

**In the
Indiana Supreme Court**

No. ____ - ____ -CV- ____

CITY OF HAMMOND,

Appellant (Plaintiff, Below),

v.

HERMAN & KITTLE PROPERTIES,
INC.,

Appellee (Defendant, Below).

On Petition to Transfer from the
Indiana Court of Appeals,
No. 49A04-1612-PL-2784

Appeal from the Marion Superior
Court No. 7

Cause No. 49D07-1601-PL-531

The Honorable Michael D. Keele,
Judge

APPELLANT'S BRIEF IN RESPONSE TO PETITION(S) TO TRANSFER

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BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER

In 1961, Hammond created a program that permitted it to inspect rental housing and required Hammond to inspect rooming houses. (App.Vol.III.p.120 §2.1, p.127 §9.2.) It charged \$5.00 per inspection. (App.Vol.III.p.127 §9.2(B).) In 2001, Hammond created a rental registration program. (App.Vol.III.p.137-142.)

Hammond instituted its Rental Inspection and Registration Programs to protect the public health, safety, and general welfare. (App.Vol.III.p.114 ¶9.) Tenants are often a vulnerable population. (Id. ¶10.) Unscrupulous landlords oftentimes subject vulnerable tenants to living conditions that do not meet basic standards for light, health, space, and cleanliness. (Id. ¶¶10-11.) Rental properties that are not kept up to code increase police and fire calls, placing a strain on Hammond's budget. (Id. ¶16.) Registering and inspecting rental properties reduces these costs. (App.Vol.III.p.115 ¶17.) In addition, Hammond has a particular need to inspect and register rentals because its housing stock is old, which leads to electric and other safety concerns, and Hammond has had an issue with "cut-ups," which result in non-conforming, dangerous basement apartments. (Id. ¶18.) But the Rental Registration Program has its own costs. (Id. ¶19.) Hammond's municipal leaders decided that landlords—who are running for-profit businesses—should pay the costs for the service they are receiving. (Id. ¶20.)

In 2010, the Legislature amended our Constitution to implement tax caps of 1% of the gross assessed value for primary residences, 2% for rental properties, and 3% for other real property. Ind.Const.Art.X §1. The 2% cap on property taxes on

rental properties has resulted in a windfall to many landlords, saving them hundreds if not thousands of dollars in property taxes. (App.Vol.III.p.115) In contrast, the tax caps, combined with the great recession, placed great strain on many municipal budgets. Mark Bennett, *Tough Decisions Face Terre Haute*, The Tribune-Star, 2015 WLNR 36887535 (Dec. 13, 2015). The tax caps hit cities hardest that formed the “backbone of Indiana’s industrial base”—such as Hammond, Gary, Muncie, and South Bend—because of their shrunken tax bases. Id.

Due to these fiscal restraints municipalities added rental registration and inspection fees because “that fee revenue is needed for covering the costs of running the programs because of the property tax caps.” (App.Vol.III.p.192.) It is in the context of the fiscal restraints caused by the property tax caps that Hammond raised its Rental Registration Fee. (App.Vol.III.p.115 ¶21.) To ensure the health and safety of its citizens, Hammond requires landlords to pay an \$80.00 Rental Registration Fee to cover the costs of registering and inspecting rental units. (Id. ¶23.) Hammond’s Rental Registration Fee is due on April 15th. (Id. ¶24.) This fee, however, does not fully cover the Rental Registration Program’s costs, and Hammond’s taxpayers are still subsidizing the service that landlords are receiving. (Id. ¶25.)

Hammond’s annual revenue from its rental registration and inspection program is the largest in the state, “over four times the next largest program,” (App.Vol.IV.p.193), totaling \$862,284.00 in 2012. (Id.) By comparison, the West Lafayette and Bloomington programs – benefited by the special legislation challenged in this appeal – “generated only \$140,759 and \$128,868, respectively, that

year.” (Id.) As HKP admitted, the legislation challenged in this appeal “reflects the Legislature’s desire to address excessive registration and inspection fees imposed by some cities in regulating landlords...” (App.Vol.X.pp.31-32.)

The amendment process that follows is pictorially presented in a Demonstrative Exhibit that is part of this record. (App.Vol.IX.pp.167-186.) It will aid the reader in tracking the various legislative amendments that ultimately led to Section 5’s passage in 2014 (which contains the Fee Exemption at Subsection (a)), as well as follow-on 2015 legislation that defined key terms in the Fee Exemption.

In January 2011, House Bill 1543 was introduced, and it would have barred all political subdivisions from registering rental properties or charging rental inspection fees. (App.Vol.III.p.173 §5; App.Vol.IX.p.169.) As enacted, HEA 1543 provided that inspection and registration fees had to be maintained in a special fund, the fees could only be used to fund the program, and they could not revert to the general fund. (App.Vol.III.p.178 §3; App.Vol.IX.p.171.) Under HEA 1543, all municipalities could charge fees of more than \$5 and at least ten did so: West Lafayette, \$250; Munster, \$200; Bloomington, \$85; Hammond, \$80; Speedway, \$60; Nappanee, \$40; Goshen, \$30; Griffith, \$25; East Chicago, \$10; and Valparaiso, \$10. (App.Vol.IX.p.237 ¶2.)

In January 2013, House Bill 1313, as introduced, would have barred all “[i]nspection” or “[r]egistration” fees. (App.Vol.III.p.182 §3; App.Vol.IX.p.172.) As enacted, HEA 1313, placed a 1-year moratorium on new inspection or registration fees and sent the issue to a study committee. (App.Vol.III. p.185; App.Vol.IX.p.173.) In September 2013, the Study Committee heard testimony that West Lafayette cre-

ated its program in 1976 and that Bloomington created its program in 1961. (App.Vol.III.pp.192-193.)

In 2014, the House Committee added language via HB 1403 that restricted rental registration fees ("Fee Restriction"): "A political subdivision may impose on an owner or landlord of a rental unit an annual registration fee of not more than five dollars (\$5)." (App.Vol.V.p.102 §5; App.Vol.IX.p.174.) Upon reaching the House, West Lafayette's Representative introduced an amendment that exempted political subdivisions from the Fee Restriction if their "rental registration or inspection program [was] created before July 1, 1984" ("Fee Exemption"). (App.Vol.IV.p.108; App.Vol.IX.p.175.) The Legislative Services Agency's Fiscal Impact Statement concluded that "Bloomington and West Lafayette would not be affected by the proposed changes to the law as they were established prior to July 1, 1984." (App.Vol.IV.p.112; App.Vol.IX.p.175.) The House voted to add the Fee Exemption, HB 1403 was enacted, and the Fee Exemption is codified at subsection (a) of Section §5:

SECTION 5

I.C. 36-1-20-5 Registration programs for rental units; fees

Sec. 5. (a) This section does not apply to a political subdivision with a rental registration or inspection program created before July 1, 1984 [**the "Fee Exemption"**].

(b) This chapter does not prohibit a political subdivision from establishing and enforcing a registration program for rental units within the political subdivision.

(c) A political subdivision may impose on an owner or landlord of a rental unit an annual registration fee of not more than five dollars (\$5) [**the "Fee Restriction"**].

(d) A registration fee imposed under subsection (c) covers all the rental units in a rental unit community. However, if a rental unit is not part of a rental unit community, a registration fee may be imposed for each separate parcel of real property on which a rental unit is located.

* * *

In May 2014, Hammond notified HKP that it owed over \$80,000 of rental registration fees and penalties for 2014. (App.Vol.III.pp.162-165.) HKP refused to pay based on the Fee Restriction. (App.Vol.III.pp.167-169.) In June 2014, Hammond sought a declaratory judgment that it qualified for the Fee Exemption (exempting a “rental registration or inspection program created *before July 1, 1984*”), attaching Hammond’s 1961 Rental Inspection Program ordinance to the Complaint and Amended Complaint. (App.Vol.II.pp.21-52.)

Privy to Hammond’s legal position that HEA 1403 did not accomplish what the Legislature wanted it to accomplish (*i.e.*, eliminate Hammond’s *costly* rental registration fee while exempting Bloomington’s and West Lafayette from the Fee Restriction in order to move the legislation forward), the Legislature embarked on a tortured and “confusingly” convoluted amendment process, (App.Vol.IX.pp.243-244 ¶¶15-17), that eventually succeeded in eliminating Hammond’s costly rental registration fee by tailoring the law to Hammond’s actual ordinance, (*id.*), requiring Hammond to file its Second Amended Complaint in November 2015, adding Counts II and III.

The “confusingly” convoluted amendment process, (App.Vol.IX. p.244 ¶17), consisted of “four ways” in which the Legislature kept amending Section 5, (*id.* p.243 ¶15), in a “clear effort to exclude Hammond—and only Hammond—from the Fee Exemption” with the ultimate goal of “affect[ing] this case.” (*Id.* p.243 ¶15.) It is a bold and targeted effort to eliminate Hammond’s program and it does so with

statutory language that is odd and confusing. This is because the Legislature had to remove Hammond's original 1961 program from the Fee Exemption.

Specifically, in January 2015, House Bill 1165 was introduced, and it narrowed the Fee Exemption to a seven-year bracket ("Fee Bracket")—only political subdivisions creating their programs "*after July 1, 1977, and before July 1, 1984*" would qualify for the Fee Exemption. (App.Vol.IVp.127 §6; App.Vol.IX.p.177). While this change would have excluded Hammond's program from the Fee Exemption, the LSA concluded it would have also excluded Bloomington. (App.Vol.IVp.131; App.Vol. IX.p.177.)

HB 1165 also provided that any "rental registration or inspection program" that inspected "rooming houses" would not qualify for the Fee Exemption. (App.Vol.IV.pp.124-125 §§1.2, 1.3; App.Vol.IX.p.178.) This once again was an effort to exclude Hammond, whose Rental Inspection Program inspected rooming houses, but it would have also excluded Bloomington, whose program inspected rooming houses. (App.Vol.IV.p.138 App.Vol.IX.p.180-181.)

As enacted, HEA 1165 did not include the Fee Bracket or exclude programs that inspected "rooming houses." Instead, it excluded "general housing registration or inspection program[s]." (App.Vol.IV.p.179 §1.2.) This excluded Hammond's Rental Inspection Program because it was a general inspection program. (App.Vol.III. p.120 §2.1.) HEA 1165 also excluded "a registration or inspection program that applies only to rooming houses and hotels." This excluded Hammond's program because it only required the inspection of "Hotels and Rooming Houses." (App.Vol.III.

p.127 §9; App.Vol.IX.p.180.) This language did not exclude Bloomington or West Lafayette. The Legislature had finally accomplished its goal.

Hammond's three-count Second Amended Complaint sought three declaratory judgments: (1) Hammond qualified for the Fee Exemption in 2014; (2) the Fee Exemption violates Section 22; and (3) the Fee Exemption violates Section 23. The Attorney General intervened, Hammond and HKP cross-moved for summary judgment, and the trial court held a hearing on July 11, 2016.

The trial court granted summary judgment to Hammond on Count I, finding Hammond qualified for the Fee Exemption in 2014. The trial court also found that the Fee Exemption is special legislation but does not violate the Indiana Constitution, granting summary judgment to HKP on Counts II and III. Hammond appealed. The Court of Appeals heard oral argument on 12/12/17. In a 56-page opinion (the "Opinion") that carefully discusses and analyzes the relevant statutory history, the Court of Appeals held that the Fee Exemption violates both Sections 22 and 23 of Article 4 of the Indiana Constitution and that the Fee Exemption is not severable from the remainder of Section 5.

SUMMARY OF ARGUMENT

This Court should deny transfer. Hammond clearly has standing to challenge the constitutionality of special legislation that will gut its ability to effectively inspect and police its outdated stock of rental properties. No "citizen" would ever reasonably undertake this expensive crusade, and the State knows it. Even if a citizen did, they would have no ability to present the kind of public policy arguments that

underscore the unlawfulness and unreasonableness of what occurred here. Indiana's ***judicial standing*** doctrine must be flexible enough to allow a political subdivision to protect its financial well-being when it is targeted and burdened by unconstitutional log-rolling. Also, as Judge Keele held, Hammond has a separate ***statutory standing*** basis under Indiana's Declaratory Judgment Act to challenge the Fee Exemption. HKP and the State ignore this separate basis and invite this Court to sow confusion into Indiana's multi-faceted standing doctrine.

The Court of Appeals correctly applied the plain language of Section 22 to invalidate a special law relating to "fees" that—to this day—is still *per se* prohibited by our Constitution. The State and HKP's position that Section 22's "fee" language is an outdated relic is belied by the Legislature's 1984 amendment to the same language that left it intact. Their position is also at odds with prior statements by this Court that Section 22's prohibition against irregular "fees" undoubtedly survived the abolition of the fee system some 130 years ago. If Indiana's legislators want to return our Constitution to a tool for bestowing special treatment in the form of irregular fees, they can repeal the subject language in Section 22. This Court should not do it for them.

The Court of Appeals also correctly applied this Court's commonsense decisional law to determine that the subject special law violates Section 23. Indiana logically requires a factual basis to justify special legislative treatment. It is a relatively low bar to factually justify to a court why a special law is needed. There is no such factual basis here because the special legislative treatment is obvious log-

rolling meant to burden Hammond and impact this litigation, which could not pass without exempting two influential municipal heavyweights. The State knows this, which is why it argues for a fact-less “rationale review” analysis, which is essentially non-justiciable. This Court should deny transfer.

ARGUMENT

I. Transfer Is Not Warranted on the Issue of Standing Because Hammond Has a Direct Stake in the Outcome of This Litigation and Will Sustain a Direct Injury if the Statute Is Upheld

Political subdivisions have previously challenged the constitutionality of special legislation. E.g., Alpha Psi Chapter v. Auditor of Monroe Cnty., 849 N.E.2d 1131, 1134 (Ind.2006); Municipal City of South Bend v. Kimsey, 781 N.E.2d 683, 685 (Ind.2003); City of Greenfield v. Ind. Dep’t of Local Gov. Fin., 22 N.E.3d 887 (Ind.Ct.App.2014); City of Lawrence v. City of Indianapolis, 338 N.E.2d 683, 689 (Ind.Ct.App.1975).

In each case, the political subdivision, like Hammond here, had a direct stake in the outcome of the lawsuit. That is how Indiana courts consistently decide standing challenges, which the Court of Appeals recognized. (Opinion 32-35.) And notwithstanding some broad dicta in Bd. of Commissioners of Howard Cnty. v. Kokomo Plan Cmm’n, 330 N.E.2d 92, 100 (Ind.1975), that is how standing – a judicial doctrine – was decided in that case.

The issue in Howard County was the county’s challenge to a statute that authorized Kokomo to exercise extra-territorial zoning jurisdiction outside its physical boundaries. Id. at 95. Howard County alleged the statute “discriminated *against*

residents of Howard County.” Id. (emphasis added). This Court held that the county did not have standing to challenge the statute (a statute Howard County would neither enforce nor execute) and that Howard County could not “act as *parens patriae*, asserting the claims of its residents.” Id. at 101.

Four years later, this Court cited Howard County for the following proposition: a “county or an official thereof *possesses standing* to challenge an interpretation or application of a statute if it can be demonstrated that the party is seeking the resolution of a *legitimate controversy* surrounding the operation of the statute.” State Bd. of Tax Comm’rs v. Marion Superior Court, 392 N.E.2d 1161, 1164 (Ind.1979)(emphases added). This Court even noted, “It would be anomalous indeed for us to hold that a county or its officials cannot resolve in a court of law a bona fide dispute with a state agency over the application of a state statute.” Id. at 1165.

More recently, this Court again cited Howard County to find that a county had standing to challenge a statute’s constitutionality: “But the County has a legitimate interest in upholding the challenged validity of its ordinances.” Ind. Dep’t of Nat. Resources v. Newton Cnty., 802 N.E.2d 430, 433 (Ind.2004); accord Marion County v. State, 888 N.E.2d 292, 297 (Ind.Ct.App.2008)(“Howard County does not hold a county may not seek to invalidate a statute; rather, a county cannot do so in the absence of any injury to the county itself.”).

And just last year, this Court decided Bd. of Comm’rs of Union County v. McGuinness, 80 N.E.3d 164 (Ind.2017), confirming that an argument for “standing” under Howard County is not really “a standing argument at all, but rather...[the]

invo[cation of] *parens patriae* authority.” Id. at 170. In other words, the State can sue on behalf of its citizens, but a political subdivision may not. See id.

The State’s novel argument that Sections 22 & 23 “are designed to protect citizens,” so that “cities and counties have no standing to challenge a law that violates those provisions,” (Pet.10), is brand new and “waived.” Humphrey v. State, 73 N.E.3d 677, 687 n.2 (Ind.2017). The State then relatedly hypothesizes how certain citizens “*might* have standing to challenge” the Fee Exemption, (Pet.10), a position that underscores the unreasonableness of the State’s position to pin the responsibility of “[v]igilant enforcement” of Indiana’s constitutional anti-logrolling provisions on the limited finances of its “citizens. (Pet.11.) In any event, the Legislature knows how to limit constitutional protections to just “citizens.” See Art.I, Sec. 23.

Also, in their zeal to prevent this Court from addressing constitutionality, HKP and the State ignore that Judge Keele also held Hammond has *statutory* standing under Indiana’s Declaratory Judgment Act, Ind. Code § 34-14-1-2, concluding that the “Act defines a municipality as a ‘person’” with standing to challenge the “‘validity’ of a statute” when its “rights, status, or other legal relations are affected by a statute.” (App.Vol.IX.pp.239-240¶¶1-5.) Howard County did not address the Legislature providing a municipality with standing under the Declaratory Judgment Act. The State and HKP are inviting this Court to sow uncertainty in Indiana law.

In this case, Hammond sued HKP for refusing to pay a fee under a validly enacted ordinance, and only through extreme logrolling—intended to affect the outcome of this case—did the Legislature remove Hammond from the Fee Exemption—

costing Hammond over \$850,000 per year. The idea that Hammond lacks standing to contest whether the Legislature's actions violated the Indiana Constitution conflicts with Indiana's judicial and statutory doctrines of standing; transfer is not warranted to confirm this.

II. Transfer Is Not Needed To Explain What Section 22 *Per Se* Prohibits: A Special Law Relating to Fees

Section 22 prohibits "local or special laws" "[r]elating to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required." Ind. Const. Art. IV §22 (emphasis added). As this Court has explained, this section "provides a list of subjects to which 'local or special laws' are prohibited." State v. Lake Superior Ct., 820 N.E.2d 1240, 1248 (Ind.2005). If a statute is special legislation relating to one of the listed subjects, it is *per se* unconstitutional. Id. at 1248-49.

HKP continues to contend that when the "fee system" was abolished by the General Assembly in the 1890's, Section 22's prohibition on special laws relating to "fees" was rendered a non-justiciable "dead letter." (Tr. 59, ll.15-16);(HKP Pet.18-22). This is (supposedly) because "the 'fees' referenced in Article IV, Section 22 are fees paid directly to county officials as compensation." (App.Vol.IX.p.245¶10.) The State now belatedly weighs in on the specific merits of Section 22, (App.Vol.V.pp.56-61), and essentially makes the same argument. (Pet.11-13.)

Hammond need not repeat in total its prior position that the Panel adopted. (Opinion 38-42.) This Court can read Boice and Krost and reach the same conclusion as Hammond and three Panel judges interpreting this Court's straightforward

statements: After the abolishment of the “fee system,” there was “a system of fees apart from the system of salaries.” State ex rel. Bd. of Comm’rs Benton Cnty. v. Boice, 39 N.E. 64, 64 (Ind.1894), and “either system must stand, and its constitutional validity be determined, independently of the other.” Id. After all, in Krost this Court held that a statute did not violate Section 22 because the statute set a uniform fee of \$1.00. See State ex rel. McCoy v. Krost, 39 N.E. 46 (Ind.1894) (“if the salary provisions of the act were entirely eliminated, no good reason appears for holding invalid the system of fees so provided”). It is unreasonable to ignore these clear pronouncements. Additionally, why on earth would it be a good idea to judicially license special laws for “fees” in this day and age, especially in combination with the State’s fact-less, post-hoc “large university town” rationale? (Pet.16.) That is an invitation to return Indiana to its special-law laden, log-rolling past.

Finally, as the Panel correctly recognized, the Legislature could have amended Section 22 in 1984 to do what HKP and the State are now asking Indiana’s courts to do via judicial fiat. (Opinion 39 n.16, 41.) This Court should decline the invitation and instead let HKP and the State lobby the Legislature to “repeal[]” Section 22’s “fee” language, so “the voters [can] ratify it.” Kimsey, 781 N.E.2d at 696.

III. Transfer Is Not Needed To Confirm This Court’s Clear Requirement for a Sufficient “Factual Basis” to Support Special Legislative Treatment

Section 23 directs that “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.” Alpha Psi, 849 N.E.2d at 1138. As this Court clarified, “Section 23 establishes a requirement of general laws where such can be made.” Id. at 1134. This clarification is based on the

plain meaning of Section 23's text, and the "first line of inquiry in any constitutional case is the text of the constitution itself." Sanchez v. State, 749 N.E.2d 509, 514 (Ind.2001).

As the Panel correctly recognized, see also supra pp.7-9, a "general" law regulated the fees at issue in 2011, and nothing arose in the interim to justify this "special" legislation that Section 23's plain text forbids. (Opinion 47-52.) The State's novel position that the Legislature is not "frozen in time" and is "free to amend the law" whenever it chooses (Pet.15) – coupled with its argument that the State can then defend any special law under a post-hoc-rationale-"large university town"-basis with no requirement whatsoever to demonstrate a supporting "factual basis" to justify the particular special treatment (Pet.16) – is a remarkable invitation to return Indiana to a "doctrine of nonjusticiability of Article IV issues," which this Court has soundly rejected. Kimsey, 781 N.E.2d at 695.

It is not possible to read and analyze Kimsey, Buncich, Hoovler, or Moseley and take the position that someone imagining "any conceivable [rational] basis" to justify special legislation is the constitutional equivalent of actually establishing a factual basis to justify special legislation. If a fact-less, rational basis review controlled the analysis, the legal discussions in those opinions would be a page or two long, at best. Yet, this is the State's position, (Pet.16), echoing what HKP has always (confusingly) argued. (Appellant's Reply Br.29-31). Both are wrong. The Panel got it right. (Opinion 42-52.)

The relaxed “any conceivable basis” standard (*i.e.*, a basis is literally just imagined) applies to the legislative classification, Paul Stieler Enterprises, Inc. v. City of Evansville, 2 N.E.3d 1269, 1277 (Ind.2014)), whereas a “factual basis” is needed to demonstrate “that a general statute could not apply.” Kimsey, 781 N.E.2d at 694. On this record, Hammond demonstrated that West Lafayette and Bloomington do not need special treatment to fund their rental registration and inspection programs, (Appellant's Reply Br.28), which was also obviously the case in 2011, when a “general statute [could] apply,” Kimsey, 781 N.E.2d at 694.

In contrast, the “factual basis” in Hoovler that justified a unique, legislative funding mechanism was a “well-documented” need “to help Tippecanoe County handle the financial burden of cleanup costs at a ‘Superfund’ landfill site.” Id. at 690 (citing State v. Hoovler, 668 N.E.2d 1229, 1234 (Ind.1996)). Nothing happened since Hoovler to negate this commonsense requirement. The Panel's reasoning is perfectly consonant with Hoovler. (Opinion 42-52.)

IV. Transfer Is Not Needed To Explain What Is Obvious: Section 5 Could Not Be Passed without According Special Treatment to Bloomington and West Lafayette

Finally, while the State continues “to stand idly by, closed mouth” on the issue of severability, (Appellant's Br.51), HKP claims that transfer is needed because the Panel misinterpreted Indiana Code § 1-1-1-8(b). (Tr.16.) HKP omits from its criticism, however, that the Panel quoted and cited Ind. Educ. Emp't Relations Bd. v. Benton Cnty. Sch. Corp., 365 N.E.2d 752, 762 (Ind.1977), where this Court interpreted I.C 1-1-1-8 and concluded that the lack of a severability clause creates a pre-

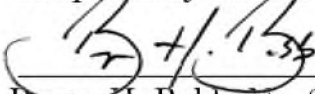
sumption that “the Legislature intends the Act to be effective as an entirety or not at all.” Id. This Court also held that “the burden is upon the supporter of the legislation to show the separability of the provisions involved.” Id. This Court stated that the idea that Indiana Code § 1-1-1-8 “was intended to have another effect, i. e. to preempt for all times the severability of statutory provisions, one from the other, regardless of the legislative intent at the time of the enactments, as determined by established principles, is so irrational as to be ludicrous.” Id. While HKP criticizes the Panel’s interpretation of Ind. Code § 1-1-1-8, the Panel was simply following this Court’s precedent.

In any event, the test for severability is “whether or not the Legislature would have passed the statute had it been presented without the invalid features.” Paul Stieler, 2 N.E.3d at 1279; I.C. § 1-1-1-8(b). The legislative history unquestionably demonstrates that the Legislature would not pass the Fee Restriction without the Fee Exemption for only Bloomington and West Lafayette.

CONCLUSION

This Court should deny transfer.

Respectfully submitted,



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I certify that on April 11, 2018, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I also certify that on April 11, 2018, the foregoing document was served upon the following individuals using the IEFS:

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