STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT
	) SS:	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2203-PL-000509

COUNTY RESIDENTS AGAINST ANNEXATION, INC., et al.,	)
Petitioners,	)
v.	)
CITY OF BLOOMINGTON, INDIANA, et al.,	)
Respondents.	)

BLOOMINGTON'S PRE-TRIAL BRIEF

Respondents, the City of Bloomington, Indiana, *et al.* (collectively, "Bloomington" or "City"), by counsel, respectfully files this Pre-Trial Brief.

Remonstrance Standard

"[A] remonstrator's challenge to an annexation is not a regular lawsuit," *Bradley v. City of New Castle*, 764 N.E.2d 212, 215 (Ind. 2002), but is instead a special judicial proceeding. Like review of other legislative processes, substantial deference is owed to Bloomington's decision to annex Areas 1A and 1B. "[A]nnexation 'is essentially a legislative function.' Therefore, courts play only a limited role in annexations and must afford the municipality's legislative judgment substantial deference." *In re Annexation of Certain Territory to City of Muncie*, 914 N.E.2d 796, 801 (Ind. Ct. App. 2009) ("*Muncie*") (quoting *City of Fort Wayne v. Certain Southwest Landowners*, 764 N.E.2d 221, 224 (Ind. 2002) ("*Fort Wayne*")). The Indiana Supreme Court has repeatedly explained:

> [W]e afford legislative judgment [in annexations] considerable deference. It is well-established that we avoid scrutinizing legislative processes, even those that are constitutionally mandated. The General Assembly has delegated part of its power to re-establish and change governmental unit boundaries to local legislatures. We do not abandon our deferential approach simply because the state legislature has delegated a legislative function to subordinate agents, the municipalities.

Bradley, 764 N.E.2d at 206; *see also, e.g., City of Carmel v. Certain Southwest Clay Tp. Annexation Territory Landowners*, 868 N.E.2d 793, 798 (Ind. 2007) ("In assessing a municipality's ordinance and plan, a court should keep in mind that annexation is 'a legislative function.'"); *City of Hobart v. Chidester*, 596 N.E.2d 1374, 1376 (Ind. 1992) ("[T]o the extent annexation statutes have seemed to require courts to make determinations of a non-judicial nature, court have refused, finding themselves to be without the power to do so under the separation of powers clause of the Indiana Constitution, Art. 3, § 1."). "Courts are not authorized to dissect the minutiae of what are essentially legislative decisions." *Fort Wayne*, 764 N.E.2d at 229. This does not mean the courts are without a role. *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016). "Rather, the court is obligated to ensure the annexing municipality has 'not exceeded its authority and that the statutory conditions for annexation of been satisfied.'") *Id.* (internal citation omitted). If those conditions have been met, "then the trial court is bound to approve annexation of the affected territory." *Id.*

The ability to remonstrate against an annexation is not a new concept. Though the statutes have been recodified and/or amended over the years, the three stages have remained the same: "(1) legislative adoption of an ordinance annexing of certain

territory and pledging to deliver certain services within a fixed period, (2) an opportunity for remonstrance by affected landowners, and (3) judicial review." *Southwest Clay*, 868 N.E.2d at 796 (internal citation omitted). Prior to 1955 a single property owner could file a remonstrance wherein the court considered whether the annexation would "cause no manifest injury to the persons owning property in the territory sought to be annexed." Ind. Code Ann. § 48-702 (Burns' 1950 Repl.). After 1955, the remonstrance process was amended to require a 75% remonstrance threshold, in which the court considered a series of "primary determinants" for annexation, including, for example, urbanization and the best interest of the territory. Ind. Code Ann. § 48-702 (Burns' 1963 Repl.); *Baker v. City of South Bend*, 268 N.E.2d 623, 624 (Ind. Ct. App. 1971). In the 1990s, Indiana Code § 36-4-3-13 was created as the scope of permissible judicial review, and Section 13(e)'s language included many of the same "primary determinant" concepts in the prior annexation statute.

Still, though, a remonstrance is "the right to have a day in court, it is not a right to obstruct annexation." *Doan v. City of Fort Wayne*, 252 N.E.2d 415, 418 (Ind. 1969). Landowners, like those remonstrating here, also "have no vested interest in the maintenance of municipal boundaries at any particular location." *Bradley*, 764 N.E.2d at 215. Rather, "the act [of annexation] simply changes the property and its owner, in their civil relation to certain public authority." *Id.* (quoting *Stilz v. City of Indianapolis*, 55 Ind. 515, 523 (1877)). And in recognizing the statutory evolution, the Indiana Supreme Court continually reaffirmed that "Indiana's annexation laws have evolved over time, but the object of the annexation statute has remained the same: 'to permit

annexation of adjacent urban property.'" *Southwest Clay,* 868 N.E.2d at 796 (internal citations omitted); *see also id.* at 797 (rejecting argument that 1999 amendment altered standard with respect to fiscal plans).

Indiana Code § 36-4-3-13

In this context, a court's review of an annexation remonstrance is limited to the elements contained in Indiana Code § 36-4-3-13 ("Section 13"). *See City of Boonville v. Am. Cold Storage*, 950 N.E.2d 764, 770 (Ind. Ct. App. 2011) ("Accordingly, our supreme court determined that judicial review of annexation should not extend beyond the confines of Sections 11 through 13 dealing with remonstrances.") For the Court's convenience, a copy of Section 13 is attached as **Exhibit A**.

Bloomington's Initial Burden

Under Section 13, Bloomington bears the initial burden of demonstrating that the annexation fits within either Section 13(b) or 13(c), that it has adopted a written fiscal plan as provided in Section 13(d), *Southwest Clay*, 868 N.E.2d at 797, and more recently, that it has submitted proof that it has complied with the outreach program and post-adoption remonstrance process in Indiana Code sections 36-4-3-1.7 and 11.1. Sections 13(a)(3) and 13(i). Sections 13(b) and 13(c) include considerations of whether the annexation territory meets the contiguity requirement, and is alternatively either (i) already urbanized, (ii) is needed and can be used for the municipality's development in the reasonably near future, or (iii) is needed for a specific development project under Indiana Code section 36-4-3-11.4.

"Contiguity" is a straight-forward calculation. *In re Town of Lizton*, 769 N.E.2d 622, 632 (Ind. Ct. App. 2002) ("[T]his statutory definition obviates any judicial interpretation of the term 'contiguous.'"). An annexation area is contiguous if "at least one-eight (1/8) of the aggregate external boundaries of the territory coincides with the boundaries" of Boonville. Ind. Code § 36-4-3-1.5. The 1/8th requirement is sufficient under Section 13(b) if the area is urbanized. Urbanization can generally be shown through zoning, population density, and subdivisions. Section 13(b)(2).

When an area is not already urbanized, a municipality can still annex under Section 13(c) if the area (a) meets a more stringent 1/4th contiguity calculation and is "needed and can be used" for the City's development in the reasonably near future, Section 13(c)(1), or (b) the municipality is annexing for a specific economic development project. Section 13(c)(2). Historically, in annexations of unurbanized areas, courts considered whether the property is "needed for any proper town purpose" or "valuable by reason of their adaptability for prospective town uses." *Chandler v. City of Kokomo*, 36 N.E. 847, 848 (Ind. 1894). Cases have similarly affirmed the municipality's judgment so long as some city purpose is served by the annexation. *E.g, Chidester v. City of Hobart*, 631 N.E.2d 908, 913 n.6 (Ind. 1994) (city needed annexation for transportation linkages with other developing areas, control of adjacent development on borders, and prevention of conflicting land uses); *In re Blackhawk Annexation*, 645 N.E.2d 650, 656 (Ind. Ct. App. 1995) (city needed annexation for management of future urban growth); *Abell v. City of Seymour*, 275 N.E.2d 547, 551 (Ind. Ct. App. 1971) (proposed construction of new school in the area and potential residential and business expansion supported

needed and can be used). The relevant "reasonably near future" period for un-urbanized territory is generally within four years. *Town of Brownsburg v. Fight Against Brownsburg Annexation*, 124 N.E.3d 597, 609 (Ind. 2019). As an alternative to an "urbanized" or "needed and can be used" annexation, a municipality could as a third option demonstrate that the annexation concerns a specific development project under Indiana Code section 36-4-3-11.4. Section 13(c)(2).

While Bloomington must also establish that it has adopted a fiscal plan for the annexation, Section 13(d), the fiscal plan is not subject to audit by the landowner-remonstrators. "[A] trial court hearing a remonstrance is not an examiner conducting an audit of a challenged fiscal plan. Rather, it should focus on whether that plan represents a credible commitment by the municipality to provide the annexed area with comparable capital and non-capital services." *Southwest Clay*, 868 N.E.2d at 799. "The general question is whether services similar to those offered in the existing city will be provided and whether the annexing municipality will be able to finance them." *Id.* This also does not mean that Bloomington must extend all facilities to the annexation territory. *Salmon v. City of Bloomington*, 761 N.E.2d 440, 448 (Ind. Ct. App. 2002) (holding Section 13 does not require extending sewer facilities, only that they be available for extension). Moreover, "it would be unreasonable to require the city to provide services to the annexed territory that are not needed because of differences in topography, patterns of land use, and population density." *Chidester*, 596 N.E.2d at 1378.

Remonstrators' Burden

Once Bloomington satisfies these conditions, the Landowners could only prevail "if they establish grounds listed in subsection 13(e)." *Southwest Clay*, 868 N.E.2d at 797-98. The Landowners must establish both Section 13(e) elements relating to significant financial impact and continued opposition at trial. *See* Section 13(e)(2). Failure on any one of these elements requires the court to uphold the annexation. *Id.* at 800 ("To defeat an otherwise valid ordinance, all conditions of section 13(e)(2) must be met."). With respect to the fiscal impact element, the Landowners must meet their burden without reference to any personal or business finances, Section 13(e)(2)(B), and must demonstrate that the financial impact is beyond the normal range of financial impact that is inevitable with annexation. "All annexations add a municipal tax layer." *Muncie*, 914 N.E.2d at 806. Subsection 13(e)(2) "therefore required the remonstrators to demonstrate, given that inevitability, the particular annexation will impose something beyond the norm – something 'significant'." *Id.* That is, "remonstrators cannot oppose annexation merely because they do not want to live in the municipality or because they believe annexation will affect them adversely, such as by raising their taxes or altering their way of life." *Brownsburg*, 124 N.E.3d at 602.

Bloomington's Final Burden (If Needed)

Finally, even if the Landowners can establish each applicable element under Section 13(e)(2), the municipality can still proceed by demonstrating that the annexation would nevertheless be in the best interest of the landowners. *See* Sections 13(e)(2)(C) and 13(f). Best interest is not a subjective inquiry into whether the

Remonstrators believe that current service is adequate. *Baker v. City of South Bend*, 268 N.E.2d 623, 625-26 (Ind. Ct. App. 1971) (rejecting argument). Instead, best interest can be established, for example, when services will be enhanced, could be improved, or would be more effective as a result of annexation, *e.g., id.*; *Smith v. Town of Culver*, 234 N.E.2d 494, 496-97 (Ind. Ct. App. 1968); *Palmer v. City of South Bend*, 273 N.E.2d 302, 302 (Ind. Ct. App. 1971); *LeMaster v. City of Fort Wayne*, 297 N.E.2d 887, 889 (Ind. Ct. App. 1973), where the areas are "economically and socially joined," and where residents will be able to vote on community problems and run for City office. *Smith*, 234 N.E.2d at 497.

Conclusion

An annexation remonstrance is not a regular lawsuit but is instead a special proceeding concerning the review of a legislative function. That review is limited to the confines of Section 13, the object of which is "to permit annexation of adjacent urban property." *Southwest Clay*, 868 N.E.2d at 796. Because Bloomington has not exceeded its authority, the City respectfully requests that the Court affirm its annexations of Area 1A and Area 1B.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2024, that the foregoing document was filed and served upon the following person(s) electronically via the Indiana E-Filing System (IEFS):

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