

STATE OF INDIANA ) IN THE MONROE CIRCUIT COURT  
 ) SS:  
COUNTY OF MONROE ) CAUSE NUMBER: 53C04-2006-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.*

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**PETITIONERS' APPLICATION FOR TRIAL RULE 65(A) PRELIMINARY  
INJUNCTION AND CONSOLIDATION OF HEARING WITH TRIAL ON  
THE MERITS FOR PETITIONERS' PENDING REQUEST FOR  
DECLARATORY JUDGMENT AND WRIT OF QUO WARRANTO**

COME NOW the Petitioners, **ANDREW GUENTHER** individually, and in his capacity as appointed member of the Bloomington Plan Commission, and **WILLIAM ELLIS**, in his capacity as Chairman of the Monroe County Republican Party, by counsel *Carl Lamb & Associates, P.C.*, and pursuant to Indiana Rules of Trial Procedure, Trial Rule 65(A), hereby request this Court to issue a *Preliminary Injunction* that enjoins any further proceedings of the Bloomington Plan Commission, until this action is disposed, *or*

*in the alternative*, enjoin Respondent **CHRISTOPHER COCKERHAM** from participating in any capacity in any further meetings of the Bloomington Plan Commission, *until this matter is disposed*.

Additionally, pursuant and in accordance with Trial Rule 65(A)(2), Petitioners request that this Application for Preliminary Injunction be *consolidated* with the Petitioners' pending request for Declaratory Judgment and Writ of Quo Warranto. In regard to “consolidation,” the Petitioners file a separate request simultaneous with the submission of this pleading. In support of this *Motion*, Petitioners state and show as follows:

1) Pursuant to Indiana Trial Rule 65, in relevant part:

**"(A) Preliminary Injunction.**

- (1) Notice. No preliminary injunction shall be issued without an opportunity for a hearing upon notice to the adverse party.
- (2) Consolidation of hearing with trial on merits. *Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.* Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial....

\* \* \*

- (4) Modification of orders--Responsive pleadings. Upon the court's own motion or the motion of any party, orders granting or denying temporary restraining orders or preliminary injunctions may be dissolved, modified, granted, or reinstated. Responsive pleadings shall not be required in response to any pleadings or motions relating to temporary restraining orders or preliminary injunctions...

\* \* \*

- (D) **Form and scope of injunction or restraining order.** Every order granting temporary injunction and every restraining order shall include or be accompanied by findings as required by Rule 52; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- 2) Petitioners hereby assert that this *Application for Preliminary Injunction* provides the Respondents with sufficient notice and gives the Respondents sufficient time to respond to the matters herein prior to any hearing on the same.
- a. Note – As determined at the most recent Attorney Conference, hearing on the instant request has been set for August 5<sup>th</sup>, 2020.
- b. Further, the Respondents have been given until such time to file any responsive pleadings to the Amended Complaint.
- 3) In determining whether to issue a preliminary injunction, the Court considers whether the moving party has shown by a *preponderance of the evidence*, the following:
- a. the movant's remedies at law are inadequate, causing irreparable harm pending resolution of the substantive action;
- b. the movant has at least a reasonable likelihood of success at trial by establishing a *prima facie* case;
- c. the threatened injury to the movant outweighs the potential harm to the defendant; and
- d. the public interest would not be disserved.” *Sperro LLC v. Ford Motor Credit Co.*, 64 N.E. 3d 235, 249 (Ind. Ct. App. 2016) (quoting *Apple Glen Crossing, LLC v. Trademark Retail, Inc.*, 784 N.E. 2d 484, 487 (Ind. 2003))
- 4) Here, Andrew Guenther (“*Mr. Guenther*”) contends he is entitled to a seat on the Bloomington Plan Commission that has been usurped by Christopher Cockerham (“*Mr. Cockerham*”), who is holding said seat under protest (as set for by the Petitioners’ Amended Complaint).

- 5) Every action taken by the Bloomington Plan Commission is another grievous harm against the Petitioners. Not only have the Respondents usurped the Seat at Issue, but they are allowing Mr. Cockerham to participate in Plan Commission Proceedings without total disregard to the contentions, allegations, and assertions by the Petitioners. In essence, the Respondent Mayor Hamilton has totally rejected any claims by the Petitioners of justifiable legal authority for the Plan Commission seat in question.
- 6) The Bloomington Plan Commission has upcoming meetings scheduled for July 13<sup>th</sup> and August 10<sup>th</sup> in which Mr. Guenther should be taking part of, as a rightful member of the Bloomington Plan Commission, not Mr. Cockerham. By allowing Bloomington Plan Commission proceedings to proceed, Mr. Gunther would face irreparable harm because his participation, consideration and active voting at the Plan Commission hearings would be denied, deprived, and not be recognized.
- 7) The facts of the Petitioners' "*Amended Verified Complaint for Declaratory Judgment and Writ of Quo Warranto*" establish a *prima facie* case that can be adjudicated on the merits.
- 8) If the Bloomington Plan Commission actions were delayed, pending the outcome of the case (*which by its very nature is to be expedited*), no identifiable harm would ensue. However, if Bloomington Plan Commission proceedings continue and Mr. Guenther is found to be a rightful member of that commission, it is likely that all decisions influenced by Mr. Cockerham will be called into question. Therefore, the threatened injury to the movant outweighs the potential harm to the Respondents.
- 9) It would not be in the public's best interest for Bloomington Plan Commission to make decisions in which Mr. Guenther is denied his rightful seat. To do so would likely lead to more litigation, which would result in financial distress to the City of Bloomington. Thus, a preliminary injunction against any further Bloomington Plan Commission proceedings would not disserve the public interest.
- 10) Should the Court deem the Plan Commission proceedings as essential to continue, the court should bar Chris Cockerham from participating during these court proceedings. The Plan Commission has operated for over five (5) months in 2020 without a full Commission.

- 11) The City of Bloomington's actions indicate that the Plan Commission can proceed without Mr. Cockerham participating. There is no legal basis for allowing a member, whose status is being challenged under law, to participate in official business.
- 12) As such, Petitioners have shown by a preponderance of the evidence, that a preliminary injunction in this case is warranted and should be issued.
- 13) Trial Rule 65(A) "provides for a consolidation of the hearing on the preliminary injunction with the trial on the merits." *City of Fort Wayne v. State Ex Rel. Hoagland*, 342 N.E. 2d 865,869 (Ind. Ct. App. 1976).
- 14) As explained in *Roberts v. Community Hospitals Ind., Inc.*, 897 N.E. 2d 458, 464 (Ind. 2008):

"Trial Rule 65(A)(2) is modeled substantially after Federal Rule of Civil Procedure ("FRCP") 65(a)(2).<sup>[2]</sup> 1970 Civil Code Study Commission Comments, *reprinted in* 4 William F. Harvey, *Indiana Practice: Rules of Procedure Annotated* 510 (3d ed.2003). The purpose of both Trial Rule 65(A)(2) and its federal counterpart is judicial efficiency. *See* Fed.R.Civ.P. 65 advisory committee's note (1966 amendment). The rule is useful

when it appears that a substantial part of the evidence offered on the application [for a preliminary injunction] will be relevant to the merits and will be presented in such form as to qualify for admission on the trial proper. Repetition of evidence is thereby avoided.... [T]o consolidate the proceedings will tend to expedite the final disposition of the action.

- 15) Regarding notice, "the parties should normally receive clear and unambiguous notice [of consolidation] either before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases." *Id* citing: *Nationwide Amusements, Inc. v. Nattin*, 452 F.2d 651, 652 (4th Cir. 1971).
- 16) Prior to the hearing on the preliminary injunction, Petitioners intend on taking depositions of Respondents.
- 17) Petitioners' request for the preliminary injunction is based upon largely the same evidence relevant to the merits of Petitioners' request for declaratory judgment and writ of quo warranto.

- 18) Petitioners' prayer section of their July 6, 2020, *Amended Complaint* reads in relevant part as follows:

“**WHEREFORE**, Petitioners, by counsel, pray that this honorable Court award them the following relief:

(1) **Issue a Declaratory Judgment** finding that the de facto appointment of NICHOLAS KAPPAS to the Bloomington Plan Commission was void *ab initio*.

(2) **Issue a Declaratory Judgment** finding Mayor John Hamilton did not have the right and/or authority to make the Plan Commission appointment once he failed to do so timely under the relevant statutes.

(3) **Issue a Declaratory Judgment** finding that Chris Cokerham is a “Democrat” as defined under Indiana law at the time and as relevant to the instant cause of action and, as such, is not eligible for the appointment to the Bloomington Plan Commission as of May 2019.

(4) **Issue a Writ of Quo Warranto** which vacates the de facto appointment of CHRISTOPHER COCKERHAM, which appointment the Respondents made wrongly.

(5) **Order JOHN HAMILTON to recognize, and certify, and install ANDREW GUENTHER** to the Seat at Issue on the Plan Commission[.]”

- 19) Granting the Petitioners' request for preliminary injunction will largely hinge on whether or not the Court finds Respondent Cockerham to be a valid appointment to the Plan Commission and whether or not Respondent Mayor Hamilton had authority to make that appointment. The writ of quo warranto seeks the same determination.
- 20) That if the Court finds Mr. Cockerham was not the rightful appointed member of the Plan Commission position, then the Court will need to determine whether or not Petitioner Ellis was entitled to appoint Petitioner Guenther to that vacancy.
- 21) Determining whether or not Petitioner Ellis was entitled to appoint Petitioner Guenther, would require the Court to determine if the appointment of Nicholas Kappas, was a valid appointment as well, which is the determination that Petitioners' request for declaratory judgment sought as well.

- 22) “*Repetition of evidence*” would be avoided by consolidating the preliminary injunction hearing, with a trial on the merits on Petitioners’ Declaratory Judgment and Writ of Quo Warranto requests. *Id* at 464.
- 23) Resolving both matters together will alleviate any prolonged delay of Plan Commission meetings, or meetings without a fully seated commission.
- 24) Resolving both matters together is in the interests of judicial economy, and all of the parties.
- 25) By this Application for Preliminary Injunction, the Respondents have sufficient notice that the Court may hear the declaratory judgment and request for writ of quo warranto either right before or after hearing Petitioners’ request for preliminary injunction.
- 26) As such, Petitioners request that this matter be *consolidated* with Petitioners pending request for Declaratory Judgment pursuant to Trial Rule 65(A)(2) and that the Court issue appropriate orders placing the Respondents on notice that the preliminary injunction request will be heard during the same setting on Petitioners request for Declaratory Judgment.
- 27) Finally, the Petitioners request that the Court *waive* the security requirement under Trial Rule 65(C) because this cause involves governmental organization. That if the Court, requires security, Petitioners request that matter to be addressed at the hearing on this application

**WHEREFORE**, Petitioners, by counsel, pray that this honorable Court enjoin the Bloomington Plan Commission from further proceedings pending the outcome of the Petitioners’ Declaratory Judgment and Writ of Quo Warranto Actions which Petitioners request to be consolidated with this Application, or in the alternative, order and direct Mr. Cockerham to refrain and be restricted from participation on the Bloomington Plan Commission until such time this Court has ruled upon the Declaratory Judgment and Quo Warranto requests; and for any and all other relief deemed appropriate in the premises.

Respectfully submitted,

**CARL LAMB & ASSOCIATES, PC**  
*Attorneys at Law*

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**Carl Paul Lamb** 7/8/2020 | 11:10:41 PM EDT  
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**CARL PAUL LAMB**  
Indiana Attorney Number: 10286-53  
*Attorney for the Petitioners*

**CERTIFICATE OF SERVICE**

I, *Carl Paul Lamb*, hereby certify that a true and accurate copy of the foregoing document has been sent via E-File and E-Mail to the following counsel:

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[**Note** – *Copies of all pleadings, for all Respondents, are being served to legal counsel noted hereinabove*]

DocuSigned by:  
**Carl Paul Lamb** 7/8/2020 | 11:10:41 PM EDT  
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