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Supreme Court of Texas.
City of Rockwall, Texas, Petitioner,
v.
Vester T. Hughes, as Sole Independent Executor of the Estate of W.W. Caruth,
Deceased, Respondent.
No. 05-0126.

January 25, 2006

Appearances:
Terry D. Morgan, Terry Morgan & Associates, P.C., Dallas TX, for petitioner.
R. Matthew Molash, Hughes & Luce, L.L.P., Dallas, TX, for respondent.

Before:

Phil Johnson, Chief Justice Wallace B. Jefferson, Dale Wainwright, David M. Medina, and Paul W. Green, Justices.

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JUSTICE: Be seated, please. The Court is ready to hear argue-- the argument in 05-0126. The City of Rockwall versus Vester T. Hughes.
COURT MARSHALL: May it please the Court. Mr. Terry Morgan will present argument for petitioner. Petitioner have their five minutes for rebuttal.

ORAL ARGUMENT OF TERRY D. MORGAN ON BEHALF OF THE PETITIONER

MR. MORGAN: May it please the Court. The Hughes opinion jeopardizes the planning of growth of every homerule city that even intends to expand its boundaries through annexation of vacant land. And it does solved of two ways. The first way is it, it undoes the statutory compromise that was put into Senate Bill 89 in order-- then allows cities to annexed vacant land as long as they are accumulated in 100 occupied parcels. Effectively, to the method of injunction and reading into the statutory provision in subsection (i), a right to unjoin the annexation depending arbitration. It effectively creates developers remedy. The developers remedy, because the developers achieved beneficiary of this section, which is nearly wrong as to, to legal aspects. The second way in which the Hughes opinion jeopardizes the planned growth of cities is that, it removes the protection of the

quo warranto doctrine in a circumstance in which the policy under opinions of that doctrine are called into question. And the opinion has to renounce that the arbitration provision in subsection (i) effectively is a prior to right of action that allows a party to attack intercession proceedings on procedural ground. And yet the opinion did so without examining the fact that there is no provision for state and arbitration provision. And secondly, without examining the consequences of multiple arbitration proceedings that are easily filed that in fact in this case, there are two petitions to arbitrate. What are result is, is that any landowner, when it cannot possibly qualify as his applicant for inclusion in a, in a three year planning process, can't the real annexation what it this it's property rights. And does avoids the cities land used planning although the-- and we submit that given the statutory context the legislature could not intimidate that result.

JUSTICE: Does the city of Rockwall have a three year planning process, annexation process?

MR. MORGAN: The, the city of Rockwall has a plan that was adapted in 1999, your Honor. And basically, it states the city will not engaged in annexations that require a three year planning process.

JUSTICE: Okay, so they enough?

MR. MORGAN: Well, it has it-- it has that state and it has no proposal to annex occupied parcels. That's correct.

JUSTICE: Is it true that-- as the in this plead tells us that are they abide us or any city?

MR. MORGAN: Well, I can't answer that the heart of anybody is-- I'm aware of some cities. In fact, there are proceeding with three year annexation plans debate, so I don't know whether that statement is correct. I know that there are cities that don't have annexed Rockwall was not that

JUSTICE: What is, what is the objection to the three year-- the city's objection to the three year process?

MR. MORGAN: Well, that the-- it does any-- I don't think the fact that could be adapted in 1999 plan say, they would not proceed with a occupied parcel and annexations in the case that they never will, but the primary reason is the difference in purpose. And when you have occupied territory particular in the area that contains a hundred occupied parcels. The services padded the develop has already there by definition. It is of less the interest and a less urgency to the city to annexed such property because it's already served wouldn't be houses that if they wont sue with or either or accept the services in some regard. Quite a different concern arises when is the vacant land annexation because that develop of pattern has not yet occurred. And for that reason the cities focus has been when it doesn't works to annexed vacant land and not populated areas. It doesn't mean, it won't do so in the future though.

JUSTICE: But what is the objection to the process, you just takes too much time or -

MR. MORGAN: Well, I think ...

JUSTICE: - have changed of positions as well its opinion.

MR. MORGAN: The, the, the city's chief objecting in annexing is, is stated in that plan. He's really to protect its own planning process. At-- I say, your Honor, it wouldn't-- when a-- you have occupied territory that you've looking at. Now, there are many objections in terms of residence but the development pattern itself has been established. And the authorities are already there, so there's no urgency could adapt those particular tracts of land and of course citizens frequently object any annexations. And so for that reason,

there is no-- again, there is no urgency, there is an urgency. However, with vacant land annexations because of the statutory framework in which cities find themselves. This ...

JUSTICE: Do you, do you agree with the Jimenez colleagues statement in their brief that the-- as file version of Senate Bill 89 would've significantly restricted the annexation authority [inaudible].

MR. MORGAN: I do believe, that's correct, your Honor. Since, that it requires another. Now, three year planning process on the one set of annexations.

JUSTICE: And as it worked out, in your view it really doesn't change very much at all Senate Bill 89.

MR. MORGAN: Well, not. I, I would not agree, your Honor. I think that the, the Senate Bill 89 establishes two separate tracts of annexation [inaudible] ...

JUSTICE: Well, which not used?

MR. MORGAN: Pardon.

JUSTICE: One of which is never used?

MR. MORGAN: Well, if you don't used them, that's true. I guess it would not be affected by a process that it doesn't intend to used -

JUSTICE: Right.

MR. MORGAN: - at least in a short.

JUSTICE: Well, but-- I, I, I guess my question is. It seems to suggest that Senate Bill 89 was really going to turn the world around. And unfortunately that didn't happen and so a lot of compromise was worked out. I'm just kind of paraphrasing here but I think that's fair. And in the end, we have a statute that really has not affected the process at all.

MR. MORGAN: Well, it certainly has affected the process, I believe in, in, in one of way with respect to the process, has adjudicate on an arbitration request.

JUSTICE: Well, but I mean if you will not though. I think he did it all, seems like ...

MR. MORGAN: Those cities that choose not to annexed occupied territory. Your Honor, they would not be affected significantly by the passage of Senate Bill 89.

JUSTICE: Yeah, that's correct. Why would they pass a bill like ...

MR. MORGAN: Well, because there's a lot of areas that would be affected. Lot of areas that may not-- I believe that's reflected in the Chief [inaudible] brief as well as its some brief the authorities that have been cited. Is the principal focused of the legislature was the annexation of occupied subject issues, that's how we got a hundred contract rule. You know, the hundred-- this hundred contract rule is not a low bar. If the legislature was still concerned about putting all annexations as the a-- state suggestion into a three year planning process. It wouldn't set the bar a hundred parcels that are occupied that's pretty high. And that reflects the legislative intent that this occupied subdivisions which were being annexed. In fact, does the legislative history of-- or that's the background of [inaudible]. The Senate Bill 89 that wasn't concerned those, those particular annexations are on a much good retract. Some cities will be affected, others will not. The-- and I think the bright line component of city-- subsection (h), (h)(1) in particular is a very clear move. It has its own procedures, all of subsection (h) has its own procedures. Much of the [inaudible] is actually it's a premise on the idea that somehow (h)(1) is an exception to the statutory scheme. Not once in the statute is the word, exception views. Does subsection (h), states in its opening premise is the procedure of a three year plan do not apply to

the following types of annexations. And the very first from listing is one that has a standard right included in it. They met a hundred unit rule, it's an easy rule to follow. It's a rule in fact that only requires as counting occupied parcels. There's that-- if you looked at under sub chapter C-1, there's an-- the procedure that actually refers back to (h)(1). It is clearly intended that annexations will proceed, they can land annexations. It may proceed as under the prior statute and it may proceed expeditiously, and it's not by accident. It's not by accident because if you looked at the background of this statute and look at the statutory framework, the city of Rockwall had a plan for the period of this annexed. It was a rural residential development plan in which the density was two units a day. The state proposed a development of 40 units a day. The background of state law, essentially is that a city cannot make-- it may plan in its extra territory jurisdiction where its future territory but it may not implement that plan until the land is within the city. We not [inaudible] regulations. And consequently, the city has a very vital interest in annexing expeditions before a land used padded as established. And also before investing property rights.

JUSTICE: That is right that when the landowner is given notification that the city intends to proceed under (h)(1). Then, the landowner can request the three year annexation plan, and if there's no action on that can seek the arbitration. Is that the way that statute [inaudible]?

MR. MORGAN: Well, the statute has subsection (i), your Honor. It does allow in a certain limited circumstances of property owners if he falls within narrow confines in the ways it's defined. The first issue say, a two step process request that his land be included or rather at the area be included in a three year plan and fail on that when the city takes no action. Then, it can request arbitration as appeared in this case. And in this case ...

JUSTICE: When-- when will it-- when would that ever occurs? It's hard to see what have what ever occur.

MR. MORGAN: I'm sorry, your Honor ...

JUSTICE: Was ever-- When would I ever-- when would the arbitration of sentence in subparagraph 5, when would that ever be implemented?

MR. MORGAN: Well, under these terms ...

JUSTICE: If the city were stupid -

MR. MORGAN: Pardon.

JUSTICE: If the city were stupid and just sat on it, but if they can deny ...

MR. MORGAN: Well, if-- you have to say-- understand it out. I believe with Judge in, in view of the time frames, which are very short. A city can complete the annexation under subchapter C-1 in 60 days. There's no procedure for doing so two hearings time between the last hearing. The time of first hearing at the ordinance but it's a quick procedure if a, if a land owner asks for you know, between two and three year plan the city seeks on. That remedy or rather at any consideration of whether it should be in a three year plan is lost. And there are other Christians in the statute for dilatory dilatory conduct.

JUSTICE: But why would a-- why would a city ever just not act on it when it could deny the on the Board of Arbitration which he done more.

MR. MORGAN: Well, I think given the time frames on how narrow they-- or how tight they are. I believe the city may-- might simply just have not noticed before took its time in between Counsel meetings

to decide it. I mean, that there is a-- there's a some reality is here as a practical way. All this the legislature should be aware of. Counsels can't ...

JUSTICE: [inaudible] is even if that happened. Oh, it seems to me a kind of unlikely but if it did, and the city just didn't notice it was erred and didn't act on it. And then, the city could still just ignore the request for arbitration, unless there was a quo warranto action to enforced it.

MR. MORGAN: It could it at the-- and we have to take that position, we're not denied that this remedy is essentially a matter that, that-- of agreement between the city, but the city has a pretty good reason for doing so. And that is the quo warrant-- the quo warranto form itself. The assumption of, of the Court of Appeals was a quo warranto is completely ineffective remedy and that the legislature carved this exception out to, to a cargo's procedure how to get around it, but that is not necessarily so. I think the city, you know, quo warranto could be brought not only by the Attorney-General but by every District Attorney of every county in Texas. I think it's a real restraint on cities actually just ignoring a statutory procedure.

JUSTICE: Does 43.052 give the private landowner any right at any time under any circumstances to suit for an order compelling arbitration?

MR. MORGAN: No, it doesn't. And, and it, it has the, the, the property owners essentially-- Well, let, let me put it differently. The Court of Appeals doesn't addressed it. The state argues that there's absolutely no burden of any property owner to show a title [inaudible] before the city that it qualifies the-- the, the actual criteria in subsection (i) does the sentence that starts of that section says, if the city proposes to annexed separately an area that essentially should've been annexed under (h) under the three year plan. Then, a landowner may proceed to request it ironically if, if the legislature were still concerned about abused of these provisions so when it created a procedures to any run, around the quo warranto procedure in general under the doctrine. Why did you have not at least give those property owners a, a right who would be-- perhaps the good example is the easiest way to answer them. If you have-- if a city chooses to annex 500 parcels in one annexation. Expeditiously, without going through (h3), there is none a remedy under subsection (i). That property [inaudible] ...

JUSTICE: So even when the city feels to act one way or the other they set on it for whatever reason. There's still no private right of action to compel arbitration.

MR. MORGAN: Well, that's correct, Judge. We take that, we take that position. It's-- I have to say that there's no comfortable, I am completely satisfactory interpretations of the statute. You have to look at it against the backdrop of the clear legislative intent to give the cities the right to expeditiously annex land. And secondly, the backdrop quo warranto that the absence of the state provision in the-- in subsection (i) is it, it had to be read by the Court of Appeals in contrast. For example to the state provision that would be-- this found in 43.0564. I think suggest strongly that the legislature did not intend the statute to be an effective alternative for one that could be enforced and compelled to arbitration.

JUSTICE: And the procedural substantive [inaudible] of the briefs. I think, what you think the first sentence of paragraph (i) is procedural too.

MR. MORGAN: I certainly do. And, and I think it ...

JUSTICE: But it kind of-- it kind of looks like it's limiting a municipalities power, but then exist, no reason exist which addressing my question on limitation.

MR. MORGAN: Well, it, it does ...

JUSTICE: It means these pleads of arguable thing.

MR. MORGAN: It's certainly in this article, your Honor. In three courts we found that the entire section and then a challenge to whether (h)(1) operates, is in fact at least that occurs, once the annexation it couldn't has to be brought by quo warranto and that's, that's reasonable as well, because a whole focus of the three year planning process is assured as plan. I'll examine why are things service planning violations of the service plan and procedure of territory. This is a procedure to effective procedure. My time is up, Judge Green.

JUSTICE: Thank you, Counsel. The Court is ready to hear argument from the respondent.

ORAL ARGUMENT OF R. MATTHEW MOLASH ON BEHALF OF THE RESPONDENT

COURT MARSHALL: May it please the Court. Mr. Matthew Molash will present argument for the respondent.

MR. MOLASH: May it please the Court. The provision in 43.052 (i) is the landowner. The petitioner specific rely in request arbitration with the city is not jeopardized the city's planning process.

JUSTICE: Well, it does enforced it into a three year plan.

MR. MOLASH: If he can't force it into a three year plan. [inaudible] ...

JUSTICE: Would it always, but throw it in a three year-- I mean is there-- unless you just wanted annexation, you could always essentially forced it in [inaudible] force it in to three year plan.

MR. MOLASH: Justice [inaudible], We'd have the right as the legislature contemplated to ask an arbitrator to determine the merits of within the city was trying to search on the requirement of a three year plan. The arbitrator could decide-- No, their not and go ahead and finish the annexation.

JUSTICE: But I was looking it practically. I mean, their concern that there could be multiple request for arbitration is, is [inaudible] and, and it seems like to me.

MR. MOLASH: There is a possibility of that. I don't think it's the reality, it's very practical because of the short time frame that is involved with the (h)(1) annexation. And also, because of the co-shifting provision that the legislature included the 43.052 (i). What the legislature did was, they started out with the statute that was proposed that everything at be in three year plan. They started out in Senate Bill 89, with-- they're not be in (h)(1) exception. Then, after some committing work, there was an (h)(1) exception added. And then on the floor of the house there were amendments to that, that would've eliminated the (h)(1) exception altogether again. And said, if you're not in a three year plan, you have to get the consent of the landowners 50 percent of landowners that lived in that area, to agree the annexation that then went to a joint committee with very unusual process, and it came out with the current statute. What the current statute represents is a balance that the legislature struck and the important part of that balance is the check on the cities abused of the (h)(1) exception that is entrusted, granted to the landowners.

JUSTICE: We'll see if that's balance part of that message because it seems to me the petitioner's position is that I just made nothing less and so he wants to gain something which it never would because it's not in [inaudible] but then it seems like the respondent position is-- oh, yes, we can do this, but the concerns that have gone into quo warranto limitations are still there and as a practical matter. Although, not as legal one but it's a practical matter. I just forces this city stand three year plan.

MR. MOLASH: Well, those same concerns in the underlying, underlying the [inaudible] oral opinion for example, could exist in some circumstances but the legislature is presumption of understood that and to made the decision but they are going to provide this check to the landowners. They have decided that in this instance the way the statute is drafted, those are acceptable possible consequences. There might be a situation where there is more than arbitration. There might not be, but the legislature decided, "We're going to let the landowners keeps the cities to us, we're going to forced them to plan," and one of the major reasons there was not likely to be a serial set of arbitrations, two reasons: one, the short time frame in which this arbitration can occur; and two, the risk that the person that comes second will have to cause the arbitration to work against him. And that's a significant the turn to arbitration after arbitration after arbitration by different land owners, that's the lack on the balance Justice [inaudible] because the legislature had to look at all this and say, "Okay, we're not going to require the three year plan, but I'm little worried about these cities, we don't want them certain venue these requirements, we're going to give the landowners to leave their chance to have some rights," and it's a departure from part of law but it's choice that the legislature made and it's a balance of the legislature struck in order to give these landowners the, the right to ask the City to plan, but they shouldn't plan. And that's all we're asking for in this case is that the court recognized that a landowners can leaves in an area, it's in the city's ETJ has a right when threatened with involuntary annexation they looked at that and say, "Wait, you're not doing the right thing, you are annexing everything under (h)(1), you've never had a three year plan, you're ranging the areas in way that you don't have to argue, you don't have to use it, and we want to take that to an arbitrator," and we followed the procedures, we should have the right to arbitrate that thing.

JUSTICE: It is the arbitration about whether it should go in the plan or not?

MR. MOLASH: Yes.

JUSTICE: And that's it?

MR. MOLASH: Yes.

JUSTICE: But I, I, I guess when I think of balance this-- I think of supplemental and this seems to me that it's going to be tilted in more or the other, pretty severely.

MR. MOLASH: And I thought actually the same reaction when thinking about this argument that just to said, the balance might not be the right word, because the balance involves equal. The legislature doesn't always have to make something equal between the parties. What they do is they strike the correct position. They decide, this are the rights we're going to give to the cities, these are the rights we're going to give to the landowners, these are the obligations we're going to put on the city, and these are the obligations that we're going to allow a landowner to enforce. There is many things in the annexation statute that the land owners cannot enforced, there's still a place for

Alexander Oil, and from the quo warranto doctrine. If there is a failure of notice for example or something along those lines that Alexander Oil was still apply. We are only asking that the court recognize the legislature in a various specific right in 43.052(i). They gave a specific rights to specific person, a landowner or a resident that lives in the area is to be annexed under (h)(1). What they said was you can arbitrate and they adapted a procedure to make that arbitration very quick and very efficient. They adapted the procedures from another section then say, the parties after trial try to agree on their arbitrator and if they can't will be appointed in about 11 days. He-- the arbitrator, he or she has to then set a hearing on this issue within ten days. And I believe the intent was that this arbitration would have occur within the 60 or 90 day periods that cities used to involved through an annexed land under (h)(1). If the cities would agree-- you know, agree that they are obligated to arbitrate, these could've all been done. There have been no need for any kind of relief from the court with respect to this matter. And we would have been either annexed under (h)(1) or they would've have pass a three year plan.

JUSTICE: I don't supposing -

MR. MOLASH: [inaudible] ...

JUSTICE: - I don't supposing anybody knows why arbitration rather than go in the court to get resolved.

MR. MOLASH: Well, in, in a legislative history there's a lot of discretion about the issue of arbitration. It just considered to be very important to the overall bill that was passed by the legislature that was a key provision. If you look at some of the comments the legislatures is made and the arbitration is prickled throughout the statute. There are other places where the legislature selected arbitration. For this particular situation the annexation generally, as the preferred remedy that either the landowners or someone else gets to used. They're stood for other places in the statute where appears in this bill.

JUSTICE: In resolving disputes with the cities?

MR. MOLASH: In resolving disputes over annexation related matters with the cities.

JUSTICE: Counsel, if, if these provisions is not in about arbitration and the city is annexing using the quick method, regardless of whether we take the statute or not and they give notice that they're going to annex. The landowner as in this provision, we just take this one out, if the landowner can prove this, I guess, is that correct?

MR. MOLASH: If, if 43.052(i) is not in the statute ...

JUSTICE: About the request for arbitration.

MR. MOLASH: If there is no right to request that. All they can do is complain and hope that the the city won't change their mind.

JUSTICE: Okay. But the process is entirely within the city's hands and the city-- and they would wrote a letter to the city or series of letters and the city can just put them in the file and ignore them and the process complete itself, is that correct?

MR. MOLASH: Well, there are period in requirements -

JUSTICE: Correct.

MR. MOLASH: - they are part of the annexation and so there-- they would have the opportunity to appear those hearings and make statements as well.

JUSTICE: Okay. But the city could just give my hearing like stand up and the city could ignore them when the damage is completely process.

MR. MOLASH: Without, without the 42.052(i) check, that is a possibility.

JUSTICE: And, and take no action on their, on their letters and the plans, the city could just ignore them. And this process, is that a correct state.? I mean, the city could just listen to him, and set a lesson and say, "Okay, you had your hearing now, we're going to go home for a date."

MR. MOLASH: Without 43.052(i).

JUSTICE: Right, and-- in this one it says, reading the statutory language look into Court of Appeal's opinion they, they, quoted: "If-- I mean the municipality fails to take action on the petition. Petitioner may request arbitration," so that gives-- so that at that point, if the city just starts the process, get sees oblige does nothing about the complaints takes no action on the petition that, that certainly gives you the right to arbitrate to request arbitration.

MR. MOLASH: That would be one situation where you have the right to arbitrate, with the, the more -

JUSTICE: But not ...

MR. MOLASH: - why this situation is look the city does and states say, "No", which sure they did in this case.

JUSTICE: But this does-- this in fact if, if we simply take the city's position, this requires the entity to take some action to address the landowners complaint. Is that an addition to or that be addressed in the process where this provision not even in there?

MR. MOLASH: If fourty-- if, if I-- I apologize I don't completely understand your question, please let me knows like an answer were correctly. If I understand your question, if 43.052(i) were not in the statute then the City would not have to respond to anything in the landowners.

JUSTICE: Do you still have to give me hearings but they don't have to respond. -

MR. MOLASH: They don't have to [inaudible]

JUSTICE: - What I'm wondering is this, does this add anything to the process if we adapt the city's position?

MR. MOLASH: No, it does not. 43.052(i) becomes meaningless if you adapt the City's position.

JUSTICE: But they do have to respond, it was required that the respondent in some nature, either deny or talk to you or take the position.

MR. MOLASH: The city even with 43.052(i) implies the city could do nothing. They could not say, yes, or no. And then you have the right to arbitrate under the city's own view but they what 43.052(i) contemplates, I believe is the city is going to failed to inclusion on a three year plan, either by in any action, or more likely by denying your petition to be included. And in that instance, the one that the issue in this case, were the landowner can then say, "Wait, I have a right to arbitrate, I get to go to an arbitrator to this, very quick expedite the process, and I get to convince the arbitrator that what you're doing is sort convening in the three year planning plan."

JUSTICE: And, and, and what are the arbitrator. What, what are the factors to be presented to the arbitrator should be decide to in effect, go contrary to the, the, the community's will as represented by the Counsel and force them to go through that three year plan.

MR. MOLASH: Under 43.052(i) the arbitrator would consider whether there were any generally accepted municipal planning principle, principles and practices for separately annexing these areas. So the standard would be, is the city planning and that-- and that's exactly

what doesn't happened here. Rockwall says that, if you adapt the Court of Appeals view 43.052(i) you jeopardized the planning, you what.? You forced them to plan it because what happened in this case, and what happens is usually is, this land sets out an the ETJ maybe for decades. And the city doesn't do anything with respect to it. They don't say, they are going to annex it, they, they don't do anything. And then someone decides they want to develop it and they react. And what they do is they going to react by starting the (h)(1) annexation process. And that's what happens here in our position, is that reacting to the proposed development is not planning. What the legislature wanted them to do and cities do this, some cities do this. They adapted the the year plan and say, "We're, we're going to annexing in the future; in two years, in three years, or whatever it might be," and that's what the 43.052(i) supposed to do and make sure the cities are going to the planning process.

JUSTICE: But they worry that you-- the landowners would scramble around and still trapped and avoid the cons-- the planning and the regulatory consequences of annexation, they're not three year period.

MR. MOLASH: Well, what land owners can do is best rights during the three year period. And that something expressly contemplated by the legislature there is been-- not only a statute adapted in connection with this section but other statutes that give the property owners the right to best rights. The one here, for example, says that if you have a plan for your property that was in place before they annexed you. Then, you can continue to develop your [inaudible] that plan. We have that plan in place and what actually trigger this annexation as shown in the record is we filed the requisite, made the first requisite filing in city, so they knew that we're going to have been developed the land that's when they raised their hand, and said, "I want to annex you," and we said, "No, that's not right, you should put us in a three year plan," we petitioned, they refused a weak time to demand that arbitration, they refused. And that's why we need to the step of filing a suit to compel arbitration. And that was the relief from request that that specifically provided for a 43.052(i) ...

JUSTICE: Just to say mention why it go to the, the substantive procedural road rythm. Is this a substantive or is this procedural or does it make a difference, in your view?

MR. MOLASH: It does make any difference under Alexander Oil. Alexander Oil says that if the legislature specifically provides a right, then quo warranto doesn't apply. So I don't think you can label this as procedural or substantive and make any decision based on Alexander Oil or quo warranto doc-- quo warranto doctrine. What is important under that case and under the other case law that construes that doctrine, is that the legislature acted directly and specifically to grant a right.

JUSTICE: And the right given was to request any event to city did not take action to agree to it.

MR. MOLASH: The rightless to arbitrate with the city, whether that land should be included in a three year plan, yes. And if you considered what the effect would be in Rockwall's interpretation, we are-- and this is really a case with one issue and that is, what its statute mean. It's a-- it's a narrow issue for the court a statutory construction. In part of that course of what did the legislature intend by this statute in one rule statutory construction is you should not construed the statute to lead to an absurd result or result is ineffective. And if you adapt Rockwall's interpretation this will be an ineffective statute and considered what the situation would be if you

adapted Rockwall's view of the statute, a landowner would ...

JUSTICE: Before you, before you get there, you don't want to have an illegal result either and it's sometimes argued that there are constitutional problems with requiring cities or governmental agencies to arbitrate because it basically delegates ultimate decision making over policy matters that were in dispute to private entity and that argument is been made in the public, in the prior employee and please this agreement, arbitrations but tell me two things, I forgotten whether there is an appeal from this arbitration decisions.

MR. MOLASH: The statute does not expressly provide for an appeal, under common law, there would be a common law right that exist outside of the arbitration statute to challenged an arbitration where on very, very limited basis.

JUSTICE: And the, the other-- the-- is it true that the arbitration and in O sections 43.056 in following regarding negotiation with landowners in the three year plan. That arbitration does have an appeal or do you remember?

MR. MOLASH: Ahh..

JUSTICE: I don't remember.

MR. MOLASH: The arbitration-- the other section incor-- does have some additional procedural rules that don't-- were not incorporated here, but I think that is not relevant to considering what the court what the legislature, rather intended by the section. And I think it makes sense that they didn't corporate some of those sections they were unnecessary. The negotiation, the service plan is a completely different situation of completely different [inaudible] it goes on for extended period of time probably a number of years and the whole structure of that is different than the structure of this very quick process that we have in issue here.

JUSTICE: And I-- I don't suppose, there was much discussion in the legislative history about delegation issues.

MR. MOLASH: Other constitutional issues.? I, I don't recall anything on that in-- that's not an issue that Rockwall is raised in the case that we've not considered the respondent to that. To consider what the fact of the Rockwall's interpretation would be, we just walked through of what happened when a petitioner receives notice that the property is going to be annexed under the (h)(1) exception. He would or she would petition for inclusion in a three year plan. The city would do nothing on the petition for someone's specified period of time, we don't know what that is under Rockwall's interpretation. Is it a day or a week, or a month, or how long is it? It's not stated in the statute, or under their interpretation. The landowner-- it's not really clear here if the land owner, or the attorney general, but someone petitions for inclusion for arbitration matter. The city still does [inaudible] that's doesn't act. So the landowner or the AG under Rockwall's intent do you says, "Let's arbitrate," and so then they arbitrate the city under the statute for procedures that are adapted has to begin trying to agree on the-- I didn't even arbitrate. If they can't agree they go to triple A and get a list they strike the list like the usual arbitration. Then, the Rockwalls review, the city still doesn't do anything. So it's clearly on notice that this plan, or they wants to arbitrate still does nothing and the process continues like that, it, it makes no sense.

JUSTICE: [inaudible]. Thank you, Counsel.

JUSTICE: How does your argument makes sense?

REBUTTAL ARGUMENT OF TERRY D. MORGAN ON BEHALF OF PETITIONER

MR. MORGAN: How does our argument makes sense, your Honor. Well, as I said before, there's no way to get all of the parts of this together. We makes sense from the context at the question before the court. The question is whether this particular arbitration procedure is actually intended to avoid the quo warranto doctrine. And under our view, if you looked at and you compare the arbitration in the reference statute that's 43.0564, it has several provisions and safeguards which this statute does not add, presentable it has a state provision.

JUSTICE: As of what?

MR. MORGAN: A state, a state invest-- annexation could not be accomplished that there are any other method while arbitration and appeals which that statute regards for going forward. We find that in subsection A, of 43.0564. This statute says nothing about standard, if the legislature was so concerned about the quo warranto that are being ineffective which is the basic premise that's being advanced here. Then, surely it would've been could stand the statute. If that Court of Appeals assuming what have to be proved rather stay into it. And basically, adjoin the city proceeding for-- with arbitration, so they make this ineffective remedy guess what, you have to go to the Court everytime and here is a good reason: even if this becomes seventh law, if you looked at the time frames, the city can annexed land under (h)(1) in 60 days. And if you go through the arbitration process, it takes about 70 just to get to a hearing. In every case, a city can agree to arbitrate and in order to avoid, the city completely in its annexation proceedings before arbitration, is even the first hearing is held. A city is going to have to-- or that the applicant, the landowners would have to get a Court and enjoin the city as soon as the city is enjoined, if you looked at the Court of Appeals opinion, there's no reciprocal injunction on the ability of the property owner to test his rights by the 43002. And what happens why was city is enjoined, he could walk in and, and the city by the way, if the, if the injunction comes before the city reach the ordinance for the first time, and there's 20 days in between the last hearing and the first reading of the ordinance by statute that proceedings is going to have start over again, because you got there the first-- the first hearing to the ordinance within 20 days to agree. That's plenty of time for the landowners to come into this and file an application while arbitration is going on, pretty small price to pay, as you can invest your right to 15 hundred units, that pay the cause of arbitration. If the arbitrator is subsequently decides that in lessen they will found it request for arbitration that's the contraries between. In [inaudible] that's to say that this-- that the city could ignore these proceedings altogether and refused to arbitrate. And there's nothing that can be done to enforced it. It's not all that comfortable position, but I think it's also found that under premise that quo warranto is an effective witness for procedural violations. And there's nothing better to illustrate that, that structure of subsection I itself. It would be predicable for the legislature to correct this remedy, as in it grant around subsection I, and not give the same right to a property owner that was an area. If you count on it-- if anybody count it were there's 200 occupied parcels with that landowner it happens to be in here can take no-- it can't request for arbitration. In order to request to arbitration the only standard that you can do so was if the city proposes to annexed two

areas, each of which contains the less than a hundred parcels. If the legislature was so concerned about quo warranto and not be an effective remedy, surely it would have given that property or the right to request arbitration and compel it as well. And finally, the, the other contrast here is the fact that there will be multiple arbitration proceedings and there's absolutely no indication of the statute how those that complete-- how those proceedings will be followed. Any further question?

JUSTICE: [inaudible]

JUSTICE: What does this provision add to the process if it gives the city the right to say, "We're not going to put you on a three year process," and then the city has the right to refuse arbitration, what is that it all?

MR. MORGAN: It provides the provisional remedy, your Honor about which the city can agreed arbitration and have these disputed result that way as an alternative to face the quo warranto proceeding were in fact the entire remedy should be given.

JUSTICE: And could the city not have been that anyway, even in the absent of this provision?

MR. MORGAN: The city could've-- I suppose the city could induced no provision expressed in the statute to stand annexation in order to arbitrate, but I suppose the city could make a contract along those lines.

JUSTICE: So that agree to it?

MR. MORGAN: Yes, your Honor.

JUSTICE: Thank you, Counsel that concludes the argument and all, all arguments for this morning. And the Marshall now are adjourned the Court.

COURT MARSHALL: All rise.

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