

STATE OF INDIANA
COUNTY OF MONROE

IN THE MONROE CIRCUIT COURT
CAUSE NO. 53C01-2203-PL-000611

CITY OF BLOOMINGTON,

Plaintiff,

vs.

CATHERINE SMITH,
in her official capacity as
Monroe County Auditor

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes now Plaintiff City of Bloomington, by its attorneys Michael Rouker, Beth Cate, Larry Allen, and Daniel Dixon, and files its complaint for declaratory and injunctive relief against Defendant, Monroe County Auditor Catherine Smith, in her official capacity. Plaintiff complains and alleges as follows:

INTRODUCTION

1. In 2017, Bloomington's City Council (the "Council") introduced eight annexation ordinances and adopted eight fiscal plans for the incorporation of adjacent areas into Bloomington's corporate boundaries. In these areas, the majority of property owners receive sewer service from Bloomington, and nearly half of property owners own property subject to a sewer extension contract waiving the owner's right to remonstrate against an annexation.

2. The Council was set to complete annexation before July 2017, approximately 133 days after Bloomington's formal 2017 annexation process began. However, the General Assembly took two successive unlawful actions to obstruct Bloomington's annexation.
3. First, during 2017 the General Assembly enacted Indiana Code § 36-4-3-11.8 ("the 2017 law"), which halted any annexation ordinance introduced during a particular subset of dates. This subset of dates captured Bloomington's, and only Bloomington's, 2017 annexation ordinances. Bloomington challenged the 2017 law, and after three and a half years of litigation, on December 15, 2020, Indiana's Supreme Court invalidated that statute as unconstitutional special legislation. *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020).
4. In 2019, as that litigation was proceeding, the General Assembly took a second unlawful action, adopting Sections 83 and 112 of House Bill 1427 ("the 2019 law"). The 2019 law effectively scuttled Bloomington's annexation for a second time, this time by invalidating eighty percent of Bloomington's sewer extension contracts.
5. This case challenges the constitutionality of the 2019 law both on its face and as applied by Auditor Catherine Smith to Bloomington's annexation ordinance for Bloomington Annexation Area Central Island, Area 4 (the "Ordinance"). The 2019 law violates the prohibition against laws impairing the obligations of contracts enshrined in Article I, Section 24 of the Indiana Constitution and Article 1, Section 10, of the United States Constitution.
6. Moreover, but for the state's earlier illegal effort to thwart Bloomington's annexation, the annexation would have been long over before the state passed the 2019 law. Equity demands that the state not be allowed to benefit from its earlier unconstitutional delay of

Bloomington's annexation and, through Auditor Smith's application of the 2019 law to that same annexation, achieve its original goal.

7. Furthermore, this case challenges errors in Auditor Smith's final determination of the number of owners of real property within Bloomington Annexation Area 4 ("Area 4") who lawfully remonstrated.
8. This Court should declare the 2019 law unconstitutional on its face and as applied to Bloomington, direct Auditor Smith to disregard the 2019 law as well as petitions that did not comply with statutory mandates, and direct Auditor Smith to certify corrected remonstrance numbers for Area 4.

JURISDICTION AND VENUE

9. This Court has jurisdiction to hear this complaint pursuant to Indiana Code § 33-28-1-2, Indiana Code § 33-33-53-2, and Indiana Code § 34-14-1-1.
10. Venue is appropriate pursuant to Indiana Rule of Trial Procedure 75(A)(5).
11. Declaratory relief is authorized by Indiana Code § 34-14-1-1, *et seq.*, and Indiana Rule of Trial Procedure 57.

PARTIES

12. Plaintiff City of Bloomington is a duly incorporated second-class city, per Indiana Code 36-4-1, *et seq.*
13. Defendant Smith is the duly elected Auditor of Monroe County.
14. Pursuant to Indiana Code § 34-14-1-11, because the present case challenges the constitutionality of a statute, the Plaintiff has also served the Attorney General's Office with a copy of this Complaint.

FACTUAL BACKGROUND
Part I: Sewer Extension Contracts

15. For a period of more than 60 years dating back to at least the 1950's, if a non-municipal resident wanted to connect to Bloomington's sewer system, Bloomington was willing to consider extending sewer service in exchange for an agreement from the non-resident to waive their right to remonstrate against a future municipal annexation.
16. During this time period, Bloomington executed thousands of sewer extension contracts voluntarily giving non-residents access to municipal sewer service.
17. Bloomington's voluntary decision to extend its sewer lines to unincorporated areas allowed many external areas directly on Bloomington's border to develop. Sewer lines enable more development and more dense development than alternative wastewater management solutions, such as septic systems or cesspits. Absent Bloomington's voluntary extension of its sewer service, many unincorporated contiguous areas would not have developed intensely or at all.
18. Bloomington also provides many services other than wastewater service that benefit residents and nonresidents alike. To identify a few, Bloomington police provide public safety services, the Bloomington Fire Department responds to emergencies, the Street Department maintains hundreds of miles of sidewalks and roads, and the Parks Department builds and maintains dozens of free and subsidized facilities and provides a broad menu of free and subsidized programming.
19. Development directly along Bloomington's borders, and in particular the dense urbanized development that follows the voluntary extension of sewer service, creates significant additional demand for Bloomington's municipal services. However, unincorporated areas directly along Bloomington's border (and in some cases wholly surrounded by

incorporated areas of the city) do not contribute any property taxes to make these services possible until such time as they are annexed.

20. Therefore, when Bloomington agreed to voluntarily extend its sewer lines, knowing that the extension would allow development and that this development would place a burden on Bloomington's municipal services, the city required as essential consideration that the property owner receiving the benefit of Bloomington's sewer service waive their right, and the right of future owners of that parcel, to contest a future annexation. Bloomington has negotiated more than a thousand of these sewer extension contracts with waiver provisions.

21. While residents living within Bloomington's corporate boundaries have an absolute right to have municipal sewer service extended to their properties on terms established by the Indiana Utility Regulatory Commission, residents who do not live in Bloomington and do not pay property taxes to Bloomington may only receive sewer service on an individually negotiated basis and only if Bloomington consents to the sewer extension. To that end Indiana Code § 36-9-22-2(b) provides that "a municipality *may* contract with owners of real property for the construction of sewage works . . . within four (4) miles outside its corporate boundaries." (emphasis added). Bloomington is not required to extend sewer service outside its boundaries, but it *may opt* to do so via contract.

22. Indiana Code explicitly describes sewer extension contracts as "contracts" and also identifies a waiver of the right to remonstrate as an essential term of such contracts. Indiana Code 36-9-22-2(c).

23. Since 2019, Indiana Code § 36-9-22-2(d) explicitly provides that a municipality may opt not to require a waiver of the right to remonstrate as part of a sewer extension contract. Despite this now express option, because future incorporation into Bloomington is an imperative element of any decision to extend its sewer service, Bloomington has never exercised this option.

Part II: Bloomington's 2017 Annexation

24. On February 3, 2017, Bloomington Mayor John Hamilton held a press conference announcing that he was asking the City Council to initiate the process of considering annexation, including annexing the areas covered by the Ordinance. The Mayor's announcement kicked off Bloomington's first multi-parcel annexation proposal since 2004.

25. On March 29, 2017, the Council held a public meeting to consider the formal introduction of nine annexation ordinances and to consider adoption of the fiscal plan associated with each ordinance. Following input from members of the community, the Council declined to introduce one of the annexation ordinances, Ordinance 17-16, but introduced the others.

26. On April 21, 2017, while Bloomington officials were making preparations for a required public hearing on the ordinances, the state legislature added a last-second provision into the 2017 biennial budget (House Bill 1001). This late insertion added Indiana Code § 36-4-3-11.8 to the annexation statute. The addition to the budget bill read, in relevant part:

SECTION 161. IC 36-4-3-11.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]:

Sec. 11.8

...

(d) An annexation ordinance that is introduced after December 31, 2016, and before July 1, 2017, that proposes to annex property to which this section applies is void and the annexation action is terminated. A municipality may not take any further action to annex any of the property to which this section applies until after June 30, 2022, including introducing another annexation ordinance covering some or all of the property covered by this section after June 30, 2017, and before July 1, 2022.

27. The General Assembly successfully designed Indiana Code § 36-4-3-11.8 (“the 2017 law”) so that Bloomington was the only municipality to which it applied.
28. By passing the 2017 law, the General Assembly attempted to entirely terminate Bloomington’s annexation proposal.
29. On May 24, 2017, Bloomington filed a complaint alleging that the 2017 law was unconstitutional special legislation per Article IV, Section 23 of the Indiana Constitution.
30. On December 15, 2020, following three and a half years of litigation, the Indiana Supreme Court held that the 2017 law was unconstitutional special legislation. *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020).

Part III: The 2019 Law

31. During the 2019 legislative session, while Bloomington was actively challenging the 2017 law and while Bloomington was prohibited from moving forward with its 2017 annexation proposal, the General Assembly took additional steps that seriously undermined the annexation.

32. Specifically, the General Assembly included in HB 1427, a 229-page bill addressing various local government matters, provisions modifying Indiana Code §§ 13-18-15-2 and 36-4-3-11.7 to retroactively void annexation remonstrance waivers that formed key terms of sewer extension contracts, if the contract was more than 15 years old.
33. The General Assembly added these modifications via sections 83 and 112 of House Bill 1427.
34. The General Assembly passed HB 1427 with Sections 83 and 112 on April 24, 2019, just five days after the trial court struck down the 2017 law as unconstitutional. The Governor signed HB 1427 into law on May 5, 2019 and it took effect on July 1, 2019.
35. Following its effect, Indiana Code § 36-4-3-11.7 now reads, in relevant part:

(b) A remonstrance waiver executed before July 1, 2003, is void. This subsection does not invalidate an annexation that was effective on or before July 1, 2019.

(c) A remonstrance waiver executed after June 30, 2003, and before July 1, 2019, is subject to the following:

(1) The waiver is void unless the waiver was recorded:

(A) before January 1, 2020; and

(B) with the county recorder of the county where the property subject to the waiver is located.

(2) A waiver that is not void under subdivision (1) expires not later than fifteen (15) years after the date the waiver is executed.

(emphasis added). Indiana Code § 13-18-15-2 contains identical language, but in subsections (e) and (f) rather than (b) and (c). Plaintiff refers collectively to Sections 83 and 112 of HB 1427, and the corresponding changes they made to Indiana Code § 36-4-3-11.7 and Indiana Code § 13-18-15-2, as “the 2019 law” throughout this Complaint.

36. The 2019 law retroactively voided provisions in at least 966 of Bloomington’s sewer extension contracts. Bloomington has negotiated approximately 1,206 sewer extension contracts, and more than 80% of these contracts were retroactively voided by the legislature.
37. Through the 2019 law, the General Assembly drastically reduced the likelihood that Bloomington’s 2017 annexation proposal could succeed—whether or not the Supreme Court ultimately affirmed Bloomington’s successful challenge to the 2017 law.
38. More importantly, the General Assembly retroactively nullified a crucial contractual provision, inserting itself between the parties to a voluntary agreement. In doing so, the legislature relieved the owner of their contractual obligation, even though Bloomington had already extended its sewer service and had upheld its part of the bargain.

Part IV: Resumption of Bloomington’s Annexation During 2021

39. In January 2021, after the Supreme Court certified its Order in *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020), Bloomington began taking necessary steps to resume the annexation that had been unconstitutionally suspended. This included updating the fiscal plans Bloomington had prepared in 2017 to incorporate updated assessed values, tax rates, and property tax circuit breaker impacts, among other changes. Bloomington also prepared amendments to update the annexation ordinances introduced during 2017.
40. On April 28, 2021, the City announced in a press release that it was resuming the annexation.

41. On May 19, 2021, the Council adopted resolutions updating the fiscal plan for each of the eight remaining annexation areas and adopted amendments to update each applicable ordinance.
42. On August 4, 2021, the Council opened a public hearing on the ordinances. The Council passed several amendments to the ordinances to shrink the annexation areas, and on September 15 and September 22, 2021, the Council adopted seven of the eight annexation ordinances – Ordinances 17-09 through 17-15 – and rejected the eighth, Ordinance 17-17.
43. The initiation of Bloomington’s annexation in 2017 and its resumption in 2021 reflected precisely the sort of careful attention to annexation considerations by well-informed local officials that the process is supposed to involve. Those considerations included the need to properly absorb developed and *de facto* urbanized areas into the City’s boundary, and to ensure that the City tax base properly reflects those who access and use its services. Bloomington put its remonstrance waiver contracts in place precisely to enable this activity.
44. On October 8, 2021, Bloomington published and mailed notice of its annexation ordinances, kicking off a 90-day window for property owners in the annexation areas to submit remonstrance petitions to Auditor Smith.
45. During the remonstrance phase, if more than 65% of property owners in the annexation area remonstrate, the annexation is void. Indiana Code § 36-4-3-11.3. If at least 51% but fewer than 65% of owners remonstrate, remonstrators may appeal the annexation for judicial review. Indiana Code §§ 36-4-3-11, -11.3. If fewer than 51% of owners remonstrate, the annexation is approved.

46. During the remonstrance period, Auditor Smith regularly transmitted remonstrance petitions to the City in accordance with Indiana Code § 36-4-3-11.2(g), and the City timely responded to these transmissions by sending the Auditor documentation regarding valid waivers of remonstrance that existed with regard to any property in the annexation areas, pursuant to Indiana Code § 36-4-3-11.2(h).
47. On February 23, 2022, Auditor Smith certified her final numbers for each annexation. When tallying up remonstrance totals, Auditor Smith implemented the 2019 law and disregarded all sewer extension contracts that were more than 15 years old.
48. However, when the Auditor certified her official numbers, she also published alternative (uncertified) numbers. These alternative numbers reflected the number of owners the City had identified as being subject to a remonstrance waiver without regard to the age of the contract containing the waiver provision.
49. The 2019 law fundamentally affected the legal standing of every one of Bloomington’s seven adopted annexation ordinances. The table below summarizes the impact of the 2019 law on the outcome of Bloomington’s annexations based on the certified and alternative numbers promulgated by Auditor Smith.

Area	After the 2019 Law Retroactively Nullified Sewer Extension Contracts	Before the 2019 Law Retroactively Nullified Sewer Extension Contracts
1A	60.94%	37.75%
1B	57.50%	30.91%
1C	71.43%	3.81%
2	71.98%	34.93%
3	66.67%	50.00%
4	70.79%	59.55%
5	66.67%	51.85%

50. If the 2019 law is unconstitutional, Areas 1A, 1B, 1C, 2, and 3 (which represent 96% of the total acreage and 90% of the population designated for annexation) automatically

become part of Bloomington, while the annexation of Areas 4 and 5 may be appealed to a judge.

51. If the 2019 law is valid, only the annexation of Areas 1A and 1B may be appealed to a judge, while the annexation of all other areas fails outright. By voiding 80% of Bloomington's waivers, the General Assembly changed the outcome in every annexation area.

52. All told, from 2017 through 2022, the City has expended more than \$1,410,346 pursuing annexation, including costs for preparation of fiscal plans, outside legal counsel, statutorily-required mass certified mailings, communications consulting, and surveying.

**COUNT I: INDIANA CODE §§ 36-4-3-11.7 (b) AND (c) AND 13-18-15-2 (e) AND (f)
UNCONSTITUTIONALLY IMPAIR CONTRACTUAL OBLIGATIONS IN VIOLATION OF
ARTICLE I, SECTION 24 OF THE INDIANA CONSTITUTION**

53. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs one through fifty-two above, as if fully set forth herein.

54. Article I, Section 24 of the Indiana Constitution reads, in its entirety: "No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed." The second half of this provision, which reads "no . . . law impairing the obligation of contracts . . . shall ever be passed" is generally abbreviated as "the contracts clause."

55. The legislature has broad authority to prospectively limit that for which parties may contract, but the primary purpose of the contracts clause is to protect existing contracts from impairment by the General Assembly. Retroactive impairment is only permitted in very narrow circumstances, where the legislature is exercising a "necessary police power."

56. Through the 2019 law, the legislature retroactively impaired hundreds of Bloomington's sewer extension contracts.

57. The General Assembly was not exercising any necessary police power when it passed the 2019 law.

58. The 2019 law unconstitutionally impairs hundreds of Bloomington's sewer extension contracts and should be declared unconstitutional on its face and as applied to Bloomington pursuant to Article I, Section 24 of the Indiana Constitution.

**COUNT II: INDIANA CODE §§ 36-4-3-11.7 (b) AND (c) AND 13-18-15-2 (e) AND (f)
UNCONSTITUTIONALLY IMPAIR CONTRACTUAL OBLIGATIONS IN VIOLATION OF
ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION**

59. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs one through fifty-eight above, as if fully set forth herein.

60. Article I, Section 10 of the United States Constitution states, in relevant part, "No state shall . . . pass any . . . Law impairing the Obligation of Contracts." This clause is generally referred to as the "Contracts Clause."

61. In analyzing whether or not a statute violates the federal Contracts Clause, courts have imposed a two-part test: (1) did the state law operate as a substantial impairment of a contractual relationship and (2) is the state law appropriately and reasonably drawn in a way that advances a significant and legitimate public purpose.

62. The 2019 law substantially impaired hundreds of Bloomington's sewer extension contracts, voiding fundamental terms of the contracts and depriving Bloomington of a critical bargained-for value.

63. The 2019 law was not appropriately and reasonably drawn in a way that advances a significant and legitimate public purpose.

64. The 2019 law should be declared unconstitutional on its face and as applied to
Bloomington pursuant to Article I, Section 10 of the United States Constitution.

**COUNT III: INDIANA CODE §§ 36-4-3-11.7 (b) AND (c) AND 13-18-15-2 (e) AND (f)
CANNOT BE APPLIED TO BLOOMINGTON'S 2017 ANNEXATION PROPOSALS, AS
DOING SO WOULD ALLOW THE GENERAL ASSEMBLY TO BENEFIT FROM
UNLAWFULLY DELAYING BLOOMINGTON'S ANNEXATIONS**

65. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs one
through sixty-four above, as if fully set forth herein.

66. In 2017, the General Assembly passed the 2017 law, unconstitutionally delaying
Bloomington's annexation by more than three and a half years.

67. In December, 2020, the Indiana Supreme Court confirmed the 2017 law's
unconstitutionality in *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020).

68. In 2019, after both the trial and appeals courts had rejected the state's attempt to dismiss
Bloomington's challenge to the 2017 law and the trial court had declared that law
unconstitutional, the General Assembly enacted the 2019 law and invalidated hundreds of
sewer extension contracts. At the time, Bloomington was the only municipality in the
state suffering an unconstitutional delay to a pending annexation.

69. Auditor Smith's application of the 2019 waiver law caused Bloomington to go from
being able to *automatically annex* five out of seven areas, comprising 96% of the total
acreage and 90% of the population designated for annexation, to being *automatically
barred* from annexing five out of seven areas.

70. When Bloomington initiated its annexation proposal, dedicating significant public time
and money to the effort, Bloomington relied to its detriment on existing contracts. The
legislature illegally delayed Bloomington's annexations via the 2017 law and then used
the time it bought with an unconstitutional statute to substantially alter or invalidate

waiver contracts, which thwarted Bloomington's annexation by other means. Allowing the 2019 waiver law to stand essentially lets the legislature benefit from its earlier unconstitutional actions, to Bloomington's detriment.

71. Therefore even if the 2019 law is constitutional on its face, it cannot justly be applied to Bloomington's annexations. Fundamental fairness dictates that Bloomington's 2017 annexation cannot be scuttled by a 2019 law rendered applicable only due to an unconstitutional delay.

COUNT IV: MONROE COUNTY AUDITOR CATHERINE SMITH INAPPROPRIATELY INCLUDED DEFECTIVE REMONSTRANCE PETITIONS IN THE REMONSTRANCE COUNTS SHE CERTIFIED FOR ANNEXATION AREA 4

72. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs one through seventy-one above, as if fully set forth herein.

73. Upon review of Auditor Smith's initial remonstrance counts, Auditor Smith appears to have counted multiple defective remonstrance petitions that should have been rejected.

74. Area 4 remonstrance petitions contain multiple defects that render them invalid. These include, but are not limited to, improperly notarized petitions, untimely delivered and processed petitions, and petitions executed by an ineligible signatory.

75. The process of reviewing individual petitions for potential defects is ongoing. The foregoing list is illustrative, not exhaustive, and Bloomington reserves the right to identify additional defects present in petitions as the long process of reviewing petitions continues.

76. Auditor Smith should be directed to disregard defective petitions and to alter her certified remonstrance count accordingly.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. Declaratory judgment that Indiana Code §§ 36-4-3-11.7(b) and (c) and 13-18-15-2(e) and (f) are unconstitutional on their face and as applied to Bloomington in violation of the contracts clause set forth in Article I, Section 24 of the Indiana Constitution.
2. Declaratory judgment that Indiana Code §§ 36-4-3-11.7 (b) and (c) and 13-18-15-2 (e) and (f) are unconstitutional on their face and as applied to Bloomington in violation of the Contracts Clause set forth in Article I, Section 10 of the United States Constitution.
3. Declaratory judgment that Indiana Code §§ 36-4-3-11.7 (b) and (c) and 13-18-15-2 (e) and (f) may not equitably be applied to Bloomington's 2017 annexation proposals, including the annexation of Area 4 because applying them to Bloomington's in-progress annexations would effectively allow the General Assembly to benefit from its earlier illegal actions that unconstitutionally delayed Bloomington's annexations.
4. Injunctive relief directing Auditor Smith to take account of all contractual provisions through which property owners waived their right to remonstrate against a proposed annexation, regardless of the age of the contract, when certifying remonstrance counts for Area 4.
5. Injunctive relief directing Auditor Smith to disregard all defective remonstrance petitions and to reissue a count that only includes valid remonstrances.
6. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

/s/ Michael Rouker

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/s/ Daniel Dixon

Daniel Dixon, Attorney No. 30585-53
Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been mailed to the following parties, including, pursuant to the Indiana Code § 34-14-1-11, the Indiana Attorney General this 29th day of March, 2022:

Catherine Smith
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