

STATE OF INDIANA)	IN THE MARION CIRCUIT/SUPERIOR COURT
)	
MARION COUNTY)	CAUSE NO.
JAMES PERRON, KATHY PERRON,)	
JULIA VAUGHN, and JOHN WINDLE,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CURTIS T. HILL, JR., and)	
AARON NEGANGARD,)	
)	
Defendants,)	
)	
and)	
)	
ERIC HOLCOMB, in his official capacity)	
as GOVERNOR of the State of Indiana,)	
)	
Rule 19(A)(2) Defendant.)	

COMPLAINT FOR DECLARATORY RELIEF

COME NOW Plaintiffs, JAMES PERRON, KATHY PERRON, JULIA VAUGHN, and JOHN WINDLE, by counsel, and for their Complaint for Declaratory Relief, request that the Court declare that the Indiana Supreme Court's May 11, 2020 Order suspending Attorney General Curtis T. Hill from the practice of law for a period of thirty (30) days means that a "vacancy" exists under Art. 5, Sec. 18 of the Indiana Constitution and/or Indiana Code § 3-13-4-3(d) such that the circuit court clerk of Elkhart County shall certify the vacancy to Rule 19(A)(2) Defendant, Governor Eric Holcomb, who shall thereupon name a successor for the remainder of Hill's current term pursuant to Ind. Code § 3-13-4-3 (e) and (f). In support of their request for declaratory relief, Plaintiffs allege as follows:

1. Plaintiffs Perrons, Vaughn and Windle are citizens of Marion County who seek relief pursuant to the Indiana Declaratory Judgment Act, Ind. Code § 34-14-1-2, because their rights, status, or other legal relations are affected by a statute and they have no other adequate remedy.

2. Marion County is the appropriate venue because it is the county where the individual defendants reside and/or conduct business, where the office in question is located, and where Plaintiffs reside.

3. Plaintiffs invoke the public standing doctrine by which citizens of the State may seek the intervention of the judicial branch to ensure that governmental actors stay within the confines of their authority, and which does not require that Plaintiffs have an interest any different from that of the general public. *State ex rel. Cittadine v. Indiana DOT*, 790 N.E.2d 978, 984 (Ind. 2003); *Horner v. Curry*, 125 N.E.3d 589, 609 (Ind. 2019) (Rush, C.J., concurring and dissenting) (although a plaintiff must ordinarily show a harm different from that suffered by the general public, the exception to that rule is the public-standing doctrine when used to rein in a government actor who has "overstepped a specific boundary to its authority").

4. Governor Holcomb is joined herein as a defendant under Indiana Trial Rule 19 (A)(2) because he claims an interest relating to the subject of this action and is so situated that the disposition of this action in his absence may as a practical matter impair or impede his ability to protect that interest.

5. Gov. Holcomb's interest relating to the subject of this action is reflected by the fact that shortly after Hill's suspension from the practice of law for thirty (30) days and his purported appointment of Defendant Negangard, Rule 19 Defendant Gov. Holcomb petitioned the Indiana Supreme Court to intervene in Hill's disciplinary action to resolve whether, during

the suspension, Hill is “duly licensed to practice law” in Indiana within the meaning of the statute establishing qualifications to serve as Attorney General, Ind. Code § 4-6-1-3; and if not, whether that creates a vacancy in the Office of Attorney General under the Indiana Constitution and statute. On May 18, 2020, the Supreme Court denied the Governor's petition to intervene.

6. In March 2019, the Indiana Supreme Court Disciplinary Commission filed a disciplinary complaint against Hill alleging that he had engaged in conduct that violated the Indiana Rules of Professional Conduct.

7. On February 14, 2020, the hearing officer issued a report finding that Attorney General Hill violated Indiana Professional Conduct Rules 8.4(b) and (d).

8. Hill petitioned the Indiana Supreme Court for review of the hearing officer's finding and conclusions.

9. On May 11, 2020, the Indiana Supreme Court issued its ruling in which it concluded that Hill had violated Indiana Professional Conduct Rules 8.4(b) and (d), and holding that:

"[f]or [Hill]'s professional misconduct, the Court suspends [Hill] from the practice of law in this state of a period of 30 days, beginning May 18, 2020. [Hill] shall not undertake any new legal matters between service of this opinion and the effective date of the suspension, and [Hill] shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the period of suspension, provided there are no other suspensions then in effect, [Hill] shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

In the Matter of Curtis T. Hill, Jr., No. 19S-DI-156 at 19 (Ind. May 11, 2020).

10. The Supreme Court's order did not address the issue of whether Hill's suspension from the practice of law meant he would no longer meet the statutory qualifications required to be the Attorney General that the attorney general "shall be a citizen of and *duly licensed to*

practice law in Indiana," Ind. Code §4-6-1-3 (emphasis added), thus creating a vacancy in the office.

11. The duties and powers of the office of Indiana Attorney General are broad and set forth in Ind. Code § 4-6-2-1.

12. Any person elected and serving as the Attorney General who is suspended from the practice of law cannot perform any of the office's statutory obligations, because an attorney who has been suspended from the practice of law is expressly forbidden from providing legal services of any kind while the attorney's law license is suspended. Ind. Admission and Discipline Rule 23(26)(b)(1) (prohibiting a suspended attorney from "practic[ing] law, represent[ing] clients, or maintain[ing] a presence or occupy[ing] an office where the practice of law is conducted"). A suspended attorney is also required to "file a notice of his or her suspension in every pending matter in which the attorney has filed an appearance [and] shall attach a copy of the suspension or disbarment order to the notice." *Id.* (b)(2).

13. As of May 18, 2020, Hill is prohibited from practicing law and is thus unable to fulfill his statutory duties and responsibilities as Attorney General.

14. The Indiana Supreme Court has repeatedly held that a suspension from the practice of law of an attorney who is an elected official in an office requiring a license to practice law prohibits that official from performing any of his or her duties or responsibilities and creates a "vacancy" in that office. *In re Szilagyi*, 969 N.E.2d 1007 (Ind. 2012) (observing that lawyer's suspension would create a "vacancy in the office of prosecuting attorney"); *In re Appointment of Temporary Prosecuting Attorney*, 834 N.E.2d 656, 657 (Ind. 2005) (same).

15. Immediately after receiving word of his suspension from the practice of law, Hill purported to appoint Defendant Aaron Negangard, one of his deputy attorneys general, to replace him during his suspension.

16. There is no statute giving the Attorney General authority to name a deputy to assume his statutory duties and powers while he is suspended from the practice of law.

17. The Indiana Constitution, in Art. 5, Sec. 18, requires the Governor to name a successor whenever there is a vacancy in a state office. It provides:

...when, at any time, a vacancy shall have occurred in any other State office....the Governor *shall* fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified. (emphasis added).

18. The Governor's constitutional duty is codified by statute, which provides, in part, that “[a] vacancy that occurs in a state office other than by resignation or death shall be certified to the governor by the circuit court clerk of the county in which the officer resided.” Ind. Code § 3-13-4-3(d).

19. Unless this Court issues the declaratory judgment Plaintiffs are seeking, the mandate of Art. 5, Sec. 18, of the Indiana Constitution will go unfulfilled.

20. It is imperative that this Court decide this case expeditiously based on the undisputed facts before it as TR 57 permits.

WHEREFORE, Plaintiffs respectfully request that the Court declare Hill's ongoing suspension from the practice of law has created a vacancy in the Office of Attorney General under the Indiana Constitution that Gov. Holcomb is not just permitted but required to fill by virtue of Art. 5, Sec. 18 of the Indiana Constitution and Ind. Code § 3-13-4-3(d). They also

request that the Court direct the circuit court clerk of Elkhart County to certify that vacancy to Gov. Holcomb so he may fulfill his constitutional duty. Plaintiffs request a speedy disposition of this matter pursuant to TR 57.

Respectfully submitted,

MACEY SWANSON LLP

/s/William R. Groth

William R. Groth, IN Atty. #7325-49
Attorney for the Plaintiffs

MACEY SWANSON LLP

445 N. Pennsylvania St., Ste. 401

Indianapolis, IN 46204

Phone: (317) 637-2345

Fax: (317) 637-2369

E-mail: wgroth@fdgtlaborlaw.com