

LEGISLATIVE LEEWAY: A YEAR OF INDIANA CONSTITUTIONAL LAW RESTRAINT—2022-2023

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INTRODUCTION*****

The decisions from Indiana's appellate courts addressing Indiana's constitution presented significant decisions, primarily in an abortion case, which will have long-term implications on individual rights. Although the Indiana Supreme Court found that the Indiana Constitution contains a judicially enforceable right to life, liberty, and the pursuit of happiness, that right does not sustain a facial challenge to legislation that bars abortion except in three narrow circumstances. The appellate courts also addressed separation of powers by means of finding cases moot for lack of injury and gave the Indiana General Assembly significant discretion in managing elections and using its police power. Decisions stemming from the COVID-19 pandemic continue to play a significant role in constitutional doctrine in cases addressing criminal defendants' speedy trial rights and the right to confront witnesses.

During the survey period (September 2022 to September 2023), Indiana appellate courts substantively addressed twelve areas of Indiana Constitutional law.¹ The Court of Appeals consistently found as reasonable under Article 1,

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1. The courts addressed eighteen topics in 2013, Jon Laramore & Daniel E. Pulliam, *Indiana Constitutional Developments: Small Steps*, 47 IND. L. REV. 1015, 1042 (2014); ten in 2014, Jon Laramore & Daniel E. Pulliam, *Developments in Indiana Constitutional Law: A New Equal Privileges Wrinkle*, 48 IND. L. REV. 1223, 1240 (2015); fourteen in 2015, Scott Chinn & Daniel

Section 11 searches stemming from law enforcement vehicle stops, with some questions raised regarding the continued applicability of the *Litchfield* factors.² The Court of Appeals found that a state law requiring school corporations to sell or lease unused properties for \$1 to charter schools did not constitute a taking and that Indiana law continues not to recognize loss of business damages in eminent domain actions.³ Finally, the Court of Appeals upheld a county's closed primary system that required a voter to affiliate with a political party in primary elections for local judges.⁴

I. ARTICLE 1, SECTION 1 – LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS

In *Members of the Medical Licensing Board of Indiana v. Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky, Inc.*, the Indiana Supreme Court considered whether, on its face, Senate Bill 1 enacted in 2023, materially burdens a fundamental right to abortion the plaintiffs contended individuals have under Indiana Constitution Article 1, Section 1.⁵ The law broadly prohibited abortion except “(1) when an abortion is necessary either to save a woman’s life or to prevent a serious health risk; (2) when there is a lethal fetal anomaly; or (3) when pregnancy results from rape or incest.”⁶ The trial court had enjoined enforcement of the law, finding a high probability that the plaintiffs would prevail on their claims.⁷ The Indiana Supreme Court

E. Pulliam, *Minimalist Developments in Indiana Constitutional Law—Equal Privileges Progresses Slowly*, 49 IND. L. REV. 1003, 1019 (2016); twelve in 2016, Scott Chinn & Daniel E. Pulliam, *Emerging Federal Reliance—Continued State Constitutional Minimalism: Indiana State Constitutional Law Summaries—2015-2016*, 50 IND. L. REV. 1215, 1238 (2017); ten in 2017, Scott Chinn & Daniel E. Pulliam, *Emerging Federal Reliance—Continued State Constitutional Minimalism: Indiana State Constitutional Law Summaries—2016-2017*, 51 IND. L. REV. 993, 1012 (2018); thirteen in 2018, 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, 711 (2019); fifteen in 2019, Scott Chinn, Daniel E. Pulliam & Elizabeth M. Little, *Continued Progressions Toward Irrelevance? Indiana State Constitutional Law Summaries—2018-2019*, 53 IND. L. REV. 865, 893 (2021); twelve in 2020, 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, 847 (2022); fourteen in 2021, Scott Chinn, Daniel E. Pulliam, Stephanie L. Gutwein & Elizabeth M. Little, *Stasis: Premature to Declare the End of Indiana Constitutional Law 2020-2021*, 55 IND. L. REV. 519, 540 (2022); and twelve in 2022, Scott Chinn, Daniel E. Pulliam, Stephanie L. Gutwein & Elizabeth M. Little, *Separation of Powers: Indiana Constitutional Law To The Forefront 2021-2022*, 56 IND. L. REV. 713, 735 (2023).

2. *See infra* Part III.

3. *See infra* Part VIII.

4. *See infra* Part IX.

5. *Members of the Med. Licensing Bd. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957 (Ind.), *reh'g denied*, 214 N.E.3d 348 (Ind. 2023).

6. *Id.* at 961.

7. *Id.* at 964.

reversed.⁸

The Court first agreed that the plaintiffs, almost all of which provided abortions in Indiana, had standing to challenge the law because they faced the threat of criminal prosecution and regulatory enforcement if they continued to perform those services contrary to the limitations in Senate Bill 1.⁹ The Court therefore found that the plaintiffs satisfied the standing inquiry's injury-in-fact requirement.¹⁰

The Court then concluded that Article 1, Section 1 of the Indiana Constitution is judicially enforceable.¹¹ Examining the provision's history, structure, and purpose, as well as precedent interpreting and applying it, the Court reasoned that Article 1, Section 1 is intended to preserve the compromise between the State, to which the citizens delegated the powers necessary to form a civil society, and its citizens, who retain all of their natural rights not delegated.¹² To effectuate this purpose, the Court recognized that Article 1, Section 1 guarantees Indiana citizens fundamental rights, including "unenumerated rights under the umbrella of 'life, liberty, and the pursuit of happiness'" that the founders would have considered to be "natural" or "fundamental," the contours of which it advised are to be defined through individual cases.¹³ The Court's recognition of judicially enforceable rights under Article I, Section 1 constituted a rejection of the State's oft-stated assertions to the contrary and that older cases finding enforceable rights had effectively been overruled.¹⁴ The Court advised that Article 1, Section 1 "limits governmental authority to the police power," which is the power generally vested in the Indiana General Assembly "to advance 'peace, safety, and wellbeing.'"¹⁵

The Court then explained that Senate Bill 1 would be a constitutional exercise of this police power that does not contravene Article 1, Section 1 so long as it was not "'arbitrary, unreasonable or patently beyond the necessities of the case'"—in other words, so long as it was "rationally related to protecting the public's peace, safety, and well-being."¹⁶ Because the plaintiffs argued that Senate Bill 1 should be enjoined because it was facially unconstitutional, the Court reiterated that they had to demonstrate a reasonable likelihood they could prove "there are no circumstances in which Senate Bill 1 could ever be enforced consistent with Article 1, Section 1."¹⁷ Ultimately, the Court held, they could

8. *Id.* at 985.

9. *Id.* at 966.

10. *Id.*

11. *Id.* at 966.

12. *Id.* at 967-68.

13. *Id.* at 968-69.

14. *See, e.g.,* Solomon v. State, 119 N.E.3d 173, 176 (Ind. Ct. App.), *trans. denied*, 127 N.E.3d 225 (Ind. 2019); *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d at 966.

15. *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d at 969 (quoting *Whittington v. State*, 669 N.E.2d 1363, 1369 n.6 (Ind. 1996)).

16. *Id.* at 969-70 (quoting *Dep't of Fin. Inst. v. Holt*, 108 N.E.2d 629, 634 (Ind. 1952)).

17. *Id.* at 975.

not.¹⁸

The Court recognized that Article 1, Section 1 protects a right to “life,” which it confirmed includes the right to protect one’s life from “imminent death” and “great bodily harm.”¹⁹ It thus confirmed that “the General Assembly cannot prohibit an abortion procedure that is necessary to protect a woman’s life or to protect her from a serious health risk.”²⁰ But this narrow set of circumstances in which Senate Bill 1 might offend Article 1, Section 1 was not enough to warrant the injunction the plaintiffs were seeking because the Court found that there are, in fact, circumstances under which Senate Bill 1 can constitutionally be enforced.²¹ In particular, the Court held that Article 1, Section 1 does not enshrine a fundamental right to abortion in all circumstances, and that the General Assembly retains discretion to balance women’s interest in bodily autonomy and privacy with the State’s interest in protecting prenatal life and to limit access to abortion.²² The Court recognized, however, that while this conclusion meant the plaintiffs’ request to enjoin enforcement of Senate Bill 1 in its entirety would not succeed in this action, parties still could challenge in future actions that particular aspects of Senate Bill 1 were unconstitutional or that it was applied unconstitutionally.²³

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

In *Ellis v. State*,²⁴ the Court of Appeals affirmed a conviction for stalking and rejected the defendant’s claim that her conduct was protected as free speech under Article 1, Section 9 of the Indiana Constitution. The Court employed a two-step inquiry to determine whether the conviction unconstitutionally restricted free speech under *Whittington v. State*.²⁵

First, the court looked at whether the charges and conviction restricted the defendant’s expressive activity.²⁶ Here, the defendant had a long-standing anger at the target of her expression arising out of the defendant’s 2008 arrest and a 1990s-era complaint related to a dirty towel at a tanning salon.²⁷ Yet the basis of the defendant’s charge had nothing to do with those claims.²⁸ The evidence at trial showed she directed profanity at the target, expressed a desire to see him battered, and used her fingers to mimic shooting him.²⁹ Although complaints

18. *Id.* at 976.

19. *Id.*

20. *Id.*

21. *Id.* at 976-77.

22. *Id.* at 980.

23. *Id.* at 984.

24. *Ellis v. State*, 194 N.E.3d 1205 (Ind. Ct. App.), *trans. denied*, 199 N.E.3d 787 (Ind. 2022).

25. *Id.* at 1217; *see Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 1996).

26. *Ellis*, 194 N.E.3d at 1217.

27. *Id.* at 1212.

28. *Id.* at 1218.

29. *Id.*

related to an arrest and a tanning salon could be protected political expression, the speech underlying the defendant's conviction was not "unambiguously political" and posed a threat to the target's safety.³⁰

Under the second step, the Court of Appeals found that even if the speech was purely political, the Indiana Constitution wouldn't protect it because the speech inflicted detriment upon the target analogous to what would sustain a tort against the speaker—a key touchstone under the heightened "material burden" standard applicable to political speech claims in Indiana.³¹ Under an intentional infliction of emotional distress analysis, the defendant's conduct satisfied all four elements: (1) it went beyond all bounds of decency in being extreme and outrageous; (2) she tracked the target down on an almost daily basis over a decade; and, (3) such conduct caused the target severe emotional distress.³²

III. ARTICLE 1, SECTION 11—SEARCH AND SEIZURE

In *Deaton v. State*, the Court of Appeals found that an inventory search of a vehicle pulled over for operating with a fake license plate was reasonable under the *Litchfield* factors.³³ As part of the inventory search, the officer found a bag with a large amount of crystal methamphetamine, prescription pills, and cocaine in a hidden compartment in a WD-40 can.³⁴

Here, there was no degree of suspicion required—it was an inventory search after the officer pulled the defendant over for driving with a fake license plate.³⁵ The Court even questioned whether *Litchfield* applied as the Indiana Supreme Court had decided inventory search cases without reference to *Litchfield*.³⁶ Nevertheless, the stop was perfectly reasonable given that the license plate did not match the car and the degree of the intrusion matched department policy while the defendant remained at all times free to leave, i.e., walk away because he couldn't drive his car with a fake license plate.³⁷

In *Chauncy v. State*, the Court of Appeals affirmed a finding of reasonable suspicion under Article 1, Section 11 of the Indiana Constitution where the officer stopped a vehicle for failing to signal 200 feet before turning.³⁸ The Court further found no constitutional violation after the officer took seventeen minutes

30. *Id.*

31. *Id.*; see *Price v. State*, 622 N.E.2d 954, 964 (Ind. 1993) ("We thus conclude that treating as abuse political speech which does not harm any particular individual ('public nuisance') does amount to a material burden, but that sanctioning expression which inflicts upon determinable parties harm of a gravity analogous to that required under tort law does not.")

32. *Ellis*, 194 N.E.3d at 1218.

33. *Deaton v. State*, 203 N.E.3d 1107, 1116 (Ind. Ct. App.), *trans. denied*, 209 N.E.3d 1178 (Ind. 2023).

34. *Id.* at 1111.

35. *Id.* at 1116.

36. *Id.*

37. *Id.*

38. *Chauncy v. State*, 204 N.E.3d 311, 319 (Ind. Ct. App. 2023).

and forty-five seconds to print a written warning for the violation, which allowed a police dog to come to the scene and alert to the presence of illicit drugs in the car.³⁹ The officer testified that his computer was “spinning” in his attempts to print the warning ticket.⁴⁰ The Court of Appeals both affirmed the finding of the officer’s credibility and distinguished the time for the dog sniff from the time to print the written warning.⁴¹ The dog sniff did not prolong the stop, which meant that the stop did not become an investigative detention that would require more than reasonable suspicion.⁴²

Similarly, in *Lehman v. State*, the Court of Appeals affirmed a traffic stop based on an officer’s observation of a motorcycle’s purple lights visible only from directly in front.⁴³ These purple lights established a traffic violation and justified a stop that resulted in a misdemeanor conviction for operating a vehicle while intoxicated.⁴⁴

In *Isley v. State*, the Court of Appeals affirmed as reasonable under the *Litchfield* factors an apparently consensual blood draw of a hospital patient who had collided head-on with another vehicle killing that other driver.⁴⁵ Law enforcement noticed the patient smelled of alcohol and slurred her speech and admitted to drinking around five beers that night and one in the 30 minutes before the crash.⁴⁶ During the patient’s initial examination, the officer obtained the patient’s signed consent to release her medical records to “these guys” without explaining that “these guys” meant the local prosecutor’s office.⁴⁷ Then the nurse incorrectly stated that the consent was to perform a blood draw and then obtained the patient’s oral consent to perform a blood draw.⁴⁸ Her blood draw showed a blood alcohol content of 0.144%.⁴⁹

The Court analyzed the question of reasonableness under Article 1, Section 11 using the *Litchfield* factors and readily found that law enforcement had a high degree of suspicion that she had been driving under the influence based on her statements to law enforcement, the smell of alcohol, and her slurred speech.⁵⁰ The intrusiveness of the blood draw was considered low because of the overall circumstances where she was in the hospital already receiving treatment for her other injuries and she validly consented to the blood draw.⁵¹ Finally, law

39. *Id.*

40. *Id.* at 314.

41. *Id.* at 319.

42. *Id.*

43. *Lehman v. State*, 203 N.E.3d 1097, 1106 (Ind. Ct. App.), *trans. denied*, 208 N.E.3d 1252 (Ind. 2023).

44. *Id.*

45. *Isley v. State*, 202 N.E.3d 1124, 1133 (Ind. Ct. App.), *trans. denied*, 209 N.E.3d 1177 (Ind. 2023).

46. *Id.* at 1128.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 1131.

51. *Id.* at 1132.

enforcement needs were deemed strong given the need to prevent crashes involving alcohol-impaired drivers.⁵²

Judge May concurred in the result but did not agree that the *Litchfield* factors should apply to a knowing and voluntary consent of the blood draw.⁵³

In *Parker v. State*, the Court of Appeals found a stop of the defendant's car reasonable under the *Litchfield* factors.⁵⁴ First, the vehicle matched the description of a suspected vehicle near a reported home invasion.⁵⁵ The driver was also evasive when the officer drove by in an attempt to identify the driver.⁵⁶ The degree of intrusion was "not insignificant" in that the officers ordered him out of the vehicle with guns drawn, but the police did not unreasonably delay the stop because they quickly found a handgun on the defendant resulting in his arrest.⁵⁷ Finally, law enforcement needs were high—police were investigating a violent home invasion conducted with a knife and handgun.⁵⁸ Ultimately though, this defendant was cleared of any involvement in the underlying home invasion.⁵⁹ Yet not "all details" must be investigated before the police stop "a possible getaway car."⁶⁰

In *Cinamon v. State*, the Court of Appeals reversed the denial of a motion to suppress evidence found in the defendant's purse.⁶¹ Law enforcement entered a home with an arrest warrant for someone other than its owner, and the defendant was one of the individuals inside.⁶² The arrest was immediately effectuated, law enforcement lacked any suspicion that the defendant's purse contained contraband or that the defendant committed a crime.⁶³ Thus, under *Litchfield*, law enforcement had no degree of concern, suspicion, or knowledge of a criminal violation as to this defendant.⁶⁴ The degree of intrusion did not weigh in favor of the State because although there was no evidence that the purse was zipped shut, the officer could not identify the contraband until he unwrapped it outside of the purse.⁶⁵ Finally, there were no law enforcement need to search the defendant's personal belongings or risk that the evidence would be destroyed.⁶⁶

In *Crabtree v. State*, the Court of Appeals held that law enforcement may

52. *Id.*

53. *Id.* at 1134.

54. *Parker v. State*, 196 N.E.3d 244, 259 (Ind. Ct. App. 2022), *trans. denied*, 205 N.E.3d 186, (Ind. 2023).

55. *Id.* at 258.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 250.

60. *Id.* at 259.

61. *Cinamon v. State*, 197 N.E.3d 371, 381 (Ind. Ct. App. 2022).

62. *Id.* at 375.

63. *Id.* at 380-81.

64. *Id.* at 381.

65. *Id.*

66. *Id.*

have dogs sniff outside hotel rooms without “*Terry*-level reasonable suspicion.”⁶⁷ Under *Hoop v. State*, law enforcement must have reasonable suspicion to conduct dog sniffs at the front doors of a residence.⁶⁸ But here, a hotel room door did not require reasonable suspicion.⁶⁹ Instead, reasonable suspicion was just one of three factors to consider under *Litchfield*’s balancing test.⁷⁰ Here, the defendant had no clue that the search took place, and the officers’ degree of suspicion was high based on a positive dog sniff of a truck tied to the hotel room.⁷¹

In *Williams v. State*, the Court of Appeals affirmed the defendant’s consent to enter his hotel room as voluntary even though the officers used a medical emergency “ruse” to obtain that consent.⁷² Under Article 1, Section 11, the voluntariness of the consent rests on the totality of the circumstances.⁷³ Consents obtained by fraud, duress, fear, intimidation, or the submission to the supremacy of the law are not consensual.⁷⁴ The “ruse” involved the officers stating that a 16-year-old victim of sex trafficking was dehydrated, but was “fine” and “had ‘some water.’”⁷⁵ None of this was true, but it prompted the defendant to open his hotel room door.⁷⁶ The deceptive law enforcement tactic did not rise to an impermissible level because officers did not misidentify themselves or use or imply the use of force against the defendant.⁷⁷ There was also no evidence that the defendant was not a man of ordinary intelligence.⁷⁸

In *Budimir v. State*, the Court of Appeals reversed a denial of a motion to suppress because the search violated Article 1, Section 11 of the Indiana Constitution.⁷⁹ The officer stopped the driver because he knew her license had been suspended, which he confirmed with dispatch, and requested a drug-sniffing K9 come to the scene.⁸⁰ The officer let the passenger walk the two children in the car home so they could use the restroom.⁸¹ Then a second officer arrived and as the passenger walked away, the second officer ordered the passenger to stay.⁸² The K9 then arrived, alerted to the vehicle, and a search of the defendant’s person found methamphetamine, marijuana, and drug

67. *Crabtree v. State*, 199 N.E.3d 410, 416 (Ind. Ct. App. 2022).

68. *Hoop v. State*, 909 N.E.2d 463, 471 (Ind. Ct. App. 2009), *trans. denied*, 929 N.E.2d 782 (Ind. 2010).

69. *Crabtree*, 199 N.E.3d at 416.

70. *Id.*

71. *Id.*

72. *Williams v. State*, 204 N.E.3d 279, 286 (Ind. Ct. App.), *trans. denied*, 211 N.E.3d 1003 (Ind. 2023).

73. *Id.* at 284 (citing *Friend v. State*, 858 N.E.2d 646, 651 (Ind. Ct. App. 2006)).

74. *Id.* (citing *Crocker v. State*, 989 N.E.2d 812, 820 (Ind. Ct. App. 2013)).

75. *Id.* at 286.

76. *Id.* at 282-83.

77. *Id.* at 286.

78. *Id.*

79. *Budimir v. State*, 218 N.E.3d 596, 600 (Ind. Ct. App. 2023).

80. *Id.* at 598.

81. *Id.*

82. *Id.*

paraphernalia.⁸³

The officer had “no reason whatsoever to suspect” that the passenger had engaged in criminal activity.⁸⁴ The driver had been lawfully stopped for driving with a suspended license, but there was at best minimal suspicion that the passenger had engaged in criminal activity.⁸⁵ The degree of the intrusion restricted the passenger’s normal activities, e.g., his freedom to leave the scene and take the children home.⁸⁶ Finally, the court rejected the State’s argument that there was a law enforcement need to briefly detain the passenger.⁸⁷ He was not resisting and had already been released from the scene by the other officer.⁸⁸

In *Nance v. State*, the Court of Appeals reversed the denial of a motion to suppress because officers crossed the threshold of the defendant’s home without a warrant based only on the smell of marijuana coming from his home.⁸⁹ The officers testified that the smell of raw marijuana was “overwhelming” when the defendant cracked open his door to the officer’s knock.⁹⁰ The officer then opened the door fully, grabbed the defendant’s wrist, handcuffed him, and searched the house, finding in plain view an AR-style rifle under the bed, a gun box in another room, and various marijuana paraphernalia throughout the house.⁹¹

Under Article 1, Section 11 of the Indiana Constitution, the smell of the marijuana gave officers a high degree of suspicion that marijuana was in the home, but not that the defendant possessed it.⁹² Yet the degree of intrusion was also high, as a person’s home receives the highest protection, and warrantless searches are presumably unreasonable.⁹³ The search also went beyond just a few minutes.⁹⁴ Finally, law enforcement needs were minimal.⁹⁵ The officers reasonably suspected criminal activity, but possible marijuana possession is a minor offense—a Class B misdemeanor.⁹⁶

IV. ARTICLE 1, SECTION 12 – OPENNESS OF THE COURTS, SPEEDY TRIAL

Indiana Code section 31-34-12-2 provides that “a finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence.”⁹⁷

83. *Id.*

84. *Id.* at 599.

85. *Id.*

86. *Id.* at 599-600.

87. *Id.* at 600.

88. *Id.*

89. *Nance v. State*, 216 N.E.3d 464, 484-85 (Ind. Ct. App. 2023).

90. *Id.* at 472.

91. *Id.*

92. *Id.* at 483.

93. *Id.* 483-84.

94. *Id.* at 484.

95. *Id.*

96. *Id.*

97. IND. CODE § 31-34-12-2 (2024).

This standard was challenged as unconstitutional in *In re PB*.⁹⁸ Under Article 1, Section 12 of the Indiana Constitution, “every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.”⁹⁹ The mother, whose parental rights were terminated, asserted that the Indiana Constitution “‘demands the highest level of proof for injuries to reputation’ and thus the proper standard is beyond a reasonable doubt.”¹⁰⁰

The Court found that the mother provided no support for her assertion.¹⁰¹ Further, the Court found that the clear and convincing evidence standard has previously been sufficient to protect a parent’s liberty interest in raising their child.¹⁰² As such, the Court found no basis for applying a higher burden in termination cases because of the reputational harm resulting from the termination of one’s parental rights.¹⁰³ Thus, the Court upheld the clear and convincing evidence standard in Indiana Code section 31-34-12-2 as constitutional.¹⁰⁴

In *Finnegan v. State*, the Court of Appeals found that the defendant’s speedy trial rights were not violated because the State’s share of the blame for the trial’s delay was minimal.¹⁰⁵ The delay in bringing the intimidation charges to trial was more than a year, but most of that delay resulted from the COVID-19 pandemic.¹⁰⁶ Although the defendant sought a speedy trial, his litigation strategy raised questions regarding his actual desire for a trial.¹⁰⁷ He fired multiple defense attorneys, pursued dilatory litigation tactics, sought a competency evaluation, and filed repeated pro se motions that he described as “nonsensical.”¹⁰⁸ His filings in this case, and thirteen other civil cases, prompted a finding that he was an abusive litigant.¹⁰⁹

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

In *Johnson v. State*, the Court of Appeals found that witnesses’ wearing of opaque face masks was a harmless violation of a defendant’s right to confront witnesses under Article 1, Section 13.¹¹⁰ At the time of trial, the Marion County

98. *In re PB*, 199 N.E.3d 790 (Ind. Ct. App. 2022), *trans. denied*, 209 N.E.3d 1168 (Ind. 2023).

99. *Id.* at 795; IND. CONST. art 1, § 12.

100. *In re PB*, 199 N.E.3d at 795.

101. *Id.* at 796.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Finnegan v. State*, 201 N.E.3d 1186, 1197 (Ind. Ct. App.), *trans. denied*, 209 N.E.3d 1175 (Ind. 2023).

106. *Id.* at 1195-96.

107. *Id.* at 1196.

108. *Id.*

109. *Id.*

110. *Johnson v. State*, 201 N.E.3d 1198, 1209 (Ind. Ct. App.), *clarified on reh’g*, 206 N.E.3d 1195 (Ind. Ct. App.), *trans. denied*, 211 N.E.3d 1012 (Ind. 2023).

courts required all those involved in trials, including witnesses, to wear masks throughout the jury proceedings.¹¹¹

Article 1, Section 13 provides a right to “meet the witness face to face.”¹¹² But this right is not absolute and may give way to public policy considerations and “necessities of the case.”¹¹³ Analogizing the cases in which alleged child sexual abuse victims testify via videotape, where the defendant was involved in questioning the child, the court found that the defendant did not claim she was unable to recognize the witnesses’ faces.¹¹⁴ Although she couldn’t see the entirety of the witnesses’ faces, which the court recognized encroached on her right to confrontation, it was harmless because she could otherwise look at the witnesses in the eye, observe their demeanor and body language, and subject them to cross-examination and she otherwise admitted to the underlying conduct during her own testimony.¹¹⁵

In *Mills v. State*, Mills appealed his convictions for burglary, armed robbery, and battery by means of a deadly weapon.¹¹⁶ In part, Mills contended that the trial court’s face mask policy violated his right to confront witnesses under Article 1, Section 13 of the Indiana Constitution.¹¹⁷ The court first noted that Mills failed to raise any such objection at trial, and, therefore, he waived that issue on review unless he could establish the trial court committed a fundamental error.¹¹⁸ “Fundamental error is an extremely narrow exception” to waiver which requires a defendant to show that the alleged error is so prejudicial to his or her rights “as to ‘make a fair trial impossible.’”¹¹⁹

The court first assessed the language of Indiana’s confrontation clause which states, in relevant part, “[i]n all criminal prosecutions, the accused shall have the right . . . to meet the witnesses face to face[.]”¹²⁰ The court then noted that both the federal and state confrontation clause serve the purposes of: ensuring the reliability by means of the oath, exposing the witness to the probe of cross-examination, and permitting the trier of fact to weigh the demeanor of the witness.¹²¹ While the face-to-face language of Indiana’s confrontation clause has a special concreteness as compared to the federal right of confrontation, nevertheless, the court observed that Indiana’s right to confrontation is not

111. *Id.* at 1202.

112. *Id.* at 1208 (quoting *Wilder v. State*, 716 N.E.2d 403, 406 (Ind. 1999)); see IND. CONST. art I, § 12.

113. *Johnson*, 716 N.E.2d at 1208 (quoting *State v. Owings*, 622 N.E.2d 948, 951 (Ind. 1993)).

114. *Id.* at 1208-09.

115. *Id.* at 1209.

116. *Mills v. State*, 198 N.E.3d 720, 725 (Ind. Ct. App. 2022), *trans. denied*, 205 N.E.3d 188 (Ind. 2023).

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*; see IND. CONST. art. I, § 13.

121. *Mills*, 198 N.E.3d at 725.

absolute and must occasionally give way to considerations of public policy.¹²²

The court then assessed the trial court's face mask policy.¹²³ The trial court instructed witnesses that they could remove their masks while testifying, though they were required to put the mask back on when they stepped down from the witness stand.¹²⁴ The trial court further instructed Mills to lower his face mask when witnesses were identifying him and while he testified.¹²⁵ The Court of Appeals concluded that the purpose of the confrontation clause was sufficiently fulfilled because Mills and the jurors were able to observe the demeanor of each witness who testified.¹²⁶ The court found that Mills failed to show that the face mask requirement denied him a fair trial, and thus was a fundamental error, instead the court found that the face mask requirement was a reasonable limitation on the right to confront witnesses, designed to further the public policy of ensuring safety during the COVID pandemic.¹²⁷

In *Bush v. State*, the Court of Appeals found fundamental error when it ordered the defendant excluded from the giving of final jury instructions after which he was convicted of raping an eighteen-year-old.¹²⁸ Although the defendant failed to object to his exclusion, Article 1, Section 13 raises an inference of prejudice if the defendant is absent from the proceedings when the jury is present.¹²⁹

The defendant was not voluntarily absent from the giving of the final jury instructions, which included an instruction critical to the outcome of his case—an instruction expressly permitting the jury to find him guilty based on evidence of alleged forced oral sex he had been acquitted of in April 2021.¹³⁰ His lawyer agreed he should be absent from closing argument, but he had stated he wanted to be present during the proceedings and that the jury instructions were “bogus.”¹³¹ Thus, his exclusion from the giving of the jury instructions “constituted a blatant violation of basic principles, the harm or potential for harm was substantial, and the resulting error denied him fundamental due process.”¹³²

122. *Id.* at 725-26.

123. *Id.* at 726.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 727.

128. *Bush v. State*, 208 N.E.3d 605, 613 (Ind. Ct. App.), *trans. denied*, 211 N.E.3d 1005 (Ind. 2023).

129. *Id.* at 612.

130. *Id.* at 612-13.

131. *Id.* at 613.

132. *Id.*

VI. ARTICLE 1, SECTIONS 13 AND 19 – RIGHTS OF ACCUSED, RIGHTS OF VICTIMS / JURY TO DETERMINE LAW AND FACTS

In *McQuinn v. State*, the Court of Appeals held that a jury instruction stating that the direction of gunfire could be “substantial evidence” of the defendant’s intent to kill “invaded the province of the jury.”¹³³ The defendant fired six shots as a police officer arrived at an apartment complex on a report that the defendant hit his girlfriend after a day of heavy drinking.¹³⁴ The officer feared for his safety and backed away from the scene while the defendant laid down on the ground to be arrested.¹³⁵ The officer testified that based on the muzzle flashes, the defendant “appeared to have fired ‘directly’ at the officer.”¹³⁶ Another witness corroborated this statement and the officers transporting the defendant to jail said the defendant proclaimed loudly that “[w]e shoot at police around here. Attempted murder, level one,”¹³⁷ and that he boasted that he “tried to kill a cop tonight, because that’s what we do.”¹³⁸

The defendant testified that he did not shoot at the officer or intend to kill him.¹³⁹ He was simply “‘overwhelmed with life’ and fired the gun in the air ‘to escape everything.’”¹⁴⁰ The defendant said his statements to the officers transporting him was him just “being a jackass. Just talking.”¹⁴¹

At trial, the jury was instructed that firing “a weapon in the direction of a victim can be substantial evidence from which the jury could infer intent to kill.”¹⁴² The Court of Appeals found that this instruction unnecessarily emphasized a particular evidentiary fact and amplified the potential weight of the fact by stating that it could be “substantial evidence.”¹⁴³

In *Harris v. State*, the Indiana Supreme Court held that the exclusion of testimony from a jury trial regarding the defendant’s habitual offender status did not violate the constitutional right to present evidence.¹⁴⁴ The trial court excluded his testimony regarding “the circumstances of his most serious crime of conviction, his intent to rehabilitate himself, and his purported innocence of one of his prior, unrelated felonies” as irrelevant to whether he had the number of convictions to qualify as a habitual offender.¹⁴⁵ The defendant argued Article 1, Section 19 gave him the constitutional right to ask the jury to “consider mercy” on the question of his habitual offender status by going beyond the mere

133. *McQuinn v. State*, 197 N.E.3d 348, 353 (Ind. Ct. App. 2022).

134. *Id.* at 350.

135. *Id.*

136. *Id.*

137. *Id.* at 351.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* at 353.

143. *Id.*

144. *Harris v. State*, 211 N.E.3d 929, 943 (Ind. 2023).

145. *Id.* at 932.

“barebones” of his convictions by considering his prior crimes’ circumstances.¹⁴⁶

The Court initially found that Article 1, Section 19 applies to the determination of a defendant’s habitual offender status.¹⁴⁷ Not only must the jury determine the existence of the prior convictions, the jury must also determine whether the defendant qualifies as habitual offender.¹⁴⁸ But as an evidentiary matter, the defendant’s proffered testimony would be irrelevant to his convictions’ existence.¹⁴⁹ This “evidentiary rule of relevance” limited the otherwise specific guarantee of a defendant’s constitutional right “to be heard by himself and counsel.”¹⁵⁰

Chief Justice Rush, with Justice Slaughter, dissented from the majority opinion’s holding that the only evidence relevant to habitual offender status are facts “tending ‘to prove or disprove’” the underlying convictions because not all testimony to the crimes’ circumstances is irrelevant to the habitual offender determination.¹⁵¹ Juries have distinct constitutional authority under Article 1, Section 19 in criminal cases, including the authority to determine a defendant’s habitual offender status.¹⁵² If the testimony of a defendant is relevant to this determination—even if that testimony includes considerations about the existence of prior convictions—then the testimony is relevant to determining the defendant’s habitual offender status.¹⁵³ The dissent agreed that testimony regarding the prior convictions could be excluded, but would find an abuse of discretion in the exclusion of evidence regarding the offense of conviction.¹⁵⁴

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

The State appealed a trial court’s order setting a jury trial on the State’s *in rem* forfeiture complaint against \$2,435 in cash seized during an arrest in *State v. \$2,435 in U.S. Currency*.¹⁵⁵ The State argued that Article 1, Section 20 of the Indiana Constitution does not require a jury trial in civil forfeiture proceedings.¹⁵⁶ The Court of Appeals described the well-settled rule that “the State’s civil forfeiture complaints are outside of Article 1, Section 20.”¹⁵⁷

146. *Id.* at 934.

147. *Id.* at 935.

148. *Id.* at 943.

149. *Id.* at 942.

150. *Id.*

151. *Id.* at 947.

152. *Id.* at 954.

153. *Id.*

154. *Id.* at 956.

155. *State v. \$2,435 in United States Currency*, 194 N.E.3d 1227, 1228 (Ind. Ct. App. 2022), *trans. granted, opinion vacated*, 205 N.E.3d 203 (Ind. 2023), *superseded by*, 220 N.E.3d 542 (Ind. 2023).

156. *Id.*

157. *Id.* at 1229.

Rather, these are “equitable claims to be tried by the court.”¹⁵⁸ Thus, the Court of Appeals reversed the trial court’s order setting a jury trial and remanding “for further proceedings consistent with this decision.”¹⁵⁹

VIII. ARTICLE 1, SECTION 21 – TAKINGS CLAUSE

The Indiana Court of Appeals analyzed a political subdivision’s ability to assert claims under the state and federal Takings Clauses against the State in *Lake Ridge School Corporation v. Holcomb*.¹⁶⁰ “Between 2018 and 2020, Lake Ridge School Corporation, School City of Hammond, and West Lafayette Community School Corporation (collectively the ‘School Corporations’) each closed public-school buildings” and were required under Indiana Code sections 20-26-7-1 and 20-26-7.1-4 “to sell or lease those properties no longer in use to any interested charter schools or state educational institutions . . . for \$1.”¹⁶¹ “The School Corporations sued the Governor in his official capacity, the attorney general in his official capacity, the Indiana State Board of Education, and the Indiana Department of Education” alleging that these statutes “violate[d] the takings clauses of the state and federal constitutions.”¹⁶² The State moved for summary judgment asserting that the School Corporations are political subdivisions which cannot assert claims against the State.¹⁶³ The trial court granted the State’s motion and the School Corporations appealed.¹⁶⁴

The court first noted that, while the federal and state Takings Clauses are not identical, the Indiana Supreme Court has held that claims under the two clauses are analyzed identically.¹⁶⁵ While the court noted that the School Corporations seemed to suggest, at times, that the two clauses warranted separate analysis, the School Corporations provided no basis for this position, and the court declined to conduct any separate analysis under the Indiana Constitution’s Takings Clause.¹⁶⁶ The court then agreed that “the U.S. Supreme Court has long held that the [federal] Takings Clause has no role to play in intragovernmental disputes between a State and one of its . . . political subdivisions.”¹⁶⁷ The court found that the School Corporations are indisputable political subdivisions of the State and therefore may not assert takings claims against the State.¹⁶⁸

In *Raylu Enterprises, Inc. v. City of Noblesville*, the Court of Appeals upheld

158. *Id.*

159. *Id.*

160. *Lake Ridge Sch. Corp. v. Holcomb*, 198 N.E.3d 715 (Ind. Ct. App. 2022).

161. *Id.* at 716-17.

162. *Id.* at 717.

163. *Id.*

164. *Id.*

165. *Id.* at 718.

166. *Id.* at 718 n.3.

167. *Id.* at 718.

168. *Id.* at 719.

longstanding precedent that Indiana law does not recognize damages for the loss of a business in an eminent domain action.¹⁶⁹ The City of Noblesville, Indiana “initiated eminent-domain proceeding to appropriate a parcel of real estate owned by Raylu Enterprises, Inc.,” with the parties ultimately agreeing on compensation for the real estate and Raylu agreeing to withdraw its objection to the proceedings.¹⁷⁰ Raylu later sought to assert an “inverse-condemnation claim against Noblesville, arguing that while it has been compensated for the taking of its real estate, it had not been compensated for the taking of its business, which operated on the real estate.”¹⁷¹ Noblesville moved to strike this claim, and the trial court granted the motion.¹⁷² Because the motion to strike involved legal interpretation of a statute, the Indiana Court of Appeals reviewed *de novo*.¹⁷³

The court began its analysis by discussing Indiana’s eminent domain laws.¹⁷⁴ The Indiana Constitution provides that “[n]o person’s property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.”¹⁷⁵ “The government may file an action to formally seize private property for a public purpose.”¹⁷⁶ “However, if the government seizes property for a public purpose but fails to initiate eminent-domain proceedings, the ‘person having an interest in [the] property’ may bring suit to recover damages under the eminent-domain statutes.”¹⁷⁷ These actions are known as inverse-condemnation actions.¹⁷⁸

Raylu contends that its inverse-condemnation claim involves the business on the real estate.¹⁷⁹ The court noted that the Indiana Supreme Court has previously explained that the general rule is that compensation for businesses is too speculative to be considered as a part of the market value of the land upon which the business is conducted.¹⁸⁰ Raylu argued that this precedent should be re-examined because of the 2002 recodification of the eminent domain statutes which changed the restriction of an inverse-condemnation suit from a person “having an interest in any land,”¹⁸¹ to a person “having an interest in any property,”¹⁸² Raylu argued that this change shows an intent to broaden the scope of the eminent domain statutes to include personal property such as a

169. Raylu Enters., Inc. v. City of Noblesville, 205 N.E.3d 260, 263 (Ind. Ct. App. 2023).

170. *Id.* at 261.

171. *Id.*

172. *Id.* at 262.

173. *Id.*

174. *Id.*

175. *Id.*; see IND. CONST. art. 1, § 21.

176. Raylu Enters., Inc., 205 N.E.3d at 262 (citing IND. CODE § 32-24-1-3 (2023)).

177. *Id.* at 262-63 (quoting IND. CODE § 32-24-1-16 (2023)).

178. *Id.* at 263.

179. *Id.* at 261.

180. *Id.* at 263.

181. *Id.* at 263-64 (quoting IND. CODE § 32-11-1-12 (2002) (repealed by P.L. 2-2002, § 9 S.E.A. 57)).

182. *Id.* (quoting IND. CODE § 32-24-1-16 (2023)).

business.¹⁸³

The court noted that the Indiana Supreme Court previously held that “[t]he 2002 recodification had no substantive effect on the law.”¹⁸⁴ Thus, the court determined that Raylu may only receive compensation for the value of its real estate, which it had already been given in the eminent domain proceedings.¹⁸⁵

Finally, in *Duke Energy Indiana, LLC v. Bellwether Properties, LLC*, the Indiana Supreme Court denied transfer of a court of appeals decision reversing the trial court’s denial of the electric utility’s motion for summary judgment, finding the electric utility’s enforcement of horizontal clearance regulations did not constitute a compensable regulatory taking.¹⁸⁶ In an opinion respecting the denial of transfer, Justice Slaughter noted he remains open to adopting an Indiana-specific takings standard under Article 1, Section 21 with broader protections for property owners than federal law.¹⁸⁷

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

In *Herr v. State*, the Indiana Court of Appeals rejected a Tippecanoe county voter’s allegations that the county’s closed-primary system (which required him to affiliate with a political party to vote in the primary elections for local judges, and then permitted him to vote for judicial candidates among only those affiliated with that party) unconstitutionally burdened his federal right to vote and violated his rights to equal protection under the First and Fourteenth Amendments of the U.S. Constitution, and Article 1, Section 23 and Article 2, Section 2 of the Indiana Constitution.¹⁸⁸

The court of appeals first applied the test enunciated in *Anderson v. Celebrezze*¹⁸⁹ and *Burdick v. Takushi*¹⁹⁰ to reject the voter’s assertion that the restrictions unconstitutionally infringed his First Amendment right to vote.¹⁹¹ The court held that the requirement that a voter affiliate with a political party to vote in the primary for that party imposes only a minimal burden on the voter’s rights because a voter “does not have a strong interest, let alone a right, to choose the nominee for a party he does not belong to.”¹⁹² It further found that the state’s interest in regulating and maintaining the integrity of elections and preserving

183. *Id.* at 264.

184. *Id.* at 264 (quoting *Util. Ctr., Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 733 n.1 (Ind. 2013)).

185. *Id.* at 264.

186. *Duke Energy Ind., LLC v. Bellwether Props., LLC*, 192 N.E.3d 1003, 1009 (Ind. Ct. App. 2022), *trans. denied*, 210 N.E.3d 809 (Ind. 2023) (mem.).

187. *Id.* (Slaughter, J., concurring).

188. *Herr v. State*, 212 N.E.3d 1261, 1264 (Ind. Ct. App.), *trans. denied*, 221 N.E.3d 1203 (Ind. 2023).

189. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

190. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

191. *Herr*, 212 N.E.3d at 1265-66.

192. *Id.* at 1267.

political parties justified that minimal burden.¹⁹³ For similar reasons, it also rebuffed the voter's Article 2, Section 2 challenge, finding the county's primary system "reasonable" because it imposes a relatively low burden on voters while "serv[ing] a substantial interest in safeguarding primary elections."¹⁹⁴

The court then rejected the voter's allegation that the restrictions on his primary participation violated his rights under the Fourteenth Amendment's Equal Protection Clause and Article 1, Section 23's Equal Privileges and Immunities Clause because individuals living in other Indiana counties were not so restricted.¹⁹⁵ Instead, it recognized that the Equal Protection Clause does not mandate that counties be treated alike and held that there was no equal protection violation because the voter was being treated the same as other similarly situated voters within his county.¹⁹⁶ For the same reason, it rejected the voter's equal privileges and immunities claim.¹⁹⁷

X. ARTICLE 3, SECTION 1 – SEPARATION OF POWERS

In *Rainey v. Indiana Election Commission*, the Indiana Court of Appeals dismissed a candidate's appeal of a final order upholding the Indiana Election Commission's denial of her request to be placed on a primary ballot as moot because the candidate waited until after the election to pursue the appeal.¹⁹⁸ Although the court acknowledged that the candidate was not lawfully required to pursue a pre-election interlocutory appeal of the trial court's order denying her request for preliminary injunctive relief, and was lawfully permitted to wait until the trial court had issued its final order to pursue her appeal, it held that because the election already had occurred by the time the candidate sought the appeal, the court could afford her no relief that would affect her legal relationship with the defendants, so there no longer was "a concrete controversy" between the parties.¹⁹⁹ Recognizing that the appeal implicated "vital public interests," but that Article 3, Section 1 of the Indiana Constitution requires the separation of the three branches of government, the court declined to hear the appeal because Indiana courts generally resolve only live cases and controversies, do not issue advisory opinions, and avoid addressing the constitutionality of a coordinate branch of government's actions except when absolutely necessary.²⁰⁰

In *Hoosier Contractors, LLC v. Gardner*, the Indiana Court of Appeals reversed a trial court's denial of summary judgment to a roof repair company

193. *Id.*

194. *Id.* at 1269.

195. *Id.* at 1268.

196. *Id.* at 1269.

197. *Id.*

198. *Rainey v. Ind. Election Comm'n*, 208 N.E.3d 641, 644 (Ind. Ct. App.), *trans. denied*, 215 N.E.3d 341 (Ind. 2023).

199. *Id.* at 644.

200. *Id.* at 643, 644, 645 (quoting *Snyder v. King*, 958 N.E.2d 764, 786 (Ind. 2011)).

on the defendant's counterclaim and directed the trial court to dismiss the counterclaim for lack of standing.²⁰¹ The court described standing as a threshold jurisdictional requirement that effectuates the separation-of-powers mandate in Article 3, Section 1 of the Indiana Constitution and limits the judiciary to hearing only real cases and controversies in which at least one party can show it "ha[s] suffered or [is] in immediate danger of suffering a direct injury as a result of the complained-of conduct."²⁰² The court reiterated that parties, including counterclaimants, must maintain standing "at each stage of litigation within a given tribunal," including at all successive stages of an action, because standing is "an essential element of a claimant's case."²⁰³ Because the roof repair company's summary judgment motion indisputably established that the counterclaimant had suffered no injuries, the court found that the counterclaimant lacked standing to pursue his claims.²⁰⁴

XI. ARTICLE 6, SECTION 6 – LOCAL OFFICERS; RESIDENCE

In *Tiesing v. State*, the Indiana Court of Appeals reviewed the conviction of a Wabash Township Trustee ("Trustee"), who was convicted of twenty-one counts of theft for taking her salary as Trustee while not residing in the township.²⁰⁵ Article 6, Section 6 of the Indiana Constitution requires that township officers reside within their respective townships and states that a trustee forfeits the office "if the trustee ceases to be a resident of the township."²⁰⁶

Jennifer Tiesing was elected as Trustee in 2018, at which time she lived in a residence she owned in Wabash Township.²⁰⁷ In early 2020, Tiesing began expressing a desire to sell her home, resign as Trustee, and move to Florida.²⁰⁸ During the COVID-19 pandemic, Tiesing sold her home, purchased a truck and travel trailer, and began traveling extensively outside of Wabash Township.²⁰⁹ For the twenty-seven nights she was not traveling during this nine-month period, she stayed at the home of a former romantic partner in Wabash Township to whom she made one payment for rent and none for utilities.²¹⁰ The State asserted that Tiesing ceased being a resident of Wabash Township when she moved from

201. *Hoosier Contractors, LLC v. Gardner*, 212 N.E.3d 1234, 1242 (Ind. 2023), *reh'g denied* (Sept. 25, 2023).

202. *Id.* at 1238 (quoting *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 217 (Ind. 2022)); *Bd. Of Comm'rs of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 168 (Ind. 2017)).

203. *Id.* at 1238.

204. *Id.* at 1241.

205. *Tiesing v. State*, 201 N.E.3d 212, 213 (Ind. Ct. App. 2022), *vacated*, 226 N.E.3d 790 (Ind. 2024).

206. *Id.* at 218 (quoting IND. CODE § 36-6-4-2(b) (2023)); *see* IND. CONST. art. 6, § 6.

207. *Id.* at 214.

208. *Id.*

209. *Id.* at 215.

210. *Id.* at 217.

the home she owned and, therefore, forfeited her role as trustee.²¹¹

The court of appeals analyzed residency statutes and common law on the definitions of domicile and residency.²¹² The court observed that a change of domicile requires “an actual mov[e] with an intent to go to a given place and remain there.”²¹³ The court further noted that “a residency determination requires consideration of all of the circumstances in a given case.”²¹⁴ The court found that, although the trial court questioned Tiesing’s residency after she sold her home, the trial court made no finding that Tiesing established residency elsewhere.²¹⁵ Thus, the court determined that she could not lose her residency in Wabash Township until she established a new residence elsewhere.²¹⁶

Having found that the State failed to present sufficient evidence that Tiesing intended to abandon her Wabash Township domicile and establish a new residence elsewhere and that she in fact established said new residence, the court reversed the trial court’s judgment.²¹⁷

XII. UNCONSTITUTIONAL VAGUENESS

In *York v. State*, the Indiana Court of Appeals rejected a criminal defendant’s argument that charges against him should be dismissed because Indiana Code section 35-31.5-2-190, defining a “machine gun,” is unconstitutionally vague.²¹⁸ Reiterating that the analysis for unconstitutional vagueness under Indiana and federal law is identical, the court held that the statute gives sufficient notice to members of the public, law enforcement, and the judiciary that a gun that automatically fires multiple shots without manual reloading or multiple trigger functions is a “machine gun,” and that because whether a gun satisfies this standard is a matter of fact, the statute does not unconstitutionally invite discriminatory or arbitrary enforcement.²¹⁹

211. *Id.* at 218.

212. *Id.* at 218-19.

213. *Id.* at 219 (quoting *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988)).

214. *Id.* at 219.

215. *Id.*

216. *Id.*

217. *Id.* at 220.

218. *York v. State*, 210 N.E.3d 307, 312 (Ind. Ct. App. 2023).

219. *Id.* at 310-12.