STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) ss:	CIVIL DIVISION D06, ROOM W-542
COUNTY OF MARION	)	CAUSE NO.: 49D06-1602-PL-004804

JEANA M. HORNER, *et al.*,

Plaintiffs,

vs.

TERRY R. CURRY, in his official capacity as Marion County Prosecuting Attorney, *et al.*,

Defendants.

PLAINTIFFS' CONSOLIDATED RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

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In this consolidated brief, Plaintiffs respond to the motion to dismiss filed by the Marion County Prosecutor's Office and Prosecutor Curry ("the State Defendants") and the motion to dismiss filed by the Consolidated City of Indianapolis/Marion County, the Marion County Prosecutor's Office, Mayor Hogsett, Director Wantz, and Chief Riggs ("the City-County Defendants"). For the reasons discussed below, both motions should be denied.[1]

INTRODUCTION

Under Article 8, Section 2 of the Indiana Constitution, "all forfeitures which may accrue" belong to the state's common school fund. In Indianapolis, however, the fund has not seen a penny of civil-forfeiture money since before many students were born. This lawsuit is brought by local citizens and taxpayers—including one couple who were wrongly ensnared in Indianapolis's forfeiture system—to correct two legal errors that have made this state of affairs possible.

The first error is in the Civil Forfeiture Statute itself, which authorizes police and prosecutors to deduct "law enforcement costs" and deliver only the remaining forfeiture proceeds to the common school fund. As this case will show, this provision violates the plain text of the Indiana Constitution. Forfeiture proceeds—*all* forfeiture proceeds—belong to the school fund. Compl. ¶¶ 116–23 (First Cause of Action).

The second error is the way in which the Defendants, representatives of Indianapolis's police and prosecuting agencies, have interpreted the law-enforcement-costs provision. Unconstitutional as it is, the Civil Forfeiture Statute permits only "limited diversion" of forfeiture proceeds to account for "actual expenses on a case-by-case basis." *Serrano v. State*,

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[1] Because the Defendants' motions to dismiss raise nearly identical legal issues, this response addresses both motions in order to most efficiently apprise the Court of the questions in dispute. Ind. Tr. R. 1; *see also Thompson v. Vigo Cty. Bd. of Cty. Comm'rs*, 876 N.E.2d 1150, 1152 (Ind. Ct. App. 2007). The motion to dismiss filed by the City-County Defendants is cited as "City MTD," and the motion filed by the State Defendants is cited as "State MTD."

946 N.E.2d 1139, 1142 n.3 (Ind. 2011). Despite this statutory limit, the Defendants have agreed among themselves to claim every penny of civil-forfeiture proceeds. Compl. ¶¶ 51–71. If, on the merits, this Court holds that the law-enforcement-costs provision is constitutional, Plaintiffs ask the Court to declare that the provision allows police and prosecutors to divert only actual expenses calculated on a case-by-case basis. Compl. ¶¶ 124–34 (Second Cause of Action).

Over the past five years, a unanimous Indiana Supreme Court, a sitting Governor, a judge on this Court, and even some of the Defendants have acknowledged the unsettled questions presented in this case. *See* p. 9 *below*. That makes the Government's twin motions to dismiss all the more remarkable. At its most basic level, the Government's position is that no Indiana citizen has the right to question the current civil-forfeiture program in court. The State Defendants go a step further, claiming that neither this Court nor any other trial court has the power to declare the meaning of the Civil Forfeiture Statute. Both contentions are unfounded.

First, the Government argues that Plaintiffs—and all Hoosiers—lack public standing to vindicate the constitutional and statutory commands that forfeiture proceeds must be sent to the common school fund. The Government is incorrect. *See* Section I *below*. Indiana's public-standing doctrine grants citizens access to the courts when public rights are at stake, and Article 8, Section 2 of the Indiana Constitution enshrines just the sort of right the public-standing doctrine protects. In arguing otherwise, the Government envisions a *Catch-22* rule that insulates its misuse of civil-forfeiture money from any judicial review. In the Government's view, claimants in a forfeiture action (such as the Horners) lack personal standing to contest the misuse of their property because "the distribution of forfeiture proceeds does not implicate the rights of property owners." City MTD 5. At the same time, the Government believes that citizens cannot claim public standing because they lack a "personal interest." *Id.* The end result the Government

asks this Court to endorse is that no one has the right to dispute law enforcement's use of forfeiture proceeds in any court. But that *Catch-22* theory is not the law, and this case meets all the requirements for public standing.

Second, the State Defendants argue that this Court has no power to determine the meaning of the Civil Forfeiture Statute, because such an interpretation would "control" judicial orders in future cases. *See* Section II *below*. This theory misunderstands the relief sought in Plaintiffs' Complaint. Plaintiffs' second cause of action seeks a judgment interpreting the Civil Forfeiture Statute and ordering the Defendants—not other courts—to honor that interpretation. This exercise in statutory interpretation would not invade the prerogatives of other courts; rather, it would order executive-branch actors to follow the law, something courts do routinely. If anything, it is the State Defendants who are encouraging tension between co-equal courts, as they suggest that the possibility of forfeiture litigation before other courts in the future strips this Court of its power to decide Plaintiffs' claims today.

ARGUMENT

I. Plaintiffs have public standing to challenge the Government's failure to transfer civil-forfeiture proceeds to the common school fund.

The Government asserts that no Indiana citizen may challenge whether police and prosecutors are acting constitutionally—or even legally—by diverting millions of dollars of forfeiture proceeds from the common school fund. But Plaintiffs have public standing to bring this case. *See* Section I.A *below*. As shown below, the Government's contrary arguments rely on a misapplication of Indiana's public-standing doctrine, the Declaratory Judgments Act, and the role of the Superintendent of Public Instruction. *See* Section I.B *below*.

A. Plaintiffs seek to vindicate the type of public right that Indiana's public-standing doctrine protects.

The Indiana Supreme Court has long held that plaintiffs may vindicate public rights using the "public standing" doctrine. *State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979–80 (Ind. 2003); *see also Old Utica Sch. Pres., Inc. v. Utica Twp.*, 7 N.E.3d 327, 331 (Ind. Ct. App.), *transfer denied*, 16 N.E.3d 980 (Ind. 2014) ("The public standing doctrine has been recognized in Indiana case law for more than one hundred and fifty years."). When "public rather than private rights are at issue," the "usual standards for establishing standing need not be met." *Cittadine*, 790 N.E.2d at 980 (citation omitted). Rather, to enforce a public right, it is enough that the plaintiff "be a citizen, and as such interested in the execution of the laws." *Id.*

Plaintiffs seek to vindicate just such a public right in this case. As the Indiana Supreme Court has emphasized, a "leading achievement" of the 1851 Constitution was its mandate of a "general and uniform system of Common Schools wherein tuition shall be without charge, and equally open to all." *Serrano*, 946 N.E.2d at 1142 (quoting Ind. Const. art. 8, § 1); Compl. ¶ 33. "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.'" Compl. ¶ 34 (quoting Ind. Const. art. 8, § 3). As alleged in the Complaint, Indiana law commits civil-forfeiture proceeds to the common school fund, and the Defendants are violating that mandate. Compl. ¶¶ 1–23, 33–134. Ensuring that civil-forfeiture proceeds go to their rightful place is a public (as opposed to private) right, and one that Plaintiffs have public standing to enforce in this Court. Like all other individual property owners, Plaintiffs Jeana and Jack Horner were barred from litigating this issue when the Marion County Prosecutor's Office tried to forfeit their family vehicles. Compl. ¶¶ 24, 82–83. That makes the availability of public

standing all the more important here. After all, citizens must have *some* way to challenge the government's unconstitutional actions.[2]

The Indiana Supreme Court has endorsed this principle time and again. In *Mitsch v. City of Hammond*, 125 N.E.2d 21 (Ind. 1955) (per curiam), for example, the Supreme Court considered—and rejected—the precise standing challenge the Government raises here. In *Mitsch*, two residents challenged a city ordinance that authorized a range of fines, which in turn were "appropriated to the use of the City." *Id.* at 22. In the residents' view, this scheme violated the Indiana Constitution, by "divert[ing] from the common school fund large sums of money." *Id.* (Along with "all forfeitures," "fines assessed for breaches of the penal laws of the State" are also committed to the common school fund. *See* Ind. Const. art. 8, § 2.) As here, the government urged dismissal, arguing that "diminution of the common school fund" did not harm "plaintiffs or their property." 125 N.E.2d at 23. But the Indiana Supreme Court rejected that theory, reasoning that "there may be rights, other than property rights, that may be protected by injunction." *Id.* This was because "[i]t has been the rule in Indiana for many years that a taxpayer has such an interest in the public funds as will enable him to maintain a suit in equity to prevent unlawful waste or appropriations thereof." *Id.* Accordingly, even though the plaintiffs in *Mitsch* did not show any injury to themselves or their property, the Supreme Court held that "as resident

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[2] The State Defendants note that the Horners live in neighboring Hancock County but do not suggest that this fact alters the standing analysis. *See* State MTD 5 n.1. Rightly so. An Indiana

[*continued next page*]

citizen's interest in the common school fund is a statewide right. *See Embry v. O'Bannon*, 798 N.E.2d 157, 159–60 (Ind. 2003) (upholding public standing to challenge dual-enrollment programs even though some plaintiffs lived in jurisdictions with no program in force). Even if the Horners' county of residence mattered (and it does not), still, four of the six Plaintiffs reside in Marion County, Compl. ¶¶ 25–26, and thus the Court "need not determine whether [the Horners] have standing," *see Bd. of Commr's v. Ne. Ind. Bldg. Trades Council*, 954 N.E.2d 937, 943 (Ind. Ct. App. 2011).

taxpayers of the county and state, [they] were proper parties plaintiff to test the validity of the involved ordinance." *Id.*

The same reasoning applies here. Like in *Mitsch*, the common school fund remains "a public fund of the state in which every taxpayer of the state has a supreme interest . . . ." *Id.* And, like in *Mitsch*, Article 8 of the Constitution confers a public right upon Indiana citizens to have a properly financed common school fund. As the Court explained in *Mitsch*, the burden of any shortfall in the common school fund falls directly on all Indiana taxpayers. *Id.* The Constitution makes clear that the "several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon." Ind. Const. art. 8, § 6. This means that Plaintiffs can expect to pay more in taxes if the Defendants continue violating the Constitution. Because counties "can discharge these obligations only by taxation," citizens thus have "an important interest in protecting the constitutional source from which the fund is derived as well as the honest and constitutional expenditure of the interest derived therefrom." *Mitsch*, 125 N.E.2d at 23.

Mitsch remains good law. At least twice in recent years, the Indiana Supreme Court has decided public-standing lawsuits alleging that the government was unconstitutionally misspending funds committed to education. In *Embry v. O'Bannon*, 798 N.E.2d 157 (Ind. 2003), the Court held that citizens had public standing to challenge the government's spending on a dual-enrollment program, *id.* at 160. And in *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013), the Court unanimously held that plaintiffs had public standing to challenge Indiana's school-voucher program, *id.* at 1220–25 (deciding merits of claimed violation of Article 8). "As taxpayers

challenging allegedly unconstitutional use of public funds," the Court reasoned in *Meredith*, "the plaintiffs have standing 'under Indiana's public standing doctrine . . . .'" *Id.* at 1217 n.4.[3]

These precedents show that Plaintiffs have public standing to bring this case. By creating a common school fund, the Indiana Constitution enshrined a public right, common to all citizens. Plaintiffs may seek judicial intervention to protect that public right against continued abuse.

B. The Government's arguments against public standing misunderstand that doctrine, the Declaratory Judgments Act, and the statutory powers of the Superintendent of Public Instruction.

In the face of these precedents, the Government proposes three new limits on the public-standing doctrine. In the Government's view: (1) citizens can claim public standing only in "extreme circumstances"; (2) public standing may be invoked to seek any relief other than declaratory relief and an injunction; and (3) whatever public standing may mean for the rest of the Indiana Constitution, Article 8 can be vindicated only by the Superintendent of Public Instruction. All three contentions lack merit.

1. The Government's extreme-circumstances theory is not the law, but it is satisfied here regardless.

Contrary to the Government's view, Hoosiers' standing to vindicate public rights does not arise only in "extreme circumstances." When public rights are at stake, public standing is the rule, not the exception. Tellingly, the Government cites a single source for the notion that public standing "is limited to 'extreme circumstances'"—a concurring opinion reflecting the views of two Indiana Supreme Court Justices. State MTD 6 (quoting *Embry*, 798 N.E.2d at 168 (Sullivan,

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[3] The City-County Defendants cite a Court of Appeals decision, *Liberty Landowners Ass'n, Inc. v. Porter Cty. Comm'rs*, 913 N.E.2d 1245, 1252 (Ind. Ct. App. 2009), for the idea that a public-standing plaintiff still must have a private right at stake. *See* City MTD 3–4. But the Court in *Liberty Landowners* relied on a 1972 Court of Appeals decision that did not involve public standing, and it addressed a very different type of case—a zoning challenge. *Liberty Landowners* is therefore distinguishable from this case and, to the extent that it is not distinguishable, it is in irreconcilable tension with the Indiana Supreme Court precedent discussed above.

J., concurring)). There is no binding authority to support the Government's view. In only one instance has a Supreme Court majority even suggested that "extreme circumstances" may cabin public standing—in *Pence v. State*, on which the Government also relies—and the Supreme Court repudiated the Government's narrow reading of that language more than a decade ago. *Cittadine*, 790 N.E.2d at 983 ("Significantly, the majority opinion in *Pence* did not expressly discuss the public standing doctrine . . . . We hold that *Pence* did not alter the public standing doctrine in Indiana."); *see also* State MTD 6–7.

Since *Cittadine*, Indiana courts have decided public-standing cases without considering whether the circumstances were sufficiently "extreme." *Meredith*, 984 N.E.2d at 1217 n.4; *Embry*, 798 N.E.2d at 159–60. In *Old Utica School Preservation*, for instance, the Court of Appeals held that town residents had public standing to try to prevent a former public school from being repurposed for halfway-housing. 7 N.E.3d at 329, 332–33. In *State ex rel. Berkshire v. City of Logansport*, 928 N.E.2d 587 (Ind. Ct. App. 2010), the Court of Appeals approved a resident's public standing to enforce a city resolution, dating back to 1915, which provided that a local park must be managed by a three-member board rather than the modern five-member body, *id.* at 592–93, 598. And only weeks ago, the Court of Appeals forcefully rejected Indianapolis's claim that public standing applies "in only exceptional circumstances." *See* Appellees' Br. 11, *Graphic Packaging Int'l v. City of Indianapolis*, No. 49A04-1504-PL-00165, 2015 WL 10058572, at *11 (Ind. Ct. App. filed Nov. 9, 2015). The court in that case ruled that "[a]lthough the Government argues that persons invoking public standing must have something more than a generalized interest to have standing, our Supreme Court disagrees." *Graphic Packaging Int'l v. City of Indianapolis*, No. 49A04-1504-PL-00165, 2016 WL 742691, at *4 (Ind. Ct. App. Feb. 24, 2016). Put simply, public standing does not require extreme circumstances.

But even if extreme circumstances were required, the Complaint in this case alleges them. Plaintiffs allege that police and prosecutors in Indianapolis are willfully violating a constitutional command. Compl. ¶¶ 51–95. While the Indiana Constitution mandates that "all forfeitures which may accrue" belong to the common school fund, "[p]olice and prosecutors in Indianapolis and Marion County are . . . retaining all of the proceeds of civil forfeitures for their own use." Compl. ¶¶ 2–3. For years, civil forfeiture has acted as a "revenue source" funneling millions of dollars into Indianapolis law-enforcement accounts. Compl. ¶¶ 55 (quoting Defendant Curry), 72–95. This state of affairs violates both the Indiana Constitution *and* the Civil Forfeiture Statute, which the Defendants argue insulates them from constitutional review in this case. *See* State MTD 9–10. The Defendants' actions do more than harm the common school fund; they harm people like the Horners—who were forced to spend nearly a year fighting Defendant Curry's Forfeiture Unit to recover two cars they had lent to their son. Compl. ¶ 24. And all of Plaintiffs—and all Hoosiers—are exposed to the risk of greater tax burdens (and more forfeitures) due to the Defendants' ongoing constitutional violations. *See* p. 6 *above*.

That this illegal activity has persisted for so long illustrates exactly why Indiana has a public-standing doctrine. In recent years, two of Indiana's three branches of government have voiced concern about the constitutionality of Indiana's civil-forfeiture program. Compl. ¶ 97 (quoting then-Governor Daniels); *Serrano*, 946 N.E.2d at 1142 n.3 (singling out the constitutional issue presented in this case as "an unresolved question"), *cited at* Compl. ¶ 98. A Judge of this Court likewise remarked—five years ago—that law-enforcement agencies' use of forfeiture proceeds raises issues that "do not deserve to be ignored." Order 2–3, *State ex rel. Lenkowsky v. Harvey*, No. 49D13-1007-PL-031572 (Marion Super. Ct. Apr. 5, 2011). Even

Marion County prosecutors have acknowledged that the constitutionality of their forfeiture program is "[s]till very much in flux." Compl. Ex. 1, at 48.

Yet despite this record, law enforcement in Indianapolis continues to channel millions of dollars in civil-forfeiture proceeds away from the common school fund. Compl. ¶¶ 4, 7, 19, 72–95. As alleged in the Complaint, this is possible because "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." Compl. ¶ 83. Critically, property owners in forfeiture cases have been denied individual standing to contest the diversion of forfeiture proceeds from the common school fund. *See $100 v. State*, 822 N.E.2d 1001, 1015 (Ind. Ct. App. 2005); Compl. ¶ 82, Ex. 1, at 49. Thus, innocent citizens facing forfeiture actions, like Jeana and Jack Horner, have no opportunity to argue that law enforcement must comply with Article 8 of the Indiana Constitution in the context of a forfeiture proceeding. Nor is there any prospect that the Indiana Attorney General's Office will fix the situation, since that office incorrectly maintains that neither the Indiana Constitution nor the Civil Forfeiture Statute prevents law enforcement from pocketing 100 percent of civil-forfeiture proceeds. Compl. ¶¶ 100–15, Ex. 1, at 48. Without public standing, therefore, the constitutionality of the Civil Forfeiture Statute and the legality of the Defendants' practices will continue to evade judicial review. That fact alone justifies Plaintiffs' right to litigate their claims in this case. *See Graphic Packaging Int'l*, 2016 WL 742691, at *6 ("[I]f these Plaintiffs do not have standing to seek to enforce this statute, we are left wondering who would."). The Defendants' *Catch-22* theory of standing—under which no one may challenge their actions in the context of a forfeiture proceeding and no one may challenge their actions outside of a forfeiture proceeding—is incorrect as a matter of law and dangerous as a matter of policy.

2. *Seeking declaratory and injunctive relief does not defeat public standing.*

The Government also argues that the public-standing doctrine does not apply when a plaintiff seeks "only declaratory relief." But Plaintiffs here do not seek "only declaratory relief." Compl., Request for Relief (requesting declaratory and injunctive relief). In any event, the Government is incorrect; public standing is available for all of Plaintiffs' claims.

The Government's contrary theory turns on a single sentence in the Supreme Court's *Cittadine* decision, which says that plaintiffs may not be able to invoke public standing if they "seek[] only declaratory relief." *Cittadine*, 790 N.E.2d at 984, *cited at* City MTD 3; *see also* State MTD 6. That statement was dicta—*Cittadine* involved a petition for a writ of mandamus, not declaratory relief—and it cannot be read as barring public-standing plaintiffs from pairing requests for declarations with requests for injunctions. This is because both before and after *Cittadine*, the Indiana Supreme Court has applied the public-standing doctrine to decide cases involving the same relief that Plaintiffs seek here. Most recently, in *Meredith v. Pence*, the Supreme Court held that the plaintiffs had public standing to pursue a complaint for declaratory and injunctive relief against an "allegedly unconstitutional use of public funds," 984 N.E.2d at 1217 n.4; Compl., *Meredith v. Daniels*, No. 49D07-1107-PL-025402 (Marion Super. Ct., filed July 1, 2011). If the Government's reading of *Cittadine* were correct, the Court in *Meredith* would never have reached the merits of the plaintiffs' claims. But the Government is not correct. Because the relief sought in *Meredith* was identical to the relief sought here, Plaintiffs have the same right to vindicate the public's interest in this case.

Moreover, *Meredith* is consistent with nearly a century of Indiana precedent. Shortly after the General Assembly enacted the Uniform Declaratory Judgments Act, the Indiana Supreme Court rejected just the standing barrier the Government advocates here. In *Zoercher v. Agler*, 172

N.E. 186 (Ind. 1930), the Supreme Court decided a constitutional challenge filed exclusively under the Declaratory Judgments Act by plaintiffs as "taxpayers, freeholders, and citizens," *id.* at 187. Like the Government here, the defendants in *Zoercher* contested the plaintiffs' public standing, arguing that "under the Uniform Declaratory Judgments Acts . . . the person bringing the action must have a substantial present interest in the relief sought." *Id.* at 189; *compare* City MTD 4 (arguing that Plaintiffs "must have a substantial present interest in the relief sought"), *and* State MTD 6. The Supreme Court rejected that argument. The Court acknowledged that "[t]he rule contended for by [the government], that the plaintiff must show that he has sustained some injury to his personal or property rights, has been applied in the case of one who brings an action to enforce his private rights." *Zoercher*, 172 N.E. at 189. "[B]ut," the Court held, "such a rule does not serve to prevent the bringing of an action which involves the establishment of public rights." *Id.* This Court should not accept an argument that the government has already advocated unsuccessfully before the Indiana Supreme Court.

The holdings in *Meredith* and *Zoercher* are consistent with decades' worth of Indiana decisions,[4] while the Government's contrary theory of public standing finds no support anywhere. Like the plaintiffs in all of the available cases, Plaintiffs here have a public right to seek declaratory and injunctive relief.

3. It does not matter that the Superintendent of Public Instruction also has standing to sue over school revenue.

[4] *See, e.g.*, *Higgens v. Hale*, 476 N.E.2d 95, 96, 101–02 (Ind. 1985) (applying public standing when plaintiffs filed a complaint for declaratory and injunctive relief); *Old Utica Sch. Pres*, 7 N.E.3d at 329 (applying public standing when the plaintiffs "filed a complaint for declaratory judgment and injunctive relief"); *Berkshire*, 928 N.E.2d at 590 (proceeding under public standing when the plaintiff "sought a writ of mandate, declaratory judgment, and injunctive relief").

The third argument for dismissal is equally unavailing. According to the State Defendants, whatever public standing may mean for the rest of the Indiana Constitution, Article 8 can be vindicated "exclusively" by the Superintendent of Public Instruction. State MTD 4. This argument strains reason. It is true that the Superintendent "may" bring "all suits necessary for the recovery" of school moneys. Ind. Code § 20-39-2-1. But this grant of statutory authority is not exclusive, even within the executive branch—the State Auditor and Attorney General both have similar powers. *Id.* §§ 4-7-1-2(6), (7), 4-6-2-6; *State ex rel. Smith v. McLellan*, 37 N.E. 799, 800 (Ind. 1894) ("[T]he attorney general [i]s the proper relator in a suit to recover moneys belonging to the common-school fund of the state."); *State ex rel. Buskirk v. Sims*, 76 Ind. 328, 332 (1881) ("[T]he superintendent and the auditor were authorized to employ an attorney to collect the desperate debt [owed to the common school fund].").

The Superintendent's power is no more exclusive as against Plaintiffs than it is against other state officials. The General Assembly did not, in granting authority to the Superintendent, divest Indiana's citizenry of their right to protect the common school fund through public-standing litigation—even if legislators had the power to do so. Public standing is a "common law doctrine," *Huffman v. Office of Envt'l Adjudication*, 811 N.E.2d 806, 812 (Ind. 2004), and courts "presume that the legislature did not intend to alter the common law unless the statute declares otherwise 'in express terms or by unmistakable implication.'" *Kosarko v. Padula*, 979 N.E.2d 144, 148 (Ind. 2012). This is especially true where statutes are claimed to limit a common-law "right to bring suit," in which case they are construed "strictly." *Mooney v. Anonymous M.D. 4*, 991 N.E.2d 565, 580 (Ind. Ct. App.), *transfer denied*, 999 N.E.2d 416 (Ind. 2013).

These principles control the outcome here. Nothing in the Superintendent's grant of authority conveys an "express" or "unmistakable" legislative intent to abrogate the people's

public-standing rights. *Kosarko*, 979 N.E.2d at 148. Rather, the General Assembly vested the Superintendent with power because the Superintendent can act *only* pursuant to legislatively delegated power. Though the Constitution "creates the office of the State Superintendent of Public Instruction," it "does not give him any right, powers or duties." *State ex rel. Young v. Niblack*, 99 N.E.2d 839, 841 (Ind. 1951). And when such an official "derives his power and authority solely from the statute, 'unless a grant of power and authority can be found in the statute it must be concluded that there is none.'" *Id.* (noting that "the Auditor of the State exercises only such powers as may be delegated by legislative act"); *see also State ex rel. Pearson v. Brown*, 537 N.E.2d 534, 536 (Ind. Ct. App. 1989) ("The attorney general can derive authority only from statutes."). Thus, granting the Superintendent power to sue does not in "express terms or by unmistakable implication" strip the population at large of their public-standing right to vindicate Article 8. *Kosarko*, 979 N.E.2d at 148; *see also Meredith*, 984 N.E.2d at 1220–25 (public standing to vindicate Article 8, Section 1); *Mitsch*, 125 N.E.2d at 23 (public standing to vindicate Article 8, Section 2); *see generally Hamilton v. State ex rel. Bates*, 3 Ind. 452, 458 (1852) ("[I]t is not necessary, in such cases, that the relator should have a special interest in the matter, or that he should be a public officer."). The State Defendants may be correct that the Superintendent has statutory power to bring similar claims against them; but that does not mean Plaintiffs have no right to bring their claims, as well.

II. The relief sought by Plaintiffs would not control the orders of other courts.

In passing, the State Defendants also argue that this Court has no power to declare the meaning of the Civil Forfeiture Statute (relief Plaintiffs seek in their second claim). As discussed below, this argument is incorrect as a matter of law. But as a preliminary matter, it is not at all clear the Court should consider the argument at this stage. The State Defendants direct their

argument only to Plaintiffs' second claim—involving the statutory limits of the law-enforcement-costs provision—which will come into play only if the Court first decides that the law-enforcement-costs provision is constitutional. If the law-enforcement-costs provision is unconstitutional, as Plaintiffs allege in their first claim, this Court will have no reason to consider the merits of the second claim or to order relief on that claim. For this reason, the Court should decline to address the Government's argument as "prospective and premature." *See Cmty. Hosps. of Ind., Inc. v. Estate of North*, 661 N.E.2d 1235, 1239 (Ind. Ct. App. 1996).[5]

If the Court chooses to address the State Defendants' argument, the argument fails. While Plaintiffs readily agree that courts of equal jurisdiction may not directly control one another's "orders or process," State MTD 10, Plaintiffs' second claim seeks no such thing. Plaintiffs ask the Court to determine the meaning of the law-enforcement-costs statute and to direct the Defendants—not any court—to prospectively conform their conduct to the statute as it must be correctly understood. Compl., Requests for Relief. If Plaintiffs prevail, this Court's judgment will control how the Defendants—not other judges—behave in future forfeiture prosecutions. As a result, Plaintiffs' victory will not mean that this Court is "control[ling] the orders or process of" courts deciding other cases. *See State v. Downey*, 14 N.E.3d 812, 815 (Ind. Ct. App. 2014). It would simply bind the Defendants in the performance of their duties—something courts do all the time. *See, e.g.*, *Greer v. Buss*, 918 N.E.2d 607, 614 (Ind. Ct. App. 2009) ("Indiana courts have frequently considered challenges to statutory requirements, despite the fact that the plaintiffs were seeking the remedy of an injunction against criminal prosecution.").

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[5] Courts "generally avoid addressing constitutional questions if a case can be resolved on other grounds," *Girl Scouts of S. Ill. v. Vincennes Ind. Girls, Inc.*, 988 N.E.2d 250, 254 (Ind. 2013), but that canon does not apply here. Plaintiffs' constitutional claim cannot be resolved on other grounds, and the question of statutory interpretation presented in Plaintiffs' second claim arises only if the statute is constitutional in the first place.

In this way, a judgment for Plaintiffs would differ markedly from the type of orders that have been held to impermissibly invade the jurisdiction of co-equal courts. In *Downey*, for example, a trial court entered an order that explicitly "set aside" a co-equal court's existing order. 14 N.E.3d at 814. And in *Gregory v. Perdue*, the Warren Circuit Court altered the rights of competing property owners in derogation of an existing Boone Circuit Court decree. 29 Ind. 66, 68 (1867). Plaintiffs' second claim here, by contrast, does not seek to alter any existing trial-court order. It asks only that the Court declare the meaning of the Civil Forfeiture Statute and bind the Defendants—as agents of the government—to honor that meaning in performing their official duties. The State Defendants have cited no precedent suggesting that that act of statutory interpretation is beyond this Court's power. Nor could they. Just as this Court cannot set aside an existing judgment from a co-equal court, so too the prospect of future litigation in co-equal courts cannot displace this Court's duty to resolve the dispute now before it.

CONCLUSION

The Defendants' two motions to dismiss should be denied.

Dated: April 15, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, a true and correct copy of the foregoing has been served upon the following via First Class U.S. Mail, postage prepaid:

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