

STATE OF INDIANA) IN THE MARION SUPERIOR/CIRCUIT COURT
) ss:
COUNTY OF MARION) CAUSE NO.: _____

JEANA M. HORNER; DENNIS JACK)
HORNER; JENNIFER K. THOMPSON;)
DANIEL C. HARGROVE; AMY M.)
WILLIS; and DANIEL J. WILLIS,)

Plaintiffs,)

vs.)

TERRY R. CURRY, in his official capacity as)
Marion County Prosecuting Attorney; the)
MARION COUNTY PROSECUTOR’S)
OFFICE; the CONSOLIDATED CITY OF)
INDIANAPOLIS/MARION COUNTY;)
JOSEPH H. HOGSETT, in his official)
capacity as Mayor of the Consolidated City of)
Indianapolis/Marion County; DAVID)
WANTZ, in his official capacity as Director)
of the Department of Public Safety; and)
TROY RIGGS, in his official capacity as)
Chief of the Indianapolis Metropolitan Police)
Department,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case seeks to put a stop to Indianapolis law enforcement’s practice of diverting millions of dollars of civil-forfeiture proceeds for its own benefit, when the Indiana Constitution requires that all forfeiture proceeds go to public schools.

2. Article 8, Section 2 of the Indiana Constitution requires that “all forfeitures which may accrue” go to the common school fund, and nowhere else.

3. Police and prosecutors in Indianapolis and Marion County are neglecting this constitutional command and retaining all of the proceeds of civil forfeitures for their own use.

4. Each year, hundreds of thousands of dollars' worth of private property—even millions—is the subject of civil-forfeiture actions in Marion County courts, but police and prosecutors have sent not a single penny of civil-forfeiture revenue to the common school fund in at least the last five years.

5. Instead, all forfeited property—everything from currency to cars to Xboxes—is being retained by and often sold for the benefit of the police and prosecutors responsible for seizing and forfeiting it.

6. Rather than aiding public schools, therefore, the forfeiture program in Indianapolis has evolved—in the words of the current Marion County Prosecutor—into a “revenue source” for law-enforcement agencies.

7. Over the past five years alone, the Marion County Prosecutor's Office has initiated more than 1,600 forfeiture actions. And for 2011 and 2012, the Marion County Prosecutor's Office retained an average of \$459,848 each year—out of an average of around \$1.5 million awarded annually to law-enforcement agencies overall in Marion County.

8. This state of affairs follows from two misapplications of Indiana law—one by the General Assembly and the other by Indianapolis's police and prosecutors.

9. The first is a legislative error in the Civil Forfeiture Statute itself, Ind. Code §§ 34-24-1-1 to 34-24-1-9, which unconstitutionally empowers police and prosecutors to deduct “law enforcement costs” before delivering forfeiture proceeds to the common school fund.

10. Under the Civil Forfeiture Statute, police and prosecutors may divert forfeiture proceeds, in reimbursement of certain expenses associated with the investigations and proceedings related to a particular forfeiture action.

11. This provision authorizing diversion of law-enforcement costs from the common school fund violates the plain text of the Indiana Constitution because Article 8, Section 2 requires that “all” forfeitures—not “some” forfeitures—be sent to the school fund.

12. The second error is the way in which Indianapolis’s police and prosecutors have interpreted the Civil Forfeiture Statute. Under their mistaken reading of the law, police and prosecutors retain staggering sums from forfeiture proceeds by wrongly characterizing them as reimbursement for “law enforcement costs.”

13. To be clear, the Civil Forfeiture Statute is unconstitutional to the extent it allows law enforcement to deduct *any* costs before sending “all forfeitures which may accrue” to the common school fund.

14. But even if actual, case-specific costs could be deducted consistent with Article 8, Section 2, police and prosecutors—including the Defendants—have gravely misconstrued the concept of “costs.”

15. Under the Civil Forfeiture Statute, reimbursable “law enforcement costs” are actual expenses that the police would not have incurred but for the criminal investigation associated with the seizure.

16. Likewise, for prosecutors, reimbursable “law enforcement costs” are actual expenses that they would not have incurred but for their involvement in proceedings associated with the seizure and the offenses related to the seizure.

17. Despite the plain letter of the law, however, the Defendants do not keep forfeiture proceeds based on case-by-case calculations of their actual enforcement costs.

18. Rather than accurately represent to the courts the amounts needed to cover their actual costs in forfeiture cases, the Defendants have reached agreements among themselves to parcel out *all* of the property they seize and forfeit.

19. For years, for example, the Marion County Prosecutor's Office and the Indianapolis Metropolitan Police Department have operated under a "Memorandum of Understanding Regarding Forfeitures." Pursuant to this agreement, prosecutors get 30% of the money from each forfeiture and the police get the remaining 70%.

20. In other words, the Defendants are keeping 100% of forfeiture proceeds for themselves, rather than accounting for their true "law enforcement costs" associated with each particular case.

21. In every case, zero percent goes to the common school fund.

22. To remedy this state of affairs, the Plaintiffs ask this Court to declare the law-enforcement-costs provision unconstitutional and to enjoin the Defendants to send all forfeiture proceeds to the common school fund.

23. If this Court holds that the law-enforcement-costs provision is constitutional, the Plaintiffs ask the Court to declare that the provision allows only for the deduction of true law-enforcement costs and, accordingly, to enjoin the Defendants from deducting forfeiture proceeds that do not in fact qualify as "law enforcement costs" under the Civil Forfeiture Statute.

PARTIES

I. THE PLAINTIFFS

24. Plaintiffs Jeana and Jack Horner are a married couple living in Greenfield, Indiana. In August 2013, two of the Horners' vehicles—including Jack's disability-tagged Jeep Grand Cherokee—were seized by law enforcement within Marion County limits. The Marion County Prosecutor's Office filed a forfeiture action against the vehicles, claiming that one of Jeana's sons (Jack's stepson) used the vehicles to transport marijuana. The charges against the Horners' son were later dismissed. To get their vehicles back, the Horners had to retain an attorney, file summary-judgment papers, and appear for a hearing before the Marion County Superior Court. The court ultimately ruled in their favor, in April 2014. It took another three weeks for the vehicles to be returned, and one of the vehicles had been drained of its oil. All told, the Horners spent more than nine months fighting to recover their lawful property. As Indiana citizens and taxpayers in good standing, they now seek to redress Marion County's profit-driven forfeiture program and to vindicate the public rights secured by Article 8 of the Indiana Constitution and the Civil Forfeiture Statute.

25. Plaintiffs Daniel Hargrove and Jennifer Thompson are a married couple living in Indianapolis, Indiana. They have been Marion County residents for more than a decade. As Indiana citizens and taxpayers in good standing, they seek to redress Marion County's profit-driven forfeiture program and to vindicate the public rights secured by Article 8 of the Indiana Constitution and the Civil Forfeiture Statute.

26. Plaintiffs Daniel and Amy Willis are a married couple living in Indianapolis, Indiana. They have been Marion County residents for the last nine years. As Indiana citizens and taxpayers in good standing, they seek to redress Marion County's profit-driven

forfeiture program and to vindicate the public rights secured by Article 8 of the Indiana Constitution and the Civil Forfeiture Statute.

II. THE DEFENDANTS

27. Defendant Terry R. Curry is the Marion County Prosecuting Attorney. He is the officer with direct authority over the Marion County Prosecutor's Office, the state governmental agency responsible for prosecuting actions for forfeiture in Marion County under the Civil Forfeiture Statute. Prosecutor Curry's office is located in Indianapolis, in Marion County, Indiana. He is sued in his official capacity.

28. Defendant Marion County Prosecutor's Office is the state governmental agency responsible for prosecuting actions for forfeiture in Marion County under the Civil Forfeiture Statute. The office is headquartered in Indianapolis, in Marion County, Indiana.

29. Defendant Consolidated City of Indianapolis/Marion County is a local governmental subdivision, created by and existing under the laws of Indiana. The Indianapolis Metropolitan Police Department—part of the Department of Public Safety—is a division of the Consolidated City of Indianapolis/Marion County. The Consolidated City of Indianapolis/Marion County and the Indianapolis Metropolitan Police Department are both headquartered in Indianapolis, in Marion County, Indiana.

30. Defendant Joseph H. Hogsett is the Mayor of the Consolidated City of Indianapolis/Marion County. As head of Indianapolis/Marion County's executive branch, he is charged with supervising the work of the executive-branch departments, including the Department of Public Safety. *See, e.g.*, Indianapolis – Marion Cty., Ind., Code Ordinances §§ 201-1–6. Mayor Hogsett's office is located in Indianapolis, in Marion County, Indiana. He is sued in his official capacity.

31. Defendant David Wantz is the Director of the Department of Public Safety, the department with authority over, among other divisions, the Indianapolis Metropolitan Police Department. *See, e.g., id.* §§ 251-101, 251-211–221. Director Wantz’s office is located in Indianapolis, in Marion County, Indiana. He is sued in his official capacity.

32. Defendant Troy Riggs is the Chief of the Indianapolis Metropolitan Police Department, a division of the Department of Public Safety. Chief Riggs’s office is located in Indianapolis, in Marion County, Indiana. He is sued in his official capacity.

FACTS

I. FORFEITURE UNDER THE INDIANA CONSTITUTION AND THE CIVIL FORFEITURE STATUTE

A. *The Forfeitures Clause of the Indiana Constitution*

33. When Indiana overhauled its state constitution in 1851, the Indiana Supreme Court has said, one of the convention’s “leading achievement[s] was an education article that mandated a ‘general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.’” *Serrano v. State*, 946 N.E.2d 1139, 1142 (Ind. 2011) (quoting Ind. Const. art. 8, § 1).

34. At the heart of the financing scheme for this objective was the common school fund, a “perpetual” depository for “the support of Common Schools, and . . . no other purpose whatever.” Ind. Const. art. 8, § 3.

35. Over the intervening 165 years, the common school fund has changed with the state’s public-education system. In the early 1900s, for example, the fund’s interest financed teachers’ wages; now, it finances loans for educational-technology programs, school construction, and charter-school operations. In the summer of 2015, there were 655

outstanding loans from the common school fund to traditional public schools, in addition to loans from the fund supporting charter schools.

36. Article 8, Section 2 of the Indiana Constitution establishes the various revenue sources that are committed to the common school fund. Among these sources are “all forfeitures which may accrue” (referred to below as the Forfeitures Clause).

37. The Forfeitures Clause and related provisions reflected a conscious effort by Indiana’s constitutional delegates to prevent state and local agencies from pocketing revenue at the expense of the common school fund.

B. The Civil Forfeiture Statute

38. In 1984, the General Assembly amended Indiana’s civil-forfeiture law in a way that violates the Indiana Constitution’s Forfeitures Clause.

39. Notwithstanding the plain text of the Forfeitures Clause in Article 8, Section 2, the General Assembly amended the Civil Forfeiture Statute to let law-enforcement agencies divert certain forfeiture proceeds—termed “law enforcement costs”—from the common school fund.

40. Indiana Code §§ 34-24-1-1 to 34-24-1-9 (the “Civil Forfeiture Statute”) authorizes the State to seize and forfeit a range of property linked to criminal violations.

41. To forfeit property, the State must demonstrate by a preponderance of the evidence that the property sought in forfeiture is connected to one of the listed criminal offenses under the Civil Forfeiture Statute. *See* Ind. Code § 34-24-1-4(a).

42. If the forfeited property is money, all of the money is to be “deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property.” *Id.* § 34-24-1-4(d)(2)(C)(i).

43. Out of that total amount of money, only the amount exceeding law-enforcement costs is “transferred to the treasurer of state for deposit in the common school fund.” *Id.* § 34-24-1-4(d)(2)(D). The remainder stays “in the general fund of the state, or the unit that employed the law enforcement officers that seized the property.”

44. Forfeitures involving property other than money proceed similarly.

45. Although the court may authorize the seizing law-enforcement agency to use forfeited property (such as a car) for a set period, property must ultimately be sold at public sale. *Id.* § 34-24-1-4(c), (d)(2)(A)–(B).

46. Like money, the net proceeds of property sales are “deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property.” *Id.* § 34-24-1-4(d)(2)(C)(i).

47. Only the amount exceeding law-enforcement costs is then transferred to the State Treasurer for deposit in the common school fund. *Id.* § 34-24-1-4(d)(2)(D). Again, the remainder stays “in the general fund of the state, or the unit that employed the law enforcement officers that seized the property.”

48. The General Assembly has defined deductible “law enforcement costs” by reference to the costs of the underlying forfeiture case and any related criminal investigation or criminal prosecution.

49. Specifically, “law enforcement costs” fall into three categories: (1) “expenses incurred by the law enforcement agency that makes [the] seizure . . . for the criminal investigation associated with the seizure”; (2) “repayment of the investigative fund of the law enforcement agency that makes [the] seizure . . . to the extent that the agency can specifically identify any part of the money as having been expended from the fund”; and

(3) “expenses of the prosecuting attorney associated with the costs of proceedings associated with the seizure and the offenses related to the seizure.” *Id.* § 34-6-2-73.

50. Without passing on the constitutionality of this arrangement, the Indiana Supreme Court has said that the statute’s definition of law-enforcement costs permits only “limited diversion” of forfeiture proceeds based on “calculating actual expenses on a case-by-case basis.” *Serrano v. State*, 946 N.E.2d 1139, 1142 n.3 (Ind. 2011).

II. FORFEITURES IN THE REAL WORLD IN MARION COUNTY

A. *The Marion County Prosecutor’s Office’s Competing Interpretation of “Law Enforcement Costs”*

51. The Marion County Prosecutor’s Office sees things differently.

52. Since at least 2010, the Marion County Prosecutor’s Office has read the law-enforcement-costs provision to justify keeping every penny of forfeiture proceeds for itself or for the law-enforcement agencies responsible for seizing people’s property.

53. In cases brought under the Civil Forfeiture Statute, the Marion County Prosecutor’s Office does not seek reimbursement of actual expenses incurred by law-enforcement agencies in connection with that particular case.

54. Rather, the Marion County Prosecutor’s Office maintains that the law-enforcement-costs provision “simply means the cost of enforcing the law in Marion County” generally. Heather Gillers et al., *Forfeiture law invites abuse of the system*, INDIANAPOLIS STAR, Nov. 7, 2010.

55. In the words of Defendant Curry—the current Marion County Prosecuting Attorney—his office treats forfeiture proceeds as “a revenue source” for itself and for other law-enforcement agencies. Jack Rinehart, *How criminals help finance the war on crime*,

rtv6-The INDY Channel (Mar. 5, 2015), *available at* www.theindychannel.com/news/local-news/crime-pays-through-asset-forfeiture (last visited Feb. 5, 2016).

56. Instead of deducting case-specific expenses, the Marion County Prosecutor's Office splits up forfeiture proceeds among participating law-enforcement agencies based on predetermined percentages.

57. As Marion County's chief narcotics prosecutor explained in 2010:

We don't break it [law-enforcement costs] down on a case-by-case basis That doesn't make any sense. You could have one case where the officer makes a simple traffic stop, and there could be a quarter-million in cash that we seize. There could be months and months and months on another case, and we catch the guy with a lot of dope but not a lot of cash. Law enforcement, as you know, is more than one case at a time.

See Heather Gillers et al., *Forfeiture law invites abuse of the system*, INDIANAPOLIS STAR, Nov. 7, 2010.

58. Representatives of the Marion County Prosecutor's Office elaborated on this approach more recently, at the Winter 2014 conference of the Indiana Prosecuting Attorneys Council ("IPAC").

59. In their IPAC presentation, Marion County prosecutors advised attendees to formalize memoranda of understanding with other law-enforcement agencies, to "[c]learly delineate everyone's responsibilities and THE SPLIT OF PROCEEDS" in forfeiture cases. (emphasis in original). A true and correct copy of the prosecutors' IPAC PowerPoint presentation is attached as Exhibit 1 to this Complaint.

60. The Marion County Prosecutor's Office has put its advice into practice.

61. When property is seized for forfeiture by the Indianapolis Metropolitan Police Department ("IMPD"), for example, the Marion County Prosecutor's Office proceeds under a "Memorandum of Understanding Regarding Forfeitures" with that agency.

62. The two agencies concluded their current Memorandum of Understanding Regarding Forfeitures in July 2011. A true and correct copy of this document is attached as Exhibit 2 to this Complaint.

63. The current Memorandum of Understanding “serve[s] as the agreement between IMPD and MCPO [the Marion County Prosecutor’s Office] relating to the forfeiture of any real or personal property seized by any officer of IMPD, EXCEPT for the forfeiture of any real or personal property seized by any officer of IMPD assigned to the Metropolitan Drug Task Force.” Ex. 2, at Preamble. (Seizures by the Metropolitan Drug Task Force operate under a separate, similar memorandum of understanding, a true and correct copy of which is attached as Exhibit 3 to this Complaint.)

64. The Memorandum of Understanding provides that “[a]ny United States currency seized by any officer of IMPD, for purposes of forfeiture, shall be deposited into and maintained by IMPD, in an account (hereinafter referred to as the INITIAL ACCOUNT), such INITIAL ACCOUNT to be established and maintained by IMPD” Ex. 2, at ¶ 1.

65. “If a Court, in a civil forfeiture action relating to an IMPD seizure, issues an order forfeiting any United States currency,” the Memorandum of Understanding then provides that:

IMPD shall . . . transfer seventy percent (70%) of such forfeited United States currency from the INITIAL ACCOUNT to a forfeiture fund established for IMPD (hereinafter referred to as the IMPD STATE FORFEITURE FUND) and shall transfer thirty percent (30%) of such forfeited United States currency from the INITIAL ACCOUNT to a forfeiture fund established for MCPO (hereinafter referred to as the MCPO STATE FORFEITURE FUND).

Ex. 2, at ¶ 7.

66. Property other than currency is treated similarly.

67. As detailed in the Memorandum of Understanding:

Any real or personal property, other than United States currency, seized by any officer of IMPD, shall be maintained and safeguarded by IMPD until such time as a Court has issued an order regarding the disposition of such real or personal property . . . or until such time as MCPO has made a determination not to pursue a civil forfeiture action relating to such real or personal property.

Ex. 2, at ¶ 2.

68. If the real or personal property is forfeited and later sold at “forfeiture auction,” the Memorandum of Understanding provides that the proceeds of the sale (less sale costs and sums owing to interest holders or co-owners) shall again be split between the IMPD and the Marion County Prosecutor’s Office:

IMPD shall transfer seventy percent (70%) of such net proceeds to the IMPD STATE FORFEITURE FUND and shall transfer thirty percent (30%) of such net proceeds to the MCPO STATE FORFEITURE FUND.

Ex. 2, at ¶¶ 10, 12.

69. Put differently, when the Marion County Prosecutor’s Office successfully forfeits currency seized by the IMPD, the two agencies have agreed that 70 cents of every dollar goes to the IMPD and the remaining 30 cents goes to the prosecutor’s office. Ex. 2, at ¶ 7.

70. When the Marion County Prosecutor’s Office successfully forfeits property other than currency, seized by the IMPD, the net proceeds from the sale of that property are likewise divided between the two agencies, based on the same 70-30 split. Ex. 2, at ¶ 12.

71. Actual, case-by-case law-enforcement costs are never accounted for and play no role in determining what money the Defendants deduct.

B. Marion County's Multimillion-Dollar Forfeiture Operation

72. Indianapolis law enforcement has profited from the Defendants' interpretation of the Civil Forfeiture Statute.

73. Between 2003 and 2010, for example, the average total proceeds awarded through state civil-forfeiture actions in Marion County totaled \$888,112 annually—with the Marion County Prosecutor's Office alone receiving an average of \$188,704 each year. Marion County Prosecutor's Office, *2012 Report to the Community 23* (undated), available at www.indy.gov/eGov/County/Pros/inititatives/Documents/2012%20Report%20to%20the%20Community.pdf (last visited Feb. 5, 2016).

74. Since then, forfeitures in Marion County have nearly doubled.

75. For 2011 and 2012, for example, "the corresponding annual averages were \$1,589,137 total cash awarded, with \$459,848 awarded to MCPO [the Marion County Prosecutor's Office]." *Id.*

76. Over the past five years, prosecutors have initiated more than 1,600 civil-forfeiture actions in Marion County alone.

77. In fact, Marion County court records indicate that the total number of forfeitures initiated in the last five years exceeds 2,700. This represents about two forfeiture actions commenced in Marion County every workday for five years.

78. On information and belief, the majority of the forfeiture actions initiated and decided in the past five years were won through default judgments.

79. Once a defendant has defaulted, the prosecutors' claims for law-enforcement costs are taken at face value.

80. Rather than submit case-specific costs of investigation and prosecution to the courts, the Marion County Prosecutor's Office instead has a policy and practice of submitting proposed judgments that recite its preexisting proceeds-splitting arrangement with the seizing agency.

81. When the Marion County Prosecutor's Office wins a default judgment based on currency seized by the IMPD, for example, the office has a policy and practice of filing a proposed judgment labeling 30% of the currency as reimbursement for the prosecutors' law-enforcement costs and the remaining 70% as reimbursement for the police department's law-enforcement costs.

82. Even in contested forfeiture cases, trial courts cannot benefit from the adversarial process in determining what amount of forfeiture proceeds should be withheld as "law enforcement costs." This is because the government has successfully argued that property owners lack individual standing to litigate the amount of forfeiture proceeds that is pocketed by police and prosecutors. *See, e.g., \$100 v. State*, 822 N.E.2d 1001, 1015 (Ind. Ct. App. 2005).

83. The end result is that the Marion County Prosecutor's Office claims forfeiture proceeds on behalf of itself and other law-enforcement agencies with no adversarial process, no meaningful trial-court oversight, and no prospect of appellate review.

84. As one Superior Court judge in Marion County has explained:

We don't have any part of that—to look over their [i.e., prosecutors'] shoulder and say, "In this particular case, it cost you \$50 to do the seizure, and you seized \$1,000, so \$950 ought to go to the Common School Fund." . . . There's no way for us to know really how much that seizure cost. That information is just not generally available to the civil court.

Tim Evans & Heather Gillers, *Take the money and . . . ?*, INDIANAPOLIS STAR, Aug. 15, 2010.

85. As a result, the Marion County Prosecutor's Office can successfully claim law-enforcement costs that dwarf the recoverable expenses contemplated by the Civil Forfeiture Statute.

86. To give one example, in *State v. Escuder*, the Marion County Prosecutor's Office filed suit to forfeit \$40,000 seized from an in-transit package at an Indianapolis shipping facility. Case No. 49D07-1202-MI-005555 (Ind. Super. Ct., Marion Cty. filed Feb. 10, 2012).

87. The Marion County Prosecutor's Office filed a three-paragraph complaint in *Escuder*.

88. Even though the addresses of both the package's sender (in Maryland) and the package's recipient (in California) were clearly visible on the seized package, the government served process by publishing notice in a local Indiana legal periodical.

89. No interested party appeared in court to contest the forfeiture.

90. The Marion County Prosecutor's Office then submitted a one-page application for default judgment, which the Court granted, ending the case.

91. For its costs "associated with this action," the Marion County Prosecutor's Office claimed and received 30% of the forfeited currency—\$12,000.00.

92. For its costs "associated with this action," the IMPD retained \$28,000.00, the remaining 70%.

93. Zero percent of the currency was transferred to the State Treasurer for deposit into the common school fund.

94. And *Escuder* is hardly unique. On information and belief, not a penny of property sought by the Marion County Prosecutor's Office under the Civil Forfeiture Statute has been delivered to the common school fund in the past year.

95. In fact, on information and belief, no property sought by the Marion County Prosecutor's Office under the Civil Forfeiture Statute has been delivered to the common school fund in at least the last five years.

III. SUPREME COURT JUSTICES AND A SITTING GOVERNOR HAVE VOICED CONCERNS ABOUT FORFEITURE PRACTICES IN INDIANA

96. The constitutional infirmity of the law-enforcement-costs provision and prosecutors' increasingly aggressive forfeiture practices have not gone unnoticed.

97. In 2011, for example, then-Governor Daniels remarked that draining the common school fund of forfeiture proceeds is "unwarranted as policy and constitutionally unacceptable" given "the plain language of Article 8, Section 2 of the Indiana Constitution." Letter from Gov. Mitch E. Daniels, Jr. to President Pro Tem Long and Members of the Ind. State Senate (May 13, 2011), *available at* <http://in.gov/governorhistory/mitchdaniels/files/215VetoMessage.pdf> (last visited Feb. 5, 2016).

98. Weeks earlier, the Indiana Supreme Court commented on the constitutionality of deducting law-enforcement expenses from forfeitures, underscoring the unresolved nature of the question in this case. *Serrano*, 946 N.E.2d at 1142 n.3.

99. More broadly, the Supreme Court in *Serrano* remarked that "the disposition of the assets" in civil-forfeiture cases "ha[s] become a matter of public note." *Id.* at 1141. And last year, a member of the Supreme Court wrote separately to drive home that the "misuse" of civil forfeiture "invites further scrutiny." *Sargent v. State*, 27 N.E.3d 729, 735 (Ind. 2015) (Massa, J., dissenting).

IV. THE ATTORNEY GENERAL'S INACTION

A. *The Attorney General Advises that the Constitution Places No Limit on Law Enforcement's Diversion of Civil-Forfeiture Proceeds*

100. The Indiana Attorney General is the chief legal officer of the State of Indiana.

101. Historically, the Attorney General's Office has enforced Article 8, Section 2 of the Indiana Constitution by, for example, sending demand letters and bringing enforcement actions to recover revenue owing to the common school fund.

102. More recently, the Attorney General has declined to question the constitutionality of the Civil Forfeiture Statute's law-enforcement-costs provision.

103. In 2010, for example, the Attorney General formally opined that Article 8, Section 2 does not apply in any way to property forfeited under the Civil Forfeiture Statute. "It is our opinion," the Attorney General's Office said, "that Article 8, § 2 of the state constitution does not apply to forfeiture actions brought under Ind. Code ch. 34-24-1." Ind. Op. Att'y Gen. 2010-1 (May 12, 2010).

104. The Indiana Supreme Court reached the opposite conclusion less than a year later. *Serrano*, 946 N.E.2d at 1141–42 & n.2.

105. In *Serrano*, the Supreme Court clarified that "Indiana's system for civil forfeitures proceeds under at least two constitutional provisions"—one of which is Article 8, Section 2. *Id.* at 1141–42.

106. Even so, the Attorney General's Office has not revised or qualified its 2010 opinion in the years since *Serrano*. Nor, as of February 2016, has the opinion been removed from the government's website. See www.in.gov/attorneygeneral/files/Official_Opinion_2010-1.pdf (last visited Feb. 5, 2016).

107. As recently as December 2014, Marion County prosecutors continued to invoke the 2010 Attorney General opinion as being “on our side.” Partly in reliance on that opinion, the prosecutors urged government lawyers statewide to “stay the course” and continue diverting forfeiture proceeds from the common school fund. Ex. 1, at 48, 49.

108. That practice continues in Marion County to this day.

B. The Attorney General Also Maintains that the Civil Forfeiture Statute Places No Limit on Law Enforcement’s Diversion of Forfeiture Proceeds

109. While ignoring the constitutional infirmities of the law-enforcement-costs provision, the Attorney General has simultaneously declined to make county prosecutors honor that provision in practice.

110. In fact, the Attorney General has subscribed to the same interpretation of the law-enforcement-costs provision used by the Marion County Prosecutor’s Office.

111. In a 2010 press release, the Attorney General affirmed that prosecutors are free to withhold forfeiture proceeds to cover “overall” costs—not just the expenses associated with case-specific investigations and proceedings. Press Release, Ind. Att’y Gen. Office, *Attorney General’s Office to defend Prosecutors in suit* (Nov. 23, 2010), available at www.in.gov/portal/news_events/59604.htm (last visited Feb. 5, 2016).

112. Put differently, if forfeiture proceeds can conceivably be used to pay for any law-enforcement activity at any time—past or future—it is the position of the Attorney General that law-enforcement agencies can legally withhold those proceeds from the common school fund under the terms of the Civil Forfeiture Statute.

113. As the forfeiture program in Marion County illustrates, this unconstitutional interpretation of the Civil Forfeiture Statute allows every penny of forfeiture proceeds to be labeled “law enforcement costs” and siphoned away from the common school fund.

114. And even if he were to read the Civil Forfeiture Statute differently, the Attorney General has suggested that he will take no steps to ensure that county prosecutors follow the law.

115. When asked about county prosecutors' pattern of diverting forfeiture proceeds from the common school fund, the Attorney General's spokesman replied: "The 92 county prosecutors are the attorney general's clients, and we provide them legal advice upon request We do not serve as the accountant for other units of government." Tim Evans & Heather Gillers, *Take the money and . . . ?*, INDIANAPOLIS STAR, Aug. 15, 2010.

FIRST CAUSE OF ACTION
(The Law-Enforcement-Costs Provision Is Unconstitutional
Under Indiana Constitution Article 8, Section 2)

116. The Plaintiffs reassert and reallege the content of paragraphs 1 through 115 as if fully set forth herein.

117. Article 8, Section 2 of the Indiana Constitution commits "all forfeitures which may accrue" to the common school fund.

118. Ind. Code § 34-24-1-4(d)(2)(D) provides that the trial court in a forfeiture action may except from forfeiture proceeds specified "law enforcement costs."

119. Proceeds designated as law-enforcement costs under the statute are not delivered to the common school fund.

120. Instead, proceeds designated as law-enforcement costs remain "in the general fund of the state, or the unit that employed the law enforcement officers that seized the property." *Id.* § 34-24-1-4(d)(2)(C)(i).

121. Because it authorizes county prosecutors and law-enforcement agencies to divert forfeiture proceeds at the expense of the common school fund, Ind. Code § 34-24-1-4(d)(2)(D) violates Article 8, Section 2 of the Indiana Constitution.

122. The Defendants have a practice and policy of relying on Ind. Code § 34-24-1-4(d)(2)(D) to divert forfeiture proceeds from the common school fund for their own benefit.

123. Unless the Defendants are enjoined from committing the above-described constitutional violations, the public rights guaranteed by Article 8 of the Indiana Constitution will continue to suffer grave and irreparable harm. Declaratory and injunctive relief is necessary to justice and its prompt administration.

**SECOND CAUSE OF ACTION
(The Defendants' Application of the Law-Enforcement-Costs Provision Is Ultra Vires)**

124. The Plaintiffs reassert and reallege the content of paragraphs 1 through 115 as if fully set forth herein.

125. If this Court denies the Plaintiffs' request for relief under Article 8, Section 2 of the Indiana Constitution—as pleaded in their First Cause of Action—the Plaintiffs ask the Court to enter judgment compelling the Defendants to comply with the Civil Forfeiture Statute.

126. The Civil Forfeiture Statute directs that when a court enters judgment for the State it shall order the proceeds “transferred to the treasurer of state for deposit in the common school fund.” Ind. Code § 34-24-1-4(d)(2)(D).

127. From these proceeds, the court may authorize the county prosecutor and participating law-enforcement agencies to divert only sums equaling “law enforcement costs.” *Id.* § 34-24-1-4(d)(2)(D).

128. Proceeds designated as law-enforcement costs under the statute are not delivered to the common school fund.

129. The term “law enforcement costs” is defined to cover only certain actual expenses incurred by the county prosecutor and participating law-enforcement agencies, calculated on a case-by-case basis. *Id.* § 34-6-2-73; *Serrano v. State*, 946 N.E.2d 1139, 1142 n.3 (Ind. 2011).

130. Nonetheless, the Defendants have a policy of seeking to retain and retaining forfeiture proceeds that do not reimburse “law enforcement costs,” as that term is defined at Ind. Code § 34-6-2-73.

131. Forfeiture proceeds wrongly designated as law-enforcement costs are not “transferred to the treasurer of state for deposit in the common school fund” as required by the Civil Forfeiture Statute.

132. Instead, these forfeiture proceeds are kept for the benefit of the Defendants.

133. The Defendants are thus engaged in a practice and policy of violating the Civil Forfeiture Statute at the expense of the common school fund.

134. Unless the Defendants are enjoined from committing the above-described violations, the public rights secured by Article 8 of the Indiana Constitution and by the Civil Forfeiture Statute will continue to suffer grave and irreparable harm. Declaratory and injunctive relief is necessary to justice and its prompt administration.

REQUEST FOR RELIEF

A. As relief for their First Cause of Action, the Plaintiffs respectfully request the following:

1. A declaratory judgment that Ind. Code § 34-24-1-4(d)(2)(D) violates Article 8, Section 2 of the Indiana Constitution to the extent that it permits the deduction of any law-enforcement costs;
2. Permanent injunctive relief prohibiting Defendants Consolidated City of Indianapolis/Marion County, Hogsett, Wantz, and Riggs (either directly or through their agents) from retaining or requesting to retain for themselves any forfeited property or the proceeds from the sale of forfeited property pursuant to the Civil Forfeiture Statute;
3. Permanent injunctive relief prohibiting Defendants Curry and Marion County Prosecutor's Office (either directly or through their agents) from retaining or requesting to retain—for themselves or for Defendants Consolidated City of Indianapolis/Marion County, Hogsett, Wantz, and Riggs—any forfeited property or the proceeds from the sale of forfeited property under the Civil Forfeiture Statute;
4. An award of nominal damages in the amount of \$1;
5. Such further legal and equitable relief as the Court may deem just and proper.

- B. If the Court denies the relief sought for their First Cause of Action, the Plaintiffs request the following alternative relief:
1. A declaratory judgment that the Civil Forfeiture Statute (a) permits diversion of forfeiture proceeds from the common school fund only to reimburse actual expenses, calculated on a case-by-case basis, and (b) does not permit diversion of forfeiture proceeds from the common school fund to reimburse “overall” costs of law enforcement.
 2. Permanent injunctive relief prohibiting Defendants Consolidated City of Indianapolis/Marion County, Hogsett, Wantz, and Riggs (either directly or through their agents) from retaining or requesting to retain for themselves any forfeited property or the proceeds from the sale of forfeited property under the Civil Forfeiture Statute, beyond that needed to reimburse them for actual, case-specific “law enforcement costs” as that term is defined at Ind. Code § 34-6-2-73.
 3. Permanent injunctive relief prohibiting Defendants Curry and Marion County Prosecutor’s Office (either directly or through their agents) from retaining or requesting to retain—for themselves or for Defendants Consolidated City of Indianapolis/Marion County, Hogsett, Wantz, and Riggs—under the Civil Forfeiture Statute any forfeited property or the proceeds from the sale of forfeited property, beyond that needed to reimburse them for actual, case-specific “law enforcement costs” as that term is defined at Ind. Code § 34-6-2-73;

4. Permanent injunctive relief requiring Defendants Curry and Marion County Prosecutor's Office to submit a sworn statement specifically identifying and itemizing all expenses claimed to be law-enforcement costs under Ind. Code § 34-6-2-73 in every case brought under the Civil Forfeiture Statute in which Defendant Curry, Defendant Marion County Prosecutor's Office, or their agents request an award of law-enforcement costs for themselves or for Defendants Consolidated City of Indianapolis/Marion County, Hogsett, Wantz, or Riggs;
5. Such other injunctive relief as may be appropriate and that the Court deems necessary to ensure compliance with its judgment;
6. An award of nominal damages in the amount of \$1;
7. Such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted this 10th day of February, 2016.

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*Applications for admission *pro hac vice* to be submitted

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