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Municipal Annexation Reform in Texas: How a Victory for Property Rights Jeopardizes the State's Financial Health

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COMMENT

MUNICIPAL ANNEXATION REFORM IN TEXAS: HOW A VICTORY FOR PROPERTY RIGHTS JEOPARDIZES THE STATE’S FINANCIAL HEALTH

JULIE POLANSKY BELL*

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I. INTRODUCTION

“Can we ever get away from the sprawl?”¹ This question has concerned American city leaders for decades.² Municipal annexation—the expansion of city boundaries—helps to combat the devastating effects caused by suburban flight and sprawl.³ Beginning in the early 1900s, Texas cities had broad annexation authority⁴ and many utilized this power to develop into the flourishing metropolises that they are today.⁵ Annexation is a contentious issue though, and ignites property owners and their state

1. ARCADE FIRE, *Sprawl II (Mountains Beyond Mountains)*, on THE SUBURBS (Merge Records 2010).

2. See Eric S. Raymond & Charles E. Menifield, *A Tale of Two Cities: An Exploratory Study of Consolidation and Annexation Policies in the Cities of Memphis and Nashville*, 35 PUB. ADMIN. Q. 404, 418 (2011) (“[O]ver the past half century, central cities have faced increasing loss of its middle- to upper-income residents . . .”).

3. See *id.* (identifying annexation as a way for cities to “curb [the] ever-growing urban crisis” caused by losing residents). The question of whether annexation is the *best way* to relieve municipal financial burdens is a complex question that is outside the scope of this comment. See Robert Rivard, *City Counsel to Grapple Anew With Annexation Question*, RIVARD REP. (June 10, 2016), <https://therivardreport.com/city-council-to-grapple-anew-with-annexation-question/> [<https://perma.cc/M37Z-D96R>], for an example of financial analysis reports evaluating annexation plans in Bexar County.

4. *Compare* Act approved April 7, 1913, 33d Leg., R.S., ch. 147, § 4, 1913 Tex. Gen. Laws 307, 310–16 (repealed 1995) (providing a historic account of the broad authority of home rule cities to extend their boundaries), *with* TEX. LOC. GOV'T CODE ANN. § 43.003 (designating three permissible actions available to home rule cities regarding their boundaries).

5. See TEX. MUN. LEAGUE, HOW CITIES WORK 35 (2017), <https://www.tml.org/p/HowCitiesWork2017Web.pdf> [<https://perma.cc/3LH3-279D>] (“States in which city councils decide whether to annex have seen their cities grow faster over the past [twenty-five] years, both economically and demographically, than other states that limit annexation.”). Over a fifty-year period, Houston increased by 440 square miles, San Antonio by 381 square miles, Dallas by 229 square miles, and Austin by 265 square miles. *Id.*

representatives.⁶ This controversy is reflected in the evolution of Texas annexation laws, which have been a continuous “balance of powers between property owners and municipalities”⁷ with property owners given more influence over time.⁸ The fight to erode broad municipal annexation authority in Texas came to an end during the eighty-fifth legislative session with the passing of the Municipal Annexation Right to Vote Act (MARVA).⁹

Under the new law in Texas, cities located in populous counties are severely limited in their ability to annex neighboring communities.¹⁰ This victory for private property rights may seem like good news for Texans living in fringe communities who are now safeguarded from paying city-imposed property taxes. However, the new law goes against urban researchers’ recommendations¹¹ and may lead to detrimental financial consequences for municipalities, metropolitan regions, and the entire State of Texas.¹² Although there are other tools available to help cities improve and maintain their security, Texas lawmakers will likely jeopardize the economic prosperity of Texas if they continue to strip away local government powers.¹³

6. *See id.* at 34 (“Rural landowners and others have regularly turned to their legislators for relief from city expansions, with the result that bills to curb unilateral annexations have surfaced in every session for the past [forty] years.”).

7. H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 71 (2016).

8. *See, e.g.*, Act of May 25, 1999, 76th Leg., R.S., ch. 1167, § 4, sec. 43.052(c), 1999 Tex. Gen. Laws 4074, 4075 (codified at TEX. LOC. GOV’T CODE § 43.052(c)) (requiring cities to wait three years before annexing an area).

9. *See* Municipal Annexation Right to Vote Act, 85th Leg., 1st C.S., ch. 6, §§ 56–57, sec. 43, 2017 Tex. Gen. Laws 4505, 4526 (codified at TEX. LOC. GOV’T CODE § 43) (reforming municipal annexation laws).

10. *See id.* §§ 24–26, secs. 43.066–.0699, 4511–17 (requiring tier 2 municipalities to obtain consent from residents and property owners prior to annexation).

11. *See, e.g.*, DAVID RUSK, BROOKINGS INST. METRO. POLICY PROGRAM, ANNEXATION AND THE FISCAL FATE OF CITIES 11 (2006), https://www.brookings.edu/wp-content/uploads/2016/06/20060810_fateofcities.pdf [<https://perma.cc/V367-C249>] (“State legislatures should have a vital interest in ensuring the fiscal viability of their state’s municipalities, particularly their major cities.”).

12. *See* PERRYMAN GRP., THE IMPACT OF OVERLY RESTRICTIVE ANNEXATION POLICY ON ECONOMIC ACTIVITY IN TEXAS AND ITS METROPOLITAN REGIONS 16, 21–22 (2003), <https://www.tml.org/p/2003PerrymanReport.pdf> [<https://perma.cc/YHX2-54FP>] (predicting severe legislative restrictions on municipal annexation will cost the State of Texas “\$305.7 billion in yearly gross product, \$168.8 billion in annual personal income, and 1,234,760 permanent jobs” over a thirty-year period).

13. *See* Richard Parker, Opinion, *The Texas Economic Miracle Is Over*, DALL. MORNING NEWS (Mar. 28, 2017), <https://www.dallasnews.com/opinion/commentary/2017/03/28/texas-economic->

This comment begins by giving a background on municipal annexation in the United States and Texas, in Part II. Part III and IV discuss the legislative history and specific provisions of MARVA. Part V predicts the future implications related to annexation reform including cautioning state lawmakers from creating further restrictions on local government authority.

II. BACKGROUND

A. *Municipal Annexation in the United States*

Municipal annexation occurs when cities expand their boundaries and thereby increase in land area.¹⁴ Cities choose to acquire additional territory for a number of reasons,¹⁵ but the greatest motivator is maintaining and improving economic prosperity.¹⁶ Annexation was frequently used by American cities in the twentieth century,¹⁷ and is oftentimes a controversial issue for the communities being annexed.¹⁸ Involuntary municipal

miracle [<https://perma.cc/CS97-JJ3Z>] (asserting the “Texas Miracle” is overdue largely to state legislators’ preoccupation with issues other than the economy).

14. Christopher J. Tyson, *Annexation and the Mid-Size Metropolis: New Insights in the Age of Mobile Capital*, 73 U. PITT. L. REV. 505, 509 (2012).

15. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 48 (2016) (“The purpose of annexation by municipalities is to create zoning and development standards, provide more efficient public safety and municipal services.”); PAULA F. STEINBAUER ET AL., AN ASSESSMENT OF MUNICIPAL ANNEXATION IN GEORGIA AND THE UNITED STATES: A SEARCH FOR POLICY GUIDANCE 8–9 (Richard W. Campbell ed., 2002) (identifying “control [of] urban sprawl” and “broadening their political base” as potential motivations behind a municipality’s decision to annex).

16. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 48 (Tex. 2016) (“[A]nnexation gives municipalities the ability to maximize the return on investments (infrastructure and business incentives), protect and expand the tax base.”); Tyson, *supra* note 14, at 507 (recognizing that cities want to grow in size because it usually leads to “better employment opportunities . . . and higher property values”); Christopher J. Tyson, *Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism*, 87 TUL. L. REV. 297, 300 (2012) (discussing how municipal annexation allows cities to recapture taxes from wealthier residents who emigrated to the edge of the city boundaries).

17. See KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 140 (1985) (“Without exception, the adjustment of local boundaries has been the dominant method of population growth in every American city of consequence.”); Mary M. Edwards, *Understanding the Complexities of Annexation*, 23 J. PLAN. LITERATURE 119, 119–20 (2008) (summarizing statistics indicating that from 1990–2005, cities in America annexed around 4.6 million acres of land and over 1 million people).

18. See 22 DAVID B. BROOKS, TEXAS PRACTICE SERIES: MUNICIPAL LAW AND PRACTICE § 1.13 (2d ed. 2017) (“The unilateral annexation of territory by cities without voter approval is one of the more contentious issues of municipal law in Texas.”); Tyson, *supra* note 16, at 300 (noting there is “organized opposition” experienced in states that give cities broad annexation authority).

annexation,¹⁹ the process of cities annexing “without the consent of the residents or property owners in the annexed area[.]” is an especially contentious subject.²⁰

State law primarily dictates municipal annexation.²¹ Thus, each state has developed a unique form of annexation policy.²² Due to the myriad of state annexation procedures, it is best to examine these variations through general classifications.²³ The method used by most states requires voter approval from either the residents of the annexing municipality, the area potentially being annexed, or both.²⁴ A method commonly employed by states in the New England area²⁵ involves special legislative acts to approve boundary changes.²⁶ A process used by states in the middle and far west²⁷ requires state administrative agencies or boards to approve annexation plans.²⁸

19. Involuntary annexation is also called “forced” and “unilateral” annexation. Tyson, *supra* note 16, at 300.

20. *Id.*

21. Tyson, *supra* note 14, at 511 (“Annexation laws are not controlled by the federal government . . .”). While annexation is mostly under the authority of states, the U.S. Supreme Court helped shape the foundation of the issue. In *Hunter v. City of Pittsburg*, the Supreme Court declared:

Municipal corporations are political subdivisions of the [s]tate The [s]tate, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, *with or without the consent of the citizens*, or even against their protest.

Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907) (emphasis added); *see also* *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 61–63 (1975) (upholding a state law granting municipalities power to regulate communities in the extraterritorial area).

22. *See* Jaime L. Palmer & Greg Lindsey, *Classifying State Approaches to Annexation*, 33 ST. & LOC. GOV'T R. 60, 60 (2001) (“[N]o two states provide for precisely the same procedures.”).

23. *See generally id.* (detailing the various types of annexation policy).

24. *See* Dustin Cammack, Comment, *Municipal Manifest Destiny: Constitutionality of Unilateral Municipal Annexations*, 2013 BYU L. REV. 619, 622 (2013) (“Under a system of popular determination, some combination of residents of the annexing municipality, the annexation area, and the local government from which the annexation area will be taken . . . vote directly to approve the annexation.”); *see also* Palmer & Lindsey, *supra* note 22, at 69 (analyzing data that shows more than half of the states use some type of popular determination as the main method for approving annexations).

25. *See* Palmer & Lindsey, *supra* note 22, at 69 (“Legislative determination is used most often in . . . New England or eastern states . . .”).

26. *See* Cammack, *supra* note 24, at 622–23 (discussing “Legislative Determination”).

27. Richard Briffault, *Our Localism: Part 1—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 82 (1990).

28. *See* Cammack, *supra* note 24, at 623 (“In a quasi-legislative jurisdiction, the state legislature delegates its power to approve or initiate boundary changes to an administrative agency, independent board, or non-judicial tribunal.”).

Another scheme, albeit rarely used, utilizes a panel of judges to authorize annexation proposals.²⁹ The last general annexation method used by states, and the most liberal one, is involuntary annexation.³⁰

Involuntary annexation has been employed primarily by states in the Sunbelt region,³¹ including the State of Texas.³² Despite the predominate use of involuntary annexation in the past,³³ state legislatures have increasingly given residents and property owners greater control over the annexation process.³⁴ In 2010, states that allowed some form of annexation without consent included North Carolina,³⁵ Indiana,³⁶ Kansas,³⁷ Nebraska,³⁸ Tennessee,³⁹ Texas,⁴⁰ Delaware,⁴¹ and Idaho.⁴² By the end of 2017, three of these states passed legislation severely restricting the use of involuntary annexation.⁴³ This trend is largely due to the efforts of

29. *See id.* at 624 (discussing the state of Virginia's "three-judge panel to approve annexations"); *see also* Palmer & Lindsey, *supra* note 22, at 69 ("Judicial determination is the main method in only [one] state . . .").

30. *See* Cammack, *supra* note 24, at 624 ("A few states give broad annexation powers to municipal governments, allowing them to freely annex . . . all with little or no involvement by annexed residents, landowners, or their elected representatives.").

31. *See* Briffault, *supra* note 27, at 80 ("[M]uch of the population growth of the large cities of the Sunbelt in recent decades is a result of substantial territorial expansion attributable to the liberal annexation laws of those states.").

32. *See id.* at 80 n.339 ("In the postwar period, Texas has led all states in population and land area annexed.").

33. *See* Tyson, *supra* note 14, at 511 ("Forcible annexation was the predominant doctrine in the states during the nineteenth century.").

34. *See* Palmer & Lindsey, *supra* note 22, at 69–71 (concluding state legislatures have decreased municipalities' ability to annex without consent and have "increased opportunities for property owners to affect or control the outcome of annexation proposals").

35. N.C. GEN. STAT. ANN. § 160A-46 (2010) (repealed 2011).

36. IND. CODE ANN. § 36-4-3-3 (2011).

37. KAN. STAT. ANN. § 12-520 (2011).

38. NEB. REV. STAT. ANN. § 14-117 (2011).

39. TENN. CODE ANN. § 6-51-102 (2011) (current version at TENN. CODE ANN. § 6-51-102 (2015)).

40. TEX. LOC. GOV'T CODE ANN. § 43.

41. DEL. CODE ANN. tit. 22, § 101 (2011).

42. IDAHO CODE ANN. § 50-222 (2011).

43. North Carolina changed its laws in 2011. *See* 2011 N.C. Sess. Laws 396 (reforming involuntary annexation laws). The Tennessee General Assembly passed involuntary annexation reform legislation in 2014. *See* 2014 Tenn. Pub. Acts 707 (repealing unilateral, nonconsensual annexation). Tennessee lawmakers took the anti-forced annexation campaign a step further by introducing a de-annexation bill in 2017. *See* S. 641, 110th Gen. Assemb., Reg. Sess. (Tenn. 2017) (proposing legislation that would allow residents living in areas already annexed to petition for de-annexation). The Texas legislature passed involuntary annexation reform in 2017. *See* Municipal Annexation Right to Vote Act, 85th Leg., 1st C.S., ch. 6, §§ 56–57, sec. 43, 2017 Tex. Gen. Laws 4505, 4526 (codified at

citizens and communities fighting against involuntary annexation,⁴⁴ claiming the process violates the basic principal of self-determination,⁴⁵ amounts to taxation without representation,⁴⁶ and infringes on private property rights.⁴⁷

B. *Initial Development of Municipal Annexation Laws in Texas*

Under the Republic of Texas and later under the State of Texas,⁴⁸ cities formed and derived power through legislative acts.⁴⁹ This limitation on municipal authority meant cities had to obtain legislative approval to extend their boundaries.⁵⁰ Texas municipalities were granted some authority in 1858 when the legislature gave cities the ability to incorporate without a

TEX. LOC. GOV'T CODE § 43) (amending the prior statute and reforming involuntary municipal annexation). Although it appears that Indiana cities can still annex without consent, there are now stricter procedural requirements. *See, e.g.*, IND. CODE ANN. § 36-4-3-5.1 (West 2011) (detailing the requirements of notices to the public).

44. *See* Tyson, *supra* note 16, at 300 (claiming all states allowing involuntary annexation “are facing some level of organized opposition”); *see also* Tyson, *supra* note 14, at 520 (“Annexation is now widely perceived as a threat to individual liberty and autonomous self-government, pitting metropolitan region residents against metropolitan region central city governments.”).

45. *See* HON. JESS FIELDS & JAMES QUINTERO, TEX. PUB. POLICY FOUND., ENDING FORCED ANNEXATION IN TEXAS 9–10 (2015), <https://www.texaspolicy.com/library/doclib/ending-forced-annexation-in-texas.pdf> [<https://perma.cc/ERZ6-VLWP>] (arguing individuals have a right to decide which government they live under).

46. *See* Harris v. City of Hous., 151 F.3d 186, 191–92 (5th Cir. 1998) (DeMoss, J., dissenting) (claiming the involuntary annexation of the Kingwood community violated the fundamental principal of “no taxation without representation”).

47. *See* FIELDS & QUINTERO, *supra* note 45, at 15–16 (arguing annexation is a form of regulatory taking); Tyson, *supra* note 16, at 327 (describing the belief held by some “that one is entitled to have their property located in a particular municipal jurisdiction and . . . infringement of that right through the adjustment of municipal boundaries is akin to an infringement of vested rights in private property”).

48. Texas was admitted into the United States in 1845. S.J. Res. 1, 29th Cong., 9 Stat. 108 (1846) (enacted).

49. *See* Brown v. City of Galveston, 75 S.W. 488, 495 (Tex. 1903) (“In [Texas] the doctrine is well settled that a municipal corporation can exist only by and through an act of the [l]egislature of the [s]tate, and that it has no power not granted by the charter, and can have no officer not provided for by law.” (citing Blessing v. City of Galveston, 42 Tex. 641, 657–58 (1874); Pye v. Peterson, 45 Tex. 312 (1876); Vosburg v. McCrary, 14 S.W. 195 (1890))); *see also* Scott Houston, *Municipal Annexation: A Key Remedy for “Reverse Intergovernmental Aid”*, 15 TEX. TECH. ADMIN. L.J. 329, 342 (2014) (“[T]he legislature passed a bill . . . that incorporated a city and delineated its powers and duties.”).

50. *Maddrey v. Cox*, 11 S.W. 541, 542 (Tex. 1889) (recognizing the power of the legislature to “extend the boundaries of an existing corporation, *without the consent*, or even against the remonstrance, of a majority or all the inhabitants of the existing corporation or of the territory to be annexed” (emphasis added)). As demonstrated in *Maddrey*, involuntary annexation has deep roots in Texas. *Id.* at 542–43.

special legislative act⁵¹ and the power to expand their boundaries if residents of the proposed annexed area petitioned to be included in the city.⁵²

The Home Rule Amendment of 1912⁵³ led to a major shift in annexation authority.⁵⁴ This constitutional amendment granted “[c]ities having more than five thousand . . . inhabitants” the power to “adopt or amend their charters” so long as they are not inconsistent with the general laws or constitution.⁵⁵ The following year, the legislature passed a law granting specific powers to home rule cities,⁵⁶ including the power to extend boundary lines.⁵⁷ Annexation authority given to home rule cities by the 1913 Act was essentially unrestricted⁵⁸ and allowed annexation of any

51. Act approved Jan. 27, 1858, 7th Leg., R.S., ch. 61, §§ 1–9, 1858 Tex. Gen. Laws 69, 69–70, reprinted in 4 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 941, 941–42 (Austin: Gammel Book Co. 1898).

52. Robert R. Ashcroft & Barbara Kyle Balfour, *Home Rule Cities and Municipal Annexation in Texas: Recent Trends and Future Prospects*, 15 ST. MARY'S L.J. 519, 521 (1984) (“Under the general laws cities were granted the right to annex territory without obtaining the permission of the [l]egislature only when . . . a majority of the qualified electors of the territory to be annexed indicated their desire to be included in the municipality.”).

53. TEX. CONST. art. XI, § 5.

54. See Ashcroft & Balfour, *supra* note 52, at 522 (“[T]he legislative powers were taken from the [l]egislature and given directly to home rule cities by the constitution.”). Other states experienced similar trends due to criticism over the Dillion theory that municipalities should only have the power specifically granted to them by state legislatures and statutes. See FIELDS & QUINTERO, *supra* note 45, at 5 (discussing Iowa Supreme Court Justice John Forrest Dillion’s “legal theory that localities should wield no more authority than that specifically delegated to them by state statutes”).

55. TEX. CONST. art. XI, § 5(a); see also *id.* § 5 interp. commentary (West 2007) (explaining the Home Rule Amendment of 1912).

56. Act approved April 7, 1913, 33d Leg., R.S., ch. 147, §§ 1–10, 1913 Tex. Gen. Laws 307, 310–17 (repealed 1995). There are three basic types of municipalities in Texas: general law, home rule, and special law. TEX. LOC. GOV'T CODE ANN. §§ 5.001–.005. The formation and functions of general law cities are “pursuant to legislation” and not a city charter that is specific to the municipality. BROOKS, *supra* note 18, § 3.03. Home rule cities are those that “operate under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5, of the Texas Constitution.” TEX. LOC. GOV'T § 5.004. Special law cities “are those created by discreet acts of the legislature.” BROOKS, *supra* note 18, § 3.03. General law and special-law cities’ authority to annex was mostly unchanged by MARVA, and so home rule cities are the focus of this comment. See *Municipal Annexation Right to Vote Act*, 85th Leg., 1st C.S., ch. 6, §§ 1–57, sec. 43, 2017 Tex. Gen. Laws 4505, 4505–26 (codified at TEX. LOC. GOV'T CODE § 43).

57. Act approved April 7, 1913, ch. 147, § 4, 1913 Tex. Gen. Laws 307, 310.

58. See Trueman O’Quinn, *Annexing New Territory: A Review of Texas Law and the Proposals for Legislative Control of Cities Extending Their Boundaries*, 39 TEX. L. REV. 172, 174–75 (1960) (discussing annexation laws prior to the Municipal Annexation Act of 1963 as providing cities with the ability to “extend[] their corporate limits, without legislative standards, restraints, or limitations”); FIELDS & QUINTERO, *supra* note 45, at 5 (claiming cities that adopted home-rule charters had “virtually no limit whatsoever on the authority . . . to annex”).

amount of land,⁵⁹ any type of land,⁶⁰ without notice to residents,⁶¹ and without the consent of residents.⁶² Some commentators believe this overly broad power led to land grabbing and other “annexation abuses”⁶³ that eventually gave rise to legislative action in the 1960s.⁶⁴

C. *Evolution of Modern Annexation Laws*

Home rule cities had nearly unrestricted annexation authority until the Municipal Annexation Act of 1963,⁶⁵ which marked the beginning of a slow but continuous trend chipping away at municipal annexation authority.⁶⁶ Although home rule cities were still allowed to annex without consent, the 1963 Act “radically changed the authority and procedure” for annexing.⁶⁷ The greatest change created by the 1963 Act was limiting annexation to either a city’s extraterritorial jurisdiction (ETJ)⁶⁸ or city-owned property.⁶⁹ Additional limitations included barring annexation of incorporated areas within the ETJ,⁷⁰ limits to the amount of land that can be annexed,⁷¹ and the requirement that cities provide “governmental and proprietary services”

59. See Ashcroft & Balfour, *supra* note 52, at 525–26 (“Limitations were not imposed on the amount of land that could be annexed . . .”).

60. See Texas *ex rel.* Pan Am. Prod. Co. v. Tex. City, 303 S.W.2d 780, 782 (Tex. 1957) (restating municipal authority to expand boundaries “without regard to the use or character of the occupation of the annexed territory” (quoting State v. City of Waxahachie, 17 S.W. 348, 350 (Tex. 1891))).

61. Ashcroft & Balfour, *supra* note 52, at 525 (“No notice requirements or time limits were imposed on home rule cities initiating the annexation process.”).

62. See O’Quinn, *supra* note 58, at 174 (discussing annexation laws prior to the Municipal Annexation Act of 1963 as providing cities with the ability to annex “without consent of the residents of the territory being annexed”).

63. Ashcroft & Balfour, *supra* note 52, at 523–24.

64. See *id.* at 526 (suggesting the Municipal Annexation Act of 1963 was passed “[i]n response to annexation wars and to prevent such abuses from continuing”).

65. Municipal Annexation Act, 58th Leg., R.S., ch. 160, 1963 Tex. Gen. Laws 447, amended by Act of Sept. 1, 1987, 70th Leg., R.S., ch. 1077, § 1, 1987 Tex. Gen. Laws 3674, 3674–83.

66. See Ashcroft & Balfour, *supra* note 52, at 530 (asserting the Municipal Annexation Act of 1963 began the “process of restricting cities’ power to annex”).

67. BROOKS, *supra* note 18, § 1.13.

68. Extraterritorial jurisdiction (ETJ) is defined as “the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of any city[.]” Municipal Annexation Act, ch. 160, art. I, § 3(A), 1963 Tex. Gen. Laws 447, 447 (amended 1987). ETJs extend five miles or less outside city boundaries. *Id.* at 447–48. As the city’s boundary expands, the ETJ “expand[s] in conformity with such annexation and shall comprise an area around the new corporate limits[.]” *Id.* at 448.

69. *Id.* § 7(A), at 450.

70. *Id.* § 3(A), at 447.

71. *Id.* § 7(B), at 450 (“A city may annex in any one calendar year only territory equivalent in size to ten per cent (10%) of the total corporate area . . .”).

to the annexed area within three years of annexation that are “substantially equivalent” to those services provided in other parts of the city.⁷² Municipalities were given some control over their ETJs,⁷³ but they could not impose taxes.⁷⁴ Procedural changes created by the 1963 Act required a public hearing prior to annexation, newspaper notice of the hearing, and completion of annexation within ninety days of instituting the proceeding.⁷⁵

After the passage of the Municipal Annexation Act of 1963, no significant changes were made to cities’ annexation authority until the end of the twentieth century.⁷⁶ S.B. 89, passed by the Texas legislature in 1999,⁷⁷ made significant changes to annexation law in response to Houston’s involuntary annexation of a neighboring community.⁷⁸ In 1996, the City of Houston proposed to annex the Kingwood community located within the city’s ETJ.⁷⁹ Despite resistance from Kingwood residents,⁸⁰ Houston’s City Council voted to annex the community.⁸¹ After unsuccessful judicial attempts to stop the annexation,⁸² S.B. 89 was introduced and subsequently

72. *Id.* § 10(A), at 452.

73. Cities could extend their subdivision ordinances to the ETJ area. *Id.* § 4, at 449. Cities also had the power to designate an area as an “industrial district” and provide temporary exemption from being annexed. *Id.* § 5, at 449. This industrial district designation was a tool used by cities to attract new business and development into the ETJ. See Ashcroft & Balfour, *supra* note 52, at 529 (discussing how the exemption of industrial districts “was effectively a tax abatement scheme”).

74. Municipal Annexation Act, ch. 160, art. I, § 3(D), 1963 Tex. Gen. Laws 447, 449.

75. *Id.* § 6, at 449–50.

76. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 48 (2016) (noting the Legislative act passed in 1999, S.B. 89, was “the first comprehensive reform of the annexation laws [in Texas] since the Municipal Annexation Act of 1963”).

77. Act of May 25, 1999, 76th Leg., R.S., ch. 1167, §§ 1–18, secs. 42–43, 1999 Tex. Gen. Laws 4074 (amended 2017) (current version at TEX. LOC. GOV’T CODE §§ 42–43).

78. See Tyson, *supra* note 16, at 320 (claiming the annexation of Kingwood “ultimately precipitated a movement to change the state’s involuntary annexation provisions and a revision to the annexation regime altogether”); Peter S. Canellos, *Land Grab: Outraged Residents of Houston Suburb Fight City’s Annexation*, CHI. TRIB. (Aug. 16, 1997), <http://www.chicagotribune.com/news/ct-xpm-1997-08-16-9708160178-story.html> [<https://perma.cc/B8DS-C5UL>] (“[H]undreds of Kingwood homeowners showed up at the state capitol in Austin [to protest] . . .”).

79. *Harris v. City of Hous.*, 151 F.3d 186, 187 (5th Cir. 1998).

80. Kingwood residents resisted the annexation due to concerns over “increased taxation and a decrease in the quality of municipal services.” Tyson, *supra* note 16, at 321. Some residents of Houston also opposed the annexation “alleg[ing] that both the purpose and effect of the annexation were to dilute the votes of minority residents[.]” *Harris*, 151 F.3d at 188.

81. *Harris*, 151 F.3d at 187.

82. *Id.* (vacating “the district court’s prior orders and remand[ing] with instructions to dismiss the case as moot”).

passed by the seventy-sixth legislature.⁸³

Under S.B. 89, cities were required to prepare a proposal identifying the areas to be annexed and wait three years before commencing the plan.⁸⁴ In addition to holding public hearings, cities were required to give written notice to every property owner and service provider in the area.⁸⁵ Cities were also required to develop and publish a plan for extending full municipal services to the annexed area.⁸⁶ Another major hurdle for municipalities under the amended law was the requirement of cities with less than 1.6 million people to negotiate with the annexed community over either the services that would be provided after annexation or services in lieu of annexation.⁸⁷

Many initial supporters of S.B. 89 felt the final version of the bill was not enough to protect property rights,⁸⁸ and thus the fight to end involuntary annexation continued.⁸⁹ Legislators' persistent efforts proved successful in 2017 when the eighty-fifth legislative session essentially ended involuntary annexation in Texas.⁹⁰

III. LEGISLATIVE HISTORY OF THE MUNICIPAL ANNEXATION RIGHT TO VOTE ACT

After the eighty-fourth legislative session, the Senate Committee on Intergovernmental Relations and the House Committee on Land and Resource Management issued interim charges addressing legislative recommendations on annexation.⁹¹ Neither committee explicitly proposed

83. Act of May 25, 1999, 76th Leg., R.S., ch. 1167, §§ 1–18, secs. 42–43, 1999 Tex. Gen. Laws 4074 (amended 2017) (current version at TEX. LOC. GOV'T CODE ANN. §§ 42–43).

84. *Id.* § 4, sec. 43.052(c), at 4075.

85. *Id.* § 4, sec. 43.052(f)(1)–(2), at 4076.

86. *Id.* § 7, sec. 43.056(a), at 4079–81.

87. *Id.* § 8, sec. 43.0562(a)(1), at 4083.

88. See Houston, *supra* note 49, at 344 (“After failing to limit annexation authority in 1999, property rights advocates put on a full-court press during the 2003 legislative session . . .”).

89. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 48 (2016) (stating Texas legislators made several attempts after S.B.89 “to amend municipal authority on annexation”); Houston, *supra* note 49, at 343 (“[B]ills to curb annexations have surfaced in every session for the past fifty years.” (quoting Scott Houston, TEX. MUN. LEAGUE, MUNICIPAL ANNEXATION IN TEXAS: “IS IT REALLY THAT COMPLICATED?” 6 (2012), https://www.tml.org/legal_pdf/ANNEXATION.pdf [<https://perma.cc/U86J-7WMD>])).

90. See TEX. LOC. GOV'T CODE ANN. §§ 43.0671, .0681, .0691 (requiring cities in populous counties to obtain consent prior to annexation of an area).

91. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 2 (2016) (requesting the committee “[e]xamine current regulatory authority available to municipalities in their extraterritorial jurisdiction. Study current annexation

voter approved annexations, but both recommended reforming the annexation process in a way that gives citizens impacted by annexation more power.⁹² Legislators of the eighty-fifth session responded to the committees' advice by introducing a bill reforming involuntary annexation,⁹³ but it was successfully filibustered by opponents in the final hours of the regular session.⁹⁴

A special session was called and municipal annexation reform was included as one of several issues to be considered.⁹⁵ S.B. 6, an annexation reform bill similar to the regular session bill, passed in the senate.⁹⁶ The house made several changes to S.B. 6, including reducing the number of cities significantly affected by the new law,⁹⁷ reducing the time a city could

policies in Texas. Make necessary legislative recommendations to ensure a proper balance between development, municipal regulations, and the needs of citizens in Texas"); S. COMM. ON INTERGOVERNMENTAL RELATIONS, INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 2 (2016) (asking the committee to "[i]dentify areas of concern in regards to statutory extraterritorial jurisdiction expansion and the processes used by municipalities for annexation, specifically reviewing whether existing statute strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development").

92. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 71 (2016) (recommending the legislature "[r]econsider annexation reform[,] which will balance the powers between private property owners and municipalities"); S. COMM. ON INTERGOVERNMENTAL RELATIONS, INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 6 (2016) (recommending the legislature "strengthen the annexation process by encouraging greater citizen participation from those impacted by a proposed annexation plan"). The recommendation for legislative action was a departure from previous years where annexation was researched, but senate and house committees did not endorse changes in the law. H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 43-44 (2016).

93. Tex. S.B. 715, 85th Leg., R.S. (2017).

94. See Cassandra Pollock & Brandon Formby, *Sen. Menéndez's Filibuster Effectively Kills City Annexation Bill*, TEX. TRIB. (May 29, 2017), <https://www.texastribune.org/2017/05/28/texas-sen-menendez-begins-filibuster-county-annexation-bill/> [<https://perma.cc/DH3C-SYQ5>] (reporting on Texas Senator José Menéndez successfully filibustering S.B. 715 due to the provision allowing cities to regulate land around military bases being taken out of the bill).

95. See Bobby Blanchard, *20 Things Gov. Greg Abbott Wants Lawmakers to Address in a Special Session*, TEX. TRIB. (June 6, 2017), <https://www.texastribune.org/2017/06/06/heres-all-20-items-gov-greg-abbott-wants-lawmakers-address-special-ses/> [<https://perma.cc/54XP-XX9A>] (listing "[m]unicipal annexation reform" as one of the several items legislators were to consider during the special session).

96. S.J. of Tex., 85th Leg., 1st C.S. 285 (2017).

97. See H. Comm. on Land & Res. Mgmt., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S. (2017) (changing the definition of a "tier 1 county" from a county "with a population of less than 125,000" to "a population of less than 500,000"). The senate version of the bill, as it pertains to the requirement of obtaining consent to annex, would have applied to twenty-three additional Texas counties. See

begin the annexation process after an unsuccessful attempt,⁹⁸ and giving cities more authority over annexing land surrounding military bases.⁹⁹ S.B. 6, named the Municipal Annexation Right to Vote Act (MARVA),¹⁰⁰ was signed by the governor on August 15, 2017¹⁰¹ and took effect on December 1, 2017.¹⁰²

IV. THE MUNICIPAL ANNEXATION RIGHT TO VOTE ACT

MARVA amended Chapter 43 of the Texas Local Government Code¹⁰³ and significantly reduced home rule cities' annexation authority.¹⁰⁴ Below is a discussion of the key changes to annexation law created by MARVA.

A. Tier 1 and Tier 2 Municipality Definitions

MARVA adds “tier 1 county,” “tier 2 county,” “tier 1 municipality,” and “tier 2 municipality” definitions to section 43.001 of the Local Government Code, which designates a home rule city’s authority to annex.¹⁰⁵ A “tier 1 county” is any county “with a population of less than 500,000[.]”¹⁰⁶ A “tier 2 county” is any county with a population over 500,000.¹⁰⁷ A “tier 1 municipality” is a city located in one or more tier 1 counties that is annexing an area located in a tier 1 county.¹⁰⁸ A “tier 2 municipality” is any city

Population Estimates for Texas Counties, 2010-2017, TEX. ST. LIBR. & ARCHIVES COMMISSION, <https://www.tsl.texas.gov/ref/abouttx/popcnty201011.html> [<https://perma.cc/R77Y-RBKS>].

98. See H. Comm. on Land & Res. Mgmt., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S. (2017) (reducing the time period that a city must wait after an unsuccessful annexation attempt).

99. See *id.* (increasing annexation authority over the land area around military bases from a quarter of a mile to five miles).

100. S. Comm. on State Affairs, Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S. (2017).

101. Municipal Annexation Right to Vote Act, 85th Leg., 1st C.S., ch. 6, § 57, 2017 Tex. Gen. Laws 4505, 4526 (codified at TEX. LOC. GOV'T CODE § 43).

102. *Id.*

103. The act also amended sections of the Special District Local Laws Code and repealed section 5.701(n)(6) of the Water Code. *Id.* §§ 44–53, 55(c), at 4521–26 (codified at TEX. SPEC. DIST. CODE §§ 8395.151–9039.110).

104. *Id.* § 3, sec. 43.003, at 4506 (codified at TEX. LOC. GOV'T CODE § 43.003). Annexation authority and procedures for general-law municipalities did not substantially change under the amended law. See TEX. LOC. GOV'T CODE ANN. §§ 43.023–.027, 43.032–.034 (relating to annexation authority of general-law cities).

105. Municipal Annexation Right to Vote Act, ch. 6, § 1, sec. 43.001, 2017 Tex. Gen. Laws 4505, 4505–06.

106. *Id.* at 4505.

107. *Id.* Also included in the definition of a “tier 2 county” are counties of any size with “a freshwater fisheries center operated by the Texas Parks and Wildlife Department” and any tier 1 county in which residents elect to be designated as a tier 2 county. *Id.*

108. *Id.*

“wholly or partly located in a tier 2 county [] or wholly located in one or more tier 1 counties that proposes to annex an area wholly or partially located in a tier 2 county.”¹⁰⁹ The annexation authority of a city designated as a tier 1 municipality did not substantially change under MARVA.¹¹⁰ However, the annexation authority of a city designated as a tier 2 municipality changed considerably.¹¹¹

B. Tier 2 Municipality Annexation Authority

MARVA created three main classifications of annexation authority and procedures for tier 2 municipalities: annexation of an area based on request of owners,¹¹² annexation of an area with a population less than 200,¹¹³ and annexation of an area with a population of more than 200.¹¹⁴ While the procedure varies for all three categories, each one requires some form of consent from the residents and property owners of the area proposed for annexation.¹¹⁵ Consent is required not only for full annexations but also for limited purpose annexations.¹¹⁶

C. Tier 2 Municipality Annexation on Request of Owners

Subchapter C-3 of Local Government Code Chapter 43 provides the authority and procedures for annexing areas based on the request of landowners.¹¹⁷ Tier 2 municipalities have the authority to “annex an area

109. *Id.* at 4505–06.

110. *See id.* §§ 12–14, secs. 43.0205, .0505, at 4508 (amending Subchapters B and C-1, Chapter 43 of the Local Government Code to apply only to tier 1 municipalities).

111. *See id.* §§ 24–26, sec. 43.066–.0699, at 4511–17 (creating new annexation requirements for tier 2 municipalities by adding Subchapters C-2, C-3, C-4, and C-5 to Chapter 43 of the Local Government Code).

112. *Id.* § 26, secs. 43.067–.0673, at 4512–13.

113. *Id.* § 26, secs. 43.068–.0688, at 4513–15.

114. *Id.* § 26, secs. 43.069–.0699, at 4515–17.

115. *See* TEX. LOC. GOV'T CODE ANN. § 43.0671 (allowing tier 2 municipalities to annex “an area if each owner of land in the area requests the annexation”); *id.* § 43.0681 (granting tier 2 municipalities the authority to annex an area with less than 200 people after obtaining consent through a petition signed by a majority of registered voters in the area); *id.* § 43.0691 (requiring a tier 2 municipality to obtain consent through an election prior to annexation of an area with more than 200 people).

116. *See id.* §§ 43.121–.1211 (requiring tier 2 municipalities with more than 225,000 residents to “annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area”).

117. *Id.* §§ 43.067–.0673. Sponsors of MARVA state one of the objectives of the bill was to “reduce[] bureaucracy to expedite voluntary annexation when cities and land owners can agree on

if *each* owner of land in the area requests the annexation.”¹¹⁸ Prior to annexation under Subchapter C–3, the municipality must negotiate and enter into a service agreement with landowners.¹¹⁹ The municipality must also hold at least two public hearings before adopting an ordinance to annex the area.¹²⁰

D. *Tier 2 Municipality Annexation of an Area with a Population Less Than 200*

Subchapter C–4 of Local Government Code Chapter 43 provides the authority and procedures for annexing areas with a population under 200.¹²¹ A tier 2 municipality may annex an area with a population of less than 200 if consent is obtained through a petition signed by more than 50% of registered voters of the area and more than 50% of land owners if registered voters in the area do not own more than half of the area being annexed.¹²² Prior to collecting signatures for the petition, the municipality must adopt a resolution pertaining to the proposed annexation,¹²³ mail notice of the proposed annexation to “each resident and property owner[,]”¹²⁴ and conduct a public hearing.¹²⁵

The municipality has five months to collect signatures from registered voters and landowners.¹²⁶ If the municipality fails to collect the requisite number of signatures, then it is banned from proposing annexation of the area for a year.¹²⁷ If the municipality collects the requisite amount of

services.” S. Comm. on State Affairs, Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S., at 1 (2017). Subchapter C–3 appears to be the legislators’ attempt to accomplish this objective.

118. TEX. LOC. GOV’T § 43.0671 (emphasis added). Subchapter C–3 does not address *how* landowners make the request. *Id.* §§ 43.067–.0673.

119. *Id.* § 43.0672.

120. *Id.* § 43.0673. The municipality must also provide notice of the public hearings. *Id.* § 43.0673(d).

121. *Id.* §§ 43.068–.0688.

122. *See id.* §§ 43.068–.0681 (declaring additional consent from land owners is not required if the registered voters in the area own at least 50% of the land to be annexed).

123. *Id.* § 43.0682. Resolutions must include the intent to annex, a map of the area that will be annexed, and a list and schedule of services that will be provided to the area by the municipality. *Id.*

124. *Id.* § 43.0683. Notices must be mailed no later than seven days after adopting the resolution. *Id.*

125. *Id.* § 43.0684. At least one public hearing must be held within twenty-one to thirty days after adopting the resolution. *Id.*

126. *Id.* § 43.0685. The municipality has 180 days from the adoption of the resolution but cannot begin collecting signatures until after notices have been mailed and the first public hearing has been conducted. *Id.* § 43.0685(b).

127. *Id.* § 43.0686(b).

signatures then it must notify the residents and property owners of the area and hold additional public hearings.¹²⁸ Even if the municipality obtains enough signatures from residents and landowners of the area proposed for annexation, residents of the *municipality* can block the annexation.¹²⁹

E. *Tier 2 Municipality Annexation of an Area with a Population More Than 200*

Subchapter C–5 of Local Government Code Chapter 43 provides the authority and procedures for annexing areas with a population over 200.¹³⁰ A tier 2 municipality may annex an area with a population greater than 200 only after holding an election in the proposed annexation area and obtaining voter approval.¹³¹ If registered voters in the area being annexed do not own more than half of the land, then a petition signed by more than 50% of the landowners is required in addition to the election.¹³² Prior to the election, the municipality must adopt a resolution pertaining to the proposed annexation,¹³³ mail notice of the proposed annexation to “each property owner in the area[.]”¹³⁴ and conduct public hearings.¹³⁵

The annexing municipality must wait at least ninety days after adopting the resolution to hold the election and shall pay all the costs.¹³⁶ If property owner consent is required, then petition signatures will be collected first,

128. *Id.* § 43.0686(c).

129. *Id.* § 43.0687. Municipality residents can lobby against the annexation by signing “a petition protesting the annexation[.]” *Id.* If the petition has enough signatures from municipal registered voters, then the annexation may not be complete until “approval of a majority of the voters of the *municipality* voting at an election called and held for that purpose.” *Id.* (emphasis added).

130. *Id.* § 43.0691.

131. *Id.* §§ 43.069–.0691(1).

132. *Id.* § 43.0691(2).

133. *Id.* § 43.0692. The requirements are substantially similar to the resolution requirements under Subchapter C-4: intent to annex, a map of the area, and a list and schedule of services to be provided. *Id.* § 43.0682.

134. *Id.* § 43.0693. This requirement differs from the notice requirement under Subchapter C–4 in that the municipality is only required to mail the notice to property owners and must also mention the election. *Cf. id.* § 43.0683 (requiring notice of the public hearing, an explanation of the petition period, and a list and schedule of services to be provided).

135. *Id.* § 43.0694. One public hearing must be held within twenty-one to thirty days after adopting the resolution and an additional public hearing must be conducted within thirty-one to ninety days after adopting the resolution. *Id.*

136. *See id.* § 43.0696(a)–(b) (stating the election will be “held on the first uniform election date that falls on or after” either ninety days after the adoption of the resolution, or if consent of property owners is required, then after seventy-eight days from the end of the petition period); *see also* TEX. ELEC. CODE ANN. § 41.001 (setting uniform election dates).

and an election will only occur if more than 50% of the owners approve the annexation.¹³⁷ If a majority of voters do not approve the annexation or if the municipality does not obtain the requisite amount of signatures when a petition is required, then the municipality is barred from proposing annexation of the area for a year.¹³⁸ If a majority of voters approve the proposed annexation and the municipality collects the requisite amount of signatures when a petition is required, then the municipality must notify residents of the proposed area and hold additional public hearings.¹³⁹ Even if residents and property owners of the proposed area approve the annexation, residents of the *municipality* can prevent the annexation.¹⁴⁰

F. *Exceptions to the Requirement of Consent*

MARVA carved out specific instances when a tier 2 municipality may annex an area without the consent of residents and owners.¹⁴¹ Cities located in populous counties can annex enclaves within their ETJ without obtaining consent.¹⁴² Other areas that a tier 2 municipality can involuntarily annex include “industrial districts”;¹⁴³ navigable streams

137. TEX. LOC. GOV'T §§ 43.0695(a), 43.0696(a)(2). The municipality has 180 days from the adoption of the resolution to collect signatures but cannot begin collecting until after notice has been mailed and the first public hearing is conducted. *Id.* § 43.0685(b).

138. *Id.* § 43.0697.

139. *Id.* § 43.0697(c).

140. *See id.* § 43.0698 (allowing residents of the municipality to lobby against the annexation by signing “a petition protesting the annexation of an area”).

141. *See* Municipal Annexation Right to Vote Act, 85th Leg., 1st C.S., ch. 6, §§ 4–9, secs. 43.026, .027, .031, .035, .051, 2017 Tex. Gen. Laws 4505, 4506–08 (codified at TEX. LOC. GOV'T CODE §§ 43.011–.016) (creating a new subchapter to Chapter 43 of the Local Government Code which applies to both tier 1 and tier 2 municipalities).

142. TEX. LOC. GOV'T CODE ANN. § 43.0115. This exception only applies when the annexing city is located in a county with two or more cities each with a population over 300,000 and the area proposed for annexation is “wholly surrounded by a municipality” and “has fewer than 100 dwelling units.” *Id.* § 43.0115(a).

143. *Id.* § 43.0116. Industrial district is defined as “the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located.” *Id.* § 42.044(a). Municipalities may designate any area within its ETJ as an industrial district and can “treat the designated area in a manner considered by the governing body to be in the best interests of the municipality.” *Id.* § 42.044(b). Municipalities will enter into agreements with landowners within the industrial district, which typically includes immunity from annexation for a specific time period. *Id.* § 42.044(c). This means that municipalities cannot involuntarily annex components of an industrial district that are subject to immunity until after the contracts with landowners expire. *Id.* § 43.0116(b).

adjacent to the municipality;¹⁴⁴ and land that qualifies for agricultural use, wildlife management use, or timber land.¹⁴⁵

MARVA created a separate provision pertaining to annexing land surrounding military bases.¹⁴⁶ A municipality may annex the area surrounding military bases that conduct active training programs.¹⁴⁷ Tier 2 municipalities are still required to allow residents in the proposed annexation area surrounding the military base to vote on the matter, but if the annexation is not approved, the municipality will have “the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study.”¹⁴⁸

V. POTENTIAL IMPLICATIONS FOR CITIES AND THE STATE OF TEXAS

Supporters of property rights and the fight to end involuntary annexation were victorious in the passing of MARVA.¹⁴⁹ While the concerns of those opposed to involuntary annexation are understandable,¹⁵⁰ MARVA disproportionately shifted the balance of power away from municipalities.¹⁵¹ The following are areas of concern that cities and Texas as a whole should be prepared for as a result of the new annexation laws.

144. *Id.* § 43.013; *see also* *City of Nassau Bay v. Winograd*, 582 S.W.2d 505, 508 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.) (explaining a city can regulate the land area around an annexed stream for limited purposes but cannot exercise general regulatory powers).

145. TEX. LOC. GOV'T CODE ANN. § 43.016.

146. *See id.* § 43.0117 (defining “military base” as “a presently functioning federally owned or operated military installation or facility”).

147. *See id.* § 43.0117(b) (“A municipality may annex . . . any part of the area located within five miles of the boundary of a military base . . .”).

148. *Id.*

149. *See* Alex Samuels & Shannon Najmabadi, *Legislature Advances Annexation Bill to Gov. Abbott*, TEX. TRIB. (Aug. 15, 2017), <https://www.texastribune.org/2017/08/13/legislature-advances-annexation-bill-gov-greg-abbott-consideration/> [<https://perma.cc/9YUM-6GQK>] (quoting state Senator Donna Campbell as saying the municipal annexation bill “is a huge victory for property rights of Texans”).

150. *See* Edwards, *supra* note 17, at 119 (“Annexation is often perceived as a process that strictly benefits annexing cities at the expense of the annexed, as it may be pursued simply to enhance tax base.”).

151. *See* H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 71 (2016) (recommending lawmakers create annexation legislation that strikes “a balance of powers between property owners and municipalities to ensure the success of [the] Texas economy”).

A. *Annexation in Populous Counties Will Significantly Decrease*

Under the laws created by MARVA, municipal annexation in populous counties¹⁵² is not likely to occur.¹⁵³ Even if a municipality can get approval to annex an area, it requires a costly process that city residents will have to cover.¹⁵⁴ Additionally, fringe communities that consent to annexation may not be beneficial for the annexing municipality because the cost of the new area may exceed the revenues generated by the annexed community.¹⁵⁵

The inability to annex may lead to fragmentation within metropolitan

152. Tier 2 counties subject to strict annexation requirements include Harris, Dallas, Tarrant, Bexar, Travis, Collin, Hidalgo, El Paso, Denton, Fort Bend, Montgomery, and Williamson. *Population Estimates for Texas Counties, 2010-2017*, TEX. ST. LIBR. & ARCHIVES COMM'N, <https://www.tsl.texas.gov/ref/abouttx/popcnty201011.html> [https://perma.cc/R77Y-RBKS]. Although this only includes twelve of the 254 counties in Texas, these counties are home to more than 60% of Texas residents. *See id.* (reporting the estimated total population in 2016 for all counties with more than 500,000 people as comprising of 63% of the total population of Texas). It is estimated that the Dallas area will be the least effected by the amended law due to the land-locked nature of the region. PERRYMAN GRP., *supra* note 12, at 19.

153. *See* Palmer & Lindsey, *supra* note 22, at 69 (“[A]nnexation occurs less often in states that make annexation contingent upon approval by referendum or written consent of property owners or residents in the territory to be annexed.”); *see also* Tyson, *supra* note 14, at 514 (explaining how approval of annexation by residents or property owners of the area proposed for annexation is unlikely considering that this puts “all power over boundary change in the hands of those of who may have deliberately fled the central city and are therefore likely opposed to its expansion”). During the November 2018 midterm elections, residents living in San Antonio’s ETJ around the Lackland and Camp Bullis military bases voted on whether they wanted to be annexed for limited purposes. Iris Dimmick, *Residents of Military Buffer Zones to Vote on Annexation in November*, RIVARD REP. (Aug. 2, 2018), <https://therivardreport.com/residents-of-military-buffer-zones-to-vote-on-annexation-in-november/#> [https://perma.cc/GZ89-8Y52]. The results were overwhelmingly against annexation. Van Darden, *Election Results: Charter Amendments, Annexation Results*, KSAT (Nov. 7, 2018), <https://www.ksat.com/news/politics/election-results-charter-amendments-annexation-results> [https://perma.cc/G56F-2KXG] (reporting that 95% of voters in the Lackland area and 83% of voters in the Camp Bullis area voted against annexation).

154. *See* TEX. LOC. GOV'T CODE ANN. § 43.0696(b) (“The municipality shall pay for the costs of holding the election.”); *see also* Cammack, *supra* note 24, at 642 (describing the various costs associated with annexation elections). *But see* H. Research Org., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S., at 4 (2017) (claiming the costs associated with an annexation election “would be minimal and easily recouped if annexation were successful”).

155. *See, e.g.*, H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 52 (2016) (describing some of the issues associated with uncontrolled development including “traffic issues, grid-lock, [and] right-away issues”). Annexing communities that developed without regulatory controls in place will likely require financial resources to fix problems which could have potentially been avoided. *See* Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247, 249 (1992) (“[I]nvoluntary municipal annexation power is a preferable method of ensuring orderly urban growth and equitable provision of municipal services.”).

regions.¹⁵⁶ Fragmentation is undesirable because it can reduce economic competitiveness of a region,¹⁵⁷ create socioeconomic segregation,¹⁵⁸ and influence other factors that negatively impact the economic development of a region.¹⁵⁹ Unincorporated communities protected from annexation by the newly amended law may also experience increases in uncontrolled and undesirable development, which can create infrastructure issues,¹⁶⁰ affect property values,¹⁶¹ and negatively impact the environment.¹⁶²

156. See Tyson, *supra* note 16, at 348 (“The ability of a municipality to annex land within its metropolitan region can be a key tool in limiting . . . municipal fragmentation . . .”).

157. See JERRY PAYTAS, DOES GOVERNANCE MATTER? THE DYNAMICS OF METROPOLITAN GOVERNANCE AND COMPETITIVENESS 22 (2001) (concluding “fragmented governance at the metropolitan level reduces the competitiveness of the metropolitan economy”); see also Tyson, *supra* note 14, at 531 (arguing that mid-size cities best way of competing on an international level is for the entire region to work together).

158. See RUSK, *supra* note 11, at 2 (“[T]he more a region is broken up into multiple governments . . . the more racially and economically segregated its housing market is . . .”); John I. Carruthers & Gudmundur F. Ulfarsson, *Fragmentation and Sprawl: Evidence from Interregional Analysis*, 33 GROWTH & CHANGE 312, 314–17 (2002) (describing how fragmentation contributes to urban sprawl and can lead to socioeconomic segregation).

159. See Tyson, *supra* note 14, at 532 (“[S]tudies support the contention that fragmentation is bad for metropolitan economic development efforts.”).

160. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 52 (2016) (reporting on “the ill effects when neighboring municipalities do not annex such as uncontrolled traffic issues, grid-lock, right-away issues and not having funding to pay roadways”).

161. See HOW CITIES WORK, *supra* note 5, at 37 (“[Z]oning grants a city the authority to prohibit detrimental uses and to promote beneficial uses [of land] . . . thereby protecting the quality of life and property values for residents.”); see also Joseph L. Sax, *Why America Has a Property Rights Movement*, 2005 U. ILL. L. REV. 513, 515 (2005) (acknowledging that unless early land-planning initiatives are established to give property owners a clearer signal to what they can do with their land, early and late developers will be treated differently in regards to what they are allowed to do with their land).

162. See Janice C. Griffith, *Regional Governance Reconsidered*, 21 J.L. & POL. 505, 512 (2005) (“[S]uburban development has left few open spaces to absorb water runoff, to preserve habitat for wildlife, or to provide green space for recreational use.”); CITY OF SAN ANTONIO, REVIEW OF ANNEXATION FINANCIAL ANALYSIS AND BEST PRACTICES 10 (2016), <https://www.sanantonio.gov/Portals/0/Files/Planning/Annexation/PFM-Annexation-Financial-Analysis-Report.pdf> [<https://perma.cc/7QED-KRTB>] (discussing how counties in Texas have limited zoning powers which means municipal annexation is an “important regional tool to either incentivize or disincentivize growth in a particular area, in order to accomplish broader regional goals such as . . . environmental preservation” (emphasis added)). See, e.g., Edmond Ortiz, *City Council Approves Southside Annexation*, RIVARD REP. (June 22, 2017), <https://therivardreport.com/council-approves-southside-annexation/#> [<https://perma.cc/R3VE-S8W3>] (reporting on the City of San Antonio annexing land so as to put resource protections in an area near a river and around a nature preserve).

B. *Fiscal Health Concerns for Cities and Metropolitan Regions*

Fringe communities benefit by living near municipalities.¹⁶³ Some of these benefits include employment with businesses located within the city;¹⁶⁴ access to public spaces; police and fire protection; and healthcare services.¹⁶⁵ When people utilize municipal funded public services without contributing to the tax base,¹⁶⁶ city resources become overly burdened.¹⁶⁷ Involuntary annexation helps cities relieve these burdens,¹⁶⁸ and thus the inability to annex fringe communities creates a cap on municipal property tax.¹⁶⁹ Now that involuntary annexation is no longer available for Texas

163. See Reynolds, *supra* note 155, at 253 (acknowledging “perhaps [the] most compelling[] interest advanced by the municipality is that annexation of the fringe would merely confirm the reality that these developments are already a functional part of the city they surround”).

164. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 67 (2016) (quoting a study which shows that “80[%] of residents in [San Antonio’s] ETJ, work within the city”); Edwards, *supra* note 17, at 121 (describing the process in which city residents move away to the outlying areas of town but “may continue to work in the central cities using municipal services and contributing to even higher city spending”). Many of these companies decide to locate to a city or remain there due to economic development efforts funded by city tax dollars. See HOW CITIES WORK, *supra* note 5, at 19 (explaining the beneficial economic impact from tax dollars).

165. See H. Research Org., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S., at 5 (2017) (noting fringe residents “rely on infrastructure, cultural attractions, and other essentials that are built and maintained by city tax revenue”); PERRYMAN GRP., *supra* note 12, at 4–5 (listing the services and amenities that central cities often provide to the surrounding area such as “hospitals, universities, cultural arts, sports facilities,” interstate highways, transit hubs, police and fire services, and parks and recreation); Edwards, *supra* note 17, at 123 (“Municipal advocates also argue that fringe residents are already enjoying urban services and urban infrastructure and not contributing to the finance of them.”).

166. This concept is sometimes referred to as “consumption without contribution.” H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 55 (2016). It should be noted that fringe residents do contribute some economic benefits to the city. See *id.* at 70 (recognizing that fringe residents contribute to city sales tax). However, fringe communities do not contribute to the largest portion of city revenue: city property taxes. See HOW CITIES WORK, *supra* note 5, at 8 (“Property taxes are the leading source of city revenue.”).

167. See Edwards, *supra* note 17, at 121 (maintaining that people living in fringe communities and not attributing to city revenues “may lead to a situation of fiscal stress”).

168. See PERRYMAN GRP., *supra* note 12, at 2 (“Annexation expands the tax base, thus providing funds to support an increasing regional population.”); Cammack, *supra* note 24, at 626 (“Unilateral annexation allows municipalities at the heart of a metropolitan area to tax surrounding areas that have benefited from the city’s services and growth, providing for the central city’s logical future growth.”).

169. Cf. Edwards, *supra* note 17, at 131 (portraying policy that prevents annexation as “protect[ing] the desire of fringe residents to avoid municipal obligations, yet enjoy municipal benefits”); Reynolds, *supra* note 155, at 266 (“[N]onresidents on the fringe should no more have the power to opt out of the responsibilities of urban life than should city residents be able to claim an exemption from taxes to support services they do not use.”).

cities in populous counties, financial burdens must be relieved elsewhere.¹⁷⁰

Cities in populous counties are now forced to focus on methods other than annexation to increase revenues.¹⁷¹ Municipalities can increase their tax base within the city by utilizing economic development strategies to attract new businesses and residents.¹⁷² While these tactics are already used in larger cities,¹⁷³ most economic development tools are improbable options for mid-size cities, thus making them the most likely to be negatively affected by the reformed laws.¹⁷⁴ Municipalities will likely increase taxes on residents living within the city at a rate higher than they otherwise would have,¹⁷⁵ which further exacerbates the disproportion in contributions between city residents and fringe residents.¹⁷⁶ An increasing tax burden on city residents can lead to more people fleeing to the fringe, thereby adding more to the city's problems and a continuation of this cycle.¹⁷⁷ Migration

170. See PERRYMAN GRP., *supra* note 12, at 1–2 (stressing concerns about the prosperity of central cities in metropolitan statistical areas if there are not enough sources of revenue to support growing demands).

171. See generally TEX. MUN. LEAGUE, REVENUE MANUAL FOR TEXAS CITIES (2017), <https://www.tml.org/p/2017revenuemanual.pdf> [<https://perma.cc/FV7E-4V6P>] (detailing the various revenue options for Texas cities).

172. See TEX. MUN. LEAGUE, ECONOMIC DEVELOPMENT HANDBOOK 1–5, 42, 80–127 (Bill Longley ed., 2017), https://www.tml.org/p/2017EconomicDevelopmentHandbook_FINAL.pdf [<https://perma.cc/2CKK-T5G5>] (exploring economic development incentives available to Texas cities including economic development sales tax, venue project tax, and property tax incentives); RICHARD M. HAUGHEY, URBAN LAND INST., HIGHER-DENSITY DEVELOPMENT: MYTH AND FACT 6 (2005), http://uli.org/wp-content/uploads/ULI-Documents/HigherDensity_MythFact.ashx.pdf [<https://perma.cc/CAN4-YJUD>] (noting a growing demand in America for “higher-density housing in mixed-density communities . . . over single-family houses far from the community core”).

173. See HOW CITIES WORK, *supra* note 5, at 19 (“[L]arger cities have partnered with the state to attract such major developments as a Texas Instruments facility and a Toyota plant.”).

174. See Tyson, *supra* note 14, at 521 (stating mid-size metropolitan regions have a hard time being economically competitive because “they lack the image, economic and population diversity, and the real and perceived quality of life advantages that large urban regions have in abundance”); HOW CITIES WORK, *supra* note 5, at 19 (“Smaller [Texas] cities are usually on their own to attract business.”).

175. See Griffith, *supra* note 162, at 512–13 (“As central cities . . . continue to maintain and operate many facilities used by the region as a whole, they must raise taxes upon their own residents, making the inner city even less affordable . . .” (footnote omitted)); Raymond & Menifield, *supra* note 2, at 417 (reporting the results of a study that indicate cities unable to expand their boundaries have the highest taxes).

176. Cf. Reynolds, *supra* note 155, at 266 (describing the movement against annexation as favoring the interests of a few over the interests of all residents in the region).

177. See PERRYMAN GRP., *supra* note 12, at 21 (describing the cycle when cities cannot meet their financial burdens, “The result is perpetual deterioration on the sustainability of the core of the area, which in turn accelerates flight to outlying areas.”). The following cities help illustrate this concern:

out of the city is especially concerning when one considers that historically most people who flee to the suburbs are wealthy and middle-class families leaving behind a poorer tax base.¹⁷⁸ In addition to increasing revenues, cities may also be forced to reduce their spending on public services.¹⁷⁹ Poorly funded public services can make a municipality undesirable to its residents¹⁸⁰ and can hamper the city's ability to attract new companies and residents.¹⁸¹

The fiscal issues that municipalities may experience due to annexation reform are not only concerning to cities but also to the entire metropolitan region. Neighboring communities benefit from their proximity to central cities.¹⁸² This means if the central city suffers, so do the suburbs and the

In 1950, Detroit, Baltimore, Cleveland, and St. Louis were the fifth, sixth, seventh, and eighth largest cities in the nation in population. All four of them were prevented from expanding their city limits. Sixty years later, in 2010, all four cities had about the same number of square miles they had in 1950.

HOW CITIES WORK, *supra* note 5, at 35. Current data places Detroit, Baltimore, Cleveland, and St. Louis as twenty-third, thirtieth, fifty-first, and sixty-second in the nation in population. *City and Town Population Totals: 2010–2017*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> [<https://perma.cc/C2T8-4HF8>].

178. See Raymond & Menifield, *supra* note 2, at 405 (claiming “the exit of former middle and upper-class city inhabitants who have since moved beyond the outer reaches of the city” as being largely responsible for the depleting tax bases in metropolitan areas); Tyson, *supra* note 14, at 516 (asserting the “initial wave of white flight and a subsequent wave of [multiracial] middle class flight . . . has decimated the tax base . . . of metropolitan region central cities”).

179. See PERRYMAN GRP., *supra* note 12, at 5 (“Without the capacity to annex . . . growing areas and increase its tax base, a city will face potentially insurmountable fiscal challenges.”). Texas municipalities spend more on public services than the state and provide police, fire and EMS, infrastructure, parks and recreations, libraries, and other services. HOW CITIES WORK, *supra* note 5, at 7–9 (2017).

180. See PERRYMAN GRP., *supra* note 12, at 21 (describing the diminishing quality of urban centers as tarnishing the image of the region and reducing retention).

181. See H. Research Org., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S., at 5 (2017) (predicting involuntary annexation reform “could threaten essential economic development incentives funded and offered by cities, which are key to staying competitive with other states and attracting businesses and new residents to Texas”); PERRYMAN GRP., *supra* note 12, at 21 (stressing a deteriorating city has reduced “prospects for business locations [and] expansions”).

182. See H. Research Org., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S., at 5 (2017) (noting fringe residents “rely on infrastructure, cultural attractions, and other essentials that are built and maintained by city tax revenue”); H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 67 (2016) (relaying testimony pertaining to a study which shows that a majority of residents in San Antonio’s ETJ, work within San Antonio); PERRYMAN GRP., *supra* note 12, at 4 (listing the services and amenities that central cities often provide to the surrounding area such as hospitals, universities, cultural arts, sports facilities, interstate highways, transit hubs, police and fire services, and parks and recreation).

entire metropolitan region.¹⁸³ To offset the potential negative impacts of annexation reform, communities within metropolitan regions have to work collectively to attract new businesses¹⁸⁴ and manage growth.¹⁸⁵ Counties may also have to take on a larger governance role,¹⁸⁶ although this would require significant legislative efforts.¹⁸⁷

C. *Statewide Fiscal Concerns*

The inability to annex is not only a concern for the cities and regions affected by the reformed law but also the entire state.¹⁸⁸ Texas relies heavily on the economic prosperity of its cities. Unlike the majority of states in the United States, there is no state income tax in Texas.¹⁸⁹ This means revenue to pay for public services must come from other sources. While the state does have sources of revenue,¹⁹⁰ Texas municipalities actually pay for a majority of public services.¹⁹¹ All states rely to some degree on local

183. See PERRYMAN GRP., *supra* note 12, at 1–3, 5 (implying fringe communities will be negatively affected by a deteriorating city center).

184. See, e.g., Paul Bell & Eric Bell, Opinion, *Amazon: Choose San Austin*, RIVARD REP. (Sept. 16, 2017), <https://therivardreport.com/amazon-choose-san-austin/> [<https://perma.cc/DKJ4-YVLZ>] (encouraging city leaders of the neighboring cities Austin and San Antonio to collectively propose a regional bid to Amazon).

185. See Griffith, *supra* note 162, at 517 (describing “smart growth” practices available to regions to help counter sprawl).

186. See Raymond & Menifield, *supra* note 2, at 415–16 (discussing city-county consolidation as an alternative way to counter deteriorating effects of suburban flight); ECONOMIC DEVELOPMENT HANDBOOK, *supra* note 172, at 170–73 (reviewing city-county cooperative efforts).

187. See RUSK, *supra* note 11, at 12 (“State legislatures should mandate regional tax-base-sharing programs . . .”); Kristen Clarke, *Voting Rights & City-County Consolidations*, 43 HOUS. L. REV. 621, 626 (2006) (describing the rarity of referendums for city-county consolidation being approved by voters). See generally *id.*, for a further discussion of city-county consolidation.

188. See Houston, *supra* note 49, at 353 (alleging “eroding annexation authority would be an economic disaster for the State of Texas”).

189. See Nicole Kaeding, *State Individual Income Tax Rates and Brackets for 2016*, TAX FOUND. (Feb. 8, 2016), <https://taxfoundation.org/state-individual-income-tax-rates-and-brackets-2016/> [<https://perma.cc/5YSQ-8AAY>] (reporting Texas as one of only seven states that did not have a state income tax in 2016).

190. Sources of state revenue in Texas include federal funds, sales tax and other state taxes such as cigarettes, motor vehicle, motor fuel, and franchise. Eva DeLuna Castro & Dick Lavine, Ctr. for Pub. Pol’y Priorities, *How Texas Spends its Money. How Texas Gets its Money. Why it Doesn’t Add Up.*, RIVARD REP. (Feb. 27, 2013), <https://therivardreport.com/how-texas-spends-its-money-how-texas-gets-its-money-why-it-doesnt-add-up/> [<https://perma.cc/NTA4-UTLY>].

191. See *id.* (“Texas[s] local governments provided \$90 billion in public services in 2009, compared to \$59 billion from the Texas state budget.”). Texas cities have paid more than the state for public services for over a decade. See *id.* (“Local taxes have provided the majority of state and local

governments to provide various public services, but most states grant financial aid¹⁹² to cities to assist in the cost of these services.¹⁹³ This is not the case in Texas where municipalities receive virtually no state aid¹⁹⁴ and instead contribute funding *to the state*.¹⁹⁵ Texas municipalities are “compelled to share city-generated revenue with the state[.]”¹⁹⁶ Examples of Texas cities transferring revenues to the state include administrative fees paid to the state for collecting and processing sales tax,¹⁹⁷ local participation in state highway projects,¹⁹⁸ costs associated with municipal courts collecting state fees,¹⁹⁹ and Texas Commission on Environmental Quality fees.²⁰⁰ While the exact amount of money paid by cities to the State of

taxes for public services in every year since 2002, peaking at a [56%] share of state and local taxes in 2010.”).

192. State aid is “a grant made by the state to cities from revenue generated by the state[.]” HOW CITIES WORK, *supra* note 5, at 14.

193. See CHRISTIANA K. MCFARLAND & CHRISTOPHER W. HOENE, NAT’L LEAGUE OF CITIES, CITIES AND STATE FISCAL STRUCTURE: 2015, at 20 (2015), http://www.nlc.org/sites/default/files/2017-02/NLC_CSFS_Report_WEB.PDF [<https://perma.cc/YL3L-7KTN>] (listing the percentage of municipal general revenue that comes from state aid for each state in the United States).

194. See *id.* at 21 (reporting that only 4% of general revenue for the average Texas city comes from state aid as compared to the United States average of 18%). Only Georgia, Oklahoma, and West Virginia receive a smaller percentage than Texas cities. *Id.*

195. See HOW CITIES WORK, *supra* note 5, at 14–16 (describing the “numerous ways in which cities transfer revenue to the state”).

196. *Id.* at 14.

197. *Id.* Revenues from sales tax are transferred to the state in the following manner:

When a Texan purchases a product that is subject to the state and local sales tax, the merchant collects the entire tax due and remits it to the state comptroller. The comptroller, in turn, remits the local share back to the appropriate local government (city, metropolitan transit authority, county, and/or special district). For providing this service and for performing other administrative, enforcement, and reporting duties, the comptroller deducts two percent of the local share of the sales tax and deposits that amount in the state’s general revenue fund.

The two percent fee is high compared to the same fee in other states. . . . A [Texas Municipal League] committee . . . estimate[d] the cost of collection to the state. The committee’s estimate was at most \$27.7 million per year, far less than the \$107 million paid by cities, [thereby] generating a “profit” of more than \$79 million to the state.

Id.

198. See *id.* at 14–15 (explaining an increase in state highway project costs being shared with local governments in response to a request from the Texas Department of Transportation).

199. *Id.* at 15 (claiming reimbursements to municipalities to cover the administrative cost of collecting state fees are not enough and that increasingly more of the overall fees collected by municipal courts are going to the state and less to the municipality).

200. See Houston, *supra* note 49, at 334–35 (asserting the Texas Commission on Environmental Quality is largely funded by local governments).

Texas is unclear, the Texas Municipal League has estimated it to be over \$250 million per year.²⁰¹

Not having a state income tax, giving virtually no state aid to cities, and sharing city revenues with the state creates a substantial dependence and burden on Texas cities.²⁰² The average Texas municipality has an array of revenue sources²⁰³ but relies heavily on property taxes.²⁰⁴ Although property taxes are higher in Texas than the average state,²⁰⁵ Texans pay one of the lowest overall tax rates.²⁰⁶ Furthermore, even though municipalities significantly depend on property taxes, only 16% of property taxes paid in Texas go to cities.²⁰⁷ Despite all the financial pressure on municipalities, state lawmakers continue to support and pass legislation that chips away at local government's ability to collect property taxes.²⁰⁸ Decisions in recent years to cap property tax have resulted in a massive state deficit²⁰⁹ and a severely underfunded school finance system.²¹⁰ The reformed annexation laws created by MARVA place additional limits on cities ability to collect

201. HOW CITIES WORK, *supra* note 5, at 16.

202. *See id.* at 7 (summarizing a National League of Cities report establishing “the State of Texas relies very heavily on Texas cities to generate the revenue necessary for municipal facilities and services”).

203. Sources of revenues that make up Texas municipal general funds include sales tax, right-of-way rentals, permit fees, and court fines. *Id.* at 8–9.

204. *See* DeLuna Castro & Lavine, *supra* note 190 (“Local property taxes are the primary source of revenue for local governments (school districts, cities, counties, and special districts like community colleges).”). Recent estimates show property tax as accounting for 34% of Texas cities’ general fund revenues. HOW CITIES WORK, *supra* note 5, at 8.

205. *See* DeLuna Castro & Lavine, *supra* note 190 (ranking Texas as having the sixteenth highest local tax bill and the fourteenth highest property taxes per capita).

206. *See* HOW CITIES WORK, *supra* note 5, at 11 (ranking Texas as “[forty-sixth] in the amount of combined state and local taxes paid by residents”).

207. *See id.* at 6 (presenting property tax distribution data published by the Texas Comptroller’s Biennial Property Tax report).

208. *See* Tex. S.B. 2, 85th Leg., R.S. 45 (2017) (proposing a 4% cap on city property tax increases); DeLuna Castro & Lavine, *supra* note 190 (reporting the Texas Legislature in 2006 “requir[ed] school districts to reduce their school property tax rates by one-third”).

209. The Center for Public Policy Priorities estimates the deficit to be around \$10 billion for each biennium since 2006. DeLuna Castro & Lavine, *supra* note 190.

210. *See* HOW CITIES WORK, *supra* note 5, at 7 (“[P]ublic schools . . . rely almost exclusively on the property tax . . .”); DeLuna Castro & Lavine, *supra* note 190 (asserting the deficit forced the legislature “to make cuts to education that have severely damaged our ability to prepare our kids for the future”). It has been estimated that “[o]ver the last two decades, if state and local taxes had merely been held constant . . . the [l]egislature would have had tens of billions of additional dollars to invest in children.” *Id.*

property taxes²¹¹ and thereby have the potential to further exacerbate this deficit.²¹² In a state that already pays one of the lowest tax rates in the United States, should lawmakers be supporting legislation that continues to lower it even more?²¹³ This is especially concerning when coupled with the \$10 billion deficit and the fact that Texas is a low-spending state.²¹⁴ While annexation reform alone is not likely to completely jeopardize Texas's economy,²¹⁵ continued legislation reducing municipal authority may slowly erode away at the economic success of Texas.²¹⁶

VI. CONCLUSION

The passing of MARVA was a clear victory for the property rights movement.²¹⁷ Supporters of MARVA fought against involuntary annexation maintaining that it is not fair to force people into the city limits without their consent.²¹⁸ While this is a legitimate concern, their argument fails to take into account the benefits of living close to a city.²¹⁹ City resources are drained when fringe communities receive benefits provided by

211. MARVA essentially creates a cap on property taxes by preventing municipalities from taxing fringe residents that regularly consume benefits provided by the city. *Cf.* MCFARLAND & HOENE, *supra* note 193, at 11 (“[S]tate and local tax systems are constrained in significant ways . . . through voter- or state-imposed . . . tax and expenditure limitations . . .”).

212. *Cf.* DeLuna Castro & Lavine, *supra* note 190 (“[The] \$10 billion hole will appear in every state budget until the Legislature fills it with additional revenue.”).

213. *See* HOW CITIES WORK, *supra* note 5, at 16 (“It’s easy to grasp why some state legislators are tempted to turn to cities and ask them to generate revenue for the state. It’s much harder to understand why some of those same legislators have been trying for several years to limit the revenue-generating capacity of cities by placing caps on the municipal property tax.”).

214. *See* DeLuna Castro & Lavine, *supra* note 190 (“Texas is [forty-third] on direct general spending per capita, for state and local government.”).

215. *But see* PERRYMAN GRP., *supra* note 12, at 21–22 (predicting involuntary annexation reform will cost the State of Texas “\$305.7 billion in yearly gross product, \$168.8 billion in annual personal income, and 1,234,760 permanent jobs” over a thirty-year period).

216. *See* MCFARLAND & HOENE, *supra* note 193, at 2 (“To ensure economic vitality, state fiscal systems should provide sufficient fiscal autonomy for localities to fund their share of resident needs.”); *see also* RUSK, *supra* note 11, at 11 (“State legislatures should have a vital interest in ensuring the fiscal viability of their state’s municipalities, particularly their major cities.”).

217. *See* Samuels & Najmabadi, *supra* note 149 (quoting Texas Senator Donna Campbell as saying the new law “is a huge victory for property rights of Texans”).

218. *See, e.g.*, FIELDS & QUINTERO, *supra* note 45, at 10 (criticizing involuntary annexation as “an unjust exercise of government power”).

219. *See* H. Comm. on Land & Res. Mgmt., Bill Analysis, Tex. S.B. 6, 85th Leg., 1st C.S. (2017) (“[T]he vast majority of those who live just outside city limits commute into the city and rely on infrastructure, cultural attractions, and other essentials that are built and maintained by city tax revenue.”).

municipalities but do not contribute their fair amount of taxes.²²⁰ Annexation allowed Texas cities to relieve the burdens created by the fringe communities.²²¹

MARVA shields fringe community property owners from paying for benefits they receive from the city and therefore creates a cap on municipalities' ability to tax²²² and leaves cities to find other ways to relieve their financial problems.²²³ The fiscal health of Texas cities is crucial to the economic strength of the entire state.²²⁴ For over a decade, local governments have contributed more to public services than the State of Texas²²⁵ and with almost no state aid.²²⁶ If Texas is going to continue to heavily depend on local governments, it should be giving cities more tools instead of taking them away.

While it is unlikely that the new annexation laws will completely jeopardize Texas's economy, legislation that continues to restrict municipal authority may collectively harm the future economic success of Texas and should not be supported by state lawmakers. "That being said, and in spite of the legislature's confusing, continued efforts to harm the state's economic engines, city officials in Texas are resilient and will find innovative ways to keep the Texas miracle alive."²²⁷

220. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 55 (2016) (testimony of the City Manager for the City of Rockport describing city benefits received by fringe residents as "consumption without contribution").

221. See Edwards, *supra* note 17, at 121 ("[A]nnexation has been pursued to offset the fiscal implications of the migration of middle- and upper-income people fleeing central cities, which may lead to a situation of fiscal stress."); see also H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 54 (2016) (quoting the Mayor for the City of Frisco as saying: "The reason behind forced annexation is to protect the public good.").

222. See Edwards, *supra* note 17, at 131 (asserting annexation reform "protects the desire of fringe residents to avoid municipal obligations, yet enjoy municipal benefits").

223. See generally REVENUE MANUAL FOR TEXAS CITIES, *supra* note 171 (listing the various ways Texas cities can generate revenues).

224. See H. COMM. ON LAND & RES. MGMT., INTERIM REPORT TO THE 85TH TEXAS LEGISLATURE, 84th Leg., R.S., at 43 (2016) ("The State relies heavily on municipalities to create . . . stable environments for the growing population all the while enhancing the economic growth.").

225. See DeLuna Castro & Lavine, *supra* note 190 ("Local taxes have provided the majority of state and local taxes for public services in every year since 2002 . . .").

226. See MCFARLAND & HOENE, *supra* note 193, at 21 (reporting how only 4% of Texas cities' general revenue comes from state aid).

227. TEX. MUN. LEAGUE, HOME RULE CITIES TAKE HEED: ANNEXATION REFORM EFFECTIVE DECEMBER 1 (2017), https://www.tml.org/legis_updates/home-rule-cities-take-heed-annexation-reform-effective-december-1 [<https://perma.cc/5XMJ-5BGL>].