

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT

TED BILSKI; CHARLIE BROWN;)
CHRISTINE CID; DANIEL DERNULC;)
DAVID HAMM, CHRISTIAN JORGENSEN;)
and ALFREDO MENCHACA,)

Plaintiffs,)

-vs-)

CAUSE NO. 45D01-2102-PL-000134

BRUNO L. PIGOTT, as Commissioner of)
the Indiana Department of Environmental)
Management; PETER LACY, as)
Commissioner of the Indiana Bureau of)
Motor Vehicles; and STATE OF INDIANA)

Defendants.)

FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Come now Plaintiffs, by counsel, and for cause of action against the Defendants allege as follows:

Parties, Jurisdiction and Venue

1. Plaintiffs are residents and taxpayers of Lake County, Indiana, and are the duly elected Members of the Lake County Council.

2. Defendant BRUNO L. PIGOTT ("PIGOTT") is the Commissioner of the Indiana Department of Environmental Management ("IDEM"), a division of Government in the State of Indiana, and is charged with enforcing rules promulgated under air pollution control laws, and with administering the operation of IDEM within Federal and State Constitutional Guidelines.

3. Defendant PETER LACY ("LACY") is the Commissioner of the Indiana Bureau of Motor Vehicles ("BMV"), a division of Government in the State of Indiana, and is charged with the responsibility of administering the operation of the BMV within Federal and State Constitutional Guidelines.

4. Defendant STATE OF INDIANA ("STATE") is a unit of government within the United

States of America in which Plaintiffs reside, and which is charged with assuring that its separate divisions operate within Federal and Constitutional guidelines.

5. This action is brought pursuant to Indiana's Uniform Declaratory Judgment Act, Ind. Code § 34-14-1-1 et seq, and Rule 57 of the Indiana Rules of Trial Procedure. Plaintiffs have a substantial present interest in the relief sought.

6. Venue is proper in this Court under Trial Rule 75(A)(2) in that the law in issue as well as the consequential impact apply to and adversely affect the present rights and status of the Plaintiffs and their property.

FACTUAL BACKGROUND

7. 326 IAC 13-1.1-2 of the Indiana Administrative Code, promulgated, enacted, and/or adopted by the Air Pollution Division of the Environmental Rules Board of IDEM requires Plaintiffs to have their motor vehicles undergo I/M program testing ("Emissions Testing").

8. 326 IAC 13-1.1-2 requires only the motor vehicles of the residents of Lake and Porter Counties in the State of Indiana to undergo Emissions Testing.

9. There are counties in Indiana with poorer air quality than that of Lake County whose residents are not required to have their motor vehicles undergo Emissions Testing.

10. Defendant LACY and/or the Indiana BMV will not process or issue registrations or license plates to Plaintiffs for their motor vehicles in absence of the Plaintiffs complying with the testing requirements imposed by 326 IAC 13-1.1-2.

11. There are numerous counties in Indiana whose residents are not required to comply with the testing requirements imposed by 326 IAC 13-1.1-2 as a pre-condition for registration and/or licensing of their motor vehicles by the BMV.

12. The Defendants enforce 326 IAC 13-1.1-2 as the law in the State of Indiana.

13. Plaintiffs are without an adequate remedy at law.

COUNT I

DECLARATORY JUDGMENT THAT 326 IAC 13-1.1-2 VIOLATES ARTICLE 1 SECTION 23 OF THE INDIANA CONSTITUTION

14. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-13 of this Complaint

15. Article 1 Section 23 of the Indiana Constitution provides:

“The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

16. Motor vehicle owners and residents of Indiana counties other than Lake County are not required to have their vehicles Emissions Tested as a pre-condition for registration and/or licencing by the BMV.

17. 326 IAC 13-1.1-2 provides special privileges to other Indiana citizens that are not similarly granted to Plaintiffs.

WHEREFORE, Plaintiffs pray for the entry of a declaratory judgment that 326 IAC 13-1.1-2 is unconstitutional in that it violates Article 1 Section 23 of the Indiana Constitution, and for all other just and proper relief.

COUNT II

DECLARATORY JUDGMENT THAT 326 IAC 13-1.1-2 VIOLATES ARTICLE 4 SECTION 23 OF THE INDIANA CONSTITUTION

18. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-13 of this Complaint.

19. Article 4 Section 23 of the Indiana Constitution provides:

“In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.”

20. 326 IAC 13-1.1-2 does not operate uniformly throughout the State, it is a special law and violative of the Indiana Constitution.

WHEREFORE, Plaintiffs pray for the entry of a declaratory judgment that 326 IAC 13-1.1-2 is unconstitutional in that it violates Article 4 Section 23 of the Indiana Constitution, and for all other just and proper relief.

COUNT III

DECLARATORY JUDGMENT THAT 326 IAC 13-1.1-2 VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

21. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-13 of this Complaint.

22. The 14th Amendment to the United States Constitution provides

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

23. 326 IAC 13-1.1-2 grants special privileges and immunities to the owners of motor vehicles in the State of Indiana who do not reside in Lake County.

24. 326 IAC 13-1.1-2 is unconstitutional in that it grants special privileges and immunities to the owners of motor vehicles in the State of Indiana that are not similarly granted to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court enter an Order declaring 326 IAC 13-1.1-2 of the Indiana Administrative Code, Air Pollution Division, to be in violation of the provisions and limitations of the United States Constitution; and for all other just and proper relief.

COUNT IV

DECLARATORY JUDGMENT THAT 326 IAC 13-1.1-2 VIOLATES THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

25. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-13 and 22 of this Complaint.

26. 326 IAC 13-1.1-2 requires Plaintiffs to have their motor vehicles Emissions Tested, whereas residents of other counties in Indiana with poorer air quality are not so required.

27. 326 IAC 13-1.1-2 is unconstitutional in that it precludes and/or impairs the Plaintiffs’

right to the free enjoyment of their property without due process of law.

WHEREFORE, Plaintiffs pray that this Court enter an Order declaring 326 IAC 13-1.1-2 of the Indiana Administrative Code, Air Pollution Division, to be in violation of the provisions and limitations of the United States Constitution; and for all other just and proper relief.

COUNT V

DECLARATORY JUDGMENT THAT 326 IAC 13-1.1-2 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

28. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-13 and 22 of this Complaint.

29. 326 IAC 13-1.1-2 requires Plaintiffs to have their motor vehicles Emissions Tested, whereas residents of other counties in Indiana with poorer air quality are not so required.

30. 326 IAC 13-1.1-2 is unconstitutional in that it deprives Plaintiffs of the equal protection of the law that is afforded to the residents of other Counties in the State of Indiana who are not required to have their vehicles Emission Tested.

WHEREFORE, Plaintiffs pray that this Court enter an Order declaring 326 IAC 13-1.1-2 of the Indiana Administrative Code, Air Pollution Division, of IDEM to be in violation of the provisions and limitations of the United States Constitution; and for all other just and proper relief.

COUNT VI

INJUNCTIVE RELIEF.

31. Plaintiffs reallege and restate the allegations contained in Rhetorical Paragraphs 1-30 of this Complaint

32. The provisions of 326 IAC 13-1.1-2 are unconstitutional and illegal and the Defendants should be enjoined from enforcing same.

33. The BMV should be enjoined from requiring Plaintiffs to have their motor vehicles Emissions Tested as a pre-requisite to registration and licensing.

34. Enjoining 326 IAC 13-1.1-2 will not cause harm to the public.

35. The public interest would be served by enjoining the enforcement of an unconstitutional law.

WHEREFORE, Plaintiffs pray that this Court enter an Order enjoining the Defendants from enforcing, or seeking to enforce, 326 IAC 13-1.1-2, and for all other just and proper relief.

/s/ Gerald M. Bishop
GERALD M. BISHOP, ESQ.
Indiana Attorney Number: 2753-45
Gerald M. Bishop & Associates
2115 West Lincoln Highway
Merrillville, IN 46410
Phone: (219) 738-2400
Fax: (219) 738-2500
Email: gmb@bishop-law.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2021 a true and correct copy of the above pleading or document was served upon all counsel and parties of record via U.S. Mail, in envelopes properly addressed with sufficient first-class postage affixed, and/or by electronic facsimile, e-mail, or the court's electronic case filing (ECF) system.

/s/ Gerald M. Bishop