

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

CITY OF CHARLES TOWN,

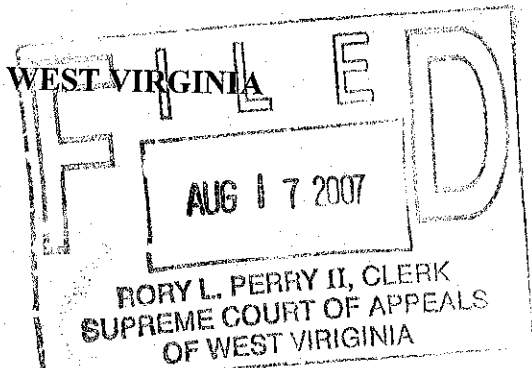
Petitioner,

v.

THE COUNTY COMMISSION OF
JEFFERSON COUNTY, a public body
corporate of the State of
West Virginia,
and
FRANCES MORGAN, President, County
Commission of Jefferson County,
and
JENNIFER MAGHAN, Clerk, County
Commission of Jefferson County,

Respondents.

IN MANDAMUS UPON
ORIGINAL JURISDICTION
Case No. 071341



AMICUS CURIAE BRIEF OF THE
WEST VIRGINIA MUNICIPAL LEAGUE, INC.

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AMICUS CURIAE BRIEF OF THE
WEST VIRGINIA MUNICIPAL LEAGUE, INC.

TO THE HONORABLE JUSTICES OF THE SUPREME
COURT OF APPEALS OF WEST VIRGINIA:

The Petitioner, West Virginia Municipal League, Inc., by its counsel, Dennis R. Vaughan, Jr., respectfully represents to the Court as follows:

I. INTRODUCTION AND INTEREST IN THE CASE

The West Virginia Municipal League, Inc. (the "Municipal League") seeks to file an amicus curiae brief in this proceeding, in support of petitioners' position, based upon the wide-ranging impact that an adverse ruling by this Court would have on municipalities in West Virginia. The Municipal League is a voluntary association formed pursuant to West Virginia Code § 8-12-6 with 217 active member cities, towns, and villages, whose purpose is to provide information to, and advocacy on behalf of, municipalities throughout West Virginia. An adverse decision in this proceeding would affect every municipality in the State and severely impact the manner in which the local government units annex property adjacent and/or contiguous with their boundaries.

Annexation, or the merger of unincorporated property into an existing incorporated city, is being used as a productive planning tool for urban development and long range planning across the nation. There are numerous benefits of annexation, not only for the cities, but also the counties, schools and regions within the boundaries of this state. Without workable annexation methods not only will cities suffer, but perhaps more alarming, the entire region and the State of West Virginia will be adversely affected. A growing number of economists assert that cities and suburbs are all highly interdependent parts of regional economics whose overall competitiveness is dependent on the health of each jurisdiction.

Without the ability to plan for orderly growth, cities lose population (and federal grants based or founded on population), retail business, new office and factory sites, and the fiscal means to continue to provide the services citizens and businesses demand. Fiscally healthy cities can generally pay for what they need to provide the services they offer. They maintain strong credit ratings and promote vigorous economic and regional growth. Fiscally sick cities are more dependent upon state and federal aid. Additionally, as the demand for municipal services increases, cities must pay particular attention to the escalating cost of providing services outside the municipal boundary. If it is urban or receives municipal services, it should be municipal.

A few years ago, David Rusk looked at the economic vitality of more than 500 cities in 320 metropolitan areas of this country. His research points to several important issues, one that particularly hits home today. "As we compete more and more in the global market, we must begin to build healthy-strong regions." Rusk's study shows that the health of the central cities affects the entire metropolitan region. Strong healthy cities are engines that drive strong economic growth. "The entire region prospers from these fiscally sound cities. Healthy regions are what will put us in the serious global competition." David Rusk, *Cities Without Suburbs: A Census 2000 Update* (2003).

II. FACTUAL BACKGROUND

The League hereby adopts the Statement of Facts contained in the Petitioner's Writ for Mandamus.

III. LEGAL ARGUMENT

Current West Virginia law provides for three methods of annexing new territory into an existing municipality: (1) annexation by election, (2) election by petition, and (3) minor boundary adjustment. W. Va. Code § 8-6-1 *et seq.* These annexation statutes, contained in article six of chapter eight of the West Virginia Code, provide three proper methods for altering municipal

boundaries through the annexation of additional territory. Under the election and petition methods, citizens initiate the procedure with their request to be annexed into the city. A minor boundary adjustment is the only method by which a city initiates the procedure. The type of annexation at issue here is annexation without an election under West Virginia Code § 8-6-4. Chapter 8, Article 6, Section 4 of the West Virginia Code provides that the City may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question (1) if a petition is filed with city council by all of the qualified voters of the additional territory to be annexed and (2) a petition to be annexed is filed by the majority of all landowners of the additional territory whether they reside or have a place of business therein or not. *Id.* Once this procedure is followed, the city council certifies the sufficiency of the petition and the County Commission enters an Order regarding the annexation. *Id.* Upon entry of the Order, the municipal boundaries are adjusted accordingly.

A. It is not the function of the County Commission to determine the propriety of an annexation pursuant to West Virginia Code § 8-6-4.

Cities and Counties in West Virginia are political subdivisions of the State. There is no implied or expressed constitutional provision giving counties oversight authority of municipalities in West Virginia. Furthermore, any authority the Counties may exercise is granted only through the West Virginia Legislature. Thus, any authority the County may exercise must be expressly provided for through a specific statute. West Virginia Code § 8-6-4 expressly provides that “[t]he *governing body of a municipality* may, by ordinance, provide for the annexation of additional territory without ordering a vote” upon petition of a majority of the qualified voters and freeholders of the additional territory and that “[i]f satisfied that the petition is sufficient in every respect, the *governing body* [the city] shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the

municipality or the major portion of the territory thereof, including the additional territory, is located. The county commission *shall thereupon enter an order* as described in [§ 8-6-3]. After the date of the order, the corporate limits of the municipality shall be as set forth therein.” W. Va. Code § 8-6-4(a), (g) (emphasis added).

It is submitted, and will be hereafter adequately shown, that West Virginia Code § 8-6-4 is premised on the basis that a municipality is capable of annexing territory without judicial review by the County Commission. The City must only satisfy itself of the validity of the petition presented to the City by a majority of the people or businesses in a territory wishing or desiring to be annexed and that the property sought to be annexed into the City is contiguous to the City. The Legislature in drafting West Virginia Code § 8-6-4 gave the City power to act in a legislative capacity in making that determination *without* second guessing by the County Commission. Similarly, the Legislature in drafting West Virginia Code § 8-6-4 gave the County Commission *only* the power to act in a ministerial capacity in entering the certification order provided by the City.

This allocation of responsibility is made clear by the language of the statute itself. West Virginia Code § 8-6-4 expressly provides that “[t]he governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote” upon petition of a majority of freeholders and qualified voters in the area to be annexed and that “[i]t *shall* be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory.” W. Va. Code § 8-6-4(a), (e) (emphasis added). The governing body of the municipality is clearly its City Council and not the County Commission. The Legislature clearly delegated to the City Council, not the County Commission, the function of verifying the petitions submitted by those desiring the annexation.

“A county commission only has powers expressly conferred by the West Virginia Constitution and our State Legislature, or powers reasonably and necessarily implied for exercise of those expressed powers.” *Berkeley County Comm’n v. Shiley*, 170 W. Va. 684, 685-86, 295 S.E.2d 924, 926 (1982). As such, “[i]t can only do those things that are authorized and only in the manner or mode prescribed by law.” *Id.* In addition, any grant of power to a county must be strictly construed against the county – especially when the power sought to be exercised by the county commission is in conflict with a power expressly granted to a city. *See, e.g., Exchange Bank v. County of Lewis*, 28 W. Va. 273, 286 (1886).

In *In Re City of Morgantown*, this Court recognized that a County Commission is only granted the power to act in a purely administrative capacity when annexation matters are brought before it pursuant to West Virginia Code § 8-6-4: “Through the enactment of these general laws, the Legislature delegated certain functions and responsibilities to the county commission of each county. A county commission is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of section 2 or 4.” 159 W.Va. 788, 792, 226 S.E. 2d 900, 903 (1976) (referring to W. Va. Code § 8-6-2 and § 8-6-4). In *In re City of Morgantown*, this Court held as follows:

we hold that the County Commission has no interest, personal or official, in municipal annexation matters which came before it other than to administer the Law.

159 W. Va. at 794, 266 S.E.2d at 904 (referring to the version of W. Va. Code § 8-6-4 in effect in 1976).¹

¹ Although Section 4 (§ 8-6-4) was amended so as to no longer require sixty percent of the voters and freeholders in the territory to be annexed, the ministerial role of the county commission with respect to the annexation procedure discussed in that case remains the same.

Based upon the foregoing, it is submitted that when a County Commission has before it a certification from a governing body made pursuant to the requirements of West Virginia Code § 8-6-4, that in such instances the County Commission must only perform the ministerial function of entering the Order. Wishing otherwise cannot make it so. In refusing to enter the Order upon receipt of the City's certification, the County Commission attempts to use powers it has not been delegated by the legislature. As such, its actions are clearly in violation of the law.

B. The annexation at issue is necessary for the orderly development of the region.

In this same context, it is submitted that approval of the annexation of the proposed territory is necessary because it will supply the City's need for expansion and upon completion of the annexation it will constitute a body of land peculiarly adaptable to the City's growth and development wherein a community of interests exist. See *City of Falls Church v. Bd. of Supervisors*, 193 Va. 112, 118, 68 S.E.2d 96, 100 (1951); *County of Norfolk v. City of Portsmouth*, 186 Va. 1032, 1045, 45 S.E.2d 136 (1947); *Warwick County v. Newport News*, 120 Va. 177, 193, 90 S.E. 644 (1916); *Alexandria v. Alexandria County*, 117 Va. 230, 234, 84 S.E. 630 (1915); and *Henrico County v. City of Richmond*, 106 Va. 282, 284, 295, 55 S.E. 683 (1906).

The lead case in this area appears to be that of *Town of Brookfield v. City of Brookfield*, 274 Wis. 638, 80 N.W.2d 800 (1957). In this case, the Supreme Court of Wisconsin was confronted with a case involving the approval of determinants by the City of Brookfield and the resultant enactment of an annexation ordinance, which action and ordinance were set aside by the Circuit Court upon appeal.

The Supreme Court of Wisconsin, in its opinion by Justice Broadfoot, set forth what has come to be viewed as the appropriate degree of judicial review in annexation issues and cases at page 804:

In annexation proceedings the city council in the first instance determines the suitability or adaptability of the area proposed to be annexed and the necessity of annexing the same for the proper growth and development of the city. Upon a review the courts cannot disturb the council's determination unless it appears that it is arbitrary and capricious or is an abuse of discretion. From a careful reading of the record it is apparent that the area annexed is reasonably adaptable to the city purposes and that it is reasonably necessary that the defendant city annex it in order that the area may be intelligently and efficiently developed.

Id. at 646, 80 N.W.2d at 804.

Justice Broadfoot's opinion has become the backbone of the view that the governing body is presumed to have acted in a responsible manner and the majority view is that "the burden of proof is upon those challenging the annexation" J.F.H., Jr. & G. M. W., *Municipal Annexation: An Urban Dilemma*, 28 *Ala. L. Rev* 717, 739 (1977), citing *Jones v. City of Oklahoma City*, 207 Okla. 431, 432, 250 P. 2d 17, 20 (1952); *Marsh v. City of El Dorado*, 217 Ark. 838, 839, 233 S.W.2d 536, 537 (1950); *City of Louisville v. Brown*, 119 S.W. 1196, 1197 (Ky. 1909). In the aforementioned *Alabama Law Review* article, the author notes at pp. 739-40:

most courts hold that the annexation ordinance will be upheld unless the action of the municipality is 'so lacking in propriety and reason that it must be deemed capricious and arbitrary, or is in excess of the authority of the (municipal) legislative body.' This standard, though strict, seems reasonable since judicial interference with a municipal annexation ordinance for less reasons would take annexation out of the hands of the municipality and place it within the discretion of the court.

J.F.H., Jr. & G. M. W., *Municipal Annexation: An Urban Dilemma*, 28 *Ala. L. Rev* at 739-40.

In another Wisconsin opinion, the *City of Beloit v. Town of Beloit*, the Wisconsin Supreme Court noted that the appellate courts role is not:

to express an opinion as to the wisdom of annexation, rather [its] role is to determine, as a question of fact, whether there are any facts or circumstances which justify the action taken by the city.

City of Beloit v. Town of Beloit, 47 Wis.2d 377, 384, 177 N.W.2d 361, 366 (1970).

The *Beloit* Court then concluded that if any reasonable need is shown, the annexation must be held for "further discussion of necessity requires weighing these facts and determining what is the best interest of the parties. This is *not* a judicial function." *Id.* at 385, 177 N. W. 2d at 366-367 (emphasis added); *see also Town of Waukechon v. City of Shawano*, 53 Wis. 2d 593, 599, 193 N.W. 2d 661, 664 (1972). It has been further noted by one text writer that "[i]t is well settled that an annexation ordinance must be given a common law presumption of validity, and that the party attacking it bears the burden of proof." Stephen L. Knowles, *The Rule of Reason in Wisconsin Annexations*, 1972 *Wis. L. Rev.* 1125, 1144 (1972).

It is submitted that the essence of these aforecited authorities is a tacit recognition that the municipality must to a certain extent be left with the authority necessary to guide its own destiny. L. Arnold Pyle and David W. Mockbee authoring the article *Municipal Annexation In Mississippi*, 45 *Miss. Law Journal* 393, at page 401 notes:

Under Mississippi's current annexation statutes, municipal authorities decide when annexation is warranted. These persons must have this authority, since they have the expertise and information necessary to make a calculated decision, keeping the best interest of both the municipality and the annexed area in mind, on the feasibility of annexation of a particular area at a particular time. Even if a majority vote were required, in actuality the decision-making process would remain the same: municipal officials would still decide when annexation is proper.

L. Arnold Pyle & David W. Mockbee, *Municipal Annexation in Mississippi*, 45 *Miss. L.J.* 393, 401 (1974).

The importance of liberal annexation statutes cannot be over-emphasized in today's urbanized society. Proper planning is the key to proper metropolitan growth; therefore, municipal authorities must have a certain degree of discretion in annexation proceedings to insure a sufficient planning base to control such growth. *See* Edward P. Blanton, Jr. & Allen Garfield, *Annexation and the Law in South Carolina*, 13 *S. C. L. Q.* 258, 259 (1960-61).

C. There has been no challenge to the propriety of the required petitions and the time to do so has passed.

As stated, *supra*, in an annexation without an election, the City Council, upon its sole determination that the petitions are sufficient enters such fact on its journal and forwards a copy of the certification to the County Commission. The Commission is then required to enter an order confirming the additional territory as part of the municipality. West Virginia Code § 8-6-4 further provides that “[t]he determination that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed is located, upon certiorari to the governing body in accordance with the provisions of article three, chapter fifty-three of this code.” *Id.* § (c). No challenge to the circuit court by any party in interest to the sufficiency of the petition at issue herein has been made and the time to do so has passed.

The County Commission’s function as clearly outlined in the statute is solely to enter the Order once certification has been provided to the County Commission by the city council. *Id.* § (g) (emphasis added.) It is not a function of the County Commission to try and substitute its judgment for that of the governing body.

D. Even if this decision was otherwise reviewable by the circuit court, contiguity requirements are met here

Annexation is essentially a legislative matter that has been delegated in some instances to the city council and in other instances to the county commission, and the circuit court may not intrude unless the process is either unconstitutional or invalid. In *In re Village of North Barrington*, the court noted that “the legislature has left to the city council and the electors, rather than to the court, the question of the reasonableness of a petition for annexation.” 144 Ill.2d 353, 369, 579 N.E.2d 880, 888 (1991). See also *In re City of Beckley*, 194 W. Va. 423, 431, 460 S.E.2d 669, 677 (1995) (county commission enjoys broad discretion in exercising its legislative

powers in determining the geographic extent of a minor boundary adjustment sought by a municipality under West Virginia Code § 8-6-5, so long as a portion of the area to be annexed is contiguous to the municipality). Here, we are not dealing with an annexation by minor boundary adjustment, we are dealing with an annexation pursuant to West Virginia Code § 8-6-4, where the legislature delegated to the City Council, *not the County Commission*, the discretion to determine the propriety of the proposed annexation. The City Council, as the governing body charged by the legislature to determine the reasonableness of a petition for annexation under that section of the statute, is therefore entitled to use broad discretion in its determination and the City Council's decision should be given great deference.

One writer has defined contiguity as the theory of the necessity of some kind of affinity between a municipality and the territory which is to be annexed. See R. Perry Sentell, Jr., *Municipal Annexation in Georgia: The Contiguity Comundrum*, 9 Ga. L. Rev. 166. Under West Virginia Code § 8-6-1 an "[u]nincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article." West Virginia Code § 8-6-1. There is only one place in the entire article where contiguity is defined -- West Virginia Code § 8-6-5(f)(1). This statute section provides that "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government. West Virginia Code § 8-6-5(f)(1).² The West Virginia Legislature certainly did not

² Note, this provision concerning contiguity was added by a 2001 amendment to W. Va. Code § 8-6-5. The pre-2001 § 8-6-5 contained no definition of contiguity.

intend to have different standards for "contiguous" in the same statute.³ Therefore, the definition in § 8-6-5 applies to § 8-6-4 and controls the case at hand.⁴ The contiguity requirement set forth in West Virginia Code § 8-6-1, although not reviewable by the County Commission, has nonetheless been appropriately met in this instance. The pending proposal for annexation to the City of Charles Town includes Route 340, which is a state highway and has been used for many years as a primary state route.

The seminal case in West Virginia on the requirement of contiguity in a municipal annexation is *In re City of Beckley*, 194 W. Va. 423, 460 S.E.2d 669 (1995), a case in which the Municipal League participated as amicus curiae. In this case, the City of Beckley sought an annexation by minor boundary adjustment under West Virginia Code § 8-6-5 of property along W. Va. Route 3 and three adjacent parcels by filing a petition for annexation with the county commission. *Id.* at 424, 460 S.E.2d at 670. At the hearing before the County Commission on the matter, there was no opposition to the annexation by the freeholders in the area to be annexed. *Id.* at 425, 460 S.E.2d at 671. Eight days after the hearing, two volunteer fire departments brought an action in the Circuit Court of Raleigh County. *Id.* at 425, 460 S.E.2d at 672. The circuit court examined the configuration of the area to be annexed and determined the area did not meet the requirements of a minor boundary adjustment. *Id.* The circuit court's order stated that the statutory provision for a minor boundary adjustment does not permit a municipality to incorporate territory that consists only of a public street or highway, or to incorporate homes or businesses that are connected to the contiguous area of the city by territory that consists only of a

³ "A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole and words and clauses must be read in a sense which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." *State ex rel. Holbert v. Robinson*, 134 W.Va. 524, 531 (1950).

public street or highway. *Id.* at n.5. On appeal, this Court reversed the circuit court because, among other reasons, the circuit court's conclusion that the commission could not grant the petition as the annexed territory did not comport with the annexation by way of a minor boundary adjustment. *Id.* at 428, 460 S.E.2d at 675. The circuit court's conclusion was based on the fact that the annexed territory contained an approximate 500 foot strip along State Route 3 abutting the city limits; the rest of the property annexed did not abut the city's limits but was adjacent to the strip. *Id.*

Addressing the issue of "contiguity", the West Virginia Supreme Court of Appeals noted that W. Va. Code § 8-6-1 provides that "[u]nincorporated territory may be annexed to and become part of a municipality contiguous thereto . . ." *Id.* The Court noted that the statute did not otherwise define the term "contiguous" and that in some jurisdictions where the term "contiguity" was not defined, the purpose of annexation is to permit the natural and gradual extension of municipal boundaries to areas which adjoin one another. *Id.* *In that regard, the case is superceded by the 2001 amendment to the article adding the definition of contiguity.* However, the case is still instructive in that "contiguous" does not always mean the land must be touching. *Id.* "Contiguous" is defined in Black's Law Dictionary as "[i]n close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by." *Id.*, citing *Awareness Group v. Board of Trustees of School Dist. No. 4*, 243 Mont. 469, 795 P.2d 447, 452-54 (1990). This Court noted that the issue in *Beckley* was not that the annexed portion did not abut the municipality's boundary; rather, the issue involved the question of *how much* of the boundary of the annexed area must be contiguous to the city limits. *Id.* at 676 (emphasis added). The Court, citing 49 A.L.R. 3d 589, stated that

⁴ See *County of Sarpy v. City of Gretna*, 273 Neb. 92 (2007) (holding that the "contiguous or adjacent" requirement in statutes governing the annexation powers of cities determines how substantial the link between the city and the annexed area must be).

the law was unsettled as to what degree of touching is needed to fulfill the contiguity requirement. *Id.* Further, the Court stated, the attempt to identify what is meant by the general term "contiguous" is often semantical at best, noting that in a previous case where the Court "approved the incorporation of a municipality which consisted of a long narrow strip of land along a valley that '[l]ong, narrow, ribbon-like communities are characteristic features of human settlements in the valleys of the central Appalachian plateau of North America.'" *Id.* at 430, 460 S.E. 2d at 676 (internal citation omitted). In addition, the Court again noted that when it is confronted with an annexation by way of a minor boundary adjustment, the process itself carries sufficient built in protection to avoid any truly outrageous geographical result.

While the *City of Beckley* case dealt with a different statutory section concerning minor boundary adjustment, the same principal is applicable here:

Common sense would dictate that the municipality would not undertake a burdensome obligation to supply services to the annexed area by extending them at great length along a narrow strip of land. Thus, there is an element of reasonableness that will control the city's decision to annex. Even if this were not true and the municipality was able to require those in the annexed area to pay for its unreasonable services, then the freeholders in the annexed area are accorded the right to object at the public hearing. If any freeholder is substantially opposed to the annexation at the public hearing before the commission, under W. Va. Code, 8-6-5 (1989), "the commission shall dismiss the [annexation] application". We have earlier pointed out that both the municipality and freeholder(s) can appeal the Commission's order to the circuit court.

Id. at 676.

A review of various other courts throughout the United States cases reveals that a majority of the appellate courts confronting a decision as to whether property to be annexed is contiguous with that of the annexing body will turn on whether the "strip," "shoestring" or "corridor" possesses some municipal value or serves some municipal purpose. That purpose may be for garbage trucks to serve the proposed territory in respect to solid waste removal, the routing of water and sewer right-of-ways adjacent thereto and thereunder, the service surface for

municipal police and fire service, in short, if the proposed territory is to receive these services and the same are to be provided through the utilization of the roadway, contiguity is present. See *City of Gainesville v. Hall County Board of Education*, 233 Ga. 77, 209 S.E. 2d 637 (1934). The Georgia Supreme Court, in upholding the annexation of property connected to the annexing municipality by a roadway, clearly stated that no land (as under annexation occurring under West Virginia Code § 8-6-4) is ever annexed without the consent of both the owner and the municipality. *Id.* at 80, 209 S.E. 2d at 640. "Such areas of land meet the requirement of being contiguous to the existing corporate limits when they adjoin and abut directly on a street or highway which has been made a part of the corporate limits. *Id.* At 80, 209 S.E. 2d at 640. See also *Village of Saranase Lake v. Gillispie*, 261 App. Div. 854, 2Y N.Y.S. 2d 403 (1991).

The extent of judicial review in support of annexation is perhaps best pointed out in the Georgia case of *City of Gainesville v. Hall County Board of Education* in the dissent by Justice Hall. 233 Ga. 77, 209 S.E.2d 637 (1934). In the majority opinion, the Supreme Court of Georgia upheld the annexation of certain territory ten miles from the annexing city, which proposed to be annexed territory was connected to the city by a strip of highway. The majority opinion in supporting the annexation found that such strip of highway provided the contiguous ground necessary to support the Council's action. Justice Hall at pages 640 and 641 notes:

(t)his Court has gone from the narrow interpretation in *City of Adel* to one as broad as the ocean and as loose as the goose. The result is we have satellite areas of a municipality ten or more miles from its contiguous body connected only by public means of transportation. I read no such anomaly in Code Ann. §§ 69-902 and 69-903.

Id. at 80, 209 S.E.2d 640.

The extent of this liberality has moved ten Georgia professors to note, with regard to a case involving Rome, Georgia:

In Georgia, therefore, it is not true that all roads lead to Rome; rather, all roads may be Rome! To Justice Hall's observation on being judicially "loose as a goose," one can only query in terms of that old refrain: "Wild goose, brother goose - Which is best? . . ."

R. Perry Sentell, Jr., *Municipal Annexation in Georgia: The Contiguity Conundrum*, 9 *Ga. L. Rev.* 167 at p. 187.

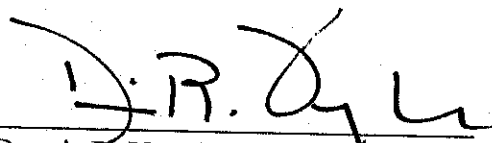
The foregoing is set forth not to suggest that such an extreme view should be followed to the same extent, but rather, simply to illustrate that annexation issues are resolved, in a majority of cases in favor of the annexing municipality. See also *State ex rel. Senff v. City of Columbia*, 208 Ten. 39, 343 S.W. 2d. 888 (1961); *Leavell v. Town of Texico*, 63 N.M. 233, 316 p. 2d 247 (1937); *Town of Greenfield v. City of Milwaukee*, 272 Wis. 388, 75 N.W. 2d 434 (1936); and J.F.H., Jr. & G. M. W., *Municipal Annexation: An Urban Dilemma*, 28 *Ala. L. Rev.* at 738.

IV. CONCLUSION

For all of the foregoing reasons, the West Virginia Municipal League prays that this Court will grant the writ of mandamus sought by the petitioners and ORDER the County Commission to enter its annexation Order based upon City Council's certification of the proposed annexed territory pursuant to West Virginia Code § 8-6-3 and as required by the law of the State of West Virginia.

**RESPECTFULLY SUBMITTED,
WEST VIRGINIA MUNICIPAL LEAGUE, INC.,**

By Counsel



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

CITY OF CHARLES TOWN,

Petitioner,

v.

IN MANDAMUS UPON
ORIGINAL JURISDICTION
Case No. 071341

THE COUNTY COMMISSION OF
JEFFERSON COUNTY, a public body
corporate of the State of
West Virginia,

and

FRANCES MORGAN, President, County
Commission of Jefferson County,

and

JENNIFER MAGHAN, Clerk, County
Commission of Jefferson County,

Respondents.

CERTIFICATE OF SERVICE

I, Dennis R. Vaughn, Jr., Esquire, counsel for the West Virginia Municipal League, Inc., do hereby certify that a true and correct copy of the foregoing "AMICUS CURIAE BRIEF OF THE WEST VIRGINIA MUNICIPAL LEAGUE, INC.," and Certificate of Service was served by United States mail, first-class, postage prepaid, this _____ day of August, 2007 upon the following parties:

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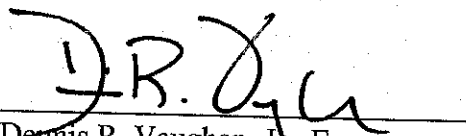
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