STATE OF INDIANA	)	IN THE LAKE COUNTY SUPERIOR COURT
	) SS	CIVIL DIVISION ROOM THREE
COUNTY OF LAKE	)	SITTING IN GARY, INDIANA

GREG SERBON and JOHN ALLEN, Plaintiffs, vs. CITY OF EAST CHICAGO, INDIANA; CITY OF EAST CHICAGO COMMON COUNCIL; MYRNA MALDONADO, LENNY FRANCISKI, BRENDA WALKER, CHRISTINE VASQUEZ, ROBERT GARCIA, GILDA ORANGE, ROBERT MEDINA, EMILIANO PEREZ, and KENNETH MONROE, in their official capacities as City of East Chicago Common Council Members; ANTHONY COPELAND, in his official capacity as City of East Chicago Mayor; CITY OF EAST CHICAGO POLICE DEPARTMENT; and FRANK SMITH, in his official capacity as City of East Chicago Chief of Police, Defendants.	)	CAUSE NO: 45D03-1805-PL-000045

DEFENDANTS' REPLY IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This case can be resolved most easily on standing grounds. Indiana Code § 5-2-18.2-5 does not establish a special, injury-free rule of statutory standing good only for the enforcement of Chapter 18.2, and Plaintiffs—who are neither taxpayers nor residents of the City of East Chicago—do not fall into the relevant "public" to benefit from the public-standing exception to judicial standing principles for either their state or federal claims.

Should the Court reach the merits of this case, it will need to determine what the various provisions of Chapter 18.2 of the Indiana Code mean, and whether the challenged portions of East Chicago's "Welcoming City" Ordinance conflict with those statutes. Defendants' reading of Chapter 18.2 most closely hews to the statutory text and context and is supported by background principles of state and federal law. Indiana Code § 5-2-18.2-3 bars cities in Indiana from restricting the maintenance and sharing of citizenship and immigration-status information with federal, state, and local authorities. Indiana Code § 5-2-18.2-4 directs governmental bodies in Indiana not to interfere with *federal* immigration enforcement under *federal* law. The challenged provisions of East Chicago's Ordinance comply with these directives because they concern only East Chicago's role in immigration enforcement, and they permit East Chicago agencies to share citizenship and immigration-status information in their possession. Indiana Code § 5-2-18.2-7 requires only that law enforcement officers receive a written notice of "a duty to cooperate . . . on matters pertaining" to immigration enforcement, which Plaintiffs acknowledge that Defendants have provided. Plaintiffs' state-law claims therefore fail.

Plaintiffs' federal constitutional claims fare no better. The challenged provisions of East Chicago's Ordinance guide only the City's own participation in federal immigration enforcement. The City may decide not to participate in federal programs under the Tenth Amendment's

anticommandeering doctrine, even if the federal government would prefer a different approach, so no provision of the Ordinance is preempted by federal law. And Ordinance section 9(c)—which directs East Chicago's police force not to arrest *any* individual where a "less severe" alternative to arrest is available and adequate "to effect a satisfactory resolution"—is a facially neutral policy, precluding Plaintiffs' Equal Protection Clause claim, and it is not the type of policy that is subject to vagueness review.

I. Plaintiffs Lack Standing

Plaintiffs confirm that they have not suffered any particularized, concrete injury sufficient to convey standing under Indiana's judicial standing principles. Pls.' Reply 13, 61, 93. Instead, Plaintiffs claim that they may assert their state-law claims via "statutory standing" under section 18.2-5 and the public-standing exception to standing, and that they may assert their federal constitutional claims under the public-standing exception. But, as previously explained, section 18.2-5 does not convey standing at all; Plaintiffs are not part of the relevant "public" for purposes of the public-standing exception; and this Court should not further expand the public-standing exception to reach federal constitutional claims. *See* Defs.' Mem. in Supp. of Their Cross-Mot. for Summ. J. and Opp'n to Pls.' Mot. for Summ. J. ("Defs.' Mem.") 6–14. Defendants are entitled to summary judgment on standing alone.

As an initial matter, Plaintiffs repeatedly fault Defendants for relying on analogies to federal justiciability principles because Indiana does not have a "case or controversy" requirement. *See, e.g.*, Pls.' Summ. J. Reply and Opp'n Mem. ("Pls.' Reply") 7, 13, 14. However, Indiana courts regularly treat "[f]ederal limits on justiciability" as "instructive" because (1) "the standing requirement under both federal and state constitutional law fulfills the same purpose: ensuring that 'the litigant is entitled to have the court decide the merits of the dispute or of particular issues,'"

and (2) "both are built on the same basic idea: separation of powers." *Schulz v. State*, 731 N.E.2d 1041, 1044 (Ind. Ct. App. 2000) (quoting *Allen v. Wright*, 468 U.S. 737, 750–51 (1984)); *see also State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003) (commenting that "the distribution of powers provision in Article 3, Section 1, of the Indiana Constitution" fulfills "an analogous function" to the federal "case or controversy" requirement). Therefore, where Indiana courts have not expressly deviated from federal constraints, federal separation-of-powers principles remain relevant, and Plaintiffs' unsupported speculation that Indiana courts *might* follow a different path is unpersuasive. Moreover, as set forth below, Plaintiffs' positions entirely disregard Indiana's distribution of powers and the proper role of the judiciary in that system.

A. Section 18.2-5 does not confer standing on every Indiana resident.

Section 18.2-5 provides that "a person lawfully domiciled in Indiana may bring an action to compel" compliance with Chapter 18.2. Ind. Code § 5-2-18.2-5. Defendants agree that section 18.2-5 provides the *form* of permissible action—an "action to compel"—and delineates *who* may assert that action—"a person lawfully domiciled in Indiana." But neither of those elements speaks to standing.

Under well-established federal justiciability rules, "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997). The same presumption should apply here: Just because "a person lawfully domiciled in Indiana" is given a statutory private right to file an action to compel under section 18.2-5 does not mean that person *also* has satisfied the requirement of a sufficient injury to justify judicial intervention. Rather, a plaintiff generally must show a personalized, concrete injury to establish standing or the applicability of the public-standing exception—neither of which Plaintiffs satisfy here.

Even if, as Plaintiffs assert, the Indiana General Assembly may depart from ordinary standing principles by statute, Pls.' Reply 7, Plaintiffs offer no good reason to believe it did so here. It is a far stretch to assume that the General Assembly intended to allow suit without any injury at all and without so much as mentioning "standing" or "injury" in section 18.2-5. Such an approach would be highly inconsistent with the distribution of powers, as it would create a roving mandate to interfere with the political processes of cities throughout the state. *See Horner v. Curry*, 125 N.E.3d 584, 595 (Ind. 2019) (op. of Massa, J.) ("If all government action is subject to judicial review, what purpose does the political process serve?"); *cf. Schulz*, 731 N.E.2d at 1045 (explaining that federal prudential standing principles are "equally applicable to questions of standing under the Indiana constitution" because they are "based on notions of separation of powers"). Indeed, reading section 18.2-5 to require *only* a domicile in Indiana would extend standing under Chapter 18.2 even farther than the public-standing exception. Under that exception, litigation may go forward "when the plaintiff's injury is no greater than that of any member of the general public, *but a redressable injury is still required*." *Gaddis v. McCullough*, 827 N.E.2d 66, 77 n.7 (Ind. Ct. App. 2005) (emphasis added). Plaintiffs' utterly unsupported assertion that the Indiana General Assembly "clearly intended" to establish "domicile standing, without more" does not satisfy this concern. Pls.' Reply 6. Nor is it apparent why it would be "likely impossible" for a resident of Indiana to establish standing under ordinary standing principles simply because the two non-resident Plaintiffs here are unable to do so. *Id.* at 7.[1]

[1] Plaintiffs claim that, in the lawsuit against the City of Gary's welcoming city ordinance, "Judge Scheele necessarily agreed, at least, that [section 18.2-5] provides domicile standing," and they insinuate that Plaintiff Serbon has standing here because at least one plaintiff must have been found to have had standing there. Pls.' Reply 7 n.18. Plaintiffs' inferences are unwarranted. For one, Plaintiffs also asserted public standing there, so the accepted rationale for plaintiffs' standing is unclear. And, in that case, two plaintiffs were Gary residents. Plaintiff Serbon is not a resident of East Chicago, so that case did not raise the same issues as Plaintiffs' expansive claim here.

B. Plaintiffs do not have standing under the public-standing exception.

Plaintiffs continue to press this Court to find that they fall into the public-standing exception to standing, regardless of their utter lack of injury and despite failing to identify any analogous case to support their claims. Plaintiffs' arguments are unconvincing.

Plaintiffs first claim that *State ex rel. Cittadine v. Indiana Department of Transportation* does not require that an individual asserting public standing be a resident or voter of the public entity whose law is being challenged. Plaintiffs further insist that their injuries are similar to those of Jack Cittadine, who had standing to sue as "a member of the motoring public." *See* Pls.' Reply 8 (quoting *Cittadine*, 790 N.E.2d at 984). But *Cittadine* follows the rule Defendants have set forth: Jack Cittadine, "a member of the motoring public" of the State of Indiana, sued the *state's* Department of Transportation. Moreover, implicit in *Cittadine*'s description of the public-standing doctrine—and confirmed by Defendants' unchallenged canvas of public-standing cases, *see* Defs.' Mem. 9—is the notion that the relevant "public" is the body of people who are governed by the entity whose action is challenged. *See Cittadine*, 790 N.E.2d at 980 (quoting *Hamilton v. State ex rel. Bates*, 3 Ind. 452, 458 (1852), as establishing that the plaintiff had an interest in the county auditor's discharge of duties "as a citizen of the county"); *id.* at 981 (noting that the plaintiffs in *Board of Comm'rs of Clay County v. Markle*, 46 Ind. 96 (1874) were "nine residents, citizens, taxpayers, and voters" of Clay County). In other words, whether someone "has a 'citizen['s]' interest in 'the execution of the law,'" Pls.' Reply 6 (quoting *Cittadine*, 790 N.E.2d at 981), depends on whether he is a "citizen" of the relevant jurisdiction. And here, the relevant question is whether Plaintiffs are citizens of East Chicago, which they are not. Whether Plaintiffs' public-duty claim arises from an alleged "public-safety interest" is immaterial to whether Plaintiffs are members of the relevant "public." *See* Pls.' Reply 8–11.

Second, Plaintiffs rely solely on *Cittadine* in arguing that they may assert federal constitutional claims under a public-standing theory. *See* Pls.' Reply 13. Although it is true that *Cittadine* said that the public-standing exception extends to "claims that government action is unconstitutional," 790 N.E.2d at 983, that statement must be understood in context. The statement was dictum, as *Cittadine* involved only a violation of a state statute. And in every case on which *Cittadine* relies for this assertion, the plaintiff's claim was brought under the state constitution. *See* Defs.' Mem. 13. Plaintiffs do not contest this.

Refusing to expand the public-standing exception beyond the circumstances in which it has been recognized—that is, challenges under state law made by residents or taxpayers of the jurisdiction at issue—best respects the Indiana constitution's distribution of powers and principles of federalism. Plaintiffs cite no analogous case for their claims to standing here. And that is not surprising. The public-standing doctrine is a narrow exception to standing that "is limited to extreme circumstances and . . . applied with cautious restraint." *21st Amendment, Inc. v. Ind. Alcohol & Tobacco Comm'n*, 84 N.E.3d 691, 698 n.3 (Ind. Ct. App. 2017) (quoting *Cittadine*, 790 N.E.2d at 980). It is meant to avoid "excessive formalism" where "an actual controversy exists," but it should not be used to wholly undermine Indiana's "separation of powers." *Cittadine*, 790 N.E.2d at 979 (quoting *Ind. Dep't of Envt'l Mgmt. v. Chem. Waste Mgmt., Inc.*, 643 N.E.2d 331, 337 (Ind. 1994)). Because Plaintiffs identify no actual harm at all, they effectively seek an advisory opinion. *See Schulz*, 731 N.E.2d at 1044 ("The standing requirement acts 'as an important check on the exercise of judicial power by Indiana courts'" that ensures "that the courts act in real cases and refrain when called to engage in abstract speculation." (quoting *Pence v. State*, 652 N.E.2d 486, 487, 488 (Ind. 1995))). This is impermissible, and summary judgment should be granted to Defendants on all claims.

II. The Ordinance Does Not Violate Chapter 18.2

Plaintiffs' latest explanation of what Indiana Code chapter 5-2-18.2 requires of cities in Indiana is dizzying. Plaintiffs repeatedly emphasize that section 18.2-3 and 18.2-4 "impose[] a ban, not a mandate." Pls.' Reply 31; *see also, e.g.*, *id.* at 27, 38, 44. According to this version of Plaintiffs' argument, sections 18.2-3 and -4 do not require cities in Indiana to *do* anything affirmative to support federal immigration enforcement, so long as they don't *say* they aren't going to do anything affirmative to support federal immigration policy. At the same time, Plaintiffs argue that section 18.2-7 imposes *some* duty on state and local law enforcement to cooperate in immigration enforcement, although Plaintiffs never explain the content of that duty beyond rejecting the idea that 18.2-3 and -4 inform what it requires. What Indiana cities are to do with that reading of state law is anyone's guess. Statutory interpretation and home-rule principles require at least this: following state law should not require city officials to solve a brain teaser before making decisions about what policies to adopt and how to direct their workforce. The Court should adopt Defendants' more understandable, textually supported reading of Chapter 18.2.

A. The Ordinance does not violate section 18.2-3.

As explained in Defendants' motion for summary judgment, section 18.2-3 prohibits only policies that restrict the maintenance or sharing of "information of the citizenship or immigration status" of any individual. Ind. Code § 5-2-18.2-3; *see* Defs.' Mem. 15–25. The City's Ordinance expressly permits the sharing of the information addressed in section 18.2-3, *see* Ordinance section 10, so the Ordinance does not violate section 18.2-3. *See* Defs.' Mem. 42–45.

Plaintiffs, Defendants, and the State of Indiana agree that the scope of information covered by section 18.2-3 should be dictated by the scope of the nearly identical language in 8 U.S.C. § 1373. *See* Pls.' Reply 16; State of Indiana's Response to Defs.' Mot. for Summ. J. ("State

Mem.") 16. Defendants demonstrated in their summary-judgment memorandum (at 15–22) that federal courts have resoundingly rejected Plaintiffs' and the State's broad and atextual interpretation of § 1373, concluding that § 1373's information-sharing mandate is unambiguously limited to the categories of information stated in the statute. *See, e.g.*, *United States v. California*, 921 F.3d 865, 891. In other words, "plainly, the phrase 'regarding the citizenship or immigration lawful or unlawful of any individual' means just that—information relating to the immigration status of an alien, including his/her citizenship." *United States v. New Jersey*, No. 20-CV-1364, 2021 WL 252270, at *12 (D.N.J. Jan. 26, 2021) (quoting *County of Ocean v. Grewal*, 475 F. Supp. 3d 355, 376 (D.N.J. 2020)). Just as with § 1373, section 18.2-3 is unambiguously limited to citizenship and immigration-status information.[2]

Plaintiffs have three primary responses. First, they contend that all of these courts were wrong and that § 1373 (and therefore section 18.2-3) is in fact ambiguous, requiring the Court to look to conference reports that suggest a broader scope of information than citizenship and immigration-status information alone. Their primary evidence for this contention is that Plaintiffs, the State of Indiana, and their conference reports agree on their proposed broader meaning. Pls.' Reply 16. But courts in Indiana do not find ambiguity simply because litigants are able to devise a reading that supports their position. Where statutory language is "straightforward"—as multiple federal courts have concluded with respect to § 1373—the court should decline Plaintiffs' "invitation to find ambiguity where none exists." *Wayne Metal Prods. Co. v. Ind. Dep't of Env't Mgmt.*, 721 N.E.2d 316, 319 (Ind. Ct. App. 1999). And where "a statute is clear and unambiguous

[2] The State contends that Ordinance section 6(a) (mistakenly cited as section 3(c)) violates section 18.2-3 because it "prohibits City law enforcement officers from providing information to federal immigration officers regarding 'persons who may be the subject of immigration enforcement operations.'" State Mem. 9. However, the State fails to note that the phrase that immediately follows *allows* police officers to share citizenship and immigration status information pursuant to section 10 of the Ordinance. Because that is all that section 18.2-3 requires, section 6(a) does not violate state law. *See* Defs.' Mem. 42–43.

on its face, this court need not, and indeed may not, interpret the statute. Instead [courts] must hold the statute to its clear and plain meaning." *S. Bend Trib. v. S. Bend Cmty. Sch. Corp.*, 740 N.E.2d 937, 938 (Ind. Ct. App. 2000). Whether a conference report may suggest a broader meaning is irrelevant once an unambiguous meaning is established. *See California*, 921 F.3d at 892 n.18.

Second, Plaintiffs claim that all of the recent decisions addressing the scope of § 1373 may be disregarded because they post-date the enactment of section 18.2-3. According to this argument, regardless of the actual scope of § 1373, all that matters is what the Indiana General Assembly *thought* § 1373 covered when it enacted section 18.2-3 in 2011.[3] *See* Pls.' Reply 17–18. This argument requires two difficult logical leaps. First, it assumes that the General Assembly did not intend the plain and unambiguous meaning of the statutory words it chose. Second, it assumes that the members of the General Assembly were aware of the legislative history of §§ 1373 and 1644 and dicta from out-of-jurisdiction decisions discussing the scope of these laws, despite Plaintiffs' failure to put forth any evidence supporting this theory. The safer assumption—one reflected in the ordinary rules of statutory interpretation—is that the Indiana General Assembly meant exactly what it said: that section 18.2-3 applies solely to citizenship and immigration-status information.

Finally, Plaintiffs point to the discussions of § 1373 in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), and *New York v. Department of Justice*, 951 F.3d 84 (2d Cir. 2020), to support its assertion that the relevant statutory language is ambiguous, requiring resort to the conference reports accompanying §§ 1373 and 1644. Pls.' Reply 21–22. But, as Defendants explained in their summary-judgment memorandum (at 18), these passages were not necessary to

[3] In this regard, Plaintiffs seek to have their cake and eat it too. Although Plaintiffs generally contend that § 1373 defines the scope of section 18.2-3, *see, e.g.*, Pls.' Reply 16, they seemingly have abandoned that position in the face of unfavorable precedent with this last-ditch argument.

the courts' decisions, as the resolution of the facial challenges at issue in those cases did not require an analysis of whether the state and local policies at issue did or did not conflict with § 1373. They therefore do not carry sufficient weight to undermine the carefully considered conclusions of the Ninth Circuit and numerous district courts that § 1373 plainly precludes the meaning that Plaintiffs ascribe to it. *See, e.g.*, *California*, 921 F.3d at 890; *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399–400 (1821) (distinguishing between "[t]he question actually before the Court," which is "investigated with care, and considered in its full extent," and dictum, where its "possible bearing on all other cases is seldom completely investigated").

With respect to the actions covered by section 18.2-3, Defendants have explained why the word "cooperating" should be "understood in the same general sense" as the words surrounding it, like "communicating," "exchanging," and "sending to or receiving information," to apply only to information already within the City's possession. Defs.' Mem. 22–25 (quoting *Day v. State*, 57 N.E.3d 809, 814 (Ind. 2016)). Plaintiffs and the State, by contrast, seek to imbue "cooperating" with a variety of meanings relating to assistance to federal immigration authorities in gathering information. Plaintiffs variously describe what they think is covered by "cooperating" as actions "that typically would be taken when investigating (or assisting) immigration status" or simply "information-cooperation." Pls.' Reply 46, 50. The State's more expansive position contends that section 18.2-3's reference to "cooperating" in fact "requires the local officers to cooperate with federal officials in their efforts to enforce immigration law," including by providing assistance in any immigration-related investigations and by "comply[ing] with detainers and removal orders." State Mem. 11, 13. But reading "cooperating" to require localities to participate in any enforcement efforts whatsoever and comply with detainers—that is, to stop, arrest, and detain people—would expand section 3's reach to conduct far afield from sharing and maintaining

immigration-status information—the actual subjects of the section. Indeed, it would be surprising for the General Assembly to tuck away requirements as consequential as demanding participation in immigration enforcement or compliance with detainer requests in a cryptic reference to "cooperating with federal officials" that is explicitly limited by the language "with regard to information of the citizenship or immigration status . . . of an individual."[4]

For these reasons and the reasons stated in Defendants' summary-judgment memorandum, section 18.2-3 bars only limitations on maintaining and sharing citizenship and immigration-status information. Because the City's Ordinance does not restrict the sharing of citizenship or immigration-status information in the possession of East Chicago agencies, the Ordinance does not violate section 18.2-3.

B. The Ordinance does not violate section 18.2-4.

The crux of the parties' dispute over the meaning of section 18.2-4 is whether it should be understood to incorporate the concept of "cooperation" with federal immigration enforcement within its terms, even though it does not appear in the text. Defendants' summary-judgment memorandum explains why this would be a strained reading: Section 18.2-4's text and context, its legislative history, Indiana's home-rule presumptions, and federal statutory and constitutional principles all suggest that the General Assembly intended to prohibit only efforts to limit *federal* enforcement of federal immigration law. *See* Defs.' Mem. 25–41.

[4] The State's argument that Ordinance section 9(c) violates section 18.2-3 is even more far-fetched. *See* State Mem. 15. Ordinance section 9(c) directs the East Chicago Police Department not to arrest any individual if the situation can be satisfactorily resolved without an arrest. Under the State's view, by discouraging unnecessary arrests, East Chicago is directing its officers to "conceal information from federal agents" in violation of section 18.2-3's information-sharing mandate. *Id.*; *see also* Pls.' Reply 55 (raising a similar argument). But, as Defendants explained, section 18.2-3 does not mandate the sharing of arrest information, as it is limited to citizenship or immigration-status information. Moreover, section 18.2-3 does not ban policies that limit the *gathering* of information; even more so, it does not speak at all to indirect restrictions on the potential for the *federal government* to discover immigration-status information. Defs.' Mem. 45.

Plaintiffs' and the State's arguments boil down to an assertion that section 18.2-4 implicitly includes cooperation because 8 U.S.C. § 1357(g)(10) allows for voluntary state and local cooperation with federal immigration officials, and § 1357(g)(10) "is part of the 'enforcement of federal immigration law.'" Pls.' Reply 30, 32; State Mem. 13. But this argument suffers from a fatal flaw—that what it means to *permissibly* "cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States" is far from clear. 8 U.S.C. § 1357(g)(10). Contrary to Plaintiffs' and the State's arguments, Pls.' Reply 32–33, State Mem. 7, the U.S. Supreme Court has not drawn a line that simply separates impermissible unilateral state and local conduct from permissible cooperation with federal requests. *See Arizona v. United States*, 567 U.S. 387, 410 (2012) (listing examples of what the Department of Homeland Security claimed "would constitute cooperation under federal law," but not including complying with detainer requests).[5] Indeed, the training and certification regime in § 1357(g) would make little sense if all that were required to transform unilateral action into permissible cooperation were a request from federal immigration officials to take action. This is especially a concern in the area of immigration enforcement where foreign affairs are implicated, federal law is preeminent, and "[f]ederal governance of immigration and alien status is extensive and complex." *Arizona*, 567 U.S. at 395. In these circumstances, enforcement only by trained federal officers is and should be the norm.

Because of the inherent uncertainty about the bounds of the permissible role of state and local cooperation, cities in Indiana would have to conduct a substantial legal analysis and be willing to risk the time and expense of litigation (whether meritorious or not) before enacting any

[5] As evidenced by the dispute over whether compliance with civil detainer requests is permitted by the Fourth Amendment, courts have reached differing conclusions on the scope of permissible cooperation under federal law. *See* Defs.' Mem. 51 & n.25.

policies that might limit a city's support to immigration enforcement. A preemption provision should not be interpreted to be this inscrutable to the average reader where a more comprehensible construction is available.

Next, Plaintiffs and the State both make sweeping assertions that section 18.2-4 overcomes any home-rule presumptions. Most broadly, relying on the principle that a state statute can "expressly den[y] a power" to a municipality, Ind. Code § 36-1-3-5(a), the State asserts that the "Indiana General Assembly has unequivocally denied local governments" the power to "withhold anything less than the full cooperation with federal law enforcement to the extent permitted by law." State Mem. 18; *see also* Pls.' Reply 41.[6] But section 18.2-4 is far from "unequivocal" on this point, and under home-rule principles, any ambiguity as to whether section 18.2-4 mandates cooperation (or, in Plaintiffs' parlance, bans policies that restrict cooperation), should be resolved in favor of the Defendants' less intrusive reading—that the statute commands localities not to interfere with federal immigration enforcement, but does not affirmatively mandate local assistance. Reading into section 18.2-4 either a broad cooperation mandate or a rule that bans any policies that might limit cooperation would seriously—and unnecessarily—undermine cities' express police powers and authority to manage their finances, operations, and employees. *See, e.g.*, Ind. Code §§ 36-8-2-4, 36-4-6-18; *see also* Defs.' Mem. 31–36.

Finally, Defendants explained in their summary judgment motion why Plaintiffs' and the State's interpretations of section 18.2-4 would raise serious concerns under federal law. *See* Defs.' Mem. 36–41. Plaintiffs suggest that an avoidance posture, rather than an outright constitutional

[6] Plaintiffs and the State appear to part ways about the extent to which section 18.2-4 mandates cooperation. Plaintiffs repeatedly emphasize that section 18.2-4 does not "mandate" anything, contending that it operates solely as a "ban" on noncooperation policies, while the State argues that the same statute imposes a full-cooperation mandate. This disagreement undermines Plaintiffs' suggestion that their cooperation-based reading of section 18.2-4 yields clear and straightforward results. *See* Pls.' Reply 37 (suggesting that "no vagueness is genuinely at issue").

challenge, is somehow improper. Pls.' Reply 39. But this is incorrect: Here, Defendants are defending the Ordinance's compliance with state law, and a facial constitutional challenge would be appropriate only if the statute would be invalid under *every* proffered interpretation. When section 18.2-4 is understood properly as prohibiting interference with federal enforcement of federal immigration laws, it does not raise the same preemption or vagueness concerns.

For all of these reasons and those stated in Defendants' summary-judgment memorandum, section 18.2-4 does not ban policies that limit cooperation in federal immigration enforcement. Because East Chicago's Ordinance solely limits its own agencies' participation in immigration enforcement and does not seek to interfere with federal enforcement, it is consistent with section 18.2-4.[7] *See* Defs.' Mem. 25–41, 45–46.

However, should the Court conclude that section 18.2-4 does ban policies that restrict local cooperation in federal immigration enforcement "to less than the full extent permitted by federal law," much of the Ordinance would remain valid. *See* Defs.' Mem. 48–64. In part, this is because the Fourth Amendment forbids state and local law enforcement from detaining individuals pursuant to civil detainer requests. *See id.* at 48–53.

Defendants will not repeat their Fourth Amendment analysis here, but Plaintiffs' reply merits one point of clarification. Plaintiffs seek to characterize detention pursuant to a detainer as merely "assisting federal authorities by cooperating with them." Pls. Reply 85–86. But the assistance that § 1357(g)(10) contemplates assumes close supervision by federal officials. *See* 8 U.S.C. § 1357(g)(1)–(3) (allowing direct immigration enforcement by state and local law

[7] The State's contention that the Ordinance creates a "safe haven" for "those fleeing federal agents" is wholly unwarranted. State Mem. 10. The Ordinance does not in any way affect federal immigration officers' ability to engage in their own enforcement operations within the city limits. Nor are federal agents entitled to "utilize the City's law enforcement officers" to augment their enforcement powers. State Mem. 12; *see infra* at 17–20 (explaining that, under the anticommandeering doctrine, the federal government may not command state and local officers to enforce a federal regulatory program).

enforcement only with adequate training, certification, and supervision by the Attorney General). In fulfilling a detainer request, however, state and local officials keep an individual in custody under their own power, independent of direct supervision by federal officials—and despite a total lack of authority to engage in civil immigration seizures on their own. Plaintiffs ignore the many cases cited by Defendants that recognize this critical distinction. *See, e.g.*, *Ramon v. Short*, 460 P.3d 867, 879 (Mont. 2020); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1158 (Mass. 2017); *Lopez-Flores v. Douglas County*, No. 6:19-CV-00904-AA, 2020 WL 2820143, at *6 (D. Or. May 30, 2020); *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018).

C. The Ordinance does not violate section 18.2-7.

Plaintiffs do not dispute that Defendants have complied with section 18.2-7's requirement that they provide written notice to East Chicago's law enforcement officers of a duty to cooperate in immigration enforcement. *See* Pls.' Reply 41. As Defendants explained in their summary-judgment motion, that is all that section 18.2-7 requires, so Defendants are entitled to summary judgment on Plaintiffs' claims under that section. *See* Defs.' Mem. 41.

Plaintiffs argue that section 18.2-7 imposes a freestanding "affirmative duty" to cooperate, but they never explain what that duty actually entails. Pls.' Reply 40. In fact, Plaintiffs expressly disclaim that sections 18.2-3 and -4 provide any guidance whatsoever as to the scope of section 18.2-7's purported mandate; instead, they say only that it is a "broadly worded affirmative cooperation duty." *Id.* But Section 18.2-7 itself cannot bear this weight: It simply notes "a duty to cooperate . . . on matters pertaining to" immigration enforcement, without any further elaboration. That is why the best reading of section 18.2-7's "duty" is found in section 18.2-3. Although Plaintiffs attempt to cleave the two statutes because section 18.2-3 imposes a "ban" and section 18.2-7 imposes a "mandate," the clear implication of section 18.2-3 is that "a law

enforcement officer" must be permitted to "communicat[e] or cooperat[e] with federal officials" with respect to "information of the citizenship or immigration status, lawful or unlawful, of an individual." Ind. Code § 5-2-18.2-3. Thus, even if section 18.2-7 imposes *some* cooperation mandate, East Chicago's Ordinance does not violate it because it permits the cooperation that section 18.2-3 contemplates. *See* Defs.' Mem. 42–45.

III. Plaintiffs' Federal Constitutional Claims Are Meritless

Plaintiffs' facial constitutional challenges to the Ordinance are meritless, as explained in Defendants' summary-judgment memorandum and elaborated below. *See* Defs.' Mem. 55–68. To begin, Plaintiffs' suggestion that Indiana courts might not apply a stricter test to facial constitutional challenges, *see* Pls.' Reply 62, is belied by Indiana law. As the Supreme Court has made clear, "[w]hen a party claims that a statute is unconstitutional on its face, the claimant assumes the burden of demonstrating that there are no set of circumstances under which the statute can be constitutionally applied." *Baldwin v. Reagan*, 715 N.E.2d 332, 337 (Ind. 1999) (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)).[8] Plaintiffs do not satisfy that test.

Additionally, the Court should not consider any arguments made by the State with respect to the constitutionality of East Chicago's Ordinance. State Mem. 19–27. In seeking intervention, the State made clear that it "neither takes a position nor advances any argument on Plaintiffs' claims that the East Chicago ordinance independently violates the U.S. Constitution. Rather, the State seeks to intervene for the sole purpose of addressing the Ordinance as it relates to Ind. Chapter 18.2." Mot. to Intervene 4 n.2. Its motion to intervene was granted on that basis. Moreover, in seeking a remand from federal court, the State once again explained that it

[8] Additionally, as explained in Part I, Plaintiffs do not have standing to bring their federal constitutional claims. *See supra* at 5–6; Defs.' Mem. 9–14. And despite confusion within Plaintiffs' brief, neither state law nor Plaintiffs' claimed "domicile standing" are relevant to the merits of their *federal* claims. *See, e.g.*, Pls.' Reply 62.

"intervened in this matter for the limited purpose of defending the constitutionality of Indiana Code Chapter 5-2-18.2," and it reiterated that it had "unequivocally stated that they do not take a position on the Private Plaintiffs' Constitutional claims." Reply in Supp. of State's Mot. to Remand 2–3. The State should be estopped from reversing course over two years into this case. *See Ohning v. Driskill*, 739 N.E.2d 161, 163 (Ind. Ct. App. 2000) ("Judicial estoppel prevents a party from assuming a position in a legal proceeding inconsistent with one previously asserted when the court has acted on the admissions of the estopped party.").

A. The Ordinance is not preempted by federal law.

1. Sections 1373 and 1644 are not valid preemption provisions, and they violate the Tenth Amendment.

As previously explained, in order to carry preemptive force, a federal statute must "regulate[] the conduct of private actors," not states or cities as governments. *Murphy v. NCAA*, 138 S. Ct. 1461, 1479, 1481 (2018); *see* Defs.' Mem. 56–57. Plaintiffs contend that §§ 1373 and 1644 remain valid preemption provisions even after *Murphy* because *Murphy* instructs that courts should "look beyond the phrasing" of a federal statute that precludes state or local regulation to see if it in fact operates as a preemption provision—i.e., whether it in fact protects *private entities* from state or local regulation. Pls.' Reply 62 (quoting *Murphy*, 138 S. Ct. at 1480). But the examples from *Murphy* that Plaintiffs cite demonstrate that §§ 1373 and 1644 do not create a federal right or prohibition for any private entity, so they are not valid preemption provisions.

The Airline Deregulation Act of 1978 provided that "no State or political subdivision thereof . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any [covered] air carrier." 49 U.S.C. app. § 1305(a)(1) (1988). As the *Murphy* Court commented, that provision conferred "on private entities (*i.e.*, covered carriers) a federal right to engage in certain conduct subject only to certain

(federal) constraints." 138 S. Ct. at 1480. That is simply not how §§ 1373 and 1644 operate. As the court in *Oregon v. Trump* concluded, those statutes "create no rights or restrictions applicable to *private* actors"; rather, their sole effect is to direct the policies of state and local governments in favor of the federal government's preferred approach. 406 F. Supp. 3d 940, 972 (D. Or. 2019). As in *Murphy*, the statutes do not create a personal right to information-sharing, nor do they impose any penalties on private entities for withholding information. "Thus, there is simply no way to understand the provision[s] . . . as anything other than . . . direct command[s] to the States." *Murphy*, 138 S. Ct. at 1481.

Plaintiffs next look to *Murphy*'s discussion of field preemption in *Arizona v. United States*, 567 U.S. 387 (2012), as support for the notion that §§ 1373 and 1644 grant individuals a right "to be free from local regulation in immigration-law enforcement relating to" those laws. Pls.' Reply 63–64. But there is no way to read §§ 1373 or 1644 as preempting the field of immigration-information sharing, as they expressly depend on state and local officials taking action in their governmental capacities. Even Plaintiffs' own description of their claimed individual right focuses on "*governments'* ability to access" private actors' information. Pls.' Reply 64 (emphasis added). Moreover, Plaintiffs fail to appreciate the narrowness of the field preemption issue in *Arizona*: there, the Court concluded that the federal government had occupied the field of "alien registration," 567 U.S. at 401, not that the federal government had occupied the field with respect to each and every law that appears in the INA, as Plaintiffs would have it. *See* Pls.' Reply 64. Therefore, the Second Circuit's recent comment in dicta that the INA *overall* "confers rights and places restrictions on large numbers of private persons," *New York v. Dep't of Justice*, 951 F.3d 84, 114 n.27 (2d Cir. 2020), is irrelevant to whether §§ 1373 and 1644 are, on their own, valid preemption provisions. *See California*, 921 F.3d at 889 n.15 (concluding that because a state law

governed only "how California and its localities can interact with the federal government," not private actors, it was irrelevant that the INA and the state law generally "implicate" noncitizens as private actors).

Furthermore, as explained in Defendants' summary-judgment memorandum (at 57–59), §§ 1373 and 1644 cannot preempt contrary state or local laws because they are facially unconstitutional. In disputing that proposition, Plaintiffs rely heavily on *New York*, which discussed facial preemption only in dicta. *See* 951 F.3d at 116 (concluding only that § 1373 is valid as applied as a condition on federal funding). There, the Second Circuit suggested a sweeping rule that the anticommandeering doctrine might not apply "in the immigration context" because there is no "pertinent authority reserved to the States" in that area. *Id.* at 113 (internal citations omitted). That analysis ignores that states and localities *do* retain authority to decide how to use their own law enforcement resources, even as those decisions may touch on areas of federal policy. *See New Jersey*, 2021 WL 252270, at *7 ("New Jersey's decision not to cooperate with the enforcement of federal immigration law is a clear exercise of its police power to regulate the conduct of its own law enforcement agencies."). Indeed, the idea that the federal government may not "impress into its service—and at no cost to itself—the police officers of the 50 States" is a core principle of the anticommandeering doctrine, regardless of the preeminence of federal authority in a given area. *Printz v. United States*, 521 U.S. 898, 922 (1997). And outside of §§ 1373 and 1644, the INA generally reflects this principle, as it relies upon the *voluntary* cooperation of states and localities in immigration enforcement. *See California*, 921 F.3d at 889 ("Federal law provides states and localities the *option*, not the *requirement*, of assisting federal immigration authorities.").

In arguing that this Court should follow *New York* and the Second Circuit's pre-*Murphy* decision in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), Plaintiffs utterly ignore

the Ninth Circuit's decision in *United States v. California*, which held that a state law similar to East Chicago's Ordinance was *not* preempted by federal immigration law under an anticommandeering rationale.[9] As the Ninth Circuit explained: "[W]hen questions of federalism are involved, we must distinguish between expectations and requirements. In this context, the federal government was free to *expect* as much as it wanted, but it could not *require* California's cooperation without running afoul of the Tenth Amendment." 921 F.3d at 891; *see also Murphy*, 138 S. Ct. at 1478 ("In [no case] did we uphold the constitutionality of a federal statute that commanded state legislatures to enact or refrain from enacting state law."). The Ninth Circuit's considered judgment on this point is far more persuasive than the brief comments offered by the Second Circuit in dicta.

Finally, Plaintiffs suggest that there is a carve-out from the anticommandeering rule for "purely ministerial reporting requirements" into which §§ 1373 and 1644 fall. Pls.' Reply 78 (quoting *New York*, 951 F.3d at 114). But courts have rejected the idea that §§ 1373 and 1644 would be covered by any such carveout because they impose more than merely ministerial requirements; rather, those laws "prevent state and local policymakers from enacting a wide range of information-governance rules, . . . and force them to stand aside and allow the federal government to conscript the time and cooperation of local employees." *Oregon*, 406 F. Supp. 3d at 973 (internal quotation marks omitted); *see also Colorado v. U.S. Dep't of Justice*, 455 F. Supp. 3d 1034, 1060 (D. Colo. 2020) ("To the extent §§ 1373 and 1644 impermissibly intrude upon the functioning of state and local governments, then, they cannot be deemed constitutional in the name of 'information-sharing.'").[10]

[9] Defendants already have explained why *City of New York* no longer remains good law after *Murphy*. *See* Defs.' Mem. 58–59.

[10] Plaintiffs go on at length to suggest technical reasons why the district court decisions that have concluded that §§ 1373 and 1644 violate the Tenth Amendment may not be binding. Pls.' Reply 78–84. But Plaintiffs' views on

2. No part of the Ordinance is conflict-preempted.

As just explained, §§ 1373 and 1644 are unconstitutional and do not operate as valid preemption provisions, so they cannot support Plaintiffs' conflict-preemption claim. In any case, the challenged provisions of East Chicago's Ordinance comply with §§ 1373 and 1644 for the same reasons they comply with section 18.2-3, so there is no conflict at all. Moreover, as Defendants explained in their summary-judgment memorandum (at 59–60), § 1357(g) envisions *voluntary* cooperation by state and local governments in immigration enforcement and says nothing about how states and localities are to exercise their discretion in deciding whether and to what extent to participate. The anticommandeering doctrine protects states' and localities' right to make that choice, so there is no conflict between the Ordinance and § 1357(g). *See* Defs.' Mem. 59–62; *New Jersey*, 2021 WL 252270, at *8 ("[T]he INA simply does not contemplate that States are obligated to assist in the federal government's enforcement of civil immigration law.").

3. Section 10 of the Ordinance is not field-preempted.

Plaintiffs have restated their "field preemption" argument to mean that language used in federal law "should not be subject to state and local redefinition ….particularly to devaluation by redefinition," and they contend that "the definitional field that preempts such redefinition efforts is the *whole* of federal law." Pls.' Reply 70. But section 10 of East Chicago's Ordinance—which permits East Chicago agencies to share citizenship and immigration-status information—does not attempt to "redefine" *any* aspect of federal law; rather, its definition applies only to East Chicago's own agencies and agents. At best, Plaintiffs' field preemption argument is merely a restatement of their conflict-preemption arguments, as Plaintiffs themselves appear to recognize. *See* Pls.' Reply 71. In any case, Ordinance section 10's definition *is* wholly consistent with §§ 1373 and

what issues should have been relied on by the courts and parties in other cases have no bearing on the persuasive value of those decisions' analyses of the anticommandeering issue.

1644—the only "definitions" to which Plaintiffs point—for the same reasons it is consistent with section 18.2-3, and §§ 1373 and 1644 are not valid preemption provisions, so they cannot control the scope of information shared by local governments.

4. The Ordinance does not impede federal officers' enforcement of federal law.

Plaintiffs continue to pursue baseless speculation that the Ordinance requires Defendants to engage in "some sort of interference with . . . ICE agent[s]" and assert that Defendants never disclaim an intent to impede federal immigration enforcement. Pls.' Reply 67–68. But Defendants have clearly and unequivocally explained that the Ordinance does not limit the federal enforcement of federal immigration law—indeed, that is specifically what Defendants argue section 18.2-4 requires, and Defendants contend that the Ordinance is wholly consistent with state law. *See* Defs.' Mem. 45–47, 63–64. Defendants made clear that the Ordinance merely limits the use of East Chicago's resources to support immigration enforcement by ICE, and Defendants are not required to do more than that under the anticommandeering doctrine, even if their decision has the indirect effect of reducing the effectiveness of ICE's own enforcement efforts. Plaintiffs cannot salvage their misreading of the Ordinance by willfully misreading Defendants' position in this case.

B. Ordinance section 9(c) does not violate the Equal Protection Clause.

Plaintiffs' equal protection claim depends on two different theories, neither of which is supported by the language of Ordinance section 9(c) or the evidence in this case.

First, Plaintiffs claim that, although section 9(c) on its face applies the same arrest policy to "all individuals," the words "all individuals" in fact actually mean "illegal aliens" or "immigrants," each of which Plaintiffs variously use. Pls.' Reply 71–72. Plaintiffs' evidence for this atextual reading is weak. Although Plaintiffs are correct that the prefatory language of section 9(c) includes the observation that "the arrest of an individual increases that individual's risk of

deportation," it does not follow that every other reference to "individuals" necessarily refers only to those individuals who may be subject to deportation. In order to avoid a disparate impact on a particular identified group—as the Ordinance seeks to do—a government or other entity may adopt a policy that applies to *all* individuals, not just those the policy seeks to protect. *See, e.g.*, Curt Rice, *How Blind Auditions Help Orchestras to Eliminate Gender Bias*, The Guardian (Oct. 14, 2013), https://perma.cc/64YE-HDBH (explaining how orchestras improved women's hiring rates through blind auditions of all musicians). Indeed, this is the very kind of harm that disparate impact claims under Title VII of the Civil Rights Act of 1964 were intended to remedy. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 429–30 (U.S. 1971). Moreover, Plaintiffs' attempt to limit the language of the policy from "all individuals" to "undocumented immigrants" makes little sense in practice, as East Chicago's police officers would rarely, if ever, know ahead of time whether an individual subject to arrest is also at risk of deportation. The policy only works if, as it plainly says, it applies to "all individuals."

Plaintiffs' second, alternative argument is that, regardless of what the policy says, East Chicago police officers inevitably will apply it only to undocumented immigrants and therefore will engage in disparate treatment in violation of the Equal Protection Clause. Pls.' Reply 72–73. Setting aside the practical problems just noted, Plaintiffs challenge the way that they *believe* that East Chicago police officers will apply Ordinance section 9(c). This assertion is unsupported by the record in this case, as Plaintiffs have not submitted any factual evidence of enforcement. Plaintiffs also have asserted only a facial challenge, and they do not deny that if the policy actually applies equally to "all individuals," there would be no disparate treatment and therefore no equal protection violation. That alone dooms their facial challenge. *See Baldwin*, 715 N.E.2d at 337 (on

a facial challenge, plaintiff must show "that there are no set of circumstances under which the statute can be constitutionally applied").

C. Ordinance section 9(c) is not unconstitutionally vague

Plaintiffs' vagueness challenge also continues to wholly miss the mark. Most fundamentally, Plaintiffs appear to misunderstand that, in order to assert a vagueness challenge, they must be among the individuals who are regulated by the provision at issue. *See* Pls.' Reply 74. As Defendants have explained, Ordinance section 9(c) is an internal directive that channels the discretion of East Chicago police officers. *See* Defs.' Mem. 65–68. Although it directs officers to consider certain information and determine whether an arrest is necessary to "effect a satisfactory resolution," it does not require any private individual, like Plaintiffs, to take any action, nor does it prohibit anyone from engaging in *any* course of conduct at all. It is therefore akin to the agency- and court-directed regulations cited in Defendants' summary-judgment memorandum, which courts have held are not subject to vagueness challenges. *See United States ex rel. Fitzgerald v. Jordan*, 747 F.2d 1120, 1130 (7th Cir. 1984) (statute regarding release on bail on appeal); *Matter of S.G. v. Ind. Dep't of Child Servs.*, 67 N.E.3d 1138, 1146–47 (Ind. Ct. App. 2017) (statute regulating agency actions). Plaintiffs fail to address these precedents at all.

Plaintiffs also again seek to draw comparisons to *City of Chicago v. Morales*, 527 U.S. 41 (1999). *See* Pls.' Reply 75. But the challenged portion of the Chicago ordinance that "afford[ed] too much discretion to the police and too little notice to citizens" was the provisions that created a criminal loitering offense—not the separate guidelines limiting police discretion. *Id.* at 64. *Morales* therefore offers no support to Plaintiffs' position. Plaintiffs' vagueness challenge thus remains meritless.

IV. Plaintiffs' Remaining Arguments Are Unavailing

Plaintiffs raise a number of arguments regarding the scope of relief they may obtain and on what basis. First, Plaintiffs seek to elide the distinction between section 18.2-5's "action to compel" compliance and section 18.2-6's authorization of an injunction for "knowing[] or intentional[]" violations of sections 18.2-3 and -4 to argue that they may obtain an injunction for any violation of Chapter 18.2 without any further showing. Pls.' Reply 89. To be clear, section 18.2-6 does not apply to this case because any violation of sections 18.2-3 or -4 was not knowing or intentional. *See* Defs.' Mem. 69–72. But, even if it were to apply, section 18.2-6 does *not* authorize a statutory injunction for violations of section 18.2-7. Although Plaintiffs seek refuge in section 18.2-5's authorization of an "action to compel" to suggest that this language alone allows the Court to "both find a violation and enjoin it," Pls.' Reply 89, that reading would render section 18.2-6 entirely superfluous.[11] Plaintiffs therefore must meet the traditional equitable injunction test *at least* for any claimed violations of section 18.2-7 and for their federal constitutional claims—which they cannot do. *See* Defs.' Mem. 72–77. Even if Plaintiffs were to satisfy public standing, that does *not* relieve them from their burden of establishing all of the equitable elements of an injunction, including a showing of irreparable harm. *See Old Utica Sch. Pres., Inc. v. Utica Twp.*, 46 N.E.3d 1252, 1257–58 (Ind. Ct. App. 2015) (concluding that plaintiffs, who had public standing, had failed to demonstrate irreparable injury to warrant an injunction).

Second, Plaintiffs argue that it would be "legally anomalous" for the Court not to grant an automatic injunction against East Chicago's Ordinance just because Defendants did not "intend or know it was violating" sections 18.2-3 or -4. Pls.' Reply 45, 91. But, for the reasons Defendants

[11] Indeed, under Plaintiffs' reading, section 18.2-5 sets the form of an action (an action to compel); grants a private right of action to any "person lawfully domiciled in Indiana"; grants standing to those individuals without any injury whatsoever; *and* creates a new "compel-compliance power as to all of Chapter 18.2." Pls.' Reply 6, 89. That is too much work for a single sentence within a broader statutory scheme.

explained in their summary-judgment motion, the "knowing or intentional" requirement of section 18.2-6 should be given independent meaning—rather than treating it as a strict liability standard for any duly enacted ordinance.[12] *See* Defs.' Mem. 70–71. And it would be completely normal—and not anomalous—to deny an injunction where a plaintiff has suffered no irreparable harm, even if a plaintiff might win on the merits. *See Old Utica Sch. Pres., Inc.*, 46 N.E.3d at 1257–58.

Third, Defendants explained in their summary-judgment memorandum (at 77) that, even if the Court were to grant injunctive relief, any further affirmative relief, including mandating public notice on the City's website, would be unwarranted. *See Crawley v. Oak Bend Ests. Homeowners Ass'n*, 753 N.E.2d 740, 744 (Ind. Ct. App. 2001) (Injunctive relief "should not be more extensive than is reasonably required to protect the interests of the party in whose favor it is granted."). Plaintiffs' sole asserted interest in this case is a desire that Defendants follow the law, so injunctive relief would fully protect their interests. And although Plaintiffs suggest that "due process" requires that Defendants "provide notice to the public" of any injunction, Pls.' Reply 41–42, they have not cited any authority for such a requirement.

Finally, Defendants suggest in a footnote that the Common Council and its members may seek only dismissal, not summary judgment, on the basis of legislative immunity. Pls.' Reply 67. There is no reason why an absolute legal immunity cannot be raised on summary judgment. Thus, even if the Court were to ultimately grant some relief to Plaintiffs, the Common Council

[12] Plaintiffs also quibble with Defendants' choice of pincite in *Pittman v. State*, 45 N.E.3d 805 (Ind. Ct. App. 2015). *See* Pls.' Reply 90–91. But that is beside the point. In *Pittman*, the court was tasked with determining whether the State had met its burden to prove that the defendant had engaged in "a knowing or an intentional course of conduct" that "would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened" and that actually caused that result. *Pittman*, 45 N.E.3d at 810. The Court's discussion indicates that the "knowing or intentional" element did not merely require a "knowing or an intentional course of conduct"—analogous to Plaintiffs' position here—but in fact required knowledge or intent to cause a particular result. *Id.* at 818. On the face of section 18.2-6, "knowingly or intentionally" modifies "violated section 3 or 4," so the statute should be read to require knowledge or intent to cause that result.

Defendants are entitled to summary judgment in their favor for the reasons stated in Defendants' summary judgment memorandum. *See* Defs.' Mem. 78–79.

CONCLUSION

For the reasons stated herein and in Defendants' memorandum in support of their motion for summary judgment and opposition to Plaintiffs' motion for summary judgment, the Court should deny Plaintiffs' motion for summary judgment and grant Defendants' cross-motion for summary judgment on all counts.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 5th day of March 2021, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by electronic service using the Indiana E-Filing System, email, or depositing the same in the United States Mail via certified mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

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