

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,* )  
 )  
 v. )  
 )  
CITY OF BLOOMINGTON, INDIANA, et al., )  
 )  
 *Respondents.* )

**BLOOMINGTON'S RESPONSE IN OPPOSITION TO  
REMONSTRATORS' MOTION TO STAY**

Respondents, the City of Bloomington, Indiana, *et al.* (“Bloomington”), by counsel, respectfully request that the Court deny Remonstrators' *Motion to Stay*, and in support thereof state as follows:

1. Now that their first attempt to avoid a trial on the merits has run its course, County Residents Against Annexation, Inc., *et al.* (“Remonstrators”) seek to indefinitely stay this case – and therefore indefinitely delay annexation by Bloomington – because another case may determine that ***Remonstrators should already be annexed.*** Remonstrators’ request is untimely, is inconsistent with the legislative directive for judicial review of annexation remonstrances, will cause significant harm to Bloomington, and should be summarily denied.<sup>1</sup>

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<sup>1</sup> Remonstrators also request a hearing on their stay request. Because Remonstrators’ Motion to Stay is so bare, and because Remonstrators’ strategy is so apparent, Bloomington submits that the requests for a stay and a hearing should be summarily denied.

2. Courts are directed to proceed 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) (emphasis added). 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)

3. Remonstrators seek to do in this case precisely what our appellate courts have cautioned against – endlessly delay being annexed by avoiding a trial on the merits of their own remonstrance.

4. Remonstrators first delayed this matter for a year by claiming that COVID-19 prevented people from signing remonstrance petitions, but then failed to identify anyone who was actually prevented from signing a remonstrance petition due to COVID-19. Remonstrators sought an interlocutory appeal, hoping that it would avoid proceeding to a remonstrance hearing. After the Court of Appeals summarily rejected their request Remonstrators have shifted their focus, but not their intent, and ask for stay because it is “within the realm of possibility” that

another court in another case “could” enter judgments that would affect this case. *Motion to Stay* ¶10.

5. First, the case that Remonstrators pin their delay hopes on – *City of Bloomington v. Smith*, Cause No. 53C06-2203-PL-608 – has been known to Remonstrators for over a year. The Complaint in *Smith* was filed on March 29, 2022 – only 13 days after Remonstrators filed this case – yet Remonstrators did not raise it here until *after* they had delayed setting a trial date for over a year by seeking a new petitioning period, *after* a case management order had been entered, and *after* the Court of Appeals denied their request to delay through an interlocutory appeal. Remonstrators’ reliance on *Smith* to now delay this case is therefore untimely.

6. Moreover, if the *Smith* case could inform this matter, it would mean only that Remonstrators should already be annexed, which is the antithesis of delaying annexation further here because of *Smith*.

7. *Smith* concerns the constitutionality of a statute invalidating existing annexation remonstrance waivers. A substantial number of landowners in the annexation areas here (areas 1A and 1B) contractually promised to agree to future annexation by Bloomington in exchange for sewer service, and then received the benefit of urbanization and development because of the service provided by Bloomington in reliance on that promise. While Bloomington’s annexations were pending, the legislature adopted a statute purporting to retroactively invalidate those waivers, which Bloomington is challenging in *Smith*. The designated evidence in *Smith* demonstrates that so many landowners promised to be annexed in exchange

for sewer service that the Remonstrators here would not have been able to challenge Bloomington's annexations. See *Smith* case's *Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment* at 6-7 (filed Feb. 27, 2023). In other words, *Smith* means that Remonstrators should already be annexed and this case never should have been filed. Remonstrators should not be permitted to delay being annexed further because another case could mean that they lose this case.

8. Moreover, the validity of the remonstrance waivers is itself a part of this case. See *Bloomington Respondents' Answer and Affirmative Defenses* at 12-14 (filed May 5, 2022) (raising remonstrance waiver issues). Consistent with its affirmative defenses, Bloomington intends to advance the waiver issue at the trial in this matter. This Court can decide this case on the evidence and arguments before it; the judge in the *Smith* case can do likewise. If there is disagreement between the two trial courts on the validity of the statutory impairment of the consent-to-annexation agreements, the appellate courts can sort it out. This is not a reason to enter a stay in this case.<sup>2</sup>

9. Further, Remonstrators' belated stay request, if successful, is highly prejudicial to Bloomington. Bloomington spent significant resources preparing plans for and moving forward with the annexation of the urbanized areas that relied on Bloomington for their development. The *Smith* case, including appeals, will likely take years to resolve. Delaying will cost Bloomington millions of dollars and will impede its ability to bring areas into Bloomington that should rightfully be within its

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<sup>2</sup> Regardless of the validity of the remonstrance waivers or outcome in *Smith*, Bloomington fully anticipates prevailing on the merits of the remonstrance in this case, which *Smith* would not impact and is yet another reason to not allow Remonstrators to delay further.

boundaries already. In essence, delay is itself a victory for Remonstrators, which is undoubtedly the very reason they continually seek to delay.

10. Conversely, there is no prejudice to Remonstrators in Bloomington having its day in court without further delay. 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)).

11. Remonstrators initiated this proceeding; they should be required to move it forward. That is, Remonstrators – and Bloomington – should receive exactly what Remonstrators should have expected when they filed their remonstrance – a day in court without further delay.

12. Finally, if a stay were granted in this matter, it would operate effectively as a preliminary injunction enjoining the City from proceeding with its annexation for years. Consistent with Trial Rule 65(C), if a stay were granted, Remonstrators should be required to post a bond covering all of Bloomington’s potential damages in the event it is determined that Remonstrators should have been annexed already and the City was wrongfully restrained from completing its annexations. *Accord Ace Bail Bonds v. Government Payment Serv., Inc.*, 892 N.E.2d 702, 706 (Ind. Ct. App. 2008) (purpose of bond is to protect and compensate a defendant for damages incurred as

result of a wrongfully issued injunction). The City's fiscal plans alone demonstrate that the City's damages will likely exceed \$6 million per year, not including attorneys' fees and costs. Accordingly, if a stay is granted, the Court should set a hearing to determine the amount of the bond that Remonstrators must post for the stay to take effect.

WHEREFORE, the City of Bloomington, Indiana, *et al.*, by counsel, respectfully requests that the Court deny Remonstrators' request to stay these proceedings, deny their request for a hearing, and provide for all other appropriate relief.

Respectfully submitted,

*/s/ Stephen C. Unger*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2023, that the foregoing document was filed and served upon the following person(s) electronically via the Indiana E-Filing System (IEFS):

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