

**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

**ORDER**

This case comes before the Court on Petitioner DeKalb County School District's ("DCSD") motion for an interlocutory injunction.

This case arises from the City of Atlanta's (the "City") annexation of 744 acres of land from unincorporated DeKalb County (the "Emory Annexation"), which was accomplished via Ordinance 17-O-1420 (the "Ordinance"). Under the Ordinance, APS was scheduled to expand its boundaries to include the Emory Annexation on July 1, 2018. Ordinance, p.3, § 3. At this preliminary stage in the litigation, DCSD seeks to enjoin only that portion of the Ordinance providing for the expansion of APS's boundaries to include the Emory Annexation on July 1, 2018.

The Atlanta City Charter (the "Charter") 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*, except for emergency ordinances . . . ." Charter, § 2-402(c) (emphasis added). DCSD contends that the changes made to the title of the Ordinance between its

first reading on July 5, 2017, and its second reading on December 4, 2017, were so material that the substitute Ordinance was effectively a new ordinance that was passed in violation of O.C.G.A. § 36-35-3(a), which states that a municipality can enact only those ordinances that comply with its Charter.

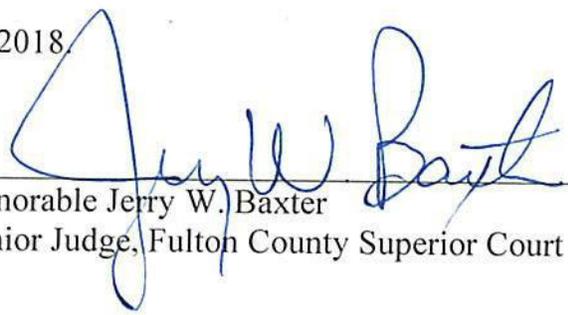
The purpose of an interlocutory injunction is to preserve the status quo and “keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication.” *Chambers v. Peach County*, 492 S.E.2d 191, 192 (Ga. 1997) (quoting *Price v. Empire Land Co.*, 126 S.E.2d 626, 630 (1962)) (alterations adopted). The Court is required to “balance the conveniences of the parties pending final adjudication” on the merits, and an injunction may issue to preserve 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). An additional factor bearing on the Court’s decision is whether the moving party 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).

The Court concludes DCSD is likely to prevail with respect to the validity of the Ordinance. When material or substantive changes are made to the title of an ordinance between its first and second readings, the prophylactic functions of § 2-402(c) can be vindicated only by requiring that the amended or substituted title itself be read twice. An ordinance passed in violation of a city charter is void under O.C.G.A. § 36-35-3(a). *Ivey v. McCorkle*, 806 S.E.2d 231, 233 (Ga. Ct. App. 2017).

The Court further finds that there is a likelihood of irreparable harm to certain students should the injunction not issue. *See Hipster, Inc. v. Augusta Mall P'ship*, 661 S.E.2d 652, 655 (Ga. Ct. App. 2008).

For the foregoing reasons, after the benefit of oral argument and consideration of all the evidence of record, the Court GRANTS Petitioner DCSD's motion for an interlocutory injunction, and enjoins the expansion of APS into the annexed areas until such time as the assigned judge can issue a final decision on the merits.

SO ORDERED this 29 day of June, 2018.

  
Honorable Jerry W. Baxter  
Senior Judge, Fulton County Superior Court

Prepared by:

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