State of Indiana	)	In The Lake Superior Court
	) ss:	Sitting at East Chicago, Indiana
County of Lake	)	

Rodney and Zena Logal,	)	
Husband and Wife,	)	
Plaintiffs,	)	
	)	Cause No. 45 D02-0911-PL-00172
-vs-	)	
	)	
The Town of Schererville, et al.,	)	
Defendants.	)	

Plaintiffs' Indiana T.R. 59 Motion To Correct Errors with
Response to Defendants' Motion to Strike and Opposition to Plaintiffs' T.R. 60 Motion

Come now the plaintiffs, *pro se*, pursuant to Indiana Trial Rule 59, and move the Court as follows to correct the fundamental error of abstaining on state constitutional law claims in favor of uninitiated, town board and / or town court proceedings:

1. The plaintiffs were turned away from Court on November 1, 2010[1] with the bailiff's assurance that the above captioned case is dismissed, suggesting their First Amended Complaint, filed herein on October 14, 2010, was rejected *sua sponte*;

2. Among other things, this motion replies to the defendants' opposition to the plaintiffs' Indiana Trial Rule 60 (B)(8) motion[2] which should have averted such an outcome. *See, Plaintiffs' Indiana T.R. 60 (B) (8) Motion To Set Aside Dismissal Order Due To Their Intervening, First Amended Complaint*;

3. Primarily, this motion proposes the fundamental error of this Court abstaining on state constitutional law claims in favor of uninitiated, town board and / or town court proceedings;

4. One of the defendants many unwarranted insinuations is that a negative judgment was entered on the merits against the plaintiffs in federal court. Without providing certified court records that prove such a contention (as there are none), the defendants inexplicably suggest the state constitutional law claims of plaintiffs' First Amended Complaint are barred by *res judicata*. *See, Dfts' Oppos to Pltfs' TR 60 Mtn, p 2* [*"There is no showing or argument (nor authority) that the rights under the Indiana Constitution are any different than the federal constitution."*];

[1] Plaintiffs attempted to attend the mandatory pre-trial conference, originally scheduled herein for November 1, 2010 at 1:30 p.m.
[2] This motion also responds to the "Defendants' Motion to Strike Plaintiffs' 'First Amended Complaint'."

5. Inaccurate, misleading, and ridiculous as the defendants' account of the plaintiffs' state constitutional law claims is, it confirms that this case is much more than a town ordinance and / or zoning dispute:

> Plaintiffs argue that they have a constitutional right against punishment, but there is no authority for that. There is no authority that there is a constitutional right against municipal zoning regulations concerning health and safety. Additionally, the 'warning' of violation which is given and is the gravamen of their original and suggested amended complaint (*rheteorical* (sic) *paragraphs 5, 10 – 15 and Exhibits 3 and 5, First Amended Complaint*) is just that, and thus is not a deprivation of the right to fair warning, argued in Paragraph 8 of Motion to Set Aside.
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> *See, Dfts' Oppos to Pltfs' TR 60 Mtn, p 2*;

6. To postpone if not totally forego addressing such matters because the plaintiffs are " . . . guessing or assuming what (corresponding) action the Defendants might take" is to deny the plaintiffs whatever protection the Indiana State Constitution presently affords them on the chance it is no longer needed, will be accorded by an inferior sovereign, or can be extended on appeal. *Cf, Order of October 15, 2010*;

7. "Procedure must be according to 'due course of law' and courts must be open to entertain claims based on rules of law." *McIntosh v. Melroe Company,* 729 N.E.2d 972 at 979 (2000);

8. Indiana's "Right to Remedy Clause does not entitle a person to automatic reparation or recompense, but rather ensures access to the courts to seek reparation or recompense for wrongful injury." *Id. at 986 (Justice Dickson dissenting)*;

9. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury v. Madison,* 5 U.S. (1Cranch) 137 at 163 (1803);

10. "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. . ." *Article 1, Section 12 of the Indiana Constitution*;

11. The plaintiffs' original and First Amended Complaint share the prospect of plaintiff Rodney Logal sustaining " . . . fines of $75 to $7,500 per day . . ." as of December 1, 2009. *See,* Plaintiffs' Exhibit 3, *formerly* Plaintiffs' Exhibit A. Yet the Court finds "that since the Town of Schererville has taken no action against the Plaintiffs, they have not been damaged in any way." *Order of October 15, 2010, ¶ 11, p 3*;

12. Should that ruling portend that Indiana citizens lack an unequivocal, constitutional shield against arbitrary and capricious government action,[3] the plaintiffs' hopes of attributing such action to the defendants via jury trial are surely dashed, at least temporarily;

13. Otherwise the question of whether the defendants, or either of them, have subjected the plaintiffs, or either of them, to arbitrary and capricious government action should be for a jury and not a town board nor a town court to decide. *See,* Plaintiffs' First Amended Complaint (*filed October 14, 2010*) and Plaintiffs' Proposed Pre-Trial Stipulation (*filed October 26, 2010*);

14. This case is precipitated by the defendants' past acts – not how they may resolve the situation if left unfettered. *See, Pltfs' First Amd Cmplt, ¶¶ 4-8, and 11-16, pp 1-3*;

15. To foreclose the present case and controversy with an invitation for the plaintiffs to return should their underlying predicament get worse is akin to imposing the "grandfather clauses, property qualifications, 'good character' tests, and the requirement that registrants 'understand' or 'interpret' certain matter" that denied African Americans the right to vote for decades. *See, South Carolina v. Katzenbach,* 383 U.S. 301 (1966). The due process and equal protection implications of disenfranchising the plaintiffs in an analogous way should be clear;

Neither Defendants' Motion To Strike Plaintiffs' First Amended Complaint
Nor Their Opposition to Plaintiffs' Motion for Relief from Judgment
Provides Grounds for Any Summary Disposition of this Case

- ***Plaintiffs Did Not Need Leave of Court to File Their First Amended Complaint***

16. The defendants represent that "*Indiana Trial Rule 15(A)* requires that a party seeking amendment of its pleading must be upon leave of court or stipulation, there having been a responsive pleading, i.e. Motion to Dismiss, having been previously filed (and granted)." *See, Dfts' Mtn to Strike, p 1*;

17. Indiana Trial Rules do not contemplate a Motion to Dismiss in providing "(a) responsive pleading shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or controvert the averments set forth in the preceding pleading." *See,* Ind. T.R. 8(B);

18. Such a motion "shall be made before pleading . . ." *See,* Ind. T.R. 12 (B). (emphasis added);

19. Moreover, "(w)hen a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of (Indiana Trial Rule 12,) the pleading may be amended once as of right pursuant to Rule

[3] The Court describes the government action precipitating this case as follows: "(T)he Town of Schererville notified the Plaintiffs that the separate garage without a residence was in violation of the Town Ordinances and indicated to them that the same should be removed." *Cf., Pltfs' First Amd Cmplt, ¶¶ 4-8, and 11-16, pp 1-3*. Perhaps the Court is prepared to conclude that such action could never be arbitrary and / or capricious as a matter of law. Alternatively the Court may opine that anyone who wrangles him or herself out of such a predicament before town officials is unharmed, no matter how unwarranted, bothersome, and costly the entire experience may have been.

15(A) within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule." *Ind. T.R. 12 (B)*;

20. "A plaintiff is entitled either to amend his complaint pursuant to Trial Rule 12(B)(6) and Trial Rule 15(A), or to elect to stand upon his complaint and to appeal from the order of dismissal." *Thacker v. Bartlett,* 785 N.E.2d 621 at 624 (Ind App 4th 2003);

- ***Claims of Plaintiff Zena Crenshaw-Logal are within 'the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'***

21. The defendants assert as to plaintiff Zena Crenshaw-Logal "(t)hat she is the spouse of the sole person in title does not create a right in her as to the title of the property." *See, Dfts' Oppos to Pltfs' TR 60 Mtn, p 3*. They extrapolate that her "claim of an equitable interest in the real property . . . is only a sham to evade and violate the order of suspension as she prosecutes the claim for her husband." *Id*;

22. It is unfathomable that plaintiff Zena Crenshaw-Logal lacks standing to protest the imminent waste and / or conversion of her husband's property as his spouse and dependent. She at least has an expectancy in her husband's assets, which interest Indiana probate statutes explicitly protect. *See,* I.C. 29-1-2-1 (*intestate distribution to spouse*); 29-1-3-1 (*spouse election to take against will*); and 29-1-4-1 (*spousal allowance*);

23. The Seventh Circuit explains:

> For a party to have standing . . . the party who invokes the court's authority (must) 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' . . . , and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision,' . . .
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> *Freedom From Religion Foundation, Inc., et. al., v. Zielke, et. al.,* 845 F.2d 1463 at 1467 (1988);

24. Already, the resources of plaintiff Rodney Logal are being depleted in terms of money expended to resist what the plaintiffs contend is the defendants' unconstitutional abuse of process. *See, Pltfs' First Amd Cmplt.*;

25. The plaintiffs' effort to maintain status quo and secure a declaration of relevant rights and obligations has been thwarted. *See, Order of December 28, 2009, p 2* [*"Defendants shall take no action to enforce (the) Town Ordinance as described in the Application for Temporary Restraining Order without prior application to this Court until such time as ruling upon the Defendants' Motion to Dismiss . . ."*]. The plaintiffs and each of them, accordingly proceed at their peril;

26. Plaintiff Rodney Logal could incur considerable expense to hastily tear down the structure at issue and still be fined beyond the fair market value of some or all surrounding land. *See,* Plaintiffs' Exhibit 3, *formerly* Plaintiffs' Exhibit A;

27. Plaintiff Zena Crenshaw-Logal is very much at risk of having her husband's assets and resources unduly diminished when ". . . the available resources of one spouse ought to be used to help support the other . . ." *See, Bartrom v. Adjustment Bureau, Inc.,* 618 N.E.2d 1 at 5 (Ind.1993);

28. The plaintiffs have separate and distinct interests to protect from the defendants that are virtually indistinguishable from their shared goals as plaintiffs in this case. Hence the plaintiffs collaborate and coordinate as respective plaintiffs *pro se* as well as husband and wife;

29. That plaintiff Rodney Logal generally defers to plaintiff Zena Crenshaw-Logal in this matter reflects his confidence in her as a co-plaintiff and his wife, not an unlawful practice of law;

- ***The Plaintiffs have complied with Indiana Trial Rule 60 (B) (8)***

30. Finally the defendants assert that the plaintiffs "merely argue that there is a meritorious claim and wholly fail to present evidence of a meritorious claim, i.e. that the issuance of a warning that their use of the property is a violation of municipal ordinance which may be submitted to enforcement in the judicial process, is a violation of a clear constitutional right." *Dfts' Oppos to Pltfs' TR 60 Mtn, p 4*. Such is an ultimate factual dispute, i.e. "Whether as a direct and proximate result of all acts of omission and commission on which this lawsuit is based, the plaintiffs have suffered and continue to suffer violation of their constitutional rights; have been and continue to be unduly inconvenienced, forced to incur the cost of this action, and subjected to corresponding distress." *See,* Plaintiffs' Proposed Pre-Trial Stipulation (*filed October 26, 2010*), ¶ (5) e), p 3;

31. Attempting to circumvent jury trial, the defendants cite *Chelovich v. Ruff & Silvian Agency*, 551 N.E. 2d 890 (Ind. App. 4th Dist. 1990), and *Bennet v. Andry*, 647 N.E.2d 28 (Ind. App. 4 Dist. 1995), which are inapposite;

32. Both *Chelovich* and *Bennet* confirm that "mere allegation that except for excusable neglect action would have been defended is insufficient to set aside judgment" – a consideration totally irrelevant to this case. *See, Chelovich at 892* and *Bennet at 35*;

33. Also irrelevant is the defendants' expose' on affidavits as none are required by Indiana Trial Rules 8, 12, 15, and 60(B)(8) which state the prerequisites of plaintiffs' First Amended Complaint. *See,* Ind. T.R. 8, 12, 15, and 60(B)(8). *Cf, Dfts' Oppos to Pltfs' TR 60 Mtn, pp 5-6*.

For the foregoing reasons, the plaintiffs pray pursuant to Indiana Trial Rule 59 (J) (3) and (6) that the Court correct errors by setting aside its Order of dismissal herein of October 15, 2010; allow this matter to proceed to jury trial in accord with the Plaintiffs' First Amended Complaint, state

and local rules of civil procedure, as well as applicable common law; and for any all other relief, just and proper upon the premises stated.

Respectfully Submitted,

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Plaintiffs' Certificate of Service

Comes now the undersigned and certifies that on the 4th day of November, 2010, the foregoing motion and corresponding CCS were served on the presiding judges and defense counsel of record by placing a true and accurate copy of the same in the U.S. Mail with adequate first class postage, addressed as follows:

The Honorable Judge Calvin Hawkins
3711 Main Street
East Chicago, Indiana 46312 - ***Certified Mail No. 7001 0360 0000 5218 3734***

The Honorable Senior Judge E. Duane Daugherty
115 West Washington Street
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