IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICHARD STANLEY, JR and TIM CLARK Plaintiffs, vs. BROWN COUNTY ELECTION BOARD Defendant.	)	Cause No. 25-1482

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

As Plaintiffs can best determine, Defendant's Motion to Dismiss is based on the assertion that the present dispute "isn't ripe for such relief." As argued in Defendant's Motion to Dismiss, the Brown County Election Board believes that it is "under no duty to opine to the Plaintiff's, act prior to a timely election filing, or make any early decision regarding eligibility to run for office for the foreseeable future." And yet, the Brown County Election Board has cited no legal authority whatsoever to support any of its arguments. The only legal authority cited by the Brown County Election Board in its Motion to Dismiss merely addresses the question of whether local governing bodies can be sued under 42 U.S.C. § 1983, which the Court concluded in the affirmative. *Monell v. Department of Soc. Svcs.*, 436 US 658 (1978). But *Monell* has no bearing on the present motion. Essentially, the arguments presented by the Brown County Election Board in its Motion to Dismiss is a wish list of what the Board would like the law to be, but the Board has completely failed to explain what the law actually is or how the law

should be applied to the facts of this case. For this reason, the Court should dismiss the present motion out of hand.

Surprisingly, the Brown County Election Board failed to cite what is probably the most relevant case on this question, and the Board clearly knew about this case when it filed its Motion to Dismiss because Plaintiffs cited this case in their Complaint. *Hero v. Lake County Election Board*, 42 F.4th 768 (2022). In that case, the lower court had dismissed Mr. Hero's complaint for lack of jurisdiction. *Id.* at 770. However, the Seventh Circuit disagreed with the district court and determined that the court did in fact have jurisdiction to hear the case. *Id.* at 771-775. In the end, Mr. Hero did lose his case, but he lost the case on its merits, not on jurisdictional grounds. *Id.* at 775-777. It is important to note that at the time of his lawsuit, Mr. Hero was not actually a current candidate for elected office. However, he did establish that he would "reasonably run again 'at the earliest opportunity'". *Id.* at 773. In explaining its decision, the court observed that "Elections often happen too quickly for meaningful judicial review to occur before a dispute is resolved, as many cases take years to reach a final disposition. Absent this exception, few challenges would be heard outside of an emergency basis." *Id.*

Although the decision in *Hero* was couched in terms of mootness (since he was prevented from running for office as a Republican in a previous election which was over by the time of his lawsuit), the question at issue could have also been easily considered as a question of ripeness since the two doctrines are essentially addressing the same underlying concern and Mr. Hero wasn't actually a candidate or proposed candidate at

the time of his lawsuit. But, the result would not have been any different if the question had been raised in terms of ripeness instead of mootness.

In addition to the *Hero* case, other precedence from the Seventh Circuit also supports Plaintiffs' assertion that the present case is ripe for decision by the Court. As explained in *E.F. Transit, Inc. v. Cook*, 878 F.3d 606 (7th Cir. 2018), "[a] claim is ripe if it is fit for judicial decision and not resolving it will cause hardship to the plaintiff." *Id.* at 610. As noted by the court in *E.F. Transit*, the question at issue in that case was "predominantly [a] legal question" and "legal questions are 'quintessentially fit' for judicial decision." *Id.* Similar to the present case, the plaintiff in *E.F. Transit* was at risk of being prosecuted under a state statute. *Id.* The court determined that "Hardship exists in this context if the plaintiff has an intention to engage in a course of conduct arguably affected with a constitutional interest but proscribed by a statute and there exists a credible threat of prosecution under the statute. A plaintiff need not engage in the proscribed conduct and expose himself to punishment or prosecution before bringing a constitutional claim. But the potential for prosecution must be likely; if a prosecution is unlikely or not even remotely possible, then the dispute is not susceptible to resolution by a federal court." *Id.* (internal punctuation and citations removed for clarity).

In *Wisconsin Right to Life State Political Action Committee v. Barland*, 664 F.3d 139 (7th Cir. 2011), the court explained that "Ripeness concerns may arise when a case involves uncertain or contingent events that may not occur as anticipated, or not occur at all. Whether a claim is ripe for adjudication depends on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.*

at 148 (internal punctuation and citations removed for clarity). The court further explained that "Claims that present purely legal issues are normally fit for judicial decision. And in challenges to laws that chill protected speech, the hardship of postponing judicial review weighs heavily in favor of hearing the case." *Id.* (citation removed for clarity).

Effectively, the Brown County Election Board is asking the Court to give it a free pass to deprive Mr. Stanley and Mr. Clark of their Constitutional rights without any intervention by the Court. Indeed, the Board's own conduct so far is evidence that the Board will in fact prevent Mr. Stanley and Mr. Clark from being placed on the Republican primary ballot if the Court permits this. That is, the Brown County Election Board had all of the relevant information about this matter three weeks before this lawsuit was filed, and Plaintiffs asked the Board to issue a written statement disavowing the Indiana Republican Party's decision against Mr. Stanley and Mr. Clark. (Plaintiffs' Exhibit 10). Indeed, in correspondence between Plaintiffs' attorney and the President of the Board, Plaintiffs' attorney asserted that "You should understand that a refusal by you to provide any clarity whatsoever on this matter should be reasonably interpreted by myself, Tim and the court to reflect an intention by the Election Board to enforce the Indiana Republican Party's decision against myself and Tim." (Plaintiffs' Exhibit 10 at pdf pg. 7). Notably, the President of the Board never denied that this would be a reasonable interpretation for Plaintiffs to make. Later, the Brown County Election Board voted unanimously to defend against any lawsuit by Plaintiffs even before the Board received the summons for the present lawsuit.[1] Ultimately, this lawsuit ended up being

[1] This can be seen on the Brown County Indiana Government Meetings channel on YouTube in the August 12, 2025 Election Board Meeting at 17:50-19:50.

filed because of the Board's refusal to provide any guidance whatsoever on how it would treat the Indiana Republican Party's decision against Mr. Stanley and Mr. Clark.

Even after Plaintiffs filed the present lawsuit, the Brown County Election Board could have walked away from this matter by not defending the lawsuit if they do not intend to enforce the Indiana Republican Party's decision against Mr. Stanley and Mr. Clark. But they haven't—the Board is actively defending this lawsuit as this is being written. In fact, the Brown County Council has already budgeted $100,000 for the Board to defend this lawsuit.[2] Why would the Brown County Election Board spend $100,000 of taxpayer money defending this lawsuit, if they actually intended to allow Mr. Stanley and Mr. Clark to run for election on the Republican primary ballot?

Without Court intervention, it is quite obvious how this will actually play out. Mr. Stanley and Mr. Clark would need to file their candidacy papers (typically in early February), and then shortly thereafter the Brown County Election Board will hold a hearing to entertain objections against the candidates. At that hearing (perhaps mid-February), no one can seriously doubt that the local Republican Chairman (or anyone for that matter) will raise the Indiana Republican Party's decision in an objection to Mr. Stanley's and Mr. Clark's candidacies. At that point, what are the real chances that the Brown County Election Board will deny said objections and allow Mr. Stanley and Mr. Clark to be placed on the Republican primary ballot? There is almost no chance of that.

And the courts have already recognized the inherent problem of this type of situation. *See, e.g., Hero*, 42 F.4th at 773 ("Elections often happen too quickly for meaningful judicial review to occur before a dispute is resolved"). When the Brown

[2] This can be seen on the Brown County Indiana Government Meetings channel on YouTube in the August 12, 2025 Council Special Work Session at 1:19:45-1:20:50.

County Election Board rules against Mr. Stanley and Mr. Clark in mid-February, there will be less than three months before primary election day. That provides Mr. Stanley and Mr. Clark almost no time at all to seek judicial relief and also completely cuts off their ability to appeal any adverse lower court ruling. And not only that, but even if a court were to intervene and provide relief at some point prior to primary election day, Mr. Stanley and Mr. Clark will have lost incredibly precious time and resources defending their legal rights in court instead of campaigning in the primary.

And that does not even encompass the full breadth of the harm. Although Mr. Stanley has expressed a 100% intention to run for elected office in Brown County (Plaintiffs' Exhibit 8 ¶ 4), he is unwilling to do that until the Indiana Republican Party's ban against him has been removed, either voluntarily by the Brown County Election Board or by order of the Court. Unlike Mr. Clark, Mr. Stanley does not have the benefit of being an incumbent, and because of this, Mr. Stanley is unwilling to formally announce his candidacy for any position as long as the cloud of the Indiana Republican Party's decision remains over his head. The reasons why Mr. Stanley is unwilling to engage in this fraught gauntlet that the Board is asking the Court to endorse is not hard to understand. First, Mr. Stanley's 100% commitment to run for elected office will undoubtedly slam right up against the 100% chance that the Board will remove him from the Republican primary ballot. Thus, Mr. Stanley's attempt to run would ultimately be futile. And second, in proceeding down this course, Mr. Stanley would only end up getting in the way of other allies that could have run instead. Therefore, Mr. Stanley is being harmed right now at this moment by the Indiana Republican Party's decision

against him and the Brown County Election Board's unwillingness to disavow that decision.

Indeed, one of the arguments made by the Brown County Election Board in its Motion to Dismiss is that "there isn't even an election in 2025 for the Plaintiff's to complain of or to participate in." However, that is a half-truth at best and not the ultimate test of ripeness. In fact, the local Republican Party will be announcing their 2026 candidates on September 20, 2025. (Plaintiffs' Exhibit 13). So, the campaign for the next election is already starting now, while Mr. Stanley has been hobbled by the Indiana Republican Party's decision against him and the Brown County Election Board's voluntary choice to fight Mr. Stanley in court.

Mr. Clark's situation is somewhat different than Mr. Stanley's because Mr. Clark is an incumbent who plans to run again for the same office he currently holds. (Plaintiffs' Exhibit 9 ¶ 8). However, the Brown County Election Board's refusal to disavow the Indiana Republican Party's decision puts Mr. Clark in just as much of a fraught position as Mr. Stanley. It should not be forgotten that this whole affair began because the local Republican Chairman did everything he could to try to "shut down [Mr. Clark's] campaign" in the 2024 election. (Plaintiffs' Exhibit 1 at 14). Now the Brown County Election Board has voluntarily decided to engage in its own lawfare to try to follow through on the local Republican Chairman's efforts to prevent Mr. Clark from winning elected office. If the Court grants the Board's Motion to Dismiss and refuses to entertain Plaintiffs' concurrently filed Motion for Summary Judgment, then it is very likely that Mr. Clark will lose the office he currently holds in the next election. First, such a result will send a misleading message to voters in Brown County that Mr. Clark is not a

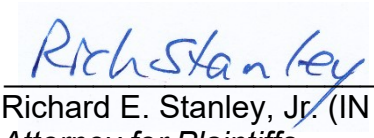
Republican in good-standing even though in reality that's not true at all. He will then be fighting an uphill battle to defend his reputation instead of campaigning on the political merits of his candidacy. And, as noted above, at a minimum if the Court is unwilling to decide this case on its merits, Mr. Clark will be forced to try to fight this issue in court during the primary season after the Brown County Election Board upholds the decision of the Indiana Republican Party's decision against him. Not only will that steal away from Mr. Clark incredibly precious time and resources during the primary, but again, it is reasonable to expect that Mr. Clark will lose voter sentiment due to the uncertainty of whether he will ultimately make it onto the Republican primary ballot before primary election day. And finally, there is no guarantee in that situation that he will be able to get this legal dispute resolved before primary election day. What is he to do then? Does he then run as an independent instead of as a Republican? That is an awful choice to force Mr. Clark into because it is highly likely that the voters will view him as being a hypocrite for doing the same thing that he complained about during his first election. There is no doubt that Mr. Clark will suffer real harm if the Court grants the Board's Motion to Dismiss and refuses to entertain Plaintiffs' Motion for Summary Judgment.

As recited above, Seventh Circuit case law establishes that the test for ripeness is hardship to the plaintiff which is "likely" to occur. Plaintiffs' dispute with the Brown County Election Board easily satisfies that standard. Moreover, the nature of this dispute falls squarely within the types of cases that the Seventh Circuit has held are normally fit for judicial review. That is, as argued by Plaintiffs in their concurrent Summary Judgment Motion, "This Case Raises a Pure Legal Question With No Facts in

Dispute" (Motion for Summary Judgment at 4). *Cf. E.F. Transit*, 878 F.3d at 610; *Wisconsin Right to Life*, 664 F.3d at 148.

Therefore, for the foregoing reasons, Plaintiffs request that the Court dismiss the Brown County Election Board's Motion to Dismiss and proceed to rule on the merits of Plaintiffs' Motion for Summary Judgment.

Dated: August 25, 2025

By: 

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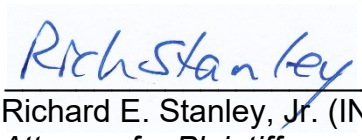
CERTIFICATE OF SERVICE

I certify that on August 25, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. A copy of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

By: 

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