

IN THE SUPREME COURT OF MISSISSIPPI  
No. 2007-CA-01547

IN THE MATTER OF THE EXTENSION  
OF THE BOUNDARIES OF THE CITY  
OF LAUREL, MISSISSIPPI

CITY OF LAUREL, MISSISSIPPI

APPELLANT

VS.

SHADY GROVE WATER ASSOCIATION,  
SHADY GROVE UTILITY DISTRICT,  
INDIVIDUAL OBJECTORS, ET AL.

APPELLEES

Appeal from the Chancery Court of the Second Judicial District  
Jones County, Mississippi  
Trial Court No. 970498

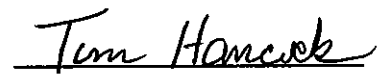
**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed persons in addition to those cited in the certificates of the other attorneys of record have an interest in the outcome of this case. These representatives are made in order that the Justices of the Supreme Court and /or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

Thomas Prine  
Willus Horne  
Larry Welborne  
Louis Goins  
Willie Porter  
Donald Middleton  
Jerry McMurtry  
Tom Mize

Jordon Welborne  
Charlie Boone  
Norman Gene Hortman, Esq.  
Jerry L. Mills, Esq.  
Joey Fillingane, Esq.  
Robert Sullivan, Esq.  
Honorable Jim Hood, Attorney General  
Honorable Charles Thomas  
Tim Hancock  
Joe Norman  
Jones County School District  
Shady Grove Water Association, Inc.  
Shady Grove Utility District  
Mayor and members of the city council for the city of Laurel, Mississippi  
Residents of the areas sought to be annexed

This the 30<sup>th</sup> day of May 2008.

A handwritten signature in cursive script that reads "Tim Hancock". The signature is written in dark ink and is positioned above a horizontal line.

Tim Hancock  
Attorney of Record for  
Shady Grove Water  
Association, Inc., Shady  
Grove Utility District, Jones  
County School District,  
Individual Objectors

## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PARTIES	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	6
CONCLUSION	44
CERTIFICATE OF SERVICE	45

### **STATEMENT OF ISSUES**

1.

WHETHER THE CHANCELLOR ERRED IN FINDING THAT THE LEGISLATIVE ACTION CONTAINED IN HOUSE BILL NO 1730. LOCAL AND PRIVATE LAWS OF 1996, VIOLATES THE SECTION 88 OF THE MISSISSIPPI CONSTITUTION OF 1890.

2.

WHETHER THE CHANCELLOR'S FINDING WAS MANIFESTLY WRONG AND WITHOUT ANY CREDIBLE EVIDENCE THAT IT WAS NOT REASONABLE TO ALLOW THE CITY OF LAUREL TO ANNEX THE NORTHERN OR SHADY GROVE PARCEL.

### **STATEMENT OF THE CASE**

In 1997, the City of Laurel adopted an ordinance seeking to annex additional territory and extend its municipal boundaries to the south, west and north of the existing corporate boundaries. Those areas can best be described as the Pendorff area, the western area (which is sometimes referred to as the Sports Center), the Sharon area, and the Shady Grove area. Subsequently, the City of Laurel filed its Petition for Annexation with the Chancery Court as required by Section 21-1-29, Miss. Code Ann. The Shady Grove area which the City of Laurel sought to annex contained part, but not all, of the Shady Grove Utility District.

The Shady Grove Utility District was created by the state legislature as a governmental entity by Local and Private Legislation, House Bill 1730 in 1996, and the Legislature prohibited the splitting of the Shady Grove Utility District by annexation. The legislation allows the District to be annexed by a municipality, but only if the entire area constituting the District is annexed.

In 1999, the Shady Grove Utility District filed a Motion to Dismiss the annexation petition contending that the proposed annexation was improper as it split the Shady Grove Utility District in violation of the legislative prohibition. On January 28, 2000, the Chancery Court issued a ruling that the City of Laurel had the option of amending its annexation ordinance so as to include all of the Shady Grove Utility District or, alternatively, the annexation petition would be dismissed as to the area encompassed by the Shady Grove Utility District.

Rather than taking an interlocutory appeal, the City of Laurel elected to increase the size of the proposed annexation to include the entire Shady Grove Utility District and filed an amended petition increasing the size of the area it proposed to annex.

After hearing all the testimony, reviewing the evidence and viewing the areas which the City proposed to annex, Special Chancellor Reeves found that it was only reasonable for the City of Laurel to annex the Pendorff area.

The City of Laurel appealed Special Chancellor Reeves' decision to this Court which remanded the case to the Chancery Court for a more detailed finding as to the twelve indicia of reasonableness and a finding as to the constitutionality of House Bill 1730, Local and Private Laws of 1996. In the Matter of the Extension of the Boundaries of the City of Laurel, 918 So.2d 1269 (Miss. 2006).

Special Chancellor R. B. Reeves was unable to proceed with the case because of health reasons (Tr. 23), and Senior Status Judge Charles Thomas was appointed to complete the case. After reviewing the record and briefs of counsel, Special Chancellor Thomas made his determination and ruling. Applying the twelve indicia of

reasonableness to the various areas the City sought to annex, he addressed the issues in a written opinion. Chancellor Thomas, as had Chancellor Reeves, found that it was reasonable for the City to annex the Pendorff area and that it was not reasonable for the City to annex the Sharon area or the Shady Grove area. Chancellor Thomas only differed in his ruling from that of the prior ruling by the former Special Chancellor Reeves in that he ruled that it was reasonable for the City to annex the western area or the area known as the Sports Center.

In his ruling, Chancellor Thomas followed the specific directive of this Court as indicated by his statement in the final judgment that:

This Special Chancellor will address each indicium as it relates to each of the four parcels under petition for annexation by the city of Laurel. These four parcels include the Pendorff parcel (referred to as the "Southern Parcel" in the city of Laurel's amended complaint), the Western parcel (includes the Laurel sports complex and immediately surrounding area), the Shady Grove parcel (the Shady Grove Utility District and surrounding area) and the Sharon parcel (the Sharon Waterworks Association and surrounding area).  
(Tr. 103)

Special Chancellor Thomas also ruled that House Bill 1730, Local and Private Laws of 1996, which authorized the annexation of all, but not part, of the Shady Grove Utility District did not violate Section 88, Mississippi Constitution of 1890.

The City of Laurel's appeal of the ruling of Chancellor Thomas is now before this Court.

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>PAGE</b>
<u>Adams v. Kuykendall</u> , 83 Miss. 571, 35 So. 830 (Miss. 1904)	10,11
<u>Brandon v. City of Hattiesburg</u> , 493 So.2d 324 (Miss. 1986)	13
<u>Burrell v. Mississippi State Tax Commission</u> , 536 So.2d 216 (Miss. 1988)	13
<u>City of Belmont v. Miss. State Tax Commission</u> , 960 So.2d 307 (Miss. 2003)	12
<u>City of Pascagoula v. Krebs</u> , 151 Miss. 676, 118 So.286 (Miss. 1928)	14
<u>City of Southaven v. City of Horne Lake</u> , 630 So.2d 10 (Miss. 1993)	27
<u>Feemster v. City of Tupelo</u> , 121 Miss. 733, 83 So. 804 (Miss. 1920)	11
<u>Gambrill v. Gulf States Creosoting Co.</u> , 856 So.2d 323 (Miss. 2003)	10
<u>Johnson v. Memorial Hospital at Gulfport</u> , 732 So.2d 864 (Miss. 1988)	15
<u>In Re the Matter of the Enlargement of Corporate Boundaries of the City of Gulfport</u> , 627 So.2d 292 (Miss. 1993)	18
<u>In the Matter of the Extension of the Boundaries of the City of Batesville</u> , 760 So.2d 697 (Miss. 2000)	29,38
<u>In the Matter of the Enlargement and Extension of the Boundaries of the City of D'Iberville v. City of Biloxi</u> , 687 So.2d 241 (Miss. 2004)	25
<u>In the Matter of the Extension of the Boundaries of the City of Laurel</u> , 918 So.2d 1296 (Miss. 2006)	2,27
<u>In the Matter of the Extension and Enlargement of of the Boundaries of the City of Laurel</u> , 922 So.2d 791 (Miss. 2006)	25
<u>In the Matter of the Enlargement and Extension of the Boundaries of the City of Jackson</u> , 691 So.2d 978 (Miss. 1997)	33,39
<u>In the Matter of the Enlargement and Extension of the Boundaries of the City of Jackson v. City of Ridgeland</u> , 912 So.2d 961 (Miss. 2005)	16
<u>In the Matter of the Enlargement and Extension of the Boundaries of the City of Macon, Mississippi v. City of Macon</u> , 854 So.2d 1029 (Miss. 2003)	17
<u>In the Matter of the Enlargement and Extension of the</u>	

<u>Boundaries of the Corporate Limits of the City of Madison, --So.2d-- , 2008 WL 879860 (Miss. 2008)</u>	15,31
<u>In the Matter of the Extension of the Boundaries of of the City of Pearl, 908 So.2d 728 (Miss. 2005)</u>	42
<u>In the Matter of the Enlargement and Extension of the Boundaries of the City of Ridgeland, 912 So.2d 961 (Miss. 2005)</u>	16
<u>In the Matter of the Extension of the Boundaries of the City of Winona, 879 So. 2d 977 (Miss. 2004)</u>	26,27
<u>In re Validation of \$7,800.000 Combined Utility System Revenue Bonds, Gautier Utility District, 456 So.2d 1003 (Miss. 1984)</u>	14
<u>Loden v. Miss. Public Service Commission, 279 So.2d 636 (Miss. 1973)</u>	12
<u>Lum v. Mayor, Etc., v. City of Vicksburg, 72 Miss. 950, 18 So. 476 (Miss. 1895)</u>	10
<u>Matter of the Extension of the Boundaries of the City of Columbus, 644 So.2d 1168 (Miss. 1994)</u>	38
<u>Palmer v. Garrard, 43 So.2d 381 (Miss. 1949)</u>	11
<u>Petterson v. Sandez, 451 So.2d 216 (Miss. 1984)</u>	13
<u>Prestridge v. City of Petal, 841 So.2d 1051 (Miss. 2003)</u>	11
<u>State v. Board of Levee Com'rs for Yazoo, 933 So. 2d 12 (Miss. 2006)</u>	12
<u>Tisdale v. City Council of City of Aberdeen, 856 So.2d 323 (Miss. 2003)</u>	11
<u>Yazoo City v. Lightcap, 82 Miss. 148, 33 So. 949 (Miss. 1903)</u>	10

## **CONSTITUTION**

Section 88, <u>Mississippi Constitution of 1890</u>	8,9,11,44
Section 89, <u>Mississippi Constitution of 1890</u>	13
Section 90, <u>Mississippi Constitution of 1890</u>	13

## **STATUTES**

Section 21-17-9, <u>Miss. Code Ann.</u>	11
Section 21-1-27, <u>Miss. Code Ann.</u>	4
Section 21-1-29, <u>Miss. Code Ann.</u>	1
Section 19-5-77, <u>Miss. Code Ann.</u>	9
Section 19-5-151, <u>Miss. Code Ann.</u>	4,9
Section 19-5-175 <u>Miss. Code Ann.</u>	9
Section 19-5-177, <u>Miss. Code Ann.</u>	9
Section 19-5 181, <u>Miss. Code Ann.</u>	9
Section 19-5-182, <u>Miss. Code Ann.</u>	9



**LOCAL AND PRIVATE LEGISLATION**

House Bill 1730, Local and Private Laws of 1996

4,6,8,9,44



To provide a means of sustaining the utility district and preventing a catastrophic result, the Legislature allows a municipality which has a legitimate need to expand its corporate boundaries and annex additional land if the proper procedures are followed and the Chancery Court finds the expansion to be reasonable. It allows a municipality to annex the entire Shady Grove Utility District and to then control it as it sees best. However, to preserve the integrity of the legislatively authorized and created utility districts, the Legislature has determined that none or all of the utility district may be annexed. But, in order to prevent a scenario such as that stated above, a municipality is not allowed to destroy the viability and sustainability of the district by taking only part, maybe even the part that makes the district functional. Such a legislative approach is sensible, reasonable, rational, necessary, and constitutional and must be viewed in that perspective.

House Bill 1730, Local and Private Laws of 1996, was enacted by the Legislature of this state and it does not violate the constitutional provisions of Section 88, Mississippi Constitution of 1890. By its enactment of Local and Private Laws of 1996, House Bill 1730, the state Legislature provided that the Shady Grove Utility District can be annexed by a municipality but only if annexed in its entirety. The City of Laurel contends that House Bill 1730 is in violation of Article 4, Section 88, Mississippi Constitution of 1890, which provides that:

The legislature shall pass general laws, under which local and private interests shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered, and all such laws shall be subject to repeal or amendment.

The Legislature of this state has specifically authorized the creation of utility districts outside the corporate boundaries of an existing municipality. Section 19-5-151, Miss. Code Ann., and has given utility districts broad powers. Section 19-5-182, Miss. Code Ann. The utility districts have the authority to issue bonds, Section 19-5-181, Miss. Code Ann., to levy taxes (Section 19-5-189, Miss. Code Ann.), to execute contracts for construction (Section 19-5-177, Miss. Code Ann.), and to exercise other powers including those set forth in Section 19-5-77, Miss. Code Ann., such as the operation of a water supply system, sewer system, garbage and waste collection and disposal system, and a fire protection system. Section 19-5-175, Miss. Code Ann., further provides that "as long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services in the district."

Thus, even without House Bill 1730, the City of Laurel could not furnish any of the services provided by the certificated water district or the Shady Grove Utility District or any other services offered by the Shady Grove Utility District.

The City's argument that House Bill 1730 violated Section 88, Mississippi Constitution of 1890, and the cases cited for that argument, are misplaced and inapplicable for the reasons stated in Chancellor's ruling and in the brief filed in this case by the objectors of the Sharon area which are also adopted herein.

Shortly after its adoption of Section 88, *Mississippi Constitution of 1890*, this Court found that the purpose of Section 88 was to require future legislatures to provide

laws under which cities and towns might be chartered and their charters amended.

Lum v. Mayor. Etc., of City of Vicksburg, 72 Miss. 950, 18 So. 476 (Miss. 1895).

Eight years later this Court found in Yazoo City v. Lightcap, 82 Miss. 148, 33 So. 949 (Miss. 1903), that the purpose of Section 88 was to bring about uniformity in the general mode of granting and considering charters of municipalities so the legislature would be freed from the nuisance of having to deal with each and every charter and amendments to such charters for the creation of or the expansion of every municipality in this state.

In Adams v. Kuykendall, 83 Miss. 571, 35 So. 830 (Miss. 1904), this Court found that prior to the adoption of the Mississippi Constitution of 1890, cities and towns in Mississippi were governed by their own charters which allowed for a wide variety of abuses by municipal governments. The founders of the Constitution did not desire to repeal those charters but recognized the need for some general plan under which municipal governments might be created and their charters amended without appeal to the legislature.

Later, this Court found that Section 88 of the Constitution was a command to the legislature to devise some general plan of easy operation under which municipalities might be chartered, or their charters amended, so as to render as unnecessary legislative resort to their law making power in each instant. Gambrill v. Gulf States Creosoting Co., 216 Miss. 505, 62 So. 772 (Miss. 1953).

Section 88 only directed the legislature to provide some uniformity in the way municipalities operated without the necessity of legislative approval of the amendment to a charter for every proposed change in municipal boundaries.

In Tisdale v. City Council of City of Aberdeen, 856 So.2d 323 (Miss. 2003), it was determined that the legislature complied with Section 88 by adopting Section 21-17-9, Miss. Code Ann., to designate the various forms of government and provide for charter amendments and the governing authority's initiatives.

The enactment of House Bill 1730 did not change the charter of the City of Laurel, nor did it change the manner or procedure through which it operates. It did not even change the manner in which the City of Laurel enlarges its boundaries. It simply recognized the need to maintain the financial integrity of the legislatively approved utility district in view of the uncertainty of the viability of the portion which would not be annexed. House Bill 1730 did not destroy the power of the City of Laurel to enlarge its boundaries nor did it amend its charter or powers. It merely restricted the exercise of that power dependent upon the facts. See Feemster v. City of Tupelo, 121 Miss. 733, 83 So. 804 (Miss. 1920). See also Palmertree v. Garrard, 43 So.2d 381 (Miss. 1949).

After reviewing Section 88, Mississippi Constitution of 1890, this Court in Adams v. Kuykendall, 83 Miss. 381, 35 So. 830 (Miss. 1904), stated:

We adhere to the time honored and firmly established doctrine that all municipalities are within legislative control and that Section 88 placed no limitation on that power.

Indeed, this Court has consistently held that annexation is a legislative affair. Prestridge v. City of Petal, 841 So. 2d 1051 (Miss. 2003).

House Bill 1730 is a legislative matter and was enacted by the state legislature and legislative acts “are cloaked with a presumption of constitutionality, and unconstitutionality must appear beyond reasonable doubt.” City of Belmont v. Miss State Tax Commission, 960 So.2d 307 (Miss. 2003).

This Court has stated that:

We adhere to the rule that one who assails a legislative enactment must overcome the strong presumption of validity and such assailant must prove his conclusions affirmatively, and clearly establish it beyond a reasonable doubt. All doubts need be resolved in favor of validity of a statute. If possible, a court should construe statutes so as to render them constitutional rather than unconstitutional if the statute under attack does not clearly and apparently conflict with organic law after first resolving all doubts in favor of validity.

Loden v. Miss. Public Service Commission, 279 So.2d 636, 640 (Miss. 1973).

As stated in State v. Board of Levee Com’rs for Yazoo 932 So.2d 12 at 19 (Miss. 2006):

“when a party invokes our power of judicial review, it behooves us to recall that the challenged act has been passed by the legislators and approved by a governor sworn to uphold the selfsame constitution as are we” *State v. Roderick*, 704 So.2d 49, 52 (Miss. 1997). Therefore, under “Mississippi law a party challenging the constitutionality of a statute must prove unconstitutionality beyond a reasonable doubt.” *Cities of Oxford, Carthage, Starkville and Tupelo v. Northeast Elec. Power Ass’n*, 704 So.2d 59, 65 (Miss. 1977) (citing *Secretary of State v. Wiesenbergh*, 633 So.2d 983, 989 (Miss. 1994). *Miss. Power v. Goudy*, 459 So.2d 257, 263 (Miss. 1984)). In other words:

One who assails a legislative enactment must overcome the strong presumption of validity and such assailant must prove his conclusions affirmatively, and clearly establish it beyond a reasonable doubt. All doubts must be resolved in favor of validity of a statute. If possible, a court should construe statutes so as to render them constitutional rather than unconstitutional if the statute under attack does not clearly and apparently conflict with

organic law after first resolving all doubts in favor of validity.

Likewise, “the legislative intention will be accorded broad treatment in determining its constitutionality.” Peterson v. Sandez, 451 So.2d 216, 218 (Miss. 1984). Gray areas of the Constitution, out of deference to the prerogative of the legislature, will be afforded any reasonable construction that will avoid unconstitutionality of the statute. Burrell v. Mississippi State Tax Commission, 536 So.2d 848, 859 (Miss. 1988).

The Shady Grove Utility District provides services to the residents within its boundaries. Thus, the City of Laurel, even without House Bill 1730, is prohibited by law from providing such services to the area it proposes to annex within the Shady Grove Utility District. Without the City’s authority to provide those services, the possible annexation of the Shady Grove area would be even more unreasonable than as shown by the ruling of the Chancellor and as shown later in this brief.

Section 88 of the Constitution has no application to the issue at hand. Additionally, Section 89, Mississippi Constitution of 1890, authorizes local and private bills and states that “If a bill is passed in conformity to the requirements hereof, other than such as are prohibited by the next session, the courts shall not, because of its local, special, or private nature, refuse to enforce it.” The “next section”, Section 90, Mississippi Constitution of 1890, enumerates various matters over which the legislature has no authority to enact local, private or special laws. Twenty one categories are reserved for general laws and none of those involve annexation. See Brandon v. City of Hattiesburg, 493 So.2d 324 (Miss. 1986).



Although general legislation authorizes the creation of utility districts, this Court has held that the creation of such a district through local and private legislation does not violate Section 88 of the Mississippi Constitution of 1890. In re Validation of \$7,800,000 Combined utility System Revenue Bonds, Gautier Utility District, 465 So.2d 1003 (Miss. 1984). There, this Court found that under Mississippi's constitutional scheme there is no prohibition upon the Legislature's enacting upon a given subject matter by both general law and a local and private law and stated:

Although general laws are preferred over private laws, the function of deciding the wisdom and propriety of enacting special laws in the legislature and not in the courts and courts will not refuse to enforce such (private) laws merely because it may be felt that a general law would have been more suitable. This idea of legislative authority emanates from Article IV, Section 89 which sets forth the procedure of a local for enactment of a local and private act. When the legislature has complied with those requirements, "courts shall not, because of its local, special, or private nature, refuse to enforce it" unless it contravenes Section 90...." Id., 653-654.

City of Pascagoula v. Krebs, 151 Miss. 676, 118 So. 286 (Miss. 1928), involved a situation in which the City of Pascagoula undertook to extend its municipal boundaries to include another existing town without its consent. The legislature passed an act to approve the takeover and this Court held that one municipality may not annex another without its consent and the legislative efforts to do so were prohibited. The case in both law and fact is inapplicable to the case at hand.

Enactment of House Bill 1730 did not deal with the creation of the City of Laurel's charter nor did it change the procedure through which it seeks annexation, and it was not in violation of Section 88. In any event, it was permissible under Section 90.

Moreover, the Chancellor's ruling is an indication that the City of Laurel was attempting to do too much, over to large an area, at a cost beyond its financial ability. With the Chancellor's decision to allow the annexation of the Pendorff and western areas the City is getting all it can reasonably handle. Because the annexation of any part of the Shady Grove area would not be reasonable, the constitutional issue need not be addressed. Johnson v. Memorial Hospital at Gulfport, 732 So. 2d 864 (Miss. 1988).

**THE CHANCERY COURT APPLIED THE CORRECT STANDARD OF REVIEW,  
ITS DECISION WAS SUPPORTED BY CREDIBLE EVIDENCE AND WAS  
NOT MANIFESTLY WRONG IN DENYING THE CITY OF LAUREL'S  
ATTEMPT TO ANNEX THE SHADY DROVE AREA**

This Court has consistently, and most recently in In the Matter of The Enlargement and Extension of The Corporate limits of the City of Madison, ---So.2d \_\_\_\_ 2008 WL 879860 (Miss. 2008), stated that:

In reviewing the chancellor's decision as to whether a proposed annexation is reasonable, this Court takes into account twelve indicia of reasonableness: (1) the municipality's need to expand; (2) whether the area sought to be annexed may be deemed to be reasonably within a path of growth of the city; (3) the potential health hazards from sewage and waste disposal in the proposed annexation area; (4) the municipality's financial ability to make improvements and furnish the promised municipal services; (5) the need for zoning and overall planning in the proposed area of annexation; (6) the need for municipal services to the area proposed to be annexed; (7) the existence vel non of natural barriers between the city and the proposed area of annexation; (8) the past performance and time element concerning the city's providing of services to its current residents; (9) the economic impact or other type impact of the annexation upon those persons who live or own property in the area proposed for annexation; (10) the impact of the annexation upon the voting strength of protected minorities; (11)

whether property owners and all inhabitants of the area proposed for annexation have in the past, and will in the future, unless annexed, enjoy the economic and social benefits of the municipality because of the reasonable proximity to the corporate limits of the municipality, without paying their fair share of taxes; and (12) any other factors that may or may not affect the issue of the reasonableness of the proposed annexed area. *City of Biloxi*, 744 So.2d at 278; *In re Enlargement and Extension of Boundaries of City of Madison*, 650 So.2d 499, 494 (Miss. 1995). With that in mind, “the ultimate determination must be whether the annexation is reasonable under the totality of the circumstances.” *City of D’Iberville v. City of Biloxi*, 867 So.2d 241, 249 (Miss. 2004) (citing *In re Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 726 (Miss. 1996) (quoting *Robinson v. City of Columbus (In re Extension of the Boundaries of the City of Columbus)*, 644 So.2d 1168, 1172 (Miss. 1994)).

In discussing the twelve indicia of reasonableness this Court has stated in In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson v. City of Ridgeland, 912 So.2d 961, 965 (Miss. 2005) that:

This Court has held that the twelve factors are only indicia of reasonableness, not separate and distinct tests in and of themselves.” *In re Extension of the Boundaries of the City of Winona*, 879 So.2d 966, 972-73 (Miss. 2004) (quoting in *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So.2d 270, 276 (Miss. 1999)). This Court stated in *Hattiesburg* that “fairness to all parties has always been the proper focus of reasonableness inquiry. Thus, we hold that municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness.” *Hattiesburg*, 840 So.2d at 82. More importantly, “(t)he chancellor must consider all (twelve) of these factors and determine whether under the totality of the circumstances the annexation is reasonable.” *Id.* (emphasis added)

In In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson v. City of Ridgeland, 912 So.2d 961 964 (Miss. 2005), this Court set forth the often stated standard of review in annexation cases:

This Court's standard of review for annexation is limited. The Court can only reverse the chancery court's findings as to the reasonableness of an annexation if the chancellor's decision is manifestly wrong and is not supported by substantial and credible evidence." *In re Contraction and Exclusion and Deannexation of City of Grenada*, 876 So.2d 995, 999 (Miss. 2004) We will defer to the findings below when there is conflicting, credible evidence. *See id.* "We only reverse where the Chancery Court has employed erroneous legal standards or where we are left with a firm and definite conviction that a mistake has been made." *Id.* at 999-1000 (quoting *Bassett v. Town of Taylorsville*, 542 So.2d 918, 912 (Miss. 1989).

This Court has further defined the scope of review of the decision of the Chancellor stating that:

Where the finding of reasonableness is challenged on appeal, this Court conducts no plenary review. It may reverse where--and only where-- the chancery court's finding of ultimate fact the annexation was reasonable is manifestly wrong or without the support of substantial, credible evidence.

In the Matter of the Enlargement and Extension of the Boundaries of the City of Macon, Mississippi v. City of Macon, 854 So.2d 1029 (Miss. 2003).

In the Matter of The Enlargement and Extension of The Corporate Limits of the City of Madison, ----So.2d \_\_\_\_ 2008 WL 879860 (Miss,) this Court stated that:

In considering whether a city has a need to annex additional territories, this Court has held that it: will consider many factors which may include, but do not have to include : (1) spillover development into the proposed area of annexation; (2) the city's internal growth; (3) the city's population growth; (4) the city's need for development of land; (5) the need for planning in the proposed annexation area; (6) increased traffic counts in the proposed area; (7) the need to maintain as well as expand the city's tax base; (8) limitations due to the geography and surrounding cities; (9) land remaining vacant within the municipality; (10) environmental influences; (11) the city's need to exercise control over the area proposed to be annexed; and (12) increase in new building activity.

(Emphasis added)

The City of Laurel has seen a continued decline in population for the last forty years. In spite of annexations the population of the City of Laurel has dropped from 27,889 in 1960, to 24,145 in 1970, to 21,897 in 1980, to 18,827 in 1990, to 18,393 in 2000. Such a continued and constant decrease in population indicates that there is no current need for expansion into any area. In the Matter of the Enlargement of the Corporate Boundaries of the City of Gulfport, 627 So. 292, 297 (Miss. 1993).

The significance of the fact is made more obvious by the fact that the City was comprised of 11.4 square miles in 1960 with a population density of 2,446 residents per square mile to 15.8 square miles in 2000 with a density on the low side of 1164 residents per square mile. The decrease in density is another indication that the city did not have a need for expansion.

Mike Slaughter, the City of Laurel's own expert witness on urban planning, recognized the continued decrease in the population of the City, that the construction of new residential units within the City was not enough to say there was a need for expansion, that 72.4% of the land within the City is developed ( Tr. 1947) , that the median age of the residents of the City has increased from 26.9 in 1960 to 34.9 in 1990 (Tr. 1939), that there had been an increase in the number of persons over 50 and beyond child bearing age (Tr. 1877), that while the median age of the residents of the City is 34.9 the age of the residents of the County is not significantly different at 33.6 years of age. (Tr. 1940) He also testified that he did not think the City was choked down and that he believed there was a need for the City to expand from within its current boundaries.

Because of the decreasing population houses have disappeared and the number of available houses within its existing boundaries has increased. There was no evidence that children leaving the homes of their parents were either returning to the City or moving to the Shady Grove area or that individuals were moving into the area to be near the City of Laurel.

It is quite noteworthy that Mr. Slaughter, again the expert witness for the City, testified that he had not made any calculation on the rate of consumption of land within the City during the last ten years. Even more interesting was his testimony that he would have done so if it had been favorable to the City. The failure to do so clearly indicates that the City did not meet its burden of proof of showing that the proposed annexation is reasonable.

Mr. Lusteck, one of the objectors' expert witnesses, testified as to his personal inspections of the city and his observation of a lot of for sale signs. He observed vacant houses and some that needed substantial work. He also observed a lot of for rent signs at apartment complexes, and he testified that the City did not have a need to expand to accommodate any additional housing or for population growth and there was no need for the City to expand. (Tr. 3027-28). He also testified that the housing trend over the past twenty years did not indicate a need for territorial expansion for residential purposes. (Tr. 3031) Clearly, there was no need for the City of Laurel to expand to provide space for residential purposes. This is particularly true here as none of the residents of the Shady Grove requested or wanted to be annexed into the City,

## **SUMMARY OF ARGUMENT**

Section 21-1-27, et seq. Miss. Code Ann., establishes the procedures by and through which municipalities may seek to expand their boundaries by annexing addition territory. The Legislature, by general legislation, has also established a method of creating, financing, maintaining and operating utility districts within the rural areas of this state. Section 19-5- 151, et seq., Miss. Code Ann. House Bill 1730, Local and Private Laws of 1996, did not prohibit the City of Laurel from annexing the Shady Grove Utility District. It merely provided a means of assuring the continuing viability of the district. Section 88, Mississippi Constitution of 1890, did not prohibit the passage of House Bill 1630, Local and Private Laws of 1996, and its enactment was authorized by Sections 89 and 90, Mississippi Constitution of 1890.

The population of the City of Laurel has been declining for forty years, its population has aged, it has lost industry and jobs, it does not have any need for land for developmental purposes, there is no need for planning and zoning in the Shady Grove area, the annexation of the Shady Grove area will not increase the City's tax base as the cost of the annexation will cause the City to lose money, the City has severe problems within its present boundaries on which its assets should be spent for the benefit of its present residents, it has vacant land within its present boundaries for residential or commercial purposes, there are no environmental problems within the Shady Grove area, there is no need for the City to have control over the area, there is no increased building permit activity within the present municipal boundaries, any development that

is occurring within the City is in the downtown area and away from the Shady Grove area, the residents of the Shady Grove area have adequate services, the City does not promise any increase in services, the residents of the Shady Grove area are satisfied with the present situation, the City did not conduct any land use analysis to show the need to expand its boundaries, there was no proof that the residents of the Shady Grove area receive any benefits for which they do not pay taxes because of their proximity, there is little transportational connectors between the City and the Shady Grove area, the annexation of the Shady Grove area would significantly dilute the minority voting strength of the City, none of the residents of the Shady Grove area desire to be annexed into the City, the City has not agreed to provide any services which the residents of the Shady Grove do not already receive from the Board of Supervisors of Jones County , the Shady Grove Water Works Association or the Shady Grove Utility District, and the City failed to show that the residents of the Shady Grove area would receive any benefits for their tax dollars that would result from the annexation.

The City failed to show its costs for providing services to the various areas and failed to meet its burden of proof that the annexation of the Shady Grove area would be reasonable. The City did not give any time lines for providing services, the services the City agreed to provide would only be provided when necessary and economically feasible and there were no guidelines or studies to give any indication when any services would be provided.



The Chancellor addressed each of the indicia reasonableness as mandated by this Court and his decision to allow the annexation of the Pendorff area and the western area and to disallow the annexation of the Sharon and Shady Grove area was not manifestly wrong. The City simply attempted to annex too much, too soon, and without the necessary studies to indicate a need for expansion, the services that would be provided, and how those services would be financed for the various areas, and the Chancellor's decision was not manifestly wrong.

### **ARGUMENT**

Section 12 of House Bill 1760, Local and Private Laws of 1996, authorized the creation of the Shady Grove Utility District and states:

None of the territory lying within the district shall be subject to an Annexation by any city, town or village unless all of the territory of the district is annexed, in which event the city, town or village shall assume the operation and maintenance of the facilities of the district and all obligations of the district with respect to the payment of any outstanding bonds of the district and all other contractual obligations of the district.

The method of establishing processes for the provision of services for the citizens of this state lies with the Legislature. The Legislature has allowed the state government to provide highways, hospitals, courts, agencies such as the Department of Public Safety and the Bureau of Narcotics and others to provide law enforcement protection, agencies to provide for those with needs for food and housing, and other services to numerous to mention. The Legislature has allowed Counties to provide law enforcement services, schools districts, water and sewer services, health services, etc. The Legislature has also authorized municipalities to provide school districts, police

departments and to construct streets, public works, and a wide range of services. The Legislature has also allowed other governmental types of entities to provide services for rural areas such as certificated water districts. The Legislature has also provided for the creation of utility district to provide a wide range of services such as fire protection, water and sewer services, and the Legislature has provided a means of making those governmental entities financially stable.

The Shady Grove Utility District was created to provide various services to a rural area in Jones County. The Legislature allowed for the district's creation and provided a means for it to be sustainable and viable. The Legislature also provided that the Shady Grove Utility District could be annexed by a municipality.

However, if only part of the District was annexed the entire District could be placed in a situation in which it is no longer viable or sustainable. For example, a utility district could be created, bonds could be issued for its infrastructure, and water and sewer lines, pump stations, etc., could be financed and constructed. A municipality could annex the area within the district which was the mostly densely populated, in other words , the area from which the revenues were collected that paid for 90% of the of the financial requirements even though the area only encompassed 10% of the land area. The cost requirement would be unreasonable for the remaining 10% of the population to have to provide for 90% of the cost of financing, maintaining and the operation of the district. The district could no longer function, the investment would be lost, and citizens would be without services.

all opposed the annexation, they already receive the services they need and desire, and the City has not really promised them anything, etc.

Mr. Lusteck also testified that there was a numerical decline within the City in manufacturing, retail trade, service industry and wholesale from 1977 through 1997. (Tr. 3034) The number of wholesale trade businesses declined from 111 to 74 from 1977 to 1997. (Tr. 3035) The number of retail establishments declined in each of five year period and although the number of employees in that category increased for a while the number had started moving back down so that the 1997 number of employees is close to the 1977 number. A decline in the number of jobs is surely another indication that the City did not have any need for expansion.

In fact, the Mayor of the City of Laurel admitted that Masonite had laid off workers recently and that oil companies had moved from Laurel. The Mayor also acknowledged that the number of building permits issued by the City was going down, that over 400 houses had been torn down since 1990.

Mr. Lusteck also testified that the presence of vacant buildings and vacant land and the redevelopment does not support the need for additional land outside the present city boundaries. There was testimony of the development of a Walmart; however, Mr. Lusteck testified that a Walmart can sell 10 times as much as 20 stores and is concentrated on one piece of land so that other land is available for other purposes. Moreover, Walmart and other businesses have moved from their former locations which were closer to the outer boundaries of the City toward the more

central part of the City. Thus, it appears that if the City has a path of growth it is not toward its outer boundaries but toward its downtown.

The evidence indicates that there is sufficient land available for commercial development within the present municipal boundaries. The evidence also showed that no business or other commercial development had sought but was unable to find land suitable within the City. The commercial development which is occurring is along the Interstate and in the Pendorff area.

Mr. Slaughter, the City's expert witness, in addition to recognizing the loss of population, agreed that there had been a loss of employment at Masonite, a loss of major oil and gas companies, tool companies and facilities for oil and gas, loss of the influence of the oil business, all of which had an impact on the City.

Also, there has been a numerical decline in manufacturing, retail trade, service industry and wholesale from 1977 through 1997. (Tr. 3034) The number of wholesale trade businesses declined from 111 to 74 from 1977 to 1997. (Tr. 3035) The number of employees in wholesale decreased from a high of 1000 in 1982 to 587. (Tr. 3035) The number of retail establishments declined in each five year period and although the number of employees in that category increased for a while the number of such employees was moving back down so that the 1997 number is close to the 1977 number.

The City has not only lost population, it has lost jobs, and it has lost businesses. Except for the hope of a potential "tax grab" for which this Court has been critical, what

is the need for expansion? It seems sensible that if there is no need for expansion the remaining indicia need not even be addressed.

With reference to the City of Laurel's need to expand, the Special Chancellor, on remand, found that:

The city of Laurel has been fairly successful in redeveloping the existing downtown and redevelopment improves the situation. The City has taken significant initiatives in taking advantage of programs and projects to improve the overall environment, ambiance and character of the downtown area, and it is more attractive than it was twenty years ago. Pages(s) 2073, 3055 of Trial Transcript. Likewise, the shopping area to the immediate west of downtown is still underdeveloped real estate and is a positive asset for the City. Page(s) 3055 of Trial Transcript. Redevelopment has an impact in attracting adjacent development as shown by small businesses, restraints and other stores surrounding the shopping mall located within the City. Page(s) 3056 of Trial Transcript.

Thus, the City's growth is within its downtown area, and it is reasonable that its focus should be there.

Mr. Brodgon, as a member of the City Council at the time the annexation ordinance was enacted, testified as to developments in the city of Laurel and the availability of vacant land. Page(s) 3398, 3425-3432 of Trial Transcript.

Mr. Lusteck, Shady Grove's expert witness, also testified as to his personal inspection of the City and his observations. Mr. Lusteck testified that the City of Laurel did not have a need to expand to accommodate any additional housing or any population growth and there is not need for territorial expansion by the City. Page(s) 3027-3031 of Trial Transcript.

The testimony of Brodgon and Lusteck, when considered with the fact that 27% of the land within the City is not developed, does not show a need for the expansion of the city of Laurel's municipal boundaries for the purpose of residential or commercial development.

The city contends that it has a need for commercial development. However, the evidence also indicated that there are many businesses within the City's present boundaries have closed and are boarded up, that the downtown area is being revitalized, that other businesses are closing, and that businesses such as Walmart and others have already moved from their former locations which were closer to the outer boundaries of the City toward the more central part of the City. The evidence indicated that there was sufficient land available for commercial development within the present municipal boundaries, that

no business or commercial development had sought and was unable to find suitable land within the City.

There has been a numerical decline in manufacturing, retail trade, and wholesale trade from 1977 through 1997. Page(s) 3034 of the Trial Transcript. The number of employees in wholesale establishments decreased from a high of 1000 in 1982 to 587 in 1997. Page(s) 3035 of the Trial Transcript. The number of retail establishments declined in each five year period and although the number of employees in that category increased for a while the number started moving back down so that the 1997 number of employees is close to the 1997 number. Although the City has an active downtown there are a lot of vacant store fronts, and there is a nice large shopping area near downtown. Page(s) 3037 of the Trial Transcript.

Mr. Lusteck also testified that the presence of vacant buildings and vacant land and the redevelopment of the same is positive for the development point of view, but it does not support the need for additional lands outside the city boundaries. Page(s) 3038, 3036 of the Trial Transcript. While sales volume may increase because of a Walmart, a Walmart can sell ten times as much as twenty stores and is concentrated on one piece of land so that other space can be used for alternative purposes. Page(s) 3038-3039 of Trial Transcript.

There is a lot of territory in the City that could be developed and/or redeveloped, and it could focus on using its assets that are available. Page(s) 3045 of the Trial Transcript/

This factor weighs against the need for annexation.  
(Tr. 107-109)

On remand, the Special Chancellor also found that:

The Shady Grove parcel is served by the Sheriff of Jones County and the parcel has a lower crime rate than the City of Laurel. The City did not deny that the law enforcement was adequate but only testified the City has more officers per square mile. Of course the City is more densely populated than the rural area of Shady Grove and the City should have more officers per square mile in a more densely populated area. The Superintendent of Education for Jones County, the members of the Board of Supervisors representing the area, and several residents of the area testified that they were satisfied with the law enforcement services they receive. Even the school located within the Shady Grove parcel has its own officers who are deputy sheriffs.

The Shady Grove parcel is also served by the volunteer fire department. The area has a class eight rating by the Rating Bureau and the City has a rating of five. Although the city has a slightly better rating than the costs of fire insurance would be less expensive on some

houses, it would be higher for others. Mike Slaughter, the City's expert, testified that as a result of annexation, the costs for insurance would actually increase on houses valued at \$100,000 and above. Page(s) 2315 of Trial Transcript.

Numerous Shady Grove objectors testified that they are satisfied with the fire protection they receive. The City's plan for fire protection in the PAA does not provide municipal level fire protection, whereas, as the City's plan does not provide, within any specific time, the infrastructure to provide fire hydrant service within the PPA. (Tr. 106)

Special Chancellor Thomas found that the traffic count was higher in the Pendorff parcel through which U. S. Highway traverses and the Western parcel through which U.S. Highway 84 traverses than the Shady Grove parcel, and that that factor weighted in favor of the annexation of those areas. However, he found that:

The counts do not clearly indicate a need to annex the Shady Grove parcel. The traffic counts reported for the northern portion of the Shady Grove parcel are less than half the traffic counts reported in the Western parcel. This Special Chancellor finds that the City failed to demonstrate the meaning of the traffic counts of the various parcels relative to other cities in Mississippi and to each other. The failure of the City to brief this factor dictates that this factor should not weigh in favor of the annexation of the Shady Grove parcel. (Tr. 116)

The Special Chancellor found that the need to maintain and expand the City's tax base weighed in favor of annexation.

The Special Chancellor also found that although there are flood plains on the eastern and western boundary, the surrounding areas could be developed and that such factors weigh in favor of annexation; however, he also found that

There is a lack of streets connecting the City to the Shady Grove parcel. That fact when considered with the evidence that the City did not plan on developing any streets in the Shady Grove parcel weakens the effect of this indicium toward the overall reasonableness of the Shady Grove parcel.

(Tr. 117-18)

This Court has indicated that in determining whether an area proposed for annexation is within a municipality's path of growth it will consider (1) spillover development in the proposed area for annexation; (2) the adjacency of the proposed annexation area to the city; (3) limited area available for further expansion (4) interconnection via transportation corridors; (5) increased urban development in the proposed annexation area; (6) geography; and (7) subdivision development. In the Matter of the Extension and Enlargement of the Boundaries of the City of Laurel, 922 So.2d 791 at 798 (Miss. 2006); In the Matter of the Enlargement and Expansion of the Municipal Boundaries of the City of D'Iberville v. The City of Biloxi, 687 So.2d 241 at 253 (Miss. 2004). In the Matter of the Extension of the Boundaries of the City of Winona, 879 So.2d at 977, (Miss. 2004)

There was no proof that the residents of the Shady Grove area moved there from the City or that they moved there in order to receive any benefits that the City might have to offer without paying their share of taxes. There was no proof that the residents shopped in or attended events in the City. In any event, if any did make purchases or shop within the City they would have paid their fair share of sales taxes without the City providing any benefits for them.

Mike Slaughter, the City's planning and annexation expert, testified that Laurel does not need to annex to maintain its financial viability. He also testified that Laurel is not choked down and there is a need to expand from within, and that its sales taxes collected in the City had decreased from 1998 to 1999 and to the year 2000, and the



cost of the annexation does not include the cost of acquiring the debt of the Shady Grove Utility District. Mr. Slaughter also testified that the annexation plan did not include any expenditures for streets or for recreation, and he did not make any recommendation as to how long it would take the City to develop the area it sought to annex.

In determining whether the city has met its burden of proving the existence of health hazards in the area it proposes to annex this Court is not limited to but will consider (1) the potential health hazards from sewage and waste disposal' (2) a large number of septic tanks in the area proposed for annexation; (3) soil conditions which are not conducive to on-site systems; (4) open dumping of garbage; and (5) standing water and sewage. In the Matter of the Extension of the boundaries of the City of Winona, 879 So.2d at 979 (Miss. 2004)

The evidence clearly indicated that Pendorff is densely populated, that there is no sewer service, that it has significant drainage problems, that it is in need of sewer service and that the City already provides it with water service. Mr. Jim Westin, an environmental health program specialist in the waste water program for the State Department of Health, testified that the Pendorff area was in desperate need for a central sewer system. Although the evidence indicated potential health problems in the Pendorff area, the City failed to met its burden of proof as to any need for municipal services to prevent health hazard in the area north of the City or in the Shady Grove area. Mr. Westin testified that the Shady Grove area is mostly rural and there are large pieces of land that can be served by individual on-site wastewater disposal

systems. He also testified that septic tanks are one of the most effective ways of treating sewage and that he did not know of anyone in the area who had gotten sick because of improper treatment of sewage. Residents of the Shady Grove area, including the Superintendent of Education for Jones County, members of the Jones County Board of Supervisors representing the area, and other testified that they knew of no health hazards, that they were satisfied with the service they were receiving, and that there was no evidence that any individual had suffered any illness resulting from the use of septic tanks. This Court has stated that the use of septic tanks has been held to be a rather insignificant in the overall test of reasonableness. City of Southaven v. City of Horn Lake, 630 So.2d 10 (Miss. 1993).

In considering the city's financial ability to make the improvements and provide the services as promised, this Court stated that it "may consider several subfactors to determine if this indicium has been met: (1) the present financial condition of the city; (2) the city's sales tax revenue history; (3) the city's recent equipment purchases; (4) the city's financial plan and department reports proposed for implementing and fiscally carrying out the annexation; (5) the fund balance of the city; (6) the city's bonding capacity; and (7) expected amount of revenue to be received by the city from taxes in the annexed area. In the Matter of the Extension of the Boundaries of the City of Winona, 879 So.2d 890-81, (Miss. 2004)

This Court directed the Special Chancellor in this case to make findings as to the different areas the City proposed to annex. In the Matter of the Extension of the Boundaries of the City of Laurel, 918 So.2d 1269 at 1280 (Miss. 2006). However, the

City refused to reveal the costs of providing services broken down by areas it sought to annex. It refused to or was unable to provide the essential information despite the repeated attempts by the various objectors during the trial below. Because the City had not determined the costs for the separate areas there is a lack of evidence to show the City's financial ability to provide services to Shady Grove or any other area.

The Special Chancellor found that:

However, the Special Chancellor has searched the transcripts for the previous proceedings and cannot find a break down of the cost of implementing Phase I in each parcel in the event that this Special Chancellor should grant a portion and deny the remainder. The Special Chancellor finds that it is the burden of the city of Laurel to provide such a breakdown of the costs of annexation and, therefore this indicium should weight against the annexation of the entire PPA. If the annexation of any combination of the parcels is to be considered in light of the City's financial ability to provide services, this Special Chancellor find that the annexation of the Pendorff and Western parcels is reasonable. The annexation of those two parcels would enable the City to focus its resources towards providing services only in these newly added parcels and would remove the doubt that any portion of the newly added parcels would not be provided services upon completion of Phase II. The Special Chancellor puts these two parcels together because the Western parcel is small in size and the Pendorff parcel is in great need of services that the City has to provide. Additionally, there is little or no opposition of the City's annexation of these areas. (Tr. 123-124)

As indicated elsewhere, the City has needs within its present boundaries which will be costly, sales taxes have decreased, if the City were successful in annexing the Shady Grove area it would have to purchase and pay the existing dept. (Tr. 124)

Demery Grubbs, the City's financial consultant, testified that the City would lose money by annexing Shady Grove, that sales taxes within the City were down, that citizens in Shady Grove would have to pay city taxes and would have to pay more for their car

tags if their areas is annexed, and that he had not even made a recommendation on how the City would pay for services it would have to provide in any area it annexed.

Based on the record, the Special Chancellor determined that:

The annexation of Shady Grove would hamper the City in meeting its need and increase the costs to its current residents. See testimony of Demery Grubbs, the City of Laurel's financial consultant, page(s) 1356 of the Trial Transcript. The lack of thought put into the proposed annexation is evident in the testimony of David Overby, the City of Laurel's Director of Finance and City Clerk until 1999. Page(s) 1418-1419 of the Trial Transcript. David Dill, a CPA that does the city of Laurel's audits testified to the City's millage rates increases from 1995 through 2000. Page(s) 1469 of Trial Transcript.

Based on the preceding discussion, the Special Chancellor finds that this indicium does not weigh in favor of the reasonableness of the Shady Grove parcel because it would weaken the City's ability to follow through with its Phase I and II in the other newly annexed areas. (Tr. 125)

Much like the situation presented in Matter of Extension of the Boundaries of the City of Batesville, 760 So.2d 697 (Miss. 2000), the City of Laurel has divided its proposal into different phases. The first phase will only provide the "backbone" for sewer service which might or might not be provided within five years. The backbone may not provide any benefits to the residents in the areas it proposes to annex, including the Shady Grove area, even in the second phase as all are contingent upon the services being "necessary and economically feasible." The City of Laurel has no plan and no real idea of the costs or how the costs will be paid or when services will be provided. These fact alone justifies a finding that the Special Chancellor was not manifestly wrong in finding that the annexation of the Shady Grove Utility and the entire area referred to as the Shady Grove area is not reasonable, particularly when the

residents like things the way they are, they are satisfied with the services they already have, and not one single resident of the area desired to be annexed.

The Special Chancellor found that the population density of the Pendorff area is 460.6 persons per square mile, that the predominate land use consists of older, low-to-moderate, single family housing and was in the need of planning and zoning. (Tr. 115) He also found that there was an undeniable need to control growth in that area and to control growth around the City's multi-million dollar sports facility.

Those factors indicate a need for annexation in the Pendorff and the western area.

The Special Chancellor also found that:

There is no argument posed by the City for the need for zoning and planning in the Shady Grove area as it is being considered in light of HB 1760. Therefore, based on the lack of evidence and the City's lack of argument, this Special Chancellor finds that this factor weights against the annexation of the Shady Grove parcel.

Moreover, much of the north portion of this parcel is rural, approximately 6.1 square miles of which is agricultural usage. Any land use already existing in the southern portion of this parcel would be grand-fathered into any zoning ordinance. This factor must be considered as it relates to the whole of the Shady Grove parcel and does not see a need for the City of Laurel to exercise its control over the Shady Grove parcel.

(Tr. 115)

Thus, this factor indicates a need for the annexation of the Pendorff and western or sports center area but not the Shady Grove area.

In determining if annexation is reasonable, this Court has considered such factors as: (1) the city's plan to provide first response fire protection; (2) the adequacy of existing fire protection; (3) the city's plan to provide police protection; (4) any

requests for water and sewer services; (5) the city's plan to provide increased solid-waste collection; and (6) use of septic tanks in the PPA; and (7) the population density.

In the Matter of The Enlargement and Extension of the Corporate Limits of the City of Madison, --So.2d---, 2008 WL 879860 (Miss., April 3, 2008).

These factors should be considered in view of this Court's opinions that "municipalities must demonstrate through plans and otherwise that residents of the annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness." In The Matter of the Enlargement and Expansion of the Municipal Boundaries of The City of Jackson v. City of Ridgeland, 912 So.2d 961, 965 (Miss. 2005).

Initially, it should be noted that the City's plan for annexation does not include any expenditure for recreation services or for the construction of new streets. (Tr. 813 of August)

The Shady Grove area is served by the Sheriff of Jones County, and the area has a lower crime rate than the City. Even the City's witnesses had no complaint about the quality of law enforcement that is provided to the area by the Sheriff. The City did not present any evidence to the contrary and did not present any evidence that law enforcement to the area was adequate. The witnesses only testified that the City had more officers per square mile. The Superintendent of Education for Jones County, the members of the Board of Supervisors of Jones County that represent the area, and several residents all testified that they were satisfied with the law enforcement

services they receive. Even the school with the Shady Grove area has its own officers who are deputy sheriffs.

The City of Laurel presented Tim Waterson, its Chief of police, as its expert witness on law enforcement needs. He testified:

Q. All right. Chief, in your expert opinion, based on what you know and the statistics that you've been given and information you have, is there a need-instead of using the word adequate- is there a need for an increased level of law enforcement in the areas proposed to be annexed?

A. With the information that I have on crime rates and other things there. I could not say that it was a definite need.

(Tr. 1158)

Mr. Lusteck testified that the Shady Grove area, in its entirety, is of low density, that it is a rural type area for which rural services are appropriate with little need to have full-time police officers as the Sheriff can respond when needed, and that the reason county government exists is to provide services to rural areas. (Tr. 3072-73)

Mr. Eddie Windham, of the City of Laurel's water production and treatment department (Tr. 1476) testified as follows:

Q. Okay. So it's your understanding that you will continue to use the water system that's already in place in Shady Grove?

A. That's correct.

Q. Have you looked at the system?

A. No, Ma'am.

Q. So, you're assuming that the water system within the area is satisfactory?

A. That's correct.

(Tr. 1490)

The lack of need for water services in the Shady Grove area was made ever more evident by the City of Laurel's witness, Mr. Windham, who also testified as follows:

Q. As far as you know, are there any areas that the City of Laurel seeks to annex that is not now receiving adequate water supply on a community water system?

A. No, sir.

(tr. 1507)

The City attempted to show that the residents of the areas proposed for annexation would receive benefits by having lower fire insurance rates; however, the evidence shows the rates would increase for some, especially those who had a house valued at more than \$100,000.

As stated in In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson, 691 So.2d 978, 984 (Miss. 1997), "When current services are adequate, the fact that annexation may enhance municipal services should not be given much relevance, see City of Columbia, 644 So.2d at 1178, especially as here, the evidence of the likelihood of enhanced services is greatly conflicting." The rational is particularly true as evidenced in the requirement that in addition to considering the twelve indicia of reasonableness there should also be an emphasis of whether residents in the annexed area will receive anything of value in exchange for their tax dollars should annexation be approved.

There are no natural boundaries between the City of Laurel and Shady Grove. However, access is limited by the lack of connecting roads and highways. Significantly,



there are no other municipalities or natural boundaries between the City and any effort to expand its boundaries in any other direction.

The failure of the City of Laurel to provide the necessary municipal services to its own residents is a clear indication that its annexation of the Shady Grove area is not reasonable. Jones Brogdon, a member of the City Council for the City of Laurel from 1993 to 2001 testified as follows:

Q. How would you describe the condition of the sanitary sewer infrastructure, at the time you left office in June of this year?

A. Well, it very poor. Most of our lines are the older country type lines, and you know, they've been there 60 or 70 years. They're just not big enough. Apparently, they not big enough because the, you know, the manholes overflowed.

Q. Did the City ever, during your eight years, secure any kind of study analysis evaluation by a professional engineer of the sanitary sewer system.

A. The only one that I'm familiar with is the one that Charles King did. And, as I remember, he suggested that we spend two to – I want to think it was two to three million dollars a year for the next twenty years to upgrade all the sewer lines in the City of Laurel, and water lines too.

Q. Did the City Council act on any kind of long term financing program to get that done?

A. No.

(Tr. 3407-08)

Mr. Brogdon also testified that he had bought a house on Northwest Drive in the City during the past year that had been there since 1945 and it was still on a septic tank, as was the house of a neighbor on Meadow lane Drive who had to use a septic tank until six months ago. He also testified about people being at a house near Vince Cinema Rental that had appeared before the City Council asking to be hooked to the sanitary sewer system and were told that it was not economically feasible and they are still having to use septic tanks within the City. (Tr. 3409) The City's failure to provide

services was not limited to residential areas as the HiFi Cruising Business and the Furniture Store on North Sixteenth Avenue within the City had to put in septic tanks as there was no sewer line in front of the buildings. (Tr.3409)

Mr. Brogdon testified that within three weeks previous to his testimony "All of those manholes on Fifth Avenue were overflowing." (Tr. 3414) Before that he had received a call to go to Brown Circle where he observed "A manhole that was overflowing with sewage running out all over the street and going into a culvert down into the creek." (Tr. 3414) On his way back home he observed a "water leak over at Lee Street and Sixteenth Avenue." The next day the manhole on Bear Creek was still overflowing. On the third day he returned to Bear Creek and observed raw sewage and toilet tissue coming out of the manhole and going down the street.

Mr. Brogdon also testified that he had several complaints as a city council member that the city water lines were too small to put out a fire. (Tr. 3419) Many witnesses testified as to the services not provided within the City's current boundaries. For example, Willus Horne resides at 20 Camellia Drive just north of the City. He formerly lived on Audubon Drive and was annexed into the City in 1960 the last large annexation of the City. He lived in one house for ten years and then five years in a second house which was one block away and which was also part of the 1960 annexation. He lived in the first house for 10 years and never received services. He moved into the second house in 1980. The City did not provide water to either house until approximately 1973 and never provided sewer service while he lived there, and he had to put in his own septic tank. He had gone to the Mayor of several occasions in an

attempt to get the services and was told "this is the way its going to be. I'd just kind of have to live with it."

The record also showed that the City had not constructed a new fire station in north Laurel even though that recommendation had been made years ago. In fact, the fire station on Twenty Sixth Street had gotten into such disrepair that the City sold land adjoining it and used the money for the sale to make needed repairs to try to bring the station up to standards, and the City had even closed the fire station on Thirteenth Avenue without building a new one. (Tr. 3428-29)

The City's poor performance within its present boundaries relative to fire protection is also of great concern. Mr. Larry Clark of the Mississippi State Rating Bureau testified that "there are some deficiency points assigned to the City of laurel for inadequate hydrants." (Tr. 933) His testimony also indicated a need for the city to improve its own infrastructure before any annexation. He testified:

Q. And back in 1994, when you did your immediately, previous study of the city, they didn't do as well in that 1994 evaluation. Did they?

A. Let's see, 94 would have been when they actually technically lost a certification.

Q. That's right. What happened in 1994?

A. We conducted a survey, and the retrogression was found in sever area. We then addressed the letter to, I believe, the current mayor had just come on board. But anyway, we sent a letter to them, and told them of our findings, and asked for a time frame of when they could get these things completed. It was a fairly large improvements that were going to have to be done.

Q. Okay;

A. They did send us back a letter giving us a time frame. Seems like they asked for five years and we gave them thee. I think three and a half.

Q. Months or years?

A. No, no. Years. No, no. there was too much to have to be done.

(Tr. 948)

Mr. Carr also testified that the City of Laurel was required to provide auxiliary power to their water treatment plant, it had to bring it staffing up to three per engine, it had to purchase an aerial truck, gate valves and hydrants, and even in 1999 there was recommendation of continuing and ongoing process of fire hydrant replacement in the city. (Tr. 951) The City of Laurel states that it will use a tanker to carry water to the annexed areas while Shady Grove already has multiple tankers. Mr. Carr testified:

Q. Is that giving them more than they would get with multiple tankers that the volunteer fire departments have?

A. No. No, it'd be less. If they're using multiple tanker, there then establishing a constant flow of water.

The City of Laurel used Tim Waterson, its Chief of Police, as its expert witness on law enforcement needs. He testified:

Q. All right. Chief, in your expert opinion, based on what you know and the statistics that you've been given and the information that you have, is there a need- instead of using the word adequate- is there a need for an increased level of law enforcement in the areas proposed to be annexed?

A. With the information that I have on crime rates and other things there, I could not say that it was a definite need.  
(Tr. 1158).

Demery Grubbs testified as a financial consultant on behalf of the City of Laurel.

He testified as follows:

Q. Is there any potential for the city of Laurel for a financial gain by taking over the Shady Grove utility District?

A. There's actually a loss of revenue in terms of the Shady Grove Utility District because the rates would be reduced by the city level. So overall, there would be a loss to the city on the utilities collected off Shady Grove. So there's not a positive gain into that city, no ma'am.  
(Tr. 1335)

Mr. Lunardini, a consulting engineer, testified that under the City's plan 72.6% of the residents of the area would not be receiving municipal level water services after five years. (Tr. 2498) He also testified that it would cost between 36.6 and 59 million dollars for the city to provide sewer services in the areas it proposed to annex. (Tr. 2949) He also testified that the City would be providing sewer services to only 20% of the residents within five years. (Tr. 2951) He also testified that there was nothing in the City's services and facilities plan as to when 69% of the citizens would receive service. (Tr. 2951) He also testified that there could be additional costs for upgrading the City's treatment plant facilities if the entire area was annexed. (Tr. 2952)

He also testified that the City would have to increase its rates by 32% for residential users and 36% for commercial users, and the effect would be that the customers now in the City would have to subsidize those in the annexation area. (Tr. 2958)

The City has only stated a plan for providing a backbone for future services. It has failed to make a commitment to extend all of its municipal services unless the area develops and it becomes economically feasible, a practice questioned in In Re the Extension of the Boundaries of the City of Batesville, 760 So.2d 697 (Miss. 2000).

The economic and the personal impact on the residents of the Shady Grove area is as important as the City's need to grow. The City of Laurel's proposed annexation must be reviewed from the perspective of the landowner as well as the City. In the Matter of the Extension of the Boundaries of Columbus, 644 So.2d 1168, 1172 (Miss. 1994)

And, as stated in In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson, 691 So.2d 978 at 984 (Miss. 1977), "When current services are adequate, the fact that annexation may enhance municipal services should not be given much relevance, see *City of Columbus*, 644 So.2d at 1178, especially as here, where the evidence of the likelihood of enhanced services is greatly conflicting."

Thus, the annexation of Shady Grove would hamper the City of Laurel in meeting its needs and would increase the costs to its current residents. Mr. Grubbs testified that he did not find a time limit on Phase II (Tr. 1337) and that Phase II might not ever happen if there was no development. (Tr. 1337-1338) The citizens in the area would pay ad valorem taxes to the City if the annexation is approved. (1342) And, even if the improvements ever occur in Shady Grove they will not occur until Phase II (Tr. 1342), however, the residents would have to begin paying city taxes. Mr. Grubbs had not broken down any figures as to the cost for providing services to the different areas the City is attempting to annex. (Tr. 1349) Mr. Grubbs also testified that he had not made a recommendation to the City as to how the City should pay for the services it proposes. (Tr. 1353-54) Mr. Grubbs also testified that he had not been given any input as to what was determined to be "economically feasible." (Tr. 1380) Mr. Grubbs also testified that if the city has a present need for expenditures the City would have to pay for them, but he did not take those matters into consideration in determining the financial feasibility of the proposed annexation.

The dilution of minority voting strength is of such import that in Matter of Extension of the Boundaries of the City of Columbus, 644 So.2d 1168 (Miss. 1994), this

Court stated: "Furthermore, in those cases where voting strength is truly in dispute, the litigants are entitled to a full scale constitutional review . The manifest error standard used for evaluating reasonableness is far too lax for such inquiries."

The case now before this Court indicates a significant problem, and the issue was raised by an affected party.

The City Council for the City of Laurel has gone from 4 white and 3 black to 5 black and 2 white members. Joe Lusteck testified that as a result of the proposed annexation the black population will decrease from 55.08% to 46.96%. The minority voting age population will be reduced to 40.85%. Mr. Lusteck, whose name appears as an expert witness throughout the cases decided by this Court, testified that this is the first time he has seen an annexation that has such a dilution upon the black voting strength. Mr. James Jones, an African-American and former president of the City Council for the City of Laurel and the President of the NAACP testified that it takes greater than 65% to 70% minority vote to be elected, (Tr. 2758) and that if the City's proposed annexation is successful Blacks will not be able to hold office for long.

Furthermore, Mr. Jones Brogdon, a member of the City Council for the City of Laurel when this annexation began, testified that a purpose of the annexation was to secure more whites into the City. Mr. Brogdon testified as follows:

Q. Let's go now, specifically, to the beginning of your memory of annexation as a City Council member, when do you first remember the issue of annexation coming before the City Council?

A. It was shortly after I was elected in 1993. It could have been six months or a year after that. There was talk about the school system. That we needed more whites in the school system. And that was the main reason, if I remember it, was to annex to get more whites into the City of Laurel.

(Tr. 3439-40).

He also testified that:

So by going to where they did, that would-actually, what that would have done is put the whites back in Laurel- back in the majority; because I think there's about 5 to 600 blacks out there and about 2500 whites and that would have put Laurel back into a white majority if we went out to that point.

(Tr. 3442)

Q. So its your understanding that the 1997 geographical area that was presented to you, as the study area, had the Shady Grove and Sharon area as well as Highway 84 and Pendorff; that the impact of that, from a voting standpoint, would have been to shift the majority from African-American to white.

A. That's exactly right. That was what the study shows.

(Tr. 3443)

Mr. Lewis Goins, a principal with the Jones County School District and an African-American (Tr. 2382), testified as to the impact the proposed annexation would have on the black voting strength and its impact on the City of Laurel. He testified:

My personal opinion, I think that's one of the underlying affects- underlying reasons why laurel is annexing would cause to dilute the minority vote within the city. As you know, that as we look at all the stuff that's across the country, that most of the inner city you have what we used to call the white flight or the whites moving to the county areas and leaving behind a majority of Black Americans. I do believe that Laurel is looking further down the road and trying to block this effort. And I think that Laurel is on the verge of -as I think, if I'm not wrong, as we see it now, there's five out of the Councilmen Afro-American. I think that if laurel is allowed to go through with this annexation and that their intent is to draw more of the majority population back into the city limits to dilute that vote to prevent this effort that we see that's happening all across the United States where you will have the white Americans moving to the suburbs, leaving behind the majority of the Black population. At this point, then the minority take over the city government. And I think somebody has studied this issue. Somebody foreseen what going to occur, and I think this is an attempt to block that. That's my feeling, my opinion. That's my feelings, my opinion. That's one of the issues.



(Tr. 2387-88)

Although this Court requires an analysis of the twelve indicia of reasonableness, it has consistently held that the twelve indicia are not to be treated as twelve distinctive tests, rather, the Chancellor must weigh the totality of the circumstances, using the twelve indicia of reasonableness only as a guide. In the Matter of the Extension of the Boundaries of the City of Pearl, 908 so.2d 728 at 733 (Miss. 2005).

“Parties seeking annexation have the burden of proving to the Chancellor the reasonableness of their case.” In the Matter of the Extension of the Boundaries of the City of Laurel, 922 So.2d 791 at 796 (Miss. 2006). It is submitted that the City of Laurel did not meet its burden of proof or present evidence to justify a need for it to expand its boundaries for residential or commercial development to any of the four separate parcels which it sought to annex. However, the neither the residents of Pendorff, nor anyone on their behalf, or the Western area objected to the annexation of those parcels, and no one presented any evidence in opposition to the annexation of those parcels. Further, the evidence clearly showed that, unlike any other area, the Pendorff parcel is densely populated, it does not have a sewer service which it requires, it has significant drainage problems which must be addressed, it is in severe need of municipal services, and the City already provides it with water services. The Chancellor’s decision to allow the annexation of those areas is not before this Court.

Many areas within the present boundaries of the City of Laurel are in need of additional services which will be costly for the City. Providing services to the Pendorff area will be even more costly. And, the annexation of the Shady Grove area would

hamper the City's need to provide services within its existing boundaries, and its ability to provide services in the Pendorff and Western area.

The residents of the Shady Grove area, the Board of Supervision for Jones County, the Jones County School Board, the Shady Grove Water Association, the Shady Grove Utility District and all the individual objectors oppose the annexation of the Shady Grove area. The residents of that area get the services they want and need, and the City promises them only a backbone of services which they might or might not ever receive. And, the City could not even state what its costs would be to provide those services. The City does not need additional land for development, its population is decreasing, it is losing jobs, its tax sales are down, and the annexation of the Shady Grove area would result in a greater loss of revenues. The City simply tried to annex too much. The annexation of the Pendorff and the Western area is all that the City can handle at this time.

The Chancellor was not manifestly wrong in finding the Pendorff should be annexed, and he was not manifestly wrong in determining it was unreasonable to allow the annexation of the Shady Grove area. Two Chancellors have now reviewed this matter and both have found that the annexation of the Shady Grove area is not proper and does not meet the standard of reasonableness required by this Court.

Chancellor Thomas reviewed the evidence and addressed all indicia as established by this Court to determine whether the proposed annexation by the City of Laurel. In his well thought out analysis he found that it was reasonable for the City to annex the Western area and the Pendorff area. He also found that:

The Special Chancellor finds the annexation of the Shady Grove and the Sharon parcels to be unreasonable. In balancing all the indicia, the clear weight of evidence in regard to the Need for Expansion, Path of Growth, Financial ability, and Need for Municipal Services indicia leads this court to its conclusion in regard to the Shady Grove parcel. There is a lack of streets connecting the City to the Shady Grove parcel. That fact when considered with the evidence that the City did not plan on developing any streets in the Shady Grove parcel weakens the effect of this indicium of overall reasonableness of the annexation of the Shady Grove parcel.  
(Tr. 39)

It is respectfully submitted that the decision of Special Chancellor Thomas should be affirmed.

#### **CONCLUSION**

The enactment of House Bill 1730 and its application in this case did not violate Section 88, Mississippi Constitution of 1890. The Chancellor applied the correct test to determine the reasonableness of the annexation, his finding and ruling was not manifestly wrong and should be affirmed.



Tim Hancock  
Attorney for Shady Grove Utility District,  
Shady Grove Water Association,  
Jones County School District, And  
Individual Objectors

Tim Hancock  
P.O. Box 963  
Jackson, MS 39205  
Telephone: 601-942-7213  
MSB# 8328

**CERTIFICATE OF SERVICE**

I, Tim Hancock, attorney for the Shady Grove Utility District, the Shady Grove Water Association, the Jones County School District, and individual objectors, do hereby certify that I have this day caused to be mailed, postage prepaid, a true and correct copy of the above Brief of the Shady Grove Utility District, the Shady Grove Water Association, the Jones County School District, and various individual objectors to the following:

Honorable Charles Thomas  
Senior Status Judge  
P.O. Box 299  
Pontotoc, Mississippi 38863-0299

Norman Gene Hortman, Esq.  
P. O. Drawer 1409  
Laurel, Mississippi 38441-1409

Jerry L. Mills, Esq.  
800 Avery Blvd North  
Suite 101  
Ridgeland, Mississippi 39157

Joey Fillingane, Jr., Esq.  
109 Fairfield Drive, Suite 109  
Hattiesburg, Mississippi 39402

Attorney General Jim Hood  
Office of the Attorney General  
P.O. Box 220  
Jackson, Mississippi 39205-0220

Robert Sullivan, Esq.  
P.O. Box 45  
Laurel, Mississippi 39441-0045

2007-AN-01547  
SGT-E

This is the 30<sup>th</sup> day of May, 2008.

Tim Hancock  
Tim Hancock

Tim Hancock  
P.O. Box 963  
Jackson, Mississippi 39205  
Tel: 601-942-7213  
MSB# [REDACTED]