STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.: 49D01-2308-PL-32783

BOARD OF SCHOOL COMMISSIONERS FOR THE CITY OF INDIANAPOLIS,

Plaintiff-Counterclaim Defendant,

v.

TODD ROKITA, in his official capacity) as Indiana Attorney General, et al,

Defendants-Counterclaim Plaintiffs.

STATE'S EMERGENCY MOTION FOR STAY PENDING APPEAL

The Court should stay its November 13 order and maintain the status quo pending the outcome of the State's appeal of the Court's judgment. When it granted injunctive relief in favor of the Board of School Commissioners for the City of Indianapolis, this Court enjoined the State from interfering with IPS's proposed sales of real property to enforce Indiana Code chapter 20-26-7.1 (the Dollar Law). On the day of the Court's order and before the State could appeal its ruling, IPS scheduled a meeting of its school board to consider the approval of the sale of one of the pieces of real property at issue in this case—Francis Bellamy School 102—to Eclectic Soul VOICES Corporation. *See* 8.01 Approval of Sale of Francis Bellamy School 102, Board of Commissioners, Indianapolis Public Schools, *Agenda Review Session* (Nov. 14, 2023), available at https://go.boarddocs.com/in/indps/Board.nsf/Public (attached as Exhibit A). And the

sale is expected to close on November 30. Ex. C at 1. If permitted to move forward, the sale of this property could impede the State's ability to obtain meaningful appellate review of the Court's judgment. The purpose of the Dollar law is to make vacant and unused school buildings available to Charter Schools for educational purposes. A sale of the building while the State's appeal is pending frustrates that purpose and delays further educational use as the State would be forced to first unwind the sale before making it available to interested Charter schools. A stay of execution of this Court's judgment provides the only effective means of preserving the status quo so that the State can vindicate its rights on appeal. This Court should stay its grant of injunctive relief pursuant to Indiana Trial Rule 62(B) or, in the alternative, grant the State leave to file a lis pendens notice to notify any potential buyers of the ongoing litigation about the subject property.

BACKGROUND

In 2019, the Indiana General Assembly enacted the Dollar Law, which requires that public school corporations make certain school buildings available for purchase by eligible charter schools for the amount of $1.00. *See* Ind. Code § 20-26-7.1-4. Under Section 3 of the statute, before a school board may "sell, exchange, lease, demolish, hold without operating, or dispose of a covered school building," it must make the property "available for lease or purchase by a charter school or state educational institution" for use by a "charter school to conduct prekindergarten through grade 12 classroom instruction" or "state educational institution for an academic purpose." I.C. § 20-26-7.1-3(a). Section 4 caps the price that public schools

can charge for these facilities, stating that "[t]he school corporation shall lease the covered school building to a charter school or state educational institution for one dollar ($1) per year" or "sell the covered school building for one dollar ($1)" if certain conditions are met. I.C. § 20-26-7.1-4(e).

The statue also imposes certain notice requirements on school corporations. When a school corporation closes a school building, it is required to notify the Indiana Department of Education of the closure within 30 days of the decision. I.C. § 20-26-7.1-4(a). The DOE then must notify "interested persons concerning the availability of a covered school building" within 15 days of receiving notice from the school corporation. I.C. § 20-26-7.1-4(a).

The legislature amended the Dollar Law in 2023 to add a new exception for public schools that distribute monies collected through a tax levy to certain charter schools. P.L. 189-2023, Sec. 11. Specifically, the Levy Exemption to the statute provides that the Dollar Law "does not apply to" a "school corporation that distributes money that is received as part of a tax levy collected under IC 20-46-1 or IC 20-46-9 to an applicable charter school." I.C. § 20-26-7.1-1.

Beginning in 2023, IPS initiated proceedings to dispose of two pieces of corporation-owned property. *See* IPS Motion for Injunctive Relief at 5 (Aug. 21, 2023) (IPS Motion). On July 27, 2023, the IPS School Board adopted a resolution declaring Raymond Brandes School 65 (Brandes 65) and Francis Bellamy School 102 (Bellamy 102) as surplus to the corporations' education, operational, and administrative needs. IPS Motion at 5. IPS identified the community nonprofit

organization VOICES Corporation (VOICES) as a prospective buyer. Order Granting IPS's Motion for Injunctive Relief at 6 (Nov. 13, 2023) (Order). The proposed purchase agreement between VOICES and IPS would allow VOICES to purchase Bellamy 102 for the sum of $550,000. IPS's Amended Response to Notice to the Court at 3–4 (Oct. 25, 2023).

In response to this action, Indiana Secretary of Education Dr. Katie Jenner sent a letter to IPS officials advising them that they were required to provide notice of the closures of the school buildings pursuant to the Dollar Law. IPS Motion at 5. The Department of Education later learned of that both school buildings have interested charter-school buyers. Order at 6–7.

On August 21, 2023, IPS filed a complaint for declaratory judgment and injunctive relief, in which it argued it was exempt from the Dollar Law under the new Levy Exemption because it distributed funds to a charter school through a 2018 operating referendum. IPS Motion at 5–6. The State filed an answer opposing IPS's request, and it filed its own counterclaim, seeking to enjoin IPS from transferring any school building in violation of the Dollar Law. State's Answer and Counterclaim at 15–16 (Sept. 13, 2023).

The State later moved for the Court to grant a temporary restraining order and a preliminary injunction enjoining IPS from transferring Brandes 65 or Bellamy 102 without complying with the Dollar Law. State's Motion at 1–2 (Sept. 25, 2023) (State's Motion). In its motion, the State asserted that IPS's school board was scheduled for a meeting on September 28, 2023, at which it "could sell,

exchange, lease or otherwise transfer" the buildings at issue "to a non-profit organization called VOICEs, Corp." State's Motion at 2. The motion also noted that Voices was "seeking financing to take over Bellamy 102" and that it could secure financing "within weeks with final approval by IPS'[s] Board of Commissioners." State's Motion at 3. The State later withdrew its request for a temporary restraining order after IPS agreed to refrain from "tak[ing] action or vote to sell, exchange, lease, or otherwise transfer Raymond Brandes School or Francis Bellamy School" prior to a final ruling form the trial court. State's Notice at 2–3 (Oct. 23, 2023).

On November 13, this Court issued an order granting IPS's motion for injunctive relief, denying the State's cross-motion, and "permanently enjoin[ing] the State from interfering with the proposed sales of the buildings at issue by way of the Dollar Law." Order at 20. That same day, IPS issued a notice of executive session announcing a meeting of its school board on November 16, 2023. Ex. B. The notice listed the "purchase, lease, or sale of real property" as an item for discussion at the upcoming meeting. Ex. B. The Board's publicly available agenda specified that the meeting would cover the "Approval of Sale of Francis Bellamy School 102," and stated that IPS officials "recommended that Francis Bellamy School 102 be sold to VOICES Corp. for a purchase price of $550,000, and that the administration be authorized to proceed with all steps and documentation necessary to complete and close the sale," Ex. A, which is expected to occur on November 30, Ex. C at 3. Included as attachments in the agenda were a draft purchase agreement between

IPS and VOICES (Ex. C) as well as a draft resolution authorizing IPS administrators to execute the sale of Bellamy 102 (Ex. D).

REASONS FOR GRANTING A STAY

A stay is necessary to prevent the sale of school property during the pendency of the State's appeal.

The trial court should stay its permanent injunction pending the outcome of the State's appeal or, alternatively, modify the injunction to permit the filing of lis pendens notice to advise potential buyers of the ongoing litigation over IPS's ability to sell the property. The Court has discretion to stay its judgment to protect parties' appeal rights. *Hilliard v. Jacobs*, 927 N.E.2d 393, 403 (Ind. Ct. App. 2010) (citing *In re Involuntary Termination of Parent-Child Relationship of A.K. & Kilbert*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001)). "When an appeal is taken" from a "final judgment granting … an injunction," Rule 62(C) authorizes trial courts to "suspend, modify, restore, or grant the injunction" under any "such terms" as the court "considers proper for the security of the rights of the adverse party." A party is entitled to a stay under this rule if it can make a showing that, "without the stay of proceedings," it will be without an adequate remedy. *Angleton v. Estate of Angleton*, 671 N.E.2d 921, 929 (Ind. Ct. App. 1996).

A. Sale of the school property will leave the State without remedy on appeal.

A stay is necessary and justified because, without suspension of the permanent injunction, the State will be unable to obtain meaningful judicial review of this Court's order. The purpose of the Dollar Law is to ensure that vacant and

unused school buildings are made available to charter schools for further educational use before they can be disposed of by school corporations for non-school uses. IPS's hasty effort to sell the buildings before State can seek appellate review of the Court's judgment undermines the primary purpose of the statutes. Thus, not only is there a realistic possibility that IPS could dispose of the property in question before the Court of Appeals has had an opportunity to pass judgment on the merits of this Court's judgment, but that possibility is *imminent*. If the trial court's judgment is in error, IPS's premature sale will cause irreparable harm to the State and the public. The remedies available to the State—either by unwinding the sale and putting the buildings back up for use by charter schools or collecting the proceeds of the sale—do not remedy the harm that the educational use of the building has been interrupted and interested charter schools have been deprived of the opportunity to make use of those buildings in the meantime. That injury cannot be remedied. Stay of the Court's judgment and preservation of the status quo is essential to a just determination of the State's appeal. *See Doe v. O'Connor*, 781

N.E.2d 672, 674 (Ind. 2003) (granting a stay after determining that a stay "would maintain the status quo until the appeal can be decided on the merits.").[1]

There is an imminent danger that Bellamy 102 and Brandes 65 will be sold before the State's appeal in this case is resolved. Immediately after this Court issued its final judgment, IPS scheduled a board meeting to approve the sale of Bellamy 102 to VOICES on November 16. *See* Ex. B. Even taking into consideration the time necessary for IPS's proposed buyer to secure financing and for the parties to close the sale, it is impractical to expect that assembly of the clerks record and full merits briefing could be completed before the sale is finalized. *See* Ind. Appellate Rules 10(B) (requiring assembly of the clerk's record within 30 days of the filing of the notice of appeal), 45(B) (establishing deadlines for briefing). And even under an expedited briefing schedule, the Court of Appeals has considered the Dollar Law in only one previous case, and it has never had an opportunity to address the applicability of the Levy Exemption. *See Lake Ridge Sch. Corp. v. Holcomb*, 198 N.E.3d 715, 716 (Ind. Ct. App. 2022) (considering whether application of the Dollar Law results in a constitutional taking). There is little realistic timeline

[1] *O'Connor* treated the plaintiff's request for a stay as a request for a preliminary injunction and reached its decision by weighing the four preliminary-injunction factors: "(1) irreparable harm, (2) likelihood of success on the merits, (3) balance of harms, and (4) public interest." 781 N.E.2d at 674. The analysis under Rule 62(C) is different, however. A stay under Rule 62(C) presupposes that an injunction has been imposed, and when the Court of Appeals has considered trial-court rulings on motions for stays under that rule, it has not engaged in the weighing of these factors. *See Kennedy v. Jester*, 700 N.E.2d 1170, 1172 (Ind. Ct. App. 1998); *Angleton v. Estate of Angleton*, 671 N.E.2d 921, 929 (Ind. Ct. App. 1996); *see also Hilliard v. Jacobs*, 927 N.E.2d 393, 403 (Ind. Ct. App. 2010) (considering denial of motion for stay brought under Rule 62(B)).

in which the Court of Appeals will be able to consider the merits of the State's appeal before the sale of Bellamy 102 is complete. *See O'Connor*, 781 N.E.2d 674 (noting that the complexity of the issue and the lack of "sufficient time to consider the merits" weigh in favor of a stay).

IPS's sale of the buildings before the State's appeal will cause significant and irreparable harms. The Dollar Law was enacted as part of large-scale educational reforms to address capital-funding disparities impacting public charter schools. *See e.g., Culver Cmty. Teachers Ass'n v. Indiana Educ. Employment Relations Bd.*, 174 N.E.3d 601, 605-06 (Ind. 2021) (discussing other reforms). Unlike traditional public schools, Indiana charter schools do not have authority to levy local taxes, nor can they access property tax revenue as a source of funding. *State v. Indiana Connections Acad., Inc.*, 132 N.E.3d 503, 505 (Ind. Ct. App. 2019), *trans. denied*. To correct that imbalance, the General Assembly enacted a comprehensive framework—which includes the Dollar Law— that both ensures charter schools have access to adequate, low-cost school facilities and that preserves the public use of school buildings that are otherwise unused.

Allowing the sale of IPS's buildings to continue unencumbered while the State's appeal is pending could result in the very harms the statute was designed to correct. Since VOICES is a community-based nonprofit, there is no guarantee that Bellamy 102 will continue to serve as an educational facility after the sale is finalized. So the community will lose a dedicated educational space. Furthermore, if IPS is permitted to dispose of the buildings, the charter schools the General

Assembly intended to benefit from the Dollar Law will lose the opportunity to purchase or lease the unused school buildings. While IPS contends that a charter school is unlikely to acquire and make use of the building before the upcoming school year, the sale of the buildings will guarantee that no charter school can use them during that time. With a stay in place, it is at least feasible that a charter school would be able to take possession and make educational use of the school buildings in the next school year.

A stay of this Court's judgment would preserve the status quo that has existed throughout the duration of this litigation. Should the State prevail on appeal, interested charter schools will have the opportunity to purchase IPS's unused school buildings pursuant to the Dollar Law, as the legislature intended. And if the State's appeal is unsuccessful, IPS will remain free to seek out potential buyers for Bellamy 102 and Brandes 65. For these reasons, this Court should enter a stay of its November 3 injunction pursuant to Trial Rule 62(C).

B. Alternatively, this Court should grant leave for the State to file a notice of lis pendens with respect to the real property at issue in this case.

In the alternative, Rule 62(C) permits courts to "suspend, modify, restore, or grant" an injunction it has issued while an appeal is pending. Should this Court ultimately conclude that suspension of its November 13 permanent injunction is inappropriate, it should nevertheless modify that injunction to permit the State to issue a lis pendens to notify potential buyers of the ongoing litigation over IPS's authority to sell the buildings. While the pending purchase agreement for Bellamy 102 acknowledges the ongoing litigation, Ex. C at 2, there is no indication that

potential buyers of Brandes 65 have been or future buyers of Bellamy 102 would be similarly advised of the ongoing litigation.

Lis pendens is a common law doctrine rooted in concepts of notice. *JPMorgan Chase Bank, N.A. v. Claybridge Homeowners Ass'n, Inc.*, 39 N.E.3d 666, 671 (Ind. 2015). The doctrine establishes that a person who acquires an interest in land during the pendency of an action concerning its title takes notice of the action and must "take the property subject to the judgment rendered in the action." *Myers v. Leedy*, 915 N.E.2d 133, 138 (Ind. 2009) (citing *Mid–West Federal Sav. Bank v. Kerlin*, 672 N.E.2d 82, 86–87 (Ind.Ct.App.1996)). Lis pendens exists to "protect the finality of court judgments by discouraging purchases of contested real estate," by establishing that a court judgment "binds all successors in interest, regardless of whether a successor was a party to the litigation." *Claybridge*, 39 N.E.3d at 671. Indiana Code section 32-30-11-3(a)–(b), provides that a person who commences a suit "to enforce any lien upon, right to, or interest in any real estate" based on an unrecorded interest in the property must file written notice of the "nature of the lien, right or interest sought to be enforced against the real estate" with the "clerk of the circuit court in each county where the real estate sought to be affected is located."

By law, the State is entitled to file a lis pendens notice to inform potential buyers of the ongoing legal dispute over IPS's authority to sell the unused school buildings and its right to enforce compliance with state law before IPS disposes of a school building. The central issue in this case is essentially whether IPS has legal

authority to transfer title of its real property without complying with the requirements of Indiana's Dollar Law. If the State prevails on appeal, then IPS does not have legal authority to sell the buildings until it complies with the Dollar Law and the Attorney General is authorized to "take any necessary action to enforce" the Dollar law. Ind. Code § 20-26-7.1-9. As the Court's injunction bars the State from taking any action that "interfer[es] with the proposed sales of the buildings … by way of the Dollar Law," Order at 20, it prevents the State from even notifying potential buyers of the building about ongoing litigation over IPS's ability to sell the property and the State's right to enforce the statute if it prevails on appeal. If the Court denies the State's request to issue a stay and maintain the status quo, at minimum principles of fair play favor granting this minimum relief to notify potential buyers of the ongoing litigation over the subject properties.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court stay its injunction and maintain the status quo or, in the alternative grant leave for the State to file notice of lis pendens against the properties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 15, 2023, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

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