amari to be outed as a transgender woman regardless of who is present in the hospital waiting room.

D. Plaintiff Heaven Edwards

54. Heaven has lived her life under her chosen name of Heaven Edwards since the age of eighteen. The name "Heaven" is aspirational, as it represents the person and lifestyle she is working towards. Heaven also symbolizes a break from her troubled past and childhood, representing instead the happy-go-lucky, honest, kind, generous, and loyal person she stands as today.

55. After pleading guilty to prostitution in September 2012, Heaven completed her sentence in 2013, meaning she does not become eligible to legally change her name until January 2023. The ability to change her legal name would allow Heaven to live her life as herself, free from the forced outing which takes place every time she presents her government-issued identification in a public setting.

56. The Illinois Name Change Statute not only impinges on Heaven's ability to express herself and identify with her true self, but it also forces her to speak and respond to a name that subjects her to discrimination every time she is forced to present her government-issued

identification in public. Therefore, the statute violates Heaven's First Amendment rights to both pure and symbolic speech.

57. The Illinois Name Change Statute also denies Heaven her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to present her government-issued identification.

58. Heaven is frequently denied her fundamental rights of self-identity and self-expression during frequent visits to the hospital, where she is forced to present her government-issued identification regardless of who is present in the hospital waiting room.

59. Heaven also faces discrimination en route to her hospital appointments, when the hospital-supplied shuttle drivers frequently do not believe that she is the individual identified on her government-issued identification or their list of patients to transport.

60. Heaven has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

61. Heaven's legal name has held her back from obtaining and maintaining employment.

62. On several occasions, Heaven's interviews and applications appeared promising until the moment that employers recognize the discrepancy between Heaven's given name and appearance, at which point she is forced to be outed as a transgender woman.

63. On one such occasion, Heaven began receiving disparate treatment at work only once her coworkers noticed that she signed her legal name on the daily sign-in sheets, as is required at the temporary agency at which Heaven most recently worked. Heaven was eventually terminated from this position.

64. Heaven is also frequently discriminated against while receiving public benefits, when everyone stops and looks at her once she is forcibly outed as a transgender woman when her legal name is called aloud.

65. Heaven regularly avoids places that require the presentation of a government-issued identification, and rarely goes out to socialize because of her fears about being outed at a transgender woman in public, social settings such as clubs or bars.

E. Plaintiff Eisha Latrice Love

66. Eisha has lived her life under her chosen name of Eisha Latrice Love for thirteen years, since she was sixteen years old. The name "Eisha" is an homage to a relative of a similar name who initially did not accept Eisha's identity. Eisha strove to be a better representation of that relative, and in doing so inspired love and acceptance from the woman who initially did not understand her. The name "Eisha" matches who she is on the inside and out, and continues to motivate her to be the best version of herself possible.

67. Following her conviction of aggravated battery in a public place in 2015, Eisha lost the ability to legally change her name until 2026, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification sporting her legal name ever since.

68. Since completing her sentence, Eisha has had no further convictions.

69. The ability to change her legal name would allow Eisha to live her life as herself, free from the forced outing that takes place every time she is called by her legal name in public.

70. The Illinois Name Change Statute not only impinges on Eisha's ability to express herself and identify with her true self, but it also forces her to speak and respond to a name that subjects her to discrimination every time she is forced to present her government-issued identification in a public setting.

71. The Illinois Name Change Statute also denies Eisha her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

72. Eisha has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

73. On one such occasion, a Regional Transit Authority employee denied Eisha disability transit benefits and caused her emotional distress after seeing her government-issued identification and discovering Eisha is a transgender woman. The employee subjected Eisha to interrogating and judgmental questions about the transgender community before incorrectly telling her that her paperwork was incomplete. Eisha was forced to leave without her benefits and return another day to receive them.

74. Eisha often feels unsafe in public settings, such as entering nightclubs, where bouncers upon seeing her government-issued identification will out her to strangers as having a male name. She feels physically at risk in these situations because she does not know how people will react. As a result, Eisha often withdraws from social events.

75. Eisha has an established career as a public figure, and engages in speaking events. Organizers often pay her in the form of checks reflecting her chosen name instead of her legal name. Eisha is unable to deposit these checks. She instead must engage in a time-consuming and embarrassing process of sending the checks back and requesting replacements.

F. Plaintiff Shamika Lopez Clay

76. Shamika has lived her life under her chosen name of Shamika Lopez Clay for twenty-seven years, since she was in eighth grade. The name “Shamika” embodies beauty to Shamika and connects with her vision of herself.

77. Following her conviction of prostitution in 2013, Shamika lost the ability to legally change her name until 2025, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification sporting her legal name ever since.

78. Since completing her sentence, Shamika has had no further convictions.

79. The ability to change her legal name would allow Shamika to live her life as herself, free from the forced outing that takes place every time she is called by her legal name in public.

80. The Illinois Name Change Statute not only impinges on Shamika's ability to express herself and identify with her true self, but it also forces her to speak and respond to a name that subjects her to discrimination every time she is forced to present her government-issued identification in a public setting.

81. The Illinois Name Change Statute also denies Shamika her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

82. Shamika has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

83. At various times in her life and as recently as 2018, Shamika has been homeless and has sought lodging at homeless shelters. She has not been receiving such services as a result of being a transwoman, a fact that is apparent from her government-issued identification.

84. Shamika often feels unsafe in public settings. She avoids places where she has to show her government-issued identification out of fear of physical and verbal attacks.

G. Plaintiff Savannah Josephine Frazier

85. Savannah has lived her life under her chosen name of Savannah Josephine Frazier since at least 2013. The name "Savannah," was inspired by the movie Waiting to Exhale, which Savannah identified closely with. The name "Josephine" is inspired by Josephine Baker, a strong black woman with significant contributions both to the French Resistance during World War II and to the Civil Rights Movement in the United States. The surname "Frazier" is the surname of Savannah's grandmother, her best friend and the first person she came out. The name "Savannah Josephine Frazier" is a manifestation and expression of her personal identity.

86. Savannah pled guilty to a charge of retail theft in 2013. As a result of her conviction, Savannah lost the ability to change her name until September 13, 2026, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification containing her legal name ever since.

87. Since completing her sentence, Savannah has had no further convictions.

88. The Illinois Name Change Statute forces Savannah to speak and respond to a name that subjects her to discrimination every time she is required to present her government-issued identification in a public setting.

89. The ability to change her legal name would allow Savannah to live her life as herself, free from the forced outing that takes place every time she is required to present a government-issued identification or to be called by her legal name in public.

90. The Illinois Name Change Statute also denies Savannah her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

91. Savannah has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

92. On one such occasion, Savannah was travelling to Atlanta, Georgia and was accused by a Transportation Security Administration agent of using someone else's identification. As a result, Savannah was delayed for approximately 30 minutes before she was allowed to pass through security.

93. On another occasion, Savannah was applying for an Illinois Link Card and was required to present several additional forms of identification. Savannah was turned away twice when applying for her Illinois Link card before her application was accepted.

94. As a result of her experiences, Savannah avoids purchasing alcohol in her neighborhood where she might be outed, refuses to join her family on cruises which would require a U.S. Passport with a name she does not identify with, and will not go back to school where she might be outed in the classroom.

H. Plaintiff Kamora Lovelace

95. Kamora has lived her life under her chosen name of Kamora Lovelace for the past two years. She assumed the name "Kamora" because it is classy and professional and connects with her vision of herself.

96. Following her guilty plea to a charge of aggravated discharge of a firearm in May 2018, Kamora lost the ability to legally change her name until 2032, and has been regularly subjected to compulsory speech and discrimination as a result of being forced to present a government-issued identification sporting her legal name ever since.

97. Kamora has had no further convictions.

98. The ability to change her legal name would allow Kamora to live her life as herself, free from the forced outing that takes place every time she is called by her legal name in public.

99. The Illinois Name Change Statute not only impinges on Kamora's ability to express herself and identify with her true self, but it also forces her to speak and respond to a name that subjects her to discrimination every time she is forced to present her government-issued identification in a public setting.

100. The Illinois Name Change Statute also denies Kamora her fundamental right to self-identify by legally changing her name to her chosen name, as demonstrated every time she is required to engage in compelled speech and to out herself as a transgender woman by presenting her government-issued identification.

101. Kamora has faced discrimination when she presents her government-issued identification in a public setting on numerous occasions.

102. As a professional truck driver, Kamora was required to wear a name tag publicly displaying a name that did not fit her physical appearance, subjecting Kamora to ridicule and embarrassment, as a result of which she eventually stopped working, and which made her reluctant to seek a new employment in her profession.

103. Kamora often feels embarrassed in public settings and avoids places where she has to show her government-issued identification out of fear of being subjected to ridicule and embarrassment.

COUNT I
Deprivation of Civil Rights, 42 U.S.C. 1983 –
First Amendment (Freedom of Speech)

104. Plaintiffs adopt and incorporate Paragraphs 1-103 of this Complaint by reference as if fully set forth herein.

105. At all times relevant hereto, Plaintiffs had and have a right under the First Amendment to the United States Constitution to free speech, free expression, and freedom of thought, which includes both the right to speak freely and the right to refrain from speaking at all. The right to speak and the right to refrain from speaking are complementary components of the broader concept of individual freedom of mind.

106. First Amendment protection extends to expressive conduct or "symbolic" speech, just as it does to literal or "pure" speech.

107. First Amendment protections extend to forced, or compelled speech, whether such speech involves compelled statements of opinion or compelled statement of fact. Either form of compulsion burdens protected speech.

108. A person's right to choose, speak, and identify by a particular name is protectable speech under the First Amendment. A person's chosen name falls under both pure and symbolic speech that symbolizes a person's personal expression and identity.

109. Plaintiffs' right to self-expression by changing their names is protectable speech, impeded by the Illinois Name Change Statute and its arbitrary and unreasonable bar prohibiting Plaintiffs from changing their legal names due to Plaintiffs' status as convicted felons is unconstitutional as applied to Plaintiffs.

110. As a result of the Illinois Name Change Statute, Plaintiff are forced to speak, respond to, and acknowledge legal names that do not comport with their gender or personal identities.

111. Forcing Plaintiffs to speak and identify by their legal names is a violation of their First Amendment rights. Doing so exposes Plaintiffs to public harm, danger, and discrimination by forcibly outing Plaintiffs as transgender women every time they are forced to present their

government-issued identifications, which bear their legal names rather than chosen names, in public.

112. The Illinois Name Change Statute as applied to Plaintiffs is not narrowly tailored to promote a compelling government interest.

113. The Illinois Name Change Statute also is not substantially related to furthering an important government interest and is not rationally connected to a legitimate state interest.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against Defendants:

A. Declaring that the Illinois Name Change Statute is unconstitutional as applied to Plaintiffs;

B. Preliminarily and permanently enjoining Defendants from (a) objecting to Plaintiffs' name change petitions; (b) preventing Plaintiffs' filing of name change petitions; and (c) denying Plaintiffs' name change petitions on the grounds that Plaintiffs have been convicted of felonies within the past ten years or have been convicted of other specified felonies or misdemeanors barring them from filing petitions for name changes under 735 ILCS 5/21-101(b); and

C. Granting such other and further relief the Court determines to be necessary or appropriate.

COUNT II
Deprivation of Civil Rights, 42 U.S.C. 1983 –
Fourteenth Amendment (Due Process; Property)
(Plaintiffs Keisha, Shamika, Heaven, Amari, Eisha, and Reyna)

114. Plaintiffs adopt and incorporate Paragraphs 1-103 of this Complaint by reference as if fully set forth herein.

115. At all times relevant hereto, Plaintiffs had and have a right under the Fourteenth Amendment to the United States Constitution to due process, including protection from state governmental deprivations of property without due process of law.

116. Under the Fourteenth Amendment, a statute unconstitutionally deprives a person of due process if it impermissibly deprives a person of a property interest. If that interest is a fundamental right, the statute can only be justified by a compelling state interest, narrowly drawn to express only the legitimate state interests at stake.

117. An amendment to the Illinois Name Change Statute effective as of July 23, 2010, states: "Common law name changes adopted in this State on or after July 1, 2010 are invalid." 735 ILCS 5/21-105.

118. Plaintiffs Keisha, Shamika, Heaven, Amari, Eisha, and Reyna (the "Pre-2010 Name Change Plaintiffs") all adopted and lived under their chosen names prior to July 1, 2010.

119. Prior to July 1, 2010, Illinois courts had held that individuals could lawfully change their names without resort to any legal proceedings and that names would, for all purposes, constitute those individuals' legal name just as much as if they had born with those names.

120. Because the Pre-2010 Name Change Plaintiffs assumed their chose names prior to July 1, 2010, they legally changed their names pursuant to the common law and, consequently, had and have a property interest in their pre-2010 common law names.

121. By retroactively invaliding the Pre-2010 Name Change Plaintiffs' common law names, the Illinois Name Change Statute deprived the Pre-2010 Name Change Plaintiffs of their property interest in their common law names.

122. The State's deprivation of the Pre-2010 Name Change Plaintiffs of their property interest in their common law names is not narrowly tailored to promote a compelling government interest.

123. The State's deprivation of the Pre-2010 Name Change Plaintiffs of their property interest in their common law names also is not substantially related to furthering an important government interest and is not rationally connected to a legitimate state interest.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against Defendants:

A. Declaring that the State's deprivation of the Pre-2010 Name Change Plaintiffs of their property interest in their common law names is void;

B. Declaring that the Pre-2010 Name Change Plaintiffs have retained and legally adopted their chosen names under Illinois common law and are entitled to live, work, and have identification issued under their common law names;

C. Preliminarily and permanently enjoining Defendants from (a) objecting to Plaintiffs' name change petitions; (b) preventing Plaintiffs' filing of name change petitions; and (c) denying Plaintiffs' name change petitions on the grounds that Plaintiffs' common law names are invalid; and

D. Granting such other and further relief the Court determines to be necessary or appropriate.

COUNT III
Deprivation of Civil Rights, 42 U.S.C. 1983 –
Fourteenth Amendment (Due Process; Liberty)
Right of Self Identification

124. Plaintiffs adopt and incorporate Paragraphs 1-103 of this Complaint by reference as if fully set forth herein.

125. At all times relevant hereto, Plaintiffs had and have a right under the Fourteenth Amendment to the United States Constitution to due process, including protection from state governmental deprivations of liberty without due process of law.

126. Under the Fourteenth Amendment, a statute unconstitutionally deprives a person of due process if it impermissibly restricts a person's liberty interest. If that interest is a fundamental right, the statute can only be justified by a compelling state interest, narrowly drawn to express only the legitimate state interests at stake.

127. Plaintiffs' right to self-identify is a fundamental right. It is, quintessentially the right to define one's own concept of existence, which lies at the heart of liberty.

128. The right to self-identify is central to personal dignity and autonomy and a necessary component of the right to define one's own concept of existence. In fact, there is a long tradition of recognizing the right of the individual to self-identify by changing one's name. The right of individuals to change their names was recognized at common law long before the founding of our country.

129. Until the advent of name-change statutes, individuals could self-identify by changing their own names through general usage or habit and without resorting to legal proceedings.

130. Illinois' name change statute was originally enacted in 1874.

131. Even after the advent of name-change statutes, under Illinois law, individuals could still lawfully change their names without legal proceedings, where for all purposes the assumed names constituted their legal names just as if it was the name with which they were born.

132. Common law name changes remained valid until July 1, 2010.

133. Until 1993, the standard for granting name change petitions pursuant to statute was simple. Any such petition was ordinarily granted so long as the petition complied with the form in the statute, provided notice as required by the statute, and there otherwise appeared no reason why the petition should not be granted.

134. In 1993, the Illinois Name Change Statute was changed to deny individuals with certain criminal convictions the right to self-identify through statutory name changes.

135. Illinois' denial of Plaintiffs' fundamental right to self-identify is demonstrated every time they are required to engage in compelled speech and to out themselves as transgender women by presenting their government-issued identifications.

136. The Illinois Name Change Statute as applied to Plaintiffs is not narrowly tailored to promote a compelling government interest.

137. The Illinois Name Change Statute also is not substantially related to furthering an important government interest and is not rationally connected to a legitimate state interest.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against Defendants:

A. Declaring that the Illinois Name Change Statute is unconstitutional as applied to Plaintiffs;

B. Preliminarily and permanently enjoining Defendants from (a) objecting to Plaintiffs' name change petitions; (b) preventing Plaintiffs' filing of name change petitions; and (c) denying Plaintiffs' name change petitions on the grounds that Plaintiffs have been convicted of felonies within the past ten years or have been convicted of other specified felonies or misdemeanors barring them from filing petitions for name changes under 735 ILCS 5/21-101(b); and

C. Granting such other and further relief the Court determines to be necessary or appropriate.

Dated: May 1, 2019

By: /s/ Gregory E. Ostfeld
Greenberg Traurig, LLP
Gregory E. Ostfeld (ARDC # 6257163)
Martin Kedziora (ARDC # 6300162)
Lucia Marker-Moore (ARDC # 6306511)
Brian Straw (ARDC # 6317181)
Alexandra Block (ARDC # 6312371)
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Telephone: (312) 456-8400
Facsimile: (312) 456-8435
ostfeldg@gtlaw.com
kedzioram@gtlaw.com
markermoorel@gtlaw.com
strawb@gtlaw.com
blocka@gtlaw.com

Lark Mulligan (ARDC # 6327361)
Transformative Justice Law Project of Illinois
203 N Lasalle, Suite 2100
Chicago, Illinois 60601
Telephone: (312) 558-1472
Facsimile: (312) 558-1470
lark@tjlp.org

Counsel for Plaintiffs