

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRIAN VALENTI, on his own behalf and)
on behalf of a class of those similarly)
situated,)

Plaintiffs,)

v.)

No. 1:15-cv-1304

INDIANA SECRETARY OF STATE, in her)
official capacity; THE INDIVIDUAL MEMBERS)
of the INDIANA ELECTION COMMISSION,)
in their official capacities; THE)
SUPERINTENDENT of the INDIANA STATE)
POLICE, in his official capacity; THE)
BLACKFORD COUNTY PROSECUTOR, in his)
official capacity,)

Defendants.)

COMPLAINT—CLASS ACTION

Class Action Complaint for Injunctive and Declaratory Relief

Introduction

1. Indiana Code § 35-42-4-14 (effective July 1, 2015) provides that certain sex offenders, defined by the statute as “serious sex offenders,” are prohibited from entering school property. One of the consequences of this is that these persons will be prohibited from voting at their designated precinct polling place if it is located on school property. Although Indiana Code § 3-11-10-24 allows such persons to vote absentee by mail, the procedure for voting absentee is complex, prone to error and fraud, and to many, it is an inferior means of exercising their fundamental right to vote. Brian Valenti is a resident of Blackford County who committed a qualifying sex offense in California more than a quarter of a century ago. He is registered and would like to vote. The polling place in his

precinct, however, is located on school property. Because Mr. Valenti is subject to Indiana Code § 35-42-4-14, he is unable to vote in person at his precinct polling place. Indiana Code § 35-42-4-14 is unconstitutional and on his own behalf, and on behalf of those similarly situated, he brings this action for declaratory and injunctive relief.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States

Parties

6. The Indiana Secretary of State is Indiana's chief election official, Indiana Code § 3-6-3.7-1, and is sued in her official capacity. Among other things, the Indiana Secretary of State is required to "perform all ministerial duties related to the administration of elections by the state." Ind. Code § 3-6-4.2-2. The Office of the Secretary of State contains the Indiana Election Division, which is statutorily obligated to "instruct" county election boards "as to their duties" under state and federal law. *Id.* § 3-6-4.2-14(a).
7. The Indiana Election Commission is a bipartisan commission consisting of four members appointed by the Governor. *Id.* § 3-6-4.1-2. The Commission is required to "[a]dminister Indiana election laws" and is to "[a]dvise and exercise supervision over local election and registration officers." *Id.* § 3-6-4.1-14(a)(1), (3).

8. The Superintendent of the Indiana State Police is the duly appointed “executive officer” of the Indiana State Police and “has general charge of the work of the department.” *Id.* § 10-11-2-6(c). Indiana State Police officers have, “in any part of Indiana, the same powers concerning criminal matters and the enforcement of related laws as sheriffs, constables, and police officers have in their respective jurisdictions” and “[p]olice employees have the power to arrest, without warrant, a person who is committing or attempting to commit in their presence or view a violation of the laws of the state.” *Id.* § 10-11-2-21(c)(1), (f).
9. The Blackford County Prosecutor is the duly elected prosecutor of Blackford County. He is required to “conduct all prosecutions for felonies, misdemeanors, or infractions” in Blackford County. *Id.* § 33-39-1-5.
10. Brian Valenti is an adult resident of Blackford County, Indiana.

Class action allegations

11. This action is brought by Brian Valenti on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.
12. Class claims are brought against the Indiana Secretary of State, the individual members of the Indiana Election Commission, and the Superintendent of the Indiana State Police (collectively, “State Defendants”).
13. The class is defined as:

All “serious sex offenders,” as that term is defined by Indiana Code § 35-42-4-14(a), who are, or will be, eligible to vote, and currently, or will in the future, live in a voting precinct where the polling place is located on school property.

14. As defined, the class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. The class is so numerous that joinder of all members is impracticable. The exact size is unknown at the current time but is believed to be large. For example, for the two most populous counties in Indiana, 203 of Marion County's 600 voting precincts (34%) are located on school property and 124 of Lake County's 517 voting precincts (24%) are located on school property. *See* Marion County Elections Board, *2015 Municipal Primary Polling Location List* (available at: <http://www.indy.gov/eGov/county/clerk/election/pages/home.aspx>) (last visited: Aug. 7, 2015); Lake County Board of Elections and Voter's Registration, *2014 General Polling Locations* (available at: https://www.lakecountyin.org/portal/media-type/html/group/voters/page/default.psml/js_pane/P-13b9cba7c46-107e7;jsessionid=0BE9E7FDA4BA5344341D4AAD4C68F01E) (last visited: Aug. 7, 2015). There are currently 2,197 people registered in the sex and violent offender registry in Marion County and 567 registered in Lake County. Upon information and belief, a majority of them would be classified as "serious sex offenders" and would be subject to Indiana Code § 35-42-4-14. Therefore, the number of class members in Marion and Lake Counties alone are likely to be in the hundreds.
- b. There are questions of law or fact common to the class – namely whether Indiana Code § 35-42-4-14 violates the United States Constitution as applied to the plaintiff and the putative plaintiff class.
- c. The claims of the named plaintiff are typical of those in the class.
- d. Brian Valenti will fairly and adequately represent the interests of the class.

15. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met here in that the State Defendants have at all times acted or refused to act on grounds that generally apply to the class, thereby making final injunctive relief and corresponding declaratory relief appropriate for the class as a whole.
16. Additionally, plaintiffs' counsel should be appointed as counsel for the class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

Facts

17. Indiana Code § 35-42-4-14 provides:

(a) As used in this section, "serious sex offender" means a person required to register as a sex offender under IC 11-8-8 who is:

(1) found to be a sexually violent predator under IC 35-38-1-7.5; or

(2) convicted of one (1) or more of the following offenses:

(A) Child molesting (IC 35-42-4-3).

(B) Child exploitation (IC 35-42-4-4(b)).

(C) Possession of child pornography (IC 35-42-4-4(c)).

(D) Vicarious sexual gratification (IC 35-42-4-5(a) and IC 35-42-4-5(b)).

(E) Performing sexual conduct in the presence of a minor (IC 35-42-4-5(c)).

(F) Child solicitation (IC 35-42-4-6).

(G) Child seduction (IC 35-42-4-7).

(H) Sexual misconduct with a minor (IC 35-42-4-9).

(I) A conspiracy or an attempt to commit an offense described in clauses (A) through (H).

(J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (I).”

(b) A serious sex offender who knowingly or intentionally enters school property commits unlawful entry by a serious sex offender, a Level 6 felony.

18. A level six felony, as defined by Indiana Code § 35-50-2-7, carries with it a fixed term between six months and two and one half years in prison and a fine of up to \$10,000.

19. Indiana Code § 3-11-10-24(a)(12) provides in part:

(a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

* * * *

(12) The voter is a serious sex offender (as defined in IC 35-42-4-14(a)).

20. In 1988, Brian Valenti, then living in California, committed, and in 1993 he was convicted of, the California offense of “Lewd or Lascivious Acts with Child Under 14 Years.” Cal. Penal Code § 288.

21. He has not been convicted of any other sex offenses against children either before or after that time.

22. In 2014, he moved to Blackford County. He has family who lives there.

23. Because Mr. Valenti has been required to register as a sex offender in Indiana, he is subject to Indiana Code § 35-42-4-14(b)’s prohibition on entering school property.

24. Mr. Valenti is registered to vote and intends to vote in future elections, including the upcoming municipal election on November 3, 2015. The polling place for Mr. Valenti’s voting precinct, however, is located on school property.

25. Because he cannot enter school property without violating Indiana Code § 35-42-4-14(b), Mr. Valenti cannot vote with his community at the designated polling place for his precinct.
26. Voting absentee by mail, the alternative method of voting provided by Indiana Code § 3-11-10-24(a), is onerous, introducing several additional procedures and risks that a voter does not face when voting in person. First, an absentee voter must submit an absentee ballot application. Ind. Code § 3-11-4-2(a). The application must be received by the county election board before midnight on the eighth day before election day if the application is mailed. *Id.* § 3-11-4-3.
27. If the absentee ballot application is received prior to the deadline, the county election board will mail an absentee ballot to the address stated in the application. *Id.* § 3-11-4-18. The county election board may, however, send the ballot with a request for additional documentation if, for example, the absentee voter has not previously voted in Indiana. *See id.* § 3-7-33-4.5.
28. The absentee voter may then send an absentee ballot to the county election board, but it must be *received* “in time for the board to deliver the ballot to the precinct election board of the voter’s precinct before the closing of the polls on election day.” *Id.* § 3-11-10-3. In the 2015 municipal primary in Marion County, for example, the election board had to receive absentee ballots by noon on Election Day. *Absentee Voting By Mail*, The Official Website of City of Indianapolis and Marion County (available at: http://www.indy.gov/eGov/County/Clerk/Election/Voter_Info/beforeed/Pages/Mail.aspx) (last visited Aug. 5, 2015).

29. Because of the strict deadlines for absentee ballots, there is a strong incentive to cast an absentee ballot early. But by voting early, absentee voters are deprived of any information pertinent to their vote that surfaces in the late stages of the election campaign, which could affect how they vote.
30. Candidates, particularly those in local elections, and their campaign workers are permitted to, and often do, campaign immediately outside of polling places. Absentee voters do not have the benefit of meeting candidates outside of polling places or receiving additional information or literature from electioneers that might influence how they vote.
31. If the absentee voter mails in a ballot early, the voter also runs the risk that the ballot will change before Election Day, for example, in the event that a candidate drops out of an election or if a candidate is succeeded by a new candidate. *See* Ind. Code § 3-11-10-1.5. In order to cast a new ballot, the absentee voter would have to submit a written request to the circuit court clerk and wait for new ballot. *Id.* The voter's request, however, will only be accepted if "the original absentee ballot has not been delivered to the appropriate precinct" and "the absentee voter's name has not been marked on the poll list." *Id.* § 3-11-10-1.5(b).
32. Mailing in an absentee ballot close to the deadline, on the other hand, runs the risk that the ballot will be delayed by the mail carrier or lost altogether, with no time left for the voter to obtain a replacement ballot.
33. Voting absentee by mail is also inferior to voting in person because voting absentee by mail is subject to a greater risk that the ballot will be rejected, even if the county election board receives the ballot by the deadline. There are numerous reasons why an absentee ballot will be rejected—hurdles not faced by in-person voters. Grounds include:

- The absentee ballot affidavit is insufficient or it has not been endorsed by two officials from either the circuit court clerk's office or the county election board.
- The signature on the affidavit does not correspond to the voter's signature furnished to the precinct election board, or there is no signature.
- The completed absentee ballot was sent to the wrong precinct.
- The absentee ballot envelope is open or was opened and resealed.
- The ballot is challenged and the absentee ballot application cannot be found.

See id. § 3-11-10-17.

34. Unlike in-person voters, absentee voters are unable to get assistance from the election workers who are present at polling centers if they have a question or a problem with the ballot.
35. If an absentee voter receives a defective ballot, makes a mistake, damages the ballot, or loses it, the voter must make a written request for another ballot from the circuit court clerk and wait for a new one to arrive before starting the process over again. *See id.* § 3-11-10-1.5.
36. Because absentee ballots are subject to additional procedures, have more grounds for being rejected, and must pass through more hands over a greater period of time before being counted at the precinct, they are subject to a greater risk of fraud by election workers than in-person ballots.

37. To Mr. Valenti, absentee voting by mail is an inferior process to in-person voting. First, in addition to registering to vote, Mr. Valenti will need to complete the application for an absentee ballot and ensure that he mails the ballot in to the Blackford County election board more than eight days prior to the election.
38. Second, Mr. Valenti fears that even if he meets the requisite deadlines for submitting an application for an absentee ballot and submitting an absentee ballot, the ballot will be rejected if he makes a mistake on the ballot or affidavit envelope. If he were to vote in person, an election judge could assist him with any questions he might have and furnish him with a new ballot if he makes a mistake.
39. Third, Mr. Valenti believes that there is a greater risk that his absentee ballot will not be counted due to inadvertent error or fraud on the part of election workers.
40. Fourth, Mr. Valenti benefits from receiving information about the candidates and issues on the ballot up until he votes. For example, Mr. Valenti would like to talk to people, including electioneers and candidates, outside of polling places.
41. Finally, the in-person act of voting is something that Mr. Valenti feels is valuable in and of itself. He views voting in person on Election Day as a celebration of his right to vote and is something that should be shared publicly with his community. Voting absentee by mail is a poor substitute.
42. Indiana Code § 3-11-8-15 burdens Mr. Valenti's right to vote.
43. There is no legitimate reason that Mr. Valenti's right to vote should be burdened by prohibiting him from voting in person. School children are not allowed in polling places located on school property unless they are accompanying adult voters, which is true regardless of where a polling place is located. *See id.* § 3-11-8-15(a).

- 44. Members of the putative class are similarly unreasonably burdened by Indiana Code § 35-42-4-14, which prohibits them from voting in person in their voting precinct.
- 45. At all times defendants have acted under color of state law.
- 46. Mr. Valenti and the putative class are being caused irreparable harm for which there is no adequate remedy at law.

Legal claims

- 47. Indiana Code § 35-42-4-14 unjustifiably burdens plaintiffs' right to vote without justification, in violation of the First and Fourteenth Amendments to the United States Constitution.

Requests for relief

WHEREFORE, plaintiffs request that this Court

- 1. Accept jurisdiction and schedule this case for a hearing.
- 2. Certify this case as a class action with a plaintiff class as defined above.
- 3. Declare that Indiana Code § 35-42-4-14, as applied to the plaintiffs, is both unlawful and unconstitutional for the reasons noted above.
- 4. Enter a preliminary injunction, later to be made permanent, enjoining Indiana Code § 35-42-4-14 to the extent that it bars the plaintiff and class from voting in person at their precinct polling places.
- 5. Enter a preliminary injunction, later to be made permanent, enjoining the Secretary of State and the individual members of the Indiana Election Commission to advise local election authorities that Indiana Code § 35-42-4-14 will not be enforced at polling places during an election and that Indiana Code §

35-42-4-14 should not be used as grounds to impede in any way a person's right to vote.

6. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
7. Award all other proper relief.

/s/ Kenneth J. Falk

Kenneth J. Falk
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317.635.4059, x104
<kfalk@aclu-in.org>

/s/ Jan P. Mensz

Jan P. Mensz
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317.635.4059, x107
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Attorneys for the plaintiff

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):**First Listed Plaintiff:**

Brian Valenti ;

County of Residence: Blackford County**Defendant(s):****First Listed Defendant:**

Indiana Secretary of State ;

County of Residence: Marion County**Additional Defendants(s):**

The Individual Members of the Indiana Election Commission ;

The Superintendent of the Indiana State Police ;

The Blackford County Prosecutor ;

County Where Claim For Relief Arose: Marion County**Plaintiff's Attorney(s):**

Jan P. Mensz (Brian Valenti)

ACLU of Indiana

1031 E. Washington St.

Indianapolis, Indiana 46202

Phone: (317) 636-4059 ext. 107**Fax:** (317) 635-4105**Email:** jmensz@aclu-in.org**Defendant's Attorney(s):****Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 441 Voting Rights**Cause of Action:** 42 U.S.C. 1983**Requested in Complaint****Class Action:** Class Action Under FRCP23**Monetary Demand (in Thousands):**

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Jan P. Mensz

Date: 08/17/2015

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

United States District Court

for the
Southern District of Indiana

BRIAN VALENTI, *et al.*

Plaintiffs,

vs.

INDIANA SECRETARY OF STATE, *et al.*

Defendants.

Cause No: 1:15-cv-1304

SUMMONS IN A CIVIL ACTION

TO:

Indiana Secretary of State
201 State House
200 W. Washington St.
Indianapolis, IN 46204

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Jan P. Mensz
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action Number:

PROOF OF SERVICE

(this section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's Signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.

United States District Court

for the
Southern District of Indiana

BRIAN VALENTI, *et al.*

Plaintiffs,

vs.

INDIANA SECRETARY OF STATE, *et al.*

Defendants.

Cause No: 1:15-cv-1304

SUMMONS IN A CIVIL ACTION

TO:

The Individual Members of the Indiana Election Commission
c/o Office of the Secretary of State
201 State House
200 W. Washington St.
Indianapolis, IN 46204

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Jan P. Mensz
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Summons (Page 2)

Civil Action Number:

PROOF OF SERVICE

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was received by me on *(date)*_____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

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Printed name and title

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United States District Court

for the
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BRIAN VALENTI, *et al.*

Plaintiffs,

vs.

INDIANA SECRETARY OF STATE, *et al.*

Defendants.

Cause No: 1:15-cv-1304

SUMMONS IN A CIVIL ACTION

TO:

Superintendent
Indiana State Police
Indiana Government Center - North
100 N. Senate Ave.
Indianapolis, IN 46204

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Jan P. Mensz
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

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Signature of Clerk or Deputy Clerk

Civil Summons (Page 2)

Civil Action Number:

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Printed name and title

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United States District Court

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BRIAN VALENTI, *et al.*

Plaintiffs,

vs.

INDIANA SECRETARY OF STATE, *et al.*

Defendants.

Cause No: 1:15-cv-1304

SUMMONS IN A CIVIL ACTION

TO:

The Blackford County Prosecutor
111 N. High St.
Hartford City, IN 47348

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Jan P. Mensz
ACLU of Indiana
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Signature of Clerk or Deputy Clerk

Civil Action Number:

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☐ Other *(specify)*:

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Printed name and title

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