

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

**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 Indiana Republican Party )  
 Petitioners, )

v. )

**CITY OF BLOOMINGTON, INDIANA,** )  
 And )

**JOHN HAMILTON**, in his official capacity )  
 as Mayor for the City of Bloomington, Indiana, )

And )

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

And )

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

**RESPONDENTS' REPLY BRIEF**

**If Petitioners' Proposed Interpretation of Indiana Code Section 36-1-8-10 is Correct, Andrew Guenther Cannot Occupy the Seat at Issue on the Plan Commission Because He is Not a Republican.**

If the Court adopts Petitioners' interpretation of Indiana Code Section 36-1-8-10, which would require an affirmative party affiliation requirement for appointment to the seat at issue on the Plan Commission, then the seat cannot be held by Guenther for the same reason Petitioners argue Kappas was ineligible to serve. Petitioners ask the Court to conclude "the seat previously held by Respondent Kappas had to be filled by a Republican," (Petitioners' Conclusion Q) and that Kappas's appointment to the Plan Commission was void

because “Kappas did not declare a membership in a party, have a signed letter from a political party chair, nor did he ever vote in a primary election in Indiana.” Petitioners’ Conclusion S.

Indiana Code Section 36-1-8-10 (b) (1) and (2) provide:

. . . at the time of an appointment, one (1) of the following must apply to the appointee:

(1) The most recent primary election in Indiana in which the appointee voted was a primary election held by the party *with which the appointee claims affiliation*.

(2) *If the appointee has never voted in a primary election in Indiana*, the appointee is certified as a member of that party by the party's county chair for the county in which the appointee resides.

I.C. § 36-1-8-10(b)(1),(2) (emphasis added).

On January 2, 2021, Guenther publicly resigned from the Republican Party. Stipulations ¶37. Therefore, as of January 2, 2021, Guenther did not claim an affiliation with the Republican Party. Although Guenther voted in the 2019 Republican Party Primary in Indiana (Stipulations ¶36) and may have been a Republican at the time of his appointment, he no longer claims an affiliation with the Republican Party, which is the most recent primary election in which Guenther voted. Stipulations ¶¶36, 37. Subpart (b)(1) requires that the most recent primary election an appointed member voted in was a primary election held by the party “*with which the appointee claims an affiliation*”. Guenther fails to meet eligibility under 36-1-8-10 (b)(1). *Id.* (emphasis added). Furthermore, because Guenther has voted in a primary election in Indiana, he cannot be a Republican through certification by the party’s county chair under the clear language of (b)(2) which applies only “*If the appointee has never voted in a primary election in Indiana . . .*”. The record does not reflect that any such certification has ever been filed for Guenther, and Guenther has never claimed affiliation with the Republican Party under such certification.

If Petitioners are correct in their interpretation of the law, Guenther, like Kappas, lacks an affiliation with the Republican Party and cannot serve on the Plan Commission.

Even if Guenther originally had a claim to the seat when he filed the Amended Complaint, he no longer does. Under either side's interpretation of Indiana Code 36-1-8-10, Guenther cannot sit on the Plan Commission. Guenther's claim to the seat on the Plan Commission along with Ellis's claim to appoint him to the Plan Commission are no longer justiciable under either side's interpretation of the law, and they must be dismissed.

At this point, the only way for Petitioners to salvage Guenther's appointment would be to change their proposed interpretation of Indiana Code 36-1-8-10 and now assert that an appointee is only required to claim an affiliation with a political party at the time of an appointment, and then that the appointee can subsequently disclaim their affiliation with that party and maintain their seat. This is a disingenuous argument of convenience which would lead to irrational and disharmonizing results and only worsen the implicated violations of the freedom of association clause detailed in Respondents' brief. *See ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016); Respondents' Brief at I.B.i, (p. 10–13).

In essence, a political independent could claim an affiliation and vote in a political party primary in order to be appointed to boards and commissions such as the Plan Commission, but could then immediately disclaim their affiliation once appointed and continue as a political independent for the duration of their term. Under this logic, Kappas's appointment would have been legitimate if he had merely claimed an affiliation with a political party and pulled a primary ballot to get appointed, and then subsequently disclaimed his affiliation and continued to act as a political independent. This interpretation would do absolutely nothing to ensure representation by members of minority political parties on boards and commissions and would undermine Petitioners' entire premise for their interpretation of Indiana Code 36-1-8-10 (See Petitioners' Proposed Conclusions M, P, Q, AA,

SS). This Court must therefore reject any such proposed legal interpretation and dismiss Petitioners' claims.

### CONCLUSION

For the foregoing reasons along with the arguments set forth in Respondents initial brief, the Court must enter judgment in favor of Respondents and against Petitioners on all claims in Petitioners' Amended Complaint.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2021, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS) and the forgoing document was served upon the following parties or their attorneys of record via IEFS:

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