

# DEFINING THE LIMITS: THE RIGHT TO BRING A CONSTITUTIONAL CLAIM—2023–2024

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## INTRODUCTION

The decisions from Indiana's appellate courts addressing Indiana Constitutional Law resulted in further definition around litigants' ability to bring constitutional claims. In a case involving claims that restrictions on abortion violated religious liberty, the Court of Appeals held that an organization has associational standing to assert claims on behalf of its members and that the plaintiffs did not need to be actually pregnant, or subject to criminal charges, to present ripe claims. The Supreme Court held that constitutional separation of powers, the Takings Clause, and the right to contract, did not prevent the General Assembly from enacting a statute that retroactively prohibited class action lawsuits against universities. Similarly, the Court of Appeals held that the General Assembly may amend statutes retroactively during the pendency of an appeal because the case had not yet reached finality. The Supreme Court issued a significant decision defining the contours of the right to a speedy trial in criminal cases, rejected an argument that the statute limiting the right of primary candidates to affiliate with a party violated equal privileges and immunities under Article 1, Section 23, and held that the right to a jury applies to civil forfeiture actions.

During the survey period (September 2023 to September 2024), Indiana appellate courts substantively addressed sixteen areas of Indiana Constitutional

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law.<sup>1</sup> The Court of Appeals addressed regular decisions regarding government searches, generally finding them permissible, and reversed addressed takings claims. The Supreme Court's new double jeopardy analysis continues to result in fewer appeals on that topic and limited defendants' ability to claim prosecutorial overreach in criminal cases.

#### I. ARTICLE 1, SECTION 9 – FREEDOM OF THOUGHT AND SPEECH

In *Ivankovic v. Ivankovic*, the Indiana Court of Appeals affirmed a trial court's denial of a wife's request to enjoin her ex-husband from harassing her by accusing her of criminal wrongdoing.<sup>2</sup> The court recognized a compelling government interest in protecting the best interests of minor children of divorced spouses by restraining former spouses from disparaging each other in front of their children.<sup>3</sup> It further agreed that the state has a compelling interest in "protecting and preserving a child's financial well-being."<sup>4</sup> However, because "allegations of criminal activity are public as a matter of course," and thus protected speech, the wife had to limit her legal recourse to asserting a defamation claim.<sup>5</sup> Because the allegations were likely to affect the children's financial well-being only if proven true, meaning that the ex-wife had, in fact, engaged in wrongdoing, the court affirmed the trial court's denial of the requested injunction.<sup>6</sup>

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1. The courts addressed eighteen topics in 2014, Jon Laramore & Daniel E. Pulliam, *Indiana Constitutional Developments: Small Steps*, 47 IND. L. REV. 1015 (2014); ten in 2015, Jon Laramore & Daniel E. Pulliam, *Developments in Indiana Constitutional Law: A New Equal Privileges Wrinkle*, 48 IND. L. REV. 1223 (2015); fourteen in 2016, Scott Chinn & Daniel E. Pulliam, *Minimalist Developments in Indiana Constitutional Law—Equal Privileges Progresses Slowly*, 49 IND. L. REV. 1003 (2016); twelve in 2017, Scott Chinn & Daniel E. Pulliam, *Emerging Federal Reliance—Continued State Constitutional Minimalism: Indiana State Constitutional Law Summaries—2015–2016*, 50 IND. L. REV. 1215 (2017); ten in 2018, Scott Chinn & Daniel E. Pulliam, *Emerging Federal Reliance—Continued State Constitutional Minimalism: Indiana State Constitutional Law Summaries—2016–2017*, 51 IND. L. REV. 993 (2018); thirteen in 2019, Scott Chinn, Daniel E. Pulliam, & Elizabeth M. Little, *Stuck in a Rut or Merely Within the Lines? Indiana State Constitutional Law Summaries—2017–2018*, 52 IND. L. REV. 689 (2019); fifteen in 2020, Scott Chinn, Daniel E. Pulliam, & Elizabeth M. Little, *Continued Progressions Toward Irrelevance? Indiana State Constitutional Law Summaries—2018–2019*, 53 IND. L. REV. 865 (2021); twelve in 2021, Scott Chinn, Daniel E. Pulliam, Stephanie L. Gutwein, & Elizabeth M. Little, *Practicing Pragmatism During A Pandemic: Indiana's Appellate Courts Practically Apply Indiana's Constitution In 2020*, 54 IND. L. REV. 827 (2022); twelve in 2022, Scott Chinn, Daniel E. Pulliam, Stephanie L. Gutwein, & Elizabeth M. Little, *Separation of Powers: Indiana Constitutional Law To The Forefront*, 55 IND. L. REV. 713 (2023); and twelve in 2023, Scott Chinn, Daniel E. Pulliam, Stephanie L. Gutwein, & Elizabeth M. Little, *Legislative Leeway: A Year of Indiana Constitutional Law Restraint—2022–2023*, 57 IND. L. REV. 871 (2024).

2. 228 N.E.3d 1143 (Ind. Ct. App. 2024)

3. *Id.* at 1148.

4. *Id.*

5. *Id.* at 1148–49.

6. *Id.*

## II. ARTICLE 1, SECTION 11—SEARCH AND SEIZURE

In *Carter v. State*, the court held that law enforcement seizure of a gun found in a purse that was initially zipped up was reasonable because the defendant consented to the purse being unzipped and the gun was otherwise plainly visible without disturbing the bag's contents.<sup>7</sup>

Under the first *Litchfield* factor,<sup>8</sup> the defendant was under a degree of suspicion initially because his license was found suspended upon crashing his motorcycle and requiring medical attention.<sup>9</sup> Second, the defendant consented to the officer opening the purse by nodding his head when the officer offered to drop a set of beads into the bag.<sup>10</sup> Upon dropping those beads into the bag, the officer saw the handgun.<sup>11</sup> The degree of the intrusion was low because the defendant did not take steps to otherwise conceal the handgun within the purse.<sup>12</sup> Finally, law enforcement needs were high as it was determined that an ambulance would transport him to a hospital where firearms had to be secured by law enforcement.<sup>13</sup>

In *Cobb v. State*, the Court of Appeals found that law enforcement lacked a considerable need to conduct a warrantless roadside search of a vehicle that consisted of a visual examination of the car's interior.<sup>14</sup> The vehicle's sole occupant was in police custody for operating the vehicle while intoxicated and there was not a high risk of the vehicle being driven away.<sup>15</sup> Nevertheless, the Court of Appeals found the search reasonable because under the other two *Litchfield* factors, the search was reasonable.<sup>16</sup> The officers merely looked at the surface areas of the car and did not intrude on the defendant's freedom as a result of the search because the defendant was already in custody for driving under the influence.<sup>17</sup> The degree of suspicion was also extremely high beyond just the defendant's operation of a vehicle while intoxicated—he had initially refused to exit his vehicle and he had broken free from the officers and lunged toward the door of the vehicle in a seeming attempt to block a search of the vehicle.<sup>18</sup>

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7. 223 N.E.3d 246 (Ind. Ct. App. 2023).

8. Under *Litchfield v. State*, the test for the reasonableness of a search or seizure under Article 1, Section 11 of the Indiana Constitution requires balancing of three factors: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. 824 N.E.2d 356, 361 (Ind. 2005).

9. *Carter*, 223 N.E.3d at 251.

10. *Id.* at 252.

11. *Id.*

12. *Id.*

13. *Id.*

14. 222 N.E.3d 373 (Ind. Ct. App. 2023).

15. *Id.* at 386.

16. *Id.*

17. *Id.*

18. *Id.*

In *Zuniga v. State*, the Court of Appeals found that the defendant lacked standing to challenge the validity of the arrest of a third party who provided evidence supporting a search warrant of the defendant's house.<sup>19</sup> The defendant had challenged the search warrant in the trial court on the basis of insufficient probable cause because the arrestee's statement was hearsay and uncorroborated.<sup>20</sup> The trial court found the statements sufficiently reliable.<sup>21</sup> On appeal, the defendant claimed the arrest itself was illegal but the Court of Appeals ruled that the defendant could not challenge the validity of the arrest for lack of standing.<sup>22</sup>

### III. ARTICLE 1, SECTION 12 – SPEEDY TRIAL

In *Grimes v. State*, the Indiana Supreme Court held that a defendant was entitled to discharge of the criminal charges when the defendant makes a prima facie showing of no court congestion and the trial court fails to explain the basis for the trial's postponement.<sup>23</sup>

The State charged the defendant with felony theft, battery, unlawful possession of a firearm by a serious violent felon, and a habitual-offender enhancement.<sup>24</sup> After two continuances, the judge disclosed that he was the prosecutor in one of the defendant's underlying convictions.<sup>25</sup> Because of the conflict, the case was transferred to a new judge, who then continued the trial due to court congestion to a date that went beyond the limits imposed by the speedy trial deadlines in Criminal Rule 4.<sup>26</sup> The defendant objected, and without explanation, the trial court overruled the objection.<sup>27</sup> The defendant moved for discharge based on certified copies of the trial court's docket showing no other jury trials scheduled during those days and that no jurors were summoned for jury duty during that period.<sup>28</sup>

The Supreme Court found that a burden-shifting test determines whether a trial court's decision to move a trial date beyond the limits imposed by Criminal Rule 4 may be based on calendar congestion.<sup>29</sup> A trial court may continue a trial date based on congestion without further explanation but the defendant may

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19. 237 N.E.3d 1168 (Ind. Ct. App. July 8, 2024).

20. *Id.* at 1171–72.

21. *Id.* at 1171.

22. *Id.* at 1174.

23. 235 N.E.3d 1224 (Ind. 2024).

24. *Id.* at 1229.

25. *Id.*

26. Generally, Article I, Section 12 of the Indiana Constitution does not confer due process rights to criminal defendants in the manner that the Due Process Clauses of the 5th and 14th Amendments of the United States Constitution do. IND. CONST. art 1, § 12. However, the Indiana Supreme Court has held that the speedy trial provision of Article I, Section 12 does apply in the criminal context and underpins Criminal Rule 4. *Grimes*, 235 N.E.3d. at 1229.

27. *Grimes*, 235 N.E.3d. at 1230–31.

28. *Id.*

29. *Id.* at 1228.

object and rebut at the “earliest opportunity” the lack of congestion and give the trial court the ability to still schedule the trial within the Criminal Rule 4 limits.<sup>30</sup> This showing must show that the court congestion finding was “factually or legally inaccurate” at the time the trial was continued.<sup>31</sup> The trial court then has the opportunity to explain the congestion finding, which is subject to being shown by the defendant to be clearly erroneous.<sup>32</sup>

Here, the defendant was entitled to discharge because he satisfied his burden to show a prima facie case of no congestion when he submitted the docket showing no other scheduling conflicts with his trial.<sup>33</sup> This showing—which the court characterized as a “low bar”—shifted the burden to the court to explain the delay, which the court also characterized as a “low bar.”<sup>34</sup> Because the trial court failed to give any reason, the court ordered the trial court to discharge the defendant.<sup>35</sup>

Justice Goff dissented on the basis that the defendant failed to submit a copy of the court’s docket after the trial court moved the trial date.<sup>36</sup> Merely alleging without evidence that no jurors were summoned for duty the week of his trial was not sufficient.<sup>37</sup> The majority’s holding effectively rejected the presumed validity of the court’s initial finding of court congestion.<sup>38</sup>

In *Mirabal v. State*, the Court of Appeals found no violation of a defendant’s speedy trial rights because the State’s continuance of a murder trial beyond the one-year allotment allowed by Criminal Rule 4 was reasonably based on a detective’s medical emergency.<sup>39</sup> Although the State should have provided more specific information regarding the detective’s return to work, the continuance of the trial was well-founded.<sup>40</sup>

By contrast, in *Hoback v. State*, the Court of Appeals reversed a defendant’s motion for discharge for the State’s failure to bring the case to trial within the one-year limit imposed by Criminal Rule 4(C).<sup>41</sup> The trial court continued multiple trial dates after the one-year period because of entries and withdrawals of plea agreements, court congestion, and public health emergencies after the defendant was arrested on April 19, 2018.<sup>42</sup> The defendant failed to object but

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30. *Id.*

31. *Id.* at 1231.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 1235 (Goff, J., dissenting).

37. *Id.* (Goff, J., dissenting).

38. *Id.* at 1235–36 (Goff, J., dissenting).

39. 237 N.E.3d 724 (Ind. Ct. App. June 25, 2024).

40. *Id.* at 731.

41. 225 N.E.3d 208 (Ind. Ct. App. 2023).

42. *Id.* at 210.

filed a motion for discharge on August 15, 2022.<sup>43</sup> A jury then found him guilty, and the court sentenced him to just under a year imprisonment.<sup>44</sup>

After finding that the defendant did not waive his speedy trial rights, the Court of Appeals found the trial court's record regarding the basis for the delay "woefully inadequate."<sup>45</sup> For example, one entry provided "other" as a description for the jury trial's cancellation.<sup>46</sup> Without an adequate record, the Court of Appeals found that it could not attribute any of the delays to the defendant.<sup>47</sup>

Judge Felix dissented.<sup>48</sup> He found that not every issue under Criminal Rule 4 raises constitutional rights and that his underdeveloped argument should result in waiver.<sup>49</sup> The defendant bore the burden to establish that the delays were not the defendant's responsibility and failed under the appellate rules to establish an argument on appeal showing that the delay was not attributable to the defendant.<sup>50</sup>

#### IV. ARTICLE 1, SECTION 12 – DUE PROCESS

In *Carter v. State*, the Court of Appeals determined that there was no indication of prosecutorial vindictiveness where the State refiled a previously dismissed murder charge after the defendant's first trial ended in a mistrial because of a deadlocked jury.<sup>51</sup>

The defendant was initially charged with murder, rape, three counts of felony criminal confinement, and felony carrying a handgun without a license.<sup>52</sup> The State amended the charging information to include two felony rape counts.<sup>53</sup> That State then moved to dismiss, without prejudice, the murder charges. After the third day of the trial, the State moved to dismiss the felony confinement charges.<sup>54</sup> The jury reached a verdict on the charge of carrying a handgun without a license, but was deadlocked on the remaining five charges, resulting in the trial court sua sponte declaring a mistrial.<sup>55</sup> The State then filed amended charges that included two felony rape charges, three felony criminal confinement charges, and murder charges.<sup>56</sup> Carter moved to dismiss the murder charges for vindictive recharging, on the basis that there had not been any newly

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43. *Id.*

44. *Id.*

45. *Id.* at 213.

46. *Id.*

47. *Id.*

48. *Id.* at 213–14 (Felix, J., dissenting).

49. *Id.* at 214 (Felix, J., dissenting).

50. *Id.* (Felix, J., dissenting).

51. 235 N.E.3d 875 (Ind. Ct. App. 2024).

52. *Id.* at 880.

53. *Id.*

54. *Id.* at 881.

55. *Id.* at 883–84.

56. *Id.* at 882.

discovered evidence between the date of the mistrial and the date of the refiling of the charges.<sup>57</sup> The trial court denied the motion to dismiss.<sup>58</sup>

The court noted that the “Due Process clauses of Article 1, Section 12, of the Indiana Constitution and the Fourteenth Amendment to the United States Constitution prohibit prosecutorial vindictiveness,” relying on a 2005 Indiana Court of Appeals decision.<sup>59</sup> As a textual matter, there is no due process clause in the Indiana Constitution although the Indiana Supreme Court has held that Section 12’s guarantee that every person “shall have remedy by due course of law” provides various forms of procedural and substantive due process protection.<sup>60</sup> The Supreme Court has also noted that—apart from speedy trial claims, Article I, Section 12 applies only to civil and not criminal cases.<sup>61</sup> The *Carter* Court nevertheless analyzed whether the constitutional principal of “due process” applied to prosecutorial vindictiveness relying on a 2002 Indiana Supreme Court decision in *Warner v. State*,<sup>62</sup> which does not mention the Indiana Constitution.<sup>63</sup>

“[Prosecutorial] vindictiveness may be established by demonstrating that a prosecutor’s charging decision was motivated by a desire to punish a defendant for doing something that the law allowed [the defendant] to do.”<sup>64</sup> The Court of Appeals wrote that, “[w]ithout this doctrine, defendants would be discouraged from challenging the misdeeds of the State.”<sup>65</sup> Here, Carter did not challenge any misdeed of the State—instead the trial court sua sponte declared a mistrial as a result of a hung jury, not some misdeed of the State.<sup>66</sup> The court held that the doctrine and its rationale have little application where a mistrial does not result from any improper conduct of the State.<sup>67</sup> Because the mistrial did not result from Carter’s exercise of any statutory or constitutional right, but rather from a deadlocked jury, the court held that Carter’s claim of prosecutorial vindictiveness failed.<sup>68</sup>

#### V. ARTICLE 1, SECTION 13 – RIGHTS OF ACCUSED, RIGHTS OF VICTIMS

In *Winans v. State*, the Court of Appeals reversed a conviction because the trial court failed to allow for a jury trial after the defendant’s post-trial diversion agreement was terminated.<sup>69</sup> Under Article 1, Section 13 of the Indiana

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57. *Id.*

58. *Id.*

59. *Id.* at 883 (quoting *Owens v. State*, 822 N.E.2d 1075 (Ind. Ct. App. 2005)).

60. *McIntosh v. Melroe Co.*, 729 N.E.2d 972, 974 (Ind. 2000).

61. *Id.*

62. *See Warner v. State*, 773 N.E.2d 239 (Ind. 2002).

63. *Carter*, 235 N.E.3d at 883.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. 220 N.E.3d 558 (Ind. Ct. App. 2023).

Constitution and the Sixth Amendment to the U.S. Constitution, the right to a jury is guaranteed.<sup>70</sup> If a defendant demands a jury trial within ten days of the first scheduled trial date in a misdemeanor case, the court must schedule a jury trial.<sup>71</sup> Because the defendant made a timely request for a jury trial, and nothing in the record showed that the defendant waived the right to a jury trial, the trial court committed fundamental error in holding a bench trial.<sup>72</sup>

In *Cook v. State*, the Court of Appeals rejected an Article 1, Section 13 challenge to the evidentiary rule that criminal defendants have no right to confront a confidential informant whose statements are not admitted for the truth of the matters asserted.<sup>73</sup> The court determined that the confidential informant's statements were not hearsay because they were only necessary to facilitate the controlled buy.<sup>74</sup> The defendant also failed to develop a specific argument regarding the meaning of Article 1, Section 13, other than an unsupported reference to "populist, anti-government Jacksonian Democrats" from the 1850s.<sup>75</sup>

#### VI. ARTICLE 1, SECTION 14 – DOUBLE JEOPARDY

In *A.W. v. State*, the Indiana Supreme Court declined to decide whether Article 1, Section 14 prohibiting double jeopardy applies in juvenile proceedings under the doctrine of constitutional avoidance.<sup>76</sup> The court confirmed its holding in *Wadle v. State* that procedural and substantive double jeopardy claims are bifurcated.<sup>77</sup> Constitutional double jeopardy claims are reserved for "successive prosecutions for the same offense"—procedural claims.<sup>78</sup> Substantive claims of double jeopardy—"multiple convictions for the same offense in a single proceeding"—are governed by the non-constitutional doctrines present in the included-offense statute.<sup>79</sup>

In *Schoeff v. State*, the Court of Appeals applied the "actual-evidence" test from *Richardson v. State* to determine whether a subsequent prosecution for conspiracy to commit an offense violated *procedural* double jeopardy where jury convicted the defendant in the first trial of the offense underlying the conspiracy.<sup>80</sup> The state charged the defendant with felony aiding, inducing, or causing drug dealing resulting in death, and conspiracy to deal drugs.<sup>81</sup> The jury

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70. U.S. CONST. amend. VI; IND. CONST. art. I, § 13.

71. *Winans*, 220 N.E.3d at 562.

72. *Id.*

73. 220 N.E.3d 72, 75 (Ind. Ct. App. 2023).

74. *Id.*

75. *Id.* at 76.

76. 229 N.E.3d 1060, 1066 (Ind. 2024).

77. *Id.* at 1062 (discussing *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020)).

78. *Id.* at 1067.

79. *Id.* at 1068; *see* IND. CODE § 35-31.5-2-168 (2024).

80. *Schoeff v. State*, 242 N.E.3d 1080, 1087 (Ind. Ct. App. 2024) (applying *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999)).

81. *Id.* at 1083.



found him guilty of the conspiracy charge but hung on the causing death charge.<sup>82</sup> On retrial, the jury convicted him of the causing death charge, but the trial court vacated his conspiracy charge as violating double jeopardy.<sup>83</sup>

On appeal, the majority held that conspiracy is not inherently included in the underlying crime because conspiracy charges rest on different statutory elements.<sup>84</sup> The court further found that there was no reasonable possibility that the evidence used to establish the conspiracy charge was also used to establish every single element of the underlying felony of aiding, inducing, or causing drug dealing resulting in death.<sup>85</sup>

#### VII. ARTICLE 1, SECTION 16 – PROPORTIONALITY / CRUEL AND UNUSUAL PUNISHMENT

In *Myers v. State*, the Court of Appeals rejected a challenge to convictions for neglect of a dependent on the basis that it violated the Proportionality Clause of the Indiana Constitution.<sup>86</sup> All “penalties shall be proportioned to the nature of the offense” under Article 1, Section 16.<sup>87</sup> An offense with identical elements to another offense that receives a different sentence violates the Proportionality Clause.<sup>88</sup> But the Proportionality Clause is not violated when the criminal penalty is graduated and proportioned to the nature of the offense.<sup>89</sup>

The defendant claimed that the enhancement for “serious bodily injury” in a neglect case violated the proportionality clause because the offenses did not have different elements.<sup>90</sup> But the enhancement required proof that the injury created a substantial risk of death or caused “serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ.”<sup>91</sup> The offense can be further enhanced if the defendant is older than eighteen, the victim is under fourteen, and the injury is so severe that it impairs the victim’s ability to live independently for at least one year.<sup>92</sup> Because the offenses graduated based on the level of the harm inflicted, the sentence did not violate the Proportionality Clause.<sup>93</sup>

Similarly, in *Kendall v. State*, the Court of Appeals rejected a Proportionality Clause challenge on the basis that the identity deception statute improperly raised a B misdemeanor to a level 6 felony when the defendant gave

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82. *Id.* at 1084.

83. *Id.*

84. *Id.* at 1085.

85. *Id.*

86. 221 N.E.3d 694 (Ind. Ct. App. 2023).

87. IND. CONST. art. 1, § 16.

88. *Myers*, 221 N.E.3d at 699.

89. *Id.*

90. *Id.* at 700.

91. *Id.*

92. *Id.*

93. *Id.*

a false name to a police officer.<sup>94</sup> Here, the defendant used false information when he used the false information with intent to harm or defraud another person.<sup>95</sup>

In *Hancz-Barron v. State*, the Indiana Supreme Court affirmed four consecutive life without parole sentences as the defendant “massacred a family of four, including three young children, and inflicted horrific injuries on each victim.”<sup>96</sup> The court rejected the defendant’s argument that his young age, stunted brain development, and difficult youth and mental health history was an inappropriate “offender-based argument” not recognized by Article 1, Section 16.<sup>97</sup>

In *Kelly v. State*, the Court of Appeals rejected an Article 1, Section 16 argument that a 110-year sentence for two murders committed when the defendant was sixteen years old constituted cruel and unusual punishment.<sup>98</sup> Based on *Conley v. State*, life without parole does not constitute cruel and unusual punishment even if the defendant was a juvenile at the time of the offense.<sup>99</sup> The court also rejected an argument that the offense violated the Proportionality Clause because it addressed his personal characteristics and not the nature of the offense.<sup>100</sup>

#### VIII. ARTICLE 1, SECTION 19 – RIGHT TO HAVE JURY DECIDE LAW AND FACT IN CRIMINAL CASES

In *Applegate v. State*, the Court of Appeals declined to find a violation of the right to have a jury determine the law and facts of a habitual offender allegation under the Indiana Supreme Court’s opinion in *Harris v. State* because the argument rested on a section of *Harris* that only obtained two votes of the justices.<sup>101</sup> Justice Slaughter had declined to join a portion of *Harris* that determined that the habitual offender statute required a jury to determine habitual offender status because it was unnecessary to decide the issue in that case.<sup>102</sup> Although Justice Slaughter otherwise joined the opinion and “largely” agreed with the constitutional analysis, he did not support addressing constitutional questions when the case turned on other non-constitutional grounds.<sup>103</sup> Thus, the Court of Appeals declined to address whether the habitual

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94. 225 N.E.3d 794 (Ind. Ct. App. 2023).

95. *Id.* at 804.

96. 235 N.E.3d 1237, 1250 (Ind. 2024).

97. *Id.*

98. 236 N.E.3d 716 (Ind. Ct. App. 2024).

99. 972 N.E.2d 864 (Ind. 2012).

100. *Kelly*, 236 N.E.3d at 729–30.

101. 230 N.E.3d 944, 953–54 (Ind. Ct. App. 2024) (declining to apply part I of *Harris v. State*, 211 N.E.3d 929, 935–38 (Ind. 2023)).

102. *Id.*

103. *Id.*

offender statute required the jury to determine the defendant's habitual offender status.<sup>104</sup>

#### IX. ARTICLE 1, SECTION 20 – RIGHT TO TRIAL BY JURY IN CIVIL CASES

In *State v. \$2,435 in United States Currency*, the Indiana Supreme Court analyzed whether a claimant in an action brought under Indiana's civil forfeiture statute has a constitutional right to trial by jury.<sup>105</sup> The Indiana Constitution secures the right to a jury trial as it existed at common law in 1851, the time that Indiana adopted its current constitution.<sup>106</sup> Claims that are deemed equitable are not entitled to a jury trial.<sup>107</sup> To determine if a claimant has a right to a jury trial, courts evaluate (1) whether the cause of action existed in 1851, and, if not (2) whether the claim is analogous to one at law or in equity as those terms were understood in 1851.<sup>108</sup>

The court began its evaluation by first determining that the fact that just because a cause of action involves a special statutory proceeding, such as the Indiana's civil forfeiture statute, that does not alter the fundamental common-law character of the cause of action.<sup>109</sup> Therefore, causes of action arising from a special statutory proceeding that are essentially legal, rather than equitable, are triable by jury.<sup>110</sup> The court then analyzed whether *in rem* civil forfeitures are analogous to an action at law or to an equitable claim.<sup>111</sup> The court conducted historical analysis of colonial America, the early United States, and the state of Indiana and determined that Indiana had a common-law tradition of jury trials for the forfeiture of the instrumentality of a crime.<sup>112</sup> The court further concluded that even if no *in rem* forfeiture cause of action existed in 1851, *in rem* forfeiture of money as the instrument an proceeds of crime is readily analogous to the traditional common-law forfeiture of property used in violation of law, a legal action subject to the right to trial by jury.<sup>113</sup> Accordingly, a claimant in an action brought under Indiana's civil forfeiture statute has a constitutional right to trial by jury.<sup>114</sup>

In *Colvin v. Taylor*, the Court of Appeals analyzed whether a case, as a whole, is equitable in nature such that the equitable clean-up doctrine applies and brings the entire case into equity.<sup>115</sup> The Indiana Constitution guarantees the

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104. *Id.*

105. 220 N.E.3d 542 (Ind. 2023).

106. *Id.* at 545.

107. *Id.*

108. *Id.* at 545.

109. *Id.* at 547–48.

110. *Id.*

111. *Id.*

112. *Id.* at 557.

113. *Id.* at 558.

114. *Id.*

115. 233 N.E.3d 497 (Ind. Ct. App. 2024).

rights to a jury trial as that right existed at common law and does not apply to equitable claims.<sup>116</sup> When a single case contains both equitable and legal causes of actions or defenses, the equitable causes of action or defenses are to be tried by the court while the legal causes of actions and defenses are to be tried by a jury.<sup>117</sup> However, where the lawsuit as a whole is equitable and the legal causes of action are not distinct or severable, equity subsumes the entire case and the equitable clean-up doctrine applies.<sup>118</sup>

In *Colvin*, the case began with Taylor's foreclosure against Colvin.<sup>119</sup> Foreclosure actions are equitable.<sup>120</sup> Colvin asserted counterclaims for abuse of process and conversions against Taylor based on Taylor's pursuit of immediate possession "based on Taylor's pursuit of immediate possession allegedly in violation of emergency orders, his failure to file a surety bond as required by Indiana Code section 32-30-3-6, and his removal of various personal and business items of Colvin's from the property."<sup>121</sup> The Court of Appeals determined that Colvin's counterclaims arose wholly out of Taylor's complaint and the actions taken by Taylor to preliminary possession of the at-issue property.<sup>122</sup> The court concluded that the essential features of the suit were equitable, and therefore, the equitable clean-up doctrine applies to pull Colvin's legal claims into equity.<sup>123</sup>

In *Cosme v. Clarke*, the Indiana Supreme Court analyzed whether, at the directed-verdict stage, the court may take on the jury's fact-finding role to weigh evidence and assess credibility at the close of the plaintiff's case.<sup>124</sup> The right to a trial by jury is protected by the Indiana constitution.<sup>125</sup> This gives parties the right to have a jury determine the credibility of witness and the weight that shall be given to the evidence and to decide the facts accordingly.<sup>126</sup> After a plaintiff rests his case, if there is insufficient evidence on any element of the plaintiff's prima facie case, a court may enter a directed verdict.<sup>127</sup> Therefore, at the directed verdict stage, an issue is withdrawn from the jury and given to the judge.<sup>128</sup> The court determined that to maintain the right to a jury trial, a judge cannot be permitted to preempt the jury's fact-finding function.<sup>129</sup> The court thus found that the judge is limited to viewing the evidence with all reasonable inferences for the nonmovant, and the court cannot assess witness credibility or

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116. *Id.* at 499.

117. *Id.*

118. *Id.*

119. *Id.* at 500.

120. *Id.*

121. *Id.*

122. *Id.* at 500–01

123. *Id.* at 501.

124. 323 N.E.3d 1141, 1145 (Ind. 2024).

125. *Id.* at 1149–50.

126. *Id.*

127. *Id.* at 1145.

128. *Id.*

129. *Id.* at 1149–50.

weigh conflicting evidence, nor the conflicting inferences to be drawn from the evidence.<sup>130</sup> The court determined that this was in line with the historical approach.<sup>131</sup> The court then found that aspects of the trial court's entry of a directed verdict was improper because sufficient evidence supported certain of the Cosmes' claims.<sup>132</sup>

In *Abed v. ElSharif*, the Court of Appeals found that a claimant did not have a right to a jury trial where the essential features of his suit were equitable.<sup>133</sup> Article 1, Section 20 of the Indiana Constitution guarantees the right to trial by jury in civil cases as the right existed at common law in 1851 when the current version of the Indiana Constitution was adopted.<sup>134</sup> The right to a jury trial does not extend to equitable cases or claims.<sup>135</sup> Further, if the essential features of a suit as a whole are equitable, and any individual causes of action which are not equitable are not distinct or severable, a party does not have a right to a jury trial.<sup>136</sup> Thus, certain legal claims can be drawn into equity under the equitable clean-up doctrine.<sup>137</sup>

This case arose from a dispute involving an estate of a decedent, Seif, who died in testate.<sup>138</sup> His nephew, Abed, claimed that Seif transferred his property and businesses to Abed.<sup>139</sup> Seif's descendants disputed that this occurred.<sup>140</sup> The parties brought the following claims:

In Counts 1 and 2, ElSharif seeks to quiet title to the Indiana Real Estate and asks the trial court to declare void the recorded quitclaim deeds. In Count 3, ElSharif requests a declaratory judgment that (1) the assignment of Seif's interest in Seif, LLC to Abed is a forgery and thus void, and (2) the estate is the rightful owner. In Count 7, ElSharif seeks declaratory judgment that (1) all other documents purporting to transfer Seif's assets are forgeries and void, (2) Abed has no right, title, or interest in Seif's assets, and (3) the estate is the rightful owner. ElSharif also demands injunctive relief preventing Abed or any of his associates from claiming any interest in Seif's assets. Finally, in Counts 4 through 6, ElSharif alleges Abed committed the crime of forgery and seeks damages, attorney fees, and expenses under the [Crime Victim Relief Act ("CVRA")].<sup>141</sup>

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130. *Id.* at 1150.

131. *Id.*

132. *Id.* at 1154.

133. 234 N.E.3d 890 (Ind. Ct. App. 2024).

134. *Id.* at 897.

135. *Id.*

136. *Id.*

137. *Id.* at 898.

138. *Id.* at 893.

139. *Id.* at 894.

140. *Id.*

141. *Id.*

In Abed's two amended counterclaims, he seeks (1) damages from the sale of the Shannon Bridge lot, and (2) declaratory judgment he is the owner of all Seif's assets.<sup>142</sup>

But, the court determined that ElSharif's claims for damages under the CVRA and Abed's counterclaims are not sufficiently distinct from the equitable issues to be severable.<sup>143</sup> The court made this determination because it found that ElSharif's legal claims under the CVRA and Abed's counterclaims depend entirely on the resolution of the equitable claims—specifically whether Abed forged the quitclaim deeds and other transfer documents.<sup>144</sup> The court determined that Abed did not have a right to a jury trial because the essential features of the suit were equitable, and the legal claims so significantly overlapped with the equitable features of the suit to be subsumed by the equitable claims.<sup>145</sup>

#### X. ARTICLE 1, SECTION 21 – TAKINGS CLAUSE

In *City of Carmel v. Barham Investmentss, LLC*, the Indiana Court of Appeals analyzed a dispute over an appraisal for purposes of determining just compensation due to a landowner whose property failed to properly identify, and thus value, all of the owner's interests in the property that it was extinguishing.<sup>146</sup> In rejecting the landowner's claim that it was entitled to compensation for the taking of its ingress and egress easement over, under, and across a road adjacent to its property for pedestrian and vehicular traffic, the court reiterated two principles.<sup>147</sup> First, it confirmed that "the right of an abutting landowner to ingress and egress over the public roads is a cognizable property right," and the government's "substantial or material interference with this right . . . is a compensable taking."<sup>148</sup> Second, it observed that "an abutting landowner has no cognizable property right in the free flow of traffic past his property."<sup>149</sup>

But the court found that the City had not acquired the property interest as to which the landowner had an easement, so the landowner was not entitled to additional compensation for the alleged taking.<sup>150</sup> The court also explained that the City had extinguished the easement the landowner had held when the City condemned the public road that was the subject of the easement in an earlier inverse condemnation action.<sup>151</sup>

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142. *Id.*

143. *Id.* at 900.

144. *Id.*

145. *Id.* at 902.

146. 222 N.E.3d 992, 994 (Ind. Ct. App. 2023).

147. *Id.* at 995–96.

148. *Id.* at 995.

149. *Id.*

150. *Id.* at 997.

151. *Id.* at 997–98.

In *Moriarity v. State*, the Court of Appeals rejected a claim for an alleged regulatory taking under Article 1, Section 21 by landowners who were ordered to remove an illegal dam they constructed on their property and claimed that complying with the order would further damage their property.<sup>152</sup> The court explained that “the government may affect a total regulatory taking without compensation where background principles of nuisance and property law independently restrict the owner’s intended use of the property.”<sup>153</sup> Because the landowners “never possessed a right to build an illegal dam . . . [t]hey [were] not entitled to compensation because the State forced them to remove or modify it.”<sup>154</sup>

XI. ARTICLE 1, SECTION 23 AND ARTICLE 2, SECTION 2 – EQUAL PRIVILEGES  
AND IMMUNITIES AND VOTING QUALIFICATIONS

In *Morales v. Rust*, the Indiana Supreme Court rejected an argument by an individual who sought the Republican nomination for U.S. Senate in 2024 that an Indiana statute, commonly referred to as the “Affiliation Statute,” was unconstitutional.<sup>155</sup> Indiana law establishes primaries in which Indiana citizens may vote for various political candidates for office, including for the office of U.S. Senator.<sup>156</sup> The Affiliation Statute requires a would-be primary candidate to file a declaration of candidacy within a specific timeframe that establishes the candidate’s party affiliation in one of two ways: by showing that they had voted for the party with which they were claiming affiliation in the two most recent primary elections in which they voted, or by filing a certification from the party chair of their county affirming the candidate’s membership in the party.<sup>157</sup> The plaintiff could not satisfy either option. He had not voted for the Republican party in the last two primary elections in which he had voted.<sup>158</sup> And the chair of the Republican party in his county refused to certify his affiliation.<sup>159</sup> So, after announcing his candidacy anyway, the would-be candidate sued the county party chair and the State and claimed that the Affiliation Statute, which otherwise would have precluded his participation in the Republican primary, was unconstitutional.<sup>160</sup> The trial court agreed and found that the Statute was unconstitutional for many reasons.<sup>161</sup>

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152. 222 N.E.3d 1075, 1076–77 (Ind. Ct. App. 2023), *trans. denied*, 232 N.E.3d 641 (Ind. 2024).

153. *Id.* at 1078 (quotations and citation omitted).

154. *Id.*

155. *Id.* at 1030–31.

156. 228 N.E.3d 1025, 1031 (Ind. 2024), *trans. denied*, 2024 Ind. LEXIS 231 (Ind. Apr. 22, 2024), *cert. denied*, 2024 U.S. LEXIS 3722 (U.S. Oct. 7, 2024).

157. *Id.* at 1032 (discussing IND. CODE § 3-8-2-7).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 1033.

The Indiana Supreme Court reversed. The court observed that the right to associate, protected by the First and Fourteenth Amendments of the U.S. Constitution, includes “the corollary right not to associate” and that that right is particularly important in the context of political parties.<sup>162</sup> Relying on federal precedent, the court held that the Affiliation Statute’s method of giving a would-be candidate the opportunity to determine party affiliation in the first instance through voting record, and then the party the opportunity to determine affiliation in the second instance through certification, was constitutional.<sup>163</sup> The court reasoned that while “[t]he First Amendment generally protects the rights of political parties and the rights of citizens to participate in the electoral system,” the Affiliation Statute imposed, at most, “a minor impediment” on the would-be candidate’s associational rights with the party of his choice and did not preclude him wholesale from running in the election.<sup>164</sup> It also agreed that the State had important regulatory interests in protecting political parties’ associational rights that justified the minor restriction the Affiliation Statute imposes on candidates’ First Amendment rights.<sup>165</sup> The court’s analysis also served as its basis for rejecting the would-be candidate’s vagueness and overbreadth challenges.<sup>166</sup> And because it concluded that the Affiliation Statute merely regulates “election procedures,” and “does not substantively change the minimum qualifications for United States Senate,” the would-be candidate’s claim that the Statute violated the Seventeenth Amendment of the federal Constitution also failed.<sup>167</sup>

The court went on to reject the would-be candidate’s claim that the Affiliation Statute, as it was being applied to him, violated his right to equal privileges and immunities under Article 1, Section 23 of the Indiana Constitution.<sup>168</sup> For this challenge, the would-be candidate cited to earlier versions of the Statute, which provided other, less-restrictive methods for a candidate to satisfy the party-association requirements for candidacy, than the current statute provides.<sup>169</sup> The would-be candidate argued that he was being treated differently than two groups of would-be candidates: those candidates who were able to be on the ballot before the latest version of the Statute was enacted, and those “who have a more reasonable party chair [who] certifies based on party membership alone.”<sup>170</sup> The court found both proposed classifications invalid. It reasoned that the would-be candidate could not compare himself to candidates who proceeded under a different statute (*i.e.*, a prior version of the Affiliation Statute), and that the disposition of each party

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162. *Id.* at 1034–35 (quotations and emphasis omitted).

163. *Id.* at 1035–36.

164. *Id.* at 1038–40 (emphasis omitted).

165. *Id.* at 1041–48.

166. *Id.* at 1049–50.

167. *Id.* at 1050–52.

168. *Id.* at 1052–53.

169. *Id.*; *see also id.* at 1032 (discussing earlier version of IND. CODE § 3-8-2-7).

170. *Id.* at 1052 (citations and quotations omitted).



chair was not basis the Affiliation Statute drew for classification of would-be candidates; instead, the Statute itself treated all potential candidates the same.<sup>171</sup> Consequently, it held the would-be candidate had not stated a valid equal privileges and immunities claim.<sup>172</sup>

The court declined to rule on the would-be candidate's challenge that the Affiliation Statute improperly amends the eligibility requirements for election to the General Assembly set forth in Article 4, section 7 of the Indiana Constitution because it found he lacked standing.<sup>173</sup> And it rejected his argument that the Affiliation Statute gives county party chairs no discretion to decide whether to certify candidates, instead finding that the Statute's plain language gives county party chairs "broad discretion" in deciding whether to do so.<sup>174</sup>

Justice Molter concurred with Justice Massa's opinion; he also wrote a separate concurrence, and Justice Slaughter concurred with Justice Massa's opinion and joined Justice Molter's.<sup>175</sup> Justice Goff wrote a dissent, which Chief Justice Rush joined, expressing his view that the Affiliation Statute violated the would-be candidate's First Amendment right of association.<sup>176</sup>

## XII. ARTICLE 1, SECTION 24 – EX POST FACTO CLAUSE

In *Shibli v. State*, the Court of Appeals held that a person required by another State to register as a sex offender for a specific period—including for life—may be required to by Indiana law to register for life under a 2007 amendment to the Sex Offender Registration Act.<sup>177</sup> Although the defendant's conviction was in 1998, when Indiana required 10-year registration, Florida had at the time required him to register for life.<sup>178</sup> And under the Indiana Supreme Court's holding in *Ammons v. State*,<sup>179</sup> requiring Indiana residents to register that Indiana resident was already required to register under another State's laws did not constitute an *ex post facto* violation because such registration requirements were non-punitive.<sup>180</sup>

The Court of Appeals also noted that because the defendant had signed a Florida form acknowledging that if he gained employment in another state or became a resident of another state, including Indiana, he must register in that state, he had entered a contract "similar to a plea agreement" and was thus even less of a punishment since he was already contractually bound to register.<sup>181</sup>

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171. *Id.* at 1053.

172. *Id.*

173. *Id.* at 1053–54.

174. *Id.* at 1054.

175. *Id.* at 1055–66.

176. *Id.* at 1066–80.

177. 231 N.E.3d 280, 282 (Ind. Ct. App. 2024).

178. *Id.*

179. 50 N.E.3d 143 (Ind. 2016).

180. *Id.*

181. *Ammons*, 231 N.E.3d at 284.

## XIII. ARTICLE 3, SECTION 1 – STANDING

In *Individual Members of Medical Licensing Board of Indiana v. Anonymous Plaintiff 1*, the Indiana Court of Appeals considered the intersection of two Indiana statutes: Indiana’s abortion law, which criminalizes pregnant persons’ obtaining abortions in Indiana except in narrow circumstances, and Indiana’s Religious Freedom Restoration Act (“RFRA”), which permits the government to substantially burden an individual’s religious exercise, including through a law of general applicability, only where the action is the least restrictive means of furthering a compelling governmental interest.<sup>182</sup> The putative class action was brought by individuals who were not, but could become pregnant and an organization, on behalf of themselves and similarly situated individuals, against members of Indiana’s Medical Licensing Board and certain local Indiana county prosecutors.<sup>183</sup> In their pre-enforcement challenge, they alleged that Indiana’s abortion law violated their and the putative class members’ rights under RFRA because the law prohibited them from obtaining an abortion under circumstances in which their sincere religious beliefs would compel them to do so.<sup>184</sup> The plaintiffs preliminarily sought to enjoin the defendant officials from enforcing Indiana’s abortion law against them, the putative class members, and the organization’s members.<sup>185</sup> The trial court obliged, to an extent, and enjoined the defendant officials from enforcing Indiana’s abortion law against the plaintiffs during the pendency of their suit.<sup>186</sup> It also certified a class of “[a]ll persons in Indiana whose religious beliefs direct them to obtain abortions in situations prohibited by [Indiana’s Abortion Law] who need, or will need, to obtain an abortion and who are not, or will not be, able to obtain an abortion because of the [Law].”<sup>187</sup> The defendant officials appealed the trial court’s orders.<sup>188</sup>

The Indiana Court of Appeals affirmed the trial court’s orders, except that it directed the trial court to narrow its preliminary injunction.<sup>189</sup> It agreed with the trial court’s finding that the organization had associational standing to assert the claims on behalf of its members, recognizing the doctrine’s availability in Indiana.<sup>190</sup> It found that the organizations’ members would otherwise have standing, that the interests the organization was seeking to protect were germane to its purpose, and that “neither the claim asserted nor the relief requested require[d] the participation of [the organization’s] individual members in the lawsuit” because the members shared a “basic commonality of views” as to their

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182. 233 N.E.3d 416, 428–29 (Ind. Ct. App.), *trans. denied*, 246 N.E.3d 271 (Ind. 2024).

183. *Id.* at 427.

184. *Id.* at 427, 429.

185. *Id.* at 430.

186. *Id.* at 431.

187. *Id.*

188. *Id.* at 427.

189. *Id.* at 428.

190. *Id.* at 433.

religious beliefs, even if there was not complete uniformity of views or interests among the organization's members.<sup>191</sup>

The court next agreed that the plaintiffs' claims were ripe because the adduced evidence presented "a real or actual controversy, or the ripening seeds of a real controversy."<sup>192</sup> The court disagreed that the plaintiffs needed to be pregnant to present ripe claims because they had "presented evidence to support a substantial burdening of the exercise of their sincere religious beliefs in the form of altered sexual and reproductive patterns."<sup>193</sup> The court also agreed that it was sufficient for the plaintiffs to have established "impending" criminal violations and that they did not need to wait to be prosecuted before they could assert ripe claims.<sup>194</sup>

Because the core religious beliefs of the members of the putative class were "uniform" in the way in which they were alleged to conflict with Indiana's abortion law, the appellate court next found that the class was sufficiently definite.<sup>195</sup> It rejected the proposed class as a "fail-safe," agreeing that a member's membership in the class did not turn on whether they had a valid claim.<sup>196</sup> And it found that the putative class demonstrated sufficient commonality of alleged harm, the named plaintiffs would be adequate class representatives and were asserting claims typical of those of the putative class's members, the class was sufficiently numerous, and that the plaintiffs were requesting a single injunction for the entire class.<sup>197</sup> It thus upheld the trial court's certification of the putative class.<sup>198</sup>

It also found the trial court did not abuse its discretion in preliminarily enjoining the defendants from enforcing the abortion law as to them during the pendency of the lawsuit.<sup>199</sup> The court held that having an abortion as presented by the plaintiffs fell within the definition of plaintiffs' "exercise of religion" under RFRA.<sup>200</sup> It rejected the government officials' argument that abortion was not a religious exercise because it was not "a mandatory religious ritual," as well as their argument that pregnancy termination should be characterized as "an enhancement to [the] [p]laintiffs' physical, emotional, mental well-being, rather than a religious exercise."<sup>201</sup> Surveying Indiana law on abortions, the court concluded that the landscape shows "the State lacks a compelling interest in potential life from the moment an egg is fertilized."<sup>202</sup> And it found the abortion law is not the least restrictive means through which the State could achieve its

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191. *Id.* at 435–37.

192. *Id.* at 439 (quotations and citation omitted).

193. *Id.* at 440.

194. *Id.* at 441–42.

195. *Id.* at 443–44.

196. *Id.* at 444.

197. *Id.* at 444–47.

198. *Id.* at 459.

199. *Id.*

200. *Id.* at 449–51.

201. *Id.* at 449.

202. *Id.* at 452–54.

goals because, among other things, it permits abortions under certain narrow circumstances unrelated to religion but based on concerns of the same nature—to prioritize the mother’s health over potential life.<sup>203</sup> The court thus concluded the plaintiffs had shown a preliminary likelihood of success on the merits. It rejected application of the rule that irreparable harm should be presumed because of its conclusions regarding the plaintiffs’ likelihood of success that the abortion law violates RFRA because that conclusion was “vigorously contested.”<sup>204</sup>

The court nonetheless agreed that the plaintiffs proved the loss of their religious liberties guaranteed by RFRA would cause them irreparable harm and that loss of access to needed abortions itself also may constitute irreparable harm.<sup>205</sup> The court reasoned the balance of the harms favored the plaintiffs because they stood to lose concrete rights while the opposing harm was the “conditional” loss of a potential life through a pregnancy that “may eventually result in a live birth.”<sup>206</sup> Lastly, it upheld the trial court’s finding that the public interest favored the plaintiffs because “statutory violations are against public interest and may support issuance of an injunction,” and “injunctions protecting First Amendment freedoms are always in the public interest.”<sup>207</sup> Because it agreed that the injunction, as entered, could be read to more broadly restrict the official defendants’ right to enforce the abortion statute than was necessary to protect the plaintiffs’ religious rights, the Court of Appeals remanded the case to the trial court to narrow the injunction to track the scope of relief to which it agreed the plaintiffs were entitled.<sup>208</sup>

In *Ehrlich v. Moss Creek Solar, LLC*, rejected an argument by a county council and a proposed development company that remonstrators lacked standing to challenge the council’s resolution creating an Economic Revitalization Area and approving a tax abatement for the development company to develop a solar-power facility.<sup>209</sup> The council and development company acknowledged that the remonstrators had timely remonstrated in writing against the council’s passage of the resolution.<sup>210</sup> But they argued that the remonstrators were not “aggrieved” by the council’s decision, as necessary to establish standing.<sup>211</sup> Specifically, while the remonstrators asserted that the to-be-developed facility would decrease their property values, the council and the development company contended that any decrease in property values was a result of the local board’s authorizing the development of the facility, and was

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203. *Id.* at 454–55.

204. *Id.* at 457.

205. *Id.* at 457–58.

206. *Id.* at 459.

207. *Id.* at 458.

208. *Id.* at 459.

209. 219 N.E.3d 760 (Ind. Ct. App. 2023).

210. *Id.* at 763.

211. *Id.*

not a “direct” result of the council’s decision.<sup>212</sup> Because the council’s resolution was directed to only development of the facility, however, the Court of Appeals found that the resolution “was as necessary for the [f]acility as was any decision of the [local zoning board],” and thus found the remonstrators had standing to challenge the council’s decision.<sup>213</sup>

In *Red Lobster Restaurants LLC v. Fricke*, the Indiana Supreme Court held that a rule it previously had applied in Chapter 7 bankruptcies extended to Chapter 13 bankruptcies, too: “a plaintiff-debtor’s omission of a lawsuit from their bankruptcy asset schedule does not deprive them of standing to pursue that lawsuit, although the omission may mean they are not the real party in interest.”<sup>214</sup> The plaintiff-debtor had filed a Chapter 13 bankruptcy proceeding in federal court years prior and had not disclosed as an asset in that proceeding any potential legal claim against the defendant (Red Lobster), though she later amended her bankruptcy asset schedule to disclose the personal injury action after she had already initiated it.<sup>215</sup> The defendant in the personal injury lawsuit argued the plaintiff lacked standing to pursue her personal injury claim in her individual capacity because the claim belonged to her bankruptcy estate.<sup>216</sup> It further argued that she was not pursuing the claim on behalf of her bankruptcy estate because she had failed to timely disclose the claim in the bankruptcy proceeding.<sup>217</sup> The court explained that the defendant was confusing “the concepts of standing and real party in interest,” and that because the plaintiff had alleged “a demonstrable injury allegedly caused by” the defendant, the plaintiff had standing.<sup>218</sup> However, it agreed that the claim appeared to have belonged to the bankruptcy estate, such that the real party in interest was the one who would have been pursuing the claim on behalf of the estate—the bankruptcy trustee before the claim was disclosed, or the plaintiff, post-disclosure.<sup>219</sup>

#### XIV. ARTICLE 3, SECTION 1 – SEPARATION OF POWERS

In *Rokita v. Tully*, Barbara Tully sued Indiana Attorney General Rokita alleging that the Office of Attorney General violated the Indiana Access to Public Records Act (“APRA”) by declining to provide her with information relating to an informal advisory opinion issued by the Indiana Office of Inspector General (“OIG”).<sup>220</sup> The trial court granted Tully summary judgment

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212. *Id.* at 764.

213. *Id.*

214. 234 N.E.3d 159, 163 (Ind. 2024).

215. *Id.* at 163, 165.

216. *Id.* at 163, 167.

217. *Id.* at 168.

218. *Id.* at 168–69.

219. *Id.* at 169.

220. 235 N.E.3d 189 (Ind. Ct. App. 2024).

and Attorney General Rokita appealed.<sup>221</sup> While the appeal was pending, the Indiana General Assembly amended the statute relating to the Inspector General's duty and made that amendment retroactive.<sup>222</sup> The amendment made informal advisory opinions of the Inspector General confidential and excepted from disclosure under APRA.<sup>223</sup> The Court of Appeals considered whether the amended was unconstitutional under two provisions of the Indiana Constitution: Article 3, Section 1 (distribution of powers) and Article 4, Section 19 (single-subject requirement).<sup>224</sup>

First, the court found that the amendment did not violate Article 3, Section 1.<sup>225</sup> The Indiana Constitution commands that each branch of state government respect the constitutional boundaries of the coordinate branches.<sup>226</sup> Tully argued that the retroactive application of the General Assembly's amendment sets aside a final judgment of the court.<sup>227</sup> The court found that, once a decision reaches finality such that no further appeal may be taken, the legislature cannot declare retroactive legislation that the law applicable to that very case was something different than what the court said.<sup>228</sup> Here, the case had not reached finality, so no violation of separation of powers occurred.<sup>229</sup>

Second, the court found that the amendment did not violate Article 4, Section 19, which provides that an act should be confined to one subject.<sup>230</sup> The purpose of this provision is two-fold: (1) to prevent surprise or fraud in the Legislature by the title of a bill giving no information to a person who might be subject to the legislation under consideration; and (2) to prevent a combination of nonrelated subjects in the same act.<sup>231</sup> The test for determining if this provision is violated is liberal, and where there is a reasonable basis for grouping together various matters of the same nature, the act is valid.<sup>232</sup> Here, the title of the legislation passed by the General Assembly was "[a]n ACT to amend the Indiana Code concerning state and local administration and to make appropriation."<sup>233</sup> The court determined that the amendment to the Inspector General's duty to issue confidential informal advisory opinions had at least some rational connection to the general purpose of efficient state administration and appropriation.<sup>234</sup> The court determined that grouping the amendment with the

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221. *Id.* at 192.

222. *Id.*

223. *Id.*

224. *Id.* at 197.

225. *Id.* at 198.

226. *Id.*

227. *Id.* at 199.

228. *Id.*

229. *Id.* at 200.

230. *Id.* at 201.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

other provisions of the legislation seemed reasonable, as well, and, accordingly, found no violation of Article 4, Section 19.<sup>235</sup>

#### XV. ARTICLE 4, SECTION 1 – THE LEGISLATIVE POWER

In *Mellowitz v. Ball State University*, the Indiana Supreme Court considered the effect of statute the General Assembly passed after a former university student sought to pursue on behalf of himself and similarly situated students in connection with his university's response to the COVID-19 pandemic.<sup>236</sup> In the suit he initiated in spring of 2020, the student had alleged that the school breached a contract to him and others when it directed that they be taught virtually, rather than in-person, and that even if the school did not breach a contract, it was unjustly enriched by retaining the students' tuition and fees paid for services the school did not provide during the pandemic.<sup>237</sup> In April 2021, the State enacted a law, retroactive to March 1, 2020, before the student had filed suit, that prohibits class actions against certain entities, including the university, for claims including those the student had asserted.<sup>238</sup> In response to a request by the university, after intervention by the Indiana Attorney General, and over the student's objection, the trial court gave effect to the law by requiring the student to amend his complaint to remove any allegations related to a putative class and it denied class certification.<sup>239</sup> On interlocutory appeal, the Indiana Court of Appeals reversed that decision.<sup>240</sup> The Indiana Supreme Court then granted transfer.<sup>241</sup>

On transfer, the Supreme Court first rejected the student's argument that the statute violated the Indiana Constitution's separation of powers provisions.<sup>242</sup> While the judicial function the Indiana Constitution vests in the courts under Article 7, Section 1 includes the power to "promulgat[e] procedural rules for litigating disputes," the General Assembly is empowered to enact "substantive law[s]"—"laws which establish rights and responsibilities"—and those laws "supersede[d] our Trial Rules."<sup>243</sup> The legislature is thus empowered to "enact laws with procedural means to achieve substantive policy objectives beyond ordinary dispatch of judicial business," so long as that legislation "predominately furthers [] public policy objective[s]," and does not "usurp the judicial prerogative of managing the courts."<sup>244</sup> To decide whether a statute satisfies this test, courts look at its "predominant purpose": "[i]f the statute

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235. *Id.*

236. 221 N.E.3d 1214, 1218–19 (Ind. 2023), *reh'g denied* (Ind. Jan. 16, 2024).

237. *Id.*

238. *Id.* at 1219.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 1221.

243. *Id.* (citations and quotations omitted).

244. *Id.* at 1222–23.

predominantly furthers judicial administration objectives, the statute is procedural,” but if it “predominantly furthers public policy objectives involving matters other than the orderly dispatch of judicial business, it is substantive.”<sup>245</sup> The class-action statute the student was challenging, the court concluded, was a valid, substantive legislative enactment because the statute and the context in which it was enacted showed the legislature acted narrowly to “twea[k] a procedural rule to predominately further a public policy objective.”<sup>246</sup>

The court next dispatched with the student’s argument that the statute effected an unconstitutional taking under Article 1, Section 21 of the Indiana Constitution and the Fifth Amendment of the United States Constitution. It explained that a “class action” is a mechanism for pursuing a cause of action, it is not, in itself, a cause of action.<sup>247</sup> Consequently, the court held that the student had “no property right to maintain a class action,” and because the statute did not deprive him of his causes of action, his takings claim failed.<sup>248</sup>

The court also rejected the student’s claim that the statute unconstitutionally impaired his rights under his contract with the university, contrary to Article 1, Section 24 of the Indiana Constitution and Article I, Section 10 of the United States Constitution, for the same reason.<sup>249</sup> Namely, the statute did not preclude the student from pursuing his claims against the university; it merely prohibited him from pursuing them on behalf of other students.<sup>250</sup> And because the student had no contractual right to pursue his claims on behalf of others, he had not showed that the statute impaired any contract he had with the university.<sup>251</sup>

#### XVI. ARTICLE 10, SECTION 1 – PROPERTY ASSESSMENT AND TAXATION

In *Osborn v. Schultz*, Steven Osborn challenged the Indiana Board of Tax Review’s final determination affirming his 2020 and 2021 property tax assessments.<sup>252</sup> Osborn alleged that annual property tax assessments violate his natural and inalienable rights, as guaranteed by the U.S. Constitution.

Article 10, Section 1 of the Indiana Constitution states that “the General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.”<sup>253</sup> Subject to this restriction and the restriction in the U.S. Constitution, the General Assembly determined that all tangible property within the jurisdiction of the state is subject to

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245. *Id.* at 1224 (quoting *Church v. State*, 189 N.E.3d 580, 589–90 (Ind. 2022)).

246. *Id.* at 1225, 1227.

247. *Id.* at 1228.

248. *Id.* at 1229.

249. *Id.* at 1229–30.

250. *Id.*

251. *Id.* at 1230.

252. 238 N.E.3d 730 (Ind. T.C. 2024) (quoting IND. CONST. art. 10, § 1).

253. *Id.* at 733.



assessment and taxation on an annual basis.<sup>254</sup> Osborn alleged that Indiana's annual property tax levy is void ab initio.<sup>255</sup> Because Osborn failed to firmly link the facts of his case to his alleged infirmities,<sup>256</sup> Thus, his claim failed.

In *Sawlani v. Lake Cnty. Assessor*, a case of first impression, the Indiana tax court analyzed whether the Indiana Constitution permits a statutory provision that limits the one percent tax cap on tangible property, including curtilage, used as a principal place of residence by an owner of the property to the one-acre of land surrounding a home.<sup>257</sup>

Article 10, Section 1 of the Indiana Constitution limits a taxpayer's property tax liability to 1%, 2%, or 3%, depending on the type of property, of the property's gross assessed value.<sup>258</sup> These limitations, referred to as "tax caps," are implemented by statute.<sup>259</sup> The Indiana Constitution applies a 1% tax cap to all tangible property, including curtilage, used as a principal place of residence by an owner of the property.<sup>260</sup> In *Sawlani v. Lake Cnty.*, home owners challenged an Indiana statute, which described the property eligible for the one percent cap as "homestead" property which consists of a dwelling and the real estate, not exceeding one acre, that immediately surrounds the dwelling.<sup>261</sup> The court examined the text of Article 10, Section 1 and determined that there is no reference to "homestead" nor any express limitation on the size or acreage of the property entitled to the one percent limitation.<sup>262</sup> The court then considered the meanings of the words "tangible property," "principal place of residence," and "curtilage."<sup>263</sup> Finding that no party contended that "tangible property" or "principal place of residence" impose a size or acreage limitation, the court focused on the term "curtilage."<sup>264</sup> The court determined that no definition of "curtilage" identified by the court reference fixed size or acreage limitations as a factor.<sup>265</sup> Therefore, the court found that the statutory one-acre limitation was not consistent with the text of the Indiana Constitution.<sup>266</sup> Accordingly, the Sawlani' successfully demonstrated that the statutory one percent cap may be unconstitutional as applied to the, and the Indiana Board of Tax Review's contrary decision was reversed and remanded.<sup>267</sup>

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254. *Id.*

255. *Id.*

256. *Id.*

257. 240 N.E.3d 734, 735–36 (Ind. T.C. 2024).

258. *Id.*

259. *Id.* at 736.

260. *Id.*

261. *Id.*

262. *Id.* at 743.

263. *Id.* at 744.

264. *Id.*

265. *Id.* at 745.

266. *Id.*

267. *Id.* at 752.