Filed: 9/27/2019 3:58 PM

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,	)	
v.	)	Case No. 53C06-1705-PL-1138
City of Bloomington,	)	The Honorable Frank M. Nardi, Special Judge
Appellee.	)	

REPLY 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES [CONT'D]

CASES [CONT'D]

STATUTES

OTHER AUTHORITIES

OTHER AUTHORITIES [CONT'D]

SUMMARY OF THE ARGUMENT

Neither the Governor nor any other member of the executive branch implements the Annexation Law, and Bloomington is unable to cite any cases properly naming a governor as a defendant in similar circumstances. To permit this case to proceed on the merits is to say that real cases and controversies are unnecessary to constitutional litigation because someone seeking to challenge a state statute need only name the governor as a nominal defendant to get in front of a court. That has never been the approach of the Indiana judiciary to standing questions.

If the Court does reach the merits, *Dortch v. Lugar*, 255 Ind. 545, 266 N.E.2d 25 (1971) permits the legislature to use a local and special law to establish local government boundaries. This Court in *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (2003), expressly reaffirmed *Dortch*, and the only way to reconcile the two cases is to distinguish between laws that make a determination about local government structure (*Dortch)* and those that tinker with annexation requirements (*Kimsey*). The Annexation Law controls the Bloomington-Monroe County local government structure and fits comfortably within the local/special law safe harbor created by *Dortch*.

Even under *Kimsey*, there is ample justification for the legislature to issue a special law to prevent Bloomington's annexation attempt. The special law implemented against Bloomington was necessary because of its abuse of the annexation process—namely by gerrymandering the annexation areas based on decades-old and unrecorded remonstrance waivers.

Finally, the State's inclusion of the Annexation Law within the biennial budget bill is consistent with Article 4, section 19 of the Indiana Constitution because of (1) the logical relationship between the tax revenue implications of the Annexation Law and the State's overall budget and (2) the Court's broad interpretation of the one-subject requirement and its practice of allowing the legislature to carry out its internal constitutional obligations.

For these reasons, this Court should reverse the judgment below.

ARGUMENT

I. The Governor Is Not a Proper Defendant Because He Is Not Charged with Enforcing the Statute's Implementation

The trial court erroneously concluded that, since there is no mention of who should enforce the Annexation Law, the catch-all remedy is to name the Governor as a defendant in constitutional challenges because of his general duty to enforce state laws. Both it and Bloomington have relied heavily on *Stoffel v. Daniels*, 908 N.E.2d 1260 (Ind. Ct. App. 2009), and a handful of cases cited therein, for the unremarkable proposition that it is sometimes appropriate to sue a governor when challenging the constitutionality of a statute. But *Stoffel* merely holds that the Governor is the proper defendant when challenging the constitutional validity of a statutory scheme that an executive branch official has been charged with implementing. There, the Department of Local Government Finance, and by extension the Governor, was specifically authorized to enforce the statute at issue. *Stoffel*, 908 N.E.2d at 1272 (noting that, pursuant to the challenged statute, "DLGF was authorized to determine and implement a procedure and schedule for the transfer of records from the township assessor

to the county assessor"). Here, Governor Holcomb neither enforces the Annexation Law, nor is involved in the annexation process.

Bloomington admits that "Section 161 differs from the statute at issue in *Stoffel* in that Section 161 contains no reference to any member of the executive branch." Appellee's Br. 30–31 n.10. Bloomington addresses that difference only by stating that "in the instant case the Governor is the only appropriate defendant, rather than one of many appropriate defendants." Appellee's Br. 31 n.10. That is a *non sequitur*. The *defining factor* of *Stoffel* is that executive branch officials were charged with implementing the challenged statutes. The *Stoffel* court relied only on precedents permitting "challenges [to] the constitutional validity of a statutory scheme . . . against the executive branch officials *charged with implementing the challenged statutes*" and that "bringing a declaratory judgment action against the executive branch official *charged with the statute's implementation* is a well-recognized approach." 908 N.E.2d at 1271 (emphasis added). The *Stoffel* Court thus recognized the need for some connection between the Governor and the statute being challenged in order for the Governor to be named a defendant. Here, there is none, so there is no rationale for suing the Governor.

The other cases Bloomington cites illustrate the same point, *i.e.* that sometimes it can be appropriate to sue the governor where the executive branch implements the statute at issue. *See Bonney v. Ind. Fin. Auth.*, 849 N.E.2d 473 (Ind. 2006) (noting the Indiana Finance Authority was given duties of implementation in the "Major Moves" legislation); *D&M Healthcare v. Kernan*, 800 N.E.2d 898 (Ind. 2003) (noting that the

Family and Social Services Administration was tasked with adopting rules to reduce reimbursements); *State v. Nixon*, 270 Ind. 192, 384 N.E.2d 152 (1979) (noting that the Indiana Racing Commission was tasked with regulating racing and pari-mutuel betting); *Welsh v. Sells*, 244 Ind. 423, 192 N.E.2d 753 (1963) (noting that the Department of Revenue is given the power to establish brackets for the collection of taxes, among other duties); *Orbison v. Welsh*, 242 Ind. 385, 179 N.E.2d 727 (1962) (noting that the Indiana Port Commission is given powers and duties in the Indiana Port Commission Act); *Whitcomb v. Young*, 258 Ind. 127, 279 N.E.2d 566 (1972) (challenging term limits for statewide offices and naming Governor in his capacity as appointing authority for the State Election Board). Furthermore, the Governor is but one of the defendants in each of the above cases cited by Bloomington. In *Bonney*, *D&M Healthcare*, *Welsh*, *Orbison*, and *Whitcomb*, the specific state agencies tasked with implementing the challenged statutes were named as defendants, and in *State v. Nixon*, the State was named as a defendant with a corporation also intervening as a defendant. With multiple defendants in each case, there would have been no need to worry about whether the Governor was a proper party since there was at least one valid defendant.

Bloomington also offers precedents from Colorado, Arizona, and Utah, but this Court recently confirmed that it takes a particularly robust view of standing as a function of separation of powers that may not prevail in other States' courts. *See Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019). In Indiana, the doctrine of standing "limits the judiciary to resolving concrete disputes between private litigants while

leaving questions of public policy to the legislature and the executive." *Id.* But in Utah, for example, courts grant "alternative standing," which does not require a showing of injury, causation, and redressability. *City of Grantsville v. Redevelopment Agency of Tooele City*, 233 P.3d 461, 466 (Utah 2010).

In any event, all of the cases from other jurisdictions, like *Stoffel*, feature some connection between the Governor and enforcement of the statute at issue. *See Yes on Prop 200 v. Napolitano*, 160 P.3d 1216 (Ariz. Ct. App. 2007) (noting there was an "actual controversy between the Plaintiffs and the Governor" because the Governor has the power to direct the executive branch to implement the statute at issue); *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008) (challenging a constitutional amendment to duties of an ethics commission, whose members were directly appointed by the governor); *Parker v. Rampton,* 497 P.2d 848 (Utah 1972) (challenging a statute that provides for arms of the executive branch to enforce "the sterilization of persons who are inmates therein or are afflicted with certain named defects"). Bloomington gives no authoritative example of a governor being named a defendant when the executive branch was not specifically charged with implementing the statute at issue.

Other cases previously cited by the State show a distinction between constitutional challenges to legislation where a governor has a *specific* duty to enforce state laws versus challenges to a statute where a governor has a *general* duty to enforce state laws. When a governor has merely a general duty to enforce state laws but no specific authority charged by the statute at issue, courts have consistently held that

the governor has no interest in the alleged action. *See Scott v. Francati*, 214 So. 3d 742, 746 (Fla. Dist. Ct. App. 2017) (explaining that for a governor to be a proper defendant, the governor must be "an enforcing authority under the statute" or have "an actual, cognizable interest in the challenged action"); *Doe v. Holcomb*, 883 F.3d 971, 976 (7th Cir. 2018) (explaining 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"). These precedents reinforce Indiana's causation and redressability requirements that "a concrete adversity [exists] between the parties, that is, that the defendant caused plaintiff's injury and therefore the defendant is the proper party from whom to seek redress." *Stoffel*, 908 N.E.2d at 1271.

Bloomington says the State's citation to federal redressability cases is "confusing." Appellee's Br. 27 n.9. But the point is straightforward enough: federal courts have agreed with the State's argument that, in a legal system where redressability is a critical component of justiciability, a governor's general "take care" authority is an insufficient reason to name the governor as a defendant. And, of course, Indiana courts have been clear that when a plaintiff's claim is not redressable, it is not justiciable. This requirement is critical for maintaining separate government functions and "precludes courts from becoming involved . . . too far into the provinces of the other branches." *Horner*, 125 N.E.3d at 589 (quoting John Laramore*, Indiana Constitutional Developments*, 37 Ind. L. Rev. 929, 930 (2004)). Indiana courts strongly disfavor advisory opinions, *City of Indianapolis v. Ind. Bd. of Tax Comm'rs*, 261 Ind.

635, 637, 308 N.E.2d 868, 869 (1974), and will not adjudicate a constitutional controversy that is not "essential to the protection of the rights of the parties concerned." *Ind. Educ. Employment Relations Bd. v. Benton Cmty. Sch. Corp.,* 266 Ind. 491, 495, 365 N.E.2d 752, 754 (1977). In order for a claim to be justiciable, it must have a direct impact on the rights and obligations of *all* of the parties. *Id.*

While it is immaterial to this argument whether obvious alternative defendants are available—there is no doctrine permitting suit against the Governor by default—Bloomington could easily have brought its challenges to the Annexation Law as a defense against remonstrance claims by landowners opposed to the annexation, or as affirmative claims against affected landowners who had announced their opposition to the annexation. *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"). As Bloomington acknowledges, 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.

Bloomington claims that "in order to litigate a ripe dispute with said landowners, Bloomington would have had to continue its annexation all the way through to adoption, blatantly violating Section 161." Appellee's Br. 28. Not so. Just as this is a

declaratory judgment action, so too could be an action against any affected landowners opposed to annexation. "Ripeness relates to the degree to which the defined issues in a case are based on actual facts rather than on abstract possibilities, and are capable of being adjudicated on an adequately developed record." *Ind. Dep't of Envtl. Mgmt. v. Chem. Waste Mgmt., Inc.,* 643 N.E.2d 331, 336 (Ind. 1994). Bloomington had adopted annexation ordinances before the legislature enacted the statute, so it knew who would have been affected with sufficient certainty to investigate whether any landowners would oppose their annexation efforts who could be targeted with a lawsuit. Indeed, Bloomington could have named a defendant class of all landowners who would remonstrate.

Finally, Bloomington asserts that if it had originally sued the landowners, then it would have "been statutorily obligated [to] notify the Attorney General and to join the State as an indispensable party," which would have brought the same parties to this Court as did Bloomington's declaratory action against the Governor. Appellee's Br. 34–35. The point of this argument is unclear. Plainly, landowners who object to the annexation would have separate interests not represented by the Attorney General. And standing doctrine exists to ensure that courts are genuinely exercising judicial power rather than deciding abstract disputes. Standing "limits the judiciary to resolving concrete disputes between private litigants while leaving questions of public policy to the legislature and the executive" and is "a vital element in the separation of powers, the disregard of which inevitably leads to 'an overjudicialization of the processes of self-governance.' " *Horner*, 125 N.E.3d at 589 (quoting Antonin Scalia,

The Doctrine of Standing as an Essential Element of the Separation of Powers, 27 Suffolk U. L. Rev. 881, 881 (1983)). The identity of the lawyers before the Court is not what matters—the Attorney General is no more a sufficient stand-in for a legitimate defendant than the Governor. What matters is that the Courts address genuine legal disputes where the legal judgment actually affects the rights and interests of the parties before it. Against that standard, this lawsuit plainly fails.

II. *Dortch* Means the Legislature May Determine the Organizational Structure of Local Governments via Special Laws

There is nothing meaningfully novel about the State's reliance on *Dortch v. Lugar*, 255 Ind. 545, 266 N.E.2d 25 (Ind. 1971)—confirmed as valid by this Court in *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003)—to justify the Annexation Law.

Dortch itself was a case that affirmed the use of a local and special law to direct the structure of a particular city and county government: "[T]he classification of excluded and included cities and towns bears a rational and legitimate relationship to the legislative goal of providing consolidated city and county government." *Dortch*, N.E.2d at 36. If consolidating city and county government is a legitimate use of local and special laws, then so must be *precluding* such consolidation, even by way of preventing annexation. In terms of legislative power, Unigov and the Annexation Law are substantively equivalent—both regulate the structure of particular local governments.

Bloomington's only response to *Dortch* is to claim that it has been overruled *sub silentio*. It cites *City of Hammond v. Herman & Kittle Properties, Inc.,* 119 N.E.3d

70 (Ind. 2019), in arguing that *Dortch* represents an antiquated approach to special law analysis. Appellee's Br. 37. But *City of Hammond* shows this Court abandoned complete legislative deference nearly 40 years before *Dortch*. *City of Hammond*, 119 N.E.3d at 81. That means *Dortch* is part of the current doctrine, which the Court in *Dortch* demonstrated when it explained the guiding principle that "population . . . must bear some rational relationship to the subject dealt with and must be based on justifiable distinctions when considered in the context of the legislative goal sought to be obtained." *Dortch*, 266 N.E.2d at 32.

Critically, this Court expressly preserved *Dortch* in *Kimsey*, which applied local and special law doctrine to an annexation process law. *Kimsey*, 781 N.E.2d at 691. Yet the only basis for reconciling *Dortch* and *Kimsey* is to conclude that *Dortch* applies to government structure outcomes while *Kimsey* applies to annexation procedure. Like Unigov, the Annexation Law is about maintaining the current structure of government in Bloomington and Monroe County, not about annexation process.

To conclude (contra *Kimsey*) that "modern" local-and-special-law doctrine necessarily overrides *Dortch* creates a host of questions about Unigov. Is it still valid under some type of equitable theory? Or could one of the municipalities within Marion County file a lawsuit seeking to break the whole thing apart? Ironically, to hold Unigov sacrosanct while deeming *Dortch* overruled would bestow *double* local-and-special status on Indianapolis-Marion County. Not only would it be a creature of a local-and-special law, but it would be the *only* municipality in Indiana whose government

structure the legislature could so create. Indianapolis and Marion County would truly be special for all to see.

III. If Necessary, Unique Characteristics Justified the Legislature's Decision To Preclude the Bloomington Annexation Until 2022

If the Court deems it necessary, ample justification exists for the legislature to prevent (at least temporarily) Bloomington's annexation attempt via special law. Bloomington's abuse of the annexation procedure and waivers of remonstrance in previously unseen ways allow the legislature to enact special legislation to address the issue.

1. Bloomington characterizes the State as "fail[ing] to identify any characteristics unique to Bloomington at all." Appellee's Br. 36. To the contrary, the State explicitly identifies how Bloomington uniquely pushed through the proposed annexation with undue urgency using decades-old and unrecorded remonstrance waivers, and Bloomington fails to identify any similarly situated annexations that are treated differently. And while the burden is on the proponent of special legislation to show that a general law cannot be made applicable, the burden merely "requires the legislation's proponent to clear a low bar by establishing a link between the class's unique characteristics and the legislative fix." *City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70, 84 (Ind. 2019). The burden then shifts to the opponent of the special legislation to "show why the specified class's characteristics are not defining enough to justify the special legislation." *Id.* at 84–85. When an opponent to special legislation fails to meet that final burden, the special treatment is justified. *Id.* at 85.

Bloomington argues that neither the city's sense of urgency nor the fact that it used decades-old and unrecorded waivers of remonstrance to shut down any opposition to the annexation are unique characteristics that justify the imposition of the Annexation Law as a special law. Appellee's Br. 40. Bloomington asserts that "[n]either of these concerns are peculiar to Bloomington because (1) Bloomington followed the statutes detailing annexation timelines and (2) all cities and towns are required by law to obtain remonstrance waivers." Appellee's Br. 40–41. Bloomington misses the point, which is that, the legislature may have believed that Bloomington's annexation plan manipulated that which was legal into something amounting to abuse of the process. Bloomington claims it was "required by law to obtain remonstrance waivers," but no law required it to gerrymander its annexation based on percentages of remonstrance waivers to minimize opposition. Appellee's Br. 41.

Furthermore, the statutory timelines in Indiana Code sections 36-4-3-1.7 and 2.1 provide *minimum* requirements for municipalities, not an idealized bullseye for Bloomington to aim for. "From the date the City mailed the published notice of its public outreach meetings on February 17 to the proposed date of adoption, June 30, 133 days would have elapsed." Appellee's Br. 42. The absolute minimum amount of time required by the statute from notifying landowners of the outreach program to adoption is 120 days, which does not even account for the required six public information meetings that must take place during the outreach program and before the introduction of an annexation ordinance. *See* Ind. Code § 36-4-3-1.7 (explaining that a municipality must publish notice of the required public meetings 30 days before the

date of each meeting and that those meetings must be conducted before introduction of the annexation ordinance); Ind. Code § 36-4-3-2.1 (explaining that a municipality must wait at least 60 days from the formal introduction of the annexation before having a public hearing and must wait at least 30 days from the date of the public hearing before adopting the ordinance).

Additionally, Bloomington's annexation is a product of Mayor Hamilton's aggressive philosophy to annex any urbanized areas of Monroe County, particularly in light of the city's "190-year history of growth [and] continual annexations"—an inherent characteristic and history portending future annexations held uniquely by Bloomington. Appellant's App. Vol. XIX 19. Indeed, Mayor Hamilton was intent on rushing through the annexation process despite members of both the City Council and the Monroe County Council demanding additional time. Appellant's App. Vol. XIX 16, 73, 78–79. This intent was fueled, at least in part, by Mayor Hamilton's fear "about the creativity the legislature could bring to the changes of annexation." Appellant's App. Vol. XIX 19. The legislature was surely justified in addressing this obvious attempt to avoid possible future changes to annexation law.

2. Bloomington fails to provide an adequate example of another situation that bears the same unique characteristics as its annexation process. It generally asserts that "other communities' schedules reveals that Bloomington's timeline was well within established norms," Appellee's Br. 43, citing—without context or detailed explanation—unspecified annexations that supposedly "took less than 90 days." Appellant's App. Vol. XX 184. For all the record reveals, those annexations might well

have been tiny, uncontested affairs where the municipality relied on no remonstrance waivers.

Bloomington details just one specific example of another city that adopted an annexation ordinance in a timeframe relatively close to that of Bloomington's—the City of Boonville's 154-day annexation timeline in 2018, which occurred *after* the legislature enacted the statute at issue here. Appellee's Br. 43. *Kimsey* makes clear that special legislation is constitutional if, "under the facts as they are at the time of passage, only justified areas are defined into the class." *Kimsey,* 781 N.E.2d at 691. Even if Boonville's annexation is materially similar to Bloomington's, it cannot retroactively render the annexation law invalid.

Regardless, the Bloomington and Boonville annexation situations are strikingly dissimilar. Bloomington asserts that "Boonville used waivers that were executed as long ago as 1998," but does not show that Boonville strategically gerrymandered annexation areas with high percentages of decades-old waivers to push through an annexation. Further, nothing in the record suggests that Boonville fielded *any* pushback from its county's residents as Bloomington did. Appellant's App. Vol. XIX 78, 79, 83, 88. It is not solely the hastiness that Bloomington rushed into its annexation that makes it a unique circumstance, it is the urgency in spite of wide-spread objection and pleas from residents to allow for more time for proper discussion of the proposed annexation. Appellant's App. Vol. XIX 78, 79, 83, 88.

3. Finally, apparently dissatisfied with its chances of prevailing on its local and special law claims, Bloomington invokes the Contracts Clause of Article 1, Section 24 of the Indiana Constitution. In its view, "[r]emonstrance waivers are contracts. If the legislature's action enacting Section 161 is justified in order to inhibit Bloomington's use of perfectly valid, enforceable, unexpired waivers, then the legislature has run afoul of the Constitution's proscription of legislative actions that impair contractual obligations." Appellee's Br. 49–50. This is an entirely new claim and contravenes the axiom that "pursuant to the notion of fairness, a party may not change its theory on appeal and argue an issue that was not properly presented to the trial court." *Pardue v. Smith*, 875 N.E.2d 285, 289–90 (Ind. Ct. App. 2007).

Regardless, the Annexation Law threatens no violation of the Contracts Clause. First, it does not impair the obligation of either Bloomington or the landowners regarding their waivers of remonstrance. Such waivers merely forego remonstrance by the landowner, and the Annexation Law does not reinstate such rights. At most, the Annexation Law affects the city's ancillary interest in annexation, which each remonstrance waiver might marginally improve, depending on a variety of contingent factors (including the City's desire to annex, the fiscal viability of annexation, the percentage of land encumbered by waivers, etc.). But no remonstrance waiver guarantees a right to annexation, and the Contracts Clause does not safeguard all perceived incidental and consequential benefits of contracts.

Not only must contract expectations be *reasonable* even to be susceptible to "substantial impairment," *see, e.g., Hawkeye Commodity Promotions, Inc. v. Vilsack,*

486 F.3d 430, 437–38 (8th Cir. 2007) ("Substantial impairment depends on 'the extent to which the [parties'] reasonable contract expectations have been disrupted'"), but also contracts cannot preclude later regulation of actions one party might intend in reliance on the contract: "regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution." *FHA v. Darlington, Inc.*, 358 U.S. 84, 91 (1959). This Court has similarly held that "prohibitions contained in the Indiana contract clause do not necessarily restrict the exercise of the State's power to protect the public health, safety, and general welfare." *Clem v. Christole, Inc.,* 582 N.E.2d 780, 782 (Ind. 1991). In short, it would not have been reasonable for Bloomington to infer that remonstrance waivers guaranteed a state law right to annex areas of Monroe County, and in any event Bloomington cannot bind the legislature's authority over annexation by signing contracts with landowners.

Second, a political subdivision has no constitutionally protected contract rights immune from state regulation. Since the State is the real party in a contract entered into by a political subdivision, the State may freely release its obligation. When a contracting party is a political subdivision of the State, "the state may withdraw the power to so contract, that it may release the liability created and without the consent of the agent. And by the great weight of authority this does not amount to the impairment of contracts as provided for in the federal and state Constitutions." *Bolivar Twp. Bd. of Fin. of Benton Cty. v. Hawkins*, 207 Ind. 171, 191 N.E. 158, 165 (1934).

On this point, the U.S. Supreme Court held in 1819 that "legislative interferences cannot be said to impair the contract" of a public entity like it would for a contract between private parties because public and private entities "differ in matters which concern their rights and privileges." *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 660–61 (1819). Under *Dartmouth*, "it has been apparent that public entities which are political subdivisions of states do not possess constitutional rights, such as the right to be free from state impairment of contractual obligations, in the same sense as private corporations or individuals." *City of Safety Harbor v. Birchfield*, 529 F.2d 1251, 1254 (5th Cir. 1976); *see also City of New Orleans v. New Orleans Waterworks Co.,* 142 U.S. 79, 91 (1891) (observing that "[t]he state, having authorized such contract, might revoke or modify it at its pleasure" without violating the Contracts Clause). Accordingly, "[w]hen a state is sued for allegedly impairing the contractual obligations of one of its political subdivisions even though it is not a signatory to the contract, the state will not be held liable for violating the Contracts Clause of the United States Constitution unless plaintiffs produce evidence that the state's self-interest rather than the general welfare of the public motivated the state's conduct." *Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 365 (2d Cir. 2006). Bloomington has provided no such evidence here.

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

The Court's single-subject doctrine gives "broad interpretation to the one-subject requirement, and thereby allow[s] legislative combinations of matters which, at first blush, might appear quiet diverse." *Dague v. Piper Aircraft Corp.,* 275 Ind. 520,

532, 418 N.E.2d 207, 214 (1981). Cases decided after the 1974 constitutional amendment eliminating the clear-title rule have taken the approach that the single-subject requirement is satisfied "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." *Loparex, LLC v. MPI Release Techs., LLC*, 964 N.E.2d 806, 813 (Ind. 2012). The single-subject requirement "is no longer tethered to the act's title." *Id*.

Bloomington misses this distinction, citing a 1963 opinion of this Court stating that the framers aimed to "prevent surprise or fraud in the Legislature by means of a provision or provisions in a bill of which the title gave no information to persons who might be subject to the legislation under consideration." *State ex rel. Ind. Real Estate Comm. v. Meier*, 244 Ind. 12, 15–16, 190 N.E.2d 191, 193 (Ind. 1963). Now, however, this Court is concerned only about the reasonableness of the connection between the subject of the act and other matters within. This is why "[a]pplying the Single Subject Clause through a constitutional lens reflecting a rule of reason has often been favorable to the legislature's enactments." *Loparex,* 964 N.E.2d at 813.

Bloomington asks this Court to overturn the reasonableness test that it has applied for more than 150 years, stating that previous decisions "have applied the wrong standard and are ripe for revisiting." Appellee's Br. 60. Bloomington cites Justice Dickson's concurring opinion in *A.B. v. State*, 949 N.E.2d 1204 (Ind. 2011), for the proposition that "[t]he proper question is not whether the legislature's decision was reasonable, it is whether an act passed by the legislature is confined to one subject and matters properly connected therewith." Appellee's Br. 58 (internal quotation

marks omitted). Yet Justice Dickson said that "the deferential standard of reasonableness applied by our Court since 1865 provides a familiar standard for courts to apply." *A.B. v. State,* 949 N.E.2d. at 1229. That test is "sufficient to prevent the gross abuses that appear to have prompted the original concerns underlying the Single Subject Clause." *Id.*

In any event, the *majority's* decision in *A.B. v. State* "conforms with the deferential standard of reasonableness that this Court has accorded the General Assembly in a long line of cases dating back 145 years." *Id.* at 1226. "Beginning in 1865 and continuing to this day, this Court has applied a reasonableness test when assessing the constitutionality of statutes under Art. IV, § 19." *Id.* at 1227. "This Court has also held that '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.' " *Id.* (quoting *Stith Petroleum Co. v. Ind. Dep't of Audit & Control*, 211 Ind. 400, 409, 5 N.E.2d 517, 521 (1937)).

This Court has a longstanding precedent of deferring judgment of single-subject matters to the legislature, which enforces this constitutional requirement on its own. Both houses of the Indiana General Assembly have rules requiring bill amendments to be germane. The House of Representative Rules provide, "[n]o motion or proposition on a subject not germane to that under consideration shall be admitted under color of an amendment." Rules of the House of Representatives (One Hundred Nineteenth General Assembly of Indiana), Rule 80. The Senate Rules state, "[n]o motion to amend, committee action, concurrence or conference committee action which

seeks under color of amendment to substitute or insert subject matter not germane to that of the bill or resolution under consideration shall be in order." Standing Rules and Orders of the Senate, Rule 53. And as this Court has long held, to maintain the separation of powers, "courts should not intermeddle with the internal functions of either the Executive or Legislative branches of Government." *State ex rel. Masariu v. Marion Super. Ct. No. 1*, 621 N.E.2d 1097, 1098 (Ind. 1993).

Again, 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. The state budget bill dealt not only with funding and state financial accounts, but also with matters affecting specific localities reasonably related to appropriations, disbursements, and state and local operations. Indiana General Assembly 2017 Session, "House Bill 1001 Digest," http://iga.in.gov/legislative/2017/bills/house/1001/#digest-heading. For example, Public Law 217-2017 allows localities to apply for grants for public transit funds, *id.* at 51, airport development, *id.* at 91, and continuing education for county law enforcement, *id.* at 106. It also specifies a maximum tax levy for both political subdivisions and public school corporations. *Id.* at 183.

Accordingly, there is a reasonable basis for grouping together these provisions within the State's Budget Bill because they share the same nature—namely, matters affecting specific localities reasonably related to local taxation, appropriations, disbursements, and state and local operations. The Annexation Law is in the same vein

and affects local taxation, appropriations, disbursements, and state and local operations of Bloomington.

Finally, Bloomington states that "[t]he single-subject clause was designed to eliminate the most common procedural mechanism of . . . special legislation" and that "the single-subject rule is designed precisely for situations like the logrolling that resulted in the passage of Section 161." Appellee's Br. 57–58. This situation, however, bears no semblance to logrolling, which this Court defined as a case when "members of the legislature [ ] vote for the local bills of others in return for comparable cooperation from them." *Kimsey,* 781 N.E.2d at 686. There is no evidence that members of the legislature voted for the Annexation Law in return for cooperation from other legislators, and Bloomington has made no such assertion.

Because there is, at a minimum, a reasonable basis to support grouping a prohibition on local government annexation that will impact local government finances with the biennial budget bill, the Annexation Law withstands single-subject scrutiny. *Loparex,* 964 N.E.2d at 813.

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 7,000 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 September 27, 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