

In the  
**Supreme Court of the United States**

CITY OR PORT ARTHUR, TEXAS,

Appellant,

v.

UNITED STATES ET AL.

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No. 81-708

Washington, D. C.

October 6, 1982

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**ALDERSON  REPORTING**

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1                   IN THE SUPREME COURT OF THE UNITED STATES  
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3 CITY OF PORT ARTHUR, TEXAS,                   :  
4                                   Appellant,                   :  
5                   v.                                   : No. 81-708  
6 UNITED STATES ET AL.                                   :  
7 - - - - -x  
8                                   Washington, D.C.  
9                                   Wednesday, October 6, 1982

10

11                   The above-entitled matter came on for oral  
12 argument before the Supreme Court of the United States  
13 at 10:03 o'clock a.m.

14

15 APPEARANCES:

16 ROBERT Q. KEITH, ESQ., Beaumont, Texas; on behalf of the  
17 Appellant.

18 CARTER G. PHILLIPS, ESQ., Office of the Solicitor  
19 General, Department of Justice Washington, D.C.; on  
20 behalf of the Appellee.

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CARTER G. PHILLIPS, ESQ.;	
on behalf of the Appellee	20
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1                                P R O C E E D I N G S

2                    CHIEF JUSTICE BURGER: We will hear arguments  
3 first this morning in City of Port Arthur against United  
4 States and others.

5                    Mr. Keith.

6                    ORAL ARGUMENT OF ROBERT Q. KEITH, ESQ.,

7                                ON BEHALF OF THE APPELLANT

8                    MR. CARUSO: Mr. Chief Justice and may it  
9 please the Court:

10                   The expanded city of Port Arthur, Texas,  
11 constitutes a black population that amounts to 35  
12 percent of the voting age population. This expansion  
13 occurred through a popular election and consolidation  
14 with two adjoining suburban cities and the subsequent  
15 annexation of an unincorporated area to the east of Port  
16 Arthur.

17                   Because of the expansion, the black population  
18 in the city by 1980 census standards changed from a 45  
19 percent black total population to a 40 percent black  
20 total population.

21                   The case was tried to the three-judge district  
22 court in the District of Columbia on an election plan  
23 that is not before the Court. It was tried on what we  
24 know in this record as a 4-4-1 election plan. The city  
25 was divided into four single-member districts of equal



1 size and a representative was to be elected from each of  
2 those districts. Then there was an at-large  
3 representative to be elected from each of those four  
4 districts. So there were four single-member  
5 representatives and four at-large representatives.

6           We tried the case. The court approved the  
7 expansion of the boundaries as being objectively  
8 verifiable, legitimate in purpose. We lost the case on  
9 the question of the 4-4-1 plan, there's no question  
10 about it.

11           When the district court opinion was rendered,  
12 the court directed the city to detail the steps that it  
13 would take to address the issue. The city went to the  
14 United States, to the Attorney General, and hammered out  
15 an agreed election plan. The parties then through joint  
16 submission submitted that agreed election plan to the  
17 district court.

18           It is that agreed election plan that is before  
19 Your Honors today. In this record we call that plan the  
20 4-2-3 plan. There are four single-member districts of  
21 equal size. There are then -- on the left side of town,  
22 the two single-member districts are combined, and on the  
23 east side of town the two single-member districts are  
24 combined into two additional single-member districts.  
25 Thus we have six single-member districts. That's four

1 plus two.

2           Then there are three at-large representatives.

3 One is the mayor, who may reside anywhere in the  
4 community and be elected at large, and that is not in  
5 dispute. There are two at-large representatives, one of  
6 whom must reside on the east and one of whom must reside  
7 on the west.

8           In the joint submission made by the Attorney  
9 General following a protracted trial, the parties stated  
10 that the agreed plan provides the minority population  
11 with representation reasonably equivalent to its  
12 strength in the expanded city, tracking verbatim  
13 Richmond. The Attorney General and the city agreed to  
14 that.

15           Turning to Section 5 of the Act, there's no  
16 question the purpose was legitimate. We were responding  
17 to a directive of the court, and we worked with the  
18 Attorney General.

19           There is no question that the effect of the  
20 change was legitimate, because, as the Attorney General  
21 stated in the agreed submission, the single-member  
22 districts in the city's plan would appear to provide the  
23 minority community with a fair opportunity to obtain  
24 representation reasonably equivalent to their political  
25 strength in the enlarged community, and cited Richmond.

1           The demographics of the single-member districts  
2 are such that one district has, in round terms, an 81  
3 percent black population, a second district has a 61  
4 percent black population. Then those two are combined  
5 into a third single-member district that has a 71  
6 percent black population. These facts are agreed and  
7 undisputed. There are three single-member districts  
8 that have a majority black population. There are three  
9 single-member districts that have a largely white  
10 population.

11           But we went one step further in this case that  
12 is a little unusual. The Attorney General and the  
13 parties, the city, agreed that in all probability  
14 representation would be provided equivalent to the  
15 strength of the minority community.

16           The court, the district court and a court in  
17 Texas, permitted the holding of elections subsequent to  
18 disapproving this 4-2-3 plan. We conducted elections in  
19 the six single-member districts and in the mayor's  
20 race. That's before Your Honors in the record.

21           In those elections which were conducted in  
22 those six single-member districts there were three black  
23 citizens elected from the majority black districts and  
24 there were three white citizens elected from the  
25 majority white districts, thus, if you will, proving

1 categorically and undisputedly that the minority  
2 community received representation reasonably equivalent  
3 to its political strength in the expanded community.

4           The United States has argued very vigorously  
5 the facts of the case as if the original plan that we  
6 tried was before Your Honors.

7           The district court disapproved the 4-2-3 plan  
8 notwithstanding the representation and agreement of the  
9 Attorney General and the City of Port Arthur. The  
10 district court decision was two to one. The majority,  
11 in rejecting the plan, stated that it did not  
12 sufficiently neutralize the effects of expansion and  
13 dilution. That was the conclusion. There were no  
14 reasons given.

15           QUESTION: Mr. Keith, may I inquire whether you  
16 think that the standard that we should use to measure, a  
17 fair reflection of political strength of the blacks in  
18 the expanded city, should be measured on the basis of  
19 voting age population figures or on general population  
20 figures?

21           MR. KEITH: Your Honor, in footnote 22 of the  
22 Rome decision the Court stated, respectfully, a  
23 preference for the voting age population. And  
24 frequently both the district court and this Court in  
25 other cases have spoken of --



1 QUESTION: We haven't really determined that,  
2 have we?

3 MR. KEITH: I think that's fair.

4 QUESTION: Is there anything in this record to  
5 show whether the general population statistics are a  
6 good indicator of future voting age population  
7 statistics?

8 MR. KEITH: The Attorney General's office and  
9 the city and the court have all extrapolated this 35  
10 percent number. We have all agreed that this is a  
11 legitimate number and a preferable number if we --

12 QUESTION: You may have agreed to that, but is  
13 there anything in the record to tell us whether there is  
14 some correlation on future voting age population.

15 MR. KEITH: No, Your Honor, there is not. We  
16 have accepted it as the best number available to the  
17 Census Bureau and to the parties.

18 QUESTION: Is it your position that we should  
19 focus entirely on voting age population figures?

20 MR. KEITH: Your Honor, it is my view that that  
21 is the best standard if it is a legitimate, demonstrable  
22 number. Now, it is not always available.

23 QUESTION: Does your argument rest on that  
24 premise?

25 MR. KEITH: Not at all, because if you take

1 Justice Marshall's footnote in the Beer case and do the  
2 mathematics -- and these become mathematical cases --  
3 our representation of 33 percent minority representation  
4 on the council and a 40 percent population, if you take  
5 that ratio, that's identical to that which he suggested  
6 was appropriate in the New Orleans -- in the Beer case  
7 in New Orleans.

8           So we're entirely comfortable with the 40  
9 percent population, or we're entirely comfortable, of  
10 course, with the 35 percent voting age population.  
11 Either way, the position of the court is the same.

12           Now, Your Honors, in addition to the three  
13 majority black seats, there is a representative elected  
14 at-large from a district consisting of 71 percent black  
15 citizens. And as Justice Blackmun said in concurrence  
16 in Mobile, the residency provides additional  
17 cross-sectional view, or the residency requirement  
18 provides additional cross-sectional view.

19           Furthermore, in addition to having these three  
20 safe seats, if you will, the majority community also has  
21 a full opportunity to participate in the election of the  
22 two at-large representatives and the mayor. So the  
23 black community has an opportunity to participate in the  
24 election of the majority of the council. Now --

25           QUESTION: Refresh my recollection. The

1 figures are 40 percent population and 35 percent voting  
2 age. Do we know the percentage of registered voters?

3 MR. KEITH: No, sir, we do not. That's not in  
4 the record. The way Texas records are kept, it's really  
5 difficult.

6 QUESTION: I see.

7 MR. KEITH: There's no question but what the  
8 City of Port Arthur met the Richmond standard, and  
9 unless that Richmond standard is to be replaced by a  
10 new rule to govern this and future Section 5 cases, then  
11 the Court --

12 QUESTION: Excuse me, Mr. Keith. You said that  
13 since the 4-3-2 plan was offered there's been an  
14 election under it with seven, three black, three white,  
15 and the mayor.

16 MR. KEITH: Yes, sir.

17 QUESTION: What about the other two?

18 MR. KEITH: Those were the two at-large seats  
19 which were still at issue in this case.

20 QUESTION: I see.

21 MR. KEITH: The district court said by way of  
22 suggestion, we will approve your plan if you would allow  
23 the at-large representatives by plurality. And as a  
24 result, Your Honor, there was no election conducted in  
25 those two at-large seats.

1 QUESTION: And is that the only issue that we  
2 have up here, is the district court's insistence on the  
3 plurality?

4 MR. KEITH: The real issue, Your Honor, is  
5 whether or not the legislative plan meets the test of  
6 Richmond. The district court's suggestion is really not  
7 before the Court. The question is whether or not the  
8 agreed plan submitted by the City of Port Arthur and  
9 approved by the Attorney General meets the Richmond  
10 test.

11 QUESTION: And what did the district court  
12 rule?

13 MR. KEITH: The district court ruled two to one  
14 that it did not and that we should go one more step.

15 QUESTION: But only because. Only because --

16 MR. KEITH: Only because --

17 QUESTION: -- of the plurality.

18 MR. KEITH: It didn't say because of the  
19 plurality. It said because we did not sufficiently  
20 neutralize the dilution.

21 QUESTION: Yes, but they said if you didn't  
22 have this head to head majority vote business you would  
23 have neutralized it.

24 MR. KEITH: That is correct, Your Honor. And  
25 the United States then says that because of your history



1 of polarized voting and because of the past  
2 discrimination which they argue, thus these past acts go  
3 to infect those two at-large seats with the majority  
4 vote.

5 QUESTION: Well, is there any issue about  
6 purpose in this plan, this particular plan?

7 MR. KEITH: No, Your Honor. It was presented  
8 in concert with the Attorney General and responsive to  
9 the court. Nobody suggested there's an impermissible  
10 purpose. We thought the case had been settled when we  
11 received this rejection.

12 QUESTION: So in terms of the Voting Rights  
13 Act, what the court said is that this will have an  
14 effect.

15 MR. KEITH: That is correct.

16 QUESTION: This will have an effect of diluting  
17 minority voting rights.

18 MR. KEITH: Yes, sir, by reducing the black  
19 population from 45 to 40 percent there was dilution,  
20 because there was a history of polarized voting and  
21 because there was, by the court's findings, a  
22 discriminatory effect in the past at-large elections.

23 QUESTION: Well, prior plans they found had  
24 been purposefully discriminatory.

25 MR. KEITH: That's correct, Your Honor.

1 QUESTION: I mean, the case you lost, was lost  
2 on purpose, wasn't it?

3 MR. KEITH: On purpose and effect.

4 QUESTION: Yes, but they never would have  
5 needed to have gotten to effect.

6 MR. KEITH: That's correct. But most of the  
7 opinion was related to effect.

8 Now, the question is, the district court tried  
9 to look at each of these individual parts and analyze  
10 them, and the United States tries to have the Court  
11 focus on each individual part and determine whether or  
12 not it, standing alone, passes muster. In fact, as this  
13 Court has insisted and as other courts dealing with this  
14 have done, you look at the entire plan to determine  
15 whether or not it has the effect.

16 QUESTION: Mr. Keith, do I understand that if  
17 you had accepted the plurality suggested by the district  
18 court, the district court would have approved the 4-3-2  
19 plan?

20 MR. KEITH: Yes, sir.

21 QUESTION: And you refused to accept the  
22 plurality suggestion?

23 MR. KEITH: Yes, sir. It was the legislative  
24 judgment that the plurality was unacceptable. Your  
25 Honor, since that time and pursuant to the authority of

1 the district court -- it's outside this record, but it  
2 is entirely verifiable -- that plurality issue was  
3 presented to a vote in the city and was soundly  
4 defeated, three and a half to one. But that was not  
5 true at the time the city declined to accept it.

6 QUESTION: Rejected by whom, the voters at  
7 large?

8 MR. KEITH: Yes, sir.

9 Now, this is very clearly a legislative plan.  
10 As late as April of this year, in the Upham v. Seaman  
11 case out of Texas, Your Honors reiterated the deference  
12 that is given to the legislative plan, the policy  
13 reasons that support it, the fact that neither the  
14 Congress nor the Court is seeking to intrude into the  
15 affairs of local government.

16 The Attorney General approved it after, by this  
17 record, 12 settlement conferences prior to trial,  
18 detailed depositions, a lengthy trial, briefs. The  
19 Attorney General is the constituted champion of a  
20 minority voter, as was said in the Carey case. The  
21 Attorney General even in this proceeding has  
22 acknowledged that the court could properly have approved  
23 the 4-2-3 plan.

24 It is the position of the city that the  
25 Richmond standard is a clear, direct, legitimately

1 predictable standard that both the courts and parties  
2 across the country are able to deal with. Once that  
3 standard is met, the statute is complied with and the  
4 district court is obligated under this Court's decisions  
5 to approve it.

6 QUESTION: May I ask you a question of  
7 procedure? I wonder why you and your adversaries in the  
8 litigation didn't simply dismiss the lawsuit,  
9 voluntarily go in and ask this case be dismissed.

10 MR. KEITH: We considered that, Your Honor.  
11 But we had all invoked the jurisdiction of the court.

12 QUESTION: Does that not imply, then, that the  
13 court had some power to approve or disapprove of the  
14 appropriate remedy?

15 MR. KEITH: Your Honor, the court had the  
16 jurisdiction over the parties and the subject matter,  
17 there's no question of that.

18 QUESTION: Do you think it was required as a  
19 matter of law -- they had absolutely no discretion in  
20 the matter -- to accept anything that was acceptable to  
21 the Attorney General?

22 MR. KEITH: So long as there were objectively  
23 verifiable facts and there was no collusion or nothing  
24 impermissible, and the facts undisputedly met the test.  
25 And that is true in this case. This is not a Rule 52,



1 where you've got clearly erroneous or abuse of  
2 discretion. As a matter of undisputed facts, the  
3 governing facts are established; it becomes purely a  
4 question of law.

5 QUESTION: Well, you did have intervenors  
6 below, did you not?

7 MR. KEITH: Yes, sir, we did. We had two -- we  
8 had four persons who intervened on behalf of the  
9 Defendant. Two of them approved the 4-2-3 plan, two of  
10 them objected to the 4-2-3.

11 QUESTION: Well, doesn't the fact that  
12 intervenors are permitted in a proceeding like this  
13 suggest that they may be able to urge arguments that may  
14 not appeal to the Government and still might commend  
15 themselves to the court?

16 MR. KEITH: Yes, sir, that's correct. But that  
17 does not mean that their arguments reach the level of a  
18 proposition as a matter of law.

19 QUESTION: No, no.

20 QUESTION: If the Attorney General -- you  
21 didn't have to deal with the Attorney General to go to  
22 court.

23 MR. KEITH: That's correct, Your Honor.

24 QUESTION: You didn't have to deal with him at  
25 all. And if the Attorney General hadn't been in this

1 suit or hadn't been participating in this thing at all,  
2 and you lost the first lawsuit and then you proposed  
3 another plan, wouldn't the court have the -- certainly  
4 it would have the authority to disapprove your 4-4-3 --  
5 or your latest plan, wouldn't it?

6 MR. KEITH: No question of that, Your Honor.

7 QUESTION: Well, you think it loses its  
8 authority just because the Attorney General comes in and  
9 proposes it?

10 MR. KEITH: No, sir, we do not.

11 QUESTION: Especially if the Attorney General  
12 still keeps a string on it and says, we've still got  
13 worries about the plan.

14 MR. KEITH: But Your Honor, where the court  
15 lost its authority was where the facts become undisputed  
16 and when undisputedly the plan meets the test of  
17 Richmond.

18 The Attorney General also, Your Honor, is more  
19 than just the ordinary litigant in a voting rights  
20 proceeding. He under the Act has a standing essentially  
21 equivalent to that of a court in the administration of  
22 this Act.

23 QUESTION: Mr. Keith, let's assume for the  
24 moment that the Court were to disagree with you that the  
25 agreement of the Attorney General required the court to

1 approve the plan. Let's disregard that argument for a  
2 moment. Then is it still your position that the court  
3 as a matter of law under the City of Richmond had to  
4 approve the plan that was submitted?

5 MR. KEITH: Yes, Your Honor. And I do not say  
6 the court --

7 QUESTION: And why? Do you think the court had  
8 the right to look into discriminatory purpose? Did the  
9 court have the right to look beyond the effect of the  
10 plan, into purpose?

11 MR. KEITH: Yes, Your Honor, it did. But  
12 there's no suggestion of impermissible purpose here, and  
13 this case should not be reversed because the Attorney  
14 General agreed. This case should be reversed because  
15 the plan unequivocally meets a clear, direct standard  
16 established by this Court.

17 QUESTION: And if all we're looking at is that,  
18 then do we apply the clearly erroneous standard?

19 MR. KEITH: No, Your Honor, because the facts  
20 are fixed as a matter of law and then the question of  
21 whether it does or does not becomes a question of law  
22 and not a question of fact or discretion. It is a  
23 clear, predictable standard and the parties have met  
24 it. The Attorney General's agreement is merely further  
25 evidence of that.

1 QUESTION: Has there been a trial on the  
2 question whether the 4-2-3 plan satisfies the Richmond  
3 standard?

4 MR. KEITH: No, Your Honor, there has not.

5 QUESTION: And is it at least not theoretically  
6 possible that there was some invidious purpose in the  
7 adoption of this plan rather than some possible  
8 alternative?

9 MR. KEITH: There is, but there's no suggestion  
10 of it at any time or place.

11 QUESTION: But I'm just wondering, how can you  
12 be so positive that it does -- I mean, I don't see any  
13 reason it doesn't meet the plan. But how can we say  
14 that it's been settled as a matter of law that it meets  
15 the standards of Richmond?

16 MR. KEITH: Well, Your Honor --

17 QUESTION: Just because the Attorney General  
18 didn't object, is what you're saying.

19 MR. KEITH: No, sir. And the court made no  
20 finding and no suggestion that the purpose was  
21 impermissible.

22 QUESTION: Well, let me put it this way.  
23 Supposing, instead of the Attorney General agreeing to  
24 the plan, he said, I would agree to it if you impose the  
25 plurality requirement, and you had said, well, we don't



1 have to do that. You'd make the same argument you make  
2 today, wouldn't you?

3 MR. KEITH: That is correct, yes, sir.

4 QUESTION: So that the Attorney General's  
5 consent is really irrelevant to the issue before us.

6 MR. KEITH: It is persuasive. It is not  
7 controlling.

8 QUESTION: But the controlling fact again is  
9 that the record leaves no room for doubt on the question  
10 whether it satisfies the Richmond standard. That's your  
11 point.

12 MR. KEITH: That is correct, yes, Your Honor.

13 May I reserve the remainder of my time,  
14 please.

15 CHIEF JUSTICE BURGER: Mr. Phillips.

16 ORAL ARGUMENT OF CARTER G. PHILLIPS, ESQ.

17 ON BEHALF OF APPELLEES

18 MR. PHILLIPS: Mr. Chief Justice, may it please  
19 the Court:

20 The issue in this case involving Section 5 of  
21 the Voting Rights Act is whether the district court  
22 erred in refusing to preclear the City of Port Arthur's  
23 post-annexation electoral plan so long as the city  
24 insisted on including a majority vote requirement for  
25 the election at large of two members of the city

1 council.

2           In the view of the Government, the issue is an  
3 exceedingly narrow one. There is no dispute that the  
4 annexations of Lakeview, Pear Ridge, and Sabine Pass are  
5 subject to the requirements of Section 5 of the Voting  
6 Rights Act.

7           There is no dispute that the effect of those  
8 annexations is to significantly dilute the minority  
9 voting strength in the City of Port Arthur, in the  
10 expanded City of Port Arthur. Indeed, there is some  
11 reason to suspect, from the findings of the district  
12 court with regard to the 4-4-1 plan, that the  
13 motivation, at least in part, for the expansion of the  
14 City of Port Arthur was to assure that the white  
15 majority retained its status as the majority for the  
16 foreseeable future.

17           Thus we are all in agreement that the basic  
18 test to be satisfied is that announced by the Court in  
19 the City of Richmond decision.

20           QUESTION: Mr. Phillips, why doesn't the Beer  
21 case control this case?

22           MR. PHILLIPS: Well, largely because the Beer  
23 case deals with a situation where there's simply a  
24 change in an electoral practice dealing with a  
25 pre-existing city and that city remains as it is,

1   whereas --

2               QUESTION:   There's nothing in Beer that limits  
3 it to that or says that it isn't applicable to  
4 annexations.

5               MR. PHILLIPS:   No, clearly not.   But this  
6 Court's decision in City of Richmond seems to indicate,  
7 or at least imply, and again in the City of Rome, that  
8 the proper test is not an analysis of retrogression, but  
9 rather the dilution of the minority vote comes from the  
10 annexation in the first instance.   And the requirement  
11 is that the minority community be adequately represented  
12 in the post-annexation city.

13              QUESTION:   City of Richmond antedated Beer, did  
14 it not?

15              MR. PHILLIPS:   Yes, sir.

16              In the city's view, this Court's decision in  
17 City of Richmond imposes a bright-line test measuring  
18 the propriety of the city's post-annexation electoral  
19 plan.   In our view, that simply does not square with the  
20 language of the test.   The test looks for whether or not  
21 there is fair or reasonable representation.   But its  
22 terms, it is not a bright-line test.   It requires the  
23 exercise of judgment by the tryer of fact and by the  
24 court in deciding whether or not a particular plan  
25 satisfies the Voting Rights Act.

1           Indeed, given the variable types of plans that  
2 are available and subject to review under City of  
3 Richmond, it is inconceivable that there can be any kind  
4 of a bright-line test. In this case we have a mixed  
5 at-large and single member district plan. In City of  
6 Richmond there was a single member district plan. City  
7 of Rome involved an all at-large plan. It's just  
8 impossible to come up with some test that will  
9 adequately resolve all of those different situations.

10           QUESTION: Mr. Phillips --

11           MR. PHILLIPS: Yes, Your Honor.

12           QUESTION: -- have you taken into  
13 consideration, there is a difference between the way  
14 land is annexed in Texas and the way land is annexed in  
15 Virginia? They're entirely different, aren't they? The  
16 question is, does that have any bearing on this?

17           MR. PHILLIPS: No, Your Honor, I don't believe  
18 so.

19           Both sides in this case complain that the other  
20 has failed to look at the plan in its entirety. Our  
21 submission is that the city is the party with tunnel  
22 vision. Specifically, the city looks at the single  
23 member district portions of this plan, finds that they  
24 will provide a certain amount of representation, and  
25 then completely ignores the rest of the plan.



1           Our position is that admittedly the single  
2 member district aspects of this plan go a long way  
3 toward satisfying the Voting Rights Act.

4           QUESTION: Is this a late insight on the behalf  
5 of the Attorney General? If the court had just approved  
6 the plan as submitted, would you have been up here?

7           MR. PHILLIPS: No, Your Honor, we would not  
8 have been up here under those circumstances. Our  
9 position is that it was a close question. I think our  
10 joint submission to the district court makes it clear we  
11 believe it is a close question.

12           The district court viewed the facts somewhat  
13 differently from the way we viewed the facts and drew  
14 different inferences from them and concluded on balance  
15 that the 4-2-3 plan with the majority vote requirement  
16 could not guarantee adequate representation to the  
17 minority.

18           QUESTION: And now you agree with that?

19           MR. PHILLIPS: And that judgment we believe is  
20 entitled to respect.

21           QUESTION: Well, you seem to be agreeing with  
22 it; not just entitled to respect. You think it is now  
23 right.

24           MR. PHILLIPS: Well, because it is based on a  
25 set of findings that we believe are not clearly

1 erroneous, and once you accept those findings, viewed  
2 through the prism of the district court's July 14th  
3 order, it seems to me there is no other conclusion  
4 that's available at this point.

5           Specifically, there are four facts that we  
6 regard, that the district court found, that we think  
7 control this case:

8           First, the City of Port Arthur faces severe  
9 racial block voting. The statistic that's used in this  
10 case is one that demonstrates statistically significant  
11 polarization at the .5 or .6 level, .5 or .6. Elections  
12 just prior to the annexation in this case involved  
13 racial polarization at .8 and above. Accordingly, it is  
14 clear that this is a badly divided city on the basis of  
15 race.

16           An even more important finding in our view is  
17 the district court's conclusions that with at-large  
18 seats and a majority vote election the black community  
19 has no opportunity to influence any elections at large.  
20 That is, even white versus white candidates, the black  
21 community is unable -- has no more than a mere  
22 theoretical possibility of exercising a swing vote  
23 influence. Accordingly, the ultimate effect of this  
24 plan as viewed from the district court's perspective  
25 must be to discard the black community or eliminate the

1 black community's influence over six of the nine seats  
2 of the city council.

3 Third, the district court found that in the  
4 past when there is a majority white population  
5 controlling the politics in the City of Port Arthur,  
6 there is a pervasive and systematic disregard for the  
7 black community, a systematic disregard that we submit,  
8 the court would conclude, will continue into the future  
9 unless this plan is modified.

10 Finally --

11 QUESTION: Mr. Phillips, do we know what the  
12 district court based its decision on? Because it isn't  
13 entirely clear. It almost reads as though the district  
14 court thought it was reviewing the expansion, when it  
15 refers to neutralizing the expansion. And  
16 theoretically, you would determine separately whether  
17 the expansion were something that could be approved, and  
18 then if that can be approved you would determine whether  
19 the voting plan could be approved.

20 Is there some confusion there?

21 MR. PHILLIPS: Well, I don't think so. I agree  
22 that the order is not artfully drafted, but it seems to  
23 me that the district court made clear its understanding  
24 of the two strands of analysis required by the City of  
25 Richmond test. And it had already approved the

1 annexation, and all that was left was the adequacy of  
2 the voting plan adopted for the expanded city.

3 QUESTION: So you think notwithstanding the  
4 language that the court used, that there was no  
5 confusion about what the court was doing?

6 MR. PHILLIPS: I don't perceive that any of the  
7 litigants disagree with regard to what the effect of the  
8 district court's order was and what it was intended to  
9 be.

10 QUESTION: May I ask you also whether it's your  
11 position that the Court should look only at voting age  
12 population figures?

13 MR. PHILLIPS: No, Your Honor. In our brief we  
14 argue that we think that both data have a legitimate  
15 role to inform the judgment of the Court. Admittedly,  
16 voting age population suggests the immediate effect of a  
17 change, but it does seem to us that raw population --

18 QUESTION: Do you think it's error if the Court  
19 looks only at voting age population figures? Would that  
20 be error?

21 MR. PHILLIPS: If it's error?

22 QUESTION: Wrong? Could a decision stand that  
23 focuses only on that?

24 MR. PHILLIPS: Well, the purpose of the Voting  
25 Rights Act and the approval of these changes is to



1 determine their future effect, and I would think it  
2 would raise serious question if you completely  
3 disregarded what might be the potential effect.  
4 Assuming the voting age population is just significantly  
5 different from the overall population, it might create a  
6 problem. In a case like this, where the difference is  
7 not that significant, it would be hard to imagine that  
8 it would be very difficult.

9           The fourth finding that we think is significant  
10 from the district court's June 12th opinion is its  
11 conclusion that residency districts do not offer the  
12 black community any greater influence over no residency  
13 districts, because of the pockets of white influence in  
14 the black districts and accordingly the availability of  
15 white candidates, who in at-large elections will  
16 continue to maintain the domination of the white  
17 community in Port Arthur.

18           Based on these findings, we believe that the  
19 district court could conclude, legitimately conclude in  
20 the exercise of its equitable judgment, that this plan  
21 does not satisfy the Voting Rights Act, and that a  
22 single minor modification would be required, should be  
23 required in order to assure that blacks will have  
24 influence in the future in these elections.

25           That modification is the elimination of the

1 majority vote requirement. That elimination in no way  
2 offers the black community the opportunity to control  
3 additional seats. It merely grants them the right to  
4 have influence over the elected officials from those  
5 districts in the at-large elections, and that we think  
6 is an appropriate exercise.

7           QUESTION: Were you suggesting that in an  
8 election at-large that a city with a third of its voters  
9 black, that they would have no influence, that neither  
10 candidate would pay any attention to obtaining their  
11 vote?

12           MR. PHILLIPS: The finding of fact by the  
13 district court in its June 12 opinion is exactly to that  
14 effect, that in only one or two elections in the 14  
15 years prior to 1977 could it find any evidence to  
16 indicate that there might have been a swing vote  
17 influence.

18           QUESTION: Is that typical across the South  
19 today?

20           MR. PHILLIPS: Well, I would hope not, Your  
21 Honor. I'm not an expert on that and I would guess that  
22 it's not always the case. Certainly, City of Rome, the  
23 district court found that in that community blacks had  
24 exercised significant influence.

25           That's part of the reason why we believe our

1 submission in this case is a very narrow one. We think  
2 the City of Port Arthur is an unusual situation, based  
3 on the findings of the district court. And that's why  
4 we have to look beyond simply whether rough proportional  
5 representation that's provided from the three single  
6 member districts adequately protects the interests of  
7 the minority community in the expanded city.

8 QUESTION: Is it the position of the Government  
9 that a majority vote is never appropriate?

10 MR. PHILLIPS: No, Your Honor, not at all.  
11 Certainly in a situation --

12 QUESTION: It's the general rule across the  
13 United States, isn't it?

14 MR. PHILLIPS: Yes, Your Honor, I think it is.  
15 And the city has argued in its reply brief that our  
16 position is a per se rejection of that view.

17 QUESTION: And may I get clear, is purpose  
18 still in this case at this level?

19 MR. PHILLIPS: Not in terms of the submission  
20 to this Court, no, Your Honor.

21 QUESTION: So we consider only the effect?

22 MR. PHILLIPS: Yes, Your Honor. I don't  
23 believe that the district court's opinion or order can  
24 fairly be read to cast any doubt on the purpose of the  
25 plan as adopted.

1           QUESTION: If we reverse, if we reversed the  
2 district court on its insistence on the plurality, would  
3 there be anything left of the case?

4           MR. PHILLIPS: Well, I don't think the United  
5 States' position is that this is infected with an  
6 invidious purpose, so I suspect there would be nothing  
7 left to litigate, although the intervenors might take a  
8 view different from that at this point.

9           QUESTION: At least, the district court didn't  
10 expressly negative any purpose --

11          MR. PHILLIPS: No, the district court  
12 submission -- the district court's order seems to  
13 indicate rather clearly that if the city were prepared  
14 to remove this one objectionable feature that seems to  
15 be directly related to the effect of this plan, that it  
16 would be satisfactory. The overall arrangement is  
17 itself not in --

18          QUESTION: Does that implicitly negative any  
19 invidious purpose?

20          MR. PHILLIPS: Well, not actually, not as a  
21 matter of logic I don't think, Your Honor. Our position  
22 is that the case, the facts of this case are not  
23 significantly different, and if anything are easily  
24 controlled by this Court's prior decisions in both City  
25 of Richmond and City of Rome.



1           City of Richmond, the black community was  
2 entitled on the basis of the single member districts to  
3 have essentially four representatives and a serious  
4 swing vote influence in a fifth district out of nine,  
5 and that for a population of approximately 41 percent.  
6 City of Rome involved an all at-large plurality vote  
7 system that was characterized by the district court  
8 itself as an essentially fair one, and yet the district  
9 court felt compelled to remove the single residency  
10 requirement in that case, and this Court upheld that  
11 exercise of judgment.

12           We believe that these facts suggest a much  
13 worse situation for the black community and that the  
14 district court's judgment in eliminating the largest  
15 impediment to the opportunity to influence the city  
16 council is a reasonable judgment by the district court  
17 and should be affirmed.

18           If there are no further questions --

19           QUESTION: May I ask you one question which  
20 perhaps isn't directly before us, but I'm curious  
21 about. The district court's opinion indicated that the  
22 original annexation was infected with an invidious  
23 purpose, as I recall the opinion. And nevertheless, it  
24 found that there were subsequent legitimate reasons for  
25 the annexation that overcome the original invidious

1 purpose.

2 MR. PHILLIPS: Yes, Your Honor.

3 QUESTION: Do you think that holding is  
4 consistent with this Court's holding in Rogers against  
5 Lucas last year?

6 MR. PHILLIPS: It is -- I hadn't really thought  
7 of that. It is clearly consistent with this Court's  
8 holding in City of Richmond.

9 QUESTION: Do you think it's consistent with  
10 the Voting Rights Act to have a mixed motive for a  
11 change?

12 MR. PHILLIPS: Yes, Your Honor, because the  
13 problem is that annexations create unusual problems and  
14 therefore you sort of have to examine them as a unique  
15 situation, I think.

16 CHIEF JUSTICE BURGER: Mr. Keith.

17 REBUTTAL ARGUMENT OF ROBERT Q. KEITH, ESQ.

18 ON BEHALF OF APPELLANT

19 MR. KEITH: Mr. Justice Stevens, in the very  
20 outset of the district court's opinion, they said on  
21 page 4A of the opinion: "We are convinced that the  
22 territorial expansion was accomplished without a  
23 discriminatory purpose." Now, they did cast some doubt  
24 on it, but they clearly came out on page 1 with an  
25 unequivocal finding of no discriminatory purpose.

1 QUESTION: But is it true that all the property  
2 annexed was predominantly white?

3 MR. KEITH: Yes, Your Honor. Previously the  
4 city had annexed --

5 QUESTION: Well, I mean, that is true?

6 MR. KEITH: That is true.

7 QUESTION: That is not invidious?

8 MR. KEITH: The city had already annexed the  
9 adjoining black territory. There was no more black  
10 community to be annexed. They had already all been  
11 annexed.

12 QUESTION: Well, were the same number of black  
13 and white people annexed? The answer is no.

14 MR. KEITH: No, that is correct, Your Honor.

15 QUESTION: That's right. They were white.

16 MR. KEITH: That is correct.

17 QUESTION: And no problem?

18 MR. KEITH: That is correct.

19 The Solicitor General states that the residence  
20 requirement offers nothing to the black citizen. As the  
21 record shows, the residency requirement was imposed as a  
22 condition of settlement by the Attorney General, and it  
23 seems strange that they would now say it offers nothing  
24 to the black community when the joint submission makes  
25 very plain that it was at their insistence and did

1 advance the interest of the black community.

2 Justice Rehnquist asked about Beer. Your  
3 Honor, before these annexations began there was one  
4 black representative among seven on the council. Even  
5 just voting on a partial council, there are now three  
6 black representatives out of nine. So if Beer becomes  
7 the test, we have met Beer at least twice over.

8 Regardless of the effect of the swing vote, the  
9 black community still has three representatives in a  
10 nine-person council. It has 35 percent of the voting  
11 age population.

12 The Richmond standard is clear and direct and  
13 does not invoke a lot of confusion, doubt, and  
14 subjective judgments, that apparently would flow from an  
15 affirmance of this district court decision.

16 Thank you, Your Honors.

17 CHIEF JUSTICE BURGER: Thank you, gentlemen.  
18 The case is submitted.

19 (Whereupon, at 10:43 a.m., the case in the  
20 above-entitled matter was submitted.)

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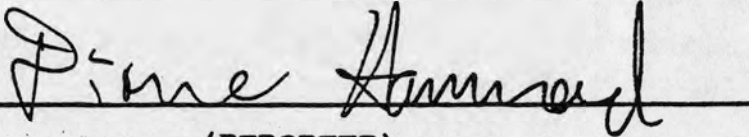
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