INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

82ND ANNUAL CONFERENCE

NIAGARA FALL, CANADA

HOME RULE IN OHIO

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OCTOBER 17, 2017

HOME RULE

I. Municipalities are governed by Article XVIII of the Ohio Constitution and Title 7 of the Ohio Revised Code.

A. Article XVIII, Section 3 of the Constitution grants two types of authority to all municipalities.

1. Exercise all powers of local self-government.
2. Enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

B. Article XIII, Section 6 and Article XVIII, Section 2 of the Constitution empower the General Assembly to pass laws for the organization of municipalities.

1. Chapters 731 and 733 of the ORC establish a general plan of government for municipal corporations. Absent action by the electors, this plan is in effect.
2. Chapter 705 of the ORC provides three alternative statutory plans for municipalities. Municipal electors may select one of these plans instead of the general statutory plan. a. Commission Plan
   b. City Manager Plan
   c. Federal Plan

C. Article XVIII, Sections 7 and 8 provide another alternative plan that can be chosen by the electors of the municipality; a charter form of government.

1. Section 7 allows any municipality to "… frame and adopt … a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."
2. Section 8 outlines the procedure to be followed in framing and adopting such a charter.

II. All municipalities can exercise home rule authority. It is not limited to chartered municipalities. Ohio Const., Article XVIII, Section 3.

A. The right to exercise "all powers of local self-government" is unfettered, except by the limitations of what constitutes local self-government. This issue is far from clear.

1. Included as matters of local self-government
   a. Internal organization
   b. Control, use and ownership of certain public property
   c. Recall of elected officials

d. Regulation of municipal streets
e. Procedures for sale of municipal property

2. Outside the scope of local self-government
   a. Detachment of territory
   b. Annexation
   c. Prevailing wage law
   d. Public collective bargaining law
3. Courts have developed "statewide concern" doctrine; if a matter impacts more than solely local interests, it is not solely a matter of local concern and not protected by this grant of authority.
   a. *Bucyrus v State Dept. of Health*, 120 Ohio St. 426 (1929). State ordered city to install a sewerage system.
   b. *State ex rel. Evans v Moore*, 69 Ohio St2d 88 (1982). Upper Arlington passed an ordinance exempting city contracts from the prevailing wage law.
   c. In recent years, the General Assembly has included in its legislation language that the subject matter of the legislation is "a matter of statewide concern". Some courts have accepted this language on its face, thereby creating a *de-facto* preemption of the power of local self-government. The correct analysis is that such language cannot bind the court and whether something is a matter of statewide concern is a legal determination to be made by the court.
4. In sum, if a matter is of solely local concern, a municipality may exercise its power over that matter.

B. The right to enforce local police, sanitary and other similar regulations within the municipality's boundaries is limited by the "conflict with general law" doctrine.
   1. Municipal laws that exercise the "police power" cannot conflict with "general laws".
      a. "Police powers" has long been defined as the authority to make regulations for the public health, safety, morals and general welfare of society. *Miami Cty. v Dayton*, 92 Ohio St. 215 (1915)
      b. In *Canton v State*, 95 Ohio St3d (2002), the Ohio Supreme Court delineated a four part test defining what constitutes a "general law": i. Must be part of a statewide and comprehensive legislative enactment;
         ii. Must apply to all parts of the state alike and operate uniformly throughout the state;

iii. Must set forth police, sanitary or similar regulations, rather than purport to limit or grant the power of a municipality to regulate; and,

iv. Must prescribe a rule of conduct upon citizens generally.

c. Conflict is a muddled term in Ohio decisions.

i. The Ohio Supreme Court stated the basic test in *Village of Struthers v Sokol*, 108 Ohio St. 263 (1923); whether the ordinance prohibits or licenses what the state statute prohibits or forbids, and *vice versa*. In that case, the village criminalized an act not addressed by state law.

ii. The Court continued on this course when it upheld an ordinance which varied the penalty on a criminal offense, making it more severe than the state law. *Toledo v Best*, 172 Ohio St. 371 (1961). The Court cautioned that if the ordinance had changed the misdemeanor to a felony, it would be in conflict.

iii. A 1975 state law requiring municipal corporation to fluoridate their water supplies trumped a local decision not to do so. *Canton v Whitman*, 44 Ohio St 2d 62 (1975).

iv. A year later, the Court introduced the theory of conflict-by-implication, leading to the potential for result oriented decisions where the courts find no direct conflict. *American Financial Services Ass'n v Cleveland*, 112 Ohio St. 3d 170 (1976).

v. A recent *decision* indicates the confusion regarding the application of home rule principles. *State ex rel. Morrison v Beck Energy Corp.*, 143 Ohio St.3d 271 (2015)

III. The importance of the chartered municipality has limited impact on the exercise of home rule powers.

A. A charter city creates its own form of government and is not bound by the constraints of Title 7.

B. Non-chartered municipalities must follow the procedures prescribed by state statute in exercising matters of local self-government. *Northern Ohio Patrolmen's Benevolent Ass'n v Parma*, 61 Ohio St.2d 375 (1980).

IV. Home Rule Analysis

A. The Ohio Supreme Court has established three-step analysis.

1. Is municipal act an exercise of local self-government or an exercise of the police power? If local self-government, the analysis ends.

2. If the act is an exercise of police power, is the state statue at issue a general law? If not, the analysis ends.

3. Does the ordinance conflict with the general law?

V. Other Limitations on Home Rule
   A. United States Constitution
   B. Ohio Constitution
      1. Article XII, Section 2: ten mill limitation on property tax
      2. Article VIII, Section 6: "lending of credit"
      3. Article II, Section 1f: reserves to citizens of a municipality the rights of initiative and referendum
      4. Article XV, Section 10: civil service
      5. Article II, Section 34: nothing in constitution impairs or limits the power of the General Assembly to pass laws that fix and regulate hours of labor, establish a minimum wage, or provide for the comfort, health, safety and general welfare of all employees
         a. *Rocky River v State Empl. Rel. Bd.*, 43 Ohio St3d 1 (1989); collective bargaining law
         b. *Lima v State*, 122 Ohio St.3d 155 (2009); local residency laws

VI. Recent Cases

   A. City of Dayton v State, 2015 Ohio 3160 (2nd App. Dist., Montgomery Co., August 7, 2015)

   B. City of Springfield v State, 2016 Ohio 725, (2nd App. Dist., Clark Co., Feb. 20, 2016)

   C. City of Toledo v State, 2016 Ohio 4906 (6th App. Dist. Lucas Co., July 8, 2016)

   D. Small Cell Wireless Facilities Ohio Senate Bill 331 enacted December 2016

   E. Walker v City of Toledo, 2017 Ohio LEXIS 416, (6th App. Dist., Lucas Co., February 3, 2017)

   F. City of Shaker Heights v El Bey, 2017 Ohio 929, (8th App. Dist., Cuyahoga Co., March 16, 2017)

   G. Kanter v City of Cleveland Heights, 2017 Ohio 1038, (8th App Dist, Cuyahogo Co., March 23, 2017)

   H. Russ v City of Reynoldsburg, 2017 Ohio 1471 (5th Cir April 19, 2017)

   I. City of Bexley v State of Ohio, 2017 Ohio Misc. LEXIS 841 (June 2, 2017)

   J. City of Dayton v State, 2017 Ohio 6909 July 26, 2017 Supreme Court Ohio

K. OML-OMAA Report on Update Constitutional Language for Ohio Constitution Article XVIII MASTER 10APR2017 FINAL

City of Springfield v. State, 2016-Ohio-725

Copy Citation

Court of Appeals of Ohio, Second Appellate District, Clark County

February 26, 2016, Rendered

C.A. CASE NO. 2015-CA-77

Reporter
2016-Ohio-725 * | 60 N.E.3d 649 ** | 2016 Ohio App. LEXIS 657 *** | 2016 WL 768655

CITY OF SPRINGFIELD, OHIO, Plaintiff-Appellant v. STATE OF OHIO, Defendant-Appellee

Subsequent History: Discretionary appeal allowed by, in part, Stay granted by Springfield v. State, 146 Ohio St. 3d 1427, 2016-Ohio-4606, 2016 Ohio LEXIS 1731, 52 N.E.3d 1203 (2016)

Prior History:

[***1] (Civil appeal from Common Pleas Court). T.C. NO. 15CV202.

Core Terms

traffic, **municipality**, **camera**, ordinance, regulations, statewide, provisions, recorded, traffic law, photo-monitoring, violations, trial court, ticket, home rule, self-government, requirements, speed, **red light**, sections, powers, summary judgment motion, local authority, speed limit, procedures, severable, offender, provides, devices, exercise of police power, prescribing rules

Case Summary

Overview

HOLDINGS: [1]-The trial court properly denied a city's motion for summary judgment, and granted summary judgment to the State, in the city's challenge to the constitutionality of Am. Sub. S.B. 342 (effective March 23, 2015), as there was no violation of the Home Rule

Amendment (HRA) of Ohio Const. art. XVIII, § 3 ; [2]-The city lacked standing to challenge S.B. 342 regarding provisions implementing use of speed **cameras** and mobile photo-monitoring devices because Springfield, Ohio, Codified Ordinances § 303.09 only used a photo enforcement system for **red light** violations; [3]-As S.B. 342 was a general law because it promoted statewide uniformity that clearly set forth comprehensive "police, sanitary or similar regulations," it was not enacted to limit municipal powers, and the traffic **camera** ordinance was an exercise of the city's police power, it did not violate the HRA.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

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HN1 **Vehicular Crimes, Traffic Control Device Violations**

Am. Sub. S.B. 342 (effective March 23, 2015) served to amend and enact several statutory provisions governing traffic law photo-monitoring devices. R.C. 4511.092 - 4511.0914 . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > Types of Evidence > Demonstrative Evidence > Foundational Requirements
- Governments > Local Governments > Police Power

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HN2 **Demonstrative Evidence, Foundational Requirements**

There is a requirement in R.C. 4511.093(B)(1) that a law enforcement officer be present at the location of any traffic law photo-monitoring device when it is being operated. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

HN3 **Photographs, Visual Formats**

R.C. 4511.095(A)(1) and (2) requires that a local authority must conduct a safety study and public information campaign for the location under consideration for the

placement of a new device before any new photo-monitoring equipment can be deployed. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Speeding
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

HN4 **Vehicular Crimes, Speeding**

R.C. 4511.0912(A) and (B) prohibits municipal authorities from issuing speeding tickets for violations recorded by traffic law photo-monitoring devices unless the individual was driving more than six miles per hour above the speed limit in a school zone and/or park, or 10 or more miles per hour above the speed limit in any other location. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

HN5 **Vehicular Crimes, Traffic Control Device Violations**

On February 15, 2005, Springfield enacted an ordinance authorizing an "automated traffic

control photographic system" for placement at intersections throughout the city. The system only provides for the enforcement of **red light** violations. The ordinance is codified in Springfield, Ohio, Codified Ordinances § 303.09. The purpose of the traffic law photo-monitoring system is to reduce the number of **red light** violations and automobile accidents in the city. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

HN6 **Local Governments, Ordinances & Regulations**

Springfield, Ohio, Codified Ordinances § 303.09 provides for civil enforcement imposing monetary fines upon the owners of vehicles who commit **red light** violations. Offenders who are recorded by the "automated traffic control photographic system" (ATCPS) are not issued criminal traffic citations, and offenses are not adjudicated by the Springfield municipal court. Offenders are not assessed points on their driving records, and Springfield has created and implemented an administrative hearing process presided over by an independent third party not employed by the City of Springfield or the police

department. The ordinance states, however, that the Springfield Police Division shall administer the ATCPS program. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Review of Initial Decisions
- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**
- Evidence > Burdens of Proof > Preponderance of Evidence

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HN7 **Agency Adjudication, Review of Initial Decisions**

Contained in the notice of liability sent to the offender for a violation of Springfield, Ohio, Codified Ordinances § 303.09 is the following: 1) the images of the vehicle and its license plate; 2) the ownership records of the vehicle; 3) the nature of the violation and the date upon which the offense occurred; 4) the amount of the civil penalty imposed; and 5) a signed statement by a Springfield Police Officer stating that a violation had occurred based upon review of the recorded images. The recorded images and speed measurement readings taken from the "automated traffic control photographic system" (ATCPS) device are considered under the ordinance to be prima facie evidence of a violation. The

ordinance further provides a means by which the owner of a vehicle can dispute a violation if he or she was not driving the vehicle at the time that the ATCPS recorded a violation. Owners choosing to appeal must send a written request to the Springfield Police Department within 15 days of receiving the notice of liability. If an administrative hearing is held, the standard of proof utilized by the hearing officer is preponderance of the evidence. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

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HN8 **Vehicular Crimes, Traffic Control Device Violations**

The following Revised Code sections were enacted as a result of the passage of Am. Sub. S.B. 342 (effective March 23, 2015): R.C. 4511.092 ; 4511.093; 4511.095; 4511.096; 4511.097; 4511.098; 4511.099; 4511.0910; 4511.0911; 4511.0912; 4511.0913; 4511.0914; and 4511.204(C)(2). Viewed collectively, the new sections provide a comprehensive definition section (§ 4511.092) and expand upon existing requirements for **municipalities** who employ the use of traffic photo-monitoring systems. R.C. 4511.094 was already in existence prior to the passage of S.B. 342, but

parts of the section were updated by the new law including requirements for signs informing drivers that traffic law photo-monitoring devices are being operated in a particular area. More like this Headnote

Shepardize - Narrow by this Headnote (1)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

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HN9 **Vehicular Crimes, Traffic Control Device Violations**

See R.C. 4511.093(A) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Duties & Powers
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices

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HN10 **Vehicular Crimes, Traffic Control Device Violations**

Clearly, the initial decision whether to implement the use of traffic **cameras** is left to the individual **municipality** . Once the decision is made to install

traffic **cameras** , their continued use becomes subject to the statewide conditions enunciated in the remainder of Am. Sub. S.B. 342 (effective March 23, 2015).

Specifically, R.C. 4511.093(B)(1) provides that if a **municipality** implements the use of a traffic law photo-monitoring device, a law enforcement officer must be present at the location of the device while it is being operated. Section 4511.093(B)(2) simply states that a law enforcement officer who is present while the photo-monitoring device is operating can issue a ticket for any violation he or she personally witnesses. Alternatively, if the officer who is present did not issue a ticket for the observed violation, the **municipality** may issue a ticket for a civil violation if it was recorded by the photo-monitoring device. § 4511.093(B)(3) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Traffic Control Device Violations
- Governments > Local Governments > Duties & Powers
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

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HN11 **Vehicular Crimes, Traffic Control Device Violations**

R.C. 4511.095 requires **municipalities** to perform certain pre-implementation procedures before deploying a traffic law photo-monitoring device that was not in

existence at the time that Am. Sub. S.B. 342 (effective March 23, 2015) became effective. Specifically, § 4511.095(A)(1) requires a **municipality** to conduct a safety study of intersections or locations under consideration for placement of a traffic **camera** . The **municipality** is also required to conduct a public information campaign to inform drivers about the use of traffic **cameras** at new system locations prior to their implementation at the new location. § 4511.095(A)(2) . **Municipalities** are also required to publish at least one notice in a local newspaper of general circulation regarding their intent to use traffic **cameras** at new locations, the locations of the traffic **cameras** , and the date on which the first traffic **camera** will become operational. § 4511.095(A)(3) . Additionally, when a new traffic **camera** is deployed, the **municipality** must "refrain from levying any civil fines" for violations detected by the device for at least 30 days after it becomes operational. § 4511.095(A)(4) . During the 30-day interim after the traffic **camera** becomes operational, the **municipality** may send a warning notice to drivers who have committed recorded traffic violations. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > ... > Vehicular Crimes > Speeding > Elements

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation > Speed Limits

HN12 **Speeding, Elements**

R.C. 4511.0912(A) states that a civil ticket may not be issued for a violation recorded by a traffic **camera** located in a school zone or local park unless the vehicle in question is captured traveling at a speed that exceeds the posted speed limit by at least six miles per hour. In all other locations, the vehicle must be recorded by the traffic **camera** traveling at least 10 miles over the posted speed limit for a civil ticket to issue. § 4511.0912(B) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation
- Insurance Law > Types of Insurance > Motor Vehicle Insurance

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HN13 **Photographs, Visual Formats**

R.C. 3937.411 instructs insurers that they may not deny coverage and/or raise the insurance premium of any individual who receives a civil ticket based on a violation recorded by a traffic **camera** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Police Power
- Transportation Law > Private Vehicles > Traffic Regulation

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HN14 **Photographs, Visual Formats**

R.C. 4511.096(A) contains a requirement that a law enforcement officer examine the evidence of an alleged violation recorded by a traffic **camera** in order to determine whether a violation has in fact occurred. If a violation is found to have occurred, the officer may use the vehicle's license plate number to identify the registered owner. Section 4511.096(B) states that the fact that a person is found to be the registered owner of the vehicle is prima facie evidence that the person was operating the vehicle at the time the traffic violation occurred. Sections 4511.096(C) and (D) contain updated requirements for the standards with respect to the issuance of civil tickets for violations recorded by traffic **cameras** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation

- Governments > Local Governments > Police Power

HN15 **Photographs, Visual Formats**

R.C. 4511.097 explains what information should be included in the civil ticket issued to an offender for a violation recorded by a traffic **camera** and states that the local authority is required to send the ticket no later than 30 days after the violation. Significantly, this section mandates that the officer, required to be present by R.C. 4511.093(B)(1) whenever traffic **cameras** are in use, must include his name and badge number in the ticket sent to the offender. § 4511.097(B)(7) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Review of Initial Decisions
- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation

HN16 **Agency Adjudication, Review of Initial Decisions**

R.C. 4511.098 sets out the options for paying or challenging the civil ticket issued to a person for a violation recorded by a traffic **camera** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Review of Initial Decisions

- Evidence > Burdens of Proof > Preponderance of Evidence
- Transportation Law > Private Vehicles > Traffic Regulation

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HN17 **Agency Adjudication, Review of Initial Decisions**

R.C. 4511.099 sets forth the procedure for a hearing, the standard of proof (preponderance of the evidence), and affirmative defenses that apply if an alleged offender chooses to challenge a ticket issued based on the recorded image of a violation from a traffic **camera** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > Types of Evidence > Demonstrative Evidence > Foundational Requirements

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HN18 **Demonstrative Evidence, Foundational Requirements**

R.C. 4511.0911 contains requirements for the manufacturer of the traffic **camera** to provide to the local authority the maintenance record for each traffic **camera** used in the **municipality** , and an annual certificate of proper operation for each traffic **camera** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Appeals > Standards of Review > De Novo Review

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HN19 **Standards of Review, De Novo Review**

When reviewing a summary judgment, an appellate court conducts a de novo review. De novo review means that the appellate court uses the same standard that the trial court should have used, and it examines the evidence to determine whether as a matter of law no genuine issues exist for trial. Therefore, the trial court's decision is not granted any deference by the reviewing appellate court. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness
- Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions
- Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

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HN20 **Entitlement as Matter of Law, Appropriateness**

Civ.R. 56 defines the standard to be applied when determining whether a summary judgment should be granted. Summary judgment is proper when the trial court finds: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for

summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

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HN21 **Burdens of Proof, Movant Persuasion & Proof**

The initial burden is on the moving party for summary judgment to show that there is no genuine issue of material fact. Once a moving party satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the party's pleadings. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions
- Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

HN22 **Constitutionality of Legislation, Inferences & Presumptions**

The fundamental principle is that a court must presume the constitutionality of lawfully enacted legislation. Accordingly, the statute will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt. More like this Headnote

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- Governments > Local Governments > Home Rule

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HN23 **Local Governments, Home Rule**

Under the Home Rule Amendment to the Ohio Constitution, **municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. Ohio Const. art. XVIII, § 3 . This amendment provides **municipalities** with the broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a statewide nature or interest. Therefore, a municipal ordinance must yield to a state statute if: 1) the ordinance is an exercise of police power, rather than of local self-government; 2) that statute is a general law; and 3) the ordinance is in conflict with the statute. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Criminal Law & Procedure > ... > Vehicular Crimes > Traffic Control Device Violations > Elements
- Governments > Local Governments > Home Rule

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

HN24 **Traffic Control Device Violations, Elements**

Municipalities have home rule authority under Ohio Const. art. XVIII to impose civil liability on traffic violators through the use of a photo enforcement system for **red light** violations. Springfield, Ohio, does not utilize speed-monitoring **cameras** or mobile photo-monitoring devices. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Home Rule
- Transportation Law > Private Vehicles > Traffic Regulation

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HN25 **Photographs, Visual Formats**

When properly analyzed in its entirety, Am. Sub. S.B. 342 (effective March 23, 2015) constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally. Therefore, S.B. 342 is a general law

that does not violate the "Home Rule Amendment" in the Ohio Constitution. Ohio Const. art. XVIII, § 3 . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

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HN26 **Local Governments, Home Rule**

If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction. An ordinance created under the power of local self-government must relate "solely to the government and administration of the internal affairs of the **municipality** ." Conversely, the police power allows **municipalities** to enact regulations only to protect the public health, safety, or morals, or the general welfare of the public. While local self-government ordinances are protected under the Home Rule Amendment, Ohio Const. art. XVIII, § 3 , police-power ordinances "must yield in the face of a general state law." More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > Private Vehicles > Traffic Regulation

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HN27 **Local Governments, Ordinances & Regulations**

The Ohio Supreme Court has concluded that traffic ordinances in general arise from the police power. It is now clear that the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public. More like this Headnote

Shepardize - Narrow by this Headnote (1)

- Governments > Local Governments > Police Power
- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

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HN28 **Local Governments, Police Power**

Springfield, Ohio, Codified Ordinances § 303.09, the traffic **camera** ordinance, is clearly an exercise of its police power. Springfield's ordinance does not relate solely to the government and administration of the internal affairs of the **municipality**, but rather enacts regulations that affect public safety. The ordinance was enacted to address that public danger occasioned by motorists running **red lights**. In its ordinance, Springfield labels the **red-lightcameras** as its "Automated Traffic Control Photographic System." Springfield's traffic **camera** ordinance was designed to regulate individuals who violate the city's **red-light** traffic laws at its busiest

intersections. These requirements serve to protect drivers and pedestrians who might be traveling on those roads and generally affect traffic flow in the **municipality** . Thus the ordinance is an exercise of that jurisdiction's police power that may be invalidated if it conflicts with the general laws of this state. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations

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HN29 **Local Governments, Ordinances & Regulations**

Am. Sub. S.B. 342 (effective March 23, 2015) is a general law. A general law has been described as one which promotes statewide uniformity. Furthermore, general laws are those enacted to safeguard the peace, health, morals, and safety, and to protect the property of the people of the State. Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the **municipality** can no longer legislate in the field so as to conflict with the State. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Legislation > Types of Statutes

- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

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HN30 **Photographs, Visual Formats**

A statute qualifies as a general law if it satisfies four criteria. The statute must: 1) be part of a statewide and comprehensive legislative enactment; 2) apply to all parts of the state alike and operate uniformly throughout the state; 3) set forth police, sanitary or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to prescribe those regulations; and 4) prescribe a rule of conduct upon citizens generally. The third element of the test requires that for a statute to be considered a general law, it must set forth police, sanitary, or similar regulations, instead of merely granting or limiting a **municipality** 's power to create such regulations. Am. Sub. S.B. 342 (effective March 23, 2015) regulates the statewide use of traffic **cameras** to record **red light** /speeding violations. The statute is a comprehensive legislative enactment which applies to all parts of the state and is operated uniformly throughout. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats

- Governments > Legislation > Types of Statutes
- Transportation Law > Private Vehicles > Traffic Regulation

HN31 **Photographs, Visual Formats**

R.C. 4511.093 , 4511.095 , and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which a **municipality** must adhere if it chooses to use traffic **cameras** to record **red light** /speeding violations. However, Am. Sub. S.B. 342 (effective March 23, 2015) has extensive scope and does more than grant or limit state powers. In addition to regulating municipal authority, the other provisions of S.B. 342 also establish laws and procedures for motorists to follow if they are recorded by the traffic **cameras** committing a **red light** or speeding violation. Moreover, the statute establishes requirements for the manufacturer of the traffic **camera** regarding maintenance and annual upkeep of the device. Finally, S.B. 342 addresses insurers and restricts them from raising premiums or denying insurance coverage based on a violation recorded by a traffic **camera** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Ordinances & Regulations

- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

View more legal topics

HN32 **Photographs, Visual Formats**

The Ohio Supreme Court has found that the speed limit statute enacted in portions of R.C. 4511.21 was a general law even though the statute contains language that clearly limits municipal authority. Section 4511.21(I) limits the ability of **municipalities** to establish their own speed limits. Pursuant to the statute, local authorities must follow specific procedures if they wish to deviate from the speed limits codified by the statute. Additionally, § 4511.21(J) specifically provides that local authorities shall not modify or alter the basic rule set forth in § 4511.21(A) or in any event authorize by ordinance a speed in excess of 50 miles per hour. Thus, if the State can constitutionally limit a **municipality** 's ability to set its own speed limit in the interest of creating a comprehensive, statewide uniform statute regulating the speed of motor vehicles, it can also create a similar statewide uniform regulatory scheme governing traffic law photo-monitoring devices. While Am. Sub. S.B. 342 (effective March 23, 2015) may contain provisions which limit municipal authority, the overriding statewide, uniform purpose of the statute clearly sets forth comprehensive "police, sanitary or similar regulations." More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Legislation > Interpretation
- Transportation Law > Private Vehicles > Traffic Regulation

View more legal topics

HN33 **Photographs, Visual Formats**

The Ohio Supreme Court has unequivocally held that sections within a chapter will not be considered in isolation when determining whether a general law exists. Read in pari materia, Am. Sub. S.B. 342 (effective March 23, 2015), creates a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices in Ohio. Similar to Ohio's speed statute, R.C. 4511.21, S.B. 342 has extensive scope and does more than grant or limit state powers. S.B. 342 was clearly not enacted to limit municipal legislative powers. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Duties & Powers
- Transportation Law > Private Vehicles > Traffic Regulation

View more legal topics

HN34 **Photographs, Visual Formats**

Am. Sub. S.B. 342 (effective March 23, 2015) permits a **municipality** to operate a traffic law photo-enforcement system. S.B. 342 merely sets forth certain uniform statewide procedures and regulations to be followed if a **municipality** voluntarily decides to implement the use of traffic **cameras**. S.B. 342 does not target the enforcement of traffic laws in only certain select **municipalities**. Simply put, S.B. 342 uniformly applies to all **municipalities** in Ohio who voluntarily choose to implement traffic **cameras**. S.B. 342 provides for a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices in Ohio, and was clearly not enacted to limit municipal legislative powers. More like this Headnote

Shepardize - Narrow by this Headnote (1)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation
- Governments > Legislation > Types of Statutes

HN35 **Photographs, Visual Formats**

A statute in question that is being challenge cannot be analyzed in a vacuum. Upon review, it is concluded that the statutory scheme contained in Am. Sub. S.B. 342 (effective March 23, 2015) is a comprehensive one enacted to insure that traffic law photo-enforcement is

implemented and regulated in the manner which best serves the statewide public interest and its citizenry. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Transportation Law > Private Vehicles > Traffic Regulation
- Governments > Local Governments > Duties & Powers

View more legal topics

HN36 **Photographs, Visual Formats**

R.C. 4511.093 , 4511.095 , and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which a **municipality** must adhere if it chooses to utilize traffic **cameras** to record **red light** /speeding violations. However, as is clear from all of the other provisions in the statute, Am. Sub. S.B. 342 (effective March 23, 2015) has "extensive scope and does more than grant or limit state powers." Certain provisions of S.B. 342 are directed at the conduct of citizens. The fourth element of the Canton test does not require that the statute in question prescribe a rule of conduct upon citizens specifically, but rather upon citizens generally. Significantly, S.B. 342 not only addresses the responsibilities of drivers and the **municipalities** in which they live,

but also the responsibilities of motor vehicle insurers and the manufacturers of the traffic **cameras** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Home Rule
- Transportation Law > Private Vehicles > Traffic Regulation

View more legal topics

HN37 **Photographs, Visual Formats**

With respect to all operators of motor vehicles in Ohio, Am. Sub. S.B. 342 (effective March 23, 2015) outlines the procedures to be followed by a driver who is issued a ticket, how to pay or dispute the violation, and finally, the procedures and rules an individual is subject to if he or she chooses to challenge the violation before an administrative body. Sections within a chapter will not be considered in isolation when determining whether a general law exists. When properly analyzed in its entirety, S.B. 342 therefore constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally. Thus, having satisfied the Canton test, S.B. 342 constitutes a "general law" and does not violate the Home Rule Amendment of the Ohio Constitution. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Legislation > Severability

HN38 **Legislation, Severability**

See R.C. 1.50 . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Legislation > Severability

HN39 **Legislation, Severability**

Determining whether a statutory provision is severable under R.C. 1.50 requires application of the following three-part inquiry: (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause is taken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only? More like this Headnote

Shepardize - Narrow by this Headnote (0)

Counsel: For Plaintiff-Appellant: JEROME M. STROZDAS, Springfield, Ohio.

For Defendant-Appellee: HALLI BROWNFIELD WATSON, and NICOLE M. KOPPITCH, Columbus, Ohio.

Judges: DONOVAN, P.J. FROELICH, J. and HALL, J., concur.

Opinion by: DONOVAN

Opinion

[**650] DONOVAN, P.J.

[*P1] Plaintiff-appellant City of Springfield (hereinafter "Springfield") appeals a decision of the Clark County Court of Common Pleas, Civil Division, denying its motion for summary judgment and granting the motion for summary judgment of defendant-appellee the State of Ohio (hereinafter "the State"). Springfield filed a timely notice of appeal with this Court on August 20, 2015.

[*P2] On March 18, 2015, Springfield filed a "Complaint," in which it challenged [**651] the constitutionality of Amended Substitute Senate Bill No. 342 (hereinafter "Am.Sub.S.B. No. 342") on the grounds that it violates Article XVIII, Section 3 of the Ohio Constitution, otherwise known as the "Home Rule Amendment." ***HN1*** Am.Sub.S.B. No. 342 served to amend and enact several statutory provisions governing traffic law photo-monitoring devices. *See* R.C. 4511.0914 — R.C. 4511.092.

[*P3] In its complaint, Springfield specifically challenged ***HN2*** the requirement in R.C. 4511.093(B)(1) that a law enforcement officer be present at the location of any traffic law photo-monitoring device when [***2] it is being operated. Springfield also challenged ***HN3*** R.C. 4511.095(A)(1) and (2), the provisions which require that a local authority must conduct a safety study and public information campaign for the location under consideration for the placement of a new device before any new photo-monitoring equipment can be deployed. Springfield further asserted that ***HN4*** R.C. 4511.0912(A) and (B) violated the home rule amendment because it prohibits municipal authorities from issuing speeding tickets for violations recorded by traffic law photo-monitoring devices unless the individual was driving more than six miles per hour above the speed limit in a school zone and/or park, or ten or more miles per hour above the speed limit in any other location. Springfield argued that the aforementioned provisions of Am.Sub.S.B. No. 342 "interfere with the City's power of 'local self-government' and with the City's exercise of its police power in a manner 'not in conflict with general laws.'" We note that although Springfield's complaint only references five specific provisions which it finds objectionable, it sought a declaratory judgment that all of Am.Sub.S.B. No. 342 violates the home rule amendment, and is therefore unconstitutional.

[*P4] On May 26, 2015, [***3] Springfield filed its motion for summary judgment. In addition to arguing that R.C. 4511.093(B)(1), 4511.095, and R.C. 4511.0912 were unconstitutional as it had in its complaint, Springfield asserted that R.C. 4511.0911, R.C. 4511.092, R.C. 4511.094, R.C. 4511.096, R.C. 4511.097, and R.C. 4511.099 were unconstitutional "incursions" into its power of local self-government. Springfield also argued that Am.Sub.S.B. No. 342 is not a general law because it does not "prescribe a rule of conduct for citizens generally," but only serves to place unconstitutional limits on a **municipality**'s legislative ability. Finally, Springfield asserted that the only provisions of Am.Sub.S.B. No. 342 that could survive being severed were R.C. 3937.411, R.C. 4511.01, and R.C. 4511.204(C)(2). According to Springfield, the remainder of Am.Sub.S.B. No. 342 should be stricken as unconstitutional.

[*P5] Shortly thereafter on June 9, 2015, the State filed its motion for summary judgment and memorandum contra in which it argued that Am.Sub.S.B. No. 342 is a general law, and therefore not subject to the home rule amendment to the Ohio Constitution. As such, the State asserted that Am.Sub. S.B. No. 342 was constitutionally permissible.

[*P6] On August 17, 2015, the trial court issued an entry overruling Springfield's motion for summary judgment. In the same entry, the trial court granted [***4] the State's motion for summary judgment, concluding that Am.Sub.S.B. No. 342 was constitutionally valid in its entirety, and therefore did not violate the home rule provisions of the Ohio Constitution.

[*P7] It is from this judgment that Springfield now appeals.

The Springfield Ordinance / No. 05-41

[*P8] *HN5* On February 15, 2005, Springfield enacted an ordinance authorizing an "automated traffic control photographic system" [**652] (ATCPS) for placement at intersections throughout the city. The system only provides for the enforcement of **red light** violations. The ordinance is codified in Section 303.09 of the Codified Ordinances of the City of Springfield, Ohio. Springfield states that the purpose of the traffic law photo-monitoring system is to reduce the number of **red light** violations and automobile accidents in the city. Springfield also asserts that the system helps to conserve limited police resources. According to Springfield, there are approximately ten intersections where **red light** **cameras** are operating throughout the city.

[*P9] Springfield maintains that the ordinance creates a system which is civil in nature, not criminal. *HN6* The ordinance provides for civil enforcement imposing monetary fines upon the owners of vehicles [***5] who commit **red light** violations. Offenders who are recorded by the ATCPS are not issued criminal traffic citations, and offenses are not adjudicated by the Springfield municipal court. Offenders are not assessed points on their driving records, and Springfield has created and implemented an administrative hearing process presided over by an independent third party not employed by the City of Springfield or the police department. The ordinance states, however, that the Springfield Police Division shall administer the ATCPS program.

[*P10] *HN7* Contained in the notice of liability sent to the offender are the following: 1) the images of the vehicle and its license plate; 2) the ownership records of the vehicle; 3) the nature of the violation and the date upon which the offense occurred; 4) the amount of the civil penalty imposed; and 5) a signed statement by a Springfield Police Officer stating that a violation had occurred based upon review of the recorded images. The recorded images and speed measurement readings taken from the ATCPS device are considered under the ordinance to be prima facie evidence of a violation. The ordinance further provides a means by which the owner of a vehicle can dispute [***6] a violation if he or she was not driving the vehicle at the time that the ATCPS recorded a violation. Owners choosing to appeal must send a written request to the Springfield Police Department within fifteen days of receiving the notice of liability. If an administrative hearing is held, the standard of proof utilized by the hearing officer is preponderance of the evidence.

Amended Substitute Senate Bill No. 342

[*P11] Am.Sub.S.B. No. 342 was signed into law on December 19, 2014, and became effective shortly thereafter on March 23, 2015. ***HN8*** The following Revised Code sections were enacted as a result of Am.Sub. S.B. No. 342's passage: 4511.092; 4511.093; 4511.095; 4511.096; 4511.097; 4511.098; 4511.099; 4511.0910; 4511.0911; 4511.0912; 4511.0913; 4511.0914; and 4511.204(C)(2). Viewed collectively, the new sections provide a comprehensive definition section (R.C. 4511.092) and expand upon existing requirements for **municipalities** who employ the use of traffic photo-monitoring systems. We note that R.C. 4511.094 was already in existence prior to the passage of Am.Sub.S.B. No. 342, but parts of the section were updated by the new law including requirements for signs informing drivers that traffic law photo-monitoring devices [***7] are being operated in a particular area.

[*P12] R.C. 4511.093(A) begins by stating that ***HN9*** "[a] local authority *may* utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations." ***HN10*** Clearly, the initial decision whether to implement the use of traffic **cameras** is left to the individual **municipality**. Once the decision is made to install traffic **cameras**, [**653] their continued use becomes subject to the statewide conditions enunciated in the remainder of Am.Sub.S.B. No. 342. Specifically, R.C. 4511.093(B)(1) provides that if a **municipality** implements the use of a traffic law photo-monitoring device, a law enforcement officer must be present at the location of the device while it is being operated. R.C. 4511.093(B)(2) simply states that a law enforcement officer who is present while the photo-monitoring device is operating can issue a ticket for any violation he or she personally witnesses. Alternatively, if the officer who is present did not issue a ticket for the observed violation, the **municipality** may issue a ticket for a civil violation if it was recorded by the photo-monitoring device. R.C. 4511.093(B)(3).

[*P13] ***HN11*** R.C. 4511.095 requires **municipalities** to perform certain pre-implementation procedures before deploying a traffic law photo-monitoring device that [***8] was not in existence at the time that Am.Sub.S.B. No. 342 became effective. Specifically, R.C. 4511.095(A)(1) requires a **municipality** to conduct a safety study of intersections or locations under consideration for placement of a traffic **camera**. The **municipality** is also required to conduct a public information campaign to inform drivers about the use of traffic **cameras** at new system locations prior to their implementation at the new location. R.C. 4511.095(A)(2). **Municipalities** are also required to publish at least one notice in a local newspaper of general circulation regarding their intent to use traffic **cameras** at new locations, the locations of the traffic **cameras**, and the date on which the first traffic **camera** will become operational. R.C. 4511.095(A)(3). Additionally, when a new traffic **camera** is deployed, the **municipality** must "refrain from levying any civil fines" for violations detected by the device for at least thirty days after it becomes operational. R.C. 4511.095(A)(4). During the thirty day interim after the traffic **camera** becomes operational, the **municipality** may send a warning notice to drivers who have committed recorded traffic violations. *Id.*

[*P14] ***HN12*** R.C. 4511.0912(A) states that a civil ticket may not be issued for a violation recorded by a traffic **camera** located [***9] in a school zone or local park unless the vehicle in question is captured traveling at a speed that exceeds the posted speed limit by at least six miles per hour. In all other locations, the vehicle must be recorded by the traffic **camera** traveling at least ten miles over the posted speed limit for a civil ticket to issue. R.C. 4511.0912(B).

[*P15] Am.Sub.S.B. No. 342 also enacted the following additional regulations:

HN13 R.C. 3937.411 — This section instructs insurers that they may not deny coverage and/or raise the insurance premium of any individual who receives a civil ticket based on a violation recorded by a traffic **camera**.

HN14 R.C. 4511.096(A) — This section contains a requirement that a law enforcement officer examine the evidence of an alleged violation recorded by a traffic **camera** in order to determine whether a violation has in fact occurred. If a violation is found to have occurred, the officer may use the vehicle's license plate number to identify the registered owner.

R.C. 4511.096(B) — This section states that the fact that a person is found to be the registered owner of the vehicle is prima facie evidence that the person was operating the vehicle at the time the traffic violation occurred.

R.C. 4511.096(C) and (D) — These sections contain updated requirements for the [***10] standards with respect to the issuance of civil tickets for violations recorded by traffic **cameras**.

[**654] *HN15* R.C. 4511.097 — This section explains what information should be included in the civil ticket issued to an offender for a violation recorded by a traffic **camera** and states that the local authority is required to send the ticket no later than thirty days after the violation. Significantly, this section mandates that the officer, required to be present by R.C. 4511.093(B)(1) whenever traffic **cameras** are in use, must include his name and badge number in the ticket sent to the offender. R.C. 4511.097(B)(7).

HN16 R.C. 4511.098 — This section sets out the options for paying or challenging the civil ticket issued to a person for a violation recorded by a traffic **camera**.

HN17 R.C. 4511.099 — This section sets forth the procedure for a hearing, the standard of proof (preponderance of the evidence), and affirmative defenses that apply if an alleged offender chooses to challenge a ticket issued based on the recorded image of a violation from a traffic **camera**.

HN18 R.C. 4511.0911 — This section contains requirements for the manufacturer of the traffic **camera** to provide to the local authority the maintenance record for each traffic **camera** used in the **municipality**, and an annual certificate of proper operation [***11] for each traffic **camera**.

Standard of Review

[*P16] As this Court has previously noted:

HN19 When reviewing a summary judgment, an appellate court conducts a de novo review. *Village of Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996 Ohio 336, 671 N.E.2d 241 (1996). "De Novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Harris v. Dayton Power & Light Co.*, 2d Dist. Montgomery No. 25636, 2013-Ohio-5234, P 11 (quoting *Brewer v. Cleveland City Schools Bd. [o]f Edn.*, 122 Ohio

App. 3d 378, 383, 701 N.E.2d 1023 (8th Dist.1997) (citing *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 413 N.E.2d 1187 (1980)). Therefore, the trial court's decision is not granted any deference by the reviewing appellate court. *Brown v. County Comm'rs*, 87 Ohio App. 3d 704, 711, 622 N.E.2d 1153 (4th Dist.1993).

HN20 Civ. R. 56 defines the standard to be applied when determining whether a summary judgment should be granted. *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 463, 2008 Ohio 87, 880 N.E.2d 88 (2008). Summary judgment is proper when the trial court finds: "(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the Motion for Summary Judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Fortune v. Fortune*, 2d Dist. Greene No. 90-CA-96, 1991 Ohio App. LEXIS 1967, 1991 WL 70721, *1 (May 3, 1991) (quoting *Harless v. Willis Day Warehous[ing] Co.*, 54 Ohio St. 2d 64, 67, 375 N.E.2d 46 (1978)). ***HN21*** The initial burden is on the moving party to show that there is no genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93, 1996 Ohio 107, 662 N.E.2d 264 (1996). Once a moving party [***12] satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the party's pleadings. *Dotson v. Freight Rite, Inc.*, 2d Dist. Montgomery No. 25495, 2013-Ohio-3272, P 41 (citation omitted).

[**655] *Cincinnati Ins. Co. v. Greenmont Mut. Hous. Corp.*, 2d Dist. Montgomery No. 25830, 2014-Ohio-1973, P 17-18.

[*P17] Because they are interrelated, Springfield's first and second assignments of error will be discussed together as follows:

[*P18] "THE TRIAL COURT ERRED BY NOT GRANTING THE CITY'S MOTION FOR SUMMARY JUDGMENT."

[*P19] "THE TRIAL COURT ERRED BY GRANTING THE STATE'S MOTION FOR SUMMARY JUDGMENT."

[*P20] In its first and second assignments, Springfield contends that the trial court erred by denying its motion for summary judgment and granting the State summary judgment on its claims regarding the constitutionality of Am.Sub.S.B. No. 342. Specifically, Springfield argues that several provisions of Am.Sub.S.B. No. 342 are unconstitutional because they violate its power of self-government. Springfield also argues that Am.Sub.S.B. No. 342 is not a general law because it does not prescribe a rule of conduct for citizens generally and is not an exercise of the police power of the State. Lastly, Springfield argues that the only sections of Am.Sub.S.B. No. 342 that can be severed are R.C. 3937.411 and R.C. 4511.01 because the remainder of the sections are unconstitutional.

[*P21] Initially, we recognize ***HN22*** the "fundamental [***13] principle that a court must 'presume the constitutionality of lawfully enacted legislation.'" *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, P 6, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993). Therefore, we begin with the presumption that Am.Sub.S.B. No. 342 (specifically, R.C. 4511.093(B)(1) & (3), 4511.095, and 4511.0912) is constitutional. Accordingly, the statute "will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt." *Id.* at P 6.

[*P22] *HN23* Under the Home Rule Amendment to the Ohio Constitution, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, *as are not in conflict with general laws*." Article XVIII, Section 3. This amendment provides **municipalities** with the "broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a statewide nature or interest." *State ex rel. Morrison v. Beck Energy Corporation*, 143 Ohio St.3d 271, 2015-Ohio-485, 37 N.E.3d 128, P 14, citing *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948). Therefore, a municipal ordinance must yield to a state statute if 1) the ordinance is an exercise of police power, rather than of local self-government; 2) that statute is a general law; and 3) the ordinance is in conflict with the statute.

[*P23] Neither party disputes that Springfield Ordinance No. 05-41, enacting an automated photo-enforcement program, was lawfully enacted [***14] pursuant to its constitutionally protected home rule powers. Recently, in *Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474, P 3, the Ohio Supreme Court reaffirmed its holding in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, that *HN24* **municipalities**, such as Springfield, have home rule authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through the use of a photo enforcement system for **red light** violations. We note that Springfield does not utilize speed-monitoring **cameras** or mobile photo-monitoring devices. [**656] To the extent Springfield challenges Am.Sub.S.B. No. 342 regarding its provisions implementing the use of speed **cameras** and mobile photo-monitoring devices, it lacks standing to do so since its **cameras** are only designed to detect **red-light** violations and nothing more.

Exercise of Police Power or Exercise of Local Self-Government

[*P24] In *Dayton v. State*, 2015-Ohio-3160, 36 N.E.3d 235 (2d Dist.), we recently found that the trial court erred when it granted partial summary judgment to the City of Dayton, finding that certain provisions of Am.Sub.S.B. No. 342 unconstitutionally violated its home rule powers. We concluded that *HN25* when properly analyzed in its entirety, Am.Sub.S.B. No. 342 constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally. Therefore, we found [***15] that Am.Sub.S.B. No. 342 is a general law that does not violate the "Home Rule Amendment" in the Ohio Constitution.

[*P25] In *Dayton*, however, the only issue before this Court was whether Am.Sub.S.B. No. 342 was a general law. Dayton acknowledged that its traffic **camera** ordinance was an exercise of police power. Additionally, Dayton acknowledged that its traffic **camera** ordinance was in conflict with Am.Sub.S.B. No. 342. In the instant case, Springfield argues that its traffic **camera** ordinance is not an exercise of police power, but is instead, an exercise of local self-government. Accordingly, that is where our analysis begins.

[*P26] *HN26* "If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction." *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, P23. An ordinance created under the power of local self-government must relate "solely to the government and administration of the internal affairs of the **municipality**." *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958), paragraph one of the syllabus. Conversely, the police power

allows **municipalities** to enact regulations only to protect the public health, safety, or morals, or the general welfare of the public. *See [***16] Downing v. Cook*, 69 Ohio St.2d 149, 150, 431 N.E.2d 995 (1982). While local self-government ordinances are protected under the Home Rule Amendment, police-power ordinances "must yield in the face of a general state law." *Am. Financial Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, P 23.

[*P27] In *Tolliver v. Newark*, 145 Ohio St. 517, 62 N.E.2d 357 (1945), overruled in part on other grounds in *Fankhauser v. Mansfield*, 19 Ohio St.2d 102, 110, 249 N.E.2d 789 (1969), the Ohio Supreme Court held that the regulation of traffic by the placement of stop signs was an exercise of the police power. *Id.* at paragraph three of the syllabus. The court came to the same conclusion for an ordinance regulating truck routes throughout a city, *Niles v. Dean*, 25 Ohio St.2d 284, 268 N.E.2d 275 (1971), paragraph one of the syllabus, and a zoning ordinance regulating the accessibility of off-street parking because it was directed at the "protection of pedestrians and drivers, elimination of traffic congestion and reduction of air and noise pollution," *Brown v. Cleveland*, 66 Ohio St.2d 93, 96, 420 N.E.2d 103 (1981). ***HN27*** The Ohio Supreme Court eventually concluded that traffic ordinances in general arise from the police power. *See Linndale v. State*, 85 Ohio St.3d 52, 53-54, 1999 Ohio 434, 706 N.E.2d 1227 (1999), citing *Geauga Cty. Bd. of Commrs.*, [**657] 67 Ohio St. 3d 579, 583, 1993-Ohio-55, 621 N.E.2d 696 (1993). "It is now clear that the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public." *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, P 14.

[*P28] Upon review, we conclude that ***HN28*** Springfield's traffic **camera** ordinance is clearly an exercise of its police power. Springfield's ordinance does not "relate solely to the government and administration of [***17] the internal affairs of the **municipality**," but rather enacts regulations that affect public safety. *Marich*, P 11. Springfield acknowledges that the ordinance was enacted "to address that public danger occasioned by motorists running **redlights**. *** The Commission declared its purpose of significantly reducing **red light** violations and related accidents." It is also important to note that in its ordinance, Springfield labels the **red-light cameras** as its "Automated *Traffic Control* Photographic System." According to Springfield's City Manager, James Bodenmiller, the "prime motivation" in enacting the traffic **camera** ordinance was to improve safety. The goal of improving safety is repeated in the preamble of Springfield's traffic **camera** ordinance.

[*P29] Springfield's traffic **camera** ordinance was designed to regulate individuals who violate the city's **red-light** traffic laws at its busiest intersections. These requirements serve to protect drivers and pedestrians who might be traveling on those roads and generally affect traffic flow in the **municipality**. Thus the ordinance is an exercise of that jurisdiction's police power that may be invalidated if it conflicts with the general laws of this state. [***18]

General Law

[*P30] As previously noted, we have recently held that ***HN29*** [**658] Am.Sub.S.B. No. 342 is a general law in *Dayton v. State*, 2015-Ohio-3160, 36 N.E.3d 235 (2d Dist.), wherein we stated in pertinent part:

*** "A general law has been described as one which promotes statewide uniformity." *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St. 3d 242, 244, 1992-Ohio-65, 602 N.E.2d 1147 (1965). Furthermore, general laws are those "enact[ed] to safeguard the peace,

health, morals, and safety, and to protect the property of the people of the state." *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83, 7 Ohio Law Abs. 349, 167 N.E. 158 (1929). "Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the **municipality** can no longer legislate in the field so as to conflict with the state." *State ex rel. McElroy v. Akron*, 173 Ohio St. 189, 194, 181 N.E.2d 26 (1962).

HN30 A statute qualifies as a general law if it satisfies four criteria. The statute must: 1) be part of a statewide and comprehensive legislative enactment; 2) apply to all parts of the state alike and operate uniformly throughout the state; 3) set forth police, sanitary or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to prescribe those regulations; and 4) prescribe a rule of conduct upon citizens generally. *Mendenhall [v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255], at P 20; *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus.

***

The third element of the *Canton* test requires that for a statute to be considered [***19] a general law, it must set forth police, sanitary, or similar regulations, instead of merely granting or limiting a **municipality**'s power to create such regulations. Am.Sub.S.B. No. 342 regulates the statewide use of traffic **cameras** to record **red light**/speeding violations. The statute is a comprehensive legislative enactment which applies to all parts of the state and is operated uniformly throughout.

***

HN31 R.C. 4511.093, 4511.095, and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which a **municipality** must adhere if it chooses to use traffic **cameras** to record **red light**/speeding violations. However, as is clear from the other provisions listed above, Am.Sub.S.B. No. 342 has "extensive scope and does more than grant or limit state powers." *Mendenhall*, at P 24. In addition to regulating municipal authority, the other provisions of Am.Sub.S.B. No. 342 also establish laws and procedures for motorists to follow if they are recorded by the traffic **cameras** committing a **red light** or speeding violation. Moreover, the statute establishes requirements for the manufacturer of the traffic **camera** regarding maintenance and annual upkeep of the device. Finally, Am.Sub.S.B. No. 342 addresses insurers and restricts them [***20] from raising premiums or denying insurance coverage based on a violation recorded by a traffic **camera**.

In *Mendenhall*, ***HN32*** the Ohio Supreme Court found that the speed limit statute enacted in portions of R.C. 4511.21 was a general law even though the statute contained language that clearly limits municipal authority. R.C. 4511.21(I) limits the ability of **municipalities** to establish their own speed limits. Pursuant to the statute, local authorities must follow specific procedures if they wish to deviate from the speed limits codified by the statute. *Id.* Additionally, R.C. 4511.21(J) specifically provides that "local authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour." Thus, if the State can constitutionally limit a **municipality**'s ability to set its own speed limit in the interest of creating a comprehensive, statewide uniform statute regulating the speed of motor vehicles, it can also create a similar statewide uniform regulatory scheme governing traffic law photo-monitoring devices. While Am.Sub.S.B. No. 342 may contain provisions which limit municipal authority, the overriding

statewide, uniform purpose of [***21] the statute clearly sets forth comprehensive "police, sanitary or similar regulations."

Similarly, the Ohio Supreme Court has held that when considering whether a statute prohibiting regulation of properly licensed hazardous waste disposal facilities by a political subdivision was a valid general law, "[t]he section of law questioned *** should not be read and interpreted in isolation from the other sections [of the Revised Code Chapter] dealing with the state's control of the disposal of hazardous wastes. All such sections read in pari materia do not merely prohibit subdivisions of the state from regulation of these facilities. Conversely, the statutory scheme contained in this chapter is a comprehensive one enacted to insure that such facilities are designed, sited, and operated in the manner which best serves the statewide public interest." *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982).

***

HN33 The Ohio Supreme Court has unequivocally held that "sections within a chapter will not be considered in isolation when determining whether a general law exists." *Mendenhall*, at P 27. Read in [**659] pari material, Am.Sub.S.B. No. 342 creates a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices [***22] in Ohio. Similar to Ohio's speed statute, R.C. 4511.21, Am.Sub.S.B. No. 342 has "extensive scope and does more than grant or limit state powers." *Id.*at P 24. Contrary to Dayton's assertion, Am.Sub.S.B. No. 342 was clearly not enacted to limit municipal legislative powers. In the instant case, the trial court erred when it considered R.C. 4511.093, 4511.095, and 4511.0912 in isolation from the remainder of the statutory provisions in Am.Sub.S.B. No. 342.

We note that in support of its finding that Am.Sub.S.B. No. 342 merely acts to limit municipal power in derogation of the third element of the *Canton* test, the trial court relied on the Ohio Supreme Court's holding in *Linndale v. State*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (1999). In *Linndale*, the Court addressed a state statute prohibiting local authorities from issuing speeding and excess weight citations when the **municipality** has less than 880 yards of the freeway within its jurisdiction. Ultimately, the Supreme Court held that the state statute was not a general law because it "impermissibly infringed on the right of affected **municipalities** to enact or enforce traffic regulations," in violation of the home rule.

However, unlike the statute in question in *Linndale* which *prohibited* the local authorities from issuing certain traffic citations, ***HN34*** Am.Sub.S.B. [***23] No. 342 *permits* a **municipality** to operate a traffic law photo-enforcement system. Am.Sub.S.B. No. 342 merely sets forth certain uniform statewide procedures and regulations to be followed if a **municipality** voluntarily decides to implement the use of traffic **cameras**. Moreover, the *Linndale* court stated that the statute in question was "not part of a uniform statewide regulation on the subject of traffic law enforcement." *Id.* at 55. The statute in *Linndale* was found to only specifically affect "certain" **municipalities** in Ohio; as a result, the statute had no uniform statewide application and was therefore unconstitutional. *Id.* Conversely, Am.Sub.S.B. No. 342 does not target the enforcement of traffic laws in only certain select **municipalities**. Simply put, Am.Sub.S.B. No. 342 uniformly applies to all **municipalities** in Ohio who voluntarily choose to implement traffic **cameras**. Accordingly, *Linndale* is clearly distinguishable from the instant case.

In **light** of the foregoing analysis, we find that Am.Sub.S.B. No. 342 provides for a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law

photo-monitoring devices in Ohio, and was clearly not enacted to [***24] limit municipal legislative powers.

***

The final issue we must address is whether Am.Sub.S.B. No. 342 "prescribe[s] a rule of conduct upon citizens generally." *Canton*, 95 Ohio St.3d 149, 2002 Ohio 2005, 766 N.E.2d 963, syllabus. As we have emphasized, ***HN35*** the statute in question cannot be analyzed in a vacuum. Upon review, we conclude and reiterate that the statutory scheme contained in Am.Sub.S.B. No. 342 is a comprehensive one enacted to insure that traffic law photo-enforcement is implemented and regulated in the manner which best serves the statewide public interest and its citizenry. *See Clermont Environmental Reclamation Co.*, 2 Ohio St.3d 44, at 48, 2 Ohio B. 587, 442 N.E.2d 1278.

HN36 R.C. 4511.093, 4511.095, and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which [**660] a **municipality** must adhere if it chooses to utilize traffic **cameras** to record **red light**/speeding violations. However, as is clear from all of the other provisions in the statute, Am.Sub.S.B. No. 342 has "extensive scope and does more than grant or limit state powers." *Mendenhall*, at P 24. In its decision, the trial court acknowledged that "certain provisions of Am.Sub.S.B. No. 342 are directed at the conduct of citizens." The trial court ignored those provisions which directly and uniformly applied to all motor vehicle operators in Ohio, and instead, narrowly focused on R.C. 4511.093, 4511.095, and 4511.0912 in isolation. The fourth [***25] element of the *Canton* test does *not* require that the statute in question prescribe a rule of conduct upon citizens *specifically*, but rather upon citizens generally. Significantly, Am.Sub.S.B. No. 342 not only addresses the responsibilities of drivers and the **municipalities** in which they live, but also the responsibilities of motor vehicle insurers and the manufacturers of the traffic **cameras**. ***HN37*** With respect to *all* operators of motor vehicles in Ohio, the statute outlines the procedures to be followed by a driver who is issued a ticket, how to pay or dispute the violation, and finally, the procedures and rules an individual is subject to if he or she chooses to challenge the violation before an administrative body. Sections within a chapter will not be considered in isolation when determining whether a general law exists. *Mendenhall*, 117 Ohio St.3d 33, at P 27, 2008 Ohio 270, 881 N.E.2d 255. When properly analyzed in its entirety, Am.Sub.S.B. No. 342 therefore constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally.

Thus, having satisfied the *Canton* test, we find that Am.Sub.S.B. No. 342 constitutes a "general law" and does not violate the Home Rule Amendment of the Ohio Constitution. Dayton has failed to meet its burden of establishing [***26] beyond a reasonable doubt that Am.Sub.S.B. No. 342 in any way offends the Ohio Constitution.

Dayton v. State, 2015-Ohio-3160, 36 N.E.3d 235, at P 22-39.

[*P31] In **light** of our previous holding in *Dayton*, we find no merit to Springfield's argument that Am.Sub.S.B. No. 342 is not a general law. Contrary to Springfield's assertions, Am.Sub.S.B. No. 342 was not enacted to limit municipal powers, and the statute constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally. Like the City of Dayton before it, Springfield has failed to meet its burden of establishing beyond a reasonable doubt that Am.Sub.S.B. No. 342 in any way offends the Ohio Constitution.

Severance

[*P32] Lastly, Springfield argues that the only provisions of Am.Sub.S.B. No. 342 that can be severed are R.C. 3937.411 and R.C. 4511.01 because the remainder of the sections are unconstitutional. R.C. 1.50 provides that statutory provisions are presumptively severable: ***HN38*** "If any provision of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or [***27] application, and to this end are severable."

[*P33] ***HN39*** Determining whether a provision is severable requires application of the following three-part inquiry:

[**661] (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause is taken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?

State ex rel. Sunset Estate Properties, L.L.C. v. Lodi, 142 Ohio St.3d 351, 2015-Ohio-790, 30 N.E.3d 934, P 17.

[*P34] Here, we have found Am.Sub.S.B. No. 342 to be constitutional in its entirety. Therefore, we need not determine whether any provision of Am.Sub.S.B. No. 342 is subject to severability because the issue is moot. Upon review, we conclude that the trial court did not err when it granted the State's motion for summary judgment.

[*P35] Springfield's first and second assignments of error are overruled.

[*P36] Both of Springfield's assignments of error having been overruled, the judgment of the trial court is affirmed.

. . . .

FROELICH, J. and HALL, J., concur.

City of Toledo v. State, 2016-Ohio-4906

Copy Citation

Court of Appeals of Ohio, Sixth Appellate District, Lucas County

July 8, 2016, Decided

Court of Appeals No. L-15-1121

Reporter
2016-Ohio-4906 * | 56 N.E.3d 997 ** | 2016 Ohio App. LEXIS 2667 ***

City of Toledo, Appellee v. State of Ohio, et al., Appellants

Subsequent History: Discretionary appeal allowed by Toledo v. Ohio, 147 Ohio St. 3d 1411, 2016-Ohio-7455, 2016 Ohio LEXIS 2646, 62 N.E.3d 185 (2016)
Stay granted by Toledo v. State, 147 Ohio St. 3d 1411, 2016-Ohio-7455, 2016 Ohio LEXIS 2669, 62 N.E.3d 184 (2016)
Decision reached on appeal by City of Toledo v. State, 2017-Ohio-215, 2017 Ohio App. LEXIS 205 (Ohio Ct. App., Lucas County, Jan. 20, 2017)

Prior History:

[***1] Trial Court No. CI0201501828.

Disposition:

Judgment affirmed.

Core Terms

municipalities, regulations, traffic, photo-monitoring, trial court, statewide, **cameras**, provisions, prescribing rules, city's, traffic law, devices, home rule, statutes, set forth, sanitary, assigned error, ordinance, legislative power, state statute, uniformly, self-government, summary judgment motion, enacting legislation, requirements, citations, relevant provision, police power, speed limit, impermissibly

Case Summary

Overview

HOLDINGS: [1]-The trial court properly granted a city summary judgment in its action alleging S.B., Gen. Assem. 342 (Ohio 2015) impermissibly limited the power of **municipalities** to enact and enforce their own legislation in contravention of the home rule provision of Ohio Const. art. XVIII, § 3 because the statutes were not "general laws," and they had to yield to Toledo, Ohio, Mun. Code 313.12; [2]-The conditions established by the legislature actually rendered illusory most **municipalities** ' right to use photo-detection devices for enforcing traffic laws, and S.B. 342 was aimed not at setting forth rules to be followed by citizens but at establishing conditions to be followed by the **municipalities** that wished to use photo-monitoring devices; [3]-Various provisions of S.B. 342 did not operate uniformly because most metropolitan areas did not have the resources to place an officer at every **camera** .

Outcome

Summary judgment affirmed.

▼LexisNexis® Headnotes

- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

View more legal topics

HN1 **Traffic Control Devices, Red Lights**

Under Toledo, Ohio, Mun. Code 313.12, civil penalties are assessed against the owner or driver of a vehicle for **red light** and speed violations captured by photo-enforcement devices. The program is administered by the city's Division of Transportation, police department, and law department. In the event that the **camera** detects a **red light** or speeding violation, a "notice of liability" is processed by the city and forwarded to the vehicle-owner's address listed in the State's motor vehicle registration database. The owner of the vehicle has 21 days from the date of the notice of liability to submit evidence that someone else was driving the vehicle or that it was stolen, to pay a $ 120 civil penalty, or to file a notice of appeal with the hearing officer. The city may assess an additional penalty of $ 25 or impound the vehicle for failure to timely respond to the notice of liability, and the right to contest the citation is waived. Citations issued under the program are not registered under the offender's operating record and no points are assigned under R.C. 4507.021 . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

HN2 **Speed Limits, Speed Detection Devices**

Under R.C. 4511.093(B)(1), citations issued under S.B., Gen. Assem. 342 (Ohio 2015) are valid only if a law enforcement officer is present at the location of the device at all times during the operation of the device. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

HN3 **Speed Limits, Speed Detection Devices**

Under R.C. 4511.094(A)(1), a **municipality** wishing to use a photo-monitoring device must erect signs along its border informing inbound traffic of the usage of traffic law photo-monitoring devices within the **municipality**. Under R.C. 4511.094(A)(2), signs must also be erected at every photo-monitoring location informing drivers of the presence of the photo-monitoring device. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

HN4 **Speed Limits, Speed Detection Devices**

Under R.C. 4511.095, the **municipality** must complete a three-year safety study

of any intersection at which the deployment of a new traffic law photo-monitoring device is proposed. Following completion of this study, a **municipality** wishing to place a new photo-monitoring device must conduct a public information campaign to inform drivers of the use of photo-monitoring devices, and must publish such notice in a local newspaper of general circulation. Additionally, a 30-day public awareness warning applies to new sites, during which drivers may not be fined for a traffic law violation based upon evidence gathered by a photo-monitoring device. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

HN5 **Speed Limits, Speed Detection Devices**

Under R.C. 4511.0912 citations for speeding violations detected by automated photo-monitoring systems may not be issued unless the vehicle was traveling at least six miles per hour over the speed limit in a school zone or at least ten miles per hour over the speed limit elsewhere. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

HN6 **Summary Judgment Review, Standards of Review**

Appellate review of a summary judgment is de novo, employing the same standard as trial courts. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

HN7 **Summary Judgment, Entitlement as Matter of Law**

The motion for summary judgment may be granted only when it is demonstrated: (1) that there is no genuine issue as to any material fact, (2) that the moving party is entitled to judgment as a matter of law, and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. Civ.R. 56(C) . More like this Headnote

Shepardize - Narrow by this Headnote (1)

- Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions
- Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

HN8 **Constitutionality of Legislation, Inferences & Presumptions**

A court must presume the constitutionality of lawfully enacted legislation. Accordingly,

statutes will not be invalidated unless the plaintiff establishes that they are unconstitutional beyond a reasonable doubt. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN9 **Local Governments, Home Rule**

The home rule to the Ohio Constitution provides that **municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. Ohio Const. art. XVIII, § 3 . In other words, a state law will take precedence over a municipal ordinance only where (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN10 **Local Governments, Home Rule**

The courts utilize a three-part process when conducting a home-rule analysis. In part one, the courts determine whether the matter in question involves an exercise of local self-

government or an exercise of local police power. If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction. If the ordinance pertains to concurrent police power rather than the right to self-government, the courts proceed to part two, which requires an examination of whether the state statute at issue is a "general law." If the state statute is not a general law, the ordinance will prevail over the state statute. If, however, the state statute does meet the definition of a general law, the courts turn to part three of its home rule analysis. In part three, the courts consider whether the state statute and the local ordinance are in conflict with one another. That is, we must ascertain whether the ordinance permits or licenses that which the statute forbids, and vice versa. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Legislation > Types of Statutes

HN11 **Legislation, Types of Statutes**

General laws are those enacted to safeguard the peace, health, morals, and safety, and to protect the property of the people of the State. Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform

statewide regulation, the **municipality** can no longer legislate in the field so as to conflict with the State. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN12 **Local Governments, Home Rule**

To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. If a statute does not satisfy all four parts of the analysis, it is not a general law, and it must yield to the municipal ordinance. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN13 **Local Governments, Home Rule**

A statute which prohibits the exercise by a **municipality** of its home rule powers

without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

HN14 **Local Governments, Home Rule**

The city's home rule authority permits it to use an automated traffic law enforcement system to impose civil liability. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > State & Territorial Governments > Relations With Governments

View more legal topics

HN15 **State & Territorial Governments, Relations With Governments**

The provisions of a multi-statute legislative act aimed primarily at limiting **municipalities** ' power to legislate cannot be insulated simply by placing it into a larger statutory scheme. Mere inclusion in a comprehensive legislative scheme is not determinative of whether a statute attempting to **preempt** municipal legislation on the subject matter of the statutory scheme is a general law. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Legislation > Types of Statutes

- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > **Red Lights**

View more legal topics

HN16 **Legislation, Types of Statutes**

S.B., Gen. Assem. 342 (Ohio 2015) are not "general laws," and they must yield to Toledo, Ohio, Mun. Code 313.12. More like this Headnote

Shepardize - Narrow by this Headnote (1)

- Governments > Legislation > Severability

HN17 **Legislation, Severability**

When a statute is found to be unconstitutional, it may be appropriate to sever the provision or provisions causing it to be unconstitutional. Three questions must be answered in determining whether severance is appropriate: (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only? More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Appeals > Appellate Jurisdiction > Certified Questions

HN18 **Appellate Jurisdiction, Certified Questions**

See Ohio Const. art. IV, § 3(B)(4) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Appeals > Appellate Jurisdiction > Certified Questions

HN19 **Appellate Jurisdiction, Certified Questions**

In order to qualify for certification to the Supreme Court of Ohio pursuant to Ohio Const. art. IV, § 3(B)(4) , a case must meet the following three conditions: First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be upon the same question. Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth the rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. More like this Headnote

Shepardize - Narrow by this Headnote (1)

Counsel: Adam W. Loukx, Director of Law, and Jeffrey B. Charles, Senior Attorney, for appellee.

Michael DeWine, Ohio Attorney General, Nicole M. Koppitch, Halli Brownfield Watson and Jordan Berman, Assistant Attorneys General, for appellants.

Andrew R. Mayle, Jeremiah S. Ray and Ronald J. Mayle, for amicus curiae Custom Seal, Inc.,

Bradley L. Walker and Kraig Kutschbach.

Judges: James D. Jensen, P.J. Arlene Singer, J., CONCURS AND WRITES SEPARATELY. Stephen A. Yarbrough, J., DISSENTS AND WRITES SEPARATELY.

Opinion by: James D. Jensen

Opinion

[**1000] **DECISION AND JUDGMENT**

JENSEN, P.J.

[*P1] Defendants-appellants, the state of Ohio and Ohio Attorney General Michael DeWine (collectively referred to as "the state"), appeal the April 27, 2015 judgment of the Lucas County Court of Common Pleas, denying their motion for summary judgment and granting, in part, a motion for summary judgment filed by plaintiff-appellee, the city of Toledo ("the city"). For the reasons that follow, we affirm.

I. Background

[*P2] On February 12, 2008, the city enacted Toledo Municipal Code 313.12, authorizing an automated **red light** and speeding system in Toledo. ***HN1***Under Toledo Municipal Code 313.12, civil penalties are assessed against [***2] the owner or driver of a vehicle for **red light** and speed violations captured by photo-enforcement devices. The program is administered by the city's Division of Transportation, police department, and law department. In the event that the **camera** detects a **red light** or speeding violation, a "notice of liability" is processed by the city and forwarded to the vehicle-owner's address listed in the state's motor vehicle registration database. The owner of the vehicle has 21 days from the date of the notice of liability to submit evidence that someone else was driving the vehicle or that it was stolen, to pay a $120 civil penalty, or to file a notice of appeal with the hearing officer. The city may assess an additional penalty of $25 or impound the vehicle for failure to timely respond to the notice of liability, and the right to contest the citation is waived. Citations issued under the program are not registered under the offender's operating record and no points are assigned under R.C. 4507.021.

[*P3] On December 19, 2014, the Ohio legislature signed into law Am.Sub.S.B. No. 342, revising and enacting a number of statutory provisions governing the use of traffic law photo-monitoring devices. It took effect [***3] on March 23, 2015. The photo-monitoring system established under S.B. 342 differs from the city's program in a number of important respects. For instance:

• ***HN2*** Under R.C. 4511.093(B)(1), citations issued under S.B. 342 are valid "only if a law enforcement officer is present at the location of the device at all times during the operation of the device."

• ***HN3*** Under R.C. 4511.094(A)(1), a **municipality** wishing to use a photo-monitoring device must erect signs along its border informing inbound traffic of the usage of traffic law photo-monitoring devices within the **municipality**. Under R.C. 4511.094(A)(2), signs must also be erected at every photo-monitoring location informing drivers of the presence of the photo-monitoring device. The statute provides details about the positioning of the signs.

• ***HN4*** Under R.C. 4511.095, the **municipality** must complete a three-year safety study of any intersection at which the deployment of a new traffic law photo-monitoring device is proposed. Following completion of this study, a **municipality** wishing to place a new photo-monitoring device must conduct a public information campaign to inform drivers of the use of photo-monitoring devices, and must publish such notice in a local newspaper of general circulation. Additionally, a 30-day [***4] "public awareness warning" applies to new sites, during which drivers may not be fined for a traffic law violation based upon evidence gathered by a photo-monitoring device.

• ***HN5*** Under R.C. 4511.0912 citations for speeding violations detected by automated photo-monitoring systems may not be issued unless the vehicle was traveling at least six miles per hour [**1001] over the speed limit in a school zone or at least ten miles per hour over the speed limit elsewhere.

[*P4] In **light** of the additional requirements imposed on **municipalities** by the General Assembly under S.B. 342, the city filed its complaint in the present action on March 13, 2015. In its complaint, the city alleged that S.B. 342 is an unconstitutional infringement of its right to self-governance under Article XVIII, Section 3, of the Ohio Constitution ("home rule provision"). The city requested injunctive relief and a stay of the enforcement of S.B. 342 until such time as the trial court could determine its constitutionality.

[*P5] The trial court conducted a hearing on the city's request for a preliminary injunction on March 20, 2015. Two days later, it issued its decision, granting the city's request for a preliminary injunction, in part, and enjoining the enforcement of certain statutory sections pending [***5] resolution of the city's request for a permanent injunction.

[*P6] On March 23, 2015, the city and the state filed cross-motions for summary judgment. In its motion, the city argued that S.B. 342 impermissibly limits the power of **municipalities** to enact and enforce their own legislation in contravention of the home rule provision. The state countered by positing that S.B. 342 does not violate the home rule provision because it is a general law.

[*P7] In a decision dated April 27, 2015, the trial court concluded that a number of the statutory provisions enacted under S.B. 342 are unconstitutional under the home rule provision. Accordingly, it denied the state's motion for summary judgment and granted, in part, the city's motion for summary judgment, ultimately enjoining the enforcement of:

• R.C. 4511.093(B)(1) and (3) (requiring police officer presence during the operation of photo-monitoring devices);

• R.C. 4511.095 (mandating the completion of a safety study prior to implementation of photo-monitoring system);

• R.C. 4511.096 (setting forth various law enforcement officer duties);

• R.C. 4511.097 (specifying the requirements for tickets issued under an automated traffic control program);

• R.C. 4511.098 (indicating the procedure that should be followed by one who receives [***6] a ticket alleging a violation of the traffic law under the automated traffic control program);

• R.C. 4511.099 (providing for an administrative hearing for those wishing to appeal a citation under the automated traffic control program);

• R.C. 4511.0911(A) and (B) (requiring manufacturers to provide maintenance records for photo-monitoring devices, along with a certificate of proper operation that attests to the accuracy of such devices); and

• R.C. 4511.0912 (specifying that speed limit violations are only punishable if the speed exceeds the posted limit by at least six miles per hour in a school zone and ten miles per hour elsewhere).

[*P8] Following the trial court's decision on the parties' cross-motions for summary judgment, the state filed its timely notice of appeal, assigning the following errors for our review:

Assignment of Error No. 1: The trial court erred in holding that portions of Amended Senate Bill 342 ("Am.Sub.S.B. No. 342") impermissibly restrict municipal power and incorrectly analyzed whether the Bill is arbitrary, unreasonable, or rationally related to a legitimate [**1002] purpose when the controlling test set forth in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, does not call for such an inquiry.

Assignment of Error No. 2: The trial court erred in holding that portions [***7] of Am.Sub.S.B. No. 342 do not prescribe a rule of conduct on citizens generally and, thus, erred in finding those portions are not general laws as set forth in *Canton*.

Assignment of Error No. 3: The trial court erred in granting the City's summary judgment motion, because Am.Sub.S.B. No. 342 satisfies all four parts of the general-law test set forth in [*Canton*], and is therefore constitutional in its entirety.

II. Standard of Review

[*P9] ***HN6*** Appellate review of a summary judgment is de novo, *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996 Ohio 336, 671 N.E.2d 241 (1996), employing the same standard as trial courts. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). ***HN7*** The motion may be granted only when it is demonstrated:

(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978), Civ.R. 56(C).

III. Analysis

[*P10] In this appeal, the state claims that the trial court incorrectly concluded that S.B. 342 impermissibly restricts municipal power, and that it applied an incorrect standard in its analysis. It challenges the trial court's determination [***8] that S.B. 342 does not prescribe a rule of conduct on citizens generally, and it insists that S.B. 342 passes all four prongs of the "general law" test that the court was required to apply in determining whether the legislation runs afoul of the city's home rule authority.

[*P11] Before we address the state's assignments of error, we begin by recognizing the "fundamental principle that ***HN8*** a court must 'presume the constitutionality of lawfully enacted legislation.'" *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶ 6, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993). Accordingly, the statutes at issue will not be invalidated unless the city establishes that they are unconstitutional beyond a reasonable doubt. *Id.* at ¶ 6.

[*P12] ***HN9*** The home rule to the Ohio Constitution provides that "**municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." In other words, a state law will take precedence over a municipal ordinance only where "(1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶17, quoting *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶9. As such, [***9] ***HN10*** we utilize a three-part process when conducting a home-rule analysis. *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 24, citing *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, [**1003] 2006-Ohio-6043, 858 N.E.2d 776, ¶23-24.

[*P13] In part one, we determine "whether the matter in question involves an exercise of local self-government or an exercise of local police power." (Citations omitted.) *Am. Fin. Servs. Assn.* at ¶ 23. "If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction." *Id.*

[*P14] If the ordinance pertains to concurrent police power rather than the right to self-government, we proceed to part two, which requires an examination of whether the state statute at issue is a "general law." If the state statute is not a general law, the ordinance will prevail over the state statute. *Mendenhall* at ¶ 18. If, however, the state statute does meet the definition of a general law, we turn to part three of our home rule analysis.

[*P15] In part three, we consider whether the state statute and the local ordinance are in conflict with one another. That is, we must ascertain "whether the ordinance permits or licenses that which the statute forbids * * *, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, 1 Ohio Law Abs. 485, 2 Ohio Law Abs. 9, 140 N.E. 519 (1923), paragraph two of the syllabus [***10] .

[*P16] Here, the parties' debate centers primarily around whether S.B. 342 is a "general law." ***HN11*** "General laws are those 'enact[ed] to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state.'" *City of Dayton v. State*, 2015-Ohio-3160, 36 N.E.3d 235, ¶ 22 (2d Dist.), *appeal allowed*, 144 Ohio St. 3d 1475, 2016-Ohio-467, 45

N.E.3d 243, quoting *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83, 7 Ohio Law Abs. 349, 167 N.E. 158 (1929). "Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the **municipality** can no longer legislate in the field so as to conflict with the state." *Id.*, quoting *State ex rel. McElroy v. Akron*, 173 Ohio St. 189, 194, 181 N.E.2d 26 (1962).

[*P17] The Ohio Supreme Court in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, devised a four-part test to determine whether a statute is a "general law":

HN12 To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. *Id.* at syllabus.

[*P18] If a statute does not satisfy all four parts of the *Canton* *[***11]* analysis, it is not a general law, and it must yield to the municipal ordinance. *Id.* at ¶ 21.

[*P19] The trial court concluded that the provisions of S.B. 342 complained of by the city are not general laws because they impermissibly restrict the legislative powers of **municipalities** and because they do not prescribe a rule of conduct upon citizens generally. In challenging these conclusions, the state's first assignment of error focuses on the third prong of the *Canton* general law analysis and requires us to determine whether S.B. 342 sets forth police, sanitary, or similar regulations, or whether it purports only to grant or limit the city's legislative power to set forth its own police, sanitary, or similar [**1004] regulations. Its second assignment of error focuses on the fourth prong of the analysis and requires us to determine whether S.B. 342 prescribes a rule of conduct on citizens generally. Its third assignment of error asserts that all four factors of the *Canton* general law analysis are satisfied.

A. First Assignment of Error: Police, Sanitary, or Similar Regulation or Impermissible Limit of the City's Legislative Powers

[*P20] The trial court held that the previously-identified provisions of S.B. [***12] 342 failed to meet the third *Canton* element because they impermissibly limit the city's authority to (1) control the manner in which its internal decision-making process is conducted, (2) establish administrative proceedings, (3) establish and operate a police department, and (4) enter into contracts. It also concluded that the relevant provisions of S.B. 342 are unconstitutional because they are arbitrary and bear no relation to the goal of promoting the health, safety, morals, or general welfare of the public.

[*P21] The state contends that S.B. 342 serves the purposes of R.C. Chapter 4511 because it creates uniformity across the state for the use of photo-monitoring devices to enforce traffic laws. It points to the provisions of the legislation dealing with the options for paying or challenging a citation, hearing procedures, burden of proof, affidavit requirements, and maintenance records as examples of the uniformity accomplished by the statutes. The state also urges that the trial court erred in examining the constitutionality of S.B. 342 under a rational basis framework, which it argues is inapplicable in a home rule analysis.

[*P22] The city responds by asserting that the relevant provisions of S.B. 342 [***13] are unconstitutional because they "serve only to limit municipal legislative power." It describes S.B. 342 as a de facto ban on the use of **cameras**.

[*P23] In expounding on the third element of the "general law" analysis, the court in *Canton* explained that this "'principle of law is that ***HN13*** a statute which prohibits the exercise by a **municipality** of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.'" *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at P 32, quoting *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982). In *Canton*, the court considered whether R.C. 3781.184(C)—forbidding political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in areas zoned for single-family residences—infringed on Canton's home-rule authority. *Id.* at ¶ 2. In doing so, the court observed that on its face, the statute at issue appeared to serve the overriding state interest in providing more affordable housing options across the state. *Id.* at ¶ 33. But a provision in the statute allowed private landowners to incorporate restrictive covenants which could exempt them from the prohibition contained in R.C. 3781.184(C), thus defeating the purpose of the legislation. *Id.* It, therefore, found that the statute [***14] did not set forth police, sanitary or similar regulations, but rather purported only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations. *Id.*

[*P24] The Ohio Supreme Court has held in no unclear terms that ***HN14*** the city's homerule authority permits it to use an automated traffic law enforcement system to impose civil liability. *Walker v. Toledo*, 143 Ohio St. 3d 420, 39 N.E.3d 474, P13, 2014-Ohio-5461. While the state now [**1005] claims that its overriding state interest is to provide uniformity in the use of those automated enforcement systems, in its own words, the legislature's intent in enacting S.B. 342 was "*to establish conditions*" for the use of such devices. (Emphasis added.) Those conditions actually render it impractical and cost-prohibitive for most **municipalities** to use photo-monitoring devices as a tool for enforcement of local traffic laws. Instead of permitting **municipalities** to continue to enforce traffic laws in a manner that the Ohio Supreme Court has already deemed permissible, the conditions direct **municipalities**' conduct because they:

• *Force* an officer to be present at the place of the **camera** regardless of whether he or she observed the traffic offense. In doing so, the legislation effectively [***15] dictates police duties and directs the allocation of law enforcement resources.

• *Prohibit* the locale from issuing citations for infractions less than six miles per hour over the speed limit in school zones, and ten miles per hour elsewhere, thus preventing **municipalities** from enforcing traffic laws within their jurisdiction as they see fit.

• *Obligate* **municipalities** to conduct three-year safety studies accounting for incidents that have occurred at the designated area, despite what they may already know from their experience and observation.

• *Mandate* that **municipalities** conduct a public information campaign and publish in the newspaper a notice of intent to use a traffic **camera**.

• *Impose* procedures for administrative hearings and *dictate* what defenses a hearing officer may consider.

• *Prevent* **municipalities** from issuing citations until the expiration of a 30-day public awareness period.

• *Specify* the content to be contained in citations.

• *Require* **municipalities** to erect signs informing inbound traffic that the locale uses traffic **cameras** and *particularize* the placement of signs at the location of the **cameras**.

[*P25] In effect, the conditions established by the legislature actually render illusory [***16] most **municipalities**' right to use photo-detection devices for enforcing traffic laws. To the extent that the relevant provisions of S.B. 342 operate primarily to limit the legislative power of municipal corporations to set forth their own police, sanitary, or similar regulations, they fail to satisfy the third requirement of the *Canton* general law analysis.

[*P26] The dissent reminds that the provisions of S.B. 342 must be read together with Chapter 4511 as a whole and not in isolation, and it characterizes our analysis of the statutes as "piecemeal." But ***HN15*** the provisions of a multi-statute legislative act aimed primarily at limiting **municipalities**' power to legislate cannot be insulated simply by placing it into a larger statutory scheme. *See* *City of Dublin v. State*, 118 Ohio Misc. 2d 18, 2002-Ohio-2431, 769 N.E.2d 436, ¶326 (C.P.) ("[M]ere inclusion in a comprehensive legislative scheme is not determinative of whether a statute attempting to **preempt** municipal legislation on the subject matter of the statutory scheme is a 'general law.'").

[*P27] We, therefore, find the state's first assignment of error not well-taken.

B. Second Assignment of Error: Prescribing a Rule of Conduct on Citizens Generally

[*P28] Under the fourth element of the *Canton* analysis, we consider whether S.B. 342 prescribes a rule [***17] of conduct upon citizens generally. The state points to R.C. 4511.098 (setting forth a person's [**1006] options after he or she receives a ticket), and R.C. 4511.099 (establishing hearing procedures, a testimonial privilege, and a right to appeal), as evidence that the statutes prescribe a rule of conduct on citizens. The city counters that none of the identified statutes have any effect on citizens' conduct.

[*P29] In *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 36, the court determined that the statute at issue failed this element because it applied "to municipal legislative bodies, not to citizens generally." We agree with the city that the same is true here. S.B. 342 is aimed not at setting forth rules to be followed by citizens—it is aimed at establishing conditions to be followed by the **municipalities** that wish to use photo-monitoring devices. In fact, the only provisions of the statutes pertaining to the conduct of citizens are those setting forth the citizen's options *after* he or she has been issued a citation.

[*P30] The state argues that "the fact that the isolated provisions of the Bill's larger statutory scheme are directed at **municipalities** does not mean that they do not prescribe a rule of conduct upon citizens generally." However, our review of the statutes reveals [***18] that the *opposite* is true: only isolated provisions of the bill are directed at citizens. As such, they fail the fourth factor of the *Canton* test.

[*P31] Accordingly, we find the state's second assignment of error not well-taken.

C. Third Assignment of Error: Statewide and Comprehensive Legislative Enactment and Uniform Operation Throughout the State

[*P32] In **light** of our conclusions with respect to the state's first and second assignments of error, ***HN16*** the relevant statutes are not "general laws," and they must yield to Toledo Municipal Code 313.12. Although we need not continue to the state's third assignment of error, we observe that the relevant statutes also fail the second prong of the *Canton* analysis because they do not operate uniformly throughout the state.

[*P33] In *Canton*, in examining the exception that allowed private landowners to incorporate restrictive covenants to avoid the requirements of R.C. 3781.184, the court predicted that "enterprising developers" in suburban portions of the state with newer housing developments would be able to opt out of the requirements of the statute. *Canton* at ¶ 28-29. It observed that the statute, therefore, would "effectively apply only in older areas of the state, i.e., [***19] cities where residential areas no longer have active homeowner associations." *Id.* at ¶ 30. As such, the court reasoned, the statute would not operate uniformly throughout the state. *Id.*

[*P34] Here, too, we find that various provisions of S.B. 342 do not operate uniformly. The evidence developed in the trial court indicates that the city currently has 44 **cameras** in place and only 19 officers assigned city-wide to patrol an 85 square-mile area over a 24-hour period. Even if all 19 officers could be diverted from their other duties to park their patrol cars next to the traffic **cameras** to satisfy R.C. 4511.093, the city would never have the financial resources to man every **camera**. In addition to this, the testimony at the hearing before the trial court established that in many instances, there is no feasible spot available for an officer to park at the **camera** location. This means that intersections and areas that the city knows to be dangerous or hot spots for traffic offenses simply cannot be monitored by an officer, thus preventing the use of the **cameras** as a deterrent to dangerous driving.

[*P35] [**1007] The same is undoubtedly true for most of Ohio's major metropolitan areas. They simply do not have the resources available [***20] to place an officer at every **camera**. In smaller, less populated communities, however, where there may be a single stoplight and considerably less traffic, it may be feasible to dedicate an officer to the jurisdiction's only traffic **light**. In this way, the legislation does not operate uniformly, and, therefore, fails the second part of the *Canton* general law analysis.

[*P36] We, therefore, find the state's third assignment of error not well-taken.

D. Severability

[*P37] ***HN17*** When a statute is found to be unconstitutional, it may be appropriate to sever the provision or provisions causing it to be unconstitutional. (Citations omitted.) *Cleveland*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644, at ¶ 18. Three questions must be answered in determining whether severance is appropriate:

(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the

Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former [***21] only? (Internal citations and quotations omitted.) *Id.* at ¶ 19.

[*P38] After considering these questions, we find that the following provisions identified by the trial court can be severed from S.B. 342: R.C. 4511.093(B)(1) and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B), and 4511.0912.

E. Conflict

[*P39] Article IV, Section 3(B)(4) of the Ohio Constitution states that ***HN18*** "[w]henever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

[*P40] ***HN19*** In order to qualify for certification to the Supreme Court of Ohio pursuant to Section 3(B)(4), Article IV of the Ohio Constitution, a case must meet the following three conditions:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be "upon the same question." Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth the rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 1993 Ohio 223, 613 N.E.2d 1032 (1993).

[*P41] We find that our holding today is in [***22] conflict with the Second District Court of Appeals' decisions in *Dayton v. State*, 2015-Ohio-3160, 36 N.E.3d 235 (2d Dist.), and *Springfield v. State*, 2016-Ohio-725, 60 N.E.3d 649 (2d Dist.). Accordingly we certify the record in this case for review and final determination to the Supreme Court of Ohio on the following issue:

[*P42] Whether Am.Sub.S.B. No. 342 is an unconstitutional infringement of **municipalities**' right to self-governance under Article XVIII, Section 3, of the Ohio Constitution.

[*P43] [**1008] The parties are directed to S.Ct.Prac.Rs. 5.03 and 8.01 for guidance.

IV. Conclusion

[*P44] We conclude that the provisions of S.B. 342 identified by the trial court fail to satisfy the second, third, and fourth prongs of the *Canton* "general law" analysis. Accordingly, we find the state's assignments of error not well-taken, and we affirm the April 27, 2015 judgment of the Lucas County Court of Common Pleas. The costs of this appeal are assessed to the state under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

James D. Jensen, P.J.

Arlene Singer, J.,

CONCURS AND WRITES SEPARATELY.

Stephen A. Yarbrough, J.,

DISSENTS AND WRITES SEPARATELY.

Concur by: Arlene Singer

Concur

SINGER, J.

[*P45] I write separately to affirm the decision of the trial court.

[*P46] I concur with Judge Jensen that S.B. 342 is not a general law and S.B. 342 fails to satisfy the fourth [***23] requirement of the *Canton* general law analysis in that it does not prescribe a rule of conduct upon citizens generally.

[*P47] In my opinion, all of the portions of S.B. 342 at issue, R.C. 4511.093(B)(1) and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B) and 4511.0912 are directed at a **municipality** that utilizes traffic photo-enforcement devices, rather than toward citizens generally. Arguably the only portions that are directed toward citizens generally might be found in R.C. 4511.098 (options for paying or challenging the tickets) or R.C. 4511.099 (how administrative hearings are to be conducted, what types of evidence can be considered at those hearings, and applicable affirmative defenses). In my view, these portions, too, are directed at **municipalities**, to prescribe how they should provide a uniform system to process tickets and how they provide due process to citizens.

[*P48] I decline to engage in an analysis about whether the practical and financial effect on **municipalities** determine whether or not these statutes apply uniformly. I do not find it necessary, and therefore end my analysis and concurrence by finding that S.B. 342 fails the fourth factor in the *Canton* case, rendering S.B. 342 unconstitutional.

Dissent by: Stephen A. Yarbrough

Dissent

YARBROUGH, J.

[*P49] Because I would reverse the judgment [***24] of the Lucas County Court of Common Pleas, denying appellants' motion for summary judgment and granting, in part, the city's motion for summary judgment, I respectfully dissent. Specifically, I would hold that S.B. 342 is constitutional in its entirety based upon my conclusion that it constitutes a comprehensive, uniform, statewide regulatory scheme that clearly prescribes a rule of conduct upon citizens generally.

[*P50] As noted in the majority's decision, a three-part process is utilized when conducting a home-rule analysis. *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 24, citing *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23-24. In part one, we determine "whether the matter in question involves an exercise of local self-government or an exercise of local police power." *Twinsburg v. State Emp. Relations Bd.*, 39 Ohio St.3d 226, 228, 530 N.E.2d 26 (1988).

[*P51] If the ordinance pertains to concurrent police power rather than the right [**1009] to self-government, we then proceed to part two, which requires an examination of whether the state statute at issue is a "general law" using the test enunciated in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus. "If the state statute is not a general law, the ordinance will not be invalidated." *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 18. If, however, the state statute does meet the definition of a general law, we turn to part three of our home rule analysis.

[*P52] In part three, we consider whether the state statute and [***25] the local ordinance are in conflict with one another. That is, we must ascertain "whether the ordinance permits or licenses that which the statute forbids * * *, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, 1 Ohio Law Abs. 485, 2 Ohio Law Abs. 9, 140 N.E. 519 (1923), at paragraph two of the syllabus.

[*P53] Here, the parties acknowledge that Toledo Municipal Code 313.12 is an exercise of police power and is in conflict with the traffic law photo-monitoring provisions set forth in the Ohio Revised Code pursuant to S.B. 342. *See Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906, ¶ 14 ("the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public"); *Springfield v. State*, 60 N.E.3d 649, 2016-Ohio-725 (2d Dist.) (applying home rule analysis to a local traffic **camera** ordinance and concluding that the ordinance constituted the exercise of police power rather than local self-government). Therefore, the sole issue in this case is whether S.B. 342 is a "general law" under *Canton* and its progeny.

To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit [***26] legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. *Canton, supra*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at syllabus.

S.B. 342 is part of a comprehensive legislative enactment that operates uniformly throughout Ohio

[*P54] Under the first element of the *Canton* test, we must examine whether S.B. 342 is part of a statewide and comprehensive legislative enactment. Under the second element, we must determine whether S.B. 342 applies statewide and operates uniformly throughout the state.

[*P55] In *Canton*, the Supreme Court considered the constitutionality of R.C. 3781.184, which imposes construction standards for manufactured homes and prohibits local ordinances from enacting zoning restrictions on such homes. *Id.* at ¶ 23-24. In **light** of the absence of a statewide zoning scheme or a comprehensive plan for the licensing, regulation, or registration for manufactured homes, the court found that R.C. 3781.184 was not a general law. *Id.*

[*P56] Six years after *Canton* was decided, the Supreme Court issued its decision in *Marich*. There, the statute at issue was R.C. 5577.05, which sets maximum dimensions for vehicles traveling on public highways within Ohio. Because such size restrictions were abolished [***27] throughout the city of Norton by way of a local ordinance enacted by the city of Norton, the court was tasked with determining whether the state statute took precedence over the local ordinance. *Marich, supra, at ¶ 1*.

[*P57] [**1010] In determining whether R.C. 5577.05 was part of a comprehensive legislative enactment, the Supreme Court noted that R.C. Chapter 5577 "broadly regulates the dimensions of vehicles that may travel on public highways." *Id.* at ¶ 18. The court went on to indicate that R.C. Chapter 5577imposes a variety of vehicle restrictions in addition to the width, height, and length restrictions imposed under R.C. 5577.05. Specifically, R.C. Chapter 5577 imposes restrictions on load weights, tire width, maximum axle loads, and wheel loads, among other things. *Id.* While acknowledging that R.C. 5577.05 contained exceptions to the size restrictions imposed therein for certain classes of vehicles (i.e. fire trucks, farm equipment, and utility trucks), the court stated that there are "no requirements that a statute must be devoid of exceptions to remain statewide and comprehensive in effect." *Id.* at ¶ 20. The court went on to conclude that such exceptions actually argued in favor of a finding that the statute was comprehensive insofar as it applied to all vehicles throughout the state except [***28] those expressly excepted. *Id.* Thus, the court determined that the first element of the *Canton* test had been met.

[*P58] Similarly, the court found that the first element was met in a subsequent case decided two weeks after *Marich*. In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, the Supreme Court of Ohio held that Ohio's speed limit statute, R.C. 4511.21, is part of a statewide and comprehensive legislative enactment. *Id.* at ¶ 23. In so holding, the court noted that no part of Ohio is exempt from the statute's enforcement. The court also highlighted the fact that R.C. 4511.21 is part of R.C. Chapter 4511, "which as a whole regulates traffic laws and the operation of motor vehicles in the state of Ohio." *Id.*

[*P59] Likewise, the codified statutes at issue in this case are included in R.C. Chapter 4511. A glance at the topics covered in R.C. Chapter 4511illustrates its comprehensive nature. For example, R.C. Chapter 4511 contains statutes governing traffic control devices and signage, traffic offenses, speed limits, operation of motor vehicles, bicycles, pedestrians, and parking. Given the breadth of topics addressed in these statutes concerning the regulation of traffic in Ohio, I find that S.B. 342 is part of a statewide and comprehensive legislative enactment.

Accordingly, I would conclude that the first element of the *Canton* test [***29] is met in this case.

[*P60] Moreover, I find that S.B. 342 operates uniformly throughout the state. Indeed, no **municipality** is singled out for regulation in S.B. 342. Rather, all traffic law photo-monitoring programs throughout Ohio are subject to regulation. Further, S.B. 342 draws no distinction between **municipalities** based upon the number of traffic **cameras** in use with each **municipality**. In that regard, I disagree with the majority's premise that S.B. 342 does not operate uniformly throughout the state simply because it has an arguably greater impact on those **municipalities** with extensive traffic law photo-monitoring programs than it does on small **municipalities** with fewer traffic **cameras**. Although this may be true, the cost incurred for each **camera** would be consistent across **municipalities** since the same regulations apply statewide. Further, under S.B. 342, **municipalities** are free to determine the appropriate balance between the number of traffic **cameras** to utilize and the attendant costs of such **cameras**. The fact that Toledo's program may be more expensive than a suburban **municipality**'s program is due to the fact that Toledo has decided to employ 44 **cameras**, not because S.B. 342 regulates [***30] Toledo's program differently than any [**1011] other municipal traffic law photo-monitoring program. Thus, I find that S.B. 342 passes muster under the second element of the *Canton* test.

S.B. 342 sets forth police, sanitary, or similar regulations, and prescribes a rule of conduct upon citizens generally

[*P61] Having found that S.B. 342 is part of a comprehensive legislative enactment that operates uniformly throughout Ohio, I now turn to the third and fourth elements of the *Canton* test. Under the third element, it must be determined whether S.B. 342 sets forth police, sanitary, or similar regulations, or merely purports to grant or limit a **municipality**'s legislative power to set forth police, sanitary, or similar regulations. In expounding upon this element, the court in *Canton* stated that "'[t]he meaning of this syllabus principle of law is that a statute which prohibits the exercise by a **municipality** of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.'" *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 32, quoting *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982). Under the fourth element, we consider whether S.B. 342 prescribes a rule of conduct upon citizens generally.

[*P62] In examining S.B. 342, I [***31] am mindful of the following directive given by the Supreme Court of Ohio in *Mendenhall*:

[S]ections within a chapter will not be considered in isolation when determining whether a general law exists. * * * All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally. *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 27, citing *Canton*at ¶ 38.

[*P63] While very little in the way of argument is offered in the parties' briefs on the first two elements of the *Canton* test, the parties strongly disagree as to the trial court's findings under the third and fourth elements.[1] In its decision granting the city's motion for summary judgment, the trial court examined the relevant provisions of S.B. 342 in **light** of the third

element and found that those provisions "are not general laws because they impermissibly restrict the legislative powers of **municipalities**." In the trial court's view, which the majority seems to embrace, S.B. 342 impermissibly limited the city's authority to (1) control the manner in which its internal decision-making process is conducted, (2) establish administrative proceedings, (3) [***32] establish and operate a police department, and (4) enter into contracts. Further, the court concluded that the relevant provisions of S.B. 342 are unconstitutional because they are arbitrary and bear no relation to the goal of promoting the health, safety, morals, or general welfare of the public.

[*P64] On appeal, the state first challenges the trial court's finding that the relevant provisions within S.B. 342 are arbitrary. In that regard, the state contends that S.B. 342 serves the purposes of R.C. Chapter 4511 by creating uniformity across the state regarding the use of photo-monitoring devices to enforce traffic laws. Moreover, the state urges that the trial court erred in examining the constitutionality [**1012] of S.B. 342 under a rational basis framework, which the state argues is inapplicable in a home rule analysis.

[*P65] The city responds by asserting that the relevant provisions of S.B. 342 are unconstitutional because they "serve only to limit municipal legislative [***33] power." Although the city concedes that R.C. Chapter 4511 is a comprehensive statewide motor vehicle code, it nonetheless argues that the mere placement of statutes within R.C. Chapter 4511 does not demand a finding that the statutes are general laws.

[*P66] Having considered the parties' arguments and the trial court's decision, I am persuaded that the relevant provisions in S.B. 342 set forth police, sanitary, or similar regulations, and do not merely grant or limit a **municipality**'s legislative power to set such regulations. Further, I find that the relevant provisions prescribe a rule of conduct upon citizens generally. In reaching my conclusion, I am in agreement with the Second District's recent decision in *Dayton v. State*, 36 N.E.3d 235, 2015-Ohio-3160 (2d Dist.).

[*P67] In *Dayton*, the trial court granted a permanent injunction to the city of Dayton on its action challenging the constitutionality of S.B. 342 under the Home Rule Amendment. While the trial court found that S.B. 342 was not unconstitutional in its entirety, the court concluded that certain provisions within the statute ran afoul of the Home Rule Amendment. *Id.* at ¶ 5.

[*P68] On appeal, the Second District examined whether S.B. 342 was a general law under the third and fourth prong of the *Canton* test. *Id.* at ¶ 24-25. The court began its analysis by agreeing with the trial court's [***34] finding that certain Revised Code sections enacted pursuant to S.B. 342 regulate municipal authority. *Id.* at ¶ 28. However, the court determined that the trial court erred in considering certain provisions of S.B. 342 in isolation rather than considering S.B. 342 in pari materia, as required under the Supreme Court of Ohio's decision in *Mendenhall*. When considered as a whole, the court concluded that S.B. 342 "constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally." *Id.* at ¶ 38.

[*P69] In support of its conclusion, the court noted that S.B. 342 also regulates motorists (R.C. 4511.098-0910), manufacturers of traffic **cameras** (R.C. 4511.0911), and insurers (R.C. 3937.411). *Id.* As such, the court found that S.B. 342 "has 'extensive scope and does more than grant or limit state powers.'" *Id.*, quoting *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 24.

[*P70] The Second District went on to compare the state's regulation of speed limits, which were found to be constitutional by the Supreme Court in *Mendenhall*, with the regulation of traffic law photo-monitoring devices in S.B. 342. Finding no material differences between the two areas of regulation in the home rule context, the court concluded that "if the State can [***35] constitutionally limit a **municipality**'s ability to set its own speed limit in the interest of creating a comprehensive, statewide uniform statute regulating the speed of motor vehicles, it can also create a similar statewide uniform regulatory scheme governing traffic law photo-monitoring devices." *Id.* at ¶ 29.

[*P71] In **light** of its holding that S.B. 342 met the definition of a general law under *Canton* and its progeny, the Second District concluded that S.B. 342 is constitutional under the Home Rule Amendment, and vacated the trial court's permanent injunction. *Id.* at ¶ 39.

[*P72] [**1013] Upon examination of the arguments advanced in this case, which are substantially the same as those offered in *Dayton*, I agree with our sister court's conclusion that S.B. 342 is a general law under *Canton*. I find that the trial court's contrary conclusion was guided by its piecemeal examination of certain provisions in S.B. 342. Such isolated examination is in violation of the Supreme Court's clear directive to consider legislation in pari materia when determining whether it constitutes a general law. *See* *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 27, citing *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 38 ("All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation [***36] and whether the chapter as a whole prescribes a rule of conduct upon citizens generally."); *see also* *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370 (reiterating that legislative schemes must be considered in pari materia under home rule analysis and concluding that appellate court erred in considering state firearm statute in isolation).

[*P73] Further, I am not persuaded by the city's argument that S.B. 342 should be found to be unconstitutional under the Supreme Court of Ohio's decision in *Linndale v. State*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (1999). In *Linndale*, the Supreme Court addressed a state statute prohibiting local law enforcement officers from issuing speeding and vehicle weight citations when the **municipality** has less than 880 yards of the freeway within its jurisdiction. The court concluded that the state statute was not a general law in that it was "not a part of a system of uniform statewide regulation on the subject of traffic law enforcement." *Id.* at 55. Rather, the court found that the statute ran afoul of the Home Rule Amendment by prohibiting a handful of **municipalities** from utilizing local authorities to police freeways that traveled through the **municipality**. *Id.*

[*P74] Having considered *Linndale* and its application here, I find that it is inapposite. Unlike the statute in question in *Linndale*, S.B. No. 342 [***37] does not single out a small group of **municipalities** for regulation. Rather, S.B. 342 sets forth statewide procedures and regulations to be followed by *any***municipality** wishing to implement the use of traffic **cameras**. Accordingly, *Linndale* is distinguishable from the case sub judice.

[*P75] Having determined that S.B. 342 is a general law under *Canton* and its progeny, it follows that S.B. 342 survives constitutional scrutiny under the Home Rule Amendment. Accordingly, I find the state's assignments of error well-taken. By extension, I conclude that the trial court erred in granting, in part, the city's motion for summary judgment. Accordingly, I would reverse and vacate the trial court's permanent injunction.

Footnotes

- 1
  Notably, the trial court also refrained from addressing the first and second elements of the *Canton* test, opting instead to focus on the third and fourth elements because, in the court's estimation, resolution of those elements was dispositive of the case.

Enacted December, 2016 Senate Bill 331 which included legislation on Pets, Minimum Wage and Small Cell Wireless Facilities

Sec. 4939.01. As used in sections 4939.01 to 4939.08 of the Revised Code:

(A) "Accessory equipment" means any equipment used in conjunction with a wireless facility or wireless support structure. "Accessory equipment" includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.
(B) "Antenna" means communications equipment that transmits or receives radio frequency signals in the provision of wireless service, including associated accessory equipment.
(C) "Cable operator," "cable service," and "franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522. (B)

(D) "Distributed antenna system" means a network or facility to which all of the following apply: (1) It distributes radio frequency signals to provide wireless service. (2) It meets the height and size characteristics of a small cell facility. (3) It consists of all of the following: (a) Remote antenna nodes deployed throughout a desired coverage area; (b) A high-capacity signal transport medium connected to a central hub site; (c) Equipment located at the hub site to process or control the radio frequency signals through the antennas. (4) It conforms to the size limitations specified in division (N) of this section.

(E) "Eligible facilities request" has the same meaning as in 47 U.S.C. 1455(a)(2).

(F) "Micro wireless facility" includes both a distributed antenna system and a small cell facility, and the related wireless facilities.

(G) "Micro wireless facility operator" means a public utility or cable operator that operates a micro wireless facility.

(H) "Municipal electric utility" has the same meaning as in section 4928.01 of the Revised Code.

(I) "Occupy or use" means, with respect to a public way, to place a tangible thing in a public way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable Sub. S. B. No. 331 131st G.A. 17 operator. (C)

(J)"Person" means any natural person, corporation, or partnership and also includes any governmental entity. (D)

(K) "Public utility" means any company described in section 4905.03 of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code. (E)

(L)"Public way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by a municipal corporation. "Public way" excludes a private easement. (F)

(M) "Public way fee" means a fee levied to recover the costs incurred by a municipal corporation and associated with the occupancy or use of a public way.

(N) "Small cell facility" means a wireless facility that meets the requirements of division (N) (1) of this section and also division (N)(2) of this section: (1)(a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume. (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services. (2) If the wireless facility were placed on a wireless support structure, the increased height would be not more than ten feet or the overall resulting height would be not more than fifty feet.

(O) "Utility pole" means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.

(P) "Wireless facility" means an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.

(Q) "Wireless service" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities.

(R) "Wireless support structure" means a pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities. As used in section 4939.031 of the Revised Code, "wireless support structure" excludes a utility pole or other facility owned or operated by a municipal electric utility.

Sec. 4939.02. (A) It is the public policy of this state to do all of the following:

(1) Promote the public health, safety, and welfare regarding access to and the occupancy or use of public ways, to protect public and private property, and to promote economic development in this state;

(2) Promote the availability of a wide range of utility, communication, and other services to residents of this state at reasonable costs, including the rapid implementation of new technologies Sub. S. B. No. 331 131st G.A. 18 and innovative services;

(3) Ensure that access to and occupancy or use of public ways advances the state policies specified in sections 4927.02, 4928.02, and 4929.02 of the Revised Code;

(4) Recognize the authority of a municipal corporation to manage access to and the occupancy or use of public ways to the extent necessary with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public ways in accordance with law;

(5) Ensure in accordance with law the recovery by a public utility of public way fees and related costs;

(6) Promote coordination and standardization of municipal management of the occupancy or use of public ways, to enable efficient placement and operation of structures, appurtenances, or facilities necessary for the delivery of public utility or cable services;

(7) Encourage agreement among parties regarding public way fees and regarding terms and conditions pertaining to access to and the occupancy or use of public ways, and to facilitate the resolution of disputes regarding public way fees;

(8) Expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state.

(C) This policy establishes fair terms and conditions for the use of public ways and does not unduly burden persons occupying or using public ways or persons that benefit from the services provided by such occupants or users.

Sec. 4939.03. (A) No person shall occupy or use a public way except in accordance with law.

(B) In occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.

(C)(1) No person shall occupy or use a public way without first obtaining, under this section or section 1332.24 or 4939.031 of the Revised Code, any requisite consent of the municipal corporation owning or controlling the public way.

(2) Except as otherwise provided in division (C)(5) of this section and sections 4939.031 and 4939.035 of the Revised Code, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent.

(3) A municipal corporation shall not unreasonably withhold or deny consent.

(4) If a request by a person for consent is denied, the municipal corporation shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent. If a request for consent is denied for an activity described in section 4939.031 of the Revised Code, the reasons required under this division shall be supported by substantial, competent evidence and the denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(5) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(6) Initial consent for occupancy or use of a public way shall be conclusively presumed for Sub. S. B. No. 331 131st G.A. 19 all lines, poles, pipes, conduits, ducts, equipment, or other appurtenances, structures, or facilities of a public utility or cable operator that, on the effective date of this section July 2, 2002, lawfully so occupy or use a public way. However, such presumed consent does not relieve the public utility or cable operator of compliance with any law related to the ongoing occupancy or use of a public way.

Sec. 4939.031. (A) A municipal corporation, not later than ninety days after the date of filing by an entity of a completed request for consent for any of the following, to be done in a public way, shall, subject to sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 4939.0319 of the Revised Code, grant or deny its consent:

(1) Attaching micro wireless facilities to a wireless support structure;

(2) Locating two or more wireless service providers' micro wireless facilities on the same wireless support structure;

(3) Replacing or modifying a micro wireless facility on a wireless support structure;

(4) Constructing, modifying, or replacing a wireless support structure associated with a micro wireless facility.

(B) Except as provided in this chapter as well as any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or public utility, a municipal corporation shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a micro wireless facility, or otherwise prohibit or restrain the activities as described in this section.

Sec. 4939.032. A micro wireless facility operator may construct and operate the facility in a public way, subject to this chapter.

Sec. 4939.033. A request for consent under section 4939.031 of the Revised Code shall be deemed a permitted use and shall be exempt from local zoning review.

Sec. 4939.035. (A) The ninety-day time period required in section 4939.031 of the Revised Code may be tolled only :

(1) By mutual agreement between the entity requesting consent and the municipal corporation ;

(2) In cases where the municipal corporation determines that the application is incomplete ; or

(3) By the municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests, in which case the municipal corporation may toll the ninety- day period for a reasonable amount of days not exceeding an additional ninety days.

(B) To toll the time period for incompleteness, the municipal corporation shall provide written notice to the entity requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0315 of the Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

(C) The time period begins running again when the entity makes a supplemental submission in response to the municipal corporation's notice of incompleteness.

(D) If a supplemental submission is inadequate, the municipal corporation shall notify the Sub. S. B. No. 331 131st G.A. 20 entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (A) to (C) of this section.

Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

Sec. 4939.037. If a municipal corporation fails to approve a request for consent under section 4939.031 of the Revised Code or a request for a relevant construction permit within the required time period, provided the time period is not tolled under section 4939.035 of the Revised Code, the request shall be deemed granted upon the requesting entity providing notice to the municipal corporation that the time period for acting on the request has lapsed.

Sec. 4939.038. Nothing in this chapter precludes a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.

Sec. 4939.039. Notwithstanding sections 4939.031 to 4939.037 of the Revised Code, a municipal corporation shall approve within sixty days, and may not deny, an eligible facilities request under 47 C.F.R. 1.40001.

Sec. 4939.0311. (A) Consent shall not be required for either of the following activities conducted in the public way:

(1) Routine maintenance of wireless facilities;

(2) The replacement of wireless facilities with wireless facilities that are either of the following: (a) Substantially similar to the existing wireless facilities; (b) The same size or smaller than the existing wireless facilities.

(B) A municipal corporation may require a work permit for an activity described in division (A) of this section. Any such permit shall be subject to any applicable law in this chapter.

Sec. 4939.0313. (A) An entity seeking to construct, modify, or replace more than one micro wireless facility within the jurisdiction of a single municipal corporation may file, at the entity's discretion, a consolidated request for consent under division (A)(4) of section 4939.031 of the Revised Code a nd receive a single permit for the construction, modification, or replacement of the micro wireless facilities or associated wireless support structures.

(B) In the case of a consolidated request, the fees provided for in section 4927.0319 of the Revised Code may be cumulative.

Sec. 4939.0315 . With respect to the provision of any micro wireless facility , a municipal corporation shall not do any of the following:

(A) Require the requestor to submit information about, or evaluate a requestor's business decisions with respect to, the requestor's service, customer demand, or quality of service to or from a particular area or site;

(B) Require the requestor to submit information about the need for the micro wireless facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds;

(C) Require the requestor to justify the need for the new micro wireless facility or associated Sub. S. B. No. 331 131st G.A. 21 wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies;

(D) Evaluate the request based on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure, including the options to submit a request under division (A)(1) or (2) of section 4939.031 of the Revised Code or under division (A)(4) of that section to modify an existing micro wireless facility or associated wireless support structure except that a municipal corporation may propose an alternate location within fifty feet of the proposed location, which the requestor shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs ;

(E) Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of the request. This division shall not preclude a municipal corporation from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities.

(F)

Impose restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the federal aviation administration;

(G) Impose requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;

(H) Unreasonably discriminate among providers of functionally equivalent services;

(I) Impose unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;

(J) Require that the requestor purchase, lease, or use facilities, networks, or services owned or operated by the municipal corporation, in whole or in part, or owned or operated, in whole or in part, by any entity in which the municipal corporation has an economic governance interest;

(K) Condition the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, a ttached to, or located on the associated wireless support structure;

(L) Limit the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;

(M) Impose setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other types of structures in the public way;

(N) Impose environmental testing, sampling, or monitoring requirements that exceed federal law or that are not imposed on other types of construction or elements of the construction;

(O) Impose any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the federal communications commission;

(P) Impose separation requirements that require any space to be maintained between wireless facilities or wireless support structures;

(Q) Prevent the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.

Sec. 4939.0317. No municipal corporation may institute a moratorium on the filing, Sub. S. B. No. 331 131st G.A. 22 acceptance of filings, consideration, or approval of requests for consent described in section 4939.031 of the Revised Code.

Sec. 4939.0319. Any fee charged by a municipal corporation for a request for consent under section 4939.031 of the Revised Code shall not exceed the lesser of two hundred fifty dollars per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.

Sec. 4939.0321. No municipal corporation shall have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.

Sec. 4939.0325. (A) A municipal corporation shall permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way.

(B)(1) The total annual charges and fees for the attachment and any activities related to the attachment shall be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or two hundred dollars per attachment.

(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.

(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators.

(D)Nothing in this chapter affects the need for an entity seeking to place a micro wireless facility on a public-utility owned utility pole to obtain from the public utility any necessary authority to place the facility.

Sec. 4939.0327. A municipal corporation shall not enter into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.

Sec. 4939.08. (A) Nothing in sections 4939.01 to 4939.07 of the Revised Code applies to a franchise or to any agreement with a public utility or , cable operator, or micro wireless facility operator, for the balance of its term, if the franchise or agreement meets all of the following, as applicable:

(1) ~~The~~ (a) With respect to a public utility or cable operator, the franchise was granted, or the agreement was authorized by ordinance or otherwise and was entered into, by a municipal corporation prior to ~~the effective date of this section~~ July 2, 2002.

(b) With respect to a micro wireless facility operator, the agreement was authorized by ordinance or otherwise and was entered into by a municipal corporation and the micro wireless facility operator prior to the effective date of the amendments to this section by S.B. 331 of the 131st general assembly.

(2) The franchise or agreement authorizes the occupation or use of public ways.

(3) The public utility or micro wireless facility operator agrees with the applicable public way fees, or nonmonetary compensation, if any, or the cable operator pays the applicable fee or utilizes the credit, offset, or deduction specified in division (B)(4) of section 4939.05 of the Revised Code. Sub. S. B. No. 331 131st G.A. 23

(B) (1) Except as otherwise provided in division (A) of section 4939.06 of the Revised Code, nothing in sections 4939.01 to 4939.07 of the Revised Code applies to an ordinance both governing public ways and enacted by a municipal corporation prior to September 29, 1999, unless, on or after that date, the ordinance is materially modified. (2) Division (B)(1) of this section does not apply to micro wireless facility operators and their facilities.

(C) Nothing in sections 4939.01 to 4939.07 of the Revised Code authorizes a municipal corporation to levy a fee, other than a public way fee authorized by section 4939.05 of the Revised Code, on a pipeline company or an operator of a pipeline facility regulated under the "Accountable Pipeline Safety and Partnership Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or on an operating partner or affiliated business unit operating under guidelines of the federal energy regulatory commission as they relate to the construction and operation of a pipeline.

(D) Nothing in sections 4939.01 to 4939.07 and this section of the Revised Code prohibits a municipal corporation from doing either of the following:

(1) Charging a cable operator a franchise fee in accordance with the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 542;

(2) Allowing a credit, offset, or deduction against the payment of a construction permit fee for any franchise fee a cable operator pays to the municipal corporation.

Walker v. City of Toledo, 2017 Ohio App. LEXIS 416

Copy Citation

Court of Appeals of Ohio, Sixth Appellate District, Lucas County

February 3, 2017, Decided

Court of Appeals No. L-15-1240

Reporter
2017 Ohio App. LEXIS 416 *

Bradley L. Walker, Appellant v. City of Toledo, et al., Appellees

Prior History:

[*1] Trial Court No. CI0201101922.

Walker v. City of Toledo, 143 Ohio St. 3d 420, 2014-Ohio-5461, 2014 Ohio LEXIS 3117, 39 N.E.3d 474 (2014)

Core Terms

Municipal, ordinance, notice, trial court, police department, administrative process, exhaust, traffic, municipal court, constitutional challenge, administrative remedy, allegations, violations, pleadings, proceedings, home-rule, appeals, administrative proceeding, fail to exhaust, requires

Case Summary

Overview

HOLDINGS: [1]-Upon remand, the trial court properly granted judgment on the pleadings to a city and a traffic system operator in a class action by a motorist who received a notice of liability for a traffic violation under Toledo, Ohio, Mun. Code 313.12, the so-called red light law, as his claim that the law was unconstitutional due to lack of an administrative

appeals process did not remedy the deficiency in the complaint due to his failure to exhaust his administrative remedies; [2]-The motorist's as-applied challenge failed because he had paid the civil fine, failed to file a notice of appeal, and never indicated that he desired to pursue an appeal, such that he could not prove any set of facts in support of his as-applied challenge that would entitle him to relief.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

- Evidence > ... > Demonstrative Evidence > Photographs > Visual Formats
- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > ... > Traffic Regulation > Traffic Control Devices > Red Lights

View more legal topics

HN1 **Photographs, Visual Formats**

Toledo, Ohio, Mun. Code 313.12 is a so-called "red light camera" law. The ordinance

authorizes an automated traffic-law-enforcement system that assesses civil penalties against a vehicle's owner for speeding and red-light violations. The enforcement apparatus includes a camera and a vehicle sensor that automatically produces photos, video, or digital images of vehicles violating these traffic laws. § 313.12(b)(1). More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices

HN2 **Local Governments, Ordinances & Regulations**

Administration of the "red light camera" law program is left to Toledo, Ohio, transportation officials and Toledo's police and law departments. Toledo, Ohio, Mun. Code 313.12(a)(2). When the camera equipment records a traffic violation, the city forwards a "notice of liability" to the registered owner of the vehicle, advising the owner that a civil penalty of $120 has been assessed against him or her. § 313.12(a)(3)(B), (d)(1) and (2). The notice of liability is not a criminal citation, and it carries no collateral consequences, such as the assignment of points against the owner's driver's license. § 313.12(c)(5), (d)(1) and (2). More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Review of Initial Decisions
- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices
- Evidence > Burdens of Proof > Allocation

View more legal topics

HN3 **Agency Adjudication, Review of Initial Decisions**

Under Toledo, Ohio, Mun. Code 313.12, the so-called "red light camera" law, the owner must "give notice of appeal or pay the civil penalty" within 21 days of the date listed on the notice. § 313.12(a)(3)(C), (d)(4). Failure to file an appeal or pay is deemed a waiver of the right to contest liability and is considered an admission. § 313.12(d)(4). If an owner does appeal, an administrative hearing is held. If the owner offers evidence to show the hearing officer that he or she was not driving the vehicle when the violation occurred, the owner will not be held responsible for the violation. § 313.12(c)(4). Pursuant to § 313.12(d)(4), appeals shall be heard through an administrative process established by the Toledo Police Department. A decision in favor of the Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Hearings > Right to Hearing

- Governments > Courts > Authority to Adjudicate
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices

View more legal topics

HN4 **Hearings, Right to Hearing**

Municipalities have home-rule authority under Ohio Const. art. XVIII to impose civil liability on traffic violators through an administrative enforcement system. Ohio Const. art. IV, § 1, which authorizes the legislature to create municipal courts, and R.C. 1901.20, which sets the jurisdiction of municipal courts, do not endow municipal courts with exclusive authority over traffic-ordinance violations. Finally, Ohio **municipalities** have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of these ordinances, that must be exhausted before offenders or the **municipality** can pursue judicial remedies. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

View more legal topics

HN5 **Motions to Dismiss, Failure to State Claim**

A trial court reviews a Civ.R. 12(C) motion for judgment on the pleadings using the

same standard of review as a Rule 12(B)(6) motion for failure to state a claim upon which relief may be granted. Thus, the trial court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Judgments > Pretrial Judgments > Judgment on Pleadings

View more legal topics

HN6 **Pretrial Judgments, Judgment on Pleadings**

In ruling on a Civ.R. 12(C) motion for judgment on the pleadings, a court is permitted to consider both the complaint and the answer as well as any material incorporated by reference or attached as exhibits to those pleadings. In so doing, the court must construe the material allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. A court granting the motion must find that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Civil Procedure > Appeals > Standards of Review > De Novo Review

View more legal topics

HN7 **Standards of Review, De Novo Review**

Because a Civ.R. 12(C) motion tests the legal basis for the claims asserted in a complaint, an appellate court's standard of review is de novo. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies
- Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Administrative Remedies

View more legal topics

HN8 **Reviewability, Exhaustion of Remedies**

The doctrine of exhaustion requires a party to exhaust administrative remedies before seeking redress from the judicial system. The purpose of the doctrine is to allow an administrative agency to apply its expertise in developing a factual record without premature judicial intervention in administrative processes. A party's failure to exhaust available administrative remedies is an affirmative defense which must be timely asserted in an action or it will be considered waived. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Hearings

- Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Administrative Remedies
- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Evidence > Burdens of Proof > Allocation

HN9 **Agency Adjudication, Hearings**

Where a plaintiff challenges the constitutionality of a law, and the defendant raises a failure to exhaust administrative remedies, Ohio courts distinguish "facial" from "as-applied" constitutional challenges. One who challenges the constitutional application of legislation to particular facts is required to raise that challenge at the first available opportunity during the proceedings before the administrative agency. On the other hand, a facial constitutional challenge can be raised for the first time on appeal from the administrative agency. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Hearings
- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

- Evidence > Burdens of Proof > Allocation

HN10 **Agency Adjudication, Hearings**

Extrinsic facts are not needed to determine whether a statute is unconstitutional on its face. When a party challenges the constitutionality of a statute as applied to a specific set of facts, however, a record is required. The proponent of the constitutionality of a statute also needs notice and an opportunity to develop an evidentiary record to support that view. For these reasons, a facial constitutional challenge to a statute need not first be raised in an administrative proceeding. However, a litigant must raise an as-applied constitutional challenge in the first instance during the proceedings in order to allow the parties to develop an evidentiary record. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Hearings
- Governments > Local Governments > Ordinances & Regulations
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices

HN11 **Agency Adjudication, Hearings**

If a vehicle owner appeals, an administrative hearing is held, and if the owner offers evidence to show the hearing officer that he or she was not driving the vehicle when the

violation occurred, the owner will not be held responsible for the violation. Toledo, Ohio, Mun. Code 313.12(c)(4). Under § 313.12(d)(4), appeals are heard through an administrative process established by the Toledo police department. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Agency Adjudication > Hearings
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices
- Governments > Local Governments > Home Rule

HN12 **Agency Adjudication, Hearings**

Ohio **municipalities** have the home-rule authority to maintain pre-suit administrative proceedings, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

View more legal topics

HN13 **Reviewability, Exhaustion of Remedies**

R.C. 2506.01 provides the mechanism for further appeal into a court of common pleas. Section 2506.01 states that every decision of any officer of any political

subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located. Section 2506.01 also requires a party to exhaust his administrative remedies before filing suit. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Separation of Powers > Legislative Controls > Scope of Delegated Authority
- Governments > Local Governments > Home Rule
- Transportation Law > Private Vehicles > Traffic Regulation > Traffic Control Devices

HN14 **Legislative Controls, Scope of Delegated Authority**

The holding that a complementary system of civil enforcement of traffic laws is within a **municipality** 's home-rule power acknowledges that administrative procedures must be established in furtherance of this power. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Counsel: Andrew R. Mayle, Jeremiah S. Ray, Ronald J. Mayle and John T. Murray, for appellant.

Adam W. Loukx, Law Director, and Eileen M. Granata, Senior Attorney, for appellee City of Toledo.

Quintin F. Lindsmith, James P. Schuck and Sommer L. Sheely, for appellee Redflex Traffic Systems, Inc.

Judges: JENSEN, P.J. Thomas J. Osowik, J. James D. Jensen, P.J., CONCUR. Arlene Singer, J., DISSENTS.

Opinion by: James D. Jensen

Opinion

DECISION AND JUDGMENT

JENSEN, P.J.

Introduction

P1 Following an order of remand from the Ohio Supreme Court, the Lucas County Court of Common Pleas granted the motions for judgment on the pleadings filed by the co-defendants, the city of Toledo and Redflex Traffic Systems, Inc. The plaintiff-appellant, Bradley L. Walker, appealed. For the reasons that follow, we affirm the trial court's decision.

Statement of Facts and Procedural History

P2 This case returns to us a second time. In 2008, the city of Toledo enacted *HN1* Toledo Municipal Code 313.12, a so-called "red light camera" law. The ordinance authorizes an automated traffic-law-enforcement system that assesses civil penalties against a vehicle's owner for speeding and red-light violations. The enforcement apparatus includes a **[*2]** camera and a vehicle sensor that automatically produces photos, video, or digital images of vehicles violating these traffic laws. Toledo Municipal Code 313.12(b)(1). Redflex Traffic Systems, Inc., provides the equipment and shares the revenue with Toledo.

P3 *HN2* Administration of the program is left to Toledo transportation officials and Toledo's police and law departments. Toledo Municipal Code 313.12(a)(2). When the Redflex equipment records a traffic violation, the city forwards a "notice of liability" to the registered owner of the vehicle, advising the owner that a civil penalty of $120 has been assessed against him or her. Toledo Municipal Code 313.12(a)(3)(B) and 313.12(d)(1) and (2). The notice of liability is not a criminal citation, and it carries no collateral consequences, such as the assignment of points against the owner's driver's license. Toledo Municipal Code 313.12(c)(5) and 313.12(d)(1) and (2).

P4 *HN3* The owner must "give notice of appeal or pay the civil penalty" within 21 days of the date listed on the notice. Toledo Municipal Code 313.12(a)(3)(C) and 313.12(d)(4). Failure to file an appeal or pay is deemed a waiver of the right to contest liability and is considered an **[*3]** admission. Toledo Municipal Code 313.12(d)(4). If an owner does appeal, an administrative hearing is held. If the owner offers evidence to show the hearing officer that he or she was not driving the vehicle when the violation occurred, the owner will not be held responsible for the violation. Toledo Municipal Code 313.12(c)(4).

P5 Pursuant to Toledo Municipal Code 313.12(d)(4), appeals "shall be heard through an administrative process established by the Toledo Police Department." A decision in favor of the city of Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

P6 Walker received a notice of liability for a traffic violation under Toledo Municipal Code 313.12. Walker paid the city $120; he did not file a notice of appeal.

P7 On February 24, 2011, Walker filed a class-action complaint against Toledo and Redflex for unjust enrichment, seeking their return of all civil penalties collected under the statute. The complaint asserted that Toledo Municipal Code 313.12 is unconstitutional for three reasons: because it usurps the exclusive jurisdiction of the municipal court, is unconstitutionally vague, and is violative of due process. Toledo **[*4]** and Redflex separately filed motions to dismiss for failure to state a claim for which relief can be granted pursuant to Civ.R. 12(B)(6).

P8 The trial court granted the motions, and Walker appealed. We reversed, in part.

The Court of Appeals' June 28, 2013 Decision

P9 As to Walker's claim that Toledo Municipal Code 313.12 invaded the exclusive jurisdiction of the municipal court, we agreed. We held,

[T]he legislature has vested the municipal court with the jurisdiction to adjudicate the violation of any municipal ordinance, including Toledo Municipal Code 313.12. The plain language of the ordinance also reveals that [Toledo] has attempted to divest the municipal court of some, or all, of its jurisdiction by establishing an administrative alternative without the express approval of the legislature. Such usurpation of jurisdiction violates Ohio Constitution, Article IV, Section 1, and is therefore a nullity. *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809, ¶ 36, 994 N.E.2d 467. ("*Walker I*.")

P10 Walker's second claim was that the ordinance is unconstitutionally vague because it delegates adjudicatory authority to the Toledo Police without articulating intelligible governance principles. This court rejected Walker's argument. We held, "The delegation of authority is extremely **[*5]** Spartan, but does not, in our view, rise to the level of constitutional vagueness." *Id.* at ¶ 38.

P11 In his third constitutional challenge, Walker claimed that the Toledo Police Department never established any administrative appeal procedures by which a notice of violation could be challenged. We agreed with Walker, finding, "Since at a minimum, due process of law requires notice and a meaningful opportunity to be heard, * * * it would seem the absence of any process would be problematic. Thus, this branch of appellant's constitutional argument does not warrant dismissal." (Citation omitted.) *Id.*

P12 Thus, this court sustained Walker's exclusive jurisdiction and due process theories of relief; we rejected the vagueness argument. Walker did not appeal; Toledo and Redflex did.

P13 As described by the Ohio Supreme Court, Toledo and Redflex appealed on the issue of "whether Toledo's civil administrative enforcement of its traffic ordinances violates the Ohio Constitution or R.C. 1901.20." *Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.2d 474, ¶ 12.

Decision by the Ohio Supreme Court

P14 By decision dated December 18, 2014, the Supreme Court of Ohio held,

[W]e reaffirm our holding in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, that ***HN4*** **municipalities** have home-rule authority under Ohio Constitution, Article XVIII, to impose civil liability on **[*6]** traffic violators through an administrative enforcement system. We also hold that Ohio Constitution, Article IV, Section 1, which authorizes the legislature to create municipal courts, and R.C. 1901.20, which sets the jurisdiction of municipal courts, do not endow municipal courts with exclusive authority over traffic-ordinance violations. Finally, we hold that Ohio **municipalities** have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of these ordinances, that must be exhausted before offenders or the **municipality** can pursue judicial remedies. We therefore reverse the judgment of the court of appeals with regard to its holding that the ordinance infringes upon the jurisdiction of the municipal court, and we remand the cause to the trial court for further proceedings consistent with this opinion. *Id.* at ¶ 29.

The Trial Court's Decision Following Remand

P15 Following remand, Toledo and Redflex answered the complaint and separately filed motions for judgment on the pleadings, pursuant to Civ.R. 12(C).

P16 The trial court found that the complaint "contains no allegations raising a reasonable inference that the Ordinance was invalidly applied to Plaintiff or that Plaintiff was harmed, actually **[*7]** or in theory, by the Police Departments' alleged failure to establish a written administrative appeal process." *Walker v. City of Toledo*, Lucas C.P. No. CI201101922, 2015 Ohio Misc. LEXIS 4135, *16-20 (Aug. 12, 2015).

P17 The trial court granted the defendants' motions for judgment on the pleadings, and Walker timely appealed, claiming one assignment of error.

Walker's Assignment of Error

The trial court erroneously dismissed Walker's complaint in violation of this court's previous decision in *Walker I* holding that Walker's complaint states a claim upon which relief may be granted.

Standard of Review

P18 ***HN5*** A trial court reviews a Civ.R. 12(C) motion for judgment on the pleadings using the same standard of review as a Civ.R. 12(B)(6) motion for failure to state a claim upon which relief may be granted. *McMullian v. Borean*, 167 Ohio App. 3d 777, 2006-Ohio-3867, 857 N.E.2d 180, ¶ 7 (6th Dist.). Thus, the trial court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

P19 ***HN6*** In ruling on the motion, a court is permitted to consider both the complaint and the answer as well as any material incorporated by reference or attached as exhibits to those pleadings. *Frazier v. Kent*, 11th Dist. Portage Nos. 2004-P-0077 and 2004-P-0096, 2005-Ohio-5413, ¶14. "In so doing, the court must construe the material **[*8]** allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. A court granting the motion must find that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to relief." (Citations omitted.) *Id.* at ¶ 14.

P20 ***HN7*** Because a Civ.R. 12(C) motion tests the legal basis for the claims asserted in a complaint, our standard of review is de novo. *Id.* at ¶ 14, citing *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 1996 Ohio 459, 664 N.E.2d 931 (1996).

Law and Analysis

P21 In support of his assignment of error, Walker makes two arguments. First, he claims, "While the majority of the Supreme Court of Ohio held that **municipalities** have *general* authority 'to establish administrative proceedings,' the problem here is that Toledo did *not* do so as required by its own ordinance." (Emphasis in original.)

P22 Second, appellant argues, "RedFlex and Toledo will urge that the Supreme Court's decision renders Walker's complaint invalid because he did not exhaust the administrative process. Not so." Walker claims that there was "nothing under the ordinance for Walker to 'exhaust' [because the] police department did not establish the administrative process."

P23 Indeed, Toledo and Redflex do argue that Walker **[*9]** failed to exhaust his administrative remedies and that his failure to do so waives further challenge.

P24 ***HN8*** The doctrine of exhaustion requires a party to exhaust administrative remedies before seeking redress from the judicial system. *Basic Distrib. Corp. v. Ohio Dept. of Taxation*, 94 Ohio St.3d 287, 2002-Ohio-794, 762 N.E.2d 979, citing *Noernberg v. Brook Park*, 63 Ohio St.2d 26, 406 N.E.2d 1095 (1980). The purpose of the doctrine is to allow an administrative agency to apply its expertise in developing a factual record without premature judicial intervention in administrative processes. *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 111, 564 N.E.2d 477 (1990).

P25 A party's failure to exhaust available administrative remedies is an affirmative defense which must be timely asserted in an action or it will be considered waived. *Grudzinski v. Med. College of Ohio*, 6th Dist. Lucas No. L-00-1098, 2000 Ohio App. LEXIS 1622 (Apr. 12, 2000). Toledo and Redflex asserted the affirmative defense in their respective answers.

P26 ***HN9*** Where a plaintiff challenges the constitutionality of a law, and the defendant raises a failure to exhaust administrative remedies, Ohio courts distinguish "facial" from "as-applied" constitutional challenges.

P27 One who challenges the constitutional application of legislation to particular facts is required to raise that challenge at the first available opportunity during the proceedings before the administrative agency. On the other hand, a facial constitutional challenge can be raised for the first time **[*10]** on appeal from the administrative agency. *City of Reading v. Pub. Util. Comm.*

of Ohio, 109 Ohio St.3d 193, 2006-Ohio-2181, 846 N.E.2d 840, ¶ 16. In *Reading*, the court explained:

HN10 Extrinsic facts are not needed to determine whether a statute is unconstitutional on its face. When a party challenges the constitutionality of a statute as applied to a specific set of facts, however, a record is required. The proponent of the constitutionality of a statute also needs notice and an opportunity to develop an evidentiary record to support that view. See *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, 232, 520 N.E.2d 188 (1988).

For these reasons, we hold that a *facial* constitutional challenge to a statute need not first be raised before the commission. However, a litigant must raise an *as-applied* constitutional challenge in the first instance during the proceedings before the commission in order to allow the parties to develop an evidentiary record. (Emphasis in original.)

Id. at ¶ 15-16. For example, in *Reading*, the Supreme Court of Ohio held that the city waived its right to make an as-applied constitutional challenge to a statute that authorized the closure of municipal railroad crossings because the city failed to raise the issue before the Public Utilities Commission. Interestingly, the city had "reserved" the right to raise the issue on three occasions before **[*11]** the commission. The court held, however, that "the reservation in a footnote of a right to raise the issue is not the same as actually raising the issue." *Id.* at ¶ 17. *See also Derakhshan v. State Med. Bd.*, 10th Dist. Franklin No. 07AP-261, 2007-Ohio-5802, ¶ 23-30.

P28 Here, Walker does not dispute that the Supreme Court of Ohio rejected his facial challenge, and that the issue has been settled. Indeed, the court observed that its 2008 [*Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255] decision "is dispositive on the constitutionality of **municipalities**' civil administrative processes for enforcement of red-light and speeding violations captured by automated systems." *Walker*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.2d 474, at ¶ 21.

P29 Walker does challenge, however, the application of the statute as to him and class members who are similarly situated. Again, he argues (1) that the police department never established an administrative appeal process; (2) that the allegation must be considered true for purposes of a Rule 12(C) motion; (3) that there was "nothing under the ordinance for Walker to 'exhaust' * * * since [the] police department did not establish the administrative process"; and (4) that "[a]ppealing within a process that is not 'established' is the quintessential vain act and therefore is *not* required." (Emphasis in original.) **[*12]**

P30 Appellant states that the allegations set forth in the complaint—that the Toledo Police Department failed to establish an appeals process—must be accepted as true. 1 Appellant correctly states the legal standard for review of a motion filed under Civ.R. 12(C). It is the same standard as a motion filed pursuant to Civ.R. 12(B). We accepted Walker's allegation in *Walker I* when the issue before the court was a Civ.R. 12(B) motion. ("This is an allegation in the complaint and must be considered as true on a motion to dismiss for failure to state a claim." *Walker I* at ¶ 39.) Just as we did in Walker I, we do so again herein. We find, however, that the absence of an appeals process is not dispositive under the facts of this case. In the words of the trial court, it "does not remedy [the] complaint's deficiency."

P31 How the department would have handled appellant's appeal and whether the absence of a policy could possibly have withstood constitutional muster is not before the court. It underscores, however, the need for Walker to have filed a notice of appeal as set forth under Toledo Municipal Code 313.12(d)(4). Had he done so, an evidentiary record would exist, from

which any procedural infirmities, or indeed the absence **[*13]** of *any* procedure, could have been raised and appealed therefrom. As it stands, however, Walker's payment of the civil fine, and his failure to file a notice of appeal curtailed the development of a factual record. Like the trial court, we find noteworthy that Walker has not alleged that he desired to pursue an appeal or that he attempted but was thwarted from doing so. Therefore, even construing the material allegations in the complaint in Walker's favor, he cannot prove any set of facts in support of an "as applied" constitutional challenge that would entitle him to relief.

P32 We are also mindful that Walker made the same argument (that there was no appeal process) to the Supreme Court of Ohio. In his merit brief, Walker argued that the issue of due process was not properly before the court because neither Toledo nor Redflex appealed our ruling on that issue.[2] Walker continued, however, that "even if these new 'propositions' are considered - and even if this court somehow rules that Toledo may home-rule a court's jurisdiction - this court must still affirm." (Walker's Merit Brief at 33-34.) Walker charged,

As alleged in the complaint, Toledo's entire scheme was premature. The ordinance **[*14]** itself contains no procedures---only a wholesale delegation to the police department. The ordinance requires that the Police Department **shall *establish*** the procedures. TMC 313.12(d)(4). * * * This was never even attempted until February 2011. (Emphasis in original). *Id.* at 33-34.)

In its decision, the Supreme Court of Ohio did not comment on the argument quoted above. Instead, the court credited Toledo Municipal Code 313.12(d)(4) as providing for a hearing. It then remarked,

HN11 If an owner appeals, an administrative hearing is held, and if the owner offers evidence to show the hearing officer that he or she was not driving the vehicle when the violation occurred, the owner will not be held responsible for the violation. [Toledo Municipal Code] 313.12(c)(4). Under [Toledo Municipal Code] 313.12(d)(4), appeals are heard through an administrative process established by the Toledo police department. *Walker* at ¶ 7-8.[3]

P33 We find the court's silence as to Walker's argument instructive. We are also **[*15]** guided by the court's rejection of *our* interpretation of its previous red light camera decision in *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. In our now-reversed decision, we opined that the Ohio Supreme Court was articulating due process concerns with an ordinance that was similar to Toledo's. The court said that we "misread" *Mendenhall*. It commented,

HN14 Our holding that a complementary system of civil enforcement of traffic laws is within a **municipality**'s home-rule power acknowledges that administrative procedures must be established in furtherance of this power. See, for example, our discussion of Akron's ordinance, which sets forth civil administrative-appeal proceedings, which appear to be almost identical to Toledo's. *Mendenhall* at ¶ 6-8. * * * As Walker has brought nothing to our attention to show that Toledo's administrative proceedings are inconsistent with home-rule authority as sanctioned by this court in other cases, we must agree with Redflex that Toledo's administrative-enforcement proceedings are appropriate. *Id.* at ¶ 28.

P34 Even if this language is considered dictum, in that it does not pertain to the issue certified by the court, we find it persuasive nonetheless.

P35 In conclusion, we find that Walker failed **[*16]** to exhaust his administrative remedies by not appealing his notice of liability. Therefore, the Lucas County Court of Common Pleas did not err in finding that the city of Toledo and Redflex were entitled to judgment on the pleadings

pursuant to Civ.R. 12(C). Walker's assignment of error is not well-taken, and the judgment is affirmed. Costs are assessed to Walker pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

James D. Jensen, P.J.

CONCUR.

Arlene Singer, J.,

DISSENTS.

Dissent by: Arlene Singer, J.

Dissent

SINGER, J.

P36 I must respectfully dissent. In my view, the issue that must be resolved before final resolution of this case is whether at the time Walker was ticketed for the red light camera violation, the city had established the administrative appeal proceeding pursuant to Toledo Municipal Code 313(d)(4). If the answer to that question is "no," than I would find that Walker has established the due process violation we questioned in *Walker I*:

Finally, appellant complains that the trial court's findings that he had conceded the existence of an administrative process was both unsupported in the record * * *. The complaint alleges that **[*17]** Toledo police never established an administrative appeal process. This is an allegation in the complaint and must be considered as true on a motion to dismiss for failure to state a claim. Since at a minimum, due process of law requires notice and a meaningful opportunity to be heard * * *, it would seem the absence of any process would be problematic. Thus, this branch of appellant's constitutional argument does not warrant dismissal. (Citations omitted.) *Walker I* at ¶ 39.

P37 There is nothing in the record to establish that *at the time* Walker received his citation, there was an administrative appeal process in place. Similarly, although the state argues that Walker's claim must fail because he failed to "administratively exhaust" the otherwise nonexistent appeal procedures that were in effect at the time of his citation, the city *has not* alleged that there was in fact an appeal procedure created by the city at the time Walker received his citation. The trial court noted that the city created and enacted an administrative appeal procedure in February 2011. However, this procedure was enacted after Walker received

his citation. It is therefore immaterial in determining whether Walker, **[*18]** himself, suffered a due process violation.

P38 As the majority notes, we must apply the same standard of review in our review of a Civ.R. 12(C) motion that we must in a 12(B)(6)—that being the trial court must presume that all factual allegations in the complaint are true. To do otherwise would in effect result in our weighing of the evidence and acting as a finder of fact in violation of not only Civ.R. 12(C) but also Civ.R. 56.

P39 Therefore, because Walker has alleged that there was *no appeal procedure in place at the time he received his citation*, I would find that the trial court erred in granting the city's motion for judgment on the pleadings. Moreover, I also note that the city does not allege that there was in fact an appeal procedure created at the time Walker received his citation. I would reverse the order of the trial court and remand the case for further proceedings.

P40 Finally, I also disagree with the majority's conclusion that Walker failed to exhaust his administrative remedies. As stated by Walker, there was "nothing under the ordinance for Walker to exhaust since the police department did not establish the administrative process." It is undisputed that the city failed to create the required administrative **[*19]** process at the time Walker received his citation. That is the due process violation which Walker challenges. One cannot fail to exhaust that which has not been created.

Footnotes

- 1

  Elsewhere in his complaint Walker conceded that the Toledo Police Department "did somehow establish an unwritten administrative appeals process." We accept as true his primary position, however, that the department "never established the administrative proceedings."

- 2

  The court accepted two propositions of law from Toledo and one from Redflex. Redflex's proposition of law is relevant to Walker's argument cited above:

  > ***HN12*** Ohio **municipalities** have the home-rule authority to maintain pre-suit administrative proceedings, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances. *Walker*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.2d 474, at ¶ 1-2.

- 3

  The court further commented that ***HN13*** R.C. 2506.01 "provides the mechanism for further appeal" into a court of common pleas. R.C. 2506.01 states, "[E]very * * * decision of any officer * * * of any political subdivision of the state may be reviewed by the court of common pleas of the

county in which the principal office of the political subdivision is located." R.C. 2506.01 also requires a party to exhaust his administrative remedies before filing suit. *See* *State ex rel. Teamsters Local Union No. 436 v. Bd. of County Comm'rs*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E.2d 224. Of course, Walker did not challenge his notice of violation under R.C. 2506.01 but rather challenged the constitutionality of the ordinance.

City of Shaker Heights v. El-Bey, 2017-Ohio-929

Copy Citation

Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County

March 16, 2017, Released; March 16, 2017, Journalized

No. 104236

Reporter
2017-Ohio-929 * | 2017 Ohio App. LEXIS 908 **

CITY OF SHAKER HEIGHTS, PLAINTIFF-APPELLEE vs. BRANDON PROFIT EL-BEY, DEFENDANT-APPELLANT

Prior History:

[**1] Criminal Appeal from the Shaker Heights Municipal Court. Case No. 15TRD07248.

Disposition:

AFFIRMED.

Core Terms

municipal court, Ordinances, sovereign, license plate, traffic, violations, municipal, territory, courts, travel, regulations, display

Counsel: Brandon N. Profit, APPELLANT, Pro se, Cleveland, Ohio.

FOR APPELLEE: C. Randolph Keller, City of Shaker Heights, Shaker Heights, Ohio.

Judges: BEFORE: E.A. Gallagher, J., Keough, A.J., and S. Gallagher, J. KATHLEEN ANN KEOUGH, A.J., and SEAN C. GALLAGHER, J., CONCUR.

Opinion by: EILEEN A. GALLAGHER

Opinion

JOURNAL ENTRY AND OPINION

EILEEN A. GALLAGHER, J.:

[*P1] Defendant-appellant Brandon Profit El-Bey, pro se, appeals his conviction for failure to display license plates in violation of Shaker Heights Codified Ordinances 1135.09. For the reasons that follow, we affirm the trial court's judgment.

Factual and Procedural Background

[*P2] On September 19, 2015, Shaker Heights police issued a citation to El-Bey for failure to properly display license plates in violation of Shaker Heights Codified Ordinances 1135.09. El-Bey pled not guilty and the case proceeded to trial.

[*P3] In February 2016, the municipal court found El-Bey guilty of violating Shaker Heights Codified Ordinances 1135.09 and ordered him to pay a fine of $35 and court costs, totaling $375.

[*P4] El-Bey appealed his conviction, identifying the following "Statements of Assignments" of error for [**2] review:

a. Status of a [U]nited States Citizen

b. Proof of a contract with The State of Ohio

c. Display of a Driver[']s License

d. Display of State of Ohio License Plates 1135.09

El-Bey's assignments of error are interrelated. We therefore, address them together.

Law and Analysis

[*P5] El-Bey does not dispute that he violated Shaker Heights Codified Ordinances 1135.09. However, he apparently contends that he is "exempt" from compliance with the ordinance because he is a national of "United Washitaw de Dugdahmoundyah Mu'ur[,] * * * an Original inhabitant of the Americas and a Freeholder inheritance, under the auspices of the great Highness, Emoress Verdiacee 'Tiara' Washitaw (Washington) Tunica (Turner) Gosten El Bey and Her great 'Crown Prince' Ramisis Abel Bey (later known as 'Hutan Tu'pak Bey')." He asserts that he is "Moorish American" and not a "14th Amendment citizen," United States citizen or Ohio citizen and that because he has "no valid contract with the State of Ohio or the United States that gives anyone jurisdiction over [him]," he is "not subject to" the "de facto Colorable law [or] jurisdiction of the United States" or "the statutes, codes, and ordinances of the State of Ohio" and "cannot be * * * ticketed [**3] for traveling on my own land." 1 He argues that he was not required to display Ohio license plates on his vehicle because "the [d]isplay of State of Ohio [l]icense [p]lates is not mandatory in my own Nation" and that his "Nation" has its own "Indigenous Traveling Plates," which he contends were on his vehicle at the time he received the citation. El-Bey's arguments are meritless.

[*P6] Numerous courts have rejected similar challenges to convictions based on "sovereign citizen" or "sovereign nation" arguments. *See, e.g., State v. Wyley*, 8th Dist. Cuyahoga No. 102889, 2016-Ohio-1118, ¶ 6-7, 11-12; *Garfield Hts. v. Foster*, 8th Dist. Cuyahoga No. 102965, 2016-Ohio-

2834, ¶ 9(noting that "[t]his court and other courts have repeatedly rejected the 'sovereign citizen' argument or defense when challenging jurisdiction and have actually characterized such arguments as frivolous"); *State v. Few*, 2d Dist. Montgomery No. 25969, 2015-Ohio-2292, ¶ 6 (sovereign citizen theories "'are meritless and worthy of little discussion'"), quoting *Dubose v. Kasich*, S.D.Ohio No. 2:11-CV-00071, 2013 U.S. Dist. LEXIS 6086,* 3 (Jan. 15, 2013); *State v. Blacker*, 12th Dist. Warren No. CA2008-07-094, 2009-Ohio-5519, ¶ 7-10 (rejecting defendant's claim that the trial court lacked jurisdiction to try and convict him of criminal defenses because he is a "sovereign man," a "non-resident alien to the Federal United States, the State of Ohio, and Warren County," and holding that "Ohio's Revised Code and any applicable criminal statutes [**4] apply to all individuals, regardless of citizenship or nonresident alien status"); *see also St. Paris v. Galluzzo*, 2d Dist. Champaign No. 2014-CA-29, 2015-Ohio-3385, ¶ 46 ("'Regardless of an individual's claimed status of descent, be it as a "sovereign citizen," a "secured-party creditor," or a "flesh-and-blood human being," that person is not beyond the jurisdiction of the courts. These theories should be rejected summarily, however they are presented.'"), quoting *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir.2011); *State v. Matthews*, 2d Dist. Greene No. 2015-CA-73, 2016-Ohio-5055, ¶ 3-6 (rejecting defendant's arguments that municipal court lacked subject matter jurisdiction and personal jurisdiction because "municipal court could not obtain jurisdiction over him without his consent" and that "there could be no consent without a 'contract' with the municipal corporation"); *Friend v. Schatzman*, M.D.N.C. No. 1:15CV231, 2015 U.S. Dist. LEXIS 36332, *3-5 (Mar. 24, 2015) (defendant's claim that he was a member of the "United Washitaw de Dugdahmoundyah Mu'ur Nation" and not a United States citizen did not preclude his arrest, prosecution and conviction for the unlawful possession of cocaine in violation of North Carolina law).

[*P7] As this court stated in *Wyley*:

[T]he United States does not recognize the Moorish Nation as a sovereign state. *Speed v. Mehan*, E.D.Mo. No. 4:13CV1841, 2013 U.S. Dist. LEXIS 153429, *5 (Oct. 25, 2013); *Allah El v. DA for Bronx Cty.*, S.D.N.Y. No. 09CV8746, 2009 U.S. Dist. LEXIS 105869, *3 (Nov. 4, 2009); *Benton-El v. Odom*, E.D.Mo. No. 5:05-CV-242, 2007 U.S. Dist. LEXIS 44270, *6 (June 19, 2007). The self-proclaimed [**5] "public minister" or "consular" "cannot unilaterally bestow sovereign immunity upon himself." *Mehan*, citing *United States v. Lumumba*, 741 F.2d 12, 15 (2d Cir.1984). Therefore the party's purported status as a Moorish-American citizen does not "enable him to violate state and federal laws without consequence." *Id.; South Carolina v. Ajani Nasir Ali*, D.S.C. No. 1:12-2629-TLW-PJG, 2012 U.S. Dist. LEXIS 183680, *3 (Dec. 4, 2012) ("[T]he defendant's purported ground for removal based on the premise that he should not be prosecuted for a violation of the law of the State of South Carolina because he is an Aboriginal Indigenous Moorish-American is frivolous on its face."); *United States v. Lee-El*, D.Kan. No. 08-20140-01-KHV, 2009 U.S. Dist. LEXIS 109973 (Nov. 24, 2009) (citing a collection of cases finding that aliens in the United States, including aboriginal Moors and Moorish-Americans, must obey the laws of the United States).

Wyley, 2016-Ohio-1118, at ¶ 12. The same rule applies with respect to violations of municipal ordinances.

[*P8] Article 18, Section 3 of the Ohio Constitution provides: "**Municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." *See also Mt. Vernon v. Young*, 5th Dist. Knox No. 2005CA45, 2006-Ohio-3319, ¶ 58 ("'a **municipality**'s authority to regulate traffic comes from the Ohio Constitution'"), quoting *State v. Parker*, 68 Ohio St.3d 283, 285, 1994 Ohio 93, 626 N.E.2d 106 (1994).

[*P9] With [**6] respect to the jurisdiction of the Shaker Heights municipal court, "Ohio municipal courts are created by statute * * * and their subject-matter jurisdiction is also set by statute." *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 11. As the Second District explained in *St. Paris v. Galluzzo*, 2d Dist. Champaign No. 2014-CA-4, 2014-Ohio-3260:

The judicial power of the state is vested in "such other courts inferior to the supreme court as may from time to time be established by law." Article IV, Section 1, Ohio Constitution. The constitution gives the General Assembly the power to provide for municipal courts and their jurisdiction. *Behrle v. Beam*, 6 Ohio St.3d 41, 42, 6 Ohio B. 61, 451 N.E.2d 237 (1983). Municipal courts, as they exist today in Ohio, were established in 1951 with the enactment of R.C. Chapter 1901. *Id.*[;] *State v. Spartz*, 12th Dist. Madison No. CA99-11-026, 2000 Ohio App. LEXIS 612, *1 (Feb. 22, 2000).

Generally, all Ohio courts have jurisdiction over violations of Ohio law occurring in Ohio. *See* R.C. 2901.11(A).[2] More to the point, municipal courts have jurisdiction over misdemeanor offenses.

Pursuant to R.C. 1901.20, "[t]he municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory * * * and of the violation of any misdemeanor committed within the limits of its territory."[3]

Id. at ¶ 11, quoting *Young* at ¶ 54-56.

[*P10] The filing of a complaint invokes the jurisdiction of a municipal court. *Matthews*, 2016-Ohio-5055, at ¶ 4, citing *Mbodji* at ¶ 12, and *State v. Gunnell*, 10th Dist. Franklin No. 13AP-90, 2013-Ohio-3928, ¶ 8. In traffic cases, an Ohio Uniform Traffic Ticket serves as the complaint and summons. *Matthews* at ¶ 4, citing Traf.R. 3(A).

[*P11] There is no dispute that the offense at issue occurred while El-Bey was driving his vehicle within the territorial boundaries of Shaker Heights. The record reflects that El-Bey was personally served with an Ohio Uniform Traffic Ticket for violating Shaker Heights Ordinances 1135.09 during a traffic stop on September 19, 2015. El-Bey was subject to the laws of Shaker Heights, including Shaker Heights Codified Ordinances 1135.09, when traveling through the city, and the Shaker Heights Municipal Court had both subject matter jurisdiction and personal jurisdiction over El-Bey for [**8] committing an act within the city that violated that ordinance. R.C. 1901.02, 1901.20(A)(1); *see also Dayton v. Galluzzo*, 2d Dist. Montgomery No. 25913, 2014-Ohio-4854, ¶ 8-9, 11 (municipal court had jurisdiction over defendant for committing a traffic offense within its territorial jurisdiction in violation of a city ordinance); *Galluzzo*, 2014-Ohio-3260, at ¶ 3, 11-12 (municipal court had subject matter jurisdiction and personal jurisdiction over defendant cited for expired vehicle registration in violation of village ordinance).

[*P12] El-Bey has asserted that the city could not exercise jurisdiction over him because he did not have a "contract" with the city or state in the form of an Ohio driver's license or Ohio license plates. This claim is disingenuous. At oral argument El-Bey acknowledged that he had an Ohio license plate on the front of his vehicle at the time he was stopped, i.e., that he was cited for the absence of a valid rear license plate and that he also had an Ohio "identification card," which he used for purposes of "convenience," such as establishing a checking account. Appellant is oddly selective in his acceptance of government rules regulations.

[*P13] El-Bey also asserts that he has "a common fundamental right" to travel and that his operation of his vehicle was not properly subject to regulation because he was [**9] not using his vehicle as part of a commercial enterprise. Other courts have previously considered and rejected similar arguments. For example, in *Matthews, supra*, the Second District stated:

[The defendant] also argues that freedom of movement and travel are "rights" which cannot be unconstitutionally "converted" into a governmental privilege by requiring licensure and registration. However, there is no fundamental right to drive a motor vehicle, and a "burden on a single mode of transportation simply does not implicate the right to interstate travel." *St. Paris v. Galluzzo*[, 2014-Ohio-3260,] at ¶ 15, quoting *State v. Gunnell*, 10th Dist. Franklin No. 13AP-90, 2013-Ohio-3928, ¶ 13 (which quoted *Duncan v. Cone*, 6th Cir. No. 00-5705, 2000 U.S. App. LEXIS 33221 (Dec. 7, 2000)). "The right of a citizen to operate a motor vehicle upon the highways of this state is not a natural or unrestricted right, but a privilege which is subject to reasonable regulation under the police power of the state in the interest of public safety and welfare." *State v. Starnes*, 21 Ohio St.2d 38, 45, 254 N.E.2d 675 (1970), quoting *Blow v. Commr. of Motor Vehicles*, 83 S.D. 628, 164 N.W.2d 351, 352 (S.D.1969). Licensure and registration are such reasonable regulations.

Matthews, 2016-Ohio-5055, at ¶ 7; *see also Young*, 2006-Ohio-3319, at ¶ 60-75; *Galluzzo*, 2014-Ohio-4854, at ¶ 10. We agree with the reasoning of these courts. El-Bey's assignments of error are meritless and are overruled.

[*P14] Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable [**10] grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Shaker Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, A.J., and

SEAN C. GALLAGHER, J., CONCUR

Footnotes

- 1

  El-Bey disputes that he is an Ohio resident, but indicates that "the United Washitaw de Dugdahmoundyah Mu'ur Nation" of which he claims he is a "National" is "situated in the same location" as the state of Ohio.

- 2
  R.C. 2901.11(A)(1) provides: "A person is subject to criminal prosecution and punishment in this state if * * * [t]he person commits an offense under the laws of this state, any element of which takes place in this state."
- 3
  Effective March 23, 2015, R.C. 1901.20(A)(1) was amended. It now states, in relevant part, as follows:

  > The municipal court has jurisdiction to hear misdemeanor cases committed within its territory and has jurisdiction over the violation [**7] of any ordinance of any municipal corporation within its territory, unless the violation is a civil violation based upon evidence recorded by a traffic law photo-monitoring device and issued pursuant to division (B)(3) of section 4511.093 of the Revised Code or the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. * * *

Kanter v. City of Cleveland Heights, 2017-Ohio-1038

Copy Citation

Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County

March 23, 2017, Released; March 23, 2017, Date of Journalization

No. 104375

Reporter
2017-Ohio-1038 * | 2017 Ohio App. LEXIS 1015 **

GARRY KANTER, RELATOR-APPELLANT vs. CITY OF CLEVELAND HEIGHTS, RESPONDENT-APPELLEE

Subsequent History: Motion denied by State ex rel. Kanter v. Cleveland Heights, 2017-Ohio-4433, 2017 Ohio LEXIS 1170 (Ohio, June 22, 2017)

Prior History:

[**1] Civil Appeal from the Cuyahoga County Court of Common Pleas. Case No. CV-15-853953.

Disposition:

AFFIRMED.

Core Terms

charter, **municipality**, ordinance, minutes, self-government, home rule, meetings, recorded, powers, open meeting, committee meeting, police power, public body, set forth, state law, argues, city's, executive session, council member, regulations, matters, prevail, provisions, conflicts, open to the public, trial court, inspection, mandates, provides, prepare

Case Summary

Overview

HOLDINGS: [1]-The trial court properly dismissed the complaint because the city did not have to follow the mandates of R.C. 121.22 , Ohio's Open Meetings Act, since the city's charter established that city council would determine its own rules and order of business. Thus, he city's charter expressly stated that city council would follow its own rules, and not the rules of the state; [2]- Cleveland Heights, Ohio, Codified Ordinances 107.04 and R.C. 121.22(C) clearly conflicted and the ordinance prevailed because the city expressly intended to distinguish council committee meetings from "all regular, special, and emergency meetings of counsel" and from executive sessions. Moreover, the two legislative enactments were nearly identical — except for the provision in Cleveland Heights, Ohio, Codified Ordinances 107.04(a) that made recording minutes of council committee meetings discretionary.

Outcome

Judgment affirmed.

▼LexisNexis® Headnotes

- Civil Procedure > Appeals > Standards of Review > De Novo Review

View more legal topics

HN1 **Standards of Review, De Novo Review**

An appellate court reviews an order dismissing a complaint for failure to state a claim for relief de novo. When reviewing a Civ.R. 12(B)(6) motion to dismiss, an appellate court must accept the material allegations of the complaint as true and make all reasonable inferences in favor of the plaintiff. While the factual allegations of the complaint must be taken as true, unsupported conclusions of a complaint are not considered admitted and are not sufficient to withstand a motion to dismiss. For a defendant to prevail on the motion, it must appear from the face of the complaint that the plaintiff can prove no set of facts that would justify a court in granting relief. Under these rules, a plaintiff is not required to prove his or her case at the pleading stage. As long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > Judicial Review > Remedies > Mandamus

View more legal topics

HN2 **Remedies, Mandamus**

Relief in mandamus. R.C. 121.22(I) , which affords mandatory injunctive relief by way

of a common pleas court action to enforce the provisions of the Open Meetings Act, does not prevent a mandamus action. To be entitled to extraordinary relief in mandamus, a relator must establish a clear legal right to the requested relief, a clear legal duty on the part of the respondent to provide it, and the lack of an adequate remedy in the ordinary course of the law. The relator must prove that he is entitled to the writ by clear and convincing evidence. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > ... > Public Information > Sunshine Legislation > Open Meetings

HN3 **Sunshine Legislation, Open Meetings**

Ohio's "Sunshine Laws" include Ohio's Public Records Act and Ohio's Open Meetings Act. Ohio's Open Meetings Act, set forth in R.C. 121.22, imposes open meeting requirements on public bodies. R.C. 121.22(A) requires that governmental bodies take official action and conduct all deliberations upon official business only in open meetings. R.C. 121.22(C) provides that the minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions

in executive sessions authorized under R.C. 121.22(G) or (J) . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > ... > Public Information > Sunshine Legislation > Open Meetings

HN4 **Sunshine Legislation, Open Meetings**

R.C. 121.22(I) , of Ohio's Open Meetings Act, sets forth how a person can enforce a public body to comply with the Open Meetings Act. It provides that any person may bring an action to enforce this section. An action under R.C. 121.22(I)(1) shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

HN5 **Local Governments, Home Rule**

The Home Rule Amendment of the Ohio Constitution resolves the question of the power of local self-government under a city charter. Home Rule gives **municipalities** a

sovereignty over matters of local government. In such matters, if a provision of a municipal charter conflicts with state law, the charter provisions will prevail. The Home Rule Amendment, set forth in Ohio Const. art. XVIII, § 3, empowers **municipalities** to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. **Municipalities** do not have to enact a charter to have the power over local self-government provided to them in the Ohio Constitution. But, **municipalities** exercise the powers of local self-government to the fullest by adopting a charter pursuant to Ohio Const. art. XVIII, § 7, which provides that any **municipality** may frame and adopt or amend a charter for its government and may, subject to the provisions of Ohio Const. art. XVIII, § 3, exercise thereunder all powers of local self-government. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

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HN6 **Local Governments, Home Rule**

With respect to the Home Rule Amendment of the Ohio Constitution, the words "as are not in conflict with general laws" in Ohio Const. art. XVIII, § 3, have been universally construed to place a limitation on a **municipality**'s power to adopt and enforce local

police, sanitary, and other similar regulations, but not on the power of local self-government. "Police powers" encompass the areas of public health, safety, morals, and general welfare. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN7 **Local Governments, Home Rule**

The Ohio Supreme Court explained that courts use a three-part test to evaluate claims that a **municipality** has exceeded its powers under the Home Rule Amendment. First, courts must determine if the ordinance is an exercise of the city's "police power," rather than of local self-government. If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction. The second step of the Mendenhall test is necessary only if the city ordinance involves an exercise of police power. This step requires a court to determine whether the state law is a general law under the four-part Canton test. If the state statute is a general law, then the local ordinance must give way if it conflicts with the general law. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

HN8 **Local Governments, Home Rule**

To constitute a general law for purposes of home-rule analysis, a statute must: (1) be part of a statewide and comprehensive legislative enactment; (2) apply to all parts of the state alike and operate uniformly throughout the state; (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

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HN9 **Local Governments, Home Rule**

With respect to the Home Rule Amendment of the Ohio Constitution, the final step of the Mendenhall test is to determine whether the ordinance conflicts with the statute, i.e., whether the ordinance permits that which the statute forbids, and vice versa. If the ordinance conflicts with the general law, it will be held unconstitutional. If there is no conflict, the municipal action is permissible even though the statute is a general law. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations

HN10 **Local Governments, Ordinances & Regulations**

A **municipality** must clearly and expressly state the areas where the **municipality** intends to supersede and override general state statutes. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Charters

HN11 **Local Governments, Charters**

Cleveland Heights, Ohio, Charter art. II states that the City of Cleveland Heights shall have all powers of local self-government now or hereafter granted to **municipalities** by the Constitution and laws of Ohio, and such further powers as may now or hereafter be granted by the laws of Ohio; and all such powers shall be exercised in the manner prescribed by this Charter or by ordinances of the Council created hereby. Cleveland Heights, Ohio, Charter art. III, § 8 further provides that the Council shall determine its own rules and order of business, provide for special meetings and keep a journal of its proceedings. Thus, the city's charter establishes that city council will determine its own

rules and order of business; that is, the city's charter expressly states that city council will follow its own rules, and not the rules of the state. More like this Headnote

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- Governments > Local Governments > Charters

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HN12 **Local Governments, Charters**

The Ohio Supreme Court has held that the Home Rule Amendment governs respective legislative roles of the state and its **municipalities**, and in matters of local self government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provision will prevail. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Charters

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HN13 **Local Governments, Charters**

The Ohio Supreme Court has stated that it is axiomatic that an ordinance, if enacted by a chartered **municipality**, would prevail over the state law irrespective of any conflict. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations

HN14 **Local Governments, Ordinances & Regulations**

A nonchartered **municipality** must follow state law on procedural matters, but may enact and follow its ordinances on substantive matters. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > ... > Public Information > Sunshine Legislation > Open Meetings
- Governments > Local Governments > Charters

View more legal topics

HN15 **Sunshine Legislation, Open Meetings**

The "police powers" of the state encompass the areas of public health, safety, morals and general welfare. Courts which have reached the issue have unanimously indicated that R.C. 121.22 , Ohio's Open Meetings Act, is not a police power statute. The procedure by which the **municipality** conducts its decision-making process is a matter solely within the purview of the powers of a chartered local self-government. Once this determination has been made, it makes little difference whether the "Sunshine Law" is a "general law" or a law of "statewide concern," for in such a case, the constitutionally granted power of local self-government reigns supreme. A charter **municipality** , in the exercise of its

sovereign powers of local self-government as established by Ohio Const. art. XVIII, § 3 , need not adhere to the strictures of R.C. 121.22 . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Administrative Law > ... > Public Information > Sunshine Legislation > Open Meetings
- Governments > Local Governments > Charters

HN16 **Sunshine Legislation, Open Meetings**

It is of the essence of home rule and of self-government that the sovereign body that has that power, whether described as a commission, council, assembly or otherwise, has the inherent power to carry on its duties according to its own rules. Were it otherwise, home rule and self-government would become a fiction, and the purpose of the constitutional amendment would be denied. R.C. 121.22 , Ohio's Open Meetings Act, does not and cannot amend the home rule provision of the Constitution which alone resolves the question of the power of local self-government under a city charter. Legislation that attempts to restrict the sovereign power of local self-government or the rules by which a local legislative assembly manages local affairs has no application to charter cities. The right to tell a charter city commission or assembly when, how, where and under what

circumstances it may meet, adjourn or hold an executive meeting no longer exists in the Ohio General Assembly. This segment of sovereignty has been assigned, by the Constitution, to charter cities, and it is one in which the state, as a whole, no longer has any residual interest. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Counsel: FOR APPELLANT: Warner Mendenhall, Akron, Ohio.

FOR APPELLEE: L. James Juliano, Law Director, Kevin P. Roberts, Elizabeth Wells Rothenberg, Assistant Directors of Law, Cleveland Hts., Ohio.

Judges: BEFORE: Boyle, J., Keough, A.J., and E.A. Gallagher, J. KATHLEEN ANN KEOUGH, A.J., and EILEEN A. GALLAGHER, J., CONCUR.

Opinion by: MARY J. BOYLE

Opinion

JOURNAL ENTRY AND OPINION

MARY J. BOYLE, J.:

[*P1] Relator-appellant, Gary Kanter ("Kanter"), a resident of Cleveland Heights, appeals a judgment dismissing his complaint against respondent-appellee, city of Cleveland Heights. Kanter raises one assignment of error for our review:

The trial court erred in dismissing relator's complaint due to the fact that relator alleged facts that, if taken as admitted (as they must be in a motion to dismiss), entitled him to recovery.

[*P2] Finding no merit to his assigned error, we affirm.

I. Procedural History

[*P3] In November 2015, Kanter filed a complaint against the city of Cleveland Heights asserting it violated R.C. 121.22(C) because Cleveland Heights council members did not prepare

minutes of committee meetings, specifically minutes from meetings of the "Committee of the [**2] Whole," and make them open to the public for inspection. 1

[*P4] Pursuant to R.C. 121.22(I), Kanter sought a civil forfeiture of five hundred dollars for each improper meeting held, as well as injunctive relief barring Cleveland Heights council members from holding committee meetings without preparing and publishing minutes from those meetings. Kanter further sought a writ of mandamus to compel council members to prepare and publish all past and future minutes of committee meetings. Finally, Kanter requested reasonable attorney fees pursuant to R.C. 121.22(I)(2)(a).

[*P5] Cleveland Heights moved to dismiss Kanter's complaint pursuant to Civ.R. 12(B)(6). In its motion, Cleveland Heights argued that the complaint failed to state a claim upon which relief could be granted because Cleveland Heights operated under its sovereign power pursuant to home rule authority provided in the Ohio Constitution, its charter, and its codified ordinances. Cleveland Heights asserted that where local rules differ from the state's general laws, such as the Sunshine Law at issue here (the Open Meetings Act), the local rule prevails.

[*P6] The trial court granted Cleveland Heights' motion and dismissed Kanter's complaint. It is from this judgment that Kanter now appeals.

II. [**3] Standard of Review

[*P7] ***HN1*** We review an order dismissing a complaint for failure to state a claim for relief de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. When reviewing a Civ.R. 12(B)(6) motion to dismiss, we must accept the material allegations of the complaint as true and make all reasonable inferences in favor of the plaintiff. *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶ 6. While the factual allegations of the complaint must be taken as true, "[u]nsupported conclusions of a complaint are not considered admitted * * * and are not sufficient to withstand a motion to dismiss." *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 324, 544 N.E.2d 639 (1989). For a defendant to prevail on the motion, it must appear from the face of the complaint that the plaintiff can prove no set of facts that would justify a court in granting relief. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). "Under these rules, a plaintiff is not required to prove his or her case at the pleading stage. * * * [A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144-145, 573 N.E.2d 1063 (1991).

[*P8] Kanter further sought ***HN2*** relief in mandamus. R.C. 121.22(I), which affords mandatory injunctive relief by way of a common pleas court action to enforce the provisions of the Open Meetings Act, does not prevent a mandamus action. *State ex rel. ACLU v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 25, citing *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 564 N.E.2d 486 (1990). To be entitled to extraordinary relief in [**4] mandamus, relator must establish a clear legal right to the requested relief, a clear legal duty on the part of Cleveland Heights to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Relator must prove that he is entitled to the writ by clear and convincing evidence. *Id.* at ¶ 13.

III. Ohio's Open Meetings Act and CHCO 107.04

[*P9] In his sole assignment of error, Kanter contends that the trial court erred when it dismissed his complaint against Cleveland Heights for failure to state a claim. He argues that he is entitled to relief pursuant to R.C. 121.22(I) because Cleveland Heights violated Ohio's Open Meetings Act when its council members conducted committee meetings as "Committee of the Whole," without recording minutes of those meetings.

[*P10] ***HN3*** Ohio's "Sunshine Laws" include Ohio's Public Records Act and Ohio's Open Meetings Act. *See* Ohio Attorney General Mike Dewine, *Ohio Sunshine Laws 2016: An Open Government Resource Manual*, http://www.ohioattorneygeneral.gov/yellowbook (accessed Feb. 21, 2017). Ohio's Open Meetings Act, set forth in R.C. 121.22, imposes open meeting requirements on public bodies. *Paridon v. Trumbull Cty. Childrens Servs. Bd.*, 2013-Ohio-881, 988 N.E.2d 904, ¶16. R.C. 121.22(A) requires that governmental bodies "take official action and * * * conduct all deliberations upon official business only in open [**5] meetings[.]" R.C. 121.22(C), which is the section of the act at issue in this case, provides in relevant part:

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

[*P11] ***HN4*** R.C. 121.22(I) sets forth how a person can enforce a public body to comply with the Open Meetings Act. It provides:

Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

R.C. 121.22(I)(1).

[*P12] Cleveland Heights counters that the trial court properly dismissed Kanter's complaint. It argues that under the Home Rule Amendment of the Ohio Constitution, **municipalities** that have adopted a city charter are not required to follow the mandates of Ohio's Open Meetings Act. Cleveland Heights maintains that under CHCO [**6] 107.04, its council members do not have to record minutes of committee meetings because the ordinance states that minutes "may" be recorded, rather than "shall" be recorded.

[*P13] CHCO 107.04 provides:

The minutes of all regular, special and emergency meetings of Council, shall be promptly recorded in writing and open to the public for inspection. Minutes of Council committee meetings *may be recorded* in writing. Minutes of executive sessions of public bodies need only reflect the general subject matter of discussion in such executive sessions.

(Emphasis added.)

[*P14] We must, therefore, determine if the trial court properly dismissed Kanter's complaint because, as Cleveland Heights contends, it was not required to follow Ohio's Open Meetings Act pursuant to its power of local self-government provided under the Home Rule Amendment.

IV. Home Rule Amendment and Cleveland Heights' Charter

[*P15] ***HN5*** The Home Rule Amendment of the Ohio Constitution resolves the question of the power of local self-government under a city charter. *Piqua v. Piqua Daily Call*, 64 Ohio App.2d 222, 225, 412 N.E.2d 1331 (2d Dist.1979). Home Rule gives **municipalities** a sovereignty over matters of local government. In such matters, if a provision of a municipal charter conflicts with state law, the charter provisions will prevail. *State ex rel. Bardo v. Lyndhurst*, 37 Ohio St.3d 106, 108-109, 524 N.E.2d 447 (1988), citing *State ex rel. Devine v. Hoermle*, 168 Ohio St. 461, 156 N.E.2d 131 (1959), and *State ex rel. Allison v. Jones*, 170 Ohio St. 323, 164 N.E. 2d 417 (1960); *see also State ex rel. Lightfield v. Indian Hill*, 69 Ohio St.3d 441, 442, 633 N.E.2d 524 (1994).

[*P16] The Home Rule Amendment, set forth in the Ohio Constitution, Section 3, Article XVIII, empowers **municipalities** to "exercise all powers [**7] of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

[*P17] **Municipalities** do not have to enact a charter to have the power over local self-government provided to them in the Ohio Constitution. *N. Ohio Patrolmen's Benevolent Assn. v. Parma*, 61 Ohio St.2d 375, 379-380, 402 N.E.2d 519 (1980). But **municipalities** exercise the powers of local self-government to the fullest by adopting a charter pursuant to Section 7, Article XVIII of the Ohio Constitution, which provides that "[a]ny **municipality** may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

[*P18] ***HN6*** The words "as are not in conflict with general laws" in Section 3, Article XVIII of the Ohio Constitution, have been universally construed to place a limitation on a **municipality**'s power to "adopt and enforce * * * local police, sanitary and other similar regulations," but not on the power of local self-government. *Hills & Dales, Inc. v. Wooster*, 4 Ohio App.3d 240, 242, 4 Ohio B. 432, 448 N.E.2d 163 (9th Dist.1982), citing *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958). "Police powers" encompass the areas of public health, safety, morals and general welfare. *Hills & Dales* at *id.*

[*P19] In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ***HN7*** the Ohio Supreme Court explained that courts use a three-part test to evaluate claims that a **municipality** has exceeded its powers under the Home Rule Amendment. First, courts must determine if the ordinance [**8] is an exercise of the city's "police power," rather than of local self-government. *Id.* at ¶ 17, citing *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. "If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a **municipality** to exercise all powers of local self-government within its jurisdiction." *Id.* at ¶ 18, quoting *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23.

[*P20] The second step of the *Mendenhall* test is necessary only if the city ordinance involves an exercise of police power. This step requires a court to determine whether the state law is a

general law under the four-part test set forth in *Canton*. 2 If the state statute is a general law, then the local ordinance must give way if it conflicts with the general law. *Id.* at ¶ 17-18.

[*P21] ***HN9*** The final step of the *Mendenhall* test is to determine whether the ordinance conflicts with the statute, i.e., whether the ordinance permits that which the statute forbids, and vice versa. If the ordinance conflicts with the general law, it will be held unconstitutional. If there is no conflict, the municipal action is permissible even though the statute is a general law. *Id.*

V. Analysis

[*P22] Kanter concedes that CHCO 107.04 only pertains to matters of local self-government and [**9] is not an act of the city's police power. Instead, Kanter argues (in his "first proposition of law") that the Cleveland Heights' charter does not expressly state where it intends to "supercede and override" the state law set forth in R.C. 121.22. ***HN10*** A **municipality** must clearly and expressly state the areas where the **municipality** intends to supersede and override general state statutes. *State ex rel. Lightfield v. Parma*, 69 Ohio St.3d 441, 443, 633 N.E.2d 524 (1994). We disagree with Kanter that Cleveland Heights has not done so.

[*P23] ***HN11*** Article II of the Cleveland Heights' charter states:

The City of Cleveland Heights shall have all powers of local self-government now or hereafter granted to **municipalities** by the Constitution and laws of Ohio, and such further powers as may now or hereafter be granted by the laws of Ohio; and all such powers shall be exercised in the manner prescribed by this Charter or by ordinances of the Council created hereby.

[*P24] Article III, Section 8 of the city's charter further provides that "[t]he Council shall determine its own rules and order of business, provide for special meetings and keep a journal of its proceedings."

[*P25] Thus, the city's charter establishes that city council will determine its own rules and order of business; that is, the city's charter expressly states that city council [**10] will follow its own rules, and not the rules of the state.

[*P26] Kanter further argues that even if this court determines that Cleveland Heights expressly authorized its ordinance to prevail over state statutory provisions, there is no conflict between CHCO 107.04(a) and R.C. 121.22(C). ***HN12*** The Ohio Supreme Court has held that the Home Rule Amendmentgoverns respective legislative roles of the state and its **municipalities**, and in matters of local self government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provision will prevail. *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164, 165, 648 N.E.2d 493 (1995); *State ex rel. Bardo v. Lyndhurst*, 37 Ohio St.3d 106, 108-109, 524 N.E.2d 447 (1988).

[*P27] Although we have already set forth the language of the statute and ordinance at issue, CHCO 107.04(a) and R.C. 121.22(C), it will assist our analysis in this section to repeat them here. CHCO 107.04(a) states in relevant part that

The minutes of all regular, special and emergency meetings of council, shall be promptly recorded in writing and open to the public for inspection. Minutes of Council committee

meetings may be recorded in writing. Minutes of executive sessions of public bodies need only reflect the general subject matter of discussion in such executive sessions.

[*P28] R.C. 121.22(C) states in relevant part:

The minutes of a regular or special meeting of any public body [**11] shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

[*P29] After comparing the ordinance and statute, it is clear that unlike R.C. 121.22(C), Cleveland Heights expressly intended to distinguish council committee meetings from "all regular, special and emergency meetings of counsel" and from executive sessions. Moreover, the two legislative enactments are nearly identical — except for the provision in CHCO 107.04(a) that makes recording minutes of council committee meetings discretionary. Thus, the two clearly conflict and Cleveland Heights' ordinance will prevail.

[*P30] Kanter further maintains that because CHCO 107.04(a) states that "[m]inutes of council committee meetings may be recorded in writing," it "should be interpreted as merely providing that the minutes may be recorded in writing rather than some other means of recording, such as audio or video." We disagree. Neither CHCO 107.04, nor any other provision in the codified ordinances support Kanter's proposed interpretation.

[*P31] Finally, Kanter asserts in his second "proposition of [**12] law" essentially that Cleveland Heights did not follow the mandates of R.C. 121.22. He argues that *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58 (2001), a case that he heavily relied on in his brief (he cited it at least seven times), supports this argument because the facts "closely resemble[s]" the facts in the instant case. But after a thorough review of *Long*, we find Kanter's arguments to be misplaced.

[*P32] In *Long*, the Ohio Supreme Court held that village council members had to prepare, file, and maintain full and accurate minutes of their public meetings pursuant to R.C. 121.22. *See id.* at 58-61. The holding in *Long*, however, has no bearing on the present case. There is nothing in *Long* to indicate that the village of Cardington had adopted a charter pursuant to Section 3, Article XVIII of the Ohio Constitution, or even that it had enacted an ordinance in conflict with the state statute — either as a chartered or nonchartered **municipality** (because as we stated earlier, even a nonchartered city has some powers over local self-government under the Home Rule Amendment). The issue in *Long* was whether the village had properly followed the mandates of R.C. 121.22 — presumably because it had not enacted any ordinance on the same subject matter that conflicted with R.C. 121.22. Thus, the holding in *Long* simply does not apply here.

[*P33] Indeed, ***HN13*** the Ohio Supreme Court has stated [**13] that it is axiomatic that an ordinance, "if enacted by a chartered **municipality**, would prevail over the state law irrespective of any conflict." *N. Ohio Patrolmen's Benevolent Assn.*, 61 Ohio St.2d at 378, 402 N.E.2d 519, citing *Mullen v. Akron*, 116 Ohio App. 417, 188 N.E.2d 607 (9th Dist.1962). The issue in *N. Ohio Patrolmen's* was "whether a nonchartered **municipality** [had] similar powers to enact an ordinance in matters of local self-government [that] are at variance with state law." *Id.* The Supreme Court held that ***HN14*** a nonchartered **municipality** must follow state law on procedural matters, but may enact and follow its ordinances on substantive matters. *Id.* at 382-383.

[*P34] We find the present case more analogous to *Hills & Dales*, 4 Ohio App.3d 240, 4 Ohio B. 432, 448 N.E.2d 163 (9th Dist.). In *Hills & Dales* ("Hills & Dales"), a corporation sought a declaration that the city's new zoning code was invalid because it had been enacted in violation of Ohio's Open Meeting Act set forth in R.C. 121.22. Specifically, Hills & Dales argued that because the city planning commission held a private meeting (i.e., not open to the public) on the proposed zoning ordinance, the city violated R.C. 121.22.

[*P35] The Ninth District disagreed with Hills & Dales, holding that the city was not required to follow the mandates of R.C. 121.22. It noted that the city had adopted a charter form of government pursuant to the Ohio Constitution and, thus, had "all the powers of local [**14] self-government." *Id.* at 242. In response to Hills & Dales' argument that R.C. 121.22 was a "general law of statewide concern, enacted pursuant to the state's police power, and must, therefore, supercede the police regulations enacted by the **municipality**," the Ninth District stated:

First, appellant's proposition that the "Sunshine Law" falls within the ambit of the state's general police powers is without judicial support. ***HN15*** The "police powers" of the state encompass the areas of public health, safety, morals and general welfare. Courts which have reached the issue have unanimously indicated that R.C. 121.22 is not a police power statute. *See Beacon Journal Publishing Co. v. Akron*(1965), 3 Ohio St.2d 191, at 195 [32 O.O.2d 183, 209 N.E.2d 399]; and *Piqua v. Piqua Daily Call* (1979), 64 Ohio App.2d 222, at 225 [18 O.O.3d 168, 412 N.E.2d 1331], motion to certify overruled (1979).

Second, and most importantly, we are of the opinion that the procedure by which the **municipality** conducts its decision-making process is a matter solely within the purview of the powers of a chartered local self-government. Once this determination has been made, it makes little difference whether the "Sunshine Law" is a "general law" or a law of "statewide concern," for in such a case, the constitutionally granted power of local self-government reigns supreme. *See State, ex rel. Canada, v. Phillips*, [168 Ohio St. 191, 151 N.E.2d 722 (1958)]; *Dies Electric Co. v. Akron*, [62 Ohio St.2d 322, 405 N.E.2d 1026 (1980)]; and Justice Locher's dissent in *State, ex rel. Evans, v. Moore*, [69 Ohio St.2d 88, 95-96, 431 N.E.2d 311(1982)].

Hills & Dales at 242.

[*P36] The Ninth District held in *Hills [**15] & Dales* "that a charter **municipality**, in the exercise of its sovereign powers of local self-government as established by Section 3 of Article XVIII of the Constitution of Ohio, need not adhere to the strictures of R.C. 121.22." *Id.* at 242-243. The court explained that:

Although zoning regulations themselves fall within the definition of police powers, this is not a case where the **municipality**'s zoning ordinance is alleged to be in conflict with a general law of the state. This is a case which concerns a charter **municipality**'s fundamental power to control the manner in which the local government decision-making process is conducted.

Id.

[*P37] Likewise, in *Piqua*, 64 Ohio App.2d 222, 412 N.E.2d 1331, Piqua Daily Call, a newspaper, sued the city of Piqua, a charter **municipality**, demanding "an injunction and rescission of all municipal resolutions and ordinances" that resulted from meetings that were not held open to the public in violation of R.C. 121.22. *Id.* at 222-223. The newspaper argued that R.C. 121.22 was a general regulation of the police powers of the state that applied to the city of Piqua. The Second District disagreed, explaining

HN16 It is of the essence of home rule and of self-government that the sovereign body that has that power, whether described as a commission, council, assembly or otherwise, has the inherent power to carry on its duties [**16] according to its own rules. Were it otherwise, home rule and self-government would become a fiction, and the purpose of the constitutional amendment would be denied.

* * *

* * * [R.C. 121.22] does not and cannot amend the home rule provision of the Constitution which alone resolves the question of the power of local self-government under a city charter. Legislation that attempts to restrict the sovereign power of local self-government or the rules by which a local legislative assembly manages local affairs has no application to charter cities. The right to tell a charter city commission or assembly when, how, where and under what circumstances it may meet, adjourn or hold an executive meeting no longer exists in the General Assembly. This segment of sovereignty has been assigned, by the Constitution, to charter cities, and it is one in which the state, as a whole, no longer has any residual interest.

Id. at 225.

[*P38] Thus, after review, Kanter's first "proposition of law" (where he argues that CHCO 107.04 "does not conflict with Ohio's Sunshine Laws as it does not explicitly supersede them"), as well his second "proposition of law" (where he argues that various provisions of R.C. 121.22 apply) are without merit. Cleveland [**17] Heights does not have to follow the mandates of R.C. 121.22.

[*P39] Kanter's sole assignment of error is overruled.

[*P40] Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, A.J., and

EILEEN A. GALLAGHER, J., CONCUR

Footnotes

- 1

Kanter further alleged in his second count that city council members violated Cleveland Heights Codified Ordinances ("CHCO") 107.04 because they did not prepare, file, maintain, and publish minutes from meetings consisting of the "Committee of the Whole." But we will not address this issue because Kanter has abandoned this issue on appeal.

We further note that in the "statement of facts" section of his complaint, Kanter stated that the Cleveland Heights Youth Advisory Commission is a public body that met five times in 2014, and that no minutes were kept of those meetings, and that the Cleveland Heights Architectural Board of Review is a public body that met four times in 2015, and no minutes were kept of those meetings. But Kanter fails to mention these entities in his two alleged claims (in those, he simply argues that the Committee of the Whole violated R.C. 121.22 and CHCO 107.04). Although he incorporates his facts into his two claims, he fails to separately allege that the commission and board violated R.C. 121.22 or CHCO 107.04. Likewise, on appeal, Kanter briefly mentions the commission and board in his "statement of the case and facts," but he fails to mention them anywhere in the argument section of his brief. Indeed, he fails to mention them again after briefly mentioning them in his facts. We will, therefore, not address these entities. See App.R. 12(A)(2) and 16(A).

- 2

HN8 "To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." Canton at the syllabus.

Russ v. City of Reynoldsburg, 2017-Ohio-1471

Copy Citation

Court of Appeals of Ohio, Fifth Appellate District, Licking County

April 19, 2017, Decided

Case No. 16-CA-58

Reporter
2017-Ohio-1471 * | 2017 Ohio App. LEXIS 1478 ** | 2017 WL 1422887

DARLENE RUSS, Plaintiff - Appellant -vs- CITY OF REYNOLDSBURG, Defendant - Appellee

Prior History:

[**1] CHARACTER OF PROCEEDING: Appeal from the Licking County Municipal Court, Case No. 2015 CVF 2039.

Disposition:

Reversed, Judgment Entered.

Core Terms

dog, Ordinances, pit bull, vicious dog, regulations, trial court, Municipal, ownership, harboring, municipal corporation, serious injury, home rule, set forth, sanitary, killed, state law, statewide, vicious

Case Summary

Overview

HOLDINGS: [1]-R.C. Chapter 955, as amended by H.B. 14, Gen. Assem. (Ohio 2012), were general laws; [2]- R.C. 955.11(A)(6)(a) defined a vicious dog, and R.C.

955.221(B)(3) stated that a **municipality** could adopt and enforce ordinances to control dogs within the **municipality** that did not conflict with the Ohio Revised Code; [3]-While Reynoldsburg, Ohio, Codified Ord. §§ 505.35(a) and 505.01(m) (Ordinances) prohibited the ownership of pit bulls outright, Chapter 955 abolished breed-specific determinations of whether a dog was vicious; [4]-Ohio residents could keep any dog, but if the dog was found to be dangerous under R.C. 955.11(A)(1)(a), the owner had to comply with R.C. 955.22; [5]-The Ordinances conflicted with Chapter 955 and exceeded the City's authority under the Home Rule Amendment, Ohio Const. art. XVIII, § 3.

Outcome

Judgment reversed. Judgment entered for owner.

LexisNexis® Headnotes

- Civil Procedure > Appeals > Standards of Review > De Novo Review

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

View more legal topics

HN1 **Standards of Review, De Novo Review**

The constitutionality of a statute or ordinance presents a question of law and is therefore reviewed under a de novo standard. In determining the constitutionality of an ordinance, the appellate court is mindful of the fundamental principle requiring courts to presume the constitutionality of lawfully enacted legislation. The legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN2 **Local Governments, Home Rule**

Ohio Const. art. XVIII, § 3 gives **municipalities** their powers of home rule. Art. XVIII, § 3 provides as follows: **Municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. The state's

highest court has established the following three-part test to determine whether a municipal ordinance must yield to the provisions of a state statute: A state statute takes precedence over a local ordinance when: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Legislation > Types of Statutes

HN3 **Legislation, Types of Statutes**

The state's highest court has set forth a four-part test for evaluating whether a statute is a general law. To constitute a general law for purposes of home-rule analysis, a statute must: (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN4 **Local Governments, Home Rule**

Under the third prong of the Canton test, the statute must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulation. Sections within a chapter will not be considered in isolation when determining whether a general law exists. All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Agriculture & Food > Pets & Service Animals

View more legal topics

HN5 **Agriculture & Food, Pets & Service Animals**

Among the regulations which have been upheld as legitimate exercises of police power are those regulations addressing the ownership and control of dogs. Although dogs are private property to a qualified extent, they are subject to the state police power, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. Legislatures have broad police power to regulate all dogs so as to protect the public against the nuisance posed by a vicious dog. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Police Power

HN6 **Local Governments, Police Power**

R.C. 955.22 contains no language specifically granting or limiting municipal action. R.C. Chapter 955 sets forth police regulations and does not purport to grant or limit the legislative power of a **municipality** . More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Agriculture & Food > Pets & Service Animals

HN7 **Agriculture & Food, Pets & Service Animals**

Prior to H.B. 14, Gen. Assem. (Ohio 2012), R.C. 955.11(A)(4)(a)(iii) provided that a vicious dog meant a dog that, without provocation: (iii) Belongs to a breed that is commonly known as a pit bull dog. R.C. 955.221(B)(3) , which was not amended, states that a municipal corporation may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with any other provision of the Ohio Revised Code. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Agriculture & Food > Pets & Service Animals

HN8 **Agriculture & Food, Pets & Service Animals**

H.B. 14, Gen. Assem. (Ohio 2012), which became effective May 22, 2012, repealed the automatic inclusion of a pit bull as a vicious dog. H. B. 14 amended R.C. 955.11(A)(6) to define a "vicious dog" as follows: (6)(a) "Vicious dog" means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person. (b) "Vicious dog" does not include either of the following: (i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties; (ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer of the dog. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Ordinances & Regulations

View more legal topics

HN9 **Local Governments, Ordinances & Regulations**

While Reynoldsburg, Ohio, Codified Ordinances prohibit the ownership of pit bulls outright, R.C. Chapter 955 has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog. Under Ohio law, Ohio residents may keep or own any dog they choose, provided that if the dog is

determined to be "dangerous" as defined in R.C. 955.11(A)(1)(a), the owner must comply with R.C. 955.22. Thus, while a pit bull is automatically considered "vicious" under the Reynoldsburg Ordinances and ownership of the same is prohibited, a pit bull may or may not be considered "vicious" under Chapter 955 based on its conduct. The appellate court finds, on such basis, that there is a conflict between Reynoldsburg's pit bull Ordinances and Chapter 955, as amended by H.B. 14, Gen. Assem. (Ohio 2012). The Ordinances prohibit that what is permitted by Ohio statutes (ownership of dogs identified as pit bulls). More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Governments > Local Governments > Home Rule

View more legal topics

HN10 **Local Governments, Home Rule**

R.C. Chapter 955 is a general law and Reynoldsburg, Ohio, Codified Ord. §§ 505.35(a) and 505.01(m) conflict with state law and exceed the City's authority under the Home Rule Amendment, Ohio Const. art. XVIII, § 3. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Counsel: For Plaintiff-Appellant: J. PHILIP CALABRESE, Porter, Wright Morris & Arthur LLP, Cleveland, Ohio.

For Defendant-Appellee: JOSEPH R. DURHAM, Eastman & Smith LTD., Columbus, Ohio, And JAMES E. HOOD MATTHEW R. ROTH Reynoldsburg City Attorney Reynoldsburg, Ohio.

Judges: Hon. W. Scott Gwin, P.J., Hon. William B. Hoffman, J., Hon. Craig R. Baldwin, J., Gwin, P.J., and Hoffman, J., concur.

Opinion by: W. Scott Gwin

Opinion

Baldwin, J.

[*P1] Plaintiff-appellant Darlene Russ appeals from the July 18, 2015 Judgment Entry of the Licking County Municipal Court denying her complaint for declaratory judgment and entering judgment in favor of defendant-appellee City of Reynoldsburg.

STATEMENT OF THE FACTS AND CASE

[*P2] Appellant Darlene Russ moved from upstate New York to the City of Reynoldsburg in Licking County, Ohio during Memorial Day weekend in 2014. At the time, she had a dog that she described as "a mixed Pit, some Terrier." Transcript at 11. Appellant conceded that veterinary records classify the dog as a pit bull. Appellant testified that she obtained a license for the dog after registering it with the Licking [**2] County Auditor and that on the day she moved into her apartment, she was cited for keeping, harboring, or owning a vicious dog in violation of Reynoldsburg Codified Ordinance Section 505.35 (a), which prohibits owning, harboring or keeping a vicious dog. Section 505.01(m) defines a vicious dog, in part, as a pit bull. Ultimately, the case against appellant was dismissed.

[*P3] Appellant, on September 24, 2015, filed a verified complaint for declaratory judgment in Licking County Municipal Court, challenging the constitutionality of Reynoldsburg's Ordinances prohibiting the ownership of dogs that the City considers pit bulls. Appellant specifically sought a declaration that appellee could not enforce its prohibitions against owning, keeping, or harboring a pit bull and that Section 505.01(m)(5) of the Codified Ordinances "impermissibly conflicts with State law in violation of the Home Rule Amendment to the Ohio Constitution, R.C. 955.221, or both..." After Appellee City of Reynoldsburg filed an answer, appellant filed a Motion for Judgment on the Pleadings. The American Society for the Prevention of Cruelty to Animals filed an amicus curiae brief on November 23, 2015. Appellee filed a memorandum in opposition to the Motion for Judgment on the Pleadings and a Motion for Summary Judgment on December [**3] 15, 2015. As memorialized in a Judgment Entry filed on March 21, 2016, both the Motion for Judgment on the Pleadings and the Motion for Summary Judgment were denied.

[*P4] A bench trial was held on March 21, 2016. Both parties filed post trial briefs. The trial court, as memorialized in a Judgment Entry filed on July 18, 2016, denied appellant's complaint for declaratory judgment and entered judgment in favor of appellee. The trial court specifically found that R.C. 955.11(A)(6)(a) and 955.221(B)(3) were not general laws and that the City of Reynoldsburg did not exceed its authority under the Home Rule Amendment to the Ohio Constitution.

[*P5] Appellant now raises the following assignments of error on appeal:

[*P6] THE MUNICIPAL COURT ERRED WHEN IT BECAME THE FIRST COURT IN OHIO TO HOLD THAT CHAPTER 955 OF THE OHIO REVISED CODE, WHICH REGULATES DOG OWNERSHIP IN THE STATE, IS NOT A GENERAL LAW.

[*P7] THE CITY OF REYNOLDSBURG'S ORDINANCES PROHIBITING THE OWNERSHIP OF DOGS IT CONSIDERS PIT BULLS EXCEED THE CITY'S AUTHORITY UNDER THE HOME RULE AMENDMENT TO THE OHIO CONSTITUTION BECAUSE THEY PROHIBIT THAT WHICH STATE LAW PERMITS AND SPECIFICALLY LICENSES.

STANDARD OF REVIEW

[*P8] *HN1* The constitutionality of a statute or ordinance presents a question of law and is therefore reviewed under a de novo standard. *Andreyko v. Cincinnati*, 153 Ohio App.3d 108, 2003-Ohio-2759, 791 N.E.2d 1025 (1st Dist). In determining the constitutionality [**4] of an ordinance, we are mindful of the fundamental principle requiring courts to presume the constitutionality of lawfully enacted legislation. *Akron v. Molyneaux*, 144 Ohio App.3d 421, 426, 760 N.E.2d 461 (9th Dist. 2001), citing *Univ. Hts. v. O'Leary*, 68 Ohio St.2d 130, 135, 429 N.E.2d 148 (1981). The legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt. *Molyneaux*, 144 Ohio App.3d at 426, 760 N.E.2d 461.

I, II

[*P9] Appellant, in her first assignment of error, argues that the trial court erred in holding that the provisions of Chapter 955, as amended by House Bill 14 in 2012, are not general laws. In her second assignment of error, appellant contends that the City of Reynoldsburg's pit bull Ordinances conflict with state law and exceed its authority under the Home Rule Amendment to the Ohio Constitution.

[*P10] *HN2* Article XVIII, Section 3 of the Ohio Constitution gives **municipalities** their powers of home rule. Article XVIII, Section 3 provides as follows: "**Municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The Ohio Supreme Court has established the following three-part test to determine whether a municipal ordinance must yield to the provisions of a state statute: "A state statute takes precedence over a local ordinance when (1) the ordinance [**5] is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Canton v. State of Ohio*, 95 Ohio St.3d 149, 151, 2002-Ohio-2005, 766 N.E.2d 963, citing *Ohio Ass'n of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St. 3d 242, 244-245, 1992 Ohio 65, 602 N.E.2d 1147 (1992), and *Auxter v. Toledo*, 173 Ohio St. 444, 183 N.E.2d 920 (1962).

[*P11] At issue in the case sub judice is whether or not R.C. Chapter 955 is a general law. The trial court, in its July 18, 2016 Judgment Entry, found that it was not.

[*P12] *HN3* The Ohio Supreme Court has set forth a four-part test for evaluating whether a statute is a general law in *Canton, supra*: "To constitute a general law for purposes of home-rule

analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.* at syllabus. We note that, in *City of Lima v. Stepleton*, 3rd Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721, the City of Lima conceded that R.C. Chapter 955 was a general law.

[*P13] The trial court, in this matter, found that "the language in R.C. 955.11(A)(6)(a) and 955.221(B)(3) must be construed as being part of a statewide and comprehensive legislative [**6] enactment" and that the first and second prongs of the *Canton* test were met. We concur.

[*P14] Ohio Revised Code Chapter 955 is titled "Dogs" and contains state-wide comprehensive provisions relating to dog and kennel licenses, impounding, assistance dogs and other dog-related matters. R.C. 955.11(A)(6)(a), cited by the trial court, defines a "vicious dog" as follows:

(6)(a) "Vicious dog" means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person.

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer of the dog.

[*P15] In turn, R.C. 955.221(B)(3) states that a "municipal corporation may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with any other provision of the Revised Code."

[*P16] As noted by the trial court, Chapter 955, [**7] as amended by House Bill 14, is part of state-wide comprehensive legislation for regulating ownership of dogs and applies to all parts of the state alike and "does not differentiate between regions of the state or contrast townships versus counties versus towns or cities." R.C. Chapter 955 applies uniformly to the whole state without exception.

[*P17] However, the trial court found that the third prong of the *Canton* test was not met. As is stated above, ***HN4*** under such prong, the statute must "set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulation." The trial court specifically found that the provisions of R.C. 955.221(B)(3) "does not set forth 'police, sanitary, or similar regulations' so much as it establishes a definition" and that R.C. 955.221(B)(3) both grants and limits the legislative authority of **municipalities**.

[*P18] However, as noted by the Court in *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 at paragraph 27, "[S]ections within a chapter will not be considered in isolation when determining whether a general law exists. See *Clermont Environmental*

Reclamation Co. v. Wiederhold (1982), 2 Ohio St.3d 44, 2 OBR 587, 442 N.E.2d 1278. All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation and [**8] whether the chapter as a whole prescribes a rule of conduct upon citizens generally. *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 38."

[*P19] As noted by the Ohio Supreme Court in *State v. Anderson*, 57 Ohio St.3d 168, 170, 566 N.E.2d 1224, ***HN5*** [a]mong the regulations which have been upheld as legitimate exercises of police power are those regulations addressing the ownership and control of dogs." See also *City of Youngstown v. Traylor*, 123 Ohio St. 3d 132, 2009-Ohio-4184,914 N.E.2d 1026 at paragraph 9 in which the Ohio Supreme Court held as follows:

Although dogs are "private property to a qualified extent, they are subject to the state police power, and 'might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. * * * [L]egislatures have broad police power to regulate all dogs so as to protect the public against the nuisance posed by a vicious dog.'" *135 *State v. Anderson* (1991), 57 Ohio St.3d 168, 170, 566 N.E.2d 1224, quoting *Sentell v. New Orleans & Carrollton R.R. Co.* (1897), 166 U.S. 698, 701-704, 17 S.Ct. 693, 41 L.Ed. 1169.

[*P20] Moreover, as noted by appellant, "no provision of Chapter 955 at issue in this case relating to the designation of dogs as vicious, dangerous, or a nuisance, or to the ownership, keeping, or harboring of dogs, grants local governments any degree of authority." ***HN6*** R.C. 955.22 contains no language specifically granting or limiting municipal action. We find, based on the foregoing, that Chapter 955 sets forth police regulations and does not purport to grant or limit the legislative [**9] power of a **municipality**.

[*P21] The last prong of the *Canton* test, which was not addressed by the trial court, requires that Chapter 955, as amended by House Bill 14, prescribe a rule of conduct on citizens generally. We find that it does because it establishes rules that govern all Ohio residents who own dogs.

[*P22] Having found that Ohio Revised Code Chapter 955 is a general law, we must next consider whether or not the Reynoldsburg Ordinances are in conflict with Chapter 955, as amended by House Bill 14. The trial court never reached such issue. "[I]n order for such a conflict [between state laws and local ordinances] to arise, the state statute must positively permit what the ordinance prohibits, or vice versa, regardless of the extent of state regulation concerning the same object." *Cincinnati v. Hoffman*, 31 Ohio St.2d 163, 169, 285 N.E.2d 714 (1972).

[*P23] Reynoldsburg Codified Ordinance Section 501.01(m)(5) states that a dog that "[b]elongs to a breed that is commonly known as pit bull dog" is a "vicious dog." Reynoldsburg Codified Ordinance Section 505.35(a) provides that "[n]o person shall keep, or harbor any vicious dog... as defined in section 505.01(m) within the **municipality**." Thus, all pit bull dogs are labeled as "vicious" without regard to conduct and keeping or harboring them is prohibited.

[*P24] ***HN7*** Prior to House Bill 14, R.C. 955.11(A)(4)(a)(iii) provided, in part, that a "vicious [**10] dog" meant "a dog that, without provocation....: (iii) Belongs to a breed that is commonly known as a pit bull dog..." R.C. 955.221(B)(3), which was not amended, states that a "municipal corporation may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with any other provision of the Revised Code."

[*P25] ***HN8*** House Bill 14, which became effective May 22, 2012, repealed the automatic inclusion of a pit bull as a vicious dog. As is stated above, House Bill 14 amended Section 955.11(A)(6) to define a "vicious dog" as follows:

(6)(a) "Vicious dog" means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person.

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer of the dog.

[*P26] ***HN9*** While Reynoldsburg's Ordinances [**11] prohibit the ownership of pit bulls outright, Ohio Revised Code Chapter 955 has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog. Under Ohio law, Ohio residents may keep or own any dog they choose, provided that if the dog is determined to be "dangerous" as defined in R.C. 955.11(A)(1)(a), the owner must comply with R.C. 955.22. Thus, while a pit bull is automatically considered "vicious" under the Reynoldsburg Ordinances and ownership of the same is prohibited, a pit bull may or may not be considered "vicious" under Ohio Revised Code Chapter 955 based on its conduct. We find, on such basis, that there is a conflict between Reynoldsburg's pit bull Ordinances and Chapter 955, as amended by House Bill 14. The Ordinances prohibit that what is permitted by Ohio statutes (ownership of dogs identified as pit bulls). See *Lima v. Stepleton*, 3rd Dist Allen. No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721.

[*P27] Based on the foregoing, we find that ***HN10*** Revised Code Chapter 955 is a general law and that the Ordinances at issue in this case conflict with state law and exceed appellee's authority under the Home Rule Amendment.

[*P28] Appellant's two assignments of error are, therefore, sustained.

[*P29] Accordingly, the judgment of the Licking County Municipal Court is reversed and, pursuant [**12] to App.R. 12(B), final judgment is entered in favor of appellant.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.

City of Bexley v. State, 2017 Ohio Misc. LEXIS 841

Copy Citation

State of Ohio, Court of Common Pleas, Franklin County, Civil Division

June 2, 2017, Decided

Case No. 17CV-2672

Reporter
2017 Ohio Misc. LEXIS 841 *

CITY OF BEXLEY, OHIO, et al., Plaintiffs, vs. THE STATE OF OHIO, et al., Defendants.

Core Terms

one-subject, municipal, provisions, wireless, regulation, animal, facilities, invalid, telecommunications, micro, statutes, diverse, dog, statewide, provides, severed, repeal, pet, humane society, minimum wage, public way, appropriation, eliminating, offending, portions, matters, cases

Counsel: **[*1]** John P. Gilligan, Esq., Daniel M. Anderson, Esq., Ice Miller, L.L.P, for plaintiffs.

Mike DeWine, Attorney General, Bridget C. Coontz, Assistant Attorney General, for defendant State of Ohio.

Douglas R. Cole, Esq., David J. Twombly, Esq., Organ Cole L.L.P., for intervening defendant CTIA - The Wireless Association.

John A. Bell, Esq. for the Humane Society of the United States, Amicus.

Judges: Richard A. Frye, Judge.

Opinion by: Richard A. Frye

Opinion

Richard A. Frye, Judge.

I. Introduction.

Fifty **municipalities** from across Ohio brought this suit challenging the constitutionality of portions of Sub. S. B. 331 enacted last December.

All parties agree that the first issue to be considered (among many challenges) is whether the single-subject (or one-subject) rule in Article II, Section 15(D) of the Ohio Constitution was violated by this enactment. The Act passed shortly before last Christmas during the so-called

"lame duck" session of the 131st General Assembly. It includes many topics that plaintiffs argue are not a single "subject." The parties provided the court with a stipulation of facts tracking the Act through the legislative process, together with all versions of S.B. 331 as it metastasized. All parties agree that no genuine dispute of material fact exists, and **[*2]** that the question presented is purely one of Ohio constitutional law.

II. The Evolution of S.B. 331.

Initially, S.B. 331 focused only R.C. Ch. 956, and was only intended "to regulate the sale of dogs from pet stores and dog retailers" and to require the Ohio Department of Agriculture "to license pet stores." (Title as introduced in the Senate, May 17, 2016.) Senate passage occurred May 25, and the Bill went to the Ohio House. It languished there until after the 2016 general election. During the so-called "lame duck" session the House Finance Committee added diverse new provisions. Some fixed a statewide minimum wage, and **preempted** local municipal minimum wage ordinances; others created new statewide rules guaranteeing that the relationship between employees and employers would be solely a matter of private contract or collective bargaining and not subject to local regulation; made cockfighting, bearbaiting, or pitting an animal against another illegal; made sexual conduct between a person and an animal (bestiality) illegal; changed the residency requirement for county humane society agents; made an appropriation for the Agriculture Department and related entities; and substantially rewrote **[*3]** statewide rules for micro-wireless 5G telecommunications equipment. The last subject - regulation of new generation micro-wireless systems - is the focus of concern raised by the fifty plaintiff **municipalities** in this case.

On December 7, 2016 the Bill passed out of the House Finance Committee. The same day it passed the full House, and the Ohio Senate concurred in the House amendments. In due course it was signed by Governor Kasich.[1] As enacted it was 28 pages in length, without signature pages. The effective date was March 21, 2017.

The portions of S.B. 331 addressed by plaintiffs amended existing statutes in R.C. Chapter 4939, and put in place new provisions addressing how **municipalities** may interface with new "micro wireless facilities." Such facilities are defined to include "both a distributed antenna system and a small cell facility, and the related wireless facilities." R.C. 4939.01(F). R.C. 4939.02(A)(8) was added to set forth a new finding by the General Assembly that "[i]t is the public policy of this state to *** [e]xpedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state."

Among many substantive revisions to this area of Ohio **[*5]** law is R.C. 4939.031(A). It now requires municipal action not later than 90 days after the date of a filing for consent to use a public way to attach micro wireless facilities to a support structure. R.C. 4939.031(B) now provides that a **municipality** "shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a micro wireless facility, or otherwise prohibit or restrain the activities as described in this section." Beyond that, R.C. 4939.032 states that "[a] micro wireless facility operator may construct and operate the facility in a public way, subject to this chapter" while the next following section (4939.033) provides that "[a] request for consent under section 4939.031 of the Revised Code shall be deemed a permitted use and shall be exempt from local zoning review." Other new provisions preclude a **municipality** from requiring a telecommunications provider "justify the need for the new micro wireless facility," or "[e]valuate the request based

on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure;" or condition consent on "purchase, lease, or use of facilities, networks, or services **[*6]** owned or operated by the municipal corporation." R. C. 4939.0315 (C), (D) and (J).

Under S.B. 331, Ohio **municipalities** are precluded from imposing "separation requirements that require any space to be maintained between wireless facilities or wireless support structures" and stopped from preventing installation of such facilities and structures "in a residential area or within a specific distance from a residence or other structure." *Id.* at (P) and (Q). Further restrictions on municipal authority include R.C. 4939.0325(A), which eliminates the right of a municipal corporation to block "an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way."

It is undisputed that S.B. 331 addresses a wide variety of topics. However, as discussed below, a law must be upheld under the one-subject rule so long as, despite a diversity in topics, one common, unifying subject or purpose ties all the topics together. Here, both the State and intervening defendant CTIA - The Wireless Association argue that the common thread or purpose behind S.B. 331 was elimination of a "patchwork quilt of differing municipal regulations scattered across the state," **[*7]** to thereby "ensuring uniform statewide regulation of certain business activities that would otherwise be harmed by fragmented and burdensome municipal regulation." Conversely, both the Humane Society of the United States as *amicus* and the plaintiff **municipalities**contend that the primary purpose of this Act can only be seen as the protection of animals through regulation of dog sales, licensing of pet stores, and ancillary provisions criminalizing bestiality, authorizing impoundment of an animal believed to be the subject of such an offense, and blocking bearbaiting and animal fighting. To that might be added the appropriation of approximately $75 million for programs involving animal health and food safety through the Agriculture Department, county Agricultural Societies, and Soil and Water Districts in the Western Lake Erie Basin. (§ 3 of S.B. 331, at pp. 23 - 27.) Similarly, the modest amendment to existing R.C. 1717.06 eliminating residency requirements for agents of county humane societies fits within the broader purpose of protecting animals, and has nothing to do with simplifying business regulation.

III. The One-Subject Provision.

Article II, Section 15 of the Ohio Constitution is entitled "How bills shall be passed." It regulates the procedures **[*8]** used by the legislature in adopting or amending laws, rather than authorizing or restricting legislative action on any particular subject matter.

Section 15(D) provides in relevant part: "No bill shall contain more than one subject, which shall be clearly expressed in its title." This Constitutional provision was first adopted in 1851. The history of this provision, which is similar to those in some 41 other states, is detailed in scholarly work. *E.g.*, Hoffer, *Symposium: The Ohio Constitution - Then and Now: An Examination of the Law and History of the Ohio Constitution *** Ohio's One-Subject Rule and the Very Evils it was Designed to* Prevent, 51 Clev. St. L. Rev. 557 (2004); Schuck, *Comment: Returning the "One" to Ohio's "One-Subject" Rule*, 28 Cap. U.L. Rev. 899 (2000); Kulewicz, *The History of the One-Subject Rule of the Ohio Constitution*, 45 Clev. St. L. Rev. 591 (1997).

In 1984 the Supreme Court discarded the view that the one-subject rule in Section 15(D) was "merely directory rather than mandatory" and recognized that situations could exist in which the rule will invalidate a legislative enactment.

The mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship **[*9]** exists between the topics. However, where there is a blatant disunity between topics and no rational reason for their combination can be discerned, it may be inferred that the bill is a result of log-rolling — the practice by which several matters are consolidated in a single bill for the purpose of obtaining passage for proposals which would never achieve a majority if voted on separately. This is the very practice which Section 15(D)was designed to prevent.

Hoover v. Board of County Comm'rs, 19 Ohio St. 3d 1, 6, 19 Ohio B. 1, 482 N.E.2d 575 (1985) citing *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 11 Ohio B. 436, 464 N.E.2d 153 (1984).

In a concurring opinion, Justice Holmes - "a [self-described] member of the General Assembly for a number of years" - acknowledged that the "court's previous renditions to the effect that *** [Section 15(D)] shall be viewed as directory, rather than mandatory, have been misinterpretations of the Constitution." 19 Ohio St.3d, at 7-8. In moving away from historical antagonism toward the one-subject rule, the Court treated Section 15(D) in essentially the same manner as other provisions in the Constitution.[2]

State ex rel. Dix, supra, characterized the one-subject rule as "disallowing unnatural combinations of provisions in acts" so that each "bill will have unity and thus the purpose of the provision [in Section 15(D)] will be satisfied." 11 Ohio St.3d, at 143. "The resultant effect of the one-subject provision is a more orderly **[*10]** and fair legislative process *** [in which] the issues presented can be better grasped and more intelligently discussed." *Id.*

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451, 465, 1999 Ohio 123, 715 N.E.2d 1062 (1999) reviewed the history of the provision and concluded that "[j]ust as the Constitution of 1802 had reflected an aversion to an all-powerful executive, so the Constitution of 1851 was inspired by an antipathy toward an all-powerful legislature and a desire for more independence of each branch of our tripartite system of government." Among the "concrete limits on the power of the General Assembly to proceed however it saw fit in the enactment of legislation" adopted with the 1851 Constitution was the one-subject rule. *Id.* at 495. *Sheward* then applied the provision to invalidate a massive tort reform bill, finding that even a liberal view of the term "subject" could not be extended to cover all of the Act in question because it included "blatantly unrelated matters." In so holding, the Court recognized that "we are not obliged to accept that any ingenious comprehensive form of expression constitutes a legitimate subject for the purposes of the one-subject rule." *Id.* at 498.

These [one-subject] cases can be perceived as points along a spectrum. At one end, closely related topics unite under **[*11]** a narrowly denominated subject. As the topics embraced in a single act become more diverse, and as their connection to each other becomes more attenuated, so the statement of subject necessary to comprehend them broadens and expands. There comes a point past which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such. It becomes a ruse by which to connect blatantly unrelated topics. At the farthest end of this spectrum lies the single enactment which endeavors to legislate on all matters under the heading of "law."

Id. at 499.

A number of one-subject decisions have been issued by Ohio appellate courts in recent years. Last year in *State ex rel. Ohio Civil Serv. Employees Ass'n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478, ¶ 16, 56 N.E.3d 913, for example, the court reaffirmed that Section 15(D) is a "mandatory" legal rule, even though the courts' "role in its enforcement remains limited" in order to "accord appropriate deference to the General Assembly's law-making function." The standard applied recognized "there are rational and practical reasons for the combination of topics on certain subjects *** as long as they are germane to a single subject *** for the purposes of bringing greater order and cohesion to the law or of coordinating an improvement of the **[*12]** law's substance." *Id.* ¶ 17. That *OCSEA* decision concluded that a state appropriations bill which included prison-privatization did not violate the one-subject rule, because all "provisions relate to the overall subject of state expenditures and revenues *** balancing state expenditures against state revenues to ensure continued operation of state programs." ¶¶ 26 - 27.[3]

This is not the first time that the General Assembly has addressed R.C. Ch. 4939 and telecommunications in a manner which triggered a municipal challenge under the one-subject rule. In 1999 provisions limiting how **municipalities** could control the use of their own "public ways" were included in the 855 page biennial appropriations bill. The cities of Upper Arlington and Dublin sued, and obtained a declaratory judgment in this court that the legislative effort violated the one-subject rule. *City of Dublin v. State*, 118 Ohio Misc.2d 18, 2002-Ohio-2431, 769 N.E.2d 436 (Franklin Co. C.P.) (Hogan, J.). Counsel have advised this court that Judge Hogan's decision was not appealed, but that in the wake of his decision new statutes were negotiated by interested parties and ultimately enacted by the General Assembly.

IV. Analysis.

The breadth of S.B. 331 violates the **[*13]** one-subject rule. Again, matters addressed in this single piece of legislation include criminalizing certain conduct, regulating pet stores and dog retailers, restricting how **municipalities** may regulate terms and conditions of work, or the minimum wage to be paid workers; and the regulation of a new generation of micro wireless facilities, including equipment placed on municipal property. Although defendants argue that most of S.B. 331 fits neatly under an overarching theme of eliminating a patchwork quilt of municipal business regulations, even that generous view of the "subject" fails to capture all this diversity. Furthermore, were a court to accept that broad concept of a single "subject" it would eviscerate the Constitutional rule. The defendants' position would also leave open difficult controversies under other, core provision in the Ohio Constitution, most notably the guarantee of Home Rule authority to **municipalities**. Article XVIII, Section 3.[4]

The lack of a single unifying subject in S.B. 331 was candidly conceded by the CTIA in oral argument. Bestiality and animal fighting prohibitions were acknowledged to share nothing in common with the wide-ranging, perhaps revolutionary telecommunications provisions, **[*14]** or with statewide minimum wage and working conditions statutes. From that perspective it has been creatively argued that this court should conclude S.B. 331 is primarily concerned with unifying rules on business subjects, leaving as outliers invalid under the one-subject rule all of the animal-related provisions. In the view of the utility association those are the provisions in S.B. 331 that should be severed and discarded.

Given the history of S.B. 331 and the diversity of material included within it, the court finds that position disingenuous. S.B. 331 passed the Senate initially to protect puppies. Nothing in the record before the court suggests that the broad telecommunications provisions now in focus were given formal hearings in either chamber. Instead, in the rush to conclude the lame duck session, S.B. 331 passed out of the House Finance Committee, and was approved on the floor of both the House and Senate all on the same day. Hasty consideration of such a diverse assortment of subjects directly undermines the policy underlying the one-subject rule, which is to encourage a more orderly and fair legislative process. *Dix, supra*, at 143.

While the court has not been asked to simultaneously decide **[*15]** other constitutional questions before resolving the one-subject challenge, the existence of serious questions about the substantive constitutionality of provisions in S.B. 331 cannot simply be ignored. A well-settled rule in constitutional cases holds that courts should seek to avoid giving legislation a construction that raises constitutional doubt when another reading is available. This is called the doctrine of constitutional avoidance. "Modern avoidance holds that constitutional *doubts* are enough to trigger the canon, without any need to adjudicate actual unconstitutionality." Katyal and Schmidt, *Active Avoidance: The Modern Supreme Court and Legal Change*, 128 Harv. L. Rev. 2109, 2117 (2015). While the avoidance doctrine cannot be applied here, because these telecommunications provisions are being challenged under both the one-subject provision and other provisions in the Ohio Constitution, the wisest course is to accept the implications of the one-subject rule. That may avoid - perhaps forever - the need for rulings on the other issues, including most notably Home Rule and "taking" of municipal property.

The interface between state government authority and Home Rule **municipalities** in the context of utility regulation **[*16]** is complicated. It has been repeatedly litigated since the adoption of Article XVIII in 1912. *See, e.g.*, Vaubel, *Of Concern to Painesville - or Only to the State: Home Rule in the Context of Utilities Regulation*, 33 Ohio St. L.J. 257 (1972) (collecting cases over the first 60 years under Home Rule). S.B. 331 not only sets forth rules on how permits and other regulation of telecommunications are to be handled but appears to permit physical use of municipal property without the consent of municipal owners.[5] All of this raises knotty issues.

As occurred when Judge Hogan decided the *Dublin* case 15 years ago, invalidating this law under the one-subject rule is not only the correct Constitutional decision, but practically speaking may bring the General Assembly, telecommunications providers, and Ohio **municipalities** together to constructively revisit all these issues through formal legislative hearings and informal discussion. That process, which the one-subject rule is intended to assure, is the best opportunity to see telecommunications statutes that avoid serious question under any provision of the Ohio Constitution.

Fostering good legislation is the reason the Ohio Constitution contains a one-subject provision, and **[*17]** why it requires a single subject to be "clearly expressed in its title." Here, a blatant disunity exists between matters engrafted at the last minute on to S.B. 331. No rational reason for their combination can be discerned. A constitutional violation has been demonstrated.

V. The Remedy.

Sheward, supra at 500, discussed "the authority to sever portions of an act that violate the one-subject rule in order 'to cure the defect and save the portions which do relate to a single subject.'" To use this remedy, a court "is permitted to ascertain which subject is primary and

which subject is an unrelated add-on. The former is then saved by severing the latter." *Id.* Recently decisions in *State v. Aalim*, Ohio St.3d , 2016-Ohio-8278, at ¶ 29, *vacated on reconsideration on other grounds* Ohio St.3d , 2017-Ohio-2956, and *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, at ¶ 18, 5 N.E.3d 644recognized the value of severing any portion of an act which is unconstitutional, while preserving the balance.

S.B. 331 itself counsels this course. Uncodified Section 6 of the Act provides that "[i]f any item of law *** contained in this act *** is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end *** sections of law contained in this act are composed, and their **[*18]** applications, are independent and severable."

Ohio law recognizes a well-settled rule that when an unconstitutional statute replaced a prior version of the same law, the repeal of the earlier statute generally is deemed invalid. Ordinarily then, it is as if the offending new statute never had been passed. *State v. Sullivan*, 90 Ohio St.3d 502, 2001-Ohio-6, 739 N.E.2d 788, syllabus paragraph two, held:

When a court strikes down a statute as unconstitutional, and the offending statute replaced an existing law that had been repealed in the same bill that enacted the offending statute, the repeal is also invalid unless it clearly appears that the General Assembly meant the repeal to have effect even if the offending statute had never been passed. (*State ex rel. Pogue v. Groom* [1914], 91 Ohio St. 1, 109 N.E. 477, paragraph three of the syllabus, approved and followed.)

Sullivan is among a number of decisions recognizing this principle. *State v. Parker*, 150 Ohio St. 22, 24, 80 N.E.2d 490 (1948); *Morton v. State*, 105 Ohio St. 366, 1 Ohio Law Abs. 214, 138 N.E. 45 (1922), syllabus paragraph 2 and cases cited; *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914), syllabus paragraph three; *State ex rel. Wilmot v. Buckley*, 60 Ohio St. 273, 54 N.E. 272 (1899), syllabus paragraph four.

To determine whether a repealing clause is inoperative in this context, court decisions focus upon whether it "clearly" would have been the "expressed intention" of the legislature to change prior law if it were known the substitute, new law were invalid. That is a demanding test. When no such **[*19]** clarity exists, the default rule is that repealing-language is deemed inoperative so the old version of the statute remains in effect.

No clear legislative intent is evident here relative to elimination of the previous version of R.C. Ch. 4939 that regulated telecommunications systems in Ohio, or of other statutes improperly altered by S.B. 331 in violation of the one-subject rule. Accordingly, pursuant to the doctrine recognized in the *Sullivan* line of cases the prior versions of Chapter 4939 and of other statutes addressing subjects (other than those touching on protection of animals) as they existed before S.B. 331 retain full force and effect. The specific statutes that are invalid and those that remain in force consistent with the single subject in S.B. 331 are set forth more fully in the Judgment being entered separately by the court. That Judgment includes Civ. R. 54(B) language in the event any party seeks an immediate appeal.

VI. Conclusion.

Some years ago, Ohio Chief Justice C. William O'Neill offered the following observation about the importance of following a constitution:

If the members of a legislative body can ignore, with impunity, the mandates of a constitution ***, then it is certain **[*20]** that the faith of the people in constitutional government will be undermined and eventually eroded completely.

Cleveland ex rel. Neelon v. Locher, 25 Ohio St.2d 49, 52, 266 N.E.2d 831 (1971).

Much more recently, one of Ohio's leading newspapers editorially disparaged the manner in which the one-subject rule appears to be enforced:

Technically, such add-ons also violate the one-subject rule in Ohio's Constitution. But that's a legal requirement so routinely ignored, and so loosely interpreted by the Ohio Supreme Court, that it's become almost meaningless.

Editorial, *Lawmakers should nix these bad ideas,"* Cleveland Plain Dealer, Friday May 12, 2017, at p. E2.

As demonstrated above, the one-subject rule retains not only a place in the Ohio Constitution, but also vitality in Ohio courts. Chief Justice O'Neill correctly recognized that the faith of the people in constitutional government demands nothing less.

Plaintiffs' motion for summary judgment on their First Claim is **GRANTED** and the cross-motions by defendants are **DENIED**. The court finds and declares that the portions of S.B. 331 which amended R.C. 4111.02, enacted R.C. 4113.85, and amended Ch. 4939 are unconstitutional, and must be severed, leaving as valid all provisions in Ch. 956 which, generally speaking, address animal welfare and protection; **[*21]** the provisions in R.C. 959.15, .21, and .99 addressing, in general, cockfighting, bearbaiting, wagering on fighting between one animal and another, sexual conduct between a human and an animal, and remedies for such misconduct; the residency criteria for county humane society agents in R. C. 1717.06; and the financial appropriation in Section 3 of the Bill for the Department of Agriculture and related entities. The repeal of statutes in Ch. 4939, and of R.C. 4111.02 (by Section 2 of S.B. 331) is deemed invalid under *Sullivan, supra*; the statutory provisions in effect on March 20, 2017 therefore remain in force.

IT IS SO ORDERED.

Footnotes

- 1

  The final version included the following topics, as set forth in the title of the Act:

  > *** to regulate the sale of dogs from pet stores and dog retailers, to require the Director of Agriculture to license pet stores, and to revise the civil penalties applicable to dog breeders and other specified entities; to govern construction and attachment activities related to

micro wireless facilities in the public way; to prohibit political subdivisions from establishing minimum wage rates different from the rate required by state law; to generally grant private employers exclusive authority to establish policies concerning hours and location of work, scheduling, and fringe benefits, unless an exception applies; to prohibit a person from engaging in **[*4]** sexual conduct with an animal and related acts, to provide for the seizure and impoundment of an animal that is the subject of a violation, and to authorize a sentencing court to require an offender to undergo psychological evaluation or counseling; to prohibit and establish an increased penalty for knowingly engaging in activities associated with cockfighting, bearbaiting, or pitting an animal against another; to remove the residency requirement for the appointment of an agent to a county humane society; and to make an appropriation.

- 2

"Ordinarily, language used in the Constitution is given its 'usual, normal, or customary meaning.' *State ex rel. King v. Summit County Council*, 99 Ohio St. 3d 172, 2003-Ohio-3050, ¶ 35, 789 N.E.2d 1108; *Toledo Edison Co. v. City of Bryan* 90 Ohio St.3d 288, 292, 2000-Ohio-169, 737 N.E.2d 529. In general, Ohio courts use the same rules of interpretation for interpreting the Constitution as are used for interpreting statutes. Therefore, 'if the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the [constitutional] provision to determine its meaning.' *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 14, 811 N.E.2d 68, citing *Castleberry v. Evatt* 147 Ohio St. 30, 67 N.E.2d 861 (1946), paragraph one of the syllabus."

> *State v. Rodgers*, 131 Ohio Misc.2d 1, 2005-Ohio-1730, ¶¶ 18-19, 827 N.E.2d 872 (Franklin Co. C.P.) *aff'd* 166 Ohio App.3d 218, 2006-Ohio-1528, 850 N.E.2d 90 (10th Dist.)

- 3

The Supreme Court currently has before it a one-subject case involving health care facilities that perform abortions. *Capital Care Network of Toledo v. State Dept. of Health*, 6th Dist. No. L-15-1186, 2016-Ohio-5168, 58 N.E.3d 1207, discretionary appeal allowed Case No. 2016-1348, 148 Ohio St. 3d 1423, 2017-Ohio-905, 71 N.E.3d 296. The appellate court concluded that inclusion of provisions on licensing abortion facilities in the otherwise massive statewide biennial budget bill offered "no common nexus" contrary to the one-subject rule. *Id.* at ¶ 42.

- 4

"**Municipalities** shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

- 5

According to the complaint, these 50 **municipalities** participate in this case as property owners, not merely in their municipal governing status. Under the Ohio Constitution, property rights are deemed to be "fundamental rights." As such "[t]here can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces." *City of Norwood v. Horney*, 110 Ohio St. 3d 353, 2006-Ohio-3799,¶ 38, 853 N.E.2d 1115. This serious issue also demonstrates the need for much fuller consideration in the General Assembly.

City of Dayton v. State, 2017-Ohio-6909

Copy Citation

Supreme Court of Ohio

January 10, 2017, Submitted; July 26, 2017, Decided

No. 2015-1549

Reporter
2017-Ohio-6909 * | 2017 Ohio LEXIS 1450 ** | 2017 WL 3215532

THE CITY OF DAYTON, APPELLANT, v. THE STATE OF OHIO, APPELLEE.

Notice:

THIS SLIP OPINION IS SUBJECT TO FORMAL REVISION BEFORE IT IS PUBLISHED IN AN ADVANCE SHEET OF THE OHIO OFFICIAL REPORTS.

Prior History:

APPEAL from the **Court of Appeals for Montgomery County, No. 26643, 2015-Ohio-3160, 36 N.E.3d 235** [**1] .

City of Dayton v. State, 2015-Ohio-3160, 2015 Ohio App. LEXIS 3082, 36 N.E.3d 235 (Ohio Ct. App., Montgomery County, Aug. 7, 2015)

Disposition:

Judgment reversed.

Core Terms

municipalities, cameras, traffic, provisions, regulations, prong, home rule, contested, home-rule, requires, local authority, lead opinion, set forth, sanitary, overriding state interest, violations, prescribing rules, traffic law, limits, speed, legislative power, devices, statutes, serving, notice, powers, ordinance, issuing, police power, photo-monitoring

Case Summary

Overview

HOLDINGS: [1]-As R.C. 4511.093(B)(1), which required a law-enforcement officer's presence at the location of a traffic camera, told municipalities how to use their law-enforcement resources when enforcing their traffic laws, thereby limiting their legislative power, and its provision requiring the officer's presence infringed on municipalities' home-rule authority without serving an overriding state interest, it violated the Home Rule Amendment, Ohio Const. art. XVIII, § 3; [2]- R.C. 4511.0912 violated the Home Rule Amendment because it dictated how municipalities enforced speed limits within their territories, thus limiting their legislative power; its speeding-leeway provision would operate as a de facto increase in speed limits in the limited areas covered by a traffic camera; and it prohibited the exercise of home-rule powers without also serving an overriding state interest.

Outcome

The judgment of the intermediate appellate court was reversed.

LexisNexis® Headnotes

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Transportation Law > Private Vehicles > Traffic Regulation
- Governments > Local Governments > Duties & Powers

HN1 **Case or Controversy, Constitutionality of Legislation**

R.C. 4511.093(B)(1), which requires that a law-enforcement officer be present at the location of a traffic camera, infringes on a municipality's legislative authority without serving an overriding state interest and is therefore unconstitutional. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

- Governments > Local Governments > Duties & Powers
- Transportation Law > ... > Traffic Regulation > Speed Limits > Maximum Speeds

View more legal topics

HN2 **Case or Controversy, Constitutionality of Legislation**

R.C. 4511.0912 , which prohibits a municipality from issuing a fine to a driver who is caught speeding by a traffic camera unless that driver's speed exceeds the posted speed limit by 6 m.p.h. in a school or park zone or 10 m.p.h. in other areas, unconstitutionally limits the municipality's legislative powers without serving an overriding state interest. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers
- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

View more legal topics

HN3 **Case or Controversy, Constitutionality of Legislation**

R.C. 4511.095 , which directs a municipality to perform a safety study and a

public-information campaign prior to using red-light and speed cameras, unconstitutionally limits the municipality's home-rule authority without serving an overriding state interest. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions
- Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

View more legal topics

HN4 **Constitutionality of Legislation, Inferences & Presumptions**

When considering the constitutionality of a statute, the court presumes the constitutionality of the legislation, and the party challenging the validity of the statute bears the burden of establishing beyond a reasonable doubt that the statute is unconstitutional. The challengers have a heavy burden when attempting to overcome the presumption of constitutionality. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > State Constitutional Operation

- Governments > Local Governments > Duties & Powers

View more legal topics

HN5 **Constitutional Law, State Constitutional Operation**

The Home Rule Amendment, Ohio Const. art. XVIII, § 3, provides independent authority to Ohio's municipalities with regard to local police regulations. Nevertheless, a municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government; (2) the statute is a general law; and (3) the ordinance is in conflict with the statute. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers

View more legal topics

HN6 **Case or Controversy, Constitutionality of Legislation**

In determining whether a statute constitutes a general law for purposes of the Home Rule Amendment, Ohio Const. art. XVIII, § 3, the Ohio Supreme Court has consistently applied the four requirements laid out in Canton v. State. To

qualify as a general law under the Canton test, a statute must (1) be part of a statewide and comprehensive legislative enactment; (2) apply to all parts of the state alike and operate uniformly throughout the state; (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally. If a statute meets the Canton general-law test, then the statute takes precedence over any conflicting municipal ordinances. However, if the general-law test is not satisfied, then the statute is an unconstitutional attempt to limit the legislative home-rule powers of municipalities. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers

View more legal topics

HN7 **Case or Controversy, Constitutionality of Legislation**

With respect to determining whether a statute constitutes a general law for

purposes of the Home Rule Amendment, Ohio Const. art. XVIII, § 3 , the third prong of the Canton v. State general-law test requires courts to consider whether the statute sets forth police regulations or whether it merely grants or limits municipalities' legislative power to set forth police regulations. In undertaking this analysis, a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers

View more legal topics

HN8 **Case or Controversy, Constitutionality of Legislation**

With respect to determining whether a statute constitutes a general law for purposes of the Home Rule Amendment, Ohio Const. art. XVIII, § 3 , under the Ohio Supreme Court's precedent, so long as a statute serves an overriding

state interest with respect to police, sanitary, or similar regulations, then the third prong of the Canton v. State general-law test is satisfied, even if the statute limits the legislative authority of municipalities. However, when a statute expressly grants or limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, without serving an overriding statewide interest, then the statute, or a portion of it, violates the Home Rule Amendment. The analysis under the third Canton prong requires consideration of the individual statutory provisions. The court must not merely examine the statute as a whole but must analyze the contested provisions individually. 

More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Home Rule
- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

View more legal topics

HN9 **Case or Controversy, Constitutionality of Legislation**

R.C. 4511.093(B)(1) tells municipalities how to use their law-enforcement resources when enforcing their traffic laws, thereby limiting municipalities' legislative power. Requiring an officer's presence at a traffic camera directly contradicts the purpose of a traffic camera--to conserve police resources. Moreover, § 4511.093(B)(1) does not require that an officer witness the violation, so the traffic camera is still the primary enforcement tool under § 4511.093 ; it is not a secondary tool. Because the officer-present requirement in R.C. 4511.093(B)(1) infringes on municipalities' home-rule authority without serving an overriding state interest, under Canton v. State, it is unconstitutional.  More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers
- Transportation Law > ... > Traffic Regulation > Speed Limits > Speed Detection Devices

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HN10 **Case or Controversy, Constitutionality of Legislation**

Under R.C. 4511.0912, a local authority is prohibited from relying on a photo-monitoring device to issue a ticket unless a vehicle exceeds the posted speed limit by 6 m.p.h. or more in a school zone or park or recreation area or, in all other areas, the vehicle exceeds the posted speed limit by 10 m.p.h. or more. R.C. 4511.0912 dictates how municipalities must enforce speed limits within their territories, thus limiting their legislative power. S.B. 342, Gen. Assem. (Ohio 2014) provides motorists with an opportunity to challenge violations in which they can contest issues such as speedometer and traffic-camera malfunctions. R.C. 4511.098 and 4511.099. The speeding-leeway provision in § 4511.0912 would operate as a de facto increase in speed limits in the limited areas covered by a traffic camera. Because R.C. 4511.0912 prohibits the exercise of home-rule powers without also serving an overriding state interest, under Canton v. State, it is unconstitutional. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

- Transportation Law > Private Vehicles > Traffic Regulation
- Governments > Local Governments > Duties & Powers

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HN11 **Case or Controversy, Constitutionality of Legislation**

R.C. 4511.095 requires local authorities to (1) conduct a safety study prior to placing a photo-monitoring device at a location, (2) conduct a public-information campaign about the use of traffic-monitoring devices, (3) inform the public through a local newspaper prior to installing a photo-monitoring device, and (4) once a device is installed, observe a 30-day warning period before issuing a violation. R.C. 4511.095 contains no requirement that the placement of the traffic cameras be instructed by or connected in any way to the results of the traffic study. Thus, it does not serve the purpose of directing that the devices be placed in spots where authorities have safety concerns. Nor does it restrict the number of cameras in a specified area to serve the purpose of avoiding over-concentration. Its requirements do not serve the purpose of ensuring that the public traveling in the area has notice. Because its alleged purpose is not served by the requirements it creates, § 4511.095 does not serve an overriding statewide interest. As a result, § 4511.095 does not set

forth state police, sanitary, or similar regulations but instead merely limits a municipality's legislative power to set forth those regulations. Accordingly, it fails the third prong of the Canton v. State test and is not a general law. More like this Headnote

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- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Duties & Powers

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HN12 **Case or Controversy, Constitutionality of Legislation**

Home-rule disputes require the court to reconcile two competing constitutional provisions. First, Ohio Const. art. II vests legislative power in the general assembly. Second, the Home Rule Amendment, Ohio Const. art. XVIII, § 3, grants municipalities the authority to exercise certain powers of local self-government. The Canton v. State test is the means by which this court reconciles those two provisions and determines whether a statute is a general law pursuant to art. XVIII, § 3. More like this Headnote

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- Governments > Courts > Judicial Precedent

HN13 **Courts, Judicial Precedent**

It is the policy of courts to stand by precedent and not to disturb a point once settled. While the doctrine of stare decisis is less important in the constitutional context than in cases involving the common law or statutory interpretation, the court should be careful to revisit settled precedent only when necessary.

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- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Home Rule

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HN14 **Case or Controversy, Constitutionality of Legislation**

Each home-rule case involves unique facts because no two statutes are exactly alike. When analyzing home-rule issues, the Ohio Supreme Court applies the Canton v. State test to the statute at issue, which results in a conclusion that is unique to that particular statute. The fact that the supreme court's conclusions

in these fact-intensive cases may vary does not mean that it is being inconsistent or that the Canton test is unworkable but rather that varying facts applied to varying statutes compel varying outcomes. The supreme court continues to apply the Canton test when analyzing home-rule issues. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Home Rule
- Transportation Law > Private Vehicles > Traffic Regulation

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HN15 **Case or Controversy, Constitutionality of Legislation**

The Ohio Supreme Court determines that the officer-present provision in R.C. 4511.093(B)(1) fails the general-law test in Canton v. State, and it holds that § 4511.093(B)(1) violates the home-rule authority of Dayton, Ohio, as provided by Ohio Const. art. XVIII, § 3. Therefore, the supreme court severs the officer-present provision in § 4511.093(B)(1) and leaves intact § 4511.093(B)(2) and (B)(3). More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Transportation Law > Private Vehicles > Traffic Regulation > Speed Limits
- Governments > Local Governments > Home Rule

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HN16 **Case or Controversy, Constitutionality of Legislation**

With respect to the Home Rule Amendment, Ohio Const. art. XVIII, § 3, the Ohio Supreme Court holds that the speeding-leeway provision in R.C. 4511.0912 is unconstitutional, and it strikes the entire statute. More like this Headnote

Shepardize - Narrow by this Headnote (0)

- Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
- Governments > Local Governments > Home Rule
- Transportation Law > Private Vehicles > Traffic Regulation

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HN17 **Case or Controversy, Constitutionality of Legislation**

With respect to the Home Rule Amendment, Ohio Const. art. XVIII, § 3, under Canton v. State, the study and notice provisions of R.C. 4511.095 do not constitute a general law and are unconstitutional, and the Ohio Supreme Court strikes § 4511.095. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Headnotes/Syllabus

Headnotes

Home rule—Ohio Constitution, Article XVIII, Section 3—R.C. 4511.093(B)(1), 4511.0912, and 4511.095—Procedures for the use of traffic cameras—Provisions requiring the presence of a law-enforcement officer at each camera, that a ticket cannot be issued unless a vehicle exceeds the posted limit by a stated amount, and that municipalities must conduct a safety study and wage a public-information campaign are not general laws and are unconstitutional.

Counsel: Barbara J. Doseck, Dayton City Attorney, and John C. Musto, Assistant City Attorney, for appellant.

Michael DeWine, Attorney General, and Eric E. Murphy, State Solicitor, Michael J. Hendershot, Chief Deputy Solicitor, Hannah C. Wilson, Deputy Solicitor, and Jordan S. Berman, Assistant Attorney General, for appellee.

Jerome M. Strozdas, Springfield Law Director, urging reversal for amicus curiae city of Springfield.

Adam W. Loukx, Toledo Director of Law, and Joseph V. McNamara, Assistant

Director of Law, urging reversal for amicus curiae city of Toledo.

Eve V. Belfance, Akron Director of Law, and John C. Reece and Michael J. Defibaugh, Assistant Directors of Law; and DiCaudo, Pitchford & Yoder and Stephen A. Fallis, urging reversal for amicus curiae city of Akron.

Willa Hemmons, East Cleveland [**2] Director of Law, urging reversal for amicus curiae city of East Cleveland.

Frost Brown Todd L.L.C., Philip K. Hartmann, and Yazan S. Ashrawi; and Garry E. Hunter, urging reversal for amicus curiae Ohio Municipal League.

Mayle, Ray & Mayle, L.L.C., Andrew R. Mayle, Jeremiah S. Ray, and Ronald J. Mayle, urging affirmance for amicus curiae Custom Seal, Inc.

Judges: FISCHER, J. O'CONNOR, C.J., and BALDWIN, J., concur. FRENCH, J., concurs, with an opinion joined by KENNEDY, J. O'NEILL, J., dissents, with an opinion. DEWINE, J., dissents, with an opinion joined by O'NEILL, J. CRAIG R. BALDWIN, J., of the Fifth District Court of Appeals, sitting for O'DONNELL, J.

Opinion by: FISCHER

Opinion

FISCHER, J.

[*P1] In this case, we address whether three statutes regulating local authorities' use of red-light and speed cameras qualify as general laws, such that the statutes do not offend the home-rule powers granted to a municipality in Article XVIII, Section 3 of the Ohio Constitution. We hold that***HN1*** R.C. 4511.093(B)(1), which requires that a law-enforcement officer be present at the location of a traffic camera, infringes on the municipality's legislative authority without serving an overriding state interest and is therefore unconstitutional. We also hold that ***HN2*** R.C. 4511.0912, which prohibits the municipality from issuing [**3] a fine to a driver who is caught speeding by a traffic camera unless that driver's speed exceeds the posted speed limit by 6 m.p.h. in a school or park zone or 10 m.p.h. in other areas, unconstitutionally limits the municipality's legislative powers without serving an overriding state interest. Finally, we hold that ***HN3*** R.C. 4511.095, which directs the municipality to perform a safety study and a public-information campaign prior to using a camera, unconstitutionally limits the municipality's home-rule authority without serving an overriding state interest.

I. Factual Background and Procedural Posture

[*P2] Plaintiff-appellant, the city of Dayton, is an Ohio municipality governed by charter. In 2002, Dayton enacted an ordinance permitting its police department to institute a program using traffic cameras to civilly enforce red-light traffic violations to conserve police resources and to reduce traffic violations and accidents. Prior to installing the traffic cameras, Dayton conducted studies to identify those intersections that had a high number of traffic accidents. Almost immediately after installing the traffic cameras, the number of violation-related accidents decreased. Because of the success Dayton [**4] had with the red-light cameras, Dayton enacted an amended ordinance in 2010 to use traffic cameras to reduce speeding violations.

[*P3] Under Dayton's program, cameras take both video and still pictures of vehicles. A police officer then reviews the camera images to confirm that a traffic violation occurred before issuing the owner of the vehicle a "notice of liability." Dayton Ordinance 70.121(D). In part, a "notice of liability" contains the location, date, and time of the traffic violation, copies of the photographs or video of the vehicle, the vehicle's speed if applicable, and the amount of the civil penalty imposed. The vehicle owner then has 30 days to appeal the notice of liability, and an independent hearing officer reviews the appeal.

[*P4] After Dayton established its program using red-light and speed cameras, a new state law became effective in March 2015, 2014 Am.Sub.S.B. No. 342 ("S.B. 342"). S.B. 342 adopted and amended several Revised Code provisions regulating local authorities' use of automated traffic-enforcement programs. It authorizes local authorities to use photo-monitoring devices for traffic-law violations, subject to certain conditions and regulations. The new law defines [**5] a "local authority" as "a municipal corporation, county, or township." R.C. 4511.092(D). R.C. 4511.094(A)(1) and (2) require a local authority using traffic cameras to post signs at its jurisdictional borders and at each location where a traffic camera is present notifying motorists that cameras are used or are present. R.C. 4511.096 requires a law-enforcement officer to examine camera footage to determine whether a traffic violation occurred; if so, the local authority, or a designee, may send a violation notice to the registered owner of the vehicle within 30 days of the violation. R.C. 4511.097 requires that certain information be included on a violation notice sent to a vehicle owner and limits the amount a local authority can levy as a fine for a violation.

[*P5] S.B. 342 goes beyond establishing procedures for local authorities choosing to use traffic cameras; it also establishes procedures applicable to citizens and entities receiving traffic-camera violations as well as to insurance companies and camera manufacturers. For example, once the registered owner receives notice of a traffic-camera violation, R.C. 4511.098 and 4511.099 establish that the owner can pay the civil fine, submit an affidavit stating that the owner had not been driving the

vehicle at the time [**6] of the infraction, or request an administrative hearing. R.C. 4511.099(G) authorizes an appeal of the administrative decision to either a municipal or county court with jurisdiction over the location where the violation occurred. R.C. 3937.411prohibits insurance companies from considering violations when issuing policies and establishing rates. And R.C. 4511.0911 requires the manufacturers of the photo-monitoring devices to provide maintenance records to local authorities upon request and to attest to the accuracy of the devices annually.

[*P6] Only three of these many provisions in S.B. 342 are at issue in this case: (1) R.C. 4511.093(B)(1), the officer-present provision, (2) R.C. 4511.0912, the speeding-leeway provision, and (3) R.C. 4511.095, the study and notice provisions.

[*P7] R.C. 4511.093(B)(1) requires the presence of a full-time law-enforcement officer at each traffic camera: it states that "[a] local authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device." *See also* R.C. 4511.092(C) (defining law-enforcement officer).

[*P8] R.C. 4511.0912 provides that local authorities shall not issue a ticket for a speeding violation unless "the vehicle involved in the [**7] violation is traveling at a speed that exceeds the posted speed limit by not less than" 6 m.p.h. in a school zone or park area or 10 m.p.h. in other locations.

[*P9] Finally, R.C. 4511.095(A)(1) requires local authorities to "[c]onduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices." Safety studies "shall include an accounting of incidents that have occurred in the designated area over the previous three-year period and shall be made available to the public upon request." *Id.* In addition, local authorities must conduct "a public information campaign to inform motor vehicle operators about the use of traffic law photo-monitoring devices at system locations prior to establishing any of those locations." R.C. 4511.095(A)(2). Local authorities must publish a notice in an area newspaper informing the public of the location of the system prior to establishing any of those systems. R.C. 4511.095(A)(3). Local authorities must also abide by a 30-day "public awareness warning period" after installing the traffic camera before levying fines. R.C. 4511.095(A)(4).

[*P10] Prior to the effective date of S.B. 342, Dayton filed a verified complaint against defendant-appellee, the state of Ohio, seeking declaratory and [**8] injunctive relief and challenging the constitutionality of all of S.B. 342 on home-rule grounds. Dayton and the state filed cross-motions for summary judgment. The trial court denied the state's summary-judgment motion and granted in part Dayton's summary-judgment motion. The trial court held that only R.C. 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are unconstitutional because they violate the third and fourth prongs of the "general law" test set forth in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. The trial court

enjoined enforcement of those three specific provisions but did not hold any of the remaining provisions of S.B. 342 unconstitutional. The state appealed, and the Second District Court of Appeals reversed the trial court's judgment. The Second District determined that S.B. 342 satisfies the third and fourth prongs of the *Canton* test and that Dayton failed to meet its burden to establish the unconstitutionality of any provision of S.B. 342 beyond a reasonable doubt. **2015-Ohio-3160, 36 N.E.3d 235**.

[*P11] This court accepted Dayton's discretionary appeal addressing whether R.C. 4511.093(B)(1), 4511.095, and 4511.0912 ("the contested provisions") violate the Home Rule Amendment and whether courts are required to analyze the contested provisions individually to determine their constitutionality under the Home Rule Amendment, as opposed to only analyzing the legislation [**9] as a whole.

II. Analysis

[*P12] Dayton argues that the Second District erred in reversing the trial court's summary-judgment ruling, which held that the contested provisions of S.B. 342 violate the Home Rule Amendment of Ohio's Constitution. This court reviews a ruling on summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996 Ohio 336, 671 N.E.2d 241 (1966). ***HN4*** When considering the constitutionality of a statute, this court "presume[s] the constitutionality of the legislation, and the party challenging the validity of the statute bears the burden of establishing beyond a reasonable doubt that the statute is unconstitutional." *Wilson v. Kasich*, 134 Ohio St. 3d 221, 2012-Ohio-5367, ¶ 18, 981 N.E.2d 814. Plaintiffs have a "heavy burden" when attempting to overcome the presumption of constitutionality. *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 10, 539 N.E.2d 103 (1989).

[*P13] Article XVIII, Section 3 of the Ohio Constitution, the Home Rule Amendment, provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." ***HN5*** The Home Rule Amendment provides independent authority to Ohio's municipalities with regard to local police regulations. *W. Jefferson v. Robinson*, 1 Ohio St.2d 113, 115, 205 N.E.2d 382 (1965). Nevertheless, a municipal ordinance must yield to a state statute if "(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute." [**10] *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 17, 881 N.E.2d 255.

[*P14] The Dayton ordinances in this case are an exercise of police power. *See Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶ 14, 880 N.E.2d 906 (determining that "the regulation of traffic is an exercise of

police power that relates to public health and safety as well as the general welfare of the public"). Moreover, neither party argues to this court that the Dayton ordinances do not conflict with S.B. 342. Therefore, the sole issue in this case is whether the contested provisions of S.B. 342 qualify as general laws.

[*P15] *HN6* In determining whether a statute constitutes a "general law" for purposes of the Home Rule Amendment, this court has consistently applied the four requirements laid out in *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. *See, e.g.*, *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 32, 858 N.E.2d 776; *Mendenhall* at ¶ 20; *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 2015-Ohio-485, 37 N.E.3d 128, ¶ 19. To qualify as a general law under the *Canton* test, a statute must

(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Canton at syllabus. If a statute meets the *Canton* general-law test, then the [**11] statute takes precedence over any conflicting municipal ordinances. However, if the general-law test is not satisfied, then the statute is "an unconstitutional attempt to limit the legislative home-rule powers" of municipalities. *Id.* at ¶ 10. Dayton challenges the contested provisions under the third and fourth prongs of the *Canton* test. Because we determine that the contested provisions are unconstitutional under the third prong of the *Canton* test, our analysis will focus solely on that prong. We recognize, however, that the contested provisions may also be unconstitutional under the fourth *Canton* prong, as asserted in the concurring opinion.

A. The Third *Canton* Prong: Limiting Municipal Authority

[*P16] *HN7* The third prong of the *Canton* general-law test requires courts to consider whether the statute sets forth police regulations or whether it merely grants or limits municipalities' legislative power to set forth police regulations. *Id.* at ¶ 33. In undertaking this analysis, "'a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.'" *Id.* at ¶ 32 [**12], quoting *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982). Dayton argues that the Second District erred in analyzing S.B. 342 as a whole under the third *Canton* prong, instead of analyzing each of the contested provisions individually.

[*P17] In *Canton*, the court considered whether R.C. 3781.184, which related to the zoning of property for manufactured homes, violated the Home Rule Amendment. R.C. 3781.184(C) provided that political subdivisions must allow manufactured homes to be placed in areas where single-family residences were permitted. R.C. 3781.184(D) created an exception to division (C) that allowed private property owners to prohibit manufactured homes on their land by way of restrictive covenants in deeds. The court determined that "R.C. 3781.184(C), on its face, appears to serve an overriding state interest in providing more affordable housing options across the state." *Canton* at ¶ 33. It then determined, however, that "the exception contained in R.C. 3781.184(D) defeats this purpose." *Id.* According to the court, R.C. 3781.184(C) would have "very little, if any, impact in areas of development having effective deed restrictions or active homeowner associations. Instead, the statute [would] effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer [**13] have active homeowner associations." *Id.* at ¶ 30. Because the statute did not serve an overriding state interest, the *Canton* court determined that R.C. 3781.184(C) "purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Id.* at ¶ 33.

[*P18] This court confronted the third prong of the *Canton* test in *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967. In *Ohioans for Concealed Carry*, the court considered whether a municipal ordinance that prohibited licensed gun owners from carrying a concealed gun within a city's parks was constitutional under the Home Rule Amendment. The municipal ordinance conflicted with a state statute that allowed a licensed gun owner to carry a gun anywhere in the state, subject to several exceptions that did not include municipal parks. In analyzing the third prong of the *Canton* general-law test, the court determined that the statute went beyond preventing cities from enacting conflicting legislation because the statute "provide[d] a program to foster proper, legal handgun ownership in this state." *Id.* at ¶ 50. The court determined that "[t]he statute therefore represents both an exercise of the state's police power and an attempt to limit legislative power of a municipal corporation to set [**14] forth police, sanitary, or similar regulations." *Id.; see also Mendenhall*, 117 Ohio St. 3d 33, 2008-Ohio-270, at ¶ 24, 881 N.E.2d 255 (determining that R.C. 4511.21 "has extensive scope and does more than grant or limit state powers").

[*P19] This court confronted the third prong of the *Canton* test again in *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644. The city of Cleveland sought a declaration that former R.C. 4921.25, 2012 Am.Sub.H.B. No. 487, 1 was unconstitutional under the Home Rule Amendment. Former R.C. 4921.25 vested the Public Utilities Commission of Ohio ("PUCO") with the authority to regulate towing entities as for-hire motor carriers, but the second sentence of the statute provided that "[s]uch an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles." Cleveland challenged

the second sentence of the statute as unconstitutionally infringing on local authorities' abilities to regulate towing companies. This court determined that the statute, when read as a whole, did not merely limit the legislative power of municipalities to set forth police, sanitary, or similar regulations, *Cleveland* at ¶ 13; nevertheless, the court isolated the second sentence of the statute, analyzed it separately, and determined that it was unconstitutional, [**15] *id.* at ¶ 16-17. According to the court, "[u]nlike the first sentence of R.C. 4921.25, which subjects towing entities to PUCO regulation, the second sentence fails to set forth any police, sanitary, or similar regulations." *Id.* at ¶ 16.

[*P20] ***HN8*** Under this court's precedent, so long as a statute serves an overriding state interest with respect to police, sanitary, or similar regulations, then the third prong of the *Canton* general-law test is satisfied, even if the statute limits the legislative authority of municipalities. However, when a statute expressly grants or limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, without serving an overriding statewide interest, then the statute, or a portion of it, violates the Home Rule Amendment. As demonstrated in *Cleveland*, the analysis under the third *Canton* prong requires consideration of the individual statutory provisions. *See id.* Therefore, we agree with Dayton's contention that under the third *Canton*prong, this court must not merely examine S.B. 342 as a whole but must analyze the contested provisions individually, a task that we now undertake.

1. The Officer-Present Provision (R.C. 4511.093(B)(1))

[*P21] Under the officer-present provision, R.C. 4511.093(B)(1), "[a] local [**16] authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device." ***HN9*** R.C. 4511.093(B)(1) tells municipalities how to use their law-enforcement resources when enforcing their traffic laws, thereby limiting municipalities' legislative power. As to whether R.C. 4511.093(B)(1) serves an overriding statewide interest, the state contends that R.C. 4511.093(B)(1) represents a legislative compromise: it is not an outright ban on traffic cameras, but it establishes cameras as secondary enforcement tools so that the officers do not have to stop every violator.

[*P22] However, requiring an officer's presence at a traffic camera directly contradicts the purpose of a traffic camera—to conserve police resources. Moreover, R.C. 4511.093(B)(1) does not require that an officer witness the violation, so the traffic camera is still the primary enforcement tool under the statute; it is not a secondary tool as the state contends. Because the officer-present requirement in R.C. 4511.093(B)(1) infringes on municipalities' home-rule authority without serving an overriding state interest, under *Canton*, it is unconstitutional.

*2. The Speeding-Leeway Provision [**17] (R.C. 4511.0912)*

[*P23] ***HN10*** Under R.C. 4511.0912, a local authority is prohibited from relying on a photo-monitoring device to issue a ticket unless a vehicle exceeds the posted speed limit by 6 m.p.h. or more in a school zone or park or recreation area or, in all other areas, the vehicle exceeds the posted speed limit by 10 m.p.h. or more. R.C. 4511.0912 dictates how municipalities must enforce speed limits within their territories, thus limiting their legislative power. With regard to whether R.C. 4511.0912 serves an overriding state interest, the state contends that the speeding-leeway provision accounts for errors in the driver's speedometer or a traffic camera's measuring device, and also creates amnesty for minor speeding infractions. We find the state's arguments unpersuasive. As an initial matter, the state's arguments seemingly contradict its contention that the cameras should be a secondary enforcement tool supplementing police officers. Second, S.B. 342 provides motorists with an opportunity to challenge violations in which they can contest issues such as speedometer and traffic-camera malfunctions. *See* R.C. 4511.098 and 4511.099. Third, the speeding-leeway provision in R.C. 4511.0912 would operate as a de facto increase in speed limits in the limited areas covered by a [**18] traffic camera. Because R.C. 4511.0912 prohibits the exercise of home-rule powers without also serving an overriding state interest, under *Canton*, it is unconstitutional.

3. The Study and Notice Provisions (R.C. 4511.095)

[*P24] The last of the contested provisions, ***HN11*** R.C. 4511.095, requires local authorities to (1) conduct a safety study prior to placing a photo-monitoring device at a location, (2) conduct a public-information campaign about the use of traffic-monitoring devices, (3) inform the public through a local newspaper prior to installing a photo-monitoring device, and (4) once a device is installed, observe a 30-day warning period before issuing a violation.

[*P25] R.C. 4511.095 contains no requirement that the placement of the traffic cameras be instructed by or connected in any way to the results of the traffic study. Thus, the statute does not serve the purpose of directing that the devices be placed in spots where authorities have safety concerns. Nor does the statute restrict the number of cameras in a specified area to serve the purpose of avoiding overconcentration.

[*P26] Moreover, the public-information campaign, 30-day warning period, and requirement to publish in a local newspaper are of limited scope and duration. The public traveling [**19] through municipalities includes motorists who are not members of the local community targeted by the public-information campaign and

local-publication requirement. Thus, the statute's requirements do not serve the purpose of ensuring that the public traveling in the area has notice.

[*P27] Because the statute's alleged purpose is not served by the requirements it creates, R.C. 4511.095 does not serve an overriding statewide interest. As a result, R.C. 4511.095 does not set forth state police, sanitary, or similar regulations but instead merely limits a municipality's legislative power to set forth those regulations. Accordingly, the statute fails the third prong of the *Canton* test and is not a general law.

B. The Continued Viability of *Canton*

[*P28] The dissenting opinion suggests that we should abandon the *Canton* test and analyze home-rule issues by determining first whether the municipal ordinance in question involves a police power and then whether the exercise of the police power conflicts with the state's exercise of that power in the corresponding statute. Although the dissents set forth a different approach to home-rule issues, now is not the time for us to reformulate our home-rule analysis.

[*P29] ***HN12*** Home-rule disputes require [**20] us to reconcile two competing constitutional provisions. First, Article II of the Ohio Constitution vests legislative power in the General Assembly. Second, the Home Rule Amendment, Article XVIII, Section 3 of the Ohio Constitution, grants municipalities the authority to exercise certain powers of local self-government. The *Canton* test is the means by which this court reconciles those two provisions and determines whether a statute is a general law pursuant to Article XVIII, Section 3.

[*P30] ***HN13*** "It is the policy of courts to stand by precedent and not to disturb a point once settled." *Clark v. Snapper Power Equip., Inc.*, 21 Ohio St.3d 58, 60, 21 Ohio B. 359, 488 N.E.2d 138 (1986). While we have noted that the doctrine of stare decisis is less important in the constitutional context than in cases involving the common law or statutory interpretation, *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 6, 539 N.E.2d 103 (1989), we should be careful to revisit settled precedent only when necessary.

[*P31] The viability of the *Canton* test is not at issue in this appeal. Neither Dayton nor the state offers any developed argument that the *Canton* test should be modified or overruled. The parties accept the *Canton* test for good reason: we have applied the test in numerous cases during the nearly 15 years since the decision in *Canton* was announced, and no justice has questioned the viability of the *Canton* test until now. In fact, four years after the announcement of the test, the only dissenting justice in *Canton* conceded that the [**21] test is now the law: "I was not a supporter of the four-part test set forth in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, for determining whether a statute constitutes a

general law. *Id.* at ¶ 42(Pfeifer, J., dissenting). But the *Canton* test is the law and has been relied upon by the majority in this case." *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 105, 858 N.E.2d 776 (Pfeifer, J., dissenting). Furthermore, the citizens of Ohio have not exercised their constitutional right to amend the language of the Home Rule Amendment in light of *Canton* and its progeny. This provides additional support to the conclusion that there is no general belief that the *Canton* test should be altered.

[*P32] ***HN14*** Each home-rule case involves unique facts because no two statutes are exactly alike. When analyzing home-rule issues, we apply the *Canton* test to the statute at issue, which results in a conclusion that is unique to that particular statute. The fact that our conclusions in these fact-intensive cases may vary does not mean that we are being inconsistent or that the *Canton* test is unworkable but rather that varying facts applied to varying statutes compel varying outcomes.

[*P33] Because neither party has raised a well-developed challenge to the *Canton* test and there is no compelling reason to revisit the test at this time, we continue to [**22] apply the *Canton* test when analyzing home-rule issues.

III. Conclusion

[*P34] ***HN15*** We determine that the officer-present provision in R.C. 4511.093(B)(1) fails the general-law test in *Canton*, and we hold that this statute violates Dayton's home-rule authority as provided by Article XVIII, Section 3 of the Ohio Constitution. Therefore, we sever the officer-present provision in R.C. 4511.093(B)(1) and leave intact R.C. 4511.093(B)(2) and (B)(3). *See* R.C. 1.50; *Cleveland*, 138 Ohio St.3d 232, 2014-Ohio-86, at ¶ 19, 5 N.E.3d 644, citing *Geiger v. Geiger*, 117 Ohio St. 451, 466, 5 Ohio Law Abs. 829, 160 N.E. 28 (1927). Similarly, ***HN16*** we hold that the speeding-leeway provision in R.C. 4511.0912 is unconstitutional, and we strike the entire statute. Finally, we hold that,***HN17*** under *Canton*, the study and notice provisions of R.C. 4511.095 do not constitute a general law and are unconstitutional, and we strike the statute. We do not address in this appeal the many remaining provisions of S.B. 342.

[*P35] Accordingly, under *Canton* and its progeny, we reverse the judgment of the Second District Court of Appeals as to R.C. 4511.093(B)(1), 4511.0912, and 4511.095, and the permanent injunction imposed by the trial court is reinstated with respect to those three provisions.

Judgment reversed.

O'Connor, C.J., and Baldwin, J., concur.

French, J., concurs, with an opinion joined by Kennedy, J.

O'NEILL, J., dissents, with an opinion.

DEWINE, J., dissents, with an opinion joined by O'NEILL, J.

CRAIG R. BALDWIN, J., of the Fifth District Court of Appeals, sitting [**23] for O'DONNELL, J.

Concur by: FRENCH

Concur

FRENCH, J., concurring.

[*P36] I concur in the lead opinion's holding that R.C. 4511.093(B)(1), 4511.095, and 4511.0912 violate the Home Rule Amendment, Article XVIII, Section 3 of the Ohio Constitution. Although I agree with the lead opinion that the three statutes are not general laws and that they are unconstitutional limits on the home-rule authority of appellant, the city of Dayton, I write separately because my analysis differs from the analysis in the lead opinion.

[*P37] Dayton challenges three provisions of 2014 Am.Sub.S.B. No. 342 ("S.B. 342"), which "establish[ed] conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations," on home-rule grounds. Title, S.B. 342. The contested provisions are R.C. 4511.093(B)(1), which requires a law-enforcement officer's presence at the location of a traffic camera while it is in use; R.C. 4511.095, which requires a municipality to perform a safety study and to wage a public-information campaign before using traffic cameras; and R.C. 4511.0912, which prohibits a municipality from issuing a fine for speeding based on a traffic camera unless the driver's speed exceeds the posted speed limit by a certain number of miles per hour.

[*P38] Ohio municipalities derive their powers of self-government from Article XVIII, Section 3 of the Ohio Constitution: "Municipalities shall have authority [**24] to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." We are concerned here solely with whether the contested provisions of S.B. 342 are general laws. If they qualify as general laws, then they take precedence over any conflicting municipal ordinance, *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, ¶ 9, 766 N.E.2d 963, citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St. 3d 242, 244-245, 1992 Ohio 65, 602 N.E.2d 1147 (1992), including Dayton's traffic-camera ordinance.

[*P39] To qualify as a general law,

a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Id. at ¶ 21. If a statute does not satisfy the *Canton* test, it is not a general law, and the statute is "an unconstitutional attempt to limit the legislative home-rule powers" of municipalities. *Id.* at ¶ 10.

[*P40] Dayton argues that the contested provisions of S.B. 342 fail the third and fourth prongs [**25] of the *Canton* test. This court has analyzed the third prong of the *Canton* test by considering whether a statute that limits municipal authority also serves an overriding statewide interest, *Canton* at ¶ 32, citing *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 2 Ohio B. 587, 442 N.E.2d 1278 (1982), and the lead opinion focuses exclusively on the third prong in this case. The dissent expresses concern that that analysis steers courts perilously close to legislative policy decisions, which are beyond the judiciary's purview. In my view, however, we can avoid considering whether the contested provisions of S.B. 342 serve an overriding state interest because those provisions do not prescribe a rule of conduct on citizens generally, as the fourth prong of the *Canton* test requires.

[*P41] Under the fourth prong of the *Canton* test, a statute must "prescribe a rule of conduct upon citizens generally" to qualify as a general law. *Id.* at ¶ 21. The statute at issue in *Canton*—forbidding political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in any zone or district in which a single-family home was permitted—did not satisfy that requirement because it "applie[d] to municipal legislative bodies, not to citizens generally." *Id.* at ¶ 36. In [**26] contrast, a statute that established speed limits and stated, "'No person shall operate a motor vehicle * * * at a speed greater or less than is reasonable or proper,'" prescribed a rule of conduct upon citizens and satisfied the fourth prong of the *Canton* test. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, quoting R.C. 4511.21.

[*P42] In *Linndale v. State*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (1999), this court considered a home-rule challenge to former R.C. 4549.17, which prohibited local law-enforcement officers from issuing speeding and excess-weight citations on interstate freeways when (1) less than 880 yards of the freeway were within the locality's jurisdiction, (2) local officers had to travel outside their jurisdiction to enter onto the freeway, and (3) local officers entered the freeway with the primary purpose of issuing the citations. *Linndale* predates *Canton*, but the court nevertheless addressed factors that it would later incorporate into the *Canton* general-law test. *Linndale* at 55. The court held that R.C. 4549.17 was not

a general law but was simply a limit on the legislative powers of municipalities to adopt and enforce police regulations. *Id.* As relevant here, the court stated that the statute did "not prescribe a rule of conduct upon citizens generally." *Id.*

[*P43] We reached a similar conclusion in *Youngstown v. Evans*, 121 Ohio St. 342, 7 Ohio Law Abs. 703, 168 N.E. 844 (1929). The statute at issue there [**27] limited municipalities' authority to set punishments for misdemeanor violations of a municipal ordinance. This court stated that the statute was "not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon law making by municipal legislative bodies." *Id.* at 345.

[*P44] Unlike the speed-limit statute in *Mendenhall*, the contested provisions here do not dictate a rule of conduct applicable to citizens of the state. Indeed, nothing in S.B. 342 directs citizens' conduct with respect to the operation of a motor vehicle. Driving in excess of the speed limit and running a red light are violations of the law, whether or not a traffic camera exists to record the violation and whether or not a law-enforcement officer has authority to issue a citation. The contested provisions are phrased in terms of what a local authority shall or shall not do. They apply not to citizens but to municipalities. Like the statute in *Linndale*, the contested provisions of S.B. 342 merely limit municipal authority to enforce other substantive laws.

[*P45] Viewing the contested provisions in relation to the rest of S.B. 342 does not lead to a different conclusion. As stated in its title, [**28] the purpose of S.B. 342 is "to establish conditions for the use by local authorities of traffic law photo-monitoring devices," and the bulk of the act does exactly that, by establishing limitations on municipalities' exercise of their police authority to enforce traffic laws. The fact that the act establishes steps a driver could take to contest an alleged violation, prohibits insurers from considering violations that result from traffic cameras, and requires traffic-camera manufacturers to provide a certificate of proper operation for their products does not demonstrate that the contested provisions, or the act in general, prescribes a rule of conduct upon citizens generally. Nor does the fact that other provisions in R.C. Chapter 4511, unrelated to traffic cameras and not part of S.B. 342, describe substantive traffic offenses satisfy the fourth prong of the *Canton* test. *See Linndale*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (not considering other provisions of R.C. Chapter 4549, which established substantive offenses, when concluding that R.C. 4549.17 did not prescribe a rule of conduct upon citizens generally).

[*P46] For these reasons, I conclude that the contested provisions of S.B. 342 do not satisfy the fourth prong of the *Canton* test, are not general laws, and are therefore [**29] an unconstitutional restriction on Dayton's home-rule authority. Accordingly, I concur in the lead opinion's holding that R.C. 4511.093(B)(1), 4511.095, and 4511.0912 are unconstitutional, albeit on different grounds.

KENNEDY, J., concurs in the foregoing opinion.

Dissent by: O'NEILL; DEWINE

Dissent

O'NEILL, J., dissenting.

[*P47] I join Justice DeWine's well-reasoned dissenting opinion. I write separately to add some clarifying thoughts on interpreting the Home Rule Amendment, Article XVIII, Section 3, Ohio Constitution. I reiterate Justice DeWine's view that the test created in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, has become unworkable and that home-rule cases should be resolved by applying the text of the Constitution. This is particularly true in the context of municipal laws that conflict with state laws regulating police power. The text of the amendment provides, "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Article XVIII, Section 3, Ohio Constitution. Thus the text of the Home Rule Amendment clearly states that if a municipal law that exercises police power is in conflict with a general law exercising police power, the municipal law must yield. In this case, the state and the city both seek to exercise police power. [**30] The state statutes apply throughout the state; they are general laws exercising police power. There is no ambiguity in the state statutes, and there is no need to conjure an overriding state interest. When the text is clear, as it is here, it should be applied by this court. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus.

[*P48] A uniform system of traffic laws promotes public safety, certainty, and public confidence. R.C. 4511.06 requires the uniform application of traffic laws and prohibits local authorities from enacting or enforcing any rule in conflict with the state's uniform traffic laws. As Justice DeWine ably points out, "[l]ocal authorities are bound by the state's manual for a uniform system of traffic-control devices and may use only those devices that conform with state standards. *Winwood v. Dayton*, 37 Ohio St.3d 282, 284, 525 N.E.2d 808 (1988); *Bibler v. Stevenson*, Ohio St.3d , 2016-Ohio-8449, ¶ 14, N.E.3d ; R.C. 4511.11(A), (D) through (F)." Dissenting opinion of DeWine, J., at ¶ 71. For example, even if a city or village believes its stop signs should be blue, stop signs are red because the state requires them to be red. This uniformity is a matter of public safety and public confidence. Our state Constitution and statutes and this court's caselaw specify that home-rule regulations must yield to state law under these circumstances.

[*P49] Here, metaphorically speaking, [**31] the city of Dayton seems to prefer blue stop signs, and it suggests that forcing a city to have red stop signs violates the Ohio Constitution. Surprisingly, the majority opinion agrees. I do not.

[*P50] Regulating the use of traffic cameras throughout the state is the same as regulating traffic signage and speed limits. I join Justice DeWine's view that the majority opinion in this case usurps the role of the General Assembly as the body that makes policy for the state. The General Assembly has said that stop signs are red and traffic cameras need a police officer to watch them doing their work. I do not agree with what the General Assembly has said here, but the Ohio Constitution requires me to agree with the legislature's right to say this, absurd though it may be.

[*P51] I dissent.

DEWINE, J., dissenting.

[*P52] Today's decision has the unfortunate impact of further muddling a body of law that is already hopelessly confused. A fractured majority of this court decides that three statutory provisions relating to traffic cameras violate the Home Rule Amendment, Article XVIII, Section 3 of the Ohio Constitution. The three justices who join the lead opinion find the provisions unconstitutional because they don't believe the provisions are in the overriding interest of the [**32] state. Two other justices say the provisions are lacking because they do not set forth a rule of conduct for citizens generally. But as in many cases in this area, the result today seems to have everything to do with the policy preferences of the majority and nothing to do with the language of the Home Rule Amendment.

[*P53] The Home Rule Amendment reads simply: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Nothing in the amendment makes the constitutionality of a legislative enactment turn upon this court's best guess about what is in the state's interest. Nor does the amendment ask whether a legislative enactment prescribes a rule of conduct for citizens generally. The questions we have to answer are dictated by the language of the amendment: Is the statute a general law? Is the municipal regulation an exercise of police powers? And is there a conflict? Because I determine that all three of the challenged provisions are general laws, and because there is no dispute that the ordinances enacted by appellant, the city of Dayton, are an exercise of [**33] police power that conflicts with these general laws, I would uphold the statutes. Accordingly, I dissent from the judgment of the court.

[*P54] The majority reaches its result not through application of the language of the Home Rule Amendment but by relying upon the judicially created *Canton* test. *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. As demonstrated by a decade and a half of inconsistent case law—now

including the lead opinion and separate concurrence in this case—the *Canton* test has proved unworkable. It is time we abandon the test and return to the language of the Home Rule Amendment.

I. Our Home Rule Jurisprudence

[*P55] Few areas of our law have proved as troublesome as the application of the Home Rule Amendment. Since the adoption of the amendment in 1912, we have considered no fewer than 100 cases in which we have endeavored to decide whether an enactment by the General Assembly overrides a municipal law. The sheer volume of these cases is indicative of—and a consequence of—our failure to articulate and apply clear and consistent standards. The result is that neither cities nor the legislature can say with any particular degree of certainty—on any particular day—who can do what.

[*P56] The most vexing question has been the one at issue here—what constitutes a general law? To answer this question, this [**34] court developed the fourpart test first set forth in *Canton*:

To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Canton at syllabus.

[*P57] The *Canton* test was this court's attempt to synthesize nine decades of divergent opinions analyzing the meaning of "general laws." But rather than provide clarity, its application has led to wildly inconsistent results. Thus, this court has held that the legislature may prohibit a city from regulating firearms, *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, but not from regulating tow trucks, *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644. Bans on the municipal regulation of predatory lenders are okay, *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776; bans on the municipal regulation of the location of manufactured homes are not, *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. And while it has been long understood that the General Assembly may establish statewide speed limits, R.C. 4511.21, and standards for traffic [**35] signals in cities, R.C. 4511.11 and 4511.12, we learn today that the General Assembly may not regulate the cameras that cities use to monitor a driver's compliance with speed limits and traffic signals.

[*P58] Today's lead and concurring opinions only add to the confusion. As I will explain, under our traditional standards, both opinions misapply the *Canton* test in concluding that the three provisions violate the Home Rule Amendment. But in my view, the answer is not to further tinker with the *Canton*test; rather, we should look to the plain and ordinary meaning of "general law" as it was understood at the time of the adoption of the Home Rule Amendment.

II. The Lead Opinion's Application of the *Canton* Test

[*P59] A plurality of this court determines that the contested statutes from 2014 Am.Sub.S.B. No. 342 ("S.B. 342")—R.C. 4511.093(B)(1) ("the officerpresent provision"), 4511.095 ("the safety-study and publicity provision"), and 4511.0912 ("the speeding-leeway provision")—fail to satisfy the third *Canton* factor. That is, the plurality finds that the statutes, rather than setting forth police regulations, merely limit municipalities' legislative power to set forth police regulations.

[*P60] The lead opinion reaches this conclusion by determining that none of the statutes serves an overriding [**36] state interest. This overriding-state-interest language appears nowhere in the language of the *Canton* test and nowhere in the language of Article XVIII, Section 3 of the Ohio Constitution.Rather, the overriding-state-interest concept was first expressed in *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 2 Ohio B. 587, 442 N.E.2d 1278 (1982), a case involving a statute that prohibited municipalities from placing conditions on the construction and operation of state-permitted hazardous-waste facilities. This court stated that "a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power." *Id.* at 48. But to determine whether a statute infringes on municipalities' home-rule powers, we explained that the statute should not be looked at in isolation. Instead, it must be read together with other statutory sections as part of an entire statutory scheme. Because the statute in question was part of a broader statutory scheme governing the siting and operation of hazardous-waste-disposal facilities, and because that statutory scheme was reasonably calculated to achieve the legislature's goals, we held that it was "a valid general law which supersedes any conflicting municipal ordinance." [**37] *Id.* at 49.

[*P61] *Clermont* thus stands for the proposition that "sections within a chapter will not be considered in isolation when determining whether a general law exists." *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 27, 881 N.E.2d 255. But here the lead opinion does just the opposite—it chooses to look at each individual provision in isolation and then to evaluate as a matter of policy whether it finds the provision to be a good idea or not.

[*P62] After deciding to evaluate the individual provisions in isolation, the plurality turns to the "overriding state interest" test. Here, it is hard to discern that the plurality is doing anything other than applying its own policy judgments as to the wisdom of the legislation.

[*P63] For example, in determining that there is no overriding state interest behind the officer-present requirement, it opines that requiring an officer's presence "directly contradicts the purpose of a traffic camera—to conserve police resources." Lead opinion at ¶ 22. To start with, it is difficult to understand why this matters. The analysis should be about the purpose of the legislation, not the purpose of a traffic camera.

[*P64] Moreover, the "purpose" of a traffic camera is itself a debatable point. As the state explained in its brief, the legislation was [**38] a compromise stemming from a longstanding argument between those who believed that some local authorities were using traffic cameras primarily to generate revenue and others who asserted that traffic cameras were employed for valid safety reasons. Compromises are by their nature often imperfect. Here, the legislature presumably sought a way to deal with concerns that traffic cameras were being misused for revenue purposes while at the same time allowing municipalities some opportunity to use the devices. The lead opinion apparently doesn't share the concern about the misuse of traffic cameras. But that should not make the legislative compromise invalid. Indeed, the question left unanswered by the plurality is why it is better suited than the legislature to determine what is in the overriding interest of the state.

[*P65] The lead opinion finds fault with R.C. 4511.095 by concluding that its safety-study and notice requirements do not meet the lead opinion's own standards of usefulness. As for the safety-study provision, which requires "an accounting of incidents that have occurred in the designated area over the previous three-year period," R.C. 4511.095(A)(1), the lead opinion complains that because the statute fails to [**39] specifically tie study results to implementation of cameras, it "does not serve the purpose of directing that the devices be placed in spots where authorities have safety concerns" or "restrict the number of cameras in a specified area to serve the purpose of avoiding overconcentration." Lead opinion at ¶ 25. The plurality establishes what it thinks the purpose of safety studies *should* be and then declares R.C. 4511.095 wanting. But the fact that the statute does not establish mandatory metrics for the placement of traffic cameras does not mean that the studies cannot be helpful in camera deployment.

[*P66] Further, the lead opinion ignores other benefits of safety studies, including governmental transparency. As discussed above, a central issue in the public debate over traffic cameras is whether municipalities are using the cameras to improve public safety or simply as a revenue grab. The safety study, which is "available to the public upon request," R.C. 4511.095(A)(1), can provide information on the motivations behind the placement of traffic cameras and allow for comparisons

among jurisdictions using traffic cameras as to what sort of conditions make their use appropriate. An official study, establishing baseline information, [**40] can also aid policymakers and the public in deciding whether the addition of traffic cameras produces a significant safety benefit. In short, safety studies help satisfy two concerns—whether traffic cameras are being deployed for safety purposes and whether they actually work.

[*P67] Equally unpersuasive are the lead opinion's objections to the required notice provisions: a public-information campaign about the location of future traffic cameras, R.C. 4511.095(A)(2); an announcement in a local newspaper about the use of cameras, R.C. 4511.095(A)(3); and a 30-day waiting period after installation before fines are levied, R.C. 4511.095(A)(4). The majority finds these components imperfect. It reasons that motorists who are from outside the local community will miss out on the public-information campaign and local-publication requirements. (It doesn't address why the 30-day, no-fine warning period is ineffective—every driver from everywhere would benefit from the delay in the enforcement of civil penalties.) The lead opinion concludes that "the statute's requirements do not serve the purpose of ensuring that the public traveling in the area has notice." Lead opinion at ¶ 26. For the lead opinion, because the publicity elements do not reach every possible [**41] motorist who might drive in a municipality for a long enough period of time, they are unconstitutional. If the publicity requirements were more onerous, if they made greater demands on municipalities, would they be acceptable to the plurality?

[*P68] Finally, as to R.C. 4511.0912, the speeding-leeway provision, the lead opinion states:

With regard to whether R.C. 4511.0912 serves an overriding state interest, the state contends that the speeding-leeway provision accounts for errors in the driver's speedometer and errors of a traffic camera's measuring device and also creates amnesty for minor speeding infractions. We find the state's arguments unpersuasive.

Lead opinion at ¶ 23.

[*P69] Fair enough. We can take from this that if the members of the majority finding R.C. 4511.0912 unconstitutional had been elected to the General Assembly rather than to this court, they wouldn't have voted for that legislation. But whether judges think something is or is not in the overriding interest of the state seems far removed from the question of whether something is a general law.

[*P70] The General Assembly is not required to tell us its reasons for enacting legislation, so to try to divine its motives, or to require perfection in the motives we divine, is imprudent. [**42] Under our precedent, this court should not judge the merits of each statutory section in isolation but rather should evaluate whether the provision is part of a legislative scheme that addresses a subject in which there is an

overriding state interest. Here, there can be no question about that state interest—the regulation of traffic. The state furthers that interest in S.B. 342 by providing a statewide, uniform framework for the use of traffic cameras.

[*P71] This court has long recognized that the regulation of traffic is a statewide concern. We have upheld laws that prevented municipalities from interfering with state speed-limit statutes, *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 7 Ohio Law Abs. 349, 167 N.E. 158 (1929), and that required municipalities to create a permit process for the operation of oversized vehicles on a municipal streets, *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906. Other laws regarding traffic have statewide reach. Local authorities are bound by the state's manual for a uniform system of traffic-control devices and may use only those devices that conform with state standards. *Winwood v. Dayton*, 37 Ohio St.3d 282, 284, 525 N.E.2d 808 (1988); *Bibler v. Stevenson*, Ohio St. 3d , 2016-Ohio-8449, N.E.3d , ¶ 14; R.C. 4511.11(A), (D) through (F).

[*P72] Similarly, this court has upheld legislation requiring markings of a "'distinctive manner or color'" on police cars. *Dayton v. Adams*, 9 Ohio St.2d 89, 90, 223 N.E.2d 822 (1967), quoting R.C. 4549.13. In doing so, this court specifically noted that "'uniformity is essential both [**43] for traffic safety and for efficient traffic regulation.'" *Id.*, quoting *Cleveland Hts. v. Woodle*, 176 Ohio St. 113, 116, 198 N.E.2d 68 (1964). Further, the court recognized the legislature's intent to "put a curb upon the speed traps which were often operated by 'peace officers' of the municipalities and townships." *Id.* at 90.

[*P73] In *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, this court addressed whether R.C. 4511.21, which governs speed limits, was a general law under the third prong of the *Canton* test. We held that "R.C. 4511.21 has extensive scope and does more than grant or limit state powers. By establishing the rules regulating the speed of motor vehicles within Ohio, it is an integral part of the state's traffic laws." *Id.* at ¶ 24.

[*P74] R.C. 4511.13(C) and 4511.21(A) prohibit drivers from running red lights and from exceeding speed limits. The officer-present, safety-study, and speeding-leeway provisions at issue here determine how those existing statewide traffic laws will be enforced through the use of photo-enforcement technology. They address the circumstances in which Ohio's drivers are subject to the automated enforcement of those laws. They are directly connected to state laws regulating the public as part of the state's police power.

III. The Concurrence's Reliance on the Fourth *Canton* Factor

[*P75] In what is perhaps an implicit acknowledgment of [**44] the rudderlessness of the lead opinion's analysis, the concurrence turns to the fourth

prong of the *Canton* test to justify striking down the legislation. But in doing so, it applies the prong in a manner that is at odds with our post-*Canton*precedent.

[*P76] The fourth prong asks whether an enactment prescribes a rule of conduct upon citizens generally. The concurrence concludes that the three contested provisions do not because they apply not to citizens but to municipalities. And were not it for our past precedents, this might seem a fair argument.

[*P77] The problem is that we have insisted that in applying the fourth prong, the entire legislative scheme must be considered. "All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation *and whether the chapter as a whole prescribes a rule of conduct upon citizens generally*." (Emphasis added.) *Mendenhall*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 27, 881 N.E.2d 255. Remarkably, the chapter at issue in *Mendenhall*, R.C. Chapter 4511, "which as a whole regulates traffic laws and the operation of motor vehicles in the state of Ohio," *id.* at ¶ 23, is the exact same chapter that contains the challenged provisions at issue in this case. Nowhere does the concurrence explain [**45] how that chapter could prescribe a rule of conduct for citizens generally when *Mendenhall* was decided in 2008, yet somehow not prescribe such a rule of conduct today.

[*P78] Indeed, this court has never relied exclusively on the fourth *Canton* factor in determining that a statute is not a general law, and it's almost impossible to reconcile what this court has done in the past with what the concurrence wants to do today.

[*P79] For example, in *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, we dealt with R.C. 9.68, "a statute * * * that provides that only federal or state regulations can limit an Ohioan's individual right to bear arms." *Id.* at ¶ 1. The court of appeals had held that the statute was not a general law because it did "not prescribe a rule of conduct upon citizens generally but instead limits lawmaking by municipal authorities." *Id.* at ¶ 29. We reversed, noting that there were numerous state laws that dealt with firearms. *Id.* at ¶ 17-20. Even though the specific enactment at issue primarily operated to restrict the authority of local governments, we concluded that it satisfied the fourth prong because it was part of an overall system of state laws that related to firearms: "Thus, when we consider the entire legislative scheme, as we must, [**46] we conclude that when interpreted as part of a whole, R.C. 9.68 applies to all citizens generally." *Id.* at ¶ 29.

[*P80] Similarly, we have upheld the ability of the legislature to limit municipal regulation of predatory lending. In *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, we sustained legislation that prohibited municipal regulation of certain lending practices because it was part of a "comprehensive and uniform statewide enactment setting forth a police regulation that prescribed a general rule of conduct for lending in Ohio." *Id.* at ¶ 36.

[*P81] These cases are impossible to square with the result the concurrence wants to reach. If the provisions at issue today do not apply to citizens generally because they are directed at municipal governments, then the same must be said for the gun law in *Cleveland* and the predatory-lending provision in *Am. Fin. Servs. Assn*.

[*P82] In fairness, the concurrence is able to muster some support for its position. It points to a couple of pre-*Canton* cases in which we looked at the provision in isolation in determining whether the provision prescribed a rule of conduct upon citizens generally. *See* *Youngstown v. Evans*, 121 Ohio St. 342, 7 Ohio Law Abs. 703, 168 N.E. 844 (1929); *Linndale v. State*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (1999). But one would think our more recent decisions should control. All this just demonstrates the loosey-goosiness of our home-rule [**47] jurisprudence. If one wants to achieve a particular result in the home-rule area, it is not hard to find a case in support.

IV. We Should Abandon the *Canton* Test

[*P83] If nothing else, the two opinions that set forth the opinions of those justices who make up the majority demonstrate the malleability and unpredictability of the *Canton* test. The lead opinion turns on two judgments it makes: first, its decision to look at the statutory provisions in isolation and second, its view that there is no overriding state interest that supports these provisions when viewed in isolation from the rest of the statutory scheme.

[*P84] The result-oriented nature of the lead opinion's approach is revealed by its elevation of the overriding-state-interest test as determinative of the third factor. One might think that a legislature comprising 132 members, elected on a proportional basis from across Ohio, is far better equipped to determine what is in the state's interest than seven members of the Ohio Supreme Court. But today, the plurality in essence says we know what is in the state's interest better than those 132 representatives of the people do. And if we don't think a law is a good idea, then it must not be [**48] a general law, and we can strike it down. A constitutional provision that says a "general law" will prevail over a municipal police-power regulation has been transformed into one that says a "good law" will prevail over a municipal police-power regulation. And we—the court—get to decide whether a law is good or not.

[*P85] The concurrence further demonstrates the capriciousness of this court's application of the *Canton* test: it chooses to ignore the place of the contested provisions in Ohio's broader traffic-law scheme, failing to address those post-*Canton* cases that would require it to do so.

[*P86] Fair to say, this court has gone far afield in attempting to resolve what is at heart a simple question in home-rule cases: Is the statute at issue a general law? We

do not need a test to answer that question. We would be better off to abandon the *Canton* test and to simply apply the language of Article XVIII, Section 3.

[*P87] The lead opinion invokes stare decisis as justification for clinging to the *Canton* test. But "stare decisis" is not Latin for "we just make it up as we go." Aside from being clothed in the common garb of the *Canton* test, our decisions in this area have been so inconsistent that there is nothing to which to [**49] give stare decisis effect.

[*P88] "Although it is a vital rule of judicial self-government, *stare decisis* does not matter for its own sake. It matters because it 'promotes the evenhanded, predictable, and consistent development of legal principles.'" *Johnson v. United States*, U.S. , 135 S.Ct. 2551, 2563, 192 L.Ed.2d 569 (2015), quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). Standing by decisions that fail to promote evenhandedness, predictability, and consistency "undermine[s], rather than promote[s], the goals that *stare decisis* is meant to serve." *Id.* What we had before today was a test that produced unpredictable, inconsistent results seemingly reflecting the policy choices of that day's majority. The lead opinion's embrace of courts' expanded role in determining a statewide interest can only add to the ad hoc nature of general-law determinations. It's time to return to the Constitution.

V. A Return to Applying the Text of the Home Rule Amendment Answers the Questions Before Us

[*P89] In interpreting constitutional text—especially a provision like Article XVIII, Section 3, which was voted on directly by the people in a September 3, 1912 special election—we look to how a voter at the time would have viewed the specific language:

[W]e are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States v. Sprague*, 282 U.S. 716, 731, 51 S.Ct. 220, 75 L.Ed. 640 (1931); see also *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 188, 6 L.Ed. 23 (1824). Normal [**50] meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

District of Columbia v. Heller, 554 U.S. 570, 576-577, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

[*P90] A contemporary dictionary defined "general" as "[c]ompletely or approximately universal, including or affecting all or nearly all parts, not partial, particular, local, or sectional." *The Concise Oxford Dictionary of Current English* 342

(1912). The ordinary meaning of a "general law," then, would be a law that is universal, not local.

[*P91] Of course, the term "general law" is by its very nature a technical legal term, but one with an agreed-upon meaning at the time. It is one that is consistent with the ordinary meaning. As one delegate to the constitutional convention that crafted the provisions that would be voted upon at the 1912 election stated,

The term "general law" is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the construction of that term and we need have no doubt about what the future rule will be. Therefore you are not launching on any untried sea. You simply open the doors and lay down the bars for the municipality, big or little, to do everything it is not [**51] prohibited from doing by general laws.

2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1471-1472 (1913).

[*P92] At the time of the enactment of Article XVIII, Section 3, "general law" was defined thusly: "As opposed to 'private,' one relating to matters of public concern. As opposed to 'local,' one operative throughout the jurisdiction of the legislative body. As opposed to 'special,' one which affects equally all persons or things of the same class." 1 Walter A. Shumaker & George Foster Longsdorf, *The Cyclopedic Law Dictionary* 409 (1912).

[*P93] The framers of the provision and the voters of the state could have found a similar definition in the state's jurisprudence. In *Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 73 N.E. 1075, 2 Ohio L. Rep. 494 (1905), this court offered the following definition of general law:

"A law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law."

Id. at 109, quoting *State ex rel. Van Riper v. Parsons*, 40 N.J.L. 123 (1878), paragraph one of the syllabus. This court cited the same definition in *Bronson v. Oberlin*, 41 Ohio St. 476, 481 (1885), and *Black's Law Dictionary* contained the same definition [**52] at the time of the enactment of the Home Rule Amendment, *Black's Law Dictionary* 710 (2d Ed.1910).

[*P94] Further, a voter at the 1912 election could have also relied on contextual cues from the language of the amendment to determine the meaning of "general laws." From "[m]unicipalities shall have the authority to * * * adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws," the voter would have distinguished "general laws"

from the other types of laws mentioned in the provision, "local police, sanitary and other similar regulations." The voter would have understood that general laws are those not confined within a specific locality.

[*P95] This court should simply adopt the understanding of general laws from the time of the 1912 vote on the Constitution. A general law is a "law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves." *Horstman* 72 Ohio St. at 109. A general law is one that operates uniformly throughout the state.

[*P96] Whether a statute is a general law [**53] should be the simplest aspect of determining whether a municipal ordinance or state statute prevails under an Article XVIII, Section 3 analysis. Does the statute have statewide reach and does it treat the objects of the law equally? The bulk of the analysis should concentrate on whether the ordinance in question addresses the operation of municipal government or whether it involves a police power and, if it does involve a police power, whether the exercise of the police power conflicts with the state's exercise of that power in the corresponding statute.

[*P97] Here, the police power and conflict issues are not in dispute. The city agrees that the regulation of photo-enforcement cameras is an exercise of police power and that its ordinances do conflict with the state legislation. Because the contested provisions apply uniformly across the state, they are general laws for purposes of Article XVIII, Section 3 of the Ohio Constitution. Because the contested provisions are general laws in which the state exercises its police powers, the Dayton ordinances must yield because they conflict with the state statutes.

[*P98] Therefore, I dissent from the majority's judgment that R.C. 4511.093(B)(1), 4511.095, and 4511.0912 violate the Home Rule Amendment.

O'NEILL, J., concurs in the foregoing opinion.

Footnotes

- 1↑ R.C. 4921.25 was previously numbered R.C. 4921.30. The language at issue was first enacted in R.C. 4921.30, Am.Sub.H.B. No. 87, 150 Ohio Laws, Part I, 59, 157-158.

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- Notes

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- No subsequent appellate history. Prior history available.

- Other Citing Sources (2)

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APRIL 10, 2017

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Ohio Municipal Attorneys Association
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OHIO MUNICIPAL LEAGUE/OHIO ATTORNEYS' ASSOCIATION REPORT ON UPDATING MUNICIPAL HOME RULE IN ARTICLE XVIII OF THE OHIO CONSTITUTION

PRESENTED TO: GOVERNOR ROBERT TAFT, MEMBER, OHIO CONSTITUTIONAL MODERNIZATION COMMISSION'S, EDUCATION, PUBLIC INFORMATION, AND LOCAL GOVERNMENT COMMITTEE.

PRESENTED BY: OHIO MUNICIPAL LEAGUE AND THE OHIO MUNICIPAL ATTORNEYS ASSOCIATION
175 S. THIRD ST., SUITE 510
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OHIO MUNICIPAL LEAGUE/OHIO ATTORNEYS' ASSOCIATION REPORT ON UPDATING MUNICIPAL HOME RULE IN ARTICLE XVIII OF THE OHIO CONSTITUTION

CHARGE AND COMPOSITION OF THE OML/OMAA COMMITTEE

CHARGE: March 10, 2017, Governor Robert Taft, a member of the Constitutional Modernization Commission, asked the Ohio Municipal League ("OML") to review Article XVIII (Home Rule) of the Ohio Constitution and suggest any amendments that might be appropriate.

COMMITTEE FORMED: Honoring that request, as General Counsel for the OML, Garry E. Hunter, Esq. formed a committee to: (1) Study Article XVIII of the Constitution of Ohio; (2) Promote an exchange of experiences and suggestions respecting desired changes in Article XVIII; (3) Consider the problems pertaining to the amendment of Article XVIII; and, (4) Make recommendations to the Ohio Constitution Modernization Commission's Education, Public Information, and Local Government Committee.

Mr. Hunter constituted the committee with members of the OML and the Ohio Municipal Attorneys Association ("OMAA"). The Committee comprises Garry E. Hunter, Esq., OML/OMAA General Counsel, Chair; E. Rod Davisson, Esq., Village Administrator Obetz, Vice Chair; Kent Scarrett, OML Executive Director; Ed Albright, OML Deputy Executive Director; Stephen J. Smith, Jr., Esq. and Thaddeus M. Boggs, Esq., of the Frost, Brown, Todd Law Firm in Columbus; Thomas Schmitt, Esq., Assistant Law Director, City of Westerville, Metz, Bailey, McLoughlin Law Firm; Paul G. Bertram, III, Esq., Director of Law, City of Marietta; Darren Shulman, Esq., City Attorney, City of Delaware; and, Les S. Landen, Esq., Director of Law, City of Middletown.

We the above-listed, after assiduous effort and consideration of the task assigned, and on behalf of Ohio's 935 municipalities and the 7,546,538 Ohioans residing therein, respectfully submit this report for your consideration.

Sincerely,

Garry Hunter, Esq.
Chairperson
General Counsel, Ohio Municipal League

E. Rod Davisson, Esq.
Vice Chairperson
Village Administrator, Village of Obetz

EXECUTIVE SUMMARY

Below, for the convenience of the Commission, we have included the current language and proposed revisions for Article XVIII, Section 3 of the Ohio Constitution.

CURRENT LANGUAGE OF ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION ENACTED IN 1912:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

PROPOSED MODERNIZATION LANGUAGE OF ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION TO CLEAR UP CONFUSION OVER THE INTENT OF THE ORIGINAL 1912 CONSTITUTIONAL CONVENTION LANGUAGE:

Municipalities shall have authority to exercise all powers of local self-government.[1] ~~and~~ Municipalities shall also have the authority[2] to adopt and enforce within their territorial limits such local police, sanitary and other similar regulations as are not in direct conflict with general laws. The General Assembly cannot interfere with powers granted to municipal corporations by the Ohio Constitution unless the Constitution sanctions the interference.[3] These exercises of municipal authority are self-executing, and no municipality shall be required to adopt a charter in accordance with Sections 7 and 8 of this Article XVIII to exercise this authority.[4]

STUDYING THE PAST TO FORM A FOUNDATION FOR THE FUTURE

The Committee intensely studied the historical backdrop of Article XVIII to understand the circumstances and choices that produced the current version of Article XVIII, which has remained unaltered since its adoption by the Constitutional Convention of 1912—more than 100 years ago. The Committee evaluated the current version of the Article washed in the light of the lives and needs of modern-day Ohioans as contrasted with the circumstances of Ohioans before economic globalization; before widespread automation; before the cell phone (1983), the computer (1975), and the television (1927).

To begin, the delegates of the 1912 Constitutional Convention set out three goals for implementing Home Rule in Ohio as explained then by Professor Knight of The Ohio State University:

1) "First, to make it possible for different cities in the state of Ohio to have, if they so desire, different forms and types of municipal organizations;"
2) "The second thing, and **the main thing**, which the proposal undertakes to do **is to get away from what is now the fixed rule of law**, seemingly also required by the constitution, **that municipal corporations**, like all other corporations, **shall be held strictly within the limit of the powers granted by the legislature to the corporation**, and that no corporation, municipal or otherwise, may lawfully undertake to do anything which it has not been given specifically the power to do by the constitution or the lawmaking body;"
3) "In the third place the proposal expressly undertakes to make clearer, or make broader, the power of municipalities to control, either by leasing, constructing or acquiring from corporations now owning or operating the public utilities within the corporation and serving the corporation, the water supply, the lighting and heating supply and the other things—without specifying—which come within the purview of municipal public utilities, thus removing once and for all, all legitimate questions as to the authority of municipalities to undertake and carry on essential municipal activities." [1]

"These three things are the fundamental things which are undertaken by the proposal, and these three things taken together certainly constitute what may be termed, and rightly

[1] Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 64, Municipal Home Rule, Page 1433 (emphasis added).

termed, municipal home rule." Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 64, Municipal Home Rule, Page 1433. Importantly:

> The proposal does not undertake, your committee believes, to detach cities from the state, but **it does undertake to draw as sharply and as clearly as possible the line that separates general state affairs from the business which is peculiar to each separate municipality**, be it a city or a village, in the' state, and to leave the control of the state as large and broad and comprehensive in the future as it has been in the past with reference to those things which concern us all in the state of Ohio, whether we live in cities or in rural districts, and, on the other hand, to confer upon the cities for the benefit of those who live in the cities control over those things peculiar to the cities and which concern the cities as distinct from the rural communities. Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 64, Municipal Home Rule, Page 1433.

The 1912 delegates struggled mightily with the desire to strike that delicate balance between creating self-determining municipalities without making them sovereign. They recognized the need to align the powers of American cities with the great cities of Europe—a proposition exponentially more important now in a global economy. Delegate Smith lamented, "Why are we behind the great European cities in the matter of municipal government? Is it because democracy has fallen down in our cities? No, it is because the city is not a democracy; because we have never had democracy in American cities. We have never had representative government in our cities in Ohio."[2] Smith went on to explain that "We in Ohio cities are not allowed to make progress; we are not allowed to solve our own problems; we are hampered by the state legislature. I tell you the state of Ohio and all the other states have treated their cities much as Great Britain treated the colonies before the revolution. We want and need some measure of home rule."[3]

Despite a general sense of enthusiasm and vigor among the delegates over the prospect of Home Rule in Ohio, there was a shadow blanketing the convention. A great specter loomed, threatening the adoption of Home Rule and creating trepidation among the delegates—Prohibition. The battle over control of liquor rights was sanguine and influential among the delegates. The "Wets" and the "Drys" had begun to stake out territory and each tried to influence the convention to its benefit. Delegate Harris exasperatedly explained, "I object strenuously to the liquor fight, either in favor of the wets or the drys, being brought in here and

[2] Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 65, Municipal Home Rule, Page 1464.
[3] Id. at 1464.

incorporated in our proposal."[4] Thus, the stage was set whereby the delegates desired to create a true Home Rule without inserting language that gave some advantage to either the Wet or Dry camps lest Home Rule be rejected by the people of Ohio being viewed as an extension of the Wet/Dry fight. The pragmatism of the convention ended up working in that Home Rule—albeit in a watered-down version—was adopted by the people of Ohio.

The delegates recognized that the shackles of the Wet/Dry fight required the deletion of language that, although necessary for the proper boundaries of state powers to interfere with municipal laws, would have drawn Home Rule into the Prohibition fight. During the debate that ultimately led to removing the words "affecting the welfare of the state as a whole" from describing the "general laws" mentioned in Section 3, Delegate Smith opined upon the result:

> I am afraid this won't do much. **I am afraid the courts may say to cities you can't legislate on this or that matter because this is a matter that concerns the welfare of the state as a whole.** It is hard to think of something that does not concern the welfare of the state as a whole, but your committee felt that those words ought to go in to be a notice or warning to the court, so that when they come to interpret it they will say, "We think the Convention meant that the city should have some freedom." I hope, therefore, you will give us this much home rule. I want the members of this Convention to see justice done to the cities. The farmer is just as much interested in good city government in the cities as the citizens of cities themselves are. The good of the cities is the good of the whole state.[5]

Delegate Professor Knight summarized the goal of his colleagues:

> I repeat, to draw as sharply and as definitely as possible, a line between those two things and to leave the power of the state as broad hereafter with reference to general affairs as it has ever been, and to have the power of the municipalities on the other hand as complete as they can be made with reference to those things which concern the municipalities alone, always keeping in mind the avoidance of conflict between the two so far as possible.[6]

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[4] Id. at 1467.

[5] Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 65, Municipal Home Rule, Page 1464.

[6] Id. at 1464.

With the potential cataclysm of the Prohibition fight looming, the delegates adopted the following form of Article XVIII, Section 3:

CURRENT LANGUAGE OF ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION ENACTED IN 1912:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Unfortunately, in the 100 years since the adoption of the foregoing language, there have been many opportunities for mistakes and misinterpretation. A few of those are fundamental in nature and the OML/OMAA seeks to clarify the original language to conform to the intent of its drafters. Expressing loyalty to the history and intent of Home Rule in Ohio, the OML/OMAA has identified three goals of the citizenry of the State of Ohio that can be resolved with the adoption of five discrete issues.

GOALS OF OHIO CITIZENS

1. POWERS OF THE GOVERNMENT SHOULD REST WITH THE GOVERNED.

It is axiomatic that local government allows for better access and more opportunity from the constituency. That is not to say that there is no role for state and federal forms of government—there are. However, every citizen is primarily affected by our local and immediate surroundings on a daily basis. Humans want to have a say in how the world around them is organized and operates. It is commonsensical that they should have the ability to affect their surroundings; and, the best opportunity to be heard and to enjoy that level of participation comes in the form of an empowered local government. Delegate Crosser explained, "I contend that the natural and correct method proceeds upon the theory that municipalities exist first and provide for a government suited to themselves, and that for their own mutual welfare, and also for the welfare of the intervening territory, general governments should be established, but which should exercise authority only in regard to matters of a general nature. As the federal

government in its relation to the states has only such powers as are specifically granted to it by the people of the states, so it should be with the state in relation to municipalities."[7]

2. OHIO CITIES MUST BE NIMBLE TO SUCCEED IN A GLOBAL ECONOMIC DEVELOPMENT COMPETITION.

Economic Development is critical to the survival and well-being of the people of the United States. The concept should be in the top of the minds of all citizens that work for the government at every level. There exists no reasonable argument against having hyper- flexible, nimble, empowered municipalities when it comes to their powers to attract and retain jobs and development for the people of the State of Ohio. There are 935 municipalities with 7,546,538 residents in our state. The overwhelming majority of the employed public in this state works in a city or village. If nothing else, the locations of those businesses are a natural effect of municipal utility and transportation infrastructure that businesses need to operate. To that end, in order to maximize Ohio's potential to compete globally for development and jobs for our citizens, we must ensure that municipalities have the tools they need to build communities that are attractive to businesses by ensuring municipalities' unhampered ability to control their infrastructure, funding, operation, and power to respond to the needs of business.

3. OHIO SHOULD TAKE ADVANTAGE OF THE EFFICIENCY AND RESPONSIVENESS OF MUNICIPAL GOVERNMENT.

It is logical that Municipal government is efficient and responsive because of its size and closeness to the people of Ohio. The State of Ohio's per capita spending is $5,389 with per capita tax collections of $2,330.[8] Comparatively, municipal per capita spending ranges from $271 to $1,249 with smaller municipalities on the lower end of the scale.[9] Municipal per capita taxes range from $75 to $856—again with smaller municipalities on the lower end of the scale.[10]

Recapitulating, we should work to ensure that Ohioans have municipal governments that are accessible, powerful, efficient, and responsive. To that end—and consistent with the needs of Ohioans and the intent of the Constitutional Convention of 1912—we propose the following clarifications to Article XVIII of the Ohio Constitution.

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[7] Proceedings and Debates of the Constitutional Convention of the State of Ohio - 1912, Day 65, Municipal Home Rule, Page 1483.
[8] https://ballotpedia.org/Ohio_state_budget_and_finances
[9] http://www.ohiotownships.org/sites/default/files/Report.pdf (Page 7).
[10] Id. at 9.

ISSUES REQUIRING ATTENTION OF THE COMMISSION

1. MUNICIPALITIES HAVE TWO SEPARATE CONSTITUTIONAL POWERS IN SECTION 3:

Section 3 creates two distinct powers, which are separate and unequal. (1) The unfettered power of local Self-government. (2) And, the limited power of police, sanitary and similar regulations.

Therefore, Section 3 should be read in two parts that were intended to create separate and not equal powers. The first power is the power of "local self-government." The beginning of Section 3 reads, "Municipalities shall have authority to exercise all powers of local self-government…" In explaining that power, Ohio's Legislative Service Commission elucidated, "The Ohio Supreme Court has set forth a three-step home rule analysis concerning many of the concepts addressed thus far. The first step is to determine whether the local ordinance is an exercise of local self-government or an exercise of local police power. **If the ordinance relates solely to matters of local self-government, the analysis ends because the Ohio Constitution authorizes a municipal corporation to exercise all powers of local self-government within its jurisdiction.**"[11] We believe that to be an accurate rendition of the law; however, as the LSC pointed out, "A word of caution: some of the numerous court cases interpreting home rule powers may appear to conflict with the general principles stated in this paper. Although the courts have established some basic principles regarding home rule powers, they are not always consistently applied."[12]

To the extent confusion has arisen in Ohio jurisprudence, it is appropriate to clarify the separation between the power of local self-government and the police powers. That is easily achieved with an appropriately added period in Section 3.

2. CONFLICT APPLIES ONLY TO POLICE POWER:

The conflict analysis employed by some courts does not apply to the exercise of local self-government; it only applies to police power issues. The Ohio Supreme Court in *State ex rel. Morrison v. Beck Ener. Corp. 143 Ohio St. 3d 271 (2015) held:*

> Article XVIII, Section 3…gives municipalities the "broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide

[11] Ohio Legislative Service Commission, *Members Only, Municipal Home Rule**, (January 26, 2010) http://www.lsc.ohio.gov/membersonly/128municipalhomerule.pdf, Volume 128, Issue 8, Page 5-6, (accessed January 26, 2010) (emphasis added).
[12] Id. at 1.

> nature or interest." *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948).
>
> The Home Rule Amendment does not, however, allow municipalities to exercise their police powers in a manner that "conflict[s] with general laws." Article XVIII, Section 3; see also *State ex rel. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Tablack, 86 Ohio St. 3d 293, 296, 1999 Ohio 103, 714 N.E.2d 917 (1999).* Therefore, a municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.
>
> *Mendenhall v. City of Akron, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 17. Id. At 275. See Also, Canton v. State,* 95 Ohio St.3d 149, 2002-Ohio-2005. By way of example, the Ohio Supreme Court held that a municipal charter provision that sets forth the form of a circulator affidavit prevails over a conflicting state statute. See *State ex rel Murray v. Scioto Cty. Bd. Of Elections*, 127 Ohio St.3d 280, 2010-Ohio-5846. Similarly, the Ohio Supreme Court also held that a municipal ordinance regarding its employee's military leave was adopted pursuant to its constitutional home-rule authority, and thus it prevailed over conflicting state law. *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Sidney*, 91 Ohio St.3d 399, 402 (2001).

3. LEGISLATIVE PREEMPTION DOES NOT EXIST, EXCEPT WHERE SO AUTHORIZED BY THE OHIO CONSTITUTION.

Legislative preemption is the improper and incorrect assumption that the General Assembly is automatically entitled to deference over conflicting municipal ordnance simply because the Assembly has enacted a law on a certain matter. The power of the State Legislature is derived from the Constitution. *See Prigg v Penn., 41 U.S. 539 (1843).* Municipalities exercise power by constitutional grant and that power is not subject to the preemption by the legislature, except where the Ohio Constitution so provides. *Legislative Service Commission Report titled, Municipal Home Rule, Vol. 128, Issue 8, pp. 7-8,* provides the exceptions where the state legislature may enact regulations that preempt Home Rule:

> In addition to the limitations in Article XVIII of the Ohio Constitution mentioned above, there are other limitations on a municipal corporation's exercise of home rule powers. A municipal corporation may be limited by the United States Constitution or relevant federal laws. Also, provisions of other articles of the Ohio Constitution limit the exercise of municipal home rule powers. Several sections in the Ohio Constitution limit municipal power to tax and incur debt. Section 2 of Article XII prohibits the taxation of property in excess of 1% of its true value (ten mills per

dollar) unless laws are enacted authorizing the levy of taxes beyond that limitation, either when approved by a vote of the electorate or when provided for by the charter of a municipal corporation. The General Assembly has enacted legislation authorizing both of these exceptions to this constitutional ten-mill limitation: R.C. 5705.07 authorizes a levy of taxes beyond the ten-mill limitation, and R.C. 5705.18 authorizes a municipal corporation to provide in its charter for a limitation other than the ten-mill limitation. On the other hand, Section 6 of Article XIII requires the General Assembly to restrict a municipal corporation's powers to tax, assess, borrow money, contract debt, and loan its credit in order to prevent the abuse of these powers. Section 13 of Article XVIII also authorizes the General Assembly to pass laws to limit the power of municipal corporations to levy taxes and incur debt and, further, allows the General Assembly to require reports from municipal corporations as to their financial condition and transactions, to provide for the examination of municipal vouchers, books, and accounts, and to provide for the examination of public undertakings conducted by a municipal authority. Section 6 of Article VIII prohibits any "city" or "town" from passing laws to become a stockholder in any joint stock company, corporation, or association whatever or to raise money for, or loan credit to or in aid of, any of those entities. (This does not prohibit the insuring of public buildings or property in mutual insurance associations or companies.) However, the Ohio Supreme Court held in 1989 that the lending of credit for a public welfare purpose (in that case, subsidized housing), not a business purpose, did not violate this constitutional provision. Additional constitutional provisions address a variety of other restrictions on municipal home rule powers. Article IV creates the judicial branch of government, preventing municipal corporations from establishing courts or judgeships.

Section 1f of Article II reserves for the citizens of each municipal corporation the right to initiative and referendum on all legislative matters. This right cannot be eliminated by a municipal corporation, but the procedures to effectuate this right may be provided for in a municipal charter. Section 10 of Article XV requires appointments and promotion in the civil service of cities according to merit and fitness. There is, however, no such requirement for villages. While the Revised Code provides for a

municipal civil service in cities, a city may provide for a civil service in its charter instead of following those Revised Code provisions as an exercise of its constitutional local self-government powers. But in some form, a city must provide for a civil service that meets Article XV's constitutional standards. Finally, Section 34 of Article II provides that no provision of the Ohio Constitution impairs or limits the power of the General Assembly to pass laws that fix and regulate the hours of labor, establish a minimum wage, or provide for the comfort, health, safety, and general welfare of all employees. The Ohio Supreme Court has held that laws passed by the General Assembly establishing the Prevailing Wage Law, the Collective Bargaining Law, the Police and Fire Pension Fund, and a law generally prohibiting residency requirements for political subdivision employees are applicable to municipal corporations under this provision, overriding any municipal home rule powers. It is worth noting, however, that the Court decision upholding the Collective Bargaining Law had an arduous history in which the tensions between Section 34 of Article II and the constitutional home rule provisions were extensively discussed. This case was heard twice by the Court with different results each time. Both times the decision had four justices supporting the majority opinion, three dissenting. The first decision, in 1988, supported the exercise of home rule powers, saying Section 34 of Article II applied only in very limited circumstances. Upon reconsideration, the Court held in 1989 that Section 34 of Article II applied, overriding the constitutional home rule provisions. And more recently, in 2009, the Ohio Supreme Court gave Section 34 of Article II a very expansive application to uphold state law restricting local residency requirements. These cases illustrate the occasional unpredictability of the holdings of Ohio courts in cases involving municipal home rule issues.

4. STATEMENT OF STATEWIDE CONCERN IS NOT DISPOSITIVE.

A legislative statement that a matter is of statewide concern does not mean the subject matter is not a matter of local self-government. This is a judicial decision. *Am. Fin. Sevs. Ass'n. v. City of Cleveland, 112 Ohio St. 3d. 170 (2006).*

5. POWERS ARE SELF-EXECUTING.

The powers granted in Section 3 are self-executing irrespective of whether, or not, a municipality has adopted a charter under Section 7 of Article XVIII. Pursuant to Article XVIII Home Rule applies to both statutory and charter municipalities; however, courts have held charter municipalities may enact both procedural and substantive laws, while statutory municipalities may enact only substantive laws. *Local Tele Co. v. Cranberry Mut Tel Co., 102 Ohio St. 524 (Home Rule Powers Self Executing, 1921).*

For discussion that Home Rule applies to both Statutory and Charter municipalities, see Legislative Service Commission Report titled, Municipal Home Rule, Vol. 128, Issue 8, p. 3, " It is a common misconception that only chartered municipalities have home rule authority. All cities and villages have home rule authority derived directly from the Ohio Constitution and not from a charter. A charter is not necessary for the exercise of police powers. A charter is, however, needed to exercise some, but not all, aspects of local self-government. In *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma, 61 Ohio St. 2d 375 (1980*), the Ohio Supreme Court held that a non-chartered municipal corporation must follow the procedure prescribed by state statutes in matters of local self-government, but may enact an ordinance that is substantively at variance with state law in such matters. So a charter is not necessary in order to exercise a substantive power of local self-government, but the procedures used to exercise such a power require a charter if they vary from state law. Municipal corporations that do not adopt a charter must follow the procedures provided in state law for the exercise of local self-government matters."

PROPOSED MODERNIZATION LANGUAGE OF ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION TO CLEAR UP CONFUSION OVER THE INTENT OF THE ORIGINAL 1912 CONSTITUTIONAL CONVENTION LANGUAGE:

Municipalities shall have authority to exercise all powers of local self-government.[1] ~~and~~ Municipalities shall also have the authority[2] to adopt and enforce within their territorial limits such local police, sanitary and other similar regulations as are not in direct conflict with general laws. The General Assembly cannot interfere with powers granted to municipal corporations by the Ohio Constitution unless the Constitution sanctions the interference.[3] These exercises of municipal authority are self-executing, and no municipality shall be required to adopt a charter in accordance with Sections 7 and 8 of this Article XVIII to exercise this authority.[4]

RATIONALE FOR CHANGES:

1. Period Added.

2. To emphasize there are two different powers, a period was added and a new sentence made.

3. This language states the obvious and is taken from the Ohio Legislative Services Commission brief, titled: Municipal Home Rule, p. 1. Vol. 128, Issue 8, January 26, 2010.

4. The 1912 Home Rule Language clearly applies to both statutory and charter municipalities, however, courts have held that charter municipalities have both substantive and procedural Home Rule powers while statutory municipalities have substantive, but not procedural powers. This language makes the original 1912 intent clear.

APPENDIX A—BACKGROUND HISTORY OF HOME RULE IN OHIO BEFORE 1912

Ohio's first constitutional convention was held in 1802. This constitution placed all power for local government in the hands of the State Legislature. The power was exercised by special legislation.[13]

"By 1838 the burden of this special legislation had become so great that another general law was passed "for the regulation of incorporated towns." This act provided "that for the good order, regulation and government of all towns incorporated after the taking effect of this act" such towns should follow its provisions. The new law contemplated the enactment of special charters, but provided the details of town organization, which could be incorporated by reference into subsequent acts of incorporation. The act dealt with suffrage, elections, officers, powers, oath of office, taxation, licensing of liquor sellers, improvement of streets and alleys, judicial powers of the mayor, use of the county jail, etc."[14]

"The Second Constitutional Convention of Ohio met at Columbus on May 6, 1850, to prepare a new constitution for a state which had completely outgrown the document framed forty-eight years before. After two months of work, the Convention recessed from July 9 to December 2 because of a cholera epidemic then raging in the state. Their place of meeting after the recess was moved to Cincinnati. The convention completed its work and adjourned sine die on March 10, 1851. **One of the serious problems that faced the delegates at the convention was that of freeing the legislature of the state of the onerous task of enacting special laws**. **A part of this problem was that of the incorporation of cities and towns and the continual amendment of these charters to meet the needs of an expanding urban civilization.** The Convention was not unanimous in its desire to eliminate these special laws. In Committee of the Whole on June 3, 1850, a proposed Section 36 of Article II of the draft was stricken out. It provided that "the General Assembly shall provide for the creation and government of municipal corporations by general and uniform laws." ' It was suggested this matter was being dealt with in another committee, the one oh Corporations other than Banking, and this proved to be true. Mr. James W. Taylor of Huron and Erie, in the course of the debate, said, "It has been frequently said that three-fourths of the laws of Ohio are special and local in their nature. . . We have a twofold abuse in this state-local interference by the central government, and an omnibus of local

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[13] *Symposium: the Ohio Constitution—Then and Now: An Examination of the Law and History of the Ohio Constitution on the Occasion of its Bicentennial: Ohio's Constitution: An Historical Perspective. 51 Clev. St. L. Rev. 357, p. 364 (2004). Municipal Government in Ohio Before 1912, 9 Ohio St. L Journal No. 1, p. 2 (1948)*

[14] *9 Ohio St. L. Journal No. 1, p. 6.*

legislation vested in the court of common pleas."[15] The Constitutional Convention of 1850-51 approved the new constitution at Cincinnati on March 10, 1851. It was submitted to the voters and approved.[16]

"As finally approved, this constitution, which still is the fundamental law of Ohio, contained two provisions relating to municipal government. The first one, most specific, was Article XIII, Section 6. "The General Assembly shall provide for the organization of cities and incorporated villages, by general laws. . . .The second, less direct, is Section 1 of the same article, "The General Assembly shall pass no special act conferring corporate powers." Apparently, the future of local government was to rest upon general laws passed by the Assembly. The appellation of "town" was dropped, presumably to avoid confusion with townships and the term "Village" appeared for the first time as of general application."[17]

"The first general law for the organization of "cities and incorporated villages," enacted May 3, 1852, provided "that all corporations which existed when the present constitution took effect, for the purposes of municipal government, either general or special, and described or denominated by any law then in force as cities, towns, villages or special road districts shall be and they are hereby organized into cities and incorporated villages... and all laws now in force for the organization and government of any such municipal corporations shall be, and they are hereby repealed. . . ." "Cities were, divided by the act into two classes-those of the first class including all those whose population was over 20,000, and those of the second class, including all others. Villages became cities when they had a population of 5,000 at any federal census. The effect of the new constitution was immediate and drastic. Only 24 special and local laws were passed in 1852, occupying 47 pages, while the general laws included 348 pages.[18]

"The general law of 1852 was amended on March 25, 1854, to make the advancement of a village to a city or a city of the second class to a city of the first-class dependent upon, the approval of the local council. Similar amendments to -various sections of the general law are found in the session laws for the remainder of the nineteenth century. There is exhibited a strong tendency toward special legislation through a refinement of the system of classification. As cities grew and became more numerous their -problems began to differentiate them one from another.[19]

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[15] *Id. At p. 8.*
[16] *Id. At pp. 8-9.*
[17] *Id. At p. 9.*
[18] *Id.*
[19] *Id.*

"Having rejected a proposed new constitution in 1874, Ohioans voted against holding a convention at all when the issue came up in 1891. By 1909, the agitation for social and political reform associated with Progressivism had reached such a peak that the general assembly submitted a referendum on holding a constitutional convention to the voters a year earlier than required.[20] . . . "For a decade, Progressives, led by Tom Johnson, the mayor of Cleveland, had been trying to open the political system. Johnson and other Progressives, such as Cincinnati clergyman Herbert Bigelow, were strong supporters of governmental reforms such as the initiative and referendum and municipal home rule.[21]

"Political reformers formed the Ohio Progressive Constitutional League to advocate on behalf of candidates who would support the initiative, referendum, recall, and municipal home rule. In Cincinnati, representatives from businesses, clubs, trade associations, and trade unions joined to organize a slate of reform candidates. . . . With such an array of Progressive forces enlisted in the campaign to elect delegates, the resulting convention had a distinctively Progressive character."[22]

"Urban home rule proved divisive. The 1851 Constitution required the legislature to provide for the organization of cities and the incorporation of villages. Another part of the constitution required that all laws be uniform. The Supreme Court had sustained legislation that had classified cities according to population and then treated them differently on that basis. This approach resulted in a range of types of city organization even for cities with similar populations. For example, Cleveland had a strong mayor, while Cincinnati had a figurehead mayor with a powerful city council and board of administration. In a suit instigated by traditional political leaders to clip the wings of Progressive mayors—especially Cleveland's Tom Johnson—the Ohio Supreme Court in 1902 had invalidated all city charters for violating the constitutional requirement of uniformity of laws. The court then had delayed execution of its order to give the boss-dominated legislature time to pass a new municipal code. Progressives, who predominated in some cities, especially Cleveland, now pushed hard for home rule to reverse their earlier defeat."[23]

"The "liquor question" figured into the debates. " Drys" did not want home rule to be used by cities to overturn state laws permitting subdivisions to ban the sale of alcoholic beverages. They were able to pass a proviso that no municipal laws could conflict with the general laws of

[20] Symposium: Ohio Constitution (supra) at pp. 381-2.
[21] *Id.*
[22] *Id. At p. 383-4.*
[23] *Id. At p. 386.*

the state. Both Republicans and Democrats generally supported home rule; it was primarily the rural delegates who expressed concern over its effect on local option."[24]

[24] *Id.*

APPENDIX B – HOME RULE OUTSIDE OHIO

The origin of home rule is an ancient concept intended merely to allow local governments to operate more effectively.[26] Even the Magna Carta included a provision that "the city of London shall have all its ancient liberties and its free customs as well by land as by water." *Id.*

In the United States, the colonists showed their dedication to independence and fear of centralized governments through inherent assumptions of home rule. However, in a line of cases dating back to 1868, state decisions viewed municipal corporations as statutory creatures owing their existence to their state legislatures. Known as "Dillon's Rule" after the Iowa Supreme Court Justice John Dillon who articulated the theory, it suggested that a municipality could only act under express authority from the legislature. Just three years later, Judge Thomas Cooley of the Michigan Supreme Court counteracted Dillon's Rule with the Cooley Doctrine, defining home rule as the legal premise that localities have the inherent right for self-governance.

In 1906, Oregon was among the first to pass home rule amendments to a state constitution. Provisions of Article XI permit the voters of a municipality to adopt charters or an act of incorporation "subject to the Constitution and criminal laws of the state of Oregon" and preserved to cities the exclusive power to regulate the sale of liquor.

However, the 1960s yielded a watershed of home rule provisions. In 1966, Massachusetts not only separated from Dillon's Rule, but also passed a home rule amendment to its constitution. The first section of Amendment 89 states its intention "to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government." Notably, section 6 of the Amendment identifies a municipality's authority to adopt, amend, and repeal ordinances and bylaws for all areas that were not reserved to the state legislature, and further provided that the local authority applies whether or not the municipality has adopted a charter. Among other states, Alaska also provides in Article 10, Section 11 that legislative powers are self-executing.

A century after creating Dillon's Rule, Iowa found it excessively burdensome, and amended its constitution to explicitly abolish it and provide home rule. Interestingly, the home rule issue won decisively by more than a 30% margin of the votes in the 1968 general election, while future President Nixon only carried 53% of the vote.[27] Found in Section 38A of the Iowa constitution, municipal corporations were granted authority "to determine their local affairs and government," and "the rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state."

In 1972, Montana adopted a completely new constitution that included Article XI on local government. Like Alaska and Massachusetts, certain legislative, administrative, and other

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[26] John R. Nolon,*The Erosion of Home Rule through the Emergence of State-Interests in Land Use Control*, 10 Pace Envtl. L. Rev. 497, 505-506. (1993); citations omitted.

[27] State of Iowa Canvass of the Vote General Election November 5, 1968, issued by Melvin D. Synhorst, Secretary of State, available at https://sos.iowa.gov/elections/pdf/results/60s/1968gencanv.pdf

powers provided or implied by law were automatically granted to municipalities upon incorporation, and those that adopt a charter are entitled to self-government and the exercise of "any power not prohibited by the constitution, law, or the charter."

Approximately 40 states have some form of home rule, and quick review suggests that at least nine states have both overruled Dillon's Rule while also having explicit home rule recognition. Nevada is moving towards these ranks with the July 2015 passage of a state bill providing limited home rule. Momentum also continues in West Virginia, where its 5-year long home rule pilot program is due to end this year, after having revoked Dillon's Rule by legislation in 1969.

Even on an international level, the importance of municipal home rule has garnered significant attention. About a decade ago, the United Nations Human Settlements Programme, UN-Habitat, published "International Guidelines on decentralization and the strengthening of local authorities." [28] In those guidelines and other reports, the organization recognized a common characteristic worldwide: local governments have a direct relationship to their citizens, and thus they must be empowered to efficiently act and respond to their constituents in order to provide stability and legitimacy. UN Habitat recognizes that "Strong and capable local governments are the key levers to ensure strong … development, accountable and transparent city management, and a dynamic multi-stakeholder engagement. They have *the proximity and legitimacy*, … to effectively manage, govern, and lead the development…."[29]

[28] http://www.cities-localgovernments.org/committees/dal/Upload/news/ladsguidelines.pdf
[29] UN-Habitat, https://unhabitat.org/governance/, last accessed 7 April 2017.