

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-1244

TITLE CITY OF PLEASANT GROVE, Appellant V. UNITED STATES

PLACE Washington, D. C.

DATE December 10, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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CITY OF PLEASANT GROVE, :
Appellant, :
v. : No. 85-1244
UNITED STATES :
- - - - - x

Washington, D.C.
Wednesday, December 10, 1986

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:50 o'clock a.m.

APPEARANCES:

THOMAS J. CORCORAN, JR., ESQ., Washington, D.C.; on behalf
of the appellant.
JERROLD J. GANZFRIED, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on behalf
of the respondent.

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THOMAS G. CORCORAN, JR., ESQ.,

on behalf of the appellant

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JERROLD J. GANZFRIED, ESQ.,

on behalf of the respondent

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THOMAS G. CORCORAN, JR., ESQ.

on behalf of the appellant - rebuttal

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P R O C E E D I N G S

(11:50 a.m.)

CHIEF JUSTICE REHNQUIST: You may proceed whenever you are ready, Mr. Corcoran.

ORAL ARGUMENT OF THOMAS G. CORCORAN, JR., ESQ.

ON BEHALF OF THE APPELLANT

MR. CORCORAN: Mr. Chief Justice, and may it please the Court:

The City of Pleasant Grove submits that it has borne its burden in this case to show, as it must show, that the two annexations which it voted to carry out do not have the purpose of discriminating with respect to the right to vote on grounds of race.

To show that we have done this, I'd like to start with the general physical surroundings of Pleasant Grove, and move on and discuss then the annexations that the city has attempted to make, and then discuss the annexation which we decided -- the city decided not to make.

I'd like to start with the highway map of Jefferson County to place Pleasant Grove in perspective. Pleasant Grove -- this highway map is attached to the Parmley deposition. It's reduced. It's not in color. But I think you can see the city just to the --

QUESTION: It is a part of the record, then; it's a part of the deposition?

1 MR. CORCORAN: Yes, Your Honor. The original, in
2 color and blown up, is. Pleasant Grove is the first city
3 directly to the west, about the center of Birmingham, center
4 south of Birmingham.

5 It's to be noted, Your Honor, that it's almost a
6 perfect square. If this city has been avoiding black areas
7 and taking in white areas, it's been very --

8 QUESTION: I'm sorry, Mr. Corcoran. I can't locate
9 it. Can you point it out?

10 MR. CORCORAN: Yes, Your Honor. It's right here.

11 QUESTION: Yes, thank you.

12 MR. CORCORAN: Next I'd like to draw the Court's
13 attention to a reduced copy of the postal map of Pleasant
14 Grove. This is Exhibit B to -- it first appears in the Joint
15 Appendix. It's referred to on page 5.

16 It is a reduced copy of what's already in the
17 record, and it's not always legible but it does show the
18 annexations. Basically, the annexations in question in this
19 case are on the far west of the city, the area marked 1979.
20 That's the western annexation.

21 Then, there is a small area in the northwest corner
22 of the city. It's just a quarter section. It's just 40
23 acres. That's marked 1969. That's the Glasgow addition.
24 It actually was annexed in 1971 but the petition was in 1969.

25 I'd like the Court to note that if you go all the

1 way around Pleasant Grove, there are no -- there are basically
2 no roads except in the south, the southeast of the city. All
3 those areas except for the southeast of the city are rural
4 areas.

5 The testimony of this map is corroborated by two
6 geological survey maps which are also in the record. They are
7 defendant's Exhibits 28 and 29, and they are attached to the
8 Parmley deposition.

9 It is important to note that Pleasant Grove, even
10 after all its annexations, is almost completely surrounded by
11 uninhabited territory because, the fact is, before the
12 Highlands area was -- the Highlands area was developed in the
13 late 1970s, and the Highlands is a little -- is one 40-acre
14 square to the southeast corner of the city, and it's called
15 West Smithfield Petition, because that's the old name of
16 Pleasant Grove Highlands.

17 It's right here, Your Honor.

18 QUESTION: Thank you.

19 QUESTION: Does it say "West Smithfield"?

20 MR. CORCORAN: It does, Your Honor. It's right
21 here. It's hard to read, I'm sorry.

22 QUESTION: It sure is.

23 MR. CORCORAN: It's easy to read on the original.

24 QUESTION: That's not much consolation.

25 MR. CORCORAN: True, Your Honor.

1 It's important to note that before the Highlands
2 was developed, there were no contiguous black areas to
3 Pleasant Grove, and there were no close black areas except the
4 Dolomite area, which is in this corner of the map.

5 Under Alabama law, to annex a -- for a city to
6 annex territory, it has to be contiguous. Therefore, before
7 the Pleasant Grove-Highlands area was developed, there was no
8 conceivable annexation partner for Pleasant Grove, and there-
9 fore there can be no evidence of a pattern of selective
10 annexation.

11 QUESTION: What was annexed? You're saying --

12 MR. CORCORAN: Before the development of Pleasant
13 Grove Highlands, which is here called West Smithfield --

14 QUESTION: Right.

15 MR. CORCORAN: -- which was in the late 1970s,
16 there can be no evidence of a pattern of selective annexation
17 because there were no blacks to annex. They weren't
18 contiguous to the city.

19 If you wanted to annex blacks, you would have to
20 get the permission of the intervening land owners and reach
21 out to areas of black concentration outside of the city.
22 There were no contiguous areas. Everything that was annexed
23 was contiguous.

24 I'd also like to call the Court's attention to the
25 third exhibit, which is not part of the record but it's

1 referred to in my -- it's referred to in my reply brief. This
2 is a decision which came down this year from the Tenth
3 Judicial Circuit of Alabama, and we're under an obligation to
4 keep the Court apprised of developments which may affect the
5 case.

6 Birmingham annexed all of the area, all the way
7 around Pleasant Grove, and it was set aside in this opinion
8 and it's now on appeal to the Supreme Court of Alabama.
9 But what I'd like to bring the Court's attention to is the
10 language on page 4 in the last complete paragraph.

11 There's a finding there that the area of Pleasant
12 Grove Highlands and Dolomite together, if annexed by the
13 City of Birmingham, would not pay the City of Birmingham in
14 taxes enough to cover the cost of services, and I'll get back
15 to that when I get to Pleasant Grove Highlands.

16 The other developments in this case are that four
17 additional black families either have moved into Pleasant
18 Grove or have houses under construction, so we now have three
19 black families in Pleasant Grove, two houses under
20 construction. We have two black voters in Pleasant Grove.
21 I just determined this today.

22 Four of these five houses are in the area of the
23 1967 annexation, which is relevant because as we have argued,
24 all annexations to Pleasant Grove tend -- well, they don't
25 tend very much -- but they do tend to integrate the city.

1 We submit, Your Honor, that the annexation of the
2 western addition, the time it was made, it's already been held
3 there was no discriminatory effect. We contend that we've
4 shown that there can't be a discriminatory purpose, because
5 if you look at what could have been in the minds of the
6 city councilmen at the time that they voted for this
7 annexation, there's no way, there's no rational, racial
8 purpose that can arise.

9 First of all, at the time they made this decision --
10 this is February of 1979 -- there's been no annexation in
11 eight years. The last one was the Glasgow annexation.

12 The last considerable annexation was in 1967. The
13 '67 annexation was in three parts, but the main parcel which
14 is about 1,600 acres is very much like the western addition.
15 It surrounds the city to the west and the south, and the
16 western addition tacks onto that.

17 That was almost entirely undeveloped land. The
18 city's conviction is that it gets money from that, and the
19 record bears that out. That annexation, the one in 1967,
20 was pre-cleared by the Justice Department. That's number one.

21 Number two, they're adding vacant land owned first
22 by the city and second by developers living within the city.

23 Third, it's uncontroverted on this record that
24 taking in undeveloped land yields substantial fees for the
25 city. The Mays affidavit, which is at the end of the Joint

1 Appendix -- we have to do some additions and subtractions --
2 but the Mays affidavit shows that development fees
3 contributed 25 percent of expenditures in the two years
4 before this vote in 1979, about 25 percent.

5 Fourth, Pleasant Grove was all white. It doesn't
6 have a white majority that it needs to defend.

7 And finally, all annexations, logically, because
8 they add new houses, because we have fair housing laws, every
9 time we add a new house, every time we put a house on the
10 market for sale, if you're all white and you want to stay all
11 white you don't add new houses.

12 CHIEF JUSTICE REHNQUIST: We'll resume at 1:00
13 o'clock, Mr. Corcoran.

14 (Whereupon, at 12:00 noon, the Court recessed, to
15 reconvene at 1:00 o'clock p.m. this same day.)
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AFTERNOON SESSION

(1:00 p.m.)

CHIEF JUSTICE REHNQUIST: We'll resume argument now in City of Pleasant Grove versus United States. You may continue, Mr. Corcoran.

MR. CORCORAN: Thank you, Your Honor.

ORAL ARGUMENT OF THOMAS G. CORCORAN, JR., ESQ.

ON BEHALF OF THE APPELLANT - RESUMED

MR. CORCORAN: The other annexation that is at issue here today is the Glasgow annexation. This is more difficult for us to justify under Voting Rights Act criteria because it was -- Glasgow's petition in 1969 at a time when Jefferson County schools were being desegregated and Pleasant Grove was attempting to set up its own separate school system, the Glasgows were in that school; that is, they were in the Pleasant Grove school at the time the changes were made, and they wished to remain there.

So, they asked to be taken into the city, and because they were good friends, basically, of a city councilman named Mr. Parmley, as Judge McKinnon found, they got in.

When the District Court required us to add the Glasgow annexation to our complaint, to pre-clear the western annexation, we told the court that rather than do that we would prefer to abandon it, and the court told us that they

1 wouldn't allow us to do that.

2 That's not relevant except if the argument is made
3 that we're trying to add white voters, we certainly tried to
4 get rid of these white voters, as soon as any difficulties
5 were presented, in favor of an area with no white voters,
6 to wit, the western addition which has no people in it at
7 all, at least for the moment.

8 But if we look at what goes through the mind of a
9 city councilman, and if the issue is, are they discriminating
10 with respect to voting, at the time they make that decision,
11 we submit, they are not discriminating with respect to
12 voting.

13 There are no black areas petitioning at that time,
14 for the reason that we stated before, there were no black
15 areas contiguous to Pleasant Grove until the late 1970s,
16 and this is 1969. They got in because they were in the
17 school. They were friends of people in Pleasant Grove, and
18 they let them in so they could stay in the school.

19 This brings us to the area which the government
20 claims we should have let in and we did not let in, on
21 racially discriminatory grounds, and that is the area of
22 Pleasant Grove Highlands which is that 40-acre section to the
23 southeast of the city which is marked, "West Smithfield
24 Petition."

25 When this petition came to the attention of the city

1 council, they appointed a committee to study it and the
2 committee basically concluded, based not on any new study it
3 made but on its practice in the last -- since 1967, to take
4 in undeveloped land to get the development fees, that it was
5 not economical to take it in.

6 What they did give them was free fire and paramedic
7 protection. They did that because what precipitated --

8 QUESTION: For economic --

9 MR. CORCORAN: Yes, but that is --

10 QUESTION: Do they sell them? Do they sell them or
11 do they give it?

12 MR. CORCORAN: No, they gave it to them. They had
13 given it to them. They had given their neighbors, basically,
14 free fire and paramedic protection. They had given it to the
15 Glasgow addition before they annexed them. They gave it to
16 these people on their southeast border. They gave it also to
17 some of the people in Dolomite.

18 When in 1979, after the decision to take in the
19 western addition, they decided that there were too many
20 strings on their fire and police -- basically their fire and
21 paramedic -- and they announced that they were going to
22 withdraw it, and immediately they got -- not immediately, but
23 first from Pleasant Grove Highlands and later from Dolomite
24 that same year, they were asked to be annexed.

25 It's uncontested, in any event, the government did

1 not contest below, our figures showing that if Pleasant
2 Grove Highlands were annexed to the city it would only pay in
3 taxes about 14 percent of the cost of services in 1930.

4 QUESTION: That's services to them, or services
5 everywhere?

6 MR. CORCORAN: It's a estimate of the cost of
7 services to them, and the estimate is based on an assumption
8 that they will cost exactly the same as everyone else does
9 per capita.

10 The way the figure was created, Your Honor, is they
11 took the total cost of services for Pleasant Grove. They
12 divided it per household, or per capita, I'm not sure which,
13 either per capita or per household, and they figured out how
14 much it cost per household. And then they figured out how
15 many households there were in Pleasant Grove Highlands and
16 assumed that they'd pay the same per capita taxes as
17 everyone -- no, they didn't assume that.

18 Sarah Mays, as the city treasurer, went through what
19 you get in taxes, and made an estimate which was conceded by
20 the government as to what would go up in rough proportion to
21 population if Pleasant Grove Highlands was annexed. And the
22 figure that came out was 14 percent, and the government
23 conceded the accuracy of the figure.

24 QUESTION: Mr. Corcoran, this evidence that you
25 are referring to now, I take it you cite it to show the

1 absence of a discriminatory intent or purpose on the part of
2 the city council?

3 MR. CORCORAN: Yes.

4 QUESTION: Well, the District Court found otherwise.
5 If we should say that that finding isn't clearly erroneous,
6 do you nonetheless -- did you lose your case?

7 MR. CORCORAN: Yes. You have to find that that's
8 clearly -- you have to find that the District Court's
9 findings were clearly erroneous.

10 QUESTION: But if we find that the District
11 Court's finding on this question of purpose was not clearly
12 erroneous, and that the city council did act in on or more
13 of these transactions with a discriminatory intent, does
14 that mean you lose your case?

15 MR. CORCORAN: If you find that with respect to the
16 decision on the western addition or the Glasgow annexation
17 there was a discriminatory purpose, then we fail. Then we
18 lose.

19 If you find there was no discriminatory purpose on
20 the Glasgow addition or the western annexation but there was
21 in the Pleasant Grove Highlands decision, then our argument
22 is that we win.

23 QUESTION: And why is that? Why is the presence
24 of discriminatory intent with respect to a couple of those
25 annexations controlling, but not with respect to the other?

1 MR. CORCORAN: Because those two annexations are the
2 two annexations which are the subject of the Voting Rights
3 Act, of Section 5 of the Voting Rights Act. The Voting
4 Rights Act only covers changes. It doesn't cover non-changes.

5 The decisions to take in the Glasgow annexation and
6 the western addition were changes, and thus covered by the
7 Act. The decision not to take in Pleasant Grove Highlands
8 was not a change and thus not covered by the Act.

9 And thus, if you decide that there was
10 discrimination in not taking in the Pleasant Grove Highlands,
11 the government can sue and undertake the burden of proof and,
12 as in Gomillion v. Lightfoot --

13 QUESTION: But that's not a Voting Rights Act --

14 MR. CORCORAN: That's not a Voting Rights Act case.
15 And the important fact, of course, is who's got the burden
16 of proof. Putting the burden of proof on the city is very
17 onerous, and we submit Congress only intended to change the
18 burden of proof in the cases which it set out in the statute,
19 and that's just changes.

20 QUESTION: Well, I'm still not quite sure why you
21 think that you lose the case if there is a discriminatory
22 purpose in taking in the western and Glasgow.

23 MR. CORCORAN: Well, perhaps I shouldn't --

24 QUESTION: It couldn't have any impact on the
25 Voting Rights, could it?

1 MR. CORCORAN: Well, that's the question, Justice
2 White. We have to show under Section 5 --

3 QUESTION: Do you think that you -- are you agreeing
4 with Judge McKinnon or not?

5 MR. CORCORAN: On the whole, yes.

6 QUESTION: Well, what do you think he thought about
7 discriminatory purpose, about the western --

8 MR. CORCORAN: His argument, as I remember it is,
9 how can there be a discriminatory purpose if there is no
10 discriminatory effect. You're just creating a legal fiction
11 if you pretend there's a discriminatory purpose where there's
12 no effect.

13 Now, there are some factual situations, as in the
14 Busby case, which is cited.

15 QUESTION: Well, why do you say there was
16 coverage on those two annexations? You say they were
17 changes? Were they? Changes in what?

18 MR. CORCORAN: Well, you can make an argument --
19 we haven't made this argument because we didn't think we had
20 to make it, but you can make the argument that adding vacant
21 land is not a Voting Rights -- is not a change of Voting
22 Rights practice, because there's nobody there.

23 That argument --

24 QUESTION: Why is taking in the Glasgow a change?

25 MR. CORCORAN: Taking in the Glasgow is a change,

1 because there are voters in the Glasgow addition. Now,
2 it has no discriminatory effect, obviously, because there are
3 no black voters in Pleasant Grove to have their vote diluted.

4 Well, finally, it's also not contested that \$45,000
5 in development fees are given up if you take in the 79 houses
6 in Pleasant Grove Highlands rather than building them out in
7 the western addition and getting your development fees up
8 front.

9 Also, there's a racially discriminatory effect if
10 you take in the Pleasant Grove Highlands, because they vote
11 as an insignificant minority in Pleasant Grove instead of as
12 a considerable minority in Jefferson County. The government
13 correctly puts out that they still get to vote in Jefferson
14 County, but the essential services of local governments will
15 be protected by -- will be provided by Pleasant Grove and not
16 Jefferson County.

17 Finally, Your Honor, we concede that you can look
18 at the Pleasant Grove Highlands decision to determine whether
19 there was a discriminatory purpose as to the decision made
20 two months earlier on the western addition, or the decision
21 made eight years earlier on the Glasgow addition. It's
22 technically relevant but it's not very probative, because
23 first of all, they don't know it's coming.

24 The reason that Pleasant Grove Highlands petitioned
25 was that they got their paramedic and fire cut off a month

1 later, and we also say it's not very probative because
2 Pleasant Grove Highlands is so unpersuasive from an economic
3 point of view as a rational annexation partner.

4 May I reserve the rest of my time?

5 CHIEF JUSTICE REHNQUIST: Yes, you may.

6 We'll hear now from you, Mr. Ganzfried.

7 ORAL ARGUMENT OF JERROLD J. GANZFRIED, ESQ.

8 ON BEHALF OF THE RESPONDENT

9 MR. GANZFRIED: Thank you, Mr. Chief Justice, and
10 may it please the Court:

11 The issue in this case is whether the City of
12 Pleasant Grove has sustained its burden of proving that its
13 decisions to make two annexations, the western addition in
14 1979 and the Glasgow property in 1971, its burden of proving
15 that those two decisions were made without a racially
16 discriminatory purpose or effect.

17 QUESTION: Tell me, were there people in both the
18 western addition and the Glasgow annexation?

19 MR. GANZFRIED: At the time of the annexation, the
20 Glasgow annexation, there were people living there. They
21 petitioned for that annexation four days after the Federal
22 District Court had entered its desegregation order for the
23 Pleasant Grove Schools; and four days after Pleasant Grove
24 announced that it was going to secede from the county school
25 system to set up its own.

1 In the western addition there were no people living
2 there at the time of the annexation.

3 QUESTION: Well, how did the annexation dilute
4 anyone's voting rights?

5 MR. GANZFRIED: Our contention is not that it did
6 dilute anyone's voting rights. Our position is that the
7 annexation, which expanded the borders, political borders of
8 the city, expanded the franchise, was a step that was taken
9 with a discriminatory purpose.

10 QUESTION: Well, but what's the effect of this step?

11 MR. GANZFRIED: It has no present effect. It has
12 a potential effect.

13 It has a present effect in expanding the borders,
14 and when people live there, as it was anticipated, with the
15 express purpose of the annexation, it will expand the
16 franchise and the size of the electorate.

17 QUESTION: Mr. Ganzfried, I'm a little worried
18 about having a continuous unit with white and black people,
19 and then you bring in 1,000 white people and say it doesn't
20 dilute anybody's vote.

21 MR. GANZFRIED: It doesn't dilute the vote of
22 anyone who is presently voting in the city.

23 QUESTION: But it does, in the present --

24 MR. GANZFRIED: It certainly has a potential for
25 diluting the vote.

1 QUESTION: It doesn't dilute --

2 MR. GANZFRIED: -- any black citizen that ever moves
3 into Pleasant Grove, whether by way of moving or by way of
4 being annexed into the city.

5 QUESTION: But their vote --

6 MR. GANZFRIED: It affects their vote. It would
7 affect their vote.

8 QUESTION: And will that dilute the Negro vote?

9 MR. GANZFRIED: It will dilute the vote when the
10 day comes that there are black voters in Pleasant Grove.
11 As Mr. Corcoran tells us this morning --

12 QUESTION: Okay. You've got this 1,000 white votes
13 in Jefferson County, and you've got 4,000 Negro votes in
14 Jefferson County, and you annex 2,000 white votes.

15 MR. GANZFRIED: It will still be in Jefferson
16 County.

17 QUESTION: Well, they'll be in Jefferson County.

18 MR. GANZFRIED: Jefferson County -- the borders of
19 Jefferson County --

20 QUESTION: Jefferson County will have 2,000 more
21 white votes and no more Negro votes. And that doesn't dilute
22 it?

23 MR. GANZFRIED: It dilutes the vote in Jefferson
24 County, but Jefferson County in this case has only grown
25 internally. It hasn't expanded its boundaries. So that, had

1 there been an expansion of Jefferson County, and that was the
2 jurisdiction that was before us, absolutely there would be a
3 present dilution of black votes, no question about that.

4 This is the city that comes in and says, because it
5 has been absolutely successful in excluding black people from
6 every aspect of life in Pleasant Grove, and as a result there
7 are no black citizens of Pleasant Grove and no black voters
8 in Pleasant Grove, they now seek to be rewarded for the total
9 success of the past discrimination. And they say that that
10 has created an exemption for them from Section 5 of the Voting
11 Rights Act because, after all, since we don't have any black
12 voters in the city, how could anything we do possibly affect
13 the voting rights of black people in the city of Pleasant
14 Grove.

15 QUESTION: Mr. Ganzfried, if I understood your
16 response to the Chief Justice earlier, you concede that the
17 city does not bear any burden of showing no discriminatory
18 motive in not annexing the Pleasant Grove Highlands?

19 MR. GANZFRIED: Well, Pleasant Grove Highlands,
20 because if was a decision not to make an annexation, did not
21 constitute a change that triggered the Section 5 pre-clearance.

22 QUESTION: So, that's relevant in view --

23 MR. GANZFRIED: It is relevant --

24 QUESTION: It is relevant only because it is
25 relevant to what their motive was in making the other,

1 earlier annexations?

2 MR. GANZFRIED: Well, the western addition is not
3 an earlier annexation. It's a contemporaneous decision,
4 contemporaneous with the decision with respect to the
5 Highlands, Your Honor, because the state statute that
6 permitted the annexation was not signed by the Governor until
7 many months after the Pleasant Grove Highlands petition
8 had --

9 QUESTION: What was the order of the decision on
10 the two, and how much were they separated in time? When did
11 Pleasant Grove seek the annexation of the western --

12 MR. GANZFRIED: That was voted by the council on
13 February 5th of 1979. The date of the petition from the
14 Highlands was in April of '79. The Act was signed by the
15 Governor, authorizing the western addition in July of 1979.

16 QUESTION: February, April?

17 MR. GANZFRIED: February, April and July, at the
18 time that the western -- that the Highlands petition was
19 presented, the western addition matter was still pending in
20 terms of being advertised in the local newspapers and was
21 before the state legislature.

22 So, there were certainly contemporaneous decisions
23 made by the same decision makers.

24 QUESTION: The theory you're asking us to accept is
25 that we should consider it a dilution of voting rights if

1 it has a potential to cause a dilution in the future, when a
2 black person would have moved into Pleasant Grove, right?
3 Because at the time there was no dilution of any minority
4 vote.

5 MR. GANZFRIED: At the time there was no dilution
6 of anyone who was living in the city, at the time of the
7 annexation.

8 QUESTION: Right.

9 MR. GANZFRIED: The question of dilution is really
10 a question that arises under the effects prong of Section 5.
11 Section 5 has two prongs. The city has the burden of proving
12 that its actions were not taken with a discriminatory
13 purpose, nor with a discriminatory effect.

14 The question of actual, immediate, present dilution
15 goes to the effects aspect of it, and that is not part of
16 this case.

17 QUESTION: What case here would say that if there's
18 a discriminatory purpose that violates the Act, even though
19 there couldn't possibly be any discriminatory effect?

20 MR. GANZAFRIED: Well, let me refer to the City of
21 Richmond case in which, after a long analysis in which the
22 Court concluded that there was no unlawful effect. It then
23 said, so much for the effect prong of Section 5. We are now
24 turning to the purpose prong of Section 5 because the
25 presence of a discriminatory purpose will invalidate a

1 decision even if there is no unlawful effect.

2 And, the Richmond case was remanded on the question
3 of purpose, even though this Court had decided that there was
4 no unlawful effect.

5 QUESTION: Is that the closest case in this Court?
6 Is that the only one?

7 MR. GANZFRIED: I believe -- it's not the only one.
8 The Court has said many times that because the statute is
9 written in the conjunctive, that the jurisdiction, seeking
10 approval of its change, has the burden of proving both the
11 absence of a discriminatory purpose and the absence of a
12 discriminatory effect.

13 QUESTION: But, Mr. Ganzfried, doesn't -- to trigger
14 the application of the statute at all, doesn't it have to have
15 some effect on voting qualifications or practices or
16 procedures, and how does taking in vacant land have such an
17 effect?

18 MR. GANZFRIED: It has that effect.

19 QUESTION: Even the statute alone --

20 MR. GANZFRIED: There are two aspects to the way
21 I'd like to answer that. The first is, it has an effect,
22 particularly when it is an annexation of vacant land intended
23 for development, we agree that the annexation of vacant land
24 for building an airport, or to construct a public park, does
25 not constitute a voting change and therefore, as we indicate

1 in our brief, the Attorney General does not require pre-
2 clearance of those sorts of annexations.

3 But when it is an annexation that is intended for
4 the purpose of development, to expand a franchise by adding
5 residential areas to the city, then Section 5 is triggered
6 and there must be clearance before anyone is permitted to vote
7 in those areas.

8 Now, as it happened, the City of Pleasant Grove
9 chose to submit that annexation for pre-clearance
10 immediately following the passage of the legislation, at a
11 time when there was no population in the western addition.

12 QUESTION: May I come back to your reliance on the
13 City of Richmond case. Actually, in that case the annexation
14 at issue involved thousands of people in Chesterfield
15 County who were proposed to be annexed, and --

16 MR. GANZFRIED: The point I was making --

17 QUESTION: Do you think that case is analogous to
18 this one?

19 MR. GANZFRIED: It's analogous with respect to the
20 point that Justice White's question goes to.

21 QUESTION: Is it analogous to our decision in this
22 case?

23 MR. GANZFRIED: It certainly is, because it's a
24 case that turned exclusively on the purpose, even though
25 there was no unlawful effect.

1 The City of Rome case was one where there were
2 uninhabited territories that were annexed.

3 QUESTION: The effect would have been substantially
4 to dilute the black vote in the City of Richmond. The
5 statistics prove that.

6 MR. GANZFRIED: But the Court concluded that because
7 the plan that would be in effect subsequent to the annexation
8 provided fair representation that there was no unlawful
9 effect.

10 QUESTION: It was opposed by the black community
11 only because their vote would be diluted.

12 Well, let's move on. Let's move on.

13 MR. GANZFRIED: But it affects the point I was
14 responding to Justice White on, namely that there was -- it
15 was a case that turned only on purpose where there was no
16 unlawful effect. The City of Rome case is one where there
17 was uninhabited land that was annexed, and the Court found
18 that --

19 QUESTION: What's your position?

20 MR. GANZFRIED: City of Rome, City of Richmond?

21 QUESTION: City of Richmond.

22 MR. GANZAFRIED: Indeed, I would refer also to
23 Perkins versus Matthews in which one of the three
24 annexations that were at issue there, it was pointed out,
25 involved an increase in the population but that added no

1 white voters.

2 Let me get back to the procedural point, Justice
3 O'Connor. The city came in immediately after the annexation.
4 Under Section 5 the Attorney General has only 60 days in which
5 to make a decision on an annexation. If he fails to object,
6 that annexation is pre-cleared and that means that when the
7 day comes that the western addition is populated, as the city
8 intended and anticipated, by the increase of substantial
9 numbers of white population, that there would be no further
10 opportunity for Section 5 pre-clearance.

11 That would defeat the purpose of Section 5 by
12 allowing jurisdictions to manipulate by the timing of their
13 submissions, around the burden of proof, by saying because
14 there's no present effect, therefore there can be no
15 discriminatory purpose. And if that's the case, then the
16 purpose prong has been written right out of the statute.

17 QUESTION: Does that sort of thing happen a lot?
18 Are we seeing a lot of this annexations of vacant land?

19 MR. GANZFRIED: Annexation of vacant land is a very
20 common form of expansion, and we've indicated in our brief,
21 the report of the United States Civil Rights Commission to
22 Congress, pointing out that most of the annexations that have
23 been objected to by the Department were to annexations of
24 land populated largely by white people, or to annexations of
25 land that was vacant.

1 It has certainly been made known to Congress that
2 that is the Attorney General's interpretation and Congress
3 has re-enacted Section 5 without change.

4 QUESTION: You may have already answered this.
5 Did the Attorney General turn these down, turn these
6 annexations down?

7 MR. GANZFRIED: It turned the western annexation
8 down. The Glasgow annexation was never submitted to the
9 Attorney General.

10 QUESTION: And is his -- did he write an opinion?

11 MR. GANZFRIED: It is a letter to the city that is
12 in the record in this case.

13 QUESTION: Now, where is that?

14 MR. GANZFRIED: It is attached to the Motion for
15 Summary Judgment. That's document No. 24 in the record, and
16 the letter from the Department of Justice is Exhibit F, for
17 that submission.

18 QUESTION: But it's not in the Joint Appendix?

19 MR. GANZFRIED: That letter's not in the Joint
20 Appendix.

21 QUESTION: I assume, Mr. Ganzfried, that the effect
22 which you must purpose is the same as the effect that is
23 referred to in the other part of the injunctive provision in
24 the statute, okay. So that means that if we hold in this case
25 that there is an invalid purpose, then would it not follow

1 that it is always an impermissible effect for the municipality
2 that's covered by the Act to annex any portion in which white
3 voters will outnumber black voters?

4 MR. GANZFRIED: No.

5 QUESTION: Why not?

6 MR. GANZFRIED: Because the effect that -- let me
7 restate our position in the case. I think it might clarify
8 things a bit.

9 Our position is that when a covered jurisdiction
10 makes a change that calls for Section 5 pre-clearance, and
11 certainly this does, and the City sought that pre-clearance,
12 and it makes that change with a racially discriminatory
13 purpose or fails to sustain its burden of proving that it
14 did not have that purpose --

15 QUESTION: Which purpose is to bring in more white
16 voters than black voters?

17 MR. GANZFRIED: Which purpose is to discriminate on
18 the basis of race.

19 QUESTION: But here you're saying, is to add white
20 voters in excess of black voters, right?

21 MR. GANZFRIED: In this case the intent is to
22 expand the size of the monolithic white electorate.

23 QUESTION: That's right. But my point is, if
24 that is a bad purpose in and of itself, then that would
25 always be a bad effect in and of itself as well, wouldn't it?

1 MR. GANZFRIED: No, because under the court cases
2 that you would look to is whether as a consequence of that
3 change the voting system in that jurisdiction would provide
4 fair representation to minorities on the basis of their share
5 of the population, and --

6 QUESTION: Don't you look to see if it diminishes
7 the relative status of --

8 MR. GANZFRIED: Well, you look to see if it
9 diminishes. But for example, once again in the City of
10 Richmond case, the changes there did diminish the percentage
11 of the black population in the City of Richmond. The Court
12 found that it did not have an unlawful effect under
13 Section 5.

14 By the same token there are instances --

15 QUESTION: I know, but proportional representation,
16 fair representation is not the test.

17 MR. GANZFRIED: Well, let me focus on the purpose
18 prong, because that is really the submission that we're
19 making here.

20 QUESTION: Now, my concern is that what we do on
21 the purpose prong may affect what we do on the effect prong
22 later on. And if a prospective influx of additional white
23 voters is enough to establish a bad purpose, I would think
24 that a prospective influx of white voters is enough to
25 establish a bad effect as well. So that, every time there

1 is an annexation, one will have to figure out what the
2 likely demographic population in the future is going to be,
3 and if it's likely to be --

4 MR. GANZFRIED: I think it oversimplifies this case
5 somewhat to say that we have simply a potential influx of
6 white voters. We also have a fencing out of black voters,
7 as indicated not only by the decision not to annex the
8 Highlands area, but as also indicated by the City's decision
9 as early as 1969 not to annex white areas or largely
10 unpopulated areas because of what the Mayor described as the
11 "mushroom" or "snowball" effect that might increase the
12 pressure upon the city later to annex black areas that were at
13 that point a little more on the outskirts of town.

14 QUESTION: That's all very helpful.

15 MR. GANZFRIED: We have a fencing out of black
16 voters.

17 QUESTION: It's all very helpful when you're
18 deciding a purpose case. But I -- which is what this is, but
19 I'm wondering whether your description of what it is that
20 must be purposed will not affect us in -- should we use that
21 word -- will not alter the kind of decision we have to make
22 in effect cases later.

23 MR. GANZFRIED: I don't see that it would.

24 QUESTION: I'll just follow that up with -- I
25 guess what you're saying is that if they had developed the

1 land before they sought to annex it, and they have added
2 1,000 white people in the new development, would that be an
3 unlawful effect or wouldn't it?

4 I think what Justice Scalia is suggesting is, under
5 your rationale here, you'd have to say that effect would be
6 unlawful.

7 MR. GANZFRIED: In this jurisdiction, the answer to
8 that is probably yes. We haven't taken a position on that
9 because --

10 QUESTION: Without proving any wrongful purpose
11 in connection with that acquisition?

12 MR. GANZFRIED: Okay. If there is no unlawful
13 purpose and it is simply that as a matter of happenstance,
14 and we are assuming out any unlawful purpose in that
15 instance, then it may well be that that would not be an
16 unlawful effect.

17 Simply the fact that demographics move in a
18 particular direction isn't something that we have any control
19 over under Section 5.

20 QUESTION: It seems to me you are saying that it's
21 not a bad effect because there's no bad purpose, and there
22 goes the end of the --

23 MR. GANZFRIED: Well, I just followed along on a
24 hypothetical. If the hypothetical is that a city can be in
25 this position, namely, to be an all-white city ringed by

1 concentrations of unincorporated black communities which
2 Pleasant Grove is, and for it to happen just as -- without
3 any motive or purpose behind it that only white people
4 continue to move into the city, and there's no racial
5 discrimination involved in that hypothetical, which seems
6 rather remote, then maybe in that instance there's no
7 unlawful effect.

8 But it may also be --

9 QUESTION: Mr. Ganzfried --

10 MR. GANZFRIED: -- also in that instance you're
11 likely to find that there is an unlawful purpose.

12 QUESTION: Why doesn't the Attorney General take
13 the position that unless there is some change in voting, that
14 an application to him for review and approval under this
15 Voting Rights Act section is just not timely? And then you
16 save your right to examine it when in fact there's some --

17 MR. GANZFRIED: Because of the way the statute is
18 written. If the Attorney General does not object within
19 60 days, it's pre-cleared. There's no second opportunity.

20 There's no chance to say, well, wait a minute
21 now. Now there are people living there.

22 QUESTION: The statute -- I mean, as I look at the
23 statute anyway, it doesn't even come into effect unless
24 there's some change in voting qualification prerequisite to
25 voting, or standard practice or procedure with respect to

1 voting that's different.

2 And if there isn't one, how does the statute ever
3 figure at all?

4 MR. GANZFRIED: Because the city made a submission
5 under Section 5.

6 QUESTION: So, why don't you say, you can't file
7 one?

8 MR. GANZFRIED: Because it may very well be that
9 the legal consequence of saying, you're too early, and not
10 objecting to it within 60 days, is that it will be pre-cleared,
11 because the statute says that if the Attorney General has not
12 interposed an objection within 60 days after such submission,
13 then the city is permitted to pursue the change.

14 QUESTION: May I pursue some of these other
15 questions a little bit? Assume you had two communities,
16 one all white and one all black, and the law in Alabama or
17 whatever state the state may be permitted the white community
18 to annex.

19 Let's assume it decided not to annex any of the
20 black area. Would that be unlawful?

21 MR. GANZFRIED: It would not trigger Section 5
22 review. It may well be unlawful under other sections or the
23 Voting Rights Act, but it would not trigger Section 5 because
24 there would be no change.

25 QUESTION: And why is this case different, because --

1 MR. GANZFRIED: Because here the city has voted
2 to make an annexation. It has decided to enlarge its
3 boundaries, and it has done it for the purpose of enlarging
4 the franchise. It intended the development. That has been
5 part of the city's submission all along.

6 QUESTION: You are saying the city cannot make a
7 choice? It doesn't have to annex anyone, does it?

8 MR. GANZFRIED: It doesn't. If it makes no
9 annexation, there is no Section 5 review triggered because
10 then, there is not a change.

11 QUESTION: Suppose there had been no requests for
12 annexation by black citizens.

13 MR. GANZFRIED: That wouldn't change the equation
14 of whether Section 5 is triggered. It might change the
15 evidentiary facts to be considered.

16 QUESTION: If there were an area occupied by
17 black citizens and an area occupied by white citizens, and
18 the latter was annexed and the former was not annexed, if
19 there were no requests from the black citizens to be
20 annexed --

21 MR. GANZFRIED: If there is an annexation, and as
22 I understand that hypothetical there would be, but we have
23 the white area.

24 QUESTION: Yes.

25 MR. GANZFRIED: Then Section 5 would be triggered.

1 The question before the Court would be, is that jurisdiction
2 permitted to annex that white area.

3 The question is not, and it's not in this case,
4 whether it must annex the black area. But its actions in
5 rejecting one and accepting another are indicative of the
6 purpose.

7 QUESTION: So, the fact that there was an area
8 here, a black area that wanted to be annexed at an earlier
9 date makes no difference to this case?

10 MR. GANZFRIED: It makes a very important
11 evidentiary difference as to the city's purpose. It makes
12 no difference as to whether there is an obligation to file
13 for pre-clearance under Section 5 because that obligation was
14 triggered only by the decision to make an annexation, not by
15 a decision not to make an annexation.

16 QUESTION: Even though there is no change whatever
17 in voting rights of the black citizens, or indeed the white
18 citizens?

19 MR. GANZFRIED: There is no present change, but
20 what we have here is a --

21 QUESTION: -- there will ever be a change --

22 MR. GANZFRIED: If there was never to be a change,
23 the Attorney General does not take the position that the
24 city would ever have to come in and submit for pre-clearance.
25 If they wanted to build an airport, if they wanted to leave

1 it as a forest preserve, that would not trigger a voting
2 change.

3 But what we have here is the city making an
4 annexation for purposes of development for residential
5 housing. And because it makes it much easier, apparently,
6 for the city to pursue that development to know in advance
7 that it is part of the City of Pleasant Grove, that it
8 submitted for pre-clearance.

9 QUESTION: It may not have any effect on voting for
10 ten, fifteen, twenty years.

11 MR. GANZFRIED: It may or may not. It presently,
12 however, has the potential to affect voters and it is
13 presently taken for the purpose of enlarging the white
14 electorate and fencing out the blacks living in the environs
15 of Pleasant Grove.

16 QUESTION: So, we decide this case on the basis of
17 potential conduct that may or may never occur?

18 MR. GANZFRIED: Well, you decide it on the basis
19 of the city's purpose. Let me say that when it's suggested
20 that the potential conduct may or may never occur, is to say
21 that the city must lose that case because it is the city's
22 burden of proving that its annexation will have no effect.

23 To say "may or may not" is to say the city has not
24 met that burden.

25 QUESTION: Mr. Ganzfried, why is that even a

1 plausible purpose to attribute to the city? You have a city
2 that has not a single black voter at the time the annexation
3 is made. There are fair housing laws. So, it's clear that
4 every time you sell a house you're taking a chance if you
5 want to preserve that kind of an electorate.

6 You're taking a chance that a black will buy that
7 house. Why is it even plausible that if the city wanted to
8 keep an entire white electorate, it wouldn't annex anything --

9 MR. GANZFRIED: -- writing on a clean slate here,
10 the City of Pleasant Grove made a similar annexation in 1967.
11 The history of that development has been with all of the laws
12 you have just referred to, is that in the areas annexed in
13 1967 that have been developed, they have provided residential
14 housing for white people and not for black people.

15 So, when this submission --

16 QUESTION: Always a chance, though. Every time a
17 house is sold there's a chance.

18 MR. GANZFRIED: In every Section 5 case there is
19 always a chance that the effect that the Court looks at from
20 the statistics may not occur. Section 5 is a pre-clearance
21 statute.

22 The determination is made before the changes to into
23 effect. There is never an actual effect in a Section 5 case.
24 There is always some measure of prediction.

25 We are saying that in this case, based on this

1 record and what the District Court regarded as the astonishing
2 hostility to the rights of black Americans, that the evidence
3 is sufficient to make that determination here, that the
4 city's purpose rightly or wrongly in terms of what the future
5 may bring in terms of -- into this area, that its present
6 purpose was to enlarge the white electorate, to fence out
7 black voters so that should any blacks move into Pleasant
8 Grove their votes -- they would be an even smaller minority
9 than they are today.

10 The fact of the matter is that the city was building
11 on a history of some 40 years in which there were no blacks
12 who lived in Pleasant Grove.

13 QUESTION: Did the District Court find there was a
14 discriminatory purpose?

15 MR. GANZFRIED: Yes, it did.

16 QUESTION: It just didn't find that the city had
17 failed to carry its burden of --

18 MR. GANZFRIED: It said, not only has the city
19 failed to carry its burden but that even had the burden been
20 on the government, that the result would have been no
21 different, that there was clearly a discriminatory purpose.

22 QUESTION: In the annexation?

23 MR. GANZFRIED: In the annexation and in the city's
24 implementation of its annexation policy of enlarging the
25 white electorate and fencing out the black electorate.

1 QUESTION: In this annexation, not in the --

2 MR. GANZFRIED: There are two annexations.

3 QUESTION: In the two annexations --

4 MR. GANZFRIED: In these annexations.

5 QUESTION: I mean, not in the aggregate of the two
6 annexations plus the refusal to annex? I mean --

7 QUESTION: The court weighed all of those as
8 probative evidence of the purpose, and the court then found
9 that the city has a discriminatory annexation policy that it
10 implemented in these two cases.

11 If we had a city, for example, that was going and
12 annexing individual houses, one at a time, and it turned out
13 that they were only houses that white people lived in, you
14 might -- and it sought pre-clearance, you might look at each
15 one and say, well, we can't see that annexing this one house
16 with a few people in it makes much of a difference.

17 But when you look at the pattern and you see what
18 the policy is, that it's creating this checkerboard and that
19 they've had 500 similar annexations like this, there comes a
20 time when it's fair to say that we know what's going on here
21 and we know what the purpose is.

22 And, while the consequence is simply that this
23 annexation is not permitted, it is certainly available to
24 the Attorney General and to the Court to weigh the probative
25 evidence indicating the city's purpose.

1 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Ganzfried.
2 Mr. Corcoran, do you have anything more? You have
3 nine minutes.

4 MR. CORCORAN: Thank you, Mr. Chief Justice.

5 ORAL ARGUMENT OF THOMAS G. CORCORAN, JR., ESQ.

6 ON BEHALF OF THE APPELLANT - REBUTTAL

7 MR. CORCORAN: First of all, Justice Scalia, what
8 Mr. Ganzfried said about sales in the 1967 addition -- I
9 mean, annexation, that every single house was sold to white
10 people is inaccurate. As I represented this morning, four
11 have now been sold to black people.

12 Secondly, the city is not ringed by unincorporated
13 black communities as Mr. Ganzfried said. As we pointed out --
14 as I pointed out in the beginning of my argument, supported
15 by the postal map of Pleasant Grove, unincorporated black
16 communities -- the postal map of Pleasant Grove and geological
17 survey, except for the southeast of the city, it is
18 surrounded by empty land.

19 Third, it doesn't really mean much to say that the
20 1979 decision to take in the western addition is
21 contemporaneous with the decision not to take in Pleasant
22 Grove Highlands. It's true, there's some overlap but the
23 timing is as follows: in late 1978 the people who owned --
24 the people who lived in Pleasant Grove, who owned the western
25 addition, came to the city and started talking to the Mayor.

1 The Mayor presented the question to the City
2 Council on February 5th. It was immediately sent to the
3 State Legislature of Alabama, which was willing to consider
4 it only because it was completely unpopulated.

5 The State Legislature of Alabama will not vote to
6 take one community into another community if there are people
7 in there unless they get a chance to vote on it. So that,
8 the two -- if they decided to take in the Highlands, they
9 couldn't combine these two decisions.

10 Then in March of 1979 they took away the fire and
11 paramedic protection. In April the Highlands asked to be
12 annexed. Then it was sent to a committee.

13 Some months later, at the end of 1979, they said,
14 we'll give you your fire and paramedic protection back. Then
15 there was some shilly-shallying. Eventually they didn't do
16 anything.

17 QUESTION: I take it your argument -- all of this
18 is revolving around the validity of the conclusion below,
19 that you hadn't carried your burden of showing no
20 discriminatory purpose.

21 MR. CORCORAN: Yes, Your Honor.

22 QUESTION: That's all it's about, isn't it? Do you
23 agree with your opposition that the District Court actually
24 found a discriminatory purpose?

25 MR. CORCORAN: It's not a holding. They suggested

1 that. They said they would find --

2 QUESTION: They would have found --

3 MR. CORCORAN: I think -- I mean, I have to really
4 look at the language, but my memory is that the District
5 Court said, not only do we find they haven't carried out
6 their burden of proof, but if the burden of proof was the
7 other way would we rule the same way.

8 QUESTION: We would have had no difficulty in .
9 finding and reading it?

10 MR. CORCORAN: Yes.

11 QUESTION: They spoke in the subjunctive?

12 MR. CORCORAN: Yes. Well, it wasn't a holding,
13 Your Honor. Judge McKinnon went the other way.

14 With respect to the City of Richmond case and the
15 City of Rome cases, of course we depend heavily on the City
16 of Richmond case because it's our contention that if Pleasant
17 Grove tried to bring in the Highlands, it would be a violation
18 of the Voting Rights Act because the effect -- it would be
19 an effect of diluting their vote, diluting their vote for
20 essential city services.

21 So, we rely very heavily on the Richmond case,
22 against the government. What makes Richmond and Rome
23 different from this case, in both of those cases you had
24 large cities with large black minorities. In the Richmond
25 case, Richmond actually had a black majority before the

1 annexation.

2 So, there's a reason to attribute to the white
3 people some sensitivity to bringing in a few more white
4 people, but we don't have that here. There were no black
5 people, no black voters in Pleasant Grove at the time these
6 decisions were made.

7 In the City of Rome case we have a lot of
8 annexations of vacant land, but there, if my memory's correct,
9 there were 60 annexations in four years. So, it's plausible
10 the -- to put together all the annexations and say, well,
11 there's one common purpose. But here you're talking about
12 four annexations in 50 years.

13 As to the point about -- Justice Scalia's point
14 and Justice O'Connor's point, I think that the government's
15 position in this case does ask us to make decisions based on
16 speculation as to future impacts on voting, and you can argue
17 that one way or the other on the literal language of the
18 statute. But as a practical matter, what are you going to do
19 with cases in which there's going to be no impact on voting
20 for five or six years except to say, for the immediate future
21 there's no effect.

22 QUESTION: Well, why did the city ask for
23 pre-clearance?

24 MR. CORCORAN: Because of the City of Richmond case.
25 the City of Richmond case, Perkins v. Mathews, City of

1 Richmond case, suggested that annexations were covered by
2 the Voting Rights Act.

3 I certainly think, Justice O'Connor, that if the
4 Justice Department came out with regulations and said, in
5 cases like this case you're not to petition until you have
6 an immediate effect, that the Court would defer to those
7 regulations and there would be no problem in upholding them.

8 But of course, they don't have those regulations,
9 and there was a holding from this Court, and the practice of
10 the Attorney General, of course, was to look at these things
11 immediately.

12 Finally -- and I end on a weak note here, but
13 finally, as to the so-called mushroom problem, I'd like the
14 Court to entertain our argument that the mushroom problem
15 refers not to Pleasant Grove Highlands but to Dolomite.

16 Dolomite is a very poor area. The city did not
17 want to be in a position where it had to offer services to
18 Dolomite. As I've said before, the city has a custom of
19 offering free services to small communities around its
20 borders, when it doesn't have any problem covering its own
21 area.

22 Dolomite is a very large community and the city did
23 want to have to take in Dolomite. And at the time they made
24 these decisions about the mushroom problem, the mushroom
25 problem was not directed towards Pleasant Grove Highlands

1 because these communities that they were thinking -- that
2 they didn't take in didn't abut on -- either didn't abut on
3 the Highlands, or two, the Highlands didn't exist at the time
4 the decisions were made.

5 Thank you very much.

6 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Corcoran.

7 The case is submitted.

8 (Whereupon, at 1:41 o'clock p.m., the case in the
9 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-1244 - CITY OF PLEASANT GROVE, Appellant V. UNITED STATES

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)