

STATE OF INDIANA     )  
   ) SS:  
 COUNTY OF MONROE    )

MONROE CIRCUIT COURT #6

CAUSE NO. 53C06-1705-PL-001138

CITY OF BLOOMINGTON,  
   PLAINTIFF,

VS.

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

ORDER

The Court, having conducted a hearing regarding the Motion to Dismiss filed by the defendant, now finds and Orders as follows:

1. The plaintiff has filed a Complaint for Declaratory and Injunctive Relief, which requests that this Court declare Section 161 of Public Law 217-2017 to be unconstitutional and to enjoin its enforcement. Section 161, as signed into law by the defendant, renders the plaintiff's annexation ordinance void, terminates the plaintiff's annexation action, and prohibits the plaintiff from introducing another annexation ordinance regarding the same property within five years.
2. I.C. 34-14-1-2 provides in relevant part that any person... whose rights, status, or legal relations are affected by a statute ...may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder."
3. As argued by the plaintiff, the plaintiff had two choices when Section 161 became law. The plaintiff could continue with the annexation process or the plaintiff could challenge the constitutionality of Section 161 and obtain a judicial determination regarding the validity of the law before continuing with the annexation process.
4. The plaintiff chose the second option and filed this declaratory judgment action. Under Indiana law, in order to determine whether declaratory judgment is appropriate, the court should look to whether: (1)"the issuance of a declaratory judgment will effectively solve the problem, (2) whether it will serve a useful purpose," and (3)whether or not another remedy is more effective or efficient." *Volkswagenwerk, A.G. v. Watson* 390 NE. 2d 1082 (Ind. Ct. App, 1979).
5. The Court finds that all three criteria are met in this case. Considering the language of Section 161, the plaintiff's annexation ordinance is void and the annexation process has been terminated by the act of the defendant. Should the plaintiff ignore Section 161 and proceed with the annexation process, the plaintiff would be subject to a claim of pursuing an unreasonable or groundless action against the property owners affected by the annexation

process. Accordingly the plaintiff has no other remedy than to pursue a declaratory judgment action if the plaintiff intends to pursue annexation. The issuance of a declaratory judgment will effectively solve the problem and will serve a useful purpose by determining whether the law is constitutional or not, and by therefore determining whether the plaintiff can proceed with the annexation process without causing undue litigation for the property owners affected by the annexation.

6. The defendant is the appropriate defendant in this case. Section 161 does not specify who will enforce its provisions. The responsibility for enforcing Section 161 accordingly falls on the defendant as the governor of Indiana. Therefore, the controversy in this case is between the plaintiff, City of Bloomington and the State of Indiana. Additionally, prior Indiana case law has found the governor to be an appropriate defendant when the constitutionality of a statute is at issue. *Stoffel v. Daniels* 908 N.E. 2d 1260 (Ind. Ct. App. 2009).

7. For these reasons, the Court now denies the Motion to Dismiss filed by the defendant. The Court will schedule a hearing regarding the plaintiff's Complaint when requested by the parties.

All Ordered this 3rd day of October, 2017.



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Frank M. Nardi, Special Judge  
Monroe Circuit Court

cc: Michael Rouker  
Thomas Cameron  
Jill E. Esenwein