



North Carolina Municipal Annexation

By Jason Kay¹

May 1, 2008

North Carolina's involuntary annexation scheme does not raise constitutional issues, it raises political issues. The political power, vested in the people by the North Carolina Constitution, must be wielded for annexation reform in the legislature, not the courts.

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.²

I. Introduction

Municipal annexation permits municipalities (cities and towns) to bring residents of outlying areas within the jurisdiction of a municipality.³ At the time an annexation is first contemplated, the residents of areas to be annexed are not within municipal jurisdiction and, therefore, are not taxed by the municipality, do not directly receive municipal services, and cannot vote in municipal elections. Annexation is imposed from without; new laws and regulations are brought to bear without invitation or permission. Yet, in the name of good government, each year more and more municipalities stretch out to govern those who have given no formal consent to be governed.

These factors make municipal annexation, particularly involuntary municipal annexation, a controversial issue, often generating strong opinions. Municipalities applaud it. Proponents of annexation have called it the "wisest urban policy in the country."⁴ Annexed residents decry it. Opponents of annexation have loudly upbraided the policy, arguing that it needlessly "trample[s] civil rights, voting rights, and property rights."⁵ The municipal self-interest and citizen angst that surround involuntary annexation have led to persistent questions over the "wisdom" of a policy which, although permitting easy annexation, to be sure, disenfranchises annexed residents, incentivizes acquisition of the rich, and ignores the poor.⁶

¹ Jason Kay is a Senior Staff Attorney with the North Carolina Institute for Constitutional Law. He can be reached at (919) 838-5313 or kay@ncicl.org. This paper is a general guide to annexation in North Carolina; certain topics are discussed in general terms or omitted entirely due to their complexity or rarity. This paper does not establish an attorney-client relationship and should not be relied on as legal advice.

² N.C. Const. art. I, §§ 1-2.

³ See *Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006).

⁴ Demorris Lee, *Borderwars*, News & Observer (Raleigh, N.C.), Feb. 22, 2004.

⁵ Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007.

⁶ Daren Bakst, *A Forced Annexation Fallacy*, Carolina Journal (Raleigh, N.C.), Mar. 21, 2008, available at http://www.carolinajournal.com/articles/display_story.html?id=4665.

The North Carolina Supreme Court appears to have acknowledged both sides of the debate, while remaining largely deferential to the annexation scheme devised by the General Assembly. The Court has upheld the validity of municipal annexation against multiple, strident challenges, stating that “[t]o suggest ... that ‘inequality and injustice ... is inherent in the concept of forced annexation’ is to ignore reality. Annexation does not bring the burden of taxation without accompanying benefits.”⁷ But the Court has not adopted a purely favorable view of annexation, stating that “[i]nvoluntary annexation is by its nature a harsh exercise of governmental power affecting private property”⁸

This paper discusses the (1) history and purposes of municipal annexation in North Carolina, (2) primary constitutional and statutory requirements of municipal annexation, (3) most common legal challenges, and (4) status of current legislative reform efforts. Discussion of these aspects of annexation leads to the inevitable conclusion: the annexation statutes in North Carolina are not easily susceptible to constitutional challenge. The North Carolina Supreme Court and the United States Supreme Court have, in response to repeated attacks on the annexation statutes over several decades, defended the constitutionality of North Carolina’s annexation scheme. The remaining viable constitutional challenges to annexation, therefore, involve the unconstitutional effects of annexation and primarily focus on race-based or takings-based violations. Statutory challenges remain effective. In light of the extensive case history surrounding the constitutionality of the annexation statutes, it appears that opponents of involuntary annexation have their best hope of annexation reform in the General Assembly, where the democratic process permits a louder voice.

II. History & Purposes of North Carolina’s Annexation Statute

North Carolina has witnessed tremendous growth in the number of its municipalities. In 1705, the Town of Bath became North Carolina’s first incorporated municipality.⁹ As of 2005, North Carolina had 547 municipalities.¹⁰

Even with the explosive increases in the opportunity for citizens to reside in more and more municipalities, approximately one half of North Carolina’s residents still exercise the choice to live outside the jurisdiction of an incorporated municipality.¹¹ More are seeing that decision nullified each year. Between 1990 and 2000, the state’s 189 largest municipalities added a total of 360,000 residents through organic growth; they added another 580,000 through annexation, primarily through involuntary annexation.¹²

⁷ In re *Annexation Ordinance*, 303 N.C. 220, 233, 278 S.E.2d 224, 233 (1981).

⁸ *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 515, 597 S.E.2d 717, 720 (2004).

⁹ North Carolina Small Towns Fact Book, The Rural Center (2005). In 1850, only Wilmington had a population greater than 5,000. *Id.* It did not exceed 10,000 residents until 1870. *Id.*

¹⁰ *Id.* Charlotte is the largest at over 600,000 residents. *Id.* Love Valley is the smallest, with 33 residents. *Id.* Bath has grown to 650 residents. *Id.*

¹¹ *Id.* Almost ninety percent of North Carolina’s municipalities, 478, had fewer than 10,000 residents. *Id.* Almost eighty percent, 437, had fewer than 5,000 residents. *Id.* Approximately one third of the population lives in municipalities of over 50,000 residents. *Id.*

¹² Michael Lowrey, *NC Cities Go On Annexation Binge: Most urban population growth in 90s came from expanding borders*, Carolina Journal Online, May 2, 2003 available at http://www.carolinajournal.com/exclusives/display_exclusive.html?id=348. From 1999-2003, North Carolina

A. Annexation History

While municipal boundaries have always changed, the power to annex has not always resided directly in the hands of municipalities, which directly benefit from annexation. Prior to 1959, the North Carolina General Assembly was the primary governmental body that extended municipal boundaries.¹³ In 1959, however, the General Assembly passed new annexation legislation, presently included with various amendments in Chapter 160A, Article 4A of the North Carolina General Statutes (“Annexation Act”).¹⁴ With the passage of the Annexation Act, the General Assembly delegated to municipalities the authority to annex areas lying near an existing municipality.¹⁵

The Annexation Act allows voluntary annexation and, the more controversial form of annexation, involuntary annexation. Involuntary annexation excludes the right of to-be annexed residents to vote on the annexation decision of a municipal board.¹⁶ North Carolina is one of a handful of states that extend broad involuntary annexation powers to municipalities.¹⁷

B. Annexation Purposes

Municipal annexation is typically motivated by at least one (in some cases, several) of the following purposes: (1) sound urban development; (2) protection of the health, safety, and welfare of residents; (3) fair allocation of payment for municipal services; and (4) increase of the municipal tax revenue base.

The primary purpose of municipal annexation, as articulated by the North Carolina Supreme Court, “is to promote ‘sound urban development’ through the organized extension of municipal services to fringe geographical areas.”¹⁸ The Annexation Act itself cites sound urban development as a predominating purpose of annexation.¹⁹ Without regular annexation, some fear that municipalities would become stressed by expanding rings of haphazardly developed suburban areas lacking sound transportation, law enforcement, or utility planning. Annexation allows municipalities to capture and regulate the development of those outlying areas.²⁰

municipalities conducted over 3,900 separate annexations; *see also* Demorris Lee, *Borderwars*, News & Observer (Raleigh, N.C.), Feb. 22, 2004.

¹³ *See Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006).

¹⁴ *See* N.C. Gen. Stat. §§ 160A-29 to 160A-58.28 (2007). All citations to the North Carolina General Statutes, unless otherwise indicated, refer to the 2007 publication of those statutes.

¹⁵ *See Huntley v. Potter*, 255 N.C. 619, 627, 122 S.E.2d 681, 686 (1961).

¹⁶ *See Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006).

¹⁷ Demorris Lee, *Borderwars*, News & Observer (Raleigh, N.C.), Feb. 22, 2004; Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007; Rex L. Facer II, *Annexation Activity and State Law In The United States*, 41 Urban Affairs Rev. 5 (2006).

¹⁸ *See Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006).

¹⁹ N.C. Gen. Stat. §§ 160A-33, -45.

²⁰ Some argue that the Annexation Act has not achieved these goals, instead driving annexation of wealthy suburbs and ignoring the planning needs of poor suburbs. *See* Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007.

A second purpose of municipal annexation is “the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development.”²¹ Under this rationale, annexation ordinances are necessary when the health and safety of residents allegedly are or may be threatened unless the outlying area receives critical municipal services, such as water and sewer services, police and fire protection, and solid waste collection. At such times, annexation is pursued as a means to provide these services, and thus to protect the residents.

A third purpose of municipal annexation is to require county residents, who may live outside a municipality but work and shop inside the municipality, to pay their fair share for municipal services.²² Residents of outlying areas frequently use and consume resources provided in whole or in part through municipal taxes, such as municipal streets, hospitals, or parking facilities. By annexing those nearby, outlying areas, municipalities attempts to spread more fairly the costs of municipal services to the consumers of those services.²³

The last purpose of municipal annexation is, to put it bluntly, to increase the tax revenue of the municipality through a thinly, if at all, disguised municipal land grab of affluent suburban areas.²⁴ When municipalities fall short of revenue needs, they often perceive a dilemma: either raise the tax rate per resident or obtain more residents.²⁵ When annexation is motivated by a desire for increased tax revenue, the mere perception of such a motive can lead to strong objections. Litigation readily springs out of this circumstance.

III. Overview of The Annexation Act

The Annexation Act can be difficult even for experts to navigate. The statutes are complex, and a single annexation issue may be addressed by several provisions spread throughout the General Statutes. Case law clarifies confusing or conflicting portions of the statutes. The result is a nuanced body of law.

A. The Power To Annex

The ultimate power to determine the boundaries of municipalities is vested in the North Carolina General Assembly, but the General Assembly has broadly delegated this authority to municipalities.²⁶ By delegating the power of annexation, the General Assembly has expressed a

²¹ N.C. Gen. Stat. §§ 160A-33(2), -45(2).

²² See *In re Annexation Ordinance*, 303 N.C. 220, 278 S.E.2d 224 (1981).

²³ Some argue that this “free rider” problem is overstated, asserting that residents contribute as much or more in economic benefits by operating and patronizing municipal businesses than they consume in municipal resources. See Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007.

²⁴ See Lee, Demorris. *Borderwars*. Raleigh News and Observer (February 22, 2004).

²⁵ A municipality may, of course, also consider pursuing efficiency or cost-cutting initiatives to resolve the problem.

²⁶ See *Lutterloh v. City of Fayetteville*, 62 N.C. 65, 62 S.E. 758 (1908), *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

preference for permitting local municipalities to determine when, what, and how land will be included within municipal boundaries.²⁷

B. Constitutional Requirements

Although municipalities have the power to annex, that power must be exercised in compliance with the state and federal constitutions. Annexation is subject to three common constitutional limitations (specific court challenges are discussed in Section IV).

First, a municipality is prohibited from annexing or refusing to annex a parcel of land for reasons based on the race of residents in either the municipality or the land to be annexed.²⁸ Race cannot be a decisional factor in annexation, whether in motive or in effect.²⁹

Second, some annexations are more than mere “annexation.” An annexation may become a “taking” when an annexing government begins using the property for public use,³⁰ or when it has land use rules that substantially diminish the value of land or deprive an owner of profitable use of the parcel.³¹ A municipality must provide due process and just compensation to the landowner if private land is taken for public use.³² Typically, however, a landowner must be deprived of nearly all profitable use of the land and must have had an objectively reasonable expectation of such use to succeed in a regulatory takings challenge.³³ Largely for this reason, these types of challenges are rare.

Finally, an annexation cannot impose taxes on citizens without providing meaningful benefits to the newly annexed area.³⁴ While some reasonable delay in the provision of services to the new area is permissible, a municipality cannot perpetuate a policy of collecting taxes from all residents, while denying substantially similar municipal services to only some of those residents.³⁵

C. Statutory Requirements

In addition to the constitutional requirements, certain substantive and procedural statutory requirements must be met. There are two primary substantive requirements: (1) the land must be *contiguous* with the present municipal boundaries and (2) it must be *urban* in character. Beyond the substantive requirements, municipalities must follow the procedures mandated by statute.

²⁷ See generally, *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). See also, *Huntley v. Potter*, 255 N.C. 619, 627, 122 S.E.2d 681, 686 (1961).

²⁸ See *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 447 S.E.2d 471 (1994).

²⁹ See *id.*

³⁰ See *United States v. Causby*, 328 U.S. 256 (1946).

³¹ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

³² See U.S. Const. Amends. V and XIV.

³³ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), *Penn Central Transp. Auth. V. City of New York*, 438 U.S. 104 (1978).

³⁴ See *Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006) (the Court’s statutory grounds for its holding did not preclude constitutional grounds). See generally, N.C. Const. art. I, § 19.

³⁵ See *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974), *Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006). See generally N.C. Const. art. I, § 19.

1. Annexed Land Must Be Contiguous³⁶

Land annexed by municipalities must be *contiguous* to the boundaries of that municipality. Land is considered contiguous if it shares at least one-eighth of its boundary with the annexing municipality and is not part of another municipality.

There are two primary exceptions to the contiguous requirement. First, a municipality may annex non-contiguous portions of a sewer and water district if the largest portion of that district is contiguous to the municipality.³⁷ Second, certain “satellite annexations” of non-contiguous land are allowed.³⁸ Special rules apply to this type of annexation as discussed below.

2. Annexed Land Must Be Urban³⁹

A municipality may only annex an area if the land to be annexed is *urban*, although exceptions apply. An area is “urban” if it is used for commercial, industrial, institutional or governmental purposes. Different criteria, based on the population of the annexing municipality, are used to determine whether land is “urban.”

For a municipality under 5,000 residents, land is designated “urban” if: (1) at least sixty percent (60%) of the lots are urban AND (2) at least sixty percent (60%) of the remaining area is divided into lots of three (3) acres or less. Municipalities of this size may annex land that is entirely urban. An exception permits annexation of the entire area of a county water and sewer district regardless of whether it is urban.

For a municipality of 5,000 or more residents, application of the urban requirement is more complicated. Land is “urban” if: (1) it meets the requirements for municipalities under 5,000 residents; (2) there are 2.3 persons per acre; OR (3) the population equals at least one person per acre and 60% of tracts in the area to be annexed) are three acres or less (and of these, 65% must be one acre or less).

An important exception to the urban requirement in municipalities with a population of 5,000 or more applies to land that is a necessary land connection to a proposed annexation area.⁴⁰ The connecting land may be annexed, even if it is not urban, if the connecting land is: (1) not more than 25% of the total area to be annexed AND (2) is either located between the municipality and the urban area to be annexed OR shares at least 60% of its boundary with a combination of the municipality’s boundary and the boundary of the urban area to be annexed.⁴¹

³⁶ See N.C. Gen. Stat. §§ 160A-36(b) and 160A-41 for municipalities under 5,000 and 160A-48(b) and 160A-53 for municipalities of 5,000 or more.

³⁷ See N.C. Gen. Stat. §§ 160A-36(b)(1) and 160A-48(b)(1).

³⁸ See N.C. Gen. Stat. § 160A-58 *et seq.*

³⁹ See N.C. Gen. Stat. §§ 160A-36(c) and (d) and 160A-41 for municipalities under 5,000 and 160A-48(c) and (d) and 160A-53 for municipalities of 5,000 or more.

⁴⁰ See N.C. Gen. Stat. § 160A-48(d).

⁴¹ A “combination” requires that the area to be annexed share at least some portion of its boundary with BOTH the municipality and the urban area to be annexed. See *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 515, 597 S.E.2d 717, 720 (2004). See also *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123

3. Annexation Procedure

It should be noted at the outset of any discussion of annexation procedure that some measure of flexibility is permitted in complying with the statutory requirements. Certain margins for error are allowed by statute.⁴² Additional flexibility has been allowed by the courts:

It is generally held that slight irregularities will not invalidate annexation proceedings if there has been substantial compliance with all essential provisions of the law. Absolute and literal compliance with a statute enacted describing the conditions of annexation is unnecessary; substantial compliance only is required. The reason is clear. Absolute and literal compliance with the statute would result in defeating the purpose of the statute in situations where no one has been or could be misled.⁴³

The basic procedures a municipality must follow in annexing land differ according to whether the annexation is initiated by the citizens in the area to be annexed (“voluntary annexation”) or is initiated by the municipality itself without or against the consent of the residents in the area to be annexed (“involuntary annexation”).

a. Voluntary Annexation⁴⁴

Citizens may voluntarily initiate annexation of contiguous land if all real property owners within the area to be annexed sign a petition to annex. The clerk inspects the petition to confirm that all property owners within the area have signed the petition. The governing board of the municipality then sets a date for, and gives notice of, a public hearing. At the hearing, residents of the municipality and the area to be annexed may voice concerns and ask questions. Following the hearing, the governing board may pass an ordinance to annex the area.

b. Involuntary Annexation

The procedure for involuntary annexation is more complicated. The requirements proceed somewhat chronologically, beginning with passing a resolution of intent to annex, then requiring reports about the annexation to be completed and made available to the public primarily through a public informational meeting and a public hearing. Then the municipality may pass the annexation ordinance and begin taxing and providing services to residents. Annexed residents have certain rights of appeal as specified in the statute. Each of these phases of annexation is further detailed in this section.

(1980) (holding that the 5% flexibility allowance provided in the statute did not apply to the “use test” of N.C. Gen. Stat. § 160A-48(c)).

⁴² See N.C. Gen. Stat. §§ 160A-42 and 160A-54 (specifying the methods for calculating population and land areas and allowing for statutory margins of error of 10% and 5%, respectively).

⁴³ In re *Annexation Ordinance*, 278 N.C. 641, 648, 278 S.E.2d 851, 856 (1971) (internal citations omitted).

⁴⁴ See N.C. Gen. Stat. § 160A-31 for the procedure applicable to annexation by petition (“voluntary annexation”).

i. Resolution of Intent to Annex⁴⁵

A municipal board begins the process of involuntary annexation by adopting a resolution of intent to annex.⁴⁶ The resolution of intent to annex must: (1) describe the boundaries of the area to be annexed; (2) fix a date for a public information meeting, which must be between 45 and 55 days after the resolution of intent to annex is passed; and (3) fix a date for a public hearing, which must be between 60 and 90 days after the resolution of intent to annex is passed.

ii. Annexation Report⁴⁷

After the resolution of intent to annex is passed, the municipality must prepare a map and a report explaining the annexation. Specifically, the municipality must (1) include a map of the municipality and the area to be annexed, (2) state that the area meets the urban use requirement, (3) clarify how the municipality plans to extend major municipal services, and (4) explain the impact of the annexation on rural fire departments and the municipality's other services and finances. The report must be completed, approved by the governing board, and made available to the public at least 30 days prior to the informational meeting.

iii. Public Meetings⁴⁸

After the map and report are prepared, approved, and made public, the municipality must hold public meetings on the annexation. Two public meetings are required, an informational meeting and a public hearing.

Public notice must be provided in advance of the meetings. The public notice must (1) include the time and place of both meetings, (2) identify the area to be annexed, (3) explain where the annexation report can be obtained, and (4) advise residents of certain rights. The notice must be provided to each landowner in the area to be annexed by mail at least four weeks prior to the informational meeting. Notice must be provided to all other persons via a newspaper of general circulation within the county once per week for at least two successive weeks and no less than eight days apart.⁴⁹

At the informational meeting, a municipality representative must explain the annexation report and provide all residents of the municipality and of the proposed annexation area an opportunity to ask questions and receive answers. Often, the annexation report is read and made available for inspection, with a question and answer session.

⁴⁵ See N.C. Gen. Stat. §§ 160A-37 and § 160A-49.

⁴⁶ A municipality is given the option of passing a "resolution of consideration" a minimum of one and no more than two years in advance of passing the resolution of intent. See N.C. Gen. Stat. §§ 160A-37(i) and (j) and 160A-49(i) and (j). A resolution of consideration, however, is not required if the municipality states in the resolution of intent and the annexation ordinance that the effective date of annexation will be at least one year from the date the annexation ordinance is passed. See *id.* Thus, the primary impact of passing a resolution of consideration is that the effective date of the annexation ordinance can occur sooner after the annexation ordinance is passed (70-400 days) than if a resolution of intent alone is passed (at least one year).

⁴⁷ See N.C. Gen. Stat. §§ 160A-35 and 160A-47.

⁴⁸ See N.C. Gen. Stat. §§ 160A-37 and 160A-49.

⁴⁹ See N.C. Gen. Stat. § 160A-37(b) and 160A-49(b) for the available alternative notice options.

After the informational meeting, the public hearing is held, during which a municipality representative again explains the annexation report and all affected residents or landowners are given an “opportunity to be heard.” This is a time when annexed residents may voice their concerns, but citizens are not allowed a right to vote.

iv. Passing The Annexation Ordinance⁵⁰

A municipality can pass an annexation ordinance between 10 and 90 days following the public hearing. After considering the public comments it has received regarding the proposed annexation, the governing board may choose to annex less land than was presented at the public hearing, but it is not permitted to annex land that was not described in the public hearing without restarting the annexation process.

The ordinance must fix a date for the annexation to become effective. The effective date of the annexation for a municipality with a population under 5,000 must be between 40 days and 400 days after passage of the ordinance. For municipalities with a population of 5,000 or more, the effective date must be between 70 and 400 days.

The ordinance must specifically state that: (1) the land to be annexed is contiguous and urban, (2) the municipality intends to provide services to the new area, and (3) the municipality has the financing necessary to construct water and sewer lines to the new area.

The ordinance and a map must be recorded in the county register of deeds and the office of the Secretary of State, generally within thirty (30) days after the annexation ordinance has been passed.⁵¹

v. After The Annexation Ordinance Is Passed

Appeals and tax liability questions arise only after an annexation ordinance is passed. Since appeals can take a significant period of time to be resolved, and tax liability does not take effect until after the appeal process is completed, it is important to understand how the Annexation Act governs appeals.

a. Appeals⁵²

Annexed residents have a right to appeal the annexation ordinance to the Superior Court, but the appeal must be filed with the Clerk of Superior Court within sixty (60) days. Annexation appeals are governed by very specific timing and filing requirements. The first level of annexation appeal is to the Superior Court, where a judge hears the matter in a bench trial without a jury present. Annexation ordinances can be appealed further to state or federal appellate courts, usually only after the superior court has first ruled on the annexation.

⁵⁰ See N.C. Gen. Stat. §§ 160A-37(e) and 160A-49(e).

⁵¹ See N.C. Gen. Stat. §§ 160A-39 and 160A-51.

⁵² See N.C. Gen. Stat. §§ 160A-38 and 160A-50.

b. Tax Liability⁵³

When the annexation ordinance takes effect, the new territory and its citizens are subject to all debts, laws, and ordinances of the municipality and are entitled to all the benefits of the citizens in the municipality. All real and personal property in the newly annexed jurisdiction is subject to municipal taxes, which take effect on the January 1 immediately preceding the effective date of annexation and are pro-rated based on the municipality's fiscal year. The annexation ordinance is not typically effective until the last day of the next full calendar month following the completion of appeals.⁵⁴

4. Special Rules For Non-Contiguous (Satellite) Annexation⁵⁵

Annexations of non-contiguous areas are sometimes termed "satellite annexations." These annexations have special rules and are treated separately from other types of annexation.

A municipality may annex a satellite area if the area is already owned by the municipality and is no more than three miles from the municipality borders. Citizens may initiate annexation of land that is not contiguous if all property owners that are not tax-exempt have signed an annexation petition. The satellite area cannot be closer to another municipality than it is to the annexing municipality, unless there is an agreement between the two municipalities.

The total area of all satellite annexations may not exceed ten percent (10%) of the area within the primary municipality limits. In addition, the annexing municipality must be able to provide the same services to the new area as it provides to citizens within its borders. In providing these new services, however, the municipality may charge higher rates for water and sewer services in the satellite area than it charges for those services within the municipality limits. The municipality may also require the citizens of the proposed annexation area to declare whether there are land development rights attached to the land that the municipality must honor. If residents fail to disclose these rights after the municipality's request, those rights, if there are any, are terminated.

The governing board must fix a date for a public hearing, after which the governing board must conclude that: (1) the area described in the petition meets the requirements for a satellite annexation; (2) the petition was signed by all the residents; and (3) the public health, safety, and welfare of the inhabitants of the municipality and the annexed area are best served by the annexation.

IV. Annexation Challenges

Constitution-based court challenges allege, in essence, that some feature of the Annexation Act itself or an application of the Annexation Act in a particular context violates a

⁵³ See N.C. Gen. Stat. §§ 160A-58.10.

⁵⁴ See N.C. Gen. Stat. §§ 160A-38(i) and 160A-50(i).

⁵⁵ See N.C. Gen. Stat. § 160A-58 et seq.

constitutional right. Statutory challenges allege, in essence, that a municipality failed to follow the North Carolina Annexation Act in passing a particular annexation ordinance.

A. Constitutional Challenges

A variety of state and federal constitutional challenges to annexation have been initiated, especially in connection with involuntary annexation. The United States Supreme Court has held that annexation is a matter of state regulation and, therefore, falls largely outside the authority of the United States Constitution.⁵⁶ Accordingly, the primary federal constitutional challenges to annexation tend to invoke takings or race-based claims, as previously noted.

In North Carolina, annexation opponents have challenged annexation ordinances on a variety of constitutional grounds, the most prominent of which are discussed in this section. Each of these challenges has been rejected by the North Carolina Supreme Court.

1. Unlawful Delegation of Authority⁵⁷

The North Carolina Constitution states that “[t]he legislative power shall be vested in the General Assembly . . .”⁵⁸ Annexation opponents have argued that, by giving municipalities the authority to expand municipal boundaries, the General Assembly violated the constitution by impermissibly delegating its legislative power.

The North Carolina Supreme Court has noted that there is a legal distinction between impermissibly delegating the power to make a law and permissibly delegating the authority to exercise discretion in carrying out a law that the General Assembly has enacted.⁵⁹ Since the Annexation Act specifically restricted the types of parcels that may be annexed and specifically prescribed the procedure by which annexation must occur, the General Assembly did not broadly grant the power to make law. Instead, the Court has held that the General Assembly merely granted the power to carry out clearly defined policies and did not impermissibly delegate legislative authority in passing the Annexation Act.⁶⁰

2. Denial of the Right to Vote⁶¹

The Annexation Act does not permit owners of to-be annexed land to vote on whether or not they are annexed into a municipality. Only after annexation occurs do landowners become residents of a municipality, thereby entitling them to vote in municipal elections. Because they

⁵⁶ See *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

⁵⁷ See *In Re Annexation Ordinances*, 253 N.C. 637, 644-649, 117 S.E.2d 795, 804 (1961) (holding that the non-delegation doctrine does not apply to municipalities that exercise no function of government); *In re Annexation Ordinance*, 303 N.C. 220, 278 S.E.2d 224 (1981).

⁵⁸ N.C. Const. art. II, § 1.

⁵⁹ See generally *In Re Annexation Ordinances*, 253 N.C. 637, 644-649, 117 S.E.2d 795, 804 (1961); *In re Annexation Ordinance*, 303 N.C. 220, 278 S.E.2d 224 (1981).

⁶⁰ See *id.*

⁶¹ See *In re Annexation Ordinance*, 303 N.C. 220, 226, 278 S.E.2d 224, 229 (1981) (citing numerous state and federal authorities in support of its ruling).

are not permitted a meaningful right of consent to annexation, landowners have contended that the Annexation Act deprives them of due process of law and equal protection of laws.⁶²

The Court has routinely dismissed such claims on the ground that the legislature has the discretionary power to set or expand municipal boundaries.⁶³ State residents may vote in North Carolina elections, including those for legislative office. The Court has held that since the legislature may delegate its annexation authority to municipalities, as it did in the Annexation Act, there is no violation of the right to vote.⁶⁴

3. Taxation Without Representation⁶⁵

Residents often elect to live outside municipal boundaries because they do not wish to receive municipal services or pay the required taxes.⁶⁶ When new areas are annexed, however, the newly annexed residents must begin paying municipal taxes, and thus must give part of their property (money) to the municipality. Furthermore, many of the larger municipalities require annexed residents to pay additional charges to offset the costs of extending water and sewer services to the annexed area. These costs are typically measured in thousands of dollars and can reach over \$11,000 per household.⁶⁷

Residents of newly annexed areas, who had no right to vote on the annexation ordinance or in the election of the municipal governing board enacting the annexation ordinance, argue that the Annexation Act allows municipalities to take their property without due process of law or equal protection of the laws.⁶⁸ In short, they allege taxation without representation.

With relatively curt and summary explanations, the Court has held that “where additional territory is annexed in accordance with the law, the fact that the property of residents in the annexation area will thereby become subject to city taxes levied in the future, does not constitute a violation of the due process clause of the State and Federal Constitutions.”⁶⁹ Thus, the Court has rejected claims that to-be annexed residents have a constitutional right to consent to a particular municipal annexation.

⁶² N.C. Const. art. I, § 19.

⁶³ See *In re Annexation Ordinance*, 303 N.C. 220, 226, 278 S.E.2d 224, 229 (1981) (citing numerous state and federal authorities in support of its ruling).

⁶⁴ See *In re Annexation Ordinance*, 303 N.C. 220, 226, 278 S.E.2d 224, 229 (1981).

⁶⁵ See *In re Annexation Ordinance*, 303 N.C. 220, 228, 278 S.E.2d 224, 229-30 (1981), *In Re Annexation Ordinances*, 253 N.C. 637, 651-652, 117 S.E.2d 795, 805 (1961).

⁶⁶ Michael Lowrey, *NC Cities Go On Annexation Binge: Most urban population growth in 90s came from expanding borders*, Carolina Journal Online, May 2, 2003 available at http://www.carolinajournal.com/exclusives/display_exclusive.html?id=348. From 1999-2003, North Carolina municipalities conducted over 3,900 separate annexations; see also Demorris Lee, *Borderwars*, News & Observer (Raleigh, N.C.), Feb. 22, 2004.

⁶⁷ Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007 (citing the Town of Cary’s Comprehensive Annexation Plan adopted March 9, 2006).

⁶⁸ N.C. Const. art. I, § 19.

⁶⁹ See *In re Annexation Ordinance*, 303 N.C. 220, 228, 278 S.E.2d 224, 229-30 (1981), *In Re Annexation Ordinances*, 253 N.C. 637, 651-652, 117 S.E.2d 795, 805 (1961).

4. Violation of the Right to Trial by Jury⁷⁰

The Annexation Act provides for judicial review in the form of an appeal, but only in a bench trial. No right to a jury trial is granted by statute.⁷¹ Challengers have sometimes claimed that this method of review is unlawful because the North Carolina Constitution states that “[i]n all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.”⁷²

In several published cases, annexed residents have alleged that the Annexation Act’s failure to provide a trial by jury violates the state constitution.⁷³ The Court, however, has held that the constitutional right to a jury trial applies only to cases in which the right to a jury trial already existed at the time the North Carolina Constitution was adopted. Since there was no right to a trial by jury provided by statute or common law for annexation proceedings before the state constitution was adopted, there is not a constitutional right to jury trial.

B. Statutory Challenges

There are two basic methods for challenging an annexation based on violation of the Annexation Act: (1) a complaint for failure to provide services and (2) an appeal for failure to follow proper annexation procedures. The grounds for challenge and the rights available to annexed residents differ according to the type of challenge.⁷⁴

1. Failure To Provide Services⁷⁵

A municipality must provide substantially similar services to annexed residents as it provides to other residents.⁷⁶ As a separate requirement, a municipality must provide “meaningful services” to the annexed area, on a nondiscriminatory basis with those services provided to other municipal residents.⁷⁷

A party may challenge an annexation if the municipality fails to meet the agreed upon service plan (for services other than water and sewer service⁷⁸) within 12 to 15 months after

⁷⁰ See *In Re Annexation Ordinances*, 253 N.C. 637, 649-650, 117 S.E.2d 795, 804 (1961). See also *In Re Annexation Ordinance*, 284 N.C. 442, 202 S.E.2d 143 (1974) (rejecting the right to a jury trial allegedly provided by Rule 38(a) of the North Carolina Rules of Civil Procedure), *In re Annexation Ordinance*, 303 N.C. 220, 278 S.E.2d 224 (1981) (rejecting again the right to jury trial grounded on Constitution).

⁷¹ See N.C. Gen. Stat. §§ 160A-38 and 160A-50.

⁷² N.C. Const. art. I, § 25.

⁷³ See *In Re Annexation Ordinances*, 253 N.C. 637, 649-650, 117 S.E.2d 795, 804 (1961). See also *In Re Annexation Ordinance*, 284 N.C. 442, 202 S.E.2d 143 (1974) (rejecting the right to a jury trial allegedly provided by Rule 38(a) of the North Carolina Rules of Civil Procedure), *In re Annexation Ordinance*, 303 N.C. 220, 278 S.E.2d 224 (1981) (rejecting again the right to jury trial grounded on Constitution).

⁷⁴ See N.C. Gen. Stat. §§ 160A-37(h)-(k), 160A-38, 160A-49(h)-(l), and 160A-50.

⁷⁵ See N.C. Gen. Stat. §§ 160A-35(3), 160A-37, 160A-47(3), and 160A-49.

⁷⁶ See N.C. Gen. Stat. §§ 160A-35(3) and 160A-47(3).

⁷⁷ See *Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006).

⁷⁸ The same relief is available for failure to provide water and sewer, but the timeframe for issue a challenge is extended from twenty-four to twenty-seven months after the effective date of the annexation ordinance. See N.C. Gen. Stat. §§ 160A-37(h) and 160A-49(h).

adoption of the annexation ordinance.⁷⁹ In this case, a court may require the municipality to comply with its plan by issuing a writ of *mandamus*.⁸⁰ If the municipality fails to provide water and sewer after two years from passage of the annexation ordinance, a party can petition the Local Government Commission (LGC) within 60 days of that two-year period for an abatement of taxes until services are provided.⁸¹ If the municipality fails to provide police, fire, and solid waste within 60 days after passage of the ordinance, a party can petition the LGC for an abatement of taxes until services are provided.⁸²

2. Failure To Follow Proper Procedure⁸³

If the municipality has failed properly to follow the required procedures for annexation, a party may challenge the annexation in superior court within 60 days of the passage of the annexation ordinance. If the municipality can show that it substantially complied with the Annexation Act, then the burden of proof shifts to the residents challenging the ordinance.⁸⁴ To be successful, a petitioner must then show by “competent evidence” that: (1) the municipality in fact failed to comply with the statutory requirements in passing the annexation ordinance or (2) there was irregularity in the proceedings which “materially prejudiced” the petitioner’s “substantive rights.”⁸⁵ If the challenge is successful, the superior court can send the annexation back to the municipal governing board for correction, declare the entire ordinance invalid, or issue a stay of annexation.⁸⁶ The court cannot simply amend the annexation ordinance to make it comply with the law.⁸⁷

3. The Impact of Agreements Not To Annex⁸⁸

Two or more municipalities may agree not to annex a particular area. This agreement can be written to last for a reasonable time but cannot exceed 20 years. Generally, a particular municipality may only enter an agreement regarding an area which is three miles or less from its primary municipality limits. If the area is further away, the municipality has no authority to enter into an annexation agreement regarding the land unless the county in which the land is located gives permission. A municipality participating in the annexation agreement must hold a public hearing before entering into the agreement.

A municipality may terminate an annexation agreement if notice to the other parties to the agreement is given at least five years prior to termination. Otherwise, if the agreement is terminated prematurely, the other parties to the agreement are entitled to petition the superior court (1) to declare the attempted annexation invalid or (2) to send the annexation back to the

⁷⁹ See N.C. Gen. Stat. §§ 160A-37(h) and 160A-49(h).

⁸⁰ See *id.*

⁸¹ See N.C. Gen. Stat. §§ 160A-37(k) and 160A-49(k).

⁸² See N.C. Gen. Stat. §§ 160A-37(l) and 160A-49(l).

⁸³ See N.C. Gen. Stat. §§ 160A-38 and 160A-50.

⁸⁴ See *In re Annexation Ordinance*, 278 N.C. 641, 647, 180 S.E.2d 851, 855-56 (1971).

⁸⁵ See *id.*

⁸⁶ See N.C. Gen. Stat. §§ 160A-38 and 160A-50.

⁸⁷ See *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

⁸⁸ See generally N.C. Gen. Stat. §§ 160A-58.21 through 160A-58.28 (explaining annexation agreements).

governing board of the offending municipality for an acceptable amendment complying with the court's order.

If a municipality has some provisions of its annexation ordinance that violate the annexation agreement and some that do not, the court can allow the non-offending portion of the annexation ordinance to proceed. If any party is not satisfied with the ruling of the superior court, the ruling can be appealed.

V. Legislative Reform Efforts

The failures of court-based challenges have resulted in a variety of citizen-led efforts to persuade the North Carolina General Assembly to abolish or reform annexation laws.⁸⁹ In 2007 alone, at least 24 bills addressing annexation reform were submitted to the General Assembly.⁹⁰ The House Select Committee on Municipal Annexation will be addressing the subject again in 2008.⁹¹

VI. Conclusion

While North Carolina's Annexation Act may provide municipalities with a powerful tool for annexation, it also breeds acrimony and outcry. Disenfranchised residents, angered by an annexation process that permits municipalities deliberately to target their property and financial resources, are actively pursuing change. Expanding municipalities, strapped for cash and in need of additional revenue to expand or maintain governmental programs and services, appear unwilling voluntarily to surrender or curb their broad annexation powers.

For nearly 50 years, courts have been reluctant to seriously question the judgment of the General Assembly on its policy of delegating broad annexation powers to self-interested municipalities. The North Carolina Supreme Court has repeatedly defended the Annexation Act from constitutional attack, leaving annexed residents to allege statutory violations. More often than not, residents targeted for annexation will eventually become subject to the jurisdiction of a government that offered them no significant choice of whether to join. Such a process necessarily breeds frustration and discontentment.

The legal frustration of annexed residents has given rise to a grassroots movement toward legislative reform intended to provide a meaningful voice to annexed residents. Such reform appears inevitable. "The question is not if the laws need to be reformed, but how they should be reformed."⁹² There, in the legislature, where among all the branches of government citizens have their freest and loudest voice, reform has its best opportunity. In addressing that reform,

⁸⁹ See, e.g., <http://www.StopNCAnnexationNow.com> (containing a collection of information in support of annexation reform).

⁹⁰ See <http://www.stopncannexation.com/Bills%202007.htm> (containing a list of pending North Carolina annexation reform bills).

⁹¹ Daren Bakst, *A Forced Annexation Fallacy*, Carolina Journal (Raleigh, N.C.), Mar. 21, 2008, available at http://www.carolinajournal.com/articles/display_story.html?id=4665

⁹² Daren Bakst, *Flawed and Undemocratic: Forced Annexation Is Good for Municipal Leaders, But Bad for the Public*, John Locke Foundation Spotlight, June 13, 2007.

“[a] good place to start would be to focus on preserving the rights of North Carolinians,”⁹³ not merely the rights of those who govern, in theory, by the consent of the governed.

Since constitutional challenges to North Carolina’s involuntary annexation scheme have been unsuccessful, legal precedent urges citizens to the legislature for redress.

⁹³ *Id.*