IN THE

Indiana Supreme Court

No. 19S-PL-00304

Eric Holcomb, in his official capacity as Governor of the State of Indiana,	)	Appeal from the Monroe County Circuit Court No. 6
Appellant,	)	Case No. 53C06-1705-PL-1138
v.	)	
City of Bloomington,	)	The Honorable Frank M. Nardi, Special Judge
Appellee.	)	

BRIEF OF APPELLANT

CURTIS T. HILL, JR.
Attorney General of Indiana
Atty. No. 13999-20

THOMAS M. FISHER
Solicitor General
Atty. No. 17949-49

KIAN J. HUDSON
Deputy Solicitor General
Atty. No. 32829-01

JULIA C. PAYNE
Deputy Attorney General
Atty. No. 34728-53

Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

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STATEMENT OF SUPREME COURT JURISDICTION

This Court has mandatory and exclusive jurisdiction over this appeal under Indiana Rule of Appellate Procedure 4(A)(1)(b) because the trial court's summary judgment order declares unconstitutional Indiana Code section 36-4-3-11.8 (the "Annexation Law"). Appellant's App. Vol. II pp. 26–27.

STATEMENT OF THE ISSUES

1. Whether the Governor is a proper defendant in a challenge to a state law that he has no role in enforcing.

2. Whether the State may, consistent with Article 4, section 23 of the Indiana Constitution, use a "local and special law" to prohibit a political subdivision of the State from annexing large portions of the surrounding area.

3. Whether the State may, consistent with Article 4, section 19 of the Indiana Constitution, include in the biennial budget bill a prohibition on local government annexation that will impact the finances of the State's political subdivisions.

STATEMENT OF THE CASE

On May 24, 2017, the City of Bloomington filed suit in the Monroe Circuit Court against the Governor of Indiana, challenging the constitutionality of section 161 of Public Law 217-2017 (Annexation Law) under Article 4, sections 19 and 23 of the Indiana Constitution. Appellant's App. Vol. II p.28. Because section 161 concerns the authority of the City of Bloomington to annex surrounding portions of Monroe County, Monroe Circuit Judge Frances G. Hill, who had been assigned the case,

disqualified herself from the case pursuant to Trial Rule 79(C). *Id.* at 45. Judge Frank Nardi, Magistrate in Brown County Circuit Court, accepted appointment as special judge in this case pursuant to written agreement by the parties in accordance with Trial Rule 79(D). *Id.* at 48.

The State moved to dismiss the complaint on the ground that the Governor, who does not enforce the Annexation Law, is an improper defendant. *Id.* at 53, 60. The Monroe Circuit Court denied that motion, *Id.* at 80–81, but, upon the State's request, certified its order for interlocutory appeal. *Id.* at 108. The Indiana Court of Appeals, however, denied the State's Motion to Accept Jurisdiction over Interlocutory Appeal. *Id.* at 114.

The parties filed cross-motions for summary judgment, and on April 18, 2019, the Monroe Circuit Court granted the City's motion and denied the State's. Appellant's App. *Id.* at 15. The State now appeals that final order to this Court.

STATEMENT OF FACTS

1. For nearly two centuries Indiana law has authorized municipal governments to extend their boundaries into the surrounding unincorporated parts of the counties in which they are located. *See Bradley v. City of New Castle*, 764 N.E.2d 212, 215 n.2 (Ind. 2002). This process, called annexation, often produces significant consequences for the municipal and county governments involved, as well as the landowners in the annexed area. Following annexation, landowners in the annexed area will receive city rather than county services; and perhaps most importantly, the municipality, rather than the county, will collect taxes on the

property located in the annexed area. Indeed, landowners who oppose annexation often suspect that "the purpose and object of the city in making the annexation [i]s simply to increase the revenues of the city by the taxation of [the newly annexed] property." *Glover v. City of Terre Haute*, 129 Ind. 593, 29 N.E. 412, 412 (1891) (describing the landowners' objection to annexation); *see also Elston v. Bd. of Trustees of Crawfordsville*, 20 Ind. 272, 274 (1863) (noting that one purpose for the proposed annexation was that the city was "in need of the increased revenue which would result from the taxes levied upon the territory sought to be annexed").

In light of the disruptions annexation can cause to the affected landowners and government entities, Indiana law requires municipalities to meet certain statutory requirements when undertaking annexations and authorizes courts to review annexations to determine "whether the city has exceeded its authority and met the conditions imposed by the statute." *City of Carmel v. Steele*, 865 N.E.2d 612, 616 (Ind. 2007). These statutory requirements include the requirement that municipalities generally may annex only contiguous territory, Ind. Code §§ 36-4-3-3, -13(a)–(c), and the requirement that municipalities "adopt a written fiscal plan and establish a definite policy" to provide services to the annexed area, Ind. Code §§ 36-4-3-3.1, -13(d). Indiana's annexation code also includes several provisions meant to ensure public participation: The municipality must undertake a public outreach program—consisting of at least six public meetings providing a variety of information regarding the proposed annexation—no more than six months before the introduction of the annexation ordinance and must give notice of these meetings at least thirty

days in advance. Ind. Code § 36-4-3-1.7. And the municipality may not proceed with the annexation until it gives notice to all affected landowners of the statutory process, called remonstrance, used to formally object to annexation. Ind. Code § 36-4-3-11.1(b).

Annexation thus proceeds in three basic stages: (1) local legislative adoption of an ordinance annexing specified territory and pledging to deliver certain services (outlined within the city's fiscal plan) within a fixed period; (2) an opportunity for remonstrance, or formal opposition, by affected landowners, and (3) judicial review. *See Rogers v. Mun. City of Elkhart*, 688 N.E.2d 1238, 1239 (Ind. 1997). Following the adoption of the annexation ordinance, landowners within the annexation area may object to the annexation by signing a remonstrance petition. Ind. Code § 36-4-3-11.2(b). Landowners may *not* sign the remonstrance petition, however, if they are subject to a valid remonstrance waiver. *Id.* Such waivers are often attached to properties based on agreements between a developer and the City, wherein the City agrees to provide services to the development so long as the developer agrees to waive remonstrance should the City seek to annex that area. Ind. Code § 36-9-22-2(c); Appellant's App. Vol. XIX p.33. These waivers attach to the property, rather than the original parties to the agreements, and over time may affect multiple parcels as the original property is subdivided. *Id.* at 146.

Indiana law provides that the annexation ordinance is automatically void if at least sixty-five percent of landowners in the annexed territory or the owners of at least eighty percent in assessed valuation of the land sign the petition. Ind. Code § 36-4-3-11.3(b). And if objecting landowners do not meet either of these automatic-

invalidation thresholds, they may still seek judicial review of the annexation if at least fifty-one percent of the landowners or the owners of at least sixty percent in assessed valuation of land in the annexed territory sign the remonstrance. Ind. Code § 36-4-3-11.3(c). Notably, these requirements apply even if a large portion of the landowners in the annexed area are bound by remonstrance waivers, which can sometimes make it quite difficult or even impossible to meet the judicial-review requirements: If, for example, fifty-two percent of landowners and forty-one percent of the annexed land—by assessed value—are subject to a remonstrance waiver, these requirements cannot be met and the annexation will not be subject to judicial review at all.

If the objecting landowners meet either of the judicial-review thresholds, however, the trial court will conduct a hearing where it determines whether the municipality has followed all of the statutory requirements for annexation, such as the contiguity and fiscal-plan requirements. Ind. Code §§ 36-4-3-12, -13(a)–(d). In this proceeding, "[a]lthough the burden of pleading is on the landowner, the burden of proof is on the municipality to demonstrate compliance with the statute." *City of Carmel*, 865 N.E.2d at 616. And "[o]nce the trial court has decided whether to approve an annexation ordinance, either the municipality or the landowner may seek appellate review." *Id.*

2. The idea of the City of Bloomington annexing surrounding Monroe County territory first appeared in 2015 as a major campaign platform of then-candidate John Hamilton, who was eventually elected Mayor of Bloomington.

Appellant's App. Vol. XIX p.11. Hamilton's view of annexation was that cities are designed to govern densely populated areas, and he deemed it his responsibility to expand the limits of Bloomington consistent with its 200-year legacy of annexation. *Id.* at 16–17. Mayor Hamilton took office on January 1, 2016, *id.* at 16, and he introduced the topic of annexation in his first State of the City Address in February of 2016. *Id.*

The City began planning for the annexation in 2016 through a working group consisting of Philippa Guthrie, the City of Bloomington's chief counsel; Jeff Underwood, the controller, *id.*; the law firm of Bose McKinney; financial advisor Reedy Financial Group, *id.*; and Laura Haley, the City's geographic information systems (GIS) manager, *id.* at 20. This group drew and revised the annexation area boundaries on maps developed by Haley to ensure that at least fifty percent of the parcels in the areas were encumbered by remonstrance waivers. *Id.* at 144, 148.

After a year of privately planning the annexation, on February 3, 2017, Mayor Hamilton issued a news release announcing that he would ask the City Council to initiate the formal annexation process. *Id.* at 127–28. The release provided the dates and times of six statutorily required public meetings set for one week, March 20 to 25, "to provide citizens with information concerning the proposed boundaries of the seven annexation territories, proposed plans for the extension of services to these territories, and the expected fiscal impact on affected property owners." *Id.* On February 16, 2017, in his 2017 State of the City Address, Hamilton touched upon the topic of annexation and its formal initiation. *Id.* at 130.

On February 15, 2017, at the City Council meeting following Hamilton's announcement, the City Administration formally introduced the annexation resolutions. *Id.* at 28. The City broke up the territory for annexation into seven separate areas, *id.*, to comply with Ind. Code § 36-4-3-1.5(a), which requires that one-eighth of the aggregate external boundaries of the territory coincide with the boundaries of the municipality. The City did so even while it sought to obtain the most advantageous arrangement based on the percentages of landowners in each area subject to remonstrance waivers. Appellant's App. Vol. XIX pp.144, 148. In particular, as part of the process of deciding the configuration of annexation territory, "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." *Id.* at 97.

Several concerned citizens and council members expressed concerns at the February 15 meeting that the timeline was rushed and asked that the City slow down the annexation process. *Id.* at 30–32, 34. In response to questions about the speed of the annexation plan and concerns about the fiscal impact, Philippa Guthrie responded that the City preferred not to extend the process because of anticipated state action and the annual budget process but did not offer any further explanation. *Id.* at 32.

On March 9, 2017, the residents of proposed annexation Area 6 submitted a petition with signatures demonstrating over ninety percent of the landowners opposed the annexation and asked the City Council to vote against the Area 6

annexation. *Id.* at 66. After this showing that a remonstrance of Area 6 would be successful, the City relied on waivers—many of which were decades-old or unrecorded, to gerrymander the other areas to avoid further remonstrance. *Id.* at 74, 84, 147–48. It combined Area 3 with Areas 1 and 2, which were encumbered by valid waivers for at least 50% of the parcels to be annexed or at least 41% of the assessed value of the land to be annexed. *Id.* at 97–98. The ordinances also split Area 1 into Areas 1a, 1b, and 1c and renumbered the remaining areas. *Id.*

In a special session held on March 29, 2017, the Bloomington City Council dropped Area 6 and voted to adopt the annexation resolutions of the other newly reconfigured areas. *Id.* at 68. During the meeting, affected residents spoke out about their concerns with the annexation, including higher property taxes, affordable housing, and the transparency of the process, *id.* at 78, 83, and many residents stated that they opposed the annexation, *id.* at 88, 90. However, at the same meeting, Mayor Hamilton "strongly urge[d the Council] to move this process forward," *id.* at 74, despite the strong opposition of individuals from the affected areas.

On April 27, 2017, the Indiana legislature passed the biennial budget bill, which became Public Law 217-2017. The bill included the Annexation Law as section 161, as follows:

> 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.

Ind. Code § 36-4-3-11.8. The Annexation Law put a stop to Bloomington's annexation plans.

3. On May 24, 2017, the City of Bloomington filed this suit against Governor Holcomb challenging the Annexation Law. The Governor moved to dismiss on ground that he is not a proper defendant, but the trial court rejected that defense, saying that because the Annexation Law "does not specify who will enforce its provisions, . . . [t]he responsibility for enforc[ement] . . . falls on the defendant as governor of Indiana." Appellant's App. Vol. II p. 81. At the Governor's request, the trial court certified that ruling for interlocutory appeal, but the Court of Appeals refused to accept the appeal. *See id.* at 108, 114.

Back in the trial court, the parties cross-moved for summary judgment. In its order declaring the Annexation Law unconstitutional, the trial court first reiterated its view that Governor Holcomb is an appropriate defendant because the Annexation Law "does not specify" an enforcer, such that "[t]he responsibility for enforcing [it] accordingly falls on the defendant as the governor of Indiana." *Id.* at 22.

On the merits, beginning with Plaintiffs' Article 4, section 23 claim, the trial court rejected the State's argument that this Court's decision in *Dortch v. Lugar*, 255 Ind. 545, 266 N.E.2d 25 (1971), secures the legislature's authority to enact local and special laws governing the structure of political subdivisions of the State. Citing *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003), and *City of Hammond v. Herman & Kittle Props.*, 119 N.E.3d 70 (Ind. 2019), it held that "there is only one test for determining whether special legislation is permissible," *i.e.*,

whether "an affected class's unique characteristics justify the differential treatment the law provides to that class." Appellant's App. Vol. II p. 24. The court held that none of the unique characteristics asserted by the State—the City's undue urgency and its abuse of remonstrance waivers to obviate potential remonstrance—sufficed. *Id.* at 24–26. The court concluded that the City complied with the letter of state law on both fronts, and thus, the legislature could not determine that this particular annexation abused the rights of affected landowners. Accordingly, it held that the Annexation Law violated the special legislation provision of the Indiana Constitution. *Id.* at 26.

On the second issue, whether the Annexation Law violated the single subject clause in Article 4, section 19 of the Indiana Constitution, the trial court summarily rejected the Governor's argument that it bears sufficient relationship with the biennial state budget because it deals with taxation. It concluded that, because "Section 161 does not contain any language that addresses taxation . . . [t]here is no connection between this section and the State's budget." *Id.* at 27.

SUMMARY OF THE ARGUMENT

This case concerns whether the legislature has the authority to limit aggressive annexation by a particular political subdivision of the State without generally altering the rules for annexation. Mayor Hamilton proposed an ambitious and controversial plan for Bloomington to annex substantial portions of Monroe County. In its haste to complete the annexation, Bloomington not only ignored residents' requests for more time, but also gerrymandered its annexation areas to minimize opposition. The Annexation Law represents a valid effort by the General

Assembly to determine the boundaries of a municipality and to prevent Bloomington from using decades-old remonstrance waivers and gerrymandered districts to plough forward with an aggressive annexation in the face of forceful—but effectively silenced—pleas from residents for more time to debate the issue.

Bloomington's suit fails for three reasons. First, Bloomington has sued the wrong defendant. Governor Holcomb has no role in enforcing the Annexation Law. Consequently, any injury Bloomington may suffer is not redressable by a judgment against the governor, and Bloomington therefore has no standing to bring this suit.

Second, the Annexation Law is constitutionally permissible special legislation. In *Dortch v. Lugar*, 255 Ind. 545, 266 N.E.2d 25 (1971), this Court permitted the legislature to use a local and special law to establish local government boundaries, upholding the legislature's Unigov plan for Indianapolis and Marion County—the only locales affected by the statute. And while the trial court relied on *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003), to conclude that "there is only one test for determining whether special legislation is permissible," Appellant's App. Vol. II p. 19, *Kimsey* itself expressly approved *Dortch,* 781 N.E.2d at 691. The only way to reconcile *Dortch* and *Kimsey*—as *Kimsey* requires—is to say that *Dortch* permits the legislature to enact local and special laws that directly affect local government structure while *Kimsey* requires judicial scrutiny of local and special laws that impose a disparate annexation *process* on certain localities. Here, the Annexation Law is a substantive law that preserves the status quo government structure in Bloomington and Monroe County until 2022. It is not—unlike the statute

at issue in *Kimsey*—a special set of procedural rules for how Bloomington and Monroe County residents are to pursue or resist annexation.

Regardless, even if *Kimsey* applies here, the Annexation Law is justified under *Kimsey* for two reasons: (1) Bloomington's particular urgency in spite of opposition, and (2) its use of decades-old and unrecorded waivers to gerrymander its annexation areas so as to minimize opposition. Bloomington ignored pleas from residents for more time and intentionally structured its annexation so as to make remonstrance impossible. The legislature rightly exercised its power to stymie Bloomington's efforts to thwart opposition by residents of the annexation area.

Third, the Annexation Law is reasonably related to the subject matter of the State's biennial budget. Because the single-subject provision is no longer tied to any clear-title rule, Indiana appellate courts have taken a "laissez-faire approach to determining whether a violation of the single-subject requirement has occurred," *Ind. State Teachers Ass'n v. Bd. of Sch. Comm'rs of Indianapolis*, 679 N.E.2d 933, 935 (Ind. Ct. App. 1997). More specifically, courts have "traditionally linked together matters of state and local administration," even when those connections are "tenuous at best." *Id.* Because the annexation will necessarily alter the tax burden of the residents within the annexed area, the Annexation Law concerns budgeting and public expenditures. This reasoning is sufficient to meet the low bar required by the single-subject clause. If courts begin picking apart the biennial budget bill looking for multiple "subjects," they will give rise to an onslaught of local and special law challenges.

For these reasons, the legislature was justified in postponing Bloomington's annexation so residents had more time to consider the mayor's plan.

ARGUMENT

I. Governor Holcomb Is Not a Proper Defendant Because He Does Not Enforce the Annexation Law

There is no need for the Court to address Bloomington's special-law and single-subject challenges to the Annexation Law because Bloomington has sued the wrong defendant and therefore has no standing to bring these challenges in the first place. Crucially, Governor Holcomb—the only defendant Bloomington has named in this proceeding—is not responsible for Bloomington's failure to proceed with its planned annexation, and any judgment against him will not redress Bloomington's alleged injury. The Annexation Law, like other parts of the Indiana Code addressing annexation, can be enforced by landowners who object to Bloomington's planned annexation; rather than Governor Holcomb, Bloomington should have sued these landowners. Bloomington's failure to do so deprives it of standing and deprived the trial court of jurisdiction. The Court should therefore reverse the judgment below and remand with instructions to dismiss the case for want of jurisdiction.

As this Court recently observed, "[t]he doctrine of standing . . . ensure[s] the resolution of real issues through vigorous litigation," prevents courts from "engag[ing] in academic debate or mere abstract speculation," and—most importantly—safeguards the constitutional separation of powers by "limit[ing] the judiciary to resolving concrete disputes between private litigants while leaving questions of public policy to the legislature and the executive." *Horner v. Curry*, No.

18S-PL-333, 2019 WL 2635603, at *2–3 (Ind. June 27, 2019). "The only concept of standing consistent with separate governmental powers requires the plaintiff to prove actual injury, causation, and redressability." *Id.* at *26 (Slaughter, J., concurring in result) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560−61 (1992)); *see also Hulse v. Ind. State Fair Bd.*, 94 N.E.3d 726, 730–31 (Ind. Ct. App. 2018) (citing and applying *Lujan*'s three-part standing test). These standing requirements vindicate the longstanding rule that Indiana courts will not adjudicate a constitutional controversy that is not "essential to the protection of the rights of the parties concerned" or that does not have "an immediate impact upon the rights and obligations of all parties." *Ind. Educ. Emp't Relations Bd. v. Benton Cmty. Sch. Corp.*, 266 Ind. 491, 365 N.E.2d 752, 754 (1977).

Accordingly, this Court has reiterated many times that "[t]he general rule of standing" limits the jurisdiction of Indiana courts to suits brought by plaintiffs "'who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury *as a result of the complained-of conduct*.'" *Bd. of Comm'rs of Union Cty. v. McGuinness*, 80 N.E.3d 164, 168 (Ind. 2017) (emphasis added) (quoting *State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003)); *see also, e.g.*, *Huffman v. Office of Envtl. Adjudication*, 811 N.E.2d 806, 811 (Ind. 2004); *Schloss v. City of Indianapolis*, 553 N.E.2d 1204, 1206 (Ind. 1990); *Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind. 1985). And it is essential that the plaintiff's injury be the result of the *defendant's* conduct because that ensures that "the defendant is the proper party from whom to seek

redress." *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989−90 (Ind. Ct. App. 2003).

Indiana courts have thus recognized that where, as here, a judgment against the defendant will not redress the plaintiff's alleged injury, the plaintiff does not have standing to bring—and the court does not have jurisdiction to decide—the case. *See Schulz v. State*, 731 N.E.2d 1041, 1046 (Ind. Ct. App. 2000) (holding that the American Legion "fail[ed] the redressability requirement of standing" and therefore lacked standing to challenge the constitutionality of a riverboat gambling law, because even if the American Legion obtained the relief it sought—invalidation of the law—"it would still not be entitled to operate its games of chance for profit"). Further, Indiana courts have also acknowledged that this redressability requirement applies with equal force whether the plaintiff seeks declaratory or any other form of relief. *See Union Cty.*, 80 N.E.3d at 168 (applying "[t]he general rule of standing" to hold that the plaintiff did not have standing to bring a declaratory judgment action against the Indiana Department of Transportation); 22A Am. Jur. 2d Declaratory Judgments § 203 & nn.1–2 ("Since a declaratory judgment statute generally does not expand the interests of the parties, it does not relieve a party from showing that it has standing to bring a declaratory judgment action based on the underlying action.").

Because Bloomington has sued the wrong defendant, it has not complied with these long-settled standing requirements. The injury it alleges is that it is "prohibit[ed] . . . from taking any formal annexation action on any parcels that were part of the 2017 annexation proposal until July 1, 2022." Appellant's App. Vol. II p.

39. But Governor Holcomb has not caused this injury: He neither enforces the Annexation Law nor is involved in the annexation process generally, and he certainly has not taken any action prohibiting Bloomington from doing anything with respect to its planned annexation. The principal practical consequence of annexation is whether property taxes are assessed by and paid to Bloomington or Monroe County, and neither the Governor nor the Department of Local Government Finance (nor any other state agency) is involved in the collection of those local taxes. Bloomington's complained-of injury is therefore neither caused by the Governor's conduct nor redressable by a judgment against him, and it has thus failed to sue "the proper party from whom to seek redress." *Alexander*, 800 N.E.2d at 989–90.

The trial court erroneously held otherwise because it wrongly concluded that the Annexation Law "does not specify who will enforce its provisions" such that the "responsibility for enforcing" the Annexation Law must perforce fall on the Governor. Appellant's App. Vol. II p. 81. But the Governor is not a defendant-of-last-resort whom plaintiffs can sue whenever they wish to challenge the constitutionality of a state law. A plaintiff cannot bring a constitutional challenge—including a declaratory judgment action—against a State's governor unless the plaintiff shows that the governor "is an enforcing authority under the statute" or at least "has an actual, cognizable interest in the challenged action." *Scott v. Francati*, 214 So. 3d 742, 746 (Fla. Dist. Ct. App. 2017), *review denied*, No. SC17-730, 2017 WL 2991836 (Fla. July 14, 2017). "It is absurd to conclude that the Governor's general executive power . . . is

sufficient to make him a proper defendant whenever a party seeks a declaration regarding the constitutionality of a state law." *Id.* at 747.

Indeed, the Seventh Circuit recently explained that "[t]he mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." *Doe v. Holcomb*, 883 F.3d 971, 976 (7th Cir.), *cert. denied*, 139 S. Ct. 126 (2018) (quoting *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979)). And other courts around the country agree. *See, e.g.*, *Women's Emergency Network v. Bush*, 323 F.3d 937, 949 (11th Cir. 2003) ("If a governor's general executive power provided a sufficient connection to a state law to permit jurisdiction over him, any state statute could be challenged simply by naming the governor as a defendant."); *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001) ("General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." (quoting *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1416 (6th Cir. 1996)); *Illinois Press Ass'n v. Ryan*, 743 N.E.2d 568, 570 (Ill. 2001) ("[T]he absence of any connection between the Governor and the subject of the suit . . . demonstrates to us that the Governor is not a proper party to defend the challenged legislation."). Because Bloomington has not even attempted to show that Governor Holcomb enforces the Annexation Law or that a judgment against him would redress Bloomington's claimed injury, it does not have standing to pursue its claims against him.

Moreover, the other premise of the trial court's standing decision—that the Annexation Law "does not specify who will enforce its provisions"—is equally incorrect: The law is quite clear that its provisions are enforced by *property owners*, not the governor. The Annexation Law added a new section within the chapter of the Indiana Code governing municipal annexation and disannexation, *see* Ind. Code § 36-4-3-0.1 *et seq.*, which in turn specifies that owners of real property within the area to be annexed may challenge the annexation as unlawful, *see* Ind. Code §§ 36-4-3-11, -11.2; *see also Bradley v. City of New Castle*, 764 N.E.2d 212, 216 (Ind. 2002) (explaining that when landowners challenge an annexation, "[t]he trial court's role is to decide whether the municipality has operated within its authority and satisfied the statutory conditions for annexation"). There are many cases involving Indiana landowners challenging annexations, yet Bloomington has not identified a single case where the *Governor* has enforced the Indiana Code's annexation provisions against a municipality. *See, e.g.*, *id.*; *City of Carmel v. Steele*, 865 N.E.2d 612 (Ind. 2007); *Certain Martinsville Annexation Territory Landowners v. City of Martinsville*, 18 N.E.3d 1030 (Ind. Ct. App. 2014). Because Indiana law clearly gives property owners the authority to challenge the lawfulness of annexations under the provisions of Indiana's annexation code, and because the challenged Annexation Law is one of those provisions, landowners have the authority to employ the Annexation Law to challenge Bloomington's planned annexation.

If Bloomington anticipated that some property owners in the annexed areas would seek to use the Annexation Law to block its annexation, it could have brought

a declaratory judgment action against them. It did not do so, however, and for this reason any judgment it obtains in this proceeding would not redress its injury: Even if it were to prevail on the merits, the judgment would not affect non-party property owners, the only parties who would stand in the way of Bloomington's annexation plan. *See* 22A Am. Jur. 2d Declaratory Judgments § 243 & n.2 ("Only the parties to the action in which it is rendered are bound by such a [declaratory] judgment . . . ."); *United Farm Bureau Mut. Ins. Co. v. Wampler*, 406 N.E.2d 1195, 1197 (Ind. Ct. App. 1980) (holding that a nonparty was not bound by a prior judgment in a declaration-of-rights action because "[t]he fundamental principle of res judicata is that one is not bound by a prior judgment unless he was a party to such action or stands in privity with one who was a party" (quoting *Smith v. Midwest Mut. Ins. Co.*, 154 Ind. App. 259, 289 N.E.2d 788, 793 (1972))).

In order to maintain the proper boundaries between separate government functions, Indiana courts hew to the requirements of jurisdiction "and eschew action when called upon to engage only in abstract speculation." *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995). And these jurisdictional requirements oblige plaintiffs, among other things, to sue the proper defendant; otherwise, any action the court might take will amount to no more than an advisory opinion, a result not countenanced by Indiana law. *See City of Indianapolis v. Ind. State Bd. of Tax Comm'rs*, 261 Ind. 635, 308 N.E.2d 868, 869 (1974) ("Firmly embedded in Indiana law is the principle that this Court does not function to render advisory opinions."). Because it has sued the wrong defendant and therefore cannot obtain meaningful redress in this proceeding,

Bloomington has not complied with the fundamental requirements of jurisdiction. The Court should reverse the trial court's decision and remand with instructions to dismiss Bloomington's suit.

II. The Annexation Law Is Constitutionally Permissible Special Legislation

Under Article 4, section 23 of the Indiana Constitution, "where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." Ind. Const. art. 4, § 23. This text implies that "while our drafters expressed a preference for general laws, there are cases in which a general law *cannot* be made applicable statewide." *State v. Buncich*, 51 N.E.3d 136, 141 (Ind. 2016) (emphasis in opinion) (citing *Ind. Gaming Comm'n v. Moseley*, 643 N.E.2d 296, 300 (Ind. 1994)). Indeed, "[i]n instances where a general law would be 'inoperative in portions of the state' or 'injurious and unjust,'" a special or local law is necessary. *Id.* (quoting *Mun. City of South Bend v. Kimsey*, 781 N.E.2d 683, 692 (Ind. 2003)).

Under the circumstances, it is plain that the legislature designed the Annexation Law—codified at Indiana Code § 36-4-3-11.8—specifically to stop Bloomington's annexation of unincorporated areas of Monroe County and therefore constitutes special legislation. Yet the Indiana Supreme Court's Article 4, section 23 precedents and doctrine establish two ways that the Annexation Law is nonetheless valid: (1) it represents direct legislative resolution of governmental structure in a particular locale; and (2) there exist "inherent characteristics of the affected locale that justify local legislation." *Id.* at 142 (quoting *Kimsey*, 781 N.E.2d at 692).

A. *Dortch* remains good law and applies here

The critical precedent here is *Dortch v. Lugar*, 255 Ind. 545, 266 N.E.2d 25 (1971), where this Court upheld the Indianapolis-Marion County consolidation in what became known as Unigov. In *Dortch*, this Court approved Unigov on the theory that the statute's use of a population classification made it a general law. *Id.* at 31. But in *Kimsey*, this Court invalidated a statute imposing a different annexation standard on South Bend than imposed on the rest of the State, even though the statute at issue, like the one at issue in *Dortch*, used population parameters to define the scope of the law in a nominal effort to make it look general rather than special. 781 N.E.2d at 692. In *Dortch*, this Court said "[t]hat legislative classifications may be based on population has already been established by this court as long as the classification results in a uniform operation of the law throughout the state." *Dortch*, 266 N.E.2d at 32.

The tension between *Kimsey* and *Dortch* is obvious: *Dortch* upheld population parameters as a way to obviate constitutional criticism of special laws, but *Kimsey* rejected that approach. Yet this Court was at great pains to preserve the vitality of *Dortch* (and by extension Unigov), and it expressly reconciled the two cases: "*Long*, *Dortch*, and other cases relying on the proposition that Article IV, section 23 challenges are resolved by addressing the reasonableness of the classification embodied in the statute are nevertheless correct in their ultimate result." *Id.* at 693. Without this reconciliation, the Indianapolis city limits that have existed for almost fifty years will have been created by an unconstitutional statute.

The trial court held that "there is only one test for determining whether special legislation is permissible." Appellant's App. Vol. II p.24. But the State has never argued that *Dortch* and *Kimsey* represent different tests; on the contrary, they are different applications of the same test. The difference between *Kimsey* and *Dortch* is that while *Kimsey* is about differences in annexation procedure—specifically, the percentage of remonstrance waivers a municipality must collect to foreclose an annexation remonstrance—this case concerns a direct and substantive legislative judgment about the structure of local government in Bloomington and Monroe County. When the legislature is indifferent about city and county boundaries in a given locale, it needs a reason to impose special procedural bars on annexation. But when, as here, it has come to a definitive view regarding how government in a locale should be structured, section 23 does not provide authority for judicial second-guessing.

The implication of the trial court's statement that "there is only one test" is that *Kimsey* must have overruled *Dortch*. *Id.* But this Court in *Kimsey* specifically stated that *Dortch* was correctly decided. *Kimsey*, 781 N.E.2d at 691. In light of *Kimsey, Dortch* must be understood as a case where the court permitted special legislation with respect to "the reorganization of county and city government in such a populated county." 266 N.E.2d at 32.

Furthermore, *Dortch* said that a special law for local government in Indianapolis and Marion County was "justifiable when considered in light of the goal sought by the Legislature," *id.*, which in turn was to enable "consolidation of

governmental functions . . . thus eliminating the overlapping jurisdictions of various county and municipal boards and departments, and to provide some semblance of centralized control over the metropolitan area." *Id.* at 30. Here, similarly, the Annexation Law is concerned with local government organization and structure. If, as *Dortch* holds, the legislature could use a local and special law to merge the municipal and county governments in Indianapolis, it could also use a local and special law to *prevent* the merger of Bloomington with areas of Monroe County proposed for annexation. Where the legislature's objectives for Indianapolis and Marion County were to eliminate overlapping governance and to create centralized control in a highly urban area, its objectives here headed toward maintaining distinct city and county boundaries despite creeping urbanization into areas of Monroe County contiguous to Bloomington. What matters is not the specific legislative goal, but the propriety of achieving them through specific resolution of city and county governance structures. For *Dortch* to be reconciled with *Kimsey*—as *Kimsey* says it must be—it has to mean that the legislature can enact special laws directly affecting the structure of local governments.

In this regard, Mayor Hamilton's annexation philosophy bears consideration. The Mayor was heavily invested in the 2017 Bloomington annexation. He believed that the City's 190-year history of growth and continual annexation spoke of a legacy and a responsibility to carry on that trend in the future. App. Vol. XIX p.16. He expressed dissatisfaction with the prior city administration for allowing the "two mile fringe" agreement to lapse. *Id.* Hamilton was concerned that for 12 years, the City

had not managed to annex any territory and believed that annexation was badly needed because of the growing population density in areas around the City. *Id.* He stressed that cities are designed to govern urbanized, densely populated areas, and insisted that Bloomington's annexation history dictated that the City act immediately in order to incorporate a significant percentage of the urbanized areas that still fell within county boundaries. *Id.*

Particularly given Mayor Hamilton's aggressive approach toward annexation and his belief that annexation should incorporate as much urbanized county area as possible, the legislature was within its rights to halt the 2017 Bloomington annexation. It may have been concerned that permitting annexation now might portend more annexation in the future as the county became more and more urbanized, to the point where Bloomington's government might dominate Monroe County, creating something resembling its own version of Unigov. Or, it may have desired to allow for a more smooth and organic annexation process, where city and county work together to achieve mutually agreeable goals. Either way, the Annexation Law is a legitimate action by the legislature to intervene in the merging of local governments, an action that *Dortch,* as blessed by *Kimsey*, permits by way of local and special legislation.

B. Even if *Dortch* does not apply, the characteristics surrounding Bloomington's annexation are unique and warrant upholding the Annexation Law

In the alternative, the Annexation Law is justified because "there are inherent characteristics of the affected locale that justify local legislation." *Kimsey*, 781 N.E.2d

at 692. Here "the facts of the affected area are distinct" and "the presence of those 'inherent characteristics' means a general law cannot 'be made applicable.'" *Id.* at 692–93.

Under this standard, special laws are routinely upheld because the standard imposes the burden on plaintiffs to negate every conceivable justification for the law. *Buncich*, 51 N.E.3d at 141; *see also Bd. of Comm'rs of Howard Cty. v. Kokomo City Plan Comm'n*, 263 Ind. 282, 330 N.E.2d 92, 96 (1975) (stating that all statutes are presumably rational and constitutional, and the party opposing the statute has the burden of overcoming this presumption and making the constitutional defects in the statute clearly apparent). Further, all doubts must be resolved in favor of the legislature. *Buncich*, 51 N.E.3d at 141 (citing *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996)).[1]

Here, the Annexation Law was the legislature's response to Bloomington's urgency to complete its annexation in the face of opposition and its use of waivers to minimize dissent.

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[1] Indeed, this Court has upheld local and special laws in the majority of cases. *See, e.g.*, *Buncich*, 51 N.E.3d 136 (upholding a statute consolidating small precincts in Lake County); *State ex rel. Atty. Gen. v. Lake Super. Ct.*, 820 N.E.2d 1240 (Ind. 2005) (upholding a tax reassessment statute applicable to Lake County); *Williams v. State*, 724 N.E.2d 1070 (Ind. 2000) (upholding a statute providing for additional magistrates in Lake County); *State v. Hoovler*, 668 N.E2d 1229 (Ind. 1996) (upholding a statute allowing Tippecanoe County to increase certain taxes); *Ind. Gaming Com'n v. Moseley*, 643 N.E.2d 296 (Ind. 1994) (upholding a riverboat gambling statute applicable to Lake County alone).

1. Bloomington's proposed annexation was marked by an undue sense of urgency

The speed and urgency with which the City proceeded once the proposed annexation was officially announced justified the legislative response. Annexation is a complex and involved process that centers on communication and planning before the annexation becomes effective. The City of Bloomington was determined to complete the actual annexation before discussing it and grappling with financial ramifications—at least in part because city officials feared the legislature might generally change annexation law to its detriment if the City did not act quickly. If Bloomington was trying to bypass proposed changes at the expense of a proper annexation process, the legislature was within its rights to temporarily stop such an annexation attempt.

The City announced the planned annexation on February 3, 2017, but the administration had contemplated annexation for considerable time before announcing it officially. Appellant's App. Vol. XIX pp.127–28. Candidate Hamilton discussed annexation as a major part of his platform throughout his campaign for mayor. *Id.* at 11. Mayor Hamilton took office on January 1, 2016, *id.* at 16, and introduced the topic of annexation generally in his State of the City Address in February 2016, but did not disclose specifically which neighborhoods he wished to annex, *id.* His administration then waited a year to ask the Bloomington City Council to enact resolutions initiating the annexation process. *Id.* at 22.

Once it finally proposed a specific plan of annexation, the City Administration pushed it forward urgently. On February 15, 2017, less than two weeks after the

public announcement of the annexation, the City Council began considering a package of resolutions related to the proposed annexations. *Id.* at 28. Philippa Guthrie, Corporation Counsel for the City of Bloomington, assured the City Council that adoption of the annexation resolutions would begin the public consideration of the annexation, but did not constitute final approval of the proposed areas of annexation. *Id.* Guthrie added that approval of the annexations would be by ordinance, one for each area, after several months of discussion. *Id.*

A little over a month later, on March 29, 2017, the City Council held a special session during which it introduced annexation ordinances and corresponding fiscal plans. *Id.* at 68. Mayor Hamilton gave a statement during the session and urged the City Council "to move this process [of annexation] forward tonight" by formally adopting the resolutions. *Id.* at 74. At the same time, Hamilton disclosed that the proposed annexation would not go into effect until 2020, allowing three years "to work out the many fine details that will need to be addressed." *Id.* at 73.[2]

During the special session, both members of the City Council and the Monroe County Council demanded additional time for the proper discussion of the proposed annexation. *Id*. at 78–79. But the mayor was determined to complete the annexation by June 2017. *Id.* at 19. Critically, one reason behind the Mayor's urgency was to avoid possible forthcoming changes in the annexation law. *Id.* at 19, 74, 79. In early

[2] At the same meeting, Steve Unger, an attorney for the City, explained that the actual reason for the 2020 effective date was that some areas proposed to be annexed could not have an effective date earlier than January 1, 2020, because different rules applied to fire protection districts, so the City had decided to set that date as the effective date for all areas. Appellant's App. Vol. XIX p.76.

2017, the legislature had proposed a bill that would have given veto power to county executives for annexation ordinances adopted before June 30. *See id.* at 107–17. During the February 15 City Council Meeting, Guthrie shared that "the reasons for the timeline were based on the annual schedule and anticipated state action regarding annexation." *Id.* at 32. Mayor Hamilton also admitted being concerned about "the creativity the Legislature could bring to the changes of annexation" because "annexation had been and continued to be a topic that generated conflict and creativity at the Legislature." *Id.* at 19. He also stated that he "expected that finishing it by June 30, that would be an advantage in the sense that it was less likely that a current change would impact what we were doing." *Id.*

The proposed county executive veto bill did not pass, but the legislature might understandably have been concerned about Bloomington's apparent intention to minimize the impact of potential opposition—whether from landowners or relevant public officials. Rushing through the process as quickly as possible reduces the ability of residents of the proposed annexation areas to learn about the annexation and how it would affect them and, ultimately, to oppose the annexation effectively if they so choose. The legislature stepped in to make sure that Bloomington did not enact its annexation with undue haste. Therefore, adoption of the Annexation Law was reasonable and expected in light of Bloomington's rushed annexation process.

The trial court mischaracterized the State's argument in this respect: "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."

Appellant's App. Vol. II pp. 24–25. But Bloomington's uniqueness arises not from the technical legality of the timeline itself, but from the urgency with which Bloomington pursued its annexation in spite of objections and pleas for more time from the community. Moreover, the mere fact that Bloomington followed the letter of the law does not negate concerns that Bloomington abused the process. Despite widespread opposition to the annexation, Bloomington used the statutory *minimums* to create its annexation timeline and ignored pleas for more time from the community. At the March 29, 2017, City Council meeting, affected residents spoke out about their concerns with the annexation, including higher property taxes, affordable housing, and the transparency of the process, Appellant's App. Vol. XIX pp. 78, 83, and many residents stated that they opposed the annexation, *id.* at 88, 90. Members of both the City Council and the Monroe County Council demanded additional time for the proper discussion of the proposed annexation. *Id.* at 78–79. A majority of the City Council nonetheless voted to proceed with the annexation. *Id.* at 91–92. It was this concern for abuse—further underscored by Bloomington's efforts to evade a potential statute that would have permitted the Monroe County executive to veto the annexation—that justified the special legislation.

Especially in light of the proposed annexation's 2020 effective date, the City's urgency to have the annexation ordinances adopted by June of 2017, even in the face of opposition and requests for more time, was unjustified. The Annexation Law, which precludes annexation until 2022, allows for additional time to discern, plan, and

implement any restructuring of local governments in Monroe County; accordingly, the law is reasonable and was within the Legislature's power to adopt.

2. Bloomington used decades-old and unrecorded waivers of remonstrance to minimize opposition to its proposed annexation

Further in the vein of minimizing formal opposition to its annexation plan, the City manipulated the use of remonstrance waivers in constructing its zoning areas. This again justified the legislature's concern that something was very wrong on the public-input side of the Bloomington annexation.

As explained above, an annexation is approved without any right to judicial review if (1) fewer than 51% of the owners of land remonstrate and (2) owners of less than 60% of the assessed value of the land to be annexed remonstrate. Ind. Code § 36-4-3-11.3(c). And owners of properties within a proposed annexation area who previously signed a waiver of remonstrance in exchange for municipal sewer service may not remonstrate, yet their parcels are included in the overall count of parcels for purposes of computing remonstrance percentages. Ind. Code § 36-9-22-2(c).

In order to maximize the amount of contiguous land that it could statutorily annex, and yet minimize the chance of formal and effective remonstrance opposition, Bloomington gerrymandered its annexation areas based on whether high percentages of owners had already signed remonstrance waivers. What is more, it sought to execute this strategy based on waivers that were signed decades earlier (and very likely not by the current landowners) and that were unrecorded (and therefore unavailable in the title record for new owners to observe and inspect).

Once again, the trial court mischaracterized the State's argument in this respect by saying that "[t]he plaintiff's use of remonstrance waivers in a manner allowed by Indiana law is not a characteristic unique to the City of Bloomington." *See* Appellant's App. Vol. II p. 25. But Bloomington's use of waivers simpliciter is not the issue. The issue justifying legislative action is that Bloomington used waivers in such a way as to minimize the opportunities for significant pockets of opposed citizens to take effective action to resist the annexation by way of remonstrance. And once again, following the letter of the law with respect to remonstrance waivers does not foreclose the possibility that Bloomington's particular use was abusive.

Initially, Bloomington divided the territory proposed for annexation into seven areas, *see* Appellant's App. Vol. XIX p. 28, of which at least 50% of the parcels in Areas 1 and 2 were encumbered by valid waivers of remonstrance, *see id.* at 97. In establishing the proposed areas, Bloomington took careful notice of the availability of remonstrance waivers and, where possible, structured such areas in order for the waivers to account for 50% (and thereby preclude effective remonstrance going forward). In an e-mail exchange between Jerry Hickman, a senior accountant with Reedy Financial Group, and Laura Haley, GIS Manager for the City of Bloomington, Haley expressed concern that removing the indicated properties would split a residential subdivision, *id.* at 103, and Hickman responded that in order to hit the 50% waiver threshold, all highlighted parcels need to be removed, *id*. at 102. He explained that with waivers scattered throughout areas, it was hard to find parcels to remove without removing numerous waivers. *Id*.

Subsequent events make clear that the City was right to be concerned that many residents opposed annexation and may, if not properly gerrymandered, launch a successful remonstrance. In particular, on March 9, 2017, after the public announcement of the annexation but before the introduction of the annexation ordinances, residents of Area 6, northeast of the current city, submitted a petition—with signatures from over 90% of the landowners in the area—to be removed from annexation—demonstrating motivation and ability to defeat the annexation of their area. *Id.* at 66. For this reason, the City Council voted not to introduce the ordinance that would have annexed Area 6. Once it had removed Area 6, the City combined Area 3 with Areas 1 and 2, split the reconfigured Area 1 into Areas 1a, 1b, and 1c, and renumbered areas 4 through 8 as areas 2 through 6 to minimize the chance that remonstrance would be successful in any remaining area. *Id.* at 97. As an end result, Areas 1b, 1c, and 2 were all encumbered by valid waivers of remonstrance, meaning that no remonstrance could be effective in those areas and successful annexation was assured. *Id.* at 98.

Moreover, at the March 29, 2017, City Council meeting, Steve Unger, an attorney for the City, suggested that some of the waivers Bloomington relied on had been unrecorded. *Id.* at 84. And many of these waivers were decades-old as well, dating back to the early 1990s. *Id.* at 147–48. In other words, many current residents and homeowners lacked power to challenge the annexation based on commitments made decades before, perhaps even unbeknownst to them when they bought their property because the waivers were not recorded.

Under these circumstances, the legislature might reasonably have concluded that Bloomington was less concerned with creating a cohesive urban community and more interested in expanding its territory with maximum effect and least resistance. The legislature might also have reasonably concluded that, particularly given Bloomington's particular focus on maximizing use of annexation waivers, no matter how long they have been around, it would be unfair to current residents and homeowners to bind them to waivers signed decades ago by predecessors in interest. This annexation, after all, was met by significant public resistance (remonstrance waivers aside), as evidenced by the numerous complaints Bloomington received from residents opposing the annexation. *Id.* at 30–31, 36, 43, 78, 88, 90. Resistance persisted even after the annexation was halted by the Annexation Law—on May 3, 2017, residents of Area 7 submitted a petition asking for their area to be withdrawn from the proposed annexation. *Id.* at 95. In the face of such resistance and blatant attempts by the City to minimize the legal leverage of those who opposed the annexation, the Legislature made a legitimate and reasonable decision to halt the process. This mix of factors and circumstances justifying legislative intervention is particular to the Bloomington annexation effort and does not suggest a more general remedy that the legislature might have adopted instead.

III. The Annexation Law Does Not Violate the Single-Subject Rule

Article 4, section 19 of the Indiana Constitution, also known as the single-subject rule, states that "[a]n act, except an act for the codification, revision or

rearrangement of laws, shall be confined to one subject and matters properly connected therewith."

Historically, this section was paired with another constitutional mandate: the clear-title rule. *Loparex, LLC v. MPI Release Techs., LLC*, 964 N.E.2d 806, 812 (Ind. 2012). Together, the single-subject and clear-title rules required that "[e]very act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title." Ind. Const. art. 4, § 19 (1851). But then, in 1974, the provision was amended to eliminate the clear-title (but not the single-subject) rule. *Loparex*, 964 N.E.2d at 812. Because "the single subject [rule] is no longer tethered to the act's title," the Constitution does not "require that any subject not expressed in the title of the act be made void." *Id.* at 813. For this reason, this Court has understandably taken an "accommodating approach" to reviewing single-subject challenges. *Id.*

This Court "has traditionally given broad interpretation to the one-subject requirement, and thereby allowed legislative combinations of matters which, at first blush, might appear quite diverse." *Dague v. Piper Aircraft Corp.*, 275 Ind. 520, 418 N.E.2d 207, 214 (1981). It has also explained that "[t]he single subject provisions of the Constitution . . . are designed to promote fair practice in legislating without much judicial intervention." *Bayh v. Ind. State Bldg. and Constr. Trades Council*, 674 N.E.2d 176, 179 (Ind. 1996).

Accordingly, "if there is any reasonable basis for grouping together in one act various matters of the same nature, and the public cannot be deceived reasonably

thereby, the act is valid." *Loparex*, 964 N.E.2d at 813 (quoting *Stith Petroleum Co v. Dep't of Audit & Control*, 211 Ind. 400, 5 N.E.2d 517, 521 (1937)). In *Dague*, for example, the Product Liability Act was one section of a public law where all others concerned "the operation and jurisdiction of the various courts of Indiana." 418 N.E.2d at 214. The Court held that it was not "clearly unreasonable" to enact the Product Liability Act under that heading. *Id.* at 215.

In *A.B. v. State*, 949 N.E.2d 1204, 1212 (Ind. 2011), the Court addressed a provision of the biennial budget bill involving when the Department of Child Services is responsible for paying the costs associated with housing a child. The provision did not itself appropriate any money, but the Court nonetheless held that it "addresses appropriations, namely, whether DCS is financially responsible for the placement of a juvenile." *Id.* Similarly, the provision at issue here does not itself appropriate any money, but does *address* appropriations in that it directly affects whether a municipality will be able to collect tax revenue from an annexed area.

Furthermore, the legislature has "traditionally linked together matters of state and local administration," and courts will uphold those connections even when the links are "tenuous at best." *Ind. State Teachers Ass'n v. Bd. Of Sch. Comm'rs of Indianapolis*, 679 N.E.2d 933, 935 (upholding legislation affecting the collective bargaining rights of IPS teachers that was included in the State Budget Act). Lastly, when assessing the constitutionality of a statute, courts accord it "every reasonable presumption supporting its validity and place the burden upon the party challenging it to show unconstitutionality." *Johnson v. St. Vincent Hosp., Inc.*, 273 Ind. 374, 404

N.E.2d 585, 591 (1980). Constitutional defects must be clearly apparent in order for a statute to be declared unconstitutional. *Id.*

Just as the public-administration aspects of the collective-bargaining legislation upheld in *Indiana State Teachers Association* were sufficiently related to the State Budget Act, so too does the Annexation Law, which also concerns public administration, sufficiently relate to the State Budget Act. Although the Annexation Law "does not contain any language that addresses taxation," Appellant's App. Vol. II p.27, the annexation of property by a political subdivision will necessarily alter the tax burden of the residents within the annexed property and the revenue collected by the municipality.

This Court's precedents require the Annexation Law to be upheld if there is "any reasonable basis" for doing so. *Loparex*, 964 N.E.2d at 813. Here, the Annexation Law reasonably concerns budgeting and public expenditures. In fact, a municipality seeking to annex property must prepare a fiscal plan that includes an estimate of the annexation's effect on expected tax rates, expenditure levies, and the estimated effect the proposed annexation will have on municipal finances. Ind. Code § 36-4-3-13(d). It is clearly reasonable, then, that the legislature would include a section pertaining to annexation that would affect tax collection and revenue in a bill within the State's overall budget.

Because the legislature has "traditionally linked together matters of state and local administration," this Court should conclude that the Annexation Law does not,

as included within the State Budget Act, violate the single-subject rule of the Indiana Constitution.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's summary judgment order.

Respectfully submitted,

CURTIS T. HILL, JR.
Attorney General of Indiana
Atty. No. 13999-20

By: *s/ Thomas M. Fisher*
Thomas M. Fisher
Solicitor General
Atty. No. 17949-49

Kian J. Hudson
Deputy Solicitor General
Atty. No. 32829-01

Julia C. Payne
Deputy Attorney General
Atty. No. 34728-53

CERTIFICATE OF WORD COUNT

Pursuant to Indiana Rule of Appellate Procedure 44, I verify that this brief, excluding tables and certificates, contains less than 14,000 words according to the word-count function of the word-processing program used to prepare this brief.

By: *s/ Thomas M. Fisher*
Thomas M. Fisher
Solicitor General

CERTIFICATE OF SERVICE

I certify that on July 25, 2019, I electronically filed the foregoing document using the Indiana E-filing System ("IEFS"). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

Michael M. Rouker
Larry Allen
City of Bloomington
roukerm@bloomington.in.gov
allenl@bloomington.in.gov

s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General

Office of the Indiana Attorney General
IGC South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov