

his capacity as Chairman of the Monroe County Republican Party, by counsel *Carl Lamb & Associates, P.C.*, respectfully request the Court to *deny* the Respondents' *Motion to Accept Jurisdiction Over Interlocutory Appeal Pursuant to Appellate Rule 14(B)* (hereinafter, "Motion to Accept Jurisdiction"), and in support thereof state and show as follows:

- 1) Petitioners/Appellees request that the Court deny Respondents' "Motion to Accept Jurisdiction" of this discretionary interlocutory appeal.
- 2) Respondents overstate their claim that Respondents will suffer substantial expenses, damages, or injury if the trial court's order denying their Indiana Trial Rule 12(B)(6) is not given interlocutory appellate review.
- 3) The Trial Court would be able to issue appropriate orders that would prevent unnecessary expense, damage, or injury to the Respondents, and to the community and citizens of the City of Bloomington, if Respondents/Appellees disagreed with the Trial Court's final disposition and decided to appeal.
- 4) Respondents/Appellants will not be prejudiced by any substantial expense, damage, or injury if the Order denying their *Motion to Dismiss* is eventually found to be erroneous because until the Court disposes of Petitioners/Appellees' *Amended Complaint*, Respondent Christopher Cockerham's position on the Bloomington Plan Commission will remain unchanged.
- 5) Any substantial or novel question of law regarding standing is not the type of issue whereby an early determination thereof will outweigh the harm that will Petitioners/Appellees would potentially suffer by not being able to proceed in the Trial Court action. For instance, Petitioners/Appellees' previous attempts to conduct necessary discovery have been delayed, by Respondents/Appellants' filing of their "Motion to Accept Jurisdiction."

- 6) The Trial Court action was in its early stages prior to Respondents filing their Motion to Accept Jurisdiction. Instead of filing an *Answer* to the *Amended Complaint*, the Respondents/Appellants' filed a Trial Rule 12(B)(6) that was ultimately denied.
- 7) Subsequent appellate review after a Final Judgment would be more appropriate since the claims pending in Petitioners' *Amended Complaint* would have been adjudicated on the merits, after both parties have had an opportunity do full discovery.
- 8) The record on appeal after Final Judgment, compared to the record now, would be helpful for the Court of Appeals in making their determination whether or not the Trial Court made the correct interpretation of Indiana Code Section 36-1-8-10.
- 9) Answering the Petitioners/Appellees' *Amended Complaint* will not require significant time and tax payor resources.
- 10) The time and resources pursuing the interlocutory appeal will likely be comparatively as time consuming and costly as litigating this matter at the trial court.
- 11) In response to paragraph fifteen (15) of the Respondents/Appellants' "Motion to Accept Jurisdiction," Petitioners/Appellees assert that the remedy by appeal after trial court's final judgment is adequate.
- 12) If Respondent Cockerham was found not to be a rightful appointment to the Plan Commission, it does not automatically follow that there would be an eight (8) member Plan Commission with a potential for gridlock and delay of civic operations of City government.
- 13) For example, Petitioner Guenther could be placed in the seat as the rightful member of the plan commission upon disposition of Petitioners/Appellees' request for a writ of *quo warranto*, or some other appropriate measure could be incorporated by the Trial Court to prevent any stall or impasse in government operation.
- 14) Trial Court disposition of the Petitioners/Appellees' request for a writ of *quo warranto* is just as efficient and cost effective as appellate resolution of standing and jurisdiction.

- 15) Respondents/Appellants' overstate the potential implications of the Trial Court's Order denying their *Motion to Dismiss*, in opening the "door to retroactive challenges to independent municipal commission members and extensive litigation..." and Petitioners/Appellees would argue that any retroactive challenges would be minimal.
- 16) Appellants failed to identify any active causes of action in Indiana where retroactive challenges of the type described in paragraph seventeen (17) of their "Motion to Accept Jurisdiction."
- 17) The Appellants would ultimately be able to appeal any final judgment issued at the Trial Court. Any standing issues resolved, on appeal, after final judgment, would clarify issues surrounding standing, and thereby impede any wasteful uptick in litigation surrounding the interpretation of Indiana Code Section 36-1-8-10.
- 18) Any interest in resolving "substantial legal questions," is outweighed by the Petitioners' interest in receiving an expedited and efficient ruling on their request for Declaratory Judgment and for a writ of *quo warranto*.
- 19) The Trial Court is able to competently resolve the parties dispute as to the interpretation and interrelationship of Indiana Code Section 36-1-8-10, Indiana Code Section 36-7-4-207(a)(5).
- 20) Indiana Code Section 36-1-8-10(d) can be applied without any reference to Indiana Code Section 36-7-4-207 because the language of Indiana Section 36-1-8-10(d) is clear and unambiguous and can be applied and interpreted independently of other code sections.
- 21) Further delay of the Trial Court resolving this matter will result in prejudice to the Petitioners who assert their rights under Indiana Law have been impaired by the actions of the Respondents, as it is explained in detail in their *Amended Complaint*.
- 22) An interlocutory appeal would significantly delay the disposition of the Petitioners' pending claims.

- 23) Petitioners' interpretation and application of the I.C. 36-1-8-10 are consistent with the legislature's amendment to include subpart (d) in July of 2017.
- 24) Kappas was not lawfully appointed and therefore Ellis had the lawful authority to appoint Guenther to the City of Bloomington Plan Commission.
- 25) Even if Kappas was lawfully appointed, the existing language of Indiana Code Section 36-1-8-10 gave Ellis appointing authority regardless of the language of the statute when Kappas was appointed in 2016, at the very minimum, because Mr. Cockerham voted Democrat in the most recent primary prior to his appointment.
- 26) For these reasons, the Petitioners request that the Court deny the Respondent's "Motion to Accept Jurisdiction."

WHEREFORE, Petitioners, by counsel, request that Court to deny Respondents' "Motion to Accept Jurisdiction," and for all other relief deemed appropriate in the premises.

Respectfully Submitted,

CARL LAMB & ASSOCIATES, P.C.

/s/ Carl Paul Lamb

Carl Paul Lamb
Attorney for Petitioners/Appellees
Indiana Attorney Number: 10286-53

CERTIFICATE OF SERVICE

I, *Carl Paul Lamb*, hereby certify that a true and accurate copy of the foregoing document has been transmitted via E-Service Filing on 10-29-20 to the following:
Michael Rouker, Daniel Dixon, Attorneys for the Respondents/Appellants.

/s/ Carl Paul Lamb

CARL PAUL LAMB

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