Comments

ANNEXATION

GOODYEAR FARMS V. CITY OF AVONDALE: REJECTION OF THE THEORY THAT SIGNING A PETITION FOR ANNEXATION IS ANALOGOUS TO THE FUNDAMENTAL RIGHT TO VOTE

In *Goodyear Farms v. City of Avondale*[1] the Arizona Supreme Court held that Arizona Revised Statute, section 9-471,[2] did not violate the equal protection clauses of the Federal and Arizona Constitutions by providing that an annexation by a municipality may only be initiated by property owners signing a petition.[3]

The annexation statute in effect at that time provided a two-step process by which municipal corporations could annex property.[4] Step one required that a petition be signed by the owners of not less than one-half of the value of the real and personal property that would be subject to taxation in the event of annexation. If the petition was properly signed, the second step allowed the governing body of the municipality to pass an ordinance approving the annexation.

In 1981, the City of Avondale circulated petitions pursuant to section 9-471(1)(A) to landowners of property adjacent to the city. After the required signatures were obtained, the petitions were submitted to the city council and a public hearing was held on the proposed annexation. Following the hearing Annexation Ordinance No. 301 was passed. This Ordinance annexed property including that of Goodyear Farms, Litchfield Park Proper-

1. 148 Ariz. 216, 714 P.2d 386 (1986).

2. ARIZ. REV. STAT. ANN. § 9-471 (1977) (repealed 1986). Although the statute has been amended, many of the same constitutional questions remain. These questions have been addressed by the Arizona Supreme Court, but in the absence of a definitive statement from the United States Supreme Court the questions cannot be viewed as settled. The constitutionality of the statute before the amendment is also still in issue for the Goodyear Farms residents who were annexed under the old statute. The Arizona decision is also pertinent in states which currently have similar annexation statutes.

3. *Goodyear Farms*, 148 Ariz. at 223, 714 P.2d at 393.

4. ARIZ. REV. STAT. ANN. § 9-471 (1977) stated:

A. A city or town may extend and increase its corporate limits in the following manner:

1. On presentation of a petition in writing signed by the owners of not less than one half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, and not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town.

ties and Litchfield Service Company (Goodyear Farms).[5]

In response Goodyear Farms filed suit challenging the constitutionality of the annexation statute. The court of appeals ruled that the statute violated the equal protection clauses of the Federal and Arizona Constitutions by excluding non-property owners from signing annexation petitions.[6] This ruling halted the expansion of municipalities in Arizona for approximately eight months.[7]

The Arizona Supreme Court vacated the decision of the court of appeals, upholding the constitutionality of the annexation statute.[8] The court found no fundamental right of non-property owners exists to sign an annexation petition and upheld the statute as rationally justified by the legitimate state interest in the "orderly and prosperous growth of Arizona cities and towns."[9]

In view of the rapid growth of cities and towns in Arizona,[10] an effective annexation statute is essential. This Comment will examine the constitutional standards of review in equal protection cases and the case law of annexation statutes. It will then examine the holding and scope of *Goodyear Farms* and the new annexation statute enacted by the Arizona State Legislature.

THE PROPER STANDARD OF REVIEW

Courts have employed two recognized standards of review of legislative classifications: the "compelling state interest" test and the traditional "rational basis" test.[11] The combination of these tests has been referred to as a "two-tiered" analysis.[12] In recent years, however, a possible middle-tier or intermediate test has been applied by the court in specific situations.[13]

In situations where a legislative act infringes on a fundamental right[14] or involves a suspect classification it will be upheld only if it is necessary to promote a compelling state interest.[15] On the other hand, when neither fun-

5. The facts of the case are set forth in *Goodyear Farms*, 148 Ariz. at 217, 714 P.2d at 387-88.

6. Goodyear Farms v. City of Avondale, 148 Ariz. 256, 260, 714 P.2d 426, 430 (Ct. App. 1985). The court of appeals only ruled ARIZ. REV. STAT. ANN. § 9-471(A)(1) unconstitutional. The remainder of § 9-471 was left intact.

7. The Arizona Court of Appeals found ARIZ. REV. STAT. ANN. § 9-471(A)(1) unconstitutional on April 25, 1985. The Arizona Supreme Court reversed, upholding the constitutionality of the statute on January 13, 1986.

8. *Goodyear Farms*, 148 Ariz. at 223, 714 P.2d at 393.

9. *Id.*

10. In 1950, the city of Phoenix had a population of 106,818 and an area of 17 square miles. In 1960 the population was 439,170 and its area had grown almost to 190 square miles. Approximately 75 percent of the population of people living in Pheonix were residents of areas that had been annexed during the previous decade. J. WENUM, ANNEXATION AS A TECHNIQUE FOR GROWTH: THE CASE OF PHOENIX, ARIZONA (1970).

11. For a detailed analysis of the purposes of standards of review see Spece, *A Purposive Analysis of Constitutional Standards of Judicial Review and A Practical Assessment of the Constitutionality of Regulating Recombinant DNA Research*, 51 S. CAL. L. REV. 1281, 1294 (1978).

12. *Id.*

13. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1082 (1978). *See also* Gunther, *The Supreme Court, 1971 Term-Foreward: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1, 44 (1972).

14. *See* Craig v. Boren, 429 U.S. 190 (1976).

15. Shapiro v. Thompson, 394 U.S. 618 (1969). *Shapiro* involved a statutory provision that

damental rights nor suspect classifications are impinged the legislation is upheld when there is any rational basis perceived by the courts.[16]

The middle-tier or intermediate test has only been applied in cases involving gender discrimination.[17] It has, however, been suggested by Professor Tribe that this standard may find use in cases that do not involve fundamental rights nor suspect classifications, but which, because of their importance, require more judicial scrutiny than given by the rational basis test.[18]

LEGAL BACKGROUND TO THE *GOODYEAR FARMS* DECISION

In the landmark decision of *Hunter v. City of Pittsburgh*[19] the United States Supreme Court articulated the broad powers the state possesses regarding municipal annexations. The Court stated that the expansion of a territorial area was within the discretion of the state and that such expansion can take place "with or without the consent of the citizens, . . . unrestrained by any provision of the Constitution."[20] This broad language served "to dispose of every conceivable challenge of annexation."[21] In *Gomillion v. Lightfoot*,[22] however, the Supreme Court rejected the premise that boundary changes never interfere with a constitutionally protected right.[23] The Court in *Gomillion* found unconstitutional a boundary change that would eliminate all but four or five of the city of Tuskagees' black voters without eliminating

required a person to reside in a jurisdiction for at least one year before receiving welfare payments. The Court said: "Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Shapiro*, 394 U.S. at 638.

16. State v. Kelly, 111 Ariz. 181, 184, 526 P.2d 720, 723 (1974).

17. In City of Cleburne v. City of Cleburne Living Center, 105 Sup. Ct. 3249, 3255 (1985), the Court states: "Legislative classifications based on gender also call for a heightened standard of review. . . .A gender classification fails unless it is substantially related to a sufficiently important governmental interest." *See also* Mississippi University for Women v. Hogan, 458 U.S. 718 (1982) (a statute that excludes males from enrolling in a state-supported nursing school violates the equal protection clause of the fourteenth amendment); Wengler v. Druggest Mut. Ins. Co., 446 U.S. 142 (1980) (a statute awarding worker's compensation differently between men and women is discriminatory); Cabin v. Mohammed, 441 U.S. 380 (1979) (a statute that makes a distinction between unmarried fathers and unmarried mothers violates the equal protection clause of the fourteenth amendment).

18. L. TRIBE, *supra* note 13, at 1082. *But see* Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976) (the Supreme Court refused to extend heightened review to differential treatment based on age). In *Cleburne*, 105 S.Ct. at 3259, the Court refused to acknowledge the mentally retarded as a quasi-suspect class which would entitle them to the heightened standard of review normally accorded to economic or social legislation. However, after selecting the rational basis test as the proper standard of review, the Court overturned the statute as a violation of equal protection.

19. 207 U.S. 161 (1907). It should be noted that *Hunter* did not involve an equal protection claim. The annexation in issue was challenged as being a taking of property without due process and also as an impairment of a contract obligation. *Id.* at 166-67.

20. *Id.* at 178-79.

21. Berry v. Bourne, 588 F.2d 422, 424 (4th Cir. 1978) *quoting from* Note, *The Right to Vote in Municipal Annexations*, 88 HARV. L. REV. 1571, 1579 (1975).

22. 364 U.S. 339 (1960).

23. *Id.* at 341. *See* Note, *The Right to Vote in Municipal Annexations*, 88 HARV. L. REV. 1571, 1580 (1975). *See also* Doyle v. Municipal Commission, 340 F. Supp. 841, 844 (D. Minn. 1972) *aff'd* 468 F.2d 620 (8th Cir. 1972) (a consolidation of two towns); Deane Hill Country Club, Inc. v. City of Knoxville, 379 F.2d 321 (6th Cir. 1967) *cert. denied*, 389 U.S. 975 (1967) (annexation ordinance and statute does not constitute a taking of property without due process).

any white voters.[24]

Three years after *Gomillion* the United States Supreme Court established the one man-one vote rule in *Reynolds v. Sims*.[25] The court noted that the objective of the Constitution was that "of making equal representation for equal numbers of people the fundamental goal."[26]

After *Reynolds* the question of whether a right to vote is being infringed became central in determining the proper standard of review in an annexation challenge. Generally an infringement on the franchise must be closely scrutinized, whereas if voting is not involved only a rational basis for the government action is necessary.[27] Now, however, due to recent exceptions to the *Reynolds* rule it is no longer necessary that strict scrutiny be applied in all voting cases. The first clear exceptions[28] to the *Reynolds* one man-one vote rule were *Salyer Land Co. v. Tulare Lake Basin Water Storage Land District*[29] and *Ball v. James*.[30] Although both cases involved voting, the Supreme Court held in each that the strict scrutiny mandated in *Reynolds* did not apply because the elections involved specialized districts whose activities disproportionately affected landowners.[31]

REJECTION OF THE THEORY THAT SIGNING A PETITION FOR ANNEXATION IS ANALOGOUS TO VOTING

Several other courts have addressed the issue of a citizen's right to vote in a municipal annexation. These decisions form the background of *Goodyear Farms*. The importance of the right of voters to sign a petition for annexation was recognized by the Wisconsin Supreme Court in *Town of*

24. 364 U.S. at 341. The Court in *Gomillion* denied the applicability of *Hunter* stating:

> All that case held was (1) that there is no implied contract between a city and its residents that their taxes will be spend solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another.

Id. at 342-43.

25. 377 U.S. 533 (1964).

26. *Id.* at 559-60 (quoting Wesberry v. Sanders, 376 U.S. 1, 18 (1969)).

27. Township of Jefferson v. City of West Carrollton, 517 F. Supp. 417, 420 (S.D. Ohio 1981).

28. In Kramer v. Union School District, 395 U.S. 621 (1969) the court implied that an exception to *Reynolds* might exist by stating that it would express no opinion as to whether in certain circumstances the state might validly limit voting to persons "primarily interested" or "primarily affected." *Id.* at 632.

In Hadley v. Junior College District, 397 U.S. 50 (1970) the Court extended the *Sims* one man-one vote principal to school district election of trustees. The Court, however, stated that it was possible that in some instances a state election may so disproportionately affect different groups that compliance with *Reynolds* may not be required. *Id.* at 56.

29. 410 U.S. 719 (1979). *Salyer* became the first exception to the one man-one vote rule of *Reynolds*. In *Salyer* the Court upheld a state statute that limited the vote in a water district election to those owning land within the district. 410 U.S. at 719. The landowner's votes were apportioned according to the assessed value of their land. The Court upheld this voting restriction because the Tulare District disproportionately affected landowners and served a special limited purpose. *Id.* at 728.

30. 452 U.S. 355 (1981). In *Ball v. James*, the Court noted that whereas the Tulare District in *Salyer* was in a sparsely populated agricultural area, the Salt River District, which was before the Court in *Ball*, included nearly half the population of Arizona. 355 U.S. at 360-61. Nevertheless, the Court found the function of the Salt River District narrow, and of the special sort allowing a departure from the one man-one vote rule. *Id.* at 370.

31. *But see Salyer Land Co.*, 410 U.S. at 735-42 (Douglas, J., dissenting) and *Ball*, 451 U.S. at 374-89 (White, J. dissenting).

Fond du Lac v. City of Fond du Lac.[32] The court held that signing the petition is more than a private right or property right, stating: "the right of an elector to participate ... [is] analogous to voting."[33] The court in *Goodyear Farms* refused to find *Town of Fond du Lac* applicable because the petitions in that case were signed by electors rather than property owners.[34]

Whether the annexation process actually involved voting was the central issue in determining the proper standard of review in *Township of Jefferson v. City of West Carrolton*.[35] A comparison was made between giving the inhabitants of an area the right to vote on annexation and allowing commencement of the annexation process through the submission of petitions signed by a majority of the landowners.[36] The plaintiffs contended that no difference exists, that the petitioning process involves the same fundamental right as if voting were involved, and that the statute allowing this type of petitioning for annexation should be closely scrutinized.[37] The court disagreed, stating that the petitioning process is only a condition precedent to bringing the decision before the governing body, which then has the power to decide whether or not to annex the land.[38]

A statute giving landowners the ability to bar an incorporation election was held unconstitutional by the California Supreme Court in *Curtis v. Board of Supervisors*.[39] The court established the principle that all residents share an interest in government and that the tax concerns of landowners is not sufficient to exclude non-landowners nor porportionately reduce the vote of owners of less valuable property.[40]

The Arizona court found *Curtis* inapplicable because it involved an election and a veto of an election whereas in Arizona neither an election nor the veto of such election is involved.[41] In rejecting *Curtis* the court utilized the rationale of *Weber v. City Council of Thousand Oaks*.[42] In *Weber* the

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32. 22 Wis. 2d 533, 126 N.W.2d 201 (1964).

33. *Id.* at 539, 126 N.W. 2d at 204. *See* Note, *supra* note 23, at 1607.

34. *Goodyear Farms*, 148 Ariz. 220, 714 P.2d at 390. In finding *Fond du Lac* inapplicable the Arizona Supreme Court relied upon a ruling made in Town of Medary v. City of La Crosse, 88 Wis. 2d 101, 277 N.W.2d 310 (Ct. App. 1979). The Wisconsin Court of Appeals stated:

> Ownership itself, detached from the personal benefits or detriments that accompany residency in a municipality, is more of a private right than the political right a resident may have in annexation. . . . The two types of interests are treated differently because they are different. Thus the political nature of annexation petitions recognized as applicable to electors in *De Bauche* and *Fond du Lac* is not applicable to property owners.

Id. at 108, 277 N.W. 2d at 314.

35. 517 F. Supp. 417 (S.D. Ohio 1981).

36. *Id.* at 420-21.

37. *Id.*

38. *Id.* at 421.

39. 7 Cal. 3d 942, 501 P.2d 537, 104 Cal. Rptr. 297 (1972). The board of supervisors contended that voting rights were not involved in the statute and that therefore the statute must only have a rational basis. *Id.* at 953, 501 P.2d at 544, 104 Cal. Rtpr. at 304. The Court stated that it was unnecessary to decide if an election was involved because strict scrutiny should be applied to laws that "touch upon" or "burden the right to vote." *Id.*

40. *Id.* at 961, 501 P.2d at 549, 104 Cal. Rptr. at 309-10.

41. *Goodyear Farms*, at 220, 221, 714 P.2d at 390, 391. Although under ARIZ. REV. STAT. ANN. § 9-471 (1977) landowners did not have the ability to veto an election, they could in essence veto an annexation decision of the governing body by failing to submit a proper amount of signatures.

42. 9 Cal. 3d 950, 513 P.2d 601, 109 Cal Rptr. 553 (1973).

California Supreme Court held that a statute that provides for annexation without an election does not infringe on the fundamental right to vote and thus does not call for strict scrutiny or justification on the basis of a compelling state interest.[43]

In *Adams v. City of Colorado Springs*,[44] Colorado's annexation statute was challenged as being in violation of the equal protection clause of the fourteenth amendment. Even though voting was involved, the *Adams* court refused to employ strict scrutiny because the classification did not involve invidious discrimination.[45] The court found several rational bases for the statute and upheld its constitutionality.[46]

The New Mexico annexation statute[47] was challenged in *Torres v. Village of Capitan*[48] as a violation of the "one man-one vote" rule of the fourteenth amendment.[49] Because the New Mexico statute involved signing a petition rather than voting the court concluded (following the reasoning of *Adams*) that a fundamental right was not involved and, applying the rational basis test, affirmed the statute.[50]

ANALYSIS OF THE *GOODYEAR FARMS* DECISION

Signing Petitions is not a Fundamental Right

Those opposing the annexation in *Goodyear Farms* claimed that signing a petition for annexation is analogous to voting, and that by limiting the process to landowners a fundamental right is infringed.[51] The Arizona

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43. *Id.* at 961, 513 P.2d at 608, 109 Cal. Rptr. at 560. The court declared:
> As the Legislature could constitutionally have provided that all annexations to cities be accomplished without a vote of the residents of the territory proposed to be annexed, and as the 1939 act provides for annexation without an election, the instant case involves no deprivation of or limitation on the fundamental right to vote calling for close scrutiny or justification on the basis of a compelling state interest.

Id at 961, 513 P.2d at 608, 109 Cal. Rptr. at 560.

44. 308 F. Supp. 1397 (D. Colo. 1970) *aff'd mem.* 339 U.S. 901 (1970).

45. *Id.* at 1403. The court cited the lack of invidious discrimination resulting from the statute as a reason for applying the rational basis test. The question of invidious discrimination, however, is usually only pertinent in deciding if a suspect classification exists and is not examined when deciding if a fundamental right is being infringed on. *See* Harris v. McRae, 448 U.S. 297, 322 (1979). *See also* Buchanan v. Evans, 423 U.S. 963 (1976); Geduldig v. Aiello, 417 U.S. 484 (1974); and Craig v. Boren, 429 U.S. 190 (1976).

46. Adams v. City of Colorado Springs, 308 F. Supp. at 1404. The court stated:
> The law thus recognizes that a municipality such as Colorado Springs is severely handicapped by an annexation law which requires the approval of the property owners and qualified electors of an annexed area. It is unable to deal with groups of citizens who form small tax colonies on the borders of the core city, which is the economic base of the urban area, and to which the colonies owe their very existence and yet pay nothing for the advantages the city provides.

47. N.M. STAT. ANN. § 14-7-17 (1953). The statute provides, in pertinent part, that a city government may annex property when a petition is signed by the owners of a majority of the acres in the contiguous territory.

48. 92 N.M. 64, 582 P.2d 1277 (1978).

49. *See supra* note 27.

50. *Torres*, 92 N.M. at 69, 582 P.2d at 1283.

51. *Goodyear Farms*, 148 Ariz. at 219, 714 P.2d at 389. In Griswold v. Connecticut, 381 U.S. 479, 493 (1965), the Supreme Court stated: "In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather they must look to the traditions and [collective] conscience of our people to determine whether a principle is 'so rooted [there] . . . as to be ranked as fundamental.'"

Supreme Court rejected this contention.[52]

The court conceded that in several voting rights cases the United States Supreme Court has used the equal protection clause to strike down as unfair voter classifications where important municipal decisions were to be made by voters in an election.[53] The court, however, following the reasoning of *Township of Jefferson*,[54] *Weber*,[55] *Adams*,[56] and *Torres*,[57] would not accept the premise that signing a petition for annexation is analogous to voting and is therefore entitled to the same strict scrutiny under the equal protection clause.[58]

The holding was not unanimous. While agreeing that the right denied to non-property owners is not an electoral one, Justice Feldman in his dissenting opinion contended that strict scrutiny should still be applied because "[the right] is one of fundamental importance . . . ."[59]

The Rational Basis For Limiting Participation In the Annexation Process

The court of appeals in *Goodyear Farms*, while stating that it would apply the rational basis test, proceeded to apply cases involving voting rights in which the statutes had been overturned through judicial strict scrutiny.[60] In applying the rational basis test the Arizona Supreme Court did not make the same error.[61]

In finding a rational basis for section 9-471 the court noted that property taxes and bond liens apply only to landowners.[62] In addition the court

52. *Goodyear Farms*, 148 Ariz. at 219, 714 P.2d at 389.

53. *See* City of Phoenix v. Kolodzieski, 399 U.S. 204 (1970); Kramer v. Union Free School District, 395 U.S. 621 (1969); Cipriano v. City of Houma, 395 U.S. 701 (1969).

54. Township of Jefferson v. City of West Carrolton, 517 F. Supp. 417 (S.D. Ohio 1981), discussed *supra* text accompanying note 35.

55. Weber v. City Council of Thousand Oaks, 9 Cal. 3d 950, 513 P.2d 601, 109 Cal. Rptr. 553 (1973), discussed *supra* text accompanying note 42.

56. Adams v. City of Colorado Springs, 308 F. Supp. 197 (D. Colo. 1970), discussed *supra* text accompanying note 44.

57. Torres v. Village of Capitan, 92 N.M. 64, 582 P.2d 1277 (1978), discussed *supra* text accompanying note 48.

58. *Goodyear Farms*, 148 Ariz. at 219-20, 714 P.2d at 389-90.

59. *Id.* at 228, 714 P.2d at 393.

60. Goodyear Farms, v. City of Avondale, 148 Ariz. 256, 259-60, 714 P.2d at 426, 429-30 (Ct. App. 1986), citing City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969). The court of appeals also used Town of Fond du Lac v. City of Fond du Lac. 22 Wis. 2d 533, 126 N.W.2d 210 (1964) and Curtis v. Board of Supervisors, 7 Cal. 3d 942, 501 P.2d 537, 104 Cal. Rptr. 297 (1972). These cases were appropriate for the court's analysis but were interpreted differently by the Arizona Supreme Court. See *supra* text accompanying notes 32-34 and 39-43.

61. The court relied heavily upon Hunter v. City of Pittsburg, 207 U.S. 161 (1907); Adams v. City of Colorado Springs, 308 F. Supp. 1387 (D. Colo. 1970); Township of Jefferson v. City of West Carrollton, 517 F. Supp. 417 (S.D. Ohio 1981) and Torres v. Village of Capitan, 92 N.M. 64, 582 P.2d 1277 (1978). In these cases the courts applied the rational basis test and upheld the annexation statutes.

62. *Goodyear Farms.*, 148 Ariz. at 222, 714 P.2d at 392. It is generally recognized, however, that increases in property taxes cause increases in costs to non-property owners who pay rent. In addition, property taxes are not the only sources of city revenues. Hagman & Disco, *One-Man One-Vote as a Constitutional Imperative for Needed Reform of Incorporation and Boundary Change Laws*, 2 URB. LAW. 459 (1970) state that the classic reason of giving landowners powers in annexation proceedings because they will be primarily burdened is no longer valid.

> [I]t is virtually self-evident that nonproperty owners have a vital interest in the general affairs of government—such an interest militates against the conclusion that real property

cited the principle established in *Gorman v. City of Phoenix*,[63] where the court held that "only those who pay the cost of city government are allowed to initiate the procedure of annexation."[64] This followed the reasoning of the New Mexico Supreme Court in *Torres v. City of Capitan*, where the court observed that an obvious rational basis for property owners having the right to sign annexation petitions is that the taxes supporting a city are partly apportioned by the amount of land owned.[65] The court in *Goodyear Farms* found that non-land owners are not excluded from the annexation process because they have the right to appear before the governing body of the city or town before a decision is made whether to annex.[66]

The court also accepted the reasoning of the court in *Adams v. City of Colorado Springs* that municipalities would be severely handicapped by annexation procedures which required the approval of all the electors.[67] The handicap being that groups of people would form "tax colonies" just outside the city whereas they could enjoy all the benefits of the city without having to pay for them.[68]

In his dissenting opinion in *Goodyear Farms*, Justice Feldman asserts that this reasoning is valid insofar as it compels inclusion of landowners in the annexation process but fails to give any rational basis for excluding non-property owners who are also affected by the same criteria.[69]

SCOPE OF *GOODYEAR FARMS*

The ruling in *Goodyear Farms* allowed the annexation of the designated lands adjacent to the cities of Avondale and Gilbert to proceed.[70] The decision by the Arizona Supreme Court affirming the constitutionality of the

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owners or landowners can disable all others from the benefits and burdens of living in an incorporated area, particularly where property owners pay an increasingly smaller share of the tax burden.

Id. at 464.

63. 76 Ariz. 35, 258 P.2d 424 (1953).

64. *Id.* at 37, 258 P.2d at 425.

65. Torres v. City of Capitan, 92 N.M. 64, 69, 582 P.2d 1277, 1283.

66. *Goodyear Farms*, 148 Ariz. at 222, 714 P.2d at 430.

67. Adams v. City of Colorado Springs, 308 F. Supp. 1387, 1404 (D. Colo. 1970).

68. *Id.* The court found that the Colorado Springs Community operated in an undemocratic manner before the challenged annexation. City residents paid both city tax and the county tax. Whereas county residents living close to the city paid only the county tax, and not the city tax, while using almost as much of the city facilities as the city residents use.

Although the *Goodyear Farms* court accepted the contention of the *Adams* court that people will live just outside the city and enjoy all its advantages without paying for them, no evidence is presented to indicate that a parallel situation existed between members of a small community outside of Colorado Springs and members of a small community outside of Avondale. Whereas it was clear members of the community in Cragmore used most of the services of Colorado Springs, it may be true that Goodyear Farms residents used the facilities of Phoenix as much or more than those of Avondale.

69. In his dissenting opinion Justice Feldman contended that no valid reason was given for the exclusion of non-property owners:

> [The majority] fails to explain why a non resident . . . may have the sole voice in determining whether the property is to be annexed; it fails to explain why those who reside on the property and whose vital interest will be affected by the question of annexation have no voice whatsoever.

Goodyear Farms, 148 Ariz. at 224, 714 P.2d at 394 (Feldman, J. dissenting).

70. *See supra* note 2 and accompanying text.

statute removed the judicial mandate for legislative action. The Arizona State Legislature chose to act anyway, however, and passed a new annexation statute.[71]

The major change in the new statute is that now, in addition to requiring a petition signed by owners of more than one-half of the value of the real or personal property that would be subject to taxation in the event of annexation, a petition must contain the signatures of more than one half of the landowners in the area to be annexed.[72] This revision of the statute requires large landowners to obtain more than one-half of the signatures of all landowners in an area to be annexed in order to meet the annexation requirements. Although smaller landowners have increased influence in the annexation process, the statute still fails to provide any means by which non-property owners may participate.

CONCLUSION

In *Goodyear Farms* the Arizona Supreme Court reversed the decision of the court of appeals and upheld the constitutionality of the Arizona annexation statute.[73] The court refused to find that signing a petition for annexation is analogous to voting.[74] Because no fundamental rights were involved, the court applied the rational basis test and upheld the statute.[75] This decision appears to be supported by a majority of the applicable case law. Unless the United States Supreme Court expands the scope of recognized fundamental rights under the fourteenth amendment, or broadens the use of intermediate review beyond the confines of gender discrimination, the decision of the court should be upheld.

By failing to include non-property owners in the new annexation statute the Arizona State Legislature made it clear that it, like the Arizona Supreme Court, was not willing to include such individuals in the annexation process.

D. Samuel Coffman

71. ARIZ. REV. STAT. ANN. § 9-471 (Supp. 1986).

72. The statute as amended requires:

> Within one year after the last day of the thirty day waiting period a petition in writing signed by the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation, as shown by the last assessment of the property may be circulated and filed in the office of the county recorder.

ARIZ. REV. STAT. ANN. § 9-471 (Supp. 1986).

73. *Goodyear Farms*. 148 Ariz. 223, 714 P.2d at 393.

74. *Id.* at 219, 714 P.2d at 389.

75. *Id.* at 223, 714 P.2d at 392.