

STATE OF INDIANA                    )  
  )  
COUNTY OF MONROE                )     IN THE MONROE CIRCUIT COURT  
  )  
  )     CAUSE NO. 53C06-2203-PL-509

COUNTY RESIDENTS  
AGAINST ANNEXATION, INC.,  
Et. Al.,  
      Petitioners,

vs.

THE COMMON COUNCIL of the City of Bloomington,  
Monroe County, Indiana,  
CITY OF BLOOMINGTON, Monroe County, Indiana,  
JOHN HAMILTON in his official capacity as  
Mayor of Bloomington, Monroe County, Indiana, and  
CATHERINE SMITH in her official capacity as Auditor  
of Monroe County, Indiana,  
      Respondents.

**OBJECTION TO  
MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL**

Come now the Petitioners, by counsel, William J. Beggs and Ryan M. Heeb, and for their Objection to Motion to Certify Order for Interlocutory Appeal state as follows:

1.       On September 7, 2023, the City of Bloomington, (the “City”) filed its Motion to Certify Order for Interlocutory Appeal (the “Motion”), requesting that the Court certify its September 5, 2023 Order (the “Order”) staying this case pending the resolution of the other cases in which the City has also brought a constitutional challenge.

2.       “Certification of an order for discretionary interlocutory appeal is a ‘matter of grace’ with the trial court.... The decision of whether an order will be certified for interlocutory appeal is a matter within the sound discretion of the trial court.” *Shelby v. State*, 986 N.E.2d 345, 357–58 (Ind. Ct. App. 2013)(Citations omitted).

3. The City’s Motion should be denied because the City lacks good grounds to support its request for certification of the Order.

4. Trial courts are trusted “to exercise sound discretion in myriad matters, including whether to grant or deny a party's motion for stay.” *Hardiman v. Cozmanoff*, 4 N.E.3d 1148, 1151 (Ind. 2014).

5. In this case, the Court had very good reasons to stay the case: avoiding inconsistent rulings on the same issue, specifically the constitutionality of Indiana Code § 36-4-3-11.7 (the “2019 Law”), and avoiding a waste of the parties’ (and the Court’s) resources by proceeding to trial when the Court may have subject matter jurisdiction over this case.

6. As of the date of this pleading, the City is challenging the constitutionality of the 2019 Law in the cases it has brought against the Monroe County Auditor (53C06-2203-PL-000610) (the “Smith Cases”) as well as in this case. *See City’s Answer, Affirmative Defenses 8 and 9.*

7. As it currently stands, the City, by challenging the constitutionality of the 2019 Law is challenging the ability of this Court to rule in this case. In other words, the challenge to the constitutionality of the 2019 Law is a challenge to the subject matter jurisdiction of this Court.

8. The City’s constitutional challenge in the Smith Case is anticipated to be heard on or before December 10, 2023 according to the joint scheduling order. Thus, it only makes sense for the present case to be stayed when the constitutionality of the 2019 law will be decided within a short time.

9. By staying this case, the Court has avoided the risk of conflicting rulings on the constitutionality of the 2019 Law and unnecessary expenses for the parties to this case.

10. The City incorrectly states that the Order “is contrary to the statutory requirement of proceeding expeditiously with annexation remonstrates.” The City only cites part of Indiana Code § 36-4-3-12(a)(2).

11. Indiana Code § 36-4-3-12(a)(2) addresses the requirement of the Court to enter its order expeditiously *after* a hearing on the remonstrance. It does not require the Court to expeditiously set a hearing, particularly where one of the parties is simultaneously pursuing litigation that would, if successful, strip this Court of subject matter jurisdiction.

12. Additionally, nothing in Indiana Code § 36-4-3-11 requires a hearing to be set expeditiously on the remonstrance.

13. During the September 1, 2023 hearing, the Court correctly pointed out the prejudice to the Petitioners and others who attended the hearing—and nearly filled all of the seats in the courtroom—if they are required to try this case for the expected five (5) days, then learn the trial was moot due to a lack of subject matter jurisdiction over the case.

14. The interlocutory appeal sought by the City will result in unnecessary and substantial expense to both parties.

15. During the September 1 hearing on the Motion to Stay, counsel for the City argued that the current Mayor’s term is ending in December 2023 and for that reason the Motion to Stay should be denied.

16. The politics of annexation should not prevail over well-established legal principles, common sense, nor efficient use of the time and resources of the parties and the Court. The Order was a proper use of this Court’s discretion where, as here, the City is pursuing the same issue in parallel lawsuits with the apparent goal of selecting which outcome it likes best (on the question

of constitutionality of the 2019 Law). While that strategy might suit the City's desires, it would be unfair to the Petitioners.

WHEREFORE, the Petitioners, by counsel, respectfully request that the Court deny the City's Motion for Interlocutory Appeal and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ William J. Beggs  
William J. Beggs, #16644-49  
Ryan M. Heeb, #34626-53  
BUNGER & ROBERTSON

**CERTIFICATE OF SERVICE**

I certify that on September 22, 2023, I electronically filed the foregoing document using the Indiana E-filing System (IEFS) and that the foregoing document was served upon all counsel of record via the same.

/s/ William J. Beggs  
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