

# The Virginia News Letter

## Virginia's Never-ending Moratorium on City-County Annexations

by Andrew V. Sorrell  
and  
Bruce A. Vlk

### Introduction

Annexation has been one of the most contentious issues facing local government in Virginia in the last 100 years. Few controversies stoke the passions of its citizens more, with the possible exception of the building of a new road.<sup>1</sup> For much of the 20th century, cities grew at the expense of counties. City-county cooperation was non-existent and mistrust was high because of the looming threat of annexation. As the civil rights era dawned, many annexation battles were tainted with racial undertones.

As described by local government scholar Jack D. Edwards, "Annexation is the process by which a city extends its boundaries to include unincorporated land lying outside the city."<sup>2</sup> In Virginia, cities are independent municipalities not part of any adjacent county while towns are smaller incorporated governmental bodies that are located within a county. This article will provide a brief background on the legacy of municipal boundary changes in Virginia and how such history has shaped current annexation law for cities and towns. We will describe the effects of annexation today and consider what would happen if the state's current annexation moratorium were lifted.

### Background and History

Virginia has two basic forms of independent local government: counties and cities. As stated in the *Encyclopedia of Virginia* web site, "Virginia's 39



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incorporated cities are politically and administratively independent of the counties with which they share borders, just as counties are politically and administratively independent of each other."<sup>3</sup> Virginia is atypical in the way it separates cities and counties. In fact, there are only three other independent cities in the United States—Baltimore, Maryland; St. Louis, Missouri; and Carson City, Nevada.<sup>4</sup> Though independent cities were implied in the Virginia Constitution of 1869 and again recognized in the Constitution of 1902, Virginia did not officially codify the independent status of Virginia cities until the current constitution, the Constitution of 1971.<sup>5</sup>

Prior to 1902, municipal boundary changes occurred through special acts of the General Assembly.<sup>6</sup> The Constitution of 1902 banned boundary changes by these special acts, and in 1904 the General Assembly adopted the procedural requirements for annexation that are the basis for what is still in place today.<sup>7</sup> In comparison to other states, Virginia's annexation process is unique with its reliance on a special three-judge panel. Other states, where the stakes are not generally as high for cities and counties because an annexation would not remove a portion of a county's tax base, use a variety of methods, such as special legislative act, ordinance, popular determination, judicial process and administrative agency.<sup>8</sup> Virginia's use of a judiciary-led process can take on political and legislative roles at times. In



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the past, most annexations occurred by a city filing suit in the annexation court to annex a stretch of land in a neighboring county. While annexations can also be citizen-initiated, that type occurs rarely. After the annexation court hears from lawyers representing each side, a decision is made by the three-judge panel. Annexation cases were almost always expensive endeavors for both parties involved. In addition, the prevailing city was typically required to compensate the neighboring county for the annexed land.<sup>9</sup>

When established, Virginia’s system of city-county separation was meant to allow for increased political accountability and was a way to avoid duplicative municipal services since cities had historically provided municipal services and counties did not.<sup>10</sup> However, over time, urbanizing counties began providing municipal services much like those provided by cities.<sup>11</sup>

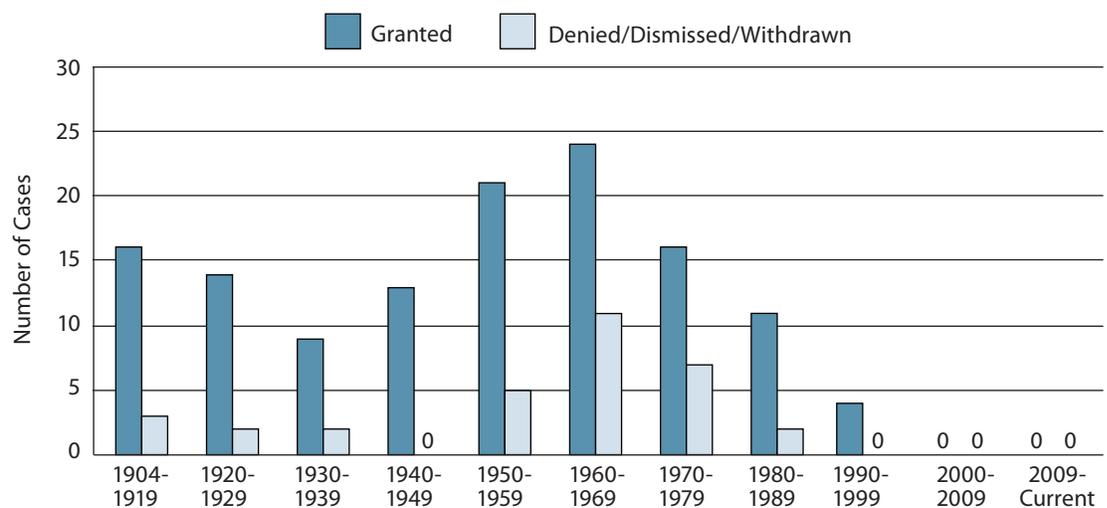
Why do cities annex land from neighboring counties? Most cases can be traced to economic development or to relieve fiscal strains on part of the city. However, from a county’s perspective, it is a “taking” of land, resources, people and taxable revenue. Some counties feared that excessive annexation would lead to their extinction. Scholar Chester Bain put it this way in his authoritative book, *Annexation in Virginia*, “As annexation peels off parts of the county, leaf by leaf like an artichoke, a major dislocation of the county’s governmental activities results.”<sup>12</sup>

Since 1904 there have been 160 city-county annexation proceedings in Virginia of which 128 (80 percent) were approved (Figure 1).<sup>13</sup> Since

1965 (the earliest data available for town-county annexation information), there have been 203 town-county annexation proceedings of which 201 (99 percent) were approved (Figure 2). As can be seen in Figure 1, the 1987 annexation moratorium ended the majority of the city-county annexation proceedings. The few city-county annexation proceedings in the 1990s were voluntary settlements. However as can be seen in Figure 2, town-county annexation proceedings continue to occur at regular intervals. In addition as David Roberts states, “[city-county separation]...produced divergent political economies between city- and town-initiated annexation proceedings against counties. Since a county lost land—and the accompanying residents and tax base—to an annexing city but not to an annexing town, counties had a much stronger interest in fighting city-initiated annexation.”<sup>14</sup>

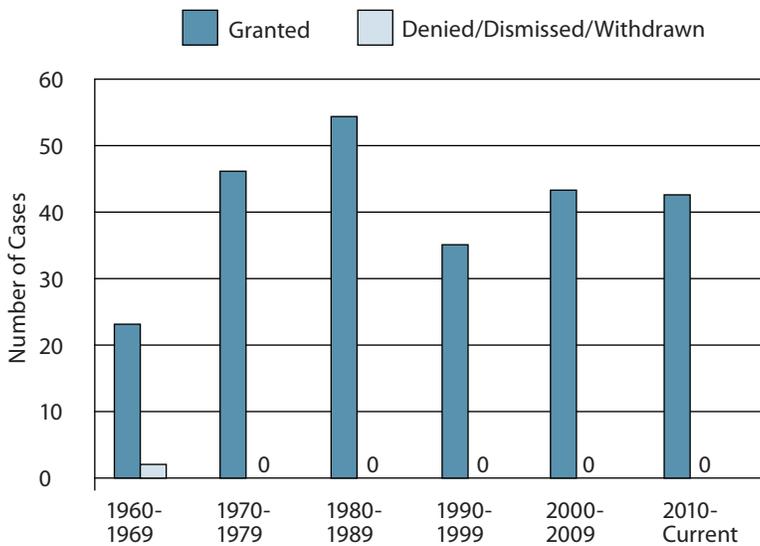
By the 1960s traditional municipal functions of Virginia cities and counties began to blur as the commonwealth urbanized, particularly in the Northern Virginia, Hampton Roads and Richmond regions. With increased influence, counties began to find ways to successfully contest annexation proceedings. Additionally, these urbanized counties began providing services on par with nearby cities. With counties providing municipal services to the areas around cities, city residents often relocated to the outlying counties where taxes were generally lower and land was cheaper. The development of highways in Virginia also aided in this flight to the suburbs. Employment and businesses followed and over time cities

**Figure 1: City-County Annexation Activity Since 1904\***



Sources: Virginia General Assembly Special Commission, *Local Government Structures and Relationships*, Appendix C (Richmond, 1990) [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD691990/\\$file/HD69-1990.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD691990/$file/HD69-1990.pdf) and Virginia Commission on Local Government, *Municipal Boundary Change Actions in Virginia Since 1990: Sorted by Date*, CLG Website (Richmond, 2011) <http://www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/Municipal%20Boundary%20Change%20Actions%20Since%201990%20bydate.pdf> and Edwards, *Neighbors and Sometimes Friends, Municipal Annexation in Modern Virginia* (Charlottesville, VA; University of Virginia, Weldon Cooper Center for Public Service, 1992), p.236.

\*Excludes boundary line adjustments permitted by the *Code of Virginia*, § 15.2-3106

**Figure 2: Town-County Annexation Activity Since 1965\***

Sources: Same as for Figure 1.

\*Excludes boundary line adjustments permitted by the *Code of Virginia*, § 15.2-3106

found themselves in a tough predicament—while people are mobile and can leave, the infrastructure and the costs to maintain the systems remain. Cities were faced with fewer people and less industry while still having the same infrastructure network to support. Cities continued to have a demand for services, especially by elderly and poor residents who stayed, combined with a tax base that has not kept pace with those of counties.

The General Assembly decided that alternatives to the time-consuming and expensive annexation process needed to be explored. As the political power of counties grew, state legislators also felt it necessary to end the possibility of annexation in parts of the state where it was no longer feasible. To halt new annexation suits while the issue was being studied, the 1971 General Assembly imposed a moratorium on new annexation proceedings for cities larger than 125,000 people, which was soon followed by a general moratorium on any new annexations proceedings.<sup>15</sup> To study the perceived increasing ineffectiveness and disruption annexation was instigating in urban areas, two commissions appointed by the General Assembly studied annexation for nearly a decade between 1971 and 1979.<sup>16</sup> The recommendations of these two commissions, the Commission on City-County Relationships (also known as the Stuart Commission, 1971-1977) and the Commission on State Aid to Localities/Joint Subcommittee on Annexation (also known as the Michie Commission, 1977-1979), were the basis for the annexation compromise of 1979 that resulted in House Bill 603 which significantly altered all future annexation proceedings.<sup>17</sup> The 1979 annexation regulations, which became effective

in 1980, allowed counties based on population size and density to request total immunity from annexation. The counties of Chesterfield, Henrico, Henry, Prince William, Roanoke and York quickly requested this immunity thereby effectively quashing future annexation threats.<sup>18</sup> Partial immunity was also permitted for counties that provided urban-type services. The 1979 legislation also created the Commission on Local Government, which in effect became the annexation policy advisor for the commonwealth of Virginia.<sup>19</sup>

Because annexation immunity was based on upon population size and density, not all counties impacted by the threat of annexation were eligible for immunity. When annexation resumed in 1980, it continued to be a divisive issue. By 1986 the General Assembly again felt it appropriate to apply a “temporary” moratorium on annexation with the intent to study the issue and determine methods for improving the process. The moratorium went into effect in 1987 and continues to this day, having been extended multiple times, the last in 2009. The annexation moratorium is now in place through 2018 unless changed by the General Assembly.

Since 1980, Virginia law authorizes a local circuit court to grant a county total immunity from annexation by a city based solely on population size and population density (i.e., a population of 50,000 persons and a density of 140 persons per square mile or a population of 20,000 persons and a density of 300 persons per square mile) as determined by the U.S. Census, official state population estimates or a special census.<sup>20</sup> Other counties may seek immunity for a portion of their territory based on the level of urban-type services in those areas and additional factors.<sup>21</sup> Further, when a county files a petition for total or partial immunity, any city annexation action is halted until the court rules on the immunity application.<sup>22</sup> Once granted annexation immunity, a county “shall thereafter retain it” meaning the county cannot lose such immunity in the future.<sup>23</sup>

## Politics and Race

For many decades in the early part of the last century, the Byrd Organization, a political machine

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led by former Governor and U.S. Senator Harry F. Byrd, Sr., controlled political power in Richmond and the state. Governor Byrd held a tight grip and had many lieutenants throughout the commonwealth. This power was rural-based, and the General Assembly voted accordingly. Interestingly, during most of this time, judicial hearings of annexations were in favor of cities proceeding without major challenge.<sup>24</sup> The vast majority of annexations succeeded in some fashion because rural counties did not provide the same municipal services that cities did.

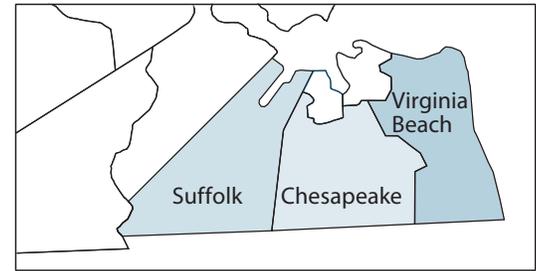
By the 1970s, political power in the General Assembly had shifted to the suburbs. Today, it can be argued that the suburban voice of Virginia’s counties has the greatest political influence in Richmond, while cities find themselves with less political power than they once had. In a sense, the cities’ political voice has been passed over.<sup>25</sup> Today many cities have little leverage in the General Assembly and in working with urbanized counties.

While nearly all annexations were about economic gain for an independent city, race was a factor in some cases. In the city of Richmond during the late 1960s, African Americans were making in-roads into city politics through adept organizing.<sup>26</sup> With “white flight” to the nearby suburban counties, the African American population remained and grew. City leaders at the time feared a majority-black city council and therefore sought to dilute black voting power.<sup>27</sup> After many legal battles, a 1970 court-negotiated agreement settled with Chesterfield County granting land that included nearly 44,000 white citizens to the city of Richmond. Records show that while city officials repeatedly asked about people in the negotiations, they rarely asked about land, businesses or other resources.<sup>28</sup> After protracted legal battles including lawsuits filed under the Voting Rights Act of 1965, the case was finally settled with the creation of a ward-based council system in Richmond.<sup>29</sup> Racial undertones were present with the city of Petersburg as well, another annexation case that reached the U.S. Supreme Court in the early 1970s.<sup>30</sup>

### Annexation Peculiarities

The south Hampton Roads area has many interesting cases of “ghost counties.” Such names as Elizabeth City County, Princess Anne County, Warwick County and Nansemond County are now relics of a past era. Formerly counties, they converted into cities or merged with neighboring cities as a method of defense against annexation threats.<sup>31</sup> The three cities of Virginia Beach, Chesapeake and Suffolk form three parallel strips all the way to the North Carolina border.

**Figure 3: The Parallel Location of the Cities of Suffolk, Chesapeake, and Virginia Beach**



Source: University of Virginia Center for Politics

Interestingly, many parts of these cities are still somewhat rural in nature.

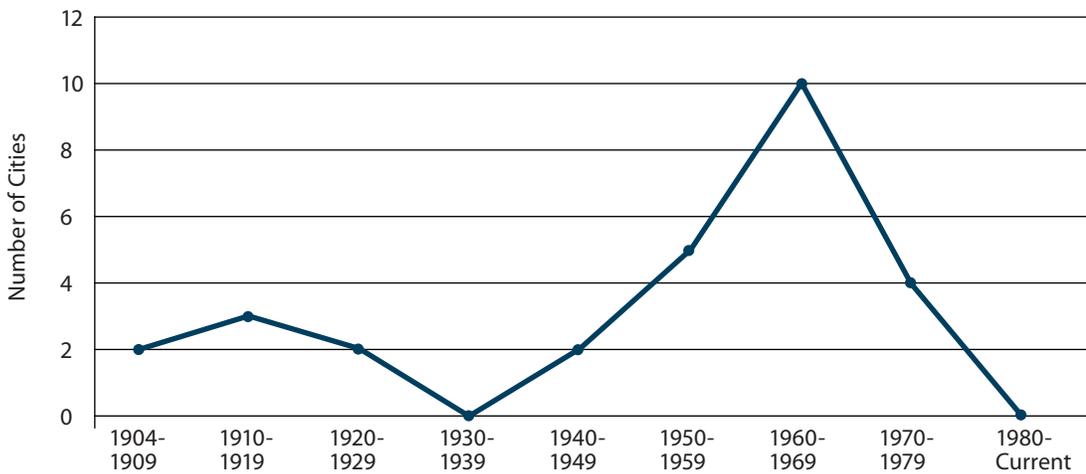
In decades past, small, suburban cities sprung up throughout the commonwealth. Traditional definitions of what encompassed a municipality did not always apply. The city of Salem was created to prevent annexation by neighboring Roanoke City.<sup>32</sup> Another example of a newer independent city was the former town of Colonial Heights in Chesterfield County, which became an independent city in an effort to avoid annexation from neighboring Petersburg.<sup>33</sup> Conversely some counties such as Arlington are very urban in appearance and in the services provided.

Including Williamsburg, which was incorporated in 1722, forty-five cities have been incorporated. Seventeen cities were incorporated prior to the 1902 Constitution of Virginia, which changed the process for city incorporation. As shown in **Figure 4**, a large number of cities in Virginia were created between 1950 and 1969. City incorporation all but ceased in the 1970s and since 1976 there have been no new cities. In fact, over the years, six cities have been eliminated—the cities of Manchester (that existed from 1769 to 1910), Warwick (1952 to 1958), South Norfolk (1921 to 1963), Nansemond (1972 to 1974), South Boston (1960 to 1995), and Clifton Forge (1906 to 2001).<sup>34</sup>

The cities of Bedford, Charlottesville, Franklin, Lexington and Radford have voluntarily surrendered their authority to annex as part of revenue-sharing agreements.<sup>35</sup> As one of the most significant revenue-sharing agreements, the Charlottesville-Albemarle County agreement has been in effect since 1982.<sup>36</sup> This perpetual agreement established a joint “revenue and growth sharing fund” and a cap on the total amount that could be transferred from it.<sup>37</sup>

### Current Status and Trends

With the few exceptions of smaller negotiated boundary settlements between cities and counties, boundaries for Virginia cities have been frozen in time since 1987. The moratorium has also prevented any new independent cities from

**Figure 4: New Virginia Cities Created Since 1904\***

Source: Rootsweb web page, "History of County Formations in Virginia 1617-1995."

<http://homepages.rootsweb.ancestry.com/~george/countyformations/virginiaformationmaps.html>

being created. Contested annexation proceedings have ceased, forcing localities to work together to solve their boundary and economic issues. It could be argued that the moratorium has allowed for greater stability in county and city planning.

Due to adjacent counties being granted annexation immunity, the cities of Hampton, Manassas, Manassas Park, Martinsville, Poquoson, Richmond, Roanoke and Salem have lost their ability to initiate annexation proceedings, though the current annexation moratorium restricts additional counties from requesting immunity.<sup>38</sup> It should be noted that though the current annexation ban also restricts any additional counties from requesting annexation immunity, expiration of the moratorium would permit this of counties that, due to population growth, now meet the population and density standards to request immunity. This could impact the cities of Alexandria, Falls Church, Fairfax, Fredericksburg, Newport News, Radford, Winchester and Williamsburg.<sup>39</sup>

The partial immunity that some counties have been granted has generally ended the opportunity for annexation for some cities such as Hopewell and Petersburg (with respect to Prince George County).<sup>40</sup> Staunton and Waynesboro (with respect to Augusta County) are only left with the possibility to annex county land that is limited by environmental or other barriers to development.<sup>41</sup>

Other cities are unable to annex due to factors such as constraints of adjacent county land, geographic size or other physical barriers. For example, rivers prevent the cities of Lynchburg and Colonial Heights from annexing nearby county land.<sup>42</sup>

However, if the moratorium were to be lifted, it would have only limited impact. Since the legislation of the late 1970s annexation in Virginia

has become much more complicated and even diluted.<sup>43</sup> Without a moratorium, there would be only 13 cities that could actually file suit to annex land from a county and 3 of those cities (Suffolk, Colonial Heights and Lynchburg) would have a hard time arguing in certain cases due to barriers such as a river or geographic size.<sup>44</sup> The remaining ten cities of Bristol, Buena Vista, Covington, Danville, Emporia, Galax, Harrisonburg, Lynchburg (with respect to Bedford and Campbell Counties only), Norton and Petersburg (with respect to Dinwiddie County only) are smaller and generally located in rural or not heavily urbanized parts of the state (with the exception of Lynchburg, Harrisonburg and Petersburg).<sup>45</sup> If annexation were to commence in Virginia again, it would have a very narrow impact due to the various immunities and limited scope under law.

Virginia cities in some regions have suffered under the moratorium. For example, if one follows the economic development of Richmond and Charlotte, North Carolina, the differences are striking. Decades ago the two cities were on par with one another economically. While Richmond has struggled to grow economically, Charlotte has flourished in recent decades. One factor contributing to this contrast is North Carolina's looser annexation laws.<sup>46</sup>

Today, many Virginia cities continue to have a larger tax burden, more fiscal stress and less ability to develop than before the moratorium.<sup>47</sup> In a way, the annexation moratorium is negatively affecting older cities' economic growth, and many counties are growing faster than the cities that they surround. Some have described the effect as a doughnut hole. However, there is a small glimmer of hope for older core cities—the rise of "New Urbanism," which attracts young professionals to

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live, shop and recreate in the city where they work. Cities offer the compact urban living that many in the mid-20th century rejected. Today, a younger generation is finding cities have a lot to offer. Benefits such as reduced transportation costs (both in time and expense) and mixed-use developments are just a few features that are beginning to attract people back to the city.

### Effects of the Moratorium

With the annexation moratorium in place, there are several effects that can be seen in the commonwealth. In some ways, the moratorium has been a catalyst for more regional cooperation. In the past, localities with potential annexation suits did not trust one another enough to enter into agreements. Today given the moratorium, cooperation is often the only option for cities to maintain their status. Also, without the threat of annexation more and more metropolitan areas are entering multi-jurisdictional agreements for utility services or economic development. For example, in recent years, the ten cities, six counties and one town that make up the Hampton Roads region recently announced a joint effort to attract businesses to the region.<sup>48</sup> This spirit of regionalism is a necessity for cities, but it makes sense for neighboring counties as well. The Hampton Roads localities are facing potential cutbacks in defense spending which could negatively affect the entire region.

The 1979 legislation included HB 599, which sought to increase state aid to localities to ease the need for annexation through funding for sheriffs, commonwealth’s attorneys and judges.<sup>49</sup> This funding continued through the moratoriums. However, in recent years state budgets have become tighter, and in 2008 the “599 funding” was frozen by the General Assembly. In October of that year, then-Governor Kaine reduced the funding again. Cities have argued that their police funding has been cut proportionately more than the counties.<sup>50</sup>

Many small cities facing mounting fiscal constraints are looking seriously at reversion to town status. Cities with populations of 50,000 people or less may petition for reversion to town status. Though additional provisions apply for cities of a population between 5,000 and 5,900, no cities met this population criterion based on the 2010 census.<sup>51</sup> In 1995 South Boston and in 2001 Clifton Forge reverted from cities to towns.<sup>52</sup> Bedford City is working towards becoming the third city to revert to a town and become part of Bedford County. Besides alleviating fiscal difficulties, Bedford City hopes to improve its education funding through reversion.<sup>53</sup> With local governments

facing increased fiscal pressures, Virginia could see more city to town reversions in the future. However, this will happen only if the neighboring county residents desire to take on additional citizens and potential expense.

City-county mergers or consolidations have occurred in recent decades, but they have usually failed. A recent referendum to merge the city of Covington with Alleghany County to become the new city of Alleghany Highlands was rejected by voters in November 2011.<sup>54</sup> If the referendum had been successful, the new city would have taken a hybrid form of local government with an elected sheriff and a seven-member governing body.<sup>55</sup>

### Limited Annexation Still Occurs

There has been a ban on city-initiated annexation proceedings since 1987. The ban impacts the adversarial annexation requests that pit a city against a county where the city gains territory at the expense of the county. The ban on city-initiated annexations does not impact a town’s ability to request such an annexation nor does the moratorium stop citizens from initiating an annexation request. An agreement is expected to be reached between the town of Culpeper and Culpeper County in which the town will annex half a mile of land.<sup>56</sup> The two localities’ 30-year agreement will include equal access to the town’s utilities.<sup>57</sup>

Since 1983, cities and counties have been permitted to enter voluntary agreements with another locality to adjust their boundary lines.<sup>58</sup> Since 1979, towns have been permitted to enter into agreements with counties whereby a town may periodically annex county land by ordinance in return for giving up its right to become a city.<sup>59</sup>

### Looking Ahead

The annexation moratorium was supposed to give the General Assembly time to work out the structural problems of local government in Virginia, but that has yet to happen.<sup>60</sup> While the moratorium is set to expire in 2018, the General Assembly could very well extend it again. If recent General Assembly sessions are any indication, the state budget will take center stage for some time to come. These constrained state budgets have led the General Assembly to further cut local aid and continue to devolve responsibilities to cities and counties (such as the responsibility for counties to maintain their own public roads).<sup>61</sup> From the local perspective, state-imposed mandates coupled with declining property tax revenue have made things worse for cities and counties in recent years.<sup>62</sup> Additionally, with the limited impact that lifting the moratorium would have, it just is not a priority for the legislature.

Virginia's adversarial annexation process was halted because it pitted cities against counties, with cities gaining land, people and tax revenue at the expense of counties. Other states have continued to use annexation as a tool for municipal growth. The key is that, in other states, cities are not independent and separate from counties; they are similar to how Virginia classifies towns. While many attempts have been made to lessen the impact of annexation, problems will persist with Virginia's continued city-county separation. The commonwealth prides itself on some of its unusual qualities, such as a one-term governor and its independent cities. However, its embrace of independent cities may be at the root of the problem with local government disputes. Unnecessary adversity between localities created a poisonous environment in years past, and now a never-ending moratorium continues to stunt the growth of the commonwealth's cities. A new system needs to be formulated to encourage equitable growth among all localities.

It is unlikely that a Virginia governor will take up the issue with only four years to accomplish an agenda.<sup>63</sup> It is also unlikely the General Assembly will address the root problems of annexation in Virginia. It may take the bankruptcy of a major city to get lawmakers to pay attention to annexation and the larger issue of independent cities. The commonwealth is often lauded for its simple form of local government, which lacks the duplicative taxing structures of other states. Although not officially codified until the 19th century, independent cities are a part of Virginia's genetic code, dating back to its colonial beginnings.<sup>64</sup> Nevertheless, Virginia lawmakers should devise a plan that can accommodate adequate municipal growth that is not at the expense of other localities. Virginia should consider a hybrid solution: one that allows for a less adversarial annexation process, more incentives for cooperation between localities and population thresholds for obtaining independent city status. A never-ending moratorium will only delay the issue and result in quick fixes that are a disservice to the citizens of the commonwealth. Perhaps the best time to address such an issue would be the next time the Constitution of Virginia is set to be rewritten. Only a fresh look could address the unusual structural issues that make the Virginia annexation process unique.

### Acknowledgements

We would like to thank the following individuals for sharing their knowledge and expertise on the issue: The Honorable Richard Cranwell, former delegate; Dr. Jack Edwards, professor emeritus

of government, College of William and Mary; Mike Edwards, vice president, Kemper Consulting; Mary Jo Fields, director of research, Virginia Municipal League; Carter Glass, IV, partner at Troutman Sanders; the Honorable Matthew Lohr, commissioner, Virginia Department of Agriculture and Consumer Services; Ted McCormack, director of governmental affairs, Virginia Association of Counties; the Honorable Thomas Michie, Jr., former delegate and state senator; Tedd Povar, associate director Virginia Institute of Government; Gerard Ward, deputy director, Council on Virginia's Future; and Mitch Wilkinson, former director, Virginia Commission on Local Government.

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### Endnotes

Note: When available, web links for sources have been shown. At the time of publication all of the links worked. However, some links are unstable and may not work with certain browsers or they may be modified or withdrawn.

*"...a never-ending moratorium continues to stunt the growth of the commonwealth's cities."*

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VOL. 88 NO. 1 JANUARY 2012

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*The Virginia News Letter* (ISSN 0042-0271) is published by the Weldon Cooper Center for Public Service, University of Virginia, P.O. Box 400206, Charlottesville, Virginia 22904-4206; (434) 982-5704, TDD: (434) 982-HEAR.

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