IN THE
INDIANA SUPREME COURT

Case No. 19S-PL-00304

ERIC HOLCOMB, in his official capacity as Governor of the State of Indiana, Appellant, vs. CITY OF BLOOMINGTON, Appellee.	Appeal from the Monroe Circuit Court, No. 6, Case No. 53C06-1705-PL-1138, Honorable Frank M. Nardi, Special Judge.

BRIEF OF APPELLEE

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STATEMENT OF SUPREME COURT JURISDICTION

The Supreme Court has mandatory and exclusive jurisdiction over this appeal pursuant to Indiana Rule of Appellate Procedure 4(A)(1)(b) as the trial court in this cause declared a state statute unconstitutional (App. Vol. II p. 27).[1]

INTRODUCTION

On March 29, 2017, the City Council for the City of Bloomington ("Bloomington") formally introduced eight annexation ordinances for public consideration (App. Vol III pp.145-6). On April 21, 2017, the Indiana General Assembly added Section 161 to its budget bill in conference committee. (App. Vol. XVII pp.3-246; Vol. XVIII pp.3-127). Section 161, codified at Indiana Code Section 36-4-3-11.8, is special legislation that voided Bloomington's, and only Bloomington's, annexation ordinances and prohibited Bloomington, and only Bloomington, from pursuing any municipal annexation for more than five years (Appellant's Br. p.27). The House voted to pass the budget the same day Section 161 was added (App. Vol. XVIII p.129). The Senate voted to pass the budget just 73 minutes later (*Id*. at 132). On April 27, 2017, Governor Holcomb signed the budget into law as Public-Law 217-2017, terminating Bloomington's annexation (App. Vol. XVII p.3).

[1] All references to appendices are to the Appellant's Appendix Volumes I through XX.

STATEMENT OF ISSUES

1. Whether, as the State's executive, the Governor is the proper party to defend unconstitutional legislation.

2. Whether Section 161 is unconstitutional special legislation in violation of Article IV, Section 23 of the Indiana Constitution.

3. Whether Section 161 is unconstitutional pursuant to Article IV, Section 19 of the Indiana Constitution, the single-subject rule.

STATEMENT OF CASE

On May 24, 2017, Bloomington filed a complaint for declaratory and injunctive relief in the Monroe Circuit Court challenging the constitutionality of Section 161 of Public Law 217-2017 ("Section 161")[2] under Article IV, Sections 19 and 23 of the Indiana Constitution (App. Vol. II p.28).

The parties filed cross-motions for summary judgment, and on April 18, 2019, the trial court granted Bloomington's motion, striking down Section 161 as unconstitutional under both Article IV, Section 23 and Article IV, Section 19 of the Indiana Constitution (*Id*. at 27). On May 16, 2019 the State filed a Notice of Appeal in response to which Bloomington now submits its brief (App. Vol. XX p.204). The State filed its Appellant's Brief on July 29, 2019, and August 1, 2019, this Court ordered Bloomington's brief due on August 28, 2019 (Docket).

[2] See Ind. Code § 36-4-3-11.8.

STATEMENT OF FACTS

Preliminary Statement

Bloomington is unable to agree with the Appellant's Statement of Facts as permitted by Indiana Rule of Appellate Procedure 46(B)(1), as the Appellant's Statement of Facts contains several untrue claims[3] and includes assertions unsupported by the record.[4]

Municipal Annexation Generally

Municipal annexation is a detailed statutory process available to all cities and towns through which growing communities incorporate contiguous, urbanized areas into their corporate boundaries. *See* Ind. Code 36-4-3, *et. seq*. There are five general

[3] For example, the State claims that following annexation "most importantly, the municipality, rather than the county will collect taxes on the property located in the annexed area" (Appellant's Br. pp.9-10). This is false. By law, county taxes must be levied at a uniform rate on landowners throughout the county, without regard to whether landowners are within the corporate boundary of a city or town. See, e.g., *Department of Local Government Finance v. Griffin*, 784 N.E.2d 448, 452-3 (Ind. 2003). The State also claims that "[f]ollowing annexation landowners in the annexed areas will receive city rather than county services" (Appellant's Br. p.9). Again, this is false. Landowners in municipalities receive both city and county services. I.C. 36-2 *et seq*., IC 36-4 *et seq*.

[4] In its Statement of Facts, the State's first reference to the record comes more than two-and-a-half pages in (Appellant's Br. p.11). And the Statement of Facts contains argument with no reference to the record. For example, the State alleges that "landowners who oppose annexation often suspect that the 'purpose and object of the city in making the annexation [i]s simply to increase the revenues of the city by the taxation of [the newly annexed] property'" (Appellant's Br. p.10). Facts supporting this assertion are not in evidence. In its facts, the State further claims that Bloomington "revised the annexation area boundaries on maps . . . to ensure that at least fifty percent of the parcels in the areas were encumbered by remonstrance waivers" (Appellant's Br. p.13). This fact is directly contradicted by the record (App. Vol. XX p.8). Areas three, four, five, six, and seven were never, at any time, fifty-percent waivered. *Id*.

phases involved in annexation: (1) public outreach, (2) ordinance introduction and fiscal plan adoption, (3) public hearing, (4) ordinance adoption, and (5) remonstrance by annexed property owners. *Id.* Here, after Bloomington completed ordinance introduction (step two) but before a public hearing could be held (step three), the State intervened and adopted special legislation to stop Bloomington (Appellant's Br. p.27; App. Vol. III pp.145-6; Vol. XVII p.3; Vol. XX p.6).

1. Public Outreach

Municipalities considering annexation begin the statutory process by conducting "an outreach program to inform citizens regarding the proposed annexation." I.C. § 36-4-3-1.7. The municipality must hold at least six outreach meetings within the six months preceding the introduction of an annexation ordinance. I.C. § 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.

Thirty days prior to the outreach meetings, the municipality must send notice of the meetings to every landowner included in the proposed annexation area by certified mail and publish notice of the meetings in the local newspaper. I.C. § 36-4-3-1.7(c). The notice must state:

> (1) That the municipality is proposing to annex territory that includes the landowner's property;

> (2) That the municipality is conducting an outreach program for the purpose of providing information to landowners and the public regarding the proposed annexation; and
>
> (3) The date, time, and location of the meetings to be conducted under the outreach program.

Id.

2. Ordinance Introduction and Fiscal Plan Adoption

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. I.C. § 36-4-3-13(d). The adopted fiscal plan must include: (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; (5) that planned capital services will be provided to the annexation area within three years of the effective date of the annexation ordinances; (6) 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; (7) 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); (8) 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 (9) a list of details about all parcels in the annexation territory, including: (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. *Id*.

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. I.C. § 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. I.C. § 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 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. I.C. § 36-4-3-2.2(d).

4. Ordinance Adoption

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. I.C. § 36-4-3-2.1(c). Notice of the adoption must be published. I.C. §§ 36-4-3-7(a), -11.1(c)(1).

5. Remonstrance

During the 90 days following publication, 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 for four hours at a time, in a public building, and within the boundaries of the municipality or annexation area. I.C. § 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. I.C. § 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. I.C. § 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. I.C. § 36-4-3-11.1(d).

If more than 65% of parcel owners remonstrate, the annexation fails without further inquiry. I.C. § 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. I.C. § 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, the annexation is approved without further inquiry. I.C. § 36-4-3-11.3.[5]

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. I.C. § 36-4-3-11.3(c). If appealed, a court must conduct a remonstrance hearing. I.C. § 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 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

[5] 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. I.C. § 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 Section 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, 839 (Ind. Ct. App. 2010).

subdivided, or (3) the territory is zoned for commercial, business, or industrial uses. I.C. §§ 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. I.C. § 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. I.C. § 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.

Bloomington's Proposed Annexation

1. Initiating Resolutions

On February 3, 2017, Bloomington Mayor John Hamilton announced that he was asking the City Council to initiate the process of considering Bloomington's first multi-parcel annexation since 2004 (App. Vol. III p.3; Vol. IV pp.112, 125). Shortly after the announcement, on the same date, the Council held a public work session to discuss the initiating resolutions for the proposed annexation (*Id.* at 42).[6]

[6] Though not statutorily required, Bloomington began its annexation proposal with initiating resolutions, providing the community with additional opportunities to publicly comment on the proposal (App. Vol. III pp.10-40).

In conjunction with the announcement and work session, Bloomington also launched a website—https://bloomington.in.gov/annex—which included, among other items, detailed maps of the 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 (App. Vol. IV pp.121, 125; Vol. V pp.8-147; Vols. VI-VII).

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 (App. Vol. III pp.44-45). A week later, on February 15, 2017, the City Council approved initiating resolutions for seven annexation areas (*Id*. at 47-115).

2. Public Outreach Program

On February 17, 2017, Bloomington published notice of six outreach meetings in the Bloomington Herald-Times newspaper and mailed notice to every property owner in the annexation areas via certified mail (App. Vol. III pp.117-120; Vol. V pp.8-147). The notice announced six outreach meetings from Monday, March 20 through Saturday, 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. (App. Vol. III pp.119-120).

Prior to conducting the outreach program, Bloomington updated and expanded its fiscal plan and prepared a massive parcel-by-parcel tax analysis showing the property tax impact on every parcel in each annexation area (App. Vols. VII-XI).

These documents were available on the City's annexation website for public consumption (App. Vol. IV p.122).

Although not required by statute, Bloomington utilized 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 (*Id.* at 108). 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 (*Id*. at 109). Bloomington also 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 (*Id*.).

3. Ordinance Introduction and Fiscal Plan Adoption

On March 29, 2017, the City Council held a special session and considered the introduction (*not* the adoption) of nine annexation ordinances[7] and the adoption of corresponding fiscal plans (App. Vol. III pp.122-147). Prior to the special session, Bloomington again updated and expanded its fiscal plan (App. Vol. V p.3; Vols. XII-XIII). During the session, the City Council voted to introduce eight annexation

[7] Though the number of annexation areas increased from seven to nine, no new parcels were added to the proposal. Rather, the area originally designated as area 1 was subdivided into three separate areas: Area 1A, 1B, and 1C (App. Vol. IV p.127).

ordinances for consideration and adopted, by resolution, corresponding fiscal plans (App. Vol. III pp.122-147; Vol. IV pp.2-127). Each of the eight annexation territories contained at least one parcel subject to a waiver of remonstrance (App. Vol. V p.3).

4. Public Hearing

On March 30, 2017, Bloomington published notice of a public hearing and sent a packet via certified mail to every property owner in the annexation area announcing May 31, 2017, as the date of the public hearing (App. Vol. III p.7; Vol. IV pp.101-105). The planned public hearing would never take place. 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 surveying (App. Vol. XIV p.3).

5. Section 161 of Public Law 217-2017

On April 21, 2017, both Indiana House and Senate conference committee reports for House Bill 1001, the State's biennial budget, added, for the first time during the four months HB 1001 had been under consideration, language related to municipal annexation (App. Vol. XVII pp.3, 183; Vol. XVIII p.122).[8] The language was added through a new section of the bill, Section 161 on page 178 of the 188-page budget bill (*Id.*). Section 161 stated, 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

[8] HB 1001 was initially introduced on January 10, 2017 (App. Vol. XVII p.4).

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

(*Id.*). Section 161, codified as Indiana Code Section 36-4-3-11.8, applied to the eight annexation ordinances Bloomington had introduced on March 29, 2017 (App. Vol. III pp.122-147; Vol. IV pp.2-100). Section 161 precluded any annexation effort by Bloomington until July 1, 2022 (App. Vol. III pp.3-4). I.C. § 36-4-3-11.8.

The full synopsis of House Bill 1001 from the conference committee report spanned six pages (App. Vol XVII pp.6-11). The only mention of annexation in the synopsis is found on page 5 of 6: "Provides that certain annexation ordinances are

void" (*Id*. at 10). The conference committee report buried its proclamation that certain annexations were void as item 24 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.

(*Id*. at 11) (emphasis added).

The same day Section 161 was added to the budget, at 11:23 p.m. on April 21, 2017, the House voted to pass the budget, House Bill 1001 (App. Vol. XVIII p.129). Just over an hour later, at 12:36 a.m. on Saturday, April 22, 2017, the Senate followed suit and passed House Bill 1001 (*Id*. at 132). The adopted versions of House Bill 1001 included the language Section 161 added during conference committee (App. Vol. XV p.19). On April 27, 2017, Governor Holcomb signed House Bill 1001 into law as Public Law 217-2017 (App. Vol. II p.140).

Section 161 represented the State's fourth and only successful attempt to pass annexation-related legislation during its 2017 legislative session (App. Vol. XVIII pp.160-193). The previous three attempts, in the form of Senate Bill 381, Amendment #43 to House Bill 1450, and Amendment #2 to Senate Bill 472, affected every community in the state rather than just Bloomington, and each of these attempts at generally applicable legislation was defeated during the legislative process (*Id*.).

Following enactment, the State's Legislative Services Agency released its Fiscal Impact Statement related to Public Law 217-2017 (*Id*. at 134-157). In a section of its report titled "Miscellaneous Provisions" the Agency noted that "the Bill voids a proposed annexation by the city of Bloomington" (*Id*. at 154). On May 24, 2017, Bloomington filed a complaint challenging the constitutionality of Section 161 under Article IV, Sections 19 and 23 of the Indiana Constitution (App. Vol. II p.28).

SUMMARY OF ARGUMENT

I. In the present declaratory judgment action Bloomington properly named Governor Holcomb as the defendant. Both Indiana Courts and our sister states' courts have endorsed this familiar approach of naming the governor as the defendant in declaratory judgment actions challenging the constitutionality of a statute. The State incorrectly suggests an alternative course—that Bloomington ignore the customary practice of naming the governor and instead sue thousands of property owners who might or might not have been annexed. This is untenable. Enlisting private citizens in a lawsuit regarding the constitutionality of an enactment of the General Assembly is preposterous and would present genuine ripeness and standing concerns. Bloomington named exactly the correct defendant in the instant suit—Governor Holcomb.

II. Section 161 is unconstitutional special legislation in violation of Article IV, Section 23 of the Indiana Constitution. In determining whether a statute is unconstitutional special legislation, this Court has established a two-step inquiry: (1) determine whether the legislation is special or general; and (2) if the legislation is special, determine whether there are unique characteristics that justify the statute's limited application. The Court affirmed this test in *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003), a case strikingly similar to the instant controversy, and just reaffirmed the test in *City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70 (Ind. 2019).

The State wrongly implores the Court to abandon this test. To that end, the State erroneously claims that *Dortch v. Lugar*, 266 N.E.2d 25 (Ind. 1971) mandates, in every case, the survival of targeted legislation that "affect[s] local government structure" (Appellant's Br. p.18). Nonsense. *Dortch* was approved in *Kimsey* because it dealt with a law that applied exclusively to Marion County—a County possessing a number of characteristics that differentiate it from all others in Indiana. There is no precedent, via *Dortch* or any other case, suggesting the Court establish a new test for special legislation under the circumstances presented by the instant case.

Under the test that this Court has repeatedly applied and recently affirmed, Section 161 is unconstitutional (1) because, as the parties agree, it is special legislation, and (2) because the statute's limited application is not justified by any characteristics that are unique to Bloomington (Appellant's Br. p.27).

The burden rests with the State to identify unique characteristics and to show that there is a connection between the identified traits and Section 161, but the State fails to identify any trait unique to Bloomington, let alone connect a local characteristic to Section 161. *Herman & Kittle*, 119 N.E.3d at 84–85. The only alleged traits cited by the State are not inherent characteristics at all. Rather they are activities—Bloomington's careful, legal adherence to the strict procedures set forth in the annexation statute. Nor are these alleged "characteristics" unique to Bloomington. Thus this Court should strike down Section 161 as precisely the sort of special legislation the drafters of Indiana's 1851 constitution sought to preclude.

III. In addition, Section 161 violates Article IV, Section 19 of the Indiana Constitution, which requires that all legislative acts be confined to one subject and matters properly connected therewith. Contrary to the State's assertions, Section 161 is not related to taxation and is not similar to other instances of local administrative regulation in budget bills. Therefore it violates the single-subject rule. In fact, Section 161 is precisely the sort of inappropriate legislation that the single-subject rule was designed to address.

ARGUMENT

I. The Governor is the appropriate party to defend unconstitutional legislation directed at local government.

Bloomington initiated the present declaratory judgment action against the only defendant who could properly redress the injury Section 161 inflicted upon Bloomington—Governor Holcomb (App. Vol. II p.28).

The State incorrectly suggests that the present dispute is not justiciable because the Governor cannot redress Bloomington's injury.[9] As an alternative, the State suggests that Bloomington "should have sued those landowners" who were part of Bloomington's annexation proposal (Appellant's Br. p.20). Since the General

[9] In arguing that Bloomington's claim is not justiciable, the State repeatedly cites to federal cases. This is confusing, as the federal standard for redressability has no direct applicability in state court and varies significantly from the standard applied in a state declaratory judgment action. *See Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989 (Ind. Ct. App. 2003) ("Under the federal test, to establish standing a plaintiff must allege a personal injury that is fairly traceable to the defendant's allegedly unlawful conduct and is likely to be redressed by the requested relief."), *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995) (noting that, while instructive, Federal limits on justiciability have "no direct applicability" to Indiana).

Assembly had passed Section 161 in order to prevent any landowners from being annexed, in order to litigate a ripe dispute with said landowners, Bloomington would have had to continue its annexation all the way through to adoption, blatantly violating Section 161 which expressly forbids Bloomington from "tak[ing] any further action to annex any . . . property." I.C. § 36-4-3-11.8(d). This situation, where a litigant would be forced to violate a statute in order to get into court, is precisely the condition the Declaratory Judgment Act was designed to address. The Act allows a litigant to determine what a statute means and how it affects that litigant without requiring the litigant to violate the statute. *See, e.g.*, *Myers v. State Life Ins. Co.*, 110 N.E.2d 312, 313 (Ind. Ct. App. 1953). Declaratory judgment is available to "any person" "whose rights . . . are affected by a statute." I.C. § 34-14-1-2. That person may seek to have determined "any question of construction or validity." *Id*. This includes a question of constitutionality. *See, e.g.*, *Ind. Educ. Emp't Relations Bd. v. Benton Cmty. Sch. Corp.*, 365 N.E.2d 752, 754-55 (Ind. 1977).

As an alternative to openly breaking the law, Bloomington opted to get clarity on the constitutionality of Section 161 through declaratory judgment. Recognizing this as the desired path for litigants to follow, both Indiana Courts and our sister states' courts have endorsed Bloomington's course of action in initiating a declaratory judgment action against the Governor to challenge the constitutionality of a statute.

For example, in 2009, the Court of Appeals considered and correctly rejected the State's redressability argument in *Stoffel v. Daniels*, 908 N.E.2d 1260 (Ind. Ct. App. 2009). In *Stoffel*, a township assessor brought a declaratory judgment action to

determine the constitutionality of a provision in the biennial budget that transferred the duties of township assessors to county assessors. *Id.* at 1265-66. Governor Daniels made the same redressability argument the State is making in the present case, claiming that "Stoffel failed to establish that [he] directly caused her injury which could be relieved." *Id.* However, the Court of Appeals correctly held that the State Defendants—Governor Daniels, the Commissioner of the Department of Local Government Finance ("DLGF"), and the DLGF itself—were all appropriate defendants. *Id.* at 1272. In reaching this conclusion, the Court reasoned: "[C]hallenging the constitutional validity of a statutory scheme by bringing a declaratory judgment action against the executive branch official charged with the statute's implementation is a well-recognized approach." *Id.* at 1271. "[T]here is ample precedent where a plaintiff challenges the constitutional validity of a statutory scheme by bringing a lawsuit against the executive branch officials charged with implementing the challenged statutes." *Id.*

In reaching its decision, the Court relied upon decades of Indiana Supreme Court practice wherein declaratory judgment actions challenging statutory provisions appropriately named governors as defendants without controversy. *Id.*; *see, e.g., Bonney v. Ind. Fin. Auth.*, 849 N.E.2d 473 (Ind. 2006) (plaintiffs properly named Governor Daniels and the Indiana Finance Authority as defendants in declaratory judgment action challenging whether or not leasing the state-owned toll road violated the State's constitutional prohibition on special legislation); *D & M Healthcare v. Kernan*, 800 N.E.2d 898 (Ind. 2003) (plaintiffs correctly brought a

declaratory judgment action against Governor Kernan contesting the constitutionality of a statute affecting nursing homes); *State v. Nixon*, 384 N.E.2d 152 (Ind. 1979) (plaintiff properly named Governor Bowen and the State of Indiana as the defendants in declaratory judgment action challenging the constitutionality of the Pari-Mutuel Wagering Act); *Whitcomb v. Young*, 279 N.E.2d 566 (Ind. 1972) (plaintiffs correctly brought a declaratory judgment action against Governor Whitcomb challenging the constitutionality of an amendment fixing the terms of office of certain state officers); *Welsh v. Sells*, 192 N.E.2d 753 (Ind. 1963) (plaintiffs properly named Governor Welsh in declaratory judgment action on the constitutionality of an excise tax on retail sales transactions); *Orbison v. Welsh*, 179 N.E.2d 727 (Ind. 1962) (plaintiff correctly brought declaratory judgment action against Governor Welsh challenging the constitutionality of the Indiana Port Commission Act). Bloomington followed this well-established, long-standing practice.

The facts here are strikingly similar to the facts before the *Stoffel* Court. Like the plaintiff in *Stoffel*, Bloomington is seeking a declaratory judgment that a provision of the biennial budget is unconstitutional. As in *Stoffel*, the Governor has been named as a defendant. However, unlike *Stoffel*, Section 161 does not delegate enforcement to any executive branch official.[10] Instead, enforcement is left to the

[10] One of the provisions at issue in *Stoffel* directed the DLGF to "determine and implement a procedure and schedule for the transfer of records from the township assessor to the county assessor." *Stoffel*, 908 N.E.2d at 1272. As such, the Court of Appeals found it appropriate to name the governor, the commissioner of the DLGF, and the DLGF itself as defendants. *Id.* at 1265, 1272. Section 161 differs from the statute at issue in *Stoffel* in that Section 161 contains no reference to any member of

Governor alone, as he is vested with the executive power of the State and has been constitutionally directed to "take care that the laws are faithfully executed." Ind. Const. art. 5, § 16.

Opinions from other jurisdictions confirm the *Stoffel* Court's conclusion. The Colorado Supreme Court addressed this precise issue in *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008):

> As a preliminary matter, we consider Governor Ritter's contention that he is not a proper party defendant because he cannot implement or enforce the provisions of Amendment 41. In light of the facts and circumstances of this case at the time it was filed, we conclude that the Governor was properly named as a defendant.
>
> Under article IV, section 2 of the Colorado Constitution, "[t]he supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed." Colorado has long recognized the practice of naming the governor, in his role as the state's chief executive, as the proper defendant in cases where a party seeks to "enjoin or mandate enforcement of a statute, regulation, ordinance, or policy." *See Ainscough v. Owens,* 90 P.3d 851, 858 (Colo. 2004); *see generally Romer v. Evans,* 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996) (suing the governor to challenge a voter-initiated constitutional amendment); *Morrissey v. State,* 951 P.2d 911 (Colo. 1998) (same). An "'official capacity suit' is 'merely another way of pleading an action against the entity of which an officer is an agent.'" *Ainscough,* 90 P.3d at 858 (quoting *Oten v. Colo. Bd. of Soc. Servs.,* 738 P.2d 37, 40 (Colo. App.1987)). Indeed, "[f]or litigation purposes, the Governor is the embodiment of the state." *Id.*

Ritter, 178 P.3d at 529-30.

Just prior to the Colorado Supreme Court's ruling, Arizona rejected the same argument from its governor:

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the executive branch. Therefore in the instant case the Governor is the only appropriate defendant, rather than one of many appropriate defendants.

> [T]he Governor is the chief executive of the state. She has the power to direct or to change how the executive branch of the State implements a statute. It is, therefore, a common occurrence that the Governor, as the chief executive officer of the State, is the named party in challenges to the implementation of a new proposition or act in either state or federal court. *See, e.g., Yavapai–Prescott Indian Tribe v. Ariz.,* 796 F.Supp. 1292 (D. Ariz. 1992) (naming the Governor as defendant in action seeking state compliance with the Indian Gaming Regulatory Act); *Ruiz,* 191 Ariz. at 441, 957 P.2d at 984 (naming the Governor as defendant in action seeking to declare an English-only amendment unconstitutional); *Litchfield,* 125 Ariz. at 215, 608 P.2d at 792 (naming the Governor as defendant in a declaratory judgment action alleging that statute should not be interpreted to allow Governor to select prison location).

Yes on Prop 200 v. Napolitano, 160 P.3d 1216, 1228 (Ariz. Ct. App. 2007).

The Utah Supreme Court has also considered and rejected the very same argument. In *Parker v. Rampton*, 497 P.2d 848 (Utah 1972), doctors filed a request for declaratory judgment seeking clarity regarding a statute that prohibited them from using certain sterilization techniques. In holding that the governor was properly named as a defendant, the Utah Supreme Court pointed out:

> Where a vital question is involved, and especially where public interest is concerned, the statute should be liberally interpreted and applied to effectuate its purposes. What is necessary in such a declaratory judgment action is that there be a defendant whose interest is involved . . . Joining the Governor of the State as a party defendant should give us no concern . . . Under Article VII, Section 5, of the Constitution, he is charged with the duty to 'see that the laws are faithfully executed.'

Parker v. Rampton, 497 P.2d 848, 852-33 (Utah 1972).

Rather than endorsing the familiar approach of naming the Governor, the State would instead have Bloomington sue the thousands of property owners who, at the end of the annexation process, may or may not have ended up becoming part of Bloomington (Appellant's Br. p.20). In so suggesting, the State does not draw any

distinction between those landowners who supported, opposed, or were indifferent to annexation.

Setting aside the considerable practical concerns presented by the State's proposed course of action, which involves pulling thousands of citizens into a complex constitutional argument and inviting each to present his/her perspective on Section 161, it is clear that the constitutionality of Section 161 cannot be addressed by property owners who might or might not have been annexed by Bloomington. Section 161 terminated Bloomington's annexation at the beginning of the statutory annexation process, just after Bloomington introduced annexation ordinances. At the time the process was abruptly brought to a halt, Bloomington's City Council had not even held the required public hearing, let alone met to consider actual adoption of any ordinance (App. Vol. XX p.6). In fact, at the special session where the Council considered ordinance introduction, the annexation ordinance covering annexation area six failed outright, and the resolution moving the process forward for area two, the largest annexation area, succeeded by a single vote—and even then only because a Councilmember requested a re-vote (App. Vol. III p.140; Vol. IV pp.3-5). It is far from certain that any of the proposed annexation ordinances would have survived the rigorous, local legislative process and made it to adoption. And so it would be entirely premature and inappropriate for Bloomington to pull property owners who might or might not have been annexed into the instant declaratory judgment action regarding the constitutionality of a legislative action.

It is helpful to remember that landowners do not become formally involved in legal proceedings associated with annexation until the remonstrance phase, when they may voluntarily choose to sign or not sign a remonstrance petition. I.C. § 36-4-3-11. These property owners were not involved in the unconstitutional codification of Section 161, nor are they involved in enforcing it. In fact, the Indiana Constitution, like all constitutions, is designed to constrain the *government*, not *private* citizens. At issue here is the constitutionality of a state law, not the conduct of any private citizens.

If Bloomington, instead of naming the Governor, had named every landowner included as part of the proposal on March 29 when the City Council first introduced its annexation ordinances, those landowners could successfully argue that Bloomington had not even meet the low bar of the "ripening seeds" requirement applicable to declaratory judgment actions. *See, e.g.*, *Pitts v. Mills*, 333 N.E.2d 897, 902 (Ind. Ct. App. 1975) (*citing Zoercher v. Agler*, 202 Ind. 186, 172 N.E. 186, 189 (1930)). Asking private citizens to sort out whether the State's actions were consistent with Article IV, Section 23 would create legitimate ripeness concerns.

And, in any event, had Bloomington sued private citizens making the preposterous allegation that they could somehow address the constitutionality of special legislation, Bloomington would nonetheless have been statutorily obligated notify the Attorney General and to join the State as an indispensable party:

> In any proceeding in which a statute, ordinance, or franchise is alleged to be unconstitutional, the court shall certify this fact to the attorney general, and the attorney general shall be permitted to intervene . . . for arguments on the question of constitutionality.

I.C. § 34-14-1-11. Regardless of which defendants Bloomington initially identified in its complaint, this Court would end up questioning the same parties at its lectern—the City on one side and the State defending the constitutionality of the statute on the other.

II. Section 161 is impermissible special legislation in violation of Article IV, Section 23 of the Indiana Constitution.

Article IV, Section 23 of the Indiana Constitution states: "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." Ind. Const. art. IV, § 23. Over the 168-year history of Indiana's constitutional proscription of special legislation, the Court's analytical framework for determining whether or not a particular piece of legislation runs afoul of this prohibition has evolved. Just a few months ago in *Herman & Kittle*, another special legislation case affecting Bloomington, this Court reaffirmed its now long-standing two-step special legislation analysis: "First, we determine whether the law is general or special . . . if the law is special, we decide whether the law is nevertheless constitutionally permissible." *Herman & Kittle*, 119 N.E.3d at 83. Constitutionally permissible special legislation turns on whether unique, inherent characteristics of the affected locale inhibit a generally applicable law. *State v. Buncich*, 51 N.E.3d 136, 141-42 (Ind. 2016).

Through *Herman & Kittle*, this court provided additional helpful clarity on the burden of proof applicable in special legislation cases:

> [O]nce a special-legislation claim is lodged and the court determines that the law is indeed special, the burden is on the proponent to show that a general law can't be made applicable.

Herman & Kittle, 119 N.E.3d at 84–85 (citations omitted). Once a law qualifies as special legislation, the burden is placed upon the statute's proponent to connect the alleged unique characteristics to the special legislation. *Id.*

Here the parties agree that Section 161 is special legislation (Appellant's Br. p.27). Therefore, as the proponent of the law, the State must draw a connection between the alleged unique characteristics and the legislation. *Id.* However, the State fails to identify any characteristics unique to Bloomington at all, revealing Section 161 as unconstitutional special legislation.

A. *Dortch* has no bearing on the constitutionality of Section 161.

In its brief, the State urges this Court to apply a novel test differing from the test applied and affirmed in *Herman & Kittle* (Appellant's Br. p.31). The State wrongly claims that *Dortch v. Lugar*, 266 N.E.2d 25 (Ind. 1971), disposes of this cause without further inquiry. In *Dortch*, this Court dealt with multiple challenges to Unigov, a one-of-a-kind statute that fully merged all county and municipal functions in Marion County. *Dortch*, 266 N.E.2d at 32, I.C. 36-3, *et. seq.*[11]. Among its other holdings, the *Dortch* Court held that Unigov did not offend Article IV, Section 23:

> We hold that the legislative qualification in the Act stipulating that there be one first class city in the county before the Act becomes effective as to that county is not an unconstitutional classification. Clearly, the population count of a city within the county has a distinct and rational relationship to the subject of the legislation, namely the reorganization of county and city government in such a populated county.

[11] By contrast, this case deals with the routine incorporation of urbanized parcels along Bloomington's border.

> Distinguishing between such a county and one with no first class city is justifiable . . .

Dortch, 266 N.E.2d at 32. When this Court upheld Unigov in 1971, special legislation jurisprudence had not evolved to utilize the familiar two-step test applicable today. *See Herman & Kittle*, 119 N.E.3d at 81 (noting that the Court replaced this prior standard with a more "fine-tuned approach"). Rather, the Court tended to permit special legislation where a law employing a "population classification had a 'rational relationship' to the law's subject matter." *Id*. Given this relatively hands-off approach, it is unsurprising that Unigov survived Article IV, Section 23 review.

Furthermore, it seems clear that Unigov would survive Article IV, Section 23 scrutiny even under today's special legislation test. Given their significant size and the attendant complexity of delivering local government services, Marion County and Indianapolis could certainly be said to possess unique, inherent characteristics justifying a one-of-a-kind law like Unigov. But contrary to the State's assertion, the Court's holding had nothing to do with a unique special legislation analysis applicable exclusively in cases involving local government organization.

Rather the current special legislation test, which the Court began to fully articulate through its holdings in *Indiana Gaming Commission v. Moseley*, 643 N.E.2d 296 (Ind. 1994) and *State v. Hoovler*, 668 N.E.2d 1229 (Ind. 1996) and has continued to affirm in *Herman & Kittle*, requires the identification of local inherent characteristics in order for special legislation to survive. Because it cannot identify any such characteristics in the instant case, the State asks this Court to discard the standard special legislation analysis and instead hold that Section 161 "is a

legitimate action by the legislature to intervene in the merging of local governments" without reference to any relevant traits of the affected locality (Appellants Br. p.31).

In effect, the State argues that Article IV, Section 23 should never apply to legislative enactments related to local government organization. This proposition is outlandish. No precedent, whether *Dortch* or any other case, supports the notion that special legislation is always permissible as long as it somehow involves the subject of local government organization. And, indeed, this Court's holding in *Kimsey* stands against the notion that a new special legislation analysis should be applied in the annexation context.

The facts in *Kimsey* and the instant case are remarkably similar. Like the present case, the special legislation in *Kimsey* dealt with municipal annexation. *Kimsey*, 781 N.E.2d at 684. In *Kimsey*, the special legislation at issue created a new statutory framework whereby a successful remonstrance required "opposition of sixty-five percent of the affected landowners . . . in ninety-one of [Indiana's] ninety-two counties, but in St. Joseph a simple majority is sufficient." *Id*. at 685. Utilizing the standard special legislation analysis to search for inherent characteristics, this Court struck down the reduced remonstrance threshold as unconstitutional special legislation, stating that it was "directed to nothing in the record and no relevant facts susceptible of judicial notice that are unique to St. Joseph County. Accordingly, this legislation is unconstitutional special legislation." *Id*. at 694. The Court did not invent a test applicable exclusively to Article IV, Section 23 annexation cases, as the State suggests. Instead, when faced a with a special legislation challenge related to

municipal annexation, the Court applied the familiar two-step analysis: (1) whether the legislation is special; and (2) if it is, are there relevant inherent characteristics of the affected locality that render the legislation constitutionally permissible? *Id*. Given this precedent from *Kimsey*, there is no cause for this Court to follow the State down a brand new path and stray from the trusted two-step analysis that has been applied time and time again.

Furthermore, the State's assertion that "*Kimsey* is about differences in annexation procedure" while "this case concerns a direct and substantive legislative judgment about the structure of local government" (apparently like *Dortch*) attempts to draw an illusory distinction (Appellant's Br. p.29). First, in *Dortch* this Court addressed the one-time, unique merger of County and City functions via Unigov. *Dortch*, 266 N.E.2d at 25. Unigov bears little resemblance to the commonplace annexations growing Indiana cities have completed for hundreds of years. Second, both *Kimsey* and the instant case are about municipal annexation, not local government structure. Municipal annexation is a detailed process which, when completed, reallocates the provision of some local government services. Whether municipal annexation is characterized as a "procedure" or as a "substantive judgment about the structure of local government" is irrelevant and illusory. The subject matter of the special legislation in *Kimsey* and the instant case is the same: annexation.

And though *Kimsey* and the present dispute cover the same subject, Section 161 is a far more extreme interference into a local annexation than the statute at issue in *Kimsey*. Section 161 eradicated Bloomington's annexation proposal

midstream and imposed a five-year ban, applicable only to Bloomington, on any additional annexation proposals. I.C. § 36-3-4-11.8(d). The impermissible statute in *Kimsey* merely altered South Bend's remonstrance threshold. *Kimsey*, 781 N.E.2d at 695. Unlike Bloomington, South Bend was free to propose and pursue annexation all the way through ordinance adoption, subject to a unique remonstrance threshold. *Id*. In response, this Court rightly stepped in to correct even this comparatively small incongruity between the annexation process available to South Bend and that available to cities outside St. Joseph County. *Id*. It is clear that the State is concerned about *Kimsey*, as it goes to great lengths to attempt to distinguish the present case from *Kimsey* (Appellant's Br. p.29). The State is right to be concerned. Given the incredible similarity between the two cases, *Kimsey* appears dispositive.

B. The State has identified no unique characteristics justifying the imposition of Section 161.

In grasping for inherent characteristics, the State posits that Section 161 is permissible special legislation because (1) Bloomington's annexation was marked by a sense of urgency, despite following the statutory time frame, and because (2) Bloomington obtained and considered remonstrance waivers during the annexation, as cities are directed to do by law (Appellant's Br. pp.33-40).[12] Neither of these concerns are peculiar to Bloomington because (1) Bloomington followed the statutes

[12] In an unusual sidebar argument, the State asserts that this Court has upheld statutes challenged on special legislation grounds in the majority of cases (Appellant's Br. p.32, n.1). However, the success or failure rate of other special legislation cases is irrelevant. Each case must be decided independently on its merits. Indeed, in the special legislation case most similar to the present dispute, *Kimsey*, this Court declared the offending statute unconstitutional.

detailing annexation timelines and (2) all cities and towns are required by law to obtain remonstrance waivers. Therefore Section 161 does not capture the entire class of entities to which it would naturally apply—namely all cities and towns. Furthermore, if this Court allows Section 161 to survive on the grounds proposed by the State, it will have effectively created a new procedure governing municipal annexation.

1. Bloomington's annexation was not marked by undue haste.

The State argues that the speed of Bloomington's annexation proposal qualifies as a relevant, unique local characteristic and "justified the legislative response" (Appellant's Br. p.33). Bloomington's proposed annexation schedule was not hasty, and it dutifully complied with the detailed statutory timing benchmarks the legislature has directed municipalities to follow when considering annexation (App. Vol. XX p.6). *See* I.C. § 36-4-3-1.7.

The legislature has handed municipalities a detailed and regimented schedule that must be followed in order to perform an annexation. The first formal step in an annexation requires a municipality to publish and mail notice of its public outreach program thirty days prior to the outreach program. I.C. § 36-4-3-1.7(c). Following the outreach program, a municipality has only six months to formally introduce an annexation ordinance. I.C. § 36-4-3-1.7(b). After introduction, a municipality must provide sixty days' notice of a public hearing on the annexation. I.C. § 36-4-3-2.2. And after the public hearing, a municipality must wait thirty days but can wait no longer than sixty days to formally adopt an annexation ordinance. I.C. § 36-4-3-2.1(c).

Bloomington's proposed schedule fell squarely within the confines of these meticulous requirements (App. Vol. XX p.6). From the date the City mailed and published notice of its public outreach meetings on February 17 to the proposed date of adoption, June 30, 133 days would have elapsed (*Id.*). Before Section 161 intervened, the City held ten formal public meetings which included public input from February 3 through March 29, 2017 (*Id.*). At the time Section 161 halted its annexation, Bloomington had already scheduled a massive public hearing for the Bloomington High School South gymnasium on May 31 and would have held at least one additional public meeting on June 30 (App. Vol. IV pp.101-106; Vol. XX p.6).

The State's argument that 133 days of legislative deliberation in compliance with a carefully structured statutory schedule represents a "rushed," "urgent," or "hurried" process strains credulity and is facially false. Bloomington's process was not unduly urgent. For comparative purposes, consider that the Indiana Legislature, even during a long session, sits for fewer than 133 days. I.C. 2-2.1, *et. seq*. That is to say, the General Assembly publicly deliberates for a shorter period of time when it develops a two-year budget that appropriates tens of billions of dollars and affects the well-being of every citizen in Indiana. As a second comparison, consider that fewer than 24 hours elapsed from the moment Section 161 was first slipped into the budget bill and its passage (App. Vol. XVII p.3; Vol. XVIII pp.129, 132). Are we now to characterize a 133-day legislative process as hasty, urgent, or rushed?

Furthermore, Bloomington's annexation was not rushed in comparison to annexations completed by other communities.[13] Michael Shaver, a municipal consultant who has been involved in more than 60 annexations, points out that some annexations "took less than 90 days" (App. Vol. XX p.184).

In addition, the City of Boonville recently adopted two annexation ordinances with 154 days between notice of public outreach and adoption (*Id*. at 11). Boonville's 154-day annexation timeline is remarkably similar to the 133-day schedule proposed by Bloomington. This striking similarity is unsurprising, given the fact that the annexation statute provides localities with clear directives regarding when each step in an annexation must be accomplished. I.C. 36-4-3. And yet despite Boonville's and Bloomington's comparable annexation timelines, only Bloomington suffered the unconstitutional termination of its annexation midstream.

On its face, Bloomington's 133-day annexation does not represent a rushed legislative process warranting the imposition of special legislation. An examination of other communities' schedules reveals that Bloomington's timeline was well within established norms (App. Vol. XX pp.11, 184). The alleged haste of Bloomington's proposed annexation does not, in fact, represent a characteristic unique to Bloomington, and therefore provides no basis for Section 161 to survive. If the State

[13] Under this Court's ruling in *Herman & Kittle*, the State bears the burden of connecting Section 161 to the class it purports to cover. *Herman & Kittle*, 119 N.E.3d at 84-85. Though the burden of proof does not rest with the Appellee, Bloomington has nonetheless presented evidence demonstrating that Section 161 is not connected to any class.

were truly anxious about the speed of municipal annexations, it could have addressed its concerns with a law of general applicability.

2. Bloomington's use of remonstrance waivers was appropriate.

Remonstrance waivers are voluntary, contractual agreements between a city and owners of parcels outside the city who request access to the city's sewer works. State law requires a municipal corporation to obtain a release of a property owner's right to remonstrate any time it extends sewer service beyond its corporate boundary:

> The contract [for sewage works extension] must include, as part of the consideration running to the municipality, the release of the right of:
>
> (1) the parties to the contract; and
> (2) the successors in title of the parties to the contract;
>
> to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive the person's rights to remonstrate against the annexation of the area served by the sewage works.

I.C. § 36-9-22-2(c).[14] Under the statute, the waiver runs with the land, and cities are directed to acquire waivers any time they extend sewer service beyond their borders. *Id*. During Bloomington's 2017 annexation proposal, only waivers obtained on or after

[14] At all times relevant to the present action, Bloomington was statutorily required to obtain waivers any time it extended sewer service beyond its boundaries. Effective July 1, 2018, a new subsection (d) was added to Indiana Code Section 36-9-22-2 by HEA 1023 (2018). The new subsection permits a works board to waive the requirement that a municipality obtain a waiver. However, that subsection has no bearing on the instant cause as it was introduced and became effective during 2018, long after Section 161 terminated Bloomington's annexation.

July 1, 2015, were subject to a statutory expiration date, fifteen years after execution. I.C. § 36-9-22-2(h).[15]

After negotiating a waiver with a property owner, municipalities are advised to record the waiver in a property's chain of title. Failure to timely record a waiver may render the instrument unenforceable against subsequent purchasers:

> [B]efore a waiver of remonstrance is binding under this statute, the landowner must have been a party to the sewer contract, or the contract must have been entered and recorded within the chain of title of subsequent purchasers . . .

Pogue, 940 N.E.2d at 839. As with all things related to annexation, the rules governing waivers are laid out in extraordinary detail, and municipalities are directed to carefully follow them.

Without acknowledging how waivers arise, the State incorrectly asserts that Section 161 should survive due to Bloomington's consideration of waivers (Appellant's Br. p.37). The State identifies three alleged "problems" related to waivers: (1) that Bloomington took specific account of waivers when crafting annexation areas; (2) that Bloomington sought to utilize waivers from as far back as the early 1990's; and (3)

[15] During this past legislative session, the legislature introduced and passed House Bill 1427, establishing Indiana Code Section 36-4-3-11.7. This new section retroactively voided all waiver provisions in contracts signed more than fifteen years ago between cities and landowners who requested the extension of municipal sewer service. Though 1427 is a general law, the legality of Indiana Code Section 36-4-3-11.7 is dubious under both the Federal Constitution's contract clause and under Article I, Section 24 of the Indiana Constitution. Nonetheless, it has no bearing here. The provision was codified more than two years after the events giving rise to this action.

that some of the waivers Bloomington sought to utilize may not have been recorded (*Id.*).

Bloomington's proposed use of waivers as part of its 2017 annexation proposal was entirely legal, appropriate, and consistent with the use of waivers by other communities. The record is clear that Bloomington took account of where it possessed waivers as *one* factor when determining which areas to consider for possible annexation (App. Vol. XIX p.96). However, waivers were clearly only one factor among others.

Of the nine areas proposed to the City Council for possible annexation, only three areas, 1B, 1C, and 2, contained more than 50% waivered parcels, which is the threshold for avoiding a remonstrance (App. Vol. XX p.8). I.C. § 36-4-3-11.3. Fewer than 50% of the parcels in the remaining six areas were subject to waivers (App. Vol. XX p.8). The State's asserted justification for Section 161—that Bloomington was inappropriately taking waiver percentages into account—does not apply to the majority of annexation areas Bloomington was exploring for possible annexation. In six of the nine areas brought to the City Council for consideration on March 29, 2017, the percentage of parcels subject to waivers did not favor the City (*Id.*). If the State had truly been concerned about waiver percentages when it killed Bloomington's annexation via Section 161, why did it craft Section 161 to capture proposed annexation area seven, where, for example, only 5.15% of parcels were waivered? (*Id.*). It is demonstrably false that Bloomington was fixated on waiver percentages. The State's asserted inherent characteristic that Bloomington was preoccupied with

waivers and waiver percentages is not an inherent characteristic at all; it is simply a baseless allegation.

And regardless of the State's assertions, there is nothing unusual or untoward about a city taking stock of its waivers when considering annexation. Waivers are a voluntary contractual commitment by a landowner not to contest a future annexation in exchange for the extension of sewer service. I.C. § 36-9-22-2. The release of the right to remonstrate is a simple contractual term that both parties to the bargain should reasonably expect to come to fruition.

Consider also that annexation is a long, expensive, and, at times, all-consuming process. As of April 27, 2017, the date Section 161 terminated Bloomington's annexation midstream, Bloomington had expended $824,733.26 pursuing annexation (App. Vol. XIV p.3). Prior to expending significant public resources, it is not just permissible, but indeed responsible, for an entity considering annexation to take account of the number of waivers it possesses, where correspondingly it is already providing services, and to incorporate that information into its analysis of which areas are most appropriate for annexation.

Nor is there anything unusual about a municipality taking waivers into account. Eric Reedy, a consultant with experience handling between 40 and 50 annexations, points out that "remonstrance waivers are commonly discussed and incorporated into determining which areas are suitable to annex" (App. Vol. XX p.186). Mr. Shaver states that "any municipality would be expected to consider the annexation of urbanized areas where voluntary remonstrance waivers have been

accumulated" and that "annexations which are underwritten by remonstrance waivers tend to be substantially more efficient, less expensive, and less controversial than annexations of areas with higher potential for remonstrance." (*Id*. at 183-184). There is nothing unusual or inappropriate about a municipality taking a property owner's voluntary relinquishment of his/her right to remonstrate into account when determining which parcels to annex, and there is nothing unique about Bloomington's doing so.

The State also posits that Bloomington inappropriately considered using waivers "dating back to the early 1990's" (Appellant's Br. p.39). This argument is baseless. It is entirely permissible for municipalities to utilize unexpired waivers as part of an annexation. As noted above, at all times relevant to the instant litigation, waivers executed before July 1, 2015, did not expire. Waivers executed on or after July 1, 2015, expired after fifteen years. I.C. § 36-9-22-2(h). Given these time periods, it is impossible for Bloomington to have used an expired waiver during its 2017 annexation proposal, and the age of the waivers is otherwise irrelevant. The State's argument that Section 161 is permissible because Bloomington might have used unexpired waivers from the 1990's fails on its face.

And here again, Bloomington's use of waivers does not differ from other political subdivisions. During its 2018 annexations, Boonville used waivers that were executed as long ago as 1998 (App. Vol. XX pp.14-53). Again, while the age of Boonville's older waivers is similar to the age of Bloomington's older waivers, only Bloomington had the misfortune of being subjected to special legislation. The fact

that Bloomington possesses waivers from as far back as the 1990's is not a characteristic unique to Bloomington.

The State's final argument related to waivers suggests Section 161 was necessary because some of Bloomington's waivers may not have been recorded (Appellant's Br. p.37). However, no legislative solution is required to solve the "problem" of unrecorded waivers. Courts have long recognized that an improperly recorded remonstrance waiver may not be enforceable against subsequent owners of a parcel. *Pogue*, 940 N.E.2d at 839. Therefore, to the extent that Bloomington even sought to use unrecorded waivers, legislative intervention was not necessary. An adequate judicial remedy is already available to property owners who were unaware that their property was subject to a waiver.

Going one step further, even if Bloomington had possessed waivers that were not timely recorded, this trait is not unique to Bloomington. Many of the waivers utilized by Boonville to complete its 2018 annexation were acquired in 1998 and recorded in 2016, 18 years after execution (App. Vol. XX pp.14-53). And yet no special legislation targeted Boonville. To the extent that Bloomington might have possessed unrecorded waivers, a fact that is not indicated anywhere in the record, this "characteristic" does not set Bloomington apart from other cities.

The State's argument also implicates Article I, Section 24 of the Indiana Constitution which protects contractual agreements from legislative interference: "No ex post facto law, or law impairing the obligation of contracts, shall ever be passed." Remonstrance waivers are contracts. If the legislature's action enacting

Section 161 is justified in order to inhibit Bloomington's use of perfectly valid, enforceable, unexpired waivers, then the legislature has run afoul of the Constitution's proscription of legislative actions that impair contractual obligations.

Finally, the State speciously suggests that Section 161 is justified because the annexation proposal was "met by significant public resistance" (Appellant's Br. p.40). This argument is meritless. Annexation is a political process, and it is often controversial. The annexation statute provides many opportunities for public input, and more importantly, a remonstrance process specifically designed to allow dissatisfied parties to seek redress. I.C. § 36-4-3-1–24. But there is no authority for the State's apparent belief that the legislature is somehow empowered to superintend annexations. The legislature is not invested with the role of reviewing and subjectively opining on the process and merits of individual annexations—and particularly when an annexation has scrupulously complied with (or even exceeded) the procedural requirements established by state law.

None of Bloomington's alleged problems with waivers—their use as one of the bases for including territory in the annexation, their age, or their alleged unrecorded status—are unique to Bloomington. Nor is the alleged unpopularity of Bloomington's annexation proposal adequate to excuse the State's behavior. Simply put, there are no inherent characteristics sufficient to transform Section 161 from an unconstitutional, targeted law into a permissible enactment based on relevant local traits.

3. If this court upholds Section 161 based on the inherent characteristics advanced by the State, it will effectively establish a new statutory process governing municipal annexation.

Annexation is regimented. Localities have little latitude with regard to scheduling, the content of fiscal plans, or the order in which an annexation may proceed. Bloomington's 2017 annexation was proceeding in accordance with all of the detailed rules governing annexation. And yet, despite the fact that Bloomington's annexation was proceeding legally, the State has cited urgency and the use of waivers as concerns that justify the extreme measure of legislative intervention via special legislation. It is novel for the State to cite a locality's careful observance of a detailed procedure sanctioned by statute as an inherent characteristic.

Bloomington is aware of no prior special legislation litigation where a locality's diligent adherence to a statutory procedure has been advanced as an inherent characteristic sufficient to legitimize special legislation. A review of the inherent characteristics successfully cited in prior special legislation cases reveals the extraordinary nature of the State's argument in the instant case. *See*, e.g., *Indiana Gaming Commission v. Mosely*, 643 N.E.2d 296 (Ind. 1994) (inherent characteristic authorizing riverboat gambling in select counties was the geographic presence of a suitable body of water); *State v. Hoovler*, 668 N.E.2d 1229 (Ind. 1996) (inherent characteristic authorizing a tax exclusively in Tippecanoe County was fact that it was the only county in the state subject to Superfund liability); *Williams v. State*, 724 N.E.2d 1070 (Ind. 2000) (statute appointing magistrates only in Lake County was permissible due to Lake County's unusually large case docket); *State ex rel. Att'y Gen.*

v. Lake Superior Court, 820 N.E.2d 1240 (Ind. 2005) (statute that changed reassessment laws for Lake County alone was permissible due to one-of-a-kind situation where only a few industrial sites were responsible for a large percentage of all of Lake County's property tax revenue); *State v. Buncich*, 51 N.E.3d 136 (Ind. 2016) (inherent characteristic was the abnormally high number of small precincts in Lake County).

If this Court accepts the State's creative argument that Bloomington's procedurally non-defective "defects" are a sufficient reason to terminate Bloomington's annexation, it will in effect create two annexation procedures: (1) the official but irrelevant annexation process established by Indiana Code 36-4-3, and (2) a second process, known only to the legislature, that a municipal corporation must observe in order to avoid suffering the unpleasant termination of its annexation via special legislation.

Similarly, if the Court accepts the State's argument that municipalities may not take account of waivers, it will change the rules related to annexation. If cities are now required to close their eyes and ignore their waivers while preparing an annexation ordinance or risk legislative termination of an annexation proposal, then statutory and judicial guidance on waivers becomes irrelevant.

Had the legislature been genuinely concerned about the potential for an annexation to proceed too urgently or about Bloomington's use of waivers, it would have passed a law of general applicability changing the relevant deadlines in Indiana Code 36-4-3 or limiting the use of waivers for all municipalities. If the General

Assembly was unhappy with the manner in which Bloomington was legally traversing the annexation process, then precedent directs the legislature to amend the annexation process for *all* municipalities, not to terminate Bloomington's annexation alone.

As this Court pointed out in *Kimsey*, permissible special legislation must apply "wherever the justifying characteristics are found." *Kimsey*, 781 N.E.2d at 692. This Court explained:

> [I]f the conditions the law addresses are found in at least a variety of places throughout the state, a general law can be made applicable and is required by Article IV, and special legislation is not permitted.

Id. at 692-3. In order for special legislation to survive, the inherent characteristics cited as justification for the legislation's enactment must be truly local. If the characteristics may be found elsewhere, the legislature is either required to pass a law that touches all of the localities that possess the unique trait, or the legislature must enact a general statute. Said differently, if the special legislation is underinclusive, then it is unconstitutional.

Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe Cty., 849 N.E.2d 1131 (Ind. 2006), is particularly instructive on the issue of underinclusivity. In *Alpha Psi*, the legislature passed special legislation that affected exactly three fraternities at the Indiana University campus in Bloomington. The legislation at issue applied exclusively to "(1) fraternities, (2) affiliated with Indiana University, (3) who were previously granted property tax exemptions, but (4) who . . . paid property tax in two specified years because of a failure to file an exemption."

Id. at 1137. In trying to come up with some unique characteristic that would permit the tax exemption to survive, the State suggested that the legislature had wanted to keep higher education affordable and therefore nonprofit entities that owned property used for student housing were in need of fiscal relief. *Id*. at 1138. This Court rejected that argument and pointed out that the exemption was underinclusive: "[t]his rationale might identify unique characteristics of fraternities and sororities as a whole" but did not "identify anything unique about the three fraternities . . . that differentiate them from any other fraternity or sorority, at any other time, at any other college, in any other county." *Id*.

Here, Section 161 is similarly underinclusive. The so-called inherent characteristics identified by the State are not inherent characteristics unique to Bloomington at all. They are simply observations about the annexation procedure that may be utilized by every city and town in Indiana. Bloomington is not the only city to which the meticulous schedule set forth at Indiana Code 36-4-3 applies. Nor is Bloomington the only city subject to the rules governing remonstrance waivers. Annexation, with its detailed rules on timing and waivers, is a process available to every city and town. The process is not uniquely available to Bloomington.

Just as the fraternities in *Alpha Psi* were not the only landowning fraternities in Indiana, Bloomington is only one among hundreds of municipalities permitted to undertake annexation. *Alpha Psi*, 849 N.E.2d at 1136. Yet Section 161 applies exclusively to Bloomington. Thus Section 161 fails to capture the "smallest relevant class" to which it might logically apply, namely all cities and towns in the state. *Id*.

As a final note, Bloomington would be remiss if it failed to note the conspicuous irony of the State's argument that Bloomington's 133-day-long annexation reduced "the ability of residents of the proposed annexation areas to learn about the annexation and how it would affect them and, ultimately, to oppose the annexation effectively" (Appellant's Br. p.35). The origin of the instant action is Section 161. Section 161 was slipped onto page 178 of a 188-page budget bill in the darkness of conference committee without any communication to Indiana's citizens and was then passed by both chambers at the Statehouse fewer than twenty-four hours after it was publicly unveiled (App. Vol. XVII p.3; Vol XVIII pp.129, 132). It is offensive for Bloomington residents to be chastised for the inadequacy of their 133-day legislative process (a process that included a minimum of twelve formal opportunities for public input) by an entity that engaged in a deliberately opaque legislative procedure with the aim of curtailing the rights of Bloomington, and only Bloomington (App. Vol. XX p.6).

4. Indiana's prohibition against special legislation was crafted for the specific purpose of precluding laws such as Section 161.

There are no relevant inherent characteristics that would allow Section 161 to survive constitutional scrutiny. Section 161 is therefore revealed as precisely the sort of private law that Indiana's Constitution prohibits. As this Court has pointed out, "the drafters of the 1851 constitution saw one of their principal challenges to be reining in a 'large and constantly increasing number' of special laws." *Kimsey*, 781 N.E.2d at 686.

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." *Id.* at 685. Second, private laws distract the legislature from the public's business. *Id*. Indeed, this Court noted that prior to prohibiting special legislation, nearly three-fourths of the legislature's time was dedicated to crafting special laws at the expense of matters of statewide concern. *Id*. 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. Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 Clev. St. L. Rev. 719, 727 (2012). Indeed special legislation encourages a corrupt practice termed "log-rolling"—a practice in which 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.

It is difficult to imagine a more egregious example of a special law than Section 161, which is blatant legislative adjudication. The enactment of Section 161 is really no different than a law that grants a particular individual a divorce, or voids a single real estate transaction, or grants a named individual an income tax exemption. These flagrant examples of legislative adjudication are precisely the evil the 1851 constitution aimed to eliminate.

III. Section 161 violates Indiana's single-subject rule.

Article IV, Section 19 of the Indiana Constitution, commonly referred to as the "single-subject rule," reads: "An act, except for the codification, revision, or rearrangement of laws, shall be confined to one subject and matters properly connected therewith." The clause impels the General Assembly to organize its acts so that there is rational unity between each of the matters addressed and regulated within an individual act.

The purpose of the clause was both to prevent "log-rolling" of legislation 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), p.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 a purely local or even personal character").

Section 161 is a classic example of logrolling. *See Kimsey*, 781 N.E.2d at 686. It was crafted after three attempts to pass generally applicable annexation legislation were defeated (App. Vol. XVIII pp.160-193). It deliberately curtailed a single locality's annexation authority and had no place in a budget bill regarding the disbursement of state-collected funds. The State, nonetheless, advocates a laissez-faire approach to the single-subject rule, and inaccurately contends that Section 161 was an act of local and state administration (Appellant's Br. p.42). However, this laissez-faire approach cannot be the law, as it renders a significant provision of our state constitution practically meaningless. *See A.B. v. State*, 949 N.E.2d 1204, 1222 (Ind. 2011) (Dickson, J. concurring) (noting that Article 4, Section 19 expressly requires Courts to enforce the single-subject rule (citing *Ind. Cent. Ry. Co. v. Potts*, 7 Ind. 681, 684 (1856); *Beebe v. State*, 6 Ind. 501, 555 (1855)).

Indeed the single-subject rule is designed precisely for situations like the logrolling that resulted in the passage of Section 161. The proper question is not whether the legislature's decision was reasonable, it is "whether an act passed by the legislature is 'confined to one subject and matters properly connected therewith.' " *Id.* at 1225. In codifying the single-subject rule, the framers aimed to "prevent surprise or fraud in the Legislature by means of a provision or provisions in a bill of which the title gave no information to persons who might be subject to the legislation under consideration." *State ex rel. Indiana Real Estate Comm. v. Meier*, 244 Ind. 12, 15, 190 N.E.2d 191, 193 (1963).

Given the context of the larger bill, Section 161 was clearly a surprise. Inserted into a lengthy budget bill mere hours before passage, Section 161 targeted Bloomington for dutifully following the statutory annexation process (App. Vol. XVII p.3; Vol XVIII pp.129, 132). No other city or process was similarly affected. Nothing in the bill put average citizens in Bloomington on notice that Section 161 would eliminate municipal annexation from Bloomington's toolkit for a period of more than five years.

The State's claim that this section was related to taxation, and therefore was properly connected to the budget bill, is similarly untenable (Appellant's Br. p.42). In support of this contention, the State cites, in part, *A.B. v. State*. However, *A.B.* is distinguishable in its scope and on its facts. In *A.B.*, this Court held that legislation covering the fiscal scope and responsibility of the Department of Child Services was properly connected with the biennial budget bill. *A.B.*, 949 N.E.2d at 1212. There is no question that the legislature may properly direct a state agency to expend its funds as part of a budget bill. That is not, however, the subject matter of Section 161, in which the General Assembly prohibited Bloomington from pursuing the statutorily-authorized, local, and public process of expanding its boundaries to cover urbanized, contiguous areas. The annexation process, and any related incidental adjustments in property taxes, increases in services to annexed areas, or any other effects of an annexation, did not alter or affect the state budget in any way. With Section 161 the General Assembly was not acting upon the administration of property taxes; it was simply halting one city's annexation process mid-stream. There is no indication in the

record or in the text of Section 161 that its purpose, effect, or intent was remotely related to taxation.

The State also incorrectly asserts that Section 161 is similar to other instances of local administrative regulation in budget bills (Appellant's Br. p.42). *See, e.g., 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) (holding that the elimination of Marion County teachers' collective bargaining rights within a budget bill that also regulated state and local administration did not offend the single-subject clause). The Court of Appeals in *Indiana State Teachers Association* based its decision in part on the fact that the budget bill made other directed adjustments to the Indianapolis Public Schools. *Id.* at 935-36. Here, there were no other adjustments related generally to annexation or to any other cities' annexations. Additionally, there is a clear connection between the wages of teachers, which are paid in part from state disbursement of education funds, and a state-wide budget. *See* I.C. § 20-28-9-1.5 (governing teacher salary increases); I.C. § 20-43-10, *et seq*. (disbursement of state funding for schools). There is no remotely similar connection here between a local annexation process and the state budget.

To the extent that previous decisions have not considered the full authority and gravity of the single-subject rule as outlined by Justice Dickson, they have applied the wrong standard and are ripe for revisiting. *See A.B.*, 949 N.E.2d at 1225 (Dickson, J. concurring); *Pence*, 652 N.E.2d at 489 (Dickson, J. dissenting) (favoring enforcement of the "constitutional imperative" of the single-subject rule). The Court

of Appeals in *Indiana State Teachers Association* seemingly expressed its solidarity with Justice Dickson's approach, but felt that its hands were tied to the previous "implied invitation" for the legislature to disregard a constitutional provision. *Indiana State Teachers Ass'n*, 679 N.E.2d at 935-36. However, no transfer from that decision was sought, and therefore this Court did not have an opportunity to comment on the tenuous connection to the budget bill.

It stands to reason that the drafters of the Indiana Constitution intended all constitutional provisions to be enforced. Regarding the single-subject rule, this intent can be discerned from the provision's early history and more recent modifications reaffirming its importance. *A.B.*, 949 N.E.2d at 1225 (Dickson, J. concurring). The proper application of the single-subject rule here is clear: Section 161 is unconstitutional because it was not a matter properly connected with the funding allocations set forth in the biennial budget bill.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's order granting summary judgment to Appellee City of Bloomington.

Respectfully Submitted,

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WORD COUNT CERTIFICATE

Pursuant to Indiana Rule of Appellate Procedure 44(F) and in reliance upon the word count of the word processing system used to prepare this brief, I verify that this brief contains no more than 14,000 words.

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CERTIFICATE OF SERVICE

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