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## Consent Not Required: Municipal Annexation in North Carolina

Since 1959, the North Carolina General Assembly has delegated to municipalities the authority to expand their boundaries without requiring a vote of residents.<sup>1</sup> The General Assembly implemented the statutory procedure of involuntary annexation, vesting each municipality's governing body with the authority to expand the municipal boundaries, enabling them to include developing fringe areas<sup>2</sup> and to maintain attractive, financially stable cities that provide quality municipal services to the growing urban population.<sup>3</sup> The statutory procedure does not require any form of consent, such as a referendum, by the residents in the area to be annexed.<sup>4</sup> This aspect of the involuntary annexation process has sparked intense opposition in municipalities across the state as residents fight the tax increases that follow annexation. Amending the current statutes to require the consent of residents has the potential to end or significantly curtail annexation and could thwart the goal of the statute: sound urban expansion to promote economic development in North Carolina.<sup>5</sup>

This Recent Development will discuss North Carolina's involuntary annexation statutes and argue that the social, economic, and political benefits that inspired the enactment of the State's liberal annexation procedures also support the continuation of these policies and procedures. A discussion of federal and state courts' rejection of nearly all challenges to involuntary annexations demonstrates the courts' consensus that the legislature has the authority to delegate discretionary annexation power to municipalities, and that annexation need not be conditioned on a vote of affected residents. Annexation provides significant financial and political benefits for growing municipalities. The involuntary annexation procedures adopted in North Carolina allow municipalities the flexibility and authority to

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1. N.C. GEN. STAT. § 160A-49 (2003).

2. *Id.* §§ 160A-48 to -49.

3. N.C. GEN. ASSEM., SUPPLEMENTARY REPORT OF THE MUNICIPAL GOVERNMENT STUDY COMMISSION, 103d Gen. Assem., at 6 (Feb. 26, 1959) [hereinafter SUPPLEMENTARY COMM'N REPORT]. This Report supplemented the Commission's Report to the Governor and General Assembly in 1958. The 1958 Report analyzed growth patterns and financial health of North Carolina's municipalities. The 1959 Supplementary Report recommended policy based on the earlier study.

4. *See* § 160A-49.

5. *Id.* § 160A-33.

implement successful economic and urban planning, control development and growth while maintaining health and safety standards, and locate new sources of revenue by expanding the tax base. Repealing the current annexation laws simply because annexed residents do not want to pay higher taxes would be near-sighted and could have severe economic consequences for municipalities and the state.

Prior to the implementation of the current annexation statutes in 1959, annexation laws required the proposed boundary expansion to be submitted to a vote of the people in the area to be annexed.<sup>6</sup> Under this required referendum process, two of every five proposals submitted to vote were defeated—a statistic that does not account for proposals abandoned before a referendum to avoid the costs of holding an election.<sup>7</sup> Due to prohibitive costs, the majority of municipal boundary expansions were accomplished through local acts of the General Assembly.<sup>8</sup> This trend led to large-scale, sporadic annexations,<sup>9</sup> a process inconsistent with the state's policy of encouraging sound urban planning through gradual expansion of boundaries of urban areas.<sup>10</sup> The process gave the decisionmaking authority to the General Assembly, a body where only a few—those representing the municipality—out of many possessed the insight and knowledge of the particular needs of the community for expanded development and services. In response to these defects in the process, the General Assembly created the Municipal Government Study Commission (the "Commission") in 1957 to examine the challenges municipalities faced in their efforts to control and manage urbanization.<sup>11</sup>

The Commission's report articulated the problem as: "cities cannot continue to remain strong and to provide essential municipal services unless their boundaries are periodically extended to take in those areas which require municipal services for sound development and whose residents make extensive use of municipal facilities."<sup>12</sup>

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6. See SUPPLEMENTARY COMM'N REPORT, *supra* note 3, at 5.

7. *Id.*; see also *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 4, 269 S.E.2d 142, 145 (1980) (reasoning that this statistic led municipalities to increasingly seek special legislation to accomplish the annexation of large areas).

8. SUPPLEMENTARY COMM'N REPORT, *supra* note 3, at 5–6.

9. *Id.*

10. See *id.*; see also *Texfi Indus.*, 301 N.C. at 4–5, 269 S.E.2d at 145–46 (explaining the impetus behind the formation of the Municipal Government Study Commission).

11. *Texfi Indus.*, 301 N.C. at 4, 269 S.E.2d at 145.

12. SUPPLEMENTARY COMM'N REPORT, *supra* note 3, at 5 (quoting N.C. GEN. ASSEM., REPORT OF THE MUNICIPAL GOVERNMENT STUDY COMMISSION, 103d Gen. Assem., at 19 (Nov. 1, 1958)).

Unless the annexation process was made simple enough so that municipalities could continuously and regularly expand as part of a planning process, the Commission concluded that “the growth of our North Carolina cities will be choked off by expanding rings of unsoundly-developed ‘fringe areas.’”<sup>13</sup> The Commission gave substantial consideration to the expansion of services into developing areas to meet certain health and safety standards.<sup>14</sup> It sought to introduce into the annexation process consideration of the services already offered within the municipality, the need for such services in the area to be annexed, and the financial and structural ability of the municipality to extend such services into the outlying areas.<sup>15</sup> The Commission commented that it did not believe that municipal governments should have unchecked authority to expand their boundaries, but it concluded that such decisions are not of a nature to be decided by a vote of only a portion of the community.<sup>16</sup> Based on these recommendations, the General Assembly implemented the current statutory procedure allowing for involuntary annexation with no requirement of consent by residents in the area to be annexed<sup>17</sup> and articulated policy justifications that reflect the conclusions of the Commission.<sup>18</sup>

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13. *Id.* at 6.

14. *Id.* at 7; *see also* Jack M. Schluckebier, *Managing Growth and Increasing Revenues Through Annexation*, QUALITY CITIES (Fla. League of Cities), Nov. 1993, at 31 (commenting that “extra net revenues from annexation can be used to improve existing services, [or] add new services”) (on file with the North Carolina Law Review).

15. SUPPLEMENTARY COMM’N REPORT, *supra* note 3, at 7–8.

16. *Id.* at 5. Despite the General Assembly’s exclusion of the check of voter consent, the annexation statutes do include some checks on municipal authority. The statutes clearly set forth a process of judicial review. *See* N.C. GEN. STAT. §§ 160A-38 to -50 (2003). The statutes also require annexing municipalities to prepare extensive and detailed plans for the provision of services to the newly annexed areas, and these plans must be made available to the public prior to the public hearing at which the annexation will be discussed. *Id.* § 160A-49(d)–(e). Members of the governing body may also be kept in check through regular elections where residents will hold members accountable for their position on annexation. *See* *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 515, 597 S.E.2d 717, 720 (2004) (recognizing that “[i]nvoluntary annexation is by its nature a harsh exercise of governmental power affecting private property and so is properly restrained and balanced by legislative policy and mandated standards of procedure”).

17. *See* §§ 160A-45 to -54 (articulating the annexation process); SUPPLEMENTARY COMM’N REPORT, *supra* note 3, at 5 (stating that annexation is a problem not properly decided by vote).

18. *Compare* § 160A-33(1)–(5) (stating the policies behind the statutory annexation process) with SUPPLEMENTARY COMM’N REPORT, *supra* note 3, at 7–8 (listing the various factors that show the need for involuntary annexation). The conclusions and recommendations of the Commission were adopted as the declared policy of the state that preceded the annexation procedure statutes. The statute begins by declaring that North

The involuntary annexation procedure is regulated and governed by statute with clear procedural requirements for an annexation to be valid.<sup>19</sup> The statutes set forth separate, though similar, procedures for municipalities with populations less than 5,000<sup>20</sup> and those with populations greater than 5,000.<sup>21</sup>

Section 160A-47 of the General Statutes of North Carolina enumerates the prerequisites to annexation.<sup>22</sup> The municipality seeking to annex must prepare a report including maps of the municipality showing the current boundaries and existing water and sewer infrastructure.<sup>23</sup> The report must show that the area to be annexed is adjacent or contiguous to the current municipal boundaries<sup>24</sup> and demonstrate that part or all of the area has been

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Carolina's commitment to "sound urban development" is "essential to the continued economic development of North Carolina." § 160A-33(1). Municipalities are touted as the entities "created to provide the governmental services essential for sound urban development and for 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." *Id.* § 160A-33(2). The policy statement then provides that extension of municipal boundaries is necessary to provide for the health and safety of developing areas, a clear reiteration of the conclusions of the Commission. *Id.* § 160A-33(3). The policy also includes consideration of the expansion of services into annexed areas to achieve the health, safety, and welfare goals of the legislation. *Id.* § 160A-33(5).

19. For an overview of general topics in North Carolina annexation law, see generally 1 DAVID M. LAWRENCE, ANNEXATION LAW IN NORTH CAROLINA (2003).

20. Annexation by municipalities with populations less than 5,000 is governed by sections 160A-33 to -42, with the procedure prescribed in section 160A-37. The procedures for municipal annexations by municipalities with populations of 5,000 or less are substantially similar to the procedures governing annexations by municipalities with populations greater than 5,000. All of the area to be annexed by smaller municipalities must be developed for urban purposes, § 160A-36, as opposed to "part or all" of the area for larger municipalities, *id.* § 160A-48. Smaller municipalities have fewer responsibilities with regard to provision of utility services, but this is probably a reflection of the services presumed already in place in the smaller municipalities as opposed to those presumed in place in larger municipalities. Compare *id.* § 160A-37(k)-(l) and *id.* § 160A-35(3)(a) (describing the municipal services to be provided by municipalities with populations of less than 5,000) with *id.* § 160A-49(k)-(l) and *id.* § 160A-47(3)(a)-(b) (describing the municipal services to be provided by municipalities with populations of greater than 5,000, including a responsibility to extend water and sewage lines upon request). This Recent Development will refer only to the statutes governing annexation by municipalities with populations exceeding 5,000.

21. See *id.* §§ 160A-45 to -54 (governing annexation by municipalities with populations greater than 5,000).

22. *Id.* § 160A-47.

23. *Id.*

24. *Id.* § 160A-48(b)(1). The statute also requires that "at least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary," *id.* § 160A-48(b)(2), and that "[n]o part of the area shall be included within the boundary of another incorporated municipality," *id.* § 160A-48(b)(3).

developed for "urban purposes."<sup>25</sup> The report must also include a statement enumerating the plans for extending major municipal services to the area to be annexed.<sup>26</sup> Police, fire, solid waste collection, and street maintenance services must be extended to the new area on the effective date of annexation.<sup>27</sup> A reasonable timetable must be in place for extension of water mains and sewer lines where needed, and these extensions must be completed within two years of the effective date.<sup>28</sup> The report must include how such infrastructure expansions will be financed<sup>29</sup> and must list estimated impacts on the municipality's finances and services.<sup>30</sup>

The statute requires the governing body of the municipal government to pass a resolution stating its intent to annex a clearly defined area.<sup>31</sup> Upon passing this resolution, the governing body must set a date for a public informational meeting and provide adequate notice of the hearing to the public.<sup>32</sup> The report required by section 160A-47 must then be made available for public inspection at least thirty days prior to the public hearing.<sup>33</sup> At the public hearing, members of the public must be given an opportunity to voice their concerns or opposition, and amendments may follow upon consideration of the information provided at the hearing.<sup>34</sup> The governing body may then pass the annexation ordinance giving effect to the expansion of municipal boundaries.<sup>35</sup> From the effective date forward, the annexed area and all of the affected residents must receive and have a right to all of the municipal services, and all residents are fully subject to municipal taxes.<sup>36</sup>

The public has a voice in the process by virtue of the public hearing held before the annexation ordinance passes. The municipal governing body, however, has the ultimate authority to pass the annexation ordinance regardless of public sentiment or concerns expressed at the public hearing. The General Assembly delegated the authority to extend the municipal boundaries to the municipal

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25. See *id.* § 160A-48(c). For the requirements to meet the definition of "developed for urban purposes," see section 160A-48(c)(1)–(5).

26. *Id.* § 160A-47(3).

27. *Id.* § 160A-47(3)(a).

28. *Id.* § 160A-47(3)(b)–(c).

29. *Id.* § 160A-47(3)(d).

30. *Id.* § 160A-47(5).

31. *Id.* § 160A-49(a).

32. *Id.* § 160A-49(b).

33. *Id.* § 160A-49(c).

34. *Id.* § 160A-49(d)–(e).

35. *Id.* § 160A-49(e).

36. *Id.* § 160A-49(f).

governing body,<sup>37</sup> and this process, as demonstrated in the discussion above, does not require a vote by anyone but the governing body of the municipality to effectuate an annexation. The statute has specifically excluded public consent as a check on municipal authority.<sup>38</sup>

Each legislative session a number of bills are introduced with a goal of returning annexation laws to their pre-1959 status and reintroducing a referendum as a check on municipal authority.<sup>39</sup> Bills seek either to affect the annexation laws through amendment on a state wide level, calling for the addition of a referendum requirement to the annexation proceedings, or on a local level through local bills affecting the annexation process in individual municipalities.<sup>40</sup> The bills reflect the opposition to annexation that has arisen<sup>41</sup> in response to the 3,906 annexations that occurred between 1999 and 2003.<sup>42</sup> Various localized groups opposing annexations of their communities combined to form a statewide, anti-annexation campaign led by StopNCAnnexation.com.<sup>43</sup> Calling the process “involuntary annexation,” residents united against municipal governments, circulated petitions, and organized their neighbors to stop annexation of their neighborhoods.<sup>44</sup> With the market price of houses in

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37. *Id.* § 160A-46.

38. *See supra* note 16.

39. *See, e.g.*, S. 19, 150th Gen. Assem., Reg. Sess. (N.C. 2005) (proposing a requirement of a vote on an annexation where a petition signed by at least fifteen percent of residents is presented); H.R. 302, 150th Gen. Assem., Reg. Sess. (N.C. 2005) (suggesting requiring a vote if a petition signed by at least ten percent of residents is presented); S. 1126, 148th Gen. Assem., Reg. Sess. (N.C. 2004) (amending the Fayetteville charter to require a vote on annexations); H.R. 1695, 148th Gen. Assem., Reg. Sess. (N.C. 2004) (requiring a vote in Kernersville if a petition signed by at least five percent of residents is presented); S. 637, 148th Gen. Assem., Reg. Sess. (N.C. 2003) (attempting to restore the pre-1959 annexation law by requiring a referendum on annexation upon petition of the residents being annexed and to allow the city to provide for a referendum on annexation). Despite the fact that the General Assembly debated this issue and amended the annexation procedure statutes on numerous occasions, in no instance has the General Assembly seen fit to abandon the original policy not to require a vote as set forth by the Municipal Government Study Commission and adopted in the 1959 statutes.

40. *See supra* note 39.

41. For example, residents of Wake County fought adamantly and are still fighting to avoid annexation by Cary. *See* StopCary.com, at <http://www.stopcary.com> (last visited Sept. 1, 2005) (on file with the North Carolina Law Review).

42. *See* Demorris Lee, *Borderwars*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 22, 2004, at 21A.

43. *See* StopNCAnnexation.com, at <http://www.stopncannexation.com> (last visited Aug. 21, 2005) (on file with the North Carolina Law Review).

44. *See id.*

proposed annexation areas often ranging from \$120,000 to \$629,000,<sup>45</sup> however, it is easy to see that the increased property tax is primarily what these residents oppose.

Opponents of involuntary annexation have fought the process through legislative and political avenues and have challenged the process in the courts.<sup>46</sup> Most recently, annexation in Fayetteville was called to a stop when opponents challenged the city's annexation proceedings.<sup>47</sup> Though opponents have invoked judicial authority to challenge annexation statutes and procedures, North Carolina courts generally give liberal deference to the municipalities and the General Assembly when challenges to annexation arise.<sup>48</sup> In cases involving annexation ordinances, courts generally limit their review to a ruling regarding the municipality's compliance with the statute's procedural requirements.<sup>49</sup> The burden is on those challenging the annexation ordinance to show by "competent evidence" that the municipality did

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45. RE/MAX Highlander Realty, Apex, North Carolina, at <http://www.raleighreal estate.com/lookat.htm> (last visited May 5, 2005) (on file with the North Carolina Law Review). Based on a search of local real estate listings for the neighborhoods represented on StopCary.com, the price ranges of houses for sale in the proposed annexation area neighborhoods consistently exceeded \$150,000. For example, of the three houses for sale in the Hermitage neighborhood, the list prices were \$166,900, \$629,000, and \$469,900. In the Jamison Park neighborhood, seven houses had list prices of over \$500,000, one at \$449,900, and three between \$160,000 and \$220,000. Though this list is not exhaustive and represents only those listings available through one real estate agency, the houses can be considered representative of the property values in the areas that Cary is attempting to annex.

46. See, e.g., *Kegley v. City of Fayetteville*, 358 N.C. 729, 729, 600 S.E.2d 861, 861 (2004) (ordering a temporary stay of an annexation ordinance); *Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville*, 358 N.C. 726, 726–27, 600 S.E.2d 860, 860–61 (2004) (same). In both cases annexation challengers succeeded in frustrating the proposed annexation. The petitions for stay of the annexation were temporarily granted by the court of appeals. *Kegley*, 358 N.C. at 729, 600 S.E.2d at 861; *Home Builders Ass'n*, 358 N.C. at 726, 600 S.E.2d at 861. The court of appeals then dissolved the stays, but challengers pursued the case to the Supreme Court of North Carolina, which continued the stays. *Kegley*, 358 N.C. at 729, 600 S.E.2d at 861; *Home Builders Ass'n*, 358 N.C. at 726, 600 S.E.2d at 860–61. Continued challenges have left the annexation of 42,000 people on hold, now awaiting a decision of the state court of appeals. See Michael Lowrey, *Focus Returns to Annexation Issue*, CAROLINA J., July 23, 2004, available at [http://www.carolinajournal.com/exclusives/display\\_exclusive.html?id=1685](http://www.carolinajournal.com/exclusives/display_exclusive.html?id=1685) (on file with the North Carolina Law Review). The North Carolina Court of Appeals recently rejected residents' judicial challenge due to tardy filings, paving the way for Fayetteville to proceed with its long-delayed annexation plans. WRAL.com, *State Court Of Appeals Dismisses Lawsuits Over Fayetteville Annexation*, at <http://www.wral.com/news/4579606/detail.html> (June 7, 2005) (on file with the North Carolina Law Review).

47. Lowrey, *supra* note 46.

48. See, e.g., *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 40, 265 S.E.2d 123, 135 (1980).

49. *Id.*



not meet the statutory requirements.<sup>50</sup> The degree of judicial review is statutorily set forth,<sup>51</sup> and courts consistently adhere to the scope of judicial review granted in the statute.<sup>52</sup> Despite the deference exercised by North Carolina courts, residents continue to challenge annexation proceedings and pursue their claims through both legislative and judicial means notwithstanding the significant benefits that flow from annexation and successful municipal growth.

The most identifiable and significant economic benefit realized through annexation of surrounding areas is the increased revenues derived from expanding the tax base.<sup>53</sup> This benefit to the municipality generally receives the most recognition and is the primary basis of opposition to annexation. Though most municipalities begin looking to outlying neighborhoods simply as a new source of wealth from which to fulfill government budget needs,<sup>54</sup> benefits of annexation extend beyond initial creation of revenue to include numerous positive social, political, educational, and economic consequences.<sup>55</sup> The resulting economic benefits include: planned growth; attractive, healthy, and safe municipalities that draw new businesses to North Carolina; improved bond ratings; and sound economic development. The involuntary annexation process allows municipalities to efficiently and expeditiously realize these positive economic results without being subject to the approval of landowners in the area to be annexed. Were the process to be subject to a vote, municipalities would find it much more difficult and expensive to successfully annex surrounding neighborhoods, and the referendum

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50. *Dunn v. City of Charlotte*, 284 N.C. 542, 544–45, 201 S.E.2d 873, 875–76 (1974).

51. “The court may hear oral arguments and receive written briefs, and may take evidence intended to show either (1) That statutory procedure was not followed, or (2) That the provisions of G.S. 160A-47 were not met, or (3) That the provisions of G.S. 160A-48 have not been met.” N.C. GEN. STAT. § 160A-50(f) (2003).

52. *See Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) (limiting judicial review of annexation proceedings to inquiring whether there has been substantial compliance with the annexation statute); *In re Annexation Ordinance*, 284 N.C. 442, 452, 202 S.E.2d 143, 149 (1974) (rejecting a constitutional challenge of an annexation proceeding’s lack of trial by jury); *In re Annexation Ordinances*, 253 N.C. 637, 649, 117 S.E.2d 795, 804 (1961) (finding that “[t]he procedure and requirements contained in the Act . . . being a solely legislative matter, the right of trial by jury is not guaranteed” and that the General Assembly’s decision not to grant trial by jury “does not render the Act unconstitutional.”).

53. *See Schluckebier*, *supra* note 14, at 31–32.

54. Jennifer Brevorka, *Annex Has Woodfin Seeing Green: New Development Could Bring \$250,000 in Taxes to the Town*, ASHEVILLE CITIZEN-TIMES, Mar. 29, 2004, at B1 (listing potential new revenue of \$250,000 following voluntary annexation of nearby subdivision development).

55. *Schluckebier*, *supra* note 14, at 33.

procedure might prove prohibitive.<sup>56</sup> The right to annex without a public referendum permits North Carolina municipalities to grow and enjoy the benefits of annexation, and these benefits can be seen by comparing the economic and population statistics of North Carolina cities to those of similarly situated cities without liberal authority to annex surrounding areas.<sup>57</sup>

By extending its boundaries, a municipality expands its tax base and therefore may generate new revenues by virtue of property tax, sales and use taxes, various municipal fees, and Powell Bill funding.<sup>58</sup> The creation of new funds and incorporation of new funding sources supplements existing municipal revenues and allows municipalities to provide utilities and services for new and old residents.<sup>59</sup> Requiring residents of the newly annexed territory, who previously were required only to pay county property taxes, to pay municipal property taxes will yield consistent sources of new wealth for the municipality<sup>60</sup> that may be dispersed throughout the community in various forms of

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56. See SUPPLEMENTARY COMM'N REPORT, *supra* note 3, at 5 (citing evidence that annexation plans, when submitted to a vote, were defeated two out of five times, not including those plans that never went to vote to avoid referendum costs). Though the Commission Report reflects the status of annexation many years ago, it is highly likely that the costs of referendums remain somewhat prohibitive due to population growth, and, with current tax rates significantly higher than those in the 1950s, opposition seeking to avoid additional taxation has likely grown in proportion to the applicable tax rates.

57. See DAVID RUSK, CITIES WITHOUT SUBURBS, 18–48 (3d ed. 2003). Rusk compared Raleigh, North Carolina, with Richmond, Virginia, and cited North Carolina's liberal annexation statutes as the primary reason for Raleigh's successful growth. *Id.* at 18. Rusk describes cities as elastic, those able to annex surrounding suburbs, and inelastic, those unable to expand their corporate boundaries through annexation. *Id.* at 12.

58. See S. Ellis Hankins, Editorial, *Let Cities' Health Be Priority*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 22, 2004, at A21, where the Executive Director of the North Carolina League of Municipalities states: “[a]s the area around a city or town develops, careful planning for extension of services and orderly annexation allows the best use of public dollars.”

59. See 1 LAWRENCE, *supra* note 19, at 14-1 to -16. The Powell Bill provides funds to aid the maintenance and repair of municipal roadways by allocating funds among municipalities based on a per capita and per mile of city street basis. *Id.* at 14-15.

60. For residents annexed to Charlotte, city property taxes of .42 cents per \$100 assessed value will be added to existing property taxes due to Mecklenburg County of .7567 cents per \$100, for a combined tax rate of 1.1767 cents per \$100. N.C. DEP'T OF REVENUE TAX RESEARCH DIV., PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES: FISCAL YEAR 2004–2005 19, available at [http://www.dor.state.nc.us/publications/2004-05TaxRates\\_Final.xls](http://www.dor.state.nc.us/publications/2004-05TaxRates_Final.xls) (on file with the North Carolina Law Review). Residents annexed to Cary will be subject to an additional .42 cents per \$100, in addition to the Wake County property taxes of .6040 cents per \$100, resulting in a combined tax rate of 1.024 cents per \$100. *Id.* at 6. Fayetteville annexation will impose an additional .53 cents per \$100 value to Cumberland County tax of .88 cents per \$100, for a combined total tax rate of 1.41 cents per \$100. *Id.* at 8.

municipal services and development projects.<sup>61</sup> In the city of Fayetteville's annexation report, estimated property tax revenues from the annexed areas totaled over \$9 million.<sup>62</sup> Fayetteville estimated sales and use tax revenues in the annexed area totaled \$3.8 million, with Powell Bill funding increases estimated to be \$937,020.<sup>63</sup> In Charlotte's proposal to annex the area labeled Mallard Creek Church East, the City estimated property tax revenues of \$885,766 with total revenue increases at about \$1.4 million.<sup>64</sup>

Annexation creates new revenues for a municipality by imposing new taxes on residents in the annexed area. Significant portions of the population choose to live outside the city limits to avoid taxes, yet continue to enjoy the benefits and services the municipality provides.<sup>65</sup> The Supreme Court of North Carolina described the arrangement:

Most of those outside residents work in the city, shop in the city, use all manner of office facilities in the city, use in-city health care facilities, park and recreational facilities and programs and while doing so use city streets, city law enforcement and fire protection services, city garbage and refuse collection services, city parking facilities and city water and sewer services. . . . [T]hese outside residents pay nothing for these services financed by taxes paid by residents of our cities.<sup>66</sup>

Municipalities find themselves with rising service needs and an eroding income base as residents migrate outside city boundaries,

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61. *Cf.* 1 LAWRENCE, *supra* note 19, at 14-3 to -5 (discussing effective date of annexation and calculating the prorated tax).

62. CITY OF FAYETTEVILLE, N.C., ANNEXATION REPORT AND PLAN OF SERVICES: PHASE 5 ANNEXATION, AREAS 1, 2, 5, 6, 8, 9, 10, AMENDED REPORT 10 (Nov. 24, 2003), available at [http://www.smartgrowthnow.com/Amended\\_Annex\\_Report.pdf](http://www.smartgrowthnow.com/Amended_Annex_Report.pdf). (on file with the North Carolina Law Review).

63. *Id.*

64. CITY OF CHARLOTTE, ANNEXATION PLAN 2005, A PROPOSAL TO CONSIDER THE ANNEXATION OF THE MALLARD CREEK CHURCH EAST AREA 46 (Aug. 23, 2004) (listing the estimated expenditures and revenues of annexing the area), available at <http://www.charmeck.org/Departments/Planning/Annexation/Home.htm> (on file with the North Carolina Law Review). The Annexation Plan also shows that Charlotte will suffer a net loss for the first two years following annexation, a typical result despite the numerous sources of new revenue. This particular annexation plan was not approved by the Charlotte City Council, though the council approved other annexation plans in 2005.

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

66. *Id.* at 233-34, 278 S.E.2d at 233. Though some tax revenues are derived from fringe area residents in the form of sales taxes, revenues from this tax are collected by the state and then distributed to municipalities. Sales tax revenues do not flow directly to the municipality.

evading tax liabilities, while still burdening municipalities with certain service demands.<sup>67</sup> Where residents benefit from the services described above, they should also finance those services through tax payments. By expanding the tax base to include fringe area residents, the municipality can avoid raising tax rates for citizens within the current municipal jurisdiction and can begin charging fringe area residents for the services they previously enjoyed for free.<sup>68</sup> A municipality's ability to tap this broader tax base, a privilege of elastic cities, results in more financially stable governments.<sup>69</sup>

The inability of municipalities to expand often leads to large population losses and high concentrations of minorities and poverty in municipal centers.<sup>70</sup> The density of center cities is decreasing as individuals and families migrate to the suburbs.<sup>71</sup> Residents leave cities for various reasons. Some seek to avoid rising tax rates. Others move in order to be closer to the growing number of jobs that are located in suburban areas.<sup>72</sup> Some move for social reasons, attempting to avoid the high concentration of minorities in center cities and seeking "good" school districts, which they view as those school districts with fewer impoverished minorities.<sup>73</sup> In addition to these motivations, many residents move out of the city to less densely populated suburbs to realize the "American Dream" in the form of a house, two-car garage, yard, and white picket fence.<sup>74</sup> This migration, often dubbed "white flight," results in a number of political and social consequences such as high concentrations of minorities in inner-city schools and wealthier whites in suburban schools, creating de facto segregation between districts.<sup>75</sup> Decreased income and quantity of taxable households within the city also leave the municipality with

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67. See RUSK, *supra* note 57, at 48.

68. See Hankins, *supra* note 58 ("Over time the tax base may grow, allowing tax rates to remain stable or drop.").

69. See RUSK, *supra* note 57, at 48.

70. See *id.* at 8-9.

71. *Id.*

72. See *id.* at 42-44. Elastic cities have doubled or tripled their non-factory job supply by incorporating new businesses in outlying areas. Inelastic cities have realized net growth in such jobs but have not been able to capture the new growth and its accompanying revenues to the same degree as elastic cities.

73. See *id.* at 23.

74. See RUSK, *supra* note 57, at 23. ("Many middle-class families moved because older cities lacked dream houses at affordable prices in good neighborhoods with good schools.").

75. *Id.* at 41 ("With one exception, black students were much less segregated in elastic area schools than they were in inelastic area schools."). This phenomenon is not the result of bussing in compliance with court-ordered desegregation plans, since school districts are generally configured based on county jurisdiction. *Id.*

fewer resources to fund and support education, and municipal budgets are stretched thin. North Carolina's current liberal annexation statutes have allowed municipalities to avoid the aforementioned negative social and economic consequences of stagnant municipal boundaries and instead have allowed municipalities to capture the many benefits of expandable boundaries that are the opposite results to those described above.

Annexation allows for economic stability of the municipality and the potential for continued economic and urban development of the community in the form of an available source of new funds. Increased revenues provide confidence that municipalities will be able to manage their debt successfully, without default.<sup>76</sup> As a result, the bond rating for the municipality will rise, or if already at the highest level, will remain stable and high.<sup>77</sup> This means that municipalities will be allowed to borrow at lower interest rates, making bond issues more economical, facilitating more public projects and development, and potentially saving North Carolina municipalities hundreds of millions of dollars in interest rate payments.<sup>78</sup> Though the prospect of votes against annexation might not have a negative effect on the bond rating, successful annexation and permissive annexation policies might improve the rating.<sup>79</sup>

In addition to the financial benefits of annexation, the process allows municipalities to manage growth in a safe and healthy way by expanding municipal health standards and implementing certain safety and emergency services. Through the annexation process, municipalities must extend utility infrastructure by expanding water

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76. Telephone Interview with Patrick Mispagel, Analyst, Moody's Investors Service, in New York, N.Y. (June 1, 2005) (interview notes on file with the North Carolina Law Review). In analyzing the finances of municipalities, Moody's considers the flexibility of the municipality's finances and its flexibility in expanding tax rates to meet its debt services obligations.

77. *The Determinants of Credit Quality: A Discussion of Moody's Methodology for Rating General Obligation Lease-Backed and Revenue Bonds*, MOODY'S SPECIAL COMMENT (Moody's Investors Serv., New York), May 2002, at 9 [hereinafter *Determinants of Credit Quality*] ("[T]he prospects or rating upgrades are certainly present if economic trends point to continued valuation or population growth.").

78. See RUSK, *supra* note 57, at 45-46 (noting a "pattern of the superiority of elastic cities over inelastic cities" with regard to bond ratings). Based on his study, Rusk found that elastic cities averaged AA1 bond ratings while inelastic cities averaged A1 ratings, a full ratings point lower.

79. *Determinants of Credit Quality*, *supra* note 77, at 7 ("Location, size and diversity of the local tax base are the predominant factors assessed when assessing the issuer's fundamental economic strength . . . . [S]ignificant growth in assessed value could eventually drive ratings up—simply because growth results in a larger tax base supporting debt obligations.").

and sewer services into growing areas.<sup>80</sup> Annexation “reflects an attempt to impose a standard of service on newly-developing areas.”<sup>81</sup> Imposing health and utility service standards results in long-term benefits, helping numerous areas to avoid “haphazard development” and run-down areas with substandard utilities and services.<sup>82</sup> Involuntary annexation gives municipalities control over the extension of services, and municipalities are authorized to influence growth patterns and control growth to yield sound urban development. An example of the detrimental effects that result from limiting annexation authority is Cumberland County, which was specifically exempted from the grant of annexation authority to municipal governments under the 1959 annexation statute.<sup>83</sup> Fayetteville and other Cumberland County municipalities were unable to grow and annex neighboring areas as they developed. Accordingly, water and sewer services were not extended to outlying areas and by 1972 the surrounding areas had about 60,000 septic tanks, amounting to an environmental “ticking time bomb.”<sup>84</sup> Extension of services to these areas would relieve the environmental and health risks, and, though the standards imposed may be more expensive to achieve, they will result in successful and healthy communities. The health and safety concerns are an important element of the annexation process,<sup>85</sup> and a plan for expansion of services must be included in the annexation ordinance and be made available to the public.<sup>86</sup> Municipalities may be motivated only by an expansion of the tax base and increased revenues, but the statute requires that they consider health and safety standards and extend

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80. *Id.* at 9; Memorandum from George H. Esser, Jr., Assistant Director, North Carolina Institute of Government, to the Municipal Government Study Commission, on Annexation and Annexation Procedures 1 (Jan. 16, 1959) [hereinafter Memorandum] (on file with the University of North Carolina Institute of Government). In response to this memorandum, the Commission issued a supplementary report on February 26, 1959, in which it recommended specific procedures through which municipalities could extend their boundaries without a vote. See SUPPLEMENTARY COMM’N REPORT, *supra* note 3, at 6.

81. Memorandum, *supra* note 80, at 9.

82. Schluckebier, *supra* note 14, at 31.

83. This exemption was in place until 1983. See Si Cantwell, *Wilmington Isn’t the Only City Wrestling with Annexation*, STAR-NEWS (Wilmington, N.C.), Oct. 5, 2003, at 1B.

84. Lee, *supra* note 42 (quoting Fayetteville city manager’s description of the potential for severe environmental damage heightened by the concentration of so many septic tanks in the area); see also Cantwell, *supra* note 83 (explaining that as a result of the exemption, many major subdivisions in Fayetteville were built using septic tanks, and the septic fields have the potential to oversaturate).

85. *Supra* notes 13–15 and accompanying text.

86. N.C. GEN. STAT. § 160A-47(3) (2003). If these services are not provided within two years, the annexation may be validly challenged. *Id.* § 160A-49(h).

municipal services to annexed areas, at times providing a real benefit to annexed areas.

If the statute required a vote of approval to annex, many annexation proposals would be defeated as residents come to the polls to oppose the imposition of new taxes without consideration of the economic benefits discussed above. Revoking the power to unite the economic resources and assets of the entire community would remove a valuable tool on which many North Carolina municipalities depend for acquiring new sources of revenue and might result in social, economic, and political inequities between predominantly poor minorities in the city center and middle-class whites in the suburbs.<sup>87</sup> The General Assembly had the foresight to recognize that the desire to avoid taxes by those most able to pay should not be allowed to block the economic development of the entire community.<sup>88</sup> It chose instead to place the ultimate decision of whether to annex with the municipal governing body. While potential revenue may instigate the annexation process, the governing body is better positioned to exercise objective judgment in considering the long-term social, political, and economic benefits of annexation. Although both proponents and opponents have short-term wealth transfers in mind, the governing members of the municipality will be more likely to consider short- *and* long-term consequences of annexation. The economic climate of growth that prompted the General Assembly to adopt involuntary annexation procedures in 1959 remains prevalent in North Carolina's communities, in part due to municipalities' use of the annexation statutes to successfully manage growth.<sup>89</sup> Municipalities should be allowed to continue using this tool to control and promote economic development in North Carolina's communities.

While the legislature has rejected and avoided proposed amendments to the annexation laws, courts have similarly rejected challenges to annexation laws and assertions of a right to vote in annexation proceedings. In *Hunter v. City of Pittsburgh*,<sup>90</sup> the United States Supreme Court, addressing the validity of Pennsylvania's annexation statutes that required a combined vote of those within the municipality and the annexed territory, ruled that there is no due

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87. See generally RUSK, *supra* note 57, at 35 (arguing that "[t]he city-to-suburb per capita income percentage is the single most important indicator of an urban area's social health").

88. See *supra* note 16 and accompanying text.

89. See RUSK, *supra* note 57, at 18.

90. 207 U.S. 161 (1907).

process violation where an annexation process does not require consent of residents, soundly rejecting the need for the consent of citizens in the annexation process.<sup>91</sup> The Court held that the State, acting through its political subdivisions, municipal corporations—may adjust the territorial boundaries of the municipality at its pleasure and that these adjustments may be made conditionally or unconditionally without a vote of affected residents.<sup>92</sup> The Court's decision removed the issue of the right to vote on annexation from the purview of the Federal Constitution, as the Court found the issue of expanding or adjusting municipal boundaries unquestionably a matter of state political concern and ruled that the means by which a state authorizes and enacts annexation provisions and regulations is entirely within the state's discretion.<sup>93</sup> In addition to its clear ruling that consent in any form is not necessary, the Supreme Court offered further support for the involuntary annexation process by rejecting claims of unfair taxation. The Court held that even though increased taxes may cause property owners to suffer inconvenience, "there is nothing in the Federal Constitution which protects them from these injurious consequences."<sup>94</sup> Based on the decision in *Hunter*, federal courts have reaffirmed the authority of states and municipalities to annex property without offering the ultimate decision to residents in the form of a referendum.<sup>95</sup> The courts have consistently ruled that there is no inherent right to vote before municipal boundaries are expanded, and where such opportunity to vote is denied, there can be no equal protection claims.<sup>96</sup> If the municipality or state has not given a landowner or municipal resident the right to vote on annexation under the statute, the Federal Constitution does not supply this right.<sup>97</sup>

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91. See *id.* at 178–79 (finding that expanding or contracting of municipal boundaries may be done "with or without the consent of the citizens, or even at their protest").

92. *Id.*

93. *Id.* at 179 ("In all these respects the State is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.").

94. *Id.*

95. See, e.g., *Berry v. Bourne*, 588 F.2d 422, 424–25 (4th Cir. 1978).

96. *Id.*

97. *Id.* at 425. But see *Muller v. Curran*, 889 F.2d 54, 56–57 (4th Cir. 1989) (rejecting a statutory provision that allowed property owners in the area to be annexed to block a popular vote); *Hayward v. Clay*, 573 F.2d 187, 190–91 (4th Cir. 1978) (finding unconstitutional a provision that mandated a referendum by landowners in the proposed annexation area as prerequisite to a general annexation vote). In *Hayward*, the Fourth Circuit found the original vote of only landowners to be unconstitutional since it gave one class of voters the right to nullify a vote for annexation by the at large electorate. 573 F.2d at 190. The court commented that once a right to vote has been established, it must be



A line of Fourth Circuit cases from North Carolina reflects the ruling by the Supreme Court and relies on *Hunter* to reject constitutional assertions of the right to vote in annexation proceedings based on the Equal Protection or Due Process clauses.<sup>98</sup> The Fourth Circuit cases reiterate the failure of a cause of action under the Fourteenth Amendment where there are no discriminatory voting provisions or, in the case of North Carolina, no voting provisions at all.<sup>99</sup> The cases also reaffirm that annexation and the expansion of municipal boundaries are strictly political matters and therefore entirely within the power of the state or its political subdivisions.<sup>100</sup> Each cites *Hunter* for this rule, and, on this basis, rejects the constitutional challenges asserted by those opposing the proposed annexation.<sup>101</sup> North Carolina statutes do not require annexation be put to a vote by any affected residents.<sup>102</sup> No classification is made among voters, and because the right to vote is denied absolutely, the protections of the Fourteenth Amendment cannot be invoked.<sup>103</sup> Annexation actions by North Carolina municipalities will not fail under the United States Constitution because no fundamental right is infringed. Substantive due process claims challenging annexation have therefore been soundly rejected by the courts.

Procedural due process claims have also received no support in North Carolina courts.<sup>104</sup> The predominant claims in state courts by those seeking to challenge the validity of the annexation process is that by annexing the territory and subjecting the residents to the new taxes imposed by the city, residents are deprived of their property without due process of law in violation of the Fifth Amendment as applied to the states through the Fourteenth Amendment.<sup>105</sup> Without

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offered equally to all voters in order to withstand an equal protection challenge. *See id.* at 190.

98. *See Barefoot v. City of Wilmington*, 306 F.3d 113, 121–22 (4th Cir. 2002); *Baldwin v. City of Winston-Salem, N.C.*, 710 F.2d 132, 134 (4th Cir. 1983); *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625, 629 (W.D.N.C. 1982).

99. *Raintree Homeowners Ass'n*, 543 F. Supp. at 629.

100. *Barefoot*, 306 F.3d at 121–22; *Baldwin*, 710 F.2d at 134; *Raintree Homeowners Ass'n*, 543 F. Supp. at 629.

101. *See cases cited supra* note 100.

102. *Barefoot*, 306 F.3d at 122.

103. *See supra* note 99 and accompanying text.

104. *Id.*

105. *See, e.g., In re Annexation Ordinances*, 303 N.C. 220, 228, 278 S.E.2d 224, 230 (1981) (rejecting due process claims “even though the property in the annexation area may be lessened in value by the burden of the increased taxation or because inhabitants of that area would suffer inconvenience for any other reason”); *Lutterloh v. City of Fayetteville*, 149 N.C. 65, 69, 62 S.E. 758, 760 (1908) (“[T]he enlargement of the municipal

offering annexation for a vote of approval and with no representatives of the annexed territory privy to the adoption of the annexation ordinance, this process has been dubbed "taxation without representation."<sup>106</sup> As new residents are immediately subject to municipal taxes and must share proportionally in the debts of the municipality, their property, in the form of their tax dollars, are claimed to have been taken unlawfully. Many argue that these takings violate procedural due process rights since residents must pay taxes without having elected those charged with determining the tax rates and collecting the taxes.<sup>107</sup> These challengers assert a due process right to involvement in the political process that results in the levying of taxes.<sup>108</sup>

In response to such claims, the Supreme Court of North Carolina ruled that taxing residents of newly annexed areas does not constitute a violation of due process under the state or federal constitution.<sup>109</sup> After recognizing the fringe area freerider problem,<sup>110</sup> the court concluded that: "[f]airness dictates that there comes a time when these residents must join in bearing the costs of those services."<sup>111</sup> The court's dismissal of the procedural due process claims based on concepts of fairness seems relatively hasty without a more complete analysis of such fundamental claims. The court, in considering procedural due process claims, may have again relied on the

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boundaries by the annexation of new territory, and the consequent extension of their corporate jurisdiction, including that of levying taxes, are legitimate subjects of legislation."); *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 221, 447 S.E.2d 471, 475 (1994) (finding that "[a]ttacks upon state annexation procedures which rest on due process or equal protection claims are confined to claims of alleged racial discrimination").

106. See, e.g., *In re Annexation Ordinances*, 303 N.C. at 228, 278 S.E.2d at 229-30; see also Julia Sullivan Hooten, Comment, *Caught Between a Rock and a Hard Place: Fringe Landowners "Can't Get No Satisfaction,"* 24 CAMPBELL L. REV. 317, 319 (2002) (pointing to a history of opposition to forced annexation of North Carolina towns dating back to the 1800s).

107. See *In re Annexation Ordinances*, 303 N.C. at 228, 278 S.E.2d at 229-30.

108. *Id.* at 226, 278 S.E.2d at 229 (affirming, in accordance with *Hunter*, that the consent of residents in the area to be annexed is not required, and this denial of the right to vote does not impinge on the principles of due process).

109. *In re Annexation Ordinances*, 253 N.C. 637, 651-52, 117 S.E.2d 795, 805 (1961). See also *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 217, 447 S.E.2d 471, 473 (1994) ("Mere adverse effect upon financial interest of a property owner is not grounds for attacking annexation proceedings."); *In re Annexation Ordinances*, 303 N.C. at 228, 278 S.E.2d at 230 (holding that "[t]here is no merit" in the argument that the current annexation procedures deprive residents of property without due process of law); *Lutterloh*, 149 N.C. at 70, 62 S.E. at 761 (commenting that outlying residents should be responsible for paying for the benefits they are already receiving).

110. *In re Annexation Ordinances*, 303 N.C. at 233-34, 278 S.E.2d at 233.

111. *Id.* at 234, 278 S.E.2d at 233.

presumption that the state's authority to regulate annexation and determine municipal boundaries is absolute,<sup>112</sup> and these types of claims fail subject to that absolute authority.

In an alternative form of judicial challenge to annexations, residents claim the annexation statutes are "an unlawful delegation of legislative power to a municipal governing body and vests such body with the discretion to act or not to act as it may deem expedient."<sup>113</sup> The residents correctly assert that the legislature may not delegate its lawmaking authority with absolute discretion.<sup>114</sup> In its examination of the statutory delegation of authority, Supreme Court of North Carolina has found the delegation entailed in the annexation statutes not to be a delegation of lawmaking authority but rather a detailed enumeration of standards and requirements to which municipalities must adhere.<sup>115</sup> The court held that the only discretion permissively exercised by the municipal authority was the decision of when to use the method of annexations proscribed in the statute.<sup>116</sup> Where the General Assembly has the authority to create and establish the initial boundaries of a municipality, and thus to change, alter, or expand those boundaries,<sup>117</sup> it may articulate the process and a clear policy that municipalities must follow, yet permissively delegate the decision of when to exercise such powers. Thus, the annexation statutes are not an unconstitutional delegation of authority, but represent a grant of power entirely within the authority of the legislature.

Finally, residents in annexed areas often challenge the statutory denial of a right to trial by jury. The North Carolina annexation statutes specifically enumerate the appeal process for challenges to involuntary annexation.<sup>118</sup>

[A]ny person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth . . . may file a petition in the superior court

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112. See *supra* note 93 and accompanying text.

113. *In re Annexation Ordinances*, 253 N.C. at 644, 117 S.E.2d at 800.

114. *Id.* at 645, 117 S.E.2d at 801.

115. *Id.* at 647, 117 S.E.2d at 802.

116. *Id.*

117. North Carolina is a charter state, and municipalities can do nothing that they are not authorized to do in their charters, as granted by the General Assembly. See *Lutterloh*, 149 N.C. at 69, 62 S.E. at 760 ("We have held in common with all the courts of this country, that municipal corporations, in the absence of constitutional restrictions, are the creatures of the legislative will, and are subject to its control; the sole object being the common good, and that rests in legislative discretion.").

118. N.C. GEN. STAT. § 160A-50 (2003).

of the county in which the municipality is located seeking review of the action of the governing board.<sup>119</sup>

The statute clearly states that “[t]he review shall be conducted by the court without a jury.”<sup>120</sup> Despite this clear statement in the statute, numerous constitutional challenges have been asserted regarding the failure of the state to allow for a jury trial.<sup>121</sup> North Carolina courts have definitively rejected the argument that a resident contesting an annexation procedure is entitled to a trial by jury and have adhered to the appeal procedure provided by statute.<sup>122</sup> The right to a trial by jury is guaranteed only where that right existed at common law when the Constitution was adopted or where such a right is conferred by statute.<sup>123</sup> Appeals from the annexation process do not meet these requirements, and the statute specifically denies the right to trial by jury.<sup>124</sup> As annexation authority rests entirely in the legislature, provisions for the appeal procedure may also be determined and set forth by the legislature.<sup>125</sup> The court has continuously relied on the exclusive procedure for appeal prescribed in the annexation statute to dismiss constitutional challenges to annexation based on claims of a denial of the right to a trial by jury.<sup>126</sup>

Federal and state courts have soundly rejected both forms of annexation challenges with firm holdings of absolute legislative authority in the area of annexation.<sup>127</sup> Courts have deferred to the legislature and declined to imply fundamental rights in the context of annexation. There is no right to vote on annexation and, with no class deprived of a right to vote, there is no equal protection claim.<sup>128</sup> Procedural due process claims have also been rejected, though North

119. *Id.* § 160A-50(a).

120. *Id.* § 160A-50(f); *see id.* (“The court may hear oral arguments and receive written briefs, and may take evidence intended to show either (1) That statutory procedure was not followed, or (2) That the provisions of G.S. 160A-47 were not met, or (3) That the provisions of G.S. 160A-48 have not been met.”).

121. *See Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) (limiting judicial review of annexation proceedings to inquiring whether there has been substantial compliance with the annexation statute); *In re Annexation Ordinances*, 303 N.C. 220, 228, 278 S.E.2d 224, 230 (1981); *In re Annexation Ordinance*, 284 N.C. 442, 451, 202 S.E.2d 143, 148 (1974); *In re Annexation Ordinances*, 253 N.C. at 649, 117 S.E.2d at 804.

122. *See cases cited supra* note 121.

123. *In re Annexation Ordinances*, 253 N.C. at 649, 117 S.E.2d at 804.

124. *Id.*

125. *Id.*; *In re Annexation Ordinances*, 303 N.C. at 228–29, 278 S.E.2d at 230.

126. *See, e.g., In re Annexation Ordinances*, 303 N.C. at 228–29, 278 S.E.2d at 230 (citing *In re Annexation Ordinances*, 253 N.C. at 649, 117 S.E.2d at 804).

127. *See supra* notes 93, 100, 112 and accompanying text.

128. *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907).

Carolina courts cited less convincing authority and relied on assertions of fairness to reject such arguments.<sup>129</sup> Through these conclusive rulings, the courts leave room only for challenging annexation based on procedural violations of the statute or failure to comply fully with the requirements of the statute. If each municipality is careful to adhere to the statutory requirements, judicial challenges will prove futile. With the Supreme Court of North Carolina's historical unwillingness to hear annexation challenges, it seems that the only outlet remaining for those opposing the current annexation statutes and procedures is the amendment of the statutes by the General Assembly. The decisions of the courts give strength to the validity of the current annexation statutes, and, despite mounting public support for annexation referenda, demonstrate that there is no constitutional or judicial support for the opposition's demands.

Annexation provides numerous economic benefits for North Carolina and its municipalities. All of these benefits would be impeded, if not thwarted completely, should annexation require a vote by residents of the area to be annexed. Such residents would ignore the positive economic consequences as well as the provision of services that will extend to the annexed areas and would see only the increased tax burden. The General Assembly should not let those protesting higher taxes get in the way of successful economic and urban development. North Carolina legislators had the foresight in 1959 to provide municipalities with a tool to control and manage municipal growth in a way that leads to successful economic and urban development. The General Assembly should pursue this policy rather than reject the foresight that has allowed municipalities to grow and thrive and has helped North Carolina become an attractive, stable setting for new businesses.

KAREN E. UBELL

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129. See *supra* notes 111–12 and accompanying text.

