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Annexation in South Carolina

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ANNEXATION IN SOUTH CAROLINA

WESLEY E. HENDERSON*

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I. INTRODUCTION

"[T]here is not a more controversial, legalistic, or emotional issue facing municipalities today than the process of annexation."¹ Annexation is the "legal process by which municipalities add land to their boundaries";² essentially, annexation is the transfer of control from one jurisdiction to another jurisdiction (usually from a county to a city).³ Annexation is a source of wide debate, not only regarding the appropriate degree of municipal authority to expand boundaries, but also regarding the effectiveness of annexation as a tool to achieve stated aims.⁴ Underlying this debate are conflicts of political philosophy, the role of government, and private property rights. States' annexation laws reflect the balancing of these beliefs against the necessity for community planning as well as the values and interests of their citizens.

On one side of the debate, proponents⁵ of broad municipal authority to annex often call for unilateral annexation authority.⁶ They argue that

¹ NEW CHALLENGES IN LOCAL AND REGIONAL ADMINISTRATION 40 (Max Barlow & Doris Wastl-Walter, eds., 2004) (quoting ALICESTYNE ADAMS & BRIAN PAUL FREESE, MISS. STATE. UNIV., MISSISSIPPI INITIATIVE MEASURE NO. 6: A COMPARATIVE STUDY OF MISSISSIPPI MUNICIPAL ANNEXATION 5 (1995)).

² Jamie L. Palmer & Greg Lindsey, *Classifying State Approaches to Annexation*, 33 ST. LOC. GOV'T REV. 60, 60 (2001), available at <http://www.cviog.uga.edu/slgr/2001/1f.pdf>.

³ ANNEXATION WORKGROUP, CITY OF ANNAPOLIS, REPORT OF THE ANNEXATION WORKGROUP 5 (2005), available at http://www.ci.annapolis.md.us/upload/images/government/depts/pl_zon/annex_report.pdf.

⁴ See *infra* notes 67-76 and accompanying text.

⁵ See, e.g., DAVID RUSK, CITIES WITHOUT SUBURBS (2d ed. 1995) [hereinafter CITIES WITHOUT SUBURBS] (proponent of involuntary annexation and metropolitan local

annexation is a pathway to economic boom and a mechanism to improve the financial status of a municipality.⁷ By expanding boundaries to include more land and residents, municipalities can increase their tax base and improve their financial position, providing additional revenue to spread throughout the community for services and projects.⁸ However, municipalities incur additional expenses to provide services and infrastructure to newly annexed areas, and thus often only annex when financially beneficial to the municipality.⁹

Proponents argue that annexation promotes efficient delivery of municipal services, by providing uniform service and avoiding duplication of service in a given area.¹⁰ Arguably, annexations may promote equitable allocation of tax burdens, by spreading the tax burden among all residents benefiting from the city and its services.¹¹ Proponents further argue that annexation is a necessary growth management tool; increasing cities' ability to plan for the effects of urban sprawl as well as promoting community interests on the city's

governments); Charlie B. Tyer, *A New Approach to Annexation: Why South Carolina's Cities are not Growing*, 6 S.C. POL'Y FORUM MAG. 35 (Winter 1995), available at <http://www.ipspr.sc.edu/grs/SCCEP/Articles/Annex2.htm> (subsequently titled *Municipal Annexation: A Reconsideration*), (examples of city officials who are proponents of greater annexation authority); cf. Prentiss Findlay, *Mt. P. Plans to Add Annexation Aide*, POST & COURIER (Charleston, S.C.), Apr. 25, 2007, available at http://www.charleston.net/news/2007/apr/25/mt_p_plans_add_annexation_aide/ (article covering an annexation dispute showcases various city officials publicly supporting the annexation; however, support for a particular annexation does not necessarily imply support for less restrictive annexation laws, albeit the parties' share similar interests when city officials are pursuing a particular annexation).

⁶ See *infra* Parts IV–V. In South Carolina, however, proponents typically call for unilateral annexation authority in limited circumstances, such as donut holes. See *infra* notes 68–71 and accompanying text.

⁷ DAVID RUSK, THE BROOKINGS INST., ANNEXATION AND THE FISCAL FATE OF CITIES 1 (2006) [hereinafter FISCAL FATE], available at http://www.brookings.edu/~media/Files/rc/reports/2006/08metropolitanpolicy_rusk/20060810_fateofcities.pdf.

⁸ Karen E. Ubell, *Consent Not Required: Municipal Annexation in North Carolina*, 83 N.C. L. REV. 1634, 1642–47 (2005).

⁹ See Elizabeth R. Connolly, *Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws*, 29 N.C. CENT. L.J. 77, 80 (2006) (arguing that cities only pursue annexations that are revenue producing). The additional costs incurred by the city can financially outweigh the additional revenue produced from taxes and other fees. *Id.*

¹⁰ See, e.g., MUN. RESEARCH & SERVS. CENTER OF WASH., ANNEXATION HANDBOOK (1995), available at <http://www.mrsc.org/Publications/textah.aspx>.

¹¹ Joni Walser Crichlow, *Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule*, 63 N.C. L. REV. 1260, 1260 (1985).

fringe, including “sound principles of land-use planning and important health and safety regulations.”¹²

On the other side, opponents¹³ acknowledge the need for municipal annexation authority, but in a more limited capacity. Opponents demand a degree of consent by the residents to be annexed before municipalities can incorporate that area. Opponents argue that the democratic fundamentals of governance and private property rights require some level of consent, in order to both maintain the integrity of the political process and to protect the interests of the potentially annexed residents.¹⁴ Consent requirements also help prevent exploitative annexations.¹⁵

Additionally, opponents of increased municipal annexation authority question the validity and weight of the economic arguments offered by proponents.¹⁶ Other opponents view annexation as an effective growth management tool that nonetheless requires restrictions, because of the frequency with which it is inappropriately used as a mechanism for municipal land (and tax) grabs.¹⁷ Finally, annexation meets resistance from residents in the potentially annexed area who foresee additional burdens¹⁸—higher taxes, diminished autonomy, and additional regulatory

¹² Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247, 252 (1992).

¹³ Howard Husock, *Let's Break Up the Big Cities*, CITY J., Winter 1998, at 71, available at http://www.cityjournal.org/html/8_1_a2.html (proponent of smaller, decentralized municipal governments and opponent of broad municipal annexation authority); Tyer, *supra* note 5, at 37-39 (explaining that landowners, businesses, and residents in the potentially annexed area, neighboring cities, special purpose governments, electric cooperatives, and investor owned utilities may have interests conflicting with municipal determination); see also Jenny Peterson, *Lawyer Says James Island 'Will Not Die'*, JOURNAL (James Island, S.C.), Apr. 3, 2008, available at http://www.charleston.net/news/2008/apr/3/lawyer_says_james_island_will_not_die/ (article showcases complaints from various residents on James Island in opposition of the City of Charleston's annexation efforts on James Island).

¹⁴ See, e.g., Julia Sullivan Hooten, Comment, “Caught Between a Rock and a Hard Place:” *Fringe Landowners “Can’t Get No Satisfaction.” Is it Time to Re-Think Annexation Policy in North Carolina?*, 24 CAMPBELL L. REV. 317, 318 (2002).

¹⁵ Clayton P. Gillette, *Voting With Your Hands: Direct Democracy in Annexation*, 78 S. CAL. L. REV. 835, 854-69 (2005) (arguing that more beneficial annexations result from allowing for the bargaining process between cities and potentially annexed residents to run its course).

¹⁶ Husock, *supra* note 13.

¹⁷ Gillette, *supra* note 15, at 848.

¹⁸ See S.C. CODE ANN. § 6-29-770 (1976) (Once a municipality annexes an area, it immediately becomes part of the municipality subject to the applicable regulations of the municipality such as zoning ordinances).

burdens such as zoning—but do not foresee offsetting benefits (at least not enough to outweigh the burdens).¹⁹

This note examines the annexation debate in South Carolina, focusing primarily on the competing methods of municipal determination and popular determination. Part II provides background information on annexation laws.²⁰ Part III briefly explains South Carolina's annexation laws.²¹ Parts IV and V examine the arguments for municipal and popular determination, respectively.²² Practically, these arguments commonly culminate in some form of compromise or variation of either of the methods in an annexation situation,²³ but this note's method of presentation allows for a thorough analysis of the arguments underlying these important debates. Part VI narrows the discussion to South Carolina, highlighting observations and suggesting the likely impact of more or less restrictive annexation laws.²⁴

II. ANNEXATION LAWS GENERALLY

A. Legal Framework

"The Constitution of the United States does not mention local governments."²⁵ Rather, local governments are "created as convenient agencies for exercising . . . the governmental powers of the state as may be intrusted to them."²⁶ The Supreme Court of the United States has held that annexation laws fall within the range of legislative functions of the states, entirely regulated by state legislatures; accordingly, the authority

¹⁹ Gillette, *supra* note 15, at 836. However, unincorporated residents may sometimes desire annexation to receive the economic and political benefits resulting from incorporation. See Amanda K. Baumle et al., *Strategic Annexation Under the Voting Rights Act: Racial Dimensions of Annexation Practices*, 24 HARV. BLACKLETTER L.J. 81, 86 (2008).

²⁰ See *infra* notes 25-44 and accompanying text.

²¹ See *infra* notes 45-76 and accompanying text.

²² See *infra* notes 77-185 and accompanying text.

²³ See Bryan H. Babb & Stephen C. Unger, *Setting the Annexation Record Straight: The Myth Underlying Annexation Reform in Indiana*, 51 RES GESTAE 36, 38 (Mar., 2008).

²⁴ See *infra* notes 186-219 and accompanying text.

²⁵ National League of Cities Official Website, Cities 101: Annexation, http://www.nlc.org/about_cities/cities_101/155.aspx (last visited Feb. 1, 2009).

²⁶ *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1970) ("Municipal corporations are political subdivisions of the State . . ." and that "[t]he number, nature and duration of the powers conferred upon [municipal] corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.").

to annex depends entirely on the state.²⁷ As a result, annexation laws come in a variety of forms, differing in authority and procedure—from granting municipalities no authority, to granting municipalities unilateral authority to annex, known as unilateral or involuntary annexation.²⁸ Essentially, municipalities and other forms of local government operate in fifty different legal and political settings, respective to each state.²⁹ In South Carolina, counties³⁰ and cities³¹ have broad authority to exercise “police powers,” including the authority to “legislate for the purpose of regulating public health, safety, welfare, [and] morals.”³²

B. Basic Types of Annexation Laws

Of the five broad categories within which annexation statutes generally fit,³³ two categories are central to the annexation debate in South Carolina: *popular determination*, reflected in the current laws, and *municipal determination*.³⁴ Popular determination reflects the belief that “property owners should have a voice in the dispensation of their property”³⁵ and gives property owners in the area to be annexed the right to consent to or reject incorporation.³⁶ Municipal determination gives local governing bodies the unilateral authority to annex and to make municipal boundary determinations, typically accomplished by enacting ordinances.³⁷

²⁷ *Id.*

²⁸ Unilateral annexation provides municipalities with authority to annex without the consent of residents in the area to be annexed. See Babb & Unger, *supra* note 23, at 38.

²⁹ National League of Cities Official Website, *supra* note 25.

³⁰ S.C. CODE ANN. § 4-9-25 (1976).

³¹ Home Rule Act of 1975, S.C. CONST. art. VIII, § 17.

³² JON B. PIERCE & EDWIN C. THOMAS, UNIV. OF S.C., CITY FOR GOVERNANCE, GENERAL PURPOSE LOCAL GOVERNMENT IN SOUTH CAROLINA 2 (2000), available at <http://www.ipspr.sc.edu/grs/LGRP/DOC/LGFP%20Gen.%20Purpose%20Local%20Government.pdf>.

³³ Palmer & Lindsey, *supra* note 2, at 62 (citing FRANK S. SENGSTOCK, ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM (1985)). The remaining three methods are not actively entertained in South Carolina: legislative determination, judicial determination, and quasi-legislative determination. See generally *id.*

³⁴ Palmer & Lindsey, *supra* note 2, at 61-64.

³⁵ *Id.* at 61.

³⁶ Babb & Unger, *supra* note 23, at 38.

³⁷ Palmer & Lindsey, *supra* note 2, at 62.

C. Relationship Between Annexation Methods and Frequency of Annexations

Important to the annexation debate is whether changes in annexation laws impact the rates of annexation. Although debated, most studies suggest that liberalizing annexation laws leads to more frequent annexations;³⁸ “annexation laws have significant, predictable effects on rates of annexation.”³⁹ Annexation will most likely occur in states where municipalities possess ultimate authority; annexation will occur less frequently in states where municipalities require prior approval from property owners or residents of the territory to be annexed.⁴⁰

Other factors may also impact the frequency of annexations. One study, for instance, suggests that older cities are less likely to annex.⁴¹ Annexations are relatively less frequent where socioeconomic disparities exist between the incorporated area and the unincorporated area.⁴² The form of a municipal government may affect the relative frequency of its annexation activities.⁴³ Additionally, other local-specific factors may contribute to rates of annexation, such as a cities’ financial capacity to expand.⁴⁴ To illustrate, a city with a weak form of government and major socioeconomic differences with the annexing area may have less frequent annexations than a similar city with a strong form of city government and minor socioeconomic differences with the annexing

³⁸ One study found that “the ease or difficulty of annexation procedures under controlling statutes does not appear to be predictive of annexation activity.” Palmer & Lindsey, *supra* note 2, at 65 (quoting Thomas R. Dye, *Urban Political Integration: Conditions Associated with Annexation in American Cities*, 8 MIDWEST J. POL. SCI. 430, 445 (1964)). A later study supported this idea, concluding that “the legal difficulties/complexities of the annexation process may not be a very significant deterrent to municipal annexation.” *Id.* (quoting S.A. McManus & R.D. Thomas, *Expanding the Tax Base: Does Annexation Make a Difference?*, 1 URB. INTEREST 15 (1979)). On the other hand, another study found that “the easier the annexation laws, the greater the chance for substantial annexation.” *Id.* (quoting Raymond H. Wheeler, *Annexation Law and Annexation Success*, 41 LAND ECON. 354, 360 (1965)). A later study supported this contention finding “state law to be the most important factor affecting annexation activity.” *Id.* (citing Thomas D. Galloway & John Landis, *How Cities Expand: Does State Law Make a Difference?*, 17 GROWTH & CHANGE 25 (1986)).

³⁹ Palmer & Lindsey, *supra* note 2, at 65.

⁴⁰ *Id.*

⁴¹ *Id.* (citing Thomas R. Dye, *Urban Political Integration: Conditions Associated with Annexation in American Cities*, 8 MIDWEST J. POL. SCI. 430, 445 (1964)).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See *infra* Part IV.C.

area, even if the former has less restrictive annexation laws. In short, although strengthening municipal authority to annex likely increases the relative number of annexations in that area with all else being equal, other factors may also contribute to the overall frequency of annexations.

III. SOUTH CAROLINA ANNEXATION LAWS EXPLAINED

A. *Methods & Procedures*

South Carolina, like most states,⁴⁵ requires annexed land to be contiguous with the municipality's existing boundaries.⁴⁶ The Supreme Court of South Carolina has held that "contiguous" maintains its original meaning, and thus the city's existing boundaries must be "touching" the boundaries of the property to be annexed.⁴⁷ The Supreme Court of South Carolina has determined that the sole legal requirement for annexation is contiguity, also stressing that the "wisdom of an annexation is a legislative, not judicial, determination."⁴⁸ Subsequent statutory definition has clarified the contiguity requirement.⁴⁹

The Constitution of South Carolina provides authority for municipal boundary changes.⁵⁰ South Carolina Code authorizes three methods of

⁴⁵ 56 AM. JUR. 2D *Municipal Corp., Counties, Other Political Subdivisions* § 51 (2008).

⁴⁶ S.C. CODE ANN. §§ 5-3-150(1)-300 (1976).

⁴⁷ *Bryant v. Charleston*, 368 S.E.2d 899, 900-01 (1988).

⁴⁸ *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 564 S.E.2d 647, 649 (2002) (citing *Harrell v. City of Columbia*, 58 S.E.2d 91 (S.C. 1950); *Pinckney v. City of Beaufort*, 370 S.E.2d 909 (S.C. Ct. App. 1988)).

⁴⁹ S.C. CODE ANN. § 5-3-305 (1976). The new definition provides that:

contiguous means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

Id. "[C]ontiguity is not established by such a connector of properties which would not share a boundary without the existence of the connector." MUN. ASS'N S.C., ANNEXATION HANDBOOK 32 (Roy D. Bates ed., 2006), available at <http://www.masc.sc/resources/2006%20annexation%20handbook.pdf>.

⁵⁰ S.C. CONST. art. VIII, § 8, "The General Assembly shall provide by general law the criteria and the procedures . . . for the readjustment of municipal boundaries. No local or special law shall be enacted for these purposes; provided, that the General Assembly may vary such provisions among the alternative forms of Government." *Id.*

annexation of privately owned property.⁵¹ The first method, the one hundred percent petition and ordinance method,⁵² permits the annexation of any area or property that is contiguous with an incorporated area by filing a petition signed by all persons⁵³ owning real estate in the area requesting annexation. Upon acceptance of a petition to annex by the relevant governing body, an ordinance is enacted declaring the area annexed and the annexation is complete.⁵⁴ To have standing to challenge an annexation using this method, a challenger must “assert an infringement of its own proprietary interests or statutory rights.”⁵⁵

The second annexation method, the seventy-five percent petition and ordinance method,⁵⁶ requires the signatures of seventy-five percent of freeholders⁵⁷ owning at least seventy-five percent of the total assessed property value of the area to be annexed.⁵⁸ Under this method, only a “municipality or a resident, or a person residing in or owning property in

⁵¹ See *infra* notes 52-66 and accompanying text. The South Carolina Code separately provides for the annexation of the following types of property, which may be accomplished by petition or consent of the owner and adoption of an ordinance: property owned by the annexing municipality; public street only; multi-county park property owned by the State; property owned by a corporation only; property owned by a school district; property owned by federal or state government; manmade industrial peninsula; cemeteries; property owned by a church or religious group. S.C. CODE ANN. §§ 5-3-100 to 260 (1976).

⁵² S.C. CODE ANN. § 5-3-150(3) (1976).

⁵³ *Id.* A governing body member that owns property or stock in a corporation owning property in the area to be annexed is not eligible to vote on the ordinance. *Id.*

⁵⁴ S.C. CODE ANN. § 5-3-150(3) (1976). There is no notification requirement under this method. *Id.*

⁵⁵ *St. Andrews*, 564 S.E.2d at 648 (citing *State by State Budget & Control Bd. v. City of Columbia*, 419 S.E.2d 229 (1992)).

⁵⁶ S.C. CODE ANN. § 5-3-150(1) (1976).

⁵⁷ S.C. CODE ANN. § 5-3-240 (1976). “[A] ‘freeholder’ is defined as any person eighteen years of age, or older, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.” *Id.*

⁵⁸ S.C. CODE ANN. § 5-3-150(1) (1976). A governing body member that owns property or stock in a corporation owning property in the area to be annexed is not eligible to vote on the ordinance. *Id.*

the area to be annexed”⁵⁹ has standing to challenge a proposed annexation.⁶⁰

The third annexation method, the twenty-five percent petition and election method,⁶¹ was codified in 1988 but was effectively obsolete until 2000 because it violated the Fourteenth Amendment’s Equal Protection Clause.⁶² In 2000, the constitutional defect was cured by an amendment providing that registered electors in the area to be annexed, rather than freeholders, initiate the election by petition.⁶³ If a petition is signed by twenty-five percent of qualified electors residing in the area to be annexed, an election may be held within that area.⁶⁴ A proposal requires a majority of the votes to be cast in favor of the proposed annexation.⁶⁵ A number of procedural requirements regarding publication and notice are required before the annexation is completed.⁶⁶

⁵⁹ *St. Andrews*, 564 S.E.2d at 648.

⁶⁰ *Id.* at 648 (through a *quo warranto* action). Further, the Supreme Court of South Carolina has held that non-statutory private parties do not have standing to challenge municipal annexations; the only non-statutory party that may challenge an annexation is the State. *Id.*

⁶¹ S.C. CODE ANN. § 5-3-300 (1976).

⁶² U.S. CONST. amend. XIV, § 1. The election was initiated by a petition of 25 percent of freeholders and thus it violated the equal protection of non-freeholders, such as renters. *See Muller v. Curran*, 889 F.2d 54 (4th Cir. 1989) (holding a Maryland statute authorizing the incorporation of an incorporated area invalid in violation of the Equal Protection Clause in that county council could not schedule incorporation vote unless a given percentage of property owners authorized it). Notice that the 100 percent and the 75 percent annexation methods did not suffer from the same defect of violating the equal protection guaranteed to electors by the Fourteenth Amendment, because there is no election involved. *See MUN. ASS’N S.C.*, *supra* note 49, at 13.

⁶³ S.C. CODE ANN. § 5-3-300 (1976).

⁶⁴ S.C. CODE ANN. § 5-3-300(C) (1976). According to the statute, only after the municipal council certifies and delivers the petition shall the county election commission “order an election to be held within the area proposed to be annexed to the municipality on the question of extension of the corporate limits of the municipality by annexation of the area proposed to be annexed.” *Id.*

⁶⁵ S.C. CODE ANN. § 5-3-300(D) (1976). The statute also contains opt-out provisions for owners of 25 percent of the assessed value of the property or freeholders owning 10 acres of agricultural real property. S.C. CODE ANN. § 5-3-300(I) (1976).

⁶⁶ *See* S.C. CODE ANN. § 5-3-300(E)-(H) (1976). For example, under section 5-3-300(E), the municipal council must publish in “a newspaper of general circulation” a notice containing a description of the proposed annexed area, the code section containing the proposed annexation, a statement that the electors voted to annex, and the methods of contesting the annexation. Sections 5-3-300(F)-(H) describe the final reading and approval requirements. *Id.*

B. Current Criticisms, Briefly

Both sides of the debate criticize South Carolina's annexations laws—one side claiming the laws are too restrictive⁶⁷ and the other side claiming they are too lenient.⁶⁸ Those criticizing the laws as too restrictive support legislation that would remedy the problem of donut holes by providing for unilateral annexation of such areas,⁶⁹ reduce the seventy-five percent method's signature requirement to sixty percent,⁷⁰ and provide municipal authority to annex contiguous land "if it reaches a certain level of urban densities in population and development."⁷¹ In contrast, others support legislation that would address the problem of shoestring annexations,⁷² liberalize standing requirements needed to contest annexations,⁷³ improve public involvement,⁷⁴ "[r]equire

⁶⁷ M. Edward Sellers & George W. Fletcher, Editorial, *Annexation Laws Key to Smarter Growth*, STATE (Columbia, S.C.), Feb. 6, 2008, at A11, available at <http://www.citiesmeanbusiness.org/Articles/Pages/Annexationlawskeytosmartergrowth.aspx>.

Critics argue that the current laws are outdated; further, by not allowing cities to grow to their natural borders, cities suffer both economically and from an inadequate capacity to plan. *Id.*

⁶⁸ Coastal Conservation League, Taxpayer Protection, <http://coastalconservationleague.org/NETCOMMUNITY/Page.aspx?pid=722&srcid=215> (last visited Feb. 1, 2009). The League argues that the current laws allow "inappropriate and harmful" annexations that lead to the inefficient use of taxpayer dollars and "causes growth to outpace communities' ability to pay for infrastructure and other services." *Id.*

⁶⁹ *Municipal Officials Should Become Familiar with the Municipal Legislative Agenda Prior to Hometown Legislative Action Day*, UPTOWN (Mun. Ass'n, Columbia, S.C.), Feb. 2005, at 1, available at www.masc.sc/resources/Uptown_Feb2005.pdf. A "donut hole," or enclave, is an area completely surrounded by a municipality. *Id.* The Municipal Association of South Carolina supports reform that would allow cities to annex donut holes. *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Cities engage in land grabs and circumvent legislative intent through use of strategies like strip annexing and selective annexations to avoid certain areas but still gain enough signatures to effectuate annexations. Tyer, *supra* note 5, at 44. The Coastal Conservation League supports an annexation reform bill that prevents inappropriate "shoestring annexations" of remote properties by enforcing additional requirements for annexations of large parcels such as requiring that the area is already serviced by the municipality, already developed for urban purposes, or if a high percentage of the boundary of the unincorporated area is contiguous with the municipality. Coastal Conservation League, *supra* note 68.

⁷³ Coastal Conservation League, *supra* note 68. The Coastal Conservation League advocates reforms that redefine statutory standing to ensure that affected citizens have the ability to contest annexation proposals. *Id.*

⁷⁴ *Id.* The Coastal Conservation League advocates reforms that improve public notice requirements to provide thirty days to review, even for the one hundred percent method (which only requires twenty-four hours public notice), and require public hearings on all annexation proposals that affect parcels greater than two hundred acres. *Id.*

annexations to be consistent with local comprehensive land use plans,"⁷⁵ and "[r]equire annexing municipalities to publish a 'plan of services' prior to approval of annexation proposal."⁷⁶

IV. MUNICIPAL DETERMINATION: THE CITY'S PERSPECTIVE

Under municipal determination, municipalities can "annex and extend boundaries unilaterally by votes of their legislative bodies."⁷⁷ Proponents argue that municipal determination is the most administratively efficient method; aides in the "solution of local problems;" helps to "avoid urban sprawl;" and may avoid "duplication of services between cities and other units of government."⁷⁸ Opponents counter that municipal determination "does not manage hostility and promote compromise;" lacks "sufficient administrative restraints, may permit land grabbing; allows cities to annex large areas that are neither developed nor anticipated for development in the near future;" "allows municipalities to choose not to annex depressed areas that demand more services but are unlikely to generate revenue;" and annexations pursuant to this method are "often done without adequate planning and communication."⁷⁹

Advocates of municipal determination typically call for unilateral annexation.⁸⁰ Under this method, the city's governing body passes the annexation; no vote or referendum of the annexed area's citizens or the municipal residents themselves is required.⁸¹ While unilateral annexation is rarely the primary annexation method nationally,⁸² many

⁷⁵ *Id.* The Coastal Conservation League advocates reforms that require annexations to be consistent with local comprehensive land use plans. *Id.*

⁷⁶ *Id.* The Coastal Conservation League advocates reforms that require annexing municipalities to publish a "plan of services" prior to approval of annexation proposals, greater than two hundred acres, that demonstrates how the municipality plans to support the extension of new services, including a schedule for services and a financial plan.

⁷⁷ Palmer & Lindsey, *supra* note 2, at 64. This method is often used in combination with other methods. *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See, e.g., RUSK, *supra* note 5, at 10-11; Ubell, *supra* note 8, at 1634.

⁸¹ See Palmer & Lindsey, *supra* note 2, at 62.

⁸² There is some debate over the number of states that provide for involuntary annexation. Compare Connolly, *supra* note 9, at 80 (only four states have involuntary annexation), and Janelle D. Allen, Case Note, Carolina Power & Light v. City of Asheville *Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary*, 27 N.C. CENT. L.J. 224,

states provide for the use of unilateral annexation, either in limited circumstances or in combination with additional requirements and guidelines restricting a municipality's authority.⁸³

A. Tax Base & Free-Riders

As a major source of municipal population growth,⁸⁴ annexations can bring about financial benefits by increasing a tax base,⁸⁵ attracting business activity,⁸⁶ and qualifying cities for institutional grants.⁸⁷ Additionally, advocates argue that cities are "better able to show realistic evidence of local population numbers and growth patterns to potential investors."⁸⁸ For instance, in 1989 the City of Columbia, South Carolina annexed a five foot-wide strip of land stretching one-half mile in length

229-30 (only seven states have involuntary annexation and only four states—North Carolina, Tennessee, Idaho, and Kansas—allow annexation without the consent of the property owners in the area to be annexed), *with* Babb & Unger, *supra* note 23, at 38-39 (suggesting twenty-nine states have "some form of" involuntary annexation, including states that provide very limited annexation for "islands" and statutes that provide for the majority of votes of both municipal and annexation territory voters). Such a discrepancy may be explained by Babb & Unger's more general definition of "involuntary annexation," which applied when "[t]he state had at least one manner of annexing territory that could be accomplished over the objection of 51 percent of the property owners in the territory to be annexed." Babb & Unger, *supra* note 23, at 38.

⁸³ See Babb & Unger, *supra* note 23, at 37-38.

⁸⁴ See Richard C. Kearney, *Fear and Loathing Across the River: Municipal Annexation in South Carolina*, S.C. POL'Y FORUM MAG., July–Sept. 1990, at 8, *available at* <http://www.ipspr.sc.edu/grs/SCCEP/Articles/Annex1.htm> (major rationale for recent Columbia, S.C. annexation was to increase the resident population of the Columbia municipality). See also Tyer, *supra* note 5, at 39.

⁸⁵ Tax revenue is central to nearly every annexation issue. See Demorris Lee, *Borderwars*, NEWS & OBSERVER (Raleigh, NC), Feb. 22, 2004, at A21, *available at* <http://www.stopcary.com/news/N&O02222004.pdf>. Proposed annexations invariably resolve into component disputes over revenue streams: municipal interests desiring access to an expanded tax base on the one hand with suburbanites and manufacturing interests (wishing to avoid being incorporated into the municipality's tax base) on the other. Resistance to annexation, most often by parties living along a municipality's unincorporated fringe, is a way to prevent higher taxes. See generally Ubell, *supra* note 8, at 1641 (noting that the expanded tax base "generally receives the most recognition and is the primary basis of opposition").

⁸⁶ Kearney, *supra* note 84, at 8-9.

⁸⁷ OFFICE OF PLAN COMM'N, CITY OF VALPARAISO [INDIANA], ANNEXATION POLICY 4 (2004), *available at* <http://www.ci.valparaiso.in.us/Planning/Annexation/AnnexPolicy2004.pdf>. "[M]any State and Federal grant and matching fund programs are population or area based, thus annexation may result in additional opportunities for the city."

⁸⁸ Sellers & Fletcher, *supra* note 67, at A11.

along the Broad River,⁸⁹ to position itself for the annexation of 3350 acres, including commercial property known as the Columbia Centre.⁹⁰ The annexation was designed to establish Columbia as a viable commercial city and to increase Columbia's population beyond 100,000 to qualify for federal grants-in-aid.⁹¹

Many cities argue that nonresidents living on the fringe of the city are "a part of the functional city they surround," and that by escaping municipal taxes these nonresidents are cherry-picking city services.⁹² Residents and businesses surrounding the city, in many cases, are part of the "functional city";⁹³ they enjoy the benefits provided by the city while escaping the corresponding municipal tax costs.⁹⁴ Allowing cities to expand to their natural boundaries, the "functional city," ensures an appropriate allocation of municipal tax liabilities.⁹⁵

Additionally, proponents argue that annexation provides opportunities for cities to "maintain urban order and identity in and around its boundaries."⁹⁶ By annexing urban fringe areas that are urban in character, annexation allows for the "inclusion of the true socioeconomic, cultural, and physical urban areas of the Community."⁹⁷

⁸⁹ State by State Budget & Control Bd. v. City of Columbia, 419 S.E.2d 229, 229 (1992).

⁹⁰ See *id.* at 229 n.1. While the respondent in *City of Columbia* owned 2829 acres, other commentators estimated the total annexation at 3350 acres. See Kearney, *supra* note 84, at 7.

⁹¹ See Kearney, *supra* note 84, at 8-9.

⁹² See Reynolds, *supra* note 12, at 253-54 (noting that "[t]he majority of those individuals will spend most of their day within the city limits, yet they will contribute nothing to the city's cost of providing infrastructure to the wide range of in-city activities of which they partake").

⁹³ *Id.* at 253. These residents and businesses that are part of the functional city enjoy the benefits from the city, such as the social benefits (social interaction, entertainment and cultural opportunities); economic benefits (working in the city, buying and selling products and services in the city); and other benefits that a city provides (medical and professional services, education opportunities, etc.). Many residents may already use services such as city water, sewer, electric and gas, and so on. *Id.*

⁹⁴ See *id.* See also Tyer, *supra* note 5, at 39 (noting that while city officials will try to compensate for the drain on local funds, the costs generally fall on city residents "in a way that is less than obvious").

⁹⁵ Reynolds, *supra* note 12, at 253.

⁹⁶ OFFICE OF PLAN COMM'N, *supra* note 87, at 4.

⁹⁷ *Id.*

B. *Fringe Planning*

Annexation is an important tool for managing urban growth.⁹⁸ Municipal determination proponents maintain that involuntary annexation is the “nation’s most successful urban policy.”⁹⁹ Annexation better equips cities for “sensible growth management and . . . the potential for a reduction of urban sprawl around the city” by allowing cities to “extend sound planning principles including transportation planning, environmental preservation, code enforcement, urban zoning with stricter development standards, and so on into surrounding areas.”¹⁰⁰ Annexation provides municipalities the opportunity to control new developments that rely on municipal services more effectively.¹⁰¹ In the absence of growth planning via annexation, “private developers determine the whys and wherefores of urban growth.”¹⁰² Cities can use annexation as a strategic tool to protect their “interests and investments” as well as to “ward off potential encroachment from other entities, such as utilities.”¹⁰³

Proponents of municipal determination suggest that outdated annexation laws are one reason South Carolina is falling behind other states economically.¹⁰⁴ Proponents argue that if unable to grow, cities may stagnate economically, and their citizens’ quality of life may decline.¹⁰⁵ “[C]ities are constrained by artificial boundaries,” which lead to their “[in]ability to attract businesses and workers.”¹⁰⁶ City officials argue that their municipalities should be permitted to “influence development on their fringe and assure that it meets sound principles of land-use and planning to assure the protection of the public’s health, safety, and welfare.”¹⁰⁷ Cities also argue that counties often have a

⁹⁸ Kearney, *supra* note 84, at 8.

⁹⁹ FISCAL FATE, *supra* note 7, at 10.

¹⁰⁰ OFFICE OF PLAN COMM’N, *supra* note 87, at 4.

¹⁰¹ *Id.* See also Reynolds, *supra* note 12, at 251-53.

¹⁰² See Kearney, *supra* note 84, at 9.

¹⁰³ OFFICE OF PLAN COMM’N, *supra* note 87, at 4. Annexation authority also lessens the fears of becoming landlocked by surrounding developments. Tyer, *supra* note 5, at 39.

¹⁰⁴ Warren Bolton, *But for State Annexation Law, Columbia Would be a Dream City*, STATE (Columbia, S.C.), July 31, 2008, at A11, available at http://www.masc.sc/Municipal%20News/073108_The_State_But_for_state_annexation_law_Columbia_would_be_a_dream_city.htm.

¹⁰⁵ Tyer, *supra* note 5, at 39.

¹⁰⁶ Sellers & Fletcher, *supra* note 67, at A11.

¹⁰⁷ Tyer, *supra* note 5, at 39. See also Reynolds, *supra* note 12, at 252.

reduced capacity to address problems created by urban sprawl and typically have less restrictive planning and development controls. This reduced capacity can create disparities in the conditions on a municipality's unincorporated fringe relative to conditions within the city.¹⁰⁸ Where disparities become extreme, a city may not have the capacity to annex an area down the road, even if desired by both parties, because of the financial costs required to upgrade and to repair existing infrastructure in such cases.¹⁰⁹ Therefore, by allowing cities to grow to their natural boundaries, cities have more opportunities to guide growth and implement coherent planning strategies that apply to the entire "functional city."¹¹⁰

C. Fiscal Health

Expanding cities' tax bases¹¹¹ and increasing revenue is a primary incentive for municipal annexation.¹¹² Additionally, advocates contend that flexible annexation laws improve cities' bond ratings, thus further promoting municipal fiscal health.¹¹³ Advocates of unilateral annexation point to unilateral annexation's utility as a planning technique by enabling municipalities both to steer economic growth and to promote fiscal health.¹¹⁴ One study maintains that a city's ability "to annex land from its surrounding county is a primary determinant of its fiscal health."¹¹⁵ The study asserts that broad municipal annexation authority more closely correlates to a city's fiscal health than its poverty rate or median household income.¹¹⁶ They assert that the "simplest way to

¹⁰⁸ Reynolds, *supra* note 12, at 252-53.

¹⁰⁹ *Id.* at 37.

¹¹⁰ OFFICE OF PLAN COMM'N, *supra* note 87, at 4.

¹¹¹ See *supra* note 85 and accompanying text.

¹¹² See Connolly, *supra* note 9, at 88 (arguing that cities only pursue annexations that are revenue producing). The additional costs incurred by the city can financially outweigh the additional revenue produced from taxes and other fees. *Id.*

¹¹³ FISCAL FATE, *supra* note 7, at 6. The study explained that cities in metropolitan areas that expanded boundaries by 15 percent or more between 1950 and 2000 had a high bond rating in 2002, while cities unable to expand their boundaries had low bond ratings. *Id.* Furthermore, the study concluded that "flexibility to annex surrounding land and communities was more important to city's bond ratings (a sign of fiscal health) than the area's poverty rate or median household income." *Id.* at 1.

¹¹⁴ See FISCAL FATE, *supra* note 7, at 1, 6-12.

¹¹⁵ FISCAL FATE, *supra* note 7, at 6.

¹¹⁶ *Id.*

predict the social, economic, and fiscal health of a city [is] to calculate its 'elasticity,'" which is the ability of a central city to expand its boundaries through annexation.¹¹⁷ Supporters of such arguments conclude that strong annexation authority must be understood not only as an important development tool, but also as a key fiscal management technique.¹¹⁸

D. Municipal Services & Efficiency

Annexation allows a city to provide uniform services to residents and businesses, often including services previously unavailable to the residents and businesses in the proposed annexed area.¹¹⁹ City officials argue that annexation allows cities to provide better services more efficiently, thereby "further enhancing quality of life."¹²⁰ Officials argue that over the long term the provision of services by the city will be more economical than where those services are furnished by special purpose districts or where furnished by smaller governments; larger cities realize benefits of economies of scale more certainly than do smaller ones.¹²¹ By extending a municipality's boundaries, areas avoid administrative confusion and duplication of services.¹²² Advocates therefore argue that annexation of fringe areas not only makes tax and service boundaries congruent, but also provides "more and better services . . . [to] suburban areas, particularly law enforcement and fire protection."¹²³

E. Governmental Accountability

Proponents of municipal determination argue that annexation improves government accountability and gives fringe residents "a voice and responsibility in the City in which they live/call home."¹²⁴ In

¹¹⁷ David Rusk, Urban and Suburban Policy Consultant, Keynote Address to the 63rd Annual Meeting of the Municipal Association of South Carolina: Stronger Cities for a Stronger South Carolina 2 (July 11, 2003) [hereinafter Rusk Keynote Address] (citing DAVID RUSK, CITIES WITHOUT SUBURBS (2d ed. 1995)), *transcript available at* <http://www.gamaliel.org/DavidRusk/MASC%20speech%207-11-03.pdf>.

¹¹⁸ Ubell, *supra* note 8, at 1645.

¹¹⁹ Tyer, *supra* note 5, at 39.

¹²⁰ OFFICE OF PLAN COMM'N, *supra* note 87, at 4.

¹²¹ Kearney, *supra* note 84, at 7.

¹²² Tyer, *supra* note 5, at 39.

¹²³ Kearney, *supra* note 84, at 7.

¹²⁴ OFFICE OF PLAN COMM'N, *supra* note 87, at 4. They argue that annexation gives fringe residents "a voice and responsibility in the City in which they live/call home." *Id.*

addition, advocates argue that liberalizing annexation laws obviates the need for special purpose districts.¹²⁵ Special purpose districts,¹²⁶ they argue, tend to become "complex, confusing, and non-responsive" to citizens who often have influence neither over such districts' operations nor over the selection of the individuals who operate them.¹²⁷ City advocates argue that taken to the extreme, self-determination gives veto power to minority interests who live along a city's fringe.¹²⁸ Such arguments raise issues concerning governance, the power of the minority to influence decisions, and if so, to what extent such minority power is advisable where it conflicts with the best interests of the majority of citizens involved.¹²⁹

V. POPULAR DETERMINATION: THE RESIDENT'S PERSPECTIVE

Under popular determination, as many as three "different groups may vote: property owners or residents of the territory to be annexed, municipal residents, and residents of the diminished territory (county or township)."¹³⁰ Proponents of popular determination argue the importance of giving the "affected electorate or property owners the right to vote to determine if a municipal boundary change will take place."¹³¹ Proponents also argue that popular determination is "in the national tradition of self determination; allows people to live under the government of their choosing"; and "provides a check on ill-conceived or rash actions by municipal authorities."¹³²

In contrast, opponents argue that this method: hinders municipalities' ability to effectively plan because it "involves procedures such as referenda, which are tedious and expensive"; allows a minority of

Additionally, cities can benefit from "additional residents for filling volunteer positions, appointments, elected positions, and for new ideas, participation, etc." *Id.*

¹²⁵ Kearney, *supra* note 84, at 8-9.

¹²⁶ PIERCE & THOMAS, *supra* note 32, at 2. Special purpose district "are specialized local governments rendering particular services," such as "water and sewer services, flood control, recreation, fire services, airports, [and] zoos." *Id.*

¹²⁷ *Id.* at 9. The authors argue that consolidation of services under city government improves accountability to citizens who elect city council members and a mayor. *Id.*

¹²⁸ Reynolds, *supra* note 12, at 266-67.

¹²⁹ Tyer, *supra* note 5, at 40.

¹³⁰ Palmer & Lindsey, *supra* note 2, at 64. This method "is widely used alone or in combination with other methods." *Id.*

¹³¹ *Id.* at 61.

¹³² *Id.* at 64.

residents to make the determination “on issues that may benefit an area as a whole”; allows residents of the surrounding area to make the determination, which simply confirms that the land is already urban by nature; “may mean that poor tax areas [will not] be annexed”; and “interferes with [the] administration of municipalities.”¹³³

A. *Interests*

Fundamental notions of American governance—the consent of the governed and private property rights—form the primary basis for resisting unilateral annexation and supporting consent requirements for annexations¹³⁴ whether by election, referendum, or petition signatures. Unilateral annexation discounts citizens’ private property rights by allowing cities to annex land without regard to the interests of the citizens in that area. Due to the consent requirements to annex in South Carolina,¹³⁵ the primary battles that municipalities engage in are with “landowners, businesses, and residents in the unincorporated areas.”¹³⁶ Citizens resisting annexation do not foresee benefits of incorporation, but instead only foresee additional costs in the form of taxes, additional regulations such as zoning, and diminished autonomy.¹³⁷ Additionally, residents may purposefully move to an unincorporated area to escape “urban life.”¹³⁸ These residents “often move to the suburbs in order to ‘buy their own government’ that will provide only what they desire, while filling their other needs through private consumption and purchasing arrangements [that] they can afford.”¹³⁹ They commonly resist incorporation because it threatens their sought-after autonomy and undermines their ability to govern themselves. Furthermore, the

¹³³ *Id.*

¹³⁴ See, e.g., DAREN BAKST, *FLAWED AND UNDEMOCRATIC - FORCED ANNEXATION IS GOOD FOR MUNICIPAL LEADERS, BUT BAD FOR THE PUBLIC*, No. 323 (2007), available at http://www.johnlocke.org/acrobat/spotlights/spotlight_323-forcedannextn.pdf.

¹³⁵ See *supra* Part III.A.

¹³⁶ *Tyer, supra* note 5, at 38.

¹³⁷ *Id.* at 38. The typical rationale for resistance by landowners, businesses, and residents includes concerns over the prospect of increased taxes and other fees that generally result from the incorporation by a municipality. *Id.* Resistance may also arise out of a city’s more stringent regulatory controls, which may impose unwanted regulatory burdens on the target residents of the proposed annexation. *Id.*

¹³⁸ *Id.* at 38.

¹³⁹ *Id.* at 38 (quoting William Schneider, *The Suburban Century Begins*, 270 ATLANTIC MONTHLY 33, 33 (1992), available at <http://www.theatlantic.com/politics/big/schnsub.htm>).

demographics of a city such as “race, education, [and] socio-economic level”¹⁴⁰ may be different from the unincorporated area, and can provide additional motivation for fringe residents to resist an annexation proposal.¹⁴¹ In addition to resistance from landowners and businesses, cities potentially face resistance from others that have conflicting interests at stake in an annexation proposal: neighboring cities,¹⁴² special purpose districts,¹⁴³ electrical cooperatives, and investment owned utilities.¹⁴⁴

B. Rebuttals

The following constitutes various rebuttals to the preceding section, Municipal Determination: A City’s Perspective:

¹⁴⁰ Tyer, *supra* note 5, at 38.

¹⁴¹ *Id.* at 38.

¹⁴² When a city annexes land, it restricts the non-annexing cities’ opportunities for future growth and the realization of the accompanying tax benefits. Robert W. Parnacott, *Annexation in Kansas*, 70 J. KAN. BUS. ASS’N 28, 28 (2001), available at <http://ksag.washburnlaw.edu/opinions/2007-033.htm>. Counties, too, can be a source of conflict. Reynolds, *supra* note 12, at 255.

¹⁴³ Special purpose districts (fire districts, water and sewer districts, and recreation commissions) potentially have conflicting interests with municipalities in that annexation may affect the special purpose district’s ability, both in terms of service delivery and fiscal health, to provide services to the remaining territory within the district. Tyer, *supra* note 5, at 38. See generally Cindi Ross Scoppe, *The Special Little Government that Wasn’t Allowed to Disband Itself*, STATE (Columbia, S.C.), Feb. 5, 2008, available at <http://www.thestate.com/scoppe/story/307537.html> (An article showing that the intensity of resistance from special purpose districts is based on the fact that with a diminished number of special purpose districts, and reduced relative power of each entity, the collective power of special purpose districts would shrink.).

¹⁴⁴ Electric cooperatives and investor owned utilities, in many situations, have large economic interests in preventing municipalities from annexing into its service area. If the city operates a municipal electric utility, questions regarding who will service the area arise. Electric cooperatives and investor owned utilities often oppose proposed annexations because South Carolina’s Constitution gives a city the right to control utility franchises in the rights-of-way within its borders. Tyer, *supra* note 5, at 38-39. Although South Carolina law allows a previously autonomous utility provider to service a newly incorporated area, the city may prevent the provider from serving new customers. *Calcaterra v. City of Columbia*, 432 S.E.2d 498, 498 (Ct. App. 1993).

1. Fringe Planning: Alternatives

Annexation is one of many avenues to implement planning that addresses local and regional problems.¹⁴⁵ State legislation in South Carolina provides alternative growth and fiscal management tools with regard to infrastructure,¹⁴⁶ economic growth,¹⁴⁷ and environmental preservation.¹⁴⁸ Such legislation promotes long-range planning and intergovernmental cooperation, and provides mechanisms to improve the quality and efficiency of municipal services. For example, the Priority Investment Act¹⁴⁹ addresses the “hazards of inadequate planning” and requires local governments to broaden their scope of planning to include planning for public expenditures on waterlines, sewers, roads, and schools.¹⁵⁰ Moreover, special purpose districts are available to provide needed services to an area while, at the same time, preserving the advantages associated with localism and self-determination.¹⁵¹ State legislation and special purpose districts, as well as intergovernmental initiatives, provide avenues for local governments to effectively plan. These opportunities, along with the current ability to annex, suggest that annexation is not a *necessary* tool for growth planning irrespective of its utility.

¹⁴⁵ See Bradford W. Wyche, *An Overview of Land Use Regulation in South Carolina*, 11 S.E. ENVTL. L.J. 183 (2003).

¹⁴⁶ Priority Investment Act of 2007, S.C. CODE ANN. §§ 6-29-310 to -1640 (1976); Comprehensive Infrastructure Development Act of 1997, S.C. CODE ANN. § 11-42-10 (1976).

¹⁴⁷ Local Government Comprehensive Planning Enabling Act of 1994, S.C. CODE ANN. §§ 6-29-310 to -1640 (1976); The South Carolina Enterprise Zone Act, S.C. CODE ANN. § 12-10-10 (1976).

¹⁴⁸ South Carolina Conservation Easement Act of 1991, S.C. CODE ANN. § 27-8-10 (1976).

¹⁴⁹ S.C. CODE ANN. 6-29-310-1640. The Priority Investment Act amends the Local Government Comprehensive Planning Enabling Act of 1994, and therefore the provisions are required by all county or municipal governments that develop zoning ordinances to plan for, at a minimum, public expenditures on waterlines, sewers, roads, and schools.

¹⁵⁰ *New Guide for Regional Planning*, POST & COURIER (Charleston, S.C.), June 18, 2007, available at http://www.charleston.net/news/2007/jun/18/new_guide_regional_planning/. The basic idea is to improve regional planning between neighboring governments, specifically as to the location and development of infrastructure. Governor Mark Sanford explained that the bill, the effects of which have not yet been realized, is “a step toward preserving the way we look and feel as a state.” *Id.* Sanford cites provisions for transportation planning and requirements to determine the use of public funds for infrastructure and facilities over a ten year span. *Id.*

¹⁵¹ Husock, *supra* note 13.

2. Tax Consequences & the Overstated “Free-Riders” Argument

The “free riders” argument seems overstated, in part because citizens participating in the “functional city” contribute to the tax revenue.¹⁵² Moreover, municipalities have alternative mechanisms to generate revenue from fringe residents, such as fee differentials.¹⁵³ Fee differentials are the mechanism through which municipalities charge nonresidents higher rates for services, such as water or sewer.¹⁵⁴ Fee differentials not only alleviate the tax burden disparity between city and fringe residents, but also serve as municipal tools useful in persuading fringe residents to approve proposed annexations. Local option sales taxes¹⁵⁵ and accommodations taxes¹⁵⁶ can help equitably allocate the burdens among persons throughout the “functional city.”¹⁵⁷ Moreover, this argument is weakened by the simple fact that citizens rely on the services of other local governments daily, particularly individuals who drive to and from work.¹⁵⁸

3. Questioning the Economic and Fiscal Benefits: The North Carolina Argument

Involuntary annexation proponents in South Carolina frequently use North Carolina, an involuntary annexation state,¹⁵⁹ as an example of the positive impacts liberal annexation laws could have in South Carolina.¹⁶⁰ The general proposition is that cities’ elasticity, or the flexibility of their

¹⁵² See DOUG AITKEN, NORTH CAROLINA LEAGUE OF MUNICIPALITIES: A REBUTTAL 10, <http://www.fairannexation.com/rebuttal.pdf> (last visited Feb. 1, 2009). Every time citizens purchase something within the city, they pay the local sales tax of the municipality. *Id.*

¹⁵³ See 56 AM. JUR. 2D *Municipal Corporations, Counties, Other Political Subdivision* § 39 (2008). Because property owners neither have a fundamental right to have their property annexed nor an “absolute right to vote on an annexation or otherwise pass judgment on proposed annexation proceedings, cities may charge nonresidents different rates for the same services such as water and sewer services.” *Id.*

¹⁵⁴ *Calcaterra*, 432 S.E.2d at 498 (holding that the City did not violate Unfair Trade Practices Act by charging higher water rates for nonresidents than for residents). See also AITKEN, *supra* note 152, at 10.

¹⁵⁵ S.C. CODE ANN. § 4-10-20 (1976).

¹⁵⁶ S.C. CODE ANN. § 12-36-920 (1976).

¹⁵⁷ Reynolds, *supra* note 12, at 253-54.

¹⁵⁸ AITKEN, *supra* note 152, at 10-11.

¹⁵⁹ N.C. GEN. STAT §§ 160A-45 to A-49, A-50 to A-54 (2009).

¹⁶⁰ See, e.g., Rusk Keynote Address, *supra* note 117, at 6-8.

annexation laws, causes economic growth and promotes fiscal health.¹⁶¹ However, this general proposition is flawed both in methodology¹⁶² and in logic.¹⁶³ Proponents argue that South Carolina, like North Carolina,¹⁶⁴ can achieve economic growth and improve cities' bond ratings by providing for involuntary annexation.¹⁶⁵ One proponent believes South Carolina has "among the worst annexation laws" whereas North Carolina "has the best annexation laws" because they "virtually guarantee that their cities will be successful."¹⁶⁶ North Carolina's annexation laws "virtually compel[] its cities to annex urbanizing areas by council ordinance alone regardless of the preference of property owners."¹⁶⁷

In applying the elasticity theory to South Carolina, proponents juxtapose changes in population density, median family income, and city bond ratings during the second half of the century of North Carolina with South Carolina.¹⁶⁸ Although the study shows that North Carolina's cities grew, both in population and in square miles, significantly more than South Carolina's cities, the study falls short of connecting these increases with economic growth.¹⁶⁹ South Carolina's median family income grew from \$18,654 in 1959 to \$52,913 in 2007 while North Carolina's median

¹⁶¹ See *supra* notes 111-118 and accompanying text.

¹⁶² A subsequent study undermined Rusk's assertions, "observ[ing] that the cities Rusk singles out as elasticity success stories outperformed 'for reasons unrelated to elasticity': Rusk compared newer-growth, non-manufacturing cities with older, manufacturing-based cities during a period of manufacturing decline, and he compared state capitals to non-capitals during a time of governmental growth." Husock, *supra* note 13 (citing John P. Blair et al., *The Central-City Elasticity Hypothesis: A Critical Appraisal of Rusk's Theory of Urban Development*, 62 J. AM. PLAN. ASS'N 345, 345-53 (1996)). If you compare the "entire metropolitan areas of inelastic cities with the metropolitan areas of their elastic rivals, there's not much difference." *Id.*

¹⁶³ Husock, *supra* note 13. David Rusk's assertions have attracted scrutiny by some who claim that Rusk made the common mistake of "confus[ing] correlation with causality." *Id.*

¹⁶⁴ N.C. GEN. STAT §§ 160A-21 to -58.28 (2009). North Carolina has provided for involuntary annexation since 1959.

¹⁶⁵ FISCAL FATE, *supra* note 7, at 1. As a result of South Carolina's lower bond ratings, Rusk argues, tens of millions of dollars more are spent in borrowing funds. Rusk Keynote Address, *supra* note 117, at 8.

¹⁶⁶ Rusk Keynote Address, *supra* note 117, at 6.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 6-8. The study measured the average median income of twenty-one North Carolina cities and eleven South Carolina cities. North Carolina's cities experienced a twenty percent increase in their median family income whereas South Carolina's cities experienced a fifteen percent increase during the same time period.

family income grew from \$19,313 to \$55,028.¹⁷⁰ The study also fails suggest that involuntary annexation laws lead to better city bond ratings. Further, the study likens Charleston and Columbia to six similarly situated cities throughout the country that have a greater municipal authority to annex.¹⁷¹ This comparison reveals only that these cities are more densely populated than Charleston and Columbia,¹⁷² which standing alone does not strengthen the argument for making South Carolina's annexation laws less restrictive.¹⁷³ More importantly, Charleston and Columbia received the same bond ratings as those six cities,¹⁷⁴ thus undermining the assertion that flexible annexation laws lead to better bond ratings.¹⁷⁵ In short, the study merely suggests a slight

¹⁷⁰ ALEMAYAHU BISHAW & JESSICA SEMEGA, INCOME, EARNINGS, AND POVERTY DATA FROM THE 2007 AMERICAN COMMUNITY SURVEY, AM. CMTY. SURVEY REPORTS, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE (2008), available at <http://www.census.gov/prod/2008pubs/acs-09.pdf>. Note, however, that the study did not disclose the cities used in determining median family income figures, therefore, the figures in the accompanying text reflect statewide median family income. Rusk Keynote Address, *supra* note 117, at 7.

¹⁷¹ Rusk Keynote Address, *supra* note 117, at 5-6. The author compares Charleston and Columbia to the denser cities of Tuscon, Las Vegas, Tulsa, Omaha, Colorado Springs, and Albuquerque (average population of these six is 416,000 while only covering a land area of 162 square miles) and suggests the reason these cities are more densely populated is because they are unitary municipalities that enjoy flexible annexation laws, which allows the cities to expand their boundaries to "bring most new subdivisions, office parks, and regional malls into their city limits." *Id.*

¹⁷² AITKEN, *supra* note 152, at 9. Additionally, involuntary annexation advocates discount the direct negative consequences of population growth and unintended consequences. Opponents of North Carolina's involuntary annexation laws highlight increased sewage spills and infrastructure problems such as roads, schools, sewer and water systems. *Id.*

¹⁷³ *See id.*

¹⁷⁴ Rusk Keynote Address, *supra* note 117, at 5-6. Rusk argues they have greater fiscal strength because of their larger tax bases, which "means that they can pay for what they need to build by themselves without having to beg for state help." *Id.* However, Charleston and Columbia enjoy the same bond ratings as these cities. *Id.* Additionally, the failure of the bond rating theory to prove true here is particularly significant given the number of cities that the study could choose from, approximately 20,000.

¹⁷⁵ AITKEN, *supra* 152, at 13-14. North Carolina League of Municipalities praises involuntary annexation as the reason that North Carolina leads the nation in cities ranked with AAA bond ratings; however, North Carolina is the only state (of seven) that received the highest bond rating that does not allow a citizen vote on annexations. *Id.* In fact, two involuntary annexation states were rated AA and three were rated AA+. *Id.* (citing Standard & Poor's rating as of Feb. 5, 2007).

correlation between involuntary annexation laws and economic growth and city bond ratings.¹⁷⁶

4. Bigger Does Not Mean Better (or More Efficient)

Smaller governments can give taxpayers more “bang for their buck” by providing services that are responsive to its citizens’ preferences and by delivering services efficiently. Local governments are better situated to respond to the particular interests of their citizens.¹⁷⁷ For instance, if residents want their trash picked up twice a week, they will choose the government that will do so.¹⁷⁸ Numerous studies suggest that smaller municipalities provide services more cost-efficiently than larger municipalities.¹⁷⁹ This is because local governments do not merely coexist; they compete by offering different “packages of services” to their residents.¹⁸⁰ The findings of another study suggest that only fire protection and library services provide an economy of scale to municipalities; “localities” can provide “all the other [necessary] services—police, recreation, public works, waste management—at equal or less cost.”¹⁸¹ This free market style competition promotes cost-

¹⁷⁶ See also AITKEN, *supra* note 152, at 1, 4-5, 13-15 (suggesting that Rusk’s elasticity theory, *supra* note 117, suffers from the logical flaw of confusing correlation with causation).

¹⁷⁷ See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 57-64 (Harvey C. Mansfield trans. ed., Delba Winthrop trans., University of Chicago Press 2000) (1835). See also Jerold S. Kayden, *National Land-Use Planning in America: Something Whose Time has Never Come*, 3 WASH. U. J.L. & POL’Y 445, 452-53 (2000).

¹⁷⁸ Peterson, *supra* note 13. The City of Charleston’s efforts to incorporate land on James Island (as well as efforts to block James Island’s incorporation) have caused much discontent among residents of James Island. Many residents complained that Charleston only picks up trash weekly whereas they strongly desire biweekly trash pickup. *Id.* Not only do these residents have to pay city taxes but they also have a less responsive governing body.

¹⁷⁹ A study of forty-eight municipalities in southern states found that competing local governments keep costs down. Husock, *supra* note 13 (citing David L. Sjoquist, *The Effect of the Number of Local Governments on Central City Expenditures*, 35 NAT’L TAX J. 85 (1982)). Even more persuasive in the fight against involuntary annexation, a study of 16 counties in the southern states found that “consolidation and centralization led to greater spending, not less.” *Id.* A case study on high schools—measuring the cost effectiveness and academic success with regard to the size of the school—also supports the proposition that smaller is better and more efficient concluding that smaller schools that are forced to compete with other schools minimized costs. *Id.* (The study found that the costs per child dropped 17 percent while reading and math scores went up 2 percent).

¹⁸⁰ Husock, *supra* note 13.

¹⁸¹ Husock, *supra* note 13 (citing Fred W. Becker & Milan J. Dluhy, *Consolidation Versus Fragmentation of Government Services: Evidence from Metropolitan Miami*, in SOLVING URBAN PROBLEMS IN URBAN AREAS CHARACTERIZED BY FRAGMENTATION AND

efficiency within the government, and allows local governments opportunities to improve their functioning by learning from and competing with nearby governments.¹⁸²

Both cities and counties are experiencing increased demand for services.¹⁸³ City advocates argue that cities should address the concerns of increased demand instead of counties. Proponents argue that liberalizing municipal annexation authority would allow cities to undertake these responsibilities whereas state legislatures would have to expand statutory enabling provisions in most states to authorize counties to provide these services.¹⁸⁴ However, unlike many states, South Carolina would not need to make any statutory changes because both cities and counties already have broad authority to "provide services based on the needs and expectations of [their] citizens."¹⁸⁵ Thus, the legislative convenience argument favoring more liberal annexations laws is inapplicable to South Carolina.

VI. THE BEST INTERESTS OF SOUTH CAROLINIANS

A. *Weighing the Risks and Benefits*

1. Cities & Less Restrictive Annexation Laws

Municipal determination, as desired by cities, theoretically would remedy the problem of donut holes in South Carolina by providing municipalities the authority to unilaterally annex these enclaves.¹⁸⁶ Because the infrastructure of these enclaves is usually comparable to that of the city, the costs incurred by cities would be relatively small, which suggests that cities would inevitably annex such areas if granted involuntarily annexation authority. Cities argue that they should be

DIVISIVENESS (Fred W. Becker & Milan J. Dluhy eds. 1999)) (examining the costs per resident in larger municipalities and "fragmented municipalities" debunks the argument that bigger, centralized governments are more efficient).

¹⁸² *Id.* ("Public service agencies may be forced to compete over the service levels offered in relation to the taxes charged.").

¹⁸³ PIERCE & THOMAS, *supra* note 32, at 30.

¹⁸⁴ Reynolds, *supra* note 12, at 259. Counties in most states do not have the authority to meet these needs; therefore, states would have to expand statutory enabling provisions for counties to deliver these services. *Id.*

¹⁸⁵ PIERCE & THOMAS, *supra* note 32, at 30.

¹⁸⁶ *See infra* note 69.

allowed to annex these areas because such annexation would allow cities to prevent free-riding, and allow cities to provide uniform services to all areas of the functional city.¹⁸⁷

On the other hand, broad annexation laws make cities more susceptible to inappropriate annexations resulting from insufficient forethought or more aggressive expansionist annexations. Greater municipal annexation authority would exacerbate the problems of shoestring annexations and land grabs in South Carolina.¹⁸⁸ Even under current “restrictive” laws, shoestringing and land and tax grabs are common.¹⁸⁹ Any surrounding area that could financially benefit the city might be annexed, regardless of the costs incurred by residents being annexed. Strengthening municipal authority in cities creates the potential problem of completely discounting the costs incurred by residents in the cities’ decision-making process, which may in turn facilitate exploitative annexations. Additionally, less restrictive measures could breed discontent among residents not wishing to be annexed, and cause cities to incur related political costs such as diminishing citizens’ trust in their governing body.

Municipal determination proponents argue that cities are too burdened by restrictive annexation laws, and often propose methods to create exceptions such as establishing well-defined objective criteria as prerequisites to annexations.¹⁹⁰ Similar criteria have been proposed in South Carolina;¹⁹¹ however, these alternatives often require additional governmental involvement either by an administrative agency or by judicial review.¹⁹² Such criteria¹⁹³ could hypothetically require a municipality to annex fringe areas that meet the criteria, which similar to

¹⁸⁷ See *infra* notes 92-95 and accompanying text.

¹⁸⁸ See Scott Miller, *Annexation Laws Under Fire for ‘Shoestring’ Easements*, CHARLESTON REG’L BUS. J., Feb. 4, 2008, at 1, available at www.benhagood.com/inNews/inNews55_files/Annexation_laws_under_fire_for_‘shoestring’_easements_CRBJ_2-4-08.pdf. See Dawn Hinshaw, *Annexation Plan Splits Cayce Residents*, STATE (Columbia, S.C.), Dec. 23, 2007, available at <http://www.thestate.com/520/story/265455.html> (example of the recent controversial annexations by the City of Cayce).

¹⁸⁹ See, e.g., Kearney, *supra* note 84. In 1989, Columbia annexed a strip of land to position it to take advantage of tax revenues from Columbiana Centre. *Id.*

¹⁹⁰ E.g., Reynolds, *supra* note 12, at 253-54, 271-301.

¹⁹¹ See *infra* note 72.

¹⁹² See Babb & Unger, *supra* note 23, at 37-38.

¹⁹³ Reynolds, *supra* note 12, at 266-67.

involuntary annexation would remove the decision from people altogether and diminish the influence of local-specific factors.

2. Residents & Restrictive Annexation Laws

Currently, the problems of shoestring annexations and land grabs usually do not reach so far as to affect private property because of the consent requirements; however, these methods have been used simply to stretch a city's border for positioning to annex valuable land.¹⁹⁴ Further restricting annexation laws by increasing standing, public hearing, and notice requirements¹⁹⁵ could largely remedy the problem of shoestring annexations and land grabs. On the other hand, maintaining or further restricting annexation laws would not remedy the problem of "donut holes."

Specific provisions could provide very limited authority to annex donut holes, such as limiting the land area that constitutes an enclave and preventing a city from taking advantage of the exception.¹⁹⁶ Further, specific provisions could create a minimum limit of total enclaves in a given area for the donut hole exception to be activated. In addition to, or alternatively, specific provisions could create an aggregate land area requirement, that must be consumed by enclaves, to activate the donut hole exception. This would allow the exception to be employed only when the donut holes are prevalent enough to be problematic or unfair to the city. These provisions could tame the use of the exception, erring on the side of caution in limiting the exception only to those situations where justified.¹⁹⁷

B. Annexing on Toes: The Problem of Elected Officials' Responsibility to their Electorate

Experience suggests that financial considerations are the primary (if not the only) factors in making annexation determinations.¹⁹⁸ When the

¹⁹⁴ See *infra* notes 89-91 and accompanying text.

¹⁹⁵ See *supra* notes 72-76 and accompanying text.

¹⁹⁶ For example, cities could purposefully enclose a parcel through a series of annexations or other acquisition avenues so as to invoke the exception.

¹⁹⁷ Findlay, *supra* note 5.

¹⁹⁸ Connolly, *supra* note 9, at 88 (The author explains that annexations under North Carolina's unilateral annexation authority, despite the statutory rhetoric claiming that determinations are pursuant to interests in the community's "health, safety and welfare," N.C. GEN. STAT. §

property values surrounding a municipality are high, the entity will likely annex that area if given the opportunity; when the property values are low, the municipality will likely not desire to annex that area, particularly when the area requires substantial upgrades or repairs to the existing infrastructure.¹⁹⁹ Thus, less valuable areas not only lack the revenue-based incentives of higher value properties (more precisely, the ensuing taxes) but also can require large expenditures by the city to deliver the necessary services.

City officials are representatives of and accountable to the residents of that city. Officials must act on behalf of their constituents' interests; otherwise, they may be voted out of office in the next city election.²⁰⁰ Mayors and council members held accountable to their electorate through periodic elections,²⁰¹ essentially must pursue the interests of the city and its residents. Consequently, economic bottom line annexations are an inevitable reality flowing from cities' desire to promote the interest of the city and its residents, as expected (if not required) of any person engaged in public service of a city. The pursuit of such revenue-based annexations to the exclusions of non-beneficial annexations should be acknowledged as an almost inherent characteristic of broad annexation authority. Even annexation policies intended to find middle ground "between protecting the interests of property owners and the interests of the greater community" have, in practice, "not fulfilled [their] promise[s], as municipalities frequently pursue annexations that benefit

160A-33(2)-(3) (2005), is in reality based on the economic bottom-line, as evidenced in the arbitrary boundaries and more specifically the recent annexation of a nearby gated-communities already enjoying services that the municipality provides but also increasing revenue of the municipality by six million dollars while at the same time neglecting to annex other nearby communities, distinguished primarily by wealth and the cost-benefits to the city.); *see also* Town of Summerville v. City of N. Charleston, 662 S.E.2d 40, 42-43 (2008) (A recent South Carolina annexation dispute over the Barry Tract where both municipalities were attempting to position the city to annex Watson Hill Plantation, serving as evidence of the reality of revenue-based annexations, shoestringing, and land grabs.).

¹⁹⁹ Unincorporated residents have no right to receive services from a city; therefore, the city has discretion whether to annex an area. *See generally supra* note 153 and accompanying text.

²⁰⁰ For example, city officials responsible for an annexation creating noticeable costs on city residents without perceivable corresponding benefits could suffer political consequences down the road. Alternatively, officials' failure to seize a prudent annexation opportunity, too, could attract attention from opposing candidates in the next election.

²⁰¹ S.C. CODE ANN. § 4-9-90 (1976) (providing for two or four year terms for county council members); *id.* § 5-15-40 (1976) (providing for two or four year terms of office for mayor and council positions).

the economic bottom line over those that would best benefit fringe area residents,”²⁰² as in the case of North Carolina.²⁰³ When statutory provisions rely on policy statements instead of actual checks on municipal authority, annexation authorizations fail, in practice, to effectuate annexation authority commensurate with intent of the legislature. In other words, annexation provisions that remove restrictions or checks on municipalities’ authority to annex fringe residents in effect proscribe authority encouraging cities to annex any surrounding that would benefit the city, regardless of the costs incurred by others.²⁰⁴

C. *Small Cities, Strong Mayor: The Special Case of South Carolina*

Beyond the commonly understood risks of expanding annexation authority, several aspects of local governments in South Carolina intensify these risks. Even if broader annexation authority could produce quality annexations by larger cities, broader authority still threatens to lead smaller cities down imprudent annexation paths, inviting ill conceived and exploitative annexations. Unilateral annexation authority equips small cities, commonly ill prepared to deal with complex rapid growth, “with a loaded weapon that allows them to quickly act without fully contemplating the consequences.”²⁰⁵ This problem is particularly

²⁰² Connolly, *supra* note 9, at 83-84. *But cf. supra* notes 70-71 and accompanying text.

²⁰³ N.C. GEN. STAT. §§ 160A-45 to -54 (2009).

²⁰⁴ Although these city-benefit-only determinations may be viewed as being contrary to the role of serving public office (or even as abuses of power or corrupt), they are, in fact, pursuant to the interests of their constituency. *See Eargle v. Horry County*, 517 S.E.2d 3, 7 (S.C. Ct. App. 1999) (“[I]n most cases, the threat of displeasing the electorate and losing a re-election bid should be a sufficient check on the behavior of the elected official.”).

²⁰⁵ Hooten, *supra* note 15, at 318. Such may be the case in the City of Cayce’s recent controversial annexation activity. In December 2007, the City of Cayce annexed 3,100 acres located in a flood-prone area (formerly known as the Green Diamond property), followed by the annexation of a 206-unit development (to be known as The Retreat) on 35.5 acres in June 2008. Op-Ed., *Cayce Must be More Thoughtful about Annexations*, STATE (Columbia, S.C.), July 16, 2008, *available at* <http://www.thestate.com/opinion/story/462375.html>. The City of Cayce has been criticized with regard to both annexations for rushing through the annexation process and failing to adequately inform the public prior to the annexations. *Id.* The City of Columbia and Richland County decided against the former annexation because of unanswered questions about flooding and liability, and with regard to The Retreat annexation, the developers looked to the City of Cayce only after frustrations with the City of Columbia and Richland County. *Id.*

relevant in South Carolina, as it “is a state of predominantly small local governments,”²⁰⁶ most of which feature strong executives.²⁰⁷

Fifty-seven percent of South Carolina municipalities use the mayor-council form of municipal government, commonly referred to as the “strong mayor” form, because the mayor has both executive and legislative powers.²⁰⁸ This form of government further consolidates power in municipal executives and decreases internal checks on municipal actions. One person is thus capable of making unilateral decisions affecting the entire community, without consideration of the multifaceted interests and diversity of citizenship of the community as a whole. In turn, cities are positioned to capitalize expediently on perceived financially beneficial annexation opportunities, which may prove to be more reckless than prudent.

Two other factors further increase the likelihood that cities in South Carolina will fall victim to the shortcomings of broader annexation authority. First, because significant portions of South Carolina remain unincorporated, more opportunities to annex exist to entice the already sleek cities to act impetuously, increasing the likelihood of cities to annex without proper forethought, which may be motivated by empire building efforts by city officials²⁰⁹ or simply result from insufficient forethought. Second, many cities in South Carolina currently face financial difficulties in financing or funding infrastructure development to keep pace with population growth.²¹⁰ As a result, misguided annexations may have a more detrimental effect on cities in South Carolina than cities in other states, which could have a greater capacity to absorb the difficulties flowing from ill-conceived annexations.

The prevalence of smaller local governments, strong mayors, and smaller strong mayor governments suggests that steps toward unilateral

²⁰⁶ PIERCE & THOMAS, *supra* note 32, at 31.

²⁰⁷ See *infra* note 208 and accompanying text.

²⁰⁸ PIERCE & THOMAS, *supra* note 32, at 12-14.

²⁰⁹ Gillette, *supra* note 15, at 837.

²¹⁰ HOLLEY H. ULBRICH & DONNA S. LONDON, STROM THURMOND INST. OF GOV'T & PUB. AFFAIRS, *MANAGING RESIDENTIAL GROWTH IN SOUTH CAROLINA: A CITIZEN'S GUIDE* (Feb. 2008), available at www.strom.clemson.edu/publications/ulbrich/Managing_Residential_Growth_in_SC.pdf. Local governments in South Carolina already face difficulties in maintaining and funding infrastructure to keep pace with residential growth, which could impact cities' ability to annex. *Id.*

annexation could prove especially imprudent in South Carolina, suggesting instead that steps toward more restrictive laws may be warranted. The landscape of local governments in South Carolina creates circumstances where consent requirements of residents in the area to be annexed are the most logical check on municipalities' authority to annex. Conveniently, this structure, built on the negotiations between municipalities and residents in the area to be annexed, not only maintains the potentiality for prudent annexations to occur but also preserves the national tradition of protecting individuals' private property rights and voice in the political process affecting those individuals.

D. The "Burden" on Cities

Unilateral annexation proponents claim that South Carolina's annexation restrictions are too burdensome on municipalities.²¹¹ They argue that the consent requirements effectively bestow a veto power upon a minority of citizens.²¹² However, this is an inaccurate portrayal. Annexations do not require the consent of all potentially incorporated residents.²¹³ The twenty-five percent method, for example, only requires the signatures of twenty-five percent of the qualified electors in the area to be annexed, and a simple majority of the votes cast in the election in favor of the annexation.²¹⁴

City officials have ample resources and avenues available, even under restrictive annexation laws, to persuade the requisite number of resisting residents. The most obvious of which is that the city can provide incentives to nonresidents to be incorporated, such as higher quality services or more efficient use of tax dollars. Other arguments have enjoyed success as well: the City of Aiken, for instance, found that "[c]ommunity pride has been [their] most successful argument."²¹⁵ Some municipalities that control their own electric utilities have offered lower rates to industries agreeing to annexation.²¹⁶ Cities have resources to

²¹¹ Reynolds, *supra* note 12, at 250 ("[T]he protection and importance currently afforded to the desires of the residents and landowners on the fringe of the municipality unwisely thwart the municipality's ability to annex.").

²¹² Reynolds, *supra* note 12, at 266-67.

²¹³ See *supra* notes 52-66 and accompanying text.

²¹⁴ S.C. CODE ANN. § 5-3-300 (1976).

²¹⁵ Kearney, *supra* note 84, at 9.

²¹⁶ *Id.* at 9.

engage in educational campaigns.²¹⁷ Increasing public involvement and public hearings tends to result in a smoother process.²¹⁸ If this “positive approach”²¹⁹ fails, municipalities can make the pocketbook disadvantages of continued separation more evident to the residents in the potentially annexed area.²²⁰ Additionally, cities could enlist the support of counties; South Carolina cities that annex an area become responsible for providing services to that area, while the encompassing county continues to receive pre-annexation property tax revenue.²²¹

VII. CONCLUSION

“Restrictive” annexation laws both place the burden of persuasion (if necessary) on the municipality and encourage compromise instead of coercion, which ensures both parties are at least minimally satisfied. Given the existing tools and resources available to municipalities to persuade resisting fringe residents to be annexed,²²² with reasonable effort municipalities could achieve desired annexations without sacrificing the voice and property rights of residents in the area to be annexed.²²³ Less restrictive annexation laws bypass the natural political bargaining process and increase the likelihood of inappropriate annexations, particularly with respect to South Carolina.

Certainly, no consensus exists among or within the states as to the specific issue of municipal annexation authority, and the broader issues of effective planning regimes and urban sprawl. Further, no consensus

²¹⁷ Findlay, *supra* note 5. Mt. Pleasant recently hired a person for \$42,000 a year to go door-to-door to convince residents and businesses of the benefits of annexation. *Id.*

²¹⁸ *Cf. id.* Columbia annexation failed because of the City’s failure to notify commercial property owners. *Id.*

²¹⁹ Kearney, *supra* note 84, at 9.

²²⁰ See *supra* notes 153-154. For example, fee differentials for services such as water, sewer, or fire protection can be enlarged to make outside residents pay more for services already furnished by the city. *Id.* In some cases, city programs and services available to external residents can be discontinued because fringe residents have no “right” to services, but presumably there are limitations when using price setting as a bargaining tool. See *Calcaterra v. City of Columbia*, 432 S.E.2d 498, 498 (S.C. Ct. App. 1993).

²²¹ *PIERCE & THOMAS*, *supra* note 32, at 21.

²²² See *supra* Part VI.D.

²²³ See *supra* notes 215-221. Resisting residents have varying reasons for opposing an annexation from additional zoning regulations to a desire for autonomy. Gillette, *supra* note 15, at 842. Perhaps, there will even be circumstances where stubborn property owners and citizens resist prudent annexations for seemingly illogical reasons, but cities have ample resources to persuade resisting residents of the benefit of annexation. See *supra* Part VI.D.

exists as to who is best situated to handle these issues²²⁴—whether state legislatures,²²⁵ regional governments, or home rule.²²⁶ These challenges call for cooperation, not consolidation.²²⁷ Provisions that address shoestringing, improve public involvement, encourage adherence to county use plans, and promote responsible annexations by requiring municipalities to offer a “plan of services”²²⁸ appear to promote cooperation and inhibit inappropriate annexations.

Ideally, annexation laws (and other growth management tools) would equip civic leaders with the tools needed to address problems and guide their communities in the right direction, while at the same time preventing inappropriate or irresponsible municipal expansion.²²⁹ Perhaps only philosopher-kings can ensure the prudent use of governmental power, pursuant only to the best interests of society. In reality, however, mechanisms are required to curb misuse (both incidental and intentional). Here, this requires the consent of residents in the area to be annexed, and maintaining the natural balance of power encourages compromise and fairness through the bargaining process.

Without consent requirements, nonresidents are subject to the will of a governing body in which they have no representation. Consent requirements maintain the integrity of private property rights and the

²²⁴ Terrence S. Welch, *Containing Urban Sprawl: Is Reinvigoration of Home Rule the Answer?*, 9 VT. J. ENVTL. L. 131, 156 (2008).

²²⁵ The state legislature should exercise caution in addressing annexation and other growth tools, as experience in other states suggests that seemingly beneficent actions can, in effect, strangle the ability of localities to address these problems. *Id.* at 150-53 (suggests that the Texas Legislature effectively constrained home rule authority).

²²⁶ *Id.* at 132 (The answer to urban sprawl is not legislative incursions into municipal home rule powers.).

²²⁷ The goal is not achieving greater or fewer annexations, but rather the true inquiry is determining the most prudent annexation laws, focusing on whether changes in law and policy will promote responsible, beneficial annexations and inhibit exploitative, improper annexations.

²²⁸ Coastal Conservation League, 2009 Legislative Agenda, Taxpayer Protection Act, <http://coastalconservationleague.org/Page.aspx?pid=215> (last visited Feb. 1, 2009) (“[R]equire annexing municipalities to hold public hearings and publish a “plan of services” prior to approval of any annexation proposal.”). See *supra* notes 72-76 and accompanying text.

²²⁹ This requires legislative action to understand the larger context in which the statutory provisions operate (as opposed to a quick fix because singularly addressing complaints of various interrelated growth management tools creates a system of complicated procedures that become either too burdensome to be effective or alternatively comprised of too many loopholes, which can undermine the collective aims).

political process; ultimately, entrusting annexation decisions to the negotiations of those most affected by, interested in, and best situated to make the decisions.

Put simply, convenience has never been an acceptable reason for undermining the most fundamental and indispensable principle of western democracy: the consent of the governed.

