FIGHTING FOR COMMON SENSE ANNEXATION

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Over the last several years, I have represented multiple Georgia cities in contested annexations, both in court and in arbitration.

WHILE I WOULD be the first to admit that both the Fair Annexation Act and specifically its annexation arbitration process could use some fine-tuning, that revision process shouldn't turn into a backdoor effort to discourage and deter annexations.

Throughout America, as property owners seek higher levels of service for themselves, and as their communities get denser and seek more development, the typical path has been from county government to incorporation, either through the creation of new cities or the expansion of existing ones. Georgia's history is no different, and the evolution of Georgia law reflects that. Throughout the 20th century, and into the 21st, Georgia law has consistently put the rights of property owners at the top of the list of the set of interests balanced in Georgia's annexation laws. That's why it's so hard to annex property without the overwhelming, if not unanimous, consent of the property owners.

That focus on the rights of property owners, including their rights to seek to improve the economic productivity of their property, is why the annexation arbitration process shouldn't be used to make annexations significantly more expensive, more time-consuming, or downright impossible. Unfortunately, some of the "reforms" now being pushed seem to do just that.

We can and should agree on common-sense reforms that make the process better. Those include things like improving the training and resources of the decisionmakers, clarifying what rules of evidence apply, having statewide reporting and greater clarity about how the law is being applied, and specifying

which of the parties' expenses can be awarded by the panel. But other proposals seem intended to make annexation harder, or to address county-specific issues on a statewide basis.

For instance, some proposals would "fix" problems that rarely occur. Very few annexations move property from one school district to another. (That only happens when the annexing municipality has an independent school system). So, why amend the annexation arbitration statute to give all school systems the right to intervene in all annexation disputes? For the same reasons that Georgia doesn't give school systems veto rights over rezoning and community development generally, it is a bad idea to multiply the issues and parties to these arbitrations. The only guaranteed result from such an expansion of the number of issues and parties is to drive up the time and expense involved.

Similarly, many of the complaints certain counties are raising about annexation are really complaints about specific development authorities' incentive decisions. But isn't the appropriate place to address such concerns in the development authority laws, rather than rewriting Georgia's annexation statute in ways that make disputes both easier to raise and harder to resolve?

Lest anyone think I'm just a municipal hack, my perspective on this is shaped by hard-won experience. Some, but not all, of the annexation disputes I've been involved with have touched on legitimate concerns. In those instances, the current annexation arbitration process has helped force resolution of at least some of those concerns. But I've also seen the current process badly misused by counties simply seeking to obstruct, delay, and drive up costs for the cities and property owners.

For example, in one recent arbitration Jennifer and I tried on behalf of a city in metro Atlanta, the fact that the arbitration was happening and could result in land use restrictions encouraged the property owners to clarify their redevelopment intentions, and to formalize those intentions to address some of the county's concerns. Chalk that up as a positive to the current framework.

But in the same dispute, the county filed objections based on school system revenue, even though the statute doesn't permit such objections, and the property (and revenue) weren't leaving the county school system. The county also objected based on hyperbolic projected impacts on its sewer system. But the county eventually was forced to admit that since the county owned the entire sewer system and controlled tie-ins to it, the annexation wouldn't have any effect on it either.

Finally, the most aggravating part was the property owners' uncontested testimony that the local county commissioner had enthusiastically supported the redevelopment plans—until annexation was proposed. It was only after the district commissioner learned that the project would be in a city rather than in his bailiwick that he "realized" it would "materially" burden the county's infrastructure. The city and the property owners spent the better part of a year and hundreds of thousands of dollars in attorneys, experts, and delays dealing with what was – at root – the county commissioner's petulance that the property owners picked the city as their development partner, not the county. Hopefully, the Georgia General Assembly will not act in ways that further such naked gamesmanship.

Georgia's annexation laws are the result of decades of discussion, debate, and ultimately compromise by Georgia's local governments. Yes, let's update those laws to deal with problems we've discovered along the way. But rather than pursuing one-sided changes that will only make disputes more likely and more expensive, let's focus on the reforms that will enhance the process for cities, counties, and property owners. Then when inevitable disputes do occur, there's a clear, efficient, and consistent way to resolve them. Those reforms would benefit not just some Georgians, but all.