

NORTH CAROLINA LEAGUE OF MUNICIPALITIES: A REBUTTAL

This paper will examine statements published by, or made by, officials of the North Carolina League of Municipalities (NCLM)

These statements are used by the League of Municipalities to convince its constituency, elected officials in the General Assembly, and its normally friendly media, that to change our existing Involuntary Annexation laws would lead to stagnant city centers, loss of growth, loss of jobs, terrible bond ratings, loss of professional sports teams, ineffective municipal government, and an unfair burden on the state's municipalities. In reality, these statements are nothing more than quick, catchy phrases which are accepted by those who love having a free hand with annexations, and by those who are too lazy to dig out the facts, or to even read the facts when they are dug out for them.

Here are the facts.

Please take a moment to read them.

(The League "statements" are in **bold**.)

1. **"Because of annexation, North Carolina's central cities are dominant job centers...and experience dynamic growth."**

- There is no evidence that this action would **not** have happened without the Involuntary Annexation (IA) Law. There is no evidence that the growth would have been greater or even less without the IA law. There are many vibrant cities in this country which do not engage in involuntary annexation.
- North Carolina is one of the top five annexing states, in terms of either population or area annexed, in the United States; North Carolina is the only one of those top five which does not allow a vote on annexation.

("An Assessment of Municipal Annexation in Georgia and the United States, A Search for Policy Guidance," by Paula. E. Steinbauer, Betty J. Hudson, Harry W. Hayes, and Rex L. Facer II, the Carl Vinson Institute of Government, University of Georgia. 2002.)

2. With regard to a municipality using the IA law to forcibly annex, **"There are many safeguards in place."**

Let's take a closer look at these "many safeguards."

- No one monitors the proper application of these "safeguards," either before, during, or after the annexation. Not the Secretary of State, not the General Assembly, not the Counties, and certainly not the League of Municipalities. The annexed citizens are the only ones providing any oversight.
- There are really only two "safeguards" that occur before an annexation can take place:
 - Public Hearing: The IA law requires a Public Hearing be held. That is all the law requires. There is no requirement that the municipality listen to what any citizen says at the Public Hearing, which should be labeled a "Public Venting" to more accurately describe its function. It is merely a step to be procedurally filled on the path towards annexation.
 - Petition to the Superior Court: Petitions for review of an involuntary annexation may be filed in Superior Court within 60 days of the passing of the annexation ordinance. This option is the only real "safeguard" available to the annexed citizen. And this option is not a good one, as it entails a "limited review" by the Court. The IA law specifies three areas, and three areas only, that the Court can review and all three revolve around annexation procedural steps. One area requires the citizen to prove "material prejudice," and the other two involve showing noncompliance with the liberal standards of the annexation statutes. The odds are, at the onset, against the citizen, even when the municipality does not follow the statutes' policies. If the municipality has followed these procedural steps, then there is little the citizen can do. If they have not followed the requirements of the law, the Court customarily remands the annexation back for correction of the errors.
- As a result of the above, all these "safeguards" really accomplish is to "safeguard" the municipality's ability to involuntarily annex unwilling citizens.

3. “Annexation does expand the tax base, but also carries with it the responsibility--and accompanying cost--to provide municipal services to residents. In other words, the tax base expands, but so does the cost of delivering services.”

- This may be true in some cases, but increasingly, enhancing the “bottom line” is the prime factor in whether to annex or not. In example after example, poorer neighborhoods, in need of the essential services the municipality can provide, are bypassed in favor of more affluent neighborhoods, which are not in need of these services. Thus, there is minimal outflow from a municipality’s treasury into these established neighborhoods, but there is a large addition to their tax base.
- In Pinehurst, for example, the Village Annexation Report presented what was essentially an even flow of revenue and expenditures for the annexation of the Pinewild area. However this was true only for the first year after annexation, as the Village planned purchases of a new garbage truck, two police cars, and the hiring of four new police officers. After the first year, the Village will realize almost \$1 Million net to its bottom line, as the most expensive of the services, water and sewer, are already provided by Moore County. Clearly the motivation for this annexation is money and not the health, safety and welfare of the Pinewild residents.

4. “If the North Carolina legislature adopts the proposed restrictions on current municipal annexation powers, it will end municipal annexations.”

- There is absolutely no evidence that this statement is true. By far the majority of other states have restrictions on involuntary annexations, and those states continue to annex.
- As a matter of fact, here are the top five states, in numbers of citizens annexed, from 1990-1998: Tied for first is North Carolina, with Texas, as each annexed 316,000. (And the population of Texas is nearly three times that of North Carolina.) Third is Washington with 221,000, fourth is California, with

155,000 and fifth is Illinois with 97,000. **Of these five top annexing states, only North Carolina does not allow a referendum.**

- Consider that Washington annexed 4.1% of its population from 1990-1998, while North Carolina annexed 4.4% of its population. Washington **requires** a vote of its citizens for annexation. (“An Assessment of Municipal Annexation in Georgia and the United States, A Search for Policy Guidance”)

5. “Imagine our cities today -- what they would look like without almost 50 years of annexations. Can you imagine what a mess they would be?”

- Again, a faulty dilemma argument. If we did not have our current law, there would be some other law or mechanism in place to handle urban growth. To imply otherwise is disingenuous.

6. “Without Involuntary Annexation, there would be no growth and our cities would grow stagnant. Growth is the engine for North Carolina’s economy.”

- First of all, another use of faulty logic. There is no evidence that either of these statements is true. Simply making these statements does not make them valid.
- In addition, this statement assumes growth is a good thing and is forever sustainable. Growth brings with it many difficulties: infrastructure problems such as roads, schools, sewer and water systems. Wake County is a perfect example. In Cary alone, between September 16, 2002, and June 23, 2006, there were 40 documented sewage spills, dumping 1,102,333 gallons of sewage into our streams and rivers.
- The Town of Apex grew from 5,000 in 1990 to over 25,000 in just ten years. As a result, traffic moves at a crawl, there are water restrictions in place every summer, the sewer system is overtaxed, and the Wake County school system is in a constant struggle to meet the needs of its students and faculty.

- The cost of this continued growth has yet to be fully realized. In May 2007, with great fanfare and press coverage, a new Partnership for North Carolina's Future was announced in Raleigh. This Partnership was formed to lobby for additional taxes to pay for the past, current, and future costs of rapid growth. The Partnership's most vocal leader is S. Ellis Hankins of the NCLM, proponent of involuntary annexation as a way to ensure growth.
- Finally, despite our IA laws, portions of our cities have become stagnant and continue to remain so as municipalities continually look outward for expansion instead of fixing the current problems that exist within their borders.

7. "You can't mess with our annexation law--it is the envy of the entire country."

- This law may be the envy of some North Carolina municipal officials, as it gives them almost total power to annex, but it is not the envy of the citizens or elected officials in most other states in this country. If it was, then none of these other states would allow a vote. Instead, North Carolina is one of only a handful of states that allows an involuntary annexation without a referendum. The rest of the country correctly recognizes that this law tramples on the rights of its citizens.

8. "Annexations lead to 'economies of scale' and make cities more efficient."

- There has been much research done which shows that numerous, smaller jurisdictions actually improve services to their citizens due to increased competition.
- Howard Husock, in a Manhattan Institute for Policy Research Bulletin dated May 1998, "Let's Break Up the Big Cities," makes the case that smaller is more efficient. He cites Milan Dluhy, from the Institute of Government at Florida International University, who found that economies of scale in

metropolitan Dade County existed only in two areas: fire protection and library services.

- Husock also points out that voter involvement is less in larger areas: “Growing voter apathy gives organized public employees and other special interests a clear field to advance their own agendas....”
- Cited in the same article, David Sjoquist analyzed 48 metropolitan areas in the South and found that competing local governments kept costs down. As he puts it: "The level of expenditures will fall as the number of jurisdictions rises." In addition, Richard Wagner and Warren Webber, looking at counties in 16 southern states, found that consolidation and centralization led to greater spending, not less.
- The Corporation for Enterprise Development (CFED) publishes a report card for every state in the union. It is an annual economic development benchmarking tool. Since Mr. Hankins mentioned Florida and New Jersey, it might prove useful to compare those states to North Carolina. There are three major graded areas: Performance, which measures how well the economy is performing for its citizens; Business Vitality, which measures the robustness of businesses in the state; and Development Capacity, which measures how current resources are used with an eye for the future.

	Performance	Business Vitality	Development Capacity	Overall
New Jersey	B	B	B	B
Florida	C	C	C	C
North Carolina	D	B	C	C

- It is interesting to note that North Carolina received a D in the Performance sub category "Quality of Life" and an F in the sub category, "Equity."

- Additionally, the bigger the government gets, the more impersonal it gets and the more isolated the individual citizen feels. Personal contact with elected officials decreases as the scope of their responsibilities broadens.
- Perhaps the facts indicate BIGGER as not being better after all.

9. **“The law has recourse options for citizens who disagree with the annexation or who do not receive services within the law’s time lines.”**

- Let’s look at these “options,” of which there are four.

(1) PUBLIC HEARING and (2) SUPERIOR COURT petition have been discussed earlier in this paper.

- The remaining two “options” are available only after an annexation has taken place, with a subsequent failure of the municipality to provide the law’s required services.

(3) SUPERIOR COURT for redress of non-delivered services: For water and sewer, the property owner about to be annexed must meet several requirements scattered in the law. First, he must know to request “accelerated service” from the municipality within FIVE days of the Public Hearing. If he misses this deadline, he has **no** Superior Court “recourse option.”

- Then the citizen must file his case in Superior Court within 24-27 months after the effective date of annexation. If he misses this window by one day, again the legal recourse no longer exists. And IF he did manage to get all these requirements correct, what would he receive for his trouble?
- The Superior Court judge could tell the Municipality to “provide the services” and the citizen may get his legal fees reimbursed.
- Perhaps this is why David Lawrence, of UNC’s School of Government and noted expert on annexation law in North Carolina, could find only one

instance, in the almost fifty years this law has been in existence, of this Superior Court “recourse” ever reaching the Appellant Court level.

- And it should be mentioned that the actual hook up to the property from the water and sewer mains can, and usually does, cost the homeowner thousands of dollars. The hook-up cost varies because the law allows the municipality to charge the property owner in accordance with the municipality policies that are in effect at the time of the annexation.

(4) LOCAL GOVERNMENT COMMISSION (LGC): This is the last “option” touted by the NCLM. The Involuntary Annexation law says that the LGC can order an abatement or refund of taxes for services not delivered as required.

- I searched for two days to find the right person at the LGC. When I did get in contact, I asked how often this “recourse” had been used by the citizens of North Carolina. After a long pause, the answer was, “Infrequently.”
- In order to use this office, you would have had to have filed a request with the local annexing municipality within five days of the Public Hearing for the water and sewer service, and then you would have had to made the request for assistance to the Local Government Commission within 60 days of the 2 year anniversary of the annexation date.
- This is an entirely ridiculous requirement to be placed on any citizen of North Carolina. And, as ridiculous as the procedure is, this much-touted recourse does not exist at all for citizens being annexed by towns with populations of less than 5,000.
- According to David Lawrence, in his book, “Annexation Law in North Carolina, Volume 3, Involuntary Annexation,” there have been NO requests for help from the LGC. That would be zero, zip, nada, none. So much for the Local Government Commission option.

- Thus we have seen four possible avenues available as “recourses” for the annexed citizen. One is simply a procedural step, another ties one hand behind the annexee’s back, a third one has been used once, and the last one has never been used.

10. “The North Carolina way guarantees the continued growth, health, and vitality of North Carolina’s cities.”

- Somewhere, at some point, a city will stop growing -- due to a physical feature like a river, or a political barrier (another municipality) or for a failure to meet the requirements of the current IA law. Charlotte provides an excellent example. Charlotte currently encompasses almost all of Mecklenburg County. Will Charlotte lose its vitality and become stagnant because it has reached the limits of its growth? Not according to Mr. Mac McArley, the City Attorney of Charlotte. So, why the rush to fill all the empty space? If we are to believe the League, Charlotte will soon become, due to its inability to continue growing through annexation, a sorry example of urban blight.
- As for the “health” issue, just ask those who have muddy water running out of their faucets, (Fayetteville) from time to time due to the municipal water system being over loaded, or check the streams and rivers after an Apex, Raleigh, Cary, or Wilmington sewage spill. Additionally, ask the folks who have been waiting for years for needed, promised sewage or water service. They exist on failing wells and old septic tanks. They can fix both these problems. But they cannot afford to fix the existing systems and also fix the well or septic system. So, they sit in a state of unhealthy limbo.
- In study after study, North Carolina has not fared well in rankings on “livability.” Average or worse is the norm for the state in areas like schools, transportation, transparency in government, affordable housing, and mental health care.

- Raleigh has such a high degree of “vitality” that city leaders have now banned the use of garbage disposals for new houses, and existing houses cannot replace their disposals when they fail. This ban is due to the deteriorating condition of the city’s sewer system.

11. “Citizens due for annexation live close to the municipality. They enjoy their amenities, and they use all their facilities. It is not fair that they do not pay their share of the cost of these services and amenities.

- As far as living “close to the municipality”, ask the members of Good Neighbors United, currently fighting an involuntary annexation by Goldsboro. These folks live five miles from the city center and they were three miles from the city’s border until a shaky voluntary annexation gave the city barely enough contiguity to go after this rural neighborhood. These citizens would likely argue, and argue correctly, that their annexation is a “stretch.”
- Rural citizens do pay into the municipalities. When they shop in the municipality, they pay a local sales tax. Every purchase in the county requires a county sales tax, and that money is redistributed to every municipality in the county. Where gasoline is purchased in the state, the customer pays a sales tax, and a portion of that tax is given to the municipality.
- For users of “amenities” such as parks and pools, many municipalities charge a user fee that is higher than the fee charged to the municipality’s residents. In addition, municipalities charge two or three times higher water and sewer fees for customers who are not part of the municipality.
- As for roads, many roads in the urban areas of North Carolina are paid for and maintained by the state, and 6.5% of NC Highway funds go to the cities for city street maintenance. The more miles of roads a municipality has, the more money that municipality receives from the state. In 2007, Charlotte received \$20.8M in road maintenance assistance from the state.

- Since 1958, nearly \$3 Billion --- \$157.7 Million in 2007 alone --- has been dispersed to municipalities in the form of Powell Bill/Highway Trust Funds.
(source: NC DOT)
- And to say that since I drive on a municipality's streets, I should pay taxes to that municipality is so simple an argument as to be laughable. I live close to Pinehurst, which wants to annex me, but I actually drive as much on the streets of Southern Pines as I do Pinehurst. I go through Carthage weekly. Should I also pay taxes to those municipalities?

12. **“Annexation opponents don’t want a vote, they want a veto.”**

- The statement ignores what a veto is and how it functions. A veto is an overriding action by one person or agency against a proposal. EXAMPLE: One property owner NOT signing a voluntary annexation petition, thus preventing all the other property owners from being considered for a voluntary annexation. THAT is a veto.
- A vote does not have to mean that an annexation fails. Consider that Washington annexed 4.1% of its population from 1990-1998, while North Carolina annexed 4.4% of its population. Washington **requires** a vote of its citizens for annexation.
- Rex L. Facer II, from Brigham Young University, in his article, “Annexation Activity and State Law in the U.S.” found that states with election provisions (i.e. a vote) had 84% more annexations than did states without such provisions.
- Jared Carr, College of Charleston and Richard C. Feiock, Florida State University, in “State Annexation Constraints and the Frequency of Municipal Annexation,” write that:

“State rules designed to constrain annexation do significantly influence local boundary patterns though in unexpected ways. Procedural constraints expected to reduce annexation activity are instead shown to stimulate greater numbers of annexations.”

- In North Carolina for example, the state’s annexation and planning laws give towns the discretion to annex only properties with high tax values, bypassing poorer neighborhoods which need services. The result is a confusing maze of boundaries that include islands of poorer neighborhoods, overlapping services, and instances where the annexing city has had to contract with the county to provide basic services like fire and police protection.
- In North Carolina between 1947 and 1957, before the current IA law was in effect, referendums were allowed, and three out of every five proposed annexations passed their vote.
- In “An Assessment of Municipal Annexation in Georgia and the United States,” authors from the Carl Vinson Institute of Government at the University of Georgia state:

*“Although a referendum in the territory to be annexed primarily benefits those property owners and residents, it also benefits the municipality by affirming that the annexation is, in fact, desired by the majority of those voting. Some may interpret elections as an obstacle to annexation; however, a **city council acting in the best interests of the entire community would prefer a delay in annexing property over an action that most citizens oppose.**”*
(emphasis added.)

- And analysis of the annexation laws in other states and a comparison of those laws with the data in the Carl Vinson Institute of Government report clearly indicate that allowing a vote does not keep annexation activity down at all.
- Plus, the NCLM pushes for a vote on some items. In the July 14, 2007 issue of the Raleigh News and Observer, Mr. Ellis Hankins, Executive Director of the

NCLM, urged the General Assembly to pass the Transfer Tax bill. This piece was entitled, "Let's Have a Vote on the Transfer Tax," and he states:

"At the state level, we need to let people vote on bond proposals for schools, clean water, transportation, land and water conservation and affordable housing for seniors and others."

13. "North Carolina leads the nation in AAA bond rated cities."

- The implication here is that the state's Involuntary Annexation laws are the reason. While it is true that the ability to reach out and annex a high value tax base would be a favorable point for a bond rater, there are, in fact, several more important factors at work here than our involuntary annexation law.
- The LOCAL GOVERNMENT COMMISSION (LGC) should receive far more credit than our IA laws for the high bond ratings given to the municipalities of North Carolina. These municipalities must receive LGC approval for any bond they wish to issue. The LGC first examines whether or not the amount being borrowed is what the municipality can afford. Then the LGC is responsible for selling the bonds on the municipality's behalf. This makes the LGC unique in the United States. In addition, the LGC monitors and audits local governments and their repayment of those bonds.
- To quote from the CITY MAYORS FINANCE, magazine, 31 March 2005 edition:

"North Carolina's local government finance and oversight system demonstrates how to limit the number of fiscal crises, while delivering municipal bond issuers respected by credit rating agencies, investors and constituents. As a result of its local government default history in the issuance of municipal bonds during the Great Depression, the state of North Carolina developed a system that continues to influence others in following the path it took in the early 20th Century. North Carolina now provides a leading example of state supervision of local government finances."

“Through regular checks of local finances it has succeeded in minimizing the type of fiscal distress that has occurred with increasing frequency within local governments of other states lacking a similar framework. This has also facilitated lower tax rates and thereby saved taxpayers money. Furthermore, the state’s role in supporting and guiding its municipal bond issuers has delivered superior credits. And the state’s mechanism of educating local government officials has enabled the state to provide an enduring and sterling example of superior performance that has led to calls for its emulation.”

The NC State Treasurer Debt Affordability Study:

“...analyzes the State’s available debt capacity using formulas based on peer states and conservative growth models. The annual study, issued for the first time...in 2003, serves as a tool for sound debt management and helps to protect North Carolina’s strong bond rating. Control of debt burden is a key factor used by the rating agencies to determining credit quality.”

- So let us try to correlate bond ratings with a state’s annexation law. According to the February 2007 Michigan Senate Fiscal Agency report, there are currently only seven states who have been awarded the top bond rating by all three rating agencies.
- Of those seven, **only North Carolina does not allow a vote on involuntary annexations.**
- In addition to North Carolina, the states of Indiana, Tennessee, Kansas, Texas, and Mississippi do not allow a vote on involuntary annexation. Two are rated AA, and three are rated AA+ (S & P rating as of Feb. 5, 2007.)
- Finally, the recent housing mortgage crisis can have a far reaching impact on the bond market. The Governor of New York has warned that bond insurers are beginning to abandon the bond market, which will have far reaching, negative effects on state and local governments. Obviously, the more debt a state or municipality acquires, the greater the potential liability.

- As Barbara Hunter, columnist for the Asheville Citizen Times has written,

“The ability to separate people from their hard-earned dollars through involuntary annexation makes municipal debt easier to acquire. The result may be either beneficial or detrimental, depending on the decisions of the municipalities. If anything, the lure of easy credit, as with private finances, can lead to short-sighted or even foolhardy expenditures.”

And this easy credit has helped move North Carolina from number 37 in 1970 to number 19 in 2005 in terms of the amount of money that goes from a citizen’s wallet to North Carolina taxes, in part to service this debt.

Some closing thoughts....

Over the years, the citizens of this state have failed miserably in trying to bring change to this unjust law. This failure has not been due to a lack of effort, and that effort continues today. Each citizen is energized by this law’s total lack of fairness and by outrage at being denied that most fundamental of American liberties--a vote.

In reading the specifics of this paper, never lose sight of this most basic, underlying fact: involuntary annexation is a blatant violation of personal property rights.

By taking citizens and their homes into a municipality without consent, municipalities are guilty of a modern form of taxation without consent of the governed, as those annexed have had no vote in the election of those decision makers.

If this sounds vaguely familiar, our forefathers went to war over 225 years ago for similar injustices.

Thank you.

Doug Aitken
Fair Annexation Coalition