

# spotlight

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## FLAWED AND UNDEMOCRATIC

Forced Annexation Is Good for Municipal Leaders, But Bad for the Public

**S U M M A R Y :** Municipalities legally can acquire unincorporated areas next to their borders without the consent of the residents living in those areas. This process, called forced annexation, was supposed to promote sound urban development in areas that need municipal services. Instead, it has created a system in which cities ignore the areas most in need of annexation. Even worse, forced annexation is undemocratic and has contributed to the exclusion of minorities from municipalities. Forced annexation needs to be eliminated immediately, and significant annexation reform needs to be adopted.

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**f**orced annexation refers to a process whereby municipalities may acquire unincorporated contiguous areas without the consent of residents living in those areas. This process has come under extreme criticism, in large part because of its treatment of individuals living in unincorporated areas. The legislature may soon study the entire annexation process.

It is important for individuals, especially those that have not been a victim of forced annexation, to put this issue in perspective. If a county decided to disincorporate an area of a city and force the area's residents to live in the "county," there would be outrage. City residents that had made a conscious choice to live in a city and receive city services would be forced against their will to give up those services.

Despite what would be justifiable outrage if a county took such an action, the state legislature has created a similar outrageous situation. Municipalities can decide to force county residents to live in a municipality against their will. County residents, like city residents, also make a conscious choice about where to live. Yet this choice is ignored.

In order to promote sound urban development to fringe geographic areas, the legislature created a forced annexation system. Forced annexation, however, has not promoted sound urban development — in fact, it has done the opposite. Even worse, it has kept minorities out of municipalities and made the annexation of unincorporated areas an excuse for financial bailouts. It also is hard to argue that North Carolina "needs" forced annexation when it has such

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a negative impact and when only five other states have such a system.<sup>1</sup>

This *Spotlight* will briefly discuss the purpose of forced annexation, highlight an inherent flaw with the system, and identify several major reasons why the annexation system in North Carolina needs to be reformed.

### **The Primary Purpose of Forced Annexation**

The North Carolina Supreme Court went through the annexation statute and past studies to identify the primary purpose of forced annexation. In a 2006 case called *Nolan v. Village of Marvin*,<sup>2</sup> the Court explained:

The primary purpose of involuntary annexation, as regulated by these statutes, is to promote “sound urban development” through the organized extension of municipal services to fringe geographical areas. These services must provide a meaningful benefit to newly annexed property owners and residents, who are now municipal taxpayers, and must also be extended in a nondiscriminatory fashion.<sup>3</sup>

Despite any arguments to the contrary, forced annexation is not designed solely to benefit municipalities. As the Court makes perfectly clear, forced annexation exists to ensure that there is sound urban development to fringe geographical areas. When it comes to meeting this purpose, forced annexation has failed miserably, as demonstrated by its exclusion of minority communities.<sup>4</sup> Areas that do not need to be annexed are annexed, and areas that may benefit from being annexed are simply ignored.

### **Inherent Flaw of Forced Annexation**

The current annexation system is inherently flawed because it ignores the rational behavior of municipalities to protect their own interest and the interests of their residents. Municipalities will annex areas when there is some financial benefit and not a financial harm. As a result, areas that need to be annexed, particularly economically disadvantaged areas, likely would not be annexed because it would not be financially beneficial for municipalities to annex these areas.

### **Forced Annexation Violates Democratic Principles**

When individuals are forcibly annexed, they have no way to challenge the merits of the annexation. Once a municipality decides to annex an area, the annexation usually is a foregone conclusion.

Our country was founded on democratic principles, but when it comes to forced annexation, this most sacred principle is conveniently forgotten. Residents in areas to be annexed should have a vote, or at a minimum some form of representation so they have some voice in the process.

This violation of democratic principles not only is important to those in annexed areas but also to those in areas that would like to be annexed. Since municipalities are not accountable to anyone outside their boundaries, this becomes another reason why municipalities do not worry about the needs of those in fringe areas. North Carolina needs an annexation system that ensures that whoever is making decisions on annexation is accountable to the residents being annexed — accountability will protect democratic principles and promote sound urban growth.

The North Carolina League of Municipalities (League) often uses the line that victims of forced annexation want a veto, not a vote.<sup>5</sup> This may make for a nice-sounding bumper sticker slogan, but it makes no sense. Municipalities have no relationship with the individuals living in the annexed areas. When a municipality votes for annexation, it is a unilateral action imposing its will on annexation victims. A vote by annexation victims is a way for them to have a say on the matter *in the first place*.

Proponents of forced annexation also argue that individuals in unincorporated areas should not have a vote be-

cause they enjoy the benefits of the city without paying their fair share. This free-rider argument examines only one side of the equation and fails to take into account the incredible amount of benefits that cities receive from individuals in these areas.

When “county” residents visit the city and buy goods and services, this is a good thing for the city, not a bad thing. “County” residents are employers in the cities helping to create jobs and promote economic growth. It is more likely that cities owe “county” residents rather than the other way around. This free-rider argument also would have us believe cities do not want visitors to their cities.

In the unlikely event that a city could demonstrate that county residents were an overall cost burden, it would still not logically follow that the city should be able to force these individuals to live in the city. If the city feels compelled to obtain money from the county residents, it always can charge user fees for the services that are used.

**Forced Annexation is Very Costly to Annexation Victims**

To add insult to injury, individuals that are forcibly annexed have to pay “development fees” in order to receive water and sewer services. If a municipality wants to forcibly annex an area, it should bear the costs of providing the infrastructure for these services.

These costs, as shown in the accompanying table, are in addition to the new city taxes that annexation victims have to pay.

**Forced Annexation is a Financial Bailout for Municipalities**

Municipalities do not even deny the fact that forced annexation is done for financial reasons. When the League argues that forced annexation helps with bond ratings, it is admitting the economic rationale for annexations. “Appealing” unincorporated areas become a bailout for municipalities that want to fix their own poor financial conditions. A good example is Columbus, North Carolina, where it was noted in the *Tryon Daily Bulletin* that:

Columbus town administrator Glenn Rhodes says the town is faced with a clear choice of either annexing property or raising taxes. ... Rhodes emphasized the importance of annexation to gain additional revenue.<sup>7</sup>

It is not beneficial to existing city residents when they live in a city that feels it can always steal its way of out of problems. When there is always a financial bailout mechanism like forced annexation, cities will take unnecessary risks and make poor decisions. The victims are not just those individuals annexed, but the residents living in the cities that have to suffer through the bad decisions.

**Forced Annexation Excludes Minorities from Municipalities**

*Discriminatory Effect.* The exclusion of minorities from municipalities (often referred to as “political underbonding”) likely is not an intentional act, but it certainly is the discriminatory effect of the current forced annexation sys-

<i>Municipality</i>	<i>Infrastructure Cost Charged Per Household</i>
Raleigh	\$11,782
Durham	\$8,106
Rocky Mount	\$6,150
Fayetteville	\$6,150
Winston-Salem	\$6,110
Greensboro	\$5,585
Cary	\$5,022.50
High Point	\$4,850
Charlotte/Mecklenburg	\$3,542
Wilmington	\$2,195

Source: Town of Cary, Comprehensive Annexation Plan, Adopted March 9, 2006<sup>8</sup>

tem. Two recent studies demonstrate the disturbing impact forced annexation in North Carolina has had on minority communities.

First, a study by the Cedar Grove Institute for Sustainable Communities examined several counties in North Carolina and found that African Americans were being kept out of municipalities. From the study:

In North Carolina, exclusionary segregation results in part from the state's annexation laws and planning practices. These laws give towns the discretion to annex only properties with high tax values, even non-contiguous properties, resulting in discontinuous boundaries that skip over poor and Black neighborhoods (Joyner and Parnell 2003). Whether the unintentional outcome of fiscally driven annexation processes or the intentional result of institutionalized actions by local governments, Blacks are excluded from towns and the associated political and material benefits.<sup>8</sup>

The UNC Center for Civil Rights did another study examining whether minorities were excluded from municipalities. Focusing on Moore County, the study found that exclusion was prevalent by the municipalities in the county.<sup>9</sup> In fact, the study included this very strong statement:

While the initial exclusion of minority communities can in part be explained by history, their continued exclusion suggests something more sinister. In essence, the jagged and irregular municipal boundaries found in many Southern towns suggest that this exclusion is a new form of institutionalized segregation that has gone largely unnoticed by the general public.<sup>10</sup>

*Possible Intentional Discrimination.* The forced annexation system is conducive to allowing systemic intentional discrimination — after all, municipalities get to choose the individuals that can live within their boundaries with very little oversight. The following example demonstrates why intentional discrimination may be a serious concern when it comes to forced annexation.

In 2001, a Goldsboro City Council member sent a disturbing letter to state legislators, the mayor, and other city council members. The letter opposed a bill that would have allowed the incorporation of an area because it would have prevented Goldsboro from annexing the area. As it turned out, Goldsboro eventually did annex the area. The letter, which expressed concern about issues such as “white flight” and the city’s “racial make-up,” stated:

In closing, I could write all day on why this proposed incorporation would be detrimental to the city and why you shouldn't support this bill, but would like to leave you with the following. A city that doesn't grow dies and because of the white flight in the schools, floods and various other reasons, Goldsboro (the city) is not growing, especially our young white families and according to the census, we might even be losing people. Thus the annexation of this area would not only add good tax base to Goldsboro, it would also help us keep our racial make up in check, which in my opinion is very important to our future.<sup>11</sup>

## **Conclusion**

The legislature has a chance to recommend and enact meaningful reform to the state's annexation laws. The question is not if the laws need to be reformed, but how they should be reformed. A good place to start would be to focus on preserving the rights of North Carolinians. There is no reason why the state's annexation process has to continue trampling on civil rights, voting rights, and property rights.

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## End Notes

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2. *Nolan v. Village of Marvin*, 360 N.C. 256; 624 S.E.2d 305 (2006).
3. *Ibid.*
4. Parnell, Allan, *et al.*, "The Persistence of Political Segregation: Racial Underbunding in North Carolina," Cedar Grove Institute for Sustainable Communities, October 24, 2004, [www.mcmoss.org/CedarGrove/Docs/regional\\_underbunding.pdf](http://www.mcmoss.org/CedarGrove/Docs/regional_underbunding.pdf), and "Municipal Underbunding in Southern Moore County," UNC Center for Civil Rights, (Earls, Williams, Connolly, *et al.*), August 2006, [www.law.unc.edu/pdfs/civil/invisiblefencesreport.pdf](http://www.law.unc.edu/pdfs/civil/invisiblefencesreport.pdf).
5. See, *e.g.*, Hankins, Ellis, North Carolina League of Municipalities Memorandum, September 7, 2005, [stopncannexation.com/NCLMBlitz.pdf](http://stopncannexation.com/NCLMBlitz.pdf).
6. "Comprehensive Annexation Program," Town of Cary, adopted March 9, 2006, [www.townofcary.org/depts/dsdept/DR%20Web%20Site/annex/ComprehensiveAnnexationProgram.pdf](http://www.townofcary.org/depts/dsdept/DR%20Web%20Site/annex/ComprehensiveAnnexationProgram.pdf).
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8. Parnell, Allan, *et al.*, "The Persistence of Political Segregation: Racial Underbunding in North Carolina," Cedar Grove Institute for Sustainable Communities, October 24, 2004 at 3, [www.mcmoss.org/CedarGrove/Docs/regional\\_underbunding.pdf](http://www.mcmoss.org/CedarGrove/Docs/regional_underbunding.pdf).
9. "Municipal Underbunding in Southern Moore County," UNC Center for Civil Rights, (Earls, Williams, Connolly, *et al.*), August 2006, p. ii, [www.law.unc.edu/pdfs/civil/invisiblefencesreport.pdf](http://www.law.unc.edu/pdfs/civil/invisiblefencesreport.pdf).
10. *Ibid.*
11. Letter admitted into evidence in *William R. Burnette et al. v. City of Goldsboro*, 05 CVS 1992 (Wayne County); see also Kenneth Fine, "Allen says city didn't use race issue to decide to annex" *Goldsboro News-Argus*, April 28, 2006, [www.newsargus.com/news/archives/2006/04/28/allen\\_says\\_city\\_didnt\\_use\\_race\\_issue\\_to\\_decide\\_to\\_annex/index.shtml](http://www.newsargus.com/news/archives/2006/04/28/allen_says_city_didnt_use_race_issue_to_decide_to_annex/index.shtml).