

**Remarks of Mayor Wilber before TACIR
August 22, 2013**

Mr. Chairman and commissioners, annexation is an emotional issue evoking strong feelings. This is not new. It has always been this way.

And the notion of a referendum is not a new development. In fact, referendum has been considered several times in the past, including during the review process that led to the enactment of Public Chapter 1101. And more recently, legislation has been introduced and debated in the years that followed enactment of PC1101. Like those efforts of the past, these bills were also rejected.

Perhaps we were predestined to have this discussion. A review of the history of annexation in Tennessee reveals a rather cyclical pattern with annexation studies and legislation occurring roughly every 20 years.

So perhaps it is just a function of the natural order of the universe that we come together to repeat many of the same discussions that have taken place over the years.

Whatever the reason, here we are again discussing a referendum.

So what is different this time? What has changed that suggests these discussions should produce a different outcome than all the prior discussions? Something must be different. We are, after all, under a moratorium.

Surely there must be some strong substantive evidence of serious flaws in the current law that have led to wide-spread abuse and resulted in significant harm to the state and its residents.

Well, under Public Chapter 1101....

Cities and counties are no longer living under a state of constant strife

The seemingly endless parade of lawsuits have ceased

Counties have greater assurances and predictability regarding the effects of annexation on their ability to fund schools and to meet other demands on revenues.

Corridor annexations have all but come to an end. There is greater continuity and regularity in city limits than ever before and the elements of sprawl are no longer pervasive.

Doughnut holes and disparate levels of service are far less common.

The law has provided the predictability to identify areas where growth will occur, the freedom to expand infrastructure in unincorporated areas where none exists – particularly water and sewer – and the flexibility to manage and coordinate the delivery of services more efficiently and less expensively than at any other time.

The certainty afforded under the law has greatly aided in allowing cities to facilitate private investment and commercial and industrial expansion. Thus, giving the state a leg up in this highly-competitive, quick-paced arena where timing is everything.

Our state's population grew by 656,822, or 11.5 percent from 2000-2010. The increase in the population of the state's municipalities accounting for about 67 percent of the total increase over the decade.

According to the Census Bureau, the state added an additional 110,000 in population between the 2010 decennial census and 2012.

Clearly, people continue to find our state an attractive place to live. This does not simply occur. Cities and counties work hard to manage this growth and to provide our citizens a good quality of life.

And it is not just the quality of life issues that earn high marks.

It seems there is a press release or newsletter from the governor, ECD or the chambers of commerce at least once a month heralding another noteworthy recognition of the state's pro-growth environment, its business climate, or its recruitment of industry.

Moreover, the state has weathered two recessions since the enactment of Public Chapter 1101; managing to produce balanced budgets and avoid a state income tax.

This is largely due to fiscally responsible policies as well as a healthy state sales tax base. This sales tax base is a direct reflection of the economic activity generated at the local level.

These facts hardly suggest a cause for alarm.

Again, I ask, what transgressions have occurred under the law that are so egregious and pervasive that they warrant responding to referendum differently this time?

There is no issue regarding any "taking" of land

There is no sanctioning of taxation without representation under the law.

The law does not constitute a violation of anyone's rights.

The plain truth is that there is no argument on the basis of law.

Yet, these arguments continue, amounting to little more than rhetorical diversions intended to incite emotions and create divisions.

We're told that a referendum is needed to give residents a voice. This presumes that, today, residents have no voice in the process. There are notice requirements. Public meetings are required...several. There are avenues to challenge the validity of annexations. Public hearings are held to ensure plans of services are implemented as promised. When plans of services are not implemented, then the law provides access to a remedy.

And let's not forget that no resident of this state, whether they reside within the incorporated areas of a city or in the unincorporated areas of a county, is without elected representation. Each of the state's 95 county commissions, acting in their capacity as the elected representatives of county residents, adopted a growth plan. These commissions adopted these plans with the full knowledge that their action carried the force of law and with the full understanding that any properties located within a city's urban growth boundary were subject to annexation by ordinance.

Having a voice is different than having a direct vote. If representative democracy is no longer a valid means of governance at the local level, then should it not also be invalid at the state or federal level?

If we are going to throw out the notion of representative democracy with respect to local ordinances affecting property, then why not also any state laws relating to property. Why stop with laws pertaining to property?

Again, I ask, what events have transpired since the enactment of Public Chapter 1101 that so clearly point to the need to respond to the question of referendum differently this time?

Even the proponents of referendum have conceded that 1101 is good law. They suggest they don't want to change the law, but only want to make a simple modification to perfect an otherwise good law.

I would confess that this is clever positioning and maybe even good politics, but I would hasten to add that it is dead wrong.

Substituting a requirement for referendum for a municipality's exclusive authority to annex by ordinance is hardly a simple modification.

I would submit that if it were truly just a simple modification, then the proponents would not be so insistent and there would be no need for us to be before you today.

Implementation of a referendum will not occur in a vacuum absent any consequence, as some have suggested. Rather, it will fundamentally alter the current practices and processes and short-circuit virtually all of the gains achieved under the law.

Referendum will eliminate certainty.

It will also remove predictability.

Consequently, growth will not be planned and intentional; rather municipalities will be restricted to reacting to development that has already occurred; resulting in more limited and sporadic growth patterns.

Our ability to recruit private investment and to create jobs will be harmed because the guarantee of incorporation that is currently offered businesses looking to locate an office or facility will be lost under a referendum.

Some cities, under the threat of the loss of the certainty provided by the local prerogative, are already re-assessing their willingness to partner with other local governments on capital improvements outside their incorporated limits. Others have terminated or are considering terminating their practices regarding the installation of infrastructure and facilities beyond their city limits. This is likely to become commonplace if a referendum is adopted.

The combination of the current moratorium or a referendum and existing restrictions concerning contiguity and corridor annexations means that some property owners desiring to be within the city limits will be subject to preferences of the property owner(s) that are in closer proximity to the city limits.

Even those willing property owners that are not landlocked would have no assurance of annexation as it may not be economically feasible to extend utilities or practical to bypass tracts of land to provide police, fire, or other services to a single property or small cluster of properties.

In closing, I would ask one final time...

What horrible abuses have occurred that would lead the state to do what it has been unwilling to do for more than 60 years....adopt a referendum requirement?

What events have transpired that would lead the state to jeopardize many of the benefits that have been realized in achieving the objectives of Public Chapter 1101?

Even the proponents of referendum have acknowledged that a great many cities are conducting annexations the right way.

Instead, the critics of the law point to the existence of a few bad actors that they contend are merely interested in grabbing land or revenue and that fail to provide services in return for taxes.

If so, then why punish all based on the purported deeds of a few bad actors?

Why not simply figure out how best to stop the bad actions of the few?

Mr. Chairman, that concludes our remarks.

Again, let me thank you and the commission members for your attention and for this opportunity.

And let me also add our thanks to the all of you and the commission staff for the work that has already been done and for the effort that I know you will continue to give to this important issue.