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JUDICIAL REVIEW OF MUNICIPAL ANNEXATIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

In response to the substantial increase in black voter registration throughout the South made possible by the Voting Rights Act of 1965,[1] opponents of the black franchise shifted their discriminatory tactics from impeding voting registration to preventing blacks from using their votes to gain significant political power.[2] To protect against further voting discrimination, Section 5[3] of the Voting Rights Act requires that all affected states or political subdivisions obtain federal preclearance of proposed changes in election procedures which may have a racially

1. 42 U.S.C. §§ 1973-1973p (1970). The Act established a comprehensive scheme to regulate registration and voting in states or parts of states that had literacy tests or similar devices prior to this Act and had registration or voter turnouts of less than 50% of the voting age population for the 1964 national elections. *Id.* § 1973b(b). The Act originally applied to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 26 Counties in North Carolina, and several non-southern areas. 30 Fed. Reg. 9897 (1965). In these jurisdictions, the use of any "test or device" as a prerequisite to registration was suspended for five years. 42 U.S.C. § 1973b (1970). In 1970, an amendment to the Voting Rights Act provided a five-year extension. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 3, 84 Stat. 315 (1970). In August, 1975, another amendment provided a seven-year extension. Voting Rights Act—Extension, Pub. L. No. 94-73, § 101, 89 Stat. 400 (1975). As a result of this suspension the percentage of voting age blacks registered in these areas increased from 29.3% in 1965 to 52.1% in 1967 to 56.6% in 1972. U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER 43 (1975). *See generally* Christopher, *The Constitutionality of the Voting Rights Act of 1965*, 18 STAN. L. REV. 1, 9-15 (1965).

2. The record before the committee indicates that as Negro voter registration has increased under the Voting Rights Act, several jurisdictions have undertaken new, unlawful ways to diminish the Negroes' franchise and to defeat Negro and Negro-supported candidates. . . . [T]hese measures have taken the form of switching to at-large elections where Negro voting strength is concentrated in particular election districts and facilitating the consolidation of predominantly Negro and predominantly white counties. Other changes . . . have included increasing filing fees in elections where Negro candidates were running; abolishing or making appointive offices sought by Negro candidates; extending the term of office of incumbent white officials, and withholding information about qualifying for office from Negro candidates.

H.R. REP. NO. 397, 91st Cong., 2d Sess. (1970), *reprinted in* [1970] U.S. CODE CONG. & ADM. NEWS 3283. *See generally* U.S. COMM'N ON CIVIL RIGHTS, POLITICAL PARTICIPATION 21-84 (1968); WASHINGTON RESEARCH PROJECT, THE SHAMEFUL BLIGHT 93-135 (1972); Derfner, *Racial Discrimination and the Right to Vote*, 26 VAND. L. REV. 523, 552-60 (1973).

3. 42 U.S.C. § 1973c (1970).

discriminatory impact upon the right to vote.[4] Under the preclearance provisions, a change may not be legally enforced until the state or political subdivision obtains the Attorney General's consent[5] or proves in a three-judge Federal court in the District of Columbia that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[6]

In *City of Richmond v. United States*,[7] the United States Supreme Court reversed a judgment of a three-judge district court denying Section 5 approval of an annexation which substantially changed the racial composition of the city's electorate. The Court held that the substantive requirements of the Act would be met if the city provided ward system representation reflecting black voting strength in the post-annexation community and if there were legitimate reasons for the annexation.

The city of Richmond, Virginia, initiated judicial proceedings in 1962 to annex a portion of adjacent Chesterfield County.[8] The suit lingered

4. The preclearance requirements of § 5 apply only to those states or political subdivisions in which literacy tests or similar prerequisites to registration and voting have been suspended under the coverage formula indicated in 42 U.S.C. § 1973b(b) (1970). *See* note 1 *supra.*

5. Procedures regulating and describing information to be submitted to the Attorney General are set forth at 28 C.F.R. §§ 51.1-.29 (1975). These regulations were upheld in Georgia v. United States, 411 U.S. 526, 536-39 (1973). For an explanation of administrative review of § 5 submissions by the Justice Department see Roman, *Section 5 of the Voting Rights Act: The Formation of an Extraordinary Federal Remedy*, 22 AM. U.L. REV. 111, 127-30 (1972).

6. 42 U.S.C. § 1973c (1970). The Supreme Court has upheld the constitutionality of § 5 as an appropriate exercise of the power vested in Congress by § 2 of the fifteenth amendment. South Carolina v. Katzenbach, 383 U.S. 301 (1966).

Most § 5 litigation on election procedure changes concerns the statute's coverage. These "coverage questions" may be brought by private parties in any federal district court. Allen v. Board of Elections, 393 U.S. 544, 554-60 (1969). A declaratory judgment action by a state or political subdivision, however, requires a substantive determination of the "purpose" and "effect" of a proposed voting change and may only be brought in the federal court of the District of Columbia. To date, only three declaratory judgment actions have been heard: City of Richmond v. United States, 422 U.S. 358 (1975) (annexation); Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974), *rev'd*, 96 S. Ct. 1357 (1976) (redistricting of councilmanic elections); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973) (annexation).

7. 422 U.S. 358 (1975).

8. Virginia annexation procedure requires a specially convened three-judge court to determine "the necessity for and the expediency of" proposed annexations. The court may approve the annexation in conformity with "what it deems fair and reasonable terms and conditions." VA. CODE ANN. §§ 15.1-1032 to -1058 (1973). *See generally* BAIN, ANNEXATION IN VIRGINIA 34-234 (1966).

Originally, Richmond also sought to annex a large area of adjacent Henrico County. In 1965, the Court awarded 16 square miles to Richmond, but the city declined to annex because it would have had to pay Henrico County $55 million. 422 U.S. at 362-63.

for several years during which time the black population of the city became the majority. In 1969, the city and county entered into a compromise agreement which specified the terms of the annexation.[9] Because the annexation became effective on January 1, 1970, residents of the predominantly white annexed area were permitted to vote in the 1970 city council at-large election[10] in which the city's white-supported political party retained six of nine council seats.[11]

Early in 1971 the city began efforts to obtain Section 5 approval. After failing to obtain the Attorney General's consent,[12] the city filed for a declaratory judgment.[13] The district court found that the annexation had been enacted for the racially discriminatory purpose of limiting the political power of the city's black community which was then on the

9. The compromise specified the boundary lines of the annexation and the number of residents to be added to the city. Final acceptance of the agreement was conditioned upon the annexation going into effect in sufficient time to make the residents of the annexed area eligible to vote in the 1970 city council elections. The 1970 census indicated that the black population within the old boundaries of Richmond was 52%, but within the boundaries set by the compromise, that figure was only 42%. City of Richmond v. United States, 376 F. Supp. 1344, 1350-51 (D.D.C. 1974).

10. In an at-large election, council representatives are elected by the entire electorate of a city; in a ward system each representative is elected from a single ward district. For a discussion of the use of at-large elections to limit the political power of blacks after passage of the Voting Rights Act see WASHINGTON RESEARCH PROJECT, *supra* note 2, at 109-26. *See also* Note, *Ghetto Voting and At-Large Elections: A Subtle Infringement Upon Minority Rights*, 58 GEO. L.J. 989 (1970).

11. It was conceded in the district court that this election was held in violation of § 5. 376 F. Supp. at 1351. It has been argued that the Richmond annexation was void without § 5 approval. *Hearing Before the Civil Rights Oversight Subcomm. of the House Comm. on the Judiciary*, 92d Cong., 1st Sess., Ser. 8, at 99 (1971) (testimony of H. Glickstein, Staff Director, U.S. Comm'n on Civil Rights). Although no court has specifically considered this question, the Justice Department's position is that the annexation is not void. An election, however, at which the right to vote can be conceivably abridged cannot be held before federal preclearance. *Id.* at 31 (Testimony of J. Turner, Deputy Assistant Attorney General); *see* City of Petersburg v. United States, 354 F. Supp. 1021, 1022-23 n.2 (D.D.C. 1972), *aff'd. mem.*, 410 U.S. 962 (1973).

In 1971, a private action was brought in the Eastern District of Virginia seeking to have the annexation declared invalid for failure to obtain § 5 preclearance. Litigation was stayed pending the outcome of the principal case. As a result of this action, however, the 1972 city council elections were enjoined by order of the Supreme Court. Holt v. City of Richmond, 406 U.S. 903 (1972). Further elections have been enjoined, and the city council that was elected in 1970 has remained in office. City of Richmond v. United States, 422 U.S. 358, 365 (1975).

12. The Attorney General objected to the annexation, asserting that the decrease in the proportion of blacks in the city tended to "dilute the voting strength of black voters." He suggested that the city consider adopting single ward-districts to avoid the discriminatory effect. City of Richmond v. United States, 422 U.S. 358, 363-64 (1975).

13. 376 F. Supp. 1344 (D.D.C. 1974). The district court referred the case to a Master under Rule 53(c) of the Federal Rules of Civil Procedure. The Court accepted the Master's findings, but not his recommendation of de-annexation. *Id.* at 1357-60.

verge of attaining political control.[14] The court held that the city had not purged itself of the discriminatory purpose prohibited by Section 5 because the city failed to prove that its proposed ward-districting plan "effectively eliminated" the dilution of black voting power[15] as well as demonstrate a current "objectively verifiable, legitimate purpose for the annexation."[16]

Rejecting the district court's interpretation, the Supreme Court construed Section 5 to establish distinct standards for reviewing the "purpose" and "effect" of the annexation. The Court declared that the discriminatory effect of diluting black voting strength would be sufficiently obviated by the city's suggested ward plan, which afforded black voters "representation reasonably equivalent to their political strength in the enlarged community."[17] Although accepting the district court's

14. *Id.* at 1351-52. Regarding the compromise agreement, the court found:

> Richmond's focus in the negotiations was upon the number of new white voters it could obtain by annexation; it expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities, or schools. The mayor required assurances from Chesterfield County officials that at least 44,000 additional white citizens would be obtained by the City before he would agree upon settlement of the annexation suit. And the mayor and one of the city councilmen conditioned final acceptance of the settlement agreement on the annexation going into effect in sufficient time to make citizens in the annexed area eligible to vote in the City Council elections of 1970.

Id. at 1350 (footnotes omitted).

15. *Id.* at 1353. The city, with the approval of the Attorney General, proposed to minimize the dilution effect by changing its at-large council system to nine ward districts of which four would have substantial black majorities, four substantial white majorities and one 59% white and 41% black residents. The court rejected this plan, holding that in view of the city's discriminatory purpose, a ward plan must not only minimize, but effectively eliminate the dilution of black voting power. The court noted that the city's blacks would probably have had greater political power in an at-large, de-annexed system. *Id.* at 1353-57.

16. *Id.* at 1353. The court relied on the Master's findings which had concluded that return of the annexed area would save the City $8.5 million of operating loss each year, and $21.3 million of required capital outlay. The Master had also found that only 6.25% of vacant annexed land could be developed. *Id.* at 1353-54.

17. 422 U.S. at 370. The Court asserted that the effective elimination of voting strength dilution would result in overrepresentation of blacks in the enlarged city. In approving the city's proposed ward plan, the Court relied upon City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973) (use of a ward system to obviate the dilution of black votes approved). *See* notes 22-25 and accompanying text *infra*. The district court had distinguished *Petersburg* on the ground that a "ward plan to minimize any dilution" is only sufficient where there is no evidence of a discriminatory purpose for the annexation. Where there is discriminatory intent, the court maintained "an extra burden rests on the city to purge itself of discriminatory taint as well as to show that the annexation will not have the prohibited effect." 376 F. Supp. at 1352-53. Rejecting this position, the Supreme Court concluded that although a change to a ward system minimizes rather than eliminates the dilution effect, § 5 approval would be warranted:

> As long as the ward system fairly reflects the strength of the Negro community as it

finding of an "impermissible purpose" at the time of the compromise, the Court also held that Section 5 approval would be granted if the city could prove that "there are now objectively verifiable, legitimate reasons for the annexation."[18]

Prior to the 1971 decision in *Perkins v. Matthews*[19] racial gerrymandering and boundary changes had been "prime weapons for discriminating against Negro voters."[20] In *Perkins* the Supreme Court asserted that any boundary change, such as a municipal annexation, which affects the racial composition of the electorate has a discriminatory potential sufficient to bring it within the intended scope of Section 5.[21]

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exists after the annexation, we cannot hold, without more specific legislative directions, that such an annexation is nevertheless barred by § 5. It is true that the black community, if there is bloc racial voting, will command fewer seats on the city council; and the annexation will have effected a decline in the Negroes' relative influence in the city. But a different city council and an enlarged city are involved after the annexation.

422 U.S. at 371. *Compare* Beer v. United States, 96 S. Ct. 1357 (1976). Prior to 1970, no black had been elected to the New Orleans city council. The 1970 census indicated that, at that time, blacks constituted 45% of the city population and 35% of the registered voters. The district court rejected a re-apportionment plan which provided a black population majority in two of five districts and a black majority of registered voters in one of the districts. 374 F. Supp. 363 (D.D.C. 1974). The Supreme Court reversed, stating that the purpose of the Voting Rights Act was to prevent "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 96 S. Ct. at 1364. Noting that the reapportionment plan, assuming racial bloc voting, would assure the election of at least one black representative and possibly two, and thus enhance minority representation, the Court could find no discriminatory effect prohibited by § 5.

18. 422 U.S. at 375. The Court remanded the case to the district court for further consideration of this issue because it appeared that the "Special Master may have relied solely on the testimony of the county administrator. . . . who had opposed any annexation and was an obviously interested witness." *Id.* at 377.

19. 400 U.S. 379 (1971).

20. *Id.* at 389. *See generally* note 2 *supra.*

21. 400 U.S. at 388-89. The Court explained:

Clearly, revision of boundary lines has an effect on voting in two ways: (1) by including certain voters within the city and leaving others outside, it determines who may vote in a municipal election and who may not; (2) it dilutes the weight of the votes of the voters to whom the franchise was limited before the annexation . . . .

Id. at 388. As a result of *Perkins*, most of the changes submitted for § 5 preclearance are annexations. Prior to 1971, only nine annexations had been submitted to the Justice Department; after *Perkins* and through April, 1975, 1,089 annexations had been submitted. The Attorney General has objected in nine cases. *Hearings on S. 407, S. 1297, S. 1409, and S. 1443, Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess., at 582-83, 597-600, 719 (1975). In several instances where objections were made, cities had included white areas while refusing to annex adjacent black areas. *Id.* at 583, 609-10. Annexations which have been approved by the Justice Department have had inconsequential racial effect. "Some have included only a handful of people or nonresidential land, some cities were all white before the annexations, some annexations bring in blacks proportionately with whites or include residential land which

The first case to consider whether a municipal annexation violated the substantive requirements of Section 5 was *City of Petersburg v. United States.*[22] Although the district court concluded that the annexation was not for a discriminatory purpose,[23] it denied approval, finding that in view of the city's history of racial bloc voting and at-large elections, the annexation would have significantly diluted black voting strength.[24] The court indicated, however, that this discriminatory effect could be remedied if the city adopted a ward system of representation "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters."[25]

Judicial scrutiny of the Richmond and Petersburg annexations under Section 5 illustrates the expanded protection of voting rights secured by the Voting Rights Act as compared to the limited protection afforded by private suits alleging infringement of fifteenth amendment rights.[26]

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has not yet been developed." WASHINGTON RESEARCH PROJECT, *supra* note 2, at 135 (footnotes omitted).

22. 354 F. Supp. 1021 (D.D.C. 1972), *aff'd. mem.*, 410 U.S. 962 (1973) (boundary extension decreased percentage of city's black residents from 55% to 46%).

23. The annexation . . . had been generally supported by the citizens of Petersburg, black and white alike, since the mid-1960's, as a necessary measure to allow the City of [sic] expand its tax base and its potential for growth and development. The contours of the annexation were designed to bring in the territory which it was economically feasible to serve, and whose population shared a community of interest with the old City.

Id. at 1024.

24. *Id.* at 1025-31.

25. *Id.* at 1031. The court recognized that although blacks might have obtained greater representation on the council if the annexation were prohibited, this would have denied the entire community the prospective benefits of the annexation. *Id.* The court also rejected the argument of opposing intervenors that "annexation *per se*, even with a shift to a ward voting system for councilmanic elections" could not be approved under § 5. *Id.* at 1029. The court asserted:

It would not matter that the annexation was essential for the continued economic health of the municipality or that it was favored by citizens of all races; because if the demographic makeup of the surrounding areas were such that any annexation would produce a shift of majority strength from one race to another, a court would be required to disapprove it without even considering any other evidence, and the municipality would be effectively locked into its original boundaries. This Court cannot agree that this was the intent of Congress when it enacted the Voting Rights Act.

Id. at 1030. Subsequently, the City of Petersburg adopted a ward system, and in the June, 1973 council elections, blacks won a majority of the council seats. U.S. COMM'N ON CIVIL RIGHTS, *supra* note 1, at 305.

26. U.S. CONST. amend. XV, § 1. *See* Gomillion v. Lightfoot, 364 U.S. 339 (1960) (Alabama legislature's realignment of Tuskegee's city boundaries from a square to a twenty-eight-sided figure which virtually excluded all blacks from the city held to be a violation of the fifteenth amendment). A fifteenth amendment challenge to the Richmond annexation was not successful. Holt v. City of Richmond, 459 F.2d 1093, 1094 (4th Cir.),

The fifteenth amendment has been a rather barren source of voter protection[27] because of the difficult burden private parties face in proving that a given "denial or abridgement" of the right to vote is the result of racial discrimination.[28]

Section 5 shifts the burden of proof to the annexing municipality[29] and explicitly directs separate judicial inquiry into both the purpose and effect of an annexation. As established in both *Richmond* and *Petersburg*, to carry the burden of proving that an annexation does not have a discriminatory effect on the right to vote, dilution of black voting strength must be minimized through city council representation which fairly reflects minority voting strength in an enlarged, post-annexation city. But as *Richmond* demonstrates, regardless of whether modification of council representation achieves a "perfectly legal result"[30] in terms of effect upon black voting rights, an annexation remains subject to invalidation[31] under Section 5 unless a city can further prove that the

cert. denied, 408 U.S. 931 (1972) (holding that the "unconstitutional motivation" was "too remote" from the decree of the annexation court "which firmly rested on non-racial grounds," *id.*).

27. Derfner, *supra* note 2, at 560-61. The Supreme Court has applied the fifteenth amendment to invalidate discriminatory measures in only eight cases. Louisiana v. United States, 380 U.S. 145 (1965) ("interpretation" test required applicants to interpret a section of the federal or state constitution); Gomillion v. Lightfoot, 364 U.S. 339 (1960) (boundary change); Terry v. Adams, 345 U.S. 461 (1953) (white primary elections); Schnell v. Davis, 336 U.S. 933 (1949) (interpretation test); Smith v. Allright, 321 U.S. 652 (1944) (white primary elections); Lane v. Wilson, 307 U.S. 268 (1939) ("grandfather" clause which in effect disenfranchised most blacks by imposing discriminatory registration standards to those persons who were lineal descendants of persons not eligible to vote before the passage of the fifteenth amendment); Myers v. Anderson, 238 U.S. 368 (1915) (grandfather clause); Guinn v. United States, 238 U.S. 347 (1915) (grandfather clause).

28. Derfner, *supra* note 2, at 560-61. *See also* Note, *Federal Protection of Negro Voting Rights*, 51 VA. L. REV. 1053, 1177-90 (1965). The difficulty in developing a consistent fifteenth amendment proof theory is illustrated by the commentary and subsequent Supreme Court cases explaining Gomillion v. Lightfoot, 364 U.S. 339 (1960); *see* note 26 *supra*. It has been asserted that *Gomillion* was an extraordinary case in which an objective inquiry revealed that the boundary change was for the sole purpose of discrimination. A. BICKEL, THE LEAST DANGEROUS BRANCH, 210-12 (1962); *cf. Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1091-92 (1969). But Supreme Court decisions subsequent to *Gomillion* state that it concerned a discriminatory effect. Palmer v. Thompson, 403 U.S. 217, 225 (1971); United States v. O'Brien, 391 U.S. 367, 384-85 (1968).

29. Georgia v. United States, 411 U.S. 526, 538 n.9 (1973); *see, e.g.*, South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966); Beer v. United States, 374 F. Supp. 363, 392-93 (D.D.C. 1974), *rev'd*, 96 S. Ct. 1357 (1976); City of Petersburg v. United States, 354 F. Supp. 1021, 1027-28 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973); 116 CONG. REC. 6154 (1970) (remarks of Senator Fong); 115 CONG. REC. 38486-87 (1969) (remarks of Rep. McCulloch).

30. 422 U.S. at 378.

31. *Id.* at 374-75. The *Richmond* Court indicated that de-annexation would be preferred to an overcompensatory ward plan which would result in overproportionate black representation based on post-annexation population ratios.

annexation is not for a discriminatory purpose.[32]

The *Richmond* Court held that proof of a nondiscriminatory purpose may be shown by present "objectively verifiable, legitimate reasons for the annexation."[33] The "purpose" inquiry directed by this interpretation of the statute is quite broad. The analysis of "purpose" is not limited to probing the motives of city officials at the effective time of annexation.[34] Instead, the standard of proof established by the Court operates, in effect, to ascertain the continuing, overall purpose of the annexation through an examination of its cumulative history.[35]

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32. Proof of a legitimate purpose should be required because an annexation, even as modified by a ward system of representation, still results in a relative decrease in black political power although purportedly minimal. An annexation for a legitimate reason should provide benefits to the entire city which, on balance, will outweigh the disadvantageous effect upon black voting strength. The Court did not explicitly approve this rationale but instead tersely concluded: "An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute." *Id.* at 378.

Where an official action is subject to invalidation because of an impermissible purpose, regardless of whether its actual effect is legally permissible, the judicial inquiry focuses upon the alleged bad faith of the responsible officials. *See* Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205, 1216-17 (1970); Note, *Legislative Purpose and Federal Constitutional Adjudication*, 83 HARV. L. REV. 1887, 1891-92 (1970); *cf.* BICKEL, *supra* note 28, at 30-31; Tussman & tenBroek, *The Equal Protection of Laws*, 37 CALIF. L. REV. 341, 358 (1949). The legislative history of § 5 appears to support this position. Congress did not intend merely to strike existing discriminatory voting laws, but designed the statute in response to the persistently discriminatory attitudes of many Southern officials. South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966); *see* Allen v. Board of Elections, 393 U.S. 544, 548 (1969); Beer v. United States, 374 F. Supp. 363, 377-78 (D.D.C. 1974), *rev'd*, 96 S. Ct. 1357 (1976). *See generally* H.R. REP. No. 439, 89th Cong., 1st Sess. 8-13 (1965); S. REP. No. 162, pt. 3, 89th Cong., 1st Sess. 3-12 (1965).

A significant policy problem arises when, in addition to a prohibited discriminatory purpose, a law has both permissible purposes and advantageous effects. *See* Tussman & tenBroek, *supra* at 360. In the context of an annexation the question is whether residents of a city should be denied the benefits of municipal expansion so that city officials can be reprimanded for having discriminatory attitudes. The Supreme Court implicitly answered this question in the negative in *Richmond*, 422 U.S. at 375.

33. 422 U.S. at 375.

34. If the annexation is struck down because of prior illegitimate motives, city officials can presumably obtain another annexation decree, this time being more discreet in negotiations and stating their reasons. *See* Palmer v. Thompson, 403 U.S. 217, 224-225 (1971); United States v. O'Brien, 391 U.S. 367, 383-86 (1968); Ely, *supra* note 32, at 1215-17.

35. The *Richmond* court noted the district court's finding that the city initiated annexation proceedings in 1962 for valid, nondiscriminatory reasons. 422 U.S. at 377. Richmond may advance current purposes for retaining the annexed area by identifying fiscal benefits accruing from the annexation from its effective date to the present. *See* MULLER & DAWSON, THE IMPACT OF ANNEXATION ON CITY FINANCES: A CASE STUDY IN RICHMOND, VIRGINIA (1973).

The underlying rationale of the *Richmond* decision emerges as a balancing process. Objectively proven, actual or potential benefits of municipal expansion may prevail even though the annexation is found to have been in part for the purpose of abridging the right to vote. Although the dissent in *Richmond* argued that the majority's construction of Section 5 amounted to "post hoc rationalization" which "negates the prophylactic purpose" of the Act,[36] the outcome of the case seems sound in view of the underlying policy considerations.

The broad standard of proof advanced by the majority in *Richmond* is necessary to evaluate changes that affect municipal elections, such as annexations. These changes may serve diverse purposes, some legitimate and others illegitimate. Traditionally, urban annexation has been employed to achieve metropolitan political unity and to integrate and maximize the economic resources of urban areas.[37] It is only in recent times that annexations have been used to diminish the political voice of urban minority groups.[38]

In view of the broadness of this standard, however, attempts to circumvent Section 5 may persist. Arguably, fiscal benefits may flow to every municipality from an expanded tax base via annexation. Such assertions, if accepted without careful evaluation, may provide an easy disguise for discriminatory intent. To avoid this problem, the Attorney General or the federal courts must thoroughly scrutinize every "legitimate" reason submitted by an annexing municipality. Needless expansion or boundary adjustments for the dominant purpose of voter discrimination must be distinguished from annexations having a truly "justifiable basis."[39]

Proof necessary to establish the legitimacy of an annexation under this standard should primarily consist of an objective assessment of the past and present economic needs of the city and the annexed area.[40] It

36. 422 U.S. at 384 (Brennan, J., dissenting).

37. COUNCIL OF STATE GOVERNMENTS, THE STATES AND THE METROPOLITAN PROBLEM 25, 30-33 (1956); DEPARTMENT OF URBAN STUDIES, NATIONAL LEAGUE OF CITIES, ADJUSTING MUNICIPAL BOUNDARIES LAW AND PRACTICE 1-2 (1966); F. SENSTOCK, ANNEXATION: SOLUTION TO METROPOLITAN AREA PROBLEMS 1-8 (1960); Woodruff, *Systems and Standards of Municipal Annexation Review: A Comparative Analysis*, 58 GEO. L.J. 743 (1970).

38. *Cf.* WASHINGTON RESEARCH PROJECT, *supra* note 2, at 132-35.

39. *Compare* Gomillion v. Lightfoot, 364 U.S. 339 (1960). It is unlikely that the City of Tuskegee could have proven any "objectively verifiable" purpose for changing its boundaries from a perfect square to a twenty-eight-sided figure. *See* note 26 *supra*.

40. Economic need has been persuasive proof of a legitimate purpose in those annexations approved by the Attorney General under § 5. *See* D. HUNTER, FEDERAL REVIEW OF VOTING CHANGES 44 (1974), *quoted in Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., ser. 1, pt. 2, at 1467-1575 (1975).

should be particularly important to show that the city limits will be expanded into areas with resources reasonably suited to accomplish the stated purposes for the annexation.[41] An evaluation by an expert may be required.[42] Many cities which annex for valid reasons will probably have this proof available in the form of professional planning studies that verified the need for expansion in the first instance.

In view of the legitimate needs for urban expansion, Section 5 imposes an appreciable burden on the annexation efforts of cities subject to the preclearance provisions of the Voting Rights Act. Nevertheless this additional burden is justified since the discriminatory efforts which originally necessitated the harshness of the preclearance provisions[43] have continued.[44]

The *Richmond* case presented evidence of both legitimate need and discriminatory motivation. The Court responded by establishing a broad, result-oriented standard to assess "purpose" which favors the proponents of expansion. Because the breadth of the standard leaves room for circumvention, extensive and exhaustive proof of objective reasons must be required to guard the voting rights of urban minorities.

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41. For example, if a city needs more territory for industrial development, it is unlikely that the annexation of a heavily populated area would fulfill its stated purpose. *See* City of Petersburg v. United States, 354 F. Supp. 1021, 1024 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973) (annexation to serve city economic needs held not for a discriminatory purpose).

42. An impartial evaluation of the Richmond annexation reported a net surplus of revenue from the annexed area in 1971. MULLER & DAWSON, *supra* note 35, at 51-56. This study was not part of the record of the Master's hearing, and the district court in *Richmond* concluded that the study did not remove the doubts raised by testimony at the hearing. 376 F. Supp. at 1354 n.51.

43. *See* South Carolina v. Katzenbach, 383 U.S. 301, 334-35 (1966).

44. *See* notes 1 and 2, *supra.*