STATE OF INDIANA	)	
	) SS:	IN THE LAKE SUPERIOR COURT
COUNTY OF LAKE	)	

CITY OF GARY	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CAUSE NO. 45D01-1211-CT-00233
SMITH & WESSON CORP. *et al*.,	)	
	)	
	)	
Defendants.	)	
	)	

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MANUFACTURERS' JOINT MOTION FOR JUDGMENT ON THE PLEADINGS

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REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MANUFACTURERS' JOINT MOTION FOR JUDGMENT ON THE PLEADINGS

The City concedes that, on the face of the pleadings, its lawsuit comes within the provisions of Ind. Code § 34-12-3.5 (the "Reservation Statute"), which by its plain language provides that the City may not maintain this action. (*See* Opp. at 17, noting that operative language "serves to terminate this lawsuit".) In its attempt to avoid that termination, the City assumes the "heavy burden" of challenging the constitutionality of the statute, but in doing so, the City relies entirely on the baseless contention that the Reservation Statute "is limited in scope to single out and eliminate ***only*** the City's case and no others." (Opp. at 13 (emphasis in original).) To the contrary, the plain language of the statute applies retroactively to reach the City's suit and applies prospectively to prohibit all political subdivisions in the State from bringing claims in the future against members of the firearm industry, including manufacturers and sellers. The City's entire brief is spent attempting to fashion a constitutional attack on a statute that the Legislature simply did not pass and, accordingly, those arguments fall well short of meeting the City's burden to overcome the strong presumption of constitutionality that clothes Indiana statutes.

First, the Reservation Statute is not "special legislation" because by its terms it applies to all political subdivisions in Indiana, and even if it were "special," it would nonetheless be constitutionally permissible. The Court of Appeals rejected a virtually identical "special law" challenge by the City with respect to the 2015 amendment to the Immunity Statute, Ind. Code § 34-12-3-3 – a fact that the City inexplicably omitted from its recitation of the case's procedural history and from its argument. *See City of Gary v. Smith & Wesson Corp.*, 126 N.E.3d 813, 826 (Ind. Ct. App. 2019). Second, the Reservation Statute does not violate separation of powers principles because nothing about the statute affects a final judgment of the courts or encroaches on the operation of the judiciary or the procedures by which it decides cases. Finally, the City has

not established that it is a "person" entitled to assert the Open Courts Clause. In any event, the Reservation Statute does not shut the courthouse door to claims based on alleged injuries to the City or any other political subdivision related to the actions of firearms manufacturers. It merely declares that, as between the State and the political subdivisions it has created, only the State can make the decision to assert such claims. Because the State has determined that political subdivisions may no longer independently assert claims against members of the firearms industry, the City has no rights to assert under the Open Courts Clause.

Given the structure of the Reservation Statute, the City's heavy reliance on *Mellowitz v. Ball State University*, 221 N.E.3d 1214 (Ind. 2023), to lead its attack is particularly curious. In that case, the Legislature passed a law in response to a single pending court case, and the new law was made retroactive to a date that included the filing of the pending case, while also applying more broadly to any actions that might be filed in the future. The Reservation Statute does the same, applying both retroactively and prospectively. And in *Mellowitz*, the Legislature did not invalidate underlying claims, but changed who could assert those claims – in that case, individuals could no longer pursue claims on behalf of others through a class action. Again, the Reservation Statute does the same, providing that only the State, and not its political subdivisions, can bring claims against members of the firearm industry for injuries allegedly suffered by a political subdivision.

Nonetheless, the City cherry-picks language from the Supreme Court's opinion in *Mellowitz* (Opp. at 2), but it takes that language out of the context provided by the Supreme Court: "[Striving to work in a spirit of cooperation] means doing what we can to accommodate legislation that predominantly furthers public policy objectives, so long as the legislature is not usurping the judicial prerogative of managing the courts." *Mellowitz*, 221 N.E.3d at 1222-23. Moreover, while

the prohibition on class actions at issue in *Mellowitz* certainly involved court procedural rules for managing cases before the courts, even that statute was found to be constitutional because of the underlying policy objectives that motivated it. Consequently, that decision does not suggest constitutional problems with the Reservation Statute, which makes no attempt to manage the courts or its procedures.

In addition, the Reservation Statute embodies the Legislature's judgment and policy objectives. Both the United States Constitution and the Indiana Constitution recognize the fundamental right of Indiana's citizens to bear arms. In order to protect those rights, and to ensure that Hoosiers would encounter consistent rules and regulations for firearms as they moved throughout the State, the Legislature passed a provision in 2011 that precluded regulation of firearms at the local level. *See* Ind. Code § 35-47-11.1-2. The Legislature furthers those same objectives through the Reservation Statute, ensuring a consistent handling of any governmental lawsuit against members of the firearms industry and thereby avoiding a potential patchwork of injunctive requirements that would create confusion for Hoosiers and for the members of the firearms industry serving them. Consistent treatment of firearm regulations throughout Indiana was a valid basis for the Legislature's reservation of such power to the State in 2011, and consistent handling of governmental litigation is a valid justification for the Reservation Statute today. While the City may not agree with the Legislature's policy choices, that disagreement does not make the Reservation Statute unconstitutional. Nor does it provide a basis for judicial second-guessing of legislative judgment. The City has not met its heavy burden, and Defendants' Motion for Judgment on the Pleadings should be granted.

ARGUMENT

I. Standards Governing the City's Constitutional Challenge to the Reservation Statute.

A statute passed by the Indiana Legislature "is cloaked with 'the presumption of constitutionality until clearly overcome by a contrary showing.'" *Morales v. Rust*, 228 N.E.3d 1025, 1033 (Ind. 2024), *reh'g denied* (Apr. 22, 2024) (quoting *Horner v. Curry*, 125 N.E.3d 584, 588 (Ind. 2019)); *see also Church v. State*, 189 N.E.3d 580, 586 (Ind. 2022) ("clothed with the presumption of constitutionality until clearly overcome") (quotation omitted). In reviewing a statute's constitutionality, the "review is 'highly restrained' and 'very deferential,' beginning 'with [a] presumption of constitutional validity, and therefore the party challenging the statute labors under a heavy burden to show that the statute is unconstitutional.'" *Conley v. State*, 972 N.E.2d 864, 877 (Ind. 2012) (quoting *State v. Moss–Dwyer*, 686 N.E.2d 109, 111-12 (Ind. 1997)). Moreover, courts must "resolve all doubts in favor of the legislature." *State v. Buncich*, 51 N.E.3d 136, 141 (Ind. 2016).

Indiana courts also "are mindful of the legislature's constitutional authority to determine the public policy of our state, and we thus will restrict our analysis to the constitutionality of the statute and refrain from evaluating its wisdom or suitability." *State v. Doe*, 987 N.E.2d 1066, 1070 (Ind. 2013); *see also Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996) ("we do not substitute our belief as to the wisdom of a particular statute for those of the legislature"). Contrary to this principle, the City has cherry-picked and submitted statements made during the course of the legislative process in an apparent attempt to color the Court's perception of individual state legislators, the Attorney General, and Defendants. But these matters go well beyond what the Court is asked to decide on this Motion for Judgment on the Pleadings and tread dangerously close to drawing the Court into a policy debate reserved for the Legislature.

Defendants' Motion under Rule 12(C) raises only the question of whether, based on the pleadings, the City's suit is foreclosed by the Reservation Statute. On that question, the statute's meaning is clear and, as noted above, the City does not dispute that the statute will "terminate" its suit. (Opp. at 19.) The City's Opposition asserts that the Reservation Statute is unconstitutional, so the Court must evaluate the statute with the strong presumption that the Legislature passed a constitutional law. On the question of constitutionality, statements of individual legislators are simply irrelevant, as they would be even if the Court were merely interpreting the law. *See A Woman's Choice-East Side Women's Clinic v. Newman*, 671 N.E.2d 104, 110 (Ind. 1996) ("In interpreting statutes, we do not impute the opinions of one legislator, even a bill's sponsor, to the entire legislature unless those views find statutory expression."); *see also City of Huntingburg v. Phoenix Nat. Res., Inc.*, 625 N.E.2d 472, 475 (Ind. Ct. App. 1993) ("The motive of an individual legislator, whether a sponsor of the legislation or not, cannot be imputed to the entire legislature absent statutory expression."). The comments of the Attorney General certainly cannot be imputed to the General Assembly or be treated as evidence of legislative intent. *See Butler Motors, Inc. v. Benosky*, 181 N.E.3d 304, 311-12 & n.7 (Ind. Ct. App. 2021) (refusing to consider evidence of "a prior 'gentlemen's agreement' between the auto dealers [association] and the Indiana Attorney General that the Attorney General would not prosecute dealers who charged less than $200," regardless of what the statute actually provided).

The City cites to *American Underwriters, Inc. v. Turpin*, 149 Ind. App. 473, 478, 273 N.E.2d 761, 764 (1971), and *Rose v. State*, 168 Ind. App. 674, 678, 345 N.E.2d 257, 260 (Ind. Ct. App. 1976), for the proposition that legislative journals and statements by public officials can be considered. But in both of those cases, the courts were interpreting the statutes, not invalidating them as the City is attempting to do here.

> Inquiries into [legislative] motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. *It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it*.

United States v. O'Brien, 391 U.S. 367, 383-84 (1968) (emphasis added) (reaffirming the "familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive").

II. The City Has Not Met Its Heavy Burden to Show the Reservation Statute Is Unconstitutional.

A. <u>The Reservation Statute is not an unconstitutional special law.</u>

The City's challenge to the Reservation Statute as a special law is rooted in Ind. Const. art. 4, § 23, which provides that "where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." The evaluation of a statute based on Section 23 requires two steps: "first, [courts] determine whether the law is general or special; second, if it is a general law, [courts] determine whether it is generally applied, and if it is a special law, [courts] determine whether it is constitutionally permissible." *Buncich*, 51 N.E.3d at 141. Under Indiana law, a "statute is 'general' if it applies 'to all persons or places of a specified class throughout the state.' … A statute is 'special' if it 'pertains to and affects a particular case, person, place, or thing, as opposed to the general public.'" *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683, 689 (Ind. 2003) (quoting Black's Law Dictionary 890 (7th ed. 1999)); *see also City of Gary*, 126 N.E.3d at 825 (same).

1. The Reservation Statute is a general law.

The City contends that the Reservation Statute is a special law because "it is limited in scope to single out and eliminate ***only*** the City's case and no others." (Opp. at 13 (emphasis in

original).) Even if such action by the Legislature would have been improper (and it would not have been), that simply is not what the Reservation Statute does. To the contrary, the statute makes the law uniform throughout Indiana that a political subdivision may not bring an action against a member of the firearm industry regarding the very manufacturing, advertising, and distribution of firearms that are the subjects of the City's lawsuit. And to ensure just such uniformity and to avoid creating a special benefit for the City of Gary, the Legislature not only made the law retroactive, but it also barred any future attempts by a political subdivision to bring a similar case.

In fact, the City effectively concedes that the Reservation Statute is a general law when it acknowledges that "the ability to bring or maintain such lawsuits *is* a matter subject to a general law that would not apply *exclusively* to the City's case." (Opp. at 24 (emphasis in original).) The law of general application that the City describes *is* the Reservation Statute because it addresses the ability of all political subdivisions to bring or maintain such suits and does not apply exclusively to the City's case. *See State v. Hoovler*, 668 N.E.2d 1229, 1233 (Ind. 1996) (local law "applies not to the entire state but to a particular area, person, class of persons, or set of circumstances *exclusively*") (emphasis added). The City's contention that the Reservation Statute reaches only its lawsuit would require the Court to ignore the statute's plain language, which prohibits the filing of future actions by all political subdivisions. This the Court cannot do. *See ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016) (court must give statute's "words their plain meaning and consider the structure of the statute as a whole" and avoid interpretations "that depend on selective reading of individual words….") (internal quotations omitted).

According to the City, "there was no legitimate justification for not making [the Reservation Statute] general by having it only apply forward-looking, to prevent and restrict

lawsuits filed after its enactment." (Opp. at 19.) But, of course, changing the law so that it was prospective only would have conferred a benefit on the City of Gary that no other political subdivision in the State would enjoy – the right to pursue claims against members of the firearm industry. Indeed, singling out the City of Gary to permit it to pursue these claims would have been contrary to the very purpose of Ind. Const. art. 4, § 23, which the Supreme Court has recognized was "to prevent the legislature from providing a benefit to or imposing a burden on one locality and not others, as allowing such practices would encourage logrolling and result in an irregular system of laws." *Buncich*, 51 N.E.3d at 141.

2. The Reservation Statute applies generally throughout the State.

Because the Reservation Statute is a general law, the next step in the analysis is to determine whether the law is generally applied. *Id*. Despite the City's effort to limit the scope of the Reservation Statute to only the City of Gary, the plain language of the statute applies generally to every political subdivision throughout the State. It is unquestionably generally applied.

3. Even if a special law, the Reservation Statute is constitutionally permissible.

Even if the Court were to ignore the uniform reach of the Reservation Statute throughout the State and consider it a special law because it also includes provisions ensuring that it applies to the City's lawsuit (in addition to any potential future lawsuit by any political subdivision), that does not end the inquiry. "[L]ocal or special laws are not ipso facto unconstitutional." *Hoovler*, 668 N.E.2d at 1233. Indeed, the Court of Appeals recognized that special laws are permissible in this very action in 2019, when it addressed a virtually identical argument from the City. The City's Opposition omits any discussion of the Court of Appeals' resolution of the City's constitutional challenge to the Legislature's 2015 amendment to the Immunity Statute, Ind. Code § 34-12-3-3, which applied the immunity for firearm manufacturers and sellers retroactively to just prior to the

filing of the City's lawsuit. *City of Gary*, 126 N.E.3d at 822. As here, the City argued that the 2015 amendment was "a constitutionally impermissible special law that targeted its case" because it was the only pending case at the time. *Id*. at 826. In response, the State intervened and argued that the law was a general law, but in the alternative, it argued

> that even if the Amendment is a special law, it is constitutionally permissible because it "ensured that [Section 34-12-3-3] would apply uniformly across the State by specifically applying the statutory immunity to the one case remaining outside its reach – a case to which the law undoubtedly could have applied in the first place."

Id. (quoting State-Intervenor's Br. at 21). The Court of Appeals found "the State's alternative argument persuasive," and rejected the City's challenge without deciding whether the law was a general or special law. *Id*. The conclusion that the current Reservation Statute is constitutionally permissible, even if a special law, is even more compelling because the current law prohibits past and future actions by political subdivisions in one legislative act, whereas the 2015 amendment to the Immunity Statute only made it retroactive to cover the City's case.

Nonetheless, ignoring that Section 23 looks at whether there is special treatment for one locality over others, *see Buncich*, 51 N.E.3d at 141, the City argues that "there is no justifiable reason why the firearm industry alone" should be entitled to protections from lawsuits by political subdivisions. (Opp. at 19.) The City also attacks the fact that the Reservation Statute reserves for the State the right to bring only claims on behalf of political subdivisions and not "individuals, private organizations, or the state." (Opp. at 23.) But the Supreme Court in *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe County*, 849 N.E.2d 1131 (Ind. 2006), found that in examining the classifications of special laws, the "specified class" consists of "the *smallest* relevant class the legislature has defined by statute…." *Id*. at 1136 (emphasis added). Thus, because the statute in *Alpha Psi* benefited only three fraternities within the smallest specified class (*i.e.*, fraternities) and lacked any justification for treating those three fraternities differently than

other fraternities, it was an unconstitutional special law. *Id*. at 1138. Consistent with *Alpha Psi*, the court does not look to whether the Reservation Statute could have applied to every business or citizen in Indiana, but the "smallest" relevant class, which would be members of the firearm industry or all political subdivisions of the State. The Reservation Statute does not treat any members of the "specified classes" differently.

Indeed, the City does not cite a single case where the constitutional restriction on special laws was applied to strike down a statute addressing one industry segment instead of every business in Indiana. And that is not surprising, given the plethora of Indiana Code provisions that are industry-specific. *See*, *e.g.*, Ind. Code Title 7.1 (alcohol and tobacco); Ind. Code Title 8, art. 2, ch. 15 (licensing of ferries); Ind. Code Title 8, art. 9 (railroad labor); Ind. Code Title 28, art. 2 (banks); Ind. Code Title 28, art. 15 (savings associations). Nor does the City cite any authority suggesting that a law applicable to every political subdivision in the State is unconstitutional because it does not also apply to private citizens or organizations. Again, this is not surprising, because the State created political subdivisions and they are part of the governmental infrastructure and subject to the will of the State, and thus they stand in a much different position than private citizens. *See City of Gary*, 126 N.E.3d at 826-27 (recognizing that the City is an agent of the State and cannot challenge the actions of its creator on due process grounds).[1]

[1] None of the cases cited by the City that found a statute to be an unconstitutional special law bear any resemblance to the Reservation Statute. *See City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70, 86 (Ind. 2019) (finding no distinguishing circumstances among counties that justified allowing just two Indiana counties to charge a higher fee than the legislative cap and finding the defendant failed to tie the alleged distinguishing characteristics to the differential treatment in the act); *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1266 (Ind. 2020) (circumstances of Bloomington's attempted annexation of surrounding area were not unique to Bloomington and, as a result, did not justify law directed solely at its annexation efforts); *Kimsey*, 781 N.E.2d at 693-94 (statute requiring vote of 65% of landowners to block annexation in all counties but one, where a majority could block annexation, was unconstitutional special law because no characteristics justified the different treatment of that county); *Alpha Psi*, 849 N.E.2d at 1136-37 (special tax treatment for three fraternities was unjustified treatment for "a narrow group within the larger class").

4. Determining public policy is the prerogative of the Legislature.

The City obviously does not agree with the policy decisions made by the Legislature, contending that "there are no legitimate public policy interests" underlying the Reservation Statute.[2] (Opp. at 29.) The Supreme Court faced a similar constitutional challenge to the Legislature's passage of the Immunity Statute, Ind. Code § 34-12-3-3. *See KS&E Sports v. Runnels*, 72 N.E.3d 892 (Ind. 2017). Plaintiff in *Runnels* argued that the statute violated the equal-privileges-and-immunities provision of the Indiana Constitution because it was not rational "to treat sellers of firearms differently than sellers of, say, knives," *id*. at 906, just like the City argues here that there is no justification for treating members of the firearms industry differently than other industries in Indiana. The Supreme Court rejected the challenge:

> We do not know what motivated our legislature's enactment of subsection 3(2). One explanation may be that the legislature, like Congress when it enacted the PLCAA, perceived that recent lawsuits against the firearms industry threatened its stability and jeopardized the continued availability of firearms even to law-abiding citizens wishing to exercise their Second Amendment rights. This rationale would provide a reasonable basis for treating sellers of firearms, which face such litigation threats, differently than sellers of knives, which do not.

Id. at 906-07.

In this case, the justifications for the Legislature's actions are readily apparent. The constitutional right to bear arms recognized in *Runnels* exists not only in the Second Amendment to the U.S. Constitution, but also in the Indiana Constitution. *See* U.S. Const. amend. II; Ind. Const. art. 1, § 32. In order to avoid piecemeal restrictions on those rights and inconsistent

[2] Indiana is not alone in prohibiting political subdivisions of the State from bringing claims against members of the firearm industry. *See* Ariz. Rev. Stat. Ann. § 12-714(A); Ark. Code Ann. § 14-16-504; Fla. Stat. Ann. § 790.331(3); Ga. Code Ann. § 16-11-173(b)(2); Idaho Code Ann. § 5-247; Kan. Stat. Ann. § 60-4501; Ky. Rev. Stat. Ann. § 65.045; La. Stat. Ann. § 40:1799; Me. Rev. Stat. Ann. tit. 30-a, § 2005; Mich. Comp. Laws Ann. § 28.345, Sec. 15(9); Miss. Code Ann. § 11-1-67; Mo. Ann. St. § 21.750(5); Mont. Code Ann. § 7-1-115; Nev. Rev. St. Ann. § 12.107(1); N.C. Gen. St. Ann. § 14-409.40(g); Okla. Stat. Ann. tit. 21, § 1289.24a(2); 18 Pa. Stat. & Cons. Stat. Ann. § 6120(a.1); Tenn. Code Ann. § 39-17-1314(d); Tex. Civ. Prac. & Rem. Code § 128.001(b); W.Va. Code Ann. § 55-18-2.

treatment of buyers and sellers of firearms, the Legislature also "determined that the public interest would be best served by denying local governments the power to regulate firearms." *City of Evansville v. Magenheimer*, 37 N.E.3d 965, 967 (Ind. Ct. App. 2015); *see* Ind. Code § 35-47-11.1-2. And when the Court of Appeals in this case determined that the City's lawsuit was not regulation within the meaning of Section 35-47-11.1-2, *see City of Gary*, 126 N.E.3d at 824-25, it also noted that "[t]he legislature knows how to prohibit firearms-related lawsuits when it wants to." *Id.* at 825.

Thus, it is hardly surprising or without justification for the Legislature to take that next step to ensure a uniform approach to firearms within the State by prohibiting political subdivisions from bringing or maintaining lawsuits that could themselves result in a patchwork of requirements imposed on whatever defendants a particular political subdivision chose to sue. Permitting local suits could easily result in differential treatment of firearm manufacturers and different rules of conduct for Hoosiers depending on the locale in which they find themselves – precisely the inconsistency and uncertainty that the Legislature sought to address with its prior legislation. The Legislature could certainly determine that it wanted to avoid such a patchwork quilt of firearm standards across the State, whether the standards be regulatory or judicial. It is not for this Court or any other to question the merits of that policy choice as long as it passes constitutional muster, which it plainly does. *See Runnels*, 72 N.E.3d at 907 ("The legislature's policy choices, so long as they are constitutional, are beyond our purview. We neither applaud the wisdom of such choices nor condemn their folly.").

For all these reasons, the Reservation Statute, Ind. Code § 34-12-3.5, is not an unconstitutional special law, and this argument is not a basis upon which to deny Defendants' Motion for Judgment on the Pleadings**.**

B. The Reservation Statute does not violate separation of powers principles.

Nor is the City's separation of powers challenge a basis upon which to deny Defendants' Motion for Judgment on the Pleadings. "It is well-settled under the doctrine of separation of powers that the Legislature cannot interfere with the discharge of judicial duties or set aside a final judgment of a court." *Lemmon v. Harris*, 949 N.E.2d 803, 814 (Ind. 2011). In other words, "the legislature cannot interfere with the discharge of judicial duties, or attempt to control judicial functions, or otherwise dictate how the judiciary conducts its order of business." *State v. Monfort*, 723 N.E.2d 407, 411 (Ind. 2000). In so ruling, the Supreme Court in *Monfort*, 723 N.E.2d at 411-12, set forth a number of illustrative cases applying the separation of powers doctrine to find statutes unconstitutional: *In re Judicial Interpretation of 1975 Senate Enrolled Act No. 441,* 263 Ind. 350, 353, 332 N.E.2d 97, 98 (1975) (legislation prescribing qualifications for county judges); *Thorpe v. King,* 248 Ind. 283, 287, 227 N.E.2d 169, 171 (1967) (legislature cannot set aside final judgment); *Noble County Council v. State ex rel. Fifer,* 234 Ind. 172, 180, 125 N.E.2d 709, 713 (1955) (inherent authority of court to appoint and require payment of necessary personnel); *State ex rel. Kostas v. Johnson,* 224 Ind. 540, 550, 69 N.E.2d 592, 596 (1946) (legislature could not limit time in which a court must rule on an issue); *Gray v. McLaughlin,* 191 Ind. 190, 193, 131 N.E. 518, 519 (1921) (legislature could not set standards for briefs filed in Supreme Court); *Roberts v. Donahoe,* 191 Ind. 98, 104, 131 N.E. 33, 35 (1921) (same); *Solimito v. State,* 188 Ind. 170, 171–72, 122 N.E. 578, 578 (1919) (same); *Parkison v. Thompson,* 164 Ind. 609, 626, 73 N.E. 109, 115 (1905) (legislature cannot dictate "manner and mode" for courts to discharge their duties); *State ex rel. Hovey v. Noble,* 118 Ind. 350, 371, 21 N.E. 244, 252 (1889) (appointment of ministers and assistants for the court).[3] None of those cases are like the Reservation Statute.

[3] The other cases cited by the City are either of the same type as those identified in *Monfort*, *see State ex rel. Mass Transp. Auth. of Greater Indianapolis v. Ind. Revenue Bd.*, 144 Ind. App. 63, 87-88, 253 N.E.2d

Indeed, nothing in the Reservation Statute purports to address the administrative functioning of the courts. Of course, even if it had, it is clear that the Legislature was motivated by the policy objective of state-wide uniformity in policy and regulation of members of the firearm industry, and not a desire to meddle in the administration of the courts. Consequently, the Reservation Statute would still not violate separation of powers principles. *See Mellowitz*, 221 N.E.3d at 1225 (legislation precluding class actions against universities for response to COVID-19 sought to "predominantly further a public policy objective—which here, both sides agree is to limit the university's litigation exposure for pandemic-related contract claims during a global crisis"); *Church v. State*, 189 N.E.3d at 590-91 (statute setting forth procedures for seeking deposition of child victims of sex crimes was valid "because it predominantly furthers public policy objectives"). And, as noted above, it makes no difference that the City believes the legislature make the wrong policy choice. *See Mellowitz*, 221 N.E.3d at 1226 (policy arguments "must be resolved by our General Assembly").

None of these cases supports the City's contention that any statute that prevents a trial court from proceeding to complete discovery, hold a trial, or enter judgment necessarily violates

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725, 731-32 (1969) (interference with final judgment), or they are readily distinguishable. *See State ex rel. Brubaker v. Pritchard*, 236 Ind. 222, 228, 138 N.E.2d 233, 236 (1956) (statutes requiring service of process could not be read to require additional service of process over party who had appeared in court because they would interfere with the court's ability to manage its case and enforce its orders, including through contempt); *Columbus, Chicago & Ind. R. Co. v. Bd. of Comm'rs of Grant Cnty.*, 65 Ind. 427, 438-39 (1878) (without changing underlying requirements for legal proceedings by the Board, legislation "exercised, or attempted to exercise, judicial functions" by declaring that certain Board actions would be deemed valid after the fact even though not in compliance with requirements).

The City's citation to *Kriner v. Bottorff*, 138 Ind. App. 195, 216 N.E.2d 38 (1966), is misleading at best, because Judge Mote did not "find" anything as a matter of law. As Judge Smith noted in reply, the legislation at issue did have "the effect of dissolving the temporary injunction and therefor the temporary injunction stands dissolved by operation of law." *Id*. at 41. As Judge Smith further noted, the memorandum by Judge Mote, cited by the City, "does not in any manner properly present any official opinion of this Court" but "merely attempts to set forth Judge Mote's individual opinion concerning a matter that was not in issue…." *Id*.

separation of power principles. (Opp. at 24-25.) As Indiana courts have long recognized, the Legislature may make substantive changes to the common law and apply those changes retroactively to pending cases. As the Court of Appeals recognized again recently, "the legislature cannot, consistent with the doctrine of separation of powers, *set aside* a *final judgment* of a court." *Rokita v. Tully*, ___ N.E.3d ___, No. 23A-PL-705, 2024 WL 1843699, *7 (Ind. Ct. App. Apr. 29, 2024) (emphases added). But that holding says nothing about what the Legislature can do as it relates to cases that are *in fieri*. Quite the opposite, the Court of Appeals recognized that the Legislature could change the law while a case was still pending. In that case, the plaintiff had obtained summary judgment from the trial court that an informal opinion from the Office of the Inspector General ("OIG") was not excluded from disclosure under the Access to Public Records Act ("APRA"). *Id.* at *2. While that decision was on appeal, the Legislature changed the law and specifically made informal opinions from the OIG confidential and exempt from the APRA. *Id.* at *3. Despite how far the underlying case had proceeded at the time the law was changed, the Court of Appeals concluded that the trial court was required to "give effect to the legislature's latest enactment, even when that has the effect of overturning a judgment of a lower court" that had not become final. *Id*. at *7.

For all these reasons, the Reservation Statute, Ind. Code § 34-12-3.5, does not violate separation of powers principles, and this argument is not a basis upon which to deny Defendants' Motion for Judgment on the Pleadings.

C. <u>The Reservation Statute does not run afoul of Indiana's Open Courts Clause.</u>

Finally, the City contends (Opp. at 25-26) that the Reservation Statute violates the Open Courts Clause, which provides in part: "All courts shall be open; and *every person*, for injury done to him in his person, property, or reputation, shall have remedy by due course of law." Ind. Const. art. 1, § 12 (emphasis added). The City cites no authority for the proposition that it, as a political

subdivision and agent of the State, is a "person" subject to the protections of the Open Courts Clause. *Accord City of Gary*, 126 N.E.3d at 826-27 (recognizing that the City is an agent of the State such that it has no due process rights against the State). Nor does the City cite to a single case in which an Indiana court applied the Open Courts Clause to a municipality proceeding against the dictates of the State. Indeed, the "every person" mandate traces its roots back to the Magna Carta, under which "every Subject of this Realm … be he Ecclesiastical, or Temporal, Free, or Bond, Man, or Woman, Old, or Young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the Law…." *Escamilla v. Shiel Sexton Co.*, 73 N.E.3d 663, 667 (Ind. 2017) (quotation omitted; discussing origins of Open Courts Clause). The Magna Carta's reference to "every Subject" – *i.e.*, the individuals in the Realm – provides the historical underpinning for the Open Courts Clause's extension of protection to "every person." Nothing in that history suggests an extension of the protection to municipalities.

The absence of cases extending the Open Courts Clause to municipalities, particularly in the face of State legislation precluding municipalities from bringing claims, is fully consistent with Indiana's Home Rule Act. That act recognizes that municipal corporations can exercise the powers "that they need for the effective operation of government *as to local affairs*." Ind. Code § 36-1-3-2 (emphasis added). Of course, even before the passage of the Reservation Statute, the Legislature declared that the regulation of the firearm industry is a matter of State – not local – concern. *See* Ind. Code § 35-47-11.1-2; *see also City of Logansport v. Pub. Serv. Comm'n*, 202 Ind. 523, 177 N.E. 249, 252 (1931) ("Even under the power to exercise self-government or home rule, a city cannot act on matters purely of state concern.").

Moreover, the Home Rule Act also provides that the City can only exercise power that: "(1) is not expressly denied by the Indiana Constitution or by statute; and (2) is not expressly

granted to another entity." Ind. Code § 36-1-3-5.[4] Here, of course, the right of the City to pursue claims against members of the firearm industry is both denied by statute and expressly granted to the State in the Reservation Statute. *Accord Ind. Dep't of Nat. Res. v. Newton Cnty.*, 802 N.E.2d 430, 433 (Ind. 2004) (rejecting county's attempt to use ordinance to trump State's statutory authority). Thus, the City does not have the power under the Home Rule Act to bring claims against members of the firearms industry. The Supreme Court has recognized that the "open courts requirement" is not violated when a claim is eliminated because "it remains the province of the General Assembly to identify legally cognizable claims for relief. If the law provides no remedy, denying a remedy is consistent with due course of law." *McIntosh v. Melroe Co.*, 729 N.E.2d 972, 976 (Ind. 2000); *see also Runnels*, 72 N.E.3d at 906 ("right of access presupposes an underlying cause of action to which the right of access attaches and for which the law affords a remedy").

A legislative act is also compliant with the Open Courts Clause's requirement of due course of law if it is "a rational means to achieve a legitimate legislative goal." *McIntosh*, 729 N.E.2d at 979. The Reservation Statute readily meets this requirement. The Legislature has determined that uniform regulation of firearms across the State is an important objective. *See* Ind. Code § 35-47-11.1-2. Such consistency across the State helps to protect the constitutional rights of all Hoosiers to keep and bear arms and also avoids a landscape of ever-changing local laws creating different requirements for citizens as they move from one location to another within the State. Because litigation against members of the firearm industry has the potential for imposing court-ordered changes as to how firearms are sold and marketed, or even limiting the availability of some firearms, state control over such litigation is simply an extension of these same policies and furthers achieving the legitimate legislative goals. *See Runnels*, 72 N.E.3d at 906-07 (finding that

[4] A "unit" is defined as "county, municipality, or township." Ind. Code Ann. § 36-1-2-23.

Legislature's goal of protecting members of the firearm industry from litigation would be a "reasonable basis" for Immunity Statute applicable only to firearms). The Reservation Statute, Ind. Code § 34-12-3.5, does not violate the Open Courts Clause, and this theory is not a basis for denying Defendants' Motion for Judgment on the Pleadings.

CONCLUSION

For all these reasons, the Reservation Statute, Ind. Code § 34-12-3.5, is constitutional, and the Manufacturer Defendants are entitled to a judgment on the pleadings.

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Respectfully submitted,

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