

Annexation... Without Representation?

You never know what you're going to find when you parse through the West Virginia State Code. But even by West Virginia standards, Chapter 8, Article 6—"Annexation"—is appalling.

The article covers all the processes by which a town could annex additional land—and its residents or businesses—into their city limits. There could be a town-wide election to certify or negate a potential annexation petition. There could also be an annexation without a large-scale election; in this case, a majority of those to be absorbed into the city must agree to the act. Neither is ideal since majority voting isn't flawless—there exist scenarios here whereby residents and corporations are forced into a city against their will. But I'd take either of these options compared in lieu of the final one.

Should a city council feel that either of the voting scenarios may not be successful—and I can't imagine that the chance of having to pay more taxes is popular at the polls—the town has the option of making a "minor boundary adjustment," or MBA. The plan must be approved at the county level, but given the alignment of city and county interests, this is hardly a check on government. City councils have essentially unlimited access to drawing and redrawing city borders.

To be certain, this isn't an issue of people preferring one mailing address to another; it's about the tax liabilities that come with living with a city's limits. Decisions regarding location, be it personal or business, are a function of taxation. Removing the ability of individuals to purposefully choose where they want to live due to the varying tax structures of our state and placing that choice into the hands of city and county commissioners violates liberty at its basest level.

(The fact that this concept—taxation matters in location decisions—tends to meet heavy opposition constantly befuddles me. To say that location decisions are solely a function of taxes would be inaccurate, but to say that they play no role whatsoever is equally as ridiculous. A quick glance at the West Virginia border bears out this concept quite clearly.)

The ability to impose MBAs can become a powerful tool of coercion for local government. Towards the end of increase tax revenue, widening the tax base is a very effective means; in fact, this exact situation happened in Morgantown just over a year ago.

Wal-Mart recently built itself a new location immediately outside of the Morgantown city limits, replacing an existing location that was within Morgantown, only to be boundary-adjusted back into the city by order of the city council. The council's minutes of a proceeding concerning the so-called "Wal-Mart Annexation" are especially revealing, dealing explicitly with the issues of whether Wal-Mart would be forced to pay a B&O (Business and Occupation) Tax and whether Wal-Mart would actually desire to be part of Morgantown. It is no secret that the fundamental issue at hand with annexation is the increase of tax revenue at the loss of private liberty; the minutes plainly bear this out. Sadly, as is the case with most government activity, loss of freedom was the result.

MBAs are not altogether different than eminent domain takings. In both cases, small local governments can make coercive decisions regarding other people's property. Eminent domain, of course, removes property from private hands entirely, whereby annexation simply charges the individual a higher rate for holding property. In addition, both measures use intentionally vague wording so as to minimize the constraints on their power. In West Virginia, eminent domain may be exercised in order to correct a "blighted" area, a term which evokes images of decay but which in practice may be construed so as to mean nearly any property or structure. Similarly, MBAs are "minor"—though nailing down a definition of minor is, by design, just as difficult.

One of the hallmarks of a sound constitution is one which prevents the abuse of another's liberty for personal gain. The process of annexation—and especially that of "minor boundary adjustments"—fails this test horribly. As I moved to West Virginia almost three years ago, I am constantly learning more about the state and its policies. Is it sad that I've encountered enough of these absurd laws that it is no longer surprising when I find another?

Matt E. Ryan is the Charles G. Koch Doctoral Fellow at West Virginia University and is an editor of *Unleashing Capitalism: Why Prosperity Stops at the West Virginia Border and How to Fix It*. He can be reached at: matt.ryan@mail.wvu.edu.