

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

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

MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL

Respondents, the City of Bloomington, Indiana, *et al.* (collectively, “Bloomington” or “City”), by counsel, pursuant to Indiana Appellate Rule 14(B), respectfully request that the Court enter an order certifying for immediate appeal to the Indiana Court of Appeals its “Order on Motion to Stay” dated September 5, 2023 (“Order”), and in support of this Motion, state as follows:

1. Bloomington seeks to have this Court’s Order dated September 5, 2023, certified for interlocutory appeal. Ind. App. R. 14(B)(1)(b)(i).
2. The Order stayed this case until “the lawsuits involving the same parties¹ in this matter filed by the City of Bloomington against the Monroe County Auditor have been fully and finally decided[,]” and vacated the remonstrance trial in this case that was scheduled for November 13, 2023 through November 17, 2023.
3. Indiana Appellate Rule 14(B)(1) allows for this Court, in its discretion, to certify an interlocutory order to allow for an immediate appeal. A motion requesting an immediate

¹ Bloomington notes that the separate cases it filed against the Monroe County Auditor do not have the same parties as this case. Notably, Remonstrators are not parties to those cases.

appeal must contain a concise statement of the issues to be addressed in the interlocutory appeal and the reasons why an interlocutory appeal should be permitted. Ind. App. R. 14(B)(1)(b)(ii)-(iii).

4. Grounds for granting an interlocutory appeal include that (i) the “appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment” and that (ii) the “order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case.” Ind. App. R. 14(B)(1)(c)(i) & (ii). Both grounds apply here, and important issues warrant this Court certifying the Order for interlocutory appeal.

5. The issues to be addressed in the interlocutory appeal include the following:

A. The Order is contrary to the statutory requirement of proceeding expeditiously with annexation remonstrances. *See* Ind. Code § 36-4-3-12(a)(2) (directing that the trial court in a remonstrance “without delay, enter judgment on the question of the annexation according to the evidence that either party may introduce.”). The statutory scheme “expresses the desire and intent of the Legislature that proceedings embracing appeals from the adoption of annexation ordinances should be conducted expeditiously and without delay.” *Keene v. Michigan City*, 174 N.E.2d 48, 50 (Ind. 1961). When remonstrators continuously avoid proceeding to a trial on their own petition, “a municipality could be endlessly delayed by disgruntled property owners in annexation proceedings.” *In re Annexation Ordinance No. X01-74*, 383 N.E.2d 481, 484 (Ind. Ct. App. 1978). Moreover, a remonstrance is “the right to have a

day in court, it is not a right to obstruct annexation.” *Doan v. City of Fort Wayne*, 252 N.E.2d 415, 418 (Ind. 1969). Landowners also “have no vested interest in the maintenance of municipal boundaries at any particular location.” *Bradley v. City of New Castle*, 764 N.E.2d 212, 215 (Ind. 2002). Rather, “the act [of annexation] simply changes the property and its owner, in their civil relation to certain public authority.” *Id.* (quoting *Stilz v. City of Indianapolis*, 55 Ind. 515, 523 (1877)).

- B. The Order effectively requires a determination of the constitutionality of certain statutes in other cases when this case can be decided without reaching constitutional grounds. The Order is inconsistent with the “longstanding constitutional avoidance principle that weighs against deciding constitutional questions not absolutely necessary to a merits disposition.” *Indiana Land Trust Co. v. XL Investment Properties, LLC*, 155 N.E.3d 1177, 1182 (Ind. 2020) (quotations and citations omitted). The Order does the reverse in that it stays the resolution of the factual and legal disputes under the annexation statute in favor of resolving the constitutionality of the General Assembly’s retroactive voiding of remonstrance waiver agreements where the City has already performed its side of the bargain.
- C. If it is determined during the remonstrance trial that the constitutionality of the statutes needs to be decided, these issues can adequately be addressed in this case rather than the other cases. A final, non-appealable order in the other cases could be many years away. After all,

Bloomington's challenge to the General Assembly's illegal special legislation passed in response to the City's 2017 annexation efforts lasted from 2017 to the end of 2020. Judicial economy would be served by deciding any necessary constitutional questions as a part of the merits of the annexation remonstrance in this case, rather than indefinitely staying this case.

D. Bloomington reserves the right to address other issues and errors with the Order.

6. Resolving whether issuing a stay in this case is inconsistent with constitutional avoidance principles and contrary to the underlying purpose of annexation cases generally presents "substantial question[s] of law, the early determination of which will promote a more orderly disposition of the case" and Bloomington "will suffer great expense, damage or injury if the order is erroneous." Ind. App. R. 14(B)(1)(c). This is particularly true where, as here, the trial had been set to commence in less than three months.

7. There is no just reason for delaying appellate review of the Order where the delay will cause substantial expense, damage, and injury to Bloomington. Bloomington's separate cases against the Monroe County Auditor may take several years to be "fully and finally decided" through appeal. (Order, p. 2). During this time, Bloomington will suffer substantial expense, damage, and injury, as its annexation process, which started in 2017 and was already unconstitutionally halted once, is again delayed in contravention of the statutory expectation that the case would proceed "without delay." Ind. Code § 36-4-3-12(a)(2).

8. Accordingly, this Court should certify the Order for interlocutory appeal. The City further asks that the Court consider this motion without delay, as it did when on Monday, March 27, 2023, it granted the Petitioners' March 24, 2023 motion for interlocutory appeal.

WHEREFORE Respondents, the City of Bloomington, Indiana, *et al.*, by counsel, respectfully request this Court enter an Order (a) certifying for appeal its interlocutory order of September 5, 2023, and (b) providing for all other relief just and proper.

Respectfully submitted,

/s/ Stephen C. Unger

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing “Motion to Certify for Interlocutory Appeal” has been served upon the following counsel of record by electronic service through the Court’s system, this 7th day of September, 2023:

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