

STATE OF INDIANA  
COUNTY OF MONROE  
CITY OF BLOOMINGTON,

Plaintiff,

vs.

ERIC HOLCOMB,  
in his official capacity as  
Governor of the State of Indiana

Defendant.

IN THE MONROE CIRCUIT COURT 6

CAUSE NO. 53C06-1705-PL-1138

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff, City of Bloomington, by counsel, hereby submits this Memorandum in Support of Motion for Summary Judgment on its complaint against Defendant Eric Holcomb.

**I. INTRODUCTION**

Section 161 of Public Law 217-2017 is unconstitutional under the Indiana Constitution because it was impermissible special legislation that targeted only the City of Bloomington's in-process annexation, and because it violated the Constitution's Single Subject Clause. Municipal annexation is a statutory process utilized by cities and towns throughout Indiana to incorporate urbanized and urbanizing areas into existing, adjacent municipal corporations. In February of 2017, the City of Bloomington initiated its first multi-parcel annexation proposal since 2004. On April 21, 2017, Section 161, a half-page provision on page 178 was added to House Bill 1001, the State's biennial budget. That same day, just hours

after this section was added, the Indiana General Assembly passed House Bill 1001, which became Public Law 217-2017. Section 161 voided Bloomington's, and only Bloomington's, annexation and prohibited future annexation of the same territory for five years. This action violated Article IV, § 23 of the Indiana Constitution, which prohibits special legislation, and Article IV, § 19 of the Indiana Constitution, which requires all laws to "be confined to one subject and matters properly connected therewith." Because there is no dispute of material fact between the parties and because Bloomington is entitled to judgment as a matter of law, Bloomington requests that this Court grant its Motion for Summary Judgment.

### **Designated Evidence**

Exhibit A: Affidavit of City of Bloomington Corporation Counsel, Philippa Guthrie.

Exhibit A-1: City of Bloomington Common Council Resolution 17-16.

Exhibit A-2: City of Bloomington Common Council Resolution 17-17.

Exhibit A-3: City of Bloomington Common Council Resolution 17-18.

Exhibit A-4: City of Bloomington Common Council Resolution 17-19.

Exhibit A-5: City of Bloomington Common Council Resolution 17-20.

Exhibit A-6: City of Bloomington Common Council Resolution 17-21.

Exhibit A-7: City of Bloomington Common Council Resolution 17-22.

Exhibit A-8: City of Bloomington Common Council Resolution 17-24.

Exhibit A-9: City of Bloomington Common Council Memorandum of February 3, 2017 work session.

Exhibit A-10: City of Bloomington Common Council Memorandum from February 8, 2017 meeting.

Exhibit A-11: City of Bloomington Common Council Minutes from February 15, 2017 meeting.

Exhibit A-12: City of Bloomington Common Council Resolution 17-06.

Exhibit A-13: City of Bloomington Common Council Resolution 17-07.

Exhibit A-14: City of Bloomington Common Council Resolution 17-08.

Exhibit A-15: City of Bloomington Common Council Resolution 17-09.

Exhibit A-16: City of Bloomington Common Council Resolution 17-10.

Exhibit A-17: City of Bloomington Common Council Resolution 17-11.

Exhibit A-18: City of Bloomington Common Council Resolution 17-12.

Exhibit A-19: Advertisement proof for notice of public outreach meetings published in the Bloomington Herald-Times newspaper on February 17, 2017.

Exhibit A-20: A copy of the notice of public outreach meetings letter mailed to property owners in the proposed annexation areas.

Exhibit A-21: City of Bloomington Common Council Minutes from March 29, 2017.

Exhibit A-22: City of Bloomington Common Council proposed resolution 17-23 (this resolution failed).

Exhibit A-23: City of Bloomington Common Council proposed ordinance 17-09.

Exhibit A-24: City of Bloomington Common Council proposed ordinance 17-10.

Exhibit A-25: City of Bloomington Common Council proposed ordinance 17-11.

Exhibit A-26: City of Bloomington Common Council proposed ordinance 17-12.

Exhibit A-27: City of Bloomington Common Council proposed ordinance 17-13.

Exhibit A-28: City of Bloomington Common Council proposed ordinance 17-14.

Exhibit A-29: City of Bloomington Common Council proposed ordinance 17-15.

Exhibit A-30: City of Bloomington Common Council proposed ordinance 17-17.

Exhibit A-31: A copy of the notice of public hearing published in the Bloomington Herald-Times newspaper on March 30, 2017.

Exhibit A-32: A copy of the notice of public hearing letter mailed to property owners in the proposed annexation areas.

Exhibit B: Affidavit of City of Bloomington Director of Communications, Mary Catherine Carmichael.

Exhibit B-1: February 3, 2017, press release announcing the annexation.

Exhibit B-2: Copy of the Frequently Asked Questions posted on the City's annexation website.

Exhibit C: Affidavit of City of Bloomington Director of Information and Technology Services, Rick Dietz.

Exhibit C-1: Map of the proposed annexation areas as of February 3, 2017.

Exhibit C-2: Map of the proposed annexation areas updated after March 29, 2017, (with area 1 subdivided and area 6 removed).

Exhibit D: Affidavit of City of Bloomington Controller, Jeff Underwood.

Exhibit D-1: Owner list – proposed annexation area 1.

Exhibit D-2: Owner list – proposed annexation area 2.

Exhibit D-3: Owner list – proposed annexation area 3.

Exhibit D-4: Owner list – proposed annexation area 4.

Exhibit D-5: Owner list – proposed annexation area 5.

Exhibit D-6: Owner list – proposed annexation area 6.

Exhibit D-7: Owner list – proposed annexation area 7.

Exhibit D-8: Fiscal Plan version 1.0.

Exhibit D-9: Fiscal Plan version 2.0

Exhibit D-10: Parcel-by-Parcel Tax Impact Summary for Area 1A

Exhibit D-11: Parcel-by-Parcel Tax Impact Summary for Area 1B

Exhibit D-12: Parcel-by-Parcel Tax Impact Summary for Area 1C

Exhibit D-13: Parcel-by-Parcel Tax Impact Summary for Area 2

Exhibit D-14: Parcel-by-Parcel Tax Impact Summary for Area 3

Exhibit D-15: Parcel-by-Parcel Tax Impact Summary for Area 4

Exhibit D-16: Parcel-by-Parcel Tax Impact Summary for Area 5

Exhibit D-17: Parcel-by-Parcel Tax Impact Summary for Area 6

Exhibit D-18: Parcel-by-Parcel Tax Impact Summary for Area 7

Exhibit D-19: Fiscal Plan version 3.0.

Exhibit D-20: Ledger of itemized expenses related to the City of Bloomington's 2017 annexation.

Exhibit E: Senate Enrolled Act 330 (2015).

Exhibit F: Defendant Eric Holcomb's Answer.

Exhibit G: House Enrolled Act 1001, the State of Indiana's 2017 Biennial Budget.

Exhibit G-1: Public Law 217-2017 (House Enrolled Act 1001), the State of Indiana's 2017 Biennial Budget.

Exhibit H: Record of Legislative Action related to 2017 House Bill 1001 (codified as Public Law 217-2017), the State of Indiana's Biennial Budget.

Exhibit I: House Conference Committee Report for 2017 House Bill 1001.

Exhibit J: Senate Conference Committee Report for 2017 House Bill 1001.

Exhibit K: House Roll Call for 2017 House Bill 1001.

Exhibit L: Archived footage from the House Chamber from Friday, April 21, 2017, Part 4, beginning at 1:28:44. (available at <http://iga.in.gov/information/archives/2017/video/house/>) (viewed on September 14, 2018).

Exhibit M: Senate Roll Call for 2017 House Bill 1001.

Exhibit N: May 15, 2017 Legislative Services Agency Fiscal Impact Statement for 2017 House Bill 1001.

Exhibit O: Court of Appeals order declining to accept jurisdiction over the interlocutory appeal.

Exhibit P: Senate Bill 381, (2017).

Exhibit Q: Proposed Amendment #43 to House Bill 1450 (2017).

Exhibit R: Proposed Amendment #2 to Senate Bill 472 (2017).

## **II. LEGAL, FACTUAL, AND PROCEDURAL BACKGROUND**

### **A. Legal Background - Municipal Annexation**

Municipal annexation is a detailed legal process for bringing unincorporated properties into an adjacent city or town. The legal procedure and standards for performing annexation are set forth at Indiana Code 36-4-3, *et. seq.* In 2015, the General Assembly enacted its most recent significant overhaul to the legal process governing annexation through Senate Enrolled Act 330 (Ex. E). Broadly speaking, following the enactment of Senate Enrolled Act 330 (“SEA 330”), there are now five phases involved in municipal annexation: (1) public outreach program, (2) introduction of an annexation ordinance and adoption of a fiscal plan, (3) public

hearing, (4) adoption of an annexation ordinance, and (5) remonstrance by annexed property owners (Ex. E).<sup>1</sup>

### 1. *Public Outreach Program*

SEA 330 created a requirement that municipalities considering annexation “conduct an outreach program to inform citizens regarding the proposed annexation.” Ind. Code § 36-4-3-1.7 (Supp. 2018). The municipality must hold at least six outreach meetings within the six months preceding the introduction of an annexation ordinance. Ind. Code § 36-4-3-1.7(b). At the outreach meetings, the municipality must provide:

- (1) Maps showing the proposed boundaries of the annexation territory.
- (2) Proposed plans for extension of capital and noncapital services in the annexation territory, including proposed dates of extension.
- (3) Expected fiscal impact on taxpayers in the annexation territory, including any increase in taxes and fees.

*Id.* Within these bounds, municipalities have latitude to conduct the outreach meetings as they see fit.

Thirty days prior to the outreach meetings, the municipality must send notice of the meetings<sup>2</sup> to every landowner of a parcel included in the proposed annexation area by certified mail and publish notice of the meetings in the local newspaper.

Ind. Code § 36-4-3-1.7(c). The statute sets forth the following requirements:

- (1) The notice must inform the landowner that the municipality is proposing to annex territory that includes the landowner's property.

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<sup>1</sup> This Memorandum describes the process of involuntary annexation. The procedures for voluntary annexation are somewhat different. However, as voluntary annexation is not at issue in this litigation, it is not discussed in this Memorandum.

<sup>2</sup> This is the first of three notices that are required, by law, to be sent to property owners.

(2) The municipality is conducting an outreach program for the purpose of providing information to landowners and the public regarding the proposed annexation.

(3) The date, time, and location of the meetings to be conducted under the outreach program.

*Id.*

*2. Introduction of an Annexation Ordinance and Adoption of a Fiscal Plan*

Within six months of the outreach meetings, a city or town council must introduce an annexation ordinance during a public meeting and must adopt, by resolution, a written fiscal plan. Ind. Code § 36-4-3-13(d). Prior to the enactment of SEA 330, the adopted fiscal plan had to include, at a minimum, (1) cost estimates of the planned municipal services to be furnished to the annexation area, (2) the method(s) for financing the planned services, (3) a plan for the organization and extension of services, (4) that planned non-capital services equivalent to the services within the municipal boundary will be provided to the annexation area within one year of the effective date of the annexation ordinance, and (5) that planned capital services will be provided to the annexation area within three years of the effective date of the annexation ordinances. *Id.*

SEA 330 also created four new requirements for fiscal plans adopted after June 30, 2015: (1) the estimated effect of the proposed annexation on taxpayers in each of the political subdivisions to which the proposed annexation applies, including the expected tax rates, tax levies, expenditure levels, service levels, and annual debt service payments in those political subdivisions for four years after the effective date of the annexation, (2) the estimated effect the proposed annexation

will have on municipal finances, specifically how municipal tax revenues will be affected by the annexation for four years after the effective date of the annexation, (3) any estimated effects on political subdivisions in the county that are not part of the annexation and on taxpayers located in those political subdivisions for four years after the effective date of the annexation, and (4) a list of all parcels of property in the annexation territory and the following information regarding each parcel: (a) the name of the owner of the parcel, (b) the parcel identification number, (c) the most recent assessed value of the parcel, and (d) the existence of a known waiver of the right to remonstrate on the parcel (Ex E).

### *3. Public Hearing*

Following the introduction of an annexation ordinance and the adoption of a fiscal plan, a city or town council must hold a public hearing at which all interested parties are afforded an opportunity to testify regarding the proposed annexation. Ind. Code § 36-4-3-2.1(b). At least 60 days prior to the public hearing, a municipality must send notice of the public hearing to each property owner in the annexation area via certified mail. Ind. Code § 36-4-3-2.2(b). At a minimum, this second notice packet must include (1) a legal description of the property to be annexed, (2) the date, time, location, and subject of the hearing, (3) a map showing the current and the proposed corporate boundaries, (4) current zoning classifications and any proposed zoning changes, (5) a detailed summary of the fiscal plan, (6) the location where the public may inspect and obtain a copy of the fiscal plan, (7) a statement that the municipality will provide a copy of the fiscal

plan immediately upon request, and (8) the name and telephone number of a representative of the municipality who may be contacted for further information regarding the annexation. Ind. Code § 36-4-3-2.2(d).

#### *4. Adoption of an Annexation Ordinance*

Not earlier than 30 days and not later than 60 days after the public hearing, a city or town council may adopt an annexation ordinance. Ind. Code § 36-4-3-2.1(c). Notice of the adoption must be published. Ind. Code §§ 36-4-3-7(a), 36-4-3-11.1(c)(1).

#### *5. Remonstrance*

During the 90 days following publication of notice of the adoption, the municipality must provide the following: (1) at least one location in the offices of the municipality where a person may come to sign a remonstrance petition during regular business hours and (2) an additional location where a person may sign a remonstrance petition to be open at least five evenings or weekends (excluding legal holidays) for four hours at a time, in a public building, and within the boundaries of the municipality or annexation area. Ind. Code § 36-4-3-11.1(e). These locations must be staffed by a municipal employee who is required to witness the signing of the petition and must thereafter swear that he/she witnessed each signature on the petition. Ind. Code § 36-4-3-11.1(f).

On the same date the notice of adoption is published, a municipality must send a third notice packet to all property owners within the annexation area, again by certified mail. Ind. Code § 36-4-3-11.1(c). The packet must state (1) that any owners of real property within the annexation area who want to remonstrate must

complete and file a remonstrance petition, (2) that remonstrance petitions must be filed not later than 90 days after the date that notice of the adoption of the annexation ordinance was published, (3) the last date that remonstrance petitions must be filed with the county auditor to be valid, and (4) the times, dates, and locations provided by the municipality where a remonstrance petition may be signed. Ind. Code § 36-4-3-11.1(d).

If more than 65% of parcel owners remonstrate, the annexation fails without further inquiry. Ind. Code § 36-4-3-11.3(b)(1). Similarly, if the owners of more than 80% of the assessed value in the annexation area remonstrate, the annexation fails without further inquiry. Ind. Code § 36-4-3-11.3(b)(2). If both (1) fewer than 51% of parcel owners remonstrate and (2) owners of less than 60% of the assessed value in the annexation area remonstrate, then the annexation is approved without further inquiry. Ind. Code § 36-4-3-11.3.<sup>3</sup>

If between 51% and 65% of parcel owners remonstrate or if owners of between 60% and 80% of the assessed value in the annexation area remonstrate, then the annexation may be appealed to court. Ind. Code § 36-4-3-11.3(c). If appealed, a court must conduct a remonstrance hearing. Ind. Code § 36-4-3-12. At the hearing, the court is required to order the annexation to take effect if one-eighth of the aggregate external boundary of the annexation territory is contiguous with

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<sup>3</sup> Owners of tax-exempt parcels may not sign a remonstrance petition, and such parcels are not included in the overall count of parcels within an annexation territory for purposes of computing remonstrance percentages. IC 36-4-3-11.3. Owners of properties to which municipal sewer service was extended in exchange for a signed waiver of remonstrance under Indiana Code § 36-9-22-2(c) may not sign a remonstrance petition, but such parcels are included in the overall count of parcels within an annexation territory for purposes of computing remonstrance percentages. See, e.g., *City of Kokomo ex rel. Goodnight v. Pogue*, 940 N.E.2d 833 (Ind. Ct. App. 2010).

the existing corporate boundary and one of the following elements is met: (1) the resident population density of the annexation area is at least three-persons per acre, (2) 60% of the territory is subdivided, or (3) the territory is zoned for commercial, business, or industrial uses. Ind. Code §§ 36-4-3-1.5(a), -13(b).

Alternatively, the court must order the annexation to take effect if one-fourth of the aggregate external boundary of the annexation territory is contiguous with the existing corporate boundary and the annexation area is needed and can be used by the municipality for its development in the reasonably near future. Ind. Code § 36-4-3-13(c).

Simultaneously, the court must order the annexation void if it finds that (1) the annexation will have a significant financial impact on the residents or owners of land and (2) the annexation is not in the best interests of the owners of land in the territory proposed to be annexed. Ind. Code §36-4-3-13(e)(2). In addition, of course, if a municipality has not carefully adhered to the detailed procedural requirements outlined by the annexation statute, the annexation may be defeated.

### **B. Statement of Undisputed Material Facts**

The following designated facts constitute all of the facts necessary for this Court to order summary judgment in favor of Plaintiff on both Count I and Count II as stated in Plaintiff's Complaint.

1. The City of Bloomington is a duly incorporated second-class city. (Answer at ¶ 6)

2. At a March 29, 2017, special session, the City of Bloomington City Council (hereafter “City Council”) introduced eight annexation ordinances for consideration and adopted eight fiscal plans by resolution. (Ex. A-1 – A-8, A-21).
3. On April 27, 2017, Defendant Governor Eric Holcomb signed House Enrolled Act 1001 into law as Public Law 217-2017 (Ex. G-1; Answer at ¶ 69).
4. Public Law 217-2017 established the State of Indiana’s Biennial Budget (Ex. G).
5. Section 161 of Public Law 217-2017 voided Bloomington’s annexation ordinances. (Ex. G at 185; Ex. G-1 at 2542).

### **C. Additional Procedural and Factual Background**

The following additional designated facts provide additional context to support this Court’s entry of summary judgment in favor of Plaintiff on both Count I and Count II as stated in Plaintiff’s Complaint.

#### *1. Initiating Resolutions Publicly Announcing Annexation*

On February 3, 2017, Bloomington Mayor John Hamilton issued a press release and held a press conference announcing that he was asking the Bloomington City Council to initiate the process of considering annexation of eight distinct areas (Ex. B, B-1, C-1). Mayor Hamilton’s announcement initiated the City’s first multi-parcel annexation since 2004. (Ex. A). Shortly after the announcement, on the same date, the City Council held a public work session during which Mayor Hamilton and

the City Council discussed initiating resolutions for the consideration of the proposed annexation (Ex. A-9).

In conjunction with the press conference and the work session, Bloomington also launched a website—<https://bloomington.in.gov/annex>—which included, among other items, detailed maps of the eight proposed annexation areas, a list of all property owners in the annexation areas, a preliminary 321-page fiscal plan, a list of frequently asked questions about annexation, and an electronic comment form for citizens to offer input on Bloomington’s annexation proposal. (Ex. C, C-1, D-1 – D-8).

Five days later, during a public meeting, the City Council discussed the proposed annexation with Bloomington officials and members of the public, but took no final action on the initiating resolutions. (Ex. A-10). A week later, on February 15, 2017, the City Council again met to discuss the annexation proposal and the initiating resolutions. (Ex. A-11). The City Council approved initiating resolutions for seven annexation areas (Ex. A-11, A-12 – A-18).

## *2. Public Outreach Program*

On February 17, 2017, Bloomington published notice of six outreach meetings in the Bloomington Herald-Times newspaper (Ex. A-19). Simultaneously, Bloomington mailed notice of the outreach meetings to every property owner in the annexation areas, via certified mail, return receipt requested (Ex. A-20, D-1 – D-7). The notice announced six outreach meetings from March 20 through March 25, 2017, with half of the meetings occurring from 11:00 a.m. to 1:00 p.m. and half

occurring from 6:00 p.m. to 8:00 p.m. (Ex. A-19 – A-20). One meeting was set on a Saturday afternoon, March 25 (Ex. A-19 – A-20).

Prior to conducting the outreach program, Bloomington updated and expanded its fiscal plan and prepared a parcel-by-parcel tax analysis showing, in detail, the property tax impact on every single parcel in each of the annexation areas (Ex. D-9, D-10 – D-18). These documents were uploaded to the City's annexation website for public consumption (Ex. C).

Although not required by statute, Bloomington opted to utilize an open-house format during its public outreach sessions, setting up seven department-specific work stations at which staff could listen to and respond to citizens' concerns (Ex. B). During the six days of outreach sessions, more than 30 city officials from various departments, including the Mayor's Office, the Legal Department, the Controller's Office, the Police Department, the Fire Department, the Utilities Department, the Transit Corporation, the Public Works Department, the Information and Technology Services Department, the Parks Department, and the Planning Department were available to interact with citizens (Ex. B). At the open house outreach sessions, Bloomington set up a fiscal impact station where attendees could review the full tax impact annexation would have on their parcel(s) and take home, free of charge, copies of post-annexation tax information specific to their property or properties (Ex. B).

### *3. Introduction of the Annexation Ordinances and Adoption of the Fiscal Plans*

On March 29, 2017, the City Council held a special session during which it considered the introduction of nine annexation ordinances<sup>4</sup> and the adoption of corresponding fiscal plans (Ex. A-21). Prior to the special session, Bloomington again updated and expanded its fiscal plan (Ex. D, D-19). During the session, the City Council opted to introduce eight annexation ordinances for consideration, dropping the ordinance for area 6 from consideration, and adopted corresponding fiscal plans (Ex. A-21, A-22 – A-30, C-1 – C-2).<sup>5</sup> Each of the eight annexation territories contained at least one parcel subject to a waiver of remonstrance. (Ex. D).

### *4. Public Hearing*

On March 30, 2017, Bloomington published notice of a public hearing in the Bloomington Herald-Times newspaper and prepared and sent a packet via certified mail to every property owner in the annexation area announcing May 31 as the date of the public hearing (Ex. A, A-31 – A-32). At this point, Bloomington had expended \$824,733.26 pursuing annexation, including costs for the preparation of the fiscal plan, outside legal counsel, mass mailings, communications consulting, and hiring a surveyor to prepare legal descriptions of the annexation area (Ex. D, D-20).

### *5. Section 161 of Public Law 217-2017*

On April 21, 2017, both House and Senate conference committee reports for House Bill 1001, the State biennial budget, were posted for public review (Ex. H).

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<sup>4</sup> Area 1 from the originally approved annexation areas was subdivided into three separate areas: Area 1A, 1B, and 1C (Ex. C-2).

<sup>5</sup> See also <https://bloomington.in.gov/annex>.

The conference committee reports included, for the first time during the four months HB 1001 had been under consideration, language related to municipal annexation (Ex. I at 5-6, 178; Ex. J at 5-6, 178).<sup>6, 7</sup> The language was added through a brand new section of the bill, Section 161 on page 178 of the 188-page budget bill.

*Id.* Section 161 reads, in its entirety:

SECTION 161. IC 36-4-3-11.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE APRIL 30, 2017 (RETROACTIVE)]:

Sec. 11.8

(a) This section does not apply to an annexation that meets both of the following requirements:

- (1) The annexation is an annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), 5, or 5.1 of this chapter.
- (2) No parcel within the annexation territory is subject to a waiver of remonstrance.

(b) This section does not apply to an annexation and annexation ordinance that is adopted and effective before April 30, 2017.

(c) This section applies to property that meets both of the following requirements:

- (1) Is in an unincorporated area on January 1, 2017.
- (2) Is within the boundaries of a territory proposed to be annexed in an annexation ordinance that was introduced after December 31, 2016, and before July 1, 2017.

(d) An annexation ordinance that is introduced after December 31, 2016, and before July 1, 2017, that proposes to annex property to which this section applies is void and the annexation action is terminated. A municipality may not take any further action to annex any of the property to which this section applies until after June 30, 2022, including introducing another annexation ordinance covering some or all of the

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<sup>6</sup> Page numbers on the committee reports correspond to the PDF file page numbers.

<sup>7</sup> HB 1001 was initially introduced on January 10, 2017 (Ex H).

property covered by this section after June 30, 2017, and before July 1, 2022.

*Id.* On March 29, 2017, Bloomington had introduced eight annexation ordinances covered by subsection (d) of newly enacted Indiana Code § 36-4-3-11.8 (Ex A-21, A-23 – A-30). Because the areas introduced for possible annexation on March 29 were contiguous to a significant portion of Bloomington’s external boundary, Section 161 had the effect of precluding any annexation effort by Bloomington until July 1, 2022 (Ex. A, C-2).

At the Statehouse, each conference committee synopsis noted that the report “[a]dds a provision voiding certain annexations” (Ex I at 6, 178; Ex. J at 6). The conference committee report buried its proclamation that certain annexations were void in a block of language reading as follows:

This conference committee report does the following: (1) Inserts from the House passed budget the duties of the treasurer of state in the role of chairperson of the Achieving a Better Life Experience (ABLE) board. (2) Inserts from the House passed budget provisions regarding the statutory appropriation from the Rainy Day Fund to the state general fund. (3) Modifies the school funding provisions and deletes the provisions concerning career and technical grants. (4) Inserts from the House passed budget a modified version of the provision for treating certain participating innovation network charter schools established before 2016 as a separate charter school. (5) Allows a teacher at a virtual charter school to receive a teacher appreciation grant. (6) Provides that the budget agency shall before February 1, 2018, transfer to the state general fund from each county's local income tax trust account for expenditures related to the department of state revenue's information technology modernization project. (7) Establishes the teachers' defined contribution plan as an account within the Indiana state teachers' retirement fund (EHB 1463). (8) Exempts Ivy Tech temporarily from the requirement to obtain three appraisals. (9) Inserts home health services provisions. (10) Modifies the reimbursement rate for certain services provided to an individual under a Medicaid waiver and whose services are delivered by direct care staff. (11) Modifies provisions concerning the

hyperbaric oxygen treatment pilot program. (12) Inserts and modifies the House passed language concerning requests for information. (13) Increases the military retirement income tax deduction to \$6,250. (14) Increases the choice scholarship income tax credit cap. (15) Inserts provisions concerning school efficiency grants. Inserts language terminating the next generation trust and creating the next level Indiana trust. (16) Requires the INPRS to establish and maintain the next level Indiana innovation and entrepreneurial fund as an annuity savings account investment option for members of INPRS. (17) Inserts DUI community service language from House passed HB1502. (18) Inserts lethal substance for lethal injection provisions. (19) Inserts OPEB investment language. (20) Inserts oversight provisions concerning the state police, conservation officers, and excise police group insurance plan. (21) Permits the horse racing commission to join an interstate compact. (22) Makes the effective date of sales tax provisions regarding short term rental July 1, 2018, instead of July 1, 2017. (23) Adds provisions concerning postsecondary SEI affiliated educational institutions. (24) *Adds a provision voiding certain annexations.* (25) Adds the increase in the presumptive cost concerning selling of cigarettes. (26) Cures conflicts.

(Ex. I at 6 (emphasis added)). The full synopsis of House Bill 1001 from the conference committee report spanned six pages (Ex. I at 1-6). The only mention of annexation in the synopsis is hidden on page 5: “Provides that certain annexation ordinances are void” (Ex. I at 5).

The same day Section 161 was added to the State’s Biennial Budget, April 21, 2017, the House voted 68-30 to pass House Bill 1001, the State Biennial Budget (Ex. K). Prior to the vote, Bloomington Representative Matt Pierce and Crawfordsville Representative Tim Brown engaged in the following discussion in the House:

Rep. Pierce: So, you mention there’s this annexation language that hadn’t passed either House, and I guess it’s Section 161 here on page 172 of the Bill, and um, I think I heard you say it impacts Monroe County.

Rep. Brown: I did say that.

Rep. Pierce: So, do we know if any other communities would be impacted by this timeline here?

Rep. Brown: I, I will answer you the same way, I do not know that for certain.

Rep. Pierce: Ok. So as near as we know it impacts the areas around the City of Bloomington that might be annexed? Is that correct?

Rep. Brown: Yes.

Rep. Pierce: Okay. And so who requested that we put this provision in the budget bill that had not passed either house?

Rep. Brown: Again, it was brought by some, uh, citizens and also through their, the state representative, the other state, one of the other state representatives that represents Monroe County, and some of the businesses of Monroe County. Citizens and state representatives and businesses.

Rep. Pierce: That's kind of curious, because I hadn't had anybody approach me about putting their provision in the budget bill. Did it occur to you, maybe, to check in with the person who represents most of the City of Bloomington—

Rep. Brown: I—

Rep. Pierce: —get some feedback on what people are thinking?

Rep. Brown: [no answer]

Rep. Pierce: So, for people out there who are living in unincorporated areas around communities that might get annexed in the next few years, could you explain to us what the threshold then is that would get a provision in the budget bill that would stop cold, eradicate, a local ordinance that was contemplating annexing them? What, what's the threshold? What are the parameters we need to, to do to get into the budget?

Rep. Brown: I don't know if I have a threshold personally, uh, Representative Pierce, that's a good question.

Rep. Pierce: So it's just a one-shot. But it sounds like if people are upset about any kind of annexation, they should definitely come and see you? [laughter in the chamber] You'll like, consider their concerns?

Rep. Brown: I—sure, why not.

(Ex. L).

Hours after its introduction, at 12:36 a.m. on Saturday, April 22, 2017, and only a few minutes after the House voted to pass the budget, the Senate voted 42-8 to pass House Bill 1001, the State Biennial Budget (Ex. M). The adopted versions of House Bill 1001 included the language Section 161 added during conference committee (Ex. G).

On April 27, 2017, House Bill 1001 was signed into law as Public Law 217-2017 (Answer at ¶69). Nineteen days following enactment, the State's Legislative Services Agency ("LSA") released its Fiscal Impact Statement related to Public Law 217-2017 (Ex. N). In a section of its report titled "Miscellaneous Provisions", the LSA noted that "the Bill voids a proposed annexation by the city of Bloomington" (Ex. N at 21).

### *6. Procedural Background*

On May 24, 2017, Bloomington filed a complaint for declaratory and injunctive relief initiating the instant suit. Defendant responded by a filing a motion to dismiss pursuant to Trial Rule 12(b)(1) and 12(b)(6). The issues raised in Defendant's motion were thoroughly briefed by both parties, and on September 7, 2017, oral argument was heard on the matter. The Court issued an order denying Defendant's motion to dismiss on October 18. Defendant moved to certify the

question for interlocutory appeal. On January 8, 2018, the Court of Appeals declined to accept jurisdiction over the interlocutory appeal (CITE to CoA Order). Thereafter Defendant filed its answer, and under the joint case management plan approved by the Court, motions for summary judgment may now be filed.

### III. STANDARD OF REVIEW

“[S]ummary judgment is appropriate only when the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Ballard v. Lewis*, 8 N.E.3d 190, 193 (Ind. 2014); Ind. Trial Rule 56. When “the relevant facts are not in dispute and the interpretation of a statute is at issue, such statutory interpretation presents a pure question of law for which summary judgment disposition is particularly appropriate.” *Sanders v. Bd. Of Comm’rs of Brown Cnty.*, 892 N.E.2d 1249, 1252 (Ind. Ct. App. 2008). Determining whether or not a statute qualifies as special legislation under Article IV of the Indiana Constitution is a question of law for a court. *State ex rel. Attorney Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1246 (Ind. 2005).

### IV. ARGUMENT

Bloomington is entitled to summary judgment on Counts I and II of its Complaint because (1) Section 161 is unconstitutional special legislation that violates Article IV, Section 23 of the Indiana Constitution, and (2) Section 161 unconstitutionally violates Article IV, Section 19 of the Indiana Constitution, the “single subject rule.”

**A. Section 161 of Public Law 217-2017 violates Article IV, Section 23 of the Indiana Constitution, which prohibits special legislation.**

Article IV, Section 23 of the Indiana Constitution reads: “In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”<sup>8</sup> Ind. Const. art. IV, §23. Over the 167-year history of Indiana’s constitutional proscription of special legislation, the Indiana Supreme Court has developed an analytical framework for determining whether or not a particular piece of legislation runs afoul of this prohibition. The Supreme Court’s most recent pronouncement on Article IV, Section 23 sets forth a two-step analysis:

Our Constitution . . . requires we engage in two analytical steps: first, we determine whether the law is general or special; second, if it is a general law, we determine whether it is generally applied, and if it is a special law, we determine whether it is constitutionally permissible.

*State v. Buncich*, 51 N.E.3d 136, 141 (Ind. 2016). Constitutionally permissible special legislation turns on whether unique, inherent characteristics of the affected locale inhibit a generally applicable law. *Id.* at 141-42. Any reasonable examination into the present case reveals that Section 161 is special legislation and that Bloomington possesses no inherent characteristics rendering the special legislation constitutionally permissible. Therefore this Court must determine that Section 161 violates Article IV, Section 23.

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<sup>8</sup> Article IV, Section 23 references the preceding section of the Constitution, Section 22, which is not at issue in this case.

1. *Article IV, Section 23 of the Indiana Constitution was established to ameliorate the negative effects caused by special legislation.*

Nearly every state constitution contains a restriction on special legislation. Anthony Schutz, *State Constitutional Restrictions on Special Legislation as Structural Restraints*, 40 J. Legis. 39, 40 (2014); *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 685 (Ind. 2003). State constitutional prohibitions on special legislation began appearing in state constitutions during the 1840's and 1850's. Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 Clev. St. L. Rev. 719, 728 (2012). These prohibitions were in direct response to the large quantity of "private" laws being passed through state legislatures. *Id.* at 726. Indiana was no exception:

In Indiana...the overwhelming majority—nearly 90%—of the legislative output of 1849-50 was private laws. Naturally, the quantity of "private bills" and the easy advantages they offered to well-connected supplicants attracted pernicious influences...

*Id.*

In response, Indiana added a prohibition against special legislation to its state constitution: "[T]he drafters of the 1851 Indiana constitution saw one of their principle challenges to be reining in a 'large and constantly increasing number' of special laws." *Kimsey*, 781 N.E.2d at 686. In fact, "the delegates to the [1850-51] constitutional convention believed that . . . more than 'two-thirds of all the laws enacted in [Indiana]' were special or local in nature." *Alpha Psi Chapter of Pi Kappa Fraternity, Inc. v. Auditor of Monroe County*, 849 N.E.2d 1131, 1135 (Ind. 2006).

Prohibitions against special legislation are intended to cure a number of evils inherent to such private laws. First, they are intended “to prevent state legislatures from granting preferences to some local units within the state, and thus creating an irregular system of laws, lacking statewide uniformity.” *Kimsey*, 781 N.E.2d at 685. Second, “the level of distraction from public business motivated the delegates to Indiana’s 1850 constitutional convention to constrain special legislation.” Long, at 726. Indeed, the *Kimsey* Court noted that prior to prohibiting special legislation, nearly three-fourths of the legislature’s time addressed special laws at the expense of other issues of statewide concern. *Kimsey*, 781 N.E.2d at 686. Third, the “corrupting minutia of legislative adjudication” encourages patronage to the benefit of the well-connected and to the detriment of the public interest. Long, at 727. Special legislation encourages what has been termed “log-rolling”—a situation where it becomes “customary for members of the legislature to vote for the local bills of others in return for comparable cooperation from them.” *Kimsey*, 781 N.E.2d at 686.

Article IV, Section 23 has remained unchanged since its enactment in 1851, as have the motives underlying its addition to the constitution: (1) to encourage a uniform rather than irregular system of laws, (2) to require the general assembly to dedicate its limited time to matters of statewide concern, and (3) to combat the corrupting influences that go hand-in-hand with private legislation.

Section 161 presents a clear example of the evils the legislature and the people of Indiana were trying to avoid when they ratified the state’s prohibition

against special legislation (Ex. G, L). First, Section 161 has created a more patchwork system of laws, whereby only one municipality in the state, Bloomington, is prohibited from pursuing annexation for a period of more than five years. Second, rather than taking up statewide issues, the General Assembly dedicated its limited resources to terminating a single annexation proposal. And finally, the fact that the “citizens and state representatives and businesses” of Monroe County who devised Section 161 were able to achieve their personal ends through the legislature will only encourage other citizens and lawmakers to engage in additional rent-seeking behavior at the statehouse. While it is impossible to know whether or not any benefits were offered in exchange for the last-minute inclusion of Section 161 in the biennial budget, the obvious potential for abuse that attaches to such special legislation is precisely the evil the 1850 delegates aimed to eliminate.

*2. Section 161 of Public Law 217-2017 is special legislation because Bloomington is the only municipality to which it applies.*

Over the years, various pieces of special legislation have used different mechanisms to single out individuals or communities for exclusive treatment.<sup>9</sup> Section 161 utilizes a discrete range of dates to single out Bloomington. Indiana Code Section 36-4-3-11.8, which was added by Section 161, voids any involuntary annexation ordinance “introduced after December 31, 2016, and before July 1, 2017”

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<sup>9</sup> See, e.g., *Williams v. State*, 724 N.E.2d 1070 (Ind. 2000) (statute called out Lake County by name); *City of Hammond v. Herman & Kittle Properties, Inc.*, 95 N.E.3d 116 (Ind. Ct. App. 2018) (identifying the City of Hammond by the date of enactment of an ordinance regulating housing and the types of entities to which the ordinance applies); *State v. Hoover*, 668 N.E.2d 1229 (Ind. 1996) (establishing specific population range to capture only one county); *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe County*, 849 N.E.2d 1131 (Ind. 2006) (singling out fraternities based on affiliation with one particular university and on whether or not the fraternities had timely filed applications for property tax exemptions).

provided that at least one parcel in the annexation territory was subject to a waiver of remonstrance and provided the annexation does not fit within one of the limited exceptions carved out in Indiana Code Sections 36-4-3-4(a)(2), -4(a)(3), (4)(b), or (4)(h) (Ex. G). Bloomington’s eight annexation ordinances were introduced on March 29, 2017, and each of the eight annexation territories included at least one parcel subject to a waiver of remonstrance (Ex. A-21 – A-30, C-1, D, D-1 – D-7). As Bloomington’s proposed annexation does not fit into any of the narrow exceptions protecting the annexation, and therefore Section 161 terminated Bloomington’s entire annexation proposal (Ex. G). No other entities were impacted by Section 161.

Section 161 is undoubtedly a special law targeting Bloomington. In *Kimsey*, the Supreme Court explained that “[a] statute is ‘general’ if it applies ‘to all persons or places of a specified class throughout the state’” and that “a statute is ‘special’ if it pertains to and affects a particular case, person, place, or things, as opposed to the general public.” *Kimsey*, 781 N.E.2d at 689. The Supreme Court has clarified that when it speaks of a “class” in this context,

[I]t does not mean a particular group defined in a particular statute, but rather the broader classification to which the particular group belongs. Were it otherwise, the General Assembly could grant privileges to any group, no matter how small and specialized, by simply drafting legislation that self-defined the “specified class.” This would produce a situation no different than that prior to the enactment of the 1851 Constitution and render useless the provisions of Sections 22 and 23.

*Alpha Psi*, 849 N.E.2d at 1136. Indeed, “[t]he mere possibility that a statute can apply outside of the area specified by its terms is not de facto evidence of its status as a ‘general’ law.” *Id.* Under this analysis, the concept of underinclusivity takes a

central role. Legislation that fails to include all members who would naturally be part of the class is underinclusive and is special legislation.

Therefore, in *Kimsey*, a statute changing remonstrance percentages only for annexation proposals by municipalities in counties with populations between 200,000 and 300,000 was considered special legislation. 781 N.E.2d at 693-95. The legislation was underinclusive and therefore special, singling out only South Bend and no other cities or towns. *Id.*

Similarly, in *Alpha Psi*, a tax exemption captured only landowning fraternities or sororities at Indiana University that had failed to timely file requests for tax exemptions during 2001 and 2002. 849 N.E.2d at 1133. Again, this legislation was underinclusive and, thus, special. The legislation should have, at the very least, included “all property-owning fraternities and sororities” in Indiana. *Id.* at 1136.

Regarding the present dispute, an appropriate class is not municipalities that introduced annexation ordinances between December 31 and July 1. Rather, an appropriate class might be all municipal entities authorized to expand their boundaries via annexation. Said otherwise, non-special or general legislation would have covered all second class cities, third class cities, and towns. Instead, Section 161 impacts only Bloomington, and it is therefore clearly special legislation.

*3. Section 161 is special legislation because the legislation was brought forward by representatives of Monroe County and was enacted retroactively.*

In addition to underinclusivity, the Supreme Court looks at other factors to determine whether or not a particular piece of legislation is special or general. *See,*

*e.g.*, *State v. Hoover*, 668 N.E.2d 1229, 1234 (Ind. 1996). In *Kimsey*, the fact that the special legislation affecting only St. Joseph County was brought forward by a representative of St. Joseph County indicated that the legislation was likely special. Because the statute at issue “was introduced as amendatory legislation in 1993 by a Representative from St. Joseph County, and sponsored in the Senate by a Senator whose district included both St. Joseph and Elkhart Counties” it was more likely to be considered special. *Kimsey*, 781 N.E.2d at 693. Also in *Kimsey*, the Supreme Court noted that “[t]he bill declared an emergency requiring immediate effect” as a factor identifying the legislation as special. *Id.* Such retroactive or immediate effect indicates that a bill is intended to address an ongoing matter, rather than to apply prospectively and generally to an entire class.

Here, Section 161 checks both of these boxes. The record indicates that Section 161 was brought forward by a Monroe County Representative, Monroe County citizens, and Monroe County businesses (Ex. L). And, by its own terms, Section 161, which was signed on April 27, 2017, negates actions by cities or towns retroactively to December 31, 2016 (Ex. G). As in *Kimsey*, the fact that the statute at issue looks backwards indicates that it is intended to have an impact on Bloomington’s ongoing annexation effort.

*4. Section 161 is special legislation because the Legislative Services Agency's Fiscal Impact Statement indicates that the legislation was designed to void Bloomington's annexation proposal.*

The Supreme Court has also reviewed statements by the Legislative Services Agency ("LSA") when construing legislation as either "special" or "general." In *Alpha Psi*, the LSA's opinion was a significant factor:

[T]he accompanying Fiscal Impact Statement by the Legislative Services Agency summarized the effect of the relevant section in rather telling terms. In describing Section 44, it says "[t]his provision would retroactively grant a property tax exemption to *a student fraternity at Indiana University. . .*" [. . .] Under even the gentlest scrutiny, the statute at issue here is revealed to be special.

*Alpha Psi*, 849 N.E.2d at 1137 (citation omitted) (emphasis in original).

As in *Alpha Psi*, the present record includes an LSA Fiscal Impact Statement labeling Section 161 as special legislation: "*Annexation Provisions: The bill voids a proposed annexation by the city of Bloomington*" (Ex. N at 21). The LSA's pronouncement reveals that Section 161 was designed to affect Bloomington's annexation proposal only and that it is therefore special legislation.

*5. Section 161 is special legislation because a law of general applicability could have been made, as there are no inherent characteristics unique to Bloomington that justify the enactment of Section 161.*

As noted above, the Supreme Court employs a two-step analysis when determining whether or not a law is impermissible special legislation: (1) does the law qualify as special legislation, and (2) if the statute is special, are there inherent characteristics unique to the affected locality justifying the special legislation?

*Alpha Psi*, 849 N.E.2d at 1137-38. In *Buncich*, the Supreme Court explained the second step as follows:

The question we must address . . . is whether the Statute is nevertheless permissible because it cannot be made applicable . . . since the relevant traits of the affected area are distinctive such that the law's application elsewhere has no effect. In other words, there exist "inherent characteristics of the affected locale that justify local legislation." The justifying characteristic need not be connected to the statutorily defined classification, so long as the class affected is limited to those that possess the justifying characteristic.

*Buncich*, at 141-142. Bloomington has demonstrated above that Section 161 is special legislation, satisfying the first step of the analysis. Section 161 also fails the second step of the test, as no unique characteristics exist to justify this special legislation. Thus, Section 161 is unconstitutional.

It is difficult for Bloomington to surmise what unique characteristics the legislature may have had in mind when it enacted Section 161. Indeed, the record reveals no legislative findings (Ex. I, J, L, N). See I.C. § 36-4-3-11.8. In *Alpha Psi*, the Supreme Court advised the legislature that it "would be preferable, and more useful for all involved, if the General Assembly would simply accompany special laws with 'legislative findings as to the facts justifying the legislation's limited territorial application.'" *Alpha Psi*, 849 N.E.2d at 1137 n.7.

Although the General Assembly has published legislative findings many times on a wide range of topics, it failed to identify any findings related to Section 161.<sup>10</sup> As the largest public entity and primary service provider for the majority of

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<sup>10</sup> For examples of legislative findings, see, e.g., Ind. Code § 5-1-17 (listing findings as to why special legislation establishing the Indiana Stadium and Convention Building Authority was justified); I.C. § 5-1-17.5-1 (findings related to Motor Sports Investment District); I.C. § 5-28-26-0.3 (findings regarding the establishment of the Global Commerce Center Pilot Program); I.C. § 6-9-40-11 (findings justifying a Steuben County food and beverage tax); I.C. § 36-7-31.3-9.3 (findings justifying the creation of a professional sports development area in the City of Marion); I.C. § 36-3-1-0.3 (findings explaining the consolidation and transfer of powers in Indianapolis).

residents of Monroe County, Bloomington is ideally situated to identify possible unique characteristics that would justify Section 161. Yet the Plaintiff is unable to identify a single unique characteristic inherent to Bloomington which would render Section 161 constitutionally permissible, and the legislature has not provided one either. The reason is simple—no such characteristics exist.

The record is clear, however, that the legislature is capable of passing a law of general applicability restricting or altering annexation. During the 2017 legislative session, multiple attempts were made to draft general legislation affecting the annexation process. Senate Bill 381, Amendment #43 to House Bill 1450, and Amendment #2 to Senate Bill 472 all proposed changes that would have had a general impact on annexations throughout the state (Ex. P, Q, R). Each failed to pass. Similarly, Senate Enrolled Act 330 from the 2015 legislative session, which overhauled the annexation process, applied generally to all municipalities throughout Indiana (Ex. E). The legislature could easily have enacted a law of general applicability, but it did not do so.

Because Section 161 is special legislation and because there are no characteristics unique to Bloomington justifying Section 161, the legislation is impermissible special legislation and should be declared unconstitutional.

**B. Section 161 of Public Law 217-2017 violates Article IV, Section 19 of the Indiana Constitution, which requires that acts of the legislature shall be confined to one subject and matters properly connected therewith.**

Section 161 of Public Law 217-2017 also violates Article IV, section 19 of the Indiana Constitution, which states, “An act, except an act for the codification,

revision, or rearrangement of laws, shall be confined to one subject and matters properly connected therewith.” This “Single Subject Clause” impels the General Assembly to organize its acts so that there is rational unity between the each of the matters addressed and regulated within an individual act.<sup>11</sup> The purpose of the clause was both to prevent “log-rolling” of legislation, which is the combination of two or more unrelated bills that could not pass on their own in order to acquire the requisite number of votes to pass both, and to impose a strict limitation on the “passage of local and special laws.” *Pence v. State*, 652 N.E.2d 486, 489 (Ind. 1995) (Dickson, J. dissenting); Justin W. Evans & Mark C. Bannister, *The Meaning and Purposes of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example*, 49 Valp. L. Rev. 87, 93 (2014) (citing Donald F. Carmony, *The Indiana Constitutional Convention of 1850–51*, n.36 at 405).

The Single Subject Clause was designed to eliminate the most common procedural mechanism for what then-Governor James Whitcomb called the “growing evil” of enacting special legislation. *See* Evans & Bannister, *supra* at 95-96 (quoting Charles Kettleborough, *Constitution Making in Indiana* (1916) at 68); George S. Cottman, *Centennial History and Handbook of Indiana* (1915) at 119 (“The argument for supplanting the old constitution was that under it certain conditions had sprung up that in time became evils. Chief of these was legislation of

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<sup>11</sup> Justice Dickson urged our Supreme Court to utilize a *de novo* review under the Single Subject Clause: “When addressing claimed violations of the Single–Subject Clause, courts should examine the subject matter of a challenged statute and that of the enactment to which it was attached and then use a *de novo* evaluation to determine whether the former is properly connected to the single subject of the latter.” *A.B. v. State*, 949 N.E.2d 1204, 1225 (Ind. 2011) (Dickson, J. concurring).

a purely local or even personal character”). The enactment of Section 161 within hours of its insertion into a comprehensive funding bill hundreds of pages long highlights the connection between targeted special legislation and the Single Subject Clause (Ex. G, L). This is precisely the obfuscation of process that the 1851 Constitution—and the Single Subject Clause in particular—was written to prevent. The drafters of the 1851 Constitution wanted to thwart attempts by legislators to creatively hide special legislation in unrelated bills where it was less likely to be noticed, properly discussed, and voted on by elected officials representing the interests of their constituents on the particular matter being addressed. Section 161 is a particularly egregious example of this evil. The General Assembly’s passage of Section 161 snatched from the citizens of Bloomington and Monroe County, in mid-stream, the opportunity provided them explicitly under Indiana law to consider how their community would be configured in the future (Ex.L).

Public Law 217-2017, the biennial budget bill, primarily “[a]ppropriate[d] money for capital expenditures, the operation of the state, K-12 and higher education, the delivery of Medicaid and other services, and various other distributions and purposes” (Ex. G).<sup>12</sup> Overwhelmingly, the law is related to matters of funding and state financial accounts (Ex. G, N). In stark contrast, Section 161, after excluding application to any annexation except for Bloomington’s, states:

(d) An annexation ordinance that is introduced after December 31, 2016, and before July 1, 2017, that proposes to annex property to

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<sup>12</sup> See also Indiana General Assembly 2017 Session, “House Bill 1001 Digest,” <http://iga.in.gov/legislative/2017/bills/house/1001/#digest-heading> (last accessed September 3, 2018).

which this section applies is void and the annexation action is terminated. A municipality may not take any further action to annex any of the property to which this section applies until after June 30, 2022, including introducing another annexation ordinance covering some or all of the property covered by this section after June 30, 2017, and before July 1, 2022.

(Ex. G). I.C. § 36-4-3-11.8(d) (West Supp. 2018). Section 161 is clearly nothing more than a legislative action to stop a single annexation. Section 161 does not have a substantial relationship to the subject matter of the budget bill as a whole; in fact, it bears no connection whatsoever to the budgetary matters of the state. As a result, under the plain language of the single subject clause, Section 161 is unconstitutional. *See A.B. v. State*, 949 N.E.2d 1204, 1225 (Ind. 2011) (Dickson, J. concurring) (“The judicial inquiry is not whether the legislature’s judgment and actions in combining two subjects appear “reasonable,” but rather whether the subject matter of the principal and annexed enactments are properly connected to the same single subject.”).

Even under what the Court of Appeals has described as a “laissez-faire approach” to Section 19, there must be at least a reasonable connection between the subject-matter of the bill and the particular tangential effect of a particular provision to make a provision constitutionally acceptable. *Indiana State Teachers Ass’n v. Bd. of Sch. Comm’rs of The City of Indianapolis*, 679 N.E.2d 933, 935 (Ind. Ct. App. 1997) (noting that the elimination of Marion County teachers’ collective bargaining rights within a bill that general regulated state and local administration was “tenuous at best” but did not offend the Single Subject Clause). *See also A.B. v. State*, 949 N.E.2d 1204, 1227–29 (Ind. 2011) (Sullivan, J. concurring) (noting that

the Supreme Court should apply a reasonableness standard in deciding the constitutionality of a statute in light of the Single Subject Clause) (citing, in part, *Dague v. Piper Aircraft Corp.*, 275 Ind. 520, 418 N.E.2d 207 (Ind. 1981) (holding “[W]e cannot say that the grouping together of the subjects in this act was so unreasonable as to be repugnant to the Indiana Constitution.”). Additionally, as Justice Sullivan of the Indiana Supreme Court clearly noted, “Under this reasonableness standard of review[...]the General Assembly has been given substantial deference but not carte blanche.” *A.B.*, 949 N.E.2d at 1227. Section 161 does not have even a remotely tenuous connection or relationship to, or any rational unity with the budget bill to which it was attached. *See, e.g., State ex rel. Percy v. Criminal Court of Marion Cnty.*, 262 Ind. 9, 17, 274 N.E.2d 519, 522 (1971) (“no rational unity existing between the provisions relating to” correctional facility employees and criminal sentencing); *Jackson v. State ex rel. S. Bend Motor Bus Co.*, 194 Ind. 248, 257–58, 142 N.E. 423, 426 (1924) (“no apparent relation between the subject of motor vehicles and the subject of inheritance taxes”). There is simply no reasonable, logical or rational way to find a connection between the subject matter of Section 161 and the remainder of the biennial budget bill. *Cf. Indiana State Teachers Ass’n*, 679 N.E.2d at 935; *Dague*, 418 N.E.2d at 214-15. Therefore, under the Indiana Constitution and prior precedent, Section 161 is unconstitutional.

The Single Subject Clause, both on its face and under a reasonableness standard, prohibits legislation like Section 161, even within broad ranging

budgetary bills. This is precisely what it was designed to do. As the history of this provision shows, there was particular concern over the insertion of unrelated legislation within budget bills. The amendment's chief proponent, former Indiana Speaker of the House Dr. Alexander C. Stevenson, a delegate to the 1850-51 Constitutional Convention, stated, "Now, I have seen the power that a few individuals have in passing bills that are worthless and injurious, by tacking them upon other bills, even upon revenue bills. This is an evil which should be remedied. We are here to reform it—and ought to reform it." *Report of the Debates and Proceedings of the Convention*, vol. 2, at 2010 (reprinted by the Indiana Historical Bureau, 1935). In Section 161, we are presented with exactly the kind of worthless and injurious measure that Article IV, Section 19 was adopted to prevent. Since there is not a sufficient, nor really any, relationship between this special legislation and the biennial budget, Section 161 is unconstitutional under Article IV, section 19. We ask this court to declare it so.

## V. CONCLUSION

Plaintiff is entitled to summary judgment declaring that:

- (1) Section 161 of Public Law 217-2017 is unconstitutional special legislation in violation of Article IV, § 23 of the Indiana Constitution;
- (2) Section 161 of Public Law 217-2017 is unconstitutional legislation in violation of Article IV, § 19, which requires that laws be confined to a one subject and matters properly connected therewith;
- (3) Any and all other appropriate relief.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 18, 2018, a copy of the foregoing document has been sent via the Indiana E-Filing System to the following persons:

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