

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

COUNTY RESIDENTS AGAINST ANNEXATION, INC.,
an Indiana not for profit corporation,
Representative of Those in the Territories Sought to be
Annexed; DON CREEK, HARRY FERRIS,
WILLIAM MANWARING, DAN DOYLE, CATHERINE
DENSFORD, SCOTT S. LOMAN, ETHEL ANN SATLER,
MARILYN J. DANIELSON, DEAN E. HOKE, BERT F.
PHILLIPS, SUNNY SLATER, HOLLY HILL, DEBORAH
REED for REED QUARRIES, INC., THOMAS W. McGHIE,
RICKY FERGUSON, THOMAS E. OSBORN, JIMMIE JOHNSON,
RICHARD PEACH, KAREN LAUCELLA, BARBARA
LEININGER, CINDI LIVINGSTON, RHONDA GRAY,
ARLLYS PAPKE, JOANNA HAHN; and OTHER TERRITORY
1A AND 1B OWNERS OF LAND,
Remonstrators/Appellants/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.

REPLY IN SUPPORT OF MOTION TO STAY

Come now the Petitioners, by counsel, William J. Beggs, and for their Reply in Support of
Motion to Stay, states as follows:

1. The Court should grant the Petitioners' Motion to Stay for three (3) primary reasons.
2. First, it is necessary that the threshold jurisdictional issue of the number of valid signed remonstrances be decided. Because the City of Bloomington challenged, in seven separate

lawsuits, the constitutionality of a law that will directly affect this Court’s jurisdiction in the present case, this case should be stayed pending the outcome of the City’s separate lawsuits.

3. In case this Court is not aware, the following are all of the pending lawsuits related to the City of Bloomington’s attempted annexation:

Cause Number	Petitioner	Summary
53C06-2203-PL-000509 CRAA v. City of Bloomington	County Residents Against Annexation et. al.	Challenge to the proposed annexation of Areas 1A and 1B
53C06-2203-PL-000608 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge of Indiana Code § 36-4-3-11.7 and 13-18-15-2 (the “2019 Law”) and request to invalidate remonstrance petitions for Area 1A
53C06-2203-PL-000609 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 1B
53C06-2203-PL-000610 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 5
53C06-2203-PL-000611 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 4
53C06-2203-PL-000614 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 3
53C06-2203-PL-000615 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 1C
53C06-2203-PL-000616 City of Bloomington v. Catherine Smith	City of Bloomington	City’s constitutional challenge the 2019 Law and request to invalidate remonstrance petitions for Area 2

4. Attached hereto as **Exhibit A** is the Complaint the City has filed in Cause No. 53C06-2203-PL-000608. (Area 1A).

5. Attached hereto as **Exhibit B** is the Complaint the City has filed in Cause No. 53C06-2203-PL-000609. (Area 1B).

6. In the City’s lawsuits against Ms. Smith, the City has challenged the validity of what it calls the 2019 Law which, according to the City’s complaints, “retroactively void annexation remonstrance waivers that formed key terms of sewer extension contracts, if the contract was more than 15 years old.” *See Exhibit A*, ¶ 32.

7. The City summarizes its request for relief in the *Smith* cases in paragraphs 50 and 51 of the Complaints it filed in Cause Nos. 53C06-2203-PL-000609 and 53C06-2203-PL-000608:

50. If the 2019 law is unconstitutional, Areas 1A, 1B, 1C, 2, and 3 (which represent 96% of the total acreage and 90% of the population designated for annexation) automatically

11

become part of Bloomington, while the annexation of Areas 4 and 5 may be appealed to a judge.

51. If the 2019 law is valid, only the annexation of Areas 1A and 1B may be appealed to a judge, while the annexation of all other areas fails outright. By voiding 80% of

Bloomington’s waivers, the General Assembly changed the outcome in every annexation

8. Additionally, in both Cause Nos. 53C06-2203-PL-000609 and 53C06-2203-PL-000608 the City requested a recount and recertification of the remonstrance petitions in Areas 1A and 1B:

74. Area 1B remonstrance petitions contain multiple defects that render them invalid. These include, but are not limited to, improperly notarized petitions, untimely delivered and processed petitions, and petitions executed by an ineligible signatory.

75. The process of reviewing individual petitions for potential defects is ongoing. The foregoing list is illustrative, not exhaustive, and Bloomington reserves the right to identify additional defects present in petitions as the long process of reviewing petitions continues.

76. Auditor Smith should be directed to disregard defective petitions and to alter her certified remonstrance count accordingly.

See Exhibit B ¶¶ 74-76. The City made an identical request with respect to Area 1A. *See also Exhibit A ¶¶ 74-76.*

9. The number of valid signed remonstrances is a threshold jurisdictional issue. *See In re Petition to Annex Approximately 7,806 Acres of Real Estate into City of Jeffersonville*, 891 N.E.2d 1157, 1161 (Ind. Ct. App. 2008) (stating “‘Ind. Code § 36-4-3-11(a) provides the specific averments necessary for a remonstrance to be valid and confer jurisdiction on the court’ and that, ‘[s]hould the remonstrance be found insufficient, the trial court is without subject matter jurisdiction over the action and cannot proceed further.’”¹)

10. Indiana Code § 36-4-3-11.3(c) provides that annexation may be appealed to the court if a written remonstrance is signed by “At least fifty-one percent (51%) but less than sixty-

¹ The *In re Petition to Annex* case was decided in 2008. This was before Indiana Code § 36-4-3-11 was amended and before Indiana Code § 36-4-3-11.1, which is at issue in this case, was adopted by the Indiana General Assembly.

five percent (65%) of the owners of land,” or “The owners of at least sixty percent (60%) but less than eighty percent (80%) in assessed valuation of land in the annexed territory.”

11. Because the City seeks to invalidate the 2019 Law and obtain a recount of the remonstrance petitions in the *Smith* case, the City is indirectly challenging the jurisdiction of this Court in this case.

12. If the outcome of the present case is a judgment in favor of Petitioners, and then the Court in *Smith* determines that the subject statutes are unconstitutional, the City will undoubtedly move to set aside the present case’s judgment. The City’s argument will be that this Court never had jurisdiction in the first place because the necessary 51% of valid remonstrance petitions in Areas 1A and 1B were not received.

13. In effect, and indirectly, by filing its other lawsuits the City has challenged this Court’s jurisdiction over the present case. Thus, it is necessary for the City’s challenge to the 2019 Law in the *Smith* cases and the City’s request for a recount of the signed remonstrance petitions in Areas 1A and 1B to be resolved so this Court can determine whether it has jurisdiction to hear this case.

14. The second reason the Motion to Stay should be granted is to avoid the possibility of inconsistent judgments.

15. The City states in its *Response in Opposition to Remonstrators’ Motion to Stay* that “the validity of the remonstrance waivers is itself a part of this case.” *Response* ¶ 8. The City states, “Consistent with its affirmative defenses, Bloomington intends to advance the waiver issue at trial of this matter.” *Response* ¶ 8. In affirmative defenses 8 and 9 in its *Answer* the City asserted that the Petitioners lack standing to challenge the proposed annexation because, in part, the 2019 Law is unconstitutional. This is the same challenge the City has brought in the *Smith* case.

16. The City’s strategy appears to be to attempt to challenge the constitutionality of the 2019 Law in the *Smith* cases and in this case.

17. Separate courts. Separate lawsuits. Separate judges. Same issue. This is a recipe for inconsistent judgments on the same issue.

18. The City acknowledges there is a possibility of inconsistent judgments between the *Smith* case and the present case: “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.” *Response* ¶ 8.

19. Attempting to try the same issue in different trial courts with the solution of appellate courts “sorting out” possibly inconsistent judgments later is hardly prudent when there is a straightforward and immediate solution well within the distraction and power of this Court: staying the present case until the *Smith* cases are resolved.

20. The third reason this matter should be stayed is for efficiency.

21. As stated above, there are currently two courts presiding over practically identical attempts by the City to challenge the constitutionality of the 2019 Law and both are pending at the same time.

22. Moving forward with what will be a five plus day trial involving over 60 witnesses (based on the City’s preliminary witness list) would be a waste of time, money, and judicial resources if this Court has no jurisdiction in the first place.

23. It would be unfair to the Petitioners to be subjected to the City’s strategy of pursuing the result it wants in separate courts and then having the appellate courts “sort out” possibly inconsistent judgments.

24. It bears repeating, if the City is successful in the *Smith* case, it will likely argue that this Court never had jurisdiction over this case in the first place and will move to set aside any judgment in favor of Petitioners after they have been required to expend significant resources in preparing for and trying this case.

25. Not only will the Petitioners be forced to expend their resources in a case in which this Court's jurisdiction may be challenged, but so will the City (and by extension, its taxpayers) and this Court.

26. Entering an order staying the present case would be the more efficient path for this Court to take at this time.

27. The City claims potential prejudice, yet it could have avoided this situation if it had challenged the 2019 Law in 2019, when the law went into effect. Instead, the City waited until 2022 to challenge the 2019 Law when it filed the *Smith* lawsuits. It could have challenged the 2019 Law four years ago, while it claims the present annexation proceeding was underway. It elected not to do so. Instead, it moved ahead with annexation and, when it was not satisfied with the results, brought the *Smith* lawsuits. Any delay associated with the constitutional challenge of the 2019 Law is of the City's own making.

WHEREFORE, the Petitioners, by counsel, respectfully request that the Court stay this matter pending the final resolution of Cause Nos. 53C06-2203-PL-000609 and 53C06-2203-PL-000608, that the Court set the Petitioners' Motion to Stay for a hearing, and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ William J. Beggs

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CERTIFICATE OF SERVICE

I certify that on June 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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