STATE OF INDIANA)
) SS.
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT 4
CAUSE NO. 49D04-2405-MI-020041

STATE OF INDIANA,

Plaintiff,

v.

$42,825.00 in U.S. CURRENCY,
HENRY MINH,
PATRICK H.,
as their interest may appear,

Defendant(s).

HENRY MINH, INC., on behalf of itself and all others similarly situated,

Counterclaim-Plaintiff,

v.

STATE OF INDIANA; and RYAN MEARS, in his official capacity as Marion County Prosecutor,

Counterclaim-Defendants.

HENRY MINH, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Counterclaim-Plaintiff Henry Minh, Inc. is a mom-and-pop jewelry wholesaler located in California. It sells jewelry to small retailers nationwide. In the spring of 2024, one of the company's customers, in Virginia, mailed a payment to the company, in California. The parcel was routed through the FedEx hub at the Indianapolis airport, where police seized it, opened it, and found the currency inside—$42,825.00. The Marion County Prosecutor's Office promptly filed a boilerplate complaint on behalf of the State of Indiana to forfeit the cash.

This chain of events spotlights two systemic defects in the Marion County Prosecutor's forfeiture practices, both of which are challenged in this now-certified class action. *See generally* Findings of Fact and Conclusions of Law re: Certification of Classes (filed July 21, 2025).

First, the practice of suing to forfeit currency seized from cross-country in-transit FedEx parcels is unlawful. *See id.* at 12-30, 40 (certifying the "Parcel Class"). Taking advantage of Indiana's position at the Crossroads of America and the presence of the nation's second-largest FedEx hub at the Indy airport, the Prosecutor's Office has brought hundreds of forfeiture actions targeting currency seized from parcels merely passing through the State on their way from one non-Indiana location to another. This practice violates the Civil Forfeiture Statute. Under that statute, property qualifies for forfeiture only if it is linked to a violation of Indiana criminal law. And under Indiana's territorial-jurisdiction statute, the happenstance of currency's being routed through the airport FedEx hub does not give rise to any violation of Indiana criminal law. Even if the currency is linked to a crime elsewhere (and, as Henry Minh, Inc.'s experience shows, the Prosecutor often has no good reason to think it is), the Civil Forfeiture Statute does not authorize Indiana to sit athwart the stream of commerce and profit off of crimes in other States. In this way, the Prosecutor's practice

violates both the Civil Forfeiture Statute and the federal and state constitutions. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 375-76 (2023) ("Nor . . . should anyone think one State may prosecute the citizen of another State for acts committed 'outside the first State's jurisdiction' that are not 'intended to produce or that do not produce detrimental effects within it.'" (cleaned up)).

Second, the Prosecutor's Office engages in an even broader unlawful practice: bringing actions to forfeit currency using boilerplate complaints that fail to identify the crime supposedly supporting the forfeiture and that fail to allege any operative facts underlying the claim. *See* Findings of Fact and Conclusions of Law re: Certification of Classes at 30-40 (filed July 21, 2025) (certifying the "Notice Class"). This practice violates federal and state due-process protections and the Civil Forfeiture Statute. When even the authoring prosecutor can't tell from the complaint what predicate crime is alleged, Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 72:4-72:7), that's a sure sign that the complaint is statutorily and constitutionally deficient.

BACKGROUND

A. Legal background

1. Like many States, Indiana has a civil-forfeiture statute that allows the State to sue to confiscate property allegedly linked to certain crimes. I.C. §§ 34-24-1-1 *et seq.* Although the cases proceed in civil court, they "have significant criminal and punitive characteristics" and amount to "criminal-like penalties." *Hughley v. State*, 15 N.E.3d 1000, 1005 (Ind. 2014). Procedurally, the State can forfeit property only by showing that it is connected to one of a list of predicate crimes. I.C. § 34-24-1-1(a); *see also id.* § 34-24-1-4(a). For example, a vehicle may be forfeited if the State proves that the property was used to transport "[a]ny stolen (IC 35-43-4-2 or IC 35-43-4-2.2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars ($100) or more." *Id.* § 34-24-1-1(a)(1)(B). Real property may be forfeited if the State proves

that the owner used it to commit "[d]ealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10)." *Id.* § 34-24-1-1(a)(5)(F). A signal jammer may be forfeited if "used by a person to commit unlawful use of a signal jammer under IC 35-45-2-6." *Id.* § 34-24-1-1(a)(18). The list goes on.

The relevant procedure for a forfeiture action is as follows. As just explained, the State may seize certain property listed in Section 1 of the statute, which specifies crimes on which a seizure must be based. *Id.* § 34-24-1-1. The prosecutor then may "cause an action for forfeiture to be brought by filing a complaint in . . . circuit or superior court." *Id.* § 34-24-1-3(a). If the action is contested, the State then must prove "by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1" of the statute. *Id.* § 34-24-1-4(a). During the case, the property remains in the custody of the law-enforcement agency that seized it. *See id.* § 34-24-1-2(*l*); *see also id.* § 34-24-1-2(c).[1]

All told, the system is both "punitive and profitable." *State v. Timbs*, 134 N.E.3d 12, 20-21 (Ind. 2019). It is also vulnerable to abuse. At various times, members of the Indiana Supreme Court have noted "overreach," *Sargent v. State*, 27 N.E.3d 729, 735 (Ind. 2015) (Massa, J., dissenting); have likened civil forfeiture to a "law enforcement Weapon[] of Mass Destruction," *id.*; and have voiced "serious concerns with the way Indiana carries out civil forfeitures," *Horner v. Curry*, 125 N.E.3d 584, 612 (Ind. 2019) (Slaughter, J., concurring in the judgment).

2. The Marion County Prosecutor's Office files hundreds of forfeiture cases on behalf of the State each year. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 15:17-15:19). The counter-claims in this case challenge two systemic defects in the Office's forfeiture-related practices. First:

[1] In certain circumstances when vehicles or real property are seized for forfeiture, the owner may seek "provisional release" of the property "while the forfeiture action is pending." I.C. § 34-24-1-2(d).

the Office's practice of suing to forfeit currency seized from in-transit FedEx parcels that originate outside Indiana and whose destination is outside Indiana. Second: the Office's broader practice, when suing to forfeit currency, of using complaints that give property owners no notice of the factual and legal basis on which the State seeks forfeiture. These two practices are detailed below.

a. The practice of forfeiting in-transit currency. Indianapolis is home to the second-largest FedEx hub in the nation. Each day, the facility processes in-transit parcels being shipped from one side of the country to the other. Counterclaim-Defs.' Answer ¶ 12 (filed Dec. 18, 2024); *see generally* FedEx, *Second-Largest FedEx Express Hub Turns 30*, at 00:33 (Sept. 28, 2018), https://tinyurl.com/y8eedhry ("99,000 packages can be processed per hour, then loaded back onto planes and trucks bound for their final destinations."). For years, local law-enforcement has exploited this happenstance to the hilt. Detectives with the Indianapolis Metropolitan Police Department visit the facility, watch parcels as they pass, and pull aside ones that they think are suspicious. Counterclaim-Defs.' Answer ¶ 14 (filed Dec. 18, 2024); Miller Class Cert. Aff. Ex. C (filed Aug. 6, 2024) (sample of 50 probable-cause affidavits). (Suspicious indicators can include, among others, that the box is new, that its seams are secured with tape, that it is being shipped to California (a "source state"), and that a signature is not required to receive the parcel. *See generally* Miller Class Cert. Aff. Ex. C.) Once pulled aside, the parcels are presented to a K-9. *Id.* When the dog alerts to a parcel, detectives secure a search warrant to open it. Counterclaim-Defs.' Answer ¶ 21 (filed Dec. 18, 2024).

When an officer finds currency, the Marion County Prosecutor's Office is responsible for suing on behalf of the State of Indiana to forfeit the currency under Indiana state law. Miller MSJ Aff. Ex. 2, at 2 (Counterclaim-Defs.' Revised Resp. to Req. for Admission No. 37). In hundreds of

instances, the parcel containing the currency is seized while in-transit *from* a jurisdiction that is not Indiana *to* a jurisdiction that is not Indiana. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 11:9-11:15, 16:14-16:16); Miller Class Cert. Aff. Ex. B (filed Aug. 6, 2024) (complaints in 139 such cases filed). In none of those cases does the State have any reason to believe that either the out-of-state sender or the out-of-state recipient knew or intended the parcel to pass through FedEx's processing facility in Indiana. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 38:4-38:5) ("There's -- there's no way of knowing what the sender and receiver knew or intended."); *id.* (Prosecutor 30(B)(6) Dep. 37:7-38:15, 51:20-52:15); Miller MSJ Aff. Ex. 3, at 2-4 (Counterclaim-Defs.' Resps. to Reqs. for Admission Nos. 39-50).

The only connection between the currency and the State of Indiana is the happenstance that FedEx routed the in-transit parcel containing the currency through the Indianapolis FedEx hub en route from one non-Indiana state to another. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 47:17-47:22) ("**Q** Is it accurate to say that it's your practice, you, Zach, your practice, to file and prosecute FedEx cases without regard to whether the currency has any connection to Indiana besides the fact that it was seized in Indiana at the FedEx hub? **A** Yes, it's my practice."); *id.* (Prosecutor 30(B)(6) Dep. 52:23-53:5, 54:6-54:10); Miller MSJ Aff. Ex. 3, at 7 (Counterclaim-Defs.' Resp. to Req. for Admission No. 62).

b. The practice of providing inadequate notice. Forfeiture cases in Marion County suffer a broader defect as well—one not unique to the FedEx-related cases. It is the practice of the Marion County Prosecutor's Office to initiate currency-forfeiture actions with complaints that supply neither the factual nor the legal basis on which forfeiture is sought. Below is an illustrative example:

> Comes now the Plaintiff, by counsel, and complains of Defendant, Sean Cole, and for claim for relief, alleges and says:
>
> 1. On or about June 21, 2023, law enforcement officers seized $533.00 from Defendant, Sean Cole, in the course of serving a search warrant in Marion County, Indiana.
>
> 2. The seized currency was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1.
>
> 3. Sean Cole is named herein so that he may respond as his interest may appear.
>
> WHEREFORE, Plaintiff demands judgment against SEAN COLE and $533.00 and for delivery of said currency upon forfeiture as provided for in I.C. 34-24-1-1, and for all other just and proper relief in the premises.

Miller MSJ Aff. Ex. 4, at 1.

Complaints to forfeit currency seized from in-transit FedEx parcels suffer the same defect. (These complaints simply include an additional allegation stating the names of the listed sender and recipient of the parcel.) The complaint in this case is illustrative. In full, it reads:

> Comes now the Plaintiff, by counsel, and complains of Defendant, Henry Minh and Patrick H., and for claim for relief, alleges and says:
>
> 1. On or about April 26, 2024, law enforcement officers seized $42,825.00 in the course of serving a search warrant in Marion County, Indiana.
>
> 2. The seized currency was in a parcel that lists Henry Minh as the sender and Patrick H. as the recipient.
>
> 3. The seized currency was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1.
>
> 4. Henry Minh and Patrick H. are named herein so that they may respond as their interest may appear.

> WHEREFORE, Plaintiff demands judgment against HENRY MINH, PATRICK H., and $42,825.00, and for delivery of said currency upon forfeiture as provided for in I.C. 34-24-1-1, and for all other just and proper relief in the premises.

Compl. for Forfeiture (filed May 2, 2024).

After this class action was filed, the Prosecutor's Office tweaked its template in one way: It tacked on a final boilerplate paragraph. In its entirety, that paragraph reads:

> A probable cause affidavit has been filed in this cause. The probable cause affidavit provides additional information about the property seizure.

Miller MSJ Aff. Ex. 3, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 66); *see also* Miller MSJ Aff. Ex. 5, at 1 (example). Notably, however, the Prosecutor's Office does not serve those probable-cause affidavits on property owners. Miller MSJ Aff. Ex. 6, at 2-14 (Counterclaim-Defs.' Resp. to Reqs. for Admission 1-18). For that matter, the prosecutors themselves often don't know what crime, specifically, supports their forfeiture actions when their forfeiture complaints are filed. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 88:1-88:5) ("**Q** When you file a forfeiture complaint, do you know, before you file, which specific criminal statute is going to be supporting the forfeiture? **A** Sometimes, but not -- not always. In fact, often we don't.").

B. Factual background and procedural history

1. Henry Minh, Inc. is a small jewelry wholesaler business in California. Henry Cheng Partial MSJ Aff. ¶¶ 1-2 (filed Oct. 16, 2024). Its sole owners and employees, Henry Cheng and his wife Minh, are U.S. citizens and California residents. *Id.* ¶ 2. In January 2024, Henry Minh, Inc. shipped a wholesale order of jewelry to a retail jeweler in Virginia. *Id.* ¶¶ 6-7. The retailer received the jewelry and paid for it with cash—$42,825.00—mailing the payment to Henry Minh, Inc. through FedEx. *Id.* ¶ 7.

The parcel was intercepted at the Indianapolis airport's FedEx hub by an Indianapolis Metropolitan Police officer. Counterclaim-Defs.' Answer ¶ 67 (filed Dec. 18, 2024). The officer deemed the package suspicious because, for example, it was a "new and purchased parcel box with all seams secured with tape," it "was tendered at a FedEx ship center in Falls Church, VA," and it was "being shipped to a FedEx ship center for pick up, in a source State (California) and not a residence." Affidavit for Probable Cause at 2 (filed May 2, 2024). The officer pulled the parcel aside, and (according to the officer's affidavit) a K-9 alerted to it. *Id.* at 3. The officer obtained a search warrant, opened the package, and found only the cash payment—no illegal substances. Counterclaim-Defs.' Answer ¶¶ 71-73 (filed Dec. 18, 2024).[2]

2. The Marion County Prosecutor's Office then sued to forfeit the seized currency, using its standard complaint template. *See* pp. 6-7, above. As the money's owner, Henry Minh, Inc., answered and paired its answer with a set of counterclaims against the State and the Marion County Prosecutor in his official capacity. Distilled, the counterclaims present two theories. First:

[2] The officer's affidavit was riddled with inaccuracies and misleading omissions. It recounted, for example, that "[t]here is no signature required to receive the parcel." In truth, however, the all-caps "DSR" designation on the face of the label (Henry Cheng Partial MSJ Aff. Ex. 2 (filed Oct. 16, 2024)) stands for "Direct Signature Required," meaning "[s]omeone at the recipient's address must sign for the delivery." Nelson Partial MSJ Aff. Ex. 7, at 2 (filed Oct. 16, 2024). The officer's affidavit described as suspicious the fact that "all seams [were] secured with tape." But FedEx specifically advises its customers to "[t]ape all the package seams securely." Nelson Partial MSJ Aff. Ex. 6, at 9 (filed Oct. 16, 2024). The officer's affidavit recounted that "[t]he Priority overnight shipment was paid by unknown means at a ship center." In fact, however, the label was not paid for at a FedEx ship center. Henry Cheng Partial MSJ Aff. ¶ 8 (filed Oct. 16, 2014). Nor do FedEx's Priority Overnight labels display the "means" by which a parcel's shipment is paid for. Nelson Partial MSJ Aff. Exs. 1 and 2 (filed Oct. 16, 2024) (sample FedEx labels paid for by cash and credit card respectively). And the all-caps "BILL SENDER" on the face of the label indicates that the shipment was paid for—not anonymously—but through a documented account. Nelson Partial MSJ Aff. Ex. 3 (filed Oct. 16, 2024); Nelson Partial MSJ Aff. Ex. 8, at 9 (filed Oct. 16, 2024) ("'Bill sender' means that the charges will be billed to the FedEx account holder who exported the shipment.").

that the Marion County Prosecutor's Office's practice of suing to forfeit currency seized from FedEx parcels in-transit from an origin outside Indiana to a destination outside Indiana violates the Civil Forfeiture Statute and the state and federal constitutions. Counterclaims ¶¶ 105-32 (filed Aug. 6, 2024) (Counts 1-4). Second: that the Office's broader practice in currency-forfeiture cases of using boilerplate complaints that give property owners no notice of the factual and legal basis on which the State seeks forfeiture likewise violates the Civil Forfeiture Statute and the state and federal constitutions. *Id.* ¶¶ 133-50 (Counts 5-7). Because these claims challenge systemic defects in the Office's enforcement of the civil-forfeiture regime, Henry Minh, Inc. asserted the claims on behalf of itself and two putative classes: the "Parcel Class" and the "Notice Class."

The case has proceeded apace. In October 2024, Henry Minh, Inc. moved for partial summary judgment, requesting a ruling in its favor on the State's affirmative forfeiture claim. Mot. for Partial Summ. J. (filed Oct. 16, 2024). The following month, the State submitted and the Court entered an agreed order on that claim, under which the claim was dismissed with prejudice and the $42,825.00 was ordered returned to Henry Minh, Inc. *See* Agreed Entry and Order on Disbursement of Property to Henry Minh, Inc. at 1 (filed Nov. 15, 2024). That order left only the company's counterclaims outstanding. *Id.* at 1-2 ("Henry Minh, Inc.'s individual and putative-class counterclaims shall remain pending."). This past summer, the Court granted the company's motion for class certification for its counterclaims and certified two classes under Trial Rule 23(B)(2):

> **The Parcel Class**: All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code (1) seeking the forfeiture of currency contained in parcels that were (a) in-transit via FedEx from an originating location outside of Indiana to a destination location outside of Indiana and (b) seized at the FedEx Express Indianapolis Hub and (2) in which the complaint makes no allegation that the currency is connected to Indiana beyond the in-transit parcel's presence in Indiana when it was seized.

> **The Notice Class**: All persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code to forfeit currency alone, in which the Marion County Prosecutor's Office represents the State of Indiana or any other government plaintiff and in which the complaint does not identify the specific predicate crime it alleges supports the forfeiture.

Findings of Fact and Conclusions of Law re: Certification of Classes (filed July 21, 2025). Henry Minh, Inc. now seeks summary judgment on its counterclaims, for itself and the certified classes.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Since no later than July 1, 2018, the Marion County Prosecutor's Office has filed every case in Marion County courts that seeks to forfeit currency (1) contained in a parcel that was in-transit via FedEx from a location outside Indiana to another location outside Indiana, and (2) seized at the Indianapolis FedEx hub. Miller MSJ Aff. Ex. 2, at 2 (Counterclaim-Defs.' Revised Resp. to Req. for Admission No. 37). This Statement of Undisputed Material Facts uses "Parcel Class forfeitures" as a shorthand for these cases.

2. It is the practice of the Marion County Prosecutor's Office to prosecute Parcel Class forfeitures without regard to whether the currency being sought has any connection to Indiana besides the fact that it was seized at the Indianapolis FedEx hub. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 47:17-47:22) ("**Q** Is it accurate to say that it's your practice, you, Zach, your practice, to file and prosecute FedEx cases without regard to whether the currency has any connection to Indiana besides the fact that it was seized in Indiana at the FedEx hub? **A** Yes, it's my practice."); *id.* (Prosecutor 30(B)(6) Dep. 14:2-14:11) ("**Q** . . . You work for the Marion County Prosecutor's Office; correct? **A** Yes. **Q** And how long have you worked for the office? **A** A little over 12 years. **Q** What is your position with that office? **A** I currently handle all the civil forfeitures and related things. I am the only deputy prosecutor handling those. . . ."); *id.* (Prosecutor 30(B)(6) Dep. 91:2-91:6 (**Q** Is it fair to say that your personal policies and practices for bringing forfeiture

cases and prosecuting them are effectively the policies and practices of the office? **A** Yes."); *see also id.* (Prosecutor 30(B)(6) Dep. 52:23-53:5, 54:6-54:10); Miller MSJ Aff. Ex. 3, at 7 (Counterclaim-Defs.' Resp. to Req. for Admission No. 62).

3. It is the practice of the Marion County Prosecutor's Office to prosecute Parcel Class forfeitures without evidence that the currency is connected to a crime in Indiana other than that the FedEx parcel carrying the currency was routed through the Indianapolis FedEx hub. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 65:1-65:5).

4. From no later than August 6, 2020, through December 31, 2024, it was the practice of the Marion County Prosecutor's Office to initiate currency-forfeiture cases (that is, cases seeking the forfeiture of currency alone) by filing complaints that alleged only the following three paragraphs of allegations:

a. On a certain date, a certain amount of currency was seized from a certain location by law enforcement;

b. the currency "was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1";

c. certain people are named in the complaint so that they may respond as their interests may appear.

Miller MSJ Aff. Ex. 3, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 64); *see also* Miller MSJ Aff. Ex. 4, at 1 (example).

5. In currency-forfeiture cases, it is the practice of the Marion County Prosecutor's Office to not identify in its complaints (either by name or by statutory citation) the criminal offense

that serves as the basis for the requested forfeiture of the seized currency. Miller MSJ Aff. Ex. 7, at 2-4 (Counterclaim-Defs.' Resps. to Reqs. for Admission Nos. 23-28); Miller MSJ Aff. Ex. 3, at 9 (Counterclaim-Defs.' Resps. to Reqs. for Admission No. 69); *see also* Miller MSJ Aff. Ex. 7, at 5-8 (Counterclaim-Defs.' Resps. to Reqs. for Admission Nos. 30-35).

6. In currency-forfeiture cases, it is the practice of the Marion County Prosecutor's Office to not allege in its complaints any operative facts that serve as the basis for the requested forfeiture of the seized currency. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 87:17-87:25, 96:18-96:22).

7. Since no earlier than December 31, 2024, it has been the practice of the Marion County Prosecutor's Office to initiate currency-forfeiture cases by filing complaints that allege only the three paragraphs of allegations detailed at paragraph 4, plus one additional paragraph, which states: "A probable cause affidavit has been filed in this cause. The probable cause affidavit provides additional information about the property seizure." Miller MSJ Aff. Ex. 3, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 66); *see also* Miller MSJ Aff. Ex. 5, at 1 (example).

8. In currency-forfeiture cases, it is the practice of the Marion County Prosecutor's Office to not serve on defendants or interested parties the probable-cause affidavits that are filed with the court. Miller MSJ Aff. Ex. 6, at 2-14 (Counterclaim-Defs.' Resps. to Reqs. for Admission Nos. 1-18).

STANDARD

Summary judgment is appropriate when "there is no genuine issue as to any material fact" and the moving party "is entitled to a judgment as a matter of law." *Pennington v. Mem'l Hosp. of S. Bend, Inc.*, 223 N.E.3d 1086, 1092 (Ind. 2024) (quoting Ind. T.R. 56(C)).

ARGUMENT

I. The Parcel Class counts: By suing to forfeit currency from in-transit parcels with no connection to an Indiana crime, the State violates state and federal law.

Counts 1 through 4 of Henry Minh, Inc's counterclaims challenge the practice of the Marion County Prosecutor's Office of bringing actions to forfeit currency from FedEx parcels that are in-transit from an origin outside Indiana to a destination outside Indiana. This practice contravenes both statutory and constitutional law.

A. The Parcel Class forfeitures violate the Civil Forfeiture Statute because they are not predicated on any violation of Indiana criminal law (Count 1).

Under Indiana's Civil Forfeiture Statute, property is forfeitable only if it is connected to a violation of Indiana criminal law. The Parcel Class forfeitures do not meet this requirement, and the Prosecutor's contrary arguments lack merit.

1. The Indiana Civil Forfeiture Statute authorizes only forfeitures that are predicated on a violation of an Indiana state criminal law.

To start: the statute. Indiana's Civil Forfeiture Statute authorizes the State to sue to confiscate property linked to certain crimes. Having first seized the property, I.C. §§ 34-24-1-1(a), 34-24-1-2(a), the State can secure a final judgment of forfeiture only by proving that the property is connected in specified ways to a listed predicate crime, *id.* § 34-24-1-4(a). For the initial seizure, probable cause is all that's required. *Id.* § 34-24-1-2(b). To actually forfeit the property, however, the State must meet a higher evidentiary burden. By a preponderance of the evidence, "the State must identify the applicable criminal statute that was violated and establish a substantial connection between the seized money and that crime." *Smith v. State*, 232 N.E.3d 109, 115 (Ind. 2024); *see also* I.C. § 34-24-1-4(a) ("At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under

section 1 of this chapter."). "[S]tatutes authorizing forfeitures are strictly construed," *Chan v. State*, 969 N.E.2d 619, 621 (Ind. Ct. App. 2012) (Shepard, J.), and at all stages, the State's claim for forfeiture must be predicated on a criminal offense. No crime, no forfeiture.

As the Prosecutor's Office acknowledged at deposition, the crimes that can support forfeiture under the Civil Forfeiture Statute are limited to violations of Indiana's state criminal laws. I.C. § 34-24-1-1(a) (enumerating crimes); *see also* Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 43:18-43:21) ("**Q** Does that crime need to be one that the State of Indiana could prosecute against an individual? **A** Yes."). The Civil Forfeiture Statute enumerates many of those predicate criminal offenses with specific cross-referenced code sections. For example, the statute authorizes the seizure and forfeiture of "[p]roperty used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2." I.C. § 34-24-1-1(a)(13). It authorizes seizure and forfeiture of vehicles used to transport "[a]ny hazardous waste in violation of IC 13-30-10-1.5." *Id.* § 34-24-1-1(a)(1)(C). And so on.

The statute identifies other predicate criminal offenses using more general terms. For instance, it authorizes seizure and forfeiture of "money . . . (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute; (B) used to facilitate any violation of a criminal statute; or (C) traceable as proceeds of the violation of a criminal statute." *Id.* § 34-24-1-1(a)(2)(A)-(C); *see also* pp. 6-7 (noting that two of these sub-provisions are replicated in the Marion County Prosecutor's forfeiture complaints). Though these sub-provisions are less specific than their neighbors, they, too, are limited to violations of Indiana criminal laws. On this front, the best data point is Section 34-24-1-3(a) of the Civil Forfeiture Statute, where the General Assembly made clear that the universe of "offense[s]" that can serve as "the basis for the

seizure" extends no further than those crimes covered by Indiana's criminal-limitations statute—that is, violations of Indiana state criminal law. I.C. § 34-24-1-3(a)(2) ("The action must be brought . . . within the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure."). To state the obvious, the Indiana General Assembly does not enact statutes of limitations for violations of other States' laws.

Not only is this reading textually correct, but it avoids the grave constitutional doubts that would arise were the statute to be construed as somehow authorizing Indiana forfeitures based on non-Indiana crimes. *See City of Bloomington Bd. of Zoning Appeals v. UJ-Eighty Corp.*, 163 N.E.3d 264, 268 (Ind. 2021) ("A statute should be interpreted in a way that avoids placing its constitutionality in doubt." (citation omitted)). As explained below (at 24-28), applying the statute to non-Indiana criminal offenses would violate both the state and federal constitutions. Simply, the starting-gate rule is clear: As a statutory matter, the Civil Forfeiture Statute authorizes forfeitures *only* if they are predicated on a violation of an Indiana state criminal law.

2. The Parcel Class forfeitures are not predicated on a violation of an Indiana state criminal law.

The Parcel Class forfeitures are not predicated on any violation of an Indiana state criminal law. Indeed, the Marion County Prosecutor's 30(B)(6) designee could identify no instance in which the Office has ever brought a criminal case against anyone associated with such a forfeiture. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 44:3-44:7). For each forfeiture case, the sender of the currency is not in Indiana. The would-be recipient of the currency is not in Indiana. And the only connection with the State of Indiana is the happenstance of a third-party commercial carrier's shipping routes: The Marion County Prosecutor's practice is "to file and prosecute FedEx cases without regard to whether the currency has any connection to Indiana besides the fact that it was

seized in Indiana at the FedEx hub[.]" *Id.* (Prosecutor 30(b)(6) Dep. 47:18-47:21); *see also id.* (Prosecutor 30(B)(6) Dep. 47:22) ("**A** Yes, it's my practice."). That does not an Indiana crime make. Criminal offenses under the Indiana Code are subject to the State's territorial-jurisdiction statute. I.C. § 35-41-1-1. And under a clear-cut application of that statute, the sort of in-transit shipments of currency underlying Parcel Class forfeitures give rise to no criminal offense that is prosecutable under the Indiana Code.

a. Indiana criminal offenses are subject to the State's territorial-jurisdiction statute.

In Indiana and elsewhere, "the general rule is that the penal laws of a particular sovereignty have no extra-territorial effect" and that "the courts of a particular sovereignty have no jurisdiction of offenses committed outside their sovereign territorial jurisdiction." 8 Ind. Law Encyc. Criminal Law § 49; *see Stewart v. Jessup*, 51 Ind. 413, 415 (1875). In service of those principles, the General Assembly has provided for "territorial jurisdiction" as a requirement for the prosecution of every Indiana crime. *Ortiz v. State*, 766 N.E.2d 370, 374 (Ind. 2002); *A.-H.Y. v. State*, 975 N.E.2d 1273, 1276 (Ind. 2012), *as corrected* (Jan. 6, 2025) ("[T]his Court treats territorial jurisdiction as though it were an element of an offense . . . ."); *Benham v. State*, 637 N.E.2d 133, 137 (Ind. 1994) ("The authority of the State of Indiana to institute criminal prosecutions is determined by the jurisdictional statute, Ind. Code § 35-41-1-1."). Under that statute, "[a] person may be convicted under Indiana law of an offense" only if one of several territorial-jurisdiction hooks is met. I.C. § 35-41-1-1(b). As relevant here, those hooks are the following:

- **Indiana Code § 35-41-1-1(b)(1)**: "either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana."

- **Indiana Code § 35-41-1-1(b)(2)**: "conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana."
- **Indiana Code § 35-41-1-1(b)(3)**: "conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana."
- **Indiana Code § 35-41-1-1(b)(4)**: "conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law."
- **Indiana Code § 35-41-1-1(b)(5)**: "the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana."

Simply, "[t]he plain, ordinary, and usual meaning of [I.C. § 35-41-1-1] clearly establishes 'in Indiana' as a prerequisite for Indiana criminal prosecutions and thus restricts the power to exercise criminal jurisdiction to Indiana's actual territorial boundaries." *A.-H.Y.*, 975 N.E.2d at 1276 (citation omitted).[3]

b. Under Indiana's territorial-jurisdiction statute, no violation of Indiana criminal law supports the Parcel Class forfeitures.

As noted above, the Prosecutor's Office acknowledges that a predicate criminal offense for forfeiture "need[s] to be one that the State of Indiana could prosecute against an individual[.]" Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 43:18-43:21). Yet no Indiana crime supports the

[3] The statute contains four other jurisdictional sub-provisions, none of which is implicated here. I.C. § 35-41-1-1(b)(6)-(7) (jurisdiction over certain crimes involving computers or other electronic-communications devices), (c) (jurisdiction over certain homicides), (d) (jurisdiction over certain identity-theft crimes).

Parcel Class forfeitures. Uniformly, according to the Office, the predicate criminal offense for Parcel Class forfeitures is "some sort of drug dealing." *Id.* (Prosecutor 30(B)(6) Dep. 37:4-37:10) ("**A** I would not identify a particular statute any more than that it was some sort of drug dealing. And -- and so there's nothing more specific than that. **Q** And it could be drug dealing anywhere, as long as the parcel was going through Indiana and was seized in Indiana; right? **A** Right."); *see also id.* (Prosecutor 30(B)(6) Dep. 32:14-32:18, 40:11-40:25, 44:22-45:2, 71:1-71:16, 74:16-74:19). Even accepting the Office's view that some of its Parcel Class forfeitures involve currency related to drug dealing *somewhere*, that currency is decidedly not related to a drug-dealing offense that *Indiana* has territorial jurisdiction to prosecute.

Just hypothesize the worst-case member of the Parcel Class—someone in California, say, who provides drugs to someone located in Maryland, in exchange for which the Maryland buyer mails currency to the California seller via FedEx. One or both of those parties might have violated California drug laws. They might have violated Maryland drug laws. They might have violated federal drug laws. But under a straightforward application of Indiana's territorial-jurisdiction statute, they did not violate Indiana drug laws.

To illustrate, take Indiana Code § 35-48-4-10, which defines the elements of "dealing in marijuana, hash oil, hashish, or salvia" in terms that, structurally, are materially identical to the other dealing provisions in Indiana's criminal code. The elements are: knowingly or intentionally manufacturing, financing the manufacture of, delivering, or financing the delivery of the listed substances, or possessing those substances with the intent to commit one of those acts. I.C. § 35-48-

4-10(a).[4] Under none of the jurisdictional hooks detailed above can either the California seller or the Maryland buyer be said to have violated that Indiana dealing statute or any other:

- **Indiana Code § 35-41-1-1(b)(1): "either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana."** In the scenario above—which, again, is the strongest possible one for the Prosecutor's Office—no conduct that is an element of Section 35-48-4-10(a) and no result that is an element of Section 35-48-4-10(a) occurs in Indiana. No one manufactured an illegal substance in Indiana. No one delivered an illegal substance in Indiana. No one financed manufacture or delivery of an illegal substance in Indiana. *See generally Hyche v. State*, 934 N.E.2d 1176, 1179 (Ind. Ct. App. 2010) (reasoning that the term "financed" is "commonly construed as applying to one who acts as a creditor or an investor and not one who merely acts as a purchaser"), *trans. denied*.
- **Indiana Code § 35-41-1-1(b)(2): "conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana."** Just as no party involved in the hypothetical California–Maryland transaction committed an Indiana dealing offense, they did not commit the offense of *attempting* to commit an Indiana dealing offense. *See generally* I.C. § 35-41-5-1(a) ("A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime.").

[4] *See also, e.g.*, I.C. § 35-48-4-1 (cocaine or schedule I or II narcotics); *id.* § 35-48-4-1.1 (methamphetamine); *id.* § 35-48-4-2 (schedule I, II, and III controlled substances); *id.* § 35-48-4-3 (schedule IV controlled substance); *id.* § 35-48-4-4 (schedule V controlled substance).

- **Indiana Code § 35-41-1-1(b)(3): "conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana."** Shipping money from Maryland to California—even as payment for drugs—does not amount to "a conspiracy to commit an offense in Indiana." (Even *within* Indiana, in fact, the sale of an illegal drug does not amount to conspiracy between the buyer and seller. *Cf. McBride v. State*, 440 N.E.2d 1135, 1137 (Ind. Ct. App. 1982) ("[T]he mere agreement of one person to buy what another agrees to sell, standing alone, does not support a conspiracy conviction." (citation omitted)).) Nor does the happenstance of FedEx's shipping routes amount to an "overt act . . . occur[ring] in Indiana." I.C. § 35-41-1-1(b)(3).
- **Indiana Code § 35-41-1-1(b)(4): "conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law."** Here, too, the same result. The Prosecutor's practice is to bring Parcel Class forfeitures with no reason to believe that any "conduct occurr[ed] in Indiana," much less conduct "establish[ing] complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law." *Cf. Allen v. Great Am. Rsrv. Ins. Co.*, 766 N.E.2d 1157, 1166 (Ind. 2002) ("[E]ven if Guffey aided and abetted GARCO in criminal activity in Indiana, Guffey himself would be liable under the criminal law of Indiana only if his conduct occurred in Indiana." (citing I.C. § 35-41-1-1(b)(4))).

- **Indiana Code § 35-41-1-1(b)(5): "the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana."** Again: the same. Having seized an in-transit parcel en route from one non-Indiana state to another, Indiana can identify no offense committed by anyone involved that "consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana." *Cf. State v. Taylor*, 625 N.E.2d 1334, 1336 (Ind. Ct. App. 1993) ("Because his children live in Indiana and any act of support was to be performed in this State, [the defendant's] nonsupport, an offense of omission, also occurred in Indiana.").

At base, the commonsense result is correct. No matter how reprehensible a Californian or a Marylander may be, California and Maryland crimes are not Indiana crimes. And the analysis does not change simply because a commercial carrier routes a Maryland-to-California parcel of currency through a shipping hub in Indianapolis. Even assuming some members of the Parcel Class violated their *own* states' criminal laws, or federal law, there is no basis to say they violated any of *Indiana's* criminal laws. *Cf. Green v. State*, 115 N.E.2d 211, 214 (Ind. 1953) ("No matter how closely an act is connected with the state, if it is done entirely outside it should not be punished, great as is the desire to do so." (citation omitted)). Without a predicate Indiana criminal offense, there is no statutory basis for the Marion County Prosecutor's Office to bring forfeiture actions against the Parcel Class.[5]

[5] In addition to drug dealing, probable-cause affidavits filed in Parcel Class forfeiture cases often recite that the parcels may contain proceeds of "bulk cash smuggling" and "money laundering." *E.g.*, Aff. for Probable Cause at 4 (filed May 4, 2024). At deposition, the Prosecutor's Office

3. The contrary arguments lack merit.

At its 30(B)(6) deposition, the Prosecutor's Office offered two justifications for its practice. Neither has merit.

First, the Office ascribes significance to the fact that actions brought under the Civil Forfeiture Statute are in rem, not in personam. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 52:23-53:1) ("**Q** The FedEx route stopping in Indianapolis is enough evidence of a crime occurring in Indiana? **A** It's enough under the forfeiture statute for an in rem case to be filed."). That characteristic does not alter the above analysis. It is true that forfeiture actions under the Civil Forfeiture Statute are styled as proceedings in rem, *State v. $2,435*, 220 N.E.3d 542, 558 (Ind. 2023), meaning they "determine[] 'the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property,'" *C.R.M. v. State*, 799 N.E.2d 555, 558 n.4 (Ind. Ct. App. 2003). But whether the cases are called in rem or in personam, the Civil Forfeiture Statute is clear: It authorizes forfeiture only if the State can "identify the applicable criminal statute that was violated and establish a substantial connection between the seized money and that crime." *Smith*, 232 N.E.3d at 115; *see also id.* at 117 ("[O]n this record, it is unclear

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identified neither of those offenses as predicate crimes for forfeiture, and for good reason. While bulk cash smuggling is an offense under federal law, 31 U.S.C. § 5332, there is no such offense under Indiana law. *Cf. Hodges v. State*, 125 N.E.3d 578, 581 n.1 (Ind. 2019) (noting that "the Indiana Code does not define" bulk cash smuggling). (Even under federal law, moreover, bulk cash smuggling covers only the unreported transfers of currency between the United States and other nations, not transfers of currency between the several states. 31 U.S.C. § 5332(a)(1).) As for money laundering, not only would the same territorial-jurisdiction hurdles described above attend a criminal prosecution under Indiana's money-laundering statute, I.C. § 35-45-15-5, but currency inside in-transit FedEx parcels does not meet the criteria for forfeiture under the terms of the Civil Forfeiture Statute itself. The currency is not "furnished or intended to be furnished . . . in exchange for [a] violation" of Indiana's money-laundering statute. *Id.* § 34-24-1-1(2)(A). Nor is it used "to facilitate" a violation of Indiana's money-laundering statute. *Id.* § 34-24-1-1(2)(B). Nor is it "traceable as proceeds" of a violation of Indiana's money-laundering statute. *Id.* § 34-24-1-1(2)(C).

which drug offense in Indiana Code chapter 35-48-4 rendered the money forfeitable under Section 34-24-1-1(a)(2).”). For members of the Parcel Class, there simply is no “applicable criminal statute that was violated” anywhere in the Indiana Code. *Id.* at 115. That is the class-wide defect.

Second, the Prosecutor’s Office appears to labor under the misimpression that the act of exchanging or receiving money for drugs is an element of drug-dealing offenses under Indiana law. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 107:18-107:20) (“With -- without the money, there’s no drug deal. You -- you don’t have drug dealing without the money.”). On that theory, seemingly, the act of mailing money from Maryland to California in payment for drugs can morph into the Indiana state-law crime of drug dealing when the parcel is routed through Indianapolis. As explained above, that theory cannot be squared with Indiana’s territorial-jurisdiction statute. It also rests on a mistaken premise: that receiving money for drugs is an element of dealing in the first place. In truth, “an exchange of money is not required to establish the offense of Dealing” under any provision of the Indiana Code. *See Hall v. State*, 897 N.E.2d 979, 984 (Ind. Ct. App. 2008); *see also* pp. 18-21 & n.4, above (cataloguing dealing statutes). That is why people can be convicted of drug-dealing offenses regardless of whether money changes hands. The fact that currency thought to be linked to another State’s drug crimes is routed by FedEx through Indiana thus does nothing to convert those crimes into ones the State of Indiana has territorial jurisdiction to prosecute.

Of course, none of this is to say that lawbreakers should get to evade laws they’ve actually broken. While Indiana’s parcel-interdiction practices are woefully careless (*see generally* Def.’s Memorandum Supporting Motion for Partial Summary Judgment at 15-17 (filed Oct. 16, 2024) (cataloguing rampant inaccuracies, omissions, and inconsistencies)), it may be that currency seized from FedEx parcels is sometimes connected to a crime. But not an Indiana crime. And that

distinction matters. It matters to the property owners, who have a right not to be hailed into a faraway state court to defend against alleged crimes they couldn't possibly have committed. And it matters to the integrity of other States' criminal-justice systems. For "[e]ach State, in respect to each of the others, is an independent sovereignty, possessing ample powers, and the exclusive right, to determine, within its own borders, what shall be tolerated, and what prohibited." *Green*, 115 N.E.2d at 214 (citation omitted). If malefactors are breaking the laws of California or Maryland or the United States, it is the prerogative of those jurisdictions to protect public safety within their borders and to see that justice is done. If it wished, Indiana could use its station at the Crossroads of America to assist in those efforts—by, for example, flagging in-transit parcels for controlled deliveries, so that police elsewhere could identify and arrest suspected wrongdoers in their communities. Instead, Indiana has chosen profit over good policework, making millions off suspected crimes in other States while doing nothing to apprehend those responsible.

Because the State's Parcel Class forfeitures are unsupported by a predicate violation of any "applicable criminal statute" in the Indiana Code, those forfeitures contravene "both the letter and spirit" of the Civil Forfeiture Statute. *Smith*, 232 N.E.3d at 114, 115 (citation omitted).

B. If the Parcel Class forfeitures do not offend the Civil Forfeiture Statute, those forfeitures violate the federal and state constitutions (Counts 2-4).

Indiana's Parcel Class forfeitures violate not just statutory constraints, but constitutional ones as well. Counterclaims ¶¶ 112-32 (filed Aug. 6, 2024). To be clear, if the Court agrees with us that the forfeitures are precluded by the Civil Forfeiture Statute (*see* pp. 13-24, above), declaratory and injunctive relief based on that statutory count could secure full relief for the Parcel Class. In that event, there would be no need for the Court to consider whether the forfeitures also violate the state and federal constitutions. *Cf. Edmonds v. State*, 100 N.E.3d 258, 262 (Ind. 2018) ("When

there are issues in a case that can be decided on either of two grounds—one involving a constitutional question and the other a question of statutory construction—the reviewing court should decide only the latter."). But if the Court were to determine that the Civil Forfeiture Statute authorizes the Parcel Class forfeitures, then the Class's constitutional counts would need to be addressed. And for similar reasons to those discussed above, the Marion County Prosecutor's practice of bringing Parcel Class forfeitures violates both the federal and the state constitutions.

1. Even if, somehow, the Parcel Class forfeitures were authorized by the Civil Forfeiture Statute, they would contravene a higher law: the U.S. Constitution. Counterclaims ¶¶ 120-32 (filed Aug. 6, 2024) (Counts 3 and 4). Under our system of horizontal federalism, "[n]o State can legislate except with reference to its own jurisdiction." *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881); *see also Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) (discussing "our horizontal separation of powers" as one tool for "mediat[ing] competing claims of sovereign authority"). The Fourteenth Amendment's Due Process Clause imposes much the same constraint. *See Nat'l Pork Producers Council*, 598 U.S. at 376. So, too, does the Tenth Amendment. U.S. Const. amend. X (reserving to the States "respectively," or to the people, those powers not delegated to the federal government). On any or all of those grounds, the Supreme Court has been clear: No one "should . . . think one State may prosecute the citizen of another State for acts committed 'outside [the first State's] jurisdiction' that are not 'intended to produce [or that do not] produc[e] detrimental effects within it.'" *Nat'l Pork Producers Council*, 598 U.S. at 375-76 (quoting *Strassheim v. Daily*, 221 U.S. 280, 285 (1911)); *see also A.-H.Y.*, 975 N.E.2d at 1278.

These principles apply straightforwardly here. Whatever offense may (or may not) be associated with the currency in a Parcel Class forfeiture, two things are clear. First, the Prosecutor's

practice is to prosecute these cases even though the offense (if any) is committed outside Indiana. Second, the Prosecutor's practice is to prosecute these cases even though the offense (if any) is not intended to produce and does not produce detrimental effects within Indiana. In fact, the record is pristine. The Parcel Class consists exclusively of persons and entities who are or will be named as defendants in forfeiture actions involving parcels that were "in-transit via FedEx from an originating location outside of Indiana to a destination location outside of Indiana." Findings of Fact and Conclusions of Law re: Certification of Classes at 40 (filed July 21, 2025). In those actions, the Prosecutor's Office "never" has "evidence that the currency was connected to a crime in Indiana other than the fact that it went through the [FedEx] hub[.]" Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 65:1-65:5). And in describing its factual basis for filing an exemplar Parcel Class forfeiture action, the Prosecutor's Office confirmed in detail precisely how disconnected every such case is from any act the State of Indiana has constitutional authority to punish:

> **Q** Did this affidavit give you any evidence that the sender knew the parcel would go through Indiana?
>
> **A** No.
>
> **Q** That the would-be recipient knew the parcel would go through Indiana?
>
> **A** No.
>
> **Q** That the sender controlled the shipping routes of FedEx?
>
> **A** No.
>
> **Q** That the would-be recipient controlled the shipping routes of FedEx?
>
> **A** No.
>
> **Q** That the sender intended the parcel to go through Indiana apart from any general knowledge they may have about the likelihood that a parcel would go through the Indianapolis FedEx hub?
>
> **A** No.

Q Same for the recipient; no evidence that they intended the parcel to go through Indianapolis?

A No.

Q Any evidence that the currency was connected to a crime occurring in Indiana other than the fact that the parcel stopped at the Indianapolis FedEx hub?

A No.

Q Any evidence that the currency was connected to a crime outside of Indiana, but intended to produce detrimental effects in Indiana?

MR. GARN: Objection, form.

BY MS. MILLER:

Q If you can answer, but.

MR. GARN: You can answer.

THE WITNESS: No.

BY MS. MILLER:

Q No evidence that the currency was producing a detrimental effect in Indiana?

A No.

Id. (Prosecutor 30(B)(6) Dep. 61:8-62:19); *see also id.* (Prosecutor 30(B)(6) Dep. 67:6-69:20) (confirming that responses would be the same for all forfeiture actions against members of the Parcel Class). On this record, the Parcel Class's right to relief under Counts 3 and 4 is plain. Just as Indiana could not criminally prosecute a member of the Class consistent with the U.S. Constitution, no more can it forfeit their property under the Civil Forfeiture Statute.

2. Along similar lines, the Parcel Class forfeitures likewise violate the Indiana Constitution. Counterclaims ¶¶ 112-19 (filed Aug. 6, 2024) (Count 2). The Indiana Constitution secures to "every person, for injury done to him in his person, property, or reputation" "remedy by due

course of law." Ind. Const. art. 1, § 12; *see generally McIntosh v. Melroe Co.*, 729 N.E.2d 972, 976 (Ind. 2000) ("In the context of a procedural right to 'remedy by due course of law' in a civil proceeding, . . . the Indiana Constitution has developed a body of law essentially identical to federal due process doctrine."). And under Article 14, Section 2, the State of Indiana's "jurisdiction and sovereignty" is "co-extensive with [its territorial] boundaries." Ind. Const. art. 14, § 2. For much the same reasons detailed above, the Prosecutor's enforcement of the civil-forfeiture regime based on wholly extraterritorial acts exceeds Indiana's jurisdiction and sovereignty. That, in turn, deprives members of the Parcel Class of their rights under the Due Course of Law Clause. *Cf. Green*, 115 N.E.2d at 214 ("[I]t is difficult to see how a statute attempting to make an act wholly committed within another state a crime, is not also a denial of due process."); *Johns v. State*, 19 Ind. 421, 424 (1862) ("Our own constitution has expressly fixed the boundaries of its sovereignty.").

II. The Notice Class counts: By filing forfeiture complaints that do not provide the legal or factual basis for forfeiture, the State violates state and federal law.

Henry Minh, Inc.'s second certified class, the Notice Class, challenges the adequacy of the notice provided by the Marion County Prosecutor's Office in its actions to forfeit currency. (In this way, the Notice Class is defined more broadly than the Parcel Class; it covers all actions to forfeit currency in Marion County, not just those originating from the FedEx hub.) As its practice, the Prosecutor's Office files boilerplate complaints in currency-forfeiture cases. Those complaints lack basic factual allegations needed to support the requested forfeiture. They also fail to identify the crime that is alleged to justify the requested forfeiture—instead reciting merely that the currency is linked to "a violation of a criminal statute." Which criminal statute exactly? That's anyone's guess. When the complaint is filed, the line prosecutor himself often doesn't know. Whether

viewed through the lens of the state and federal due-process clauses or the Civil Forfeiture Statute's requirements, this practice is profoundly unlawful.

A. The Prosecutor's Office violates federal and state due-process guarantees by failing to provide adequate notice to property owners (Counts 6-7).

1. Across the board, the Prosecutor's Office initiates its actions to forfeit currency with a boilerplate complaint. Until recently, that complaint would contain three paragraphs:

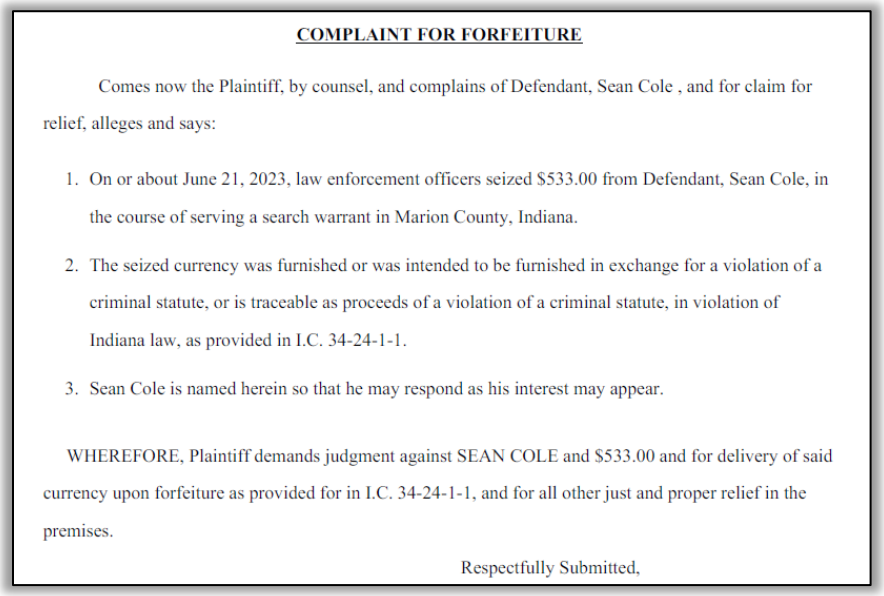
Paragraph 1: On a certain date, a certain amount of currency was seized from a certain location by law enforcement.

Paragraph 2: "Said currency was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1."

Paragraph 3: Certain people are named in the complaint so that they may respond as their interests may appear.

Miller MSJ Aff. Ex. 3, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 64).

Here's an example:



COMPLAINT FOR FORFEITURE

Comes now the Plaintiff, by counsel, and complains of Defendant, Sean Cole , and for claim for relief, alleges and says:

1. On or about June 21, 2023, law enforcement officers seized $533.00 from Defendant, Sean Cole, in the course of serving a search warrant in Marion County, Indiana.
2. The seized currency was furnished or was intended to be furnished in exchange for a violation of a criminal statute, or is traceable as proceeds of a violation of a criminal statute, in violation of Indiana law, as provided in I.C. 34-24-1-1.
3. Sean Cole is named herein so that he may respond as his interest may appear.

WHEREFORE, Plaintiff demands judgment against SEAN COLE and $533.00 and for delivery of said currency upon forfeiture as provided for in I.C. 34-24-1-1, and for all other just and proper relief in the premises.

Respectfully Submitted,

Miller MSJ Aff. Ex. 4, at 1.

Early last year (a few months after this lawsuit was filed), the Office added a fourth paragraph to its template:

> Paragraph 4: "A probable cause affidavit has been filed in this cause. The probable cause affidavit provides additional information about the property seizure."

Miller MSJ Aff. Ex. 3, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 66); Miller MSJ Aff. Ex. 5, at 1 (example).

Conspicuously absent from the complaints are allegations of elemental facts supporting the State's claim under the Civil Forfeiture Statute. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 96:18-96:22) ("**Q** Are you aware of any forfeiture complaints for currency alone where the complaint, by itself, alleged all the facts needed to demonstrate probable cause? **A** No."). Also absent: any allegation identifying which of Indiana's (many) criminal laws serves as the basis for the requested forfeiture. Rather than identify the predicate crime, the complaints recite merely that the currency is linked to "a violation of a criminal statute." Which one? Who knows.

2. The above practice violates the due-process guarantees of the federal and state constitutions. Counterclaims ¶¶ 139-50 (filed Aug. 6, 2024). "It is universally agreed that adequate notice lies at the heart of due process." *Gray Panthers v. Schweiker*, 716 F.2d 23, 32 (D.C. Cir. 1983) (citation omitted); *see also Freeman v. Pierce*, 101 N.E. 478, 479 (Ind. 1913) (observing that due process requires notice and an opportunity to be heard). And since the first years of nationhood, the courts have made clear that—for forfeitures specifically—the sort of boilerplate used in Marion County is inadequate. In 1813, for example, the U.S. Supreme Court held a forfeiture pleading fatally defective for failing to provide specific legal and factual allegations justifying the forfeiture.

The Hoppet, 11 U.S. 389, 393 (1813). As Chief Justice Marshall reasoned, "a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offence upon which the prosecution is founded, must be the rule of every Court where justice is the object, and cannot be satisfied by a general reference to the provisions of a statute." *Id.* at 394; *see also id.* at 393 ("The importance of this principle to a fair administration of justice, to that certainty introduced and demanded by the free genius of our institutions in all prosecutions for offences against the laws, is too apparent to require elucidation, and the principle itself is too familiar not to suggest itself to every gentleman of the profession.").

Modern precedent is in accord. The Ninth Circuit, for instance, has held that a federal agency violated due process when it seized vehicles for forfeiture without telling the owners "which statutory provisions are alleged to have been violated" and without giving them "any statement of the factual basis" for forfeiture. *Gete v. INS*, 121 F.3d 1285, 1290 (9th Cir. 1997). More recently, another federal court enjoined forfeitures as likely violating due process when the FBI seized the contents of hundreds of safety deposit boxes and issued forfeiture notices reciting thirty-five potential crimes—and providing "no factual basis for the seizure of Plaintiffs' property whatsoever." *Snitko v. United States*, No. 21-cv-4405, 2021 WL 3139707, at *3 (C.D. Cal. June 22, 2021) (temporary restraining order). Even in the context of public-benefit denials, the courts have rejected boilerplate notice of the sort at issue here, reasoning that "in the absence of an explanation of the reasons underlying the state's action, it is implausible to expect that an individual could prepare, let alone present, a sound defense." *Perdue v. Gargano*, 964 N.E.2d 825, 835 (Ind. 2012).

Against this backdrop, the complaints filed by the Marion County Prosecutor's Office miss the mark by a country mile. The complaints do not have basic factual allegations supporting the

requested forfeiture, much less provide "a substantial statement of the offence upon which the prosecution is founded." *The Hoppet*, 11 U.S. at 394. Nor do they even identify the crime that is alleged to support the forfeiture. Even the prosecutor who writes the complaints, when reviewing one he'd previously filed, had no way of identifying from the document what crime served as the basis for the forfeiture it demanded. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 72:4-72:7) ("**Q** Let me try it this way. Looking at the complaint alone, can you identify what crime was committed? **A** No."). Worse, even when the prosecutor *files* the complaints, he "often" does not know what particular crime serves as the basis for the requested forfeiture. *Id.* (Prosecutor 30(B)(6) Dep. 88:1-88:5) ("**Q** When you file a forfeiture complaint, do you know, before you file, which specific criminal statute is going to be supporting the forfeiture? **A** Sometimes, but not -- not always. In fact, often we don't.").

Bluntly, no one receiving one of these complaints can read it and have any idea of the basis on which the State seeks to forfeit their property. Under the federal constitution and under Indiana's constitution, due process demands more. In criminal and civil contexts alike, the defending party must be "informed of the charges" so that "he is able to prepare a defense." *Salary v. State*, 523 N.E.2d 764, 765-66 (Ind. Ct. App. 1988) (citation omitted); *Larkin v. State*, 173 N.E.3d 662, 669 (Ind. 2021) (explaining that due process "entitles a defendant to limit his defense to the charging instrument's allegations," meaning he "must have fair notice of the offenses of which he may be convicted"). After all, "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978). This means the notice must "provide the individualized reasons" for the government's action. *Perdue*, 964 N.E.2d at 836; *accord Vargas v.*

Trainor, 508 F.2d 485, 489 (7th Cir. 1974) (collecting cases recognizing that "the notice of proposed action cannot be adequate if it does not include the reasons or grounds for the action"). Systematically, however, the Marion County Prosecutor's Office does nothing of the sort, leaving property owners, courts, and, evidently, even the prosecutor himself to guess at the crimes alleged to supply the basis for forfeiture. *See, e.g.*, *Smith*, 232 N.E.3d at 116 (remarking, in forfeiture case out of Marion County, that "both in the trial court and on appeal, the State has never tied the money to a specific, applicable offense").

3. As against all this, the Prosecutor's Office points out that, separate from its complaints, it simultaneously files probable-cause affidavits with the trial courts in forfeiture cases. Whatever deficiencies there may be in its complaints (so the argument goes), the probable-cause affidavits put property owners on notice of the factual and legal bases for the requested forfeiture. *See* Counterclaim-Defs.' Opposition to Motion for Class Certification at 9-10 (filed Dec. 18, 2024).

But there's an obvious problem: For reasons known only to itself, the Prosecutor's Office *does not serve* its probable-cause affidavits on the property owners. Having filed its forfeiture complaint, the Office then files, ex parte, a motion with the trial court entitled "Plaintiff's Motion for Probable Cause Finding." *See, e.g.*, Plaintiff's Motion for Probable Cause Finding (filed May 2, 2024). Accompanying that motion is an affidavit for probable cause. *See, e.g.*, Aff. for Probable Cause (filed May 2, 2024). One might think the Prosecutor's Office would be duty-bound—under Trial Rule 5, for instance—to serve those court-filed documents on the other parties to the case.[6]

[6] Under Trial Rule 5, "each party . . . must be served with," among other documents, "every written motion except one which may be heard ex parte," "every brief submitted to the trial court," and "every written notice . . . or similar paper." Ind. T.R. 5(A). Property owners in civil-forfeiture cases are named as defendants. *See*, *e.g.*, Compl. for Forfeiture (caption) (filed May 2, 2024) (identifying Henry Minh as a "Defendant[]"); Summons (entered May 6, 2024)

Yet it doesn't. It "does not as a practice serve on individuals interested in civil forfeiture matters probable cause affidavits or motions for probable cause finding filed in forfeiture cases." Miller MSJ Aff. Ex. 6, at 8 (Counterclaim-Defs.' Resp. to Req. for Admission No. 9); *see also id.* at 10 (Counterclaim-Defs.' Resp. to Req. for Admission No. 12) ("Without waiving objections, MCPO admits that the State of Indiana, through its work in MCPO, does file probable cause affidavits and motions for probable cause finding ex parte."). At risk of stating the obvious, property owners don't receive adequate notice from documents the State doesn't send them.

Does it change the analysis that, of late, the Prosecutor's Office has taken to adding a fourth boilerplate paragraph to its complaint? The paragraph stating that "[a] probable cause affidavit has been filed in this cause" and that "[t]he probable cause affidavit provides additional information about the property seizure"? Not in the slightest. For one thing, nothing prevents the Office from changing that language or reverting to its original template at any time. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 86:23-87:5) ("**Q** Does anything prevent you from omitting that statement from complaints in the future? **A** You mean, could I change the complaint to not include that language? **Q** Well, not past filed ones, but going forward, you could omit that statement from future cases? **A** I could, yes."). And in any event, the Office's new-and-improved complaint template continues to suffer the same notice problems as before. "[T]he burden of providing adequate notice rests with the state." *Perdue*, 964 N.E.2d at 838 n.18 (citation omitted). And the State "cannot

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(identifying Henry Minh as a "Defendant" and advising that "[y]ou are hereby notified that you have been sued by the person(s) named as Plaintiff in the Court indicated above"). The State's probable-cause motion and accompanying affidavit are not authorized by statute to be filed with the courts ex parte. I.C. § 34-24-1-2(b) (providing simply that "the prosecuting attorney shall file an affidavit of probable cause with a circuit or superior court in the county in which the seizure occurred not later than seven (7) days after the date of the seizure"). Yet as a matter of practice, the Prosecutor's Office does not serve these documents on its opponents.

shift that burden to the individual by providing inadequate notice and inviting the [defendant]" to hunt for the missing pieces. *Id.* Nor can it do so by "[m]erely offering" parties "information from which they could potentially deduce the reasons for" the State's actions against them. *Id.* at 838. Yet at best, that is what the State's complaints do. They allege no facts. They identify no predicate crime. They simply make opaque reference to "additional information" in unserved court filings that the Prosecutor's Office submits ex parte. That does not comport with due process. Indeed, the Indiana Supreme Court has said as much explicitly: "The ability to proactively inquire as to the reasons" for a proposed action "has been unequivocally rejected by the Seventh Circuit as well as many other courts as an inadequate remedy for an otherwise deficient notice." *Id.* at 838 n.18.

And the stakes are real. Unlike in criminal cases, defendants in civil-forfeiture actions do not have a right to appointed counsel. *Abbott v. State*, 183 N.E.3d 1074, 1087 (Ind. 2022) (Rush, C.J., concurring in part and dissenting in part) ("Forfeiture defendants, in particular, are distinctly disadvantaged by the lack of appointed counsel."). As the State has elsewhere conceded, moreover, it often does not make economic sense for forfeiture defendants to hire a lawyer. *See* State's Pet. for Reh'g at 8, *Abbott v. State*, No. 19A-PL-1635, 2021 WL 11721576 (Ind. Ct. App. Mar. 15, 2021) ("Based on the relatively-small amount of money at issue and the low probability of success . . . [,] it is unlikely that even a litigant of significant means would hire counsel to defend this action."). As a result, many have no choice but to proceed *pro se* or default. And for *pro se* defendants, accessing court-filed documents is uniquely challenging when the documents aren't served on them. Without an attorney username and password, they cannot access most court documents online, including the probable-cause materials described above. Henry Cheng MSJ Aff. ¶¶ 4-13. To access those documents, they either need to travel in-person to the clerk's office (which would

require interstate travel for folks like Henry Cheng and his wife) or need to create a MyCase account and receive authorization for "party access"—a process that involves either visiting the clerk's office in-person or waiting for a hard-copy letter with an access code. Indiana Judicial Branch, *How to connect your case to your account*, https://www.in.gov/courts/help/mycase/party-access/.[7] In short—and as due-process principles recognize—there's no substitute for adequate notice, and the Prosecutor's Office's current practices come nowhere close.

B. The State's forfeiture complaints contravene Indiana's Civil Forfeiture Statute by failing to comply with basic notice-pleading standards (Count 5).

Separate and apart from due-process guarantees, the Prosecutor's practice of filing notice-deficient complaints also contravenes the Civil Forfeiture Statute. Counterclaims ¶¶ 133-38 (filed Aug. 6, 2024). By its terms, the statute mandates that "an action for forfeiture" be brought "by filing a complaint in the circuit or superior court in the jurisdiction where the seizure occurred." I.C. § 34-24-1-3(a). Systematically, however, the Marion County Prosecutor's case-initiating pleadings lack the hallmark of a "complaint." "Although the plaintiff need not set out in precise detail the facts upon which the claim is based," Indiana's pleading standard requires that a complaint must "plead the operative facts necessary to set forth an actionable claim." *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 135 (Ind. 2006); *see also Noblesville Redevelopment Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 563 (Ind. 1996) ("[N]otice pleading 'merely requires pleading the operative facts so as to place the defendant on notice as to the evidence to be presented at trial.'"). An actionable claim under the Civil Forfeiture Statute is one that

[7] This Court's online instructions on how parties can access case documents are subject to judicial notice, and Henry Minh, Inc. asks that the Court take judicial notice of them. *See* Ind. R. Evid. 201(a)(1)(A)-(B), 201(c)(1)-(2).

"identif[ies] the applicable criminal statute that was violated and establish[es] a substantial connection between the seized money and that crime." *Smith*, 232 N.E.3d at 115. But the Prosecutor's Office's complaints? They allege no set of facts amounting to a crime. They identify no applicable criminal statute. Reading them, even their author can't say what the predicate crime is. Often, the State can't say what the crime is even when a complaint is filed. Or, sometimes, when the case goes to trial. Or on appeal. Just two days before the Office filed suit against Henry Minh, Inc., in fact, the Indiana Supreme Court in another case faulted the Office for failing to "specifically identif[y] an applicable criminal statute that was violated" at *any stage of the case* before it. *Id.* at 116.

Whatever notice pleading requires, it's more than this. And here, too, the need for the Court's intervention is acute. "[B]ecause forfeitures . . . have significant criminal and punitive characteristics," the supreme court has cautioned, "they 'are not favored, and should be enforced only when within both the letter and spirit of the law.'" *Hughley v. State*, 15 N.E.3d 1000, 1005 (Ind. 2014). To balance the State's "use of civil forfeiture" against "citizens' rights and interests," the court has thus admonished that "civil forfeiture actions must strictly comply with the laws our Legislature has carefully crafted." *Smith*, 232 N.E.3d at 111. Yet in Marion County, thousands of forfeiture actions systematically fail in one of the most basic respects: notice. The Marion County Prosecutor's practice is in default of its obligations to property owners and courts alike. Whether on constitutional grounds or statutory, the Notice Class is entitled to relief.

CONCLUSION

The Court should grant Henry Minh, Inc.'s motion for summary judgment and enter declaratory and injunctive relief against Counterclaim-Defendants and in favor of Henry Minh, Inc., the certified Parcel Class, and the certified Notice Class.

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Respectfully submitted,

/s/ Marie Miller

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2026, a copy of the foregoing was served upon the following by the Indiana E-Filing system:

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