

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NUMBER: 53C08-2006-MI-000958

ANDREW GUENTHER, individually and in his capacity)
as appointed Republican member of the Bloomington Plan)
Commission,)

and)

WILLIAM ELLIS, in his capacity as Chairman of the)
Monroe County Indiana Republican Party,)
Petitioners,)

v.)

CITY OF BLOOMINGTON, INDIANA,)
and)

JOHN HAMILTON, in his capacity as Mayor for the City)
of Bloomington,)
and)

CHRISTOPHER COCKERHAM, in his capacity as)
contested member of the Bloomington Plan Commission.)
and)

NICK KAPPAS, in his capacity as contested former)
member of the Bloomington Plan Commission.)
Respondents.

**PETITIONERS’ OBJECTION TO RESPONDENTS’
MOTION TO STAY ENFORCEMENT PENDING APPEAL**

Petitioners, **ANDREW GUENTHER** (“*Guenther*”) individually, and in his capacity as member of the Bloomington Plan Commission, and **WILLIAM ELLIS** (“*Ellis*”), in his capacity as Chair of the Monroe County Republican Party, by counsel *Carl Lamb & Associates, P.C.*, for their *Petitioners’ Objection to Respondents’ Motion to Stay Enforcement Pending Appeal*, state and show as follows:

- 1) The Court's November 18, 2021 Judgment in favor of the Petitioners should be full executed, and the Respondents' Motion to Stay Enforcement Pending Appeal should be denied.

- 2) Petitioner Andrew Guenther is the rightful member of the City of Bloomington Plan Commission, and further efforts to deny Andrew Guenther his right on the Plan Commission creates unfair prejudice to the Petitioners.
- 3) A stay pending appeal would prevent Petitioner Guenther from participating in the next Plan Commission meeting on December 13, 2021
- 4) Pursuant to Rule 39(A) of the Indiana Rules of Appellate Procedure, "An appeal does not stay the effect or enforceability of a judgment or order of a trial court or Administrative Agency unless the trial court, Administrative Agency, or Court on Appeal otherwise orders.
- 5) Respondents are requesting a stay of the Judgment pursuant to Rule 62 of the Indiana Rules of Trial Procedure.
- 6) Motions to stay judgments are governed by Trial Rule 62(B) which provides in relevant part: "In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay execution of any proceedings to enforce a judgment pending the filing and disposition of...an appeal."
- 7) Any benefit in preserving the status quo far outweighs the harm to the Petitioners if this Court's Judgment is not immediately recognized.
- 8) Respondents have ignored Andrew Guenther's efforts to effectuate his position on the Plan Commission between the time the Court issued its Judgment and before the Respondents filed for a stay of execution of the Judgment.
- 9) At the time of his appointment to the Plan Commission, Petitioner Guenther was a registered Republican. The Court's *Findings of Fact, Conclusions, and Judgment*, Finding 37, clearly considered the fact that on "January 2, 2021, Andrew Guenther publicly resigned from the Republican Party.

- 10) Even if the Court denies the Respondents' request for a stay pending appeal, the Respondents can nevertheless petition the Court of Appeals for a stay under Rule 39 of the Indiana Rules of Appellate Procedure.
- 11) Guenther desires to exercise his rights as a rightfully appointed member of the Plan Commission and therefore has shown sufficient basis. The Respondent's assertion that "[t]here is minimal prejudice to Guenther in not occupying the seat on the Plan Commission while the appellate courts weigh in on the novel legal issues in this case," is incorrect.
- 12) The appellate process will take time, a decision will likely not be issued before several more Plan Commission meetings take place, beyond just the upcoming December 13th meeting. Granting Respondents' request for a stay pending an appeal will only further extend the prejudice Andrew Guenther has experienced since April 16, 2020, when William Ellis appointed Andrew Guenther to the vacant seat. (Finding 19).
- 13) The Petitioners request that the Court deny the Respondent's Motion for Stay Enforcement Pending Appeal and issue an order requiring the Petitioners to immediately distribute materials for Petitioner Guenther to sufficiently prepare for the December 12, 2021 Plan Commission meeting.
- 14) The Court issued its *Findings of Fact, Conclusions, and Judgment* after reviewing and considering the respective legal positions of the parties, and the Respondents' Motion for Stay does not assert any new legal basis this Court has not already considered. This court appears to have duly considered the arguments poised by the Respondents prior rendering its Final Judgment.
- 15) The risk of retroactive challenges to independent municipal board and commission members throughout the state is overstated and does not outweigh the prejudice Petitioners would suffer if a stay was granted.
- 16) For these reasons, Petitioners request that the Court deny the Respondent's Motion for Stay Enforcement Pending Appeal.

WHEREFORE, the Petitioners, by counsel, request that this court's November 18, 2021, *Findings of Fact, Conclusions, and Judgment*, be enforced, and that the *Respondents' Motion to Stay Enforcement Pending Appeal* be denied, and for all other relief in the premises.

Respectfully submitted,

CARL LAMB and ASSOCIATES, PC

Attorneys at Law

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Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been electronically filed using the Indiana E-Filing System (IEFS) and that the foregoing document was served upon the following person(s) using the service contact entered in the IEFS on 11/30/2021.

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