UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMYA SPARGER-WITHERS, on behalf of herself and others similarly situated,	)	
Plaintiff,	)	
v.	)	No. 1:21-cv-02824-JRS-MG
JOSHUA N. TAYLOR, et al.,	)	
Defendants.	)	

Order on Defendants' Motion to Dismiss and Plaintiff's Motion for Class Certification

I. Introduction

This is a putative class action civil-rights suit, brought under 42 U.S.C. § 1983, to challenge the constitutionality of Indiana's civil forfeiture system. The state allows private attorneys working on a contingency fee basis to prosecute civil forfeiture cases on its behalf. Plaintiff Amya Sparger-Withers was subject to a civil forfeiture suit brought by Defendant Joshua Taylor under this arrangement. She now sues Taylor and the prosecuting attorneys of seventeen Indiana counties, seeking declaratory and injunctive relief for herself and similarly situated forfeiture defendants.

Now before the Court are the Defendants' Motion to Dismiss, (ECF No. 46), and Plaintiff's Motion for Class Certification, (ECF No. 6).

II. Background

Plaintiff Amya Sparger-Withers was stopped by police on January 29, 2021. (Compl. ¶ 47, ECF No. 1; Defs.' Mot. Dismiss Ex. 1, ECF No. 46.) The police seized

drugs and cash belonging to Sparger-Withers. (Compl. ¶47; Mot. Dismiss Ex. 1, ECF No. 46.)

On February 1, 2021, Defendant Joshua Taylor, acting as a prosecutor for the state of Indiana, brought a civil forfeiture action against the seized property. (Compl. ¶¶ 6, 48.) Taylor is a private attorney who worked the case on a contingency fee basis. (*Id.* ¶ 49.) Taylor routinely prosecutes civil forfeiture actions on contingency fees, (*Id.* ¶ 29); he appears to file about a hundred cases per year spread over seventeen counties across the state, (Decl. Michael Greenberg, ECF No. 6 Attach. 2, Ex. 2–7).

On February 2, 2021, the state began criminal proceedings against Sparger-Withers. (Defs.' Mot. Dismiss Ex. 5, ECF No. 46.)

The civil and criminal actions remained pending for most of the year. Then, on November 2, 2021, there was a bench trial in the criminal case. (*Id.*) The court docketed an "Administrative Event" on November 5, 2021, finding Sparger-Withers guilty of marijuana possession and not guilty of marijuana dealing. (*Id.*)

On November 10, 2021, Sparger-Withers filed the Complaint opening this case, (Pl.'s Compl., ECF No. 1), along with a Motion to Certify Class, (Pl.'s Mot. Class Certification, ECF No. 6). The civil forfeiture case was still open.

A few days later, though, on November 16, 2021, Taylor filed a "Plaintiff's Motion to Dismiss" in the civil forfeiture case, (Def.'s Mot. Dismiss Ex. 6, ECF No. 46), which the court granted the same day, (*id.* Ex. 7). The court ordered the money subject to forfeiture returned to Sparger-Withers, (*id.*), and by December 6, 2021, the police had effected its return, (*id.* Ex. 9).

III. Motion to Dismiss

Defendant Taylor moves to dismiss this action on Article III grounds, because Sparger-Withers' property is no longer subject to a civil forfeiture prosecution. (Defs.' Mot. Dismiss, ECF No. 46.)

A. Standing

Taylor argues first that Sparger-Withers lacks Article III standing to bring her case. (Def.'s Br. Supp. Mot. Dismiss 3, ECF No. 47.)

Article III standing is a threshold requirement for this Court's subject-matter jurisdiction over the case; the Court must have a justiciable case or controversy at all stages of review. *Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (citing U.S. Const. art. III, § 2 and *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). "Standing is an essential component of Article III's case-or-controversy requirement." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "[T]he plaintiff bears the burden of establishing standing." *Id.* (citing *Perry v. Vill. of Arlington Heights*, 186 F.3d 826, 829 (7th Cir. 1999)). To do so, the plaintiff must show "(1) that she has 'suffered a concrete and particularized injury that is either actual or imminent'; (2) 'that the injury is fairly traceable to the defendant'; and (3) 'that it is likely that a favorable decision will redress that injury.'" *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs of City of Milwaukee*, 708 F.3d 921, 926 (7th Cir. 2013) (quoting *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007)). "Standing is evaluated at the time suit is filed." *Id.* at 928. The Court, even at the motion to dismiss stage, "may properly look beyond the

jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Apex Digital*, 572 F.3d at 444 (quoting *Evers v. Astrue*, 536 F.3d 651, 656–57 (7th Cir. 2008)).

Here, the operative date is November 10, 2021, when the case was filed. On November 10, Sparger-Withers' property was subject to Taylor's prosecution of an ongoing civil forfeiture proceeding. (Compl. ¶ 48, ECF No. 1; Def.'s Mot. Dismiss Ex. 7, ECF No. 46.) She thus easily satisfies the three standing elements listed above. The injury she alleges—a violation of her due process right to be free from improperly-motivated civil forfeiture prosecution—was then "actual." (Compl. ¶ 61.) That injury was also "fairly traceable" to Taylor, the improperly motivated prosecutor behind the case. (Compl. ¶ 63; Def.'s Mot. Dismiss Ex. 6.) Finally, the injury would be redressed by a favorable decision: Sparger-Withers seeks an injunction that would remove Taylor's allegedly improper motivation from the civil forfeiture prosecution against her property. (Compl. ¶ 68.)

Therefore, considering both the allegations in Sparger-Withers' Complaint and the exhibit evidence introduced by Taylor with his Motion to Dismiss, the Court holds that Sparger-Withers had standing when the case was filed.

B. Mootness

Much of Defendants' Brief in Support of the Motion to Dismiss, (ECF No. 47), argues against Sparger-Withers' continued stake in this case now that the civil forfeiture proceeding against her has been dismissed. Those arguments are framed

in terms of standing, but "it is the doctrine of mootness, not standing, that addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit. The distinction matters because the [defendant], not petitioners, bears the burden to establish that a once-live case has become moot." *West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022) (cleaned up). With that caveat about the burden of proof in mind, the Court is willing to take Defendants' suggestion that it look past the misnaming to address the substance of their arguments. (Def.'s Reply Supp. Mot. Dismiss 2, ECF No. 65.)

Mootness, like standing, is an Article III requirement. *DM Trans, LLC v. Scott*, 38 F.4th 608, 616 (7th Cir. 2022). Mootness is jurisdictional, so the Court will dismiss the case where it is lacking. *Id.* A case is moot when the Court can no longer "grant the litigants any effectual relief." *Id.*

Here, Taylor argues that because Sparger-Withers has been mooted out, the whole case is moot. (Def.'s Br. Supp. Mot. Dismiss 3, ECF No. 47.) The Court agrees that Sparger-Withers was mooted out when the civil forfeiture case against her property closed and that property was returned—she had no injury after December 6, 2021, for which the Court could grant "effectual relief." In a single-plaintiff case, that would be the end of it.

But class actions play by different rules. Even after the named plaintiff is mooted out, "timely filing for class certification can save a cause of action if it falls within the exception to the mootness doctrine announced in *Gerstein v. Pugh*, 420 U.S. 103 (1975)." *Olson v. Brown*, 594 F.3d 577, 580 (7th Cir. 2010). The *Gerstein* exception

for "inherently transitory" cases allows relation back, for mootness purposes, to the date the motion for class certification was filed. *Id.* at 581 (citing *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978)). If the named plaintiff's case was live at the time of filing, it is allowed to continue despite having been mooted out since. *Id.* at 580–81. The Court applies a two-prong test to determine whether the "inherently transitory" exception applies: "(1) it is uncertain that a claim will remain live for any individual who could be named as a plaintiff long enough for a court to certify the class; and (2) there will be a constant class of persons suffering the deprivation complained of in the complaint." *Id.* at 582 (citing *Gerstein*, 420 U.S. at 110 n. 11).

In evaluating the first prong, courts give some weight to the duration of the claims, but there is no "bright-line rule" dividing transitory and non-transitory claims on duration alone. *Id.* at 583. Instead, "the essence of the exception is uncertainty about whether a claim will remain alive for any given plaintiff long enough for a district court to certify the class." *Id.* (citing *Banks v. NCAA*, 977 F.2d 1081, 1086 (7th Cir. 1992) and *Trotter v. Klincar*, 748 F.2d 1177 (7th Cir. 1984)). Other circuits agree. *See Gawry v. Countrywide Home Loans, Inc.*, 395 F. App'x 152, 159 (6th Cir. 2010); *Ward v. Hellerstedt*, 753 F. App'x 236, 243 (5th Cir. 2018); *Jonathan R. by Dixon v. Just.*, 41 F.4th 316, 325–26 (4th Cir. 2022). In evaluating the second prong, the Court looks to the likelihood that the claim will "recur with regard to the class," not the likelihood that it will recur with regard to any individual plaintiff. *Olson*, 594 F.3d at 584.

Here, Sparger-Withers took roughly ten months to file for class certification, which the Court acknowledges is longer than many of the cases in which the "inherently transitory" exception has been found appropriate. *See, e.g.*, *Zurak v. Regan*, 550 F.2d 86, 92 (2d Cir. 1977) (sixty to ninety days appropriate); *Olson*, 594 F.3d at 582 (roughly 120 days appropriate or too long, depending on "uncertainty"); *Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957, 971 (S.D. Ind. 2017) (180 days appropriate); *Gawry*, 395 F. App'x at 159 (five years too long). The Court considers, though, that it has taken as of this writing roughly nine months to address the class certification motion. Defendants offer no evidence to show how long civil forfeiture proceedings usually remain pending; the Court has no good evidence that Sparger-Withers' civil forfeiture case would not have continued for several months more had not Taylor sought voluntarily to dismiss it. Furthermore, as that dismissal shows, Taylor has the effective power (with the state court's acquiescence) to moot out any individual plaintiff who brings a case of this sort. *Cf. Washington*, 264 F. Supp. 3d at 971 ("[A]s the State retains discretion to return the seized property to its owner at any time, it could attempt to moot any named plaintiff's claim by simply returning the property after the plaintiff files a motion to certify."); *see also Jonathan R. by Dixon*, 41 F.4th at 326 (citing *Olson*, 594 F.3d at 582) ("[C]ourts find the [inherently transitory] exception particularly fitting when *defendants* create a significant possibility that any single named plaintiff would be dismissed prior to certification."). The Court considers, then, that it is "uncertain"—even unlikely—that

any named plaintiff could keep a claim live long enough for the Court to certify a class.

The claims asserted by Sparger-Withers are likely to recur. Sparger-Withers pleads, and Taylor does not deny, that Taylor brings about a hundred civil forfeiture cases a year as a contingency fee prosecutor. (Compl. ¶ 72, ECF No. 1.) Taylor gives no evidence that he intends to slow or stop his civil forfeiture prosecutions, and each of them yields a potential plaintiff on Sparger-Withers' claims.

The Court, accordingly, finds that both prongs of the *Gerstein* "inherently transitory" test are met here, and Sparger-Withers' putative class action remains live. The Court need not and does not address the parties' arguments for and against other mootness exceptions.

C. Conclusion on Motion to Dismiss

The Court holds that (1) Sparger-Withers has met her burden of showing standing at the time the case was filed, and (2) the Defendants have not met their burden of showing that Sparger-Withers' putative class action is moot.

Both grounds asserted by Defendants' Motion to Dismiss, (ECF No. 46), thus fail, and that motion is **denied.**

IV. Class Certification

Sparger-Withers moves that this Court certify a class consisting of "All persons who are or will be named as defendants in civil-forfeiture actions (a) brought under Title 34, Article 24 of the Indiana Code and (b) in which Joshua N. Taylor represents the State of Indiana or any other government plaintiff." (Pl.'s Mot. Class Certification

1, ECF No. 6.) Defendants contend that class is unascertainable and, even if ascertained, that Sparger-Withers is not an adequate representative. (Defs.' Resp. Opp., ECF No. 56.)

To certify the class, the Court must find that it meets the four requirements of Rule 23(a), and that it meets at least one of the Rule 23(b) requirements. *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012). The class must also be "ascertainable." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015). "The party seeking certification bears the burden of demonstrating that certification is proper by a preponderance of the evidence." *Chicago Tchrs. Union, Loc. No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 433 (7th Cir. 2015) (citing *Messner*, 669 F.3d at 811). The Court's inquiry should be "rigorous," *id.*, but need not become a "dress rehearsal for the trial on the merits," *Messner*, 669 F.3d at 811. The Court may look to evidence beyond the pleadings where necessary to resolve disputes. *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676 (7th Cir. 2001). Finally, should the Court choose to certify a class, it must concurrently appoint class counsel. Fed. R. Civ. P. 23(c)(1)(B).

A. Ascertainability

Rule 23 implicitly requires that a class be ascertainable. *Mullins*, 795 F.3d at 657. To be ascertainable, a "class must be defined clearly and [its] membership be defined by objective criteria." *Id.* The class must not be vague, amorphous, or imprecise. *Id.* at 659. It must not be "defined by subjective criteria, such as by a person's state of

mind." *Id.* at 660. And it must not be "defined in terms of success on the merits"—membership must "not depend on the liability of the defendant." *Id.*

Here, the class proposed by Sparger-Withers is ascertainable. Two objective criteria govern class membership: whether the potential class member is subject to a civil forfeiture prosecution "brought under Title 34, Article 24 of the Indiana Code" and whether "Joshua N. Taylor represents the State of Indiana or any other government plaintiff." (Pl.'s Mot. Class Certification 1, ECF No. 6.) The Court foresees no problem in ruling on those two criteria precisely, repeatably, and correctly for any potential class member brought before it. The criteria are not vague; they do not depend on any person's state of mind; they make no reference to the liability of the Defendants. There is no rule that a class open to future members is unascertainable;[1] courts routinely certify such classes. § 4:4. Existence of identifiable class—Inclusion in class of future claimants, 1 MCLAUGHLIN ON CLASS ACTIONS § 4:4 (18th ed.) ("There is no per se prohibition against certifying a single class including both presently injured and future claimants."); *see also, e.g.*, *DDMB, Inc. v. Visa, Inc.*, No. 05-MD-1720 (MKB), 2021 WL 6221326, at *14 (E.D.N.Y. Sept. 27, 2021) (collecting cases) ("Courts both within and outside of this Circuit have routinely certified classes including future class members when any equitable relief to which the class would be entitled would be of the sort that would affect present and future claimants in the same way.").

[1] It might be helpful to consider the difference between "ascertainable" and "ascertained." An umpire, for instance, knows the next pitch to be ascertainable as a ball or a strike, even though, until thrown, it remains unascertained. Whether the next pitch "would have been hit out of the park by Roger Maris" is both unascertainable and forever to be unascertained.

B. Rule 23(a)

The proposed class must meet Rule 23(a)'s four requirements of numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011); *Chicago Tchrs. Union*, 797 F.3d at 433. Sparger-Withers argues that Defendants have conceded the proposed class meets the numerosity, commonality, and typicality requirements. (Pl.'s R. Supp. Mot. Class Certification 1, ECF No. 60.) While the requirements of Rule 23(a) cannot be waived, the Court's inquiry into the undisputed elements may be lighter. *See Messner*, 669 F.3d at 811 (7th Cir. 2012) ("If there are *material factual disputes*, the court must receive evidence and resolve the disputes before deciding whether to certify the class.") (emphasis added) (internal quotation omitted).

A class is sufficiently "numerous" beyond forty or so members. *See Swanson v. American Consumer Indus.*, 415 F.2d 1326, 1333 n. 9 (7th Cir. 1969); *Hubler Chevrolet, Inc. v. Gen. Motors Corp.*, 193 F.R.D. 574, 577 (S.D. Ind. 2000). Here, the proposed class includes persons presently or in the future subject to Taylor's civil forfeiture prosecutions. Sparger-Withers alleges that Taylor has since 2019 prosecuted roughly a hundred civil forfeiture cases a year, and her affidavit evidence gives this Court ample documentation in support. (Compl. ¶ 72, ECF No. 1; Decl. Michael Greenberg, ECF No. 6 Attach. 2, Ex. 2–7.) Sparger-Withers also provides evidence that about a hundred of those cases were still pending in state court at the time of filing. (Decl. Michael Greenberg, ECF No. 6 Attach. 2 Ex. 8–9.) Taylor does not dispute the evidence of his past practice; nor does he contend that his civil

forfeiture prosecutions will let up in future. The Court notes that each presently pending case, and each future case, provides a class member. All told, then, the class looks to have roughly a hundred members at the outset, with more joining as future civil forfeiture cases are opened. The parties do not dispute these facts. The Court, then, is satisfied that Rule 23(a)(1)'s numerosity requirement has been met.

"The commonality and typicality requirements tend to merge." *Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957, 965 (S.D. Ind. 2017) (citing *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 158 n. 13 (1982)). A class has "commonality" and "typicality" when there is a "common contention . . . capable of classwide resolution," *Dukes*, 564 U.S. at 350, and "the named representatives' claims have the same essential characteristics as the claims of the class at large," *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009). Sparger-Withers' central contention is that contingency fee civil forfeiture prosecutions violate the Due Process clause. (Pl.'s Compl. ¶ 1, ECF No. 1.) That contention is capable only of class-wide resolution—an injunction against Taylor's fee structure would apply to each of his civil forfeiture cases—and does not vary across the class, no matter what the underlying facts of each civil forfeiture prosecution. This case presents a question of law that has systemic, not particularized, effects. The parties do not dispute "commonality" or "typicality," and the Court is satisfied that both requirements are met.

The parties dispute the "adequacy" of Sparger-Withers' representation. (Defs.' Resp. Opp. 5, ECF No. 56.) Adequacy requires first that the named plaintiff have effective counsel and second that the named plaintiff have no conflict of interest with

the other class members. *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993). Usually, then, to avoid "conflicts of interest between named parties and the class they seek to represent, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997) (cleaned up). Taylor does not dispute the adequacy of Sparger-Withers' counsel. Indeed, the Court has no qualms in finding that the Institute for Justice has the experience and resources ably to represent her in this litigation. (Decl. Samuel Gredge, ECF No. 6 Attach. 1.) Instead, Taylor contends that, because Sparger-Withers has been mooted out, she no longer shares an injury with the rest of the class. (Defs.' Resp. Opp. 5–10, ECF No. 56.) The Court has already addressed standing and mootness, Sections III.A–III.B, above, and concluded that Sparger-Withers had a live interest in the litigation when filed. Adequacy does not require that her claim remain live. *J.D. v. Azar*, 925 F.3d 1291, 1313 (D.C. Cir. 2019) (explaining that "the very existence of the inherently-transitory exception disproves any suggestion that the mootness of a plaintiff's claims necessarily demonstrates her inadequacy as a representative. . . . [T]he Supreme Court has specifically recognized that a plaintiff with a moot claim may serve as a class representative.") (citing *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 406 (1980) and *Sosna v. Iowa*, 419 U.S. 393, 402–03 (1975)). Taylor does not argue that, aside from mootness, Sparger-Withers will fail adequately to represent the class. She has no conflict of interest with the other class members; nor is there any suggestion of lassitude in her litigation of the case thus far. The Court

notes too that the Institute for Justice, more than Sparger-Withers or any other named plaintiff it might find, is the real moving force behind this litigation; the Court invokes its common sense to surmise that the Institute is unlikely to tire, to settle, or to favor any individual class member's claim over another. The Court therefore finds that Sparger-Withers will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

C. Rule 23(b)

A proposed class must also fall under one of the three "types of class actions" set forth in Rule 23(b). Fed R. Civ. P. 23(b). Here, Sparger-Withers suggests, and Taylor does not dispute, that Rule 23(b)(2) is the appropriate type of class action. (R. Supp. Mot. Class Certification 1, ECF No. 60.) The Court agrees. "23(b)(2) is the appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would benefit the whole class." *Chicago Tchrs. Union*, 797 F.3d at 441. Sparger-Withers requests declaratory and injunctive relief: specifically, a declaration that "Indiana Code § 34-24-1-8(e) and the contingency-fee provisions of Defendant Joshua N. Taylor's forfeiture-prosecution contracts violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution" and an injunction barring Taylor "from accepting compensation for prosecuting any civil-forfeiture action under Title 34, Article 24 of the Indiana Code that is contingent upon the outcome" of such an action. (Compl. ¶ D–G, ECF No. 1.) That is "final injunctive relief," which would, if granted, be "appropriate respecting

the class as a whole." Fed R. Civ. P. 23(b). The Court finds this class action satisfies Rule 23(b)(2).

D. Rule 23(g)

The Court must appoint class counsel when certifying a class, Fed. R. Civ. P. 23(c)(1)(B), and, when appointing counsel, must consider the four factors in Rule 23(g), Fed. R. Civ. P. 23(g)(1)(A)(i)–(iv). The Court considers "the work counsel has done in identifying or investigating potential claims in the action," "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action," "counsel's knowledge of the applicable law," and "the resources that counsel will commit to representing the class." *Id.* The Court considers that the Institute meets each of the mandatory factors in Rule 23(g)(1)(A): the Institute has done substantial legwork to prepare for class certification. (ECF No. 6 Attach. 2–11.) The Institute has significant experience in complex litigation, including in the civil forfeiture context. (ECF No. 6 Attach. 1.) The Institute's attorneys know the law. (*Id.*) Finally, the Institute apparently has the resources to pursue its litigation to the highest level of appeal. (*Id.*)

The Court notes that no other candidates have sought appointment as class counsel.

E. Conclusion on Motion to Certify Class

This Court has "broad discretion to determine whether certification of a class-action lawsuit is appropriate." *Mira v. Nuclear Measurements Corp.*, 107 F.3d 466, 474 (7th Cir. 1997). Here, the Court finds that certification is appropriate. Sparger-

Withers has proposed an ascertainable class; that class meets the four requirements of Rule 23(a); the action is of a type that fits Rule 23(b)(2); and able counsel is available for appointment under Rule 23(g).

Plaintiff's Motion to Certify Class, (ECF No. 6), is **granted**.

The certified class is defined as:

> "All persons who are or will be named as defendants in civil forfeiture actions (a) brought under Title 34, Article 24 of the Indiana Code and (b) in which Joshua N. Taylor represents the State of Indiana or any other government plaintiff."

This class is certified to seek injunctive relief under Rule 23(b)(2).

The Court appoints Anthony Sanders, of the Institute for Justice, along with his colleagues Samuel Gedge, Michael Greenberg, and Robert Belden, as class counsel under Rule 23(g).

V. Abstention

The Court, in the interest of state and federal comity, considered abstention *sua sponte*. *Bellotti v. Baird*, 428 U.S. 132, 143 n.10 (1976). Sparger-Withers asks the Court to invalidate a state law on federal constitutional grounds. The law in question is not old or disused but recently adopted and amended, *see* Ind. Code Ann. § 34-24-1-8 (West) (amended by P.L.47-2018, SEC.5, eff. July 1, 2018); it represents a recent policy judgment by the Indiana legislature, and the issue remains live in legislative debate, *see, e.g.*, 2022 IN S.B. 295 (NS). Furthermore, the Indiana Supreme Court has not yet had a chance to rule on the due process challenge brought here. *State v.*

Timbs, 134 N.E.3d 12, 28 n.5 (Ind. 2019). The Court endorses "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431–32 (1982) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). And "[m]inimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights." *Id.* This Court, then, recognizes its duty here to "abide by standards of restraint that go well beyond those of private equity jurisprudence." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 603 (1975); *see also Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 75 (1997) ("In litigation generally, and in constitutional litigation most prominently, courts in the United States characteristically pause to ask: Is this conflict really necessary? When anticipatory relief is sought in federal court against a state statute, respect for the place of the States in our federal system calls for close consideration of that core question.")

That said, "[n]ormally, federal jurisdiction is not optional. . . . '[C]ourts are obliged to decide cases within the scope of federal jurisdiction' assigned to them." *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1537 (2021) (quoting *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013)). And where, as here,

> "the naked question, uncomplicated by an unresolved state law, is whether that Act on its face is unconstitutional . . . abstention should not be ordered merely to await an attempt to vindicate the claim in a state court. Where there is no ambiguity in the state statute, the federal

> court should not abstain but should proceed to decide the federal constitutional claim."

Wisconsin v. Constantineau, 400 U.S. 433, 439, 91 S. Ct. 507, 511, 27 L. Ed. 2d 515 (1971) (citing *Zwickler v. Koota*, 389 U.S. 241, 251 (1967)). Certification of a constitutional question to the state court is likewise inappropriate, and for the same reason. *City of Houston, Tex. v. Hill*, 482 U.S. 451, 471 (1987). The Court, accordingly, will retain jurisdiction of this case.

VI. Conclusion

Defendants' Motion to Dismiss, (ECF No. 46), is **denied.**

The stay of discovery imposed by Order of Magistrate Judge Garcia, (ECF No. 82), pending this Court's ruling on the Motion to Dismiss, is therefore **lifted.**

Plaintiff's Motion for Class Certification, (ECF No. 6), is **granted.** The class is defined in Section IV.E, above, and class counsel there appointed.

SO ORDERED.

Date: 09/14/2022

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

By CM/ECF to all registered counsel of record.