

**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

**PETITION FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND  
ISSUANCE OF A WRIT OF MANDAMUS**

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Petitioner DeKalb County School District (“DCSD”) files this Petition for Declaratory Judgment, Injunctive Relief and Issuance of a Writ of Mandamus against the City of Atlanta (the “City”) and the City Council President stating as follows:

**SUMMARY OF PETITION**

1.

DCSD seeks a declaratory judgment pursuant to O.C.G.A. § 9-4-1 *et seq.* declaring that Atlanta Ordinance 17-O-1420 (“Ord. 17-O-1420”), which annexed 744 acres located within DeKalb County along the City’s eastern edge, absorbing (among other things) Emory University, the Centers for Disease Control and Prevention, and Children’s Healthcare of Atlanta (the “Emory Annexation”), is void *ab initio* under O.C.G.A. § 36-35-3(a) because its means of passage violated the procedural rules set

forth in § 2-402(c) of the Atlanta City Charter.

2.

DCSD also seeks injunctive relief requiring that the City halt implementation and enforcement of the provisions of Ord. 17-O-1420 that require affected public school students within the Emory Annexation area to enroll in the Atlanta Independent School District (“APS”) school system effective July 1, 2018.

3.

DCSD also seeks the issuance of mandamus relief requiring the Atlanta City Council to declare Ord. 17-O-1420 void.

**Parties, Jurisdiction, and Venue**

4.

Petitioner DCSD is a political subdivision of the State of Georgia acting by and through the State of Georgia.

5.

Defendant City of Atlanta is a municipal corporation and political subdivision of the State of Georgia, acting through its Mayor and City Council as its governing authority. The City is subject to the jurisdiction of this Court and may be served with process through Mayor Keisha Lance Bottoms at the Executive Offices of the City of Atlanta, 55 Trinity Avenue, Atlanta, Georgia 30303.

6.

Respondent Felicia A. Moore (“Moore”) is the sitting Atlanta City Council President. Pursuant to § 2-203 of the Atlanta City Charter, the City Council President is responsible for presiding over meetings and votes of the City Council and ensuring the passage of all ordinances complies with all legal requirements. Moore may be served with process at the offices of the City Council, Atlanta City Hall, 55 Trinity Ave, S.W., Second Floor East, Atlanta, GA 30303-3584.

7.

Venue is proper in the Superior Court of Fulton County because the City of Atlanta resides in Fulton County, and the Court has general subject matter jurisdiction over the claims asserted by DCSD.

## **FACTS**

### **Operation and Funding of DCSD**

8.

DCSD is Georgia’s third largest school system. The District serves nearly 102,000 students in 137 schools and centers, and it has 15,500 employees.

9.

The DeKalb County Board of Education (“Board”) is the governing body of DCSD and has a constitutional responsibility to manage, operate, and fund DCSD.

10.

While DCSD receives a portion of its operational funding from the State of Georgia through the Quality Basic Education Act, it relies on local property taxation generated from the territory within DeKalb County that it serves for the majority of its remaining funding needs.

11.

The value of real property located within that portion of DeKalb County that is served by DCSD, and is taxable for education purposes, has a direct and substantial impact on DCSD's ability to operate and maintain the public schools within DCSD.

12.

Unlike those municipalities in DeKalb County that remain under the umbrella of DCSD's management and funding for the education needs of their residents, the City of Atlanta ("City") maintains an independent school system, APS, which relies on property taxation of the territory it serves for a significant portion of its funding.

13.

APS has an enrollment of approximately 54,000 students, attending a total of 103 schools. It is operated by the Atlanta Board of Education.

14.

Any expansion of APS's school zoning boundaries into areas of DeKalb County annexed by the City decreases the taxable real property base from which DCSD draws a

significant portion of its funding, and impairs its ability to operate and adequately fund DeKalb County Public Schools.

15.

DCSD services nearly twice as many students as APS, but receives proportionally less funding per student than APS.

### **The Emory Annexation**

16.

On August 19, 2016, Emory University (“Emory”) issued a statement announcing that it was “beginning the process to annex its campus into the City of Atlanta.”

17.

Emory filed a formal petition seeking annexation into the City on June 27, 2017. The area of the proposed Emory Annexation included 744 acres located within DeKalb County along the City’s eastern edge made up of, among other properties, Emory, the Centers for Disease Control and Prevention (“CDC”), and Children’s Healthcare of Atlanta (“CHOA”). There were only approximately 7 to 9 public school aged children residing in the area proposed for annexation.

18.

On or about August 1, 2017, the DeKalb County Board of Commissioners (“DCBC”) invoked the arbitration procedures available to it pursuant to O.C.G.A. § 36-36-110 *et seq.* to challenge the Emory Annexation, and/or resolve certain disputes arising

from the annexation proposed on September 26, 2017.

19.

Prior to the formal arbitration, the City and DCBC reached a settlement agreement that purported to allow the annexation to move forward, which was entered into on September 26, 2017.

20.

Throughout this entire process, the City expressly represented to DCSD and the DCBC that the Emory Annexation would not result in the expansion of APS's school zoning boundaries. Accordingly, DCSD not only did not object to the Emory Annexation, but affirmatively supported the annexation since it would not negatively affect DCSD's student population or taxable property base.

**Approval of the Emory Annexation through Invalid Legislation  
Voids the Legislation and Annexation**

21.

The Annexation legislation required to implement the Emory Annexation included the passage of an ordinance by the Atlanta City Council ("Council"). Such an ordinance constitutes a permanent rule of government.

22.

Before such an ordinance can be finally approved and adopted, the proposed ordinance must be read by title before the full City Council at two regular meetings. Specifically, Section 2-402(c) of the Atlanta City Charter provides that "no ordinance

shall be passed and adopted until it has been read by title at two regular meetings not less than one week apart.”

23.

The title of the Emory Annexation ordinance initially introduced in the City Council expressly stated that it would “*not extend the boundaries of the Atlanta Independent School System* [APS].” *See* Exhibit A, Ordinance 17-O-1420 (July 5, 2017 version) (emphasis added.)

24.

Upon information and belief, the title of the Emory Annexation Ordinance that *did not expand* APS’ school boundaries was properly read by title before the City Council at two regular meetings.

25.

On November 29, 2017, however, the City Council Zoning Committee, for the very first time, introduced and passed a substitute ordinance with a title that expressly *extended the boundaries of APS* to include the entire Emory Annexation. *See* Exhibit B, Ordinance 17-O-1420 (substitute ordinance, November 29, 2017).

26.

Only five days later, on December 4, 2017, in a move that smacks of backroom political dealing, the City Council voted to approve the substitute ordinance that included the expansion of the APS school boundaries throughout the Emory Annexation.

27.

The expansion of APS's school zone boundaries to include the entire Emory Annexation in the substitute ordinance constituted a material change from the original proposed ordinance that required the substitute ordinance to be read twice at regular meetings in order to not violate Section 2-402(a) of the City's Charter.

28.

Despite making material, substantive changes to both the title and the substance of the original ordinance, the substitute ordinance that expanded APS's school zone boundaries *was not read* at two regular meetings more than one week apart as required by Section 2-402(c) of the Atlanta City Charter.

29.

Section 2-402(a) of the City's Charter requires that the proposed legislation be drafted "to ensure that the public is able to adequately review and understand the intent and effect of the legislation."

30.

The last-minute change of the annexation ordinance to expand APS's school zone boundaries to include the entire Emory Annexation effectively deprived the public of that right to adequately review and understand the intent and effect of the legislation and caused the public to have the misperception that DeKalb County and the DCSD were in favor of the annexation.

31.

This “bait and switch” tactic on the extension of the APS boundaries allowed the proponents of the annexation to eliminate and any all opposition to annexation by every impacted public body.

32.

Had the ordinance that was actually passed been made public early in the process, DeKalb County and the DCSD would have publicly opposed annexation, which could have greatly impacted its chances for passage.

33.

Under O.C.G.A. § 36-35-3(a), a city council is authorized to adopt only those ordinances “which are not inconsistent with the Constitution or any charter provision applicable thereto.”

34.

“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))).

35.

The Emory Annexation is the largest expansion of the City’s borders in 65 years,

since the annexation of Buckhead in 1952. It brought an additional 6,400 residents into the City as of January 1, 2018, including 7 to 9 school-aged children who had been enrolled in DCSD.

36.

The real property within the boundaries of the Emory Annexation purportedly became part of the City effective January 1, 2018. The attendant APS expansion to include the annexed area does not become effective until July 1, 2018.

37.

Pursuant to the substitute ordinance, public school age children living in the Emory Annexation are required to register to attend APS schools on or before July 1, 2018 in order to attend public school in Georgia.

38.

Although just a handful of students are being transferred from DCSD to APS, DCSD will lose more than \$2,000,000 in funding per year, in perpetuity, as a result of the APS unlawful expansion to include the Emory Annexation.

39.

Residents impacted by the invalid passage of the substitute ordinance that allowed the APS expansion into the Emory Annexation have informed DCSD that they desire and intend to continue to enroll their children in DCSD schools.

## COUNT I – DECLARATORY JUDGMENT

40.

Paragraphs one through thirty-nine are incorporated by reference as if set forth fully herein.

41.

There exists between the parties an actual controversy relative as to whether ordinance that allowed the expansion of the APS school system throughout the Emory Annexation was validly enacted so as to deprive DCSD of taxable real property available for DCSD school system funding.

42.

Substitute Ord. 17-O-1420, which included the language expanding the APS school zone boundaries, was not read by title in full in two separate regular meetings of the City Council.

43.

The City Council's enactment of Ord. 17-O-1420 violated Section 2-402(a) of the City's Charter.

44.

Ord. 17-O-1420 is therefore void as a matter of law pursuant to O.C.G.A. § 36-35-3(a).

45.

The expansion of the APS school zone boundaries and the requirement that

students within the Emory Annexation enroll in APS is therefore void and invalid.

46.

Pursuant to O.C.G.A. § 9-4-1 *et seq.*, Petitioner seeks a declaratory judgment that Ord. 17-O-1420, and the annexation and expansion of APS that the ordinance attempts to enact, are illegal, void and of no force and effect as a matter of law.

47.

Based on the foregoing, Petitioner has demonstrated an interest in having any ordinance depriving it of taxable real property for its school system operation being properly and duly enacted.

48.

Based on the foregoing, there is an actual controversy under O.C.G.A. § 9-4-2(a) between DSCD and the City such that the Court should issue a declaratory judgment.

49.

DCSD is uncertain and insecure as to its rights, status and other legal obligations with respect to the taxable real property located in and enrollment rights of public school students residing within the Emory Annexation. It is critical that these uncertainties be resolved now so that DCSD can appropriately plan and budget for the 2018-2019 academic year.

50.

Therefore, there is a justiciable controversy under O.C.G.A. § 9-4-2(b) such that the Court should issue a declaratory judgment

**COUNT II – INJUNCTIVE RELIEF**

51.

Paragraphs one through fifty are incorporated by reference as if set forth fully herein.

52.

Petitioner will suffer immediate and irreparable harm should the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school system go into effect on July 1, 2018.

53.

Injunctive relief prohibiting the enforcement of the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018 will maintain the *status quo* pending final adjudication of this matter on the merits.

54.

Based on the foregoing, Petitioner seeks temporary and permanent injunctive relief prohibit Respondent from enforcing the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018.

**COUNT III - MANDAMUS**

55.

Paragraphs one through fifty-four are incorporated by reference as if set forth fully

herein.

56.

There exists no means of judicial review that comport with due process to challenge the arbitrary and capricious conduct of the City Council in failing to adhere to Section 2-402(a) of the City's Charter when considering and enacting Ord. 17-O-1420. Mandamus is therefore an appropriate remedy.

57.

The Atlanta City Council's discretion with respect to the manner in which ordinances are passed is not absolute, but is instead circumscribed by the statutes and Charter—including Section 2-402(a) of the Charter—from which the Council's authority derives.

58.

The City Council, as presided over by Moore, had an official duty to abide by and follow Section 2-402(a) of the City's Charter, which requires that proposed legislation be read by title in full at two separate regular meetings of the City Council when passing Ord. 17-O-1420. The City Council failed to fulfill that duty by making material and substantive changes to the title and substance of the ordinance without reading the revised title at two separate regular meetings of the City Council at least one week apart.

59.

Members of the public, including DCSD, have a clear legal right to “to adequately review and understand the intent and effect of the legislation.” Section 2-402(a).

Petitioner is seeking a writ of mandamus to issue to compel Moore to declare Ord. 17-O-1420 void and to follow the procedural strictures of the City Charter prior to any reenactment of legislation for the Emory Annexation.

**Wherefore, Petitioner demands judgment as follows:**

- 1) that process issue as provided by law;
- 2) that the Court order a trial by jury as to all issues so triable;
- 3) that the Court enter temporary, preliminary and permanent injunctive relief barring Respondents from enforcing the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018;
- 4) that the Court settle the actual and justiciable controversy between the parties and enter a declaratory judgment to the effect that Ord. 17-O-1420 is null and void as a matter of law pursuant to O.C.G.A. § 36-35-3(a);
- 5) that the Court issue a writ of mandamus requiring the City to declare Ord. 17-O-1420 void and to follow the procedural strictures of the City Charter prior to any reenactment of legislation for the Emory Annexation;
- 6) that the Court award Petitioner an award of costs and expenses of litigation, including reasonable attorney's fees; and
- 7) that the Court grant Petitioner such other and further relief as the Court deems appropriate.

Respectfully submitted, this 5<sup>th</sup> day of June 2018.



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School District*



that the zoning is approved by the City of Atlanta or the date that the annexation becomes effective as required by O.C.G.A. §36-36-2; and

**WHEREAS**, the City of Atlanta has lawfully provided notice to DeKalb County, Georgia of all required information including notice of the City of Atlanta's receipt of the Applications for annexation of the Properties; and

**WHEREAS**, the City of Atlanta has authority pursuant to O.C.G.A. §36-36-1 *et seq.* to annex certain property into the corporate limits of the City of Atlanta, and that the Mayor and Council of the City of Atlanta have determined that the annexation of the Properties would be in the best interest of the residents and property owners of the areas to be annexed and of the citizens of the City of Atlanta; and

**WHEREAS**, the City of Atlanta has determined that the Applications meet the requirements of law pursuant to O.C.G.A. §36-36-1 *et seq.*; and

**WHEREAS**, the Atlanta City Council of the City of Atlanta and the Mayor have determined that the annexation of the Properties into the corporate limits of the City of Atlanta, but not the expansion of the boundaries of the Atlanta Independent School System ("APS") to include the Properties would be in the best interest of the residents and property owners of the Properties to be annexed and of the citizens of the City of Atlanta; and

**WHEREAS**, the City Council of the City of Atlanta and the Mayor and have determined that the annexation of the Properties would be in the best interest of the residents and property owners of the Properties to be annexed and of the citizens of the City of Atlanta even if such annexation required expansion of the boundaries of APS to include the Properties, and have further determined that such annexation along with expansion would be less preferable than annexation without an expansion of APS's boundaries.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:**

Section 1. The Properties set forth in the Applications, identified on the list and delineated on the map, each attached hereto as Exhibit "A", are hereby annexed to the existing corporate limits of the City of Atlanta, Georgia. So as to not create an unincorporated island, excepted from the annexation area are 10' strips along Houston Mill Road, Burlington Road, and Gatewood Road, as more particularly described in the Application and depicted in the map submitted by Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, and Synod of South Atlantic & Presbyterian Church (USA), Inc.

stamped received by the Office of Municipal Clerk on June 27, 2017. So as to not create an unincorporated island, also excepted from the annexation area is a 10' foot strip running along the Clifton Road, as more particularly described in the application and depicted in the map submitted by the CDC stamped received by the Office of Municipal Clerk on June 27, 2017. The Applications, including the maps enclosed therein, are public records available for inspection in the Office of the Municipal Clerk. They are incorporated herein by reference and are made a part hereof.

Section 2. It is the expressed intent of the Atlanta City Council that the annexation of the Properties shall not act to expand the boundaries of APS for this annexation. Rather, it is the expressed intent of the City Council that the Properties shall remain within the boundaries of the DeKalb County School District for this annexation. Should the non-expansion of APS's boundaries in connection with this annexation as expressed in this Section 2 be for any reason deemed by a court of competent jurisdiction to be void or unenforceable, it is the expressed intent of the City Council that the annexation of the Properties still be valid and binding.

Section 3. The City of Atlanta Law Department is hereby authorized and directed to file a report identifying property annexed with the Department of Community Affairs of the State of Georgia and with the governing authority of DeKalb County as required by O.C.G.A. §36-36-3 and to take all other actions required by law with regard to the adoption of this ordinance and the annexation of the Properties.

Section 4. The annexation shall become effective in accordance with applicable provisions of Georgia law.

Section 5. All Ordinances or parts of Ordinances in conflict with the terms of this Ordinance are hereby waived to the extent of the conflict.



**AN ORDINANCE**

**BY: COUNCIL MEMBERS ANDRE DICKENS, MICHAEL JULIAN BOND, KEISHA LANCE BOTTOMS, MARY NORWOOD, HOWARD SHOOK, CLETA WINSLOW, IVORY LEE YOUNG, JOYCE SHEPERD, CARLA SMITH, KWANZA HALL, NATALYN ARCHIBONG**

**AS SUBSTITUTED BY FINANCE/EXECUTIVE COMMITTEE**

**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.**

**WHEREAS**, both the United States of America acting by and through the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) and the General Services Administration (hereafter "CDC") and Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, and Synod of South Atlantic & Presbyterian Church (USA), Inc. (collectively the aforementioned entities being the "Applicants") have applied to the City of Atlanta for annexation of their property from DeKalb County unincorporated into the corporate boundaries of the City of Atlanta ("the Applications"). Their property is more fully described in the Applications and identified on the list and delineated on the map attached hereto as Exhibit "A" (the "Properties"). The Applications, including the maps enclosed therein, are public records available for inspection in the Office of the Municipal Clerk. They are incorporated herein by reference and are made a part hereof; and

**WHEREAS**, the City of Atlanta has determined that the Properties are contiguous to the existing corporate limits of the City of Atlanta in excess of the minimum amount required for such annexations under O.C.G.A. §36-36-1 *et seq.*; and

**WHEREAS**, the City of Atlanta has determined that the Applicants are the title holders of record of 100% of the privately owned land within the Properties, as evidenced by the Clerk of the Superior Court of DeKalb County, Georgia; and

**WHEREAS**, the requirements in O.C.G.A. § 36-66-4(d) governing procedures for the zoning of land to be annexed into a municipality have been satisfied; and

**WHEREAS**, the zoning classification approved by the City of Atlanta for the Properties which are the subject of the proposed annexation shall become effective on the later date of the date that the zoning is approved by the City of Atlanta or the date that the annexation becomes effective as required by O.C.G.A. §36-36-2; and

**WHEREAS**, the City of Atlanta has lawfully provided notice to DeKalb County, Georgia of all required information including notice of the City of Atlanta's receipt of the Applications for annexation of the Properties; and

**WHEREAS**, the City of Atlanta has authority pursuant to O.C.G.A. §36-36-1 *et seq.* to annex certain property into the corporate limits of the City of Atlanta, and that the Mayor and Council of the City of Atlanta have determined that the annexation of the Properties would be in the best interest of the residents and property owners of the areas to be annexed and of the citizens of the City of Atlanta; and

**WHEREAS**, the City of Atlanta has determined that the Applications meet the requirements of law pursuant to O.C.G.A. §36-36-1 *et seq.*; and

**WHEREAS**, the Atlanta City Council of the City of Atlanta and the Mayor have determined that the annexation of the Properties into the corporate limits of the City of Atlanta and the expansion of the boundaries of the Atlanta Independent School System ("APS") to include the Properties would be in the best interest of the residents and property owners of the Properties to be annexed and of the citizens of the City of Atlanta.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:**

Section 1. The Properties set forth in the Applications, identified on the list and delineated on the map, each attached hereto as Exhibit "A", are hereby annexed to the existing corporate limits of the City of Atlanta, Georgia. So as to not create an unincorporated island, excepted from the annexation area are 10' strips along Houston Mill Road, Burlington Road, and Gatewood Road, as more particularly described in the Application and depicted in the map submitted by Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, and Synod of South Atlantic & Presbyterian Church (USA), Inc. stamped received by the Office of Municipal Clerk on June 27, 2017. So as to not create an unincorporated island, also excepted from the annexation area is a 10'

foot strip running along the Clifton Road, as more particularly described in the application and depicted in the map submitted by the CDC stamped received by the Office of Municipal Clerk on June 27, 2017. The Applications, including the maps enclosed therein, are public records available for inspection in the Office of the Municipal Clerk. They are incorporated herein by reference and are made a part hereof.

Section 2. It is the expressed intent of the Atlanta City Council that the annexation of the Properties shall act to expand the boundaries of APS for this annexation.

Section 3. This Ordinance shall become effective for school enrollment purposes on July 1, 2018. For all other purposes, the Ordinance shall become effective in accordance with applicable provisions of Georgia law.

Section 4. The City of Atlanta Law Department is hereby authorized and directed to file a report identifying property annexed with the Department of Community Affairs of the State of Georgia and with the governing authority of DeKalb County as required by O.C.G.A. §36-36-3 and to take all other actions required by law with regard to the adoption of this ordinance and the annexation of the Properties.

Section 5. The annexation shall become effective in accordance with applicable provisions of Georgia law.

Section 6. All Ordinances or parts of Ordinances in conflict with the terms of this Ordinance are hereby waived to the extent of the conflict.

