STATE OF WISCONSIN **CIRCUIT COURT** **EAU CLAIRE COUNTY**
BRANCH 3

TOWN OF WASHINGTON
5750 Old Town Hall Road
Eau Claire, WI 54701

Case No. 2022CV347
Case Code: 30701

Plaintiffs,

v.

CITY OF EAU CLAIRE
203 South Farwell Street
Eau Claire, WI 54701

Defendant.

CITY OF EAU CLAIRE'S BRIEF IN SUPPORT MOTION TO DISMISS

This case involves private property owners who want to develop their land in the City of Eau Claire. Wisconsin law allows property owners to determine whether, when, and how to characterize the annexations they file. The owners in this case elected to petition for annexation to the City of Eau Claire earlier this year, filed a direct annexation by unanimous approval, and then timely followed every statutorily required step. The Eau Claire City Council approved the petition for direct annexation by unanimous approval in a legislative session after public hearings were held and extensive evidence was weighed.

State law recognizes the strong public policy that supports private property owners' determination to annex, and substantially limits the ability of towns to impede the self determination of private property owners who wish to annex their land to villages or cities. State law contemplates the temptation some towns may feel to protect their own tax base through litigation related delays to discourage private property owners from seeking annexation. Consequently, state law strictly limits the actions towns may file in annexation lawsuits, and towns must strictly follow various statutory

requirements when bringing annexation lawsuits. The Town of Washington's lawsuit does not follow state law and must be dismissed.

The Town of Washington failed to meet a statutory precondition for bringing this lawsuit. Wis. Stat. § 66.0217(11) explicitly states that "[e]xcept as provided in sub (6)(d)2., no action on any grounds, whether procedural or jurisdictional, to contest the validity of a [direct annexation by unanimous approval] may be brought by a town." Wis. Stat. § 66.0217(6)(d)2 requires town requested DOA review and a DOA finding prior to towns filing lawsuits challenging annexations filed and approved as unanimous.

The Wisconsin Supreme Court recently confirmed that towns must request DOA review to invoke the right to file a lawsuit even if courts later determine that the annexation was mislabeled as unanimous. The annexation in this case was filed as unanimous, and the Eau Claire City Council passed an ordinance approving this annexation as unanimous. The Town did not first seek DOA review of this annexation prior to filing this lawsuit. Consequently this Court lacks competency to proceed with this case and this lawsuit must be dismissed. Although the failure to meet this statutory requirement should dispose of this case, nevertheless the lawsuit has other deficiencies requiring dismissal.

This case should also be dismissed because publicly owned, non-developable land with no assessed value does not count towards annexation signature requirements so the annexation is unanimous as a matter of law. In the alternative, if this matter is not dismissed in its entirety then certiorari rather than declaratory judgment is the proper remedy for challenging the city council legislative act approving the proposed annexation so the claims for declaratory relief should be dismissed. Lastly, although a ruling on the Town of Washington's rule of reason arguments is not necessary to dispose of this case, and the annexation is consistent with the rule of reason, nevertheless the rule of reason should be abolished.

STATEMENT OF FACTS

No alleged facts necessary for the court to rule on this motion to dismiss are in dispute. Laverne Stewart and Todd Hauge are private property owners who wish to annex their property into the City of Eau Claire. (Compl. 2). Stewart and Hauge submitted a petition for a direct annexation by unanimous approval. (Compl. 1-3). Every private property owner within the proposed annexation area signed the annexation petition, and the annexation also included non-developable park land owned by Eau Claire County.[1] (Compl. 1-4). There is no dispute that the petition stated the purpose of the petition, contained a legal description and a scale map, and specified the population of the territory. (Compl.). Because Eau Claire County has a population of over 50,000 people, the annexation petition was subject to mandatory non-binding advisory review by the Department of Administration ("DOA") under Wis. Stat. § 66.0217(6)(a). (Compl. 4).

Wisconsin law requires DOA review of proposed annexations such as the annexation in this case. *See* Wis. Stat. § 66.0217. First, the DOA must engage in a non-binding advisory review prior to city council action on the proposed annexation. *Id.* Second, after city council approval, towns seeking to challenge annexations filed and approved as unanimous annexations must request DOA review and the DOA must make findings on the proposed annexation as a precondition to filing a lawsuit. *Id.* The City of Eau Claire and the private property owners followed the first required step; the Town of Washington failed to follow the second required step. (Compl. 1-9).

The city and private property owners timely forwarded the annexation petition to the DOA to engage in its initial advisory review. *Id.* Both the Town of Washington and the City of Eau Claire were provided opportunities to comment to the DOA on the proposed annexation. (Compl. 5). The DOA's advisory review results were then forwarded to the both the Town of Washington and the City

1 The park land in question would not only require a zoning change to be useable for development, but it is also subject to deed restrictions allowing the land to be utilized for educational purposes provided the purposes are mutually agreed upon by the Eau Claire County Board and governing board for Area Vocational Technical and Adult Education District One. See Exhibit 1.

of Eau Claire. (Compl. 5). In its non-binding advisory decision, the DOA noted that the shape of the proposed annexation was consistent with an annexation to the City of Sheboygan which was upheld in a recent Wisconsin Supreme Court decision, but still concluded that the proposed annexation was not in the public interest due to the irregular shape of the proposed annexation. (Compl. Ex. 2). The DOA also erroneously stated it believed the Town of Washington could better provide EMS services even though the Town of Washington does not provide EMS services to the area (the City of Eau Claire does). (Compl. Ex. 2).

The Eau Claire City Council had an opportunity to review the annexation petition, the initial DOA advisory review, meeting minutes from the Eau Claire Plan Commission (which voted in favor of the annexation), public hearings, and various other pieces of evidence including letters from the Town of Washington's attorney. (Compl. 5-6). After reviewing the robust evidence regarding the proposed annexation, the Eau Claire City Council approved the annexation during its legislative session on June 14, 2022 as a direct annexation by unanimous approval. (Compl. 6).

The second required DOA annexation review must occur within 30 days of city council action approving an annexation filed as unanimous if a Town wishes to file a lawsuit challenging the annexation. *See* Wis. Stat. § 66.0217. Despite citing Wis. Stat. 66.0217 and *Town of Lincoln v. City of Whitehall* in their complaint, which both discuss this required precondition for bringing a lawsuit, nevertheless the Town of Washington did not seek DOA review of the City Council ordinance prior to filing this lawsuit on July 15, 2022. (Compl. 1, 3-9).

MOTION TO DISMISS STANDARD

A presumption of validity attaches to annexation ordinances. *Town of Waukesha v. City of Waukesha*, 206 N.W.2d 585, 58 Wis. 2d 525 (1973). An annexation ordinance's presumption of validity remains until overcome by the party attacking it. *Town of Menasha v. City of Menasha (Banta*

Annexation), 42 Wis. 2d. 719, 168 N.W.2d 161 (1969) (Objectors to annexation ordinance have burden to demonstrate signers of annexation petition did not qualify as owners).

Whether a Complaint states a claim upon which relief can be granted is a question of law. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶ 17, 356 Wis. 2d 665, 675, 849 N.W.2d 693, 698. When reviewing a motion to dismiss, factual allegations in the Complaint are accepted as true for the purposes of review. *Id.* at ¶ 18. Legal conclusions asserted in the Complaint, however, are not accepted, and legal conclusions are insufficient to withstand a motion to dismiss. *Id.*

Wisconsin standards governing a Motion to Dismiss track those of the Federal Rules of Civil Procedure. *See Data Key,* 2014 WI 86 at ¶¶ 19-31 (noting the U.S. Supreme Court's decision in *Twombly* is consistent with Wisconsin Supreme Court precedent, and plaintiffs must allege facts that *plausibly* suggest they are entitled to relief). "A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." *Data Key*, 2014 WI 86 at ¶¶ 19-21; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 955 (2007); *John Doe 1 v. Archdiocese of Milwaukee,* 2007 WI 95, ¶ 12, 303 Wis. 2d 34, 734 N.W.2d 827 (quoting *BBB Doe v. Archdiocese of Milwaukee,* 211 Wis. 2d 312, 331, 565 N.W.2d 94 (1997)).

Upon a motion to dismiss, courts accept as true all facts well-pleaded in the Complaint and the reasonable inferences therefrom. *Data Key*, 2014 WI 86 at ¶¶ 19-21; *Kaloti Enters., Inc. v. Kellogg Sales Co.,* 2005 WI 111, ¶ 11, 283 Wis. 2d 555, 699 N.W.2d 205. However, a court cannot add facts in the process of construing a Complaint. *Doe v. Archdiocese of Milwaukee*, 2005 WI 123, ¶ 19, 284 Wis. 2d 307, 700 N.W.2d 180. Furthermore, legal conclusions stated in the Complaint are not accepted as true, and they are insufficient to enable a Complaint to withstand a motion to dismiss. *Id.*. Therefore, it is important for a court considering a motion to dismiss to accurately distinguish pleaded facts from pleaded legal conclusions. *Data Key*, 2014 WI 86 at ¶ 19.

Wis. Stat. § 802.02(1) sets the requirements for a Complaint to withstand a motion to dismiss for failure to state a claim. *Id.* at ¶¶ 19-21. To satisfy Wis. Stat. § 802.02(1)(a), a Complaint must plead facts, which if true, would entitle the plaintiff to relief. *Data Key*, 2014 WI 86 at ¶¶ 19-21. Bare legal conclusions set out in a Complaint provide no assistance in warding off a motion to dismiss. *Data Key*, 2014 WI 86 at ¶¶ 19-21; *see John Doe,* 2005 WI 123 at ¶ 19. Plaintiffs must allege facts that, if true, plausibly suggest a violation of applicable law. *Id.*

Courts applying the Motion to Dismiss standard in cases involving deference to legislative determinations should apply a heightened standard. *See Data Key,* 2014 WI 86 (applying standard to case involving business judgment rule); *See also Voters With Facts*, 382 Wis. 2d at ¶ 37-40, 71 (applying standard to case involving legislative determinations); *see also* Douglas J. Hoffer, *Threshold Issues in State Court Civil Litigation*, 92 — Jan. Wis. Law. 24 (2019) ("Lawyers representing civil defendants should also examine whether the complaint pleads sufficient facts to state a claim, especially in situations in which the actions challenged, like the actions in *Data Key* and *Voters With Facts*, are entitled to deference and thus may require additional pleaded facts.") (emphasis added); *Davis v. City of Elkhorn*, 132 Wis. 2d 394, 400, 393 N.W.2d 95, 98 (Ct. App. 1986) (Local ordinances – similar to state statutes – are presumed constitutional, and a party challenging the constitutionality of an ordinance must demonstrate unconstitutionality beyond a reasonable doubt).

1. **The Town of Washington failed to meet a statutory precondition for bringing this lawsuit when it failed to first seek review of the annexation from the Wisconsin Department of Administration.**

The Town of Washington failed to meet a statutory precondition for bringing this lawsuit when it neglected to first seek review of the of the annexation from the Wisconsin Department of Administration. The Court should apply Wis. Stat. §66.0217(6)(d)2 and *Town of Lincoln v. City of Whitehall*, 2019 WI 37, ¶¶ 10-14, 386 Wis. 2d 354, 925 N.W.2d 520 in dismissing this case. Wis. Stat. § 66.0217(11) explicitly states that "[e]xcept as provided in sub (6)(d)2., no action on any grounds,

whether procedural or jurisdictional, to contest the validity of a [direct annexation by unanimous approval] may be brought by a town." Wis. Stat. § 66.0217(6)(d)2 requires DOA review prior to towns filing lawsuits challenging annexations filed and approved as unanimous, and this step is still required even if a court later determines that that the annexation was not in fact unanimous.

Lincoln describes the roadmap Wis. Stat. § 66.0217 requires towns to follow when seeking to challenge annexation petitions filed and approved by city councils as a "direct annexation by unanimous approval." *Id.* at ¶¶ 10-15, 37. In *Lincoln*, the Whitehall city council adopted an ordinance approving the petition as a "direct annexation by unanimous approval." *Id.* at ¶¶ 9-14. The Town of Lincoln argued that although the petition was labelled as unanimous it was not in fact unanimous. *Id.* at ¶ 2. Nevertheless, the Town of Lincoln followed the requirements of Wis. Stat. § 66.0217(6)(d)2 and one month following the City's passage of the annexation ordinances, "the Town timely sought review of the annexation from the Department of Administration (DOA) pursuant to Wis. Stat. ¶ 66.0217(6)(d)." *Id.* at ¶ 12. *Lincoln* pointed out that the DOA indicated its finding entitled the Town of Lincoln to challenge the annexation in circuit court, pursuant to Wis. Stat. § 66.0217(6)(d)2, should the Town choose to do so. *Id.* at ¶ 13. The Wisconsin Supreme Court said that by first requesting DOA review as required by Wis. Stat. ¶ 66.0217(6)(d) the Town of Lincoln "invoke[ed] its right to challenge the annexation in circuit court." *Id.* at ¶ 14.

The Wisconsin Supreme Court, relying on concessions made by the City of Whitehall, later determined that the petition was not unanimous because one of the private property owners included in the proposed annexation area did not sign the annexation petition. *Id.* at ¶¶ 30-31. Because the Court determined the annexation was not unanimous, that meant the grounds on which the Town of Lincoln could challenge the annexation could include unanimity and was not limited to contiguity. *Id.* at ¶ 24. The Court said that its finding that the annexation was not unanimous meant that the limitations on remedies found in Wis. Stat. § 66.0217(11)(c) did not apply to the annexation, but ¶¶ 10 through 13 of

the *Lincoln* opinion clearly demonstrate that the right to challenge an annexation labelled and approved as unanimous in circuit court is predicated on first seeking DOA review even if the annexation is not unanimous.[2] *Id.* at ¶¶ 10-13.

Unlike the Town of Lincoln, the Town of Washington failed to meet the statutory requirement to seek DOA review, so this court lacks competency to hear this challenge. The failure to meet a mandatory requirement central to the statutory scheme deprives circuit courts of competency to hear the case. *City of Eau Claire v. Booth*, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738. The Wisconsin Constitution grants circuit courts broad subject matter jurisdiction, which cannot be revoked by statute. Wis. Const. art. VII, § 8; Douglas J. Hoffer, *Keep Your Case Afloat: Wisconsin's Court Competency Doctrine*, 87 Wis. Law. 26 (June 2014). Consequently, a party's failure to meet a statutory requirement results in a loss of court competency rather than a loss of subject matter jurisdiction. *Village of Elm Grove v. Brefka*, 2013 WI 54, 348 Wis. 2d 282, 832 N.W.2d 121. Competency refers to whether a court can adjudicate the specific case before it; subject matter jurisdiction refers to whether a court can adjudicate the kind of case before it. *Booth* at ¶ 7; Hoffer at 26.

Lincoln confirms that the statutory requirement to seek DOA approval is mandatory, and state law demonstrates this requirement is central to the statutory scheme which seeks to reduce the opportunities for towns to frustrate the desires of private property owners seeking to annex their land into cities or villages. *See* Wis. Stat. 66.0217(11) ("Except as provided in sub (6)(d)2., no action on any grounds, whether procedural or jurisdictional, to contest the validity of a [direct annexation by unanimous approval] may be brought by a town"); *see also Town of Burke v. City of Madison*, 225 Wis. 2d 615, 593 N.W.2d 822 (Ct. App. 1999) (Time limits chosen by the legislature in statute

2 The Town of Washington's complaint says the petition in this case was improperly labelled as unanimous. *Lincoln* repeatedly refers to the annexation petition as improperly labelled, but still spends three paragraphs stating that the right to bring a lawsuit under Wis. Stat. § 66.0217 is conditioned on first seeking DOA review which the Town of Washington failed to do.

governing actions to challenge validity of annexation are a demonstration of its intent to require that contests to annexation be resolved in an expedient manner).

Because the Town of Washington failed to first request a DOA hearing as required by law the Court lacks competency to proceed and must dismiss this case.

2. The proposed annexation is unanimous as a matter of law.

The proposed annexation is unanimous as a matter of law. Publicly owned, non-developable land with no assessed value does not count toward annexation signature requirements. *International Paper Co. v. City of Fond du Lac*, 50 Wis. 2d 529, 184 N.W.2d 834 (1971). The Court should apply Wis. Stat. 66.0217 and *International Paper* in dismissing this case.

In *International Paper*, the Court examined whether the City of Fond du Lac owned one half of the area in a proposed annexation. *Id.* The City of Fond du Lac, which was the only signer of the annexation petition, would have owned at least one half of the area if public streets and highways were counted for determining ownership. *Id.* The Court determined that even public roads and highways owned in fee simple did not count towards the signature requirement because the "legislature did not intend to place the burden on the ownership of *usable land*" to compete with non-usable publicly owned land such as roads and highways, and also pointed out that public highways and easements do not have any assessed value. *Id.* at 532-33.

The Town of Washington's argument, that the proposed annexation needed a signature from the County because the annexation included a county park, contradicts *International Paper* which is binding on this Court. The park land in this case is similar to the public roads in *International Paper.* The park land is publicly owned just like the public roads. The park land is not currently developable just as the public roads were not developable. The park land's current zoning and deed restrictions impede development. It is possible steps could be taken to someday make the park land usable for development, but that is also true of public roads. Public roads are sometimes vacated and ownership

is transferred to adjoining property owners to make lot splits and other development possible. *International Paper* instructs that the legal analysis in determining whether an owner's signature is required includes determining whether the land in question is publicly owned, non-developable, and has no assessed value. *International Paper* explicitly says that the legislature did not intend to place the burden on the ownership of usable land to compete in annexations with non-developable public land like the park land in this case.[3] Accordingly, private property owners such as Stewart and Haugen are not prevented from annexing their land into cities or villages because they do not get the approval of governments which own non-developable land with no assessed value.

The Town of Washington asks the Court to construe Wis. Stat. 66.0217 in a manner inconsistent with its clear intent and in a manner that ignores binding precedent found in *International Paper*. The Court should apply *International Paper* and dismiss this case.

3. Certiorari is the proper remedy for challenging city council legislative acts approving annexations.

In the alternative, certiorari is the more appropriate remedy for reviewing city council legislative acts such as ordinances approving annexations, and because declaratory relief is disfavored when an adequate alternative remedy exists.

Certiorari review is consistent with the deference courts are required to give factual determinations made by legislative bodies. *See State v. McManus*, 152 Wis. 2d 113, 129, 447 46 N.W.2d 654, 660 (1989) ("The court cannot reweigh the facts found by the legislature. If the court can conceive any facts on which the legislation could reasonably be based, it must hold the legislation

3 *International Paper* is not an outlier. The principle that publicly owned non-usable land is not subject to the signature requirement or should not impede annexation is widely shared. There is at least one unpublished Wisconsin case from 2001 that reaches the same conclusion as *International Paper* in a different context (not citable under Wis. Stat. § 809.23(3)). There is a wide body of Wisconsin and extra-jurisdictional case law that provides similar reasonable exceptions to the contiguity requirement for annexations. *See Town of Delavan v. City of Delevan*, 176 Wis. 2d 516, 500 N.W.2d 268 (1993); *See also* Florida Statute § 171.031(11) (The separation of the territory sought to be annexed by a "publicly owned county park" does not prevent annexation). The approach of *International Paper* and other authorities is consistent with the textualist approach to statutory interpretation found in Wisconsin law such as *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶ 44-46, 61, 271 Wis. 2d 633, 681 N.W.2d 110 *citing* Antonin Scalia, *A Matter of Interpretation:*

constitutional."); *see also Nowell*, 2013 WI 88 at ¶¶ 3, 35-36, 43-53 (certiorari is the correct standard of review for circuit court to apply when reviewing a municipal decision not to renew an alcohol license because the decision to grant "a liquor license is a legislative function"); *see also Voters With Facts v. City of Eau Claire*, 2018 WI 63, 382 Wis. 2d 1; 913 N.W.2d 131 (certiorari is proper standard of review of legislative function approving creation or amendment of TIF districts); *See also Ottman v. Town of Primrose*, 2011 WI 18, ¶ 34, 332 Wis. 2d 3, 796 N.W.2d 411 ("Certiorari is a mechanism by which a court may test the validity of a decision rendered by a municipality, an administrative agency, or an inferior tribunal."); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 549-50, 185 N.W.2d 306 (1971) ("It is well established in this state that where there are no statutory provisions for judicial review, the action of a board or commission may be reviewed by way of certiorari.").

Common law certiorari review examines the record, not to see whether the findings are supported by the evidence, but to ascertain upon the whole record whether the legislative choice is without rational basis. Id. "When conducting common law certiorari review, a court reviews the record compiled by the municipality and does not take any additional evidence on the merits of the decision." *Voters With Facts v. City of Eau Claire*, 2018 WI 63, ¶ 71, 382 Wis. 2d 1, 913 N.W.2d 131 *citing Ottman v. Town of Primrose*, 2011 WI 18, ¶ 35, 332 Wis. 2d 3, 796 N.W.2d 411. The court's review is limited to: (1) whether the municipality kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. *Id.* "[O]n certiorari review, there is a presumption of correctness and validity to a municipality's decision." *Id.* This standard is commensurate with established judicial deference to legislative determinations. *Id.* Certiorari lies only to review questions of jurisdiction or

Federal Courts and the Law 23-24 (1997) (Textualism should not be confused with strict constructionism. A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably).

power of the body whose decision is in question; exercise of either legislative or judicial discretion is not reviewable. *Hippler*, 47 Wis. 2d at 603.

Certiorari review of legislative determinations is limited and deferential. Only questions of law are raised in a common law certiorari proceeding. *Franklin v. Housing Authority of City of Milwaukee*, 155 Wis. 2d 419, 424, 455 N.W.2d 668 (Ct. App. 1990). When the legislature vests discretion in local legislative bodies it does "not intend a circuit court to substitute its discretion for that committed to the Board." *Klinger v. Oneida County*, 149 Wis. 2d 838, 843, 440 N.W.2d 348, 350 (1989). Legislative judgments are presumed to be supported by facts known to the legislative body, unless facts judicially known or proved preclude that possibility. *State ex. Rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 613-15, 178 N.W.2d 1, 7-8 (1970).

Additionally, the existence of an alternative remedy is preferable to seeking declaratory relief. *See Lister v. Board of Regents*, 72 Wis. 2d 282, 307-08, 240 N.W.2d 610 (1976) (if the alternative remedy is as speedy, effective, and adequate declaratory judgment relief may be precluded); *see also Madison Gen. Hosp. Ass'n v. City of Madison*, 71 Wis. 2d 259, 266, 237 N.W.2d 750 (1976) (declaratory relief will not ordinarily be entertained where another equally or more appropriate remedy is available). Certiorari review would provide an adequate alternative remedy for reviewing the legal issues in this case. The Plaintiffs assert that the City Council erred in approving the proposed annexation as unanimous. Certiorari is the most appropriate mechanism for resolving this alleged infirmity. "The general rule in common law certiorari is that the circuit court does not take evidence on the merits of the case and the scope of review is limited to the record presented to the tribunal whose decision is under review." *Sills v. Walworth Cnty.*, 2002 WI App 111, ¶ 36, 254 Wis. 2d 538, 648 N.W.2d 878.

Permitting this matter to continue as a Declaratory Judgment action and allowing an unfettered discovery process will not assist the Court in analyzing the legal issues in this case. Certiorari review

will allow the Court to examine the record before the Eau Claire City Council and determine whether the record supported the City Council's legislative action approving the proposed annexation, or whether the Eau Claire City Council proceeded on a correct theory of law.

4. The Rule of Reason is inconsistent with Wis. Stat. § 66.0217 and other state law.

A ruling on the Plaintiff's rule of reason arguments is not necessary to dispose of this case, and the annexation in this case is consistent with the Rule of Reason requirements. Nevertheless, the Rule of Reason should be abolished. The rule of reason asks courts to substitute their policy judgments for the policy judgments of local legislative bodies. This approach is inconsistent with the separation of powers, leads to confusion, and invites unnecessary litigation which contradicts the purpose of Wisconsin annexation statute. *see Town of Burke v. City of Madison*, 225 Wis. 2d 615, 593 N.W.2d 822 (Ct. App. 1999) (Time limits chosen by the legislature in statute governing actions to challenge validity of annexation are a demonstration of its intent to require that contests to annexation be resolved in an expedient manner).

Justice Bradley and Justice Hagedorn's concurring opinions in *Town of Wilson v. City of Sheboygan*, 2020 WI 16, 390 Wis. 2d 266, 938 N.W.2d 493, demonstrate the rule of reason is inconsistent Wis. Stat. § 66.0217 and other state law. The City of Eau Claire reserves the right to provide additional argument regarding the rule of reason if this case proceeds at either the circuit court level or on appeal.

CONCLUSION

For all the foregoing reasons the Plaintiff's complaint should be dismissed.

Dated: 9/13 2022

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