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IN THE
COURT OF APPEALS OF INDIANA

Lake Ridge School Corporation and School City of Hammond,

Appellants-Plaintiffs,

West Lafayette Community School Corporation,

Appellant-Intervenor,

v.

Eric Holcomb, in his official capacity as Governor of the State of Indiana; Indiana State Board of Education; Indiana Department of Education; and Todd Rokita, in his official capacity as Attorney General of the State of Indiana,

November 9, 2022

Court of Appeals Case No.
22A-PL-423

Appeal from the
Lake Superior Court

The Honorable
Stephen E. Scheele, Judge

Trial Court Cause No.
45D05-2001-PL-2

Appellees-Defendants

Vaidik, Judge.

Case Summary

[1] Between 2018 and 2020, Lake Ridge School Corporation ("Lake Ridge"), School City of Hammond ("Hammond"), and West Lafayette Community School Corporation ("West Lafayette") (collectively, "the School Corporations"), each closed public-school buildings. Under Indiana Code sections 20-26-7-1 and 20-26-7.1-4, the School Corporations were required to sell or lease those properties no longer in use to any interested charter schools or state educational institutions (i.e., public colleges or universities) for $1. The School Corporations sued the governor in his official capacity, the attorney general in his official capacity, the Indiana State Board of Education, and the Indiana Department of Education (collectively "the State"), arguing these statutes violate the takings clauses of the state and federal constitutions. The State moved for summary judgment, which the trial court granted, and the School Corporations now appeal. Because we agree with the State that the

School Corporations, as political subdivisions, cannot assert takings claims against the State, we affirm.[1]

Facts and Procedural History

[2] Indiana Code sections 20-26-7-1 and 20-26-7.1-4 (collectively, "the Statutes"), provide that within ten days of taking official action to close or no longer use a school building previously used for classroom instruction, the governing body of the school must notify the Department of Education, make the building available to any interested charter school or state educational institution, and ultimately sell or lease the building to the interested charter school or statute educational institution for $1. If no interest is expressed, then the governing body may otherwise dispose of the building in accordance with Indiana law. Ind. Code § 20-26-7.1-4.[2]

[3] In 2019 and 2020, Lake Ridge and Hammond each closed schools but failed to notify the Department of Education or otherwise comply with the Statutes. In 2020, Lake Ridge and Hammond sued the State, alleging the Statutes violate the takings clauses of the Fifth Amendment to the United States Constitution

[1] We held oral argument in this matter in Merrillville on October 5, 2022. We thank the Lake County Bar Association for its hospitality and counsel for their helpful advocacy.

[2] According to the School Corporations, Indiana is the only state to statutorily require public schools to sell their unoccupied buildings, paid for by local taxes, for less than fair-market value.

and Article 1, Section 21 of the Indiana Constitution and seeking declaratory and injunctive relief.

[4] In August 2020, West Lafayette moved to intervene in the suit. West Lafayette closed one of its elementary schools in 2018 and is also seeking declaratory and injunctive relief on the ground that the Statutes violate the takings clauses. Unlike Lake Ridge and Hammond, West Lafayette notified the Department of Education of the school's closing, but no charter school or state educational institution expressed interest in the building. The trial court granted West Lafayette's motion to intervene over the State's objection.

[5] Ultimately, the parties cross-moved for summary judgment, with the State arguing in part that the School Corporations cannot assert takings claims against the State. The trial court granted the State's motion, finding the Statutes do not constitute a taking without just compensation in violation of the state or federal constitution.

[6] The School Corporations now appeal.

Discussion and Decision

[7] The School Corporations renew their argument that the Statutes violate the state and federal takings clauses. We review the constitutionality of a statute de novo. *Himsel v. Himsel*, 122 N.E.3d 935, 945 (Ind. Ct. App. 2019), *reh'g denied*, *trans. denied*. "Statutes come before us 'clothed with the presumption of constitutionality until clearly overcome by a contrary showing.'" *Id.* (quoting

Zoeller v. Sweeney, 19 N.E.3d 749, 751 (Ind. 2014)). "The party challenging the constitutionality of a statute bears the burden of proof, and all doubts are resolved against that party and in favor of the legislature." *Id.* (citation omitted).

[8] Article 1, Section 21 of the Indiana Constitution states, in part, "No person's property shall be taken by law, without just compensation[.]" The Fifth Amendment to the United States Constitution similarly provides "nor shall private property be taken for public use, without just compensation." The Fifth Amendment's takings clause applies to the states via the Due Process Clause of the Fourteenth Amendment. *State v. Kimco of Evansville, Inc.*, 902 N.E.2d 206, 210 (Ind. 2009). As both parties note, the federal and state takings clauses are not identical, but our Supreme Court has held we analyze them identically.[3] *Id.*

[9] The State argues the School Corporations, as political subdivisions, cannot sue the State under the takings clauses because "the U.S. Supreme Court has long held that the Takings Clause has no role to play in intragovernmental disputes

[3] At times, the School Corporations seem to suggest these differences in text should lead to separate constitutional analyses. For example, the School Corporations contend they are "persons" whom the Indiana takings clause protects and assert the clause protects "more broadly" than its federal counterpart. Appellant's Br. p. 12. But they stop short of conducting an independent analysis. And notably, they provide no historical information or caselaw on the Indiana takings clause from which we could conduct such an analysis ourselves. *See Cheatham v. Pohle*, 789 N.E.2d 467, 472-73 (Ind. 2003) ("[We] ordinarily resolve . . . questions that arise under the Indiana Constitution by examining the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of our constitution, and case law interpreting the specific provisions.") (citation omitted). To the extent the School Corporations are asking us to depart from prior cases and conduct a separate analysis under the Indiana takings clause, we decline to do so.

between a State and one of its agencies or political subdivisions." Appellee's Br. p. 19. We agree.

[10] The United States Supreme Court addressed the relationship between states and municipalities in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907), stating:

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state . . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, **may take without compensation such property**, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation.

(Emphasis added). Given this relationship, courts generally hold municipalities and political subdivisions cannot bring constitutional claims against their states. *See, e.g., Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933) (explaining that a municipal corporation cannot bring an equal-protection claim against its state because a municipal corporation has "no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator"); *Vill. of Arlington Heights v. Reg'l Transp. Auth.*, 653 F.2d 1149, 1152 (7th Cir. 1981) (noting the principle that a municipality may

not challenge acts of the state under the Fourteenth Amendment is "well established").

[11] The Court specifically addressed a municipality's ability to sue its state under the federal takings clause in *City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923). The Court held the takings clause "do[es] not apply against the state in favor of its own municipalities" because a "municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit." *Id.* at 187, 192. Since *Trenton*, federal courts have continued to hold political subdivisions cannot sue their states, or other state agencies, under the takings clause. *See Bd. of Levee Com'rs of the Orleans Levee Bd. v. Huls*, 852 F.2d 140, 142 (5th Cir. 1988) ("[A]n agency of the state may [not] sue the state under the Fifth and Fourteenth Amendments for an uncompensated taking of property."); *City of South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231, 233-34 (9th Cir. 1980) (holding municipal corporation cannot bring a takings claim against other state agencies, citing *Trenton*).[4]

[12] The School Corporations note that the U.S. Supreme Court in *Gomillion v. Lightfoot*, 364 U.S. 339, 342 (1960), explained a state's power over

[4] Several state supreme courts have similarly held that political subdivisions cannot bring takings claims against the state. *See Bd. of Water Works Trs. of City of Des Moines v. Sac Cnty. Bd. of Supervisors*, 890 N.W.2d 50, 70 (Iowa 2017) (holding political subdivision cannot assert a takings claim against the state, citing *Trenton*); *Sanitary and Improvement Dist. No. 67 of Sarpy Cnty. v. Dept. of Rds.*, 961 N.W.2d 796, 807 (Neb. 2021) (same); *City of Reno v. Washoe Cnty.*, 580 P.2d 460, 463 (Nev. 1978) (same).

municipalities is not "absolute." While this is true, *Gomillion* also states the explicit holdings in *Hunter* and its progeny, including *Trenton*, remain good law. *Id.* at 344 ("[A] correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate . . . its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases.").

[13] Indisputably, the School Corporations here are political subdivisions of the State. *See Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 926 (7th Cir. 2012) ("School corporations are political subdivisions . . . ."); *see also* I.C. § 5-10.1-1-7 (definition of "political subdivision" includes public-school corporation). We conclude the School Corporations may not assert takings claims against the State.[5]

[14] Affirmed.

Crone, J., and Tavitas, J., concur.

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[5] The State also argues, as an alternative basis to affirm, that West Lafayette lacks standing to challenge the Statutes because, unlike Lake Ridge and Hammond, it complied with the Statutes and no charter school or state educational institution expressed interest. Because we are affirming on other grounds, we need not address this issue.