
WALNUT TREE V. WALNUT COVE: A CASE STUDY IN
RACIAL EXCLUSION, ANNEXATION, & COMMUNITY
LAWYERING

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This article is dedicated to the memory of David Hairston, a community leader and fearless advocate in the struggle for justice. May he rest in power.

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INTRODUCTION

Walnut Tree is an African American community that was developed in the early 1970s directly adjacent to, but just outside, the boundary of the predominantly white Town of Walnut Cove (“Town”) in rural Stokes County, North Carolina.¹ Because Walnut Tree was located outside of the Town limits, the community did not enjoy any of the public amenities of its in-town neighbors—including public water and sewer, trash pickup, sidewalks, and streetlights.² Walnut Tree residents were also unable to vote in municipal elections, even though North Carolina law gave town officials substantial zoning and planning authority over the neighborhood pursuant to the state’s laws authorizing cities and towns to exercise “extra-territorial jurisdiction” up to three miles beyond municipal boundaries.³

Although Walnut Tree was just over the Town line, many of its residents worked, shopped, and attended schools, churches, and social events in Walnut Cove. They always considered the neighborhood part of the Town.⁴ When it became clear that their community had been excluded from Walnut Cove, and as a result would be denied the same basic public services as their in-town neighbors, Walnut Tree residents began a four-decade struggle for inclusion.⁵ For much of that time, state law gave municipalities virtually unchecked discretion regarding annexation, and the majority white Walnut Cove Board of Commissioners exercised that power to continually ignore, deflect, and reject annexation petitions and pleas from Walnut Tree.⁶ At the same time, Town boundaries were expanded to include majority-white neighborhoods, even at substantial costs to the local government to extend services to these areas.⁷

¹ See Sarah Kellogg, *One Neighborhood’s Fight for Representation*, THE APPALACHIAN VOICE (June 7, 2018), <https://appvoices.org/2018/06/07/the-fight-for-representation/>.

² See Complaint at 3, 5, Walnut Tree Cmty. Ass’n v. Town of Walnut Cove, No. 17-CVS-614 (Stokes Cnty. Super. Ct. Sept. 7, 2017).

³ N.C. GEN. STAT. § 160D-202 (2025). A large majority of states have authorized municipal extra-territorial jurisdiction. See Lori Schwartzmiller, Note, *This Land is Whose Land? The Feasibility of Extraterritorial Jurisdiction in West Virginia’s Land Use Planning Laws*, 109 W. VA. L. REV. 929, 934 n.48 (2007).

⁴ See Letter from Mark Dorosin, Managing Att’y, UNC Ctr. for C.R. to Lynn Lewis, Mayor of Walnut Cove, Members of the Bd. of Comm’rs, and Bobby Miller, Town Manager (Nov. 9, 2016) (on file with author).

⁵ See Kellogg, *supra* note 1.

⁶ See Complaint, *supra* note 2, at 5–9; Meeting Minutes from Town of Walnut Cove Bd. of Comm’rs, at 4 (June 4, 2013) (on file with author); Landon Bost et al., *Walnut Tree, NC*, URB. EXCLUSION IN N.C., <https://urbangrowthnc.weebly.com/walnut-tree.html> (last visited Dec. 6, 2025, 12:00 PM); *Annexation*, UNC SCH. OF GOV’T, <https://www.sog.unc.edu/resources/microsites/annexation> (last visited Dec. 6, 2025, 12:20 PM).

⁷ See Complaint, *supra* note 2, at 5, 8–9.

By 2016, several significant factors brought the long-simmering issue of annexation and the racial exclusion of Walnut Tree to a head. These included the contamination of the wells in the community from the nearby coal fired power plant (requiring the Town to extend public water to the neighborhood), the Town's approval of test drillings for fracking in Walnut Tree, and advocacy by other racially excluded communities that led to changes to state annexation law.⁸ But the most important change for Walnut Tree was the emergence of David Hairston as the leader of a revitalized Walnut Tree Community Association. David had grown up in the neighborhood; his mother was one of the first residents.⁹ He was committed to organizing and building on the grassroots power he first saw as a boy, to holding Walnut Cove accountable to the Walnut Tree community, and to ensuring that its residents received the fair and equitable treatment to which they were entitled.

David Hairston understood the power and resilience of his neighbors and always put their voices and priorities at the center of the community's advocacy. He also understood the importance of engaging allies and outside resources to help uplift that advocacy. These included supportive residents of the Town, other racial and environmental advocacy organizations, and, ultimately, lawyers. But, because of the Walnut Tree Community Association's commitment to organic grassroots engagement in making structural changes in the racial and political hierarchies it confronted, those legal efforts were necessarily grounded in community-based lawyering and advocacy. That model of legal engagement recognizes the primacy of the organizing power of the community and that legal strategies are just one tool among the many that support the struggle for social justice. The successful inclusion of Walnut Tree is a case study of effective community lawyering.

Section II of this article examines the development of Walnut Tree and the neighborhood's initial efforts to organize for inclusion and environmental justice. Section III provides some background on the scope and impacts of municipal exclusion, extra-territorial jurisdiction, and annexation law, as well as the 2011 statutory revisions in North Carolina designed to assist excluded communities. Sections IV and V focus on the 2016 community efforts to secure annexation and the litigation that followed, respectively. Section VI is a reflection on community lawyering and how the

⁸ See Symposium, *Practicing On Uneven Ground: Raising Environmental Justice Claims Under Race Neutral Laws*, 45 HARV. ENV'T. L. REV. 295, 315–16 (2021); see also *infra* Section III.B.

⁹ See Claire Haile, *'David fighting Goliath': For Walnut Cove Residents, Environmental Activism is Personal*, WUNC (Sept. 12, 2022), <https://www.wunc.org/wunc-youth-reporting-institute/2022-09-12/david-goliath-environmental-activism-walnut-cove-powerplant-duke-coalash-epa>.

application of that strategy in Walnut Tree is a model that can be readily replicated. A brief coda at the end pays tribute to David Hairston.

I. A BRIEF HISTORY OF THE WALNUT TREE COMMUNITY

Walnut Tree is a predominantly African American community of approximately seventy-three homes that was developed just outside the municipal boundaries of the predominantly white Town of Walnut Cove in Stokes County, North Carolina.¹⁰ Walnut Tree was developed in the early 1970s.¹¹ The majority of its first residents were African Americans, many of whom had previously lived in rental housing in Walnut Cove.¹² Mortgages were provided to these new residents through the Farmers Home Administration program, designed to increase African American home ownership in the South.¹³ Residents of the new neighborhood believed that the community would be annexed and integrated into Walnut Cove once it was fully developed.¹⁴

Not long after moving into their new homes, Walnut Tree residents experienced problems with the water, which was provided by a private system (and not by Walnut Cove).¹⁵ The water was discolored, filled with sediment, and smelled like rotten eggs.¹⁶ Residents were forced to rely on bottled water.¹⁷ Because of the poor water quality, in 1995, the Farmers Home Administration refused to make any additional loans for homes in Walnut Tree “until there was a dependable and acceptable source of water.”¹⁸ As a result, many of the lots in the community were never developed.¹⁹

The following year, Stokes County received a Community Development Block Grant (CDBG) to connect Walnut Tree to Walnut Cove’s public water and sewer system.²⁰ Pursuant to state law, the Town charged

¹⁰ See Kellogg, *supra* note 1.

¹¹ *Id.*

¹² See Complaint, *supra* note 2, at 3.

¹³ See Kellogg, *supra* note 1. The Farmers Home Administration was dismantled in the 1990s and its programs were taken over by various U.S. Department of Agriculture Rural Development agencies. See James Chen, *Farmers Home Administration (FmHA): Meaning, History, Examples*, INVESTOPEdia (Oct. 11, 2021), <https://www.investopedia.com/terms/f/farmers-home-administration-fmha.asp>.

¹⁴ See Kellogg, *supra* note 1; Complaint, *supra* note 2, at 5.

¹⁵ Kellogg, *supra* note 1.

¹⁶ *Id.*

¹⁷ See *id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complaint, *supra* note 2, at 4 ¶¶ 24–26.

Walnut Tree homeowners its non-residential rate for water and sewer services—200% the rate that Walnut Cove residents paid.²¹ However, water quality issues continued after the service was taken over by the Town, leading to concerns in the community that it was not actually being served by the same well as in-town water customers.²²

Despite repeated efforts by Walnut Tree residents to organize together to press their concerns with the Walnut Cove Town Board of Commissioners, they could not vote in municipal elections because their community was developed adjacent to but outside of the Town’s boundaries.²³ Even though the Town’s land use, planning, permitting, zoning, and development decisions most directly—and adversely—impacted their lives, the people in Walnut Tree had no way to hold those elected officials politically accountable. Leaders in the community realized the only way to address their inequitable treatment was to advocate for Walnut Cove to annex Walnut Tree.

Residents petitioned the Town Board of Commissioners for annexation several times, but the Town refused to ever formally consider any such proposals.²⁴ In 1998, Walnut Tree residents brought their concerns about water quality to the Board and expressly asked to be annexed.²⁵ No action was ever taken on the request.²⁶ This issue was raised again in 2000, but “the Board felt they could not afford to do this.”²⁷ In 2001, a motion for the Town to study the costs of annexing Walnut Tree died for lack of a second.²⁸ Over the next several years, residents continued to press the Board for annexation and the inclusion of Walnut Tree into the Town of

²¹ See N.C. GEN. STAT. § 160A-314(a) (2024); discussion *infra* Section II.B.

²² Kellogg, *supra* note 1.

²³ *Upcoming Election*, N.C. STATE BD. OF ELECTIONS, <https://www.ncsbe.gov/voting/upcoming-election> (last visited Dec. 5, 2025) (“Voting in Municipal Elections—To be eligible to vote in a municipal election, the voter must live in that municipality for at least 30 days before Election Day. *North Carolina residents who live outside the boundaries of a municipality, such as an unincorporated part of a county, are not eligible to vote in a municipal election.*” (emphasis added)).

²⁴ See Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 4–5 (July 11, 2000) (on file with author); Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 5 (Feb. 6, 2001) (on file with author); Complaint, *supra* note 20 ¶¶ 29–77; Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 1, 5 (June 4, 2013) (on file with author).

²⁵ Complaint, *supra* note 20, at 5 ¶ 37.

²⁶ *Id.* at ¶ 40.

²⁷ Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 4–5 (July 11, 2000) (on file with author).

²⁸ Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 5 (Feb. 6, 2001) (on file with author).

Walnut Cove.²⁹ All those requests were ignored.³⁰ During the same period however, the Town moved expeditiously to grant annexation petitions from Kingswood and Laurel Cliffs, two predominantly white neighborhoods.³¹ Given the ease and speed with which the Town moved to annex those subdivisions, leaders in Walnut Tree began publicly asserting that their community was being excluded and discriminated against because of the race of the residents.³²

David Hairston was a child when his family moved to Walnut Tree, and he grew up in the midst of the community's early struggles for inclusion.³³ He regularly talked about how proud his mom was about buying a home for her family as a single Black woman.³⁴ He grew up and was inspired by the advocacy of his mother and other Walnut Tree residents for equal treatment, clean water, and annexation.³⁵ He witnessed first-hand the impacts of exclusion, specifically on the health of the Walnut Tree residents.³⁶ "There's not a home up here on either side of the road, from my mom's house all the way down to the [power plant] that there's not a cancer survivor or somebody that died of cancer, none of these homes."³⁷ Galvanized by the racial injustice he and his neighbors experienced for decades and the Town's refusal to take any steps to address the discriminatory and devastating impacts on the community, David was determined to help organize for change.³⁸ He became the president of the Walnut Tree Community Association in 2015 and immediately began to build a coordinated effort to take on the growing environmental justice issues threatening Walnut Tree.³⁹ That activism would in turn lead the Walnut Tree Community Association to push for and ultimately secure annexation.

²⁹ Complaint, *supra* note 2.

³⁰ See, e.g., Meeting Minutes from the Meeting of the Mayor and Comm'rs for the Town of Walnut Cove, at 2-4 (June 4, 2013) (on file with author).

³¹ Notably, the annexation of Kingswood required Walnut Cove to incur substantial costs for the extension of water and sewer. See *id.* at 2-3.; see also Complaint, *supra* note 2 at 5; Walnut Tree, <https://urbangrowthnc.weebly.com/walnut-tree.html>.

³² See Meeting Minutes from the Meeting of the Mayor and Comm'rs for the Town of Walnut Cove, at 1, 2 (Feb. 9, 2016) (on file with author).

³³ See Lisa O'Donnell, *Walnut Cove Advocate for Social, Ecological Justice Dies*, Winston-Salem J., July 26, 2023.

³⁴ Haile, *supra* note 9.

³⁵ See *id.*; see also O'Donnell, *supra* note 33.

³⁶ Haile, *supra* note 9.

³⁷ *Id.*

³⁸ The Appalachian Voice, *Remembering David Hairston*, Appalachian Voices: Front Porch Blogs (July 27, 2023), <https://appvoices.org/2023/07/27/remembering-david-hairston/>.

³⁹ *Id.*

In 2015, the North Carolina General Assembly assessed the potential for attracting the natural gas mining industry (i.e., fracking)⁴⁰ to the state and believed that Stokes County was a potentially lucrative site.⁴¹ In May, the Walnut Cove Board of Commissioners—without any advance notice to the community—approved a state request for preliminary drilling in the Walnut Tree area to test the viability of fracking for natural gas.⁴² The highly controversial mining process presented substantial risks of water contamination, and the decision to allow the test drilling was vehemently opposed by Walnut Tree, as well as many other residents throughout the county (and the state).⁴³

David Hairston and the Walnut Tree Community Association were at the forefront of that opposition: speaking out at Commissioners' meetings, coordinating with other community and environmental groups, and engaging the Stokes County Branch and the North Carolina State Conference of the NAACP.⁴⁴ After the initial test drillings showed a positive presence of the methane gas deposits,⁴⁵ the State NAACP contacted the Southern Environmental Law Center (SELC) to provide legal support for Walnut Tree in its fight against any potential fracking in or around the community.⁴⁶

⁴⁰ "Fracking" is the colloquial term for a natural gas mining process known as hydraulic fracturing. This is an environmentally hazardous method in which "large quantities of water, chemicals, and sand are blasted into [shale rock] formations at pressures high enough to crack the rock, allowing the once-trapped gas and oil to flow to the surface." NRDC, *Fracking 101*, (Apr. 19, 2019), <https://www.nrdc.org/stories/fracking-101>. Adverse environmental impacts of fracking include contaminated water, air pollution, and water supply disruption. *Id.*; see also Nat'l. Institute of Env't. Health Sci, *Hydraulic Fracturing & Health*, <https://www.niehs.nih.gov/health/topics/agents/fracking>.

⁴¹ H.B. 332, 2015 Leg. Reg. Sess. (N.C. 2015); Taft Wireback, *Stokes County Town Could be First Fracking Site in Region*, Greensboro News & Rec., May 10, 2015.

⁴² Taft Wireback, *Stokes County Town Could be First Fracking Site in Region*, Greensboro News & Rec., May 10, 2015; Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 3 (Apr. 14, 2015) (on file with author).

⁴³ Meaghann Evans, *Fracking controversy draws crowd at Stokes library*, THE STOKES NEWS/WXIII2, (May 17, 2012), <https://www.wxii12.com/article/fracking-controversy-draws-crowd-to-stokes-library/2045587>

⁴⁴ See Meeting Minutes from the Bd. of Comm'rs for the Town of Walnut Cove, at 1–2 (May 12, 2015) (on file with author); Meeting Minutes from the Bd. of Comm'rs for the Town of Walnut Cove, at 1–2 (June 9, 2015) (on file with author); Meeting Minutes from the Bd. of Comm'rs for the Town of Walnut Cove, at 1 (Aug. 11, 2015) (on file with author); Meeting Minutes from the Bd. of Comm'rs for the Town of Walnut Cove, at 1–2 (Oct. 13, 2015) (on file with author).

⁴⁵ Brenda Mallory & David Neal, *Practicing on Uneven Ground: Rising Environmental Justice Claims Under Race Neutral Laws*, 45 HARV. ENV'T. L. REV. 295, 315 (2021).

⁴⁶ *Id.*; see *Our Focus*, ENV'T L. CTR., <https://www.selc.org/our-focus/> (last visited Dec. 5, 2025) (SELC is a nonprofit environmental legal advocacy organization focused on clean air and water, protecting land and wildlife, climate change, and environmental justice throughout the south-east).

SELC's work with Walnut Tree quickly revealed that the community was subject to a range of environmental justice issues (in addition to the immediate challenge from the prospect of fracking).⁴⁷ These included the problems with well contamination, access to public water, and exposure to toxic coal ash from the nearby Duke Energy power plant.⁴⁸

Through SELC's efforts, the North Carolina Committee to the U.S. Civil Rights Commission held a hearing in Stokes County focusing on coal ash and environmental justice.⁴⁹ Walnut Tree residents and their SELC advocates testified at the hearing.⁵⁰ They spoke not only about coal ash and water contamination, but about racial exclusion and the community's efforts to secure annexation into Walnut Cove.⁵¹

Before examining what would become Walnut Tree's successful campaign for inclusion, it is important to understand the legal background and context in which that advocacy took place. Since the community's last attempt at annexation, statewide and national advocacy around racial exclusion and fundamental changes to state laws created an opportune moment for the organized grassroots inclusion campaign led by David Hairston and the Walnut Tree Community Association.

II. MUNICIPAL EXCLUSION, EXTRA-TERRITORIAL JURISDICTION, AND ANNEXATION

Walnut Tree suffered the discriminatory impacts of public policies that, although formally race "neutral," were grounded in the legacy of *de jure* housing segregation. Those impacts were not unique to Walnut Tree; the discrimination residents confronted were the foreseeable and widespread results of "spatial inequality"—the institutionalized geographic, social, and political exclusion of communities of color.⁵²

⁴⁷ See Mallory & Neal, *supra* note 45, at 315–16.

⁴⁸ *Id.* at 316 (noting that the coal-ash impoundment facility at the plant adjacent to Walnut Tree was "one of the largest in the state.").

⁴⁹ *Id.*

⁵⁰ *Id.* at 316–17.

⁵¹ *Id.* at 315–17.

⁵² Ben Marsh et al., *Institutionalization of Racial Inequality in Local Political Geographies*, 30 URB. GEOGRAPHY 691, 692–93; see RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (W.W. Norton & Co., 2017) (for a comprehensive study of the laws and public policies that underlie spatial inequality and racial exclusion).

A. *Racial Exclusion and Municipal Underbounding*

Numerous excluded communities across the nation were established during the Jim Crow era. When municipalities became incorporated, race discrimination in access to housing was legal and town boundaries were drawn to specifically exclude nearby, and even adjacent, Black communities.⁵³ Geographers and sociologists label this racialized exclusion “municipal underbounding.”⁵⁴ These communities—many located immediately alongside town boundaries and often as densely populated as the adjoining in-town neighborhoods—were not provided the basic public services or amenities that the predominantly white residents inside the city limits enjoyed, including public water and sewer, police and fire protection, trash pickup, stormwater controls, sidewalks, paved roads, and streetlights.⁵⁵ The lack of fundamental public services and infrastructure led to the systematic economic underdevelopment of these excluded communities as private businesses, government agencies, and other catalysts for growth avoided locating to such areas.⁵⁶

The absence of infrastructure investments and the related lack of development depresses property values in these communities. Without positive growth, these neighborhoods become targets for adverse and unwanted land uses, like landfills, prisons, or polluting industries.⁵⁷ Local government policies and decision-making entrench the cycle of exclusion and underdevelopment, and the disparities between the mostly white residents inside town boundaries and the mostly Black residents just outside them widens over time.⁵⁸

Exacerbating these racialized land use and development disparities is the reality that being excluded from town boundaries also eliminates the possibility for residents of these communities to participate in local political processes. Since these residents live outside the municipal boundary, they

⁵³ Ben Marsh et al., *Institutionalization of Racial Inequality in Local Political Geographies*, 30 URB. GEOGRAPHY 691, 692–93 (“where minority neighborhoods are distributed around the edges of municipalities, the municipal boundaries may themselves become a significant component of racial segregation.”).

⁵⁴ Daniel T. Lichter et al., *Municipal Underbounding: Annexation and Racial Exclusion in Small Southern Towns*, 72 RURAL SOCIO. 47, 48 (2007) (referring to racially selective annexation and systematic exclusion of Black communities from annexation and incorporation).

⁵⁵ Peter Gilbert, *The State of Exclusion: An Empirical Analysis of the Legacy of Segregated Communities in North Carolina*, UNC Center for Civil Rights 1, 3–7 (2014).

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 17–21.

⁵⁸ *Id.* at 5–6.

are barred from voting in local elections.⁵⁹ But, these communities are typically adjacent to the town boundaries and significantly impacted by municipal public policies. In addition, state statutes give cities and towns certain land use powers and controls to directly legislate in those adjacent out-of-town areas.⁶⁰ Excluded communities are thus denied any political power to hold accountable the elected officials whose decisions most directly impact their lives.⁶¹

The Cedar Grove Institute for Sustainable Communities is a nonprofit social science research firm that focuses on multi-disciplinary analysis of public data related to economic development, housing, education, environmental justice, and equitable land use.⁶² Beginning in 2003, Cedar Grove published a series of reports on municipal underbounding and racial exclusion in North Carolina.⁶³ Using publicly available census and Geographical Information System (GIS) data, the organization identified over thirty-five excluded communities across the state.⁶⁴ These reports often included multi-level maps that depicted town boundaries, racial demographics, and public amenities like water and sewer lines, which together provided compelling visual evidence of the disparities of exclusion.⁶⁵ Visiting and working with these communities reveals the real-life impacts on residents. Upon crossing the town boundary, one quickly notices the absence of sidewalks, curbs and gutters, fire hydrants, sewer manholes, streetlights, and paved roads.⁶⁶

⁵⁹ *Voting in Municipal Elections*, North Carolina State Board of Elections, www.ncsbe.gov/voting/upcoming-election#heading-2 (last visited Dec. 5, 2025).

⁶⁰ See *infra* Section II.B.

⁶¹ For these communities, county leaders are the only local government that can be held politically accountable, and excluded residents seeking redress from town officials are often directed to the county. County officials often claim they have no recourse however, because the towns exercise extra-territorial jurisdiction over these neighborhoods.

⁶² See CEDAR GROVE INSTITUTE FOR SUSTAINABLE COMMUNITIES, <https://www.cedargroveinst.org/index.php>. (last visited Dec. 6, 2025).

⁶³ *Id.*

⁶⁴ See, e.g., *Mapping Excluded and Underserved Communities to Support Litigation and Advocacy*, CEDAR GROVE INSTITUTE FOR SUSTAINABLE COMMUNITIES, <https://www.cedargroveinst.org/reports.php>. (last visited Dec. 6, 2025); *The Persistence of Political Segregation: Racial Underbounding in North Carolina*, CEDAR GROVE INSTITUTE FOR SUSTAINABLE COMMUNITIES, <https://www.cedargroveinst.org/reports.php>. (last visited Dec. 6, 2025); *Southern Moore County Case Study*, CEDAR GROVE INSTITUTE FOR SUSTAINABLE COMMUNITIES, <https://www.cedargroveinst.org/reports.php>. (last visited Dec. 6, 2025).

⁶⁵ *Id.*

⁶⁶ During the nearly ten years the author served as the Managing Attorney for the UNC Center for Civil Rights, that organization published several studies of the scope and impacts of racial exclusion, and represented excluded communities fighting those impacts in Moore, Orange, Jones, Halifax, Duplin, Wayne, Hoke, Northampton, Brunswick, Lenoir, Johnston, Harnett, Wake, and Stokes counties. Most of these county level reports are no longer accessible online, but the comprehensive State of Exclusion report is here:

The research on underbounding illustrates the manipulation of land use regulations and annexation to continue to disadvantage excluded communities. A case study of Mebane, North Carolina, highlighted the town's refusal to annex these neighborhoods, even while annexing predominantly white communities.⁶⁷ Professor Daniel Lichter's comprehensive underbounding study concluded that "communities with large black populations at the fringe were significantly less likely than other communities to annex at all," and that "predominately white communities were much less likely to annex black populations."⁶⁸

The systematic underdevelopment of racially excluded communities provides a convenient rationale for the neighboring majority white town's refusal to annex and incorporate these neighborhoods. As a result of the absence of municipal services, property values in excluded communities are depressed compared to similar in-town areas. Local government leaders highlight that the cost of extending the required services to these areas will be greater than the anticipated property tax revenues to be realized. The refusal to annex is thus justified as a fiscally responsible (and racially neutral) cost-saving measure for residents of the town—who are the only people able to vote for the elected officials refusing to annex.⁶⁹

Ironically, the underdevelopment of excluded communities undercut the ability of towns willing to address those impacts and annex adjacent underbounded communities.⁷⁰ Prior to 2011, local governments were

<https://www.fairhousingnc.org/wp-content/uploads/2024/10/2013-The-State-of-Exclusion-An-Empirical-Analysis-of-the-Legacy-of-Segregated-Communities-in-North-Carolina.pdf>; see also Orange County report: <https://sites.nicholas.duke.edu/diversity/files/2024/08/UNC-Inclusion-Project-Orange-County-Profile.pdf>; see also Duplin County: <https://www.ednc.org/state-exclusion-duplin-county-education-environmental-justice-civic-engagement/>; see also Halifax County: <https://digital.ncdcr.gov/documents/detail/3282819?item=3313315>.

⁶⁷ James H. Johnson, Jr. et al., "Racial Apartheid in a Small North Carolina Town," *The Review of Black Political Economy*, Vol. 31, Number 4, at 95 (2004) ("of Mebane's [NC] African American neighborhoods . . . none of the have been annexed into the city. Most of the parcels annexed over the past decade . . . are predominantly white."); see also Marsh et al., *supra* note 52, at 697–99; see also Lichter et al., *supra* note 54.

⁶⁸ Lichter et al., *supra* note 54, at 60.

⁶⁹ During the hearings on the annexation of Walnut Tree, one Walnut Cove Town Commissioner repeatedly raised the specter that inclusion would be a financial loss for the town and a burden on existing in-town residences. See *infra* notes 53–56 and accompanying text.

⁷⁰ For years, the Midway community advocated for annexation by the Town of Aberdeen, in Moore County North Carolina. The town had grown into a horseshoe around the community, and residents described seeing town garbage trucks and other service vehicles driving through their neighborhood to save time reaching other incorporated areas. Eventually town leaders were convinced that annexing Midway would not only address the legacy of exclusion, but also was critical to the Town's long range planning and development strategies. When the Town moved forward to annex Midway, it discovered the community would not satisfy the statutory density or development requirements. With no other alternative, the Town petitioned the state legislature to adjust its boundaries, which it eventually did in 2009. *E.g.*, *Midway Annexation*

prohibited from annexing any area unless certain minimum population density and development standards were met.⁷¹ The historical economic suppression of these areas made it impossible for towns to include these communities.⁷²

The legacy of racial residential segregation and the exclusion of Black communities from town boundaries laid the foundation for the political and economic exploitation of those communities. Countless public policies that disproportionately and adversely impacted excluded residents built an edifice of spatial inequality on that foundation. The power of local governments to legislate beyond their borders was one of the most significant elements in cementing that inequality.

B. The Use & Misuse of Extra-Territorial Jurisdiction

North Carolina (like many other states) allows cities and towns to exercise significant municipal authority over property beyond their borders.⁷³ Extra-territorial jurisdiction (“ETJ”) was designed as a tool to help cities manage their own geographic growth and development, as well as ensure effective growth and planning among towns.⁷⁴ In practice, ETJ allows a city to extend its land use, zoning, planning and other municipal authority over individuals, families, and communities that do not have the right to vote in municipal elections and thus cannot hold officials accountable for the decisions that most directly impact on their day-to-day lives.⁷⁵ Walnut Tree was historically part of the Walnut Cove’s ETJ.⁷⁶

In 1958, the North Carolina General Assembly established a Municipal Government Study Commission, which concluded that ETJ was a vital

Ends Long Struggle, THE PILOT, (July 19, 2009) https://www.thepilot.com/news/midway-annexation-ends-long-struggle/article_9c2e8cb4-ba55-518d-b4e1-cfc913f44cbc.html; see also “An Act to Annex the Midway Community to the Town of Aberdeen,” 2009 N.C. Sess. Laws 153.

⁷¹ N.C. GEN. STAT. §§ 160A-45–54 (2010) (repealed 2011).

⁷² See THE PILOT *supra* note 70.

⁷³ N.C. GEN. STAT. § 160D-202 (2025).

⁷⁴ David W. Owens, *Extraterritorial Jurisdiction for Planning and Development Regulation*, UNC SCH. OF GOV’T (Mar. 2023) <https://www.sog.unc.edu/resources/legal-summaries/extraterritorial-jurisdiction-planning-and-development-regulation>.

⁷⁵ The Supreme Court rejected a constitutional challenge to extra-territorial jurisdiction, emphasizing that “our cases have uniformly recognized that a government may legitimately restrict the right to participate in its political processes to those who reside within its borders. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68–69 (1978). The Court effectively concluded “no representation without taxation.” *Id.*

⁷⁶ See WALNUT COVE TOWN CODE ch. 156.003 (1986) (“The regulations and provisions found in this chapter shall apply to all the properties . . . within the territory beyond such corporate limits . . . for a distance of approximately one mile in all directions. . .”).

tool for cities and towns.⁷⁷ The study commission report was based on the presumption that the areas over which towns asserted ETJ would soon be annexed and become part of the adjacent municipality.⁷⁸ This remains one of the primary justifications for the continuing support of broad ETJ power—it seems reasonable to allow cities to have additional planning power over areas that will soon become part of the city itself.

In reality, many cities have kept areas within their ETJs for decades.⁷⁹ Rather than using ETJ as part of a process to ensure the orderly geographic expansion of town boundaries, this authority has been misused, leaving ETJ communities like Walnut Tree indefinitely subject to a municipal authority in which they have no meaningful voice. In addition, county leaders—the only local officials politically accountable to ETJ residents—become less directly engaged in assisting these communities, deferring responsibility to the municipalities to whom the county willingly granted ETJ authority. The municipalities in turn repeatedly refer ETJ residents to the county commissioners as their primary elected representatives, leaving excluded community members trapped in a frustrating political no-man’s-land of miscommunication and unmet community needs. This outcome is contrary to the legitimate purpose, intention, and design of ETJ.

There is one additional component of exclusion that requires consideration. North Carolina law expressly allows a municipality to set the schedule of rates for any services it provides and that “different schedules may be adopted for services provided outside the corporate limits of the city.”⁸⁰ Walnut Cove, like many cities and towns in North Carolina, charges nonresidents double the water and sewer rates for in-town residents.⁸¹ Because services to nonresidents are voluntary (unlike services provided to residents), “utilities can provide services for a profit.”⁸²

⁷⁷ JOSEPH M. HUNT JR. ET. AL., REPORT OF THE MUNICIPAL GOVERNMENT STUDY COMMISSION, (Nov. 1, 1958) <https://www.sog.unc.edu/publications/reports/report-municipal-government-study-commission-0>.

⁷⁸ Owens, *supra* note 74; *see also* HUNT, *supra* note 77, at 18. (“These areas, in the normal course of events, will at some time be annexed to the city.”).

⁷⁹ David W. Owens, *The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction*, UNC SCH. OF GOV’T, (Jan. 2006), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.sog.unc.edu/sites/default/files/additional_files/ss20.pdf&ved=2ahUKEwjP6ODrpdGNAXUGmYQIHfNUOeQQFnoECCUQAQ&usq=AOvVaw27-rup3Oa8pABeFil22EM8.

⁸⁰ N.C. GEN. STAT. § 160A-314(a).

⁸¹ Complaint Jury Trial Demanded, *Walnut Tree Comm. Assoc. v. Town of Walnut Cove*, 17-CV-614, 5 (Stokes Cnty, Super. Ct. Sept. 7, 2017).

⁸² Christian Lutz, *Outside Rates: Why Are They Higher?*, UNC SCH. OF GOV’T: ENV’T FIN. CTR., (Dec. 9, 2021), https://efc.sog.unc.edu/outside-rates-why-are-they-higher/#_ftn1.

Additionally, courts have held that the reasonableness of extraterritorial rates is not subject to judicial review.⁸³

Local governments seeking to discourage demands for annexation by excluded communities often attempt to frighten residents with specter of increased property taxes.⁸⁴ But, for excluded communities to which water and sewer has been extended—like Walnut Tree—the opportunity for residents to cut their water and sewer bills by fifty percent or more provides a substantial financial incentive to pursue annexation. Moreover, because of systemic economic underdevelopment of these communities, the increased tax burden is often offset by the reduction in utility costs. Newly annexed residents also realize other savings, including fees and costs related to hauling one’s own trash, homeowner’s insurance (following the installation of streetlights and fire hydrants), maintenance of well and septic systems, as well as reduced rates for other municipal services that have a nonresident fee (e.g., parks and recreation programs).

C. *Annexation Reform Act 2011*

Prior to 2011, North Carolina recognized two forms of municipal annexation.⁸⁵ The first, city-initiated or “involuntary” annexation, allowed a city or town to unilaterally annex property that met certain statutory prerequisites regarding size, development, population density, and contiguity.⁸⁶ The other form, owner-initiated or “voluntary” annexation, required a petition signed by 100% of the property owners in the area seeking annexation.⁸⁷ Because of the 100% requirement, voluntary annexation was mostly used by real estate developers seeking approval for incorporation prior to beginning construction, when all parcels or lots were owned by a single person or entity.⁸⁸

⁸³ *Providing Utility Services Outside Territorial Boundaries: Recent Developments*, UNC SCH. OF GOV’T: COATES’ CANONS LOC. GOV’T L. BLOG, (Jun. 10, 2016), <https://canons.sog.unc.edu/2016/06/providing-utility-services-outside-territorial-boundaries-recent-developments/>; see also Kara A. Millonzi, *Lawful Discrimination In Utility Ratemaking*, UNC SCH. OF GOV’T: LOC. FIN. BULL., (Oct. 2006), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/lfb34.pdf> p. 3 (“[M]ost municipalities charge nonresidents rates that are significantly higher than those imposed on resident customers. According to the North Carolina League of Municipalities, the median bill for outside water and sewer customers is 195–196 percent higher than that for inside customers.”).

⁸⁴ See Lutz, *supra* note 82. Upon annexation, residents would be required to pay municipal property taxes like every other town resident.

⁸⁵ See N.C. GEN. STAT. §§ 160A-45–49 (2010) (repealed 2011).

⁸⁶ N.C. GEN. STAT. §§ 160A-45–54 (2010) (repealed 2011).

⁸⁷ N.C. GEN. STAT. § 160A-58.1 (2023) (amended by 2025 N.C. Sess. Laws 1, 1).

⁸⁸ In addition to these two statutory forms of annexation, the state legislature also retains the authority to annex property into a municipality. See *Annexation*, UNC SCH. OF GOV’T,

Neither annexation process served excluded communities. Historic underdevelopment, lack of infrastructure such as water and sewer, poor housing stock, unemployment, and other legacies of segregation and exclusion prevented these communities from being sufficiently dense for involuntary annexation. Additionally, local governments had no interest in initiating the annexation of areas that would bring in little tax revenue and likely require additional infrastructure investment, especially if the municipality could exercise control through extra territorial jurisdiction.

Voluntary annexation was similarly unattainable. Securing 100% of the owners in any longstanding residential community would be a substantial burden; in historically excluded Black communities—which often included heirs’ property or absentee landowners—it was an insurmountable hurdle. And even if it were possible to secure the needed signatures, whether to accept a voluntary annexation petition was solely within the discretion of municipal officials.⁸⁹ Thus, local governments retained exclusive control over both statutory annexation processes.

Opposition to city-initiated annexation became a dominant political issue in North Carolina after the residents of the wealthy, gated, and predominantly white Pinewild community in Moore County challenged the Village of Pinehurst’s plan to annex the area in 2005.⁹⁰ Following a high-profile but ultimately unsuccessful legal challenge to reverse the town-initiated annexation,⁹¹ anti-annexation advocates turned their focus to the General Assembly.⁹² These efforts led to the creation of legislative study committees in 2007 and 2008, tasked with comprehensively reviewing the state’s annexation laws, with a particular focus on limiting involuntary annexation.⁹³ Although a number of legislative changes were proposed based on the committee’s report, no annexation legislation was passed.⁹⁴

Comprehensive annexation reform was a leading priority of the Republican dominated legislature that was elected in 2010, again with a focus

<https://www.sog.unc.edu/resources/microsites/annexation> (last visited Dec. 5, 2025). Notably, legislative action is the only way that areas can be deannexed from a municipality. *See, e.g.*, Mark Dorosin, *The Battle of Brandy Creek: How One Black Community Fought Annexation, Tax Revaluation, and Displacement*, 72 S.C. L. REV. 817, 830 (2021).

⁸⁹ *See* N.C. GEN. STAT. §§ 160A-58.1 (2023) (amended by 2025 N.C. Sess. Laws 1, 1).

⁹⁰ *See* Karen Welsh, *Grass Roots Move Against Annexations*, CAROLINA J. (Oct. 28, 2008), at 1; *see also, e.g.*, Mark Wineka, *Annexation fight shifts to Raleigh*, SALISBURY POST (Dec. 2, 2009, 12:00 AM), <https://www.salisburypost.com/2009/12/02/annexation-fight-shifts-to-raleigh/>.

⁹¹ Welsh, *supra* note 90, at 1.

⁹² *Id.*; Wineka, *supra* note 90.

⁹³ Judith Welch Wegner, *North Carolina’s Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 211–12 (2012).

⁹⁴ *Id.* at 211.

on limiting municipal power and city-initiated annexations.⁹⁵ At that same time, advocates and representatives of racially excluded communities across the state, working with the North Carolina League of Municipalities, the North Carolina Justice Center, and the UNC Center for Civil Rights, helped secure changes to the voluntary annexation statutes in order to assist those communities seeking annexation and the rights and privileges that inclusion offered.

The Annexation Reform Act of 2011 included provisions specifically designed to lower barriers to annexation for historically excluded low-wealth communities.⁹⁶ The revised voluntary annexation statutes created a process to identify and recognize qualifying “distressed communities,” defined as any community where fifty-one percent of the households have incomes that are 200% or less of the federal poverty threshold.⁹⁷ Additionally, annexation of these communities was mandatory “upon presentation to the governing board of a petition signed by the owners of at least seventy-five percent (75%) of the parcels of real property in that area.”⁹⁸ Advocates also secured a discretionary voluntary annexation provision for “any distressed area contiguous to [town] boundaries upon presentation to the governing board of a petition signed by at least one adult resident of at least two-thirds of the resident households located within such area.”⁹⁹

Walnut Tree was the first community to pursue annexation under the 2011 law. The annexation and full inclusion of this historically excluded community was exactly what the distressed community provisions of Annexation Reform Act of 2011 envisioned. But, Walnut Cove was determined to keep Walnut Tree out.

⁹⁵ *Id.* at 211–12. The primary demand of the annexation opponents was a referendum provision that would allow impacted residents to block city-initiated annexations.

⁹⁶ *Summary of the Annexation Reform Act of 2011: Session Law 2011-396*, UNC SCH. OF GOV. (July 2021), <https://www.sog.unc.edu/resources/legal-summaries/summary-annexation-reform-act-2011-session-law-2011-396>.

⁹⁷ N.C. GEN. STAT. § 160A-31(b1) (2011).

⁹⁸ *Id.* This mandatory provision also included restrictions on the population and contiguity of the community seeking annexation.

⁹⁹ N.C. GEN. STAT. § 160A-31(j) (2025). It is worth noting that although this provision maintains municipal discretion to annex, it also includes more generous petition requirements: only sixty-seven percent of households, and signers can be residents (as opposed to owners).

III. A NEW DEMAND FOR INCLUSION

A. February 2016 Petition for Annexation

Building on the momentum of successfully organizing against coal ash and potential fracking in their community and mindful of the reality that racial exclusion was the foundation of those environmental justice issues, the Walnut Tree Community Association began a new round of advocacy for annexation in 2016. At that time, white officials held a three-two majority on the Town Board (Mayor Lynn Lewis and Commissioners Sharon Conaway and Elwood Made were white; Commissioners Danny Hairston and Charles Mitchell were Black).¹⁰⁰ At the February 9, 2016, Walnut Cove Town Commissioner’s meeting, David Hairston submitted a voluntary annexation petition formally requesting the Town to annex the Walnut Tree community.¹⁰¹ While noting the “three previous annexation petitions have been denied,” he emphasized that recent tests revealed that the water in Walnut Tree was contaminated.¹⁰² He also urged the Town to annex the neighborhood to connect it to the same wells that served the in-town residents.¹⁰³ Other Walnut Tree residents spoke at the meeting in support of annexation and their need for clean drinking water. One resident, Gregory Hairston, said “the Walnut Tree community feels that they have been rejected because they are ninety percent black,” and asked the Commissioners to prove that is not true and annex Walnut Tree.¹⁰⁴

At the Commissioner’s meeting the next month, Town Manager Bobby Miller rejected the annexation petition because it failed to include the signatures of 100% of the property owners in Walnut Tree.¹⁰⁵ Town Attorney Ann Rowe told residents to resubmit the petition when they collected the missing signatures.¹⁰⁶ She neglected to tell them about the

¹⁰⁰ The author confirmed the race for each official by looking up their voter registration. N.C. STATE BD. OF ELECTIONS, <https://vt.ncsbe.gov/RegLkup/> (last visited July 7, 2025) (on file with the author); see *Mayors unopposed in Nov. election*, STOKES NEWS, https://www.thestokesnews.com/news/local/mayors-unopposed-in-nov-election/article_f2b1cdb4-7b5b-51ba-816b-4a2e6e1e298e.html (last updated July 19, 2023); see also CANDIDATE LISTING 2013, https://s3.amazonaws.com/dl.ncsbe.gov/Elections/2013/Candidate%20Filing/Candidate_listing_2013.csv (last visited Dec. 5, 2025) (on file with author).

¹⁰¹ Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 1 (Feb. 9, 2016) (on file with author).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 2.

¹⁰⁵ Meeting Minutes from the Meeting of the Mayor & Comm’rs for the Town of Walnut Cove, at 2 (Mar. 8, 2016) (on file with author).

¹⁰⁶ *Id.*

distressed area provisions of section 160A-31.¹⁰⁷ Frustrated by the Town's response, David Hairston reached out to the University of North Carolina Law School's Center for Civil Rights because of its advocacy on behalf of excluded communities.¹⁰⁸ Working together, they developed a strategy to pursue annexation as a distressed area under the discretionary provisions of section 160A-31(j).¹⁰⁹

B. July 2016 Petition

On July 8, 2016, David Hairston submitted a new petition for the voluntary annexation of Walnut Tree, pursuant to the revised annexation statutes.¹¹⁰ The petition was signed by fifty-eight residents of the community and was accompanied by an affidavit from Dr. Allan Parnell, a demographer and Vice President of the Cedar Grove Institute for Sustainable Communities.¹¹¹ Dr. Parnell explained that, based on his research and analysis of U.S. census data, Walnut Tree met the statutory definition of a distressed area.¹¹² The Town Manager reported at the August

¹⁰⁷ *Id.* The omission is worth noting, because the Town Manager specifically referenced the statute in his comments. Commissioner Sharon Conaway, who would later prove to be the biggest opponent of annexing Walnut Tree, also claimed that the community is already connected to the Town's water system. *Id.* at 3. There was no discussion of the tests that revealed water contamination in Walnut Tree.

¹⁰⁸ The author served as lead counsel in the Center's representation of the Walnut Tree Community Association. The author served as the Managing Director of the UNC Center for Civil Rights from 2008 until 2017, when the UNC Board of Governors banned the Center from engaging in litigation or representing clients in any capacity. See Elizabeth Haddix and Mark Dorosin, *Backlash Against Justice: The Ideological Attack on the University of North Carolina Center for Civil Rights*, 40 N.C. CENT. L. REV. 23, 23–24, 23 n.1 (2018).

¹⁰⁹ The 2011 Annexation Reform Act limits mandatory voluntary annexation to areas whose population "is no more than ten percent (10%) of that of the municipality." N.C. GEN. STAT. § 160A-31(b1) (2025). At the time of the petition, there were 73 residential households in Walnut Tree, many of which included families and children. Kellogg, *supra* note 1. The most recent census data available at the time (2010) listed the population of Walnut Cove as 1,425. N.C. OFF. OF STATE BUDGET AND MGMT., *Total Population Change in North Carolina, 2010-2020* 18, <https://www.osbm.nc.gov/2010-2020-municipal-population-change/open> (last visited Dec. 6, 2025). Because the community likely exceeded the population limits for mandatory annexation, and in order to avoid a prolonged process that might require a census of the Town and the community, Walnut Tree proceeded to seek annexation under the discretionary provision. See Kellogg, *supra* note 1; N.C. GEN. STAT. § 160A-31(b1) (2025).

¹¹⁰ See Exhibit A, *Walnut Tree Cmty. Ass'n v. Walnut Cove*, 17-CVS-614 (Stokes Cnty. Super. Ct. Sept. 7, 2017).

¹¹¹ See *id.*; Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2 (Aug. 9, 2016) (on file with author).

¹¹² See Ex. D., Aff. of Allan Parnell, *Walnut Tree Cmty. Ass'n v. Town of Walnut Cove*, 17-CVS-614 (Stokes Cnty. Super. Ct. Sept. 7, 2017) (this is an updated version of Dr. Parnell's affidavit that was submitted with the annexation petition in July 2016) (document in possession of the author).

Commissioner's meeting that the Town Clerk had certified the petition.¹¹³ The Town Attorney explained that she and the Town Manager met with consultants regarding Dr. Parnell's affidavit, and they agreed that Walnut Tree met the statutory requirements.¹¹⁴ The Commissioners then voted unanimously to schedule a public hearing on the annexation petition on October 11.¹¹⁵

The Town Manager presented some preliminary data on the financial impact of annexing Walnut Tree at the Commissioners meeting on September 13.¹¹⁶ In addition to the increased property tax revenue and reduction in water and sewer fees, the Town Manager listed some of the basic public services that inclusion would mean to the residents of Walnut Tree, including "garbage collection service, street maintenance, street lighting, Police, Fire and Rescue services . . . [.]"¹¹⁷ Under North Carolina law, these services must be provided at the same service level and costs to residents of Walnut Tree as any other resident of Walnut Cove.¹¹⁸

A few days before the public hearing, the SELC sent a letter to the Commissioners in support of annexation. SELC lawyers had been working with the Walnut Tree community on the water contamination and other environmental justice issues impacting residents.¹¹⁹ The letter highlighted that annexation would not only improve the quality of life in Walnut Tree, but that it would also bring significant benefits to the Town as a whole by bolstering property tax revenues, making the neighborhood more attractive to new residents and growing the town, and making Walnut Cove more competitive for federal and state grant funding.¹²⁰

Attached to the SELC letter was a copy of the U.S. Commission on Civil Rights comprehensive annual report on environmental justice, which had been issued just a few weeks earlier. That report included detailed

¹¹³ Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2 (Aug. 9, 2016) (on file with author).

¹¹⁴ See *id.* at 2–3. N.C. GEN. STAT. § 106A-31(l) (2022) expressly authorizes the use of census data for assessing whether the area seeking annexation is distressed. ("For purposes of determining whether the percentage of households in the area petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this section, the petitioners shall submit to the municipal governing board any reasonable evidence that demonstrates the area in fact meets the income requirements of that subsection. The evidence presented may include data from the most recent federal decennial census, [or] other official census documents. . . .")

¹¹⁵ *Id.* at 3.

¹¹⁶ Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2 (Sept. 13, 2016) (on file with author).

¹¹⁷ *Id.*

¹¹⁸ N.C. GEN. STAT. § 106A-31(e).

¹¹⁹ See Mallory & Neal, *supra* note 45, at 315–16.

¹²⁰ See Ex. C at 1–2, Walnut Tree Cmty. Ass'n v. Town of Walnut Cove, No. 17-CVS-614 (Sup. Ct. Stokes Cnty. Sept. 7, 2017).

information on Walnut Tree, its exposure to coal ash from the adjacent Duke Energy plant, and the contamination of the community's water.¹²¹ The report recognized the legacy of racial exclusion of Walnut Tree as one of the primary reasons the residents suffered years of environmental injustices.¹²² Notably included among the Commission's recommendations was this: "The affected community of Walnut Tree should be annexed into the Town of Walnut Cove in order to have political representation."¹²³

C. Public Hearings and Votes

Over forty Walnut Tree residents attended the October 11 public hearing, and several of them made public comments.¹²⁴ Representatives from SELC and the UNC Center for Civil Rights also addressed the Commissioners.¹²⁵ David Hairston described annexation as "his mother's dream" for the community and said that they had been turned down for annexation three times "but never for any legitimate reason."¹²⁶ He told the Commissioners that "[he and] the people of Walnut Tree want to contribute to the town not take anything away from it."¹²⁷ Other residents said that "the people in the Walnut Tree area want to be part of the Town, they want to be part of the greater good," and that the community should be annexed "so that all can see there is equality."¹²⁸

Commissioner Conaway was unpersuaded. She challenged the accuracy of the information presented by SELC and the Civil Rights Commission report.¹²⁹ Despite the assurances of Town Attorney Ann Rowe and the experts she consulted with, the Commissioner also questioned whether Walnut Tree actually met the distressed area qualifications.¹³⁰ The public hearing was closed without a vote on the petition.¹³¹

¹²¹ *See id.*

¹²² *See id.* at 194–95.

¹²³ *Id.* at 202.

¹²⁴ *See* Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2 (Oct. 11, 2016) (on file with author). The author attended this meeting and observed the number of people in attendance.

¹²⁵ *Id.* at 2–3.

¹²⁶ *Id.* at 2.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 2–4.

¹³⁰ *See id.*

¹³¹ *Id.* at 3–4.

The Town Board was scheduled to again consider the annexation at its meeting on November 15, 2016.¹³² In anticipation of that hearing and given the questions some Commissioners had raised at the October meeting, the UNC Center for Civil Rights sent a detailed letter to the Board reviewing the history of Walnut Tree, the community's continuing water quality issues, and its repeated requests for annexation.¹³³ The letter also explained the provisions of the 2011 Annexation Reform Act affecting excluded communities, how Walnut Tree met all the statutory requirements, and the anticipated financial benefits of annexation for Walnut Cove.¹³⁴ The letter concluded with the underlying civil rights issue at stake.¹³⁵

The most compelling argument in favor of annexation however, is the one made with eloquence and power by the residents of Walnut Tree. . . . They believe, and have always believed, that they are part of and belong to the Walnut Cove community, and to continue to exclude them from the Town only serves to divide, discriminate against, diminish, and deny their full inclusion and participation in the broader community. This of course impacts Walnut Tree residents most severely, but also prevents every resident of Walnut Cove from achieving their collective potential.¹³⁶

At the November 15 meeting, Commissioner Conaway questioned the Town Clerk's certification of the July annexation petition and the affidavit from Dr. Parnell.¹³⁷ She insisted that the Board needed more information before it could vote.¹³⁸ After Commissioner Conaway questioned the Town Attorney for thirty minutes, Commissioner Mitchell called for a vote on annexation.¹³⁹ Mayor Lewis said, "if the petition was not done correctly[,] the vote wouldn't matter."¹⁴⁰ The vote was delayed until January 2017.¹⁴¹

¹³² See Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove (Nov. 15, 2016) (on file with author).

¹³³ Letter from Mark Dorosin, Managing Att'y, UNC Ctr. for C.R., to Mayor Lewis, Members of the Board of Comm'rs, and Manager Miller (Nov. 9, 2016) (on file with author).

¹³⁴ *Id.*

¹³⁵ *Id.* at 5.

¹³⁶ *Id.*

¹³⁷ See Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove (Nov. 15, 2016) (on file with author). Under the voluntary annexation statute, when a petition is submitted under the distressed area provisions, the Town Clerk is required to review the evidence presented to show the community meets that criteria and the certify "the sufficiency of the petition." N.C. GEN. STAT. §160A-31(c) (2025). The Clerk presented that certification to the board at its August meeting. See Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2 (Aug. 9, 2016) (on file with author).

¹³⁸ See Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove (Nov. 15, 2016) (on file with author).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Prior to the Board's January meeting, Walnut Tree provided additional information in support of its petition. This included a revised affidavit from Dr. Parnell elaborating on the methodology and data he used in determining that Walnut Tree met the distressed area criteria and reaffirming his initial conclusion.¹⁴² Judith Wegner also submitted an affidavit on behalf of the community.¹⁴³ Professor Wegner was the former Dean of the UNC School of Law, an expert in local government and land use law, and a leader of the Joint Legislative Study Commission that helped develop the 2011 Annexation Reform Act.¹⁴⁴ Her affidavit explained in detail how the distressed area provisions were specifically designed to address the inequities faced by neighborhoods like Walnut Tree.¹⁴⁵

At the request of the Town Board, Dr. Parnell appeared at the Town meeting on January 10.¹⁴⁶ Anne Edwards, the consultant the Town had engaged to review the petition (and who had previously concluded that it met the statutory requirements), attended the meeting as well.¹⁴⁷ At the start of the meeting, the Town Manager explained that two votes were required. The first vote would consider whether the petition was sufficient.¹⁴⁸ If that vote passed, then the Board would vote on whether to annex the community.¹⁴⁹

Commissioner Conaway immediately began questioning the census data used to meet distressed area criteria, stating it "was not the reality of this area."¹⁵⁰ She claimed that the data was insufficient, inaccurate, and conflicted with data related to property values in Walnut Tree.¹⁵¹ Dr. Parnell defended the data and his analysis and stated that "multiple measures

¹⁴² Ex. D., Aff. of Allan Parnell, Walnut Tree Cmty. Ass'n v. Town of Walnut Cove, 17-CVS-614 (Stokes Cnty. Super. Ct. Sept. 7, 2017) (document in possession of the author).

¹⁴³ Ex. D., Aff. of Judith Wegner, Walnut Tree Cmty. Ass'n v. Town of Walnut Cove, 17-CVS-614 (Stokes Cnty. Super. Ct. Sept. 7, 2017) (document in possession of the author).

¹⁴⁴ *Id.* at 270.

¹⁴⁵ *Id.* at 270–71.

¹⁴⁶ See Meeting Minutes from Town of Walnut Cove Bd. of Comm'rs Meeting, at 2 (Jan. 10, 2017) (on file with author).

¹⁴⁷ See Meeting Minutes from Town of Walnut Cove Bd. of Comm'rs Meeting, at 2 (Aug. 9, 2016) (on file with author) (demonstrating that a census was reached at a prior meeting between Anne Edwards and others that the area could be certified as distressed).

¹⁴⁸ Meeting Minutes from Town of Walnut Cove Bd. of Comm'rs Meeting, at 2. (Jan. 10, 2017) (on file with author).

¹⁴⁹ *Id.*; N.C. GEN. STAT. § 160A-31(d1) (2025).

¹⁵⁰ Meeting Minutes from Town of Walnut Cove Bd. of Comm'rs Meeting, at 2. (Jan. 10, 2017) (on file with author).

¹⁵¹ *Id.* at 2–3.

using official data” showed the community met the statutory criteria.¹⁵² Commissioner Conaway then argued the Walnut Tree already had the services the statute was designed to provide, the residents would receive no benefit from annexation except streetlights and lower utility bills, and that those changes would impose costs on the other residents of Walnut Cove.¹⁵³ She also disputed that the Town ever denied an annexation petition from the community.¹⁵⁴ David Hairston replied that the Town refused to ever act on the previous petitions submitted.¹⁵⁵

Mayor Lewis stated that the issue was about money, and “preserving the town at all costs” and “has nothing to do with race.”¹⁵⁶ At that point, Commissioner Mitchell said “it is a voting issue.”¹⁵⁷ Commissioner Hairston made a motion to find the petition sufficient, which was seconded by Commissioner Mitchell.¹⁵⁸ Both Black commissioners voted in favor, both white commissioners (Conaway and Mabe) voted against.¹⁵⁹ Mayor Lewis then cast the tie breaking vote—against certifying the petition.¹⁶⁰

IV. LITIGATION, COMMUNITY ORGANIZING, AND THE ANNEXATION OF WALNUT TREE

David Hairston was undaunted by the Town’s refusal to annex the neighborhood. He spent the next several months organizing the community, as well as allies that lived in Walnut Cove, to continue to advocate for annexation. As part of that grassroots advocacy, in September 2017, the Walnut Tree Community Association and long-time residents David Webster, Ada Linster, and Anthony and Lydia Prysock filed a lawsuit against the Town.¹⁶¹ The complaint alleged that the Town intentionally discriminated against the residents of Walnut Tree when it refused to annex the community, in violation of the equal protection provision of the

¹⁵² *Id.* at 3. During his testimony at the meeting, the author also noted that property value was not a metric listed in the statute to determine whether the area seeking annexation was economically distressed.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

¹⁵⁶ *Id.* at 4.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *See id.*

¹⁶⁰ *Id.*

¹⁶¹ *See* Complaint, *supra* note 2, at 1. The UNC Center for Civil Rights and K&L Gates, LLP represented the plaintiffs. *Id.* at 22; Kellogg, *supra* note 1.

North Carolina Constitution.¹⁶² Specifically, the complaint asserted that Walnut Cove “implemented annexation decisions contrary to the . . . annexation statutes and in a manner that intentionally discriminates against the Plaintiffs,” and “engaged in . . . a pattern and practice of discrimination against African American residents of the Walnut Tree Community.”¹⁶³

The relief requested was straightforward—that the Town be enjoined from further discriminating against the residents of Walnut Tree and ordered to approve the annexation of the community.¹⁶⁴ When asked about the filing of the lawsuit, David Hairston said:

We are and have long been a part of the fabric of the Town of Walnut Cove, but when it comes to voting rights and town services, the town has excluded us. . . . At some point, you just have to ask why. Is it the color of our skin and not the content of our character that has kept us out all these years?¹⁶⁵

Even though the community was hopeful the litigation would be successful, David Hairston understood that Walnut Tree’s struggle was first and foremost a matter of community organizing and building grassroots support for inclusion. The three-two vote against annexation was a stinging reminder of what was perhaps most significantly at stake for the community—political power. This was the point Commissioner Conaway failed to grasp but that every resident of Walnut Tree knew instinctively and was reminded of every day: they had no voice in selecting the officials who made the policy decisions that most directly impacted their lives, and no ability to hold those officials accountable for those decisions. But, if Walnut Tree were to become part of Walnut Cove, African Americans might be able to gain a majority on the Town Board. And David Hairston believed that was the primary reason white town leaders opposed annexation.¹⁶⁶ Ironically, that milestone would be reached even before annexation and was the critical factor in securing the incorporation of Walnut Tree into Walnut Cove.

¹⁶² See Complaint, *supra* note 2; N.C. CONST. art. I, § 19 states: “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”

¹⁶³ Complaint, *supra* note 2, at 20.

¹⁶⁴ *Id.* at 22.

¹⁶⁵ Jenny Drabble, *Residents ‘in no-man’s land’ sue town of Walnut Cove*, WINSTON-SALEM J., Sept. 10, 2017, at 1.

¹⁶⁶ See Kellog, *supra* note 1, at 3.

In the November 2017 election, the Mayor and two Town Commissioner seats—all the ones held by whites— were on the ballot.¹⁶⁷ The Mayor’s seat was an open race (Mayor Lewis did not seek re-election); Commissioners Mabe and Conaway were each seeking an additional term.¹⁶⁸ David Hairston and the Walnut Tree Community Association recognized an opportunity. Building on the broad public engagement around the test drilling for fracking, the water quality issues, and the continuing struggle for inclusion (highlighted by the recently filed discrimination lawsuit), the Association focused its efforts on making annexation the central issue of the municipal elections.¹⁶⁹ The fact that the residents of Walnut Tree could not vote did not deter David Hairston, who said

We started a write-in campaign Even though we were not in the town limits[,] we participated in the election system that year by going out and bringing people into the polls to vote that actually live in the town of Walnut Cove. We got 90 percent of the Black people that live in the town limits to come out and vote, and persuaded the good old Democratic people and some Republicans that supported us.¹⁷⁰

The Walnut Tree Community Association recruited supporters of annexation to run as write-in candidates, and they were victorious. Commissioner Charles Mitchell was elected mayor, the first African American to ever hold that office.¹⁷¹ His son, Thomas Mitchell, was the highest vote-getter in the Town Board race.¹⁷² Commissioner Mabe came in second and kept his seat.¹⁷³ Commissioner Conaway, the most aggressive opponent of annexation, was rejected by the voters.¹⁷⁴ For the first time in history, African Americans constituted a majority of the elected officials of Walnut Cove. This outcome recast the potential for the annexation of Walnut Tree. While the litigation was just beginning, the election results renewed hope that the Association’s grassroots organizing efforts could bring a political resolution to the long exclusion of the community.

¹⁶⁷ 11/07/2017 OFFICIAL MUNICIPAL ELECTION RESULTS – STOKES, N.C. STATE BD. OF ELECTIONS (Nov. 17, 2017, 11:57 AM), https://er.ncsbe.gov/?election_dt=11/07/2017&county_id=85&office=LOC&contest=0.

¹⁶⁸ *Id.*

¹⁶⁹ See *infra* note 180 and accompanying text; Kellogg, *supra* note 1.

¹⁷⁰ Kellogg, *supra* note 1.

¹⁷¹ N.C. STATE BD. OF ELECTIONS, *supra* note 167. *Walnut Cove Remembers Charles Mitchell, First Black Mayor*, STOKES NEWS (Dec. 15, 2021), https://www.thestokesnews.com/news/walnut-cove-remembers-charles-mitchell-first-black-mayor/article_7c6297e1-df66-5df9-a0d3-8fed99f46236.html.

¹⁷² N.C. STATE BD. OF ELECTIONS, *supra* note 167; STOKES NEWS, *supra* note 171.

¹⁷³ N.C. STATE BD. OF ELECTIONS, *supra* note 167.

¹⁷⁴ *Id.*

Pursuant to North Carolina law, the new Mayor and Commissioners were sworn in at the December 2017 Board meeting.¹⁷⁵ Immediately after the new members took office, discussions began about a possible settlement.¹⁷⁶ David Hairston and the other Walnut Tree plaintiffs were steadfast in their demand that there could be no agreement that did not result in the annexation of the community. The new Board of Commissioners agreed, and by the end of January 2018, the parties reached a settlement requiring the Board to hold a vote on the annexation of Walnut Tree at its meeting on February 13.¹⁷⁷ The settlement agreement also provided that if the annexation was approved, Walnut Cove would apply the in-town water and sewer rates to all Walnut Tree residents retroactively to January 1, 2018.¹⁷⁸ The terms of the settlement agreement were adopted as a Consent Order issued on February 7.¹⁷⁹

The Board of Commissioners voted unanimously in favor of the annexation of Walnut Tree—approving the petition they had rejected three-two a little over a year earlier.¹⁸⁰ Following the vote, the Walnut Cove Town Manager noted that trash and recycling bins had already been ordered for Walnut Tree, that town trash service would begin in March, and that sidewalks and streetlights were in the community’s future.¹⁸¹ She also said that the in-town water and sewer rates would be effective immediately, reducing residents’ utility bills by fifty percent.¹⁸²

David Hairston and the other Walnut Tree residents were thrilled by their overdue inclusion into Walnut Cove. Ada Linster, a long-time resident and one of the individual plaintiffs in the lawsuit, said that the fight for annexation “has been a very long journey. . . . This was a victory, this shows that the barrier has been broken. They finally walked in and picked up a Black neighborhood, instead of a White one.”¹⁸³ Toney Prysock, another plaintiff, added: “It’s been a long time coming. I’ve been fighting for

¹⁷⁵ N.C. GEN. STAT. § 160A-68 (2025).

¹⁷⁶ Amanda Dodson, *Walnut Tree Annexed by Walnut Cove*, MT. AIRY NEWS (Feb. 16, 2018), https://www.mtairynews.com/news/local/walnut-tree-annexed-by-walnut-cove/article_32f8e7f0-18e1-5281-80d6-b88eff874b69.html.

¹⁷⁷ Consent Order & Decree at 3–5, *Walnut Tree Cmty. Ass’n v. Town of Walnut Cove*, 17-CVS-614 (Stokes Cnty. Super. Ct. Feb. 7, 2018).

¹⁷⁸ *Id.* at 5. See generally N.C. GEN. STAT. § 160A-314(a) (2024) (discussing a municipality’s ability to determine utility rates).

¹⁷⁹ Consent Order & Decree at 1, 6, *Walnut Tree Cmty. Ass’n v. Town of Walnut Cove*, 17-CVS-614 (Stokes Cnty. Super. Ct. Feb. 7, 2018).

¹⁸⁰ Jenny Drabble, *Walnut Cove Annexes Black Community: Predominantly Black Community Annexed into Stokes County Town After Decades-Long Fight for Inclusion*, WINSTON-SALEM J., Feb. 16, 2018, at 1.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Kellogg, *supra* note 1.

annexation for 38 years. . . . [it] was a historic night.”¹⁸⁴ David Hairston reminded everyone why annexation was so important to Walnut Tree: “This means the world to us. . . . This is something been fighting for: to be included in a town we love dearly.”¹⁸⁵

But then he went further and spoke from his experience and his passion as a community leader and organizer, and emphasized the collective nature of Walnut Tree’s success. “Come together. When you come together and you fight the fight together and you are determined not to lose, you will win. There will be setbacks, but don’t ever let a setback stop you. Know that as long as you are fighting that fight, eventually you will win.”¹⁸⁶ Over a year after Walnut Cove annexed Walnut Tree, Nellie Brown became the first Black woman elected mayor of the town.¹⁸⁷ Mayor Brown lives in Walnut Tree.

V. SOME REFLECTIONS: MORE COMMUNITY, LESS LAWYERING

The annexation of Walnut Tree is testament to the power of grassroots advocacy and organizing in the struggle for racial justice. It also offers a primer in the appropriate role for lawyers committed to supporting this struggle, and of the important but ultimately limited impact of traditional civil rights litigation on dismantling structural discrimination.

“Community lawyering” is a theory and model of legal practice that focuses on lawyers working collaboratively with clients “not only to solve acute individual problems but to advance collective social change,”¹⁸⁸ particularly regarding institutional hierarchies of racial, sexual, and economic dominance and subordination. Community lawyering recognizes that the lawyer’s role in the representation of any specific client matter also functions as part of the struggle to remedy broader and more fundamental

¹⁸⁴ Drabble, *supra* note 180.

¹⁸⁵ *Id.*

¹⁸⁶ Kellogg, *supra* note 1.

¹⁸⁷ In that November 2019 election, Danielle Bailey-Lash also became the first Black woman elected to the Walnut Cove Town Board of Commissioners. Sadly, Ms. Bailey-Lash passed away before being sworn-in. Neill Caldwell, *A Night of Celebration, Tinged with Sadness*, THE STOKES NEWS (Dec. 11, 2019), https://www.thestokesnews.com/news/a-night-of-celebration-tinged-with-sadness/article_78c5ab73-e82c-5a0a-b636-17114ced5f4c.html; Ms. Bailey-Lash was an outspoken environmental justice advocate in the community and believed her cancer—like that of many of her neighbors—was caused by exposure to the coal ash pollution that contaminated the water in Walnut Tree. *See also Three Great Moments from our Atlanta Training*, THE CLIMATE REALITY PROJECT (Apr. 6, 2019), <https://www.climatealityproject.org/blog/three-great-moments-our-atlanta-training>.

¹⁸⁸ Alina Ball, *Transactional Community Lawyering*, 94 TEMP. L. REV. 397, 410 (2022).

social disparities (and of which the clients' immediate challenge reflects and is a foreseeable if not intentional impact).¹⁸⁹ A foundational tenet of community lawyering is the acknowledgment that the legal system is also an institution of society infected with structural biases and is frequently the most impactful manifestation of those biases on marginalized communities.¹⁹⁰ As a result, community lawyers understand that legal advocacy works best as a tool in support of the broader grassroots struggle for justice.

In practice, community lawyering centers around the community's priorities, strategies, and vision for creating change. "Effective community lawyering means that community members, not the lawyers, are the protagonists of their story and should be the architects of solutions developed."¹⁹¹ It recognizes that communities themselves are best able to assess the full range of impacts—political, social, economic, moral—of both the legal issues confronting them and the alternatives for addressing those impacts.¹⁹² Community lawyering prioritizes the client community's voice, values, and the comprehensive context from which its challenges emerge and which any resolution must acknowledge, particularly the non-legal ones.¹⁹³

The model inverts the traditional dynamics of the lawyer-client relationship that focuses on the lawyer's expertise and experience to assess the applicable law and determine the most effective solution to the immediate (and often narrow) legal issue. That approach even characterizes early civil rights advocacy which, like almost all legal practice, was individualized and reactive. Community lawyering, by contrast, focuses on collective justice and a commitment to prospective structural change while supporting communities and the immediate needs and priorities of their residents. At its most fundamental level, community lawyering is designed to strengthen grassroots power and the prospects for social change by subverting the institutional inequities inherent in the legal system itself. To put the matter in a more philosophical context, community lawyering is the social justice advocate's recognition of Audre Lorde's admonition that "the master's tools will never dismantle the master's house."¹⁹⁴

¹⁸⁹ See *id.* at 411–12; see also Ascanio Piomelli, *Rebellious Heroes*, 23 CLINICAL L. REV. 283, 300 (2016).

¹⁹⁰ See Ball, *supra* note 188, at 415–16.

¹⁹¹ Conniel Malek, *What's the Key to Community Lawyering? Less Lawyering and More Community*, ABA JOURNAL (May 22, 2024, 3:13 PM), https://www.abajournal.com/voice/article/whats-the-key-to-community-lawyering-less-lawyering-and-more-community#google_vignette.

¹⁹² See *id.*

¹⁹³ See DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 3–7 (3d ed. 2012).

¹⁹⁴ AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES*, 100, 102 (1984) (italics removed).

The residents of Walnut Tree began demanding justice for their community in the most traditional grassroots manner. They organized themselves to advocate before the Walnut Cove Town Board—the local government body whose decisions most directly impacted their community. When those persistent efforts were ignored or deflected by leaders whom they could not hold politically accountable, the community built alliances with other organizations to help residents both leverage their power and address the immediate discriminatory impacts of its exclusion.¹⁹⁵ Through these collaborative efforts, the connections between the environmental and racial justice challenges became manifest, and in the process strengthened the community's ability to address both. This collective commitment in turn helped residents recognize the potential role legal resources could play in support of the broader strategy for annexation and inclusion.

Although the success of Walnut Tree's long struggle was achieved following the initiation of litigation, that lawsuit was in fact only one of the tools (one of the last ones, in fact) upon which the community relied over its decades-long demand for racial justice. The Walnut Tree Community Association initiated the litigation with the hope that the lawsuit and its attendant publicity would further build community support and put additional pressure on the Commissioners to approve the petition for annexation.

David Hairston and other residents understood that a political resolution, with the Commissioners recognizing Walnut Tree's legitimate demand for annexation—and inclusion in the broadest sense of that term—was critical in validating the community's belief that Walnut Tree was always part of Walnut Cove. They also understood that a favorable court ruling a few years later might produce the same legal outcome but would necessarily lack the redemptive and institutional change an affirmative decision by the Board could and ultimately did. With the Board acting on its own initiative to approve the annexation, no one could later claim that the inclusion of Walnut Tree was externally imposed on the Town by a judge from outside the community.

Moreover, the litigation faced significant obstacles. Because of the relative size of the populations in Walnut Tree and Walnut Cove, the petition could not be brought under the mandatory provisions of the distressed

¹⁹⁵ In addition to the organizations already mentioned in this article, community based environmental groups like Appalachian Voices, the State Conference of the NAACP, and the Stokes County Branch of the NAACP all collaborated with the Walnut Tree Community Association, and their support was especially critical during the coal ash and anti-fracking advocacy, as well as during the 2017 municipal election. See Mallory & Neal, *supra* note 46, at 315–17; Kellogg, *supra* note 1.

area annexation statute.¹⁹⁶ As a result, the case depended on the equal protection claim, which required the plaintiffs to prove intentional race discrimination—the clear evidence of disparate impact alone would not suffice.¹⁹⁷ This is an extraordinarily high burden, especially in the modern era, where political actors have learned to avoid any overt statements or actions that could provide evidence of discriminatory purpose in their decision making. Instead, Walnut Tree would have had to prove intentional discrimination circumstantially, relying on the factors the Supreme Court first recognized in *Arlington Heights v. Metro. Hous. Dev. Corp.*¹⁹⁸ These include evidence of disparate impact, a pattern of government actions that disproportionately affect one race, the historical background of the official decision, departures from normal administrative procedures, and legislative history and statements by members of the decision-making body.¹⁹⁹

To their credit, the Walnut Tree Community Association and the other plaintiffs may have been able to make a compelling case even under the more restrictive *Arlington Heights* framework. But that is only because of the community's consistent and coordinated grassroots advocacy, which was supported (but never supplanted or minimized) by the long-term community lawyering commitment of their legal counsel.²⁰⁰ Those efforts helped Walnut Tree maximize the community's nascent strengths and dedication to bringing racial justice to the residents. By listening to and understanding their goals, prioritizing their voices, and then providing access to legal resources and substantive expertise, the lawyers were able to enhance the community's grassroots political power.

There are several important lessons to be drawn from Walnut Tree's struggle for inclusion. One is that path to securing racial justice is rarely a straight line but rather reflects both the obstacles presented by entrenched power and emergent (and often unexpected) challenges. Annexation had been the community's primary goal for decades. Despite the Town's

¹⁹⁶ Although the distressed areas provision of the revised statutes was a step toward inclusion, the population limitation created a loophole that allows cities and towns to avoid having to annex racially excluded communities whose size could potentially impact Black or Latino political power—like Walnut Tree. See Meeting Minutes from the Meeting of the Mayor & Comm'rs for the Town of Walnut Cove, at 2–4 (Jan. 10, 2017) (on file with author).

¹⁹⁷ *Washington v. Davis*, 426 U.S. 229, 248 (1976) (“A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white.”).

¹⁹⁸ *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

¹⁹⁹ *Id.* at 266–68.

²⁰⁰ First, the Southern Environmental Law Center, then the UNC Center for Civil Rights and K&L Gates. See *supra* sections II & III.

repeated refusals to act on their petitions, residents continued to attend Board meetings and speak out publicly about their inequitable and discriminatory treatment. But in 2014 and 2015, it was a different (albeit related) set of urgent issues—coal ash, fracking, and water quality—that brought annexation once again to the forefront. While David Hairston and his neighboring residents recognized that environmental justice issues were the immediate critical danger to their community, they also recognized that these were another manifestation of the racial exclusion of Walnut Tree. They then used the momentum and power of that more focused advocacy to re-engage residents and allies in the broader fight for annexation.

Another important lesson from Walnut Tree is the necessity for collaboration in advocating for racial justice. For decades, residents pushed the Town Board for annexation with limited support from outside the community. These efforts were ignored by the Commissioners, who were politically unaccountable to the residents by the very fact of their exclusion. David Hairston intuitively understood that limitation and also that Walnut Tree was not the only racially excluded community to confront it. That is why when the high-profile environmental justice issues emerged, he reached out to the NAACP, which in turn contacted the SELC.²⁰¹ That organization's expertise and experience helped bring the U.S. Civil Rights Commission to Stokes County, and its commitment to community lawyering let the residents' voices and stories be at the forefront of those hearings.²⁰²

By letting the community determine its own priorities and lead the advocacy, SELC lawyers learned that the underlying goal was inclusion. They then reached out to the Center for Civil Rights, to bring that organization's expertise and experience with annexation to support Walnut Tree. The Center continued to let the residents determine the strategy for pursuing inclusion, providing legal support to the community's engagement with the Town Board, to build a powerful record to document the injustices and exclusion, and ultimately to use the litigation to bring meaningful and systemic political change.

CODA

David Hairston passed away unexpectedly in July 2023. He successfully organized, inspired, and led the community in its struggles against coal ash and fracking, and in securing annexation, inclusion, and political

²⁰¹ See Mallory & Neal, *supra* note 45, at 315–17.

²⁰² See *id.*

power. His legacy is a testament to the power of grassroots, community-led advocacy. As longtime ally and friend Caroline Armijo reflected, “His goal was to empower, to let people know that if we put our minds to something we could defeat great odds.”²⁰³ SELC lawyer Chandra Taylor-Stewart said, “Meaningful change always comes from within a community and is impossible without local leaders like David Hairston.”²⁰⁴

David was fearless, generous, and compassionate, and it was an honor to represent him and the Walnut Tree community. I am a better person and a better lawyer for having known him. In remembering David, Dr. King’s words about what he hoped people would say about him after he passed resonate powerfully: “If you want to say that I was a drum major, say that I was a drum major for justice. Say that I was a drum major for peace. I was a drum major for righteousness.”²⁰⁵ But if David could hear all this, he would simply say “Don’t mourn—organize!”²⁰⁶

²⁰³ *Remembering a Community Pillar and Fierce Coal Ash Partner*, S. ENV’T L. CTR.: NEWS (Feb. 5, 2024) <https://www.southernenvironment.org/news/remembering-a-community-pillar-and-fierce-coal-ash-partner/>.

²⁰⁴ *Id.*

²⁰⁵ “*The Drum Major Instinct*”, STANFORD UNIV.: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST. (Feb. 4, 1968), <https://kinginstitute.stanford.edu/drum-major-instinct>.

²⁰⁶ Kimberly Ann, *Don’t Mourn...Organize! Remembering Joe Hill and His Music*, LEFT VOICE: LAB. MOVEMENT (Nov. 19, 2021), <https://www.leftvoice.org/dont-mourn-organize-remembering-joe-hills-music/>.