

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE COUNTY CIRCUIT COURT

CAUSE NO: 53C06-2203-PL- 00610

CITY OF BLOOMINGTON,)
)
Plaintiff,)
)
Vs.)
)
CATHERINE SMITH, in her official)
capacity as Monroe County Auditor,)
)
Defendant,)
)
and)
)
STATE OF INDIANA,)
)
Intervenor.)

ORDER ON PARTIAL SUMMARY JUDGMENT

Plaintiff, City of Bloomington, initiated these consolidated actions by filing a Complaint for Declaratory and Injunctive Relief on March 29, 2022. Plaintiff filed its Motion for Partial Summary Judgment on Counts I, II, and III on February 27, 2023, pursuant to Trial Rule 56. Intervenor, State of Indiana, filed Intervenor’s Cross-Motion for Partial Summary Judgment on September 7, 2023. On November 15, 2023, Plaintiff filed a Motion for Hearing on Cross-Motions for Summary Judgment. The Court set this matter for hearing on February 8, 2024. Prior to the

scheduled hearing on February 8, 2024, the Honorable Kelsey B. Hanlon recused as Special Judge, and the hearing was vacated. On February 20, 2024, the Honorable Erik C. Allen, District Facilitator for the assignment of special judges, appointed the Honorable Nathan G. Nikirk to preside over this matter. The Court set the pending cross-motions for hearing to receive oral argument on March 15, 2024. The Court having considered the parties' written submissions, designated evidence, and having heard oral argument on the motions, now DENIES the City's motion and GRANTS the State's motion.

The Court now makes the following findings of fact and conclusions of law in support of its ruling. To the extent any finding of fact is more properly understood to be a conclusion of law, it shall be treated as such, and vice-versa.

FINDINGS OF FACT

I. The City's Provision of Sewer Service Outside City Limits

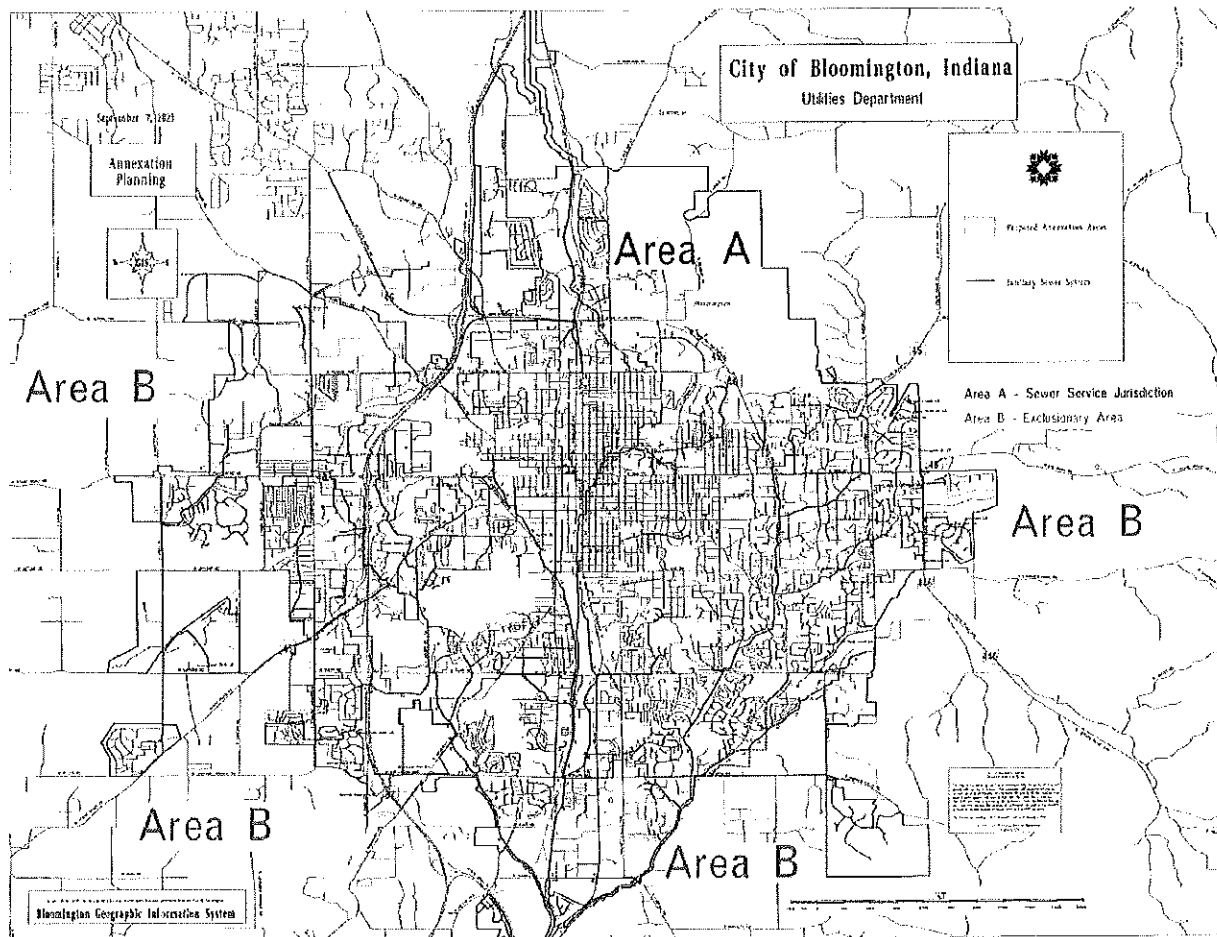
1. The City operates municipal sewage works through its Utilities Department. State Ex. 1, *Hamilton Dep.* 11:2–9. The Utilities Department is funded through rates and fees for service provided, which are calculated based on the cost of service. (State Ex. 2, *Kelson Dep.* 27:13–17; *see id.* at 24:1–7). The Utilities Department receives no “funding from the City through taxes or any other vehicle.” *Id.* at 24:1–7.

2. As permitted by I.C. 36-9-23-36, the City provides sewer service to properties outside of the city limits. (*Hamilton Dep.* 12:7–24). Businesses, homeowners, and developers

may seek municipal sewer service because some proposed land uses require sewer access, sewer access enables denser development, and septic systems can be harder to maintain. (*Kelson Dep.* 62:13–67:24). In return for providing sewer service, the City of Bloomington enjoys a number of benefits. Providing sewer services enables the City to promote “dense growth” in an “orderly” manner. (*Hamilton Dep.* 15:1–9). The resulting factories, libraries, and hospitals can provide jobs for City residents or valuable services for the entire community. (*Kelson Dep.* 55:15–56:2, 68:3–15; *Hamilton Dep.* 24:22–25:8). Residential developments can provide more workers or customers for City businesses, helping them to thrive. (*Hamilton Dep.* 16:20–17:3). Areas that develop around the city may also be candidates for annexation by the City later. *Id.* at 26:6–27:18, 30:8–10.

3. To obtain sewer service outside City limits, landowners must submit an application to the Utilities Department and sign a contract. (*Kelson Dep.* 18:1–20:1). The contract states: “I hereby contract with the City of Bloomington Utilities (CBU) for service and agree to pay CBU for such service in accordance with established rates. I also agree to conform to all CBU Rules, Regulations, and Standards . . . now in force or which may be hereafter adopted.” (State Ex. 5, Individual Customer Contract at 2; State Ex. 6; Commercial Customer Contract). The City also requires landowners to sign a waiver of the right to remonstrate against annexation. (*Kelson Dep.* 17:18–22, 73:18–74:18; State Ex. 7, CBU Rules, Regulations and Standards (2008) §§ 3.9, 24.8). There are, however, “hundreds” of serviced properties outside City limits for which the City “do[es] not have waivers.” (*Hamilton Dep.* 33:3–25).

4. After an application is submitted, engineering staff at the Utilities Department review it. (*Kelson Dep.* 17:23–24). “[T]ypical” approvals list technical requirements related to the sewer connection. (*Kelson Dep.* 20:15–21:2; see State Ex. 8, Sample Individual Approval at 2; State Ex. 9, Sample Commercial Approval at 2). For at least 13 years, the City required the Utilities Department to approve all compliant service requests in an area outside City limits known as “Area A,” indicated on the map below. (CBU Rules, Regulations and Standards (2008) § 24.2).



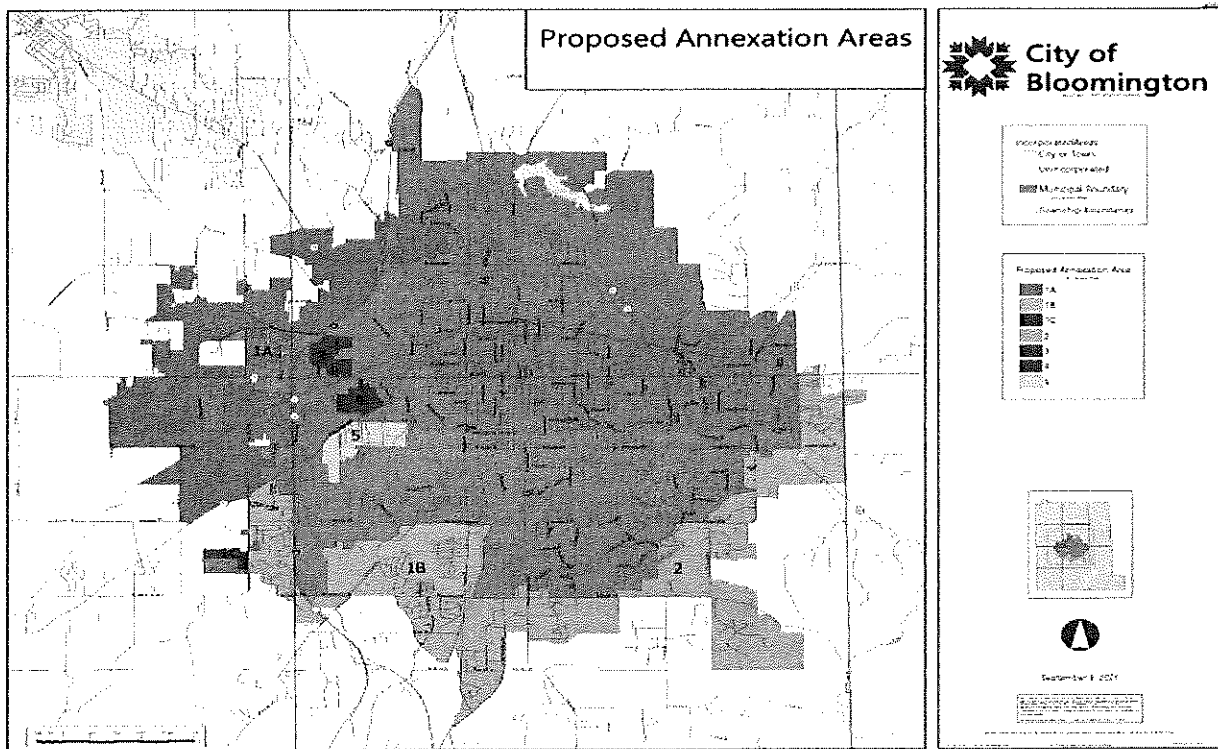
State Ex. 4, Sewer Service Map).

The Utilities Department had the discretion to deny service requests only for properties outside Area A. (CBU Rules, Regulations, and Standards (2008) § 24.3). The Utilities Director is not aware of “any cases” in which the City denied an application to serve a property in Area A. (*Kelson Dep.* 58:6–22).

5. When a landowner’s application to connect is approved, the landowner is required to build pipe to the sewer main and pay a fee to cover the cost of connection and necessary upgrades to existing infrastructure (*e.g.*, larger pipes needed to accommodate additional flow from the new sewer connection). (*Kelson Dep.* 24:1–8, 48:14–49:5; CBU Rules, Regulations, and Standards (2008) § 24.7). The landowner also must pay any applicable sewer rates. (*Kelson Dep.* 18:1–20:1; Individual Customer Application and Contract; Commercial Contract). The rates charged to customers outside City limits are higher than the rates charged to customers inside City limits, which reflects the higher cost of serving customers in less densely populated areas. (*Kelson Dep.* 30:18–32:8; State Ex. 10, City Response to Interrogatories 14).

II. City of Bloomington - Proposed Annexation

6. In February 2017, the City proposed the annexation of seven areas designated as areas 1A, 1B, 1C, 2, 3, 4, and 5 as illustrated on the map below. (City Ex. A-2; City Ex. A-3).



(City Ex. 14-A).

7. The City planned to adopt annexation ordinances in June 2017. Under state law, the City of Bloomington's adoption would have triggered an obligation to notify affected landowners that they could remonstrate against the proposed annexations. [I.C. 36-4-3-11.1]. If at least 65% of landowners remonstrate against a proposed annexation, the proposed annexation is automatically void. [I.C. 36-4-3-11.3(b)(1)]. If fewer than 65% but more than 51% of landowners remonstrate, the remonstrators may appeal the proposed annexation to a court for review. [I.C. 36-4-3-11.3(c)(1)]. If fewer than 51% of landowners remonstrate, the proposed annexation may move

forward without judicial approval. Remonstrances do not count if the landowner is “subject to a valid waiver of remonstrance.” [I.C. 36-4-3-11.2(b)(3)].

8. When the City proposed its annexation of Areas 1A - 5, it held more than 1,000 waivers of the right to remonstrate against annexation from landowners in those areas. (City Ex. 1-A). Many of the waivers had been executed years before - some as far back as 1958. (State Ex. 11, Examples of Old Waivers; *see* City Reply at 17 (admitting that “more than 80%” of the waivers were at least 15 years old).

9. The City does not have an explanation regarding why it did not act on those waivers before 2017. (*Hamilton Dep.* 65:25–66:2).

10. Dozens of waivers from the 1990s and 2000s also had not been previously recorded. (State Ex. 12, Examples of Previously Unrecorded Waivers).

III. The General Assembly’s Enactment of Legislation

11. In April 2017, while the City was considering annexation, the General Assembly enacted a statute (the 2017 Act) that, until June 30, 2022, prohibited municipalities from taking “any further action” to annex properties located within “an unincorporated area on January 1, 2017,” and were “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.” [I.C. 36-4-3-11.8(c) - (d)]. The City challenged the 2017 Act, arguing that it violated Article 4, Section 23 of the Indiana Constitution regarding the prohibition of special legislation. The City also argued the 2017 Act violated Article 4, Section 19 of the Indiana Constitution known as the single-subject

rule. In December 2020, the Indiana Supreme Court ruled that the 2017 Act was unconstitutional special legislation. *See, Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020).

12. In 2019, the Indiana General Assembly amended several statutes governing annexation and waivers with the 2019 Act. (2019 Ind. Legis. Serv. P.L. 257-2019). The 2019 Act provides that a “remonstrance waiver executed before July 1, 2003, is void,” I.C. 36-4-3-11.7(b); *see id.* §§ 13-18-15-2(e), 36-9-22-2(i), and that waivers executed on or after July 1, 2003, “expire[] not later than fifteen (15) years after the date the waiver is executed.” *Id.* § 36-4-3-11.7(c) - (d); *see id.* §§ 13-18-15-2(f) - (g), 36-9-22-2(j) - (k). The 2019 Act also requires the timely recording of waivers executed on or after July 1, 2003. *Id.* § 36-4-3-11.7(c)–(d); *see id.* §§ 13-18-15-2(f)–(g), 36-9-22-2(j)–(k). In addition, the 2019 Act applies to all remonstrance waivers anywhere in the State of Indiana.

IV. 2021 Annexation by the City of Bloomington

13. In September 2021, the City enacted ordinances authorizing the involuntary annexation of Areas 1A - 5 and notified landowners of that intent, triggering the period for submitting remonstrances to the Monroe County Auditor. (City Ex. A-10; City Ex. A-11; City Ex. A-12; *see* I.C. §§ 36-4-3-11.1, 36-4-3-11.2).

14. The City’s annexation proposals met with resistance. Landowners expressed concern over “increased taxes”; more restrictive regulations on animals, open burning, and discharging firearms; and not “want[ing] to be associated with the City.” (*Hamilton Dep.* 49:22–51:1). Longtime landowners faced the most daunting changes from annexation. As the City’s

mayor explained, the City has undergone “significant” changes over the last 25 years. (*Hamilton Dep.* 9:19–10:11). “[C]limate change,” “inclusion,” and “affordable housing” now loom large on the City’s agenda. *Id.* at 10:5–11. The City has enacted “significant” new regulations over the last 25 years as well, such as “[n]o smoking rules in public spaces and private spaces” and a comprehensive new zoning code to govern buildings, “parking requirements, landscaping requirements, [and] signage requirements.” *Id.* at 48:15–49:12.

15. According to the Monroe County Auditor’s certified results, more than 65% of landowners in five of the seven areas remonstrated, defeating annexation of those areas. (City Ex. H; *see* I.C. 36-4-3-11.3(b)(1)). In the remaining two areas, more than 60% of landowners remonstrated, giving them a right to appeal. (City Ex. H; *see* I.C. 36-4-3-11.3(c)(1)). In certifying the remonstrances, the Monroe County Auditor considered whether the City held a valid waiver of annexation for the affected properties. (*See* City Ex. H). The Auditor noted that hundreds of the waivers held by the City were invalid under the 2019 Act. *Id.*

V. Lawsuits filed in 2022

16. In March 2022, the City filed seven separate actions against the Monroe County Auditor, each challenging the Auditor’s certification for a different portion within the proposed annexation area. In each, the City alleged that the Auditor should be required to count waivers that are invalid under the 2019 Act. The City alleges the 2019 Act is unconstitutional because it violates Article I, Section 24 of the Indiana Constitution, and Article I, Section 10 of the United States Constitution regarding the prohibitions against impairment of contracts. (*See* 53C06-2203-PL-608 Complaint ¶¶ 53–64 (Counts I and II); 53C06-2203-PL-610 Complaint ¶¶ 53–64 (Counts

I and II)).¹ The City also alleged that the 2019 Act cannot “fair[ly]” be applied to it because the “legislature illegally delayed Bloomington’s annexations via the 2017 law” and, while litigation over the law was pending, enacted another statute that “invalidate[d] waiver contracts.” (See 53C06-2203-PL-608 Complaint ¶¶ 70–71 (Count III); 53C06-2203-PL-610 Complaint ¶¶ 70–71 (Count III)). A final count alleged that the Auditor “appears to have counted multiple defective remonstrance petitions.” (See 53C06-2203-PL-608 Complaint ¶ 73 (Count IV); 53C06-2203-PL-610 Complaint ¶ 73 (Count IV)). The actions were consolidated pursuant to Trial Rule 42(A). (*Order Consolidating Actions (Apr. 11, 2022)*). The State of Indiana then intervened. (*Notice of Intervention (May 18, 2022)*).

17. On February 27, 2023, the City moved for partial summary judgment on Counts I, II, and III of its complaints. A period of discovery followed. On September 7, 2023, the State filed its Cross-Motion for Partial Summary Judgment on Counts I, II, and III of the complaints filed by the City of Bloomington.

18. As the briefing was ongoing, the City moved to dismiss 53C06-2203-PL-000608 and 53C06-2203-PL-000609 with prejudice, explaining that it wished to “proceed expeditiously” with another case that had been stayed pending disposition of the 53C06-2203-PL-000608 and 53C06-2203-PL-000609 actions. (See *Voluntary Motion to Dismiss (Sept. 13, 2023)*). The Court granted the motion, dismissing the 53C06-2203-PL-000608 and 53C06-2203-PL-000609 “with

¹ The complaint in Cause No. 53C06-2203-PL-000608 is representative of all seven complaints. As two of the actions have been dismissed, however, the Court cites to the lead complaint in the remaining actions as well (*cause 53C06-2203-PL-610*). The complaint in cause ending 610 is also representative of all remaining complaints. The Court also notes that the original complaint was captioned as 53C01, however, the case was transferred to Monroe Circuit Court VI upon filing.

prejudice” and consolidating the remaining five actions into cause number 53C06-2203-PL-000610. (*See* Order Granting Mot. to Dismiss (Sept. 19, 2023)).

19. The parties’ cross-motions for partial summary judgment concern the City’s claims that the 2019 Act violates the federal and state Contract Clauses and contravenes principles of fundamental fairness thereby making the 2019 Act unconstitutional. The Court finds the City’s challenges to the 2019 Act fail.

20. The Court rejects the State of Indiana’s argument that claim preclusion applies in this matter. It appears to the Court that the remaining cases were intentionally excluded to allow for this litigation to proceed when the City filed the Motion to Dismiss in causes 53C06-2203-PL-000608 and 53C06-2203-PL-000609. Accordingly, the Court finds claim preclusion does not apply in this instance.

CONCLUSIONS OF LAW

I. City of Bloomington - Claims

A. Count I

21. Count I of the City’s complaint alleges that the 2019 Act violates Article 1, Section 24 of the Indiana Constitution. That provision, known as the state Contract Clause, states as follows:

*No ex post facto law, or law impairing the obligation of contracts,
shall ever be passed.*

[Ind. Const. art.1, § 24].

22. The placement of the Contract Clause in the Bill of Rights suggests the provision is designed to protect “private” contracts from unwarranted state interference. *Clem v. Christole, Inc.*, 582 N.E.2d 780, 783–84 (Ind. 1991) (citations omitted). It does not give the State’s political subdivisions a right to object to “the validity of statutes releasing obligations due the state” or themselves. *Dep’t of Pub. Welfare of Allen Cnty. v. Potthoff*, 220 Ind. 574, 44 N.E.2d 494, 496 (1942).

23. Our Supreme Court has rejected claims by local governments under the state Contracts Clause. In *Bolivar Township Board of Finance of Benton County v. Hawkins*, 207 Ind. 171, 191 N.E. 158 (1934), the court rejected a challenge to a state statute releasing sureties from obligations to Bolivar Township’s board of finance. As the court explained, there was no impairment of contract because the board was “a political subdivision of the state, and a creature of the Legislature.” *Id.* at 165.

24. The State “may release the liability created . . . without the consent of the agent,” and “by the great weight of authority this does not amount to the impairment of contracts as provided for in the federal and state Constitutions.” *Id.*; see, e.g., *Cent. Union Tel. Co. v. Indianapolis Tel. Co.*, 189 Ind. 210, 126 N.E. 628, 630–31, 634 (1920); *Lucas v. Bd. of Comm’rs of Tippecanoe Cnty.*, 44 Ind. 524, 530 (1873), *aff’d*, 93 U.S. 108 (1876).

25. Similarly, in *Department of Public Welfare of Allen County v. Potthoff*, 220 Ind. 574, 44 N.E.2d 494 (1942), the Indiana Supreme Court again rejected this argument. It held that the state Contract Clause did not prevent the legislature from discharging a pensioner from an agreement that required him to reimburse Allen County for old age assistance from any real

property he acquired. *Id.* at 496. “While the contract clause of the Constitution protects parties dealing with the state,” the court stated, “it does not, of course, affect the validity of statutes releasing obligations due the state.” *Id.* Under *Bolivar*, the court continued, a statute releasing a person from an obligation to a political subdivision of the state “does not amount to the impairment of contracts.” *Id.* at 497 (quoting *Bolivar*, 191 N.E. at 165). That principle has since been “reaffirmed” as “the settled law of the state.” *Id.* (citing *Kassabaum v. Bd. of Fin. of Town of Lakeville, St. Joseph Cnty.*, 215 Ind. 491, 20 N.E.2d 642, 646 (1939), and *State ex rel. Jackson v. Middleton*, 215 Ind. 219, 19 N.E.2d 470, 473 (1939)).

26. *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020), does not establish a different rule. That decision addressed issues relating to justiciability and Article 4, Section 23, not the scope of what the state Contract Clause protects. *Id.* at 1253. Nothing in the two-Justice plurality opinion overrules the Indiana Supreme Court’s express holdings in *Bollivar* and *Potthoff*. While the City might wish for those decisions to be “replaced,” as stated in Plaintiff’s Reply on page 3, filed October 10, 2023, this Court is “bound by the decisions of our supreme court” holding that the City cannot challenge state statutes under the state Contract Clause, *Horn v. Hendrickson*, 824 N.E.2d 690, 694 (Ind. Ct. App. 2005); see *Dep’t of Treasury v. City of Linton*, 223 Ind. 363, 60 N.E.2d 948, 952 (1945) (rejecting the argument that an earlier decision was overruled “by implication”). Therefore, the City’s challenge to the 2019 Act in Count I fails.

B. Count II

27. Count II of the City’s complaint alleges that the 2019 Act violates the Contract Clause of the United States Constitution. That provision provides in relevant part that “[n]o State

shall . . . pass any Law impairing the Obligation of Contracts.” (U.S. Const. art. I, § 10). Designed as a “constitutional bulwark in favor of personal security and private rights,” *The Federalist No. 44* (James Madison), the Clause binds States and their political subdivisions alike, *see Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 242 (1978); *St. Paul Gaslight Co. v. City of St. Paul*, 181 U.S. 142, 148 (1901). Like the Indiana Supreme Court, the U.S. Supreme Court has held that a “city cannot invoke” the Contract Clause “against the state,” explaining that a “city is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit.” *City of Trenton v. New Jersey*, 262 U.S. 182, 188, 192 (1923); *see, e.g., City of Worcester v. Worcester Consol. St. Ry. Co.*, 196 U.S. 539, 550–52 (1905); *City of New Orleans v. New Orleans Waterworks Co.*, 142 U.S. 79, 89 (1891).

28. The City argues that the U.S. Supreme Court’s decision in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), abrogates decisions limiting cities’ ability to assert constitutional claims against their States. As the Indiana Court of Appeals explained, however, *Gomillion* “states that the explicit holding[]” of *Trenton* - namely, that cities cannot invoke the Contract Clause against their States - “remain[s] good law.” *Lake Ridge Sch. Corp. v. Holcomb*, 198 N.E.3d 715, 719 (Ind. Ct. App. 2022) (citing *Gomillion*, 364 U.S. at 344). The law remains that “municipalities and political subdivisions cannot bring [federal] constitutional claims against their states,” including claims under the Contract Clause. *Id.* at 718; *see Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (explaining that courts must follow U.S. Supreme Court precedent even if they think “the precedent is in tension with ‘some other line of decisions’” (quoting *Rodriguez de Quijas v.*

Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989)). Consequently, Count II of the City's complaint fails.

C. Count III

29. Count III of the City's complaint alleges that the 2019 Act contravenes "fundamental fairness." See 53C06-2203-PL-000610 Complaint, ¶ 71. Courts, however, may "evaluate only the boundaries of legislative power, not the wisdom of legislative policy." *Planned Parenthood*, 211 N.E.3d at 984; see *Bunker v. Nat'l Gypsum Co.*, 441 N.E.2d 8, 11 (Ind. 1982). Thus, to the extent that Count III raises a claim distinct from the City's federal and state Contract Clause claims, the claim fails.

III. Conclusion

30. There is no genuine issue of material fact and the State of Indiana is entitled to Partial Summary Judgment as to Counts I, II, and III of Plaintiff's Complaint.

IT IS THEREFORE ORDERED that the City's motion for partial summary judgment is **DENIED**. The State's cross-motion for partial summary judgment is **GRANTED** as there is no genuine issue of disputed material fact as to Counts I, II, and III of Plaintiff's Complaint. This order does not dispose of Count IV of the Complaint which raises unrelated issues.

Dated: June 18, 2024.



Hon. Nathan G. Nikirk, Special Judge
Monroe Circuit Court VI

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