IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEKALB COUNTY SCHOOL DISTRICT, Petitioner, v. CITY OF ATLANTA and FELICIA A. MOORE, ATLANTA CITY COUNCIL PRESIDENT, in her Official Capacity, Respondents.	CIVIL ACTION FILE No. 2018CV306056

PETITIONER'S MOTION FOR AN INTERLOCUTORY INJUNCTION AND SUPPORTING BRIEF

Petitioner DeKalb County School District ("DCSD") files this motion for an interlocutory injunction, seeking expedited review and determination of its claims. In support of its claims, DCSD respectfully shows the Court the following:

I. Introduction and Overview

This case arises from the City of Atlanta's (the "City") annexation of 744 acres encompassing Emory University, the Centers for Disease Control and Prevention, and Children's Healthcare of Atlanta (the "Emory Annexation"). More precisely, this lawsuit arises from the Atlanta City Council's (the "Council") eleventh-hour enactment of a "substitute" annexation ordinance in violation of mandatory provisions of the Atlanta City Charter (the "Charter"), including Section 2-402(c) of the Charter, which provides that "[n]o ordinance shall be passed and adopted until it has been read by title at two regular meetings not less than one week apart . . . ."

The substitute ordinance at issue was hastily passed by the Council on December 4, 2017. It was materially different than the original ordinance circulated to all stakeholders and the public, and was introduced to the Council for the first time just five days earlier, on November 29. The material difference between the two ordinances is evident from their titles, which are fully quoted in Section II below. The title of the original annexation ordinance provided that the boundaries of the Atlanta Independent School System (a/k/a Atlanta Public Schools or "APS") would ***not*** be extended in connection with the Emory Annexation. The substitute ordinance's title was materially changed to extend APS's boundaries to include the annexed area. This substantive change to the annexation ordinance required that the substitute ordinance be read by title at two regular meetings at least one week apart. *See* Charter, § 2-402(c). To hold otherwise would vitiate the purpose of the two-reading requirement, which is "to ensure that the public is able to adequately review and understand the intent and effect of the legislation." Charter, § 2-402(a).

The failure of the Council to abide by Section 2-402(c) of the Charter renders the eleventh-hour changes that were made to the substitute annexation ordinance void. Accordingly, this Court should grant the instant motion and direct that until such time as this case can be fully resolved on the merits, the status quo be preserved and the annexed areas remain a part of the DCSD, not APS.

II. Factual Background

In August 2016, Emory University issued a public statement announcing that after "considering and evaluating its annexation options for several years," it was "beginning the process to annex its campus into the City of Atlanta." Petition, ¶ 16; *see also* http://news.emory.edu/stories/2016/08/upress_atlanta_annexation_statement/index.html (last accessed June 4, 2018). Emory filed a formal petition seeking annexation into the City of Atlanta (the "City") on June 27, 2017. Petition, ¶ 17. The area to be annexed included 744 acres within DeKalb County along the City's eastern edge, and the properties within the area were owned by Emory, the Centers for Disease Control and Prevention, and Children's Healthcare of Atlanta. *Id.* It is the largest expansion of the City in 65 years, since the annexation of Buckhead in 1952. *Id.*, ¶ 35.

The Emory Annexation petition sought annexation pursuant to "the 100% method" set forth in O.C.G.A. § 36-36-21. That code section grants authority to municipalities to annex, by ordinance, unincorporated areas contiguous to existing corporate limits "upon the written and signed applications of all the owners of all the land . . . proposed to be annexed . . . ." To that end, following the filing of the annexation application in June, the Atlanta City Council introduced proposed ordinance 17-O-1420 on July 5, 2017. Petition, ¶ 25 & Ex. A. The title of the original annexation ordinance was as follows:

> An ordinance to provide for the annexation of property owned by Emory University, Children's Healthcare of Atlanta, the Centers for Disease Control, Georgia Power Company, Villa International, and Synod of South Atlantic & Presbyterian Church (USA), Inc. to the corporate limits of the City of Atlanta, Georgia pursuant to the 100% method; ***to not extend the***

> ***boundaries of the Atlanta Independent School System***; to notify the Georgia Department of Community Affairs of such annexation; and for other purposes.

Petition, Ex. A (emphasis added).

For the next five months, the title of the annexation ordinance remained unchanged, even as the City of Atlanta and DeKalb County engaged in arbitration proceedings relating to various financial and service disputes surrounding the annexation. *See* Petition, ¶ 18. Those proceedings ended in a settlement on September 26, 2017, prior to the formal arbitration hearing. *Id.*, ¶ 19. Throughout this process, the City misled DeKalb County, DCSD, and the public into believing that the Emory Annexation would not result in an expansion of APS's boundaries. Consequently, DCSD did not object to the annexation or encourage DeKalb County to raise the issue of school boundaries. In fact, DCSD affirmatively supported the annexation based on its understanding that "basic changes to the city of Atlanta's boundaries in the area ***would not negatively impact DeKalb County students or schools.***" *See* Dan Whisenhunt, *DeKalb County Schools Tells Parents Emory Annexation Won't Affect DeKalb Students*, ATLANTA LOOP (Oct. 6, 2017), http://www.atlantaloop.com/dekalb-county-schools-tells-parents-emory-annexation-wont-affect-dekalb-students/.

On November 29, 2017, however, the Council's Finance/Executive Committee, after relentless lobbying efforts by APS to change the ordinance and allow APS to "annex" the same 744 acres, relented in an about-face. A new substitute ordinance mandating the expansion of APS to incorporate the Emory Annexation was prepared and

passed by the Council's Finance/Executive Committee. Specifically, the title of the substitute ordinance provided as follows:

> An ordinance to provide for the annexation of property owned by Emory University, Children's Healthcare of Atlanta, the Centers for Disease Control, Georgia Power Company, Villa International, and Synod of South Atlantic & Presbyterian Church (USA), Inc. to the corporate limits of the City of Atlanta, Georgia pursuant to the 100% method; ***to extend the boundaries of the Atlanta Independent School System***; to notify the Georgia Department of Community Affairs of such annexation; and for other purposes.

Petition, Ex. B (emphasis added). This substitute ordinance, introduced on November 29, 2017, was the very first time that it was proposed that the Emory Annexation would result in an expansion of APS.

On December 4, 2017—just five days after the substitute ordinance with the new title and new purpose was introduced in the Finance/Executive Committee—the full Council approved the substitute ordinance, in contravention of the mandatory language in the Charter providing that "[n]o ordinance shall be passed and adopted until it has been read by title at two regular meetings not less than one week apart, except for emergency ordinances . . . ." Charter, § 2-402(c). Because the City's home rule powers authorize the Council to enact only those ordinances that comply with its Charter, *see* O.C.G.A. § 36-35-3(a), the Council's failure to read the *new* title of Ordinance 17-O-1420 by title at two regular meetings not less than one week apart prior to its passage and adoption is fatal to the validity of the ordinance.

After protracted, albeit unsuccessful efforts to resolve this dispute via negotiations and legislative remediation by the General Assembly, DCSD has filed suit against the City and Council President Felicia A. Moore, in her official capacity, seeking declaratory, injunctive, and mandamus relief. The urgent need for judicial intervention is due to the fact the portion of the annexation ordinance providing for the expansion of APS into the annexed area is set to take effect until July 1, 2018. *See* Petition, ¶¶ 2 & 36; *id.*, Ex. B at § 3. It is this aspect of the Emory Annexation —not the entirety of the annexation—that DCSD asks this Court to halt implementation of via a interlocutory injunction. ON that issue, the equities weigh heavily in favor of DCSD.

DCSD is the third-largest public school system in the State of Georgia, serving approximately 102,000 students in 137 schools and centers. Petition, ¶ 8. For the majority of its funding, DCSD relies on local property taxation from the territory that it serves. *Id.*, ¶ 10. The expansion of APS into previously unincorporated areas of DeKalb County removes students from DCSD's schools, decreases the taxable real property base from which DCSD draws its funding, and impairs DCSD's ability to carry out its legal obligation to operate and adequately fund its schools. *Id.*, ¶ 13. This case is a particularly egregious example of over-reaching by the City and APS. Among the 6,400 residents of the annexed areas there are, at most, nine school-aged children who were previously enrolled in DCSD and are now supposed to enroll in APS effective July 1, 2018. *Id.*, ¶ 35. In exchange for annexing this area and assuming a mere handful of students into its schools, ***the City of Atlanta will take from DCSD more than $2 million in funding per***

year, in perpetuity. *Id.*, ¶ 38. That money will now go to APS, a school district that serves approximately half the number of students as DCSD, operates fewer schools than DCSD, already receives more funding on a per-student basis than DCSD, and is taking on just a handful of students who reside in the annexed area. *Id.*, ¶¶ 13-15. This grossly unfair outcome is the result of an ordinance that, as discussed below, is clearly void because of the City's failure to adhere to mandatory provisions of its own Charter.

III. Discussion and Analysis

A. Legal Standard on a Motion for Interlocutory Injunction

"Equity, by a writ of injunction, may restrain . . . any . . . act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law." O.C.G.A. § 9-5-1. The purpose of an interlocutory injunction is to preserve the status quo and "'keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication. There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy.'" *Chambers v. Peach County*, 492 S.E.2d 191, 192 (Ga. 1997) (quoting *Price v. Empire Land Co.*, 126 S.E.2d 626, 630 (1962)) (alterations adopted).

> In determining whether to issue an interlocutory injunction, the trial court must balance the conveniences of the parties pending final adjudication. An interlocutory injunction may be issued to maintain the status quo if, after balancing the relative equities of the parties, it appears the equities favor the party seeking the injunction.

Bernocchi v. Forcucci, 614 S.E.2d 775, 777 (Ga. 2005) (internal citations omitted). One factor bearing on the Court's analysis is whether the movant is likely to succeed on the merits of its claims. *Toberman v. Larose Ltd. P'ship*, 637 S.E.2d 158, 161 (Ga. Ct. App. 2006). As detailed below, DCSD is likely to prevail on its claims in this case, but even if the Court were to disagree, "a trial court is not *required* to find that a movant is likely to succeed on the merits before *granting* and interlocutory injunction, under certain circumstances *where other equitable factors counsel in favor of the grant*." *Id.* (first two emphases in original, final emphasis added).

"The granting and continuing of injunctions shall always rest in the sound discretion of the judge, according to the circumstances of each case." O.C.G.A. § 9-5-8. While the power to grant injunctions must be "prudently and cautiously exercised," *id.*, the Georgia Supreme Court has recognized that "[t]rial courts enjoy broad discretion in deciding whether an interlocutory injunction should be imposed . . . ." *Bernocchi*, 614 S.E.2d at 777. "[T]he appellate courts will not disturb the trial court's exercise of its discretion unless a manifest abuse of discretion is shown or there was no evidence on which to base the ruling." *Chambers*, 492 S.E.2d at 192.

B. The Equities of This Case Favor the Preservation of the Status Quo Through the Grant of an Interlocutory Injunction Pending a Final Adjudication of This Case

The facts of this case plainly call for the preservation of the status quo, via issuance of an interlocutory injunction, until the challenged legality of the challenged ordinance can be fully and finally adjudicated. From August 2016, when Emory indicated

it was exploring its annexation opportunities, until November 28, 2017, the day before the Council's Finance/Executive Committee passed the substitute version of ordinance 17-O-1420, the City misled DeKalb County, DCSD, and affected families and stakeholders by assuring them the Emory Annexation would not result in an expansion of the boundaries of APS to incorporate the annexed area. That representation was maintained through the introduction, examination, and most significantly the readings of the original annexation ordinance, the title of which plainly stated the ordinance would "**not extend the boundaries" of APS and the body of which expressly recognized that "annexation along with expansion [of APS's boundaries] would be less preferable than annexation without an expansion of APS's boundaries**." Petition, Ex. A, p.2. (emphasis added). Then, on November 29, 2017, the City pulled a bait-and-switch, introducing the substitute ordinance that, for the first time, reversed course on the issue and changed the purpose of the ordinance so "to extend the boundaries of the Atlanta Independent School System." Petition, Ex. B (title). That substitute ordinance was to vote, and enacted by the City Council just five days later, on December 4.

This enactment of the substitute ordinance was unlawful because it clearly violated § 2-402(c) of the City Charter and exceeds the City's home rule powers under O.C.G.A. § 36-35-3(a), rendering the ordinance void.

1. Section 2-402(c) of the Atlanta City Charter Requires That the Substitute Ordinance's Title be Read Twice Prior to Adoption

Section 2-402(c) of the City Charter prohibits the enactment of any ordinance that has not "been read by title at two regular meetings not less than one week apart." While the *original title* of ordinance 17-O-1420 might have been read at two regular meetings at least one week apart, there can be no dispute that the title of the substitute ordinance, which differed materially from the title of the original ordinance, at least as it relates to the expansion of APS, was not read at two meetings as required by § 2-402(c). Indeed, the fact that the substitute ordinance was passed and adopted by the full Council just five days after it was first introduced by the Finance/Executive Committee makes compliance with § 2-402(c) a literal impossibility.

Defendants may argue that the City effectively complied with the Charter because reading the title of the original ordinance at two meetings satisfied § 2-402(c) with respect to the substitute ordinance that was eventually passed. That argument cannot pass legal muster. The stated purpose of the parliamentary rules contained in § 2-402 is "to ensure that the public is able to adequately review and understand the intent and effect of the legislation" in question. Charter, § 2-402(a). As recognized by other courts, provisions such as the dual-reading requirement of § 2-402(c) exist "to prevent hasty and ill-considered legislation," *Metro. Gov't of Nashville & Davidson County v. Mitchell*, 539 S.W.2d 20, 21 (Tenn. 1976), by "caus[ing] legislators to proceed in their action with caution and deliberation," *Paterson & R.R. Co. v. City of Paterson*, 68 A. 76, 77 (N.J.

1907). These purposes are vindicated *only* if § 2-402(c) requires that the title that is read actually reflect "the intent and effect" of the ordinance in question; allowing an ordinance to be adopted under a different title than the one that was read renders § 2-402(c) entirely meaningless. Thus, the only logical interpretation of the Charter provision in question is that when substantive changes are made to the *title* (not merely the body) of an ordinance before the ordinance is adopted, the *revised title* must itself be read twice in accordance with § 2-402(c) before the ordinance can be passed.

While a city council may under some circumstances "abolish, modify, or waive its own rules" of parliamentary procedure without judicial reproach, "of course it cannot disregard mandatory charter provisions." *S. Ga. Power Co. v. Baumann*, 151 S.E. 513, 515-16 (Ga. 1929). Under O.C.G.A. § 36-35-3(a) empowers a municipality to adopt only those ordinance "which are not inconsistent with . . . any charter provision . . . ." Any municipal ordinance that is inconsistent with a city charter provision is violative of O.C.G.A. § 36-35-3(a) and "is void." *Ivey v. McCorkle*, 806 S.E.2d 231, 233 (Ga. Ct. App. 2017).

There is little case law interpreting the relevant provisions of the Charter, but case law interpreting similar requirements in the charters, ordinances, and statutes of other jurisdictions is instructive. Nashville, Tennessee's charter provides that "no ordinance shall become effective until it shall have been passed by majority vote on three different days." *Metro. Gov't of Nashville & Davidson County v. Mitchell*, 539 S.W.2d 20, 21 (Tenn. 1976). Where the facts before the Tennessee Supreme Court showed that material

changes were made to the substantive content (but not the title) of a particular ordinance between its first and final readings, the court found no violation of the charter, but for reasons that mandate a contrary outcome in this case:

> [Tennessee's] cases have consistently given a different treatment to changes in the title or captions of bills from that given to changes in the bodies of bills. **Thus, we have held that when the title or caption of a bill is altered 'substantially' or changed to introduce 'new or foreign matter,' the bill loses its identity and a new bill is thereby created which must, itself, be passed on three different days.**
>
> But, with respect to changes only in the body of a bill, a much more liberal test has been applied . . . .
>
> Therefore, the net effect of the above-mentioned cases . . . , may be said to be that **the subject [i.e., title] of a bill may not be substantially or materially altered between first and final readings**, but that substantial and material changes may be made in the particular provisions of a bill between first and final readings so long as those changes are germane to and within the scope of the original subject.

Id. at 21–22 (emphasis added).

The Supreme Court of Washington reached a similar conclusion in *City of Vancouver v. Wintler*, 36 P. 278, 278 (Wash. 1894). There, the respondent sought to void an ordinance that it claimed was enacted in violation of a statute which provided that "[n]o ordinance . . . shall be passed by the city council on the day of its introduction, nor within five days thereafter . . . ." *Id.* The facts of that case showed that more than five days had elapsed between the introduction of the ordinance and its passage, but the ordinance that passed was a substitute ordinance that had been introduced fewer than five days before its passage. The court rejected the respondent's challenge, holding, in line with the Tennessee Supreme Court's reasoning in *Mitchell*, that "so long as the substitute

is clearly within the limits of the subject-matter of the original proposition," there was nothing wrong with the city council's actions. *Id.*; *accord State v. Hughes*, 102 P. 758, 758–59 (Wash. 1909) (finding that an amendment to an ordinance was "within the limits of the subject-matter of the original proposition" because "[t]he purpose of the amended ordinance was identical with that of the ordinance as originally introduced" and the only change made was "in the name of the grantee," a change that did not "render it in substance a new or different ordinance" from the original one).

Equally enlightening is the analysis of the Oregon Court of Appeals in *Drummond v. Oregon Department of Transportation*, 730 P.2d 582, 584-85 (Or. Ct. App. 1986). An Oregon statute very similar to § 2-402(c) of the Atlanta City Charter "requires that a proposed ordinance be read twice during regular meetings at least six days apart . . . ." *Id.* at 584. The respondents in *Drummond* argued that amendments to the ordinance in question changed the ordinance "to such an extent as to require two readings of the amended ordinance," while the Board of Directors of the Tri-County Metropolitan Transportation District of Oregon ("Tri-Met") urged that "the amendments were insubstantial." *Id.* The Oregon Court of Appeals began by noting that "[a] literal reading of the statute would seem to require that the particular ordinance that is adopted be read twice before its passage," but insofar as that could produce an unreasonable result by requiring an amended ordinance be read twice "even if the amendment involved simple editorial changes," the court declined to adopt that interpretation. *Id.* at 584–85. But that was only the beginning of the court's analysis.

The *Drummond* court went on to conclude that "if a substantial change is made in a proposed ordinance, . . . [the statute in question] requires that the revised ordinance be 'read' twice during regular meetings of the board on two different days at least six days apart . . . ," reasoning as follows:

> If a Tri-Met ordinance is changed substantially and then read and adopted at one meeting, the public and other interested parties might not have an opportunity to comment on the revisions that may affect them. If the original ordinance did not affect them, they might have no reason to attend either meeting."

Id. at 585. The Court further concluded that changing the ordinance in question—which related to a tax on petroleum products—to expand the scope of products that came within its ambit constituted a "substantial[] and material[]" amendment. *Id.* Because the materially amended ordinance was not adopted in compliance with the statute, it was held to be invalid.

Even if, as the court in *Drummond* concluded, it would be unreasonable to require that *every* change to the title of an ordinance be read twice under § 2-402(c), the change to the substitute ordinance's title was a fundamental one that was expressly rejected by the original ordinance's title. Unlike the ordinance in *Mitchell*, the changes made between the first and final readings of the Emory Annexation ordnance did change the title and impact the ordinance. Indeed, insofar as APS's expansion is concerned, the substitute ordinance accomplished the exact *opposite* of what the original ordinance purported to do. Nothing could be a more material change than that. This Court should follow the well-reasoned and persuasive opinions in *Mitchell*, *City of Vancouver*, and *Hughes* to

hold that such material and substantive changes to the title of an ordinance re-trigger the dual-reading requirement of § 2-402(c).

The Georgia Supreme Court recently made it very clear that notice requirements similar to the one contained in § 2-402(c) are not mere technicalities. In *Hoechstetter v. Pickens County*, ___ S.E.2d ___, No. S17G1500, 2018 WL 2465513 (Ga. June 4, 2018), the Court was asked to decide whether proper notice had been provided in connection with a county zoning decision, as required by O.C.G.A. § 36-66-4(a). In ruling that the Zoning Procedures Law's notice-and-hearing requirements were not satisfied, the Court emphasized that "the whole point of the statutory notice-and-hearing requirements is to afford interested citizens a *meaningful* opportunity to be heard on a proposed zoning decision." *Id.* at *1 (emphasis in original). Where the only hearing that was properly noticed was before the Planning Commission, and no adequate record was made to inform the Board of Commissioners about what happened at the Planning Commission hearing, the Court concluded that "it cannot be said that the hearing before the Planning Commission afforded interested citizens a meaningful opportunity to be heard by the Board . . . ." *Id.* at *2.

The same principle enunciated in the *Hoechstetter* opinion applies to this case: arguable technical compliance with § 2-402(c) by reading the title of the original ordinance at two meetings cannot suffice when, as in this case, substantive changes are subsequently made to the title. In order for the public to have a *meaningful* opportunity to know what is being considered by the Council, the revised title must itself be read at two

separate meetings at least a week apart. Such a holding is the only way to give effect to the stated purposes of § 2-402's mandatory parliamentary rules, and it is the only way to ensure that interested parties "have an opportunity to comment on the revisions that may affect them." *Drummond*, 730 P.2d at 585. In essence, that is the only way to give any meaning whatsoever to § 2-402(c).

2. The City's Non-Compliance with § 2-402(c) Renders the Substitute Ordinance Void Insofar as It Purports to Expand APS's Boundaries

Under O.C.G.A. § 36-35-3(a), "[t]he governing authority of each municipal corporation shall have the legislative power to adopt clearly reasonable ordinances, resolutions, or regulations . . . which are not inconsistent with . . . any charter provision applicable thereto." "An ordinance enacted in violation of O.C.G.A. § 36-35-3(a) is void." *Ivey v. McCorkle*, 806 S.E.2d 231, 233 (Ga. Ct. App. 2017); *accord City of Buchanan v. Pope*, 476 S.E.2d 53, 56 (Ga. Ct. App. 1996) ("The Georgia Supreme Court has interpreted [O.C.G.A. § 36-35-3(a)] to invalidate municipal ordinances inconsistent with a city's charter." (citing *Ga. Branch, Assoc'd Gen. Contractors of Am., Inc. v. City of Atlanta*, 321 S.E.2d 325, 329 (Ga. 1984))). Georgia's courts have not hesitated to declare municipal ordinances invalid where they have failed to comply with charter provisions such as the one contained in § 2-402(c) of the City of Atlanta's Charter. *See Jeanes v. Mayor & Aldermen of Milledgeville*, 155 S.E.218, 219–20 (Ga. Ct. App. 1930) (invalidating a city ordinance that was not read three times as required by city's charter).

As noted above, a city council may under appropriate circumstances "abolish, modify, or waive its own rules" of procedure, *S. Ga. Power Co.*, 151 S.E. at 515, and consequently Georgia courts have recognized the general principle that "the observance of parliamentary and other procedural rules enacted by a municipal corporation is not a matter of judicial concern," *Fairfax MK, Inc. v. City of Clarkston*, 555 S.E.2d 722, 725 (Ga. 2001). "Hence, when an ordinance is enacted *in compliance with the charter*, it will not be held void because in its passage one of the parliamentary rules of the council was violated." *S. Ga. Power Co.*, 151 S.E. at 516. This case, however, does not involve mere procedural or parliamentary rules enacted by a city council; rather, it involves the City's non-compliance with mandatory provisions of its legislatively-created charter.

3. The Equities Favor DCSD and Support Granting an Injunction

The preceding legal analysis demonstrates that DCSD is likely to prevail on the merits of its claims, because an ordinance enacted in violation of a city charter provision is by law void under O.C.G.A. § 36-35-3(a). DCSD has both the law and the equities on its side, as detailed in the factual recitation above. The City spent months considering the Emory Annexation ordinance; yet, it waited until the eleventh hour to pull the rug out from under everybody else's feet with respect to the expansion of APS. As a result of the City's actions, APS stands to deprive DCSD—its more populous and less wealthy neighbor—of more than $2 million in critical funding on an annual and perpetual basis in exchange for absorbing fewer than ten new students into APS's schools.

If this void ordinance is permitted to go into effect on July 1, the harm to DCSD will be severe, immediate, and irreparable. Once the affected students have transferred into APS, there is no way to un-ring that bell without imposing substantial hardships on the students and their families. At the soonest, any subsequent remedy could be expected to return the students to DCSD at the beginning of the 2019-2020 school year, more than a year from now. In the interim, DCSD will have been deprived of funding that is critical to its success for the forthcoming 2018-2019 school year and suffer from the uncertainty of being unable to realistically plan for its budgetary and other operational needs.

By contrast, the City will suffer no harm from the maintenance of the status quo. Should this Court conclude that the annexation ordinance was validly passed, it is far easier and less burdensome to transfer the affected students into APS than it is to transfer them initially and risk a subsequent determination that that was premature and erroneous. And it cannot be ignored that *this is a problem of the City's own making*. The City had ample time to advise DCSD, DeKalb County, and other stakeholders that it intended to capitulate to APS's demands and expand APS in connection with the Emory Annexation. It chose not to, opting instead to obtain a settlement with DeKalb County under false pretenses and rally the other necessary support for the annexation and then, at the last minute, hastily pass a "substitute" ordinance that dramatically changes the landscape of this annexation.

IV. This Case Is Not Related to Any Prior Lawsuit, and the City's Anticipated Defenses of Standing and Sovereign Immunity Are Meritless

On June 13, 2018, the City of Atlanta submitted a filing titled "Respondent's Notice of Related Cases," arguing that the instant case qualifies as a "related case" to *DeKalb County School District v. City of Atlanta*, No. 2016CV284278 (Fulton Super., filed Dec. 29, 2016) (Newkirk, J.). Despite the similarity in the caption of the two cases, however, the two are not "related" for case-assignment purposes. They relate to entirely different annexations, and thus different factual issues, and the claims asserted in the two cases are entirely different: in the 2016 lawsuit, DCSD brought constitutional claims premised on the deprivation of its claimed property interest in tax revenue. Here, by contrast, DCSD has brought no constitutional claim, and the claim it has brought—that the annexation ordinance is void because the City did not comply with mandatory provisions of its own charter—does not relate to any claimed property interest in tax revenue. The only thing the two lawsuits have in common is the parties to them. The two cases are no more related than two lawsuits, filed two years apart, between the same parties concerning different motor-vehicle collisions.

The City's apparent intention to challenge this lawsuit on grounds of standing and sovereign immunity does not change this analysis. Again, the standing and sovereign immunity arguments that proved dispositive in the 2016 action are entirely inapplicable here, due to the different legal claims and different injury giving DCSD standing to sue. And in any event, as discussed below, neither of these defenses has any merit to it.

First, DCSD unquestionably has standing to sue the City for violations of the City's Charter. Section 2-402(c) exists to ensure that *all affected stakeholders* are meaningfully apprised of City Council proceedings. In this case, the substitute annexation ordinance that was rushed through City Council unquestionably affects DCSD's legal responsibility to educate children residing in DeKalb County, and if that aspect of the void ordinance that provides for expansion of APS is given effect on July 1, it will cause DCSD to suffer harm in the form of lost students and lost tax revenue. Significantly, unlike in the 2016 lawsuit between DCSD and the City, DCSD is *not claiming* a vested property interest in its tax revenue that gives rise to a due process or other constitutional claim. The lost tax revenue is simply one aspect of the harm that DCSD stands to suffer by virtue of the City's violation of its charter. Standing is determined on a claim-by-claim basis, and whether a plaintiff has suffered an injury sufficient to create standing for a non-constitutional claim is a separate and distinct inquiry from whether that injury is constitutionally-protected such that it is cognizable under the Due Process clause. *See Cypress Ins. Co. v. Clark*, 144 F.3d 1435, 1436–37 (11th Cir. 1998) (distinguishing between injuries generally and those protected by the Due Process clause). Judge Newkirk's ruling in the 2016 lawsuit that DCSD lacked standing to pursue its due process claims is simply inapplicable here.[1]

[1] DCSD notes that despite its conclusion that DCSD lacked standing to pursue the claims at issue in the 2016 litigation, Judge Newkirk's Order dismissing that case did in fact appear to reach the merits of DCSD's claims. *See* Order Granting Respondent's Motion to Dismiss, pp. 8–9.

Second, sovereign immunity does not bar DCSD's claims in this case. As a threshold matter, § 2-402(c)'s two-reading requirement requires the City to perform a ministerial act— i.e., "one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty," *Stone v. Taylor*, 506 S.E.2d 161, 163 (Ga. Ct. App. 1998)—and thus sovereign immunity is inapplicable. O.C.G.A. § 36-33-1(b) ("For neglect to perform or improper or unskillful performance of their ministerial duties, [municipal corporations] shall be liable.").

But even if sovereign immunity might otherwise be implicated, there is no principled reason to apply such a bar in a case between political subdivisions of the same sovereign, such as DCSD and the City of Atlanta. *See Clayton County v. City of College Park*, 803 S.E.2d 63, 65–66 (Ga. 2017) (remanding case to trial court for consideration of the "threshold question of whether sovereign immunity applies at all in suits between political subdivisions of the same sovereign (like the City and the County)," a question that the court described as "complex and important" and declined to address in the first instance on appeal).

> Historically, governmental or sovereign immunity was justified as a recognition that it was a contradiction of the sovereignty of the king to allow him to be sued as of right in his own courts. Later, the doctrine reflected the more substantive principle associated with the divine right of kings that "the king can do no wrong."

Gilbert v. Richardson, 452 S.E.2d 476, 480 n.7 (Ga. 1994).

The notion that the independence, dignity, and status of a sovereign should not be impugned by allowing a subject to haul the sovereign into court has no application in a

case like this, where neither DCSD nor the City of Atlanta is the subject or sovereign of the other. Instead, both DCSD and the City derive their respective immunities from the state, of which they are each political subdivisions. *See, e.g., Gravitt v. Olens*, 774 S.E.2d 263, 268 (Ga. Ct. App. 2015). They stand as co-equal sovereigns, and neither should be permitted to claim immunity from suit brought by the other, just as neither could claim immunity from a suit brought against it by the state itself. *See id.*

If needed, DCSD will more fully address any issues relating to standing, sovereign immunity, or other defenses that are raised by the City. For now, however, there is no basis upon which to conclude that DCSD lacks standing or that this action is barred by sovereign immunity.

V. Conclusion

Section 2-402(c) of the Atlanta City Charter serves the vital purpose of preventing hasty legislation such as the substitute Ordinance 17-O-1420 from being enacted without a meaningful opportunity for public review comment. Because DCSD is likely to prevail on the merits of its claims, and the equities weigh heavily in its favor, an interlocutory injunction should issue maintaining the status quo until such time as this lawsuit can be fully adjudicated on the merits. DCSD respectfully therefore requests that this Court (1) set a hearing on the instant motion with sufficient time to allow a ruling prior to the July 1, 2018 effective date of the APS expansion, and (2) GRANT the instant motion for an interlocutory injunction in favor of DCSD.

Respectfully submitted, this 13th day of June 2018.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEKALB COUNTY SCHOOL DISTRICT, Petitioner, v. CITY OF ATLANTA and FELICIA A. MOORE, ATLANTA CITY COUNCIL PRESIDENT, in her Official Capacity, Respondents.	CIVIL ACTION FILE No. 2018CV306056

CERTIFICATE OF SERVICE

I certify that on June 12, 2018, I electronically filed **PETITIONER'S MOTION FOR AN INTERLOCUTORY INJUNCTION AND SUPPORTING BRIEF** with the Clerk of Court using the electronic filing system (Odyssey eFileGA) that will automatically send email notification of such filing to the following parties and/or attorneys of record:

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