

This is the uncorrected closed captioning from the Jan. 9, 2019 Indiana Supreme Court case: Eric Holcomb, in his official capacity as Governor of the State of Indiana v. City of Bloomington

>> ALL RISE. HEAR YE, HEAR YE, HEAR YE, THE SUPREME COURT OF THE STATE OF INDIANA IS NOW IN SESSION.

JUSTICE: GOOD MORNING. AND WELCOME. BEFORE WE GET STARTED, WE'RE PLEASED TO HAVE THE INDIANA UNIVERSITY MCKINNEY SCHOOL OF LAW CONSTITUTIONAL LAW CLASS WITH THEIR PROFESSOR HERE. WELCOME. WE'RE GLAD TO HAVE YOU. ALL RIGHT. TODAY, WE'RE HERE TO HEAR THE ARGUMENT, ERIC HOLCOMB THE OFFICIAL CAPACITY OF THE STATE OF INDIANA APPELLANT V. THE CITY OF BLOOMINGTON APPELLEE. A DIRECT APPEAL. THE COUNSEL WILL ARGUE FIRST, REPRESENTING THE APPELLANT AT COUNSEL TABLE IT, THOMAS FISHER, WELCOME MR. FISHER, JULIA PAYNE. COUNSEL TABLE, MICHAEL ROUKER, WELCOME MR. ROUKER, AND LARRY ALLEN, WELCOME MR. ALLEN. ARE THE PARTIES READY TO PROCEED?

ATTORNEY: YES.

JUSTICE: ALL RIGHT, MR. FISHER.

ATTORNEY: THANK YOU, CHIEF JUSTICE, AND MAY IT PLEASE THE COURT. IN 2017, WHILE CONSIDERING CHANGES TO THE STATE ANNEXATION PROCEDURES, THE LEGISLATURE LEARNED THAT BLOOMINGTON WAS ATTEMPTING TO AND NEXT SIGNIFICANT AREAS OF MONROE COUNTY AND A TIMELINE TO AVOID LEGISLATION. RATHER THAN TAKING HASTY UNDERTABLES WITH THE OVERALL PROCESS WITH UNTOLD CONSEQUENCES THE LEGISLATURE REQUIRED BLOOMINGTON TO PAUSE ITS ANNEXATION AMBITION FOR FIVE YEARS, TO AFFORD TIME FOR BLOOMINGTON AND MONROE COUNTY RESIDENTS TO CONSIDER THE IMPLICATIONS OF ANNEXATION AND AFFORD THE LEGISLATION TIME TO CONSIDER WHETHER MORE GENERAL RAL CHANGES TO THE ANNEXATION WERE WARRANTED. BLOOMINGTON CHALLENGES THAT FIVE-YEAR PAUSE IN THE SPECIAL LAW FOR THE SINGLE SUBJECT RULE. THE LEGISLATION HAS AUTHORITY TO DIRECT GOVERNMENT STRUCTURE WITH RESPECT TO SPECIFIC MUNICIPALITIES IN MATTERS OF LOCAL ADMINISTRATION PARTICULARLY AFFECTING TAXATION ARE APPROPRIATELY INCLUDED IN THE BIENNIAL BUDGET, REGARDLESS, THEY FAILED TO BRING A CASE. THE GOVERNOR IS NOT UP AND ALL PURPOSE DEFENDANT IN THE CASES. THIS IS A CONTINUAL SEPARATION OF POWERS, WHICH THIS COURT FOCUSED ON SO DIRECTLY IN THE HORNER CASE. THIS IS THE BOOK END. HORNER WAS ABOUT STANDING. THIS IS ABOUT THE DEFENDANT AND ADDRESSABILITY, WHAT MAKES AN APPROPRIATE CASE.

JUSTICE: COUNSEL, IF NOT THE GOVERNOR, WHO UNDER THE CIRCUMSTANCES? IF BLOOMINGTON BELIEVES THIS IS SPECIAL LEGISLATION AND MOVE UNDER THE DECLARATORY JUDGMENT ACT, WHO ARE THEY SUPPOSED TO SUE?

ATTORNEY: I THINK THEY HAVE A MULTIPLITY OF EXAMPLES. FOR EXAMPLE, LANDOWNER THAT MIGHT OBJECT TO ANNEXATION ORDINANCE AND INVOKE THE STATUTE TO BLOCK IT, THAT'S ONE POSSIBILITY. ANOTHER POSSIBILITY, CANDIDLY, WOULD BE THE COUNTY OFFICIALS IN CHARGE OF RECORDING WHERE THE TAX MONEY GOES. I THINK THAT'S -- IN THIS CASE, THAT'S THE AUDITOR AND THE SURVEYOR. THEY'RE THE ONES WHERE THE RUBBER HITS THE ROAD, YOU HAVE AN ANNEXATION ORDINANCE, THEY ARE TASKED WITH THE OBLIGATION TO NOTE WHERE THE TAX MONEYS GO. AND, YOU KNOW, THEY WOULD

BE THE ONES THAT YOU WOULD GO TO AND SAY, HERE, MAKE THIS ORDINANCE EFFECTIVE AND THEY WOULD INVOKE THE ORDINANCE -- SORRY, THE STATUTE, SAY, NO, THAT'S INVALID YOU GOT A REAL LIFE DISPUTE SUITABLE FOR RESOLUTION.

JUSTICE: COUNSEL, IS IT NOT THE FLIP SIDE OF LEGAL AUTHORITY? THAT IS, IF YOU ARE RIGHT ON THE STANDING, THE PROPER DEFENDANT ARGUMENT THIS GOVERNOR HAS NO AUTHORITY TO ENFORCE THE STATUTE AND GIVE THE PLAINTIFFS REDRESS, DOESN'T IT MEAN IF THIS GOVERNOR OR FUTURE GOVERNOR WANTED TO UNDER SOME CONSTITUTIONAL AUTHORITY ACT AND TRY TO FORCE THE ANNEXATION STATUTES, THIS CASE WOULD SAY, HE COULD NOT DO THAT?

ATTORNEY: WELL, I THINK YOU'VE GOT -- YOU HAVE NO AUTHORITY WITHIN EITHER, INHERENT POWER OR NY DIRECT STATUTORY POWER TO DO THAT. YOU MIGHT HAVE ANOTHER HOST OF CONCERN.

JUSTICE: IMPLICIT IN YOUR ARGUMENT IS THE IDEA ONLY IF THE LEGISLATION IDENTIFIES THE GOVERNOR HIMSELF OR ONE OF THE EXECUTIVE BRANCH MEMBERS THAT AUTHORITY DOESN'T EXIST. THE COURTS HAVE INHERENT AUTHORITY, WHY DOESN'T THE GOVERNOR?

ATTORNEY: BECAUSE WE DON'T HAVE THE SYSTEM SETUP THAT WAY. WE DON'T HAVE AN EXECUTIVE THAT HAS ALWAYS AUTHORITY ONE CAN PROPERLY INFER.

JUSTICE: SAYS, I MEAN, DO OUR CASES SAY THAT IN.

ATTORNEY: I'M NOT SURE WE NEED CASES TO TELL US THAT, THAT'S THE WHOLE POINT OF A CONSTITUTION. WE HAVE SEPARATED POWERS. WHAT WE HAVE IN --

JUSTICE: BUT, SURE. BUT WE'RE TALKING HERE ABOUT THE EXECUTIVE POWER TO ENFORCE THE LAW. AND THE QUESTION IS, DOES THE GOVERNOR, AS THE CONSTITUTIONAL OFFICER UNDER ARTICLE 5 WITH BOTH, IN WHOM EXECUTIVE POWER IS VESTED AS WELL AS THE OBLIGATION TO TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED, DOES HE HAVE TO WAIT FOR THE LEGISLATURE TO SAY, YOU HAVE AUTHORITY BEFORE HE CAN ACT?

ATTORNEY: I THINK HE DOES. HE DOESN'T HAVE THE POWER, FOR EXAMPLE, TO INITIATE CRIMINAL PROCEDURES.

JUSTICE: BECAUSE THAT'S GIVEN TO COUNTY PROSECUTORS.

ATTORNEY: AND DOESN'T HAVE THE AUTHORITY TO INITIATE CIVIL LAWSUITS ON BEHALF OF THE STATE, ONLY THE ATTORNEY GENERAL CAN DO THAT.

THERE'S A BARRIER ON SEPARATION OF POWERS.

JUSTICE: THE ARGUMENT IS CORRECT ON THE STANDING ISSUE, WHO IS GOING TO BE HERE ARGUING THIS CASE FOR THE GROUP THAT WOULD BE THE PROPER, POSSIBLY, IT WOULD BE YOU.

ATTORNEY: I MIGHT BE ONE LAWYER. IT IT WON'T NECESSARILY ONLY BE ME.

JUSTICE: PRETTY GENERAL MAKING THE SAME ARGUMENTS -- OR ARGUMENTS IN ARTICLE SECTION 23 IN THE SINGLE LEGISLATION.

ATTORNEY: WELL, YES, BUT, WHAT'S MISSING? WHAT'S MISSING IS ANY ARGUMENTS THAT WOULD BE BROUGHT FORWARD BY ANOTHER SET OF DEFENDANTS. I THINK THERE'S POTENTIAL FOR LOSS OF PRACTICAL RIGHTS HERE. WE DON'T KNOW, FOURTH QUARTER, IF PROPER OWNERS WERE DEFENDANTS WHAT THEY'D WANT TO SAY IN A LAWSUIT DEFENDING THE STATUTE. WE DON'T KNOW WHAT THE MONROE COUNTY OFFICIALS MIGHT WANT TO SAY. THEY MIGHT HAVE KNOWLEDGE OF LOCAL CIRCUMSTANCES THAT WE DON'T KNOW. WE DO THE BEST

WE CAN TO INVESTIGATE, BUT THERE, I THINK, IS A MISSING VOICE HERE.
JUSTICE: COUNSEL, HOW DO WE GET THERE? NOW THAT THE GENERAL ASSEMBLY SEEMS TO HAVE, IN ESSENCE, STAYED PROCEDURES? ARE YOU SUGGESTING THAT BLOOMINGTON COULD ACT IN DEFIANCE OF THAT AND THEN GET SUED BY A REMONSTRATOR? THEN WE'RE RIGHT BACK HERE, FINALLY REACHING THE MERITS WITH THE RIGHT PARTIES.

ATTORNEY: OH, NO.

I DON'T THINK THEY NEED TO ACT IN DEFIANCE OF THE STATUTE. I THINK THERE'S ENOUGH OF A TRACK RECORD AND HISTORY OF ATTEMPTING TO DO THIS ANNEXATION THAT THEY COULD JUST FILE A DECLARATORY JUDGMENT ACTION AGAINST IDENTIFIABLE HOMEOWNERS ASSOCIATIONS TO REPRONE STRAIGHT. OR PROBABLY MORE OBVIOUSLY AGAINST THE COUNTY OFFICIALS. I DON'T THINK THEY NEED TO WAIT FOR ANYTHING ELSE. BUT I THINK, YOU KNOW, THAT -- AND YOU HAVE A DIFFERENT CIRCUMSTANCE FROM ANOTHER SET OF DEPARTMENTS. WE'D BE HERE AS A MATTER OF COURSE AND DUTY, THAT DOESN'T MEAN EITHER THE GOVERNOR OR ATTORNEY GENERAL IS ALL YOU NEED IF YOU WANT TO CHALLENGE THE CONSTITUTIONALITY OF A STATE LAW.

JUSTICE: MAKING A DIFFERENCE IN YOUR ARGUMENT, COUNSEL, IF THE PLAINTIFFS HAD SUED NOT ONLY THE GOVERNOR OF THE STATE OF INDIANA, IN HIS OFFICIAL CAPACITY, ALSO THE STATE OF INDIANA.

ATTORNEY: THAT WOULDN'T BE SUFFICIENT. THERE'S SOVEREIGN IMMUNITY FOR THE STATE OF INDIANA.

JUSTICE: WHAT DO YOU MAKE OF INDIANA'S SUPREME COURT PRECEDENT IN THE COURT OF APPEAL'S PRECEDENTS AS IT RELATES TO WHETHER THERE'S ANY OTHER CASES THAT ONLY THE GOVERNOR IN HIS OFFICIAL CAPACITY HAS BEEN SUED? NOT ANY OTHER AGENCIES OR DEFENDANTS, BUT JUST, SINGULAR, THE GOVERNOR.

ATTORNEY: THE ONLY ONE I'M AWARE OF, THE CITY OF OFF AND ON CASE AN OFFICIAL 1 THE CONTROL OF THE GOVERNOR. AT LEAST THERE SHIRT THERE'S CONNECTION BETWEEN THE GOVERNOR AND ACTION. IT MIGHT HAVE BEEN A LAWSUIT MORE APPROPRIATELY DIRECTED AT WHAT THE DEPARTMENT OF LOCAL GOVERNMENT, WHOEVER THE AGENCY, BUT AT LEAST A MORE CLEAR CONNECTION.

JUSTICE: EXACTLY. THE GOVERNOR COULD THEORETICALLY DIRECT THE GOVERNOR IF THERE'S DEFINES. THERE'S AUTHORITY THERE. HERE, WHAT'S INTERESTING ABOUT BLOOMINGTON'S CASE THEY MAKE NO ATTEMPT TO CONNECT THE GOVERNOR TO ANY OF THIS. THEY JUST SAY, LOOK, WE COULDN'T FIGURE OUT WHOM ELSE TO SUE. THE GOVERNOR SEEMS LIKE SOMEBODY WHO COULD BE RESPONSIBLE FOR THIS SORT OF THING, WE'LL JUST SUE THE GOVERNOR AS ALL-PURPOSE DEFENDANT. THERE'S NO THEORY OTHER THAN WE NEED TO BE ABLE TO FILE A LAWSUIT. ALMOST AS IF THEY THINK THEY SHOULD BE ABLE TO FILE EX-PARTE BLOOMINGTON AND HOPE THE ATTORNEY GENERAL SHOWS UP TO MAKE AN ARGUMENT. THE COURTS DECIDE BETWEEN ACTUAL PARTIES WITH SOMETHING AT STAKE. SOME ROLE TO PLAY WITH RESPECT TO THE STATUTE THAT'S AT ISSUE.

JUSTICE: SEVERAL APART FROM THAT DISCUSSION, AND YOUR ARGUMENT AS IT RELATES TO OUR DIALOGUE, THERE ARE A NUMBER OF STATES, SUPREME COURTS UNDER ARGUABLY SIMILAR CIRCUMSTANCES THAT HAVE SAID, LOOKING AT THEIR STATE'S CONSTITUTION, NOT INCREDIBLY DIFFERENT FROM OURS, YOU CAN SUE THE GOVERNOR IN THEIR OFFICIAL CAPACITY WHAT DO YOU MAKE OF THAT?

ATTORNEY: IN EACH CASE YOU EITHER HAVE CONNECTION BETWEEN THE

GOVERNOR AND ENFORCEMENT OR YOU HAVE SOME PRE-RECOGNIZED ALTERNATE STANDING THAT YOU KNOW OPENS THE GATES WIDE OPEN. THAT NOT PART OF THE TRADITION HERE IN INDIANA. AS I THINK THE HORNER CASE REINFORCED. YOU KNOW, HORNER, THINK, GIVES US A REALLY GOOD SET OF GUIDE POSTS HERE TO SAY THAT THIS IS MEANINGFUL TO HAVE, FOR SEPARATION OF POWERS, TO HAVE ENFORCEABLE STANDING DOCTRINE ON BOTH ENDS. THE PLAINTIFF END AND ON THE DEFENDANT END. I THINK THAT THAT'S REALLY THE ONLY WAY THAT YOU'RE GOING TO KEEP OUT THE OVERJUDICIALIZATION, THE WORD IN THAT OPINION --

JUSTICE: WAS THAT, THE ISSUE IN THAT CASE WAS THE ISSUE AS IT RELATES TO THE DEFENDANT? OR THE ISSUE AS IT RELATES TO PLAINTIFF?

ATTORNEY: PLAINTIFF. PRINCIPLES ARE BROADER THAN THAT. IN HORNER THE COURT RECOGNIZED THREE ELEMENTS, INJURY, CAUSATION, REDRESS ABILITY. TO FULFILL YOU NEED ALL THREE. YOU CAN'T CHECKS WITH ONLY INJURED PLAINTIFF YOU NEED WHERE THE CAUSATION TRACE AND REDRESS.

JUSTICE: MY CONCERN AS I READ OUR CASES THAT DEAL WITH STANDING, REALLY, ALL APPEAR TO DEAL WITH PLAINTIFF. AND IN THIS CASE, MY CONCERN IS, THAT BLOOMINGTON APPEARS TO HAVE LEGITIMATE INJURY, THEY'VE GONE DOWN THIS ROAD IN EXPENDED A LOT OF EFFORT, A LOT OF MONEY. HELP ME WITH THAT CONCERN.

ATTORNEY: WELL, I GUESS FIRST OF ALL, THEY CAN'T POSSIBLY BE THE CASE A PARTY CAN OVERCOME STANDING BARRIERS SIMPLY BECAUSE THE TRIAL COURT DIDN'T DISMISS THE CASE OUT THE HAND. THESE STANDARDS HAVE TO BE ENFORCED AT ANY LEVEL OF LITIGATION OR ELSE THEY'LL BECOME MEANINGLESS. THE COURT CAN SAY I DON'T CARE ABOUT STANDING RULES AND I'LL DEFER STANDING IN THIS CASE AND I KNOW THAT WON'T BE REVERSED BECAUSE EVERYBODY PUT ENOUGH TIME AND EFFORT IN THE CASE. I DON'T THINK THAT'S THE STANDARD. AGAIN, THERE'S ENORMOUS BOTH PRACTICAL CONSEQUENCES IN FUTURE CASES. HERE, WE ARE MISSING THE VOICES OF PEOPLE IN BLOOMINGTON PROPERTY OWNERS AND COUNTY OFFICIALS WHO ARE CHARGED WITH, YOU KNOW, WITH MAKING THE ANNEXATION EFFECTIVATION. I THINK THE POTENTIAL IN LATER CASES WHERE THE CASES WE JUST DON'T KNOW ABOUT, WITH IT IS ONLY THE GOVERNOR WHO HAS BEEN SUED. MAYBE THERE ARE MANY OTHER PEOPLE WHO WOULD HAVE SOMETHING AT STAKE AND THEY'RE NOT PRESENT. AND MAYBE, YOU KNOW, THEN THE GOVERNOR IS TRYING TO FIGURE OUT, I GOT AN INJUNCTION AGAINST ME HOW DO I ENFORCE THIS INJUNCTION OVER SOMETHING I DON'T HAVE AUTHORITY? I THINK THERE'S ALL KINDS OF POSSIBILITIES OF GREAT MISCHIEF THERE I THINK THE COURT NEEDS TO BE VIGILANT ABOUT THIS. LOOK, I SEE THAT THERE IS A FORMALIST ANGLE HERE. I THINK THAT WHAT'S IMPORTANT TO BEAR IN MIND IS THAT SEPARATION OF POWERS IS AT SOME LEVEL ALWAYS ABOUT FORMALISM. ABOUT MAKING SURE THAT EVERYBODY STAYS WITHIN THE AMBIT OF THEIR AUTHORITY. WHAT WAS THE PHRASE?

JUSTICE: DOESN'T OFFEND ME. I'M ALL FOR FORMALISM AND SEPARATION OF POWERS AND STANDING AND IMPORTANT PRINCIPLES AND I'M WITH YOU 100% THE ADDRESSABILITY AND ESSENTIAL ADDRESS OF STANDING. MY CONCERN IS, REALLY, FRANKLY, STRIKES ME AS EXTRAORDINARY ARGUMENT BY THE GOVERNOR THE GOVERNOR DOESN'T HAVE AUTHORITY. HE MAY WIN THE BATTLE BUT LOSE THE WAR, HE HAS NO POWER UNLESS TS LEGISLATION SAYS.

CHAIRPERSON: I THINK --

JUSTICE: ISN'T THAT A CONCERN WE SHOULD HAVE AS WELL?

ATTORNEY: BUT.

JUSTICE: ASPECT OF SEPARATION OF POWERS.

ATTORNEY: I DON'T THINK WE HAVE TO ANSWER THAT QUESTION FOR ALL TIME. I THINK WHATEVER TO DO IS LOOK AT WHAT CONSTITUTES A PROPER CASE IN THIS COURT OR IN THE STATE COURTS IN GENERAL. THERE'S NEVER BEEN A CASE THE COURT HAS SAID OR MMITTED -- THE GOVERNOR SUED AS ALL PURPOSE DEFENDANT.

JUSTICE: THAT'S NOT BEFORE US, THE GOVERNOR WHO ARE PROPER DEFENDANTS ALSO HAVE BEEN NAMED EXECUTIVE BRANCH AGENCIES OVER WHICH THEY HAD CONTROL AND BY STATUTE HAD SOME RESPONSIBILITY FOR CARRYING OUT THE STATUTORY CHARGE.

ATTORNEY: TRUE. IT IS NOT AS IF WE'RE WITHOUT GUIDANCE WHATSOEVER. WE KNOW, IF WE, AS I THINK THE COURT DID IN HORNER, LOOK AT LEAST TO SOME DEGREE TO THE FEDERAL AUTHORITIES.

WE KNOW THIS SORT OF LAWSUIT WOULD FLAT OUT FAIL IN FEDERAL COURT. THEY SAID YOU CANNOT SUE IN FEDERAL COURT A DEFENDANT WITH NO ENFORCEMENT AUTHORITY. THAT'S PART OF THAT SEPARATION OF POWERS'S UNDERSTANDING.

JUSTICE: THAT'S NOT -- THAT'S NOT BINDING ON US.

ATTORNEY: OF COURSE NOT. BUT THE POINT IS, AND I THINK THE COURT RECOGNIZES THIS HORNER, WITH ARTICLE 3, WE HAVE A SEPARATION OF POWER COMMAND. THE POINT IS, RESPECT THAT. WHAT DOES IT TAKE TO RESPECT SEPARATION OF POWERS? THE HORNER DECISION, I THINK, GIVES US CLARITY ON THIS, IT TAKES RIGOROUS UNDERSTANDING WHO IS A PROPER PLAINTIFF AND DEFENDANT, YOU KNOW, CHECKING THE BOX. INJURY. CAUSATION. REDRESSIBILITY. WHERE IS THAT HERE? AND UNLESS WE'RE GOING TO MAKE THE GOVERNOR AND ALL PURPOSE DEFENDANT IN ALL CONSTITUTIONAL CASES, THIS CASE HAS GOT TO BE DISMISSED.

JUSTICE: IN THE SYSTEM WITH THE UNTEAR EXECUTIVE DOES THE PRESIDENT HAVE THE CONGRESS WHETHER THE CONGRESS REFERS EXPRESSLY OR NOT?

ATTORNEY: THERE'S ARGUMENTS ABOUT EXECUTIVE AUTHORITY THAT YOU KNOW INHERITED EXECUTIVE AUTHORITY GO WELL BEYOND THE STANDING QUESTIONS. I THINK IT IS CERTAINLY THE CASE THE PRESIDENT OF THE UNITED STATES IS NOT AN ALL PURPOSE DEFENDANT WHEN IT COMES TO CHALLENGING CONGRESSIONAL STATUTES. YOU HAVE TO CHALLENGE THE OFFICIAL CHARGE WITH RESPONDING. INDEED, YOU KNOW, YOU DON'T SEE LAWSUITS DIRECTED AT THE PRESIDENT EVEN WHERE THE ENFORCEMENT IS BY SUBORDINATE OFFICIAL TO BE FIRED BY THE PRESIDENT YOU SEE THEM DIRECTED AT THE CABINET HEAD.

JUSTICE: BECAUSE ALMOST EVERY SWAYS I CAN IMAGINE, THE CONGRESS IS ACTUALLY IDENTIFIED AN EXECUTIVE BRANCH OFFICIAL, CABINET OFFICER WITH STATUTORY RESPONSIBILITY FOR CARRYING IT OUT.

ATTORNEY: NO. LOOK, I DON'T THINK THAT, IN A SITUATION, FOURTH QUARTER, A STATUTE GOVERNS RELATIONSHIPS BETWEEN PRIVATE PARTIES THAT SOMEBODY WHO IS AGGRIEVED BY THE STATUTE CAN TURN AROUND AND SUE THE PRESIDENT BECAUSE THERE'S NO GOVERNMENT OFFICIAL. I THINK YOU GOT TO FIGURE OUT WHERE.

JUSTICE: THE QUESTION IS IF THE PRESIDENT HAS THE AUTHORITY UNDER UNIVETARY APPROACH, THE QUESTION IS WHY ISN'T HE PROPER DEFENDANT? IS

HE DISMISSED ON REDRESSABLE GROUNDS?

ATTORNEY: I THINK. IT IS NOT UNIVERSAL. THIS EXECUTIVE HAS ALL POSSIBLE AUTHORITY TO CARRY SOMETHING OUT. WE OFTENTIMES HAVE TO ASK QUESTIONS ABOUT FEDERAL STATUTES PRIVATE RIGHT OF ACTION AND WHETHER THE GOVERNMENT IS THE PROPER ONLY PROPER ENFORCER. THERE ARE ALSO OTHER OTHER SIDE IT CAN ONLY BE ENFORCED BY PRIVATE INDIVIDUALS AND NOT BY THE GOVERNMENT.

JUSTICE: IN THIS STATUTE WHERE THE LEGISLATURE HAS NOT IDENTIFIED ANY EXECUTIVE BRANCH OFFICIAL, NOT A COUNTY PROSECUTOR, NOT THE ATTORNEY GENERAL, NOT THE GOVERNOR. DOES SOMEBODY HAVE AUTHORITY TO ENFORCE THE STATUTE? IF THEY SAY NO?

ATTORNEY: I THINK THE AUDITOR AND SURVEYOR. WHERE THE RUBBER HITS THE ROAD. THAT'S WHERE THEY MAKE THE RECORD OF THE ANNEXATION AND ITS EFFECT ON THE TAX ROLL.

JUSTICE: OF COURSE COME BACK ON REBUTTAL, YOU CITE A CASE YOU MADE THE ARGUMENT, WHETHER IT IS A BROAD CONSTITUTIONAL DUTY OF THE STATE WITH A SPECIFIC RESPONSIBILITY. SECOND IF THE STATE HAS INTEREST IN THE CHALLENGED ACTION. TALK ABOUT 22 THOSE FACTORS YOU DON'T -- TWO FACTORS YOU DON'T ARGUE IN THE BRIEF AND I WANT TO HEAR IF YOU SAY THIS IS A PRECEDENT WE SHOULD FOLLOW IN THE CASE. I'D LIKE TO HEAR IF THE TWO FACTORS ARE HERE AND IF YOU ARGUE THEM. YOU CAN DO THAT ON REBUTTAL.

ATTORNEY: THANK YOU VERY MUCH. THAT'S MY TIME.

JUSTICE: ALL RIGHT. MR. RIVER.

ATTORNEY: THANK YOU, CHIEF JUSTICE, MAY IT PLEASE THE COURT. THE FINAL DAY OF 2017 LEGISLATIVE SESSION THE GENERAL ASSEMBLY TUCKED A SEVEN SENTENCE LAST SECOND RETRO ACTION PROVISION INTO 188 PAGE BIENNIAL BUDGET BILL. KNOWN AS SECTION 161 HAD TWO EFFECTS. FIRST, PROHIBITED BLOOMINGTON AND ONLY BLOOMINGTON FROM TAKING ANY FURTHER ACTION TOWARD THE ONGOING MUN PAL ANNEXATION. SECOND, IT PROHIBITED BLOOMINGTON AND ONLY BLOOMINGTON FROM PURSUING ANY FURTHER MUN PAL ANNEXATION FOR A PERIOD OF MORE THAN FIVE YEARS.

JUSTICE: ALL RIGHT. I COMPLETELY UNDERSTAND YOUR ARTICLE 1 SECTION 23 ARGUMENT VERY WELL MADE IN THE BRIEF. TELL ME IS THERE ANY RELIEF THE COURT COULD ORDER GOVERNOR HOLCOMB TO PROVIDE TO REMEDY THE CONSTITUTIONAL VIOLATION?

ATTORNEY: ABSOLUTELY. I'M GLAD YOU ASK A QUESTION I CAN RESPOND. SORT OF INTERESTING SITUATION, CITY OF BLOOMINGTON FOUND ITSELF IN AFTER SECTION 161 WAS EFFECTIVE. WE COULDN'T PROV WITH ANNEXATION BECAUSE UNLIKE INCOME KIMSEY CASE WE WERE GIVEN A FULL STOP TIME OUT IN ORDER NOT TO PROCEED ANY FURTHER WITH THE ANNEXATION. SO SOUTH BEND, FOR EXAMPLE, KIMSEY, THE REMEDY OR -- EXCUSE ME MECHANISM UTILIZED BY THE GENERAL ASSEMBLY THERE TO TWEAK DOWN THE REMONSTRANCE THRESHOLD SOUTH BEND ADOPTED IT AND GOT CLARITY ON THE CONSTITUTIONAL QUESTION AFTER ADOPTING ORDINANCE. THAT WAS NOT AN OPTION FOR OUR OFFICIALS.

JUSTICE: WHY NOT?

ATTORNEY: BECAUSE.

JUSTICE: NOT SUGGESTING UTTER LAWLESSLESS. MO IS GOING TO STOP YOU?

ATTORNEY: THE ELECTED OFFICIALS TAKE AN OATH VERY SERIOUSLY AND

THEY'RE NOT ABOUT TO FLAUNT AN ACTION OF THE GENERAL ASSEMBLY.

JUSTICE: IF YOU HAD, REMONSTRATOR COULD CITE THE STATUTE AND SAY YOU CAN'T DO THAT, WE'D HAVE THE RIGHT PARTIES.

ATTORNEY: IF THE GENERAL ASSEMBLY CRAFTED SECTION 161 IN A DIFFERENT WAY, WE COULD HAVE GOTTEN THERE. UNFORTUNATELY, BECAUSE THEY SAID YOU CANNOT TAKE ANY FURTHER ACTION, THE ONLY ROUTE FORWARD FOR THE CITY OF BLOOMINGTON WAS A DECLARATORY JUDGMENT ACTION TO GET CLARITY ON THE CONSTITUTIONAL QUESTION BEFORE WE.

JUSTICE: I DIDN'T HEAR THE REMEDY. MY QUESTION. I DIDN'T HEAR IN YOUR ANSWER WHAT WAS THE REMEDY GOVERNOR HOLCOMB COULD PROVIDE TO FOR THIS ALLEGED CONSTITUTIONAL VIOLATION? WHAT IS THE SPECIFIC REMEDY HE COULD PROVIDE?

ATTORNEY: WELL, IT IS -- IT IS AN INTERESTING QUESTION BECAUSE THE GOVERNOR IS CHARGED UNDER ARTICLE 5 WITH TAKING CARE ALL OF THE LAWS ARE FAITHFULLY EXECUTED. SECTION 161 HERE WE DON'T HAVE EXECUTIVE BRANCH OFFICIAL CHARGED WITH SPECIFIC ENFORCEMENT AS JUSTICE SLAUGHTER POINTED OUT. IT IS REALLY A UNIQUE PROVISION IN THAT REGARD. TYPICAL YOU WILL, WE'LL FOUND AN EXECUTIVE BRANCH OFFICIAL CHARGED WITH ENFORCEMENT WE'VE SEEN WITH OTHER CASES ON THIS QUESTION.

JUSTICE: WHAT'S THE REMEDY? WHAT YOU'RE SAYING THERE'S REALLY NO REMEDY. I'M NOT HEARING, WHAT COULD HE DO? GOVERNOR HOLCOMB DID TO FIX THE REMEDY THIS ALLEGED CONSTITUTIONAL, SERIOUS CONSTITUTIONAL VIOLATION?

ATTORNEY: THERE'S NO SPECIFIC REMEDY. THE MECHANISM THAT'S UTILIZED APPROACH UTILIZED IN INDIANA AND OTHER STATES AS WELL IS TO IDENTIFY THE EXECUTIVE BRANCH OFFICIALS AND THE GOVERNOR AS THOSE PARTIES WHEN FILING A DECLARATORY JUDGMENT ACTION SEEKING CLARITY AND CONSTITUTIONALITY IDENTIFY THE EXECUTIVE BRANCH OFFICIALS.

>> GOVERNOR DANIELS, THERE WAS AT LEAST A REMEDY, RIGHT? WITH REGARD TO THE LOCAL FINANCE, DLGF BY EXTENSION THE GOVERNOR WAS AUTHORIZED TO ENFORCE THE STATUTE THERE WAS A REMEDY TO BE HAD. I CAN'T -- WE CAN'T COME TO WHAT IS THE REMEDY HE COULD PROVIDE HERE.

ATTORNEY: WELL, IT IS BECAUSE OF THE WAY SECTION 161 IS CRAFTED THERE'S REALLY NO OFFICIAL YOU COULD IDENTIFY WHO WOULD BE ABLE TO PROVIDE THE SORT OF REMEDY YOU'RE SEEKING. IS IT SIMPLY GIVES DIRECTIVES TO THE CITY OF BLOOMINGTON WE CAN'T PROCEED OR WITH ANY ANNEXATION DURING THE NEXT FIVE YEARS, SO.

JUSTICE: YOUR POSITION: FOR LACK OF A BETTER PHRASE, SEEKING A VEHICLE BY WHICH TO CHALLENGE THE CONSTITUTIONALITY OF THIS ASSET.

ATTORNEY: I THINK THAT'S CORRECT. THIS IS THE VEHICLE WE SEE BOTH IN THE STATE OF INDIANA AND IN OTHER STATES AS WELL. I THINK YOU CAN SEE THE COLORADO SUPREME COURT VERY RECENTLY SAID YOU KNOW UNDER THE TAKE CARE CLAUSE IN THAT STATE THE GOVERNOR IS THE EM BODIMENT OF THE STATE. THAT'S THE ROUTE YOU UTILIZE WHEN SEEKING CLARITY ON CONSTITUTION.

JUSTICE: FISHER SUGGESTS THAT SUING THE COUNTY AUDITOR OR COUNTY SURVEYOR IS -- NOT CONCEDING, SUGGESTS THAT WOULD HAVE BEEN THE MORE APPROPRIATE DEFENDANT. WHAT'S YOUR RESPONSE TO THAT?

ATTORNEY: WELL, I DO FIND THAT ARGUMENT INTERESTING BECAUSE IT DOESN'T APPEAR IN THEIR BRIEF ANYWHERE THE COUNTY OFFICIALS ACTUALLY ARE THE

CORRECT DEFENDANTS TO NAME IN THE SUIT. THEY SUGGESTED IN THE BRIEF THAT THE OWNERS OF THE APPROXIMATELY 15,000 PARCELS THAT WERE SUBJECT TO THE ANNEXATION WERE --

JUSTICE: HOW WOULD THAT PLAY OUT? YOU SUE STEVE DAVID WHO LIVES WITHIN THE JURISDICTION AND I SAY, I DON'T CARE.

ATTORNEY: YEAH. I THINK THERE'S ALL SORTS OF PRAGMATIC PROBLEMS SET ASIDE.

JUSTICE: HOW DO YOU GET THE ATTORNEY GENERAL'S OFFICE INVOLVED IN SOMETHING LIKE THAT?

ATTORNEY: TITLE 34 REQUIRES US TO NAME THE ATTORNEY GENERAL OF COURSE AS AN INTERVENING PARTY BECAUSE IT'S THE ATTORNEY GENERAL'S RESPONSIBILITY TO DEFEND THE CONSTITUTIONAL OF ENACTMENTS OF THE GENERAL ASSEMBLY. THIS REALLY IS ABOUT CAPTIONING THE CASE. HERE WE OBVIOUSLY HAVE THE CORRECT BRIEFS CORRECT PARTIES CITY OF BLOOMINGTON SUFFERED A CONCRETE HARM AS JUSTICE SLAUGHTER POINTED OUT.

JUSTICE: THAT CAN'T BE THE TEST. OTHERWISE YOU COULD SUE ME IN THE OFFICIAL CAPACITY AND THE ATTORNEY GENERAL IS OBLIGATION LYING TO -- OBLIGED TO INTERVENE AND REPRESENT ME. AND THAT CAN'T BE RIGHT. THAT'S NOT THE TEST, RIGHT?

ATTORNEY: AGREE THAT'S NOT THE TEST. I WAS MAKING THE POINT WE HAVE THE CORRECT PARTIES AT THE PODIUM, BLOOMINGTON SUFFERED A CONCRETE HARM AND WE HAVE THE OFFICE RESPONSIBILITY FOR DEFENDING CONSTITUTIONALITY OF ENACTMENTS OF THE GENERAL ASSEMBLY. WE COULD GO BACK I GUESS AND NAME COUNTY OFFICIALS. I'M SURE THEY DO NOT WANT TO BE NAMED, HAVING SPOKEN WITH OUR FRIENDS OVER AT THE COUNTY. WE CERTAINLY COULD TRY DO THAT. WE'D FILE THE SAME BRIEFS AND BE BACK HERE AND PROBABLY BE RECEIVING SOL SORT OF STANDING ARGUMENT FROM THE ATTORNEY GENERAL HOW THE COUNTY OFFICIALS WEREN'T THE CORRECT PEOPLE TO NAME WITH REGARD TO THE PROPERTY OWNERS. I THINK THE GENUINE RIGHT CONCERNS HAD WE NAMED THE PROXIMATE OWNERS OF APPROXIMATELY 15,000 PARCELS.

JUSTICE: BECAUSE WE HAVE LIMITED TIME AND I SHARE THE CONCERNS ABOUT RIGHTNESS WITH RESPECT TO SUING THE PROPERTY OWNERS, AND I HAD NOT CONTEMPLATED QUITE CANDIDLY THE ARGUMENT MR. FISHER PUT FORWARD TODAY ABOUT SUING THE COUNTY OFFICIALS. I WOULD LIKE TO KNOW IF YOU HAVE TIME ABOUT WHETHER OR NOT THAT ACTUALLY IS PRACTICAL? I THINK YOU WERE ADDRESSING THAT. BUT I WOULD LIKE TO ASK YOU TO FOCUS A LITTLE BIRTH BIT, IF YOU WOULD, ON THE CONCERN I THINK ALL OF US, IN THAT THE FLOODGATE OPENING THE FLOODGATE ISSUE IF THE GOVERNOR IN HIS OFFICIAL CAPACITY IS A PROPER DEFENDANT WHEN SOMEONE IS TRYING TO AVAIL THEMSELVES OF CONSTITUTIONAL DAMAGES SUFFERED BY A CONSTITUTIONAL VIOLATION. HOW DO WE LIMIT A DECISION IF WE END UP AGREEING TO YOU SO THE CONCERNS OVER FLOODGATES OPENING ARE MITIGATED TO THE EXTENT POSSIBLE?

ATTORNEY: WELL, I THINK IN THAT REGARD WE HAVE TO CONSIDER THE UNIQUENESS OF SECTION 161 HERE. I'VE ALREADY CONTRASTED IT WITH THE MECHANISM UNCONSTITUTIONAL MECHANISM UTILIZED IN THE KIMSEY CASE THE GOVERNOR DID NOT HAVE TO BE A DEFENDANT SOUTH BEND WAS FREE TO PROCEED. IN MOST CASES THERE'S AN EXECUTIVE BRANCH OFFICIAL CHARGED WITH THE ENFORCEMENT OF THE STATUTE OR SOME OTHER ROUTE IN THE COURT.

JUSTICE: LET ME ASK YOU THIS AND GOING WITH THAT, I WOULD LOVE TO HEAR MR. FISHER'S RESPONSE WHEN HE COMES BACK ON REBUTTAL. I DON'T SEE ANYTHING LIKE THIS IN THE CASES THAT WE'RE ASKED TO CONSIDER WHERE THE MISCHIEF THAT THE AGGRIEVED PARTY IS SEEKING TO HAVE REMEDIED IS JUST A CONSTITUTIONAL VIOLATION AND THERE'S -- I MEAN, ARE WE LOOKING AT THAT? TO THIS EXTENT? EVEN CLOSE? ANY OTHER CASES?

ATTORNEY: NO, ABSOLUTELY NOT. THE CASE IS TRULY UNIQUE IN THAT REGARD. WHEN WE LOOK THROUGH THIS COURT'S HISTORY WITH DECLARATORY JUDGMENT ACTIONS SEEKING CLARITY ON CONSTITUTIONALITY YOU SEE IN EACH CASE PROPIATE EXECUTIVE BRANCH OFFICIAL OR AGENCY IDENTIFIED. THERE'S NO SIMILAR COR RELER HERE NOBODY NAMED IN ADDITION TO THE GOVERNOR WE'RE LEFT WITH THE GOVERNOR ALONE.

JUSTICE: BUT IF THE STATE IS RIGHT THE GOVERNOR DOESN'T HAVE POWER TO ENFORCE THE STATUTE, HOW CAN HE PROVIDE THE REDRESS THAT STANDING REQUIRES? THAT'S THE CHIEF JUSTICE'S QUESTION IN THE NUTSHELL. I'M NOT SURE OF YOUR ANSWER TO THAT.

ATTORNEY: I DON'T AGREE THE GOVERNOR DOESN'T HAVE POWER TO ENFORCE THE STATUTE. THE GOVERNOR UNDER THE TAKE CARE CLAUSE HAS THE POWER AND DUTY.

JUSTICE: IF THE STATE IS RIGHT HE DOESN'T HAVE AUTHORITY AND THE GOVERNOR IS DISCLAIMING AUTHORITY TO ACT HERE, I QUERY WHETHER THAT SAME DISCLAIMER APLEAS IN ALL OTHER PROPERTY TAXES HE'S NOT NAMED. AT LEAST IN -- STATUTE HE'S NOT NAMED. AT LEAST IN THE -- IS HE THE WRONG DEFENDANT? IF SO, IF SO, DOESN'T THAT MEAN WE MUST DISMISS FOR LACK OF STANDING?

ATTORNEY: I SUPPOSE IF YOU DETERMINE THE TAKE CARE CLAUSE DOES NOT GRANT THE GOVERNOR AUTHORITY TO TAKE CARE THAT A STATUTE THAT IS SILENT ON ENFORCEMENT, BE ENFORCED IF THAT'S YOUR RULING.

>> IF HE ENFORCES -- THIS GETS CURIUSER AND CURIUSER. IF HE ENFORCES UNDER HIS TAKE CARE POWERS, THAT LEAVES YOU IN A DEAD END. BECAUSE THE STATUTE SAYS YOU CAN'T PROCEED.

ATTORNEY: I THINK THAT'S RIGHT. THAT WOULD MEAN, ESSENTIALLY, BY SOMETHING SILENT ON ENFORCEMENT AUTHORITY THE GENERAL ASSEMBLY COULD IGNORE ARTICLE 4 SECTION 23. IGNORE ARTICLE 4 SECTION 19. A NICE WIDE OPEN LOOPHOLE FOR THE GENERAL ASSEMBLY TO PASS STATUTES AND DISREGARD THOSE CONSTITUTIONAL PROVISIONS. I THINK THAT'S A CONCERN WE SHOULD HAVE. BECAUSE ARTICLE 4 AND SECTION THREE AND ARTICLE 4 --

JUSTICE: AS A TAKEAWAY YOUR POSITION IS YOUR ARGUING A PARTY COULD ALWAYS SUE A GOVERNOR WHEN CHALLENGING A STATUTE THAT DOESN'T NAME AN AGENCY WITH ANY CHARGE OF ENFORCEMENT?

ATTORNEY: THAT'S THE DEFAULT BECAUSE WE'RE LEFT WITH. THE STAUFFER CASE --

JUSTICE: STAUFFER VERY CLEARLY THERE WAS ENFORCEMENT MECHANISM. GOVERNOR DANIELS COULD BE PULLED IN BY THE ENFORCEMENT -- ENTITY CHARGE WITH ENFORCEMENT. THERE'S ALL OF THE CASES I HAVE HAVE THAT KIND OF CONNECTION. THIS IS A NEW ONE. HELP ME GET, HOW DO WE GO FROM THOSE WHERE THERE'S CONNECTION TO THE GOVERNOR WITH THE ENFORCEMENT MECHANISM TO THIS, A STAND ALONE, FROM THIS POINT FORWARD, IF YOUR POSITION RULES TODAY THE GOVERNOR COULD ALWAYS BE SUED ON A STATUTE IF IT DOESN'T CALL FOR SPECIFIC ENFORCEMENT AGENCY.

ATTORNEY: THERE'S NOT MANY. TO THE UNIQUENESS OF SECTION 161. THERE HAS TO BE A REMEDY. IF IT'S NOT ENFORCEABLE BY ANY AUTHORITY ON SOME LEVEL THAT'S A WIN BY THE CITY OF BLOOMINGTON. IT HAS TO BE ENFORCEABLE BY SOMEONE OR THERE'S NO MEANING.

JUSTICE: IF IT'S ENFORCEABLE BY THE CITY OF BLOOMINGTON WHY ARE YOU OBJECTING?

ATTORNEY: WE'D LIKE CLARITY ON THE CONSTITUTIONAL QUESTION AND MERITS THAT'S CLEARER.

JUSTICE: GO BACK TO JUSTICE GOFF. WHY IS IT UNRIGHT FOR YOU TO SUE AS THE STATE HAS SUGGESTED PROPERTY OWNERS THAT WITHIN THE ANNEXATION AREA TO SAY, WE WANT TO AND NEXT YOUR PROPERTY AND WE'RE GOING TO BRING THE DECLARATORY JUDGMENT ACTION TO HAVE THE COURT DECLARE WE INDEED HAVE THE RIGHT AND THE STATUTE THAT STANDS IN THE WAY IS UNLAWFUL.

ATTORNEY: BECAUSE WE HADN'T COMPLETED MUNICIPAL ANNEXATION AND THEREFORE IF WASN'T CLEAR WHO WOULD BE PART OF ANY CLEAR ANNEXATION. WE PROCEEDED THROUGH THE FIRST TWO STEPS MUNICIPAL ANNEXATION PUBLIC OUTREACH SECTION.

JUSTICE: INTRODUCED YOU'VE NOT ENACTED IT?

ATTORNEY: THAT'S RIGHT. DURING THE FIRST TWO STEPS WE SAW A NUMBER OF PROPERTY OWNERS REMOVED FROM THE ANNEXATION PROPOSAL I'M CERTAIN THAT TREND WOULD HAVE CONTINUED AS WE MOVED FORWARD. IT WOULDN'T BE RIGHT. WE HAVE NO IDEAS IF THE INDIVIDUALS WERE SUBJECT TO ANY MUNICIPAL ANNEXATION AT ANY POINT. THIS LITIGATION IS ABOUT ACTION AT GENERAL ASSEMBLY IN ENACTING SECTION 161 NOT ABOUT COMPLETING MUNICIPAL ANNEXATION. THAT'S AN IMPORTANT DIFFERENCE. THOSE CLAIMS AREN'T RIGHT.

AND THERE'S STANDING CONCERNS THERE AS WELL. THE ATTORNEY GENERAL OF THE STATE IS CHARGED WITH DEFENDING THE CONSTITUTION THE OF ENFORCEMENT OF THE GENERAL ASSEMBLY.

JUSTICE: THAT'S DIFFERENT.

IF YOU SUE THE PROPERTY OWNERS BY STATUTE YOU'RE OBLIGED TO NOTIFY THE ATTORNEY GENERAL AND HE HAS A RIGHT TO INTERVENE, THAT'S NOT A PROBLEM.

ATTORNEY: ON THAT POINT. ANOTHER ISSUE IT'S WRONG-HEADED I THINK TO TREAT THE PROPERTY OWNERS AS A MON O LYFT.

JUSTICE: SORRY, WHAT?

ATTORNEY: MONOLITH. WE HEARD PROPERTY OWNERS WHO WERE EXCITED AND WE HEARD FROM OTHERS WHO MAY NOT HAVE BEEN THRILLED BY THE IDEA OF MUNICIPAL ANNEXATION BY WE'RE EXTREMELY CONCERNED ABOUT THE GENERAL ASSEMBLY'S ACTIONS IN ENACTS SECTION 161. WE WOULD HAVE HAD A VARIETY OF VIEW PAINTS HAD WE BROUGHT THOSE PEOPLE IN.

JUSTICE: JUDGE HAMILTON IN THE SOUTHERN DISTRICT OF INDIANA A CASE WHICH I WAS INVOLVED WHEN I WAS STILL A PRACTICING LAWYER, A CASE, CLINIC FOR WOMEN VERSE SCOTT NEW NON-DISTRICT JUDGE HAMILTON HAD AN UNUSUAL CLASS, AND WE'RE NOT GOING TO NAME ALL COUNTY PROSECUTORS WE'LL NAME SCOTT NEWMAN AND HAVE HIM AS A CLASS ON ALL SIMILARLY SITUATED COUNTY PROSECUTORS. IS THERE ONE AGGRIEVED PROPERTY OWNER TO COMPLAIN IF YOU GO FORWARD AND LET HIM OR ALL REPRESENT ALL SIMILAR SITUATED PROPERTY OWNTORIES COMPLAINT? SOME OPT OUT AND SAY

I'M NOT GOING TO COMPLAIN, I'M GLAD TO BE PART.

ATTORNEY: I THINK THERE'S CONCERNS THE FOLKS WITH THE OPPOSITE PERSPECTIVE WOULD WANT TO SHARE THE PERSPECTIVE AS WELL. INDIVIDUALS WHO MIGHT HAVE CONCERNED ABOUT MUNICIPAL ANNEXATION WANTED TO HAPPEN A DIFFERENT WAY BUT WERE ALSO CONCERNED ABOUT SECTION 161 WOULD WANT TO BE PROVIDE THEIR PERSPECTIVE AND IT WOULD TURN EVERYTHING ON ITS HEAD. WE WANT WANT --

JUSTICE: SHARING PERSPECTIVE DOESN'T MEAN -- IF NOT ADVERSE IN A LAWSUIT YOU CAN WRITE A LETTER TO THE EDITOR THAT DOESN'T MEAN YOU GET YOUR VOICE HEARD IN A CASE SYMPATHETIC WITH A PLAINTIFF, THAT'S NOT THE FORUM TO DO THAT.

ATTORNEY: I'M NOT SURE I TOTALLY AGREE. I THINK IT IS AN APPROPRIATE FORM FOR INDIVIDUALS.

JUSTICE: THERE WOULD BE NO ADVERSITY.

ATTORNEY: ADVERSITY.

JUSTICE: WANT AND NEXT PROPERTY AND THEY WANT IT, WHAT'S THE BEEF?

ATTORNEY: THE BEEF IS WITH THE OTHER PROPERTY OWNERS THAT DON'T WANT THE PROPERTY ANNEXED THERE. THERE'S DEGREE OF CONTROVERSY THERE. I THINK WE'RE GOING FAR DOWN THE PATH. THE ISSUE IS THE RIGHTNESS OF THE CLAIMS. NO MUNICIPAL ANNEXATION WAS COMPLETED AND SO, THEREFORE, WOULD HAVE BEEN INAPPROPRIATE FOR THE CITY OF BLOOMINGTON TO BRING THOSE PROPERTY OWNERS INTO THE CASE.

JUSTICE: IS IT YOUR ARGUMENT, THEN, THE GOVERNOR SIGNING OF THE BILL THAT INCLUDED SECTION 161 IN THIS CASE MAKES HIM THE PROPER DEFENDANT?

ATTORNEY: I THINK THAT'S ONE INDICATION. HE HAS A ROLE IN THE LEGISLATIVE PROCESS AGAIN.

JUSTICE: WHAT ABOUT ALL OF THE OTHER FACTORS? THAT'S THE OTHER THING LOOKED AT. I ASKED MR. FISHER THAT QUESTION. THEY CITE THE FLORIDA CASE WITH REGARD TO WHAT THE RULES SHOULD LOOK LIKE. THERE'S TWO OTHER FACTORS. WHAT WOULD THE OTHERS BE? OKAY, THE GOVERNOR SIGNED THIS, WOULD BE THE OTHER FACTORS THE COURT SHOULD CONSIDER ON SAYING IF HE'S A PROPER PARTY IN THIS CASE?

ATTORNEY: THE PRIMARY FACTOR THE TAKE CARE CLAUSE. WHAT WE SEE IN THE COLORADO SUPREME COURT CITING AND THE UTAH SUPREME COURT CITING. YOU THINK THOSE CASES THEY SPEAK THE LANGUAGE OF THOSE CASES SPEAK VERY DIRECTLY ON THE ISSUE. QUOTING FROM THE 2008 COLORADO SUPREME COURT CASE ARTICLE 4 SECTION 11 OF THE COLORADO CONSTITUTION THE SPEAR EXECUTIVE POWER OF THE STATE SHALL BE INVESTIGATED IN THE GOVERNOR THAT TAKES CARE THE LAWS ARE EXECUTED.

JUSTICE: THAT GOES WITH THE FIRST FACTOR, TAKE CARE. THE SECOND FACTOR IF THEY HAVE A COGNIZANT INTEREST. WHAT'S THE GOVERNOR'S ACTION?

ATTORNEY: I DON'T KNOW THAT'S THE APPROPRIATE TESTIMONY.

JUSTICE: OKAY.

JUSTICE: I DON'T KNOW IT MAKES SENSE TO APPLY THAT, THAT'S FLORIDA APPELLEE COURT CASE AND CONTRASTED IMPORTANTLY BY THE COLORADO AND UTAH SUPREME COURT AND ARIZONA CITED IN THE BRIEFS THE TAKE CARE CLAUSE WHY THE GOVERNOR IS THE EM BODIMENT OF THE STATE. THAT'S EXACTLY WHAT YOU DO IN THIS CIRCUMSTANCE. YOU WANT TO GET CLARITY ON THE CONSTITUTIONALLALITY OF A PROVISION USING THE JUDGMENT ACTION.

JUSTICE: ARE YOU CONCERNED WITH THE FLIP SIDE OF THE QUESTION I ASKED OF COUNSEL FISHER YOU MIGHT WIN THE BATTLE AND LOSE THE WAR. IF WE AGREE WITH YOU THE GOVERNOR DOES HAVE TAKE CARE AUTHORITY TO ENFORCE THE ANNEXATION STATUTES, THEREFORE, HE'S A PROPER DEFENDANT HERE. THAT YOU OPEN THE DOOR TO THIS GOVERNOR OR ANY FUTURE GOVERNOR AGAINST THE CITY OF BLOOMINGTON OR ANY OTHER MUNICIPALITY ACROSS THE STATE TO TAKE AN ACTIVE ROLE IN SEEING TO IT ANNEXATION STATUTES ARE FOLLOWED AND COMPLIED WITH. IS THAT REALLY SOMETHING THE CITY OF BLOOMINGTON IS EAGER TO SEE HAPPEN?

ATTORNEY: THAT'S NOT --

JUSTICE: ASTONISHING RESULT, FRANKLY.

ATTORNEY: NOT TO BE CONCERNED TO US. THE ANNEXATION STATUTE IS INCREDIBLY DETAILED. WE FOLLOWED THE STRUCTURES OF THE ANNEXATION STATUTE WITH METICULOUS CERTAINLY IN OUR 2017 ANNEXATION PROPOSAL. SO YOU HAVE NO CONCERN WITH ANYBODY WHO MIGHT WANT --

JUSTICE: BRING IT ON OVER OUR SHOULDER.

ATTORNEY: EXCUSE ME?

JUSTICE: BRING IT ON.

ATTORNEY: BRING IT ON.

JUSTICE: DOING ALL RIGHT. OKAY.

JUSTICE: HOW DO YOU, BRIEFLY, IF YOU CAN, ADDRESS TWO WORDS THAT I HATE TO TOSS OUT IN THIS. BUT EFFICIENCY OR EXPEDIENCE. BECAUSE IF YOU HADN'T SUED THE GOVERNOR AND YOU PROCEEDED, WHICH YOU DIDN'T WANT TO, AGAINST THE LAW, WHICH IS YOUR POSITION AND YOU SUED STEVE DAVID WHO LIVED IN BLOOMINGTON, I DON'T WANT THIS, LIVED IN MONROE COUNTY, I DON'T WANT THIS. SO I GET AN ATTORNEY AND FILE A RESTRAINING ORDER. HERE'S THE LAW, YOU CAN'T DO THIS. THEN, AT SOME POINT IN TIME, I THINK YOU WOULD AGREE THE ATTORNEY GENERAL'S OFFICE IS GOING TO GET INVOLVED IN THIS. THAT SEEMS, TO ME, LOGICALLY THE ROUTE TO GO THAT ANY OTHER LITIGANT WOULD GO. SO PUSH BACK ON WHY YOUR POSITION ISN'T REALLY FOUNDED UPON WE WANT TO MOVE THIS FASTER. WE WANT TO GET BACK TO OUR ANNEXATION. RATHER THAN -- THAN DO THIS BY PROCESS AND ULTIMATELY GET TO THIS CONSTITUTIONALITY ISSUE WE'RE GOING TO JUMP TO SEE THE GOVERNOR AND GET THE ATTORNEY GENERAL'S OFFICE AND WE'LL BYPASS COUPLE STEPS.

ATTORNEY: I DON'T THINK WE'RE BYPASSING -- I DON'T THINK WE WERE BYPASSING ANY SEPARATES. AGAIN, WHEN WE -- WHEN WE SAT DOWN TO IDENTIFY WHO MIGHT HAVE STANDING, WHO MIGHT HAVE A LEGITIMATE CLAIM, WE DIDN'T KNOW WHO WOULD END UP BEING PART OF THE ANNEXATION PROCESS. SO STEVE DAVID WOULD NOT HAVE BEEN AN APPROPRIATE DEFENDANT FOR REASONS I BROUGHT UP BEFORE. LOOK AT THE LEGISLATIVE HISTORY AT THE LOCAL AREA AREA 6 WAS REMOVED, ALL REMOVED FROM THE ANNEXATION PROPOSAL AT INTRODUCTION OF ANNEXATION ORDINANCE IN MARCH OF 2017. AREA 2, THE LARGEST ANNEXATION AREA ONLY PROCEEDED FORWARD BECAUSE BY SINGLE VOTE. THEN, I SEE MY TIME EXPIRED. MAY I FINISH ANSWERING THE QUESTION? ONLY BECAUSE COUNCIL MEMBER REQUESTED REVOTE. THERE WAS A DECENT CHANCE ENORMOUS NUMBER OF PROPERTY OWNERS LARGER AREA, IN FACT, WOULD NOT HAVE BEEN PART OF ANNEXATION. THE RIGHTNESS CONCERNS ARE GENUINE HAD WE TRIED TO IDENTIFY PROPERTY OWNERS. I WOULD EXPECT THEM TO IDENTIFY THE PROPERTY OWNERS AND MAKE THEM

SUCCESSFUL.

JUSTICE: THANK YOU.

JUSTICE: THANK YOU, COUNSEL. MR. FISHER, REBUTTAL.

ATTORNEY: THANK YOU, YOUR HONOR. I'M START WITH CHIEF JUSTICE ABOUT THE SCOTT CASE. THE TWO COMPONENTS MENTIONED ENFORCES AUTHORITY UNDER THE STATUTE THAT'S EXACTLY WHAT WE ARE TAKING ABOUT. NO ENFORCES AUTHORITY UNDER THE STATUTE. THE SECOND, ACTUAL COULD GO NIZABLE INTEREST IN THE CHALLENGED ACTION. I THINK THAT'S OPEN-ENDED IF THERE'S SOME OTHER FACTOR THAT LINKS THE GOVERNOR TO A CASE THAT MAYBE WE COULD CONSIDER THAT. WE DON'T SEE OR HEAR FROM THE CITY OF BLOOMINGTON SAYING THERE'S ANYTHING OF THAT SORT, THEY'RE ALL ABOUT THE TAKE CARE CLAUSE. WITH RESPECT TO THAT THERE'S NO REASON TO LIMIT THE THEORY OF STANDING WHERE THEY DON'T NAME AN ENFORCEMENT. IF THE GOVERNOR HAS THE AUTHORITY THAT APPLIES TO ALL STATUTES AND DOESN'T LIMIT AND APPLIES TO TAKE CARE LAWS FAITHFULLY EXECUTED, ALL LAWS, NOT STATUTES. THAT'S WILDLY OPEN. WHAT DOES ENFORCEMENT LOOK LIKE? WE TALK ABOUT WHAT DO THE OTHER ALTERNATE LAWSUITS LOOK LIKE? WHAT'S THE GOVERNOR ENFORCEMENT LOOK LIKE? HE IS GOING TO GO DOWN TO THE COUNTY BOOKS IN MONROE COUNTY AND SAY NO YOU DON'T TO ERASE ALLOCATION OF REVENUE AND PUT IT SOMEWHERE ELSE OR SEND IN THE STATE POLICE? NO. NO PLAUSIBLE WAY THE GOVERNOR WILL ENFORCE THIS LAW. THAT'S WHY NO REMEDY.

JUSTICE: MR. FISHER, TO THAT POINT, THAT'S REALLY IN MY MIND, HELP ME WITH THIS, THE NARROWNESS ISSUE THAT WE HAVE IN THIS CASE. WHAT'S WRONG WITHHOLDING THAT IT WOULD INDICATE IN THE LEGISLATURE TAKES ACTION THAT IS UNCONSTITUTIONAL PURSUANT TO ARTICLE 4 SECTION 23 AS SPECIAL LEGISLATION UNCONSTITUTIONAL SPECIAL LEGISLATION AND THERE'S NO OTHER MEANS BY WHICH AN ACHIEVED PARTY CAN VINDICATE THEIR RIGHTS, THAT ARE IMPLICATED BY THAT, WHAT'S WRONG WITH THE DEFAULT IS THAT IT'S THE STATE EXECUTIVE? WHAT'S WRONG WITH THAT? AND IF WE DON'T FIND THAT IN THOSE INSTANCE AN ACHIEVED PARTY IS ABLE TO PROCEED, WHY DOESN'T THAT RUN AFOUL OF THE OPEN COURT'S CLAUSE?

ATTORNEY: WELL, I DON'T THINK THAT OPEN COURT HAS EVER BEEN THOUGHT OF AS A WAY AROUND THE SEPARATION OF POWERS CONCERNS UNDERNEATH WE'RE TALKING ABOUT WITH RESPECT TO STANDING. NOW, WHERE DOES THAT GO? IF WE HAVE A RULING THAT SAYS IF WE CAN'T FIGURE OUT WHO ELSE MIGHT ENFORCE THEN THE GOVERNOR CAN BE A DEFENDANT. THAT IS NOTHING MORE THAN ADVISORY OPINION. AND THAT'S WHAT THIS COURT HAS SAID TIME AND AGAIN THAT IT DOES NOT WANT TO ISSUE ADVISORY OPINIONS.

I THINK MR. ROUKER SAID QUITE DIRECTLY PLAINLY, WHY IS IT THE CITY OF BLOOMINGTON WANTS HERE? HEE WANT CLARITY. THEY WANT CLARITY. DON'T SIT BACK AND PROCEED AND SEE WHAT HAPPENS. THEY WANT CLARITY. THAT'S REQUEST FOR ADVISORY OPINION IF I EVER HEARD ONE. WHAT THEY'RE LOOKING AT HERE.

JUSTICE: THAT'S THE NARROWNESS. I DON'T MEAN TO INTERRUPT YOU THAT'S THE DISCUSSION I HAD FRANKLY WITH THE CLERKS YESTERDAY. WHY THE ADVISORY OPINION TO THIS NARROW SET OF CIRCUMSTANCES IN PARTICULAR AN ACHIEVED PARTY LIKE BLOOMINGTON THAT EXPENDED SO MUCH MONEY ON SOMETHING LIKE THIS. HELP ME UNDERSTAND THAT.

ATTORNEY: COURTS DON'T DO THAT. THEY EXIST TO DECIDE LEGAL DISPUTES

BETWEEN LIVE PARTIES AND DON'T EXIST TO PRONOUNCE ON CONSTITUTIONAL QUESTIONS. I THINK THAT'S WHAT SEPARATION OF POWERS IN THIS CIRCUMSTANCE COMES DOWN TO. ITS AALL ABOUT WHAT ARE GOING TO BE THE LIMITS RESPECTED LIMITS OF JUDICIARY.

JUSTICE: DON'T EXIST TO SAY WHAT THE INDIANA CONSTITUTION MEANS?

ATTORNEY: EXIST TO SAY YOU DO THAT WITHIN THE CONTEXT OF DECIDING RULE DISPUTES BETWEEN PARTIES. DIFFERENCE BETWEEN ADVISE O'OPINION AND LEGAL DECISION IS THERE LIVE DISPUTE BETWEEN THE PARTIES OF TRADITIONS OF THIS STATE AND COUNTRY SAID AMOUNT TO GENUINE LEGAL DISPUTE? OR THAT PUTS IN THE BUSINESS OF ADVISORY OPINIONS AND WE DON'T WORRY ABOUT STANDING IN ANY CASE. THAT'S NOT WHERE THE COURT HAS BEEN IN UNDERSTANDING THE ROLE WITHIN THE LEGAL SYSTEM. I THINK THAT'S WHAT YOU'RE LEFT WITH IN TERMS THAT HAVE CHOICE. I THINK ONE OTHER POINT MR. ROUKER MADE I WANTED TO COME BACK TO, WHICH WAS, MAYBE IT WAS FROM A RESPONSE TO A QUESTION ABOUT, FROM THE CHIEF ABOUT IS IT THE GOVERNOR'S SIGNATURE THAT PUTS HIM IN PLAY AS A DEFENDANT HERE? I DON'T THINK THAT CAN BE SOMETHING THAT IS A FACTOR, IF WE WANT TO LOOK AT FACTORS. BECAUSE OF COURSE THERE ARE STATUTES THAT ARE ENACTED OVER A GOVERNOR'S VETO. AND SO WHAT DO YOU DO THEN? AND THERE ARE STATUTES THAT, YOU KNOW, THE GOVERNOR SIGNS AND THAT'S, YOU KNOW, NEARLY EVERY STATUTE. SO AGAIN THAT'S NOT A LIMITING CHARACTERISTIC I THINK IS USEFUL AT ALL. NO FURTHER QUESTIONS, I'LL LEAVE IT AT THAT. THANK YOU.

JUSTICE: THANK YOU. THANK YOU, COUNSEL. TO ALL OF THE LAW STUDENTS OUT THERE TODAY, YOU WERE TREATED TO EXCELLENT ADVOCACY BY BOTH PARTIES. I APPRECIATE THE BRIEFING AND ARGUMENT TODAY.

WE'LL DISCUSS THE CASE AND ISSUE AN OPINION IN DUE COURSE. THANK YOU VERY MUCH.

>> ALL RISE.