



## CASE REPORT

**MUNICIPAL ANNEXATION — PROPERTY OWNER PETITION METHOD.** The “property owner petition method” of municipal annexation authorized under Chapters 35A.14 and 35.13 RCW is unconstitutional. **Grant County Fire Protection District No. 5 v. City of Moses Lake, No. 70090-7 (Slip Op. March 14, 2002).**

**I. Facts.** The City of Moses Lake, a code city, annexed an unincorporated area of Grant County utilizing the “property owner petition method” of annexation under Chapter 35A.14 RCW. Pursuant to the applicable statute, the owners of at least 10 percent of the assessed value property in the proposed annexation area signed a notice of intent to petition. After the Moses Lake City Council accepted this notice, owners of at least 60 percent of the assessed value in the area signed an annexation petition and presented it for the City’s formal approval via ordinance. Area residents opposed to the annexation, together with the fire district that formerly provided services to the annexation area, filed suit challenging the City’s action. The superior court upheld the constitutionality of the annexation, and the plaintiffs appealed. Their appeal was consolidated with a factually similar case arising from a City of Yakima annexation under Chapter 35.13 RCW, the statute authorizing the property owner petition method of annexation for non-code cities.

**II. Applicable Law and Analysis.** On direct review, the Washington Supreme Court reversed the superior court’s rulings and held the property owner petition method of annexation authorized under Chapters 35A.14 and 35.13 RCW unconstitutional. Under the *Grant County* Court’s reasoning, the annexation statutes at issue effectively granted property owners — and particularly, owners of highly valued property — “an almost exclusive voice in the annexation process” to the detriment of non-owners and owners of less-valued parcels. Concluding that this result afforded an impermissible privilege to owners of highly valued property, the Supreme Court invalidated the challenged method under article I, section 12 (the “Privileges and Immunities Clause”) of the Washington Constitution.

**III. Conclusion.** The property owner petition statute invalidated in *Grant County* represented the most commonly utilized annexation method for Washington municipalities. The Supreme Court’s decision unquestionably precludes use of this method to effect future annexations, and would appear to bar completion of those currently in the process.

Because the *Grant County* Court did not expressly define the applicability of its holding, however, the extent to which the decision affects past annexations is less clear. Appellate decisions invalidating state laws generally apply retroactively but are limited by applicable statutes of limitation. On one hand, the relevant RCW chapters lack a specific statute of limitations for annexations (although a separate 10 day deadline applies where the challenge is to a county annexation review board decision). On the other hand, Washington courts have, in the

interest of finality, typically applied a limitations period of either 21 or 30 days in land use actions where no statute expressly provides a deadline for asserting challenges.

In the absence of definitive authority on this issue, cities should assume that past annexations effected under the property owner petition method may be challenged under *Grant County*. Cities may potentially defend in any such litigation by asserting a limitations period of 10, 21 or 30 days. The defense of laches, an equitable doctrine preventing untimely lawsuits, may also be available to municipal defendants under certain circumstances. Any municipality facing a challenge to a past annexation should immediately consult legal counsel in order to preserve available defenses.