

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

MONROE CIRCUIT COURT #6
CAUSE NO. 53C06-1705-PL-1138

CITY OF BLOOMINGTON,
PLAINTIFF,

VS.
ERIC HOLCOMB,
In his official capacity as Governor
of the State of Indiana

SUMMARY JUDGMENT

This cause is now at issue regarding the Motion for Summary Judgment filed by the plaintiff and the Motion for Summary Judgment filed by the defendant. The Court conducted and completed a hearing on these motions on March 26, 2019, and at the conclusion thereof, took the matters under advisement.

The Court, being duly advised , now finds and Orders as follows:

1. The plaintiff seeks summary judgment and requests that this Court enter summary judgment declaring that Indiana Code section 36-4-3-11.8 is unconstitutional special legislation in violation of Indiana Constitution Article IV, Section 23, because it only applied to the annexation efforts of the City of Bloomington, could have been made a generally applicable law, and was not based on any inherent characteristics that would justify it as constitutionally permissible. The plaintiff also requests that the Court enter summary judgment declaring that Section 161 of Public Law 217-2017 is unconstitutional under the Single Subject Clause of Indiana Constitution Article IV, Section 19, because it did not bear a logical and proper connection with the biennial budget within which it was inserted.

2. The defendant also seeks summary judgment and requests that this Court enter summary judgment declaring that Section 161 of Public Law 217-2017 is constitutionally permissible special legislation. The defendant asserts two grounds in support of this request. First, that special legislation is permissible with respect to the reorganization of county and city government and that Section 161 is about local government structure and is a legitimate action by the legislature to intervene in the merging of Bloomington and Monroe County territory. The defendant also asserts that special laws are permissible where the legislation is justified by inherent characteristics of the locality to which the law applies and asserts that in this case the Legislature was justified in implementing Section 161 by Bloomington's undue urgency and utilization of remonstrance waivers. The defendant also requests that the Court enter summary judgment that Section 161 is

constitutional and does not offend the single subject rule because a logical connection exists between the section and the rest of the bill's provisions. In this regard, the defendant asserts that Section 161 pertains to annexation that would affect tax collection and revenue and it is perfectly reasonable for the General Assembly to include it in a bill with the state's overall budget. The defendant also asserts that he is not a proper defendant in this case and that the plaintiff lacks standing to challenge the constitutionality of Section 161 under Article IV, Section 23 of the Indiana Constitution.

3. Both parties assert that there are no genuine issues of material fact and that each is entitled to summary judgment in that party's favor as a matter of law.
4. Pursuant to Trial Rule 56 of the Indiana Rules of Court, summary judgment shall be entered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.
5. The evidence shows that the plaintiff started to consider whether to annex areas into the City of Bloomington in 2016 after John Hamilton had been elected mayor. In 2016, the plaintiff hired the law firm of Bose McKinney and the financial firm of Reedy Financial Group to assist in developing the annexation action. In February of 2017, the plaintiff began the process of annexing several areas adjacent to the City of Bloomington pursuant to the procedures outlined in I.C. 36-4-3-1, et seq. Plaintiff's exhibit S-01 was the Annexation Timeline that the plaintiff used for this process. As this exhibit shows, the plaintiff started the legal process on February 3, 2017 and wanted to adopt the annexation ordinances by June 30, 2017. This timeline complied with the requirements of I.C. 36-4-3-1. As noted by the plaintiff in its Complaint, there are five phases involved in a municipal annexation: Public outreach, introduction of an annexation ordinance, public hearing, adoption of an annexation ordinance and remonstrance by annexed property owners. The evidence shows that the plaintiff took additional steps that were not required by Indiana law by adding initiating resolutions to the process, announced its proposal at a work session open to the public, launched and maintained a website to inform the public of the proposed annexation, created online comment forms, and distributed a fiscal plan on February 3, 2017, a date earlier than required by statute.
6. Plaintiff's exhibit A shows that the plaintiff conducted a meeting as a Committee of the Whole at a public meeting on February 8, 2017, determined the manner in which the City Council would consider the initiating resolutions at the regular city council meeting on February 15, 2017. The initiating resolutions were all voted upon with a result of a "do pass recommendation." The procedure for consideration provided that the administration would address the Council, the Council would then be allowed to question the presenters. The members of the public would then have the opportunity to address the

Council. The Council would then be allowed to ask further questions before moving on to consider the initiating resolution in regard to each area considered for annexation. The Council would then consider each initiating resolution, with the Council members asking questions followed by further questions by the public. The Council would then consider and vote upon each initiating resolution.

7. Plaintiff's exhibit A-11 are the Minutes of the regular City Council meeting held on February 15, 2017. This exhibit shows that the City Council considered the initiating resolutions in the manner described at the February 8, 2017 meeting. At this meeting, Corporation counsel, Philippa Guthrie, explained that approval of the annexations would be by ordinance, one for each area after several months of discussion and that the annexations would not go into effect until January 1, 2020. Steve Unger, attorney from Bose, McKinney & Evans, explained that after the public outreach meetings, there would be a three meeting process to complete the annexation, consisting of an introduction of the ordinance, a public hearing, and then a final hearing 30 to 60 days after the public hearing. Unger explained that the administration hoped to hold the final hearing by June 30, 2017. The Council considered the resolutions in the manner already described and during the meeting the issue was raised regarding the desire to have the final meeting on the annexation ordinance by June 30, 2017. The administration's response to this issue indicated that they wanted to complete the annexation process so as not to intrude into the budget process and also because of "anticipated state action regarding annexation." Later in the meeting in response to questions from the Council, Mr. Unger explained that the Council could reconfigure the timeline and extend or push out the process so long as the final hearings were held within 6 months of the public information meetings. The minutes of this meeting show that some members of the public appeared and spoke in opposition to the annexation and that several county officials, including township trustees, a county commissioner, and a Monroe County council member. In summary, these county officials urged the City to slow down the process. The Council voted to pass all of the initiating resolutions.

8. Plaintiff's exhibit A-21 are the minutes of the City Council meeting held on March 29, 2017. The purpose of this meeting was to introduce the annexation ordinances and to consider adoption of the fiscal plan.
9. The plaintiff gave the notice required by statute and conducted six public information meetings in March of 2017. The plaintiff asserts that in an effort to be transparent about the process and to involve the public, it provided more information to the public during these meetings and made more city officials available during these meetings than was required by Indiana law. The plaintiff asserts that during these meetings city officials interacted with hundreds of citizens. There is no evidence before the Court to contradict

these assertions, although as will be described later, the defendant asserts that the plaintiff did not heed the request of some individuals to slow down the process.

10. On March 29, 2017 there was a special session of the Bloomington common council. The minutes of this meeting are Plaintiff's exhibit A-21. During this session the council considered the annexation resolutions and followed a similar procedure in regard to these resolutions as the council had followed in regard to the initiating resolutions. The administration was allowed to make an initial presentation about the proposed annexation. Council members would then be allowed to question the presenters. After the Council had completed questions regarding the annexation in general, the Council would then consider the resolutions one resolution at a time. After introduction of the resolution, the administration would be allowed to comment on the resolution, which would be followed by questions from the Council members in regard to that resolution. The members of the public would then be allowed to address the resolution and any amendments. Following the public comment, the Council members would be allowed to ask further questions before proceeding to vote on the resolution.

11. Mayor John Hamilton was the first to address the Council on behalf of the administration. As noted by the defendant, during his presentation, Mayor Hamilton urged the Council to move the process forward by the following comments: " I strongly urge you to move this process forward tonight—remembering we're still not even halfway through the formal period of review—so we can continue to meet and discuss the proposed city boundaries, the challenges and opportunities for joint services, the fiscal pressures and opportunities. Let the robust dialogue continue over the next 3 months before any final vote in June." Corporation Counsel, Philippa Gurthrie also addressed the Council about the annexation process, and during her remarks, requested the Council to follow the proposed schedule for various reasons, including possible action by the state legislature. During this meeting, an amendment was proposed to change the proposed schedule to allow the Council to extend the annexation process, however this amendment failed to pass. ~~During this meeting various county officials appeared and shared their concerns~~ over the annexation. Some of these officials indicated that they opposed the annexation of certain areas. Also, during this meeting, questions were raised about whether waivers were used to determine the annexation areas and the administration's response was that waivers were one of the factors considered in the initial consideration of the areas to be annexed. Throughout this meeting various Council members expressed their desire to continue to collect information about the areas to be annexed and public input regarding each area, and to make modifications to the annexation plan based upon that information. The citizens of the northeast area to be annexed demonstrated to the Council that more than 65% of the citizens in the area would remonstrate. The Ordinance 17-16 regarding annexation of this area did not pass by a unanimous vote of the Council. The other

annexation ordinances regarding the other areas were introduced at the conclusion of this meeting.

12. The designated evidence shows that the city administration wanted to follow the proposed annexation timeline and to complete the annexation process by June 30, 2017 for a couple of reasons. First the administration did not want the annexation process to conflict with the budget period. Second, the administration did not want the annexation action to be affected by any changes made by the General Assembly to the requirements for annexation, which historically would have become effective on July 1st. See plaintiff's Exhibit A-21 and defendant's exhibit 2.
13. On March 30, 2017, the plaintiff published notice that the public hearing required by statute would be held on May 31, 2017, commencing at noon. The plaintiff also mailed packets of information to property owners in the annexation area. The plaintiff arranged for the public hearing to be held in the gymnasium of the Bloomington High School South because the gymnasium provided more seating capacity than the City Council chambers.
14. During the 2017 session of the General Assembly, three attempts were made to pass general legislation modifying the annexation statute, all of which failed to pass. On April 21, 2017 at approximately 2:00 a.m. , an amendment was posted to House Bill 1001, which added Section 161 to the Bill, which Bill is the biennial budget and is titled "An act to amend the Indiana Code concerning state offices and administration and to make an appropriation." The Indiana House of Representatives passed this bill on April 21, 2017 and the Senate passed the bill on April 22, 2017. The defendant signed the bill into law as Public Law 217-2017 on April 27, 2017.
15. Section 161 reads as follows:
 - a) "This section does not apply to an annexation that meets both of the following requirements:

 - 1) The annexation is an annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), 5, or 5.1 of this chapter.
 - 2) No parcel within the annexation territory is subject to a waiver of remonstrance.
 - b) This section does not apply to an annexation and annexation ordinance that is adopted or effective before April 30, 2017.
 - c) This section applies to property that meets both of the following requirements:

- 1) Is in an unincorporated areas on January 1, 2017.
- 2) Is within the boundaries of a territory proposed to be annexed in an annexation ordinance that was introduced after December 31, 2016, and before July 1, 2017.

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 20, 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.”

16. Section 161 applies only to the City of Bloomington’s 2017 annexation action and that annexation action is the only action which could be voided by this bill. Additionally, the provision prohibiting any further annexation action for five years also applies only to the City of Bloomington. Section 161 is special legislation. The defendant does not dispute that this bill is special legislation which applies only to the City of Bloomington.

17. Defendant’s Exhibit 8 contains those facts and evidence stipulated by the parties and reads as follows:

“1. With respect to its attempt to annex areas of Monroe County in 2017, the City took specific account of whether annexed areas were encumbered by valid waivers of remonstrance for at least 50% of the parcels to be annexed or at least 41% of the assessed value of the land to be annexed.

2. When the City introduced its initial annexation resolution in February of 2017, Areas 1 and 2 were encumbered by valid waivers of remonstrance for at least 50% of the parcels to be annexed or at least 41% of the assessed value of the land to be annexed. The City then combined Area 3 with Areas 1 and 2, split Area 1 into Areas 1a, 1b, and 1c, and renumbered Areas 4 through 8.

3. As of April 22, 2017, at least 50% of the parcels to be annexed, or at least 41% of the assessed value of the land to be annexed were encumbered by valid waivers of remonstrance in Areas 1a, 1b, and 1c.”

18. The designated evidence shows that the plaintiff did consider waivers of remonstrance and the percentage of these waivers in determining the annexation areas. See defendant’s Exhibits 2, 9, and 14. However, the plaintiff’s designated evidence shows that it was not uncommon for municipalities to consider waivers of remonstrance and the percentage of

these waivers in a given area when developing annexation areas. See Affidavit of Eric Reedy plaintiff's exhibit T.

19. Under I.C. 36-9-22-2 municipalities are required by law to obtain waivers of the right to remonstrate in regard to any pending or future annexation of the area from property owners who contract with that municipality to obtain sewer service to the property. Under I.C. 36-4-3-11.7, waivers of remonstrance executed after June 30, 2015 expire after 15 years. Waivers executed prior to that date do not expire.
20. The defendant has renewed his assertions that the plaintiff does not have standing to bring this action and that the Governor is not the proper defendant in this case.
21. The Court has already addressed these claims in the Order denying the defendant's Motion to Dismiss and now re-affirms the Court's Order in regard to these issues as follows.
22. I.C. 34-14-1-2 provides in relevant part that any person... whose rights, status, or legal relations are affected by a statute ...may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder."
23. As argued by the plaintiff, the plaintiff had two choices when Section 161 became law. The plaintiff could continue with the annexation process or the plaintiff could challenge the constitutionality of Section 161 and obtain a judicial determination regarding the validity of the law before continuing with the annexation process.
24. The plaintiff chose the second option and filed this declaratory judgment action. Under Indiana law, in order to determine whether declaratory judgment is appropriate, the court should look to whether: (1)"the issuance of a declaratory judgment will effectively solve the problem; (2) whether it will serve a useful purpose;" and (3) whether or not another remedy is more effective or efficient." *Volkswagenwerk, A.G. v. Watson* 390 NE. 2d 1082 (Ind. Ct. App, 1979).
25. The Court finds that all three criteria are met in this case. Considering the language of Section 161, the plaintiff's annexation ordinance is void and the annexation process has been terminated by the act of the defendant. Should the plaintiff ignore Section 161 and proceed with the annexation process, the plaintiff would be subject to a claim of pursuing an unreasonable or groundless action against the property owners affected by the annexation process. Accordingly the plaintiff has no other remedy than to pursue a declaratory judgment action if the plaintiff intends to pursue annexation. The issuance of

a declaratory judgment will effectively solve the problem and will serve a useful purpose by determining whether the law is constitutional or not, and by therefore determining whether the plaintiff can proceed with the annexation process without causing undue litigation for the property owners affected by the annexation.

26. The defendant is the appropriate defendant in this case. Section 161 does not specify who will enforce its provisions. The responsibility for enforcing Section 161 accordingly falls on the defendant as the governor of Indiana. Therefore, the controversy in this case is between the plaintiff, City of Bloomington and the State of Indiana. Additionally, prior Indiana case law has found the governor to be an appropriate defendant when the constitutionality of a statute is at issue. *Stoffel v. Daniels* 908 N.E. 2d 1260 (Ind. Ct. App. 2009)
 27. The Court further finds that under Indiana law, the plaintiff, as a political subdivision of this state has standing to challenge the constitutionality of special legislation because the plaintiff will sustain a direct injury if this statute is upheld. In this regard, the plaintiff has expended significant amounts of money to prepare the annexation action and to meet the requirements of the annexation statute. Additionally, if this statute is upheld, the plaintiff cannot pursue annexation of any of these areas for five years. The plaintiff is representing its own interest in pursuing this litigation and is not attempting to represent the interests of any other group. For these reasons the plaintiff has standing. See *City of Hammond v. Herman & Kittle Properties, Inc. and State of Indiana* 2019 Ind. Lexis 47 (Ind. 2019), which affirmed the decision of the Indiana Court of Appeals in the same case that the City of Hammond had standing to bring the action challenging the constitutionality of the Indiana statute regarding fee exemptions. *City of Hammond v. Herman & Kittle Props.* 95 N.E. 2d 116, (Ind. Ct. App. 2018).
 28. The Court therefore now turns to the merits of the summary judgment claims of the parties, the constitutionality of Section 161.
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29. As already noted there is no question that Section 161 is special legislation. The defendant does not contest that Section 161 is special legislation.
 30. Article 4 Section 23 of the Indiana Constitution reads as follows: “ In all the 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.”
 31. In determining whether a statute is constitutional, the Court must start from a position that the statute is presumed to be constitutional and will continue to be presumed

constitutional until this presumption is clearly overcome by a contrary showing. *State v. Buncich* 51 N.E. 3d 136, (Ind. 2016), *City of Hammond v. Herman & Kittle Properties and State of Indiana*, *Supra*.

32. The test for determining whether special legislation was constitutionally permissible was most recently stated by Chief Justice Loretta Rush in the *City of Hammond* case after a thorough review of the history behind state constitutional limits on special legislation. “So, what can be distilled from this review of Article 4, Section 23 case law? In sum—that the constitutionality of special legislation hinges on the uniqueness of the identified class and the relationship between that uniqueness and the law. More specifically, a special law complies with Article 4, Section 23 when an affected class's unique characteristics justify the differential treatment the law provides to that class. *See Buncich*, 51 N.E.3d at 143; *Lake Superior Court*, 820 N.E.2d at 1250; *Williams*, 724 N.E.2d at 1086; *Hoovler*, 668 N.E.2d at 1235; *Moseley*, 643 N.E.2d at 301. But, a special law violates Article 4, Section 23 when there are no unique circumstances of an affected class that warrant the special treatment—meaning that a general law could be made applicable. *See Alpha Psi*, 849 N.E.2d at 1138-39; *Kimsey*, 781 N.E.2d at 694. With this test, though, we keep in mind two considerations. First, because a special-legislation challenge is a type of constitutional challenge, there is an overarching presumption that the statute is constitutional. *See, e.g., Buncich*, 51 N.E.3d at 141. So in close cases, the special law will be upheld. *See id.* at 143. Second, once a special-legislation claim is lodged and the court determines that the law is indeed special, the burden is on the proponent to show that a general law can't be made applicable. *See id.* This requires the legislation's proponent to clear a low bar by establishing a link between the class's unique characteristics and the legislative fix. *See id.* If the proponent overcomes its initial hurdle to show a link between the unique characteristics and the special treatment, but the case poses a question of degree—i.e., the characteristics used to justify the special law are common to the specified class and to those outside of the class—then the opponent of the legislation must show why the specified class's characteristics are not defining enough to justify the special legislation. *See, e.g., id.; Moseley*, 643 N.E.2d at 301. By carrying this burden, the opponent demonstrates that the law's proponent has failed to justify the special treatment. *City of Hammond*, *Supra* at p. 20-21.
33. As noted in this Court's findings, the defendant has stipulated that Section 161 is special legislation. As the proponent of the legislation, the burden is on the defendant to show that a general law cannot be made applicable and must show the unique characteristics of the identified class, i.e. the City of Bloomington's annexation action, and the relationship between that uniqueness and the legislation.

34. The defendant has asserted that a different test should be applied in this case because Section 161 addresses “local government structure.” The defendant cites this Court to *Dortch v. Lugar* 266 N.E. 2d 25 (Ind. 1971) and argues essentially that special legislation was permissible to authorize the reorganization of local government structure to allow Unigov, i.e. the consolidation of municipal and county functions, and that therefore special legislation should be a permissible to prevent such a consolidation of functions by an annexation action. The Court finds that Indiana caselaw shows that there is only one test for determining whether special legislation is permissible and that test has been clearly stated in the *City of Hammond* case. The Court also notes the case of *City of S. Bend v. Kimsey* 781 N.E. 2d 683 (Ind. 2003), in which the Indiana Supreme Court found special legislation which applied only to an annexation action undertaken by the City of South Bend to be unconstitutional. The Court in *Kimsey* followed the same test identified in the *City of Hammond* case.
35. The defendant has asserted three unique characteristics of the plaintiff’s annexation action that justify the special legislation. First, the defendant argues that the plaintiff’s annexation action was marked by an undue sense of urgency, which the defendant claims was led by Mayor Hamilton, (who counsel for the defendant labeled “the annexation mayor.”) and that there was public opposition to the action. Second, the plaintiff used remonstrance waivers to determine annexation areas. Lastly, the plaintiff intended to use old remonstrance waivers and unrecorded remonstrance waivers.
36. The Court notes that there are no legislative findings or statements to support any of the unique characteristics asserted by the defendant, and while such findings would be helpful, they are not required. See *Kimsey*, *Supra*. Accordingly it is not possible to know exactly what problem the General Assembly was trying to address with this legislation.
37. Considering the first unique characteristic asserted by the defendant, the defendant argues that the plaintiff was acting hastily by trying to adopt the annexation ordinances before any new laws could take effect. The Court finds that the Indiana annexation statute, I.C. 36-4-3-1 et seq. provides specific deadlines and requirements for any annexation action, which deadlines and requirements protect the interest of the parties involved and which slow the process down so that public input can be obtained and considered. The plaintiff was in the process of following these requirements when Section 161 voided the action. The defendant has not identified any violation of the statute by the plaintiff in this regard. The plaintiff’s annexation action would take 133 days. The evidence shows that there have been other annexation actions that took less than 90 days. See plaintiff’s exhibit U, and at least one which took 154 days, see plaintiff’s exhibit T. The defendant appears to argue that it would be a unique

characteristic for a governmental body to diligently follow the requirements of a state statute. Such conduct is not unique and is certainly not unique to the City of Bloomington's actions.

38. The defendant also appears to argue that because the plaintiff was acting "hastily", its officials were not listening to its citizens or other elected officials. While it is clear from the minutes of the various meetings that have been designated as evidence, that there were citizens who did not favor the annexation and there were officials who wanted more information about the plan, there is no evidence that the plaintiff did not consider these objections, again in the manner and timeframe allowed by state statute, and in some regards acted upon them in favor of the citizens making the objections. It is not unusual for there to be public opposition to acts of government. Such opposition is not a characteristic inherently unique to the City of Bloomington or its annexation action.
39. The defendant's second assertion deals with the plaintiff's use of remonstrance waivers as one factor in determining the annexation areas. As noted already, the City was required by state law to obtain these waivers whenever sewer service was extended to a property outside of the city limits. There is no state law prohibiting a city from considering these waivers when deciding when and what properties to annex, and it would stand to reason that it would be logical to consider these waivers in making such a decision because the property owner has already entered into a contract with the municipality to not object to annexation. Additionally, the evidence shows that the percentage of waivers was only one factor considered by the plaintiff in determining the annexation areas and further that it was not uncommon for municipalities to consider the percentage of waivers in making this determination. See Affidavit of Eric Reedy. The plaintiff's use of remonstrance waivers in a manner allowed by Indiana law is not a characteristic unique to the City of Bloomington.
40. The defendant's last assertion concerns the plaintiff's use of old and unrecorded remonstrance waivers. ~~The evidence shows that the plaintiff did use some waivers that~~ dated back to the early 1990's. Under Indiana law, these waivers are still valid insofar as Indiana law provides that only such waivers executed after July 1, 2015 expire after 15 years. This characteristic is not unique to Bloomington. See plaintiff's exhibit T. The City of Boonville used older waivers similar in age to the waivers in this case. The evidence shows that there may have been some waivers which had not been recorded. The plaintiff acknowledged this in one of the public meetings and indicated that it would be a legal matter, i.e. up to the Courts to resolve, as to whether such waivers would be valid. Again, this is not a characteristic which is unique to Bloomington. Unrecorded waivers were used in the City of Boonville's annexation action, see Plaintiff's exhibit T.

Additionally, property owners subject to an unrecorded waiver have legal recourse to challenge the validity of these waivers.

41. For these reasons the Court finds that the defendant has failed to prove that there are any inherent characteristics that are unique to the City of Bloomington's annexation action that make this special legislation permissible. Each of the concerns asserted by the defendant could have been and are required by our state Constitution to be addressed by general legislation. If the General Assembly desires to protect the citizens of this state from a "hasty", "hurried", or "urgent" action by a municipality following the requirements of Indiana law by imposing some type of mens rea on the process, the General Assembly should define the same and provide for the same protection for all of the citizens of Indiana who might be affected by such action. If the General Assembly wants to limit the use of remonstrance waivers, then it can do so by general legislation addressing the issue and protect all citizens in Indiana who might be affected by the use of such waivers. The defendant has established no reason why such general legislation would not have addressed the issues presented in the plaintiff's annexation action so that they could be applied uniformly across the state. The plaintiff has carried its burden of proof that any claimed unique characteristics did not justify this special legislation.
42. The Court finds that Section 161 of Public Law 217-2017 is unconstitutional special legislation in violation of Article 14, Sec 23 of the Indiana Constitution.
43. Article IV, Section 19 of the Indiana Constitution reads as follows: "An act, except for an act for the codification, revision or rearrangement of laws, shall be confined to one [1] subject and matters properly connected therewith."
44. The defendant asserts that Section 161 does not violate Article IV, Section 19 because it deals with taxation and therefore relates to the biennial state budget.
45. ~~Article 14, Section 19~~ "was designed primarily for those titles which are narrower than the enactment. *State, P. R. R. Co. et al. v. Iroq. Cons. Dist. Ct. et al.* (1956), 235 Ind. 353, 133 N. E. 2d 848; *Ule v. State* (1935), 208 Ind. 255, 194 N. E. 140; *Moore-Mansfield, etc., Co. v. Indianapolis, etc., R. Co.* (1913), 179 Ind. 356, 101 N. E. 296. The purpose is to prevent surprise or fraud in the Legislature by means of a provision or provisions in a bill of which the title gave no information to persons who might [*16] be subject to the legislation under consideration. *State, P.R.R. Co. et al. v. Iroq. Cons. Dist. Ct. et al., supra*; *Crabbs v. State* (1923), 193 Ind. 248, 139 N.E. 180; *Albert v. Milk Control Board of Indiana* (1936), 210 Ind. 283, 200 N.E. 688. A further purpose of the provision is to prevent a combination of non-related subjects in the same act. *State, P.R.R. Co. et al. v. Iroq. Cons. Dist. Ct. et [***5] al., supra*; *Albert v. Milk Control Board of Indiana*,

supra; Sarlls, City Clerk v. State ex rel. (1929), 201 Ind. 88, 166 N. E. 270” State ex rel. Indiana Real Estate Com. v. Meier, 190 N.E.2d 191, 193, 244 Ind. 12, 15-16, 1963 Ind. LEXIS 154.

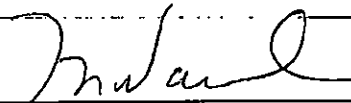
46. Section 161 does not contain any language that addresses taxation. Rather it voids a pending annexation action and prohibits the plaintiff from pursuing the same annexation action for five years. There is no connection between this section and the State’s budget.
47. The Court finds that Section 161 of Public Law 217-2017 is unconstitutional legislation in violation of Article 14, Sec 19 of the Indiana Constitution.
48. The Court finds that there are no genuine issues of material fact, the law is with the plaintiff and against the defendant. The Court further finds that there is no reason to delay entry of judgment.

For all of these reasons, the Court now grants the plaintiff’s Motion for Summary Judgment and denies the defendant’s Motion for Summary Judgment and enters Summary Judgment in favor of the plaintiff.

The Court Orders, Adjudges, and Decrees that Section 161 of Public Law 217-2017 (I.C. 36-4-1-11.8) is unconstitutional special legislation in violation of Article 14, Sec 23 of the Indiana Constitution.

The Court further Orders, Adjudges, and Decrees that Section 161 of Public Law 217-2017 (I.C. 36-4-3-11.8) is unconstitutional legislation in violation of Article 14, Sec 19 of the Indiana Constitution.

All Ordered this 18th day of April, 2019.



Frank M. Nardi, Special Judge
Monroe Circuit Court 6

cc: Michael Rouker
Larry Allen
Thomas M. Fisher
Aleksandrina Pratt
Julia C. Payne
Terra Hall