

spotlight

No. 366 – January 22, 2009

FORCED ANNEXATION IN N.C.

A question-and-answer guide

KEY FACTS: • **Forced annexation is a kind of city-initiated annexation that allows municipalities unilaterally to force citizens living in unincorporated areas into the municipalities.**

• **North Carolina has an extreme annexation law even among states classified by recent studies as forced-annexation states.**

• **Based on the level of recourse provided to property owners in state statutes, nearly every state in the country (48 states) has abandoned North Carolina's outdated approach to forced annexation.**

• **The primary purpose of forced annexation, according to the North Carolina Supreme Court, is for municipalities to provide meaningful services to the annexed areas.**

• **Except for courts that can review very narrow issues, there is no oversight of city-initiated annexations.**

• **Counties should provide the necessary oversight. Close to half (45 percent) of states with annexation of unincorporated areas allow counties to approve annexations. That does not include the other means by which states provide oversight, such as through boundary commissions.**

• **Two-thirds (67 percent) of states that have annexation of unincorporated areas allow a vote or approval by the affected property owners.**

• **The trend among states with city-initiated annexations is to allow more voting for affected property owners. From 1978 to 1997, five additional states allowed property owners a vote.**

• **There are 11 states that have at least four municipalities with a top rating from Moody's or Standard and Poor's. North Carolina is the only state on the list that is a forced-annexation state. Six of the states have more top-rated municipalities than North Carolina — Massachusetts has more than double the number.**

200 W. Morgan, #200
Raleigh, NC 27601
phone: 919-828-3876
fax: 919-821-5117
www.johnlocke.org

The John Locke Foundation is a 501(c)(3) nonprofit, nonpartisan research institute dedicated to improving public policy debate in North Carolina. Viewpoints expressed by authors do not necessarily reflect those of the staff or board of the Locke Foundation.

As the North Carolina General Assembly considers annexation reform in the upcoming session, some clarification on the basic facts of involuntary (i.e., forced) annexation and the law itself¹ seem to be in order. The primary proponent of the law, the North Carolina League of Municipalities (League), has been trying to maintain the status quo for decades. Unfortunately, their efforts have worked, as past legislatures merely tinkered with the law, never addressing real reform. This *Spotlight* uses a brief question-and-answer format to get beyond the rhetoric and explain the truth behind forced annexation.

Forced Annexation: An Overview

➤ ***What is forced annexation?***

Forced annexation is a process that allows municipalities unilaterally to force citizens living in unincorporated areas into the municipalities. These victims have no recourse on the merits of the specific annexation—in other words, they have no voice through a vote, representative process, or through a neutral third party who considers the merits of the annexation.

➤ ***How many states are forced-annexation states?***

Regardless of the subjectivity that often comes with classifying state annexation laws, the research consistently shows that very few states are considered forced-annexation states. The most recent research indicates anywhere from five² to seven³ states other than North Carolina are forced-annexation states.

The research gives an incomplete picture, however, not an “apples to apples” comparison. North Carolina is extreme even among forced-annexation states. The state’s annexation law *never* allows *any* annexation victims to have recourse on the merits. While classifying states is very difficult, based on the author’s analysis of the level of recourse provided to property owners in state statutes, there is only one other state, Nebraska, comparable to North Carolina in this regard.⁴ To put it another way, virtually every state in the country (48 states) has abandoned North Carolina’s outdated approach to forced annexation.

➤ ***Is city-initiated annexation the same thing as forced annexation?***

No. There are 39 states that have city-initiated annexations.⁵ Forced annexation is one kind of city-initiated annexation.

➤ ***Does the state need to get rid of all annexation?***

Absolutely not. There is nothing wrong with city-initiated annexations or voluntary annexations (annexations initiated by the property owners). The concern is over only one subcategory of city-initiated annexations (i.e., forced annexation).

➤ ***Isn’t the problem with forced annexation in NC just a few bad apples abusing the annexation law?***

The problem with forced annexation in North Carolina is the law itself. Although some municipalities push the limits of the law further than others, the law itself is what *allows* the abuse.

➤ ***Isn’t North Carolina’s the model annexation statute?***

Given that nearly every other state does not follow North Carolina’s approach, it hardly can be considered the model. There has been a constant misrepresentation that North Carolina has the model statute.

This false claim comes from misrepresentations of a 1975 Advisory Commission on Intergovernmental Relations (ACIR) report.⁶ ACIR is a defunct federal body that studied local governmental issues.

The ACIR report recommended two options that states should use for city-initiated annexations, both involving boundary commissions:

States should adopt one of the two principal approaches for exercising surveillance over local government boundary adjustments. The first approach—state review of local actions—has been adopted by Minnesota, which has established a three member state commission. ... The second approach has been adopted by California and involves the establishment of local agency formation commissions (usually consisting of two county officials, two city officials, and one member representing the general public.)⁷

If, however, the state chooses to ignore these two *principal* recommendations, the ACIR points to North Carolina's forced-annexation procedures as a third option.⁸ In a 1977 report, the ACIR recommended a local boundary commission approach without mention of any other approach.⁹

For decades though, the clear impression that has been given is the 1975 ACIR report recommended *only* North Carolina's statute. The following statements, which are only some examples of this misrepresentation, not only fail to mention the other recommendations but also fail to mention that the two principal recommendations were boundary commissions.

In 1980, a joint study committee report of the North Carolina Association of County Commissioners and the League stated "We found that North Carolina's chief annexation statute [forced annexation provisions] ... has been cited by [ACIR] as a model for the nation."¹⁰

Even now, the University of North Carolina's School of Government has a web page¹¹ listing the arguments in favor of forced annexation. The following is how the ACIR report is listed on that page:

The recommendation of the federal Advisory Commission on Intergovernmental Relations (ACIR) to states to adopt an annexation statute based on the North Carolina statutes. This recommendation is from the 1975 set of recommendations, which is the last year the ACIR made such recommendations.¹²

The UNC School of Government also omits the pages from the 1975 ACIR report that includes model legislation setting up the boundary commissions and instead only includes the North Carolina related legislation.¹³ Professor David Lawrence, from the UNC School of Government, echoed the model statute claim in recent testimony before the Joint Legislative Study Commission on Municipal Annexation.¹⁴

The Primary Purpose of Forced Annexation: Meaningful Services

➤ *What is the primary purpose of the forced-annexation provisions in the law?*

The North Carolina Supreme Court in a 2006 case called *Nolan. v. Village of Marvin*¹⁵ did an extensive review of the annexation statutes and past reports. The Court found:

The primary purpose of involuntary annexation, as regulated by these statutes, is to promote "sound urban development" through the organized extension of municipal services to fringe geographical areas. These services must provide a **meaningful benefit** to newly annexed property owners and residents, who are now municipal taxpayers, and must also be extended in a nondiscriminatory fashion.¹⁶ (Emphasis added.)

In simple terms, the point of the law is for municipalities to provide services to areas that need services. These services must be meaningful or significant¹⁷ services for the annexation victims.

☞ ***Is the primary purpose of the law being achieved?***

No. Municipalities go out of their way to forcibly annex areas not in need services while avoiding areas that need services. The League recently has admitted that municipalities overlook areas in need of services.¹⁸ Instead of apologizing for this failure and seeking real reform, the League has asked for incentives to provide services to those areas. *In other words, they want to get paid to do what they were supposed to be doing in the first place.*

Oversight

☞ ***What third party oversees forced annexations under the statute?***

Except for courts that can review very narrow issues involved in an annexation,¹⁹ there is no oversight. The North Carolina statute allows municipalities to do virtually anything they want when it comes to forced annexation. There would be no way in the current process for any of the following to be prevented by anyone, *even by the courts*:

- Hurting sound urban growth
- Increasing the taxes on municipal residents
- Annexing areas based on financial motivations alone
- Ignoring low-income areas that need services
- Hurting the finances of counties

These are just some examples.

☞ ***Who should provide oversight?***

Counties are a logical choice to provide the oversight over forced annexations. They represent the municipalities as well as the affected property owners. They also should be familiar with the needs of the community.

☞ ***Is county oversight rare in other states?***

No, close to half (45 percent) of states with annexation of unincorporated areas allows counties to approve annexations.²⁰ That does not include the other means by which states provide oversight, such as through boundary commissions.

☞ ***Why is oversight necessary?***

There is no governing body that should be able to do whatever it likes—that is why the federal and state constitutions build checks and balances among the branches of government. There are no checks, however, on municipalities when it comes to forced annexations.

For example, in 2001, a Goldsboro city council member was concerned about a bill that would have allowed an area to incorporate and, as a result, would have prevented Goldsboro from forcibly annexing the area. As it turned out, the bill got killed and Goldsboro was able to annex the area.

The following, which many would deem to be racist, is what the council member wrote to the state legislators and city officials:

A city that doesn't grow dies and because of the white flight in the schools, floods and various other reasons, Goldsboro (the city) is not growing, especially our young white families and according to the census, we might even be losing people. Thus the annexation of this area would not only add good tax base to Goldsboro, it would also help us keep our racial make up in check, which in my opinion is very important to our future.²¹

The UNC Center for Civil Rights studied the exclusion of minority communities in Moore County. The study included this very strong statement:

While the initial exclusion of minority communities can in part be explained by history, their continued exclusion suggests something more sinister. In essence, the jagged and irregular municipal boundaries found in many Southern towns suggest that this exclusion is a new form of institutionalized segregation that has gone largely unnoticed by the general public.²²

Voting

☞ *How many states allow a vote or approval by the affected property owners in the annexed area?*

Of the states that have annexation of unincorporated areas, 67 percent allow a vote or approval by the affected property owners.²³

☞ *What is the trend on allowing a vote for the affected property owners?*

The trend is in favor of more voting. From 1978 to 1997, five additional states allowed property owners a vote.²⁴

☞ *Aren't the people that want to vote just being selfish?*

This is one of the frequent talking points by forced-annexation proponents—the affected property owners are just being selfish and not allowing what is in the best interests of the community.

It is amazing that in a democracy, anyone would argue that wanting to vote is being selfish. Municipal leaders are not all-knowing when it comes to what is in the best interest of the community. In fact, municipalities are going to act in the best interests of municipalities, regardless of whether it is in the community's best interest.

Costs

☞ *Aren't annexation victims concerned only about paying higher property taxes?*

No, as will be discussed below. Even if that were the sole reason, however, being forced to pay taxes without having a voice in that decision is certainly something to be upset about.

☞ *Are there costs for water and sewer?*

The exorbitant costs for water and sewer infrastructure imposed on annexation victims often gets lost in the annexation discussion. Municipalities have different policies on recovering those costs. One way or another, however, annexation victims will eventually pay for those infrastructure costs even if they do not want the water and sewer. For example, property owners, due to the annexation, often are denied a permit to replace a septic system once it fails.²⁵

Municipalities go further than that, though. Once water and sewer lines are placed adjacent to a property, municipalities often will expect some form of payment, regardless of whether the property owners request those services. In

Raleigh’s annexation information document, it states:

When utilities are made available to an annexed property, the assessment fees must be paid regardless of whether the property owner connects to the service.²⁶ (Emphasis added.)

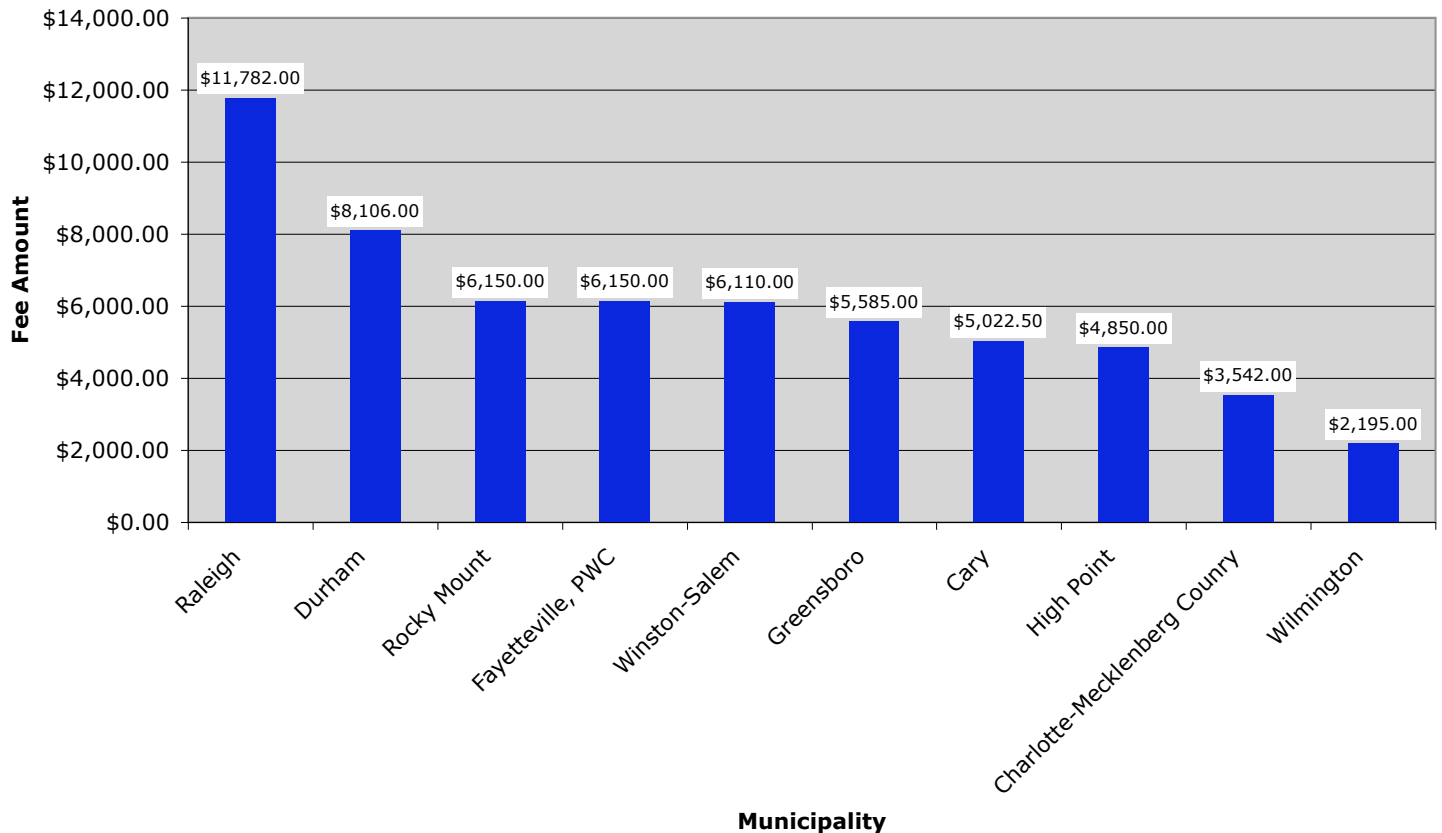
The town of Cary did a comparison of the water and sewer fees charged by different municipalities throughout the state²⁷ (see Figure 1). Annexation victims will have to pay these amounts if they want the water and sewer, and even if they do not, municipalities are going to get some money well before a septic system fails. Practically, when residents are forced to pay a large chunk of the fees, they will recognize that they are better off simply connecting to the system.

It also should be noted that the costs in Figure 1 do not include the additional costs that property owners must incur for hiring someone to connect lines from a house to the public water and sewer system, or for abandoning wells and septic systems.²⁸

➤ **Why do annexation victims have to pay for water and sewer infrastructure when the city initiated the annexation?**

There is no defensible reason. If municipalities want to annex an area, it should be their burden to pay for the costs of the water and sewer infrastructure. Basically, they should pay for whatever it costs to get property owners the water and sewer services to their house.

Figure 1. Water and Sewer Fees Charged by Selected Municipalities



Source: Town of Cary, Comprehensive Annexation Plan, Adopted March 9, 2006

☞ ***What other costs are there?***

The following is not necessarily exhaustive, and may not always apply—these fees and charges come from Raleigh’s annexation document:

- Street resurfacing
- Street construction
- Sidewalk construction fees
- Solid waste collection fees
- Stormwater fees
- Cat and dog fees
- City motor vehicle fees
- Business license taxes²⁹

☞ ***Doesn’t being in the city improve the quality of life of forced-annexation victims?***

The biggest cost of all to annexation victims, arguably, is being forced to change their way of life. Municipal zoning laws can undermine the freedom that individuals that live in unincorporated areas chose for themselves. Businesses may be forced to close or relocate due to municipal restrictions. A property owner who always had horses or had a hobby farm could be forced to give up his animals.

Bond Ratings

☞ ***What is the argument about municipal bond ratings?***

The League argues that without the forced-annexation law, North Carolina cities would be in financial ruin. They hope that the public and policymakers simply ignore the fact that almost every state in the country is not a forced-annexation state.

To support their financial-health argument, they point to North Carolina’s high municipal bond ratings. In one of its talking point documents on forced annexation, the League alleges, “cities without the ability to annex have poor bond ratings.”³⁰ This extreme argument crumbles as soon as one city without forced annexation can be shown to have a “better than poor” bond rating (which will be shown below).

The League’s president recently argued in an op-ed in *The News & Observer* that no state has more AAA-rated municipalities than North Carolina.³¹ Whether the number of AAA-rated cities is a good measure of the financial health of municipalities is doubtful, but even using this measure and their data, this claim is shown to be fallacious.³²

☞ ***How did the League determine that no state has more AAA-rated municipalities than North Carolina?***

In arguing that no state has more AAA-rated municipalities than North Carolina, the League cherry-picks the data to get the best possible results. Instead of looking at how Moody’s and Standard and Poor’s (S&P) each rate the municipalities in the state, the League decided to calculate their number based on the municipalities that appear in both ratings (note that Moody’s highest rating is Aaa, not AAA). The League’s recent op-ed would suggest that only S&P data was being used.

Even using this approach, which fails to consider the third bond-rating agency (Fitch's), North Carolina has seven top-rated municipalities in both. The League does not mention that Connecticut also has seven top-rated municipalities in both³³—a state that not only is *not* a forced-annexation state, but also has *no* annexation of unincorporated areas.

➤ **What states have the most municipalities with a top-rating from either Moody's or Standard & Poor's?**

As can be seen in Figure 2, North Carolina has seven municipalities with at least one top rating. Massachusetts (with 16) has more than double that number and Connecticut (with 13) has close to double the number. Like Connecticut, Massachusetts not only is not a forced-annexation state, but also has no annexation of unincorporated areas (because there are little to no unincorporated areas in these states³⁴). There are 11 states with at least four municipalities on the list—only North Carolina is a forced-annexation state.³⁵

➤ **What states does S&P deem to have the most AAA-rated municipalities?**

Figure 3 shows S&P's rankings—three states have more AAA ratings than North Carolina, and out of the eight states listed, only North Carolina is a forced-annexation state.³⁶

➤ **What states does Moody's deem to have the most Aaa rated municipalities?**

Figure 4 shows Moody's rankings—three states have more Aaa ratings than North Carolina, two have the same number, and out of the nine states listed, only North Carolina is a forced-annexation state.³⁷ It is worth noting that both agencies identified Connecticut and Massachusetts, two

Figure 2. Number of municipalities with at least one top rating by either Moody's or S&P, by state
(minimum of four municipalities)

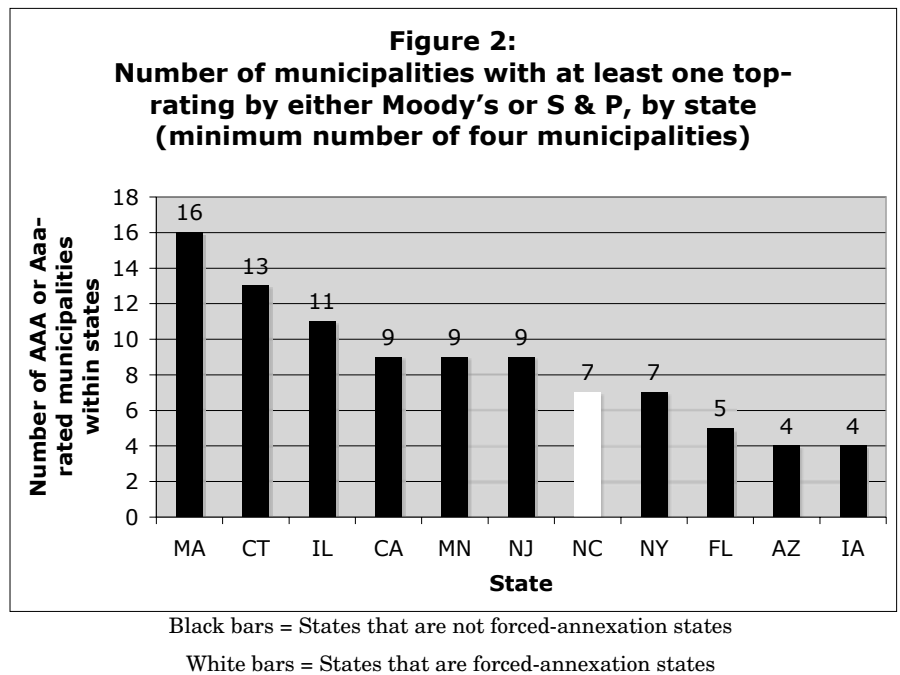
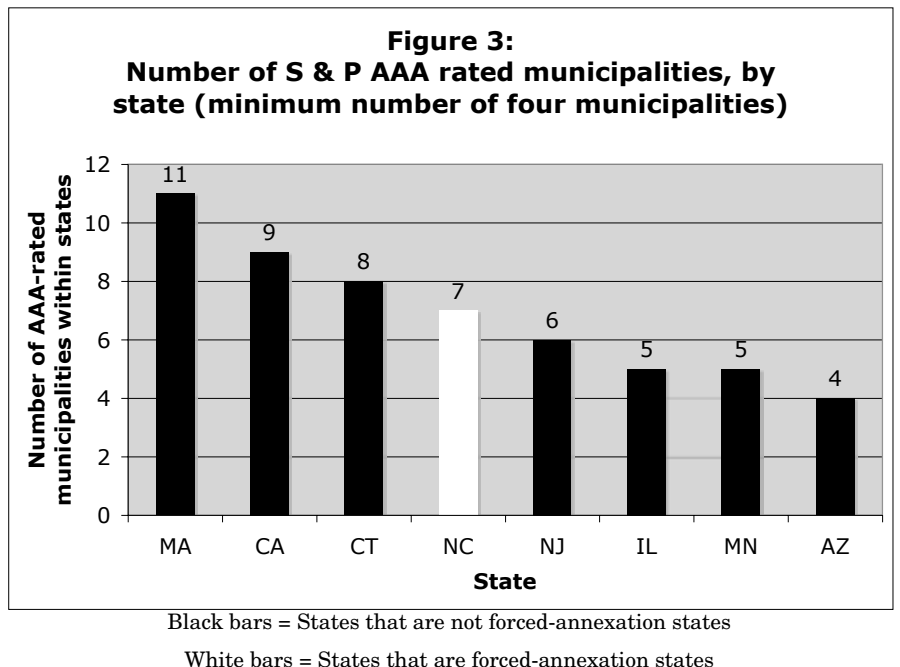


Figure 3. Number of S&P AAA-rated municipalities, by state
(minimum of four municipalities)



“non-annexation” states, as having more top-rated municipalities than North Carolina.³⁸

Conclusion

About 4.1 million North Carolinians, or about 46 percent of the state’s population,³⁹ live in unincorporated areas. These individuals, who represent nearly half the state, deserve better than this state’s annexation law.

If a city council was given unlimited power to kick city residents out of the city, there would be outrage and the idea would be considered absurd. Yet in North Carolina, a city council that has *no relationship* with citizens who live in unincorporated areas can generally do whatever it wants to bring those citizens into the city.

It has been a half century since North Carolina passed the current annexation law. It is not a lot to ask for every North Carolinian to be treated equally, regardless of whether they live in cities or not. This 50th anniversary of the outdated annexation law should be celebrated with real reform.

Daren Bakst, J.D., LL.M., is Legal and Regulatory Policy Analyst for the John Locke Foundation.

End Notes

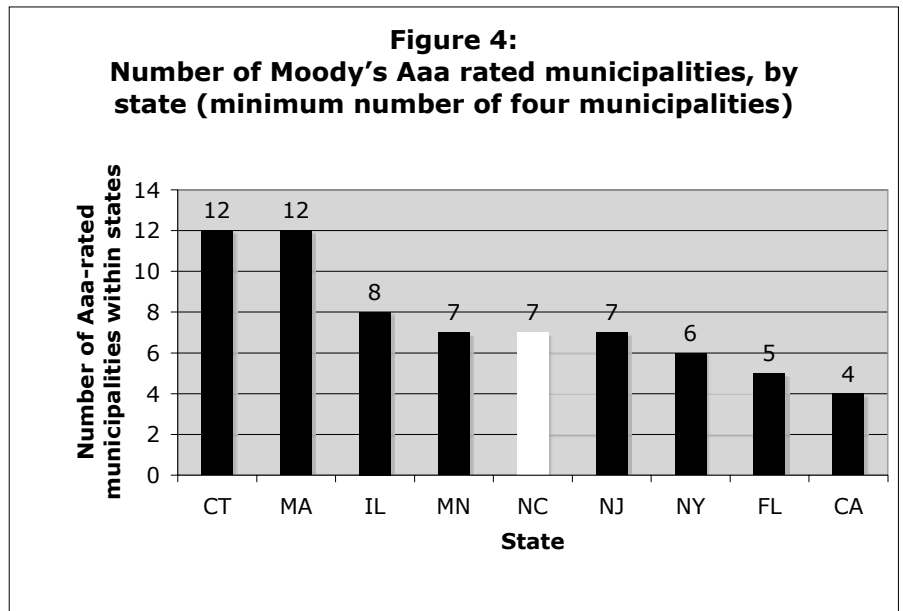
1. N.C. Gen. Stat. § 160A-29 *et seq.*, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_4A.html.
2. “Annexation in Indiana: Issues and Options,” Indiana Advisory Committee on Intergovernmental Affairs (IACIR), November 1998, iacir.spea.iupui.edu/publications/fullreport.pdf.
3. Greg Lindsey and Jamie L. Palmer, “Classifying State Approaches to Annexation,” *State and Local Government Review*, Vol. 33, No. 1, Winter 2001, www.jstor.org/pss/4355279.
4. Nebraska’s statutes can be accessed at law.justia.com/nebraska/codes. My assessment of the law was confirmed through a phone conversation with Lash Chaffin, Utilities Section Director, League of Nebraska Municipalities, January 21, 2009. Nebraska does not provide any recourse to property owners in unincorporated areas—no vote, no county oversight, no judicial review of the merits of the annexation, etc.

Some other states often are thought of as being as severe as North Carolina. In my analysis, as I explain in the text, I looked at whether recourse was provided to affected property owners in unincorporated areas. If I thought that the recourse was so narrow that it would have been, in effect, the same thing as providing no recourse for any property owners, I would have included it as comparable to North Carolina’s.

Let me provide one example of a state (Kansas) considered a “severe” forced-annexation state but is not comparable to North Carolina. K.S.A. Section 12-521 of the Kansas statutes provides for county review of some annexations. A January 20, 2009, phone conversation with Sandra Jacquot, Director of Law and General Counsel of the League of Kansas Municipalities, confirmed that these county reviews are not rare. This Kansas law firm (Kaup and Schultz) web page has a summary of the law: www.kaupandshultz.com/LandUse.html. See also this City of Lawrence web page: www.ci.lawrence.ks.us/study_session_2005/05-18-05/05-18-05H/annexation_staff_overview.html.

5. Steinbauer *et al.*, “An Assessment of Municipal Annexation in Georgia and the United States: A Search for Policy Guidance,” Carl Vinson Institute of Government, University of Georgia, August 2002, www.cviog.uga.edu/publications/pprs/53.pdf; see also Rex Facer, “Annexation Activity and State Law in the United States,” *Urban Affairs Review*, Vol. 41, No. 5, May 2006, uar.sagepub.com/cgi/content/abstract/41/5/697.
6. “ACIR State Legislative Program: Local Government Modernization,” Advisory Commission on Intergovernmental Relations, November 1975, www.sog.unc.edu/programs/annexation/docs/ACIR%20State%20Legislative%20Program-1975.pdf.

Figure 4. Number of Moody’s Aaa-rated municipalities, by state (minimum of four municipalities)



Black bars = States that are not forced-annexation states

White bars = States that are forced-annexation states

7. *Ibid.*, page 16.
8. *Ibid.*
9. “Regionalism Revisited: Recent Area-wide and Local Responses,” Advisory Commission on Intergovernmental Relations, June, 1977, p. 36.
10. “Report of the Joint Annexation Study Committee of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities,” June 19, 1980, www.sog.unc.edu/programs/annexation/docs/league-association-1980%20report.pdf.
11. See this UNC School of Government web page: www.sog.unc.edu/programs/annexation/arguments.php.
12. *Ibid.*
13. *Op. cit.*, note 6.
14. Testimony of David Lawrence before the North Carolina Joint Legislative Study Commission on Municipal Annexation, viewable at [video.google.com/videoplay?docid=8462361454124968361&hl=en](https://www.google.com/videoplay?docid=8462361454124968361&hl=en).
15. *Nolan v. Village of Marvin*, 360 N.C. 256; 624 S.E.2d 305 (2006), www.aoc.state.nc.us/www/public/sc/opinions/2006/488-05-1.htm.
16. *Ibid.*
17. The Court used the term “significant” interchangeably with “meaningful” in describing the benefits that must be provided by the services.
18. “A Proposal to the Joint Senate and House Study Commission on Municipal Annexation,” North Carolina League of Municipalities, December 17, 2008, p. 5, www.nclm.org/documents/annexationproposalsdec17.pdf.
19. N.C. Gen. Stat. § 160A-50, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-50.html.
20. *Op. cit.*, note 5.
21. Letter admitted into evidence in *William R. Burnette et al. v. City of Goldsboro*, 05 CVS 1992 (Wayne County); see also Kenneth Fine, “Allen says city didn’t use race issue to decide to annex” *Goldsboro News-Argus*, April 28, 2006, www.newsargus.com/news/archives/2006/04/28/allen_says_city_didnt_use_race_issue_to_decide_to_annex/index.shtml.
22. Earls *et al.*, “Municipal Underbunding in Southern Moore County,” UNC Center for Civil Rights, August 2006, p. ii, www.law.unc.edu/documents/civilrights/briefs/invisiblefencesreport.pdf.
23. *Op. cit.*, note 5.
24. *Op. cit.*, note 2.
25. See, e.g., Town of Cary, Comprehensive Annexation Plan, Adopted March 9, 2006.
26. “Annexation: Methods, Purposes, Services, Costs,” The City of Raleigh, Revised July 7, 2008; see also this city of Greensboro web page: www.greensboro-nc.gov/residents/annexation/services/water.htm; see also this Fayetteville page: www.faypwc.com/quick_annex_Q&A.htm#21 (see the question regarding assessments).
27. Town of Cary, Comprehensive Annexation Plan, Adopted March 9, 2006.
28. *Ibid.* See also this Greensboro web page: “You will need to contact a licensed plumber to connect the lateral line from your property line to your home,” www.greensboro-nc.gov/residents/annexation/services/water.htm.
29. *Op. cit.*, note 26
30. “Annexation Q & A,” North Carolina League of Municipalities, www.nclm.org/documents/annexationqa.pdf.
31. Jerry Jones, “How N.C. should tweak its annexation laws,” *The News & Observer* (Raleigh), December 29, 2008, www.newsobserver.com/opinion/columns/story/1348182.html.
32. The author wishes to thank the North Carolina League of Municipalities for providing the bond rating data that they were using. Their data comes from Standard & Poor’s, Ratings Direct, Sector Review: Tax-Base Growth and Strong Reserves Propel 14 U.S. Municipalities to ‘AAA’ List, January 9, 2008, and from Moody’s Investors Services.
33. *Ibid.* Regardless of whether I used the classifications in the IACIR report or the Lindsey and Palmer report, the number of forced-annexation states on these AAA and Aaa lists would remain the same.
34. *Op. cit.*, note 5, p. 15.
35. *Op. cit.*, note 32
36. *Ibid.*
37. *Ibid.*
38. *Ibid.*
39. This 2007 data comes from the North Carolina Office of State Budget and Management, www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/ctotm07.htm.